

Non-Assert Small Breeding Companies
relating to the European patent EP3560330
(Digestibility Trait)

The undersigned,

_____ (name and entity), having its registered office and principal place of business at _____ (address and postal code), _____ (town/city), _____ (country), in this matter duly represented by: _____, in his/her position as _____, hereinafter "**You**"

hereby notifies

KWS SAAT SE & Co. KGaA, for the attention of: Claudia Hallebach, LL.M., Head of Global Legal and IP, having its registered office and principal place of business at Grimsehlstr. 31, 37574 Einbeck, Germany

and acknowledges the following:

1 – DEFINITIONS

"**Affiliate**" means in relation to You, any existing and/or future legal entity which directly or indirectly Controls, is Controlled by, or is under common Control with You. Affiliates shall not be considered third parties hereunder.

"**Control, Controlled by or under common Control**" means the direct or indirect ownership of more than fifty percent (50%) of the voting stock of an entity and with respect to any other legal entity, ownership of more than fifty percent (50%) of total equity interests, or otherwise the power, directly or indirectly, to direct substantial management and business policies or decisions of that entity, or the power to veto substantial management and business policies or decisions of any such entity, whether through the ownership of voting securities, by contract or otherwise.

"**Non-Asserts**" means that KWS will not assert the Patent against You and your Affiliates to the extent described in section 2.

"**Marker**" means a nucleotide marker for detecting nucleotide polymorphisms.

"**Marker Allele**" means one of a plurality of polymorphic nucleotide sequences found at a marker locus in a population. A marker locus is a locus (gene, sequence or nucleotide) that a Marker detects.

"**Patent**" means the granted European patent EP3560330.

"**Small Breeding Company(ies)**" means an enterprise which i) employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million, ii) engages in breeding and/or production of seeds, and iii) is not affiliated in any way with another entity not fulfilling the requirements of lit. i) and ii) of this definition, irrespective of whether such entity Controls, is Controlled by or under common Control with it.

"**Territory**" means the Member States of the European Patent Organization in which the Patent has been validated and is still in force.

2 – NON-ASSERTS

2.1 Subject to the terms and conditions set forth herein and provided that you are a Small Breeding Company, KWS will not assert the Patent against You and your Affiliates to the extent it refers to

- a. claim 1 of the Patent in so far as it concerns – in the Territory – the screening for the presence of a Marker Allele in maize plants or plant parts from maize with an improved digestibility using Markers which identify Marker Alleles located outside of a certain chromosomal interval, which interval is flanked by the Marker Alleles ma17117s01 and ma61125s01, and not being Marker Alleles ma17117s01, ma61125s01, ma61070s01, ma50827s01, ma16983s02 and ma30168s02;
- b. the using, marketing, offering to sell, and selling in the Territory of maize plants and plant parts from maize identified by screening for the presence of a Marker Allele according to lit. a. above.

2.2 The non-assert set forth in section 2.1 includes the limited right for You and your Affiliates to contract third parties for the propagation and/or commercialization of maize plants described in section 2.1 (“Products”) in the Territory for the benefit of You and/or your Affiliates, i.e. to seed producers and growers for the propagation and treatment of Products and / or to seed agents or distributors acting in its own name or on behalf of You and/or your Affiliates with regard to the propagation, storage, marketing, sale, delivery or other commercialization of such Products in the Territory, provided however that You and/or your Affiliates are responsible for the actions of such third parties.

2.3 You will promptly notify KWS when and if You no longer fulfill the requirements of a Small Breeding Company as defined in section 1 above. From the moment on You no longer fulfill the requirements of a Small Breeding Company, the Non-Asserts provided by KWS according to section 2.1 do not apply anymore. In such case You are free to download and sign the Non-Assert for All Breeders as available on the KWS Traitway website and thereby accepting and acknowledging the Non-Assert provisions for All Breeders.

3 – LIMITATIONS

3.1 You understand that any use of the Patent by You and/or your Affiliates which goes beyond the Non-Asserts granted by KWS in section 2 requires the grant of a separate authorization of KWS which may be granted in a separate agreement, including in the form of a Standard Breeders License or a Standard Commercial License Agreement as available on the KWS TraitWay website, provided however that the respective claims of the Patent are still in force.

3.2 For the avoidance of doubt, the Non-Asserts do not apply or extend to any acts of You and/or your Affiliates outside the Territory, which includes without limitation that You and/or your Affiliates may under the Non-Asserts neither import any products described in section 2 above into the Territory nor export such products from the Territory.

4 – NO WARRANTY AND LIABILITY OF KWS

4.1 KWS makes no representations or warranties of any kind concerning the Patent and hereby disclaims all representations and warranties, express or implied, including without limitation warranties of merchantability, fitness for a particular purpose, non-infringement of any intellectual property rights or other rights of any third party.

4.2 For the avoidance of doubt, You are responsible for your and your Affiliates’ actions or omissions in connection with the Non-Asserts granted by KWS to You and your Affiliates hereunder.

5 – ADDITIONAL DECLARATION OF YOU

You herewith declare that You fulfil the criteria of a Small Breeding Company as defined in section 1.

Signature:

Name:

Position:

Place:

Date: