

Agworld Master Subscription Agreement

Last updated: 25 May 2018

These terms and conditions together with all applicable Order Forms, the Schedule and specified parts of Our website form the agreement between You and Us for Your acquisition and use of Our Services for any purpose including a free trial of our Services.

BY CLICKING A BOX INDICATING YOUR ACCEPTANCE, USING OR CONTINUING TO USE OUR SERVICES OR BY COMPLETING AND FORWARDING TO US AN ORDER FORM THAT REFERS TO THIS AGREEMENT, EACH OF WHICH ACTIONS CONSTITUTES YOUR ACCEPTANCE OF THIS AGREEMENT, YOU CONFIRM THAT:

- (a) YOU AGREE TO THE TERMS OF THIS AGREEMENT;
- (b) YOU HAVE THE AUTHORITY TO BIND ANY COMPANY OR OTHER LEGAL ENTITY ON WHOSE BEHALF YOU ARE ENTERING INTO THIS AGREEMENT; AND
- (c) YOU ARE NOT OUR DIRECT COMPETITOR AND ARE NOT ACCESSING OUR SERVICES FOR ANY BENCHMARKING OR COMPETITIVE PURPOSES.

SAVE AS SET OUT IN A CURRENT ORDER FORM, IN PARTICULAR AS REGARDS THE FEES PAYABLE UNDER ANY SUCH ORDER FORM, THESE TERMS AND CONDITIONS WILL APPLY TO ALL SUBSCRIBERS AND TAKE EFFECT IMMEDIATELY ON 14 April 2017.

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1. FREE TRIAL

1.1. **Registration.** If You have not previously used Our Services or otherwise had access to the Agworld System You may register for a free trial use of Our Services via Our website. You may also register for a free trial use of an upgraded version of Our Services. The Services We provide to You on a free trial will only be provided for the specified trial period and are subject to further terms and conditions (as provided upon registration) which are incorporated into this Agreement. For so long as You are registered for a free trial You will be a “subscriber” and as such subject to the provisions of this Agreement.

1.2. **Availability.** We make no warranty or representation that any or all of Our Services will be generally available for a free trial.

1.3. **No warranty.** Subject to any applicable Non-Excludable Law, the Services provided during a free trial are provided "as-is" without any express or implied warranty.

2. **PURCHASED SERVICES**

2.1. **Provision of Purchased Services.** We will provide the Purchased Services to You pursuant to this Agreement and the relevant Order Forms for the duration of Your subscription (the **Subscription Period**).

2.2. **User Subscriptions.** Unless otherwise specified in the applicable Order Form:

- (a) Services are purchased as User subscriptions and may only be accessed by the specified number of Users;
- (b) additional Users may be added during the Subscription Period at the then current pricing for existing User subscriptions, adjusted for the remainder of the Subscription Period in effect at the time the additional User subscriptions are added;
- (c) the added User subscriptions will terminate on the same date as the existing User subscriptions; and
- (d) User subscriptions are for nominated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services if We are advised beforehand of the Users' identities.

2.3. **Variation of Services.** We may at any time vary or alter the Services or their manner of performance or delivery but in any case not so as to alter the fundamental or basic nature of those Services or any of them. The variation or alteration of the Services in accordance with this **clause 2.3** does not entitle You to any reimbursement, discount or reduction in the fees payable for the Services.

2.4. **Additional or enhanced Services.** In any case in which We provide or propose to provide additional or enhanced Services We will provide You with notice of the availability of such additional or enhanced Services and the applicable fee or fees. We will be under no obligation to provide such additional or enhanced Services unless You agree in writing to accept those Services and the applicable fee. On acceptance such additional or enhanced Services will be deemed to be part of the Services and the provisions of this Agreement will apply to their performance, delivery and acceptance.

3. **OUR RESPONSIBILITIES**

We **WILL**:

- (a) provide Basic Support for the Purchased Services to You at no additional charge, and/or Upgraded Support if purchased separately;
- (b) use reasonable endeavours to make the Purchased Services available at all times (subject to scheduled downtime or any unavailability due to Force Majeure);
- (c) maintain safeguards for protection of the security, confidentiality and integrity of Your Data; and

- (d) provide the Purchased Services in accordance with Applicable Laws.

4. YOUR RESPONSIBILITIES

You **WILL**:

- (a) be responsible for Your Users' compliance with this Agreement;
- (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data;
- (c) only provide data which You are entitled to use and which does not infringe the Intellectual Property Rights, contractual and other rights of any third party;
- (d) prevent unauthorised access to or use of the Services, and notify Us promptly if You are aware of any such unauthorised access or use; and
- (e) use the Services only in accordance with the User Guide and Applicable Laws.

You **ARE AND REMAIN** wholly, individually and separately responsible for checking and verifying any data, information and recommendations provided to You by Us, whether they are reproduced verbatim or summarised or adapted for Your particular actual or proposed application or use. In particular, before You make any recommendation concerning the use of an agricultural chemical or crop protection product or fertiliser or You use any such product in any application You are reminded and cautioned to read, review and carefully check the published approved label, advice note and/or warning statement (if any) for that product and ensure that the particular use, application, blend or mix recommended or otherwise to be undertaken is observed strictly in accordance with instructions, directions and, so far as applicable, recommendations on the published approved label, advice note, warning statement and recommendations made available with the product or products of its particular brand, type and specification. If you are using a Service or Services provided by Us (including an application or "App" provided by Us) which allows input of a number of variables or repeated testing You are reminded and cautioned that on each fresh or new entry by You or a User the process of checking and verification described in this paragraph will need to be repeated.

