



For Office Use Only

NEXERA™ CANOLA FLEXIBILITY AGREEMENT

This Nexera™ Canola Flexibility Agreement is entered into by the Grower and Agrigenetics, Inc. d/b/a Mycogen Seeds ("Mycogen") to set forth the terms and conditions upon which the Grower shall use Purchased Seed.

By signing below, the undersigned represents and agrees that: (1) he/she has read and understands the terms and conditions of this Agreement, (2) he/she is fully authorized to enter into this Agreement on behalf of the Grower identified in the Grower Information Section below, and (3) the terms and conditions of this Agreement will be legally binding on the Grower and all individuals and entities for which the undersigned and the Grower obtain Seed or use Purchased Seed and all individuals and entities that will plant and grow crops from Purchased Seed on behalf of the undersigned and the Grower.

Business Entity Name (if applicable)

Grower/Authorized Signature

Printed Name of Person Signing

Title of Person Signing (e.g. Operation Owner), if applicable

Date (Month/Day/Year)

Mycogen may send to you product information, samples and offers that may be of interest to you from time to time by way of electronic messages. Please check the box to indicate if you would like to receive such messages from Mycogen: **YES** ☐

You may later withdraw your consent to receive these messages. For further information about Mycogen's privacy policy, see Article 7 or, to contact Mycogen, see Article 8.

SECTION A Grower Information

Business Type: ☐ Corporation ☐ Partnership ☐ Limited Liability Company (LLC) ☐ Sole Proprietorship
(Check One)

Desired Hybrid:

Intended Acres:

Full Grower's or Authorized Representative's Name (First/Middle/Last) and Title (e.g.: Manager), if applicable:

Farm (if different from Business Entity Name)

Business Mailing Address:

City/Town

State:

Zip Code:

Email Address:

Business Phone:

Cell Phone

Fax Number:

Additional Contact Name: (First/Middle/Last)

Relationship to person signing:

If the above information changes, Grower agrees to promptly notify Mycogen of the changes at buymycogen@dow.com or Mycogen Seeds Sales Acceleration Center (317) 337-4060.

SECTION B Seed Retailer Information

Business Name:

Business Phone:

City/Town

State:

Zip Code:

SECTION C Terms and Conditions

1. DEFINITIONS: Each of the following terms shall have the meaning specified below:

- **"Agreement"** means, as of any date of determination, this Nexera Canola Flexibility Agreement and the then current Technology Notification(s) for Purchased Seed, which are incorporated herein and deemed a material part of this Agreement.

- **"Technology Notification"** means a communication to Growers with updated information regarding new and existing Mycogen Sourced Technologies, including (among other things) Canada or United States patents licensed under this Agreement and any new or modified terms. The Technology Notification(s) for Purchased Seed shall become a part of this Agreement, and Grower's use of Purchased Seed following receipt of any Technology Notification for such Purchased Seed constitutes Grower's acceptance of all terms in the Technology Notification.

- **"Approved Retailers"** means those retailers through which Mycogen has approved the distribution of Nexera Canola Seed.

- **"Delivery Contract"** means any one of, and **"Delivery Contracts"** means collectively, the contracts, to be entered into by Processors with Growers pursuant to which the Growers are to plant, cultivate and harvest Grain grown from Nexera Canola seed, all solely in North America, and/or to sell and deliver Qualifying Grain to the Processor.

- **"Exclusive Rights"** means (i) the rights under the Seed and Oil Patents, (ii) the rights existing under the Plant Variety Protection Act and corresponding regulations, including all varieties registered or to be registered thereunder, and (iii) the rights existing pursuant to U.S. regulatory approvals.

- **"Plant Variety Protection Act"** or **"PVPA"** means the Plant Variety Protection Act, 7 U.S.C. §§2321 *et. seq.*, as amended from time to time.

"Grain" means any commercial grade of canola which is grown from Purchased Seed and harvested by the Grower.

