

# OSSI FAQs (February 10, 2024, v13)

## Table of Contents

### Definitions

#### **FAQs I—Introduction to OSSI and OSSI-Pledged varieties**

1. What is the OSSI Pledge?
2. Why was OSSI created?
3. What is OSSI?
4. What is “open source”?
5. What is an OSSI-Pledged variety?
6. In what sense are OSSI-Pledged seeds “freed seeds”?
7. How does OSSI benefit gardeners?
8. How does OSSI benefit farmers?
9. How does OSSI benefit seed companies?
10. How does OSSI benefit consumers?
11. Is the OSSI Pledge legally binding?
12. Is OSSI against intellectual property rights?
13. Are any OSSI-Pledged varieties GMO?
14. Where can I get OSSI-Pledged seeds?
15. Does OSSI have trademarks?
16. Who is the OSSI leadership team?
17. How can I be part of OSSI?
18. Where can I find more information on the Open Source Seed Initiative, open source plant breeding, or OSSI-Pledged varieties?

#### **FAQs II—Using, selling, or transferring seeds of OSSI-Pledged varieties**

19. What obligation do I have to OSSI if I make use of seeds of an OSSI-Pledged variety?
20. If I sell or resell OSSI-Pledged seed, what are my obligations regarding OSSI labeling?
21. When I sell or distribute an OSSI-Pledged variety, can I change the name from the one the breeder gave it to some other name I prefer?
22. May I use a trademark in connection with an OSSI-Pledged variety?

#### **FAQs III—For plant breeders**

23. How do I gain OSSI-Pledged status for a variety I have developed?
24. Who can OSSI-Pledge a variety?
25. What kinds of materials may be OSSI-Pledged?
26. Can a variety be OSSI-Pledged if it has a current patent, PVP (Plant Variety Protection), or other intellectual property on it?
27. Can a variety be OSSI-Pledged if it is already covered by some other Pledge or license?
28. Can a public domain or heirloom variety be OSSI-Pledged?
29. Can a variety be OSSI-Pledged if some of its parentage is from a public domain, heirloom, or indigenous variety?

30. Can an F<sub>1</sub> hybrid be OSSI-Pledged?
31. May I OSSI-Pledge my new Cannabis variety, germplasm, or population?
32. How do I choose a legally valid name for my new variety?
33. I bred a variety and released it some time ago. It is already available from a number of seed companies. Can I OSSI-Pledge such a variety?
34. If I develop a new variety from an OSSI-Pledged variety, should I release and distribute it as an OSSI-Pledged variety?
35. Am I obligated to provide seed of a variety I develop and release under the OSSI Pledge to anyone who requests it?
36. Can I contract for seed multiplication with seeds of an OSSI-Pledged variety?
37. Does the OSSI Pledge allow contracts or agreement involving OSSI-Pledged varieties or derivatives?
38. Can I use an MTA (Material Transfer Agreement) with an OSSI-Pledged variety?
39. Can the OSSI-Pledged status of a variety be revoked or withdrawn?
40. Can OSSI add new FAQs or change their interpretations?

## Definitions

**Seed:** ‘Seed’ of a variety in this document in addition to botanical seed also includes vegetatively propagated material, cuttings, and transplants.

**Seed company:** The phrase ‘seed company’ includes vendors of any sort including nurseries, and sellers of OSSI-Pledged varieties at any stage of their development, such as transplants, cuttings, or vegetatively propagated material in addition to seed-propagated material.

**Not Restrict:** The restrictions that the OSSI Pledge seeks to prevent are those that impede the free use of seed for trade, propagation, selling, or breeding by third parties such as those who buy seed from seed companies. The restrictions do not apply to arrangements between/among breeders or seed companies and seed growers for seed multiplication or introduction of varieties. While seed of a variety may be increased or produced under contract with any conditions agreed to by the breeder or producer, and distributed with any conditions agreed to by the breeder, grower, and distributor, the next recipient must not be held to any conditions other than those of the OSSI Pledge. (FAQs 36-38.)

