

This Memorandum of Agreement (MOA) is signed on the \_\_\_\_ day of \_\_\_\_, 2017 (the “Effective Date”)

**By and Between**

**ICAR-Indian Institute of Wheat & Barley Research, Karnal 132 001**- a constituent unit of the Indian Council of Agricultural Research (ICAR), Rajendra Prasad Road, Krishi Bhawan, New Delhi (a society under the Societies Registration Act, 1860) through its ‘Director’, hereinafter referred to as “**ICAR-IIWBR**”/ “**LICENSOR**” (which expression shall unless repugnant to the context mean and include its legal representatives, successors and assignees), of the First Party.

**AND**

**M/S XXXXX**, a Company registered under the **Companies Act 1956** having its office at “**XXXXX**” (Hereinafter referred to as “**M/S XXXXX**” /the “**LICENSEE**”) (Which expression shall unless repugnant to the context mean and include its legal representatives, affiliates, successors and assignees) of the Second Party.

Hereinafter, the **ICAR-IIWBR** and **M/S XXXXX**, shall collectively be referred to as “the Parties” and individually as “Party”.

**WHEREAS:**

- A. The **LICENSOR** is India’s Nodal Institute for agricultural research, coordination and extension in wheat & barley crops. It coordinates for development of high yielding varieties of wheat & barley for different agro-ecological zones of the country. ICAR-IIWBR has also developed many wheat and barley varieties and makes available breeder seeds of these varieties to many breeders/organizations/seed companies.
- B. The **LICENSEE** is an agriculture Seed Company involved in R&D, seed production, processing and marketing of agriculture seeds and having interests in commercialisation of seed of wheat variety **WB 2** (hereinafter called as **WB 2**) developed by the **LICENSOR**.
- C. **WB 2** is a new wheat/~~barley~~ variety released for **irrigated and timely sown** conditions of **North Western Plain Zone (NWPZ)** comprising of Punjab, Haryana, Delhi, Rajasthan, Uttar Pradesh, Jammu and Kashmir, Himachal Pradesh and Uttarakhand states. This variety is bio-fortified with good levels of Zn and Fe, high yielding having wider adaptability, good quality and high resistance to diseases. ICAR-IIWBR wishes to avail of the production networks and delivery mechanisms of seed agencies/seed companies to pass on the benefits of this technology to the farmers.

- A. The **LICENSEE** has approached the **LICENSOR** and the **LICENSOR** has agreed to license the breeder seed of Wheat varieties **WB 2** developed by the **LICENSOR** for commercialisation on the terms and conditions of this MoA.

**The Parties hereto agree as follows:**

**1. Grant of Approval**

- 1.1 The **LICENSEE** has requested for a license to use the breeder seed of **WB 2** (Hereinafter referred to as the 'Seed/Seeds') developed by the **ICAR-IIWBR/LICENSOR** and described in details in Appendix A for commercialisation. The **LICENSOR** hereby grants to the **LICENSEE**, and the **LICENSEE** hereby accepts at its free will, *a non-exclusive and non-transferable license* to make, have made, produce, have produced, multiply, have multiplied, sell, have sold and offer to sell the seed of **WB 2** in the territory as specified in the MoA to use the Seed, subject to the terms and conditions contained in this MoA.
- 1.2 The **LICENSOR** shall provide 100 Kg breeder seed of **WB 2** at the basic cost of breeder seed to the **LICENSEE** after receiving one time License fee, royalty and taxes as applicable as per clause 4.
- 1.3 The **LICENSEE** shall provide the detailed information to the **LICENSOR** regarding the location of the fields where the **LICENSEE** is producing the foundation seed and/or certified seed of **WB 2**. Such information should be provided as soon as possible, latest within two weeks of planting. The **LICENSOR** at its discretion will have the right to inspect these fields to ensure the quality of production.
- 1.4 The **LICENSEE** shall submit to the **LICENSOR** a report indicating the production figures (Quantity of Foundation Seed multiplied/ Produced and/or Certified seed produced), immediately after the harvest of the crop, not later than 30 days of harvest.
- 1.5 The **LICENSEE** shall take the basic breeder seed transferred by the **LICENSOR** to only one stage of foundation seed to produce the certified or commercial seed.
- 1.6 For subsequent years, to maintain the purity of the variety, the **LICENSEE** will have to purchase 100 kg breeder seed or as per the available quantity of the breeder seed of the licensed Wheat variety **WB 2** every year during the term of MoA from the **LICENSOR** at the basic cost of breeder seed and royalty of Rs. 10/Kg of Breeder seed and taxes as applicable along with the basic seed cost of breeder seed for **WB 2**.
- 1.7 In case, the **LICENSEE** does not procure the breeder seed every year from the **LICENSOR** as per clause 1.6, the **Agreement** will be terminated and the **LICENSEE** will forfeit the licensing fee and the royalty paid. The **LICENSOR** reserves the right to debar the **LICENSEE** from licensing any other technology during the term of this Agreement.
- 1.8 The territory of the **LICENSEE** shall be the territory of India.

