

THE AGACCORD: Data Use and Compensation Agreement
A CONTRACTUAL MECHANISM FOR TRANSITIONING TO A
MARKETPLACE WITH GENERIC AGRICULTURAL BIOTECHNOLOGY
SEED PRODUCTS & CONTINUING THE MAINTENANCE OF GLOBAL
PRODUCT AUTHORIZATIONS

Dated as of October 9, 2013

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THE AGACCORD: DATA USE AND COMPENSATION AGREEMENT

THIS AGACCORD: Data Use and Compensation Agreement (“DUCA”) shall become effective (the “Effective Date”) on the date that it is executed by at least three Signatories who, at the time of signing, either are PRP Holders, or have petitioned the U.S. Department of Agriculture for non-regulated status for an Event and who would be PRP Holders for an Event if that Event were Commercial and were within four (4) years of Patent Expiration and at least three Signatories who are not PRP Holders and would not be PRP Holders as described, above, and shall continue until terminated pursuant to the DUCA.

Article I. Preamble

- A. Biotechnology has produced improved “Seed Products” containing “Events” that have provided agronomic, economic, and environmental benefits for farmers throughout the world. Some “Signatories” to the DUCA have heavily invested in research and field testing to generate data required by regulatory agencies in the United States to obtain necessary authorizations to allow these Seed Products to be planted in the United States.
- B. In order to permit uninterrupted trade in Seed Products containing Events throughout the world, proprietary regulatory property holders must also obtain import authorizations from regulatory authorities in each country that requires regulatory approval for that Seed Product to be imported. Because of the expense of the required research and field testing over a number of years, obtaining and maintaining United States cultivation and ex-United States import authorizations is complex and costly.

- C. Those authorizations (regulatory approvals) and the studies, dossiers, data, and submissions necessary to obtain those authorizations are proprietary regulatory property, and Signatories that control such proprietary regulatory property are the proprietary regulatory property holders.
- D. Proprietary Events are those covered by patents. Once these patents expire, the Events will become generic. Producers and sellers of Seed Products containing Generic Events will need maintenance of the same United States cultivation approvals and ex-United States import authorizations that had to be obtained by the proprietary regulatory property holder in order to grow and to protect trade in products containing those Events. Hence, even though all patents on an Event have expired, there still will be Continuing Maintenance Costs both to maintain authorizations already in existence and to obtain new authorizations in countries in which authorizations have not yet been obtained but later become necessary to permit uninterrupted trade in products derived from Seed Products containing that generic Event. Without obtaining and maintaining these authorizations, the commercial marketability of Seed Products containing Generic Events will be jeopardized.
- E. The commercial marketability of Seed Products containing Events also requires effective product stewardship to ensure the Product Integrity of those Seed Products, to assure the durability of those products, to meet the requirements for global authorizations and to assure that trade in products derived from Seed Products containing generic Events is not disrupted.
- F. Unless a producer of a Seed Product containing a Generic Event incurs the costs to produce its own proprietary regulatory property and obtain its own authorizations for that Generic Event, it will require access to the proprietary regulatory property owned by the proprietary regulatory property holders. In addition, many regulatory authorities require data and authorizations on each Event (*id est* including a generic Event) and their combinations in combined Event Seed Products containing that Event.

- G. To maintain uninterrupted trade of Seed Products containing generic Events and to maintain the benefits of these Seed Products for consumers throughout the world, authorizations in United States export markets must remain in place for such Events, maintained either by the proprietary regulatory property holder sharing this responsibility with, or transferring this responsibility to, other producers and marketers of Seed Products containing the Generic Events.
- H. In 2010, the stakeholders in the agricultural production value chain began a dialogue on 1) access to biotech events, and the proprietary regulatory property related to those events, when they became generic; 2) the facilitation of a generic marketplace; and 3) the proper stewardship and discontinuation of generic events; and 4) the maintenance of the regulatory authorizations necessary to enable undisrupted trade in generic events. The Biotechnology Industry Organization (BIO) and the American Seed Trade Association (ASTA) took on the task of crafting the AgAccord Agreements, one of which is the DUCA, in order to achieve those objectives.
- I. Prior to starting the process of drafting the AgAccord Agreements, both ASTA and BIO adopted sets of core principles to guide that creative process. Among those guiding principles are the following:
1. Choice for seed companies and growers should be promoted, including access to generic seed products.
 2. Business opportunities should be made available while maintaining the seed industry's high product quality standards.
 3. After patent expiration, the generic event and the proprietary regulatory property supporting that event should be accessible to facilitate ongoing product and variety development.
 4. Transparent and predictable mechanisms should be identified or developed to facilitate the transition or sharing of regulatory and stewardship responsibilities on generic events.

5. Fair compensation should be provided for any access to approvals or data for generic events.
 6. Intellectual property should be protected to provide incentives for continued innovation and investment.
 7. If a generic event is utilized in a seed product, necessary regulatory approvals both in the United States and internationally should be consistently maintained, and, if necessary, new approvals obtained.
 8. Appropriate product stewardship should be maintained to avoid trade disruptions and to ensure product integrity and durability.
 9. Regulatory approvals and product stewardship should continue for a period of time after an event's use is discontinued.
- J. The resulting DUCA establishes a, fair, efficient and predictable process to transition a proprietary Event to the generic marketplace by providing access to the Event and to the proprietary regulatory property supporting that Event. To do so, the DUCA provides the following:
1. Access to information about pending patent expiration of Covered Events.
 2. Entry into an agreement that will enable access to proprietary regulatory property and the Generic Event at patent expiration.
 3. Maintenance of necessary Covered Authorizations for Covered Events and Generic Events.
 4. Acceptance of either sharing in maintaining and obtaining Covered Authorizations for a Generic Event or a process to transfer the responsibility for maintaining and obtaining Covered Authorizations to the producer of the Generic Event.
 5. Commitments to product stewardship for all Events.

6. The allocation among proprietary regulatory property holders and producers of Seed Products containing Generic Events of (i) Basic Regulatory Costs (*id est*, data compensation); and (ii) Continuing Maintenance Costs.
7. A clear and predictable path for proprietary regulatory property holders or producers of Seed Products containing Generic Events who desire to do so to exit the market place and to discontinue Events and Seed Products.

Therefore, in consideration of these premises and of the mutual promises contained in the DUCA, the Signatories agree as follows:

Article II. Definitions

In addition to any terms defined elsewhere in the DUCA, the terms below have the following definitions for purposes of the DUCA:

- A. AgAccord – Data Use and Compensation Agreement (DUCA): This agreement including the appendices, amendments, and confidentiality agreements executed pursuant to the DUCA. For the avoidance of doubt, Comprehensive Agreements are not a part of the DUCA.
- B. Administrator: The person or entity retained by the Committee of Signatories to carry out, on a day-to-day basis, the non-discretionary administrative functions assigned to this person or entity under the terms of the DUCA.
- C. Arbitration: Binding arbitration in accordance with the DUCA.
- D. Authorization: Official recognition by a regulatory authority of the successful completion of a regulatory process to allow United States cultivation of Seed Products containing a generic Event or that is necessary to permit undisrupted trade of material containing a Covered or Generic Event (*id est* Seed Products or grain) or any product regulated as a result of the Covered or Generic Event. Authorization includes permits necessary for seed development and production outside the United

States, solely in countries where it is the ordinary and customary practice to do such seed development and production and solely to support United States cultivation; but does not include cultivation Authorizations outside the United States.

- E. Basic Regulatory Costs (BRC): The current (as of Patent Expiration) replacement cost of PRP (including applicable items identified in Appendix H) submitted to regulatory authorities as of Patent Expiration on the Covered Event to obtain and maintain the Covered Authorizations for that Event. Provided that, BRC shall not include the value by which Encumbered PRP is decreased as a result of the encumbrance.
- F. Commercial: A Seed Product is Commercial or is Commercialized when it is offered for sale, or otherwise transferred, for the purpose of planting and production in the United States of a crop or crop product that will be placed into commerce. A Seed Product is no longer Commercial if the Last Sale has occurred. An Event is Commercial if it is contained in a Seed Product that is Commercial.
- G. Committee of Signatories: Representatives of the Signatories that have the responsibility and authority to make discretionary determinations and decisions related to the DUCA, and who represent the Signatories, but only pursuant to the terms and conditions of the DUCA.
- H. Comprehensive Agreement: The agreement between a PRP Holder and Verified Signatories that defines the rights and responsibilities for a Covered Event as a Generic Event.
- I. Confidentiality Agreement for the Confidential Notice: The agreement in Appendix D.
- J. Confidential Information: As defined in Article XX.
- K. Confidential Notice: A notice with respect to a Covered Event that includes: (i) the patent number and Expiration date of the last United States patent having claims that prevent all uses of the Covered Event as a single Event (*id est*, a claim that would prevent each and every use of the Event as opposed to a claim that would prevent some but not all uses of the Event); (ii) the disclosure of Relevant Patents; (iii) identification of Encumbered PRP and the scope of any limitation on such Encumbered

PRP; (iv) the current scope and status of Regulatory Data, Covered Authorizations, filed applications for Covered Authorizations, and Material Developments regarding Covered Authorizations; (v) a good faith estimate, including the applicable information from Appendix H, of the Event-specific Basic Regulatory Costs (including any other information which provides the basis for determining depreciation under Article XII) and Continuing Maintenance Costs; (vi) any extraordinary regulatory or stewardship requirements for a Special Use Product; and, (vii) the identity of other Signatories that have signed a Confidentiality Agreement for such Covered Event.

- L. Continuing Maintenance Costs (CMC): The actual costs of providing Regulatory Services, including items identified in Appendix H, for a Generic Event incurred by the Operator on behalf of one or more of the Signatories to the Comprehensive Agreement.
- M. Covered Authorization: Authorizations necessary for the cultivation and sale of a single Covered Event in the United States, and Authorizations for that single Event necessary to permit uninterrupted trade of material containing that Covered Event (*id est* Seed Products or grain) or any product regulated as a result of the Event.
- N. Covered Event: As set forth in Article V.
- O. Discontinuation: After a Signatory's Last Sale, the process by which that Signatory discontinues the Covered Event in accordance with the DUCA , including Article XV, and consistent with the then current Excellence Through Stewardship "Guide for Product Discontinuation of Biotechnology-Derived Plant Products¹."

¹ <http://www.excellencethroughstewardship.org/LinkClick.aspx?fileticket=mkLB3u3JvcA%3d&tabid=97>

- P. Encumbered PRP: Any PRP that is protected by a third-party intellectual property right (*exempli gratia*, a copyright or patent) that would be infringed by, or that is subject to an Outside Agreement that would prevent or limit, PRP Access, Reference Rights, or Use Rights to such PRP to provide Required Regulatory or Supplemental Regulatory Services as set forth in the DUCA.
- Q. Event: A single insertion of a nucleic acid construct into a specific site in a plant's chromosome.
- R. Founding Signatory: All Signatories that execute the DUCA on or before six (6) months after the Effective Date. Founding Signatories are listed in Appendix B.
- S. Generic Event: A Covered Event for which all United States patents having claims that prevent all uses of the Covered Event as a single Event have Expired, *id est*, a claim that would prevent each and every use of the Event as a single Event as opposed to a claim that would prevent some but not all uses of the Event as a single Event.
- T. Good Laboratory Practices: Standards or requirements established by a regulatory agency to ensure the quality, integrity, maintenance and storage of Regulatory Data in any jurisdiction in which any of the Regulatory Data may be submitted, Referenced, Used, or otherwise relied upon, by way of example, as set forth in the United States Environmental Protection Agency's regulations at 40 C.F.R. Part 160.
- U. Initial Notice: Non-confidential notice made to all Signatories that the last United States patent having claims that prevent all uses of the Covered Event as a single Event (*id est*, a claim that would prevent each and every use of the Event as opposed to a claim that would prevent some but not all uses of the Event) Expires in not less than three (3) years, and that states whether i) the Seed Product containing the Event is a Special Use Product, and ii) the PRP Holder elects to be the Operator under a Comprehensive Agreement.

- V. Last Sale: The last Commercial disposition in the United States of a Signatory's Seed Product containing a Covered Event by that Signatory or any licensee, distributor, dealer or other seller by, or for that Signatory.
- W. Material Development: Any change or development that actually or potentially materially impacts an Authorization for Seed Products containing a Generic Event (provided, however, that if the Authorization is for a combined Event Seed Product, only if the change or development is a result of the Generic Event), including related to terms and conditions of an Authorization or existing or future Regulatory Data requirements. For clarity, a Material Development shall not include routine regulatory actions or developments that do not actually or potentially materially impact Authorizations for Seed Products containing the Generic Event.
- X. Operating Costs: The costs of administering the DUCA. Operating Costs are described in the text of the DUCA and in the Administrative Provisions, or are those otherwise determined to be necessary by the Committee of Signatories.
- Y. Operator: The PRP Holder or other party to the Comprehensive Agreement, designated by the parties to a Comprehensive Agreement to be responsible for the performance of Regulatory Services and Supplemental Regulatory Services for a Generic Event.
- Z. Outside Agreement: An agreement between two or more parties (at least one of which is a Signatory) negotiated and executed outside of and not pursuant to the DUCA process.
- AA. Patent Expiration: A United States patent "Expires" on: (1) the date of expiration of its term; or (2) the day after the last date allowed for delayed payment of an unpaid maintenance fee on the expired patent as set forth in 37 C.F.R. 1.378(c); or (3) the date of entry of a final, non-appealable judgment or decision by a United States federal court or the United States Patent and Trademark Office finding invalid or unenforceable all claims in that patent that prevent all uses of the Covered Event as a single Event (*id est*, a claim that would prevent each and every use of the Event as opposed to a claim that

would prevent some but not all uses of the Event); or (4) the date that the patent holder disclaims all claims in that patent that prevent all uses of the Covered Event as a single Event (*id est*, a claim that would prevent each and every use of the Event as opposed to a claim that would prevent some but not all uses of the Event).

BB. Product Integrity: The genetic identity, integrity, and purity of Seed Products containing the Covered Event.

CC. Proprietary Regulatory Property (PRP): The data, studies, dossiers, submissions and Authorizations that enable the cultivation and sale of a Covered Event as a single Event in the United States and allow export and ex-United States use of material containing that Covered Event (*id est* Seed Products or grain) or any product regulated as a result of the Event. Proprietary Regulatory Property includes Regulatory Data, Regulatory Methods and Regulatory Correspondence.

DD. Proprietary Regulatory Property Access (PRP Access): 1) Physical review of all Regulatory Data, (a) to take detailed written and electronic notes and (b) to make mental impressions regarding such Regulatory Data, and 2) Use and Reference of any such notes, impressions and Regulatory Data to prepare protocols, studies, study reports, regulatory submissions or dossiers for Seed Products containing the Generic Event to seek to obtain and maintain any Covered Authorization for any Seed Products containing the Generic Event.

EE. Proprietary Regulatory Property Holder (PRP Holder): the Signatory or Signatories that have sufficient legal rights in the PRP (including Encumbered PRP) for an Event to grant the rights or execute the duties related to such PRP to maintain the Covered Authorizations in effect at the time the Event becomes a Covered Event. By way of clarity, if the encumbrances on Encumbered PRP are such that no Signatory or Signatories can maintain such Covered Authorizations, then there is no PRP Holder for such Event.

FF. Reference: Refer to, cite, or rely upon any Regulatory Data, Regulatory Correspondence, Regulatory Methods, or Authorizations, for use by any regulatory agency in making any regulatory decision, or requesting that a regulatory agency refer to, cite, or rely upon any Regulatory Data, Regulatory Correspondence, Regulatory Methods, or Authorizations in making any regulatory decisions.

GG. Regulatory Correspondence: All letters relating to, or summaries or memoranda of or about, telephone calls, meetings, applications, approvals, exemptions, licenses, clearances, permits, registrations, tolerances exemptions, or deregulations, or other matters related to a Covered Authorization for a Generic Event, including all modifications or updates of any of the foregoing; but only that (a) have been provided to or received from a regulatory agency, or (b) are required to be maintained by applicable laws, regulations or records retention policies, or (c) are in the possession, custody, or control of the Operator.

HH. Regulatory Data: All data and information, including raw data (including any models or tools Required to interpret such raw data), summaries, applications, dossiers, study reports, study protocols, analytical methods, method validations, data tables, historic and current homology searches for allergenicity screening, historic and current protein expression level ranges, plasmid maps (including reconciliation of multiple versions, if they exist, along with an explanation of the authoritative version compared to others), sequence information, Regulatory Correspondence, additional studies supporting safety assessments, and similar items that are Required for regulatory purposes for the Generic Event (including for Covered Authorizations) as of the effective date of the Comprehensive Agreement or later (whether or not submitted to a regulatory agency).

II. Regulatory Methods: All materials or information Required to generate, validate or to submit Regulatory Data for an Authorization, whether now known or that become known in the future, including test samples, reference standards and material, method validations, comparator lines, antibodies (including purified coating antibody), molecular analysis tools and templates (including

primers, probes, and DNA fragments and associated sequences), reagents, sequencing tools, molecular assays (including detection assays), quantitative and qualitative gene and Event-specific detection methods (whether protein or molecular), and other materials or information Required for regulatory purposes that meet the local requirements of the relevant jurisdictions (whether as of the effective date of the Comprehensive Agreement, earlier, or later).

JJ. Regulatory Services: Those services necessary to obtain and maintain Covered Authorizations for the Generic Event in a single Event Seed Product.

KK. Related Entity: A legal person or entity (including an association; joint venture; joint stock company; trust; unincorporated organization; government; or regulatory, administrative, or political subdivision, agency, department or instrumentality of any government, but excluding a natural person) that directly or indirectly through one or more intermediates, owns, controls, or is controlled by, or is under common control with, a Signatory. For purposes hereof, the term “control” (including “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a legal person or entity, whether through the ownership of voting securities, by contract, or otherwise.

LL. Relevant Patent(s): As of the date of Confidential Notice, any issued United States patent or published United States patent application owned or licensed by the PRP Holder that 1) would prevent then-current common commercial uses of that Event as a single Event (*exempli gratia*, integrated refuge), or 2) would prevent the Use of any specific PRP for that Event as a single Event. By way of clarification, Relevant Patents do not include: (a) patents the PRP Holder cannot disclose due to confidentiality agreements; (b) germplasm patents; (c) varietal patents; or (d) patents on any other genetic element (*exempli gratia*, a “native trait”) or Event that has been combined with that Event (but not patents on the combination).

MM. Required: All PRP, Regulatory Services, or Supplemental Regulatory Services for the Generic Event as a single Event required by a regulatory agency for applications, petitions or submissions for Authorizations for Seed Products containing the Generic Event. In addition to the foregoing, if approved by the regulatory committee for the Generic Event, Required also includes all PRP and Regulatory Services for the Generic Event as a single Event (i) requested by a regulatory agency in communications to a party, whether written or verbal, for applications, petitions, or submissions for Authorizations for single Event Seed products; or (ii) reasonably anticipated to be required, or that will expedite review or grant of, applications, petitions, or submissions for Authorizations for single Event Seed Products. For the Generic Event as a single Event in combined Event Seed Products, (i) and (ii) above may be provided by the Operator at its sole discretion subject to payment for such Supplementary Regulatory Services, or the Operator shall enable the requesting Signatory to provide such services.

NN. Seed Product: Within the context of the DUCA, any sexually, asexually, or tuber propagated material, or grafted material, intended for planting.

OO. Signatory: An entity that (1) supports access to, and availability of, Seed Products containing Events, including the developing, growing, producing, marketing, selling, stewarding, processing, transporting, shipping, handling, or maintaining Authorizations of such Seed Products, and (2) signs the DUCA. A Signatory may be a governmental, quasi-governmental or public entity within the United States, or a non-United States entity, that in each case: i) consents to jurisdiction in the federal and state courts of United States and waives sovereign immunity, ii) agrees to be bound by United States law, both solely for purposes of the DUCA, and iii) has the authority to legally enter into and be bound by the DUCA.

PP. Special Use Product: A Seed Product containing an Event which confers a value-added quality or other specialty biotechnology-derived trait, resulting in a functional or compositional change that may have significant unintended processing or product functional or compositional effects in crops, crop

uses or crop processing streams, and that is subject to product-specific stewardship, production, handling or marketing practices such as closed loop production, identity preservation, or geographic limitations.