**Derivative:** The OSSI-Pledged status of a variety extends to its “derivatives” which are here used to specify the progeny of a variety whether produced by direct multiplication of the variety or through cross pollination regardless of the number of generations. Derivatives include but are not limited to sports, hybrids, populations, and selections. Derivatives also include genes, gene sequences, or genetic sequence information harvested from an OSSI-Pledged variety or derivative.

## FAQS—Introduction to OSSI and OSSI-Pledged Varieties

### 1. What is the OSSI Pledge?

The OSSI Pledge reads: “You have the freedom to use these OSSI-Pledged seeds in any way you choose. In return, you pledge not to restrict others’ use of these seeds or their derivatives by patents or other means, and to include this pledge with any transfer of these seeds or their derivatives.”

## **2. Why was OSSI created?**

OSSI was created to counterbalance the trend towards patenting and restricting the use of seeds and the rights of farmers and gardeners who buy them. Over the past 30 years, patents and licenses and other restrictions on the uses of seed have spread to many parts of the world. If this trend continues, these critically important genetic resources may become so legally encumbered that farmers and gardeners may be unable to do anything more than rent seeds from the companies who control them. Today, the purchase of many varieties of corn, soybean, sugar beet, and cotton seeds in the U.S. by a farmer constitutes a one-time rental of the seed for a single cropping season. “Bag tag” licenses prevent farmers from saving, replanting, breeding, and sharing seed that has been rented, no longer purchased. In addition, plant breeders are prohibited from using these seeds to improve our crops and protect them from pests and diseases. These legal restrictions on seeds benefit a few companies but jeopardize the freedom of others to use this critically important resource.

## **3. What is OSSI?**

OSSI stands for the Open Source Seed Initiative. OSSI has three interconnected objectives. First, OSSI is a new way to save and exchange seed that ensures the seed will remain free of patents, licenses, and other restrictions on freedom to use. This method of exchange involves commitment to an open source seed Pledge. Second, OSSI maintains a list of crop varieties that have been pledged as “freed seed” and provides a link to sources of seed for those varieties. Third, OSSI works to raise awareness of the importance of keeping seeds unencumbered from legal restrictions and free to be used, shared, saved, bred, and sold.

## **4. What is “open source”?**

“Open source” is a descriptive term used to refer to formal or informal agreements designed to maintain access to a resource that otherwise might be subject to restrictions on availability or use. Originally developed for computer code, there are many different versions of “open source” arrangements. OSSI created an agreement for seed exchange—its Pledge—that is best understood as an example of the “copyleft” form of open source. Copyleft agreements apply not just to the item that is exchanged but also to any downstream improvement or derivative development of the original material. The terms of OSSI’s Pledge thus apply not just to seed of the original variety but to all of its progeny and any populations or lines derived from it. OSSI-Pledged seeds are freed to be shared, sold, reproduced, and used to breed new populations and varieties. These derivatives must also remain free for others to use and cannot be further encumbered by patents or other means.

## **5. What is an OSSI-Pledged variety?**

An OSSI-Pledged variety is a variety for which the breeder has formally agreed to distribute, transfer, or sell seed or germplasm of the variety exclusively under the terms of the OSSI Pledge. OSSI-Pledged varieties cannot be restricted by patents or other intellectual property rights. OSSI-Pledged seeds are open source inasmuch as the seeds are available for unrestricted use by anyone who agrees to honor the OSSI Pledge. The OSSI Pledge requires that any subsequent distributions of OSSI-Pledged seed or of derivatives bred from OSSI-Pledged seed be accompanied by the Pledge. In this way OSSI intends to develop an expanding pool of genetic resources that are available now and in the future for unrestricted use by scientists, farmers, and gardeners.

