

## **The Accord: Generic Event Marketability & Access Agreement (GEMAA)**

**WHEREAS**, the commercial marketability of Seed Products containing Events requires the establishment and maintenance of global Authorizations; and

**WHEREAS**, the availability of single generic Event Seed Products requires access to the Event on Patent expiration; and

**WHEREAS**, the commercial marketability of Seed Products containing Events also requires effective product stewardship, in part to assure that global Authorizations remain in place and trade in the products derived from Seed Products containing Generic Events is not disrupted;

The undersigned Signatories agree as follows:

1. This Agreement shall become effective on the date that it is executed by the fourth of at least four Signatories, and shall continue until terminated by consensus of the Signatories.
2. Definitions:
  - a) Authorization: Official recognition by a regulatory authority of the successful completion of a regulatory process to allow cultivation or import of material containing an Event (Seed Products or grain, or any product thereof regulated as a result of the Event).
  - b) Covered Authorizations: All Authorizations necessary for the cultivation and sale of a single Covered or Generic Event in the United States, and all Authorizations necessary to permit uninterrupted trade of material containing a Covered or Generic Event (Seed Products or grain, or any product thereof regulated as a result of the Event).
  - c) Covered Event: a single Event covered by at least one United States patent, that is commercialized, either as a standalone single Event product or as a component of a stacked (combined Event) product in the United States, and the Last Sale has not occurred more than 4 years before Patent Expiration of the last United States patent having claims that read on the Event; provided that the Event is not subject to an agreement in existence prior to execution by the Signatory of this Agreement that prevents inclusion of the Event under this Agreement. In-licenses of the gene or genetic elements in the Event or of the Event, out-licenses of the Event and commercial stacks incorporating the Event will not prevent an Event from becoming a Covered Event unless the terms of such licenses or the document permitting such commercial stacking prevent the Proprietary Regulatory Property (PRP) Holder from performing its obligations under this Agreement. If the ownership or control of the PRP or Authorizations is split and some part is owned or controlled by a non-Signatory and no Signatory or combination of Signatories can grant the necessary rights under this Agreement, then the Event is not a Covered Event.
  - d) Discontinue: The Last Sale has occurred and the Signatory is discontinuing the Covered or Generic Event in accordance with this Agreement and consistent with the Excellence Through Stewardship “Guide for Product Discontinuation of Biotechnology-Derived Plant Products.”

- e) Event: A genetic construct inserted into a specific site in a plant's genome.
- f) Founding Signatory: The first four Signatories of this Agreement, together with all Signatories that execute this Agreement on or before one-hundred twenty (120) days after the date that this Agreement commences as set forth in Paragraph 1. Founding Signatories will be listed in Appendix B.
- g) Generic Event: When all United States patents having claims that read on a Covered Event Expire, that Covered Event becomes a Generic Event.
- h) Last Sale: The last sale for commercial planting in the United States of a Seed Product containing a Covered or Generic Event by a Signatory or any licensee, distributor, dealer or other seller of or for that Signatory.
- i) Notice of Discontinuation of Regulatory Responsibilities: PRP Holder will notify the Administrator that it will discontinue regulatory responsibilities at least seven years prior to any such discontinuation. In such Notice, the PRP Holder must set forth (1) the date of discontinuation, and (2) whether it will retain or transfer ownership of the PRP.
- j) Notice of Patent Expiration: The PRP Holder will notify the Administrator of Patent Expiration at least three (3) years prior to Patent Expiration of the last United States patent having claims that read on the Covered Event; provided that, if Patent Expiration is the result of either Paragraph 2.k) (2), (3) or (4), then Notice of Patent Expiration will be given as soon as practicable after such expiration. If a Covered Event is already within three (3) years of Patent Expiration at the time the PRP Holder for such Covered Event signs this Agreement, then Notice of Patent Expiration will be given within sixty (60) days after such PRP Holder executes this Agreement or sixty (60) days after this Agreement becomes effective, whichever is later. If the PRP Holder is not the patent holder for all patents that read on the Covered Event, the PRP Holder shall use reasonable best efforts to ascertain the date of Patent Expiration and if the PRP Holder cannot do so, will provide a good faith estimate of that date. The Notice of Patent Expiration shall state whether the Event results in a Special Use Product and describe any product-specific stewardship programs in place for that Special Use Product.
- k) Patent Expiration: A patent has "Expired" if it is no longer in force due to (1) expiration of its patent term, (2) failure to pay maintenance fees, (3) 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 read on the Covered Event, or (4) if a patent holder has disclaimed all claims in that patent that read on the Covered Event.
- l) Proprietary Regulatory Property Holder: the Signatory that owns or controls the PRP for a Covered or Generic Event.
- m) Proprietary Regulatory Property (PRP): The data, dossiers, and Authorizations which enable the cultivation and sale of a single Covered or Generic Event in the United States and allow for import and use of material containing that Covered or Generic Event (Seed Products or grain, or any product thereof regulated as a result of the Event).

- n) **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.
- o) **Seed Product:** Within the context of this Agreement, any sexually, asexually, or tuber propagated material, or grafted material, intended for planting.
- p) **Signatory:** An entity that (1) supports access to, and availability of, Seed Products containing Events, including the growing, developing, marketing, selling, stewarding, processing, transporting, shipping, handling, or maintaining of such Seed Products, and that (2) signs this Agreement.
- q) **Special Use Product:** A Seed Product containing an Event which confers a value-added, quality or other specialty biotechnology-derived trait resulting in functional or compositional change that may have significant, unintended processing or product functional or compositional effects in crops, crop uses or 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.
- r) **Verification:** Verification is the proof of an individual Signatory’s or a task force’s ability to maintain and obtain Covered Authorizations and to steward a Covered or Generic Event.