QQ. Supplemental Regulatory Services: Any services pursuant to a Comprehensive Agreement, which are not Regulatory Services, and which are provided by the Operator or PRP Holder upon request of a Signatory and are Required to support the use of the Generic Event as a single Event in a combined Event Seed Product, including Authorizations for seed development and production outside the United States in accordance with the provisions set forth herein.

RR. Task Force: A legal entity established by agreement of two or more Signatories to become a Verified Signatory and to act on their behalf in a unified manner to negotiate and carry out the terms of a Comprehensive Agreement. For clarity, the Task Force and all its members must be a Signatory to the DUCA. For the purposes of Verification as defined in Article XI, Financial Criteria as defined in Article XII, calculation of BRC and CMC, and cost sharing under a Comprehensive Agreement, unless otherwise agreed by all parties to a Comprehensive Agreement, a Task Force share shall be based on the number of parties to the Task Force if shares are determined per-capita, or on the total market share of the parties to the Task Force if shares are determined by market share.

SS. Timely: Sufficiently in advance temporally of any applicable deadline for a response to a request by any regulatory agency in order to enable a party to a Comprehensive Agreement to review the request, confer with other parties to the Comprehensive Agreement, and submit a regulatory communication or make a submission with respect to the request..

TT. Use: To use, transcribe, Reference, copy, disclose, incorporate, or transmit PRP, as Required, in order to obtain or maintain Authorizations for Seed Products containing the Generic Event.

UU. Verified Group: The group of Signatories that become Verified under the DUCA and provide notice of intent to negotiate a Comprehensive Agreement for a Covered Event.

VV. Verified Signatory: A Signatory or Task Force that becomes Verified as defined in Article XI. A Task Force must sign the DUCA before it can become a Verified Signatory.

Article III. Rules of Construction of this Agreement

- A. The DUCA applies to all Covered and Generic Events of a Signatory.
- B. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to the DUCA as a whole and not to any particular provision of this Agreement.
- C. All references to “The DUCA” or to the “DUCA” or to “This Agreement,” or to the “provisions” or the “terms and conditions of” “this Agreement” include this DUCA and all of its Appendices, each as may be modified, amended, supplemented or restated and in effect from time to time, subject to any applicable restrictions set forth herein.
- D. Each of the Appendices to the DUCA is incorporated herein by this reference and expressly made a part hereof. Unless otherwise defined, all terms used in any Appendix shall have the meaning ascribed to such terms in this DUCA.
- E. All references to “Articles,” “Sections,” “Paragraphs,” and “Appendices” shall be deemed to be references to Articles, Sections and Paragraphs of and Appendices to this DUCA unless the reference explicitly states otherwise.
- F. All defined terms in this DUCA apply to the singular and plural forms of the defined terms.
- G. Whenever the context may require, any pronoun includes the corresponding masculine, feminine and neuter forms.
- H. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”
- I. Unless otherwise expressly provided, (a) any reference to another document means such document as from time to time amended, modified or supplemented, including by waiver or consent and

includes all attachments thereto and instruments incorporated therein, and (b) any reference to a statute or regulation means such statute or regulation as from time to time amended, modified or supplemented, including by succession of comparable successor statute or regulation.

- J. Each provision of this DUCA has been subject to extensive consultation or negotiation by or among each of the participating Signatories, and by executing this agreement each Signatory agrees that the DUCA shall not be construed for or against any Signatory on the basis that a Signatory did or did not participate in drafting the DUCA.
- K. The English language text of this DUCA shall be controlling, notwithstanding any translation made for any purpose whatsoever.
- L. Any reference to “business days” means “business days” in the United States.

Article IV. General Rights and Duties

- A. All Signatories must support the use of biotechnology and access to, and availability of, Seed Products containing Events, including the developing, growing, producing, marketing, selling, stewarding, processing, transporting, shipping, handling, or maintaining Authorizations of Seed Products containing Events.
- B. At Patent Expiration, PRP Holders will enable access to PRP and to a Covered Event, in a suitable form, to all Signatories that enter into a Comprehensive Agreement for that Covered Event as set forth in the DUCA. Suitable form means in unencumbered or non-proprietary germplasm that will enable Signatories to backcross that Event into Seed Products. This obligation can be satisfied by a seed deposit described under 37 CFR § 1.801- §1.809 provided that deposit meets the requirements of this paragraph. In fulfilling this duty, the PRP Holder has no obligation to provide any proprietary germplasm.

- C. All Signatories who develop, grow, produce, market, sell, process, handle, or maintain Authorizations for Seed Products containing Events, Covered Events or Generic Events must abide by the stewardship obligations set forth in Article XIII.
- D. All Signatories have the right to Discontinue Covered Events or transfer their responsibility for maintaining and obtaining Covered Authorizations for such Covered Events, as set forth in the DUCA.
- E. Signatories have no obligations under the DUCA for any Event that has not become a Covered Event, other than the stewardship obligations of all Signatories set forth in Article XIII.
- F. Through four years after the Last Sale, all Signatories who develop, produce, market, or sell Seed Products containing a Covered Event must i) maintain or share in maintaining Covered Authorizations for that Covered Event as set forth in the DUCA, or ii) be party to an Outside Agreement with another Signatory who has signed the Comprehensive Agreement for that Covered Event and is meeting the obligations (including the applicable share of BRC and CMC) the first Signatory would otherwise have under that Comprehensive Agreement. A Signatory that fulfills its obligations under ii) above, may, but is not obligated to, sign a Comprehensive Agreement for the Covered Event.
- G. All Signatories who develop, produce, market or sell Seed Products containing a Covered Event must share BRC and CMC as determined by the provisions of the Comprehensive Agreement for that Covered Event unless such obligations are satisfied pursuant to an Outside Agreement with another Signatory.

Article V. Covered Events

- A. The determination of whether an Event is a Covered Event is made at the later of i) four (4) years before Patent Expiration of the last United States patent or ii) the date a potential PRP Holder for that Event becomes a Signatory.
- B. A single Event is a Covered Event if, at the time the determination is made; i) the Event is four (4) years or less from the last United States Patent Expiration or United States Patent Expiration has occurred; ii) the Event is Commercialized, either as a single Event Seed Product or as a component of a combined Event Seed Product by the PRP Holder for that Event or any licensee, distributor, dealer or other seller by, or for that PRP Holder; iii) the PRP for the Event is not and was not previously subject to a Comprehensive Agreement (whether currently being negotiated, arbitrated, or already-executed); and iv) a Signatory or combination of Signatories is a PRP Holder.
- C. For an Event that is not a Covered Event solely because that Event has not been Commercialized at the time of the determination, if thereafter the Event is Commercialized the Event shall become a Covered Event as of the date of Commercialization.
- D. For an Event that is not a Covered Event solely because there is no potential PRP Holder at the time of the determination, if thereafter a Signatory obtains sufficient rights to become a PRP Holder for that Event as a single Event, the Event shall become a Covered Event as of the date there is a PRP Holder.
- E. In- or out-licenses or comparable grants of rights to the genes or genetic elements in the Event, or to the Event itself, or to combined Event Seed Products incorporating the Event will not prevent an Event from becoming a Covered Event unless the terms of such agreements prevent the requirements of Article V.B from being met for that Event.
- F. If after a Signatory executes the DUCA, the Last Sale for an Event occurs four (4) or more years before Patent Expiration, then the Signatory will provide notice to the Administrator within three (3)

months after such Last Sale. Such notice shall be provided by the Administrator to all Signatories and posted to the website in a public manner.

G. A Covered Event shall cease to be a Covered Event if:

1. No Signatory signs the Confidentiality Agreement within the time frame established under Article IX; or
2. No Signatory has given notice of intent to negotiate a Comprehensive Agreement within the time frame established under Article XIV; or
3. The PRP Holder and Verified Signatories do not reach agreement during negotiation of the Comprehensive Agreement and no Verified Signatory files a demand for Arbitration under Article XVIII.D; or
4. A Comprehensive Agreement is not executed under Article XIV.

An Event that ceases to be a Covered Event pursuant to this paragraph E shall remain subject to Article XIII and Article XV.

Article VI. Access to PRP and Covered Event Pre-Patent Expiration

Notwithstanding the provisions of Article IV. B., a Signatory may request in writing that a PRP Holder enable access to PRP and a Covered Event prior to Patent Expiration. If such a request is made, the requesting Signatory and the PRP Holder must negotiate in good faith, and in such negotiations the Signatory and the PRP Holder must offer reasonable consideration for such access. However, neither the Signatory nor the PRP Holder is obligated to accept any offer for access or such consideration, and (1) access to PRP and a Covered Event prior to Patent Expiration, (2) the negotiations or the standards applicable to such negotiations, and (3) the reasonableness of any consideration, under this Article VI are not subject to Arbitration under the DUCA.

Article VII. Outside Agreements

- A. The DUCA is non-exclusive and does not affect the right of a Signatory to enter into an Outside Agreement, provided that no Signatory shall enter into an Outside Agreement:
1. That causes the PRP Holder to breach the DUCA, including removing a Covered Event from the DUCA (including by encumbering PRP such that there is no PRP Holder); or
 2. With the Signatory's intent of preventing an Event from becoming a Covered Event to avoid its obligations under the DUCA (including by encumbering PRP such that there would be no PRP Holder). By way of example, an Outside Agreement in which the Signatory:
 - a. Retains United States commercial rights and control of the PRP – such an Outside Agreement with any provision preventing the Event from becoming a Covered Event would be prohibited by this Article VII.A.1.;
 - b. Divests United States commercial rights, but retains control of the PRP, and takes a non-exclusive license to United States commercial rights – such an Outside Agreement with any provision preventing the Event from becoming a Covered Event would be prohibited by this Article VII.A.1.;
 - c. Divests United States commercial rights and divests control of the PRP to a non-Signatory, and takes a non-exclusive license to United States commercial rights – this Outside Agreement can prevent the Event from becoming a Covered Event because the Signatory does not retain exclusive United States commercial rights or control of the PRP. Such Outside Agreement would not be prohibited by this Article VII.A.1.
 - d. Divests United States commercial rights and divests control of the PRP to a non-Signatory, and does not take a non-exclusive license to United States commercial rights–

this Outside Agreement can prevent the Event from becoming a Covered Event because the Signatory does not retain United States commercial rights or control of the PRP. Such Outside Agreement would not be prohibited by this Article VII.A.1.

- e. Retains United States commercial rights and divests control of PRP to a non-Signatory -- this Outside Agreement would prevent the Event from becoming a Covered Event because the Signatory would no longer be a PRP Holder. However this circumstance raises concern because the Signatory retains the commercial value of the Event in the United States. For illustration:

- i. Such an Outside Agreement would not be deemed prohibited by this Article VII.A.1 if divesting control of the PRP is a condition of divestiture of substantial ex. United States commercial rights.
- ii. Such an Outside Agreement would be deemed prohibited by this Article VII.A.1 if there is no related substantial divestiture of commercial rights in the Event.

B. If after executing the DUCA, a Signatory executes an Outside Agreement that prevents an Event from becoming a Covered Event (including by encumbering PRP such that there would be no PRP Holder), that Signatory must give notice to the Administrator who in turn shall provide such notice to all other Signatories at the later of i) four (4) years prior to Patent Expiration, or ii) within six (6) months after the date that the Event is first Commercialized in the United States, that the Event will not become a Covered Event and why such Outside Agreement is not prohibited under Article VII.A.1

C. A Signatory must give notice of an Outside Agreement to the Administrator who in turn shall provide such notice to all other Signatories regarding an Outside Agreement that i) was in effect at the time the Signatory executed the DUCA, and ii) has obligations that are still in effect that prevent a then

Commercialized Event (for which a Signatory is the PRP Holder) from becoming a Covered Event (including by encumbering PRP such that there is no PRP Holder). The Signatory shall provide such notice at the later of a) within six (6) months after executing the DUCA, or b) four (4) years prior to Patent Expiration of the last United States patent.

- D. A Signatory must give notice to the Administrator who in turn shall provide such notice to all other Signatories within six (6) months after an Event (for which that Signatory is the PRP Holder) is first Commercialized in the United States, if such Commercialization occurs after the Signatory executed the DUCA and that Event is subject to an Outside Agreement that was executed prior to that Signatory executing the DUCA and that prevents the Event from becoming a Covered Event under the DUCA.
- E. A Signatory that is not the PRP Holder for an Event that the Signatory has Commercialized in the United States shall use commercially reasonable efforts to assure that all of its agreements or licenses for that Event provide that such PRP is subject to the DUCA.
- F. A Signatory that is a PRP Holder of Encumbered PRP shall use commercially reasonable efforts to assure that it can grant PRP Access, Reference Rights, or Use Rights to such PRP to provide Required Regulatory or Supplemental Regulatory Services as contemplated in the DUCA.
- G. Each Signatory is responsible for the satisfaction of its obligations under the DUCA with respect to its Outside Agreements. Subject to paragraph A, above, after executing the DUCA, a Signatory that enters into an Outside Agreement shall either 1) obligate all parties to that Outside Agreement to satisfy the Signatory's obligations for an Event under the DUCA, or 2) satisfy the putative obligations of such parties for that Event under the DUCA.
- H. Disputes over Outside Agreements or the provisions of this Article VII are not subject to Arbitration, except that breach of the DUCA by execution of an Outside Agreement prohibited by Article VII.A shall be subject to Arbitration.

Article VIII. Initial Notice

- A. Subject to paragraph B and C, PRP Holders shall provide Initial Notice to the Administrator not less than three (3) years prior to the Patent Expiration of the last United States patent having claims that prevent all uses of a Covered Event as a single Event (*id est*, a claim that would prevent each and every use of that Event as opposed to a claim that would prevent some but not all uses of that Event).
- B. If, at the time a PRP Holder signs the DUCA, a Covered Event:
1. is already within three (3) years of Patent Expiration of the last United States patent having claims that prevent all uses of the Covered Event as a single Event (*id est*, a claim that would prevent each and every use of the Event as opposed to a claim that would prevent some but not all uses of the Event), or
 2. all United States patents having claims that prevent all uses of the Covered Event as a single Event (*id est*, a claim that would prevent each and every use of the Event as opposed to a claim that would prevent some but not all uses of the Event) have Expired and the Event is still Commercialized in the United States,
then Initial Notice shall be given by the PRP Holder within six (6) months after executing the DUCA;
 3. However, if Patent Expiration under section B.2. of this paragraph has occurred as a result of Article II.AA (2), (3) or (4), then Initial Notice shall be given by the PRP Holder within two (2) months after such Patent Expiration.
- C. If an Event becomes a Covered Event as a result of Article V.C. or D., the Signatory shall provide Initial Notice to the Administrator at the later of i) the time period prescribed in paragraph A above, or ii) within six (6) months after the Event becomes a Covered Event.

- D. Any Initial Notice shall promptly be provided by the Administrator to all Signatories and posted to the website in a public manner. Initial Notice shall be provided and will be received as set forth in Article XXV.
- E. All Signatories may provide the information in an Initial Notice to any third party.

Article IX. Confidential Notice

- A. To receive the Confidential Notice, a Signatory must execute the Confidentiality Agreement with respect to that Covered Event within one (1) month after receipt of the Initial Notice. The Signatory shall provide the executed Confidentiality Agreement to the Administrator who will transmit a copy to the PRP Holder within five (5) days. The PRP Holder shall sign and return the Confidentiality Agreement to the Administrator. In turn the Administrator will provide fully executed copies of the Confidentiality Agreement to the PRP Holder and that Signatory.
- B. The PRP Holder shall transmit the Confidential Notice to the Administrator within two (2) months after Initial Notice is provided to Signatories unless no Signatory has satisfied the requirement in paragraph A above.
- C. The Administrator shall provide Confidential Notice to those Signatories that satisfy requirements of subparagraph A within two (2) months and fifteen (15) days after receipt of Initial Notice for that Covered Event.
- D. A Signatory that does not meet the requirements of subparagraph A who later requests Confidential Notice may receive a Confidential Notice already issued to other Signatories as long as (1) that Signatory executes the Confidentiality Agreement, and (2) the Verification Fund has not been initially established pursuant to Article XII.A.
- E. If a Relevant Patent to which the PRP Holder can grant a license is not disclosed in the Confidential Notice or a supplement to such Confidential Notice, then a Signatory that has provided notice of

intent to negotiate but has not entered into a Comprehensive Agreement may request, and the PRP Holder is required to engage in, good faith negotiations to license any such Relevant Patent discovered by that Signatory.

- F. If a Relevant Patent to which the PRP Holder can grant a license is not disclosed by the PRP Holder in the Confidential Notice or a supplement to such Confidential Notice, then a Signatory that has entered into a Comprehensive Agreement may request, and the PRP Holder must grant a non-exclusive license to any such Relevant Patent asserted by the PRP Holder on industry standard terms or on fair, reasonable and non-discriminatory terms if no such industry standard terms exist.
- G. Confidential Notice shall be provided by the Administrator in a manner consistent with Article XXV, provided that the date of receipt must be verified.
- H. Until a Comprehensive Agreement is executed, the PRP Holder providing Confidential Notice shall supplement the Confidential Notice if there is a change in the information contained in the Confidential Notice that, objectively, would be significant to a Signatory negotiating a Comprehensive Agreement in reliance upon the Confidential Notice; and the Administrator shall provide such supplement, as applicable, i) to those Signatories that have signed the Confidentiality Agreement; or ii) to those Signatories that are negotiating the Comprehensive Agreement.

Article X. Pre-Verification Procedure

- A. Within three (3) months and fifteen (15) days following delivery of the Initial Notice for a Covered or Generic Event, the Administrator shall convene a meeting (in person or by telephone or video conference) and facilitate communication and discussion to permit the recipients of the Confidential Notice to express their interest in becoming Verified or forming a Task Force to become Verified.
- B. Recipients of Confidential Notice who intend to become Verified must, within five (5) months and fifteen (15) days after Initial Notice for the Covered Event give written notice to the Administrator of

their intention to become Verified either individually, or as part of a Task Force (including the identity of the other potential Task Force members), and whether that Signatory intends to access the PRP for a Covered Event to create a combined Event Seed Product. The Administrator shall calculate, pursuant to Article XII.2., the per-capita share of BRC and CMC for each Signatory that gives such notice of intent to become Verified. No later than six (6) months after Initial Notice the Administrator shall notify each Signatory that gave notice of intent to become Verified of its per-capita share and the identity of all Signatories that gave notice of intent to become Verified.

Article XI. Verification

- A. Verification is established for a Signatory when these three conditions are satisfied:
1. Such Signatory individually, whether or not a member of a Task Force, establishes its compliance with the stewardship requirements in Article XIII; and
 2. the PRP Holder elects to be the Operator, or if the PRP Holder elects not to be the Operator, either:
 - a. A Signatory that has given notice of intent to become Verified pursuant to Article X certifies that it agrees to be the Operator and either it:
 - i. has successfully obtained and maintained Authorizations for cultivation in the United States and for import into at least two United States export markets for at least three (3) years; or
 - ii. has at least three employees who have at least five years' experience each in preparing submissions and obtaining and maintaining Authorizations in the United States and at least two United States export markets; or
 - b. A Signatory that has given notice of intent to become Verified pursuant to Article X provides a copy of a contract (with any appropriate contingencies regarding

execution of a Comprehensive Agreement) pursuant to which a third party Operator will obtain and maintain Covered Authorizations for the four-year period following execution of the Comprehensive Agreement, and which third party Operator (*exempli gratia* a consultant or entity) either:

- i. has successfully obtained and maintained Authorizations for cultivation in the United States and for import into at least two United States export markets for at least three (3) years; or
- ii. has at least three employees who have at least five years' experience each in preparing submissions and obtaining and maintaining Authorizations in the United States and at least two United States export markets; and

3. Such Signatory has satisfied the Financial Criteria in accordance with Article XII.

- B. A Signatory intending to become Verified must provide documents to demonstrate Verification to the Administrator in accordance with the Administrative Provisions in Appendix A within nine (9) months after Initial Notice. Verification will be determined by the Committee of Signatories as provided for in the Administrative Provisions.
- C. If the Committee of Signatories determines a Signatory is not Verified, that Signatory may obtain review of that determination as set forth in the Administrative Provisions of the DUCA. If the determination on Verification proceeds to Arbitration, the record before the arbitral tribunal shall be limited to the record on which the Committee of Signatories made its determination.

