

**OKLAHOMA GENETICS, INC.**  
**AFFILIATE AGREEMENT**

THIS AFFILIATE AGREEMENT is entered into on \_\_\_\_\_  
(the “Effective Date”), by and between Oklahoma Genetics, Inc., an Oklahoma § 501(c)(5)  
nonprofit corporation (“OGI”), and \_\_\_\_\_.  
 (“AFFILIATE”) (collectively, the “Parties”).

Affiliate Physical Address: \_\_\_\_\_

Affiliate Mailing Address: \_\_\_\_\_

Affiliate Phone: \_\_\_\_\_ Affiliate Email: \_\_\_\_\_

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WHEREAS, OGI is the owner or exclusive licensee of numerous proprietary seed varieties, which it produces, processes, markets, distributes and sells; and

WHEREAS, AFFILIATE desires to produce and sell seed of certain proprietary varieties owned or exclusively licensed by OGI, subject to the strict terms and conditions imposed by OGI.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

**OGI MEMBERS MUST REMAIN IN GOOD STANDING (WITH OGI AND WITH YOUR STATE’S CERTIFICATION AGENCY) WHICH INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING:**

- Follow through with **ALL** steps of the certification process (unless a special exception is granted in writing by the OGI Board of Directors). “For personal use” is not an exception.
- Buy OGI Foundation or Registered seed.
- Plant on eligible ground.
- Apply for field certification through your state’s certification agency.
- Have seed crop cleaned in your own cleaning plant or by an Approved seed processor or by the guidelines from your state’s certification agency.
- Submit seed sample for purity and germination to your state’s certification agency.
- Order tags through your state’s certification agency.
- Submit to OGI a copy of all PVP acknowledgement forms (with complete addresses).
- Submit to OGI an annual Royalty Report and applicable Sales Logs.
- Remain current on payment of membership and variety fees, as well as payment of any applicable late fees.

1. **Definitions.** As used in this Agreement, the defined terms have the following meaning:

1.1 “Approved Conditioner” means a seed conditioner approved by the conditioner’s state certification agency for the type of crop which AFFILIATE seeks authority to produce and sell under this Agreement.

1.2 “C3 Grower” means a grower of Certified Class Seed who has completed certification every year for at least the previous three (3) years of a variety that has no Registered class.

1.3 “Certified Class Seed” means a class of Certified Seed produced directly from Registered Class Seed. Certified Class Seed is the primary seed product sold at retail.

1.4 “Certified Seed” means seed of a Licensed Product that has been inspected and approved by your state’s certification agency. There are four classes of Certified Seed: Breeder Class Seed, Foundation Class Seed, Registered Class Seed and Certified Class Seed. Each class of seed is subject to strict purity and germination standards established by your state’s certification agency.

1.5 “Change of Control” means (i) any merger, reorganization or consolidation of a Party; (ii) transfer of at least 50% of the voting stock or ownership interest of a Party; (iii) sale, lease or other transfer of all or substantially all of the assets of a Party; or (iv) the liquidation or dissolution of a Party.

1.6 “Confidential Information” means any and all information received from the other Party that is marked confidential, or information that should reasonably have been understood by either Party, because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, to be proprietary and confidential to the other Party. Confidential Information shall not include information that: (i) was, is or becomes public knowledge in a manner other than by breach of this Agreement or other fault of the receiving Party; (ii) is acquired by the receiving Party from a third party not owing a duty of confidentiality to the disclosing Party; (iii) before receipt from the disclosing Party, was lawfully possessed by the receiving Party without a duty of confidentiality to the disclosing Party; or (iv) is independently developed by the receiving Party.

1.7 “State Certification Agency” means the official state agency or organization who administers the state’s seed certification program.

1.8 “Foundation Class Seed” means the first generation of Certified Seed and is used in Registered Class Seed production.

1.9 “Full License” means a license to purchase both Foundation Class Seed and Registered Class Seed, subject to availability of supply.

1.10 “Licensed Product” means the seed of those varieties listed on Schedule 1 which is licensed under this Agreement by OGI to AFFILIATE.

1.11 “Provisional License” means a license to purchase Registered Class Seed, subject to availability of supply, but not Foundation Class Seed.