## **6. In what sense are OSSI-Pledged seeds “freed seeds”?**

OSSI-Pledged seed is considered to be “freed seed.” That is, its use for any purpose cannot be restricted. It is important to understand that we use the word “freed,” not “free,” because we refer to *freedom* and not price. OSSI-Pledged seeds are freed from the patents and licenses that can restrict use. The OSSI Pledge is a commitment to foster unfettered exchange of germplasm and the freedom to use the material for any purpose, with the single proviso that by accepting the Pledge the user commits to allowing others the same freedom to use the material or derivatives of the material.

## **7. How does OSSI benefit gardeners?**

By using OSSI’s “freed seed,” gardeners participate directly in the global movement to maintain free access to plant genetic resources. By buying seed of OSSI varieties, gardeners support the breeders, seed growers and seed companies that share a commitment to freeing the seed. Using OSSI-Pledged seed helps keep the food supply secure for future generations and assures that broad food choices and diverse genetics, developed often over thousands of years, do not become lost as restricted seed comes to predominate.

## **8. How does OSSI benefit farmers?**

OSSI-Pledged seed preserves the farmer’s right to save, replant, share, breed, and sell seed. It is this fundamental right that is now being eroded globally as transnational seed companies push for the worldwide expansion of restrictive seed laws and intellectual property rights. The independent farmer has long been the basis of food security for local communities, and in many countries is the first line of defense against hunger. With use-restricted seeds, a farmer is unable to plant a new crop without purchasing new seed from an outside supplier. Whether the cause is cataclysm or merely economics, no seed means the farmer produces no crop. Open source, unrestricted seed allows the farmer to plant again if the patented seeds are unavailable, unwanted or unaffordable

## **9. How does OSSI benefit seed companies?**

By selling and emphasizing OSSI-Pledged seed, the seed company makes a statement that they, like their customers, care about the sustainability of the food system, the freedom of growers around the world to create and control their own seed, and the need to keep the genes that undergird our food system accessible to everyone. Moreover, just as with fair trade and organics, there is a significant potential market among ethical consumers and gardeners for “freed seed.”

## **10. How does OSSI benefit consumers?**

If we want to maintain and increase the choices in the colors and flavors and nutrient contents of the food crop varieties we eat, we need to be able to buy those varied foods. If we wish to maintain the ability of farmers to remain as independent farmers and to feed us no matter what, we need to support food suppliers and seed companies that offer lines kept free for future generations by OSSI designation.

## **11. Is the OSSI Pledge legally binding?**

We believe the Pledge to be legally enforceable. We chose a simple pledge to highlight the spirit and rationale behind our initiative. We also feel that our Pledge has the greatest chance of being transferred with the seed because of its brevity and simplicity. Our goal is to support the free exchange of plant genetic resources and to foster breeding, seed saving, and seed stewardship.

## **12. Is OSSI against intellectual property rights?**

Users of OSSI seed have the freedom to reproduce that seed for their own use and for sale, and to use the seed in research and breeding. In that respect, the OSSI Pledge is incompatible with intellectual property rights as currently applied to plants, such as plant patents, utility patents, Plant Variety Protection, and Plant Breeders Rights that limit the rights of seed recipients to produce seed for replanting, for sale, and for use in research or breeding. OSSI is not opposed to arrangements that require sharing the benefits of new varieties with the breeder, as long as those arrangements do not restrict the freedom to use the seed. OSSI is not opposed to contracts, licenses, or MTAs between/among breeders, seed growers, and seed companies to facilitate seed production and variety introduction as long as no restrictions are passed on to third parties, such as seed company customers. (See FAQs 36-38 for OSSI-compatible licenses and MTAs.)

## **13. Are any OSSI-Pledged varieties GMO?**

No. OSSI does not currently accept material containing transgenic (GMO) components for designation as OSSI-Pledged varieties. Given the on-going societal conversation around both demonstrable and possible ecological effects of some GMO varieties, the close ties between GMO's development and restrictive intellectual property arrangements, and the discomfort expressed within the OSSI community regarding transgenic plants, we do not feel that GMO material is currently appropriate for OSSI.

