



Bayer CropScience

## 1. SEEDS COVERED

This Agreement applies to any seeds, which contain Bayer technologies or traits, and which are required by retailer or Bayer to have a signed Grower Trait Licensing Agreement as designated on the bag in which seed is grown or otherwise including LibertyLink® cotton seed, LibertyLink® soybean seed, InVigor® canola seed, and GlyTo™ cotton seed, when available (hereinafter "Seeds"). Additionally, other Seeds with these or other Bayer technologies or traits may be developed by Bayer or other third parties at a later date and require a Grower Trait License Agreement, and these Seeds will be covered under this Agreement unless a revised agreement is entered into by Grower and Bayer.

## 2. LIMITED LICENSE

Bayer technologies or traits may be protected under one or more United States and/or foreign patents. A list of applicable U.S. patent numbers may be found on the corresponding bag label or tag of the respective Seed. This list may change from time to time, and Grower hereby agrees that Bayer retains the right to add or delete applicable patent numbers in its sole discretion to the list appearing on the respective bag label or tag. Bayer licenses the Grower and Grower hereby accepts a limited license under these applicable patents owned or licensed in by Bayer, as listed on the bag label or tag, to purchase Seed and plant one commercial crop from such Seed, subject to the conditions set forth in this Agreement and/or appearing on the bag label or tag of the Seed. This license does not authorize Grower to plant Seed in the United States that has been purchased in another country or plant Seed in another country that has been purchased in the United States. Grower is not authorized to transfer Seed to any third party (1) who has not signed a Bayer Grower Trait Licensing Agreement and for which Grower has not informed Bayer of such transfer; or (2) anyone outside of the United States. Grower is not licensed hereunder with respect to any seeds or plants, other than Seeds, even if such seed may contain Bayer technologies or traits.

## 3. LIMITED LICENSE

- a) To use Seed solely for planting a single commercial crop and to refrain from using such Seed for any research purposes or to engage in any type of reverse engineering of the technology contained in this Seed.
- b) To acquire Seed containing Bayer technology or traits only from a seed company licensed by Bayer for such technology or trait or from its authorized dealer.
- c) Not to save any seed or other propagating material produced from Seed for planting and not to supply same to anyone for planting.
- d) To allow Bayer to examine and copy any records and receipts that could be relevant to Grower's performance of the Agreement.
- e) To read and follow the Bayer Trait and Technology Use Manual.
- f) That Bayer or its designee may conduct audits of Grower's crops that are covered by this Agreement. This audit may include reviewing records and receipts related to Grower's crops, inspecting the crops and taking samples of the Grower's crops.
- g) To allow Bayer to use the Grower's name and information for the purpose of providing Grower with marketing programs, promotional materials, and product and other related information.

**MODIFICATIONS TO TERMS NOT VALID UNLESS APPROVED IN WRITING BY BAYER**

**4. BAYER'S REMEDIES**

In the event the Grower violates the terms of this Agreement, Grower's limited-use license will terminate immediately. If such termination occurs, Grower acknowledges he no longer will have any right to buy or use Seed.

If Grower is found by any Court to have breached any term of this Agreement, or to have infringed any of the Bayer U.S. patents, Grower agrees that Bayer will be entitled to a permanent injunction enjoining Grower from using, selling or offering Seed for sale without the necessity of proving irreparable harm. Grower also agrees that any such finding of infringement by Grower shall entitle Bayer to patent infringement damages to the full extent authorized by 35 U.S.C. §271, et seq. Grower will also be liable for breach of contract damages. If Grower is found by any Court to have infringed on one or more Bayer U.S. patents or otherwise breached this Agreement, Grower agrees to pay Bayer its attorneys' fees and other expenses incurred enforcing its rights under this Agreement, including attorneys' fees and expenses for investigation of the matter involved.

**5. NOTICE REQUIREMENT**

As a condition precedent to Grower or any other person with an interest in Grower's crop asserting any claim, action, or dispute against Bayer and/or any seller of Seed regarding performance or non-performance of Bayer technologies or traits or the Seed in which it is contained, Grower must provide a written, prompt, and timely notice to Bayer and to the seller of any Seed within sufficient time to allow an in-field inspection of the crop(s) about which any claim, action, or dispute is being asserted. The notice will be timely only if it is delivered 14 days or less after the Grower or his agent first observes the issue(s) regarding performance or non-performance of the Bayer technology or trait and/or the Seed in which it is contained.

