

1. Parties

This agreement has been signed between:

The Institute of Biodiversity Conservation of the Federal Democratic Republic of Ethiopia, whose address is Kebele 08, Yeka Sub-City, P.O.Box 30726; Addis Ababa, Telephone 251-11-6612244, or 251-11-6615607 Fax: 251-11-6613722; E-mail: dg-ibc@ethionet.et or ddg-ibc@ethionet.et or bioresearch@ethionet.et, Addis Ababa, Ethiopia, hereafter referred to as the “Provider”

And

Vernique Biotech Ltd, whose registered address is Unit 31, 79 Gloucester Street, London SW1V 4E4, England, Tel: +441608658313, E-mail: pgmccclory@btinternet.com hereinafter referred to as the “Company”.

2. Preamble

Whereas, *Vernonia galamensis* L. ssp. *galamensis* var. *ethiopica* (Noya), hereinafter referred to as “*Vernonia*”, is a new annual industrial oilseed crop containing about 40 to 42% oil of which 73 to 80 % is vernolic acid;

Whereas, the Company has certain intellectual and industrial property rights and access to a novel oil extraction and refining technological know-how potentially relevant to the development of products derived from *Vernonia* oil, and desires to explore and, where appropriate, exploit applications of *Vernonia* oil;

Whereas, *Vernonia* is endemic to Ethiopia and grows in the Regional States of Oromiya, Southern Peoples, Nations and Nationalities, and Tigray;

Whereas the Provider has the legal mandate to regulate and grant access to genetic resources and community knowledge in Ethiopia;

Whereas, both parties have the desire to benefit from the results derived from the use of *Vernonia* oil;

Now, therefore, the parties have hereby agreed as follows:

3. Scope of access

- a. Subject to the limitations provided for in this agreement, the Provider agrees to grant the Company exclusive access to *Vernonia* seed to export and use for purpose of developing and commercializing the *Vernonia* seed oil products specified in the Annex to this agreement. The Company shall not use *Vernonia* seed for other purposes or applications unless it has first secured a written prior informed consent from the Provider based on mutually agreed terms.
- b. This agreement applies, and has effect in relation, to *Vernonia* seed only and to no other plant seed or crop.
- c. The Provider shall not grant access to the seeds of *Vernonia* to other parties for the purpose of developing and commercializing the *Vernonia* oil products specified in the Annex to this agreement. However, the Provider may grant access to third parties to *Vernonia* seed for purposes of developing and commercializing products or applications other than those specified in the Annex to this agreement. The Provider may also grant access to third parties to *Vernonia* seed for purpose of developing and commercializing those products or applications specified in the Annex to this agreement which the Company has not developed or has not begun developing within two years from the date this agreement is signed.
- d. The Company is not permitted under this agreement to access the traditional knowledge of Ethiopian local communities in relation to the use of *Vernonia*. Therefore, the Company shall not make use of or commercialize such traditional knowledge of Ethiopian local communities unless it has first secured an explicit written prior informed consent from the Provider based on mutually agreed terms. The Company shall not make any claim that may affect the traditional uses of *Vernonia* by local communities.

4. Intellectual property

The Company shall neither claim nor obtain intellectual property rights over *Vernonia* or over any genetic components thereof. However, the Company can obtain intellectual property rights relating to inventions, products or applications developed using *Vernonia* oil.

5. Transfer to third parties

- a. The Company shall not transfer samples of *Vernonia* or any genetic components thereof to third parties to use for their own purposes. The company shall ensure that all sub-contractors and providers to it of research services are made aware of the fact that they shall not use the samples or genetic components thereof for their own purpose or transfer them to third parties and shall also ensure that they have to enter into a legally binding undertaking with the Company to this effect before they handle the samples or genetic components thereof.
- b. The Company shall not assign, transfer or otherwise dispose, in whole or in part, to third parties any of its rights or obligations under this agreement to access and use *Vernonia* seed or the genetic components thereof unless it has first secured the explicit written prior informed consent of the Provider to that effect.
- c. The rights and obligations of the Company under this agreement may be assigned, transferred, or otherwise disposed of, to a third party only where the Provider is a party to the agreement of assignment.

6. Effect of the agreement

- a. This agreement shall not affect whatsoever the sovereign rights of Ethiopia over the genetic resources of *Vernonia* seed or the genetic components

thereof. The *Vernonia* or the genetic components thereof shall, at all times, be the property of the Government and the people of Ethiopia.

- b. This agreement shall not affect whatsoever any traditional uses by, or traditional knowledge of, local communities associated with *Vernonia*.

7. Benefit sharing

7.1 The Monetary benefits:

- a. The Company shall pay to the Provider an upfront payment of Euros 35,000 upon the signing of this agreement.
- b. The Company shall pay to the Provider annually a royalty amounting to:
 - i) 2 % of the sale value of products derived from *Vernonia* sold at a price of up to Euros 2,000 per ton;
 - ii) 4 % of the sale value of products derived from *Vernonia* sold at a price between Euros 2001 and 10,000 per ton.
 - iii) 5 % of the sale value of products derived from *Vernonia* sold at a price above Euros 10,000 per ton.
- c. In addition to the royalty to be paid under sub-article (b) above, the Company shall also pay annually a royalty amounting to 5% of its net profit after taxes from the commercialization of products derived from *Vernonia*.

7.2 Non-Monetary benefits:

- a. The Company shall share with the Provider the research results and technologies generated from the use of *Vernonia* so long as they do not affect the commercial advantages of the Company. The parties will specify in the future by mutual agreement the research results and technologies that affect the commercial advantages of the Company.
- b. The Company shall give priority to Ethiopian research institutions such as the Alemaya University to undertake for it agronomic research on *Vernonia* to be grown in Ethiopia.

- c. The Company shall give priority to Ethiopia to supply it with *Vernonia* seed for producing oil products. The Company shall, unless prevented by force majeure, source at least 75% of its annual need of *Vernonia* seed by producing it, and/or by buying it from out-growers or local communities, in Ethiopia. However, the Company shall not be obliged to secure 75% of its annual need of *Vernonia* seed in Ethiopia during the first one year from the date this agreement is signed. In order to ensure the continuity of supply, the Company can grow up to 25% of its annual needs of *Vernonia* seed in Zambia and Australia.
- d. The Company will provide, as applicable, training to local communities or out-growers on methods of production of *Vernonia* seed.
- e. The Company shall acknowledge, in all its relevant publications and applications for intellectual property protection over the products developed from *Vernonia*, Ethiopia as the source of the *Vernonia* used therein.

8. Confidentiality

Information that is reasonably identified by the parties as confidential shall be kept as such by both parties. The parties shall agree in writing the information they need to be treated as confidential.

9. Duration of the agreement

- a. The agreement shall remain in force for a period of 10 years as of the date it is signed by both parties.
- b. At the end of such period, the parties may renegotiate the agreement. The agreement shall terminate and the provisions of article 12 of this agreement shall apply if the agreement is not renegotiated.

10. Monitoring and follow-up

- a. The Company shall submit to the Provider quarterly progress reports on its activities including its commercial and research works. Where the research result to be reported constitutes an invention for which intellectual property protection has not been filed, the Company shall give the report thereof only in general terms, without providing the full details of the invention, until it shall have filed the application for intellectual property protection. However, the application must be filed within a period of three months. The Company shall also submit to the Provider its annual financial statements within one month from the date it has been filed and published which shall not be later than 30 June each year.
- b. The Provider has the right to examine, at any moment, through an independent accountant if it so wishes, the bookkeeping as well as the relevant administrative details of the items of the company covered by this agreement.
- c. Meetings will be held between the two parties at least once in a year in Ethiopia to exchange information on, and monitor the implementation of, this agreement.

11. Penalty

- a. The Company shall pay a penalty of Euros 50,000 to the Provider if it breaches the provision of article 5 of this agreement. The Company shall also pay the Provider damages amounting to the income foregone by the Provider because third parties did not access the *Vernonia* or the genetic components thereof through an agreement made in accordance with article 5(a) of this agreement.
- b. If the Company fails to effect payment of the royalties specified under article 7 of this agreement within 60 days from the date on which the annual financial statement of the Company is filed and published, it shall pay a penalty of 10% of the overdue royalty for any delay of up to 90 days, and 20% of the overdue royalty for any delay between 90 and 180 days.

Should the Company fail to pay the overdue royalty within 180 days, the Provider may terminate the agreement as per article 12 of this agreement.

- c. The Company shall pay a penalty of Euros 5,000 to the Provider if it breaches the provisions of articles 10 (a) or (b) of this agreement.

