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## **International Licensing Platform Vegetable**

### **INTERNAL REGULATIONS**

## INTRODUCTION

- These Internal Regulations are established pursuant to article 9 of the Articles of Association and set out the obligations of the Members and internal procedures of the Association.
- These Internal Regulations are integral and complementary to and should be read in conjunction with the provisions of the Articles of Association, the Members' Agreement, the Board By-Laws and the Expert Committee By-Laws.

## CHAPTER I

### 1 Definitions and interpretation

- 1.1 In these Internal Regulations, the following terms shall have the following meanings, except where expressly indicated otherwise:

**"Affiliate"** means, with respect to any legal entity, any other legal entity that, directly or indirectly, Controls, is Controlled by or is under common Control with such legal entity.

**"Association"** means the association, the internal organisation of which is governed by its articles of association, named International Licensing Platform Vegetable.

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

**"Baseball Procedure"** means the procedure as described in article 6.

**"Bilateral License Agreement"** means the agreement which differs from the Standard License Agreement and in which the terms and conditions governing the License under a Committed Patent are agreed upon by the parties bilaterally.

**"Binding License Agreement"** means the Standard License Agreement that is a result of the request pursuant to article 5.3 or the Baseball Procedure.

**"Binding Trait Category Advice"** has the meaning attributed thereto in article 9.11.

**"Board"** means the board of the Association.

**"Categorisation Procedure"** means the procedure applied by the Expert Committee for the (re)assessment of the Trait Category as described in article 9.

**"Committed Patents"** means all published Patents and applications thereto owned or controlled – with the right to license or sublicense to Members – by a Patentee Member and/or its Affiliates but excluding each Patent under which a Patentee

Member and/or its Affiliates has granted an exclusive license or entered into any other agreement which precludes granting a License under these Internal Regulations before that Patentee Member became a Member.

**“Control”** shall mean 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 board (bestuur), supervisory board (raad van commissarissen) or other governing body, or otherwise has the power to control the management and policies of that other legal entity. Terms derived from Control, such as **“Controlled”** etcetera, shall have a similar meaning to that of Control.

**“Expert Committee”** means the expert committee of the Association.

**“Expert Committee By-Laws”** has the meaning attributed thereto in article 20.2 of the Articles of Association.

**“General Meeting”** means the body of the Association consisting of the Members, or (as the case may be) a meeting of Members (or their representatives) and other persons entitled to attend such meetings.

**“in writing”** means transmitted by registered letter.

**“Initial Board of the Expert Committee”** has the meaning attributed thereto in the Expert Committee By-Laws.

**“License”** means a world-wide, non-exclusive, non-assignable right under a Patent solely to use Source Material to breed, develop, produce, keep in stock, treat, market, sell and/or deliver Licensed Products without the right to sublicense unless explicitly specified otherwise.

For the avoidance of doubt, the License includes the right to use generic methods and processes of breeding and of seed production but does not include the right to practice any technical step claimed in the Patents, nor to use any other material claimed in the Patents - including but not limited to molecular markers or DNA sequences - other than Source Material. Thus, a Patent, which covers Source Material, can also cover non-generic technology, the latter being excluded from the License.

The License does not include any right to sublicense other than to third parties to have Licensed Products researched, developed, produced and/or treated solely for the benefit of Licensee and/or its Affiliates, all subject to the conditions as specified in the License Agreement.

**“License Agreement”** means a Bilateral License Agreement, a Standard License Agreement or a Binding License Agreement, as applicable.

**“Licensee Member”** means a Member or one of its Affiliates that as a licensee has entered into a License Agreement for one or more Committed Patents.

**“Licensed Product”** means any Vegetable biological material, including but not limited to Vegetable plants and seeds, which is exclusively owned by a Licensee Member or co-owned with (an)other Licensee Member(s) with similar rights as under a License, and falls under the scope of a Committed Patent with the exclusion of plant varieties owned or developed by or for the Patentee Member and its Affiliates.

**“Lump Sum”** means the Remuneration in the form of a fixed amount.

**“Member”** means a member of the Association.

**“Members’ Agreement”** means the members’ agreement in respect of the Association dated on or about the thirteenth day of November two thousand and fourteen, which agreement (or relevant parts thereof) is/are deposited at the Association’s office.

**“Membership”** means, with respect to a Member, all rights and obligations of such Member towards the Association resulting from the relevant Member’s membership of the Association, the Articles of Association, the Dutch Civil Code and the Members’ Agreement.

**“MFN Percentage”** means the Most Favoured Nations percentage which consists of the lowest Royalty Percentage included in one or more Standard License Agreements regarding the same Committed Patent or the Royalty Percentage adjusted for a specific Committed Patent according to article 6.12.

**“Net Sales”** means the total invoiced amount to third parties by a Licensee Member and its Affiliates in respect of the sales and/or delivery of Licensed Products, including but not limited to the Licensed Product sales price and any value received from beneficiaries downstream the value chain, in any country where such Licensed Product is covered by a Valid Claim, after deduction of any discounts given, including commission directly related to turnover, and exclusive of costs for seed treatment as determined by the Expert Committee according to article 1.1(d) of the Expert Committee By-Laws.

