

SOYBEAN COMMERCIALIZATION AGREEMENT FOR FOOD-GRADE OR  
GENERAL-USE VARIETIES

THIS AGREEMENT is made and entered into \_\_\_\_\_ 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 production of the following soybean variety [Licensed Variety] developed by Iowa State University:

\_\_\_\_\_

WHEREAS, ISURF and LICENSEE believe that the granting of non-exclusive rights to LICENSEE for the production, promotion, distribution, and sale of the LICENSED VARIETY, as defined herein, is a means of achieving this goal; and

WHEREAS, the parties 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; and

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:

1.1 Parent Seed – Seed of the Licensed Variety produced by or for ISURF, or produced by the LICENSEE, that is used by the LICENSEE or its contract growers, to produce additional Parent Seed or Commercial Grain, or is sold by the LICENSEE for production of additional parent seed or Commercial Grain. Production of additional Parent Seed must be inspected by a state or provincial certification agency and the records of that inspection made available to ISURF and accompany the royalty reports discussed hereinafter. Other certification agencies or LICENSEE's inspection systems must be approved in advance by ISURF.

1.2 Commercial Grain – Grain produced for sale to commercial grain users that is not used for replanting.

1.3 Contract Grower – Grower who produces Parent Seed or Commercial Grain under contractual obligation to LICENSEE, which retains ownership interest in said production.

1.4 Licensed Variety – Soybean variety \_\_\_\_\_ including all plant parts, cells and derivatives thereof that retain the essential features and characteristics of soybean variety \_\_\_\_\_.

1.5 Territory – The United States of America and Canada.

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ARTICLE II – GRANT OF LICENSE

2.1 ISURF grants to LICENSEE the non-exclusive right to use, produce, and sell the variety under this agreement for five years. ISURF reserves the right under this agreement to use and sell the variety and to distribute the variety for breeding and research purposes.

2.2 LICENSEE agrees that Parent Seed provided under the terms of this agreement may be used by the LICENSEE for production and commercialization of the Licensed Variety only. No breeding, crossing, transformation, or selection will be allowed under this agreement. Licensed Variety shall not be transferred outside of the Territory without ISURF's prior written consent.

2.3 LICENSEE agrees that the Licensed Variety is the property of ISURF. LICENSEE shall have no rights with respect to the Licensed Variety, 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 Licensed Variety, 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 Licensed Variety, the rights of which will be owned by ISURF.

2.4 ISURF or its designated agents will maintain foundation seed of the Licensed Variety.

2.5 LICENSEE agrees to pay ISURF a royalty as determined in Article IV.

2.6 Should LICENSEE decide not to pursue commercialization of the Licensed Variety, its entire supply of Parent Seed and Commercial Grain shall be disposed of as directed by ISURF.

2.7 Branding of Commercial Grain of the Licensed Variety by the LICENSEE is permitted provided all State and Federal regulations are followed. The brand designation must be provided to ISURF in writing. Branding of Parent Seed will require ISURF's prior written consent. The name of the Licensed Variety on all Soybean Commercialization Agreements will be the ISU designation regardless of brand name.

2.8 All seed sold must be labeled with the following notification that is printed on a bag or other seed container, printed on a tag attached to the bag or seed container, or printed on a sticker applied to the bag or seed container.

Seed label: IMPORTANT NOTICE. BY PURCHASING THIS PRODUCT AND NOT RETURNING IT WITHIN THE NUMBER OF DAYS SPECIFIED BY LICENSEE OR ITS AUTHORIZED SEED DISTRIBUTOR YOU ACKNOWLEDGE A CLEAR UNDERSTANDING AND AGREE TO THE RESTRICTIONS AND RIGHTS OF USE AS STATED HEREIN AND ON THE ACCOMPANYING DOCUMENTS, INCLUDING PURCHASE ORDERS. THESE SEEDS ARE OF SOYBEAN GERMPLASM THAT IS THE EXCLUSIVE INTELLECTUAL PROPERTY OF THE IOWA STATE UNIVERSITY RESEARCH FOUNDATION, INC. GRAIN HARVESTED FROM THIS SEED CANNOT BE USED FOR REPLANTING OR TRANSFERRED TO OTHERS FOR REPLANTING WITHOUT A LICENSE AGREEMENT FROM THE IOWA STATE UNIVERSITY RESEARCH FOUNDATION, INC. **IF YOU DO NOT AGREE WITH THESE TERMS, DO NOT OPEN THIS BAG.**

2.9 LICENSEE must have each seed purchaser read and sign or initial the following agreement that is placed on their purchase order form or equivalent document.

**PURCHASER'S LICENSE:** THE IOWA STATE UNIVERSITY RESEARCH FOUNDATION INC., 310 LAB OF MECHANICS, IOWA STATE UNIVERSITY, AMES, IA 50011, HEREBY GRANTS THE PURCHASER OF THIS SOYBEAN SEED A LIMITED LICENSE TO USE IT FOR THE SOLE PURPOSE OF PRODUCING A SINGLE CROP AND NOT TO SAVE ANY GRAIN PRODUCED FROM THIS SEED FOR REPLANTING. PURCHASER AGREES NOT TO SUPPLY ANY OF THIS SEED TO ANY OTHER PERSON OR ENTITY FOR PLANTING OR REPLANTING. PURCHASER FURTHER AGREES NOT TO USE THE SEED OR TO PROVIDE IT TO ANYONE ELSE FOR BREEDING, GENETIC MODIFICATION BY ANY TECHNIQUE, OR SEED PRODUCTION.

2.10 To the extent that the provisions of the seed label and purchaser's license in sections 2.8 and 2.9 are inconsistent with the terms of this agreement, this agreement supersedes the seed label and purchaser's license for LICENSEES who have executed this agreement.

2.11 If LICENSEE uses contract growers for Parent Seed or Commercial Grain production, LICENSEE shall insure that all Parent Seed and Commercial Grain regardless of seed quality is returned to LICENSEE or to a location specified by LICENSEE. LICENSEE will MAINTAIN AND SUPPLY UPON REQUEST to ISURF a list of all such contract growers including: names and addresses, along with the number of units and acreage planted by each contract grower.

2.12 LICENSEE must notify any lien holder of the restrictions on the use and disposition of the Licensed Variety.

### ARTICLE III – DUE DILIGENCE

3.1 LICENSEE shall use its best efforts to bring the Licensed Variety to market through a thorough, vigorous and diligent program.

#### ARTICLE IV – ROYALTIES

4.1 LICENSEE will pay to ISURF through its office at 310 Lab of Mechanics, Iowa State University, Ames, Iowa 50011, royalties of \$\_\_\_\_\_ per 50-pound unit, or equivalent amount for other size units of Parent Seed used to produce additional Parent Seed or Commercial Grain, unless the Parent Seed was purchased from another licensee who is responsible for the royalty payment. LICENSEE will be responsible for royalty payments due to ISURF for seed sold or distributed under the terms of this agreement. Royalties will be due and payable annually on the September 1 following the previous July 1 - June 30 fiscal year during which Parent Seed is planted for the production of additional Parent Seed or Commercial Grain. For example, for Parent Seed planted during the period from July 1, 2004 to June 30, 2005, payment will be due September 1, 2005. Upon request by ISURF, its auditor, or its designated representative, LICENSEE shall make available sufficient records to verify the amount of Parent Seed used for planting.

4.2 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. These records shall include, but are not limited to the following: Name of the purchaser, number of 50-pound units or the equivalent of other size units sold or distributed for planting, number of acres planted with the seed, or a reasonable estimate thereof, if used to produce additional Parent Seed under contract with the LICENSEE; and disposition of seed harvested by or for the LICENSEE the previous year that was not sold or used for planting. 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 five (5) 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.

If any sum of money owed to ISURF hereunder is not paid when due, the unpaid amount shall bear interest, compounded annually, at an annual rate which is the lesser of four (4) percentage points above the prime rate quoted by Chase Manhattan Bank of New York on the day payment was due and the maximum lawful interest rate permitted under applicable law. Such interest shall accrue on the balance of unpaid amounts from the date such amounts become due and owing until payment or offset thereof in full.

4.3 Licensed Variety purchased or produced under this Agreement shall under no circumstances be sold or distributed to third parties for production or sale of Parent Seed or Commercial Grain who are not contract growers of the LICENSEE, unless the third party also has executed a Soybean Commercialization Agreement with ISURF.

LICENSEE will provide to ISURF the name of the third parties and the number of 50-pound units or equivalent of other size units sold or distributed to them. LICENSEE will be responsible for royalty payments due to ISURF for the Parent Seed sold or distributed to third parties.

#### ARTICLE V – TERM and 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 prior to 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 Variety 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 this 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 prior to termination.

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 prior to termination, and all seeds of the Licensed Variety covered under this Agreement are to be disposed of as directed by ISURF.

5.3 This Agreement shall remain in effect until five 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 expires or terminates for any reason, LICENSEE will dispose of all Parent Seed and Commercial Grain as directed by ISURF.

#### 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 Licensed Variety without prior written permission of that party. Authorization is hereby given to LICENSEE to make statements in such advertising or publicity that the Licensed Variety is licensed by ISURF.

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

#### ARTICLE VII - INFRINGEMENT

7.1 In the event that LICENSEE shall learn of infringement of the Licensed Variety, or wrongful use of the Licensed Variety, 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 sole discretion, may cause suit to be brought for infringement or other wrongful use. If requested by ISURF, LICENSEE agrees to cooperate with ISURF or ISURF's designee in any infringement or other proceeding that ISURF may institute.

#### ARTICLE VIII – WARRANTIES and INDEMNIFICATION

8.1 ISURF warrants that it is the owner of the Licensed Variety and has the right to grant the licenses granted to LICENSEE in this Agreement.

8.2 ISURF makes no warranty, express or implied, that the Licensed Variety will be successful for the commercial production of soybean seed.

8.3 EXCEPT AS OTHERWISE MAY BE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE LICENSED VARIETY IS LICENSED “AS IS” WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES WHATSOEVER. ISURF MAKES NO REPRESENTATIONS, EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND ASSUMES NO RESPONSIBILITIES WHATSOEVER WITH RESPECT TO THE USE, SALE, OR OTHER DISPOSITION BY LICENSEE OR ITS VENDEES OR OTHER TRANSFEREES OF THE VARIETY LICENSED UNDER THIS AGREEMENT.

8.4 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 the Licensed Variety with respect to any misrepresentation or breach of condition or warranty, expressed or implied, is limited to refunding the royalty paid to ISURF by LICENSEE.

8.5 While it is believed that the ordinary and anticipated use of the Licensed Variety will not result in safety or health hazards to workers or to purchasers of such products, there is no warranty or guarantee against such health or safety hazards.

8.6 Care was taken during seed multiplication to avoid GMO contamination; however the seed is not guaranteed to be GMO free. No representations or warranties are made regarding seed purity, or any other express or implied warranties.

8.7 LICENSEE agrees that it is solely responsible for and will indemnify and hold harmless ISURF, its trustees, officers, employees, affiliates, from any suits, costs or charges as a result of the production, use or sale by LICENSEE of the Licensed Variety.

8.8 LICENSEE shall obtain and carry in full force and effect liability insurance that shall protect LICENSEE and ISURF in regard to events covered by 8.6 above.

**SAMPLE** ARTICLE IX - WAIVER

9.1 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.

9.2 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.

9.3 This Agreement terminates all prior arrangements written or oral and incorporates the entire Agreement of the parties. It shall be modified only in writing and 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.

9.4 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:

9.5 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.

