

**foiapa**

**From:** Mark Edwards <medwards@biosciadvisors.com>  
**Sent:** Friday, May 18, 2018 8:24 PM  
**To:** foiapa  
**Subject:** FOIA Request

**RECEIVED**

MAY 21 2018

Office of  
FOIA Services

I would like to request access to Exhibits 10.1 and 10.2 to the 9/30/02 10-Q, filed by Senesco Technologies, Inc. (now called Eloxx Pharmaceuticals, Inc.) on 11/14/2002. Confidential treatment was sought as to certain portions when initially filed with the Commission.

In the event that confidential treatment has not expired or has been extended, I further request that you send me the expiration date(s) from the relevant CT order(s) so I will know when I should resubmit my request.

I authorize up to \$61 in search and retrieval fees. Please send the exhibit(s) by PDF if possible.

Sincerely,

Mark

Mark G Edwards  
Managing Director  
Bioscience Advisors  
2855 Mitchell Dr., Suite 103  
Walnut Creek, CA 94598  
[medwards@biosciadvisors.com](mailto:medwards@biosciadvisors.com)  
925 954-1397



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
STATION PLACE  
100 F STREET, NE  
WASHINGTON, DC 20549-2465

Office of FOIA Services

June 19, 2018

Mr. Mark G. Edwards  
Bioscience Advisors  
2855 Mitchell Dr., Suite 103  
Walnut Creek, CA 94598

RE: Freedom of Information Act (FOIA), 5 U.S.C. § 552  
Request No. 18-04388-E

Dear Mr. Edwards:

This letter is in response to your request, dated and received in this office on May 21, 2018, for information regarding Exhibits 10.1 and 10.2 to the September 30, 2002 to the Form 10-Q, filed by Senesco Technologies, Inc. (now called Eloxx Pharmaceuticals, Inc.) on November 14, 2002.

The search for responsive records has resulted in the retrieval of 39 pages of records that may be responsive to your request. They are being provided to you with this letter.

If you have any questions, please contact me at [smithLR@sec.gov](mailto:smithLR@sec.gov) or (202) 551-8328. You may also contact me at [foiapa@sec.gov](mailto:foiapa@sec.gov) or (202) 551-7900. You also have the right to seek assistance from Lizzette Katilius as a FOIA Public Liaison or contact the Office of Government Information Services (OGIS) for dispute resolution services. OGIS can be reached at 1-877-684-6448 or [Archives.gov](http://Archives.gov) or via e-mail at [ogis@nara.gov](mailto:ogis@nara.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "L. Smith".

La Kisha R. Smith  
FOIA Research Specialist

Enclosure

Senesco Technologies, Inc.  
requests that the marked portions of this agreement be granted confidential treatment  
pursuant to Rule 24b-2 under the Securities Exchange Act of 1934

## **DEVELOPMENT AND LICENSE AGREEMENT**

This Development and License Agreement ("Agreement") dated as of 09-14-02 (the "Effective Date") is entered into by and between Senesco Technologies, Inc, a Delaware corporation with principal offices at 303 George Street, Suite 420, New Brunswick, NJ 08901 ("STI") and Cal/West Seeds, a California corporation with principal offices at 41970 E. Main Street, Woodland, CA 95776 ("Cal/West").

### **RECITALS**

WHEREAS, STI owns and controls technology, know-how and United States and foreign patent applications concerning methods for controlling plant senescence involving altering the expression of plant genes and their cognate expressed proteins that are induced during or coincident with the onset of senescence;

WHEREAS, Cal/West is a company in the business of forage seeds, oilseeds, and dichondra with expertise in research and development, production, conditioning and shipping, and marketing that is global in scope;

WHEREAS, STI desires to provide Cal/West with access to STI Technology to enable STI and Cal/West to develop Licensed Products in the Field, and STI desires to grant to Cal/West a license under the STI Patents to commercialize Licensed Products in the Field; and

WHEREAS, Cal/West desires to have access to STI Technology in the Field and to acquire a license under the STI Patents to commercialize Licensed Products in the Field;

NOW THEREFORE, in consideration of the premises and the faithful performance of the mutual covenants hereinafter set forth, the parties hereto hereby agree as follows:

### **1. DEFINITIONS**

As used in this Agreement, the following defined terms shall have the respective meanings set forth below:

- 1.1 "Field" means the plant species and types as set forth in Appendix A.
- 1.2 "Licensed Product" means any product developed pursuant to this Agreement within the Field, including the particular plant species and types listed in Appendix A.

- 1.3 "STI Patents" means (i) all pending (as of the Effective Date of this Agreement) U.S. and foreign patent applications owned or controlled by STI or its Affiliates pertaining to controlling senescence, including original applications, provisionals, divisions, continuations, continuations in part, extensions, PCT applications, renewals, reissues, or reexamination applications or supplemental prosecution certificates, including, but not limited to, all applications listed in Appendix B; (ii) all U.S. and foreign patents that have issued or will issue from any application identified in Section (i) of this paragraph; and (iii) all U.S. and foreign applications that claim priority in any way from any application or patent identified in subparagraphs (i) or (ii) of this paragraph.
- 1.4 "STI Confidential Information" means any information disclosed by STI to Cal/West, including all business, technical and other information, whether disclosed in writing, orally or in any other form, tangible or intangible, including but not limited to: information concerning inventions (including patent applications and related documents), discoveries, techniques, processes, designs, biological materials, specifications, algorithms, data, finances and plans, customer lists, business plans, contracts, marketing plans, production plans, distribution plans, system implementations plans, business concepts, supplier information, business procedures, business operations; all know-how and trade secrets; and all other unpublished copyrightable material. Confidential Information does not include information which:
- (i) is known to Cal/West prior to the time of disclosure by the STI, as evidenced by contemporaneous dated written records;
  - (ii) is received by Cal/West from independent sources having the right to such information without an obligation of confidence or non-disclosure, and without the information having been solicited or obtained by any use of the Confidential Information;
  - (iii) STI gives written consent for disclosure to a third party; or
  - (iv) is subsequently and independently developed by Cal/West without use of the Confidential Information and by persons who have not had access to the Confidential Information, as evidenced by contemporaneous dated written records.
- 1.5 "STI Technology" means the STI Patents, STI Confidential Information, and all STI know-how, materials, information and methods (whether developed by STI or acquired from a third party), including, but not limited to methods for controlling plant senescence involving altering the expression of plant genes and their cognate expressed proteins that are induced during or coincident with the onset of senescence.
- 1.6 "STI Development" means any improvement or development, whether or not patentable or protectable as a trade secret, relating to or deriving from the STI Technology, made by STI and/or Cal/West, pursuant to and during the term of this Agreement, including all

patents and patent applications to be filed relating to any such improvements or developments.

1.7 "Territory" means worldwide.

1.8 "Timeline" means the product development timetable for STI and Cal/West development of technology relating to Licensed Products in the Field, as set forth in Appendix C.

## **2. LICENSE GRANT**

2.1 STI grants Cal/West an exclusive license in the Field and in the Territory to make, have made, use, sell, and offer to sell Licensed Products within the scope of the STI Patents.

2.2 STI grants Cal/West the right to grant sublicenses in the Field and in the Territory to sell and offer to sell Licensed Products within the scope of the STI Patents. Cal/West shall not receive from sublicensees anything in lieu of cash payments in consideration for any sublicense under this Agreement without the express written consent of STI.

2.3 STI grants Cal/West the right to sublicense STI technology to third parties in the Field provided that such sublicensee was contractually obligated to the terms and conditions of the Agreement between Cal/West and STI, as if the license was between the sublicensee and STI. Cal/West's right to sublicense requires prior written consent of STI which will not unduly withhold such consent. Sublicensing fees paid by third parties to access STI technology would be shared between Cal/West and STI on a 50/50 basis.

2.4 STI grants Cal/West an option until January 1, 2004, to add clover and/or safflower to the Field defined in Appendix A. To exercise its option, Cal/West shall notify Senesco in writing prior to the expiration of the option period. Cal/West shall include with said notification an option fee of \$5,000 payable to STI for each option exercised.

2.5 Cal/West grants STI a nonexclusive license in the Field to any Cal/West technology necessary for the development of Licensed Products under this Agreement.

## **3. TERM**

This Agreement is effective as of the Effective Date, and shall continue until the last to expire of the STI Patents unless earlier terminated pursuant to Article 13, below or extended by mutual written agreement of the parties.

## **4. PRODUCT DEVELOPMENT**

4.1 STI agrees to carry out its development obligations in each of the Phases as set forth in the Timeline attached hereto as Appendix C.

- 4.2 Cal/West agrees to carry out its development obligations in each of the Phases as set forth in the Timeline attached hereto as Appendix C.
- 4.3 STI agrees during the term of this agreement to provide Cal/West access to the STI Technology, pursuant to the terms set forth herein.
- 4.4 STI shall provide technical support to Cal/West, as necessary to enable Cal/West to meet its development obligations as set forth in the Timeline attached hereto as Appendix C. STI technical support shall be provided without a fee; however, travel expenses for any Cal/West or STI technical personnel and any disbursements necessary for such technical support shall be paid by Cal/West, any unusually large disbursements subject to Cal/West approval.
- 4.5 Cal/West shall be responsible, and STI shall fully cooperate with Cal/West, to obtain any required state, federal, national, or international approval needed to carry out the terms of this Agreement.