1.12 “PVPA” means the Plant Variety Protection Act, codified at 7 U.S.C. §§ 2321 et seq.

1.13 “Qualified Merchandiser” means a state-licensed seed dealer who has merchandised Certified Seed every year for at least the previous ten (10) years.

1.14 “R2 Grower” means a grower of Registered Class Seed who has completed certification in at least two (2) of the previous three (3) years.

1.15 “Registered Class Seed” means a class of Certified Seed produced directly from Foundation Class Seed and is used in production of Certified Class Seed.

1.16 “Sales Year” means: (i) for the initial license period, a period commencing on the Effective Date and ending on December 31 of the following year; and (ii) for each subsequent renewal period, a year commencing on January 1 and ending the following December 31.

1.17 “Territory or Licensed Territory” shall mean the United States of America or its territories.

## **2. License.**

2.1 To qualify for a License under this Agreement, AFFILIATE must at all times be a voting member in good standing with its state’s certification agency and be either (i) an R2 Grower or C3 Grower, or (ii) an Approved Conditioner, or (iii) a Qualified Merchandiser.

2.2 To qualify for a Full License, including the right to purchase Foundation Class Seed, AFFILIATE must have raised a class of Certified Seed within the past three (3) years. Otherwise, any AFFILIATE who has not raised any Certified Seed within the past three (3) years but who otherwise qualifies for a License will be granted only a Provisional License.

2.3 Subject to the terms and conditions of this Agreement and AFFILIATE’s compliance with state and federal law, OGI hereby grants to AFFILIATE a non-exclusive, nontransferable, royalty-bearing, limited license to produce, use, market, sell, and offer for sale Licensed Product. AFFILIATE must have executed and submitted to OGI a copy of this Agreement, as well as a Renewal Addendum if applicable, in order to be validly licensed hereunder. Supplies and shipments of Licensed Product by OGI are subject to availability, and OGI further reserves the right to accept or reject any order for Licensed Product by AFFILIATE.

2.4 AFFILIATE acknowledges that OGI has not granted it any exclusive area, market, territory, or development rights. The Parties agree that nothing in this Agreement is, or shall be deemed to be, a sale or assignment of any proprietary rights contained within the Licensed Product. Except as specifically set forth herein, no other license, right or privilege is granted by implication or otherwise.

2.5 AFFILIATE acknowledges that Licensed Product constitutes valuable intellectual property of OGI and agrees to protect OGI's intellectual property rights in the course of producing, using, marketing, selling, and offering for sale Licensed Product.

2.6 This grant of License is strictly conditioned upon AFFILIATE's compliance with this Agreement. Any sale of OGI's protected varieties in violation of this Agreement is deemed to exceed the scope of the License and to constitute infringement of OGI's intellectual property rights. For example, the sale of non-certified Licensed Product, or the sale of Licensed Product without reporting it to OGI, exceeds the scope of the License and constitutes infringement under the PVPA as well as a material breach of this Agreement.

2.7 This License does not include the right to grant sub-licenses to other parties. In the event AFFILIATE sells Licensed Product indirectly, such contract between AFFILIATE and such third party shall be no less restrictive than the terms of this Agreement, and in no event shall such third party have the right to multiply any seed initially sourced through this Agreement. AFFILIATE agrees not to knowingly distribute any Licensed Product to any third party who intends to use or distribute such seed in breach of the terms of this Agreement.

2.8 The unauthorized offering, distribution, storage, marketing, selling, consigning, transferring title or possession, multiplication or propagation of Licensed Product is strictly prohibited. AFFILIATE shall make no use of Licensed Product other than in strict conformity with this License. For the elimination of doubt, the omission of any potential use of Licensed Product in this provision shall not be interpreted to mean that such omitted use is permitted.

### **3. Quality Control.**

3.1 AFFILIATE shall maintain control of all Licensed Product during production and not delegate control to any third party. All seed shall be planted on AFFILIATE's own land, or pursuant to the terms of a written seed production contract subject to any and all terms of this Agreement and specifically granting AFFILIATE control of the resulting product. Notwithstanding the foregoing, AFFILIATE shall be responsible to OGI for any breach of this Agreement arising or resulting in any way from the acts or omissions of a third party contractor. Upon request, AFFILIATE will provide a copy of any such contract to OGI within thirty (30) calendar days.

3.2 AFFILIATE shall observe and comply with isolation and cropping standards of its state's certification agency and OGI. Licensed Product must be planted only on eligible ground, i.e., no crop of the same kind having been planted on the same ground in the last production year (regardless of whether the previous crop was planted for seed production, grain production, haying, grazing, or was disastered) unless it was a class of Certified Seed of the same variety.

3.3 AFFILIATE shall use care in all aspects of producing, conditioning, distributing, and selling Licensed Product to assure that AFFILIATE markets high quality seed products conforming to the minimum standards of its state's certification agency and OGI.

AFFILIATE shall use commercially reasonable efforts to maintain all purity standards and, to the extent applicable, herbicide tolerance standards. In the event any Licensed Product fails to meet such standards, AFFILIATE shall immediately cease selling such seed. AFFILIATE shall at all times comply with any restrictions or other obligations imposed by technology trait providers.

3.4 Except as provided in the following section concerning affiliate-to-affiliate transfers, all Licensed Product shall only be sold or transferred as a class of Certified Seed. AFFILIATE is responsible for complying with all regulations and standards necessary to obtain certification of the Licensed Product, such as field certification, approved conditioning, and purity and germination testing. Any Licensed Product that fails certification cannot be used, marketed or sold as seed, and AFFILIATE shall take steps to carefully document the proper disposal of such non-certified seed.

3.5 No Licensed Product variety shall be blended with any other variety. Only sales of pure, single-variety Licensed Product are authorized under this License.

3.6 AFFILIATE's obligation to maintain quality control of Licensed Product in accordance with federal and state laws and this Agreement constitutes a material term of this Agreement.

#### **4. Affiliate-to-Affiliate Transfers.**

4.1 Where AFFILIATE (the "Distributing Affiliate") transfers or sells Licensed Product to another OGI-licensed Affiliate, the Distributing Affiliate shall report and pay the required royalties in accordance with the terms of this Agreement, the same as sales to other customers. The Distributing Affiliate has the responsibility for providing verifiable documentation of any such sale or transfer to another Affiliate.

4.2 However, notwithstanding the other restrictions in this Agreement that require all sales be of Certified Seed (which contemplates conditioned seed), AFFILIATE is authorized to sell or transfer "bulk unconditioned" seed of a variety licensed hereunder to another OGI-licensed Affiliate (the "Purchasing Affiliate"), so long as such seed otherwise conforms to certification requirements (including without limitation, that it was raised on eligible ground and passed field inspections) and subject to the following additional conditions:

4.2.1 The Distributing Affiliate must first confirm, prior to any such sale or transfer, that the Purchasing Affiliate is duly licensed to sell Licensed Product. OGI will provide such information upon request by the Distributing Affiliate.

4.2.2 The Distributing Affiliate must promptly (not longer than 7 calendar days after the sale or transfer) notify OGI of such sale or transfer and provide a copy of certification transfer and reports.

4.2.3 The Receiving Affiliate shall be primarily responsible for reporting and payment of royalties on such bulk unconditioned seed. However, the Distributing Affiliate remains secondarily

responsible for payment of royalties, and OGI reserves all rights to demand payment from either Affiliate, notwithstanding anything to the contrary in this section.

## **5. Labeling.**

5.1 The variety name for each Licensed Product is set forth in Schedule 1, and AFFILIATE shall use the proper varietal name of each Licensed Product on all labeling for such Licensed Product as required under local, state and/or federal law. AFFILIATE is responsible for compliance with all applicable labeling laws and regulations. All labeling materials used with Licensed Product must also be approved in advance by OGI.

5.2 AFFILIATE shall not sell any Licensed Product without Certified Seed tags. AFFILIATE shall timely submit to its state's certification agency copies of all documentation required by the Association in connection with Certified Seed sales.

5.3 AFFILIATE shall not sell any Licensed Product as "variety not stated," "VNS," "bin run," "feed," or any other generic name. All Licensed Product must be sold by variety name.

