

These Terms of Use (this “**Agreement**”) contain the terms, conditions, representations, warranties and other agreements that govern access to and use of the agmatix Products and is an agreement between Growers Tech Inc d/b/a agmatix (“**agmatix**”) and the user specified in an executed Service Order (the “**User**”).

This Agreement takes effect when the User or its representative clicks on or checks an “I Accept” button or box presented with this Agreement (the “**Effective Date**”) and becomes a legally binding agreement between agmatix and User. If the person so clicking or checking is entering into this Agreement for an entity or organization, such as the company or organization that person works for, such person represents to agmatix that they have full legal authority to bind that entity or organization.

Access to and use of the agmatix Products is prohibited with respect to any person that does not agree and comply with this Agreement.

1. Definitions

The following terms are defined for purposes of this Agreement:

- 1.1 “**agmatix Content**” means all information, data, text, messages, software, sound, music, video, photographs, graphics, images, and tags that are incorporated into agmatix Properties or otherwise provided to Users.
- 1.2 “**agmatix Platform**” means the hosted, web-based, software-as-a-service platform offered by agmatix, and includes the specific tools, features and functionality of the agmatix Platform.
- 1.3 “**Agronomic Raw Data**” means the primary raw agronomic data, information or Content, that has not been subjected to any processing or other manipulation, which User submits to the agmatix Platform.
- 1.4 “**agmatix Marks**” means any trademarks, service marks, logos, and other brand identifiers that agmatix makes available to User in connection with this Agreement.
- 1.5 “**agmatix Products**” means the agmatix Platform and any other services, applications, tools and platforms agmatix makes available to User.
- 1.6 “**agmatix Properties**” means the software (both object and source code), specifications, documentation, agmatix Marks, API’s, marketing materials, agmatix Content, Confidential Information, platforms and services including the agmatix Products (and the tools available through any such platform), and other services, products, systems, technologies, information, and materials provided or made available by agmatix to User in connection with the agmatix Platform, and all Intellectual Property Rights therein and all improvements, enhancements, modifications and derivative works thereof.
- 1.7 “**agmatix Software**” means the software applications owned by or licensed to agmatix and made available by agmatix for use by User as part of the agmatix Products.
- 1.8 “**Content**” means data, text, audio, video, images or other content.
- 1.9 “**Documentation**” means the user guides, technical specifications, and operations manuals for the agmatix Products provided or made available by agmatix.

- 1.10 **"Harmful Code"** means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent any person from accessing or using the agmatix Products as intended by this Agreement.
- 1.11 **"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright or original works of authorship, software (including all software and code, all types of computer software programs, operating systems, application programs, software tools, all types of firmware, firmware specifications, mask works, and hardware descriptions), including both object code and source code, and all written or electronic data, documentation and materials that explain the structure or use of software or used in the development of software, including software specifications, or are used in the operation of the software (including logic diagrams, flow charts, procedural diagrams, error reports, manuals and training materials, look-up tables and databases), whether patentable or not in any jurisdiction, and rights in any jurisdiction to limit the use or disclosure thereof), trademark, trade secret, database protection, sui generis database rights other than copyright, and all similar or equivalent rights or forms of protection, in any part of the world.
- 1.12 **"Login Credentials"** means any password, authentication keys or security credentials that enable User's access to and management of the agmatix Products.
- 1.13 **"Personal Data"** means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person. Personal Data does not include information that is anonymized.
- 1.14 **"Policies"** means agmatix's written policies, to the extent applicable, which are posted on the agmatix website at <https://www.agmatix.com/wp-content/uploads/2021/06/Terms-Of-Use-Agmatix.pdf>, as modified from time to time, including the Privacy Policy, Open Data Policy, and Data Protection Policy.
- 1.15 **"Process"** means to take any action or perform any operation or set of operations that the agmatix Products are capable of taking or performing on any Agronomic Raw Data, or other data, information, or Content, including to collect, receive, input, upload, download, publish, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, compile, adapt, arrange, alter, translate, extract, transform, enhance, or create Processed Data and other derivative works or improvements thereof. "Processing" and "Processed" have correlative meanings.
- 1.16 **"Processed Data"** means the enriched, aggregated and standardized data that agmatix creates from any data processed by one or more tools that are part of the agmatix Platform, and the data standards used to build the agmatix data sets; where "processed" means that one or more of such tools have performed an operation, including to compile, convert, format, combine and aggregate with other data sets, cross-reference, manage, adapt, organize, standardize, convert and/or transform raw data provided by User and other sources. For clarity, "Processed Data" does not include any of User's Agronomic Raw Data.
- 1.17 **"Service Order"** means a separate online form available on the agmatix Platform electronically signed by authorized representatives of User and accepted by agmatix, setting forth the agmatix Products and specific tools that User will be permitted to use under this Agreement, the fees, term, and other provisions applicable to User in addition to the provisions of this Agreement.