- **"Grower"** means the individual farmer or farming entity identified in Section A on page 1 of this Agreement.

- **"Licensed Rights"** mean all patent claims, trade secrets, rights existing under the Plant Variety Protection Act (or its foreign equivalents), and other intellectual property rights relating to Mycogen Sourced Technology(ies) as set forth in the Annual Technology Notification(s), that are reasonably necessary for a Grower's exercise of the limited license granted under paragraph 2 herein with respect to Purchased Seed.

- **"Mycogen Sourced Technology(ies)"** means proprietary germplasm and all current and future seed trait technologies as set forth in applicable Technology Notification(s). Mycogen Sourced Technologies currently covered as Licensed Rights by this Agreement include, but are not limited to, those listed in Technology Notification(s) provided at the time of execution of this Agreement.

- **"Nexera Canola"** means all the Mycogen proprietary varieties of canola developed by Mycogen or its affiliates or its predecessors that is sold or marketed under the Nexera name and protected pursuant to the Exclusive Rights.

- **"Omega-9 Quality Canola"** means Nexera Canola that has an oil profile with a minimum of seventy percent (70%) oleic acid and a maximum of three and one half percent (3.5%) α -linolenic acid.

- **"Omega-9 Quality Oil"** means canola oil resulting from the crushing and processing of Qualifying Seed purchased under a Delivery Contract and which has an oil profile with a minimum of seventy percent (70%) oleic acid and a

maximum of three and one-half percent (3.5%) α -linolenic acid.

- **"Parties"** means the Grower and Mycogen, collectively, and "Party" means any one of them.
- **"Process"** or **"Processing"** or **"Processed"** means the crushing of Qualifying Grain for the purposes of extracting Omega-9 Quality Oil and includes refining, bleaching and/or deodorizing of such Omega-9 Quality Oil, and any related services.
- **"Processor"** means any of: Pacific Coast Canola, Archer Daniels Midland Company, Louis Dreyfus Group, Richardson International Ltd., Viterro Inc., and Bunge Canada, by its general partner, CF Edible Oils Inc.; or any other company, partnership, or person approved by Mycogen to enter into Delivery Contracts with North American farmers.
- **"Purchased Seed"** means Seed that is purchased by a Grower from an Approved Retailer under this Agreement which is of a variety of Nexera Canola that, to the knowledge of Mycogen:
 - i. is free of unapproved adventitious events of Mycogen;
 - ii. contains genetic material that causes it to display commercially acceptable herbicide tolerance for the Clearfield canola system;
 - iii. is Omega-9 Quality Canola; and
 - iv. if planted, cultivated and harvested in accordance with the Production Contracts, is capable of producing Qualifying Grains.
- **"Qualifying Grain"** means Grain that meets all of the specifications mutually agreed to by Mycogen and the Processors from time to time.
- **"Representatives"** means Mycogen representatives and representatives of any owner of Mycogen Sourced Technology.
- **"Seed"** means agricultural planting seed containing, but not limited to, Mycogen Sourced Technologies.
- **"Seed and Oil Patents"** means any and all patents and patent applications worldwide owned or licensed by Agrigenetics for Nexera Canola seed, planting Nexera Canola seed, plants propagated and Grain harvested from Nexera Canola seed, and Omega-9 Quality Oil including, but not limited to, United States patents 6489543, 6455763, 6444879, 6433254, 6169190, 5965755; European patent 647406B1; Canadian patent 2133881 and any other such patents or patent applications that Mycogen may provide notice of to the Producer in writing and Mycogen hereby represents and warrants that it has licenses to any and all patents and patent applications owned or licensed by Mycogen Seed Company or its affiliates for Nexera Canola seed, planting Nexera Canola seed, plants propagated and Grain harvested from Nexera Canola seed and Omega-9 Quality Oil, which patents and patent applications are expressly included in the definition of Seed and Oil Patents under this Agreement.
- **"Third Party Trait Technology"** means proprietary trait technology from a technology provider other than Mycogen.

