

## **APPENDIX E**

### **GROWER SINGLE USE AGREEMENT**

This Grower Single Use Agreement (“Agreement”) is entered into by you (“Grower”) and KWS Cereals USA, LLC (“KWS”), effective as of the date of Grower’s signature (the “Effective Date”).

#### **Grower Information:**

Grower’s name or farm/business name: \_\_\_\_\_

Grower’s mailing address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

This Agreement governs the sale and use of all existing and future KWS hybrid rye seed varieties (the “Seed”).

#### **Terms and Conditions of Sale:**

1. Grower acknowledges that KWS has certain intellectual property or other proprietary rights in the Seed (“KWS IP Rights”).
2. KWS hereby grants to Grower a limited, non-exclusive, non-transferable right and license to use the Seed solely for the purpose of a single planting by the Grower to produce a crop for: (a) use by the Grower for food, fuel or livestock feed or forage; or (b) sale of that single crop to the food, fuel or livestock feed or forage commercial markets (the “Permitted Purposes”).
3. Grower agrees: (a) to acquire Seed only from retailers or distributors authorized by KWS to sell the Seed; (b) to use the Seed solely for a single planting; (c) to pay all invoices for the purchase of the Seed; (d) not to transfer any Seed to any other person or entity; (e) to use the Seed only for the Permitted Purposes; and (f) not to use the Seed or its progeny for research, breeding, crossing, propagation, seed multiplication, production, or development of a hybrid or different variety of seed.
4. KWS has the right to audit Grower’s growing, storage, sales and other records related to the Seed for a period of up to three years from the date Grower purchased the Seed. Grower agrees to provide copies of all such documents upon request from KWS. Grower grants KWS the right to inspect Grower’s fields and/or to test or take samples of crops grown from the Seed to ensure compliance with this Agreement and protection of KWS IP Rights. Grower also grants KWS the right to use personal information and data provided by Grower for business and marketing purposes subject to U.S. privacy laws.
5. This Agreement begins on the Effective Date and continues as long as Grower is in possession of the Seed or its progeny. Either party may end the Agreement by providing written notice of termination. Any terms of this Agreement needed for the protection or benefit of either party shall survive termination.
6. KWS warrants the Seed only to the extent specifically set forth on the Seed bag, label and/or tag and except as provided otherwise under applicable law, the Seed is provided on an as-is basis. KWS DISCLAIMS ALL WARRANTIES REGARDING THE SEED, TRAIT OR TRAIT TECHNOLOGY IN THE SEED, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.
7. KWS’ LIABILITY, WHETHER CONTRACTUAL OR EXTRACTIONAL, FOR NEGLIGENCE OR OTHERWISE, IS LIMITED IN AMOUNT TO THE PURCHASE PRICE OF THE SEED, REGARDLESS OF THE NATURE, CAUSE OR EXTENT OF THE LOSS. IN NO EVENT SHALL KWS BE LIABLE TO GROWER OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST REVENUES OR LOSS OF GOODWILL.
8. If Grower breaches any term of this Agreement and/or infringes or otherwise violates any KWS IP Rights, Grower agrees that KWS shall be entitled to preliminary and permanent injunctive relief. KWS shall be entitled to recover its reasonable attorneys’ fees and costs to enforce this Agreement against Grower.
9. Grower may not transfer its rights or obligations under this Agreement to any third party without the prior written consent of KWS. This Agreement shall be governed by the laws of the State of Illinois and Grower consents to exclusive jurisdiction in the State or Federal courts in Illinois. This Agreement

constitutes the entire contract between Grower and KWS regarding the Seed and supersedes all prior discussions or agreements regarding the Seed. This Agreement may be executed electronically.

The individual signing below represents that he/she is the Grower or has the authority to execute this Agreement on behalf of Grower and acknowledges that Grower agrees to be legally bound by the terms of this Agreement.

Date: \_\_\_\_\_ Grower signature: \_\_\_\_\_