

## BITSTRATA SYSTEMS INC.

### AGRIMATICS CLOUD SERVICE - TERMS AND CONDITIONS

Last Updated: October 30, 2014

These Terms and Conditions (the “**Agreement**”) are an agreement between you (“**You**”) and Bitstrata Systems Inc. (“**Bitstrata**”) regarding your use of the Agrimatics cloud-based solution and user interfaces, including all features and functionalities and all associated content and software.

**IMPORTANT: CLICKING THE “I ACCEPT” BUTTON BELOW INDICATES THAT YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, PLEASE CLICK ON THE “EXIT” BUTTON BELOW.**

#### ARTICLE 1 – DEFINITIONS

In this Agreement:

- 1.1 Account:** means Your membership account to the Agrimatics Service, represented by Your unique account number, which allows You to access and use the Agrimatics Service.
- 1.2 Aggregated Data:** means a compilation of multiple users’ data relating to the use of the Agrimatics Service with respect to which Bitstrata has taken commercially reasonable precautions to ensure that no individual, particular transaction or entity can be identified.
- 1.3 Agrimatics Data:** means any proprietary information, documents, records, materials or data provided to You or accessible by You through use of the Agrimatics Service.
- 1.4 Agrimatics Aero Basic Service:** means the Agrimatics cloud-based solution which allows You to automatically upload, store, view and export Your Data through a web app.
- 1.5 Agrimatics Aero Pro Service:** means the Agrimatics cloud-based solution which includes the Agrimatics Aero Basic Service and additionally, upon payment of the applicable Service Fee, allows You to synchronize, view and edit Your Data across multiple mobile devices and a web app.
- 1.6 Agrimatics Service:** means the Agrimatics Aero Basic Service and, where You have signed up for and paid the corresponding Service Fees, the Agrimatics Aero Pro Service.
- 1.7 IP Rights:** means any intellectual property rights recognized by law (including any intellectual property rights protected through legislation such as governing patents, trade-marks, copyrights and industrial designs) and all intangible rights or privileges of a nature similar to any of the foregoing, whether or not registered or patentable, and shall include all rights in any applications and granted registrations for any of the foregoing.
- 1.8 Service Fee:** means the fee which You agree to pay in consideration for access to the Agrimatics Aero Pro Service.

- 1.9 Your Data:** means any data, information or materials gathered, compiled, uploaded, created or authored by You using the Agrimatics Service (including but not limited to load weights and associated land locations), but does not include information or other data proprietary to Bitstrata.

## **ARTICLE 2 – THE AGRIMATICS SERVICE**

- 2.1 License to Use Agrimatics Aero Basic Service.** Bitstrata grants You a personal, non-transferable and non-exclusive right and license, for the term of this Agreement, to access and use the Agrimatics Aero Basic Service for the purpose of uploading, storing, viewing and exporting Your Data using a cloud-based solution and a web app.
- 2.2 License to Use Agrimatics Aero Pro Service.** Subject to completion of the sign-up procedure and the payment of the Service Fees described in Article 3 below, Bitstrata grants You a personal, non-transferable and non-exclusive right and license, for the term of this Agreement, to access and use the Agrimatics Aero Pro Service for the purpose of synchronizing, viewing and editing Your Data among and between a number of mobile devices and a web app.
- 2.3 Restrictions On Use.** You agree that You will not create derivative works of, reverse engineer, decompile, disassemble, adapt, translate, transmit, arrange, modify, copy, bundle, sell, sublicense, export, merge, transfer, loan, rent, lease, assign, share, outsource, host, publish, make available to any person or otherwise use, either directly or indirectly, the Agrimatics Service in whole or in part. You agree not to permit, allow or do anything that would infringe or otherwise prejudice the proprietary rights of Bitstrata or its licensors.
- 2.4 Changes to Service.** Bitstrata may, at its sole discretion, enhance, delete or modify the features, format, characteristics, functionality, and/or the procedures to use the Agrimatics Service, the information available to You through use of the Agrimatics Service and upgrades or updates to the Agrimatics Service, provided that such changes will not materially adversely affect Your use of the Agrimatics Service.
- 2.5 Changes to Terms.** Bitstrata may amend the terms and conditions of this Agreement from time to time by providing such revised Agreement to You or by publishing the revised Agreement on the Agrimatics Aero website. You are responsible for periodically reviewing the amendments on the Agrimatics Aero website and You are deemed to be aware of such amendments. Your continued use of the Agrimatics Service shall constitute Your acceptance to be bound by the revised Agreement.

