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**Agreement for the provision of services****THIS AGREEMENT IS MADE AND ENTERED INTO****BETWEEN**

**ESA European Seed Association** aisbl, registered according to Belgian law, located in 23/15, rue du Luxembourg, 1000 Brussels, Belgium and represented by its Secretary General, Mr Garlich von Essen or his delegated representative;

hereinafter referred to as '**ESA**'

**AND**

**XXX**, registered according to \_\_\_\_\_ law, located in \_\_\_\_\_ and represented by \_\_\_\_\_ ;

hereinafter referred to as '**the National Agent**' or '**Agent**'

together referred to as '**the Parties**'

WHEREAS ESA has set up a quality assurance scheme for seed treatment and treated seed, called the European Seed Treatment Assurance ("**ESTA**"). The ESTA standard<sup>1</sup> is protected by copyright and the ESTA name and logo by Community trademark<sup>2</sup>.

WHEREAS seed treatment sites ("**Treatment Sites**") can obtain ESTA certification after an on-site audit by a certifying body that is accepted to audit Treatment Sites on their compliance with the ESTA standard ("**ESTA Certifying Body**"). Following a positive on-site audit by an ESTA Certifying Body, Treatment Sites can apply for a (non-exclusive) licence to make use of the ESTA Trademark on bags containing seed treated according to the ESTA Standard.

WHEREAS ESA wishes to implement the ESTA scheme quickly and broadly throughout Europe.

WHEREAS the Agent has the necessary infrastructure, knowledge and competence to assist ESA with the implementation of the ESTA scheme in the territory mentioned in Annex I (the "**Territory**") through (i) the acceptance of ESTA Certifying Bodies; and (ii) the licensing of the ESTA Trademark to ESTA certified Treatment Sites located in the Territory.

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<sup>1</sup> The ESTA Standard is document ESA\_12.0271, adopted on March 23, 2012 by the ESA Board and May 3, 2012 by the ESA STAT, including subsequent amendments (the "**ESTA Standard**"). The ESTA Standard is available on: [http://www.euroseeds.org/codes/esta-european-seed-treatment-assurance/ESA\\_12.0271.pdf](http://www.euroseeds.org/codes/esta-european-seed-treatment-assurance/ESA_12.0271.pdf)

<sup>2</sup> ESA has obtained Community trademark related to ESTA with the following numbers: 009819764; 009832296; 009832882; 009832965; 009839051; 009839085; 009839127; 009839201 (the "**ESTA Trademarks**").

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WHEREAS ESA therefore wishes to appoint the Agent, which the Agent accepts, as its exclusive agent for the implementation of the ESTA scheme in the Territory for a period of two (2) years, under the terms and conditions set forth herein:

**NOW, THEREFORE, the Parties have agreed as follows:**

**1. Object of the Agreement**

- 1.1 ESA appoints the Agent, who accepts, as an exclusive agent to implement and manage the ESTA scheme in the Territory for a period of two (2) years. As such, the Agent will be granted the exclusive right to accept ESTA Certifying Bodies and license the ESTA Trademark to ESTA certified Treatment Sites according to the ESTA criteria within the Territory, in name and on behalf of ESA, under the conditions and with the rights and obligations as specified in the present Agreement.

**2. Rights and Obligations of the National Agent**

- 2.1. The Agent agrees to provide all services specified in this Agreement to ESA with all reasonable care and skill. It undertakes to carry out all activities related to those services in a proper and comprehensive manner.
- 2.2. The Agent shall be entitled to perform any of the obligations undertaken by it, and to exercise any of the rights granted to it under the present Agreement through its branches or sub-divisions and any act or omission of any such branch or sub-division shall for the purpose of this Agreement be deemed to be an act or omission of the Agent.

**A. Acceptance of ESTA Certifying Bodies**

- 2.3. Upon written application by a certifying body, the Agent verifies whether the applying certifying body complies with the following criteria as defined in the ESTA Standard ("**ESTA Criteria**"):

- be an accredited certifying body accredited or accepted by the competent national accreditation services in the Territory;
- be accredited to the ISO/IEC Guide 65 – ISO/EN 45011 (General requirements for bodies operating product certification systems); and
- have proven competence and experience in the field of agriculture, forestry and fishing, group 01.01, 01.02, 01.61 as defined in NACE Rev. 2 – Statistical classification of economic activities in the European Community. 2008. European Commission.

