024/H/87/AG38
121887

CONTRACTS

NORM LATKER C/C of French Contract

AGENCY SERVICING AGREEMENT

AGREEMENT made this 28 th day of December , 1987, between INSTITUT NATIONAL de la RECHERCHE AGRONOMIQUE, with offices at 147 rue de l'UNIVERSITE, 75341 Paris Cedex 07, FRANCE (hereinafter called "INRA"), and UNIVERSITY PATENTS, INC., a Delaware corporation, with principal offices at 1465 Post Road East, Westport, Connecticut 06880 (hereinafter called "UPI") (INRA and UPI being sometimes hereinafter referred to as the "Parties").

W I T N E S S E T H:

WHEREAS, INRA is a public establishment of the French Republic for the purposes of enhancing all aspects of agriculture and agriculturally-related research, product development, and exploitation in France and throughout the World; and

WHEREAS, it is understood by the Parties hereto that INRA owns present rights and will own future rights to inventions and discoveries made by its employees and others in accordance with its charter, policies, and procedures and that INRA has and will have the full and exclusive right to license or have licensed on its behalf said inventions and discoveries; and

WHEREAS, INRA desires that certain of the inventions and discoveries which INRA presently owns or may hereinafter obtain during the term of this AGREEMENT be utilized in such a manner as to develop their commercial utility and to develop the maximum reasonably obtainable income from them in North America in the interests of France and INRA, and that such rights be administered in an effective manner; and

WHEREAS, UPI has been organized under the laws of the State of Delaware and has the capabilities for the exploitation and administration of patents and inventions and is willing to undertake such functions under the terms set forth in this AGREEMENT.

NOW, THEREFORE, for good and valuable consideration, the receipt whereof is hereby acknowledged, and the mutual performance of the undertakings herein, it is agreed by the Parties hereto as follows:

Section 1. Definitions

A. "INVENTORS" shall mean INRA's researchers, and staff members, and other persons from whom INRA may acquire title to inventions in accordance with its invention policy.

B. "ACQUIRED RIGHTS" shall mean technology, inventions, invention disclosures, know-how, trade secrets, patents and patent applications heretofore or hereafter acquired by INRA from its

INVENTORS or from other sources which INRA chooses to submit to UPI for evaluation and election pursuant to Section 4 hereof.

C. "INVENTIONS COVERED BY THIS AGREEMENT" shall mean ACQUIRED RIGHTS which UPI elects to subject to this AGREEMENT.

D. "TERRITORY" shall mean North America (all portions of the Earth from meridian 30° west of Greenwich, moving in a westerly direction to meridian 170° west of Greenwich, including Panama and all countries north thereof, but excluding locations which are colonies, territories, possessions or departments of countries not included in the area defined above: e.g., Guadeloupe, Martinique, Bermuda).

Section 2. Duties of UPI

UPI, from and after the date of this AGREEMENT, shall perform the following services for INRA:

A. UPI shall enter into a program of licensing INVENTIONS COVERED BY THIS AGREEMENT, in the TERRITORY, to the extent warranted in UPI's opinion by the commercial potential and patentability or other legal protectability of such INVENTIONS COVERED BY THIS AGREEMENT, and within the limits of reasonable corporate prudence. UPI shall consult, as appropriate, with INRA administrative personnel to plan licensing strategies for such INVENTIONS COVERED BY THIS AGREEMENT. UPI shall consult with appropriate INRA administrative personnel prior to granting licenses under any INVENTIONS COVERED BY

THIS AGREEMENT. Upon completion of negotiation of a license or option agreement (and/or sponsored research and/or development agreement) relating to an INVENTION COVERED BY THIS AGREEMENT, UPI shall forward a copy of said license or option agreement (and/or sponsored research and/or development agreement), by facsimile (FAX) or by a courier service, to INRA for INRA's review and comments. INRA will have sixty (60) days from UPI's submission of the license or option agreement (and/or sponsored research and/or development agreement) to advise UPI of requested changes or otherwise provide comments thereon. The license or option agreement (and/or sponsored research and/or development agreement) which will be signed by UPI will include changes requested by INRA, unless with the express written consent of INRA. UPI shall consummate no agreement which has been rejected by INRA.

B. UPI shall provide licensees and prospective licensees with information obtained from INRA in order to permit more profitable return to INRA from the administration of the INVENTIONS COVERED BY THIS AGREEMENT.

C. In the event UPI is advised by INRA, pursuant to Section 4B(1) hereof, that INRA, or a licensee or industrial partner of INRA having rights outside the TERRITORY desires to obtain sponsored research and/or development funding for an INVENTION COVERED BY THIS AGREEMENT, UPI agrees to seek to obtain such funding from a source within the TERRITORY; provided, however, that unless INRA has advised UPI that said funding is a condition of granting a license,

UPI may license such INVENTION COVERED BY THIS AGREEMENT regardless of whether or not sponsored research funding is obtained by UPI.

D. UPI shall provide semiannual written status reports regarding its activities hereunder to INRA during the term hereof.

E. As soon as UPI has elected, and INRA has agreed to the election of, the first three (3) ACQUIRED RIGHTS to become INVENTIONS COVERED BY THIS AGREEMENT, but in no event later than March 15, 1988, UPI agrees that at least one representative of UPI will spend one (1) week visiting INRA and INRA facilities and personnel in France. Thereafter, UPI agrees that a representative of UPI will spend one (1) week in each six (6) month period during the term of the AGREEMENT visiting INRA and INRA facilities and personnel in France. UPI will pay the costs of international travel and INRA will pay the costs of local travel and accommodations in France for UPI's representative.

Section 3. UPI's Rights

A. INRA agrees that it will not hereafter, during the term of this AGREEMENT, without the express written consent of UPI, execute any license or take any other action contrary to the rights granted or to be granted to UPI in accordance with the terms of this AGREEMENT.

B. Nothing contained herein shall authorize either UPI, or any of its licensees to use INRA's name in any advertising or

advertising of products or processes licensed hereunder without the prior specific written authorization of INRA; however, UPI will advise others of the sources of INVENTIONS COVERED BY THIS AGREEMENT and will disclose the existence of this AGREEMENT. UPI further agrees that each Option and/or License agreement shall, include the following language: "The source of the invention(s) licensed herein is Institut National de la Recherche Agronomique, Paris, France."

Section 4. Acquired Rights

A. It is recognized by the Parties hereto that prior to and subsequent to the execution of this AGREEMENT, pursuant to its patent policy, INRA has obtained and shall obtain ACQUIRED RIGHTS as a result of the activities of various INRA INVENTORS.

B. (1) At the time of submitting an ACQUIRED RIGHT to UPI, INRA shall advise UPI of any outstanding commitments or obligations which might limit UPI's ability to license or otherwise convey rights thereto in the TERRITORY, and shall advise UPI of any publication already known to INRA (including the date thereof) pertaining to such ACQUIRED RIGHT (and shall provide UPI with a copy of such publication if reasonably possible).

(2) In addition to the foregoing, INRA shall advise UPI: (i) if and in what country or countries a patent application or applications have been filed covering such ACQUIRED RIGHT, and shall, if available, provide UPI with an English language copy of such patent application(s) together with a status report of the patent application prosecution; (ii) if INRA is in

negotiation with or has concluded an agreement with any company or companies as licensee and/or sponsor of funded research relating to the technology included in the ACQUIRED RIGHT outside the TERRITORY, and INRA shall include the name(s) and address(es) of such companies and the terms and conditions of such license or licenses and/or sponsored research and development agreement or agreements unless such information shall be retained as confidential by INRA at the request of INRA's licensee/sponsor; and (iii) if INRA seeks sponsored research support for further development of the ACQUIRED RIGHT, and INRA shall provide UPI with an outline of the proposed research and development protocol and a budget, in a form suitable for confidential presentation to potential sponsors within the TERRITORY.

