

MEMBERS' AGREEMENT

in relation to the International Licensing Platform

MEMBERS' AGREEMENT

This Agreement is between:

1. **AGRISEMEN B.V.**, a private company with limited liability incorporated under the laws of the Netherlands (*besloten vennootschap met beperkte aansprakelijkheid*), having its official seat (*statutaire zetel*) in Ellewoutsdijk, the Netherlands, and its office at Zeedijk 4, 4454 PM Borssele, the Netherlands, registered with the Dutch Trade Register of the Chamber of Commerce under number 22047292;
2. **Nunhems B.V.**, a private company with limited liability incorporated under the laws of the Netherlands (*besloten vennootschap met beperkte aansprakelijkheid*), having its official seat (*statutaire zetel*) in Haelen, the Netherlands, and its office at Napoleonsweg 152, 6083 AB Nunhem, the Netherlands, registered with the Dutch Trade Register of the Chamber of Commerce under number 13002516;
3. **Bejo Finance B.V.**, a private company with limited liability incorporated under the laws of the Netherlands (*besloten vennootschap met beperkte aansprakelijkheid*), having its official seat (*statutaire zetel*) in Warmenhuizen, the Netherlands, and its office at Trambaan 1, 1749 CZ Warmenhuizen, the Netherlands, registered with the Dutch Trade Register of the Chamber of Commerce under number 37083070;
4. **Enza Zaden Beheer B.V.**, a private company with limited liability incorporated under the laws of the Netherlands (*besloten vennootschap met beperkte aansprakelijkheid*), having its official seat (*statutaire zetel*) in Enkhuizen, the Netherlands, and its office at Haling 1 E, 1602 DB Enkhuizen, the Netherlands, registered with the Dutch Trade Register of the Chamber of Commerce under number 36034974;
5. **Holland-Select B.V.**, a private company with limited liability incorporated under the laws of the Netherlands (*besloten vennootschap met beperkte aansprakelijkheid*), having its official seat (*statutaire zetel*) in Andijk, the Netherlands, and its office at Horn 29, 1619 BT Andijk, the Netherlands, registered with the Dutch Trade Register of the Chamber of Commerce under number 36014057;
6. **VILMORIN & CIE**, a company incorporated under the laws of France (*Société Anonyme*), having its registered office at 4 Quai de la Mégisserie, 75001 Paris, France, registered with the *Registre du commerce et des sociétés* under number 377 913 728;
7. **Asparagus Beheer B.V.**, a private company with limited liability incorporated under the laws of the Netherlands (*besloten vennootschap met beperkte aansprakelijkheid*), having its official seat (*statutaire zetel*) in Horst aan de Maas, the Netherlands, and its office at Veld-Oostenrijk 13, 5961 NV Horst, the Netherlands, registered with the Dutch Trade Register of the Chamber of Commerce under number 12030202;
8. **Belami B.V.**, a private company with limited liability incorporated under the laws of the Netherlands (*besloten vennootschap met beperkte aansprakelijkheid*), having its official seat (*statutaire zetel*) in Andijk, the Netherlands, and its office at Middenweg 52, 1619 BN Andijk, the

Netherlands, registered with the Dutch Trade Register of the Chamber of Commerce under number 37105105;

9. **Rijk Zwaan Zaadteelt en Zaadhandel B.V.**, a private company with limited liability incorporated under the laws of the Netherlands (*besloten vennootschap met beperkte aansprakelijkheid*), having its official seat (*statutaire zetel*) in De Lier, the Netherlands, and its office at Burgemeester Crezéelaan 40, 2678 KX De Lier, the Netherlands, registered with the Dutch Trade Register of the Chamber of Commerce under number 27214459;

10. **Syngenta Crop Protection AG**, a public joint stock company incorporated under the laws of Switzerland (*Aktiengesellschaft*), having its registered office at Schwarzwaldallee 215, 4058 Basel, Switzerland, registered with the Commercial Register of Canton Basel-city under number CHE-108.526.832; and

11. **Takii & Co., Ltd**, a limited liability company incorporated under the laws of Japan, having its registered office at Kyoto, Japan, and its principal place of business at 180, Umekojidori, Inokuma-higashi-iru, Shimogyo-ku, 6008686, Kyoto, Japan, registered with the Trade Register of the Kyoto Legal Affairs Bureau under number 1300-01-017950,

(the parties referred to in paragraphs 1 through 11, jointly the “**Parties**” and each a “**Party**”).

