Potential Use of a Computer-Generated Contract Template System (CoGenCo) to Facilitate Licensing of Traits and Varieties

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ABSTRACT

Licensing between companies of both traits and varieties is routine, and there is no reason that it should be anything other than routine between companies and public sector institutions, as well. Some public entities struggle to gain experience in this area. This leads companies to shun negotiations and, even, discussions. Yet opportunities for the public sector to in-license traits (in the form of well-characterized and deregulated transgenic "events") and varieties are vast and could lead to earlier access with respect to transgenic events (through backcrossing into local varieties) and to improved varieties for subsistence farmers. In order to improve the ability of the public sector to both in-license and out-license germplasm, a test version of a software program, the "Computer Generated Contract Template System" (CoGenCo), was developed. It aims to facilitate the exchange (or licensing) of commercial varieties by "walking" potential licensors and licensees though a systematic list of questions and tested parameters. CoGenCo is a pragmatic way of increasing the licensing of both finished varieties and germplasm containing transgenes for backcrossing, and its flexibility would make it especially suited for use in developing countries. This chapter explains the concept behind the software's test version and leads the reader through its use. The authors very much welcome comments and suggestions about the software and look forward to collaborating with interested parties to further develop CoGenCo into a comprehensive and widely available system.

1. INTRODUCTION

The international agricultural-development community, the crop industry, and various advocacy groups disagree about how to transfer protected varieties and biotechnological inventions to developing countries. Yet everyone agrees that access to these inventions in developing countries should be improved and accelerated, either through donations or "open-source" licensing or through a variety of other strategies. But too often this goal is made complicated by too much industry incrementalism, or by activist demagoguery. From a humanitarian perspective, such debates distract from the only focus that matters—the urgent need for farmers to access improved traits and varieties.

There is no reason that the licensing of germplasm and traits, particularly to meet the needs of resource-poor farmers in developing countries, need be more difficult than out-licensing for routine business purposes. Any plant-breeding company that does the latter—virtually all of them—considers out-licensing routine. Consider Holden's Foundation Seeds, a company now owned by Monsanto, the sole revenue of which comes from the out-licensing of its foundation seeds. In terms of developing country licensing, however, most companies are reluctant to even enter into discussions, let alone negotiations, partly because many variables are unknown or little tested, and because few companies have any experience in this area. For these reasons, a small

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project was undertaken to develop a test version of a software program, the Computer Generated Contract Template System (CoGenCo).

2. WHAT IS COGENCO?

CoGenCo was designed to contribute to facilitating the exchange (or licensing) of commercial varieties by "walking" potential licensors and licensees though a systematic list of questions and tested parameters. The word *commercial* here is used because the licensor transfers commercial varieties primarily for commercialization in developing countries (following appropriate backcrossing, as necessary). Such commercialization may be in the form of donations, through national agricultural-research systems, or directly through seed companies.

CoGenCo is a concept proposed as a pragmatic way of increasing licensing of proprietary and finished varieties that may or may not incorporate proprietary technologies. Essentially, CoGenCo facilitates the awarding of out-licenses to developing country institutions, including germplasm from the Consultative Group on International Agricultural Research (CGIAR). Under the legally binding terms of these license agreements, several entities in a given country could compete against one another on price in *poor* (developing) countries but would not be allowed to compete against the patent holder in developed countries, where revenues and incentives for developing new varieties and new technologies would be undiminished. Under appropriate circumstances, the germplasm and/or traits could also be licensed royalty free. Such out-licensing separates these fundamentally different markets and promotes access to improved germplasm and technologies, all by reaffirming various statutory protections as indispensable for successful agricultural research and development.

The CoGenCo system, therefore, is aimed at establishing a certain international standard license. The more institutions use the CoGenCo template, the more the system becomes valuable. For this reason, we intend to make the CoGenCo system available for free once it is fully developed.