Article XII. Financial Criteria

- A. Prior to beginning negotiation of the Comprehensive Agreement, the Signatories that have given notice of intent to become Verified pursuant to Article X must initially establish a "Verification Fund" to pay the following:

1. The share of BRC as calculated in Article XII.B.a, reduced by the PRP Holder's share, if any, plus
 2. Five (5) times the annualized good faith estimate of CMC , reduced by the PRP Holder's share, if any, plus
 3. If the Signatory or Task Force has contracted an Operator pursuant to Article XI.2.b, sufficient funds to satisfy that contractual obligation for five (5) years.
- B. Each Signatory's individual share of the Verification Fund described above in paragraph A can be established either:
1. By agreement among the Signatories that have given notice of intent to become Verified pursuant to Article X; or,
 2. In the absence of such agreement, by utilizing the following formula:
 - a. The share of BRC for each Signatory who has given notice of intent to become Verified pursuant to Article X is the sum of:
 - i. A per capita share of the depreciated good faith estimate of BRC.
 - a. The depreciated good faith estimate of BRC is calculated as a fifteen (15) year straight-line depreciation on each study or dossier. Such depreciation shall start on the date that study or dossier was first submitted to obtain a Covered Authorization that was or is thereafter granted and shall end at the later of Patent Expiration or three (3) years after Initial Notice. For purpose of depreciation, a stage three environmental trial dossier in Japan shall be deemed a submission to obtain a Covered Authorization.
 - b. By way of example, if a study is submitted in the year 2025 and three years after Initial Notice is in the year 2035 then the cost of

that study for calculating BRC shall be reduced by 10/15 (2/3) of the current replacement costs.

ii. Plus, for each Signatory or Task Force that has declared its intent to use the Covered Event to create a combined Event Seed Product that is proprietary because the non-Covered Event or the combination of Events is proprietary, its share will include a per capita share of the non-depreciated good faith estimate of BRC reduced by the total amount calculated under Article XII.B.2.a.i, above.

iii. Less, the good faith estimate of the cost of Encumbered PRP or the decreased value of the Encumbered PRP resulting from the encumbrance.

b. The share of CMC for each Signatory who has given notice of intent to become Verified, whether interested in using the Covered Event as a single or combined Event Seed Product, will be a per capita share of five (5) times the annualized good faith estimate of CMC.

C. The Verification Fund shall be reestablished at the same amount as established pursuant to Article XII. A. and B., above, unless a different amount is negotiated by the Verified Group and the PRP Holder: i) at such time as the constitution of the Verified Group changes after the beginning of negotiation of a Comprehensive Agreement; and in any event ii) prior to beginning Arbitration pursuant to the DUCA to establish a Comprehensive Agreement.

D. The Verification Fund shall be finally established prior to execution of the Comprehensive Agreement at the amount of BRC and CMC negotiated in the Comprehensive Agreement or determined by Arbitration and shall be paid to the PRP Holder in accordance with the terms of the Comprehensive Agreement.

- E. The Verification Fund can be established with any combination of the following: escrow accounts, letters of credit, surety bonds, or other comparable instruments. The Verification Fund must be established with funding sources that are readily and immediately accessible to pay the foregoing costs upon execution of the Comprehensive Agreement (or at such other time as set forth in the Comprehensive Agreement).

Article XIII. Stewardship Obligations

- A. Each Signatory of the DUCA that develops, grows, produces, markets, sells, processes, handles, or maintains Authorizations for a Seed Product containing Events, Covered Events, or Generic Events shall steward those Seed Products by satisfying each of the following conditions:
1. Complying with one of the following options:
 - a. Maintaining membership in good standing of Excellence Through Stewardship (ETS) (<http://www.excellencethroughstewardship.org/>); or
 - b. Maintaining compliance under an agreement with a member in good standing of ETS and that contract or agreement complies with the following requirement of ETS program charter: *“ETS Members shall include appropriate stewardship and quality management requirements, practices or specifications in applicable contracts and agreements involving plant biotechnology with third parties, including contractors, cooperators, licensees, researchers, suppliers and academic institutions. Inclusion of these provisions must be designed to achieve the **Excellence Through Stewardship**[®] Program Objectives and be consistent with the **Excellence Through Stewardship**[®] program Principles and Management Practices”*; or

- c. Maintaining a Seed Product stewardship program that complies with the product life cycle stewardship and Quality Management System (QMS) guidelines established by ETS, as verified in an audit of the program by a certified ETS auditor;
 2. Complying with all conditions set forth in Authorizations for Events contained in those Seed Products; and
 3. Complying with the laws and regulations that apply to those Seed Products.
- B. Any other provision of this DUCA notwithstanding, each Signatory and each member of a Task Force is responsible to steward, and maintain the Product Integrity of, its own Seed Products in accordance with this Article.
- C. A Signatory that develops, grows, produces, markets, sells, processes, handles, or maintains Authorizations a Special Use Product shall comply with all special stewardship programs established for that Event. Examples of special stewardship programs are closed loop production systems or geographically designated or limited production systems.

Article XIV. Comprehensive Agreement

- A. Negotiation of a Comprehensive Agreement
 1. Negotiation of a Comprehensive Agreement shall not begin until; i) the Administrator and PRP Holder receive written notice of intent to negotiate a Comprehensive Agreement from at least one Verified Signatory, ii) all Signatories seeking Verification have either agreed that negotiations can begin or have withdrawn from seeking Verification, and iii) the Verification Fund has been established. Notice of intent to negotiate a Comprehensive Agreement must be provided within fourteen (14) months after delivery of Initial Notice, and negotiations of the Comprehensive Agreement must begin no later than fourteen (14) months and five (5) days after delivery of Initial Notice. Any notice of intent to negotiate

shall be provided by the Administrator to all other Signatories that have given intent to become Verified.

2. A Signatory may become Verified and join the negotiation or Arbitration process after fourteen (14) months and five (5) days after receipt of Initial Notice provided that: i) the Signatory signs the Confidentiality Agreement; and ii) the Signatory contributes to the Verification Fund; and either a) that Verified Signatory agrees to the terms and conditions negotiated to that point; or b) all parties to the negotiation agree to that Verified Signatory joining subject to renegotiation of specific agreed terms and conditions. In all events, all other time limitations in the DUCA must be met.
3. If within two (2) years after receipt of the Initial Notice for that Covered Event, the parties have not agreed upon the terms and conditions of the Comprehensive Agreement, then all issues with respect to unresolved terms and conditions will be resolved by Arbitration unless all Verified Signatories agree not to file a demand for Arbitration pursuant to Article XVIII.D. Such a demand for Arbitration must be filed on or before twenty-five (25) months after receipt of Initial Notice.
4. The Signatories negotiating the Comprehensive Agreement must complete the Arbitration and an Arbitration award must be issued within nine (9) months after of the date the demand for Arbitration is filed with the Administrator. The arbitration award shall be in the form of and shall comprise the Comprehensive Agreement for such Covered Event. Within thirty (30) days after issuance of the Arbitration award, the parties to such Arbitrations may unanimously agree to modifications to the Arbitration award, provided that such modification shall be consistent with the terms and conditions of the DUCA, and such modified Arbitration award shall comprise the Comprehensive Agreement for such Covered Event.

5. After completion of the Comprehensive Agreement (whether by negotiation or Arbitration), a Verified Signatory shall have thirty (30) days to execute the Comprehensive Agreement. No Verified Signatory is required to execute the Comprehensive Agreement, except as set forth Article XIV.5. If one Verified Signatory executes the Comprehensive Agreement then the PRP Holder must execute the Comprehensive Agreement.

B. General

1. The parties to a Comprehensive Agreement must be Signatories to the DUCA and must meet their obligations under both the DUCA and the Comprehensive Agreement.
2. The parties to a Comprehensive Agreement are free to negotiate the terms of the Comprehensive Agreement, provided that such terms do not contravene any provisions of the DUCA, nor place any party in breach of its DUCA obligations.
3. Nothing in a Comprehensive Agreement shall limit a party's right to generate or submit its own data regarding a Generic Event, including data generated for obtaining or maintaining Authorizations.
4. The PRP Holder must be an initial party to the Comprehensive Agreement but may withdraw from the Comprehensive Agreement pursuant Article XIV.L.3. (if applicable) and Article XIV.M.3., below. Any subsequent agreements entered into by the PRP Holder that affect the PRP for the Event that is the subject of the Comprehensive Agreement must either allow the PRP Holder, or provide for another party, to satisfy the PRP Holder's obligations under the Comprehensive Agreement with regard to that PRP.
5. A Task Force shall be treated a single party in a Comprehensive Agreement.
6. A Comprehensive Agreement for a Covered Event that when contained in a Seed Product makes that Seed Product a Special Use Product must address any extraordinary regulatory or stewardship requirements or costs relating to such Special Use Product.

C. Operator

1. The Comprehensive Agreement shall provide that the Operator is responsible for providing Regulatory Services.
2. Upon written request of a party to the Comprehensive Agreement and subject to the provisions of this DUCA, and on the terms and conditions provided in the Comprehensive Agreement, the Operator shall provide Required Supplemental Regulatory Services.
3. The Operator shall Timely provide any Required support or assistance (including letters of access) in order to confirm to regulatory authorities the rights of the parties to the Comprehensive Agreement.
4. The Comprehensive Agreement must require the PRP Holder to grant the Operator all rights necessary to perform the Operator's duties under the Comprehensive Agreement, including rights under any Relevant Patents, and to effectuate and confirm such grant with all relevant entities, such as regulatory authorities.
5. Under the Comprehensive Agreement, the Operator must have physical possession of the PRP, and responsibility to keep the PRP secure and maintain the PRP in a readily accessible format.
6. The Operator (a) must be a party to the Comprehensive Agreement; (b) is responsible for the execution of all duties assigned to the Operator under the Comprehensive Agreement or the DUCA; and (c) may subcontract the performance of its duties, provided that (i) Covered Authorizations must be in the name of the Operator wherever possible, unless transfer of such Covered Authorizations is not possible under applicable law; (ii) subject to (i) above, all PRP must remain the property of the Operator or original PRP Holder as provided herein, and (iii) the Operator shall remain responsible for the performance of the duties of an Operator under the Comprehensive Agreement and the DUCA.

7. The Comprehensive Agreement will identify the initial Operator, and set forth the process by which a successor Operator will be selected should any Operator cease to serve in the role of Operator.
8. One or more parties to the Comprehensive Agreement may form a separate legal entity to serve as the Operator. Any such entity must be a party to the Comprehensive Agreement while it serves as the Operator.
9. If the PRP Holder is not the Operator, the PRP Holder shall have no obligation under the Comprehensive Agreement to provide Regulatory Services or Supplemental Regulatory Services, subject to Article XIV.C.10, below.
10. Where (a) a PRP Holder is required under applicable national laws to remain the owner or the responsible party for a Covered Authorization, and (b) the Operator is unable to assume such roles for the PRP Holder, (c) the PRP Holder shall take such actions as are necessary to maintain such Covered Authorization and provide Supplemental Regulatory Services, and (d) the Comprehensive Agreement shall provide for reimbursement to the PRP Holder for the reasonable costs of taking such actions and providing such Supplemental Regulatory Services.

D. Scope of PRP Access, Reference, and Use

1. A Comprehensive Agreement must ensure that the parties to the Comprehensive Agreement have the PRP Access, Reference, and Use rights to the PRP Required for obtaining and maintaining Authorizations for the Generic Event in a single Event Seed Product and as a single Event in a combined Event Seed Product, pursuant to and so long as the requirements of the DUCA have been met.
2. Anything in the DUCA to the contrary notwithstanding, PRP Access, Reference, and Use rights provided for in a Comprehensive Agreement (a) shall be limited to the PRP for the

Generic Event as a single Event, and (b) unless otherwise agreed by all parties negotiating a Comprehensive Agreement, is only for the purpose of (i) United States cultivation, (ii) supporting United States cultivation, including permits necessary for seed development and production outside the United States solely to support United States cultivation or (iii) export from the United States of Seed Products or grain, or any product regulated as a result of the Event.

3. **Party Pursuing a Combined Event Seed Product.** Any party to a Comprehensive Agreement that pursues a specific combined Event Seed Product containing the Generic Event is responsible for ensuring that any necessary Authorizations for that combined Event Seed Product are in place or obtained and maintained.
4. **All Other Parties to the Comprehensive Agreement.** For parties to the Comprehensive Agreement that are not the Operator and that are not pursuing a combined Event Seed Product, PRP Access, Reference, and Use rights shall be granted only to the extent that the Operator cannot obtain and maintain Covered Authorizations for the Generic Event in a single Event Seed Product and such rights are Required for that party to do so.

E. Scope and Costs of Supplemental Regulatory Services

1. The Comprehensive Agreement shall provide that, at the written request of a party to the Comprehensive Agreement, the Operator will provide Required Supplemental Regulatory Services, but only to the extent required by the DUCA, unless otherwise agreed by all parties to the Comprehensive Agreement.
2. The Comprehensive Agreement must provide the Operator all rights necessary to provide Required Supplemental Regulatory Services.

3. Subject to agreement by all the parties to the Comprehensive Agreement, all costs for Supplemental Regulatory Services shall be reimbursed to the Operator by the party to the Comprehensive Agreement receiving such services.
4. Supplemental Regulatory Services costs will be determined on the same basis as Continuing Maintenance Costs, subject to negotiation in the Comprehensive Agreement.

F. Sharing BRC and CMC

1. All parties to a Comprehensive Agreement (including the PRP Holder, unless the PRP Holder has Discontinued the Generic Event on or before Patent Expiration) shall be responsible for a share of BRC, as depreciated pursuant to Article XII. In addition, all parties to a Comprehensive Agreement (including the PRP Holder, unless the PRP Holder has Discontinued the Generic Event on or before Patent Expiration) who exercise the right to PRP Access, Reference or Use for combined Event Seed Products including the Generic Event shall be responsible for a share of BRC less the cumulative depreciated BRC.
2. All parties to a Comprehensive Agreement (including the PRP Holder, unless the PRP Holder will have Discontinued the Generic Event on or before Patent Expiration) shall be responsible for a share of CMC. The terms of a Comprehensive Agreement shall provide that the Operator will make its books and records available for independent accounting review at least annually for the parties to the Comprehensive Agreement at a place and on a date and time mutually acceptable to the Operator and the parties to enable those parties to verify the amount of CMC.
3. The parties negotiating the Comprehensive Agreement shall negotiate each party's share of BRC and CMC under the Comprehensive Agreement, and such share may be per capita or market share, and if the parties cannot agree shall be determined by Arbitration; provided that no party to such a Comprehensive Agreement shall be required, absent express

agreement, to pay more than the share of such costs described in Article XII.B.2. If applicable, the Comprehensive Agreement shall set forth the means by which market share will be calculated for purposes of that agreement.

4. If as of the date Confidential Notice is delivered, a Signatory has already entered into an Outside Agreement with the PRP Holder to obtain post-patent Expiration rights to PRP for a Covered Event, any compensation paid to the PRP Holder for such rights shall be credited toward that Signatory's share of BRC or CMC, but shall have no effect on any other Signatory's share.

G. Regulatory Committee

1. The parties to a Comprehensive Agreement shall form a regulatory committee to facilitate communication and address regulatory issues. All parties to the Comprehensive Agreement may participate in the regulatory committee, but only those that advise the Operator in writing of their intent to participate are entitled to receive information made available to the regulatory committee and participate in any decisions of the regulatory committee. The Operator shall be the chair of the regulatory committee. For clarity, the regulatory committee shall not have control over submissions for Authorizations for Seed Products containing the Generic Event.
2. The Operator shall be solely responsible for obtaining and maintaining Covered Authorizations for the use of the Generic Event in a single Event Seed Product. Also, parties to the Comprehensive Agreement that pursue a combined Event Seed Product containing the Generic Event are solely responsible for obtaining and maintaining any Authorizations for that combined Event Seed Product.
3. The Operator shall no later than ten (10) days following receipt, notify the regulatory committee of any request, question, notification, communication or other similar

- correspondence from, any regulatory agency or other applicable government entity, with respect to a Covered Authorization for the Generic Event in a single Event Seed Product.
4. The Operator shall provide the regulatory committee with a draft communication and associated information no later than ten (10) days before communicating with a regulatory agency regarding the Generic Event, and shall incorporate reasonable comments or feedback from the regulatory committee into such draft communication. Notwithstanding the foregoing requirement, the Operator shall meet any deadline Required by a regulatory agency. The Operator shall provide copies of the final communication to the regulatory committee contemporaneously with submission to such regulatory agency.
 5. The Operator shall provide to the parties of the Comprehensive Agreement status updates on all Covered Authorizations for the Generic Event in a single Event Seed Product and on all activities of the regulatory committee at least twice per year.
- H. Interim Rights. If a Covered Event becomes a Generic Event before completion of a Comprehensive Agreement for that Event, a Verified Signatory may elect to receive the PRP Access, Reference, Regulatory Services and Use rights set forth in this Article XIV while the terms of such Comprehensive Agreement are being negotiated or Arbitrated, provided that, unless otherwise agreed by all Verified Signatories negotiating the Comprehensive Agreement, a Signatory that exercises such rights must execute the Comprehensive Agreement that results from such negotiation or Arbitration.
- I. Sublicensing and Subcontracting
1. A Signatory obtaining rights to the PRP through a Comprehensive Agreement shall have the right to sublicense those rights to third parties to the extent Required to permit those sub-licensees to produce or sell that Signatory's Seed Products containing the Generic Event, provided that such Signatory sub-licensing its rights is responsible for all putative

responsibilities of any such sub-licensee under the DUCA and the Comprehensive Agreement. The Comprehensive Agreement shall include provisions for determining the applicable share of BRC and CMC of any such sub-licensee, if appropriate.

2. In no event shall any such sub-licensee access PRP under such sub-license to support a new combined Event Seed Product containing the Generic Event.
3. Any party shall have the right to contract with third parties to exercise its rights and perform its duties under a Comprehensive Agreement, provided that the party engaging such contractor remains responsible for all putative responsibilities of such contractor under the Comprehensive Agreement, and is responsible for acts or omissions of such contractor in carrying out such responsibilities.
4. Unless all parties to the Comprehensive Agreement agree otherwise, the Comprehensive Agreement shall provide that, to the extent an Authorization is Required in a country to sell a Seed Product containing the Generic Event or for cultivation in the United States, and the laws of such country do not permit foreign entities to have a Related Entity in such country, parties to the Comprehensive Agreement shall be permitted to contract with third parties to enable the party to obtain and maintain such Authorizations. The party engaging such third party remains responsible for all putative responsibilities of such third party under the Comprehensive Agreement and is responsible for acts or omissions of such third party in carrying out such responsibilities.

J. Combination of Generic Events

1. The development and marketing of a generic combined Event Seed Product (a combined event Seed Product where all of the Events are generic) does not change the obligations of a Signatory under the DUCA, or under the Comprehensive Agreement, unless that combination of Generic Events is or becomes patented in the United States.

2. If the combination of Generic Events in a generic combined Event Seed Product is or becomes patented in the United States, then such Seed Product shall be treated as a proprietary combined Event Seed Product under the DUCA, including for purposes of payment of an applicable share of BRC and CMC.

K. Proprietary Combined Event Seed Products

1. The Comprehensive Agreement shall provide for a mechanism whereby a party to the Comprehensive Agreement that initially elected not to obtain rights to the PRP necessary to obtain Authorizations for proprietary Combined Event Seed Products with the Generic Event can later elect to obtain such rights. This mechanism must include a procedure for reallocating the shares of BRC among the parties to the Comprehensive Agreement.
2. If a party to the Comprehensive Agreement that initially elected to obtain rights to the PRP necessary to obtain Authorizations for a proprietary Combined Event Seed Products with the Generic Event later elects not to utilize such rights, BRC will not be reallocated.

L. Termination of Comprehensive Agreement or Transfer of Operator

1. The Comprehensive Agreement shall provide a mechanism for parties to terminate the Comprehensive Agreement, provided that the Comprehensive Agreement cannot be terminated unless the Generic Event has been Discontinued by all parties to the Comprehensive Agreement and all stewardship obligations have been met, and provided further that the Operator shall give written notice to the parties of the Comprehensive Agreement and the Administrator of the intent to terminate the Comprehensive Agreement at the time the decision to terminate is made. Such notice shall be provided by the Administrator to all Signatories and posted to the website in a public manner.
2. The Comprehensive Agreement shall provide a process for Discontinuation in accordance with Article XV of the DUCA.

