

Cargill Terms and Conditions

These terms and conditions govern the use of the Services provided by Cargill, Incorporated (“Cargill”) and the Customer.

1. DEFINITIONS

1.1. “Additional Services” means any Professional Services that are outside the description of Professional Services set forth in a particular Statement of Work.

1.2. “Agreement” means these General Terms and Conditions and any Contract referencing these General Terms and Conditions, and any other Quotations, Statements of Work, Software Terms of Use, or exhibits or attachments thereto.

1.3. “Authorized User” means (i) Customer and its Affiliates, (ii) employees, agents, and independent contractors, or (iii) third-parties to which Customer or its Affiliate has outsourced information technology or business functions who need to use the Software in the performance of their duties for Customer. All such Authorized Users must be contractually obligated to protect the confidentiality and integrity of Customer’s confidential information and have been authorized by Customer to use the Software in accordance with the terms hereof.

1.4. “Beta Software” means pre-production versions of Cargill software applications that are unwarranted and are provided to Customer for review and testing.

1.5. “Confidential Information” means information that one party receives from the other party through the operation of the Agreement, which information is of a confidential and sensitive nature. Confidential Information includes the Software, Third Party Software, the Documentation and any information that is clearly identified as confidential or proprietary at the time of disclosure.

1.6. “Contract” means the written description of Software to be provided and/or Services to be performed by Cargill for Customer, which written document references these General Terms and Conditions.

1.7. “Customer” means the person or entity identified as the Customer in the Agreement.

1.8. “Evaluation Software” means Cargill software that is provided to Customer on a limited term basis for non-production evaluation and review, prior to purchase of such software by Customer for use in a live, production environment.

1.9. “Inventions” means work product or tangible or intangible results produced by or with Cargill pursuant to the Agreement, including during the performance of a Support and Enhancement Plan or Professional Services.

1.10. “Quotation” means the written quotation of Software, Services, pricing and other applicable fees.

1.11. “Professional Services” means the implementation, training and services (other than a Support and Enhancement Plan) which are provided by Cargill to Customer pursuant to the Quotation and an associated Statement of Work.

1.12. “Services” means the Professional Services and/or the Support and Enhancement Plan, as dictated by the context of the applicable provision.

1.13. “Software” means the software programs identified in the applicable Quotation.

1.14. "Statement of Work" means the written description of Professional Services to be performed by Cargill for Customer pursuant to the Agreement.

1.15 "Subscription License" means the Software provided to Customer on a Software-as-a-Service basis, as identified in the applicable Quotation.

1.16. "Support and Enhancement Plan" means the telephone and e-mail technical support described in these General Terms and Conditions as well as Software updates, modifications, improvements and enhancements made available by Cargill from time to time in its sole discretion.

1.17. "Term" means the duration of the Agreement as may be set forth in such Order Form or a Quotation thereunder.

1.18. "Third Party Software" or "Third Party Licenses" means software, content, data or other materials, including related documentation, that are owned by parties other than Cargill and that are provided to Customer on terms that are in addition to and/or different from those contained herein.

2. SOFTWARE TERMS OF USE

The Software may be provided to Customer either as a Customer-installed, on-premises solution or as a Software-as-a-Service, all as set forth in the applicable Quotation. Subject to, and conditioned upon Customer's payment of applicable fees and its compliance with these General Terms and Conditions, Cargill grants Customer the following rights:

2.1. Customer Hosted Software. If Customer and Cargill agree that Customer will install the Software at Customer's location, Customer may use one copy of the Software on a single computer, subject to the Authorized User limitation below, during the Term. The Software is in "use" on a computer when it is loaded into temporary memory (i.e., RAM) or installed into permanent memory (e.g., hard disk, CD-ROM, or other storage device) of that computer. However, installation on a network server for the sole purpose of internal distribution to one or more other computers shall not constitute "use" for which a separate license is required, provided that Customer has a separate license for each computer to which the Software is distributed.

2.2. Software-as-a-Service. If Customer and Cargill agree that Cargill will provide the Software to Customer on a Software-as-a-Service basis, Cargill will provide access to the Software on the site hosted by a third party (the "Site") and Customer's Authorized Users may access and use the Software on the Site during the Term, subject to the restrictions noted herein.

2.3. Mobile Application Software. To the extent provided for in the applicable Quotation, Customer's use of the Software on mobile devices may be permitted, subject to Customer's Authorized User and other limitations set forth herein. Certain personal information or other information may be stored on mobile devices enabled with the Software and it is Customer's responsibility to maintain the security of such mobile devices to prevent unauthorized access and use.

2.4. Copies of Electronic Documents. Solely with respect to electronic user documentation included with the Software ("Documentation"), Customer may make a reasonable number of copies (either in hardcopy or electronic form), provided that such copies shall be used only for internal purposes and shall not be republished or distributed to any unauthorized third party.

2.5. Data Use. Customer acknowledges that Cargill may, directly or indirectly through

the Software, including through adapters on Software installed on mobile devices, collect and store information regarding use of the Software and about equipment on which the Software is installed, through the Site, or through which it otherwise is accessed and used. Customer agrees that Cargill may, without additional consideration to Customer, use such information for any purpose related to any use or potential use of the Software by Customer, including but not limited to improving the performance or functionality of the Software or verifying Customer's compliance with these General Terms and Conditions.

2.6 Ownership. Customer owns all data it inputs into the Software that is provided on a Software-as-a-Service basis. Customer grants Cargill an exclusive, royalty-free, perpetual license to Customer data to use, copy, distribute, and create derivative works for any purpose. Cargill owns any derivative works produced from Customer's data. Any Customer data used, copied, or distributed by Cargill for a purpose other than providing Services to Customer, will be aggregated and will not be linked directly to Customer name or business address. Cargill owns all its data and information it uses to provide the Software to Customer.

2.7 Beta Software. From time to time, Customer may elect to evaluate Evaluation Software or Beta Software, for the purpose of evaluation and review. Evaluation Software and Beta Software are licensed for Customer's non-production use in Customer's on-site test or evaluation environment for the period set forth in the applicable Quotation. Except for the provisions of Sections 8.1 and 8.3 below, which shall not apply with respect to any Evaluation Software or Beta Software, as any Evaluation Software or Beta Software is provided on an "as-is" basis, Customer acknowledges and agrees that all Evaluation Software and Beta Software delivered in accordance with this paragraph shall be considered to be a "Software" hereunder. Notwithstanding anything to the contrary, as to any Evaluation and Beta Software, Customer's right to use such Software will terminate on the earliest of: (a) thirty (30) days after the date such Software is activated for use in Customer's test environment; or (b) immediately upon the delivery of written notice of termination to Customer. Upon expiration or other termination of its use rights, Customer will immediately either (y) discontinue any and all of use of the Software and related documentation and remove or permit Cargill to deactivate the applicable Software; or (z) execute a Quotation for and deliver payment in full of the Software price that has been agreed upon for such Software to Cargill. The termination of any Evaluation or Beta Software licenses shall not affect the license to any other Software that has been licensed by Customer under the Solution Agreement.

3. SOFTWARE USE RESTRICTIONS

3.1. Authorized User Restrictions. Authorized User may access and use the Software during the Term solely for the internal business purposes of Customer. Unless otherwise agreed, Customer's use rights are limited to a single Authorized User. If Customer has purchased multi-user rights, the Software may be used by the maximum number of Authorized Users for which use rights have been purchased, either on a concurrent use or on a per-seat basis, as identified in the Quotation. Only those contractors of Customer with a need to know may use the Software for the sole benefit of Customer and thus may qualify to be an Authorized User. Customer is fully responsible and liable for all uses of the Software and all actions and failures to take

required actions regarding the Software by Authorized Users.

3.2. Transfer Restrictions. For Customer-Hosted Software, the Software may be transferred from one computer to another provided only one Authorized User uses it at a time. The Software may be transferred from one computer to another and may reside on multiple servers or workstations on the network provided it is used at any time only by the maximum number of Authorized Users for which licenses have been purchased. If Customer has expanded from a single-user to a multi-user license, the multi-user restrictions supersede the single-user restrictions. Customer may either (a) make one copy of the Customer-hosted Software solely for backup or archival purposes or (b) install the Software on a single computer solely for backup or archival purposes. Cargill may periodically conduct audits of Customer's records, systems and facilities to verify compliance with the Agreement. Customer agrees to comply with said audits as required by Cargill.