**“New Trait Category Decision”** has the meaning attributed thereto in article 9.10.

**“Normal Trait”** means a trait covered by a Committed Patent which is not a Special Trait.

**“Objection Board of the Expert Committee”** has the meaning attributed thereto in the Expert Committee By-Laws.

**“Patent”** means all intellectual property rights similar or identical to the intellectual property rights described in the European Patent Convention or the US Patent Act (as laid down in title 35 of the United States Act), that would, without a License, be infringed by the use of biological material for breeding new varieties of Vegetable plants and/or the use and exploitation of such newly developed varieties but with the exclusion of i) plant patents meant in the United States Code Title 35 Chapter 15 or any rights identical to such plant patents, ii) patents solely covering Special Traits, and iii) Variety patents.

**“Patent Information List”** has the meaning attributed thereto in article 4.1.

**“Patentee Member”** means a Member owning and/or controlling, directly or through any of its Affiliates, one or more Committed Patents and/or Variety patents.

**“Patent Register”** has the meaning attributed thereto in article 4.1.

**“Remuneration”** means the compensation for a License.

**“Request for Review”** has the meaning attributed thereto in article 6.5.

**“Requesting Member”** means a Member which has requested a Patentee Member to be granted a License.

**“Regulated Trait”** means (i) a trait that is developed by using genetic modification techniques which lead to genetically modified organisms which may not be released in the environment without an environmental risk assessment according to EU Directive 2001/18 on the deliberate release into the environment of genetically modified organisms or a corresponding legislation in other countries, and (ii) a trait that is not covered by EU Directive 2001/18 or corresponding legislation in other countries, provided that substantial liability risks or substantial deregulation costs as referred to in the definition of Special Trait are confirmed by the Expert Committee.

**“Royalty Percentage”** means the Remuneration in the form of a percentage of the Net Sales.

**“Secretary”** has the meaning attributed thereto in article 15.1 of the Articles of Association.

**“Source Material”** means any Vegetable biological material, including but not limited to plants and seeds, that (i) falls under the scope of a Committed Patent, and (ii) is commercially available, or otherwise legally available for breeding purposes.

**“Special Trait”** means a Regulated Trait which, according to the Expert Committee, involves substantial liability risks or substantial deregulation costs. For the avoidance of doubt, each trait that is subject to an environmental risk assessment under EU Directive 2001/18 (version that is valid on the first day of August two thousand and

fourteen) is considered to fulfil the criteria regarding substantial liability risks or substantial deregulation costs and is therefore considered to be a Special Trait.

**“Standard License Agreement”** means a License Agreement consisting of the terms and conditions as described in either Annex 1 or in Annex 2 of these Internal Regulations and that also contains the Remuneration. Annex 1 contains the terms and conditions for the Standard License Agreement to be used when a Royalty Percentage applies. Annex 2 contains the terms and conditions for the Standard License Agreement when parties agreed on a Lump Sum.

**“Trait Category Decision”** has the meaning attributed thereto in article 9.7.

**“Valid Claim”** means a claim of any unexpired Patent which is not withdrawn, cancelled or disclaimed by holder of the Patent, nor finally refused, held invalid or revoked by a court of competent jurisdiction or any administrative body in an unappealable decision.

**“Variety”** means a Vegetable plant variety that falls under the scope of a Variety patent.

**“Variety patent”** means a granted patent or published application thereto under title 35 of the United States Act or equivalent right in other countries, that is owned or controlled – with the right to license – by a Member and/or its Affiliates and that claims a specific Variety as such. Additional claims for example to the use of the Variety or its offspring shall not change the classification as a Variety patent. If a patent claims a Variety but also claims a Normal Trait it should be considered a Patent and not a Variety patent.

**“Vegetable”** means the vegetable crops as listed in Annex 3 of these Internal Regulations.

- 1.2 References to “articles” refer to articles that are part of these Internal Regulations, except where expressly indicated otherwise.
- 1.3 The annexes to these Internal Regulations form an integral part of these Internal Regulations.

## **CHAPTER II OBLIGATIONS**

### **2 Obligations of a Member with respect to Patents**

- 2.1 Within two (2) weeks after a Member has been admitted as Member it shall notify the Board about its Committed Patents and any Member shall notify the Board about any new Committed Patents within three (3) months after the first publication date, which notifications shall at least include (to the extent relevant) the data set forth in the Patent Information List so that the Board can register the relevant Patents in the Patent Register.