12. Termination of this Agreement

1. Either party may terminate this agreement at any time:
 - a. When performance becomes impossible for reasons beyond the control of the party concerned.
 - b. When an order has been made or resolution has been passed for the winding up or liquidation of the Company's establishment.
2. When one of the parties fails to fulfill its obligations or violates the terms under this agreement, and the aggrieved party has given the other party notice of not less than 60 days in writing requiring that the failure or violation be remedied. If the failure or violation shall not have been remedied within the said 60 days, the aggrieved party shall have the right to terminate the agreement.
3. In the event of the termination of this agreement by either party under sub-articles (1) or (2) above, the terminating party shall notify the other party in writing.

13. Effect of Termination

1. The termination of this agreement shall not affect the accrued rights and obligations that were due to either party prior to the effective date of termination of the agreement.
2. Upon the termination of this agreement, the Company shall:
 - a. cease to make use of *Vernonia* seed and any genetic components thereof and to commercialize any of the products developed therefrom.

- b. not transfer to third parties samples of *Vernonia* seed or any genetic components thereof.
- c. not disclose any of the confidential information relating to *Vernonia*.

14. Waiver

No failure by either party to enforce any of the provision of this agreement shall constitute a waiver of any part of those provisions or of the rights of that party thereafter to enforce each and every term and condition of this agreement.

15. Severability

If any provision hereof is held to be illegal, invalid or unenforceable for any reason, such provision shall be deemed to be *prononscripto* but without affecting, impairing or invalidating any of the remaining provisions of this agreement which will continue to be of full force and effect.

16. Dispute settlement

- a. If any dispute arises in connection with the interpretation or application of this agreement, both parties shall seek solution by negotiation. If the dispute cannot be resolved by negotiation, it shall be submitted to an arbitration tribunal to be established by both parties.
- b. The party that wishes a dispute to be referred to an arbitration tribunal shall give notice to the other party in writing specifying the person it has appointed as an arbitrator on its part. The other party shall appoint one arbitrator on its part within 30 days from the receipt of such notice. The two arbitrators nominated by the parties shall appoint the third arbitrator, who shall preside over the arbitration tribunal. Should the two arbitrators fail to agree on who the third arbitrator should be, then the third arbitrator shall be appointed by an Ethiopian court.

- c. The arbitration tribunal will adjudicate in Ethiopia. The decision of the arbitration tribunal shall be final and binding on the parties without appeal.
- d. If either of the parties fails to execute the award of the arbitration tribunal, the aggrieved party may ask the Government of Ethiopia or the Government of the UK, as applicable, to enforce the award given by the arbitration tribunal.

17. Governing law

This agreement shall be interpreted in accordance with, and the performance of the parties and the enforcement of their respective rights and obligations hereunder shall be governed in all respects by the laws of Ethiopia and, where applicable, by international treaties, to which Ethiopia is a party, and in particular, the Convention on Biological Diversity (CBD) and any other international law emanating from it.

18. Notice

All notices, requests and other communications needed hereunder shall be made in writing and shall be deemed given if delivered or sent by registered mail or by courier, to the following address or to such other address or person as either party may designate by a written notice to the other party.

If to the Provider

Name: Institute of Biodiversity Conservation
Address: P.O. Box 30726, Addis Ababa, Ethiopia

If to the Company

Name: Vernique Biotech Ltd.
Address: Unit 31, 79 Gloucester Street, London SW1V 4E4, England

19. Language of the Agreement and communications

- a. This agreement is done in English.
- b. All reports, minutes, records, instructions, notices, advice, correspondence or any other communication required under this agreement shall be made in English.

20. Amendment of Agreement

- a. This agreement may be amended to the extent mutually agreed by and between the parties hereto.
- b. Any amendment shall be made expressly in writing and attached as an annex to this agreement.

Annex

List of products and applications for which the Company is granted permit to use *Vernonia* seed.

1. Epoxy Resins both for conventional and new uses in the field of nanotechnology;
2. Solvents;
3. Paints, varnishes and industrial coatings;
4. Inks;
5. Adhesives;
6. Cosmetics;
7. Pharmaceuticals & Medicines;
8. Paper and wood products;
9. Polymers;
10. Elastomers;
11. Polyvinyl Chloride applications;
12. Fungicides;
13. Pesticides;
14. Herbicides and biocides;
15. Flavours & fragrances;
16. Fermentation products;
17. Floor surface;
18. Bearing oils;
19. Insect repellants;
20. Sealants;
21. Lubricants;
22. Waxes and polishes;
23. Drug delivery;
24. Vernolic acid derivatives;
25. Decarboxylic acids;
26. Pigment dispersants;
27. Industrial Chemicals;