

Sole and Exclusive Export Licence Agreement

The Rice Marketing Board for the State of New South Wales
(the Board)

Ricegrowers Limited
(Ricegrowers)

Sole and Exclusive Export Licence Agreement

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Date	27th June 2023
Parties	<p>The Rice Marketing Board for the State of New South Wales, established under the <i>Rice Marketing Act 1983 (NSW)</i> of 57 Yanco Avenue, Leeton, New South Wales (Board)</p> <p>Ricegrowers Limited (ABN 55 007 481 156) having its registered office at 57 Yanco Avenue, Leeton, NSW (Ricegrowers)</p>
A	Rice is a commodity proclaimed for the purposes of the <i>Rice Marketing Act 1983</i> (the Act).
B	The Board is a marketing board under the Act.
C	Ricegrowers' shareholders include the majority of Rice Producers in Australia and Ricegrowers is engaged in the milling and marketing of Rice for Australian and overseas markets.
D	The Act enables the Board to appoint Authorised Buyers of Rice for domestic sale or supply (subject to conditions to be determined by the Board), including a condition that Rice must not be sold or supplied outside of Australia without the Board's written approval.
E	Ricegrowers is appointed an Authorised Buyer pursuant to the Appointment Order.
F	The Board has granted the Licence to Ricegrowers for the Term.
G	The parties wish to set out in this Agreement the terms and conditions governing the Licence.

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IT IS AGREED as follows.

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, including the Recitals, the following definitions apply unless the context requires otherwise.

Act means the *Rice Marketing Act 1983 (NSW)*.

Agreement means this Agreement.

Appointment Order means the order made by the Board under section 51(1) of the Act and executed by the Board on 7 November 2008 and Ricegrowers on 27 November 2008 appointing Ricegrowers as an Authorised Buyer, a copy of which is attached as an Annexure to this Agreement.

Authorised Agent means an agent appointed by the Board pursuant to and in accordance with section 50 of the Act.

Authorised Buyer means a buyer authorised by the Board pursuant to and in accordance with section 51 of the Act.

Board means the Rice Marketing Board for the State of New South Wales deemed to have been constituted under the Act pursuant to clause 2(1)(g) of Part 2 of Schedule 4 of that Act.

Change in Control means any change in the Control of an entity, whether directly or indirectly.

Commencement Date means 1 July 2023.

Control has the meaning given by section 50AA of the *Corporations Act 2001 (Cth)*.

CPI means the Consumer Price Index (all groups – weighted average of eight capital cities) published by the Australian Bureau of Statistics.

Elected Member means an elected member of the Board as constituted under the Act, including a person appointed to the Board by the Governor (on the nomination of the Minister) to fill a casual vacancy who is or is deemed by the Act to be an elected member of the Board.

Eligibility Requirements means clause 11.1 of the constitution of Ricegrowers applying to the appointment and continuation in office of Elected Members as directors of Ricegrowers.

Insolvency Event means that a party:

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) is insolvent within the meaning of section 95A of the *Corporations Act 2001*;
- (c) must be presumed by a court to be insolvent by reason of an event set out in section 459C(2) of the *Corporations Act 2001*;

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- (d) fails to comply with a statutory demand (within the meaning of section 459F(1) of the *Corporations Act 2001*);
- (e) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
- (f) has a controller (within the meaning of section 9 of the *Corporations Act 2001*) or similar officer appointed to all or any of its property;
- (g) has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

Licence has the meaning given in clause 2.1 (Licence grant).

Material Breach means a breach of any of the following provisions of this Agreement:

- (a) clause 2 (Licence);
- (b) clause 3 (Acceptance of Rice);
- (c) clause 4 (Buyer of Last Resort);
- (d) clause 5.2 (Access to records);
- (e) clause 6 (Fees and other payments);
- (f) clause 16 (Service Level Agreement).

Merchantable Quality means paddy rice that is capable of being sold in domestic or international markets as determined by the Board under s 47(a) of the Act through this Agreement.

Minister means the Minister who administers the Act.

Paddy Tonne Equivalent means the amount of unprocessed Rice required to produce one tonne of processed Rice for sale or supply outside Australia.