## **5. PATENTS, PATENT APPLICATIONS AND PATENT ENFORCEMENT**

- 5.1 Cal/West acknowledges that all the STI Technology is and shall remain the property of STI, and except as provided herein, all right, title and interest in the STI Technology is and shall remain with STI.
- 5.2 Cal/West and STI agree that all STI Developments are and shall remain the property of STI, and except as provided herein, all right, title and interest in the STI Developments is and shall remain with STI. Cal/West assigns all patentable inventions relating to any STI Development to STI and agrees to execute all documents, provide all information and materials (including any biological materials necessary for deposit) and do all acts, at STI's sole expense, necessary to perfect and maintain STI's rights to all patentable STI Developments.
- 5.3 STI shall retain the sole right to prosecute and maintain any and all patents and patent applications relating to STI Technology and STI Developments in its sole and absolute discretion.
- 5.4 STI shall have sole and absolute discretion over whether to bring any claims at their own expense for patent infringement under the STI Patents, shall have complete control of any such suits, claims or counterclaims it asserts, and shall retain 100% of any monies received, including all damage awards and settlement payments in such cases. In the event STI declines to enforce the STI Patents in the Field, and STI gives written consent to Cal/West, Cal/West may enforce the STI Patents in the Field against a Third Party. Should Cal/West bear 100% of the expenses associated with enforcing a claim, Cal/West will receive 100% of any damage awards received, but as such damages are "lost profits", Cal/West will pay royalties to STI at the rate of 10% of the damages received by Cal/West. Should the Parties agree to split the expenses of enforcing a claim, then any

damages received will first be applied on a pro-rata basis to repaying the expenses of each party and any amounts received over the expenses will be divided between Cal/West and STI on a pro-rata basis of their expense contribution.

## **6. BENCHMARK PAYMENTS TO STI**

6.1 Cal/West shall make the following payments to STI:

- (i) \$10,000 in U.S. dollars to STI upon execution of this Agreement;
- (ii) \$5,000 in U.S. dollars at the end of [Phase I];
- (iii) \$5,000 in U.S. dollars at the end of [Phase II]; and
- (iv) \$10,000 in U.S. dollars at the end of [Phase III].

Benchmark payments listed in subparagraphs (ii), (iii), and (iv) above are associated with completion of each of the Phases as set forth in the Timeline attached hereto as Appendix C.

## **7. ROYALTIES**

7.1 Upon commercialization by Cal/West or any of Cal/West's sublicensees of any Licensed Products within the Field, Cal/West shall make royalty payments to STI.

7.2 Cal/West agrees to pay to STI a royalty based on the following accumulative volume pricing schedule:

### **ACCUMULATIVE VOLUME (LBS)**

From	To	Royalty/lb
<u>1</u>	<u>2,000,000</u>	<u>\$0.10</u>
<u>2,000,001</u>	<u>4,000,000</u>	<u>\$0.09</u>
<u>4,000,001</u>	<u>6,000,000</u>	<u>\$0.08</u>
<u>6,000,000</u>	<u>8,000,000</u>	<u>\$0.07</u>
<u>8,000,000+</u>		<u>\$0.06</u>

The royalty is deemed earned as of the earlier of the date the Product is actually sold and paid for, the date an invoice is sent by Cal/West, or the date a Product is transferred to a third party for any promotional reasons. The same accumulative volume pricing schedule will apply separately to sales made by a Cal/West sublicensee.

7.3 Royalties shall be paid in U.S. dollars with one annual payment made on or before June 30<sup>th</sup> of each year for the previous years activities. All royalties owing in currencies other

than U.S. dollars shall be converted at the rate shown in the Federal Reserve Noon Valuation -- value of Foreign currencies on the date preceding the payment.

- 7.4 Royalty payments shall be accompanied by a royalty report. A full accounting showing how any amounts owing to STI have been calculated shall be submitted to STI on the date of each such royalty payment. Such reporting shall be on a per-country basis with accounting on a Cal/West product ID (product line) basis and customers identified on an alpha or numeric basis but not by company name. In the event no payment is owed to STI, a statement setting forth that fact shall be supplied to STI.

## **8. RECORDKEEPING**

- 8.1 STI shall have a right to conduct an audit of Cal/West's books and records upon thirty (30) days notice.
- 8.2 Cal/West shall keep books and records sufficient to verify the accuracy and completeness of Cal/West's accounting referred to above, including without limitation inventory, purchase and invoice records relating to the Licensed Products or their manufacture. Such books and records shall be preserved for a period of not less than six years after they are created during and after the term of this Agreement.
- 8.3 Cal/West shall take all steps necessary so that STI may within thirty days of its request review and copy all books and records at Cal/West's registered office to verify the accuracy of Cal/West's accounting. Such review shall be performed by a mutually agreed upon independent auditor upon reasonable notice and during regular business hours. Such review shall be conducted at STI's expense.
- 8.4 If a royalty payment deficiency is determined, Cal/West shall pay the royalty deficiency outstanding within thirty (30) days of receiving written notice thereof, plus interest on outstanding amounts.
- 8.5 If a royalty payment deficiency for a calendar year exceeds five percent (5%) of the royalties paid for that year, then Cal/West shall be responsible for paying STI's out-of-pocket expense incurred with respect to such review.

## **9. NO COMPETE**

Other than products under development prior to the effective date of this Agreement, Cal/West agrees not to develop or commercialize any product through recombinant DNA technology that modifies plant senescence and would compete with a Licensed Product in the Field of this Agreement. In exchange for this non-compete agreement, STI agrees to grant Cal/West first right of refusal for new technologies within the Field. Products developed subsequent to the Effective Date of this Agreement using conventional plant breeding techniques are excluded from this non-compete agreement with the following

exception. Cal/West agrees not to use information and know-how gained under this agreement to use conventional plant breeding techniques to develop varieties with modified senescence, substantially equivalent to STI technology, that would circumvent our responsibilities under this agreement.

## **10. ASSIGNMENT**

- 10.1 All rights granted under this Agreement are personal to Cal/West. Cal/West may not assign this Agreement or its rights or obligations hereunder.
- 10.2 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns.

## **11. CONFIDENTIALITY**

- 11.1 Cal/West agrees that it will respect the STI Confidential Information and treat it in the same manner as if it were its own Confidential Information. STI Confidential Information shall not be disclosed by Cal/West to any third person or entity or to the public except as provided herein.
- 11.2 STI shall designate its Confidential Information, when disclosed in writing, by stating that such information is confidential. When disclosed orally or visually, STI party shall use its best efforts to orally state that such information is considered confidential at the time of the disclosure, and shall use its best efforts to reduce to writing a notice regarding said confidentiality within thirty (30) days of such disclosure.
- 11.3 Cal/West agrees to treat and hold as confidential and not disclose to or provide access to any third person or entity or to the public any and all Confidential Information received pursuant to this Agreement and will cause its respective agents, representatives, and employees to do likewise.
- 11.4 Cal/West shall use the STI Confidential Information only for the uses as agreed upon in this Agreement and only in connection with the development of Licensed Products in the Field and any other purpose mutually agreeable to the parties.
- 11.5 Cal/West may disclose STI Confidential Information received, only to the extent it is required to do so pursuant to a final court order; provided, however, that Cal/West (i) promptly notifies STI upon its receipt of any pleading, discovery request, interrogatory, motion or other paper that requests or demands disclosure of the STI Confidential Information, (ii) opposes any request for disclosure, and that failing, seeks to have access and use limited by a protective order, and (iii) provides STI a reasonable opportunity to contest and assist in opposing any requirement of disclosure, to seek judicial protection against the disclosure and to have such disclosure as is required made under a protective secrecy order.

- 11.6 Cal/West agrees that, at any time upon the request of STI, Cal/West will return or destroy any materials containing STI Confidential Information (and destroy its notes and copies related thereto). If destroyed, Cal/West shall provide STI with written certification of destruction of the materials containing said STI Confidential Information, said certification to be signed by an officer of Cal/West.
- 11.7 Cal/West agrees that only those of its employees who need to know the STI Confidential Information will have access to same, and then only to the extent necessary to carry out their respective tasks. Cal/West agrees to be responsible for any use by its employees of the STI Confidential Information. Cal/West employees who will have access to STI Confidential Information have signed a confidentiality agreement as a condition of their employment, an example of which is shown in Appendix D as reference.
- 11.8 In the event Cal/West wishes to use a Third Party contractor or consultant and disclose to that contractor or consultant the STI Confidential Information, Cal/West shall, prior to disclosure, (i) secure written permission from STI (which shall not be unreasonably withheld) and (ii) secure from the Third Party a signed undertaking in which the Third Party agrees to be bound to the terms of the Confidentiality provisions of this Agreement in accordance with this Section 11 as if he or she were a party hereto.
- 11.9 STI and Cal/West each agree not to disclose the terms of this Agreement other than as required by law to any regulatory or judicial body, or as necessary to potential investors or financiers (provided such potential investors or financiers are subject to confidentiality undertakings) without the express prior written consent of the other party, which consent shall not be unreasonably withheld. The parties, however, shall be permitted to prepare press releases disclosing the existence of the Agreement in accordance with the provisions of Paragraph 11.10.
- 11.10 Prior to issuing any reports, statements, press releases, publications, or other disclosures to third parties regarding this Agreement or the transactions contemplated herein, STI and Cal/West shall exchange copies of said disclosure at least ten (10) days in advance in the case of press releases and at least sixty (60) days in advance in the case of any other disclosures, and the parties shall consult with each other regarding the content of said disclosure. Except as otherwise required by law, neither STI nor Cal/West shall issue any such disclosure without the prior written approval of the other. This paragraph does not apply to disclosures necessary for filing documents with the U.S. Securities and Exchange Commission.