2. LIMITED LICENSE: Upon acceptance by Mycogen (or its authorized Representative) of this Agreement, unaltered and duly executed by Grower, Grower is granted and hereby accepts, on and subject to the terms and conditions of this Agreement, a limited, non-transferable, revocable, non-exclusive license to the Licensed Rights to purchase the Purchased Seed, each purchase of which shall be used to produce a single commercial crop in the United States.

This limited license only covers Grower's activities in the United States and does not authorize Grower to plant Seed in the United States that has been purchased/acquired in another country or to plant Seed in another country that has been purchased/acquired in the United States. Grower acknowledges and agrees that Grower is NOT permitted: (1) to sell the Purchased Seed or Grain other than to a Processor; (2) to supply, transfer, license or sublicense any Seed or Mycogen Sourced Technology to any other person, entity or other third party for planting or any other purposes; (3) to save or use any seed produced from Seed for planting by Grower or any other third party; or (4) to use or allow others to use Seed or any plant material produced from Seed for crop breeding, seed delivery, research (including, without limitation, agronomic testing or generation of comparative data against seed containing Third-Party Trait Technology), or generation of regulatory approval data. Grower further acknowledges and agrees that the limited license(s) granted herein does not convey or otherwise transfer any ownership rights of Mycogen Sourced Technologies to Grower.

For greater certainty and without limiting the generality of the foregoing, it is agreed and acknowledged that the taking and forwarding of representative samples of Grain to independent third parties as may be agreed to by the parties for inspection, testing, analysis or otherwise in accordance with this Agreement or a Delivery Contract, shall not be construed

as a breach of this Limited License.

3. UPDATES ARE PART OF THIS AGREEMENT: Grower acknowledges and agrees that the Technology Notification is incorporated herein and deemed a material part of this Agreement. For so long as Grower has a valid Agreement in effect with Mycogen, Mycogen will send all Technology Notification(s) to Grower at the address identified in Section A on page 1 of this Agreement. Grower's use of Purchased Seed after Mycogen publishes a new Technology Notification constitutes Grower's acceptance of and agreement to be bound by the provisions of such new Technology Notification.

4. DELIVERY CONTRACTS: The Grower will have the option to offer its commercial grade of canola grown from the Purchased Seed for sale to a Processor by entering into a Delivery Contract. Pursuant to the Delivery Contract, the Processor, in its sole discretion, will purchase some or all of the Grain offered from the Grower as Qualifying Grain for the purpose of Processing and/or exporting the Omega-9 Quality Canola for the purpose of being Processed.

5. COMMODITY CANOLA: Any Grain not sold to a Processor through a Delivery Contract as Qualifying Grain may be sold to a Processor as commodity canola, which may be comingled with other commodity canola. The Grower hereby acknowledges and agrees that it is strictly prohibited from selling any Purchased Seed or Grain to any person other than a Processor listed under this Agreement or as approved by Mycogen in writing. Any sale that is not in compliance with the foregoing is a violation of the limited license granted to the Grower under this Agreement.

6. COVENANTS OF THE GROWER: The Grower covenants and agrees to do all of the following under this Agreement:

- a) order only Purchased Seed from Approved Retailers and not resell any Purchased Seed except in accordance with this Agreement or with the express written consent of Mycogen;
- b) ensure that the Purchased Seed and the Grain (except as allowed in paragraph 5 above) are not contaminated or comingled with any other seed, crop or foreign material at any time;
- c) ensure that all equipment, machinery, facilities and transport carriers are thoroughly cleaned before being used for the Purchased Seed or Grain;
- d) not sell, give, provide or allow access to the Purchased Seed or Grain or allow access to any third party for any purpose whatsoever except as required by law or as contemplated in this Agreement, or with Mycogen's prior written consent;
- e) not sell, transfer or dispose of any Purchased Seed or Grain, except as provided in this Agreement or a Delivery Contract;
- f) not chemically or genetically modify or otherwise alter the composition of any Purchased Seed or Grain;
- g) not breed, increase or multiply any Purchased Seed or Grain, except as provided in this Agreement or a Delivery Contract;
- h) not conduct any field tests or performance trials in respect of any Purchased Seed or Grain;
- i) not crush or process any Purchased Seed or Grain;
- j) not retain any Purchased Seed for planting in subsequent years and shall not provide any Purchased Seed to any third party for planting or any other purpose; and
- k) return to an Authorized Retailer all unopened bags of the Purchased Seed on or before June 30 of the current year.

7. STEWARDSHIP AND COMPLIANCE: Grower agrees to read and follow all applicable product labels associated with Mycogen Sourced Technologies, including the Purchased Seed.

Grower agrees to provide Grower's reasonable cooperation to Mycogen and the Representatives in connection with their efforts to verify Grower's compliance with stewardship, and other requirements hereof, including, but not limited to, completing written and oral questionnaires. Grower authorizes the Representatives to enter upon land where Grower has planted or is growing Seed for the purposes of examining the land and Grower's crop and taking samples thereof. Upon the request of the Representatives, Grower shall furnish copies of invoices for Grower's purchase and sale of the Purchased Seed and Grower will disclose to the Representatives certain information to confirm compliance with this Agreement, including the locations of all fields planted with crops containing Mycogen Sourced Technology(ies) and other data as specified from time to time by Mycogen.

Grower hereby consents to the collection, use and disclosure of his or her personal and purchase information by and between: (i) Mycogen and its affiliated companies, including parents, subsidiaries and affiliates; (ii) retailers, including but not limited to Approved Retailers, from which Grower purchases Mycogen products; and (iii) grain processors, Mycogen strategic and commercial partners and service providers, for the purpose of administering Mycogen offers, including validation of product purchases and calculation/issuance of rebates and rewards. Grower understands that his or her personal information may be transferred outside of the United States for this purpose and that he or she may obtain more information regarding the collection, use and disclosure of personal information by reviewing Mycogen's privacy policy at:

www.dowagro.com/company/privacy/index.htm. Grower understands, by completing and signing this Agreement, that he or she is eligible to participate in Mycogen offers but is under no obligation to participate in any offer, now or in the future, and that he or she may withdraw consent to the collection, use and disclosure of his or her personal information at any time.

8. TERM AND TERMINATION: Unless otherwise terminated in accordance with provisions of this Agreement, the term of this Agreement shall be for a period of one (1) year from the date first written above. Grower or Mycogen may terminate this Agreement at any time for any reason by sending notice of termination to the other party at Mycogen Seed Company, 9330 Zionsville Rd., Indianapolis, IN 46268. Attn. Mycogen Sales Acceleration Center.

In the case of termination by Grower, such notice of termination must include Grower's full name and address. Upon termination of this Agreement for any reason, Grower will no longer have a right to purchase or use Seed, except as expressly provided below; however, Grower's obligations and Mycogen's rights that arose under the Agreement prior to termination will continue in effect. In addition to the foregoing, Mycogen reserves the right to revoke Grower's right to use one or more particular Mycogen Sourced Technology(ies) upon notice to the Grower. Upon receipt of such revocation notice, the Grower shall forthwith terminate its use of any and all Seed containing such Mycogen Sourced Technology(ies) and return such Seed to Mycogen at Grower's cost.

Notwithstanding any termination or expiration of this Agreement, Mycogen acknowledges that the Grower is required to fulfil its duties and obligations under the Delivery Contracts and therefore, the Grower shall be entitled to:

- i. purchase and handle Purchased Seed and Grain under existing Delivery Contracts; and
- ii. sell the resulting Grain, all in continued compliance with the terms and conditions of this Agreement.

9. INFRINGEMENT AND COOPERATION: The Grower shall advise Mycogen in a timely fashion of any access to or use of the Purchased Seed or Grain by third parties not expressly contemplated or permitted by this Agreement or the Delivery Contracts.