At the moment of application the Agent must request the applying certifying body to prove fulfilment of the above ESTA Criteria with documentary evidence.

- 2.4. The Agent shall deal with all applications from certifying bodies to become ESTA Certifying Bodies in an open, transparent, reasonable and non-discriminatory manner.

Any certifying body that complies with the ESTA criteria and provides the required documentary evidence shall be allowed to become an ESTA Certifying Body. The Agent shall not impose additional criteria, other than the ESTA Criteria, on the

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certifying bodies willing to become ESTA Certifying Bodies. (Annex III contains the standard agreement to be concluded by the Agent with ESTA Certifying Bodies.)

The Agent shall allow certifying bodies that comply with the ESTA Criteria to become ESTA Certifying Bodies, without the need to equally become a certifying body for any other quality assurance scheme run in or outside the Territory.

- 2.5. Whenever a certifying body is accepted by the Agent as an ESTA Certifying Body it shall inform ESA and provide it with the name, registered office and representative of the accepted ESTA Certifying Body. ESA will then enter it into a public register of accepted ESTA Certifying Bodies available on the ESTA website.
- 2.6. Provided compliance with the requirements listed in 2.3, in the name and on behalf of ESA, the Agent shall authorise ESTA Certifying Bodies to audit Treatment Sites in order to certify their compliance with the ESTA Standard and to grant the ESTA certification to audited and compliant Treatment Sites.

ESTA certification by an ESTA Certifying Body does however not automatically mean that the Treatment Site is authorised to use the ESTA Trademark, nor that the certified Treatment Site paid all relevant fees. These aspects shall be regulated in a separate agreement concluded by the Agent in the name and on behalf of ESA and the ESTA certified Treatment Site (the “**Licence Agreement**”). Annex II contains a copy of the standard Licence Agreement.

- 2.7. The Agent shall request each accepted ESTA Certifying Body to carry out on-site audits – as required also by ISO/EN 45011 – when auditing a Treatment Site regarding its compliance with the ESTA Standard as well as at least annual verification audits following the initial evaluation of a Treatment Site.
- 2.8. The Agent may not prevent or restrict (i) ESTA Certifying Bodies accepted in the Territory to provide audit services outside the Territory; (ii) ESTA Certifying Bodies accepted outside the Territory to provide audit services within the Territory.
- 2.9. The Agent shall request each accepted ESTA Certifying Body to provide it with:
- a. An audit report every time a Treatment Site is audited for ESTA certification. The audit report shall contain the following information:
- full name, address and legal structure of the audited Treatment Site;
  - the statement whether the Treatment Site is compliant with the ESTA Standard with the indication of potential necessary improvements if applicable;
- If the Treatment Site complies with the ESTA Standard:
- the date on which the ESTA certification was granted; and
  - the scope of the ESTA certification (i.e. species covered).
- b. An audit report regarding the main findings of the annual verification audits.
- c. An annual overall report indicating the full name, address, legal structure, scope and expiry date of ESTA certification of each ESTA certified Treatment Site in the Territory as well as with a report on audit findings and granted and rejected ESTA certificates.

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**B. ESTA Certification of Treatment Sites**

- 2.10. The Agent shall grant Treatment Sites located in the Territory that are positively audited by an ESTA Certifying Body, in name and on behalf of ESA, a non-exclusive right to use the ESTA Trademark(s):
- on seed bags containing treated seed when the treatment used and the seed treated are covered by the scope of the ESTA certification of the Treatment Site;
  - in promotion activities related to seed treated at the Treatment Site under ESTA certification. In relation to promotion activities, the Treatment Site may allow third parties in the distribution chain to use the ESTA Trademark in communication activities related to the ESTA certified seed to the extent necessary.
- 2.11. When a certified Treatment Site is granted the authorisation to use the ESTA Trademarks the Agent informs ESA immediately.
- 2.12. The Agent shall request the Treatment Site to indicate which versions of the ESTA Trademarks it wishes to use. It shall also oblige the Treatment Site to use the Trademarks in the exact form as they are protected, as set forth in Annex IV.
- 2.13. The Agent shall request the Treatment Site to inform it in a written form immediately when - during its normal course of business - it encounters any misuse or abuse of the ESTA Trademarks.
- 2.14. The Agent shall request the Treatment Site to report to it annually and in written form the overall number of treated units per species and the types of Trademarks used on the treated units.<sup>3</sup> The Agent shall retain its right to verify the accuracy of the reported information at the Treatment Site and it shall oblige the Treatment Site to provide the necessary further data upon request.
- 2.15. In name and on behalf of ESA, the Agent shall charge each ESTA certified Treatment Site a handling fee per Treatment Site and a fixed fee per treated unit. The fee structure of the (non-exclusive licence for the) use of the ESTA Trademark, will be set uniformly for all Treatment Sites in Europe and will be made public on the ESTA website. ESA reserves the right to revise the fees unilaterally on a yearly basis. In case such revision takes place ESA undertakes to notify the Agent at least 6 months in advance. The modalities of the payment by the Treatment Sites shall be laid down in the Licence Agreement, to be concluded by the Agent with the Treatment Sites in name and on behalf of ESA.