## **12. REPRESENTATIONS AND WARRANTIES**

- 12.1 STI represents to the best of its knowledge that it is legally entitled to disclose the STI Confidential Information disclosed by it, and that to the best of its knowledge the disclosure of the STI Confidential Information under this Agreement does in no event violate any right of any Third Party. No other warranties are made, whether express or implied, and STI expressly disclaims all other warranties concerning, including without

limitation, merchantability, fitness for a particular purpose, and non-infringement.

- 12.2 STI warrants that it is the owner of the STI Patents set forth in Appendix B or otherwise has the rights to grant the licenses granted to Cal/West in this Agreement.

### **13. DEFAULT AND TERMINATION**

- 13.1 STI may terminate this Agreement upon sixty (60) days notice if Cal/West fails to materially fulfill or perform any one or more of its duties, obligations, or responsibilities pursuant to this Agreement and does not cure said failure within thirty (30) days after receiving notice of said failure
- 13.2 Either party may terminate this agreement if the other party declares or petitions for bankruptcy, is the subject of a bankruptcy petition filed against it, makes an assignment for the benefit of creditors or seeks similar relief under state law, or becomes insolvent.
- 13.3 Cal/West may terminate this Agreement at any time by giving at least ninety (90) days written and unambiguous notice of such determination to STI.
- 13.4 Upon termination of this Agreement pursuant to this Section 13, (i) Cal/West shall cease to be licensed under the STI Patents; (ii) all moneys owed by Cal/West to STI shall become immediately due and payable; (iii) all STI Confidential Information exchanged pursuant to this Agreement shall be returned immediately to STI; (iv) neither party to this Agreement shall be responsible to the other for any damages arising from the termination of this Agreement, including any claim for lost or anticipated profits, expenditures, reliance, or other damages.
- 13.5 In the event that this Agreement is terminated by Cal/West, Cal/West shall pay to STI 50% of next payment due during the development process, if any, under Section 6 of this Agreement and shall pay royalties earned up to the date of termination. In the event this Agreement is terminated, Cal/West, its customers, and its sublicensees shall have the right to sell existing inventories of Licensed Products until depleted with royalties due and payable according to Paragraph 7 of this Agreement.

### **14. PATENT MARKING**

Cal/West shall insure that it and its sublicensee(s) apply patent markings that meet all requirements of U.S. law, 35 U.S.C. 287, with respect to all Licensed Products subject to this Agreement.

## **15. PRODUCT LIABILITY; CONDUCT OF BUSINESS**

Cal/West shall, at all times during the term of this Agreement and thereafter, indemnify, defend and hold STI and the inventors of the STI Patents harmless against all claims and expenses, including legal expenses and reasonable attorneys fees, arising out of the death of or injury to any person or persons or out of any damage to property and against any other claim, proceeding, demand, expense and liability of any kind (other than patent infringement claims and claims resulting from STI's own negligence or the negligence of the inventors of the Licensed patents) resulting from the production, manufacture, sale, use, lease, consumption or advertisement of Licensed Products arising from any right or obligation of Cal/West or any sublicensee hereunder. STI at all times reserves the right to select and retain counsel of its own to defend STI's interests.

## **16. USE OF NAMES**

Cal/West and its sublicensee(s) shall not use STI's name, the name of any inventor of inventions governed by this Agreement in sales promotion, advertising, or any other form of publicity without the prior written approval of the entity or person whose name is being used.

## **17. CHOICE OF LAW; CHOICE OF FORUM**

This Agreement shall be construed and interpreted in accordance with the laws of the State of New York without reference to its choice of law principles. The state and federal courts in Southern District of New York shall have exclusive jurisdiction of any dispute arising under this Agreement.

## **18. ENTIRE AGREEMENT; NO ORAL MODIFICATIONS; WAIVER**

18.1 This Agreement contains the entire understanding and agreement between STI and Cal/West with respect to the subject matter hereof, and supersedes all prior oral or written understandings and agreements relating thereto. Neither party shall be bound by any conditions, definitions, warranties, understandings, or representations concerning the subject matter hereof except as are (i) provided in this Agreement, (ii) contained in any prior existing written agreement between the parties, or (iii) duly set forth on or after the Effective Date of this Agreement in a written instrument subscribed by an authorized representative of the party to be bound thereby.

18.2 No waiver by either party, whether express or implied, of any provision of this Agreement, or of any breach or default thereof, shall constitute a continuing waiver of such provision or of any other provision of this Agreement. Either party's acceptance of payments by the other under this Agreement shall not be deemed a waiver of any violation of or default under any of the provisions of this Agreement.

**19. RELATIONSHIP OF THE PARTIES**

Nothing herein contained shall be construed to constitute the parties hereto as partners or as joint venturers, or either as agent or employee of the other. Neither party shall take any action that purports to bind the other.

**20. SEVERABILITY**

If any provision or any portion of any provision of this Agreement shall be held to be void or unenforceable, the remaining provisions of this Agreement and the remaining portion of any provision held void or unenforceable in part shall continue in full force and effect.

**21. CONSTRUCTION**

This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. If any words or phrases in this Agreement shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Agreement shall be construed as if those words or phrases were never included in this Agreement, and no implication or inference shall be drawn from the fact that the words or phrases were so stricken out or otherwise eliminated.

**22. HEADINGS**

The captions and paragraph headings appearing in this Agreement are inserted for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions thereof.

**23. NOTICES**

All reports, approvals, requests, demands and notices required or permitted by this Agreement to be given to a party (hereafter "Notices") shall be in writing. Notices shall be hand delivered, sent by certified or registered mail, return receipt requested, or sent via a reputable private express service which requires the addressee to acknowledge receipt thereof. Notices may also be transmitted by fax, provided that a confirmation copy is also sent by one of the above methods. Except as otherwise provided in this Agreement, Notices shall be effective upon dispatch. Notices shall be sent to the party concerned as follows (or at such other address as a party may specify by notice to the other):

As to STI:

Senesco Technologies, Inc.  
303 George Street, Suite 420  
New Brunswick, NJ 08901  
Facsimile: (732) 296-9292  
Attn: Sascha Fedyszyn, Vice President Corporate Development

As to Cal/West:

Cal/West Seeds  
P. O. Box 1428  
Woodland, CA 95776-1428  
Facsimile: (530) 666-0064  
Attn: Jonathan M. Reich, Executive Vice President

## **24. SURVIVAL OF TERMS**

The obligations set forth in Sections 7, 8, 11, 13, and 15 shall survive the termination of this Agreement.

## **25. APPENDICES**

All Appendices referenced herein are hereby made a part of this Agreement.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the day and year first above written.

**SENESCO TECHNOLOGIES, INC.**

**CAL/WEST SEEDS**

By: /s/ S. Fedyszyn

By: /s/ Jonathan M. Reich

Title: Vice President, Corporate Development

Title: Executive Vice President

## **APPENDIX A**

### **Field of License**

The Field of this License is alfalfa, *Medicago* species.

## APPENDIX B

### STI Patents

#### Lipase Applications:

##### **International Application No. PCT/US00/03494**

Title: "DNA Encoding a Plant Lipase, Transgenic Plants and a Method for Controlling Senescence in Plants"  
Filed: February 14, 2000  
Priority: U.S. Application No. 09/250,280  
Published: August 24, 2000, as WO 00/49164

Australian Appln. No. 35942/00  
Filed: September 14, 2001

Israeli Appln. No. 144835  
Filed: August 9, 2001

Canadian Appln. No. 2,362,546  
Filed: August 14, 2001

Japanese Appln. No. 2000-599888  
Filed: August 16, 2001

EPO Application No. 00914569.9  
Filed: September 14, 2001

New Zealand Appln. No. 514123  
Filed: September 11, 2001

Chinese Appln. No. 00806296.X  
Filed: October 16, 2001

S. Korean Appln. No. 10-2001-7010405  
Filed: August 16, 2001

##### U.S. Application No. 09/610,104

Title: "DNA Encoding a Plant Lipase, Transgenic Plants and a Method for Controlling Senescence in Plants"  
Filed: July 5, 2000  
Priority: CIP of U.S. Application No. 09/597,774, which is a CIP of U.S. Application No. 09/250,280 (abandoned), which is a CIP of U.S. Application No. 09/105,812 (abandoned)

##### **International Application No. PCT/US01/19385**

Title: "DNA Encoding a Plant Lipase, Transgenic Plants and a Method for Controlling Senescence in Plants"  
Filed: June 19, 2001  
Priority: U.S. Application Nos. 09/610,104 and 09/597,774  
Published: December 27, 2001, as WO 01/98510

DHS APPLICATIONS:

**U.S. Application No. 09/597,771**

Title: "DNA Encoding a Plant Deoxyhypusine Synthase, a Plant Eukaryotic Initiation Factor-5A, Transgenic Plants and a Method for Controlling Senescence Programmed Cell Death in Plants"  
Filed: June 19, 2000  
Priority: CIP of U.S. Application No. 09/348,675

**International Application No. PCT/US00/18364**

Title: "DNA Encoding a Plant Deoxyhypusine Synthase, a Plant Eukaryotic Initiation Factor-5A, Transgenic Plants and a Method for Controlling Senescence Programmed Cell Death in Plants"  
Filed: July 6, 2000  
Priority: U.S. Application Nos. 09/348,675 and 09/597,771  
Published: January 11, 2001, as WO 01/02592

Australian Appln. No. 59132/00

Filed: January 25, 2002

Canadian Appln. No. [Unassigned]

Filed: January 4, 2002

Chinese Appln. No. 00812538.4

Filed: March 6, 2002

EPO Appln. No. 00945148.5

Filed: February 6, 2002

Israeli Appln. No. 147335

Filed: December 26, 2001

Japanese Appln. No. 2001-508364

Filed: January 7, 2002

Mexican Appln. No. PA/a/2002/000132

Filed: January 7, 2002

New Zealand Appln. No. 517055

Filed: February 5, 2002

S. Korean Appln. No. 10-2002-7000187

Filed: January 7, 2002

U.S. Application No. 09/725,019

Title: "DNA Encoding a Plant Deoxyhypusine Synthase, a Plant Eukaryotic Initiation Factor-5A Transgenic Plants and a Method for Controlling Senescence Programmed Cell Death in Plants"

Filed: November 29, 2000

Priority: CIP of U.S. Application No. 09/597,771, which is a CIP of U.S. Application No. 09/348,675 (abandoned)

International Application No. PCT/US01/44505

Title: "DNA Encoding a Plant Deoxyhypusine Synthase, a Plant Eukaryotic Initiation Factor-5A, Transgenic Plants and a Method for Controlling Senescence Programmed Cell Death in Plants"

Filed: November 29, 2001

Priority: U.S. Application No. 09/725,019

## APPENDIX C

### Timeline

#### **Phase I – Defined as “Confirmation of a Registerable Event”.**

Transgenic plant(s) must be obtained using a “clean construct”, with subsequent verification that the event resulted from a “clean insertion”, and that there are no unwanted genetic elements in the transgenic plant(s).

