



# Trademark Proposal Form

Briefly describe the reason for your proposal. Please include in the description how pursuing trademark protection for the term/logo described below will benefit the A&M System.

What is the term (word/phrase) you are interested in trademarking?

Is there, or will there be, a particular logo associated with the term that you also want to trademark?  YES  NO

Are you currently using the term and/or logo of interest (on a website, brochure, package, etc.)?

YES  NO If NO, when do you believe the first use will occur?

If YES, what was the first date of use?

Do you have evidence of this first use?  YES  NO

If YES, please describe.

Has the use occurred **consistently** for more than 5 years?  YES  NO

Is the term or logo you are looking to trademark related to a **good** or **service** you provide, or will be providing?  YES  NO

If YES, please describe.

Provide a description as to how you are using, or propose to use, the term and/or logo. Please be as specific as possible and expand on above descriptions if needed. Attach an example of your use of the mark if being used.

Will your department be willing to pay for the trademark filing (rough estimate \$2,500)?

YES  NO

Name and affiliation of requestor.

Name:

Affiliation:

Phone:

Email:

**Return completed form, and any attachments to:**

**The Office of Technology Commercialization**

**3369 TAMU**

**College Station, TX 77843-3369**

**Phone 979.847.8682 Fax 979.845.1402**



## LICENSE AGREEMENT

between

**Turf merchants, inc.**

and

**THE TEXAS A&M UNIVERSITY SYSTEM**

This license agreement ("Agreement") is made between Turf Merchants, Inc. ("LICENSEE"), an Oregon company with principal offices at Tangent, Oregon, and The Texas A&M University System ("SYSTEM"), of which Texas AgriLife Research ("AgriLife") is a part, both having a business address at College Station, Texas. LICENSEE and SYSTEM are jointly referred to in this Agreement as "Parties," and individually as a "Party."

### WITNESSETH:

WHEREAS, AgriLife has a primary mission to conduct research and development of plant selections and new cultivars, and owns all rights and interest in and to such plant selections and cultivars, and wants to assure that cultivars of high quality and purity are available for commercial production in Texas and throughout the world for public benefit; and

WHEREAS, AgriLife, in collaboration with a third party, has developed a turf-type ryegrass, designated by experimental number \_\_\_\_\_ and variety name \_\_\_\_\_ and wants to assure that seed is readily available for commercial production and use in Texas and throughout the world for public benefit; and

WHEREAS, LICENSEE is interested in the production, distribution and marketing of high quality seed and has represented that LICENSEE shall commit itself to a thorough, vigorous, and diligent program of development and commercialization of the cultivar for public benefit; and

WHEREAS, AgriLife has obtained exclusive rights from the third party co-developer of the LICENSED VARIETY to license the LICENSED VARIETY for commercial purposes; and

WHEREAS, AgriLife may release improved cultivars and SYSTEM may, at its discretion, grant commercial rights to such cultivar to LICENSEE to maximize public benefit.

NOW THEREFORE, in consideration of the mutual covenants and premises contained in this Agreement, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

### ARTICLE I - DEFINITIONS

- 1.01 "LICENSED VARIETY" means the turf-type ryegrass designated by experimental number \_\_\_\_\_ and variety name \_\_\_\_\_ (SYSTEM Internal Ref. No. TAMUS \_\_\_\_\_), which is anticipated for release by AgriLife during Calendar Year 2009.
- 1.02 "INTELLECTUAL PROPERTY RIGHTS" means a Plant Variety Protection Act Application for LICENSED VARIETY, each issued Certificate under the Plant Variety Protection Act, and each corresponding foreign Certification and application therefor, now or hereafter owned or controlled by SYSTEM and a co-developer.

- 1.03 “LICENSED PRODUCT” means all planting seed of LICENSED VARIETY, including seed of LICENSED VARIETY sold as a blend with one or more varieties.
- 1.04 “CONTRACT GROWER(S)” means a person or firm producing LICENSED PRODUCT for LICENSEE. All sales of LICENSED PRODUCT produced by the CONTRACT GROWER shall be to LICENSEE. All CONTRACT GROWERS shall be required to abide by the terms and conditions set forth in this Agreement.
- 1.05 “CONTRACT GROWER PRICE” means the price LICENSEE or sublicensee pays to CONTRACT GROWER(S) for the production of LICENSED PRODUCT(S).
- 1.06 “EFFECTIVE DATE” means the date on which the last Party executes this Agreement.
- 1.07 “CROP YEAR” means the twelve (12)-month period beginning July 1 and ending June 30. For clarification purposes, “2010 CROP YEAR” shall mean the period beginning July 1, 2009 and ending June 30, 2010.

#### ARTICLE II - GRANT

- 2.01 Grant. Subject to the reservation in paragraph 2.02, SYSTEM grants to LICENSEE a worldwide, exclusive license under INTELLECTUAL PROPERTY RIGHTS to:
- (i) plant, produce and maintain LICENSED VARIETY (as a foundation class seedstock),
  - (ii) to produce and sell LICENSED PRODUCTS, and
  - (iii) to grant sublicenses of the same scope;
- to the end of the term of this Agreement as prescribed in Article X. LICENSEE will provide LICENSED PRODUCT to CONTRACT GROWERS for production purposes. This grant does not relinquish SYSTEM’s ownership or rights to LICENSED VARIETY and does not imply any future rights of the LICENSEE to other cultivars (plant materials) developed by SYSTEM. This grant specifically **prohibits** the right to use LICENSED VARIETY for any genetic manipulation or transformation purposes, or to make selections from the LICENSED VARIETY.
- 2.02 Reservation. SYSTEM hereby reserves an irrevocable, non-exclusive, nontransferable, royalty-free license to LICENSED VARIETY and LICENSED PRODUCTS for research, demonstration, and educational purposes only and not for commercial purposes.

#### ARTICLE III - CONSIDERATION

- 3.01 License Fee. In consideration for the rights granted in this Agreement, LICENSEE must make an initial, non-refundable payment to SYSTEM in the amount of five thousand dollars (\$5,000.00). Such payment will be due no later than thirty (30) days following the EFFECTIVE DATE. This License Fee will be not credited against any other payments due SYSTEM under this Agreement.
- 3.02 Royalties. As additional consideration for the license granted in this Agreement, LICENSEE shall remit to SYSTEM a royalty of five percent (5%) of the CONTRACT GROWER PRICE for LICENSED PRODUCTS. For any LICENSED PRODUCTS produced by LICENSEE and/or sublicensees rather than by CONTRACT GROWERS, LICENSEE shall remit to SYSTEM a royalty of five percent (5%) of the equivalent price for production that would have been paid to CONTRACT GROWERS for such production.

3.03 Minimum Annual Consideration. As an additional consideration for the license granted in this Agreement, LICENSEE shall pay to SYSTEM a Minimum Annual Consideration in accordance with the following schedule:

2011 CROP YEAR and 2012 CROP YEAR .....\$2,000  
2013 CROP YEAR and each CROP YEAR thereafter through  
the expiration or termination of the Agreement..... \$4,000

In the event that royalties for the CROP YEAR do not achieve the required minimum, LICENSEE's royalty payment for the CROP YEAR must include payment of the balance needed to achieve the Minimum Annual Consideration for the CROP YEAR. In the event that this Agreement expires or is terminated prior to the end of a CROP YEAR, the Minimum Annual Consideration shall be prorated for that CROP YEAR.

3.04 Sublicense Fees. Sales of LICENSED PRODUCTS by sublicensees are subject to the same royalty rate prescribed for LICENSEE, per paragraph 3.02. As additional consideration for the license granted in this Agreement, LICENSEE shall remit to SYSTEM fifty percent (50%) of any "up-front" or periodic sublicense fees collected from sublicensees as consideration for the grant of a sublicense. As used herein, sublicense fees are separate and distinct from royalties collected from sublicensees and shall mean any amount or consideration collected from any sublicensee which is charged for the initial granting of the sublicense or periodic maintenance of the sublicense, royalty payments excluded. Such sublicense fees shall not be creditable against Minimum Annual Consideration.

3.05 Certificate Expenses Reimbursement. LICENSEE shall reimburse SYSTEM for its documented out-of-pocket expenses incurred in the application and prosecution-to-completion of the INTELLECTUAL PROPERTY RIGHTS for the LICENSED VARIETY, as further described in Article VIII. Such reimbursement shall be made within thirty (30) days after receipt of SYSTEM's invoice for such expenses.

3.06 Grant Back. LICENSEE will make available to AgriLife, upon request, up to 1000 pounds of LICENSED VARIETY per year beginning in Calendar Year 2011, FOB Overton, Texas, royalty free and cost free, for research, promotion and demonstration purposes. AgriLife will submit a request for such material in writing sixty (60) days prior to desired delivery.

3.07 Travel Expenses. As an additional consideration for the rights granted by SYSTEM herein, LICENSEE shall provide to AgriLife reimbursement, up to one thousand dollars (\$1,000) per year beginning in Calendar Year 2010, for reasonable travel expenses incurred by one visit per year of a AgriLife representative to evaluate the LICENSED VARIETY.

ARTICLE IV - DUTIES OF LICENSEE

4.01 Standards. LICENSEE agrees to plant Certified eligible seed, i.e., Foundation or Registered, of LICENSED VARIETY on acres that would be eligible for crop certification according to the certification requirements of the jurisdiction of such planting and to maintain all certification standards as may be required by any authorized certifying agency for the jurisdictions where production may take place. LICENSEE agrees that any plantings of LICENSED PRODUCT on non-certified fields will occur only on fields where Intermediate or Annual ryegrass has not been grown within the last three (3) years, and Perennial ryegrass has not been grown within the last one (1) year, unless the prior planting was the same LICENSED VARIETY. LICENSEE shall

make every effort to assist the CONTRACT GROWER(s) and sublicensee(s) to produce 100% Certified commercial seed.

