
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): December 1, 2006

LANDEC CORPORATION

(Exact name of registrant as specified in its charter)

California

(State or other jurisdiction of incorporation or organization)

0-27446

(Commission file number)

94-3025618

(IRS Employer Identification No.)

3603 Haven Avenue, Menlo Park, California 94025

(Address of principal executive offices and zip code)

(650) 306-1650

(Registrant's telephone number,
including area code)

Not Applicable

(Former name or former address, if changed from last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into a Material Definitive Agreement.

On December 1, 2006, Landec Ag, Inc. ("Landec Ag"), a subsidiary of Landec Corporation ("Landec"), sold 100% of the outstanding capital stock of its wholly-owned subsidiary, FCD Holding Company ("FCD"), to American Seeds, Inc., a wholly-owned subsidiary of Monsanto Company ("ASI"), pursuant to a Stock Purchase Agreement by and among Landec, Landec Ag and ASI dated as of December 1, 2006 (the "Stock Purchase Agreement"). Pursuant to the Stock Purchase Agreement, ASI paid \$50,000,000 to Landec Ag upon the closing of the transactions contemplated by the Stock Purchase Agreement and is obligated to pay Landec Ag up to an additional \$5,000,000 (the "Earn-Out Amount") if FCD meets certain gross margin targets for the period from June 1, 2006 through May 31, 2007. Prior to December 1, 2006, Landec Ag had transferred the business, assets and liabilities related to its row-crop seed business (including the businesses relating to its Fielder's Choice Direct[®] and Heartland Hybrids[®] brands) to FCD. The Stock Purchase Agreement provides that the transaction will be treated as an asset sale under Section 338(h)(10) of the Internal Revenue Code.

In connection with the transactions consummated pursuant to the Stock Purchase Agreement, each of Landec and Landec Ag have agreed, for a period of five (5) years, other than for the benefit of ASI, not to engage in any business in the United States or Canada that competes with the business of FCD as conducted immediately prior to the consummation of the transactions. Each of Landec and Landec Ag have also agreed not to solicit customers or employees, consultants or agents of FCD and to maintain the confidentiality of information relating to FCD. The Stock Purchase Agreement also provides for indemnification obligations on behalf of the parties with respect to their representations, warranties and agreements made pursuant to the Stock Purchase Agreement.

The foregoing is a summary of the terms of the Stock Purchase Agreement and does not purport to be complete and is qualified in its entirety by reference to the full text of the Stock Purchase Agreement, a copy of which is attached hereto as Exhibit 10.70.

Landec has also entered into a License, Supply and R&D Agreement (the "License Agreement") dated as of December 1, 2006 among Landec, Landec Ag and Monsanto Company ("Monsanto"), pursuant to which Landec and Landec Ag have granted a five-year co-exclusive license to Monsanto to use Landec's Intellicoat[®] Seed Coating Technology. Pursuant to the License Agreement, Monsanto has agreed to pay a total of \$12,500,000 to Landec Ag over five years for such rights and has the right, at any time over the next five years, to purchase all of Landec Ag's outstanding shares of capital stock for an additional \$8,000,000. If Monsanto does not exercise its right to purchase all of Landec Ag's outstanding shares, or if Monsanto terminates the License Agreement at any time prior to the end of its term, Monsanto will pay to Landec Ag a termination fee in the amount of \$4,000,000 and all rights to the Intellicoat[®] Seed Coating Technology will revert back to Landec and Landec Ag. Monsanto has also agreed to pay Landec Ag a total of \$500,000 over five years for the manufacture and supply of polymer, a necessary component of the Intellicoat[®] technology.

The foregoing is a summary of the terms of the License Agreement and does not purport to be complete and is qualified in its entirety by reference to the full text of the License Agreement, a copy of which is attached hereto as Exhibit 10.71.

In addition, Landec approved the merger of Landec Merger Corporation, which owned in excess of 90% of the capital stock of Landec Ag, with and into Landec Ag with the result that Landec now owns 100% of the outstanding shares of Landec Ag. As a result of the merger, all previously outstanding shares of common stock of Landec Ag (other than shares held by Landec

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Merger Corporation) and options to purchase shares of common stock of Landec Ag have been converted into the right to receive \$5.62 per share (net of the applicable exercise price in the case of options) for an aggregate price of approximately \$7.3 million and a pro rata portion of any Earn-Out Amount paid to Landec Ag by ASI pursuant to the Stock Purchase Agreement.

Item 2.01. Acquisition or Disposition of Assets

The information in item 1.01 above describing the Stock Purchase Agreement and the transactions consummated thereby is hereby incorporated into this item 2.01.

Item 8.01. Other Events.

On December 4, 2006, Landec issued a press release announcing that it had entered into the Stock Purchase Agreement and the License Agreement. The press release is attached hereto as Exhibit 99.1 and is incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits

(b) Pro Forma Financial Information.

The unaudited *pro forma* consolidated financial statements, including the statements of operations for the year ended May 28, 2006 and quarter ended August 27, 2006, and the balance sheet as of August 27, 2006, are attached as Exhibit 99.2 hereto and incorporated in their entirety herein by reference.

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(d) Exhibits.

| <u>Exhibit</u> | <u>Description</u> |
|----------------|---|
| 10.70 | Stock Purchase Agreement dated as of December 1, 2006 by and among American Seeds, Inc., Landec Corporation and Landec Ag, Inc (the exhibits and schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K and will be provided to the Securities and Exchange Commission upon request). |
| 10.71 | License, Supply and R&D Agreement dated as of December 1, 2006 by and among Landec Corporation, Landec Ag, Inc. and Monsanto Company (the exhibits and schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K and will be provided to the Securities and Exchange Commission upon request). |
| 99.1 | Press Release by Landec Corporation dated December 4, 2006 announcing that it entered into the Stock Purchase Agreement and License Agreement. |
| 99.2 | Unaudited <i>pro forma</i> financial statements. |

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this Report to be signed on its behalf by the undersigned hereunto duly authorized.

LANDEC CORPORATION

Date: December 6, 2006

By: /s/ Gregory S. Skinner
Gregory S. Skinner
Vice President of Finance and
Chief Financial Officer

EXHIBIT INDEX

| <u>Exhibit</u> | <u>Description</u> |
|----------------|---|
| 10.70 | Stock Purchase Agreement dated as of December 1, 2006 by and among American Seeds, Inc., Landec Corporation and Landec Ag, Inc (the exhibits and schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K and will be provided to the Securities and Exchange Commission upon request). |
| 10.71 | License, Supply and R&D Agreement dated as of December 1, 2006 by and among Landec Corporation, Landec Ag, Inc. and Monsanto Company (the exhibits and schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K and will be provided to the Securities and Exchange Commission upon request). |
| 99.1 | Press Release by Landec Corporation dated December 4, 2006 announcing that it entered into the Stock Purchase Agreement and License Agreement. |
| 99.2 | Unaudited <i>pro forma</i> financial statements. |

STOCK PURCHASE AGREEMENT

by and among

AMERICAN SEEDS, INC.,

LANDEC CORPORATION

and

LANDEC AG, INC.

Dated December 1, 2006

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STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT is entered into on December 1, 2006, by and among AMERICAN SEEDS, INC., a Delaware corporation (“Buyer”), LANDEC CORPORATION, a California corporation (“Landec”), and LANDEC AG, INC. a Delaware corporation (the “Seller”). Capitalized terms are defined in Article 1.

RECITALS

A. The Seller is a subsidiary of Landec.

B. Prior to the execution and delivery, and in contemplation of the consummation of this agreement, Seller caused the row-crop seed (including corn, soybean and alfalfa) business of Seller, including, without limitation, the businesses of Fielder’s Choice Direct, Heartland Hybrids, and CRM (excluding, however, the Intellicoat® Seed Coatings business) and all assets of Seller and its affiliates which have been used in such business prior to the date hereof (collectively the “Transferred Business”) to be transferred to FCD HOLDING COMPANY, a Delaware corporation (the “Company”), by undertaking a corporate reorganization (the “Reorganization”) whereby (i) the Company assumed the Transferred Liabilities (as defined below), and (ii) Seller has transferred, or caused to be transferred, to the Company all of the assets used in, required for the operation of or relating to the Transferred Business (the “Transferred Assets”) free of any liens, security interests, or other claims, except the Transferred Liabilities and Permitted Liens.

C. As part of the Closing, Landec will cause a further corporate reorganization to be completed as a result of which the Seller will become a wholly-owned subsidiary of Landec, and all shares of the Seller now held by other parties will be converted solely into the right to receive cash in the amount to be provided in the reorganization documents.

D. Buyer desires to purchase from Seller, on the terms and conditions set forth herein, all of the issued and outstanding capital stock of the Company, which consists of 100 shares of common stock, par value \$.0001 per share (the “Shares”); and

E. Seller desires to sell the Shares to Buyer, and that the Shares be sold to Buyer, on the following terms and conditions.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, representations, warranties and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

The following terms shall have the meanings set forth below in this Article 1.

1.1 “338(h)(10) Election” has the meaning set forth in Section 5.2(d).

1.2 “Accounts Receivable” has the meaning set forth in Section 3.8.

1.3 “Action” has the meaning set forth in Section 3.11.

1.4 “Actual Knowledge” means, with respect to Landec, the Seller or the Company, the actual awareness of a particular fact by Gary Steele, Greg Skinner, Thomas Crowley, Michael Godlove, Dennis Schlott or William Gass.

1.5 “Affiliate” means, with respect to any Person, any other Person which is directly or indirectly controlling, controlled by, or under common control with such Person, and, if the Person referred to is a natural person, any member of such Person’s immediate family. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by Contract or otherwise.

1.6 “Aggregate Consideration” has the meaning set forth in Section 5.2(d).

1.7 “Agreement” means this Stock Purchase Agreement as amended or supplemented in accordance with its terms, including all Schedules and Exhibits hereto.

1.8 “Arbiter” has the meaning set forth in Section 2.4(c).

1.9 “Basket” has the meaning set forth in Section 6.6(a)(ii).

1.10 “Business Day” means any day which is not a Saturday, Sunday or legal holiday in the State of New York, United States of America.

1.11 “Buyer” has the meaning set forth in the first paragraph.

1.12 “Buyer Indemnified Persons” has the meaning set forth in Section 6.2.

1.13 “Cap” has the meaning set forth in Section 6.6(a)(iv).

1.14 “Closing” means the consummation of the transactions contemplated by this Agreement, as provided for in Section 2.3.

1.15 “Closing Date” means the date of this Agreement.

1.16 “Closing Payment” has the meaning set forth in Section 2.2.

1.17 “COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985 and regulations promulgated thereunder, as amended from time to time.

1.18 “Code” means the Internal Revenue Code of 1986 and regulations promulgated thereunder, as amended from time to time.

1.19 “Company” has the meaning set forth in the Recitals.

1.20 "Company Plans" has the meaning set forth in Section 3.27(a).

1.21 "Confidential Information" has the meaning set forth in Section 5.1(c).

1.22 "Contract" means any contract, agreement, understanding, lease, indenture, mortgage, deed of trust, evidence of indebtedness, binding commitment or instrument.

1.23 "Covered Loss" has the meaning set forth in Section 6.6(a)(i).

1.24 "Credit Agreement" has the meaning set forth in Section 3.4(b).

1.25 "CRM System" means all components of the customer relations software applications currently used in the Transferred Business, details of which have been provided to the Buyer by the Seller.

1.26 "Earn-Out Amount" has the meaning set forth in Section 2.4(b)(i).

1.27 "Earn-Out Period" means the fiscal period commencing June 1, 2006 and ending on May 31, 2007.

1.28 "Effective Time" means the effective time of the Closing, which shall be 11:59 p.m. Central time on the Closing Date.

1.29 "Environmental Claim" means any third party (including private parties, Government agencies and employees) action, lawsuit, claim or proceeding relating to the current or previous operations of Seller, with respect to the Transferred Business, the Company, or their predecessors, as applicable, which alleges potential liability for (i) noise; (ii) odor; (iii) mold; (iv) pollution or contamination of the air, surface water, groundwater or land; (v) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation; (vi) Hazardous Materials handling, treatment, storage, disposal or transportation; (vii) exposure to hazardous or toxic substances; (viii) non-compliance with the Toxic Substances Control Act; or (ix) non-compliance with any other Environmental Law. An "Environmental Claim" includes, without limitation, a proceeding to terminate a permit or license to the extent that such a proceeding attempts to redress violations of the applicable permit, license, Law or regulation as alleged by any federal, state or local regulatory or administrative agency, board or authority.

1.30 "Environmental Law" means all applicable Laws relating to pollution or protection of human health, safety, the environment, natural resources or Laws relating to releases or threatened releases of Hazardous Materials into the indoor or outdoor environment or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport or handling of Hazardous Materials, including the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. App. §1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.) and the Occupational Safety and Health Act (29U.S.C. §653 et seq.), and the regulations promulgated pursuant thereto, as amended from time to time, and their state law equivalents and common law

theories of nuisance, trespass, waste, negligence or abnormally dangerous activity arising out of or relating to Hazardous Materials.

1.31 “ERISA” means the Employee Retirement Income Security Act of 1974 and regulations promulgated thereunder, as amended from time to time.

1.32 “Excluded Assets” means those assets set forth on Schedule 1.32.

1.33 “Excluded Liabilities” means those Liabilities set forth on Schedule 1.33.

1.34 “Financial Statements” has the meaning set forth in Section 3.4.

1.35 “GAAP” means the accounting principles generally accepted in the U.S. and applied consistently throughout the periods involved.

1.36 “GMOs” means genetically modified organisms.

1.37 “Germplasm” means (a) hybrids, lines and varieties that (i) are in commercial use by Seller, with respect to the Transferred Business, or the Company, as applicable, (ii) are licensed by Seller, with respect to the Transferred Business, or the Company, as applicable, from third parties, (iii) are licensed by Seller, with respect to the Transferred Business, or the Company, as applicable, to third parties, or (iv) are in the pipeline for development by Seller, with respect to the Transferred Business, or the Company, as applicable, for commercial use as of the date of this Agreement and one year, two years or three years from commercialization; (b) parents used in the production of the hybrids, lines and varieties referred to in clause (a); (c) all hybrids, lines and varieties that are in testing or evaluation at any stage of development by Seller, with respect to the Transferred Business, or the Company, as applicable, anywhere in the world as of the date of this Agreement, whether such hybrids, lines and varieties are owned or licensed by Seller, with respect to the Transferred Business, or the Company, as applicable; and (d) the breeding populations and sources used to provide the hybrids, lines and varieties referred to in clause (c).

1.38 “Government” means the United States of America, any other nation or state, any U.S. State, any federal, bilateral or multilateral governmental authority, any possession, territory, local, county, district, city or other governmental unit or subdivision, and any branch, department, division, agency, or judicial body of any of the foregoing.

1.39 “Hazardous Materials” means any chemicals, materials or substances which are defined or regulated as dangerous, toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous or as a pollutant or contaminant under any Environmental Law.

1.40 “HIPAA” means the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder as amended from time to time.

1.41 “Incentive Plan Agreements” has the meaning set forth in Section 2.6(a).

1.42 “Income Taxes” means any Tax imposed upon or measured by net income or gross income (excluding any Tax based solely on gross receipts).

1.43 “Indemnified Party” has the meaning set forth in Section 6.4.

1.44 “Indemnifying Party” has the meaning set forth in Section 6.4.

1.45 “Intellectual Property” means all intellectual property, including all:

(a) patents, applications for patents, and rights to apply for patents in any part of the world;

(b) copyrights, design rights, topography rights, Internet domain names, and database rights whether registered or unregistered;

(c) trademark and service mark applications, registered trademarks and service marks, registered designations of origin, registered designations of geographic origin, refilings, renewals and reissues of the foregoing, unregistered trademarks and service marks, including common law trademarks and service marks, rights to trade dress and company names, in each case with any and all associated goodwill;

(d) plant breeders’ rights, including all plant variety protection certificates, and any applications for plant breeders’ rights in any part of the world; and

(e) all rights in respect of any Know How.

1.46 “Interim Balance Sheet” means the unaudited balance sheet of the Transferred Business as of October 22, 2006, which constitutes a part of the Financial Statements.

1.47 “IRS” means the United States Internal Revenue Service.

1.48 “Know How” means trade secrets and Confidential Information including details of supply arrangements, customer lists and pricing policy; sales targets, sales statistics, market share statistics, marketing surveys and reports; unpatented technical and other information including inventions, discoveries, processes and procedures, ideas, concepts, formulae, notebooks, specifications, procedures for experiments and tests and results of experimentation and testing; information comprised in software and materials; together with all common law or statutory rights protecting the same and any similar or analogous rights to any of the foregoing whether arising or granted under any Laws.

1.49 “Knowledge” means, with respect to Landec, the Seller or the Company, (i) the actual awareness of a particular fact by Gary Steele, Greg Skinner, Thomas Crowley, Michael Godlove, Dennis Schlott or William Gass or (ii) knowledge that would have been acquired by any of them after a commercially reasonable inquiry and investigation. The words “know,” “knowing” and “known” shall be construed accordingly.

1.50 “Law” means any statute, law, ordinance, decree, order, injunction, rule, directive, or regulation of any Government or quasi-governmental authority, and includes rules and

regulations of any regulatory or self-regulatory authority compliance with which is required by any of the foregoing.

1.51 “Leased Real Property” has the meaning set forth in Section 3.12(b).

1.52 “Liability” or “Liabilities” means all debts, adverse claims, liabilities and/or obligations, direct, indirect, absolute or contingent, whether accrued, vested or otherwise and whether or not reflected or required to be reflected on the financial statements of a Person.

1.53 “Lien” means any lien, security interest, mortgage, indenture, deed of trust, pledge, charge, adverse claim, easement, restriction or other encumbrance.

1.54 “Losses” has the meaning set forth in Section 6.2.

1.55 “Material Contracts” has the meaning set forth in Section 3.17(a).

1.56 “May Balance Sheet” has the meaning set forth in Section 3.4(a).

1.57 “Non-Competition Period” has the meaning set forth in Section 5.1(a).

1.58 “Notice of Dispute” means a written notice by Seller to Buyer delivered pursuant to Section 2.4, specifying in reasonable detail all points of disagreement with Buyer’s calculation of the Earn-Out Amount.

1.59 “Order” means an order, writ, injunction, or decree of any court or Government.

1.60 “Ordinary Course” means, with respect to the Transferred Business, the ordinary course of commercial operations customarily engaged in by the Transferred Business consistent with the prior practices of the Transferred Business.

1.61 “Owned Real Property” has the meaning set forth in Section 3.12(a).

1.62 “Party” means any of Landec, Seller and Buyer, and “Parties” means all of them.

1.63 “PBGC” means the Pension Benefit Guaranty Corporation.

1.64 “Pension Plan” means an employee pension benefit plan (within the meaning of ERISA Section 3(2)).

1.65 “Permitted Liens” means (i) the Transferred Liabilities and Liens securing such Transferred Liabilities which are disclosed on Schedule 1.65; (ii) any Lien securing payment of real estate taxes not delinquent; (iii) existing Liens with respect to the Owned Real Property or Leased Real Property that are described on Schedule 3.12(a) or 3.12(b), as applicable; and (iv) with respect to any leased personal property or Leased Real Property, (A) the rights and interest of each lessor as owner or otherwise under each related lease described on Schedule 3.12(b) and (B) Liens on the interest of each lessor through which the Company directly or indirectly derives its interest as lessee under the related lease.

1.66 “Person” means a natural person, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or Government.

1.67 “Plan” means any agreement, arrangement, plan, or policy, qualified or non-qualified, that involves any (a) pension, retirement, profit sharing, savings, deferred compensation, bonus, stock option, stock purchase, phantom stock, incentive plan, including any multiple employer plan or multiemployer plan (as defined in ERISA Section 3(37) or 4001(a)(3)) and including any such plan covering any employee or former employee outside the United States; (b) welfare or “fringe” benefits, including vacation, holiday, severance, disability, medical, hospitalization, dental, life and other insurance, tuition, company car, club dues, sick leave, maternity, paternity or family leave, health care reimbursement, dependent care assistance, cafeteria plan or other benefits; or (c) any employment, consulting, engagement, retainer or golden parachute agreement or arrangement, including any “employee benefit plan” as defined in ERISA Section 3(3).

1.68 “Pre-Closing Periods” has the meaning set forth in Section 5.2(b).

1.69 “Purchase Price” has the meaning set forth in Section 2.2.

1.70 “Reorganization” has the meaning set forth on the Recitals.

1.71 “Retained Business” means, collectively, the Excluded Assets, the Excluded Liabilities and all businesses of Seller, including, without limitation, the Intellicoat® Seed Coating business, not included in the Transferred Business.

1.72 “Seller Indemnified Persons” has the meaning set forth in Section 6.3.

1.73 “Seller” has the meaning set forth in the first paragraph.

1.74 “Shares” has the meaning set forth in the Recitals.

1.75 “StarLink” means corn which includes a Bt gene commonly designated as the Cry9C gene and/or the Cry9C protein, the Cry9C gene and/or any fragments of either, and/or any product containing the Cry9C protein and/or the Cry9C gene and any fragments of either.

1.76 “Taxes” means all taxes, charges, fees, levies, or other like assessments, including all Government income, profits, employment, franchise, gross receipts, sales, use, transfer, stamp, occupation, property, capital, customs, duties, ad valorem, value added and excise taxes, PBGC premiums and any other Government charges of the same or similar nature, including any interest, penalty or addition thereto, whether disputed or not.

1.77 “Tax Returns” means all reports and returns relating to or required by Law to be filed by or on behalf of Seller or Landec, with respect to the Transferred Business, or the Company, as applicable, in connection with any Taxes, and all information returns (e.g., Form W-2, Form 1099) and reports relating to Taxes and Taxes payable by, pursuant to or in connection with any Plans, including any amendment or supplement thereof.

1.78 "Territory" has the meaning set forth in Section 5.1(a).

1.79 "Third Person" has the meaning set forth in Section 6.5.

1.80 "Third Person Claim" has the meaning set forth in Section 6.5.

1.81 "Transferred Assets" has the meaning set forth in the Recitals and includes, without limitation, those assets listed on Schedule 1.81.

1.82 "Transferred Business" has the meaning set forth in the Recitals.

1.83 "Transferred Germplasm" has the meaning set forth in Section 3.20.

1.84 "Transferred IP" has the meaning set forth in Section 3.19.

1.85 "Transferred Liabilities" means (i) all amounts owed under the Credit Agreement as of the Closing Date, (ii) other liabilities of the type and in the amounts reflected on the Interim Balance Sheet; (iii) current liabilities incurred by the Transferred Business in the Ordinary Course and in compliance with the terms of the this Agreement from the date of the Interim Balance Sheet to the Closing; (iv) Seller's or the Company's obligations arising or attributable to any period after the Effective Time under Contracts constituting a part of the Transferred Assets; and (v) any other liabilities set forth on Schedule 1.85; *provided, however*, that Transferred Liabilities shall in no event include any of the Excluded Liabilities.

1.86 "Treasury Regulations" means the rules and regulations under the Code issued by the U.S. Department of the Treasury.

ARTICLE 2 PURCHASE AND SALE OF SHARES

2.1 Transfer of Shares. Upon the terms and subject to the conditions of this Agreement, on the Closing Date and as of the Effective Time, Seller shall sell, assign, transfer and convey to Buyer, and Buyer shall purchase, acquire and accept from Seller, all of Seller's right, title and interest in and to the Shares free and clear of all Liens.

2.2 Consideration. The consideration that Buyer shall pay to Seller for the Shares, the obligations of Seller under Article 5, and other rights of Buyer hereunder shall be Fifty Million Dollars (\$50,000,000.00) (the "Closing Payment") plus the Earn-Out Amount (together with the Closing Payment, the "Purchase Price").

2.3 Closing. The Closing shall take place at 3:00 p.m. on the Closing Date, effective as of the Effective Time, at the offices of Bryan Cave LLP, One Metropolitan Square, 211 N. Broadway, Suite 3600, St. Louis, Missouri 63102, or, if agreed by the Parties, by the exchange of faxed or scanned signature pages, wire transfer of funds, and communications via telephone, email, fax and other mutually acceptable means of telecommunication, with originals of signature pages to be exchanged by express delivery for receipt the business day following the Closing Date, or in such other manner and such place as the Parties may agree. At Closing, (a) Seller and Landec shall deliver or cause to be delivered to Buyer the documents identified in

Section 2.5 and (b) Buyer shall deliver to Seller (i) by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth on Schedule 2.3, the Closing Payment, and (ii) the documents identified in Section 2.6.

2.4 Earn-Out Payment.

(a) The Earn-Out Amount, if any, payable as part of the Purchase Price shall be determined and paid in accordance with the terms and provisions of this Section 2.4.

(b) For purposes of this Section 2.4, the following terms have the meanings defined below:

(i) "Earn-Out Amount" means the product of (A) the Earn-Out Fraction times (B) \$5,000,000.00

(ii) "Earn-Out Fraction" means:

(A) zero, if the Gross Margin is equal to or less than \$12,900,000.00; or

(B) a fraction having a numerator equal to the amount by which the Gross Margin exceeds \$12,900,000.00, and a denominator equal to \$700,000.00, if the Gross Margin exceeds \$12,900,000.00 and is less than or equal to \$13,600,000.00; or

(C) one, if the Gross Margin exceeds \$13,600,000.00.