Duration of Phase I is expected to be from twenty-four (24) to thirty-six (36) months following the Effective Date of this Agreement. Cal/West responsibilities will be for vector construction, transformation processes, and molecular characterization. STI responsibility will be to provide technical expertise and know-how in the areas of vector construction, transformation, and molecular characterization.

#### **Phase II – Defined as “Confirmation of Trait Efficacy Under Field Conditions”.**

This phase includes field-testing of transgenic individuals and resulting populations to verify trait efficacy. It also includes verification of gene transmission through seed multiplication generations through foundation seed production.

Duration of Phase II is expected to be from thirty-six (36) to forty-eight (48) months following completion of Phase I of this Agreement. Cal/West responsibilities will be for event sorting, trait efficacy and agronomic evaluation under field and controlled environment conditions, initiation of forward breeding and variety development activities, and initiation of experiments designed to collect data necessary for registration and regulatory approval. STI responsibility will be to provide technical expertise and know-how in evaluation of trait efficacy and, where relevant, conducting registration trials.

#### **Phase III – Defined as “Registration”.**

This phase results in the successful completion of registration with USDA-APHIS and FDA and unregulated status for the event(s) that will be exploited commercially. (We do not anticipate requirement to complete EPA registration since this project does not utilize a plant pesticide gene.)

Duration of Phase III is expected to be from twenty-four (24) to thirty-six (36) months following completion of Phase II of this Agreement. Cal/West responsibilities will be for completion of experiments designed to collect data necessary for registration and regulatory approval, continuation of forward breeding and variety development activities, and petitioning of governmental regulatory agencies to obtain unregulated status for the event(s) that will be commercialized. STI responsibility will be to provide technical expertise and know-how in conducting registration trials and petitioning of governmental regulatory agencies.

## APPENDIX D

### CONFIDENTIALITY AGREEMENT

1. The Parties acknowledge and agree that during the term of this Agreement and in the course of the discharge of (his/her) duties hereunder, employee shall have access to and become acquainted with information concerning the operation of employer, including but not limited to plant breeding and research, data processing, sales, seed conditioning, seed analysis, operational techniques and production techniques, (without limitation, financial, personnel, sales, planning), and other information that is owned by the employer and regularly used in the operation of employer's business, and that this information constitutes employer's Trade Secrets.
2. Employee agrees that (he/she) shall not disclose any Trade Secrets, directly or indirectly, to any other person or use them in any way, either during the term of this Agreement or at any time thereafter, except as is required in the course of (his/her) employment with employer.
3. Employee further agrees that all breeding materials, files, records, documents, equipment, and similar items relating to employer's business, whether prepared by employee or others, are and shall remain exclusively the property of employer and that they shall be removed from the premises of employer only with the express prior consent of employer's senior management.
4. Employee will not, without employer's prior consent, either during (his/her) employment by employer or for five (5) years after termination of that employment, directly or indirectly disclose to any third person any such confidential information or trade secrets.

\_\_\_\_\_  
Cal/West Seeds Employee Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Senesco Technologies, Inc.  
requests that the marked portions of this agreement be granted confidential treatment  
pursuant to Rule 24b-2 under the Securities Exchange Act of 1934

Collaboration Agreement

between

Tilligen, Inc.

and

Senesco Technologies, Inc.

September 20, 2002

THIS IS AN AGREEMENT effective September 20, 2002, ("Effective Date") by and between Tilligen, Inc., a Washington corporation having its principal place of business at 1000 Seneca Street, Seattle, WA 98101 ("Tilligen") and Senesco Technologies, Inc. ("Senesco"), a Delaware corporation having a principal place of business at 303 George Street, Suite 420, New Brunswick, NJ 08901.

Senesco has certain technologies related to controlling plant senescence by altering the expression of plant genes and their cognate expressed proteins that are induced during or coincident with the onset of senescence.

Tilligen has certain technologies relating to the generation and identification of mutations in genes predictive of traits of interest.

Senesco and Tilligen are establishing a research alliance to develop and commercialize certain improved varieties of Lactuca sativa containing desirable Mutations (hereinafter defined).

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. DEFINITIONS

Terms in this Agreement defined in the singular have the same meanings when used in the plural and vice versa. For purposes of this Agreement, the following words and phrases shall have the following meanings:

1.1 "Affiliate" means with respect to any person or entity, any other person or entity that directly or indirectly controls, is controlled by or is under common control with such person or entity. A person or entity shall be deemed to be "controlled" by any other person or entity if such other person or entity (i) possesses, directly or indirectly, power to direct or cause the direction of the management and policies of such person or entity whether by contract or otherwise, (ii) has direct or indirect ownership of at least 50% (in the aggregate) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity or (iii) has direct or indirect ownership of at least 50% of the equity interests in a partnership or a limited liability company.

1.2 "Agreement" means this Collaboration Agreement.

1.3 "Contract Party" means a distributor, processor, packer or similar party having a contractual relationship with Senesco (or Harris Moran Seed Company in association with its relationship with Senesco) pursuant to which Senesco (or Harris Moran Seed Company in association with its relationship with Senesco) permits such party to make, use, market, distribute, import, sell or offer for sale any Licensed Product.

1.4 "Field" means Iceberg and Romaine varieties of Lactuca sativa (lettuce) .

1.5 “Gene Target” means a gene chosen by the Collaboration Managers to be analyzed by Tilligen for Mutations as provided for in the Research Plan.

1.6 “Intellectual Property” means all patents and patent applications owned or controlled by a party or any of its Affiliates or under which a party has a right to practice with the right to extend such right to practice, which contain claims, the rights to which are necessary or useful for the development, propagation, manufacture, use, sale or distribution of Licensed Products. Intellectual Property will also include all inventions, discoveries, know-how, trade secrets, information, experience, technical data, formulas, procedures or results relating to the Licensed Products and which are necessary for purposes of performing the Research Plan (including, without limitation, physical, chemical, biological, toxicological, and pharmacological data, product forms and formulations, and know-how relating to methods, processes or techniques for the development, propagation, manufacture, use, sale or distribution of Licensed Products or related products or materials), which are held by a party or its Affiliates with right to license or sublicense during the term of this Agreement, and which Intellectual Property is useful or necessary for the development, propagation, manufacture, use, sale or distribution of Licensed Products or for performing the Research Plan. Without limiting the foregoing, a party’s Intellectual Property will include the Tilligen Patents or Senesco Patents, as the case may be.

1.7 “Joint Patents” is as defined in Section 6.1.

1.8 “Licensed Products” means germplasm and plants and plant products in the Field consisting of, containing, or derived from a Mutation.

1.9 “Mutation” means a mutation of a Gene Target discovered or developed by Tilligen in connection with the Research Plan.

1.10 “Net Revenues” means (a) the gross amount invoiced by Senesco and Harris Moran Seed Company and their respective Affiliates and sublicensees for the sale or other disposition of Licensed Products to persons who are not Contract Parties, plus (b) the gross amount invoiced by Contract Parties and their Affiliates for the sale or other disposition of Licensed Products, in each case during the applicable period in arm’s length transactions after deduction of the following items, provided and to the extent such items are actually incurred and do not exceed reasonable and customary amounts in each market in which such sales occurred: (i) trade and quantity discounts and rebates; (ii) credits or allowances made for rejection or return of previously sold Licensed Products; and (iii) any tax or government charge levied on the sale, such as value added tax (but not including income tax). In the event that the Licensed Product is sold or otherwise transferred to an Affiliate or a third party for a price lower than if it had been sold to a third party in an arm’s length transaction (“fair market value”), then Net Revenues shall be the fair market value of the Licensed Products to an end-user of the Licensed Product.

1.11 “Project Committee” is as defined in Section 3.4.

1.12 “Project Technology” means any materials, know-how, information, discoveries or inventions that are discovered or developed in the course of carrying out the Research Plan.

1.13 “Research Plan” means the plan attached as Appendix A, as amended from time to time by the Project Committee pursuant to Section 3.3.

1.14 “Senesco Patents” is as defined in Section 7.1.

1.15 “Term” is as defined in Section 4.1

1.16 “Tilligen Patents” is as defined in Section 7.1.