Whereas:

- (A) Each of the Members wishes to enter into this Agreement in order to further set forth their and any future Member’s respective rights and obligations in connection with the Association.
- (B) The Association is a Party in order to express its agreement to the contents and its acceptance of the Association’s rights and obligations contained herein.

It is agreed as follows:

1 Interpretation

In this Agreement, including its Recitals and Annexes, unless the context otherwise requires, the provisions in this article 1 apply:

1.1 Definitions

Save as otherwise set out below or otherwise in this Agreement, words and expressions defined in the Articles of Association and the Internal Regulations have the same meaning in this Agreement.

“**Agreement**” means this Members’ agreement including all of its annexes.

“**Articles of Association**” means the articles of association (*statuten*) of the Association, as amended from time to time.

“**Effective Date**” means the date this Agreement is signed by at least 7 Parties that represent at least 40 Committed Patent families.

1.2 Singular, Plural, Gender

References to one gender include all genders and references to the singular include the plural and *vice versa*.

1.3 References to Persons and Companies

References to:

1.3.1 a person include any company, partnership or unincorporated association (whether or not having separate legal personality); and

1.3.2 a company include any company, corporation or any body corporate, wherever incorporated.

1.4 References to articles

References to this Agreement shall include any articles in it and references to “articles” refer to articles that are part of this Members’ Agreement, except where expressly indicated otherwise.

1.5 Legal Terms

References to any Dutch legal term shall, in respect of any jurisdiction other than the Netherlands, be construed as references to the term or concept which most nearly corresponds to it in that jurisdiction.

1.6 Headings

Headings shall be ignored in interpreting this Agreement.

1.7 Documents

References to any document or agreement include a reference to that document or agreement as varied, amended, supplemented, substituted or assigned from time to time in accordance with this Agreement (as applicable).

1.8 Voting of the General Meeting

If in this Agreement reference is made to the adoption of resolutions by the General Meeting with a certain majority of the votes, article 1.3 of the Articles of Association applies *mutatis mutandis* to the adoption of these resolutions by the General Meeting.

1.9 Contra Proferentem

No provision of this Agreement shall be interpreted adversely against a Party, solely because that Party was responsible for drafting that provision.

2 Objects

The objects of the Association are:

- (a) to guarantee access to patents covering biological material;
- (b) to safeguard that incentives to innovate which depend on the availability of patent protection, remain intact; and
- (c) to do all that is connected with the objects under (a) and (b) or may be conducive thereto, all to be interpreted in the broadest sense.

3 Parties

3.1 Obligations

3.1.1 Each Party shall comply with this Agreement, the Articles of Association, the Internal Regulations, the Board By-Laws and the Expert Committee By-Laws, as well as with all resolutions of the General Meeting, the Board and the Expert Committee.

3.2 Duration of obligations

3.2.1 This Agreement shall enter into force on the Effective Date.

3.2.2 As from the Effective Date, a party becomes a Member of the Association and a Party to this Agreement per the day of signing this Agreement.

3.2.3 To the extent this Agreement or the Articles of Association do not explicitly provide otherwise, the obligations as set out in this Agreement commence as per the day of becoming a Party and terminate as per the day of the relevant Party ceasing to be a Party, other than pursuant to article 7.2 of the Articles of Association in which latter case the former Party's obligations shall be assumed by the acquiring legal entity.

3.2.4 The obligations as referred to in article 2 of the Internal Regulations and all corresponding and related obligations shall continue to apply unimpaired to the relevant Party (or its successors) and its Affiliates with respect to the relevant Committed Patents and the relevant Variety patents owned and/or controlled by it or its Affiliates during the period that the relevant Party is a Party for a period of five (5) years upon the relevant Party ceasing to be a Party, other than pursuant to article 7.2 of the Articles of Association in which latter case the former Party's obligation as referred to in article 2 of the Internal Regulations shall be assumed by the acquiring legal entity.

3.2.5 All Standard License Agreements which have been made with a former Party may be terminated by the relevant Patentee Member by means of a notification in writing thereof to that Party which notification must be sent within a period of two (2) months of the former Party's Membership being terminated. The termination of the License shall have effect thirty (30) days after the date of this notification.

