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NATIONAL GROWER REGISTER PTY LIMITED

STANDARD TERMS AND CONDITIONS FOR  
REGISTERED PARTIES

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First Issued:

**BETWEEN:**        **NATIONAL GROWER REGISTER PTY LTD (ACN 095 857 266)**  
of PO Box 3526, Toowoomba Village Fair in the State of  
Queensland (“the Supplier”)

**AND:**             **THE PARTY LISTED IN THE REGISTERED PARTY  
APPLICATION OF THESE STANDARD TERMS AND  
CONDITIONS** (“Registered Party”)

## **BACKGROUND**

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- A.**    The Supplier has established a database of Grower and Grower payment information and has appointed a system Operator to maintain the database and disseminate data to Registered Users.
- B.**    The Supplier has also commenced a project in conjunction with several Registered Parties to provide the services of collection and dissemination of harvest data to Registered Users.
- C.**    The Registered Party wishes to access this data subject to the Registered Party’s level of membership and access to the NGR.
- D.**    This Deed records the terms and conditions of access to the data.

## **1. DEFINITIONS**

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In these Standard Terms and Conditions, unless the context otherwise requires:

**Agreement**                means the agreement between You and the Supplier for the supply of access to the NGR comprising the Application Conditions and these Standard Terms and Conditions which is formed when You and/or any of your specified listing users are supplied with a Security Code.

**Agricultural  
Product**                    means products or Commodities derived from viticulture, horticulture, pasturage, apiculture, poultry farming and dairy farming or other operations connected with the cultivation of the soil, the gathering in of crops and the rearing of livestock.

<b>AML/CTF Law</b>	means the Anti-Money Laundering and Counter-Terrorism Financing Act and any regulations made pursuant to that Act as amended from time to time.
<b>Application Conditions</b>	means the terms and conditions stated in the Registered Party Application.
<b>Approved Dealing</b>	means a Primary Production related transaction between a Grower and a Registered Party agreed in writing by the Supplier to entitle the Registered Party to the NGR Details in accordance with its level of membership access.
<b>Associated Entity</b>	has the same meaning given by Section 50AAA of the Corporations Act 2001.
<b>Combined Harvest Declaration</b>	means the joint initiative between NGR and participating EPR breeders/owners. This initiative will enable NGR to collect all relevant information for EPR entities through a single piece of correspondence (End Point Royalty Harvest Declaration Form) to Growers.
<b>Commencement Date</b>	means the date upon which the Registered Party is supplied with a Security Code and is able to request information from the Operator in accordance with this Agreement.
<b>Commodity</b>	includes Grain, Agricultural Product or other article of trade or commerce.
<b>Confidential Information</b>	means all the Supplier's Intellectual Property including technical and pricing information, NGR Card numbers, the Details, documents, files, books, manuals, records, information, statements, papers, writings and similar items, whether in hard copy, electronic, magnetic or other form, relating to the Supplier's affairs.

**Details**

means in respect of each NGR Card:

- (a) the name of the individual or entity to which the NGR Card will be issued;
- (b) the names and addresses of the persons or entities that are payees in respect of the NGR Card;
- (c) the name and address of the Principal Contact for the individual or business entity to which the NGR Card will be issued;
- (d) any available electronic contact details for the Principal Contact and payees;
- (e) the location by State and, in the case of South Australian properties, (hundred), of the main Grain or Agricultural Product producing property contributing Grain or Agricultural Product to be sold using the NGR Card;
- (f) the percentage split of payments to go to each of the payees;
- (g) the preferred method of payment (cheque or direct credit);
- (h) the bank BSB and account number of each of the payees;
- (i) the Australian Business Number of the business entity (if provided);
- (j) the GST status of the payees,

and any other information that the Supplier may collect from the Grower and provide to the Registered Party from time to time.

**End Point Royalty  
or “EPR”**

means a royalty collection method used by variety breeders/owners that is used to fund ongoing breeding and research of improved varieties.

<b>End Point Royalty Harvest Declaration Form Reprint – Grower Requested</b>	means the reissued form resulting from a Grower contacting the Supplier and requesting an additional copy of the End Point Harvest Declaration Form. The Supplier will reissue an End Point Royalty Harvest Declaration Form without charge to either the Grower or any Registered Parties.
<b>End Point Royalty Harvest Declaration Form Reprint – Registered Party Requested</b>	means the Supplier will issue free of charge, to nominated Growers at the request of the Registered Party, up to 10% of the Registered Parties original Data File as Hard Copy reprints. The Supplier will notify the Registered Party once 50% of the reprint threshold has been reached. Once the threshold of 100% reprints has been reached, the Supplier will seek approval from the Registered Party before proceeding with any further Hard Copy reprints. Additional authorised reprints will incur a fee as per The Schedule of Fees. End Point Royalty Harvest Declaration Form Reprints – Registered Party Requested will be charged in the third invoice at the end of July.
<b>Force Majeure</b>	means an act of God, fire, lightning, explosion, flood, subsidence, insurrection, civil disorder, expropriation, government or quasi government restraint, delay in obtaining government or quasi government approvals, industrial disputes and any other cause, whether similar or not, outside the affected party's control.
<b>Founders</b>	means ABB Grain Ltd and GrainCorp Operations Ltd and their successors and assigns and any other organisation that becomes a shareholder of the Supplier.
<b>Grain</b>	includes all dry bulk commodities including, without limitation, grain, minerals, woodchips, fertiliser and chemicals.

