

# TEC Terms and Conditions

## SUBSCRIPTION AGREEMENT

Dated: ..... ("Effective Date")

Between Plant Bioscience Limited, Norwich Research Park, Colney Lane, Norwich, NR4 7UH, UK ("PBL") and ..... ("Subscriber")

1. The term "TEC" refers to the Plant Technology Evaluation Concept scheme operated by PBL under this Agreement.

The term "Subscriber" includes Subscriber and its Affiliates. The term "Affiliates" means any entity controlled by, or under common control with Subscriber (where "control" means direct or indirect beneficial ownership of at least fifty percent (50%) of the voting stock, or at least fifty percent (50%) interest in the equity of such corporation or other business).

### 2. Subscription and Renewal

The 12 months period following the Effective Date, and each paid-up further 12-month period, constitutes a "Subscription Period". The Subscriber hereby subscribes for one Subscription Period under TEC and warrants and represents that Subscriber is at the Effective Date [a private company with less than][more than][twenty five employees] [a company with some or all of its shares listed on a recognised stock or investment exchange].

The Subscriber may subscribe for a further 12-month Subscription Period by payment, no later than the expiry of the preceding Subscription Period, of the fees applicable according to Schedule 1 (according to Subscriber's status at the time of commencement of such further Subscription Period). Notwithstanding the foregoing, PBL shall not be obliged to offer the TEC beyond the term of any enduring Subscription Period, and should it so decide, PBL shall give written notice to the Subscriber no later than 30 days before expiry of the enduring Subscription Period.

### 3. Technology Information Releases : TEC Sheets

PBL will, upon receipt of initial subscription fee against PBL's invoice, provide Subscriber with non-confidential information packs ("TEC Sheets") describing each technology available at the Effective Date for evaluation under the TEC(s) subscribed to by Subscriber ("Technology/ies"). Technologies released to the TEC shall be those that PBL acquires, by assignment or exclusive licence, and which PBL at its sole discretion makes available to the TEC.

Periodically through the Subscription Period, PBL will at its sole discretion provide to Subscriber (at the same time as all other paid-up subscribers to the TEC) new TEC Sheets describing new Technologies, and supplementary TEC Sheets containing updates of new non-confidential information on previously released Technologies.

TEC Sheets will be sent by PBL to all recipients in Subscriber's organization that are identified by Subscriber, upon subscription, in accordance with Schedule 2. Subscriber warrants and represents that such recipients are employees of Subscriber. PBL will not be responsible for late, lost or misdirected mail (including electronic mail).

Notwithstanding any other provision of this Agreement, Subscriber agrees not to disclose or transfer any TEC Sheet in whole or in part to any third party, for six-months from date of receipt.

For six-months after the first release of a TEC Sheet to the TEC, PBL will not release the information contained therein, physical materials related to the corresponding Technology, nor market or promote or grant exploitation rights in respect of that Technology, to any Non-Subscriber. The term "Non-Subscriber" means a commercial entity that is not a paid up subscriber to the TEC and that conducts business in the field of plants, horticulture or agriculture (in the case of the Plant-TEC

### 4. Further Information and Confidentiality

PBL will endeavour to provide (or procure the provision of from its licensors or assignors) such further information in respect of Technologies described in TEC Sheets as Subscriber may reasonably require in order to assist Subscriber to assess interest to evaluate such Technology/ies, insofar as such additional information exists and is available to PBL. If such information is confidential it shall be marked as such ("Confidential Information") and shall be provided to Subscriber, whether by PBL or on behalf of PBL by its licensors or assignors, subject to the confidentiality provisions of this Agreement (unless a separate confidentiality agreement is negotiated in good faith between PBL and Subscriber).

