

COMMERCIAL PRODUCER AGREEMENT

COMMERCIAL PRODUCER'S

NON-PROPAGATION & SUPPLY SUB-LICENCE AGREEMENT

(NOTE: SECTIONS A AND B ARE TO BE DEPICTED ON THE FRONT AND TO BE FILLED IN AND SIGNED BY EACH PERSON OBTAINING PLANT MATERIAL FROM A SEED SUPPLIER. SECTION C AND THE REST OF THE AGREEMENT ARE TO BE DEPICTED ON THE BACK)

SECTION A:

WARNING TO COMMERCIAL PRODUCERS/FARMERS: the Seed obtained in accordance with this Agreement is supplied exclusively on the terms and conditions set out herein and by taking possession of the seed, the Commercial Producer/Farmer consents thereto. Seed obtained is not to be sold or otherwise provided to any other party and is supplied under licence for the exclusive purpose of producing Harvested Material.

EACH COMMERCIAL PRODUCER/FARMER MUST COMPLETE THE FOLLOWING:

Name of Legal Entity/Owner		Registration Number/ID	
Telephone	Fax	E-Mail	
Physical address		Postal Address	
Contact person	Position	Cell	
Quantity of Seed Obtained		Licensed Variety	
Location of growing areas		Seeding rate Kg/ha	Area

By signing this Agreement or by taking possession of the Seed, the Commercial Producer and/or its representative certifies that he has read and understands the terms of this Agreement depicted on the front and back and agrees to the terms thereof, and in the event of the Commercial Producer being a legal entity warrants that the representative has been duly authorised to enter into this Agreement on the Commercial Producer's behalf.

Name of Duly Authorised Representative		Position
Signature		Date

SECTION B:

SEED SUPPLIER

Name of Legal Entity

Registration Number

Authorised Representative

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Signature

Date

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SECTION C(ON THE BACK):

1 THE PARTIES ("the Parties") to this Agreement are:

- 1.1. THE COMMERCIAL PRODUCER ("the Commercial Producer") being the party defined in SECTION A; and
- 1.2. SENSAKO (PROPRIETARY) LIMITED ("SENSAKO")
Registration number 1997/021469/07
having its registered office at 3 Plumtree Crescent, Cedar Lakes Estate, Cedar Road, Fourways, South Africa; duly herein represented by Patrick Graham;
and includes any duly appointed agent of SENSAKO; and/or
- 1.3. SEED SUPPLIER: ("the SEED SUPPLIER") being the party defined in Section B and is the party who supplies seed to the Commercial Producer under licence from SENSAKO:

2. DEFINITIONS

2.1 In this Agreement, unless inconsistent with or otherwise indicated by the context:

- 2.1.1 "Acts" means the Plant Breeders' Rights Act no 15 of 1976, the Plant Improvement Act no 53 of 1976, The Genetically Modified Organisms Act no 15 of 1997, and the Agricultural Pests Act no 36 of 1983.
- 2.1.2 "Agreement" means the front and back of this document constituting the entire agreement between the Parties for the order, licensing, delivery of Seed and payment of the licence fee.
- 2.1.3 "Certified Seed" means commercial wheat seed of the Licensed Varieties intended for supply to Commercial Producers, and which seed is certified in terms of the provisions of the South African Seed Certification Scheme instituted in terms of the Plant Improvement Act, 1976 (Act no 53 of 1976).
- 2.1.4 "Delivery" means delivery of the Seed to the Commercial Producer, which shall be deemed to include delivery to a transport contractor.
- 2.1.5 "Effective Date" means the date of signing of this Agreement by the Commercial Producer.
- 2.1.6 "Expiry Date" means the day after the completion of one Growing Cycle of the Licensed Varieties from the Effective Date, whereupon the rights granted to the Commercial Producer in terms of this Agreement expires, with preservation of all rights of SENSAKO and SEED SUPPLIER.
- 2.1.7 "Farm Saved Seed" means any part of a crop produced from Certified Seed or from progeny thereof and which is retained for propagating purposes.
- 2.1.8 "Growing Area" means the place located within the Territory as described in Section A of this Agreement and where the Commercial Producer has undertaken to plant or actually plants the Seed and any other area under the control of the Commercial Producer.
- 2.1.9 "Growing Cycle" means the period during which the Seed is planted, grown and harvested to produce Harvested Material.
- 2.1.10 "Harvested Material" means any crop (either before or after harvest) of the Licensed Varieties produced from the Certified Seed or from progeny thereof and excludes Seed.
- 2.1.11 "Licence fee" means the monetary value at which the Seed is supplied to the Commercial Producer.
- 2.1.12 "Licensed Variety" (either singular or plural) means any wheat variety forming the subject matter of a plant breeder's right registration or application in respect of which SENSAKO has proprietary or licensed rights as described in Section A of this Agreement.
- 2.1.13 "PBR" means the plant breeders' rights registrations belonging to or granted or pending in the name of SENSAKO in respect of the Licensed Varieties.
- 2.1.14 "Plant Material" means Harvested Material and Seed.
- 2.1.15 "Seed" means Certified Seed and Farm Saved Seed and excludes Harvested Material.
- 2.1.16 "Technology Fee" means the fee payable to SENSAKO where the Commercial Producer is granted prior written authorisation to replant Harvested Material as

