



***drum*MUSTER PROGRAM PARTICIPATION AGREEMENT**

Sample

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THIS AGREEMENT is made on

BETWEEN

Agsafe Pty Limited ACN 057 112 062 of Level 1, 40 Macquarie Street, Barton ACT 2600 in the Australian Capital Territory (**Agsafe**)

and

ACN

of

(Participating Organisation)

RECITALS

- A. Agsafe conducts the Programs to promote industry waste recycling.
- B. The Participating Organisation wishes to participate in the Programs.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement unless the context or subject matter indicate otherwise:

AgVet Chemical means any 'agricultural chemical product' or 'veterinary chemical product' as those terms are defined in the AgVet Code.

AgVet Code means the schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* (Cth), as applied in each State and Territory.

AgVet Product means any product used in connection with crop production or farm animal health, excluding an AgVet Chemical.

Approval means any certificate, licence, consent, permit, approval, determination, permission or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement.

APVMA means the Australian Pesticides and Veterinary Medicines Authority.

Authority means a government or governmental, semi-governmental, statutory, administrative, fiscal or judicial or quasi-judicial body, department, commission, authority, tribunal, agency, person or entity whether federal, state, territorial or local.

Business Day means any day other than:

- (a) a Saturday, Sunday, public holiday or bank holiday in Canberra, Australian Capital Territory; or
- (b) 27, 28, 29, 30 or 31 December.

Business IP means the plain text name, business images and logos of the Participating Organisation.

ChemClear Program means the program of that name to collect and dispose of unwanted or obsolete Hazardous AgVet Chemical and AgVet Product waste from Eligible ChemClear Containers.

ChemClear Trademark means registered trademark 794253.

Claim means any claim, allegation, demand, cause of action, suit, proceeding, order, judgement, debt, Liability, cost or expense of any nature and however arising, whether in contract, in tort or under statute, and whether present or future, or involving a third party or a party to this agreement.

Cleanliness Standard means the standards of cleanliness for the Programs as notified by Agsafe to the Participating Organisation from time to time, including via updates posted to the Websites.

Confidential Information means all know how, trade secrets, ideas, concepts, technical, financial and operational information of a party, and any other information which by its nature, or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential.

Continuing Clauses means this clause 1 (Definitions and interpretation) and clauses 8 (Warranties), 9.6 (Effect of termination), 10 (Disputes), 11 (GST), 12 (Confidentiality), 13 (Notices), 14 (Trustee) and 15 (General), together with any other clause that by its terms survives termination of this agreement.

drumMUSTER Program means program of that name to collect and recycle non-Hazardous and empty Eligible drumMUSTER Containers.

drumMUSTER Trademark means the following trademarks:

- (a) registered trademark 1085684; and
- (b) registered trademark 770706.

Eligible ChemClear Container means any container of AgVet Chemicals or AgVet Products which are Hazardous in nature and which meets all of the following criteria:

- (a) the Supplier is the Participating Organisation or a Participant who has complied with its obligations under this agreement or otherwise in connection with the Programs;
- (b) the container holds a single AgVet Chemical or AgVet Product:
 - (i) with an APVMA registration or permit that:
 - (A) is current as at; or
 - (B) was suspended, cancelled or withdrawn within two years of, the intended date of disposal; and
 - (ii) that is no more than two years past expiry;
- (c) the container is:
 - (i) the original container in which the AgVet Chemical or AgVet Product it currently contains, was supplied by the Supplier;
 - (ii) labelled in accordance with all Labelling Requirements;
 - (iii) not eligible to participate in any other program conducted by a manufacturer or distributor which provides for the return of AgVet Chemicals or AgVet Products in their original container; and
 - (iv) not held by a Supplier as unwanted or excess inventory; and
- (d) the AgVet Chemical or AgVet Product stored in the container is not part of:
 - (i) a special regulatory or voluntary phase-out campaign agreed to between the APVMA and the Manufacturer; or
 - (ii) any recall, or mandatory phase-out campaign, imposed by the APVMA, in which the relevant deadline has passed.

Eligible Container means an Eligible ChemClear Container or an Eligible drumMUSTER container, or both.

Eligible drumMUSTER Container means any container of AgVet Chemicals or AgVet Products which are non-Hazardous in nature and which meets all of the following criteria:

- (a) the Supplier is the Participating Organisation who has complied with its obligations under this agreement;

- (b) the container is:
 - (i) empty;
 - (ii) not eligible to participate in any other program conducted by a manufacturer or distributor which provides for the return of AgVet Chemicals or AgVet Products in their original container; and
 - (iii) manufactured from either:
 - (A) steel; or
 - (B) recyclable HDPE plastic, with no metal components;
- (c) the container has been cleaned in accordance with the Cleanliness Standard, as determined by Agsafe upon inspection at the time of disposal;
- (d) the container is clearly labelled in accordance with all Labelling Requirements; and
- (e) the capacity of the container is at least 1L/Kg but no greater than 220L/Kg.