1.18 **“Third Party Products”** means any software application that User must license or obtain in order to use the agmatix Products but that is not licensed by agmatix to User as part of the agmatix Products.

1.19 **“User Personnel”** means the individuals who provide services to User as employees or independent contractors and who are authorized by User to use the agmatix Products in accordance with this Agreement.

2. Right to Use agmatix Products

2.1 Grant of Subscription. On and subject to the terms of this Agreement, User hereby subscribes for and agmatix hereby grants to User a non-transferable, non-exclusive, limited right during the Term for the User (and User Personnel) to access and use the agmatix Products through User-supplied internet connections or other telecommunications tools and using their respective Login Credentials. agmatix will use its commercially reasonable efforts, in accordance with industry standards and practices, to deploy and administer the agmatix Products to User based on the agmatix Platform tools to which User has subscribed (as set forth in the Service Order and this Agreement). User will access and use the agmatix Products only for User’s internal purposes consistent with Section 4.2 below.

2.2 Modifications. agmatix may, in its sole discretion, (i) reengineer agmatix network components or infrastructure or change the location from where agmatix Products are provided; and (ii) modify or replace technology or service architectures relating to any agmatix Products (including by changing or discontinuing features or functionality of the agmatix Products from time to time).

3. Agronomic Raw Data

3.1 User agrees to submit Agronomic Raw Data to the agmatix Platform. By posting, uploading, referencing or otherwise submitting any Agronomic Raw Data to any agmatix Products or to agmatix directly, User grants agmatix the right to use and process such Agronomic Raw Data to the extent required for purposes of providing the products and services that comprise the agmatix Products to which User has subscribed in accordance with the documentation applicable to such products and services. Depending on the specific products and services to which User has subscribed, User may be required to provide additional consents regarding agmatix’s use and processing of User’s Agronomic Raw Data and Processed Data; such additional consents to be documented separately.

3.2 User represents, warrants and agrees that:

- (a) All of User’s Agronomic Raw Data is accurate in all material respects, and use and posting or other transmission of such Agronomic Raw Data in relation to the agmatix Products does not violate applicable law or this Agreement.
- (b) User has all rights, consents and permissions, and has provided any notices, required under any applicable law or contract in order to provide Agronomic Raw Data to agmatix for Processing as provided in in this Agreement.
- (c) User is providing Agronomic Raw Data without any expectation or obligation of remuneration or attribution.
- (d) User will not violate, jeopardize, or otherwise interfere with any other person’s Intellectual Property Rights, right to privacy or other applicable rights (whether that Person is a user of the agmatix Products or not) in relation to Agronomic Raw Data.
- (e) User will not provide Agronomic Raw Data that (i) violates any law, (ii) constitutes a criminal offense, (iii) gives rise to a civil liability, regulatory fine or obligation, (iv) advocates or attempts to induce illegal activity, (v) contains any advertisement or solicitation with respect to any products, materials, services or other offerings, or (vi) contains any Personal Information.

- 3.3 agmatix has the right, but no obligation, to monitor and/or screen Agronomic Raw Data uploaded to the agmatix Products, without notice to User. Further, User agrees that agmatix will have no liability with respect to User's Agronomic Raw Data, and agmatix has the right without liability to not accept or process User's Agronomic Raw Data. agmatix will only access, Process and use Agronomic Raw Data as necessary to (i) provide the agmatix Products in accordance with this Agreement, the Documentation and Policies, and to create Processed Data; (ii) assist the User in administering the agmatix Products; and (iii) comply with applicable law.
- 3.4 agmatix agrees that in no event will any Processed Data contain Agronomic Raw Data that can be used to identify or re-identify the User or the User's data sources.
- 3.5 To the extent permitted by law, agmatix will redirect to User any request agmatix receives from a law enforcement agency to produce or disclose such User's Agronomic Raw Data and it will be User's responsibility to comply with such request. If agmatix remains compelled to produce or disclose such User's Agronomic Raw Data then agmatix will (unless prohibited from doing so by applicable law) provide a copy of such request to such User. User is also responsible for responding to any requests from any other third party regarding Agronomic Raw Data or User's use of the agmatix Properties.

4. User Obligations

- 4.1 Technical Data. User will provide agmatix with such technical and other information that agmatix may reasonably request to allow agmatix to provide the agmatix Products to User. Such information will be complete and accurate to the User's best knowledge.
- 4.2 Use Restrictions. User (i) will not itself, (ii) will not directly or indirectly permit any User Personnel or any other Person under User's control to, and (iii) will not directly or indirectly authorize any other Person to:
- (a) Access or use the agmatix Properties for any purpose or in any manner except as expressly provided by this Agreement and, in the case of Third Party Software, the applicable third party license agreement;
 - (b) Copy, modify, or create derivative works or improvements of any of the agmatix Properties;
 - (c) Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available all or any portion of the agmatix Properties to any person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;
 - (d) Reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the agmatix Software or other agmatix Properties;
 - (e) Bypass or breach any security device or protection used by the agmatix Properties or access or use the agmatix Properties other than by User Personnel through the use of their own then valid Login Credentials;
 - (f) Input, upload, transmit, or otherwise provide to or through the agmatix Products or any agmatix Software, hardware, firmware, servers or other systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;
 - (g) Damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the agmatix Products or any agmatix Software, hardware, firmware, servers or other systems, or agmatix's provision of services to any other person;

- (h) Remove, delete, alter, or obscure any agmatix Marks, Documentation, warranties, or disclaimers, or Intellectual Property Rights notices from any agmatix Properties, including any copy thereof;
 - (i) Access or use the agmatix Properties in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Rights or other rights of any person, or that violates any applicable law;
 - (j) Access or use the agmatix Properties for purposes of competitive analysis of the agmatix Properties or the development, provision, or use of a competing software, service or product; or
 - (k) Otherwise access or use the agmatix Properties beyond the scope of the authorization granted in Section 2.
- 4.3 **Equipment.** User is required to provide and maintain at its own expense high-speed internet and telecommunications equipment, and other information technology, devices, sensors, remote communication and other systems and infrastructure, in order to access and use the agmatix Products (including as necessary to maintain connectivity between User's location(s) and the agmatix Products location) as provided in the Documentation. User is also responsible for backing up its Agronomic Raw Data, providing security for its information technology infrastructure, and for supervision of User Personnel in relation to their access and use of the agmatix Products.
- 4.4 **Third Party Products.** The agmatix Products may require Third Party Products, which are listed in the Documentation, as amended from time to time. User warrants that all User computers that access the agmatix Products have and will maintain current licenses of such Third-Party Products and are and will remain in compliance with the terms of such licenses. User acknowledges that agmatix is not responsible for the operation, suitability or support of any Third-Party Product and it is User's responsibility to obtain the most current versions of Third-Party Products. User will be liable for damages and expenses incurred by agmatix for User's failure to maintain current licenses for Third Party Products or the use of unlicensed software or products with the agmatix Products.
- 5. Fees; Payment**
- 5.1 Pricing and payment terms for the agmatix Products are set forth in the Service Order.
- 6. Suspension**
- 6.1 **Bases to Suspend.** Without limiting any other rights or remedies, agmatix may suspend or otherwise deny User's access to or use of all or any part of the agmatix Products, without incurring any liability, if:
 - (a) agmatix receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires it to do so;
 - (b) User is delinquent on payments subject to notice as set forth in Section 5.2(c); or
 - (c) agmatix believes, in its sole discretion, that: (i) User has failed to comply with any material term of this Agreement, or accessed or used the agmatix Products beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any of the Policies; (ii) User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to the agmatix Products; or (iii) this Agreement expires or is terminated.
- 6.2 **Effect of Suspension.** If agmatix suspends User's right to access or use the agmatix Products:

- (a) User will remain responsible for all fees and charges through the date of suspension, other charges provided for in the Service Order, and for any portions of the agmatix Products (if any) to which User continues to have access.
- (b) User will not receive any service credits under the Service Level Agreement for any period of suspension, nor will agmatix have any other liability to User on account of any suspension effected in accordance with this Agreement.
- (c) agmatix's right to suspend User's access and use of the agmatix Products is in addition to agmatix's right to terminate this Agreement pursuant to Section 7.2.

7. Term; Termination

7.1 Term. The term of this Agreement commences as of the date specified in the Service Order and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect through the termination date set forth in the Service Order.

7.2 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

- (a) agmatix may terminate this Agreement, effective on written notice to User, if User: (i) fails to pay any amount when due hereunder, and such failure continues more than 10 days after agmatix's delivery of written notice thereof; or (ii) breaches any of its obligations under Section 4.2;
- (b) Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach; and
- (c) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

7.3 Effect of Termination or Expiration. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

- (a) User's right to access and use the agmatix Products and any agmatix Properties will immediately cease, and agmatix will disable User's access to the agmatix Products.
- (b) User will promptly pay all amounts due hereunder.
- (c) agmatix will make your Agronomic Raw Data available to you in order download in standard format for a period of 30 days after expiration or termination of this Agreement. After such 30-day period, agmatix will delete your Agronomic Raw Data in accordance with applicable legal requirements and the agmatix Privacy Policy.

7.4 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 1, Section 3, Section 4.2, Section 5, Sections 7 - 12, and Sections 14 - 15.

8. Data Security; Compliance with Laws

- 8.1 agmatix will maintain administrative, physical and technical safeguards for Agronomic Raw Data consistent with commercially reasonable practices and agmatix's Data Protection Policy.
- 8.2 User will (i) cause its User Personnel to keep all passwords and system access information confidential; (ii) implement and maintain data security and privacy protections and measures in accordance with commercially reasonable practices and applicable laws; and (iii) use encryption and other secure means to transmit Agronomic Raw Data as appropriate.
- 8.3 agmatix will comply laws applicable to agmatix's provision of the agmatix Products (including applicable data breach notification laws); provided, that agmatix is not responsible for compliance with laws or policies applicable to User or User's business that are not generally applicable to information technology service providers. agmatix does not determine whether Agronomic Raw Data includes information subject to any specific law; and it is User's responsibility to comply with applicable laws related to privacy, data protection, confidentiality and the collection and use of personally identifiable information.

9. Confidential Information

- 9.1 Scope. "**Confidential Information**" means all non-public, confidential, or proprietary information, whether disclosed orally or disclosed, observed or accessed in written, electronic, or other form or media, whether disclosed, observed or accessed before or after the date of this Agreement, and whether or not designated or otherwise identified as "confidential," by either party (a "**Disclosing Party**") to the other party (a "**Recipient**") including: (a) all information concerning the Disclosing Party's and its affiliates', and their customers', suppliers', and other third parties' past, present, and future business affairs, finances, customer information, supplier information, products, services, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales, and other commercial strategies; (b) the Disclosing Party's unpatented inventions, ideas, methods, and discoveries, trade secrets, know-how, unpublished patent applications, and other confidential intellectual property; (c) all designs, specifications, documentation, components, source code, object code, algorithms, images, icons, audiovisual components and objects, schematics, drawings, protocols, processes, and other visual depictions, in whole or in part, of any of the foregoing; and (d) any third-party confidential information included with, or incorporated in, any information provided by the Disclosing Party to the Recipient.
- 9.2 Obligations. The Recipient will protect the Disclosing Party's Confidential Information disclosed hereunder from unauthorized disclosure and/or use with at least the same degree of care that the Recipient uses to protect its own Confidential Information, but in no case less than commercially reasonable care. The Recipient and its Representatives will use the confidential Information of the Disclosing Party only for purposes of performing the Recipient's obligations and exercising its rights under this Agreement, and will not use such Confidential Information in any other manner or for any other purpose without the express prior written consent of the Disclosing Party. The Recipient will hold in confidence, and will not disclose any Confidential Information of the Disclosing Party; provided, however, that (i) the Recipient may make any disclosure of such information to which the Disclosing Party gives its prior written consent; and (ii) any of the Confidential Information may be disclosed by the Recipient to its employees or independent contractors who need to know such information in connection with the Recipient performing its obligations or exercising its rights under this Agreement, and in each case who are informed of the confidential nature of such information, the restrictions on use thereof, and of the terms of this Section. Recipient will be responsible for any act or omission by any of its employees and independent contractors that if done or omitted to be done by Recipient would be a breach of this Section 9.2.
- 9.3 Limitation on Obligations. The obligations of the Recipient specified in Section 9 will not apply, and the Recipient will have no further obligations, with respect to any Confidential