- Grower** means:
- (a) an individual producer of Grain, Agricultural Product or other Commodity;
  - (b) a partnership or other entity associated for the purpose of producing and selling Grain or other Agricultural Product or other Commodity;
  - (c) a trader of Grain which delivers Grain to a bulk grain handling facility or which purchases warehoused Grain;
  - (d) any Primary Producer involved in Primary Production;
  - (e) any trader of an Agricultural Product or other Commodity; or
  - (f) any Commodity Trader.
- GST** has the same meaning as in the GST Law.
- GST Law** means *A New Tax System (Goods and Services Tax) Act 1999, A New Tax Act System (Goods and Services Administration) Act 1999* and any regulations made pursuant to those Acts as amended from time to time.
- Harvest Details** means the details collected by means of an End Point Royalty Harvest Declaration Form which include; Variety Name, Quantity Sown, Quantity Sold, Quantity Retained for On Farm Use, Quantity Warehoused, Quantity Retained for Seed, Name of Buyer, Variety and Tonnes sold to the Buyer and any other information that the supplier may collect from the Grower and provide to the Registered User from time to time.

<b>Harvest Declaration Reconciliation</b>	<p>means the difference between the actual number of End Point Royalty Harvest Declaration Forms issued (excluding Grower and Registered Party requested reprints) and:</p> <ul style="list-style-type: none"> <li>(a) the Registered Party's specified Growers;</li> <li>(b) any additional requests; and</li> <li>(c) any End Point Royalty Harvest Declaration Forms collected on behalf of the Registered Party that were not specified by the Registered Party, but have been received in Grower's Harvest Details.</li> </ul>
<b>Interest Rate</b>	<p>means a rate of interest per annum which is three (3) percentage points higher than the Commonwealth Bank of Australia corporate overdraft rate from time to time.</p>
<b>Joining Fee</b>	<p>means the joining fee set by the Supplier from time to time and payable by You at the same time as You submit the Registered Party Application.</p>
<b>Listings</b>	<p>means all Registered Party links to a Grower within the NGR.</p>
<b>Member</b>	<p>means a Registered Party who has signed a Registered Party deed, and to whom the Supplier has agreed to provide access to the NGR in accordance with this Agreement, and who identifies themselves to the Supplier as either:</p> <ul style="list-style-type: none"> <li>(a) Member Level 0 – Identification Purposes</li> <li>(b) Member Level 2 – Restricted Data Access; or</li> <li>(c) Member Level 3 – Payment Details for Commodity Traders.</li> </ul>
<b>Member Level 0</b>	<p>means a Member described in clause 5.2 who adopts the NGR unique identification number as an Identifier for the Registered Party's Growers customers and clients.</p>

- Member Level 2** means a restricted data access Member described in clause 5.3 who enters this Registered Party deed and requires access to data on the NGR for the sole purpose of:
- (a) customer or member identification; or
  - (b) such other purpose as may be agreed in writing by the Registered Party's Growers, customers or clients and the Supplier.
- Member Level 3** means a Commodity Trader described in clause 5.4 who:
- (a) enters this Registered Party Deed;
  - (b) requires access to all of the Details on the NGR pursuant to this Agreement; and
  - (c) can satisfy the Supplier, in its absolute discretion, that the Member is a genuine Commodity Trader as that term is used in this Agreement.
- NGR** means the database of Grower Card numbers and corresponding Details maintained by the Supplier.
- NGR Card** means the Grower Card or delivery card issued by the Supplier to a Grower carrying a unique NGR identification number.
- Operator** means National Grower Register Pty Ltd or such other person as the Supplier may appoint from time to time to operate the NGR.
- Payee** in respect of an NGR Card means a person or entity that has been registered with the NGR as having a financial interest in any Agricultural Product delivered or sold under that card.
- Payment Details** means those parts of the Details that relate to a Grower's bank account and tax status.
- Period** means the initial period or a renewal period in each case commencing on 1 July of each calendar year and ending on 30 June of the next calendar year.

<b>Primary Production</b>	means the: (a) growing, producing or extracting of natural resources, Agricultural Products or other Commodity; (b) the supply, sale and delivery of natural resources, Agricultural Products or other Commodity.
<b>Primary Producer</b>	means an entity, including a Grower, engaged in Primary Production.
<b>Principal Contact</b>	in respect of an NGR Card, means the person or entity (including a payee) that has taken responsibility for the registration of the Details with the NGR.
<b>Privacy Laws</b>	means the <i>Privacy Act 1988</i> (Cath) and any other legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to the Details.
<b>Privacy Policy</b>	means the privacy protection policy and procedures implemented by the Supplier for the collection, storage, use, disclosure and granting of access rights to the Details collected by the Supplier.
<b>RCTI</b>	means a recipient created tax invoice in accordance with the GST Law.
<b>Registered Party</b>	means a Member or Associated Entity or Subsidiary of a Member, that holds from time to time a current Security Code to access certain data on the NGR and has entered into a Registered Party deed with the Supplier.
<b>Registered Party Application</b>	means the application by a person to become a Registered Party consisting of an application form to which these Standard Terms and Conditions apply.

