

PROCEDURE RULES FOR DISPUTE  
SETTLEMENT FOR THE TRADE IN SEEDS  
FOR SOWING PURPOSES AND FOR THE  
MANAGEMENT OF INTELLECTUAL  
PROPERTY MEDIATION, CONCILIATION,  
ARBITRATION

**ADOPTED AT THE GENERAL ASSEMBLY HELD ON 29 MAY 2024**

These ISF Procedure Rules for Dispute Settlement incorporate the following documents:

- Guidelines on Mediation and Conciliation adopted by the General Assembly of ISF in Rotterdam (the Netherlands) on May 29, 2024; they become effective on 01 July 2024 and replace all previous versions.
- The Arbitration Procedure Rules adopted by the General Assembly of ISF in Rotterdam (the Netherlands) on May 29, 2024. They become effective on 01 July 2024 and replace all previous versions.
- Mediation, Conciliation and Arbitration for Disputes between Professionals Concerning the Management of Intellectual Property Rights in the Field of Plant Breeding;
- Code of Ethics for Arbitrators.

In case of disagreement as to the interpretation, the English text is considered the original.

## ISF PROCEDURE RULES FOR DISPUTE SETTLEMENT FOR THE TRADE IN SEEDS FOR SOWING PURPOSES AND FOR MANAGEMENT OF INTELLECTUAL PROPERTY

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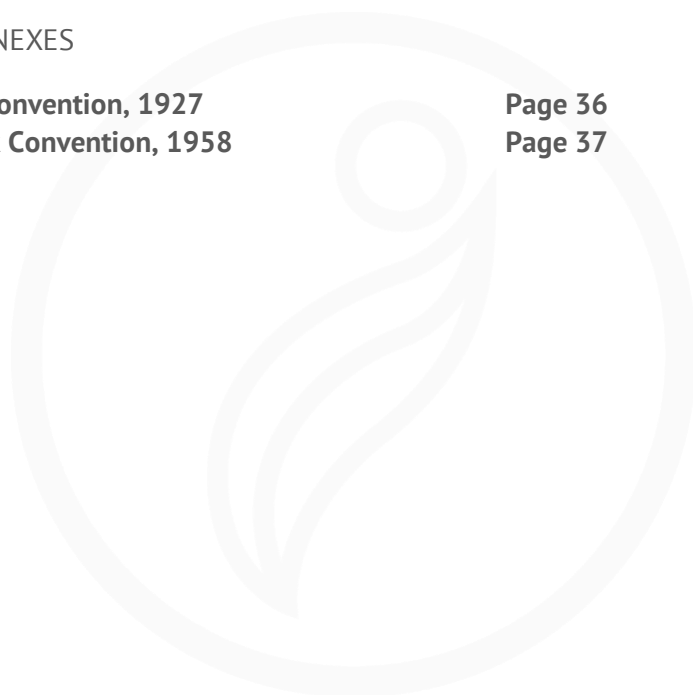
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## **A. Guidelines on Mediation and Conciliation**

### **FOREWORD**

As a principle, settlement is a desirable solution for business disputes. Although arbitration is a useful process which leads the dispute to a binding and final decision, these guidelines express the idea that the parties should look primarily within themselves to resolve private commercial conflicts through personal understanding and mutual cooperation. ISF, therefore, has set out these guidelines in order to facilitate the settlement of such disputes.

The outcome of mediation and conciliation is not a judgment establishing who is right and who is wrong. It is simply an agreement between the parties. These non-binding techniques will allow the parties themselves to control both the process and the outcome. They are typically voluntary and private methods of resolving disputes in which an impartial third party does not replace the parties but helps them negotiate a settlement. When the parties enter into an agreement to mediate or to conciliate, it implies that they commit themselves to try, in good faith, to resolve the conflict retaining the decision making power.

For that purpose, ISF not only gives the parties the possibility of using a wide range of tools to have the dispute settled, but also encourages them to use them whenever possible.

These guidelines will refer to conciliation and mediation, as ways to help the parties reach an agreement. They will be understood as alternative dispute resolution systems, which complement the use of arbitration.

The two main systems referred to in these guidelines – mediation and conciliation – do not exclude other methods the parties could agree to implement in any particular situation.

### **DEFINITIONS**

#### **ARTICLE 1**

##### **1. Mediation**

Mediation is a negotiation carried out with the assistance of a neutral third party –the mediator– who does not have the authority to give an award or to impose a decision on disputing parties. The mediator acts as a facilitator, just helping them to reach an agreement.

##### **2. Conciliation**

Conciliation is a process in which the neutral third party –the conciliator– not only attempts to motivate the parties towards a final settlement but also could be asked to give the parties a non-binding opinion. This opinion will remain confidential and will not affect the subsequent arbitration.

### **3. Arbitration**

Arbitration is a process in which each side presents its case to an arbitration tribunal for a final and binding decision.

#### **MEDIATION/CONCILIATION UNDER THESE GUIDELINES**

##### **ARTICLE 2**

All business disputes referred to ISF Rules and Usages for Trade in Seeds for Sowing Purposes or to ISF Arbitration may be submitted to conciliation or to mediation.

Conciliation and mediation are consensual and voluntary. The parties are free to voluntarily adopt them or not. None of the parties can be forced to enter into these processes. Once the process is accepted, the parties are not obliged to agree to any terms of settlement that they do not accept of their own free will.

The mediation/conciliation shall be conducted according to these Guidelines, unless prior to the confirmation or appointment of the mediator/conciliator or with the agreement of the mediator/conciliator, the parties agree upon a different settlement procedure or a combination of settlement procedures.

#### **APPLICATION FOR MEDIATION/CONCILIATION**

##### **ARTICLE 3**

1. The party requesting conciliation or mediation shall apply to the National Member Association in whose country arbitration should take place according to Article 5 paragraph 2 of the Arbitration Procedure Rules, or to ISF Secretariat, unless agreed otherwise. If in such country there is no National Association affiliated with ISF or if the existing one does not provide conciliation or mediation services, the application must be sent to the ISF Secretary General. In such a case, ISF Secretariat will organize the mediation or conciliation.
2. National Associations providing mediation and conciliation shall inform the ISF Secretariat. They shall prepare a list of mediators/conciliators who should be in full possession of their civil rights and have experience in mediation/conciliation and/or in the seed business. This list can be completely or partially identical with the list of arbitrators according to Article 3 paragraph 4 2 of the Arbitration Procedure Rules.

ISF Secretariat shall also prepare a list of mediators/conciliators who should be in full possession of their civil rights and have experience in mediation/conciliation and/or in the seed business. This list can be completely or partially identical with the list of arbitrators according to Article 3 paragraph 2 of the Arbitration Procedure Rules.

3. The application shall include:
  - (a) the names, addresses, telephone numbers, email addresses and any other contact details of the parties to the dispute and of any person(s) representing the parties in the proceedings;

- (b) a description of the dispute including, if possible, an assessment of its value;
  - (c) the indication whether the dispute should be settled according to mediation *or* conciliation;
  - (d) any agreement as to time limits for conducting the mediation/conciliation, or, in the absence thereof, any proposal with respect thereto;
  - (e) any agreement as to the language(s) of the mediation/conciliation, or, in the absence thereof, any proposal as to such language(s);
  - (f) any agreement as to the location of any physical meetings, or, in the absence thereof, any proposal as to such location;
  - (g) a joint nomination by all of the parties of a mediator/conciliator;
  - (h) a copy of any written agreement under which the application is made.
4. Together with the application, the party or parties filing the application shall pay the filing fee determined by the National Association or ISF Secretariat conducting the process.
  5. The party or parties filing the application shall simultaneously send a copy of the application to all other parties, unless the application has been filed jointly by all parties.
  6. The National Association or ISF Secretariat shall acknowledge receipt of the application and of the filing fee in writing to the parties as soon as possible. If the application was not made jointly by the parties, the other party(s) will be given a period of ten working days to inform the National Association or ISF Secretariat whether it agrees or refuses to participate in the attempt to conciliate or mediate.
  7. Where the parties have agreed that a time limit for settling the dispute shall start running from the filing of an application, such filing, for the exclusive purpose of determining the starting point of the time limit, shall be deemed to have been made on the date the National Association or ISF Secretariat acknowledges receipt of the application or of the filing fee, whichever is later.

## **SELECTION OF THE MEDIATOR/CONCILIATOR**

### ARTICLE 4

1. The parties may jointly nominate a mediator/conciliator for confirmation by the National Association or ISF Secretariat.
2. In the absence of a joint nomination of a mediator/conciliator by the parties, the National Association or ISF Secretariat shall, after consulting the parties, either appoint a mediator/conciliator or propose a list of mediators/conciliators to the parties. The parties may jointly nominate a mediator/conciliator from the said list for confirmation by the

National Association or ISF Secretariat within 10 working days, failing which the National Association or ISF Secretariat shall appoint a mediator/conciliator.

