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http://www.wipo.int/globalissues/biotech/documents/pdf/cs_oct_2000.pdf

Dirk Kloss

THE ROLE OF INTELLECTUAL PROPERTY RIGHTS IN THE SHARING OF BENEFITS ARISING FROM THE USE OF BIOLOGICAL RESOURCES AND ASSOCIATED TRADITIONAL KNOWLEDGE

SELECTED CASE STUDIES

A joint submission by
the World Intellectual Property Organization (WIPO)
and
the United Nations Environment Programme (UNEP)

The present case studies were produced jointly by the World Intellectual Property Organization and the United Nations Environment Programme and submitted to the Executive Secretary of the Convention on Biological Diversity for consideration at the Fifth Conference of the Parties to the Convention on Biological Diversity, held in Nairobi, Kenya, from May 15 to 26, 2000. The case studies form part of a larger Study that will be published by UNEP and WIPO, along with additional sections.

The objective of the Study is to identify and explore the role of intellectual property rights in the sharing of benefits arising from the use of biological resources and associated traditional knowledge. The case studies may provide lessons relevant to the role of intellectual property rights in the implementation, inter alia, of Articles 8, 10, 15 and 16 of the Convention on Biological Diversity.

The larger Study is being undertaken by Prof. Anil K Gupta, Indian Institute of Management, Ahmedabad, from which these cases have been excerpted. Besides the case studies, the Study includes an introductory review and analytical synthesis. The views and opinions reflected in the Study, including the present case studies, are those of the author, not those of WIPO, UNEP, or any of their Member States. The author can be contacted for any comments and suggestions at anilg@iimahd.ernet.in



UNITED NATIONS
ENVIRONMENT PROGRAMME



WORLD INTELLECTUAL
PROPERTY ORGANIZATION

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Case 1: Mali
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Material Transfer Form

February 16th, 2000

IN DUPLICATE

This is to acknowledge receipt of your email in which you requested certain research materials developed in this laboratory be sent to you for scientific research purposes. The materials concerned, which belong to The Regents of the University of California are the *XA21* gene from rice.

While I cannot transfer ownership of these materials to you, I will be pleased to permit your use of these materials within your research laboratory for our cooperative scientific research. However, before forwarding them to you, I require your agreement that the materials will be received by you only for use in our cooperative work, that you will bear all risk to you or any others resulting from your use, and that you will not pass these materials, their progeny, or derivatives on to any other party or use them for commercial purposes without the express written consent of The Regents of the University of California. You understand that no other right or license to these materials, their progeny or derivatives, is granted or implied as a result of our transmission of these materials to you.

These materials are to be used with caution and prudence in any experimental work, since all of their characteristics are not known.

As you recognize, there is a processing cost to us involved in providing these materials to you. We will bill you for our processing costs, which will amount to no charge.

If you agree to accept these materials under the above conditions, please sign the enclosed duplicate copy of this letter, then have it signed by an authorized representative of your institution, and return it to me. Upon receipt of that confirmation I will forward the material(s) to you.

The patent application and corresponding patents covering these materials have been exclusively licensed to a company in the United States, and accordingly, no commercial licenses or rights are available for these materials.

Sincerely yours,
Pamela C. Ronald

ACCEPTED:

RESEARCH INVESTIGATOR

Name:

Signature here:

Date:

[Research Institution] Representative:

Date:

Case 2: India

Annex 3.3.1

AGREEMENT FOR LICENSING OF KNOWHOW

A.1 THE AGREEMENT

A.1.1 THIS AGREEMENT made and entered into this Tenth day of November One Thousand Nine Hundred and Ninety Five between Tropical Botanic Garden & Research Institute, a Society registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act 1955, having its registered office at Tropical Botanic Garden and Research Institute, Karimancode, P.O.Pacha-Palode, Thiruvananthapuram – 695 562 (hereinafter called TBGRI which expression shall where the context so admits, include its successors and permitted assigns) of the one part

And

A.1.2 The Arya Vaidya Pharmacy (Coimbatore) Ltd., a COMPANY incorporated in India under the Indian Companies Act 1913 (No.61 of 1947 – 48) and having its registered office at 1381 & 1382, Trichy Road, Coimbatore – 641 018 (hereinafter called the PARTY which expression shall where the context so admits include its successors and permitted assigns) of the other part.