- 4.02 Quality Assurance. LICENSEE will use care in all aspects of the production, conditioning, distribution and sale of LICENSED PRODUCT to insure that all LICENSED PRODUCT sold is of high quality and genetic purity. The LICENSEE shall implement and monitor quality assurance provisions for CONTRACT GROWERS and sublicensee(s), to assure and maintain genetic purity of the LICENSED PRODUCT produced. LICENSEE shall assure that CONTRACT GROWERS and sublicensee(s) follow proper propagation procedures.
- 4.03 Labeling. LICENSED PRODUCT of high quality and genetic purity equal to or better than that required by certification standards of the jurisdiction in which it was planted shall be sold by variety name only, and must be properly and clearly marked and labeled in accordance with state and federal laws. In the event LICENSED PRODUCT represents a blend or mixture comprising seed of other varieties in addition to the LICENSED VARIETY, the product labeling must include a notice specifying the percentage of LICENSED VARIETY, by name, contained in the product. LICENSEE agrees to notify SYSTEM of any situation where an unauthorized third party may be attempting to produce and/or sell LICENSED PRODUCT.
- 4.04 Marking. LICENSEE agrees to mark the LICENSED PRODUCT sold in the United States with all applicable certification tags or labels and other tags or information as may be required by state and federal laws, including the appropriate markings to reflect that unauthorized propagation is prohibited and that a PVP Certificate is either pending or has been granted. All LICENSED PRODUCT shipped to or sold in other countries shall be marked in such a manner as to conform with certification standards and laws of the country of production and import or sale.
- 4.05 Compliance. LICENSEE must comply with all applicable federal, state and local laws and regulations in its exercise of all rights granted to it by SYSTEM under this Agreement. Furthermore, LICENSEE accepts responsibility for enforcement of the requirements of this Agreement and compliance thereto by CONTRACT GROWERS and sublicensees. LICENSEE will ensure that all sublicensees will have in place a valid contract for production and sale of the LICENSED VARIETY and that contracts with CONTRACT GROWERS prohibit CONTRACT GROWERS from the sale of LICENSED PRODUCTS to parties other than LICENSEE.

#### ARTICLE V – SEED SUPPLY

- 5.01 Breeder seed or material. LICENSEE possesses breeder material of LICENSED VARIETY from its evaluation period. This seed will be used to establish production under this Agreement. AgriLife shall not be obligated to provide seed of LICENSED VARIETY to LICENSEE during the term of this Agreement unless mutually agreed and arranged between the Parties.
- 5.02 Foundation Seed. LICENSEE, in accordance with the regulations of the jurisdiction of seed production, shall maintain the foundation class of seed of LICENSED VARIETY.

#### ARTICLE VI - PAYMENTS AND REPORTS

- 6.01 When payments are due. Unless otherwise specified, payments shall be made annually. Payments shall be made to Texas Foundation Seed Service (TFSS), in Vernon, Texas, not later than thirty (30) days after the last day of the CROP YEAR in which they accrue. Sublicense fees received by LICENSEE per paragraph 3.04 above, shall be remitted within sixty (60) days of

receipt by LICENSEE from its sublicensees.

- 6.02 Royalty reports. With each annual payment, LICENSEE shall provide information sufficient to allow SYSTEM to calculate the royalty due that year. This information shall include, at a minimum, quantity of LICENSED PRODUCT sold, CONTRACT GROWER PRICE, sublicensee reports, and royalty due. No annual reports are due until sales of LICENSED PRODUCTS begin. After product sales begin, annual reports shall be provided even if no royalties accrued during the year.
- 6.03 Currency. Payment due to SYSTEM shall be paid in U.S. dollars. Payments requiring conversion shall use the exchange rate as reported in The Wall Street Journal on the last business day of the reporting period.
- 6.04 Records. LICENSEE shall keep accurate records and books showing the maintenance and production of the LICENSED VARIETY by LICENSEE, and by its sublicensees, and the inventory, sale, or distribution of LICENSED PRODUCTS. Upon request, LICENSEE shall provide information to SYSTEM concerning the location of fields, CONTRACT GROWERS, and other information relating to the maintenance of the LICENSED VARIETY and production fields and shall permit duly authorized agents of SYSTEM, during regular business hours, to inspect fields, other facilities, and records for the purpose of verifying quality control and royalty payments due SYSTEM. Furthermore, LICENSEE authorizes SYSTEM to request, obtain and review the certification records of the certification agency of the jurisdiction of production to verify reports without additional authorization, and shall ensure that sublicensees and CONTRACT GROWERS provide such authorization.
- 6.05 Inspection of books and records. At its own expense, SYSTEM may annually inspect LICENSEE's books and records as needed to determine royalties payable. LICENSEE shall maintain such books and records for at least three (3) years following the dates of the underlying transactions. Any such inspections shall be in confidence and conducted during ordinary business hours, and SYSTEM will provide LICENSEE prior notice before making such inspections. SYSTEM may employ a Certified Public Accountant and/or an AgriLife or SYSTEM representative for this purpose. If SYSTEM's audit identifies a shortage of five percent (5%) or more of amounts due to SYSTEM, then LICENSEE shall pay the costs of SYSTEM's audit. LICENSEE shall pay all amounts due as a consequence of such audit to SYSTEM promptly, with interest.
- 6.06 Interest Charges. Overdue payments may, at the sole discretion of SYSTEM, be subject to a daily charge, commencing on the 31st day after such payment is due, compounded monthly, at the rate of either one and one-half percent (1.5%) per month or the highest legal interest rate, whichever is lower. The payment of such interest will not foreclose SYSTEM from exercising any other rights it may have as a consequence of the lateness of any payment.

#### ARTICLE VII - DUE DILIGENCE

- 7.01 Best Efforts. LICENSEE agrees to diligently proceed to produce LICENSED PRODUCT and will use its best efforts to advertise and offer for sale, or cause to be offered for sale, to potential customers LICENSED PRODUCT within a reasonable time in accordance with marketing plans. LICENSEE further agrees to list and offer for sale LICENSED PRODUCT for use by commercial, residential or other potential customers.
- 7.02 Milestones. In addition, LICENSEE shall adhere to the following milestones:

(a) Have planted a minimum of 200 acres of commercial production of LICENSED VARIETY no later than December 1, 2010.

(b) Record sales of LICENSED PRODUCTS no later than December 1, 2012.

LICENSEE shall provide written notification to SYSTEM within thirty (30) days of achieving each milestone.

7.03 Failure to Accomplish Milestones. Should LICENSEE fail to achieve milestones specified in paragraph 7.02 above, or should LICENSEE fail to record sales of LICENSED PRODUCT in any two (2) consecutive CROP YEARS once sales begin, SYSTEM at its sole option may terminate this Agreement, renegotiate the milestones, or render this Agreement non-exclusive. In making this determination, SYSTEM shall take into account the normal course of such programs conducted with sound and reasonable business practices and judgment.

7.04 Due Diligence. During the term of this Agreement, SYSTEM may identify a state and/or country in which LICENSED PRODUCTS are not being sold or advertised for sale, but which SYSTEM has reason to believe may be a significant market for LICENSED PRODUCTS. SYSTEM shall notify LICENSEE of such market by providing documentation to support SYSTEM's determination. Thereafter, LICENSEE shall make a good faith effort to advertise and record NET SALES in such state and/or country. Should LICENSEE not record NET SALES in such market within one (1) year of SYSTEM's notification, SYSTEM, at its sole option, may waive this requirement or revise LICENSEE's grant set forth in paragraph 2.01 to nonexclusive for the specified state and/or country only.

#### ARTICLE VIII - INTELLECTUAL PROPERTY

8.01 Plant Variety Protection Filing. SYSTEM shall proceed in filing a Plant Variety Protection Act (PVP) application for LICENSED VARIETY in the United States within twelve (12) months of the EFFECTIVE DATE. SYSTEM will prosecute-to-completion such application and shall maintain each resulting Certificate of Protection. "Prosecution-to-completion" shall mean prosecution of the original applications, and each continuing application, to issuance or final rejection by the Plant Variety Protection Office, the United States Department of Agriculture.

8.02 Foreign Protection Applications. With the cooperation of SYSTEM and at its sole discretion and expense, LICENSEE shall file and prosecute, in the name of SYSTEM and its co-developer, applications for foreign Certificates of Protection and/or patents relating to the LICENSED VARIETY corresponding to the above-referenced U.S. application(s).

(a) Election not to file. LICENSEE will inform SYSTEM no later than three (3) years and nine (9) months following the date of the first commercial sale of the LICENSED VARIETY in the U.S. as to its selection of foreign countries in which it will seek corresponding plant protection. Notwithstanding, should LICENSEE sell LICENSED VARIETY in a foreign country prior to such time, LICENSEE shall inform SYSTEM no later than nine (9) months following the date of such sale as to its election not to file for plant protection in the foreign country in which the sale occurred. After such notification in either case, SYSTEM shall then have the right to file corresponding foreign Certificates of Protection or patent protection at its own expense in those foreign countries not selected by LICENSEE. However, such applications funded at SYSTEM's expense shall be excluded from INTELLECTUAL PROPERTY RIGHTS. "First

commercial sale” shall mean the date of sale of LICENSED VARIETY for purposes of exploitation, specifically the first sale to commercial end users of LICENSED PRODUCT, which is further described in the Plant Variety Protection Act.

