

# INTERNAL RULES OF PROCEDURE

27 June 2023

## INTRODUCTION

- These Internal Rules of Procedure are established pursuant to the Articles of Association and set out the obligations of the Members and the internal procedures of the Association.
- These Internal Rules of Procedure are integral and complementary to and should be read in conjunction with the provisions of the Articles of Association, and the ACLP Code of Conduct.

## 1. Definitions and interpretation

1.1. In these Internal Rules of Procedure, the following terms shall have the following meanings, except where expressly indicated otherwise:

**“Affiliate”**: means, with respect to an Association Member, any other legal entity that Controls, is Controlled by or is under common Control of such legal entity. For avoidance of doubt, an Affiliate can never be an Association Member.

**“Articles of Association”** means the articles of association of the Association, as may be amended from time to time.

**“Association”** means the Agricultural Crops Licensing Platform (ACLP) as established by its Articles of Association.

**“Association Member”** means a legal entity that is party to the Association.

**“Baseball Arbitration Procedure”** means the procedure as described in article 4.2.

**“Binding Standard License Agreement or Binding SLA”** means the commercial license agreement between a Requesting Member and a Patented Trait Holder with regard to a Patented Trait, which is the completed and signed Standard License Agreement. A Binding Standard License Agreement is negotiated in accordance with Article 2 herein.

**“Board or Board of Directors”** means the body of the Association as provided for in Section VI of the Articles of Association.

**“Breeding”**: the process of crossing and selection of plants with the aim to develop new plant varieties.

**“Commercial Activity”**: the following acts in respect to Licensed Products which would require a commercial license from the Patented Trait Holder :

- production or reproduction (multiplication);
- conditioning for the purpose of propagation;
- offering for sale;
- selling or other marketing;
- exporting from the Territory;
- importing to the Territory ;
- stocking for any of the purposes mentioned above.

**“Commercial License”** means a license covering the Commercial Activities for the Territory based on the Standard License Agreement with regard to a Patented Trait that is present in Source Material and as further stipulated in Article 4 below.

**“Commercial Variety”**: means any variety of a Crop that contains at least one Patented Trait and is approved for commercialization and cultivation in at least one country of the Territory by a Member or any of its Affiliates or licensees and is commercialized on the open market in the Territory. For the avoidance of doubt, a variety of a Crop that is i) grown in the Territory under the control of a company (either directly or through subcontracting), in a restricted and controlled geographic area, for delivery to designated delivery points,

and/or ii) grown in the Territory in a closed loop system designed by one or more companies to contain special use traits and to maintain the value of the specialty use crop as well as the integrity and purity of the plant, seed and harvested material of adjacent crops and of downstream products, will not be considered to be commercially available on the open market in the Territory.

**“Competitively Sensitive Information”**: any and all Confidential Information that may reduce uncertainty as to the strategic-commercial conduct of the disclosing Party and its Affiliates as well as their competitors, including but not limited to information pertaining to: (a) pricing or pricing intention; (b) current or future costs; (c) current or future output levels or sales; (d) current or future profit margins or profitability targets; (e) current and future demand or future sales or negotiations with, or sales efforts directed at, prospective customers; (f) future products characteristics which are relevant for customers; (g) current state and business strategy and intended commercial strategy ; (h) positions on the market; (i) current and future production capacities or plans to expand/reduce output or expand/close capacity; (j) current research and development projects, including details regarding the future launch of important products; and (k) transactional information relating to competitive elements of sales and input purchases.

**“Confidential Information”**: any and all information exchanged between Members and/or their Affiliates or between Members and/ or their Affiliates and the Association in connection with any of the operations of the Association, including any and all information concerning any aspect of any Member or its Affiliates’ business or proposed business not generally known to persons not associated with the disclosing Party.

**“Control”**: means that the relevant legal entity, whether directly or indirectly, with respect to another legal entity, (i) holds the majority of the shares in the capital of that other legal entity, or (ii) whether by the ownership of share capital, the possession of voting rights, contract or otherwise, has the power to elect and/or remove the majority of the members of the management body, or otherwise has the power to control the management and policies of that other legal entity. Terms derived from Control, such as “Controlled” etc. shall have a similar meaning to that of Control.

**“Covered”**: with regard to certain subject matter and a patent or patent application in a certain jurisdiction, means that said subject matter is in scope of at least one claim in said

patent or patent application that reads on such subject matter wherein said claim has not expired, has not been abandoned, revoked, or held unenforceable, unpatentable or invalid by a court in said jurisdiction or governmental agency of competent jurisdiction, from which no appeal has been or can be taken, and has not been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise.

**“Crop”**: will have the meaning attributed thereto in the Articles of Association”

**“Customer”**: a Customer of a Party means any person or entity other than that Party, its Affiliates or sublicensees that purchases a Commercial Variety such as a Licensed Product Variety.

