

EO -TQB AGREEMENT

AMENDMENT NO. 1

Ref. No: 75/2022/ÚKSÚP

EXAMINATION OFFICE /TECHNICALLY QUALIFIED BODY - TEMPLATE AGREEMENT

Naktuinbouw, Sotaweg 22, POB 40, 2370 AA Roelofarendsveen, the Netherlands, represented by Ir. B. (Bert) Scholte, Head of the Variety Testing Department
("the Examination Office")

AND

The Central Control and Testing Institute in Agriculture in Bratislava, Matúškova 21, 833 16 Bratislava, Slovakia, represented by Mrs. Štefánia Buschbacher, General Director
("the Technnically Qualified Body" or "TQB"),

having regard to the fact that the Examination Office has been entrusted by the Community Plant Variety Office (hereinafter "CPVO) with responsibility for the technical examination of certain species, *inter alia* *Zea Mais L. (sugar maize / popcorn* , under the Designation Agreement No DA-2022-90061/NL-Naktuinbouw

having regard to the fact that in said agreement, Parties agreed that the contracting TQB may be eligible for the technical examination of the abovementioned species, in accordance with Article 56(3) of Regulation (EC) 210/1994 (hereinafter "the Basic Regulation" or "BR")

having regard to the fact that acts performed by the Examination Office or members of the staff thereof, are considered, as far as third Parties are concerned, to be acts of the CPVO, in accordance with Article 15(2) Regulation (EC) No 874/2009, which establish the implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards proceedings before the Community Plant Variety Office (hereinafter "Proceedings Regulation" or "PR")

having regard to the fact that the Examination Office is responsible for the Technically Qualified Body's compliance with requirements, guidelines and procedures of the CPVO, and that the Technically Qualified Body is bound by the rules set out in Article 13(2)(3)PR

HAVE AGREED -

1. Scope of the Agreement

Tasks and Species falling within the scope of the Agreement

1. TQB shall undertake the part of the examination as specified in Annex A 1, for the genera and species whose list is given in the said Annex.
2. Naktuinbouw shall undertake the examination for distinctness, uniformity and stability of the variety concerned in relation to the genera and species as listed in Annex B 1
3. TQB and Naktuinbouw may agree, on an ad hoc basis, to apply this Agreement to a variety from a genus or species not listed in the relevant Annex.

2. Procedure on requests for Services made by the Examination Office

1. The Examination Office shall address a written request (by email) annually, well in advance of the deadlines as specified in the S2/S3 for *Zea Mais L. (sugar maize / popcorn)* to the TQB specifying the Service asked for.

3. Use of sub-contractors

1. For the purpose of carrying out the Services or part of the services, the TQB shall not engage any sub-contractor than the agreed sub-contractors to provide the service prior agreement or revision of designation between the Examination Office and the CPVO. If the TQB wants to make use of sub-contractors, it shall forward a written request to the Examination Office. The approval of the request is subject to a previous assessment of the Examination Office.
2. The TQB is liable for all actions carried out by sub-contractors. Staff members of the sub-contractors shall be bound by the provisions concerning confidentiality and absence of conflict of interest (see below).

4. Performance

1. The Examination Office shall apply the Entrustment Requirements. To that purpose, the Examination Office shall give specific instructions to the TQB so that the tasks are performed in accordance with the Entrustment Requirements' criteria. The TQB undertakes to perform on behalf of the Examination Office the tasks assigned to it according to the said criteria.

Technical protocols, test guidelines and national protocols

2. The technical examination shall be carried out in accordance with the applicable test guidelines (hereinafter "CPVO Technical Protocols"), issued by the Administrative Council for *Zea Mais L. (sugar maize / popcorn)* concerned as well as any instructions given by the CPVO to the Examination Office pursuant to Article 56(2) BR. Technical protocols issued by the Administrative Council enter into force on the date mentioned in the technical protocol. If no date is mentioned in the technical protocol, the entry into force is the date of approval by the CPVO Administrative Council.
3. Practical details arising out of this Agreement – regarding in particular the provisions relating to the considerations, application forms, technical questionnaires and requirements as to propagating material, testing methods, exchange of reference samples, maintenance of reference collections and the presentation of the results – shall be specified in this Agreement in Annexes A 1, and B 1.