3. In accepting nomination the mediator/conciliator must agree in writing to be bound by the Code of Ethics for Arbitrators in Part D of ISF Procedure Rules for Dispute Settlement. The prospective mediator/conciliator shall disclose in writing to the National Association or ISF Secretariat any facts or circumstances which might be of such a nature as to call into question the mediator/conciliator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the mediator/conciliator's impartiality. The National Association or ISF Secretariat shall provide such information to the parties in writing and shall fix a time limit for any comments from them.
4. When confirming or appointing a mediator/conciliator, the National Association or ISF Secretariat shall consider the prospective mediator's/conciliator's attributes and the prospective mediator/conciliator's availability and ability to conduct the mediation in accordance with these Guidelines.

## **PLACE AND LANGUAGE OF THE MEDIATION/CONCILIATION**

### ARTICLE 5

1. In the absence of an agreement of the parties, the National Association or ISF Secretariat may determine the location of any physical or virtual meeting of the mediator/conciliator and the parties or may invite the mediator/conciliator to do so after the mediator/conciliator has been confirmed or appointed.
2. In the absence of an agreement of the parties, the National Association or ISF Secretariat may determine the language(s) in which the mediation shall be conducted or may invite the mediator/conciliator to do so after the mediator/conciliator has been confirmed or appointed.

## **CONDUCT OF THE MEDIATION/CONCILIATION**

### ARTICLE 6

1. The mediator/conciliator and the parties shall promptly discuss the manner in which the mediation/conciliation shall be conducted, unless parties have already agreed on the manner in which the mediation/conciliation will be conducted, including timelines, before the mediator/conciliator was appointed.
2. After such discussion, the mediator/conciliator shall provide the parties within 5 working days with a written note informing them of the manner in which the mediation/conciliation shall be conducted. Any objections against this note must be expressed by the parties in writing within 5 working days after receipt of the note, failing which the parties are bound by the procedure set out in the note.

3. If they so wish the parties may be assisted by counsel of their choice and at their own expense.
4. In establishing and conducting the mediation/conciliation, the mediator/conciliator shall be guided by the wishes of the parties and shall treat them with fairness and impartiality.
5. Each party shall act in good faith throughout the mediation/conciliation.

## **FEES AND COSTS**

### ARTICLE 7

1. The party or parties filing a request for mediation/conciliation shall include with the request the non-refundable filing fee required by Article 3 paragraph 4. No request shall be processed unless accompanied by the filing fee.
2. Following the commencement of the proceedings, the National Association or ISF Secretariat may request the parties to pay one or more deposits to cover the administrative expenses of the process and the fees and expenses of the mediator/conciliator, to be determined by the National Association or ISF Secretariat.
3. The National Association or ISF Secretariat may stay or terminate the proceedings if any requested deposit is not paid.
4. Upon termination of the proceedings, the National Association or ISF Secretariat shall fix the total costs of the proceedings and shall, as the case may be, reimburse the parties for any excess payment or bill the parties for any balance required.
5. All deposits requested and costs fixed shall be borne in equal shares by the parties, unless they agree otherwise in writing. However, any party shall be free to pay the unpaid balance of such deposits and costs should another party fail to pay its share.
6. A party's other expenditure shall remain the responsibility of that party, unless otherwise agreed by the parties.

## **TERMINATION OF THE MEDIATION/CONCILIATION**

### ARTICLE 8

1. Proceedings which have been commenced pursuant to these Guidelines shall terminate upon written confirmation of termination by the National Association or ISF Secretariat to the parties after the occurrence of the earliest of:
  - (a) the signing by the parties of a settlement agreement;
  - (b) the notification in writing made to the mediator/conciliator by any party, at any time after it has received the mediator's/conciliator's note referred 6 paragraph 2, that such party has decided no longer to pursue the mediation/conciliation;



- (c) the notification in writing by the mediator/conciliator to the parties that the mediation/conciliation has been completed or terminated;
  - (d) the notification in writing by the mediator/conciliator to the parties that, in the mediator's/conciliator's opinion, the mediation/conciliation will not resolve the dispute between the parties;
  - (e) the notification in writing by the National Association or ISF Secretariat to the parties that any time limit set for the proceedings, including any extension thereof, has expired;
  - (f) the notification in writing by the National Association or ISF Secretariat to the parties, not less than five working days after the due date for any payment by one or more parties pursuant to these Guidelines, that such payment has not been made or;
  - (g) the notification in writing by the National Association or ISF Secretariat to the parties that, in the judgment of the National Association or ISF Secretariat, there has been a failure to nominate a mediator/conciliator or that it has not been reasonably possible to appoint a mediator/conciliator.
2. The mediator/conciliator shall promptly notify the National Association or ISF Secretariat of the signing of a settlement agreement by the parties or of any notification given to or by the mediator/conciliator pursuant to Article 8 paragraph 1 subparagraphs (b) and (d), and shall provide the National Association or ISF Secretariat with a copy of any such notification.

## **CONFIDENTIALITY**

### ARTICLE 9

1. In the absence of any agreement of the parties to the contrary and unless prohibited by applicable law:
  - (a) The proceedings, but not the fact that they are taking place, have taken place or will take place, are private and confidential;
  - (b) Any settlement agreement between the parties shall be kept confidential, except that a party shall have the right to disclose it to the extent that such disclosure is required by applicable law or necessary for purposes of its implementation or enforcement.
2. Unless required to do so by applicable law and in the absence of any agreement of the parties to the contrary, a party shall not in any manner produce as evidence in any judicial, arbitral or similar proceedings:
  - (a) Any documents, statements or communications which are submitted by another party or by the mediator/conciliator in or for the proceedings, unless they can be obtained independently by the party seeking to produce them in the judicial, arbitral or similar proceedings;

- (b) Any views expressed or suggestions made by any party within the proceedings with regard to the dispute or the possible settlement of the dispute;
- (c) Any admissions made by another party within the proceedings;
- (d) Any views or proposals put forward by the mediator/conciliator within the proceedings; or
- (e) The fact that any party indicated within the proceedings was ready to accept a proposal for a settlement.

## **GENERAL PROVISIONS**

### ARTICLE 10

1. Unless all of the parties have agreed otherwise in writing or unless prohibited by applicable law, the parties may commence or continue any judicial, arbitral or similar proceedings in respect of the dispute notwithstanding the proceedings under these Guidelines. The mediation/conciliation procedure interrupts the time frame for the application for ISF arbitration.
2. Unless all of the parties agree otherwise in writing, a mediator/conciliator shall neither act nor shall have acted in any judicial, arbitral or similar proceedings relating to the dispute which is or was the subject of the proceedings under these Guidelines, whether as a judge, an arbitrator, an expert or a representative or advisor of a party.
3. Unless required by applicable law or unless all of the parties and the mediator/conciliator agree otherwise in writing, the mediator/conciliator shall not give testimony in any judicial, arbitral or similar proceedings concerning any aspect of the proceedings under these Guidelines.
4. The mediator/conciliator, the National Association, ISF Secretariat and its employees and representatives shall not be liable to any person for any act or omission in connection with the proceedings, except to the extent such limitation of liability is prohibited by applicable law.
5. For all matters not expressly addressed in these Guidelines, the National Association or ISF Secretariat and the mediator/conciliator should act in accordance with the spirit of these Guidelines.

## B. Arbitration Procedure Rules

### DEFINITIONS

#### ARTICLE 1

1. **International Seed Federation** (hereinafter ISF): A nongovernmental, nonprofit International Association of National seed trade and/or plant breeders Associations and individual companies acting in plant breeding and/or seed trade, located in Nyon (Switzerland);
2. **ISF Secretary General**: administers ISF under the authority and the control of the President; through a delegation of power the Secretary General represents the Federation in all civil and legal actions, and may perform all legal acts that are necessary for the smooth running of the Federation. The Secretary General has the specific task of ensuring the proper application of the ISF Rules and Usages for the Trade in Seeds for Sowing Purposes (hereinafter Trade Rules), particularly with regard to organization of arbitration according to these Arbitration Procedure Rules (hereinafter the Procedure Rules);
3. **ISF Secretariat**: the staff assisting the Secretary General and in some circumstances delegated to follow specific subjects like arbitration cases;
4. **Arbitration Chamber**: service, facilities and group of arbitrators organized by ISF member associations or ISF Secretariat for conducting arbitration in accordance with these ISF Procedure Rules;
5. **Arbitral Tribunal**: the arbitrators who evaluate the dispute, who determine the outcome of it and issue the award.
6. **Appeal**: a petition for review of a case that has been decided by an Arbitral Tribunal. The petition shall be dealt with by a different Arbitral Tribunal that may confirm, overturn or modify the decision of the Tribunal in the first instance.
7. **ex aequo et bono**: Latin term which means what is just and fair or according to equity and good conscience; the power of the arbitrators to dispense with consideration of the law and contemplate solely what they consider to be fair and equitable in the case at hand;
8. **amiable compositeurs**: agreement permitting the arbitrators to decide the dispute according to the legal principles they believe to be just, without being limited to any particular national law; arbitrators are authorized as *amiable compositeurs* to disregard legal technicalities and strict constructions and to take into account the usages and habits of the seed trade.