5.4 Licensed Product shall only be sold in bulk, bulk bags, or in bags approved by OGI. AFFILIATE shall distribute and sell Licensed Product only under OGI's logos and trademarks. AFFILIATE agrees to use such logos and trademarks, and AFFILIATE shall have no right, title or interest in OGI's logos or trademarks except as expressly authorized by OGI in writing.

5.5 For all sales of Licensed Product, AFFILIATE shall notify each buyer in writing that, pursuant to the PVPA, the Licensed Product is protected under federal law. All labels shall include the statement, "Unauthorized Propagation Prohibited." For bulk transfers, AFFILIATE shall require each buyer to sign a PVPA acknowledgement form.

5.6 AFFILIATE's obligation to properly label Licensed Product in accordance with federal and state laws and this Agreement constitutes a material term of this Agreement.

## **6. Membership and Variety Fees.**

6.1 **In order to maintain full status as an AFFILIATE, AFFILIATE shall pay to OGI an annual membership fee every year. The initial membership fee is \$200.00 for the growing cycle, and the renewal membership fee is \$100.00 per year thereafter. Membership renewal fees are due by June 30. Membership renewal fees paid after July 1 will be doubled, resulting in a membership renewal fee of \$200.00 for the year. Failure to pay membership renewal fees by August 1 may result in revocation of AFFILIATE's license and membership, in OGI's sole discretion.**

6.2 **In addition to the annual membership fee, AFFILIATE shall pay to OGI each year a variety fee of \$50.00 per variety licensed under this Agreement. The varieties licensed under this Agreement shall be listed on Schedule 1, as modified or extended in subsequent years through a Renewal Addendum. Variety fees for renewing members are due**

**by June 30. Variety fees for renewing members paid after July 1 will be doubled, resulting in a variety fee of \$100.00 per variety licensed under this Agreement. Failure to pay variety fees by August 1 may result in revocation of AFFILIATE's license and membership, in OGI's sole discretion.**

## **7. Royalty Reports and Payments.**

**7.1 In addition to the annual membership fee and variety fees, AFFILIATE shall pay to OGI a royalty for each and every bushel of Licensed Product sold or transferred.** The applicable royalty rate is listed on Schedule 1. The royalty rate may be amended from time to time by OGI upon reasonable advance notice to AFFILIATE, as memorialized through a Renewal Addendum.

7.2 AFFILIATE shall complete and submit to OGI an annual royalty report in a form approved by OGI, giving a full and accurate accounting of all Licensed Product handled in the Sales Year just ended. The report should account for all seed of each Licensed Product variety planted, produced, sold, bartered, exchanged, traded, transferred, saved, released, or otherwise disposed of by AFFILIATE or its authorized contract growers during the Sales Year. Such reports shall include without limitation the number of bushels sold and transferred for each Licensed Product variety, the royalty amounts due, the carryover amount of any seed, an accounting of any seed disposed of as grain or other uses, the number of bushels and acres planted for seed production in the upcoming year, along with any other information specified by OGI.

7.3 AFFILIATE should carefully document any seed that is disposed of in a non-royalty-bearing manner. For example, if AFFILIATE sells any Licensed Product through grain channels or disasters any seed fields, then AFFILIATE should take care to document such grain sales or field destruction to justify AFFILIATE's diminished seed sales and inventory under this Agreement.

**7.4 Royalty reports are due by December 31 of the Sales Year just ended. AFFILIATE must submit a royalty report every year in which it is licensed to produce and sell Licensed Product, including when AFFILIATE reports zero sales.** An officer of AFFILIATE shall certify such reports as true and accurate.

**7.5 By December 31, AFFILIATE shall pay in full to OGI the royalty due for the Sales Year just ended. Royalty payments should typically be accompanied with AFFILIATE's royalty report. Payments of less than the full royalty amount due by the deadline are considered untimely.**

7.6 **Past due royalty reports or payments are subject to additional fees.**

**7.6.1 Reports or payments submitted between January 1-31 following the applicable Sales Year are considered untimely but not subject to additional fees. However, chronic delinquency may be taken into consideration in deciding whether to renew AFFILIATE's license in future years, in OGI's sole discretion.**

7.6.2 Reports or payments submitted between February 1-28 following the applicable Sales Year are subject to an additional fee of \$50.00 or 10% of the total royalty due for the Sales Year, whichever is more. OGI in its sole discretion may also elect to downgrade or revoke AFFILIATE's license and membership.

