

# **Funding Plant Breeding in Australia – A Review of End Point Royalties and Future Funding Requirements**

**Donald J. Coles – Valley Seeds Pty Ltd.**

## **Abstract**

The process of funding plant breeding in Australia has undergone great change over the past 25 years. The impact of a change in public policy where state governments have directed funds towards environmental, social and post farm gate issues and away from applied plant breeding has been significant. This paper explores the development of alternative funding arrangements for plant breeding of major crop species and looks at factors affecting various stakeholders in the value chain as a result of these changes.

End Point Royalties have been introduced as a potential alternative source of funding for plant breeding. All participants in the supply chain are evaluating its effectiveness and proposing changes to improve efficiency and effectiveness. These issues are also raised along with the problems that they aim to overcome.

## **Introduction**

Advances in plant breeding technology and associated intellectual property frameworks have made plant breeding a new and potentially lucrative activity. A gradual withdrawal of government and institutional support for this activity has created an unstable environment in an industry that needs long term funding stability. The concepts of “market failure” (Grey 2003) and “public good” (Lindner 2004) investment have been used as reasons to slow the pace of change.

Some breeding organisations have embraced change and developed and promoted alternative forms of funding rather than wait for change to be forced upon them. It is these dynamic organisations that have proven to be successful to date. The grower levy manager and federal government agency Grains Research and Development Corporation (GRDC) has been willing to stand in and take control of the agenda in many of the critical areas of applied breeding and breeding infrastructure. Coincidentally an expansion of grain production has increased levy receipts and supported the interventionist plant breeding policies of GRDC.

Private breeders as represented by the Australian Seed Federation – Plant Breeders & Proprietary Marketers Group, have introduced and promoted the concept of End Point Royalties (EPR's) as a potential method of supporting a shift towards private breeding. The practice and implementation of EPR's, however has not been without its problems. Despite this, a chorus of support emanates from all segments of the supply chain and this is leading to shared and supported changes to make the system more efficient and effective.

## **Funding of Plant Breeding – The past**

Australia was not unique in the world when it came to funding plant breeding. Up until 20 years ago plant breeding was mainly funded by federal and state governments (Jarrett 1990). Funds were directed to state departments of agriculture, universities and a few research institutes for the purpose of breeding new plant varieties. These organisations were responsible for over 90% of total expenditure on agricultural research. (Jarrett, 1990, p.84) Table 1 shows the level and dominance of varieties bred from these organisations.

**Table 1: The distribution of broadacre plant breeders in Australia in 1985<sup>a</sup>**

	-----Number of plant breeders-----					
	State departments	Universities	CSIRO	Total	Public breeding share of breeding effort in this crop	Share of total breeding effort in all crops
Wheat	20.9	13.9	3.3	38.1	95%	43.2%
Barley	8.4	3.8	0.5	12.7	98%	13.8%
Oats	4.25	0	0	4.25	100%	4.6%
Triticale	0.45	3.15	0.3	3.9	100%	4.2%
Sorghum	3	0	0	3	39%	8.3%
Canola	2.8	0.8	0	3.6	78%	4.9%
Soybean	1.5	4.35	2.5	8.35	100%	8.9%
Grain legumes	4.45	0.4	1.35	6.2	100%	6.6%
Cotton	1	1.1	3	5.1	100%	5.5%
Total	46.75	27.5	10.95	85.2		
Share of public breeding effort	55%	32%	13%			

<sup>a</sup> Compiled from data contained in various tables in Lazenby (1986) - (Kingwell 2005)

In the decade or so leading up to the introduction of the *Plant Variety Rights Act 1987* much debate took place regarding the future funding for plant breeding and related technologies. Only a very few seed companies became active in breeding and or support for breeding prior to 1987 as it was seen as an investment with uncertain outcomes. Valley Seeds Pty Ltd was the first Australian company to actively invest in pasture variety breeding with its programme starting in 1975. New Zealand companies such as Wrightson NMA and Yates – NZ Agriseeds were among the first entrants to the Australian market with proprietary varieties during the period around 1987. Since this time New Zealand public and private breeders have had the dominant market share of proprietary pasture varieties.

Throughout the time leading up to and immediately after 1987 cereals, pulses and oilseeds were still being bred almost exclusively by publicly funded organisations with some grower levy funds channeled into this activity (Lazenby, 1986). Public policy changes during the 1990's started with a shift in funding towards environmental, social and post farm gate issues (Briggs and Vernon, 1993). In 1995 a Competition Principles Agreement was endorsed by the Council of Australian Governments' (COAG) drawing on a report by Hilmer *et al.* (1993)

Plant breeding organisations were then forced to look for alternative methods of funding. Industry funding was the only real option. Most breeding organisations were successful at replacing at least part of their funding from grower levies.

## **Australian Levy System**

Australia has a system of research levies that are agreed by producers and regulated by the federal government. Levies are charged at rates agreed by producers via their national commodity organisations. Table 2 lists the levy rate for each crop.

Levies from all primary industry sources are administered by 15 government agencies known as Industry Research Corporations. The Grains Research and Development Corporation (GRDC) manages levies and government matching funds from 25 major crop species. The federal government matches levies mostly on a \$ for \$ basis with some limits. "GRDC's levy income is matched by the Australian Government up to 0.5 percent of the gross value of grains production (3-year rolling average), provided the Government contribution does not exceed grower levies." (GRDC Stakeholder Report 2006-7)

Table 2 – Levy rates 2007 (% of farm gate value)

Product	Rate	Product	Rate
wheat	1.015%	sunflower	1.015%
barley	1.015%	linseed (inc linola)	1.015%
triticale	1.015%	soybean	1.015%
oats	1.015%	safflower	1.015%
cereal rye	1.00%	rape seed (inc canola)	1.015%
sorghum	1.015%		
maize	0.715%	Medics	\$10.00 per tonne
millet	1.00%	Lucernes (Alfalfa)	\$15.00 per tonne
canary seed	1.00%	Clovers	\$15.00 per tonne
field peas	1.015%	Sub-clovers	\$11.00 per tonne
lupins	1.015%	Serradella	\$10.00 per tonne
faba beans	1.015%	Rice	\$2.00 per tonne
chick peas	1.015%		
mung beans	1.015%		
pigeon peas	1.015%		
peanuts	1.00%		
navy beans	1.015%		
vetch	1.015%		
cow peas	1.015%		
lentils	1.015%		

## Funding of Plant Breeding – The Present

GRDC has significantly increased its investment in plant breeding and related activities. In 1996-7 GRDC's contribution to plant breeding and variety evaluation was approximately A\$23.77 Million. This was considered to be approximately 35% of the total cost of these activities (Cook L, 1996). In 2006 GRDC spent A\$58.887 Million on a similar range of activities. It is not possible to ascertain the percentage of the total cost of activities that are funded by GRDC from publicly available data, however funding is likely to have increased to compensate for a gradual withdrawal of state government support.

GRDC spent A\$115.330 Million on all R&D activities during the year ending 30<sup>th</sup> June 2006. GRDC has 4 major programmes as detailed below:

Varieties: (A\$58.887 Million)

Primarily plant breeding but also includes gene discovery, breeding technologies, genetic resources, functional genomics, germplasm enhancement, genetic transformation, crop variety testing, grain quality and plant pathology (where directly related to breeding).

Practices: (A\$37.211 Million)

Research areas include activities to address soil constraints, water and nutrient use, crop threats, environmental variability, agronomic improvements and biosecurity.

New Products: (A\$11.662 Million)

Funds are used for R&D and commercialisation of new grain and farm products and services focused on providing farmers with additional options for farm management and marketing.

Communications & Capacity Building: (A\$7.570 Million)

Funds are used for streamlining the collection and distribution of information from R&D outputs, GRDC communications including funds for visiting fellowship programmes, PhD and post-doctoral research scholarships, grains industry training and development awards, short term courses and conference sponsorship.

