



# PLANT GERMPLASM RELEASE POLICY

## University of Northern Iowa Research Foundation

The development of source-identified foundation germplasm of native plant species is one of the primary objectives of the Tallgrass Prairie Center (TPC) at the University of Northern Iowa (UNI). This foundation germplasm does not benefit society unless it is managed and released effectively. The goals of TPC's management of foundation germplasm follow the same general principles guiding the management of all University intellectual property:

- (1) manage intellectual property to ensure that the results of University research will have the maximum possible beneficial effect for Iowans and the larger public; and
- (2) where it does not interfere with the first objective, manage intellectual property in such a way that the TPC/UNI benefits financially.

To achieve these goals, TPC normally releases plant germplasm for commercial use in a non-exclusive manner to ensure wide availability and collects a reasonable royalty. Exceptions to this generally require sound, specific and over-riding reasons and special approval (see below). Germplasm released solely for research is distributed free of royalty in a non-exclusive manner.

### **1. Ownership**

The University of Northern Iowa Research Foundation/ Tallgrass Prairie Center (UNIRF/TPC) believes new plant germplasm should be managed with the same level of care and diligence as intellectual property developed by other disciplines of research at the University. The University of Northern Iowa Research Foundation/ Tallgrass Prairie Center shall retain ownership of the foundation germplasm developed at the TPC.

### **2. Recommendation & Approval for Release**

The Release Committee is comprised of representatives from the cooperating agencies and institutions (currently made up of representatives from the Iowa Department of Transportation, United States Department of Agriculture-Natural Resources Conservation Service, Iowa Crop Improvement Association, and University of Northern Iowa) involved in the development and certification of TPC source identified germplasm. Recommendations regarding whether the germplasm should be released exclusively, non-exclusively, or in a restricted manner may be made by the Release Committee.

### 3. Royalties

The UNIRF/TPC assesses a reasonable royalty on germplasm released for commercialization. Fifty-percent of the net royalty is returned to the TPC for operating cost, and 20% remains with the UNI Foundation. The remaining 30% normally goes to the sponsoring college (College of Natural Sciences in this case) unless otherwise negotiated to return to the TPC.

No royalty is collected on germplasm released solely for research purposes. A small one-time handling fee may be collected to recover the cost associated with the propagation, maintenance and shipment of the germplasm.

### 4. Dissemination to Growers & Restrictions

The Iowa Ecotype Project is committed to the principle of fair competition in the native local seed industry. Normally, TPC releases germplasm in a non-exclusive manner. Because of limited availability of foundation seed, a grower interested in receiving a license to grow and propagate the germplasm will be offered an opportunity to do so with payment of a license fee and at an established royalty rate, according to the following guidelines:

Currently licensed growers who remain in compliance with the Commercialization Agreement (Category 1 Growers, C1) are given priority for new releases. If the supply of foundation seed available exceeds demand by C1 Growers, then new growers (Category 2 Growers, C2) will be offered the surplus. If the supply of foundation seed available is less than demand by C1 Growers, allotment of foundation seed will be pro-rated among C1 Growers.

Specialty germplasm that requires either a high level of identity preservation, a sizable initial capital investment, and/or a specialized marketing effort, may be released in an exclusive or in a restricted manner. Exceptions to a non-exclusive release will be made only upon approval by the Release Committee after considering written justification by a requester.

**In order to best preserve the integrity of Iowa source seed over the long term, seed will be grown within Iowa or neighboring state bordering counties immediately adjacent to Iowa.** In this way, plants are exposed to similar average and extremes of climate over time as they have evolved with in the recent past.

Source identified class (yellow tag) certification by the Iowa Crop Improvement Association is required, and is deemed to be the best way currently available to maintain the integrity of and consumer confidence in commercially produced Iowa-source seed.



