

PRODUCTION AND MARKETING AGREEMENT

for

NC _____ Cucurbit Cultivar(s)

Between:

_____ and **NORTH CAROLINA STATE UNIVERSITY**

_____ **Box 8201**
Raleigh, NC 27695-8201

Ph: _____
Fax: _____
E-mail: _____

Ph: 919-515-7199
Fax: 919-515-3773

This Agreement establishes the terms and conditions under which NORTH CAROLINA STATE UNIVERSITY, (“NCSU”) licenses to _____, (“THE COMPANY”) non-exclusive production and marketing rights for seed of _____ (“Hybrid”).

TERMS OF AGREEMENT

A. THE COMPANY agrees to:

1. Be responsible for maintenance of purity of the Hybrid produced in accordance with industry standards and practices.
2. Sell and distribute Hybrid for production of cucurbits at price competitive with similar cucurbit varieties.
3. Sell the Hybrid only as the designated variety name.
4. Assume all risks and liabilities involved in production and the marketing of Hybrid, and indemnify and hold NCSU harmless from any such risks, liabilities or claims of liability.
5. Maintain a good faith effort to produce and market Hybrid in the current production year and in subsequent years for as long as this Agreement is in effect.
6. Provide NCSU with annual reports on production efforts, marketing efforts, and sales of Hybrid by April 1 of each calendar year.
7. Pay a royalty of 10% of gross sales of Hybrid. The royalty must be paid annually by April 1 of each year for all sales made during the previous calendar year, with payment to the attention of Director at:

North Carolina Foundation Seed Producers, Inc. (NCFSPI)
8220 RILEY HILL RD.
ZEBULON, NC 27597-8773

8. Make Available its Hybrid and parent lines production fields for inspection by an appointed official and/or representative of the NCFSPI or of NCSU or of both during normal business hours, when accompanied by an employee of THE COMPANY.
9. Make its records of production and sale of Hybrid available upon request by NCSU during normal business hours.

B. NCSU agrees to:

1. Grant THE COMPANY the right to obtain seed from NCSU. NCSU may delay the delivery of seed if it interferes with the university's ability to engage in its research and educational purposes. NCSU will provide THE COMPANY written notice within 30 days if a delay is expected.
2. Grant THE COMPANY a non-exclusive license for the production and marketing of Hybrid domestically and/or internationally.

C. Conditions:

1. This Agreement is effective on the date that THE COMPANY and NCSU have signed the Agreement, and remains in effect indefinitely, or until terminated under C.2 or C.3 below.
2. THE COMPANY may terminate this Agreement at any time on six (6) months written notice to NCSU. Upon termination, THE COMPANY will stop Plant production and will pay royalties on all Hybrid sold and will pay royalties on all Hybrid on hand, based on the market value of the Hybrid on the termination date.
3. If THE COMPANY breaches any of its obligations under this Agreement or does not produce and market Hybrid for two or more consecutive growing seasons, NCSU shall be entitled to terminate this Agreement immediately upon giving written notice.
4. This Agreement is governed by and must be interpreted in accordance with North Carolina Law, without reference to its conflict of laws provisions. All litigations arising out of this Agreement, its interpretation or performance, must be in Wake County Superior Court or in the US District Court for the Eastern District of North Carolina, and the parties consent to the jurisdiction of those courts.
5. The terms and conditions as set forth have been read carefully before execution. This Agreement shall be executed in duplicate, but is not binding on either THE COMPANY or NCSU until signed by both parties.

AGREEMENT APPROVAL:

FOR:

Signed: _____

Name: _____

Title: _____

Date: _____

FOR:

NORTH CAROLINA STATE UNIVERSITY

Signed: _____

Name: Billy B. Houghteling

Title: Director

Office of Technology Transfer

Date: _____