Fee means an amount equivalent to \$0.06 litre/kg for each Eligible Container, or as otherwise notified by Agsafe to the Participating Organisation under this agreement.

GST means a tax, levy, duty, charge or deduction together with any related additional tax, interest, penalty, fine or other charge imposed under the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hazardous means any substance, or any container which previously held a substance, which:

- (a) can be classified as a hazardous substance under the *Approved Criteria for Classifying Hazardous Substances* from time to time approved by the National Occupational Health and Safety Commission under the *National Occupational Health and Safety Commission Act 1985* (Cth); or
- (b) is listed as a hazardous substance on the *List of Designated Hazardous Substances* from time to time approved by the National Occupational Health and Safety Commission under the *National Occupational Health and Safety Commission Act 1985* (Cth).

Immediately Available Funds means cash, bank cheque or electronic transfer of cleared funds into the bank account nominated in advance by the payee.

Insolvency Event means, in relation to a party, any of the following:

- (a) a receiver, manager, administrator or similar officer is appointed to a person or any asset of the party;
- (b) a liquidator is appointed to the party, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
- (c) an application is made to a court or an order is made or a resolution is passed to:
 - (i) appoint a person referred to in paragraphs (a) or (b) of this definition;
 - (ii) wind up the party; or
 - (iii) implement an arrangement in favour of the party's creditors;
- (d) the party becomes bankrupt;
- (e) the party is or declares that it is unable to pay its debts;
- (f) a writ of execution or similar order is made against any asset of the party; or
- (g) anything analogous to any of the events listed in paragraphs (a) to (f) (inclusive) of this definition occurs in relation to a party.

Intellectual Property Rights means:

- (a) all present and future statutory and other proprietary rights in respect of copyright, registered and unregistered trademarks, patents, circuit layouts, software, business and domain names, designs, inventions, know-how, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields; and
- (b) all other IP Rights as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

Labelling Requirements means:

- (a) the requirements of any Laws applicable to AgVet Chemicals, AgVet Products, the Eligible Containers or the Programs;
- (b) any requirements for use of the Trademarks notified by the Trademark Owners from time to time, including via updates posted to the Websites; and
- (c) any other directions provided by Agsafe to the Participating Organisation from time to time.

Law includes:

- (a) any applicable statute, regulation, rule, by-law, ordinance, proclamation, treaty, decree, convention, rule of any applicable stock exchange, or Approval (including any condition or requirement under it);
- (b) any judgement, court order, injunction or rule or principle of common law or equity; and
- (c) that law as amended, consolidated, supplemented, re-enacted or replaced.

Liabilities includes all liabilities, of any kind, whether actual, contingent or prospective, losses, damages, costs and expenses of whatever description.

Loss means any loss, Claim, Liability, damage, charges, payments, cost or expense (whether direct, indirect or consequential and whether accrued or paid) including legal fees and disbursements (on the higher of a full indemnity or solicitor and own client basis and determined without taxation, assessment or similar process) and costs of investigation, litigation, settlement, judgment, interest and penalties.

Participant means a participant in any Program (other than Agsafe) who has entered into an agreement similar to this agreement with Agsafe.

Programs means the drumMUSTER Program and the ChemClear Program.

Quarter End Date means each of the following dates during the term: 31 March, 30 June, 30 September and 31 December.

Quarterly Report means the report referred to in clause 5.2 and in the form set out in Attachment 1 or as otherwise notified by Agsafe to the Participating Organisation from time to time.

Related Body Corporate has the meaning given in section 50 of the *Corporations Act 2001* (Cth).

Representative of a party means its personnel, agents, auditors, legal or financial advisers or of any of its Related Bodies Corporate.

Supplier means:

- (a) any person who manufactures AgVet Chemicals or AgVet Products; and
- (b) any person who sells AgVet Chemicals or AgVet Products, either on a wholesale or retail basis.

Term means the period commencing on 1 July 2023 and ending on the earlier of:

- (a) termination of this agreement under clause 9; and

- (b) either:
 - (i) the end of the period in clause 2.1(a), if the Participating Organisation issues a notice under clause 2.1(b); or
 - (ii) the end of any extension period referred to in clause 2.1(b) in which the Participating Organisation issues a notice under that clause.

Trademarks means the ChemClear Trademark and the drumMUSTER Trademark.

Trademark Owners means:

- (a) CropLife Limited, for the ChemClear Trademark; and
- (b) Agsafe, for the drumMUSTER Trademark.

Websites means:

- (a) the websites located at <http://chemclear.org.au>, <http://drummuster.org.au> and <http://agsafe.org.au>; and
- (b) any other website notified by Agsafe to the Participating Organisation from time to time.