## 2. CONVEYANCE OF RIGHTS.

2.1 License to Senesco. Subject to the terms and conditions of this Agreement, Tilligen hereby grants to Senesco an exclusive, worldwide, nontransferable royalty-bearing license under the Tilligen Intellectual Property to make, use, sell, have sold and offer for sale Licensed Products in the Field. This license shall be exclusive as to the Field, in that Tilligen will not use the Tilligen Intellectual Property to develop or commercialize any products for use in the Field, and will not grant any license to any third party to develop or commercialize products for use in the Field. The foregoing license does not, however, prohibit Tilligen from using the Tilligen Intellectual Property for its own internal research and development purposes or to develop and commercialize products outside the Field.

2.2 License to Tilligen. Subject to the terms and conditions of this Agreement, Senesco hereby grants to Tilligen a non-exclusive, fully-paid, royalty-free, license in the Field to use the Senesco Intellectual Property in the United States and Canada during the Term for internal purposes only as necessary for and in connection with Tilligen’s performance under this Agreement and the Research Plan. The term of this license under the Senesco Intellectual Property ends at the conclusion of Tilligen’s completion of its obligations under the Research Agreement, unless earlier terminated pursuant to Section 4.

2.3 Restrictions on Licenses. Nothing in this Agreement shall be construed as granting a license under any intellectual property or other rights other than intellectual property or other rights identified in this Agreement, and in no event shall anything in this Agreement be construed as granting a license under any intellectual property or other right which any such party is, as of the Effective Date or during the Term of this Agreement, prohibited, contractually or otherwise, from granting.

2.4 Sublicense Rights. Senesco may sublicense its rights under Section 2.1 only with the prior written consent of Tilligen, which consent will not be unreasonably withheld or delayed. Notwithstanding any such consent, any such sublicense shall be consistent with all of the terms and conditions of this Agreement, and subordinate thereto. Senesco shall remain responsible to Tilligen for all obligations arising under this

Agreement based on the development, sales, distribution and other activities of each such sublicensee.

### 3. RESEARCH PLAN.

3.1 Research Plan. Subject to the terms and conditions set forth herein, each of Senesco and Tilligen shall conduct the collaboration pursuant to the Research Plan, as attached hereto or as amended by the Project Committee, and in compliance with this Agreement.

3.2 General Contribution of the Parties. Senesco and Tilligen shall use diligent efforts to conduct their respective obligations under the Research Plan.

3.3 Project Committee. The Research Plan will be managed by a Project Committee of four, consisting of one (1) Executive Sponsor and one (1) Collaboration Manager from each party. The Project Committee will coordinate and expedite the design, development, and implementation of activities that are necessary to fulfill the purposes of the collaboration, including the evaluation and selection of Gene Targets. Each party may, in its sole discretion, replace the assigned individuals at any time as necessary, by providing written notice to the other party of such change.

3.3.1 Executive Sponsors. The initial Executive Sponsors shall be Sascha Fedyszyn of Senesco and Vic Knauf of Tilligen. The Executive Sponsors shall have the following specific responsibilities:

- (a) approving the Research Plan and any amendments or changes thereto;
- (b) settling disputes or disagreements that cannot be resolved by the Collaboration Managers; and
- (c) performing such other functions as appropriate to further the purposes of the collaboration as agreed by the parties.

3.3.2 Collaboration Managers. The initial Collaboration Managers shall be John Thompson of Senesco and Susan Hurst of Tilligen. The Collaboration Managers shall have general responsibility for preparation of the Research Plan and the design, development, and implementation of activities that will fulfill the objectives of the collaboration as expeditiously as practicable. The Collaboration Managers shall also have the following specific responsibilities:

- (a) updating and revising the Research Plan quarterly or as mutually agreed;
- (b) monitoring and reviewing the progress of research, development, and implementation of collaboration activities in order to ensure that satisfactory progress is being made with respect to the execution of the Research Plan;

(c) discussing and agreeing upon remedial measures if a Collaboration Manager determines that the progress in respect of implementation of a Research Plan activity is unsatisfactory;

(d) settling disputes or disagreements related to the Research Plan; and

(e) performing such other functions as appropriate to further the purposes of the collaboration as agreed by the parties.

3.3.3 Decision-making. Decisions of the Collaboration Managers shall be made by unanimous vote, with each of Tilligen and Senesco having one vote. If the Collaboration Managers become deadlocked on an issue, the issue shall be presented to the Executive Sponsors for resolution. Other than the Research Plan, the Project Committee may not modify this Agreement. Any decisions related to material changes in the scope or the budget for the Research Plan or related to changing the terms of this Agreement will require mutual consent of Tilligen and Senesco.

3.3.4 Meetings. The Project Committee shall meet no less frequently than quarterly, as agreed upon by the Project Committee, but preferably at a location that alternates between Tilligen's corporate headquarters and Senesco's corporate headquarters. Responsibility for keeping the minutes of these meetings shall alternate between the parties. The Project Committee will prepare quarterly science reports and the minutes of the meetings will be approved by both parties. In the event that Tilligen and Senesco become deadlocked on an issue concerning this Agreement, this Agreement shall terminate as set forth in Section 4.3.

#### 4. TERMINATION

4.1 Term. This Agreement will begin on the Effective Date and, except as set for in Section 2.2, will expire concurrently with the last to expire of any patent contained in the Tilligen Intellectual Property or the Joint Intellectual Property, unless earlier terminated as provided for herein (the "Term").

4.2 Termination For Failure to Meet a Material Term of the Research Plan. Subject to the provisions of Section 4.6, each of Senesco and Tilligen will have the option to terminate this Agreement prior to the expiration of the Term if the other party fails to meet any material term of the Research Plan. The defaulting party will be given sixty (60) days from receipt of such written notice to initiate cure of the failure pursuant to this Section 4.2 prior to actual termination. If the defaulting party is making a good faith effort to cure during such sixty (60) day period, then the party will be given an additional sixty (60) days to complete the cure, for a total period of one hundred twenty (120) days. If the default is cured during such period, the notice will have no force or effect.

4.3 Termination due to Deadlock. Subject to the provisions of Section 4.6, this Agreement shall terminate if the parties become deadlocked concerning a material term of the Research Plan.

4.4 Early Termination - Other Reasons. Subject to the provisions of Section 4.6, either party, at its option and without prejudice to any of its other legal and equitable rights and remedies, may terminate this Agreement by reason of failure to cure a material breach by the other party, other than a breach provided in Section 4.2, or upon bankruptcy, insolvency, and dissolution or winding up of the other party. Any such termination will require written notice from the terminating party, specifying, in reasonable detail, the breach or other basis of the termination. If capable of being cured, the breaching party will be given thirty (30) days from receipt of such written notice to cure the breach pursuant to this Section 4.4 prior to actual termination. If the breach is cured during such period, the notice will have no force or effect.

4.5 Surviving Paragraphs. Termination of this Agreement for any reason shall not terminate the provisions set forth in Sections 4.6, 6, 8, 9.3, 9.4, 9.5, 9.6, 10, 11.1 and 11.3. The rights and obligations of these Sections shall continue in full force and effect following any such termination.

4.6 Actions on Termination.

4.6.1 Return of Information and Things. Upon any termination of this Agreement, Tilligen agrees to return or permanently destroy, at Senesco's sole discretion, all Senesco Confidential Information in Tilligen's possession. Senesco agrees to return or permanently destroy, at Tilligen's sole discretion, all Tilligen Confidential Information in Senesco's possession. If biological or other material that comprises Joint Intellectual Property of Senesco and Tilligen exists upon any termination of this Agreement, the parties will attempt to negotiate a reasonable agreement as to how to dispose of such material.

4.6.2 Termination of License under Senesco Intellectual Property. Upon termination of this Agreement for any reason, Tilligen's license under the Senesco Intellectual Property pursuant to Section 2.2 is terminated.

4.6.3 Termination of License under Tilligen Intellectual Property and Continuation of License Rights Vested. Upon termination if this Agreement pursuant to Sections 4.2, 4.3, or 4.4 (other than a termination resulting from a payment or similar default by Senesco, or a termination resulting from a bankruptcy, insolvency, dissolution or winding up of Senesco), Senesco's license under the Tilligen Intellectual Property granted in Section 2.1 will continue, at Senesco's option, as to any and all Licensed Products for which a Gene Mutation fee has been paid by Senesco to Tilligen pursuant to Section 5.1.2. As to those Licensed Products for which a Gene Mutation fee has been paid, Senesco will continue to be obligated to make the royalty and other payments to Tilligen pursuant to Section 5 and the applicable provisions of this Agreement will remain in full force and effect as to those Licensed Products. Upon termination pursuant to Sections 4.2, 4.3, and 4.4, Senesco's license under the Tilligen Intellectual Property as to all other products in the Field is terminated.

5. PAYMENTS.

5.1 Project Funding. Senesco agrees to fund the Research Plan as set forth below. All payments set forth in this Section 4 shall be made in United States dollars.

5.1.1 Initial Fee. Senesco agrees to pay Tilligen two hundred thousand dollars (\$200,000) on or within five (5) days of the Effective Date. Except as otherwise provided in this Section, the full amount of this initial fee shall be guaranteed, non-refundable and non-creditable and shall be paid directly to Tilligen.

5.1.2 Gene Mutation Fee. Upon delivery to Senesco of seeds containing a Mutation (and the DNA sequence information with respect thereto) for each Gene Target identified pursuant to the Research Plan, Senesco shall pay Tilligen a fee of fifty thousand dollars (\$50,000). Each such payment will be made within five (5) days of delivery of such seeds.

