

# Request for Applications

## Non-Exclusive License for Seed Production, Marketing and Sales of the CLEARFIELD\* Soft White Winter Wheat Variety 'ORCF-101'

### Background

A non-exclusive license agreement is being offered to eligible seed companies by the State of Oregon, acting by and through the Oregon University System on Behalf of Oregon State University (OSU). The license agreement constitutes a nonexclusive right and license to produce, promote, and sell seed of the variety 'ORCF-101', without right to sublicense, under terms outlined in the Agreement, under requirements of applicable U.S. Patent law, and under laws of the Plant Variety Protection Act (PVPA).

'ORCF-101' is a soft white winter wheat variety developed and owned by Oregon State University (OSU) which possesses CLEARFIELD\* herbicide resistance technology. The CLEARFIELD\* wheat technologies are owned by BASF Corporation and protected under U.S. Patent law (U.S. Patents 6,211,438; 6,211,439; 6,222,100, and others pending). The wheat variety 'ORCF-101', which possesses CLEARFIELD\* wheat technologies, is subject to protection under the U.S. PVPA.

### Eligibility Requirements

Prior to issuance of the seed license, the applicant must warrant that the following conditions and criteria have been met and must provide documentation to assure compliance. These conditions and requirements remain in effect for the duration of the seed license.

1. Seed Associate has prior experience with production and sales of certified seed and has produced and sold a certified generation of cereal seed in each of the last three consecutive cropping years.
2. Seed Associate is, and shall remain, in good standing with Association of Official Seed Certifying Agencies and their member state seed certification agencies, such as the OSU Seed Certification Service, Washington State Crop Improvement (WSCIA), Idaho Crop Improvement Association (ICIA), or their designees.
3. Seed Associate has not been convicted of any state or federal seed laws violations within the past 5 years. Seed Associate grants OSU permission to review any pertinent records with appropriate state and federal agencies.

If a violation has occurred in the past 5 years and the violation has been effectively resolved, an applicant may appeal for waiver of this requirement. Decision to waive this

requirement will be made in consultations between the OSU Technology Transfer office and representatives of BASF. For any violation, provide a complete accounting of the violation, actions that were taken to resolve the situation, and actions taken to prevent future violations.

4. Seed Associate shall obtain, and maintain in effect, general liability insurance in the combined amount of one million dollars (\$1,000,000) per occurrence for bodily injury and property damage against any claims, demands, or causes of action or damages, including reasonable attorneys' fees, that may be related to seed production, sales, or marketing of the licensed variety.

5. Seed Associate is capable, willing, and able to electronically report sales and inventories to OSU and BASF through a BASF-sponsored web-based database system. Seed Associate is responsible for reporting of any seed sale to the BASF web site within 14 days of effective date of sale. Consistent failure of Seed Associate to report sales within the 14-day timeline will lead to termination of this Agreement by OSU.

6. Seed Associate has signed and agrees to the BASF CLEARFIELD\* Wheat Stewardship Grower Agreement (attached) for authorized use and planting of certified seed stocks of CLEARFIELD\* wheat varieties. The BASF CLEARFIELD\* Wheat Stewardship Grower Agreement must be renewed annually.

7. Seed Associate must participate in OSU-sponsored training that addresses license terms and conditions, performance requirements, and technology stewardship.

8. Seed Associate must continue to meet conditions established in the eligibility requirements during the duration of the license. Failure to do so will be cause for termination.

## **Performance Requirements**

The Seed Associate warrants that the following provisions and performance requirements will be met during the duration of the License Agreement. Failure to do so may result in termination of the License Agreement.

1. Fields and seed stocks are to be managed to produce high quality certified seed per standards of the official state seed certification agency and attached CLEARFIELD\* Wheat Seed Production Protocol. The labeled rate of Beyond™ will be applied to all CLEARFIELD\* variety seed increase fields. Seed samples will be submitted to a BASF approved laboratory for analysis of percent CLEARFIELD\* tolerant seed prior to sales. Seed Associate is responsible for cost of the test for each seed lot. A minimum of 95% of seed must be rated as herbicide tolerant for the stocks to be sold as a class of certified seed.