1.2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to an agreement or document is to that agreement or document as varied, supplemented, novated or replaced from time to time;
- (b) **(form of document)** a reference to a document includes any computer program, material, record and any other means by which information may be stored, reproduced or retrieved;
- (c) **(references)** a reference to a party, recital, clause, paragraph, schedule or annexure is a reference to a party, recital, clause, paragraph, schedule or annexure to or of this agreement;
- (d) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (e) **(person)** a reference to a person includes a natural person, firm, body corporate, a statutory corporation, partnership, an unincorporated association, Authority, the Crown and any other organisation or legal entity;

- (f) **(parties)** a reference to a party includes a reference to its personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (g) **(including) including and includes** (and other similar expressions) are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (h) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (i) **(singular)** the singular includes the plural and vice versa;
- (j) **(gender)** words importing one gender include all other genders;
- (k) **(rules of construction)** in the interpretation of this agreement no rule of construction applies to the disadvantage of one party on the basis that party or its lawyer were responsible for its drafting;
- (l) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements of it and all regulations or documents issued under it;
- (m) **(time and date)** a reference to a time or date is a reference to the time and date in Canberra, Australian Capital Territory;
- (n) **(writing)** a reference to a notice, consent, approval, request or other communication under this agreement or an agreement between the parties means a written notice, consent, approval, request, communication or agreement.
- (o) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (p) **(whole and part)** a reference to any thing (including any amount) is a reference to the whole or any part of it, but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (q) **(at any time)** the words **at any time** mean 'at any time and from time to time'; and
- (r) **(requirements to do)** a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done.

1.3 Method of payment

All payments made under or in connection with this agreement must be made in Immediately Available Funds in Australian dollars without deduction or set off.

1.4 Liability

- (a) Any agreement, representation, warranty or indemnity by two or more parties (including if two or more persons are included in the same defined term) binds them jointly and severally.
- (b) Any agreement, representation, warranty or indemnity in favour of two or more parties (including if two or more persons are included in the same defined term) is for the benefit of each of them severally and not jointly.
- (c) Default of this agreement by a party does not relieve any other party of its Liability.
- (d) Any provision of this agreement which seeks to limit or exclude the liability of a party is to be construed as doing so only to the extent permitted by Law.

1.5 Interest on amounts payable

If the Participating Organisation fails to pay any amount payable by it to Agsafe under or in accordance with this agreement, the Participating Organisation must, if demand is made by Agsafe, pay simple interest on the outstanding amount, calculated on a daily basis on and from the due date for payment until that amount is paid in full at the rate of 2% per annum per annum above the rate from time to time applicable to post-judgment debts within the jurisdiction of the Supreme Court of the Australian Capital Territory pursuant to Schedule 2 of the *Court Procedures Rules Act 2006* (ACT). The right of Agsafe to require payment of interest under this clause 1.5 is without prejudice to any other rights Agsafe may have against the Participating Organisation at Law or in equity.

2. TERM

2.1 Duration

- (a) The initial term of this agreement will commence on 1 July 2023 and expire on 30 June 2024.
- (b) The Term will automatically extend for successive 12 month periods commencing on and from the day after the end of the then current Term unless the Participating Organisation provides at least 3 months' notice of its intention for the Term to expire on the end of the then current Term.

3. ELIGIBILITY

3.1 ChemClear Program

The Participating Organisation:

- (a) acknowledges that only Eligible ChemClear Containers are able to participate in the ChemClear Program;
- (b) must ensure that all Eligible ChemClear Containers are labelled in accordance with the Labelling Requirements;
- (c) must provide Agsafe with a current and complete product list, including pack sizes, and promptly update Agsafe with any changes to that product list from time to time;
- (d) must permit Agsafe to exercise its rights in connection with the ChemClear Program, including any obligations of Agsafe arising under any Law in connection with the ChemClear Program; and
- (e) must promote the ChemClear Program as the preferred method of Eligible ChemClear Container disposal, including by ensuring its storage and disposal label recommendations reference the ChemClear Program and APVMA recommendations.

3.2 drumMUSTER Program

The Participating Organisation:

- (a) acknowledges that only Eligible drumMUSTER Containers are able to participate in the drumMUSTER Program;
- (b) must ensure that all Eligible drumMUSTER Containers are labelled in accordance with the Labelling Requirements;
- (c) must permit Agsafe to exercise its rights in connection with the drumMUSTER Program, including any obligations of Agsafe arising under any Law in connection with the drumMUSTER Program; and
- (d) must promote the drumMUSTER Program as the preferred method of Eligible drumMUSTER Container disposal, including by ensuring its storage and disposal label recommendations reference the drumMUSTER Program as per the APVMA recommendations.

3.3 Discretion

Agsafe may:

- (a) or may cause its Representatives to, inspect containers but the Participating Organisation acknowledges that any such inspection of any containers does not relieve the Participating Organisation from its obligations under clauses 3.1 or 3.2;
- (b) in its discretion, refuse to accept any container into any Programs if that container is not an Eligible Container.

3.4 Confidentiality consent

On the date of execution of this agreement, the Participating Organisation must provide Agsafe with a signed confidentiality consent in the form in Schedule 1, to enable Agsafe to provide the Programs to the Participating Organisation.

