

## NON-EXCLUSIVE ANNUAL POTATO SUBLICENSE AGREEMENT

This Potato Sublicense Agreement (this "Agreement") is made effective and entered into on [\_\_\_\_\_], 2017, by and between Wisconsin Crop Improvement Association ("WCIA") as Sublicensor, with an address of 1575 Linden Drive, 554 Moore Hall, Madison, Wisconsin, 53706; and [\_\_\_\_\_] ("Sublicensee"), with an address of [\_\_\_\_\_].

**WHEREAS**, Wisconsin Alumni Research Foundation ("WARF"), a Wisconsin nonprofit, nonstock corporation, owns by assignment a certain proprietary potato variety, for which WARF has applied for or may apply for Plant Variety Protection (PVP) or other forms of intellectual property protection; and

**WHEREAS**, WARF as Owner has licensed certain of such rights to WCIA; and

**WHEREAS**, WARF has authorized WCIA to sublicense seed potato production of proprietary potato variety and/or produce and replant seed potatoes for commercial production in the United States; and

**WHEREAS**, Sublicensee desires to obtain from WCIA a non-exclusive sublicense under the potato variety listed on Schedule A (hereinafter the "Variety") to produce and sell or transfer such Variety as seed potatoes and/or produce and replant the Variety for commercial production in the United States.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth, the parties covenant and agree as follows:

1. **Grant:** WCIA hereby grants to Sublicensee a non-exclusive nontransferable, royalty bearing, sublicense under WCIA's licensed rights in the Variety to propagate, harvest and sell said Variety listed on Schedule A in the United States (US). Sublicensee acknowledges that WARF retains all ownership rights and PVP or other rights to such Variety, and that the sublicense granted hereunder does not provide Sublicensee any right to grant or assign sublicenses under this Agreement or the right to sell or otherwise distribute as seed of said Variety outside of the United States.

2. **Term:** The term of the license for the Variety begins on the effective date first set forth above for 2017 and continues for the current crop year through and until June 30, 2018, unless sooner terminated in accordance with the Agreement as provided in Section 7 below. Sublicensee agrees that all seed quantities produced in 2017 and not sold or transferred on or before June 30, 2018 shall be reported to WCIA no later than July 31, 2018.

3. **Annual Fee:** Sublicensee agrees to pay to WCIA an annual fee of \$50.00 per sublicensed Variety on Schedule A. Such payment shall be made in US dollars and due within thirty (30) days of the effective date of this Agreement. Sublicensee may add additional Varieties under this Agreement after the effective date of this Agreement by notifying WCIA in writing as to what Variety Sublicensee desires to add and including payment of \$50.00 per sublicensed Variety.

| <b>Territory Variety Is Grown</b>   |                                     |
|-------------------------------------|-------------------------------------|
| <b>Wisconsin</b>                    | <b>Other US (outside WI)</b>        |
| Annual Sublicense<br>Fee = \$50     | Annual Sublicense<br>Fee = \$50     |
| Annual Royalty<br>Rate = \$0.35/CWT | Annual Royalty<br>Rate = \$0.50/CWT |

4. Annual Royalty: In addition to the annual sublicense fee required under Section 3 above, Sublicensee agrees to pay to WCIA as “earned royalties” an annual royalty on the sale or transfer of potatoes as seed by or on behalf of the Sublicensee. The royalty will be calculated at the applicable rates from the above table, expressed per CWT (hundred weight) of seed, which are based on the Territory where the seed is grown. If the seed is sold, transferred after the termination of this Agreement, the royalties must still be paid.

5. Annual Royalty Payments and Reports: Sublicensee agrees to provide to WCIA, within thirty (30) days of June 30, 2018 or termination of this Agreement, an “Annual Royalty Report” setting forth (i) the number of acres of Variety grown by or on behalf of Sublicensee as seed potatoes during the 2017 season, and (ii) the total weight of seed sales or seed transfer of Variety and the corresponding royalties owed to WCIA. The Annual Report shall be provided to WCIA in the form set forth in Schedule B at the address listed above, and shall be accompanied by said royalty payments in US dollars. In the event that no payment is owed, Sublicensee shall supply a statement explaining that fact. The balance of any amounts remaining unpaid more than thirty (30) days after they are due to WCIA shall accrue interest until paid at the rate of the lesser of one percent (1%) per month or the maximum amount allowed under applicable law. In no event, however, shall this interest provision be construed as a grant of permission for any payment delays.

