

**From:** [Robert Harris](#)  
**To:** [Bill Rooney](#)  
**Subject:** Fw: Preparationfor our talk.  
**Date:** Monday, November 09, 2009 2:39:34 PM

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I cannot believe this guy.

Bob

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

**From:** [Schuerman, Peter L.](#)  
**To:** [Robert Harris](#) ; [McCutchen, Bill](#)  
**Sent:** Monday, November 09, 2009 2:58 PM  
**Subject:** RE: Preparationfor our talk.

Bob, thanks for this. The problem I notice is the following:

4. NIC/SPK will be the exclusive and perpetual licensee for sorghum product and varieties developed by the University and that A&M will use its best efforts to develop same.

We can commit the sorghum we have now to a license, but we can't commit future varieties in this way. We need to consider each variety as it is developed.

If we develop new varieties and we have a successful partnership, undoubtedly we will want to license new varieties to NIC/SPK. And under sponsored research funding to develop these new varieties, we can provide rights to the sponsor in the sorghum that is developed. How would you like to proceed?

-Peter

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**From:** Robert Harris [mailto:rharris@nj.rr.com]  
**Sent:** Sunday, November 08, 2009 10:28 PM  
**To:** Peter Schuerman; McCutchen, Bill  
**Subject:** Preparationfor our talk.

Dear Peter and Bill,

Confirming our talk last week, we seemed to find basic general agreement on these key issues:

1. We will pay royalties on any product or sorghum variety which the IP is owned by the University and licensed to SPK/NIC. Such royalties will be based on the IP actually used by us in similar fashion to the oil we used (developed by Brandeis) in our Smart Balance products.
2. And fees or cash payments or contributions we make to A&M to help support research and sorghum development will not be related to the royalty payments to be paid by NIC/SPK.
3. Such contributions will be paid by our charitable foundation as pure research support to help you create healthful sorghum varieties and products - to be used in foods, drugs, nutraceuticals, etc.
4. NIC/SPK will be the exclusive and perpetual licensee for sorghum product and varieties developed by the University and that A&M will use its best efforts to develop same.

Since I promised to lay out our proposed royalties and contributions before our next talk so that we do not imply more than is practical or sensible, this is what we are open to do in order to lock up this agreement without further delay:

#### Basic Plan for Royalties

Based on pounds of sorghum bran or whole grain used in any foods, or any type of product the sorghums licensed by NIC/SPK, the IP of which is the property of A&M. Naturally, the formulations calling for the sorghum ingredient will dictate the absolute royalty paid - predicated on amount to be used per product and identified as such in any and all products marketed by NIC/SPK. In addition, any product of sorghum material sublicensed by NIC/SPK to a third party (as discussed last week), the amount of royalty will of necessity be less since we must administer and manage such programs (if in our judgment it is useful to sub-license third parties):

#### Direct Royalties:

No patent protection: 50-points per pound of sorghum used in direct formulations (in products marketed by NIC/SPK).

Patent Protection: 75 points per pound of sorghum used in direct formulations

Sublicense - no patent: 25 points per pound

Sublicense - patent protection: 50 points per pound

#### Contributions from CRH Foundation

2009 - \$25,000 in one payment.

2010- 50,000 in two payments

2011- 50,000 in two payments

2012- 50,000 in two payments

2013 - 25,000 in one payment

We are scheduled for a conference call this Thursday, November 12 and can complete this negotiation at that time. It would be to our mutual advantage to start the development program in high gear - not only for your black sorghum program but also to develop a hybrid of sumac sorghum with higher antioxidant levels than the sorghum we now use so that we may replace it with a sumac hybrid and escalate the royalty payments to you.

Bob Harris