## **14. Where can I get OSSI-Pledged seeds?**

OSSI is not a seed company. Rather, we work with seed companies who are interested in supporting OSSI's mission. OSSI seeds are available from a number of different seed companies, or directly from the plant breeder, depending on the variety. Please see the OSSI Seeds page for a list of all OSSI-Pledged varieties, photos, descriptions, and links to the OSSI-associated seed company partners who sell the varieties. <https://osseeds.org/ossi-varieties/>

## **15. Does OSSI have trademarks?**

Yes. Both the words "Open Source Seed Initiative" and the OSSI logo are trademarks registered with the United States Patent and Trademark Office and are listed in the USPTO's Principal Register. Use of either trademark that is not "fair use" and is not approved by OSSI is prohibited by law. Use of the trademarks by OSSI Variety Contributors and OSSI Seed Company Partners for informational and marketing purposes is permitted and encouraged.

## **16. Who is the OSSI leadership team?**

OSSI was started by a group of plant breeders, farmers, seed companies, seed rights activists, non-profit organizations, and policy makers who are committed to promoting and maintaining fair and open access to plant genetic resources worldwide. We seek to collaborate with other organizations working to create new sharing mechanisms for plants and seeds. Members of the OSSI Board of Directors may be found at <https://osseeds.org/board/>.

## **17. How can I be part of OSSI?**

OSSI welcomes participation in its work in three ways. Anyone can become an OSSI supporter by. Anyone can become an OSSI supporter by working to advance OSSI's objectives. You can become an OSSI Seed Company and Nursery Partner if you agree to sell OSSI seed, cuttings, or transplants to others in accordance with the Pledge. You can become an OSSI Variety Contributor if you agree to designate a variety you have bred as an OSSI-Pledged variety and to distribute it in accordance with the OSSI Pledge.

We also welcome donations to help support our work. For details on these options, visit our Get Involved page at <https://osseeds.org/actions-2/>.

**18. Where can I find more information on the Open Source Seed Initiative, open source plant breeding, or OSSI-Pledged varieties?** We maintain a website at [www.osseeds.org](http://www.osseeds.org) where more information on OSSI has been posted. Please feel free to contact us through this site. For OSSI-sponsored podcasts, webinars, and seminars on how to breed plants, how particular OSSI-Pledged varieties were bred and interviews with their breeders, and other subjects see the Podcast and Blog pages <https://osseeds.org/category/free-the-seed-podcast/> and <https://osseeds.org/ossi-blog/>. For the list of more than 500 OSSI-Pledged varieties with descriptions, photos, and links to the seed companies that sell the varieties them, see the OSSI Seed page at <https://osseeds.org/ossi-varieties/>.

## FAQs III—Using, selling, or transferring seeds of OSSI-PLEDGED varieties

**19. What obligation do I have to OSSI if I make use of seeds of an OSSI-Pledged variety?**

If you choose to use OSSI-Pledged seeds, your only obligation is to honor the Pledge:

**You have the freedom to use these OSSI-Pledged seeds in any way you choose. In return, you pledge not to restrict others' use of these seeds or their derivatives by patents or other means, and to include this pledge with any transfer of these seeds or their derivatives.**

You have the freedom to plant, save, share, multiply, distribute, sell, and breed with the seeds. You are obligated to pass the Pledge along with any seeds you give away, exchange with, or sell to others.

**20. If I sell, resell, gift, or distribute seeds of an OSSI-Pledged variety, what are my obligations regarding OSSI labeling?**

If you are an individual distributing seed, just attach a copy of the Pledge to the seed packet. If you are a seed company, nursery, or other vendor who is distributing or wants to distribute OSSI-Pledged varieties, please consult with us about becoming an OSSI Seed Company and Nursery Partner. (See <https://osseeds.org/resources-for-seed-company-partners-2/> .) Any seed company, nursery, or other vendor that is selling or agrees to sell at least one OSSI-Pledged variety may apply to become an OSSI Seed Company and Nursery Partner. Becoming an OSSI Seed Company and Nursery Partner is free and revocable by either party with 30 days notice. OSSI Seed Company and Nursery Partners have live links on the OSSI Seed list to each OSSI variety they carry. The Partnership Agreement spells out the obligations of the Seed Company and Nursery Partner and OSSI to each other.