Standard samples

4. The TQB shall not use samples received in the framework of an application for CPVR from an applicant or from another Examination Office entrusted by the Administrative Council of the CPVO for any other purposes than for technical examinations carried out under this Agreement, for national listings, national plant variety rights or certification purposes (including post control purposes). The provisions on confidentiality and conflicts of interest shall apply equally to the handling of sub-samples. The TQB shall respect the policy of the Administrative Council on "Status of plant material used for testing purposes", included in the Designation Agreement between the CPVO and the Examination Office.

Informing on problems in the tests and keeping sample

5. The TQB shall report to the Examination Office immediately in cases where the plant material of the candidate variety has not arrived in time, when the TQB encounters difficulties in obtaining the material or in cases where the material submitted does not fulfil the conditions laid down in the request for material issued by the CPVO.

5. Monitoring of the performance

1. In order to monitor the conduct of the technical examination, including inspection of the locations of the test plots and the methods used for the tests, the TQB agrees to allow the staff of the CPVO and the Examination Office to visit its premises.
2. The monitoring of the technical examination may include assessing compliance with the relevant technical protocols/test guidelines/national protocols.
3. The monitoring of the technical examination also applies to sub-contractors of the TQBs referred above.

6. Assessments by the CPVO Quality Audit Service

1. The TQB undertakes, under request of the Examination Office, to cooperate in the assessments carried out by the CPVO Quality Audit Service. The assessments are carried out to evaluate Examination Offices competence and provide a recommendation to the Administrative Council in respect of maintaining, renewing or extending the entrustment.
2. The assessment referred to above applies also to sub-contractors of the TQB involved in DUS testing.

7. Budget

1. For the service mentioned in Article 1 (1) and 1 (2) of the Agreement the Authorities agree with reciprocal testing without payment. In the case of unequal number of tests of the running testing year Authorities shall pay mutually the amount set out in Annex A 1 and Annex B 1 for each growing period of the examination. The actual fee will be confirmed annually in writing.
2. For the service mentioned in Article 1 (1) of the Agreement Naktuinbouw shall pay to ÚKSÚP the amount set out in Annex A 1 for each growing period of the examination. The actual fee will be confirmed annually in writing.
3. In the case of a service specified in Article 1 (1) and 1 (2) of the Agreement the Receiving Authority shall pay to the Executing Authority the amount of € 320 for the take-over of the final report. Naktuinbouw will pay 50€ per similar variety included in the trial. The number of similar varieties in the trial will be decided by Naktuinbouw and may differ from candidate to candidate and thus from year to year. "

8. Confidentiality

1. A member of the staff of the TQB taking part in a technical examination is not allowed to make any unauthorised use of, or disclose to any unauthorized person, any facts, documents and information coming to their knowledge in the course of or in connection with the technical examination of the candidate variety conducted in the framework of an application for CPVR without the prior express written consent of the EO. Staff members shall continue to be bound by this obligation after the termination of the technical examination concerned, after leaving the service and after the cancellation of the designation of the Examination Office, should this be the case. This shall apply *mutatis mutandis* to all material of the plant variety which has been made available to the TQB.
2. The Examination Office may monitor compliance with these rules on confidentiality.

9. Conflicts of interest

1. The TQB shall take every necessary precaution to avoid any risk of a conflict of interests and shall declare to the Examination Office without delay any situation constituting or likely to lead to a conflict of interests. A conflict of interests may arise in particular from economic interests,

political affinities, family or emotional ties, or any other common interests that are liable to influence the impartial and objective performance of the Agreement.

2. The TQB shall declare to the Examination Office, without undue delay, if it is involved in breeding activities or envisages such involvement in any situation that may lead to a conflict of interest. The same declaration shall be provided in case of R&D activities for the purposes of creation of a new variety and in general any other activity that may influence the objectivity and impartiality of the DUS test for which the TQB has been entrusted. Such a declaration should be made in accordance with the form attached to the Designation Agreement between the CPVO and the Examination Office respectively.
3. The TQB agrees to allow the Examination Office to conduct a compliance check on the measures taken and may put in place additional measures if required.

