

LICENSE AGREEMENT

Type of Agreement entered into between the Parties:

Protected Potato Variety

Open Potato Variety

This agreement is entered into between:

NAME OF PARTY1:

having its registered office at
and duly herein represented by
hereinafter referred to as "**Party1**" or "**Licensor**"

NAME OF PARTY2:

with its registered office at
and duly herein represented by
hereinafter referred to as the "**Party2**", and also referred to as

"Seed Grower"*

"Commercial Producer"*

"Seed Merchant"*

* kindly indicate all designations of **Party2**

WHEREAS the **Licensor** has been granted the exclusive right to license a range of **Protected Potato Varieties** in South Africa and to supply **Propagating Material** of these **Protected Potato Varieties** under license, either directly or indirectly, to **Party2** in South Africa; and

WHEREAS the **Protected Potato Varieties** are protected by **Plant Breeders' Rights** registrations in South Africa and the **PBR Holder** is the proprietor thereof; and

WHEREAS the **Licensor** is also in a position to supply **Open Potato Varieties**, not being protected by **Plant Breeders' Rights**, either directly or indirectly to **Party2** in South Africa; and

WHEREAS the **Seed Grower** wishes to obtain **Plant Material** of the abovementioned **Potato Varieties** in order to propagate such **Potato Varieties** for the purpose of supplying **Commercial Producers**, **Seed Merchants** and other **Seed Growers** with **Propagating Material** under license from the **Licensor**, without **Transfer** of ownership in the **Propagating Material**, and

WHEREAS the **Seed Merchant** wishes to obtain **Propagating Material** for supply to **Commercial Producers** in terms of this **Agreement** and subject to the conclusion of a **Commercial Producer's Agreement** with each such **Producer**; and

WHEREAS the **Commercial Producer** wishes to grow the **Varieties** for the purpose of producing **Ware potatoes** commercially in the **Growing Area**.

NOW IT IS AGREED AS FOLLOWS:**1. INTERPRETATION AND DEFINITIONS**

In this **Agreement**, unless the context indicates otherwise, the following words and expressions shall have the following meanings:

- 1.1 "Acts" means the Plant Breeder's Rights Act no 15 of 1976; the Agricultural Pests Act no 36 of 1983; and the Plant Improvement Act no 53 of 1976.
- 1.2 "Agreement" means this agreement including any attached **Schedules**.
- 1.3 "Area" means any area directly or indirectly under the control or occupied by the **Party2**.
- 1.4 "Effective Date" means the date of signature of this **Agreement** by the last party signing.
- 1.5 "Ware Potatoes" means any potatoes designated for consumption, either as table potatoes, foodstuff potatoes or otherwise, but excludes all **Propagating Material**.
- 1.6 "Growing Area" means the place located within the borders of the Republic of South Africa as described in **Schedule A** of this **Agreement** and where **Party2** has undertaken to grow the **Varieties**; **[NOTE: THE AREAS WHERE PARTY2 INTENDS GROWING THE PLANT MATERIAL SHOULD BE**

PROPERLY IDENTIFIED IN SCHEDULE A AND BE ATTACHED HERETO]