Farm Saved Seed in terms of clause 5.7 of this Agreement, in which case the Technology Fee will be set out in the written authorisation.

2.1.17 "Territory" means South Africa.

2.1.18 "Transfer" or "Supply" means a conveyance or transfer of possession to a Commercial Producer of the Seed, but excludes the transfer of ownership. In other words, it means that the SEED SUPPLIER or Commercial Producer does not acquire, at any stage, the ownership of any of the Seed referred to in this Agreement.

3 SUPPLYING OF SEED

3.1 SENSAKO has licensed the SEED SUPPLIER and SEED SUPPLIER hereby undertakes to supply Seed to the Commercial Producer in return for payment of the Licence Fee.

3.2 The supply of the Seed is subject to the terms and conditions contained herein (which are agreed to by the Commercial Producer) and is supplied and accepted for the sole purposes of producing Harvested Material on a commercial basis, without transferring ownership in supplied Seed, whilst existing as seed, to the SEED SUPPLIER or the Commercial Producer.

3.3 The ownership in the supplied Seed, whilst existing as seed, shall at all times vest in SENSAKO.

3.4 Only Certified Seed shall be supplied to the Commercial Producer.

4 GENERAL RIGHTS AND OBLIGATIONS OF SENSAKO

SENSAKO will on 12 hours prior written notice, sent via fax (confirmed by a fax receipt) or email (confirmed by a read receipt) or any form of hand delivery (confirmed by signature of the Commercial Producer or his representative):

4.1 at its expense have the right, upon advising the Commercial Producer and presenting a copy of this Agreement, to enter the Growing Area at any time on a business day between the hours of 8:00 am and 5:00 pm or any other reasonable time and to move around freely and in an unfettered manner in order to inspect the Plant Material and to inspect and verify the Commercial Producer's compliance with this Agreement;

4.2 have the right to take samples, of Plant Material from the Growing Area or of any other area operated either directly or indirectly by the Commercial Producer in order to inspect and verify the Commercial Producer's compliance with this Agreement by conducting DNA or other tests, it being understood that SENSAKO shall not be entitled to cultivate or dispose of such samples for any other purpose;

4.3 have the right of access to (and the Commercial Producer undertakes to make available) all books and records of accounts of the Commercial Producer (and where applicable, of any agent or representative that may have been appointed by the Commercial Producer), in order to inspect and verify the Commercial Producer's compliance with this Agreement. Such examination will be limited to information pertinent to this Agreement and will be at the expense of SENSAKO, unless any errors, omissions or inaccuracies in the books and records of account are disclosed in which case the costs of the inspection will be for the expense of the Commercial Producer,

4.4 the understanding being that SENSAKO shall be entitled to delegate any or all of its rights in terms of this clause 4 to be exercised by its authorised representatives on its behalf.