3. The Comprehensive Agreement shall provide: a) a mechanism for an Operator to resign as the Operator and (i) transfer all rights and responsibilities of the Operator to a successor Operator, and (ii) to the extent necessary, for a PRP Holder to assign the rights necessary for the successor Operator to perform its obligations under the Comprehensive Agreement and the DUCA in the same manner and to the same extent that the PRP Holder provided such rights to the original Operator; and b) for the requirement that the Operator or the PRP Holder, as the case may be, provide notice of the change in Operators to the Administrator and all appropriate persons or entities, including regulatory authorities and the Committee of Signatories. In the event that no party to the Comprehensive Agreement agrees to become the successor Operator, the Comprehensive Agreement will provide that all parties to the Comprehensive Agreement must Discontinue the Event and that the Comprehensive Agreement shall terminate upon Discontinuation.

M. Joinder in, and Restructuring of, a Comprehensive Agreement

1. A Comprehensive Agreement shall establish a mechanism for Signatories to the DUCA to enter into the Comprehensive Agreement after it has already been executed. The allocation of BRC and CMC shall be made for a new entrant as if it were an existing party, without penalty or late fee.
2. The Comprehensive Agreement shall establish procedures for changes in composition of Task Forces, and shall include provisions for financial criteria as set forth in Article XII of the DUCA.
3. The Comprehensive Agreement must provide a mechanism for a party to withdraw from a Comprehensive Agreement and for restructuring the Comprehensive Agreement, as appropriate, to account for the withdrawing party upon at least the following terms:

- i. The withdrawing party must provide notice of withdrawal to the Administrator and the other parties to the Comprehensive Agreement.
- ii. The withdrawing party must complete Discontinuation.
- iii. The effective date of the withdrawal is the later of withdrawing party's completion of Discontinuation and thirty (30) days after the date of the withdrawing party's notice of withdrawal.
- iv. There will be no refund of BRC to the withdrawing party.
- v. The withdrawing party satisfies its obligation for payment of its share of CMC through the effective date of the withdrawal, as set forth in Article XV.

N. Confidentiality of PRP

1. All parties to a Comprehensive Agreement shall be required to take reasonable steps to protect the integrity and confidentiality of PRP, including:
 - i. Maintenance and storage of PRP consistent with Good Laboratory Practices (GLP), or as otherwise required by law or regulation;
 - ii. Secure storage of PRP, including as required by law or regulation; and
 - iii. Labeling PRP as confidential and segregating PRP from non-confidential information.

O. Encumbered PRP under the Comprehensive Agreement.

1. The Comprehensive Agreement shall provide that for any Encumbered PRP, execution of the Comprehensive Agreement by the PRP Holder includes the grant of a limited license under such intellectual property right to the parties to the Comprehensive Agreement solely for the purposes set forth in the Comprehensive Agreement to the extent the PRP Holder is able to grant such rights. To the extent the PRP Holder cannot grant such rights,

the PRP Holder has no obligation to provide PRP Access, Reference Rights, or Use Rights to such PRP.

2. If the PRP Holder either elects not to be Operator or resigns as Operator, and access to Encumbered PRP is required to allow the incoming Operator to perform its duties as Operator, the PRP Holder must be able to and grant access to that Encumbered PRP to the incoming Operator. To the extent that the PRP Holder cannot grant such access, then a) the PRP Holder shall take such actions related to the Encumbered PRP for the Covered Event as are necessary to provide Required Regulatory Services and Supplemental Regulatory Services for the Covered Event, and b) the Comprehensive Agreement shall provide for reimbursement to the PRP Holder for the reasonable costs of providing such Regulatory Services and Supplemental Regulatory Services.

P. Ownership of PRP

1. The PRP Holder has the absolute right to retain ownership of PRP existing on the date the Comprehensive Agreement is executed; provided that if the PRP Holder either elects not to be Operator or resigns as Operator, and transfer of ownership of any PRP is required to allow the incoming Operator to perform its duties as Operator, the PRP Holder must transfer ownership of that PRP to the incoming Operator, or, in the alternative, can elect to be or remain the Operator.
2. Parties to the Comprehensive Agreement have co-ownership of all PRP jointly generated pursuant to the Comprehensive Agreement (“New PRP”) as follows:
 - i. A party’s share of ownership of New PRP will be commensurate with its share of the CMC; provided that, if a party is in default of its payment obligations for CMC, it has no ownership share of New PRP until it pays any past due amounts in full.
 - ii. Each co-owner has joint ownership rights in the whole of the New PRP, including PRP Access, Reference, and Use rights.

Q. Distribution of Data Compensation

1. A party's share of data compensation for PRP developed or compensated pursuant to the Comprehensive Agreement or recovered pursuant to law or regulation subsequent to execution of the Comprehensive Agreement will be calculated based upon the following formula:
 - i. Share of data compensation = total amount of BRC and CMC party has paid /
(total of all BRC and CMC)
2. No party to the Comprehensive Agreement shall have any right to data compensation or any reimbursement for data compensation recovered by a Signatory, other than as set forth herein, and no such compensation recovered shall be taken into account other than as set forth in Article XIV.F.4 (*exempli gratia*, compensation paid to a Signatory prior to signing the DUCA or through an Outside Agreement).

R. Material Development

1. Any party to the Comprehensive Agreement shall provide notice to the Operator of a Material Development for the Generic Event no later than ten (10) days after the earlier of
 - a. The receipt of notification of the Material Development by the that party or
 - b. That party otherwise becoming aware of such Material Development.After receipt of such notice the Operator shall provide a comparable notice to all parties to the Comprehensive Agreement within three business days and; provided that the Operator shall Timely comply with any reporting or response obligations required by applicable law or regulation.
2. If any party determines that any adverse effect directly related to the Generic Event is reportable to a regulatory agency, that party shall inform the Operator and all other parties to the Comprehensive Agreement for that Event as soon as practicable after such

determination, and such adverse effect shall thereafter be treated as a Material Development.

S. Apportionment of Liability

1. The Comprehensive Agreement must provide:

- a. Terms addressing liability for any damages caused by the Generic Event following execution of the Comprehensive Agreement.
- b. That no Signatory is responsible for damages resulting from another Signatory's Combined Event Seed Product containing a Covered or Generic Event, unless such damages result solely from the Covered Event and subject to subparagraph c, below.
- c. That a Signatory is responsible for any damages caused solely by the Signatory's Seed Products containing the Covered or Generic Event as a single Event. If the parties to the Comprehensive Agreement agree that damages cannot be attributed solely to a Signatory's Seed Products, then the parties shall share the liability for any damages caused by that Event in proportion to their market share as of the date of the first occurrence of such damage. If the parties do not agree, then the parties shall engage in dispute resolution by a court or through arbitration to resolve questions of causation and responsibility for the damages.

2. Liability for any damages caused by a Covered Event is not subject to Arbitration under the DUCA.

T. Dispute Resolution

1. Other than issues not subject to Arbitration under the DUCA, or expressly excluded from Arbitration under the Comprehensive Agreement, dispute resolution under a

Comprehensive Agreement shall be through independent third-party accounting review or binding Arbitration in accordance with the provisions of the DUCA.

2. Signatories to a Comprehensive Agreement may establish a dispute resolution process under the Comprehensive Agreement to address liability issues or disputes under the Comprehensive Agreement excluded from Arbitration.

U. Timely Performance. Any Comprehensive Agreement executed pursuant to the DUCA shall provide that time is of the essence with respect to all obligations of parties to that Comprehensive Agreement.

Article XV. Discontinuation

- A. If an Event is no longer a Covered Event under Article V.G, then the Signatory who was the PRP Holder for that Event when it was a Covered Event shall give notice of Discontinuation after its Last Sale of that Covered Event to the Administrator, and shall continue to maintain and obtain Covered Authorizations for such Covered Event for four (4) years after such notice. Such notice of Discontinuation shall be provided by the Administrator to all Signatories and posted to the website in a public manner.
- B. Each party to the Comprehensive Agreement for a Covered Event shall give notice of Discontinuation after such party's Last Sale of that Covered Event to the Administrator, and shall continue to maintain and obtain, or share in maintaining and obtaining Covered Authorizations for such Covered Event for four (4) years after such notice. Such notice shall be provided by the Administrator to all Signatories and posted to the web in a public manner.
- C. If no party to a Comprehensive Agreement agrees to take over the role of Operator and meets the criteria to be an Operator as set for in Article XI.A.2, the Operator for a Generic Event can

give a notice of Discontinuation, and the Operator's notice shall include the date on which Covered Authorizations will no longer be maintained for such Generic Event. Such date shall be at least four (4) to six (6) years after the date of such notice of Discontinuation by the Operator, calculated as follows: i) two (2) years for the other parties to the Comprehensive Agreement to complete Last Sale, unless otherwise agreed by all parties to the Comprehensive Agreement; plus ii) the four (4) years for which the Operator is required to continue to maintain and obtain Covered Authorizations for such Covered Event. All Signatories must complete Discontinuation of the Generic Event prior to such date.

Article XVI. Reservation of Rights

- A. The PRP is and remains the property of the PRP Holder, and only the PRP Holder can enter into agreements to transfer ownership of, or grant access to, the PRP, including through a Comprehensive Agreement.
- B. Except as expressly provided in the DUCA or a Comprehensive Agreement, a Signatory retains all intellectual property rights related to its Covered Event and the PRP for that Covered Event in all territories and jurisdictions. Nothing in the DUCA, and no action taken by a Signatory pursuant to or in accordance with the DUCA, affects any such rights or constitutes a direct or implied waiver or license of any such rights, except and solely to the extent provided in the DUCA with regard to Relevant Patents and Encumbered PRP in Article IX.E. and F. and Article XIV.O., respectively.

Article XVII. Independent Third-Party Accounting Reviews

- A. Independent third-party accounting review is the preferred resolution of all disputes subject to accounting calculation and verification under the DUCA.

- B. The Administrator shall maintain on www.AgAccord.org a list of qualified third-party auditors who are trained and qualified to conduct accounting reviews contemplated by the DUCA, and who have been selected from time-to-time by the Committee of Signatories based on the Committee's approval of the auditor's qualifications.
- C. Any calculation which is required for the purposes of Financial Criteria, the calculation and sharing of BRC and CMC, and such other uses, issues or disputes as shall be listed by the Committee of Signatories or the parties to a Comprehensive Agreement, and which is disputed by a Signatory, shall be subject to independent third-party accounting review. Such disputes must go through independent third-party accounting review prior to Arbitration. Any such dispute must be submitted to the Administrator in writing within one (1) month after notice of the calculation that is disputed.
- D. The auditor to conduct such review shall be selected from the list compiled pursuant to subparagraph B above, by the parties to such dispute, taking into account any conflicts of interest. Disagreement over the selection of the auditor shall be resolved by the Committee of Signatories.
- E. The party who has the information and records relevant to the dispute shall provide such information and records reasonably necessary to the auditor to conduct the independent third-party accounting review, subject to the confidentiality provisions in subparagraph H, below. Access to such information and records shall be provided at such party's place of business during normal business hours within seven (7) days after a request by the auditor. At the completion of such review, including any subsequent Arbitration, such information and records shall be returned to the appropriate party or destroyed at that party's request.
- F. The independent third-party accounting review shall be conducted as expeditiously as possible, and subject to the time limitations in the DUCA. The results of such review shall be made available to all parties to the dispute, subject to the confidentiality provisions in subparagraph H, below. In the

event of the Arbitration of a disputed calculation, the results of the independent third-party accounting review together with the information and records supporting such review shall be submitted to the Arbitration panel, and such results shall be presumed to be correct. The party challenging such results shall have the burden to prove such results are incorrect.

- G. The costs of independent third-party accounting reviews under the DUCA or under a Comprehensive Agreement shall be allocated as set forth in the relevant provisions of the DUCA or such Comprehensive Agreement. If the DUCA or Comprehensive Agreement does not otherwise provide for the allocation of payments for independent third-party accounting reviews, the costs will be paid by the party requesting such review; provided that, if such independent third-party accounting review reveals a discrepancy of ten (10) percent or more in favor of the party requesting such review, then the costs will be paid by the party subject to the review.
- H. Each Signatory required to disclose such Confidential Information shall ensure an appropriate confidentiality agreement is in place with such third-party auditor. The information and records upon which the independent third-party accounting review is conducted and the results of such review are Confidential Information.

Article XVIII. Arbitration and Mediation

- A. Except as otherwise set forth in the DUCA, all disputes under or related to the DUCA including:
 - 1. disputes on the interpretation of the DUCA,
 - 2. disputes on the application of the DUCA,
 - 3. disputes among Signatories under the DUCA,
 - 4. breach of the terms of the DUCA, and
 - 5. compensation for BRC, CMC, or assessment of Operating Costs if not resolved by independent third-party accounting review or by negotiation in the Comprehensive Agreement,

shall be resolved by Arbitration with no right of appeal.

- B. Arbitration is binding on all Signatories who are party to the Arbitration and their Related Entities, or if Arbitration is brought on behalf of all Signatories, then such Arbitration is binding on all Signatories and their Related Entities, in either case, regardless of the Signatory's public or private status, principal place of business or place of incorporation.
- C. Only Signatories to the DUCA can bring an Arbitration.
- D. The Arbitration shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association (AAA) as modified by Appendix C. The claimant shall file a demand for Arbitration under Rule R-4 of those rules to the AAA and provide a copy to other parties and the Administrator of the DUCA.
- E. An Arbitration panel cannot:
 - 1. Award access to Covered Events before a patent Expires;
 - 2. Award access to Proprietary Regulatory Property before a patent Expires;
 - 3. Arbitrate any implicit or explicit patent issues, including invalidity, claim scope, infringement, or date of Expiration, or patent or license issues under Article V, except that failure to provide Initial Notice is subject to Arbitration when no patent issues are raised;
 - 4. Arbitrate disputes regarding Outside Agreements, except as provided in Article VII.H;
 - 5. Award any remedy inconsistent with the terms and conditions of the DUCA;
 - 6. Arbitrate any decision of the Committee of Signatories with regard to waivers under Article XXIII;
 - 7. Grant an award inconsistent with a provision with the DUCA or a Comprehensive Agreement that expressly requires agreement among all parties to vary such provision if all parties do not agree; or,

8. Grant an award inconsistent with the agreement of all parties where a provision of the DUCA or Comprehensive Agreement can expressly be varied by such agreement.
- F. In case of a breach, an Arbitration panel can award, but is not limited to awarding:
 - a. Interim relief including, by way of example, access to the Covered Event or to the PRP at Patent Expiration pending and contingent upon eventual execution of a Comprehensive Agreement;
 - b. Specific performance by the Signatory in breach of the terms of the DUCA, including as set forth in Article XIX.F;
 - c. Equitable relief, if specific performance is not possible; e.g. if Initial Notice is late, the award could provide that the PRP Holder may receive reduced data compensation.
 - d. Damages, provided that any damages awarded must be related to the direct costs of the breach, and exclude general (e.g. lost profits, etc.) or consequential damages; or
 - e. Forfeiture of rights under the DUCA and any Comprehensive Agreement, pending cure of the breach.
 - G. At any time during the negotiation of the Comprehensive Agreement or during an Arbitration, any party to the negotiation or Arbitration may seek mediation under the Commercial Mediation Procedures of the AAA. Mediation is voluntary and requires the agreement of all parties involved in the negotiation or Arbitration. Engaging in mediation does not toll or otherwise affect any prescribed time period set forth in the DUCA.

Article XIX. Breach of the DUCA and Remedies

- A. The Signatories are responsible for compliance with and enforcement of the DUCA.

1. Any Signatory claiming to be aggrieved by an alleged breach of the DUCA shall give notice of that alleged breach to the Administrator, who shall forward the notice to the Committee of Signatories and to the Signatory alleged to be in breach.
 2. The Committee of Signatories shall decide when any action for enforcement should be brought on behalf of all Signatories (except the Signatories alleged to be in breach).
 3. The Signatories whose representatives sit on the Committee of Signatories (except any such Signatory alleged to be in breach) shall be the parties in interest and those parties shall bring any action on behalf of all Signatories (except the Signatories alleged to be in breach) and shall represent such Signatories in any such action; provided that any Signatory can decline to be the party in interest. If none of the foregoing parties consent to be a party in interest, then any other Signatory can elect to be the party in interest.
 4. An aggrieved Signatory or a group of aggrieved Signatories may bring any action of enforcement that relates to a specific Covered Event. Except that, any action to enforce stewardship obligations under Article XIII must be brought by the Signatories whose representatives sit on the Committee of Signatories, subject to subparagraph 3, above.
- B. The Committee of Signatories shall follow the procedures sets forth in Article IX of the Administrative Provisions of the DUCA for processing a claim of alleged breaches of the DUCA which are enforceable on behalf of all Signatories.
- C. The costs and fees for any enforcement action brought on behalf of all Signatories (including, if applicable, any costs and fees paid to the party alleged to be in breach) shall be an Operating Cost. The costs and fees for any enforcement action brought by an aggrieved Signatory or group of aggrieved Signatories shall be borne by those Signatories. In any action for enforcement or specific performance, the prevailing party shall recover its costs and fees from any party required to pay as

set forth above. Payment of costs and fees assessed against multiple parties held to be in breach shall be allocated by an Arbitration tribunal or court.

- D. Subject to Article XVIII, the obligations of a Signatory alleged to be in breach shall be enforced through Arbitration, and, if necessary, judicial enforcement of an Arbitration award. All remedies available at law or in equity shall be available in any such Arbitration or in any subsequent or alternative judicial proceedings.
- E. Any breach of a Comprehensive Agreement shall be addressed in that Comprehensive Agreement.
- F. Each Signatory acknowledges and agrees that in regard to each of the following obligations: i) they are unique and subject to specific performance; ii) the other Signatories may be irreparably harmed if they are not satisfied; and iii) there is no adequate remedy at law available to any Signatory aggrieved by the failure of another Signatory to perform them:
 - 1. Stewardship under Article XIII;
 - 2. Providing Initial Notice and Confidential Notice;
 - 3. The PRP Holder entering into a Comprehensive Agreement once the terms have been agreed upon;
 - 4. Abiding by an Arbitration decision establishing the terms of a Comprehensive Agreement if those terms are not established by negotiation;
 - 5. Providing access to PRP and the Covered Event where required under the DUCA or a Comprehensive Agreement.
- G. Notwithstanding the obligation to Arbitrate, including this Article XIX, if a Signatory fails to perform the obligations set forth in paragraph F, above, an aggrieved Signatory can pursue specific performance in court.
- H. The jurisdiction for any action for specific performance pursuant to this Article XIX shall be a United States District Court that has subject matter jurisdiction, in:

1. the domicile or principal place of business in the United States of the plaintiff Signatory; or,
2. the jurisdiction agreed to by the parties to the action; or,
3. by default New York, New York.

If no United States District Court has subject matter jurisdiction, then the jurisdiction and venue shall be the State Court of New York in New York City. The Signatories agree to personal jurisdiction and venue in such courts.

Article XX. Confidential Information

- A. The term “Confidential Information” means information that has been marked confidential by a Signatory and does not fall within any of the exclusions below. Confidential Information may include information related to a Signatory’s present or future business, operations, services, products, research, inventions, discoveries, drawings, designs, plans, processes, models, technical information, facilities, methods, trade secrets, copyrights, software, source code, systems, patents, procedures, manuals, specifications, any other intellectual property, confidential reports, price lists, pricing formulas, customer lists, financial information, business plans, lease structures, projections, prospects, opportunities or strategies, acquisitions or mergers, advertising or promotions, personnel matters, and legal matters, or any other information not generally known to the public that may be of value to any Signatory.
- B. Each Signatory recognizes that, by reason of its participation in the DUCA, it may acquire Confidential Information, the use or disclosure of which could cause substantial loss and damages to the other Signatories that could not be readily calculated and for which no remedy at law would be adequate. A Signatory shall only use the Confidential Information for the purpose for which it is disclosed, and shall not at any time, except in performance of its obligations hereunder, directly or

indirectly, use, disclose or publish, or permit any other person to use, disclose or publish, any Confidential Information, or use any such information, unless:

1. Such information becomes generally known to the public through no fault of any Signatory;
2. Such information is already known to the Signatory and that Signatory can show by its contemporaneous written records that such information was already known on a non-confidential basis by that Signatory;
3. Such information is received from a third-party that did not have obligations to maintain the information as confidential;
4. Such information is independently developed by the Signatory without access to or use of Confidential Information;
5. The disclosing party is advised in writing by counsel that disclosure is required by law or the order of any governmental authority of competent jurisdiction under color of law or the rules of any stock exchange on which a Signatory's stock is listed; or
6. The disclosing party reasonably believes that such disclosure is required in connection with the defense of a lawsuit against the disclosing party;

provided, however, that prior to disclosing any information pursuant to subparagraphs (5) or (6) above, such Signatory shall give prior written notice thereof to the other Signatories and provide them with the opportunity to contest such disclosure and shall cooperate with efforts to prevent such disclosure. Confidential Information disclosed under the DUCA shall not be deemed to be within the foregoing exceptions merely because such Confidential Information is embraced by more general information in the public domain or in the receiving party's possession.