4. AGSAFE OBLIGATIONS

4.1 Services

During the Term, Agsafe will:

- (a) (transitional services) collect all containers that were Eligible Containers as at 30 June 2023 which are returned by Participants, including the Participating Organisation, to collection sites nominated by Agsafe from time to time on the Websites, at no cost to the Participating Organisation;
- (b) (services) in exchange for the Fee, collect all Eligible Containers from collection sites nominated by Agsafe from time to time on the Websites; and
- (c) arrange for the processing and recycling of Eligible Containers which have been collected under this clause into new products.

4.2 Delay

If Agsafe is unable to perform in whole or part any of its obligations under this agreement due to circumstances beyond its reasonable control:

- (a) it is relieved of those obligations to the extent and for the period that it is unable to perform them; and
- (b) the Participating Organisation releases Agsafe from all Liability in connection with such inability to perform those obligations.

4.3 Subcontract

Agsafe may subcontract any or all of its obligations under this agreement.

5. FEES

5.1 Participation in Programs

- (a) If the Participating Organisation wishes to participate in the Programs, it:
 - (i) must pay the Fee to Agsafe; and
 - (ii) may impose a fee to its customers on the supply of each Eligible Container.
- (b) Agsafe may, during the Term, notify the Participating Organisation of any increases to the Fee which will apply on and from 1 July during that financial year in the Term.

5.2 Quarterly Report

No later than 10 Business Days after each Quarter End Date, the Participating Organisation must deliver a report to Agsafe by email at info@agsafe.org.au or such other address notified to the Participating Organisation from time to time, which:

- (a) states number, volumes and container composition of all Eligible Containers sold by the Participating Organisation during the 3 month period specified in the report, segmented into State and Territory of sale;
- (b) is signed by a duly authorised representative of the Participating Organisation;
- (c) contains a statement by a duly authorised representative of the Participating Organisation certifying that the information in the report:
 - (i) is accurate, true and complete to the best of that person's information, knowledge and belief; and
 - (ii) has been prepared with due regard to the books and records of the Participating Organisation.

5.3 Invoice

- (a) Following receipt of the Quarterly Report, Agsafe will issue an invoice to the Participating Organisation for the Fees payable to Agsafe for the period specified in the Quarterly Report (**Quarterly Invoice**).

- (b) The Participating Organisation must pay the Quarterly Invoice within 10 Business Days of the date of the Quarterly Invoice.

5.4 Records

- (a) The Participating Organisation must maintain proper accounts, books and other records relating to Eligible Containers sold by the Participating Organisation (**Program Records**).
- (b) The Participating Organisation must permit Agsafe and its Representatives to examine the Program Records, including taking copies or extracts of the Program Records for the purpose of determining or verifying whether or not the contents of the Quarterly Report are accurate, provided that at least 5 Business Days' notice of the request to examine is provided by Agsafe to the Participating Organisation.

6. TRADEMARKS

6.1 Licence

Agsafe grants the Participating Organisation a non-exclusive, non-transferrable, non-sublicensable royalty free licence to use the Trademarks but only to the extent required for the Participating Organisation to comply with the Labelling Requirements.

6.2 Benefit of Trademark Owner

The Participating Organisation acknowledges that:

- (a) the Trademarks are and at all times remain the property of the Trademark Owner;
- (b) all Intellectual Property Rights arising from or in connection with the Trademarks are owned at all times by the relevant Trademark Owner;
- (c) it must not in any way represent that it is the owner of, or has any rights or interest in, the Trademarks, other than the rights granted under this agreement; and
- (d) all use of the Trademarks by the Participating Organisation under this agreement insures to the exclusive benefit of the Trademark Owner.

6.3 Obligations of Participating Organisation

The Participating Organisation must:

- (a) cease using the Trademarks at the end of the Term;

- (b) only use the Trademarks as permitted under this agreement;
- (c) not use the Trademarks in any manner likely to deceive or cause confusion;
and
- (d) not create or develop any new trademarks, logos or names which are substantially identical or deceptively similar to the Trademarks.

7. BUSINESS IP

7.1 Licence

The Participating Organisation grants Agsafe a non-exclusive, non-transferrable, non-sublicensable royalty free licence to use the Business IP but only to the extent required for Agsafe to develop and promote the Programs.

7.2 Benefit of Participating Organisation

Agsafe acknowledges that:

- (a) the Business IP is and at all times remains the property of the Participating Organisation;
- (b) it must not in any way represent that it is the owner of, or has any rights or interest in, the Business IP, other than the rights granted under this agreement;
- (c) all Intellectual Property Rights arising from or in connection with the Business IP are owned at all times by the Participating Organisation; and
- (d) all use of the Business IP by Agsafe under this agreement insures to the exclusive benefit of the Participating Organisation.

7.3 Obligations of Agsafe

Agsafe must:

- (a) cease using the Business IP at the end of the Term;
- (b) only use the Business IP as permitted under this agreement;
- (c) not use the Business IP in any manner likely to deceive or cause confusion;
and
- (d) not create or develop any new trademarks, logos or names which are substantially identical or deceptively similar to the Business IP.

8. WARRANTIES

8.1 Mutual warranties

Each party warrants to the other that:

- (a) it has all powers required to, and has obtained all necessary consents and authorisations to enable it to, execute and perform this agreement;
- (b) this agreement contains binding obligations enforceable against it in accordance with its terms;
- (c) it has not relied on any undertaking, conduct or representation from or on behalf of the other party except as set out in this agreement;
- (d) it is solvent and able to pay its debts as and when they fall due; and
- (e) entry into this agreement will not contravene any Law to which it or its property is subject or any order of any Authority binding on it or its property.

8.2 Participating Organisation warranties

The Participating Organisation warrants that all information it will provide to Agsafe under this agreement or otherwise in connection with the Programs will be:

- (a) accurate, true and complete to the best of its information, knowledge and belief; and
- (b) not misleading in any material particular, accidental errors and omissions excepted.

8.3 Indemnity

The Participating Organisation indemnifies Agsafe, to the fullest extent permitted by Law, from and against all Loss suffered by Agsafe which arises from or in connection with any breach by the Participating Organisation of this agreement.

8.4 Consequential Loss

Despite any other provision of this agreement and to the maximum extent permitted by Law, Agsafe will not be liable for any Claims or Liabilities (however arising) for any one or more of the following Losses suffered or incurred by the Participating Organisation:

- (a) Loss of revenue, profit or anticipated savings;
- (b) Loss of goodwill;

- (c) Loss of business;
- (d) Loss of opportunity; and
- (e) any Loss beyond that which arises naturally in the usual course of events flowing from the breach.

9. DEFAULT AND TERMINATION

9.1 Right to terminate for default

Either party may terminate this agreement at any time by immediate notice to the other party (**Defaulting Party**) if any of the following occur:

- (a) the Defaulting Party fails to carry out any provision of this agreement, the failure is capable of remedy and the Defaulting Party does not remedy that failure within 10 Business Days after notice to the Defaulting Party requiring it to be remedied;
- (b) the Defaulting Party fails to carry out any material provision of this agreement and the failure is not capable of remedy;
- (c) the Defaulting Party is the Participating Organisation and has either:
 - (i) persistently breached or defaulted in the punctual performance of its obligations under this agreement; or
 - (ii) has demonstrated an intention to no longer be bound by this agreement or any Law applicable to the Programs;
- (d) the Defaulting Party suffers or becomes subject to an Insolvency Event;
- (e) the Defaulting Party fails to obtain or ceases to hold any Approval required to carry out its obligations under this agreement;
- (f) any other event occurs or circumstance arises which, in the reasonable opinion of the other party, is likely to materially and adversely affect the ability of the Defaulting Party to perform all or any of its obligations under or otherwise to comply with the terms of this agreement, including if the compliance by a party with any provision of this agreement is or becomes prohibited by Law.

9.2 Suspension

Agsafe may suspend all rights of the Participating Organisation to participate in the Programs during any period in which the Participating Organisation is a Defaulting

Party is required to remedy an event of default under clause 9.1(a) and until such default is remedied to Agsafe's reasonable satisfaction or Agsafe exercises its right to terminate this agreement.

9.3 Termination for convenience

Either party may terminate this agreement at any time on 6 months' notice to the other party.

9.4 Notice

If a party has a right to terminate this agreement, it may exercise that right by delivering a notice to the other party stating that it terminates this agreement.

9.5 No refund

The Participating Organisation is not entitled to any refund of Fees paid to Agsafe which relate to any period prior to any suspension or termination of this agreement.

9.6 Effect of termination

- (a) Subject to clause 9.6(b), if a party terminates this agreement in accordance with clause 9.1:
 - (i) the Participating Organisation must ensure that the drumMUSTER logo is removed from all containers;
 - (ii) the Participating Organisation must not make any statements indicating that the Participating Organisation is involved in the Programs; and
 - (iii) both parties are released from their obligations to further perform the agreement.
- (b) The termination of this agreement will not affect:
 - (i) any other rights the parties have against one another at Law;
 - (ii) the Continuing Clauses, which survive termination of this agreement; or
 - (iii) a right or Claim which arises before termination.

10. DISPUTE RESOLUTION

10.1 Disputes

A party must not commence court proceedings or arbitration relating to any dispute arising from this agreement without first complying with this clause 10.1, except if:

- (a) a party seeks urgent interlocutory relief; or
- (b) the dispute relates to compliance with this clause 10.1.

10.2 Notice of dispute

- (a) A party claiming that a dispute has arisen under this agreement must give notice of the details of the dispute to the other party.
- (b) A party who has given or received notice of a dispute under this clause 10.2 must promptly:
 - (i) designate as its representative in negotiations relating to the dispute a person with authority to settle the dispute; and
 - (ii) use its best endeavours to resolve the dispute.

10.3 Costs

Each party must pay its own costs in connection with the dispute resolution procedures under this clause 10.

