

Pro Forma INRA TRANSFERT TEC Evaluation Licence

INRA TEC EVALUATION LICENCE AGREEMENT

This Agreement is between INRA TRANSFERT a company registered in France whose registered office is 10 rue Vivienne, 75002, Paris, France (hereinafter "IT") and whose registered office is at, (hereinafter "Subscriber").

The Effective Date of this Agreement shall be (the "Effective Date").

ARTICLE 1 BACKGROUND

- 1.1 IT has the right to and is able to license the rights granted or agreed to be granted under this Agreement relating the technology developed by of (hereinafter "Source") and the subject of [patent application(s) Number.....].
- 1.2 The technology mentioned in Clause 1.1 was released to subscribers of PBL's (Plant Bioscience Limited) Plant Technology Evaluation Concept programme (the "TEC") on("Release Date")
- 1.3 As a subscriber to the TEC, SUBSCRIBER has a right to select for evaluation certain technologies released under the TEC, and SUBSCRIBER now wishes to exercise such right to evaluate the technology referred to in Clause 1.1, as more particularly defined herein. IT is willing to grant SUBSCRIBER this evaluation right under the terms and conditions of this Agreement.

ARTICLE 2 DEFINITIONS

- 2.1 "Affiliate(s)" means any company controlled by or under common control with a Party to this Agreement.
- 2.2 "Control" meaning in this context the direct or indirect ownership of more than fifty percent (50%) of the voting rights of a company, or the power to nominate more than half of the directors, or the power otherwise to determine the policy of a company or organisation.
- 2.3 "Parties" means IT and SUBSCRIBER; "Party" means IT or SUBSCRIBER, as the context requires.
- 2.4 "Know-How" means unpatented (as at the Effective Date) confidential technical information, knowledge and proprietary materials relating to Patent Rights and within the right of IT to license, including without limitation such information and materials relating to the Technology as have already been made available by PBL and IT to SUBSCRIBER before the date of this Agreement.
- 2.5 "Materials" means any living and nonliving biomaterial and/or other physical property supplied by IT or on IT's behalf to SUBSCRIBER containing or comprising technology as shown in Schedule A and any mutually agreed amendments made thereto.
- 2.6 "Patent Rights" means (a) [priority] patent application number and any patent(s) based on that application; and (b) any patents and applications corresponding to such patents and applications which may be granted to or made by [IT/FRO...] in other countries; and any re-issues or extensions of such patents and any division and continuations of such applications.
- 2.7 "Technology" means the Patent Rights, Materials, and Know-How relating to the invention(s) described in Clause 1. 1.
- 2.8 "Improvements" means all improvements, modifications or discoveries in relation to the Technology which are made by SUBSCRIBER during the term of this Agreement the use or exploitation of which would infringe any pending or granted claim of the Patent Rights.
- 2.9 "Non-Subscriber" means any commercial entity that is not a paid up subscriber to the TEC.

ARTICLE 3 EVALUATION LICENCE, SUPPLY OF MATERIALS AND KNOW-HOW

- 3.1 IT hereby grants to SUBSCRIBER a limited non-exclusive licence, without the right to sub-license, to evaluate the Technology in SUBSCRIBER's own in-house evaluation programme to determine SUBSCRIBER's interest to secure research and/or commercial exploitation rights (or options) to the Technology (hereinafter the "Evaluation Licence"). All other uses of the Technology including without limitation use in research other than for the purpose of evaluating the Technology, development, service to third party, or commercial use or exploitation

whatsoever are expressly excluded from this Evaluation Licence.

- 3.2 Without prejudice to the Evaluation Licence granted herein, SUBSCRIBER expressly acknowledges that IT may at any time grant exploitation rights to commercial third parties in respect of the Technology (subject that IT will not grant exploitation rights to any Non-Subscriber for six (6) months after the Release Date) and that this Agreement and the Evaluation Licence do not constitute any research-use or exploitation licence, option or promise of licence or option, express or implied.
- 3.3 Promptly upon execution of this Agreement IT shall arrange for SUBSCRIBER to be supplied with Materials as the Parties may agree to be reasonably necessary for the purposes of evaluation.
- 3.4 SUBSCRIBER shall ensure that Materials supplied under this Agreement are used only for evaluation by employees of SUBSCRIBER or of any of its Affiliates. Material and Know-How supplied to SUBSCRIBER shall be kept secure and confidential and shall not be disclosed or transferred to any third party.
- 3.5 With respect to the use of the Materials under the Evaluation Licence, SUBSCRIBER shall comply with all laws and regulations including any applicable guidelines for work with recombinant DNA and genetically modified organisms. IT shall have no liability in contract tort or otherwise in respect of handling, propagation or other use of the Materials by SUBSCRIBER.