6. Record Keeping: Sublicensee shall keep books and records sufficient to verify the accuracy and completeness of Sublicensee’s accounting referred to above, including without limitation inventory and invoice records relating to the seed production, seed sale and distribution of Variety produced under this Agreement. Such books and records shall be preserved for a period of not less than six (6) years after they are created during and after the term of this Agreement. Sublicensee shall take all steps necessary so that WCIA may, within thirty (30) days of its request, review and have access to Sublicensee’s books, records, and property to allow WCIA to verify the accuracy of its Annual Reports. Such review may be performed by any employee of WCIA as well as by any attorney or registered CPA designated by WCIA, upon reasonable notices and during regular business hours. If a royalty payment deficiency is determined, Sublicensee shall pay the royalty deficiency outstanding within thirty (30) days of receiving written notice thereof, plus interest on outstanding amounts as described in Section 5 above. If a royalty payment deficiency for a calendar year exceeds the lesser of ten percent (10%) of the royalties paid for that year or \$5,000, then Sublicensee shall be responsible for paying WCIA’s out-of-pocket expenses incurred with respect to such review.

7. Termination:

a. Sublicensee may terminate this Agreement at any time by giving at least ninety (90) days written notice to WCIA.

b. If Sublicensee at any time defaults in the timely payment of any monies due to WCIA or commits any breach of any other covenant herein contained, and fails to remedy any such breach or default within sixty (60) days after written notice thereof by WCIA, or if Sublicensee commits any act of bankruptcy, becomes insolvent or unable to pay Sublicensee's debts as they become due, files a petition under any bankruptcy or insolvency act, or has any such petition filed against Sublicensee that is not dismissed within sixty (60) days, or offers any Variety to its creditors, WCIA may, at its option, terminate this Agreement and any license granted hereunder by giving notice of termination to Sublicensee.

c. Upon termination of this Agreement, Sublicensee shall cease all propagation of the Variety and shall entirely sell or destroy all potatoes within one (1) year of the date of termination, unless otherwise expressly agreed upon by WCIA in writing.

d. Upon termination of this Agreement, Sublicensee shall remain obligated to provide an accounting for and to pay Royalties on any Variety propagated during the calendar year in which this Agreement expired or was terminated as provided herein.

e. This Agreement is subject to terminate upon WARF/WCIA License Agreement termination. In the event that the WARF/WCIA License is terminated, Sublicensee will have the opportunity to negotiate a non-exclusive sublicense directly with WARF for the technology previously sublicensed to said Sublicensee under this Agreement.

8. Certain Warranties: The Variety is provided "AS IS." WCIA AND WARF MAKE NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER RELATED TO THE VARIETY INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE VARIETY, THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES REGARDING INFRINGEMENT OF THIRD PARTY RIGHTS. SUBLICENSEE AGREES TO BEAR ALL RISK RESULTING FROM THE USE OF THE VARIETY AND ANYTHING DERIVED THEREFROM.

9. Product Liability, Conduct of Business: All development activities and decisions are entirely at the discretion of Sublicensee, and Sublicensee shall rely entirely on its own expertise with respect thereto. Sublicensee shall, at all times during the term of this Agreement and thereafter, indemnify, defend and hold WCIA, WARF, and the inventors of the Variety harmless against all claims and expenses relating to the Variety. Sublicensee agrees that it will maintain liability insurance coverage appropriate to the risks involved in growing, using, and/or selling the Variety under this Agreement.

10. United States Government Interests: If any U.S. agency has funded the research from which the Variety or any of WARF's rights arose, the United States is entitled to certain rights under the provisions of §35 U.S.C. 200-212 and applicable regulations of Chapter 37 of the Code of Federal Regulations and the license granted hereunder is subject to such rights.

