



## **Attachment 3 – Draft Contract**

### COMMERCIALISATION AGREEMENT

REFERENCE: RFT-2024-NOLOX1219

# COMMERCIALISATION AGREEMENT

THIS AGREEMENT is made on 2024

## BETWEEN

**GRAINS RESEARCH AND DEVELOPMENT CORPORATION** (ABN 55 611 233 291), of Level 4, 4 National Circuit, Barton, in the Australian Capital Territory (**GRDC or Licensor**)

**[LEGAL NAME]** (ABN **[insert]**), of **[address]** (**Licensee**)

The Licensor and Licensee are collectively referred to as the Parties and each is a Party.

## RECITALS

- A. GRDC, the NSW Department of Primary Industries and Regional Development (NSW DPIRD) and the Commonwealth Scientific and Industrial Research Organisation were co-investors in the Australian National Soybean Breeding under GRDC contract number CSP00157 and GRDC contract number 9175421 (together, the ANSB Program).
- B. The Licensed Project Outputs were developed under the ANSB Program.
- C. GRDC is the sole owner of the Licensed Project Outputs.
- D. GRDC wishes to grant a licence to Commercialise the Licensed Project Outputs to the Licensee on the terms and conditions of this Agreement.
- E. The Licensee agrees to Commercialise the Licensed Project Outputs by performing the Commercialisation Activities in accordance with the Commercialisation Plan required by this Agreement and with a view to achieving the Objectives.

**EXECUTED BY THE PARTIES AS AN AGREEMENT**

**SIGNED** for and on behalf of )  
the **GRAINS RESEARCH AND** )  
**DEVELOPMENT CORPORATION** by )  
a duly authorised delegate in the )  
presence of:

.....Delegate  
Name (printed):.....  
Title:.....

.....  
Witness  
Name (printed):.....

Date:.....

Date:.....

**SIGNED** for and on behalf of )  
the **[LICENSEE NAME]** by a duly )  
authorised delegate in the presence )  
of: )

.....Delegate  
Name (printed):.....  
Title:.....

.....  
Witness  
Name (printed):.....

Date:.....

Date:.....

***\*By signing this agreement, the authorised delegate or representative represents and warrants that he/she is duly authorised to execute this document on behalf of the relevant Party.***

## THE PARTIES AGREE AS FOLLOWS:

### 1. INTERPRETATION

#### 1.1 Definitions

The following definitions apply in this Agreement:

**Agreement** means this Commercialisation Agreement including its schedules, annexures and any other attachments to it.

**Australian Grains Industry** means production in Australia of wheat, coarse grains, grain legumes and oil seeds, leviable under the *Primary Industries (Excise) Levies Act 1999* (Cth) as amended from time to time.

**Commencement Date** means the date specified as such in Item 1 of SCHEDULE 1, or if no such date is specified, the date this Agreement was signed by the last Party to sign it.

**Commercialisation** means, in relation to Licensed Project Outputs:

- (a) to manufacture, produce, grow, market, sell, hire or otherwise exploit the Licensed Project Outputs for commercial gain;
- (b) if a product or process incorporates or is derived from the Licensed Project Outputs, to use, market, sell, hire or otherwise use the product or process for commercial gain;
- (c) if a service uses the Licensed Project Outputs, to provide that service for commercial gain; or
- (d) to license a third party to do any of those things,

and **Commercialise** has a corresponding meaning.

**Commercialisation Activities** means the activities undertaken by the Licensee to Commercialise the Licensed Project Outputs as set out in, and performed in accordance with, the Commercialisation Plan.

**Commercialisation Cost** means **[INSERT]**.

**Commercialisation Plan** means the written plan for Commercialisation of the Licensed Project Outputs attached as SCHEDULE 3 to this Agreement (as amended from time to time).

**Commercialisation Report** has the meaning given in clause 9.5.

**Confidential Information** means all information disclosed by or on behalf of one Party (**Discloser**) to the other Party (**Recipient**):

- (a) which is indicated in writing by the Discloser to be confidential; or
- (b) which might otherwise reasonably be regarded by the Discloser as confidential,

including technical and commercial information and information the disclosure of which could prejudice the registration, exploitation or value of any Intellectual Property, but does not include information that:

- (c) is in the public domain, or comes into the public domain, other than as a result of a breach of this Agreement; or
- (d) is rightfully known by the Recipient and is not subject to an obligation of confidentiality before the date of receipt; or
- (e) has been independently developed or acquired by the Recipient.

**Control** means of a corporation, partnership or other entity means:

- (a) direct or indirect beneficial ownership of more than 50% of its voting power, or 50% of the interest in its income; or

- (b) the power to appoint the majority of its directors; or
- (c) the power otherwise to direct its business activities.

**Extension Period** means the shorter of:

- (a) the period of 10 years from expiry of the Initial Term; or
- (b) the period between the expiry of the Initial Term and the expiry of the Plant Breeder's Right application 2022/237; or
- (c) the period between the expiry of the Initial Term and the termination of the Plant Breeder's Right application 2022/237.

**Fee** means any amount specified as such in Item 10 of SCHEDULE 1.

**Group Members** means a Party and its related bodies corporate (as that term is defined in the *Corporations Act 2001*(Cth)) and any of their respective Personnel.

**Income** means all royalties, fees or other payments or forms of recognised income receivable by the Licensee from the Commercialisation of the Licensed Project Outputs (or, where any transaction is entered into other than on an arms'-length basis, the income that would have been receivable if the transaction had been at market value) under this Agreement.

**Income Period** means the period specified in Item 8 of SCHEDULE 1.

**Initial Term** means the period specified as such in clause 2.1(a).

**Insolvency Event** when a Party:

- (a) has a receiver, receiver and manager, trustee, administrator, other controller (as defined in the *Corporations Act 2001* (Cth)) or similar analogous official appointed over any of its assets or undertakings;
- (b) suspends payment of its debts generally;
- (c) is or becomes unable to pay its debts as and when they are due;
- (d) is presumed to be insolvent within the meaning of section 459C(2) of the *Corporations Act 2001* (Cth);
- (e) enters into or resolves to, or any steps are taken to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (f) ceases to carry on business or threatens to cease to carry on business;
- (g) has a resolution passed or steps are taken to appoint, or to pass a resolution to appoint, an administrator, receiver, receiver and manager, trustee in bankruptcy, liquidator, provisional liquidator, controller, or other like person to the whole or any part of its business or assets;
- (h) has an application or order made for its winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the other Party; or
- (i) does anything that has a substantially similar effect to the events set out in paragraphs (a) through (h) above under the Law of any jurisdiction.

**Intellectual Property (or IP)** means any registered or unregistered intellectual property rights including any:

- (a) patents or rights concerning any discovery, invention, process, process improvement, procedure, manufacturing method, technique or information regarding the chemical or genetic composition of materials (whether patentable or not);

- (b) trade marks, business names or trading styles (whether registered or not);
- (c) copyright material and similar or neighbouring rights;
- (d) registered or registrable designs;
- (e) plant breeder rights or other proprietary information concerning genetic or biological material or engineering processes;
- (f) trade secrets and know how; and
- (g) eligible layouts or protectable computer programs,

as well as any right to seek registration of, or to take action for infringement of, any such rights.