*Unless otherwise agreed by separate written agreement between PBL and Subscriber:*

Subscriber agrees to keep secure and confidential any and all Confidential Information provided by or on behalf of PBL in respect of Technology described in TEC Sheets. The obligation to keep Confidential Information secure and confidential shall not apply to (a) information which through independent research, becomes known to Subscriber without reference to Confidential Information (b) information which as such is publicly known at the time of its disclosure or which becomes known later through no fault of Subscriber or (c) information belonging to a third party and disclosed lawfully to Subscriber by the third party.

Intellectual property in or relating to the Technologies and/or Confidential Information will remain with PBL (or its licensors or assignors as may be applicable), and Subscriber

has no authority to apply for any patent or other registered form of intellectual property in anything based on or obtained from the Confidential Information.

Subscriber agrees only to use Confidential Information for the purpose of deciding whether Subscriber wishes to obtain an Evaluation Licence (as set out in Schedule 3) and shall not use Confidential Information for any other purpose whatsoever unless separately so authorized under written agreement with PBL.

If at any time Subscriber contravenes or breaches any term of this Confidentiality Section, PBL may require Subscriber forthwith to return or to destroy all Confidential Information provided hereunder, and to destroy any copies thereof and to certify to PBL that such destruction has been carried out. Should the provisions of this Confidentiality Section be contravened or breached at any time by Subscriber, Subscriber may be liable to PBL for damages in respect of such contravention or breach.

Termination of this Agreement shall not affect the conditions of confidentiality hereof.

### 5. Selection of Technology for Evaluation

Subscriber may notify PBL in writing at any time during a Subscription Period as to whether it wishes to evaluate any or all offered Technologies within the subscribed TEC. The parties shall then promptly complete an Evaluation Licence as set out in Schedule 3, for each Technology selected for evaluation by Subscriber.

Without prejudice to any and all completed Evaluation Licences, PBL reserves the right to withdraw any Technology from the TEC scheme at its sole and absolute discretion at any time and with immediate effect upon written notice to Subscriber.

The continuation of any Evaluation Licence is dependent upon the Subscriber remaining a paid-up subscriber during the period of such Evaluation Licence and any extension(s) thereof.

### 6. Miscellaneous

This Agreement does not create any form of partnership, agency or club between PBL and Subscriber or any other party subscribing to the TEC.

PBL uses all reasonable efforts to ensure the accuracy of technical details contained in the TEC Sheets, but PBL provides no warranty or representation as to such accuracy nor as to the safety, validity, scope of patent claims, novelty, performance, merchantability, non-infringement or commercial utility of any Technology described in TEC Sheets. All representations, implied terms, conditions and warranties, statutory or otherwise which might by operation of law be incorporated in this Agreement are hereby expressly excluded insofar as is permitted by law. This Clause shall not exclude any liability for fraudulent misrepresentations.

Save as is prohibited by law, PBL shall have no liability to Subscriber for any loss of profits, revenue or goodwill or for any special, indirect or consequential loss suffered by Subscriber, other than for fraudulent or negligent representations, misconduct or negligence of PBL.

Subscriber has no licence, or promise or option of licence, express or implied, to use any Technology (or intellectual property therein) or information contained TEC Sheets (and any Confidential Information) for any purpose whatsoever other than deciding whether Subscriber wishes to obtain an Evaluation Licence (as set out in Schedule 3) unless separately so authorized under written agreement with PBL. Notwithstanding the foregoing, if Subscriber wishes to acquire exploitation rights (or options thereto) in respect of a Technology or Technologies then, provided Subscriber so notifies PBL during a Subscription Period and subject to such rights being available, PBL will enter into good faith negotiations in with Subscriber.

Subscriber expressly acknowledges and agrees that, subject to the last paragraph of section 3 hereof and notwithstanding but without prejudice to any effective Evaluation Licence, PBL may at any time without notice to Subscriber grant, without limitation, options, licences or other commercial exploitation rights to such Technology, unless Subscriber has already entered into written option or licence with PBL in respect of such Technology where such option or licence with Subscriber would restrict the aforementioned granting rights of PBL.