7.6.3 Reports or payments submitted between March 1-31 following the applicable Sales Year are subject to an additional fee of \$100 or 20% of the total royalty due for the Sales Year, whichever is more. OGI in its sole discretion may also elect to downgrade or revoke AFFILIATE's license and membership.

7.6.4 Failure to submit a royalty report and full payment by March 31 following the applicable Sales Year constitutes a material breach of this Agreement, and OGI is authorized to take any and all legal or equitable action against AFFILIATE, including but not limited to instituting suit and revoking AFFILIATE's license and membership.

7.7 AFFILIATE shall be responsible for all costs of collection for delinquent accounts, including without limitation attorney's fees and costs, regardless of whether suit is brought.

7.8 Any amount due and payable to OGI as a royalty or other fee hereunder shall, notwithstanding any dispute, be payable when due in at least the amount calculated by AFFILIATE. Upon final determination of a disputed amount, any amount due from either Party shall be paid within thirty (30) days thereafter and shall bear interest at a rate of ten percent (10%) per annum, accrued from the date the disputed royalty payment was first due.

## **8. Recordkeeping Requirements.**

8.1 AFFILIATE shall keep and maintain complete and accurate records and books pertaining to Licensed Product. The recordkeeping requirements include all planting and production records, certification records, inventory and storage records, conditioning records, scale tickets, seed transfer and sales records, financial and banking records, and grain sales records. AFFILIATE shall make and preserve detailed records identifying the location and number of acres planted with Licensed Product each season, delineated by variety, the yield of each variety, the quantity certified of each variety, the location and quantity of seed inventory of each variety, and the quantity of all sales and transfers of each variety.

8.2 AFFILIATE shall make and preserve a ledger of all seed transactions, including the customer name, transaction date, quantity, price, and variety of each sale or transfer. AFFILIATE shall also maintain updated contact information of all customers, including each customer's name, address and phone number. AFFILIATE shall also maintain copies of PVPA acknowledgement forms signed by each customer for all bulk transfers of Licensed Product.

8.3 AFFILIATE shall maintain all records required by this Agreement for a period of at least five (5) years following the later of (i) the date on which AFFILIATE completes the sale of all Licensed Product, or (ii) the date on which all royalties due on such sales have been paid in full.

8.4 AFFILIATE's records and books, including any electronic bookkeeping records, shall be available for inspection by OGI and its representatives or agents for the purpose of verifying AFFILIATE's compliance with this Agreement, including the accuracy of royalty reports and payments.

8.5 AFFILIATE acknowledges that, in the event of an audit, AFFILIATE's financial and banking records pertaining to the production and sale of Licensed Product will be reviewed by OGI and its representatives or agents. AFFILIATE is therefore encouraged to conduct all seed business through a dedicated bank account kept separate from its personal and household banking.

8.6 AFFILIATE's recordkeeping obligations constitute a material term of this Agreement.

## **9. OGI's Right to Audit.**

9.1 At OGI's election and as often as OGI may deem necessary, OGI shall have the right to audit AFFILIATE's business records and accounts for the purpose of verifying AFFILIATE's compliance with this Agreement, including the accuracy of royalty reports and payments. The audit may be conducted by OGI and/or its agents. The audit may also include inspection and sampling of AFFILIATE's crops and seed, whether in field or storage, bagged or bulk.

9.2 OGI's audit rights expire five (5) years following the later of (i) the date on which AFFILIATE completes the sale of all Licensed Product, or (ii) the date on which all royalties due on such sales have been paid in full. Execution of a Renewal Addendum extends the right-to-audit period.

9.3 OGI shall provide AFFILIATE with at least three (3) calendar days' advance notice of OGI's intention to conduct an audit. OGI may send such notice to AFFILIATE either by U.S. postal service at its mailing address on file with OGI or by commercial delivery service to its physical address on file with OGI.