<b>Registered Party's Growers</b>	means Growers that the Registered Party can demonstrate to the reasonable satisfaction of the Supplier have either: <ul style="list-style-type: none"> <li>(a) delivered Agricultural Product to, or sold or contracted to sell Agricultural Product to, the Registered Party; or</li> <li>(b) purchased or contracted to purchase Agricultural Product from the Registered Party.</li> </ul>
<b>Registered Variety</b>	means a seed variety that is registered to attract an End Point Royalty, through a specified EPR Manager or Owner.
<b>Rules</b>	means the rules from time to time formulated by the Supplier.
<b>Security Code</b>	means a unique security code for accessing the NGR supplied to each specified listing user of the Registered Party by the Supplier.
<b>Standard Terms and Conditions</b>	means these Standard Terms and Conditions for Registered Parties.
<b>Subsidiary</b>	means a wholly owned subsidiary (as that term is defined in the <i>Corporations Act 2001</i> (Cath)) of the Registered Party that: <ul style="list-style-type: none"> <li>(a) is engaged in an Approved Dealing; and</li> <li>(b) has entered into a Registered Party deed with the Supplier.</li> </ul>
<b>Tax Invoice</b>	means a tax invoice as defined in the GST Law.
<b>Trader</b>	means a person who engages in the trade of Grain, Agricultural Product or other Commodity.
<b>Usage Fee</b>	means the fee set by the Supplier from time to time payable by a Registered Party and available on request.
<b>We and Us</b>	means National Grower Register Pty Ltd.
<b>You</b>	means the person named in the Registered Party Application.

## **2. INTERPRETATION**

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- 2.1 A reference to a clause, sub-clause, schedule or attachment is, unless the context requires otherwise, a reference to a clause, sub-clause, schedule or attachment to this Agreement.
- 2.2 Unless the context requires otherwise, the singular will include the plural and vice versa and any word or expression defined in the singular will have a corresponding meaning if used in the plural and vice versa.
- 2.3 If a word or phrase is defined, a matching word or phrase containing another part of speech has a corresponding meaning, whether or not the word or words in the matching word or phrase commence with a capital letter.
- 2.4 Headings to this Agreement are for ease of reference only and will not in any way affect the construction or interpretation of this Agreement.
- 2.5 References to currency are references to Australian dollars.
- 2.6 A reference to this Agreement is a reference to this Agreement as it may be amended from time to time by mutual written agreement of the parties.

## **3. INCORPORATION OF STANDARD TERMS**

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- 3.1 A Registered Party Application will be subject to these Standard Terms and Conditions.
- 3.2 A binding agreement on these Standard Terms and Conditions is formed when the Supplier provides You and each of your specified listing users with a Security Code.
- 3.3 Any terms or conditions put forward by You will not be binding on the Supplier unless specifically agreed in writing by the Supplier.
- 3.4 You acknowledge that you have read these Standard Terms and Conditions prior to submitting a Registered Party Application.

## **4. REGISTERED PARTY MEMBERSHIP**

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- 4.1 The Supplier provides three levels of access to the NGR, namely:
  - (a) Member Level 0: Identifier Only;
  - (b) Member Level 2: Restricted Data Access; and
  - (c) Member Level 3: Payment Details Commodity Trader Membership.
- 4.2 The Member Level determines:

- (a) the level of access to the NGR;
  - (b) the Usage Fees payable by a Registered Party to the Supplier for access to the NGR; and
  - (c) a Registered Party's rights and obligations.
- 4.3 The Supplier is not obliged to accept the Member Level nominated by You in the Registered Party Application. The Supplier may grant You the Member Level that the Supplier believes in its absolute discretion is appropriate to You.

## **5. CONDITIONS OF ACCESS TO NGR**

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### **5.1 Access to the NGR**

The Supplier will provide a Registered Party with access to the NGR in accordance with the Member Level granted by the Supplier to the Registered Party.

### **5.2 Member Level 0: Identifier only membership**

A Member Level 0:

- (a) will be entitled, subject to this Agreement and the Rules, to adopt the unique NGR identification number as an Identifier for the Registered Party's Growers, customers and clients;
- (b) will not:
  - (i) be entitled to access or receive any other data or Details on the NGR;
  - (ii) divulge or disclose the unique NGR identification number to any third party (including a Subsidiary) for any reason, except as required by law or as provided in this Agreement.

### **5.3 Member Level 2: Restricted Data Access**

A Member Level 2:

- (a) will be entitled, subject to this Agreement and the Rules, to access limited contact data fields:
  - (i) as determined by the Supplier and published from time to time; and
  - (ii) matched to NGR card numbers of the Registered Party's Growers, customers and clients;
- (b) acknowledges and agrees that access to the limited data fields is for the sole purpose of:
  - (i) customer or Member identification; or

- (ii) such other purpose as may be agreed to in writing by the Registered Party's Growers, customers or clients and the Supplier;
- (c) will not be entitled to access or receive any other data or Details on the NGR, except as required by law or as provided in this Agreement;
- (d) will not divulge or disclose any data obtained from the NGR to any third party including an Associated Entity or Subsidiary for any reason except as required by law or as provided in this Agreement.

#### **5.4 Member Level 3: Payment Details for Commodity Trader**

A Member Level 3 will be entitled, subject to this Agreement and the Rules, to:

- (a) access the Details matched to NGR Card numbers of the Registered Party's Growers;
- (b) an automatic update in electronic form of the Details of any new Listings of the Registered Party and any changes to the Details of any Listings already registered to the Registered Party;
- (c) request a download of the Details in electronic form to the Registered Party's database of any NGR Card number quoted by the Registered Party to the Operator; and
- (d) allow any Associated Entity or Subsidiary requested in writing by the Registered Party to access the Member's Registered Party's Grower data.

#### **5.5 Listings**

A Listing is registered to the Registered Party for the purposes of this Agreement if:

- (a) the Registered Party has nominated a Grower as a Registered Party's Grower for the Registered Party's Listings; or
- (b) the Registered Party requests the Details of an NGR Card number not already listed against the Registered Party in accordance with this Agreement,

and the Listing has not been deleted.

#### **5.6 Transfer of Data**

At the request of a Registered Party, the Supplier will assist the Registered Party to cleanse and transfer the Registered Party's data on the Registered Party's Growers to the NGR and register those Growers by:

- (a) providing to the Registered Party a template to format the data;

- (b) where possible providing a conversion table to convert the Registered Party's payment numbers to NGR Card numbers;
- (c) accepting an upload of the data in the required format;
- (d) incorporating the data in the NGR for registration mail-out;
- (e) contacting the Registered Party's Growers to confirm their Details and obtain their registration to NGR;
- (f) issuing NGR Cards to the Registered Party's Growers that have not previously been registered with NGR; and
- (g) (where possible) providing the Registered Party with the NGR Card numbers for the Registered Party's Growers matched to the registration numbers of the Registered Party's own registration system.

### **5.7 Denial of Access**

Access to the NGR may be denied to a Registered Party if the Registered Party:

- (a) owes Usage Fees due and payable under this Agreement;
- (b) is in breach of any of these Standard Terms and Conditions;
- (c) can not quote the Security Code;
- (d) is unable to quote the NGR Card Number for the Details requested;
- (e) endeavours to access or accesses the NGR contrary to their membership or conditions of access under this Agreement or the Rules; or
- (f) being a Member Level 3, is unable to satisfy the Supplier, in its absolute discretion, that the Member is a genuine Commodity Trader.

## **6. SUPPLIER'S UNDERTAKINGS**

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6.1 The Supplier will:

- (a) issue an NGR Card to each Grower that:
  - (i) delivers, sells Agricultural Product to or purchases Agricultural Product from, (or contracts to deliver, sell Agricultural Product to or purchase Agricultural Product from) the Registered Party; or
  - (ii) undertakes an Approved Dealing with the Registered Party; and
  - (iii) is willing to register his or her Details with NGR;

- (b) collect the Details from the Grower before issuing the NGR Card by means of an application form which attaches the Privacy Policy and obtain from the Grower the authority to release the Details to the Registered Party according to the Registered Party's Member Level;
- (c) require the Grower to agree that the Registered Party may act in reliance on the Details to make payments to the payees listed for the NGR Card or otherwise transact business with the Registered Party;
- (d) maintain the NGR through the Operator and provide reasonable access to Growers to update or change their NGR Card Details;
- (e) update the NGR to reflect changes to the Details as advised by Growers from time to time;
- (f) allow the Registered Party access to certain data in accordance with the Registered Parties Member level ;
- (g) disallow Registered Parties access to data except in accordance with their Member level;
- (h) in all other respects comply with the Privacy Policy and Privacy Laws and ensure its employees and agents are aware of and comply with the Privacy Policy and Privacy Laws; and
- (i) in all other respects comply with the AML/CTF Law; and
- (j) where applicable, will complete the following services on behalf of the Registered Party:
  - (i) match entities and seed sale data to an NGR number;
  - (ii) complete NGR registration of non-registered NGR Growers where possible;
  - (iii) design and provide an End Point Royalty Harvest Declaration Form;
  - (iv) pre-populate End Point Royalty Harvest Declaration Form before issuing to growers;
  - (v) print, lodge and post the End Point Royalty Harvest Declaration Form;
  - (vi) provide access for Growers to the NGR Contact Centre;
  - (vii) provide up to two follow-up contacts (actual contact made with Grower) for each outstanding form;
  - (viii) collect client specific Harvest Detail data;
  - (ix) collate Daily output file of client specific data;
  - (x) report monthly on the progress of the Project: Combined Harvest Declaration;

- (xi) Post Project Report on the combined Harvest Declaration and any client specific issues
- (xii) contact NGR nominated employees during QLD business hours on normal working days to resolve issues relating to the collection, use and access of Harvest Declaration Data.
- (xiii) retrieve and make available to the Registered Party full Harvest Details for 80% of the growers as specified by The Registered Party. The Supplier will make available to The Registered Party full Harvest Details for non-specified growers of varieties registered to The Registered Party identified to The Supplier from other sources, and to whom The Supplier sends an End Point Royalty Harvest Declaration Form.
- (xiv) forfeit up to 20% of Harvest Details usage fees as detailed in The Schedule of Fees attached in the event that the Supplier fails to meet the terms of 6.1 (j) (xiii).
- (xv) In the case of a Registered Variety being reported to The Supplier, make available to The Registered Party up to 5% of End Point Royalty Harvest Declaration Form images available for the purpose of quality assurance and diligence.