C. INRA grants to UPI the right to disclose to actual or potential licensees within the TERRITORY, information regarding ACQUIRED RIGHTS, upon condition that the disclosure is accomplished in a manner and form sufficient to protect and safeguard the prospective patent rights thereto. Attached hereto, and marked "Exhibit 'A'", is a copy of UPI's standard Confidential Disclosure Agreement ("CDA"). INRA agrees that the execution of a CDA by a prospective disclosee shall generally constitute sufficient protection and safeguarding, as aforesaid. At the time it submits an ACQUIRED RIGHT to UPI, INRA may request modification(s) by UPI to the standard CDA prior to distribution to potential optionees, licensees and/or sponsors, and/or INRA may request that no confidential information relating to the ACQUIRED RIGHT be disseminated by

UPI unless and until such ACQUIRED RIGHT has been elected by UPI as an INVENTION SUBJECT TO THIS AGREEMENT, under Section 4D.

D. UPI shall evaluate such ACQUIRED RIGHTS at its own expense with all reasonable diligence and shall notify INRA in writing whether or not UPI elects to include such ACQUIRED RIGHTS as INVENTIONS SUBJECT TO THIS AGREEMENT.

(1) With respect to complete disclosures, within ninety (90) days from receipt of an ACQUIRED RIGHT from INRA, UPI will notify INRA in writing, whether or not UPI elects to subject such ACQUIRED RIGHT to this AGREEMENT. If UPI rejects an ACQUIRED RIGHT, it will give its reasons in its letter of rejection, and send copies of all the CDA's which may already have been executed relating to the said ACQUIRED RIGHT.

(2) With respect to incomplete disclosures, UPI will notify INRA within thirty (30) days of the receipt of the disclosure of the information required for completing the disclosure (and its evaluation), and such disclosures will be held in abeyance pending receipt of such information, at which time the three (3) month period of Section 4D(1) shall commence.

(3) With respect to complete or incomplete disclosures, in the event UPI believes that an ACQUIRED RIGHT is unsuitable for presentation, patenting or exploitation at the time an election decision is required under Subsections (1) or (2) of this Section 4D, but

believes that the invention contained therein is of potential value to INRA, UPI may request that the disclosure be placed in suspense for such period as UPI and INRA mutually find acceptable. UPI understands and agrees that INRA is under no obligation to consent to the suspension of election of an ACQUIRED RIGHT. ACQUIRED RIGHTS which become subject to this subsection shall be known as "4-D-3 disclosures".

E. In the event UPI does elect to subject an ACQUIRED RIGHT to this AGREEMENT, INRA agrees to grant and hereby does grant to UPI an exclusive agency in the TERRITORY to perform the duties and enjoy the rights which devolve upon UPI under the terms of this AGREEMENT, subject to any previous commitments made or limitations incurred by INRA to the government of France or under the laws or regulations of France (which commitments and/or limitations have been conveyed to UPI pursuant to Section 4B(1) hereof), and such ACQUIRED RIGHT shall thereafter become an INVENTION COVERED BY THIS AGREEMENT. Any licences granted for such INVENTIONS COVERED BY THIS AGREEMENT shall be granted in the name of UPI, with attribution of the source thereof to INRA pursuant to Section 3B. In all agreements, UPI shall attempt to require that the licensee use INRA's name on or in connection with licensed products, but does not guarantee that it shall always be able to achieve same.

F. In the event an ACQUIRED RIGHT is elected by UPI and becomes an INVENTION COVERED BY THIS AGREEMENT, no sooner than

twelve (12) months from the date of such election, upon INRA's request, UPI shall release such INVENTION to INRA and UPI's agency as to that INVENTION shall terminate, unless:

(1) UPI has granted an exclusive license to said INVENTION which was accepted by INRA pursuant to Section 2A. Then, said license shall constitute a conclusive presumption that UPI has produced maximum utilization of the said INVENTION, provided that UPI has made every reasonable effort to cause the licensee to fulfill its contractual obligations, and UPI's agency as to that INVENTION shall not be terminable by INRA under Section 4G.

(2) UPI has granted one or more nonexclusive licenses to said INVENTION which were accepted by INRA pursuant to Section 2A. Then, no sooner than two (2) years from the date upon which such INVENTION was elected by UPI under Section 4D hereof, INRA may initiate the actions described in Section 4G.

(3) UPI has granted one or more options to obtain a license to said INVENTION which were accepted by INRA pursuant to Section 2A. Then, no sooner than one (1) year from the date upon which the first option covering the INVENTION is granted by UPI, INRA may initiate the actions described in Section 4G.

(4) UPI has obtained sponsored research and/or development funding under research and/or funding agreement(s) which was accepted by INRA pursuant to Section 2A hereof. Then, no sooner than one (1) year following the expiration or other termination of such research and/or development funding agreement(s), INRA may initiate the actions described in Section 4G.

(5) UPI has filed a patent application in the name of INRA covering said INVENTION in the United States of America. Then, no sooner than two (2) years from the date upon which such INVENTION was elected by UPI under Section 4D hereof, INRA may initiate the actions described in Section 4G.

(6) An optionee, licensee or sponsor under a research and/or development agreement has filed or paid for the filing of a patent application covering said INVENTION in the United States of America. Then, at any time after the last to occur of (i) two (2) years from the date upon which such INVENTION was elected by UPI under Section 4D hereof, or (ii) the first time, if any, expressed in the aforementioned option, license or agreement after which UPI reserved the right to terminate or modify the optionee's, licensee's or promisee's rights to the INVENTION, INRA may initiate the actions described in Section 4G.

(7) UPI is engaged in a bona fide negotiation for an option or license or sponsored research and/or development agreement covering said INVENTION. Then, at any time after one (1) year from the commencement of said negotiation, INRA may initiate the actions described in Section 4G.

G. If, subsequent to the time periods described in Section 4F(2) through (7), INRA determines that UPI has failed to produce the maximum utilization or return which might be expected from commercial development of an INVENTION, INRA shall, upon sixty (60) days written notice to UPI, have a right to terminate the agency

granted to UPI hereunder with respect to such INVENTION and demand recovery of such INVENTION.

If UPI desires to dispute the reasonableness of such determination by INRA, and the dispute is not settled by negotiation between the Parties, such dispute shall be settled by an independent third party expert, mutually agreeable to both INRA and UPI, at the joint expense of the Parties. The expert shall have the right to request the Parties to provide relevant documents and to present oral evidence, but shall not be bound by the rules of evidence, and shall seek to resolve the dispute in an expeditious and informal manner. The expert shall agree that the information made available to him and the conclusion he reaches shall be kept confidential. The determination of such third party expert shall be final and binding upon both INRA and UPI.

In the event of such termination of agency, UPI shall receive and retain a royalty or funding share for the life of said INVENTION arising directly from any license or agreement consummated prior to the demand for the recovery of said INVENTION, in the amount it would have received and retained had the INVENTION not been recovered by INRA.

If an INVENTION COVERED BY THIS AGREEMENT is released to INRA, UPI will supply the names of business entities to whom presentations of the INVENTION were made, and the names of those with whom negotiations were undertaken and the stumbling blocks of the said negotiations.

H. In the event UPI does not elect to subject an ACQUIRED RIGHT to this AGREEMENT, or fails to give timely notice of its

election to subject such ACQUIRED RIGHT to this AGREEMENT, then UPI shall obtain no agency right hereunder in such ACQUIRED RIGHT and INRA shall be entitled to pursue any and all activities related to such ACQUIRED RIGHT without involvement of UPI.