3.3. University and University Extension Use. If the Agreement is between Cargill and a University or an Extension Office associated with a University, the Software may be used only in teaching, research, and extension service environments and cannot be used for commercial purposes unless otherwise agreed upon in the Agreement. For non-commercial use, the Software will contain a drop dead date, which can be reset yearly upon mutual agreement of the parties.

3.4. Additional Restrictions. Customer agrees: (a) not to remove any Cargill notices in the Software; (b) not to sell, transfer, rent, lease or sub-license the Software or Documentation to any third party; (c) not to alter or modify the Software; (d) not to reverse engineer, disassemble, decompile or attempt to derive source code from the Software, or prepare derivative works therefrom; and (e) not to separate any Software component or update for use by more than one Authorized User at a time – the Software is provided as a single product.

3.5. Third Party Materials. The Software may include Third Party Licenses. If the Software contains content provided by third parties, including but not limited to content regarding drugs, medication warnings, feeding directions, or withdrawals and prescriptions relating to animal feed formulas, Cargill makes no warranties, either expressed or implied, that such third party content is accurate, complete or up-to-date. The information contained therein may change from time to time, and Cargill assumes no responsibility to advise Customer of any changes or additions. Additionally, where Cargill includes data and equations in the Software, including data related to animal performance or nutrients, Cargill makes no warranties, either express or implied, regarding the accuracy or reliability of the data or equations included therein. The information contained therein may change from time to time, and Cargill assumes no responsibility to advise Customer of any changes or additions.

3.6. U.S. GOVERNMENT RESTRICTED RIGHTS. The Software and Documentation are provided with RESTRICTED RIGHTS. The Software includes commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if the Customer is the US Government or any contractor therefor, Customer shall receive only those rights with respect to the Software and Documentation as are granted to all other end users under contract, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their

contractors. Manufacturer is Cargill, 9320 Excelsior Boulevard, MS-54, Hopkins, MN 55343.

4. SUPPORT SERVICES

4.1. Support and Enhancement Plan Generally. A Support and Enhancement Plan, if applicable, is effective beginning with the date of shipment of the Cargill Software until the Term of Agreement expires or is otherwise terminated. If These Terms and Conditions are also effective beginning with the date of shipment of Third Party Software sold by Cargill and are automatically renewed on an annual basis for the Third Party Software through until the Term of the Agreement expires or is otherwise terminated.

4.2. Service/Support Requirements. Cargill is responsible for providing phone and e-mail support during Cargill' normal business hours, excluding Cargill holidays, for Cargill-proprietary Software. A Support and Enhancement Plan for all other Third-Party Software may be provided by the third party as noted in the Quotation. A Support and Enhancement Plan is provided for routine, normal business usage of the Software and associated modules specified in the Quotation; provided that Customer's personnel are trained in the normal use of the Software and provided that there is no outstanding balance owed for any Support and Enhancement Plan fees. Customer is responsible for installing network equipment suitable for connecting to the Internet from least one computer and maintaining Internet connectivity to that computer in order for Cargill support staff to be able to connect to the Customer's system. Any Professional Service is provided as specified in the Agreement. Any Additional Services will be billed separately at the standard training/support rates.

4.3. E-Mail Service/Support. Customer's Authorized Users are entitled to e-mail support that is available by addressing requests to: CDS_Support@cargill.com. E-mail support questions will be answered in a priority order based upon the order in which they are received and based upon the priority status of the question.

4.4. Emergency or After-Hours Support. In the event of a Support and Enhancement Plan call requiring a response outside of Cargill normal business hours, a technical support person will usually respond within: (a) one (1) hour for emergencies (critical or high priority matters only) and (b) the next business day in all other cases..

4.5. Support and Enhancement Plan Fee; Subscription License Fee. The annual fee for a Support and Enhancement Plan or a Subscription License Fee is listed on the Quotation. These fees are subject to change and said price changes will be reflected in the renewal invoice that will be provided to Customer prior to expiration of the applicable Support and Enhancement Plan or Subscription License term. Such price changes will increase annually by three percent (3%) or a three month average of the CPI, whichever is higher. Additional Software purchased after the original purchase will also be included in the annual fee calculation. Cargill may terminate a Support and Enhancement Plan or Subscription License if Customer does not pay the applicable annual fee when due.