## **ARTICLE 3 – SERVICE FEES FOR AGRIMATICS AERO PRO SERVICE**

- 3.1 Service Fees.** You acknowledge and agree that by signing up for the Agrimatics Aero Pro Service, You agree to provide Bitstrata with the annual Service Fees due in advance and in any event, no later than the 30th day of the first month of the applicable annual Term. The amount of such Service Fee shall be set out in the “Accounts” section within the web app. Bitstrata reserves the right to change the fee schedule at any time.
- 3.2 Consequences of Non-Payment or Delayed Payment of Fees.** If You fail to make prompt payment of the Service Fees when due, Bitstrata will provide You with notice of such default and may suspend or terminate this Agreement unless you have made payment within ten (10) days of the notice of default.

- 3.3 Payment Processor:** You specifically acknowledge that Bitstrata may use a third party payment processing service in connection with Your Service Fees. You consent to the collection and use of Your Data (including, if applicable, personal information) by such payment processing service as necessary to process your payments.
- 3.4 Billing Errors and Discrepancies.** In the event You believe that Bitstrata has billed You in error, You must contact Bitstrata within sixty (60) days of the date of invoice. No refunds or adjustments will be provided for charges that are more than sixty (60) days old.
- 3.5 Currency.** All pricing is in United States dollars.
- 3.6 Taxes.** All prices exclude any applicable sales, retail, excise or similar taxes (including GST). You are fully responsible for any such taxes that You are obligated to pay or which we may collect from You in accordance with applicable laws.
- 3.7 No Refunds.** Service Fees are non-refundable. For greater certainty, regardless of the reason for termination, if the Agreement is terminated prior to the end of the annual Term all Service Fees that You paid in advance are non-refundable.

#### **ARTICLE 4 – PRIVACY AND DATA**

- 4.1 Bitstrata Privacy Statement.** It is Bitstrata's policy to protect and respect the privacy of all personal information that we collect, and to hold in strict confidence all information concerning the business and affairs of our customers gathered in the course of our professional relationship. While the nature of the information collected by Bitstrata is generally not subject to privacy laws, Bitstrata strives to protect the privacy of all customer information to the standards established for personal information.
- (a) **Collection and Use.** Bitstrata is committed to respecting the confidentiality of our customers' information, including personal information. In connection with the Agrimatics Service, the customer information collected by Bitstrata may include, but is not limited to: name, email address, personal and/or business address, grain weight data and (where equipped) land descriptions and locations. Bitstrata collects and uses Your Data, as necessary, for the purpose of providing the Agrimatics Service and administering the customer relationship generally including, without limitation, for the purpose of offering additional opportunities which Bitstrata feels will be of interest to You. You may opt-out of receiving such marketing communications or customized advertising by contacting us at the address below.
- (b) **Disclosure.** In certain instances, Bitstrata may also share Your Data with third party service providers, including service providers located outside of Canada, performing functions on our behalf, including, without limitation, vendors that process credit card orders, provide us marketing or promotional assistance, analyze data, and assist us with customer service. Bitstrata has taken all appropriate technical, organizational and legal steps to secure Your Data.
- 4.2 Data Security and Integrity.** You shall have sole responsibility for the accuracy, currency, quality, integrity, legality, reliability, and appropriateness of all of Your Data and Bitstrata shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store, monitor or transmit any data. Bitstrata shall not be responsible for adequate security, archival and/or back-up procedures on Your behalf. Further, Bitstrata will not be liable for any

type of communication or data, or the accuracy or sufficiency of the content thereof, which is uploaded or downloaded through Your access or use the Agrimatics Service.