As part of GRDC's investment it owns or has shares in the following plant breeding related companies and joint ventures:

- Australian Grain Technologies Pty Ltd. (AGT) 44.95% – A South Australian and Victorian Plant breeding company recently merged with NSW breeding company SunPrime Seeds.
- Australian Centre for Functional Genomics Pty Ltd. (CRC for Functional Genomics) 22.39%
- Enterprise Grains Australia (EGA) 39% - A Plant breeding company incorporating NSW and Queensland breeders which has marketing arrangements with Pacific Seeds (part of Advanta Seeds Europe)
- Graingene II joint venture 28.57% (Breeding technology & Biotechnology)
- Graingene III joint venture 33.33% (Breeding technology & Biotechnology)

Apart from the organisations listed above GRDC also supports state based wheat breeding in Western Australia.

GRDC is now the dominant shareholder and investor in plant breeding for crops in Australia with a cumulative investment of some 100's of millions of dollars. A plethora of small or regional breeding companies have recently reduced in number by merger or acquisition. Other companies that have significant breeding investments in major crop species include:

- LongReach Plant Breeders Pty Ltd which is a company owned by AWB Ltd. (Previously known as the Australian Wheat Board) and Syngenta. LongReach is also a partner in the Graingene JV.

- Crop & Food Research Australia – A New Zealand government owned company which is part of the Graingene JV.
- Nuseed Pty Ltd. a wholly owned subsidiary of Nufarm Ltd. Nufarm recently purchased the remaining shares in Nugrain Pty Ltd., the remaining shares in Access Genetics Pty Ltd. from the founder Donald Coles, Ag-Seed Research Pty Ltd., Nutrihealth Pty Ltd and Dovuro Seeds Pty Ltd. Access Genetics has breeding and or commercialisation agreements with SW Seeds – Sweden and World Wide Wheat – USA.
- Canola Breeders WA Pty Ltd. - An alliance of the Council of Grain Grower Organisations Ltd (COGGO), the Export Grains Centre Ltd (EGC), a research investment company of the GRDC, The University of Western Australia and Nordddeutsche Pflanzenzucht Hans George Lembke – Germany.
- Heritage Seeds Pty Ltd. – Subsidiary of the Royal Barenbrug Group, Holland
- Pacific Seeds Pty Ltd – owned by Advanta Seeds Europe, a subsidiary of United Phosphate Limited - India
- Pioneer Hi-Bred Australia Pty Ltd (Hybrid Seed breeding)

The major crop species where breeding investment has been concentrated have been Wheat and Canola. Canola has been the recipient of a strong mix of private and public breeding investment. Joint ventures between state governments and private companies were successful and have now made the transition to a majority of private investment. Much of the success has been due to a small percentage of farmer saved seed (FSS) by Canola growers. Although the percentage has increased in the last couple of years from a low of around 20% to a high of around 40%, it still remains at a low level relative to the wheat industry which is estimated to be at least 95% FSS. Rapid variety development due to mutating black leg disease, different herbicide resistance options and the imminent commercial release of GM Canola is keeping Canola FSS in check.

Plant Breeders Rights, however has had limited impact on farmer to farmer trading due to the cost and complexity of legal action. Changes to the act in 1994 gave breeders renewed hope by allowing the breeders to obtain royalties beyond the first sale of seed in circumstances where the breeder “...does not have a reasonable opportunity to exercise...” the rights to charge a royalty. Reasonable opportunity is defined by the industry as the opportunity to charge royalties on seed sold for propagation due to a high percentage of FSS. (Plant Breeders Right Act 1994, Part 2, Section 15) The act is currently under review with many in the industry calling for changes to overcome legal uncertainties.

## End Point Royalties

Private investment in wheat breeding was slow to start due to the issues of FSS and PBR enforcement. Private investment was, however seen as vital for the future of the industry. In 1993 the board of the GRDC established a “Working Party to Review the Variety Testing and Release Procedures” for Australian leviabile grain crops. In its deliberations the working party recognised that the PVR act 1987 was enacted in order to attract more private investment into plant breeding. It further recognised that due to the high level of FSS royalty payments “...had a negligible effect on rewarding those breeders (or their organisations) who have bred new and successful varieties. Further, although there are recent indications of increasing interest from the private sector, little extra private capital has so far been attracted into plant breeding in Australia.” (Working Party for Review of Variety Testing and Release Procedures, October 1994)

After consultation with the private sector and in particular the Australian Seed Federation (ASF) – Plant Breeders & Proprietary Marketers Group “The working party supports the proposition that royalties on varieties protected by PVR should be collected at the point of delivery of the crop as a means of:

- encouraging more rapid adoption of a new variety;
- increasing revenue to support plant breeding programs; and
- encouraging further private investment in crop improvement.”

(Pg 88 of the Working Party’s Report – 1994)

Along with further consultations with GRDC and the farmer commodity group the Grains Council of Australia, the ASF developed a system based on individual contracts. The process came to be known as End Point Royalties (EPR’s).

Collecting EPR’s was left up to individual breeders and their commercialization companies. Various systems evolved with the two most common systems detailed in Table 3. In the early stages of EPR implementation Type 1 agreements were the most common but few of these had arrangements in place for grain buyer deduction of royalties. At the end of harvest growers were required to report and pay royalties to the agent. Few growers reported so they would be contacted by the breeders’ agent to ascertain the quantity of grain delivered and then invoiced for the value of the royalty. In many of these cases the contact resulted in an adversarial exchange between the agent and the grower.

Table 3 – EPR systems compared

	Type 1 (Appendix 1) <sup>a</sup>	Type 2 (Appendix 2) <sup>b</sup>
Seed (Bagged & Bulk)	Most rural retailers	Selected agents & retailers
Agreement signed	Yes – At the point of sale	No – Copy given at the POS
Agreement copies	Grower, retailer, breeder/agent	No copies
EPR payment	Invoices by breeder/agent or deducted by grain buyer	Deducted by grain buyer

<sup>a</sup> <http://www.planttech.com.au/epr.php>

<sup>b</sup> <http://www.awb.com.au/growers/awbseeds/endpointroyalties/>

Issues that arose were based around growers not reading or understanding their obligations under the agreements. This is to some extent understandable given the legal wording and length of these agreements. (See appendix 1) When a grower failed to pay the royalty or report grain deliveries agents treated the contact as a debt collection function rather than a supplier customer contact. Much of the resulting contact led to grower anger and complaints being lodged with their state or federal farmer organisation.

One such organisation even went as far as to recommend to its members that they not sign any EPR agreements. The Western Australian Farmers Federation – “Beyond The Farmgate” Newsletter dated May 6<sup>th</sup> 2005 stated under the heading “GROWERS NOT TO SIGN END POINT ROYALTY AGREEMENTS” where they stated that these agreements had “too many restrictions on the grower (reporting requirements, the ability to on sell seed and unfettered access to the growers property).” They also went on to claim that some provisions breach the Trade Practices Act.

In the state of Western Australia state government support for EPR’s is at best inconsistent. Western Australian publicly bred varieties dominate the market. These varieties have been commercialized with limited royalty collection arrangements and with special arrangements for farmer to farmer trading after the first couple of years. These arrangements are vastly different to conditions imposed by all other breeders. The Western Australian Government even granted royalty payment “holidays” in drought years. The combination of these government sponsored actions sent a message to growers that breeder’s rights and those rights relating to the payment of royalties were secondary to their other business priorities.