3. THE TEST VERSION

Based on discussions with several lawyers and licensing experts, we generated a basic license template. First, we developed a set of key variables and agreed on different options to choose from within defined ranges. A software engineer translated the concept into a "workable" software version that would provide a feel for what a finished product would look like. We selected Microsoft® Access® as the backbone of the system because it provides flexibility and easily expands into a version that can be used via a Web interface. Users around the world would thus be able to access the system without having to invest in expensive database software.

The primary objective of this test version was to see how different types of potential users would use it. The software allows for certain parameters to be adjusted. For example, for "humanitarian" licensing, a royalty of 0% could be specified, whereas for larger farmers, a sliding-scale royalty rate could be chosen. Depending on the option preferred, a different set of follow-up options will arise, such as liabilities, payment terms, auditing requirements, and so on. The software will be developed in such a way that individual users may customize the software. For example, they could include their own institutional standard language where appropriate. It could also eventually be downloadable from the online version of this *Handbook*.[1]

Figure 1 shows one of many screenshots that allow users to input various parameters and select from a range of options. For example, by selecting the tab *License*, the user is offered a screen that lists all the pertinent licensing details, including the territory (countries), and many more. The user basically walks through the different issues that should be considered in a license and is provided with one, two, or more options.

The software thus presents users with an interactive decision tree, which allows for multiple choices or user inputs. The key factors included are:

- country
- commodity/crop
- technology
- farm size

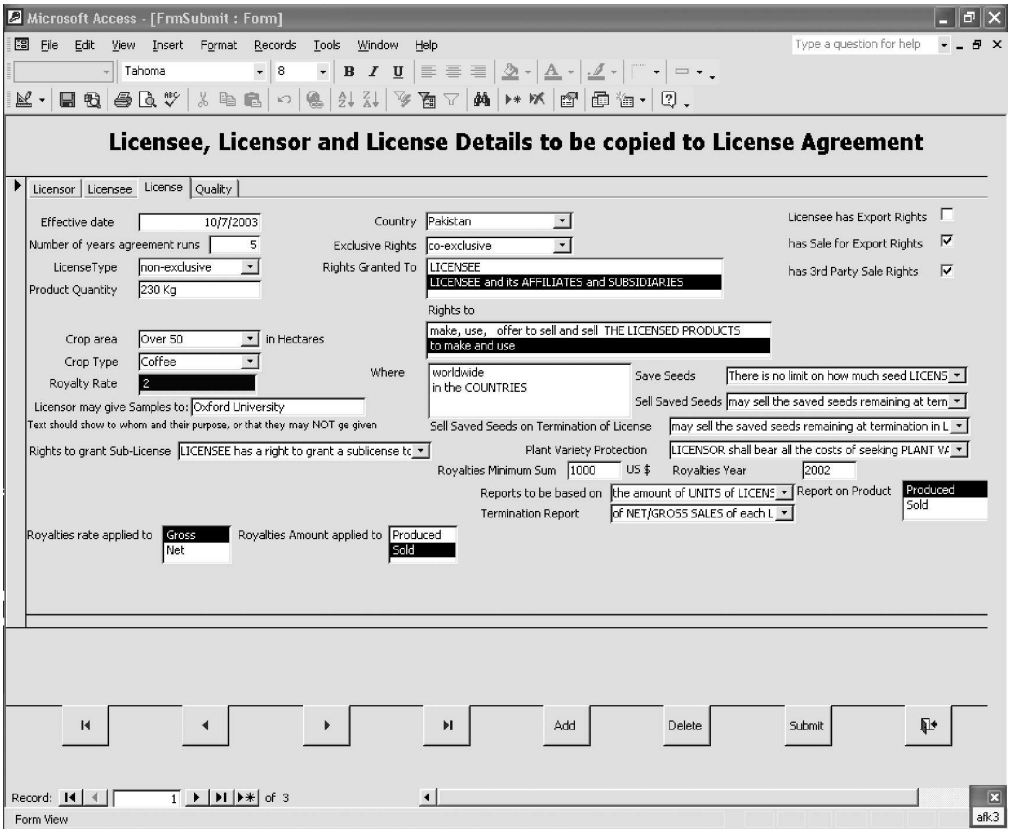
- material transfer/reach-through clauses
- farm income
- import/export matters
- cooperative farm issues
- sliding scale for royalties
- royalty stacking issues
- warranties
- liabilities
- third-party distribution issues
- farmer-seeds issues