As stated in the Partnership Agreement, the Seed Company's obligations with respect to labeling are to:

1. Include the OSSI Pledge in its print and on-line catalogs.
2. Include an explanation of the OSSI purpose and mission in its print and on-line catalogs.
3. Label OSSI-Pledged varieties or populations or plant materials in its print and on-line catalogs with the name "Open Source Seed Initiative" and/or "OSSI" and/or "OSSI-Pledged" and/or the OSSI logo. Placement of the Pledge and labeling of OSSI-Pledged varieties or populations in print and on-line catalogs is regarded as fulfillment of the Pledge for retail sales. For retail sales, Partner is invited, but not obligated, to include the Pledge on seed or germplasm packaging or as a printed flyer. Partner is not responsible for monitoring subsequent compliance with the Pledge.
4. Include the Pledge with any sale or distribution of seed or germplasm of OSSI-Pledged

varieties or populations or plant materials that is to be used for further reproduction as breeding material or multiplication for commercial sale. Inclusion of the Pledge may be accomplished by written notice (letter, flyer, e-mail) or by package labeling. If Partner has existing sales arrangements for varieties or populations or plant materials that are subsequently designated as OSSI-Pledged by the breeder, the Partner may continue any existing sales arrangements for those varieties or populations without obligation to OSSI. Partner is not responsible for monitoring subsequent compliance with the Pledge. 5. In variety descriptions in its print and on-line catalogs, acknowledge by name the breeder(s) of all OSSI-Pledged varieties listed (e.g., "Bred by "name of breeder(s)").

## **21. When I sell or distribute an OSSI-Pledged variety, can I change the name from the one the breeder gave it to some other name I prefer?**

OSSI-Pledged varieties may not be sold or distributed under a different name. We encourage people in the OSSI community to become familiar with the Federal Seed Act.

<https://www.ams.usda.gov/sites/default/files/media/FactsAboutNamingAndLabelingVarietiesofSeed.pdf> and <https://www.ams.usda.gov/rules-regulations/fsa/variety-naming>

## **22. May I use a trademark in connection with an OSSI-Pledged variety?**

A trademark is ownership of a certain name associated with a certain kind of produce or crop. Trademarks restrict use of a word or symbol, not use of any underlying goods. You may use a trademark with an OSSI-Pledged variety UNDER CERTAIN CIRCUMSTANCES ONLY. It is NOT acceptable to use a trademark to try to control access to or use of the seed of an OSSI-Pledged variety. It IS acceptable to use a trademark to indicate or identify a certain farm, producer, distributor, marketing group, or other entity, including those that have agreements to grow and market the variety according to certain standards. Accordingly:

1. The trademarked name registered and used, in any context, must be a different name from the variety name under which the variety is OSSI-Pledged. The two names cannot be the same.
2. No restrictions may exist on the rights of farmers, gardeners, and breeders to use, save seed from, plant, or sell seed from the trademarked variety as long as they do not use the trademark.
3. All descriptions in catalogs **and on all packaging** that contain viable seed must:
  - a. state the variety name under which the variety is Pledged,
  - b. state that this variety is an OSSI-Pledged variety, and
  - c. give a link to the official OSSI website.
4. Where a product description, web page, catalog, or package contains products involving OSSI-Pledged varieties but that do not include viable seed (such as flour or ground grain), the trademark holder may refer to the OSSI-Pledged status of one or more components or may not, at their discretion. If the trademark holder does opt to refer to the OSSI-Pledged status of one or more of their product's components, they must follow the same three policies as explained in Point 3, above.
5. Nothing in agreements among those using the trademark and nothing on the packaging, catalog listings, or advertising for the product may violate the terms of the OSSI Pledge. No restrictions may exist on the rights of farmers, gardeners, and breeders to use, breed from, reproduce, or sell seed from the trademarked variety as long as they do not use the trademark.
6. Trademark owners ARE allowed to make claims as to the superiority of the trademark-labeled material with respect to genetic purity, freedom from seed-born disease, quality, or other issues. Trademark owners are also allowed to say that buying the trademarked product promotes certain goals or supports a university, program, or other entity.