## ARTICLE 5 – YOUR ACCOUNT

**5.1 User ID and Password.** During the term of this Agreement, You shall adopt a user ID and password in order to use the Agrimatics Service (the "Login Information"). You are solely responsible for maintaining the confidentiality of Your Login Information and agree to use commercially reasonable efforts: (i) to protect the security of Your Login Information; (ii) not to permit individuals other than employees or contractors approved by You to use the Login Information to gain access to the Agrimatics Service; (iii) not to disclose any Login Information to any person except on a need-to-know basis; and (iv) to ensure that employees or contractors approved to access the Agrimatics Service on Your behalf do so only in connection with Your business purposes.

**5.2 Your Responsibilities.** By using Your Account, you agree to:

- (a) use the Agrimatics Service solely for lawful purposes and not to utilize the Agrimatics Service, or any resulting Agrimatics Data, for fraudulent or illegal purposes;
- (b) follow safe and secure computing practices with respect to any device with which You access Your Account; and
- (c) immediately notify Bitstrata of any loss, unauthorized disclosure or actual or suspected unauthorized use of Your Account.

## ARTICLE 6 – INTELLECTUAL PROPERTY RIGHTS

**6.1 All Rights Reserved.** Bitstrata owns and shall own all right, title and interest, in and to (i) Agrimatics and all trade names, trade-marks, and service marks used in connection with the Agrimatics Service; and (ii) Aggregated Data (collectively, "Bitstrata IP"). Nothing in this Agreement transfers any such IP Rights to, or vests any such IP Rights, in You or any user. You are only entitled to the limited licensed use of the Bitstrata IP granted to You in this Agreement.

**6.2 License to Use Your Information.** You shall own: (i) all documents, data, files, records and other information related to Your business; (ii) all right, title and interest in and to Your Data, provided that, to the extent required to provide the Agrimatics Service, You grant to Bitstrata, with the exception of personal information, a perpetual, unlimited, irrevocable, royalty-free, worldwide, non-exclusive, transferable license permitting Bitstrata to collect, use, reproduce, adapt, modify, copy, run, bundle, create derivative works of, transmit, display and distribute Your Data for such purposes which include, without limitation, compiling and distributing Aggregated Data to third parties. Bitstrata may access Your Account, including Your Data, to respond to service or technical problems or as stated in this Agreement. Bitstrata will not monitor, edit, or disclose any information regarding Your Account, including any of Your Data, except in accordance with this Agreement, applicable laws or at the direction of legal authorities.

**6.3 Aggregated Data.** By entering into this Agreement, You grant Bitstrata a perpetual, irrevocable, royalty-free, worldwide, unlimited, non-exclusive and transferable license to use Your Data for the preparation of Aggregated Data, which may be used by Bitstrata for any purpose, including to improve the delivery of the Agrimatics Service. Bitstrata reserves the right to release or sell such Aggregated Data to third parties.

## **ARTICLE 7 – TERM AND TERMINATION**

- 7.1 Term.** Unless sooner terminated as provided below, this Agreement shall commence on the date You accept this Agreement by clicking the "I Accept" button and continue for successive automatically renewable one (1) year terms, unless otherwise agreed upon by the parties (the "Term").
- 7.2 Termination by Bitstrata.** Notwithstanding Section 7.1 above, Bitstrata may, in its sole discretion, terminate or suspend the Agrimatics Service or this Agreement at any time for any reason by providing You with thirty (30) days' prior written notice to the email account that You submitted in connection with Your membership. Bitstrata may terminate the Agrimatics Service or this Agreement immediately upon the occurrence of any of the following:
- (a) Your failure to pay any amount when due;
  - (b) Your breach of any material term of this Agreement; or
  - (c) Your involvement in any activity likely to undermine the business or reputation of Bitstrata or the usability, functionality or performance of the Agrimatics Service.
- 7.3 Consequences of Termination.** Upon termination of this Agreement for any reason whatsoever, Bitstrata will de-activate Your Account and Login Information and provide You with a copy of Your Data and/or all data input by You in connection with the terminated Account for the Agrimatics Service.

## **ARTICLE 8 – WARRANTY AND DISCLAIMER**

- 8.1 GENERAL WARRANTY DISCLAIMER.** OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BITSTRATA MAKES NO REPRESENTATIONS, WARRANTIES OR COVENANTS TO ANY PERSON OR ENTITY WITH RESPECT TO THE AGRIMATICS SERVICE. EXCEPT AS SET FORTH ABOVE, THE AGRIMATICS SERVICE IS PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS. YOU ARE SOLELY RESPONSIBLE FOR ALL DATA AND INFORMATION WHICH HAS BEEN ENTERED, REMOVED OR USED IN CONNECTION WITH YOUR USER ID AND ACCOUNT. BITSTRATA DOES NOT GIVE ANY WARRANTIES, GUARANTEES, REPRESENTATIONS OR CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE (INCLUDING, WITHOUT LIMITATION: ANY IMPLIED WARRANTY OF MERCHANTABILITY; FUNCTIONALITY OF THE AGRIMATICS SERVICE OR SOFTWARE; THE USER INTERFACE; FITNESS FOR A PARTICULAR PURPOSE, INCLUDING THE ACCURATE WEIGHING OF GRAIN; ACCURACY OF DATA; COMPLIANCE WITH ANY DESCRIPTION; OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS) WITH RESPECT TO ANY AGRIMATICS SERVICE AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
- 8.2 NO WARRANTY OF SERVICE AVAILABILITY.** BITSTRATA DOES NOT GUARANTEE THE ACCURACY OR TIMELINESS OF INFORMATION AND/OR DATA (INCLUDING, WITHOUT LIMITATION, AGRIMATICS DATA) AVAILABLE OR ACCESSIBLE THROUGH USE OF THE AGRIMATICS SERVICE NOR THAT THE AGRIMATICS SERVICE MAY BE PROVIDED WITHOUT INTERRUPTION OR ERROR FREE. BITSTRATA DOES NOT WARRANT THAT IT WILL BE ABLE TO CORRECT ALL REPORTED DEFECTS IN THE AGRIMATICS SERVICE. BITSTRATA DOES NOT

GUARANTEE THAT THE AGRIMATICS SERVICE AND ACCESS TO YOUR ACCOUNT WILL ALWAYS FUNCTION WITHOUT DISRUPTIONS OR DELAY. SINCE THE AGRIMATICS SERVICE MAY OR WILL BE FACILITATED AND/OR TRANSMITTED THROUGH PUBLIC INTERNET LINES, COMMUNICATIONS NETWORKS AND PUBLIC AND/OR PRIVATE SWITCHED TELEPHONY NETWORK(S) (AS THE CASE MAY BE), YOU UNDERSTAND THAT THERE MAY BE SERVICE DISRUPTIONS OR OUTAGES.

## **ARTICLE 9 – LIMITATION OF LIABILITY AND INDEMNITY**

**9.1 LIABILITY EXCLUSION.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BITSTRATA SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT (EXCEPT AS PROVIDED IN SECTION 9.2 BELOW) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER OR FOR ANY LOSS OF PROFIT, LOSS OF BUSINESS, USE OR DATA, LOSS OF REVENUE, LOSS OF REPUTATION OR GOODWILL, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, BUSINESS INTERRUPTION OR OTHER KIND OF INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS, OR FOR ANY INJURY OR LOSS OF LIFE ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, YOUR ACCOUNT OR YOUR USE OF OR INABILITY TO USE, THE AGRIMATICS SERVICE. THIS EXCLUSION INCLUDES ANY LIABILITY THAT MAY ARISE OUT OF THIRD PARTY CLAIMS AGAINST YOU OR BITSTRATA.

