

# DOW AGROSCIENCES GROWER AGREEMENT

This Grower Agreement is entered into by Grower and Dow AgroSciences LLC to set forth the terms and conditions upon which Grower shall use seed containing Dow AgroSciences Sourced Technologies.

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 Box 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 or use Seed.

Grower's Authorized Signature:

By: \_\_\_\_\_ Date \_\_\_\_\_  
 Authorized Signature Title of Person Signing  
 \_\_\_\_\_  
 Printed Name of Person Signing Title of Person Signing

## GROWER INFORMATION – Complete Section A OR Section B – PLEASE PRINT CLEARLY

**Section A – For Individual (Sole Proprietorship) Grower**

Grower Name – Last First MI

Farming or "Doing Business As" (d/b/a) Name

Full Address

City State ZIP

County Phone

E-mail Address

Last 4 Digits of Social Security No.

**Section B – For Business Entity Grower**

Business Name

Business Type (Check One):  Corporation  Partnership  
 Limited Liability Company (LLC)  Other

Authorized Representative's Name & Title

Full Address

City State ZIP

County Phone

E-mail Address

Last 4 Digits of Tax I.D. No.

**RETURN SIGNED GROWER AGREEMENT TO THE COMPANY WHERE YOU PURCHASE YOUR SEED.**

Seed companies should send completed agreements to Dow AgroSciences using one of the following options: 1) e-mail: [DowTraits@agdata.net](mailto:DowTraits@agdata.net); 2) fax: 704-366-9603; or 3) mail: Attn: Traits Administrator, P.O. Box, 220928, Charlotte, NC 28222-0928.

For further information or to receive a current PUG contact DAS at 1-877-4-TRAITS (1-877-487-2487).

1. **DEFINITIONS:** Each of the following terms shall have the meaning specified below:
- "Agreement" means this Grower Agreement to grow DAS Sourced Technologies and the current PUG, as may be revised from time to time, which is incorporated herein and deemed a material part of this Agreement.
  - "DAS" and "Dow AgroSciences" mean Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268.

- "DAS Sourced Technology(ies)" means *current and future* seed trait technologies as published in a then current PUG which may include Third Party Trait Technology sold by DAS affiliated seed companies. Current DAS Sourced Technologies include Herculex<sup>®</sup> *Insect Protection* for corn; *SmartStax™* for corn; and *WideStrike® Insect Protection* for cotton.
- "Grower" means the individual farmer or farming entity identified in the Grower Information Box.
- "Product Use Guide" and "PUG" mean the document(s) published and updated by DAS from time to time, which specify, among other things, the DAS Sourced Technologies that Grower has a limited license to use hereunder and the planting and stewardship requirements therefor.
- "Seed" means agricultural planting seed containing one or more DAS Sourced Technologies sold by DAS affiliated seed companies and/or DAS seed company licensees.
- "Third Party Trait Technology" means proprietary trait technology from a technology provider other than DAS.

2. **LIMITED LICENSE:** Upon acceptance by DAS of this Agreement, unaltered and duly executed by Grower, Grower is granted a limited use license by DAS (and Third Party Trait Technology provider(s) to the extent applicable) under the appropriate patents (listed herein and in the current PUG) to purchase from authorized sellers and to plant Seed containing the DAS Sourced Technologies to produce a single commercial grain crop in the United States. In the case of some Third Party Trait Technology contained in the Seed, Grower may obtain a limited license to use such technology upon purchase or by means other than by this Agreement, but such use and license shall be subject to the terms and conditions of this Agreement. This limited license only covers the United States and does not authorize Grower to plant Seed in the United States that has been purchased/acquired in another country or 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 supply, transfer, license or sublicense any Seed to any other party for planting or any other purposes; (2) to save or use any seed produced from Seed for planting by Grower or any other party; or (3) to use or allow others to use Seed or any plant material produced from Seed for crop breeding, seed production, research (including, without limitation, agronomic testing or generation of comparative data against seed containing Third Party Trait Technology), or generation of regulatory approval data.

3. **PRODUCT USE GUIDE (PUG):** Grower acknowledges and agrees the PUG, as revised from time-to-time by DAS, is incorporated herein and deemed a material part of this Agreement. For so long as Grower has a valid Agreement in effect with DAS, DAS will use reasonable efforts to provide Grower with the current PUG. Notwithstanding the foregoing, Grower agrees that it is Grower's responsibility to obtain and comply with the current PUG. The current PUG should be available from authorized sellers of the Seed, from DAS directly and/or on one or more DAS Web sites. Grower's use of Seed after DAS publishes a new PUG or updates a PUG constitutes Grower's acceptance of and agreement to be bound by the provisions of such new or revised PUG.

Grower agrees to follow all Insect Resistance Management (IRM) requirements set forth in the PUG, including any to establish and maintain a refuge.

4. **TERM AND TERMINATION:** This Agreement, once signed by Grower and accepted by DAS, will remain in effect until terminated. Grower or DAS may terminate this Agreement at any time for any reason by sending notice of termination to the other party at the address specified above. In addition to the foregoing, DAS reserves the right to revoke Grower's right to use a particular DAS Technology(ies) upon notice to the Grower. In the case of termination by Grower, such notice of termination must include Grower's full name and address. Upon termination of this Agreement, Grower will no longer have a right to purchase or use Seed; however, Grower's obligations and DAS' rights that arose under the Agreement prior to termination will continue in effect.

5. **TRAIT FEES:** Grower agrees to timely pay DAS and its designated representative all applicable fees that are a part of, associated with or collected with the purchase and use of any Seed and/or DAS Sourced Technology upon DAS' payment terms then in effect. DAS reserves the right to change from time to time the amount of and how it charges technology fees. Grower shall pay interest to DAS on any past due technology fees at the rate of 1.5% per month (18% per annum) or the maximum amount permitted by law, whichever is less, from the applicable due date for such fees until paid. Any payments received by DAS may be applied to unpaid fees, interest or other charges in DAS' discretion.

6. **LIMITATIONS OF WARRANTIES AND REMEDIES:** DAS warrants that the DAS Sourced Technologies licensed hereunder conform to the written description in the current PUG and the seed tag affixed to the unit of seed containing DAS Sourced Technology. This warranty applies only to the DAS Sourced Technologies contained in planting Seed that has been purchased from a DAS authorized Seed seller. 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.

No claim can be asserted against DAS unless Grower reports to DAS promptly after discovery any condition that might lead to a complaint. All claims must be asserted within one year from the date they arose.

**GROWER'S EXCLUSIVE REMEDY FOR ANY CLAIM OR LOSS, INCLUDING, WITHOUT LIMITATION, CLAIMS RESULTING FROM BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, STRICT LIABILITY OR NEGLIGENCE, SHALL BE LIMITED TO REPAYMENT OF THE AMOUNT OF THE PURCHASE PRICE FOR THE AFFECTED SEED. IN NO EVENT SHALL DAS, ITS AFFILIATES, DEALERS OR LICENSEES BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THE SEED.**

7. **THIRD PARTY TRAIT PROVIDERS:** Grower acknowledges and agrees this Agreement is entered into for the benefit of Third Party Trait Technology providers to the extent their trait technologies are licensed as DAS Sourced Technologies hereunder and, as third party beneficiaries, these Third Party Trait Technology providers are entitled to enforce the provisions of this Agreement, as they may pertain to their respective trait technologies, against Grower, including maintaining a legal action directly against Grower.

#### 8. ADDITIONAL PROVISIONS:

- Grower agrees to communicate all applicable terms, conditions and restrictions on Seed whether under this Agreement, a PUG or otherwise to all persons and entities possessing or taking an interest in your Seed and grain therefrom.
- Grower agrees that should any information provided to DAS herein change, Grower will promptly provide DAS with Grower's updated information at the DAS address provided above.
- Grower's rights hereunder may not be transferred or assigned to any other party without the written consent of DAS.
- Grower agrees to provide Grower's reasonable cooperation to DAS and its representatives in connection with their efforts to verify Grower's compliance with IRM and other requirements hereof, including completing written and oral IRM questionnaires.
- Grower consents to DAS and its representatives and the representatives of any owner of the patents listed herein or in the PUG to (i) entering upon Grower's land where the DAS Sourced Technologies have been planted or are growing as well as the refuge area for purposes of examining the land, your crop and taking samples thereof; (ii) reviewing the Farm Service Agency crop reporting information including Form 578 and corresponding aerial photographs, and (iii) obtaining copies of invoices of Grower.
- This Agreement constitutes the entire agreement between Grower and DAS regarding the subject matter hereof and all prior agreements between Grower and DAS with respect to the subject matter hereof are hereby superseded.
- If any provision hereof is determined to be void or unenforceable, the remaining provisions shall remain in full force and effect.
- The failure of DAS or any Third Party Technology providers to exercise one or more of its rights hereunder on one or more occasions shall not be deemed a waiver to exercise such right(s) on one or more subsequent occasions.
- **Governing Law:** This interpretation and enforcement of this Agreement shall be governed by the laws of the State of Indiana without regard to its choice of laws provisions.
- **Enforcement Costs:** Grower agrees that DAS and any owners of the patents listed herein or in the PUG shall be entitled to recover any costs or expenses, including, but not limited to, court costs or reasonable attorneys fees, it incurs in enforcing its rights under this Agreement.

9. **U.S. PATENT NUMBERS.** DAS Sourced Technologies are protected under U.S. patents. Specific DAS Sourced Technology is protected under one or more U.S. patents as identified below and/or as identified and updated in a PUG from time to time: **Herculex<sup>®</sup> Insect Protection** corn: DAS patents 5,510,474; 6,020,190; 6,083,499; 6,127,180; 6,218,188; 6,340,593; 6,548,291; 6,573,240; 6,624,145; 6,737,273; 6,893,872; 6,900,371; 6,943,282; 7,288,643; 7,323,556; 7,417,132; 7,435,807; 7,449,564; 7,514,544. Monsanto patents: 5,484,956; 5,489,520; 5,538,877; 5,538,880; 5,550,318; 6,331,665. **SmartStax<sup>™</sup>** corn: DAS patents: 5,510,474; 6,020,190; 6,083,499; 6,127,180; 6,218,188; 6,340,593; 6,548,291; 6,573,240; 6,624,145; 6,737,273; 6,893,872; 6,900,371; 6,943,282; 7,288,643; 7,323,556; 7,417,132; 7,435,807; 7,449,564; 7,514,544. Monsanto patents: 5,276,268; 5,322,938; 5,352,605; 5,378,619; 5,424,412; 5,554,798; 5,641,876; 5,717,084; 5,728,925; 6,025,545; 6,051,753; 6,063,597; 6,083,878; 6,489,542; 6,645,497; 6,962,705; 7,064,249; 7,112,665; 7,227,056; 7,250,501; RE39247; 5,484,956; 5,489,520; 5,538,877; 5,538,880; 5,550,318; 6,331,665. **WideStrike<sup>®</sup> Insect Protection** cotton: 5,001,060; 5,188,960; 5,428,147; 5,508,264; 5,510,474; 5,827,514; 6,020,190; 6,090,627; 6,218,188; 6,229,004; 6,943,282; 7,179,695.