

## EnVision® License Agreement

On this day \_\_\_\_ of \_\_\_\_\_, 200\_\_\_\_, New Vision Coop located at 1301 County Road 5, Worthington, Minnesota (hereafter called NVC) and Customer as identified on page 6 and Schedule B, agree as follows:

NVC is the owner of software titled EnVision® that selects seed varieties based on soil characteristics. This EnVision® License Agreement (hereafter called “Agreement”) shall define the conditions of use of the EnVision® software owned by NVC.

**Ownership Rights.** Customer acknowledges that NVC owns all right, title, and interest in EnVision® and all information and materials related to EnVision® and NVC’s business, regardless of form, including without limitation all trademarks, patents, copyrights, Proprietary Information, and other intellectual property rights in or related to, EnVision® and any modification, improvements, copy, derivative work or adaptation thereof, (NVC property). Customer is granted only a right to use EnVision® which right of use is not coupled with an interest and is revocable in the event of Customer’s breach of the terms hereof.

**Definitions.** “Proprietary Information” means, collectively and without regard to form, Confidential Information and Trade Secrets, and any third party information either party has agreed to keep confidential. “Confidential Information” means any non-public confidential or proprietary information other than Trade Secrets of value to its owner and any data or information defined herein as a Trade Secret but which is determined by a court of competent jurisdiction not to rise to the level of a trade secret under applicable law. “Trade Secret” means information that derives economic value, actual or potential from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. For the purposes of this Agreement, Trade Secrets include EnVision®, support documents and improvements to EnVision®.

**License.** NVC shall grant Customer a revocable, nonexclusive, nontransferable (except as noted herein) limited license to use EnVision® software in a form accessible by the Internet and password protected.

This license shall allow Customer to use EnVision® only at its designated locations listed on the attached schedule A and by the designated users listed on the attached schedule B.

**Reservations.** Any right or license not expressly granted herein to Customer is reserved to NVC. Except as expressly set forth herein, no express or implied license is granted to Customers to use, receive, market, reproduce, copy, sell, distribute, license, sublicense, lease, timeshare or rent EnVision® or any component thereof.

**Customer Responsibilities.** Customer shall be solely responsible for selecting qualified operators, providing proper operating environment, hardware and Internet accessibility for EnVision®.

Customer shall inform NVC of change in employment status of designated users within 7 (seven) days of that change. Customer may request additional users be added to this agreement provided they fulfill all terms of the agreement.

Customer shall appoint one person and one associate on Schedule B to serve as primary and secondary contact persons for NVC.

Customer shall comply with all terms contained herein.

**NVC Responsibilities.** NVC or its Designated Agent shall deliver operating EnVision® software and software access to Customer via the Internet.

NVC, or its designated Customer Service Agent, shall provide customer support through telephone, facsimile or Internet contact from 8 AM through 5 PM Monday through Friday, except national Holidays.

**Fees.** Customer shall pay a fee of \$3,000.00 to NVC upon contract acceptance. This fee shall constitute a prepayment of a \$500 training fee and prepayment of up to 5,000 acres and shall be due annually thereafter on August 1<sup>st</sup>.

Customer shall pay NVC \$0.50 (fifty cents) per acre per year for EnVision® use on all acres over 5,000. NVC will issue monthly statements when this occurs.

Customer shall pay applicable taxes (including sales tax) on Fees and Training.

Additional training and consultation is available at additional expense to the Customer.

Customer shall pay NVC upon receipt for the products and services listed.

NVC may decide to enhance or improve the EnVision® product at anytime. As such, Rates and Fees are subject to change upon thirty (30) days written notice to Customer by NVC.

**Term.** Regardless of sign up date, each contract year shall begin and run after July 31<sup>st</sup> of the following year and shall renew automatically thereafter on an annual basis unless terminated under the Termination provision stated herein.

Upon cancellation all remaining balances shall become immediately due and payable in full.

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**Confidentiality.** Customer acknowledges that EnVision® is a commercially valuable property and Proprietary Information, the design and development of which reflects the effort of skilled experts, the investment of considerable time and money and that the unauthorized disclosure or unauthorized use of the Proprietary Information will cause irreparable harm and injury to NVC. Customer covenants and agrees that, except as otherwise may be set forth herein, it shall take all appropriate action to ensure the confidentiality and security of NVC Proprietary Information.

Customer shall not, without prior written consent of NVC, either directly or indirectly disclose, distribute, publish, reproduce, decompile, reverse engineer or transmit NVC's Proprietary Information, the benefit thereof or any portions thereof, in whole or in part, by any means or in any form, except in confidence to its own employees listed on Schedule B. Customer shall not make use of EnVision® other than in connection with the rights granted under this Agreement and shall not copy, duplicate, replicate, transform or reproduce any NVC Proprietary Information. If requested by NVC, Customer shall require all employees and consultants to execute appropriate confidentiality agreements. If unauthorized use or disclosure occurs, Customer will immediately notify NVC and assist in recovering the Proprietary Information and prevent its subsequent unauthorized use or dissemination.

NVC shall have the right to provide Customer's contact information to participating seed companies in order to verify authorized dealership status.

NVC shall have the right to list Customer's name on NVC's standard customer list.

**Protection of NVC Property.** Customers shall not itself nor permit any party to:  
Use any NVC property to create any computer program, software or other material that performs, replicates or utilizes the same or substantially similar functions as EnVision®

Use EnVision® in a service bureau, time-sharing, network or share ware environment beyond those locations identified in Schedule A

Sell, sublicense, lease, assign, transfer, distribute, encumber or otherwise transform any NVC property, this Agreement or any of Customer's Rights hereunder.

**Trademarks.** NVC hereby grants Customer a non-exclusive right to use the registered trademark EnVision® for the term of this Agreement.

**Applicability.** The restrictions set forth in this Agreement shall apply in full force and effect after termination for Trade Secrets and any Confidential Information that arises to the level of Trade Secret as long as such information qualifies as a Trade Secret under applicable law and for all other Confidential Information during a period of five (5) years after the date of final disclosure.

**Limited Warranty.** NVC warrants for a period of twelve months after live date, EnVision® will perform substantially in accordance with the documentation. Customer acknowledges that EnVision® may not satisfy all of Customer's requirements, the use of EnVision® may not be uninterrupted or error free, modification of EnVision® by anyone other than NVC, or its Designated Agent will void the warranty. This limited warranty is conditioned upon the complete compliance with the terms and conditions of this Agreement.

**Performance Disclaimer.** EnVision® is a software application of data compiled both directly from seed companies and from public sources. While this data is believed to be accurate, the subjectivity in some of the appraisal categories and variability in growing conditions and appraisal standards may result in an undesired outcome in some EnVision® applications.

**Disclaimer of Warranties.** Except as provided herein, the parties agree and acknowledge that EnVision® is provided "as is".

**Limitation of Liability.** Customer's sole remedy under this limited warranty, NVC shall in its sole discretion 1) provide service to repair a nonconformity within this limited warranty 2) replace the non performing portion of the software or 3) refund of fees paid. NVC shall not be obligated to remedy, correct or cure any nonconformity in EnVision® if EnVision® has been misused or damaged in any respect, altered or modified by Customer or a third Party or if Customer has not reported to NVC the existence and nature of such nonconformity upon discovery thereof.

NVC SHALL NOT BE RESPONSIBLE FOR ANY OTHER DAMAGES  
CONSEQUENTIAL OR INCIDENTAL, CAUSED AS A RESULT OF CUSTOMER'S  
USE OF ENVISION®.

**Termination.** By either party if the other party commits a material breach of any of the terms or conditions of this Agreement and fails to cure such breach within thirty (30) days after delivery of notice thereof.

By NVC at its option, if Customer becomes insolvent, makes a general assignment of EnVision® to creditors, suffers or permits an appointment of a receiver for its business or assets, becomes subject to proceedings under bankruptcy or insolvency law whether domestic or foreign or is liquidated, voluntarily or otherwise.

**Post Termination Obligations.** Upon termination or expiration of this Agreement for any reason 1) all rights, licenses and access to EnVision® granted to Customer will immediately cease 2) Customer shall return to NVC or certify to NVC destruction of all copies of EnVision® documentation and all other Proprietary Information of NVC including copies of this Agreement and 3) all invoices and any other monies due to NVC by Customer shall remain due and payable in accordance with the terms thereof.

**Infringement by Others.** Each party shall promptly notify the other in writing of any infringements of rights in EnVision® that come to such parties' attention. In the event of any infringement of any rights granted to NVC hereunder, NVC shall have the first option to bring any action for such infringement on behalf of itself and Customer and Customer shall cooperate fully with NVC in such action; and in such event NVC shall bear the expenses of the action and shall have all proceeds recovered in such action.

**Survival Of Terms.** Upon termination or expiration of this Agreement, all terms of this Agreement shall survive as allowed by Minnesota State Law.

**Indemnification.** NVC represents and warrants that EnVision® does not infringe on any existing United States copyright or patent and that the use of EnVision® by Customer within the United States will not violate any trade secret or confidential rights of any third party. NVC agrees to defend indemnify and hold Customer harmless from and against any and all third party claims, demands, liabilities, damages, losses, awards, suits, proceedings, causes of action and suits, including reasonable attorney's fees for the violation of the above warranty. NVC's indemnification obligation is subject to all of the following: 1) Customer providing NVC with prompt written notice of the initial claim and filing of the lawsuit thereto 2) Customer permitting NVC to assume the entire claim and at its expense, select legal counsel and to defend, compromise or settle the lawsuit at NVC's sole discretion 3) Customer providing NVC with all available information, assistance and authority to enable NVC to defend, compromise or settle the lawsuit. In addition, should EnVision® become the subject of any infringement or other claim resulting from modification of EnVision®, from use of EnVision® in combination with products not specifically approved in writing by NVC for use with EnVision® this indemnification obligation shall be void. This section sets forth the exclusive remedy of Customer against NVC and the complete liability of NVC to Customer with respect to any claim under this section.

## **General Provisions**

**Equitable Relief.** Customer acknowledges that the performance of NVC's obligations hereunder and the rights and licenses granted to NVC hereunder are special, unique, unusual, extraordinary and intellectual character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at

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**(Equitable Relief cont.)** law, that a material breach by Customer of this Agreement will cause NVC great and irreparable injury and damage and therefore, that NVC shall be entitled to injunctive relief to prevent such injury and damage.

**Additional Rights.** In addition to, or in lieu of, its rights to terminate this Agreement upon a material breach by Customer, NVC shall have the right to pursue any remedies NVC may have in law or equity.

**Severability.** If any provision of this Agreement is declared by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect, its provisions being severable.

**Notices.** All notices or other communication required to be given by either Party, pursuant to this Agreement shall be given in writing by registered or certified mail, postage prepaid, addressed to each respective Party at the address shown hereafter:

Roy Minion  
New Vision Coop  
PO Box 67  
Jeffers, MN 56145  
507-628-5566

Customer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Governing Law.** The laws of the State of Minnesota shall govern this Agreement. Venue for any dispute hereunder shall be set forth in Nobles County, Minnesota.

**Amendments.** No amendments, alterations or modification to this Agreement shall be effective unless in writing and signed by authorized representatives of each party.

**Entire Agreement.** This Agreement and its Exhibits attached hereto constitute the entire undertaking and agreement of the parties hereto, with respect to the subject matter hereof, and supersede all prior agreements and understandings, written or oral, between the Parties with respect thereto.

If EnVision® is subscribed to online; Customer's online order receipt shall bind Customer to the terms of this Agreement and serve as a binding substitute for Customer's signature.

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Customer may sign the following signatory section and forward a signed copy of the complete Agreement to the address listed in “Notices” above in lieu of online execution.

In witness whereof, the parties have read, understand and agree to comply with the terms and conditions of this Agreement and is executed by authorized persons for New Vision Coop (“NVC”) and Customer:

New Vision Coop

Customer \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_ (Title)

Its \_\_\_\_\_ (Title)

## **Schedules**

Schedule A Customer Locations

Schedule B Customer Designated Users  
Primary  
Contact Information

Secondary  
Contact Information