This Agreement shall terminate automatically if Subscriber goes into compulsory or voluntary liquidation (except for the purposes of reconstruction or amalgamation) or if a receiver or administrator is appointed in respect of the whole or any part of its assets.

PBL may terminate this Agreement (a) if Subscriber breaches any provision hereof and (b) without limitation to the generality of the foregoing, if Subscriber discloses or transfers any TEC Sheet in whole or in part to any third party sooner than six months from the date of receipt of such TEC Sheet by Subscriber.

This agreement shall be construed and enforced in accordance with English law. Subscriber submits to the exclusive jurisdiction of the English courts.

### Signed for Agreement:

For and on behalf of **PLANT BIOSCIENCE LIMITED**

For and on behalf of **SUBSCRIBER**

Name: A J S Chojecki  
Position: Managing Director  
Date:

Name:  
Position:  
Date:

Name and address of Subscriber for invoices, notices and other formal correspondence under this Agreement:

.....  
.....  
.....

# Subscription Fees

Sign up or renew during 2009	Sign up or renew during 2010
<b>P u b l i c L i s t e d C o m p a n i e s</b>	
£12,000	£12,000
<b>P r i v a t e C o m p a n i e s</b>	
£6,000	£6,000
<b>P r i v a t e C o m p a n i e s &lt; 2 5 e m p l o y e e s</b>	
£3,500	£3,500

*All fees are non-refundable and non-creditable, and exclusive of VAT where applicable.*

**Schedule 2**

To be completed and returned with executed Agreement

**Contact details of subscriber's designated recipient(s):**

<b>Name 1.</b>		<b>Name 2.</b>	
<b>Mailing Address</b>		<b>Mailing Address</b>	
<b>Phone</b>		<b>Phone</b>	
<b>Fax</b>		<b>Fax</b>	
<b>Email</b>		<b>Email</b>	
<b>Name 3.</b>		<b>Name 4.</b>	
<b>Mailing Address</b>		<b>Mailing Address</b>	
<b>Phone</b>		<b>Phone</b>	
<b>Fax</b>		<b>Fax</b>	
<b>Email</b>		<b>Email</b>	

**Additional contacts :**

£250 administration fee will be added to the annual subscription fees for each additional contact required above the first four per subscriber

<b>Name 5.</b>		<b>Name 6.</b>	
<b>Mailing Address</b>		<b>Mailing Address</b>	
<b>Phone</b>		<b>Phone</b>	
<b>Fax</b>		<b>Fax</b>	
<b>Email</b>		<b>Email</b>	
<b>Name 7.</b>		<b>Name 8.</b>	
<b>Mailing Address</b>		<b>Mailing Address</b>	
<b>Phone</b>		<b>Phone</b>	
<b>Fax</b>		<b>Fax</b>	
<b>Email</b>		<b>Email</b>	

## Schedule 3

### Pro Forma Evaluation Licence

#### EVALUATION LICENCE AGREEMENT

This Agreement is between Plant Bioscience Limited, of Norwich Research Park, Colney Lane, Norwich, NR4 7UH, UK (hereinafter "PBL") and ..... whose registered office is at ..... (hereinafter "Subscriber").

The Effective Date of this Agreement shall be ..... (the "Effective Date").

#### ARTICLE 1. BACKGROUND

- 1.01 PBL has the right to and is able to license the rights granted or agreed to be granted under this Agreement relating the ..... technology developed by ..... of ..... (hereinafter "Source") and the subject of [patent application(s) Number.....].
- 1.02 The technology mentioned in Clause 1.01 was released to subscribers of PBL's Plant Technology Evaluation Concept programme (the "TEC") on ..... ("Release Date")
- 1.03 As a subscriber to the TEC, SUBSCRIBER has a right to select for evaluation certain technologies released under the TEC, and SUBSCRIBER now wishes to exercise such right to evaluate the technology referred to in 1.01, as more particularly defined herein. PBL is willing to grant SUBSCRIBER this evaluation right under the terms and conditions of this Agreement.