10.4 Failure to resolve

If the dispute is not resolved within 20 Business Days after a dispute notice (**Resolution Period**) is given under clause 10.2, then a party which has complied with the provisions of this clause 10 may terminate any dispute resolution process undertaken pursuant to this clause 10 and may then refer the dispute to mediation. The mediation must be conducted in Canberra, Australian Capital Territory. The Resolution Institute's mediation rules apply to the mediation, except to the extent they conflict with this clause 10.

10.5 Appointment of mediator

If the parties have not agreed upon the mediator and the mediator's remuneration within 5 Business Days following the end of the Resolution Period:

- (a) the mediator is the person appointed by; and
- (b) the remuneration of the mediator is the amount or rate determined by,

the President of the Law Society of Australian Capital Territory (**President**) or the President's nominee, acting on the request of any party to the dispute.

10.6 Costs

The parties must pay the mediator's remuneration in equal shares. Each party must pay its own costs of the mediation.

10.7 Acknowledgement

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 10 is to attempt to settle the dispute concerned. Neither party may use and information or documents obtained through any dispute resolution process undertaken pursuant to this clause 10 for any purpose other than in an attempt to settle the dispute concerned (but nothing in this clause 10 is intended to prevent and information or documents being used in any subsequent litigation arising from the dispute).

10.8 Urgent relief from Court

This clause 10 does not prevent either party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

11. GST

11.1 Definition of GST

In this clause 11, any expression which is defined in the GST Law has that meaning.

11.2 Exclusive of GST

Unless GST is expressly included, all amounts expressed to be payable or to be provided under any clause in this agreement for any supply made under or in connection with this agreement does not include GST.

11.3 Increase for GST

To the extent that any supply made under or in connection with this agreement is a taxable supply, the GST exclusive consideration otherwise payable or provided for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and subject to receipt of an effective tax invoice, is payable at the same time.

11.4 Liability net of GST

- (a) If any indemnity, reimbursement or similar payment to a party under this agreement is calculated by reference to the GST inclusive amount of any Liability or Loss, then the payment is to be reduced by the amount of any input tax credit or notional input tax credit entitlement to which that party is entitled in respect of that Liability or Loss.
- (b) If either party becomes liable for any penalties or interest as a result of a late payment of GST, where that late payment is as a direct result of a failure of the other party to comply with the terms of this clause 11, the first party must pay to the other party an additional amount on demand equal to the amount of those penalties and interest.

11.5 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

12. CONFIDENTIALITY

12.1 Confidentiality obligations

Subject to clause 12.2, if a party discloses Confidential Information to another party under this agreement, the receiving party must:

- (a) hold the Confidential Information in strict confidence, keep the Confidential Information secret, protect and preserve the confidential nature and secrecy of the Confidential Information, and not disclose any of the Confidential Information to any person (or allow or assist any person to observe or have access to any Confidential Information) other than in accordance with this agreement;
- (b) only use the Confidential Information disclosed to the receiving party for the purpose for which it was disclosed;
- (c) not use or exploit any Confidential Information to the competitive disadvantage of, or in any manner which may cause Loss to, the providing party or its Related Bodies Corporate;
- (d) store safely and keep separate from the Recipient's own documents all notes, documents and copies of any Confidential Information received by the receiving party under or in accordance with this agreement; and

- (e) not, other than as expressly permitted by this agreement or as required by Law, do anything that contributes to the creation of an obligation to disclose any Confidential Information by any person.

12.2 Permitted disclosure

A receiving party may disclose, and may permit its Representatives to disclose, any Confidential Information (and the restrictions as to confidentiality, non-use and non-disclosure in clause 12.1 will not apply in such cases):

- (a) with the prior consent of the party to whom the Confidential Information relates;
- (b) to the extent the receiving party is required to do so by Law, any order or request of any Authority or by any recognised stock exchange on which the receiving party's shares (or those of any of its Related Bodies Corporate) are listed; or
- (c) to the receiving party's Representatives but only to the extent required for the purposes of implementing this agreement.

12.3 Disclosure to Representatives

- (a) To the extent possible, a party that makes or permits a disclosure of Confidential Information under clause 12.2(b) must first consult with the providing party about the form and content of the disclosure.
- (b) A party who makes or permits a disclosure of Confidential Information under clause 12.2(c) must ensure that its Representatives are subject to obligations of confidentiality equivalent to the obligations in this clause 11.

12.4 Publicity

Subject to clause 12.2(b), a party may not make a public announcement or issue any press release regarding this agreement and the transactions the subject of this agreement without the approval of the other party (such approval not to be unreasonably withheld) as to the form and manner of the announcement or release.

12.5 Return of Information

- (a) On the termination of this agreement, the receiving party must (at its own expense):
 - (i) promptly return to the providing party (or, at the election of the receiving party, destroy) all documents and other materials constituting

Confidential Information in the possession or control of the receiving party or its Representatives; and

- (ii) promptly delete, as far as technically reasonably possible, all of the Confidential Information in the possession or control of the receiving party or its Representatives, which is stored in an electronic or other medium and retrievable in perceivable form.

