

## **PIVOT BIO, INC – PRODUCT LICENSE TERMS AND CONDITIONS**

These Pivot Bio Inc., a Delaware corporation, (“*Pivot Bio*”) Product License Terms and Conditions (“*Terms*”) govern the access and use by you (“*Grower*”) of Pivot Bio’s nitrogen producing microbial products, PIVOT BIO PROVEN® and/or PIVOT BIO RETURN®, including any next generation commercial products available to Grower (“*Product(s)*”). The Terms apply regardless of how Grower places an order or purchases Product.

### **PRODUCT INSTRUCTIONS AND ADDITIONAL TERMS**

Grower agrees to comply with all Product packing labels, use instructions, and additional terms, including as may be unilaterally amended or updated by Pivot Bio upon notice to Grower from time to time at [www.pivotbio.com/product-license-terms](http://www.pivotbio.com/product-license-terms) or otherwise communicated to Grower by U.S. mail, email or other written form (“*Product Instructions*”), which are incorporated into and are part of these Terms. Grower’s use of the Products further confirms Grower’s agreement to be bound by any amended or updated Terms and Product Instructions. Grower acknowledges and accepts the terms of Pivot Bio’s *Privacy Policy* at [www.pivotbio.com/privacy-policy](http://www.pivotbio.com/privacy-policy).

### **LIMITED USE LICENSE**

Grower is granted a limited, non-exclusive, non-transferrable, non-sublicensable, revocable license to acquire and use Products in the United States solely to produce a single grain crop and only on such acreage under Grower’s direct control, as agreed with Pivot Bio, and subject to the Product Instructions. Grower agrees that the Product is to be used solely in the manner set forth in the Product Instructions and that the licenses granted herein are expressly conditioned on Grower’s use of Products in compliance with the Product Instructions on acreage under Grower’s direct control. Any use of Product that is non-compliant with the Product Instructions shall be deemed unlicensed use and infringement, and all rights in any unlicensed use of Product, including all data and intellectual property generated therefrom shall be solely owned by Pivot Bio. Grower shall not isolate, sequence, reverse engineer or otherwise modify Product without the express written permission of Pivot Bio. Grower shall not give, transfer, sell, loan, or otherwise distribute Product to any third party without written authorization by Pivot Bio. These Terms do not grant Grower a license under any technology or activity with respect to the Products except as expressly licensed herein.

### **LIMITATIONS OF WARRANTIES AND REMEDIES**

The results obtained by Grower will depend on external factors, including weather, soil, and other farming conditions. Grower shall be solely responsible for determining the suitability and appropriateness of the use of Product in Grower’s selected conditions. GROWER IS RECEIVING PRODUCT ON AN “AS IS” BASIS, AND PIVOT BIO MAKES NO WARRANTY THAT THE PRODUCT SOLD SHALL BE MERCHANTABLE OR FIT FOR ANY PARTICULAR PURPOSE, NOR DOES PIVOT BIO MAKE ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, EXCEPT SUCH AS ARE EXPRESSLY SET FORTH HEREIN. RESULTS MAY VARY.

If Grower believes the Product does not meet quality standards, is unable to be used as per the instructions, or otherwise is not suitable for use as agreed on Grower’s acreage, Grower will immediately inform Pivot Bio of Grower’s concerns in writing by contacting the Pivot Bio Customer Success Center located at 2600 South Loop Drive, Ames, IA 50010 or by email to: [support@pivotbio.com](mailto:support@pivotbio.com). Pivot Bio and Grower will confer regarding possible accommodation, including possibly replacing Product delivered with equivalent Product, providing additional Product at reduced cost, or refunding Grower’s purchase price, all at the election of Pivot Bio. Pivot Bio must have prompt notice of any claim arising from the Products so that an immediate inspection of any allegedly affected Product or crop can be made. Grower has ten (10) days from discovery of a condition that may lead to a claim to report such condition to Pivot Bio. Grower acknowledges that time is of the essence in reporting a condition, and that Pivot Bio would be prejudiced if unable to inspect the condition in a timely manner. Reporting any such condition within ten (10) days of discovery is a condition precedent to any claim against Pivot Bio arising from such condition. All claims must be filed within one (1) year from the date the Product was acquired by Grower or the claim is barred. GROWER’S EXCLUSIVE REMEDY AND PIVOT BIO’S SOLE LIABILITY FOR ANY CLAIM OR LOSS, INCLUDING WITHOUT LIMITATION, CLAIMS RESULTING FROM BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, STRICT LIABILITY OR NEGLIGENCE, SHALL BE LIMITED TO REPAYMENT OF THE PRICE OF PRODUCT. IN NO EVENT SHALL PIVOT BIO, ITS DISTRIBUTORS, RETAILERS, OR SALES REPRESENTATIVES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES.

### **N-OVATOR PROGRAM AND SUSTAINABILITY ASSETS**

Grower may choose to participate in the Pivot Bio N-Ovator® Program for certain year(s), pursuant to a separate N-Ovator Program Agreement and its accompanying annual Affidavit. Regardless of whether Grower so participates, Grower agrees it will not leverage any sustainability credit or asset, or enroll in any unauthorized third party program purporting to assign such interests generated from using Products committed to the N-Ovator Program.

## **PIVOT BIO, INC – PRODUCT LICENSE TERMS AND CONDITIONS**

### **MANDATORY ARBITRATION AND CLASS ACTION WAIVER**

**Any claim, action or dispute (“Dispute”) made or asserted by Grower against Pivot Bio, and arising out of and/or in connection with these Terms, must be resolved by confidential, binding arbitration.** The foregoing requirement to arbitrate specifically excludes any Dispute involving the infringement, validity, or enforceability of a patent or that otherwise arises under the U.S. patent laws. As a condition precedent to arbitration of a Dispute, a Party must provide written notice to the other Party describing such Dispute in a reasonably detailed manner. If the Parties fail to resolve such Dispute within 30 days, the Dispute shall be resolved by final and binding arbitration administered by the American Arbitration Association (“AAA”) according to its Commercial Arbitration Rules (“Rules”). With respect to each such unresolved Dispute, the arbitration shall be conducted by a single, independent and neutral arbitrator mutually selected by the Parties, and shall apply the laws of the State of Iowa, without regard to its conflicts of law principles. If the Parties cannot agree on an arbitrator within thirty (30) days from the filing of a demand for arbitration with the AAA, the arbitrator shall be chosen pursuant to the Rules. The arbitration shall be conducted in one of the following locations (whichever is closest to Grower’s farm location): Chicago, IL; Minneapolis, MN; St. Louis, MO; Dallas, TX; Denver, CO; San Francisco, CA; or New York, NY. The Parties shall bear their own costs and expenses of preparing testimony, presenting witnesses and evidence, including attorneys’ fees and costs. The costs of the arbitrator and the proceedings shall be borne by the Parties equally. The award of the arbitrator, and the reasons for the arbitrator’s decision, shall be in writing and shall be binding and may be enforced by any court of competent jurisdiction. The arbitrator shall have exclusive authority to (a) determine the scope and enforceability of this Arbitration Section and (b) resolve any dispute related to the interpretation, applicability, enforceability or formation of this Arbitration Section including, but not limited to, any assertion that all or any part of this Arbitration Section is void or voidable. The arbitration will decide the rights and liabilities, if any, of Grower and Pivot Bio. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum’s rules, and the Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon Grower and Pivot Bio. The arbitration proceedings and results shall remain confidential and shall not be disclosed without the written agreement of the Parties, except to the extent necessary to effectuate the decision or award or as otherwise required by law. **LICENSEE MAY ONLY BRING A CLAIM IN ARBITRATION IN LICENSEE’S INDIVIDUAL CAPACITY AND LICENSEE WAIVES ANY RIGHT TO DO SO AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OR PUTATIVE CLASS.**

If a decision is issued stating that applicable law precludes enforcement of any of this paragraph’s limitations as to a given dispute, claim, or request for relief, then such aspect must be severed from the arbitration and brought into the State or Federal Courts located in San Francisco, California. All other disputes, claims, or requests for relief shall be arbitrated. If any part or parts of this Arbitration Section is found under the law to be invalid or unenforceable, then such specific part or parts shall be of no force and effect and shall be severed and the remainder shall continue in full force and effect.

### **GOVERNING LAW**

These Terms and all claims relating thereto shall be governed by the substantive and procedural laws of the State of Iowa, as they presently exist or may hereafter be amended, without regard to conflicts of law principles.

### **TERM AND TERMINATION**

These Terms shall remain in effect until and unless terminated by Pivot Bio by providing written notice to Grower. Upon termination, Grower shall immediately cease all use of Products and destroy or return, upon request, any portion of unused Product still under Grower’s control. The Terms (including the most current Product Instructions) constitutes the entire agreement between Grower and Pivot Bio regarding the subject matter hereof. All prior negotiations and understandings between Grower and Pivot Bio with respect to such subject matter are hereby superseded.

### **QUESTIONS ABOUT THESE TERMS**

If you have any questions about these Terms, please contact the Pivot Bio Customer Success Center located at 2600 South Loop Drive, Ames Iowa 50010 at (877) 451-1977, or email [support@pivotbio.com](mailto:support@pivotbio.com).