## End Point Royalty Rates

Royalty rates were initially implemented by GRDC sponsored breeders and their commercialization agents. Rates varied between crop species and market potential. Royalty rates range from \$0.45 per metric tonne for a Barley variety to \$8.80 per metric tonne for a Lentil variety with most EPR's for wheat at around \$1.50/t. One of the issues raised by growers has been the amount of royalty retained by the commercialization agent. Growers have been required to buy mainly certified seed at a significant increase in price compared to the old registered seed or farmer grown seed system. Growers assumed that the additional cost is all profit for the commercialization agent and that the agent should not be retaining any part of the EPR. This has led to one organisation reporting EPR's by their component parts (see appendix 2)

Poor royalty collection rates coupled with inefficient collection methods, as detailed above have led to low levels of profitability for many commercialization agents. While these comments are largely anecdotal an indication of royalties compared to other industries can be obtained from a paper by Ross Kingswell 2005. In his paper he makes the following observations:

“Crop improvement royalties in Australian agriculture are low compared to royalty rates in other sectors (see Table 4). For example, AgSeed has a royalty of \$8/t (less than 2 per cent of the farm-gate canola price) for its canola variety AG-Castle, AWB-Seeds has royalty rates up to \$3/t and DAWA/GRDC royalty rates are mostly less than 1 per cent of the farm-gate price of grains. Rates set by public sector plant breeding organisations in general are less than those set by private companies and perceptions of political tolerance appear to influence the setting of these rates. Although economic agents in the private and public sectors recommend higher rates, political concerns usually dictate a lesser rate.”

**Table 4: Average royalty as a percentage of sales**

Type of product	Average royalty as a percentage of sales
Agricultural	3.9
Engineering	6.3
Medical (therapeutics)	6.3
Medical (diagnostics)	6.6
Medical (materials & reagents)	9.4
Other (includes chemicals)	7.6
All fields	6.6

*Source: Castillo et al. (2000)*

Despite the issues raised above the production and up-take of varieties that are subject to EPR payments is significant. An analysis of AWB delivery data together with seed company EPR lists has enabled a summary in Table 5 to be developed detailing the percentage of varieties being used by growers for each state.

Table 5

<b>Wheat producing states</b>	<b>Percentage EPR varieties of total varieties delivered 2003-4<sup>a</sup></b>	<b>Percentage of national wheat production for each state 2003-4<sup>b</sup></b>	<b>% Production of EPR varieties</b>
Western Australia	12%	42%	5%
South Australia	26%	15%	4%
Victoria	52%	13%	7%
New South Wales	55%	26%	14%
Queensland	75%	4%	3%
Total Australian crop EPR varieties			33%

<sup>a</sup> Derived from AWB delivery by variety data plus EPR rated varieties by company

<sup>b</sup> Australian Bureau of Statistics – Crop report No. 134 7<sup>th</sup> July 2005

Major differences between states are evident. These differences can be explained by the timing of a move to private breeding or support for this activity by the respective state government as follows:

- Western Australia has maintained a significant public breeding activity to this day. Only recently has the government moved to support EPR's albeit with certain conditions attached. This situation is rapidly changing as reported by GRDC consultants Blowes and Jones (2005).

“In WA in 2004/05, EPR varieties accounted for 33% of tonnes delivered with the tonnes attracting EPR doubling from 2003/04 to 2004/05. This trend is continuing, with information taken from the 2006/07 CBH grower planting survey indicating that 51.35% of the WA wheat crop will attract an EPR. The Department of Agriculture and Food WA predicts that by 2009/10 over 70% of the wheat delivered in WA will attract an EPR.”

- South Australia has maintained a strong public sector breeding and breeding support research and development centers. The state was late to privatise its state breeding institute which is now known as AGT.

- Victoria was the first state government to privatise public breeding. It also was the first government to draw a distinction between applied plant breeding and germplasm development. The state government withdrew from applied breeding but still continues with germplasm development and maintenance of breeding infrastructure.
- New South Wales maintained a small public breeding activity, however a strong and affective private breeding company called SunPrime emerged from a partnership between the state bulk handler Grain Corp and the University of Sydney. SunPrime was an early user of EPR's and released several successful varieties.
- Queensland maintained a small public breeding activity until merging it with NSW to form EGA. Much of the high percentage of EPR varieties is due to the success of SunPrime varieties over the boarder in Queensland's and the early use of EPR's by EGA breeding partners.

It is worth noting that the national production of wheat derived from EPR varieties represents one third of total production despite the largest producing state of Western Australia being recalcitrant in promoting private investment in plant breeding.

## **Funding of Plant Breeding – The Future**

In recent years governments have withdrawn from a large percentage of direct funding and control over plant breeding and breeding infrastructure and this has largely been taken up by the GRDC. GRDC has now assumed control over some of the key areas of plant breeding, albeit in various corporatised models. This change has put pressure on the relationship between private breeders and GRDC funded breeders. One of the key issues is that GRDC uses levies derived from privately owned varieties to, at least in part, fund its own breeding companies.

The GRDC has addressed this by continuing to fund Essential Plant Breeding Infrastructure (EPBI). EPBI is an essential part of maintaining a viable plant breeding industry (Lindner 2004). GRDC has been prepared to make some critical services available to private breeders at little or no cost. An example of this is with the University of Sydney's rust evaluation research and breeding facility at Cobbity in NSW. In this facility private breeder's "breeding lines" are being evaluated for all major rust strains. Reports are given to the breeder detailing resistance genes that are present. A crossing service is also available to incorporate the latest resistance genes in selected lines. All these services are made available at no charge to any breeder.

Another example of free or low cost EPBI is; screening for late maturing  $\alpha$ -amylase, blackpoint, and various other diseases of cereals. Limited quality testing has also been made available to private breeders. While GRDC supports the provision of these services their availability largely came about from the generosity of the particular researchers. Future success of breeding in Australia will rely on an agency such as GRDC maintaining EPBI.

Levy funds are covering much of the breeding and infrastructure costs at present however EPR collection rates are poor and are not at present contributed to any great extent. There are no public figures available to accurately report collection rates but discussion amongst commercializing agents and breeders suggests that it is less than 50%. Reported revenue of royalties to the GRDC is running at a little over A\$2million which supports the anecdotal evidence. Current debates amongst private breeders, GRDC supported breeders and grower organisations are concentrated on ways to streamline the process of collecting EPR's. Some of the principal areas of proposed change include:

- Development of an EPR agreement common to all organisations
- Collection of EPR's by all grain buyers
- Central collection agency
- Provision of grain delivery data by variety to all breeders
- A move by growers to be able to grow and trade their own seed of PBR protected varieties

Recent discussions across industry segments are likely to produce a common agreement for growers of EPR varieties. These agreements are likely, however to contain addendums that meet the specific organisational and contractual needs of each commercialising party.

The collection of EPR's by grain buyers is already practiced by several major buyers as detailed in appendix 1 and 2. The difficulty will come when the industry calls on small grain traders and grain product manufacturers to also be collection agencies. All grain users are required to deduct levies from grower payments under federal government law, so at least there is some understanding of the principle involved.

The need to expand EPR collection to small volume buyers has lead to a proposal to develop a EPR collection agency. Limited industry discussion has taken place on this matter, however support is more likely to be forthcoming if it can be demonstrated to be a low cost activity.

Further support for a central collection agency may come if it is capable of accumulating and disseminating accurate and timely delivery data by variety, region and row. This type of information is critical for any breeder or commercialising agent to report and plan further investment.

The flexibility to allow growers to trade protected varieties is being met with considerable concern on behalf of private breeders. The ability to track and trace would be made almost impossible over a production area of 20 million hectares (50 million acres) if seed were traded between growers. The issue of admixtures of different varieties and the inevitable drop in end product quality is also a major concern; one which has ramifications not only for the breeder but also the grower.

## Conclusions

Concerns raised by Lindner and Kingwell regarding the pace of change and specifically by Lindner regarding the maintenance of EPBI are well founded. While most of the basic infrastructure upon which the plant breeders rely has been maintained through the timely increase in leviathan crop production and the interventionist policies of the GRDC, careful consideration and industry wide planning is still needed. GRDC has the unenviable task of planning its future with a clear cut responsibility to support and promote a future for EPBI.