4.6. Server Requirements. Customer is responsible for providing server hardware, server operating system software, workstation hardware, workstation operating system software, network cabling, and connectivity devices, and properly filtered power supply with battery backup, except as was otherwise specified in writing in the Quotation. Customer is responsible for ensuring that trained, competent individuals have assembled and installed the server hardware, server operating system software,

workstation hardware, workstation operating system software, network cabling, and connectivity devices and that the aforementioned components have been certified to meet or exceed the appropriate specification standards.

4.7. Staff Training. Customer is responsible for ensuring that its staff members are competent in the use of the workstation hardware and software. Customer is responsible for ensuring that at least one staff member is competent to administer the network, manage the backup system of Customer data, and ensure that a backup copy of Customer's data is completed and the media is stored in safe, multiple locations at all times. Customer is responsible for sending people to training in the use of Cargill Software and associated modules with significant knowledge of the Customer's business and authority to make changes as necessary to improve the Customer's business use of the Software Cargill provides.

4.8. Renewal. The Support and Enhancement Plan shall be renewed automatically on an annual basis unless either party provides written notice of non-renewal to the other party no less than thirty day prior to expiration of the then current Term. Payment is due prior to or on the renewal date. If the Support and Enhancement Plan or Subscription License should lapse due to non-payment of the annual renewal, a reactivation fee will be charged.

5. PROFESSIONAL SERVICES

5.1. These General Terms and Conditions apply to the Professional Services provided by Cargill to Customer pursuant to mutually agreed Statements of Work which are incorporated into and made a part of specific Quotations. Each Statement of Work will reference the applicable Quotation and will specify the Professional Services to be performed by Cargill. Statements of Work will become effective upon execution of the Quotation of which they are a part.

5.2. Hiring. Customer agrees not to solicit or hire, on a temporary or permanent basis, without the express written consent of Cargill, any of Cargill' personnel during the Term and for a period of twelve (12) months after the termination or expiration of the Agreement.

5.3. Professional Services Responsibilities. Each Statement of Work shall reflect the responsibilities and requirements of both Cargill and Customer.

5.4. Change Requests. Any modifications to a Statement of Work must be mutually agreed upon in writing. "In writing" includes emails ONLY for the purposes of authorizing changes to the Expense parameters in the relevant Statement of Work. Customer shall designate an authorized representative within each Statement of Work to approve Professional Services fees or expenses on behalf of Customer. If Customer requests Additional Services, Cargill will advise Customer, to the best of its ability based on information available, of any additional compensation and any modifications to the delivery schedule that would be needed to perform such Additional Services. Cargill shall perform or provide such Additional Services upon the parties' written agreement regarding such additional compensation and modifications to the delivery schedule.

6. FEES

6.1. Customer shall pay to Cargill the fees for Software and Services provided herein, in the amounts set forth in the applicable Quotation, within 30 days from the date of the applicable invoice, unless otherwise stated in the Quotation or agreed to by the parties.

6.2. Except as expressly set forth in the Contract, all purchases are non-cancelable, and all fees are non-refundable. Customer shall have no right to withhold fees under the Agreement, including, without limitation, for alleged defects in the Software and/or Services.

6.3. Fees described in the Agreement do not include federal, state or local sales tax, VAT, GST, foreign withholding, use, property, excise, service or other taxes now or hereafter levied, all of which shall be Customer's responsibility. If Cargill is required to pay any such taxes, Customer shall reimburse Cargill for such and Customer agrees to indemnify Cargill for any such taxes and related costs, interest, fees or penalties paid or owing by Cargill hereunder.

6.4. The Customer agrees to pay Cargill for travel expenses 30 days from the invoice date. Cargill will invoice Customer monthly for travel expenses. Mileage rates shall be charged to Customer as per IRS regulations. Airfare, lodging, rental car, meals, and other travel expenses are billed at actual Cargill costs. Cargill personnel will use best efforts for reasonable travel expenses. All rates are subject to change by Cargill.