- 2.2 Under and pursuant to these Internal Regulations, a Member is required to make Licenses under its and its Affiliates' Committed Patents available to the other Members and their Affiliates and shall not invoke its and its Affiliates' Variety patents, Committed Patents and general terms and conditions that prohibit or limit the use of a variety for the purpose of breeding and/or development in accordance with and under the conditions of article 8.
- 2.3 The obligation of a Member to grant a License under a specific Committed Patent under these articles of association to another Member shall not apply in case such other Member has obtained a License under that Committed Patent before such other Member became a Member of the ILP. For the avoidance of doubt, any termination of such a License will not revive such obligation.
- 2.4 The obligations referred to in article 2.2 shall continue to apply unimpaired to the relevant Member (or its successors) and its Affiliates with respect to the Committed Patents and the Variety patents, owned and/or controlled by it and/or its Affiliates during its Membership, for a period of five (5) years upon the relevant Member ceasing to be a Member (other than pursuant to article 7.2 of the Articles of Association in which latter case the former Member's obligations shall be assumed by the acquiring legal entity). During said period of five (5) years the Internal Regulations, the Articles of Association, Members' Agreement, The Board By- Laws and the Expert Committee By-Laws valid on the date the relevant Member gave notice of termination shall remain applicable to that former Member (or its successors) and its Affiliates and they shall be bound to all procedures with continuing Members including the procedures under articles 5 and 6.
- 2.5 In case a third party not being a Member acquires (part of) the Committed Patents and/or Variety patents of a Member and/or its Affiliates, for example as a result of an assignment, that Member undertakes that the obligations referred to in article 2.2 shall apply unimpaired to the acquiring third party and its Affiliates with respect to the acquired Committed Patents and Variety patents, for a period of five (5) years upon acquirement by the third party of the Committed Patents and/or Variety patents, all in accordance with the conditions and procedures of these Internal Regulations.
- 2.6 In the event that a Member or a Member's Affiliate holds an exclusive license to a Patent of a third party but without the right to license or sublicense to other Members, the relevant Member shall use reasonable efforts to obtain the right to sub-license to any other Member and its Affiliates under the terms and conditions of the Standard License Agreement and the procedures of this Association. Upon the request in writing of a Member who wishes to be granted a sub-license, the Expert Committee shall verify whether the Member has used reasonable efforts.
- 2.7 In the event a Member or a Member's Affiliate develops jointly with one or more third parties (not being a Member or a Member's Affiliate) new biological material containing a Normal Trait or one or more third parties have developed such biological material for that Member and/or its Affiliates, such Member will use reasonable

efforts to have any related Patent jointly owned and/or controlled with those third parties included as Committed Patent. Upon the request in writing of a Member who wishes to be granted a license under such a Patent, the Expert Committee shall verify whether the Member has used reasonable efforts.

### **3 Special Traits**

3.1 In the event biological material of Vegetables with Special Traits becomes commercially relevant for the global vegetable market and is covered by patents, the Members shall negotiate in good faith a comparable solution as agreed under the ILP to achieve the object of the Association. Such negotiation shall be mediated by the Expert Committee and shall take into consideration the substantial liability risks and the substantial deregulation costs and in consequence shall include (a) arrangements with regard to stewardship and/or liability if applicable, and (b) arrangements for compensating additional deregulation costs if applicable.

3.2 In case a Patent covers both a Normal Trait and a Special Trait the rights under the Standard License Agreement and non-asserts as described in article 8 only apply in relation to material containing the Normal Trait covered by the Patent concerned as long as no comparable solution as described under Article 3.1 has been agreed upon. As a consequence, during the absence of such a solution, any reference to material as far as the rights under the ILP are concerned - including but not limited to references in articles 2 and 8 and in the Standard License Agreement - are understood as references to material that does not contain the Special Trait covered by the Patent concerned.

Material covered by a Patent that relates to a trait that qualifies as Special Trait in one or more countries, should be considered as material comprising the Normal Trait as covered by the Patent concerned in countries where such material is commercialized by the Patentee Member, its Affiliates and/or its licensees without any labelling or restrictions from which it unambiguously follows that the material concerns the Special Trait. Any Member may file a request to the initial Board of the Expert Committee to assess whether it follows unambiguously from the labelling or restrictions in one or more countries that the material concerns the Special Trait. The procedure for decision-making by the Expert Committee shall be in analogy to Article 9 of this Regulation. In case the Expert Committee decides that it does not follow unambiguously from the labelling or restrictions applied in one or more countries that the material concerns the Special Trait, the material shall be considered to contain the Normal Trait covered by the Patent concerned and not the Special Trait covered by that Patent in the relevant country or countries.

If a specific, clearly identifiable pre-commercial material (e.g., material deposited under the Budapest Treaty) is legally available and it is not unambiguously clear from the related patent whether such material is regulated under EU Directive 2001/18, Patentee Members will use reasonable efforts to indicate this in the Patent Register. No liability shall result from any omission of this requirement.

## **CHAPTER III PATENT REGISTER; LICENSE AGREEMENT; LICENSE PROCEDURE**

### **4 Patent Register**

- 4.1 The Association shall keep an accurate and up-to-date register in which all Committed Patents are recorded (the “**Patent Register**”). The Patent Register (which, to the extent possible, shall be by crop(s)) contains the details of all Committed Patents, and shall at least include the following information (the “Patent Information List”):
- (a) name of the Patent holder;
  - (b) name/title of the Committed Patent;
  - (c) the Committed Patent’s number(s) which may be limited to the European and US patent numbers;
  - (d) the crop(s) to which the Committed Patent belongs;
  - (e) link to a commonly accepted public database that includes the Committed Patent.
- 4.2 A Member shall notify the Board in writing upon any data set forth in the Patent Information List which are still missing, becoming available, which notification shall at least include the data which have become available.
- 4.3 The Patent Register may be made publicly available by the Board.
- 4.4 A Member shall be provided by the Secretary with a link to a website containing the online Patent Register. Upon its request, a Member shall also be provided with a copy of the Patent Register, or an extract thereof, if applicable.