- 1.7 "Certified Seed Potatoes" means propagating material certified in terms of the provisions of the South African Seed Potato Certification Scheme instituted in terms of the Plant Improvement Act, 1976 (Act no 53 of 1976).
- 1.8 "Uncertified Seed Potatoes" means propagating material which is not certified.
- 1.9 "Commercial Producer" means a **Ware Potato** producer who has been granted a sub-license by the **Licensor** in terms of a **Commercial Producer Agreement**.
- 1.10 "Commercial Producer Agreement" means any agreement between **Party1** and **Party2**, and which determines *inter alia* the terms and conditions of supply of **Propagating Material** by the **Seed Grower** and/or **Seed Merchant** to the **Commercial Producer** and the conditions under which the **Commercial Producer** grows the **Propagating Material** and plants derived therefrom, and which shall be substantially the same as this **Agreement**.
- 1.11 "Parties" means the **Parties** indicated above as being parties to this agreement.
- 1.12 "PBR Holder" means the proprietor of the **Plant Breeders' Rights** as indicated in **Schedule B** to this **Agreement**.
- 1.13 "Plant Breeders' Rights" means the plant breeders' rights registrations pending or granted to the **PBR Holder** in respect of the **Propagating Material** as described in **Schedule B** to this **Agreement** which the **Parties** may amend from time to time in the form of a replacement **Schedule**. **[NOTE: THE DETAILS OF THE PBR HOLDER AND REGISTRATIONS SHOULD BE DEPICTED IN THIS SCHEDULE]**
- 1.14 "Compensation" means royalties payable in respect of the licensed **Potato Varieties** including other forms of consideration.
- 1.15 "Plant Material" means any plant or part thereof of the **Protected** and **Open Potato Varieties** and include **Propagating Material** thereof, but excludes **Ware potatoes** produced by **Commercial Producers** in accordance with the **Commercial Producer Agreement**.
- 1.16 "Principal Agreement" means a main license agreement between the **Licensor** and the **PBR Holder** and in terms of which the **Licensor** is granted the right to license **Seed Growers** and/or **Seed Merchants** to proliferate the **Plant Material** of the **Varieties** for supplying and licensing **Commercial Producers** for commercial **Ware Potato** production in South Africa under the terms and conditions of this **Agreement** and **Commercial Producer Agreements**.
- 1.17 "Propagating Material" means any material of a plant that can be used for the propagation of a plant of the **Protected** and **Open Potato Varieties** and includes plant material in any form, shape, size, nature and volume, and specifically including **Ware Potatoes**.
- 1.18 "Protected Potato Varieties" means **Potato Varieties** forming the subject matter of **Plant Breeders' Rights**.
- 1.19 "Open Potato Varieties" means **Potato Varieties** as set out in **Schedule C** to this **Agreement** which the **Parties** may amend from time to time in the form of a replacement **Schedule**, and not being protected by **Plant Breeders' Rights**. **[NOTE: THE DETAILS OF THE OPEN POTATO VARIETIES SHOULD BE DEPICTED IN THIS SCHEDULE]**
- 1.20 "Territory" means South Africa.
- 1.21 "Potato Varieties" means **Protected Potato Varieties** and **Open Potato Varieties**, whether **Certified Seed Potatoes** or **Uncertified Seed Potatoes** and as listed in **Schedules B** and **C** to this **Agreement**.
- 1.22 "Schedule" means a **Schedule** annexed to this **Agreement**.
- 1.23 "Transfer" means a conveyance or transfer of possession, but excludes the transfer of ownership. In other words, it means that the **Parties** do not acquire, at any stage, the ownership of any of the **Plant Material**.
- Further in this **Agreement**:
- 1.24 Clause headings are for the purposes of convenience and reference only and shall not be used in the interpretation of this **Agreement**, nor modify nor amplify any of its provisions.
- 1.25 The **Parties** shall, wherever necessary or appropriate, be referred to by their defined designations.
- 1.26 A reference to:-

- 1.26.1 any particular gender shall include the other gender;
- 1.26.2 the singular shall include the plural and *vice versa*;
- 1.26.3 a natural person shall include a juristic person (whether a corporate or unincorporate created entity) and *vice versa*.
- 1.27 All of the **Schedules** hereto are incorporated herein and shall have the same force and effect as if they were set out in the body of this **Agreement**.
- 1.28 Words and/or expressions defined in this **Agreement** shall bear the same meanings in any schedules hereto which do not contain their own defined words and/or expressions.
- 1.29 Where a period consisting of a number of days is prescribed, it shall be determined by excluding the first and including the last day.
- 1.30 Where the day upon or by which any act is required to be performed is a Saturday, Sunday or public holiday in the Republic of South Africa, the Parties shall be deemed to have intended such act to be performed upon or by the first day thereafter which is not a Saturday, Sunday or public holiday.
- 1.31 Where an expression has been defined and such definition contains a provision conferring a right or imposing an obligation on any Party, then notwithstanding that it is contained only in a definition, effect shall be given to that provision as if it were a substantive provision contained in the body of this Agreement.
- 1.32 If figures are referred to in numerals and words, the words shall prevail in the event of any conflict between the two.
- 1.33 Words and/or expressions defined in any particular clause in the body of this **Agreement** shall, unless the application of such word and/or expression is specifically limited to that clause, bear the meaning so assigned to it throughout this **Agreement**.
- 1.34 The *contra proferentem* rule shall not apply and accordingly, none of the provisions hereof shall be construed against or interpreted to the disadvantage of the **Party** responsible for the drafting or preparation of such provision.
- 1.35 The *eiusdem generis* rule shall not apply and accordingly, whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned.
- 1.36 A reference to any statutory enactment (including statutes, ordinances, regulations and by-laws) shall be construed as a reference to that enactment as at the Signature Date and as amended or re-enacted or substituted from time to time thereafter.
- 1.37 A reference to any legal principle, doctrine or process under South African law shall include a reference to the equivalent or analogous principle, doctrine or process in any other jurisdiction in which the provisions of this **Agreement** may apply or to the laws of which a Party may be or become subject.
- 1.38 Unless specifically provided to the contrary, all amounts referred to in this **Agreement** are inclusive of VAT.
- 1.39 The expiration or termination of this Agreement shall not affect such of its provisions that expressly provide that they will continue to apply after such expiration or termination or which of necessity must continue to apply after such expiration or termination.
- 2. GRANT**
- 2.1. Subject to the terms and limitations set forth in this **Agreement**, the **Licensors** hereby grants to the **Seed Grower** a license, together with the right to sub-license others on the same terms and conditions, to reproduce and propagate the **Propagating Material** in South Africa, exclusively and only for the purpose of providing the **Propagating Material** to **Seed Merchants**, **Commercial Producers** and other **Seed Growers** for the commercial production of **Ware Potatoes**, or for own use, subject to the payment of **Compensation** as contemplated herein.
- 2.2. Subject to the terms and limitations set forth in this **Agreement**, the **Licensors** hereby grants to the **Seed Merchant** a license to provide **Propagating Material** obtained from the **Seed Growers** to **Commercial Producers** for the commercial production of **Ware potatoes**.
- 2.3. It is recorded that the **Propagating Material** supplied by the **Licensors** to the **Seed Grower** and **Seed Merchant** remains the property of the **PBR Holder** in the custody of the **Licensors** and that no **Transfer** of ownership in the **Propagating Material** or the **Plant Material** is granted in terms of this **Agreement**, neither to the **Seed Grower** nor to the **Seed Merchant** nor to the **Commercial Producer**. The **Seed Grower** and **Seed Merchant** are not to make any representations contrary to the aforesaid to anyone.
- 2.4. The **Seed Grower** and **Seed Merchant** will be obliged to enter into the **Commercial Producer Agreement** with each and every **Commercial Producer** who is supplied with **Propagating Material**

