

RICE SEED PRODUCTION AGREEMENT (WINTER NURSERY)

**Between the
UNIVERSITY OF PUERTO RICO
AGRICULTURAL EXPERIMENT STATION
And
HORIZON AG, LLC**

BE IT KNOWN, THAT ON THE FIRST DAY OF JANUARY, 2006 (THE EFFECTIVE DATE”),

1. **AGRICULTURAL EXPERIMENT STATION OF THE UNIVERSITY OF PUERTO RICO**, having its registered office at Carretera No 2, Calle Post 259 N, Mayaguez, PR, 00680, _____ represented in this agreement by it Chancellor, Jorge Iván Vélez Arocho, (“UPR”)

AND

2. **HORIZON AG LLC**, having its registered office at 1661 International Drive, Suite 400, Memphis, TN 38120, USA, _____, represented in this agreement by Randy Ouzts, ___ General Manager _____,

HAVE AGREED AS FOLLOWS:

WHEREAS, Horizon wishes to maintain a winter nursery for seed rice production and is willing to pay UPR to organize said winter nursery and grow seed rice for them, as they may decide from time to time;

Y. **WHEREAS**, UPR (at Mayaguez Campus), is willing and able to grow rice at its facilities at Lajas, Puerto Rico;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1. DEFINITIONS

“Affiliate”: any company controlling, controlled by, or under common control with a signatory to this Agreement, control meaning in this context the direct or indirect ownership of more than fifty percent (50%) of voting stock/shares of a company, or the power to nominate more than half of the directors, or the power otherwise to policy of a company or organization.

“Service”: the following non-exhaustive list of services pertaining to the Material: planting, increasing, pollination, crossing, herbicide and insecticide treatment, follow-up, harvesting of the Rice Crop, drying, replanting, obtaining customs clearance, organize shipping of rice seed, required to be performed by UPR.

“Material”: the rice seed which will pursuant to the terms of this Agreement be delivered each year to UPR for purposes of planting in the winter nursery at Lajas, Puerto Rico. The Material shall be referred to as Horizon Material, dependent on the Party having delivered such Material to UPR.

“Term”: the time period defined in Article 3.1 of this Agreement.

“Time Period”: September 1 of a calendar year until August 31 of the subsequent calendar year.

“Rice”: means specific breeding lines of rice seed provided by Horizon to UPR for propagation purposes.

“Rice Crop”: the Rice, progeny of the Material which, will be harvested each session or each time period during the Term.

“Winter Nursery”: the rice winter nursery and seed increase acreage organized by UPR and funded as specified in this Agreement, located at or near Lajas Agricultural Experiment Station and running during the Term from September 1 of each year through August 31 of the next year. Winter Nursery is further defined as land dedicated for breeding head rows and seed increase purposes.

ARTICLE 2. IDENTIFICATION OF PROJECT

This project shall be defined by the UPR assigned account number and by the title: “Horizon Rice Winter Nursery at Lajas Substation”.

ARTICLE 3. TIME PERIOD

3.1 Subject to Article 12, this Agreement will commence on the Effective Date and terminate August 31, 2010 (the “Term”) and will comprise five (5) successive Time Periods, each comprising two planting/harvesting sessions as described in Article 3.2.

3.2 During each Time Period, a first planting/harvesting session shall run from September 01 through December 15. The second session shall run from January 15 through June 1, thus resulting in two rice crops per Winter Nursery. Parties expressly agree that the value of this Agreement largely depends on the ability to have an all-winter nursery, ensuring two crops per Winter Nursery.

ARTICLE 4. STATEMENT OF WORK

- 4.1 A detailed description of the Services which will be required for each Time Period and shall be delivered by Horizon not later than September 1 of each calendar year of this Agreement (the "Work Plan").
- 4.2 The Work plan will detail at very least:
- What Horizon Material will be delivered to UPR for planting,
 - Which Services will be required pertaining to such Material,
 - What timelines and milestones need to be respected by the Parties, and
 - What needs to happen with the remainder of the Material and the replanted Material after (re) planting and with the Rice Crops after harvesting.

ARTICLE 5. ORGANIZATION OF THE STEERING COMMITTEE AND PROJECT TEAM

- 5.1 Horizon shall designate a "Project Director" who will be responsible to coordinate with any other parties to this Agreement on issues relating to the practical organization of the Winter Nursery. For UPR, such person shall be named the "Project Leader". The Horizon Project Director and the UPR Project Leader shall jointly be referred to as the "Steering Committee". The Steering Committee shall have no individual authority to modify the terms of the present Agreement, which can only be done by mutual agreement between the Parties.
- 5.2 The Horizon Project Director must inform the UPR Project Leader by September 1 of each calendar year of this Agreement what their respective desired planting date ranges will be for the fall/winter planting.
- 5.3 UPR Project Leader will have overall managerial and technical responsibilities for the Winter Nursery and will be responsible as the point of contact for coordinating, scheduling treatments for the crop, and reporting crop progress and weather conditions to designated Horizon Project Director(s.)
- 5.4 A Research Associate will assist the UPR Project Leader in carrying out the duties and daily supervision of the Personnel and overseeing the maintenance of the equipment and nursery area.

ARTICLE 6. RESPONSABILITIES OF THE PARTIES

- 6.1 UPR shall ensure that the Services shall be performed by qualified personnel, each expert in the particular Service they are assigned to perform (the "Personnel"). UPR will assign, supervise and pay the Personnel required to execute the Services. It will decide on the number and qualifications of the Personnel needed to perform the work planned during the growing season. At harvest, all effort will be made by UPR to have adequate staffing to complete harvest activities under an agreed upon schedule with Horizon.

- 6.2 UPR shall provide all standard supplies, equipment (except as noted in Article 7.2), land and other facilities necessary and required pursuant to good industry standard in order to perform the Service (jointly the "Environment"). In particular, UPR will develop a nursery area on a tract of land approximately fifteen (15) acres in size located on its main farm at Lajas Substation near Lajas, Puerto Rico. Thereafter, two and a half (2.5) of fifteen (15) acres will be kept in a state of readiness for planting from September 15 through December 15. This plot must likewise be kept in a state of readiness for planting through February 15.
- 6.3 UPR will have overall responsibilities to prepare plot area land in preparation for planting, keep plot area free of vegetation until planting, do proper drainage of plot area to facilitate timely planting, plant, condition and prepare for replanting, do proper drainage after flushing to encourage emergence, irrigate, control weeds, clear alleys, stake plot areas, fertilize, get netting up after initial heading to prevent bird damage, control pests/harvest and thresh, and prepare seed for shipment (including obtaining all customs clearance).
- 6.4 UPR shall have the sole responsibility for the timely delivery of the Services by the Personnel in the Environment, in strict compliance with the Work plan.
- 6.5 Horizon, or their respective agents, will for their own Rice Crop, coordinate the shipment and pay all costs associated with shipping seed to and from UPR.

ARTICLE 7. EQUIPMENT

- 7.1 The cost of normal operating supplies, equipment, maintenance, land maintenance and cultural input are the responsibility of UPR. Equipment maintenance will be the responsibility of UPR. Major repair of old equipment will be considered as part of the normal operating costs.
- 7.2 In the event additional equipment is required specifically for the Winter Nursery pursuant to this Agreement, the Parties shall consult to attempt to meet this need. Additional equipment specifically required for large quantity seed increase will be provided by Horizon. Neither party shall, however, be obligated to purchase, lease, or rent such equipment without a prior written agreement thereto. A list of all equipment so furnished will be kept by Horizon and UPR and updated on a bi-annual basis.
- 7.3 Ownership of fixed property (including but not limited to grain bins, auger equipment, drying fans, loading equipment and any other related items) shall remain with the Party having initially provided same. In the event of early termination by UPR, a specific remuneration at a standard depreciation schedule (fifteen year straight line) for the described fixed property that cannot be moved will be made by UPR to the property owner as per the terms of the Agreement.

- 7.4 A requirement for specialized equipment for special circumstances warranting unexpected expenses, such expenses may after prior written approved of Horizon, be covered as a special budget addendum agreed to by all Parties. Horizon reserves the right to review and verify any unexpected expenses as related to the project prior to any special payment being made.