Private investment will likely take care of the activity of applied plant breeding. The ability of Australia to maintain an independent capacity to breed world class varieties will continue to rely on industry and government funds supporting EPBI. The alternative is to allow Australia to become dependant on critical enabling technology from other countries. This would likely leave Australian breeders with little bargaining power to leverage access. A future of biotechnology generated traits can only form part of the genes by environment interaction which leads to quality high yielding varieties. A strong and well supported local applied breeding industry has and can continue to deliver outcomes providing it has scientific critical mass.

Adoption rates of varieties subject to EPBI's should be sufficient to sustain a critical mass of applied plant breeders as an independent economic activity. Changes are urgently needed, however to complete the development of this funding system. All organisations in the supply chain must cooperate to achieve this aim. Cooperation on a global scale should also be seen as a positive outcome. Already investment has been made by several transnational companies with the aim of achieving profitable variety development. The economies of scale in this age of biotechnology are indeed making the world of plant breeding a smaller place.

## References

- Castillo, F. Parker, D. and Zilberman, D. (2000) Offices of Technology Transfer and privatisation of university discoveries, Department of Agricultural and Resource Economics, University of California, Berkley.
- Briggs, D. and Vernon, D. (1993) Reassessing the markets for agricultural services - implications for governments. Contributed paper to the 37<sup>th</sup> Annual Conference of the Australian Agricultural and Resource Economics Society, University of Sydney, February 9-11, 1993.
- Cook, Dr. L. (1996) NSW Agriculture – ‘End Point’ or ‘Product’ Royalties, A discussion paper, November 1996.
- Gray, R. (2003) Agriculture and food policy and research perspectives, In Proceedings of Funding Agriculture and Food Research in Canada: Building new models, Ottawa, Ontario, April 28-29, 2003, pp.15-17.
- GRDC Report - Working Party for Review of Variety Testing and Release Procedures, October 1994.
- GRDC Stakeholder Report 2006-7
- Hilmer, F.G., Rayner, M.R. and Taperell, G.Q. (1993) *National Competition Policy*: a report by the Independent Committee of Inquiry, AGPS, Canberra.
- Jarrett, F. G. (1990) Rural Research Organisation and Policies. Chp 6 In (D.B. Williams:ed), *Agriculture in the Australian Economy*, 3<sup>rd</sup> Edition, Sydney University Press & Oxford University Press Australia.
- Kingwell, R. (2005) Institutional Change and Plant Variety Provision in Australia, Australian Agribusiness Review – Vol. 13 – 2005 Paper 5, ISSN 1442-951
- Lazenby, A. (1986) *Australia's plant breeding needs: a report to the Minister for Primary Industry*, Australian Government Publishing Service, Canberra
- Lindner, B. (2004) Economic Issues for Plant Breeding – Public Funding and Private Ownership, Australian Agribusiness Review – Vol. 12 – 2004 Paper 6 ISSN 1442-6951
- Walmsley, T (Department of Agriculture and Food WA) and Blowes, B (BEEBILL Enterprises, GRDC Consultant - **End Point Royalty Collection: A consolidated industry approach**, Presented to Australian Seed Federation – Plant Breeders & Proprietary Marketers Group Meeting 13<sup>th</sup> February 2007.

## Appendix 1 – Type 1

### Example EPR Agreement – signed by grower

**PlantTech** - <http://www.planttech.com.au/epr.php>

#### **SEED LICENCE AND ROYALTY AGREEMENT**

THIS AGREEMENT CONTAINS LEGAL OBLIGATIONS. PLEASE READ CAREFULLY BEFORE APPLYING FOR YOUR e.EPR GROWER NUMBER.

A. This Agreement contains the only terms and conditions under which Grower may purchase and grow Seed (as hereinafter defined) of the Plant Varieties (as hereinafter defined) from a PlantTech authorised distributor.

B. In respect of the Plant Varieties PlantTech is either:

- (i) the licensee of the grantee of PBR in the Plant Varieties; or
- (ii) the sole agent of the licensee of the grantee of PBR in the Plant Varieties; or
- (iii) an agent for the supplier of Seed of a Plant Variety.

C. The terms of this Agreement (as amended from time to time in accordance with clause 12.1.2) will apply to each purchase of Seed made by Grower or an authorised representative on Grower's behalf from a PlantTech authorised distributor. By applying for an e.EPR Grower Code, Grower represents that it has read, understood and agreed to be bound by this Agreement. Each time a purchase is made for Seed from a PlantTech authorised distributor by Grower or an authorised representative quoting Grower's e.EPR Grower Number, Grower confirms its agreement to be bound by this Agreement in respect of the particular purchase.

D. Except as expressly provided herein, no licence is granted to Grower to deal with any Seed or Grain of the Plant Varieties. Any such dealing not authorised under this Agreement may, in addition to being a breach of this Agreement, constitute an infringement of any PBR in that Plant Variety.

#### **• DEFINITIONS AND INTERPRETATION**

The following definitions and interpretation apply to this Agreement:

1.1 Crop means, in relation to a Plant Variety, the product of the Propagation of Seed or Grain of the Plant Variety.

1.2 Grain means grain produced by Grower's Propagation of Seed.

1.3 Grower means the person/entity whose particulars are included in the PlantTech e-EPR Registration Data below and who has agreed to acquire Seed and grow Grain upon the terms and conditions contained herein.

1.4 GST, means the same as in the A New Tax System (Goods & Services Tax) Act 1999, as amended from time to time.

1.5 Propagation means, in relation to Seed or Grain the growth, culture or multiplication of that Seed or Grain by whatever means.

1.6 Royalty means the End Point Royalty payable pursuant to clause 4 below.

1.7 Royalty Deductor means an organisation with whom PlantTech has entered into a collection arrangement pursuant to which the Royalty is deducted from any amount(s) otherwise payable by that organisation to the Grower.

1.8 Seed means, in relation to a Plant Variety, Propagating Material (as defined in section 3 of the PBR Act) of that Plant Variety.

1.9 PBR in respect of a Plant Variety means the plant breeders rights as granted under the PBR Act in respect of that Plant Variety.

- 1.10 PBR Act means the Plant Breeder's Rights Act 1994 (C'th) as amended from time to time.
- 1.11 Plant Variety means a plant variety specified in the Schedule of Seed Varieties.
- 1.12 Permitted Use means, for Grain of the Plant Variety, its use as food for human or animal consumption, food ingredient, fuel or any other purpose that does not involve the production or reproduction of Seed or Grain.
- 1.13 PlantTech Representative means a person authorised and appointed by PlantTech.
- 1.14 Principal means PlantTech or another party noted in the Schedule of Seed Varieties who holds PBR rights to the Plant Variety.
- 1.15 Territory means Australia.
- 1.16 Term is 20 years from the date of purchase of the Seed of the Plant Variety unless terminated earlier according to clause 9.
- 1.17 Schedule of Seed Varieties means the schedule annexed hereto which lists the plant varieties in respect of which these Terms and Conditions apply. The Schedule of Seed Varieties may be revised by PlantTech from time to time.
- 1.18 Each party includes its successors and permitted assigns. The singular includes plural and vice versa. The word person includes a body corporate. Where a term is defined, any other grammatical form of that letter has the same meaning.
- 1.19 If the Grower consists of more than one person, each person is jointly and severally liable under this Agreement.