I. UPI agrees to hold in confidence all information, concepts, ideas, processes, methods, techniques, products, formulas, know-how and improvements incorporated in ACQUIRED RIGHTS and disclosed by INRA to UPI and identified at the time of submission as being confidential (the "Information") and not to disclose such Information to anyone except such of UPI's employees as may be necessary, or in accordance with Section 4C hereof, and not to use such Information for a purpose not covered by this Agreement for a period of five (5) years from the date of receipt of such ACQUIRED RIGHT unless:

(1) Such Information is or was a part of the public domain prior to the date upon which it was disclosed to UPI; or

(2) Such Information becomes a part of the public domain not due to some unauthorized act by or omission of UPI after this Agreement is executed; or

(3) UPI can demonstrate that it theretofore independently obtained knowledge of such Information; or

(4) Such Information is disclosed to UPI by a third party who has the right to make such disclosure; or

(5) Permission to disclose said Information or to make use thereof is obtained by UPI from INRA in writing.

It is understood that the Information to be disclosed upon the execution of this Agreement shall be furnished by INRA to UPI in

furtherance of the expressed purposes of this Agreement, and for no other purpose.

Section 5. Patents and Patent Costs

A. Subject to the provisions of Section 4, UPI shall, when it deems necessary, promptly file or cause to be filed patent applications in any country or countries in the TERRITORY, including the United States, in the name of INRA. In the event UPI shall file counterpart patent applications in the TERRITORY which differ in text from direct English translations of French patent applications theretofore filed by INRA, UPI will submit copies of such counterpart patent applications to INRA. It is understood that UPI will conform such counterpart patent applications to legal, grammatical and/or stylistic requirements of the country or countries of filing within the TERRITORY. Such patent applications shall be filed and prosecuted, and any patents issuing thereunder covering INVENTIONS COVERED BY THIS AGREEMENT shall be maintained at no cost to INRA. INRA agrees to sign or cause to be signed all documents or papers and take any other action necessary to effect such filing and prosecution. In the event UPI decides not to file a patent application on an INVENTION COVERED BY THIS AGREEMENT, it will notify INRA of such decision, and state the reasons for such decision, within adequate time for INRA to file a patent application on such INVENTION and will promptly transfer all of UPI's rights therein to INRA, thereby deleting same from the scope of this AGREEMENT.

In the event UPI, or an optionee or licensee of UPI, decides to abandon a filed patent application or issued patent

covering an INVENTION COVERED BY THIS AGREEMENT, it will notify INRA of such decision within adequate time for INRA to continue the prosecution of such application or maintenance of such issued patent, as the case may be, and will promptly transfer all of UPI's rights therein to INRA, thereby deleting same from the scope of this AGREEMENT; or

B. If UPI files for patents as aforesaid, UPI may first deduct the filing, prosecution, and maintenance costs from royalties or other income (but not from research and/or development funding) derived from the licensing or other handling of the particular INVENTION or INVENTIONS involved, and the remaining royalties or other income shall be shared as set forth in this AGREEMENT.

C. In the event any INVENTIONS COVERED BY THIS AGREEMENT become involved in litigation initiated by UPI in the TERRITORY, UPI will pay the expense of same. UPI shall be entitled to deduct its litigation expenses from any recovery or royalties related to the INVENTION that is the subject of the suit, with the balance of the recovery, if any, or the remainder of such royalties, as the case may be, to be shared in accordance with the royalty sharing provisions of this AGREEMENT. Notwithstanding the foregoing, UPI may transfer some or all of the power of litigation and the costs thereof to a licensee under an INVENTION COVERED BY THIS AGREEMENT and permit the licensee to set-off its litigation costs from royalties otherwise due. In no event shall INRA be required to become a party to any such suit initiated by UPI or any licensee without INRA's express permission unless so required by law or court action.

Section 6. Representation and Warranty by INRA

INRA represents and warrants that it has the right to enter into this AGREEMENT and intends hereafter to comply with the terms thereof.

Section 7. Payments and Consideration

A. UPI shall collect and receive in its own name all royalties, fees or other remuneration hereafter to be due or accruing by reason of the licensing, sale, litigation or other exploitation of INVENTIONS COVERED BY THIS AGREEMENT and shall also collect and receive in its own name all sponsored research and/or development funding payments to be due or accruing by reason of sponsored research and/or development agreements which UPI negotiates on behalf of INRA.

B. (1) With respect to any royalties or other income received by UPI for the licensing, sale, litigation or other exploitation of any INVENTIONS COVERED BY THIS AGREEMENT in any country in the TERRITORY in which INRA has filed for or has obtained patent protection, UPI shall first reimburse INRA for INRA's patent filing, prosecution and maintenance costs incurred in the TERRITORY for patent application(s) and issued patent(s), then, subject to Section 5C, UPI shall retain forty percent (40%) thereof and shall pay over to INRA the remaining sixty percent (60%).

(2) With respect to any royalties or other income received by UPI for the licensing, sale, litigation or other exploitation of any INVENTIONS COVERED BY THIS AGREEMENT in any country in the TERRITORY in which UPI or a licensee of UPI has filed for or obtained patent protection, but subject to Sections 5B and 5C, UPI shall retain forty percent (40%) thereof and shall pay over to INRA the remaining sixty percent (60%).

(3) INRA recognizes and agrees that subsequent to the date first written above, UPI has the exclusive agency to seek optionees, licensees and/or sponsors for INVENTIONS COVERED BY THIS AGREEMENT in the TERRITORY, subject to the terms of Section 4F and G. UPI recognizes that INRA may negotiate and enter into option, license, and/or sponsored research, and/or development agreements with French or multinational business entities located outside the TERRITORY, and that such business entities may desire, and INRA may wish to grant to them, rights to INVENTIONS in the TERRITORY.

(i) With respect to agreements, as aforesaid, between INRA and business entities entered into prior to the date first written above, UPI shall be entitled to no share of royalties, sponsored research funding or other income derived therefrom.

(ii) With respect to agreements, as aforesaid, between INRA and business entities, the negotiation of which commence after the date first written above, UPI agrees to negotiate for INRA or assist INRA upon request in negotiations affecting the TERRITORY. INRA agrees that UPI shall retain from funds received by UPI or shall

receive from INRA from funds which INRA receives from such optionees, licensees or sponsors, as the case may be, fifteen percent (15%) of royalties or other income derived from optioning, licensing, sale or other exploitation of /In the Territory/the subject INVENTIONS/ and/or three and three-quarters percent (3 3/4%) of monies UPI or INRA receive from in the Territory/ sponsors / under sponsored research and/or development agreements covering such INVENTIONS.

(4) With respect to any monies which UPI receives from a sponsor under a research and/or development agreement negotiated by UPI on INRA's behalf, UPI shall retain ten percent (10%) thereof, and shall pay over to INRA the remaining ninety percent (90%).

(5) From its share of royalties or other income, INRA shall compensate the INVENTORS of INRA in accordance with its applicable policy and UPI shall have no obligation with respect thereto.

(6) Every time a license agreement has been successfully concluded by UPI on an INVENTION COVERED BY THIS AGREEMENT, an additional exhibit to the present Agency Agreement will be signed by INRA and UPI to specify the partition of all royalties and other payments resulting from said license agreement between INRA and UPI, in accordance with the present Agency Agreement.

(7) The Parties recognize that from time-to-time, INRA may request UPI to provide counsel, or to act solely as a negotiator of options, licenses or sponsored research agreements in the TERRITORY for INRA respecting inventions which

INRA does not elect to submit to UPI as ACQUIRED RIGHTS. In such event, if UPI chooses to represent INRA in any such matter, the Parties will determine UPI's compensation for services to be rendered on a case-by-case basis prior to the commencement of the requested services.

