

## PARTNERSHIP AGREEMENT

### On the cooperation of a central EU Melon database

FINAL VERSION, 15 March 2021

BETWEEN:

- |  |   |
|--|---|
| <i>(i) Naktuinbouw</i><br><i>(hereinafter referred to as the Coordinator),</i> | Naktuinbouw, Sotaweg 22,<br>2371 GD Roelofarendsveen, THE NETHERLANDS                         |
| And  |   |
| <i>(ii) CPVO</i>   | Community Plant Variety Office, 3 bd Maréchal Foch,<br>CS 10121, 49101 Angers Cedex 2, FRANCE |
| And  |   |
| (iii) GEVES  | GIP GEVES, 25, rue Georges Morel, CS 90024, 49071<br>Beaucouzé Cedex, FRANCE                  |
| And  |   |
| (vi) UKSUP   | UKSUP Bratislava, Matúškova 21, 833 16 Bratislava, SLOVAKIA                                   |
| And  |   |
| (v) INIA   | INIA, Ctra. de la Coruña, Km 7.5 - 28040 , Madrid, SPAIN                                      |
| And  |   |
| (vi) DGAV  | DGAV, Edifício II, Tapada da Ajuda, 1349-018 Lisboa,<br>PORTUGAL                              |

The above are together hereinafter referred to as the Parties or in the singular a Party.

WHEREAS:

The parties participated in an R&D project co-financed by the CPVO on the setting up of the European Database as centralized collection of information on varieties of common knowledge ("EU Melon DB"),

As a follow up of the R&D project it has been decided that the parties should use the data base GEMMA to store the relevant data. Accordingly, an agreement on the terms and conditions on the use of GEMMA must be entered into between the parties and GEVES (hereinafter the "IT Tool Provider"), the owner of GEMMA. During the period 2018-2020 the CPVO will enter into a contract and pay for the services rendered by GEVES in the framework of an R&D project. As from March 2021 the partners will take over the role of the CPVO in this respect.

The Parties have decided to conclude this Agreement in order to define their respective rights and obligations with respect to the management of a European Database as centralized collection of information (variety descriptions and pictures) on varieties of common knowledge ("EU Melon DB"),

IT IS AGREED AS FOLLOWS:

### **Article 1 – Purpose and scope**

1.1 The Parties have decided to conclude this Agreement in order to define their respective rights and obligations on the management of the EU Melon DB. Its intention is to define common rules for a long lasting cooperation beneficial for all partners.

### **Article 2 - Coordinator**

2.1 The General Assembly shall pursuant to Article 3 appoint a Coordinator.

2.2 It is hereby agreed that the Coordinator shall assume overall responsibility for liaison between the Parties concerning the Project, and for the administration of the implementation of this Agreement. To this effect the Coordinator shall act on behalf of the Parties and discharge such functions as defined by this Agreement and from time to time by the General Assembly as defined in Article 3 of this Agreement.

Such functions shall be limited to:

- (a) Propose the Specifications under which the Parties shall contribute with data to the EU Melon DB to the General Assembly for adoption. The Specifications will be annexed as **Annex 1** to this Agreement.
- (b) Negotiating, as from 2021, with the IT Tool Provider on the terms and conditions, including fees to be paid for the use of GEMMA. To propose to the General Assembly to agree on such terms and conditions. The contract will be signed by each individual partner. The signed contract will be annexed to this agreement as **Annex 2**.
- (c) Propose the amount of fee or fees to be paid by each of the partner for the use of the EU Melon DB.  
As there are no financial issues outside GEMMA for this moment, there is no reason to pay extra fees for the use of the EU Melon DB. The extra work for coordination will be shared by rotating it. If necessary a payment could be introduced in the future upon agreement of the General Assembly.
- (d) Administration of documents and preparation of minutes during General Assemblies and follow up of decisions.

### **Article 3 - General Assembly**

3.1 The Parties shall establish a General Assembly composed of one representative of each of them. Each representative shall have one vote. Each Party shall have the right to replace its representative and/or to appoint a proxy by informing the other Parties by post, fax or e-mail. Each representative shall have a deputy.