- 1.9 The **LICENSOR** does not confer any right upon the **LICENSEE** to sub-license the license without written consent of the **LICENSOR** except as provided in this MoA.

## **2. Conditions of use of the Seed**

- 2.1 The **LICENSEE** shall be solely responsible for any and all marketing costs incurred in connection with the sale and marketing of seed produced by using these Seed.
- 2.2 The **LICENSEE** shall test necessary number of Lots of Seeds produced under this license for compliance with Government prescribed quality standards prior to sale of that lot. Upon failure of any lot to meet such quality standards, that lot shall be destroyed or otherwise disposed of in a manner prescribed by the **LICENSOR**, but in no events it may be sold for commercial planting. The **LICENSEE** shall retain samples of each lot of Seed produced. Such samples shall be retained for at least two (2) years after the last sale of that lot.
- 2.3 The **LICENSEE** shall duly acknowledge the receipt of the said base material (Breeder Seed) from the **LICENSOR** or its designated agent.
- 2.4 The **LICENSEE** shall not use this genetic material for any further breeding/ improvement/ commercialization without appropriate permission of the **LICENSOR**.
- 2.5 The variety **WB 2** will be licensed under only the registered denomination. The **LICENSEE** shall display on all packaging and promotional material including website and social media the following in equal sized letters **“Wheat variety notified as WB 2 developed & licensed by ICAR-IIWBR”** of half the nominal size of the largest size giving the name of the **LICENSEE**. Subsequently, it shall also not be changed by the licensee or by any third party with whom the licensee deals with in that seed.
- 2.6 Along with the use of denomination, the licensee will be required to use ICAR’s Collective Mark/Trade Mark on all packets of seed of the licensed seed. In this context if the licensee is interested to simultaneously use its own trade name in the licensed seed, the same can also be agreed to.

## **3. Intellectual Property**

- 3.1 The **LICENSOR** retains all rights, interest, and title to the Seed/Seeds provided to the **LICENSEE**.
- 3.2 The **LICENSEE** recognizes the title in the Territory, of the **LICENSOR** to the Licensed Germplasm and the Licensed Products. The **LICENSEE** shall not during the term of this Agreement do any act of commission or omission which would in any way impair those rights, and in particular those rights as applicable under the Protection of Plant Varieties and Farmers’ Rights Act, 2001 (PPV&FR Act).

- 3.3 Any technical advancement, improvement or any innovation in the Seed by the **LICENSEE** can't be made, except with the prior written permission of the **LICENSOR**, with separate terms and conditions to be determined at the time of such permission.
- 3.4 The **LICENSEE** shall not, either directly or indirectly, without the prior written consent of the **LICENSOR**, use the Seed or any information pertaining to the Seed to seek or obtain patent protection or plant variety rights or any other intellectual property protection for this Seed Variety, either within India or any country outside India.
- 3.5 The **LICENSEE** shall not authorize any third party to use the Seed or any information pertaining to the Seed to seek patent protection or plant variety rights or any other intellectual property protection for this Seed Variety by any act or omission.