## • SUB-LICENCE TO REPRODUCE GRAIN

- 2.1.1 Upon the terms and conditions contained herein, the Principal hereby grants to Grower in respect of any Seed purchased from a PlantTech authorised distributor a licence to plant and grow that Seed to produce Grain and to sell or otherwise dispose of that Grain for a Permitted Use.
- 2.1.2 In respect of any Grain produced by Grower pursuant to the licence granted herein, Grower may retain from such Grain any amount for:
- (i) subsequent planting PROVIDED HOWEVER that these Terms and Conditions will continue to apply to such Grain and to the Grain produced there from, including but not limited to clause 4; or
  - (ii) use as stock feed.
- 2.1.3 For the avoidance of doubt, Grower acknowledges and agrees that it cannot sell or otherwise dispose of Seed or Grain for use as propagating material. Grower shall not offer for sale, sell or otherwise dispose of or supply Seed or Grain to any person if there is any reason to believe that that person will use or deal with the Seed or Grain other than for a Permitted Use.
- 2.2 All purchases of Seed by Grower or on Grower's behalf must be made using Grower's e.EPR Grower Code.
- 2.3 The Grower must keep the Plant Variety segregated from other crops when planted to ensure that there is no cross breeding or fertilising of the Plant Variety.
- 2.4 The Grower will not, and the Grower will ensure that the Grower's employees, agents and contractors do not, use the Seed or Grain other than in accordance with this Agreement.
- 2.5 On each occasion when the Grower delivers or sells Grain to a third party (including but not limited to a grain handling agent) the name of the Plant Variety(ies) must be accurately disclosed in writing to the third party and if there are any other varieties present in the delivery the Grower must disclose in writing the amount of each plant variety present.
- 2.6 If Grower sells or otherwise disposes of any standing crop of the Plant Variety or sells or otherwise parts with possession of land on which any Plant Variety is growing, Grower must within 21 days give PlantTech written notification of the transaction stating the name and address of the third party.



## • REPORTING REQUIREMENTS

3.1 In respect of every Crop of any Plant Variety harvested, and otherwise where specifically requested by the Principal, the Grower will forthwith provide to the Principal in the form of the Delivery and Storage Schedule the following details:

- (i) quantity of Seed acquired;
- (ii) total quantity of Grain produced;
- (iii) quantity of Seed retained for future planting (EPR not applicable);
- (iv) quantity of Seed or Grain used or held back for stock feed (EPR applicable);
- (v) quantity of Grain delivered to an approved Royalty Deductor e.g. AWB (EPR is deducted automatically);
- (vi) quantity of Grain sold to other grain buyers (EPR applicable);
- (vii) such other information relating to the Crop as PlantTech may request from time to time.

The Grower acknowledges and accepts that the Principal reserves the right to make random audits to verify the information provided by Growers. This right includes the right to contact any of PlantTech's authorised distributors or any person to whom the Grower may have delivered Grain (for storage or otherwise) to verify any of the details the Grower has provided.

3.2 Grower warrants that all information provided by or on behalf of the Grower to the Principal shall be true, accurate and complete and not misleading as to any fact or intention.

## • ROYALTY PAYMENTS

4.1.1 The Grower acknowledges and confirms that except in respect of Grain retained from a Crop for subsequent planting, a Royalty is payable on each Crop as provided herein. The Royalty is payable at the rate set out in the Schedule of Seed Varieties for the particular Plant Variety and is calculated on a per metric tonne basis. The Royalty provided for herein is exclusive of GST and any other tax, levy or other similar payment due in respect of any transaction involving the Crop or any part thereof, all of which shall be borne by the Grower. For the purpose of this clause a reference to "Royalty" shall include any additional amounts payable by Grower as provided herein.

4.1.2 The royalty obligations herein apply whether or not the relevant Plant Variety is the subject of PBR or has been but ceases to be the subject of PBR.

4.2 For the purpose of clarification, it is acknowledged that a Royalty is due and payable on any disposal or supply of Grain by the Grower to a third party, whether for value, monetary consideration or otherwise, and on any use of the Grain by it as feed.

4.3 Unless the Royalty is deducted in accordance with clause 4.5, the Grower must within 35 days of delivery of Grain to a third party (whether in the context of a sale, barter, exchange or other transaction whatsoever) pay to the Principal the Royalty due by cheque to the address nominated by the Principal from time to time.

4.4 Further, each Royalty payment must be accompanied by the following information:

- (a) The quantity (in tonnes) of Grain produced and/or sold or otherwise disposed of by the Grower;
- (b) The name and address of each recipient (whether or not an accredited grain marketer) of the Grain and how much Grain was delivered to each recipient.

4.5 Where Grain is supplied or delivered to a Royalty Deductor, Grower hereby authorises and requests Royalty Deductor to deduct the Royalty due in relation to that Grain from the price to be paid to the Grower for that or any other grain and to pay such sum to the Principal for the account of the Grower in or towards satisfaction of the Grower's Royalty obligations under this Agreement. Grower will receive a tax invoice after deduction of the Royalty.

4.6 In all cases it is the Grower's responsibility to provide the Principal/Royalty Deductor with the relevant information to enable an appropriate tax invoice to be issued by the Principal/ Royalty Deductor.

4.7 Grower shall pay interest to the Principal on all outstanding amounts due and payable to the Principal as Royalties under this Agreement at the Commonwealth Bank's Overdraft Index Rate applicable on the date the outstanding amount is due and payable until the amount is paid in full.

4.8 The Principal may increase the Royalty rates (as set out in the Schedule of Seed Varieties) upon written notice to the Grower, provided that no increase will take effect on less than three (3) months' notice.

4.9 The Principal retains the right to deduct any Royalty due against any payments owing by the Principal to the Grower from time to time whether under this Agreement or otherwise.

4.10 The Principal may give Royalty Deductors personal information about Grower (including name, address, PlantTech Grower Number). The Royalty Deductors may collect and use the information for the purpose of collecting Royalties and fees and for related purposes.

## • MAINTENANCE AND INSPECTION OF RECORDS

5.1 The Grower shall maintain for a period of seven (7) years separate, accurate and comprehensive records and accounts of the purchase of all Seed, the production and disposal (whether by sale or otherwise) of all Grain, the Grain retained by the Grower from each Crop, and any other information referred to herein or reasonably requested by the Principal from time to time.

5.2 The Grower shall permit a the Principal Representative from time to time during ordinary business hours to inspect and verify all or any records and accounts required to be maintained by the Grower and the Grower shall give all assistance necessary to the Principal Representative to carry out such inspection and verification and permit the Principal Representative to take copies of any such records.

5.3 The Grower agrees that any finding or decision made by the Principal Representative is final and conclusive. The Grower agrees to pay any invoice issued by the Principal or the Principal Representative within 7 days and to indemnify the Principal for all costs it incurs as a result of any inspection under clause 5.2, where it is found as part of that inspection that further payment is required to be made to the Principal.

## • GROWING STANDARDS

6.1 Grower will monitor Crop production and immediately inform PlantTech of any mutant or derived forms of a Plant Variety.

6.2 Grower will assign to PlantTech or to PlantTech's nominee, all right, title and interest of the Grower (including but not limited to the right to apply for PBR) in any mutant or derived forms of a Plant Variety.

6.3 Grower acknowledges that all right, title and interest (including but not limited to the right to apply for plant breeders rights or any other form of protection both in Australia and overseas) in respect of any mutant or derived forms of a Plant Variety which come into existence in the course of the Grower's involvement with any Plant Variety shall vest in and remain with PlantTech or such other entity as PlantTech may nominate. Grower shall promptly notify PlantTech of any mutant or derived form of any Plant Variety which may come into existence and shall thereafter take such steps as PlantTech may advise in order to give effect to this clause.

6.4 PlantTech or any PlantTech representative may enter upon any land on which the Seed is being grown to inspect the Crop.

6.5 The use by the Grower of hormones, chemicals and sprays ("chemicals") in respect of the Seed is beyond the control of the Principal and, accordingly, the Principal shall bear no responsibility or liability for such use of any chemicals. Furthermore, no warranty is given by, sought from or implied against the Principal as to the merchantability or fitness for the purpose to which any chemicals are applied by the Grower or the consequences of the use of any such chemicals. The Grower further acknowledges and agrees that the Principal shall bear no responsibility whatsoever for any chemicals applied by the Grower arranged by or invoiced through the Principal.

6.6 The Grower must obtain and maintain, at all times, in its name and for the express benefit of the Principal for their respective rights, interests and liabilities arising out of this Agreement, public liability insurance for an amount of not less than AUD\$10 million in respect of personal injury or death arising by accident of any person whomsoever and product liability insurance for an amount of not less than AUD\$10 million in respect of any injury, loss or damage whatsoever arising by

negligence or accident or otherwise howsoever to any real or personal property of any person whatsoever arising from or otherwise as a direct or indirect result of any negligent or wrongful or unauthorised act or omission by the Grower in connection with the exercise of its rights under this Agreement. The Grower will on request provide to the Principal copies of certificates of currency or other information pertaining to these insurance provisions.

## • WARRANTY AND LIMITATION OF LIABILITY

7.1 The Grower acknowledges and confirms that in respect of any Seed purchased by the Grower from a PlantTech authorised distributor that:

- (a) prior to delivery of the Seed to the Grower, the Grower will see and read the seed quality certificate applicable to that Seed as issued by PlantTech;
- (b) prior to delivery of the Seed to the Grower, the Grower will inspect the Seed for quality and fitness for purpose.

7.2 Subject to the provisions of any applicable legislation which prohibits the exclusion, restriction or modification of a party's liability, any direction given by and any advice, recommendation, information, assistance or service provided by PlantTech pursuant to this Agreement is given in good faith without any liability whatsoever and howsoever arising on its part.

7.3 To the extent permitted by law and subject to clause 7.4 neither PlantTech nor, if applicable, the owner(s) of any PBR in the relevant Plant Variety(ies) make any representation or warranty, express or implied, in relation to the Seed, including but not limited to any representation or warranty as to its merchantability or fitness for a particular purpose. All implied terms, conditions and warranties (whether statutory or otherwise) and all other potential liabilities applicable to PlantTech or any relevant PBR owner(s) in relation to any Seed howsoever arising (whether under statute, contract, tort including negligence, or otherwise howsoever) are hereby excluded.

7.4 If the Trade Practices Act 1974 (C'th) or any other Australian Federal, State or Territory Act implies into this Agreement any term, condition or warranty which cannot be excluded, restricted or modified and if PlantTech breaches such term, condition or warranty, then its liability for such breach is (if permitted by the relevant Act) limited to, at PlantTech's election,:

- (a) the replacement of the Seed or the supply of Seed of an agronomically equivalent Plant Variety; or
- (b) the payment of the cost of replacing the Seed or acquiring Seed of an agronomically equivalent Plant Variety.

## • INDEMNITY

The Grower hereby indemnifies and shall keep indemnified and hold PlantTech and the owners of any PBR in the relevant Plant Variety(ies) harmless from and against all and any liabilities, actions, proceedings, claims or demands against or losses, damages, costs or expenses of the Grower of whatsoever kind whether director or indirect and whether for property damage, economic loss, consequential loss, personal injury or otherwise howsoever, arising in any way from any conduct by it or by any person for whom it is vicariously liable in relation to any Seed or Grain, except to the extent that such damage, loss or injury arises directly from the negligence of PlantTech or the relevant PBR owner(s).

## • TERMINATION

9.1 This Agreement shall take effect on the date that PlantTech issues to the Grower an e.EPR Grower Code and shall, subject to this clause, continue for the Term.

9.2 The Principal may terminate this Agreement immediately upon notice in writing in the event that:

- 9.2.1 The Grower breaches a provision of this Agreement and, where such breach is capable of being remedied, does not remedy such breach within thirty (30) days of notice of such default from the Principal;
- 9.2.2 The Grower breaches a provision of this Agreement and such breach is not capable of being remedied;

9.2.3 (i) the Grower has an order made or resolution passed for its winding up (where such winding up is other than for the purposes of reconstruction or amalgamation), is placed under official management, has an inspector or inspectors appointed to investigate its affairs, has a receiver and/or manager and/or administrator appointed, or becomes insolvent or unable to pay its debts as provided under the Corporations Act 2001 or other applicable legislation;

9.2.4 (ii) distress or execution is levied upon or against or in relation to any of the Grower's assets or undertakings or any encumbrancer takes possession of the whole or any part of its assets or undertaking.

9.2.5 Any of the information provided by the Grower as required hereunder is inaccurate.

9.3 The Grower may terminate this Agreement within 14 days from receipt of notice that:

(a) The Principal intends to increase the rate of the Royalty as notified in accordance with clause 4.8; or

(b) the Agreement is varied in accordance with clause 12.1.2.

where the Grower does not accept the proposed increase or variation, as the case may be.

Termination pursuant to this clause shall be effected by notice in writing from the Grower to PlantTech.

9.4 The Principal may terminate this Agreement by giving one (1) years notice in writing to the Grower if the head licence which the Principal has received in relation to the Plant Variety is terminated for any reason.

9.5 The expiry or termination of this Agreement shall be without prejudice to the rights of either party accrued to the date of expiry or termination.

## • CONSEQUENCES OF EXPIRATION OR TERMINATION

10.1 Upon the expiration or termination of this Agreement, all rights and licences granted to the Grower hereunder shall forthwith cease PROVIDED HOWEVER that except where the Principal exercises its rights under clause 10.2 the Grower may harvest Grain from crops growing at the time of termination or expiration and may sell or use the Grain, for a Permitted Use, subject to the same obligations applicable before expiration or termination.

10.2 Upon termination of this Agreement, the Principal may at its option direct Grower to destroy all or any Seed, Grain, Crops and plants of any Plant Variety in the possession or control of Grower at the time of termination or deliver up the same to the Principal or its nominee. Upon destruction or delivery up Grower shall be entitled to payment of an amount equal to the market value of the said Seed, Grain, Crops or plants subject to the Principal's rights of set-off as provided under this Agreement.

10.3 Survival of Provisions

Grower's obligations and the Principal's rights under this Agreement survive the expiration or termination of this Agreement.

## • SAMPLE FOR SEED VARIETY OWNER

The Grower will take all reasonable steps to obtain the consent of all purchasers of Grain, Grain receivers, purchasing facilities or marketing organisations to allow the Principal and the owner(s) of the particular Plant Variety(ies) to access information they hold relating to the Grain sourced from the Grower and to take representative samples (not exceeding 50 grams) from each delivery of Grain sourced from the Grower for testing purposes.

## • GENERAL MATTERS

12.1.1 This Agreement contains the entire agreement between the parties with respect to its subject matter and fully replaces any previous understandings, agreements, representations or warranties relating to that subject matter.

12.1.2 PlantTech may from time to time at its discretion change, modify, add or remove any of the terms and conditions of this Agreement. The current version of this Agreement will be posted at all

times on this website. Copies of the current version of this Agreement will otherwise be available from PlantTech on request. All purchases of Seed by the Grower from PlantTech or a PlantTech authorised distributor will be deemed to be made pursuant to the then current version of this Agreement.

12.1.3 Without limiting the generality of the foregoing, PlantTech may vary this Agreement to reflect the terms of any head licence it holds in respect of a Plant Variety (or any subsequent amendment thereof) by providing the Grower with 14 days notice of such proposed variation. Subject to clause 9.3 any variation to this Agreement shall take effect at the end of the said 14 day notice period.

12.2 Any notice required to be given by one party to another hereunder shall (unless otherwise agreed in writing) be in writing and may be given by transmitting the same by prepaid mail to the address of the recipient party set out herein or such other address as the recipient party may have notified the other party in writing as being its address for the service of notices. Any notice given by mail as aforesaid shall be deemed to have been served on the third day following posting whether or not it is received by the recipient party. Any notice may also be given by e-mail and any such notice shall be deemed to have been received when the sender receives a delivery receipt. Any notice may also be given by facsimile to the facsimile number of the recipient party and any such notice shall be deemed to have been served upon the transmission of the notice to the relevant facsimile number and the receipt by the transmitting facsimile machine of an answerback code showing that the facsimile message has been received properly by the facsimile machine to which it was transmitted.