For example, the software system will ask the user whether tangible material is being transferred under the license. If *NO* is selected, then the next options will be limited to IP licensing aspects (including patents and/or know-how and/or trademarks and/or copyrights). If *YES* is selected under tangible material, then a specific question arises as to the conditions of the transfer, primarily in terms of possible reach-through clauses. To include reach-through clauses has certain advantages and disadvantages. If the user selects *YES*, then he or she will be prompted with different language and issues to consider. Also, if the user selected *YES*, then later down the path, an alternative liability clause will be offered that is somewhat different from the scenario under which no material transfer takes place.

To illustrate, if the user clicks *YES* under material transfer, he or she will be offered options such as these:

1. Is the licensor transferring the material with certain claims of ownership on new inventions based on the transferred material?
   - ☐ No, the licensor makes no claims on ownership of new inventions.

Figure 1: User Interface for the Specification of Licensee, Licensor, and License Details



→ The software system will proceed to the next topic.

☐ Yes, the licensor does make some claim of ownership.

→ The software system will offer some of the options illustrated below:

First, the user will be offered some text about reach-through clauses, their utility, and their rationale, and information about how common such clauses are under different conditions. Basically, licensors want to ensure that if the licensee makes an improvement, the licensor is not prevented from using/licensing the improved licensed technology and benefiting from the improvements.

There are several levels of ownership a licensor may wish to exercise. Which one is chosen depends on the commercialization strategies of the licensor, including the symmetry of negotiations. Generally, three levels are typical (whether for commercial or humanitarian use). These will be listed, together with a blank field for the users to specify their own terms. For example:

Licensor gives the material, and if licensee improves the invention or invents something based on the transferred material, licensee will give licensor one of the following:

1. an exclusive license in all Fields of Use (crops or applications, that is, medical, agricultural, environmental, and so on, as defined above) in all territories (countries, group of countries, as defined above) and grant back a royalty-free nonexclusive license to licensee in Field of Use
2. a royalty-free nonexclusive license ***and*** a right of first refusal to an exclusive license (in some/all Fields of Use and in some/all territories)
3. a first right of refusal to an exclusive license (in some/all Fields of Use and in some/all Territories).
4. other (specified by user)

Each such option will be linked to legal language in plain English to be inserted into the license. For example, under 2. above, the following language would be inserted:

In consideration of Licensor's contribution of Materials (defined above), Licensee grants to Licensor a paid-up, worldwide, nonexclusive license to make, have made, use, have used, import, export, sell and have sold products and processes developed from Materials and an option to obtain a fee-bearing, worldwide, exclusive license to make, have made … (terms to exercise option to be defined; software will prompt user with a new screen on the ways in which such options can be exercised; depending on which is selected, the legal language and clause will be amended accordingly).

For number 3. above, the clause could read:

In consideration of Licensor's contribution of Materials (defined above), Licensee grants to Licensor an option, exercisable at any time up to two years after expiration or termination to obtain a royalty-bearing, worldwide, exclusive license with a right to grant sublicenses to Company affiliates and subsidiaries in the following Field of Use (defined where field of use refers to crops) in Territory (geographic region, limited or worldwide) or a combination thereof.

Other fields are diverse and include the type of licensee institution, the countries, or the type of license (Table 1).

As above, depending on which field is chosen, other text in the database template will automatically be inserted into the license agreement.

To generate the complete license in Microsoft® Word®, the user now presses the tab Submit at the bottom right corner. See Box 1 for an example of the output (see also the Appendix to this *Handbook* for a comprehensive commercial variety license).

4. CONCLUSIONS: IMPLEMENTING COGENCO

CoGenCo has the potential to help public institutions license plant varieties and associated intellectual property more easily than before. It offers a very flexible, pragmatic approach to drafting licensing agreements. A test version of CoGenCo and a preliminary user's guide, together with the draft license, are available to interested parties.