5 GENERAL RIGHTS AND OBLIGATIONS OF THE COMMERCIAL PRODUCER

The Commercial Producer:

5.1 will have the right to plant the Seed during the Growing Cycle only in the Growing Area for the sole purpose of producing and harvesting Harvested Material only during the period of the Growing Cycle and whilst this Agreement is in full force and effect, provided that any Seed that is not planted in a particular Growing Cycle, may be planted in the subsequent Growing Cycle;

5.2 will have the right to store and sell the Harvested Material both during and after the Growing Cycle;

5.3 acknowledges that this Agreement binds the Commercial Producer's heirs, agents, representatives, employees, members or shareholders, successors in title and/or assigns;

5.4 acknowledges that the ownership of all Seed whilst existing as seed vests with SENSAKO;

5.5 undertakes not to or attempt to propagate, multiply, clone, breed, reverse engineer, genetically or otherwise modify the Plant Material in any way;

- 5.6 undertakes not to sell, Transfer, donate or otherwise dispose of any Seed;
- 5.7 shall be entitled to retain possession of the Seed:
- 5.7.1 only if the Commercial Producer, prior to the Expiry Date, requests SENSAKO in writing to do so; and
- 5.7.2 if the Parties agree thereto in writing (*BY SIGNING A SEPARATE FARM SAVED SEED AGREEMENT*); and
- 5.7.3 subject to the payment of the Technology Fee by the Commercial Producer to SENSAKO in terms of this Agreement, based on the quantum of Seed retained,
- in which case this Agreement will be extended and its terms and conditions will continue to apply for a single further similar Growing Cycle commencing on the day following the Expiry Date;
- 5.8 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;
- 5.9 shall not do or permit the doing of anything which would constitute an infringement of any of SENSAKO's rights in terms of section 23A of the Plant Breeders' Rights Act or otherwise;
- 5.10 hereby confirms SENSAKO's rights in terms of section 24(A) of the Plant Breeders' Rights Act, 15 of 1976; section 25 of the Plant Improvement Act, 53 of 1976; and section 15 of the Genetically Modified Organisms Act, 15 of 1997;
- 5.11 grants SENSAKO the same rights granted in the abovementioned sections in case of *prima facie* infringement of SENSAKO's intellectual property by the Commercial Producer confirmed on oath in a court of competent jurisdiction stipulated for herein; and
- 5.12 undertakes not to publish any data or information pertaining to the Licensed Varieties without the express permission of SENSAKO.
- 6 DELIVERY AND RISK (THIS CLAUSE SHALL ONLY APPLY IN THE ABSENCE OF TERMS DEALING WITH DELIVERY AND RISK IN A SEPARATE WRITTEN AGREEMENT BETWEEN THE SEED SUPPLIER AND THE COMMERCIAL PRODUCER)
- 6.1 Risk shall pass to the Commercial Producer, in respect to the Seed obtained, on the Seed leaving SEED SUPPLIER's place of dispatch.
- 6.2 The Commercial Producer will provide equipment and labour for the off loading of the Seed.
- 6.3 Should the Commercial Producer in any way prevent Delivery from being effected or fail to take Delivery of the Seed:
- 6.3.1 SENSAKO and the SEED SUPPLIER shall not be liable for any loss or damages including consequential damages that may ensue as a result of the non-delivery;
- 6.3.2 the Seed will be deemed to have been delivered;
- 6.3.3 the Seed may be stored at a place chosen by SENSAKO or the SEED SUPPLIER until Delivery has been effected; and
- 6.3.4 the Commercial Producer shall be liable for all costs incurred by SENSAKO or the SEED SUPPLIER in consequence thereof.
- 7 LICENCE FEE (THIS CLAUSE SHALL ONLY APPLY IN THE ABSENCE OF TERMS DEALING WITH LICENCE FEES IN A SEPARATE WRITTEN AGREEMENT BETWEEN THE SEED SUPPLIER AND THE COMMERCIAL PRODUCER)
- 7.1 ownership of all Seed and all Seed of the Licensed Varieties vest at all times with SENSAKO;
- Unless otherwise agreed in writing between the SEED SUPPLIER and Commercial Producer:
- 7.2 the Licence Fee shall be set out on the front side of the order form for the Seed obtained by the Commercial Producer, its representative or its agent as indicated on the order form or on an invoice to be issued to the Commercial Producer;
- 7.3 the Licence Fee shall be paid in cash with order or on account of an institution accredited by SENSAKO, or SEED SUPPLIER as the case may be;
- 7.4 SEED SUPPLIER may at its discretion supply Seed prior to compliance with the above. Payment shall then be made against the invoice supplied to the Commercial Producer;
- 7.5 any amount outstanding will bear interest equal to the prevailing interest rate as determined from time to time by ABSA bank plus 7%. Interest will be capitalised monthly in arrear as from the date the amount becomes due, but unpaid;