PBR has the same meaning as in section 11 of the *Plant Breeder's Rights Act 1994 (Cth)*.

Previous SEEL means the Sole and Exclusive Export Licence Agreement entered into between the Board, Ricegrowers and Riviana Australia Pty Ltd on 28 June 2007.

Public Domain Seed means Rice varieties in which no person, including Ricegrowers and its related bodies corporate (as defined in the *Corporations Act 2001(Cth)*) has any intellectual property rights or otherwise has any control over, other than the fact that Ricegrowers (or any of its related bodies corporate (as defined in the *Corporations Act 2001(Cth)*) had possession of the Rice by virtue of the Vesting Proclamation as applicable up to 30 June 2006.

Rice means rice produced in the State.

Rice Distributor means a person authorised by the grantee of a PBR to distribute Rice seed.

Rice Crop means Rice produced by Rice Producers in a single Rice crop period.

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Rice Producers means any and all producers (as that term is defined in the Act) of Rice in the State.

State means the State of New South Wales.

Term means the period commencing on the Commencement Date and continuing for the period of the Vesting Proclamation or such further period or periods agreed between the parties in writing.

Uniform Price means the per tonne price for a variety of rice for a season paid to Rice Producers by Ricegrowers.

Varietal Commercialisation Agreement means an agreement between Ricegrowers and the grantee of a PBR or a Rice Distributor relating to the supply and use of Rice seed.

Vested Commodity means Rice coming into existence, as described in the Vesting Proclamation, being paddy rice.

Vesting Proclamation means the Proclamation of the Governor made under section 56 of the Act on 1 June 2022 and published in NSW Government Gazette No 260 of 17 June 2022 as amended, substituted or replaced by a further proclamation or proclamations made under section 56 during the Term.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely.
- (b) a gender includes all genders.
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) a reference to a person includes a body corporate, an unincorporated body or other entity and conversely.
- (e) a reference to any legislation or to any provision of any legislation includes any amendment to or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
- (f) a reference to conduct includes any omission and any statement or undertaking, whether or not in writing.

2. Licence

2.1 Licence grant

Pursuant to section 51A(2) of the Act and clause 2(a) of the Appointment Order, in consideration of Ricegrowers entering into and complying with this agreement, the Board grants approval to Ricegrowers to sell or supply Rice to persons outside of Australia for the Term subject to the

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terms of the Appointment Order and this Agreement ("**Licence**").

2.2 Exercise of powers

Ricegrowers agrees to exercise the powers conferred by the Licence strictly in accordance with the Act and any other applicable laws and shall not engage in any conduct which is contrary to the Act or any other applicable laws. Without limitation, Ricegrowers agrees to keep all financial records in such a manner as to be capable of being audited in accordance with clause 5.2.

2.3 Application of order

The conditions set out in the Appointment Order apply to Ricegrowers as an Authorised Buyer and Licence holder in relation to the sale and supply of Rice both within and outside of Australia.

2.4 Sole and Exclusive Licence

The grant of the Licence is sole and exclusive to Ricegrowers and the Board will not, during the Term, grant its approval to any other person (whether as Authorised Agent or Authorised Buyer) to sell or supply Rice outside of Australia.

2.5 Operation of previous Sole and Exclusive Export Licence Agreement

The parties agree that:

- (a) the Previous SEEL is terminated with effect from the Commencement Date;
- (b) the termination of the Previous SEEL does not affect any accrued rights, obligations, claims or liabilities arising under the Previous SEEL before the Commencement Date.

2.6 Intervening Law

If giving effect to clause 2.4 becomes illegal under any intervening Law or clause 2.4 is rendered unenforceable:

- (a) the Board is not in breach of this Agreement by not giving effect to clause 2.3; and
- (b) clause 3 no longer applies.

3. Acceptance of Rice

3.1 Buyer of Last Resort

In consideration of the grant of the Licence, Ricegrowers must:

- (a) comply with section 61 of the Act relating to the acceptance of the Vested Commodity of Merchantable Quality from Rice Producers as if that section applied to it;
- (b) communicate to Rice Producers the basis upon which its obligations under clause 3.1(a) will be met.