### **5 License Agreement**

- 5.1 In order to obtain a License under a Committed Patent, a Requesting Member shall request the relevant Patentee Member in writing to enter into a License Agreement.
- 5.2 In the event that the Requesting Member and a Patentee Member cannot bilaterally agree on a Standard License Agreement or a Bilateral License Agreement within three (3) months from the date of the request as per article 5.1, the Requesting Member is entitled to start the Baseball Procedure according to article 6 in case no MFN Percentage has been set or in case an MFN Percentage has been set i) to file a request to the Secretary pursuant to article 5.3 or ii) to start the procedure for revising an MFN Percentage under Article 6.12.
- 5.3 For the avoidance of doubt, once an MFN Percentage has been set, a Requesting Member is at all times entitled to obtain a Standard License Agreement including the MFN Percentage. If the Patentee Member refuses such a request for whatever reasons, a Binding License Agreement between the Patentee Member and the

Requesting Member shall, upon request of the Requesting Member, be prepared by the Secretary and qualifies as binding advice (bindend advies), regardless whether the document is signed by the parties thereto or not, setting out the rights and obligations of both parties vis-à-vis each other with respect to the relevant Committed Patent.

- 5.4 For the sake of good order, the Secretary shall promptly prepare execution versions of the Binding License Agreement in twofold, one for the Patentee Member and one for the Requesting Member. The Patentee Member and the Requesting Member shall sign and exchange between themselves execution versions of the Binding License Agreement such that each has a fully executed version.
- 5.5 The Patentee Member shall provide the Secretary with a copy of the executed Binding License Agreement. The Secretary shall keep the copies of the executed Binding Standard License Agreement with the books and records of the Association.

## **6 Baseball Procedure**

- 6.1 The request to initiate the Baseball Procedure shall be made to the Secretary in writing. The Secretary shall immediately request both the Requesting Member and the Patentee Member to submit their respective proposal for a Royalty Percentage or, if the Members involved agree so, a proposal for a Lump Sum, to the Secretary. Both these Members shall submit their proposal in writing for the Remuneration within two (2) weeks following receipt of the request by the Secretary.
- 6.2 The Secretary shall upon receipt of the proposals for the Remuneration promptly send the proposal of the Requesting Member to the Patentee Member and the proposal of the Patentee Member to the Requesting Member. Both Members will try to agree on and to execute a License Agreement within a period of three (3) weeks after the Secretary has exchanged the proposals between the Members involved. This period can be extended by mutual agreement of both Members.
- 6.3 If a Requesting Member and a Patentee Member cannot bilaterally agree on a License Agreement within the period prescribed in article 6.2, the Requesting Member has the right to start the next phase of the Baseball Procedure by filing a request thereto in writing to the Secretary. Upon receipt of such a request the Secretary will ask each of the Members involved to submit within two weeks the reasoning why that Members' own proposal is reasonable and he will submit the proposals as originally submitted under article 6.1 and the reasoning to the Initial Board of the Expert Committee. The Secretary shall organize a conference of the Initial Board of the Expert Committee as soon as reasonably possible and the Initial Board of the Expert Committee will in this conference – upon careful consideration of the reasoning of both Members – choose either the proposal of the Requesting Member or the proposal of the Patentee Member, whichever is the most reasonable proposal according to its opinion. The Secretary will promptly notify the Members involved in writing about the decision of the Initial Board of the Expert Committee.

- 6.4 If a Patentee Member does not submit a proposal under this article 6, the Secretary will inform the Initial Board of the Expert Committee accordingly. In such a case the Initial Board of the Expert Committee shall consider the proposal of the Requesting Member to be the most reasonable according to its opinion. The Secretary will promptly notify the Members involved in writing about the decision of the Initial Board of the Expert Committee.
- 6.5 Each of the Members involved in the Baseball Procedure may file in writing a request for revision against the decision under 6.3 or 6.4 on the Remuneration with the Objection Board of the Expert Committee within one (1) month following the date of the decision (**“Request for Review”**). The Objection Board of the Expert Committee shall solely perform a formal review of the Baseball Procedure but shall not revisit the substantive facts of the decision of the Initial Board of the Expert Committee as such. The grounds for the revision must be submitted jointly with the written request to the Objection Board of the Expert Committee in order for the objection to be considered properly filed.
- 6.6 In case a Member files a Request for Review, the other Member involved will be notified by the Secretary and this other Member may file a response in writing with the Objection Board of the Expert Committee within one (1) month following the date of the notification by the Secretary. If a Request for Review is properly filed, the Objection Board of the Expert Committee shall, taking into account all information available, decide within two (2) months after the notification by the Secretary, whether the initial decision should be revoked. In case of revocation, a new Baseball Procedure will be initiated. In case the Request for Review is rejected, the initial decision of the Initial Board of the Expert Committee will remain in force.

The decision upon the Request for Review must be properly reasoned by the Objection Board of the Expert Committee.

- 6.7 Within two weeks after the period referred to in article 6.5 has lapsed or when a Request for Review has been rejected pursuant to article 6.6, the Secretary shall prepare execution versions of the Binding License Agreement in twofold, one for the Patentee Member and one for the Requesting Member. The Binding License Agreement between the Patentee Member and the Requesting Member prepared by the Secretary qualifies as binding advice (bindend advies), regardless whether the document is signed by the parties thereto or not, setting out the rights and obligations of both parties vis-à-vis each other with respect to the relevant Committed Patent.
- 6.8 For the sake of good order, the Secretary shall promptly prepare execution versions of the Binding License Agreement in twofold, one for the Patentee Member, and one for the Requesting Member. The Patentee Member and the Requesting Member shall sign and exchange between themselves execution versions of the Binding License Agreement such that each has a fully executed version.