5.2 Royalties and Other Payments - Licensed Products.

5.2.1 Royalty Calculation. Senesco shall pay, and in the case of Contract Parties cause to be paid, to Tilligen four tenths of one percent (0.4%) of the total aggregate worldwide Net Revenue of all Licensed Products (for each Mutation utilized therein) notwithstanding that the sale or other disposition of such Licensed Products occurs in a jurisdiction in which Licensed Products are not covered by a valid and enforceable Tilligen Patent or Joint Patent or the corresponding pending patent applications

5.2.2 Sublicense of Tilligen Intellectual Property by Senesco. If Senesco grants a sublicense of Tilligen Intellectual Property to a third party non-Affiliate without providing such sublicensee with a Licensed Product, Senesco shall pay Tilligen twenty percent ( 20%) of any royalty-based payments (or similar payments based upon per-unit sales of the Licensed Product) received for or as a result of such sublicense by Senesco.

5.2.3 Non-Royalty Payments. In situations where the sublicensee does not pay a royalty, Senesco shall pay to Tilligen an amount equal to twenty percent ( 20%) of all non-royalty income (including, without limitation, license fees, license maintenance fees and milestone payments, but not including equity consideration or reimbursements for actual research and development costs incurred by Senesco) received by Senesco from any sublicensees to the Tilligen Intellectual Property ("Non-Royalty Payments"). Such Non-Royalty Payments shall be paid on a calendar quarterly basis along with the payment of the foregoing royalties, within thirty (30) days of the close of the calendar quarter in which such Non-Royalty Payment was received.

5.2.4 Duration of Royalty Obligations. The royalty obligations of Senesco under Sections 5.2.1 and 5.2.2 as to each Licensed Product shall terminate on a country-by-country basis concurrently with the expiration of the last to expire of any patents contained in the Tilligen Intellectual Property enforceable in each such country. For any country in which no patent issues related to the Tilligen Intellectual Property, the

royalty obligations for such country shall terminate concurrently with the expiration of the last to expire of any patents contained in the Tilligen Intellectual Property.

5.2.5 License Maintenance Payments. In addition to the royalty and other payments set forth in this Section 5.2, Senesco will pay to Tilligen an annual license maintenance fee ("License Maintenance Fee") of fifty thousand dollars (\$50,000). The first such License Maintenance Fee shall be due twelve (12) months following delivery by Tilligen of the first Mutation delivered to Senesco hereunder, and on each subsequent anniversary thereof. The License Maintenance Fee shall be creditable on a noncumulative annual basis against any royalties owed to Tilligen hereunder.

## 6. RECORDS.

6.1 Payments of Royalties. Within thirty (30) days of the end of the applicable quarterly period (calendar) following the first commercial sale of a Licensed Product and within thirty (30) days after the end of each quarterly period thereafter, Senesco shall make a written report to Tilligen setting forth the information, including that of Affiliates and sublicensees and Contract Parties, necessary to permit Tilligen to calculate and confirm the royalty and other payments due Tilligen, even if no payment is due. At the time each report is made, Senesco shall pay or cause to be paid to Tilligen, or any Affiliate of Tilligen as Tilligen may direct, the amounts shown by such report to be payable hereunder. Payments due on sales in foreign currency shall be calculated in United States dollars on the basis of the rate of exchange in effect for purchase of dollars at Chase Manhattan Bank, New York, New York, on the last business day of the last-preceding June or December, whichever shall be later. Payments shall be without set off (except with respect the License Maintenance Fee) and free and clear of any taxes, duties, fees or charges other than withholding taxes, if any. Payment shall be made by wire transfer to an account in the United States designated by Tilligen from time to time with prior written notice.

6.2 Books and Records for Royalty and Non-Royalty Payments. Senesco shall keep, and shall cause its Affiliates, sublicensees, and all Contract Parties to keep, books and records in such reasonable detail as will permit the reports provided for in this Section to be made and the royalties payable hereunder to be determined. Senesco further agrees to permit its and its Affiliates' books and records to be inspected and audited from time to time (but not more often than once annually) during reasonable business hours by an independent auditor, designated by Tilligen and approved by Senesco, which approval will not be unreasonably withheld, to the extent necessary to verify the reports provided for in this Section; provided, however, that such auditor shall indicate to Tilligen only whether the reports and royalties paid are correct, and if not, the reason why not. Senesco also agrees to cause all Contract Parties (pursuant to the agreement under which they become Contract Parties of Senesco) to permit their respective books and records to be inspected and audited from time to time (but not more often than once annually) during reasonable business hours by an independent auditor, designated by Tilligen and approved by them, which approval will not be unreasonably withheld, to the extent necessary to verify the reports required to be provided by Senesco in this Section; provided, however, that such auditor shall indicate to Tilligen only

whether the amounts reported by Senesco are correct, and if not, the reason why not. In the event that such an audit results in additional royalties being owed to Tilligen, such royalties shall be paid within twenty (20) days from notice of deficiency along with interest calculated as from the date the correct payment was due to the date of actual payment at an annual rate of five (5) percentage points above the prime rate quoted by Chase Manhattan Bank, New York, New York, on the day payment was due, or at the greatest rate permitted by law, if lower, until paid. If the original royalty payment was more than ten percent (10%) less than it should have been, the cost of the audit shall be reimbursed by Senesco.

6.3 Late Payment. If any royalties or other amounts owed under this Agreement are not paid when due, the unpaid amount shall bear interest, compounded annually, at an annual rate of five (5) percentage points above the prime rate quoted by Chase Manhattan Bank of New York on the day payment was due or at the greatest rate permitted by law, if lower, until paid or offset.

## 7. INTELLECTUAL PROPERTY.

7.1 Ownership of Intellectual Property. Except as set forth in this Agreement: (i) any Project Technology and any patent applications and patents claiming any Project Technology within or outside the Field first developed or made by one or more employees of Senesco shall belong to Senesco ("Senesco Patents"); (ii) any Project Technology and any patent applications and patents claiming any Project Technology within or outside the Field first developed or made by one or more employees of Tilligen shall belong to Tilligen ("Tilligen Patents"); and (iii) any Project Technology and any patent applications and patents claiming any Project Technology first developed or made jointly by one or more employees of Senesco and one or more employees of Tilligen within or outside the Field shall belong jointly to Senesco and Tilligen ("Joint Patents"). Inventorship shall be determined in accordance with United States patent laws.

7.2 Disclosure of Patentable Inventions. In addition to the disclosures otherwise required under this Agreement, each party shall submit a written report to the other within forty-five (45) days of the end of each calendar quarter summarizing any inventions arising in the performance of the Research Plan during the quarterly period immediately preceding delivery of such report which it believes may be patentable.

### 7.3 Patent Prosecution and Maintenance.

(a) Tilligen Patents. Subject to Section 7.5, Tilligen shall control the prosecution and maintenance of the Tilligen Patents in its sole discretion. If Tilligen intends to or does abandon any patent application without filing a continuation of the same, or fails to maintain any issued patent in the Tilligen Patents, in each case that claims a Licensed Product, Tilligen shall provide Senesco notice thereof not less than two (2) months before any relevant deadline, and thereafter Senesco shall have the right, but not the obligation, to prosecute such patent at Senesco's expense and Tilligen agrees to cooperate fully with Senesco in such prosecution, including by providing all appropriate technical data, all appropriate files, and executing all necessary legal documents.

(b) Joint Patents. The parties shall agree upon an outside law firm who shall prepare, file, prosecute and maintain Joint Patents under the joint instructions of the parties. All costs shall be shared equally. In the event Tilligen or Senesco elects not to share or continue to share such costs of prosecution of a filed application for a Joint Patent or maintenance costs for an issued Joint Patent, it shall notify the other party not less than two (2) months before any relevant deadline, and the other party shall have the right, but not the obligation, to assume sole control over the prosecution of such filed application for a Joint Patent or maintenance of such issued Joint Patent. In such event, the party which assumes such control shall have title to such Joint Patent and the other party agrees to execute the appropriate documents to assign all of its right, title and interest in such patent to the other party.

(c) Senesco Patents. Senesco shall control the prosecution and maintenance of the Senesco Patents in its sole discretion.

7.4 Cooperation. Each party agrees to cooperate with the other in preparing and executing any documents necessary or useful to obtain patent protection on any invention that is subject to this Agreement in any country in the world.

7.5 Costs. Subject to Section 6.3(a), Tilligen shall retain control over and bear all expenses associated with the filing, prosecution and maintenance of the Tilligen Patents and patents included in the Tilligen Intellectual Property, except to the extent that such expenses relate to the prosecution and maintenance of Tilligen Intellectual Property outside the United States undertaken at the request of Senesco, in which event all such expenses will be paid or reimbursed by Senesco, provided, however, in the event that Senesco intends to or does abandon any such patent application without filing a continuation of the same, or fails to maintain any such issued patent in the Tilligen Patents, Senesco shall provide Tilligen notice thereof not less than two (2) months before any relevant deadline, and thereafter none of Senesco, its Affiliates, sublicensees, or any Contract Party shall have any rights to develop, propagate, manufacture, use, sell, have sold, offer for sale or distribute in such jurisdiction any Licensed Product. Senesco shall retain control over and bear all expenses associated with the filing, prosecution and maintenance of the Senesco Patents and patents included in the Senesco Intellectual Property.

7.6 Patent Litigation: Right to Bring Suit. Each party shall have the power to institute and prosecute at its sole discretion and expense suits for infringement of their respective patent rights. Each party agrees to cooperate with the other in any suit brought under this Section. All expenses in such suits will be borne entirely by the party bringing such suit and such party shall collect all judgments or awards arising from these suits.

7.7 Patent Litigation: Jointly Owned Patents. In the event that any Joint Patent is infringed or misappropriated by a third party, Senesco and Tilligen shall discuss whether, and, if so, how, to enforce such Joint Patent or to defend such Joint Patent in an infringement action, declaratory judgment action or other proceeding. In the event only one party wishes to participate in such proceeding, it shall have the right to proceed alone, at its expense, and may retain any recovery; provided that, at the request and

expense of the participating party, the other party agrees to cooperate and join in any proceedings in the event that a third party asserts that the co-owner of such Joint Patent is necessary or indispensable to such proceeding.

