

Clearfield® Commitment for Canola

Purchaser Information:

Purchaser Surname: _____

First Name: _____

Phone: _____

Farm Name: _____

Retail Information:

Retail Name: _____

Town: _____

Province: _____

Contact Person: _____

ALL Certified seed invoices must be accounted for:

Invoice # _____ Date _____ Variety _____

Invoice # _____ Date _____ Variety _____

Clearfield Canola System Information:

Variety: _____ Acres planned: _____

Variety: _____ Acres planned: _____

Seeding Rate (bu/acre) _____

By signing below, the Purchaser acknowledges that he/she has read, understands and agrees to the terms and conditions of this Commitment. In particular, the Purchaser consents to the collection, use, and disclosure of his/her personal information in accordance with the terms and conditions of this Commitment. The Purchaser agrees to notify BASF within thirty (30) days following any changes to the Purchaser's personal information in accordance with Section 3.3 of this Commitment.

Upon the Purchaser's signing this Commitment, and until such time as this Commitment is terminated, BASF authorizes the Purchaser to grow plants using Clearfield Canola Seed and provides the Purchaser with access to Clearfield canola promotional marketing programs (both subject to the Terms and Conditions of this Commitment).

The right to use BASF's Clearfield technology for the purpose of growing plants using Clearfield Canola Seed is NOT granted without an executed Clearfield Commitment effective during the growing season during which the Purchaser plants such seed.

Purchaser's Signature _____ Date _____

Authorized Retailer's Name (please print) _____

Authorized Retailer's Signature _____ Date _____

This is a legal document. Forging signatures is a serious offence. Additions and/or alterations to this **Clearfield** Commitment will not be accepted.

Authorized Retailer: Please mail completed **Clearfield** Commitments within sixty (60) days of the Purchaser's signing to:

Clearfield Commitment
BASF AgSolutions
1000-90 Burnhamthorpe Rd. West
Mississauga, Ontario L5B 3B

Always read and follow label directions before use.

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BASF Copy (White) Grower Copy (Yellow) Retail Copy (Pink)

This **Clearfield**® Commitment for Canola (this "Commitment") is made and entered into by and between the grain grower whose signature is affixed hereto (the "Purchaser") and BASF Canada Inc., operating as BASF Canada ("BASF). This Commitment is effective as of the date of the Purchaser's signature shown on this Commitment (the "Effective Date") and shall continue for the Term set forth in Section 4.1 unless earlier terminated by BASF in accordance with Section 4.2.

BACKGROUND

1. BASF is a licensee of the trade-mark **Clearfield**, which (among other uses of the trade-mark) is used in association with varieties of canola seed (including brassica juncea seed) that contain a genetic trait (the "**Clearfield** Trait") that confers upon such canola seed (including brassica juncea seed) tolerance toward certain AHAS Herbicides, as defined in paragraph 3 below ("**Clearfield** Canola Seed").
2. BASF sells certain AHAS Herbicides in association with the trade-marks ABSOLUTE®, ARES™, ODYSSEY®, ODYSSEY DLX™, SOLO® and TENSILE®, and may introduce other AHAS Herbicides in association with other trade-marks from time to time during the Term (individually, a "BASF Product" and collectively, the "BASF Products"). The BASF Products are intended and registered for use with certain varieties of **Clearfield** Canola Seed in Canada.
3. The BASF Products are members of a class of herbicides which inhibit a plant enzyme called acetohydroxyacid synthase and are classified as Group 2 products by the Canadian Weed Science Society. All herbicides belonging to this class are referred to in this Commitment as the "AHAS Herbicides." Examples of AHAS Herbicides include those herbicides which are commonly known as IMI herbicides and SA herbicides.
4. BASF and/or its affiliates are exclusive licensees of the **Clearfield** Trait technology under Canadian patent 1,341,465, entitled "Herbicide Resistance in Plants," and are owners or have rights under Canadian patent applications 2,507,844, entitled "Brassica AHAS Genes and Gene Alleles that Provide Resistance to Imidazolinone Herbicides," and 2,682,331, entitled "Herbicide-Resistant Brassica Plants and Methods of Use" (collectively, the "Patents").
5. The Purchaser intends to acquire **Clearfield** Canola Seed in Canada through authorized distributors or retailers authorized by BASF, its affiliates or its designees to sell such seed (collectively, "Authorized Retailers").
6. The Purchaser would like to use BASF's **Clearfield** Trait technology for the purpose of growing plants from **Clearfield** Canola Seed in accordance with the terms of this Commitment.