You **WILL NOT**:

- (a) make the Services available to anyone other than Your Users;
- (b) supply, resupply, assign, license, lease or sub-contract the Services;
- (c) use the Services or the Agworld System:
 - (i) in a manner which will harm or adversely affect another person or the data, computer systems or other property of another person (including the ability of another person to use the Services);
 - (ii) in a manner which does, or is reasonably likely to, degrade the performance of the Services or cause them to malfunction or operate in any improper way;
 - (iii) directly or indirectly for any unlawful purpose, including to infringe the Intellectual Property Rights of any other person; or
 - (iv) in a manner which alters or damages the Services or the Agworld System, or jeopardises their integrity, safety or security;
- (d) use the Services to store or transmit any data which:
 - (i) infringe the rights of third parties;
 - (ii) are defamatory, libelous or offensive;
 - (iii) would be a breach of any Applicable Laws relating to data protection, privacy and personal and public safety; or
 - (iv) are otherwise unlawful;

- (e) use the Services to store or transmit Malicious Code;
- (f) recreate, reverse engineer, disassemble, reverse compile, translate nor in any other way derive the source code or object code of or relating to the Agworld System;
- (g) attempt to gain, or allow Your Users to gain, unauthorised access to the Services or the Agworld System or its related systems and networks; or
- (h) subject to any Non-Excludable Law, participate or be involved during the Subscription Period and for two years thereafter, directly or indirectly, in establishing, selling or contributing to the development of any proprietary software system which is comparable to or which competes in any way with the Agworld System.

5. YOUR DATA

5.1. **Our Protection of Your Data.** We will:

- (a) save in the performance of Our Services, make no modification to Your Data;
- (b) not disclose Your Data (except in accordance with Our Data and Privacy Policy, **clause 5.3, 9.2(a) or 9.2(b)** or as expressly permitted by You); or
- (c) not access Your Data except to provide the Services and prevent or address service or technical problems, or at Your request.

5.2. **Presentation of Data.** You acknowledge that We are ultimately responsible for the manner of presentation, order and precedence given to Your Data on the Agworld System. We may consult with You in relation to the manner of presentation, order and precedence given to Your Data but otherwise We accept no liability for the manner of presentation, order and precedence we give to Your Data or for any decision We make in that regard. We own and will hold copyright in the particular formats and manner of presentation We use to display and present Your Data.

5.3. **Permission.** So far as it is necessary to do so for the purposes of this Agreement and subject always to this **clause 5**, You grant Us full authority to use, reproduce, copy and categorise Your Data (including a royalty free licence in the copyright and other Intellectual Property Rights in Your Data) in electronic format for the purpose of establishing, maintaining and conducting the Services and, in particular:

- (a) so far as We require, to modify, adapt, reformat and represent Your Data so as to conform to the format(s) generally adopted by Us and used in the Services;
- (b) so far as We require, to classify, organise and categorise Your Data according to Our recognised categories and segments in the performance of the Services; and
- (c) to compile and analyse Your Data for the purpose of preparing reports for Your benefit.

5.4. **Aggregated Information.** We collect and aggregate data and information, including Ag Data, on a strictly anonymous basis from a number of sources. That data and information which we describe as Aggregated Information help us among other things to identify and analyse trends, set benchmarks, observe customer behaviour, participate in research and development programs and generally improve Our Services. We may collect, use and transfer any Aggregated Information for any purposes we choose, although we will not do so to make speculative commodities trades or actively to assist others to do so.

5.5. **Opt-out rights.** You may opt-out of any Services we provide (including any particular application of any such Services) which involve the collection of Aggregated Information for a disclosed commercial purpose by contacting us at [opt-out@agworld.com.au]. Your request must include sufficient details and information for Us to identify You and Your Users (so far as far as they are affected) as well as the particular Service or application which is the subject of an opt-out request. We will take all reasonable steps to give effect to your request to opt-out of an identified Service or application as soon as reasonably practicable. However, any request and

subsequent action on Our part can only relate to Your Data in so far as it would otherwise have been included in the future provision of such Service or application.

5.6. Our Data and Privacy Policy. Our Data and Privacy Policy forms part of this Agreement but to the extent its provisions are inconsistent with the terms and conditions set out in this document, which includes additional provisions relating to data protection and privacy, the latter will prevail.

5.7. Our principal role. You also acknowledge that the Services We provide are primarily as a warehouse, aggregator and e-conduit of information and data and as such Our principal role is to facilitate communications between You, other data providers and Suppliers to support Your decision making. You acknowledge that, as such, We are not, and cannot be held to be, responsible or liable in any way or in any circumstance for, nor do We make, give or provide any representation, undertaking, warranty or guarantee in relation to:

- (a) the accuracy, content or currency of data and information, including the Suppliers Data and Your Data, which We collect or which is submitted to Us, uploaded onto the Agworld System and Our websites or other applications (including Agworld branded "Apps") or otherwise stored or retained by Us for dissemination to growers, agronomists and other third parties;
- (b) the uploading or transcription of the Suppliers Data or Your Data save to the extent that We are negligent in transcribing or uploading any such data and information onto the Agworld System;
- (c) any instruction, direction, recommendation, representation or statement made in relation to any particular products (including, without limitation, agricultural chemical and crop protection products and fertilisers) or in relation to services supplied or provided by a manufacturer, importer, supplier, distributor or reseller of any such product or products, including in each case in relation to their application, use, attributes, characteristics, performance, acceptability, merchantability, suitability, fitness for purpose, conformity to and compliance with applicable laws, regulations and standards, and whether given or provided by any such person, any professional adviser or government or regulatory agency and whether or not reproduced or referred to in the data and information made available to You by Us;
- (d) Your failure to seek out, obtain, independently and separately review, verify, follow or comply with any instruction, direction, recommendation or statement contained on an approved label, advice note or warning statement for an agricultural chemical or crop production product or fertiliser and any other guideline or other document issued by a Supplier, government or regulatory agency applicable to any such product;
- (e) any outcomes that may result or follow from your reliance on data and information made available to You by Us and on recommendations You receive through Your use of the Agworld System;
- (f) the nature, level and mix of participation from Suppliers or others to the Agworld System; or
- (g) Your compliance with Applicable Laws (including for this purpose industry standards, stewardship requirements and codes of practice) and any instructions or recommendations relating to the use of products or services supplied or provided by a Supplier.

6. NON-AGWORLD PROVIDERS

6.1. Acquisition of third-party products and services. We or third parties may from time to time make available to You or incorporate in the Agworld System third-party software, products or services, including but not limited to Non-Agworld Applications and implementation,

customization and other consulting services but in each such case subject to the following conditions:

- (a) You accept the terms and conditions which are specified or otherwise form part of the agreement between Us and any provider of such software, products or services as fully as if you were a party to any such agreement;
- (b) any direct acquisition by You of such third-party products or services, and any exchange of data between You and any third-party provider, is a matter solely between You and the applicable third-party provider;
- (c) except as We may otherwise specify or indicate, no purchase of third party products or services is required to use the Services except a supported computing device, operating system, web browser and Internet connection which you must have.

6.2. **No warranty.** We do not warrant or support third-party products or services, whether or not they are described by Us as “certified” or otherwise, except as specified in an Order Form.

6.3. **Non-Agworld Applications and Your Data.** By installing or enabling Non-Agworld Applications for use with the Services, You authorise Us to allow providers of those Non-Agworld Applications to access Your Data as required for the interoperation of such Non-Agworld Applications with the Services. We are not responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Non-Agworld Application providers.

6.4. **Integration with Non-Agworld Applications.** We are not responsible for the continuing provision of Non-Agworld Applications which interoperate with the Services. To be clear, where any Non-Agworld Applications (e.g., Google, Facebook or Twitter applications) cease to be available for interoperation with Our Services, either at all or on any particular terms, You will not be entitled to any refund, credit, or other compensation.

6.5. **Google.** The Services may incorporate Google Maps software provided by Google Inc. Where Google Maps software is incorporated into the Services You agree to be bound by:

- (a) The [Google Maps/Google Earth Additional Terms of Service](#)
- (b) [Google Privacy Policy](#)

7. FEES AND PAYMENT FOR PURCHASED SERVICES

7.1. **Fees.** You will pay all fees specified in applicable Order Forms. Unless otherwise agreed by Us, all fees are payable annually in advance, are based on the Services purchased for the minimum subscription term specified and are non-refundable. To be clear, You will not be entitled to a refund of or any decrease of User subscriptions during the minimum subscription term and fees are based on User subscriptions, not actual or planned usage even if the purchase is for a 12 month minimum term.

7.2. **Invoicing and Payment.** Payments must be made by using an approved credit card and by way of an electronic payment gateway nominated by Us on the Order Form completed by You. Further instructions on the use of any applicable online payment system are set out on Our Website and form part of this Agreement. In any event You are **wholly liable** for and must, at our election and direction, pay or reimburse Us the cost of all additional transaction fees and charges (including currency conversion fees) or levies imposed by the operator of any such electronic payment gateway, any participating bank or other finance or credit provider. Where payment is not processed by credit card in advance, payments are due within 15 days of the date of Our invoice unless otherwise agreed in writing.

7.3. **Automatic renewal.** You authorise Us to take payment from Your nominated credit card on each anniversary of Your subscription (or on the basis of any billing schedule set out in the applicable Order Form) until such time that You have terminated Your subscription in accordance with this Agreement. In the ordinary course but without in any way affecting Your obligation to pay all fees due to Us on a renewal of Your subscription We will send You email reminders of the renewal of Your subscription.

7.4. **Overdue Charges.** We are entitled to charge interest (calculated daily) on any outstanding amount until those amounts are paid in full. We may charge interest at a rate up to the maximum rate permitted by law on any outstanding amounts until those amounts are paid in full.

7.5. **Suspension of Services.** We may also suspend Our provision of the Services to You if any amount owing by You is outstanding for more than 21 days after its due date of payment.

7.6. **Taxes.** Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, assessable by any relevant jurisdiction (**Taxes**). You are responsible for paying all Taxes associated with this Agreement and Your Purchased Services. If We pay or collect Taxes for which You are responsible under this clause, the appropriate amount must be paid or reimbursed by You to Us. Unless You provide Us with a valid tax exemption certificate authorised by the appropriate and competent taxing authority or other satisfactory evidence of your exemption from any Tax liability We will not be held responsible for any payment or overpayment of the applicable Tax for or on Your behalf.

7.7. **Availability of Services.** We will provide as much notice as reasonably practicable of the unavailability of Services due to reasons within Our control. We may at any time (including without notice) immediately suspend part of or all Services including where:

- (a) We or Our Affiliates are required to undertake the repair, maintenance or service of any part of the Agworld System (or an interconnected third party is required to undertake such work on its network);
- (b) suspension of the Agworld System or the Services is required to reduce or prevent fraud or interference with the Agworld System;
- (c) Your use of the Agworld System causes serious degradation of the operation of the Agworld System or adversely affects the ability of others to access or use the Agworld System;
- (d) We or our Affiliates are required to comply with an order, instruction or request of any governmental emergency services or other competent authority; or
- (e) We or our Affiliates experience problems interconnecting the Agworld System with any third party network of a third party.