Information to the extent the Recipient can demonstrate, by clear and convincing evidence, that such Confidential Information: (a) is generally known to the public at the time of disclosure or becomes generally known without the Recipient or its Representatives violating this Agreement; (b) is in the Recipient's possession at the time of disclosure; (c) becomes known to the Recipient through disclosure by sources other than the Disclosing Party without such sources violating any confidentiality or restricted use obligations to the Disclosing Party; or (d) is independently developed by the Recipient without reference to or reliance upon the Disclosing Party's Confidential Information. This Section 9 will not prohibit the Recipient from disclosing Confidential Information of the Disclosing Party if the Recipient is required to do so to comply with applicable laws or a valid order issued by a court or governmental agency of competent jurisdiction, provided that the Recipient gives prior written notice of such required disclosure to the Disclosing Party and takes reasonable and lawful actions at the Disclosing Party's request and expense to avoid, limit and/or minimize the extent and scope of such disclosure.

10. Intellectual Property

10.1 Agronomic Raw Data. As between User and agmatix, User owns all right, title and interest (including all Intellectual Property Rights) in and to its Agronomic Raw Data. Except as expressly provided in this Agreement, agmatix obtains no rights under this Agreement to User's Agronomic Raw Data.

10.2 Third Party Materials. As applicable, third parties retain all Intellectual Property Rights in their respective trademarks, service marks, copyrights, patents, content, software and trade secrets.

10.3 agmatix Properties.

- (a) User agrees that agmatix, and its affiliates and licensors (as applicable), own all right, title and interest (including all Intellectual Property Rights) in and to all agmatix Properties, together with all improvements, enhancements, modifications, versions, and derivative works thereto and thereof, and User will have no right or interest in any of the foregoing except for the specific access and use rights expressly provided for in this Agreement. agmatix reserves all rights, title and interest (including all Intellectual Property Rights) not expressly granted in this Agreement.
- (b) agmatix will have a royalty-free, worldwide, irrevocable and perpetual license to use or incorporate into the agmatix Products and Documentation any suggestions, ideas, enhancement requests, feedback or recommendations provided by User or User Personnel.
- (c) agmatix may (alone or in collaboration with others including User) develop new systems, software, technology or capabilities in relation to any of the agmatix Properties (including improvements, enhancements, modifications, versions, and derivative works thereto and thereof). As between User and agmatix, ownership of which will remain exclusively with agmatix (from the moment of conception, development or creation and regardless of inventorship).

11. Disclaimers; Limitation of Liability

11.1 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, EACH PARTY AND ITS AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTY ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, THE AGMATIX SAAS AND OTHER AGMATIX PROPRIETARY MATERIALS ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND AGMATIX AND ITS AFFILIATES AND LICENSORS DO NOT MAKE AND HEREBY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. FURTHER, AGMATIX AND ITS AFFILIATES AND LICENSORS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS

OR IMPLIED, THAT THE AGMATIX SAAS OR OTHER AGMATIX PROPRIETARY MATERIALS OR ANY PRODUCTS OR RESULTS (INCLUDING ANY PROCESSED DATA) FROM THE USE THEREOF, WILL MEET USER'S OR ANY OTHER PERSON'S EXPECTATIONS OR REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, OR BE ACCURATE, ERROR-FREE, SECURE, OR FREE OF HARMFUL CODE. USER IS SOLELY RESPONSIBLE FOR ANY USE OF OR RELIANCE ON OUTPUT OF THE AGMATIX SAAS.

11.2 IN NO EVENT SHALL EITHER PARTY, OR ANY OF ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS, BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY:

- (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE;
- (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE AGMATIX SERVICE, EXCEPT TO THE EXTENT EXPRESSLY PROVIDED IN THE APPLICABLE SERVICE ORDER;
- (c) LOSS, DAMAGE, CORRUPTION, THEFT, OR RECOVERY OF USER CONTENT, BREACH OF USER CONTENT OR SYSTEM SECURITY, DAMAGES FOR TELECOMMUNICATIONS FAILURES OR HARMFUL CODE;
- (d) COST OF REPLACEMENT GOODS OR SERVICES;
- (e) LOSS OF GOODWILL OR REPUTATION;
- (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; OR
- (g) ACTUAL COMPENSATORY DAMAGES IN EXCESS OF THE TOTAL AMOUNT PAID FOR THE AGMATIX SAAS FOR THE IMMEDIATELY PRECEDING 12-MONTH PERIOD (OR ANNUALIZED FOR 12 MONTHS IF AGMATIX SAAS HAVE NOT YET BEEN PROVIDED FOR 12 MONTHS).

11.3 The limitations in Sections 11.1 and 11.2:

- (a) Shall not be construed:
 - (i) To limit User's obligation to pay any fees and charges incurred under this Agreement; or
 - (ii) As any waiver of a publicly funded state institution of its governmental immunity or an any acceptance by such institution of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowed under applicable law.
- (b) Shall apply:
 - (i) Regardless of whether such persons were advised of the possibility of such losses or damages or such losses or damages were otherwise foreseeable; and
 - (ii) Notwithstanding the failure of any agreed or other remedy of its essential purpose.
- (c) Shall not apply to:
 - (i) Any violation by a party of the other party's Intellectual Property Rights;
 - (ii) Breach by a party of its obligations regarding the other party's Confidential Information;
 - (iii) A party's obligations to indemnify the other party on the terms set forth in Section 12; or

- (iv) A party's willful and intentional breach of this Agreement.
- (d) Are an agreed-upon allocation of risk that is integral to agmatix's pricing of and ability to provide the agmatix Products.

12. Indemnification

- 12.1 agmatix Indemnification. agmatix will indemnify, defend, and hold harmless User from and against any and all losses, damages, deficiencies, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind incurred by User resulting from any claim, demand, action, lawsuit, arbitration, proceeding, inquiry, audit, subpoena, or investigation of any nature (whether civil, criminal, administrative, regulatory, or other), asserted or brought by a third party alleging that User's or any User Personnel's use of the agmatix Products (excluding Agronomic Raw Data and Third-Party Materials) in accordance with this Agreement infringes or misappropriates such third party's US patents, copyrights, or trade secrets. The foregoing obligation does not apply to the extent that the alleged infringement arises from:
- (a) Third-Party Materials or Agronomic Raw Data;
 - (b) Access to or use of the agmatix Products or other agmatix Properties in combination with any hardware, system, software, network, or other materials or service not provided by agmatix or specified for use in the Documentation;
 - (c) Modification of the agmatix Products or other agmatix Properties other than by agmatix or in accordance with agmatix's express written approval; or
 - (d) Any act, omission, or other matter described in Section 12.2.
- 12.2 User Indemnification. User will indemnify, defend, and hold harmless agmatix and its licensors, subcontractors and affiliates from and against any and all losses, damages, deficiencies, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind incurred by any such indemnitees resulting from any claim, demand, action, lawsuit, arbitration, proceeding, inquiry, audit, subpoena, or investigation of any nature (whether civil, criminal, administrative, regulatory, or other), asserted or brought by a third party that arise out of or result from, or are alleged to arise out of or result from:
- (a) Agronomic Raw Data;
 - (b) Any allegation of facts that, if true, would constitute User's breach of any of its representations, warranties, covenants, or obligations under this Agreement; or
 - (c) Any gross negligence or more culpable act or omission (including recklessness or willful misconduct) by User, any User Personnel, or any third party on behalf of User, in connection with this Agreement or the transactions hereunder.
- 12.3 Indemnification Procedure. Each party will promptly notify the other party in writing of any matter or proceeding for which such party believes it is entitled to be indemnified pursuant to Section 12.1 or Section 12.2, as the case may be. The parties will cooperate with one another in connection with the investigation and defense of any such matter or proceeding. The party responsible for providing indemnity hereunder will promptly assume control of the defense and will employ counsel reasonably acceptable to the party entitled to be indemnified hereunder to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnifying party will not settle any such matter or proceeding without the indemnified party's prior written consent, which will not be unreasonably withheld or delayed. If the indemnifying party fails or refuses to assume control of the defense of such matter or proceeding, the indemnified party will have the right, but no obligation, to defend against such matter or proceeding, including settling the same after giving notice to the indemnifying party, in each case in such manner and on such terms as the indemnified party may deem appropriate. The indemnified party's failure to perform any obligations under this Section 12.3 will not relieve the indemnifying party of its obligations under this Section 12, except to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure.

12.4 Mitigation. If any of the agmatix Products or other agmatix Properties are, or in agmatix's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third- party Intellectual Property Right, or if User's or any User Personnel's use of the agmatix Products or other agmatix Properties is enjoined or threatened to be enjoined, agmatix may, at its option and sole cost and expense:

- (a) obtain the right for User to continue to use the agmatix Products and agmatix Properties substantially as contemplated by this Agreement;
- (b) modify or replace the agmatix Products and agmatix Properties, in whole or in part, to seek to make the agmatix Products and agmatix Properties (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute agmatix Products and agmatix Properties, as applicable, under this Agreement; or
- (c) by written notice to User, terminate this Agreement with respect to all or part of the agmatix Products and agmatix Properties, and require User and User Personnel to immediately cease any use of the same or any specified part or feature thereof, provided that if such termination occurs prior to the expiration of 75% of the total time of the scheduled term of this Agreement, User will be entitled to a refund of 50%.

12.5 Sole Remedy. THIS SECTION 12 SETS FORTH USER'S SOLE REMEDIES AND AGMATIX'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE AGMATIX SAAS AND AGMATIX PROPRIETARY MATERIALS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

13. Force Majeure

Neither party will be liable for any delay or failure in performing its obligations (other than payment obligations) under this Agreement if such delay or failure is caused by circumstances beyond the affected party's reasonable control and that do not exist on the effective date of this Agreement. Such circumstances may include acts of God, war, terrorism, civil unrest, natural disasters, weather-related events, labor disputes, changes in laws, public health emergencies or pandemics, failure in electrical supply or telecommunications systems, or delay of essential materials or services. In a force majeure event occurs, the period of performance of the affected party will be extended by the time reasonably necessary for the affected party to resume performance. However, if the affected party is not able to resume full performance within 30 days of the occurrence of the event, the other party will have the right to terminate this Agreement upon 10 days written notice.

14. Dispute Resolution; Governing Law

14.1 This Section 14 ("**Arbitration Agreement**") contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.

14.2 Applicability of Arbitration Agreement. Each party irrevocably agrees that any dispute, controversy or claim between the parties (or their respective affiliated entities, successors or assigns) arising out of or related to this Agreement or the services, transactions or agreements contemplated by this Agreement, or the breach, termination or validity hereof will be submitted to binding arbitration as the exclusive means of resolving and deciding such dispute, controversy or claim.

14.3 Arbitration Rules. Any arbitration will be conducted by the American Arbitration Association ("**AAA**") under its Commercial Arbitration Rules in effect at the time of the arbitration to the extent such rules are not inconsistent with this Arbitration Agreement. Arbitration will be conducted by a single independent and impartial arbitrator selected from the AAA's panel of neutrals. The arbitrator will determine issues of arbitrability in the first instance but may not

limit, expand or otherwise modify the terms of this Agreement. Without limiting the foregoing, the arbitrator will not have the power to award damages (other than actual compensatory damages) in excess of the limitations set forth in Section 11.2 and will not award any damages that are specifically excluded under this Agreement. The arbitral award will be in writing, state the reasons for the award, and will be final and binding upon the parties. The arbitration and award will be kept strictly confidential (except to the extent required by law or in connection with proceedings to enforce such award). Judgment on the award may be entered by any court of competent jurisdiction. The parties agree to participate in the arbitration in good faith and share equally in the fees of the AAA and the arbitrator.

- 14.4 Time Limits. Any arbitration must be initiated and/or demanded in writing within twelve (12) months after the claim has accrued. Any claim or dispute first asserted after such 12-month period will be deemed barred and waived, the parties agreeing that such time period is a bargained for contractual shortening of any applicable statute of limitations.

- 14.5 Waiver of Class or Consolidated Actions. The arbitrator will decide the rights and liabilities, if any, of only User and agmatix, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. 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 PERSON CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER PERSON.

- 14.6 Claims Not Subject to Arbitration. Notwithstanding this Arbitration Agreement, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of patent, copyright, trademark, trade secrets or other Intellectual Property Rights, will not be subject to this Arbitration Agreement and are subject to litigation in court.