**“General Assembly”** means the body of the Association as provided for in Section V of the Articles of Association.

**“GM Trait”** means a phenotypic characteristic of a plant, seed or harvested material obtained through (i) recombinant nucleic acid techniques involving the formation of new combinations of genetic material by insertion of nucleic acid molecules produced by whatever means outside an organism into any virus, bacterial plasmid or other vector system and their incorporation into the host plant in which they do not naturally occur but in which they are capable of continued propagation.

**“Gross Sales”** in a Binding SLA for a particular Patented Trait means

the total amount in € or converted in € invoiced to and received or collected from Customers during the Financial Year by Licensee, its Affiliates or sublicensees in respect of Licensed Product Varieties sold in jurisdictions of the Territory where at least one Licensed Patent Covers the Licensed Trait, or produced in such jurisdictions but sold in other jurisdictions of the Territory. Value added tax and other indirect taxes are not included in Gross Sales.

OR, by exception, if both Parties agree

the total amount in tons or hectares invoiced to, and for which income was received or collected during the Financial Year, from Customers

by Licensee, its Affiliates or sublicensees in respect of Licensed Product Varieties sold in jurisdictions of the Territory where at least one Licensed Patent Covers the Licensed Trait, or produced in such jurisdictions but sold in other jurisdictions of the Territory.

**“in writing”** means transmitted by registered letter with confirmation of receipt.

**“Legal Counsel”** means the legal counsel(s) retained by the Association for purposes of legal assistance to members pursuant to Article 5.

**“Licensed Product”** in a Binding SLA for a particular Patented Trait means any biological material of a Crop, including material of Licensed Product Varieties, including but not limited to Crop plants and seeds, which contain such Patented Trait and which are bred or fully owned or controlled by the applicable Licensee Member or its Affiliates.

**“Licensed Product Variety”**: in a Binding SLA for a particular Patented Trait means a Licensed Product in the form of a variety approved for cultivation and commercialization in the Territory and fully owned or controlled by the applicable Licensee Member.

**“Licensee Member”** means, with regard to a particular Patented Trait, a Member that has concluded a Binding SLA for that Patented Trait from the relevant Patented Trait Holder.

**“Lump Sum”** means, with regard to a particular Binding SLA following the template of Annex 2, the agreed compensation in the form of a fixed amount.

**“Managing Director”** has the meaning attributed thereto in Section VIII of the Articles of Association.

**“Medium-Small Member”** means, a Member that – during the latest approved accounting period :

- employed less than 250 persons; and
- realised equal to or less than 50,000,000 EUR of annual turnover; or
- did not exceed an annual balance sheet of 43,000,000 EUR.

**“Medium-Large Member”** means a Member that – during the latest approved accounting period -:

- employed less than 2500 persons; and
- realised less than 500,000,000 EUR of annual turnover; or
- did not exceed an annual balance sheet of 430,000,000 EUR.

**“Large Member”** means a Member that – during the latest approved accounting period - exceeds any of the criteria stipulated in the definition of Medium-Large Member.

**“Member”**: means an Association Member and its Affiliates.

**“Non-Member”**: means any legal entity that is not a Member.

**“Patent”**: any patent or pending patent application in the Territory that is owned by, or licensed-in by a Member or an Affiliate of a Member.

**“Patent Non-Assert”** means the patent non-assert with regard to the use of Source Material and Patented Traits contained therein as stipulated in Article 3 below.

**“Patented Trait”**: a Trait that:

- i) is owned, controlled or licensed (with the right to sublicense in accordance with the principles set forth in the Association) by a Member or any of its Affiliates
- ii) is present in at least one Commercial Variety or Source Material, and
- iii) which is a phenotypical characteristic of said Commercial Variety or Source Material.

In a Binding SLA a Patented Trait will be defined at least by reference to:

- a description of the phenotypic characteristic conferred by the Patented Trait
- a patent or patent application where the Patented Trait is claimed or described
- the name of a Commercial Variety or reference to Source Material.

**“Patented Trait Holder”** with regard to a Patented Trait means the Member that, on behalf of itself or any of its Affiliates, owns, controls or is entitled to license that Patented Trait in accordance with the principles of the Association.

“**PINTO**” the online database administered by Euroseeds and accessible through the following URL: <https://euroseeds.eu/pinto-patent-information-and-transparency-on-line/>

“**Regulated Trait**” means a phenotypical characteristic of a Crop plant, seed or harvested material that i) needs to undergo a Regulated Trait Authorisation Process in at least one country of the Territory or ii) has completed a Regulated Trait Authorisation Process in at least one country of the Territory.

“**Regulated Trait Authorisation Process**” means the process imposed by regional or national authorities in at least one country of the Territory by which certain traits require separate regulatory authorisation before any plant material containing such traits can be released, cultivated and/or used, or can be continued to be released, cultivated and/or used, in at least one region or country of the Territory.

For clarity, such Regulated Trait Authorisation Process is independent from any variety registration process (or similar requirement) for the cultivation and commercialization of plant reproductive material.