ARTICLE 8. BUDGET AND COMPENSATION

- 8.1 Horizon agrees to make the following payments to UPR in according with the following Budget and Payment Schedule.

- 8.2 Payments shall be made by Horizon as a receipt of an individualized invoice provided by UPR, which date can however not be earlier than the timelines set out in Article 8.3 hereof. All payments shall be made payable to the "University of Puerto Rico, Agricultural Experiment Station".

- 8.3 Annual Budget

From September 1, 2005 to August 31, 2006:	\$25,000
From September 1, 2006 to August 31, 2007:	\$23,750
From September 1, 2007 to August 31, 2008:	\$25,000
From September 1, 2008 to August 31, 2009:	\$26,250
From September 1, 2009 to August 31, 2010:	\$27,500

- 8.4 Payment Schedule

Half of the relevant budget amount set out in Article 8.3 above shall be paid on September 1 of the budget year and the other half by January 30 of each budget year on receipt of invoice.

- 8.5 If for any reason less than two and a half (2.5) acres per year are planted as a total nursery area, the payment and budget will be reduced proportionally to the total of planted area, but it never be less than half of the original annual budget set forth herein.

- 8.6 If additional land area (i.e. more than two and a half (2.5) acres per year) is needed, and available, for seed increase/production purposes in any particular year, Horizon agrees to pay the UPR at the following rates:

- Head Rows - \$2.25 each with bird netting installed
- Bulk seed increase:
 - o \$5,300 per acre if bird netting is installed
 - o \$3,500 per acre without netting

- 8.7 Failure to adequately irrigation or provide control measures for disease or birds will result in a payment reduction proportional to area unharvestable at season's end.

- 8.8 The UPR Project Leader and the Research Associate will receive payment for their work as an additional compensation by 10% of time effort increase at their regular workload. These funds do not represent any additive monies outside the term of this agreement.

ARTICLE 9. INDEMNIFICATION

- 9.1 Subject to Article 9.2 below and to the permitted by the law of the Commonwealth of Puerto Rico, each Party hereto agrees to indemnify, defend, and hold the other Parties, its officers, directors, agents, and employees, harmless from and against any losses, liabilities and claims (excluding attorney fees) arising out of or resulting from the act, fault, omission, or negligence of such first Party or of its employees, contractors, or agents in performing its obligations under this agreement.
- 9.2 Except for gross negligence or willful misconduct, no Party hereto shall be liable to any other for any consequential, incidental or special damages or loss of profit out of it act, fault, omission or negligence.

ARTICLE 10. CONFIDENTIALITY OF INFORMATION

- 10.1 In order to allow the organization and conduct of the Winter Nursery, Parties envisage that information pertaining to the Material and information pertaining to the Parties' business will need to be disclosed. All information so disclosed by either Party to the others shall be considered as confidential unless expressly stated otherwise by the disclosing Party. All such confidential information shall be referred to hereinafter as "Information". Disclosure of Information shall be made in writing whenever possible. Any verbal disclosure of Information shall be confirmed in writing within thirty (30) days describing the Information and identifying the place and date of the disclosure and the person(s) to whom the disclosure was made.
- 10.2 The receiving Party undertakes to treat the Information disclosed to it as strictly confidential and secret and not to disclose same, directly or indirectly, to any persons except to the purpose of this Agreement and who have undertaken in writing similar obligations to those set forth in this Agreement.
- 10.3 The receiving Party shall assume responsibility for the observance of its obligations under this Agreement by all persons having or having had access to the Information through the receiving Party provided that nothing hereinabove contained shall deprive the Parties of the right to use or disclose any information which:
- was in the receiving Party's or one of its Affiliates' possession and at it free disposal prior to disclosure by the disclosing Party or one of its Affiliates; or

- was in the public domain at the time of disclosure by the disclosing Party; or
- subsequently comes into the public domain through no fault, action or omission of the receiving Party or one of its Affiliates: or
- Becomes available to the receiving Party or one of its Affiliates without any obligation of confidence from a third Party having the legal right to transmit the same.

10.4 The Material, received from Horizon will be kept strictly confidential by UPR and will not be disclosed or transferred to any other party, except to those employees of UPR to whom it will be strictly necessary to grant access to conduct the Service and who have executed undertakings securing their compliance with this Agreement.

