

PLANT BREEDER'S RIGHTS – ONLINE TERMS AND CONDITIONS

YOU WILL BE TAKEN TO HAVE READ, UNDERSTOOD AND ACCEPTED THE TERMS BELOW BY PURCHASING, ACCEPTING OR USING THE PROPAGATING MATERIAL

THIS CONTRACT IS BETWEEN SUGAR RESEARCH AUSTRALIA LIMITED (SRA), THE OWNER OF PLANT BREEDERS RIGHTS AND YOU, THE GROWER

Terms and conditions

It is agreed:

1 Meaning of Words

1.1 In this Agreement, all words starting with a capital letter have the meaning set out in Schedule 1.

2 Grant of Licence

2.1 Each time you purchase or otherwise acquire Propagating Material from an authorised SRA agent or distributor, we grant you a revocable non- exclusive licence to:

- (1) plant and grow the Propagating Material on your land in commercial quantities in Australia during the Term; and
- (2) deliver the harvested sugarcane product which results from growing the Propagating Material to the Mill, on the terms and conditions set out in this Agreement.

2.2 The licence granted under clause 2.1 is personal to you and does not run with the land.

2.3 If you transfer any of the land upon which Propagating Material is growing to another person, then the licence granted under clause 2.1 immediately terminates upon the occurrence of that transfer with respect to all Propagating Material growing on the land transferred.

2.4 This licence replaces any existing services agreement or PBR licence between you and us.

3 Term

3.1 This Agreement takes effect from the date on which you took delivery or otherwise acquired the Propagating Material, and continues until PBR for the relevant SRA Variety lapses.

4 What you cannot do

4.1 You agree that, except as provided in this clause, you will not:

- (1) sell or supply the Propagating Material to any other person without our prior written consent, except:

- (a) to a Mill for processing in circumstances where you have a legally binding Cane Supply Agreement with that Mill; or
 - (b) to another sugarcane grower that has a current PBR licence agreement with us on terms substantially the same as this Agreement.
- (2) make any representations or warranties on our behalf;
 - (3) take any action to challenge the validity of our PBR in the SRA Varieties; or
 - (4) disclose any Confidential Information provided by us to you whether directly or indirectly, unless required by law.

5 What you must do

5.1 You agree to:

(1) **Comply with laws**

- (a) make sure that anything you do under this Agreement complies with all applicable laws; and
- (b) promptly notify us if you become aware of any unauthorised propagation, production, sale or use of any Propagating Material.

(2) **Records and access**

- (a) provide us with reasonable access to your land for the purpose of conducting an audit of the SRA Varieties, including reasonable testing of sugarcane product and removal of material for determining whether it is one of the SRA Varieties;
- (b) provide us with reasonable access to your records regarding your planting, propagation and harvesting of the SRA Varieties;
- (c) provide to us any reports and information concerning your activities in relation to this Agreement as we may reasonably request in writing from time to time; and
- (d) at our reasonable request, write to the Mill and/or any other party for the disclosure to us of any documents within the possession of that party pertaining to your planting, propagation and harvesting of the SRA Varieties.

(3) **Infringement and intellectual property rights**

- (a) advise us immediately on becoming aware of:
 - (i) any suspected or actual infringement by any person of our PBR in the SRA Varieties; or
 - (ii) any person claiming that our PBR in the SRA Varieties infringes the rights of any person.

6 Royalty

6.1 This licence is currently royalty free.

6.2 We reserve the right to begin charging you a royalty at the point of sale of Propagating Material, and/or an End Point Royalty, on the provision of notice to you in accordance with clause 13.

6.3 In terms of timing, we will communicate this change to you:

- (1) in the case of a royalty to be charged at the point of sale of Propagating Material, 30 days' prior to the change coming into effect; and

- (2) in the case of an End Point Royalty, no later than 31 December in the year immediately prior to the next sugarcane growing season.

6.4 You acknowledge and agree that the giving by us of notice under this clause 6 in accordance with the process in clause 13.2 constitutes reasonable and sufficient notice of the imposition of the new royalty.

7 Exclusions

7.1 Except as provided in this Agreement we exclude all terms, conditions and promises implied by custom, the general law or statute except any promises that cannot be excluded by law.

7.2 Our liability to you for breach of any promise that cannot be excluded is limited, at our option, to replacing the Propagating Material or refunding the price paid by you for the Propagating Material, or \$100 whichever is the lesser.

8 Intellectual Property Rights

8.1 You acknowledge that we:

- (1) are the grantee (whether solely or jointly) of any PBRs in the SRA Varieties; or
- (2) hold the commercialisation rights in such PBRs (if we do not solely or jointly hold them).

8.2 Subject to clause 2, you acknowledge and agree that, to the extent permitted by law, unauthorised:

- (1) production or reproduction of the Propagating Material;
- (2) offering the Propagating Material to other persons;
- (3) selling the Propagating Material;
- (4) importing the Propagating Material; or
- (5) exporting the Propagating Material, is a breach of this Agreement, an infringement of our rights under the PBR Act, and may cause us loss.

8.3 We do not warrant that SRA Varieties comprised in any Propagating Material licensed under this Agreement will not infringe any third party's intellectual property rights, but will provide notice to you if we become aware of any infringement in accordance with clause 13.

9 Liability

9.1 You agree that you:

- (1) exercise your rights under this Agreement at your own risk; and
- (2) indemnify us against all liabilities, expenses, losses, damages and costs (including enforcement costs and legal costs on a full indemnity basis and whether incurred by or awarded against a Party) incurred by us resulting directly or indirectly from our granting the Licence to you.

10 Dispute Resolution

10.1 Any dispute or difference arising out of or in connection with this Agreement will be submitted to an expert in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Expert Determination Rules, except for any matter relating to an infringement of intellectual property rights.

11 End of Agreement

11.1 Either of us may end this Agreement immediately by giving notice to the other if the other:

- (1) breaches any provision of this Agreement and fails to fix the breach within 30 days after receiving notice asking it to do so; or
- (2) breaches a provision of this Agreement where that breach cannot be fixed.

11.2 This Agreement terminates automatically with respect to particular Propagating Material if we lose the right to grant the Licence in respect of that material.

12 After End of Agreement

12.1 After the end of this Agreement:

- (1) the Licence ends;
- (2) you must:
 - (a) promptly sell in accordance with clause 4.1(1) or destroy all Propagating Material in your possession or control except as provided under clause 12.1(3);
 - (b) return any of our Confidential Information in your possession or control to us; and
 - (c) provide us with a letter signed by you that confirms that you have complied with all of your obligations under this clause 12 if requested by us;
- (3) you may grow out any crop planted at the date of termination and sell in accordance with clause 4.1(1) or consume the Propagating Material from that crop, but must not plant any new crops;
- (4) the following clauses continue: clauses 4 (What you cannot do), 5 (What you must do), 7 (Exclusions), 8 (Intellectual Property Rights), 9 (Liability), 10 (Dispute Resolution) and this clause; and
- (5) accrued rights and remedies are not affected.

13 Notices

13.1 Any notices which you give to us under this Agreement must be in writing, addressed to us at PO Box 86, Indooroopilly QLD 4068.

13.2 Any notices which we give to you under this Agreement will be communicated to you:

- (1) by mail or fax sent to your address or fax number;
- (2) through general publication in an SRA bulletin or other industry specific journal;
- (3) posted on our website, or
- (4) in any other way which is reasonably appropriate to effectively communicate the relevant variation or change.

13.3 A notice given in accordance with this clause will be deemed received:

- (1) if left at the recipient's address, on the date of delivery;
- (2) if sent by prepaid post, 10 days after the date of posting unless it is in fact received earlier, in which case, on the date of receipt; and
- (3) if sent by fax, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice;
- (4) if published in an SRA bulletin or other industry specific journal, the date of publication;
- (5) if communicated online, when posted to our website and/or posted to the same website on which this Agreement is available;
- (6) at a time that is reasonable if another method is used.

14 Waiver

14.1 Rights or obligations created under this Agreement may not be waived except in writing signed by both parties.

15 Amendment

15.1 Subject to clause 6.3(2), we may change the terms of this Agreement by giving you at least 30 days' notice.

16 Severability

16.1 If part or all of any clause of this Agreement is illegal or unenforceable it will be severed from this Agreement and will not affect the continued operation of the remaining provisions.

17 Assignment

17.1 Except as otherwise provided in this Agreement, you must not assign or attempt to assign any obligation, or otherwise transfer any right arising out of this Agreement, without our prior written consent

17.2 We can assign or novate all or any part of our rights, interests, obligations or liabilities under this Agreement and you hereby consent to and waive any requirement for prior notice of such assignment or novation.

18 Entire Agreement

18.1 This Agreement and schedule records the entire Agreement between each of us and supersedes all earlier agreements and representations by either of us.

19 Governing Law

19.1 This Agreement will be governed by the law of Queensland and the Courts of Queensland will have jurisdiction over all matters arising under it.

Schedule 1 Glossary

In this Agreement:

- (1) **Agreement** means this agreement together with its schedules.
- (2) **Cane Supply Agreement** means any agreement between you and a Mill regarding the delivery by you of harvested sugarcane product grown from Propagating Material.
- (3) **Confidential Information** means all confidential and proprietary information and materials exchanged by the parties to which a party has access, whether in oral, written, graphic or machine readable form, in the course of or in connection with this Agreement.
- (4) **End Point Royalty** means an end point royalty payable by you on harvested sugarcane product grown from Propagating Material at a specified rate to be set out in the Agreement.
- (5) **Licence** means the licence granted under clause 2.1.
- (6) **Mill** means a milling company to which you deliver harvested sugarcane product grown from Propagating Material.
- (7) **Parties** means you and us.
- (8) **PBR** means plant breeder's rights as defined in the PBR Act.
- (9) **PBR Act** means the *Plant Breeder's Rights Act 1994* (Cth) as amended from time to time.
- (10) **Propagating Material** means sugarcane material used to propagate the SRA Varieties.
- (11) **SRA Varieties** means all varieties of sugarcane:
 - (a) in which we hold PBR (including any PBR rights which we hold jointly with a third party); or
 - (b) in which we hold the commercialisation rights (even if we do not solely or jointly hold the PBR),
and which we:
 - (c) have released as at the date of this Agreement; or
 - (d) will release in the future, either directly or through our agents for distribution to the Australian sugarcane industry.