- (b) Prosecution and Maintenance of Foreign Certificates and/or Patents. Should LICENSEE file corresponding applications for foreign patent or Certificates of Protection in a country, and subsequently elects not to continue the diligent prosecution and maintenance of such foreign patents, patent applications, or Certificates of Protection, it shall so notify SYSTEM at least three (3) months prior to any deadline for any action which would result in abandonment, withdrawal, or lapse of such foreign patents, certificates, or applications. SYSTEM shall then have the right to continue maintenance or prosecution of such foreign patent, certificate or application at its own expense. However, expenses incurred prior to the point of LICENSEE not electing such action shall remain the responsibility of LICENSEE and such foreign Certificates, patents or applications shall be excluded from INTELLECTUAL PROPERTY RIGHTS.

- 8.03 Financial Responsibility. LICENSEE shall reimburse SYSTEM for its filing, examination, prosecution, and certificate fees incurred in the filing and prosecution-to-completion of the U.S. patent application(s) and/or patent(s) as described in paragraph 8.01. LICENSEE shall provide such payment within thirty (30) days of receipt of SYSTEM’s invoices for such expenses. LICENSEE shall directly assume one hundred percent (100%) of the expenses related to filing, examination, prosecution, and certificate fees incurred in the filing and prosecution-to-completion of foreign Certificates of Protection, Patents, and applications as described in paragraph 8.02.

#### ARTICLE IX - ENFORCEMENT OF INTELLECTUAL PROPERTY

- 9.01 Notice of Infringement. SYSTEM and LICENSEE shall promptly notify one another in writing of any alleged infringement of the INTELLECTUAL PROPERTY RIGHTS. Within thirty (30) days after receipt of such notice, the SYSTEM and LICENSEE shall meet and formulate a strategy for resolving the alleged infringement.
- 9.02 Legal Process. LICENSEE shall have the right, but no obligation, to pursue legal process to redress the alleged infringement. Upon the written consent of SYSTEM and the Attorney General of the State of Texas, LICENSEE may make the SYSTEM a party plaintiff or otherwise appropriate participant in such process. LICENSEE shall pay the SYSTEM's legal expenses incurred in such process, and shall indemnify the SYSTEM against any order for costs that may be made against the SYSTEM in such proceedings. In any such litigation initiated by LICENSEE, SYSTEM will be represented, at LICENSEE's expense, by the Attorney General of the State of Texas or, with the agreement of the Attorney General, by LICENSEE's counsel or by counsel of SYSTEM's choosing.
- 9.03 Monetary Recovery. Any monetary recovery for an infringement in a suit brought by LICENSEE shall be applied in the following manner: first, to LICENSEE's documented legal expenses; with remainder of recovery shared with SYSTEM as follows: 94% to LICENSEE and 6% to SYSTEM.
- 9.04 Cooperation. The SYSTEM and LICENSEE shall cooperate in any legal process concerning alleged infringement of INTELLECTUAL PROPERTY RIGHTS. Each party shall, to the fullest extent possible, make available its employees, records, information and the like as relevant to the legal process.



- 9.05 Action by Licensor. Should LICENSEE choose not to pursue legal action to redress the alleged infringement, the SYSTEM may do so at its own expense. Any monetary recovery resulting from pursuit of redress solely by the SYSTEM shall be considered the SYSTEM's recovery with no obligations to LICENSEE.

#### ARTICLE X - TERMINATION

- 10.01 Expiration. This Agreement, unless sooner terminated as provided herein, shall remain in effect until the expiration of the last to expire plant protection certificate under SYSTEM INTELLECTUAL PROPERTY RIGHTS.
- 10.02 Termination by LICENSEE. LICENSEE may terminate this Agreement by providing written notice to SYSTEM at least ninety (90) days before the termination is to take effect.
- 10.03 Termination by SYSTEM. If LICENSEE materially breaches this Agreement, SYSTEM may give LICENSEE written notice of the breach. LICENSEE shall have a period of sixty (60) days from receipt of the notice to cure the breach. If LICENSEE does not cure the breach within this period, SYSTEM may terminate this Agreement by giving written notice of its election to do so.
- 10.04 Inventory. Upon any termination or expiration of this Agreement, LICENSEE shall notify SYSTEM of the amount of LICENSED PRODUCTS which LICENSEE has in inventory, the sale of which, but for such termination or expiration, would be subject to royalty. LICENSEE may sell such LICENSED PRODUCTS for a period not to exceed six (6) months following termination or expiration, provided that LICENSEE shall pay SYSTEM the applicable royalty in the manner set forth in this Agreement. Thereafter, LICENSEE shall, at AgriLife's sole election and within a time period designated by AgriLife, (i) destroy, (ii) return to AgriLife, or (iii) permit AgriLife to enter LICENSEE's property(ies) to directly destroy any remaining inventory, including plantings, of LICENSED VARIETY and LICENSED PRODUCTS. Should AgriLife elect to request that LICENSEE destroy material, LICENSEE shall provide written verification to AgriLife within thirty (30) days of such destruction.
- 10.05 Survival of sublicenses. Any sublicense granted by LICENSEE under this Agreement shall survive termination of this Agreement. Upon termination of this Agreement under paragraphs 10.02 or 10.03 above, LICENSEE shall assign to SYSTEM all of its rights in such sublicenses.
- 10.06 Matters Surviving Termination. All accrued obligations and claims, including reimbursement of plant protection expenses, license fee obligations, royalty obligations, minimum annual consideration obligations, interest charge obligations, and all other financial obligations, and claims or causes of action for breach of this Agreement, shall survive termination of this Agreement. Obligations of confidentiality shall survive termination of this Agreement. This section controls in the case of a conflict with any other section of this Agreement.

#### ARTICLE XI - INDEMNIFICATION AND REPRESENTATION

- 11.01 Indemnification. LICENSEE SHALL AT ALL TIMES DURING THE TERM OF THIS AGREEMENT AND THEREAFTER INDEMNIFY, DEFEND, AND HOLD HARMLESS SYSTEM, ITS REGENTS, OFFICERS, AND EMPLOYEES AGAINST ANY CLAIM, PROCEEDING, DEMAND, LIABILITY OR EXPENSE (INCLUDING LEGAL EXPENSE**

**AND REASONABLE ATTORNEYS' FEES) WHICH RELATES TO INJURY TO PERSONS OR TO PROPERTY, ANY ACTION BROUGHT BY A THIRD PARTY ALLEGING INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR AGAINST ANY OTHER CLAIM, PROCEEDING, DEMAND, EXPENSE, AND LIABILITY OF ANY KIND WHATSOEVER RESULTING FROM THE PRODUCTION, MANUFACTURE, SALE, COMMERCIAL USE, LEASE, CONSUMPTION, OR ADVERTISEMENT OF LICENSED PRODUCTS OR ARISING FROM ANY OBLIGATION OF LICENSEE OR SUBLICENSEE(S) UNDER THIS AGREEMENT.**

- 11.02 Representation. SYSTEM represents that it owns and has title to, jointly with its co-developer, the LICENSED VARIETY and has the full right and power to grant the license set forth in paragraph 2.01, and that there are no outstanding agreements, assignments, or encumbrances inconsistent with the provisions of this Agreement. **SYSTEM MAKES NO OTHER REPRESENTATIONS AND EXTENDS NO OTHER WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR DOES SYSTEM ASSUME ANY OBLIGATIONS WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR OTHER RIGHTS OF THIRD PARTIES DUE TO LICENSEE'S, SUBLICENSEE(S)' OR CONTRACT GROWER'S ACTIVITIES UNDER THIS AGREEMENT.**

#### ARTICLE XII - NOTICES

- 12.01 Payments, notices, or other communications required by this Agreement shall be sufficiently made or given if mailed by certified First Class United States mail, postage pre-paid, or by commercial carrier (e.g., FedEx, UPS, etc.) when such carrier maintains receipt or record of delivery, addressed to the address stated below, or to the last address specified in writing by the intended recipient.

If to SYSTEM:

Vice Chancellor  
Office of Technology Commercialization  
The Texas A&M University System  
3369 TAMU  
College Station, Texas 77843-3369  
Ph: (979) 847-8682; Fax: (979) 845-1402

With payments addressed to:

Texas Foundation Seed Service  
Attn: Director  
11914 Highway 70  
Vernon, TX 76384  
Ph: (940) 552-6226

If to LICENSEE:

John Cochran  
Turf Merchants, Inc.  
33390 Tangent Loop  
Tangent, Oregon 97389  
Phone: (541) 926-8649; Fax: (541) 926-4435

#### ARTICLE XIII - MISCELLANEOUS

- 13.01 Export Controls. It is understood that SYSTEM is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, and that its obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by LICENSEE that LICENSEE shall not export data or commodities to certain foreign

countries without prior approval of such agency. SYSTEM neither represents that a license shall not be required nor that, if required, it shall be issued.