## FAQs III—For plant breeders

### **23. How do I gain OSSI-Pledge status for a variety that I have developed?**

We welcome the designation of additional varieties as OSSI-Pledged. Applications to OSSI-Pledge a variety are reviewed by OSSI's Variety Review Committee, who are all OSSI board members as well as experienced plant breeders. For further information on OSSI-Pledging a variety see <https://osseeds.org/pledge-a-variety-to-ossi/>.

### **24. Who can OSSI-Pledge a variety?**

Only the living breeder or co-breeder of a variety may apply to OSSI-Pledge a variety. All living co-breeders must agree to the OSSI-Pledging of a variety. If a breeder or co-breeder is an employee of a university, seed company other than one he/she owns or co-owns, or other institution that owns their work, the institution must also sign off before the variety can be OSSI-Pledged unless the variety carries automatic OSSI-Pledged status by virtue of being a derivative of an OSSI-Pledged variety.

### **25. What kinds of materials may be OSSI-Pledged?**

Some OSSI-Pledged varieties are finished varieties. Others are breeding materials or heterogeneous populations. Usually the breeder has been breeding the variety for three or more plant generations, though materials developed with just one or two plant generations of breeding may be accepted on a case by case basis at the discretion of OSSI's Variety Review Committee.

### **26. Can a variety be OSSI-Pledged if it has a current patent, PVP (Plant Variety Protection), or other intellectual property on it?**

No.

### **27. Can a variety be OSSI-Pledged if it is already covered by some other Pledge or license?**

No.

### **28. Can a public domain or heirloom variety be OSSI-Pledged?**

No.

### **29. Can a variety be OSSI-Pledged if some of its parentage is from a public domain, heirloom, or indigenous variety?**

Yes.

### **30. Can an F<sub>1</sub> hybrid be OSSI-Pledged?**

F<sub>1</sub> hybrids may sometimes be OSSI-Pledged, as decided on a case by case basis by OSSI's Variety Review Committee. Since hybrids are usually in part a method of restricting seed, we anticipate that OSSI-pledged F<sub>1</sub> hybrids might be accepted for Pledging because they are especially valuable as breeding material, or as a method for protecting novel plant traits from being claimed in utility patents. OSSI will require the contributor to identify the parents involved in the cross that produces the hybrid that might make the hybrid valuable in a breeding program or worthy of protecting from plant trait patenting. OSSI will not require that the parents themselves be OSSI-pledged or available. The breeder will be required to assure us that to the best of his/her knowledge, there are not intellectual property protection claims associated with the hybrid's parents that would limit freedom to use the hybrid or its progeny for breeding, seed saving, research, replanting or sale.



### **31. May I OSSI-Pledge my new Cannabis variety, germplasm, or population?**

Yes. OSSI accepts applications to Pledge *Cannabis sp.* materials as described in FAQ#25, as long as the propagation materials (the seeds or cuttings) do not exceed 0.3 percent THC on a dry weight basis. Prior to submitting your application, please consult the OSSI FAQs and information on the website on OSSI-Pledging a variety.

### **32. How do I choose a legally valid name for my new variety?**

As the breeder of the variety, you can name it. As long as you give your new variety a name that is consistent with the "Variety Naming Guidelines to Comply With the Federal Seed Act," your chosen variety name becomes the permanent legal name for your variety as soon as it is used in commerce in the United States. If you give or sell seed to someone else without naming your variety and they first enter the variety into commerce in the United States the variety name they give your variety becomes its permanent legal name. So you need to name your variety yourself before distributing it to anyone who might enter it into commerce, or you can lose the right to do the naming. Once a variety has a legal name, neither you nor anyone else can legally change that name unless it turns out that the name fails to comply with the Federal Seed Act guidelines and is itself illegal, for example by being the same as the name of some of variety of the same crop.