“**Regulated Trait Holder**” with regard to a Regulated Trait means the Member that, on behalf of itself or any of its Affiliates, owns, controls or is entitled to license that Regulated Trait.

“**Requesting Member**” means a Member which has requested a commercial license using the Standard License Agreement from a Patented Trait Holder.

“**Royalty**” means, with regard to a particular Binding SLA following the template of Annex 1, the proposed or agreed compensation in the form of a percentage of the Gross Sales (option i)) or as a Euro-amount per ton or per hectares of Gross Sales (option ii)) as the case may be.

“**Small Member**” means, according to Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, a Member that – during the latest approved accounting period -:

- employed less than 50 persons; and

- realized less than 10,000,000 EUR of annual turnover; or
- did not exceed a maximum annual balance sheet of 10,000,000 EUR.

**“Source Material”** with regard to a Patented Trait means 1) any plant material of a Commercial Variety of a Crop that:

- i) contains such Patented Trait, and,
- ii) is owned by a Member or by any other third party provided that this third party is licensed by such Member to use and commercialize such Patented Trait in the Territory,

and/or, 2) any plant material containing said Patented Trait and provided by a Patented Trait Holder to another Member under separate agreement entered into or amended after the set-up of the ACLP and specifically allowing the use as Source Material for serving the purpose of the ACLP.

**“Standard License Agreement or SLA”** means a template license agreement consisting of the terms and conditions as described in either Annex 1 (Royalty option) -or in Annex 2 (Lump Sum option) of these Internal Rules of Procedure.

**“Stewardship Practices”**: with regard to plants and seeds containing a Patented Trait, means any practices during Breeding or Commercial Activities or other use of such plants or seeds that are set by the relevant Patented Trait Holder for purposes of the sustainable and compliant use of any Patented Trait. Such practices shall be reasonable and will not be different from those that the Patented Trait Holder applies to itself, its Affiliates, its licensees or other Members that are breeding with or commercializing the Patented Trait.

**“Territory”**: All countries listed in Annex 2 to the Articles of Association.

**“Trait”** means a phenotypical characteristic of a Crop plant, seed or harvested material that is Covered by at least one Patent.

1.2. References to “articles” refer to articles that are part of these Internal Rules of Procedure, except where expressly indicated otherwise.



1.3. The annexes to these Internal Rules of Procedure form an integral part of these Internal Rules of Procedure.

## 2. Transparency

2.1. Each Patented Trait Holder and Licensee Member will ensure that with respect to its varieties containing Patented Trait(s) and approved for cultivation and commercialization in at least one country of the Territory, the following information is entered into PINTO :

- the denomination of the variety containing the Patented Trait(s),
- the species to which the variety containing the Patented Trait belongs
- with respect to each Patented Trait, the name and contact information of the Patented Trait Holder(s),
- at least one Patent Covering each Patented Trait,
- a link to the mentioned Patent(s) in a public database.

2.2. The information identified in 2.1 will be entered into PINTO by a Patented Trait Holder or Licensee Member before, and no later than 3 months after the time that the registration of a variety containing a Patented Trait has been published in the official national catalogue in at least one country of the Territory.

2.3. Any Patented Trait Holder will ensure that upon concluding a Binding SLA with another Member with regard to any of its Patented Trait(s), the Licensee Member will be provided with the relevant information to be entered into PINTO pursuant to Art. 2.1.

## 3. Patent Non-Assert

3.1. Each Member agrees that it will not and shall procure that its Affiliates will not assert any Patents against any other Member with regard to any of the following acts carried out in the Territory:

- i) The use of Patented Traits in plants or seeds of Source Material in Breeding

- ii) The use of molecular markers, that are relevant with regard to a Patented Trait in Source Material, in Breeding solely to determine the absence or presence of such Patented Trait in Source Material or progeny thereof.
- iii) The combination of Patented Traits with any other trait provided that all the rights to that other trait have been obtained by the Member benefitting from the Non-Assert.

For the avoidance of doubt nothing herein shall oblige Members to disclose information on molecular markers that are not publicly available.

3.2. Each Member, on behalf of itself and its Affiliates, also agrees that the Patent Non-Assert does not apply or extend to any of the following acts in the Territory:

- i) The practice of any technical process to modify plant genomes or to introduce novel traits into plants,
- ii) The use of any biological material other than Source Material,
- iii) The use of Source Material for any other purpose than as donor material for any Patented Trait,
- iv) The use of any molecular markers except as explicitly set forth in Article 3.1.ii),
- v) The use of any non-biological material or equipment,
- vi) The use of any chemical compound including for seed treatment or over the top application,
- vii) The practice or use of any services, digital or otherwise, rendered in association with varieties or traits,
- viii) The use of material deposited in connection with a patent or patent application with a recognized depository institution recognized under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure,
- ix) any Commercial Activities with material containing a Patented Trait.

3.3. For the avoidance of any doubt, no license is granted and no non-assert commitment is made by any Member with regard to any other Member, for carrying out any act, including but not limited to a) Breeding with any material of Source Material and/or b) performing any acts under i)-ix), above, outside the Territory.