## 8. CONFIDENTIALITY.

8.1 Definition. As used herein, "Confidential Information" means any information of a party disclosed by that party to the other party pursuant to such other parties' written request describing in detail the information necessary to accomplish the goals of this Agreement and the Research Plan and which is in written, graphic, machine readable or other tangible form and is marked "Confidential," "Proprietary" or in some other manner to indicate its confidential nature. Confidential Information also includes oral information disclosed by one party to the other pursuant to such written request, provided that such information is indicated to be confidential at the time of disclosure and is reduced to writing by the disclosing party within a reasonable time (not to exceed thirty (30) days) after its oral disclosure, and such writing is marked in a manner to indicate its confidential nature and delivered to the receiving party. Notwithstanding any failure to so identify it, all nonpublic Intellectual Property of each party shall be considered the Confidential Information of such party. Each party shall retain sole and exclusive ownership, right, title and interest in and to all of its Confidential Information.

8.2 Obligations. Should either party disclose to the other any of such party's Confidential Information (the "Disclosing Party"), the party receiving the Confidential Information (the "Receiving Party") shall maintain the Confidential Information in confidence, shall use at least the same degree of care to maintain the secrecy of the Confidential Information as it uses in maintaining the secrecy of its own proprietary, confidential and trade secret information, shall always use at least a reasonable degree of care in maintaining the secrecy of the Confidential Information, shall use the Confidential Information only for the purpose of performing its obligations under this Agreement and the Research Plan and exercising its rights hereunder unless otherwise agreed in writing by the Disclosing Party, and shall deliver to the Disclosing Party, in accordance with any request from the Disclosing Party, all copies, notes, packages, diagrams, computer memory media and all other materials containing any portion of the Disclosing Party's Confidential Information which is not necessary for the Receiving Party to perform its obligations under this Agreement and the Research Plan and to exercise its rights hereunder. The Receiving Party shall not disclose any of the Disclosing Party's Confidential Information to any person except to those Receiving Party Affiliates, employees and consultants having a need to know such Confidential Information in order to accomplish the purposes and intent of this Agreement and the Research Plan. Such disclosure shall not be made until the Disclosing Party is notified and consents to the disclosure, such consent not to be unreasonably withheld. The Receiving Party shall ensure that each such Affiliate, employee and consultant has been instructed to keep confidential the Confidential Information of the Disclosing Party and shall ensure that each such Affiliate, employee or consultant has signed a confidentiality agreement prepared by the Disclosing Party covering the Confidential Information of the Disclosing Party.

8.3 Exceptions. A Receiving Party shall not have any obligation with respect to any portion of Confidential Information of the Disclosing Party which the Receiving Party is able to demonstrate (i) was known by the Receiving Party at the time of disclosure by the Disclosing Party, as evidenced by written records of the Receiving Party, (ii) has become publicly known and made generally available through no wrongful act of the Receiving Party, (iii) is outside the scope of the written request pursuant to which such Confidential Information was initially disclosed, or (iv) has rightfully been received by the Receiving Party from a third party under no obligation to the Disclosing Party to keep such information confidential. Notwithstanding Section 8.2, a Receiving Party may disclose the Confidential Information of the Disclosing Party pursuant to a subpoena or other legal process, provided that the Disclosing Party is provided prior notice reasonably sufficient to permit the Disclosing Party to obtain a protective order and provided further that such disclosure shall not relieve the Receiving Party from future adherence to Section 8.1 with respect to such Confidential Information.

8.4 Reservation. Unless expressly provided for in this Agreement, a Disclosing Party shall retain all rights, title and interest in its Confidential Information, and in no event will a Receiving Party have any license or right to a Disclosing Party's Confidential Information outside the Field.

8.5 Agreement as Confidential Information. Neither party shall issue a press release or other publicity announcing the existence of this Agreement or the relationship between the parties or disclose the terms and conditions of the Agreement to any third party, without the prior written consent of the other party; except each party may disclose the terms and conditions of this Agreement: (i) as required by any court or other governmental body; (ii) as otherwise required by law; (iii) to legal counsel of the parties; (iv) in confidence, to accountants, banks, and financing sources and their advisors solely for the purposes of a party's securing financing; (v) in connection with the enforcement of this Agreement or rights under this Agreement; or (vi) in confidence, in connection with an actual or proposed merger, acquisition, or similar transaction solely for use in the due diligence investigation in connection with such transaction.

8.6 Publications and Disclosure. The parties hereby agree that the results obtained in the course of performing under the Research Plan may not be published or otherwise disclosed without the express prior written approval of the Executive Sponsors, except in connection with the pursuit and maintenance of patent rights.

## 9. REPRESENTATION AND WARRANTIES; INDEMNIFICATION AND LIMITATION OF LIABILITY.

9.1 Senesco. Senesco represents and warrants that to the best of its knowledge it has the right to make conveyances and grants in accordance with this Agreement, including, without limitation, that Senesco is free to conduct the Research Plan.

9.2 Tilligen. Tilligen represents and warrants that to the best of its knowledge it has the right to make conveyances and grants in accordance with this Agreement, including, without limitation, that Tilligen is free to conduct the Research Plan.

9.3 Indemnification by Tilligen. Tilligen shall indemnify and hold harmless Senesco, its Affiliates, and all their officers, directors, employees and agents, for any losses, claims, damages, judgments, assessments, costs and other liabilities, including reasonable out-of-pocket costs and expenses as they are incurred by Senesco in connection with any demands, law suits and other legal actions by third parties against Senesco arising from (i) the infringement or alleged infringement of any patent, trade secret or other intellectual property right of any third party as a result of the use of Tilligen Intellectual Property in accordance with the Research Plan, or (ii) any gross negligence or willful misconduct by or of Tilligen, its Affiliates, agents or sublicensees.

9.4 Indemnification by Senesco. Senesco shall, except to the extent caused by Tilligen's gross negligence or willful misconduct, indemnify and hold harmless Tilligen, its Affiliates, and all their officers, directors, employees and agents, for any losses, claims, damages, judgments, assessments, costs and other liabilities, including reasonable out-of-pocket costs and expenses as they are incurred by Tilligen in connection with any demands, law suits and other legal actions by third parties against Tilligen arising out of or alleged to arise out of (I) the propagation, manufacture, use, distribution or sale by Senesco, any Senesco Affiliate, or any Senesco sublicensee or Contract Party of any Licensed Product or any other product or service covered by Senesco Intellectual Property; (ii) the infringement or alleged infringement of any patent, trade secret or other intellectual property right of any third party as a result of the use of Senesco Intellectual Property in accordance with the Research Plan; or (iii) any gross negligence or willful misconduct by or of Senesco, its Affiliates, agents or sublicensees.

9.5 Conditions and Limitations of Indemnification Obligation.

(a) In order to maintain the right to be indemnified by the other party ("Indemnitor"), the party claiming indemnification ("Indemnitee") must:

(i) notify the Indemnitor promptly after learning of any legal action undertaken by a third party and related to the subject matter of this Section 9 (a "Third Party Claim");

(ii) allow the Indemnitor to manage and control (by way of intervention or otherwise) the defense and settlement of any such Third Party Claim against the Indemnitee;

(iii) cooperate with the Indemnitor in the defense or the settlement negotiations of Third Party Claims as reasonable required by the Indemnitor; and

(iv) abstain from making any statements or taking any actions which damage the defense against a Third Party Claim (including, without limitation, any statements against the interest of the Indemnitee or admissions of causation or guilt).

(b) The Indemnitor shall not agree to any settlement that adversely affects the Indemnitee's rights or interest without the Indemnitee's prior written approval (which approval shall not be unreasonably withheld).

9.6 Limitation of Liability. EXCEPT WITH RESPECT TO THE INDEMNIFICATION OBLIGATIONS SET FORTH HEREIN, NEITHER PARTY WILL BE LIABLE TO THE OTHER WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, OR LOST PROFITS OR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES REGARDLESS OF WHETHER ANY SUCH CLAIM FOR DAMAGES, LOST PROFITS OR OTHER COSTS IS BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.7 Risk of Failure; No Representations. Each of Senesco and Tilligen recognize that risk is inherent in the collaborative efforts such as those being undertaken in this Agreement and each thereof voluntarily assume this risk. Accordingly, subject to the rights to terminate provided in Section 4, any other failure of any Intellectual Property provided for use in connection with or developed under this Agreement to perform as desired despite the reasonable efforts of the responsible party or parties will not be deemed to be a breach of this Agreement. Other than as set forth in this Agreement, NO PARTY MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO PATENTS OWNED OR LICENSED BY THEM OR ANY KNOW-HOW INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NONINFRINGEMENT, PATENTABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 10. APPLICABLE LAW.

10.1 Governing Law; Jurisdiction. The validity, interpretation and performance of this agreement and any dispute connected with this agreement shall be governed by and determined in accordance with the statutory, regulatory, and decisional law of the State of Washington (exclusive of such state's choice or conflicts of laws rules and except for the U.N. convention on contracts for the international sale of goods). Subject to having first complied with the requirements of Section 11.3, any legal actions or proceedings brought under this Agreement brought by Senesco shall be subject to the exclusive jurisdiction of the state and federal courts in, and any mediation or arbitration proceeding initiated by Senesco pursuant to Section 11.3 shall occur in, King County, Washington; and any legal actions or proceedings brought by Tilligen shall be subject to the exclusive jurisdiction of the state and federal courts in, and any mediation or arbitration proceeding initiated by Tilligen pursuant to Section 11.3 shall occur in, Middlesex County, New Jersey, and each party hereby consents to the jurisdiction of the court as provided above.