10. Liability

1. The TQB shall be liable only for demonstrable loss or damage caused by itself in performance of the Agreement, including any loss or damage caused by a sub-contractor body agreed. The Examination Office shall not be liable for any act or default on the part of the TQB in performance of the Agreement, unless TQB proven otherwise.
2. The TQB shall indemnify the Examination Office in full and undertakes to provide compensation only in the event of provable qualified action, claim or proceeding brought against it by an Examination office as a result of damage caused by the TQB in performance of the Agreement. However, the TQB shall not be liable for damages sustained by the Examination Office resulting from misconduct or negligence on the part of the Examination Office.
3. In the event of any action brought by a third Party against the CPVO in connection with performance of the Agreement, the TQB shall, upon request, assist the Examination Office and the CPVO.

11. Duration of the Agreement and Termination

1. The present agreement shall come into effect on the date of the signature and shall remain valid for the duration of the respective Designation Agreement and effective on the day following its publication in accordance with point 14 of this contract..
2. The agreement may be terminated by mutual agreement or by one Party giving the other a 12 months from the date of delivery of the written notice to the other contracting party. Unless the Parties agree otherwise, early termination of the agreement should not hinder the implementation of any ongoing activity. The Agreement will be terminated in the following cases:
 - Mutual consent of the parties;
 - Breach of the obligations by one of the parties;

- Inability to fulfill the obligations of this agreement for reasons out of the will and control of the parties;
- Annulment of the present agreement by judgement of the competent Court or prior termination of the Designation Agreement between the CPVO and the EO with reference to the entrusted species.

12. Assignment

1. The TQB shall not assign the rights and obligations arising from the Agreement, in whole or in part, without prior written approval from the Examination Office.
2. In the absence of the approval referred to in the paragraph above, or in the event of failure to observe the terms thereof, assignment by the TQB shall not be enforceable against and shall have no effect on the Examination Office.

13. Jurisdiction

1. Data protection *Processing of personal data by the Examination Office:*

Any personal data included in or related to the Agreement, including its implementation, shall be processed in accordance with REGULATION (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of natural persons in the processing of personal data by institutions, bodies, offices and agencies of the Union and on the free movement of such data, which repeals Regulation (EC) No. 45/2001 and decision no. 1247/2002/EC (hereinafter referred to as "Regulation (EU) No. 2018/1725") and Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons in the processing of personal data and on the free movement of such data, which repeals Directive 95/46/EC (General Data Protection Regulation) (hereinafter referred to as "the Regulation (EU) 2016/679") and the applicable national legislation. Such data shall be processed solely for the purposes of implementation, management and monitoring of the Agreement by the Examination Office.

Any person whose personal data is processed by the Examination Office in relation to this agreement, has specific rights as a data subject under Chapter III (Articles 12-23) of Regulation (EU) No 2016/679, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

Should any other person whose personal data is processed in relation to this Agreement have any queries concerning the processing of its data, it shall address it to the data controller. They may also address themselves to the Data Protection Officer of the data controller.

For the above-mentioned purposes,

a) the data controller is the Head of Technical Unit of the CPVO, and can be contacted at dpc@cpvo.europa.eu

b) the data protection notice is available at <https://cpvo.europa.eu/en/data-protection>

2. *Processing of personal data by the Technically Qualified Body*

Personal data in relation to the varieties tested under this agreement are not shared with the TQB.

The processing of personal data by the TQB shall meet the requirements of Regulation (EU) No 2016/679 and be processed solely for the purposes set out by the controller.

The TQB shall assist the controller in the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this Agreement as laid down in Chapter III (Articles 12-23) of regulation (EU) No 2016/679. The TQB shall inform without delay the Examination Office about such requests.

The TQB may act only on documented written instructions and under the supervision of the EO, in particular with regard to the purpose of processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its right.

