PROGRAM PARTICIPATION AGREEMENT

AGREEMENT dated 2019

BETWEEN **AGSTEWARDSHIP AUSTRALIA LIMITED** ABN 41 133 108 853 of 8 Geils Court, Deakin, ACT 2600 ('**AgStewardship**')

AND _____

ABN

_____

"of Address"

_____

(together '**the Parties**').

Recitals

1. AgStewardship Australia Limited (**AgStewardship**) is responsible for the funding arrangements of ***drum****MUSTER*® and ChemClear® (**the Programs**). AgStewardship's members include the National Farmers' Federation, CropLife Australia Limited, Animal Medicines Australia Limited, and the Veterinary Manufacturers and Distributors Association.

2. Agsafe Limited (**Agsafe**) owns and operates the Programs, which provide for the safe collection of empty AgVet chemical containers and the disposal of obsolete or unwanted AgVet chemicals.

3. The ***drum****MUSTER*® program is a non-hazardous collection and recycling program by virtue of the triple rinse standard with an inspection process being imposed on each container pre entry into secure collection compounds.

4. The ChemClear® program is a hazardous waste collection and disposal program which requires more stringent environmental controls.

5. The ACCC has authorised AgStewardship on behalf of itself, its members, Agsafe Limited and current and future participants in the Programs, to impose a levy of six cents per litre or kilogram on the sale of agricultural and veterinary (**AgVet)** chemicals. The levy is used to fund the Programs, which undertake the collection of AgVet chemical containers and disposal of AgVet chemicals.

6. Manufacturers and suppliers of AgVet chemicals voluntarily participate in the Programs and in doing so agree to impose the levy on the supply of AgVet chemicals. Participating organsiatons then remit the proceeds of the levy to AgStewardship who then fund the Programs. The levy is passed through to end users in the final price of AgVet chemicals.

7. Participation in the Programs demonstrates a company's commitment to extended producer responsibility and environmental initiatives, showing customers and the community that he organsation takes its responsibility to Australian agriculture seriously.

8. This agreement supersedes all previous agreements for participation in the ***drum****MUSTER*® and ChemClear.

1. **ELIGIBILITY**

1.1 **ChemClear®**

A container is eligible for participate in the ChemClear® program if all of the following criteria apply:

(a) the Supplier of the container is a Participating Organisation who has complied in full with its obligations under and in connection with these Conditions;

(b) the container holds a single AgVet Chemical or Product:

(i) with an APVMA registration or permit that:

(A) is current as at; or

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 Product it currently contains, was originally supplied by the Supplier;

(ii) labelled in accordance with all Labelling Requirements;

(iii) non-returnable; and

(iv) not held by a Supplier as unwanted or excess inventory; and

(d) the AgVet Chemical or 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, where the relevant deadline has passed.

1.2 **drumMUSTER®**

Hazardous and Non-Hazardous Containers are eligible for participation in the drumMUSTER® program if all of the following criteria apply:

(a) the Supplier of the container is a Participating Organisation who has complied in full with its obligations under and in connection with these Conditions;

(b) the container is:

(i) empty;

(ii) non-returnable; and

(iii) manufactured from either:

(A) steel; or

(B) steel or other recyclable 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 205L/Kg

1.3 **Labelling & Inspection**

(a) Participating Organisations must ensure that all containers in respect of which it imposes the Levy are labelled consistently with the Labelling Requirements (Noted in Clause 7-Labelling Requirements).

(b) Any inspection of any container which Agsafe or its authorised employees, contractors or agents may in its or their discretion perform, shall not relieve a Participating Organisation

of its obligations under clause 1.3(a).

(c) AgStewardship may in its discretion refuse to accept any container into the Programs which, in its reasonable opinion, is not an Eligible drumMUSTER® or Eligible ChemClear® Container (Clause 1.1& 1.2).

2. LEVY

2.1 Participating Organisations must:

(a) impose a the levy on all Relevant Sales; and

(b) include the following notice on each invoice issued in connection with a Relevant Sale:

'We promote responsible industry waste management by participating in the drumMUSTER® and ChemClear® programs.