- 13.02 Non-Use of Names. LICENSEE shall not use the names of The Texas A&M University System, nor of any of its employees or components, nor any adaptation thereof, in any advertising, promotional or sales literature without the prior written consent obtained from SYSTEM in each case, except that LICENSEE may state that it is licensed by SYSTEM under INTELLECTUAL PROPERTY RIGHTS.
- 13.03 Trademarks. It is understood by the Parties that LICENSEE shall have the right to select, own and use its own trademarks on the LICENSED PRODUCT. However, nothing herein shall be construed as granting to LICENSEE any license or other right under any trade name, trademark, or service mark owned or licensed by SYSTEM. Neither shall SYSTEM have any rights to trade names, trademarks, or service marks owned by LICENSEE.
- 13.04 Assignment. This Agreement and the rights and privileges thereof are not assignable or otherwise transferable by either party without the express written consent of the other party, which consent will not be unreasonably withheld.
- 13.05 Confidential Information. Sales reports submitted by LICENSEE under Article VI shall be considered as Confidential Information under this Agreement and shall not be disclosed by SYSTEM to any third party except as may be required in response to a valid order of a court or other government body of the United States or any political subdivision thereof, as required under the Texas Public Information Act. Should the Parties contemplate exchange of other information of a confidential nature, they shall enter into a separate confidentiality agreement.
- 13.06 Force Majeure. Other than an obligation for the payment of money, SYSTEM, upon receipt of documentation from LICENSEE which it deems appropriate, shall excuse any breach of this Agreement, which is proximately caused by war, strike, act of God, or other similar circumstance normally deemed outside the control of well-managed businesses.
- 13.07 Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to LICENSED VARIETY and INTELLECTUAL PROPERTY RIGHTS, and supersedes all other written and oral agreements between the Parties with respect to LICENSED VARIETY and INTELLECTUAL PROPERTY RIGHTS. It may be modified only by a written amendment signed by the Parties.
- 13.08 Governing Law. This Agreement shall be construed under the Constitution and laws of the State of Texas, USA, and venue for any dispute shall be in Brazos County, Texas.
- 13.09 Headings. Headings appear solely for convenience of reference. Such headings are not part of, and shall not be used to construe, this Agreement.
- 13.10 No Waiver; Severability. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. No waiver of any breach of this Agreement shall constitute a waiver of any other breach of the same or other provision of this Agreement and no waiver shall be effective unless made in writing.

The Parties have caused this Agreement to become effective as of the date last executed below.

TURF MERCHANTS, INC.

THE TEXAS A&M UNIVERSITY SYSTEM

\_\_\_\_\_  
By:  
Title:  
Date: \_\_\_\_\_

\_\_\_\_\_  
Guy K. Diedrich  
Vice Chancellor for Federal Relations and  
Commercialization  
Date: \_\_\_\_\_

**From:** "Hurley, Janie C." <JHurley@tamu.edu>  
**To:** "Milton C. Engelke" <m-engelke@tamu.edu>, <jmgould@ag.tamu.edu>, <d-geno...>  
**CC:** "Schuerman, Peter L." <PSchuerman@tamu.edu>, "Pennington, Jeanine M." <J...>  
**Date:** 10/29/2010 5:09 PM  
**Subject:** RE: Turfgrass Meeting Follow up

All:

Thank you all for joining in the discussions on Tuesday, especially to all of you who described projects you are working on and areas of interest. For your reference, and for the benefit of Dr. Russ Jessup and Steve Brown who could not attend, I am providing a general summary of topics discussed, along with a few comments from those discussions and action items noted.

1. Overview provided of research program (Dallas)

Dr. Ambika Chandra and others described the focus of the program and specific research projects. Bluegrass and St. Augustine projects are currently supported with external funding, but zoysiagrass program largely has no current external funding (exception being USGA project supporting development of seeded zoysiagrass).

It was mentioned that other ongoing projects/areas such as developing molecular markers and genetic transformation protocols were in need of, or could benefit more from, funding.

It was noted that release documents are being prepared for at least two new cultivars.

2. Overview provided of research program (Overton/CS)

Dr. Lloyd Nelson described the focus of the Overton program and informed that Dr. Gerald (Ray) Smith will be taking the lead on some of the turf-type ryegrass work at Overton since his retirement and move to CS. Dr. Nelson will continue some projects, working with David Chalmers and Russ Jessup. It was mentioned that Dr. Jessup is (or will be?) working with bermudagrass and bluegrasses.

3. Commercial opportunities/current activities were discussed. In regards to vegetatively-propagated materials where we currently have multiple licensees, it was mentioned that we need a mechanism of branding/promoting our varieties and/or program, and suggested that we could be realizing more value from currently released varieties. The idea of creating a company that could create/lead such effort was mentioned.

It was also mentioned that performance milestones in license agreements should be implemented to ensure broad coverage for licensed areas and compliance with these milestones should be monitored. It was mentioned that the breeders should be kept informed when licensees are in breach of their agreement.

4. Miscellaneous items such as royalty collections/distributions, and material transfer & nondisclosure agreements were discussed.

Action items:

1. Identify proposed improvements to the turfgrass commercialization program so that we can begin compiling a list of items that need to be addressed and develop a plan for doing so. Participants list items and send to Janie to compile. Target date: provide to Janie by November 30th.
2. Peter will develop an annual report for COALS (per Dr. Baltensperger) concerning varieties licensed, noting corresponding developers and royalties generated. Details and scope of such report to be determined. Peter will follow up with Dr. Baltensperger concerning this report by December 31st.
3. The OTC will prepare a draft inter-agency document to govern material transfers among A&M System researchers by Nov. 30th.
4. In order to explore the idea of creating a company to create a brand to promote varieties, Dr. Engelke will discuss with Dr. Gilstrap toward getting a proposal to the OTC. Ideally the OTC would like to receive this proposal by Nov. 30th.
5. Schedule next meeting for March 2011.

Again, thank you for sharing your valuable time with this group.  
Looking forward to the next meeting.

Sincerely,

Janie

Janie C. Hurley, MBA

Sr. Licensing Manager

Office of Technology Commercialization

The Texas A&M University System

3369 TAMU

College Station, TX 77843-3369

Ph: 979-845-6337

Fx: 979-845-1402

<http://otc.tamu.edu> <<http://otc.tamu.edu>>

From: Jones, Brenda A.

Sent: Wednesday, October 13, 2010 11:21 AM

To: Jones, Brenda A.; Milton C. Engelke; [jmgould@ag.tamu.edu](mailto:jmgould@ag.tamu.edu); [d-genovesi@tamu.edu](mailto:d-genovesi@tamu.edu); Ambika Chandra; [lr-nelson@tamu.edu](mailto:lr-nelson@tamu.edu); 'RSBrown@ag.tamu.edu'; Helms, Adam; [rjessup@tamu.edu](mailto:rjessup@tamu.edu); Marla Binzel; [j-reinert@tamu.edu](mailto:j-reinert@tamu.edu); McCutchen, Bill

Cc: Hurley, Janie C.; Schuerman, Peter L.; Slovacek, Jackie; David Baltensperger; [jr-lane@tamu.edu](mailto:jr-lane@tamu.edu); Pennington, Jeanine M.

Subject: Turfgrass IMPACT Meeting Scheduled

All:

The Turfgrass IMPACT meeting has been scheduled. Please see the following information:

Date: Tuesday, October 26, 2010

Time: 10:00a - 1:30p

Place: Texas AgriLife Research and Extension Center - Dallas

Address: 17360 Coit Road, Dallas, TX, / Pavilion Building, Pavilion Classrooms 104 & 106 (adjoining)

Contact in Dallas: Janine Lane, phone: 972-952-9245, email: [jr-lane@tamu.edu](mailto:jr-lane@tamu.edu)

Lunch will be provided, so if you have any dietary restrictions, please let me or Janine know as soon as possible and no later than Thursday, October 21, 2010.

If you cannot make this meeting, please let me know at your earliest convenience so that Janine can plan appropriately for the lunch orders. If you have any questions, please do not hesitate to contact me.

Please add this meeting to your calendar.

Thank you.

Brenda Jones

The Texas A&M University System

Office of Technology Commercialization

800 Raymond Stotzer Parkway, Suite 2020

College Station, TX 77845

Mail Stop 3369

979-862-4547 direct

979-845-1402 fax



**From:** "Hurley, Janie C." <JHurley@tamu.edu>  
**To:** "Baltensperger, David" <dbaltensperger@ag.tamu.edu>  
**Date:** 10/22/2010 1:49 PM  
**Subject:** RE: Turfgrass IMPACT Meeting Scheduled

Dr. Baltensperger,

Thanks for the note. Would you mind clarifying just a little?

Thanks again,  
Janie

-----Original Message-----

From: David Baltensperger [mailto:DBaltensperger@ag.tamu.edu]  
Sent: Friday, October 22, 2010 10:40 AM  
To: Hurley, Janie C.  
Subject: RE: Turfgrass IMPACT Meeting Scheduled

Janie,

I think it would be good to recover timing of providing disclosures.

David D. Baltensperger  
Professor and Head  
Soil and Crop Sciences  
Texas A&M University  
2474 TAMU  
College Station, Texas 77843-2474

Phone 979-845-3041  
Fax 979-845-0456  
Email dbaltensperger@ag.tamu.edu

>>> "Hurley, Janie C." <JHurley@tamu.edu> 10/22/2010 8:23 AM >>>  
All:

If there are any specific topics you would like to be discussed during the meeting next Tues, please send me an email by Monday, noon, so that I may incorporate them into our draft agenda. We will of course have some time for open discussion as well.

Thank you,

Janie

Janie C. Hurley, MBA

Sr. Licensing Manager

Office of Technology Commercialization

The Texas A&M University System

3369 TAMU

College Station, TX 77843-3369

Ph: 979-845-6337

Fx: 979-845-1402

<http://otc.tamu.edu> <<http://otc.tamu.edu>>

From: Jones, Brenda A.

Sent: Wednesday, October 13, 2010 11:21 AM

To: Jones, Brenda A.; Milton C. Engelke; [jmgould@ag.tamu.edu](mailto:jmgould@ag.tamu.edu);  
[d-genovesi@tamu.edu](mailto:d-genovesi@tamu.edu); Ambika Chandra; [lr-nelson@tamu.edu](mailto:lr-nelson@tamu.edu);  
'[RSBrown@ag.tamu.edu](mailto:RSBrown@ag.tamu.edu)'; Helms, Adam; [rjessup@tamu.edu](mailto:rjessup@tamu.edu); Marla Binzel;  
[j-reinert@tamu.edu](mailto:j-reinert@tamu.edu); McCutchen, Bill

Cc: Hurley, Janie C.; Schuerman, Peter L.; Slovacek, Jackie; David  
Baltensperger; [jr-lane@tamu.edu](mailto:jr-lane@tamu.edu); Pennington, Jeanine M.