- C. Each Signatory agrees that by executing the DUCA and participating in the processes set forth herein, specified information, which may include Confidential Information, is required to and shall be shared among other Signatories pursuant to those processes. Any Confidential Information

shared pursuant to such processes shall be subject to the confidentiality obligations set forth in this Article XX.

- D. Signatories hereby agree to be bound by all of the obligations related to Confidential Information set forth in the DUCA.
- E. Disclosure to Employees, Representatives and Consultants. A Signatory may disclose Confidential Information to employees and consultants as necessary to carry out its rights and obligations under the DUCA. Such Signatory shall cause employees, representatives and consultants who have access or to which Confidential Information is disclosed to undertake the obligations of confidentiality set out in this Agreement and shall require representatives on the Committee of Signatories and third-party consultants to agree in writing to such obligations.
- F. Return or Destruction of Confidential Information. Upon i) completion of the action under the DUCA for which access to Confidential Information was granted, ii) completion of the negotiation of a Comprehensive Agreement, iii) the termination of or withdrawal from the DUCA, or iv) if the Signatory is in breach of the DUCA and has not cured such breach under the terms of the DUCA, the Signatory shall:
 - 1. cease to use all Confidential Information to which it has access;
 - 2. at the election of the disclosing Signatory, return to the disclosing Signatory or destroy all Confidential Information in the Signatory's possession, custody or control, and provide to the disclosing Signatory a notice certifying destruction; and
 - 3. use reasonable efforts to delete from accessible electronic storage media all Confidential Information stored in electronic form by the Signatory.

Notwithstanding the foregoing, such Signatory may retain one (1) copy of Confidential Information received under this Agreement solely to monitor its obligations under this Agreement.

- G. The Contracting Organization and the representatives of the Contracting Organization, the Administrator and representatives of the Administrator, third-party auditors, arbitrators , and any other third-parties who gain access to Confidential Information in carrying-out activities related to or under the DUCA shall execute a confidentiality agreement which contains terms and conditions at least as protective as those set forth herein.

Article XXI. Term and Termination

- A. This DUCA shall remain in effect unless terminated pursuant to this Article XXI.
- B. The DUCA may be terminated at any time with the unanimous written consent of all Signatories. Upon termination, the Signatories shall no longer have any obligations of the Signatories under the DUCA except as to those provisions of the DUCA that expressly survive such termination pursuant to Article XXIII.
- C. As of the effective date of any United States law or regulation adopted after the effective date of the DUCA and which addresses the post patent issues addressed by the DUCA, *exempli gratia*, post patent access to PRP or data compensation for PRP, the Committee of Signatories shall review such United States law or regulation to determine whether the obligations thereunder conflict with or duplicate the requirements of the DUCA, and decide whether to recommend modification or termination of the DUCA. The Committee of Signatories shall report its determination and decision to the Signatories. The recommendation of the Committee shall be voted on by the Signatories as an amendment that materially affects the rights and duties of all Signatories, pursuant to Article XI of the Administrative Provisions of the DUCA. If the DUCA is terminated, such termination shall be subject to this Article XXI and Article XXII.C.

Article XXII. General Provisions

- A. **No Legal Entity.** The DUCA is a contract establishing the rights and duties of Signatories, and does not create any legal entity, or any personal or corporate existence.
- B. **Responsibility for Events and Seed Products containing Events.** Each Signatory to the DUCA is solely responsible for its proprietary Events, for its use of Events and for its Seed Products containing Events, and any claims or allegations related to those Events and Seed Products. There is no joint and several liability among Signatories under the DUCA.
- C. **Survival.** The following provisions shall survive withdrawal from or termination of the DUCA: Article II, Article III, Article XXV and Article XXVI (to the extent necessary to interpret and apply other surviving articles); Article IV.A, C and F; Article XIII (as to Covered Events for so long as such Events are subject to the DUCA or a Comprehensive Agreement); Article XV; Article XVI; Article XVIII (with respect to any surviving article) and Appendix C (as to surviving covered disputes); Article XX together with all Confidentiality Agreements for a period of 10 years after the effective date of such withdrawal or termination; Appendix A (as necessary to wind up operation of the DUCA in the event of termination); and any Comprehensive Agreement in effect at the time of withdrawal or termination subject to its terms and conditions.
- D. **AgAccord Administration.** The DUCA shall be operated and administered as set forth in the Administrative Provisions to the DUCA contained in Appendix A.
- E. **Joining the DUCA.** An entity obligates itself to the terms and conditions of the DUCA as a Signatory by executing the DUCA and delivering it to the Administrator. An entity that executes the DUCA after it has entered into effect is responsible for the payment of Operating Costs in accordance with Article VI.E. of the Administrative Provisions.
- F. **Related Entities, Successors and Assigns.**

1. The DUCA is binding upon and shall inure to the benefit of the Signatories, their Related Entities, and their respective successors and legal representatives.
 2. Any Signatory shall have the right to assign its rights and obligations under the DUCA i) to any of its Related Entities; ii) in connection with the reorganization, consolidation, spin-off, sale, or transfer of all or substantially all of the stock or assets related to the relevant business of the Signatory, whether such business is conveyed alone, or in conjunction with other businesses; or iii) with the prior written consent of the percent of Signatories required to approve an amendment that materially affects the rights and duties of all Signatories, as set forth in Article XI of the Administrative Provisions of the DUCA, such consent cannot be unreasonably withheld.
 3. Any assignment must obligate the assignee and its Related Entities to be bound by all the terms and conditions of the DUCA and shall not diminish the rights of the non-assigning Signatories.
 4. Any assignment of a Signatory's rights and obligations under the DUCA in violation of this Article XXII.F shall have no effect as it relates to such rights and obligations.
- G. **Entire Agreement.** The DUCA sets forth the entire understanding of the Signatories with respect to the terms of the DUCA. All previous negotiations, discussions, drafts, agreements or understandings between or among the parties regarding the subject matter of the DUCA, whether written or oral, are superseded by the DUCA.
- H. **Severability.** The provisions of the DUCA are severable. If any provision of the DUCA is held invalid or unenforceable, the remaining provisions shall not be affected thereby and shall remain in full force and effect. If a judicial authority of competent jurisdiction determines that any provision of the DUCA is invalid or unenforceable as drafted, such provision shall be construed, modified or amended, as needed, by the judicial authority or as provided in this

DUCA in a manner that effectuates the Signatories' intent and the purpose of such provision to the greatest extent possible under applicable law.

- I. **No Third-Party Beneficiaries.** The DUCA is not intended to create, does not create and shall not be construed to create (A) any third-party beneficiaries or third-party beneficiary rights; or (B) any rights or duties of any kind other than those set forth in the DUCA in any Signatory or person, including any Related Entity, director, manager, stockholder, member, officer, employee, partner, client, or customer of any Signatory.
- J. **Execution of Implementing Documents.** Each party Signatory agrees to execute, acknowledge and deliver all instruments and documents and to take all those actions required to consummate and to carry out the purposes of the DUCA, including any documents or actions necessary to properly steward Seed Products containing Events or to maintain and obtain Covered Authorizations for Events pursuant to the DUCA or to a Comprehensive Agreement to which the Signatory is a party or a member of a Task Force which is a party.
- K. **Execution of the DUCA.** The DUCA may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. For purposes of the DUCA, a document (or signature page thereto) signed and transmitted by facsimile (or equivalent, such as an e-mailed scan) shall be considered an original document, and the signature of a Signatory thereon shall be considered an original signature, and that document shall have the same binding effect as an original signature on an original document.
- L. **Timely Performance:** Time is of the essence with respect to all obligations of Signatories under the DUCA.
- M. **Compliance with Laws:** Each Signatory represents and warrants that it will comply with all applicable laws, orders, ordinances, notifications, rules and regulations relating to or in any way

relevant to the performance of the DUCA or a Comprehensive Agreement. Each Signatory further represents and warrants that it has obtained and will maintain all permits, licenses, zoning, variances, approvals, certificates, and other authorizations necessary for the Signatory to perform its obligations under the DUCA or a Comprehensive Agreement. Signatories agree not to make, offer or approve payments to any government official or to any political party or official thereof, or to any other person who may transfer such payments to any of such persons for the purpose of influencing any such official, political or other person in connection with any business as prohibited by the United States Foreign Corrupt Practices Act (“FCPA”).

- N. **Election of Remedies.** The rights and remedies of a Signatory set forth in the DUCA with respect to failure of another Signatory to comply with the terms of the DUCA are not exclusive, the exercise thereof shall not constitute an election of remedies and the aggrieved Signatory shall, in all events, be entitled to seek whatever additional remedies may be available at law or in equity, subject to the requirement for Arbitration.

Article XXIII. Amendment and Waiver

- A. The DUCA can only be amended through the procedures set forth in the Administrative Provisions.
- B. The provisions of the DUCA can only be waived through the procedures set forth in the Administrative Provisions.

Article XXIV. Withdrawal

- A. A Signatory may withdraw from the DUCA effective one (1) year after written notice of withdrawal is delivered to the Administrator. To be effective, the notice must identify Events that are Covered Events for which that Signatory has obligations at the time such notice would become effective.
- B. Withdrawal does not relieve a Signatory of: 1) its obligations under the DUCA for Events that are Covered Events at the time such withdrawal is effective, including the Discontinuation process

pursuant to Article XV; 2) those provisions that survive under Article XXII.C.; and 3) obligations under any Comprehensive Agreement to which the Signatory is a party. All such obligations survive and continue until fully satisfied pursuant to the terms of the DUCA and applicable Comprehensive Agreement.

Article XXV. Notice

- A. Any other provision of the DUCA notwithstanding, all notices required or permitted under the DUCA shall be provided in writing to the Administrator, and the Administrator shall transmit such notices to the specified Signatories, and when and as specified shall post such notices to the DUCA website in a public manner within five (5) days.
- B. Unless otherwise specified, any notices to Signatories that are required under the DUCA with regard to a Covered Event or the negotiation of a Comprehensive Agreement shall be in writing with a copy provided to the Administrator and shall be delivered personally; or sent by e-mail or other forms of electronic communication (including by facsimile) where receipt can be verified in a commercially reasonable manner; or by registered or certified mail, postage prepaid or nationally recognized overnight courier service to that Signatory's current address on file with the Administrator.
- C. Such notices shall be deemed to have been given (a) as of the date so delivered or telefaxed, (b) one business day after it is sent for next business day delivery via a nationally recognized overnight courier service, (c) four business days after it is sent by registered or certified mail, and (d) if given by any other means, shall be deemed given only when actually received by the addressee(s).
- D. All notices, other than those set forth in paragraph B above shall be deemed delivered when posted to the website.

- E. Each Signatory shall provide the Administrator with its contact information for receipt of notices, which shall include recipient name or position, mailing address, delivery address, e-mail address, telephone number, and optionally facsimile number, and shall keep such information current.
- F. If any PRP Holder fails to provide any notice within the timeframes required under the DUCA, then all obligations of that PRP Holder for maintaining or obtaining Covered Authorizations and for product stewardship shall be extended by the time of the delay in providing such notice plus any additional time necessary to complete the processes described by the DUCA; *exempli gratia*, negotiation or Arbitration.

Article XXVI. Governing Law and Forum

- A. The DUCA shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflict of law rules.
- B. Unless otherwise provided in the DUCA (*exempli gratia*, as set forth in Article XIX.H.), any dispute, claim or controversy seeking (a) to enforce an Arbitration award, or (b) specific performance or other equitable relief permitted under the DUCA shall be subject to the exclusive jurisdiction of the Federal and State Courts in New York, New York. The parties hereby consent to the jurisdiction and venue of the above designated courts and to the service of process by registered mail, return receipt requested or by any other manner provided by the laws of the State of New York or the Federal Rules of Civil Procedure and any applicable local rules.

Article XXVII. Representation & Warranties

- A. Each Signatory represents and warrants that in entering into the DUCA, either (1) such Signatory will not breach (currently, or by complying with the DUCA in the future) any agreement, instrument, or other contractual arrangement to which such Signatory is a party (whether express, implied or by operation of law), or (2) if there will be such a breach, that such Signatory assumes full and

complete liability for any such breach, and will indemnify, defend and hold all other Signatories harmless with regard to claims, losses, damages, expenses or costs (including attorneys' fees) made or sought against them arising out of any such breach.

B. By executing, delivering and performing its obligations under the DUCA, each Signatory represents and warrants that:

1. It supports access to, stewardship of, and availability of Seed Products containing Events, in growing, developing, marketing, selling, processing, transporting, shipping, handling, or maintaining such Seed Products;
2. It is a corporation, partnership, limited partnership, limited liability company, or sole proprietorship, as the case may be, duly organized or formed, validly existing, and in good standing under the laws of its jurisdiction of organization or formation, and has all requisite authority to execute, deliver, and perform its obligations under, and consummate the transactions contemplated by, the DUCA;
3. It is not violating such Signatory's articles of incorporation, bylaws, or other charter documents of such Signatory, or any resolution of the board of directors, members, or stockholders or other equity owners of such Signatory, or any applicable law;
4. It has already obtained and has in full force and effect all necessary consents, approvals, qualifications or authorizations and has made all necessary filings and registrations; and
5. The DUCA has been duly executed and delivered by and on behalf of such Signatory, and constitutes the legal, valid, and binding obligation of such Signatory, enforceable against such Signatory in accordance with its terms.

C. Nothing in the DUCA or any Comprehensive Agreement grants any licenses to any intellectual property, including patents and copyrights, unless otherwise expressly stated in the DUCA or Comprehensive Agreement.

- D. Other than a good faith effort to disclose Relevant Patents, there is no representation or warranty regarding the presence or absence of patents or other intellectual property that may affect the use of any Covered Event. Each Signatory has an independent duty to search for and understand patents or any other intellectual property that may affect its intended use of any Covered Event accessed through the DUCA.
- E. There is no representation or warranty of the ability to stack any Covered Event with any other Event or to use the Covered Event with any particular germplasm. Signatories have the obligation and responsibility to investigate patents or any other intellectual property that may affect the ability to create such Seed Products containing the Covered Event.
- F. There is no representation or warranty of any non-infringement of any third-party intellectual property.

IN WITNESS WHEREOF, the parties have caused the DUCA to be executed by their duly authorized representatives as of the day and year written above.

[SIGNATORY]

By: _____

Name: _____

Title: _____

Address: _____

Telephone: _____

Fax: _____

E-mail: _____

Date: _____

Appendix A Administrative Provisions

Article I. Purpose

These Administrative Provisions are established for the administration and operation of The AgAccord: Data Use and Compensation Agreement (DUCA) and shall be interpreted in a manner consistent with the provisions of the DUCA.

Article II. General

- A. All references to an “Article” in these Administrative Provisions are references to the provisions of these Administrative Provisions unless otherwise expressly stated.
- B. The definitions in and determinations under the DUCA apply to these Administrative Provisions.

Article III. Language

All correspondence, reports, invoices, minutes and manuscripts concerning any matter under these Administrative Provisions will be in English. Where the original of any document is in a language other than English, the Administrator will obtain a certified translation.

Article IV. Committee of Signatories

- A. The Committee of Signatories shall have the responsibility and authority to make discretionary determinations and decisions as set forth in the DUCA, and represent the Signatories in carrying out the terms and conditions of the DUCA. The Committee of Signatories’ authority includes:
 - 1. Appointing and managing all contracts with the Administrator; and managing any other contracts as necessary under the DUCA and the Administrative Provisions;
 - 2. Reviewing and resolving disputes involving Verification;
 - 3. Determining and giving notice of a breach;

4. Interpreting, enforcing, or amending the DUCA or the Administrative Provisions subject to their terms and conditions;
 5. Defending claims: a) against the Committee of Signatories, a member of the Committee of Signatories, or the Administrator (or interim Administrator) resulting from performance of their duties in accordance with the DUCA or the Administrative Provisions as a member of the Committee of Signatories or as the Administrator (or interim Administrator); or b) challenging the validity of the DUCA under applicable laws or regulations.
 6. Approving the budget and annual assessment;
 7. Carrying out the default provisions under Article IX of these Administrative Provisions;
 8. Establishing and maintaining a roster of neutrals or establishing qualifications or criteria for neutrals to serve on Arbitration tribunals; and
 9. All other tasks necessary to carry out the terms of the DUCA and these Administrative Provisions.
- B. The Committee of Signatories shall operate by consensus. If the Committee of Signatories lacks consensus, decisions shall be determined based on a majority vote of the Committee of Signatories.
- C. If an amendment to the DUCA or a decision of the Committee materially affects the rights or duties of all Signatories, then to become effective the amendment or decision must be agreed to, in writing, by at least sixty percent (60%) of all Signatories. Without limiting alternative ways to establish the materiality of an amendment or decision, if there is a dispute within the Committee of Signatories whether an amendment or decision materially affects the rights or duties of all Signatories, a vote of at least forty percent (40%) of the members of the Committee of Signatories that it does is sufficient to trigger the obligation to put the vote to all Signatories. For purposes of a vote of all Signatories, an email confirmation or vote sent to the Administrator shall be acceptable as agreement in writing.
- D. The Committee of Signatories can be up to nine (9) representatives of Signatories. Each Signatory may have only one representative on the Committee of Signatories at any time. The representatives

shall be self-nominated from among the Signatories, consisting of up to six (6) but no less than three (3) from among all the Proprietary Regulatory Property (PRP) Holders and Founding Signatories and up to three (3) but no less than two (2) from among all remaining Signatories. At any time, the representatives from the PRP Holders or Founding Signatories can have up to three (3) alternate representatives, with roles further described in paragraph K, below. The representatives from among the remaining Signatories can have up to two (2) alternate representatives.

E. If there are more self-nominees than are permitted by these Administrative Provisions to serve on the Committee of Signatories and as alternates, the self-nominated names shall be drawn at random by the Administrator or by a neutral person or institution selected by the Administrator.

1. The first nine names drawn from within the group of PRP Holders and Founding Signatories will be the initial candidates from this group to serve on Committee of Signatories. A random selection process will then be reemployed to determine which of the nine initial candidates will serve on the Committee of Signatories and which will serve as alternates, and as to those serving on the Committee of Signatories, which will serve initial terms of two, three or four years. The first two names drawn from this group of nine candidates shall have an initial term of four years; the second two names, an initial term of three years; and the third two names, an initial term of two years. The remaining names shall serve as the three alternate representatives with the first selected serving as the first alternate representative for four years, the second as the second alternate representative for three years, and the third as the third alternate representative for two years.

2. The first five names drawn from the group of all remaining Signatories will be the initial candidates from this group to serve on the Committee of Signatories. A random selection process will then be reemployed to determine which of the five candidates will serve on the Committee of Signatories and which will serve as alternates, and as to those serving on the

Committee of Signatories, which will serve initial terms of two, three or four years. The first name drawn from this group of five candidates shall have an initial term of four years; the second name, an initial term of three years; and the third name, an initial term of two years. The remaining two names shall serve as alternate representatives with the first selected serving as the first alternate representative for a term of four years, and the second as the second alternate representative for a term of three years.

- F. If there are fewer self-nominees than the maximum permitted by these Administrative Provisions to serve on the Committee of Signatories and as alternates, the self-nominees names shall be drawn at random by the Administrator or by a neutral person or institution selected by the Administrator. This random process shall be followed until all self-nominees have been selected to serve on the Committee or as alternative representatives following the same process as set forth above to establish the candidates for the Committee of Signatories or alternate representatives from within each group, and then from among these candidates, the initial terms of service.
1. To illustrate the operation of this paragraph from within the group of PRP Holders and Founding Signatories, if there are five self-nominees, they shall all serve on the Committee of Signatories with the first two names selected at random serving four-year terms, the next two names selected, a three-year term, and the last name, a two-year term. If there are six self-nominees, they shall all serve on the Committee of Signatories, with the first two names serving four-year terms, the next two, three-year terms, and the last two, two-year terms. If there are eight self-nominees, the same selection process will be followed, and the seventh name selected will be the first alternate representative for four years, and the eighth, the second alternative representative for three years.
 2. To illustrate the operation of this paragraph from within the group of the remaining Signatories, if there are two self-nominees, both shall serve on the Committee, with the first

name selected at random serving a four-year term, and the second, a three-year term. If there are three self-nominees, they shall all serve on the Committee of Signatories with the first names selected at random serving a four-year term, the next name selected, a three-year term, and the last name, a two-year term. If there are four self-nominees, the first three names selected shall all serve on the Committee of Signatories, with the first name serving a four-year term, the next name, a three-year term, and the last name, a two-year term. The remaining name shall be the first alternate representative from this group for a term of four years.