### APPLICATION OF THESE RULES – NATURE OF ISF ARBITRATION

#### ARTICLE 2

1. Except otherwise agreed by the parties, when the words “ISF Rules” have been embodied in a contract, any dispute arising from that contract must be referred to ISF arbitration under

the ISF Procedure Rules. Parties may also agree, without that clause in their contract, to refer any dispute among them relating to seed trade and/or production to ISF arbitration. In both cases the disputes will be settled in accordance with these Procedure Rules.

2. These Procedure Rules shall govern the arbitration except when any of these Procedure Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate.
3. ISF arbitration is, by essence, *ex aequo et bono* and the arbitrators will act as *amiable compositeurs*.

## **ORGANIZATION OF THE ARBITRATION**

### ARTICLE 3

1. In conformity with International Seed Federation Articles of Association, member associations shall organize facilities for conducting arbitration according to the Trade Rules and to these Procedure Rules establishing an Arbitration Chamber. If there is more than one member association in a given country, they shall agree on the establishment of only one Arbitration Chamber.
2. In the case a member association does not organize an Arbitration Chamber by itself the ISF Arbitration Chamber will be organizing the arbitration.
3. Each member association providing an Arbitration Chamber shall prepare a list of at least 8 arbitrators *in its country* to be deposited at the ISF Secretariat. This list should be approved by a decision body of the association. This list may contain arbitrators from the member association that has designated the Arbitration Chamber to manage its cases. This list should be updated every 5 years.
4. ISF Secretariat shall prepare a list of at least 15 experienced arbitrators for the ISF Arbitration Chamber, which should be approved by ISF Board of Directors. Further details on the selection of arbitrators would be listed in ISF internal rules.
5. The list should be updated every 5 years.
6. The arbitrators should be in full possession of their civil rights and have professional experience in the seed industry. Only arbitrators appearing on this list can be appointed to Arbitral Tribunals either by the parties or by the Arbitration Chamber. Arbitration Chambers shall report immediately any modification of the list of arbitrators to the ISF Secretariat.
7. An arbitrator representing or employed by a company that has not fulfilled its obligations arising from an arbitration award and to which the ISF Secretary General has applied Article 19 of these Procedure Rules shall be considered ineligible to serve.

8. The possibility to have arbitration will be suspended in countries from which the ISF Secretariat has not received the information as required in paragraph 3 1 of this Article, The Arbitration Chamber by default will be ISF Arbitration Chamber.

## **MEANS OF COMMUNICATION - CALCULATION OF PERIODS OF TIME**

### **ARTICLE 4**

1. A notice, notification or communication may be transmitted by any means of communication that provides or allows for a record of its transmission and record of delivery.
2. All notifications or communications shall be made to the address of the party as notified either by the party in question or by the other party/parties.
3. If, after reasonable efforts, delivery cannot be made in accordance with paragraph 2, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.
4. A notice shall be deemed to have been received on the day it is delivered or attempted to be delivered in accordance with precedent paragraphs.
5. For the purpose of calculating a period of time under these Procedure Rules, such period shall begin to run on the day after a notice is received. Official and bank holidays in the countries of the parties are not included in the calculation of this period meaning that said period starts on the first upcoming working day.

## **APPLICATION FOR ARBITRATION**

### **ARTICLE 5**

1. Application for arbitration must be made within the time limit as mentioned in the Trade Rules (365 days after the first communication between the parties concerning the dispute) governing the contract or as agreed in the arbitration agreement if made separately from the contract.
2. Applications for arbitration, as well as all other correspondence concerning the arbitration, must be prepared in as many copies as the parties part of the process, the Arbitration Chamber and arbitrators to be appointed plus one copy for the ISF Secretariat and must be sent to the Arbitration Chamber of the seller's or multiplier's country, or the ISF Arbitration Chamber, unless otherwise agreed by the parties.
3. If there is no national association affiliated to ISF in the seller's or multiplier's country, or if that association has not yet organized an Arbitration Chamber, the application for arbitration must be addressed to the ISF Secretary General. The ISF Secretary General will organize the arbitration under the ISF Arbitration Chamber.

4. One original hard copy application and the set of attachments must be sent to the relevant Arbitration Chamber. Copies may be sent in hardcopy or electronic format as decided by the Arbitration Chamber. Applicant is responsible for the appropriate identification of the documents, their order and their reference number.
5. As soon as the Arbitration Chamber receives the application the arbitral proceedings shall be deemed to commence.
6. The application, written in English, must contain:
  - (a) A request that the dispute be referred to arbitration; the request should also indicate if the parties have tried to settle the dispute amicably, for example through mediation or conciliation
  - (b) The names and contact details of the parties (claimant(s) and respondent(s))
  - (c) A copy of the contract or other legal instrument out of or in relation to which the dispute arises and making reference to ISF Rules, or a copy of the agreement to refer the dispute to ISF arbitration;
  - (d) A brief description of the claim, an indication of the amount involved, if any, and a clear statement of the questions/request asked to the arbitrators;
  - (e) The relief or remedy sought;
  - (f) Copies of all the documents on which the claimant wishes to base its case;
  - (g) Proof of payment of the deposit as specified in Article 6.
7. In the event that the claimant fails to comply with any of these requirements, the Arbitration Chamber may fix a time limit within which claimant must comply, failing which the file shall be closed without prejudice to claimant's right to submit the same claims at a later date in another application, but still within the time limit as stated in paragraph 1.
8. The Arbitration Chamber must, as soon as possible, communicate the application to respondent. The communication will include the application itself and all the documents attached and all the relevant information for respondent to be informed about the procedure.
9. The establishment of the Arbitral Tribunal shall not be hindered by any controversy on the application with respect to any issues other than those mentioned in paragraph 6 of this Article.
10. The parties may be represented by persons chosen by them. The names and contact details of such persons must be communicated to all parties and to the Arbitral Tribunal. Where a person is to act as a representative of a party, the Arbitral Tribunal, on its own initiative or at the request of a party, may at any time require proof of authority granted to the representative in such a form as the Arbitral Tribunal may determine.

## **DEPOSIT**

### **ARTICLE 6**

1. In order to guarantee the payment of the arbitration costs a deposit as published on the ISF webpage must be paid to the Arbitration Chamber at the time of making the application. If the deposit is not paid the application will not be accepted. Article 5 paragraph 7 similarly applies.
2. The arbitrators or the Arbitration Chamber may require from the applicant an additional deposit, which must be paid within the time mentioned in the notification of the additional amount.
3. If the deposit as mentioned in paragraph 2 has not been remitted within the time limit indicated the application will be considered as withdrawn. The Arbitration Chamber shall inform the other party/parties accordingly. The Arbitration Chamber will decide if and how to return to the applicant the deposit already paid after deduction of the costs incurred.

## **RESPONSE TO THE APPLICATION AND COUNTERCLAIM(S)**

### **ARTICLE 7**

1. Within 20 working days after the receipt of the application for arbitration, the respondent shall communicate to the Arbitration Chamber a response to that application, which shall include:
  - (a) The name and contact details of the respondent;
  - (b) A response to the information and/or to the claims set forth in the application for arbitration;
  - (c) A brief description of all defenses the respondent wants to raise against the application of the claimant and all the documents on which the respondent wants to base its case.
2. The response and the set of attachments as well as all other correspondence concerning the arbitration must be sent to the Arbitration Chamber. Copies must be sent in hardcopy or electronic format (to be decided by the Arbitration Chamber). The respondent is responsible for the appropriate identification of the documents, their order and their reference number.
3. In the event that the respondent fails to comply with any of these requirements, the Arbitration Chamber may fix a time limit within which the respondent must comply. In case the respondent fails to do so or if the respondent refuses or fails to take part in the arbitration or any stage thereof, the arbitration shall proceed notwithstanding such refusal or failure. In such a case, the facts and the documents provided by the claimant shall be presumed undisputed.

4. The establishment of the Arbitral Tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the application for arbitration, or an incomplete or late response thereto, which shall be finally resolved by the Arbitral Tribunal.
5. The respondent is entitled to file one or more counterclaims against the claimant, provided this claim or claims arise from the same relationship as the original claim(s).
6. Any counterclaim(s) made by the respondent shall be filed with its response and shall provide:
  - (a) A description of the nature and circumstances of the dispute giving rise to the counterclaim(s); and
  - (b) A statement of the relief sought, including, to the extent possible, an indication of any amount(s) counterclaimed.
7. Paragraph 2 of this Article will similarly apply for the counterclaim(s).
8. The claimant shall file a response to any counterclaim within 20 working days from the date of receipt of the counterclaim(s). Paragraph 2 of this Article will similarly apply for this response.