6.2 The Supplier agrees with regard to the confidentiality of End Point Royalty Harvest Declaration data the following:

- (a) Ownership of information provided on the End Point Royalty Harvest Declaration Form remains the property of the Grower to whom the Harvest Details belong.
- (b) The Grower is required to provide the Harvest Details to the relevant Registered Party in accordance with the licences issued to the Grower by the Registered Party.
- (c) Access to the Harvest Details provided by the Grower, is available to the Supplier solely for the purpose of its collection, collation and distribution of Harvest Details to the relevant Registered Party.
- (d) The Supplier will not disseminate Harvest Details collected from the End Point Royalty Harvest Declaration Form to any parties other than the Registered Party in any form or for any purpose.
- (e) The Supplier will store all Harvest Details, both hard and electronic copies, collected from the End Point Royalty Harvest Declaration Forms in a secure environment in accordance with The Supplier's Privacy Statement. The Harvest Details will be stored for a period of

no less than seven years, and disposal of Harvest Details will be in an appropriate manner in accordance with maintaining the security and privacy of Grower's Details.

- (f) The Supplier may only make use of the provided Harvest Details for the purposes of assessing the feasibility of delivering the same or similar services to the Registered Party in subsequent years, and for the improvement of the services offered to the Registered Party.

6.3 Resolution of Grower's Queries received by the Registered Parties:

- (a) In instances where the Registered Party receives a Grower query relating to an invoice raised by the Registered Party based on the Harvest Details provided by the Supplier, the Registered Party may request from the Supplier an electronic copy of the End Point Royalty Harvest Declaration Form to be faxed or emailed to both the Grower and/or the Registered Party for the purposes of resolving the dispute.
- (b) All requests should be made to the Supplier by the Registered Party by way of an email to [customer care@ngr.com.au](mailto:customer care@ngr.com.au).
- (c) The Supplier agrees all requests received in the above manner will be attended to by a nominated care agent within four (4) business hours of receipt of the requests.

## 7. REGISTERED PARTY'S UNDERTAKINGS

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7.1 A Registered Party must:

- (a) pay the fees set by the Supplier in accordance with this Agreement;
- (b) upon signing this Agreement, advise NGR of the estimated Listings for each financial year;
- (c) comply with the Rules including the terms and conditions of the Registered User Guide;
- (d) take all reasonable steps to ensure the confidentiality and security of the Security Code and the NGR Card numbers;
- (e) comply with the Privacy Policy and Privacy Laws in respect of the date and Details, and must at all times:
  - (i) ensure the details are stored, used, disclosed and destroyed in a secure manner;
  - (ii) ensure the details are protected against misuse and loss, or unauthorised access, modification or disclosures;

- (iii) have procedures in place to deal with complaints or requests for access from Growers;
  - (iv) notify the Supplier if it becomes aware of any breach of its obligations under the Privacy Policy or this sub-clause 7.1 and comply with any reasonable direction from the Supplier with respect to remedying that breach;
  - (v) ensure the Registered Party's employees and agents are aware of and comply with the Privacy Policy, Privacy Laws and the requirements of this sub-clause 7.1;
  - (vi) have and distribute upon request and, if it has a website, publish on its website, a Privacy Policy that addresses the Registered Party's intended use of the Grower Details or data provided by the NGR.
- (f) advise the Operator as soon as practicable after it becomes aware of any incorrect details on the NGR;
  - (g) not attempt to obtain the NGR Card numbers or data of Growers (for example by touting or trawling for such information) not listed against the Registered Party or contrary to its Member level;
  - (h) not make the details of a Grower (with the exception of the details on the face of the NGR Card and the Principal Contact's address and/or telephone number) available to any third party except with a third party that is an Associated Entity of the Registered Party, in any form, unless that third party is also a Registered Party and that third party has paid the Usage Fees to the Supplier;
  - (i) not use a Grower's payment details or Confidential Information for any purpose other than:
    - (i) the payment to the Grower for purchases of Agricultural Product;
    - (ii) invoicing for the provision of services to the Grower;
    - (iii) any mandatory returns to the Australian Taxation Office or other government body in respect of such transactions;
    - (iv) any other purpose authorised by the Grower; or
    - (v) passing those Grower details on to another Registered Party of the NGR for any of the purposes specified in paragraphs (i) to (iv);

- (j) take all reasonable steps to ensure that any Associated Entity or Subsidiary complies with the Registered Party's Undertakings and all other terms and conditions of this Agreement;
- (k) not:
  - (i) take commercial advantage of or use Confidential Information other than as prescribed by this Agreement or otherwise by law;
  - (ii) disclose to a third party any Confidential Information belonging to the Supplier;
  - (iii) allow any of its Associated Entities, Subsidiaries, directors, shareholders, employees or agents to use for commercial advantage any Confidential Information belonging to the Supplier other than as prescribed by this Agreement or otherwise allowed by law;
- (l) must take all reasonable steps to:
  - (i) protect the Confidential Information of the Supplier obtained by the Registered Party;
  - (ii) prevent any conflict between the Supplier's business interests and the Registered Party's financial interests; and
  - (iii) act honestly and in good faith towards the Supplier.
- (m) where applicable, supply to the Supplier:
  - (i) a Data File containing possible Growers and their Details for the purpose of matching the NGR number to the Registered Party's number; and
  - (ii) a Final Data File containing the full details of specified Growers to whom they wish an End Point Royalty Harvest Declaration Form to be issued.