The TQB shall grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the Agreement. The TQB must ensure that personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation in accordance with the provision of Article 7 by Regulation (EU) No. 2018/1725.

The TQB shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, in order to ensure in particular, as appropriate:

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- (e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

The TQB shall notify relevant personal data breaches to the controller without undue delay, and at the later within 48 hours after the TQB becomes aware of the breach. In such cases, the TQB shall provide the controller at least with the following information:

- (a) nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- (b) likely consequences of the breach;
- (c) measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.

The TQB shall immediately inform the controller if, in its opinion, an instruction infringes Regulation (EU) 2018/1725, Regulation (EU) 2016/679, or other Union or Member State data protection provisions as referred to in the agreement.

The TQB shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 41 under Regulation (EU) 2018/1725 to:

- (a) ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
- (b) notify a personal data breach to the European Data Protection Supervisor;
- (c) communicate a personal data breach without undue delay to the data subject, where applicable;
- (d) carry out data protection impact assessments and prior consultations as necessary.

The TQB shall maintain a record of all data processing operation carried out on in or relating to this Agreement, on behalf of the EO, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requested for access to personal data by third parties.

The CPVO is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services) and data security, which includes personal data held on behalf of the Office in the premises of the Examination Office or SubExamination Office (TQB).

The TQB shall notify the CPVO without due delay of any legally binding request for disclosure of the personal data processed in or relating to this Agreement made by any national public authority, including an authority from a third country. The TQB may not give such access without the prior written authorisation of the CPVO.

The duration of processing of personal data by the TQB will not exceed the period retention of personal data in accordance with the requirements of Regulation (EU) 2016/679. Upon expiry of this period and unless no new agreement with the TQB has been signed, the TQB shall, at the choice of the controller, return, without undue delay in a commonly agreed format, all personal data processed in and in relation to this Agreement and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

For the purpose of Article 4) Regulations (EU) 2018/1725, if part or all of the processing of personal data is sub-contracted to a TQB' sub-contractor, the TQB shall pass on the same obligations as set out in the Agreement, in writing to those parties. At the request of the EO, the TQB shall provide a document providing evidence of this commitment.

14. Final provisions

1. The provision of the present agreement constitute the entire agreement between the Parties and shall prevail over any other prior document. Should one of the provisions of this agreement be declared null or without object by application of any law, regulation, or decision issued by a competent Court, the other provisions of this agreement shall remain valid due observance of the laws and regulations in force.
2. Any further agreements regarding this contract will be subject to the signature by the Parties of a covenant. For the application of this agreement, the Parties declare that their residence is located at the address of their respective head offices mentioned at the head of this agreement. Each Party shall inform the others of any change regarding such address. The contracting parties have agreed that any change in the name of the general director mentioned in the identification data of this contract does not affect the content of the contract and does not need to be reported to the other contracting party.
3. The present agreement may be amended by mutual consent of the Parties. Any amendments shall be formalised in writing through a supplementary agreement which shall include the date on which said amendments become effective. No verbal agreement may bind the Parties to this effect. The supplementary agreement may not have as its purpose or effect to modify substantially the content of the present agreement.
4. The agreement becomes valid on the day of signature by both contracting parties and takes effect according to § 47a par. 1 of Act no. 40/1964 Coll. of the Civil Code, as amended, on the day following its publication in the Central Register of Contracts maintained by the Office of the Government of the Slovak Republic.

5. The contract is drawn up in 1 original, which is taken over by TQB.

Party For the Examination Office

For the Technically Qualified Body,

Date: 23 / 11 / 22

Date: 28.11.2022

Ms./Mr

Mrs. Štefánia Buschbacher

ANNEX A1

The genera and species for which TQB shall undertake the part of the examination for distinctness, uniformity and stability of the variety concerned.

Species	Common name	Date of Application	Date of Seed Submission	Date of Interim Report	Date of Final Report	Fee in EUR¹⁾
Zea mays L.	Sweet corn, pop corn					

¹⁾ The amount which Naktuinbouw shall pay to TQB in the case of unequal number of DUS tests of vegetable species stated in ANNEX A1 and ANNEX B1 is 300 € per application of each Sweet corn or popcorn.