3.2 The General Assembly shall be chaired by the Coordinator's representative. The General Assembly shall meet at agreed intervals or at the request of its Chairman or at any other time when necessary at the request of one of the Parties where one third of the Parties agree. Meetings shall be convened by the Chairman giving at least 15 (fifteen) calendar days prior notice with the agenda. For matters of substance the minutes shall be considered as accepted by the parties if within 15 days of receipt thereof the Parties have not objected in writing.

3.3 The General Assembly shall be in charge of:

- a) Ensuring the management of the EU Melon DB
- b) Appoint one of the Partners as Coordinator for a period of three years. The mandate can be renewed.
- c) Adopt and implement an annual working program
- d) Adopt a budget
- e) On proposal from the Coordinator adopt the documents in Annexes 1-3.
- f) Decide on accepting new Parties
- g) Decide on excluding existing Parties
- h) Decisions shall be taken by the majority of the votes of the Parties present or represented by proxy except for decisions under e) where decisions shall be taken unanimously by all Parties and f) where decisions shall be taken unanimously by all the Parties with exception of the Defaulting Party.

### **Article 4 - Each Party hereby undertakes:**

4.1 Towards each other each Party undertakes to use all reasonable endeavours:

- (i) to contribute with data to the EU Melon DB in accordance with the Specifications set out in **Annex 1**.
- (ii) to pay for the use of the EU Melon DB if agreed by the General Assembly (see 2.2 (c))

- (iii) In addition to Article 4.1 (ii), each party shall bear its own costs in connection with the implementing of the work program.
- (iv) to participate actively in the performance of organizational tasks set out under this Agreement;
- (v) promptly to notify the Coordinator and each of the other Parties of any delay in performance in accordance with (i), (ii)

#### 4.2 Defaults and Remedies

In the event of a substantial breach (but not in case of force majeure) by a Party of its obligations under this Agreement which is not remedied within 60 (sixty) days of written notice from the other Parties requiring that it be remedied, the other Parties may jointly terminate this Agreement with respect to the Party concerned ("Defaulting Party") by not less than one month's prior written notice.

### **Article 5 – Confidentiality**

5.1 Documents and data established by a Party to be used for the EU Melon DB project shall not be divulged to third parties in accordance with a policy on access to such documents and data adopted by the General Assembly, to be annexed as **(Annex 3)**.

### **Article 6 - Force majeure**

6.1 If any Party is prevented or delayed in the performance of any of its obligations hereunder by any event beyond the reasonable control of that Party including but not limited to Acts of God, strikes, lockouts or other industrial action, civil commotion, war, fire, flood, or political interference then it shall notify the other Parties of the circumstances and shall be excused from performing those obligations for so long as the event constituting force majeure shall continue. If the event continues for longer than 90 days the Parties shall consult to see how best to continue to perform their obligations under the Agreement. If in the reasonable opinion of the Parties other than the Party affected by force majeure that Party will not be able to perform its obligations under this Agreement, then the Parties not so affected shall be entitled jointly to terminate this Agreement with that party.

## **Article 7 - Assignment**

7.1 No Party shall without the prior written consent of the other Parties, assign or otherwise transfer partially or totally any of its rights and obligations under this Agreement This provision shall not apply when such assignment or transfer is in favour of an Affiliated Company of the Party making the assignment or transfer.

## **Article 8 - Duration - Termination**

8.1 This Agreement shall come into force as of the date of its signature and should have a duration of three years. After this period it should be tacitly renewed each year unless terminated 12 months before the first day of January the coming year.

8.2 After the first period of three years each Party may decide to exit the cooperation provided under the agreement as from the first day of January in the following year by giving 12 months written notice to the other partners.

## **Article 9 - Dispute settlement and applicable law**

9.1 The Parties expressly agree that the present agreement shall be governed by French law. The Parties agree to strive to settle out of court the disputes likely to arise from the interpretation and the execution of this agreement. Should they fail to reach an agreement, the litigation will be submitted to the competent court in accordance with the French Law.

## **Article 10 - Language**

10.1 This Agreement is drawn up in English which language shall govern all documents, notices and meeting for its application and/or extension or in any other way relative thereto.

## **Article 11 - Entire Agreement- Amendments**

11.1 This Agreement and the EU Contract constitute the entire agreement between the Parties in respect of the Project and supersede all previous negotiations, commitments and writings concerning the Project.

Amendments and changes to this Agreement shall be valid only if made in writing and signed by an authorized representative.