It will require running Microsoft® Access® on a Windows XP or higher system. The authors very much welcome comments and suggestions about the software and look forward to collaborating with interested parties to further develop CoGenCo into a comprehensive and widely available system. ■

ACKNOWLEDGMENTS

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1 See www.ipHandbook.org.

2 This means that the LICENSOR shall be the first party to which a worldwide exclusive license is offered. Only after the LICENSOR has refused from such a license may the LICENSEE offer the license to others.

Table 1: Options under License Type

License Type	Note
Exclusive	Exclusive license is a promise by the licensor not to practice under the licensed intellectual property and not to grant any further licenses.
Nonexclusive	Nonexclusive license ensures that the owner of the licensed intellectual property shall not sue the licensee with respect to acts done within the scope of the license. The licensor can grant several nonexclusive licenses to same intellectual property.
Coexclusive	Coexclusive license is otherwise similar to the exclusive license but the licensor retains rights to itself practice the intellectual property.

Box 1: Sample Noncommercial Variety Licensing Agreement

Underlined and bolded text means that these gaps will be filled in when completing the agreement using the software.

Italicized and bolded text means that these are one or more alternatives to be chosen depending on the parties, the circumstances, and so forth.

Bold indicates text that may not apply to given agreement.

Effective **day** of **month**, **insert year** (hereafter, the EFFECTIVE DATE) **full name of organization licensing out to the other**, having a principal place of business at **address** (hereafter LICENSOR) and **full name of organization licensing in**, having a principal place of business at **address** (hereafter LICENSEE) agrees as follows:

I. PARTIES

LICENSOR being
a) a not-for-profit organization with the objective to _____
b) a not-for-profit company in business of_____
c) a for-profit entity in business of _____

and LICENSEE being
a) a small farmer_____
b) a farmer's association_____
c) a for-profit entity in business of _____
d) a not-for-profit organization with the objective to _____

have agreed to ***_____(for example, commercialize and produce seeds of the variety CCC)***

LICENSOR represents that it owns the rights to
patents
plant patents
trademarks
plant varieties
trade secrets
copyrights
in respect to which it is prepared to grant
nonexclusive
exclusive
coexclusive
license to the LICENSEE.

LICENSEE, wishes to acquire a license under selected
patents
plant patents
trademarks
plant varieties
trade secrets
copyrights
for purposes of **(for example, seed production, distribution, sale, to have sold, etc.)**

Box 1 (continued)

LICENSOR and LICENSEE are hereunder commonly referred to as PARTIES.

ARTICLE 1. DEFINITIONS

In this Agreement defined terms shall have the meanings set out below:

[optional] AFFILIATE of a PARTY means any person or legal entity that is a general licensee of such PARTY in the field of this agreement and that has a contract with such PARTY entitling it to receive continuing technical services from the PARTY, but any such person shall be deemed to be an affiliate only so long as it has such a contract and continues to be such a licensee.

COMMERCIAL SALES means the sales made by LICENSEE in the TERRITORY.

COOPERATIVE means an enterprise or organization jointly owned or managed by those who use its facilities or services.

[optional] COUNTRY means a country in which the LICENSEE makes EXPORT SALES. A list of COUNTRIES is attached as an integral part of this license agreement. Such list may be updated in writing by the parties from time to time by mutual agreement.

[optional] EXPORT SALES means the sales made by the LICENSEE in COUNTRIES.

FARMERS' ASSOCIATION means an organized body of farmers.

[optional] GROSS SALES means income at invoice values received for goods and services over a given period of time.

[optional] INVENTION means the invention, which is the subject matter of patents, PVP or any other form of Intellectual Property Protection.

INTELLECTUAL PROPERTY means the patents, copyrights, trademarks, design rights, data protection rights, plant variety rights and any other statutory rights for inventions, improvements, designs, and any other intellectual property rights in any territory of the world relating to the INVENTION.