A.2 PREAMBLE

A.2.1 WHEREAS TBGRI has developed and is in full possession of and has full intellectual property rights to manufacture herbal formulation based on “Arogyapacha” and a few other herbal drugs (Jeevani) as detailed in Annexure I (hereinafter called the KNOWHOW) for making Herbal Formulation based on “Arogyapacha” and a few other herbal drugs (Jeevani) as per specifications laid down in Annexure II (hereinafter called the PRODUCT).

A.2.2 And whereas TBGRI at the request of the PARTY has agreed to grant licence to the PARTY for utilising the KNOWHOW on terms and conditions hereinafter contained.

A.3 SCOPE OF AGREEMENT

This agreement details the modalities and the terms and conditions for the grant of licence by TBGRI to the PARTY for utilising the said KNOWHOW, the rights and obligations of either party thereto and the financial arrangements between the parties.

A.4 GRANT OF LICENCE

A.4.1 In consideration of the payment as provided for in Clause 5.1 and performance by PARTY of the covenants herein contained, TBGRI hereby grants to the PARTY the licence to utilise the KNOWHOW to make and sell the PRODUCT directly or through any marketing agency authorised by The Arya Vaidya Pharmacy (Coimbatore) Ltd.

- A.4.2 The license hereby granted to the PARTY by TBGRI is for utilisation of KNOWHOW for a period of seven years on exclusive basis commencing from the date of transfer of KNOWHOW provided that the KNOWHOW is effectively utilised within 4 years from the date of transfer of KNOWHOW.
- A.4.3 The license shall come into force from Tenth day of November One Thousand Nine Hundred and Ninety Five (hereinafter called the EFFECTIVE DATE) and shall remain valid for a period of seven years thereafter.
- A.4.4 The PARTY will produce and market the PRODUCT within 4 years from the date of transfer of KNOWHOW. If PARTY fails to do so TBGRI will have the right to cancel the licence granted to PARTY and the PARTY in turn should surrender the KNOWHOW. In such a circumstance the PARTY will not have any right to claim licence fee already paid to TBGRI.

A.5 FINANCIAL ARRANGEMENTS

- A.5.1 In consideration of the licence hereby granted and the transfer of KNOWHOW by TBGRI to the PARTY, the PARTY shall pay to TBGRI as hereunder:

Licence Fee

- i. Lumpsum
- a. Rs. 5 Lakhs on signing of the agreement, and
- b. Rs. 5 Lakhs on the day of transfer of KNOWHOW by TBGRI

and

- ii. Royalty

Royalty at the rate of 2% of the ex-factory sale price of the PRODUCT made by the PARTY for a period of 10 years, computed from the date of commercial production. The terms and conditions governing the payment of royalty shall be as in Annexure III.

A.6. RESPONSIBILITIES OF TBGRI

- A.6.1. Transfer of KNOWHOW

- i. Transfer of KNOWHOW Documents

TBGRI shall within 180 days of the EFFECTIVE DATE hand over to the PARTY Technology Transfer Documents (TTD) consisting of specifications of product, process details, quality control procedures and user manuals.

- ii. Demonstration

TBGRI shall demonstrate the KNOWHOW at TBGRI, Palode to the authorised representative of the PARTY within 6 months from the EFFECTIVE DATE for which the PARTY shall pay separately. On completion of the demonstration both parties shall sign a certificate to this effect.

iii Training

TBGRI shall arrange for the training of Two or Three of PARTY's personnel having the requisite qualifications for a maximum of 2 months for which the PARTY shall provide inputs/pay separately. The training shall be availed of by the PARTY within a period of 3 months from the date of transfer of KNOWHOW.