2. Protected under PVPA, title 5, ORCF-101 can be sold only as a class of certified seed. Registered or Foundation Seed stocks may only be sold to other OSU-approved Seed Associates. Furthermore, all seed sales to growers shall be of Certified seed class. Certified seed stocks may be used to plant a single commercial crop, and may not be used

to generate seed stocks for replanting. Stocks that fail to meet certification standards cannot be sold or used as seed and must either be sold into commercial channels as non-seed grain or destroyed. Documentation of such disposition, such as with weight or scale tags, must be provided.

3. Seed is to be produced, conditioned, stored, and sold according to applicable rules, regulations, and requirements of the official state seed certification agencies. Seed will be properly labeled with certified seed tag or retail bulk sales certificate including required PVPA and applicable patent notices. Seed will be labeled to comply with applicable federal and state seed labeling laws and such other labeling requirements including trademarks as specified by BASF and OSU.

4. Prior to sale or shipment of any CLEARFIELD\* seed, the Seed Associate must confirm that purchaser has signed the BASF CLEARFIELD Wheat Stewardship Grower Agreement and is eligible to purchase seed. If purchaser has not signed the Stewardship Grower Agreement, purchaser is to be referred to an authorized BASF representative for stewardship training, review and signature of the Grower Agreement.

5. Seed Associate agrees to support and assist in enforcement of PVPA, applicable patents, the BASF Grower Agreement, and this Agreement, by reporting violations to BASF, OSU, or appropriate state regulatory agencies. Seed Associate shall use due diligence and all reasonable efforts to monitor whether any seed of ORCF-101 is being produced, used, or sold as seed by unauthorized persons. If Seed Associate shall become aware of violation of any applicable law, Seed Associate shall promptly notify OSU and/or BASF and provide all information available to Seed Associate regarding the violation. Seed Associate shall have no right or obligation to undertake any independent action to enforce provisions of the PVPA. However, Seed Associate may be required to be a party in legal action taken by OSU or BASF should a violation involve customer or subcontractor working on behalf of the Seed Associate.

6. Seed Associate will keep and maintain production, inventory, and sales records and provide copies of such to OSU or BASF on request. Seed Associate will collect and remit royalties from certified seed sales of ORCF-101 to OSU per the schedule in the License and Royalty Fees section of the Agreement. Seed Associate agrees to provide University with annual report summarizing the amount of seeded acreage of ORCF-101, total amount of seed sold, total non-seed uses or sales, and provide payment for accrued royalties on or before January 31 for seed sold during the preceding calendar year. Seed Associate shall retain a 2 lb representative file sample of each seed lot produced, handled, or sold for a period of not less than three years after final distribution of the seed lot.

7. Seed Associate shall ensure that proper trademarks, tradenames, PVPA and patent notifications, and product labeling protocols are used as required by certification agencies, OSU, and BASF on seed packaging and sales documents and in advertising and other correspondence.

## **License fees and royalties**

1. A one-time application fee of \$100 is to be paid to OSU prior to review of application to become a Seed Associate.
2. Upon execution of the Agreement to become a Seed Associate, the Seed Associate shall pay OSU a one-time license access fee of \$2,000.
3. An annual license renewal is required, with fee of \$100 to be paid to OSU, due on or before July 1 of each year.
4. Seed Associate shall pay OSU a royalty on the sale of all Certified seed, or Certified class seed used for Seed Associates own general production, at a rate of \$0.02 per pound of seed. The \$0.02 royalty shall not be assessed on sales of Foundation or Registered seed classes.
5. If the Seed Associate has seed stocks which cannot be sold as certified class seed, the Seed Associate may, without obligation to pay a royalty to OSU, a) destroy or process the stocks in a manner which results in loss of identify of the variety, or; b) sell or co-mingle with other grain into commercial channels as non-seed wheat, provided there is no opportunity the stocks can or will be used as seed. Documentation of disposition, such as with weight or scale tags, commercial invoices and inventory records must be provided.