(b) The providing party acknowledges and agrees that:

- (i) the receiving party may retain Confidential Information to the extent that (and only in the form in which) it is included in any board papers or board minutes of the receiving party or its Related Bodies Corporate, or in any other documents required to be retained by Law by the receiving party or its Related Bodies Corporate; and
- (ii) the receiving party's financial, legal and other advisers may retain Confidential Information as is necessary to support any advice given to the receiving party, or to comply with their insurance or risk management policies or professional obligations,

provided that, in each case, the Confidential Information retained is kept confidential in accordance with this agreement.

13. NOTICES

13.1 Form

A notice or other communication given under or in connection with this agreement (**Notice**) must be in writing and given by a party, its authorised officer or its lawyer.

13.2 Delivery

A Notice must be:

- (a) delivered by hand to the recipient's address or registered office;
- (b) posted to the recipient's address or registered office by prepaid ordinary post (or airmail, if posted to or from a place outside Australia); or
- (c) emailed to the recipient's email address,

as set out in this agreement, or as notified from time to time.

13.3 Address for service

Details of the parties' addresses for service of notices on the date of this agreement are set out below:

(a) Agsafe:

Address: Level 1, 40 Macquarie Street, Barton ACT 2600

Attention: Dominique Doyle, General Manager

Email: Dominique.doyle@agsafe.org.au

(b) Participating Organisation:

Address:

Attention:

Email:

13.4 Service

(a) Service of a Notice is deemed to have occurred, if sent:

(i) as a hand delivered Notice – at the time it is delivered;

(ii) as a Notice delivered by post – on the 3rd Business Day after posting (or the 7th, if posted to or from a place outside Australia); or

(iii) by email – on the day and at the time of being sent, provided that if it is sent after 5:00 pm on any day or on a day which is not a Business Day, it will be treated as having been duly given and received at 9:00 am the next Business Day.

(b) This clause 13.4 does not limit the way in which a Notice can be deemed to be served under any applicable Law.

14. TRUSTEE

14.1 Application

If a party executes this agreement as trustee of any trust fund (**Trust**) then this clause 14 applies to that party (**Trustee Party**).

14.2 Trustee Party warranties

(a) The Trustee Party declares that:

- (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) it has power under the trust deed for the Trust (**Trust Deed**) to execute and perform its obligations under this agreement;
 - (iii) all necessary action has been taken to authorise the execution and performance of this agreement under the Trust Deed and the constituent documents of the Trust; and
 - (iv) this agreement is executed and all transactions relating to this agreement are or will be entered into as part of the due and proper administration of the Trust and are or will be for the benefit of the beneficiaries.
- (b) Each of the warranties contained in this clause 14.2 will remain true as long as this agreement remains in force.

14.3 Covenants by Trustee Party

The Trustee Party promises that during the continuance of this agreement:

- (a) the Trustee Party will ensure that the Trust Deed is not varied or revoked;
- (b) the Trustee Party will not retire as trustee of the Trust or appoint any new or additional trustee;
- (c) the Trustee Party will not default in its duties as trustee of the Trust; and
- (d) the Trustee Party will not exercise any power to appoint new beneficiaries or class of beneficiaries.

14.4 Personal liability

The Trustee Party is personally liable to perform the obligations of the Trustee Party under this agreement, even though the Trustee Party enters into this agreement as trustee of the Trust.

14.5 Successors

The Trustee Party must cause any successor of the Trust and any person who becomes a trustee of the Trust jointly with the Trustee Party to execute all documents required to ensure that this agreement is binding on them.

15. GENERAL

15.1 Entire agreement

This agreement constitutes the entire agreement between the parties regarding the matters contained in it and supersedes any prior representations, understandings or arrangements made between the parties regarding the matters contained in it, whether oral or written.

15.2 Variation

No variation of this agreement is binding unless it is in writing and executed by each party.

15.3 Waiver

A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right or remedy. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

15.4 Further assurances

Each party must, at its own expense, promptly execute all documents and do all things necessary or desirable to give full effect to the arrangements contained in this agreement.

15.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this agreement,
 - expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.
- (c) A reference to a day is a reference to a time period that begins at midnight and ends 24 hours later.

- (d) A reference to a period of time, unless expressly stated otherwise, excludes the first day of that period.

15.6 Governing law

- (a) The Laws applicable in Australian Capital Territory govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of Australian Capital Territory and any courts competent to hear appeals from those courts.

15.7 Assignment

A party cannot assign or otherwise transfer its rights under this agreement without the prior consent of the other party.

15.8 Invalidity

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause 15.8(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 15.8(b)(i) or clause 15.8(b)(ii) applies.

15.9 Capacity to contract

Each party warrants to the other party that:

- (a) this agreement creates legal, valid and binding obligations, enforceable against that party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this agreement in the capacity of any trust.