KNOW-HOW means all information, data, results and know-how (including without limitation reports, notebooks, drawings, papers, documents, manuals and databases) but excluding MATERIAL.

LICENSED CROP means the crop or crops listed in Appendix I, initially derived from the plant variety XXXX.

LICENSED KNOW-HOW means KNOW-HOW relating to the INVENTION.

LICENSED
PATENTS
PLANT PATENTS
TRADEMARKS

(Continued on Next Page)

Box 1 (continued)

PLANT VARIETIES
TRADE SECRETS
means _____

MATERIAL means all forms of living and nonliving biological material including without limitation, strains, clones, antiserum, plants, parts of plants, cultivars, germplasm, genetic material, gene constructs, and microorganisms.

[optional] NET SALES means gross sales reduced by customer discounts, returns, freight out, and allowances

[optional] NONPROFIT CORPORATION means a corporation no part of the income of which is distributable to its members, directors, or officers. Corporation organized for other than profit-making purposes.

[optional] NONPROFIT ORGANIZATION means an organization for purposes other than generating profit, such as charitable, scientific, or literary organization.

[optional] PATENTS mean any and all patents (including but not limited to patents of implementation, improvement, or addition; utility model and appearance design patents; and inventors' certificates; as well as divisions, reissues, continuations, renewals, and extensions of any of these), applications for patent, and letters of patent that may issue on such applications.

[optional] UNIT OF PRODUCT EMBODYING THE INVENTION means **kg of seeds of the VARIETY or number of fruits of the VARIETY.**

PRODUCTS EMBODYING THE INVENTION means for example, fruit, seed or plant parts of the PLANT VARIETY.

PROPRIETARY GERMPLASM means Germplasm, which in the relevant TERRITORY or COUNTRIES is the subject of intellectual property protection owned or controlled by LICENSOR.

PRODUCTION COST means combined cost of raw material and labor incurred in producing seeds.

[optional] PVP means Plant Variety Protection; the protection of varieties as a form of exclusive ownership and use rights determined based on distinctness, uniformity, and stability of the Plant Material.

SAMPLES means any samples or copies of the MATERIAL distributed to third parties for testing purposes.

SMALL FARMER means a farmer

a) ***owning and operating a farm smaller than*** **the area** ***and growing*** **the crop** ***on at least*** (**percentage) %** ***of the area***
b) ***having yearly sell less than*** $**amount**

[optional] SUBSIDIARY of a PARTY means any corporation over 50% of the voting stock of which is directly or indirectly owned or controlled by such a PARTY.

TECHNOLOGY means the INVENTION, LICENSED KNOW-HOW, LICENSED MATERIAL, and INTELLECTUAL PROPERTY.

(Continued on Next Page)

Box 1 (continued)

TERRITORY means the geographic territory of **name of the territory (for example, Uganda).**

[optional] VARIETY means plant variety as described in relevant certificate of Plant Variety Protection.

VARIETY NAME means the name.

ARTICLE 2. LICENSE GRANT

LICENSOR grants to LICENSEE an

a) ***exclusive/nonexclusive license to produce and use PRODUCTS EMBODYING THE INVENTION worldwide/throughout the TERRITORY and offer to sell and sell worldwide/ throughout the TERRITORY/in the COUNTRIES***

and/or

b) ***an exclusive/nonexclusive license to produce and use worldwide/throughout the TERRITORY but not offer to sell and sell PRODUCTS EMBODYING THE INVENTION worldwide/throughout the TERRITORY***

LICENSEE
has
has not
a right to export the PRODUCTS EMBODYING THE INVENTION to the COUNTRIES. LICENSEE
has
has not
a right to sell the PRODUCTS EMBODYING THE INVENTION to a third party exporting or aiming to export. LICENSEE
has
has not
a right to sell the PRODUCTS EMBODYING THE INVENTION through any third party, including any FARMER'S ASSOCIATION.

[optional] The license granted in this article is subject to a reserved nonexclusive license to the LICENSOR to produce, use, sell, offer for sale and import the PRODUCTS EMBODYING THE INVENTION.