7. TERM AND TERMINATION

7.1. These General Terms and Conditions and the Software use rights granted hereunder shall remain in effect for the Term or until terminated as set forth herein.

7.2. Customer may terminate its license to the Software by: (a) ceasing to use and destroying all copies of the Software and Documentation in its possession or control ; and (b) providing written notice to Cargill of its decision to terminate such Software license.

7.3. Cargill may terminate the Agreement, effective upon written notice to Customer, if Customer: (a) breaches a payment obligation; (b) breaches a material provision of the Agreement; or (c) files or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

7.4. Upon expiration or termination of the Subscription License term, the use rights granted in the Agreement shall also terminate, and Customer shall immediately cease using the Software, destroy or return to Cargill all Confidential Information and Documentation, and pay all outstanding fees due to Cargill through the date of termination. No expiration or termination shall affect Customer's obligation to pay all fees that may have become due before such expiration or termination.

7.5 Customer is solely responsible for copying or downloading all Customer data using the Software-as-a-Service within thirty (30) days upon termination of the Agreement. After such thirty (30) day period, Cargill is not obligated to provide Customer access to the Software or retain any of Customer data.

8. LIMITED WARRANTY

8.1. LIMITED WARRANTIES. Cargill warrants that the Software (excluding any Third-Party Software, content or services provided with or accessed through the Software) will perform substantially in accordance with the accompanying written Documentation for a period of ninety (90) days from the date of receipt by Customer. The warranty period for the Site is ninety (90) days following the date it is first available for use by Customer, and applies only to the initial implementation of the Site and not to any future upgrades, updates, or optional additions such as additional users or modules. Cargill further

warrants and represents that it and its employees and agents have all training, skills, tools, and equipment necessary to competently perform the Services described herein and that such services shall be performed in a timely, professional, and high-quality manner. Customer is solely responsible for data backup.

8.2. NO OTHER WARRANTIES. EXCEPT FOR THE LIMITED WARRANTY IN SECTION 8.1 ABOVE, THE SOFTWARE, DOCUMENTATION AND SERVICES ARE PROVIDED TO CUSTOMER "AS IS" AND WITH ALL FAULTS AND DEFECTS, WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CARGILL AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY OF INFORMATIONAL CONTENT, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING. WITHOUT LIMITING THE FOREGOING, CARGILL DOES NOT WARRANT THE ACCURACY, COMPLETENESS, RELIABILITY, OR TIMELINESS OF THIRD-PARTY CONTENT CONTAINED IN THE SOFTWARE. ADDITIONALLY, WITHOUT LIMITATION TO THE FOREGOING, CARGILL PROVIDES NO WARRANTY AND MAKES NO REPRESENTATION OF ANY KIND THAT THE SOFTWARE WILL MEET THE CUSTOMER'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, OR OPERATE WITHOUT INTERRUPTION OR ERROR. TO THE EXTENT ALLOWED BY APPLICABLE LAW, IMPLIED WARRANTIES ON THE SOFTWARE, IF ANY, ARE LIMITED TO NINETY (90) DAYS FROM THE DATE OF CUSTOMER'S RECEIPT OF THE SOFTWARE.

8.3. LICENSEE REMEDIES. Regarding any warranty for non-conformance, the entire liability of Cargill and its agents, suppliers, consultants, resellers and Customer's exclusive remedy shall be, at the option of Cargill, either (a) return of the price paid, or (b) repair or replacement of the Software that does not meet Cargill's Limited Warranty and which is returned to Cargill with a copy of Customer's receipt. This Limited Warranty is void if failure of the Software has resulted from Customer's use of the Software in connection with any hardware or software not specified in the Documentation or has resulted from Customer's negligence, reckless use, accident, abuse, or misapplication. Any replacement Software elements will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. Outside the United States, neither these remedies nor any product support services offered by Cargill are available without proof of purchase from an authorized international source.