3.4. In order to benefit from a Patent Non-assert a Member should notify the relevant Patented Trait Holder in writing that it is using such Source Material or Patented Trait for Breeding. Such notification (the “Non-Assert Notification”) should use the form as set forth in Annex [A] to these Internal Rules of Procedure and shall be countersigned by the Patented Trait Holder no later than 4 weeks after receipt.

Such Non-Assert Notification will only be due with respect to Patented Traits in Source Material that are listed in PINTO. For the avoidance of doubt, with respect to any Patented Traits in Source Material that are not listed in PINTO, Members will benefit from a Patent Non-Assert until such time that Source Material is listed in PINTO. This shall also apply to any Source Material mentioned under 2) in the above definition of Source Material in Article 1.1.

3.5. Each Member agrees that in order to benefit from a Patent Non-assert it will follow any Stewardship Practices that are relevant to Breeding using the Source Material and that are either publicly available (e.g. in bag tags or conditions of sale) or are communicated by the relevant Patented Trait Holder following the Non-Assert Notification and introduced in that Notification within 4 weeks after receipt as specified above.

If there is no countersignature and/or communication of Stewardship Practices within the 4 weeks period mentioned above, the Patent Non-assert becomes effective.

3.6. Any Member that has not timely sent a Non-Assert Notification acknowledges and agrees that the Patented Trait Holder may require that material developed before the Non-Assert Notification or the effective date of the Binding SLA be excluded therefrom and may not be used for the development of Licensed Products.

3.7. For the avoidance of doubt, a Patent Non-assert will not apply to the use of parent lines that are repeatedly used in the production of hybrids and/or that are not being exploited as commercial varieties.

3.8. Any Patent Non-assert will cease with immediate effect in case the beneficiary ceases, for any reason whatsoever, to be a Member.

## 4. Commercial License

### 4.1. Licensing Process

- 4.1.1. Any Member shall be entitled to be granted a Commercial License.
- 4.1.2. In order to obtain a Commercial License, a Requesting Member shall request the relevant Patented Trait Holder in writing to enter into a Binding Standard License Agreement.
- 4.1.3. Upon receipt of the written request pursuant to Article 4.1.2, the Requesting Member and the Patented Trait Holder (hereinafter the “Negotiating Parties”) shall enter into good faith negotiations to establish a mutually agreed Binding SLA.
  - 4.1.3.1. Lump Sum option: If both Negotiating Parties agree on using the SLA with the Lump Sum option according to Annex 2 they shall enter into good faith negotiations to establish a mutually agreed Lump sum with regard to the Patented Trait for which a Commercial License is sought.
  - 4.1.3.2. If one of the Negotiating Parties does not agree to the Lump Sum option, or if the good faith negotiations initiated in accordance with Section 4.1.3.1 do not lead to a mutually agreed Lump Sum within a period of three (3) months, the Negotiating Parties will enter into good faith negotiations to conclude a Binding SLA on the basis of Royalty option using the SLA according to Annex 1 and to agree on a Royalty with regard to the Patented Trait for which a Commercial License is sought.
  - 4.1.3.3. In the event that the Negotiating Parties cannot agree on a Royalty within six (6) months, or any longer period agreed by the Negotiating Parties, the Requesting Member shall be entitled to start the Baseball Arbitration according to Article 4.2.
  - 4.1.3.4. For the avoidance of doubt, in the event that the Negotiation Parties cannot agree on a Lump Sum following negotiations pursuant to section 4.1.3.1, no Baseball Arbitration or any other form of dispute resolution will apply.

4.1.4. The Patented Trait Holder shall inform the Managing Director of the conclusion of a Binding SLA for the purpose of maintaining statistics/measuring performance of the ACLP as decided by the Board of Directors.

#### 4.2. Baseball Arbitration

4.2.1. The request to initiate the Baseball Procedure shall be made by the Requesting Member to the Managing Director in writing within thirty (30) days after expiration of the negotiation period as set forth in article 4.1.3.3. The Managing Director shall immediately request both the Requesting Member and the Patented Trait Holder to submit their respective proposals for a Royalty to the Managing Director. Both these Members shall submit their motivated Royalty proposal in writing within forty-five (45) days following the receipt of the request from the Managing Director in duplicate, each in closed envelopes or encrypted or password-protected messages.

4.2.2. The Managing Director shall, upon receipt of the proposals for the Royalty to be applied to the Patented Trait, promptly send the proposal of the Requesting Member to the Patented Trait Holder and the proposal of the Patented Trait Holder to the Requesting Member. Both Members will attempt to agree on a final Royalty to be applied within a period of three (3) weeks after the Managing Director has exchanged the proposals between the Members involved. In case this last attempt to agree on a Royalty fails, then the Managing Director shall initiate the Baseball Arbitration procedure as set forth below, on the basis of the motivated proposals initially submitted by the Parties.