ARTICLE 1— LICENSE GRANTS; COMMITMENT FEE

1.1 Subject to the terms and conditions in this Commitment, BASF hereby grants to the Purchaser, during the Term, a limited, personal, non-transferable, royalty-bearing, nonexclusive license under the Patents to:

- (a) purchase in Canada from an Authorized Retailer **Clearfield** Canola Seed;
- (b) grow canola (including brassica juncea) plants in Canada from **Clearfield** Canola Seed purchased by the Purchaser in Canada from an Authorized Retailer of **Clearfield** Canola Seed;
- (c) apply a BASF Product to such canola (including brassica juncea) plants and to the area where such canola plants are grown; and
- (d) sell any resulting **Clearfield** canola (including brassica juncea) crop as grain for food or feed.

1.2 In consideration of the license granted hereunder, the Purchaser shall pay a license fee (the "**Clearfield** Commitment Fee") in an amount to be set by BASF in its sole discretion from time to time. The **Clearfield** Commitment Fee shall be calculated and charged by the Authorized Retailer (for the benefit of BASF) and shall be paid by the Purchaser to such Authorized Retailer at the time that **Clearfield** Canola Seed is purchased. The **Clearfield** Commitment Fee for the 2015 growing season is: (a) seventy Canadian dollars (CDN \$70.00) per 22.7KG or 25KG bag of **Clearfield** Canola Seed purchased; and/or (b) seven Canadian dollars (CDN \$7.00) per acre for all other sized bags of **Clearfield** Canola Seed purchased. The **Clearfield** Commitment Fee for future growing seasons shall be communicated to you by BASF, directly or through your Authorized Retailer, prior to your purchase of **Clearfield** Canola Seed for such growing season.

ARTICLE 2 – RESTRICTIONS ON LICENSE GRANT

In consideration of the license granted hereunder, the Purchaser agrees and acknowledges as follows:

2.1 The license granted to the Purchaser under this Commitment is granted only for:

- (a) growing seasons occurring during the Term (as defined in Section 4.1 herein);
 - (b) canola (including brassica juncea) plants grown in Canada from **Clearfield** Canola Seed during a growing season during the Term; and
 - (c) the Purchaser's selling **Clearfield** canola (including brassica juncea) crops grown during the Term,
- all subject to the terms and conditions of this Commitment, including, without limitation Articles 2 and 3 and Section 5.2.

Clearfield® Commitment™ for Canola**Terms and Conditions**

In order for the Purchaser to be permitted to plant **Clearfield** Canola Seed after the Term, the Purchaser shall be required to sign a new **Clearfield** Commitment for Canola.

2.2 The Purchaser shall not:

- (a) purchase or otherwise acquire **Clearfield** Canola Seed from any source other than an Authorized Retailer;
- (b) use **Clearfield** Canola Seed acquired in Canada as propagating material (as defined in the Plant Breeders' Rights Act (1990)) in any country other than Canada;
- (c) use in Canada **Clearfield** Canola Seed that has been acquired in any country other than Canada;
- (d) purchase or otherwise acquire any seeds harvested from crops of **Clearfield** Canola Seed ("Saved Seed") from any third party;
- (e) plant any Saved Seed;
- (f) use, or provide to any third party to use, **Clearfield** Canola Seed, including, without limitation, Saved Seed, for crop breeding, research or generation of herbicide registration data;
- (g) sell or transfer any **Clearfield** Canola Seed, including, without limitation, Saved Seed, to any third party for use as propagating material or for resale as propagating material;
- (h) grow, harvest, or permit growth of any volunteer canola plants from **Clearfield** Canola Seed purchased in the 2014 growing season or earlier; or
- (i) grow Canola plants from **Clearfield** Canola Seed in the presence of any AHAS Herbicide other than a BASF Product.

2.3 Except as provided in this Commitment, (a) BASF grants no other right or license, express or implied, to the Purchaser, and (b) the Purchaser has no other rights under the Patents or to make, use or sell **Clearfield** Canola Seed, including, without limitation, Saved Seed. BASF and/or its affiliates and co-owners (as applicable) retain all rights in and to the Patents. Nothing in this Commitment shall be regarded as conferring to the Purchaser any ownership rights to the Patents or granting a license or any rights to any Plant Breeders' Rights applications or certificates relating to **Clearfield** Canola Seed (collectively, the "PBR").

ARTICLE 3 – PURCHASER INFORMATION

3.1 Upon request by BASF, directly or through its third-party service providers, the Purchaser shall submit within five (5) business days a complete listing to BASF of all BASF agrochemical products (including, without limitation, the BASF Products) used in connection with growing plants and harvesting plants grown from **Clearfield** Canola Seed, in the then-current growing season.

3.2 The Purchaser hereby grants to BASF (or its agent) the right to audit or inspect, at any time during the Term and for five (5) years after the Term, (a) all farm and business records and (b) all land owned, leased and/or crop shared by the Purchaser, including taking samples and/or conducting any tests reasonably necessary to verify the Purchaser's compliance with this Commitment. BASF agrees to conduct its audits, inspections and sampling in a commercially and agriculturally reasonable manner, and shall make reasonable efforts not to interfere with ongoing farming operations and (where appropriate) to provide reasonable advance notice for testing of stored seed. Notwithstanding the foregoing, the farm and business records in subsection (a) above shall only be available to BASF during the growing season to which they relate and for five (5) years thereafter.

3.3 Upon BASF's request, the Purchaser agrees to provide and hereby authorizes and directs any Authorized Retailer from which the Purchaser purchased **Clearfield** Canola Seed to provide to BASF, directly or through its third-party service providers, the following information relating to the Purchaser's purchase and use of (a) **Clearfield** Canola Seed and (b) agrochemical products (including, without limitation, BASF Products) used in connection with growing plants from such **Clearfield** Canola Seed: (i) the Purchaser's name and address, the Purchaser's business, farm or corporate name and address, and other contact information of the Purchaser and the Purchaser's business, farm or corporation; (ii) the amount, (including acreage), variety, and seeding intentions for any **Clearfield** Canola Seed purchased by the Purchaser; (iii) the identity and the quantity of the BASF agrochemical products (including the BASF Products) used by the Purchaser in connection with growing plants from **Clearfield** Canola Seed; (iv) a copy of this **Clearfield** Commitment; and (v) the **Clearfield** Estimates (as defined below) (collectively, the "Purchaser's Information"). The Purchaser shall notify BASF within thirty (30) days following any changes to the information described in clause 3.3(i) above. On or before February 28 of each year during the Term, the Purchaser shall provide to BASF, directly or through its third-party service providers or an Authorized Retailer, the amount (including acreage), variety and seeding intentions for any **Clearfield** Canola Seed for the upcoming growing season (the "**Clearfield** Estimates"). The Purchaser acknowledges and agrees that BASF, directly or through its third-party service providers or the Authorized Retailers, may contact Purchaser to obtain the **Clearfield** Estimates. The Purchaser hereby consents to the collection, use and disclosure of the Purchaser's Information, by BASF and any Authorized Retailer from which the Purchaser purchased **Clearfield** Canola Seed, for the following purposes: (I) administering and enforcing BASF's rights hereunder; (II) verifying BASF's marketing program payments to the Purchaser, if any; (III) developing BASF's marketing programs; (IV) developing, promoting and offering additional information, products and services to the Purchaser; (V) BASF's internal use for development and evaluation of business plans; (VI) disclosure to Authorized Retailers, BASF's third-party service providers and/or affiliated companies in the BASF group of companies that administer and enforce this Commitment and/or that

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Terms and Conditions

administer BASF's marketing programs on BASF's behalf for the limited purposes of administering and enforcing this Commitment and administering such marketing programs; and (VII) disclosure to Authorized Retailers for the limited purposes of (x) the Authorized Retailer obtaining Purchaser feedback for the Authorized Retailer's own use and (y) the Authorized Retailer developing, promoting and offering additional information, products and services to the Purchaser. Any personal information of the Purchaser collected by BASF, directly or through its third-party service providers, will not be used or disclosed except in accordance with this Commitment. Except as provided in this Commitment, BASF will not sell or disclose the Purchaser's personal information to any other third parties without the Purchaser's prior written consent. The Purchaser may find out more about BASF's privacy practices by viewing its Privacy Policy on the BASF website. If the Purchaser has questions about BASF's privacy practices or would like access to the Purchaser's personal information, the Purchaser may call: **BASF AGSOLUTIONS® at 1-877-371-2273**.

ARTICLE 4 – TERM AND TERMINATION

4.1 The term of this Commitment shall commence on the Effective Date and, unless earlier terminated by BASF in accordance with Section 4.2, shall continue for an initial term expiring November 30, 2015. The term of this Commitment shall automatically renew following November 30, 2015, for successive one (1) year renewal terms commencing on December 1 and continuing until November 30 of the following calendar year, unless BASF provides written notice to the Purchaser of termination of this Commitment in accordance with Section 4.2. The initial term and all renewal terms, if any, of this Commitment are collectively referred to in this Commitment as the "Term."