The defined terms herein shall apply equally to both the singular and plural forms, other tenses, and the verb form of a noun, of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. All Appendices and Exhibits attached hereto shall be deemed incorporated herein as if set forth in full herein and, unless otherwise defined therein, all terms used in any Appendix or Exhibit shall have the meanings ascribed to such terms in this Agreement. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

- 3. The PRP Holder may Discontinue any Event that has not become a Covered Event with no obligations under this Agreement.
- 4. If requested by a Signatory, a PRP Holder shall negotiate in good faith to grant access, prior to or after Patent Expiration, to the PRP and to the Covered Event. Each party to the negotiation must offer reasonable and appropriate value, and neither party is obligated to accept any offer. Access prior to Patent Expiration to PRP and the Covered Event, or after Patent Expiration to PRP, under this Paragraph 4, is not subject to arbitration under this Agreement.
- 5. At the time a Covered Event becomes a Generic Event, the PRP Holder will make that Event available to Signatories of this Agreement 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 § 1.806. In fulfilling this duty, the PRP Holder has no obligation to provide any proprietary germplasm.

6. The PRP Holder shall provide Notice of Patent Expiration to the Administrator. In that Notice the PRP Holder will elect to either:
  - a) Independently maintain and obtain Covered Authorizations for its Covered Event subject to Paragraphs 4, 5, 7 and 11; or
  - b) Seek to share responsibility for that Covered Event pursuant to Paragraph 8; or
  - c) Give Notice of Discontinuation of Regulatory Responsibilities for that Covered Event, pursuant to Paragraph 9.

If Patent Expiration is the result of Paragraph 2.k) (2), (3), or (4) then the PRP Holder shall be deemed to have elected to independently maintain and obtain Covered Authorizations for its Covered Event.

If *The Accord: Data Use & Compensation Agreement* (DUCA) is in effect, the PRP Holder is encouraged to share or transition responsibility for regulatory maintenance, stewardship and liability for its Covered Event pursuant to the terms and conditions of DUCA in lieu of sharing responsibility or discontinuing responsibility for that Covered Event pursuant to Paragraphs 8 or 9 respectively.

7. If the PRP Holder elects to independently maintain and obtain Covered Authorizations for its Covered or Generic Event:
  - a) The PRP Holder is not entitled to receive any compensation for the costs of maintaining or obtaining Covered Authorizations for its PRP unless the PRP Holder subsequently decides to share or transition that Covered or Generic Event pursuant to Paragraphs 8 or 9.
  - b) A PRP Holder has no obligation to provide access for any purpose to the PRP for a Covered or Generic Event to Signatories under this Paragraph 7. However, if a citation to i) a Covered Authorization or ii) the data supporting a Covered Authorization, is required of a Signatory by a regulatory agency to support the marketability of material that contains only that single Covered or Generic Event (Seed Products or grain, or any product thereof regulated as a result of the Event), the PRP Holder shall provide a letter authorizing such citation<sup>1</sup>.
  - c) If the PRP Holder subsequently decides to seek to share responsibility for that Covered or Generic Event, the PRP Holder shall provide notice to the Administrator. Subsequent to that notice, the PRP Holder shall follow the process described in Paragraph 8.
  - d) If the PRP Holder subsequently decides to discontinue responsibility for that Covered or Generic Event, the PRP Holder shall provide Notice of Discontinuation of Regulatory Responsibilities to the Administrator. Subsequent to that Notice, the PRP Holder shall follow the process described in Paragraph 9.
8. If the PRP Holder seeks to share responsibility for maintaining and obtaining Covered Authorizations for its Covered or Generic Event:

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<sup>1</sup> As of the effective date of this Agreement, no regulatory authority requires such citation letter.

- a) Within sixty (60) days after receipt of notice from the Administrator following a Notice under Paragraphs 6.b) or 7.c), all interested Signatories must give notice to the PRP Holder and the Administrator of their interest in sharing responsibility for the Covered or Generic Event.
- b) The interested Signatories may negotiate an agreement *inter se* to form a task force to establish the terms and conditions of their relationship and responsibilities regarding the regulatory maintenance, stewardship, and liability for the Covered or Generic Event. Each interested Signatory and interested task force must complete the Verification process described in Paragraph 10.
- c) The PRP Holder and all of the Verified interested Signatories or Verified task forces will negotiate in good faith to establish a joint responsibility agreement to share responsibility for regulatory maintenance, stewardship and liability for the Covered or Generic Event and for all Covered Authorizations for such Events.
- d) A joint responsibility agreement shall provide that persons executing the joint responsibility agreement shall receive access for all purposes to the PRP for the Covered or Generic Event.
- e) Cost-sharing for maintaining and obtaining Covered Authorizations, if any, and compensation for access to PRP shall be negotiated in good faith.
- f) If the PRP Holder and the Verified interested Signatories or Verified task forces do not reach a joint responsibility agreement within sixteen (16) calendar months after receipt by the PRP Holder of the last timely notice of interest from a Signatory, then, unless all Verified interested Signatories and Verified task forces decide that they no longer wish to pursue a joint responsibility agreement, the unresolved terms and conditions of the joint responsibility agreement shall be determined by binding arbitration pursuant to Paragraph 18.
- g) All Signatories that share responsibility for a Covered or Generic Event through a joint responsibility agreement assume all of the obligations of a PRP Holder.
- h) A PRP Holder, Verified interested Signatory, or Verified task force is not obligated to execute a joint responsibility agreement resulting from the arbitration.
- i) If there are no Verified interested Signatories or Verified task forces, or no joint responsibility agreement is executed within sixty (60) days after the arbitration decision, then the PRP Holder remains responsible for its Covered or Generic Event subject to Paragraphs 4, 5, 7 and 11.
- j) If the PRP Holder subsequently decides to discontinue responsibility for that Covered Event, the PRP Holder shall provide Notice of Discontinuation of Regulatory Responsibilities to the Administrator. Subsequent to that Notice, the PRP Holder shall follow the process described in Paragraph 9.