**Laws** means any applicable law, statute, rule, regulation, directive, direction, treaty, judgment, order, guideline, decree, interpretation, permit, injunction of any government agency, or rule of any public stock exchange, in any jurisdiction, and in each case, as amended from time to time.

**Licensed Project Outputs** means the subject matter identified as such at Item 7 of SCHEDULE 1 of this Agreement and the Intellectual Property therein.

**Modern Slavery** has the meaning given to that term in the Modern Slavery Legislation, which includes, among other things, any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and any other slavery-like exploitation as prohibited under all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time.

**Modern Slavery Legislation** means the *Modern Slavery Act 2018* (Cth) and any other modern slavery act that is in force, and their respective regulations and codes from time to time.

**Net Commercialisation Income** means the total Income received in an Income Period less total Commercialisation Costs incurred in that Income Period.

**Objectives** means the Objectives listed in Item 3 of SCHEDULE 1.

**Party** means a party to this Agreement.

**Personnel** means a person's employees, representatives, agents, officers, contractors and subcontractors.

**Royalty** means any amount specified as such in Item 10 of SCHEDULE 1.

**Term** has the meaning defined in clause 2.1.

## 1.2 General

In this Agreement unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust or government;
- (c) a reference to any gender includes all genders;
- (d) a reference to a Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form has a corresponding meaning;
- (f) a reference to any organisation, committee or body includes a reference to any successor of that organisation, committee or body;

- (g) a reference to any document or agreement includes a reference to that document or agreement as properly amended, novated, supplemented, varied or replaced from time to time;
- (h) a reference to any legislation or regulation includes a reference to any amendment, modification or replacement to that legislation or regulation which may be made from time to time;
- (i) "includes" or "including" are not words of limitation;
- (j) all monetary amounts are in Australian currency;
- (k) where any Party is constituted by more than one legal entity, they shall be, unless otherwise expressly stated, jointly and severally liable in respect of all obligations arising under this Agreement and jointly entitled to enjoy any rights granted by this Agreement;
- (l) it is to be interpreted in accordance with the rules for the interpretation of Acts set out in the *Acts Interpretation Act 1901*(Cth);
- (m) all references to Minister are to be interpreted in accordance with the relevant Commonwealth, State or Territory interpretation of acts legislation; and
- (n) all references to a Department, Government agency and statutory bodies are to be interpreted in accordance with the applicable Commonwealth, State or Territory interpretation of acts legislation.

### 1.3 Headings

In this Agreement, headings are for convenience only and do not affect interpretation.

## 2. TERM

### 2.1 Term

This Agreement commences on the Commencement Date and expires on the latter of:

- (a) 10 years from the Commencement Date (**Initial Term**); and
- (b) the last day of the Extension Period to be exercised pursuant to clause 2.2 (if any),

unless it is terminated earlier in accordance with this Agreement (**Term**).

### 2.2 Extension Period

- (a) Subject to the Licensor's reasonable satisfaction that the Licensee has met its obligations under this Agreement, the Licensee may extend this Agreement for the Extension Period by requesting the extension in writing to the Licensor at least six months before the end of the Initial Term.
- (b) If the Licensee gives notice under clause 2.2(a) and the Licensor agrees, this Agreement will be extended for the Extension Period:
  - (i) commencing on the expiry of the Initial Term; and
  - (ii) on the terms and conditions in effect at the end of the Initial Term, or as otherwise agreed by the Parties in writing.

### 2.3 Separate Grant

This Agreement constitutes a separate grant of licence in respect of each Licensed Project Output comprising:

- (a) a registered Intellectual Property right in each jurisdiction of registration; and
- (b) an unregistered Intellectual Property right or subject matter other than Intellectual Property.

## 3. COMMERCIALISATION

### 3.1 Grant of licence

The Licensor grants to the Licensee a licence of the scope set out in Item 6 of SCHEDULE 1 to Commercialise the Licensed Project Outputs on the terms and conditions of this Agreement.

### 3.2 Obligations of the Licensee

The Licensee must:

- (a) not use, disseminate, assign, licence or otherwise exploit or deal with the Licensed Project Outputs in any way other than as set out in this Agreement and the Commercialisation Plan;
- (b) comply with all reasonable directions of the Licensor from time to time in relation to the protection and security of the Licensed Project Outputs;
- (c) undertake the Commercialisation Activities in an efficient and effective manner in accordance with the Commercialisation Plan unless otherwise agreed with the Licensor;
- (d) use best endeavours to achieve the Key Performance Indicators;
- (e) ensure that it dedicates adequate funding and resources to conduct the Commercialisation Activities in accordance with Commercialisation Plan;
- (f) use best endeavours to Commercialise the Licensed Project Outputs in such a manner as to maximise the benefit to the Australian Grains Industry;
- (g) comply with the acknowledgement requirements in Item 2 of SCHEDULE 1 of this Agreement;
- (h) perform this Agreement at all times in accordance with all Laws applicable to the Licensee in connection with Commercialisation of the Licensed Project Outputs and this Agreement; and
- (i) comply with any additional obligations set out at Item 4 of SCHEDULE 1.

### 3.3 Commercialisation of Data

To the extent that the Licensed Project Outputs include confidential data sets (**Data**), the Licensee acknowledges that such Data is the Confidential Information of the Licensor and agrees that:

- (a) it must not publish any Data, or otherwise disclose any Data to any third party unless:
  - (i) such publication or disclosure is expressly contemplated in the Commercialisation Plan; or
  - (ii) it has obtained the Licensor's prior written consent to the publication or disclosure; and
- (b) it must take reasonable steps to ensure that Data it holds is protected against:
  - (i) misuse, interference and loss; and
  - (ii) unauthorised access, modification or disclosure.

### 3.4 PPSA

- (a) The Licensee agrees to make such amendments to this Agreement, and to do such other things as a Licensor may reasonably require from time to time, to ensure that any Security Interest that a Licensor has arising out of or in connection with the Licensed Project Outputs or otherwise arising under this Agreement or any contract is perfected under the PPSA, and to otherwise protect the Licensor's position under the PPSA.
- (b) In this clause 3.4:
  - (i) **perfected** and **Security Interest** have the meaning set out in the PPSA; and
  - (ii) **PPSA** means the *Personal Property Securities Act 2009* (Cth).



### 3.5 **Obligations of the Licensor**

- (a) The Licensor must, upon request from the Licensee, promptly make available by appropriate means the items identified in Item 5 of SCHEDULE 1 in relation to the Licensed Project Outputs.
- (b) The Licensor must promptly provide all reasonable assistance and information required by the Licensee to enable the Licensee to Commercialise the Licensed Project Outputs.