C. In the event INRA shall recover an INVENTION COVERED BY THIS AGREEMENT from UPI pursuant to Section 4G, and within six (6) months after said recovery INRA shall grant an option to license, or a license, or shall receive sponsored research and/or development funding from a business entity with which UPI was in active negotiation within six (6) months prior to said recovery, then INRA shall pay over to UPI from royalties or other income, or research and development funds, one-half (1/2) of the amounts which would have been retained by UPI under Section 7B(1), (2) or (3) had the INVENTION not been recovered and the aforementioned option, license or funding had been negotiated to a successful conclusion by UPI.

D. (1) All royalties or other payments received by UPI and attributable to the licensing of INVENTIONS COVERED BY THIS AGREEMENT shall be accumulated by UPI and amounts due to INRA shall be paid to INRA semi-annually each year on or about each January 15 and July 15, together with an accounting of the source of such amounts and a copy of the statement of sales and/or other documentation as received from the licensee.

(2) All monies received by UPI and attributable to sponsored research and/or development funding agreements shall be

paid to INRA no later than fifteen (15) days after receipt by UPI.

E. UPI shall keep accurate books and records of its income and receipts hereunder and of disbursements, and INRA shall have the right to inspect such books and records, at reasonable intervals and at reasonable times.

F. UPI agrees that any payments due from UPI to INRA based upon cash received from optionees or licensees, which payments are not remitted within thirty (30) days of January 15 and July 15 respectively, shall bear interest payable to INRA at the rate of one percent (1%) per month. UPI shall attempt to require the same of licensees in all agreements, but does not guarantee that it will be able to do so nor that it will always be able to collect same interest from licensees under agreements that require such payment.

Section 8. Term

A. The term of this AGREEMENT shall be from the date hereof for a period of three (3) years and shall be automatically renewed for additional one (1) year periods thereafter; provided, however, that either party shall have the right to terminate this AGREEMENT at the end of the initial three (3) year period or any subsequent one (1) year period thereafter by providing written notice of termination to the other party at least thirty (30) days prior to the end of any such period. Notwithstanding the expiration of this AGREEMENT or earlier termination as provided hereunder, with respect

to any INVENTION COVERED BY THIS AGREEMENT, the provisions hereof relating to such INVENTIONS shall survive such expiration or earlier termination, unless recovered by INRA under Section 4G, until the expiration of the last to expire of any patents issuing on each such INVENTION.

B. In the event of receivership or bankruptcy of UPI, or in the event UPI shall make an assignment for the benefit of creditors or shall go out of business, this AGREEMENT shall terminate and, in such event all right, title and interest in and to all INVENTIONS COVERED BY THIS AGREEMENT then represented by UPI as agent pursuant to and under the terms of this AGREEMENT shall automatically revert to INRA. In the event of such reversion, UPI shall receive and retain royalties and/or funding shares from and for the full term of any licenses or similar agreements consummated prior to the receivership, bankruptcy, assignment or cessation of business of UPI, in the amount it would have received and retained had the INVENTIONS not reverted to INRA.

C. If either party shall at any time during the term hereof commit any breach of any material covenant or agreement herein contained, and shall fail to remedy any such breach within sixty (60) days after written notice thereof by the other party, such other party may at its option terminate this AGREEMENT by notice in writing to such effect, in addition to such other remedies as are provided by law.

D. The termination of this AGREEMENT for any cause or the cessation of the agency as to any INVENTION COVERED BY THIS AGREEMENT shall not affect the terms of any options, licenses, sales, research and/or development agreements or other grants theretofore entered into by UPI, and no termination shall relieve UPI or its successors of its obligation to pay INRA its share of royalties or sponsored research and/or development funding due or to become due or accrued under Section 7B hereof, or shall relieve INRA of the obligation set forth in Sections 4G, 7B, 7C, and 8B to pay a continuing royalty or funding share attributable to services of UPI, the right to which continuing royalty or funding share accrued prior to such termination.

Section 9. Miscellaneous

A. If a dispute is not settled by negotiation between the Parties, such dispute shall be settled by an independent third party expert, mutually agreeable to both INRA and UPI, at the joint expense of the Parties. The expert shall have the right to request the Parties to provide relevant documents and to present oral evidence, but shall not be bound by the rules of evidence, and shall seek to resolve the dispute in an expeditious and informal manner. The expert shall agree that the information made available to him and the conclusion he reaches shall be kept confidential. The determination of such third party expert shall be final and binding upon both INRA and UPI. Such arbitration will be submitted to the rules and control of the International Chamber of Commerce. The expert will determine, in accordance with the matter of the dispute,

whether the French legislation or the laws of the State of Connecticut shall be applicable to settle the dispute. If the Parties disagree with the expert determination of the application legislation, the ICC will decide that point.

B. Any payment, notice or other communication required or permitted to be made to either party hereunder shall be sufficiently made or given on the date of mailing if sent to such party at its address given below, or such other address as it shall hereafter designate in writing, as follows:

In the case of UPI:

President
University Patents, Inc.
P. O. Box 901
Westport, Connecticut 06881

In the case of INRA:

All legal documents to:

Chef du Service Juridque
et du Contentieux
Institut National de la Recherche Agronomique
147, rue de l'Universite
75341 Paris Cedex 07, France

All other communications to:

Directeur des Relations Industrielles
et de la Valorisation
Institut National de la Recherche Agronomique
147, rue de l'Universite
75341 Paris Cedex 07, France

C. UPI agrees that a provision similar to the language following will be incorporated in each license agreement which UPI negotiates for INVENTIONS COVERED BY THIS AGREEMENT:

"LICENSEE agrees to defend, indemnify and hold INRA and UPI harmless from and against any and all liability, demands, damages, expenses or losses for death, personal injury, illness or property damage arising (1) out of use by LICENSEE or its transferees of inventions licensed or information furnished under this agreement, or (2) out of any use, sale or other disposition by LICENSEE or its transferees of products made by use of such inventions or information.

As used in this ARTICLE ____, 'INRA' includes the officers, agents and employees of INRA, and 'LICENSEE' includes its affiliates, subsidiaries, contractors and sub-contractors."

D. UPI agrees to use its best efforts to ensure that Optionees and Licensees of INVENTIONS COVERED BY THIS AGREEMENT act in accordance with the terms and conditions of the option and license agreements to which they are parties. In the event UPI finds it necessary to enforce any option or license agreement, UPI agrees that the costs of resulting litigation shall be borne by UPI. UPI shall be entitled to deduct its litigation expenses from any recovery or royalties related to the INVENTION that is the subject of the

suit, from whatever source or sources such recovery or royalties may emanate, with the balance of the recovery or the remainder of such royalties, if any, as the case may be, to be shared in accordance with the royalty sharing provisions of this AGREEMENT.

E. This Agency Agreement shall be executed simultaneously in four counterparts, two in English and French, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In case of dispute as to the meaning and to intent of the Parties, the French language version of the Agreement shall be controlling.

F. This AGREEMENT shall be binding upon and shall inure to the benefit of the successors or assigns of INRA, but UPI may not assign this AGREEMENT nor any interest under this AGREEMENT without the

prior written consent of INRA, except that UPI may assign its rights to monies due or to become due hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this AGREEMENT to be signed hereinbelow.

UNIVERSITY PATENTS, INC.

WITNESS:

A. S. ALPERT, President

INSTITUT NATIONAL de la RECHERCHE AGRONOMIQUE

WITNESS:

Le Président Directeur Général de l'Institut National de la Recherche Agronomique
Signé : J. POLY

By: _____

Title: _____

A. VIAL
Directeur des Relations Industrielles et de la Valorisation

024/H/87/AG38
121887

CONTRACTS

- French (c
Right of Fr
Reference
• Data 20 Bill
Agriculture
(Rec. for all strawberries)

NORM
LATKER C/C
of French
Contract

AGENCY SERVICING AGREEMENT

AGREEMENT made this 28 th day of December , 1987, between INSTITUT NATIONAL de la RECHERCHE AGRONOMIQUE, with offices at 147 rue de l'UNIVERSITE, 75341 Paris Cedex 07, FRANCE (hereinafter called "INRA"), and UNIVERSITY PATENTS, INC., a Delaware corporation, with principal offices at 1465 Post Road East, Westport, Connecticut 06880 (hereinafter called "UPI") (INRA and UPI being sometimes hereinafter referred to as the "Parties").

W I T N E S S E T H:

WHEREAS, INRA is a public establishment of the French Republic for the purposes of enhancing all aspects of agriculture and agriculturally-related research, product development, and exploitation in France and throughout the World; and

WHEREAS, it is understood by the Parties hereto that INRA owns present rights and will own future rights to inventions and discoveries made by its employees and others in accordance with its charter, policies, and procedures and that INRA has and will have the full and exclusive right to license or have licensed on its behalf said inventions and discoveries; and

WHEREAS, INRA desires that certain of the inventions and discoveries which INRA presently owns or may hereinafter obtain during the term of this AGREEMENT be utilized in such a manner as to develop their commercial utility and to develop the maximum reasonably obtainable income from them in North America in the interests of France and INRA, and that such rights be administered in an effective manner; and

WHEREAS, UPI has been organized under the laws of the State of Delaware and has the capabilities for the exploitation and administration of patents and inventions and is willing to undertake such functions under the terms set forth in this AGREEMENT.

NOW, THEREFORE, for good and valuable consideration, the receipt whereof is hereby acknowledged, and the mutual performance of the undertakings herein, it is agreed by the Parties hereto as follows:

Section 1. Definitions

A. "INVENTORS" shall mean INRA's researchers, and staff members, and other persons from whom INRA may acquire title to inventions in accordance with its invention policy.

B. "ACQUIRED RIGHTS" shall mean technology, inventions, invention disclosures, know-how, trade secrets, patents and patent applications heretofore or hereafter acquired by INRA from its

INVENTORS or from other sources which INRA chooses to submit to UPI for evaluation and election pursuant to Section 4 hereof.

C. "INVENTIONS COVERED BY THIS AGREEMENT" shall mean ACQUIRED RIGHTS which UPI elects to subject to this AGREEMENT.

D. "TERRITORY" shall mean North America (all portions of the Earth from meridian 30° west of Greenwich, moving in a westerly direction to meridian 170° west of Greenwich, including Panama and all countries north thereof, but excluding locations which are colonies, territories, possessions or departments of countries not included in the area defined above: e.g., Guadeloupe, Martinique, Bermuda).

Section 2. Duties of UPI

UPI, from and after the date of this AGREEMENT, shall perform the following services for INRA:

A. UPI shall enter into a program of licensing INVENTIONS COVERED BY THIS AGREEMENT, in the TERRITORY, to the extent warranted in UPI's opinion by the commercial potential and patentability or other legal protectability of such INVENTIONS COVERED BY THIS AGREEMENT, and within the limits of reasonable corporate prudence. UPI shall consult, as appropriate, with INRA administrative personnel to plan licensing strategies for such INVENTIONS COVERED BY THIS AGREEMENT. UPI shall consult with appropriate INRA administrative personnel prior to granting licenses under any INVENTIONS COVERED BY

THIS AGREEMENT. Upon completion of negotiation of a license or option agreement (and/or sponsored research and/or development agreement) relating to an INVENTION COVERED BY THIS AGREEMENT, UPI shall forward a copy of said license or option agreement (and/or sponsored research and/or development agreement), by facsimile (FAX) or by a courier service, to INRA for INRA's review and comments. INRA will have sixty (60) days from UPI's submission of the license or option agreement (and/or sponsored research and/or development agreement) to advise UPI of requested changes or otherwise provide comments thereon. The license or option agreement (and/or sponsored research and/or development agreement) which will be signed by UPI will include changes requested by INRA, unless with the express written consent of INRA. UPI shall consummate no agreement which has been rejected by INRA.

B. UPI shall provide licensees and prospective licensees with information obtained from INRA in order to permit more profitable return to INRA from the administration of the INVENTIONS COVERED BY THIS AGREEMENT.

C. In the event UPI is advised by INRA, pursuant to Section 4B(1) hereof, that INRA, or a licensee or industrial partner of INRA having rights outside the TERRITORY desires to obtain sponsored research and/or development funding for an INVENTION COVERED BY THIS AGREEMENT, UPI agrees to seek to obtain such funding from a source within the TERRITORY; provided, however, that unless INRA has advised UPI that said funding is a condition of granting a license,

UPI may license such INVENTION COVERED BY THIS AGREEMENT regardless of whether or not sponsored research funding is obtained by UPI.

D. UPI shall provide semiannual written status reports regarding its activities hereunder to INRA during the term hereof.

E. As soon as UPI has elected, and INRA has agreed to the election of, the first three (3) ACQUIRED RIGHTS to become INVENTIONS COVERED BY THIS AGREEMENT, but in no event later than March 15, 1988, UPI agrees that at least one representative of UPI will spend one (1) week visiting INRA and INRA facilities and personnel in France. Thereafter, UPI agrees that a representative of UPI will spend one (1) week in each six (6) month period during the term of the AGREEMENT visiting INRA and INRA facilities and personnel in France. UPI will pay the costs of international travel and INRA will pay the costs of local travel and accommodations in France for UPI's representative.

Section 3. UPI's Rights

A. INRA agrees that it will not hereafter, during the term of this AGREEMENT, without the express written consent of UPI, execute any license or take any other action contrary to the rights granted or to be granted to UPI in accordance with the terms of this AGREEMENT.

B. Nothing contained herein shall authorize either UPI, or any of its licensees to use INRA's name in any advertising or

advertising of products or processes licensed hereunder without the prior specific written authorization of INRA; however, UPI will advise others of the sources of INVENTIONS COVERED BY THIS AGREEMENT and will disclose the existence of this AGREEMENT. UPI further agrees that each Option and/or License agreement shall, include the following language: "The source of the invention(s) licensed herein is Institut National de la Recherche Agronomique, Paris, France."

Section 4. Acquired Rights

A. It is recognized by the Parties hereto that prior to and subsequent to the execution of this AGREEMENT, pursuant to its patent policy, INRA has obtained and shall obtain ACQUIRED RIGHTS as a result of the activities of various INRA INVENTORS.

B. (1) At the time of submitting an ACQUIRED RIGHT to UPI, INRA shall advise UPI of any outstanding commitments or obligations which might limit UPI's ability to license or otherwise convey rights thereto in the TERRITORY, and shall advise UPI of any publication already known to INRA (including the date thereof) pertaining to such ACQUIRED RIGHT (and shall provide UPI with a copy of such publication if reasonably possible).

(2) In addition to the foregoing, INRA shall advise UPI: (i) if and in what country or countries a patent application or applications have been filed covering such ACQUIRED RIGHT, and shall, if available, provide UPI with an English language copy of such patent application(s) together with a status report of the patent application prosecution; (ii) if INRA is in

negotiation with or has concluded an agreement with any company or companies as licensee and/or sponsor of funded research relating to the technology included in the ACQUIRED RIGHT outside the TERRITORY, and INRA shall include the name(s) and address(es) of such companies and the terms and conditions of such license or licenses and/or sponsored research and development agreement or agreements unless such information shall be retained as confidential by INRA at the request of INRA's licensee/sponsor; and (iii) if INRA seeks sponsored research support for further development of the ACQUIRED RIGHT, and INRA shall provide UPI with an outline of the proposed research and development protocol and a budget, in a form suitable for confidential presentation to potential sponsors within the TERRITORY.