4.2.3. Baseball Arbitration shall be conducted before a special panel of three (3) arbitrators (the "Baseball Arbitration Panel"). Such arbitrators shall be chosen from a list of arbitrators established and administered by the ACLP. Each member of the Arbitration Panel shall be a person with expertise and experience in the field of the seeds and traits business (including breeding, trait development and/or licensing thereof) in the Territory. The Managing Director shall identify and reach

out to suitable candidates which shall be approved to be added to the list of arbitrators by the Board of Directors.

- 4.2.4. The members of the Baseball Arbitration Panel shall be selected within thirty (30) days after the receipt by the Patented Trait Holder and Requesting Member of notice from the Managing Director. Patented Trait Holder and Requesting Member shall each select from the list of arbitrators one member of the Arbitration Panel and the two members thus selected shall select the third member from the list of arbitrators. The selected arbitrators shall however have (i) no current or previous employment with or interest in the Patented Trait Holder and/or the Requesting Member and/or their respective Affiliates, and ii) no conflict of interest with regard to the parties and/or the crop that is subject of the arbitration. In case of an alleged conflict of interest as brought forward by one of the Baseball Arbitration parties, the arbitrator may withdraw from the arbitration or shall explain why he/she believes that there is no conflict of interest. In case of an ongoing non-agreement whether a conflict of interest exists, the Managing Director may decide on the need for replacement of the arbitrator.
- 4.2.5. The Association shall ensure that the members of the Arbitration Panel and the parties to the arbitration shall treat all data, information and rulings comprising and/or concerning Arbitration(s) and/or Royalty(ies) as Confidential Information and agree to be subject to the confidentiality obligations of the Association.
- 4.2.6. Once the Arbitration Panel has been established then the Managing Director shall provide within one (1) week the sealed envelopes or encrypted (or password-protected) messages containing the motivated Royalty proposals from the parties to the Arbitration Panel. In case of encrypted or password-protected messages the parties will exchange the necessary information to open the messages.
- 4.2.7. The Arbitration Panel is and shall be authorized only to determine, for the Territory, which of the parties' Royalty proposal constitutes the most reasonable Royalty based on the rationales brought by the parties for their respective proposed Royalty and their own knowledge of the market. In its determination, the Arbitration Panel shall give preference to that Royalty proposal that is closest to the market value of the Patented Trait at hand contained in Commercial Varieties of the

relevant Crop in the Territory while including a margin to the Licensee. In this respect, the market value should be assessed on the basis of all relevant data, including agronomic data, field and panel studies and other market research tools as the case may be, to determine and value the various components that make up the overall value to the customer of that Patented Trait in such Commercial Varieties. Such components can include, without limitation:

- the decrease in cost of existing solutions to address the issue solved by the Patented Trait (e.g. chemicals in case of a disease tolerance trait),
- the added value of the Patented Trait as complement of existing solutions
- the benefits of increased yield,
- the convenience to the grower, and,
- the value of competitive technology.

4.2.8. Within thirty (30) days after the provision of the Royalty proposals by the Managing Director, the Arbitration Panel shall meet, in person or by means of telecommunications, to determine a ruling (“Ruling”) and deliver the same to the parties by facsimile and/or electronic transmission. The Ruling shall set forth which of the parties' proposed Royalty is considered applicable together with the reason(s) for such determination. Before rendering a Ruling, the Arbitration Panel will hear the Parties for clarification of their respective Royalty proposals.

4.2.9. The Royalties selected by the Arbitration Panel in the Ruling shall be the Royalties to be applied in the Binding SLA between the Patented Trait Holder and the Requesting Member. Unless otherwise agreed by the Negotiating Parties, the Negotiating Parties shall execute a Binding SLA with the selected Royalties within three (3) month after the date of the Ruling.

4.2.10. Members of the Arbitration Panel shall receive reimbursement for the reasonable value of their service on the Arbitration Panel and their reasonable out of pocket expenses connected therewith. Such amounts as well as any other costs arising within the context of the Baseball Arbitration procedure shall be shared in equal amounts between Patented Trait Holder and Requesting Member. The parties shall however bear their own respective costs and expenses incurred in the Baseball Arbitration procedure.

#### 4.3. Grantback licenses

- 4.3.1. Members acknowledge that it is not the intention that they would be entitled to enter into a Binding SLA for a Patented Trait while at the same time be holding or controlling patent rights that would prevent the relevant Patented Trait Holder from using itself that Patented Trait as such.
- 4.3.2. Therefore, in the unlikely event that, with respect to a particular Patented Trait, a Licensee Member or a Requesting Member possesses or controls a patent right that prevents a Member from commercially exploiting that Patented Trait but for which the Patented Trait Holder does not have a license, the Patented Trait Holder will be entitled to be granted a license to such patent right from such Licensee Member or Requesting Member. Such grantback license will be negotiated in good faith between Patented Trait Holder on the one hand and Licensee Member or Requesting Member on the other hand and shall be: i) non-exclusive, ii) royalty-bearing, iii) limited to the Territory, iv) solely for the use of that Patented Trait in plants, plant parts or seeds, and, v) sub-licenseable by the Patented Trait Holder but solely in connection with that Patented Trait. The principles of the Baseball Arbitration shall apply to said grant-back license negotiation accordingly.