### 3.6 **Amendments to Commercialisation Plan**

- (a) The Parties acknowledge and agree that, over the Term, it may be reasonable or necessary to amend or update the Commercialisation Plan.
- (b) Both Parties agree to negotiate any amendments to the Commercialisation Plan in good faith and any amendment to the Commercialisation Plan does not invalidate or otherwise derogate from a Party's rights under this Agreement.
- (c) Where the Parties agree an amended Commercialisation Plan, the amendments are to be recorded in writing and the Parties agree that the amended Commercialisation Plan will replace the previous Commercialisation Plan under SCHEDULE 3 of this Agreement.

## 4. **SUB-LICENSING AND SUBCONTRACTING**

4.1 The Licensee must not sub-licence any Commercialisation Activity to any other person unless agreed in writing by GRDC.

4.2 GRDC may determine whether to agree to any sub-licensing under clause 4.1 at its absolute discretion and may impose any conditions on such agreement as it considers necessary or appropriate, including at a minimum that the Licensee enters into a written sub-licence agreement with the sub-licensee on terms that:

- (a) are consistent with the Licensee's rights or obligations under this Agreement;
- (b) acknowledge that the Licensed Project Outputs are supplied "as is" and on the terms set out at clause 8.2;
- (c) the sub-licence agreement automatically terminates immediately on termination or expiry of this Agreement;
- (d) comply with the acknowledgement requirements in Item 2 of SCHEDULE 1 of this Agreement; and
- (e) provide the Licensor (or its agents) with rights of inspection, audit, access and the copying of records and accounts relevant to the sub-licensee's performance of work under the sub-licence agreement, on terms which are in substance the same as those that apply to the Licensee under this Agreement.

4.3 The Licensee must notify GRDC in advance of any subcontractor proposed to be engaged in connection with this Agreement or the Commercialisation of Licensed Project Outputs, and must provide to GRDC a copy of the sub-contract agreement entered into between the Licensee and the subcontractor within 30 days of execution.

4.4 The Licensee is fully liable and responsible under this Agreement for the acts or omissions of any permitted sub-licensee or subcontractor as if those acts or omissions were those of the Licensee under this Agreement.

## 5. **COMMERCIALISATION INCOME, COSTS AND DISTRIBUTION**

### 5.1 **General**

The Parties acknowledge and agree that the Licensee is responsible for the proper and effective collection and management of all Income during the Term in accordance with this Agreement.

### 5.2 **Collection and management**

The Licensee must:

- (a) collect and account for all Income pursuant to this Agreement; and
- (b) immediately upon receipt, hold all Income in an account controlled by the Licensee, pending distribution in accordance with clause 5.3.

### 5.3 Distribution

Within 60 days after each Income Period during the Term, the Licensee must:

- (a) account for all Income received in that Income Period;
- (b) deduct from that Income accrued Commercialisation Costs not recovered in any previous Income Period;
- (c) calculate the Net Commercialisation Income for that Income Period (if more than \$0 after deducting the Commercialisation Costs) and the Royalty and/or Fee payable by the Licensee to the Licensor; and
- (d) notify the Licensor of the amount of Royalty and/or Fee payable by the Licensee to the Licensor under clause 5.3(c) (and any GST payable), even if that amount is \$0. This notification may be made in the Commercialisation Report under clause 9.5.

### 5.4 Payment procedure

- (a) In order for the Licensor to receive a payment notified under clause 5.3(d), it must issue to the Licensee a tax invoice for any such amount due and owing to it.
- (b) The Licensee must pay all such invoices in full within 30 days of receipt of the tax invoice in accordance with the payment details provided by the Licensor.

### 5.5 Continuing obligations of payment

The Parties agree that, if the Licensee continues to derive Income from the Licensed Project Outputs beyond the expiry or termination of the Term:

- (a) the Licensee's obligations to collect the Income and pay the Royalty and/or Fee to the Licensor continues for as long as the Licensee derives an Income;
- (b) the Licensee is only entitled to deduct Commercialisation Costs incurred prior to expiry or termination; and
- (c) the terms of this clause 5 will continue to apply.

### 5.6 Taxes

- (a) All payments required to be made by the Licensee to the Licensor under this Agreement must be made free and clear of, and without deduction or deferment in respect of, any taxes, duties, excise or other similar imposts (other than GST).
- (b) All stamp duty which may be payable on this Agreement or any instrument executed under this Agreement or on a transaction evidenced by this Agreement will be borne by the Licensee unless expressly stated otherwise.
- (c) Any the amount for the purposes of calculating Net Commercialisation Income under this Agreement must be grossed up for any withholding tax withheld from Income received by the Licensee.

### 5.7 GST

- (a) Where, under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related Acts, a goods and services tax (**GST**) is payable on any supply made by the supplier of a taxable supply under or in the performance of this Agreement, the amount payable by the recipient of that supply under this Agreement will be increased by the amount of such GST.

- (b) The supplier of a taxable supply must provide the recipient with a valid tax invoice in respect of the taxable supply, before payment is due for that supply.

## 6. INTELLECTUAL PROPERTY

6.1 The Parties acknowledge and agree that:

- (a) nothing in this Agreement assigns or transfers ownership of any of the Licensed Project Outputs to any other person;
- (b) except as otherwise agreed by the Parties, the Licensor will be responsible for decisions and actions to apply to register, prosecute and maintain any registered Intellectual Property rights in Licensed Project Outputs and
- (c) to the extent the Licensee bears any costs of registration, prosecution or maintenance of any registered Intellectual Property rights in Licensed Project Outputs with the prior approval of the Licensor, such costs may be treated as Commercialisation Costs.

6.2 The Licensee must notify the Licensor of any improvement, modification, adaptation or development of Licensed Project Outputs (**Improvement**) as soon as practicable after becoming aware of any such Improvement. The Licensee grants the Licensor a non-exclusive, worldwide, royalty- and fee-free licence (including the right to sub-licence) to use and exploit such Improvements and the Intellectual Property therein.

6.3 The Licensee grants to the Licensor a non-exclusive, royalty- and fee-free licence to use the Licensed Project Outputs (including the right to sub-licence) for non-commercial research, teaching or publication purposes provided that such use does not prejudice any current or future registration, value or commercial exploitation of the Licensed Project Outputs.

## 7. ACTS TO DEFEND LICENSED PROJECT OUTPUTS

7.1 Each Party must promptly notify the other Party on:

- (a) becoming aware of any actual, suspected or threatened infringement of Licensed Project Outputs or action to invalidate any registered Intellectual Property rights in Licensed Project Outputs by any third party (**Infringement Claim**); or
- (b) receipt of a claim of infringement of a third party's Intellectual Property Rights in connection with this Agreement (**Third Party Claim**).

7.2 The Parties will consult with each other on the appropriate approach in pursuing an Infringement Claim or defending a Third Party Claim related to the Licensed Project Outputs. The final decision on how to proceed will be with the Licensor.

7.3 Each Party will:

- (a) keep the other Party regularly informed as to the status of; and
- (b) provide the other Party with such information as the other Party may reasonably request at any time in respect of,

any Infringement Claim or Third Party Claim.

7.4 The Licensor may direct the Licensee to pursue an Infringement Claim or defend any Third Party Claim, in which case the Licensee will do so on its own behalf and that of the Licensor to the best of its ability taking in account the advice of senior legal counsel and, subject to clause 7.6(c), the Licensee will be entitled to retain any settlement sums received through any legal actions (after reimbursing the Licensor for any legal or other costs incurred by it in connection with the matter).

7.5 In the absence of any direction by the Licensor under clause 7.4, the Licensee may pursue an Infringement Claim or defend a Third Party Claim at its own expense.

7.6 If the Licensee requests any assistance or participation from the Licensor in respect of any Infringement Claim it is pursuing or Third Party Claim it is defending under clause 7.4 or 7.5, the

Licensors will use reasonable endeavours to cooperate with such a request, on the basis that the Licensee:

- (a) takes into account in good faith any directions by the Licensor in respect of the matter;
- (b) bears all associated costs, including reimbursing the Licensor for any legal or other costs incurred by the Licensor; and
- (c) will distribute any settlement sums received through any legal actions as if such sums were Net Commercialisation Income under this Agreement.

7.7 At its absolute discretion, the Licensor may pursue an Infringement Claim or defend any Third Party Claim, in which case the Licensee agrees to provide information and assistance at the Licensor's reasonable request including executing any documents necessary to enable such pursuit or defence, on the basis that the Licensor:

- (a) bears all associated costs, including any legal or other costs incurred by the Licensee; and
- (b) will retain any settlement sums received through any legal actions (after reimbursing the Licensee for any costs pursuant to clause 7.7(a)).

7.8 Nothing in this Agreement grants a Party any rights to:

- (a) bring or defend a claim in the name of the other Party; or
- (b) make any admission or enter into any settlement in relation to any Infringement Claim or Third Party Claim without obtaining the prior written consent of the Licensor.

## **8. WARRANTIES AND UNDERTAKINGS**

### **8.1 Reciprocal warranties**

Each Party warrants to each other Party that it has the power and authority to enter into this Agreement.

### **8.2 Licensor warranties**

- (a) The Licensed Project Outputs are licensed on an "as is" basis and the Licensor does not warrant the performance of the Licensed Project Outputs.
- (b) To the full extent permitted by Law, the Licensor does not make, and excludes, all warranties, terms, conditions or undertakings, whether express or implied, written or oral, statutory or otherwise in respect of the Licensed Project Outputs including as to:
  - (i) merchantability, suitability, qualities or fitness for a particular purpose;
  - (ii) the registration or validity at any time of any Intellectual Property rights in the Licensed Project Outputs; or
  - (iii) the economic viability of the Licensed Project Outputs.
- (c) The Licensee acknowledges and agrees that it exploits the Licensed Project Outputs at its own risk.

### **8.3 Licensee warranties**

The Licensee warrants that:

- (a) it has the ability to perform the Commercialisation Activities in the manner and in the scope contemplated by this Agreement;
- (b) it has not knowingly breached any relevant Laws or infringed the legal rights of any person, provided that, with respect to patent rights, the Licensee will not be in breach of this warranty if it has taken all reasonable steps to ensure that it is not infringing the rights of any third party patent applicant or patent owner which can be identified from a reasonable search;

- (c) all information provided by the Licensee to the Licensor in connection with or as required by this Agreement is, or will be, at the time it is provided, correct, complete and not misleading in any respect;
- (d) there is nothing that restricts its ability to Commercialise the Licensed Project Outputs in the manner contemplated by this Agreement;
- (e) it has the infrastructure, expertise and resources to comply with its obligations under this Agreement;
- (f) it has not relied on any representations, statements or undertakings made by the Licensor other than those expressly set out in this Agreement;
- (g) to the best of the Licensee's knowledge, neither the Licensee nor any Personnel of the Licensee has any conflict of interest or potential conflict of interest which directly or indirectly conflicts with the subject matter of this Agreement; and
- (h) it will:
  - (i) take reasonable measures to ensure that no conflicts of interest or potential conflicts of interest arise during this Agreement;
  - (ii) notify the Licensor immediately if a conflict of interest or potential conflict of interest arises or is likely to arise during this Agreement; and
  - (iii) take all reasonable steps, and comply with all reasonable directions given by the Licensor, to resolve any conflict of interest or potential conflict of interest to the Licensor's satisfaction within 30 days of being given that direction from the Licensor without compromising the Licensor's position or the Commercialisation of the Licensed Project Outputs.

## **9. RECORDS AND REPORTING**

### **9.1 Record keeping**

The Licensee must:

- (a) ensure that it is able to substantiate all Commercialisation Costs, including by retaining relevant invoices or receipts or legible copies of such invoices or receipts;
- (b) maintain records and books of account in relation to all Income, Commercialisation Costs, any agreements with permitted sub-licensees or sub-contractors and any other information reasonably required by the Licensor. Such records and books of account must:
  - (i) be accurate, complete and up to date; and
  - (ii) be kept in a manner that permits them to be conveniently and properly audited;
- (c) give the Licensor reasonable access to the documents required of the Licensee under this clause 9.1 for the purpose of enabling the Licensor to verify compliance by the Licensee with its obligations under this Agreement;
- (d) if requested by the Licensor in writing, provide, within 7 days, a copy of any such reports, documents, records, statements or any other information as reasonably required by the Licensor in connection with this Agreement; and
- (e) retain the documents required of the Licensee under this clause 9.1 until at least 7 years after the end of the Term.

### **9.2 Inspection**

- (a) The Licensee must permit the Licensor (including either of their authorised representatives) at reasonable times during ordinary business hours and upon reasonable written notice, during the Term and for up to 7 years after the end of the Term:

- (i) to inspect Commercialisation Activities being carried out in connection with this Agreement, including any activities sub-contracted to permitted sub-licensees or subcontractors;
  - (ii) to inspect and copy any records or documents required to be kept or maintained by the Licensee under this Agreement; and
  - (iii) to inspect and copy all other documents evidencing the Commercialisation Activities including records evidencing collection, receipt and disbursement of all Income received and costs incurred in connection with those activities.
- (b) The Licensee must give all reasonable assistance to the Licensor in relation to any such inspection and copying.

### 9.3 Audit

- (a) A Party may during the Term and for up to 7 years after the end of the Term arrange for the accounts and other relevant documents maintained by the Licensee in relation to this Agreement to be audited at reasonable times during ordinary business hours and upon reasonable written notice.
- (b) Any such audit undertaken pursuant to clause 9.3(a) shall be at the expense of the auditing Party unless it discloses any breach of this Agreement or other error of substance in which case the Party may, by notice, require the Licensee to reimburse the Party for the cost of the audit. An accounting error in excess of 5% resulting in a shortfall in payment of Net Commercialisation Income to the Licensor will be considered to be an error of substance. The Licensee must promptly pay the relevant Party the amount of such shortfall. If the audit identifies any overpayment to the Licensor exceeding the cost of the audit, the Licensee may deduct the difference between the overpaid amount and the cost of the audit from future amounts to be paid to the relevant Party.
- (c) The Licensee must give all reasonable assistance to the Licensor and its auditors in relation to any such audit.
- (d) Without limiting any other right a Party may have under this Agreement or at Law, where inspection of the documents referred to in clause 9.2(a), or conduct of the audit referred to in clause 9.3(a), discloses a failure to make payment to a Licensor as required by this Agreement, the Party may by notice in writing require the Licensee to immediately make such payment together with payment of interest on that amount calculated at the commercial overdraft rate of the Commonwealth Bank of Australia applicable at the time of, and specified in, the notice from the Party.

### 9.4 Third party obligations

- (a) The Licensor acknowledges that any information or documents provided or made available to it under clauses 9.1, 9.2 or 9.3 might contain Confidential Information or personal information of or concerning a third party, or be subject to legal professional privilege (Specific Information).
- (b) The Licensee must use reasonable endeavours to:
  - (i) obtain the consent of the third party to; or
  - (ii) if it is not reasonably possible to obtain consent under clause 9.4(b)(i), redact any relevant information prior to,
 

disclosure of such Specific Information to the Licensor.
- (c) The Licensor agrees in relation to any Specific Information disclosed or made available to it under clauses 9.1, 9.2 or 9.3, to keep that information confidential and not to use or disclose that information without the written permission of the relevant third party.

### 9.5 Commercialisation Reports

Within 60 days after the end of each Income Period, the Licensee must provide a report, in the form provided in SCHEDULE 2, to the Licensor summarising the following matters in respect of the Income Period which has just ended:

- (a) all executed sub-licence agreements;
- (b) audited accounts of all Income received and all Commercialisation Costs incurred;
- (c) the Commercialisation Activities undertaken by the Licensee (including any such activities undertaken by any permitted sub-licensees);
- (d) progress of Commercialisation Activities, including:
  - (i) achievement of Key Performance Indicators;
  - (ii) any potential reduction in the adoption of Licensed Project Outputs;
  - (iii) any potential delay in the release of Licensed Project Outputs to Australian grain growers; and
  - (iv) any potential delays to the realisation of Income;
- (e) Income forecasts for the next Income Period;
- (f) any other matter provided for in the form provided in Schedule 2; and
- (g) any other matter the Licensor reasonably requests,

**(Commercialisation Report).**

## 10 REDUCTION OF LICENCE SCOPE

10.1 The Licensor may, by written notice to the Licensee:

- (a) terminate the licence granted under clause 3.1 with respect to any part of; or
- (b) render the licence granted under clause 3.1 non-exclusive with respect to some or all of,

the Licensed Project Outputs if:

- (c) in the reasonable opinion of the Licensor, the Licensee fails to adequately address any of the matters set out in clauses 9.5, and the Licensee fails to rectify such deficiency within 30 days of receipt of a written notice from a Licensor identifying the deficiency and requiring it to be remedied;
- (d) the Licensee persistently fails to meet the Key Performance Indicators contained in Item 9 of SCHEDULE 1 and fails to remedy the failure (which may include an adequate explanation for the failure (to be considered reasonably by the Licensor)) within 30 days of written notice from the Licensor identifying the failure and requiring it to be remedied;
- (e) the Licensee breaches any term of this Agreement and fails to remedy the breach within 30 days of receipt of a written notice from the Licensor identifying the breach and requiring it to be remedied;
- (f) the Licensee breaches a material provision of this Agreement which is not capable of remedy; or
- (g) the Licensee persistently breaches a material provision of this Agreement despite notice of the breach.

10.2 The terms of this Agreement continue with respect to any Licensed Project Outputs in respect of which the Licensee retains a licence under this Agreement.

## 11 TERMINATION

### 11.1 Termination for Default

Any Party may terminate this Agreement with immediate effect by written notice to the other Party if that other Party (**Defaulting Party**):

- (a) breaches any provision of this Agreement and the breach continues unremedied for 30 days after the Defaulting Party has been served with written notice of the breach and requiring it to be remedied;
- (b) breaches a material provision of this Agreement which is not capable of remedy; or
- (c) persistently breaches a material provision of this Agreement despite notice of the breach.

Nothing in this Agreement limits a Party's rights at common law to terminate this Agreement.

### 11.2 Termination on notice

The Licensor may immediately terminate this Agreement by notice in writing to the Licensee if any one of the following occurs:

- (a) the Licensee persistently fails to meet the Key Performance Indicators contained in Item 9 of SCHEDULE 1 and fails to remedy the failure (which may include an adequate explanation for the failure (to be considered reasonably by the Licensor)) within 30 days of written notice from the Licensor identify the failure and requiring it to be remedied;
- (b) an Insolvency Event occurs in relation to the Licensee;
- (c) there is a change in Control of the Licensee which the Licensor has not previously consented to;
- (d) the Licensee, or any Personnel of the Licensee, commits any act or omission that will, or is likely to, damage the reputation of the Licensor or the Australian Grains Industry;
- (e) the Licensee ceases to carry on business;
- (f) a representation or warranty made by the Licensee in this Agreement is found or is notified by the Licensee to be materially incorrect or misleading when made or taken to be made; or
- (g) the Licensee purports to assign any of its rights under this Agreement or grant any sublicense of those rights, other than in accordance with this Agreement.

### 11.3 Licensor may terminate this Agreement

The Licensor may terminate this Agreement by providing three months' written notice to the Licensee if this Agreement is no longer relevant to the objectives or functions of the Licensor or Licensee or otherwise ceases to be of value to the Australian Grains Industry.

### 11.4 Licensee may terminate this Agreement

If the Licensee is no longer willing or able to continue with the Commercialisation Activities, it may terminate this Agreement by giving the Licensor six months' written notice and must reimburse the Licensor for the Licensor's reasonable costs incurred as a result of the termination.

### 11.5 Consequences of termination

- (a) If a Party terminates this Agreement:
  - (i) all licences granted to the Licensee under this Agreement terminate with immediate effect;
  - (ii) the Licensee must ensure that its permitted sub-licensees and subcontractors immediately cease using the Licensed Project Outputs;
  - (iii) all Parties, including the Defaulting Party, retain their respective entitlements to Net Commercialisation Income up to and including the date of termination;



- (iv) the Licensee must continue to provide Commercialisation Reports and pay Commercialisation Costs for the period up to and including the date of termination;
  - (v) ownership of Intellectual Property is not affected; and
  - (vi) termination does not affect the enforceability of any rights or obligations accrued up to the date of termination or any other rights and obligations which under the terms of this Agreement are expected to survive termination.
- (b) Where the Licensee has terminated this Agreement under clause 11.4 it will reimburse the Licensor for any reasonable additional costs necessarily incurred by the Licensor as a result of the early termination of this Agreement.
- (c) Upon termination or expiry of this Agreement, the Licensee must return to the Licensor all Confidential Information of the Licensor by no later than 14 days after termination, except that the Licensee may retain one archive copy of any document required in order for the Licensee to comply with its statutory record keeping obligations or determine the scope of its legal obligations under this Agreement.

## 11.6 Survival

The provisions of clauses 1 (Interpretation), 4.4 (Sub-licensing), 5.5 (Continuing Obligations of payment), 6 (Intellectual Property), 9 (Records and Reporting), 11.5 (Consequences of termination), 11.6 (Survival), 12 (Liability and Indemnity), 13 (Confidential Information), 19(b) and 19(c) (Modern Slavery), 20.12 (Severance) and 20.14 (Governing law and jurisdiction) and any other term which, by its nature, is intended to survive expiry or termination of this Agreement will survive the expiry or termination of this Agreement.

## 12 LIABILITY AND INDEMNITY

### 12.1 Licensee Indemnity

- (a) The Licensee indemnifies the Licensor, and their respective Personnel (each an **Indemnified Person**) from and against any and all liability, loss, damage, costs and expenses (including reasonable legal costs on a solicitor and own client basis) sustained or incurred by the Indemnified Person arising out of, related to or connection with the Licensee's or any permitted sub-licensee's or subcontractor's or any of their Personnel's:
- (i) Commercialisation of Licensed Project Outputs under this Agreement;
  - (ii) breach of the terms and conditions of, or any warranty given under, this Agreement;
  - (iii) any breach of any Law or infringement of any person's legal rights; or
  - (iv) unlawful, negligent or wrongful act or omission.
- (b) The Licensee's liability to the Indemnified Person under clause 12.1(a) shall be reduced proportionately to the extent that any breach or negligence of the Licensor contributed to the liability, loss, damage, cost and expense.

### 12.2 Liability

Notwithstanding any other clause of this Agreement, neither Party will be liable to any other Party for any:

- (a) loss of business revenue or profit;
- (b) loss of reputation or goodwill;
- (c) loss of customers, business or any contract;
- (d) loss of opportunity;
- (e) loss of productivity;

- (f) loss arising from exchange rate fluctuation; and
- (g) special, exemplary, contingent, incidental or punitive damages.

## **13 CONFIDENTIAL INFORMATION**

### **13.1 Confidential treatment**

The Recipient must, subject to this Agreement:

- (a) treat as confidential the Confidential Information disclosed to it by or on behalf of the Discloser;
- (b) only use or copy Confidential Information for the purposes of fulfilling its obligations under this Agreement;
- (c) take reasonable steps to protect the Confidential Information and keep it secure from misuse, interference, loss and unauthorised access, modification or disclosure; and
- (d) promptly notify the other Party if it becomes aware of, or suspects, any unauthorised copying, use or disclosure of any Confidential Information.

### **13.2 Permitted disclosure**

The Recipient must not, without the prior written consent of the Discloser, disclose the Confidential Information except to the extent required to:

- (a) disclose Confidential Information to its Personnel and legal and financial advisors who have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know), provided that the Recipient uses reasonable efforts to ensure that:
  - (i) its Personnel and advisors who acquire access to Confidential Information keep the Confidential Information confidential and only use the Confidential Information for the purpose for which it was disclosed; and
  - (ii) any of the abovementioned Personnel and advisors who cease to be Personnel or advisors must continue to be bound by such obligations of confidentiality;
- (b) comply with requirements of a court, parliamentary, governmental or administrative authority or by applicable Law to disclose Confidential Information of the Discloser, provided that the Recipient must:
  - (i) promptly notify the Discloser and consult with it about the form and content of any disclosure required; and
  - (ii) only disclose that part of the Confidential Information as is necessary to comply with the relevant requirements; or
- (c) in the case of GRDC, disclose the Confidential Information in response to parliamentary questions, ministerial inquiries and inquiries conducted by or on behalf of the Auditor General of the relevant State or Territory government or the Auditor General of the Commonwealth of Australia.

## **14 INSURANCE**

- (a) The Licensee must hold, and must ensure that any permitted sub-licensee holds, with a reputable insurer appropriate insurances for its activities in connection with this Agreement, including the insurance set out in Item 12 of SCHEDULE 1.
- (b) On request from the Licensor, the Licensee must provide evidence of the currency of the insurance policies required under, and any other information reasonably required by the Licensor to demonstrate the Licensee's compliance with, clause 14(a).

## 15 NOTICES

- (a) All notices or communications given pursuant to this Agreement must be:
- (i) in writing;
  - (ii) signed by a person who has authority to give such notice on behalf of the sender; and
  - (iii) delivered by hand, sent by pre-paid express post or transmitted by email to the recipient's nominated representative(s) at the nominated address specified in Item 11 of SCHEDULE 1, or the representative's address last notified in writing by the recipient to the sender.
- (b) A notice or communication will be deemed to be received:
- (i) if delivered by hand, upon delivery;
  - (ii) if sent by pre-paid express post within Australia, within 5 days of the date on which it was sent; and
  - (iii) if sent by email, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth).

## 16 PUBLIC ANNOUNCEMENTS

No Party may make any public announcement regarding this Agreement or use a Party's logo or trademarks without the prior written consent of the other Party.

## 17 DISPUTE RESOLUTION

- (a) If any dispute arises out of or in connection with this Agreement, the Parties involved in the dispute must first, before commencing any legal action, attempt to resolve the dispute through discussions between the Parties' senior officers. If the dispute is not resolved by the Parties within 30 days of the commencement of those discussions, the Parties must refer the dispute to the Australian Disputes Centre Limited (**ADC**) for mediation in accordance with the Mediation Guidelines of ADC.
- (b) Nothing in clause 17 prevents a Party from seeking urgent interlocutory relief.

## 18 FORCE MAJEURE

- (a) An **Event of Force Majeure** occurs if any of the following occur and that event prevents a Party from performing a material obligation under this Agreement:
- (i) an act of God;
  - (ii) war, civil unrest, insurrection, riots or strikes;
  - (iii) martial law is declared;
  - (iv) natural disasters or unusually inclement weather;
  - (v) pandemic;
  - (vi) a change in legislation or government policy; or
  - (vii) trade from or to the country ceases or is suspended or other sanctions are imposed on the country.

- (b) A Party is not liable for its inability to perform, or for any delay in performing, any of its obligations under this Agreement (other than an obligation to pay money), to the extent that, and during the time that, the inability or delay is caused by an Event of Force Majeure.
- (c) If a Party is prevented from performing its obligations under this Agreement by an Event of Force Majeure, then that Party:
  - (i) must notify the other Party of the Event of Force Majeure, giving details as to the nature of the Event of Force Majeure and the effect the Event of Force Majeure will have on the Party's performance of its obligations under this Agreement; and
  - (ii) must use its best endeavours to minimise the effect of the Event of Force Majeure on the Party's performance of its obligations under this Agreement.
- (d) The time for performance of any obligation by either Party under this Agreement will be extended by a period equal to the period of any Event of Force Majeure which causes the inability to perform, or delay in performing, the obligation.
- (e) If a Party's performance is affected by an Event of Force Majeure for a period equal to or greater than 60 days, the other Party may by notice to the first-mentioned Party terminate this Agreement with immediate effect.