<https://www.ams.usda.gov/sites/default/files/media/FactsAboutNamingAndLabelingVarietiesofSeed.pdf> ; <https://www.ams.usda.gov/rules-regulations/fsa/variety-naming> ;

<https://www.ams.usda.gov/services/seed-testing/variety-name-list> ;

<https://apps.ams.usda.gov/VarietyWebSearch/searchform.aspx>

### **33. I bred a variety and released it some time ago. It is already available from a number of seed companies. Can I OSSI-Pledge such a variety?**

Usually, yes. The ideal situation is to Pledge a variety just before or as the variety is released so that all the seed of the variety in circulation is transmitted with the Pledge. However, OSSI usually does accept varieties that have been released previously on a case-by-case basis, with the main criterion being how widely distributed the variety was before Pledging. If the variety is widely available from many seed companies it may be impractical to Pledge the variety at that point since having both OSSI-Pledged and non-OSSI-Pledged seed of the same variety in commerce could be confusing. When the variety is available only from the breeder or from a few seed companies it can usually be OSSI-Pledged.

### **34. If I develop a new variety from an OSSI-Pledged variety, should I release and distribute it as an OSSI-Pledged variety?**

Derivatives of OSSI-Pledged varieties have automatic OSSI-Pledged status. They should be passed along only with the Pledge, like any other OSSI-Pledged variety. However, breeders may or may not release or sell seed of derivatives, at their discretion. Breeders may use derivatives to create commercial hybrids or use in produce sales or vertically integrated operations. Breeders have the option of submitting their derivative to OSSI for formal vetting as an OSSI-Pledged variety; this will be most useful where the variety is to be released and seed sold commercially. All derivatives have OSSI-Pledged status whether they are formally submitted to OSSI or not. However, OSSI requires that the breeder of a derivative inform OSSI of the existence of the derivative for our records. This could matter if OSSI ever needs to defend the derivative or anything derived from it legally.

### **35. Am I obligated to provide seed of a variety I develop and release under the OSSI Pledge to anyone who requests it?**

The developer of a variety released under the OSSI Pledge retains the right to distribute or not to distribute seed as he/she chooses. However, varieties are not accepted for OSSI-Pledging as original OSSI-Pledged varieties—varieties developed from non-OSSI-Pledged germplasm—unless they are going to be released in some way, for example through a seed company or by small samples sent by the breeder to those who request it. Once the variety is released and available the breeder is no longer responsible for distributing it. Derivatives have automatic OSSI-Pledged status and may or may not be released or made public at all at the discretion of the breeder. (Since every plant developed from a Pledged variety is a derivative, requiring release of derivatives would require breeders to release seed from nearly every plant in their fields, including seeds from the perhaps thousands of plants they grow while developing new varieties and all the new varieties before they are even released. It would not be workable.)

### **36. Can I contract for seed multiplication with seeds of an OSSI-Pledged variety?**

Yes. If you choose to multiply seeds of an OSSI-Pledged variety or derivative for personal use or sale, you may do so without fear of violating the OSSI Pledge. Selling seeds is fully consistent with the OSSI model. However, in accordance with the OSSI Pledge you cannot restrict others' rights to use the seeds or their progeny or derivatives. That is, when others purchase your seeds they must have the right to breed with them, save them, sell them, and to transfer them under the Pledge. In addition, you must pass the Pledge along with the seed.