#### 4.4. Other Licenses

- 4.4.1. For the avoidance of doubt, nothing shall prevent a Member to obtain or grant a commercial license with regard to a Patented Trait outside the framework of the Association and independent from these Internal Rules of Procedure through bilateral negotiations with the relevant Patented Trait Holder.
- 4.4.2. Notwithstanding the provisions as set out in article 4.1, Members and their Affiliates may enter into agreements with third parties pursuant to which a commercial license with respect to a Patented Trait shall be granted to such third party. In these events, the Members and their Affiliates shall not be obliged to make use of or make reference to the terms and conditions of the Standard License Agreement.



- 4.4.3. An agreement as referred to in article 4.4.1 or 4.4.2, which entered into force after a relevant party to such agreement has become a Member, may not in any manner whatsoever exclude access to Patented Traits for other Members and their Affiliates.
- 4.4.4. With respect to a Member that has obtained a license in the Territory for a Patented Trait from a Patented Trait Holder prior to or outside the framework of the ACLP, the Patented Trait Holder will be permitted but will have no obligation to grant a license under the Standard License Agreement for that same Patented Trait under the ACLP.

## **5. Assistance for Small or Medium-Small Members**

- 5.1. The Board of Directors will set aside a part of the budget for legal assistance for Small or Medium-Small Members. Within the limits of this budget, Small and Medium-Small Members may obtain legal assistance as set forth here after:

A Small or Medium-Small Member may obtain legal advice from Legal Counsel free of charge with respect to:

- The legal set-up of the Association
- The interpretation of the Articles of Association, the Internal Rules of Procedure, the Code of Conduct and the Standard License Agreement
- General aspects to be taken into account for determining a business case and for making a proposal for the Royalty as applicable to a Patented Trait. The Legal Counsel will however not assist or advice with regard to the determination of a concrete business case or a concrete Royalty for any specific Patented Trait.

For the avoidance of doubt, Legal Counsel will only provide legal advice on neutral terms on behalf of the Association. In no case will Legal Counsel provide legal advice in favor of or against any Member of the Association or with regard to any relationship between Members.

- 5.2. The legal advice free of charge pursuant to Art 5.1 will be limited to an annual total of 5 billable hours of the Legal Counsel for a Medium-Small Member and to an annual total of 10 billable hours of the Legal Counsel for a Small Member. Any additional expenses incurred for services rendered by the Legal Counsel will be born by the Medium-Small or Small Member as the case may be.
- 5.3. A Small or Medium-Small Member willing to obtain legal advice pursuant to this Art 5 will make a request to the Managing Director who will then inform Legal Counsel accordingly after which the Small or Medium-Small Member will be able to contact the Legal Counsel.
- 5.4. A Small or Medium-Small Member that is obtaining legal advice pursuant to this Art 5 agrees that the Legal Counsel will inform the Association of the amount of billable hours rendered with respect to its legal advice. For the avoidance of doubt a Legal Counsel will not be able to disclose, to the Association or to any third party, any information with regard to the specifics of the legal advice requested or rendered without the express written consent of the Small or Medium-Small Member concerned.

## **6. Access to Source Material**

- 6.1. All Members agree that, with regard to any of their Patented Traits, Source Material will be at the latest accessible to other Members in the form of material of the first Commercial Variety containing such Patented Trait provided that such material is purchased on the open market in the Territory.
- 6.2. However, nothing prevents Members or groups of Members, to conclude an agreement among themselves that provides that
- i) also certain pre-commercial plant material containing one or more of their Patented Traits will be available to other Member(s) or within a group of Members, and/or access to material of Commercial Varieties containing such Patented Trait is facilitated,
  - ii) access and use of such Patented Trait will be subject to the rights and obligations of the Association, including the right and the obligation to obtain a patent non-assert as provided in section 3 hereunder and the right to obtain a commercial license pursuant to

Section 4 hereunder, and therefore, iii) any material exchanged under such agreement will be considered Source Material within the meaning of the Association between the parties to such agreement.

6.3. Members or groups of Members that have concluded an agreement with regard to a certain Crop pursuant to Article 6.2 above may request the Board to publish on the intranet and/or external website of the Association that such agreement exists and optionally invites other Members to become part of such agreement.

## **7. Traits not subject to the Association**

7.1. Members acknowledge that certain Traits may be present in Commercial Varieties of its own or of other Members, including Source Material, but may not be subject to the provisions of the Association because the Member does not have the right to make such Traits available under the provisions of the Association, including but not limited to:

7.1.1. Traits that are co-owned by a Member and one or more Non-Members, but for which the Member does not have the right to make the Trait available under the provisions of the Association.