15.10 Power of attorney

Each person who executes this agreement under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this agreement under that power.

15.11 Cumulative rights

Except as expressly provided for in this agreement, the rights of a party under this agreement are cumulative and do not limit any right or remedy provided by Law.

15.12 Consents or approvals

Except as otherwise stated in this agreement, any consent or approval required under this agreement may be given conditionally or unconditionally or withheld by the party required to give that consent or approval in its absolute discretion.

15.13 Legal costs

Except as expressly stated in this agreement, each party will pay its own costs and expenses arising from this agreement and any related documents.

15.14 Relationship between parties

- (a) Nothing in this agreement constitutes a partnership between the parties or, except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose bind another party or contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

15.15 Electronic execution and counterparts

- (a) This agreement may be executed electronically and in any number of counterparts.
- (b) If this agreement is signed in counterparts then:
 - (i) each counterpart is an original; and
 - (ii) together they constitute one agreement.

15.16 No merger

A right or obligation of a party that can operate or have effect on or after the completion, expiration, termination or rescission of this agreement will not merge on the occurrence of that event but will remain in full force and effect.

15.17 Survival

- (a) The indemnities in this agreement are continuing obligations and continue to apply after expiration or termination of this agreement.
- (b) The Continuing Clauses continue to apply after expiration or termination of this agreement.

Sample

SCHEDULE 1 - CONFIDENTIALITY CONSENT

ACN

of

(Participating Organisation) consents to Agstewardship Limited (**Agstewardship**) providing Agsafe Pty Limited (**Agsafe**) with the following information relating to the Participating Organisation which is held by Agstewardship in connection with arrangements between the Participating Organisation and Agstewardship regarding the drumMUSTER and ChemClear programs undertaken by the parties (**Program Arrangements**):

- accounts, books and other records relating to levy imposed under the Program Arrangements;
- up-to-date product lists and pack sizes of eligible containers under the Program Arrangements; and
- other commercially sensitive information,

to the extent reasonably required by Agsafe in order to provide services to the Participating Organisation under the Program Arrangements on and from 1 July 2023.

EXECUTED as an agreement by)

ACN)
in accordance with its Constitution and)
section 127 of the *Corporations Act* 2001)
by being signed by:

Signature:

Signature:

Name:

Name:

Office held:

Office held:

* Delete as appropriate

EXECUTED as an agreement

EXECUTED as an agreement by **AGSAFE**)
PTY LIMITED ACN 057 112 062 by its)
authorised officer in the presence of:)

Witness signature:

Signature:

Witness name:

Name of officer:

Office held:

EXECUTED as an agreement by)
)
)
ACN)
in accordance with its Constitution and)
section 127 of the *Corporations Act* 2001)
by being signed by:

Signature:

Signature:

Name:




Name:

Office held:

Office held:

* Delete as appropriate

ATTACHMENT 1 – QUARTERLY REPORT

AgVet Quarterly Container Declaration

Please complete the shaded cells

Name of Reporting Organisation

Contact Information

First Name <input style="width: 150px;" type="text"/>	Last Name <input style="width: 150px;" type="text"/>
Job Title <input style="width: 150px;" type="text"/>	Email <input style="width: 150px;" type="text"/>
Contact Number <input style="width: 150px;" type="text"/>	Mobile <input style="width: 150px;" type="text"/>
Quarter ending <input style="width: 150px;" type="text" value="Please select"/>	Year <input style="width: 150px;" type="text"/>

The Program membership fee calculation includes all hazardous products and those non-hazardous products voluntarily included in the program, when sold in non-returnable rigid metal and plastic HDPE containers from 1L/1kg up to 220L/kg in declared content used in packaging of crop protection and animal health products. Please **do not include 1000lt IBC's** in the declaration.

The membership fee is payable is 6 cents per litre or kilogram of saleable product.

Container Size (L or kg)	Number of Containers Sold		Calculation of Volume Sold (L or kg)	%	%	%	%	%	%	%	Total
	Metal	Plastic		NSW/ ACT	VIC	TAS	QLD	WA	SA	NT	
Please only include a value (eg 20)			0.00								0
			0.00								0
			0.00								0
			0.00								0
			0.00								0
			0.00								0
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			0.00								0
			0.00								0
			0.00								0
			0.00								0
			0.00								0
Total Sales Volume			0.00								
x \$0.06			\$ 0.00								
Goods & Services Tax (10%)			\$ 0.00								
Total Due			\$ 0.00								

DECLARATION

I am authorised by the Reporting Organisation to prepare this report on its behalf.
 The information contained in this report is true and correct to the best of my information, knowledge and belief (accidental errors and omissions excepted), and has been prepared with due regard to the books and records of the Reporting Organisation.

Full Name	<input style="width: 150px;" type="text"/>	Signature	<input style="width: 150px;" type="text"/>
Date	<input style="width: 150px;" type="text"/>		

*Please note a tax invoice will be issued on the return of the completed declaration to Manufacturers@drummuster.org.au.