Subject: Turfgrass IMPACT Meeting Scheduled

All:

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Classrooms 104 & 106 (adjoining)

Contact in Dallas: Janine Lane, phone: 972-952-9245, email:  
jr-lane@tamu.edu

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let me or Janine know as soon as possible and no later than Thursday,  
October 21, 2010.

If you cannot make this meeting, please let me know at your earliest  
convenience so that Janine can plan appropriately for the lunch orders.  
If you have any questions, please do not hesitate to contact me.

Please add this meeting to your calendar.

Thank you.

Brenda Jones

The Texas A&M University System

Office of Technology Commercialization

800 Raymond Stotzer Parkway, Suite 2020

College Station, TX 77845

Mail Stop 3369

979-862-4547 direct

979-845-1402 fax

**From:** "Hurley, Janie C." <JHurley@tamu.edu>  
**To:** "Milton C. Engelke" <m-engelke@tamu.edu>, <jmgould@ag.tamu.edu>, <d-geno...>  
**CC:** "Schuerman, Peter L." <PSchuerman@tamu.edu>, "Slovacek, Jackie" <j-slova...>  
**Date:** 10/22/2010 8:24 AM  
**Subject:** RE: Turfgrass IMPACT Meeting Scheduled

All:

If there are any specific topics you would like to be discussed during the meeting next Tues, please send me an email by Monday, noon, so that I may incorporate them into our draft agenda. We will of course have some time for open discussion as well.

Thank you,

Janie

Janie C. Hurley, MBA

Sr. Licensing Manager

Office of Technology Commercialization

The Texas A&M University System

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College Station, TX 77843-3369

Ph: 979-845-6337

Fx: 979-845-1402

<http://otc.tamu.edu> <<http://otc.tamu.edu>>

From: Jones, Brenda A.  
Sent: Wednesday, October 13, 2010 11:21 AM  
To: Jones, Brenda A.; Milton C. Engelke; jmgould@ag.tamu.edu;

d-genovesi@tamu.edu; Ambika Chandra; Ir-nelson@tamu.edu;  
'RSBrown@ag.tamu.edu'; Helms, Adam; rjessup@tamu.edu; Marla Binzel;  
j-reinert@tamu.edu; McCutchen, Bill  
Cc: Hurley, Janie C.; Schuerman, Peter L.; Slovacek, Jackie; David  
Baltensperger; jr-lane@tamu.edu; Pennington, Jeanine M.  
Subject: Turfgrass IMPACT Meeting Scheduled

All:

The Turfgrass IMPACT meeting has been scheduled. Please see the following information:

Date: Tuesday, October 26, 2010

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Contact in Dallas: Janine Lane, phone: 972-952-9245, email: jr-lane@tamu.edu

Lunch will be provided, so if you have any dietary restrictions, please let me or Janine know as soon as possible and no later than Thursday, October 21, 2010.

If you cannot make this meeting, please let me know at your earliest convenience so that Janine can plan appropriately for the lunch orders. If you have any questions, please do not hesitate to contact me.

Please add this meeting to your calendar.

Thank you.

Brenda Jones

The Texas A&M University System

Office of Technology Commercialization  
800 Raymond Stotzer Parkway, Suite 2020  
College Station, TX 77845

Mail Stop 3369  
979-862-4547 direct  
979-845-1402 fax

**From:** "Hurley, Janie C." <JHurley@tamu.edu>  
**To:** <rsbrown@ag.tamu.edu>, "Baltensperger, David" <dbaltensperger@ag.tamu.ed...>  
**CC:** "Nessler, Craig" <cnessler@tamu.edu>, "Hussey, Mark" <mhussey@tamu.edu>, ...  
**Date:** 9/21/2010 7:22 PM  
**Subject:** Re: Fw: ARS-TAMU agreement on peanut release

Steve,

We don't have agreement with OSU yet and do not have to before finalizing with ARS - I figured the proposed sharing would work out somewhere between 5 - 15% with OSU.

Thanks,  
Janie

Janie Hurley  
Office of Technology Commercialization  
(mobile)

-----  
Sent from my BlackBerry

----- Original Message -----

From: Steve Brown <RSBrown@ag.tamu.edu>  
To: Baltensperger, David; Jaroy Moore <JMoore@ag.tamu.edu>; Michael R Baring <MBaring@ag.tamu.edu>; McCutchen, Bill; Charles Simpson <c-simpson@tamu.edu>; Don Cawthon <d-cawthon@tamu.edu>; mburow@tamu.edu <mburow@tamu.edu>  
Cc: Nessler, Craig; Hurley, Janie C.; Hussey, Mark; Schuerman, Peter L.  
Sent: Tue Sep 21 18:41:43 2010  
Subject: Re: Fw: ARS-TAMU agreement on peanut release

I'm a little confused on point 5. Do we mean that we are sharing 35 percent of the royalties? I discussed with Janie that the MAX should no more that 25 percent for both ARS and OSU. The OSU contribution was test plots and evaluation which in other crops is 3-5 percent. As mentioned previously, I don't have a problem with OSU producing the FDN seed but think that there should be some revenue sharing from that venture. --Steve

<<< Sent from Blackberry Handheld >>>

-----Original Message-----

From: "McCutchen, Bill" <bmccutchen@tamu.edu>  
Cc: Nessler, Craig <CNessler.EXTERNAL.Internet>  
Cc: Hussey, Mark A <MAHussey.EXTERNAL.Internet>  
Cc: Schuerman, Peter L <PLSchuerman.EXTERNAL.Internet>  
To: Moore, Jaroy <JMoore@ag.tamu.edu>  
To: Baltensperger, David <DBaltensperger@ag.tamu.edu>  
To: Baring, Michael R <MBaring@ag.tamu.edu>  
To: Simpson, Charles <CSIMPSON@ag.tamu.edu>  
To: Cawthon, Don <DCAWTHON@ag.tamu.edu>  
To: Brown, Steve <RSBrown@ag.tamu.edu>  
Cc: Hurley, Janie C. <JHurley@tamu.edu>  
To: <mburow@tamu.edu>

Sent: 9/21/2010 5:37:17 PM

Subject: Re: Fw: ARS-TAMU agreement on peanut release

All,

Per Janie Hurley's most recent discussions with ARS (below), we have negotiated very favorable terms - with AgriLife having a 80:20 percent ownership, which frankly is better than I expected. Here are a few

additional details for consideration to include:

- 1) ARS has verbally agreed to the proposed 80/20 split (AgriLife:ARS) for license revenue on \_\_\_\_\_, with the following understandings:
- 2) TAMUS will negotiate commercial license to producers for \_\_\_\_\_
- 3) We will prepare and file the PVP application on \_\_\_\_\_ deducting the PVP expenses from license income before sharing with other parties.
- 4) After expenses, we share 20% with ARS, and although not part of our written agreement with ARS, the understanding is that we will share a portion with OSU.

(My suggestion is to proceed ASAP to this arrangement. It greatly favors and recognizes our major contributions and if agreed in principle, we will proceed in preparing the license agreement).

- 5) Concerning OSU, we will likely prefer that OK produce/provide the foundation seed to our licensees. Proposed sharing with OSU – 15% of license income?

Please let us know if you have any feedback on this proposed arrangement. We plan to proceed in rapid manner.

Thanks,

Bill

---

From: Charles Simpson <c-simpson@tamu.edu>  
To: Baltensperger, David; Jaroy Moore <JMoore@ag.tamu.edu>; Michael R Baring <MBaring@ag.tamu.edu>; Steve Brown <RSBrown@ag.tamu.edu>; McCutchen, Bill; Don Cawthon <d-cawthon@tamu.edu>; mburow@tamu.edu <mburow@tamu.edu>  
Cc: Nessler, Craig; Hurley, Janie C.; Hussey, Mark; Schuerman, Peter L.  
Sent: Fri Sep 17 11:31:08 2010  
Subject: Re: Fw: ARS-TAMU agreement on peanut release

Bill:

I have read Michael Baring's response and I think it is accurate. The only points I would add are:

1. The ARS does not have a license from the University of Florida to work with the High O/L trait so they need to ride our coat tails.
2. There has never been an issue of ownership about this line in my mind. The line is a sister line to \_\_\_\_\_ and we did not have to clear ownership on \_\_\_\_\_ with anyone, so I see no reason that it would be any different with the \_\_\_\_\_ Line. Michael Baring pointed out the crossing and selection process very clearly in his response to you. To me Texas AgriLife Research is the owner of \_\_\_\_\_ and any deviation from that will be very generous on our part, to say the least.