9. LIMITATION OF LIABILITY

9.1. Cargill has no liability or obligation to Customer for any actual or alleged infringement, indemnification claim, warranty claim, or other claim, to the extent based upon or attributable to: (i) the combination or interfacing of the Site, including Software, with any software or other products not produced or approved in writing by Cargill, (ii) the alteration, repair, or maintenance of Software, except by Cargill, (iii) Customer's failure to install and use any update, (iv) Customer's use of third-party software in connection with the Site that is no longer supported by such third-party, or (v) any operation or use of the Site in a manner not in compliance with the Agreement or the Documentation, or any other breach of the Agreement by Customer. Except for the express warranties

9.2. NO LIABILITY FOR CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CARGILL OR ITS SUPPLIERS OR AGENTS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS-INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE AGREEMENT INCLUDING BUT NOT LIMITED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, LOSS OR CORRUPTION OF DATA, FAILURE TO UPDATE OR PROVIDE ACCURATE INFORMATION OR SECURITY BREACHES, EVEN IF CARGILL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE.

9.3. DAMAGE CAP. IN NO EVENT WILL CARGILL OR ITS SUPPLIERS' OR AGENTS' COLLECTIVE AGGREGATE LIABILITY UNDER THE AGREEMENT FOR ANY REASON EXCEED ONE THOUSAND DOLLARS. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF THE CUSTOMER'S REMEDIES UNDER THE AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

10. PROPRIETARY RIGHTS

10.1. Professional Services. All Inventions shall be the exclusive property of Cargill. With the respect to any Invention, Cargill hereby grants to Customer a non-exclusive license to use such Inventions in the normal course of Customer's business during the Term.

10.2. Ownership. All title and copyrights, patents, trade secrets, trademarks and proprietary rights in and to the Software and all derivatives thereof (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the Software), the accompanying printed materials, and any copies of the Software are owned by Cargill or its suppliers. To the extent that Customer provides any ideas, reports or other feedback to Cargill as part of Customer's use of the Software, Customer hereby freely assigns all right, title and interest in such ideas, reports and feedback to Cargill, without further compensation, and shall execute all necessary documentation as may be reasonably requested by Cargill to effect such assignment. Customer acknowledges and agrees that all updates, upgrades, work, Inventions, and deliverables in connection with the Site or related Services, whether or not paid for or reimbursed by Customer, is the exclusive property of Cargill. The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. No ownership rights in the Software or the Site are transferred to the Customer. Cargill owns and retains the right to collect and use in any lawful manner and disclose aggregated, anonymized data or other data that is not Confidential Information.

11. CONFIDENTIALITY

11.1. Dissemination of Confidential Information shall be limited to employees or agents that are directly involved with discussions contemplated by the Agreement, and even then, only to such extent as is necessary and essential. The Parties shall inform their employees and agents of the confidential nature of the information disclosed

hereunder and cause all such employees and agents to abide by the terms of the Agreement. The receiving Party shall not disclose the disclosing Party's Confidential Information to any unauthorized party without prior express written consent of the disclosing Party or unless required by law or court order. If a Party is required by law or court order to disclose Confidential Information of the other Party, they shall give the disclosing Party prompt notice of such requirement so that an appropriate protective order or other relief may be sought.

11.2. Confidential Information will be used only in connection with discussions contemplated by the Agreement; no other use will be made of it by the receiving Party, it being recognized that both Parties have reserved all rights to their respective Confidential Information not expressly granted herein. All documents containing Confidential Information and provided by the disclosing Party shall remain the property of the disclosing Party, and all such documents, and copies thereof, shall be returned or destroyed upon the request of the disclosing Party. Documents prepared by the receiving Party using Confidential Information of the disclosing Party, or derived therefrom, shall be destroyed upon request of the disclosing Party, confirmation of which shall be provided in writing. The receiving Party, however, may keep one copy of any document requested to be returned or destroyed in the files of its legal department or outside counsel for record purposes only.

11.3. Confidential Information shall not include that which:

11.3.1.1. is in the public domain prior to disclosure by disclosing Party;

11.3.1.2. becomes part of the public domain, by publication or otherwise, through no unauthorized act or omission on the part of the receiving Party;

11.3.1.3. is lawfully in the receiving Party's possession prior to disclosure by the disclosing Party; or

11.3.1.4. is independently developed by an employee(s) of the receiving Party with no access to the disclosed Confidential Information.

11.4. The period for disclosure of Confidential Information between the Parties under the Agreement shall endure for the Term of the Agreement. The confidentiality obligations imposed by the Agreement, including but not limited to non-disclosure and non-use, however, shall endure for three (3) years from the date the Term (or any renewal thereof) expires or the date when early termination of the Agreement becomes effective; provided, however, that Customer's confidentiality obligations regarding Confidential Information that is the Software, Third Party Software, Documentation, or Services shall survive indefinitely.

12. RELATIONSHIP OF PARTIES

12.1. The relationship of Cargill to Customer shall be one of independent contractor, and the parties do not intend to create any partnership, joint venture, employment or agency under the Agreement. Cargill shall not represent that Cargill is an agent of Customer and shall not be authorized to bind Customer in any way.

13. GENERAL

13.1. Choice of Law. The Agreement will be governed by the laws of the State of Minnesota, without reference to its choice of law rules. Customer hereby irrevocably consents to the exercise of exclusive jurisdiction and venue by the state or federal courts in Hennepin County, Minnesota for any claim relating to the enforcement of, or any rights under, the Agreement. The Parties exclude application of the United Nations

Convention on Contracts for the International Sale of Goods.

13.2. Exports. Customer represents and warrants that it is not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons (“SDN List”) and is not otherwise legally prohibited to use the Services. Customer will comply with all applicable customs, technical compliance and country of origin requirements of each country into which the Software is imported. Customer will not export or re-export, directly or indirectly, the Software to any country where such export or transmission is restricted or prohibited by local law, regulations, or statutes or by U.S. legal regulations or statutes or to any individual on the SDN List or the U.S. Commerce Department’s Table of Denial Orders..

13.3. Complete Agreement. The Agreement represents the entire Agreement between Customer and Cargill with respect to matters covered herein and supersedes all previous proposals and/or agreements, whether written or oral. No variation or modification of any term of the Agreement shall have effect, unless in writing and signed by authorized representatives of Customer and Cargill.

13.4. Waiver and Severability. No waiver of any provision of the Agreement will be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. Any waiver of either party of any provision of the Agreement will not be construed as a waiver of any other provision of the Agreement, nor will such waiver operate as or be construed as a waiver of such provision respecting any future event or circumstance. If any term or provision of the Agreement is held invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

13.5. Force Majeure. Except for Customer’s obligation to pay fees hereunder, neither party shall be responsible for any delay or failure in performance, caused by flood, riot, insurrection, fire, earthquake, strike, communication line failure and power failure, explosion or act of God, death of, or incapacitating illness or injury to, key personnel or any other force or cause beyond the control of the party claiming the protection of this paragraph.

13.6. Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under the Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Cargill’ prior written consent, which consent Cargill may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under the Agreement for which Cargill’ prior written consent is required. No delegation or other transfer will relieve Customer of any of its obligations or performance under the Agreement. Any purported assignment, delegation or transfer in violation of this Section is void. The Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

13.7. Arbitration. Any dispute arising under the terms of the Agreement that is not resolved within a reasonable period of time by the authorized representatives of Cargill and the Customer shall be brought to the attention of the Chief Executive Officer (or

designee) of Cargill and the Chief Executive Officer (or designee) of the Customer for joint resolution at Cargill' offices. If resolution of the dispute through discussion between the aforementioned executive officers is pursued without success, the issue will go to arbitration before a mutually agreed upon party.

13.8. Dongles. Cargill may provide Customer with a dongle as part of the delivery of Software or Services. Broken or faulty dongles will be replaced for the cost of the replacement dongle, postage and packing. The inoperative dongle must be returned to Cargill on receipt on the new dongle and satisfactory installation. In the event of a dongle theft, Cargill may, at its own discretion, issue a replacement dongle. Cargill, however, will require proper evidence of theft (such as a police or insurance report) and will need to be satisfied that diligent steps were taken to recover the dongle. Failure to return the dongle or provide satisfactory evidence of theft or destruction will incur a re-issue charge of 50% of current software list price.

13.9. Company Information and Notice. Should Customer have any questions concerning the Agreement, or if Customer desires to contact Cargill for any reason, please contact Cargill by phone at 952-984-4700 or by mail at 9320 Excelsior Blvd, MS 54, Hopkins, MN 55343. Cargill may update its contact information from time to time. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Contract cover page.