A.6.2 The transfer of KNOWHOW shall be deemed as completed on performance by TBGRI the tasks stipulated in clause A.6.1.

A.6.3 Assistance

TBGRI may at the request of the PARTY and on its paying charges as specified by TBGRI, depute qualified personnel to render assistance in KNOWHOW implementation. This assistance would be available up to a period of 4 years from the EFFECTIVE DATE.

A.7. RESPONSIBILITIES OF PARTY

A.7.1 The PARTY shall employ its best endeavour to work the KNOWHOW and sell the PRODUCT on a commercial scale. The PARTY shall commercialise the KNOWHOW within a period of 48 months from the date of transfer of KNOWHOW as defined in clause A.6.2.

A.7.2 Fulfilment of all procedural, legal, operational requirements for the commercial implementation of the KNOWHOW shall be the responsibility of the PARTY.

A.7.3 The PARTY acknowledges the absolute ownership of KNOWHOW by TBGRI and shall not dispute the legality, validity or enforceability of the licence granted.

A.7.4. It shall not be open to the PARTY to claim the KNOWHOW in their name on the plea of having effected any improvements/modifications upon the KNOWHOW or upon the PRODUCT. All PRODUCTS manufactured by the PARTY shall be deemed to have been manufactured under the licence hereby granted.

A.7.5 The PARTY shall permit the personnel of TBGRI or its attorneys or duly authorised agents, at all convenient time to enter into and upon any premises of PARTY where PRODUCTS under this licence are manufactured/stocked/sold/used for the purpose of inspecting the same and the manufacture thereof, generally to ascertain that the provisions of this licence are being complied with and quality of the PRODUCT maintained.

A.7.6 The PARTY shall not, at any time, assign, mortgage, charge, grant sub-licence or otherwise deal with possession or control of the licence hereby granted.

A.7.7 The PARTY shall not directly or indirectly and either by itself or by its agents use the KNOWHOW otherwise than in accordance with these presents.

A.7.8 The PARTY shall not file any application for seeking intellectual property rights in its own name or in the name of other person(s) on any matter relating to the information disclosed to it by TBGRI under this agreement, save with the written prior approval of TBGRI.

A.7.9 The PARTY shall not oppose or direct or cause any persons to oppose any application seeking intellectual property rights relating to the PRODUCT and/or KNOWHOW filed by TBGRI.

A.7.10 The PARTY shall treat as strictly confidential all information/knowledge obtained from TBGRI, in connection *with or relating to the licence hereby granted*.

A.8. GENERAL PROVISIONS

A.8.1 During the currency of the agreement both parties shall promptly disclose to each other in writing, all or any improvements or modifications made on the KNOWHOW / PRODUCT. All such improvements/modifications shall then form an integral part of the KNOWHOW.

A.8.2 These presents shall not be construed as a warranty by TBGRI of the novelty, utility, saleability and workability of the KNOWHOW/PRODUCT.

A.8.3 This agreement shall be the sole repository of the terms and conditions agreed to herein by and between TBGRI and the PARTY and no amendment thereof shall take effect and be binding on either of them except provided for in clause A.16. hereunder.

A.9. ACKNOWLEDGEMENT

A.9.1. The PARTY shall affix in a conspicuous manner upon every PRODUCT and a label or plate bearing the inscription "TBGRI KNOWHOW" in letters of size not less than half the nominal size of the largest size of letter ----- name of the party or its brand name or trademark for the PRODUCT. The PARTY shall not sell [PRODUCT and/or any box or Package containing the PRODUCT] without such label or plate being affixed thereon. Similarly every advertisement, boarding, technical literature, publicity and the like material in respect of or relative to the PRODUCT issued by the PARTY shall include the same inscription as aforesaid in a prominent manner.