9. If the PRP Holder gives Notice of Discontinuation of Regulatory Responsibilities:

- a) Within sixty (60) days after receipt of notice from the Administrator following Notice under Paragraphs 6.c) or 7.d), all interested Signatories must give notice to the PRP Holder and the Administrator of their interest in assuming responsibility for the Covered or Generic Event.
- b) The interested Signatories may negotiate an agreement *inter se* to form a task force to establish the terms and conditions of their relationship and responsibilities regarding the regulatory maintenance, stewardship, and liability for the Covered or Generic Event. Each interested Signatory and interested task force must complete the Verification process described in Paragraph 10.
- c) The PRP Holder and all Verified interested Signatories or Verified task forces will negotiate in good faith to establish a transition agreement to transition responsibility for regulatory

- maintenance, stewardship and liability for the Covered or Generic Event and for all Covered Authorizations for such Events.
- d) A transition agreement shall provide that any persons executing the transition agreement shall receive access for all purposes to the PRP for the Covered or Generic Event.
  - e) Compensation for access to PRP shall be negotiated in good faith.
  - f) If the PRP Holder decides that it is transferring ownership of the PRP, in the transition agreement the Signatory or task force must accept ownership of the PRP.
  - g) If the PRP Holder and the Verified interested Signatories do not reach a transition agreement within sixteen (16) calendar months after receipt by the PRP Holder of the last timely notice of interest from a Signatory, then the unresolved terms and conditions of the transition agreement shall be determined by binding arbitration pursuant to Paragraph 18.
  - h) Having given Notice of Discontinuation of Regulatory Responsibilities, the PRP Holder shall execute the transition agreement resulting from negotiation or the arbitration.
  - i) All Signatories that execute a transition agreement assume all of the obligations of a PRP Holder under this Agreement.
  - j) If no Signatory or task force gives timely notice under Paragraph 9a) or no transition agreement is executed within sixty (60) days after an arbitration decision by a Signatory or task force, the PRP Holder shall Discontinue its Covered or Generic Event subject to the obligations under Paragraphs 11 and 13 of this Agreement. In that case, all Signatories who are selling Seed Products containing that Covered or Generic Event shall Discontinue the Covered or Generic Event subject to the obligations under Paragraphs 11 and 13 of this Agreement and ensure that their Last Sale of a Seed Product containing that Covered or Generic Event occurs at least four (4) years prior to the date upon which the PRP Holder will discontinue regulatory responsibilities.
  - k) The transition agreement shall provide that the PRP Holder shall be indemnified, defended, and held harmless for claims caused by acts or omissions that occur after the date of transfer, if the PRP Holder has satisfied its obligations to provide access to, or provide ownership of, PRP so that the Signatory or task force can obtain and maintain Covered Authorizations.
10. Verification is established when that Signatory or task force establishes its ability to steward Events in accordance with Paragraph 13 and 1) demonstrates that it has held for at least three (3) years, and has successfully obtained and maintained Authorizations for an Event; or 2) has a) contracted for maintaining and obtaining Covered Authorizations, for the four-year period following execution of the agreement provided for in Paragraphs 8 or 9, with a consultant or entity that has successfully obtained and maintained Authorizations for any Event, and b) provided proof (a guaranty, an escrow account, a letter of credit, a surety bond, or other comparable instrument) of the ability to maintain sufficient funds to satisfy that continuing contractual obligation; or 3) has been Verified for any Event under the Financial Criteria provisions of DUCA, if that agreement is in effect. Interested Signatories and interested task forces must provide documentary proof to support Verification to the Administrator within sixty (60) calendar days after giving notice of interest and complete the Verification process in accordance with Article XIII of the Administrative Provisions to the GEMAA in Appendix A.
11. In addition to the obligations of the PRP Holder who gives Notice of Discontinuation of Regulatory Responsibility, the PRP Holder and all Signatories who assume responsibility for a Covered or Generic Event pursuant to this Agreement shall each give notice of Last Sale to the Administrator

and maintain and obtain or share in maintaining and obtaining Covered Authorizations for four (4) years after such notice.

12. Each Signatory that sells a Seed Product containing a Covered or Generic Event must comply with all obligations of the transition agreement for that Event, including obligations to pay data compensation and the costs of maintaining and obtaining Covered Authorizations; provided that once a Signatory has produced its own PRP for that Event, it shall be exempt from any data compensation.

13. Each Signatory of this Agreement that develops, produces, markets, sells, maintains, or handles a Seed Product containing Events, Covered Events, or Generic Events shall steward those Seed Products by complying with each of the following:

a) By complying with one of the following options:

- 1) Maintaining membership in good standing of Excellence Through Stewardship (ETS);
- 2) Maintaining compliance with a contract or 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**<sup>®</sup> Program Objectives and be consistent with the **Excellence Through Stewardship**<sup>®</sup> program Principles and Management Practices”*; or,
- 3) Maintaining a Seed Product stewardship program that complies with the product life cycle stewardship and Quality Management System (QMS) guidelines established by ETS and that compliance has been verified in an audit by a certified ETS auditor.

b) By complying with all conditions set forth in Authorizations for Events contained in those Seed Products.

c) By complying with the laws and regulations which may bear upon those Seed Products.