## 11. MISCELLANEOUS PROVISIONS.

11.1 Notices. All notices and other communications required or permitted under this Agreement shall be deemed to be properly given when in writing and sent by registered or certified mail, postage prepaid or by reputable courier service providing evidence of delivery or by facsimile with receipt confirmation, to the other party at the address set forth below, or at such other address as either party may be in writing designate from time to time for these purposes.

If to Tilligen:                   Tilligen, Inc.  
1000 Seneca Street  
Seattle, WA 98101  
Attention: Chief Technical Officer  
Fax No.: 206-903-0263

If to Senesco:                   Senesco Technologies , Inc.  
303 George Street  
Suite 420  
New Brunswick, NJ 08901  
Attention: Sascha Fedyszyn, VP, Corp. Dev.  
Fax No.: 732.296.9292

11.2 Assignability. The rights and obligations acquired herein by the parties are not assignable, transferable or otherwise conveyable, in whole or part (by operation of law or otherwise) to any third party without the consent of other party, which shall not be unreasonably withheld, except that either party may, without such consent, assign its rights and obligations to any purchaser of all or substantially all of the assets of the party related to this Agreement or to any successor corporation resulting from any merger or consolidation of a party. Any attempted assignment conflicting with this Section shall be null and void and without effect.

### 11.3 Dispute Resolution.

11.3.1 All claims, disputes, and other matters in controversy (“Dispute”) arising directly or indirectly out of or related to this Agreement, or the breach thereof, whether contractual or noncontractual, and whether during the term or after the termination of this Agreement, shall be resolved exclusively according to the procedures set forth in this Section 11.3.

11.3.2 Mediation. No Party shall commence an arbitration proceeding pursuant to the provisions of Paragraph 11.3.3 below unless such Party shall first give written notice (a “Dispute Notice”) to the other Party in the same manner otherwise provided for notice in this Agreement, setting forth with reasonable specificity the nature of the Dispute. The Dispute Notice shall constitute a notice and demand for mediation. The Parties shall attempt in good faith to resolve the Dispute by mediation under the CPR Mediation Procedure for Business Disputes in effect on the date of the Dispute Notice. CPR is the Center for Public Resources Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017-3122. If the Parties cannot agree on the selection of a

mediator within twenty (20) days after delivery of the Dispute Notice, the mediator shall be selected by CPR. If the Dispute has not been resolved by mediation within sixty (60) days after delivery of the Dispute Notice, then the Dispute shall be determined by arbitration in accordance with the provisions of Paragraph 11.3.3 below.

11.3.3 Arbitration. Any Dispute that is not settled by mediation as provided in Paragraph 11.3.2 above shall be resolved by arbitration in accordance with the CPR Non-Administered Arbitration Rules in effect on the date of the Dispute Notice, as modified by the terms set forth in this Paragraph 11.3.3, by three independent and impartial arbitrators, of whom each party shall appoint one and the third, who shall serve as chairman, shall be appointed by CPR. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1-16, and judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.

11.3.3.1 The arbitrators shall issue an award in writing specifying their findings of fact and conclusions of law. The arbitrators are not empowered to award damages in excess of compensatory damages and each Party hereby irrevocably waives any right to recover such damages with respect to the Dispute.

11.3.3.2 Upon the application by any Party to a court for an order confirming, modifying, or vacating the award, the court shall have the power to review whether, as a matter of law based on the findings of fact determined by the arbitrators, the award should be confirmed, or should be modified or vacated in order to correct any errors of the law governing the substance of this Agreement that may have been made by the arbitrators. In order to effectuate such judicial review limited to issues of law, the Parties agree (and shall stipulate to the court) that the findings of fact made by the arbitrators shall be final and binding on the parties and shall serve as the facts to be submitted to and relied on by the court in determining the extent to which the award should be confirmed, modified, or vacated.

11.3.4 If any Party fails to proceed with mediation or arbitration as provided herein or unsuccessfully seeks to stay such mediation or arbitration, or fails to comply with any arbitration award, or is unsuccessful in vacating or modifying the award pursuant to a petition or application for judicial review, the other Party(ies) shall be entitled to be awarded costs, including reasonable attorneys' fees, paid or incurred by such other party in successfully compelling such arbitration or defending against the attempt to stay, modify, or vacate such arbitration award and/or successfully defending or enforcing the award.

11.3.5 All applicable statutes of limitations and defenses based upon the passage of time shall be tolled while the procedures specified in this Section 11 are pending. The Parties will take such action, if any, required to effectuate such tolling.

11.3.6 The provisions of this Section 11.3 shall survive termination or expiration of this Agreement..

11.4 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, but this Agreement shall be construed as if such invalid or illegal or unenforceable provisions had never been contained herein.

11.5 Counterparts. This Agreement may be executed in two (2) counterparts, each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same instrument.

11.6 Headings. Headings as to the contents of particular Sections are for convenience only and are in no way to be construed as part of this Agreement or as a limitation of the scope of the particular Sections to which they refer.

11.7 Export Control. Notwithstanding any other provisions of this Agreement, Tilligen agrees to make no disclosure or use of any Senesco information or Senesco technology furnished or made known to Tilligen pursuant to this Agreement, and Senesco agrees to make no disclosure or use of any Tilligen information or Tilligen technology disclosed to Senesco pursuant to this Agreement except in compliance with the laws and regulations of the United States of America, including the Export Administration Regulations promulgated by the Office of Export Administration International Trade Administration, United States Department of Commerce; and in particular, each party agrees not to export, directly or indirectly, either

- the technical data furnished or made known to it by the other party pursuant to this Agreement; or
- the “direct product” thereof; or
- any commodity produced using such technical data

to any country or countries for which a validated license is required unless a validated license is first obtained pursuant to the Export Administration Regulations. The term “direct product” as used above, is defined to mean the immediate product (including process and services) produced directly by the use of the technical data.

11.8 Force Majeure. Except for payments of money, neither of the parties shall be liable for any default or delay in performance of any obligation under this Agreement or the Research Plan caused by any of the following: Act of God, war, riot, fire, explosion, accident, flood, sabotage, compliance with governmental requests, laws, regulations, orders or actions, national defense requirements or any other event beyond the reasonable control of such party; or labor trouble, strike, lockout or injunction (provided that neither of the parties shall be required to settle a labor dispute against its own best judgment).

The party invoking this subparagraph shall give the other party written notice pursuant to Section 11.1 and full particulars of such force majeure event as soon as possible after the occurrence of the cause upon which said party is relying.

Both Senesco and Tilligen shall use reasonable efforts to mitigate the effects of any force majeure on their respective part.

11.10 Negation of Agency. It is agreed and understood by the parties hereto that each of Tilligen and Senesco, in its performance of its obligations and responsibilities under this Agreement, is an independent contractor and that nothing herein contained shall be deemed to create an agency, partnership, joint venture or like relationship between the parties. The manner in which each of Tilligen and Senesco carries out its performance under this Agreement is within each of Tilligen's and Senesco's sole discretion and control.

11.11 Other Requests. The parties hereto agree that upon reasonable request of the other party, each such party shall execute and deliver such additional documents and Agreements, and take such further actions, as may be necessary in order to fulfill and give effect to the terms of this Agreement.

11.12 Integration; Amendment and Waiver; Conflict. This Agreement, including any exhibits or other attachments hereto, constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous understandings or agreements, whether written or oral, between the parties with respect to the subject matters. This Agreement may be amended, modified, superseded or canceled, and any of the terms may be waived, only by a written instrument executed by each party or, in the case of waiver, by the party or parties waiving compliance. The delay or failure of any party at any time or times to require performance of any provisions shall in no manner affect the rights at a later time to enforce the same. No waiver by any party of any condition or of the breach of any term contained in this Agreement, whether by conduct, or otherwise, in any one or more instances, shall be deemed to be, or considered as, a further or continuing waiver of any such condition or of the breach of such term or any other term of this Agreement. In the event of any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Research Plan, the terms and conditions of the Agreement shall control.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the Effective Date.

TILLIGEN, INC.

By /s/ Ken Hunt

Date 9/20/02

SENESCO TECHNOLOGIES, INC.

By /s/ S. Fedyszyn

Date 9/27/02

## APPENDIX A

Senesco (Harris Moran) supplies sufficient seed of Iceberg and Romaine varieties of lettuce.

Tilligen determines mutagenesis protocol; and mutagenizes seed.

Tilligen, with Harris Moran, plants seed in HM Davis farm in summer of 2002.

Senesco provides DNA sequence of one to four Gene Targets to Tilligen.

Tilligen, HM , and Senesco representatives to observe M1 plantings in fall of 2002.

Tilligen to design and test primers within 45 days of receipt of DNA sequence information from Senesco to be used for tilling.

Tilligen to harvest lettuce seed (September to October 2002).

Tilligen to replant lettuce M2 seedlings in greenhouse ( planting November 2002 through February 2003; harvesting M3 seed June - August 2003).

Tilligen to prepare DNA samples from individual M2 lettuce plants from late November 2002 into March 2003, and till for mutations in approved targets from December 2002 into June 2003. Results will be communicated to Senesco team on a biweekly basis.

For mutations of interest, Tilligen will propagate through self and backcross generations to homozygosity. At same time, seed containing the mutations (possibly heterozygous) will be provided to Senesco, along with sequence information of the mutation.

For mutations of interest, Tilligen will proceed to file provisionally with the US patent office. Subsequent actions on all patent filings will be jointly discussed by Tilligen and Senesco.