A.10. FORCE MAJEURE

Neither party shall be held responsible for non-fulfilment of their respective obligations under this agreement due to the exigency of one or more of the force majeure events such as but not limited to acts of God, War, Flood, Earthquakes, Strikes, Lockouts, Epidemics, Riots, Civil Commotions etc., provided on the occurrence and cessation of any such event the party affected thereby shall give a notice in writing to the other party within one month of such occurrence or cessation. If the force majeure conditions continue beyond six months, the parties shall jointly decide about the future course of action.

A.11 INDEMNITY

TBGRI hereby agrees to authorise and to empower the PARTY to institute and prosecute such suits or proceedings as the PARTY may deem expedient, to protect the rights hereby conferred and for the recoveries of damages and penalties for the infringement of such rights and to secure to the PARTY full benefits of this licence and for any such purpose to use the name of TBGRI. The PARTY in its turn shall indemnify TBGRI against damages, costs and expenses occasioned by such proceedings, and TBGRI shall in any such proceedings, at the expense of the PARTY afford to the PARTY all proper and or reasonable assistance in proving and defending its title to the grant of the rights hereby conferred.

A.12 TERMINATION OF AGREEMENT

A.12.1 This agreement may be terminated by either of the parties forthwith if the other party commits breach of any of the terms hereof and shall have failed to rectify such breach within sixty days of the notice in this behalf having been served on it by the other party.

A.12.2. In addition to the reasons for termination as set forth above, this agreement may be terminated forthwith if either of the parties voluntarily or involuntarily enters into

composition, bankruptcy or similar reorganisation proceedings or if applications invoking such proceedings have been filed.

A.13. SETTLEMENTS

Upon termination of the agreement:

- A.13.1 All rights granted to and the obligations undertaken by the parties hereto shall cease to exist forthwith except the obligation of the PARTY to keep KNOWHOW in confidence vide clause A.7.10 herein and pay royalty as per clause A.5.1. (ii) above accrued on or prior to the date of such termination, make written reports and keep records, files and books vide para 6 of Annexure III hereto and the right of TBGRI to inspect the same.
- A.13.2 The PARTY or its assigns will not utilise the KNOWHOW to manufacture the PRODUCT and the PARTY shall immediately deposit with TBGRI the original and all copies of TTD, and other documents data related to this licence received from TBGRI.
- A.13.3. The PARTY shall immediately pay to TBGRI all amounts of money due from it upto the date of termination. Also all sums of money hereto paid by the PARTY under the terms of this licence shall be forfeited to TBGRI, and the PARTY shall not be entitled to any credit or allowance in respect thereof.
- A.13.4. The PARTY will not be debarred from disposing off the PRODUCTS which are already manufactured or in the process thereof by sale or otherwise. Such disposal will however, not be effected unless and until the PARTY remits to TBGRI the entire amount of royalty due, in accordance with Clause 5 above including the PRODUCTS sought to be disposed off.

A.14. NOTICES

- A.14 All notices and other communications required to be served on the PARTY under the terms of this agreement, shall be considered to be duly served if the same shall have been delivered to, left with or posted by registered mail to PARTY at its last known address of business. Similarly, any notice to be given to TBGRI shall be considered as duly served if the same shall have been delivered to, left or posted by registered mail to TBGIR at its registered address in Pacha-Palode, Thiruvananthapuram.

A.15 AMENDMENTS TO THE AGREEMENT

A.15.1 No amendment or modification of this agreement shall be allowed. The request for the same is made in writing by both the parties or their authorised representatives and specifically stating the same to be an amendment of this agreement. The modifications/changes shall be effective from the date on which they are made/executed unless otherwise agreed to.

A.16 ASSIGNMENT OF THE AGREEMENT

A.16.1 The rights and/or liabilities arising to any PARTY to this agreement shall not be assigned except with the written consent of the PARTY and subject to such terms and conditions as may be mutually agreed upon.

A.17. ARBITRATION

Applicable to agreements with private parties in India

A.17.1 Except as hereinbefore provided, any dispute arising out of this Agreement, the same shall be referred to the arbitration of two arbitrators, one to be appointed by each party to the dispute, and in case of difference of opinion between them to an umpire appointed by the said two arbitrators before entering on the reference, and the decision of such arbitrators or umpire, as the case may be, shall be final and binding on both parties. The venue of arbitration shall be at such place as may be fixed by such arbitrators or umpire and the arbitration proceedings shall take place under the Indian Arbitration Act, 1940.

A.17.2 Any legal appeal over the arbitrators' award arising out of or in any way connected with this agreement shall be deemed to have arisen in Thiruvananthapuram and only the courts in Kerala shall have the first jurisdiction to determine such matters.

SEAL OF PARTIES

This agreement has been executed in two originals one of these has been retained by TBGRI and the other by the PARTY.

In witness whereof the parties hereto have signed this agreement the Tenth day of November One Thousand Nine Hundred and Ninety Five mentioned hereinbefore.

I or and on behalf of TBGRI

For and on behalf of PARTY

ANNEXURE - I

KNOWHOW

The KNOWHOW shall mean [please specify the type of knowhow/ scale of development/ parameters, specifications of its operation / use etc.]

ANNEXURE – II

PRODUCT

The PRODUCT shall meet/conform to the following [specifications / parameters etc.]

TERMS & CONDITIONS FOR PAYMENT OF ROYALTY

1. The royalty shall be payable on net ex-factory sale price of all the PRODUCT manufactures sold and used for as such or to make any other product therefrom, exclusive of all duties and taxes payable to the Government. The ex-factory sale price for the basis of payment of royalty on the PRODUCT used for shall be (i) the highest ex-factory sale price of the PRODUCT sold; (ii) or if no merchant sales have taken place, the price such a PRODUCT would fetch if sold in the market as determined by the DIRECTOR TBGRI.
2. The period 10 years for the payment of royalty shall be computed from the date of the start of the commercial manufacture of the PRODUCT authorised by the PARTY to any agency of the Central or State Government or in the PARTY's Annual Reports and shall survive the period of licence hereinbefore mentioned.
3. The royalty shall become due for payment on the 31st March and on 30th September in every year and shall be paid by the PARTY on / or before the expiry of 60 days from the above two stipulated dates. In the event of default in the payment of royalty amount as above the PARTY shall pay interest on amount in default at the rate of 18% per annum.
4. The PARTY shall within 60 days of the stipulated dates deliver to TBGRI in a prescribed form, a true and complete statement in writing of PRODUCT manufactured, sold and / or used by PARTY during the preceding half year and all the royalty payable to TBGRI under this agreement.
5. PARTY shall be liable for the payment of royalty on all PRODUCT irrespective of any plea whether the same have been manufactured as per the KNOWHOW licensed by TBGRI or otherwise. All PRODUCT manufactured by the PARTY shall be deemed to have been manufactured under KNOWHOW licensed TBGRI. It will not be open to PARTY to claim any exemption or reduction in the payment or amount of royalty accruing under this agreement on the plea of having used KNOWHOW other than that of TBGRI or having effected any improvements/modifications in the intellectual property licensed by TBGRI.
6. PARTY shall at its place of business, keep accurate records in sufficient details to enable the calculation and determination of royalty payable hereunder and upon TBGRI's request shall permit an authorised representative of TBGRI to have access during its business hours to examine relevant records as may be necessary to (a) determine in respect of any half year as specified above, ending not more than one year prior to the date of such request, the correctness of any report and / or payment under this agreement and (b) obtain information as to the royalty payable for any such period in case of failure to comply with the terms of the agreement.

Case 3: Nigeria
Annex 3.4.2

CONSULTANCY AGREEMENT

BETWEEN

NATIONAL INSTITUTE FOR PHARMACEUTICAL RESEARCH AND DEVELOPMENT

AND

CONSULTANT HERBALIST

Dated this.....day of.....1997

THIS AGREEMENT made this day of 1997 between NATIONAL INSTITUTE FOR PHARMACEUTICAL RESEARCH AND DEVELOPMENT, IDU-ABUJA (hereinafter called the “INSTITUTE” which expression shall where the context admits include agents, successors in office and assigns) of the one part and (hereinafter called the “CONSULTANT HERBALIST” which expression shall where the context admits include his agents, personal legal representatives and assigns) of the other part.