#### 4. License Fee and Royalties

- 4.1 The **LICENSEE** shall pay to the **LICENSOR** on the execution of this MoA a sum of Rs.50000/- (Rupees Fifty Thousand only) as a non refundable one time license fee (valid for five years). In addition basic cost of the breeder seed of wheat variety **WB 2** at the price fixed by the Department of Agriculture Co-operation & Farmers' Welfare, MoA, GoI from time-to-time for minimum quantity of 100 kg breeder seed; a Royalty of Rs. 10/Kg of Breeder seed and the taxes as applicable.

S.No.	Particulars	Licensing Fee (Rs.)	Royalty for minimum quantity (100 kg) of breeder seed (Rs.)	Total Amount (Rs.)
<b>Amount To Be Paid At The Time Of Licensing</b>				
1	WB 2	50,000.00	1000.00	51,000.00
<b>Taxes</b>		<b>as applicable</b>		
<b>Total (Rs.)</b>		<b>51000.00 + taxes as applicable</b>		
<b>The basic cost of the seed will be paid by the LICENSEE at the time of delivery of the breeder seed to him + royalty @ Rs 10/kg of breeder seed exceeding 100 kg, if any + taxes as applicable</b>				

- 4.2 Every year the Licensee will have to buy the breeder seed from the Licensor at the cost of prevailing breeder seed rates and to pay royalty and taxes as above in 4.1.
- 4.3 The Licensee will deposit 10% amount of the actual cost (at the prevailing rates) of the breeder seed, royalty and taxes as applicable for the quantity it books for next year. This amount will be adjusted as per the rates of breeder seed prevailing at the time of delivery of seed to the licensee

#### 5. Warranties, Liabilities and Indemnification

- 5.1 The seeds provided by the **LICENSOR** under this MoA are on "as is" basis, as per standards specified at APPENDIX A, WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY SORT, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.
- 5.2 The **LICENSEE** will ensure the maintenance of seed quality and genetic purity, during the entire term of license, of the wheat variety **WB 2** licensed by the **LICENSOR**. **LICENSOR**, including

its employees, will not be held responsible for the seed quality/purity of the subsequent lots commercialized by the **LICENSEE**.

- 5.3 The **LICENSEE** shall be solely responsible for any claims by third parties arising from the **LICENSEE**'s acts or omissions in the course of performing this MoA and under no circumstances shall the **LICENSOR** be held responsible or liable for any such claims by third parties.
- 5.4 The **LICENSEE** shall indemnify the **LICENSOR** including its employees stand indemnified by the **LICENSEE**, from and against all claims, demands, losses, damages, costs (including attorney fees), actions, suits or other proceedings, all in any manner based upon, arising out of, related to, occasioned by or attributable to, any acts or conduct of the **LICENSEE**, its employees or agents, (whether by reason of negligence or otherwise) in the performance by or on behalf of the **LICENSEE** of the provisions of this MoA or any activity undertaken or purported to be undertaken under the authority or pursuant to the terms of this MoA.
- 5.4 The MoA granting license to the **LICENSEE** to produce quality seeds of the licensed wheat variety **WB 2** is valid only when the licensee agrees to produce and distribute/sell quality seeds of the variety **WB 2** in the respective zone mentioned in the license agreement on a regular basis "in sufficient quantities and at a reasonable price".

## **6. Terms and Termination**

- 6.1 This MoA, unless terminated as provided herein, shall remain in effect for a period of Five (5) years and renewal afterwards with mutual consent of both the parties.
- 6.2 If the **LICENSEE** materially breaches any of its obligations under this MoA, the **LICENSOR** may terminate this MoA forthwith if the **LICENSEE** fails to take corrective action of a breach within 90 days of the receipt of a written notice of breach sent by the **LICENSOR**.
- 6.3 Upon expiry unless otherwise extended through MoA, in writing, or early termination, the **LICENSEE** must stop all commercialization activities on the Seed provided under this MoA, return to the or destruct the seed as per direction of the **LICENSOR** and certify to the **LICENSOR** the destruction of the seed materials. However, in the event of the commercial production of the seed of wheat variety **WB 2** the **LICENSEE** shall continue to pay the Royalties agreed under clause 4 of this MoA and the use will be deemed to use of the Seed as provided in clause 4.
- 6.4 The **LICENSOR** shall not be liable for any loss or damage whatsoever caused to the **LICENSEE** due to revocation of approval for access and/ or termination of this MoA as per any clause of MoA.