## IOWA ECOTYPE PROJECT “Natural Selections”™ COMMERCIALIZATION AGREEMENT

THIS AGREEMENT is made and entered into \_\_\_\_\_ (date) by and between the UNIVERSITY OF NORTHERN IOWA RESEARCH FOUNDATION, INC. (and the TALLGRASS PRAIRIE CENTER) an Iowa non-profit corporation (hereinafter called "UNIRF/TPC"), and \_\_\_\_\_ (hereinafter called "LICENSEE").

WITNESSETH:

WHEREAS, the TALLGRASS PRAIRIE CENTER (TPC) as part of the University of Northern Iowa, is responsible for the collection and initial increase of Iowa source seed for the Iowa Ecotype Project and

WHEREAS, it is the mutual desire of UNIRF/TPC and LICENSEE to promote the production of the following source identified foundation germplasm (‘regional ecotype’) developed by Tallgrass Prairie Center at the University of Northern Iowa:

[As per attached Addendum(s) specifying species and ‘regional ecotype’]

WHEREAS, UNIRF/TPC and LICENSEE believe that the granting of non-exclusive rights to LICENSEE for the production, promotion, distribution and sale of this source identified seed is a means of achieving this goal;

Whereas the parties further believe that this agreement is in the best interests of and will further the purpose of their two organizations, and that it will benefit habitat restorations and reconstructions;

Now, therefore, in consideration of the promises and mutual covenants contained herein, the parties agree as follows:

### ARTICLE I - DEFINITIONS

For the purposes of this Agreement, the following terms shall be defined as follows:

1.1 Founder Seed – Source identified seed of regional Iowa-source collected and increased by or for TPC (G0) that is used by the Licensee or its contracted growers to establish a Generation One (G1) Production Field for seed increase. Licensee may only use seed increase from their certified G1 Production Field or derivative G2 Production Fields to further expand production fields. Source identified seed **MAY NOT BE REPRODUCED BY NON-LICENSED ENTITIES WITHOUT PROPER AUTHORIZATION.**

1.2 Production Seed – Source identified seed produced by the LICENSEE from G1 Production Field, or derivative G2 and G3 Production Fields for commercial sale to public agencies and private individuals for reconstructive/restorative plantings.

1.3 Production Field – Certified fields from which source identified seed may be harvested. Only Founder Seed (G0) can be used to establish G1 Production Field (PF). G1 PF produces G1

seed, which can be used to establish G2 PF, which produces G2 seed. G2 seed is used to establish G3 PF, which produces G3 seed. Only G0, G1, and G2 seed can be used to expand Production Fields. G3 is the last generation for seed production to maintain identity other than species.

1.4 Regional Ecotype – Seed collected from remnant prairies within a defined region and pooled together for the purpose of seed increase of source identified seed. The Iowa Ecotype Project currently has three regions, a northern, central and southern Iowa region.

## ARTICLE II - GRANT OF LICENSE

2.1 UNIRF/TPC grants LICENSEE the non-exclusive right to use and sell this regional ecotype under this agreement for five years. UNIRF/TPC reserves the right under this agreement to distribute to third parties seed for production, research purposes, conservation field trials, or other purposes.

2.2 LICENSEE agrees that seed provided may be used by the LICENSEE for basic research, field testing, and product evaluation. No selective breeding will be conducted within the regional ecotype, in accordance with Source Identified Certification per Iowa Crop Improvement Association.

2.3 LICENSEE agrees that the regional ecotype is the sole property of UNIRF/TPC. LICENSEE shall have no rights with respect thereto except as may be expressly granted hereunder. LICENSEE shall not apply for any patent or other right and shall not divulge or disclose any information, material or documents, concerning this agreement or the rights contained hereunder or make available in any way or use the aforesaid regional ecotype, except as expressly provided in this agreement, without the prior written consent of UNIRF/TPC. UNIRF/TPC will have the right to pursue legal protection of the regional ecotype, the rights of which will be owned by UNIRF/TPC.

2.4 LICENSEE agrees to pay UNIRF/TPC a royalty as determined in Article IV.

2.5 Production Seed must be sold as Iowa certified (source identified class) yellow tag seed; only Iowa Crop Improvement Association (ICIA) is authorized to certify Iowa Ecotype Project seed as Iowa yellow tag seed.

2.6 LICENSEE agrees to grow seed in the state of Iowa or border counties immediately adjacent to the state of Iowa within neighboring states (Minnesota, Wisconsin, Illinois, Missouri, Nebraska, South Dakota).

2.7 Should LICENSEE decide not to pursue certification and commercialization of the regional ecotype, its entire supply of Founder and Production Seed shall be disposed of as directed by UNIRF/TPC.

2.8 LICENSEE agrees that any sublicense will contain provisions which obligate the Sublicensee to LICENSEE to at least the same extent that LICENSEE is obligated to UNIRF/TPC under this Agreement, and subject to approval of UNIRF/TPC which will not be unreasonably withheld.

## ARTICLE III - DUE DILIGENCE

LICENSEE shall use its best efforts to bring the regional ecotype to market through a thorough, vigorous and diligent program, including the following minimum obligations:

3.1 LICENSEE will plant the seed at a reasonable time within 12 months of receipt. Grower must notify UNIRF/TPC in a timely fashion if unforeseen circumstances prevent planting within 12 months of receipt.

3.2 LICENSEE will store seed properly so as to preserve its viability until such time as seed is planted. This means cool, dry storage conditions short term and under suitable refrigeration long term (storage exceeding 3 months).

3.3 LICENSEE will apply to ICIA for source identified seed certification the year of establishment and annually thereafter to qualify for source identified certification per ICIA guidelines.

3.4 LICENSEE will follow field maintenance specifications regarding isolation, weed control, and rowing as indicated by ICIA guidelines.

3.5 LICENSEE will demonstrate progress towards producing sufficient seed for marketing in first three years and will continue production for a minimum of five years (per section 2.1) unless insufficient demand can be demonstrated to UNIRF/TPC. (see section 2.7).

## ARTICLE IV - ROYALTIES

4.1 LICENSEE will pay to UNIRF/TPC through its office at 205 Commons, University of Northern Iowa Research Foundation, Cedar Falls, Iowa 50614-0282, royalties of 2% of the purchase price per PLS (Pure Live Seed) pound of successfully marketed Production Seed by Licensee. Royalties will be due and payable annually on the September 1 following the previous July 1 - June 30 fiscal year during which seed was marketed. For example, for Production Seed marketed during the period from July 1, 2001 to June 30, 2002, payment will be due September 1, 2002. Upon request by UNIRF/TPC, its auditor, or its designated representative, LICENSEE shall make available sufficient records to verify the amount of Production Seed marketed in a specified year and the price received.

4.2 LICENSEE shall keep full, true and accurate books of account containing all particulars that may be necessary for the purpose of documenting and showing the amounts payable to UNIRF/TPC hereunder. Said books of account shall be kept at LICENSEE's principal place of business or the principal place of business of the appropriate division of LICENSEE to which this Agreement relates. Said books and the supporting data shall be open at all reasonable times and five (5) years following the end of the calendar year to which they pertain, to the inspection of UNIRF/TPC or its agents for the purpose of verifying LICENSEE's royalty statement or compliance in other respects with this Agreement.

4.3 LICENSEE shall maintain control of all seed production grown under its control.

4.4 Founder Seed and Production Seed purchased or produced under this Agreement shall under no circumstances be sold or distributed to third parties for the purpose of seed production, unless

authorized by UNIRF/TPC. LICENSEE may provide G1 and/or G2 Production Seed to another Licensee for the purpose of certified seed production, with prior written approval from UNIRF/TPC.

4.5 LICENSEE may market and distribute the regional ecotype Production Seed as source identified seed produced in accordance with this Agreement under their own brand name provided, however, that an ICIA issued Source Identified yellow tag AND a TPC “**Natural Selections**”<sup>TM</sup> licensed ecotype tag is properly attached to the seed bag.