8. INTELLECTUAL PROPERTY RIGHTS

8.1. **Ownership of Intellectual Property Rights.** Each party acknowledges the other party's title to and interest in its and its Affiliates' respective Intellectual Property Rights. To be clear, no rights in respect of Our or Our Affiliates' Intellectual Property Rights are granted to You or are available for Your use or exploitation other than as expressly set out in this Agreement.

8.2. **Covenants.** Neither party may:

- (a) represent itself as the owner of or having any interest in the Intellectual Property Rights of the other party;
- (b) subject to this Agreement, use or allow the use of any Intellectual Property Rights of the other party in a manner that is contrary to or conflicts with or in any way damages the title or interest of the other party in its Intellectual Property Rights;
- (c) challenge or call into question in any way the right, title, interest and goodwill of the other party to its Intellectual Property Rights;
- (d) subject to this Agreement, register or attempt to register under the provisions of any statute or otherwise the Intellectual Property Rights of the other party; or
- (e) reverse engineer or, subject to this Agreement, modify, vary or make a copy of the Intellectual Property Rights of the other party for any purpose.

8.3. **Suggestions.** You grant to Us a royalty-free, worldwide, irrevocable and perpetual licence to use and incorporate into the Services any suggestions, enhancement requests, recommendations

or other feedback provided by You, including Your Users, relating to the presentation, use, operation, supply and marketing of the Services.

8.4. **Extension.** A reference in this clause 8 to a party's, the other party's or its Intellectual Property Rights includes in Our case Our Affiliates' Intellectual Property Rights.

9. CONFIDENTIALITY

9.1. **Definition of Confidential Information.** **Confidential Information** of a party (**Discloser**) means the following information regardless of its form or whether the other party (**Recipient**) becomes aware of it before or after the commencement of this Agreement:

- (a) all information relating to the business of the Discloser and its Affiliates, including all information and data which have been or may be disclosed on behalf of the Discloser or any of its Affiliates to the Recipient including information relating to the Services, product formulations, specifications, processes, statements, trade secrets, formulation and product recipes, technical information and data, marketing information, business and marketing plans, customer lists and the Discloser's Intellectual Property Rights;
- (b) Your Personal Information and Your Ag Data; and
- (c) any information the Discloser specifies or which reasonably would be understood as confidential;

but does not include:

- (a) any other information forming part of Your Data unless You make clear in writing any restrictions on the use or disclosure of such information;
- (b) information which a party obtains from a third party entitled to disclose it; and
- (c) information that is public knowledge or in the public domain (otherwise than as a breach of an obligation of confidence by the Recipient).

9.2. **Non-disclosure of Confidential Information.** All Confidential Information exchanged between You and Us under this Agreement is confidential and may not be exploited commercially or used for any purpose other than as set out in or contemplated by this Agreement or disclosed to any other person except:

- (a) to employees, legal advisers, auditors and other consultants of either party or their Affiliates requiring the information for the purposes of this Agreement;
- (b) if required by law or a recognised stock or securities exchange; or
- (c) if the Recipient has the informed and written consent of the Discloser.

10. WARRANTIES AND DISCLAIMER

10.1. **Our warranties.** Subject to this **clause 10**, We warrant that:

- (a) the Agworld System will be capable of performing the Services; and
- (b) We will perform the Services with due care and skill.

10.2. **Limits of Our warranties.** If it is proven to Our reasonable satisfaction that the Agworld System or the Services do not comply with the warranties set out in **clause 10.1** then We will, at Our cost and option, either:

- (a) make such adjustment to the Agworld System as We consider necessary so as to ensure it is capable of performing the Services; or
- (b) resupply the Services or pay for the cost of resupply of the Services,

but otherwise, and subject always to the other provisions of this Agreement, We accept no liability or responsibility to You or any third party.

10.3. **Limits of Our warranties.** The warranties in **clause 10.1** do not apply unless:

- (a) the Agworld System and Our Services have been properly used and operated, in particular in accordance with any and all instructions as to use provided by Us, including as set out in the User Guide;
- (b) We are notified in writing within 7 days of any alleged failure or defect first coming to Your notice and We have been given reasonable opportunity to remedy the defect; and
- (c) You have fulfilled all of Your contractual obligations.

10.4. **Your warranties.** You warrant that You and Your Users:

- (a) understand the nature, purpose and characteristics of the Agworld System;
- (b) are familiar with all relevant information and literature made available to You and Your Users by Us concerning the operation, requirements and attributes of the Agworld System and the Services, including the User Guide;
- (c) have the financial and technical resources to carry out Your obligations under this Agreement;
- (d) have exercised Your independent skill and judgement and have carried out Your own investigations in Your decision to enter into this Agreement;
- (e) have not relied on any advice, promise or representation made by Us that has not been expressly included in this Agreement; and
- (f) are duly authorised to enter this Agreement.