## **NOMINATION OF THE ARBITRATORS**

### ARTICLE 8

1. Once the requirements of Articles 5 and 6 of these Procedure Rules have been complied with, the Arbitration Chamber shall communicate the list of arbitrators to the parties.
2. Each party shall nominate one arbitrator within the 15 working days following receipt of the list of arbitrators. If that nomination is not made within the prescribed time limit, the Arbitration Chamber shall nominate the missing arbitrator(s).
3. The third arbitrator shall be nominated by the Arbitration Chamber - unless otherwise agreed by the parties before the application. This arbitrator will be the chairman of the Arbitral Tribunal.
4. Where there are multiple parties, whether as claimant or as respondent, the multiple claimants, jointly, and the multiple respondents, jointly, shall nominate an arbitrator.
5. In accepting nomination to the Arbitral Tribunal, each arbitrator must agree in writing to be bound by the Code of Ethics for Arbitrators in Part D of the ISF Procedure Rules for Dispute Settlement.
6. The Arbitration Chamber shall communicate the composition of the Arbitral Tribunal to the parties as soon as possible.



7. Unless all of the parties agree otherwise a person who acted as a mediator/conciliator in a case between the same parties shall not be eligible as an arbitrator.

## **CHALLENGE AND REPLACEMENT OF ARBITRATORS**

### **ARTICLE 9**

1. An arbitrator may be challenged by the parties if there are circumstances that give rise to justifiable doubts as to the arbitrator's impartiality or independence. A party may challenge the arbitrator it has appointed itself only for reasons which it becomes aware of after the appointment has been made.
2. If a party wishes to challenge an arbitrator, it must submit a reasoned written request to the Arbitration Chamber within eight working days following receipt of the composition of the Arbitral Tribunal, except in the condition as provided for in the second sentence of Article 9.1.
3. The decision as to whether or not the challenge is justified shall be given, after consideration of the reasons, by the Arbitration Chamber.
4. If the challenge is accepted, a substitute arbitrator will be nominated in the same way in which the challenged arbitrator was nominated, within a period of ten working days.
5. The rule set forth in paragraph 4 applies also in any case an arbitrator should be replaced during the proceedings.
6. If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the Arbitral Tribunal decides otherwise.

## **SECRETARY**

### **ARTICLE 10**

The Arbitration Chamber or the Arbitral Tribunal may designate a Secretary to assist the arbitrators. The arbitrators may delegate to the Secretary certain procedural duties, but the arbitrators are exclusively responsible for the content of the award.

## **SEAT OF THE ARBITRATION, LANGUAGE AND APPLICABLE RULES**

### **ARTICLE 11**

1. The seat of the arbitration shall be the place where the Arbitration Chamber has its main seat. Nevertheless, the Arbitral Tribunal may conduct hearings and meetings and deliberate at any location it considers appropriate, including by virtual means.

2. In the absence of an agreement between the parties, the Arbitral Tribunal shall determine the language of the arbitration, due regard being given to all relevant circumstances, including the language of the contract. In case of arbitration at ISF Arbitration Chamber, the language of the arbitration shall be English.
3. The proceedings before the Arbitral Tribunal shall be governed by these Procedure Rules, In all cases, the Arbitral Tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its position and argumentation.
4. The Arbitral Tribunal has the power of *amiable compositeurs*, deciding on the merits of the dispute *ex aequo et bono*. In all cases the Arbitral Tribunal shall take account of the provisions of the contract, and the Trade Rules in force at the time of concluding the contract.

## THE ARBITRATION PROCEDURE

### ARTICLE 12

1. At the request of the Arbitral Tribunal the parties must supply all the details and information regarding the case in writing. They must also comply with other requests made by the Arbitral Tribunal. If a party does not comply with the requests, the Arbitral Tribunal may, when giving the award, draw such conclusions as seems appropriate to it.
2. The Arbitral Tribunal shall invite the parties to a face to face oral hearing unless decided otherwise by the Arbitral Tribunal and agreed by the parties.
3. The Arbitral Tribunal may authorize the parties to bring or to summon witnesses or experts, and it may summon witnesses or experts itself.
4. All communications between parties and the Arbitral Tribunal outside the hearings shall be in writing. Any such communication from a party shall be sent to each other party, to the Arbitration Chamber and to each of the arbitrators.
5. After having provided the details and information regarding the case according to paragraph 1 of this Article or after the oral hearing referred to in precedent paragraphs, the parties will not be allowed to make new claims or counterclaims nor to present new documentary evidence unless authorized to do so by the Arbitral Tribunal which shall consider the nature of such new claims or documents, the stage of the arbitration and other relevant circumstances.
6. The Arbitral Tribunal has complete discretion to determine the admissibility, relevance, pertinence, materiality and weight of the evidence offered or suggested.
7. The Arbitral Tribunal shall proceed within the shortest possible time to establish the facts of the case by all appropriate means.
8. The parties may attend the hearing personally or may be represented by a duly accredited proxy.

9. A failure by any party to object within 10 working days to any non-compliance with these Procedure Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.
10. When it is satisfied that the parties have had a reasonable opportunity to present their cases, the Arbitral Tribunal shall declare the proceedings closed.

## **WITHDRAWAL OF THE ARBITRATION AND SETTLEMENT**

### **ARTICLE 13**

1. The claimant may withdraw from the arbitration process by submitting a request in writing to the Arbitration Chamber. When the withdrawal is filed before the reception by the respondent of the communication of the application sent by the Arbitration Chamber, the arbitration will be declared terminated and no agreement of the respondent will be needed. Once the respondent has been informed of the application, the arbitration cannot be withdrawn without its consent.
2. If in the course of arbitration a settlement is reached, which should be confirmed by both parties in a written and signed statement to the Arbitral Tribunal, the Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the Arbitral Tribunal, record the settlement in the form of an arbitration award on agreed terms. The Arbitral Tribunal is not obliged to give reasons for such an award.
3. Copies of the order for termination of the arbitral proceedings or of the arbitration award on agreed terms, signed by all the arbitrators, shall be communicated by the Arbitration Chamber to the parties.

## **AWARD**

### **ARTICLE 14**

1. The arbitrators shall render the final award within two months after the day on which the Arbitral Tribunal declared the proceedings closed. The arbitrators shall, however, be authorized to extend that term if there are, in their opinion, exceptional circumstances requiring such an extension.
2. Awards shall be made in writing and signed by all arbitrators. If this is not possible due to *force majeure* the award shall state the reason for the absence of a signature, but it will be valid nevertheless.
3. The Arbitral Tribunal shall give the award by a majority decision or, if no majority can be reached, by the decision of the chairman alone, who will draw up the award. In all cases all arbitrators shall sign the award and shall keep confidential all information concerning the decision process.

4. Any arbitration award shall contain: (a) the names of the parties; (b) the names of the arbitrators; (c) a brief description of the matter in dispute; (d) a statement of the facts, the decision and the arguments for the decision; (e) the amount of the costs and who is obliged to pay them; (f) all other information necessary for the validity and enforceability of the award.

The award shall be drawn up in such a way that it complies with the provisions of the Conventions of Geneva and New York.

5. Any award shall be deemed to have been made at the place of the arbitration and on the date stated therein.
6. The award shall be made in at least five originals. The Arbitration Chamber shall send by registered mail or any other means of communication that allows for proof of delivery, as soon as possible and not later than two months after the award has been rendered, one signed original to each of the parties and to the ISF Secretariat. One signed original shall be used to satisfy the legal requirements of the country where the arbitration was held, another signed original staying in the files of the Arbitration Chamber.

## **RECOURSE OF APPEAL – CONDITIONS OF ADMISSIBILITY**

### ARTICLE 15

1. Each party may appeal against the award to the ISF Secretariat unless otherwise agreed by the parties. That appeal must be filed not later than 30 calendar days after acknowledgment of receipt (proof of delivery) of the award. The application for appeal must also contain a copy of the arbitration award.
2. Although the effects of the award are suspended in case of appeal by one party, nevertheless if the award contains an obligation to be fulfilled by the appealing party, he or she must furnish or remit within the time indicated by the ISF Secretariat a security to guarantee that the award of the first instance, if confirmed, will be implemented. This security must be furnished or remitted, to the ISF Secretariat. That security shall consist either of a deposit of the amount, or a confirmed irrevocable bank guarantee for a minimum period of 12 months, of 25% of the amount awarded, and maximum 100'000CHF except if the parties agree on another form of guarantee.
3. An appeal deposit as determined by the ISF Secretary General and as published on the ISF website must be remitted to the ISF Secretariat within the time limit fixed by the ISF Secretary General. The Arbitral Tribunal may fix the deposit at a higher amount. The increase must be paid within the time mentioned in the notification requiring the higher amount.
4. The ISF Secretary General organizes the appeal and is the sole Arbitration Chamber in case of appeal.
5. The list of arbitrators mentioned in Article 3.2 shall be the same list used for appeal.

6. The appeal shall be heard by three arbitrators designated by each party and the ISF Secretary General. The arbitrators who have been arbitrators in the first instance shall not be appeal arbitrators. The arbitrators shall not belong to any of the Parties company and its affiliates. The rules for challenge and replacement of the arbitrators and for designation of a Secretary as mentioned in Article 9 and 10 of these Procedure Rules apply accordingly.
7. The procedure shall be conducted in English unless otherwise decided by the appeal Arbitral Tribunal. Articles 11, 12 and 13 of these Procedure Rules similarly apply. Hearings should take place by online meetings, unless otherwise decided by the Arbitral Tribunal.
8. No new evidence will be allowed in the appeal process unless otherwise decided by the appeal Arbitral Tribunal and the facts brought forward in the first instance shall be deemed as given also for the appeal proceedings.
9. After notification of the appeal award, if it confirms the first instance award, the ISF Secretariat shall put the security referred to in paragraph 2 at the disposal of the successful party. If the appeal award invalidates or modifies the first instance award and if the security has been furnished in cash, the surplus, if any, must be immediately reimbursed to the party which has furnished the security.
10. For the appeal award article 14 similarly applies.

## **RULES OF CONFIDENTIALITY AND EXCEPTIONS**

### **ARTICLE 16**

1. The Arbitration Chamber, the parties, the Arbitral Tribunal, ISF Secretary General, ISF Secretariat and the expert witnesses shall keep the proceedings and the arbitration award confidential except in the case it has to be used to protect one's rights and in the other cases indicated below in this Article.
2. Extracts of appeal awards, without revealing the names of the parties and any other element that can identify the parties, may be published by the ISF Secretariat.
3. Nothing in these Procedure Rules and no agreement between the parties to the contrary can prevent ISF from exercising the rights according to Article 19.

## **ARBITRATION COSTS**

### **ARTICLE 17**

1. The arbitration costs shall generally be for the account of the unsuccessful party or parties. However, the Arbitral Tribunal may apportion these costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. The term “costs” includes: (a) the fees of the Arbitral Tribunal and if applicable the Secretary of the Tribunal; (b) the reasonable travel and other expenses incurred by the arbitrators and the Secretary; (c) the reasonable costs of expert advice and of other assistance required by the Arbitral Tribunal; (d) the reasonable travel and other expenses of witnesses to the extent such expenses are approved by the Arbitral Tribunal; (e) any fees and expenses of the Arbitration Chamber and of ISF.
3. The costs shall be fixed by the Arbitration Chamber, and they shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

## **EFFECTS OF THE AWARD**

### **ARTICLE 18**

1. Unless appeal recourse was filed in the terms of Article 15, the first instance award shall be final and binding on the parties. The financial and other obligations falling upon the parties should be fulfilled within 30 calendar days that follow the receipt of the award, unless otherwise determined by the Arbitral Tribunal.
2. The effects of the award are suspended in case of appeal by one party. The Secretariat shall immediately after receipt of an appeal inform the other party or parties thereof. If there is no appeal, the successful party can demand the enforcement of the award according to the rules in force in the country where enforcement is requested.
3. An appeal award shall be final, binding and immediately enforceable according to the rules in force in the country where enforcement is requested.

## **FAILURE TO COMPLY WITH A FINAL AWARD**

### **ARTICLE 19**

1. When one of the parties has not fulfilled its obligations arising from a final ISF arbitration award, the other party may request ISF to publish the failure of the first party to comply with the award.
2. For that purpose, the successful party shall report the default to the ISF Secretariat, providing a signed statement that the award has not been fulfilled. That signed statement shall be sent by ISF Secretariat to the unsuccessful party by registered mail, offering that party an opportunity to explain or otherwise respond to the alleged failure to comply. The unsuccessful party shall be notified that in the absence of an acceptable response, that can only be *force majeure*, the allegation that it has failed to honor the award will be presumed to be correct and said failure will be published. A registered mail sent to the correct address and not accepted or not collected by the addressee is considered as received and the procedure will continue.
3. An award shall be considered as final for the purpose of this Article if it is an appeal award or after the time for filing such appeal has expired.

4. The decision to publish the failure to comply adopted by the ISF Secretary General shall be communicated to all ISF members. The member associations are required to inform all their members. The ISF Secretariat and the member associations shall expressly indicate that this information does not prevent the possibility of exercising other judicial actions. If one of the parties or both parties have informed the ISF Secretariat that they have sought judicial review in any court of competent jurisdiction before sending the notification, then the ISF Secretary General, and in turn, the member associations, will indicate in the notification that a judicial review is pending. The ISF Secretary General will notify all the members of the judicial decision, upon request of one of the parties.
5. Nevertheless, ISF could refrain from taking a final decision on the request until an eventual judicial review sought was exhausted, taking into consideration the effect given to that recourse in the law of the country where that revision is sought and any other relevant information.
6. When a member of an association affiliated with ISF or any other member of ISF has not fulfilled its obligations arising from a final ISF arbitration, that member will be immediately barred from participating in any ISF activities and congresses.
7. Re-admission will be decided by the General Assembly of ISF after a new application by this member, and after being shown proof that the obligations have been fulfilled.

## **EXCLUSION OF LIABILITY**

### ARTICLE 20

The Arbitration Chamber, the arbitrators, the Secretary of the Arbitral Tribunal, the experts and witnesses, the ISF Secretary General and the ISF Secretariat shall in no way be liable towards the parties for any damage whatsoever arising in connection with the arbitration or from the application of these Procedure Rules.

## **EXPEDITED PROCEDURE**

### ARTICLE 21

1. The expedited procedure is an expeditious and simplified arbitration procedure, to facilitate and accelerate the recovery of money claims that qualify as being unquestionable, liquid and due. That procedure may be applied to money claims not exceeding the amount of CHF 250,000 (or the equivalent in another currency as of the date of the arbitration claim) not including damages and/or indemnities.
2. Application for arbitration written in English must be sent in four copies in line with provisions of Paragraphs 1 and 3 of Article 5 and must contain:
  - (a) A request that the dispute will be referred to expedited arbitration;

- (b) The names and contact details of the parties (claimant and respondent);
  - (c) Copy of the contract or other legal instrument out of or in relation to which the dispute arises;
  - (d) The precise amount being claimed together with a detailed account of the various components of the money claim as well as the grounds of said claim;
  - (e) The deposit as stipulated in Article 6.
3. The Arbitration Chamber:
- notifies the respondent that an application has been received, and sends to that party one copy of the application; a copy of the application should be sent to ISF Secretariat also.
  - nominates an arbitrator of the list of arbitrators as defined in Article 3 paragraph 4. The parties shall be informed by telephone, fax or email of the nomination of the arbitrator; this arbitrator may be subject to challenge as specified in Article 9.

If the challenge is accepted, the Arbitration Chamber shall nominate a second arbitrator, replacing the previous. That second nomination shall be final.

4. All exchanges under the expedited procedure shall be made by telephone, fax or email. Exchanges by telephone and email shall be confirmed with a hardcopy correspondence within 5 working days.
5. Unless decided otherwise by the arbitrator, additional claims or additional documents of the claimant shall not be admitted.
6. To be admissible, any counterclaim of the respondent must be lodged within 10 working days from the notification of the application for arbitration and fulfill the requirements of Article 7 paragraph 6.
7. If a hearing is organized the arbitrator shall fix the date, time and place of the hearing. This information is notified by the Arbitration Chamber to both parties, by fax or email, at least 14 days prior to the date of the hearing. This information shall be confirmed in writing.
8. If the parties and the arbitrator decide that a hearing would not be necessary the arbitrator will make his or her decision on documents only.
9. If after a hearing or upon examination of the documents that have been supplied the claim appears to the arbitrator as being substantiated, he or she shall make an award within one month after the hearing or after the decision of having no hearing, ordering the payment of the money claim for the amount he or she considers as justified.
10. If the claim appears to be unsubstantiated or the materials produced reveal for whatever reason that it is necessary to further investigate the case, the arbitrator shall dismiss as such



the whole or part of the payment claim. In such case, either party may lodge within 10 working days a request for arbitration concerning the claim, according to Article 5 of the Procedure Rules at the relevant Arbitration Chamber.