- 7.6 The Commercial Producer acknowledges that where payment is effected by cheque and the postage system is used, the risk of using such will vest in the Commercial Producer;
- 7.7 The Licence Fee is inclusive of VAT.

8 LIABILITY

- 8.1 The Seed, being a natural product exposed to unlimited factors, subject to the terms of the Consumer Protection Act 68 of 2008 once fully in force, is provided 'voetstoots', free of any representations or influence, and without any express, tacit or common law warranty concerning quality or fitness for any purpose.
- 8.2 The Commercial Producer shall not hold SENSAGO or the SEED SUPPLIER liable for any Seed supplied in terms hereof and which does not perform as expected or which are not viable, or not of the designated Varieties, and the Commercial Producer shall not be entitled to obtain remuneration or replacement Seed from any party to this Agreement ;
- 8.3 The Commercial Producer shall have no recourse in any manner whatsoever against SENSAGO or the SEED SUPPLIER or the Seed Grower or anyone else who is party to this Agreement in the event of:
- 8.3.1 any Seed supplied in terms hereof not performing as expected; or
- 8.3.2 the Plant Breeders' Rights not being valid.
- 8.4 The Commercial Producer shall have no claim whatsoever against SENSAGO or the SEED SUPPLIER, be it for damages or otherwise, for defective (being latent or patent) Seed, or for incomplete or late delivery; nor shall the Commercial Producer be entitled to withhold any Licence Fee from SENSAGO or the SEED SUPPLIER under any circumstance.
- 8.5 Without any limitation, the Commercial Producer waives all other claims whatsoever against SENSAGO and the SEED SUPPLIER, in particular, but without any limitation, SENSAGO and the SEED SUPPLIER shall not be liable to the Commercial Producer for any direct, indirect claims and consequential damages which may arise as a result of this Agreement, late delivery, short or incomplete or defective performance, substituted Seed, use, or return/repossession of the Seed.
- 8.6 SENSAGO warrants that all Foundation Seed conforms to the label description within tolerances established by the Acts and the SEED SUPPLIER warrants that all the Certified Seed supplied by it in terms of this Agreement conforms to the label description within tolerances established by the Acts.
- 8.7 SENSAGO and the SEED SUPPLIER do not warrant or guarantee the performance of the Seed in any manner whatsoever nor does SENSAGO or the SEED SUPPLIER warrant the size of the yield of the Seed supplied to the Commercial Producer. For the avoidance of any doubt or uncertainty, it is recorded in this regard that the performance of seed and the size of the yield of seed can in any event never be warranted as both these aspects can be influenced by unlimited factors such as soil and climate conditions.
- 8.8 No warranty is expressed or implied as to the Seed's merchantability, fitness for a particular purpose or otherwise.
- 8.9 Any recommendation for use of the Seed, materials or apparatus in connection therewith, are based on SENSAGO's and/or the SEED SUPPLIER'S (as the case may be) best judgement and is given without any warranty of result to be obtained.
- 8.10 Orders are accepted in good faith and acceptance is based on anticipated stocks of Seed. No liability will be accepted for any losses suffered by the Commercial Producer due to SENSAGO or the SEED SUPPLIER failing to supply any Seed, hybrid, variety, and/or grade for any reason whatsoever.
- 8.11 Solely in the cases where the Seed was supplied subsequent to direct marketing, the Commercial Producer shall be entitled to cancel this agreement and return the seed in the same condition as at the delivery date and at its own costs, but after the period of 5 (five) days, no returns will be accepted unless the prior approval of SENSAGO and the SEED SUPPLIER is obtained. In the case of all returns, the Commercial Producer shall be liable for a 10% handling fee and the costs of tests to be conducted on the returned seed to determine whether or not it is in the same condition.