(iii) "Gross Margin" means (A) the revenue of the Transferred Business for the Earn-Out Period, minus (B) the cost of goods sold of the Transferred Business for the Earn-Out Period.

(iv) "Earn-Out Period" means the fiscal year of the Transferred Business commenced June 1, 2006 and ending May 31, 2007.

(c) For purposes of calculating the Gross Margin for the Earn-Out Period, (i) the revenue and cost of goods sold of the Transferred Business (A) shall exclude any revenue or expense, regardless of materiality, that under GAAP is attributable to a prior period, (B) shall otherwise be accrued in accordance with GAAP as applied in a manner consistent with the preparation of the Financial Statements except for materiality limitations or qualifications under GAAP and (C) shall consist of revenue and cost for the Earn-Out Period of the types shown in the proforma calculation of Gross Margin set forth on Schedule 2.4, and (ii) net technology fees and genetic royalties payable to Monsanto Company or its Affiliates shall be adjusted, if necessary, to the amounts (net of seed service fees) that would be charged to Seller under the existing applicable license agreements, identified on Schedule 2.4, between Seller and Monsanto Company or its Affiliates, assuming that Seller continued to own the Transferred Business, and such agreements had remained in effect, throughout the entire Earn-Out Period.

(d) As an example of the calculation of the Earn-Out Amount, assuming actual Gross Margin were to equal the proforma amount of \$13,400,000 shown on Schedule 2.4, the Earn-Out Fraction would equal 71.43% (i.e., [$\$13,400,000 - \$12,900,000$]/ $\$700,000$), and the Earn-Out Amount would equal 71.43% times \$5,000,000, or \$3,571,500.

(e) Within sixty (60) calendar days following the end of the Earn-Out Period, Buyer shall at its expense prepare and deliver to Seller its reasonably detailed calculation of the Earn-Out Amount. Seller shall have access to such books and records as may be reasonably necessary to confirm Buyer's calculations, which calculations shall be derived from the Company's books and records.

(f) If Seller and Buyer do not reach written agreement on a final calculation of the Earn-Out Amount prior to expiration of the 30-day period after Seller's receipt of Buyer's calculation, the disputed items in Buyer's calculation shall be referred to the Indianapolis office of Crowe Chizek and Company LLC, or if such firm is unable or unwilling to act, such other reputable accounting firm that is mutually acceptable to the Parties (the "Arbiter"), as an arbitrator to finally determine, as soon as practicable, and in any event within 30 calendar days after such reference, all points of disagreement with respect to the calculation of the Earn-Out Amount. For purposes of such arbitration, Buyer and Seller shall each submit a proposed calculation of the Earn-Out Amount and relevant support for such calculation. The Arbiter shall apply the terms of this Section 2.4 and Schedule 2.4 in making its determination. The fees and expenses of the arbitration and the Arbiter incurred in connection with the calculation of the Earn-Out Amount shall be allocated between Buyer and Seller by the Arbiter based on the Arbiter's determination of the relative merit of the positions of the Parties; provided, that such fees and expenses shall not include, so long as Buyer or Seller, as applicable, complies with the procedures of this Section 2.4, the other Party's outside counsel or accounting fees. All determinations by the Arbiter shall, in the absence of fraud or manifest error, be final, conclusive and binding with respect to the calculation of the Earn-Out Amount and the allocation of arbitration fees and expenses.

(g) The payment of the Earn-Out Amount shall be made to Seller in accordance with the wire instructions set forth on Schedule 2.3 on the later of (i) July 31, 2007, or (ii) the date that is five (5) Business Days after the resolution of any dispute between Seller and Buyer relating to the amount of such payment; *provided*, that Buyer may deduct from the Earn-Out Amount any indemnification obligations then due to the Buyer from the Seller or Landec pursuant to Section 6.2.

2.5 Deliveries of Seller at Closing. At Closing, Seller shall deliver or cause to be delivered to Buyer:

(a) certificates representing all the Shares, duly endorsed to Buyer or its designated Affiliate in blank or accompanied by duly executed stock powers in blank;

(b) an opinion of Bose McKinney & Evans LLP, counsel to Seller, dated as of the Closing Date, in form and substance satisfactory to Buyer;

(c) the written resignation of each member of the Board of Directors of the Company, with such exceptions as may be specified by Buyer;

(d) a certificate of good standing of the Company, dated no more than five (5) Business Days prior to the Closing Date, from the Secretary of State of the State of Delaware;

(e) a certificate of good standing of Landec, as of a recent date, from the Secretary of State of California

(f) a certificate of good standing of Seller, dated no more than five (5) Business Days prior to the Closing Date, from the Secretary of State of Delaware;

(g) evidence of the validly completed transfer to the Company of the Transferred Business and the Transferred Assets, in form and substance satisfactory to Buyer;

(h) the written release of all Liens (except Permitted Liens) relating to the Transferred Assets executed by the holder of or parties to each such Lien, which releases shall be satisfactory in substance to Buyer;

(i) evidence satisfactory to the Buyer that the payment obligations of Seller under the Credit Agreement have been assigned and transferred to, and assumed by, the Company, with the consent of the lender;

(j) all share transfer books, minute books and other corporate records of the Company;

(k) properly completed IRS Form 8023 executed by Landec; and

(l) such other customary documents, instruments or certificates as shall be reasonably requested by Buyer and as shall be consistent with the terms of this Agreement.

2.6 Deliveries of Buyer at Closing. At Closing, Buyer shall deliver or cause to be delivered:

(a) to each of Thomas Crowley, Michael Godlove, Dennis Schlott and William Gass, the applicable incentive plan letters in a form satisfactory to Buyer to each of Thomas Crowley, Michael Godlove, Dennis Schlott and William Gass (collectively, the "Incentive Plan Agreements"), duly executed on behalf of Buyer;

(b) to Seller, a certificate of good standing of Buyer, dated no more than five (5) Business Days prior to the Closing Date, from the Secretary of State of the State of Delaware;

(c) to Seller, such other customary documents, instruments or certificates as shall be reasonably requested by Seller and as shall be consistent with the terms of this Agreement;

(d) to Landec, an undertaking, in form satisfactory to Landec, confirming that the Buyer will cause the Company to repay in full the indebtedness outstanding under the Credit Agreement, promptly following the Closing Date; and

(e) to Seller, the Closing Payment by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth on Schedule 2.3.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER AND LANDEC

Seller and Landec hereby jointly and severally make the following representations and warranties to Buyer, each of which is true and correct on the date hereof and shall survive the Closing and the transactions contemplated hereby to the extent set forth herein.

3.1 Corporate Existence and Power.

(a) Each of Landec, Seller and the Company is a corporation duly organized, validly existing and in good standing under the Laws of the state of its state of incorporation as set forth on Schedule 3.1(a). Seller has delivered to Buyer true, complete and correct copies of the articles of incorporation and bylaws, as currently in effect, of the Company.

(b) The Company has, and the Seller has had with respect to the Transferred Business, all requisite corporate power and authority to own, lease and use their respective assets and to transact the Transferred Business, and hold all authorizations, franchises, licenses, permits and approvals required therefor, all of which are valid and in full force and effect. The Seller, with respect to the Transferred Business, has been duly licensed or qualified to do business as a foreign corporation and is in good standing in the jurisdictions listed on Schedule 3.1(b). The Seller has not been with respect to the Transferred Business, required to be registered, licensed or qualified to do business in any other jurisdiction; *provided* that the period with respect to which the representation and warranty in this sentence is made, and with respect to which Buyer shall be entitled to rely, shall not extend beyond the Effective Time, and Buyer shall be responsible for making its own determination regarding the jurisdictions in which the Company is to be registered, licensed or qualified to do business after the Effective Time.

(c) Each of Seller and Landec has the full power, authority and capacity to execute and deliver this Agreement, to perform its respective obligations hereunder, and to consummate the transactions contemplated hereby.

3.2 Valid and Enforceable Agreement; Non-contravention.

(a) This Agreement has been duly executed and delivered by Seller and Landec and constitutes a legal, valid and binding obligation of Seller and Landec, enforceable against each of them in accordance with its terms, except that such enforcement may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally, and (ii) general principles of equity. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of each of Seller and Landec.

(b) Except as set forth on Schedule 3.2(b), neither the Company nor Seller is a party to, subject to or bound by any Contract, Law or Order which does or would (i) conflict with or be breached or violated or accelerated or increased by the execution, delivery or performance by Seller or Landec of this Agreement, or (ii) prevent the carrying out of the transactions contemplated hereby. Except as set forth on Schedule 3.2(b) or as specifically indicated on Schedule 3.17(a), no permit, consent, waiver, approval or authorization of, or declaration to or filing or registration with, any Government authority or third party is required in connection with the execution, delivery or performance of this Agreement by Seller or Landec or the consummation by Seller of the transactions contemplated hereby under any agreement to which Seller or Landec is a party. The transactions contemplated hereby will not result in the creation of any Lien against any part of the Transferred Business.

3.3 Capitalization and Ownership.

(a) The authorized capital stock of the Company and the names, addresses and holdings of the record holders thereof are set forth on Schedule 3.3(a). Seller is the sole owner of the Shares, whether of record or beneficially, and the Shares constitute the only issued and outstanding capital stock of the Company. Upon purchase and payment therefor and delivery to Buyer thereof in accordance with the terms of this Agreement, the Shares shall be transferred free and clear of all Liens at Closing. All of the Shares were duly authorized and validly issued and are fully paid and non-assessable without restriction on the right of transfer thereof. Except for Buyer's rights pursuant to this Agreement, (i) there are no issued and outstanding (A) securities of the Company other than the Shares or (B) warrants, preemptive rights, other rights, or options with respect to any securities of the Company, and (ii) neither the Company nor Seller is subject to any obligation to issue, acquire or retire any securities of the Company.

(b) The Company does not have any subsidiaries or otherwise own, directly or indirectly, any capital stock or other equity interest in any Person.

3.4 Financial Statements; Credit Agreement.

(a) True and complete copies of

(i) (x) the audited consolidated balance sheets of Landec and its affiliates as of May 28, 2006, (y) the related statements of income and loss for the 12- month period then ended, and (z) together, as to all the foregoing, with any notes or schedules thereto (together, the "Landec Financial Statements"), and

(ii) (x) the unaudited balance sheet of the Transferred Business as of May 28, 2006, a copy of which is attached hereto as Schedule 3.4 (the "May Balance Sheet"), and (y) the related statement of income and loss for the fiscal year then ended, and (z) the unaudited balance sheet of the Transferred Business as of October 22, 2006, and the related statement of income and loss for the five-month period then ended (collectively, the "Transferred Business Financial Statements" and, together with the Landec Financial Statements, the "Financial Statements"),

have been delivered to Buyer. All such Financial Statements (x) were derived from the books and records of Landec and (y) have been prepared in conformity with GAAP and present fairly

in all material respects the financial position and results of operations of Landec and of the Transferred Business, as applicable, at the dates and for the periods indicated, except that the Transferred Business Financial Statements do not include notes and related disclosures required by GAAP or statements of cash flows.

(b) Amounts which will remain outstanding as of the Closing Date under the Credit Agreement dated as of June 5, 2000, as previously amended by the First through Sixth Amendments to such agreement, and as amended or replaced by the Business Loan Agreement dated as of August 29, 2006 (collectively, the "Credit Agreement"), between Seller and Old National Bank, represent advances which have been applied in the Ordinary Course to payment of operating expenses of Seller incurred during the period from May 29, 2006 to the Closing Date, except for an advance in the amount of \$1,000,000, details of which have been provided by Landec to Buyer. A prepayment of principal under the Credit Agreement will be made by Landec, out of funds unrelated to the operations of the Transferred Business, between the date of the Interim Balance Sheet and the Closing Date, in the amount of \$500,000, and any excess cash of Landec or Seller generated by the Transferred Business during the period from May 29 to the Closing Date will be applied in payment of amounts outstanding under the Credit Agreement. The principal amount outstanding under the Credit Agreement as of the Closing Date will not exceed \$10,000,000.

3.5 Subsequent Events. Since October 22, 2006, except as set forth on Schedule 3.5 and except as contemplated in this Agreement, there has been no:

- (a) Material change or event relating to the business or condition (financial or otherwise), operations, results of operations, assets or prospects of the Transferred Business;
- (b) change in the relationship with any supplier, customer, distributor, lessor, licensor, licensee or other third party which is material to the Transferred Business;
- (c) declaration, setting aside, or payment of any dividend or any distribution with respect to any securities of the Company;
- (d) transfer of any cash or material assets relating to the Transferred Business from Seller to Landec;
- (e) increase in or commitment to increase compensation, benefits, or other remuneration to or for the benefit of any employee, shareholder, director, officer, or agent of the Transferred Business, or any benefits granted under any Plan with or for the benefit of any such employee, shareholder, director, officer, or agent, other than in the Ordinary Course;
- (f) transaction entered into or carried out by the Company or Seller in connection with the Transferred Business or any Transferred Assets or securities of the Company other than in the Ordinary Course, or any agreement to sell or dispose of any material Transferred Assets;
- (g) loan or advance by the Seller with respect to the Transferred Business, or by the Company, to any third party except for advances not in excess of \$5,000 made in the Ordinary Course to its employees;

(h) change made with respect to the Transferred Business or the Company in their respective Tax or financial accounting or any Tax election; or

(i) commitment or agreement by Seller or the Company to do any of the foregoing items 3.5(a) through 3.5(h) (or Landec with respect to Section 3.5(h)).

3.6 Undisclosed Liabilities. The Company and the Transferred Business do not have any Liabilities whatsoever, known or unknown, asserted or unasserted, liquidated or unliquidated, accrued, absolute, contingent, or otherwise, and there is no basis for any claim against the Company for any such Liability, except for the Transferred Liabilities.

3.7 Taxes. Except as set forth on Schedule 3.7:

(a) Each of Seller and the Company has filed on a timely basis all Tax Returns required to be filed prior to the date hereof, and such Tax Returns are true, correct and complete in all respects. Without limiting the foregoing, none of these Tax Returns contains any position that is, or would be, subject to penalties under Section 6662 of the Code (or any corresponding provisions of state or local Tax Law). Each of Seller and the Company has not entered into any "listed transactions" as defined in Section 1.6011-4(b)(2) of the Treasury Regulations, and it has properly disclosed all reportable transactions as required by Section 1.6011-4 of the Treasury Regulations.

(b) The Company is not currently the beneficiary of any extension of time within which to file any Tax Return.

(c) All Taxes due and owing by each of Seller and the Company (whether or not reflected on any Tax Return) have been timely and fully paid and there are no grounds for the assertion or assessment of additional Taxes against the Company or its assets.

(d) Each of Seller and the Company has timely and properly withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, shareholder or other third party.

(e) There are no Liens for Taxes, other than Permitted Liens, upon any Transferred Assets.

(f) The Company is not a party to or bound by any Tax indemnity, Tax sharing or Tax allocation agreement or arrangement.

(g) The Company has never been an "S corporation" within the meaning of Section 1361(a)(1) of the Code or a "qualified subchapter S subsidiary" within the meaning of Section 1361(b)(3)(B) of the Code.

(h) The Company is not a party to or a partner in any joint venture, partnership or other arrangement or Contract that could be treated as a partnership for federal Income Tax purposes.

(i) No Government Tax audits or administrative or judicial Tax proceedings are pending or being conducted with respect to Seller, Landec or, with respect to the Transferred Business, the Company.

(j) None of Landec, Seller or, with respect to the Transferred Business, the Company have received from any Government Tax authority any (i) notice indicating an intent to open an audit or other review; (ii) request for information related to Tax matters; or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted, or assessed by any Tax authority against Seller, Landec or, with respect to the Transferred Business, the Company.

(k) None of Landec, Seller or, with respect to the Transferred Business, the Company has waived any statutes of limitation in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(l) True, correct and complete copies of all Income Tax Returns, Tax examination reports and statements of deficiencies assessed against, or agreed to with respect to Seller, Landec and, with respect to the Transferred Business, the Company for any of the last three years with the IRS (or any other taxing authority) have been made available to Buyer.

(m) The Company is not a party to any Contract, arrangement or Plan that has resulted or would result in a payment that would not be fully deductible as a result of Section 162(m) of the Code (determined without regard to whether the Company is a publicly held corporation within the meaning of Section 162(m)(2) of the Code) or Section 280G of the Code (determined without regard to the reasonableness of any such compensation) or any provision of Law similar to either such provision.

(n) None of the Transferred Assets is property that the Company is required to treat as being a “safe harbor lease” within the meaning of Section 168(f)(8) of the Code, as in effect prior to amendment by the Tax Equity and Fiscal Responsibility Act of 1982.

(o) None of the Transferred Assets has been financed with or directly or indirectly secures any debt the interest on which is Tax-exempt under Section 103(a) of the Code. The Company is not a borrower or guarantor of any outstanding industrial revenue bonds, and the Company is not a tenant, principal user or related person to any principal user (within the meaning of Section 144(a) of the Code) of any property that has been financed or improved with the proceeds of any industrial revenue bonds.

(p) None of the Transferred Assets is “tax-exempt use property” within the meaning of Section 168(h) of the Code.

(q) The Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (i) change in method of accounting for a taxable period ending on or prior to the Closing Date; (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state or local Income Tax Law) executed on or prior to the Closing Date; (iii) installment sale or open transaction disposition made on or prior to the Closing Date; or (iv) prepaid amount received on or prior to the Closing

Date except to the extent of the amount of deferred revenue constituting a part of the Transferred Liabilities.

(r) The Company is, and has been since the date of its initial issuance of capital stock, a member of the affiliated group (within the meaning of Section 1504(a) of the Code or any similar group defined under a similar provision of state, local or foreign law) of which Landec is the common parent and the Company will be a member of such affiliated group through and including the Closing Date. Except for its liability for Taxes of the members of such affiliated group as and to the extent provided in Treasury Regulation Section 1.1502-6 (or similar provision of state or local Law), the Company does not have any liability for the Taxes of any Person under Treasury Regulation Section 1.1502-6 (or similar provision of state or local Law) as a transferee or successor, by Contract or otherwise.

(s) Landec is eligible to make an election under Section 338(h)(10) of the Code (or any comparable election under state, local or foreign tax law) with respect to the Company.

(t) Neither the Company nor its subsidiaries, if any, have constituted a “distributing corporation” or a “controlled corporation” within the meaning of Section 355(a)(1)(A) of the Code in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code.

(u) Neither the operation of the Business nor the ownership of the Transferred Assets creates nexus for state Tax purposes in any jurisdiction other than Indiana; provided that the period with respect to which the representation and warranty in this Subsection (u) is made, and with respect to which Buyer shall be entitled to rely, shall not extend beyond the Effective Time, and Buyer shall be responsible for making its own determination regarding such nexus for all periods after the Effective Time.

3.8 Accounts Receivable. Set forth on Schedule 3.8 is a true and complete list of all accounts receivable of the Transferred Business as of October 22, 2006. As used in this Agreement, “Accounts Receivable” means such accounts receivable and any other accounts receivable relating to the Transferred Business arising during the period from October 23, 2006 to the Closing Date. The open orders relating to the Transferred Business will become (i) Accounts Receivable upon shipment prior to the Effective Time, and (ii) additional accounts receivable of the Company upon shipment after the Effective Time. The Accounts Receivable are valid, genuine and existing and arose from bona fide sales of products or services actually made in the Ordinary Course. Except as set forth on Schedule 3.8, the Accounts Receivable are and will be current and fully collectible, net of the amount of reserves shown in respect of receivables on the Interim Balance Sheet.

3.9 Inventories. The inventory included in the Transferred Assets as of the Closing Date will comply with the generally applicable industry germination standards, and with the Seller’s historic germination standards, will not be physically damaged, and will be in compliance with all applicable Law, whether domestic or foreign, and in conformity with all applicable product registrations and specifications.

3.10 No Breach of Law, Governing Documents, Licenses or Permits. Except as set forth on Schedule 3.10, (a) neither Seller nor the Company is, in any material respect, in default under or in breach or violation of any Law or the provisions of any permit, franchise or license held by it with respect to the Transferred Business, or any provision of its governing documents; (b) neither the Company nor Seller has received any notice alleging such default, breach or violation; and (c) neither the execution of this Agreement nor the Closing does or will constitute or result in any such default, breach or violation.

3.11 Litigation. Except as set forth on Schedule 3.11, with respect to the Transferred Business, (a) there is no, and for the previous five years there has not been any, suit, claim, litigation, proceeding, Government or grand jury investigation, or other action (any of the foregoing, an “Action”) pending or, to the Knowledge of Landec, Seller or the Company, threatened, anticipated or contemplated against the Company or involving the Transferred Business, the real or personal property included in the Transferred Assets, or the Company’s or Seller’s shareholders, directors, officers, agents, or other personnel in their capacity as such; (b) Seller and the Company are not nor have been subject to any Order other than Orders of general applicability; and (c) neither Seller nor the Company has been subject to or, to the Knowledge of Landec, Seller or the Company, threatened to be subject to, and there are no grounds for, any Action or Order relating to personal injury, death, or property or economic damage arising from products sold, licensed or leased, or services performed, by Seller or Landec, with respect to the Transferred Business, or the Company.

3.12 Owned and Leased Real Property.

(a) Set forth on Schedule 3.12(a) is a list of the real property owned by the Company (the “Owned Real Property”), together with the legal description of each parcel of Owned Real Property, a description of the title insurance policy or a description of other evidence of title issued with respect thereto and a description of the type of use of each such parcel. Except for Permitted Liens and Liens set forth on Schedule 3.12(a), none of which are substantial in character or amount and none of which detract from the value or interfere with the use of the property in any material way, the Company has good and marketable title to the Owned Real Property, free and clear of all options, rights of first refusal, rights to acquire or occupy, licenses, restrictions, leases, covenants, conditions, easements, agreements, encumbrances, claims, and other Liens of every kind and there exists no restriction on the use or transfer of such property. No shareholder of the Company has any interest in, or any right or obligation to acquire any interest in, the Owned Real Property. The Company does not lease (as the lessor), sublease or permit any third party to occupy or use any Owned Real Property.

(b) Set forth on Schedule 3.12(b) is a description of each lease pursuant to which the Company is the lessee of any real property (the “Leased Real Property” and, together with the Owned Real Property, the “Real Property”). The Company has made available to Buyer a true, correct and complete copy of each lease identified on Schedule 3.12(b). Except as set forth on Schedule 3.12(b), all rentals due under such leases have been paid and there exists no default by the Company or by any other party to such leases under the terms of such leases and no event has occurred which, upon passage of time or the giving of notice, or both, would result in any event of default by the Company or by any other party to such leases, or prevent the Company from exercising and obtaining the benefits of any rights or options contained therein.

Except as set forth on Schedule 3.12(b), the Company has all right, title and interest of the lessee under the terms of each lease pursuant to which the Company is the lessee, free of all Liens other than Permitted Liens, and all such leases are valid and in full force and effect. The Company does not sublease (as sublessor or sublessee) or permit any third party to occupy or use any Leased Real Property.

(c) There is no proposed, pending or threatened change in any code, ordinance, regulation, standard or zoning classification which would, or may reasonably be expected to have, an adverse effect on any Owned Real Property or, to the Actual Knowledge of Landec, Seller or the Company, any Leased Real Property.

(d) There is no pending or threatened condemnation proceeding against the Owned Real Property or, to the Actual Knowledge of Landec, Seller or the Company, any Leased Real Property. No part of any improvements on the Owned Real Property encroaches upon any property adjacent thereto or upon any easement, nor is there any encroachment or overlap upon the Owned Real Property other than Permitted Liens. To the Actual Knowledge of Landec, Seller or the Company, no part of any improvements on the Leased Real Property encroaches upon any property adjacent thereto or upon any easement, nor, to the Actual Knowledge of Landec, Seller or the Company, is there any encroachment or overlap upon the Leased Real Property other than Permitted Liens.

(e) There has been no cleanup performed on the Owned Real Property which would entitle a third party to a lien for reimbursement of its cleanup costs. To the Actual Knowledge of Landec, Seller and the Company, there has been no cleanup performed on the Leased Real Property which would entitle a third party to a lien for reimbursement of its cleanup costs at any time during which the leases identified on Schedule 3.12(b) have been in effect or at any other times. No part of the Owned Real Property or, to the Actual Knowledge of Landec, Seller or the Company, the Leased Real Property is in a condition which would require a cleanup that could result in such a lien.

3.13 Personal Property Leases. Set forth on Schedule 3.13 is a description of each lease relating to leased personal property used in the Transferred Business (the "Leased Personal Property") having annual lease payments in excess of \$25,000 and the location of such property. Seller has made available to Buyer a true, correct and complete copy of each lease identified on Schedule 3.13. Except as set forth on Schedule 3.13, all rentals due under such leases have been paid and there exists no default by Seller, with respect to the Transferred Business, by the Company or, to the Knowledge of Landec, Seller or the Company, by any other party to such leases under the terms thereof and no event has occurred which, upon passage of time or the giving of notice, or both, would result in any event of default by the Company or, to the Knowledge of Landec, Seller or the Company, by any other party to such leases, or prevent the Company from exercising and obtaining the benefits of any rights or options contained therein. Except as set forth on Schedule 3.13, the Company has all right, title and interest of the lessee under the terms of each lease pursuant to which Seller or Landec, with respect to the Transferred Business, or the Company is the lessee, free of all Liens other than Permitted Liens and all such leases are valid and in full force and effect.

3.14 Title to Assets; Necessary Property.

(a) Except as set forth on Schedule 3.14(a), (i) the Company has good and marketable title to and is the sole and exclusive owner of all right title and interest in and to all of the real and personal property used by it to conduct the Transferred Business (limited, however, in respect of the Leased Real Property and the Leased Personal Property to only the lessee's interest upon and subject to the terms and conditions of the leases disclosed on Schedule 3.13 and Schedule 3.12(b)), including in each case all personal property reflected on the Financial Statements or acquired after the date thereof (except any personal property subsequently sold in the Ordinary Course), free and clear of all Liens except Permitted Liens; (ii) there exists no condition, restriction or reservation affecting the title to or utility of the Transferred Assets which would prevent the Company or Buyer from utilizing the Transferred Assets after the Closing to the same full extent that Seller might continue to do so if the transactions contemplated hereby did not take place (provided, however, to the extent the representation and warranty in this clause (ii) shall relate to the Leased Real Property, the same shall be made to the Knowledge of Landec, Seller or the Company); and (iii) all of the Transferred Assets are suitable for the purposes for which they are being used and are in good operating condition and repair, subject to ordinary and normal wear and tear, as reasonably required for their use in the operation of the Transferred Business as presently conducted. The foregoing representations and warranties shall not, however, apply to the Intellectual Property, and the only representations and warranties of Seller and Landec regarding the Intellectual Property are set forth in Section 3.19.

(b) Except for the Excluded Assets, the Transferred Assets constitute all of the property and property rights used in or necessary to operate the Transferred Business in the manner and to the extent conducted by the Seller.

3.15 Licenses and Permits. Except as set forth on Schedule 3.10 and/or Schedule 3.17(a), Seller, with respect to the Transferred Business, and the Company are in compliance in all material respects with all licenses, permits and other authorizations and approvals required for the conduct of the Transferred Business and upon Closing the Company will have all right and authority to conduct its activities pursuant to such licenses and permits. No such license or permit has been, or, to the Knowledge of Landec, Seller or the Company, is threatened to be, revoked, canceled, suspended or modified.

3.16 Environmental Matters. Except as set forth on Schedule 3.16:

(a) The operations of the Transferred Business comply with, and have been in compliance with, all Environmental Laws. Seller, with respect to the Transferred Business, and the Company have, and have had, all licenses, permits, authorizations, registrations and other approvals required under any Environmental Law and required for the operation of the Transferred Business, and Seller and the Company are, and have been, in compliance with all terms and conditions thereof. Neither Seller nor the Company, nor any of the properties or operations of the Transferred Business, is subject to any written order from or agreement with any Government authority, nor subject to any proceeding, respecting any Environmental Law, Environmental Claim or Hazardous Material. Neither Seller nor the Company nor Landec has received any communication in any form from a Government agency or other third party alleging that the Company, the Transferred Business, or Seller with respect to the Transferred Business,

is, or was, not in compliance with any Environmental Law. To the Knowledge of Landec, Seller or the Company, there are no circumstances that may prevent or interfere with compliance by Buyer or the Company with any Environmental Laws or anticipated changes in Environmental Laws applicable to the operations of the Transferred Business after Closing. There are no Hazardous Materials or other conditions or circumstances existing with respect to any property, arising from operations or relating to any Hazardous Material or waste disposal or release, of the Transferred Business that would reasonably be expected to result, either individually or in the aggregate, in a material Environmental Claim. Seller and, with respect to the Transferred Business, the Company do not have any underground storage tanks that are, nor previously had any underground storage tanks that were, not properly registered or permitted under applicable Environmental Laws or that at any time have released, leaked, disposed of or otherwise discharged Hazardous Materials. There are no asbestos containing materials or PCBs on the Owned Real Property or, to the Knowledge of Landec, Seller or the Company, the Leased Real Property. Seller has made available to Buyer true and accurate copies of all safety and environmental reports and investigations of the current and previous operations of the Transferred Business.

(b) The Company has not assumed the liability of any other Person, nor has the Company agreed to indemnify any other Person, for claims arising out of the release of Hazardous Materials into the environment or any other claims under Environmental Laws.

(c) None of the Owned Real Property or, to the Actual Knowledge of Landec, Seller or the Company, the Leased Real Property is located on, adjacent to or adjoining any area that is or may be considered a wetland under the federal Clean Water Act (33 U.S.C. § 1251 et seq.) or any other Environmental Law.

3.17 Contracts and Commitments.

(a) Schedule 3.17(a) lists all of the following Contracts, whether written or oral, to which the Company is a party or which relate to the Transferred Business ("Material Contracts"):

(i) Any Contract providing for the sale of products or the provision of services by Seller (with respect to the Transferred Business) or the Company in excess of \$50,000;

(ii) Any Contract providing for an expenditure by Seller (with respect to the Transferred Business) or the Company in excess of \$50,000;

(iii) any license agreement pursuant to which Seller or the Company, as licensee or licensor, licenses any Transferred Germplasm, any traits included in any Transferred Germplasm, or any other Intellectual Property;

(iv) Any purchase commitment in excess of the normal requirements of the Transferred Business or at a price in excess of the current reasonable market price at the time of such commitment;

(v) Any power of attorney granted by Seller, with respect to the Transferred Business, or the Company to any Person;

(vi) Any loan agreement, indenture, promissory note, conditional sales agreement, mortgage, security agreement, pledge, letter of credit arrangement, guarantee or other similar type of agreement;

(vii) Any arrangement or other agreement (not otherwise required to be listed on Schedule 3.17(a)) under any other clause of this Section 3.17(a) which involves (A) a sharing of profits, (B) future payments of \$50,000 or more per annum to other Persons, or (C) any joint venture, partnership or similar Contract or arrangement;

(viii) Any sales agency, sales representation, consultant, distributorship or franchise agreement that is not terminable by the Company without penalty within 60 days;

(ix) Any Contract providing for the payment of any cash or other benefits upon the sale or change of control of the Company or the sale of a substantial portion of the Company's or the Seller's assets;

(x) Any Contract prohibiting competition, prohibiting the Company from freely engaging in any business anywhere in the world, or prohibiting the disclosure of trade secrets or other confidential or proprietary information;

(xi) Any Contract or commitment not made in the Ordinary Course; or

(xii) Any other Contract or commitment which is not cancelable by the Company without penalty on 60 days' notice or less.

(b) Neither Seller nor Landec, with respect to the Transferred Business, nor the Company has received any notice of any intention to terminate, repudiate or disclaim any Material Contract.

3.18 Validity of Contracts. Except as set forth on Schedule 3.18, (a) each of the Material Contracts is a valid, binding and enforceable obligation of the Company and, to the Knowledge of Landec, Seller or the Company, the other parties thereto, in accordance with its terms and conditions; and (b) neither Seller, with respect to the Transferred Business, nor the Company is, and, to the Knowledge of Landec, Seller or the Company, no other party to a Material Contract is, in breach or default under any Material Contract. Seller has delivered to Buyer a true, complete and accurate copy of each Material Contract.

3.19 Intellectual Property. Schedule 3.19 accurately describes and lists all (i) Intellectual Property owned by the Company (other than unregistered copyrights) and (ii) all licensed Intellectual Property included in the Transferred Assets or material to the Transferred Business (collectively, together with any unregistered copyrights included in the Transferred Assets, the "Transferred IP"). Except as set forth on Schedule 3.19:

- (a) The Company is the sole owner of the Transferred IP identified on such Schedule as owned by it, free and clear of all Liens except Permitted Liens, and all such items are valid, subsisting and enforceable;
- (b) To the Actual Knowledge of Landec, Seller or the Company, the Transferred IP licensed to the Company is valid, subsisting and enforceable;
- (c) The Transferred IP encompasses all proprietary rights necessary for the operation of the Transferred Business as currently conducted;
- (d) Seller, the Company and, to the Actual Knowledge of Landec, Seller or the Company, the owners of the Transferred IP licensed to the Company have taken all customary and reasonable actions to maintain and protect the Transferred IP;
- (e) There has been no claim made or, to the Knowledge of Landec, Seller or the Company, threatened against Seller or the Company asserting the invalidity, misuse or unenforceability of any of the Transferred IP or challenging Seller's or the Company's right to use or ownership of any of the Transferred IP, and there are no valid grounds for any such claim or challenge with respect to Transferred IP owned by the Company or, to the Actual Knowledge of Landec, Seller or the Company, with respect to Transferred IP licensed to the Company;
- (f) No loss of any of the Transferred IP is pending or, to the Knowledge of Landec, Seller or the Company, threatened;
- (g) The consummation of the transactions contemplated by this Agreement will not alter, impair or extinguish the Company's rights in and to any of the Transferred IP;
- (h) There exists no restriction on the Company's use of the Transferred IP, or on the transfer of any rights of the Company in and to any of the Transferred IP, and the Company has the right to use each item of Transferred IP without obligations to third parties other than obligations arising under the terms and provisions of the license agreements disclosed on Schedule 3.17(a) under which any of the Transferred IP is licensed;
- (i) The conduct of the Transferred Business and operations of the Company and the ownership, production, purchase, sale, licensing and use of the Company's products do not, to the Knowledge of Landec, Seller or the Company in the case of owned Transferred IP (except in respect of the CRM System, as to which such Knowledge qualification shall not apply) or to the Actual Knowledge of Landec, Seller or the Company in the case of Transferred IP licensed to the Company, contravene, conflict with, violate or infringe upon any Intellectual Property of a third party or the terms of any license with respect thereto, and no proprietary information or trade secret has been misappropriated by Seller or the Company from any third party; and
- (j) The Transferred IP and the products of the Transferred Business are not subject to a current claim of infringement, interference or unfair competition or other claim and, to the Knowledge of Landec, Seller or the Company in the case of owned Transferred IP (except in respect of the CRM System, as to which such Knowledge qualification shall not apply) or to

the Actual Knowledge of Landec, Seller or the Company in the case of Transferred IP licensed to the Company, the Transferred IP is not being infringed upon or violated by any third party.

3.20 Germplasm. Schedule 3.20 accurately describes the Germplasm included in the Transferred Assets (the “Transferred Germplasm”). Except as set forth on Schedule 3.20:

(a) The Company (i) is the sole legal and beneficial owner of and is entitled to use the Transferred Germplasm and all related Intellectual Property rights or (ii) has been granted, by a written agreement, all such rights as may be required in connection with the use by the Company of the Transferred Germplasm;

(b) Seller and the Company have not used in connection with the Transferred Germplasm any Intellectual Property rights (including Know How) of any third party, other than those rights licensed to Seller or the Company by a written agreement for use in the Transferred Germplasm; and

(c) The acquisition and use of the Transferred Germplasm by Seller and the Company prior to and as of the Closing Date (i) did not, to the Actual Knowledge of Landec, Seller or the Company, infringe on the Intellectual Property rights of any third party or involve the misappropriation of Know How of any third party; (ii) was not in breach of any confidential, fiduciary, partnership, master-servant or agency relationship arising under Law applicable to Landec, Seller or the Company; (iii) was not in breach of any obligation arising under any Contract to which Seller or the Company is or has been a party; (iv) was not, to the Actual Knowledge of Landec, Seller or the Company, in breach of any obligation arising under any Contract to which neither Seller nor the Company is or has been a party; (v) did not involve any trespass to land or buildings used or occupied by third parties; and (vi) was not and is not otherwise in violation of any Laws.

3.21 Genetically Modified Organisms.

(a) Schedule 3.21 sets forth complete details of the procedures performed by or on behalf of Seller or the Company to minimize the possibility of unapproved GMOs existing in any Transferred Germplasm and of assessments made by or on behalf of Seller or the Company as to the effectiveness of such procedures and steps taken to implement such procedures. Seller and the Company have, since the introduction of such procedures, operated in accordance with the terms of such procedures and, other than with respect to ongoing improvements to them, has not deviated from such procedures or failed to implement such procedures in connection with the use by Seller or the Company of any Transferred Germplasm.

(b) No unapproved GMOs, including any StarLink presence, exist or have existed in any of the seed currently being sold, or which has been sold, commercially by Seller or the Company; provided that the representation in this paragraph shall not be applicable to any seed purchased by the Seller or the Company from the Buyer or its Affiliates.

3.22 Insurance. Seller and the Company have at all times maintained insurance as required by Law or under any Contract relating to the Transferred Business, including general comprehensive liability, unemployment and workers’ compensation coverage. Schedule 3.22 accurately describes the insurance (other than pursuant to a Plan) maintained by Seller and the

Company with respect to the Transferred Business. Such policies evidence insurance in such amounts and against such risks and losses as are generally maintained with respect to comparable companies and properties. All of such insurance policies are in full force and effect, and neither Seller nor the Company is in default with respect to any of its obligations under any of such insurance policies.

3.23 Employees, Officers, Directors and Consultants.

(a) A true, correct and complete list of each current employee of the Transferred Business and position held is set forth on Schedule 3.23(a). A true, correct and complete schedule of the following information for each such employee, including each employee on leave of absence or layoff status, has been delivered to Buyer: name, job title, current compensation paid or payable, any change in compensation not yet effective, and vacation accrued.

(b) Schedule 3.23(b) lists: (i) all current directors of the Company, (ii) all current officers (with office held) of the Company, and (iii) all current paid consultants to the Company.

(c) Except as set forth on Schedule 3.23(c), the Company does not have any benefits responsibility or other continuing or contingent obligation to any retirees or terminated employees of the Transferred Business.

(d) The Company is not indebted to any shareholder, director, officer, employee or agent of the Company, except for amounts due as normal salaries, wages, employee benefits and bonuses, and in reimbursement of ordinary expenses on a current basis to employees.

(e) No officer, director, employee or consultant of the Company is indebted to the Company except for advances for ordinary business expenses on a basis consistent with past practices.

(f) All payments to agents, consultants and others performing services for or in connection with the Transferred Business made by Seller or the Company have been in payment of bona fide fees and commissions and not as bribes, kickbacks or as otherwise illegal payments.

(g) Except as set forth on Schedule 3.23(g), no former or current employee or current or former officer or director of the Company is a party to, or is otherwise bound by, any agreement or arrangement, including any confidentiality, non-competition or proprietary rights agreement, between such employee, officer or director and any other Person that in any way adversely affected, affects or may affect (i) the performance of his or her duties as an employee, officer or director of the Company, or (ii) the ability of the Company or Buyer to conduct the Transferred Business. To the Knowledge of Landec, Seller or the Company, no director, officer or other current and active employee of the Company intends to terminate his or her employment with the Company.

3.24 Bank Accounts of the Company. Set forth on Schedule 3.24 is a list of the locations and numbers of all bank accounts, investment accounts and safe deposit boxes maintained by the Company, together with the names of all persons who are authorized signatories or have access thereto or control thereof.

3.25 Transactions with Related Persons; Affiliates.

(a) The Company does not have any entity Affiliates other than Seller and its Affiliates.

(b) The Company does not have any Liabilities, contractual or otherwise, owed to or owing from, directly or indirectly, the Seller, or any Affiliate of the Company or of Seller.

(c) Except for (i) an ongoing business relationship between the Retained Business and the Company and (ii) any employment relationship with the Company, neither Seller nor, to the Knowledge of Landec, Seller or the Company, any immediate family members of any director, officer or individual-Affiliate of the Company, will have any on-going business relationship with or other financial interest in the Transferred Business following the Closing, whether direct or indirect.

3.26 Labor Matters. Except as set forth on Schedule 3.26:

(a) The Company is not a party to or bound by any collective bargaining, union representation or similar agreement or arrangement, and no collective bargaining agreement is currently being negotiated nor is any organizing effort currently being made with respect to the employees of the Company;

(b) There is no controversy existing, pending or, to the Knowledge of Landec, Seller or the Company, threatened with any association or union or collective bargaining representative of the employees of the Company;

(c) The Company is not engaging and Seller and the Company have not engaged in any unfair labor practice and there is no charge or complaint relating to unfair labor practices pending against Seller or the Company, nor is there any labor strike, work stoppage, slowdown, material grievance or other labor dispute pending or, to the Knowledge of Landec, Seller or the Company, threatened against Seller or the Company;

(d) No right of representation exists respecting the employees of the Company; and

(e) There is no contract of service in force between the Company and any director, officer or employee of the Company or the Transferred Business which is not terminable by the Company without compensation on not more than three months' notice given at any time or which provides for compensation specifically in connection with the transactions contemplated by this Agreement. There are no consultancy or management services agreements in existence between the Company and any other Person.

3.27 Employee Benefit Matters.

(a) *Plans.* Except for the Plans set forth on Schedule 3.27(a) (the “Company Plans”), the Company neither is nor has been a party to or otherwise has any Liability with respect to any Plan.

(b) *Disclosure.* To the extent applicable with respect to each Company Plan, true, correct and complete copies of the most recent documents described below have been delivered or made available to Buyer: (i) IRS determination letter and any outstanding request for a determination letter; (ii) Form 5500 for the three most recent plan years; (iii) all plan documents and amendments and any written policies and/or procedures used in plan administration; (iv) current summary plan descriptions and any summaries of material modifications; and (v) administrative service agreements, HIPAA business associate agreements, related trust agreements, annuity contracts and other funding instruments.

(c) *Prohibited Transactions and Qualified Status.* With respect to each Company Plan, no prohibited transactions (as defined in ERISA Section 406 or Code Section 4975) and no violations of ERISA Section 407 have occurred. Each Company Plan (and its related trust) that is intended to qualify under Code Section 401(a) and to be tax-exempt under Code Section 501(a), if any, is so qualified under and has been determined by the IRS to qualify thereunder for all applicable requirements and nothing has since occurred to cause the loss of the Plan’s qualification. Each Company Plan and related funding instrument complies with and has been administered, operated and maintained in compliance with its terms and applicable law, and neither the Seller, Landec nor the Company has any liability under any applicable law with respect to a Company Plan. Each such Company Plan that is intended to qualify under Code Section 401(a) is set forth on Schedule 3.27(c).

(d) *Claims/Liability.* There is no pending or, to the Knowledge of Landec, Seller, or the Company, threatened Action involving any Company Plan and no facts exist that would give rise thereto, other than routine claims for benefits. Neither the Company nor any of its directors, officers, employees or any plan fiduciary has any Liability for failure to comply with ERISA, HIPAA, COBRA or the Code. The Company has no Liability by virtue of its being a member of a controlled group with a Person who has Liability under the Code or ERISA. All contributions and insurance premiums, including premiums to the PBGC, due on or prior to Closing have been paid in full with respect to each applicable Plan, and the Company has no Liability in connection with any such contributions or premiums due on or prior to Closing or by virtue of being a member of a controlled group with a person who has any such Liability.

(e) *Title IV Pension Plans.* Neither Seller nor Landec nor the Company has made or been required to make any contributions to, nor may have any liability with respect to, any Pension Plan which is subject to the provisions of Title IV of ERISA. On and after the Closing Date, neither Buyer nor the Company shall have any obligation to provide any particular employee benefit plan as a result of any Company Plan or action taken by Landec, Seller or the Company prior to Closing. Seller and Landec, with respect to the Transferred Business, the Company have never contributed to nor had any Liability with respect to a multiple employer plan, and the Company would not become subject to any Liability if any multiple employer plan were to terminate or the Company were to withdraw from any multiple employer plan as of the

Closing Date. Neither Seller nor Landec nor the Company nor any Affiliate of Seller, Landec or the Company has ever made any contributions to any multiemployer plan (as defined in ERISA Section 3(37) or 4001(a)(3)).

(f) *Severance Plans*. The consummation of the transaction contemplated by this Agreement will not (i) entitle any current or former employee of the Transferred Business to severance pay, unemployment compensation or any other payment, (ii) accelerate the time of payment or vesting, or increase the amount of any compensation due to any current or former employee of the Company, or (iii) give rise to the payment of any amount that would not be deductible pursuant to Code Section 280G.

(g) *Terminated Plans*. Any action taken by Seller, Landec or the Company to terminate (in part or in whole) any employee benefit plans, as defined in ERISA Section 3(3) has been carried out in all material respects in accordance with all provisions of applicable Law, including without limitation all applicable provisions of ERISA and the Code. The Company has no liability with respect to any terminated employee benefit plan as defined in ERISA Section 3(3).

(h) *Retiree Welfare*. The Company has no Liability or obligation to provide life, medical or other welfare benefits to former or retired employees, other than under Laws requiring the continuation of medical benefits, including COBRA or any applicable state Law.

3.28 Books and Records. True, correct and complete copies of the books of account, stock record books, minute books, bank account records, and other corporate records of Seller (and Landec with respect to any such Tax records), to the extent relating to the Transferred Business, and of the Company in existence on the date hereof have been made available to Buyer and such books and records have been maintained in accordance with good business practices. The minute books of Seller, to the extent relating to the Transferred Business, and the Company contain accurate and complete records of all meetings of, and corporate action taken by, the shareholders, the Board of Directors, and committees of the Board of Directors, of each, to the extent relating to the Transferred Business, and no meeting of any such shareholders, Board of Directors, or committee has been held for which minutes or written consents have not been prepared and are not contained in such minute books. At the Closing, all such books and records will be in the possession of the Company and delivered to Buyer.

3.29 Brokers, Finders. No finder, broker, agent or other intermediary, acting on behalf of the Company, the Seller or Landec, is entitled to a commission, fee or other compensation in connection with the negotiation or consummation of this Agreement or any of the transactions contemplated hereby.

3.30 Disclosure. No representation or warranty by Seller or Landec in this Agreement, or any Exhibit or Schedule referred to herein or in any agreement to be delivered hereunder, and no statement, certificate or other information furnished to Buyer by or on behalf of Seller or Landec pursuant hereto or thereto, to the Knowledge of the Seller or Landec (or Actual Knowledge of Seller or Landec in the case of each representation or warranty qualified by Actual Knowledge), contains any untrue statement of a material fact or any omission of a material fact

necessary to make the respective statements contained herein and therein, in the light of the circumstances under which the statements were made, not misleading.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby makes the following representations and warranties to Seller, each of which is true and correct on the date hereof and shall survive the Closing Date and the transactions contemplated hereby to the extent set forth herein.

4.1 Corporate Existence and Power.

(a) Buyer is a corporation, validly existing and in good standing under the Laws of the State of Delaware.

(b) Buyer has the corporate power to enter into this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby.

(c) Buyer is not a party to, subject to or bound by any Contract, Law or Order which would (i) be breached or violated by the execution or delivery by Buyer of this Agreement or the performance by Buyer of the transactions contemplated by this Agreement, or (ii) prevent the carrying out of the transactions contemplated hereby. Except as otherwise provided for herein, no waiver or consent of any third person or Government authority is required for the execution by Buyer of this Agreement, or the consummation by Buyer of the transactions contemplated hereby.

4.2 Valid and Enforceable Agreement; Authorization; Non-Contravention. This Agreement has been duly executed and delivered by Buyer and constitutes a legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms, except that such enforcement may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally, and (ii) general principles of equity. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of Buyer.

4.3 Compliance with Securities Law. Buyer is acquiring the Shares for investment and not with a view to distribution thereof, and will not sell, offer for sale, pledge, transfer or otherwise dispose of the Shares or any interest therein except in compliance with the Securities Act of 1933, as amended, and any other applicable federal and state securities Laws.

4.4 Brokers, Finders. Except as set forth on Schedule 4.4, no finder, broker, agent or other intermediary, acting on behalf of Buyer, is entitled to a commission, fee or other compensation in connection with the negotiation or consummation of this Agreement or any of the transactions contemplated hereby. Buyer will be solely responsible for payment of any commission, fee or other compensation earned by any such finder, broker, agent or other intermediary of Buyer.

ARTICLE 5
ADDITIONAL COVENANTS OF THE PARTIES

5.1 Covenant Not to Compete.

(a) *Non-Compete.* Seller and Landec acknowledge and agree that the reputation and goodwill associated with the Transferred Business are an integral part of the success of the Transferred Business throughout the United States and Canada (the "Territory"). Seller and Landec further acknowledge that if either of them deprive Buyer of the goodwill of the Transferred Business or in any manner utilizes the reputation and goodwill of the Transferred Business in competition with Buyer, Buyer will be deprived of the benefits it has paid for pursuant to this Agreement. Accordingly, as an inducement for Buyer to enter into this Agreement, Seller and Landec agree that for a period ending five (5) years after the Closing Date (the "Non-competition Period"), except for the benefit of Buyer as contemplated by other agreement entered into in connection herewith, Seller and Landec shall not, without Buyer's prior written consent, directly or indirectly, own, manage, operate, assist, join, control or participate in the ownership, management, operation or control of, or be connected as a director, officer, employee, partner, consultant or otherwise with, any business in the Territory that, directly or indirectly, competes with the Transferred Business in relation to any row crops(excluding vegetables) as conducted immediately prior to the Closing. In addition, during the Non-competition Period neither Seller nor Landec shall have an equity interest in any such Person other than as a 5% or less shareholder of a public corporation. In the event the agreement in this Section 5.1 shall be determined by a court of competent jurisdiction to be unenforceable by reason of its extending for too great a period of time or over too great a geographical area or by reason of its being too extensive in any other respect, it shall be interpreted to extend only over the maximum period of time for which it may be enforceable and/or over the maximum geographical area as to which it may be enforceable and/or to the maximum extent in all other respects as to which it may be enforceable, all as determined by such court in such action.