## **8. USAGE FEES**

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- 8.1 You must pay the Joining Fee at the same time as you submit your Registered Party Application.
- 8.2 If, after ceasing to be entitled to access the NGR (for any reason), a Registered Party wishes to again be entitled to access the NGR the Registered Party must submit a fresh Registered Party Application along with the Joining Fee.
- 8.3 A Member Level 0 must pay to the Supplier the Administration Fee.

- 8.4 A Member Level 2 must pay to the Supplier the Usage Fee subject to an adjustment under this clause.
- 8.5 A Member Level 3 must pay to the Supplier the Usage Fee subject to an adjustment under this clause.
- 8.6 The Supplier will notify each Registered Party in writing of the Usage Fee for the following financial year ending 30 June by not later than 30 May in each year.
- 8.7 A Registered Party may by notice in writing elect to terminate this Agreement without prejudice to its accrued rights and obligations under this Agreement and otherwise without penalty provided such notice is served on the Supplier within thirty (30) days of receipt of the Supplier's notification.
- 8.8 If a Registered Party does not serve such notice it will be taken to be bound to pay the Usage Fee so notified in accordance with this Agreement for the relevant financial year.
- 8.9 A Registered Party (other than a Member Level 0) will be invoiced monthly, quarterly or annually for the Usage Fee based on the number of Listings of that Registered Party in the previous financial year (as per The Schedule of Fees).
- 8.10 The invoice for the initial financial year will be based on the total number of estimated listings for the period pro-rated accordingly. Thereafter, invoicing will be based on your total number of unique listings in the previous year.
- 8.11 A Registered Party (other than a Member Level 0) is liable to pay to the Supplier in respect of each financial year the shortfall between:
- (a) the applicable Usage Fees payable under this Agreement in respect of the actual Registered Party Listings; and
  - (b) the Usage Fees actually paid by the Registered Party in respect of that period based on its Listings for the previous period.
- 8.12 On or prior to 30 June of each year the Supplier will provide to the Registered Party a reconciliation statement and, if an amount is owing by the Registered Party, an invoice, in respect of the preceding financial year specifying:
- (a) the Usage Fees payable for the Registered Party's Unique Listings for the period;
  - (b) the Usage Fees paid by the Registered Party for the period;
  - (c) the amount (if any) payable by the Registered Party for the shortfall between the amounts specified in sub-paragraphs (a) and (b);
  - (d) the amount (if any) due to the Registered Party by the Supplier for the surplus of the amounts specified in sub-paragraphs (a) and (b).

- 8.13 In the event that the Usage Fees paid by a Registered Party (other than a Member Level 0) in respect of a period exceed the annually adjusted Usage Fees payable in respect of the Listings for the period, the Supplier will refund the difference to the Registered Party.
- 8.14 A Registered Party must pay all amounts due to the Supplier within 14 days of receipt of a tax invoice for such amount.
- 8.15 The Supplier reserves the right to review and change the principles of the setting of the Usage Fees for any period commencing after 30 June 2010.
- 8.16 In respect of the Harvest Details, in addition to a Registered Party's Usage Fees you agree to pay a flat fee as detailed in The Schedule of Fees for:
- (a) each Grower as specified by the Registered Party to the Supplier for the purpose of issuing an End Point Royalty Harvest Declaration Form in accordance with the Supplier's undertakings; and
  - (b) each non-specified End Point Royalty Harvest Declaration Form that the Supplier receives Harvest Details including a variety that is a Registered Variety of the Registered Party.
- 8.17 For Harvest Details, NGR will issue to Registered Parties:
- (a) an invoice at the end of March, for 50% of the estimated full payment; and
  - (b) a second invoice at the end of June for 25% of the estimated full payment; and
  - (c) a third invoice at the end of July for the balance of 25% of the estimated full payment,
- such payments to be made in addition to the Usage Fees payable for provision of data to a Member Level 2 or a Member Level 3, and payable in accordance with the terms of invoice and these Standard Terms and Conditions.
- The final invoice issued at the end of July in each year will include additional amounts owing after a Harvest Declaration Reconciliation.

## **9. GST – RECIPIENT CREATED TAX INVOICES**

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- 9.1 This clause 9 applies if You have applied for Level 3 Data – Payment Details for Commodity Trader on the Registered Party Application Form and will be receiving the data field 'RCTI Permission' from the Supplier.
- 9.2 You confirm that You are a registered entity for the purposes of the GST Law.

- 9.3 You agree to advise the Grower through NGR if You cease to be registered under the GST Act.
- 9.4 Where the Grower provides NGR with an Australian Business Number, NGR agrees to provide You with a Grower's Australian Business Number where that Grower supplies Agricultural Product to You.
- 9.5 You agree to issue the Grower with an RCTI in accordance with the GST Law within twenty-eight (28) days of the delivery of Agricultural Product by the Grower to You or within twenty-eight (28) days of the determination of the value of that supply, whichever is the latter.
- 9.6 You agree not to issue an RCTI if any of the RCTI Determination requirements are not met.
- 9.7 You agree to provide the following statement on all RCTI's for Growers *"This is a reminder that you agreed to allow us to issue RCTI's when you signed the NGR Registration Form."*
- 9.8 You appoint the Supplier as Your agent to procure a "written RCTI agreement" for the purposes of the GST Law and any GST Ruling.
- 9.9 The parties expressly acknowledge and agree to read this clause with any other agreement entered between them, as the Registered Party's agent and any Grower.