C. INRA grants to UPI the right to disclose to actual or potential licensees within the TERRITORY, information regarding ACQUIRED RIGHTS, upon condition that the disclosure is accomplished in a manner and form sufficient to protect and safeguard the prospective patent rights thereto. Attached hereto, and marked "Exhibit 'A'", is a copy of UPI's standard Confidential Disclosure Agreement ("CDA"). INRA agrees that the execution of a CDA by a prospective disclosee shall generally constitute sufficient protection and safeguarding, as aforesaid. At the time it submits an ACQUIRED RIGHT to UPI, INRA may request modification(s) by UPI to the standard CDA prior to distribution to potential optionees, licensees and/or sponsors, and/or INRA may request that no confidential information relating to the ACQUIRED RIGHT be disseminated by

UPI unless and until such ACQUIRED RIGHT has been elected by UPI as an INVENTION SUBJECT TO THIS AGREEMENT, under Section 4D.

D. UPI shall evaluate such ACQUIRED RIGHTS at its own expense with all reasonable diligence and shall notify INRA in writing whether or not UPI elects to include such ACQUIRED RIGHTS as INVENTIONS SUBJECT TO THIS AGREEMENT.

(1) With respect to complete disclosures, within ninety (90) days from receipt of an ACQUIRED RIGHT from INRA, UPI will notify INRA in writing, whether or not UPI elects to subject such ACQUIRED RIGHT to this AGREEMENT. If UPI rejects an ACQUIRED RIGHT, it will give its reasons in its letter of rejection, and send copies of all the CDA's which may already have been executed relating to the said ACQUIRED RIGHT.

(2) With respect to incomplete disclosures, UPI will notify INRA within thirty (30) days of the receipt of the disclosure of the information required for completing the disclosure (and its evaluation), and such disclosures will be held in abeyance pending receipt of such information, at which time the three (3) month period of Section 4D(1) shall commence.

(3) With respect to complete or incomplete disclosures, in the event UPI believes that an ACQUIRED RIGHT is unsuitable for presentation, patenting or exploitation at the time an election decision is required under Subsections (1) or (2) of this Section 4D, but

believes that the invention contained therein is of potential value to INRA, UPI may request that the disclosure be placed in suspense for such period as UPI and INRA mutually find acceptable. UPI understands and agrees that INRA is under no obligation to consent to the suspension of election of an ACQUIRED RIGHT. ACQUIRED RIGHTS which become subject to this subsection shall be known as "4-D-3 disclosures".

E. In the event UPI does elect to subject an ACQUIRED RIGHT to this AGREEMENT, INRA agrees to grant and hereby does grant to UPI an exclusive agency in the TERRITORY to perform the duties and enjoy the rights which devolve upon UPI under the terms of this AGREEMENT, subject to any previous commitments made or limitations incurred by INRA to the government of France or under the laws or regulations of France (which commitments and/or limitations have been conveyed to UPI pursuant to Section 4B(1) hereof), and such ACQUIRED RIGHT shall thereafter become an INVENTION COVERED BY THIS AGREEMENT. Any licences granted for such INVENTIONS COVERED BY THIS AGREEMENT shall be granted in the name of UPI, with attribution of the source thereof to INRA pursuant to Section 3B. In all agreements, UPI shall attempt to require that the licensee use INRA's name on or in connection with licensed products, but does not guarantee that it shall always be able to achieve same.

F. In the event an ACQUIRED RIGHT is elected by UPI and becomes an INVENTION COVERED BY THIS AGREEMENT, no sooner than

twelve (12) months from the date of such election, upon INRA's request, UPI shall release such INVENTION to INRA and UPI's agency as to that INVENTION shall terminate, unless:

(1) UPI has granted an exclusive license to said INVENTION which was accepted by INRA pursuant to Section 2A. Then, said license shall constitute a conclusive presumption that UPI has produced maximum utilization of the said INVENTION, provided that UPI has made every reasonable effort to cause the licensee to fulfill its contractual obligations, and UPI's agency as to that INVENTION shall not be terminable by INRA under Section 4G.

(2) UPI has granted one or more nonexclusive licenses to said INVENTION which were accepted by INRA pursuant to Section 2A. Then, no sooner than two (2) years from the date upon which such INVENTION was elected by UPI under Section 4D hereof, INRA may initiate the actions described in Section 4G.

(3) UPI has granted one or more options to obtain a license to said INVENTION which were accepted by INRA pursuant to Section 2A. Then, no sooner than one (1) year from the date upon which the first option covering the INVENTION is granted by UPI, INRA may initiate the actions described in Section 4G.

(4) UPI has obtained sponsored research and/or development funding under research and/or funding agreement(s) which was accepted by INRA pursuant to Section 2A hereof. Then, no sooner than one (1) year following the expiration or other termination of such research and/or development funding agreement(s), INRA may initiate the actions described in Section 4G.

(5) UPI has filed a patent application in the name of INRA covering said INVENTION in the United States of America. Then, no sooner than two (2) years from the date upon which such INVENTION was elected by UPI under Section 4D hereof, INRA may initiate the actions described in Section 4G.

(6) An optionee, licensee or sponsor under a research and/or development agreement has filed or paid for the filing of a patent application covering said INVENTION in the United States of America. Then, at any time after the last to occur of (i) two (2) years from the date upon which such INVENTION was elected by UPI under Section 4D hereof, or (ii) the first time, if any, expressed in the aforementioned option, license or agreement after which UPI reserved the right to terminate or modify the optionee's, licensee's or promisee's rights to the INVENTION, INRA may initiate the actions described in Section 4G.

(7) UPI is engaged in a bona fide negotiation for an option or license or sponsored research and/or development agreement covering said INVENTION. Then, at any time after one (1) year from the commencement of said negotiation, INRA may initiate the actions described in Section 4G.

G. If, subsequent to the time periods described in Section 4F(2) through (7), INRA determines that UPI has failed to produce the maximum utilization or return which might be expected from commercial development of an INVENTION, INRA shall, upon sixty (60) days written notice to UPI, have a right to terminate the agency

granted to UPI hereunder with respect to such INVENTION and demand recovery of such INVENTION.

If UPI desires to dispute the reasonableness of such determination by INRA, and the dispute is not settled by negotiation between the Parties, such dispute shall be settled by an independent third party expert, mutually agreeable to both INRA and UPI, at the joint expense of the Parties. The expert shall have the right to request the Parties to provide relevant documents and to present oral evidence, but shall not be bound by the rules of evidence, and shall seek to resolve the dispute in an expeditious and informal manner. The expert shall agree that the information made available to him and the conclusion he reaches shall be kept confidential. The determination of such third party expert shall be final and binding upon both INRA and UPI.

In the event of such termination of agency, UPI shall receive and retain a royalty or funding share for the life of said INVENTION arising directly from any license or agreement consummated prior to the demand for the recovery of said INVENTION, in the amount it would have received and retained had the INVENTION not been recovered by INRA.

If an INVENTION COVERED BY THIS AGREEMENT is released to INRA, UPI will supply the names of business entities to whom presentations of the INVENTION were made, and the names of those with whom negotiations were undertaken and the stumbling blocks of the said negotiations.

H. In the event UPI does not elect to subject an ACQUIRED RIGHT to this AGREEMENT, or fails to give timely notice of its

election to subject such ACQUIRED RIGHT to this AGREEMENT, then UPI shall obtain no agency right hereunder in such ACQUIRED RIGHT and INRA shall be entitled to pursue any and all activities related to such ACQUIRED RIGHT without involvement of UPI.