- G. If there are fewer self-nominees than the maximum permitted by these Administrative Provisions to serve on the Committee of Signatories and as alternates, the Committee of Signatories will hold another self-nomination process on the one-year anniversary of the creation of the first Committee of Signatories to attempt to fill additional positions allowed on the Committee of Signatories as provided for in Paragraphs D, E and F of this Article IV. The terms of service on the Committee of Signatories by persons so selected will be those set forth in Paragraph C of this Article IV minus one year.
- H. If there are fewer self-nominees from either category of members than the minimum required by these Administrative Provisions, then the Committee of Signatories shall be formed consisting of those self-nominees, and shall be empowered to act. Their respective terms shall be determined by random drawing as set forth in the preceding paragraphs. The Committee of Signatories shall thereafter seek additional self-nominees for the category that is lacking members on the Committee every six (6) months until the requisite membership is attained.
- I. Once the representatives on the Committee of Signatories are selected, each representative may designate a substitute representative from that Signatory to serve on the Committee if the Signatory's representative is unable to participate on the Committee of Signatories or at a meeting

of the Committee of Signatories. The name of the substitute representative shall be provided to the Administrator.

- J. Following establishment of the initial terms, representatives and alternate representatives shall serve on the Committee of Signatories for three years. No Signatory may have a representative serve more than two consecutive three-year terms on the Committee of Signatories unless (a) there are no other PRP Holders and Founding Signatories, on the one hand, or the remaining Signatories, on the other, to provide self-nominees to serve in this role, or (b) an eligible Signatory in either of these two groups give notice to the Administrator that it is withdrawing as a self-nominee or declines to be considered for service on the Committee of Signatories and such a decision produces the conditions set forth in subparagraph (a) of this paragraph. Alternate representatives are not excluded from seeking service on the Committee of Signatories after completing their term of service as alternate representatives.
- K. Representatives of a Signatory on the Committee of Signatories shall recuse themselves from any issue, determination or decisions in which they or their companies have a conflict of interest. In the event of a recusal, the alternate representatives will become the representatives to vote on matters as to which a recusal has occurred with the first alternate representative voting if there is one recusal, the first and second alternative representatives voting if there are two recusals, and in the case of the PRP Holders and Founding Signatories, all three alternate representatives voting if there are three recusals. If one or more recusals occur, and there are no alternate representatives, the remaining representatives on the Committee of Signatories shall vote. If there are not at least five representatives, including alternate representatives, on the Committee of Signatories to conduct a vote, the matter shall be referred to all Signatories for a vote as if it were one that materially affects the rights or duties of all Signatories.

- L. If any representative for the Committee of Signatories resigns or can no longer perform his/her duties, the substitute representative from that Signatory shall fill that representative's position for the remainder of that representative's term. If a Signatory resigns from the Committee of Signatories or withdraws from this Agreement, then sequentially (the first, second, or as the case may be, third) alternate representative from the respective self-nominating group shall fill that Signatory's position on the Committee of Signatories for the remainder of the term of that Signatory on the Committee of Signatories. Any vacancy on the Committee of Signatories or for alternative representatives that cannot be filled by this process will be filled using the same selection process used for selecting representatives and alternates.
- M. The Administrator will provide notice of available openings for representatives or alternates for the Committee of Signatories. The notice will set forth a deadline for receipt of self-nominations. This notice will be sent to all Signatories at least ten (10) business days in advance of this deadline.
- N. By majority vote, the Committee of Signatories will elect one representative as a Chair and another as Vice-Chair, both to sit for two (2) years. At the end of the two (2) year period, the Committee of Signatories will elect by majority vote new representatives for the position of Chair or Vice-Chair neither of whom shall be a representative of the same Signatory whose representative served as Chair in the prior term. Any vacancy otherwise in the position of Chair or Vice-Chair shall be filled by majority vote of the Committee of Signatories. If there is a tie vote, the Chair or Vice-Chair shall be drawn at random by the Administrator or a neutral person or institution selected by the Administrator from the names of the candidates who were the subject of the tie vote.
- O. The Chair's and Vice-Chair's responsibilities shall be to ensure that the Committee of Signatories carries out its responsibilities as set forth in these Administrative Provisions.
- P. The Committee of Signatories shall meet at least once annually but can meet more often when deemed necessary by the Chair, upon request of a member of the Committee of Signatories for a

specified purpose, or when an amendment to the DUCA or these Administrative Provisions has been proposed. Meetings of the Committee of Signatories can be held in person, by telephone, by electronic means or by any combination of these forms of meetings. Each meeting will be preceded by at least ten (10) business days notice unless the Chair decides that there is a need for a meeting on less notice, and distribution of an agenda by the Administrator with approval of the Chair. If agreed by unanimous written consent of all representatives (either before or at the beginning of a meeting), the Committee of Signatories may meet without notice.

- Q. The Committee of Signatories may assign tasks to a subcommittee and, if it does so, shall define the scope of each task in writing to the subcommittee. The Committee of Signatories may appoint to a subcommittee representatives of the Committee of Signatories or Signatories that are not members of the Committee of Signatories.

Article V. Administrator

- A. The DUCA and these Administrative Provisions shall be administered in accordance with their terms and conditions by an Administrator, retained by a contracting organization (the “Contracting Organization”). The Biotechnology Industry Organization (BIO) shall serve as the initial Contracting Organization for the purpose of retaining an interim Administrator to implement the DUCA. Such interim Administrator shall report to a designated representative of BIO until such time as the Committee of Signatories is established, at which time the Committee of Signatories shall appoint an Administrator who shall report to the Committee of Signatories.
- B. A Contracting Organization shall not be liable to any Signatory for any acts or omissions of the interim Administrator or the Administrator, or for any other claims brought under or relating to the DUCA. The Signatories (the “Indemnifying Parties”) agree to defend and indemnify the Contracting Organization (and its employees, officers, directors, and agents) and the interim Administrator or Administrator (the Indemnified Parties or, individually, an Indemnified Party) against all claims, lawsuits, liabilities, costs or damages (including reasonable attorneys’ fees and costs), arising out of or connected with the DUCA that result from carrying out their responsibilities in accordance with the DUCA and these Administrative Provisions and applicable law. The Indemnified Parties agree to

promptly notify the Indemnifying Parties in writing of any such claim or suit within ten (10) business days that the pleading, demand letter, or other notice is served upon Indemnified Parties; and agrees to cooperate in a reasonable manner with the Indemnifying Parties and at the Indemnifying Parties' expense, with respect to the defense and disposition of such claim or suit. Indemnifying Parties shall have control of the defense or settlement; provided, however, that the Indemnifying Parties shall not enter into any settlement that obligates the Indemnified Parties to take any action or incur any expense without such Indemnified Parties' prior written consent, and provided further that the Indemnified Parties shall have the right to be represented by independent counsel of their own choosing, at their own expense, in connection with such claim or suit. If the Indemnifying Parties fail to defend such suit, then the Indemnified Parties, through counsel of their own choice, shall, at the expense of the Indemnifying Parties, have the right to conduct the defense of claim or suit; provided however that the Indemnified Parties shall not enter into any settlement that obligates the Indemnifying Parties to take any action or incur any expense without the Indemnifying Parties prior written consent. All indemnification costs under this paragraph shall be Operating Costs.

- C. All reasonable expenditures of administering the DUCA incurred by a Contracting Organization, including any legal costs in defense of claims or suits referenced in paragraph B, above, shall be reimbursed to such Contracting Organization as part of the annual assessment process under Article VI.B. of these Administrative Provisions.
- D. Within three months after the Effective Date of the DUCA, the interim Administrator shall constitute the Committee of Signatories pursuant to Article IV of these Administrative Provisions. Within three (3) months after the Committee of Signatories is constituted it will select an Administrator and determine an appropriate Contracting Organization to retain such Administrator. The interim Administrator may be appointed as the Administrator and the initial Contracting Organization may be retained as the Contracting Organization.
- E. The Administrator (a) shall not be affiliated with any Signatory while serving in the role of Administrator unless otherwise agreed to by all of the Signatories, (b) shall have established credentials, expertise and experience in the issues addressed and the types of procedures employed in the DUCA, and (c) shall execute a retention agreement that includes appropriate confidentiality provisions.
- F. If the position of Administrator becomes vacant, the Committee of Signatories will appoint an interim Administrator until the vacancy is filled.

- G. The Administrator shall have no responsibility or authority to make discretionary determinations and decisions related to the DUCA. The Administrator is not the agent of any Signatory. The Administrator has no authority to speak for any Signatory or the Committee of Signatories or to bind any Signatory or the Committee of Signatories. No third party may rely on any action or statement made by the Administrator to create any “apparent agency” relationship to any Signatory or the Committee of Signatories. In the event of a dispute over the interpretation of the DUCA, the Administrator has no responsibility or authority to interpret the DUCA.
- H. The Administrator is responsible for the non-discretionary operations and administration of the DUCA, including:
1. Attending meetings of the Committee of Signatories and keeping minutes of the meetings or a record of other actions taken under the DUCA or these Administrative Provisions;
 2. Providing the Antitrust Guidelines at Appendix F for all activities conducted pursuant to the DUCA;
 3. Maintaining a current copy of the DUCA and Administrative Provisions and an archive of all amendments to the DUCA or these Administrative Provisions;
 4. Issuing all notices required of the Administrator, and receiving, transmitting, and keeping a record of all notices required, under the DUCA or these Administrative Provisions;
 5. Making decisions of the Committee of Signatories or the Signatories available to Signatories in a reasonably prompt manner;
 6. Acting as a point of contact for and responding to inquiries and, at the discretion and under the direction of the Chair and Vice-Chair, providing education, training and presentations on the DUCA;
 7. Receiving documentation on Verification provided by a Signatory under the DUCA and checking for the completeness of such documentation;
 8. Assisting in arrangements for third-party audits or surveys under the DUCA;
 9. Assisting in arrangements for Arbitration;
 10. Providing budget-related information to the Committee of Signatories;
 11. Invoicing and collecting the annual assessment, paying invoices, and managing the financial accounts associated with operations of the DUCA and these Administrative Provisions;

12. Conducting or supervising the conduct of the random selection process to identify the representatives and alternative representatives on the Committee of Signatories and the terms of the initial representatives;
13. Maintaining a roster with current contact information of Signatories, the primary point of contact for each Signatory, the representatives on the Committee of Signatories, substitute representatives of Signatories on the Committee of Signatories, and alternative representatives on the Committee of Signatories;
14. Maintaining a record of all self-nominees for service on the Committee of Signatories;
15. Establishing and maintaining a website, pursuant to Article XIII of these Administrative Provisions, and other necessary information technology resources with appropriate security (including secure Signatory-only access);
16. Maintaining the records and the financial books and accounts of the DUCA, and making them available for inspection by any Signatory upon reasonable notice to the Administrator;
17. Supervising voting of all Signatories where such votes are required to be taken; and
18. Other administrative duties as designated by the Committee of Signatories.

Article VI. Operating Costs

- A. Operating Costs are the costs of administering this Agreement, including (1) any contract charges, (2) legal, accounting and other professional fees, (3) costs and expenses of the Contracting Organization, (4) other reasonable and necessary expenses, and (5) any capital expenditures approved by the Committee of Signatories. Operating Costs includes the costs of an audit or survey that are determined to be Operating Costs by a decision of the Committee of Signatories, unless allocation of such costs is specified in the DUCA.
- B. The Operating Costs shall be paid by annual assessment. The annual assessment shall be issued by the Administrator based on the budget approved by the Committee of Signatories. The budget, shall cover two-years and be updated annually. The budget shall include a reserve as established by the Committee of Signatories.

- C. Should funds be required to pay the costs of the Interim Administrator before receipt of payments for the first annual assessment, the Committee of Signatories shall assess Signatories on a per-capita basis sufficient funds to pay such costs.
- D. Subject to paragraph G, below, each Signatory will pay the Operating Costs on a per-capita basis. Each Signatory shall pay individually, irrespective of its membership in a Task Force, and by way of clarification each member of a Task Force shall pay, and the Task Force shall not pay. To illustrate this requirement, if Operating Costs for one year are \$100,000 and there are ten Signatories, each Signatory will pay \$10,000. The DUCA Administrator shall collaborate with the GEMAA Administrator to identify and create a list of duplicative operating costs ("Shared Operating Costs"). The DUCA Administrator will submit the list to the DUCA Committee of Signatories. If approved by the Committees of Signatories of both the DUCA and GEMAA, any Shared Operating Costs will be split as agreed between parties.
- E. In the case of a Signatory who executes the DUCA after the annual assessment has already been assessed, the following procedure shall be followed:
1. The Administrator shall determine the unpaid Operating Costs covered by the annual assessment.
 2. The new Signatory shall pay its equal share of the remaining Operating Costs.
 3. The other Signatories will receive a per-capita credit against future assessments for their share of the payment made by the new Signatory.
 4. To illustrate this procedure, if the annual assessment was \$100,000 paid equally by ten Signatories, there is \$77,000 in remaining Operating Costs, and an eleventh Signatory executes the DUCA, the eleventh signatory will pay \$7,000 (1/11 times \$77,000) and the other ten Signatories will receive a \$700 credit on their payment of their share of the next annual assessment.

- F. If a Signatory defaults in making the payment due for its share of the annual assessment, the Administrator shall provide notice of default to that Signatory and to the Committee of Signatories thirty (30) days after such default. In the interim, the other Signatories shall pay their per-capita share of the defaulting Signatory's share within thirty (30) days after being invoiced by the Administrator.
- G. Subject to Paragraph H of this Article VI, the following are exceptions to the obligation of a Signatory to pay its per-capita share of an annual assessment. The number of full shares shall be determined by adding the number of non-exception entities to one half the number of entities in number 3 below.
1. A non-profit organization recognized by the IRS under Section 501(c)(3), 501(c)(4), 501 (c)(5), 501(c)(6), or 501(c)(16) of the Internal Revenue Code shall pay no Operating Costs;
 2. An entity with less than 100 full time equivalent employees, including any full time equivalent employees of Related Entities, shall pay no Operating Costs; and
 3. An entity with between 100 and 250 full time equivalent employees, including full time equivalent employees of Related Entities shall pay one-half of a full share of the annual assessment.
- H. Any Signatory covered by an exception in paragraph G of this Article VI that becomes a Verified Signatory under the DUCA and executes a Comprehensive Agreement shall no longer be entitled to any exception in paragraph G and shall pay its per-capita share of the annual assessment like any other Signatory. Assessments will start as of the date of execution of a Comprehensive Agreement, and the amount of the initial assessment shall be determined as set forth in paragraph E of this Article VI.

Article VII. Financial Procedures

- A. At least three (3) months prior to the beginning of each calendar year, the Administrator shall present to the Committee of Signatories a budget to meet the Operating Costs for DUCA activities. Following the incorporation of any changes to the budget it deems necessary, the Committee of Signatories shall approve the budget prior to two (2) months before the beginning of each calendar year.
- B. Subject to Article VI, at least one (1) month and fifteen (15) days prior to the beginning of each calendar year, the Administrator shall invoice each Signatory individually for the next year's costs based on the approved budget, and in an amount sufficient to cover each Signatory's respective share of the total Operating Costs of the DUCA to be incurred during the following calendar year. All invoices shall be paid within three (3) months of receipt.
- C. The Administrator will issue a semi-annual financial report for the DUCA, comparing the actual expenses and receipts against the approved budget as of December 31 and June 30. Such reports shall be delivered to all Signatories by April 1 and September 1.

Article VIII. Books of Account

- A. The Administrator shall maintain separate books of account covering the Operating Costs and funds disbursed and received. Such books, and all records pertaining thereto, shall be open for inspection by the Signatories at all reasonable times. The Committee of Signatories may, as necessary, retain a certified public accounting firm to prepare an annual audited financial statement and tax information.
- B. The books of account, all records pertaining thereto, and all invoices under these Administrative Provisions shall be in United States Dollars.

Article IX. Breach

- A. The Committee of Signatories shall direct the Administrator to provide notice to any Signatory that it finds to be in breach. The notice shall require the Signatory to cure the breach within three (3) months from receipt of such notice, unless the Signatory requests a meeting to dispute the determination of breach under paragraph D.
- B. If the Signatory disputes a determination and requests a meeting, the Committee of Signatories shall set a date and time for the meeting which the Signatory shall attend.
- C. The Signatory shall have the right to be heard by the Committee of Signatories at the meeting and shall explain why the Signatory believes it is not in breach or why the Signatory has cured the breach.
- D. After considering the Signatory's explanation, and within thirty (30) days after the meeting, the Committee of Signatories shall notify the Signatory:
 - 1. that the Committee of Signatories no longer deems the Signatory in breach; or
 - 2. that the Committee of Signatories finds the Signatory in breach and that the breach must be remedied in a manner specified within thirty (30) days. The notification shall inform the Signatory in breach that it has the right to notify the Committee of Signatories, by notice within the thirty (30)-day period, that it refuses to take the steps specified by the Committee of Signatories to cure the breach.
- E. Should the Signatory fail to attend the meeting, or should the Signatory not respond (by curing the breach or otherwise) within the time limit set forth in the notification received from the Committee of Signatories under the above paragraphs, the Signatory shall be in breach under the DUCA.
- F. If the Signatory does not dispute the alleged breach pursuant to this Article IX or Article XIX of the DUCA, or otherwise fails to cure such breach within the time limits prescribed therein after receipt

of notice, the Committee of Signatories shall enforce the obligations of the Signatory under Article XIX of the DUCA.

- G. A Signatory in breach, remains responsible for, and shall continue to execute, its obligations under the DUCA including any obligation to provide response.
- H. A Signatory in breach forfeits its voting rights under the DUCA and these Administrative Provisions, until such breach is cured.
- I. A Signatory which fails to pay an invoice within three (3) months after such payment was due shall remain liable for the payment, but, subject to Article X of these Administrative Provisions on Withdrawal, shall cease to be a Signatory without the need for action by the Committee of Signatories and irrespective of whether the Signatory was issued or received a notice of default with respect to the failure to make the payment. Such Signatory shall be automatically reinstated as a Signatory by making payment of the outstanding invoice with interest. The interest rate shall be the Wall Street Journal Prime Rate as of the date such payment is made.

Article X. Withdrawal

- A. A Signatory seeking to withdraw shall follow the process as set forth in Article XXIV of the DUCA.
- B. A withdrawing Signatory shall not be entitled to any refunds of sums previously paid by the Signatory under these Administrative Provisions. The Signatory shall remain responsible to pay its share of Operating Costs until the withdrawal becomes effective.

Article XI. Amendment and Waiver

- A. Any Signatory can propose an amendment to the DUCA or these Administrative Provisions by submitting the proposed amendment in writing to the Administrator.
- B. Amendments can only be made by the Committee of Signatories provided, however, that an amendment that materially affects the rights or duties of all Signatories must be agreed to, in

writing, by sixty percent (60%) of all Signatories. A Signatory who provides notice of withdrawal under Article XXIV of the DUCA to the Administrator within thirty (30) business days after an amendment to the DUCA is effective is not bound by the amendment, provided that the Signatory withdraws pursuant to that notice.

- C. Any amendment shall become effective upon the necessary approval, as set forth above, unless a later time is specified within the amendment.
- D. The Committee of Signatories may waive specific provisions of the DUCA upon request of a Signatory in writing for that Signatory. Any Signatory negotiating or intending to negotiate a Comprehensive Agreement may request such waiver of specific provisions of Article X, Article XI, Article XII, or Article XIV of the DUCA. Notwithstanding the foregoing, any waiver that materially affects the rights or duties of all Signatories must be agreed to, in writing, by sixty percent (60%) of all Signatories.

