



# DOW AGROSCIENCES TECHNOLOGY USE AGREEMENT

This Technology Use Agreement is entered into by Grower and Dow AgroSciences LLC and its affiliated companies (collectively Dow AgroSciences or DAS) to set forth the terms and conditions upon which Grower shall use Seed containing DAS Sourced Technology.

By signing below the undersigned represents and agrees that: (1) he/she has read and understands the terms and conditions of this Agreement, including the terms and conditions on the next page, (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 and all individuals and entities that will plant and grow crops from Seed on behalf of the undersigned and the Grower.

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

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

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

Grower Name – First MI Last

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

Full Address

City State Zip Code

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 Code

County Phone

E-mail Address

Last 4 Digits of Tax I.D. No.

**Section C - Seed Supplier**

Business Name

City State Zip Code

Send completed agreements to Dow AgroSciences using one of the following options:  
**1. E-mail:** [agreements@accelerate.com](mailto:agreements@accelerate.com)  
**2. Mail:** AgCelerate,  
 PO Box 221679  
 Charlotte, NC 28222-1679

in conjunction with Enlist™ crops and are specified in a Product Use Guide. For greater certainty, the only 2,4-D herbicides considered to be DAS Authorized Herbicide Product(s) are those featuring Colex-D Technology.

**"DAS Licensee"** means an entity that has a valid, in force agreement with DAS granting it a license to produce and sell DAS seed trait technology in its seed products.

**"DAS Sourced Technology"** means proprietary germplasm and all current and future seed trait technology as set forth in applicable Annual Technology Notification(s). DAS Sourced Technology currently covered as Licensed Rights by this Agreement includes, but is not limited to, the U.S. patents listed in Annual Technology Notification(s) provided at the time of execution of this Agreement.

**"Grower"** means the individual farmer or farming entity identified in the Grower Information Box.

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

**"Product Use Guide"** and **"Guide"** mean the document(s) published and updated by DAS from time to time, which specify, among other things, stewardship management practices for Seed and DAS Authorized Herbicide Product(s). The Guide(s) for Purchased Seed shall become a part of this Agreement, and Grower's use of DAS Sourced Technology following receipt of any Guide constitutes Grower's acceptance of all terms in the Guide.

**"Production Crop"** means seed that Grower produces for DAS or a DAS Licensee pursuant to a valid production agreement, which crop is controlled by DAS or the DAS Licensee.

**"Purchased Seed"** means Seed that is purchased by Grower from a Seed Seller under a fully executed Technology Use Agreement to which Grower and DAS are parties, as amended pursuant to Annual Technology Notification(s), or otherwise.

**"Representatives"** means DAS representatives and representatives of any owner of DAS Sourced Technology.

**"Seed"** means agricultural planting seed containing DAS Sourced Technology sold by DAS Seed Sellers. "Seed" may contain Third-Party Trait Technology that is subject to the provider's separate licensing arrangements.

**"Seed Seller"** means Dow AgroSciences and those entities authorized by DAS to sell Seed.

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

**"Agreement"** means, as of any date of determination, this Technology Use Agreement, the then current (i) Product Use Guide(s) and (ii) Annual Technology Notification(s), all of which are incorporated herein and deemed a material part of this Agreement.

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

**"Colex-D Technology"** means a DAS-proprietary herbicide technology package comprised of 2,4-D choline, advanced formulation science and innovative manufacturing processes, which is specifically designed to provide ultra-low volatility, minimized potential for physical drift, decreased odor and improved handling characteristics.

**"DAS"** and **"Dow AgroSciences"** mean Dow AgroSciences LLC and its affiliated companies, the principle address of which is 9330 Zionsville Road, Indianapolis, IN 46268.

**"DAS Authorized Herbicide Product(s)"** means agricultural products that contain either 2,4-D herbicides featuring Colex-D Technology, or AOPP herbicides, or both that are expressly labeled for use

"Seed Stock" means seed that is owned by DAS or a DAS Licensee that is made available to a Grower to produce a Production Crop.

"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 and hereby accepts, on and subject to the terms and conditions of this Agreement, a limited, non-transferable, revocable, non-exclusive license by DAS under the Licensed Rights to i) purchase Seed from a Seed Seller and to plant Purchased Seed to produce a single commercial crop in the United States in a single season, or ii) if Grower has entered into a current and valid seed production agreement with DAS or a DAS Licensee, plant Seed Stock to produce a single Production Crop in the United States provided that all such Production Crop is delivered to or its disposition is controlled by DAS or the DAS Licensee.