11. Miscellaneous: This Agreement is nonassignable, is governed by the laws of Wisconsin and may be amended only with the mutual written consent of both parties. No Agreement between the parties shall exist unless the duly authorized representatives of Sublicensee and WCIA have signed this document within thirty (30) days of the effective date first set forth above.

The parties have indicated their acceptance of the terms of this Agreement by the signatures set forth below on the dates indicated. Each individual signing for a corporate entity hereby personally warrants his or her legal authority to bind that entity.

**WISCONSIN CROP IMPROVEMENT ASSOCIATION**

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

Tony Klink  
General Manager

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

**SUBLICENSEE**

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

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

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

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

## SCHEDULE A – SUBLICENSEE POTATO VARIETY REPORT

### **Potato Varieties Available Through WCIA**

| Variety/Name             | Reference Number |
|--------------------------|------------------|
| *Hodag (W5955-1)         | P110184US01      |
| *Oneida Gold (W6703-1Y)  | P120382US01      |
| *Red Endeavor (W6002-1R) | P110185US01      |
| W6234-4rus               | P120381          |
| W8405-1R                 | P120384          |
| W8893-1R                 | P140163          |
| W9133-1rus               | P140166          |
| W9433-1rus               | P140167          |
| W9576-11Y                | P160335          |

\*If you have an active WARF license agreement for other varieties, you may add Hodag, Oneida Gold, and/or Red Endeavor to your license by contacting Emily Bauer (608-262-8638) or Juli Baumgartner at WARF (608-890-1243). For growers who have not previously licensed any variety through WARF, these varieties can be licensed through WCIA.

### **Grower Sublicensed Varieties**

| Potato Variety                            | Estimated Acres<br>to be Planted | Annual Sublicense Fee<br>(\$50 Per Variety) |
|---|----------------------------------|---|
|   |                                  |   |
|   |                                  |   |
|   |                                  |   |
| <b>**Total Variety Sublicense Fee Due</b> |                                  |   |

\*\*To be paid within 30 days of executing Potato Sublicense Agreement.

~ Per Section 9, please confirm and certify that you are maintaining liability insurance:  yes  no

*I hereby certify on behalf of the above Sublicensee that the above is true and accurate.*

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

Name and Title: \_\_\_\_\_

Mail this report with payment due to:

**Wisconsin Crop Improvement Association**  
 Attn: General Manager  
 1575 Linden Drive, 554 Moore Hall  
 Madison, WI 53706

**SCHEDULE B – ANNUAL POTATO VARIETY ROYALTY REPORT**

**Sublicensee:** \_\_\_\_\_  
**Period Covered:** From: \_\_\_\_\_ / \_\_\_\_\_ /20 \_\_\_\_\_ Through: \_\_\_\_\_ / \_\_\_\_\_ /20 \_\_\_\_\_  
**Prepared By:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Approved By:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Sublicensed Varieties** – Sublicensee agrees to submit this Annual Royalty Report for each Sublicensed Variety.

| Potato Variety            | Acres Planted | Total CWT Seed Sold, Transferred or Used For Commercial Production (Select Territory Where Variety Was Grown) |                                  |
|---------------------------|---------------|---|----------------------------------|
|                           |               | Wisconsin   | Other US (outside WI)            |
|                           |               | Annual Royalty Rate = \$0.35/CWT  | Annual Royalty Rate = \$0.50/CWT |
|                           |               |   |                                  |
|                           |               |   |                                  |
|                           |               |   |                                  |
|                           |               |   |                                  |
| <b>Total Royalty Due*</b> |               |   |                                  |

\*To be paid within 30 days of June 30 each year.

*I hereby certify on behalf of the above Sublicensee that the above is true and accurate.*

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

Name and Title: \_\_\_\_\_

**Projected Varieties** – For the upcoming year.

| Potato Variety | Estimated Acres That May Be Planted |
|----------------|-------------------------------------|
|                |                                     |
|                |                                     |
|                |                                     |

Mail this report with payment due to:

**Wisconsin Crop Improvement Association**  
 Attn: General Manager  
 1575 Linden Drive, 554 Moore Hall  
 Madison, WI 53706