Article XII. Verification

- A. To establish Verification under the DUCA, the Signatory or task force that has provided notice of intent to become Verified will submit to the Administrator the following information within nine (9) months of Initial Notice.
 - 1. Copies of documents establishing that the Signatory or each member of a task force is in compliance with the provisions of Article XIII of the DUCA. Such documents include (a) as applicable, verification from ETS, copies of contracts, or certified copies of audit results by a certified ETS auditor, and (b) a declaration from each Signatory that satisfies 28 U.S.C. § 1746 providing: "I certify that [name of entity] develops, grows, produces, markets, sells, processes, handles, or maintains Authorizations for a Seed Product containing Events, Covered Events, or Generic Events and, after having made reasonable inquiry of persons

with knowledge, [name of entity] is currently in compliance with all laws and regulations which may bear upon those Seed Products and all conditions set forth in Authorizations for Events contained in those Seed Products” and

2. Pursuant to Article XI.A.2. of the DUCA, provide documents indicating the Signatory who will serve as the initial Operator, which must be, or satisfy one of the following:

a. the PRP Holder; or,

b. Documents establishing that a Signatory or Task Force (or any Signatory that is a member of a Task Force) will be the Operator and has held for at least three (3) years, and has successfully obtained and maintained Authorizations for an Event; or

c. Documents establishing that a Signatory or Task Force (or any Signatory that is a member of a Task Force) will be the Operator, together with (i) a copy of an agreement, or sufficient proof establishing existence of an agreement (even if such agreement is contingent on the execution of a Comprehensive Agreement), between the Signatory or the Task Force with a consultant or entity to obtain and maintain Covered Authorizations. This agreement must cover the four-year period following execution of a Comprehensive Agreement. (ii) The Signatory or Task Force must also submit proof that the consultant or entity has held for at least three (3) years, and has successfully obtained and maintained Authorizations for an Event for clients of the consultant or entity. (iii) The Signatory or Task Force shall submit a statement that it has undertaken due diligence that the consultant or entity meets Stewardship requirements of the DUCA that applicable to the services provided by the consultant or entity;

and

3. In accordance with Article XII of the DUCA, the Signatory or Task Force provides the Administrator documentation sufficient to meet the requirements of Article XII.E to satisfy the Financial Criteria.
- B. The Administrator will provide the Signatory or Task Force with notice that the Administrator has received the information submitted in support of Verification within fifteen (15) days after receipt of that information. If the information is incomplete or insufficient the Administrator will advise the Signatory or Task Force of what additional information is needed. A response to any request for additional information shall be made by the Signatory or Task Force within fifteen (15) days after notice of receipt of information submitted in support of Verification from the Administrator. Within seven (7) days after receipt of a complete submission, the Administrator shall give notice of completeness to the Signatory or Task Force and the Committee of Signatories and shall submit all the documentation supporting Verification to the Committee of Signatories for review and determination.
 - C. If the Committee of Signatories has questions about the information submitted, the Committee shall submit those questions to the Signatory or Task Force within fifteen (15) days after receipt of the information from the Administrator; and response shall be made by the Signatory or Task Force within fifteen (15) days. The Committee of Signatories shall provide a written determination of Verification to the Signatory or Task Force within twelve (12) months after Initial Notice.
 - D. If a Signatory or Task Force's submissions to the Committee of Signatories contain Confidential Information, the Signatory or Task Force will identify for the Committee of Signatories the portions of the submissions that represent Confidential Information.
 - E. All members of the Committee of Signatories with access to the Signatory or Task Force's submissions shall maintain the confidentiality of the Confidential Information and shall review and use it solely for the purposes of decision making under this Agreement.

- F. Before making a decision on Verification the Committee of Signatories shall have the option to invite the Signatory or Task Force to make an oral presentation in person or by conference call, in support of its position on Verification.
- G. If the Committee of Signatories makes an adverse determination of Verification, the Signatory or Task Force may seek reconsideration from the Committee of Signatories and provide any other additional information to demonstrate that it satisfies the requirements of the DUCA for Verification. Reconsideration must be sought within fifteen (15) days after issuance by the Committee of Signatories of its determination of Verification. The Committee of Signatories shall provide a written determination of Verification to the Signatory or Task Force on the request for reconsideration within fifteen (15) days after receipt of the request and, if provided, any additional information that accompanied the request.
- H. Subject to Arbitration under the DUCA, the Committee of Signatories has the final authority to determine if the requirements for Verification have been satisfied by the Signatory or Task Force.
- I. The time frames set forth in this Article XII can be extended by the Administrator or Committee of Signatories or upon request of a Signatory or Task Force whenever reasonably necessary to advance the goals of this DUCA without, however, compromising time limitations set forth in the DUCA.

Article XIII. Information on the DUCA

- A. The Administrator will maintain a website on the DUCA and will take appropriate steps to make the public aware of the existence of the website.
- B. As described in the DUCA, the Administrator shall post on the website relevant information or notice of interest to the agricultural community relating to the DUCA within five (5) days , including any Initial Notice or notice of Discontinuation received by the Administrator.

Article XIV. Confidentiality and Antitrust Compliance

- A. All activities of Signatories, the Administrator, and anyone else relating to the DUCA shall be conducted in accordance with the following Confidentiality Policy:

It is the expectation that discussions at DUCA-sponsored meetings be kept confidential to DUCA Signatories participating in those meetings. This expectation facilitates open communication among the participants and can enhance the effectiveness of the meetings. Exceptions will be made only when all Signatories participating are aware, in advance, of the intent to disclose discussions and deliberations in those cases where it may be appropriate or necessary to do so.

- B. All activities of Signatories, the Administrator, and anyone else relating to the DUCA shall be conducted in accordance with the requirements of applicable antitrust law.
- C. The Antitrust Guidelines set forth in Appendix F to the DUCA shall govern all activities conducted pursuant to the DUCA and these Administrative Provisions:

Appendix B Founding Signatories

Appendix C Arbitration Provisions

Article I. General

- A. Arbitration is governed by the Commercial Arbitration Rules of the American Arbitration Association (AAA Rules) except as modified herein.
- B. The following provisions shall apply to Arbitration:

Article II. Constitution of the Tribunal

- A. For a challenge to an adverse determination of the Committee of Signatories of Verification, or qualification of an Operator, to resolve unresolved terms and conditions of a Comprehensive Agreement, the tribunal shall consist of a sole arbitrator. For all other disputes that are required to be resolved by Arbitration, the tribunal will consist of three arbitrators.
- B. Roster of Arbitrators
 - 1. Whether the tribunal consists of one arbitrator or three arbitrators, the tribunal shall be selected from a roster of arbitrators who have been pre-qualified to serve to resolve disputes under the DUCA
 - 2. The roster's development shall be facilitated by the Committee of Signatories.
 - 3. The roster shall be maintained by the Administrator.
 - 4. If no roster has been assembled, or if for any reason there is no one on the roster available to serve, the member or members of a tribunal shall be selected based on the minimum qualifications set forth in Appendix I.
 - 5. Notwithstanding any selection process or criteria set forth herein, where all of the parties to an Arbitration agree to select an arbitrator or three arbitrators who are not on the roster, they may do so as long as the agreement is in writing and signed by all parties to the Arbitration and provided to the Administrator and the AAA.

C. Selection of a tribunal consisting of a sole arbitrator

1. The sole arbitrator shall be selected from the roster of arbitrators maintained by the Administrator unless all parties to an Arbitration agree in writing to select an arbitrator not on the roster.
2. If within twenty (20) business days after the demand for Arbitration under Rule R-4 of the AAA Rules the parties agree on an arbitrator, that arbitrator shall be appointed.
3. If the parties fail to reach agreement within this time period, the AAA shall, within seven (7) business days appoint the arbitrator from the roster.

D. Selection of a tribunal consisting of three arbitrators

1. If there are two parties to the Arbitration, within twenty (20) business days after the demand for Arbitration each party will select an arbitrator from the roster and, within seven (7) business days thereafter, those two arbitrators shall select the third arbitrator who shall serve as the chair of the tribunal. If within these prescribed time periods, either party fails to appoint an arbitrator or if the two arbitrators fail to select the third arbitrator, the AAA shall within three (3) business days after the expiration of either prescribed time period make the appointment for the party that fails or parties that fail or the chair, as the case may be.
2. If there are multiple parties to one side or both sides in the Arbitration, within twenty (20) business days after the demand for Arbitration each side should appoint an arbitrator from the roster and, within seven (7) business days thereafter, the two arbitrators appointed shall select the third arbitrator who shall serve as the chair of the tribunal. If within these prescribed time periods, either side fails to appoint an arbitrator or if the two arbitrators fail to select the third arbitrator, the AAA shall within three (3) business days after the expiration of either prescribed time period make the appointment for the side that fails or sides that fail or the chair, as the case may be.

3. If multiple parties on one side of the Arbitration are unable to agree on the appointment of an arbitrator by that side, the AAA shall select that side's arbitrator from the roster.

Article III. Legal Seat of the Arbitration and Substantive Law

- A. The legal seat of the Arbitration is New York, New York. For convenience, after consultation with the parties, the Tribunal may hold hearings by telephone or video conference, or may hold evidentiary hearings at any other location, but the award shall be deemed to be made at New York, New York.
- B. The substantive law governing the Arbitration is the statutory and common law of the State New York.

Article IV. Language

- A. The language to be used in proceedings, and with respect to all submissions, is English.

Article V. Jurisdictional Challenges

- A. Should any jurisdictional challenges be made, the tribunal shall have the authority to determine the scope of its own jurisdiction.

Article VI. Joinder

- A. The tribunal shall have the power (a) on the application of any party, but only after all parties to the Arbitration have had a reasonable opportunity to state their views, to allow one or more third persons to be joined in the Arbitration as a party provided that any such third person and the applicant party have consented thereto in writing, and (b) thereafter to make a single final award, or separate awards, in respect of all parties in the Arbitration. The tribunal shall not permit *amicus* parties or *amicus* submissions.

Article VII. Discovery

- A. With respect to discovery, the following rules are applicable:
1. No depositions shall be permitted by the tribunal except for good cause shown.
 2. If depositions are allowed by the tribunal they will be limited to no more than two depositions per party and each deposition must be concluded in four hours or less, unless good cause is shown to permit more or longer depositions.
 3. At least four (4) months before a hearing on the merits, all parties to the Arbitration will produce the documents, which includes all electronically stored information, that they intend to use to support their positions. Any documents provided to an auditor to comply with any term or condition of the DUCA shall be included in the production to all other parties, subject to the requirements and limitation of Article XX of the DUCA.
 4. At least four (4) months before a hearing on the merits, all parties to the Arbitration shall produce to all other parties a list of the witnesses they intend to call at the hearing.
 5. Document discovery shall be limited to any discovery allowed by the tribunal. The tribunal shall follow Article 3 of the IBA Rules for the Taking of Evidence in International Arbitration in deciding whether to permit document discovery.

Article VIII. Conduct of the Proceeding

- A. Motions for summary judgment shall be heard by the tribunal if the tribunal determines that (a) the motion solely involves questions of law and resolution of the motion before a hearing will expedite the resolution of issues that will be presented at a hearing (b) and that there will be no adverse impact on the deadline for issuance of an award.
- B. The proceeding must be conducted in a manner that results in completion of the Arbitration within nine (9) months after the demand for Arbitration is received by the AAA.

- C. All direct testimony from a fact witness or an expert witness shall be made in writing and submitted to all other parties at least thirty (30) business days prior to the start of the hearing at which such testimony will be presented. If the proponent of the witness elects to do so, the proponent shall be permitted to offer limited oral examination to assist the tribunal in understanding the evidence of the witness. Thereafter, all other parties shall be permitted by the tribunal to conduct a cross examination of witnesses. The party who initially presented the witness shall subsequently have the opportunity to redirect questions on the matters raised in the other parties' cross examination. Oral examinations are subject to the tribunal's authority to control the manner in which witnesses are examined. The tribunal may ask questions of a witness at any time. The tribunal may arrange the order of testimony by issue or in such a manner that witnesses presented by different parties can be questioned at the same time and in confrontation with each other.
- D. In the case of tribunal consisting of a sole arbitrator, hearing time may, in the sole discretion of the tribunal, be controlled by a "chess clock," where the tribunal allows a fixed amount of time for each party or side to present its evidence and make argument.
- E. Fact witnesses shall be sequestered from hearing or reading cross examination of other witnesses unless the fact witnesses have completed testifying.
- F. The only expert witnesses shall be those offered by the parties; the tribunal shall not appoint tribunal experts witnesses.

Article IX. Attorneys Fees and Costs

- A. Notwithstanding whether any party seeks to recover attorneys' fees as part of a claim or counterclaim, each party in the Arbitration shall pay its own attorneys' fees and costs.
- B. Deposits for the costs of the Arbitration, including the fees of the arbitrators, shall be paid pro-rata by the number of parties. To illustrate this term, if there are two parties to the Arbitration, each

shall pay 1/2 of these costs; if there are three parties to the Arbitration, each shall pay 1/3 of these costs, and so on.

Article X. Interim Measures

- A. Interim measures shall be permitted under the AAA Rules including the Optional Rules for Emergency Measures of Protection except as follows: (a) where the tribunal consists of a sole arbitrator the sole arbitrator shall be appointed as provided for by these Arbitration Provisions; (b) there must be a showing of a substantial likelihood of success on the merits of the claim under which the person is seeking interim measures; (c) the harm sought to be prevented outweighs the harm to the party or parties against whom the interim measures are sought; and (d) security shall be required by the tribunal from the proponent of the interim measures if interim measures are awarded.

Article XI. Confidentiality

- A. Each party shall have the right to designate proprietary business information or trade secrets as confidential business information. If such a designation is made, the Tribunal (i) shall require any person to whom the confidential business information is to be disclosed, including disclosure to persons in attendance at any hearings or disclosure to any experts, to sign an appropriate confidentiality undertaking, and (ii) shall not reference the text of such information in any award that is rendered.
- B. Confidential information from the arbitral proceedings may not be used in any proceeding to enforce or challenge an award except as required by law and, if required, shall be filed under seal. After written notice from the Administrator, the Tribunal shall destroy or, in the case of electronically stored information, delete, all documents, records or other information generated by the parties or the tribunal that are in the personal possession of the members of the tribunal, except

for the award of the tribunal, unless the documents, records or other information must be maintained with respect to a challenge to, or enforcement of, an award, or under applicable law.

Article XII. Rules of Construction

- A. If the tribunal determines that there is an ambiguity in the DUCA requiring resort to rules of construction of contracts, the following rules shall be applied by the tribunal (i) there shall be no construction of language against a person because the person drafted the language in question, (ii) the text of the DUCA shall control over any conflicting text in any appendix or other document; and (iii) the words of the DUCA shall be given their plain or common meaning. Parol evidence may not be considered in the interpretation of the DUCA unless there is an ambiguity identified by the tribunal, but under no circumstances shall prior drafts of the DUCA, negotiation materials related to the DUCA, or public communications about or extrinsic materials relating to the DUCA, be considered at all in interpreting the DUCA.

Article XIII. Rules of Professional Conduct

- A. The following rules of professional conduct shall be applicable to counsel in addition to any other rules of professional conduct that may be applicable: (a) There is a duty of candor to the tribunal; (b) No party may communicate with an employee of another party without the consent of the other party's counsel; and (c) if a document is withheld from the tribunal because of a claim of privilege, the tribunal will be advised of the existence of the document and the basis of the claim of privilege; and (d) if a party comes into possession of confidential or privileged documents of another party by means other than intentional transmittal by the other party, the tribunal and all parties to the Arbitration will be promptly notified and the documents will be destroyed or returned to the other party.

Article XIV. Award

- A. The award of the tribunal shall be in writing and shall contain sufficient but no more than is necessary detail to explain the reasoning behind each decision made in the award.
- B. A procedural history of the Arbitration need not be included in the award unless requested by all parties to the Arbitration or the tribunal decides that the procedural history is important to explain the reasoning behind a decision made in the award.
- C. The award must be issued within twenty-one (21) days after completion of the hearing.

Article XV. Publication of Awards

- A. Awards are confidential and shall not be published except as follows: (a) awards except those relating Verification shall be available for review by Signatories; (b) awards relating to Verification shall only be made available to the parties to the Arbitration relating to Verification; (c) if an award relates to Verification and other topics, the award may be reviewed by all Signatories after redaction of the award relating to Verification; (d) an award shall be disclosed if required by applicable securities laws or the rules of any stock exchange on which Signatory's stock is listed, but only those parts of the award and to the extent required.

Appendix D

Confidentiality Agreement for Confidential Notice

[NAME OF EVENT]

THIS CONFIDENTIALITY AGREEMENT ("Confidentiality Agreement") is made and entered into by and among [NAME OF PRP HOLDER(S)] ([collectively,] "PRP Holder") and [NAME OF SIGNATORY] ("Signatory")(collectively hereinafter the "Parties" or individually the "Party") and becomes effective on the date Signatory executes this Agreement (the "Effective Date"). All defined terms in the AgAccord: Data Use and Compensation Agreement (the "DUCA") shall have the same definitions in this Confidentiality Agreement.

WHEREAS, PRP Holder is the entity that, prior to Patent Expiration, has all the necessary rights and responsibilities, including marketing and Proprietary Regulatory Property, whether by patent or contract, for [NAME OF EVENT] ("Covered Event");

WHEREAS, PRP Holder has issued an Initial Notice regarding the Covered Event to all Signatories of the DUCA;

WHEREAS, Signatory wishes to receive a Confidential Notice regarding the Covered Event in order to evaluate whether to seek to become a Verified for the Covered Event;

WHEREAS, PRP Holder is prepared to issue a Confidential Notice regarding the Covered Event to Signatory upon execution of this Agreement by Signatory.

WHEREFORE, THE PARTIES HEREBY AGREE:

- I. REPRESENTATIONS OF THE PARTIES: The Parties represent that they are current Signatories of the DUCA and are in compliance with their obligations under the DUCA.

II. CONFIDENTIALITY OF INFORMATION IN CONFIDENTIAL NOTICE:

A. Confidential Information: Except as provided in Article II.C. below, all information contained in the Confidential Notice to be issued by the PRP Holder is “Confidential Information” protected under the terms of this Confidentiality Agreement.

B. Permitted Purposes and Allowed Use: Signatory shall not (1) use any of the Confidential Information contained in the Confidential Notice except to evaluate whether to pursue becoming a Verified for the Covered Event, and, if it so elects, to conduct negotiation of the Comprehensive Agreement (the “Permitted Purpose”); (2) disclose the Confidential Notice or any part of it to any person other than as permitted in this Agreement; (3) copy or duplicate the Confidential Notice or any part of it except to the extent necessary for the Permitted Purpose; and (4) make, permit, or cause to be made any notes or memoranda based on or relating to the Confidential Notice or any part of it for any purpose other than the Permitted Purpose.

C. Exceptions: The definition of “Confidential Information” expressly excludes, and this Article II shall not apply to, any part of the Confidential Notice (1) which the PRP Holder agrees in writing is excluded from the definition of “Confidential Information”; (2) which Signatory can demonstrate was known to or developed by it prior to its receipt of the Confidential Notice; (3) which is or becomes public or industry knowledge, other than through acts or omissions of a Signatory who received the information pursuant to this Confidentiality Agreement; or (4) which is lawfully obtained by Signatory from sources independent of PRP Holder that have a lawful right to possess and disclose such Confidential Information. Confidential Information disclosed under this Confidentiality Agreement shall not be deemed to be within the foregoing exceptions merely because such Confidential Information is embraced by more general information in the public domain or in the Signatory’s possession. In the event that a Signatory or any of its representatives receives a request to disclose any Confidential Information under the terms of a subpoena, an order issued by a court of competent jurisdiction or by a

governmental body, or any other lawful process to obtain information, such Signatory agrees to immediately notify the PRP Holder of the request so that PRP Holder may seek an appropriate protective order, obtaining an injunction, or otherwise engage in steps to prevent disclosure. If the Signatory is advised by its counsel that it is compelled or required to disclose the Confidential Information despite any position taken by the PRP Holder to the contrary, it may disclose only that portion of the Confidential Information that such counsel advises is required to be disclosed.

D. Disclosure to Employees and Consultants: Signatory may disclose Confidential Information to employees and consultants as necessary to carry out the Permitted Purpose, provided that Signatory causes those employees and consultants to which Confidential Information is disclosed to undertake the obligations of confidentiality set out in this Agreement and requires outside consultants to agree in writing to do so.

III. NO LICENSE: PRP Holder retains all rights in its Confidential Information and the Parties agree that the disclosure by the PRP Holder of Confidential Information hereunder shall not constitute any grant, option, or license to Signatory of the Confidential Information or of any other intellectual property rights (including, without limitation, patents, registered and unregistered copyrights, registered and unregistered trademarks, trade names, and mask works), now or hereinafter held by PRP Holder.