In addition, when Grower purchases or receives Seed or Seed Stock and plants Purchased Seed or Seed Stock containing Enlist™ technology, Grower shall receive a limited license to use DAS Authorized Herbicide Products in conjunction with Enlist™ crops grown from such Purchased Seed or Seed Stock. 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.

#### PROHIBITED ACTIVITIES:

Grower acknowledges and agrees that Grower is NOT permitted to:

- supply, transfer, license or sublicense any Seed, Seed Stock, seed produced from Seed or Seed Stock or DAS Sourced Technology to any other person, entity or other third party for planting or any other purposes;
- accept any Seed or Seed Stock from any third party other than a Seed Seller, DAS or a DAS Licensee;
- save or use any seed produced from Seed or Seed Stock for planting by Grower or any other third party;
- use 2,4-D products without Colex-D Technology in conjunction with Enlist crops;
- use any phenoxy auxin herbicides (e.g., 2,4-DB, MCPA, dichlorprop, MCPB, mecoprop) or AOPP herbicides (e.g., quizalofop, cyhalofop, haloxyfop, diclofop, fenoxaprop, fluzifop) other than DAS Authorized Herbicide Products in conjunction with Enlist Crops;
- use any pyridine auxin herbicides (e.g., triclopyr, fluroxypyr) in conjunction with Enlist Crops; or
- use or allow others to use Seed, Seed Stock, seed produced from Seed or Seed Stock or any plant material produced from Seed for crop breeding, seed production (except under a valid production agreement with DAS or a DAS Licensee), 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 do not convey or otherwise transfer any ownership rights of DAS Sourced Technology to Grower.

#### 3. UPDATES AND DOCUMENTS THAT ARE PART OF THIS AGREEMENT:

Until this Agreement is terminated or superseded as set out in Article 5, the Annual Technology Notification is incorporated herein and deemed a material part of this Agreement once posted on the DAS website ([www.traitstewardship.com](http://www.traitstewardship.com)). For so long as Grower has a valid Agreement in effect with DAS, DAS will send hard copies of Annual Technology Notifications to Grower at the address identified by Grower above.

Until this Agreement is terminated or superseded as set out in Article 5, new Guides are incorporated herein and deemed a material part of this Agreement once posted on the DAS website ([www.traitstewardship.com](http://www.traitstewardship.com)). Current Guides will be available from Seed Sellers, from DAS directly and/or on the DAS website ([www.traitstewardship.com](http://www.traitstewardship.com)).

Until this Agreement is terminated or superseded as set out in Article 5, terms and conditions of use set forth on the packaging of Purchased Seed are incorporated herein and deemed a material part of this Agreement.

Grower acknowledges and agrees that updates of this Agreement, any Annual Technology Notification and any Product Use Guide published from time to time by DAS are incorporated herein and deemed a material part of this Agreement once posted on the DAS website ([www.traitstewardship.com](http://www.traitstewardship.com)).

**Grower's use of Seed after DAS posts on the DAS website ([www.traitstewardship.com](http://www.traitstewardship.com)) updates of this Agreement, an Annual Technology Notification or a Guide, or a new Annual Technology Notification or a new Guide, constitutes Grower's acceptance of and agreement to be bound by the provisions of such updated or new documents.**

Inconsistencies among (i) the Annual Technology Notification, (ii) the Technology Use Agreement, (iii) relevant Guide(s), each as posted on [www.traitstewardship.com](http://www.traitstewardship.com) at the time Grower opens a bag or container of Seed for planting, and (iv) the packaging of the Purchased Seed, shall be resolved in the following order: first, in favor of the Annual Technology Notification, second, the Technology Use Agreement, third, the Guide(s), and fourth, the packaging of the Purchased Seed.

#### 4. STEWARDSHIP AND COMPLIANCE:

Grower agrees to read and follow all applicable Guides, the terms and conditions set forth on the packaging of the Purchased Seed, and product labels associated with DAS Sourced Technology and DAS Authorized Herbicide Products.

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

Grower acknowledges and agrees that the only 2,4-D herbicides included in DAS Authorized Herbicide Products feature Colex-D Technology.

Grower agrees to follow herbicide resistance management (HRM) practices, such as pre-and post-application field scouting and reporting. Lack of herbicide efficacy should immediately be reported to DAS.