A Signatory that produces, sells, markets, maintains or handles a Seed Product containing an Event which makes that Seed Product a Special Use Product shall establish product-specific stewardship programs adequate to achieve the stewardship objectives achieved by the product-specific stewardship programs already in place for that Event.

14. A person who becomes a Signatory to this Agreement after a joint responsibility agreement or a transition agreement has been executed, and that is Verified, shall be permitted to execute that joint responsibility agreement or transition agreement,

- a) on the same terms as the existing joint responsibility or transition agreement as long as the new Signatory otherwise satisfies Paragraphs 8 or 9 respectively, and
  - b) pays its share of
    - i. data compensation that has already been paid by persons which have executed the joint responsibility agreement or transition agreement, and
    - ii. other expenses incurred that the person would have paid a part of had it been a Signatory before the existing joint responsibility agreement or transition agreement was executed.
- 15.
- a) A Signatory shall not engage in any conduct or enter into any agreement that would delay performance, or make either partial or complete performance impossible under this Agreement.
  - b) This Agreement does not affect the right of a Signatory to enter into agreements with third parties provided that such agreements do not breach or interfere with its obligations under this Agreement. Each Signatory is responsible for compliance with its obligations under this Agreement with respect to its licenses or contracts that are outside of this Agreement.
16. Each Signatory of this Agreement who sells Seed Products containing a Generic Event and benefits from the maintenance of Covered Authorizations for that Generic Event by the PRP Holder or any other Signatory assumes all liability attributable to its use of that Generic Event.
17. 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 joint responsibility or transition agreement. Pursuant to a joint responsibility or transition agreement, the PRP Holder shall provide to a Signatory or task force that executes either agreement access to the PRP sufficient and necessary to exercise its rights under that agreement.
18. Patent issues and disputes are not subject to arbitration under this Agreement. Otherwise, unless expressly excluded in this Agreement, all Signatories agree that all issues that arise under Paragraphs 8, 9 and 10, and all disputes under this Agreement or regarding the interpretation and application of this Agreement will be resolved by mandatory binding arbitration in accordance with the commercial rules of the American Arbitration Association and the Arbitration Provisions in Appendix C. Issues that arise under Paragraphs 8, 9 and 10 must be completed within fifteen (15) months following initiation of the arbitration, and shall be arbitrated separately from any other disputes in the same case. The venue for all arbitrations shall be New York, New York, unless otherwise agreed by the parties to such arbitration. At any time a party may seek mediation of any dispute 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 a mediation does not toll or otherwise affect any prescribed time period set forth in this Agreement.
19. This Agreement binds the Signatories and Related Entities. Each Signatory warrants that it has the authority to enter into this Agreement. Except for the obligations expressed herein, no Signatory shall be committed or liable in any way with respect to any future business relationships. Each Signatory represents and warrants that its entering into this Agreement, either does not and shall not violate any agreement (whether express, implied or by operation of law) with any other person



or entity, or that it is fully liable for any such violation, and will indemnify, defend and hold all other Signatories harmless with regard to any such violation.

20. Notwithstanding Paragraph 23, a Signatory may withdraw from this Agreement at any time upon one (1) year written notice of withdrawal to the Administrator; provided that its obligations under this Agreement for Events that are Covered or Generic Events at the time of withdrawal survive and continue as to such Covered or Generic Events until fully satisfied.
21. Where there is a reference to notice in this Agreement:
  - a) Any notice or other communication that is required or permitted under this Agreement shall be in writing and shall be deemed given to a Signatory or the Administrator, if 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; by registered or certified mail, postage prepaid; or by nationally recognized overnight courier service, to the address on the signature page of this Agreement for such Signatory, or to such other address as such Signatory may have specified in a notice duly given to the sender as provided. Such notice or other communication shall be deemed to have been given to the Signatory or the Administrator (a) as of the date so delivered or telefaxed, (b) one business day after it is sent for next business day delivery via a reputable nationwide 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 addressees.
  - b) When a notice is provided to the Administrator pursuant to this Agreement, the Administrator shall transmit that notice to all Signatories of this Agreement and of the DUCA, if that Agreement is in effect, within ten (10) business days of receipt of such notice by the Administrator, provided that notices from interested Signatories to the Administrator under Paragraph 8.a) or 9.a) shall be transmitted to all Signatories within ten (10) business days after the end of the sixty (60)-day period referred to in Paragraphs 8.a) and 9.a).
22. Each Signatory agrees to retain its obligations under this Agreement as to Covered or Generic Events or to assign such obligations to (1) any purchaser of the intellectual property and PRP for such Covered Events, (2) any successor corporation that results from re-incorporation, merger or consolidation of such Signatory with or into such purchaser or such corporation, or (3) its affiliates. Upon assignment, the rights and obligations under this Agreement shall be binding upon and inure to the benefit of said purchaser, successor in interest, or affiliate.
23. If a PRP Holder under this Agreement executes the DUCA, that PRP Holder shall not have any further obligations as a PRP Holder under this Agreement for Covered or Generic Events that are subject to DUCA; provided that, if:
  - a) a PRP Holder has executed a joint responsibility or transition agreement pursuant to this GEMAA, that PRP Holder remains subject to the terms and conditions of such joint responsibility or transition agreement, or
  - b) the PRP Holder and the Verified interested Signatories have entered the binding arbitration process for a transition agreement, then a PRP Holder must execute the transition agreement resulting from that arbitration, and that PRP Holder remains subject to the terms and conditions of such transition agreement.

24. If any of the provisions of this Agreement are judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced. The English language text of this Agreement shall be controlling, notwithstanding any translation made for any purpose whatsoever.
25. This Agreement (which includes the Appendices hereto) and all other agreements contemplated hereby set forth the entire understanding of the Signatories with respect to the transactions contemplated hereby. Any and all previous agreements and understandings between or among the Signatories regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.
26. This Agreement shall be operated and administered as set forth in the Administrative Provisions to the GEMAA contained in Appendix A. This Agreement can only be amended as set forth in those Administrative Provisions.
27. This Agreement is governed by and interpreted under the laws of the State of New York, USA, and subject to Paragraph 18, the Parties hereby submit to the exclusive jurisdiction of the state and Federal courts of New York for its enforcement and the resolution of any disputes arising under it.
28. This Agreement 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 this Agreement, a document (or signature page thereto) signed and transmitted by facsimile (or equivalent, such as an e-mailed scan) is to be treated as an original document. The signature of any Signatory thereon, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized representatives as of the commencement of this Agreement as set forth In Paragraph 1.

[SIGNATORY]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

## **APPENDIX A**

### **ADMINISTRATIVE PROVISIONS**

#### **Article I: Purpose**

These Administrative Provisions are established for the administration and operation of The Accord: Generic Event Marketability & Access Agreement (GEMAA) and shall be interpreted in a manner consistent with the provisions of the GEMAA.

#### **Article II: Terminology**

- A. All references to an “Article” in these Administrative Provisions are references to the provisions of these Administrative Provisions unless otherwise expressly stated.
- B. Unless otherwise defined in these Administrative Provisions, capitalized terms have the meaning attributed to them in the GEMAA.

#### **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 related to the GEMAA, and shall speak for the Signatories pursuant to the terms and conditions of the GEMAA. The Committee of Signatories’ authority and responsibilities include:
  - 1. Appointing and managing all contracts with the Administrator; and managing any other contracts as necessary under the GEMAA and the Administrative Provisions;
  - 2. Reviewing and resolving disputes involving Verification;
  - 3. Determining and giving notice of a material breach;
  - 4. Enforcing the GEMAA and the Administrative Provisions;

5. Interpreting the GEMAA and the Administrative Provisions;
  6. Amending the GEMAA or the Administrative Provisions;
  7. 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 GEMAA 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 GEMAA under applicable laws or regulations.
  8. Approving the budget and annual assessment;
  9. Carrying out the default provisions under Article IX of these Administrative Provisions;
  10. Establishing and maintaining a roster of neutrals or establishing qualifications or criteria for neutrals to serve on arbitration tribunals as may be necessary under the GEMAA; and
  11. All other tasks necessary to carry out the terms of the GEMAA and these Administrative Provisions.
- B. A majority of the Committee representatives shall constitute a quorum for the transaction of business at a meeting by the Committee. The Committee of Signatories shall generally 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 GEMAA or a decision of the Committee materially affects the rights or duties of all Signatories, then 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 required vote by all Signatories. For purposes of a vote by 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. The representatives from among the remaining Signatories can have up to two (2) alternate representatives.

- E. No Signatory of The Accord: Data Use & Compensation Agreement (DUCA) that is a PRP Holder and therefore not obligated under the GEMAA for Covered or Generic Events that are subject to the DUCA pursuant to paragraph 23 of the GEMAA may serve on the Committee of Signatories for the GEMAA.
- F. 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.

- 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 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.
- H. If there are fewer self-nominees than the maximum permitted by these Administrative Provisions to serve on the Committee of Signatories and as alternates so that the process described in Paragraph G of this Article IV is implemented, 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 addition positions allowed on the Committee of Signatories as provided for in Paragraphs D 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 F of this Article IV minus one year.

- I. 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 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 which is lacking members on the Committee every six months until the requisite membership is attained.
- J. 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.
- K. 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 a Signatory in either of these two groups gives notice to the Administrator that it is withdrawing a self-nominee or declines to be considered for service on the Committee of Signatories. Alternate representatives are not excluded from seeking service on the Committee of Signatories after completing their term of service as alternate representatives.
- L. 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 competitive interest or 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 representative 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.

- M. 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.
- N. 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 at least ten (10) business days in advance of this deadline.
- O. 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.
- P. 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.
- Q. 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 GEMAA 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 reasonable notice (i.e., normally at least ten (10) business days unless decided differently at the

previous meeting) 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.

- R. 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 Signatories that are not members of the Committee of Signatories.
- S. Each representative on the Committee of Signatories and any subcommittee shall execute an appropriate confidentiality agreement with respect to the duties each such representative will undertake as a member of such Committee in accordance with the GEMAA and these Administrative Provisions.

#### **Article V: Administrator**

- A. The GEMAA and these Administrative Provisions shall be administered in accordance with their terms and conditions by an Administrator, retained by a 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 GEMAA. Such interim Administrator shall report to 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 such Committee.
- 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 GEMAA. 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, liabilities, costs or damages (including reasonable attorneys' fees and any cost of lawsuit), arising out of or connected with the GEMAA that result from carrying out their responsibilities in accordance with the GEMAA and these Administrative Provisions. 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. 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 such claim; 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 GEMAA incurred by a Contracting Organization, including any legal costs in defense of claims 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 GEMAA, 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 Organizations 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 GEMAA, 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 GEMAA. 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 GEMAA, the Administrator has no responsibility or authority to interpret the GEMAA.