12.3 A person's address, e-mail and fax numbers shall be included in the Registration Data below as provided in the Grower Details. The parties shall send a notice to the other party in accordance with this clause of any change in its e-mail address, post address or facsimile number.

12.4 The Grower cannot assign any rights or transfer its obligations under this Agreement without the prior written consent of PlantTech which it can withhold at its discretion. The Principal may assign its rights and transfer its obligations contained in this Agreement to any third party and the Grower hereby agrees to such assignment and transfer.

12.5 This Agreement shall be construed and governed by the laws in force in Victoria, Australia from time to time and only the courts of Victoria and the courts hearing appeals therefrom shall have jurisdiction over any dispute hereunder.

12.6 No forbearance, delay or indulgence by the Principal to enforce the provisions of this Agreement shall prejudice or restrict its rights, nor shall any waiver of its rights operate as a waiver of any subsequent breach or in any way affect the validity of the whole or any part of this Agreement nor prejudice the Principal's right to take subsequent action.

In consideration of your use of e-EPR, you represent that you are of legal age to form a binding contract, and that the Registration Data provided about yourself as prompted by Grower Details below is true, accurate, current and complete.

The collected Registration Data is subject to our Privacy Policy.

Unless Grower advises otherwise, the Principal may use the Registration Data to inform the Grower of Products that may be of interest to the Grower. If you do not wish your Registration Data to be used for marketing purposes please contact PlantTech (03) 8398 0100.

# PlantTech

PlantTech Seed Varieties That Require An End Point Royalty				
Varieties	Principal	EPR Rate Plus Management Fee \$/tonne (excl GST)	States	Accredited Grain Marketer Automatically Deducts EPR From Grower Payment
Ajana wheat 1	PlantTech	\$0.95	WA	AWB/Elders/ABB
Annuello wheat 2	Graintrust	\$1.65	All States	AWB/Elders/ABB/GPWA
Babbler wheat	PlantTech	\$1.50	All States	AWB/Elders/ABB
Baxter wheat 3	PlantTech	\$1.45	All States	No
Binalong barley 2	Graintrust	\$1.35	All States	ABB/AWB/Elders
Braewood wheat 4	PlantTech	\$1.25	WA	AWB/Elders/ABB
Cairo faba beans 2	Graintrust	\$3.00	All States	ABB/AWB/Elders
Camm wheat 1	PlantTech	\$0.95	WA	AWB/Elders
		\$1.05	All Other States	AWB/Elders/ABB
Cooke field peas 1	PlantTech	\$0.95	WA	No
Cowabbie barley 2	Graintrust	\$1.70	All States	ABB/AWB/Elders
Dhow barley 2	PlantTech	\$1.70	All States	ABB/AWB/Elders
Doolup barley 1	PlantTech	\$0.45	All States	Elders
EGA Bellaroi wheat 2	Graintrust	\$2.50	All States	AWB/Elders/ABB
Farah faba beans 5	PlantTech	\$3.00	All States	See Farah Buying Agents
GBA Ruby wheat	PlantTech	\$3.00	All States	AWB/ABB/Elders
Giles wheat	PlantTech	\$1.00	All States	AWB/Elders/ABB
H45 wheat 4	PlantTech	\$1.25	WA/SA	AWB/Elders/ABB
Helana field peas	PlantTech	\$1.20	WA	No
Kennedy wheat 3	PlantTech	\$1.45	All States	No
Mackay barley 2	Graintrust	\$1.65	All States	ABB/AWB Elders
Mitre wheat	PlantTech	\$1.50	All States	AWB/ABB Elders
Mitika oat	PlantTech	\$2.00	All States	Elders, ABB, Uncle Tobys
Nugget lentil 6	PlantTech	\$5.00	All States	See Authorised Nugget Buying Agents
Pugsley wheat 2	Graintrust	\$1.50	All States	AWB/Elders/ABB
Quilnock lupins	PlantTech	\$0.95	All States	Elders
Sloop SA barley 2	Graintrust	\$1.70	All States	ABB/AWB/Elders
Sloop Vic barley 2	Graintrust	\$1.70	All States	ABB/AWB/Elders
Strezelecki wheat	PlantTech	\$1.00	All States	AWB/Elders/ABB
Tanjil lupins	PlantTech	\$0.85	All States	No
Unicorn barley	PlantTech	\$1.50	All States	Elders/GPWA
Wyalkatchem wheat	PlantTech	\$1.125	WA	No
		\$1.25	All Other states	Elders
Wylah wheat	PlantTech	\$1.00	All States	AWB/Elders/ABB

## Appendix 1 – Type 2

### Example EPR Agreement – Not signed by grower

# Seed Variety Licence 2007

<http://www.awb.com.au/growers/awbseeds/endpointroyalties/>

Key elements of AWB Seeds' current seed licensing arrangements include:

AWB Seeds varieties are protected under the Plant Breeders Rights Act (1994)  
Each time a grower purchases seed, the grower simultaneously enters into a licence with AWB Seeds on the seed variety terms and conditions (Seed Variety Licence 2007)  
Grower does not need to sign the Seed Variety Licence 2007 as the grower is taken to agree to the licence terms and conditions at the point of purchase  
End Point Royalty is payable on all grain production (except seed retained by grower for re-planting)  
NO grower to grower trading of AWB Seeds varieties for seed use is allowed  
Licence obligations are enduring.  
For further information contact AWB Seeds on 03 5389 0150 or visit **www.awbseeds.com.au**

## ESSENTIAL READING – Seed Variety Licence for 2007 Seed Sales

### 1 Application

These are the terms and conditions on which AWB Limited (ABN 99 081 890 459) trading as AWB Seeds (we or us or our) licences to each person (you or your) who purchases (either itself or through an authorised representative), from us or an AWB Seeds approved retailer, seed that is subject to registered protection under the Plant Breeders Rights Act 1994 (Cth) (Act) and in respect of which we are the grantee of Plant Breeders Rights (PBR) or licensee of that grantee (Seed). Details of AWB Seeds approved retailers are available online [www.awbseeds.com.au](http://www.awbseeds.com.au) or by contacting AWB Seeds on 03 5389 0150.

### 2 When is a contract formed

Each time you complete a purchase of Seed from us or an AWB Seeds approved retailer, you simultaneously enter into a licence with us in respect of the relevant Seed, on these terms and conditions.  
You acknowledge that no licence rights are granted by us in respect of purchases of Seed from persons other than us or AWB Seeds approved retailers.

### 3 Licence

(a) Subject to paragraph 3(b), we licence you to plant Seed for the purpose of you producing grain therefrom (Commodity) and selling that Commodity as commodity (and not as seed). You must not use Seed for any other purpose.

(b) You may retain:

(i) Commodity as seed for the purpose of subsequent planting by you (Retained Seed). Retained Seed remains subject to these terms and conditions including the obligation to make payments under paragraph 5 in respect of Commodity produced therefrom; and

(ii) Commodity for the purpose of feeding your stock (Stockfeed Commodity).

(c) Subject to any express entitlements conferred on you under these terms and conditions, you acknowledge that all rights conferred on us or our licensors under the Act in respect of the Seed remain in full force and effect.

#### 4 Limitation of liability

- (a) To the extent permitted by law we exclude all warranties and liabilities in relation to the Seed howsoever arising (including all liabilities arising from our negligence).
- (b) Where any warranty or liability in relation to the Seed (including a liability arising from our negligence) cannot be excluded by us, we limit our liability to the extent legally permissible to:
- (i) the replacement of the Seed or the supply of agronomically equivalent Seed; or
  - (ii) the payment of the cost of replacing the Seed or acquiring agronomically equivalent Seed, – as determined by us in our discretion.