- and the **Seed Grower** and **Seed Merchant** shall not under any circumstances supply **Plant Material** to any **Commercial Producer** or any other party without first entering into such written **Commercial Producer Agreement** with such **Commercial Producer** or party.
- 2.5. The **Commercial Producer Agreement** shall bind such **Commercial Producer** to all legal obligations owing the **Licensors**, especially the limitations that the **Propagating Material** may only be grown on identified **Growing Areas**, the **Propagating Material** may not be transferred outside the **Territory** and that the **Commercial Producer** shall not asexually propagate **Propagating Material** or **Transfer** such **Propagating Material** or parts thereof to any other party for the purpose of propagation.
- 2.6. The **Seed Grower** shall have the right to grant sub-licenses to sub-contractor **Seed Growers** to produce the **Propagating Material** on its behalf, and the sub-contractor **Seed Growers** shall supply their entire yield of **Propagating Material** either to the **Seed Grower**, or to **Commercial Producers** and the sub-contractor **Seed Growers** shall be bound by the terms and conditions of this **Agreement**.
- 2.7. Should the **Seed Grower** wish to additionally produce **Ware potatoes**, it shall enter into a **Commercial Producer Agreement** with the **Licensors**, and shall then be entitled to sell both **Ware potatoes** and **Propagating Material**, provided that the **Seed Grower** shall clearly distinguish between the two in its books and records.
- 2.8. The right to alter the **Propagating Material** through genetic engineering techniques, including introducing new genes and other genetic material into the **Propagating Material** is expressly excluded from this **Agreement** and the **Commercial Producer Agreement**, and is strictly prohibited.
- 2.9. Should a **Party** to this **Agreement** be a participant to the potato certification scheme, such **Party** shall only sell **Certified Seed Potatoes** for propagation purposes.
- 2.10. **Party2** shall be responsible to pay **Compensation** to **Party1** whether the **Potato Varieties** are **Certified Seed Potatoes** or **Uncertified Seed Potatoes**.
- 2.11. In the case of **Protected Potato Varieties**, the **Seed Grower** and **Seed Merchant** will attach, or have the **Commercial Producers** attach, to **Propagating Material** transferred under this **Agreement**, or their boxes, pallets, or containers, or the like in which **Propagating Material** is contained, a durable and legible label or tag specifying:
- 2.11.1. the correct name of the **Varieties**;
- 2.11.2. if applicable, the corresponding **Plant Breeder's Rights** Numbers of the **Varieties**;
- 2.11.3. a warning that unlicensed propagation of the **Plant Material** is prohibited;
- 2.11.4. a warning that the sale or **Transfer** of the **Plant Material** is not allowed; and
- 2.11.5. a warning that the **Varieties** are genetically identifiable.
- 2.12. In the event that **Party2** becomes aware of unauthorised propagation, growing or **Transfer** of the plants, **Party2** shall notify **Party1** of this in writing and will provide **Party1** with evidence, available to him, of such unauthorised use, within 20 (twenty) days after so becoming aware.
- 2.13. **Party2** indemnifies and holds harmless **Party1**, its officers, employees and agents and the **PBR Holder** against any and all claims, suits, losses, damages, costs, fees, and expenses arising from or arising out of the exercise by **Party2** of this license. This indemnification will include, but will not be limited to, any product liability.
- 2.14. **Party2** acknowledges that the ownership of all **Plant Material** will forever vest with the **PBR Holder** held in the custody of the **Licensors**, or in the possession of **Party2**, notwithstanding the fact that the **Plant Material** may be planted in the **Growing Areas** or other **Areas**.
- 2.15. Neither the **Party1** nor the **PBR Holder** nor **Party2** will be liable to replace any **Plant Material** in the event of any damage, disease or other mishap to the **Plant Material**.
- 2.16. Production of the **Propagating Material** shall take place in terms of the provisions of the Plant Improvement Act, 1976 (Act no 53 of 1976), specifically including but not limited to the terms of sections 6 and 13.
- 3. LICENSOR'S RIGHTS**

- 3.1. The **Licensor** does not warrant or guarantee the performance of the **Potato Varieties** in any manner whatsoever nor does the **Licensor** warrant the size of the yield of the **Propagating Material** supplied to the **Commercial Producer**.
- 3.2. The **Licensor** or its authorised representatives shall have the right upon reasonable notice to enter upon or to procure the entering upon premises, **Areas**, or land of **Party2** or under the direct or indirect control, occupation or possession of **Party2** during normal business hours for the purposes of inspection and verifying **Party2's** compliance with the terms and conditions of this **Agreement** or any **Commercial Producer Agreement**. The **Licensor** will keep all information gained during an inspection confidential save to the extent that publication thereof is essential to enforce the **Licensor's** rights in terms hereof.
- 3.3. **Party2** shall render such assistance as may reasonably be requested by the **Licensor** or his representative for any such inspection.
- 3.4. Any inspection shall be at the expense of the **Licensor** unless material non-compliance of **Party2** with the terms and conditions of this **Agreement** or any **Commercial Producer Agreement** is disclosed in which case the said costs shall be met by **Party2**.
- 3.5. **Licensor** or its authorised representative shall have the right, on reasonable notice to **Party2**, to enter upon the premises of **Party2** to examine the accounts and records pertaining to the implementation of this **Agreement** and where appropriate of any agent or representative discharging any of the obligations assumed by **Party2** in terms of this **Agreement**. Such examination shall be at the expense of the **Licensor** unless material errors, omissions or inaccuracies in the accounts and records are disclosed in which case the said costs shall be met by **Party2**. The **Licensor** shall keep all information solicited pursuant to the exercise of its rights in terms of this clause confidential except to the extent that it may be necessary to publicise the information to enforce its rights in terms of this **Agreement**.
- 3.6. The **Licensor** shall further have the right, without giving notice to **Party2** and without having a warrant or court order, to do the following, should it appear that **Party2** is infringing the **Plant Breeders' Rights** namely:
- 3.6.1. enter and inspect any place, premises or vehicle in or upon which any **Plant Material** or **Propagating Material** is or is upon reasonable grounds suspected to be produced, reproduced, bred, cultivated, processed, treated, prepared, tested, examined, analysed, classified, pre-packaged, marked, labelled, held, kept, packed, removed, transported, exhibited or **Transferred**;
- 3.6.2. direct a person in control of or employed at such place, premises or vehicle to-
- 3.6.2.1 deliver any book, record or other document that pertains to that **Plant Material** or **Propagating Material** and which is in the possession or under the control of that person;
- 3.6.2.2 furnish such information as he or she has with regard to that **Plant Material** or **Propagating Material**;
- 3.6.2.3 render such assistance as the **Licensor** requires to enable him or her to perform his rights in terms of this **Agreement**;
- 3.6.3 inspect any book, record or other document and make copies thereof or excerpts therefrom;
- 3.6.4 seize any **Plant Material**, **Propagating Material**, substance, book, record or other document or article which is or may be relevant to the infringement and keep it in his custody: Provided that the person from whose possession or control any book, record or document has been taken, may, at his or her own expense and under the supervision of the **Licensor** make copies thereof or excerpts therefrom;
- 3.6.5 take samples, in the presence of **Party2**, of any **Plant Material**, **Propagating Material**, substance or other article used or intended for use in the production, reproduction, breeding, cultivation, processing, treatment, preparation, testing, examining, analysing, classification, pre-packaging, marking, labelling, holding, keeping, packing, removal, transport, exhibition or **Transfer** thereof, and of any **Plant Material**, **Propagating Material**, substance or other article seized in terms hereof, and examine, analyse or classify such samples.
- 3.7. Should any costs be awarded in any proceedings instituted in terms of this agreement against **Party2**, **Party2** agrees to calculation and taxation of the costs on an Attorney-and-Own-Client Scale.
- 4. SUPPLY OF PLANT MATERIAL**