4.2 BASF may terminate this Commitment immediately if the Purchaser violates any of the terms of this Commitment. In addition, BASF may terminate this Commitment during any year of the Term by providing written notice to the Purchaser at least sixty (60) days prior to November 30 of any such year, whereupon this Commitment shall terminate effective as of November 30 of such year. In the event of termination of this Commitment and in addition to any other remedies available to BASF: (a) the license granted to the Purchaser and all other rights of the Purchaser under this Commitment shall cease immediately upon such termination, except that the Purchaser may sell or transfer any **Clearfield** Canola (including brassica juncea) crop in its inventory upon the date of termination only to processors of canola for food or feed; and (b) if such termination results from a breach of this Commitment by the Purchaser, then the Purchaser may be refused the opportunity to purchase **Clearfield** Canola Seed or any other **Clearfield** seeds and to enter into a Commitment in the future.

4.3 The Purchaser acknowledges and agrees that BASF is entitled to recover the full amount of legal fees and any other costs incurred in enforcing this Commitment along with damages, and any other costs or expenses to which BASF may be entitled. The Purchaser acknowledges that BASF's damages from unauthorized use, planting, selling or transferring of **Clearfield** Canola Seed (including, without limitation, Saved Seed) shall be at least equal to, but not limited to, one hundred Canadian dollars (CDN \$100.00) per acre of unauthorized or unlicensed **Clearfield** Canola Seed (including, without limitation, Saved Seed) planted, which the Purchaser acknowledges and agrees is a genuine pre-estimate of actual losses and is not oppressive or unconscionable.

ARTICLE 5 - GENERAL

5.1 The Purchaser may be eligible to participate in certain marketing programs or offers related to **Clearfield** Canola Seed and/or the BASF Products that may be offered from time to time by BASF on such terms and conditions determined by BASF in its sole discretion.

5.2 The Purchaser shall not, directly or indirectly, during or after the Term, take any action to challenge or contest the validity or ownership of any technology or intellectual property relating to **Clearfield** canola (including brassica juncea), including, for greater certainty, the Patents.

5.3 This Commitment may not be assigned, transferred or delegated, in whole or in part, by Purchaser to any party without the prior written consent of BASF. The Purchaser has no right to sublicense any license or right granted to it under this Commitment. The terms and conditions of this Commitment are personal to the Purchaser and shall be binding and have full force and effect on the heirs, personal representatives, successors and permitted assigns of the Purchaser.

5.4 **Clearfield** Canola Seed will generally be in limited supply. The Purchaser acknowledges and agrees that this Commitment does not constitute assurance by BASF that the Purchaser will have access to **Clearfield** Canola Seed during any growing season during the Term. The Purchaser acknowledges and agrees that crop quality and yield are the result of many conditions beyond the control of BASF and, therefore, BASF cannot warrant the quality of or yield from **Clearfield** Canola Seed. NOTWITHSTANDING ANY OTHER PROVISION IN THIS COMMITMENT AND FOR GREATER CERTAINTY, BASF IS NOT THE SELLER OF **CLEARFIELD** CANOLA SEED, AND, ACCORDINGLY, BASF EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, BY FACT OR LAW, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES, REPRESENTATIONS AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING FROM STATUTE, IN RESPECT OF THE **CLEARFIELD** CANOLA SEED, IN ASSOCIATION WITH THE PURCHASE OF SUCH **CLEARFIELD** CANOLA SEED BY THE PURCHASER.

5.5 BASF AND ITS AFFILIATES SHALL NOT BE LIABLE TO THE PURCHASER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR LIKE DAMAGES, HOWSOEVER NAMED, INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS.

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Terms and Conditions

5.6 This Commitment is governed by, and shall be construed and interpreted in accordance with, the laws of the Province of Ontario, and the federal laws of Canada. The Purchaser hereby submits to the jurisdiction of the Courts of the Province of Ontario.

5.7 No waiver of BASF's rights under this Commitment shall be effective unless in writing and signed by an authorized representative of BASF. Any waiver of any BASF right under this Commitment in any single instance shall not constitute a waiver of such right or any other right of BASF's in any future instance.

5.8 If any portion of this Commitment is deemed invalid, unenforceable or void by any court, the other portions of this Commitment shall remain valid and enforceable.

5.9 This Commitment (including, without limitation, the cover page and the paragraphs appearing under the heading entitled "Background") constitutes the entire agreement between BASF and the Purchaser concerning the subject matter hereof and does not include or incorporate by reference the terms of any production contract or any other agreement between the Purchaser and either any Authorized Retailer or BASF, including any agreement that exists as of the Effective Date or is subsequently entered into during the Term. The label of any BASF agrochemical products (including, without limitation, any BASF Product) purchased by the Purchaser contains the entire agreement with the Purchaser concerning such BASF agrochemical products.

5.10 The defined terms in this Commitment, Sections 2.2, 2.3, 3.1, 3.2, 3.3 (first, fifth, sixth and seventh sentences), 4.2 (last sentence), 4.3 and 5.2 through 5.10 inclusive, shall survive the termination of this Commitment.

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