- 6.9 The Patentee Member shall provide the Secretary with a copy of Binding License Agreement signed by both parties. The Secretary shall keep the copy with the books and records of the Association. The Secretary shall give inspection of these copies only to the Expert Committee.
- 6.10 The costs for a Baseball Procedure and for filing a Request for Review shall be covered by fees that will be determined by the Board. A resolution of the Board to determine this fee shall require the approval of the General Meeting which shall require a majority of at least eighty percent (80%) of the votes, or which approval is adopted in accordance with article 32.1 of the Articles of Association. In case of the Baseball Procedure the fee shall be paid by the Member whose proposal has not been selected by the Expert Committee. The fee for a Request for Review shall be paid by the Member filing the request, unless the decision of the Initial Board of the Expert Committee is found faulty and revoked. In that case the costs for the revision and the subsequent new Baseball Procedure are born by the Association. The fee should be paid to the bank account of the Association within thirty (30) working days after receipt of the corresponding invoice.
- 6.11 In order to facilitate the decision taking within the Expert Committee and the assessment of the arguments of the Members in relation to a proposal for a Remuneration, all Members shall communicate all Royalty Percentages they have agreed upon in a Standard License Agreement to the Association and the Association shall keep a list of all these Royalty Percentages, as well as of the Royalty Percentages decided upon by the Expert Committee in accordance with this article 6. The Association shall also keep a list of the MFN Percentages. The list showing the MFN Percentage will be open for inspection to all Members, the Secretary and the Expert Committee without identification of the Licensee Member.

#### **6.12 Procedure for revising an MFN Percentage**

- 6.12.1 A Member that considers that the MFN Percentage should be lowered, shall firstly put forward his proposal to the Patentee Member in writing. If the Patentee Member agrees to the proposal, the proposal shall become the new MFN Percentage. If the Patentee Member does not agree with the proposal, the requesting Member may submit his request to lower the MFN Percentage in writing, including his proposal, to the Initial Board of the Expert Committee.
- 6.12.2 A request as described in article 6.12.1 must at all times be supported by convincing arguments and evidence proving a material change to the value of the related Normal Trait which would justify a substantial correction of the MFN Percentage. The Secretary shall promptly notify the Patentee Member concerned in writing that a request has been filed and include the proposal of the requesting Member. The Patentee Member has the right to submit in writing arguments and evidence to the contrary within one (1) month of receiving the notification from the Secretary. The Patentee Member can propose the MFN Percentage or can propose a percentage which is lower than the MFN Percentage but higher than the percentage proposed by the requesting Member.

6.12.3 Not later than two (2) months after the notification as described in article 6.12.2, the Initial Board of the Expert Committee shall decide upon the request as described in article 6.12.1. If the Patentee Member proposed the MFN Percentage and proof of a material change as described in article 6.12.2 is not given by the Requesting Member, the Initial Board of the Expert Committee shall reject the request. If the request is rejected, the MFN Percentage remains unchanged. In this case the fee for the procedure pursuant to this article 6.12 shall be paid by the Requesting Member. If the Initial Board of the Expert Committee decides that the material change as described in article 6.12.2 is proven or if the Patentee Member proposed a lower percentage than the MFN Percentage, the Initial Board of the Expert Committee chooses either the proposal of the Requesting Member or the proposal of the Patentee Member, whichever is the most reasonable proposal according to its opinion. The chosen percentage will be the new MFN Percentage. The fee for this procedure shall be paid by the Member whose proposal has not been selected by the Initial Board of the Expert Committee. As soon as the Initial Board of the Expert Committee has made its decision under this article 6.12.3 the Secretary will promptly notify the Members involved in writing about that decision.

6.12.4 A Patentee Member that considers that a MFN Percentage regarding one of his Committed Patents should be increased, has the right to file a request to the Initial Board of the Expert Committee to increase the MFN Percentage.

6.12.5 A request as described in article 6.12.4 must at all times be made in writing and supported by convincing arguments and evidence proving a material change to the value of the related Normal Trait which would justify a substantial correction to the MFN Percentage. The Secretary shall promptly notify in writing all Members that have a Standard License Agreement under the Committed Patent concerned that a request has been filed. These Licensee Members have the right to submit in writing arguments and evidence to the contrary within one (1) month of receiving such notification. Not later than two (2) months after the notification as described in this article 6.12.5 the Initial Board of the Expert Committee shall decide upon the request. If proof of a material change as described above is not given, the Initial Board of the Expert Commission shall reject the request. If the request is rejected, the MFN Percentage remains unchanged. If the Initial Board of the Expert Committee decides that the material change as described above is proven the proposed percentage will be the new MFN Percentage. The Secretary will promptly notify all Members involved in writing about the decision of the Initial Board of the Expert Committee pursuant to this article. The fee for this procedure shall at all times be paid by the Patentee Member.