**3. Rights and obligations of ESA**

- 3.1 ESA shall act in a loyal manner and in good faith in its relations with the Agent and shall:
- provide the Agent with all documents and information which are reasonably required for the proper performance by the Agent of its activities under this Agreement. Such documents and information shall be free of charge;

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<sup>3</sup> The notion of treated unit is defined in the ESTA Standard.

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- inform the Agent in due time of changes, reductions or expansions of the ESTA Standard, and in general inform the Agent about the developments which may have an important impact on the activities of the Agent under this Agreement.

3.2 For the duration of this Agreement, ESA shall not appoint another agent for the implementation of the ESTA scheme within the Territory.

#### **4. Confidentiality**

4.1 Information provided by the Agent in its reports will be handled as confidential by ESA. However, the names and contact details of ESTA certified Treatment Sites and aggregated information per country on the overall use of the ESTA system may be provided on the ESTA website for information purposes.

4.2 ESA reserves the right to use general information - not allowing the identification of individual organisations - provided in the reports from the Agent, in compliance with any applicable competition laws, for its annual reports on the functioning of the ESTA system.

4.3 The Agent will keep confidential and not divulge to any third party, any confidential information, including, but not limited to the commercial and trade secrets of ESA, reports, records or other restricted documents concerning ESA or the ESTA scheme which it has received or obtained by performing the services under this Agreement ("**Confidential Information**"), for the duration of the present Agreement as well as ten (10) years thereafter.

4.4. Upon termination or expiration of this Agreement for any reason whatsoever, the Agent shall immediately return to ESA any Confidential Information provided to it in the framework of the execution of this Agreement.

#### **5. Intellectual Property Rights**

5.1 Both the ESTA Standard and the ESTA logos constitute the property of ESA and are protected respectively by copyright and Community Trademark. The Agent agrees that all intellectual property rights related to ESTA are and shall remain at all times the exclusive property of ESA.

5.2 The Agent is allowed to put a copy of or a link to the ESTA Standard and to use the ESTA logo(s) on its website or other information material for information purposes.

5.3 The Agent is allowed to grant, in name and on behalf of ESA, a non-exclusive right to every accepted ESTA Certifying Body to put a copy of or a link to the ESTA Standard and to use the ESTA logo(s) on their website or other information material for information purposes. If such an authorisation is granted to an ESTA Certifying Body the Agent must inform ESA thereof.

5.4 The Agent is allowed to grant, in name and on behalf of ESA, a non-exclusive right to ESTA certified Treatment Sites to use and to allow use of the ESTA Trademark(s) in line with point 2.10 of the present Agreement.

5.5 The Agent shall indicate to ESA which versions of the ESTA Trademarks it wishes to use. It shall also undertake to use the Trademarks in the exact form as they are protected. The Agent shall also request in its authorisations according to points 5.3 and 5.4 the authorised organisations to act in the same way.

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Furthermore, the Agent shall inform ESA in a written form immediately when - during its normal course of business - it encounters any infringement of intellectual property rights, misuse or abuse of the ESTA Trademarks. It shall also request organisations authorised to use the ESTA Trademarks according to points 5.3 and 5.4 to act in the same way.

- 5.6 No other use of the ESTA Standard and the ESTA Trademarks is allowed by the Agent.
- 5.7 ESA reserves the right to grant the right to use the ESTA Trademarks to any third party outside the Territory.

