

Agworld API Development Agreement

Last updated: 19 April 2017

1. OUTLINE

These terms and conditions and specified parts of Our website will form the agreement between You and Us for Your use and access to Our range of Application Programming Interfaces (**APIs**) which are included in our **Development Platform**.

BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR USING OR CONTINUING TO USE OUR SERVICES, EACH OF WHICH ACTIONS CONSTITUTES YOUR ACCEPTANCE OF THIS AGREEMENT FOR GOOD CONSIDERATION, 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.

2. OUR DEVELOPMENT PLATFORM

Your entry into this Agreement and the access it gives You to our Development Platform will allow You and Your Users to connect Your applications, products and services (**Your Applications**) with the applications, products and services comprised in the Agworld System, in particular by use of one or more of Our APIs (**Our Services**).

3. ACCESS TO YOU AND YOUR USERS

Following Your entry into this Agreement We may approve or allow You access to one or more of Our APIs in our sole discretion and subject to such further conditions as We prescribe. Access to Our Services by Your Users following Your entry into this Agreement will be governed by the terms of our then current subscription agreement (now described as the Master Subscription Agreement) with each such User, in addition to any applicable terms in this Agreement.

4. LICENCE

Subject to the terms and conditions of this Agreement, We will grant You and You will accept a non-exclusive, royalty free, non-transferrable, non-sublicensable and revocable licence to:

- (a) Use Our APIs to develop Your Applications;
- (b) Copy and display a reasonable amount of Content on Your Applications; and
- (c) Modify Content but only to reformat it for the purposes of display on Your Applications.

5. BRANDING

You must not use Agworld Branding except with Our express written consent, in which case You must always comply with Our Branding Guidelines and any other conditions We may apply to such use. You must not use or allow the use of Agworld Branding (including in Your Applications, on Your websites and in any related advertising or other publications) in any way, including in any derivative works, that suggests or implies any certification, approval or endorsement by, or association with, Us except as We may require as a condition of this Agreement, in particular to identify Us as a source of Content and owner and operator of the Development Platform.

6. YOUR USE OF OUR SERVICES

You are free to develop and write Your Applications as You wish but so far as they rely on or use Our Services You must not and will not allow others (including Your Users) to:

- (a) resupply, assign, license, lease or sub-contract Our Services;
- (b) use Your Applications:
 - (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 Our Services);
 - (ii) in a manner which does, or is reasonably likely to, degrade the performance of Our 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 Our Services or the Agworld System, or jeopardises their integrity, safety or security;
- (c) use Your Applications to store or transmit any data which:
 - (i) infringe the rights of third parties;
 - (ii) are defamatory, libellous 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;
- (d) use Your Applications to store or transmit Malicious Code;
- (e) recreate, reverse engineer, disassemble, reverse compile, translate or in any way derive any source code or object code of or relating to Our Services or the Agworld System;
- (f) attempt to gain, or allow Your Users to gain, unauthorised access to Our Services or the Agworld System or its related systems and networks; or
- (g) subject to any Non-Excludable Law, participate or be involved during the term of this Agreement and for two years thereafter, directly or indirectly, in establishing, selling or contributing to the development of any proprietary software system which mimics, attempts to replicate, is comparable to or which competes in any way with the Agworld System.

You must also observe and comply with any technical documentation, standards, policies and directions We issue from time to time relating to our Development Platform, the operation of Our Services and Your use of Our APIs.

7. RATE LIMITS

You will observe and in no circumstances attempt to exceed limitations We may impose on access, calls and use of Our APIs (**Rate Limits**). We also reserve the right to monitor Your and Your Users' use of Our APIs to ensure compliance with this clause 7 and to suspend or terminate Your use and access to Our Services if You exceed any Rate Limits We impose.

8. UPDATES AND NEW RELEASES

You acknowledge and accept that We may update and modify and replace Our APIs from time to time and may as a consequence require You to use the current versions of Our APIs. In any such case You will at Our request make any changes to Your Applications that are required as a result of any such updates, modifications or replacements at Your sole cost and expense and without recourse to Us for any compensation for any loss or damage You may incur.

9. INTELLECTUAL PROPERTY

9.1. **Ownership of Our Intellectual Property Rights.** You acknowledge We (or Our licensors) own all Intellectual Property Rights in Our APIs, Branding Material, the Agworld System and any other material or methods developed by Us in providing Our Services (**Our Intellectual Property Rights**).

9.2. **Covenants.** You will not:

- (a) represent Yourself as the owner of or having any interest in Our Intellectual Property Rights;
- (b) use or allow the use of any of Our Intellectual Property Rights in a manner that is contrary to or conflicts with or in any way damages those rights;
- (c) challenge or call into question in any way Our right, title, interest and goodwill in Our Intellectual Property Rights; or
- (d) register or attempt to register under the provisions of any statute or otherwise Our Intellectual Property Rights of the other party.

9.3. **Suggestions.** You grant to Us a royalty-free, worldwide, irrevocable and perpetual licence to use and incorporate into Our Services any suggestions, enhancement requests, recommendations or other feedback provided by You and Your Users relating to the presentation, use, operation, supply and marketing of Our Services.

9.4. **Extension.** A reference in this clause 9 to Our Intellectual Property Rights includes in Our case Our Affiliates' Intellectual Property Rights.

10. CONFIDENTIALITY

All Confidential Information We provide to You 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 those of your employees, legal advisers, auditors and other consultants who need to know the information for the purposes of this Agreement;
- (b) if required by law; or
- (c) if You have first obtained Our informed and written consent.

You agree that You will take all necessary precautions to protect such Confidential Information from unauthorised use, access or disclosure and in that regard do no less than You would do to protect Your own confidential and proprietary information.

11. DATA PROTECTION AND PRIVACY

11.1. **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, in particular as regards additional provisions relating to data protection and privacy, the latter will prevail.

11.2. **Your Applications.** In Your Applications and related websites, material and publications You must include terms and conditions of use which include or which incorporate a privacy policy which is prominently identified and accessible to Your Users. Such policy must meet all applicable legal standards and requirements in the particular jurisdiction or jurisdictions in which it applies and accurately describe Your practices as regards the collection, use and sharing of data, including in particular Personal Information and information which is otherwise clearly sensitive. Such conditions must be no less strict than the terms and conditions of Our Data and Protection Policy.

11.3. **Security Precautions.** In providing access to Your Users You will take all necessary security precautions including provision of passwords and user names including instructions on their proper

use and protection so as to ensure data and confidential information relating to Our operations and customers remains secure and protected.

12. FEES

We will not charge You for our Services unless otherwise advised but we do reserve the right to charge Your Users a fee for their use of Our Services for any use in excess of 500 calls on one or more of Our APIs in any period of 24 hours. Provision for such fees will form part of the subscription agreement between Us and individual Users.

13. TERM AND TERMINATION

13.1. This Agreement commences on the date of Your acceptance in accordance with clause 1 or such other date as We specify to You and will continue until it is terminated in accordance with this clause 13.

13.2. You may terminate this Agreement in whole or in part (for example in relation to particular APIs You no longer wish to use) on giving Us no less than 5 business days' notice of Your intention to cease using Our APIs.

13.3. We may terminate or suspend this Agreement:

- (a) at any time and for any reason on giving You no less than 20 business days' notice; or
- (b) at any time and with immediate effect if You are in breach of this Agreement, or You have otherwise engaged in fraudulent, damaging or unlawful activities which in Our view may or will compromise or adversely affect the operation or integrity of Our Services or the Agworld System.

13.4. On termination of this Agreement:

- (a) all licences and rights granted to You pursuant to this Agreement will terminate immediately and You must cease using Our Services;
- (b) You must at our direction delete or destroy any Confidential Information You hold; and
- (c) neither You nor We will be liable to each other by reason only of the termination of this Agreement.

14. DISCLAIMER

14.1. **Disclaimer.** OUR SERVICES ARE PROVIDED TO YOU "AS IS" AND, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND SUBJECT TO ANY NON-EXCLUDABLE LAW, WE DO NOT MAKE ANY REPRESENTATIONS OR GIVE ANY WARRANTIES OR GUARANTEES IN RELATION TO OUR SERVICES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW IN RELATION TO OUR SERVICES. FURTHER AND SUBJECT TO ANY NON-EXCLUDABLE LAW, WE DO NOT MAKE, GIVE OR PROVIDE ANY REPRESENTATION, UNDERTAKING, WARRANTY OR GUARANTEE IN RELATION TO THE DEVELOPMENT PLATFORM, OUR APIS OR OUR SERVICES, INCLUDING IN RELATION TO THE RESULTS OR OUTCOMES THAT WILL OR MAY BE ACHIEVED, THE LEVEL OF ACCESS TO AND THE COMPLETENESS, AVAILABILITY AND RELIABILITY OF OUR SERVICES INCLUDING TIMELINES AND SERVICE AVAILABILITY, FREEDOM FROM DEFECTS IN ANY SOFTWARE USED AND FAILURE IN ANY TELECOMMUNICATIONS OR OTHER MEANS OF CONNECTION TO OUR SERVICES.

15. LIMITATION OF LIABILITY

15.1. **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 YOU PAID US (IF ANY) 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).

15.2. 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 OUR SERVICES.

15.3. Operation of Law. 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 clause 14 or this clause 15 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.

16. YOUR REPRESENTATIONS AND INDEMNITY

You will defend Us from and against all and any demands, claims and proceedings and indemnify and hold Us harmless from and against any and all liabilities, damages and costs (including legal fees We incur on a full indemnity basis) which arise from or are a result of:

- (a) Your Use of Our Services in breach of this Agreement;
- (b) Your Applications; or
- (c) Your breach of Our Intellectual Property Rights,

except to the extent any such liability, loss, damages or costs are caused by or contributed by Our negligence or default.

17. 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; and (d) the courts which have non-exclusive jurisdiction in respect of disputes in connection with this Agreement.

18. GENERAL PROVISIONS

18.1. 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).

18.2. 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 or, in the case of international mailing, on the sixth 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 also responsible for notifying Us of any change in Your contact details.

18.3. **Extension to Our Affiliates and personnel.** Every indemnity, 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.

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

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

18.6. **Waiver.** No failure or delay on Our part in exercising any right under this Agreement will constitute a waiver of that right.

18.7. **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.

18.8. **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.

18.9. **Entire Agreement.** This Agreement (including these terms and conditions, the Schedule, all applicable provisions and parts of Our website referred to in these terms and conditions and any Registration Form) contains the entire understanding between the parties concerning the provision of Our 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, in relation to the subject matter of this Agreement.

18.10. **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 earliest 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.

18.11. **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.

19. DEFINITIONS

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

Agworld Branding means Our trade names, trade marks, service marks, logos, domain names and other distinctive brand features.

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.

APIs and Our APIs means Agworld’s Programming Interfaces and includes software development kits, related documentation, data, code and access credentials (including user names and passwords).

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

Confidential Information means all information We disclose to You concerning Our business or Our Services which we specify to be confidential or which would reasonably be understood to be confidential. For the avoidance of doubt, all information and specifications we provide in relation to Our APIs and in any supporting documentation are confidential.

Content means data and information which We make available to You through Our APIs and any copies and other material which may be derived from such data and information.

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 know-how; 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-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 which otherwise would be permitted under this Agreement.

Our Branding Guidelines mean the guidelines we publish from time to time which describe the permitted use and display of Agworld Brands and which can be found at [Agworld Style Guide](#).

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 anyone 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 any services You or We may provide and any demographic information which is particular to that individual.

Schedule means the schedule to this Agreement.

Users and **Your Users** mean individuals who are authorised by You to use Your Applications and who have been supplied user identifications and passwords by You. Users may include but are not limited to Your employees, consultants, contractors and agents and third parties with whom You transact business. Each User will in the normal course be required to enter into a separate subscription agreement (now described as the Master Subscription Agreement) with Us which sets out the terms and conditions of their individual access to and use of Our Services.

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.

SCHEDULE

A. If You are located in Australia the following terms also apply to You:

You are contracting with:	Notices should be addressed to:	The governing law is:	The courts having exclusive jurisdiction are:
Agworld Pty Ltd ACN 136 483 951, a proprietary limited company incorporated in Western Australia	Agworld Pty Ltd PO Box 1472 West Leederville WA 6901	The law in force in Western Australia and applicable laws of the Commonwealth of Australia	The courts of Western Australia, the Federal Court of Australia in Western Australia and courts of appeal from them.

B. If You are located in the United States of America the following terms also apply to You:

You are contracting with:	Notices should be addressed to:	The governing law is:	The courts having exclusive jurisdiction are:
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

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

You are contracting with:	Notices should be addressed to:	The governing law is:	The courts having exclusive jurisdiction are:
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 6901	The law in force in New Zealand	The courts of New Zealand