This invoice includes a levy of six cents per litre/kilogram on all sales of AgVet Chemicals or Products in containers eligible to participate in those Programs.'

2.2 No later than ten (10) Business Days after each Quarter End Date, each Participating Organisation must deliver a fully completed Quarterly Report (Annexure A) to AgStewardship by email to:

accounts@agstewardshipaustralia.org.au

2.3 Participating Organisations must remit payment of the Quarterly Levy Amount to AgStewardship by electronic funds transfer, without deduction or set-off no later than ten (10) Business Days after the date of invoice.

2.4 Participating Organisations must maintain proper accounts, books and other records relating to the Levy.

2.5 On the written request of AgStewardship or its authorised representative at least seven (7) Business Days beforehand, Participating Organisations must:

(a) at all reasonable times produce for examination by AgStewardship and its authorised representatives all accounts, books and other records relating to the Levy; and

(b) if so desired by AgStewardship, must permit AgStewardship and its authorised representatives to take copies of or extracts from those accounts, books and records for the purpose of determining or verifying the amount of the Levy payable by the Participating Organisation to AgStewardship.

2.6 Any Participating Organisation which intends to participate in the ChemClear® Program must ensure that AgStewardship is at all times in possession of an up to date product list, with pack sizes.

2.7 Each Participating Organisation warrants that:

(a) all information it will provide to AgStewardship in connection with the Programs is:

(i) accurate, true and complete to the best of its information, knowledge and belief;

not misleading in any material particular; accidental errors and omissions excepted; and

(b) it will not:

(i) infringe the ChemClear® Trademark or drumMUSTER® Trademark; or

(ii) use, reproduce, adapt, modify or otherwise deal with the ChemClear® Trademark or drumMUSTER® Trademarks, otherwise than in accordance with the Labelling Requirements.

2.8 Participating Organisations authorise AgStewardship to use their plain text name, and business images or logos, for the purposes of developing and promoting the Programs.

2.9 AgStewardship agrees not to disclose any information received from a Participating Organisation in connection with clauses 2.1 through 2.6 (**'Commercially Sensitive Information'**) to any third party, except where:

(a) the Participating Organisation has provided AgStewardship with its prior written consent to the disclosure; or

(b) subject to clause 2.10:

(i) if AgStewardship is obliged by law or court order to make the disclosure; or

(ii) the disclosure is to AgStewardship's employees, contractors, agents or professional advisers or other consultants who require the information for the purposes of or connected with the Programs; or

(c) the disclosure is strictly and necessarily required in connection with legal proceedings relating to the Programs, including for the purposes of enforcement of any rights or obligations of a Participating Organisation.

2.10 If AgStewardship intends to disclose Commercially Sensitive Information to a third person in the circumstances permitted by paragraphs 2.9(b) or (ii) (**'Additional Recipients'**), it must:

(a) notify the Additional Recipient that the information disclosed that the information is Commercially Sensitive Information; and

(b) not disclose the information to the Additional Recipient unless the Additional Recipient agrees to keep the information confidential on the same terms as are contained in clause 2.9.

3. DEFAULT & TERMINATION

3.1 Suspension

AgStewardship reserves the right to, in the Event of Default, suspend all rights a Participating Organisation has to participate in the Programs, until such time as the relevant Event of Default is remedied to the reasonable satisfaction of AgStewardship.

3.2 Termination

(a) Participating Organisations may withdraw from participation in the Programs at any time, via written notice to AgStewardship.

(b) On withdrawal, the Participating Organisation must ensure that the drumMUSTER® logo is removed from all containers and cease promoting involvement in the Programs.

(c) AgStewardship reserves the right to, in the Event of Default, terminate all rights a Participating *O*rganisation has to participate in the Programs, by notice in writing with immediate effect.

3.3 No Refund

Suspension under clause 3.1 and termination under clause 3.2(c) shall not give rise to any entitlement for a refund or exemption from payment of any Levies payable in relation to the period prior to suspension or termination.

3.4 Interest

Any money payable by a Participating Organisation to AgStewardship pursuant to or in connection with these Conditions which is not paid when payable shall attract interest at the Standard Rate calculated on the basis of a 365 day year, until all interest and principal is paid in full. This clause shall not merge on entry of judgment.

3.5 Costs

Each Participating Organisation agrees to upon demand by AgStewardship pay all Legal Fees, expenses and other amounts reasonably and properly incurred or paid by AgStewardship in respect of or in connection with:

(a) any breach of its obligations pursuant to and in connection with these Conditions;

(b) the recovery of the whole or any part of any moneys payable to AgStewardship pursuant to or in connection with these Conditions which are not paid when payable and which remain unpaid for more than seven (7) days after written demand for payment;

(c) the exercise or purported or attempted exercise by AgStewardship of any of its rights pursuant to or in connection with the Programs, or for the preservation of those rights; and

(d) the enforcement of any obligation it has to AgStewardship in connection with the Programs, including any law relevant to the Programs.

4. DISPUTE RESOLUTION

4.1 Subject to sub-clause 4.2, if a dispute arises out of or relates to these Conditions (including any dispute as to breach or any Claim or Liability) no party to the dispute (**Party**) may commence any proceedings unless it has complied with the following paragraphs:

(a) The Party claiming that a dispute has arisen (**the Dispute**) must give notice (**Dispute Notice**) to the other party specifying the nature of the Dispute.

(b) Following issue of a Dispute Notice, the Parties must endeavour in good faith to resolve the Dispute expeditiously using dispute resolution techniques such as negotiation, mediation, conciliation, arbitration and expert evaluation or determination or similar techniques agreed by them.

(c) If the Parties do not resolve the Dispute within twenty-eight days (28) days of receipt of the Dispute Notice by all Parties (or any further period as agreed in writing by them) or do not agree within that time as to:

(i) the dispute resolution technique and procedures to be adopted to resolve the Dispute; and/or

(ii) the timetable for all steps in those procedures; and/or

(iii) the selection and compensation of the independent person required for the selected technique; either Party may refer the Dispute to a mediator for mediation in accordance with and subject to the then current Mediation Rules of The Resolution Institute.

4.2 Clause 4.1 does not apply where a Party seeks urgent relief or where all Parties agree in writing that it shall not apply.

5. NOTICES

5.1 All notices to be given by a party pursuant to or in connection with these Conditions must be given in writing by any one of the following means:

(a) by sending it to the other party by post or to its solicitor by document exchange in either of which cases it shall be deemed to be given and received two (2) Business Days after it has been sent;

(b) by sending it to the party to be served or to its solicitor by delivery and read receipted email sent to:

(i) in the case of a notice addressed to a Participating Organisation, to any email address known or reasonably believed by AgStewardship to be used or accessed by the Participating Organisation or by its solicitor; or

(ii) in the case of notice addressed to AgStewardship, to the following address: 8 Geils Court, Deakin, ACT, 2600 or

(c) by delivering it personally to the party to be served or to its solicitor, in which case it shall be deemed to be given and received on the day so delivered.

5.2 A notice given, or a document signed or served, on behalf of any party by any director or company secretary or solicitor of that party shall be deemed to have been given, signed or served by that party personally.

5.3 In relation to service by email, a delivery or read receipt shall constitute sufficient and good proof of service for the purposes of these Conditions.

6. MISCELLANEOUS

6.1 All rights conferred on AgStewardship in these Conditions:

(a) shall operate without prejudice to any other rights to which AgStewardship may be entitled at law or in equity; and

(b) may be exercised by AgStewardship without liability for any Claim or Liability arising or suffered by any person as a result, including as to any Consequential Loss.

6.2 These Conditions shall be governed by and construed in accordance with the laws from time to time applying in the Australian Capital Territory. AgStewardship and all Participating Organisations submit to the exclusive jurisdiction of the courts of the Australian Capital Territory

and, where available, the Commonwealth of Australia, and those that have jurisdiction to hear any appeals from them.

6.3 Participating Organisations must not attempt to offset any alleged entitlement against any monies owing to AgStewardship in connection with these Conditions, and must not withhold payment by reason only that they claim the alleged entitlement.

6.4 For all purposes connected with these Conditions:

(a) AgStewardship may provide or withhold its consent to the doing or execution of any act, matter or thing in its absolute discretion and on such terms as it shall deem fit; and

(b) a reference to the consent or approval of AgStewardship means AgStewardship's express prior written consent or approval.

6.5 There shall be no implied waiver by AgStewardship in respect of any provision of these Conditions, and any delay or failure by AgStewardship to enforce any provision of the Contract will not be deemed to be a waiver. Any waiver granted by AgStewardship:

(a) must be in writing;

(b) shall be without prejudice to any other rights; and

(c) will only be effective in relation to the particular obligation or breach in respect of which it is given and will not cover subsequent breaches of the same or a different kind.

6.6 No variation to, modification or consent to any departure from any provision of these Conditions (including this clause) by a Participating Organisation shall in any event be of any force or effect unless the same shall be confirmed in writing and signed by AgStewardship and then such variation, modification or consent shall be effective only to the extent for which it may be made or given.

6.7 If any of the provisions of these Conditions shall be unlawful, void or unenforceable for any reason, the provision shall be deemed severable to the extent that it is lawful, void or unenforceable, but shall not affect the validity or enforceability of the remaining provisions.

7. DEFINITIONS

Agsafe means Agsafe Limited (ACN 057 112 062).

AgStewardship means Agstewardship Australia Limited (ACN 133 108 853).

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

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

AgVet Chemical means any *"agricultural chemical product"* or any *"veterinary chemical product"* as defined in Sch 1, sections 4 and 5 of the AgVet Code.

APVMA means the Australian Pesticides and Veterinary Medicines Authority, continued in existence by section 6 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* (Cth) and includes any successor authority with substantially equivalent responsibility.

Business Day means a day on which trading banks are open for ordinary business in the Australian Capital Territory.

ChemClear® Trade Mark means the ChemClear (logo), trade mark number 794253, registered to CropLife, and all underlying and associated IP Rights.

Claim means any claim, demand, regulatory proceeding, action or cause of action or anything of a similar nature.

Cleanliness Standard means the standard of that name from time to time approved by Agsafe for use in connection with the Programs and notified to Participating Organisations in writing (including by email or via the Websites).

Conditions means the terms and conditions set out in this document.

Consequential Loss means any consequential, indirect or incidental damages, including any lost profits or lost savings.

CropLife means Croplife Australia Limited (ACN 008 579 048).

drumMUSTER® Trade Marks means:

(a) drummuster (words), trade mark number 1085684, registered to Agsafe;

(b) drumMUSTER (logo), trade mark number 770706, registered to Agsafe; and

all underlying and associated IP Rights.

Eligible ChemClear® Container means a container which meets the requirements of clause 1.1.

Eligible drumMUSTER® Container means a container which meets the requirements of clause 1.2.

Event of Default means, in relation to a Participating Organisation, if:

(a) the Participating Organisation breaches or is in default of its obligations pursuant to or in connection with these Conditions and either:

  (i) does not remedy the breach or default within seven (7) days after AgStewardship's written request; or

  (ii) in the reasonable opinion of AgStewardship, the breach or default is incapable of remedy.

(b) in the reasonable opinion of AgStewardship:

  (i) the Participating Organisation has persistently breached or defaulted in the due and punctual observance of these Conditions, without reasonable excuse; or

  (ii) has demonstrated intent to no longer be bound by these Conditions or a law applicable to the Programs.

Hazardous Container means a container which has previously contained an AgVet Chemical or Product which is a Hazardous Substance.

Hazardous Substance means any substance which:

(a) can be classified as a hazardous substance under the NOHSC Criteria; or

(b) is listed as a hazardous substance on the NOHSC List.

IP 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) all laws regulating the labelling of AgVet Chemicals and Products, including without limitation the AgVet Code and any guidelines approved by the APVMA in connection with the AgVet Code;

(b) any requirements from time to time approved by CropLife for use of the ChemClear® Trademark in connection with the Programs, and notified to Participating Organisations in writing (including by email or via the Websites);

(c) any requirements from time to time approved by Agsafe for use of the drumMUSTER® Trademarks in connection with the Programs, and notified to Participating Organisations in writing (including by email or via the Websites);

(d) any other reasonable labelling requirements notified by AgStewardship to Participating Organisations in writing from time to time (including by email or other electronic means reasonably likely to bring the requirements to the attention of Participating Organisations).

Legal Fees means legal fees, costs and disbursements on the higher of a full indemnity basis or a solicitor and own client basis, determined without taxation, assessment, or similar process.

Liability means any liability, loss, damage, expense or anything of a similar nature (including without limitation settlement costs and Legal Fees) sustained or incurred at any time, actually or contingently.

Levy means the levy referred to in clause 2.1(a), the imposition / collection of which is authorised by Australian Competition and Consumer Commission authorisation no. A91382 dated 29 January 2014.

Non-Hazardous Container means a container which has not previously contained an AgVet Chemical or Product which is a Hazardous Substance.

non-returnable means not eligible to participate in any program operated by a manufacturer or distributor providing for return of AgVet Chemicals or Products in their original container.

NOHSC Criteria means 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).

NOHSC List means 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).

Participating Organisation means a Supplier who has agreed in writing to comply with these Conditions.

Programs means, collectively, the drumMUSTER® and ChemClear® programs run by Agsafe on behalf of AgStewardship, to promote industry waste recycling.

Quarter means each three calendar month period ending on each Quarter End Date.

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

Quarterly Levy Amount means, in relation to any given Quarter, the total of all Levies that a Participating Organisation was required to charge in relation to supplies made during that Quarter, by operation of clause 2.1(a).

Quarterly Report means a report, in a format reasonably acceptable to AgStewardship which:

(a) states the number, volumes and container composition of all Eligible drumMUSTER® Containers and Eligible ChemClear® Containers sold by the Participating Organisation in the Quarter to which the report pertains, segmented into State and Territory of sale; and

(b) calculates, with reference to the data referred to in the preceding paragraph, the amount of the levies the Participating Organisation was required to impose under clause 1.3 for Relevant Sales in the Quarter to which the report pertains;

(c) is signed by a duly authorised representative of the Participating Organisation submitting the report;

(d) contains a statement by a duly authorised representative of the Participating Organisation submitting the report certifying that the information contained in the report:

  (i) accurate, true and complete to the best of that person's information, knowledge and belief (accidental errors and omissions excepted);

  (ii) been prepared with due regard to the books and records of the Participating Organisation.

Relevant Sale means any supply of:

(e) an Eligible ChemClear® Container with a capacity greater than 1L/Kg; or

(f) an Eligible drumMUSTER® Container.

Standard Rate means the rate which is 2% per annum above the rate from time to time applying 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 2006* (ACT).

Supplier means any manufacturer of AgVet Chemicals or Products and any entity who sells AgVet Chemicals or Products, either on a wholesale or retail basis.

Websites means:

(a) the websites with the following URLs http://chemclear.org.au; http://drummuster.org.au/; http://agstewardshipaustralia.org.au/

(b) any other website notified by AgStewarship to Participating Organisations from time to time.

EXECUTED AS AN AGREEMENT

SIGNED for **AGSTEWARDSHIP AUSTRALIA**)) .....
LIMITED by an authorised officer in the presence Signature of officer
of

....
Signature of witness Name of officer (print)

....
Name of witness (print) Office held

Date:

SIGNED for the **"Participating organisation"** by)) .....
an authorised officer in the presence of) Signature of officer

....
Signature of witness Name of officer (print)

....
Name of witness (print) Office held

Date:

Agstewardship AgVet Quarterly Container Levy Declaration

Please complete the shaded cells

Name of Reporting Organisation										
Contact Information										
Name										
Email							**Phone**			
Quarter ending	**30-Sep**		**31-Dec**		**31-Mar**		**30-Jun**		**Year**	

The Program levy calculation includes all hazardous products and those non-hazardous products voluntarily included in the program, when sold in non-returnable rigid metal and plastic containers of greater than 1L/1kg up to 205lt/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 levy payable is 6 cents per litre or kilogram of leviable product.

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

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.

Name		**Signature**	
Date			

Please note a tax invoice will be issued on the return of the completed declaration