

OAT 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 oat variety developed by Iowa State University:

Baker

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

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;

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 variety produced by or for ISURF or by the Licensee that is used by the Licensee or its contracted growers to produce additional Parent Seed or Commercial Grain. Parent seed may be foundation, registered, or certified.

1.2 Commercial Grain - Seed produced by the Licensee or its contracted growers from Parent Seed for sale to commercial grain users. It may NOT be sold for planting.

ARTICLE II - GRANT OF LICENSE

2.1 ISURF grants LICENSEE the non-exclusive right to use and sell the variety under this agreement for five years. ISURF reserves the right to use and sell under this agreement and to distribute to third parties seed for breeding and research purposes. No breeding, crossing, transformation, or selection will be allowed under this agreement.

2.2 LICENSEE agrees that seed of the variety is the sole 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 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 variety, the rights of which will be owned by ISURF.

2.3 ISURF or its designated agents will maintain breeder seed of the variety.

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

2.5 Branding of this variety is not permitted.

2.6 Certified or non-certified seed may be sold; however, there may be no more than three generations of production including the foundation seed class.

2.7 Blending will be allowed, and royalties will be proportional to the percentage of the variety in the blend.

2.8 Should LICENSEE decide not to pursue commercialization of the variety, its entire supply of Parent Seed or Commercial Grain shall be disposed of as directed by ISURF.

ARTICLE III - DUE DILIGENCE

3.1 LICENSEE shall use its best efforts to bring the 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 \$20.00 per 48 lb unit or equivalent amount for other size units of planted Parent Seed used to produce additional Parent Seed or Commercial Grain planted by Licensee. 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. 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.

4.3 LICENSEE shall maintain control of all seed production grown under its control.

4.4 Parent Seed purchased or produced under this Agreement shall under no circumstances be sold or distributed to third parties by LICENSEE, unless the third party also is a LICENSEE of the variety.

4.5 Commercial Grain sold by the LICENSEE must label all seed sold with the following statement. "This seed may be used for the production of grain for processing or feed use only. It may not be sold for planting."

4.6 LICENSEE may market and distribute the variety as Commercial Grain produced in accordance with this Agreement under their own brand name provided, however, that Parent Seed sold or distributed to other Licensees is identified by the variety 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.

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 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 is terminated by either party for any reason, LICENSEE will dispose of all Parent Seed and Commercial Grain 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 five 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 five 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 variety without prior written permission of that party. Authorization is hereby given to LICENSEE in connection with the variety to make use in such advertising matter of the statements that the variety is licensed by ISURF, or that the variety was developed by breeders at Iowa State University.

SAMPLE

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 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 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 which become licensed under this agreement.

8.2 ISURF makes no warranty, expressed or implied, that the licensed variety will be successful for the commercial production of oat 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 variety 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 variety.

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.

SAMPLE

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: _____