11. Once the award is received by the parties the arbitrator is relieved from the case.
  12. The award shall be made in writing and signed by the arbitrator.
  13. The award shall contain:
    - (a) The names of the parties;
    - (b) The name of the arbitrator;
    - (c) A brief description of the matter in dispute;
    - (d) A statement of the facts, the decision and the arguments for the decision;
    - (e) The amount of the costs and who is obliged to pay them;
    - (f) All other information necessary for the validity and enforceability of the award.
  14. The award shall be drawn up in such a way that it complies with the provisions of the Conventions of Geneva and New York.
  15. The award shall be deemed to have been made at the place of the arbitration and on the date stated therein.
  16. The award shall be made in at least five originals. The Arbitration Chamber shall send by registered mail or any other means of communication that allows for proof of delivery, as soon as possible and not later than one month after the hearing or after the decision of having no hearing, one signed original to each of the parties and to the ISF Secretariat. One signed original shall be used to satisfy the legal requirements of the country where the arbitration was held, another signed original staying in the files of the Arbitration Chamber.
  17. An award in an expedited procedure is not subject to appeal.
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## **C. Mediation, Conciliation and Arbitration for Disputes between Professionals Concerning the Management of Intellectual Property Rights in the Field of Plant Breeding**

### **PRELIMINARY REMARKS**

The International Seed Federation (hereinafter ISF), having as members plant breeders and holders of rights under patents for biotechnological inventions, should be capable by mediation, conciliation or arbitration organized by itself or delegated elsewhere, of helping to find a solution to the disputes which are submitted to it by people or legal entities who work as collaborators with the business of creating intellectual property rights or in the field of grants, transfers or management of these rights.

These mediation, conciliation and arbitration rules (hereinafter “the Rules”) are binding only on those people or legal entities who wish to refer to them under an arbitration clause accepted by the parties or included in the contract by which they are bound. This clause must state that each of the contracting parties accepts to submit any claims to mediation, conciliation or arbitration by the ISF.

### **GLOSSARY OF TERMS**

For the purposes of these rules, Arbitral Tribunal is the group of persons designated to deal with an arbitration case.

Arbitration Chamber is a private or public entity specialized in providing alternative dispute resolution systems, mainly arbitration, and organizing them with legal and administrative facilities. The Arbitration Chamber organizes, helps and hosts the tribunals dealing with the concrete cases.

### **FIELD OF APPLICATION FOR MEDIATION, CONCILIATION AND ARBITRATION CONCERNING INTELLECTUAL PROPERTY RIGHTS**

#### **ARTICLE 1**

With respect to intellectual property rights arbitration according to the Rules can settle those disputes occurring within the framework of implementation or interpretation of a contract linking the parties, either for setting up research and sharing the income derived from this research, or within the framework of implementation or interpretation of the clauses of a license to use an intellectual property right. The Rules can also be used to settle any other dispute on intellectual property rights provided that the parties agree. In the absence of an agreement between the parties in question, this clause cannot apply, particularly within the framework of penal or civil litigation concerning counterfeit use of intellectual property rights, whether for plant certificates or for patents concerning the legal protection of biotechnological inventions.

### **RULES FOR MEDIATION, CONCILIATION AND ARBITRATION**

#### **ARTICLE 2**

- (a) Depending on what is chosen by the parties and successively if necessary, ISF shall provide mediation, conciliation and arbitration by organizing them or possibly creating an Arbitral Tribunal.

ISF may delegate mediation, conciliation or arbitration between the parties to an Arbitration Chamber, when such an Arbitration Chamber has been organized.

- (b) ISF shall keep a list of minimum 10 arbitrators with recognized skills on Intellectual Property rights management. This list shall be displayed on ISF website and can be similar to the EDV arbitrators list.

- (c) When an Arbitration Tribunal is set up at ISF level, it must arrange for:

- Choice of an arbitrator appointed from the lists communicated to each of the parties in question;
- Choice of the President of the Arbitration Tribunal selected either by the two arbitrators appointed by the parties, or by the ISF Secretary General If the parties in question fail to appoint arbitrators or are unable to agree on the appointment of the third party arbitrators who are to preside the Arbitral Tribunal, the ISF Secretary General shall appoint the missing arbitrator(s) together with the President within 30 days of the date on which this failure is noted.

Each party may refuse an arbitrator or the third party arbitrator for reasons that he must specify, supported by proof to support his statement. Final appointment of the arbitrators shall in this case be the responsibility of the ISF Secretary General.

These arrangements do not replace the various arbitration Chamber rules for procedures, which must be fulfilled.

It must be noted that the arbitrators are appointed as judges for the case and shall in no case act as representatives pleading for the parties during arbitration.

- (d) Mediation and conciliation.

- If the parties accept this, they can have recourse to the services of a mediator or person appointed to conciliate the parties, with both the mediator and the conciliator appointed either jointly by the parties from the list of experts, or in the absence of agreement between the parties, by the ISF Secretary General.

It is reminded that the mediator is responsible for defining a point of view liable to enable the parties to accept the proposition formulated, whereas the role of conciliation is to enable the parties to come to agreement on the dispute between them, and in so doing terminate all procedures on the subject.

If there is no agreement concerning the mediator's proposal or the conciliator's mission, the parties must resort to arbitration within 30 days.

- For mediation or conciliation, the time limits for lodging a request for arbitration are suspended from the date that mediation or conciliation is

accepted, until the date that failure of the mediator's or conciliator's mission is noted, as proved by a statement of failure.

## **REQUEST FOR ARBITRATION**

### **ARTICLE 3**

If mediation or conciliation fails to result in agreement of the parties and if the applicant party wishes to proceed further, he must lodge a request for arbitration with the ISF Arbitration Chamber, within thirty working days after the failure report and date of notification of the same.

In order to guarantee the payment of the arbitration costs, a deposit of an amount equivalent to CHF 5,000 must be paid to the ISF Secretariat at the time of making the application

1. If arbitration is requested, the applicant party must make this request to ISF Secretary General, and send a copy to the other party involved. In addition this request must specify the title and address of the applicant party, the title and address of the other party, include a copy of the arbitration clause by which the parties involved accept arbitration according to the Rules, and describe in detail the facts which are subject to dispute and which motivate the request, together with all the documents enabling the arbitrators to assess the claim.

This request and the various documents must be supplied in four copies of all of them to the ISF Secretary General.

In every case, the principle of fair hearing with possibility of defense and confrontation of witnesses and evidence must be applied. Each party must either send a copy of all the files to the opposing party, or request the ISF arbitration Chamber to do so, if it usually does this itself.

2. If a request for arbitration does not fulfill all the conditions specified above when the request is made, the ISF Arbitration Chamber may allow a period to complete the file, but in no case may this period exceed 45 days.

## **APPOINTMENT FOR ARBITRATORS**

### **ARTICLE 4**

The arbitrators shall be selected by the parties from the list of experts, which they will be given, by the ISF Secretary General.

The arbitrators must be in full possession of their civil rights and have worked in posts of responsibility in organizations, companies or groups so that they have acquired skills in the subjects with which they would be dealing.

## **CHALLENGE TO THE ARBITRATORS**

### **ARTICLE 5**

As mentioned above, an arbitrator or third party arbitrator may be challenged according to the law and rules for procedure and arbitration in the arbitration Chamber in the country in question, or the legal requirements of the same country.

In accordance with the rules of ethics, the arbitrators appointed can be challenged if there is any link of subordination or dependence with one or the other of the parties.

The decision as to whether this objection is founded or not, which must be sent by registered mail with acknowledgement of receipt to the Arbitration, shall be made by the ISF Secretary General after studying the file lodged complete with the motivations for the objection, and the decision made by them concerning the upholding or refusal of this objection shall be supreme.

The decision by the ISF Secretary General is without appeal.

## **ARBITRATION PROCEDURES**

### **ARTICLE 6**

The parties are deemed to be aware of the arbitration Chamber Arbitration procedures.

The ISF tribunal procedures are given in the document entitled "ISF Arbitration Procedure Rules" to which must be added the ISF "Code of Ethics for Arbitrators".

The ISF Secretary General may set up an Arbitral Tribunal and communicate the place and day and time of debates and the composition of the Tribunal, by registered letter or by email with acknowledgement of receipt at least 15 days in advance.

On its own initiative the Tribunal will hear the parties who may be assisted by their counsels, will involve them in the debates and will then deliberate in private.

The arbitration decision shall be drawn up under the responsibility of the arbitrators who may hear and command all witnesses to appear during a formal session in the presence of both parties.

Access to the arbitration hearing sessions is limited to members of the Arbitral Tribunal, the Secretary responsible for assisting the Tribunal, and the two parties assisted by their counsels.

The debates are supposed to be oral and to give a fair hearing. Each party can present their opinion on different points of view by means of statements and replies.

After the hearings the Tribunal shall hand down its ruling under the responsibility of the arbitrators. The judgment is the result of a majority of votes and shall be notified to the parties in question.

Awards by the arbitration Chambers which are not subject to any appeal, or arbitration judgments at the 2nd degree shall be lodged with the competent office of the clerk of the courts by the party which took the initiative, and by the same right the parties can entrust the Arbitral Tribunal which handed down the award to do the same. The award can only be lodged with the office of the clerk of the courts once it has become final.

## **APPEAL**

### **ARTICLE 7**

Awards by the ISF Arbitration Chamber may be the subject of an appeal.

Appeal procedure shall be the same as provided for in articles 12 and 14 of the ISF Arbitration Procedure Rules.