H. The Administrator is responsible for the non-discretionary operations and administration of the GEMAA, including:

1. Attending meetings of the Committee of Signatories and keeping minutes of the meetings or a record of other actions taken under the GEMAA or these Administrative Provisions;
2. Providing the Antitrust Guidelines at Appendix D for all activities conducted pursuant to the GEMAA;
3. Maintaining a current copy of the GEMAA and Administrative Provisions and an archive of all amendments to the GEMAA 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 GEMAA 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, provide education, training and presentations on the GEMAA;
7. Receiving documentation on Verification provided by a Signatory under the GEMAA and checking for the completeness of such documentation;
8. Assisting in arrangements for third-party audits or surveys under the GEMAA;
9. Assisting in arrangements for binding arbitration;
10. Providing budget-related information to the Committee of Signatories;
11. Invoicing and collecting the annual assessment, paying invoices, and managing the bank accounts associated with operations of the GEMAA 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 XIV of these Administrative Provisions, and other necessary information technology resources with appropriate security;
16. Maintaining the records and the financial books and accounts of the GEMAA, and to make 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 cost of an audit or survey that are determined to be Operating Costs by a decision of the Committee of Signatories. As used in this Article, “legal accounting, and other professional fees” include litigation costs of the Accord (i.e. costs to defend or enforce the Accord authorized by the Committee of Signatories).
- 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, based on the number of Signatories, assess an amount pro-rata among the Signatories that will in total be sufficient to pay such costs.
- D. Subject to paragraph G, below, each Signatory will on an equal basis pay the Operating Costs. To illustrate this requirement, if Operating Costs for one year are \$100,000 and there are ten

Signatories, each Signatory will pay \$10,000. In the event the Accord: Data Use and Compensation Agreement (DUCA) is in effect, the GEMAA Administrator shall collaborate with the DUCA Administrator to identify and create a list of duplicative operating costs. The GEMAA Administrator will submit the list to the GEMAA Committee of Signatories. If approved by both the GEMAA and the DUCA Committee of Signatories, the costs will be split equally.

- E. In the case of a Signatory who executes the GEMAA 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 pro-rata credit against future assessments for their share of the payment made by the new Signatory.

To illustrate this procedure, if the annual assessment was \$100,000 paid equally by ten Signatories, there are \$77,000 in remaining Operating Costs, and an eleventh Signatory executes the Accord, 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 other Signatories shall pay their pro-rata share of the defaulting Signatory's share within thirty (30) days after being invoiced by the Administrator.
- G. The following are exceptions to the obligation of a Signatory to pay its pro-rata 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 half of a full share of the annual assessment;

provided, however, that any entity that becomes Verified under the GEMAA or a member of a Verified task force and executes a joint responsibility or transition agreement shall not be entitled to this exception and shall pay its pro-rata share of the annual assessment like any other Signatory.

#### **Article VII: Financial Procedures**

- A. At least ninety (90) days prior to the beginning of each calendar year, the Administrator shall present to the Committee of Signatories a draft budget to meet the Operating Costs for GEMAA activities. Following the incorporation of any changes to the budget it deems necessary, the Committee of Signatories shall approve the budget prior to sixty (60) days before the beginning of each calendar year.
- B. Subject to Article VI, at least forty-five (45) days prior to the beginning of each calendar year, the Administrator shall invoice each Signatory 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 GEMAA to be incurred during the following calendar year. All invoices shall be paid within ninety (90) days of receipt.
- C. The Administrator will issue a semi-annual financial report for the GEMAA, 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 financial statement and tax information.
- B. The books of account, all records pertaining thereto, and all invoices under these Administrative Provisions shall be in U.S. Dollars.

#### **Article IX: Default**

- A. A Signatory is deemed in default if it fails to (1) pay an invoice when due, or (2) meet the obligations or conditions imposed on a Signatory by the GEMAA.

- B. The Committee of Signatories shall provide notice to any Signatory that it deems to be in default. The notice shall require the Signatory to cure the default.
- C. If the Signatory requests a meeting, the Committee of Signatories shall set a date and time for the meeting which the Signatory shall attend.
- D. The Signatory shall have the right to be heard by the Committee of Signatories at the meeting and shall explain why the Signatory has not cured the default or why the Signatory believes it is not in default.
- E. 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 default; or
  - 2. that the Committee of Signatories finds the Signatory in default and that the default must be remedied in a manner specified within thirty (30) days. The notification shall inform the defaulting Signatory 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 default.
- F. Should the Signatory fail to attend the meeting, or should the Signatory not respond (by curing the default 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 default under the GEMAA.
- G. A Signatory deemed in default, or in default, remains responsible for, and shall continue to execute, its obligations under the GEMAA including any obligation to provide Response.
- H. A Signatory in default forfeits its voting rights under the GEMAA and these Administrative Provisions.
- I. A Signatory which fails to pay an invoice within ninety (90) days 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.



### **Article X: Withdrawal**

- A. A Signatory not in default may withdraw from participation in the GEMAA by submitting to the Administrator a notice of withdrawal signed by a duly authorized representative of the Signatory. The withdrawal shall become effective twelve (12) months after receipt of notice by the Administrator. 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.
- B. The withdrawing Signatory or one who ceases to be a Signatory pursuant to Article IX of these Administrative Provisions, remains responsible to satisfy all of its obligations under the GEMAA for Events that are Covered or Generic Events at the time of withdrawal.

### **Article XI: Amendment**

- A. Any Signatory can propose an amendment to the GEMAA or these Administrative Provisions by submitting the proposed amendment in writing to the Administrator.
- B. Amendments can only be approved 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 to the Administrator under Paragraph 20 of the GEMAA and Article X of these Administrative Provisions within thirty (30) business days after an amendment to the GEMAA is effective is not bound by the amendment.