## **7. Reports and Audit**

- 7.1 The **LICENSEE** shall fulfill all the requirements under the relevant laws of India in respect of Seeds.
- 7.2 **The LICENSEE** shall keep accurate records (together with supporting documentation) required to determine that the conditions of the MoA are being complied with. Such records shall be retained for at least one year following the end of the reporting period to which they relate. ICAR-IIWBR at its discretion can request the **LICENSEE** to provide a copy of these records or

allow its officers to inspect /audit such records, for the sole purpose of ensuring that the terms and conditions of this MoA are being complied with.

- 7.3 **The LICENSEE** will ensure that all these clauses are applicable to the third entity also, in case the LICENSEE has undertaken any action through a third entity as per provisions of this MoA.

## 8. Notice

- 8.1 Wherever in this MoA, it is required or permitted that a communication, notice or demand be given or served by either Party to or on the other Party, such communication, notice or demand will be in writing and will be validly given or sufficiently communicated if forwarded by Registered mail acknowledgement due, e-mail, telegram, telex or facsimile as follows:

### The addresses for communication are:

(A) To the **LICENSOR** : Director  
ICAR-Indian Institute of Wheat and Barley Research,  
P.B. No. 158, Kunjpura Road,  
Karnal, Haryana-132001  
Phone : 0184-2267490  
E-mail : [wheatpd@gmail.com](mailto:wheatpd@gmail.com), [directoriiwbr@gmail.com](mailto:directoriiwbr@gmail.com)

(B ) To **The LICENSEE** : **XXXXXX**  
: **XXXXXX**  
Phone : **XXXXXX**  
: **XXXXXX**  
Email : **XXXXXX**  
:

- 8.2 Notice will be deemed to have been delivered:
- If delivered by hand, upon receipt;
  - If sent by electronic transmission, 48 hours after the time of transmission, excluding from the calculation weekends and public holidays;
  - If sent by certified mail, four (4) days after the mailing thereof, provided that if there is a postal strike or other disruption such notice will be delivered by hand or electronic transmission.

- 8.3 The Parties may change their respective addresses for delivery by delivering notice of change as provided in this clause.

## 9. Confidentiality

- 9.1 Each Party agrees to treat as confidential any and all Confidential Information marked as "CONFIDENTIAL" and to that end further agrees that information disclosed pursuant to this MoA relating to the Seed and Hybrids, including efforts to commercialize, shall be deemed Confidential Information.

- 9.2 Notwithstanding clause 9.1, Confidential Information may be disclosed to the extent required by any law or regulation or order of any governmental/administrative/judicial authority having jurisdiction over any of the Parties, with appropriate efforts made to maintain confidentiality.

## **10. Dispute Resolution**

- 10.1 If any controversy, question, dispute or difference (hereinafter referred to as a '**Dispute**') between the Parties hereto arises under this MoA, any Party may give the other Party a written notice of Dispute adequately identifying and providing details of the Dispute. On receipt of such notice by the other Party, the Parties shall try to settle the Dispute amicably between them through mediation and reconciliation in good faith within 30 days of the receipt of the notice of Dispute by the other Party, taking Director, ICAR-IIWBR into confidence.
- 10.2 If the Dispute is not resolved by such good faith negotiations within the period mentioned, the Parties agree to settle the Dispute through joint arbitration conducted by the arbitrators appointed by the Director General, ICAR. The arbitration shall be governed by the ICAR guidelines (1.5.23). The place of arbitration shall be Karnal, Haryana. The language to be used in the arbitration proceedings shall be English or as mutually agreed between the Parties.
- 10.3 The Parties hereto agree that the award and determination of the arbitrator shall be final and binding on both Parties hereto.

## **11. Governing Law and Jurisdiction**

This MoA is governed by and must be construed in accordance with the laws of India without reference to its conflict of laws provisions. The Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the courts in Karnal, Haryana.

## **12. Article XII: Saving Provisions**

- 12.1 Notwithstanding anything herein contained, the **LICENSOR** shall always have the right to disclose and provide to the Central Government or its authorized representative, agency or undertaking, the KNOW HOW and/or the related PROCESS, to use and practice the same for the purpose of experimentation and/or further research or development thereof, with the right to sell and vend the ARTICLE in such manner as the Central Government may, in its judgement decide, for "Government purposes" or otherwise in public interest.