ARTICLE 4 CONFIDENTIAL INFORMATION

- 4.1 Each Party shall take all reasonably practicable measures to keep secure and confidential any and all confidential information (including Know-How) supplied by or obtained from the other Party and clearly identified in writing as confidential at the time of disclosure ("Confidential Information").
- 4.2 Without prejudice to the generality of clause 4.1, neither Party shall disclose Confidential Information to any third party, except to those employees, authorised agents or collaborators of the receiving party or any of its Affiliates under binding obligations of confidence (which the receiving party undertakes to enforce). The non-disclosure obligations in Clauses 4.1 and 4.2 shall survive termination of this Agreement and be enforceable for 5 years beyond the date of termination unless the Party seeking relief from the obligation can show that the information:
 - is disclosed in a patent specification;
 - was public knowledge and known to that Party at the time that Party obtained it;
 - has become public knowledge without the fault of that Party since that Party obtained it or was independently generated by an employee of the receiving Party or by one of its Affiliates who has not had access directly or indirectly to the relevant confidential information;
 - was already in its possession (or in the possession of one of its Affiliates) at the date of disclosure hereunder
 - is lawfully obtained from a third party without restriction upon disclosure
 - is necessary to support any patent application filed under this Agreement;
 - is required to be disclosed by law or by any legal or regulatory authority.

ARTICLE 5 CONSIDERATION - REPORTING AND IMPROVEMENTS

- 5.1 SUBSCRIBER shall report to IT in writing of progress made by Subscriber in its evaluation of the Technology, at six months from the Effective Date and again in six-monthly intervals thereafter during the period of the Evaluation Licence, describing the work carried out to evaluate the Technology and the results achieved. IT may disclose to PBL information received from Subscriber under this Agreement under conditions of confidentiality equivalent to those herein.
- 5.2 SUBSCRIBER shall disclose to IT in such detail as IT may reasonably require all Improvements which are the subject matter of a patent application filed by SUBSCRIBER, and which shall vest in, and be the property of SUBSCRIBER. SUBSCRIBER shall report such Improvements to IT promptly in writing and in any case no later than the filing of any patent application claiming priority in such Improvements and provide copies of such patent application to IT. SUBSCRIBER grants IT a first option and right for a period of six (6) months to negotiate an exclusive or non-exclusive licence to make, use, sell, or have made, used or sold any Improvement. SUBSCRIBER will grant to SOURCE a paid up royalty free non-exclusive licence under all SUBSCRIBER Improvements and for non-commercial, academic research-only purposes.

ARTICLE 6 LIMITATION OF LIABILITY

- 6.1 It is expressly agreed between the Parties that IT gives no warranty as to the validity, novelty, non-infringement, scope of claims, or safety of any of the Technology or its suitability for any particular purpose. All implied terms, conditions and warranties, statutory or otherwise, which might otherwise by operation of law be incorporated in this Agreement are hereby expressly excluded insofar as is permitted by law.
- 6.2 Save as is prohibited by law IT shall have no liability to SUBSCRIBER in respect of any breach of contract or negligent act which occurs hereunder and shall have no liability to SUBSCRIBER for any loss of profits, revenue or goodwill or any other type of special, indirect or consequential loss suffered by SUBSCRIBER, except to the extent that such loss results from the wilful misconduct or gross negligence of IT, and in the case of gross negligence that such gross negligence is not known to SUBSCRIBER.
- 6.3 SUBSCRIBER shall indemnify and hold harmless IT, SOURCE and their respective directors, officers, employees and agents from and against any and all costs, claims, damages, expenses and liabilities asserted by any third party arising from any use of the Technology (including without limitation the Materials) by SUBSCRIBER or any of its Affiliates.