Grower agrees to provide Grower's reasonable cooperation to DAS and the Representatives in connection with their efforts to verify Grower's compliance with stewardship, IRM, HRM 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 as well as any refuge area for purposes of examining the land and Grower's crop and taking samples thereof. Such inspection, examination or sampling shall be available to DAS and the Representatives only after DAS or the Representatives deliver or mail to the Grower written notification at least seven (7) days in advance and DAS or the Representatives also have reasonably attempted to discuss the visits with the Grower in advance of the visit. DAS will indemnify Growers for entry by DAS employees or the Representatives onto land, but not for Grower's gross negligence or a violation of the law.

Grower authorizes the Representatives to review the USDA Farm Service Agency crop reporting information, including Form 578 and corresponding aerial photographs.

Upon the request of the Representatives, Grower shall furnish copies of invoices for Grower's purchases of Purchased Seed and DAS Authorized Herbicide(s), 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 DAS Sourced Technology, the identities of all herbicides applied to these fields, and other data as specified in the Guide(s).

Grower hereby consents to the collection, use and disclosure of Grower's personal or company data and purchase information by and among: (i) DAS and its affiliated companies, including parents, subsidiaries and affiliates; (ii) retailers, including but not limited to Seed Sellers, from which Grower purchases DAS products; and (iii) DAS partners and service providers for the purpose of administering DAS offers, including validation of product purchases and calculation/issuance of rebates and rewards.

**5. TERM AND TERMINATION:** This Agreement, once signed by Grower and accepted by DAS, will remain in effect until terminated or superseded. 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 one or more particular DAS Sourced Technology 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 or a license granted hereunder with respect to any DAS Sourced Technology for any reason, (i) Grower shall terminate the use of any and all Seeds containing the affected DAS Sourced Technology; (ii) Grower shall return unused Seeds containing such DAS Sourced Technology to DAS at Grower's cost; and (iii) Grower will no longer have a right to purchase or use Seed containing such DAS Sourced Technology. Notwithstanding the foregoing, Grower's obligations and DAS' rights that arose under the Agreement prior to termination will continue in effect.

**6. DAS SOURCED TECHNOLOGY FEES:** Grower agrees to pay DAS or DAS Licensee 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 DAS Sourced Technology fees. Grower shall pay interest to DAS on any past-due 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.

**7. LIMITATIONS OF WARRANTIES AND REMEDIES:** DAS warrants that the DAS Sourced Technology contained in the Purchased Seed licensed hereunder conforms to the written description(s) in the Annual Technology Notification(s) and on the packaging of the Purchased Seed. This warranty applies only to the DAS Sourced Technology contained in 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 DAS must have sufficient time to investigate any claim regarding the performance or non-performance of Purchased Seed and/or DAS Sourced Technology, no claim can be asserted against DAS unless Grower gives notice to DAS within fifteen (15) days after Grower first observes indications that the performance of the Purchased Seed and/or DAS 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 DAS, ITS AFFILIATES, DEALERS OR LICENSEES BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH SEED AND/OR DAS SOURCED TECHNOLOGY.**

#### 8. 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 Technology 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.

In the case of some Third-Party Trait Technology contained in the Seed and identified in the Guide, Grower may be required to obtain a limited license to use such technology directly from the owner (or an authorized agent of the owner) of such Third Party Trait Technology.

#### 9. ADDITIONAL PROVISIONS:

Grower agrees to communicate all applicable terms, conditions and restrictions on Seed whether under this Agreement, a Guide, an Annual Technology Notification or otherwise to all persons and entities possessing or taking an interest in Grower's Seed and grain therefrom.

Except as provided herein, notices to Grower or to DAS shall be sent to the address specified on the first page hereof.

Grower agrees that should any information provided to DAS herein change, Grower will promptly notify DAS.

Nothing in this Agreement shall be construed as a grant or license from DAS to the Grower for the use of any DAS trademark. Grower is required to enter a separate trademark license from DAS to use any DAS trademark(s), including but not limited to those marks associated with the Enlist trait, seed, technology or products.

Grower's rights under this Agreement may not be transferred or assigned to any other person, entity or third party without the written consent of DAS.

This Agreement (including documents and updates incorporated herein pursuant to Article 3 hereof) constitutes the entire agreement between Grower and DAS regarding the use of Purchased Seed and DAS Sourced Technology. All prior agreements and understandings between Grower and DAS with respect to Purchased Seed and DAS Sourced Technology are hereby superseded.

If any provision in this Agreement 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 under this Agreement 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 law provisions.

Enforcement Costs: Grower agrees that DAS and any owners of the patents covered by this Agreement 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.