7.1.2. Traits that are owned or controlled by at least one Non-Member and are licensed-in by a Member in the Territory without the right to sublicense the Trait under the provisions of the Association.

7.1.3. Traits that have been out-licensed in an exclusive or sole license to a Non-Member in the Territory prior to the Patent Trait Holder becoming a Member of the ACLP.

7.2. Each Member agrees that, with regard to the Traits specified in Article 7. 1 above, it will make reasonable efforts to obtain from the relevant Non-Member(s) the right to provide information in PINTO that such Trait is present in applicable Commercial Varieties but is not subject to the provisions of the Association. In case such efforts would not be successful each Member agrees that, upon request from other Members with regard to the status of one of their Commercial Varieties that would contain such Trait(s)), it will

notify such other Members that such Commercial Variety may be subject to third party rights.

- 7.3. Each Member agrees that when it enters or has entered into a collaboration or other agreement with a Non-Member that may lead to the development of Traits, it will make reasonable efforts to ensure that any such Trait can be made available to other Members under the provisions of the Association.
- 7.4. Each Member agrees that when it enters or has entered into a non-exclusive license agreement with a Non-Member for part or all of the Territory with regard to a Trait owned or controlled by such Non-Member, it will make reasonable efforts to ensure that such Trait can be made available to other Members under the provisions of the Association.
- 7.5. Each Member agrees that when it has entered into an exclusive license agreement with a Non-Member for part or all of the Territory with regard to a Trait owned or controlled by such Non-Member, before the Association came into being, and such agreement would not allow to make such Trait available under the provisions of the Association, it will make reasonable efforts to ensure that such Trait can be made so available.
- 7.6. Each Member agrees that when it enters into an exclusive license agreement with a Non-Member for part or all of the Territory with regard to a Trait owned or controlled by such Non-Member, it will ensure that such Trait can be made available to other Members under the provisions of the Association.
- 7.7. Members acknowledge that despite taking proper due diligence Traits that are owned or controlled by at least one Non-Member may be inadvertently present in Commercial Varieties of other Members without proper authorization of such Non-Member.
- 7.8. Members acknowledge that GM Traits are not subject to the provisions of the Association.

## 8. Confidentiality

8.1. The Association shall keep the Confidential Information received from any Member in confidence and shall therefore not disclose the Confidential Information to any other Member or to any third party in whatever way.

8.2. Each Member shall keep the Confidential Information received from the Association or any other Member in confidence and shall therefore not disclose the Confidential Information to any other Member or any other third party in whatever way.

If a Member must disclose Confidential Information to the Association or to another Member in the context of the resolution of disputes, such disclosure will only occur if this is necessary to ensure that the dispute resolution mechanisms as set forth in the Articles of Association are compliant with fundamental procedural principles, including the right to be heard and plea one's case, and will only take place in accordance with the provisions of this article 8.

No Competitively Sensitive Information shall be exchanged between a Member or Its Affiliate and another Member or its Affiliate or between a Member or its Affiliate and (any corporate body or representative) of the Association. With regard to certain Competitively Sensitive Information that must be disclosed by a Member or one of its Affiliates to another Member or one or more of its Affiliates in the context of the resolution of disputes, that other Member, or the other Member's Affiliate, will ensure that such Competitively Sensitive Information is only available to the internal or external legal advisors of the other Member, or the other Member's Affiliate, that are handling the dispute and who are bound to confidentiality by virtue of their profession or by an adequate confidentiality agreement entered into between such external advisors and the relevant Member or such Member's Affiliate who must disclose the Competitively Sensitive Information. Any further material or information or part thereof, including but not limited to documents, statements, reports, binding advices and/or arbitral awards, the content of which is based on or in which reference is made to Competitively Sensitive Information is also deemed to be Competitively Sensitive Information and may only be disclosed to the aforementioned internal or external advisors. Such material or information, or part thereof, must also contain the mention "RESTRICTED CONFIDENTIAL INFORMATION". For the

avoidance of doubt, disclosure of the content of any part of such material or information that is not based on or in which no reference is made to Competitively Sensitive Information is not restricted.

The mention “RESTRICTED CONFIDENTIAL INFORMATION” shall be placed on top of each page containing the Competitively Sensitive Information that is disclosed to any of the Association, any of the Members, any of the Member’s Affiliates or any Members’, or Members’ Affiliates’, external advisors.

8.3. The Association and each Member undertakes to impose the obligations as described in this Article to its Affiliates and its employees and consultants.

8.4. The confidentiality obligations shall not apply to Confidential Information if and as far as the recipient party can show by documentary evidence that the Confidential Information:

8.4.1. was in the possession of the recipient party prior to disclosure thereof by the other party;

8.4.2. is or through no fault of the recipient party becomes part of the public knowledge or literature;

8.4.3. lawfully becomes available without limitation as to its disclosure from an outside source; or

8.4.4. is required to be disclosed by law or by court order provided that the party who is required to disclose the confidential Information first provides the other party with notice of such requirements and of its intent to disclose the Confidential Information.

## **9. Further Development of the Association**

9.1. In accordance with the powers of the Managing Director as set forth in Article 29.1 of the Articles of Association the Members desire that the Managing Director should make proposals for further development of the Association.

9.2. In particular the Members identify the projects set forth in Annex [B] which set forth particular objectives together with timelines in which they would have to be achieved. The Managing Director is requested to prepare those projects and come up with proposals for approval by the Board.

## **10. Amendments and miscellaneous**

10.1. Without prejudice to Article 10.2 any amendment to these Internal Rules of Procedure has to be adopted in accordance with Art 20.2 of the Articles of Association.

10.2. These Internal Rules of Procedure cannot be amended in a way that would cause, explicitly or implicitly, a conflict with the Articles of Association. Should such an amendment be proposed, it would then require a prior amendment of the Articles of Association by the General Assembly in accordance with the Articles of Association such that the conflict is removed.

10.3. In case of conflict, the Articles of Association take precedence over the Internal Rules of Procedure, which take precedence over the ACLP Code of Conduct.

10.4. For the operations of the ACLP, the English version of the Articles of Association will prevail.

## **11. Regulatory Aspects, Stewardship and Stacking**

11.1. Any Regulatory Authorisation Process with regard to a specific Regulated Trait shall be controlled only by the Regulated Trait Holder, or any party so authorized by the Regulated Trait Holder. Therefore, each Member acknowledges and agrees not to i) generate data relevant to the Regulatory Approval Process for such specific Regulated Trait (hereinafter "Regulatory Data") ii) publish data relevant to the Regulatory Authorisation Process for such specific Regulated Trait and/or iii) submit such Regulatory Data to the relevant regulatory authorities overseeing any Trait Regulatory Authorisation Process, without the specific written approval of the Regulated Trait Holder.

- 11.2. Without prejudice to Article 11.1, the Licensee Member shall not be prevented from disclosing any Regulatory Data to a competent regulatory authority upon the express request of such authority if, and strictly to the extent that, the Licensee Member is required to do so by law. In any event, the Licensee Member shall, immediately upon receiving such request, notify the Regulated Trait Holder of the request and provide the Regulated Trait Holder with all assistance and documents as the Regulated Trait Holder may require to facilitate the Regulated Trait Holder's control over and compliance with the Trait Regulatory Authorisation Process.
- 11.3. For the avoidance of doubt the foregoing will not prevent any Licensee Member for a Patented Trait that is also a Regulated Trait to generate and use data with regard to such Regulated Trait solely to satisfy the requirements of the variety registration process for his varieties containing the licensed-in Regulated Trait.
- 11.4. In view of the potential liability in relation with the combination of two or more Regulated Traits, each Member also acknowledges and agrees that combining two or more Regulated Traits in a single plant or seed, resulting in a stack of Regulated Traits, requires the prior written agreement of the respective Regulated Trait Holders, which should not be unreasonably withheld.
- 11.5. Members also agree that any Standard License Agreement with respect to a Patented Trait that is also a Regulated Trait may include Stewardship Practices that:
- a. include obligations, applicable to part or all of the Territory, resulting from conditions imposed by relevant regional or national regulatory authorities, as a result of the outcome of the relevant Regulated Trait Authorisation Process, on the cultivation and use of plants or seeds containing such Patented Trait;
  - b. prohibit the cultivation and use of plant varieties containing such Patented Trait in countries of the Territory where the Regulated Trait Authorisation Process has not yet resulted in a determination that such plant varieties can be cultivated and/or used;
  - c. include restrictions as generally set forth in this Section 11 with regard to Regulatory Data.



## 12. Territorial opt-out

- 12.1. In line with Article 15.2.r of the Articles of Association, the Board of Directors shall determine the countries (or parts thereof) of the Territory for which this Article 12 shall apply.
- 12.2. Each Member shall have the power to temporarily opt-out from its rights and obligations under Articles 33 and 34 of the Articles of Association with regard to one or more countries (or parts thereof) of the Territory, as determined by the Board of Directors in accordance with Article 12.1. Consequently, upon exercising such power, said Member shall, with regard to such part of the Territory, temporarily not be obliged to grant nor entitled to obtain (i) Patent Non-Asserts, and/or (ii) Commercial Licenses.
- 12.3. A Member exercising the power under Article 12.2 shall promptly inform the Managing Director thereof, who will record these decisions in a special register that each Member may consult.
- 12.4. Immediately after the incorporation of the Association, the Board of Directors will take a decision that Russia is an opt-out country at its first session.

### **Annexes:**

Annex [A] - Notification in relation to the patent non-asserts under Section 3 of the Internal Rules of Procedure of the Agricultural Crop Licensing Platform (ACLPL)

Annex [B] Projects for further development of the Association to be pursued by the Managing Director upon incorporation of the Association

Annex 1 - SLA Royalty option

Annex 2 - SLA Lump Sum option

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