8.12 Notwithstanding every effort being made to ensure that Seed is delivered at the earliest opportunity after processing, SENSAKO and the SEED SUPPLIER will not be liable for late arrival of the Seed due to any cause.

9 TERMINATION

9.1 SENSAKO is entitled to cancel this Agreement summarily if any judgement is granted against the Commercial Producer or if the Commercial Producer commits any statutory act of insolvency.

9.2 Should any party ("the defaulting party") commit a breach of any of the provisions hereof, then either of the other parties ("the aggrieved party") shall be entitled to require the defaulting party to remedy the breach within a period of 10 (ten) days from receipt of the written notice to do so.

9.3 If the Commercial Producer, after 10 (ten) calendar days from receipt of a written demand to rectify any breach, fails to remedy the breach then SENSAKO and/or the SEED SUPPLIER shall be entitled to claim immediate payment and/or performance by the Commercial Producer of all the Commercial Producer's obligations, whether or not the due date for payment and/or performance shall have arisen, in either event, without prejudice to SENSAKO's and the SEED SUPPLIER'S rights to claim damages. The foregoing is without prejudice to such other rights as SENSAKO and the SEED SUPPLIER may have at law.

9.4 Termination of the Agreement in terms of this clause will be without liability for any costs incurred or damages suffered by the Commercial Producer or any other person as a result of the exercise of any of the rights of SENSAKO and/or the SEED SUPPLIER. The Commercial Producer will indemnify and hold SENSAKO and the SEED SUPPLIER harmless against any such claims.

9.5 Immediately upon the termination of this Agreement, the Commercial Producer will provide SENSAKO or SEED SUPPLIER with proof satisfactory to SENSAKO that the Commercial Producer has concluded all performances demanded of the Commercial Producer in terms of this Agreement.

9.6 Without prejudice to any other rights SENSAKO or SEED SUPPLIER may have, SENSAKO and SEED SUPPLIER will have the right immediately upon termination of this Agreement to demand the immediate surrender of all Seed to SENSAKO or its designated agent at the cost of the Commercial Producer.

9.7 All terms in this Agreement granting rights to SENSAKO or SEED SUPPLIER shall survive termination, notwithstanding the reason for termination.

10 PENALTY FOR BREACH OF AGREEMENT

10.1 The Commercial Producer waives all other rights and entitlements in respect of the Seed including all rights in terms of section 23(6)(f) of the Plant Breeders' Rights Act, 15 of 1976, except the right to use the Seed exclusively to produce Harvested Material for one Growing Cycle only and shall never use, sell or otherwise make available the Plant Material directly or indirectly as propagating material, in breach of which the Commercial Producer shall be liable to pay SENSAKO within 30 (thirty) days an amount of 3 (three) times the price at which SENSAKO could have provided the Seed, or SENSAKO's actual damages (at SENSAKO's election).

10.2 Should the Commercial Producer in breach of clause 5.7 of this agreement retain and replant the Seed, the Commercial Producer shall be liable to pay a penalty of three times the commercial value of the harvest produced from the retained seed. Such Commercial Value is deemed to be the SAFEX price per ton as at 31 December in the year in which the harvest was produced.

11 GENERAL TERMS

11.1 The Commercial Producer warrants that the person signing this agreement on his/its behalf is duly authorised to do so.

11.2 SENSAKO is the proprietors and/or rightful title holders of the intellectual property in and associated with the Seed.

11.3 The Commercial Producer shall not infringe or dispute SENSAKO's intellectual property rights (whether registered or unregistered and especially the PBR) and shall also not assist anybody else in doing so, but shall actively support and protect it by advising

- SENSAKO immediately if the Commercial Producer becomes aware of any other party dealing with any of the Seed in a manner which is in contravention with the terms of this Agreement and/or infringes any of SENSAKO's intellectual property rights.
- 11.4 The Commercial Producer shall familiarise himself and comply with all statutory provisions in the handling of the Seed and Harvested Material.
- 11.5 The Commercial Producer hereby acknowledges that he is aware that the Seed has been treated with potentially harmful chemicals and has adequately been informed hereof by SENSAKO and the SEED SUPPLIER and the Commercial Producer undertakes to take all precautionary measures and provide his employees, handling the Seed, with protective gear and equipment to prevent any harm to either the Commercial Producer or his employees as a result of handling the Seed treated with the said chemicals. The Commercial Producer hereby indemnifies SENSAKO and the SEED SUPPLIER against any liability or claims resulting from the handling of the Seed. The potentially harmful chemicals are clearly stated on the label of the Seed concerned.
- 11.6 If any clause or term of this Agreement should be invalid, unenforceable, defective or illegal for any reason whatsoever, then the remaining terms and provisions of this Agreement shall be deemed to be severable therefrom and shall continue to be of force and effect.
- 11.7 This Agreement records the entire agreement between the parties. No representation, warranty, disclosures, prior oral agreement or expressions of opinion which are not contained herein shall be valid and binding. No variation, amendment, addition or consensual cancellation of this Agreement or any provision or term hereof or any other document issued or executed pursuant to or in terms of this Agreement, shall be binding or have any force or effect, unless reduced to writing and signed by or on behalf of the parties.
- 11.8 No relaxation or indulgence, including the acceptance of late payments, by SENSAKO or the SEED SUPPLIER shall be deemed to be a waiver by SENSAKO or the SEED SUPPLIER of any of its rights to enforce strict compliance by the Commercial Producer of any of his obligations in terms hereof; nor is such relaxation or indulgence a novation of any of the terms and conditions of this Agreement.
- 11.9 The Commercial Producer hereby consents to the disclosure of the personal information which has been provided by the Commercial Producer to SENSAKO or SEED SUPPLIER for the purpose of recording the transactions contemplated herein.
- 11.10 The Commercial Producer hereby consents to and authorises SENSAKO, and SEED SUPPLIER if applicable, to make enquiries about the Commercial Producer's credit record with any credit reference agency and any other party to confirm the information provided by the Commercial Producer and to record the Commercial Producer's details with any credit reference agency should the Commercial Producer default on repayment obligations.
- 11.11 The Commercial Producer consents to the jurisdiction of the Magistrate's Court in respect of litigation resulting from this Agreement. However SENSAKO or SEED SUPPLIER shall be entitled to refer any dispute emanating from this Agreement to the High Court, and in this regard the Commercial Producer consents to the jurisdiction of the South Gauteng High Court, Johannesburg in the case of SENSAKO referring the dispute, and to the jurisdiction of the Western Cape High Court in the case of the SEED SUPPLIER referring the dispute, and the Commercial Producer is obliged to pay SENSAKO's and/or SEED SUPPLIER's legal costs at the attorney-own-client-scale, including tracing and collection costs.
- 11.12 A certificate issued and signed by a director or duly authorised manager of SENSAKO or SEED SUPPLIER, whose authority need not be proved, stating the amount owing by the Commercial Producer shall be *prima facie* proof of the facts stated therein and may be used in any legal proceedings, including in support of any application for judgment by default or summary judgment.

- 11.13 Solely in the cases where the Seed was supplied subsequent to direct marketing, and only once the Consumer Protection Act has come fully in force, the Commercial Producer shall be entitled to cancel this agreement and return the seed in the same condition as at the delivery date and at its own costs, but after the period of 5 (five) days, no returns will be accepted unless SENSAKO's or SEED SUPPLIER's prior approval is obtained. In the case of all returns, the Commercial Producer shall be liable for a 10% handling fee and the costs of tests to be conducted on the returned seed to determine whether or not it is in the same condition.
- 11.14 The Commercial Producer may not cede or assign any of his rights of obligations hereunder without the written consent of SENSAKO or SEED SUPPLIER.
-----end of agreement-----