## **6. Remuneration**

- 6.1. ESA shall pay the Agent a remuneration for the services provided under this Agreement, in the form of a commission for each Treatment Site that is duly certified according to the ESTA Standard by a Certifying Body accepted by the Agent.
- 6.2. The amount of the commission and all further details of the payment terms and conditions are laid down in Annex V to the present Agreement.
- 6.3. The amount of the commission may be reviewed by explicit written agreement signed by both Parties and adjusted upward or downward to compensate for changes in the ESTA scheme, ESA's business and/or the performance of the Agent under this Agreement.
- 6.4. Notwithstanding the above provisions, payment of the commission shall not be due unless, until and to the extent that ESA has received payment in full from the Treatment Site of all amounts due with respect to the payment described in point 2.15 of this Agreement.
- 6.5. The payment of the commission under point 6.2 of this Agreement shall be deemed to cover any and all costs and expenses of the Agent relating to its services under this Agreement. The Agent shall have no claim for reimbursement of expenses and costs unless with the prior written consent of ESA.

## **7. Information and reporting**

- 7.1 The Agent shall be in regular contact with the person responsible for the management of ESTA within the ESA Secretariat.
- 7.2 ESA shall ensure that the Agent is duly informed about any modification adopted to the ESTA Standard and related documents and shall provide it with the amended versions without delay.
- 7.3 Every time when, in name and on behalf of ESA, an ESTA Certifying Body is accepted by the Agent as well as when the use of the ESTA Trademark(s) is authorised for an ESTA certified Treatment Site, the Agent shall inform ESA immediately in writing. Similarly, when acceptance of an ESTA Certifying Body or certification of a Treatment Site is withdrawn the Agent shall also inform ESA immediately in writing.
- 7.4 On an annual basis the Agent shall prepare a summary report containing all the information reported to it by the accepted ESTA Certifying Bodies. Furthermore, the Agent shall also prepare an overall annual report containing all relevant information

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regarding accepted ESTA Certifying Bodies as well as ESTA certified Treatment Sites. Such information shall at least contain:

- the name and contact details of each accepted ESTA Certifying Body, the date of acceptance and possible ending or suspension of such acceptance;
- the full name, address, legal structure, scope and expiry date of ESTA certification of each ESTA certified Treatment Site;
- a summary of audit findings of ESTA audits carried out by the accepted ESTA Certifying Bodies as well as granted and rejected ESTA certificates;
- the number of treated units per species reported by the ESTA certified Treatment Sites.

Such reports must be provided to ESA by May 31 of the year following the year concerned by the reported activities.

## **8. Duration and termination**

- 8.1 The present Agreement shall run for a fixed period of two (2) years from the date of signature by the last signing Party. Six (6) months prior to the termination of the present Agreement, the Parties shall meet to discuss in good faith the possible conclusion of a new agreement for the provision of services by the Agent.
- 8.2 The present Agreement can be terminated by the common agreement of the parties at any time.
- 8.3 The present Agreement can be terminated by any of the Parties unilaterally by written notice to the other party six (6) months in advance.
- 8.4 The present Agreement can be terminated by any of the Parties unilaterally by written notice to the other party in case of serious breach of the terms described in the present Agreement. The Agreement terminates 30 days following the receipt of the notice by the other Party.

## **9. General terms**

- 9.1 The present Agreement has been prepared in two original copies and is governed by Belgian law.
- 9.2 Annexes to the present Agreement form integral part of it.
- 9.3 Regarding questions not dealt with in the present Agreement in first place the ESTA Standard and in second place Belgian law should apply.
- 9.4 In case of disputes resulting from the present Agreement and from the activities described therein the Parties should seek an amicable settlement. If such a settlement is not possible they should solve their dispute before the competent Belgian courts.
- 9.5 The present Agreement represents the complete understanding between the Parties and supersedes all prior or contemporaneous oral or written agreements or undertakings of the Parties referring to the subject matter of the present Agreement.
- 9.6 Should any provision of the present Agreement be entirely or partially invalid or the Parties be required by national law or authorities to modify certain provisions hereof,

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the validity of the other provisions shall be unaffected. Furthermore, in the event of an invalid provision or modification being required by national law or authorities, the Parties shall enter into negotiations and amend or replace the provision concerned by a valid provision which comes closest to what the invalid provision was intended to achieve.

9.7 Neither the waiver by either of the Parties of a breach or a default under any of the provisions of this Agreement, nor the failure of either of the Parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provisions, rights or privileges hereunder.