ARTICLE 3. OBLIGATIONS OF THE PARTIES

[optional] 3.1. RIGHT TO SAVE SEEDS

a) ***There is no limit to how much seed LICENSEE may save***
b) ***LICENSEE may save enough seed to plant his/her own farm holding***
c) ***LICENSEE has no right to save seeds***

[optional] If a or b was selected from above then 3.1.1. RIGHT TO SELL SAVED SEEDS

a) The saved seeds may not be sold without permission of LICENSOR
b) LICENSEE may sell the saved seed

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Box 1 (continued)

a) but only by VARIETY NAME
b) but only under the LICENSED TRADEMARK

When this agreement is terminated LICENSEE
a) may not sell the saved seeds/
b) may sell the saved seeds
a) but only by VARIETY NAME
b) but only under the LICENSED TRADEMARK
c) shall sell the seeds to the LICENSOR at the production cost

[optional] 3.1 RIGHT TO GIVE SAMPLES

[optional] The LICENSOR reserves a right to give SAMPLES to
a) any third party for (e.g. research, testing) purposes/
b) to (e.g. research) institutes to (e.g. research) purposes

3.3 RIGHT TO GRANT SUBLICENSES

a) LICENSEE has not a right to grant a sublicense to a third party/

b) LICENSEE has a right to grant a sublicense to a third party. LICENSEE has such a right only at such times, as it is not in material default with any of its obligations to LICENSOR under this agreement. Any such sublicense should be in writing and shall be accepted in writing by any such third party.

The operations of such third party shall be deemed to be the operations of LICENSEE, and LICENSEE shall account therefore and be primarily responsible for the performance by such third party of all of its obligations hereunder.

LICENSEE shall notify LICENSOR promptly in writing of any such sublicense.

Any sublicense granted by the LICENSEE shall be deemed to terminate upon termination of this Agreement terminates.

3.4. ADVERTISING, MARKETING AND PROMOTION COSTS

LICENSEE shall bear all costs associated with the advertising, marketing, and promotion of MATERIAL and TECHNOGIY covered by this license. **[optional] LICENSEE shall make reasonable efforts to share with LICENSOR details of such campaigns in advance of release.**

3.5. GOVERNMENT AND REGULATORY APPROVALS

LICENSEE shall be responsible for adhering to all laws and regulations and for obtaining and complying with all government and regulatory approvals, licenses, clearances and consents pertinent to or required to cover its activities under this agreement.

[optional] 3.5. PLANT VARIETY PROTECTION

LICENSOR shall bear all the costs of seeking PLANT VARIETY PROTECTION in TERRITORY and/or

(Continued on Next Page)

Box 1 (continued)

COUNTRIES when it is mutually agreed that the potential markets justify such costs.

3.6. INDEPENDENT ENTITIES

Each PARTY is acting as an independent entity. Nothing in this Agreement shall be construed so as to constitute a partnership or joint venture of any kind between the PARTIES hereto. This document merely serves to license MATERIAL and TECHNOLOGY from LICENSOR TO LICENSEE**.**

ARTICLE 4. ROYALTIES

4.1. RATE OF ROYALTIES

- ***a) LICENSEE shall pay royalties to LICENSOR from COMMERCIAL SALES at the rate of number % of a) the gross sales/ b) net sales of the PRODUCT EMBODYING THE INVENTION and/or***
- ***b) LICENSEE shall pay royalties to LICENSOR from EXPORT SALES at the rate of number% of a) the gross sales/ b) net sales of the PRODUCT EMBODYING THE INVENTION and/or***
- ***c) LICENSEE shall pay royalties to the LICENSOR from COMMERCIAL SALES at the rate of US$ the amount per UNIT of a) PRODUCT EMBODYING THE INVENTION sold/ 2) PRODUCT EMBODYING THE INVENTION produced***
- ***d) LICENSEE shall pay royalties to the LICENSOR from EXPORT SALES at the rate of US$ the amount per UNIT of 1) PRODUCT EMBODYING THE INVENTION sold/ 2) PRODUCT EMBODYIN THE INVENTION produced.***

[optional] In case the royalties paid do not aggregate a minimum of the sum US$ dollars for the year ending December 31, the year, and for each succeeding calendar year during the life of this agreement, LICENSEE will pay to LICENSOR, within thirty (30) days of the end of such year, the difference between the royalties actually paid under this Agreement for such year and such minimum sum.