Naktuinbouw will pay 50€ per similar variety included in the trial. The number of similar varieties in the trial will be decided by Naktuinbouw and may differ from candidate to candidate and thus from year to year. "

PRACTICAL DETAILS

On the basis of the information provided by Naktuinbouw, TQB will carry out trials with the samples of the application together with the provided sample(s) for comparison.

The applications will be judged and described according to the CPVO protocols as far as the morphological characteristics are concerned.

Characteristics to be observed

In principle the CPVO protocol characteristics are to be observed and reported and the trials may be concluded after the harvest period, however in some cases such as disease resistance characteristics and characteristics as male sterility, it is sufficient to observe these only in the Naktuinbouw trial, so laboratory resistance tests and flowering trials for biannual species as Brassica and Allium are not required in ÚKSÚP.

Uniformity

The preferred way to report uniformity is by mentioning the number and briefly describing the clear off-types, by providing a mark between 1 and 9 for the continuous variation of the trial discarding the clear off-types and by giving a final judgment by combining the number of off-types and the continuous variation into a + or a -.

Analysis of the results

It is agreed to analyze the results by comparing the TQB and Naktuinbouw notes to check for systematic differences. The outcome of these analyses will be discussed with the aim of mutual understanding and improvement. Naktuinbouw will define for each characteristic the decision base in order to decide if the results of the two trials can be combined into one conclusion. For the final description the Naktuinbouw trial will be the basis.

Photographs

For each application photographs will be made in the trial. These photographs will be exchanged.

Information on particular trial

Information includes:

- list of applied and compare varieties
- Technical questionnaires of applied varieties
- order of varieties in trial

Plant material in the trial

Naktuinbouw will send prox. 120 seeds per application and prox. 250 seeds per comparing variety.

The remaining seed after sowing of the application shall be destroyed and of the comparing variety may be stored by TQB for future use as reference material.

After final positive conclusion on the application Naktuinbouw shall send a reference sample of the former application to TQB as future reference material.

The products of the trial shall be destroyed.

Exchange of information during the trials

When during the trials problems become evident on the selected comparing varieties, information has to be exchanged during the trial to possibly discuss the use of another comparing variety. Further exchange of information should be minimized.

Visiting the trials

In principle staff of both organizations will visit each other's trial once a year.

Visit to the TQB trials by the applicants of the Dutch applications

It is possible for applicants to visit the trials on appointment. It will be made clear to the visitors that regardless the observations in the TQB trials and possible discussions in the field during the visit, the decision on DUS will be made by Naktuinbouw based on a combination of results.

ANNEX B1

The genera and species for which Naktuinbouw shall undertake the examination for distinctness, uniformity and stability of the variety concerned.

Species	Common name	Date of Application	Date of Seed Submission	Date of Interim Report	Date of Final Report	Fee in EUR ¹⁾
Zea mays L.	Sweet corn, pop corn					

¹⁾ The amount which ÚKSÚP shall pay to Naktuinbouw in the case of unequal number of DUS tests of vegetable species stated in ANNEX B1 and ANNEX A1 as indicated on the website of the Board for Plantvarieties:

<https://www.raadvoorplantenrassen.nl/en/plant-breeders-rights-and-or-listing/applicable-fees/>

FOR PRACTICAL DETAILS :**Characteristics to be observed**

All characteristics according to relevant CPVO technical protocols or UPOV guidelines should be observed.

Photographs

Photographs shall be provided in the case of uniformity or distinctness problem.

Plant material in trial, date of application and date of seed submission,

The Naktuinbouw requirements for submission of plant material can be found on the website of the Board for Plant varieties: [Requirements for submission - Raad voor plantenrassen](#)

The remaining plant material after sowing shall be destroyed.

The products from the trials shall be destroyed.

After final positive conclusion on the application TQB shall send a reference sample of the former application to Naktuinbouw as future reference material.