I. UPI agrees to hold in confidence all information, concepts, ideas, processes, methods, techniques, products, formulas, know-how and improvements incorporated in ACQUIRED RIGHTS and disclosed by INRA to UPI and identified at the time of submission as being confidential (the "Information") and not to disclose such Information to anyone except such of UPI's employees as may be necessary, or in accordance with Section 4C hereof, and not to use such Information for a purpose not covered by this Agreement for a period of five (5) years from the date of receipt of such ACQUIRED RIGHT unless:

(1) Such Information is or was a part of the public domain prior to the date upon which it was disclosed to UPI; or

(2) Such Information becomes a part of the public domain not due to some unauthorized act by or omission of UPI after this Agreement is executed; or

(3) UPI can demonstrate that it theretofore independently obtained knowledge of such Information; or

(4) Such Information is disclosed to UPI by a third party who has the right to make such disclosure; or

(5) Permission to disclose said Information or to make use thereof is obtained by UPI from INRA in writing.

It is understood that the Information to be disclosed upon the execution of this Agreement shall be furnished by INRA to UPI in

furtherance of the expressed purposes of this Agreement, and for no other purpose.

Section 5. Patents and Patent Costs

A. Subject to the provisions of Section 4, UPI shall, when it deems necessary, promptly file or cause to be filed patent applications in any country or countries in the TERRITORY, including the United States, in the name of INRA. In the event UPI shall file counterpart patent applications in the TERRITORY which differ in text from direct English translations of French patent applications theretofore filed by INRA, UPI will submit copies of such counterpart patent applications to INRA. It is understood that UPI will conform such counterpart patent applications to legal, grammatical and/or stylistic requirements of the country or countries of filing within the TERRITORY. Such patent applications shall be filed and prosecuted, and any patents issuing thereunder covering INVENTIONS COVERED BY THIS AGREEMENT shall be maintained at no cost to INRA. INRA agrees to sign or cause to be signed all documents or papers and take any other action necessary to effect such filing and prosecution. In the event UPI decides not to file a patent application on an INVENTION COVERED BY THIS AGREEMENT, it will notify INRA of such decision, and state the reasons for such decision, within adequate time for INRA to file a patent application on such INVENTION and will promptly transfer all of UPI's rights therein to INRA, thereby deleting same from the scope of this AGREEMENT.

In the event UPI, or an optionee or licensee of UPI, decides to abandon a filed patent application or issued patent

covering an INVENTION COVERED BY THIS AGREEMENT, it will notify INRA of such decision within adequate time for INRA to continue the prosecution of such application or maintenance of such issued patent, as the case may be, and will promptly transfer all of UPI's rights therein to INRA, thereby deleting same from the scope of this AGREEMENT; or

B. If UPI files for patents as aforesaid, UPI may first deduct the filing, prosecution, and maintenance costs from royalties or other income (but not from research and/or development funding) derived from the licensing or other handling of the particular INVENTION or INVENTIONS involved, and the remaining royalties or other income shall be shared as set forth in this AGREEMENT.

C. In the event any INVENTIONS COVERED BY THIS AGREEMENT become involved in litigation initiated by UPI in the TERRITORY, UPI will pay the expense of same. UPI shall be entitled to deduct its litigation expenses from any recovery or royalties related to the INVENTION that is the subject of the suit, with the balance of the recovery, if any, or the remainder of such royalties, as the case may be, to be shared in accordance with the royalty sharing provisions of this AGREEMENT. Notwithstanding the foregoing, UPI may transfer some or all of the power of litigation and the costs thereof to a licensee under an INVENTION COVERED BY THIS AGREEMENT and permit the licensee to set-off its litigation costs from royalties otherwise due. In no event shall INRA be required to become a party to any such suit initiated by UPI or any licensee without INRA's express permission unless so required by law or court action.

Section 6. Representation and Warranty by INRA

INRA represents and warrants that it has the right to enter into this AGREEMENT and intends hereafter to comply with the terms thereof.

Section 7. Payments and Consideration

A. UPI shall collect and receive in its own name all royalties, fees or other remuneration hereafter to be due or accruing by reason of the licensing, sale, litigation or other exploitation of INVENTIONS COVERED BY THIS AGREEMENT and shall also collect and receive in its own name all sponsored research and/or development funding payments to be due or accruing by reason of sponsored research and/or development agreements which UPI negotiates on behalf of INRA.

B. (1) With respect to any royalties or other income received by UPI for the licensing, sale, litigation or other exploitation of any INVENTIONS COVERED BY THIS AGREEMENT in any country in the TERRITORY in which INRA has filed for or has obtained patent protection, UPI shall first reimburse INRA for INRA's patent filing, prosecution and maintenance costs incurred in the TERRITORY for patent application(s) and issued patent(s), then, subject to Section 5C, UPI shall retain forty percent (40%) thereof and shall pay over to INRA the remaining sixty percent (60%).

(2) With respect to any royalties or other income received by UPI for the licensing, sale, litigation or other exploitation of any INVENTIONS COVERED BY THIS AGREEMENT in any country in the TERRITORY in which UPI or a licensee of UPI has filed for or obtained patent protection, but subject to Sections 5B and 5C, UPI shall retain forty percent (40%) thereof and shall pay over to INRA the remaining sixty percent (60%).

(3) INRA recognizes and agrees that subsequent to the date first written above, UPI has the exclusive agency to seek optionees, licensees and/or sponsors for INVENTIONS COVERED BY THIS AGREEMENT in the TERRITORY, subject to the terms of Section 4F and G. UPI recognizes that INRA may negotiate and enter into option, license, and/or sponsored research, and/or development agreements with French or multinational business entities located outside the TERRITORY, and that such business entities may desire, and INRA may wish to grant to them, rights to INVENTIONS in the TERRITORY.

(i) With respect to agreements, as aforesaid, between INRA and business entities entered into prior to the date first written above, UPI shall be entitled to no share of royalties, sponsored research funding or other income derived therefrom.

(ii) With respect to agreements, as aforesaid, between INRA and business entities, the negotiation of which commence after the date first written above, UPI agrees to negotiate for INRA or assist INRA upon request in negotiations affecting the TERRITORY. INRA agrees that UPI shall retain from funds received by UPI or shall

receive from INRA from funds which INRA receives from such optionees, licensees or sponsors, as the case may be, fifteen percent (15%) of royalties or other income derived from optioning, licensing, sale or other exploitation of /In the Territory/the subject INVENTIONS/ and/or three and three-quarters percent (3 3/4%) of monies UPI or INRA receive from /in the Territory/ sponsors / under sponsored research and/or development agreements covering such INVENTIONS.

(4) With respect to any monies which UPI receives from a sponsor under a research and/or development agreement negotiated by UPI on INRA's behalf, UPI shall retain ten percent (10%) thereof, and shall pay over to INRA the remaining ninety percent (90%).

(5) From its share of royalties or other income, INRA shall compensate the INVENTORS of INRA in accordance with its applicable policy and UPI shall have no obligation with respect thereto.

(6) Every time a license agreement has been successfully concluded by UPI on an INVENTION COVERED BY THIS AGREEMENT, an additional exhibit to the present Agency Agreement will be signed by INRA and UPI to specify the partition of all royalties and other payments resulting from said license agreement between INRA and UPI, in accordance with the present Agency Agreement.

(7) The Parties recognize that from time-to-time, INRA may request UPI to provide counsel, or to act solely as a negotiator of options, licenses or sponsored research agreements in the TERRITORY for INRA respecting inventions which

INRA does not elect to submit to UPI as ACQUIRED RIGHTS. In such event, if UPI chooses to represent INRA in any such matter, the Parties will determine UPI's compensation for services to be rendered on a case-by-case basis prior to the commencement of the requested services.