WHEREAS:

1. The “INSTITUTE” is a scientific and technological-oriented public Institution established to undertake research and development work into (among other things) drugs and pharmaceutical raw materials from indigenous natural resources or materials and the evaluation, standardization and rational utilization of traditional medicine.
2. The “CONSULTANT HERBALIST” has acquired useful information, facts and knowledge in respect of the use of herbal products for the management, treatment and/or cure of and other ailments and he is engaged in the practice of Herbal medicine.
3. The “CONSULTANT HERBALIST” is willing to make these information, facts and discoveries in respect of the herbal products available to the “INSTITUTE” for use in the management and/or cure of and other ailments for the overall benefit of the public.
4. The “INSTITUTE” has requested, and the “CONSULTANT HERBALIST” has agreed, to provide services and information set out herein on herbal products for development and use in the management of and other ailments.
5. The “CONSULTANT HERBALIST” is willing and has agreed to supply the “INSTITUTE” with herbal materials (in their compounded forms) for the treatment of and other ailments for scientific identification, evaluation, analysis, development and/or improvement.
6. The “CONSULTANT HERBALIST” hereby gives consent to the “INSTITUTE” and the “INSTITUTE” hereby accepts to conduct research into, develop and process the said herbal products into suitable pharmaceutical drugs in dosage forms for commercial and industrial utilization towards the management or treatment of and other ailments.

NOW THIS AGREEMENT WITNESSETH:

In consideration of the mutual Covenants and Agreements herein contained, the parties hereto do hereby agree as follows:

1. The “CONSULTANT HERBALIST” hereby permits the “INSTITUTE” to conduct research into, develop and process the said herbal products into standard pharmaceutical drugs in dosage forms and to ensure due scientific evaluation, purification, standardization and safety of the said products for use in the management of and other ailments aforesaid.
2. The “CONSULTANT HERBALIST” shall disclose to the “INSTITUTE” his existing collections of the plant or herbal materials in their compounded forms at the moment (and fully subsequently) in respect of and other ailments for scientific identification, evaluation and development and literature search on such compounded plants/materials and shall at all times endeavor during the continuance of this Agreement to make available to the “INSTITUTE” any collection at his disposal upon request.
3. In the event that any of the medicinal plants has already been documented for the same disease which the “CONSULTANT HERBALIST” uses it to treat or where the “INSTITUTE” has already obtained information from other “CONSULTANT HERBALISTS” on the same plant, the “INSTITUTE” shall duly inform the “CONSULTANT HERBALIST” as such giving the relevant literature references within fourteen (14) days.