## **Access to Future OSU CLEARFIELD\* Varieties**

The OSU Wheat Breeding Program is continuing efforts to develop CLEARFIELD\* wheat varieties for production in the Pacific Northwest. Licensed Seed Associates for ORCF-101 are eligible to participate in future OSU CLEARFIELD\* wheat variety releases without payment of an additional license access fee. Eligibility is restricted, however, to OSU CLEARFIELD\* varieties which are derived from the parent cultivar CV9804 and carry a single gene for herbicide resistance.

Seed growers who decline to participate or are currently ineligible in licensing of ORCF-101 may participate and apply for seed licenses of future OSU CLEARFIELD\* varieties. OSU reserves the right, as is required under its license agreement with BASF and with 1-year prior notification to Seed Associates, to withdraw a CLEARFIELD\* variety from the market and discontinue production of Foundation Seed.

## Application Instructions

Prior to developing the application, review the Eligibility Requirements, Performance Requirements, License Fees and Royalties, and the Seed License Agreement contract.

1. Applications for license of ORCF-101, and \$100 application fee (payable to Oregon State University), are to be sent to:

Bill Hostetler  
Director of Technology Transfer  
312 Kerr Administration Bldg  
Oregon State University  
Corvallis, OR 97331-2140  
Phone: 541-737-3439  
FAX: 541-737-3093

Applications may be submitted to OSU at any time during the year. However, to receive an allocation of Foundation Seed for fall planting, license applications and seed allocation requests must be received no later than August 1 of that same year.

2. In the application, please document compliance with all eligibility requirements. Include specific information on:

- a. Name, address, and contact information.
- b. Experience with certified seed production and sales, particularly with small grains in the last three years.
- c. Current and past association, experience, and standing with state seed certification agencies.
- d. State or federal seed law violations that occurred during the last 5 years. For any violation, provide a complete accounting of the violation and actions that were taken to resolve the situation.
- e. Provider of general liability insurance, contact information, policy number, and amount and type of coverage.
- f. Internet provider, current email address, and capability for electronic reporting.
- g. List of individuals responsible and able to present the BASF CLEARFIELD\* Wheat Stewardship Grower Agreement and witness, or confirm, grower signature of the Grower Agreement.
- h. Date for which representatives participated in OSU-sponsored training for seed associate licenses and technology stewardship.
- i. Indicate quantity of Foundation Seed agreed to be purchased in fall, 2003.

j. Include the following statements above the signature line:

'The information provided herein is warranted to be accurate and complete and no information pertinent to review of the application has been withheld. Oregon State University and BASF are granted permission to verify any and all information provided in the application. This application is signed by a duly authorized representative.'

Failure to fully document eligibility will result in return of the application and delays in processing. License applications will be reviewed in the OSU Technology Transfer Office within approximately 1 month of receipt of the application.

4. Upon approval of the application, the Seed License agreement will be offered for signature. The signed License Agreement is to be returned to the OSU Office of Technology Transfer along with the \$2,000 license fee. Once this is signed and complete, you will be eligible to purchase Foundation Seed stocks.

### **Allocation of Foundation Seed**

1. OSU will direct the allocation of Foundation Seed stocks. All applicants and seed requests received prior to August 1 will be considered in a common pool for initial allocations. Allocations will be announced in mid-August. Seed stocks that remain after the initial allocations are announced will be available on a first-come first-serve basis.

2. License applications and seed requests will be considered after August 1. However, these requests will be filled only from Foundation Seed stocks that remain, or are unsold, after the initial allocation process is complete. OSU cannot guarantee availability of Foundation Seed for applications received after August 1.

3. Minimum Foundation Seed purchase is 20 units, where each unit is considered a 60 lb bag of seed. Purchases of Foundation Seed stocks are to be arranged directly through the Foundation Seed Service of the Washington State Crop Improvement Association. Foundation Seed price of ORCF-101 for fall, 2003, is \$0.46 per pound plus a surcharge of \$0.05 per pound. The surcharge is to cover costs of variety release and Plant Variety Protection and will be assessed for the first two years of Foundation Seed sales (2003 and 2004).

4. If total seed requests exceed available stocks for fall, 2003, then all requests over 20 units will be reduced proportionally. Seed will be available for pick-up from the WSCIA Foundation Seed Service in late August. In the future, Seed Associates will be encouraged, and may be required, to contract for Foundation Seed Stocks one year in advance of distribution.