Charles Simpson

>>> Michael R Baring 9/17/2010 9:15 AM >>>  
Dr. McCutchen,

I am not sure where Mr. Kaphammer keeps getting his information, although I have a good idea, but his intel is incorrect. I am attaching the same pedigree information that I made available to Dr. Melouk and Dr. Chamberlain. First, you will notice that I made the original cross for this line in 1997 and we performed selection and increase on generations until the first yield tests in 2000. There is no way that the material could have been transferred in the mid-90's because it did not exist at that time. Secondly he



is correct that no agreements were used to transfer this line to ARS because it was never sent to ARS. It was sent to Dr. Kent Dashiell who was the breeder for Oklahoma State University. He received the line in yield trials that he tested for us in Southern Oklahoma from 2000 to 2002. Dr. Dashiell left OSU and Dr. Melouk had seen the performance of the line and decided to keep the line for further testing without our knowledge. At one of our meetings in Stephenville, Dr. Melouk specifically asked me if I had ever sent him seed of this line and my response was "no" to which he responded "I did not think so". Thirdly, and more importantly, the only selection that ARS performed on this line was in the form of bulk selection in which they took the line some time after 2002 which made it about an F3:8 generation line, they space planted it in a field of Sclerotinia, made selections based on the plants that did not have symptoms and then finally bulked all of these individual plant selections together to make \_\_\_\_\_ If he actually stated that "ARS did all the selections" as you wrote in your email, well that is just absurd! The bulk selection that they actually performed did not work very well considering that \_\_\_\_\_ performed at the bottom of our yield tests in Stephenville under heavy Sclerotinia pressure two years in a row!

The attached pedigree information is strictly what we did with the development of the line. We took it from an initial cross to three years worth of yield testing (2000-2002) in which it was tested in 9 individual yield trials across Texas and Oklahoma.

You should be aware that I am currently writing up a release proposal for a line that I developed which will grade as high or higher than \_\_\_\_\_ and will perform superior to \_\_\_\_\_ under heavy Sclerotinia pressure. It is my hope that it will take off in the West Texas area and replace some of the Flavor Runner 458 acreage as it performs equal to that variety in the absence of disease and superior to it in the presence of Sclerotinia. I have 3/4 acre increase that I will be harvesting within the next month. I will be sending in the proposal to our PRC before the end of November with any luck.

If you need any other information don't hesitate to call me 979-220-2656.

Thanks,  
Mike

>>> "McCutchen, Bill" <bmccutchen@tamu.edu> 9/16/2010 6:40 PM >>>  
All,

I would greatly appreciate your feedback on Dr. Kaphammer's statements (and email string) below - to include any relevant feedback from faculty that you might ascertain. Kaphammer's recollection of events, agreements and conclusions do not correspond with the intel that I have gathered to date.

Thanks,

Bill

---

From: Kaphammer, Bryan <Bryan.Kaphammer@ars.usda.gov>  
To: McCutchen, Bill; Blalock, June <June.Blalock@ars.usda.gov>; Porter, David R <david.r.porter@okstate.edu>; Simmons, Kay <Kay.Simmons@ars.usda.gov>  
Cc: Palmer, Bob <robert.palmer@okstate.edu>; Upchurch, Dan <Dan.Upchurch@ars.usda.gov>; Hurley, Janie C.; Steve Brown <RSBrown@ag.tamu.edu>; Nessler, Craig; Hussey, Mark; Schuerman, Peter L.  
Sent: Wed Sep 15 14:59:51 2010  
Subject: RE: ARS-TAMU agreement on peanut release

A few months ago, Janie and I discussed ownership of \_\_\_\_\_ The original germplasm was transferred from A&M to ARS in the mid-90s. At that time no agreements were used to transfer this germplasm. ARS scientists evaluated the A&M germplasm and found it had potential in Oklahoma. The ARS scientists did within line selections to eventually select \_\_\_\_\_. Since it was originally A&M germplasm and ARS did all the selections, we concluded it should be jointly owned. As with most

plant varieties that are jointly owned by A&M and ARS, ARS plans to license its rights exclusively to A&M and A&M will handle the PVPC and any sublicensing.

It is my understanding that OSU is interested in growing the foundation seed for sale in Oklahoma. Once the IP rights are consolidated at A&M, A&M can work with OSU on a sublicensing agreement.

Currently, Janie and June Blalock are working out the terms of a license. Janie is providing a terms sheet to June. They hope to come to an agreement on the terms of the license in the next few days.

I hope my email helps resolve this issue.

Regards,

Bryan

Bryan Kaphammer, Ph.D.

USDA-ARS-OTT

2150 Centre Avenue, Building D

Fort Collins, CO 80526

PH: 970-492-7028

FAX: 970-492-7023

CELL: 970-222-6726

EMAIL: [bryan.kaphammer@ars.usda.gov](mailto:bryan.kaphammer@ars.usda.gov)

From: McCutchen, Bill [<mailto:bmccutchen@tamu.edu>]

Sent: Wednesday, September 15, 2010 12:08 PM

To: Blalock, June; Porter, David R; Simmons, Kay

Cc: Palmer, Bob; Kaphammer, Bryan; Upchurch, Dan; Hurley, Janie C.; Steve Brown; Nessler, Craig; Hussey, Mark; Schuerman, Peter L.

Subject: RE: ARS-TAMU agreement on peanut release

June and Kay,

Thanks for your prompt response, and we apologize if our requests are out of line. For clarity, we have been talking about these issues with Bryan Kaphammer, and he indicated to Janie that she would have to send a written message to you (June Blalock) to request a license draft, and quite frankly, I am not sure who should be licensing from whom. So yes Janie did just follow-up with you in the last week or so (you're correct).

That said, we have been trying to work diligently on these matters for some time. In fact, we have documents going back over 4 years now trying to head off these types of issues. In other words, there is likely a lot more to this story than meets the eye. In the attached letter from Steve Brown to Dr. Hassan Malouk, we tried to open discussions as far back as March of 2006 on the use and potential ownership of such lines to include bringing this to the attention of Dr. Kaphammer. We would love to get this resolved and see proper ownership and licensing developed correctly and to everyone's satisfaction.

The bottom-line is that we have had ongoing discussions with USDA for some time over the rightful ownership of the \_\_\_\_\_ line; and thus the delay in releasing this variety the release has not been signed although the PRC made a positive recommendation.

Sorry for the confusion, and I hope we can get this resolved.

Sincerely,

Bill

--

Bill F. McCutchen, Ph.D.

Associate Director

Texas AgriLife Research

Texas A&M University System

113 Jack K. Williams Administration Building

2142 TAMU College Station, TX 77843-2142

979-845-8488 Tel

979-458-4765 Fax

bmccutchen@tamu.edu

---

From: Blalock, June [mailto:June.Blalock@ARS.USDA.GOV]  
Sent: Wednesday, September 15, 2010 12:29 PM  
To: Porter, David R; Simmons, Kay  
Cc: Palmer, Bob; Kaphammer, Bryan; Upchurch, Dan; Hurley, Janie C.; McCutchen, Bill  
Subject: RE: ARS-TAMU agreement on peanut release

Kay, Just to be clear, I was only notified that TAMU wanted a license earlier this week. I am in correspondence with Janie Hurley, Senior Licensing Manager at the TAMU Office of Technology Commercialization about the need for an agreement, and I will do the best I can, but there are others who were in the queue first. I do not foresee any difficulties in negotiating the agreement since I have worked with Janie on many previous TAMU-USDA agreements. I would point out that it is also not necessary to have a license agreement in place in order to release this variety. All that is needed is permission of the co-owners. Hope this helps, June

June Blalock, CLP

Technology Licensing Program Coordinator

USDA, ARS, Office of Technology Transfer

Room 4-1174, George Washington Carver Center

5601 Sunnyside Ave.

Beltsville, MD 20705-5131

Phone: 301-504-5989

Fax: 301-504-5060

Email: [june.blalock@ars.usda.gov](mailto:june.blalock@ars.usda.gov)

From: Porter, David R [mailto:david.r.porter@okstate.edu]  
Sent: Wednesday, September 15, 2010 1:17 PM  
To: Simmons, Kay  
Cc: Palmer, Bob; Blalock, June; Kaphammer, Bryan; Upchurch, Dan; Hurley, Janie C.; McCutchen, Bill  
Subject: ARS-TAMU agreement on peanut release  
Importance: High

Kay,

Hope this finds you well.

I have a favor to ask. I would like to ask you to help expedite the resolution of a pending agreement between ARS and Texas AgriLife Research regarding the co-ownership and release of the peanut cultivar

I believe that negotiations have been ongoing for some time to finalize the agreement. OSU has been involved with this project over the years and invested resources in the development of , but as things have evolved, we will not be a co-owner of the cultivar. However, we have three OSU employees who are set to receive royalties once the cultivar is commercialized. I believe that ARS and AgriLife can manage to make provisions for that in the agreement they are working on.

The reason that I am asking for your help to expedite finalizing this agreement is that the Oklahoma Peanut Commission and others in the SW peanut industry are scheduling peanut field days in which they want to make the announcement that is officially released to the industry. One of these important events is scheduled for next Thursday, September 23.

I know this puts your IP office in a crunch, and I understand that they are understaffed as it is. However, I hope you can sense the urgency and anticipation of the SW peanut industry in receiving word of the official release of this new peanut cultivar.

Please let me know if you need additional information and please accept my thanks for looking into this matter.

Thanks,

Dave

David R. Porter

Professor and Head

Plant and Soil Sciences

368 Agricultural Hall

Oklahoma State University

Stillwater, OK 74078-6028

Phone: 405-744-6130

Fax: 405-744-0354

Email: [david.r.porter@okstate.edu](mailto:david.r.porter@okstate.edu)

Website: <http://pass.okstate.edu>

**Please Read:** The information requested in this invention disclosure form is required for the Office of Technology Commercialization (OTC) to begin its assessment. Your invention disclosure is a legally important document that should be prepared carefully. This form must be completed in its entirety. Incomplete forms will be returned for completion and resubmission.

Title of Invention:  
\_\_\_\_\_

1. Please provide the name of each inventor and affiliation with The Texas A&M University System (SYSTEM) when the invention was conceived. If any inventor has a joint appointment with another institution, please list them again under question 2, below. Check the box corresponding to the Lead Inventor. (Lead Inventor indicates the primary contact for the OTC).