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3.2 Crop marketing and payment

In consideration of the grant of the Licence, Ricegrowers must:

- (a) operate a crop marketing and payment scheme in relation to the Vested Commodity as if section 64 of the Act applied to it, being a scheme that is equitable in that it does not discriminate between Rice Producers in the absence of a demonstrable and proportionate commercial basis for doing so; and
- (b) communicate to Rice Producers the basis upon which its obligations under 3.2 will be met.

3.3 Price payable to Rice Producers

The price payable by Ricegrowers to Rice Producers for Rice accepted under clauses 3.1 and 3.2 must seek to achieve the best possible returns for Rice Producers.

3.4 Variations in Price

Notwithstanding the requirements of this clause 3, Ricegrowers may:

- (a) pay a price which is greater than the Uniform Price to a Rice Producer who agrees to produce Rice of a particular variety and in a particular quantity as specified by Ricegrowers, as a means of encouraging the optimum level of production of that variety of Rice; and
- (b) pay a price which is less than the Uniform Price if the payment is made in cash on delivery of the Rice to Ricegrowers.

4. Availability of Rice Seed

Where Ricegrowers makes seed available to Rice Producers, Ricegrowers must:

- (a) make seed, available to all Rice Producers, or their agents, on an equitable basis by not discriminating between Rice Producers in the absence of a demonstrable and proportionate commercial basis and otherwise in accordance with Ricegrowers' obligations under any applicable Varietal Commercialisation Agreement; and
- (b) meet its obligations in the service level agreement (entered into between the parties under clause 14) to communicate to Rice Producers, or their agents in a clear and transparent manner, the basis upon which rice seed will be made available to Rice Producers, including the timeframe for seed ordering.

In this clause, **seed** means Rice seed which is generally available and is either:

- (a) Public Domain Seed;
- (b) a variety protected by PBR, which is owned by Ricegrowers (including jointly); or

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- (c) a variety protected by PBR, in respect of which Ricegrowers holds exclusive rights to commercialise under a Varietal Commercialisation Agreement.

5. Role of Board

5.1 Review of performance

Ricegrowers acknowledges and agrees that, notwithstanding any provision of this Agreement and subject to the Act, the Board shall have a continuing independent role, and shall be entitled to monitor, audit and report to the Minister on the performance by Ricegrowers of its powers, authorities and duties under this Agreement (including under any service level agreement entered into between the parties under clause 14 of this Agreement).

5.2 Maintain records

Ricegrowers shall keep and maintain all records in connection with the performance by Ricegrowers of any and all of its activities under the Appointment Order for a period of not less than seven (7) years following the creation of any such record.

5.3 Access to records

Ricegrowers undertakes to provide full and free access by the Board and its employees and advisers, and by the Minister's nominees, to all records (with due regard for the need to protect confidential information, including marketing secrets, competitively sensitive or commercially valuable information from disclosure or publication by the Board) in connection with the performance by Ricegrowers of any and all of its activities under the Appointment Order.

5.4 Resources

For the purposes of clause 5.3, Ricegrowers must provide to the Board reasonable office, secretarial, accountancy and other staff resources.

6. Fees and other payments

6.1 Levying of fees

The Board may from time to time, in its absolute discretion:

- (a) require Ricegrowers to pay fees to the Board with respect to Ricegrowers' continuing role as the exclusive exporter of Rice under the Licence; and
- (b) vary, substitute or abolish such fees.

Where the Board increases the fees (other than a CPI increase to the Annual Fee) in accordance with this clause 6, the Board must disclose the increase to Rice Producers.

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6.2 Annual fee

- (a) Without limiting clause 6.1, by not later than 31 August in each year, or by such other time specified by the Board, Ricegrowers must pay to the Board an annual fee in an amount up to a maximum amount of \$450,000 +GST indexed annually in accordance with paragraph (b) in consideration of the continuing grant of the Licence.
- (b) The maximum amount of the annual fee is to be indexed on 1 August in the second and subsequent years during the Term in accordance with the most recently published annual movement in the CPI.
- (c) The maximum amount of the Annual Fee payable in each year during the Term under this clause 6.2 is as follows:
 - (i) first year - \$450,000 +GST,
 - (ii) second year - \$450,000 +GST indexed in accordance with paragraph (b),
 - (iii) third and subsequent years – the indexed maximum amount of the Annual Fee applying to the previous year indexed in accordance with paragraph (b).
- (d) For the purpose of this clause 6.2, the Board will:
 - (i) issue a tax invoice to Ricegrowers for the annual fee;
 - (ii) issue a payment receipt to Ricegrowers upon receipt of payment of the fee.

6.3 Variable fee

- (a) By not later than 31 August in each year, Ricegrowers must pay to the Board the variable fee determined by the Board in accordance with clause 6.4(c) for each Paddy Tonne Equivalent purchased by Ricegrowers from the Rice Crop in the previous financial year.
- (b) For the purpose of clause 6.3(a):
 - (i) the Board will issue a tax invoice to Ricegrowers for the variable fee by not later than 31 July in the relevant year;
 - (ii) Ricegrowers must pay the annual fee by no later than 31 August in the year in which the tax invoice for the annual fee is issued,
 - (iii) the Board will issue a payment receipt to Ricegrowers upon receipt of payment of the variable fee.
- (c) The Board will determine the variable fee each year with reference to:
 - (i) the anticipated operating expenses of the Board;
 - (ii) any projected shortfall in year-end Board Equity after deducting two years' operating expenses;
 - (iii) the annual fee set each year under clause 6.2; and
 - (iv) the variable fee charged in preceding years.

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6.4 Adjustments

If evidence is available establishing to the satisfaction of the Board that the Paddy Tonne Equivalent purchased by Ricegrowers from the Rice Crop in previous financial year should be revised after the payment of the variable fee:

- (a) Ricegrowers must make an adjustment payment to the Board reflecting any increased amount arising from the application of the variable fee to the revised Paddy Tonne Equivalent; and
- (b) the Board must provide a refund to Ricegrowers reflecting any decreased amount arising from the application of the variable fee to the revised Paddy Tonne Equivalent.

6.5 GST

If GST is payable on a taxable supply in connection with this Agreement, the party providing the consideration for that taxable supply must also pay to the supplier the GST amount as additional consideration unless that the consideration for the taxable supply is expressly stated to be GST inclusive.

7. Appointment of Directors

7.1 Appointment as Ricegrowers directors

Ricegrowers must seek the approval of its A Class Shareholders to the appointment to the Ricegrowers board of any Elected Member nominated by the Board who consents to act and satisfies the Eligibility Requirements for elected members of the Ricegrowers board under the Ricegrowers constitution.

7.2 Term of appointment

Ricegrowers is required to make any appointment under clause 7.1 until the end of the Elected Member's term on the Board (subject to this Agreement being in place).

7.3 Application of clause

Clauses 7.1 and 7.2 apply where the Board nominates an elected Member for appointment to the Ricegrowers board in accordance with the Ricegrowers constitution:

- (a) following an election of members of the Board, and
- (b) where an Elected Member who has been appointed to the Ricegrowers Board either resigns or is not permitted by Ricegrowers to continue in their position on the Ricegrowers board or ceases to be an Elected Member of the Board before the end of their term on the Board.

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8. Statutory requirements

Ricegrowers expressly acknowledges that it is aware of, and will comply with and provide all assistance to the Board necessary for the Board to comply with, the statutory requirements that relate to the Board and the subject matter of this Agreement under the terms of the Act, the *Government Sector Audit Act 1983*, the *Annual Reports (Statutory Bodies) Act 1984* and any other relevant legislation.

9. Term

This Agreement commences on the Commencement Date and operates for the Term.

10. Indemnity

10.1 Indemnity

To the maximum extent permitted by law, Ricegrowers indemnifies the Board against all charges, costs, damages, expenses, liabilities and losses which the Board may sustain or incur arising directly or through third party claims from any negligent or wilful act or omission by Ricegrowers in connection with this Agreement or any breach of this Agreement by Ricegrowers.

10.2 Proportionate liability

Ricegrowers' liability under clause 10.1 will be reduced to the extent that the charges, costs, damages, expenses, liabilities or losses sustained or incurred by the Board arises as a result of any negligent or wilful act or omission by the Board or the Board's breach of this Agreement.

11. Termination

11.1 Termination for convenience

Either party may terminate this Agreement for convenience during the Term by giving the other party at least five years' written notice of termination.

11.2 Termination by either party

This Agreement may be terminated by either party immediately in the event that:

- (a) either party commits a Material Breach of this Agreement and fails to remedy that breach within 30 days after it has received written notice from the non-defaulting party requiring remedy of the breach; or
- (b) the Board is dissolved under the provisions of the Act or for whatever reason; or

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- (c) Ricegrowers ceases to be an Authorised Buyer, for any reason; or
- (d) the Vesting Proclamation vesting all Rice in the Board is revoked or not renewed; or
- (e) either party suffers an Insolvency Event.

11.3 Termination by the Board:

This Agreement may be terminated by the Board in the event that:

- (a) the A Class Shareholders of Ricegrowers fail to approve the appointment to the Board of Ricegrowers of more than one Elected Member referred to in clause 7.1 during the Term; or
- (b) there is a Change in Control of Ricegrowers, without the prior written consent of the Board.

11.4 Transition

If this Agreement is terminated under clause 11.1 or 11.2, the parties agree to work together in good faith to agree appropriate transitional arrangements.

11.5 Survival

This clause 11 survives termination of this Agreement.

12. Good faith

- (a) Ricegrowers must carry out its functions under this Agreement in good faith, with impartiality and for a proper purpose.
- (b) Ricegrowers will not, in carrying out its obligations under this Agreement, act in a way that causes the Board to act inconsistently with its objects established by proclamation.

13. Notices

- (a) Any notice, consent, information, application or request that is given or made to a party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - (i) delivered or posted to that party at its address set out in in this Agreement; or
 - (ii) emailed to that party at its email address known by or provided to the other party for the purposes of this Agreement.
- (b) If a party gives the other party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or emailed to the latest address.

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- (c) Any notice, consent, information, application or request is to be treated as given or made if it is:
 - (i) delivered, when it is left at the relevant address;
 - (ii) sent by post, 2 business days after it is posted; or
 - (iii) sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- (d) If any notice, consent, information, application or request is delivered or sent on a day that is not a business day, or is delivered or sent after 5pm on a business day, it is to be treated as having been given or made at the beginning of the next business day.

14. Service Level Agreement

14.1 Requirement for service level agreement

The parties must use their best endeavours to enter into a service level agreement establishing reporting and engagement protocols in relation to Ricegrowers' obligations under the Licence within 90 days of the Commencement Date.

14.2 Parties must act co-operatively

The parties must co-operate in good faith to keep the service level agreement under regular review as the Board considers necessary or convenient in order to promote the object of the Board referred to in section 11(7) of the Act.

14.3 Contents of service level agreement

The service level agreement may address such matters as the Board considers reasonably relate to the performance by Ricegrowers of its obligations under the Licence and this Agreement.

14.4 Status of service level agreement

The provisions of the service level agreement form part of this agreement to the extent to which they are not inconsistent with this Agreement.

15. Entire Agreement

This Agreement contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties in respect to its subject matter.

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16. Transparency

The parties agree and acknowledge that upon execution this Agreement will be made publicly available.

17. Amendment

This Agreement may be amended only by another agreement executed by all parties.

18. Assignment

The rights and obligations of each party under this Agreement must not be assigned, charged or otherwise dealt with, and no party shall attempt or purport to do so, without the prior written consent of all the parties.

19. No Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

20. Costs

Each party shall bear its own costs arising out of the preparation of this Agreement. Ricegrowers must pay any stamp duty payable on this Agreement.

21. Severability of Provisions

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

22. Governing Law

This Agreement is governed by the laws of the State. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

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Executed and delivered as a Deed in Sydney.

Executed as a deed in accordance with
s127 of the Corporations Act by **The Rice
Marketing Board for the State of New
South Wales:**



Board Member Signature



Secretary Signature

Victoria Taylor

Print Name

Nyree Dunn

Print Name

Executed as a deed in accordance with
s127 of the Corporations Act by
Ricegrowers Limited:



Director Signature



Director/Secretary Signature

Rob Gordon

Print Name

Kate Cooper

Print Name