## ARTICLE V - TERMINATION

5.1 LICENSEE shall have the right to cancel or terminate this agreement at any time after six months written notice to UNIRF/TPC, provided, however, that such termination shall not impair any accrued rights of UNIRF/TPC or relieve LICENSEE from any other obligation of LICENSEE.

5.2 If LICENSEE fails to exercise the diligence required in Article III hereof, or fails to timely deliver to UNIRF/TPC any required agreement, payment, statement, report or other document, or uses the licensed invention or licensed material for purposes not herein expressly authorized, or violates or fails to keep or perform any obligation, term or condition of this agreement, then and in such event UNIRF/TPC may give written notice of such breach or default to LICENSEE, specifying the default which is claimed and if LICENSEE should fail to repair such breach or default in sixty (60) days from receipt by it of such notice, UNIRF/TPC shall have the right to immediately cancel or terminate this agreement by written notice to LICENSEE. Upon delivery of such notice of cancellation or termination to LICENSEE, this agreement shall be terminated but termination shall not impair any accrued rights of UNIRF/TPC or relieve LICENSEE from any obligation of LICENSEE which has accrued up to and upon termination.

It is further agreed that should LICENSEE be adjudged bankrupt, become insolvent or enter into or make a composition with or assignment to its creditors, then and in such event, this license shall automatically terminate without notice but such termination shall not impair any accrued rights of UNIRF/TPC or relieve LICENSEE from any obligation, and all seeds of the regional ecotype(s) covered under this agreement are to be disposed of as directed by UNIRF/TPC.

5.3 This Agreement shall remain in effect until five years after date of the agreement, unless sooner terminated by either party pursuant to this agreement. In the event this agreement is not renewed, or is terminated by either party for any reason, LICENSEE will dispose of the Production Field(s), all Founder Seed and Production Seed as directed by UNIRF/TPC. All provisions of this Agreement regarding sales and royalties on seed produced pursuant to this Agreement shall continue to apply for a period of five years after the effective cancellation date as if this Agreement were still in force. This Agreement may be extended in its present form, or any modified form, by written request and mutual consent of both parties for five years.

## ARTICLE VI - NON-USE OF NAMES

6.1 Neither UNIRF/TPC, nor LICENSEE shall use the name or trademark of the other party to this Agreement in any advertising or publicity relating to the regional ecotype without prior written permission of that party, with the exception of listing the LICENSEE's name and business address, phone, website, etc. in promotional material. Authorization is hereby given to LICENSEE in connection with the regional ecotype to make use in such advertising matter of the statements that the regional ecotype is licensed by UNIRF/TPC, or that the regional ecotype was developed by the Tallgrass Prairie Center at the University of Northern Iowa.

6.2 UNIRF/TPC retains the right to disclose to the public the transfer of this technology and the existence of this license with the LICENSEE.

#### ARTICLE VII - INFRINGEMENT

7.1 In the event that LICENSEE shall learn of infringement of the licensed regional ecotype, or wrongful use of the licensed regional ecotype, LICENSEE shall notify UNIRF/TPC in writing to such effect and provide UNIRF/TPC with evidence thereof in LICENSEE's possession. UNIRF/TPC shall use its best efforts to terminate the infringement or wrongful use without litigation. If such efforts are not successful, UNIRF/TPC, in its discretion, may cause suit to be brought for infringement or other wrongful use. If requested by UNIRF/TPC, LICENSEE agrees to cooperate with UNIRF/TPC in any infringement or other proceeding that UNIRF/TPC may institute.

#### ARTICLE VIII - WARRANT

8.1 UNIRF/TPC does not warrant the validity or scope of any legal protection that might be expected under this agreement, except as specifically provided.

8.2 UNIRF/TPC makes no warranty, expressed or implied, that the licensed regional ecotype will be commercially successful.

8.3 UNIRF/TPC makes no warranty, expressed or implied, that the licensed regional ecotype will germinate or establish successfully. Extent of any responsibility on our part would be to replace seed, as available.

