

CONFIDENTIALITY AGREEMENT

Reciprocal Disclosure
(Non Use / Non Disclosure)

Vigorcheck, Canola Seed Vigor Assay

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
as represented by the Minister of Agriculture and Agri-Food

("Canada")

AND

Name of Legal Entity: _____

an entity having its principal office at

Address: _____

("Entity")

INTRODUCTION

- A. Whereas Canada has scientific expertise and physical and human resources required to conduct seed-related research;
- B. Canada has developed the product "Vigorcheck" and has maintained the information, the subject of this **Confidentiality Agreement**, in secrecy or in confidence because of the scientific or commercial worth attributed by Canada to that information, and Canada desires to preserve that secrecy or confidentiality;
- C. Canada is seeking a company to commercialize this technology and has issued a call for proposals under the Request for Proposals process on April 2006;
- D. The Entity acknowledges the need for confidentiality in order to review the information for the purpose of submitting a proposal in response to the Request for Proposals; and
- E. The Entity desires to preserve the confidentiality of any of its business information and commercialization strategy that may be presented in the proposal that is submitted in response to the RFP;

NOW THEREFORE IN CONSIDERATION of the mutual terms and conditions, and other good and valuable consideration, the adequacy and receipt of which is acknowledged by the **Parties**, the **Parties** agree as follows:

1.0 DEFINITIONS

1.1 “**Confidentiality Agreement**” means this agreement, and refers to the whole of this agreement, not to any particular section or portion thereof;

1.2 “**Confidential Information**” means without limitation,

1.2.1 all scientific, technical, business, financial, legal, marketing or strategic information; or

1.2.2 information that is non-public, protected, confidential, privileged or proprietary in nature, which may have actual or potential economic value, in part, from not being known;

1.2.3 however fixed, stored, expressed or embodied (and includes, without limitation, samples, prototypes, specimens and derivatives);

1.2.4 disclosed during discussions, telephone calls, meetings, tests, demonstrations, correspondence or otherwise;

or any part or portion thereof, related to activities pursuant to the **Confidentiality Agreement**, irrespective of whether or not such information is specifically marked confidential or identified as confidential at the time of disclosure.

1.3 “**Party**” or “**Parties**” means either Canada or the Entity, or both of them; and their respective employees, servants, and agents. This definition does not include affiliates, subsidiaries or horizontally or vertically related corporations.

1.4 “**Project**” means the Request for Proposals for the purpose of Canada finding a licensee to commercialize its technology “Vigorcheck” Canola Seed Vigor Assay;

1.5 “**Receiving Party**” or “**Disclosing Party**”, as applicable, means either of the **Parties** and their respective servants, agents, employees, representatives, lawyers, and permitted consultants; and “**Entity**” or “**Canada**”, as applicable, includes their respective servants, agents, employees, representatives, lawyers, and permitted consultants.

2.0 CONFIDENTIALITY

2.1 Purpose

Confidential Information disclosed to the **Receiving Party** shall be:

2.1.1 used by the **Receiving Party** solely for the **Project** and for no other purpose whatsoever;

2.1.2 held in confidence, safeguarded and not disclosed by the **Receiving Party**;

2.1.3 held in trust and dealt with only as authorized under sub-paragraph 2.1.1

The failure to identify **Confidential Information** shall not change the confidentiality of that information, or otherwise remove such information from the scope of this **Confidentiality Agreement**.

3.0 CONFIDENTIALITY EXCLUSIONS

3.1 Specific Exclusions

Article 2 (Confidentiality) does not apply to **Confidential Information** which, even if it may be marked “confidential”, is not really confidential, in that: the information was legally and legitimately in the public domain through no act or omission of the **Receiving Party** at the time of disclosure by the **Receiving Party**; the information was already in the possession of the **Receiving Party** at the time of disclosure by the **Disclosing Party**; the information becomes available from an outside source who has a lawful and legitimate right to disclose the information to others, and the **Receiving Party** is free to disclose the information; the information was independently developed by the **Receiving Party** without any of the **Confidential Information** being reviewed or accessed by the **Receiving Party**; or the information was released due to a compulsory disclosure order under a judicial process.

4.0 TERMINATION

4.1 Term

The term of this **Confidentiality Agreement** shall be five (5) years from the date of execution unless earlier terminated.

4.2 Unilateral Termination

The **Confidentiality Agreement** may be terminated by either **Party**, at any time, upon sixty (60) days written notice to the other **Party**, or immediately by the **Disclosing Party** upon notice that the **Receiving Party** has breached the **Confidentiality Agreement**.

4.3 Consequences of Termination

Subject to 5.2 (Minister Complies with Law), upon termination all **Confidential Information** in any form, including without limitation, any hard or electronic copies and all biological material derivatives and replicates, shall be promptly returned to the **Disclosing Party**. The **Receiving Party** shall have no right whatsoever to continue the use of or disclose the returned **Confidential Information** in any way, whatsoever.

4.4 Provisions that Survive Termination

Notwithstanding the termination or expiration of this **Confidentiality Agreement**, all obligations of the **Parties**, which expressly or by their nature survive termination or expiration, shall continue in full force and effect subsequent to and notwithstanding such termination or expiration, until they are satisfied or by their nature expire. For greater clarity such obligations shall subsist for a period of five (5) years following receipt of the **Confidential Information** from the **Disclosing Party**.

5.0 NO REVERSE ENGINEERING

5.1 No Use of the **Disclosing Party's Confidential Information**

The **Receiving Party** shall not disclose either:

- 5.1.1 the **Disclosing Party's Confidential Information**; or
- 5.1.2 the subject matter of the **Disclosing Party's Confidential Information**;