## **19 MODERN SLAVERY**

- (a) The Licensee represents and warrants that:
  - (i) it does not, and will not, engage in any activity that constitutes or involves Modern Slavery in the performance of its obligations under this Agreement or otherwise; and
  - (ii) it has investigated its practices and those of its Group Members and is satisfied that there are no activities that constitute or could constitute or involve Modern Slavery anywhere in its (and each of its Group Members') business, operations or supply chains.
- (b) The Licensee must, on the receipt of a written request from GRDC, provide GRDC with all information reasonably requested by GRDC to assist GRDC to comply with its requirements under the Modern Slavery Legislation.
- (c) The Licensee agrees that GRDC may take any reasonable actions to monitor, assess, audit and verify the Licensee's compliance with its obligations under this clause 19.
- (d) If the Licensee or its Group Member is in breach of any part of this clause 19, or GRDC reasonably suspects a breach, without prejudice to any other remedy which GRDC may have, GRDC may immediately terminate this Agreement by written notice.

## **20 GENERAL**

### **20.1 Further assurances**

Each Party must do all things necessary or desirable to give effect to the provisions of this Agreement including by signing all documents and performing all acts.

### **20.2 Assignment**

Except as otherwise expressly specified in this Agreement, neither Party may assign, novate, charge, transfer, encumber or otherwise deal with its rights under this Agreement without the prior written consent of the other Party.

### **20.3 Relationship**

This Agreement does not create any partnership, agency (except to the extent expressly stated in this Agreement) or trust relationship or confer on any Party the authority to bind the other Party in any way.

#### 20.4 **Costs**

Each Party must pay its own legal and other costs in connection with the negotiation, preparation and signing of this Agreement.

#### 20.5 **Amendment**

Except as expressly provided for by this Agreement, a term of this Agreement may not be varied except in writing and signed by the Parties.

#### 20.6 **Construction**

This Agreement (or any term of it) is not to be construed to the disadvantage of one Party for the reason that that Party was responsible for its preparation or seeks to rely on it.

#### 20.7 **Freedom of Information and Auditor General**

The Parties acknowledge that:

- (a) this Agreement, and information held or compiled by GRDC in relation to this Agreement, are subject to State, Territory, and Commonwealth Laws in relation to freedom of information;
- (b) the powers and duties of the Auditor General are not limited or otherwise affected by the terms and conditions of this Agreement; and
- (c) Confidential Information may be disclosed under the *Freedom of Information Act 1992* (Cth), or in response to inquiries conducted by or on behalf of the Auditor General.

#### 20.8 **Entire agreement**

This Agreement constitutes the entire Agreement between the Parties, and supersedes any and all prior representations, conduct and agreements, as to its subject matter.

#### 20.9 **Waiver**

A waiver will not be binding unless it is in writing and signed by the Party granting it. The non-exercise of or delay in exercising any power or right conferred on a Party by this Agreement does not operate as a waiver of that power or right.

#### 20.10 **Remedies cumulative**

The rights, powers and remedies provided to a Party under this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by Law or equity.

#### 20.11 **Counterparts**

This Agreement may consist of a number of copies, each signed by one or more Parties to the Agreement. If so, each signed copy is deemed an original and all signed copies together constitute one document. Executed counterparts of this Agreement may be exchanged by email or other means of electronic communication (as that term is defined in the *Electronic Transactions Act 1999* (Cth)).

#### 20.12 **Discretion**

Unless otherwise expressly contemplated, where a provision of this Agreement contemplates that a Party may exercise its discretion then that Party is entitled to exercise that discretion absolutely, with or without conditions and without being required to act reasonably or give reasons.

#### 20.13 **Severance**

If a provision in this Agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this Agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this Agreement.

#### 20.14 **Governing law and jurisdiction**

This Agreement is governed by the laws in force in the Australian Capital Territory and the Parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and any courts that may hear appeals from those courts.

## SCHEDULE 1 – COMMERCIALISATION AGREEMENT DETAILS

Item	Topic	Details
1.	Commencement Date	[insert]
2.	Acknowledgement requirements	<p>(i) Prominently acknowledge the Licensor in any public-facing materials, media, interviews, industry events or other promotional or public statements about Licensed Project Outputs or otherwise in connection with this Agreement.</p> <p>(ii) Include the following acknowledgement statement in all Licensee, subcontractor and sub-licensee promotional materials for NoLox 1219 soybean variety such as variety factsheets:</p> <p><i>“NoLox 1219 was selected from a cross made by the Australian National Soybean Breeding Program (ANSBP) from a cross between Hayman and a breeder line 2C12-693-1-603. The partners of the ANSBP were the Commonwealth Scientific and Industrial Research Organisation, the NSW Department of Primary Industries and Regional Development and the Grains Research and Development Corporation.”</i></p> <p>(iii) Comply with any other specific acknowledgement requirements which the Licensor may issue.</p> <p>(iv) Require any permitted sub-licensees to comply with these acknowledgement requirements.</p>
3.	Objectives	<p>(i) To manage the bulk up and release of seed of NoLox 1219 in step with grower and industry demand.</p> <p>(ii) To evaluate the performance of NoLox 1219 to appropriately position the variety in the market to facilitate maximum adoption of the variety.</p>
4.	Additional Licensee obligations	[insert other obligations in alignment with the purpose of Commercialisation]
5.	Items to be made available by the Licensor	<p>(i) [insert] kg of basic seed of NoLox 1219 soybean variety (Breeder code 2H36-1219)</p> <p>(ii) Information on the performance of NoLox 1219 collected during the ANSB Program that is in the possession of GRDC at the time the Licensor makes a request to GRDC.</p>

Item	Topic	Details
6.	<b>Scope of licence</b>	<p>The licence granted under clause 3.1 is:</p> <ul style="list-style-type: none"> <li>(i) Exclusive;</li> <li>(ii) Sub-licensable;</li> <li>(iii) Royalty-bearing;</li> <li>(iv) For Australia only ; and</li> <li>(v) For the Term.</li> </ul>
7.	<b>Licensed Project Outputs</b>	<ul style="list-style-type: none"> <li>(i) Seed of NoLox 1219 soybean variety (Breeder code 2H36-1219).</li> <li>(ii) Australian Plant Breeder's Right application 2022/237 which, at the Commencement Date, has been [accepted / granted] by IP Australia at the date of this Agreement.</li> <li>(iii) Data from the ANSB Program relating to the performance of NoLox 1219 that is in the possession of GRDC at the Commencement Date of the Licence.</li> </ul>
8.	<b>Income Period</b>	The twelve month period from 1 July to 31 December.



Item	Topic	Details																																																				
9.	Key Performance Indicators (KPIs)	<p><b>To be negotiated.</b></p> <p>Examples include:</p> <ol style="list-style-type: none"> <li>1. <b>Propagating material of the variety to meet evidenced demand:</b> <ul style="list-style-type: none"> <li>○ Inspection and reporting on propagation of the variety</li> <li>○ A best-estimate forecast of commercial area planted and</li> <li>○ Reporting on seed quality testing.</li> </ul> </li> <li>2. <b>Variety Promotion and Performance:</b> <ul style="list-style-type: none"> <li>○ Offering the Variety for sale, including marketing the Variety/ies</li> <li>○ Distribution of marketing materials for the Variety/ies</li> <li>○ Feedback pertaining to maximum Variety/ies adoption obtained through industry networking and field days and</li> <li>○ Feedback from qualified agronomists and advisors on Variety/ies performance.</li> </ul> </li> <li>3. <b>Royalty Collection:</b> <ul style="list-style-type: none"> <li>○ Continual expansion of the Licensee's Collection Marketer capabilities</li> </ul> </li> <li>4. <b>Seed Production, Retail Sales and Grain Production Targets:</b> <ul style="list-style-type: none"> <li>○ Annual review of seed production, seed sales and commodity targets</li> <li>○ Reporting of end user market feedback</li> </ul> </li> </ol> <p>Expected and Minimum Targets for seed sales and declared grain delivery figures for NoLox 1219 soybean variety for the first 7 years of commercialisation.</p> <table border="1" data-bbox="528 1025 1409 1469"> <thead> <tr> <th rowspan="2">Year</th> <th colspan="2">Expected Target Following RFT expected target area of xxxha and xx% EPR compliance</th> </tr> <tr> <th>Seed sales (mt)</th> <th>Declared grain delivered (mt)</th> </tr> </thead> <tbody> <tr><td>2024</td><td></td><td></td></tr> <tr><td>2025</td><td></td><td></td></tr> <tr><td>2026</td><td></td><td></td></tr> <tr><td>2027</td><td></td><td></td></tr> <tr><td>2028</td><td></td><td></td></tr> <tr><td>2029</td><td></td><td></td></tr> <tr><td>2030</td><td></td><td></td></tr> </tbody> </table> <table border="1" data-bbox="528 1541 1409 1977"> <thead> <tr> <th rowspan="2">Year</th> <th colspan="2">Minimum Target Only achieving ~half target area of xxxha and xx% EPR compliance</th> </tr> <tr> <th>Seed sales (mt)</th> <th>Declared grain delivered (mt)</th> </tr> </thead> <tbody> <tr><td>2024</td><td></td><td></td></tr> <tr><td>2025</td><td></td><td></td></tr> <tr><td>2026</td><td></td><td></td></tr> <tr><td>2027</td><td></td><td></td></tr> <tr><td>2028</td><td></td><td></td></tr> <tr><td>2029</td><td></td><td></td></tr> <tr><td>2030</td><td></td><td></td></tr> </tbody> </table>	Year	Expected Target Following RFT expected target area of xxxha and xx% EPR compliance		Seed sales (mt)	Declared grain delivered (mt)	2024			2025			2026			2027			2028			2029			2030			Year	Minimum Target Only achieving ~half target area of xxxha and xx% EPR compliance		Seed sales (mt)	Declared grain delivered (mt)	2024			2025			2026			2027			2028			2029			2030		
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Item	Topic	Details	
10.	Royalty and Fee	<p>Royalty:</p> <p>(a) a breeder royalty of \$ [to be determined] per tonne.</p> <p>Fees:</p> <p>(b) Payment for Basic Seed of \$4000.00 (GST exclusive) per tonne payable within 30 days of receipt of the seed.</p> <p>(c) Upfront Licence Fee of \$ [to be determined]</p> <p>(d) Reimbursement of any renewal fees for the Plant Breeder's Right application number 2022/237 paid by the Licensor during the Income Period.</p>	
11.	Address for Notices	PARTY	ADDRESS
		Licensee	IP and Licensing Level 4, East Building 4 National Circuit Barton, ACT 2600  Email: <a href="mailto:licensing@grdc.com.au">licensing@grdc.com.au</a>
		Licensor	
12.	Insurance	<p>Public liability: public liability in the amount of at least \$A20million for each claim or event.</p> <p>Professional indemnity insurance: not less than \$A5 million per event that covers the key activities undertaken by the Licensee in connection with this agreement.</p> <p>Products liability: not less than \$A20million per event and \$A1million in the aggregate in any 12 month policy period.</p> <p>Workers' compensation as required by law.</p>	

## SCHEDULE 2 – COMMERCIALISATION REPORT TEMPLATE

A Commercialisation Report in the form of this template required by clause 9.5 of this Agreement:

### Commercialisation Report for [insert Income Period]

Submitted: [date]

#### 1. Net Commercialisation Income

##### a. Report on Income received

[insert]

Harvested grain reported	End Point Royalty applied	Total End Point Royalty	Licensor Royalty	Licensor Royalty	Licensor Royalty
tonnes	\$ / tonne	\$ GST Exclusive	\$ / tonne	\$ GST Exclusive	\$ GST Inclusive

##### b. Report on Commercialisation Costs incurred

[insert]

##### c. Net Commercialisation Income due to each Party

[insert]

#### 2. Report on Commercialisation Activities

##### a. Report on progress of Commercialisation Activities

[Insert. Focus on issues which may significantly impact the achievement of aims

Include details of any potential reduction in the adoption of Licensed Project Outputs

Include details of any potential delay in the release of Licensed Project Outputs to Australian growers.

Include details of any potential delays to realisation of revenue (Income)]

##### b. Report on performance

[insert]

##### c. IP management reporting

###### i. Filing of new IP applications for Licensed Project Outputs

[insert]

###### ii. Progress of existing IP applications concerning Licensed Project Outputs

[insert]

###### iii. IP issues for consideration

[insert]

#### 3. Report on Key Performance Indicators

[insert]

## SCHEDULE 3 – COMMERCIALISATION PLAN

---

### Commercialisation Plan for NoLox 1219 soybean variety

Submitted: [date]

#### General Commercialisation Plan for NoLox 1219 soybean variety

- (a) [Licensed Project Output] name:
  - (b) Market strategy (e.g. customers, users, distribution channels):
  - (c) Intellectual property strategy:
  - (d) Commercialisation approach (e.g. model, partners):
  - (e) Revenue sharing model, including commercialisation costs:
  - (f) Key performance indicators, including adoption metrics:
  - (g) Sub-licensee selection process:
  - (h) Proposed additional sub-licensee performance obligations:
- 

#### Agreement and approval:

The Licensor and Licensee hereby agree that the activities set out in the Commercialisation Plan above are the agreed Commercialisation Activities to be performed by the Licensee in accordance with this Commercialisation Plan.

The signature below of each Party representative is taken to indicate that Party's agreement to this Commercialisation Plan.

I, \_\_\_\_\_ (*name*), as the Licensor representative, or delegate, approve the above Commercialisation Plan.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

I, \_\_\_\_\_ (*name*), as the Licensee representative, or delegate, approve the above Commercialisation Plan.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date