#### ARTICLE IX - WARRANTIES & INDEMNIFICATION

9.1 UNIRF/TPC makes no representations, warranties or conditions other than those expressed in this agreement. The liability of UNIRF/TPC with respect to any misdescription of or deviation from the characteristics of such regional ecotype, or with respect to any misrepresentation or breach of condition or warranty, expressed or implied, is limited to refunding the license fee.

9.2 LICENSEE agrees that it will indemnify and hold harmless UNIRF/TPC, its trustees, officers, employer, affiliates, from any suits, costs or charges as a result of the production, use or sale by LICENSEE of the regional ecotype or foundation seed or production seed.

9.3 LICENSEE shall obtain and carry in full force and effect liability insurance which shall protect LICENSEE and UNIRF/TPC in regard to events covered by 9.2 above.

ARTICLE X - WAIVER

10.1 This agreement may be modified at any time by mutual consent of both parties. Such modifications shall be in writing, signed by both parties, and made a part of this agreement.

10.2 It is agreed that no waiver by either party hereto of any breach or default of any of the covenants or requirements herein set forth shall be deemed a waiver as to any subsequent or similar breach or default.

10.3 This agreement terminates all prior arrangements written or oral and incorporates the entire agreement of the parties. It shall be modified only in writing, signed by both parties. This agreement is made in the state of Iowa and shall be governed by and construed in accordance with its laws.

10.4 Any notices or reports required to be sent to either party to this agreement shall be deemed received when sent by certified first-class mail, postage prepaid, to the attention of the party as set forth below:

To: Tallgrass Prairie Center  
University of Northern Iowa  
Cedar Falls, Iowa 50614-0294

To: LICENSEE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

10.5 If one or more of the provisions of this agreement shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective proper owners and/or officers.

\_\_\_\_\_  
Dr. Jill Trainer, Intellectual Prop. Officer

\_\_\_\_\_  
(signature of Licensee)

\_\_\_\_\_  
William Calhoun, Jr., President, UNIRF

\_\_\_\_\_  
(print or type name)

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Dr. Daryl Smith, Director, TPC

Date: \_\_\_\_\_  
For University of Northern  
Iowa Research Foundation, Inc.  
/Tallgrass Prairie Center

Date: \_\_\_\_\_  
For LICENSEE  
Title \_\_\_\_\_

2/05/01 Iowa Ecotype Project "Natural Selections"™ Commercialization Agreement

**IOWA ECOTYPE PROJECT “Natural Selections”™  
COMMERCIALIZATION AGREEMENT**

**ADDENDUM**

**REGIONAL ECOTYPES AUTHORIZED FOR PRODUCTION**

\_\_\_\_\_ (LICENSEE) is hereby authorized to produce and market the following regional ecotypes, identified by species and zone of source, pursuant to the terms and conditions of the IOWA ECOTYPE PROJECT “Natural Selections”™ COMMERCIALIZATION AGREEMENT, signed and dated \_\_\_\_\_ (DATE). Terms and conditions of aforementioned AGREEMENT are fully binding for ALL Regional Ecotypes listed herein.

<u>SPECIES (COMMON NAME)</u>	<u>REGIONAL ‘ECOTYPE’    LOT NUMBER</u>
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S            A            M    P                    L    E

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective proper owners and/or officers.

\_\_\_\_\_  
Dr. Jill Trainer, Intellectual Prop. Officer

\_\_\_\_\_  
(signature of Licensee)

\_\_\_\_\_  
William Calhoun, Jr., Chair, UNIRF

\_\_\_\_\_  
(print or type name)

\_\_\_\_\_  
Dr. Daryl Smith, Director, TPC

Date: \_\_\_\_\_  
For University of Northern  
Iowa Research Foundation, Inc.  
/Tallgrass Prairie Center

Date: \_\_\_\_\_  
For LICENSEE  
  
Title \_\_\_\_\_