4.2. REPORTING

a) LICENSEE agrees to a) report/ b) make written report to LICENSOR

- ***i.) once a year***
- ***ii) twice a year during the life of this Agreement stating in each such report the number and description of***
  - ***a. net***
  - ***b. gross sales of each PRODUCT EMBODYING THE INVENTION sold or otherwise disposed of during the preceding***
    - ***i. 12 months***
    - ***ii. 6 months***

b) LICENSEE agrees to report to LICENSOR once a year during the life of this Agreement the amount of UNITS of PRODUCTS EMBODYING THE INVENTION a) produced/b) sold.

LICENSEE agrees to make a written report to LICENSOR within thirty (30) days after the date of termination of this Agreement stating in such report the number and description

- ***a) of net/gross sales of each PRODUCT EMBODYING THE INVENTION sold or otherwise disposed***
- ***b) amount of UNITS of PRODUCTS EMBODYING THE INVENTION***
- ***c) amount of UNITS of PRODUCTS EMBODYING THE INVENTION produced***

and on which royalty is payable hereunder but that were not previously reported to LICENSOR.

(Continued on Next Page)

Box 1 (continued)

4.4. RECORD KEEPING

LICENSEE agrees to keep records showing the sales or other dispositions of the PRODUCTS EMBODYING THE INVENTION in sufficient details and further agrees to permit its books and record to be examined from time to time to the extent necessary to verify the reports provided above. Any costs of the examination of the books are due to the LICENSOR.

4.5 TERMINATION OF OBLIGATION TO PAY ROYALTIES

The obligation to pay royalties shall terminate when this Agreement terminates.

[optional] ARTICLE 5._

The PRODUCTS EMBODYING THE INVENTION and aimed to COMMERCIAL SALES or EXPORT SALES shall be
a) of high quality which is at least equal to comparable products produced and marketed by LICENSEE and in conformity with a standard SAMPLE approved by LICENSOR/
b) of the quality of certified seeds/
c) shall have germination percentage of at least ___(%)

If the quality of such PRODUCTS EMBODYING THE INVENTION falls below such quality as previously approved by LICENSOR, LICENSEE shall use its best efforts to restore such a quality. In the event that LICENSEE has not taken appropriate steps to restore such a quality within number days after notification by LICENSOR, LICENSOR shall have the right to terminate this Agreement.

Before selling PRODUCTS EMBODYING THE INVENTION, LICENSEE shall submit to LICENSOR, at no cost to LICENSOR and for approval as to quality, number sets of samples of the PRODUCTS EMBODYING THE INVENTION, which LICENSEE intends to sell and one (1) complete set of all promotional and advertising material associated therewith. Failure of LICENSOR to approve such samples within number working days after receipt hereof will be deemed approval. If LICENSOR should disapprove any SAMPLE, it shall provide specific reasons for such disapproval. Once such SAMPLES have been approved by LICENSOR, LICENSEE shall not materially depart therefrom without LICENSOR's prior express written consent that shall not be unreasonably withheld.

The LICENSEE agrees to permit LICENSOR or its representatives to inspect the facilities where the PRODUCTS EMBODYING THE INVENTION are being produced
and/
or
packaged.