In the event that any of the Exclusive Rights, or other intellectual property rights of Mycogen, are infringed by a third party, Mycogen shall have the exclusive right to take such action as it may, in its sole discretion, deem necessary, including the right to sue for infringement, in the event of which Mycogen shall exclusively recover and retain any and all damages resulting from such suit. Mycogen shall take all such steps as it deems may be necessary or advisable to protect its intellectual property, shall provide the Grower with such information concerning its intellectual property rights or claims of third parties that Mycogen determines the Grower may require to perform its obligations under this Agreement and shall indemnify and save the Grower harmless against any and all claims from third parties that any of Mycogen's intellectual property rights claimed therein infringe the rights of any third party.

Upon Mycogen's request, the Grower shall cooperate, on a reasonable basis and at Mycogen's sole expense, in any infringement action commenced or defended by Mycogen relating to the Seed and Oil Patents or other intellectual property rights.

10. LIMITATIONS OF WARRANTIES AND REMEDIES: Mycogen warrants that the Mycogen Sourced Technologies contained in the Purchased Seed licensed hereunder conform to the written description(s) in the Technology Notification(s) and the bag containing, or tag affixed to, the unit of Purchased Seed. This warranty applies only to the Mycogen Sourced Technologies contained in the Purchased Seed.

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHICH ARE HEREBY DISCLAIMED.

Because Mycogen must have sufficient time to investigate any claim regarding the performance or non-performance of Purchased Seed and/or Mycogen Sourced Technology, no claim can be asserted against Mycogen unless Grower gives notice to Mycogen within fifteen (15) days after Grower first observes indications that the performance of the Purchased Seed and/or Mycogen Sourced Technology is not as warranted.

GROWER'S EXCLUSIVE REMEDY FOR ANY CLAIM OR LOSS, INCLUDING, WITHOUT LIMITATION, CLAIMS ALLEGING STRICT LIABILITY OR NEGLIGENCE, SHALL BE LIMITED TO REPAYMENT OF THE AMOUNT OF THE PURCHASE PRICE FOR THE AFFECTED PURCHASED SEED. IN NO EVENT SHALL MYCOGEN, ITS AFFILIATES, DEALERS OR LICENSEES BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH SEED AND/OR MYCOGEN SOURCED TECHNOLOGY.

11. ADDITIONAL PROVISIONS:

- Grower agrees to communicate all applicable terms, conditions and restrictions on the Purchased Seed whether under this Agreement, a Technology Notification or otherwise to all persons and entities possessing or taking an interest in Grower's Purchased Seed and grain there from.
- Independent Contractor. This Agreement is not to be construed as (i) creating any partnership, agency relationship, employment relationship or any other form of legal association or entity that would impose liability upon one Party for the actions or failure of the other Party, or (ii) providing one Party with the right, power or authority (express or implied) to create any duty for, or obligation of, the other Party.
- Assignment. Mycogen may assign its rights or obligations hereunder. Neither this Agreement nor any right or obligation under this Agreement may be assigned by the Grower without the prior written consent of Mycogen.
- Entire Agreement. This Agreement (including all Technology Notifications), along with applicable Mycogen bag tags and/or Mycogen commercial trait licenses, constitutes the entire agreement between Grower and Mycogen regarding the use of Purchased Seed and all prior agreements and understandings between Grower and Mycogen with respect to Purchased Seed are hereby superseded.
- Severability. If any provision in this Agreement is determined to be void or unenforceable, the remaining provisions shall remain in full force and effect.
- Amendment and Waiver. No amendment, discharge, modification, restatement, supplement, termination or waiver of this Agreement or any Section of this Agreement is binding unless it is in writing and executed by each Party. No waiver of, failure to exercise, or delay in exercising, any Section of this Agreement constitutes a waiver of any other Section (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.
- Governing Law and Forum. This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the state of Indiana and the laws of the United States applicable in that state. Each of the parties irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the state of Indiana.