#### ARTICLE 2. DEFINITIONS

- 2.01 "Affiliate(s)" means any company controlled by or under common control with a party to this Agreement
- 2.02 "Control" meaning in this context the direct or indirect ownership of more than fifty percent (50%) of the voting rights of a company, or the power to nominate more than half of the directors, or the power otherwise to determine the policy of a company or organisation.
- 2.03 "Parties" means PBL and SUBSCRIBER; "Party" means PBL or SUBSCRIBER, as the context requires.
- 2.04 "Know-How" means unpatented (as at the Effective Date) confidential technical information, knowledge and proprietary materials relating to Patent Rights and within the right of PBL to license, including without limitation such information and materials relating to the Technology as have already been made available by PBL to SUBSCRIBER before the date of this Agreement.
- 2.05 "Materials" means any living and nonliving biomaterial and/or other physical property supplied by PBL or SOURCE on PBL's behalf to SUBSCRIBER containing or comprising ..... technology as shown in Schedule A and any mutually agreed amendments made thereto.
- 2.06 "Patent Rights" means
- 1) [priority] patent application number ..... and any patent(s) based on that application; and,
  - 2) any patents and applications corresponding to such patents and applications which may be granted to or made by PBL in other countries; and any re-issues or extensions of such patents and any division and continuations of such applications.
- 2.07 "Technology" means the Patent Rights, Materials, and Know-How relating to the invention(s) described in Clause 1. 01
- 2.08 "Improvements" means all improvements, modifications or discoveries in relation to the Technology which are made by SUBSCRIBER during the term of this Agreement the use or exploitation of which would infringe any pending or granted claim of the Patent Rights.
- 2.09 "Non-Subscriber" means any commercial entity that is not a paid up subscriber to the TEC and that conducts business in the field of plants, horticulture or agriculture.

#### ARTICLE 3. EVALUATION LICENCE and SUPPLY OF MATERIALS AND KNOW-HOW

- 3.01 PBL hereby grants to SUBSCRIBER a limited non-exclusive licence, without the right to sub-license, to evaluate the Technology in SUBSCRIBER's own in-house evaluation programme to determine SUBSCRIBER's interest to secure research and/or commercial exploitation rights (or options) to the Technology (hereinafter the "Evaluation Licence"). All other uses of the Technology including without limitation use in research other than for the purpose of evaluating the Technology, development, service to third party, or commercial use or exploitation whatsoever are expressly excluded from the Evaluation Licence.
- 3.02 Without prejudice to the Evaluation Licence granted herein, SUBSCRIBER expressly acknowledges that PBL may at any time grant exploitation rights to commercial third parties in respect of the Technology (subject that PBL will not grant exploitation rights to any Non-Subscriber for six (6) months after the Release Date) and that this Agreement and the Evaluation Licence do not constitute any research-use or exploitation licence, option or promise of licence or option, express or implied.

- 3.03 Promptly upon execution of this Agreement PBL shall arrange for SUBSCRIBER to be supplied with Materials as the Parties may agree to be reasonably necessary for the purposes of evaluation.
- 3.04 SUBSCRIBER shall ensure that Materials supplied under this Agreement are used only for evaluation by employees of SUBSCRIBER or of any of its Affiliates. Material and Know-How supplied to SUBSCRIBER shall be kept secure and confidential and shall not be disclosed or transferred to any third party.
- 3.05 With respect to the use of the Materials under the Evaluation Licence, SUBSCRIBER shall comply with all laws and regulations including any applicable guidelines for work with recombinant DNA and genetically modified organisms. PBL shall have no liability in contract tort or otherwise in respect of handling, propagation or other use of the Materials by SUBSCRIBER.

