

# VDF SPECIALTY SEEDS USE AGREEMENT

This Seed Use Agreement (“Agreement”) is entered into between (“Receiver”) and VDF Specialty Seeds (“VDFSS”), a division of R.J. Van Drunen & Sons, Inc. d/b/a Van Drunen Farms, to set forth the terms and conditions upon which Receiver shall use Seed Products provided by VDFSS.

By signing below, the undersigned represents and agrees that: (1) he/she has read and understands the terms and conditions of this Agreement, (2) he/she is fully authorized to enter into this Agreement on behalf of the Receiver, and (3) the terms and conditions of this Agreement will be legally binding on the Receiver.

## 1. DEFINITIONS

- 1.1 “**Authorized Locations**” shall mean the locations at which Receiver, or a Contract Grower on Receiver’s behalf, is authorized to use the Seed Products, as listed in Exhibit B. Authorized Locations may be amended only by written notice to VDFSS.
- 1.2 “**Contact Grower**” shall mean a third party hired or otherwise engaged by Receiver to grow plants from Seed Products on behalf of Receiver in connection with the Purpose.
- 1.3 “**Entity**” shall mean any corporation, partnership, limited liability company, association, joint stock company, trust, joint venture, unincorporated organization, governmental body (or any department, agency, or political subdivision thereof) or any other legal enterprise or organization.
- 1.4 “**Purpose**” shall mean the purpose for which Receiver is authorized by VDFSS to use the Seed Products. The Purpose is to plant and grow the Seed Products to produce a single commercial crop in a single season and to sell, for non-propagative purposes, the single commercial crop grown from such Seed Products for ornamental or food use.
- 1.5 “**Seed Products**” means the varieties of plant seeds set forth in Exhibit A.
- 1.6 “**Seed Progeny**” means plant parts, whole plants or any other plant material produced by propagation of Seed Products, including the first generation produced directly from Seed Products and all subsequent generations.
- 1.7 “**Seed Technology**” means all patents, trademarks, applications, trade secrets, and other intellectual property related to the Seed Products.
- 1.8 “**Territory**” shall mean the countries within which Receiver may use the Seed Products. The Territory is \_\_\_\_\_.

## 2. PROHIBITED ACTIVITES

- 2.1 Receiver acknowledges and agrees that Receiver shall not:
  - 2.1.1 Acquire Seed Products other than through purchase or transfer from VDFSS or from a distributor licensed by VDFSS to sell Seed Products
  - 2.1.2 Sell or transfer Seed Products to any person or Entity other than VDFSS. Notwithstanding the preceding, Receiver may transfer Seed Products to a Contract Grower solely in connection with the Purpose, provided that such Contract Grower has signed a copy of the “VDFSS Contract Grower Use Agreement” prior to transfer.
  - 2.1.3 Use, sell, or otherwise transfer Seed Products or Seed Progeny for plant breeding or propagation.

- 2.1.4 Use the Seed Products or Seed Progeny for any purpose other than the Purpose, or at any location other than the Authorized Locations.
- 2.1.5 Conduct research on or with Seed Products or Seed Progeny, including but not limited to the following: genetic profiling, sequencing, analyzing molecular species, isolated molecular species, subjecting to molecular marker analysis, genotyping, DNA fingerprinting, or use of double-haploid technology.
- 2.1.6 Take any action that contests, challenges, or otherwise adversely interferes with the Seed Technology, or that adversely affects VDFSS’s ability to secure and maintain intellectual property rights anywhere in the world.

## 3. REQUIRED ACTIVITES

- 3.1 For the purposes of monitoring compliance with this agreement, for three years following the purchase of Seed Products, Receiver shall grant VDFSS and its representatives access to your owned, leased, and/or farmed land, as well as other facilities, to inspect and take samples of crops, crop residue, grain or seeds located therein. Receiver acknowledges that VDFSS has in its possession the genetic markers necessary for positive identification of any Seed Products or Seed Progeny, and may use it as evidence in any litigation.
- 3.2 Receiver shall accept and continue the obligations of this Agreement on any new land purchased, leased, owned, rented, or farmed by Receiver that has Seed Products planted on it by a previous owner or possessor of the land, and notify in writing purchasers or lessees of land owned by Receiver that has Seed Products planted on it that the Seed Products are subject to this Agreement and they must obtain their own Seed and Technology Use Agreement from VDFSS.

## 4. REGULATORY COMPLIANCE

- 4.1 Any Seed Product covered by this Agreement including, but not limited to, proprietary plant varieties and/or hybrid products can only be used, processed, or sold in countries where all necessary regulatory approvals have been granted. Receiver shall be solely responsible for regulatory compliance in connection with activities it undertakes in the Territory.