- 12.2 The rights of the **LICENSOR** hereunder are cumulative and not mutually exclusive.

## **13. Miscellaneous Covenants**

### **13.1 Assignment**

- 13.1.1 Without the prior written consent of the **LICENSOR** in each instance, neither this MoA nor the **LICENSE** granted hereunder shall be transferred or assigned in whole or in part by the **LICENSEE** to any person whether voluntarily or involuntarily, by operation of act or omission on the part of the **LICENSEE** or otherwise.
- 13.1.2 This MoA is strictly personal to the **LICENSEE** and will be treated as terminated in the event of any substantial changes in the management or shareholding of the **LICENSEE**, that alters the

control structure of the **LICENSEE** and includes changes brought by a transfer of business units, merger, demerger or any other kind of corporate restructuring. In any event, Royalties shall continue to be paid in accordance with this MoA to any entity or individual to whom the benefit of this MoA accrues.

13.1.3 Nothing in this MoA restricts any right of the **LICENSOR** in what so ever manner.

### **13.2 Severability**

If any part of this MoA is declared or held invalid by a court for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if the MoA had been executed without the invalid portion.

### **13.3 Modification**

No amendment or modification to this MoA shall be valid or binding upon the Parties, unless agreed upon by both Parties, made in writing, and signed on behalf of each of the Parties by their duly and legally authorized signatories.

### **13.4 Independent Parties**

The **LICENSEE** hereby agrees that this MoA shall not in any way constitute or be presumed to constitute a partnership, joint venture or joint enterprise in any way or for any purpose between the Parties hereto or make them in any way liable as partners of or as agents for one another. No Party has the authority to act for or to assume any obligation or responsibility on behalf of the other Party.

### **13.5 Entire MoA**

The Parties acknowledge that there are no representations either oral or written, as regards the subject matter of this MoA, other than those expressly set out in this MoA. All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this MoA are merged in and superseded by this MoA and are of no effect. This MoA constitutes the entire understanding between the Parties as to the subject matter of this MoA. This MoA sets forth all representations forming part of or in any way affecting or relating to the subject matter of this MoA.

### **13.6 Representations**

Either Party represents to each other Party that it has the legal right and power to enter into this MoA and to perform its obligations under the terms of this MoA and the execution, delivery and performance of this MoA by it has been duly and validly authorized by all necessary corporate action or Government action on its part.



The document attached hereto as Appendix A forms an integral part of this MoA as fully as if it were set forth herein *in extenso*.

This MoA has been executed in duplicate. The original is to lie with the **LICENSOR** and the duplicate with the **LICENSEE**. Each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHERE OF this MoA has been executed by duly authorized representatives of the Parties on the day and the year first above mentioned.

SIGNED BY

SIGNED BY

For and on behalf of

For and on behalf of

ICAR-IIWBR, Karnal

**XXXXX**

**The LICENSOR**

**The LICENSEE**

Signature\_\_\_\_\_

Signature\_\_\_\_\_

Name: **(Dr. G. P. Singh)**

Name: **XXXXX**

Designation: Director

Designation: **XXXXX**

Seal:

Seal:

Witnesses: (Name and address)

Witnesses: (Name and address)

1.

1.

2.

2.

Date:

## Appendix A

Variety	Recommended Regions for Cultivation	Year of Release and Notification	Recommended Conditions of Cultivation	Special features of the variety
WB 2	NORTH WESTERN PLAINS ZONE (NWPZ) Punjab, Haryana, Delhi, Rajasthan, Uttar Pradesh, Jammu and Kashmir, Himachal Pradesh and Uttarakhand.	2017	Irrigated & Timely Sown	WB 2 is a high yielding (~51.6q/ha) and bio-fortified variety with high grain Zn (~42.0ppm) and Fe (~40.0ppm) contents. This variety has high grain protein content (~12.4%), test weight and high sedimentation value for better product quality. It has high level of resistance to rusts and powdery mildew and matures in about 142 days under irrigated and timely sown conditions of NWPZ.