[optional] ARTICLE 6. INVENTIONS

6.1. NOTIFICATION OF INVENTIONS, IMPROVEMENTS, OR DISCOVERIES

If during the term of this Agreement LICENSEE generates any INVENTION, improvement, or discovery that improves the MATERIAL or TECHNOLOGY, it shall notify LICENSOR immediately and the PARTIES shall meet to discuss the ownership and patenting of the NEW MATERIAL, TECHNOLOGY, or INVENTION, and if appropriate the TERRITORY and COUNTRIES in which such patent protection should be sought. Should such MATERIAL, TECHNOLOGY, or INVENTION be

(Continued on Next Page)

Box 1 (continued)

patentable LICENSOR will be granted a royalty-free worldwide nonexclusive commercial license thereunder including the right to sublicense for all applications and a first option[1] to negotiate worldwide exclusive access or all uses.

6.2. LICENSEE'S RIGHTS TO NEW INTELLECTUAL PROPERTY
In any event LICENSEE shall retain royalty bearing nonexclusive licenses for use
a) in the TERRITORY
b) in country
of any such intellectual property generated by LICENSEE arising during the term of this Agreement.

[optional] 6.3. LICENSEE'S OBLIGATIONS
LICENSEE shall not make or permit to be made by any employee, appointee, agent contractor, or otherwise any publication or results, or data arising under or in connection with this Agreement, nor disclose the existence or content of this Agreement without the prior written consent of LICENSOR.

ARTICLE 7. CONFIDENTIAL INFORMATION

Any information provided under this Agreement to LICENSEE, which LICENSOR considers confidential, will be provided in a written or oral form or in the form of a sample. LICENSEE agrees that it will treat such information and material confidential and will not divulge or provide such information and material to any third party. LICENSEE further agrees that it will not make any use of such information or material except as required or authorized by LICENSOR.

ARTICLE 8. TERMINATION OF THE AGREEMENT

[optional] In case royalties paid through December 31**, year** or any subsequent full calendar year do not equal or exceed minimum of **amount in letters** dollars **$amount in numbers.** LICENSOR may at its option terminate this Agreement and the license granted to LICENSEE by thirty (30) days' notice in writing to LICENSEE. Such termination shall not release LICENSEE from any liability or obligations to LICENSOR, which occurred on or prior to the date of such termination.

This Agreement may be terminated by either PARTY upon written notice to the other PARTY specifying a material breach by the other party of the provisions thereof. The nonbreaching PARTY may terminate this Agreement in the event the specified breach has not been cured within sixty (60) days after the written notice.

Unless earlier terminated, this agreement shall extend for **number of years)** years from the date of execution of this agreement.

ARTICLE 9. LIABILITIES

LICENSOR shall in no event be liable for damages, whether direct or otherwise, arising out of the use by LICENSEE or any third party of information or materials supplied hereunder.

In no event shall LICENSOR be liable for lost or prospective profits or special or consequential damages, whether or not LICENSOR has been advised of the possibility of the damages, nor for

(Continued on Next Page)

Box 1 (continued)

any claim by a third party against LICENSEE.

LICENSOR warrants that it is the sole owner of the (**describe the IP**) and that it has the right to grant licenses.

ARTICLE 10. APPLICABLE LAW

This agreement shall be governed by and construed according to the laws of **country or state.**

ARTICLE 11. VALIDITY

If any of the provisions of this Agreement are held to be invalid or unenforceable, the PARTIES will attempt to replace them with new provisions, which have the same force and effect and the remaining provisions shall not be affected.

ARTICLE 12. DISPUTE RESOLUTION

In the event a dispute shall arise between the PARTIES to this Agreement, the PARTIES agree to participate in at least four (4) hours mediation in accordance with the mediation rules of _____ _____. The PARTIES agree to share equally the costs of the mediation. In case the PARTIES are unable to resolve the dispute in mediation they agree to submit the dispute to

a) final and binding arbitration under the arbitration rules of _____,* [optional] and the judgment upon the award rendered by the Arbitrator(s) may be entered into any court having judgment thereof. *The PARTIES agree to share equally the costs of the arbitration.

b) court decision

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed by their duly authorized representatives as of the dates below.

_____ _____
For Date

_____ _____
For Date

a This means that the LICENSOR shall be the first party to which a worldwide exclusive license is offered. Only after the LICENSOR has refused from such a license may the LICENSEE offer the license to others.