## **10. GST - GENERAL**

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- 10.1 Any fees payable by a Registered Party to the Supplier are exclusive of any GST that may be payable on the supply.
- 10.2 If GST is payable on the supply then, in addition to the fees payable, a Registered Party must pay an amount equal to the GST at the same time and in the same way as the Registered Party makes payment of the fees.
- 10.3 The amount the Registered Party must pay for GST is calculated by applying the applicable GST rate to the GST exclusive consideration for the taxable supply.
- 10.4 The Supplier must deliver to the Registered Party a valid tax invoice in exchange for payment by the Registered Party of the GST.

## **11. RULES**

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- 11.1 The Supplier may make Rules relating to the NGR necessary to regulate the efficient, secure, orderly and lawful use of the NGR by all Registered Parties – for example, the required procedure for lost Security Codes and different levels of access depending on the level of the Registered Party's membership.
- 11.2 The Supplier will publish to each Registered Party and provide to the Registered Party the Rules that apply to the NGR from time to time.

## **12. TERM AND EXPIRY**

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This Agreement continues until it is validly terminated in accordance with these Standard Terms and Conditions or at law.

## **13. ACCURACY COMPATIBILITY AND SUITABILITY OF INFORMATION**

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- 13.1 The Supplier is reliant on the Grower for the accuracy or currency of the Details. The Supplier does not represent that the Details as provided to the Supplier are accurate or current.
- 13.2 The Supplier does not represent that the supply in electronic form of the NGR information will be compatible with the Registered Party's information systems. It is the responsibility of the Registered Party to satisfy itself about these matters.
- 13.3 Unless required by statute, the Supplier gives no warranty, or undertaking and makes no representation to the Registered Party about the suitability of, or fitness of the NGR or the Details for the Registered Party's purposes other than those warranties, undertakings or representations expressly set out in this Agreement.

## **14. WARRANTIES BY SUPPLIER**

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The Supplier warrants, as of the date of this Agreement, that:

- (a) it has the authority to enter and to perform its obligations under this Agreement;
- (b) it has the ability to perform its obligations under this Agreement;

- (c) it has the necessary authority to provide the Details to the Registered Party for the purposes authorised by this Agreement; and
- (d) the use of the Details by the Registered Party in accordance with this Agreement will not infringe the rights of any person or contravene any law.

## **15. LIMITATION OF LIABILITY, INDEMNITY AND INSURANCE**

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- 15.1 Neither the Operator nor any party to this Agreement will be liable to the other party for any indirect, special, economic or consequential loss or damage or loss of revenue, potential profits, profits, goodwill, bargain or opportunities incurred or suffered by the other party whether caused by a breach of this Agreement, negligence on the part of a party or otherwise, and whether that party was aware or should have been aware of the possibility of such loss or damage.
- 15.2 Subject to the other provisions of this Agreement, including sub-clause 15.1, the Supplier indemnifies the Registered Party from and against all costs, claims, actions, losses, damages or expenses sustained by the Registered Party arising out of:
  - (a) any wrongful or negligent acts or omissions of the Supplier or the Operator; or
  - (b) any breach by the Supplier of the terms or warranties of this Agreement.
- 15.3 Subject to the other provisions of this Agreement, including sub-clause 15.1, the Registered Party indemnifies the Supplier and the Operator from and against all costs, claims, actions, losses, damages or expenses sustained by the Supplier or the Operator arising out of any breach by the Registered Party of the terms of this Agreement.
- 15.4 The Supplier will provide upon request a certificate of currency evidencing that the Operator carries professional indemnity insurance of at least five million dollars (\$5,000,000.00) covering any negligence on the part of the Operator.
- 15.5 The Supplier acknowledges and agrees that:
  - (a) in compliance with its obligations under clause 6.1(c) it will procure a warranty from each Grower that the Details provided by them are accurate, and an indemnity in favour of the Supplier and a Registered Party, with respect to any loss, damage, tax or fine suffered or

incurred by either the Supplier or the Registered Party if the Details are not accurate;

- (b) subject to the limitation provided in clauses 15.1 and 15.5(c), the Supplier indemnifies the Registered Party with respect to any loss, damage, tax or fine suffered or incurred by the Registered Party in the event that the Details are not accurate due to the Supplier having been provided with inaccurate information by the relevant Grower;
- (c) the Supplier's liability under the indemnity in clause 15.5(b) is limited to the higher of the following amounts:
  - (i) the amount that is recovered by the Supplier from the relevant Grower under the indemnity obtained from that Grower referred to in clause 15.5(a); or
  - (ii) the amount of the cost to the Supplier of supplying the service again; or
  - (iii) the amount being the cost of having the service supplied again.

15.6 Nothing in this clause obliges the Supplier to commence proceedings or take action against a Grower whether in its own right or on behalf of a Registered Party in respect of a breach of warranty by a Grower.

## **16. TERMINATION**

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16.1 A party may not, even for anticipatory breach, terminate this Agreement except in accordance with the following clauses:

- (a) Clause 8.7 (Notification of Usage Fees);
- (b) Clause 18.11 (Change of Law);
- (c) Clause 18.12 (Force Majeure);
- (d) The following provisions of this clause 16.