#### **ARTICLE 4. CONFIDENTIAL INFORMATION**

- 4.01 Each Party shall take all reasonably practicable measures to keep secure and confidential any and all confidential information (including Know-How) supplied by or obtained from the other Party and clearly identified as confidential at the time of disclosure ("Confidential Information").
- 4.02 Without prejudice to the generality of clause 4.01, neither Party shall disclose Confidential Information to any third party, except to those employees, authorised agents or collaborators of the receiving party or any of its Affiliates under binding obligations of confidence (which the receiving party undertakes to enforce). The non-disclosure obligations in Clauses 4.01 and 4.02 shall survive termination of this Agreement and be enforceable for 5 years beyond the date of termination unless the Party seeking relief from the obligation can show that the information:
- 4.03 is disclosed in a patent specification or was public knowledge and known to that Party at the time that Party obtained it or has become public knowledge without the fault of that Party since that Party obtained it or was independently generated by an employee of the receiving party or one its Affiliates who has not had access directly or indirectly to the relevant confidential information;
- 4.04 was already in its possession (or in the possession of one of its Affiliates) at the date of disclosure hereunder;
- 4.05 is lawfully obtained from a third party without restriction upon disclosure;
- 4.06 is necessary to support any patent application filed under this Agreement;
- 4.07 is required to be disclosed by law or by any legal or regulatory authority.

#### **ARTICLE 5. CONSIDERATION - REPORTING AND IMPROVEMENTS**

- 5.01 SUBSCRIBER shall report to PBL in writing of progress made by Subscriber in its evaluation of the Technology, at six months from the Effective Date and again in six-monthly intervals thereafter during the period of the Evaluation Licence, describing the work carried out to evaluate the Technology and the results achieved.
- 5.02 SUBSCRIBER shall disclose to PBL in such detail as PBL may reasonably require all Improvements which are the subject matter of a patent application filed by SUBSCRIBER, and which shall vest in, and be the property of SUBSCRIBER. SUBSCRIBER shall report such Improvements to PBL promptly in writing and in any case no later than the filing of any patent application claiming priority in such Improvements and provide copies of such patent application to PBL. SUBSCRIBER grants PBL a first option and right for a period of six (6) months to negotiate an exclusive, a sole or non-exclusive licence to make, use, sell, or have made, used or sold any Improvement. SUBSCRIBER will grant to SOURCE a paid up royalty free non-exclusive licence under all SUBSCRIBER Improvements and for non-commercial, academic research-only purposes.

#### **ARTICLE 6. LIMITATION OF LIABILITY**

- 6.01 It is expressly agreed between the Parties that PBL gives no warranty as to the validity, novelty, non-infringement, scope of claims, or safety of any of the Technology or its suitability for any particular purpose. All implied terms, conditions and warranties, statutory or otherwise, which might otherwise by operation of law be incorporated in this Agreement are hereby expressly excluded insofar as is permitted by law.
- 6.02 Save as is prohibited by law PBL shall have no liability to SUBSCRIBER in respect of any breach of contract or negligent act which occurs hereunder and shall have no liability to SUBSCRIBER for any loss of profits, revenue or goodwill or any other type of special, indirect or consequential loss suffered by SUBSCRIBER, except to the extent that such loss results from the wilful misconduct or gross negligence of PBL, and in the case of gross negligence that such gross negligence is not known to SUBSCRIBER.
- 6.03 PBL's entire liability to SUBSCRIBER for loss or damage, including related expenses and legal costs, arising from a breach of this Agreement shall be limited to £5,000.
- 6.04 SUBSCRIBER shall indemnify and hold harmless PBL, SOURCE and their respective directors, officers, employees and agents from and against any and all costs, claims, damages, expenses and liabilities asserted by any third party arising from any use of the Technology (including without limitation the Materials) by SUBSCRIBER or any of its Affiliates.

**ARTICLE 7. TERM AND TERMINATION**

- 7.01 The Evaluation Licence shall endure for a period of [one year] [two years] *(Note : two years for Technologies where transgenic plant creation is necessary before evaluation can occur)* from the Effective Date hereof. Upon expiry of the Evaluation Licence, or termination otherwise thereof, SUBSCRIBER shall return the Materials to PBL or if so requested by PBL destroy the Materials (whether they are in isolated form or they have been incorporated into other matter by the SUBSCRIBER).
- 7.02 The Evaluation Licence and this Agreement may be terminated by PBL if SUBSCRIBER breaches this Agreement and such breach has not been remedied within thirty (30) days of PBL's written notification of the breach. This Agreement and the Evaluation Licence shall terminate automatically if SUBSCRIBER goes into compulsory or voluntary liquidation or if a receiver or administrator is appointed in respect of the whole or any part of its assets or if SUBSCRIBER makes an assignment for the benefit of its creditors generally.
- 7.03 This Agreement and the Evaluation Licence shall terminate automatically if SUBSCRIBER does not renew the Subscription Agreement by paying the annual fees identified in the Subscription Agreement, or if SUBSCRIBER, or an Affiliate of SUBSCRIBER, contests, directly or indirectly, the validity of the Patent Rights.
- 7.04 Termination of this Agreement for any reason shall not bring to an end the obligations of Section 4, 5 and 6.

**ARTICLE 8. MISCELLANEOUS**

- 8.01 SUBSCRIBER warrants that it has not challenged or encouraged or facilitated a third party to challenge the validity of the Patent Rights.
- 8.02 This Agreement is personal to each Party and is intended to be for its/their exclusive benefit. Neither the whole nor any part of it shall be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the above, SUBSCRIBER shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under this Agreement through any of its Affiliates and any act or omission of any such Affiliate shall, for the purposes of this Agreement, be deemed to be an act or omission of SUBSCRIBER.
- 8.03 PBL shall not be liable for failure to perform any obligation under this the Agreement if such failure results from strike, lockout, riot, armed conflict, or act of God.
- 8.04 This Agreement shall not constitute either Party as an agent or a legal representative of the other Party for any purpose whatsoever nor create any form of partnership between the Parties.
- 8.05 If any term of this Agreement is judged to be invalid, illegal or unenforceable, that term shall be construed or deemed amended to conform with the applicable law so as to be valid and enforceable or, if it cannot be so construed or deemed amended without altering in a material way the intentions of the Parties, that term shall be deleted automatically from this Agreement and the remainder of this Agreement shall remain in full force and effect.
- 8.06 No waiver of any right under this Agreement shall be effective unless in a document signed by the Party waiving it. No waiver of any right arising from any breach or non-performance shall be deemed to waive any future such right or any other right arising under this Agreement. The failure of either Party at any time or for any period of time to enforce any term of this Agreement shall not be construed to waive such term or the right of either Party to enforce each and every such term.
- 8.07 Without detriment to any other term of this Agreement requiring notice to be given in a specific form or manner, notices to be given under this Agreement shall be in writing, signed by the Party giving the notice, and shall be sent to the address of the Party to be notified as set down at the beginning of this Agreement, in the case of PBL, and as set out below in the case of SUBSCRIBER, or to such other address as a Party may specify hereafter. Notice shall be deemed given upon physical delivery of the notice to the Party addressed in the notice.

.....SUBSCRIBER ADDRESS FOR NOTICES.....

- 8.08 This Agreement shall come within the jurisdiction of the English courts and the proper law of the contract shall be English Law. This Agreement which includes schedule A sets forth and constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any and all prior agreements, understandings, promises and representations made by either Party to the other Party concerning the subject matter hereof and the terms applicable hereto. This Clause shall not apply to fraudulent or wilful misrepresentations.

**SIGNATURES**

For and on behalf of PLANT BIOSCIENCE LIMITED

For and on behalf of SUBSCRIBER

.....  
Name: A J S Chojecki  
Position: Managing Director

.....  
Name:  
Position

Date:

Date:

## **SCHEDULE A**

Materials: