

## Terms of Use

Last Modified: August 11th, 2020

### **Acceptance of these Terms of Use**

These terms of use are entered into by and between you and Agwa, Inc. (the “**Company**,” “**we**,” “**us**” or “**our**”). The following terms and conditions, together with any policies and other documents they expressly incorporate by reference (collectively, these “**Terms of Use**”), govern your access to and use of our website, [www.agwafarm.com](http://www.agwafarm.com) (the “**Website**”), including our products and services and any content, functionality, web applications, mobile applications and software offered on or through the Website or otherwise by the Company from time to time (collectively, with the Website, the “**Services**”), whether as a guest or a registered user.

*Please read these Terms of Use carefully before you start to use the Website or any Services.*

**By using the Services or by clicking to accept or agree to these Terms of Use when this option is made available to you, you accept and agree to be bound and abide by these Terms of Use and our Privacy Policy, found at [PRIVACY POLICY](#), incorporated herein by reference.**

**If you do not agree to these Terms of Use or the Privacy Policy, then you must not access or use the Website or Services.**

### **Users Under 18 Years of Age**

The Services is offered and available to users who are 18 years of age or older. By using the Services, you represent and warrant that you are of legal age to form a binding contract with the Company and meet the foregoing eligibility requirements. If you do not meet all of these requirements, then you must not access or use the Services.

### **Arbitration Notice**

**THESE TERMS OF USE REQUIRE THE USE OF [Arbitration](#) ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMIT THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.**

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### **Business Uses of the Services**

If you are using the Services on behalf of a business or legal entity, then such business or legal entity accepts these Terms of Use and will hold harmless and indemnify us and our affiliates, officers, agents and employees from any claim, suit or action arising from or related to the use of the Services or violation of these Terms of Use, including any liability or expense arising from claims, losses, damages, suits judgments, litigation costs and reasonable attorneys’ fees.

### **Changes to these Terms of Use**

We may revise, modify and update these Terms of Use from time to time in our sole discretion. All changes are effective immediately when we post them, and apply to all access to and use of the Services thereafter. However, any changes to the dispute resolution provisions set forth therein will not apply to any disputes for which the parties have actual notice on or before the date that such changes are posted on the Services.

Your continued use of the Services following the posting of revised, modified or updated Terms of Use means that you accept and agree to such changes. You are expected to check this page from time to time, so you are aware of any changes, as they are binding on you.

### **Additional Terms**

We may offer from time to time Services that require additional terms and conditions or product requirements (including age requirements). Such additional terms will be made available with the relevant Services, and such additional terms become a part of your agreement with us if you use such Services. If there is a conflict between these Terms of Use and the additional terms, then the additional terms will control with respect to the applicable Services.

### **Software in Our Services**

For Services that include software, such Services may be subject to additional software terms that expressly override some of these Terms of Use. Such additional software terms will be made available with such Services, and shall become a part of your agreement with us if you use such Services.

For users of the AgwaFarm, see our [AgwaFarm Terms of Use](#).

Additionally, when a Service requires or includes downloadable software, then such software may update automatically on your device as new versions or features become available.

### **AgwaFarm Mobile App**

For users of our AgwaFarm Mobile App, our AgwaFarm Mobile App End User License Agreement is available *here* [MOBILE APP EULA](#) and our AgwaFarm Mobile App Privacy Policy is available *here* [MOBILE APP PRIVACY POLICY](#).

### **Accessing the Services and Account Security**

We reserve the right to withdraw, modify or amend the Services, and any product, service or material that we provide on or through the Services, in our sole discretion and without notice. We will not be liable if for any reason all or any part of the Services is unavailable at any time or for any period of time. From time to time, we may restrict access to some parts of the Services, or all of the Services, to users, including registered users.

You are responsible for:

- Making all arrangements necessary for you to have access to the Services; and

- Ensuring that all persons who access the Services through your network, internet connection, equipment or systems, as applicable, agree to these Terms of Use and comply with them.

To access the Services, you may be required to provide certain account registration details or other information. It is a condition of your use of the Services that all of the information you provide to us and otherwise on or through the Services is correct, current and complete. You acknowledge and agree that all information that you provide to register with the Services or otherwise, including, but not limited to, through the use of any interactive features on the Services, is governed by our [Privacy Policy](#), and you consent to all actions that we take with respect to your information consistent with our [Privacy Policy](#).

If you choose, or are provided with, a user name, password or any other piece of information as part of our security procedures, then you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge and agree that your account is personal to you and you shall not provide any other person with access to the Services or any portions of it using your user name, password or other security information, without our express written consent. You agree to notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer, so that others are not able to view or record your username, password or other personal information.

We have the right to disable any user name, password or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of these Terms of Use.

### **Intellectual Property Rights**

The Services and any content, features and functionality thereof (including, but not limited to, all information, software, text, displays, images, video and audio, and the design, selection and arrangement thereof), and all intellectual property and confidential information of the Company are owned by the Company, its licensors or other providers of such items and are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws, as applicable.

These Terms of Use permit you to use the Services for your personal, non-commercial use only. Unless expressly authorized by the Company, you must not reproduce, distribute, modify, create derivative works of, disassemble, reverse engineer, publicly display, publicly perform, republish, download, store or transmit any part of the Services, except as follows:

- Your device (including, without limitation, computer, mobile phone, tablet, game console, STB, smart TV and other internet connected platforms and devices) may temporarily store copies of such materials in RAM incidental to your accessing and viewing those materials;
- You may store files that are automatically cached by your Web browser for display enhancement purposes;
- You may print or download one copy of a reasonable number of pages of the Services for your own personal, non-commercial use and not for further reproduction, publication or distribution;

- If we provide desktop, mobile or other applications for download, you may download a single copy to your computer or mobile device solely for your own personal, non-commercial use, provided that you agree to be bound by our end user license agreement for such applications;
- If we provide [social media features](#) with certain Services, then you may take such actions as are enabled by such features.

Without our express written permission in each case, you must not:

- Modify copies of any materials from the Services;
- Use any illustrations, photographs, video or audio sequences, or any graphics separately from the accompanying text;
- Delete or alter any copyright, trademark or other proprietary rights notices from copies of materials from the Services;
- Use or access the Services in order to build a similar or competitive website, product or service;
- License, sell, rent, lease, transfer, assign, distribute, host or otherwise commercially exploit the Services, whether in whole or in part; or
- Access or use for any commercial purposes any part of the Services or any products, services or materials available on or through the Services.

If you print, copy, modify, download or otherwise use or provide any other person with access to any part of the Services in breach of these Terms of Use, then your right to use the Services will stop immediately and you must, at our option, return or destroy any copies of the materials that you have made. No right, title or interest in or to the Services or any other intellectual property or confidential information of the Company is transferred to you, and all rights not expressly granted hereunder are reserved by the Company. Any use of the Services not expressly permitted by these Terms of Use is a breach of these Terms of Use and may violate copyright, trademark and other laws.

### **Trademarks**

The Company's name, the terms "Agwa" and "AgwaFarm," the Company's logo, and all related names, logos, product and service names, designs and slogans are trademarks of the Company or its affiliates or licensors. You must not use such marks without the prior written permission of the Company. All other names, logos, product and service names, designs and slogans on the Services are the trademarks of their respective owners.

### **No Support or Maintenance**

You understand, acknowledge and agree that, unless otherwise set forth in a separate written agreement between you and the Company, the Company will have no obligation to provide you with any support or maintenance in connection with the Services.

### **Prohibited Uses**

You may use the Services only for lawful purposes and in accordance with these Terms of Use. You agree not to use the Services:

- In any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries);
- For the purpose of exploiting, harming or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information or otherwise;
- To send, knowingly receive, upload, download, use or re-use any material that does not comply with the [Content Standards](#) set out in these Terms of Use;
- To transmit, or procure the sending of, any advertising or promotional material without our prior written consent, including any “junk mail,” “chain letter,” “spam” or any other similar solicitation;
- To impersonate or attempt to impersonate the Company, a Company employee, another user or any other person or entity (including, without limitation, by using email addresses or screen names associated with any of the foregoing);
- To engage in any other conduct that restricts or inhibits anyone’s use or enjoyment of the Services, or which, as determined by us in our sole and absolute discretion, may harm the Company or users of the Services or expose them to liability;
- Harvest, collect, gather or assemble information or data regarding other users, including e-mail addresses, without their consent; or
- Use software or automated agents or scripts to produce multiple accounts on the Services or to generate automated searches, requests or queries to (or to strip, scrape or mine data from) the Services.

Additionally, you agree not to:

- Use the Services in any manner that could disable, overburden, damage or impair the Services or interfere with any other party’s use of the Services, including, without limitation, their ability to engage in real time activities through the Services;
- Use any robot, spider or other automatic device, process or means to access the Services for any purpose, including, without limitation, monitoring or copying any of the material on the Services;
- Use any manual process to monitor or copy any of the material on the Services or for any other unauthorized purpose without our prior written consent;
- Use any device, software or routine that interferes with the proper working of the Services;
- Introduce any viruses, Trojan horses, worms, logic bombs or other material that is malicious or technologically harmful;
- Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Services, the server(s) on which the Services are stored, or any server, computer or database connected to the Services;
- Attack the Services via a denial-of-service attack or a distributed denial-of-service attack; or
- Otherwise attempt to interfere with the proper working of the Services.

### **User Contributions**

The Services may contain upload screens, submission screens, scheduling features, message features and boards, chat features and rooms, personal web pages or profiles, forums, bulletin boards and other interactive features (collectively, “**Interactive Services**”), that allow users to post, submit, publish,

display, make available and/or transmit to us, other users or other persons (hereinafter, “**post**”) content or materials, including, without limitation, content or materials from third party services or applications integrated with the Services (collectively, “**User Contributions**”) on or through the Services. All User Contributions must comply with the Content Standards set out in these Terms of Use.

You retain ownership of any intellectual property rights that you hold in your User Contributions. By providing any User Contribution on or through the Services, you grant to us and our affiliates and service providers, and each of their and our respective licensees, successors and assigns the an irrevocable, nonexclusive, royalty-free and fully paid, worldwide license to use, host, store, reproduce, modify, perform, display, distribute, prepare derivative works of, incorporate into other works, exploit and disclose to third parties any such User Contribution and to grant sublicenses of the foregoing rights. The rights you grant in the foregoing license are for the limited purpose of operating, promoting and improving our Services, and to develop new ones, and remains in effect even if you stop using the Services. Without limiting the generality of the foregoing, if you elect to use any third party service or application that is integrated with the Services, then (i) you also agree that licenses granted to us herein apply to all User Contributions that are submitted, uploaded or posted through such third party service or application, (ii) if the third party service or application that you elect to use would access or extract User Contributions, then you grant to us the right and license to enable third party access to and extraction of your User Contributions, (iii) you acknowledge and agree that we do not assume any responsibility for, or liability on the account of, any actions or omissions of such third party applications or service providers and (iv) you understand and agree that, in performing any required technical steps necessary to provide you with the Services, including, without limitation, any features, functionality or Interactive Services of the Services, we may make such changes to your User Contributions as are necessary to adapt such User Contributions to the technical requirements of the Services, connecting networks, devices, services or media.

You represent and warrant that:

- You own or control all rights in and to the User Contributions and have the right to grant the license granted above to us and our affiliates and service providers, and each of their and our respective licensees, successors and assigns;
- All of your User Contributions do not and shall not infringe, misappropriate or violate any patent, copyright, trademark, trade secret, publicity, privacy or other right of any third party;
- All of your User Contributions do and will comply with these Terms of Use; and
- You irrevocably waive (and agree to cause to be waived) any claims and assertions of moral rights or attribution with respect to your User Contributions.

You understand, acknowledge and agree that you are responsible for any User Contributions that you submit or contribute, and you, not the Company, have full responsibility for such content, including, without limitation, its legality, reliability, accuracy and appropriateness.

We are not responsible or liable to any third party for the content or accuracy of any User Contributions posted by you or any other user of the Services.

### **Feedback**

If you provide the Company with any feedback or suggestions regarding the Services (“**Feedback**”), then you hereby assign to the Company all right, title and interest in and to such Feedback and agree that the

Company shall have the right to use and fully exploit such Feedback and related information in any manner it deems appropriate. The Company will treat any Feedback that you provide to the Company as non-confidential and non-proprietary. You understand, acknowledge and agree that you will not submit to the Company any information or ideas that you consider to be confidential or proprietary.

### **Monitoring and Enforcement; Termination**

We have the right to:

- Remove or refuse to post any User Contributions for any or no reason in our sole discretion;
- Take any action with respect to any User Contribution that we deem necessary or appropriate in our sole discretion, including, without limitation, if we believe that such User Contribution violates these Terms of Use, including the Content Standards, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the Services or the public or could create liability for the Company;
- Disclose your identity or other information about you to any third party who claims that material posted by you violates their rights, including their intellectual property rights or their right to privacy;
- Take appropriate legal action, including, without limitation, referral to law enforcement, for any illegal or unauthorized use of the Services; and
- Terminate or suspend your access to all or part of the Services for any or no reason, including, without limitation, any violation of these Terms of Use.

Without limiting the foregoing or anything herein to the contrary, we have the right to cooperate fully with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any materials on or through the Services. YOU WAIVE AND HOLD HARMLESS THE COMPANY AND ITS AFFILIATES, LICENSEES AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY OF THE FOREGOING PARTIES DURING, OR TAKEN AS A CONSEQUENCE OF, INVESTIGATIONS BY EITHER SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES.

However, we cannot and do not undertake to review all material before it is posted on the Services, and cannot ensure prompt removal of objectionable material after it has been posted. Accordingly, we assume no liability for any action or inaction regarding transmissions, communications or content provided by any user or third party. We have no liability or responsibility to anyone for performance or nonperformance of the activities described in this section.

### **Content Standards**

These content standards apply to any and all User Contributions and use of Interactive Services. User Contributions must in their entirety comply with all applicable federal, state, local and international laws and regulations. Without limiting the foregoing, User Contributions must not:

- Contain any material that is defamatory, obscene, indecent, abusive, offensive, harassing, violent, hateful, inflammatory or otherwise objectionable;
- Promote sexually explicit or pornographic material, violence or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;

- Infringe any patent, trademark, trade secret, copyright or other intellectual property or other rights of any other person;
- Violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with these Terms of Use and our [Privacy Policy](#);
- Be likely to deceive any person;
- Promote any illegal activity, or advocate, promote or assist any unlawful act;
- Cause annoyance, inconvenience or needless anxiety or be likely to upset, embarrass, alarm or annoy any other person;
- Impersonate any person, or misrepresent your identity or affiliation with any person or organization;
- Involve commercial activities or sales, such as contests, sweepstakes and other sales promotions, barter or advertising; or
- Give the impression that they emanate from or are endorsed by us or any other person or entity, if this is not the case.

### **Copyright Infringement**

If you believe that any User Contributions violate your copyright, then please see our [Copyright Policy](#) for instructions on sending us a notice of copyright infringement. It is the Company's policy to terminate the user accounts of repeat copyright infringers.

### **Reliance on Information Posted**

The information presented on or through the Services is made available solely for general information purposes. We do not warrant the accuracy, completeness or usefulness of this information, including, without limitation, any results, opinions or recommendations made by the Services. Any reliance that you place on such information is strictly at your own risk. We disclaim any and all liability and responsibility arising from any reliance placed on such information or materials by you or any other user of the Services, or by anyone who may be informed of any of its contents.

The Services may include content provided by third parties, including, without limitation, materials provided by other users, businesses and third-party licensors, syndicators, aggregators and/or reporting services. All statements and/or opinions expressed in these materials, and all articles and responses to questions and other content, other than the content provided by the Company, are solely the respective opinions and the responsibility of the person or entity providing those materials. These materials do not necessarily reflect the opinion of the Company. We are not responsible or liable to you or any third party for the content or accuracy of any materials provided by any third parties.

### **Changes to the Services**

We may revise, modify or update the Services from time to time in our sole and absolute discretion, but its content is not necessarily complete or up-to-date. Any of the information or material on the Services may be out of date at any given time, and we are under no obligation to update such material. We also may add or remove functionalities or features, or suspending or stopping a Service, from time to time in our sole and absolute discretion.



### **Information About You and Your Use of the Services**

All information that we collect about you on or through the Services is subject to our [Privacy Policy](#). By using the Services, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

### **Linking to the Services and Social Media Features**

You may link to the Services, provided that you do so in a way that is fair and legal and does not damage our reputation or take advantage of it, but you must not establish a link in such a way as to suggest any form of association, approval or endorsement on our part without our express written consent in each case.

The Services may provide certain social media features and third-party integrations that enable you to:

- Link from your own or certain third-party websites or applications to certain content on the Services;
- Send emails or other communications with certain content, or links to certain content, on the Services; and/or
- Cause limited portions of content on the Services to be displayed or appear to be displayed on your own or certain third-party websites or applications.

You may use these features solely as they are provided by us and solely with respect to the content that they are displayed with and otherwise in accordance with any additional terms and conditions that we provide with respect to such features. Subject to the foregoing and except as otherwise expressly allowed herein or by us, you must not:

- Establish a link from any website, application or social media account that is not owned by you;
- Cause the Services or portions of it to be displayed on, or appear to be displayed by, any other site or application, for example, framing, deep linking or in-line linking; or
- Otherwise take any action with respect to the information or materials on the Services that is inconsistent with any other provision of these Terms of Use.

The website, application or social media account from which you are linking or on which you make certain content accessible must comply in all respects with the Content Standards set out in these Terms of Use. You agree to cooperate with us in causing any unauthorized framing or linking immediately to stop. We reserve the right to withdraw linking permission without notice at any time and without any reason. We may disable all or any social media features and any links at any time without notice in our sole discretion.

### **Links from the Services**

If the Services contain links to other sites, materials and resources provided by third parties, then these links are provided for your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links, and product or service recommendations. We have no control over the contents of those sites, materials or resources, and accept no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third-party

websites linked to the Services, or to use any of the third-party materials or resources, then you do so entirely at your own risk and subject to the terms and conditions of use for such items.

### **Purchases and Terms of Sale**

Unless expressly agreed by us in writing, all purchases or other transactions for the sale of products, Services or available content, as applicable, formed through the Services or resulting from visits made by you are governed by these Terms of Use, the following terms of sale and any additional terms and conditions made available to you at the time of such purchase or other transaction, including, without limitation, any terms of service required by our payment processing service providers.

### **Order Acceptance and Cancellation**

You agree that an order placed with us (including through the Services) is an offer to buy, under these Terms of Use and any additional terms made available to you at the time of your order, all products and Services listed in your order. All orders must be accepted by us or we will not be obligated to sell the products or Services to you. We may choose not to accept any orders in our sole and absolute discretion. After having received your order, we will send to you a confirmation email with your order number and details of the items that you have ordered. Acceptance of your order and the formation of the contract of sale between you and us will not take place unless and until you have received your order confirmation email.

### **Prices**

All prices posted on the Services are subject to change without notice. The price charged for a product or Service will be the price in effect at the time the order is placed and will be set out in your order confirmation email. Price increases will only apply to orders placed after such changes are made. Posted prices do not include taxes or charges for shipping and handling. All such taxes and charges will be added to your merchandise total and will be itemized in your shopping cart and in your order confirmation email. We are not responsible for pricing, typographical or other errors in any offer by us and we reserve the right to cancel any orders arising from such errors.

### **Payment; Billing**

Terms of payment are within our sole and absolute discretion and, unless otherwise agreed by us in writing, payment must be received by us before our acceptance of an order.

By providing us with a payment method, you: (i) represent that you are authorized to use the payment method that you provided and that any payment information you provide is true, correct and complete; (ii) authorize us to charge you for any products, Services or available content purchased using your payment method; (iii) authorize us to charge you for any paid feature of the Services that you choose to sign up for or use; (iv) charges incurred by you will be honored by your credit card company; and (v) you will pay charges incurred by you at the posted prices, including all applicable taxes, if any. You agree to promptly update your account and other information, including your email address and credit card numbers and expiration dates, so that we can complete your transactions and contact you as needed in connection with your transactions. We may bill you: (a) in advance; (b) at the time of purchase; (c) shortly after purchase; or (d) on a recurring basis for subscriptions. Also, we may charge you up to the amount you have approved, and we will notify you in advance and in accordance with the terms of your subscription of any

change in the amount to be charged for recurring subscriptions. We may bill you at the same time for more than one of your prior billing periods for amounts that haven't previously been processed.

If you are taking part in any trial-period offer, then you must cancel the applicable Service by the end of the trial period to avoid incurring new charges unless we notify you otherwise. If you do not cancel such Service at the end of the trial period, then you authorize us to charge your payment method for such Service.

### Recurring Payments

From time to time, we may make certain Services available for purchase on a subscription basis (e.g., weekly, monthly, quarterly or annually, as applicable). When you purchase Services on a subscription basis, you acknowledge and agree that you are authorizing recurring payment, and payments shall be made to us by the payment method that you have chosen at the recurring intervals chosen by you, until the subscription is terminated by you or by us or otherwise in accordance with its terms. By authorizing recurring payments, you authorize us to process such payments as either electronic debits or fund transfers, or as electronic drafts from your designated account (in the case of Automated Clearing House or similar payments), or as charges to your designated account (in the case of credit card or similar payments) (collectively, “**Electronic Payments**”). Subscription fees are billed or charged in advance of the applicable subscription period. If any payment is returned unpaid or if any credit card or similar transaction is rejected or denied, then we or our service providers reserve the right to collect any applicable return item, rejection or other fees as permitted by applicable law.

### Automatic Renewals

We may allow you to choose Services that automatically renew at the end of a fixed service period. If you elect to automatically renew a Service, then we may automatically renew such Service at the end of the current service period and charge you the then-current price for the renewal term, unless you have chosen to cancel such Service. We will bill your selected payment method for the renewal, whether it was on file on the renewal date or provided later. You may cancel such Service prior to the renewal date, and you must cancel before the renewal date to avoid being billed for the renewal.

### Refund Policy

All purchases are final and non-refundable, unless otherwise required by law or expressly agreed by us in our sole discretion.

### Product Shipments; Delivery; Title and Risk of Loss

We will arrange for shipment of products to you. Please check the individual product page for specific delivery options. You will pay all shipping and handling charges specified during the ordering process. Title and risk of loss pass to you upon our transfer of the products to the carrier. Shipping and delivery dates are estimates only and cannot be guaranteed. We are not liable for any delays in shipments.

### Goods Not for Resale or Export

You agree to comply with all applicable laws and regulations of the various states and of the United States including all Export Regulations (as defined below). You represent and warrant that you are buying

products or Services from us for your own personal or household use only, and not for resale or export. Products and services purchased from us may be controlled for export purposes by export regulations, including but not limited to, the Export Control Reform Act of 2018 (ECRA) (Title XVII, Subtitle B of Pub. L. No. 115-232), the Export Administration Regulations (15 C.F.R. 768-799) for which ECRA is permanent statutory authority, the International Traffic in Arms Regulations (22 C.F.R. 120-128 and 130) and their successor and supplemental regulations (collectively, “**Export Regulations**”).

### **Geographic Restrictions**

The owner of the Services is based in the state of California in the United States. We provide the Services for use only by persons located in the United States. We make no claims that the Services or any content is accessible or appropriate outside of the United States. Access to the Services may not be legal by certain persons or in certain countries. If you access the Services from outside the United States, then you do so on your own initiative and are responsible for compliance with local laws.

### **Release**

You hereby release and forever discharge the Company (and our officers, employees, agents, successors, and assigns) from, and hereby waive and relinquish, each and every past, present and future dispute, claim, controversy, demand, right, obligation, liability, action and cause of action of every kind and nature (including personal injuries, death and property damage), that has arisen or arises directly or indirectly out of, or that relates directly or indirectly to, the Services (including any interactions with, or act or omission of, other users or any third-parties, including third-party links and ads). IF YOU ARE A CALIFORNIA RESIDENT, THEN YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 IN CONNECTION WITH THE FOREGOING, WHICH STATES: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

### **Disclaimer of Warranties**

You understand, acknowledge and agree that we cannot and do not guarantee or warrant that the Services, including, without limitation, any files available for downloading or access from the internet or the Services will be free of viruses or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to the Services for any reconstruction of any lost data. TO THE FULLEST EXTENT PROVIDED BY LAW, WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES OR ANY OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE SERVICES.

YOUR USE OF THE SERVICES IS AT YOUR OWN RISK. THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER THE COMPANY NOR ANY PERSON ASSOCIATED WITH THE COMPANY MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY OR AVAILABILITY

OF THE SERVICES. WITHOUT LIMITING THE FOREGOING, NEITHER THE COMPANY NOR ANYONE ASSOCIATED WITH THE COMPANY REPRESENTS OR WARRANTS THAT THE SERVICES WILL BE ACCURATE, RELIABLE, ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT THE SERVICES OR THE SERVER(S) THAT MAKES THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THE SERVICES WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

TO THE FULLEST EXTENT PROVIDED BY LAW, THE COMPANY HEREBY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF

MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE.

IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SERVICES, THEN ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF FIRST USE.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

### **Limitation on Liability**

TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL THE COMPANY, ITS AFFILIATES OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE SERVICES, ANY WEBSITES LINKED TO IT, ANY CONTENT MADE AVAILABLE BY THE SERVICES OR SUCH OTHER SERVICES OR WEBSITES, INCLUDING, WITHOUT LIMITATION, ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE.

TO THE MAXIMUM EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THESE TERMS OF USE OR THE SERVICES (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO A MAXIMUM OF FIFTY US DOLLARS (U.S. \$50). THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT. YOU AGREE THAT OUR SUPPLIERS WILL HAVE NO LIABILITY OF ANY KIND ARISING FROM OR RELATING TO THESE TERMS OF USE OR THE SERVICES.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

### **Indemnification**

You agree to defend, indemnify and hold harmless the Company, its affiliates, licensors and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors,

suppliers, successors and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys' fees) arising out of or relating to (a) your violation of these Terms of Use, (b) your use of the Services, including, but not limited to, your User Contributions, any use of the Services other than as expressly authorized in these Terms of Use or your use of any information obtained from or through the Services or (c) your violation of applicable laws or regulations. The Company reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate with our defense of these claims. You agree not to settle any matter without the prior written consent of the Company. The Company will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

### **Governing Law and Jurisdiction**

All matters relating to the Services and these Terms of Use and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction).

### **Arbitration Agreement**

**Please read this Arbitration Agreement carefully. It is part of your contract with the Company and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.**

*Applicability of Arbitration Agreement.* Any and all claims, disputes or controversies, whether in contract, tort or otherwise, whether pre-existing, present or future, and including statutory, consumer protection, common law and intentional tort, but excluding claims for injunctive or other equitable relief as set forth below) in connection with these Terms of Use, the Services or the use of any product, service or information provided by the Company that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under the terms of this Arbitration Agreement. Unless otherwise agreed to, all arbitration proceedings shall be held in English. This Arbitration Agreement applies to you and the Company, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services and goods provided under these Terms of Use.

*Notice Requirement and Informal Dispute Resolution.* Before either party may seek arbitration, the party must first send to the other party a written Notice of Dispute (“**Notice**”) describing the nature and basis of the claim or dispute, and the requested relief. A Notice to the Company should be sent to: info@agwafarm.com. After the Notice is received, you and the Company may attempt to resolve the claim or dispute informally. If you and the Company do not resolve the claim or dispute within thirty (30) days after the Notice is received, then either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

*Arbitration Rules.* Arbitration shall be initiated through the American Arbitration Association (“**AAA**”), an established alternative dispute resolution provider (“**ADR Provider**”) that offers arbitration as set forth in this section. If AAA is not available to arbitrate, then the parties shall agree to select an alternative

ADR Provider. The rules of the ADR Provider shall govern all aspects of the arbitration, including, but not limited to, the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with the Terms. The AAA Consumer Arbitration Rules (“**Arbitration Rules**”) governing the arbitration are available online at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879. The arbitration shall be conducted by a single, neutral arbitrator. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the Arbitration Rules. Any hearing will be held in San Francisco, California unless the parties agree otherwise. If you reside outside of the U.S., then the arbitrator shall give the parties reasonable notice of the date, time and place of any oral hearings. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Each party shall bear its own costs (including attorneys’ fees) and disbursements arising out of the arbitration and shall pay an equal share of the fees and costs of the ADR Provider.

*Additional Rules for Non-Appearance Based Arbitration.* If non-appearance based arbitration is elected, then the arbitration shall be conducted by telephone, online and/or based solely on written submissions; and the specific manner shall be chosen by the party initiating the arbitration. The arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise agreed by the parties.

*Time Limits.* Except as otherwise set forth herein, if you or the Company pursue arbitration, then arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a claim) and within any deadline imposed under the AAA Rules for the pertinent claim.

*Authority of Arbitrator.* If arbitration is initiated, then the arbitrator will decide the rights and liabilities, if any, of you and the Company, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages, and to grant any non-monetary remedy or relief available to an individual under applicable law, the AAA Rules, and the Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and the Company.

*Waiver of Jury Trial.* THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court. In the event any litigation should arise between you and the Company in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND THE COMPANY WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.

*Waiver of Class or Consolidated Actions.* ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER.

*Confidentiality.* All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This paragraph shall not prevent a party from submitting to a court of law any information necessary to enforce this Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.

*Severability.* If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.

*Right to Waive.* Any or all of the rights and limitations set forth in this Arbitration Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or affect any other portion of this Arbitration Agreement.

*Survival of Agreement.* This Arbitration Agreement will survive the termination of your relationship with Company.

*Small Claims Court.* Notwithstanding the foregoing, either you or the Company may bring an individual action in small claims court.

*Emergency Equitable Relief.* Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

*Claims Not Subject to Arbitration.* Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark or trade secrets shall not be subject to this Arbitration Agreement.

*Courts.* In any circumstances where the foregoing Arbitration Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within San Diego County, California, for such purpose.

#### **Limitation on Time to File Claims**

TO THE EXTENT ALLOWED BY APPLICABLE LAW AND NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF USE OR THE SERVICES MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

#### **General Terms and Conditions**

*Export.* The Services may be subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree not to export, reexport or transfer, directly or indirectly, any



U.S. technical data acquired from Company, or any products utilizing such data, in violation of the United States export laws or regulations.

*Disclosures.* The Company is located at the address set forth below. If you are a California resident, then you may report complaints to the Complaint Assistance Unit of the Division of Consumer Product of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

*Electronic Communications.* The communications between you and the Company use electronic means, whether you use the Services or send us emails, or whether the Company posts notices on the Services or communicates with you via email. For contractual purposes, you: (a) consent to receive communications from Company in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures and other communications that the Company provides to you electronically satisfy any legal requirement that such communications would satisfy if it were be in a hardcopy writing. The foregoing does not affect your non-waivable rights.

*Construction; Independent Contractors; Assignment.* The section titles in these Terms of Use are for convenience only and have no legal or contractual effect. The word “including” means “including without limitation.” Your relationship to Company is that of an independent contractor, and neither party is an agent or partner of the other. These Terms of Use, and your rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by you without Company’s prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. Company may freely assign these Terms of Use. The terms and conditions set forth in these Terms of Use shall be binding upon assignees.

*Waiver and Severability.* No waiver by the Company of any term or condition set out in these Terms of Use shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of the Company to assert a right or provision under these Terms of Use shall not constitute a waiver of such right or provision. If any provision of these Terms of Use is held by a court or other tribunal of competent jurisdiction to be invalid, illegal or unenforceable for any reason, then such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of these Terms of Use will continue in full force and effect.

*Entire Agreement.* These Terms of Use, our Privacy Policy, Terms of Sale and other policies and terms referred to herein constitute the sole and entire agreement between you and the Company regarding the Services and supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding the Services.

*Term and Termination.* Subject to this section, these Terms of Use will remain in full force and effect while you use the Services. Upon termination of your rights under these Terms of Use, your account and right to access and use the Services will terminate immediately. You understand and agree that any termination of your account may involve deletion of your User Contributions associated with your account from our live databases. The Company will not have any liability whatsoever to you for any termination of your rights under these Terms of Use, including for termination of your account or deletion of your User Contributions.

*Force Majeure.* We will not be liable or responsible to you, nor be deemed to have defaulted or breached these Terms of Use, or any other policies and terms referred to herein, for any failure or delay in our

performance hereunder or thereunder when and to the extent such failure or delay is caused by or results from acts or circumstances beyond our reasonable control, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lockouts, strikes or other labor disputes (whether or not relating to our workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

### **Copyright Policy**

The Company respects the intellectual property of others and asks that users of the Services do the same. In connection with the Services, we have adopted and implemented a policy respecting copyright law that provides for the removal of any infringing materials and for the termination, in appropriate circumstances, of users of the Services who are repeat infringers of intellectual property rights, including copyrights. If you believe that one of our users is, through the use of the Services, unlawfully infringing the copyright(s) in a work, and wish to have the allegedly infringing material removed, then the following information in the form of a written notification (pursuant to 17 U.S.C. § 512(c)) must be provided to our designated Copyright Agent:

1. Your physical or electronic signature;
2. Identification of the copyrighted work(s) that you claim to have been infringed;
3. Identification of the material on our services that you claim is infringing and that you request us to remove;
4. Sufficient information to permit us to locate such material;
5. Your address, telephone number, and e-mail address;
6. A statement that you have a good faith belief that use of the objectionable material is not authorized by the copyright owner, its agent, or under the law; and
7. A statement that the information in the notification is accurate, and under penalty of perjury, that you are either the owner of the copyright that has allegedly been infringed or that you are authorized to act on behalf of the copyright owner.

Please note that, pursuant to 17 U.S.C. § 512(f), any misrepresentation of material fact (i.e., falsities) in a written notification automatically subjects the complaining party to liability for any damages, costs and attorney's fees incurred by us in connection with the written notification and allegation of copyright infringement.

The designated Copyright Agent for the Company is: Alon Wallach  
 Phone: (510) 517-3031  
 E-mail: alon@agwafarm.com

### **Your Comments and Concerns**

The Services is operated by Agwa, Inc.

All notices of copyright infringement claims should be sent to the copyright agent designated in our [Copyright Policy](#) in the manner and by the means set out therein.

All other feedback, comments, requests for technical support and other communications relating to the Services should be directed to:

**Agwa, Inc.**  
[info@agwafarm.com](mailto:info@agwafarm.com)