- 14.7 Courts. In any circumstances where this Arbitration Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal and exclusive jurisdiction of the courts located in the city of St. Louis, State of Missouri, United States of America, for such purpose. Each party consents to the jurisdiction of such courts, and waives any and all objections to the exercise of jurisdiction over such party by such courts and any objections based on inconvenient forum or venue in such courts; provided, however, that any publicly funded state institution will not be bound by such choice of venue and jurisdiction to the extent laws applicable to such institution expressly prohibit it from consenting to venue or jurisdiction outside its home state.

- 14.8 Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Sections 9 or 10 would cause the other party irreparable harm for which monetary damages would not be an adequate remedy. In the event of such breach or threatened breach, the non-breaching party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. A request for equitable relief will not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

15. Miscellaneous

- 15.1 Assignment. User may assign this Agreement in its entirety in connection with the transfer of User's business to a third party (including by way of sale of assets or voting control, merger, or otherwise); provided that before any such assignment the User and assignee: (i) provide at least 30 days' prior written notice to agmatix, (ii) the assignee agrees in writing to assume all liabilities under and be bound by this Agreement; and (iii) all amounts due agmatix under this Agreement through the effective date of the assignment are paid or provisions for payment satisfactory to agmatix are made. agmatix may in its sole discretion and at its expense provide or perform its obligations under this Agreement through affiliates or

independent contractors that agmatix selects; provided, that agmatix will remain responsible and liable for the acts and omissions of such affiliate or subcontractor in relation to this Agreement as if such acts or omissions were by agmatix.

- 15.2 Notices. To have legal effect, all notices from one party to the other: (a) must be in writing; (b) must be addressed to the intended recipient as set forth in the Service Order; and (c) are deemed to be effectively given deemed effectively given: (i) when received, if delivered by hand, with signed confirmation of receipt; (ii) when received, if sent by a nationally recognized overnight courier, signature required; or (iii) when sent, if by facsimile or email (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours.
- 15.3 Independent Contractors. Each party to this Agreement and such party's personnel are independent contractors in relation to the other party with respect to this Agreement, and nothing herein establishes a partnership, joint venture, association, or employment relationship between the parties. Each party is responsible for, and will indemnify and hold the other party harmless from, all of the first party's employment-related taxes, withholding, insurance, and employee benefits (whether employer- or government-sponsored). Each party will comply with all applicable laws applicable to its employees, including those related to employment and compensation practices, working conditions, and discrimination. Publicly funded government institutions will be liable for damages incurred by agmatix for such institution's actions but will not be required to indemnify agmatix to the extent applicable law expressly prohibits the institution from indemnifying a third party under these circumstances.
- 15.4 U.S. Government Users. With respect to the procurement of any agmatix Products or agmatix Software (or any third party software used with the agmatix Software and any related documentation) by or for the U.S. Government, any software provided in connection with the agmatix Products is commercial computer software. To the extent applicable, the use, duplication, or disclosure by the Government is subject to restrictions as set forth in this Agreement and are licensed with "Restricted Rights" as provided in FAR 52.227-14, FAR 52.227-19(c), DFAR 252.227-7013 and other agency data rights as applicable.
- 15.5 Cumulative Remedies. The rights and remedies provided under this Agreement are cumulative and non-exclusive; and are in addition to, and not exclusive of, any rights or remedies provided by law.
- 15.6 Entire Agreement. This Agreement together with the Policies and any other documents incorporated herein by reference, constitute the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.
- 15.7 Amendment; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 15.8 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually

acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

- 15.9 Interpretation. For purposes of this Agreement: (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; (e) words denoting any gender include all genders; and (f) the word "person" includes any natural person, any form of legal entity or association, and any government body or agency. Unless the context otherwise requires, references in this Agreement: (w) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; (x) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; (y) to a statute means such statute as amended from time to time and includes any successor legislation thereto, and includes any rules and regulations promulgated under such statute; and (z) to a law means any statute (as previously described) ordinance, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any government or political subdivision thereof in any jurisdiction, or any arbitrator, court, or tribunal of competent jurisdiction. This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein, and the documents incorporated herein by reference, are an integral part of this Agreement to the same extent as if they were set forth verbatim herein. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement. This Agreement is drafted in the English language. If this Agreement is translated into any other language, the English language version will prevail.

Updated: August, 2022.