9.8 All section captions are for reference only and shall not be considered in construing the present Agreement.

**Signed by:** \_\_\_\_\_ **Date** \_\_\_\_\_

**for and on  
behalf of ESA:**  
\_\_\_\_\_  
\_\_\_\_\_

**Signed by:** \_\_\_\_\_ **Date** \_\_\_\_\_

**for and on behalf  
XXX**  
\_\_\_\_\_



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## **ANNEX I**

### **The Territory**

The present Agreement is concluded for the territory of ....

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## ANNEX II

### Standard Licence Agreement

This Agreement is made and concluded

BETWEEN

**ESA European Seed Association** aisbl, registered according to Belgian law, located in 23/15, rue du Luxembourg, 1000 Brussels, Belgium and represented by its Secretary General, Mr Garlich von Essen or his delegated representative;

hereinafter referred to as '**ESA**'

AND

**XXX**, registered according to .... law, located in .... and represented by ....

hereinafter referred to as '**the Treatment Site**'

together referred to as '**the Parties**'

WITH THE FOLLOWING TERMS

#### **1. Object of the agreement**

By the present Agreement ESA authorizes the Treatment Site, which has been audited by an accepted ESTA Certifying Body and has been granted ESTA certification, to use the ESTA Trademark – as set forth in Annex I to the present Agreement - on the bags of seeds treated according to the ESTA standard and related communication activities.<sup>4</sup> The Treatment Site undertakes to pay a handling fee and a fee per treated unit to ESA's exclusive national representative.

#### **2. Rights of the Treatment Site**

2.1 The ESTA logos constitute the property of ESA and are all protected by Community Trademark. The logos are presented in Annex I to the present Agreement.

2.2 The Treatment Site is allowed to use the ESTA Trademark:

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<sup>4</sup> The ESTA Standard is document ESA\_12.0271, adopted on March 23, 2012 by the ESA Board and May 3, 2012 by the ESA STAT, including subsequent amendments (the "**ESTA Standard**"). The ESTA Standard is available on: [http://www.euroseeds.org/codes/esta-european-seed-treatment-assurance/ESA\\_12.0271.pdf](http://www.euroseeds.org/codes/esta-european-seed-treatment-assurance/ESA_12.0271.pdf)

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- on seed bags containing treated seed when the treatment used and the seed treated are covered by the scope of the ESTA certification of the Treatment Site;
- in promotion activities related to seed treated at the Treatment Site under ESTA certification. In relation to promotion activities, the Treatment Site may allow third parties in the distribution chain to use the ESTA trademark in communication activities related to the ESTA certified seed to the extent necessary.

2.3 The Treatment Site may decide to use the ESTA Trademark or not and it may choose to use one or several forms of the logo.

2.4 Without prejudice to point 2.2 second paragraph, the Treatment Site is not authorized to further sub-license the trademarks, i.e. to allow any third party to use the ESTA Trademark in any form.

2.5 The present authorization is a non-exclusive one. ESA reserves the right to grant the right to use the ESTA Trademark to any third party.

2.6 The use of the ESTA Trademark by the Treatment Site is free of charge.

### **3. Obligations of the Treatment Site**

#### *A) Use of the ESTA Trademark*

3.1 Upon signing the present Agreement the Treatment Site indicates which versions of the ESTA Trademark it wishes to use. The Treatment Site undertakes to use the Trademark in the exact form as they are protected, as set forth in Annex I to the present Agreement.

3.2 The Treatment Site accepts to inform ESA in a written form immediately when - during its normal course of business - it encounters any misuse or abuse of the ESTA Trademark.

#### *B) Payment and reporting*

3.3 The Treatment Site undertakes to report to ESA's exclusive national representative annually and in written form the overall number of treated units per species and the types of Trademarks used on the treated units.<sup>5</sup> ESA however retains the right to verify the accuracy of the reported information at the Treatment Site and the Treatment Site is obliged to provide the necessary further data upon request.

The report must be provided to ESA's exclusive national representative by May 31 of the year following the year concerned by the reported activities.

3.4 The Treatment Site undertakes to pay a handling fee and a fixed fee per treated unit to ESA's exclusive national representative. Further payment details are specified in Annex II to the present Agreement. The fee structure is set uniformly for all Treatment Sites in Europe

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<sup>5</sup> The notion of treated unit is defined in the ESTA standard.

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and is publicly available on the ESTA website. ESA however reserves the right to revise the feed unilaterally on a yearly basis. In case such revision takes place ESA undertakes to notify its exclusive national representative at least six (6) months in advance.