### **37. Does the OSSI Pledge allow contracts or agreements involving OSSI-Pledge varieties or derivatives?**

OSSI accepts *certain* contracts or agreements involving OSSI-Pledged varieties in order to facilitate seed increase and production and/or to provide benefit sharing to breeders. OSSI's principal mission is to provide breeders, farmers, and gardeners with seed they can use in any way they choose. Seed increase is an essential step in the production or release or availability of seed of most varieties. In addition, OSSI supports the goal of facilitating plant breeding by rewarding breeders for the value they add to the gene pool when they develop a new plant variety. Contracts or agreements between breeders, growers, and seed companies are essential tools for facilitating seed introduction and production and/or ensuring an appropriate return of benefits to the breeder. OSSI permits such contracts and agreements as long as the agreement passes no benefit sharing obligation or any other restrictions on to subsequent buyers of the seed. These arrangements were based on practices already in use among OSSI breeders, seed growers, and seed company partners. Formally, OSSI's policy is as follows:

**The Open Source Seed Initiative permits any contract or agreement for seed increase and/or benefit sharing for OSSI-Pledged varieties in which the restrictions on the use of the seeds are limited to the two contracting parties. Seed companies can pass no restrictions on to breeders or customers. From the point of view of breeders or customers, OSSI-Pledge varieties must be unrestricted.**

Example 1: A breeder might contract with a seed company to allow them to grow and sell seed of his unreleased OSSI-Pledged variety in exchange for a specified royalty. The seed company, however, must sell the seed to its customers with the Pledge and with no royalty requirements or obligations other than the Pledge passed along to the seed company's customers. (Can another seed company buy a packet of such seed from the first seed company and do their own grow-out, thus escaping from paying any royalty to the breeder? Yes, it can. However, if the second seed company is fairly large, the breeder

or his/her agent may call the company and suggest that it would be a lot friendlier thing to do to help support the breeding of the OSSI-Pledged varieties they use. Which they may or may not do. It's their choice.)

Example 2. A breeder or seed company might contract with a seed grower for a grow-out of an OSSI-Pledged variety. That contract might have every conceivable restriction, specifying for example exactly how the seed is grown and that all seed must be sold back to the breeder with none retained by the grower even for his own use. These latter terms are commonly used when the variety has not yet been released. (Breeders and seed companies introducing a new variety need to control release of the variety rather than have a grower or someone who got seed from a grower release it independently, giving it a different name, their own description, and essentially getting credit for the breeding or making it appear that there is a similar variety that is just as good that was introduced earlier.) This arrangement is OSSI-compatible, because there are no third parties. The seed and plants belong to the breeder or first seed company during the grow-out by the seed grower. If the grower or second seed company has permission to distribute or sell seed to third parties, those third parties cannot be restricted in any way except by the terms of the Pledge.

### **38. Can I use an MTA (Material Transfer Agreement) with an OSSI-Pledged variety?**

MTA's of certain types may be used with *unreleased* OSSI-Pledged varieties. It depends on what's in the MTA. MTAs are contracts; so OSSI's policies with respect to contracts apply. Some MTAs are simple contracts between two parties specifying that the seed is provided for trials only, and no seed will be saved, bred with, or distributed to third parties. These MTAs are often used to permit seed companies to trial unreleased varieties. These types of MTAs are compatible with OSSI-Pledged varieties even though they commonly forbid saving seed, breeding with it, etc. Breeders need to be able to use such MTAs with unreleased OSSI-Pledged varieties in order to arrange for seed increase and control release of their varieties. MTA's cannot be used with released OSSI-Pledged varieties, as it would involve adding restrictions to seed protected by the OSSI Pledge, and would violate the Pledge. Some MTAs pass restrictions on use of the seed on to third parties. Such MTAs may not be used with OSSI-Pledged varieties. See FAQs 36 and 37.

### **39. Can the OSSI-Pledged status of a variety be revoked or withdrawn?**

No. The OSSI-Pledged status of a variety cannot be revoked or withdrawn by either the breeder or OSSI unless the Pledging itself was illegitimate. Pledging may be annulled at the discretion of OSSI if the Pledging turns out to be illegitimate. A Pledging would be illegitimate, for example, if it was later determined that the contributor did not breed the variety or have the right to Pledge it, or had violated someone's intellectual property rights in developing it.

### **40. Can OSSI add new FAQs or change their interpretations?**

Yes. OSSI needs to be able to update the FAQs to meet changes in needs and practices. However, as a breeder you are bound only by the FAQs as they existed at the time you OSSI-Pledged your variety.