9.4 Upon receiving notice of an audit, AFFILIATE shall take reasonable steps to ensure all required records are in proper order and available to the auditor. Such preparations will help minimize any disruption to AFFILIATE's business at the time of audit.

9.5 AFFILIATE shall grant the auditor unrestricted access to its business and accounting records and shall make reasonable accommodations to permit the auditor to make photocopies of paper records. Any relevant electronic records, such as electronic bookkeeping records or electronically scanned documents, shall likewise be made available to the auditor for copying.

9.6 Without the requirement of further authorization or consent, AFFILIATE hereby authorizes OGI to inspect and copy records held by third parties relating to AFFILIATE's farming operations, including without limitation, any and all: (i) Farm Service Agency ("FSA") crop reporting information on any land farmed by AFFILIATE, including but not limited to, Summary Acreage History Report, Form 578, and any corresponding aerial photographs; (ii) Risk Management Agency ("RMA") documentation relating to any crops farmed by AFFILIATE; (iii) dealer and retailer invoices for seed, fertilizer, herbicide, or other chemicals purchased by or for AFFILIATE; and (iv) records or documents covering or relating to the storage, conditioning, sale, or transfer of crops licensed under this Agreement.

9.7 OGI shall bear the cost of audits, except as specifically provided in the following sections concerning unreported amounts meeting or exceeding ten percent (10%).

#### **10. OGI's Remedies for Underreported Royalties.**

10.1 In the event AFFILIATE is determined to have underreported the royalties it owed, and the unreported amount is less than ten percent (10%) of the reported amount, then AFFILIATE shall pay the appropriate standard royalties due with interest at a rate of ten percent (10%) per annum, accrued from the date the erroneous royalty report was first due. Full payment of the unreported royalties with interest is due within thirty (30) calendar days of OGI's demand for payment.

10.2 In the event AFFILIATE is determined to have underreported the royalties it owed, and the unreported amount is ten percent (10%) or more of the reported amount, either in a given Sales Year or comprehensively, then AFFILIATE shall pay the cost of the audit along with the cost of any subsequent audit(s) OGI deems necessary or appropriate to be satisfied that AFFILIATE's business is back in compliance with this Agreement. The cost of the audit(s) may include the reasonable expenses of professional accountants and/or attorneys as well as out-of-pocket expenses such as travel and lodging. Additionally, AFFILIATE shall be liable to OGI in liquidated damages for all unreported sales and transfers of OGI's protected varieties.

10.3 If the underreporting of royalties exceeds twenty percent (20%), either in a given Sales Year or comprehensively, then AFFILIATE's understatement shall be deemed willful and intentional.

10.4 For purposes of triggering AFFILIATE's obligation to pay for the cost of audit(s) and OGI's entitlement to damages, AFFILIATE's failure to submit any royalty report by March 31 following the applicable Sales Year shall be treated as one hundred percent (100%) unreported sales by AFFILIATE.

#### **11. Liquidated Damages.**

11.1 If AFFILIATE violates the terms of this Agreement, then, in addition to and not in lieu of the remedies available to OGI and other technology providers: AFFILIATE's rights under this Agreement will terminate immediately, including without limitation the license to any intellectual property or technology granted hereunder; and AFFILIATE acknowledges and agrees that damages recoverable by OGI shall include liquidated damages of \$40.00 per bushel of OGI's protected seed sold or transferred by AFFILIATE in violation of this Agreement. Such

liquidated damages would apply, as one example, to any sales of Licensed Product by AFFILIATE that are not timely reported to OGI. This amount is not to be determined a penalty, but rather as an objective measure of the damages likely suffered by OGI.

**12. Probationary Status.**

12.1 In the event AFFILIATE fails to comply with any term or condition of this Agreement, then OGI, in its sole discretion, may place AFFILIATE on probationary status. OGI will notify AFFILIATE of such probationary status in writing and outline its terms and restrictions. However, nothing mandates that an AFFILIATE in violation of this Agreement be placed on probation in lieu of outright termination of License.