3.2.6 For the avoidance of doubt, all Licenses which have been granted by a former Party or any of its Affiliates that is not being succeeded under universal succession of title in accordance with article 7.2 of the Articles of Association, remain valid and continue to apply unimpaired compliant with the terms and conditions as set out in the relevant License Agreement.

3.2.7 Any request of a Requesting Member for a License under a Committed Patent of a former Party or any of its Affiliates, made during the period stated in article 3.2.4, shall be settled as if the former Party is still a Member and Parties hereby declare that they shall fully cooperate to establish a License based on the procedure as set forth in article 5 and if necessary, article 6 of the Internal Regulations, all in accordance with the Articles of Association, Members' Agreement, Internal Regulations and By-Laws valid on the date said Party gave notice of termination. The latter also applies to any pending procedures in which said Party was initially involved as a Member.

4 Representation and warranties

4.1 Each Party represents and warrants to the other Parties hereto as follows:

4.1.1 it has the power to enter into this Agreement and has taken all necessary action to authorise its entry into and performance of its obligations thereunder;

- 4.1.2 the person(s) signing this Agreement on its behalf is/are duly authorised to sign for and on its behalf;
- 4.1.3 it is not a party to any agreement that is inconsistent with the rights of any party hereunder or otherwise conflicts with the provisions hereof

5 Disputes

- 5.1 Any dispute, controversy or claim arising under, out of or relating to article 6 of the Internal Regulations (for the avoidance of doubt, not being disputes covered by the disputes article in a License Agreement) and article 9 of the Internal Regulations, including, without limitation, the formation, validity, binding effect, interpretation, performance, breach or termination, shall be settled in accordance with article 11 of the Internal Regulations.
- 5.2 All disputes arising in connection with the articles of association, the resolutions of the Corporate Bodies, the Members' Agreement, the Board By-Laws, the Expert Committee By-Laws or further agreements resulting therefrom, except (i) the disputes as referred to in article 5.1, (ii) disputes arising from license agreements containing a separate dispute resolution provision (including any Binding License Agreement), (iii) disputes arising from other agreements which contain a separate dispute resolution provision and (iv) disputes relating to the infringement or validity of a Committed Patent, shall be settled in accordance with article 36 of the Articles of Association.

6 General

6.1 Duration

When a Party (other than the Association) ceases to be a Member that Party shall cease to have any rights or be bound by any obligations under this Agreement except that:

- i) Article 1 (*Interpretation*), article 3.2 (*Duration of obligations*), article 5 (*Disputes*) and article 6 (*General*) hereof shall continue to bind it; and
- ii) other than provided under article 3.2.5 its accrued rights and obligations shall not be affected.

6.2 Notices

- 6.2.1 Any notice, claim or demand in connection with this Agreement shall be in writing in English and shall be sufficiently given if delivered or sent to the recipient at (i) its fax or e-mail address as included in the register of Members kept by the Board or (ii) its address as included in the register of Members kept by the Board or at such other address or fax or e-mail address as it may notify to the other Parties and the Board. Any notice or other document sent by post shall be sent by prepaid recorded delivery post (if the place of destination is the same as its country of origin) or by prepaid airmail (if its destination is elsewhere).
- 6.2.2 In proving the giving of a notice or other formal communication it shall be sufficient to prove that delivery in person was made or that the envelope containing the communication was properly addressed and posted, either by prepaid recorded delivery post or by prepaid airmail as the case may be, or that the fax or e-mail was properly addressed and transmitted, as the case may be.

6.3 Whole Agreement and remedies

- 6.3.1 This Agreement contains the whole agreement between the Parties relating to the subject matter of this Agreement at the date of this Agreement to the exclusion of any terms implied by law which may be excluded by contract and supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in this Agreement.
- 6.3.2 So far as permitted by law and except in the case of fraud, each Party agrees and acknowledges that its only right and remedy in relation to any representation, warranty or undertaking made or given in connection with this Agreement shall be for breach of the terms of this Agreement to the exclusion of all other rights and remedies (including those in tort or arising under statute but excluding those in the Articles of Association, the Internal Regulations, the Board By-Laws and the Expert Committee By-Laws).