(b) *No Solicitation.* During the Non-competition Period, neither Seller nor Landec shall, without the prior written consent of Buyer, (i) directly or indirectly solicit any Person that is a customer of the Transferred Business to become a customer of any other Person for products or services the same as, or competitive with, the products and services of the Transferred Business as of the Closing Date, or products or services in any stage of development by the Transferred Business as of the Closing Date or (ii) directly or indirectly solicit any Person that currently is or at any time during the Non-competition Period shall be an employee, agent or consultant of or to the Transferred Business to leave the Transferred Business.

(c) *Confidential Information.* Seller and Landec acknowledge that the Confidential Information relating to the Transferred Business is valuable and proprietary to the Transferred Business and agree not to, directly or indirectly, use, publish, disseminate or otherwise disclose any Confidential Information without the prior written consent of Buyer, unless, in the opinion of its counsel, it is legally compelled or required to make such disclosure; *provided*, that, in the event it is so compelled or required to make such disclosure, it will provide the Buyer with prompt written notice thereof, and cooperate with Buyer, so that the parties may seek a protective order, confidentiality treatment or other appropriate remedy to prevent or limit such disclosure. If such protective order or other remedy is not obtained, Seller or Landec shall

furnish only that portion of the Confidential Information or such other information that it is advised by counsel is legally required to be disclosed. For purposes of this Agreement, the term "Confidential Information" means Intellectual Property and other information not publicly available or generally available to the industry, which relates to specific matters concerning the Transferred Business.

(d) *Remedies*. Seller and Landec acknowledge that a breach of the covenants contained in this Section 5.1 would be likely to cause irreparable damage to Buyer, the exact amount of which will be difficult to ascertain, and that the remedies at law for any such breach will be inadequate. Accordingly, Seller and Landec agree that if any Person breaches the covenants contained in this Section 5.1, in addition to any other remedy that may be available at law or in equity, Buyer shall be entitled to specific performance and injunctive relief, without posting bond or other security.

(e) *Retained Business*. For the avoidance of doubt, the ownership, management, operation or control by Seller or Landec of the Intellicoat® Seed Coatings business as currently conducted by Seller shall not constitute a violation of the restrictive covenants in this Section 5.1.

5.2 Taxes.

(a) All transfer, documentary, sales and other such Taxes, whether imposed on Buyer, Seller, Landec or the Company, incurred in connection with consummation of the transactions contemplated by this Agreement, shall be borne by Landec when due, and Landec will, at its own expense, file all necessary Tax Returns and other documentation with respect to all such Taxes and, if required by applicable Law, Buyer will, and will cause its Affiliates to, join in the execution of any such Tax Returns and other documentation. Landec shall remain liable for any Income Taxes imposed on Landec, the Seller and/or the Company as a result of the transactions contemplated by this Agreement, or the transactions carried out by Seller in contemplation of this Agreement.

(b) Landec shall prepare or cause to be prepared, and file or cause to be filed, all Income Tax Returns of the Company for any taxable year or period ending on or before the Closing Date ("Pre-Closing Periods"). Such Income Tax Returns will be prepared in a manner consistent with prior Income Tax Returns of Seller, Landec and the Company to the extent permitted by applicable Law. Landec shall permit Buyer to review and comment on such Income Tax Returns prior to filing. All other Tax Returns which include any Pre-Closing Period shall be prepared by Buyer. All Taxes payable with respect to Pre-Closing Periods shall be borne by Landec and promptly remitted to Buyer.

(c) Buyer, Seller and Landec shall furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information (including reasonable access to books and records, Tax Returns and Tax filings) and assistance as is reasonably necessary for the filing of any Tax Return, the conduct of any Tax audit, and for the prosecution or defense of any claim, suit or proceeding relating to any Tax matter. Buyer, Seller and Landec shall cooperate with each other in the conduct of any Tax audit or other Tax proceedings and each shall execute and deliver such powers of attorney and other documents as are necessary to carry out the intent

of this Section 5.2. Any Tax audit or other Tax proceeding shall be deemed to be a Third Person Claim subject to the procedures set forth in Article 6 of this Agreement.

(d) At Closing, Buyer and Landec shall join in making an election under Section 338(h)(10) of the Code (and any corresponding election under state and local Tax Law) with respect to the purchase and sale of the Shares (a “338(h)(10) Election”). The Parties will timely file such forms with the IRS and state and local Taxing authority as may be required with their respective Tax Returns for the periods that include the Closing Date and otherwise to make effective the 338(h)(10) Election. The Parties shall allocate the Purchase Price to the Shares. Following Closing, Buyer shall submit an allocation of the Aggregate Consideration among the assets of the Company on IRS Form 8883 (such allocation having been prepared in accordance with Section 1060 of the Code and Section 338 of the Code) to Seller for its approval, which approval shall not be unreasonably withheld, conditioned or delayed. The term “Aggregate Consideration” means the sum of the Purchase Price, the liabilities of the Company and all other items required for federal income tax purposes to be included in the amount realized pursuant to the 338(h)(10) Election. The Parties shall report the transactions consummated pursuant to this Agreement in a manner consistent with such allocation on all Tax Returns. Each Party agrees that it will (i) be bound by this allocation for the purposes of determining any Taxes, (ii) report for Tax purposes the transactions consummated pursuant to this Agreement in a manner consistent with this allocation, (iii) timely file a copy of the attached IRS Form 8883 with its appropriate federal and other Tax Return, and (iv) not take a position for Tax purposes that is inconsistent with such allocation on any applicable Tax Return or in any proceeding before any governmental authority except with the prior written consent of the other Party. In the event that the allocation is disputed by any Governmental authority, the Party receiving notice of such dispute will promptly notify the other Party and the Parties will consult in good faith how to resolve such dispute in a manner consistent with the allocation.

(e) Prior to Closing, all intercompany balances due to or from the Company on the one hand, and Seller, Landec or any Affiliate of either of them on the other hand, shall have been cancelled or otherwise satisfied.

5.3 Employee Matters.

(a) As of the Effective Time, all employees of the Transferred Business listed on Schedule 3.23(a) shall be deemed to be employees of the Company and, as among the Company, Seller and the Buyer, shall no longer be deemed to be employees of Seller, except for any such employees who may elect not to accept employment with the Company.

(b) For a period of two (2) years following the Closing Date, Buyer shall not, and shall not permit any Affiliate to, reduce the base salary of any current employee of the Transferred Business who remains employed by the Company during such two year period.

(c) Prior to Closing, Seller shall cause the Company to cease to be a participating employer under, and to terminate its sponsorship of, each Company Plan. Any such action shall be carried out in all material respects in accordance with all provisions of applicable Law, including without limitation all applicable provisions of ERISA and the Code. In the event of a termination of sponsorship of any Company Plan results in a Company Plan termination,

Seller shall file the final annual report and submit an application to the IRS for a favorable determination letter, if applicable. Neither Buyer nor the Company shall be responsible for any liability associated with or arising from, directly or indirectly, any Company Plan or the Company's withdrawal from or termination of any Company Plan, and Seller shall retain any such liability; provided, however, that (i) (A) Seller shall be entitled to fund its payment of liabilities under its paid-time-off Company Plan accrued as of the Effective Time in respect of employees of the Transferred Business with an advance drawn prior to the Effective Time under the Credit Agreement, and (B) such advance shall constitute a Transferred Liability for which Company shall be responsible after the Effective Time; and (ii) the Company will be responsible for the obligations arising during or attributable to any period after the Effective Time under the employment agreements listed on Schedule 3.26.

(d) With respect to each employee of the Transferred Business who (i) participates in Landec's 401(k) Plan, (ii) continues to be employed by the Company immediately after Closing, and (iii) elects to have his or her account balance in Landec's 401(k) Plan directly rolled over to Buyer's 401(k) Plan, Buyer agrees to cause such 401(k) Plan to accept a direct rollover of the employee's account balance. In no event shall Buyer's 401(k) Plan be required to accept any outstanding loans under Landec's 401(k) Plan. "Buyer's 401(k) Plan" shall mean any 401(k) plan of an affiliate of Buyer in which such employees of the Transferred Business are eligible to participate.

(e) Neither Buyer nor the Company shall have any liability with respect to any Plan set forth on Schedule 3.27(a) except as and to the extent provided in clauses (i) and (ii) of the last sentence of Section 5.3(c). Seller shall be responsible for the continuation of health plan coverage, in accordance with the requirements of COBRA and Sections 601 through 608 of ERISA, for any employee of Seller or the Company or qualified beneficiary under a Seller, Landec or Company health plan (i) who, prior to the Effective Time, is receiving, or is entitled to receive, COBRA benefits or (ii) who loses health coverage in connection with the transactions contemplated in this Agreement.

(f) Except as and to the extent provided in clause (i) of the last sentence of Section 5.3(c), neither Buyer nor Company shall be responsible for any liabilities or obligations to current or former employees of the Seller, Landec or the Transferred Business that arise during or are attributable to any period prior to the Effective Time, including the COBRA and severance obligations set forth on Schedules 3.23(c).

5.4 Books and Records. From and after the Closing, Buyer shall provide Seller and its representatives and Seller (and Landec with respect to any Tax books and records) shall provide Buyer and its representatives with reasonable access, for any reasonable purpose, during normal business hours, to all relevant books and records in their respective possession related to the Transferred Business pertaining to the period prior to the Effective Time. Buyer and Seller (and Landec with respect to any Tax books and records) shall maintain such books and records in accordance with their respective record retention policies.

5.5 Public Announcements. No press release or other public statement concerning the negotiation, execution and delivery of this Agreement or the transactions contemplated hereby shall be issued or made without the prior approval of Seller and Buyer (which approval shall not

be unreasonably withheld), except as required by the rules of the New York Stock Exchange, NASDAQ or applicable Law.

5.6 Financial and IT Services During Transition. During a transition period of no more than six (6) months after the Closing Date (the “Transition Period”), Buyer will cause the Company to provide, from the Company’s headquarters in Monticello, Indiana, all of the financial and accounting services and information technology support required for Seller to continue to operate the Retained Business as it has in the past, at no cost to Seller. In addition, during the Transition Period, Landec will provide, from Landec’s operating facilities in Menlo Park, California, all of the general ledger requirements for the Company to operate the Transferred Business as it has been operated in the past, at no cost to the Company. Landec and Buyer will work together to develop financial and information technology systems for Seller and accounting systems for the Company to be implemented after the Transition Period.

5.7 Further Assurances; Cooperation. From and after the Closing, the Parties shall do such acts and execute such documents and instruments as may be reasonably required to make effective the transactions contemplated hereby. On or after the Closing Date, the Parties shall, on request, cooperate with one another by furnishing any additional information, executing and delivering any additional documents and instruments, including Contract assignments, and doing any and all such other things as may be reasonably required by the Parties or their counsel to consummate or otherwise implement the transactions contemplated by this Agreement, to put Buyer or the Company in actual possession and operating control of all Transferred Assets, including the transfer of any assets of Seller principally related to the seed marketing and sales business and operations of the Company and to permit Buyer or the Company to exercise all rights and to perform all obligations with respect to all Transferred Assets.

5.8 Waiver. Effective upon the Closing, Seller hereby irrevocably waives, releases and discharges Buyer, the Company and any of their respective Affiliates from any and all liabilities and obligations to each of them of any kind or nature whatsoever, in its capacity as a direct or indirect shareholder, manager, member, officer or director of the Company, as applicable, in each case whether absolute or contingent, liquidated or unliquidated, known or unknown, and whether arising under any agreement or understanding (other than this Agreement and any of the other agreements executed and delivered by Buyer in connection herewith) or otherwise at law or equity, and Seller agrees that it shall not seek to recover any amounts in connection therewith or thereunder from any of Buyer, the Company or any of their respective Affiliates; provided, that the waivers contained in this Section 5.8 shall not apply to (i) claims against Buyer asserted pursuant to this Agreement or (ii) any claims for which the facts or circumstances giving rise to such claim first arise following Closing.

5.9 Termination of Insurance Policies. Seller shall be entitled to terminate, effective as of the Effective Time, all coverage applicable to the Transferred Business and the Company under the insurance policies listed on Schedule 3.22.

5.10 Collections of Receivables; Bank Accounts. The Seller will promptly remit to the Company, under arrangements reasonably satisfactory to the Company, any payments received by the Seller or its Affiliates following the Closing which represent payments on accounts receivable relating to the Transferred Business. In addition, following a reasonable period

sufficient to allow for the payment of any unpaid checks which are outstanding as of the Closing Date, the Seller will transfer to the Company any funds then remaining in the bank accounts previously maintained by the Company relating to the Transferred Business, and will not issue any additional checks or otherwise make any withdrawals from such accounts following the Closing.

ARTICLE 6 INDEMNIFICATION

6.1 Survival of Representations and Warranties and Covenants. All of the representations, warranties, covenants and agreements made by any Party in this Agreement or in any certificates or documents delivered hereunder shall survive the Closing; provided, however, that the period of survival shall (i) with respect to the representations and warranties in Section 3.3 (Capitalization and Ownership – Company), continue indefinitely; (ii) with respect to the representations and warranties in Section 3.7 (Taxes), end thirty (30) days after expiration of the statutory limitation period applicable to the Tax; (iii) with respect to the representations and warranties in Section 3.16 (Environmental Matters), end five (5) years following the Closing Date; (iv) with respect to all other representations and warranties, end eighteen (18) months after the Closing Date; and (v) with respect to covenants and agreements, continue in accordance with their respective terms (in each case, the “Survival Period”). No claim for breach of any representation, warranty, covenant or agreement may be brought under this Agreement or any other document executed and delivered pursuant to or in connection with this Agreement unless written notice describing in reasonable detail the nature and basis of such claim is given on or prior to the expiration of the 30-day period following the last day of the applicable Survival Period. In the event such notice of a claim is so given, the right to indemnification with respect to such claim will survive the applicable Survival Period until the claim is finally resolved and any obligations with respect to the claim are fully satisfied.

6.2 Indemnification by Seller and Landec. Subject to the terms and conditions of this Article 6, from and after Closing, Seller and Landec shall, jointly and severally, indemnify and hold harmless Buyer and its Affiliates (including, from and after the Closing, the Company and its Affiliates) and the employee benefit plans, shareholders, directors, officers, partners, employees, successors, assigns, representatives and agents of each of them in their capacities as such (collectively, the “Buyer Indemnified Persons”), from and against, and Seller and Landec waive any claim for contribution or indemnity against the Company and its Affiliates with respect to, any and all claims, losses, monetary damages, obligations, liabilities, fines, fees, penalties, expenses or costs, plus reasonable attorneys’ fees and expenses, court costs and expert witness fees and expenses, incurred in connection therewith and/or in connection with the enforcement of this Agreement (collectively, “Losses”) incurred or to be incurred by any of them resulting from or arising out of or in connection with:

(a) the breach of any agreement, covenant, representation, warranty, or other obligation of Seller or Landec made or incurred under or pursuant to this Agreement or any document delivered pursuant hereto or in connection with the Closing;

(b) any Liability of the Company or its Affiliates with respect to Taxes claimed or assessed against any of them (i) for any taxable period resulting from a breach of any

of the representations or warranties contained in Section 3.7, breach of the covenants set forth in Section 5.2 or from this transaction (including without limitation Taxes on the taxable gain, if any recognized by the Company as a result of the 338(h)(10) Election and the transactions contemplated by this Agreement); and (ii) that relate to a taxable period (or portion thereof) ending on or before the Closing Date, whether or not the Tax Returns with respect to such periods have been filed on or before the Closing Date;

(c) the Retained Business, the Excluded Liabilities and the Excluded Assets; and

(d) any Losses asserted against Company or Buyer by a third party to any Contract constituting part of the Transferred Assets to the extent based on the transfer of such Contract from Seller to Company without obtaining a required consent or approval of such third party; *provided, however*, that neither Landec nor Seller shall have any liability or obligation under this Section 6.2 or otherwise to the Company or Buyer for any other Losses incurred by the Company or the Buyer arising from, relating to or in connection with any such transfer without a required consent, including, without limitation, (i) any Losses resulting from a diminution in business or customers due to the inability to sell product containing Intellectual Property licensed under any such Contract, (ii) any Losses resulting from a requirement to destroy, return to the licensor or otherwise cease selling inventory now or in the future on hand or in production containing Intellectual Property licensed under any such Contract, or (iii) any costs or expenses incurred by the Company or the Buyer to acquire, produce, license or create a market for replacement products or inventory.

6.3 Indemnification by Buyer. Subject to the terms and conditions of this Article 6, Buyer shall indemnify and hold harmless Seller and Landec its Affiliates and the employee benefit plans, shareholders, directors, officers, partners, employees, successors, assigns, representatives and agents of each of them in their capacities as such (the "Seller Indemnified Persons") from and against any and all Losses incurred or to be incurred by any of them, resulting from or arising out of or in connection with (i) the breach of any agreement, covenant, representation, warranty, or other obligation of Buyer made or incurred under this Agreement or any document delivered pursuant hereto or in connection with the Closing; or (ii) the operation of the Transferred Business after Closing, including any failure of the Company to pay, perform or discharge when due all Transferred Liabilities.

6.4 Notice of Claim. In the event that Buyer seeks indemnification on behalf of a Buyer Indemnified Person, or Seller or Landec seeks indemnification on behalf of a Seller Indemnified Person, such Party seeking indemnification (the "Indemnified Party") shall give reasonably prompt written notice to the indemnifying Party (the "Indemnifying Party") specifying the facts constituting the basis for such claim and the amount, to the extent known, of the claim asserted; provided, that the right of a Person to be indemnified hereunder shall not be adversely affected by a failure to give such notice (if given prior to expiration of the applicable notice period provided herein) unless, and then only to the extent that, an Indemnifying Party is prejudiced thereby. Subject to the terms of this Agreement, the Indemnifying Party shall pay the amount of any valid claim not more than ten (10) days after the Indemnified Party provides notice to the Indemnifying Party of such amount.

6.5 Right to Contest Claims of Third Persons.

(a) If an Indemnified Party is entitled to indemnification hereunder because of a claim asserted by any claimant other than an Indemnified Party (a "Third Person"), the Indemnified Party shall give the Indemnifying Party reasonably prompt notice thereof after such assertion is actually known to the Indemnified Party; provided, however, that the right of a Person to be indemnified hereunder in respect of claims made by a Third Person shall not be adversely affected by a failure to give such notice unless, and then only to the extent that, an Indemnifying Party is prejudiced thereby. The Indemnifying Party shall have the right, upon written notice to the Indemnified Party, and using counsel reasonably satisfactory to the Indemnified Party, to investigate, defend, contest or settle the claim alleged by such Third Person (a "Third Person Claim"), provided that the Indemnifying Party has unconditionally acknowledged to the Indemnified Party in writing its obligation to indemnify the Persons to be indemnified hereunder with respect to such Third Person Claim and, subject to Section 6.6, to discharge any cost or expense arising out of such investigation, contest or settlement and provided that any settlement shall include an unconditional release of such claim against the Indemnified Party.

(b) The Indemnified Party may thereafter participate in (but not control) the defense of any such Third Person Claim with its own counsel at its own expense, unless separate representation is necessary to avoid a conflict of interest, as determined by the Indemnifying Party's legal counsel in accordance with applicable law, in which case such representation shall be at the expense of the Indemnifying Party.

(c) Notwithstanding anything to the contrary contained in this Agreement, neither Seller nor Landec shall settle a Third Person Claim with respect to Taxes for a taxable period (or portion thereof) that ends on or before the Closing Date without the prior written consent of Buyer (not to be unreasonably withheld) if such settlement would result in an increase in the Tax liability of the Company or Buyer for any taxable period (or portion thereof) that ends after the Closing Date.

(d) Unless and until the Indemnifying Party so acknowledges its obligation to indemnify, the Indemnified Party shall have the right, at its option, to assume and control defense of the matter and to look to the Indemnifying Party for the full amount of the reasonable costs of defense. The failure of the Indemnifying Party to respond in writing to the aforesaid notice of the Indemnified Party with respect to such Third Person Claim within twenty (20) days after receipt thereof shall be deemed an irrevocable election not to defend the same. If the Indemnifying Party does not so acknowledge its obligation to indemnify and assume the defense of any such Third Person Claim, (i) the Indemnified Party may defend against such claim using counsel of its choice, in such manner as it may reasonably deem appropriate, including, but not limited to, settling such claim, after giving notice of the same to the Indemnifying Party, on such terms as the Indemnified Party may reasonably deem appropriate, and (ii) the Indemnifying Party may participate in (but not control) the defense of such action, with its own counsel at its own expense. The Parties shall make available to each other all relevant information in their possession relating to any such Third Person Claim and shall cooperate in the defense thereof.

6.6 Limitations on Indemnity.

(a) Notwithstanding anything contained herein to the contrary, but subject to Section 6.6(b), the collective obligation of Seller and Landec under this Article 6 to indemnify or reimburse Buyer Indemnified Persons for any claims for Losses (each, an "Indemnity Claim") shall be subject to the following limitations:

(i) Seller and Landec shall have no obligation with respect to any Indemnity Claim (or series of related Indemnity Claims) unless the Indemnity Claim (or series of related Indemnity Claims) is for Losses exceeding \$10,000 (each, a "Covered Claim").

(ii) Seller and Landec shall have no obligation with respect to any Indemnity Claims until the total amount of the Indemnity Claims reaches \$500,000 (the "Basket"). If the Basket is exceeded, then the Buyer Indemnified Persons shall be entitled to receive the entire amount of the Covered Claims, including the first \$500,000.

(iii) The maximum aggregate obligation of Seller and Landec with respect to all Covered Claims resulting from or arising from a breach of the representations or warranties under Sections 3.4(b), 3.8 or 3.9 shall not exceed \$1,500,000.

(iv) The maximum aggregate obligation of Seller and Landec with respect to all Covered Claims shall not exceed \$20,000,000 (the "Cap").

(b) Notwithstanding the foregoing in subsection (a) to the contrary,

(i) neither the Basket nor the Cap shall apply to Losses (A) resulting from or arising from a breach under Section 5.1 (Covenant Not to Compete) or (B) which are indemnifiable pursuant to Section 6.2(b) or 6.2(c);

(ii) the Cap shall not apply to Losses resulting from or arising from a breach of the representations or warranties in Section 3.3 (Capitalization and Ownership – Company); and

(iii) no Losses referred to in this subsection (b) shall be counted for purposes of determining whether the Cap has been met.

6.7 Characterization of Indemnity Payments. Any indemnification payments made pursuant to this Agreement shall be considered, to the extent permissible under Law, as adjustments to the Purchase Price for all Tax purposes.

6.8 Exclusive Monetary Remedy. Except in the case of a claim based on fraud, the right to indemnification or reimbursement upon and subject to the terms, limitations and conditions of this Agreement shall be the exclusive remedy for monetary damages of any Party and its shareholders, members, directors, officers, employees and agents for any Losses arising under or in connection with this Agreement, any other document executed and delivered

pursuant to this Agreement, or otherwise in connection with or relating to the transactions under this Agreement.

**ARTICLE 7
MISCELLANEOUS PROVISIONS**

7.1 Notice.

(a) All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given (i) when delivered in person, (ii) when received by facsimile, receipt confirmed, (iii) on the next Business Day when sent by overnight courier, or (iv) on the second succeeding Business Day when sent by registered or certified mail (postage prepaid, return receipt requested), to the respective Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

If to Buyer:

American Seeds, Inc.
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167
Telephone: (314) 694-1000
Telecopier: (314) 694-6399
Attn: President

With copy to:

Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167
Telephone: (314) 694-1000
Telecopier: (314) 694-6399
Attn: General Counsel's Office

With an additional copy to:

Bryan Cave LLP
One Metropolitan Square
211 N. Broadway, Suite 3600
St. Louis, Missouri 63102
Telephone: (314) 259-2455
Telecopier: (314) 259-2020
Attn: Denis P. McCusker

If to Seller or Landec:

Landec Corporation
3603 Haven Ave.
Menlo Park, CA 94025
Telephone:
Telecopier:
Attn: Gary T. Steele

With additional copies to:

Bose McKinney & Evans LLP
2700 First Indiana Plaza
135 North Pennsylvania Street
Indianapolis, Indiana 46204
Telephone: (317) 684-5000
Telecopier: (317) 684-5173
Attn: Kendall C. Crook

and

Ropes & Gray LLP
One Embarcadero Center, Suite 2200
135 North Pennsylvania Street
San Francisco, California 94111
Telephone: (415) 315-6364
Telecopier: (415) 315-6350
Attn: Geoffrey P. Leonard

7.2 Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings relative to such subject matter.

7.3 Amendment and Modification. This Agreement may be amended only by a written agreement between Buyer, Seller and Landec.

7.4 Assignment; Binding Agreement. This Agreement and various rights and obligations arising hereunder shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, legal representatives, successors and permitted assigns. Neither this Agreement nor any of the rights, interests, or obligations hereunder shall be transferred, delegated, or assigned (by operation of law or otherwise) by the Parties hereto without the prior written consent of the other Parties, except that (i) Buyer shall have the right to transfer and assign any or all of its rights and obligations hereunder to any entity which at the time of such transfer and assignment is controlled by Buyer or by the Affiliates of Buyer (provided, however, that Buyer shall remain liable for the performance of its obligations under this Agreement) and (ii) the Seller and Landec shall have the right to assign their right to receive payments, but not their obligations, hereunder.

7.5 Waiver of Compliance; Consents. Any failure of Seller or Landec, on the one hand, or Buyer, on the other hand, to comply with any obligation herein may be waived by Buyer, on the one hand, or Seller and Landec, on the other hand, only by a written instrument signed by the Party granting such waiver. Any such waiver or failure to insist upon strict compliance with such obligation shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

7.6 Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs or expenses.

7.7 Counterparts. This Agreement may be executed in multiple counterparts (including via facsimile or an electronically scanned e-mail attachment), each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

7.8 Severability. Subject to the provisions set forth in Section 5.1 regarding judicial modification of the covenant not to compete, if any provision of this Agreement shall be determined to be invalid, illegal or incapable of being enforced by any court of law, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby are not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

7.9 Remedies Cumulative. Except as otherwise provided herein, all rights and remedies of the Parties under this Agreement are cumulative and without prejudice to any other rights or remedies under Law. Nothing contained herein shall be construed as limiting the Parties' rights to redress for fraud.

7.10 Governing Law. This Agreement shall in all respects be construed in accordance with and governed by the substantive Laws of the State of New York, without reference to its choice of law rules.

7.11 No Third Party Beneficiaries or Other Rights. Nothing herein shall grant to or create in any Person not a Party hereto, or any such Person's dependents, heirs, successors or assigns, any right to any benefits hereunder, and no such party shall be entitled to sue any Party to this Agreement with respect thereto. The representations and warranties contained in this Agreement are made for purposes of this Agreement only and shall not be construed to confer any additional rights on the Parties under applicable state and federal securities Laws.

7.12 Submission to Jurisdiction. Each of the Parties hereto irrevocably submits to the exclusive jurisdiction of (i) the federal courts of the United States District Court for the Southern District of New York located in New York County, New York, or (ii) only if the jurisdiction of such courts is unavailable, the state courts located in New York County, New York, for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each of the Parties agrees to commence any action, suit or proceeding

relating hereto in the federal courts of the United States District Court for the Southern District of New York located in New York County, New York, or if the jurisdiction of such courts is unavailable, in the state courts located in New York County, New York. Each of the Parties further agrees that service of any process, summons, notice or document by U.S. registered mail to such Party's address set forth above shall be effective service of process for any action, suit or proceeding with respect to any matters to which it has submitted to jurisdiction in this Section 7.12. Each of the Parties waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in (i) the federal courts of the United States District Court for the Southern District of New York located in New York County, New York, or (ii) only if the jurisdiction of such courts is unavailable, the state courts located in New York County, New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum or to raise any similar defense or objection.

7.13 Headings; Interpretation. The article and section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. Each reference in this Agreement to an Article, Section, Schedule or Exhibit, unless otherwise indicated, shall mean an Article or a Section of this Agreement or a Schedule or Exhibit attached to this Agreement, respectively. Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement; (iv) the terms "include," "includes," "including," and derivative or similar words shall be construed to be followed by the phrase "without limitation"; and (v) references herein to "days" are to consecutive calendar days unless Business Days are specified. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP. Both Parties have participated substantially in the negotiation and drafting of this Agreement and agree that no ambiguity herein should be construed against the draftsman.

7.14 Joint and Several Liability. Seller and Landec shall be jointly and severally liable for each representation, warranty, covenant, agreement, liability or obligation of either or both of them under this Agreement or any other document executed and delivered pursuant to or in connection with this Agreement whether or not otherwise indicated in this Agreement or any other such document.

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**SECTION 2.4 OF THIS AGREEMENT CONTAINS A BINDING ARBITRATION
PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.**

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed as of the date first above written.

Landec:

LANDEC CORPORATION

By: /s/ Gary T. Steele
Name: Gary T. Steele
Title: Chief Executive Officer

Buyer:

AMERICAN SEEDS, INC.

By: /s/ Michael DeMarco
Name: Michael DeMarco
Title: Authorized Person

Seller:

LANDEC AG, INC.

By: /s/ Thomas F. Crowley
Name: Thomas F. Crowley
Title: President and Chief Executive Officer

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LICENSE, SUPPLY AND R&D AGREEMENT

by and among

LANDEC CORPORATION,

LANDEC AG, INC.

and

MONSANTO COMPANY

December 1, 2006

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LICENSE, SUPPLY AND R&D AGREEMENT

This License, Supply and R&D Agreement (this "Agreement") is entered into as of December 1, 2006 (the "Effective Date"), by and among LANDEC CORPORATION, a corporation organized and existing under the laws of the state of California ("Landec Corporation"), LANDEC AG, INC., a corporation organized and existing under the laws of the state of Delaware and a subsidiary of Landec Corporation ("Landec Ag," and together with Landec Corporation, "Landec"), and MONSANTO COMPANY, a corporation organized and existing under the laws of the state of Delaware (together with its Affiliates referred to herein as "Monsanto"). Landec Corporation, Landec Ag and Monsanto may each be referred to herein individually as a "Party" and collectively as the "Parties."

Background

WHEREAS, Landec has developed and commercialized a broad technology and business, including proprietary technology, patents, technical know-how, trade secrets and other intellectual property rights, for seed coatings and coating-related processes, and systems designed to control and enhance germination and other seed performance characteristics, and the formulation, application and the use of such coatings, processes and systems, either alone or in combination with herbicides, fungicides, insecticides, nutrients and other additives (the foregoing collectively referred to as the "**Intellicoat® Seed Coating Technology**");

WHEREAS, Monsanto, an agricultural company, produces leading seed brands in large-acre crops like corn, cotton and oilseeds (soybeans and canola);

WHEREAS, Monsanto desires to obtain, and Landec desires to grant to Monsanto, a non-exclusive license to Landec's Intellicoat® Seed Coating Technology; and

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Agreement

1. Definitions.

- 1.1. "**Affiliate**" means, with respect to any person or entity, any other person or entity which controls, is controlled by or is under common control with such person or entity. A person or entity will be regarded as in control of another entity if it owns or controls more than fifty percent (50%) of the equity securities of the subject entity entitled to vote in the election of directors (or, in the case of an entity that is not a corporation, for the election of the corresponding managing authority).
- 1.2. "**Commercially Reasonable Efforts**" means those efforts, activities, measures, and resources of a diligent Third Party active in a similar field as the Party under the obligation to make such efforts would consider to be

commercially reasonable, feasible and viable to be performed, undertaken or made in or under the specific circumstances.

- 1.3. **“Confidential Information”** means, with respect to each Party, proprietary data or information that belongs in whole or in part to such Party or information designated as Confidential Information of such Party hereunder, in all cases that, if disclosed in writing, is marked with the words “Confidential,” “Proprietary” or words of similar import and, if disclosed orally or visually, is described in reasonable detail in a written notice sent by the disclosing party to the receiving party within thirty (30) days of the oral or visual disclosure requesting that such information be treated as Confidential Information hereunder.
- 1.4. **“Control”** or **“Controlled”** means, with respect to any (a) item of information, including, without limitation, Know-How, or (b) intellectual property or other right, the possession of the right, whether directly or indirectly, and whether by ownership, license or otherwise, to grant to the other Party access or a license, sublicense or other right to or under such item or right without violating the terms of any agreement or other arrangements with any Third Party existing before or after the Effective Date.
- 1.5. **“Direct Costs”** means the cost of all raw materials and contract manufacturing charges (including direct labor, but excluding the costs of Operating Services paid by Monsanto to Landec pursuant to Section 5.4) incurred by Landec in manufacturing and supplying Polymer or Formulation ordered by Monsanto.
- 1.6. **“Ex Works”** has the meaning set forth in Incoterms 2000, ICC Official Rules for the Interpretation of Trade Terms, ICC Publication No. 560.
- 1.7. **“Field”** means the treatment and coating of seeds, including without limitation, the seeds of alfalfa, canola, corn, cotton and soybean, and the use of such coated seeds.
- 1.8. **“Formulation”** means agricultural seed coatings using the Polymer or derivatives thereof.
- 1.9. **“Governmental Authority”** means any government or agency, instrumentality or other subdivision thereof, including courts and tribunals, and the states, provinces and other subdivisions thereof.
- 1.10. **“Improvement”** means all Patent Rights and other intellectual property rights on any improvement to the Polymer or derivatives thereof, methods for applying the Polymer or derivatives thereof to seed, or preparation and use of the Formulation, whether or not patentable or copyrightable, which is recorded, developed, conceived of, created or reduced to practice during the performance of the Work Plan during the Term. Improvements will not include anything conducted outside the Work Plan even though conducted during the Term.

- 1.11. **“Incotec License Agreement”** means that Non-Exclusive License Agreement dated February 14, 2003 by and between Landec Ag and Incotec International, BV.
- 1.12. **“Joint Improvement”** means any and all Improvements created or conceived jointly by (a) Monsanto or any one or more of its Affiliates, agents, employees, subcontractors, Third Parties acting on their behalf or sublicensees and (b) Landec or any one or more of its Affiliates, agents, employees, subcontractors, Third Parties acting on their behalf or licensees, *provided* that either Party or both Parties may assist with or be involved in reduction to practice, during the performance of the Work Plan during the Term.
- 1.13. **“Know-How”** means inventions, discoveries, data, information, processes, methods, techniques, materials, systems, formulations, design, expertise, technology, or research results, whether or not patentable or copyrightable.
- 1.14. **“Landec Improvements”** means any and all Improvements created or conceived solely by Landec or any one or more of its Affiliates, agents, employees, subcontractors, Third Parties acting on their behalf, or licensees, *provided* that either Party or both Parties may assist with or be involved in reduction to practice during the performance of the Work Plan during the Term. All Landec Improvements relating exclusively to the Field will be solely owned by Landec Ag.
- 1.15. **“Laws”** means laws, statutes, ordinances, rules, regulations, judgments or decrees administered, promulgated or issued by any Governmental Authority.
- 1.16. **“Licensed Know-How”** means all Know-How developed by or on behalf of or acquired by, and in the possession or Control of, Landec, including Landec Improvements, which is necessary or useful to the manufacture, use or sale of Licensed Products, or otherwise relates to the Licensed Technology, except for any Know-How relating to the manufacture of Polymer.
- 1.17. **“Licensed Patent Rights”** means (a) the Patent Rights referred to in Exhibit A and Exhibit B, (b) any Patent Rights claiming Landec Improvements, and (c) Patent Rights maturing from the aforementioned applications or maturing from applications in any country of the world that claim priority to any of such applications.
- 1.18. **“Licensed Product”** means Polymer or Formulation that is made using the Licensed Technology.
- 1.19. **“Licensed Technology”** means the Licensed Know-How, Landec Improvements, Joint Improvements and Licensed Patent Rights.
- 1.20. **“Licensed Trademarks”** means those marks identified on Exhibit C,

including all registered, applied for and common law rights thereto and the goodwill associated therewith, and any foreign equivalent or representation thereof where Landec has the rights to such mark or acquires the rights to such mark during the Term.

- 1.21. **“Major Market Countries”** means the United States, Canada, Japan, Germany, France, United Kingdom of Great Britain and the Netherlands.
- 1.22. **“Monsanto Improvements”** means any and all Improvements created or conceived solely by Monsanto or any one or more of its Affiliates, agents, employees, subcontractors, Third Parties acting on their behalf or licensees, *provided* that either Party or both Parties may assist with or be involved in reduction to practice during the performance of the Work Plan during the Term. All Monsanto Improvements will be solely owned by Monsanto.
- 1.23. **“Patent Rights”** means any and all rights under any and all (a) U.S. or foreign patents, (b) U.S. or foreign patent applications, including without limitation, all provisional applications, substitutions, continuations, continuations-in-part, divisional applications, renewals, and all patents granted thereon, (c) all patents-of-addition, reissues, reexaminations and extensions or restorations by existing or future extension or restoration mechanisms, including, without limitation, supplementary protection certificates or he equivalent thereof, and (d) any other form of government-issued right substantially equivalent to any of the foregoing.
- 1.24. **“Polymer”** means Landec’s temperature-sensitive polymer material.
- 1.25. **“Purchase Price”** means 120% of Direct Costs, but excluding the costs of Operating Services paid by Monsanto to Landec Ag pursuant to Section 5.4, relating to the manufacture of Polymer ordered by Monsanto.
- 1.26. **“Territory”** means worldwide.
- 1.27. **“Third Party”** means any person or entity other than Landec Corporation, Landec Ag or Monsanto or their respective Affiliates.
- 1.28. **Additional Definitions.** Each of the following definitions are found in the body of this Agreement as indicated:

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2. License Grants and IP Ownership.

2.1. **License Grants to Monsanto.** Except for the licenses granted by Landec Ag under the Incotec License Agreement:

2.1.1. **Patent and Know-How License.** Subject to the terms and conditions of this Agreement, Landec hereby grants to Monsanto a co-exclusive license under the Licensed Technology to use, develop, market, distribute, sell, offer for sale, import and export Licensed Products for use in the Field during the Term in the Territory.

2.1.2. **Formulation License.** Subject to the terms and conditions of this Agreement, Landec hereby grants to Monsanto a co-exclusive license under the Licensed Technology to make and have made Formulation for use in the Field during the Term in the Territory (the **“Formulation**

License”). Consistent with Section 4.1.2, Monsanto covenants to Landec that it will not exercise its rights under the Formulation License before the first anniversary of the Effective Date.

2.1.3. **Trademark License.** Subject to the terms and conditions of this Agreement, Landec hereby grants to Monsanto a co-exclusive license to the Licensed Trademarks for use solely in connection with the marketing, promotion, distribution and sale of Licensed Products in the Field during the Term in the Territory.

2.1.3.1. **Trademark Use.** Monsanto may use the Licensed Trademarks in or on all packaging, labels, promotional materials, marketing literature, seed tags and other materials in any medium directly or indirectly relating to the Licensed Products (“**Trademark Documentation**”). When using each of the Licensed Trademarks, Monsanto agrees to use a footnote in substantially the following form: [Licensed Trademark] is a [registered] trademark of [Landec] once on each piece of Trademark Documentation. Monsanto will not be required to utilize the Licensed Trademarks in connection with the Licensed Products and may, at its option, use other trademarks on the Licensed Products.

2.1.3.2. **Marking.** Any use of a Licensed Trademark will be marked with an “®” if and when Landec has obtained registrations thereof in the Territory or portions thereof in which Licensed Products will be promoted, and will be marked with a “™” for trademarks and “SM” for service marks prior to such registration.

2.1.3.3. **Restrictions.** Monsanto agrees that it will not use any Licensed Trademark: (a) as a corporate name, business name, domain name or trade name, (b) in a manner that would reasonably be expected to impair materially the validity, reputation, or distinctiveness of any of the Licensed Trademarks, or (c) in a manner that would reasonably be expected to impair materially Landec’s reputation. Monsanto also agrees that it will not challenge or diminish any of Landec’s rights in the Licensed Marks during the Term of this Agreement or apply to register in its name any of the Licensed Trademarks.

2.1.3.4. **Quality Control.** Monsanto agrees that the Licensed Products bearing any Licensed Trademarks (which may, as deemed appropriate by Monsanto, be co-branded with Monsanto trademarks) will be sold and distributed in accordance with all applicable Laws and regulations, including those Laws and regulations pertaining to the proper use and designation of the Licensed Trademarks. Monsanto also agrees to (a) display the

proper form of trademark notice associated with the Licensed Trademarks and (b) include, on any Licensed Product which bears a Licensed Trademark, a statement identifying Landec as the owner of such Licensed Trademark. Monsanto acknowledges and agrees that Landec is the sole and exclusive owner of all Licensed Trademarks. All goodwill associated with the Licensed Trademarks arising from any and all use of the Licensed Trademarks will inure to the sole benefit of Landec.

- 2.1.3.5. **Samples.** Monsanto will provide to Landec for inspection all Trademark Documentation for the first Licensed Product that incorporates a Licensed Trademark or which will be marketed or distributed using a Licensed Trademark a reasonable time prior to the initial sale or distribution of such Licensed Product. Such Trademark Documentation will be sent to: Dr. Steven Bitler, Landec Corporation, Vice President, Corporate Technology, 3603 Haven Avenue, Menlo Park, CA 94025. Landec will have the right to make reasonable changes to the way the Licensed Trademark is used or appears in such Trademark Documentation, including, without limitation, changes in the color and font of the mark (the “**Approved First Use**”). Any required changes will be provided by Landec to Monsanto within twenty (20) business days of submission of the Trademark Documentation by Monsanto to Landec. Monsanto will thereafter provide Trademark Documentation for Licensed Products to Landec for Landec’s inspection and approval of the use of the Licensed Trademark only if Monsanto makes material changes to the Approved First Use. At Landec’s request, Monsanto will reasonably assist Landec in monitoring the use of the Licensed Trademarks by conducting an annual review with Landec of Monsanto’s use of the same. Monsanto will, at all times, comply with any trademark usage guidelines that may be provided by Landec, *provided* that, following the Approved First Use, Landec may not require any changes to any Trademark Documentation which has been prepared or produced by Monsanto and which is consistent with the Approved First Use. In the event of infringement of any of the Licensed Trademarks by any third party, Monsanto will cooperate and assist Landec in the enforcement of Landec’s rights therein.
- 2.1.3.6. **Non-Compliance.** In the event that Monsanto fails to comply with the provisions of this Section 2.1.3, Landec may give written notice specifying the failure to comply. Unless Monsanto remedies its failure to comply within twenty (20) business days after receipt of such notice, Landec may terminate Monsanto’s rights solely under this Section 2.1.3 immediately upon written notice to Monsanto and Monsanto will cease to use any Licensed

Trademark in connection with the Licensed Products, provided however, that Monsanto will have ninety (90) days to sell off any existing inventory of Licensed Products bearing the Licensed Trademarks. Termination under this Section 2.1.3 will not terminate the licenses under Sections 2.1.1 and 2.1.2.

2.1.4. **Sublicensing.** Monsanto may sublicense all or any portion of its rights and obligations under this Agreement only with the prior written approval of Landec, which approval will not be unreasonably withheld. Notwithstanding the foregoing, Monsanto will be free to grant sublicenses to all or any portion of its rights under this Agreement without Landec's prior written consent to authorize its customers to use Formulation made by or on behalf of Monsanto.

2.2. License Grants to Landec.

2.2.1. **In the Field.** Subject to the terms and conditions of this Agreement, Monsanto hereby grants to Landec a non-exclusive, royalty-free license to exploit the Monsanto Improvements within the Field in the Territory solely to make and use (but not sell) Licensed Product, provided that Landec may sell Licensed Product that exploits the Monsanto Improvements at the direction of Monsanto pursuant to Section 5.3.1(b).

2.2.2. **Outside the Field.** Subject to the terms and conditions of this Agreement, Monsanto hereby grants to Landec a non-exclusive license for all rights to use, develop, make, have made, market, distribute, sell, offer for sale, import, export and otherwise exploit the Monsanto Improvements outside the Field in the Territory. Landec will pay a reasonable royalty, as mutually agreed, to Monsanto on net sales of products for use solely outside the Field, which are covered by the Monsanto Improvements.

2.3. Retained Rights and Ownership.

2.3.1. **Licensed Technology and Licensed Trademarks.** Except for the licenses expressly granted under Section 2.1, Landec retains all right, title and interest in and to the Licensed Technology and Licensed Trademarks and, subject to Section 5.3.1, is free to use the Licensed Technology and Licensed Trademarks in the Field in the Territory. In addition to the foregoing, Landec is free to transfer, license, use and otherwise exploit the Licensed Technology and Licensed Trademarks outside the Field in the Territory.

2.3.2. **Monsanto Improvements.** Except for the licenses expressly granted under Section 2.2, Monsanto retains all right, title and interest in and to the Monsanto Improvements and is free to transfer, license and otherwise exploit the Monsanto Improvements in the Territory.

2.3.3. **Joint Improvements.** Subject to Sections 6.1.4 and 6.1.5, the Parties are joint owners of any Joint Improvements and will have the right to make, have made, use, develop, market, distribute, sell, offer for sale, import and export products covered by the Joint Improvements for use in all fields in the Territory without any compensation to the other Party. No right or license is conveyed by this Section 2.3.3 to any Patent Right other than those Patent Rights included within the Joint Improvements.

2.3.4. **Disclosure.** By the end of each calendar quarter during the Term, Landec will disclose any material Landec Improvements promptly in writing to Monsanto and Monsanto will disclose any material Monsanto Improvements promptly in writing to Landec.

3. **Annual Payments and Buy-Out Option.**

- 3.1. **Annual Payments.** On January 31 of each year from 2007 through 2011, Monsanto will pay to Landec Ag two million five hundred thousand dollars (\$2,500,000) (each, an “**Annual Payment**”). For the sake of clarity, at the end of the Term, Monsanto will have paid to Landec Ag the total amount of twelve million, five hundred thousand dollars (\$12,500,000).
- 3.2. **Buy-Out Option.** At any time during the period starting on the Effective Date and ending on the fifth anniversary of the Effective Date, Monsanto has the option to purchase one-hundred percent (100%) of the equity of Landec Ag (the “**Buy-Out Option**”) by paying eight million dollars (\$8,000,000) (the “**Buy-Out Fee**”) to Landec Corporation. Monsanto may exercise the Buy-Out Option by providing written notice to both Landec Ag and Landec Corporation of its desire to exercise the Buy-Out Option. Upon Landec Corporation’s receipt of Monsanto’s notice, Landec Corporation and Monsanto will negotiate and enter into a Stock Purchase Agreement for the sale of Landec Ag to Monsanto on terms consistent with the provisions of this Agreement (the “**Stock Purchase Agreement**”).
- 3.3. **Long-Term Supply.** To assist with Monsanto’s decision to exercise its Buy-Out Option, after the second anniversary of the Effective Date, the Parties will use good faith efforts to negotiate and agree upon the margin over Purchase Price that Monsanto will pay Landec to manufacture and supply Polymer to Monsanto pursuant to the supply agreement that the Parties will negotiate and enter into pursuant to Section 3.4.3 below if Monsanto exercises its Buy-Out Option.
- 3.4. **Effects of Buy-Out.** If Monsanto elects to exercise its Buy-Out Option, then the following will occur upon the closing of the Stock Purchase Agreement for the sale of Landec Ag to Monsanto:
 - 3.4.1. **Acceleration of Payments.** Monsanto will pay to Landec Corporation any unpaid Annual Payments or Annual Supply Fees that would have otherwise been paid to Landec Ag during the Term of this Agreement.

3.4.2. IP Ownership and Licenses.

- 3.4.2.1. Monsanto will own (a) those Licensed Patent Rights that are owned by Landec Ag, including, without limitation, the Patent Rights listed on Exhibit B and (b) any Licensed Know-How and Licensed Trademarks owned by Landec Ag. Any license from Landec Ag to Monsanto pursuant to Section 2.1 will terminate.
- 3.4.2.2. To the extent any Licensed Patent Rights including, without limitation, the Patent Rights listed on Exhibit A, or other items of Licensed Technology are owned by Landec Corporation and not Landec Ag, Landec Corporation will grant to Monsanto a perpetual, irrevocable, royalty-free, exclusive license under such Licensed Patent Rights and other items of Licensed Technology to use, develop, make, have made, market, distribute, sell, offer for sale, import and export Licensed Products for use in the Field in the Territory with the right to sublicense all or any portion of such Licensed Patent Rights for use in the Field in the Territory.
- 3.4.2.3. To the extent any Licensed Trademarks are owned by Landec Corporation and not Landec Ag, Landec Corporation will grant to Monsanto a perpetual, irrevocable, royalty-free, exclusive, non-transferable license under such Licensed Trademarks for use solely in connection with the marketing, promotion, distribution and sale of Licensed Products in the Field in the Territory with the right to sublicense all or any portion of such Licensed Trademarks for use in the Field in the Territory.
- 3.4.3. **Supply of Polymer.** The Parties' obligations under Section 4 will terminate. Landec Corporation and Monsanto will negotiate and enter into a new supply agreement pursuant to which Monsanto will order and purchase from Landec its total requirement of Polymer and Landec will manufacture and sell to Monsanto an amount of Polymer equal to such total requirement during such term, *provided* that Landec (a) has the capability to meet Monsanto's demand, (b) can manufacture Polymer in accordance with Specifications and (c) can provide Polymer to Monsanto at a price and on other terms that are competitive to the prices and other terms offered by other bona fide suppliers. Subject to any agreements reached during negotiations pursuant to Section 3.3 above, when negotiating the new supply agreement, Landec Corporation and Monsanto will agree upon a price for the Polymer, as well as a supply term. In addition, this supply agreement will provide that Landec will give priority to Monsanto over any other customers in allocating its Polymer production capability.

- 3.4.4. **Termination of Other Provisions.** This Agreement will terminate in its entirety and Landec Corporation and Monsanto will have no further obligations under this Agreement, *provided, however*, that the following provisions of this Agreement will survive after the closing of the Stock Purchase Agreement for the sale of Landec Ag to Monsanto: Section 2.2 (License Grants to Landec), Section 3.4 (Effects of Buy-Out), Section 6 (Intellectual Property), Section 7 (Confidentiality), Section 8 (Representations, Warranties and Covenants), and Section 11 (Miscellaneous Terms).
- 3.5. **Failure to Exercise the Buy-Out Option.** If Monsanto does not elect to exercise its Buy-Out Option within the time period described in Section 3.2 and does not otherwise terminate the Agreement, then upon expiration of the Term, Monsanto will be deemed to have terminated this Agreement pursuant to Section 9.2 and will pay to Landec Ag the Termination Fee (described in Section 9.2.1) on the last day of the Term.
- 3.6. **Undertakings Relating to Buy-Out Option.** In order to preserve the value to Monsanto of the Buy-Out Option, Landec agrees as follows for the period of time after the Effective Date until (a) immediately prior to the closing of the Stock Purchase Agreement (the “**Buy-Out Closing**”) or (b) Monsanto decides not to exercise its Buy-Out Option:
- 3.6.1. As of the date of the Buy-Out Closing, all of the Licensed Patent Rights listed on Exhibit B and Licensed Trademarks owned by Landec Ag will be owned free and clear of any liens or encumbrances, and will be registered in the name of Landec Ag.
- 3.6.2. As of the date of the Buy-Out Closing, with the exception of the Incotec License Agreement, no third party will hold any licenses or sublicenses to any of the Licensed Patent Rights or Licensed Trademarks for use in the Field.
- 3.6.3. Landec Ag will not transfer any of its material assets, except for transfers in the ordinary course of business which will not adversely affect the ability of Landec Ag to continue its operations; *provided that*, prior to the date of the Buy-Out Closing, Landec Ag may transfer all of its remaining cash to Landec Corporation, including the Annual Payments and Annual Supply Fees.
- 3.6.4. As of the date of the Buy-Out Closing, Landec Ag will be free of any indebtedness, and its working capital (excluding cash) will be at a level consistent with similar seasonal periods in its prior fiscal years.
- 3.6.5. Landec Ag will continue to conduct its business in the ordinary course, except for changes made pursuant to this Agreement, and will maintain its property in substantially the condition currently existing, normal wear and tear excepted.
- 3.6.6. Landec Ag will preserve its corporate existence and good standing.

- 3.6.7. Landec Ag will not change the overall character of its business, operations, activities or practices except as provided in this Agreement.
- 3.6.8. As of the date of the Buy-Out Closing, Landec Ag will release any liens existing on any of its assets which would adversely affect the value of Landec Ag to Monsanto in any material respect.
- 3.6.9. Except as provided in accordance with the Stock Purchase Agreement, Landec will not permit Landec Ag to issue any additional equity securities of any class, or any securities convertible into or exchangeable into any of its equity securities, and will not transfer any of the equity securities of Landec Ag to any other person (other than a transfer to an Affiliate of Landec which is expressly subject to the Buy-Out Option and subject to the other conditions set forth in this Section 3.6).
- 3.6.10. Landec Ag will not enter into any agreements, or take any other actions, which would prevent Monsanto from exercising the Buy-Out Option or materially and adversely affect the value to Monsanto of Landec Ag upon exercise of the Buy-Out Option.

4. **Supply of Licensed Product.**

4.1. **Supply Agreement.**

- 4.1.1. **Polymer.** Beginning on the Effective Date, until the end of the Term or such earlier time as (a) the sale of Landec Ag to Monsanto in accordance with Section 3.2 or (b) the early termination of this Agreement in accordance with Sections 9.2 or 9.3 (the "**Supply Term**"), Landec will manufacture and supply Polymer to Monsanto. During the Supply Term, Monsanto will order and purchase from Landec under the terms and conditions stated in this Section 4 its total requirement of Polymer and Landec will, under the terms and conditions stated in this Section 4, manufacture and sell to Monsanto an amount of Polymer equal to such total requirement.
- 4.1.2. **Formulation.** For a period of one year from the Effective Date, Monsanto will order and purchase from Landec under the terms and conditions stated in this Section 4 its total requirement of Formulation and Landec will, under the terms and conditions stated in this Section 4, manufacture and sell to Monsanto an amount of Formulation equal to such total requirement and be responsible for the coating of seeds. At any time after the first anniversary of the Effective Date and during the Term, Monsanto has the option to (a) continue to order Formulation from Landec or (b) take over all manufacturing and production of Formulation and coating of seeds. The Parties agree that upon Monsanto's request and at Monsanto's sole expense, Landec will assist Monsanto in the transfer of manufacturing and production of Formulation and coating of seeds from Landec to

Monsanto in order to allow Monsanto to commence commercial production of Formulation at any time specified by Monsanto on or after such first anniversary. If so requested by Monsanto, Landec will sell to Monsanto any equipment required by Monsanto for such manufacturing and production which is no longer required by Landec, at a purchase price equal to the fair market value thereof.

4.2. Monsanto's Responsibilities.

- 4.2.1. **Forecasts.** By the end of each calendar quarter during the Supply Term, Monsanto will provide a non-binding six (6) month rolling forecast of its expected requirements for Licensed Product. Within thirty (30) business days following receipt of each such forecast, Landec will advise Monsanto in writing whether it has the capability to provide such estimated requirements or, if not, the amount of Licensed Products it has the capability to provide. Landec will, in determining its capability to provide Monsanto's forecasted requirements, give priority to Monsanto over any other Landec customers. If Landec does not provide such written advice to Monsanto within such thirty (30) business day period, Landec will be deemed to have confirmed that it has the required capability to provide Monsanto's forecasted amounts.
- 4.2.2. **Purchase Orders.** From time to time, Monsanto will issue purchase orders for Licensed Product. These purchase orders will be binding upon Monsanto at the time of issue, and will also be binding upon Landec to the extent the amount of Licensed Product requested in the purchase orders does not exceed Landec's capability as referred to in Section 4.2.1 above. Monsanto will provide at least sixty (60) days lead time for Licensed Product orders up to a quantity of 20,000 pounds and a lead time of at least ninety (90) days for larger Licensed Product orders. Landec will consult with Monsanto if additional suppliers are required to meet Monsanto's requirements.

4.3. Landec's Responsibilities.

- 4.3.1. **Raw Materials.** Landec will be responsible for (a) obtaining all raw materials, ingredients and components required to manufacture and supply Licensed Product to Monsanto; and (b) supplying all other facilities, equipment, materials, shipping supplies and personnel necessary to manufacture and supply Licensed Product, *provided, however*, that Monsanto will pay for such costs incurred by Landec through payment of the Purchase Price for Licensed Product that it orders from Landec in accordance with Section 4.4.2.
- 4.3.2. **Specifications.** Landec Ag will supply Licensed Product to Monsanto as so ordered and in accordance with the specifications that are mutually agreed to by Landec Ag and Monsanto during the Term (the "**Specifications**"). The Specifications may be modified or updated during the Supply Term as mutually agreed in writing by the Parties.

4.3.3. **Use of Third Parties.** Landec is entitled to use one or more Third Parties to perform all or any part of the manufacturing of Licensed Product, including, but not limited to, the sourcing of raw materials, components and other items used in manufacturing Licensed Product. Landec will be responsible for ensuring that the performance by such Third Parties complies with the applicable provisions of this Agreement.

4.4. **Payment.**

4.4.1. **Annual Supply Fee.** On January 31 of each year from 2007 through 2011, Monsanto will pay to Landec Ag one hundred thousand dollars (\$100,000) (the “**Annual Supply Fee**”). For the sake of clarity, at the end of the Supply Term (or earlier as provided by [Section 3.4.1](#)), Monsanto will have paid to Landec Ag the total amount of five hundred thousand dollars (\$500,000) in Annual Supply Fees. In addition, if this Agreement is terminated early in accordance with [Section 9.2](#) (or [Section 9.3](#), if Landec terminates for cause), Monsanto will also owe the total amount of five hundred thousand dollars (\$500,000) in Annual Supply Fees.

4.4.2. **Purchase Price.** During the Supply Term, Monsanto will purchase Licensed Product from Landec Ag for the Purchase Price. Payment for amounts invoiced by Landec Ag will be due and payable by Monsanto to Landec Ag within thirty (30) days after the date of each such invoice.

4.4.3. **Adjustment in Purchase Price.**

4.4.3.1. **Increase in Direct Costs.** Landec will use Commercially Reasonable Efforts to avoid increases to its Direct Cost, and will consult with Monsanto in good faith, in advance, to discuss any anticipated material increases in Direct Costs and alternatives for avoiding or minimizing such increases. Subject to the foregoing, to the extent that Landec’s Direct Costs do increase during the Supply Term, such increase will be passed through to Monsanto by a corresponding increase in the Purchase Price.

4.4.3.2. **Decrease in Direct Costs.** Landec will use Commercially Reasonable Efforts, in consultation with Monsanto, to reduce its Direct Costs. To the extent that Landec’s Direct Costs are reduced during the Supply Term from the Direct Costs existing on the Effective Date as set forth on [Exhibit D](#) (the “**Reduction Amount**”), such Reduction Amount will be allocated 70% to Monsanto and 30% to Landec. For example, if the Direct Costs of the Polymer were to decrease from \$4.00 to \$2.00, the Direct Costs used in the calculation of Purchase Price would be reduced from \$4.00 to \$2.60

- 4.5. **Records and Audit.** Landec will maintain complete and accurate records which are relevant to the determination of the Purchase Price that Monsanto pays for Polymer under this Agreement. Such records will be open during reasonable business hours for a period of three (3) years from the creation of individual records for examination at Monsanto's expense and not more often than once per year by an independent certified public accountant selected by Monsanto. Landec's records and accounting information will be Confidential Information for purposes of Section 7 of this Agreement.
- 4.6. **Sole Remedy.** Provided that Landec has used Commercially Reasonable Efforts to manufacture and supply Licensed Product in accordance with the Specifications, Landec's sole liability and Monsanto's sole remedy for any failure to manufacture and supply Licensed Product pursuant to Section 4 hereof will be that Landec will manufacture and supply replacement Licensed Product in accordance with the Specifications satisfactory to remedy such failure.
- 4.7. **Title.** All right, title and interest in and to Licensed Product in the possession or control of Landec will at all times remain the sole property of Landec until delivery to Monsanto under this Agreement, Ex Works Landec facility, or such other facility that Landec designates from time to time.
5. **Services.** During the Term of this Agreement, Landec will provide to Monsanto Research and Development Services, Formulation and Manufacturing Services and General Administrative Services as described in Sections 5.1.2, 5.1.3 and 5.1.4 below (each, an "**Operating Service**") and Monsanto will provide to Landec certain Support Services and Sales and Marketing Services as described respectively in Sections 5.2 and 5.3.
- 5.1. **Operating Services.**
- 5.1.1. **Annual Plan and Budget.** Landec and Monsanto have agreed upon a financial plan and budget for Landec Ag for the first year of the Term, which reflects the budgeted costs of the Operating Services necessary to run the business as contemplated by the Parties. In connection with the annual review meetings referred to in Section 5.4.1.1, the Parties will review the prior year's operations, and prepare and approve an updated financial plan and budget for the following year (the "**Annual Plan and Budget**"). The Annual Plan and Budget will also reflect capital expenditures contemplated to be made by Landec Ag.
- 5.1.2. **Research & Development Services.**
- 5.1.2.1. **Work Plan.** Landec will perform research, development, formulation, biological testing and technical support services in connection with the Licensed Technology within the Field

(“**Research and Development Services**”) in accordance with a mutually approved research and development work plan, which will be modified, amended and otherwise updated during the Term as mutually agreed by the Parties (the “**Work Plan**”). The Parties will create and mutually agree upon an initial Work Plan within sixty (60) days after the Effective Date. The initial Work Plan will describe the Research and Development Services to be performed by Landec and will reflect without limitation the following key areas: (a) development of Polymer and Formulation, (b) manufacturing of Licensed Products, including raw materials, coating processes and logistics, (c) seed testing needs (both for research and development and in support of production), (d) process engineering development and manufacturing support and (e) sales and marketing efforts. The Parties may update, amend, modify, extend or replace any Work Plan upon mutual agreement. If the Parties cannot mutually agree upon the initial Work Plan, any subsequent update, amendment, modification or extension of the initial Work Plan or new Work Plan, the Representatives will use good faith efforts pursuant to Section 11.8.1 to reach agreement.

5.1.2.2. **Review Meetings.** At least once per calendar quarter when Landec is performing Research and Development Services pursuant to a Work Plan, at mutually agreeable times and locations, representatives of the Parties’ research and development teams and business development staff will meet either in person, by videoconference or by telephone to discuss the progress and results or outcomes of the Research and Development Services performed pursuant to the Work Plan and any necessary modifications, amendments or updates to the Work Plan.

5.1.3. **Formulation and Manufacturing Services.** In addition to Landec’s responsibility to supply Licensed Product under the terms of Section 4 above, Landec will provide the following services to Monsanto (“**Formulation and Manufacturing Services**”): (a) Polymer and Formulation manufacturing support, (b) seed coating and treatment support, (c) manufacturing scale-up for Polymer, Formulation and seed coating, (d) testing and analysis associated with manufacturing Polymer, Formulation and coatings, (e) purchasing of raw materials, and (f) packaging and engineering support. The cost of Formulation and Manufacturing Services will include non-labor costs such as supplies, travel, communications, logistics cost of inventory and storage, and depreciation on equipment as more fully described in Section 5.4.1.4, as approved in the Annual Plan and Budget. At least once per year during the Term, Landec agrees to meet and work with representatives from Monsanto’s manufacturing group to discuss in good faith ways to lower the costs of the Formulation and Manufacturing Services.

- 5.1.4. **General Administrative Services.** Landec will provide the following services to Monsanto (“**General Administrative Services**”) to support Landec Ag’s activities: (a) administrative, (b) accounting, including payroll, (c) information technology services and (d) prosecution and maintenance services for the Licensed Patent Rights and Licensed Trademarks.
- 5.2. **Monsanto’s Support Services.** Monsanto will provide services to Landec Ag that are necessary to support Landec Ag’s operations and the production requested by Monsanto hereunder (“**Support Services**”), *provided* that Monsanto will have the right, after consultation with Landec, to determine the appropriate level of staffing and resources to be allocated to such services. Subject to the foregoing, such Support Services will include, without limitation, the following:
- 5.2.1. field evaluation of current and new Licensed Products across several geographies;
- 5.2.2. logistics support, including sourcing of raw materials, inventory control of work-in-progress and finished goods, and shipping and distribution services;
- 5.2.3. environmental and regulatory support of Landec Ag’s lab, plant, polymer formulation and product activities; and
- 5.2.4. analytical and engineering support.
- 5.3. **Sales Agency.**
- 5.3.1. **Appointment.** As of the Effective Date, Landec Ag designates and appoints Monsanto to act as its exclusive sales and marketing agent for the limited purpose of selling Licensed Products to Third Parties for use in the Field in the Territory; *provided* that Landec Ag will retain the right to sell Licensed Products directly under the Incotec License Agreement and to any Third Parties if (a) a customer requests a direct sale from Landec, (b) Monsanto requests that Landec make such direct sale, or (c) Monsanto elects, after consultation with Landec, not to develop and commercialize the Licensed Technology for a particular application in the Field. During the Term, Landec Ag will not appoint any Third Party other than Monsanto to act as its sales agent in respect of Licensed Products for use in the Field.
- 5.3.2. **Monsanto Responsibilities.** Monsanto will be responsible for the sales program and for generating a marketing program for Licensed Products, including promotions, promotional activities, press releases and incentive programs (“**Sales and Marketing Services**”).

5.3.3. **Payment for Direct Sales.**

5.3.3.1. If Landec makes any direct sale of Licensed Products to Third Parties pursuant to Section 5.3.1 above, Landec will provide written notice of such direct sale to Monsanto within thirty (30) of such sale. On a quarterly basis, Landec Ag will pay to Monsanto thirty-five percent (35%) of the gross profit received from any direct sales to Third Party customers. For the sake of clarity, Landec will be responsible for the costs of the Polymer used in Licensed Products sold directly under Section 5.3.1 above.

5.3.3.2. On or before August 31 of every year of the Term, the Parties will determine the total combined sales of Licensed Products in the Field by both Monsanto and Landec in the previous year (the “**Total Relevant Sales**”). To the extent that Landec’s direct sales of Licensed Products to Third Parties pursuant to Sections 5.3.1(a) and 5.3.1(c) above exceed twenty-five percent (25%) of the Total Relevant Sales, the Parties will negotiate in good faith how to fairly apportion between the Parties the costs of Operating Services necessary to run the business in the following year. For the avoidance of doubt, direct sales of Licensed Products to Third Parties pursuant to Section 5.3.1(b), above (*i.e.*, direct sales made upon Monsanto’s request) will not be included in the calculation of Total Relevant Sales.

5.3.4. **Preexisting Agreements.** Notwithstanding Section 5.3.3 above, Landec Ag will not owe any percentage of the gross profit received from direct sales of Licensed Product to Incotec International, B.V. under the Incotec License Agreement. The Incotec License Agreement will not be renewed, extended or otherwise amended without the advance written consent of Monsanto.

5.3.5. **Non-Solicitation.** Monsanto agrees that during the Term of this Agreement, it will not, directly or indirectly, hire or attempt to hire any employee of Landec Corporation, Landec Ag or any of their respective Affiliates or encourage any such employee to terminate his or her relationship with Landec Corporation, Landec Ag or any of their respective Affiliates, without the prior written consent of Landec Corporation, *provided* that Monsanto may make employment offers to Landec Ag’s sales and marketing employees.

5.4. **Costs of Services.**

5.4.1. **Operating Services.** Monsanto is responsible for paying for all costs of the Operating Services provided by Landec Ag under this Agreement and detailed in the Annual Plan and Budget, subject to the following:

- 5.4.1.1. On an annual basis, representatives of Landec will meet with senior management representatives of the manufacturing and commercial divisions of Monsanto to discuss the Annual Plan and Budget, and to consider how the Operating Services can be conducted in the most efficient and least costly manner. Such meetings will be scheduled a sufficient time prior to the commencement of each production season, which begins on June 1 of every year, to allow for implementation of any agreed changes to the Annual Plan and Budget.
- 5.4.1.2. Monsanto will be responsible for payment of the first \$10,000 of the annual cost of prosecuting and maintaining the Licensed Patent Rights and Licensed Trademarks, which will be included in the costs of the Operating Services. Any excess amount will not be included in the costs of the Operating Services and will be paid by Landec.
- 5.4.1.3. Monsanto will not bear any costs of manufacture or production of Licensed Products for any Third Parties, or for the purchase of raw materials, or production of Licensed Products, in excess of amounts reasonably required to fulfill orders submitted by Monsanto pursuant to Section 4.2.2.
- 5.4.1.4. Landec Ag will be responsible for any capital costs of replacing existing equipment and other existing assets required by Landec Ag for production of the Licensed Products and otherwise performing its obligations hereunder, and no capital expenditures related to such equipment or assets will be included in the costs of the Operating Services, *provided* that Landec Ag may account for the depreciation on such equipment and assets in the costs of Operating Services in accordance with past practices and United States generally accepted accounting principles. Any non-routine or special capital expenditures required as a result of any changes in the Specifications or in the manner of producing the Licensed Products, which are requested by Monsanto, will be paid for by Monsanto and recorded on Monsanto's books. Any equipment or other assets purchased by such non-routine or special capital expenditures will be owned by Monsanto. For the avoidance of doubt, upon termination of this Agreement Monsanto will be entitled to remove such equipment or other assets from Landec's facility and will be responsible for the costs of removing and shipping any such capital equipment or assets that are installed in Landec's facility.
- 5.4.1.5. If Landec reasonably incurs costs in performing its obligations hereunder that are not contemplated by the Annual Plan and Budget, the Parties will discuss such unplanned costs of the

Operating Services in the calendar quarter after such costs are incurred by Landec. If Landec used Commercially Reasonable Efforts in incurring such unplanned costs when providing Operating Services, Monsanto will not unreasonably withhold its agreement to pay for such unplanned costs.

5.4.2. **Invoicing and Payment.** Landec Ag will invoice Monsanto quarterly for the costs of Operating Services and payments for such invoiced amounts will be due and payable by Monsanto to Landec Ag within thirty (30) days after the date of each such invoice.

5.4.3. **Other Services.** Monsanto is also responsible for the costs it incurs in providing Support Services or Sales and Marketing Services.

5.5. **Records and Audit.** Landec will maintain complete and accurate records which are relevant to the determination of the cost of the Operating Services provided by Landec to Monsanto under this Agreement. Such records will be open during reasonable business hours for a period of three (3) years from the creation of individual records for examination at Monsanto's expense and not more often than once per year by an independent certified public accountant selected by Monsanto. Landec's records and accounting information will be Confidential Information for purposes of Section 7 of this Agreement.

5.6. **Workforce.** It is the current intention of the Parties that until the first anniversary of the Effective Date, there will be no reduction in Landec Ag's employee workforce.

6. Intellectual Property.

6.1. Filing, Prosecution and Maintenance of Patent Rights.

6.1.1. **Licensed Patent Rights.** Landec, through counsel of its choosing, will have primary responsibility for and control over obtaining, prosecuting (including any interferences, reissue proceedings and re-examinations), and maintaining throughout the world the Licensed Patent Rights in the Major Market Countries. In this regard, Landec will (a) file and prosecute patent applications to secure Patent Rights for the Licensed Patent Rights in the Major Market Countries, and (b) upon issuance, maintain such patents in full force in the Major Market Countries.

6.1.2. **Monsanto Improvements.** Monsanto, through counsel of its choosing, will have primary responsibility for and control over obtaining, prosecuting (including any interferences, reissue proceedings and re-examinations), and maintaining throughout the world Patent Rights in Monsanto Improvements. In this regard, Monsanto will (a) file and prosecute patent applications to secure Patent Rights for the Monsanto Improvements in such countries in the Territory as determined by Monsanto in its sole discretion and (b) upon issuance, maintain such

patents in full force in such countries. Monsanto will pay for the costs and expenses of prosecuting and maintaining Patent Rights in the Monsanto Improvements.

6.1.3. **Joint Improvements.** Landec, through counsel reasonably acceptable to both Parties, will have primary responsibility for obtaining, prosecuting (including any interferences, reissue proceedings and re-examinations), and maintaining throughout the world any Patent Rights in Joint Improvements. In this regard, Landec will (a) file and prosecute patent applications to secure Patent Rights for the Joint Improvements in such countries in the Territory as mutually determined by Landec and Monsanto, (b) upon issuance, maintain such patents in full force in such countries and (c) keep Monsanto fully informed of all matters relating to prosecution of Patent Rights in Joint Improvements. Subject to [Section 6.1.4](#) and [6.1.5](#) below, Landec and Monsanto will share equally the external expenses associated with the prosecution and maintenance of Patent Rights in the Joint Improvements.

6.1.4. **Election not to Continue Prosecution; Abandonment.**

6.1.4.1. **Step-In Rights.** If a Party with primary responsibility for prosecuting and maintaining certain Patent Rights (*i.e.*, Landec Ag for Licensed Patent Rights and Patent Rights in Joint Improvements and Monsanto for Patent Rights in Monsanto Improvements) (the “**Responsible Party**”) elects (a) not to file and prosecute such Patent Rights in any Major Market Country or any other country of the Territory, as applicable or (b) not to continue the prosecution (including any interferences, oppositions, reissue proceedings and re-examinations) or maintenance of a Patent Right in a particular country in the Territory (the “**Disinterested Party**”), then the Disinterested Party will so notify the other Party promptly in writing of its intention in good time to enable the other Party to meet any deadlines by which an action must be taken to establish or preserve any such rights in such patent in such country. The Disinterested Party will permit the other Party, should the other Party choose to do so, at the other sole Party’s expense, to file for, or continue to prosecute, maintain or enforce, or otherwise pursue such Patent Rights in such country and the Disinterested Party will reasonably cooperate with the other Party in regard thereto.

6.1.4.2. **Ownership.** (a) If the Disinterested Party is Landec, and Monsanto steps-in as the Responsible Party for prosecuting and maintaining the Licensed Patent Rights or Patent Rights in Joint Improvements, Landec agrees to assign to Monsanto all of its rights, title and interest in and to such Patent Rights. (b) If the

Disinterested Party is Monsanto, and Landec steps-in as the Responsible Party for prosecuting and maintaining the Patent Rights in the Monsanto Improvements, Monsanto agrees to assign to Landec all of its rights, title and interest in and to such Patent Rights. (c) Both Parties agree to execute and deliver such instruments and do such acts and things, including the filing of such assignments, agreements, documents and instruments, as may be necessary to carry out the assignments in clauses (a) and (b) above.

6.1.5. Patent Coverage in the Territory.

6.1.5.1. **Broadening Coverage.** If Monsanto wants to expand patent coverage of the Licensed Patent Rights or Patent Rights in either Landec Improvements or Joint Improvements, or Landec wants to expand patent coverage of the Patent Rights in the Monsanto Improvements with respect to other countries in the Territory, the Parties will reasonably discuss taking such action. If the Responsible Party refuses to expand the patent coverage in the Territory as desired by the other Party, the Responsible Party will be considered an Disinterested Party with respect to such country and the terms of Section 6.1.4 will apply.

6.1.5.2. **Narrowing Coverage.** Monsanto or Landec has the right to refuse to share the costs and expenses of the prosecution and maintenance of the Patent Rights in Joint Improvements. In the event that either Party is not interested in assuming the costs and expenses of the prosecution and maintenance of the Patent Rights in Joint Improvements, such Party will assign to the other Party all of its rights, title and interest in and to the Patent Rights in Joint Improvements for which it does not share such costs in accordance with Section 6.1.3.

6.1.6. **Communication.** The Responsible Party will provide the other Party with copies of all official correspondence (including, but not limited to, applications, office actions, responses, etc.) relating to prosecution and maintenance of the any Patent Rights under this Agreement. The other Party may provide comments with respect to actions to be taken by the Responsible Party. The Responsible Party will give good faith consideration to the other Party's comments, but it will be within the Responsible Party's reasonable discretion whether to incorporate such comments into any prosecution response relating to such Patent Rights. In order to facilitate each Party's rights to comment, the Responsible Party will provide copies of all such official correspondence and any proposed responses by such Responsible Party at least thirty (30) business days prior to any filing or response deadlines and the other Party will provide any comments promptly and in sufficient time to allow Responsible Party to meet applicable filing requirements. In no event will a Responsible Party be required to delay any submission, filing or response.

- 6.1.7. **Cooperation; Information Disclosure.** Each Party will, and will cause its Affiliates to, cooperate fully in the preparation, filing, prosecution and maintenance of Patent Rights, including without limitation, (a) promptly disclosing and making available to the other Party all material information it Controls after it first develops, learns or first appreciates the significance of such information that is reasonably necessary for such other Party to perform its obligations under this Section 6, and (b) executing all papers and instruments so as to enable the other Party to perform its obligations under this Section 6. Each Party will provide to the other Party prompt notice as to all matters which come to its attention and which may affect the preparation, filing, prosecution or maintenance of any Patent Rights.
- 6.2. **Filing, Prosecution and Maintenance of Licensed Trademarks.** Landec, through counsel of its choosing, will have primary responsibility for and control over obtaining, prosecuting and maintaining throughout the world the Licensed Trademarks. In the event that Monsanto wants to market Licensed Products in a country in the Territory in which Landec does not own a Licensed Trademark, the Parties will reasonably discuss filing for a Licensed Trademark in such country. If, after discussions, Landec does not file for a trademark in such country, Monsanto, at its sole expense, will have the right to do so on behalf of Landec. Any trademark obtained by Monsanto pursuant to this Section 6.2 will be owned by Landec, but considered a Licensed Trademark pursuant to which Monsanto has a license under Section 2.1.3.
- 6.3. **Enforcement of Patent Rights.**
- 6.3.1. **Notification.** Each Party will promptly report in writing to the other Party during the Term any known infringement or suspected infringement of any of the Licensed Patent Rights, Patent Rights in Landec Improvements, Monsanto Improvements or Joint Improvements, or Licensed Trademarks by a Third Party (an “**Infringer**”), and will provide the other Party with all available evidence supporting said infringement or suspected infringement, including without limitation, the identity of the Infringer and the alleged infringement complained of.
- 6.3.2. **Enforcement Within the Field.** The Responsible Party (*i.e.*, Landec Ag for Licensed Patent Rights, Patent Rights in Landec Improvements and Joint Improvements and Licensed Trademarks and Monsanto for Patent Rights in Monsanto Improvements) will have the first right, but not the obligation, to take any reasonable measures it deems appropriate to stop such infringing activities by an Infringer in any part of the Territory, including initiating or prosecuting an infringement or other appropriate suit or action against such Infringer. In the event the Responsible Party elects not to take action pursuant to this Section 6.3.2, the Responsible

Party will so notify the other Party promptly in writing of its intention in good time to enable the other Party to meet any deadlines by which an action must be taken to establish or preserve any enforcement rights and such other Party will have the right to take any such reasonable measures to stop such infringing activities by such Infringer. The Responsible Party will fully cooperate with the other Party in the event that the Responsible Party decides not to bring an infringement action. Such cooperation will include being a named party in any action brought by the other Party

- 6.3.3. **Procedures.** Each Party will give the other Party sufficient advance notice of its intent to file any suit pursuant to Sections 6.3.2 and the reasons therefore and each Party will provide the other Party with an opportunity to make suggestions and comments regarding such filings, *provided, however*, that the commenting Party will provide any such comments promptly and sufficiently in advance of any filing dates to allow for consideration by the Party filing the suit (the “**Controlling Party**”), and *further provided* that it will be within the Controlling Party’s reasonable discretion whether to incorporate such suggestions or comments. The Parties will keep each other reasonably and timely informed of the status and progress of the litigation, including without limitation, furnishing copies of communications, pleadings, and other documents and keeping each Party informed of settlement efforts, and will obtain suggestions and strategy from the other Party, including during pre-trial motions and discovery, *provided, however*, that it will be within the Controlling Party’s reasonable discretion whether to incorporate such suggestions or comments, but *further provided* that the Controlling Party will not enter into any settlement without the prior written consent of the other Party (which consent will not unreasonably be withheld) if such settlement includes a finding or agreement that any Patent Right is invalid or unenforceable. The Controlling Party will have the sole and exclusive right to select counsel for any such suit and action and will pay all expenses of the suit, including, but not limited to, attorneys’ fees and court costs. Upon reasonable request by the Controlling Party, the other Party will give the Controlling Party all reasonable information and assistance in connection with such suit for infringement, including allowing the Controlling Party access to its files and documents and to its personnel who may have possession of relevant information and, if necessary, for the Controlling Party to prosecute any legal action, joining in the legal action as a party.
- 6.3.4. **Recovery.** Any amounts recovered by either Party pursuant to Section 6.3.2, whether by settlement or judgment, will be used to reimburse the Parties for their reasonable costs and expenses (including attorneys fees) incurred in making such recovery (which amounts will be allocated pro rata if insufficient to cover the totality of such expenses), with any remainder being paid to the Controlling Party. The Controlling Party pursuing any action under Section 6.3.2 will bear all payments awarded against or agreed to be paid by such Party pursuant to such action, including any costs or expenses incurred that exceed the amounts recovered by such Party.

6.3.5. **Declaratory Judgments.** Each Party will provide the other Party with immediate written notice of any declaratory judgment action or other claim or action brought by a Third Party in the Territory that alleges the invalidity, unenforceability or noninfringement of any Licensed Patent Right or any Patent Right in Landec Improvements, Monsanto Improvements or Joint Improvements. The Responsible Party will have the first right, but not the obligation, at its own expense, to defend the Patent Rights in any such declaratory judgment action. The Responsible Party will notify the other Party within fifteen (15) business days of receiving written notice of such declaratory judgment action as to whether it intends to defend such declaratory judgment action (or if appropriate such lesser period as is necessary so as to give the other Party a reasonable period in which to respond to such declaratory judgment action). If, after the expiration of such period, the Responsible Party has not notified the other Party of its intent to defend such declaratory judgment action, then the other Party will have the right, but not the obligation, to defend such declaratory judgment action, *provided* that the Responsible Party will fully cooperate with the other Party in the event that the Responsible Party decides not to defend such declaratory judgment action. Furthermore, the Responsible Party will bear all the expenses of such litigation. Neither Party will consent to the entry of any judgment or enter into any settlement with respect to such declaratory judgment action without the prior written consent of the other Party (which consent will not unreasonably be withheld) if such judgment or settlement includes a finding or agreement that any Patent Right is invalid or unenforceable, or would enjoin or grant other equitable relief against the other Party. Each Party will cooperate (including by executing any documents required to enable the other Party to participate in such litigation) with the other Party in the defense of any declaratory judgment action brought by a Third Party relating to the Patent Rights in accordance with this Section 6.3.5 and will have the right to consult with the other Party and to participate in and be represented by independent counsel in such litigation at its own expense.

6.4. **Defense of Third Party Infringement Action.**

6.4.1. **Notice.** In the event of any actual or threatened suit against a Party or the Affiliates or sublicensees of a Party (the “**Sued Party**”) alleging that commercialization of the Licensed Products in the Territory infringes or will infringe such Third Party’s Patent Rights (an “**Infringement Suit**”), the Sued Party will promptly give written notice of such Infringement Suit to the other Party.

- 6.4.2. **Landec's Right to Defend.** Landec will have the first right, but not the obligation, through counsel reasonably acceptable to Monsanto, to assume direction and control of the defense of claims arising from the practice of technology covered by the Licensed Patent Rights or Patent Rights in Landec Improvements and Joint Improvements, including the right to settle such claims, *provided* that (i) Landec will obtain the prior written consent of Monsanto to settle such claims, and (ii) to the extent Monsanto is a named party to the Infringement Suit, Monsanto may, upon written notice to Landec, assume at Monsanto's cost its own defense of any claims against Monsanto in such suit, in which event Landec will have no authority to act on Monsanto's behalf with respect to the defense of such claims.
- 6.4.3. **Monsanto's Right to Defend.** Monsanto will have the first right, but not the obligation, through counsel reasonably acceptable to Landec, to assume direction and control of the defense of claims arising from the practice of Monsanto Improvements, including the right to settle such claims, *provided* that (i) Monsanto will obtain the prior written consent of Landec (which consent will not unreasonably be withheld) if such settlement includes a finding or agreement that any Patent Right in a Monsanto Improvement is invalid or unenforceable or otherwise adversely affects Landec, and (ii) to the extent Landec is a named party to the Infringement Suit, Landec may, upon written notice to Monsanto, assume at Landec's cost its own defense of any claims against Landec in such suit, in which event Monsanto will have no authority to act on Landec's behalf with respect to the defense of such claims.
- 6.4.4. **Cooperation and Communication.** Upon the other Party's request and at the other Party's expense, each Party will offer reasonable assistance in connection with the defense of an Infringement Suit. Each Party will keep the other Party reasonably and timely informed of the status and progress of the litigation and will provide the other Party with the opportunity to make suggestions and comments regarding such defense, *provided, however*, that the other Party will provide any such comments sufficiently in advance of any filing dates to allow for consideration by Party responsible for defending the Infringement Suit, and *further provided* that it will be within such responsible Party's reasonable discretion whether to incorporate such suggestions or comments. If a Party notifies the other Party in writing that it does not wish to assume direction and control of defending an Infringement Suit pursuant to either Section 6.4.2 or 6.4.3, the other Party will have the right, but not the obligation to, at its sole cost and expense, to defend against such claims, *provided, however*, that such Party will obtain the written consent of the other Party prior to ceasing to defend, settling or otherwise compromising such claims.
- 6.5. **Patent Term Restoration.** The Parties hereto will cooperate with each other in obtaining patent term restoration in the Territory where applicable to the Licensed Patent Rights related to any Licensed Product, including under 35

U.S.C. § 156. If elections with respect to obtaining such patent term restoration are to be made, Landec will make such election and Monsanto will abide by such election.

7. **Confidentiality.**

- 7.1. **Confidential Information.** Each Party will treat as confidential all Confidential Information of the other Party, will not use such Confidential Information except as set forth in this Agreement, and will use its best efforts not to disclose such Confidential Information to any Third Party. Without limiting the foregoing, each of the Parties will use at least the same degree of care which it uses to prevent the disclosure of its own Confidential Information of like importance to prevent the disclosure of Confidential Information disclosed to it by the other Party under this Agreement. Each Party will disclose Confidential Information of the other Party only to its directors, officers, employees, consultants and advisors who have a need to know such information in order for such Party to carry out the activities and transactions contemplated by this Agreement. Each Party will promptly notify the other Party of any actual or suspected misuse or unauthorized disclosure of the other Party's Confidential Information.
- 7.2. **Exceptions.** Notwithstanding the above, neither Party will have liability to the other with regard to any Confidential Information of the other which the receiving Party can prove:
- 7.2.1. was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party;
 - 7.2.2. became generally available to the public or otherwise part of the public domain after its disclosure or development, as the case may be, other than through any act or omission of the receiving Party;
 - 7.2.3. was known by the receiving Party, without restriction, at the time of disclosure by the disclosing party and the receiving party has documentary evidence to that effect;
 - 7.2.4. was disclosed to the receiving Party, without restriction, by a Third Party who had no obligation to the disclosing Party not to disclose such information to others; or
 - 7.2.5. was independently discovered or developed by or on behalf of the receiving Party without the use of any Confidential Information belonging to the disclosing Party and the receiving Party has documentary evidence to that effect.
- 7.3. **Authorized Disclosure and Use.**
- 7.3.1. **Disclosure.** Notwithstanding the foregoing provisions of Section 7.1, each Party may disclose Confidential Information belonging to the other Party to the extent such disclosure is reasonably necessary to:

7.3.1.1. file or prosecute patent applications as contemplated by this Agreement;

7.3.1.2. prosecute or defend litigation; and

7.3.1.3. comply with applicable Laws and regulations.

7.3.2. **Advanced Notice.** In the event a Party will deem it reasonably necessary to disclose Confidential Information belonging to the other Party pursuant to Section 7.3.1 above, the disclosing Party will to the extent possible give reasonable advance notice of such disclosure to the other Party and take reasonable measures to ensure confidential treatment of such information.

7.3.3. **Use.** Notwithstanding the foregoing provisions of Section 7.1, each Party will have the right to use the other Party's Confidential Information in carrying out its responsibilities or exercising its rights under this Agreement, or as otherwise expressly authorized by this Agreement.

7.4. **SEC Filings and Other Disclosures.** Either Party may disclose the terms of this Agreement (a) to the extent required, in the reasonable opinion of such Party's legal counsel, to comply with applicable Laws, including, without limitation, the rules and regulations promulgated by the United States Securities and Exchange Commission and (b) in connection with a prospective acquisition, merger, financing or license for such Party, to prospective acquirers or merger candidates or to existing or potential investors or licensees, *provided* that prior to such disclosure each such candidate or investor will be agree in writing to be bound by obligations of confidentiality and non-use at least equivalent in scope to those set forth in this Section 7. If a Party discloses this Agreement or any of the terms hereof in accordance with Section 7.4(a), such Party agrees, at its own expense, to seek confidential treatment of portions of this Agreement or such terms, as may be reasonably requested by the other Party.

7.5. **Public Announcements.** The Parties agree that either Party may make a public announcement regarding this Agreement or concerning the subject of this Agreement, *provided* that the other Party has a chance to review and comment prior to the release of such public announcement.

8. Representations, Warranties and Covenants.

8.1. **Representations, Warranties and Covenants of Each Party.** Each of the Parties represents, warrants, and covenants to the other Parties as follows:

8.1.1. It is a corporation or entity duly organized and validly existing under the laws of the state or other jurisdiction of its incorporation or formation.

- 8.1.2. The execution, delivery and performance of this Agreement by such Party has been duly authorized by all requisite corporate action and does not require any shareholder action or approval.
- 8.1.3. It has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- 8.1.4. The execution, delivery and performance by such Party of this Agreement and its compliance with the terms and provisions hereof does not and will not conflict with or result in a breach of any of the terms and provisions of or constitute a default under (i) the provisions of its charter or operative documents or bylaws; (ii) any order, writ, injunction or decree of any court or governmental authority entered against it or by which any of its property is bound; or (iii) any applicable law, rule, regulation or permit.
- 8.1.5. It will at all times comply with all material laws and regulations applicable to its activities under this Agreement.
- 8.2. **Additional Representations, Warranties of Landec.** In addition to the representations, warranties and covenants made by Landec elsewhere in this Agreement, Landec hereby represents, warrants, and covenants to Monsanto that:
- 8.2.1. Landec solely owns all right, title and interest in the Licensed Technology or otherwise has the right to grant the licenses granted hereunder and that Exhibits A and B are, to the best of Landec's knowledge, complete and accurate as of the Effective Date.
- 8.2.2. As of the Effective Date, the Licensed Patent Rights are existing and, to the best of Landec's knowledge, are not invalid or unenforceable, in whole or in part.
- 8.2.3. To the best of Landec's knowledge, the practice of the Licensed Technology and the commercialization of any Licensed Product in the Field do not and will not infringe any issued patents or other intellectual property rights owned or possessed by any Third Party, and Landec has not received any charge, complaint, demand or notice alleging such infringement.
- 8.3. **Representation by Legal Counsel.** Each Party hereto represents that it has been represented by legal counsel in connection with this Agreement and acknowledges that it has participated in the drafting hereof. In interpreting and applying the terms and provisions of this Agreement, the Parties agree that no presumption will exist or be implied against the Party which drafted such terms and provisions.
- 8.4. **No Inconsistent Agreements.** No Party has in effect and after the Effective Date no Party will enter into any oral or written agreement or arrangement that is or would be inconsistent with its obligations under this Agreement.

8.5. **Warranty Disclaimer.** THE FOREGOING WARRANTIES OF LANDEC ARE IN LIEU OF ANY OTHER WARRANTIES, AND THE LICENSED TECHNOLOGY, POLYMER AND FORMULATION ARE PROVIDED TO MONSANTO “AS IS” AND WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY SPECIFICALLY EXCLUDED AND DISCLAIMED.

9. **Term and Termination.**

- 9.1. **Term.** If not earlier terminated as provided in this Section 9, the term of this Agreement (the “**Term**”) will be the five (5) year period commencing on the Effective Date.
- 9.2. **Termination by Monsanto.** Monsanto may terminate this Agreement at any time during the Term, *provided* that Monsanto complies with the following conditions:
- 9.2.1. **Termination Fee.** At the time of termination, Monsanto will pay four million dollars (\$4,000,000) (the “**Termination Fee**”) to Landec Ag; and
- 9.2.2. **Annual Payments and Annual Supply Fees.** Notwithstanding termination of this Agreement, Monsanto will continue to owe any remaining Annual Payments and Annual Supply Fees in accordance with the payment schedules set forth in Sections 3.1 and 4.4.1, respectively, *provided, however*, that Monsanto, at its election, may accelerate the payment schedules and pay to Landec Ag the total remaining Annual Payments and Annual Supply Fees upon the date of termination of this Agreement, and will accelerate such payment schedules upon exercise of the Buy-Out Option in accordance with Section 3.4.1.
- 9.3. **Termination for Cause.** Either Party may terminate this Agreement at any time during the Term by giving written notice to the other Party in the event that the other Party commits a material breach of its obligations under this Agreement and such breach remains uncured for sixty (60) days, measured from the date written notice by certified carrier or equivalent of such breach is given to the breaching Party, *provided, however*, that if such breach is not susceptible of cure within the stated period and the breaching Party uses diligent, good faith efforts to cure such breach, the stated period will be extended by an additional sixty (60) days. If the alleged breach relates to nonpayment of any amount due under this Agreement, the sixty (60) day cure period will be tolled pending resolution of any bona fide dispute between the Parties as to whether such payment is due. If Landec terminates this

Agreement under this Section 9.3 due to Monsanto's uncured material breach, then on the date of termination, Monsanto will owe the Termination Fee and any remaining Annual Payments or Annual Supply Fees that would have been paid by Monsanto had this Agreement not been terminated by Landec under this Section 9.3. If Monsanto terminates this Agreement under this Section 9.3 due to Landec's uncured material breach, then Monsanto will not be required to pay any Termination Fee or any remaining Annual Payments or Annual Supply Fees. Any dispute over what constitutes an uncured material breach by a Party will be resolved pursuant to the dispute resolution mechanisms under Section 11.8.

9.4. Effects of Termination.

- 9.4.1. Upon termination of this Agreement under Section 9.2 or 9.3, all rights and licenses granted by Landec to Monsanto hereunder will automatically terminate.
 - 9.4.2. Except as expressly provided herein, the termination of this Agreement will not relieve the Parties of any obligation accruing prior to termination. Any and all Confidential Information and materials provided pursuant to this Agreement will be promptly returned to the disclosing party or destroyed at the written request of the disclosing party.
 - 9.4.3. Upon termination of this Agreement for any reason, all sublicenses granted by Monsanto will terminate, although both Monsanto and its sublicensees may, after termination, sell Licensed Product in inventory at the time of termination.
- 9.5. **Survival of Certain Obligations.** The following provisions of this Agreement will survive the termination of the Agreement: Section 2.2 (License Grants to Landec), Section 6 (Intellectual Property), Section 7 (Confidentiality), Section 8 (Representations, Warranties and Covenants), Section 9.4 (Effects of Termination), Section 9.5 and Section 11 (Miscellaneous Terms). Any expiration or early termination of this Agreement will be without prejudice to the rights of either Party against the other accrued or accruing under this Agreement before termination.

10. Indemnification.

10.1. Indemnification by Landec.

- 10.1.1. Subject to Section 10.3 below, until the end of the Term or such earlier time as (a) the sale of Landec Ag to Monsanto in accordance with Section 3.2 or (b) the early termination of this Agreement in accordance with Sections 9.2 or 9.3, Landec will indemnify, defend and hold harmless Monsanto and its directors, officers, employees and agents (each, a "**Monsanto Indemnified Party**") from and against any and all liability, loss, damage, expense (including reasonable attorneys' fees and expenses)

and cost (collectively, a “**Liability**”) that a Monsanto Indemnified Party may be required to pay to one or more Third Parties resulting from or arising out of:

(a) any claims of any nature by Third Parties to the extent arising out of the actual or alleged infringement or violation of any Third Party right by exploitation of the Licensed Technology in the manner contemplated by this Agreement; or

(b) any claims (or series of related claims) by Third Parties relating to or arising out of any alleged failure of, or deficiency in the Formulation performance (“**Performance Claims**”), subject to the limitations of Section 10.1.2 below; *provided* that Landec will only be responsible for indemnification under this Section 10.1.1(b) if (i) such Performance Claims relate to Licensed Product sold by Monsanto during the first year of the Term and (ii) when Monsanto sold Licensed Product to the Third Party making the Performance Claim, Monsanto used the same contractual limitation of liability and warranty disclaimer language as used by Landec when Landec sold Licensed Product prior to the Effective Date, the form of which appears on Exhibit E.

(c) the material breach by Landec of any of its representations, warranties or covenants set forth herein, except, in each case, to the extent caused by the gross negligence or willful misconduct of Monsanto or any Monsanto Indemnified Party.

10.1.2. Notwithstanding Section 10.1.1, Landec’s obligations under Section 10.1 will not apply to any Liability to the extent it arises out of:

(a) specifications provided by Monsanto that are prepared without collaboration with Landec;

(b) modifications of any Licensed Technology at the request of Monsanto, which are not covered by Landec Improvements, or that materially alter the form or functionality thereof;

(c) any claims of any nature by Third Parties to the extent arising out of the actual or alleged infringement or violation of any Third Party right by Monsanto’s exploitation of the Monsanto Improvements; or

(d) combinations of any of the Licensed Technology by Monsanto with any product not provided by Landec, *provided* that such combination materially alters the form or function of the Licensed Technology or that such Liability arises out of or relates to the use of such non-Landec product (clauses (a), (b), (c), and (d) are herein collectively referred to as “**Held Back Claims**”).

10.2. **Indemnification by Monsanto.** Subject to Section 10.3 below, until the end of the Term or such earlier time as (a) the sale of Landec Ag to Monsanto in accordance with Section 3.2 or (b) the early termination of this Agreement in accordance with Sections 9.2 or 9.3, Monsanto will indemnify, defend and hold harmless Landec and their respective directors, officers, employees and agents (each, a “**Landec Indemnified Party**”) from and against all Liabilities that a Landec Indemnified Party may be required to pay to one or more Third Parties resulting from or arising out of:

(a) any Held Back Claim; or

(b) any claims of any nature by Third Parties to the extent arising out of any Licensed Product sold by Monsanto, except to the extent that Monsanto is entitled to indemnification from Landec under Section 10.1 above.

(c) the material breach by Monsanto of any of its representations, warranties or covenants set forth herein, except, in each case, to the extent caused by the gross negligence or willful misconduct of Landec or any Landec Indemnified Party.

10.3. **Conditions to Indemnification.** In any claim for defense or indemnification hereunder, the indemnified party must (a) give the indemnifying party prompt written notice of the applicable claim; (b) reasonably cooperate with the indemnifying party at the indemnifying party’s request and expense, in the defense or settlement of the claim; and (c) give the indemnifying party the right to control the defense or settlement of the claim, except that the indemnifying party will not enter into any settlement that adversely affects the indemnified party’s rights or obligations without the indemnified party’s proper express written consent, which will not be unreasonably withheld or delayed. The indemnified party may participate in the defense or settlement of any such claim at its own expense with counsel of its choosing. Notwithstanding the foregoing, any failure of the indemnified party to comply with the provisions of this Section 10.3 will not relieve the indemnifying party of any defense or indemnity obligations hereunder except to the extent that the indemnifying party is prejudiced by such failure.

10.4. **Limitations of Indemnification.**

10.4.1. **Limitation of Obligations and Liability.** Notwithstanding anything to the contrary, neither Landec nor Monsanto will be obligated to indemnify the other Party pursuant to Sections 10.1 or 10.2 above unless and until the total amount of losses incurred by the other Party exceeds two hundred and fifty thousand dollars (\$250,000) (the “**Threshold**”) in the aggregate, at which time the indemnifying party will be responsible for all losses and not just those losses in excess of the Threshold. In no event will either Landec or Monsanto be liable under this Agreement for any amounts aggregating in excess of five million dollars (\$5,000,000) (the “**Cap**”),

provided, however, that (a) the Cap will not apply to any payments owed by Monsanto to Landec pursuant to this Agreement and (b) neither the Threshold nor the Cap will apply to Landec's indemnification obligations under Section 10.1.1(b) to the extent there are Performance Claims during the first year of the Term.

10.4.2. **Incidental and Consequential Damages.** NO PARTY WILL BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, EXCEPT IN CONNECTION WITH A BREACH OF SECTION 7 ABOVE OR FOR LIABILITY ARISING OUT OF A PARTY EXCEEDING THE SCOPE OF ANY LICENSE GRANTED TO SUCH PARTY HEREUNDER.

10.5. **Sole Remedy.** The indemnification obligations under this Section 10 will be the indemnifying Party's sole obligation and the indemnified Party's sole remedy with respect to any breach of Section 8 or other event giving rise to indemnification hereunder.

11. **Miscellaneous Terms.**

11.1. **General Payment Terms.**

11.1.1. **Currency.** All amounts payable and calculations hereunder will be in United States dollars.

11.1.2. **Wire Transfer.** All payments by Monsanto to under this Agreement will be by wire transfer of immediately available funds in U.S. dollars to the bank account(s) designated in writing by Landec.

11.1.3. **Late Payments.** If any payment due under this Agreement, including, without limitation, Annual Payments under Section 3.1, Annual Supply Fees under Section 4.4.1, invoiced amounts for the supply of Polymer under Section 4.4.2, or invoiced amounts for Operating Services under Section 5.4.1, is overdue by more than thirty (30) days, Monsanto will pay interest on such overdue amount at an annual percentage rate equal to the Prime Rate (as published in the "Money Rates" table of The Wall Street Journal on the due date) plus five percent (5%).

11.2. **Assignment.** Neither this Agreement nor any interest hereunder will be assignable by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, a Party may make such an assignment without the other Party's consent to Affiliates or to a successor to substantially all of the business of such Party to which this Agreement relates, whether pursuant to a merger, sale

of stock, sale of assets or other transaction. This Agreement will be binding upon the successors and permitted assigns of the Parties and the name of a Party appearing herein will be deemed to include the names of such Party's successors and permitted assigns to the extent necessary to carry out the intent of this Agreement. Any assignment not in accordance with this Section 11.2 will be null and void.

- 11.3. **Amendment.** No amendment, modification or supplement of any provision of this Agreement will be valid or effective unless made in writing and signed by a duly authorized officer of each Party.
- 11.4. **Waiver.** No provision of the Agreement will be waived by any act, omission or knowledge of a Party or its agents or employees except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving Party.
- 11.5. **Governing Law and Jurisdiction.** This Agreement, the rights of the Parties and all claims arising under or in connection herewith, will be governed by and interpreted in accordance with the domestic substantive laws of the State of New York, without regard to any choice or conflict of law principles that would cause the application of the laws of any other jurisdiction, and will be subject to the exclusive jurisdiction of the State and Federal Courts located in New York, New York.
- 11.6. **UN Convention on Contracts for Sale of Goods.** The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- 11.7. **Bankruptcy.** The Parties agree that the licenses granted hereunder are subject to Section 365(n) of the U.S. Bankruptcy Code.
- 11.8. **Dispute Resolution.** Any disputes, other than disputes regarding the construction, validity or enforcement of patents (which disputes will be resolved by legal proceedings to be held subject to the requirements of Section 11.5 (Governing Law and Jurisdiction)), arising between the Parties relating to, arising out of or in any way connected with this Agreement or any term or condition hereof, or the performance by either Party of its obligations hereunder, whether before or after termination of this Agreement, will be resolved as follows:
 - 11.8.1. **Senior Management.** Within sixty (60) days after the request of any Party that reasonably believes the Parties have been unable to resolve a matter, the chief executive officer of Landec Corporation and the Executive Vice President – North America Commercial of Monsanto (or their designees) (the “**Representatives**”), will meet in person at a mutually acceptable time and location or by means of telephone or video conference to attempt to resolve the matter or negotiate a settlement.

- 11.8.2. **Arbitration.** If the Representatives are not able to resolve the dispute within thirty (30) days of their first meeting or within such extended period as they agree upon, either Party may submit the matter to binding arbitration in accordance with this Section 11.8.2. Except as specified below, the arbitration will be conducted in accordance with the rules of, and under the auspices of, the American Arbitration Association (the “**AAA**”). The arbitration will be conducted by a single arbitrator with relevant technical expertise who is jointly selected by the Parties or, if the Parties cannot mutually agree, is selected by the AAA administrator and is not employed by and does not have a material financial relationship with, a Party or any of its Affiliates or sublicensees. The location of the arbitration will be in New York, New York. This Agreement will remain in effect pending completion of the proceedings brought under this Section 11.8.2. Within ten (10) business days after the arbitrator is selected, each Party will submit to the arbitrator that Party’s proposed resolution of the dispute and justification therefor. All arbitration proceedings must be completed within thirty (30) days after the arbitration is convened. The Parties hereby agree that the arbitrator has authority to issue rulings and orders regarding all procedural and evidentiary matters that the arbitrator deems reasonable and necessary with or without petition therefor by the Parties as well as the final ruling and judgment. Rulings will be issued by written order summarizing the arbitration proceedings. Any judgment or award by the arbitrator in any dispute will have the same force and effect as the final judgment of a court of competent jurisdiction. Nothing in this arbitration clause will prevent either Party from seeking a pre-award attachment of assets or preliminary relief to enforce its rights in intellectual property or confidentiality obligations under this Agreement, or to enjoin any event that might cause irreparable injury, in a court of competent jurisdiction prior to an award on the merits by the arbitrator.
- 11.9. **Descriptive Headings.** The descriptive headings of this Agreement are for convenience only and will be of no force or effect in construing or interpreting any of the provisions of this Agreement.
- 11.10. **Notices.** Any consent, notice or report required or permitted to be given or made under this Agreement by one of the Parties hereto to the other will be in writing and delivered by hand or sent by nationally recognized overnight delivery service, prepaid registered or certified air mail, or by facsimile confirmed by prepaid, registered or certified mail letter, and will be deemed to have been properly served to the addressee upon receipt of such written communication, in any event to the following addresses:

If to Landec Corporation, to:

3603 Haven Avenue
Menlo Park, CA 94025
Attention: Chief Financial Officer
Phone: (650) 306-1650
Fax: (650) 368-9818

If to Landec Ag, to:

Natarajan Balachander, Ph.D.
Vice President, Research and Manufacturing
201 N. Michigan
Oxford, Indiana 47971
Phone: (765) 385-1000 ext. 101
Fax: (765) 385-0598

With a copy to:

Ropes & Gray LLP
One Embarcadero Center Suite 2200
San Francisco, CA 94111-3627
Boston, MA 02110
Attn: Geoff Leonard, Esq.
Phone: 415-315-6300
Fax: 415-315-6350

If to Monsanto, to:

Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167
Telephone: (314) 694-1000
Telecopier: (314) 694-6399
Attn: Vice President — Manufacturing

With copy to:

Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167
Telephone: (314) 694-1000
Telecopier: (314) 694-6399
Attn: General Counsel's Office

With an additional copy to:

Bryan Cave LLP
One Metropolitan Square
211 N. Broadway, Suite 3600
St. Louis, Missouri 63102
Telephone: (314) 259-2455
Telecopier: (314) 259-2020
Attn: Denis P. McCusker

- 11.11. **Entire Agreement.** This Agreement, together with all exhibits hereto, constitutes and contains the complete, final and exclusive understanding and agreement of the Parties and cancels and supersedes any and all prior negotiations, correspondence, understandings and agreements, whether oral or written, between the Parties respecting the subject matter hereof and thereof.
- 11.12. **Force Majeure.** Except for obligations to make payments under this Agreement, neither Party will be liable to the other for delay or failure in the performance of the obligations on its part contained in this Agreement if and to the extent that such failure or delay is caused by acts of God, war, terrorism (actual or threatened), strikes, revolutions, lack or failure of transportation facilities, Laws or other causes that are beyond the reasonable control of such Party. A Party will notify the other Party promptly in the event any force majeure event arises, giving an indication of the likely extent and duration thereof, and will use all Commercially Reasonable Efforts to resume performance of its obligations as soon as practicable, *provided, however*, that neither Party will be required to settle any labor dispute or disturbance. In the event that a Party's performance is suspended for more than six (6) months because of a Force Majeure Event, the Parties hereto will consult with each other to determine whether this Agreement should be modified. In no event will this Section 11.12 serve to extend the Term of this Agreement.
- 11.13. **Severability.** If any clause or portion thereof in this Agreement is for any reason held to be invalid, illegal or unenforceable, the same will not affect any other portion of this Agreement, as it is the intent of the Parties that this Agreement will be construed in such fashion as to maintain its existence, validity and enforceability to the greatest extent possible. In any such event, this Agreement will be construed as if such clause of portion thereof had never been contained in this Agreement, and there will be deemed substituted therefore such provision as will most nearly carry out the intent of the Parties as expressed in this Agreement to the fullest extent permitted by applicable law.
- 11.14. **No Implied License.** Each Party recognizes that except for the licenses expressly set forth in this Agreement, nothing in this Agreement will be construed as granting a license, whether by implication, operation of law or otherwise.
- 11.15. **Basis of Bargain.** Each Party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained for bases of this Agreement and that they have been taken into account and reflected in determining the consideration to be given by each Party under this Agreement and in the decision by each Party to enter into this Agreement.

- 11.16. **Further Actions.** Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of the Agreement.
- 11.17. **Independent Contractors.** Both Parties are independent contractors under this Agreement. With the exception of sales and marketing agency relationship created under Section 5.3, nothing herein contained will be deemed to create an employment, agency, joint venture or partnership relationship between the Parties hereto or any of their agents or employees, or any other legal arrangement that would impose liability upon one Party for the act or failure to act of the other Party. With the exception of sales and marketing agency relationship created under Section 5.3, neither Party will have any express or implied power to enter into any contracts or commitments or to incur any liabilities in the name of, or on behalf of, the other Party, or to bind the other Party in any respect whatsoever.
- 11.18. **Counterparts.** This Agreement may be executed in any number of counterparts (including by facsimile or electronic transmission), each of which need not contain the signature of more than one Party, but all such counterparts taken together will constitute one and the same agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

Landec Corporation

By: /s/ Gary T. Steele
(Signature)

Name: Gary T. Steele
Title: President and Chief Executive Officer

Monsanto Company

By: /s/ Michael DeMarco
(Signature)

Name: Michael DeMarco
Title: Authorized Person

Landec Ag, Inc.

By: /s/ Thomas Crowley
(Signature)

Name: Thomas Crowley
Title: President and Chief Executive Officer

FOR IMMEDIATE RELEASE**Contact Information:****At the Company:**

Gregory S. Skinner
Vice President Finance and CFO
(650) 261-3677

EAS & Associates:

Liz Saghi
(805) 967-0161

**LANDEC ENTERS INTO AGREEMENTS WITH MONSANTO POTENTIALLY
VALUED AT OVER \$70 MILLION**

MENLO PARK, CA – December 4, 2006 — Landec Corporation (Nasdaq: LNDC), today announced that it has entered into two agreements with Monsanto Company (NYSE: MON) potentially valued at over \$70 million.

In the first agreement, Landec sold its direct marketing and sales seed business, Fielder's Choice Direct (FCD), which includes the Fielder's Choice Direct® and Heartland Hybrid® brands, to American Seeds, Inc. (ASI), a wholly owned subsidiary of Monsanto Company. The sales price for FCD was \$50 million in cash paid at the close on December 1, 2006 with a potential additional earn-out amount of up to \$5 million based on FCD results for the twelve months ended May 31, 2007. Landec expects to recognize a significant gain during the third quarter of fiscal year 2007, the amount of which has not been finalized. The gain will be equal to the difference between the fair value of FCD and its net book value. In accordance with generally accepted accounting principles, any portion of the \$50 million of proceeds in excess of the fair value of FCD will be allocated to the technology license agreement described below and will be recognized as revenue ratably over the five year term of the technology license agreement. Management expects to finalize the accounting for this transaction within the next 30 days.

In the second agreement, Landec has entered into a five-year co-exclusive technology license and polymer supply agreement with Monsanto Company for the use of Landec's Intellicoat® polymer seed coating technology. In addition, Monsanto will provide research and development funding over the term of the agreement. This agreement provides for a fee payable to Landec of \$4 million if Monsanto elects to terminate the agreement or a fee payable to Landec of \$8 million if Monsanto elects to buyout the technology. Accordingly, if the agreement is eventually terminated Landec will receive minimum guaranteed payments of \$17 million for license fees and polymer supply payments over five years or \$21 million in maximum payments if Monsanto elects to buyout the licensed technology. The minimum guaranteed payments will result in Landec recognizing revenue and operating income of \$3.4 million per year for five years. If Monsanto elects to buyout the technology, an additional \$4 million of license fee revenue will be recognized at the time of payment.

If the buyout option is exercised before the fifth anniversary of the Intellicoat agreement, all annual license fees and supply payments that have not been paid to Landec will become due upon the buyout. If Monsanto does not exercise its buyout option by the fifth anniversary of the Intellicoat agreement, Landec will receive the termination fee and all rights to the Intellicoat seed coating technology will revert to Landec. If Monsanto exercises its buyout option, Landec and Monsanto will enter into a new long-term supply agreement in which Landec will continue to be the exclusive supplier of Intellicoat polymer materials to Monsanto.

In exchange for the annual payments, Monsanto receives (1) a co-exclusive right to use Landec's Intellicoat temperature activated seed coating technology worldwide during the license period, (2) the right to be the exclusive global sales and marketing agent for the Intellicoat seed coating technology, and (3) the right to buyout the technology any time during the five year term of the Intellicoat agreement. In addition, Monsanto will fund all Intellicoat research and development, product development and non-replacement capital costs during the five year agreement period.

Conference Call

Landec will hold a Special Conference Call today, Monday, December 4, 2006 at 2:00 PM Eastern Time (11:00 AM Pacific Time) regarding the agreements with Monsanto Company.

The teleconference and webcast are open to all interested parties. The teleconference can be accessed by calling 866-291-9595 or 703-639-1280. Please log in 5 — 10 minutes prior to the beginning of the call.

This call is also being webcast by Thomson/CCBN and can be accessed at Landec's web site at www.Landec.com on the Investor Relations page. The webcast will be available for 30 days through January 2, 2007. A replay of the teleconference will be available for one week until midnight Eastern Time, December 10, 2006 by calling 888-266-2081 or 703-925-2533. The access code for the replay is 1006683.

About American Seeds, Inc.

American Seeds, Inc. (ASI), which was formed by Monsanto in 2004, serves as a holding company for regional seed companies that market primarily corn and soybeans. ASI provides support for these regional seed businesses with capital, genetics and technology investments. These investments allow the operating companies of ASI to more directly connect their customers to significant innovations in genomics-based breeding and other new technologies while continuing to operate autonomously and locally, providing great services to their customers. For more information on ASI, see: www.americanseedsinc.com.

About Monsanto Company

Monsanto Company is a leading global provider of technology-based solutions and agricultural products that improve farm productivity and food quality. For more information, please visit the company's web site at www.monsanto.com.

About Landec Corporation

Landec Corporation designs, develops, manufactures and sells temperature-activated and other specialty polymer products for a variety of food, agricultural and licensed partner applications. The Company's temperature-activated polymer products are based on its proprietary Intelimer polymers which differ from other polymers in that they can be customized to abruptly change their physical characteristics when heated or cooled through a pre-set temperature switch. For more information about the Company visit Landec's website at www.landec.com.

LANDEC CORPORATION
UNAUDITED PRO FORMA
CONSOLIDATED STATEMENT OF OPERATIONS
Fiscal Year Ended May 28, 2006

(In thousands, except per share amounts)

| | <u>As Reported</u> | <u>Pro Forma Adjustments</u> | <u>Pro Forma</u> |
|---|--------------------|----------------------------------|----------------------|
| | | Debit (Credit) | |
| Revenues | | | |
| Product Sales | \$ 225,404 | \$ 32,944 A | \$ 192,460 |
| Services Revenue | — | | — |
| Services Revenue, related party | 3,725 | | 3,725 |
| License Fees | 2,398 | | 2,398 |
| Research, Development and Royalty Revenues | 162 | | 162 |
| Royalty Revenues, related party | 264 | | 264 |
| Total Revenues | 231,953 | 32,944 | 199,009 |
| Costs of Revenues | | | |
| Costs of Product Sales | 184,345 | (22,975) A | 161,370 |
| Costs of Product Sales, related party | 4,559 | | 4,559 |
| Cost of Service Revenues | 3,005 | | 3,005 |
| Total Cost of Revenues | 191,909 | (22,975) | 168,934 |
| Gross Profit | 40,044 | (9,969) | 30,075 |
| Operating Costs and Expenses | | | |
| Research and Development | 3,042 | | 3,042 |
| Selling, General and Administrative | 27,979 | (9,242) A | 18,737 |
| Total Operating Costs and Expenses | 31,021 | (9,242) | 21,779 |
| Operating Income | 9,023 | (727) | 8,296 |
| Interest Income | 633 | 75 A | 558 |
| Interest Expense | (452) | (152) A | (300) |
| Minority Interest Expense | (529) | | (529) |
| Other (Expense)/Income, net | (24) | (1) A | (23) |
| Net Income | 8,651 | (649) | 8,002 |
| Basic Net Income Per Share | \$ 0.35 | \$ (0.03) | \$ 0.33 |
| Diluted Net Income Per Share | \$ 0.32 | \$ (0.03) | \$ 0.29 |
| Shares Used In Per Share Computation | | | |
| Basic | 24,553 | 24,553 | 24,553 |
| Diluted | 25,657 | 25,657 | 25,657 |

See accompanying notes.

LANDEC CORPORATION
UNAUDITED PRO FORMA
CONSOLIDATED STATEMENT OF OPERATIONS
Fiscal Quarter Ended August 27, 2006
(In thousands, except per share amounts)

| | As Reported | Pro Forma Adjustments Debit (Credit) | Pro Forma |
|---|----------------|--|----------------|
| Revenues | | | |
| Product Sales | \$ 50,046 | \$ 114 A | \$ 49,932 |
| Services Revenue | — | | — |
| Services Revenue, related party | 843 | | 843 |
| License Fees | 200 | | 200 |
| Research, Development and Royalty Revenues | 50 | | 50 |
| Royalty Revenues, related party | 8 | | 8 |
| Total Revenues | 51,147 | 114 | 51,033 |
| Costs of Revenues | | | |
| Costs of Product Sales | 43,288 | (119) A | 43,169 |
| Costs of Product Sales, related party | 1,549 | | 1,549 |
| Cost of Service Revenues | 754 | | 754 |
| Total Cost of Revenues | 45,591 | (119) | 45,472 |
| Gross Profit | 5,556 | 5 | 5,561 |
| Operating Costs and Expenses | | | |
| Research and Development | 784 | — | 784 |
| Selling, General and Administrative | 4,902 | (2,249) A | 2,653 |
| Total Operating Costs and Expenses | 5,686 | (2,249) | 3,437 |
| Operating Income | (130) | 2,254 | 2,124 |
| Interest Income | 236 | 41 A | 195 |
| Interest Expense | (70) | | (70) |
| Minority Interest Expense | (18) | | (18) |
| Other (Expense)/Income, net | (4) | (4) A | (0) |
| Net Income | 14 | 2,217 | 2,231 |
| Basic Net Income Per Share | \$ 0.00 | \$ 0.09 | \$ 0.09 |
| Diluted Net Income Per Share | \$ 0.00 | \$ 0.08 | \$ 0.08 |
| Shares Used In Per Share Computation | | | |
| Basic | 24,936 | 24,936 | 24,936 |
| Diluted | 24,936 | 26,233 | 26,233 |
| LAI Net Income before intercompany | | | |
| Intercompany Expense | | | |
| Net Income (Loss) | | | |

See accompanying notes.

LANDEC CORPORATION
UNAUDITED PRO FORMA
CONSOLIDATED BALANCE SHEET
Fiscal Quarter Ended August 27, 2006
(In thousands, except per share amounts)

| | As Reported | Pro Forma Adjustments Debit (Credit) | Pro Forma |
|--|-------------------|--|-------------------|
| Assets | | | |
| Current Assets | | | |
| Cash and Cash Equivalents | \$ 14,363 | \$ 48,585 B,C | \$ 62,948 |
| Accounts Receivable, net of allowance | 15,369 | (933) C | 14,436 |
| Accounts Receivable, related party | 410 | — | 410 |
| Inventory | 15,997 | (8,531) C | 7,466 |
| Notes and Advances Receivable | 223 | | 223 |
| Prepaid Expenses and Other Current Assets | 1,826 | (783) C | 1,043 |
| Total Current Assets | 48,188 | 38,338 | 86,526 |
| Property and Equipment, net | 20,504 | (2,268) C | 18,236 |
| Goodwill, net | 29,507 | (8,272) C | 21,235 |
| Trademarks, net | 13,270 | (5,043) C | 8,227 |
| Other Intangibles, net | 822 | (808) C | 14 |
| Notes Receivable | 631 | | 631 |
| Other Assets | 1,359 | | 1,359 |
| Total Assets | \$ 114,281 | \$ 21,947 | \$ 136,228 |
| Liabilities and Shareholders' Equity | | | |
| Current Liabilities | | | |
| Accounts Payable | \$ 22,435 | \$ 9,379 C | \$ 13,056 |
| Related Party Payables | 463 | — | 463 |
| Accrued Compensation | 1,001 | 274 C | 727 |
| Other Accrued Liabilities | 2,425 | 47 C | 2,378 |
| Deferred Revenue | 733 | 240 C | 493 |
| Current Maturities of Long Term Debt | 45 | | 45 |
| Total Current Liabilities | 27,102 | 9,940 | 17,162 |
| Minority Interest | 1,497 | 92 C | 1,405 |
| Total Liabilities | 28,599 | 10,032 | 18,567 |
| Shareholders' Equity | | | |
| Common Stock, \$0.001 par value, 50,000,000 authorized, 24,989,192 issued and outstanding | 126,907 | | 126,907 |
| Accumulated Deficit | (41,225) | (31,979) A,B,C | (9,246) |
| Total Shareholders' Equity | 85,682 | (31,979) | 117,661 |
| Total Liabilities and Shareholders' Equity | \$ 114,281 | \$ (21,947) | \$ 136,228 |

See accompanying notes.

Landec Corporation
Notes to Unaudited Pro forma Consolidated Financial Statements

Note 1 — Basis of Presentation

Pursuant to the Stock Purchase Agreement among American Seeds, Inc., a wholly owned subsidiary of Monsanto Company (“ASI”), Landec Corporation (“Landec”), and Landec Ag, Inc. (“Landec Ag”) dated December 1, 2006, Landec Ag completed the sale of its wholly owned subsidiary, FCD Holding Company (“FCD”), to ASI (the “Sale”).

After the transactions contemplated by the Stock Purchase Agreement, Landec Ag’s Intellicoat[®] coating business will continue to supply polymer coatings to Monsanto Company (“Monsanto”) under a License, Supply and R&D Agreement by and among Landec, Landec Ag and Monsanto dated December 1, 2006, for five years. As a result of Landec Ag’s ongoing relationship with Monsanto, the sale of FCD does not meet the accounting requirements to be considered a discontinued operation thereby requiring presentation of the pro forma consolidated financial results in this report.

The unaudited pro forma consolidated statements of operations for the year ended May 28, 2006 and quarter ended August 27, 2006 include the historical consolidated statements of operations of Landec giving effect to the Sale as if it had occurred at the beginning of each of the periods presented. The unaudited pro forma consolidated statements of operations do not reflect any accounting entries related to the proceeds from the Sale or related tax effects. The unaudited pro forma consolidated balance sheet as of August 27, 2006 includes the historical consolidated balance sheet of Landec giving effect to the Sale as if it had occurred on August 27, 2006.

The unaudited pro forma consolidated financial statements are provided for informational purposes only. The adjustments in the pro forma consolidated financial information are based on available information and on assumptions with management believes are reasonable. The unaudited pro forma consolidated financial statements are not necessarily and should not be assumed to be an indication of the results that would have been achieved had the Sale been completed as of the dates indicated or that may be achieved in the future. The unaudited pro forma consolidated financial statements should be read in conjunction with the Consolidated Financial Statements, the Notes to the Consolidated Financial Statements and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in Landec’s Form 10-K for the fiscal year ended May 28, 2006 and the Form 10-Q for the fiscal quarter ended August 27, 2006.

Note 2 — Pro Forma Adjustments

A — Reflects the removal of FCD as if the Sale was consummated on May 30, 2005.

B — Reflects the increase in cash resulting from the Sale as if the Sale was consummated on August 27, 2006. The increase in cash of \$49.6 million is comprised of the sale proceeds, without effect of any contingent payments that may be received upon achievement of future milestones, net of expected expenses relating to the Sale.

C — Reflects the removal of assets and liabilities of FCD as if the Sale was consummated on August 27, 2006.