10.5. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND SUBJECT TO ANY NON-EXCLUDABLE LAW, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. FURTHER AND SUBJECT TO ANY NON-EXCLUDABLE LAW, WE DO NOT MAKE, GIVE OR PROVIDE ANY REPRESENTATION, UNDERTAKING, WARRANTY OR GUARANTEE IN RELATION TO ANY SERVICE WE PROVIDE, INCLUDING IN RELATION TO THE RESULTS OR OUTCOMES THAT WILL OR MAY BE ACHIEVED OR OBTAINED FROM USE OF ANY SUCH SERVICE, ACCESS TO AND RELIABILITY OF THE SERVICE INCLUDING TIMELINES AND SERVICE AVAILABILITY, FREEDOM FROM DEFECTS IN ANY SOFTWARE USED AND FAILURE IN ANY TELECOMMUNICATIONS OR OTHER MEANS OF CONNECTION TO ANY SUCH SERVICE.

11. **BETA SERVICES**

From time to time We may invite You to try, at no charge, Our products or services that are not generally available to Our customers (**Beta Services**). You may accept or decline any such trial in Your sole discretion. Any Beta Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a similar description. Beta Services are provided for evaluation purposes and not for commercial use, are not supported, may contain bugs or errors, and may be subject to additional terms. BETA SERVICES ARE NOT CONSIDERED "SERVICES" UNDER THIS AGREEMENT AND, SUBJECT TO ANY NON-EXCLUDABLE LAW, ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available, in each case without any liability or responsibility being assumed on Our part.

12. **INDEMNIFICATION**

12.1. **Indemnification by Us.** We will defend You against any claim, demand, suit, or proceeding made or brought against You by a third party alleging that the Services or Your use of the Services infringes the Intellectual Property Rights of a third party (a **Claim Against You**), and will indemnify You for any damages, legal fees and costs finally awarded against You as a result of, and for

amounts paid by You under a court-approved settlement of, a Claim Against You provided that You:

- (a) promptly give Us written notice of the Claim Against You;
- (b) give Us absolute control of the defence and settlement of the Claim Against You (provided that We may not settle any Claim Against You unless the settlement unconditionally releases You of all liability); and
- (c) provide to Us all reasonable assistance, at Our expense.

In the event of a Claim Against You, or if We reasonably believe the Services may infringe the Intellectual Property Rights of a third party, We may in Our discretion:

- (a) so far as reasonably practicable, modify the Services so that they no longer so infringe, without breaching Our warranties under **clause 10.1**;
- (b) obtain a licence for Your continued use of the Services in accordance with this Agreement; or
- (c) terminate this Agreement and Your User subscriptions for such Services upon 30 days' written notice and refund to You any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination.

12.2. Indemnification by You. You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of the Services in breach of this Agreement, infringes the Intellectual Property Rights of a third party or contravenes Applicable Law (a **Claim Against Us**), and You will indemnify Us for any damages, legal fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us, provided that We:

- (a) promptly give You written notice of the Claim Against Us;
- (b) give You absolute control of the defence and settlement of the Claim Against Us (provided that You may not settle any Claim Against Us unless the settlement unconditionally releases Us of all liability); and
- (c) provide to You all reasonable assistance, at Your expense.

13. LIMITATION OF LIABILITY

13.1. Limitation of Liability. SUBJECT TO ANY NON-EXCLUDABLE LAW OUR MAXIMUM LIABILITY TO YOU ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) WILL NOT EXCEED THE AMOUNT PAID BY YOU UNDER THIS AGREEMENT DURING THE 6 MONTH PERIOD BEFORE THE LIABILITY AROSE (LESS ANY AMOUNTS RELATING TO TAXES AND ANY AMOUNT ALREADY PAID BY US IN RESPECT OF ALL OR PART OF THAT PERIOD).

13.2. Exclusion of Consequential and Related Damages. SUBJECT TO ANY NON-EXCLUDABLE LAW IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOSS OF PROFITS OR REVENUES OR FOR ANY ECONOMIC, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY. TO BE CLEAR, UNDER NO CIRCUMSTANCE ARE WE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY LOSS OR DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, SAVINGS INVESTMENT, GOODWILL, BUSINESS OR BUSINESS OPPORTUNITY) RESULTING FROM OR IN ANY WAY RELATED TO YOUR USE OR RELIANCE UPON SERVICES PROVIDED BY US.

13.3. Operation of Law. The limitations and exclusions described and referred to in clauses 13.1 and 13.2 apply regardless of the form of action, whether the damages or other relief sought are based on breach of warranty, breach of contract, tort (including negligence), strict product

liability, or any other theory of liability and even if the relevant party has been advised of the possibility of such actions, damages or other relief.

If the law in any country, state or other jurisdiction does not allow the exclusion or limitation of implied conditions or warranties or the exclusion or limitation of liability in the terms expressed in this clause 13 or otherwise so implied, the limitations and exclusions set out above are to that extent inapplicable to You but otherwise apply to the maximum extent permitted by law in such country, state or other jurisdiction.

14. TERM AND TERMINATION

14.1. **Term of Agreement.** This Agreement commences on the date You accept it and continues until all User subscriptions granted in accordance with this Agreement (including by way of a free trial) have expired or been terminated.

14.2. **Termination on Non-renewal.** At least 30 days before the expiration of the subscription period of this Agreement either party may give written notice to the other of its non-renewal of this Agreement, in which case this Agreement will terminate on the expiration of that term or on such later date as We agree in our absolute discretion. If no such notice is given this Agreement will automatically renew for a subscription period equal to the expiring subscription term or one year (whichever is shorter).

14.3. **Termination for Cause.** Either party may terminate this Agreement for cause:

- (a) upon 14 days' written notice to the other party of a breach of a material term of this Agreement if such breach remains unremedied at the expiration of such period; or
- (b) if the other party becomes the subject of a petition, action or any other proceeding relating to insolvency, receivership, liquidation, bankruptcy, administration or assignment for the benefit of creditors.