6.12.6 In case the outcome of bilateral negotiations or the Baseball Procedure including the procedure as described in this article 6.12 is a Standard License Agreement with a Royalty Percentage that is lower than the MFN Percentage, the new MFN Percentage will apply automatically to all current Standard License Agreements regarding the same Committed Patent from the moment the Standard License Agreement with the new MFN Percentage enters into force.

- 6.12.7 An MFN Percentage that is adjusted according to article 6.12.5 will only apply to new Standard License Agreements entering into force after it has been adjusted.
- 6.12.8 During an ongoing procedure with the Initial Board of the Expert Committee under this article 6.12, the Expert Committee will not proceed with any other request under article 6.12 regarding the same Committed Patent.
- 6.12.9 A Request for Review can be filed to the Objection Board of the of the Expert Committee according to Article 6.5 and 6.6.
- 6.12.10 The fees referred to in this article 6.12 shall be determined by the Board. A resolution of the Board to determine these fees shall require the approval of the General Meeting which shall require a majority of at least eighty percent (80%) of the votes, or which approval is adopted in accordance with article 32.1 of the Articles of Association.

## **7 Other Licenses**

- 7.1 Notwithstanding the provisions as set out in article 6, Members and their Affiliates may enter into agreements with third parties pursuant to which a License with respect to a Committed Patent 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. For the avoidance of doubt, the terms and conditions of the License to such third party may be agreed upon on more favourable terms for such third party than the terms and conditions laid down in the Standard License Agreement.
- 7.2 An agreement as referred to in article 7.1, which entered into force after a the relevant party to such agreement has become a Member, may not in any manner whatsoever exclude access to Committed Patents or Variety patents for other Members and their Affiliates.

## **8 Non-asserts**

### **8.1 Non assert for Variety patents**

- 8.1.1 Each Member undertakes that it and its Affiliates shall not use any Variety patent to prohibit other Members to use Variety(ies), which are commercially available, or otherwise legally available for breeding purposes, for the breeding and development of new Vegetable plant varieties. Furthermore each Member undertakes that it and its Affiliates shall not use any Variety patent to prohibit other Members to carry out any act regarding said new Vegetable plant varieties.

- 8.1.2 The non-assert as described in article 8.1.1 only applies provided that:
- i) the Member invoking the non-assert under this Article 8.1 complies with article 8.5 for the Variety concerned, unless the Patentee Member has not disclosed the name of that Variety in relation to the applicable Variety patent in which case the notification as described in article 8.5 is not required; and
  - ii) the new Vegetable varieties are sufficiently different from the Variety concerned. With due observance of article 8.4 the latter is deemed to be the case if either:
    - a) for open pollinated varieties: at least two crosses are made with varieties other than varieties of the patent holder meaning that the material resulting from a first cross between the Variety and another parent (other than a variety of the patent holder) needs to be crossed at least once more with another parent (other than a variety of the patent holder); or
    - b) for hybrid varieties: doubled haploids technology or an equivalent technology, including but not limited to pedigree selection and SSD (single seed descent), has been applied to the Variety to produce doubled haploids or equivalent products.

8.1.3 In any case, repetitive backcrossing against a Variety will not be considered as leading to sufficient difference from the Variety.

8.1.4 In case a Variety falls under the scope of any other patent than a Variety patent, the non-assert as described in article 8.1 does not imply any license under such other patent.

8.1.5 If a Patentee Member receives a notification under article 8.5 for a specific Variety patent under this article 8.1 which covers a Variety that happens to be also protected in addition by a Committed Patent and if the fact of said protection is not public information, the Patentee Member shall make reasonable efforts to inform the notifying Member of such protection and the related Committed Patent within a reasonable period of time.

## **8.2 Non-assert for Committed Patents**

8.2.1 Each Member undertakes that it and its Affiliates shall not use any Committed Patent to prohibit other Members to use biological material (including varieties) which is commercially available, or otherwise legally available for breeding purposes, for the breeding and development of new Vegetable plant varieties.

8.2.2 If and as far as the use of a variety that falls under the scope of a Committed Patent is concerned, the non-assert as described in article 8.2.1 only applies provided that:

- i) the Member that invokes the non-assert under this article 8.2 complies with article 8.5, unless the Patentee Member has not disclosed the name of the variety concerned in relation to the applicable Committed Patent(s) in which case the notification as described in article 8.5 is not required, and

- ii) the new Vegetable varieties are sufficiently different from the variety referred to under i) (the original variety).

With due observance of article 8.4 the latter is deemed to be the case:

- a) for open pollinated varieties: if at least one cross is made with the original variety and a parent other than a variety of the holder of the Committed Patent concerned, provided that no back-crossing is made against the original variety; or
- b) for hybrid varieties: doubled haploids technology or an equivalent technology, including but not limited to pedigree selection and SSD (single seed descent), has been applied to the original variety to produce doubled haploids or equivalent products.

8.2.3 A License is required as soon as a Member making use of the non-assert as described in this article 8.2 starts producing propagating material of a variety that would fall under a Committed Patent for commercial exploitation.

8.2.4 In case a specific variety is protected by both a Variety patent and a Committed Patent the provision of article 8.1.2 sub ii) a) shall prevail over the provision of article 8.2.2 sub ii) a).