### **Article XIII: Verification**

- A. To establish Verification under the GEMAA, the Signatory or task force will submit to the Administrator the following information within sixty (60) calendar days after giving notice of interest under Paragraphs 8.a) or 9.a) of the GEMAA:
  - 1. Copies of documents establishing that the Signatory or each member of a task force is in compliance with the provisions of Paragraph 13, of the GEMAA. 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 under 28 U.S.C. 1746 that provides: "I certify that [name of entity] develops, produces, market, sells, maintains, or

handles 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. One of the following:
  - a. Copies of documents establishing that the Signatory or task force (or any Signatory that is member of a task force) has held for at least three (3) years, and has successfully obtained and maintained Authorizations for an Event; or
  - b. (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 joint responsibility or transition agreement), between the Signatory or the task force with a consultant or entity to obtain and maintain Authorizations. This agreement must cover the four-year period following execution of a joint responsibility agreement or a transition agreement under the GEMAA. (ii) The Signatory or task force must also submit proof that the consultant or entity has successfully obtained and renewed Authorizations for at least three (3) years for clients of the consultant or entity. (iii) The Signatory or task force has obtained a letter of credit (issued by a financial institution with a Fitch Rating of A+ or higher), or comparably secure ways to satisfy this financial assurance obligation as described in Paragraph 10 of the GEMAA, that demonstrate that the Signatory or task force is able to satisfy its contractual obligation to the consultant or entity. (iv) The Signatory or task force shall submit a statement that it has undertaken due diligence that the consultant or entity meets the applicable stewardship requirements of the GEMAA;
  - c. Or a combination of subparagraphs a or b above; or
  - d. Evidence that the Signatory or task force has been Verified under the Financial Criteria for any Event under the DUCA.
- B. With the exception of A.1 above, where a task force includes a Signatory that satisfies Paragraph A of this Article XIII, the task force need only submit the required evidence related to that Signatory.
- C. The Administrator will provide the Signatory or task force with notice that the Administrator has received the information submitted in support of Verification within ten (10) business days after receipt of that information. If the information is incomplete 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 ten (10) business days. Within five (5) business 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.

- D. Within five (5) business days of providing notice of completeness, the Administrator shall submit all the documentation supporting Verification to the Committee of Signatories for review and determination. If the Committee of Signatories has questions about the information submitted, the Committee shall submit those questions to the Signatory or task force within ten (10) business days after receipt of the information from the Administrator; and response shall be made by the Signatory or task force within ten (10) business days. The Committee of Signatories shall provide a written determination of Verification to the Signatory or task force within thirty (30) calendar days after receipt of the documentation from the Administrator or of the response from the Signatory or task force, whichever date is later.
- E. 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.
- F. 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.
- G. 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.
- H. 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 GEMAA for Verification. Reconsideration must be sought within ten (10) business 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 ten (10) business days after receipt of the request and any additional information that accompanied the request.

- I. Subject to arbitration under this Agreement, the Committee of Signatories has the final authority to determine if the requirements for Verification have been satisfied by the Signatory or Task force.
- J. The time frames set forth in this Article XIII 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 Agreement without, however, compromising time limitations set forth in the GEMAA.

#### **Article XIV: Information on the GEMAA**

- A. The Administrator will retain an appropriate consultant or contractor to establish and support the maintenance of a website on the GEMAA, and to develop and support the maintenance of other necessary information technology resources, and all with appropriate security.
- B. The Administrator will take appropriate steps to publicize the existence of the website.
- C. The Administrator shall post on the website any information or notice of interest to the agricultural community relating to the GEMAA, including any Notice of Discontinuation of Regulatory Responsibilities, notice of Last Sale, or Notice of Patent Expiration received by the Administrator.

#### **Article XV: Confidentiality and Antitrust Compliance**

- A. All activities of Signatories, the Administrator, and anyone else relating to the GEMAA shall be conducted in accordance with the following Confidentiality Policy:
  - A. *It is the expectation that discussions at GEMAA-sponsored meetings be kept confidential to GEMAA 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 GEMAA shall be conducted in accordance with the requirements of U.S. antitrust law.
- C. The Antitrust Guidelines set forth in Appendix D to the GEMAA shall govern all activities conducted pursuant to the GEMAA and these Administrative Provisions:

## **APPENDIX B**

### **FOUNDING SIGNATORIES**

Founding Signatories to the GEMAA include:

- American Farm Bureau Federation
- American Seed Trade Association
- American Soybean Association
- BASF Plant Science LP
- Bayer CropScience
- Dow Agro Sciences LLC
- Dupont Pioneer
- Gro Alliance, LLC
- Monsanto Company
- National Corn Growers Association

## 1. APPENDIX C

### ARBITRATION PROVISIONS

- A. Arbitration under the GEMAA 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 under the GEMAA.

#### ***Constitution of the Tribunal***

1. For issues subject to arbitration pursuant to Paragraphs 8, 9 or 10 of the GEMAA, the tribunal shall consist of a sole arbitrator. Notwithstanding the preceding sentence, any parties to such arbitration may elect to have three arbitrators if such parties pay all additional cost resulting from the additional arbitrators, including increased cost resulting from meeting the required timelines for such arbitrations; and provided that there will be no increase in timelines or change from the arbitrator selection process for a three arbitrator panel set forth in paragraph 4. For all other disputes that are required to be resolved by arbitration under the GEMAA, the tribunal will consist of three arbitrators.