16.2 Either party may terminate this Agreement with immediate effect by giving notice to the other party ("Notified Party") if:

- (a) the Notified Party breaches any provision of this Agreement and fails to remedy the breach within fourteen (14) days after receiving notice requiring it to do so; or
- (b) any event referred to in clause 16.1 happens to the Notified Party.

16.3 Each party ("Notifying Party") must notify the other party immediately if:

- (a) the Notifying Party disposes of (part or all of) its assets, operations or business other than in the normal course of business;

- (b) the Notifying Party enters into any arrangement between itself and its creditors;
- (c) the Notifying Party ceases to be able to pay its debts as they become due;
- (d) the Notifying Party ceases to carry on business;
- (e) a mortgagee enters into possession or disposes of part or all of the Notifying Party's assets or business; or
- (f) a receiver, a receiver manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person is appointed over part or all of the Notifying Party's assets or business.

16.4 If the Registered Party at any time is acting in the capacity of trustee of any Trust ("Trust") and in that event the following will apply:

- (a) this Agreement extends to all rights of indemnity which the Registered Party has against the Trust;
- (b) the Registered Party warrants that it has power and authority to enter into this Agreement and the Registered Party must not release any right of indemnity or commit any breach of trust or be a party to any other action which might prejudice a right of indemnity;
- (c) the Registered Party must not without the written consent of the Operator allow any of the following events to occur:
  - (i) the replacement of the Registered Party as sole trustee of the Trust;
  - (ii) any variation of the terms of the Trust;
  - (iii) any distribution of capital of the Trust;
  - (iv) any re-settlement of the trust property.

16.5 It will be an event of default under this Agreement if the Registered Party is guilty of any breach of trust in respect of the Trust or ceases to be the sole trustee of the Trust or allows any of the events described in clause 16.4(c) to occur.

16.6 If a party terminates this Agreement under this clause:

- (a) the accrued rights and remedies of each party remain unaffected; and
- (b) the terminating party may recover its damages arising out of:
  - (i) the other party's breach of this Agreement, including without limitation the breach that gave rise to the right to terminate; and
  - (ii) termination of this Agreement.

## **17. DEFAULT INTEREST**

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The Registered Party must pay interest at the Interest Rate on any moneys due but unpaid under this Agreement calculated on daily rests from the date of due payment until actual payment.

## **18. GENERAL**

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### **18.1 Governing Law**

- (a) This Deed is governed by the law in force in Queensland;
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

### **18.2 Costs**

Each party will bear their own expenses incurred in connection with:

- (a) the negotiation, preparation, and execution of this Agreement;
- (b) the transactions that this Agreement contemplates; and
- (c) any amendment to, or any consent, approval, waiver, release or discharge of or under, this Agreement,

and the Supplier will bear the costs of any stamp duty payable in respect of this Agreement.

### **18.3 Good Faith**

Each party must do anything (including execute any Deed), and must ensure that its employees and agents do anything (including execute any Deed), that may reasonably be required to give full effect to this Agreement.

### **18.4 Waiver**

A right may be waived by a party if in writing signed by the parties, and:

- (a) no other conduct of the party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

### **18.5 Entire Understanding**

- (a) This Deed contains the entire agreement between the party's about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a party may have under this Agreement is in addition to, and does not replace or limit, any other right that the party may have at law or in equity.
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

### **18.6 Consent**

Where this Agreement contemplates that a party may agree or consent to something (however it is described), the party may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions, unless this Agreement expressly contemplates otherwise.

### **18.7 Set Off**

A party may not set off any amount that is or may become owing by the party to the other party against any amount owing by the other party to the party under this Agreement.

### **18.8 No Merger**

Nothing in this Agreement merges with any other judgment or other right or remedy that a party may hold at any time.

### **18.9 Statutes**

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this Agreement is excluded to the full extent permitted by law.

### **18.10 Inconsistency**

If this Agreement is inconsistent with any other document or agreement between the parties, this Agreement prevails to the extent of the inconsistency.

### **18.11 Change of Law**

In the event that a change of law makes the performance by a party under this Agreement unlawful, the parties agree to use their best endeavours to re-

negotiate the terms of this Agreement. If they cannot agree within sixty (60) days of the commencement of the relevant legislation, either party may terminate this Agreement without prejudice to each party's accrued rights but otherwise without penalty.

#### **18.12 Force Majeure**

A party will not be liable for any delay in or failure of performance caused by Force Majeure (except that delay in payment of money under this Agreement is never excused by Force Majeure). In the event of a Force Majeure that causes delay in performance by more than sixty (60) days, either party may terminate this Agreement without prejudice to each party's accrued rights but otherwise without penalty.

#### **18.13 Counterparts**

This Deed may be executed in counterparts.

#### **18.14 Power of Attorney**

Each person who executes this Agreement on behalf of a party under a power of attorney declares and warrants that he or she:

- (a) has proper authority by that power of attorney to perform his or her obligations under this Agreement;
- (b) has not received notice of Revocation of Power of Attorney;
- (c) is not aware of any fact or circumstance that might affect his or her authority to act as attorney under that Power of Attorney; and
- (d) will provide to the Supplier a certified copy of the Power of Attorney upon request.