- 4.1. The **Licensor** will arrange for the supply of **Plant Material** to the **Seed Grower** for the purpose of asexually propagating the **Propagating Material** and the planting and growing of the **Propagating Material** on the **Growing Area**, and supplying **Propagating Material** to **Seed Merchants**, **Commercial Producers** and other **Seed Growers** for the purpose of planting and growing plants to produce **Ware potatoes** commercially. It is understood that the **Seed Grower** may, subject to the payment of **Compensation** and subject to the other terms of this agreement, stock **Propagating Material** for future propagation.
- 4.2. The **Seed Merchant** shall obtain the **Propagation Material** exclusively from the **Seed Grower** and will supply the **Propagating Material** to **Commercial Producers** for the purpose of planting and growing plants to produce **Ware potatoes** commercially, subject to the terms and conditions of this **Agreement** and the **Commercial Producer Agreement**.
- 4.3. The **Seed Grower** will supply **Plant Material** to the **Seed Merchant** and **Commercial Producer** during the currency of this agreement subject to the terms and conditions contained herein, without ownership in such **Plant Material** having been transferred to either **Party2**, and in which ownership in such plant material shall at all times vest in the **PBR Holder**.
- 4.4. The terms and conditions of any **Commercial Producer Agreement** and any amendment thereto or variation thereof shall be read together with the terms and conditions of this **Agreement** and the terms and conditions of this **Agreement** shall prevail in the event of conflict or ambiguity between any such **Commercial Producer Agreement** and this **Agreement**.
- 4.5. Subject to the terms and conditions of this **Agreement**, it is recorded that the **Seed Grower** and **Licensor** may enter into a **Commercial Producer Agreement** in terms of which the **Seed Grower** acts as **Commercial Producer** of the **Plant Material**.
- 4.6. The **Parties** acknowledge that this **Agreement** is intended to protect the interests of the **Licensor** and to ensure its ability to comply with the terms and conditions of the **Principal Agreement**.
- 4.7. Supply of **Plant Material** is subject to the laws of South Africa, and in particular, the **Acts**.
- 5. SEED GROWER AND SEED MERCHANT'S OBLIGATIONS**
- The **Seed Grower** and **Seed Merchant** hereby undertakes in favour of the **Licensor** that it shall:
- 5.1. plant and propagate the **Propagating Material** only on the **Growing Area**;
- 5.2. provide adequate security and pest control on the **Growing Area** and at the location where the **Propagating Material** are propagated;
- 5.3. provide the **Licensor** with copies of the signed **Commercial Producer Agreements** on a quarterly basis;
- 5.4. make payments to the **Licensor** of all **Compensation** or other forms of consideration as set out in **Schedule B** hereto;
- 5.5. comply with any import, export, utilisation or disposal constraints imposed on him/it in terms of this **Agreement** or by law;
- 5.6. not divulge confidential information belonging to the **Licensor**; and
- 5.7. not sell any **Plant Material** to any third party or **Commercial Producer**, it being understood that the **Compensation** paid by the **Commercial Producer** to the **Seed Grower** for **Propagating Material** supplied shall be either in the form of a license royalty and/or license fee, but not a purchase price.
- 6. GENERAL RIGHTS AND OBLIGATIONS OF THE COMMERCIAL PRODUCER**
- The **Commercial Producer**:
- 6.1. will have the right to plant and grow the **Potato Varieties** only in the **Growing Area** for the sole purpose of selling of harvested potatoes for consumption (**Ware potatoes**) whilst this **Agreement** is in full force and effect;
- 6.1. acknowledges that this **Agreement** binds the **Commercial Producer's** heirs, agents, representatives, employees, members or shareholders, successors in title and/or assigns;
- 6.2. acknowledges that the ownership of all **Plant Material** at all times vests with the **PBR Holder** notwithstanding the fact that the **Plant Material** may be planted in the **Growing Area** or in any ground or **Areas** belonging to the **Commercial Producer** or under the direct or indirect control of the **Commercial Producer** or in any other **Area** with the **Commercial Producer's** consent and/or knowledge;
- 6.3. undertakes not to or attempt to propagate, multiply, clone, breed, reverse engineer, genetically or otherwise modify seeds of the **Potato Varieties** in any way;
- 6.4. undertakes not to sell, **Transfer**, donate or otherwise dispose of any **Propagating Material**;
- 6.5. shall be entitled to retain possession of the **Plant Material**;