#### 5 End Point Royalties

- (a) You agree, in accordance with the following provisions of this paragraph 5, to pay to us a royalty on each metric tonne of Commodity you produce (other than Retained Seed) calculated at the rate applying to the relevant Commodity (End Point Royalty) plus applicable GST as set out in the schedule to these terms and conditions.
- (b) In respect of the sale of Commodity to us or a third person with whom, prior to the time of that sale, we have entered into a collection arrangement (Collection Marketer), an amount equal to the End Point Royalty (plus applicable GST) will be deducted by us or that Collection Marketer, as the case may be, from purchase monies otherwise payable to you, in satisfaction of your obligation under paragraph 5(a). A tax invoice will be issued to you in relation to the End Point Royalty after the End Point Royalty is deducted from the purchase monies payable to you.
- (c) In respect of any sale of Commodity to a third person who is not a Collection Marketer and in respect of any Stockfeed Commodity, you must pay to us the applicable End Point Royalty (plus applicable GST) within 30 days after the day of sale or day of harvest of the Stockfeed Commodity, as applicable. A tax invoice will be issued to you in relation to the End Point Royalty following receipt of your payment.

#### 6 Information requirements

- (a) As a condition of your purchase of Seed from an AWB Seeds approved retailer and your sale of Commodity to a Collection Marketer, you agree to supply to that approved retailer or Collection Marketer your name, address, contact and trading details.
- (b) At the time of making your payment under paragraph 5(c) and at any other time that we request in writing, you must provide to us complete and accurate written details of the:
- (i) varieties and quantities of Commodity produced and/or sold;
  - (ii) persons to whom Commodity is sold and details of the varieties and quantities of Commodity sold to those persons;
  - (iii) the varieties and quantities of Stockfeed Commodity;
  - (iv) the varieties and quantities of Retained Seed; and
  - (v) any other details reasonably required by us in order to verify your compliance with the requirements of these terms and conditions.
- (c) You authorise us to contact and obtain from any person from whom you purchase Seed or to whom you sell Commodity any of the details referred to in paragraphs 6(a) or 6(b).

#### 7 General

- (a) For the purposes of these terms and conditions, the expression sold includes *bartered or exchanged* and *sell* has a corresponding meaning.
- (b) You acknowledge and agree that we may enter the details referred to in paragraphs 6 (a) and (b) into an internal database and use those details to contact you with information regarding any of our business developments and/or our products and services (Marketing Purposes). If you do not wish us to use your details for Marketing Purposes please contact us on 03 5389 0150.
- (c) You and us both agree that in performing our rights and exercising our obligations under these terms and conditions, we will each comply with all applicable laws including the Privacy Act 1988 (Cth). A copy of the AWB privacy policy (with which we agree to comply) is available online [www.awb.com.au](http://www.awb.com.au) or by contacting AWB Seeds on 03 5389 0150.
- (d) Any failure by us to insist on strict compliance with any of these terms and conditions or any delay by us in exercising our rights under these terms and conditions will not constitute a variation or waiver of any of these terms and conditions or any other right that is available to us.
- (e) These terms and conditions can be amended by us at any time by giving you not less than 14 days notice in writing. Any amendments to these terms and conditions, except to the End Point Royalty rates, will apply after the notice period. Amendments to End Point Royalty rates notified in a year will only apply from the commencement of the subsequent year's harvest. You acknowledge that these terms and conditions cannot be amended in any other manner and that no person (including the person from whom you purchase Seed) other than us has the authority to amend these terms and conditions on our behalf.
- (f) If part or all of any provision of these terms and conditions or its application to any person or circumstance is illegal or unenforceable, the provision will be interpreted so as to ensure it is not illegal or unenforceable. If any



provision or any part of it cannot be so interpreted, the provision or part of it will be severed from these terms and conditions and the remaining provisions of these terms and conditions remain in force.

(g) Where you comprise two or more persons, an agreement or obligation to be performed or observed by you binds those persons jointly and each of them severally.

(h) Your obligations under these terms and conditions cannot be assigned without our prior written consent and you acknowledge that we can give our consent on such terms and conditions as we think fit.

(i) These terms and conditions (and any contract between us in which these terms and conditions form part) are governed by the law in the State of Victoria and you and us each submit to the jurisdiction of the courts of that state.

(j) The expressions GST and *tax invoice*, when used in these terms and conditions, have the meaning given to them in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

## End Point Royalty Rates and Breakdown

Variety	Total End Point Royalty (\$ per mt Including GST)	GST (\$ per mt)	Breeder Royalty (\$ per mt)	Management fee (\$ per mt)
<b>Jindalee</b> (Lupin)	\$1.38	\$0.13	\$0.95	\$0.30
<b>Kaspa</b> (Field Pea)	\$2.20	\$0.20	\$1.70	\$0.30
<b>Kukri</b> (Wheat)	\$1.10	\$0.10	\$0.65	\$0.35
<b>Lang</b> (Wheat)	\$1.10	\$0.10	\$0.55	\$0.45
<b>Moti</b> (Chickpea)	\$2.75	\$0.25	\$2.00	\$0.50
<b>*Na.ce</b> (Chickpea)	\$7.15	\$0.65	\$6.00	\$0.50
<b>Nura</b> (Faba Bean)	\$3.30	\$0.30	\$2.40	\$0.60
<b>Petrie</b> (Wheat)	\$1.10	\$0.10	\$0.55	\$0.45
<b>Possum</b> (Oats)	\$1.87	\$0.17	\$1.20	\$0.50
<b>Rees</b> (Wheat)	\$1.65	\$0.15	\$1.05	\$0.45
<b>Sentinel</b> (Wheat)	\$1.98	\$0.18	\$1.40	\$0.40
<b>Tiara</b> (Lentil)	\$8.80	\$0.80	\$5.00	\$3.00
<b>Yitpi</b> (Wheat)	\$1.10	\$0.10	\$0.55	\$0.45
<b>Yorker</b> (Chickpea)	\$3.30	\$0.30	\$2.40	\$0.60
<b>*Almaz</b> (Chickpea)	\$7.15	\$0.65	\$6.00	\$0.50
<b>Arrivato</b> (Durum)	\$3.30	\$0.30	\$2.50	\$0.50
<b>*Baudin</b> (Feed Barley)	\$1.65	\$0.15	\$1.00	\$0.50
<b>*Baudin</b> (Malt Barley)	\$3.85	\$0.35	\$3.00	\$0.50
<b>Buloke</b> (Barley)	\$2.20	\$0.20	\$1.50	\$0.50
<b>Catalina</b> (Wheat)	\$2.75	\$0.25	\$2.10	\$0.40
<b>Chara</b> (Wheat)	\$1.10	\$0.10	\$0.55	\$0.45
<b>Drysdale</b> (Wheat)	\$1.10	\$0.10	\$0.70	\$0.30
<b>EGA Hume</b> (Wheat)	\$1.10	\$0.10	\$0.70	\$0.30
<b>EGA Wedgetail</b> (Wheat)	\$1.60	\$0.15	\$1.00	\$0.45
<b>Fitzroy</b> (Barley)	\$2.20	\$0.20	\$1.50	\$0.50
<b>Flipper</b> (Chickpea)	\$3.30	\$0.30	\$2.40	\$0.60
<b>Grout</b> (Barley)	\$2.20	\$0.20	\$1.50	\$0.50
<b>Guardian</b> (Wheat)	\$2.75	\$0.25	\$2.10	\$0.40
<b>Jandaroi</b> (Durum)	\$2.75	\$0.25	\$2.00	\$0.50

\* The Seed Variety Licence 2007 and the applicable End Point Royalty Rates and Breakdown do not apply in Western Australia.

Protected by PBR. The products denoted with this symbol are subject to the Plant Breeders Rights in Australia. Unauthorised commercial propagation or any sale, conditioning, export, import or stocking of propagating material is an infringement under the Plant Breeders Right Act (1994). AWB4006