

POPCORN COMMERCIALIZATION AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 200__, by and between the IOWA STATE UNIVERSITY RESEARCH FOUNDATION, INC. an Iowa non-profit corporation (hereinafter called "ISURF"), and _____ (hereinafter called "LICENSEE").

WITNESSETH:

SAMPLE

WHEREAS, it is the mutual desire of ISURF and LICENSEE to promote the production, promotion, distribution, and sale of popcorn lines developed at Iowa State University:

WHEREAS, ISURF desires to grant to LICENSEE and LICENSEE desires to obtain a limited non-exclusive, non-transferable license to use one or more lines of Popcorn Foundation Seed Line owned by ISURF or new popcorn line developed from ISU germplasm identified in Schedule A and offered to LICENSEE:

- (a) for the production of hybrid seed popcorn,
- (b) for the commercialization and sale of the line(s) per se, and/or
- (c) for the commercialization and sale of the harvested crop from any popcorn hybrid resulting from the use of the line(s).

WHEREAS the parties to this agreement further believe that this agreement is in the best interests of and will further the purpose of their two organizations, and that it will benefit agriculture;

Now, therefore, in consideration of the promises and mutual covenants contained herein, the parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement, the following terms shall be defined as follows:

- (a) "Popcorn Foundation Seed Line" shall mean the inbred line, identified in Schedule A which has been bred or discovered at ISU and which ISURF desires to offer to LICENSEE. For purposes of this Agreement, Popcorn Foundation Seed Line shall include, but not be limited to, whole corn plants, seed, pollen, and other plant parts and/or tissues, and the genetic material contained therein.
- (b) "Improved or Recovered Popcorn Inbred Line" shall mean any Parent line developed by LICENSEE from Popcorn Foundation Seed Line by selection or backcrossing.
- (c) "Hybrid Seed Popcorn" shall mean hybrid seed popcorn produced from at least one Popcorn Foundation Seed Line as defined in 1(a) above and/or hybrid seed popcorn produced from at least one Improved or Recovered Popcorn Inbred Line as defined in paragraph 1(b) above or New Popcorn Line as defined in paragraph 1(d) below.
- (d) "New Popcorn Line(s)" shall mean any Parent developed by LICENSEE and containing any Popcorn Foundation Seed Line or any part thereof.
- (e) "New Popcorn Hybrid(s)" shall mean Hybrid Seed Popcorn containing at least one New Popcorn Line(s), or one Improved or Recovered Popcorn Inbred Line or any part thereof.
- (f) "Parent" shall mean any inbred line and/or single cross line(s) which can be crossed to produce a hybrid.
- (g) "Territory" shall mean the United States of America.
- (h) "Term" shall mean the period specified in Section 5 of this Agreement.
- (i) "MVK" shall mean 1000 viable kernels

ARTICLE II - GRANT OF LICENSE

2.1 ISURF grants LICENSEE the non-exclusive right to use and sell the Popcorn Foundation Seed Line under this agreement for the Term of the agreement. ISURF reserves the right to use and sell under this agreement and to

distribute to third parties seed for breeding, research, and commercial purposes. Popcorn Foundation Seed Line provided may be used only as specifically provided in this Agreement

2.2 LICENSEE agrees to pay ISURF a fee in the amount published in the current ISURF / Committee for Agricultural Development (CAD) seed price list for each unit requested of the Popcorn Foundation Seed Line.

2.3 LICENSEE shall not transfer or distribute Popcorn Foundation Seed Line to any third party not bound by contract to LICENSEE unless the third party is also a licensee of the Popcorn Foundation Seed Line. LICENSEE shall not grant sublicenses of Popcorn Foundation Seed Line.

2.4 Seeds, plants, plant parts, seed parts, callus tissue or DNA of the Popcorn Foundation Seed Line will not be distributed to a third party without the written consent of ISURF.

2.5 LICENSEE may cross the Popcorn Foundation Seed Line for the production of Hybrid Seed Popcorn for sale, distribution, and/or private use.

2.6 Popcorn Foundation Seed Line may not be increased by LICENSEE except as specifically provided in Article IV of this agreement.

2.7 LICENSEE may backcross Popcorn Foundation Seed Line as the recurrent parent for research purposes and for development of Improved or Recovered Popcorn Inbred lines.

2.8 New Popcorn Lines and Improved or Recovered Popcorn inbred lines may be increased by LICENSEE for research purposes and the production of Hybrid Popcorn Seed for sale and distribution only as provided in Article IV of this agreement.

2.9 LICENSEE may subject a Popcorn Foundation Seed Line to genetic manipulation under this Agreement only provided LICENSEE obtains written permission from ISURF prior to all such activities. The identity of any genetically modified line must carry unique identification as mutually agreed upon by ISURF and LICENSEE.

2.10 LICENSEE agrees that the Popcorn Foundation Seed Line is the property of ISURF. LICENSEE shall have no rights with respect thereto except as may be expressly granted hereunder. LICENSEE shall not apply for any patent or other right and shall not divulge or disclose any information, material or documents, concerning this agreement or the rights contained hereunder or make available in any way or use the aforesaid Popcorn Foundation Seed Line, except as expressly provided in this agreement, without the prior written consent of ISURF. ISURF will have the right to pursue legal protection of the Popcorn Foundation Seed Line, the rights of which will be owned by ISURF.

2.11 ISURF or its designated agents will maintain breeder seed of the Popcorn Foundation Seed Line.

2.12 LICENSEE agrees to submit annual reports detailing commercialization progress and to pay ISURF a royalty as determined in Article IV.

2.13 Should LICENSEE decide not to pursue commercialization of the Popcorn Foundation Seed Line, LICENSEE's entire supply of Popcorn Foundation Seed shall be disposed of as directed by ISURF.

ARTICLE III - DUE DILIGENCE

3.1 LICENSEE shall use its best efforts to bring the licensed Popcorn Foundation Seed Line to market through a thorough, vigorous and diligent program.

ARTICLE IV – ROYALTIES

4.1 Popcorn Foundation Seed Line: LICENSEE will pay to ISURF through its office at 310 Lab of Mechanics, Iowa State University, Ames, Iowa 50011, royalties in the amount stated on Schedule A per MVK of the Popcorn Foundation Seed Line planted for Hybrid Seed Popcorn production or seed increase when the Popcorn Foundation Seed Line per se is marketed. Royalties will be due and payable annually on the September 1 following the previous July 1 - June 30 fiscal year during which Popcorn Foundation Seed Line is planted for the production of Hybrid Seed Popcorn or seed increase when the Popcorn Foundation Seed Line per se is marketed. For example, for Popcorn Foundation Seed Line planted during the period from July 1, 2005 to June 30, 2006, payment will be due September 1, 2006. Upon request by ISURF, its auditor, or its designated representative, LICENSEE shall make available sufficient records to verify the amount of Popcorn Foundation Seed used for planting. LICENSEE may increase seed supplies of Popcorn

Foundation Seed Line as needed to supply enough seed for planting LICENSEE's Hybrid Seed Popcorn production fields.

4.2 New Popcorn Lines or Improved or Recovered Popcorn Inbred Lines: Royalties on New Popcorn Lines or Improved or Recovered Popcorn Inbred Lines shall be proportional to the theoretical average number of alleles in the Improved or Recovered Popcorn Inbred Lines according to the pedigree times the price listed on Schedule A for each MVK of the Improved or Recovered Popcorn Line planted for Hybrid Seed Popcorn production. For example, where B is the Popcorn Foundation Seed line and Y is a line not covered under this agreement, the inbred created from the cross B x Y will be calculated as 50% x Schedule A rate. Royalties will not be collected on New Popcorn Lines or Improved or Recovered Popcorn Inbred Lines that contain less than 50% the theoretical average number of alleles of the Popcorn Foundation Seed Line. Royalties on Improved or Recovered Popcorn Inbred Lines will be due and payable annually on September 1st as specified in Article 4.1 and 4.2. LICENSEE may increase seed supplies of New Popcorn Lines or Improved or Recovered Popcorn Inbred Lines as needed to supply enough seed for planting LICENSEE's Hybrid Seed Popcorn production fields.

4.3 LICENSEE shall keep full, true and accurate books of account containing all particulars that may be necessary for the purpose of showing the amounts payable to ISURF hereunder. Said books of account shall be kept at LICENSEE's principal place of business or the principal place of business of the appropriate division of LICENSEE to which this Agreement relates. Said books and the supporting data shall be open at all reasonable times for ten (10) years following the end of the calendar year to which they pertain, to the inspection of ISURF or its agents for the purpose of verifying LICENSEE's royalty statement or compliance in other respects with this Agreement.

4.4 LICENSEE shall maintain control of all seed production grown under this Agreement.

4.5 LICENSEE may market and distribute New Popcorn Hybrids, Hybrid Seed Popcorn or the harvested crop from any popcorn hybrid resulting from the use of the line(s) produced in accordance with this Agreement under their own brand name provided, however, that Popcorn Foundation Seed Line sold or distributed to other Licensees is identified by the Popcorn Foundation Seed Line name.

ARTICLE V - TERMINATION

5.1 LICENSEE shall have the right to cancel or terminate this agreement at any time after six months written notice to ISURF, provided, however, that such termination shall not impair any accrued rights of ISURF or relieve LICENSEE from any other obligation of LICENSEE arising upon such termination.

5.2 If LICENSEE should fail to exercise the diligence required in Article III hereof, or to deliver to ISURF any agreement, payment, statement, report or other document required to be delivered at the time or times that the same shall be made, or shall use the licensed invention or licensed material for purposes not herein expressly authorized or if LICENSEE shall violate or fail to keep or perform any obligation, term or condition of this agreement on its part to be kept or performed hereunder, then and in such event ISURF may give written notice of such breach or default to LICENSEE, specifying the default which is claimed and if LICENSEE should fail to repair such breach or default in sixty (60) days from receipt by it of such notice, ISURF shall have the right to cancel or terminate agreement by written notice to LICENSEE. Upon delivery of such notice of cancellation or termination to LICENSEE, this agreement shall be terminated but termination shall not impair any accrued rights of ISURF or relieve LICENSEE from any obligation of LICENSEE arising upon termination.

5.3 It is further agreed that should LICENSEE be adjudged bankrupt, become insolvent or enter into or make a composition with or assignment to its creditors, then and in such event, this license shall automatically terminate without notice but such termination shall not impair any accrued rights of ISURF or relieve LICENSEE from any other obligation of LICENSEE arising upon such termination, and all seeds of the Popcorn Foundation Seed Line covered under this agreement are to be disposed of as directed by ISURF.

5.4 This Agreement shall remain in effect until ten years after date of the agreement, unless sooner terminated by either party upon six months written notice of intent to terminate. In the event this agreement is terminated by either party for any reason, LICENSEE will dispose of all licensed Popcorn Foundation Seed Line as directed by ISURF. All provisions of this Agreement regarding sales and royalties on seed produced pursuant to this Agreement shall continue to apply for a period of ten (10) years after the effective cancellation date as if this Agreement were still in force. This Agreement may be extended in its present form, or any modified form, by written request of either party for a period of ten years.

ARTICLE VI - NON-USE OF NAMES

6.1 Neither ISURF, nor LICENSEE or any of its growers shall use the name of either party to this Agreement in any advertising or publicity relating to the Popcorn Foundation Seed Line without prior written permission of that party.

6.2 ISURF retains the right to disclose to the public the transfer of this technology and the existence of this license with the LICENSEE.

ARTICLE VII - INFRINGEMENT

7.1 In the event that LICENSEE shall learn of infringement of the Popcorn Foundation Seed Line, or wrongful use of the Popcorn Foundation Seed Line, LICENSEE shall notify ISURF in writing to such effect and provide ISURF with evidence thereof in LICENSEE's possession. ISURF shall use its best efforts to terminate the infringement or wrongful use without litigation. If such efforts are not successful, ISURF, in its discretion, may cause suit to be brought for infringement or other wrongful use. If requested by ISURF, LICENSEE agrees to cooperate with ISURF in any infringement or other proceeding that ISURF may institute.

ARTICLE VIII - WARRANT

8.1 ISURF does not warrant the validity or scope of any legal protection that become licensed under this agreement.

8.2 ISURF makes no warranty, expressed or implied, that the Popcorn Foundation Seed Line will be successful for the production of popcorn seed.

ARTICLE IX - WARRANTIES & INDEMNIFICATION

9.1 ISURF makes no representations, warranties or conditions other than those expressed in this clause. The liability of ISURF with respect to any misdescription of or deviation from the characteristics of such Popcorn Foundation Seed Line with respect to any misrepresentation or breach of condition or warranty, expressed or implied, is limited to refunding the purchase price of the seed sold.

9.2 LICENSEE agrees that it will indemnify and hold harmless ISURF, its trustees, officers, employer, affiliates, from any suits, costs or charges as a result of the manufacture, use or sale by LICENSEE of the Popcorn Foundation Seed Line.

9.3 LICENSEE shall obtain and carry in full force and effect liability insurance which shall protect LICENSEE and ISURF in regard to events covered by 9.2 above.

ARTICLE X - WAIVER

10.1 This agreement may be modified at any time by mutual consent of both parties. Such modifications shall be in writing, signed by both parties, and made a part of this agreement.

10.2 It is agreed that no waiver by either party hereto of any breach or default of any of the covenants or requirements herein set forth shall be deemed a waiver as to any subsequent or similar breach or default.

10.3 This agreement terminates all prior arrangements written or oral and incorporates the entire agreement of the parties. It shall be modified only in writing, signed by both parties. This agreement is made in the state of Iowa and shall be governed by and construed in accordance with its laws.

10.4 Any notices or reports required to be sent to either party to this agreement shall be deemed received when sent by certified first-class mail, postage prepaid, to the attention of the party as set forth below:

To: Iowa State University Research Foundation, Inc.
310 Lab of Mechanics
Ames, Iowa 50011-2131

To: LICENSEE: _____

Attn: _____

10 .5 If one or more of the provisions of this agreement shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective proper officers.

IOWA STATE UNIVERSITY RESEARCH FOUNDATION, INC.

By: _____ Date: _____

Kenneth Kirkland, Ph.D., Executive Director

LICENSEE

By: _____ Date: _____, _____

Name and Office: _____

Address _____

Phone: _____ Fax: _____ Email: _____

Schedule A

Line	Number of Kernels (K) ordered	Royalty per MVK planted
BPM1	200 K	\$3.00
BPM4	150 K	\$3.00
BPM5	50 K	\$3.00

SAMPLE