## **LODGING THE FILES**

### **ARTICLE 8**

As described above, the parties must lodge their files, replies and statements with as many copies as there are arbitrators in the Arbitral Tribunal, together with one to be sent to the Arbitration Chamber.

## **APPEARANCE IN ARBITRATION TRIBUNAL AND REPRESENTATION**

### **ARTICLE 9**

The parties may appear in person before the Arbitral Tribunal, or be represented by a duly authorized representative. They can be assisted by counsel.

Legal counsels only, by which is meant barristers or attorneys duly registered with the Bar or the association which they are members of, are not obliged to prove their principal/agency relationship if the documents they produce in the case confirm their role as representative.

If although duly summoned, the defendant does not appear or is not represented, produces no argument nor document, the Arbitral Tribunal may proceed with arbitration based solely on the elements which it has available.

## **SITTING AND PROCEEDINGS OF THE HEARINGS**

### **ARTICLE 10**

Arbitration hearings may take place in the premises of the designated arbitration Chamber or in any other place if the Arbitration Tribunal accepts this unanimously, including by virtual means.

## **INVESTIGATION MEASURES**

### **ARTICLE 11**

In addition to the files and elements of information transmitted to them by the parties, the arbitration tribunals have wide-ranging powers to search for information on which to base their judgment.

Nevertheless they are bound to comply with the principles of a fair hearing and those elements derived from application of national and international rights together with the measures governing the exercising of these rights at national level.

## **EXPEDITED PROCEDURE**

### **ARTICLE 12**

When arbitration is requested, an application for an expedited procedure for urgency can be made.

This treatment must respect the rules for procedure of the ISF Arbitration Chamber, and must be subject to decision by the ISF Secretary General.

If there are no rules for such a procedure, the decision handed down by the ISF Secretary General is without appeal.

## **ARBITRATION COSTS**

### **ARTICLE 13**

The costs of arbitration will be allocated after the decision by the Arbitral Tribunal who can charge the costs to the party who loses or allocate them as it sees fit.

In every case and in particular with respect to the arbitration Chambers set up, the applicant remains the guarantor for the arbitration costs allowed for in the Rules governing arbitration Chambers.

These arbitration costs become definitely and totally due to the arbitration Chamber once the case has been summoned.

When an Arbitral Tribunal has been appointed by the ISF Secretary General, the arbitrators assess their arbitration costs by a majority vote.

## **PUBLICATION OF THE AWARD**

### **ARTICLE 14**

If a party does not carry out the award, the other party may ask for enforcement according to the rules of the New York Convention. The ISF Secretary General shall inform all those involved in the ISF that the award has not been carried out.

## **RESPONSIBILITY OF THE ARBITRATION TRIBUNAL**

### **ARTICLE 15**

In accordance with normal practice, no action may be taken by the parties for any damage whatsoever under application or execution of the present mediation, conciliation or arbitration procedures, whether against the arbitrators, the Arbitration Chambers or the associations which are members of the ISF administrative authorities.

## **REGULATIONS ON ESSENTIAL DERIVATION**

### **ARTICLE 16**

#### **Part I - DEFINITIONS:**

1. Essentially derived variety (EDV): A variety that has been predominantly derived from an INV or an EDV therefrom and which fulfils the definition of Article 14 paragraph 5(b) of the UPOV Convention 1991.
2. Putative essentially derived variety (PEDV): The variety in question that may be an EDV of an INV.
3. Initial variety (INV): The variety from which the PEDV might have or has been derived.

4. EDV Threshold: The value of the genetic conformity or distance point that forms, according to a code of conduct or a guideline as adopted by ISF or by another agreement between parties, the trigger point for the reversal of the burden of proof.
5. Breeder: Titleholder of the plant breeder's right of an INV or EDV concerned, or his mandated agent.
6. Operator: Person or company exploiting the variety concerned.
7. Applicable territories: The territories of a country or group of countries in which a Plant Variety Protection law is in force which complies with UPOV 1991 or contains a similar provision of essential derivation.

#### Part II - APPLICATION:

1. A Breeder who suspects that another variety has been derived from his protected INV may apply for an arbitration procedure at the ISF Arbitration Chamber.

The application shall contain molecular data of his variety compared to the PEDV showing that the PEDV and the INV are genetically very similar, as well as phenotypic data to establish phenotypic conformity between the PEDV and the INV.

In the case of parent lines of hybrids, data on the lawfully accessible parent line(s) concerned and, if necessary, on the hybrids, which have been produced by the PEDV parent line(s) may be included.

2. Any ISF guidelines agreed for a crop on EDV assessment shall be preferably used in this application process. The molecular analysis must be performed by using the agreed methods, as mentioned in the crop guidelines published on the ISF website, if any.
3. Each molecular method used in these Regulations must conform to the ISF paper "Issues to be addressed by technical experts to define molecular markers sets for establishing threshold for ISF EDV arbitration", available on the ISF website.
4. The Breeder or Operator of the PEDV may, within 30 days after the receipt of the copy of the application for arbitration, file the counter claim that the INV is itself an EDV. This claim should be followed within one year after the said 30 days with a clear justification using phenotypic and molecular data. This period of one year may be reduced by the Arbitral Tribunal taking into account the time period that the Breeder or Operator of the PEDV had clear knowledge of the fact that his variety was considered to be an EDV by the breeder of the INV. Not fulfilling these time limits may result in dismissal of the counter claim at the discretion of the arbitrators.



5. In case the Breeder or Operator of a variety is in any way accused of infringing the rights of another party by exploiting a variety, which is considered by the other party as essentially derived from his protected variety, the Breeder or Operator of the PEDV may apply for an arbitration procedure in order to obtain a decision whether his variety has been derived from the said protected variety or not. The application for the arbitration procedure must follow the usual requirements mentioned in the Rules, with the exception of the requirement of 30 working days, applicable to the ISF Arbitration Chamber.

### Part III - ARBITRATION PROCEDURE:

1. If the Arbitral Tribunal is convinced that the genetic conformity of the PEDV with the INV is above the EDV threshold, it determines that the Breeder or Operator of the PEDV has to prove that the PEDV has not been predominantly derived from the INV.
2. If an EDV threshold has not been established for the crop concerned and no agreement concerning a threshold is reached between the parties, the Arbitral Tribunal will decide at its own discretion, following the principles laid down in the ISF View on Intellectual Property, whether the Breeder or Operator of the PEDV has to prove that the PEDV has not been derived from the INV.
3. In the case the INV has been counter claimed to be an EDV itself and the Arbitral Tribunal is convinced that the genetic conformity of the INV with another variety is above the EDV threshold, the breeder of the INV has to prove that his INV has not been predominantly derived from that other variety.
4. Before the Arbitral Tribunal takes a decision, both parties will have the opportunity to deposit their arguments in writing, and to comment once in writing on these arguments within 6 weeks of their receipt. It is at the discretion of the Arbitral Tribunal to allow additional cycle(s) of written comments. The Arbitral Tribunal will send copies of the documents immediately and directly to the parties. The Arbitral Tribunal will organise at least one hearing, taking into account the provisions of the ISF Arbitration Procedure Rules.
5. The Arbitral Tribunal may at any time request the parties to disclose all relevant information concerning the breeding history of the INV and the PEDV.
6. Confidential information or parts thereof, clearly designated as such by the party concerned, will not be provided to any other party, unless the said party gives his consent in writing.
7. For the purpose of this article confidential information shall mean any information that is in the possession of a party, is not accessible to the public, is of commercial, financial or technical significance and is treated and declared as confidential by the party possessing it.
8. Any confidential information affecting one of the parties will be provided to the Arbitral Tribunal under a confidentiality agreement or other appropriate means.

9. Both parties may supply additional phenotypic, biochemical or molecular information, which will be taken into account by the Arbitral Tribunal.
10. The Arbitral Tribunal may decide to have the varieties concerned tested with molecular, biochemical or phenotypic methods or a combination thereof by an independent third party.
11. If the data concerning the parents of a hybrid variety shows a high probability that the hybrid was produced by a PEDV parent line, the Arbitral Tribunal can decide to have the PEDV parent line tested by an independent third party in comparison with the INV parent line.
12. To implement Paragraphs 10 and 11 of this Part III, both parties shall authorise, the Arbitral Tribunal, at its request, to apply for and receive an official sample of the deposited seeds of the varieties concerned and/or ancestors thereof, if applicable, from the competent authorities or other relevant independent bodies.
13. In the case said authorities or bodies do not acknowledge such a request from the Arbitral Tribunal, the parties shall arrange to have the seed sent, on their behalf, by this authority or body to the Arbitral Tribunal. If no seed of a variety can be obtained from an independent source, the Arbitral Tribunal will decide how to proceed.
14. The Arbitral Tribunal may, on request of one party, admit this party to bring witnesses or experts. The Arbitral Tribunal may designate one of its members to hear the witnesses or experts.
15. The Arbitral Tribunal may for reasons of confidentiality, at its own initiative or at the request of one party, agree to hear one party in the absence of its opponent. It will inform the other party at least 7 days before such a hearing. An extract of the report of this hearing will be sent to the other party within 15 days of the session.
16. The Arbitral Tribunal may appoint, in consultation with the parties, one or more expert(s) to formulate and provide technical advice. After its decision on such a matter the Arbitral Tribunal will send a copy of the nomination and the assigned task of the expert(s) to both parties directly, with the time frame for the task as determined by the Tribunal.
17. The parties may only once challenge the nomination of an expert through a reasoned written argument sent to the Arbitral Tribunal by registered mail within 8 working days of the receipt of the aforementioned nomination. If the Arbitral Tribunal decides the reasons for the challenge to be justified, it will appoint another expert according to paragraph 16 of Part III of this article.
18. The Arbitral Tribunal may require one or both parties to supply all relevant information and to render the necessary assistance to the expert(s).
19. The Arbitral Tribunal will send the draft expert-report that may contain confidential information for review to the party concerned. This party will send his comments within 15 days after the receipt of this document.