### **8.3 Non-assert for general terms and conditions**

8.3.1 In case a commercially available plant variety of a Member or its Affiliates is sold under valid general terms and conditions that prohibit or limit the use of the variety for the purpose of breeding and/or development, that Member will – also on behalf of its Affiliates – refrain from asserting such prohibition or limitation towards other Members to the extent necessary for the aforementioned purposes. General terms and conditions shall include valid bag tags and general conditions of sale but shall not include any specific bilateral agreement.

8.3.2 The non-assert under article 8.3.1 is only applicable if:

- i) the requirements of article 8.1 are fulfilled in case the variety concerned is protected by a Variety patent or has no patent protection. In case of no patent protection, the term “Patentee Member” in article 8.1 shall have the meaning of “Member entitled to the Variety”, and the term “applicable Variety patent” shall have the meaning of “applicable general terms and conditions”, and the term “Variety” shall mean the variety that is subject to the general terms and conditions), or
- ii) the conditions of article 8.2 are met in case the variety concerned falls solely under the scope of a Committed Patent (but not of a Variety patent).

8.4 For the avoidance of doubt, the non-asserts as described in this article 8 will not apply to the use of parent lines that are repeatedly used in the production of hybrids and that are not being exploited as commercial varieties.

- 8.5 To invoke a non-assert as described in this article 8, a Member should have notified the relevant Member in accordance with annex 4 to these Internal Regulations.
- 8.6 Article 8 does not apply to material deposited in connection with a patent (application) with a recognised depository institution recognised under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, if and as far as the applicable law or the applicable rules of the recognised depository institution concerned prohibit or limit the use of such material for the breeding and/or development of new plant varieties.

## **9 Categorisation Procedure**

- 9.1 Unless otherwise decided upon by the Expert Committee pursuant to this article, the Trait Category of all Patents is that of Normal Trait. If a Member believes that a certain Patent of a Patentee Member should be a Committed Patent and the Patentee Member argues that that patent solely covers Special Traits and therefore refuses a License, said Member may apply to the Initial Board of the Expert Committee to assess the Trait Category.
- 9.2 A Patentee Member may file a request to the Initial Board of the Expert Committee to assess a Normal Trait covered by one of his Committed Patents and to qualify it as Special Trait. The Member who filed the request shall submit a properly reasoned submission in writing including any data and documents which it considers necessary and material for the assessment.
- 9.3 Without a properly reasoned written submission the Expert Committee shall refuse the requests as referred to in articles 9.1 and 9.2.
- 9.4 The Expert Committee shall inform all Members immediately in writing that it shall start an assessment of a Patent.
- 9.5 The Member whose Patent is subject to an assessment shall provide the Initial Board of the Expert Committee with all data and documents necessary for such assessment. These data and documents must be made available to the Initial Board of the Expert Committee at the latest one (1) month after the Initial Board of the Expert Committee has informed all Members pursuant to article 9.4. The Expert Committee may expand the period on the basis of a well- reasoned request of the Patentee Member.
- 9.6 Any Member may submit to the Initial Board of the Expert Committee a properly reasoned response in writing including any data and documents which it considers necessary and material for the assessment within the same period as described in article 9.5.
- 9.7 Based on all the data and documents available to the Initial Board of the Expert Committee, it shall categorise the relevant Patent as Normal or Special Trait (the **“Trait Category Decision”**). The Trait Category Decision must be rendered at the

latest two (2) months following the day on which the period referred to in article 9.5 has lapsed. All Members will be informed of the Trait Category Decision. The Trait Category Decision must be properly reasoned by the Initial Board of the Expert Committee and shall be published in due observance of article 35 of the Articles of Association.

- 9.8 Any Member that is adversely affected by the Trait Category Decision may file an objection in writing with the Objection Board of the Expert Committee within one (1) month following the date of communication of the Trait Category Decision to all Members. An objection must be properly reasoned and all data and documents referred to in such objection must be submitted jointly with the written objection to the Objection Board of the Expert Committee in order for the objection to be considered properly filed.
- 9.9 Other Members may file a response in writing to the objection within two (2) month following the date of communication of the Trait Category Decision to all Members. Such response must be properly reasoned and all data and documents referred to in such response must be submitted jointly with the written response to the Objection Board of the Expert Committee in order for the response to be considered properly filed.
- 9.10 If any objections to a Trait Category Decision are properly filed, the Objection Board of the Expert Committee shall, taking into account all information available, render a new decision on the Trait Category of that Patent (the **“New Trait Category Decision”**) within one (1) month of the last day a response to an objection against a Trait Category Decision with the Objection Board of the Expert Committee as referred to in article 9.9 may be filed. For the avoidance of doubt, such a New Trait Category Decision may also have the same outcome as the Trait Category Decision. The New Trait Category Decision must be properly reasoned by the Objection Board of the Expert Committee.
- 9.11 All Members will be informed in writing of the outcome of the New Trait Category Decision and, at the request of a Member the New Trait Category Decision shall be provided to that Member in due observance of article 35 of the Articles of Association. The Trait Category Decision or, if an objection is filed against a Trait Category Decision, the New Trait Category Decision is final and binding between all Members and qualifies as binding advice (bindend advies) (the **“Binding Trait Category Advice”**).
- 9.12 If the period as referred to in article 9.8 has lapsed, the Member which has allowed such period to lapse shall be inadmissible in its objection and the objection made by that Member shall not be taken into account by the Objection Board of the Expert Committee.
- 9.13 The fees in connection with the requests described in article 9.1 and 9.2 and the objection as described in article 9.8 shall amount to:

- (a) EUR 30,000 for requests as referred to in article 9.1 filed by Members not being the Patentee Member in the specific case;
- (b) EUR 30,000 for requests as referred to in article 9.2 filed by the Patentee Member with the exception that the fee relating to a request to qualify a Committed Patent as a Patent regarding a Special Trait shall amount to EUR 10,000 in case the respective trait is already subject to an existing environmental risk assessment or pending application therefore under EU directive 2001/18 (as valid on the first day of August two thousand and fourteen) or corresponding legislation in other countries; and
- (c) EUR 30,000 for objection as referred to in article 9.8.

Amendment of these fees will be decided upon by the Board. A resolution of the Board to amend these fees shall require the approval of the General Meeting which shall require a majority of at least eighty percent (80%) of the votes, or which approval is adopted in accordance with article 32.1 of the Articles of Association.

- 9.14 After the Trait Category Decision respectively the New Trait Category Decision has become final, the unsuccessful Member shall pay the fee(s) which it is obliged to pay to a bank account in the name of the Association as indicated by the Expert Committee or, on the Expert Committee's behalf, by the Secretary, within thirty (30) working days after receipt of the corresponding invoice.

## **10 Amendments**

- 10.1 With the exception of the fees referred to in article 9.13 and of articles 10.2 and 10.3, a resolution to amend the Internal Regulations requires a resolution of the General Meeting passed with a majority of at least eighty per cent (80%) of the votes, or adopted in accordance with article 32.1 of the Articles of Association. The notice convening the General Meeting must state that an amendment of the Internal Regulations will be proposed in that meeting.
- 10.2 With the exception of article 10.3, a resolution of the General Meeting to amend the following provisions of the Internal Regulations shall require unanimous votes, or can be adopted in accordance with article 32.1 of the Articles of Association:
- (i) the definition of Vegetable as referred to in article 1.1;
  - (ii) the Standard License Agreement as referred to in article 1.1;
  - (iii) article 2.2 and 2.4 (obligations);
  - (iv) the non-asserts under article 8.

For the avoidance of doubt, any amendment to the Standard License Agreement thus resolved upon, shall not affect any License Agreement

already entered into force before the date of such amendment of the articles of association.

- 10.3 In case a change to the Standard License Agreement or the non-asserts under article 8 is required as a consequence of a change in competition law, and provided that such change is confirmed as legally required from a competition law and compliance perspective by independent out-side counsel appointed by the Board, the Board by unanimous decision can decide to amend the Standard License Agreement or the non-asserts to the degree necessary to ensure legal compliance staying as close as possible to the original intention of the respective provision. Any such change shall be confirmed by the subsequent General Meeting.

## **11 Disputes on Binding Category Advices and on Binding License Agreements,**

- 11.1 Any dispute, controversy or claim arising under, out of or relating to the procedures followed under article 6 (for the avoidance of doubt, not being disputes covered by the disputes clause in a Binding License Agreement) and article 9 (categorisation procedure), including but not limited to, the formation, validity, binding effect, interpretation, performance, breach or termination, shall be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules with due observance of article 35 of the Articles of Association. The arbitral tribunal shall consist of one arbitrator. The place of arbitration shall be Amsterdam, the Netherlands. The language to be used in the arbitral proceedings shall be English.
- 11.2 The sole arbitrator must at least have a degree equivalent to a masters degree in Dutch law, with this respect that the degree must at all times be a degree in Dutch law obtained at a Dutch university.
- 11.3 The arbitral tribunal may only share Competitively Sensitive Information with persons as referred to in article 35.2 of the Articles of Association.
- 11.4 In addition to article 55 of the WIPO Expedited Arbitration Rules, the arbitral award shall contain on top of each page of the arbitral award where Competitively Sensitive Information is quoted or where reference is made to such information "CONFIDENTIAL INFORMATION". These parts of the arbitral award shall only be provided to persons as referred to in article 35.2 of the Articles of Association.
- 11.5 Consolidation of the arbitral proceedings with other arbitral proceedings pending in the Netherlands, as provided for in Section 1046 of the Dutch Code of Civil Procedure, is excluded.
- 11.6 Parties agree that, notwithstanding article 68 of the WIPO Expedited Arbitration Rules, they shall make any arbitral awards rendered pursuant to this article 11 available to the Board and the Expert Committee.

- 11.7 Pending arbitral proceedings under this article, and notwithstanding the rights and remedies available to a party pursuant to the law, parties to a Binding License Agreement are obliged to perform under such Binding License Agreement, including the Binding Trait Category, as it is, as long as no final and binding arbitral award has been rendered in such arbitral proceedings.
- 11.8 Should the result of arbitral proceedings under this article be that a party obtains a Licence for a Committed Patent on significantly different terms than the Binding Licence Agreement and the Trait Category Decision applicable to it, the Expert Committee must immediately start a(n) (re)assessment procedure regarding the relevant Committed Patent under article 9, in which it takes the relevant arbitral award into consideration.