ARTICLE 7 TERM AND TERMINATION

- 7.1 The Evaluation Licence shall endure for a period of [one year] [two years] (*Note : two years for Technologies where transgenic plant creation is necessary before evaluation can occur*) from the Effective Date hereof. Upon expiry of the Evaluation Licence, or termination otherwise thereof, SUBSCRIBER shall return the Materials to IT or if so requested by IT destroy the Materials (whether they are in isolated form or they have been incorporated into other matter by the SUBSCRIBER).
- 7.2 The Evaluation Licence and this Agreement may be terminated by IT if SUBSCRIBER breaches this Agreement and such breach has not been remedied within thirty (30) days of IT's written notification of the breach. This Agreement and the Evaluation Licence shall terminate automatically if SUBSCRIBER goes into compulsory or voluntary liquidation or if a receiver or administrator is appointed in respect of the whole or any part of its assets or if SUBSCRIBER makes an assignment for the benefit of its creditors generally.
- 7.3 This Agreement and the Evaluation Licence shall terminate automatically if SUBSCRIBER does not renew the Subscription Agreement by paying the annual fees identified in the Subscription Agreement, or if SUBSCRIBER, or an Affiliate of SUBSCRIBER, contests, directly or indirectly, the validity of the Patent Rights.
- 7.4 Termination of this Agreement for any reason shall not bring to an end the obligations of Section 4, 5 and 6.

ARTICLE 8 MISCELLANEOUS

- 8.1 SUBSCRIBER warrants that it has not challenged or encouraged or facilitated a third party to challenge the validity of the Patent Rights.
- 8.2 This Agreement is personal to each Party and is intended to be for its/their exclusive benefit. Neither the whole nor any part of it shall be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the above, SUBSCRIBER shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under this Agreement through any of its Affiliates and any act or omission of any such Affiliate shall, for the purposes of this Agreement, be deemed to be an act or omission of SUBSCRIBER.
- 8.3 IT shall not be liable for failure to perform any obligation under this Agreement if such failure results from strike, lockout, riot, armed conflict, or act of God.
- 8.4 This Agreement shall not constitute either Party as an agent or a legal representative of the other Party for any purpose whatsoever nor create any form of partnership between the Parties.
- 8.5 If any term of this Agreement is judged to be invalid, illegal or unenforceable, that term shall be construed or deemed amended to conform with the applicable law so as to be valid and enforceable or, if it cannot be so construed or deemed amended without altering in a material way the intentions of the Parties, that term shall be deleted automatically from this Agreement and the remainder of this Agreement shall remain in full force and effect.
- 8.6 No waiver of any right under this Agreement shall be effective unless in a document signed by

the Party waiving it. No waiver of any right arising from any breach or non-performance shall be deemed to waive any future such right or any other right arising under this Agreement. The failure of either Party at any time or for any period of time to enforce any term of this Agreement shall not be construed to waive such term or the right of either Party to enforce each and every such term.

8.7 Without detriment to any other term of this Agreement requiring notice to be given in a specific form or manner, notices to be given under this Agreement shall be in writing, signed by the Party giving the notice, and shall be sent to the address of the Party to be notified as set down at the beginning of this Agreement, in the case of IT, and as set out below in the case of SUBSCRIBER, or to such other address as a Party may specify hereafter. Notice shall be deemed given upon physical delivery of the notice to the Party addressed in the notice.

.....SUBSCRIBER ADDRESS FOR NOTICES.....

8.8 This Agreement shall come within the jurisdiction of the French courts and the proper law of the contract shall be French Law. This Agreement which includes schedule A sets forth and constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any and all prior agreements, understandings, promises and representations made by either Party to the other Party concerning the subject matter hereof and the terms applicable hereto. This Clause shall not apply to fraudulent or wilful misrepresentations.

SIGNATURES

For and on behalf of INRA TRANSFERT

For and on behalf of SUBSCRIBER

.....

.....

.....
Name:
Position:

Name:
Position

Date:

Date:

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SCHEDULE A

Materials:

Insert details of materials to be provided under ELA

