

provisions of the **HERCULEX Product Use Guide** (“**Product Guide**”). Grower must obtain, read and comply with all provisions of the most current Product Guide, including **Insect Resistance Management** (“**IRM**”) practices and refuge requirements. As long as Grower has a valid Agreement for HERCULEX in effect, Dow AgroSciences will use reasonable commercial efforts to provide Grower with the current Product Guide and any updates relating to HERCULEX *Insect Protection* corn. Grower’s use of any HERCULEX Products after receipt of a revised Product Guide constitutes Grower’s acceptance of the provisions of such Product Guide.

4. Term and Termination. This Agreement shall remain in effect until terminated by either Grower or Dow AgroSciences. Either party may terminate this Agreement at any time for any reason by sending written notice of termination to the other party at the address for such party specified below. In the case of termination by Grower, such notice of termination must include Grower’s full name and address. Upon the termination of this Agreement, Grower may no longer purchase or use HERCULEX Products; however, Grower’s obligations that arose under this Agreement prior to the termination will continue in effect.

5. Limited Warranties and Disclaimers. Dow AgroSciences warrants that the HERCULEX Products licensed hereunder will conform to the applicable written description in the applicable Product Use Guide and on the Dow AgroSciences approved HERCULEX seed tag affixed to the seed bag. This warranty applies only to HERCULEX Products that have been purchased from a seed company licensed by Dow AgroSciences, or such seed company’s authorized dealers or distributors, and planted from the original sealed bag. **Dow AgroSciences makes no other warranties of any kind and disclaims all other warranties, oral or written, expressed or implied, including any implied warranties of fitness for particular purpose and merchantability.**

6. Limitation of Remedies and Liability. **Grower’s exclusive remedy and the limit of the liability of Dow AgroSciences or any seller to any party for any and all losses, injury or damages arising from or relating to the use or handling of a HERCULEX Product or the HERCULEX Technologies (including claims based in contract, negligence, product liability, strict liability or other theories of liability) shall be limited to the price paid by the Grower for the quantity of the HERCULEX Product involved. In no event shall Dow AgroSciences or any seller be liable for any indirect, incidental, consequential, special, exemplary or punitive damages.**

7. Product Claims Notice Requirements. As a condition precedent to Grower, or any other person with an interest in Grower’s crop, asserting a claim or commencing an action against Dow AgroSciences and/or any seller of seed in any way relating to or arising from the HERCULEX Technologies, Grower must provide prompt and timely notice to Dow AgroSciences (regarding performance or nonperformance of the gene technologies) and/or the seller of any seed (regarding performance or nonperformance of the seed) within sufficient time to allow an in-field inspection of the crop(s) about which any controversy, claim, action or dispute is being asserted. The notice shall include the Grower’s name, address, FSA number, a description of the claim, and the variety and lot number of the HERCULEX Product at issue.

8. Dow AgroSciences Remedies. If Grower violates the terms of this agreement, in addition to all other remedies available to Dow AgroSciences Grower’s license hereunder may be immediately terminated by Dow AgroSciences and Grower may forfeit any right to use the HERCULEX Technologies from Dow AgroSciences in the future. Additionally, Grower shall pay Dow AgroSciences any and all costs and expenses, including reasonable attorneys’ fees and court costs, incurred by Dow AgroSciences in connection with (i) its successful enforcement of any term or condition of this Agreement relating to Grower’s actual or threatened breach of this Agreement; and (ii) Grower’s infringement of any patents covering HERCULEX *Insect Protection* technology.

9.0 General Provisions.

9.01 Grower agrees to communicate all applicable terms, conditions and restrictions applicable to HERCULEX Products purchased by Grower whether under this Agreement, a Product Guide or otherwise to all persons and entities possessing or taking an interest in Grower’s HERCULEX Products corn crop(s).

9.02 Grower agrees to provide Grower’s reasonable cooperation to Dow AgroSciences and its representatives in connection with their efforts to verify Grower’s compliance with any and all IRM requirements, including completing written and oral IRM questionnaires and surveys. Grower further consents to Dow AgroSciences and its representatives (i) entering upon any land where Grower has planted or is growing any HERCULEX Products as well as the refuge corn therefore for purposes of examining the land, Grower’s crop and taking samples thereof; (ii) reviewing FSA crop reporting information and corresponding aerial photographs; and (iii) obtaining copies of invoices of Grower’s seed and chemical transactions from Grower’s seed and chemical dealer.

9.03 Grower’s rights under this Agreement may not be transferred to anyone else without the written consent of Dow AgroSciences. If Grower’s rights are transferred with Dow AgroSciences’ consent or by operation of law, this Agreement shall be binding on the person or entity receiving such transferred rights.

9.04 This Agreement is governed by the laws of the state of Indiana without regard to its choice of laws provisions.

9.05 If any provision of this Agreement is determined to be void or unenforceable, the remaining provisions shall remain in full force and effect.

9.06 The failure of Dow AgroSciences to exercise one or more of its rights under this Agreement on one or more occasions shall not be deemed a waiver on the part of Dow AgroSciences to exercise such right or rights on one or more subsequent occasions.

9.07 If Grower’s information provided to Dow AgroSciences herein or otherwise in connection with the HERCULEX Products changes, Grower agrees to promptly provide Dow AgroSciences with Grower’s updated information to Grower’s HERCULEX Products seed dealer or to the Dow AgroSciences address below.

9.08 Return your signed Grower Agreement to the seed company where you purchased corn hybrids containing Dow AgroSciences HERCULEX Products. The seed company will forward it to:

Dow AgroSciences, Attn: Traits Administrator, P.O. Box 220928, Charlotte, NC 28222-0928



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HERCULEX *Insect Protection* technology by Dow AgroSciences and Pioneer Hi-Bred.

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