#### 2. Roster of Arbitrators

- a. 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 resolve disputes under the GEMAA.
- b. The roster's development shall be facilitated by the Committee of Signatories.
- c. The roster shall be maintained by the Administrator.
- d. 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 \_\_\_.
- e. 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 and provided to the Administrator and the AAA.

3. Selection of a tribunal consisting of a sole arbitrator

- a. 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.
  - b. 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.
  - c. 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.
4. Selection of a tribunal consisting of three arbitrators.
- a. Within twenty (20) business days after the demand for arbitration under Rule R-4 of the AAA Rules the party or parties demanding arbitration and the respondent or respondents will each 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 the demanding party or parties or the respondent or respondents fail 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 remaining appointments or shall select the chair.

### ***Legal Seat of the Arbitration and Substantive Law***

5. 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.
6. The substantive law governing the arbitration is the statutory and common law of the State of New York.

### ***Language***

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

### ***Jurisdictional Challenges***

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

### ***Joinder***

9. The tribunal shall have the power (a) on the application of any party, but only after all parties 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.

### ***Discovery***

10. With respect to discovery in arbitrations pursuant to Paragraphs 8, 9 and 10 of the GEMAA the following rules apply:
  - a. No depositions shall be permitted by the tribunal except for good cause shown.
  - b. 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.
  - c. At least one hundred and twenty (120) days before a hearing on the merits, all parties will produce the documents, which include 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 GEMAA shall be included in the production to all other parties.
  - d. At least one hundred and twenty (120) days before a hearing on the merits, all parties shall produce to all other parties a list of the witnesses they intend to call at the hearing.
  - e. Document discovery, including electronic 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.



- f. With respect to discovery in arbitrations other than pursuant to paragraphs 8, 9, or 10 of the GEMAA, the parties to such arbitration shall meet and confer regarding the scope and conduct of discovery in such arbitration.

### ***Conduct of the Proceeding***

11. 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.
12. The proceeding must be conducted in a manner that results in completion of the arbitration within 270 days after the demand for arbitration is received by the AAA.
13. 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 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.
14. 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.
15. Fact witnesses shall be sequestered from hearing or reading cross examination of other witnesses unless the fact witnesses have completed testifying.
16. The only expert witnesses shall be those offered by the parties; the tribunal shall not appoint tribunal experts witnesses.

### ***Attorneys and Arbitration Fees and Costs***

17. 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.
18. Subject to any demand for three arbitrators pursuant to Paragraph 1 of these Arbitration Provisions, the costs of arbitration shall be paid as follows: (1) each party in the arbitration shall pay its own arbitration fees and costs, (2) deposits for the costs of the arbitration, including the fees of the arbitrators, shall be made 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.
19. Where the Signatories are a party to an arbitration they shall be represented by the Committee of Signatories in the person of the Chair. If the arbitration is brought by the Committee, the Committee's share of the costs of arbitration shall be based on pro-rata share per member of the Committee as if each is a party to the arbitration, and shall be an Operating Expense. If the arbitration is brought against the Signatories or the Committee of Signatories, the Committee's share of the costs of arbitration shall be based on the Committee as one party to the arbitration, and shall be an Operating Expense.

### ***Interim Measures***

20. 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.
21. Interim Measures shall not affect any timeline established by this Agreement.

### ***Confidentiality***

22. 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) may still consider and rely on the confidential business information; (ii) 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 (iii) shall not reference the text of such information in any award that is rendered.
23. 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.

### ***Rules of Construction***

24. If the tribunal determines that there is an ambiguity in the GEMAA 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 GEMAA shall control over any conflicting text in any appendix or other document; and (iii) the words of the GEMAA shall be given their plain or common meaning. Parol evidence may not be considered in the interpretation of the GEMAA unless there is an ambiguity identified by the tribunal, but under no circumstances shall prior drafts of the GEMAA, negotiation materials related to the GEMAA, or public communications about or extrinsic materials relating to the GEMAA, be considered at all in interpreting the GEMAA.

### ***Rules of Professional Conduct***

25. 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; (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 will be promptly notified and the documents will be destroyed or returned to the other party.

### ***Award***

26. The award of the tribunal shall be in writing and shall contain sufficient detail, but no more than is necessary, to explain the reasoning behind each decision made in the award.
27. 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.
28. The award must be issued within twenty-one (21) days after completion of the hearing.

### ***Publication of Awards***

29. Awards are confidential and shall not be published except as follows: (a) awards except those relating Verification or Qualification shall be available for review by Signatories; (b) awards relating to Verification or Qualification shall only be made available to the parties to the arbitration relating to Verification or Qualification; (c) if an award relates to Verification or Qualification and other topics, the award may be reviewed by all Signatories after redaction of the award relating to Verification or Qualification.

## APPENDIX D

### ANTITRUST GUIDELINES

#### *The Accord: Generic Event Marketability & Access Agreement (GEMAA)*

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 U.S. antitrust laws. Agreements or combinations between or among competitors need not be formal to be subject to U.S. 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, GEMAA has adopted these Guidelines to seek to avoid even the appearance of impropriety under the antitrust laws. Each participant in activities related to the GEMAA is responsible to see that topics, which may give an appearance of an agreement that would violate the U.S. antitrust laws, are neither discussed nor agreed upon at meetings related to the GEMAA. 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 U.S. 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 U.S. 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 GEMAA.
2. Prepare brief minutes for any meeting among competitors related to the GEMAA and have them reviewed and approved by counsel. Object if the minutes do not accurately reflect the 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 GEMAA.
4. Protest against any discussions or meeting activities that appear to violate the U.S. antitrust laws, disassociate yourself from any such discussions or activities, and leave any meeting in which such discussions or activities continue.