## 5. LIMITED WARRANTY

- 5.1 VDFSS MAKES NO WARRANTIES OF ANY KIND AND DISCLAIMS ALL WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. THE EXCLUSIVE REMEDY OF RECEIVER AND THE LIMIT OF THE LIABILITY OF VDFSS FOR ANY AND ALL LOSSES, INJURY OR DAMAGES RESULTING FROM THE USE, OR HANDLING OF SEED PRODUCTS CONTAINING TECHNOLOGY (INCLUDING CLAIMS BASED IN CONTRACT, NEGLIGENCE, PRODUCT LIABILITY, STRICT LIABILITY, TORT, OR OTHERWISE) SHALL BE THE PRICE PAID BY RECEIVER FOR THE QUANTITY OF THE SEED INVOLVED. IN NO EVENT SHALL VDFSS OR ANY SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

## 6. GOVERNING LAW

- 6.1 This Agreement shall be governed by, construed, interpreted, and enforced under and according to the laws of the State of Illinois.

Receiver agrees to the exclusive jurisdiction and venue of the state and federal courts located in Chicago, Illinois for the resolution of any dispute concerning the enforcement, breach, interpretation, or validity of this Agreement.

**7. REMEDIES**

7.1 Receiver acknowledges that Receiver’s breach of this Agreement will cause immediate and irreparable harm to VDFSS. If Receiver is found to have violated any term of this Agreement, VDFSS will be entitled to the entry of preliminary and permanent injunctive relief without the posting of any bond (or the minimum allowable bond). Without limitation to VDFSS’ entitlement to injunctive relief, Receiver also agrees that any finding of a breach of this Agreement shall entitle VDFSS to recover damages from Receiver to the full extent authorized by applicable law.

7.2 In the event of a breach of this Agreement, VDFSS shall be entitled to recover its costs and expenses, including reasonable attorneys’ fees, incurred to enforce the terms of this Agreement.

**8. INDEMNITY**

8.1 Receiver shall indemnify and hold harmless VDFSS and its members, directors, officers, employees, and agents against all claims, suits, liabilities, judgments, losses, and expenses (including, without limitation, reasonable attorney’s fees and costs of litigation) arising out of or in any way relating to (i) the operation of Receiver’s business; (ii) any representations made by Receiver or its employees or agents to third parties; (iii) any negligent or willful act or omission by Receiver or its employees, agents, or contractors; and (iv) any breach of this Agreement by Receiver.

**9. MISCELLANEOUS PROVISIONS**

9.1 In the event any part or parts of this Agreement are found to be invalid, illegal, or unenforceable in any respect, the remaining provisions shall nevertheless be binding with the same effect as if the invalid, illegal, or unenforceable part or parts were originally deleted.

9.2 This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors,

VDFSS:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

assignees and agents. Notwithstanding the preceding, Receiver shall not have the right to sell this Agreement as an asset nor to assign this Agreement and any rights hereunder without the written permission of VDFSS.

9.3 Failure of VDFSS to enforce any of the provisions of this Agreement shall not constitute waiver to enforce that term in the future.

9.4 This Agreement embodies the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes and replaces any and all pre-existing agreements or understandings between VDFSS and Receiver pertaining to the subject matter hereof. Both parties hereby object to and reject any terms proposed in any quotation, order acknowledgement, purchase order, invoice, shipping document, or other forms or business correspondence which add to, vary from, or conflict with the terms of this Agreement. Receiver acknowledges that it has not relied on any oral statements in entering this Agreement. No amendment or modification of this Agreement shall be valid or binding upon VDFSS or Receiver unless made in writing in a mutually-exchanged document apart and distinct from any quotation, order acknowledgement, purchase order, invoice or other forms or business correspondence, and signed on behalf of each of the parties by their respective duly authorized corporate representatives.

9.5 Each of the parties acknowledges that it has had the opportunity to be represented by independent legal counsel of its own choice throughout all of the negotiations that precede and include the execution of this Agreement and that each has executed this Agreement on the advice of any such independent legal counsel. Each of the parties further acknowledges that it and any such counsel have had an adequate opportunity to make whatever investigation or inquiry they may deem necessary or desirable in connection with any of the subjects of this Agreement prior to the execution hereof.

9.6 This Agreement may be executed in any number of counterparts by facsimile or e-mail, each of which shall be deemed an original but all of which together shall constitute one and the same instrument

RECEIVER:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A: SEED PRODUCTS**

Rutgers DMR Obsession

Rutgers DMR Devotion

Rutgers DMR Thunderstruck

**EXHIBIT B: AUTHORIZED LOCATIONS ADDRESS**