

# *DATA ACCESS & USE AGREEMENT*



*THIS DATA ACCESS AND USE AGREEMENT* ("Agreement") is made and entered by and between Illini FS, a division of GROWMARK, Inc., on its own behalf and on behalf of its affiliates and other third parties as provided for in this Agreement (individually and collectively referred to herein as "Company"), and the individual, company or other customer of Company agreeing to the terms and conditions of this Agreement ("Customer") as of the date of Customer's entry into this Agreement (the "Effective Date"), whether evidenced by a execution of this Agreement, electronic execution of this Agreement, or online consent to the terms hereof ("Consent").

**1. Access to Information.** Company provides certain products and services its customers (the "Services"). This Agreement represents the agreement of the parties that the Services are made available to Customer in partial consideration and exchange for access to certain information of Customer ("Ag Data") and certain related rights set forth herein ("Use Rights"). Customer hereby grants access to the Ag Data, and Customer warrants that the Ag Data is owned by Customer and Customer has the right to grant access thereto. Access as provided for herein shall be construed broadly, including without limitation, access to information and property of Customer as required to collect, create and compile the Ag Data, and access to any information and materials provided by Customer to Company or any third party which may be useful to Company in connection with the Services. Access to Ag Data granted hereunder shall terminate following five (5) business days prior written notice.

**2. Ag Data.** (a) Ag Data shall include and be limited to personal identifying information of Customer and the following types of data when directly identifiable as the operations of Customer: **farm management data**, including business operations, financial, tax, operating, land loans, office files, farm labor contracts, human resources, supply chain, point of sale data, partnerships, customer data, supplier data, transport and storage data, commodity prices (input and output pricing), reporting and compliance data; **machine data**, including rolling and fixed assets data, machine health and operation technique data, energy and fuel use, machine load, equipment reference data, equipment function; **land data**, including conservation data, tillage practice data, access data, water management data, source data, usage data, soil and fertility data, soil test data, nutrient management data, waste management data, environmental and ecological data, watershed data, topological data, elevation data and derivatives, drainage data, geospatial information system (GIS), global positioning system (GPS) & field boundary data, ground-

based machine data, unmanned aerial system (UAS) data, sensor collection system (EC/EM) data, remote sensing including radar, spectral, & LIDAR data; **agronomic data**, including crop seed data, genetics data, production attribute data, planting data, recommendation data, prescription data, work order data, as planted data, yield data, attribute data, quality data, disease and pest management data, crop protection data (herbicide, insecticide, fungicide), crop protection use and application rates data, prescription data, work order data, as treated / as applied data, crop nutrition data, sampling data, application and use of biological fertilizer data, application and use of crop protection fertilizer data, prescription data, work order data, as treated as applied fertility treatment data, pollinators, **climate and weather data**, including weather stations, soil probes, sensor data.

(b) Company aggregates Ag Data with that of other customers in a non-identifiable format ("Aggregated Data"). Ag Data shall not include any other information, including without limitation, Aggregated Data or regarding Customer and others when not directly or readily identifiable as related to Customer, information developed by Company or any other party within the Use Rights even if such information incorporates or is based upon Ag Data (collectively, "Company Information"). As between the parties, any information other than Ag Data shall constitute Company Information. Company Information shall be owned by Company. Customer's original Ag Data will be maintained by Company and may be retrieved by Customer at any time during the life of this Agreement, so long as Customer's account with Company is current and paid in full.

**3. Use Rights.** (a) Ag Data constitutes confidential information of Customer and shall be protected and secured by Company in a commercially reasonable manner. The Use Rights shall include the right to use the Ag Data to provide, modify, replace or expand the Services, the right to acquire support or supplemental services from third parties in connection with provision, modification, replacement or enhancement of the Services, the right to assess current or potential Services on an individualized or aggregate basis, the right to integrate the Ag Data into and with other information, materials, processes and systems of Company or any third party subject to the confidentiality provisions hereof, the right to disclose the Ag Data to any third party, including with regard to Company's participation in agricultural industry initiatives and regulatory efforts, subject to the confidentiality provisions hereof, and the right to disclose the Ag Data as required for legal and regulatory compliance.

(b) Customer grants to Company an irrevocable, royalty-free license and right to use the Ag Data for the foregoing purposes to the extent that Ag Data is integrated into or constitutes the basis for Company Information. The Use Rights shall terminate following five (5) business days prior written notice in which case Company shall destroy Ag Data in Company's possession within thirty (30) days following the effective date of such notice; provided however, that termination of Use Rights shall not require the destruction of any Company Information and Use Rights shall not terminate to the extent related to Company Information incorporating Ag Data, but any Aggregated Data shall continue to remain subject to the confidentiality obligations hereof.

(c) Company shall require any third parties contractors that will have access to Customer's Ag Data to abide by the terms and conditions of this Agreement. In the event Company offers additional integrations that allow Ag Data sharing with other third party platforms, Customer's consent will be obtained before Customer's Ag Data is disclosed to such third party platforms.

**4. Liability.** Company shall notify Customer in the event of a data breach that causes disclosure of Ag Data that has not been authorized by Customer. Company shall not be liable for nonperformance or any costs resulting from any event beyond the control of Company, including without limitation, interruption in the Services. COMPANY SHALL NOT BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE AMOUNTS PAID HEREUNDER TO COMPANY FOR THE SERVICES DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY EVENT ALLEGED TO CAUSE LIABILITY FOR COMPANY, NOR SHALL COMPANY BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOST PROFITS OR ANY FORM OF CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**5. Miscellaneous.** This Agreement constitutes the entire understanding of the parties with regard to the subject matter hereof and shall not be amended except by Company from time to time with notice to Customer. Notice may come in different forms, including without limitation, email or on Customer's log in page for the Services. Company shall have the right to assign this Agreement at any time without restriction or obligation; provided however, that this Agreement shall benefit and bind the heirs, successor and assigns of the parties. The Services are provided as is, without representation or warranty, the entry into and performance of this Agreement shall create no future duty upon Company, including any obligation to provide additional Services to Customer, and this Agreement, the Services and Customer use of Company's website are subject to, and this Agreement hereby incorporates, Company's online terms and conditions as posted on Company website and amended from time to time; provided however, that the terms of this Agreement shall control in the event of any conflict between such terms and conditions and the terms hereof. The terms hereof shall be deemed to be the language of both parties, and no rule of strict construction shall be applied. If any term, clause or provision hereof is held invalid, such invalidity shall not affect the validity or operation of any other term. Notices required hereunder shall be effective three (3) days following mailing to Company's principal place of business. This Agreement shall be governed in accordance with Illinois law, and any action hereunder shall be brought only in courts located in Illinois. This Agreement and any amendment shall be effective without any signature required of either party.