C. In the event INRA shall recover an INVENTION COVERED BY THIS AGREEMENT from UPI pursuant to Section 4G, and within six (6) months after said recovery INRA shall grant an option to license, or a license, or shall receive sponsored research and/or development funding from a business entity with which UPI was in active negotiation within six (6) months prior to said recovery, then INRA shall pay over to UPI from royalties or other income, or research and development funds, one-half (1/2) of the amounts which would have been retained by UPI under Section 7B(1), (2) or (3) had the INVENTION not been recovered and the aforementioned option, license or funding had been negotiated to a successful conclusion by UPI.

D. (1) All royalties or other payments received by UPI and attributable to the licensing of INVENTIONS COVERED BY THIS AGREEMENT shall be accumulated by UPI and amounts due to INRA shall be paid to INRA semi-annually each year on or about each January 15 and July 15, together with an accounting of the source of such amounts and a copy of the statement of sales and/or other documentation as received from the licensee.

(2) All monies received by UPI and attributable to sponsored research and/or development funding agreements shall be

paid to INRA no later than fifteen (15) days after receipt by UPI.

E. UPI shall keep accurate books and records of its income and receipts hereunder and of disbursements, and INRA shall have the right to inspect such books and records, at reasonable intervals and at reasonable times.

F. UPI agrees that any payments due from UPI to INRA based upon cash received from optionees or licensees, which payments are not remitted within thirty (30) days of January 15 and July 15 respectively, shall bear interest payable to INRA at the rate of one percent (1%) per month. UPI shall attempt to require the same of licensees in all agreements, but does not guarantee that it will be able to do so nor that it will always be able to collect same interest from licensees under agreements that require such payment.

Section 8. Term

A. The term of this AGREEMENT shall be from the date hereof for a period of three (3) years and shall be automatically renewed for additional one (1) year periods thereafter; provided, however, that either party shall have the right to terminate this AGREEMENT at the end of the initial three (3) year period or any subsequent one (1) year period thereafter by providing written notice of termination to the other party at least thirty (30) days prior to the end of any such period. Notwithstanding the expiration of this AGREEMENT or earlier termination as provided hereunder, with respect

to any INVENTION COVERED BY THIS AGREEMENT, the provisions hereof relating to such INVENTIONS shall survive such expiration or earlier termination, unless recovered by INRA under Section 4G, until the expiration of the last to expire of any patents issuing on each such INVENTION.

B. In the event of receivership or bankruptcy of UPI, or in the event UPI shall make an assignment for the benefit of creditors or shall go out of business, this AGREEMENT shall terminate and, in such event all right, title and interest in and to all INVENTIONS COVERED BY THIS AGREEMENT then represented by UPI as agent pursuant to and under the terms of this AGREEMENT shall automatically revert to INRA. In the event of such reversion, UPI shall receive and retain royalties and/or funding shares from and for the full term of any licenses or similar agreements consummated prior to the receivership, bankruptcy, assignment or cessation of business of UPI, in the amount it would have received and retained had the INVENTIONS not reverted to INRA.

C. If either party shall at any time during the term hereof commit any breach of any material covenant or agreement herein contained, and shall fail to remedy any such breach within sixty (60) days after written notice thereof by the other party, such other party may at its option terminate this AGREEMENT by notice in writing to such effect, in addition to such other remedies as are provided by law.

D. The termination of this AGREEMENT for any cause or the cessation of the agency as to any INVENTION COVERED BY THIS AGREEMENT shall not affect the terms of any options, licenses, sales, research and/or development agreements or other grants theretofore entered into by UPI, and no termination shall relieve UPI or its successors of its obligation to pay INRA its share of royalties or sponsored research and/or development funding due or to become due or accrued under Section 7B hereof, or shall relieve INRA of the obligation set forth in Sections 4G, 7B, 7C, and 8B to pay a continuing royalty or funding share attributable to services of UPI, the right to which continuing royalty or funding share accrued prior to such termination.

Section 9. Miscellaneous

A. If a dispute is not settled by negotiation between the Parties, such dispute shall be settled by an independent third party expert, mutually agreeable to both INRA and UPI, at the joint expense of the Parties. The expert shall have the right to request the Parties to provide relevant documents and to present oral evidence, but shall not be bound by the rules of evidence, and shall seek to resolve the dispute in an expeditious and informal manner. The expert shall agree that the information made available to him and the conclusion he reaches shall be kept confidential. The determination of such third party expert shall be final and binding upon both INRA and UPI. Such arbitration will be submitted to the rules and control of the International Chamber of Commerce. The expert will determine, in accordance with the matter of the dispute,

whether the French legislation or the laws of the State of Connecticut shall be applicable to settle the dispute. If the Parties disagree with the expert determination of the application legislation, the ICC will decide that point.

B. Any payment, notice or other communication required or permitted to be made to either party hereunder shall be sufficiently made or given on the date of mailing if sent to such party at its address given below, or such other address as it shall hereafter designate in writing, as follows:

In the case of UPI:

President
University Patents, Inc.
P. O. Box 901
Westport, Connecticut 06881

In the case of INRA:

All legal documents to:

Chef du Service Juridque
et du Contentieux
Institut National de la Recherche Agronomique
147, rue de l'Universite
75341 Paris Cedex 07, France

All other communications to:

Directeur des Relations Industrielles
et de la Valorisation
Institut National de la Recherche Agronomique
147, rue de l'Universite
75341 Paris Cedex 07, France

C. UPI agrees that a provision similar to the language following will be incorporated in each license agreement which UPI negotiates for INVENTIONS COVERED BY THIS AGREEMENT:

"LICENSEE agrees to defend, indemnify and hold INRA and UPI harmless from and against any and all liability, demands, damages, expenses or losses for death, personal injury, illness or property damage arising (1) out of use by LICENSEE or its transferees of inventions licensed or information furnished under this agreement, or (2) out of any use, sale or other disposition by LICENSEE or its transferees of products made by use of such inventions or information.

As used in this ARTICLE ____, 'INRA' includes the officers, agents and employees of INRA, and 'LICENSEE' includes its affiliates, subsidiaries, contractors and sub-contractors."

D. UPI agrees to use its best efforts to ensure that Optionees and Licensees of INVENTIONS COVERED BY THIS AGREEMENT act in accordance with the terms and conditions of the option and license agreements to which they are parties. In the event UPI finds it necessary to enforce any option or license agreement, UPI agrees that the costs of resulting litigation shall be borne by UPI. UPI shall be entitled to deduct its litigation expenses from any recovery or royalties related to the INVENTION that is the subject of the

suit, from whatever source or sources such recovery or royalties may emanate, with the balance of the recovery or the remainder of such royalties, if any, as the case may be, to be shared in accordance with the royalty sharing provisions of this AGREEMENT.

E. This Agency Agreement shall be executed simultaneously in four counterparts, two in English and French, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In case of dispute as to the meaning and to intent of the Parties, the French language version of the Agreement shall be controlling.

F. This AGREEMENT shall be binding upon and shall inure to the benefit of the successors or assigns of INRA, but UPI may not assign this AGREEMENT nor any interest under this AGREEMENT without the

prior written consent of INRA, except that UPI may assign its rights to monies due or to become due hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this AGREEMENT to be signed hereinbelow.

UNIVERSITY PATENTS, INC.

WITNESS:

A. S. ALPERT, President

INSTITUT NATIONAL de la RECHERCHE AGRONOMIQUE

WITNESS:

Le Président Directeur Général
de l'Institut National de la Recherche
Agronomique
Signé : J. POLY

By:

Title:

A. WEIL
Directeur des Relations
Industrielles
et de la Valorisation

USET

University Sc
and Technolog
8000 Westpark L
Tel: 703/821-2030

TELECOPIER

TRANSMITTAL SHEET

DATE: 9/26/88

TO: Bob Siegel

FROM: Norm Latker

SUBJECT: Revised Smithsonian Agreement
incorporating your changes

NUMBER OF PAGES (INCLUDING THIS COVER): 13