**9.2 MAXIMUM LIABILITY.** NOTWITHSTANDING SECTION 9.1 ABOVE, THE AGGREGATE LIABILITY OF BITSTRATA FOR ALL CLAIMS OF ANY KIND WHETHER BASED IN CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, FOR ALL LOSSES OR DAMAGES ARISING OUT OF, OR RESULTING IN CONNECTION WITH THIS AGREEMENT, FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM THE PROVISION OF THE AGRIMATICS SERVICE, WILL IN NO CASE EXCEED THE AMOUNT, IF ANY, PAID BY YOU UNDER THIS AGREEMENT TO ACCESS THE AGRIMATICS SERVICE IN THE YEAR IN WHICH THE CLAIM AROSE.

**9.3 Indemnity.** You hereby agree to defend, indemnify, and hold harmless Bitstrata, its officers, directors, assigns, and service providers and their respective successors and assigns, from and against any and all claims and all costs, liabilities and expenses (including, without limitation, reasonable legal fees) arising out of or relating to Your use of the Agrimatics Service, Account, or Login Information.

## **ARTICLE 10 – GENERAL**

**10.1 Assignment Prohibited.** You may not assign the whole or any part of this Agreement or the rights granted hereunder without the prior written consent of Bitstrata. Notwithstanding the foregoing, Bitstrata may, at its sole discretion, assign this Agreement or any of its rights hereunder to any third party, without giving prior notice.

**10.2 Severability.** Each provision of this Agreement is intended to be severable and if any provision is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, such provision shall be severed from this Agreement and will not affect the legality or validity or enforceability of the remainder of this Agreement or any other provision

hereof and the Agreement shall be construed, as nearly as possible, to reflect the intentions of the severed provision(s) to the extent possible under applicable law.

- 10.3 Waiver.** No delay on the part of Bitstrata in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.
- 10.4 Governing Law and Jurisdiction.** This Agreement and any transactions contemplated by this Agreement shall in all respects, be construed according to, and the rights and liabilities of the parties hereto shall in all respects be governed exclusively by, the laws of the Province of Saskatchewan, Canada without reference to the principles of conflicts of law. You irrevocably submit and attorn to the exclusive jurisdiction of the courts of the Province of Saskatchewan, Canada with respect to any adjudication of rights hereunder, without regard to its conflict of laws provisions. To the extent permitted by applicable law, You agree to waive any right You may have to: (i) trial by jury; and (ii) commence or participate in any class action against Bitstrata related to the Bitstrata Service or this Agreement and, where applicable, You also agree to opt out of any class proceedings against Bitstrata.
- 10.5 Enurement.** This Agreement shall enure to the benefit of and be binding upon You and Bitstrata and each party's successors and permitted assigns.
- 10.6 Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto and supersedes all other prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof.
- 10.7 Notices.** All notices, requests and other communications required or permitted to be given under this Agreement except those specifically permitted to be given by e-mail or posted using the Agrimatics Service, must be in writing, and must be mailed by registered or certified mail, postage prepaid and return receipt requested, or delivered by express mail, private courier or facsimile to the party to whom such notice is required or permitted to be given. Any such notice will be considered to have been given when received, or if mailed, five business days after it was mailed, as evidenced by the postmark. Your mailing address or electronic mail address for notice shall be the address You provided to Bitstrata in association with Your Account. You are solely responsible for keeping Your Account contact information current.
- 10.8 Contact Bitstrata.** For further information about Bitstrata's privacy practices or to make a request for access to personal information, please contact Bitstrata at the following address:

Bitstrata Systems Inc.  
400-15 Innovation Blvd  
Saskatoon SK S7N 2X8  
1-888-241-7216  
info@bitstrata.com

## ACKNOWLEDGEMENT

**BY CLICKING "I ACCEPT" YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND HAVE HAD AN OPPORTUNITY TO SEEK INDEPENDENT LEGAL ADVICE PRIOR TO AGREEING TO IT. IN CONSIDERATION OF**

**BITSTRATA AGREEING TO PROVIDE THE AGRIMATICS SERVICE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE ABOVE TERMS AND CONDITIONS, CLICK "EXIT" AND YOU WILL NOT BE ABLE TO ACCESS THE AGRIMATICS SERVICE.**