- 6.5.1 only if the **Commercial Producer**, requests the **Licensor** in writing to do so; and
- 6.5.2 the **Licensor** agrees thereto in writing; and
- 6.5.3 subject to the payment of further **Compensation** by the **Commercial Producer** to the **Licensor** in terms of this **Agreement**, based on the quantum of **Propagating Material** retained, in which case the terms and conditions of this **Agreement** will continue to apply; and failing which the **Commercial Producer** shall be obliged and hereby undertakes to destroy all **Plant Material** in the possession of the **Commercial Producer** at the cost of the **Commercial Producer** and to provide the **Licensor** with confirmation in writing thereof;
- 6.6 undertakes to comply at all times with any statutory conditions that relate to the import, export, handling, storage, utilisation or disposal of any **Plant Material**, including, but not limited to, the **Acts**;
- 6.7 endeavors, to sell all **Ware potatoes** of the **Potato Varieties** in a manner that clearly displays the **Potato Variety**, the origin of the potatoes, as well as the fact that the **Potato Varieties** are protected by **Plant Breeders' Rights** (if they are) on the commercial packaging;
- 6.8 shall not do or permit the doing of anything which would constitute an infringement of any of the **PBR Holder's** rights in terms of section 23A of the **Plant Breeders' Rights Act** or otherwise;
- 6.9 shall not hold the **Licensor** liable for any **Plant Material** supplied in terms hereof by the **Seed Grower** and which does not perform as expected or which are not viable, or not of the designated **Potato Varieties**; and the **Commercial Producer** shall not be entitled to obtain remuneration or replacement **Plant Material** from any party to this agreement or from the **PBR Holder**. The **Commercial Producer** shall have no recourse in any manner whatsoever against the **Licensor** or the **Seed Grower** or anyone else who is party to this agreement in the event of:
- 6.9.1 any **Plant Material** supplied in terms hereof by the **Seed Grower** not performing as expected; or
- 6.9.2 the **Plant Breeders' Rights** not being valid.
- 6.10 The **Parties** agree that, should the **Commercial Producer** be in default of his obligations in any way in terms of this **Agreement** or acts in contravention of the **Acts** or causes the **PBR Holder** or the **Licensor** to suffer any harm or damage as a consequence of the conduct of either the **Commercial Producer**, his agents or his assigns, the **Licensor** shall be entitled to cancel this agreement summarily and remove any or all of the **Plant Material** of the **Potato Varieties** or order the **Commercial Producer** to destroy the **Plant Material**.
- ## 7 COMPENSATION
- The **Compensation** includes royalties and license fees payable in terms of this **Agreement** and is incorporated into the price paid by the **Commercial Producer** to the **Seed Grower** and/or **Seed Merchant** on supply of the **Plant Material**.
- ## 8 TERMINATION
- 8.1 Unless terminated in accordance with the provisions of this clause, the term of this **Agreement** shall be one (1) year; but it shall be automatically renewed on an annual basis and on the condition that **Compensation** remains payable to the **Licensor** on an annual basis.
- 8.1 This **Agreement** may be terminated:
- 8.1.1 by either **Party** on no less than 3 (three) months written notice to the other **Party**, for any reason or no reason whatsoever, provided that no such notice shall be issued within the first year after the final date of signature of this **Agreement**; In the event that **Party1** terminates this **Agreement**, **Party2** shall be entitled to supply all unfulfilled orders for the **Plant Material** received prior to the date of termination;
- 8.1.2 by the **Licensor** on written notice to the **Party2**, in the event that the **Principal Agreement** is terminated for any reason whatsoever; provided that if the **Principal Agreement** has been terminated by written notice of **Party1** to the **PBR Holder** this **Agreement** shall only be terminated on 3 (three) months written notice. In the event that **Party1** terminates this **Agreement** **Party2** shall be entitled to supply all unfulfilled orders for the **Plant Material** received prior to the date of termination.
- 8.2 Without prejudice to any right or remedy **Party1** may have against **Party2** for breach of this **Agreement**, **Party1** shall have the right summarily to terminate this **Agreement**:
- 8.2.1 should **Party2** be found by a court to infringe the **Plant Breeders' Rights**, *prima facie* or otherwise;
- 8.2.2 should **Party2** breach any term of this **Agreement** or any **Commercial Producer Agreement** entered into between the **Party1** and **Party2** and fail to remedy such breach to the reasonable satisfaction of the **Licensor** within ten (10) days (or within a reasonable period of time if it cannot be remedied within the ten (10) days period) of the receipt by **Party2** of a written demand to that effect;
- 8.2.3 on the commencement of winding up or bankruptcy of the **Seed Grower** or on the appointment of a receiver or administrator of the **Seed Grower's** assets or on the **Seed Grower** ceasing to do business at any time for 30 consecutive days (other than for annual holiday);
- 8.2.4 on the **Seed Grower** for any reason of whatsoever nature being substantially prevented from performing or becoming unable to perform its obligations hereunder;
- 8.2.5 on the **Seed Grower** assigning or attempting to assign this **Agreement** without the prior written consent of the **Licensor**;
- 8.2.6 if the control of the **Seed Grower** passes from the present shareholders or owners or controllers to other persons whom the **Licensor** in its absolute discretion regard as unsuitable.
- 8.3 Upon termination hereof, the **Licensor** shall have, in addition to any rights and/or remedies which are in any event available to the **Licensor**, the right to claim immediate surrender of all **Plant Material** including tissue culture and plants including mother stock growing on the **Growing Area**.
- 8.4 Termination in terms of this clause shall be without liability for any costs incurred or damages suffered by the **Seed Grower** or any third party as a result of the exercise of any of the rights of the **Licensor**. The **Seed Grower** shall indemnify and hold the **Licensor** harmless against any such claims.
- ## 9 PENALTY FOR BREACH OF AGREEMENT
- Should **Party2** be found to have infringed the **Plant Breeders' Rights** or breached a material term of this agreement, **Party2** shall be liable to pay to the **Licensor** a penalty of ten (10) times the total commercial value of the items forming the subject matter of the infringement or breach. For example, the quantum of the unauthorised propagating material from which the infringing crop originated is calculated and the value, at the time of calculation, of the corresponding authorised propagating material multiplied by ten (10) to determine the penalty payable.
- ## 10 NOTICES
- 10.1 All notices, documents, consents, approvals or other communications (hereinafter referred to as a "Notice") to be given hereunder shall be in writing and shall be sufficiently served if:
- 10.1.1 sent prepaid by registered mail and addressed to the addresses set out **Schedule D** hereto; which the **Parties** choose as their *domicilium citandi et executandi*. Any Notice so sent shall be deemed served on the fourteenth (14th) day after the day of posting; or
- 10.1.2 sent by facsimile and successfully transmitted to the facsimile number depicted in **Schedule D** of the party to be notified. Any Notice so sent shall be deemed served at the time of transmission; and
- 10.1.3 which clearly identifies the intended recipient.
- 10.2 Any **Party** may by notice to the other/s change the physical address chosen as its *domicilium citandi et executandi* to another physical address in the Republic of South Africa, or its telefax number; provided that the change shall only become effective upon receipt of the notice by the addressee.
- 10.3 Any notice to a Party which is:-
- 10.3.1 sent by prepaid registered post in a correctly addressed envelope to it at its *domicilium citandi et executandi* shall be deemed to have been received on the 10th day after posting (unless the contrary is proved); or
- 10.3.2 delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
- 10.3.3 transmitted by telefax to its chosen telefax number (if any) stipulated in **Schedule D**, shall be deemed to have been received on the date of dispatch (unless the contrary is proved); or
- 10.3.4 transmitted by electronic mail to its chosen e-mail address (if any) stipulated in **Schedule D**, shall be deemed to have been received on the first business day succeeding the date of dispatch (unless the contrary is proved).
- 10.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a **Party** shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.
- ## 11 MISCELLANEOUS
- 11.1 The waiver or forbearance or failure of a **Party** in insisting in any one or more instances upon the performance of any provisions of this **Agreement** shall not be construed as acquiescence or waiver or relinquishment of the party's rights to future performance of such