Authorized to sign on behalf of

**(UKSUP, SK)**

**Signature:** \_\_\_\_\_

**Name:**

Jana Vargova

**Title:**

Director of the Institute

Annexes

Annex 1: Contribution of data

Annex 2: Licence Agreement on GEMMA website and database (*valid after March 2021*)

Annex 3: Confidentiality of data

## **Annex 1**

### **Contribution and use of data**

The EU Melon Database is built up and maintained by the parties of the Partnership Agreement. The parties are committed to contribute with the agreed set of data gained in relation to DUS test of new Melon varieties.

Each party undertakes to use all reasonable efforts to regularly update the information in the database.

#### **General principles**

1. The database is used by all partners in the project for free according to the scope of use of the DB.
2. Scope of use of the DB: Its use is limited to the management of reference collection in the context of official DUS testing of new varieties (NLI or PBR), excluding any other use.
3. The database can be used by the partners to include variety descriptions in their own databases. The data must not be used to include directly in databases of third parties without permission of the project partners (see Annex 3 for use of the data by third parties).
4. The 'Status' should be updated regularly. Each party has to ensure that the 'Status' of all varieties is up to date at least once a year before March 1<sup>st</sup>.
5. The data are owned by the project partners
6. The partners will pay an annual contribution to the administrator of the database; for conditions, see annex 2.
7. Each DUS testing station keeps responsible for the maintenance of its own (reference) variety (reference) collection, which is separate from our database project. The DB is not a substitute for a living reference collection.
8. The database will be available to the partners of the project for improvement of the quality of the identification of varieties for the registration on national lists and for the protection of Plant Breeders' Rights
9. Entrance of new participants has to be agreed by all current participants. New participants are newly entrusted EO. A new participant is obligated to include all variety descriptions from their own database. Depending on the costs of the project partners an appropriate fee shall be charged for new interested parties.
10. After the finalisation of the project a partner can stop the maintenance of the database by writing a letter to other partners (see article 8). The data in the database will not be deleted from the database. The remaining partners may use the existing data conform the general principles.
11. There will be no access to the data for third parties.

#### **Technical principles**

1. GEMMA will be used as central database.
2. The descriptions will not be harmonised between the project partners.
3. The database consists of official descriptions (max 1 per office) and working descriptions (Max 1 per office)



4. The database contains also one or more photos of the variety.
5. The database contains no molecular data. The platform will however be suitable to include such characteristics in future.
6. The TQ descriptions of new applications will be incorporated to the database temporarily. When the Official description is produced, the TQ data will be replaced.
7. Data sets from different EOs for the same variety shall be indicated with the 'Unique identifier'.

### **Access to the DB**

The parties are given administrator rights. Administrator rights are technically created by the software provider GEVES. GEVES must create access rights only on request of the coordinator appointed by the parties. The parties themselves become clients of GEVES for the software.

The person with administrator access for a party may create user access for other persons within the same organization.

The rights linked to the different access levels are defined in the Licence Agreement on GEMMA Website & Database, Annex 2

Each party has to define the access level for the individual data. The administrators and users of the parties shall have access to the agreed set of varieties and data uploaded by all partners ("Restricted access level (2)" for all parties). Access rights include reading and downloading of data.

Access to the database must not be given to any person or organization which is not a party of this partnership agreement.

### **Ownership of the data**

The data uploaded by each party are their respective property.

### **Confidentiality**

All partners have to guarantee the confidentiality requirements as defined in the Partnership agreement, and the following parts in particular:

- Annex 2: Licence agreement on GEMMA website and database
- Annex 3: Confidentiality of data

## *Annex 2*

### **License Agreement on GEMMA website and database**

**> SEE SEPARATE DOCUMENT**

## ***Annex 3***

### **Confidentiality of data**

The aim of this document is to define the policy concerning the handling and use of documents and data produced in the framework of this Partnership Agreement. The policy applies to administrative data, morphological data and photographs.

Access to the common database is limited to the parties of this agreement. The EU Melon DB was set up as a centralized collection of information on varieties of common knowledge in order to support the performance of testing on distinctness, uniformity and stability. The database shall facilitate the exchange of information between the EOs. Any other use of the database requires consent of the parties which submitted the data concerned.

The parties undertake to treat in confidence and not to disclose to third parties any documents or data concerning the use of the EU Melon DB without consent of the other