In addition, UPR shall:

- Assume responsibility for the observance of its obligations by all persons having had access to the Material through UPR;
- exercise at least the same degree of care that it uses for its own proprietary information and biological material with respect to the Material;
- Maintain adequate security to prevent unauthorized disclosure, theft, loss or destruction of the Material.

10.5 All Material and Information provided by Horizon to UPR, or any data or reports prepared by UPR relating to Horizon Material (such data and reports also being considered as Information) are the sole property of Horizon. As such, UPR shall strictly apply the above confidentiality obligations also in its dealings with Horizon, so as to ensure that no Material and Information provided by Horizon, or any data or reports prepared by UPR on Horizon Material shall be disclosed to the Party who is not the owner thereof.

10.6 The receiving Party undertakes to stop using and to return promptly the Information, Material and all copies, notes and other material supports containing Information, as well as any progeny of the Material to the disclosing Party at the first written request, and in any case not later than ten (10) days after the termination or the expiry of this Agreement.

ARTICLE 11. PROPERTY

11.1 The Material remains property of the Party who provided it to UPR.

11.2 All Rice Crops produced under this Agreement are the sole property of the respective owner of the Material from which the rice crop was produced.

11.3 Only the owner of the Material and the Rice Crops is entitled to seek intellectual property protection thereon, if appropriate.

ARTICLE 12. TERMINATION/AMENDMENT OF AGREEMENT

- 12.1 This agreement may be terminated in whole or in part by either of the Parties, provided that the other Party is given: (a) at least thirty (30) days written notice of intent to terminate as well as (b) an opportunity for consultation with the terminating Party prior to termination.
- 12.2 In the event of early termination by Horizon, the total payments to UPR shall not be less than all costs incurred by UPR and non-cancelable commitments up to and including the last day of the notice period set out in Article 12.1, not to exceed the total amount budgeted pursuant to Article 8 for the remainder of this Agreement.
- 12.3 Horizon reserves the right, upon termination of pursuant to this Article 12 to recoup any equipment or capital investment they have contributed to the Winter Nursery under this Agreement from UPR. Horizon shall not remove any fixed property or materials without advance written notice and a description of said property or materials.
- 12.4 This Agreement may be amended only with written approval of all Parties.

ARTICLE 13. NOTICES

The designated Horizon Project Director shall be Mr. Randy Ouzts and the designated Project Leader for the UPR shall be Mr. Lucas N. Avilés.

All notices or communications that pertain to the Agreement shall be directed as follows:

University of Puerto Rico-Agricultural Experiment Station
Mr. Lucas N. Avilés,
HC 01 Box 11656, Lajas P.R. 00667
Tel. (787) 899-1530
Fax. (787) 899-1265
e-mail: lnaviles@uprm.edu

Horizon Ag, LLC
Mr. Randy Ouzts
General Manager
1661 International Drive, Suite 400
Memphis, TN 38120
Tel. (901) 818-3070
Fax. (901) 818-3117
e-mail: Ouzts@orygen.net

ARTICLE 14. GENERAL PROVISIONS

14.1 Applicable law and Jurisdiction

The Agreement shall be governed by and construed in accordance with the laws of Tennessee, except with regard to its law provisions.

14.2 Entireness of Covenants, Integration

This Agreement including its annexes, when dated and signed by each of the Parties, form an indivisible whole, comprising the entireness of what has been agreed between the Parties in connection with the subject matter of this Agreement and replacing and superseding all prior covenants between the Parties relating to the subject matter of this Agreement.

14.3 Amendments

This Agreement may be amended only by a written document signed by duly authorized representatives of the Parties.

14.4 Number of Copies

This Agreement is being executed in two (2) copies. Each of those copies shall be deemed to be an original and each Party shall retain such a signed original.

14.5 Descriptive Headings

The descriptive heading in this Agreement are for convenience only and shall not be interpreted so as to limit or affect in any way the meaning of the language in the pertaining Article, Section, Paragraph, or Sub-paragraph.

14.6 Assignability

No Party shall have the right to assign its rights and/or obligations under this Agreement to any third party without the prior written consent of the other Parties, except as expressly stated in this Agreement.

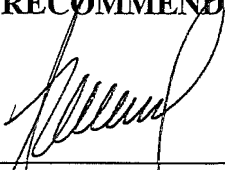
14.6.1 Severability

Should any provision of this Agreement be illegal, invalid or unenforceable under applicable law, the remaining provision had not been contained herein. The Parties shall attempt to negotiate a provision replacing such negotiations relating to any such provision that is material do not result in agreement within ninety (90) days, any Party shall have the right to terminate this Agreement by ninety (90) days written notice to the other Parties.

14.7 Ambiguities

Where there is any contradiction of ambiguity as between the ANNEXES and the written clauses of this Agreement, the clauses will take precedence.

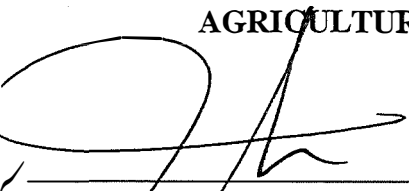
RECOMMEND APPROVAL:



Dr. John Fernández Van Cleve
Dean and Director
Agricultural Experiment Station
University of Puerto Rico, Mayaguez Campus

15-12-05
Date

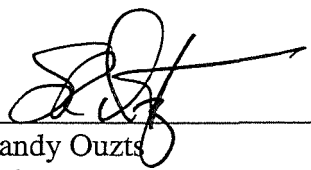
**APPROVED FOR THE UNIVERSITY OF PUERTO RICO
AGRICULTURAL EXPERIMENT STATION**



Dr. Jorge I. Vélez Arocho
Chancellor
University of Puerto Rico, Mayaguez Campus

Dec 21, 2005
Date

APPROVED FOR THE HORIZON AG LLC



Mr. Randy Ouzts
General Manager
Horizon Ag LLC
1661 International Drive Suite 400
Memphis , TN 38120

12/12/05
Date



UNIVERSIDAD DE PUERTO RICO
RECINTO UNIVERSITARIO DE MAYAGUEZ



OFICINA DE LA ASESORA LEGAL

Del escritorio de: *Tajani Rodríguez Bonilla*

832-4040 ext. 3557 ó 2484

A: Dr. Jorge I. Vélez Arocho

Fecha: 20 de diciembre de 2005

Asunto: CONTRATO

Para:

- Atención
- Consideración
- Acción correspondiente
- Firma
- Iniciar Página

OFICINA DE LA ASESORA LEGAL
2005 DEC 20 PM 3:40

ADJUNTO: RICE SEED PRODUCTION AGREEMENT (WINTER NURSERY)
BETWEEN THE UNIVERSITY OF PUERTO RICO, AGRICULTURAL
EXPERIMENT STATION AND HORIZON AG, LLC

*a Decano de Ciencias Agrícolas
22/ dic. 05*

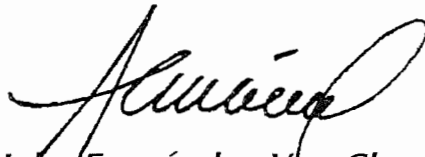
Universidad de Puerto Rico
Recinto Universitario de Mayagüez
COLEGIO DE CIENCIAS AGRÍCOLAS
Oficina del Decano y Director

TRÁMITE

2005 DEC 15 PM 3:12

OFIC. ASESOR LEGAL
RUM.

A : LCDA. ELVIA CAMAYD
Asesora Legal
Recinto Universitario de Mayagüez



DE : John Fernández Van Cleve
Decano y Director

ASUNTO : RICE SEED PRODUCTION AGREEMENT (WINTER NURSERY) BETWEEN
THE UNIVERSITY OF PUERTO RICO AGRICULTURAL EXPERIMENT
STATION AND HORIZON AG. LLC

CORRESPONDENCIA:

Re :
Fecha :
Recibo: 15 de diciembre de 2005

ACCIÓN : Para su atención y acción correspondiente.

Endosado: 15 de diciembre de 2005 9:53 Por: Keyllas K. Pérez Laboy

[x] Doc. Original

NOTA: Al contestar el asunto de referencia, favor de incluir copia de la presente hoja de trámite. ;Gracias!