provision and the other party's obligations in respect of such future performance shall continue in full force and effect.

11.2 This **Agreement** and the **Schedules** thereto embody all the terms agreed between the **Parties** and no oral representations, warranties or promises shall be implied as terms hereof. The terms and conditions of this **Agreement** may only be varied by documents in writing in terms agreed between the **Parties** and any such documents shall be signed by the **Parties** hereto and annexed to this **Agreement**.

11.3 No alteration, variation, amendment or purported consensual cancellation of this **Agreement** or any deletion therefrom shall be of any force or effect unless reduced to writing and signed by or on behalf of the **Parties**.

11.4 The **Parties** have undertaken to each other to do all such things, take all such steps and to procure the doing of all such things and the taking of all such steps as may be necessary, incidental or conducive to the implementation of the provisions, terms, conditions and import of this **Agreement**.

11.5 No **Party** shall be entitled to cede, assign or otherwise transfer any of its rights, interests or obligations under and in terms of this **Agreement** without the prior written consent of all of the other **Parties**.

11.6 If any term or provision in this **Agreement** shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this **Agreement** and shall not be affected.

11.7 The **Parties** shall replace the unenforceable provision(s) with other provision(s) which differ as little as possible from the valid one(s) taking into account the object and purpose of this **Agreement**.

11.8 Nothing in this **Agreement** shall create a partnership or joint venture between the **Parties** hereto and save as expressly provided in this **Agreement** neither party shall enter into or have authority to enter into any engagement or make any representation or warranty on behalf of or pledge the credit of or otherwise bind or oblige the other party hereto.

12 GOVERNING LAW

The interpretation, construction and effect and enforceability of this **Agreement** shall be governed by the laws of the Republic of South Africa.

13 FORCE MAJEURE

Notwithstanding anything to the contrary contained in this **Agreement**, the **Parties** agree that in the event of any of them failing to perform its obligations hereunder, excepting the obligation to pay money when due, the same shall not constitute a breach of this **Agreement** when and while, and to the extent that such failure shall be caused by act of nature, fire, riot, insurrection, civil disturbance, war, accidents, labour disturbance, compliance with acts or requests of any government authorities (foreign or domestic), or by any cause beyond reasonable control, or risk of non-performing party, whether or not similar to any of the foregoing events.

14 ADVERTISEMENTS

Party2 shall in any advertisement, sales contract, catalogue, price list, and any other publication in which the **Protected Potato Variety** is mentioned, refer to the **Plant Breeders' Rights** of the **PBR Holder** in the **Protected Potato Variety**.

15 DISPUTES AND ARBITRATION

15.1 Any disputes arising out of or relating to this **Agreement** including disputes as to the meaning or interpretation of any provision of this agreement, may first be resolved or attempted to be resolved by the **Parties** through bona fide discussion within 15 days of such dispute having been declared by any of the **Parties**. Should they fail to resolve the dispute, the dispute shall be settled by arbitration

15.2 The arbitration shall be held:

15.2.1 in Pretoria;

15.2.2 in an informal manner with only the parties concerned and their respective legal representatives present;

15.2.3 otherwise in terms of the Arbitration Act, 1965 (Act no 42 of 1965) and it is the intention of the parties that the arbitration shall, if possible, be finalised within 21 (twenty one) days after it has been requested.

15.3 The arbiter shall, if the matter is mainly:

15.3.1 of a judicial nature, be a practicing lawyer or advocate with not less than 10 (ten) years experience;

15.3.2 of an accounting nature, be a practicing chartered accountant with not less than 10 (ten) years experience;

15.3.3 of any other nature, be any independent person whomsoever, upon which the parties to the dispute agree.

15.4 If the parties to the dispute cannot within 7 (seven) days after the arbitration has been requested, agree whether the dispute is mainly of a

judicial, accountancy, or other nature, the dispute shall be regarded to be of a judicial nature.

15.5 If the parties to the dispute are not able to agree upon an arbiter within 7 (seven) days after the arbitration has been requested, the arbiter shall be appointed by the serving President of the Law Society of Transvaal, upon the request of any of the parties to the dispute.

15.6 The decision of the arbiter shall be final and binding upon the parties to the dispute and may be made an order of any court to whose jurisdiction the parties are subject.

15.7 None of the above clauses will preclude either party from approaching a court of competent jurisdiction for an order, pending the decision of the arbitrator or pending the finalisation of the arbitration proceedings or under any other circumstances.

SIGNED AT _____ ON THIS ____ DAY OF _____

LICENSOR

NAME OF SIGNATORY: _____

CAPACITY OF SIGNATORY: _____

WITNESS 1: _____

WITNESS 2: _____

SIGNED AT _____ ON THIS ____ DAY OF _____

PARTY2:

NAME OF SIGNATORY: _____

CAPACITY OF SIGNATORY: _____

WITNESS 1: _____

WITNESS 2: _____

SCHEDULE A – ATTACH DETAILS OF GROWING AREA(S)

SCHEDULE B – ATTACH LIST OF PLANT BREEDERS' RIGHTS AND COMPENSATION PAYABLE IN RESPECT OF SUCH PBRs

SCHEDULE C – ATTACH LIST OF OPEN VARIETIES

SCHEDULE D – ATTACH FULL DETAILS OF ALL PARTIES i.e. NAMES, ADDRESSES (PHYSICAL AND POSTAL) COMPANY AND CC REGISTRATION NUMBERS, TEL. NOS., FAXES, EMAIL ETC.

(Shedule "A")
TO THE SEED LICENSE AGREEMENT

1. Growing Areas:

1.1. Area 1:.....

1.2. Area 2:.....

1.3. Area 3:.....

(Schedule "B")
TO THE SEED LICENSE AGREEMENT

1. CULTIVARS:

1.1. Lady Rosetta

1.2. Fianna

1.3. Lady Jo

1.4. Melody

(Schedule "D")
TO THE SEED LICENSE AGREEMENT

1. CUSTOMER BASE (Parties to receive seed from Licensee):

- 1.1. Customer 1 Detail:
- 1.2. Customer 2 Detail:
- 1.3. Customer 3 Detail:
- 1.4. Customer 4 Detail:
- 1.5. Customer 5 Detail:
- 1.6. Customer 6 Detail:
- 1.7. Customer 7 Detail:
- 1.8. Customer 8 Detail:
- 1.9. Customer 9 Detail:
- 1.10. Customer 10 Detail: