

## SOYBEAN COMMERCIALIZATION AGREEMENT

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:

WHEREAS, it is the mutual desire of ISURF and LICENSEE to promote the production of the following soybean variety:

IA2064

WHEREAS, ISURF is owner by assignment of Licensed Patents as defined herein; and

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 upon request.. Other certification agencies or LICENSEE's inspection systems must be approved in advance by ISURF.

1.2. Commercial Grain – Grain produced by the LICENSEE or its Contract Grower from Parent Seed for sale to commercial grain users. It may not be used for planting.

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 Territory – The United States of America

1.5 Licensed Patents

U.S. Patent No. 5,334,425 entitled Soybeans having low linolenic acid content and method of production;

U.S. Patent No. 5,850,030 entitled Reduced linolenic acid production in soybeans;

U.S. Patent No. 5,986,118 entitled Soybean vegetable oil possessing a reduced linolenic acid content ; and

U.S. Patent No. 6,133,509 entitled Reduced linolenic acid production in soybeans.

1.6 Licensed Variety – shall mean the soybean line referenced as **IA2064**.

## ARTICLE II - GRANT OF LICENSE

2.1 ISURF grants to LICENSEE a non-exclusive license to produce and sell the Licensed Variety under the Licensed Patents limited to the Territory.

2.2 LICENSEE agrees that seed provided 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 shall have no rights with respect to the Licensed Variety or Licensed Patents 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.

2.4 ISURF or its designated agents will maintain breeder 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 Licensed Variety on all Soybean Commercialization Agreements will be the ISU designation regardless of brand name.

2.8 To comply with the requirements of 35 U.S.C. Section 287 of the federal law, the LICENSEE must label all seed that is sold with the following patent notification. The patent notification must be 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: THESE SEEDS ARE PROTECTED UNDER UNITED STATES PATENT NUMBERS 5,534,425; 5,850,030; 5,986,118; and 6,133,509. THE PURCHASE OF THE SEED CONVEYS NO LICENSE UNDER SAID PATENTS TO USE THESE SEEDS OR PERFORM ANY OF THE METHODS COVERED BY THE PATENTS. A PURCHASER'S LICENSE MUST FIRST BE OBTAINED FROM THE SEED DISTRIBUTOR BEFORE THESE SEEDS CAN BE USED IN ANY WAY. GRAIN HARVESTED FROM THE SEED CANNOT BE USED FOR REPLANTING OR TRANSFERRED TO OTHERS FOR REPLANTING.

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, 310 LAB OF MECHANICS, IOWA STATE UNIVERSITY, AMES, IA 50011 HEREBY GRANTS THE BUYER OF THIS SOYBEAN SEED A LIMITED, NON-EXCLUSIVE, NON-ASSIGNABLE LICENSE TO TECHNOLOGY COVERED BY U.S. PATENTS 5,534,425; 5,710,369; 5,763,745; 5,850,030; 5,986,118; AND 6,133,509 FOR THE SOLE PURPOSE OF PRODUCING A GRAIN CROP. PURCHASER AGREES TO USE THE SEED FOR PLANTING A SINGLE COMMERCIAL CROP, NOT TO SUPPLY ANY OF THIS SEED TO ANY OTHER PERSON OR ENTITY FOR PLANTING, NOT TO SAVE ANY GRAIN PRODUCED FROM THIS SEED FOR REPLANTING, AND NOT TO SUPPLY ANY GRAIN PRODUCED FROM THIS SEED TO ANOTHER PERSON OR ENTITY FOR REPLANTING. PURCHASER 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 or grain quality is returned to LICENSEE or to a location specified by LICENSEE.

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

### ARTICLE III - DUE DILIGENCE

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

**SAMPLE**

#### 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 \$ 3.00 per 50-pound unit, or equivalent amount for other size units of planted Parent Seed used to produce additional Parent Seed or Commercial Grain planted by or for LICENSEE unless the Parent Seed was purchased from another licensee which is responsible for the royalty payment. LICENSEE will be responsible for royalty payments due to ISURF for seed sold or distributed to third parties. 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, 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 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, and number of acres planted with the seed; and disposition of seed harvested the previous year that was not sold 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 LICENSEE shall maintain control of all seed production. If LICENSEE contracts with third parties under Section 2.9, LICENSEE will supply to ISURF a list of such contract growers including: names, addresses and any other pertinent contact information along with the number of units and acreage planted by each contract grower. This report shall be due upon request by ISURF.

4.4 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

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 Patents or otherwise has the right to grant the licenses granted to LICENSEE in this Agreement. However, nothing in this Agreement shall be construed as:

- (i) a warranty or representation by ISURF as to the validity or scope of any of the Licensed Patents;
- (ii) a warranty or representation that anything made, used, sold or otherwise disposed of under the license granted in this Agreement will or will not infringe patents of third parties;
- (iii) an obligation to furnish any know-how not provided to the Licensed Patents or any services other than those specified 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 PATENTS ARE 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 which shall protect LICENSEE and ISURF in regard to events covered by 8.6 above.

#### 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, 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.

**IOWA STATE UNIVERSITY RESEARCH FOUNDATION, INC.**

By: \_\_\_\_\_ Date: \_\_\_\_\_, \_\_\_\_\_

Kenneth Kirkland, Ph.D., Executive Director

**LICENSEE**

By: \_\_\_\_\_ Date: \_\_\_\_\_, \_\_\_\_\_

Name and Office: \_\_\_\_\_

Address \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_