

**1. Services Provided**

The SP will collect, hold, and share data pertaining to the farm activities in accordance with the agreed terms and conditions set out in this agreement.

**2. Term and Termination**

**2.1 Term:** This Agreement commences on the Commencement Date and continues for a period of 24 months from the date of ability to transmit data under clause 4 of the Services as set out in the Data Source Details.(Initial Term). Upon expiry of the Initial Term, this Agreement will automatically renew for consecutive 12 month terms commencing on each anniversary of the Commencement Date unless either party gives notice to the other confirming that the Agreement will not renew at the expiry of the Initial Term or the next anniversary of the Commencement Date (as applicable), such notice to be given at least 60 Business Days prior to that expiry or next anniversary.

**2.2 Termination by SP:** If, upon installation of the Equipment, SP discovers that it is not able to provide the Services to the PP for reasons outside its reasonable control (such as, without limitation, the physical or topographical constraints of the Data Source), then SP may immediately terminate this Agreement by giving written notice to the PP. To avoid doubt the PP shall pay SP for all Services provided by SP up to and including the date of termination.

**2.3 Termination for cause:** Either party may terminate this Agreement immediately by giving notice to the other party, if the other party;

- a. Commits a material breach of this Agreement and fails to remedy that breach within 10 Business Days in receipt of notice of the breach from the first party; or
- b. Becomes insolvent, is placed in receivership or liquidation, is the subject of any winding up or liquidation resolution or order, or is subject to any other form of insolvency action or administration.

**2.4 Expiry or termination:** Clause 17 shall survive the expiry or termination of this Agreement.

**2.5 Effect of termination:** Termination of the Agreement is without prejudice to the rights and obligations of the parties accrued up to and including the date of termination.

The parties acknowledge the term is for a period of (24) Twenty Four months from the date of this agreement with automatic renewal unless terminated as set out in clause 15.

**3. Definition: In this Agreement, unless the context otherwise requires:**

**Agreement:** means this agreement

**Business Day:** means a day other than a Saturday, Sunday, or a public holiday within New Zealand

**Charges:** means the charges payable by the PP for the Services from time to time as set out in this Agreement

**Commencement Date:** means the date this Agreement is signed by both parties

**Data:** means any data;

- a. Collected and transmitted via the Equipment from the Data Sources; or
- b. Collected by or provided to the SP by the Customer for the purposes of this Agreement

**Data Sources:** means the data sources set out on the front page of this Agreement

**Equipment:** means the telemetry equipment and sensors used to collect and transmit Data from the Data Source (s) to the SP.

**Force Majeure:** means any cause or circumstances beyond the reasonable control of a party including riots, acts of war, epidemics, governmental action after the *Commencement Date*, legislative change, strikes and other industrial action, communication line or internet failures, power failures, earthquakes or other disasters.

**Intellectual Property Rights:** means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how confidential information and any other intellectual or industrial property rights, whether or not registered.

**Permitted User::** means the PP and the third party data vendor authorised by the PP in accordance with clause 5e.

**Services:** means the services set out in clause 1

**Source Codes:** means the devices within the PP property from which data is collected.

**Raw Data:** means the data collected from the sensors belonging to PP which has not in any way been modified or interpreted.

**4. Interpretation: For the purposes of this Agreement, unless the context requires otherwise:**

- a. Words importing the singular or plural number include the plural and singular number respectively;
- b. A reference to:
  - i. A “person” includes any individual, corporation, unincorporated association, government department or municipal authority
  - ii. \$ or “dollar” is a reference to New Zealand currency; and
  - iii. “including” and similar words do not imply any limitation; and
  - iv. Any covenant not to do anything also constitutes an obligation not to suffer or permit or cause that thing to be done.

**5. SP Obligations**

SP to provide Services; SP must:

- a. Provide the Services to the PP subject to, and in accordance with, the terms of this Agreement
- b. Provide the Services in a proper, professional and workmanlike manner; and
- c. Exercise due care, skill and diligence at all times.
- d. Provided that SP shall not be in breach of this Agreement to the extent that it is unable to comply with this clause 2.1 (or any other provision of this Agreement) due to;
  - i. Any act or omission of the PP(or its Authorised Data Vendor)
  - ii. Without limiting clause 2.2 any loss of transmission or transmission failure that is outside the reasonable control of SP (**Transmission Failure**); or
  - iii. Any downtime required for repair and maintenance of the Service, including the Equipment
- e. Only permit access to the data upon evidence of a Data Interchange Agreement between the PP and an Authorised Data Vendor.

**5.1Transmission Failure:** In the event of a Transmission Failure, SP will use it’s best endeavours to remotely diagnose the Transmission Failure and will take all reasonable steps to resume transmission as soon as practicable. Despite the previous sentence, SP shall not be liable to the PP under this Agreement or otherwise for any loss or damage suffered or incurred by the PP as a result of Transmission Failure.

**6. PP Obligations**

**6.1 General:** The PP must only use the Service for:

- a. its own internal business purposes; and
- b. for lawful purposes,  
and must not resell the Service

**6.2 Access Conditions:** The provision of the Services by SP is subject to the PP complying with the following conditions:

6.2.1 Access to the Services by the PP is limited to the Permitted Users. The PP must not permit any other person to access or use the Services (including any accessing Source Codes). To avoid doubt, the PP must only use the Source Codes for its own internal business purposes and must not on-sell or otherwise provide the Source Codes to any third party.

6.2.2 In accessing the Services, the PP must:

- i. not attempt to undermine the security or integrity of SP computing systems or networks or those of any third parties engaged by SP in the provision of the Services
- ii. not transmit, or input into the Equipment or the Website, any Data or other material in violation of any law, including material protected by copyright, legally judged to be threatening or obscene, protected by trade secrets, or in relation to which it has not obtained the necessary consent to use it:
- iii. comply with any terms of use on the Website as amended from time to time by SP by posting the new terms on that Website; and
- iv. comply with all reasonable direction of SP, including, where applicable, undertaking a visual inspection of the Equipment as requested by SP.

## 7. Equipment

**7.1 Ownership:** Title in the Equipment shall pass to the PP on payment of the Charges in respect of the Equipment to SP. Risk in the Equipment shall pass to the PP on delivery of the Equipment to the PP.

- a. **Customer Obligations.** The PP shall, during the term of this Agreement; protect the Equipment from damage, except reasonable wear and tear, and any kind of loss, including by ensuring that the Equipment is fenced off and protected from animals and works carried out on the Site;
- b. not interfere with or disconnect all or any part of the Equipment, without the prior written consent of SP; and
- c. subject to clause 19.2, be solely responsible for the maintenance and repair of the Equipment .

## 8. Charges

**8.1 Charges;** The PP must pay to SP the Charges plus Gst in accordance with the payment terms set out in the Details.

**8.2 Adjustment to Charges;** SP reserves the right to change the Charges to apply for the next renewal term by notifying the PP at least 65 Business Days prior to the expiry of the current term.

**8.3 Invoices;** SP will provide the PP with a valid tax invoice for Charges under this Agreement by the invoice dates specified in the Detail.

**8.4 Payment;** The PP must pay an invoice no later the payment dates specified in the payment terms in the Details and without deduction or set off;

**8.5 Interest on overdue monies;** If the PP defaults in the payment of any monies payable under this Agreement by the due date for payment, then the PP must pay to SP interest at the rate of 8% above the then overdraft lending rate of the ASB Bank on the monies unpaid from the due date for payment until the actual date of payment.

## 9. Subcontracting

**9.1 Appointment of Subcontractors;** SP may subcontract any or all of the Services to a third party. Despite the previous sentence; SP shall remain principally liable to the PP for the performance of its obligations under this Agreement.

## 10. Rights to Data

The SP acknowledges the rights to farm data remain the ownership of the PP and SP will interchange farm data with a third party only upon the authorisation of the PP. Should the PP request the SP to make available their farm data to a third party, the SP will ensure they hold a valid authorisation referred to as the Data Interchange Authority between the PP and the third party. The PP acknowledges the data being stored by the SP is in raw format and SP has no obligation to provide an interpretation of the data to either the PP or third party within the terms of this agreement

## 11. Security of Data

The SP makes known to the PP they have in place policies and procedures to ensure all staff and sub-contractors comply with security and privacy best practice. PP is advised SP has an information security management system in place to protect against data being compromised and an appropriate back- up and recovery regime is in place.

## 12. Data Access

a. Access by the PP - SP advises PP the data collected and stored in raw format. The PP may only view or extract the data in JSON format pertaining to their farming operations by applying to SP for a login key. The login key shall only be provided once the PP or authorised third party conforms to the Farm Data Code of Practice. The login key provides access for the PP or authorised third party to GET the data to store on their own device. SP take no responsibility for the integrating of the data once the data has been transferred to an external device.

b. Access by third party – SP will provide access by third – party only upon receiving a Data Interchange Authority duly executed by both parties. The Data Interchange Authority will provide the third party with access only to the data pertaining to the data sources included in the authority.

c. SP will provide the third party with an API key enabling the third party to make a GET which will result in:

- i. Name of the farm
- ii. Supply number
- iii. Access status
- iv. Historical access status
- v. Access expiry

d. Migration of Data –SP will provide the third party with access to multiple data sources as per the Data Interchange Authority providing the API with a list of devices from which they can GET data from which the third party has the ability to migrate data to meet the reporting needs of the PP.

e. Formats & Standards Supported – SP has developed the MSPL which interfaces to the Smart Farm Data Services Data Portal utilising the JSON format. The response through this format uses UniqueID and DeviseType to identify the sensor and make requests to retrieve data from it. The major technologies used on the system are, JSON,C# (ASP.Net with MVC5 framework), MsSQL with LINQ

## 13. Data Sovereignty

Data is stored in a centralised Web API We have ensured that we are using a Comodo Certified certificate (HTTPS/SSL), Vendors are required to use a Hash to request data from the web portal. The software has been built on the MVC5 .net framework. All users/vendors created have accounts stored in a secure environment.

The legal jurisdiction in which data is stored is hosted at Microsoft Azure's South East Asia – Singapore Data Centre.

The legal jurisdiction where back-ups are automatically stored is on Microsoft Azure's South East Asia – Singapore Data Centre, which is

a cloud hosted service providing additional back up reliability.

#### **14. Subscription Fee**

You have subscribed to Gateway Data Services, the initial period of your subscription is specified in your invoice (the "Initial Period"). After the Initial Period, your subscription will automatically renew for successive twelve month periods, unless terminated by you in accordance with clause 15.

Subscription fees are payable in advance unless we have agreed to accept payment by way of instalments over the period of the subscription. However, where payment is made in instalments, a 15% surcharge may be applied to the agreed price.

We may increase the subscription fee if you request data services from additional farm sensors relating to your farm (Additional Services) and/or we may increase your subscription fee if we provide enhancement of the Software (an "Enhancement"). Such increases in the subscription fee will take effect upon your receipt of the Additional Services and/or Enhancement. However you may notify us prior to receipt of the Additional Services or Enhancement that you do not wish to receive the Additional Services and/or Enhancement, in which case your subscription fee will not be increased.

We may review your subscription fee on renewal of your subscription. We will give you 30 (thirty days) working day's notice of the increased subscription fee.

#### **15. Cancellation**

If you wish to cancel a Service Level Agreement, you must notify us in writing within 60 days of the date of your first invoice for the products or Agreement or within 60 days of any renewal invoice for that subscription.

All notices of cancellation must be in writing and sent by email addressed to: [admin@gatewaydataservices.com](mailto:admin@gatewaydataservices.com).