IV. TERM: This Agreement shall remain in effect for 10 years after the Effective Date.

V. RETURN OF CONFIDENTIAL INFORMATION: Upon completion of the Permitted Purpose (unless Signatory executes a Comprehensive Agreement for the Covered Event, in which case Confidential Information or if the Signatory is in breach of the DUCA and has not cured such breach under the terms of the DUCA, Signatory shall (1) cease to use all Confidential Information; (2) destroy all Confidential Information contained in any tangible form, and provide to PRP Holder a notice certifying destruction; and (3) use reasonable efforts to delete from accessible electronic storage media all Confidential Information stored in electronic form by the Signatory. Notwithstanding the foregoing, Signatory may

retain one (1) copy of Confidential Information received under this Agreement solely to monitor its obligations under this Agreement.

VI. GOVERNING LAW AND JURISDICTION: This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the New York, without regard to its conflict of law rules. The jurisdiction for any action for breach of this Agreement shall be a United States District Court that has subject matter jurisdiction, in:

1. the domicile or principal place of business in the United States of the plaintiff Signatory; or,
2. the jurisdiction agreed to by the parties to the action; or,
3. by default New York, New York.

If no United States District Court has subject matter jurisdiction, then the jurisdiction and venue shall be the State Court of New York in New York City. The Parties agree to personal jurisdiction and venue in such court.

VII. ENTIRE AGREEMENT: This Agreement constitutes the entire and exclusive agreement between the parties with respect to the subject matter hereof and supersedes and cancels all previous registrations, agreements, commitments and writings in respect thereof.

VIII. AUTHORITY: The undersigned are duly authorized to execute this Agreement on behalf of the respective Parties.

IX. REMEDIES; NO WAIVER; SEVERABILITY: The Parties hereto acknowledge that money damages may be an inadequate remedy for breach of this Agreement because of the difficulty of ascertaining the amount of damages that will be suffered in the event that this Agreement is breached. Therefore, Parties agree that a Party may obtain specific performance of this Agreement and injunctive or other equitable relief as a remedy for any such breach, and each Party further waives any requirement for the securing or posting of any bond in connection with any such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Agreement, but shall be in addition to all other remedies

available at law or equity. No failure of delay by either party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. If any term or condition of this Agreement is held by a court of competent jurisdiction to be illegal, void or unenforceable, the remaining terms and conditions of this Agreement shall remain in full force and effect and such court shall replace such illegal, void or unenforceable term or condition with a term or condition that is valid and enforceable and that comes closest to expressing the intent of such illegal, void or unenforceable term or condition.

X. COUNTERPARTS: This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same agreement.

IN WITNESS WHEREOF each Party has executed this Agreement as of the date indicated below.

[PRP HOLDER]

By: _____

Name: _____

Title: _____

[SIGNATORY]

By: _____

Name: _____

Title: _____

Appendix E Letter of Access

[Date]

[Addressee]

Subject: Authorization to Use [PRP Holder] Data and Information for the Benefit of [Requesting Party]

Dear [insert name]:

[PRP Holder] hereby authorizes the [Regulatory Agency] to use all data, correspondence, approvals, or other information provided by [PRP Holder] to [Regulatory Agency] or by [Regulatory Agency] to [PRP Holder] concerning [Generic Event] (the “Event Information”), as follows.

[PRP Holder] authorizes [Regulatory Agency] to use Event Information for the purposes of evaluating applications or approvals of [Requesting Party] for any products that include or rely on [Generic Event], including products that contain that event alone or contain that event in combination with one or more other events or traits. This includes Event Information that [PRP Holder] has submitted or may in the future submit to [Regulatory Agency]. It also includes Event Information that [Requesting Party] has submitted or may in the future submit to [Regulatory Agency].

[PRP Holder] holds proprietary rights to the extent allowable under law to all of the Event Information. Today’s authorization is limited to [Requesting Party] and does not in any way waive [PRP Holder’s] rights (including rights to exclusivity and compensation) to the Event Information as those rights relate to entities other than [Requesting Party]. [Requesting Party] has no ownership interest in, including no right to compensation from other entities, for the Event Information. This authorization shall not be transferred by [Requesting Party] to any other entity, without the express prior written authorization of [PRP Holder].

Additionally, this confirms that [PRP Holder] has no reciprocal right to use, access or rely on [Requesting Party] data, correspondence, approvals or other information provided by [Requesting Party] to [Regulatory Agency] or by [Regulatory Agency] to [Requesting Party] (the “[Requesting Party] Information”) unless specifically authorized in writing by [Requesting Party]. Moreover, [PRP Holder's] authorization shall not be construed as an authorization to release any [Requesting Party] Information to [PRP Holder] or any other private entity or government authority nor as a waiver of any of [Requesting Party's] rights in [Requesting Party] Information, including rights to exclusivity and compensation.

Please do not hesitate to contact me at ____ if you have questions concerning this authorization or need any further information.

Thank you for your attention to this matter.

Sincerely,

[Authorized PRP Holder representative]

cc: [Requesting party representative]

APPENDIX F ANTITRUST GUIDELINES

The AgAccord: DATA USE AND COMPENSATION AGREEMENT

While some activities among competitors are both legal and beneficial to the public and to the industry involved, group activities of competitors are subject to close and critical scrutiny under the United States antitrust laws. Agreements or combinations between or among competitors need not be formal to be subject to United States antitrust laws, but may potentially include any kind of understanding, formal or informal, secretive or public, under which participants in a marketplace can reasonably expect that one or more other participants have at least implicitly agreed to follow a particular course of action resulting in anti-competitive effects.

Therefore, DUCA has adopted these Guidelines to seek to avoid even the appearance of impropriety under the antitrust laws. Each participant in activities related to the DUCA is responsible to see that topics, which may give an appearance of an agreement that would violate the United States antitrust laws, are neither discussed nor agreed upon at meetings related to the DUCA. It is the responsibility of each participant in the first instance to avoid raising improper subjects for discussion. This guideline has been prepared to help participants in such meetings avoid running afoul of United States antitrust laws. The Dos and Don'ts presented below address only some of the most basic antitrust principles. Each participant in a meeting should be thoroughly familiar with his/her responsibilities under the United States antitrust laws and should consult legal counsel in all cases involving situations that may require specific legal interpretations or advice.

DON'T

1. Do not, in fact or appearance, discuss or exchange information regarding:

- (a) Individual company prices, price changes, price differentials, mark-ups, discounts, allowances, credit terms, etc., or data that bear on price, e.g. costs, production, capacity, inventories, sales, etc.
- (b) Industry pricing policies, price levels, price changes, price differentials, etc..
- (c) Changes in industry production, capacity or inventories.
- (d) Bids on contracts for particular products; procedures for responding to bid invitations.
- (e) Plans of individual companies concerning the design, production, distribution or marketing of particular products, including proposed territories or customers.

(f) Matters relating to actual or potential individual customers or suppliers that might have the effect of excluding them from any market or of reducing competition among competing firms who are dealing with such suppliers or customers.

2. Do not discuss or exchange information regarding the above matters during social gatherings incidental to meetings, even in jest.

DO

1. Have an agenda approved in advance by counsel and follow it for all meetings related to the DUCA.
2. Prepare brief minutes for any meeting among competitors related to the DUCA and have them reviewed and approved by counsel. Object if the minutes do not accurately reflect the subjects discussed and the decisions and actions taken.
3. Consult with the appropriate legal counsel (or your company's legal counsel) on all antitrust questions relating to meetings undertaken pursuant to the DUCA.
4. Protest against any discussions or meeting activities that appear to violate the United States antitrust laws, disassociate yourself from any such discussions or activities, and leave any meeting in which such discussions or activities continue.

Appendix G Process Schedule

The Signatories envision the following schedule for the process established by the DUCA:

Initial Notice (IN)		3 years prior to patent Expiration
Must Sign Confidential Agreement	1 mos	w/in 1 months of IN
Confidential Notice Provided by Administrator	2.5 mos	w/in 2 months and 15 days of IN
Pre-Verification Meeting	3.5 mos	w/in 3 months and 15 days of IN
Signatories give intention of becoming Verified	5.5 mos	w/in 5 months and 15 days of IN
Signatories must provide proof of verification	9 mos	w/in 9 months of IN
Administrator -> Signatory confirming receipt of paperwork / notice of deficiency		9 months and 15 days of IN
Signatory response to notice of deficiency		10 months of IN
Notice of completeness of file Admin -> Signatory & Committee		10 months and 7 days of IN
Committee Questions -> Signatory		10 months and 22 days of IN
Signatory response to Committee questions -> Committee		11 months and 7 days of IN
Committee determination of Verification (or not)		12 months (1 year) of IN
Request for reconsideration		12 months and 15 days of IN
Reconsideration determination		13 months (1 year+1month) of IN
Verified Signatories must give notice of intent to negotiate Comp Agree	14 mos	w/in 14 months of IN
Negotiation of Comp Agreement begins	14 mos + 5 days	no later than 14 months and 5 days of IN
All terms to be agreed upon or go to Arbitration	2 years	2 years from IN
File demand for Arbitration	2 years + 1 mo	2 years and 1 month from IN
Complete Arbitration and award issued	2 years + 10 months	2 years and 10 months from IN
Parties unanimously agree on language and comprehensive agreement is complete; out for signature	2 years + 11 months	2 years and 11 months from IN
Comprehensive Agreement is executed	3 years	3 years from IN

Appendix H Regulatory Compliance Costs

Table 1 Summary of Basic Regulatory Costs for Non-PIP and PIP (insect-resistant) GE crops

Costs include external study costs, production of study materials, analytical studies, internal costs associated to deliver the specific study/activity including headcount and associated overhead (aka “fully loaded headcount”).

Basic Regulatory Costs includes the costs incurred for maintaining authorizations for a 15 year period.

Cost estimates are limited to studies and activities conducted to gain U.S. cultivation (excluding costs for specific studies or submissions made to obtain cultivation approval outside the U.S.) and US export market authorizations. They represent current average costs for a single “typical” event (typically meaning a HT trait or similar) that produces a protein.

Costs do not include those associated with evaluating herbicide residues or safety of herbicides that are used with HT crops. These studies may be critical in gaining deregulation from USDA, but do not relate specifically to the evaluation of the GE plant.

[This list of costs is representative of Basic Regulatory Cost elements, but may not all cover cost elements for a specific GE plant]

Cost Category	Study/Element	Source	Comments/Notes	PIP	Non-PIP
0. Miscellaneous	a. Biology of the plant Reproductive biology, ecology, geographic distribution of sexually compatible wild relatives, agronomic characteristics, taxonomy, origin and center of diversity, life cycle, ecological partners and pests.	Available from scientific literature and other public documents	May only be needed on “new crops” without prior submissions and/or no OECD biology consensus document Summary of literature		
1. Early Characterization Preparation for hand-off of events into	a. Early bioinformatics assessments/Toxin Allergen Screen/Toxicity Screen	Laboratory Analysis Some information available from scientific literature			

regulatory	b. Event selection consultations				
	c. QC of initial regulatory material				
2. Molecular characterization characterize inserted DNA; deletions or rearrangements; stably integrated, and inherited in Mendelian fashion.	a. Southern blot	Laboratory Analysis			
	b. Genetic stability by Southern				
	c. Insert and flank sequence determination				
	d. Sequence analysis to evaluate wild type sequence at insert				
	e. Mendelian segregation analysis				
	f. Bioinformatics assessment: flanking sequence				
3. Production of tissues Tissues used for analysis in other studies including expression, composition and feeding studies	a. Year 1 tissue production	Field /greenhouse/growth chamber tissue production			
	b. Year 2 tissue production				
	c. Seed bulk up for animal feeding and processed fractions				
	d. Greenhouse tissue productions				
	e. Seed devitalization (China)				

	f. Field production of certified reference material				
4. Compositional assessment - assessments of concentrations and ranges of nutritional components such as proteins, amino acids, carbohydrates, sugars, fats, fatty acid,, ash, fiber, water, vitamins, minerals	a. Composition analysis – basic year 1	Laboratory Analysis			
	b. Incremental: Composition analysis – spray/unsprayed				
	c. Composition analysis – year 2				
	d. Allergenic crop endogenous allergen assessment (if needed)		Include typical analysis conducted –regulator requirements for this study are currently in flux (1D, 2G gels, other methods).		
	e. Small scale processing and processed fraction analysis				
5. Animal performance and safety studies	a. Plant material identity confirmation[1]	Laboratory Analysis of plant material and animal tissues.	Confirm identity of test and control substances in GLP or GLP-like studies		
	b. Plant material grain processing		To include processing (may be pilot scale) into appropriate fractions and diet formulation		
	c. Diet analytics				
	d. Chicken/Broiler feeding				
	e. Aquatic (Catfish) feeding - -Korea				
	f. Other animal feeding studies submitted to gain US or export approval		Place here or in country-specific section 14		
6. Toxicology (90-day rat) - items not already	a. 90-day rat toxicity study	Laboratory assessments			

covered above under protein safety	b. Grain/meal analytics				
7. Protein production and characterization- Equivalence is analytical assessments conducted when plant-produced protein cannot be obtained in sufficient quantities to conduct toxicity studies.	a. Batch protein standard production	Lab-scale fermentation, purify protein standard			
	b. Protein mode of action studies		May be highly variable		
	c. Protein functional assay development				
	d. Protein physiochemical characterization		SDS-PAGE, western blot, glycoprotein detection, MALDI-TOF MS, ESILC/MS, N-terminal sequence		
	e. Protein equivalence				
	f. Large scale protein production		Variable dependent on amount of protein needed and difficulty of purification scheme		
	g. Acute toxicity Dose prep/ confirmation/ Incremental: subchronic 28 d repeat dose				
	h. Protein isolation from grain/plant material		Variable dependent on amount of protein needed and difficulty of purification scheme		

8. Protein safety assessment	a. Protein in-vitro digestibility (SGF, SIF)	Laboratory Analysis	Rely on ILSI standard protocol		
	b. Heat stability				
	c. Acute oral gavage mouse tox		US EPA/OPPTS 870.1100 and OECD Guidelines for Testing Chemicals, No. 401		
	d. Protein sequence bioinformatics (toxin, allergen)	Computer analysis			
	e. 28 d repeat dose protein oral tox		If needed, use OECD Test Guideline No. 407		
	f. Dietary risk assessment (based on mouse acute tox study)	Calculated assessment			
9. Target/Non-target organism studies (PIPs)	a. Soil microbe community assessment	Laboratory/greenhouse work that requires insect/organism rearing and feeding, followed by toxicity assessments			
	b. Lab NTO studies on PIP protein/product (bee, bee larvae, ladybird, earthworm, avian, freshwater fish, freshwater invertebrate)				
	c. Field NTO studies		Only as needed to support US and export market approvals		
	d. Insect bioassays activity spectrum		Data on a range of target pest(s) and other species that may be affected.		
10. Environmental fate studies – PIP proteins	a. Soil degradation (lab)	Lab and field evaluations			
	b. Soil degradation (field)		Like OECD Test Guideline No. 307		

11. Agronomic and phenotypic assessments	a. Agronomic/Phenotypic field assessment	Field /greenhouse/growth chamber and lab assessments	Quite variable – number of sites, number of seasons		
	b. Stress (cold) tolerance (Japan)	Growth chamber			
	c. Pollen morphology				
	d. Seed dormancy/germination				
	e. Volunteer potential				
	f. Symbiont assessment (legumes only)				
12. ELISA development, validation and expression analysis	a. Antibody production	Lab evaluations			
	b. ELISA Assay development				
	c. Assess Tissue Stability – ELISA				
	d. Protein expression analysis – 1 year, multi-tissue				
	e. Protein expression – 2 nd year				
	e1. Generational stability - Western				
	f. Tissue identity confirmation				
13. EPA/PRIA expenses for PIPs (e.g., EUPs, tolerances)	a. PRIA Fee – EUP (2 yrs)	Registration Fees	To include only PRIA fees, not document preparation fees. (PRIA3 categories B771, B884,		

	b. PRIA Fee – Seed Increase Registration		B891)		
	c. PRIA Fee - Registration/ Tolerance Exemption				
	d. State registration fees				
14a. Other Costs Associated with US Filings	a. Preparation of FDA EFSE summary		EFSE not available for PIPs		
	b. Preparation of USDA Petitioners Environmental Report (ER)				
14b. Stewardship Plans for Regulatory Submissions	a. Draft stewardship Plan - WRM	Plans based on field performance data, scientific literature and other public documents			
	b. Draft stewardship Plan – IRM				
	c. Simulation models		Covering internal and contractor costs to prepare information submitted to regulators		
	d. Target organism biology and ecology review				

	e. EPA public interest document				
15. Detection Method Development and Validation	a. Quantitative PCR method development				
	a1. Qualitative PCR method development				
	b. Certified Reference Material production (lab production)				
	c. Gel based detection method (China)				
16. International Registration costs and fees - Headcount and overhead for personnel, dossier prep, translation, and filing fee costs to pursue regulatory authorizations in US export markets; country specific lab and field evaluations, and regulator interactions needed to obtain import authorizations.	a. Canada			Country import authorizations needed to launch a product in the US. Not an exhaustive list.	
	b. China (local trial),				
	c. Japan (local trial),				
	d. EU				
	e. Korea				
	f. Taiwan				
	g. Mexico				
	h. Colombia				
	i. Philippines				

	j. etc				
	k. additional country-specific lab studies or re-analysis of data needed to meet regulator requirements				
17. Facility & management core costs - Headcount and overhead for personnel to pursue regulatory authorizations in US (USDA, FDA, EPA Submissions)	a. USDA Permit/ notifications for field trials (~6 years)				
	b. QAU/Stats support – studies and submissions				
	c. Reg Affairs support – presubmission				
	d. Reg Affairs support – Dossier preparation, submission and regulator interaction		As with all categories, be sure to capture indirect (admin, resources, etc) costs which support the work needed to obtain approval/registration		
17a. Ongoing Regulatory Maintenance Costs – All post registration	a. US Maintenance Costs (15 yr total)		Assume maintenance term of 15 Yrs		
	b. US Export Maintenance Costs (15 yr total) Countries requiring renewals to include China (every 3 yrs), Philippines (5), Taiwan (5), Russia (5), Korea (10), EU (10), Colombia (10)		Assume maintenance term of 15 Yrs. As with all categories, be sure to capture indirect (admin, resources, etc) costs which support this maintenance work.		
	d. Costs for conducting/submitting studies to EPA, conditions for registration (15 yr total)		For example ABSTC costs, post registration costs such as implementing Compliance Assurance Program (CAP), resistance monitoring, sales figures, section 7		

		reporting for EPA.		
e. Annual pesticide maintenance fees (EPA) (15 yr total)		Flat fee charged to all EPA registrants (15 yr sum)		
f. EU annual bioinformatics updates [literature search] (15 yr total)				
g. Maintain detection methods, reference materials and reagents (15 yr total)		May include periodic production of new protein standard, reference		
Total Basic Reg. Cost				

Table 1A. Summary of Regulatory Continuing Maintenance Costs for Non-PIP and PIP GE crops Continuing maintenance costs include typical ongoing work conducted following commercial introduction of a GE crop product. It would include external study costs, production of study materials, analytical studies, internal costs associated to deliver the specific study/activity including headcount and associated overhead (aka “fully loaded headcount”). Continuing maintenance Costs only includes costs incurred for maintaining authorizations for a single year.

[This list of costs is representative of Continuing Maintenance Cost elements, but may not all cover cost elements for a specific GE plant]

Cost Category	Study/Element	Comments/Notes	PIP	Non-PIP
Continuing Maintenance Costs – All post commercial introduction	a. Annual US Maintenance Costs			
	b. US Export Maintenance Costs Countries requiring renewals to include China (every 3 yrs), Philippines (5), Taiwan (5), Russia (5), Korea (10), EU (10), Colombia (10)	As with all categories, be sure to capture indirect (admin, resources, etc) costs which support this maintenance work.		
	d. Costs for conducting/submitting studies to EPA, conditions for registration	For example ABSTC costs, post registration costs such as implementing Compliance Assurance Program (CAP), resistance monitoring, sales figures, section 7 reporting for EPA.		
	e. Annual pesticide maintenance fees (EPA)	Flat fee charged to all EPA registrants		
	f. EU annual bioinformatics updates [literature search]			
	g. Maintain detection methods, reference materials and reagents (15 yr total)	May include periodic production of new protein standard, reference		
	Total Continuing Maintenance Cost			

Appendix I. Roster of Arbitrators and Minimum Qualification