**6. BINDING ARBITRATION FOR CLAIMS MADE BY GROWER**

Any claim or action made or asserted by any Grower (or any other person claiming an interest in the Grower's crop) against Bayer or any seller of Seed arising out of and/or in connection with this Agreement or the sale or performance of the Seed other than claims arising under the patent laws of the United States must be resolved by binding arbitration. The parties acknowledge that the transaction involves interstate commerce. The parties agree that arbitration shall be conducted pursuant to the provisions of the Federal Arbitration Act, 9 U.S.C. Sec 1, et seq. and administered under the Commercial Dispute Resolution Procedures established by the American Arbitration Association ("AAA"). The term "seller" as used throughout this Agreement refers to all parties involved in the production, development, distribution, and/or sale of the Seed. In the event that a claim is not amicably resolved within 30 days of Bayer's receipt of the Grower's notice required pursuant to this Agreement, any party may initiate arbitration. The arbitration shall be heard in the capital city of the state of the Grower's residence or in any other place as the parties decide by mutual agreement. When a demand for arbitration is filed by a party, the Grower and Bayer/sellers shall each immediately pay one half of the AAA filing fee. In addition, Grower and Bayer/sellers shall each pay one half AAA's administrative and arbitrator fees as those fees are incurred. The arbitrator(s) shall have the power to apportion the ultimate responsibility for all AAA fees in the final award. The arbitration proceedings and results are to remain confidential and are not to be disclosed without the written agreement of all parties, except to the extent necessary to effectuate the decision or award of the arbitrator(s) or as otherwise required by law.

**7. DISCLAIMER OF WARRANTIES**

**EXCEPT AS MAY BE SPECIFICALLY STATED BY BAYER ON BAGS OF SEED PURCHASED, BAYER MAKES NO WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT**

**LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, AND BAYER SPECIFICALLY DISCLAIMS ANY SUCH WARRANTIES.**

**MODIFICATIONS TO TERMS NOT VALID UNLESS APPROVED IN WRITING BY BAYER**

## **8. DISCLAIMER AND LIMITATION OF REMEDIES AND DAMAGES**

**BAYER DISCLAIMS ANY LIABILITY WHATSOEVER FOR SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES RELATING TO THE USE OR HANDLING OF THESE SEEDS. THE EXCLUSIVE REMEDY OF THE GROWER AND BUYER AGAINST BAYER FOR ANY AND ALL LOSSES, INJURIES, OR DAMAGES RESULTING FROM THE USE OR HANDLING OF THESE SEEDS, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE PAID.**

## **9. GOVERNING LAW**

This Agreement and the parties' relationship shall be governed by the laws of the State of Missouri and the United States (without regard to the choice of law rules.)

## **10. TERM OF AGREEMENT**

This Agreement shall last for a period of one year from the date it is signed by Grower and shall continue year to year thereafter unless terminated under Paragraph 4 above or replaced by a revised agreement. Bayer may revise the Agreement in the future.

## **11. OTHER PROVISIONS**

- a) The Bayer technologies and traits named in this Agreement have received full regulatory clearance in the United States, but may have not received full clearance in all export markets. Processed fractions from plants grown or produced from seed containing the Bayer technologies and traits named in this Agreement must not be exported without all necessary approvals in the importing country. Grower should consult with their local Bayer Representative for updated export clearance information.
- b) This Agreement may not be transferred or assigned to anyone.
- c) If any provision of this Agreement is found to be unenforceable or invalid, that shall not affect the validity or enforceability of any other provision of this Agreement.
- d) No presumption shall operate in favor or against the Grower or Bayer as a result of any responsibility Bayer had for drafting the Agreement.
- e) This Agreement and the applicable bag label or tag contains the entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, representations, agreements and understandings with respect thereto. If there is a conflict between this Agreement and the respective bag label or tag, this Agreement shall control.
- f) The following provisions shall survive termination of this Agreement: Sections 3(c), (d), (f), (g); 4-11.

To sign this Agreement you must be the operator/grower for all fields that will grow plants from Seed you obtained containing Bayer technologies or traits. You represent that you have full authority to and do hereby bind to this Agreement yourself, and all entities for which you obtain Seed, all individuals and entities having ownership interest in any entities for which you obtain Seed.

**GROWER SIGNATURE & DATE REQUIRED**