4. The “INSTITUTE” engages the “CONSULTANT HERBALIST” to procure, provide and keep on supplying samples, information, facts/ideas relating to and in respect of herbal products that will facilitate research and development towards the management of and other ailments.
5. The “CONSULTANT HERBALIST” shall as and when requested by the “INSTITUTE” and within a reasonable time after receiving such request supply compounded plant samples for the scientific evaluation as the “INSTITUTE” shall specify and diligently proceed with the preparation of such samples and deliver the same as required by the “INSTITUTE”.
6. The “INSTITUTE” shall subject the various extracts and fractions obtained from the medicinal plants used to prepare the herbal products to scientific evaluation for safety and efficacy provided that and it is hereby agreed that the “INSTITUTE” shall in all events furnish the “CONSULTANT HERBALIST” in writing with the result of every scientific test or analysis carried out on any herbal product/material received from him.
7. The “INSTITUTE” shall diligently proceed at Abuja or such other designated places within and outside Nigeria as the “INSTITUTE” may determine to conduct research and development work into the evaluation, preservation, purification, standardization, safety and rational utilization of the herbal products and formulate same into dosage form for commercial and industrial use and to apply and obtain the grant of patent in respect of the products at the cost, expense and techniques of the “INSTITUTE” and in a manner mentioned herein before in the proceeding clauses.
8. The “INSTITUTE” shall apply for and obtain or cause to be granted and obtained the letters of patent on the products in the name of the “INSTITUTE” after the same has been developed and processed provided that the “CONSULTANT HERBALIST’S” name be included in the patent subject to the conditions hereinafter set forth.
9. The either party shall use every reasonable means to protect, preserve and secure the interest and person of the other and the efficacy and safety of the products and shall not subject each other to public ridicule, adverse publicity and derogatory treatment during the subsistence of this Agreement.
10. The “CONSULTANT HERBALIST” shall be at liberty to continue to use, apply and utilize the herbal products which he has prepared and/or may continue to prepare in future by his own technique notwithstanding that the same or similar product has been referred to the “INSTITUTE” for scientific evaluation and formulation, provided however that the “INSTITUTE” does not guarantee the safety, purity, and quality or standard of such products. Nothing in this Agreement shall be construed as implying that the “CONSULTANT HERBALIST” is prohibited from citing his relationship with the “INSTITUTE” in any advertisement of his practice if and only if the consent of the “INSTITUTE” is first sought and obtained in writing.
11. Any information acquired by the “CONSULTANT HERBALIST” in the course of his services, transactions and operations under this Agreement regarding the sample preparation process, research and development work and details of the formulae of the products shall be treated by him as secret and confidential and shall not be disclosed by him without consent and authority in writing of the “INSTITUTE” provided that, and it is hereby agreed that, the “INSTITUTE” shall not unreasonably withhold such consent.
12. The “CONSULTANT HERBALIST” shall not during the continuance of this Agreement be engaged in a transaction similar with the one here in evidence with any other person, firm, company or organization anywhere in Nigeria in respect of products of any description or kind similar to, or competitive with, those of the “INSTITUTE” without the previous consent in writing of the “INSTITUTE”.
13. The ownership of and rights to obtain trade name or trademark and/or registration of designs in any products supplied by the “CONSULTANT HERBALIST” to the “INSTITUTE” under this Agreement shall be vested in the “INSTITUTE” from the date of delivery by the “CONSULTANT HERBALIST” to the “INSTITUTE” of the herbal products and the “INSTITUTE” shall thereupon be at liberty to effect and be responsible for the registration and other protection of such formulated dosage as it thinks fit provided always that the discovery of the herbal products by the “CONSULTANT HERBALIST” shall be acknowledged as such in the correspondence and literature publications on the products as much as practicable and provided that and it is hereby agreed that the “CONSULTANT HERBALIST” gives no warranty for the efficacy and safety of such resultant end product.