20. Directly after the finalisation of the expert-report, the Arbitral Tribunal will send a copy to both parties without the confidential information, unless the owner of that information agrees in writing to its inclusion. A party may, within 15 days after the receipt of the said copy, request to hear the expert(s) in a session of the Arbitral Tribunal. The Arbitral Tribunal will provide parties the opportunity to hear the expert(s) and to bring their own experts. The session will be announced to the parties 15 days before it is held.
21. The Arbitral Tribunal may, through a full or part representation, visit the relevant trials at the premises of one or both parties or a third party. The Tribunal will inform both parties of this visit at least 5 days before.
22. Each session of the Arbitral Tribunal will be recorded in a written report. Unless agreed otherwise between the parties and the Tribunal, a copy of the full report, accompanied with the productions of the parties that have not already been distributed, will be sent to both parties within 6 weeks after the session.
23. For any matters not regulated in this Article, the general provisions of these Rules apply.

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#### **D. Code of Ethics for Arbitrators**

The recourse to arbitration or other alternative methods for the settlement of litigation such as conciliation and mediation are very common in commercial matters. People who act as arbitrators, conciliators or mediators therefore undertake serious responsibilities to the public as well as to the parties. These responsibilities are partly dealt with in the ISF Arbitration Procedure Rules. However, some of them concern ethical obligations. The Rules of Ethics are described in the present Code. They don't substitute themselves and are not to be opposed to the rules described in the substance of the text.

##### Canon I

*An arbitrator should uphold the integrity and fairness of the arbitration process.*

1. In no case shall arbitrators act as lawyers of one of the parties.  
Though two of the arbitrators are chosen by the parties from a list proposed by the arbitration tribunal, they don't represent the interests of the parties who have chosen them. During the entire duration of the procedure they have to remain neutral and impartial and conduct themselves as judges and not as lawyers of one of the parties. They shall not let themselves be influenced by any outside pressure, by the fear of being criticized and by personal interests.
2. Persons should accept appointment as arbitrators only if they believe that they can be available to conduct the arbitration promptly. They should make all reasonable efforts to avoid dilatory tactics, harassment of the parties or other participants, or other damages or disruption of the arbitration procedure.

3. After accepting appointment for a case and while serving as an arbitrator for this case, a person should avoid entering into any relationship, or acquiring any interest, which is likely to affect impartiality or which might reasonably create the appearance of partiality or bias. For a reasonable period of time after the decision of a case, persons who have served as arbitrators should avoid entering in any such relationship, or acquiring any such interest, in circumstances which might reasonably create the appearance that they had been influenced in the arbitration by the anticipation or expectation of the relationship or interest.
4. Arbitrators should neither exceed their authority or do less than is required to exercise that authority completely. It is the obligation of the arbitrators to comply with the procedures or rules parties have agreed in their contract, i.e. with the procedures laid down in the ISF Procedure Rules and any deviation parties have agreed in their contract.
5. The ethical obligations of an arbitrator begin upon acceptance of the appointment and continue throughout all stages of the proceedings. In addition, wherever specifically set forth in this Code, certain ethical obligations continue even after the decision in the case has been given.
6. Arbitrators must sign the Arbitration Award, even if the Award has been taken at the majority (Article 11.4 of the Arbitration Rules) and not at unanimity. The dissenting opinion shall not be indicated in the Award to avoid undue following use.

## Canon II

*An arbitrator should disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias.*

Disclosure:

1. Persons who are requested to serve as arbitrators should, before accepting, disclose:
  - (a) Any direct or indirect financial or personal interest in the outcome of the arbitration;
  - (b) Any existing or past financial, business, professional, family or social relationships which are likely to affect impartiality or which might create an appearance of partiality or bias. Persons requested to serve as arbitrators should disclose any such relationships which they personally have with any party or with his lawyer, or with any individual whom they have been told will be a witness. They should also disclose any such relationships involving members of their families or their current employers, partners or business associates.
2. Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in paragraph A. above.
3. The obligation to disclose interests or relationships described in paragraph A. above is a continuing duty, which requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests or relationships which may arise, or which are recalled or discovered.
4. Disclosure should be made to all parties and to the other arbitrators.

5. These present provisions of the Code are intended to be applied realistically so that the burden of detailed disclosure does not become so great that it is impractical for persons in the business world to be arbitrators, thereby depriving parties of the services of those who might be best informed and qualified to decide particular types of cases.

This Code does not limit the freedom of parties to agree on anyone they choose as an arbitrator. When parties, with knowledge of a person's interests and relationships, nevertheless desire that individual as an arbitrator, that person may properly serve.

### Canon III

*An arbitrator should avoid unilateral relationships with one or all parties.*

1. Unless otherwise provided in an agreement of parties or in the ISF Arbitration Procedure Rules for the International Seed Trade, arbitrators should not discuss a case with any party in the absence of each other party.
2. Whenever an arbitrator communicates in writing with one party, the arbitrator should at the same time send a copy of the communication to each other party and to the other arbitrators. Whenever an arbitrator receives any written communication concerning the case from one party, which has not already been sent to each other party, the arbitrator should do so. In addition, he should also send this to the other arbitrators.
3. Arbitrators should offer each other entire faculty to participate in all arbitration modalities.

### Canon IV

*An arbitrator should make decisions in a just, independent and deliberate manner.*

1. An arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.
2. An arbitrator should decide all matters justly, exercising independent judgment, and should not permit outside pressure to affect the decision.
3. An arbitrator should not delegate the duty to decide to any other person.

### Canon V

*An arbitrator should be faithful to the relationship of trust and confidentiality inherent in that office.*

1. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the arbitration proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of others.
2. Unless otherwise agreed by the parties, or required by applicable rules or law, an arbitrator should keep confidential all matters relating to the arbitration proceedings and decision. The ISF Secretariat however is entitled to publish awards without disclosing the names of parties, arbitrators and details, which are not required for a good understanding of the case.

3. It is not proper at any time for an arbitrator to inform anyone of the decision in advance of the time it is given to all parties. It is not proper at any time for an arbitrator to inform anyone concerning the deliberations of the arbitrators. They may however seek advice from experts. After an arbitration award has been made, it is not proper for an arbitrator to assist in any post-arbitration proceedings, except as may be required by law.
4. In case the arbitration award foresees payment, the arbitrators should scrupulously avoid to haggle with the parties over the amount to be settled or to engage any correspondence concerning payment, which would create an appearance of constraint or improper behavior. It is to the Arbitration Chamber to organize payment in order to avoid the necessity for the arbitrators to enter into direct contact with the parties on that matter.



## ANNEXES

### IMPORTANT PROVISIONS OF THE CONVENTIONS OF GENEVA AND NEW YORK

#### ANNEX I

##### A. Important provisions of the Geneva Convention of 1927

###### ARTICLE 1

To obtain such recognition or enforcement, it shall, further, be necessary:

1. That the award has been made in pursuance of a submission to arbitration, which is valid under the law applicable thereto;
2. That the subject matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;
3. That the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;
4. That the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to *opposition*, *appel* or *pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;
5. That the recognition or enforcement of the award is not contrary to the public policy or to the principles of law of the country in which it is sought to be relied upon.

###### ARTICLE 2

Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied:

1. That the award has been annulled in the country in which it was made;
2. That the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;
3. That the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if he thinks fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

###### ARTICLE 3

If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is ground, other than the grounds referred to in Article 1.a and c and Article 2.b and c entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

## ANNEX II

### **B. Important provisions of the New York Convention of 1958**

#### ARTICLE V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
  - (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the Law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
  - (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
  - (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matter submitted to arbitration may be recognized and enforced; or
  - (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
  - (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
  - (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
  - (b) The recognition or enforcement of the award would be contrary to the public policy of that country.



## ARTICLE VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) (e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

For information on countries that are parties to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards see <http://www.jurisint.org/cgi-bin/disp.pl/pub/01/en/152.htm>.