- |    | <u>Lead</u>              | <u>Name and Affiliation</u> |
|----|--------------------------|-----------------------------|
| 1. | <input type="checkbox"/> |                             |
| 2. | <input type="checkbox"/> |                             |
| 3. | <input type="checkbox"/> |                             |
| 4. | <input type="checkbox"/> |                             |

2. Please provide the name, e-mail address, phone number, and place of employment for each inventor external to TAMUS, if applicable.

- |    | <u>Name, Affiliation, E-mail, and Phone Number</u> |
|----|--|
| 1. |  |
| 2. |  |

3. OTC Contacts. Please identify any Office of Technology Commercialization (OTC) personnel who you may have discussed this invention with prior to disclosure (if applicable).

4. Invention Description/Abstract. Please describe the invention or discovery that you are disclosing.

5. Purpose. Please describe the purpose of this invention or discovery.

6. Advantages. Please describe the key features or advantages of this invention or discovery, and how it achieves its advantages.

7. Stage of Development. Briefly discuss the current status of your invention (e.g. theoretical or conceptual; supported by laboratory results; prototype under development; prototype completed).

8. Funding. **THIS SECTION MUST BE COMPLETED. IF YOU CHECK 'YES', YOU MUST ALSO COMPLETE THE BOXES BELOW.** Rights in inventions may be impacted by the sources of funding used to develop them. Please list all sources of funding used in the conception and development of the invention/discovery; include grant numbers or other unique identifiers for each. Was the conception or development of this invention or discovery funded in any way by an internal



The Texas A&M University System  
DISCLOSURE OF INVENTION

or external source?

YES  NO

*Note: Types of funding sources include but are not limited to federal agencies, state agencies, i.e. internal funds, non-profit research foundations, private companies, and providers of gift contributions.*

<i>Name of Funding Agency</i>	<i>Federal Grant/Other Award Reference No.</i>	<i>Internal Reference Number</i>	<i>Office/Person Managing Grant/Award</i>

9.

10. *Future Funding.* If work on this invention or discovery is to be continued, indicate the sources of future funding and nature of the work.

11. *Materials/Information Used.* Rights in inventions may be impacted by materials of others used to develop them (e.g. materials obtained under a Material Transfer Agreement; materials sent by a colleague at another institution; purchased materials for which there was a purchase agreement; information obtained under a Nondisclosure Agreement; information received from an outside party under terms of confidentiality). Please list all sources of materials/information used in the conception and development of this invention or discovery and whether a Material Transfer Agreement, Nondisclosure Agreement, or other agreement was required to obtain the materials/information.

12. *Prior Public Release of Information.* Release of information about an invention or discovery can impact the scope of intellectual property rights that can be obtained. Please check the boxes of the types of disclosures (oral or written) that have occurred that mention or describe the invention or discovery. Below each checked box, please provide the earliest date of occurrence and a brief description what information was made publically available.

Check and describe all that may apply.

No public release of information

Published abstracts or manuscripts

Abstracts or manuscripts submitted for external review

Web





The Texas A&M University System  
DISCLOSURE OF INVENTION

- Conversation or e-mail with external party
  
- Presentation outside of department
  
- Thesis or Dissertation
  
- During consulting
  
- Other



The Texas A&M University System  
DISCLOSURE OF INVENTION

13. *Planned Release of Information.* Please provide the estimated date and description of any planned publications or public releases of information about this invention or discovery.
14. *Principal Events.* Please provide dates for the principal events regarding origin and development of this invention or discovery. *If no dates are provided, the date of the disclosure by OTC will be used as the date of conception.*
- a. What was the earliest conception date?
  - b. Was the conception date documented in a lab notebook?  YES  NO  
If YES and if witnessed, please provide name of the witness.
  - c. What was the first date of any other written records of this invention or discovery and what is the availability of those records?
14. *Commercial Entities.* Please provide information about commercial entities that may be interested in this invention or discovery and describe your discussion or contact with them regarding this invention or discovery (if applicable).
- a. Companies that you have discussed this invention/discovery with.
  - b. Companies that have contacted you regarding this invention or discovery.
  - c. Companies that you would like to be contacted regarding your invention/discovery.  
Please provide contact information for specific persons if known.



The Texas A&M University System  
DISCLOSURE OF INVENTION

**Inventor Data Sheet**

Please complete an Inventor Data Sheet for each inventor named in section 1 and 2 of this Disclosure of Invention. Additional forms may be found at the OTC website ([click here](#)). Please submit the completed Disclosure of Invention and all Inventor Data Sheets to [disclosures@tamu.edu](mailto:disclosures@tamu.edu) (or mail to the address at the bottom of this form). (Note that the Signature Page (next page) must be printed, signed and submitted when the Disclosure of Invention and Inventor Data Sheet(s) are submitted.)

**Contribution:**

Briefly describe your contribution to the disclosed invention.

**Inventor:**

Preferred Salutation:  Professor  Dr.  Ms.  Mrs.  Mr.  Other

First: MI: Last:

PhD  DVM  MD  MS/MA  BS/BA  Other:

University ID Number (UIN):

Country of Citizenship:

<u>Work</u>
Address:
Phone:
Fax:
Email:

<u>Home</u>
Address:
Phone:
Fax:
Email:

**TAMU System Employment Status/Title (including former employees):**

Professor  Associate Professor  Assistant Professor  Employed Student

Other Status/Title (if not listed above):

Former Texas A&M University System Employee

If you checked "Former Texas A&M University System Employee", were you employed by the A&M System at the time of invention or discovery?  YES  NO

System Component: (AgriLife, TAMU, TEES, TTI, Kingsville, Corpus Christi, etc.):

Department/Division:

Laboratory or Center:

**Non-TAMU System Employment Status/Title (for non-System inventors only):**

Please provide your Position/Title and Company Name:



The Texas A&M University System  
DISCLOSURE OF INVENTION

**Signature Page**

*Each inventor named in section 1 must sign and date this page. Additionally, this Disclosure of Invention must then be read and signed by a witness that understands it. Please also indicate each inventor's percentage of contribution to the disclosed invention.*

Title of Invention:

Inventor Signatures:

I/We certify that the information in this Disclosure of Invention is complete and accurate.

_____ Printed Name:	_____ % Contribution	_____ Date
_____ Printed Name:	_____ % Contribution	_____ Date
_____ Printed Name:	_____ % Contribution	_____ Date
_____ Printed Name:	_____ % Contribution	_____ Date
_____ Printed Name:	_____ % Contribution	_____ Date
_____ Printed Name:	_____ % Contribution	_____ Date

Witness Signature:

Disclosed to and understood by me this "**DATE**" day of "**MONTH**", "**YEAR**".

\_\_\_\_\_  
Printed Name:

Please submit this completed Disclosure of Invention (including Inventor Data Sheet(s) and signed and witnessed Signature Page) to:

[disclosures@tamu.edu](mailto:disclosures@tamu.edu) or mail to

**The Office of Technology Commercialization**  
**Attn: Disclosure of Invention**



The Texas A&M University System  
DISCLOSURE OF INVENTION

**3369 TAMU**  
**College Station, TX 77843-3369**



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**CONFIDENTIAL – DO NOT FORWARD**  
**PRELIMINARY REPORT – INVENTION DISCLOSURE**

---

**TO:** MARK BUROW; CHARLES SIMPSON; MICHAEL BARING; JAMES STARR  
**FROM:** JANIE HURLEY  
**SUBJECT:**  
**DATE:** 8/11/2010  
**CC:** BILL MCCUTCHEN; DAVID BALTENSBERGER; DON CAWTHON; JAROY MOORE;  
LELAND PIERSON; PETER SCHUERMAN

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INTRODUCTION

Thank you for submitting your Invention Disclosure to The Texas A&M University System (TAMUS) Office of Technology Commercialization (OTC). This report contains a preliminary assessment of the disclosure based upon the information provided.

The assessment is comprised of the following sections: Summary, Ownership, Obligations, Type of IP Protection, Publication and Next Steps. Following these sections, a description of the next steps for this disclosure based on these findings is described.

Based on these initial results, we would like to obtain additional information from the inventors about this disclosure to confirm our understanding of the technology as described in this report, and to complete the disclosure process. After reviewing this report, we ask that you please contact Janie Hurley at [jhurley@tamu.edu](mailto:jhurley@tamu.edu) or 979-845-6337 to arrange a time for discussion at your earliest convenience so that we may address several questions and complete the assessment of your invention.

SUMMARY OF INVENTION

## OWNERSHIP

## OBLIGATIONS TO THIRD PARTIES

## TYPES OF IP PROTECTION

### PUBLICATION

Publications and public disclosures that describe the invention, or the transfer of tangible materials, can impact the scope of intellectual property rights that can be obtained. The disclosure indicates that no public disclosures or transfer of materials has occurred.

## NEXT STEPS

As indicated above, the OTC will notify \_\_\_\_\_ of the receipt of this invention disclosure and expect to discuss with the company its potential commercial interests in this technology in the near future. In the meantime, the OTC would like to seek to learn more about this invention and its commercial potential by conducting a phone interview with the inventor(s), with the following topics listed below as a guideline for our anticipated discussion.

## SAMPLE INTERVIEW TOPICS

### *Purpose of Invention*

- Identify any products enabled by this technology.
- Identify any services enabled by this technology
- Identify any industrial uses enabled by this technology.
- Identify the problems that the technology solves.
- Identify benefits that the technology may confer.
- Identify any alternative embodiments.