**13. Infringement.**

13.1 AFFILIATE shall promptly inform OGI in writing of any alleged or suspected infringement under the PVPA or patent laws by a third party and shall provide OGI with any available evidence thereof. AFFILIATE shall not notify the third party of the infringement without first consulting with OGI and receiving OGI's approval of such notification. All enforcement against third parties will be conducted by OGI, and AFFILIATE agrees to cooperate with OGI, at OGI's expense, in such enforcement actions.

**14. Attorney's Fees.**

14.1 In the event of litigation to enforce any term or condition of this Agreement, or to recover damages for a violation of this Agreement, then the prevailing party shall be entitled to its reasonable attorney's fees, costs and expenses incurred in connection with such enforcement and litigation.

**15. Warranties; Limitations; Disclaimers.**

15.1 OGI warrants that the Licensed Product sold to AFFILIATE by OGI hereunder will conform to the label and tag descriptions within tolerances allowed by law. THE FOREGOING IS IN LIEU OF AND OGI EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. OGI'S LIABILITY FOR BREACH OF THE FOREGOING WARRANTY AND FOR ANY OTHER CLAIMS RELATED TO SUCH SEED PROVIDED BY OGI HEREUNDER IS LIMITED TO A REFUND OF THE PRICE PAID BY AFFILIATE FOR THE SEED CLAIMED TO BE DEFECTIVE OR NONCONFORMING. NO CLAIM SHALL BE ASSERTED AGAINST OGI UNLESS AFFILIATE REPORTS TO OGI WITHIN A REASONABLE PERIOD AFTER DISCOVERY (NOT TO EXCEED THIRTY DAYS), ANY CONDITION THAT MIGHT LEAD TO A CLAIM THAT THE SEED DID NOT CONFORM TO THE LABEL DESCRIPTION.

15.2 UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY IN TORT, CONTRACT OR OTHERWISE, SHALL OGI BE LIABLE TO AFFILIATE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST

PROFITS OR LOST PRODUCTS, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES EVEN IF INFORMED OF THE POSSIBILITY THEREOF IN ADVANCE.

**16. Indemnification.**

16.1 AFFILIATE shall defend, indemnify and hold harmless OGI, its licensors, and its and their respective officers, employees and agents from and against all losses, damages, expenses (including attorney's fees and costs), claims, suits and liabilities to the extent caused by negligence, willful misconduct or other alleged or actual violation of any third party license requirements or applicable law by AFFILIATE or any of its employees, agents or subcontractors; provided OGI first provides prompt notice of such claim, suit and liability to AFFILIATE. AFFILIATE shall, upon OGI's request, immediately assume the handling, negotiation and defense of any such claim for which AFFILIATE is responsible and shall keep OGI fully informed of all developments related to such activities. OGI may elect at any time to assume handling, negotiation and defense of any such claim and may settle such claims or suits in its sole discretion. Notwithstanding the preceding sentence, any liability, damages and costs awarded against OGI shall be reimbursed by AFFILIATE.

**17. Confidential Information.**

17.1 Each Party agrees to maintain the confidentiality of Confidential Information. Neither Party will use or disclose the other's Confidential Information for any purpose, except to employees on a "need to know" basis who have been informed of their obligations under this Agreement. Each Party shall remain liable to the other Party for the use or disclosure of Confidential Information by any of its employees or agents in a manner inconsistent with this provision.

17.2 Notwithstanding anything to the contrary in this Agreement, and without negating any designation of confidentiality, it shall not be a breach of a Party's obligations under this Agreement regarding Confidential Information if a Party is required to disclose Confidential Information due to subpoena, court order, or other governmental or regulatory body of competent jurisdiction, or as otherwise required by law, provided the original disclosing Party is informed in writing of the circumstances pertaining to the required disclosure sufficiently in advance to allow such original disclosing Party to pursue any available legal remedy to protect its Confidential Information.

17.3 This Agreement and its terms constitute Confidential Information of OGI.

**18. Term and Termination.**

18.1 The term of this Agreement shall commence on the Effective Date and continue until December 31 of the following year, subject to annual renewal. OGI has sole discretion in deciding whether to permit renewal in subsequent years and may take into consideration supply and demand forecasts and any other information or circumstances OGI deems relevant. This Agreement in no way entitles AFFILIATE to subsequent renewals, and OGI is not obligated to explain or defend any decision not to renew.

18.2 This Agreement may be terminated by either Party in the event of a material breach by the other Party.

18.3 AFFILIATE's obligation to pay royalties for Licensed Product sold or transferred during the term of this Agreement shall survive termination of this Agreement. AFFILIATE's recordkeeping obligations and OGI's right to audit AFFILIATE shall survive termination of this Agreement and shall only expire in accordance with the time limitations set forth under those provisions. The Parties' mutual obligations to preserve the confidentiality of Confidential Information shall survive termination of this Agreement.

## **19. Notice.**

19.1 NOTICE TO AFFILIATE: Any notice required to be given to AFFILIATE under this Agreement shall be in writing and delivered or mailed to AFFILIATE at its physical or mailing address on file with OGI. AFFILIATE shall ensure at all times that OGI is provided with AFFILIATE's current physical and mailing address information. In the event AFFILIATE claims not to have received notice from OGI due to a failure by AFFILIATE to provide current physical and mailing address information to OGI, then AFFILIATE is deemed to have waived the requirement of such notice.

19.2 NOTICE TO OGI: Any notice required to be given to OGI under this Agreement shall be in writing and mailed to OGI at 201 South Range Road, Stillwater, OK 74074-1559, or at such other address as OGI may notify AFFILIATE in writing from time to time.

## **20. Miscellaneous.**

20.1 ENTIRE AGREEMENT: This Agreement and the attached Schedule(s) constitute the entire agreement of the Parties concerning AFFILIATE's authorization to produce, use, market and sell Licensed Product. This Agreement revokes and supersedes all prior agreements between the Parties and is intended as a final expression of their agreement.

20.2 MODIFICATION: This Agreement may only be modified in a writing signed by the Parties.

20.3 NON-ASSIGNABLE: AFFILIATE may not assign its rights or obligations under this Agreement.

20.4 NON-WAIVER: Any waiver of rights under this Agreement in any single instance shall not constitute a waiver in any future instance.

20.5 SEVERABILITY: In the event any one or more of the provisions contained in this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect the remaining provisions of this Agreement. In lieu of the stricken provision, a provision as close to the stricken provision as allowed by then-prevailing law shall be inserted into this Agreement.

20.6 CHOICE OF LAW AND FORUM SELECTION: This Agreement is governed by the laws of the State of Oklahoma and the United States, without regard to conflict of law provisions. Any claim or dispute arising hereunder or relating to the subject matter of this Agreement must be filed in a state or federal court located in Oklahoma. The Parties submit to the personal jurisdiction of the courts located within Oklahoma for the purpose of litigating all such claims or disputes.

20.7 COUNTERPARTS: This Agreement may be executed in multiple counterparts all of which together shall be deemed one and the same instrument. A facsimile or electronic signature on any counterpart shall operate as an original signature.

IN WITNESS WHEREOF, the Parties have caused this agreement to be duly executed, effective as of the date first written above.

OKLAHOMA GENETICS, INC.

AFFILIATE: \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

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

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

**SCHEDULE 1**

AFFILIATE is licensed to produce, use, market, sell, and offer for sale the following varieties at the following royalty rates:

<b>Initial and pay variety fee of \$50 for each desired variety</b>	<b>Variety</b>	<b>Royalty (per bushel)</b>
	BAKER'S ANN	\$0.90
	BENTLEY	\$0.90
	DOUBLESTOP CL PLUS ***	\$1.92
	GALLAGHER	\$0.90
	GREEN HAMMER	\$0.90
	IBA	\$0.90
	LONERIDER	\$0.90
	OK CORRAL	\$0.90
	RUBY LEE	\$0.90
	SHOWDOWN	\$0.90
	SKYDANCE	\$0.90

	SMITH'S GOLD	\$0.90
	SPIRIT RIDER	\$0.90
	STARDUST	\$0.90

\*\*\* ADDITIONAL CONDITIONS APPLY. MUST HAVE BASF® CONTRACT.

<b>Initial and pay variety fee of \$50 for each desired variety</b>	<b>Variety</b>	<b>Royalty (per pound)</b>
	CONTENDER	Royalty amount pending
	LARIAT	\$0.03
	OLé	\$0.04