Notwithstanding the above, nothing in these terms and conditions will limit or affect any rights that a non-business consumer may have under the Consumer Guarantees Act 1993.

#### **16. Suspension or Modification of Agreement**

We may discontinue or revise any or all aspects of this Agreement at our sole discretion and without prior notice to take account of (for example but without limitation) changes in law or circumstance relating to the supply of that Agreement.

We may, without notice, suspend access to the Software, in whole or in part, until further notice, with immediate effect:

- to periodically maintain or improve the Software and related systems;
- to comply with any order, instruction or request of any government, any emergency services organisation, or other competent judicial, administrative or regulatory authority;
- if we believe that the Software may be used in such a way as may constitute a breach of any provision of these terms and conditions; or
- if you fail to pay all or part of any fee by the due date.

We will endeavour, where possible, to provide you with reasonable notice of such suspension.

Whilst we will use our best endeavours to minimise disruption to your use of the Software, unscheduled outages may occur from time to time.

#### **17. Consequences of Suspension and Termination**

Upon termination or suspension of an Agreement for any reason, we may immediately disable access to the Software and neither you nor any users within your organisation or any third party will be entitled to access the Software.

If we remove or modify any or all of the Software (in accordance with clause 16), we may, at our discretion, refund your subscription fee. Any such refund shall be limited to a pro-rata refund of the subscription fee provided you have already paid for access to the relevant Agreement.

If we have suspended your access to Software for failure to pay all or part of the fee by the due date, we will at our sole discretion (unless required otherwise by law) reconnect or re-commence supply of the Software to you for the remainder of the subscription period, provided that you first pay the full amount for which you have been invoiced along with a re-connect fee of \$50 (Fifty dollars) plus gst.

#### **18. Privacy**

For the purposes of this clause, "Personal Information" has the meaning given to it in the Privacy Act 1993 (the "Privacy Act").

You expressly acknowledge and consent to us collecting and using Personal Information provided by you for credit, administration, service and marketing purposes. Any Personal Information collected will be held by Gateway Data Services Ltd, Level 4 5 The Crescent, Invercargill 9810, New Zealand.

You expressly acknowledge and consent to our:

- a. transferring and disclosing Personal Information provided by you to third party Agreement providers within New Zealand; and such third party Agreement providers storing and processing such Personal Information provided by you on servers within New Zealand.

We will each comply with the privacy laws applicable to our respective organisations under these terms and conditions. In particular, but without limitation, you warrant that:

- a. you will only disclose Personal Information about an individual to us if necessary for the purposes of these terms and conditions;
  - i. in so doing you will comply with the Privacy Act including but not limited to Information Privacy Principles 1, 3 and 9;
  - ii use and disclosure of such Personal Information by us in accordance with these terms and conditions will not result in a breach of the Privacy Act by either of us; and
- ii. you have obtained all necessary consents or authorisation required under the Privacy Act in respect of any Personal Information provided to us such that we are able to provide the Agreements to you in accordance with these terms and conditions.

You are responsible for ensuring that if a third party is required to disclose Personal Information to us for the purposes of these terms and conditions on your behalf, or at your request, such disclosure by the third party complies with the Privacy Act.

If we are required to retain any Personal Information by Law:

- i. you have taken all steps to ensure that we are permitted to do so, and
- ii. on reasonable notice, and payment of a reasonable charge, we will make such information available for inspection by you and your auditor.

#### **19. Intellectual Property**

##### **19.1 Ownership:**

###### **19.1.1**

Subject to clause 12.b, title to, and all Intellectual Property Rights in, the Services, the Website and any documentation on, or in relation to, the Services or the Website remain the property of Gateway Data Services Ltd (or its licensors)

###### **19.1.2**

Title to, and all Intellectual Property Rights in, Raw Data remain the property of the PP.

**19.2 Intellectual Property Rights warranty:** The SP warrants to the best of its knowledge and belief that the PP's use of the Services does not infringe the Intellectual Property Rights of any third parties.

**19.3 Third Party Claims:** If any challenge is made to the SP right to provide the Services claiming Intellectual Property Rights are breached by their provision (IP Claim), the SP shall have, at its option, the following rights:

19.3.1

To modify or replace the items which are the subject of the IP Claim so that they become non-infringing; or

19.3.2

To procure for the PP the right to continue using the items which are subject to the IP claim; or

19.3.3

To discontinue providing the services, without providing compensation for the discontinuances.

#### **19.4 Intellectual Property Indemnity:**

19.4.1

The SP shall defend and indemnify the PP against, and pay the costs (including legal costs on a solicitor own client basis), damages or liability arising out of, any action, claim, or settlement alleging infringement of any third party's Intellectual Property Rights (IP Claim) arising out of or in connection with the PP's use of the Services, subject to the PP:

- i. promptly notifying the SP in writing of any allegation of infringement;
- ii. making no admission without the SP's consent; and
- iii. at the SP's request, allowing SP to conduct and /or settle all negotiations and litigation and giving the SP all reasonable assistance.

The costs incurred or recovered in such negotiations and litigation will be for the account of the SP.

19.4.2

If at any time an IP Claim is made, or in the SP's reasonable opinion is likely to be made, or in the defence or settlement of such claim, SP may (at its discretion):

- i. modify or replace the items which are subject to the IP Claim so they become non-fringing, provided that this does not have a material adverse effect on the Services; or
- ii. procure for the PP the right to continue using the items which are subject to the IP Claim.

19.4.3

The SP is not obliged to indemnify the Customer under this clause to the extent that an IP Claim arises from or in connection with:

- i. use of the Services by the Customer in a manner or for a purpose not reasonably contemplated by the Agreement or not authorised by the SP; or
- ii. use the Services in combination by any means and in any form with other items not specifically approved by the SP

## **20. Warranties**

**20.1 Authority:** Each party warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute valid and binding obligations on it in accordance with its terms.

#### **20.2 Equipment and Warranty:**

- a. The SP warrants that the Equipment will be free from material defects in workmanship and materials for a period of 12 months from the date the Equipment is installed on the Sites
- b. The SP sole obligation in respect of any breach of the warranty in clause 20.2a shall be to repair or replace the defective Equipment at no charge to the PP, provided that the PP shall be solely responsible for any freight costs associated with the repair or replacement of the defective Equipment under warranty.

**20.3 No Implied Warranties:** The SP warranties are limited to those set out in this Agreement and any implied conditions or warranties (including warranties under the Sale of Goods Act 1908) are excluded. Without limit and despite anything to the contrary in this Agreement, the SP does not warrant that the Services:

- a. will meet the PP's requirements
- b. will be uninterrupted or error free; or
- c. are fault-tolerant or designed, manufactured or intended for use in environments, requiring fail-safe performance

**20.4 Limitation of Remedies:** Where legislation or rule of Law implies into this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application or exercise of a liability under such condition or warranty, the condition or warranty is deemed to be included in this Agreement. However, the liability of the SP for any breach of such condition or warranty is limited, at the option of SP, to:

- a. repairing or replacing the Equipment in accordance with clause 20.2b;
  - b. supplying the Services again; and/or
- paying the costs of having the Services supplied again.

**20.5 Consumer Guarantee:** The PP agrees and represents that it is acquiring the Services and entering this Agreement for the purposes of a business and that the Consumer Guarantees Act 1993 does not apply to the supply of the Services or this Agreement.

## **21. Limitation of Liability and Indemnity**

**21.1 Unrecoverable losses:** Neither party is liable to the other party for any indirect, incidental or consequential loss or damage or loss of revenue, profit, savings, or Data arising out of or in connection with this Agreement. This clause does not apply to the PP's liability to pay the Charges when due and payable under this Agreement.

## **22. Governing Law and Jurisdiction**

This Agreement is governed by and construed in accordance with the laws of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the courts of that jurisdiction.