### *Reduction to Practice*

- Determine whether the technology has been reduced to practice.
- Determine what timeframe the technology is estimated to be reduced to practice.
- Determine limitations in reducing the technology to practice.
- Determine inventor plans for further work on this technology.
- Determine whether the technology needs to be further developed at the university
- Determine whether the technology could be further developed by a licensee
- Determine any barriers to reduction of practice.
- Determine the best mode for the invention.

### *Market Barriers*

- Identify any regulatory approval (e.g. FDA, EPA) necessary for successful commercialization of the technology.
- Identify any public perception issues that may influence successful commercialization of the technology.
- Identify any industry perception issues that may influence successful commercialization of the technology.
- Identify any resistance in the industry to licensing technologies of this type.

### *Production*

- Determine the current scale of the production for the invention.



- Determine the need for to scaling up the production of the invention.
- Determine the barriers to scaling up the production of the invention.

*Inventor Participation*

- Determine the contributions of each inventor to the invention.
- Determine contacts that inventor has with relevant industry.
- Determine contacts that OTC has with relevant industry.
- Determine level of interest that inventor has in working with OTC.
- Determine level of interest that inventor has in commercialization.
- Determine the required level of participation from an inventor for successful commercialization.



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**CONFIDENTIAL – DO NOT FORWARD**  
**PRELIMINARY REPORT – INVENTION DISCLOSURE**

---

**TO:** CHARLES SIMPSON; MICHAEL BARING; MARK BUROW

**FROM:** JANIE HURLEY

**SUBJECT:**

**DATE:** 8/11/2010

**CC:** BILL MCCUTCHEN; DAVID BALTENSPERGER; DON CAWTHON; JAROY MOORE;  
PETER SCHUERMAN

---

#### INTRODUCTION

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- Determine any barriers to reduction of practice.
- Determine the best mode for the invention.

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- Identify any industry perception issues that may influence successful commercialization of the technology.
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- Determine the barriers to scaling up the production of the invention.

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- Determine contacts that OTC has with relevant industry.
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- Determine level of interest that inventor has in commercialization.
- Determine the required level of participation from an inventor for successful commercialization.



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**CONFIDENTIAL – DO NOT FORWARD**  
**COMMERCIALIZATION PLAN – UPDATE REPORT**

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**TO:** GERALD RAY SMITH; GERALD EVERS; INDRE PEMBERTON; PEGGY PARSONS  
**FROM:** JANIE HURLEY  
**SUBJECT:**  
**DATE:** 2/24/2009  
**CC:** BILL MCCUTCHEN; CHARLES LONG; DAVID BALTENSBERGER; STEVE BROWN; PETER SCHUERMAN; DAVID RIDDLE

---

SUMMARY

PLAN

Coordination Between Inventors and OTC. The developers should remain advised that any distribution of this variety should only take place under an MTA drafted by the OTC and that the OTC and TFSS should be kept apprised of any inquiries regarding commercial interest. When data becomes available, the OTC will require assistance from the developers for filing the PVP.

COMPLETION OR AMENDMENT OF PLAN

If efforts to enter into an option for this variety as described above have not been successful by October 31, 2009, OTC will confer with the developers and those copied on this memo to decide how we should revise this commercialization plan.



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**CONFIDENTIAL – DO NOT FORWARD**  
**COMMERCIALIZATION PLAN – UPDATE REPORT**

---

**TO:** LLOYD R. NELSON; JIMMY CROWDER; JANIS WILLIAMSON  
**FROM:** JANIE HURLEY  
**SUBJECT:**  
**DATE:** 4/22/2009  
**CC:** BILL MCCUTCHEN; CHARLES LONG; DAVID BALTENSPERGER; STEVE BROWN;  
PETER SCHUERMAN

---

SUMMARY

PLAN

Coordination Between Inventors and OTC. The developers should remain advised that any distribution of this variety should only take place under an MTA drafted by the OTC and that the



OTC and TFSS should be kept apprised of any inquiries regarding commercial interest. When data becomes available, the OTC will require assistance from the developers for filing the PVP.

COMPLETION OR AMENDMENT OF PLAN

If efforts to enter into a commercial license with \_\_\_\_\_ have not been successful by July 1, 2009, OTC will confer with the developers and those copied on this memo to decide how we should revise this commercialization plan.



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**CONFIDENTIAL – DO NOT FORWARD**  
**COMMERCIALIZATION PLAN – UPDATE REPORT**

---

**TO:** LLOYD R. NELSON; JIMMY CROWDER; JANIS WILLIAMSON  
**FROM:** JANIE HURLEY  
**SUBJECT:**  
**DATE:** 4/17/2009  
**CC:** BILL MCCUTCHEN; CHARLES LONG; DAVID BALTENSPERGER; STEVE BROWN;  
PETER SCHUERMAN

---

SUMMARY

PLAN

Coordination Between Inventors and OTC. The developers should remain advised that any distribution of this variety should only take place under an MTA drafted by the OTC and that the OTC and TFSS should be kept apprised of any inquiries regarding commercial interest. When data becomes available, the OTC will require assistance from the developers for filing the PVP.

#### COMPLETION OR AMENDMENT OF PLAN

Following further discussions with the company and with results obtained during the evaluation period, we will be better able to outline the subsequent plan for commercialization of the variety. If                    does not elect to commercialize the variety, OTC will confer with the developers and those copied on this memo to decide how we should revise this commercialization plan.



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**CONFIDENTIAL – DO NOT FORWARD**  
**COMMERCIALIZATION PLAN – UPDATE REPORT**

---

**TO:** LLOYD R. NELSON; JIMMY CROWDER; JANIS WILLIAMSON; GERALD EVERS; F. MONTE ROUQUETTE  
**FROM:** JANIE HURLEY  
**SUBJECT:**  
**DATE:** 4/22/2009  
**CC:** BILL MCCUTCHEN; CHARLES LONG; DAVID BALTENSPERGER; STEVE BROWN; PETER SCHUERMAN

---

SUMMARY

PLAN

Coordination Between Inventors and OTC. The developers should remain advised that any distribution of this variety should only take place under an MTA drafted by the OTC and that the OTC and TFSS should be kept apprised of any inquiries regarding commercial interest. When data becomes available, the OTC will require assistance from the developers for filing the PVP.

COMPLETION OR AMENDMENT OF PLAN

If efforts to enter into a commercial license with \_\_\_\_\_ have not been successful by June 1, 2009, OTC will confer with the developers and those copied on this memo to decide how we should revise this commercialization plan.



---

**CONFIDENTIAL – DO NOT FORWARD**  
**COMMERCIALIZATION PLAN – UPDATE REPORT**

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**TO:** GERALD RAY SMITH; GERALD EVERS; INDRE PEMBERTON; F. MONTE ROUQUETTE<sup>1</sup>  
**FROM:** JANIE HURLEY  
**SUBJECT:**  
**DATE:** 5/13/2009  
**CC:** BILL MCCUTCHEN; CHARLES LONG; DAVID BALTENSPERGER; STEVE BROWN; PETER SCHUERMAN

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SUMMARY

PLAN

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<sup>1</sup> Contributors currently with TAMUS

Coordination Between Inventors and OTC. The developers should remain advised that any distribution of this cultivar should only take place under an MTA drafted by the OTC and that the OTC and TFSS should be kept apprised of any inquiries regarding commercial interest. The OTC will require assistance from the developers for filing the PVP when determined appropriate to do so.

COMPLETION OR AMENDMENT OF PLAN

If efforts to enter into a commercial license for this cultivar, as described above, have not been successful by December 31, 2010, OTC will confer with the developers and those copied on this memo to decide how we should revise this commercialization plan.



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**CONFIDENTIAL – DO NOT FORWARD**  
**COMMERCIALIZATION PLAN – UPDATE REPORT**

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**TO:** BILL L. ROONEY; STEPHEN DELROY COLLINS; KAREN PRIHODA; DUSTIN BORDEN; REBECCA CORN  
**FROM:** JANIE HURLEY  
**SUBJECT:**  
  
**DATE:** 8/22/2009  
**CC:** BILL MCCUTCHEN; DAVID BALTENSPERGER; STEVE BROWN; PETER SCHUERMAN

---

SUMMARY

PLAN



Coordination Between Inventors and OTC. Distribution of this plant material by the developers should continue to be in coordination with TFSS and the OTC. The developers are requested to keep OTC apprised of any requests received directly from external parties regarding seed availability and licensing interests.

#### COMPLETION OR AMENDMENT OF PLAN

The OTC will continue to solicit interests from companies in nonexclusive commercial license agreements and enter into additional agreements where appropriate. OTC and TFSS will continue to manage and monitor the commercial license agreements mentioned above, including the distribution of any royalty income received during the life of the agreements. We will keep the developers and others copied on this memo informed of new licensing interests.



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**CONFIDENTIAL – DO NOT FORWARD**  
**COMMERCIALIZATION PLAN – UPDATE REPORT**

---

**TO:** BILL ROONEY; STEPHEN DELROY COLLINS; KAREN PRIHODA  
**FROM:** JANIE HURLEY  
**SUBJECT:**  
**DATE:** 3/3/2009  
**CC:** BILL MCCUTCHEN; DAVID BALTENSBERGER; STEVE BROWN; PETER SCHUERMAN; DAVID RIDDLE

---

SUMMARY

PLAN

Coordination Between Inventors and OTC. Distribution of this plant material by the developers should only take place in close coordination with TFSS and the OTC. The developers are requested to keep OTC apprised of any requests received directly from external parties regarding seed availability and licensing interests.

COMPLETION OR AMENDMENT OF PLAN

If efforts to license this variety as described above have not been successful by April 15, 2009, the OTC will confer with the developers and those copied on this memo to decide how we might revise this commercialization plan.