#### **4. Duration and termination of Agreement**

4.1 The present Agreement comes into force on the date of signature and is concluded for a period of one year. The Agreement is automatically renewed every year if the annual verification audit of the Treatment Site confirms its compliance with the ESTA standard.

4.2 The present Agreement can be terminated by the common agreement of the Parties at any time.

4.3 The present Agreement can be terminated by any of the Parties unilaterally by written notice to the other party six (6) months in advance.

4.4 The present Agreement can be terminated by any of the Parties by written notice to the other party in case of serious breach of the terms described in the present Agreement. The Agreement terminates 30 days following the receipt of the notice by the other party.

#### **5. General terms**

5.1 The present Agreement has been prepared in two original English copies and is governed by Belgian law.

5.2 Annexes to the present Agreement form integral part of it.

5.3 Regarding questions not dealt with in the present Agreement in first place the ESTA standard and in second place Belgian law should apply.

5.4 In case of disputes resulting from the present Agreement and from the rights and obligations described therein the Parties should seek an amicable settlement. If such a settlement is not possible they should solve their dispute before the competent Belgian courts.

5.5 The present Agreement represents the complete understanding between the Parties and supersedes all prior or contemporaneous oral or written agreements or undertakings of the Parties referring to the subject matter of the present Agreement.

5.6 Should any provision of the present Agreement be entirely or partially invalid or the Parties be required by national law or authorities to modify certain provisions hereof, the validity of the other provisions shall be unaffected. Furthermore, in the event of an invalid provision or modification being required by national law or authorities, the Parties shall enter into negotiations and amend or replace the provision concerned by a valid provision which comes closest to what the invalid provision was intended to achieve.

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5.7 Neither the waiver by either of the Parties of a breach or a default under any of the provisions of this Agreement, nor the failure of either of the Parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provisions, rights or privileges hereunder.

5.8 All section captions are for reference only and shall not be considered in construing the present Agreement.

**Signed by:** \_\_\_\_\_

Date \_\_\_\_\_

**for and on  
behalf of ESA:**

\_\_\_\_\_  
\_\_\_\_\_

**Signed by:** \_\_\_\_\_

Date \_\_\_\_\_

**for and on behalf  
of XXX**

\_\_\_\_\_

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**ANNEX I****ESTA Trademarks**

The ESTA logos are as follows. They are all protected by Community trademark (CTM). The relevant trademark number is indicated after each logo.



Protected by CTM no. 009839051.



Protected by CTM no. 009839085.



Protected by CTM no. 009839127.

European Seed Treatment Assurance

Protected by CTM no. 009839201.



Protected by CTM no. 009819764.



Protected by CTM no. 009832296.



Protected by CTM no. 009832882.

European Seed Treatment Assurance

Protected by CTM no. 009832965.

The relevant part on the permitted use of the logos can be found in Annex 2 to the ESTA Standard.

**ANNEX II****Payment terms and conditions**

1. The Treatment Site shall pay ESA's exclusive national representative a
  - (i) handling fee of 1000€
  - and a
  - (ii) a fee of 0.005€ per treated unit.

Treated units are defined as follows:

Maize:	< 50.000 seeds
Beets (sugar and fodder):	< 100.000 seeds
Oilseed Rape (hybrid):	< 1.5 mio. seeds
Oilseed rape (lines):	< 2 mio. seeds
Sunflower:	< 100.000 seeds
Cereals and pulses:	< 1 ton
Vegetables:	to be defined

2. Payment shall take place once a year within 30 days following receipt of the invoice.
3. In the first year the handling fee should be paid by the Treatment Site upon its certification and in the following years it will be invoiced together with the fee per treated unit.
4. Payment by the Treatment Site shall be made to the following account:

**ACCOUNT DETAILS TO EB SPECIFIED**

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**ANNEX III****Framework Agreement to carry out audits regarding compliance with the ESTA standard**

This Framework Agreement is concluded

BETWEEN

**ESA European Seed Association** aisbl, registered according to Belgian law, located in 23/15, rue du Luxembourg, 1000 Brussels, Belgium and represented by its Secretary General, Mr Garlich von Essen or his delegated representative;

hereinafter referred to as '**ESA**'

AND

**XXX**, registered according to .... law, located in .... and represented by ....

hereinafter referred to as '**the Certifying Body**'

together referred to as '**the Parties**'

WITH THE FOLLOWING TERMS

**1. Object of the agreement**

By the present Agreement ESA officially accepts the Certifying Body as a body allowed to carry out audits of Treatment Sites in order to certify their compliance with the ESTA (European Seed Treatment Assurance) standard<sup>6</sup>. The Certifying Body acknowledges fulfilling the requirements and undertakes to comply with the obligations set out in the present Agreement.

**2. Requirements of acceptance**

In order to be accepted for the purpose described in point 1 of the present Agreement the Certifying Body has to fulfill the following requirements.

It must:

- be an accredited certifying body accredited or accepted by the competent national accreditation services of its registered offices;

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<sup>6</sup> The ESTA Standard is document ESA\_12.0271, adopted on March 23, 2012 by the ESA Board and May 3, 2012 by the ESA STAT, including subsequent amendments (the "**ESTA Standard**"). The ESTA Standard is available on: [http://www.euroseeds.org/codes/esta-european-seed-treatment-assurance/ESA\\_12.0271.pdf](http://www.euroseeds.org/codes/esta-european-seed-treatment-assurance/ESA_12.0271.pdf)



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- be accredited to the ISO/IEC Guide 65 – ISO/EN 45011 (General requirements for bodies operating product certification systems); and
- have proven competence and experience in the field of agriculture, forestry and fishing, group 01.01, 01.02, 01.61 as defined in NACE Rev. 2 – Statistical classification of economic activities in the European Community. 2008. European Commission.

### **3. Rights of the Certifying Body**

3.1 Upon written application and provided compliance with the requirements listed in point 2 the Certifying Body is authorized to audit Treatment Sites to certify their compliance with the ESTA standard and with that to grant the ESTA certification to audited and compliant Treatment Sites.

Accepted Certifying Bodies are then entered into a public register of accepted ESTA Certifying Bodies available on the ESTA website.

3.2 ESTA certification by an accepted Certifying Body however does not automatically mean that the certified Treatment Site is authorized to use the ESTA Trademark<sup>7</sup>, nor that the certified Treatment Site paid all relevant fees. These aspects shall be regulated in a separate agreement between ESA and the ESTA certified Treatment Site.

### **4. Obligation of the Certifying Body**

4.1 The Certifying Body undertakes to provide documentary evidence of fulfillment of the acceptance requirements as defined in point 2 of the present Agreement upon application.

4.2 The Certifying Body undertakes to inform ESA without delay in case its accreditation is suspended or withdrawn. In such case the authorization of the Certifying Body to carry out audits for verifying compliance with the ESTA standard is suspended until the accreditation is re-installed.

4.3 The Certifying Body undertakes to carry out also on-site audits – as required also by ISO/EN 45011 – when auditing an Treatment Site regarding its compliance with the ESTA standard as well as at least annual verification audits following the initial evaluation of an Treatment Site.

4.4 The Certifying Body undertakes to provide ESA's exclusive national representative with an audit report every time an Treatment Site is audited for ESTA certification. The report shall contain the following information:

- full name, address and legal structure of the audited Treatment Site;

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<sup>7</sup> ESA has obtained Community trademark related to ESTA with the following numbers: 009819764; 009832296; 009832882; 009832965; 009839051; 009839085; 009839127; 009839201 (the “**ESTA Trademarks**”).

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- the statement whether the Treatment Site is compliant with the ESTA standard with the indication of potential necessary improvements if applicable;  
If the Treatment Site complies with the ESTA standard:
- the date on which the ESTA certification was granted; and
- the scope of the ESTA certification (i.e. species covered).

The Certifying Body also provides a report to ESA's exclusive national representative regarding the main findings of the annual verification audits.

On an annual basis the Certifying Body provides ESA's exclusive national representative with an overall report indicating the full name, address, legal structure, scope and expiry date of ESTA certification of each ESTA certified Treatment Site as well as with a report on audit findings and granted and rejected ESTA certificates.

## **5. Confidentiality**

5.1 Information provided by the Agent in its reports will be handled as confidential by ESA. However, the names and contact details of ESTA certified Treatment Sites and aggregated information per country on the overall use of the ESTA system may be provided on the ESTA website for information purposes.

5.2 ESA reserves the right to use general information - not allowing the identification of individual organisations - provided in the reports from the Agent, in compliance with any applicable competition laws, for its annual reports on the functioning of the ESTA system.

## **6. Intellectual property rights**

6.1 Both the ESTA standard and the ESTA logos constitute the property of ESA and are protected respectively by copyright and Community Trademark.

6.2 Accepted Certifying Bodies are allowed to put a copy of or a link to the ESTA standard and to use the ESTA trademark on its website (or other information material) for information purposes.

## **7. Duration and termination of Agreement**

7.1 The present Agreement comes into force on the date of signature and is concluded for an indeterminate period.

7.2 The present Agreement automatically terminates if the Certification Body ceases to comply with at least one of the acceptance requirements as defined in point 2 of the present Agreement and in case this situation is not remedied in a reasonable period of time.

7.3 The present Agreement can be terminated by the common agreement of the parties at any time.

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7.4 The present Agreement can be terminated by any of the Parties unilaterally by written notice to the other party six (6) months in advance.

7.5 The present Agreement can be terminated by any of the Parties by written notice to the other party in case of serious breach of the present terms. The Agreement terminates thirty (30) days following the receipt of the notice by the other party.

## 8. General terms

8.1 The present Agreement has been prepared in two original copies and is governed by Belgian law.

8.2 Regarding questions not dealt with in the present Agreement in first place the ESTA standard and in second place the Belgian law should apply.

8.3 In case of disputes resulting from the present Agreement and from the activities described therein the Parties should seek an amicable settlement. If such a settlement is not possible they should solve their dispute before the competent Belgian courts.

8.4 The present Agreement represents the complete understanding between the Parties and supersedes all prior or contemporaneous oral or written agreements or undertakings of the Parties referring to the subject matter of the present Agreement.

8.5 Should any provision of the present Agreement be entirely or partially invalid or the Parties be required by national law or authorities to modify certain provisions hereof, the validity of the other provisions shall be unaffected. Furthermore, in the event of an invalid provision or modification being required by national law or authorities, the Parties shall enter into negotiations and amend or replace the provision concerned by a valid provision which comes closest to what the invalid provision was intended to achieve.

8.6 Neither the waiver by either of the Parties of a breach or a default under any of the provisions of this Agreement, nor the failure of either of the Parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provisions, rights or privileges hereunder.

8.7 All section captions are for reference only and shall not be considered in construing the present Agreement.

**Signed by:** \_\_\_\_\_

Date \_\_\_\_\_

**for and on  
behalf of ESA:**

\_\_\_\_\_  
\_\_\_\_\_

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\_\_\_\_\_

**Signed by:**

\_\_\_\_\_

Date

\_\_\_\_\_

**for and on behalf  
of XXX**

\_\_\_\_\_

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**ANNEX IV**  
**ESTA Trademarks**  
**(protected logos, and standards on permitted use)**

The ESTA logos are as follows. They are all protected by Community trademark (CTM). The relevant trademark number is indicated after each logo.



Protected by CTM no. 009839051.



Protected by CTM no. 009839085.



Protected by CTM no. 009839127.

European Seed Treatment Assurance

Protected by CTM no. 009839201.



Protected by CTM no. 009819764.



Protected by CTM no. 009832296.



Protected by CTM no. 009832882.

European Seed Treatment Assurance

Protected by CTM no. 009832965.

The relevant part on the permitted use of the logos can be found in Annex 2 to the ESTA Standard.

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**ANNEX V**  
**Payment Terms and Conditions**

1. The Agent shall pay ESA per each ESTA certified Treatment Site a  
(i) handling fee of 1000€  
and a  
(ii) a fee of 0.005€ per treated unit.

Treated units are defined as follows:

Maize:	< 50.000 seeds
Beets (sugar and fodder):	< 100.000 seeds
Oilseed Rape (hybrid):	< 1.5 mio. seeds
Oilseed rape (lines):	< 2 mio. seeds
Sunflower:	< 100.000 seeds
Cereals and pulses:	< 1 ton

Vegetables: to be defined

2. ESA shall pay the Agent a commission of 900€ for the provision of the services detailed in the present Agreement per each ESTA certified Treatment Site.
3. Payment shall take place once a year within 30 days following receipt of the invoice.
4. Payment by the Agent shall be made to the following account:

**ACCOUNT DETAILS TO BE SPECIFIED.**

Payment by ESA shall be made to the following account:

**ACCOUNT DETAILS TO BE SPECIFIED.**

5. Parties may decide to deduct ESA's debt from the amount due from the Agent and thus arrange the yearly payment in the form of only one bank transfer from the Agent to ESA.