6.4 Conflict with the Articles of Association

- 6.4.1 In the event of any ambiguity or discrepancy between the provisions of this Agreement on the one hand and the Articles of Association and Internal Regulations on the other hand, it is intended that the provisions of the latest version of the Articles of Association and the Internal Regulations shall prevail.
- 6.4.2 The Articles of Association have been executed in Dutch with an office translation thereof in English. In the event that any differences may occur in translation, the Parties hereby agree that the text of the English office translation shall prevail between the Parties and that, in the event of a dispute between one or more Parties, they shall only bring forward as evidence the English office translation of the Articles of Association in any legal proceedings to the extent permitted under applicable law.

6.5 No Partnership

Nothing in this Agreement shall be deemed to constitute a partnership between the Parties.

6.6 Survival of rights, duties and obligations

- 6.6.1 Termination of this Agreement for any cause shall not release a Party from any liability which at the time of termination has already accrued to another Party or which thereafter may accrue in respect of any act or omission prior to such termination.
- 6.6.2 If a Party ceases to be a party to this Agreement for any cause such Party shall not be released from any liability which at the time of the cessation has already accrued to another Party or which thereafter may accrue in respect of any act or omission prior to such cessation.

6.7 Waiver

No failure of any Party to exercise, and no delay by it in exercising, any right shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude any other or further exercise of that right or the exercise of any other right.

6.8 Amendment

Any amendment or addition to this Agreement shall only be valid and binding between the Parties if made in writing and executed by all Parties.

6.9 No assignment

None of the Parties may assign, grant any security interest over, hold on trust or otherwise transfer the benefit of the whole or any part of this Agreement.

6.10 Further assurance

Each Party shall:

- (a) cooperate with the other Parties and execute and deliver to each of the others instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out the intended purpose of this Agreement; and
- (b) shall use all reasonable endeavours to procure that any necessary third-party shall execute such documents and do such acts and things as may reasonably be required in order to carry out the intended purpose of this Agreement.

6.11 Invalidity/Severance

6.11.1 If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, the provision shall apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the Parties.

6.11.2 To the extent it is not possible to delete or modify the provision, in whole or in part, under article 6.11.1 hereof, then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed not to form part of this Agreement and the legality, validity and enforceability of the remainder of this Agreement shall, subject to any deletion or modification made under article 6.11.1 hereof, not be affected.

6.12 Counterparts

This Agreement may be entered into in any number of counterparts, each of which when executed and delivered shall be an original but all of which taken together shall constitute one and the same document.

6.13 Governing law

6.13.1 This Agreement and any non-contractual obligations arising out of it are governed by and shall be construed in accordance with the laws of the Netherlands.

6.13.2 This article 6.13 shall also apply to disputes arising in connection with agreements which are connected with this Agreement, unless the relevant agreement expressly provides otherwise.

In witness of which this Agreement has been duly executed.

AGRISEMEN B.V.

By:

Its: solely authorised managing director

By:

Its: sole managing director

Date:

Nunhems B.V.:

By: J.W. Schneider

Its: sole managing director

Date:

Bejo Finance B.V.

By: J.P. Schipper

Its: solely authorised managing director

Date:

Enza Zaden Beheer B.V.

By:

Its:

Date:

Holland-Select B.V.

By: Holland-Select Beheer B.V.

Its: sole managing director

By: Tussenholding Holland-Select B.V.

Its: sole managing director

By:

Its: solely authorised managing director

By:

Its:

Date:

VILMORIN & CIE

By: E. Rougier

Its: Chief Executive Officer

Date:

Asparagus Beheer B.V.

By: Bähr Venlo B.V.

Its: sole managing director

By: G.J.M. van den Bercken

Its: sole managing director

Date:

Belami B.V.:

By: Galena Beheer B.V.

Its: jointly authorised managing director

By: E.L. Timmerman

Its: sole managing director

Date:

By: Maharagwe B.V.

Its: jointly authorised managing director

By: P.A. Vriend

Its: sole managing director

Date:

Rijk Zwaan Zaadteelt en Zaadhandel B.V.

By: B.M. Tax

Its: sole managing director

Date:

Syngenta Crop Protection AG:

By: D. Pisk

Its: COO

Date:

By: M. Kock

Its: Head IP

Date:

Takii & Co., Ltd,

By:

Its:

Date:

Signed for approval by the International Licensing Platform on 17 December 2014

By:

Its: member of the board

By:

Its: member of the board

By:

Its: member of the board

By:

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By:

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