14.4. **Termination by Us.** We may terminate this Agreement at any time and with immediate effect by written notice:

- (a) if You fail to pay any fees and other charges due and payable to Us by a due date;
- (b) if You otherwise engage in any fraudulent, damaging or unlawful activities which in Our view may or will compromise or affect the operation or integrity of the Agworld System; or
- (c) it is clear to us you are a competitor or have otherwise used Our Services or have accessed the Agworld System for any unauthorised purpose including to establish, sell or otherwise contribute to the development of any proprietary software system comparable to or which competes in any way with the Agworld System.

We may also terminate this Agreement at any time on giving You no less than 90 days' written notice.

In any case in which We give You notice of termination under this clause 14 We will be entitled to retain and may demand immediate payment of any amount (including any fees) then due and payable by You.

14.5. **Term of Purchased User subscriptions.** User subscriptions purchased by You commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. **Except as otherwise specified in the applicable Order Form, all User subscriptions will endure for a period equal to the period of the then applicable subscription period of this Agreement and as such will automatically renew for additional periods equal to the renewal period of this Agreement, unless You give notice of non-renewal of identified Users at least 30 days before the end of the relevant subscription term. The per-unit pricing during any such renewal period will be the then current pricing for the relevant subscription.**

14.6. **Refund or Payment upon Termination.** Upon any termination for cause by You, We will refund You any prepaid fees covering the remainder of the term of all subscriptions after the

effective date of termination. Upon any termination for cause by Us, You will pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event will any termination relieve You of the obligation to pay any fees payable to Us for the period before the effective date of termination.

14.7. Return of Your Data. Upon written request by You made within 60 days after the effective date of termination of a Purchased Services subscription, We will make available to You for download a file of Your Data in comma separated value (.csv) format along with attachments in their native format. After such 60-day period, We will have no obligation to maintain or provide any of Your Data and, unless legally prohibited from doing so, We will delete all of Your Data in Our systems or otherwise in Our possession or under Our control.

14.8. Suspension and Denial of Access. In any case in which We have the right to terminate this Agreement, We may alternatively in Our absolute discretion elect to suspend Your access to the Agworld System or to deny access to the Agworld System to particular Users until any relevant issues are resolved to Our satisfaction.

At any time during a period of suspension (whether any relevant issues are resolved or not) We may give written notice to You that the period of suspension will end and that one or more of the following actions will be taken:

- (a) access to the Agworld System will be restored to You or to particular Users;
- (b) access to the Agworld System to particular Users will continue to be denied; and
- (c) this Agreement will be terminated.

14.9. Injunction and other remedies. Nothing in this Agreement operates to deny or limit any right We may have at law to obtain injunctive or other equitable relief and for this purpose You acknowledge that in any case in which the Agworld System is any way compromised or access to it is obtained unlawfully or in breach of this Agreement, damages or compensation may not be an adequate remedy.

14.10. Surviving Provisions. Clauses 4, 5, 7, 8, 9, 10.5, 12, 13, 14, 15, 16 and 17 survive any termination or expiration of this Agreement, together with any other clauses which by their nature are intended to survive any termination or expiration of this Agreement.

15. AGWORLD ENTITY, NOTICES, GOVERNING LAW AND JURISDICTION

The table in the **Schedule** describes and determines, based on Your location: (a) the relevant Agworld entity with which You are contracting; (b) the address for notices to Us under this Agreement; (c) the governing law for this Agreement without regard to choice or conflict of law rules; (d) the courts which have non-exclusive jurisdiction in respect of disputes in connection with this Agreement; and (e) any Special Terms.

16. GENERAL PROVISIONS

16.1. Anti-Corruption. In entering into this Agreement You acknowledge You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value (excluding reasonable gifts in the ordinary course of business) from any of Our employees or agents in connection with this Agreement. If You learn of any breach of the above restriction, You will use reasonable efforts to promptly notify Us (at accounts@agworld.com.au, accounts@agworld.co or accounts@agworld.co.nz, as the case may be).

16.2. Waiver of Jury Trial. So far as any Applicable Law permits or does not prohibit each party waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

16.3. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals will be in writing and will be deemed to have been given upon:

- (a) personal delivery,

- (b) the second business day after mailing,
- (c) the first business day after sending by confirmed facsimile, or
- (d) the first business day after sending by email (provided however that email is not sufficient for notices of termination or an indemnifiable claim).

You are responsible for notifying Us of any change in Your contact details.

16.4. **Notices to You and Users.** A notice by Us to You or to Your Users, which applies generally to Your Users or a significant number of Users, may be posted on Our website and is deemed to be given by Us and received by You and Your Users when posted on Our website.

16.5. **Extension to Our Affiliates and personnel.** Every exemption from liability, defence or immunity applicable to Us or to which We are entitled to will also be available and extends to protect all Our personnel and all Our Affiliates and all their respective personnel.

16.6. **Relationship of the Parties.** Nothing in this Agreement constitutes one party the agent, partner or joint venturer of the other party.

16.7. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

16.8. **Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

16.9. **Severability.** If any provision of this Agreement offends any law applicable to it and is as a consequence illegal, invalid or unenforceable then:

- (a) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and
- (b) in any other case the offending provision must be severed from this Agreement in which event the remaining provisions of the Agreement operate as if the severed provision had not been included.

16.10. **Legal Fees.** You will pay on demand all of Our reasonable legal fees and other costs incurred by Us to collect any fees or charges due by You to Us under this Agreement.

16.11. **Assignment.** This Agreement binds and benefits the parties and their respective successors and permitted assigns. Save in the case of an assignment by Us to any one of Our Affiliates neither party may assign or otherwise transfer the benefit of this Agreement without the prior written consent of the other party.

16.12. **Entire Agreement.** This Agreement (including these terms and conditions, the Schedule, all applicable provisions and parts of Our website and Our other applications (including Agworld branded "Apps") referred to in these terms and conditions and any Order Forms) contains the entire understanding between the parties concerning the Agworld System and the provision of Services and supersedes all prior communications between the parties. Each party acknowledges that, except as expressly stated in this Agreement, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other party, including information provided by or through the Agworld System, in relation to the subject matter of this Agreement.

16.13. **Variations to this Agreement.** This Agreement and any other terms and conditions set out on Our website may be amended from time to time by Us by posting the amended terms and conditions on Our website. The amended terms and conditions will, subject to any other provision of this Agreement, be automatically effective from the earlier of:

- (a) 7 days after they are posted on Our website;
- (b) Your entry into this Agreement; and
- (c) 7 days' notice being given by Us to You.

16.14. **Consents.** If anything depends on the consent or approval of a party, then, unless this Agreement provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld in the absolute discretion of that party.

16.15. **Interpretation.** In this Agreement unless the context otherwise requires:

- (a) the singular includes the plural and vice versa and a gender includes the other genders;
- (b) the headings are used for convenience only and do not affect the interpretation of this Agreement;
- (c) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and regulation or statutory instrument issued under it;
- (f) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted renamed or replaced or has its powers or functions removed ("defunct body"), means the agency or body which performs most closely the functions of the defunct body;
- (g) a reference to a document includes any communication or form whether in electronic or hard copy format; and
- (h) no provision of this Agreement will be interpreted adversely or to the disadvantage of a party solely on the ground that party was responsible for the preparation of this Agreement or that provision.

17. DEFINITIONS

Ag Data means information about a farm or business including its location, the crops grown and any other activities and other information provided to Us about the farm or business, including agricultural, agronomic, farm management, financial and climate and weather data.

Aggregated Information means the data and information referred to in **clause 5.4** which is collected from You and Your Users and from a range of other sources, including subscribers to Our Services, and which has been collected and aggregated so that no individuals or their farm and business operations can be identified and so that none of their specific Personal Information can be ascertained.

Agworld means Agworld Pty Ltd ACN 136 483 951, a company incorporated in Western Australia.

Affiliate means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity and **control**, for the purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests or board of directors of the subject entity.

Agworld System means the proprietary business and data management system which:

- (a) was developed and which continues to be maintained by Us.;
- (b) has a particular application to the agricultural, chemical and crop production industries;
- (c) enables the systematic collection of data and communication among subscribers (in any capacity), more particularly to facilitate the timely and efficient exchange of data among them for any lawful commercial purpose and to enhance and develop their own businesses; and

- (d) is made available to industry participants by way of Our website and other applications such as “Apps” on smartphones and other mobile devices.

Applicable Laws means laws (including legislation and general law) which apply in the jurisdiction in which We provide Services to You.

Basic Support means the technical support and training relevant to the standard functionality of the Agworld System when used in the ordinary course as contemplated by this Agreement and in accordance with any applicable User Guide and excludes support for any third party system, software or application.

Force Majeure means any act or occurrence beyond the reasonable control of the party liable to perform an obligation under this Agreement which has arisen through no fault or negligence of that party and includes strikes, embargoes, lock-outs, delays in shipping and transportation, industrial disputes, floods, war, riots, acts of God, sabotage and machinery breakdowns, loss of power and failure of telecommunications and operating systems and software.

Intellectual Property Rights means all intellectual property rights including:

- (a) copyright, trade marks, plant breeder’s rights, rights in circuit layouts, designs (including registered designs), patents, trade names, trade secrets and Confidential Information; and
- (b) any applications for, licences in relation to, and extensions and renewals of such rights.

Malicious Code means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

Non-Agworld Applications means online applications and offline software products that are provided by entities or individuals other than Us and are clearly identified as such, and that interoperate with the Services, for example by way of Application Programming Interfaces (or APIs) We have developed and which allow for and facilitate the connection of those applications and software products to the Services.

Non-Excludable Law means any Applicable Law which provides for guarantees or warranties to be provided which cannot be excluded by contract (including, in the case of Australia, the statutory guarantees set out in Part 3-2, Division 1 of the Australian Consumer Law) and any other Applicable Law which explicitly and absolutely prohibits a particular course of conduct or action otherwise permitted under this Agreement.

Order Form means an online shopping cart or any purchase order and in each case any related documents for placing orders for Purchased Services that are entered into between You and Us from time to time, including any attachments or variations, in each case whether in electronic or hard copy format.

Our Data and Privacy Policy means the Agworld Data and Privacy Policy as published and appearing on Our website from time to time.

Personal Information means any information necessary to identify a subscriber or User who is a natural person, including in each case the individual’s name, address, telephone number and email address, the name of the company, partnership or entity conducting business on an individual’s behalf (including all necessary details such as place of incorporation, registered office and any numbers or other identifier), the browsers and devices an individual uses or will use to obtain access to Our Services and any demographic information which is particular to that individual.

Purchased Services means Services that You purchase under an Order Form, as distinguished from those provided pursuant to a free trial.

Schedule means the schedule to this Agreement.

Services means the products and services that are ordered by You under a free trial or an Order Form or otherwise provided to You and made available by Us online via the Agworld System and the customer login link at <http://www.agworld.com.au>, <http://www.agworld.co> or <http://www.agworld.co.nz> and/or other web pages designated by Us, and also on subscription by way of other applications such as Agworld branded “Apps” including in each case associated offline components, as described in the User Guide. Services exclude Non-Agworld Applications.

Special Terms means those terms more particularly set out in the Schedule and applicable to the particular jurisdiction in which We provide Services to You.

Supplier means any supplier of agricultural chemical products, crop protection products and/or fertilisers.

Suppliers Data means the data, information and records sourced from Suppliers including all information about particular products, test and trial results, material safety data sheets, product labels, advice notes, warning statements, technical information, marketing information, commercial information (including critical analyses, consumer surveys and satisfaction reports), international survey data, environmental and toxicological data and reports.

Upgraded Support means any technical support and training beyond Basic Support as set out in a separate service level agreement between You and Us.

User Guide means the online user guides and self-help solutions for the Services, accessible via login at <http://www.agworld.com.au>, <http://www.agworld.co>, or <http://www.agworld.co.nz> and/or other web pages designated by Us, as updated from time to time.

Users means individuals who are authorised by You to use the Services, for whom subscriptions to a Service or Services have been ordered, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees and, subject to Our written consent, consultants, contractors, agents and third parties with whom You transact business.

We, Us or Our means Agworld (in the case of Australia and New Zealand) and the Affiliate of Agworld operating in the country in which You are located (in any other case) and, where the context allows and it is to the benefit of Agworld and such Affiliate to so allow, includes both such corporations.

You or Your means you individually and any company or other legal entity on whose behalf you have entered into this Agreement, including, in each case, your respective directors, officers, employees, contractors and agents.

Your Data means all electronic data or information submitted by You to Us under this Agreement and necessary or desirable for Us to undertake and perform the Purchased Services and includes Your Personal Information and Your Ag Data.

SCHEDULE

A. If you are located in Australia the following terms also apply to You and Your Users:

You are contracting with:	Notices should be addressed to:	The governing law is:	The courts having exclusive jurisdiction are:	Special Terms
<p>Agworld Pty Ltd ACN 136 483 951, a proprietary limited company incorporated in Western Australia</p>	<p>Agworld Pty Ltd PO Box 1472 West Leederville WA 6901</p>	<p>The law in force in Western Australia and applicable laws of the Commonwealth of Australia</p>	<p>The courts of Western Australia, the Federal Court of Australia in Western Australia and courts of appeal from them.</p>	<p>(I) In relation to the supply of goods or services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, to a “consumer” (as that term is defined in section 3 of the Australian Consumer Law) Our liability for failure to comply with any statutory guarantee (other than a guarantee under sections 51, 52 or 53 of the Australian Consumer Law) is limited, at our option, to:</p> <ul style="list-style-type: none"> (a) in the case of goods, the replacement, repair or payment of the cost of replacement or repair of the goods; and (b) in the case of services, supplying the services again or payment of the cost of having the services supplied again. <p>(II) We are not responsible for compliance by You and Your Users with applicable laws, regulations, standards and codes of practice, including provisions of the AgVet Code, and any requirements or directions of the APVMA or other regulatory authorities, relating to products or services supplied or provided to You, Your Users or any other person by a Supplier or any other person by reason of or in any way arising from access to, use of or reliance upon the Agworld System or Our Services.</p> <p>AgVet Code means the "Agricultural and Veterinary</p>

				<p>Chemicals Code" which is a schedule to the <i>Agricultural and Veterinary Chemicals Code Act 1994</i> (Cth).</p> <p>APVMA means the Australian Pesticides and Veterinary Medicines Authority.</p>
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B. If you are located in the United States of America the following terms also apply to You and Your Users:

You are contracting with:	Notices should be addressed to:	The governing law is:	The courts having exclusive jurisdiction are:	Special Terms
Agworld, Inc., a Delaware corporation	Agworld, Inc. 1601 Pelican Lakes Point, Suite 200, Windsor Colorado 80550	The law in force in Colorado and applicable laws of the United States of America	The courts of Colorado and the United States of America	We are not responsible for compliance by You and Your Users with applicable laws, regulations, standards and codes of practice, including any requirements or directions of the Environmental Protection Authority or other Federal and State regulatory authorities, relating to particular products or services supplied or provided to You, Your Users or any other person by a Supplier or any other person by reason of or in any way arising from access to, use of or reliance upon the Agworld System or Our Services.

C. If you are located in New Zealand the following terms also apply to You and Your Users:

You are contracting with:	Notices should be addressed to:	The governing law is:	The courts having exclusive jurisdiction are:	Special Terms
Agworld Pty Ltd Business Id: 4235918; N2BN 9429030373716, a body corporate incorporated in Australia and registered as an overseas company in New Zealand.	Agworld Pty Ltd PO Box 1472 West Leederville Western Australia A 6901	The law in force in New Zealand	The courts of New Zealand	(I) In relation to the supply of goods or services in trade We accept no liability for breach of any statutory guarantee under the Consumer Guarantees Act 1993, so far as such exclusion is permissible under that Act and the Fair Trading Act 1986. (II) We are not responsible for compliance by you with applicable laws, regulations, standards and codes of practice, including provisions of the Hazardous Substances and New Organisms Act 1996 and the Agricultural Compounds and Veterinary Medicines Act 1997, and any requirements of the Ministry of Primary Industries or other regulatory authorities relating to products or services supplied or provided to You, Your Users or any other person by a Supplier or any person by reason of or in any way arising from access to, use of or reliance upon the Agworld System or Our Services.