14. The “CONSULTANT HERBALIST” hereby convenants to make available to the “INSTITUTE” upon its observance of the terms contained in this Agreement, information and assistance relating to and in furtherance of research and development of the herbal product.
15. The “INSTITUTE” shall endeavor in every reasonable and proper way and to the best of its ability to publicize the result of its Research and Development of the herbal products and for that purpose advertise such in Magazines, Journals, Periodicals, Weeklies, Newspapers or on radio and television in such manner as may be necessary.
16. IN CONSIDERATION of the foregoing provisions, the “INSTITUTE” shall at the point of commercialization of products derived from the “CONSULTANT HERBALIST’S” input negotiate on behalf of the “CONSULTANT HERBALIST” for some royalty of at least 10% of the net profit to accrue to the “CONSULTANT HERBALIST”.
17. IN FURTHER CONSIDERATION of the services rendered by the “CONSULTANT HERBALIST”, the “INSTITUTE” shall make payment to him as follows:
 - a) Without prejudice to any other remedies the “INSTITUTE” may have against the “CONSULTANT HERBALIST”, the “INSTITUTE” shall have the right at any time by giving 3 months notice in writing to the “CONSULTANT HERBALIST” to terminate the Agreement in any of the following events:
 - i. If the “CONSULTANT HERBALIST” commits a deliberate breach of any of the terms of this Agreement which he refuses to rectify even upon demand.
 - ii. If the “CONSULTANT HERBALIST” dies, compounds with his creditors or takes or suffers any similar action in consequence of debts.
 - iii. If from any cause the “CONSULTANT HERBALIST” in the reasonable opinion of the “INSTITUTE” is prevented from performing his duties hereunder for a continuous period of six (6) months or for a total of eight (8) months in any period of (12) twelve calendar months.
 - iv. If the “CONSULTANT HERBALIST” is guilty of any conduct which in the reasonable opinion of the “INSTITUTE” prejudicial to the “INSTITUTE’S” interest.
 - v. If the “CONSULTANT HERBALIST” purports to assign the burden or benefits of this Agreement provided that the floating of a company by the “CONSULTANT HERBALIST” to undertake the practice of herbal medicine or for his practice shall not be taken as a breach hereof, provided that the “INSTITUTE” is duly notified any its consent obtained in writing.
 - b) If the “INSTITUTE” ceases to carry out research and development or deal in such drugs as were previously mentioned, this Agreement shall forthwith terminate unless the business or any part of it (being a part concerned in the manufacture or sale of such drugs or any class of them) has been transferred to any other organization and the rights and obligations of the Company hereunder have been assigned to that other organization after one month’s notice of such assignment in writing has been given by the “INSTITUTE” to the “CONSULTANT HERBALIST”.
 - c) It is hereby agreed that where pursuant to clause 17 (a) it shall not be practicable to effect personal service of notice to terminate on the “CONSULTANT HERBALIST”, the “INSTITUTE” shall be excused from giving such notice as aforesaid.
18. If the “INSTITUTE” shall fail any of its obligations to the “CONSULTANT HERBALIST” and remains in breach for 90 days, the Consultant for the management of and other ailments and there are not promises, terms, or conditions, obligations, oral or written, express or implied, other than those contained herein.
19. Subject to clause 17 (c) above, all previous Agreements and arrangements if any relating to the foregoing between the parties hereto are hereby superseded.
20. If any dispute arises as to the construction of the provisions of these presents or implementation of the terms, the parties shall appoint one independent Arbitrator or constitute a panel of 3 Arbitrators who

Herbalist, in addition to other remedies available to him, may on the 90th day of the breach terminate this Agreement forthwith.

21. The "CONSULTANT HERBALIST" or his personal representative shall upon the termination of this Agreement immediately deliver up to the "INSTITUTE" all facilities and property belonging to the "INSTITUTE" which may be in his possession or under his control.
22. This Agreement shall have effect in substitution for all previous Agreements and arrangements whether written or oral or implied by the "INSTITUTE" and the "CONSULTANT HERBALIST".
23. The Agreement shall not in any way constitute or be presumed to constitute a partnership between the parties hereto or make them in any way liable as partners of or as agents for one another. The "CONSULTANT HERBALIST" shall relate with the "INSTITUTE" as an independent contractor.
24. The Waiver by either party of any breach of any terms of this Agreement shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach provided that a breach, once rectified, shall not, for any purpose whatsoever, be taken into account.
25. The Agreement embodies the entire understanding of the parties in respect of research and development. And for the purpose of this clause the provisions of the Arbitration Acts, 1990 shall apply.

IN WITNESS WHEREOF the parties hereto have executed this presents the day and year first above written.

SIGNED, SEALED AND DELIVERED BY:

for and on behalf of the "INSTITUTE" DIRECTOR-GENERAL/CHIEF EXECUTIVE

IN THE PRESENCE OF:

Name:

Address:

Occupation:

SIGNED, SEALED AND DELIVERED BY
THE "CONSULTANT HERBALIST"

("CONSULTANT HERBALIST")

IN THE PRESENCE OF:

Name:

Address:

Occupation: