

DATA ACCESS AND USE AGREEMENT

THIS DATA ACCESS AND USE AGREEMENT (“Agreement”) is made and entered by and between GROWMARK, Inc., on its own behalf and on behalf of its affiliates and other third parties as provided for in this Agreement (individually and collectively referred to herein as “Company”), and the individual, company or other customer of Company agreeing to the terms and conditions of this Agreement (“Customer”) as of the date of Customer’s entry into this Agreement (the “Effective Date”), whether evidenced by execution of this Agreement, electronic execution of this Agreement, online consent to the terms hereof, confirmation of this Agreement through invoices or course of dealing, or any other reasonable evidence of agreement hereto by Customer (“Consent”).

Access to Information. Company provides certain products and services its customers (the “Services”). This Agreement represents the agreement of the parties that the Services are made available to Customer in partial consideration and exchange for access to certain information of Customer (“Customer Information”) and certain related rights set forth herein (“Use Rights”). Customer hereby grants access to the Customer Information without regard to when the Customer Information was or is accessed by or provided to Company, and Customer warrants that the Customer Information is owned by Customer and Customer has the right to grant access thereto. Access as provided for herein shall be construed broadly, including without limitation, access to information and property of Customer as required to collect, create and compile the Customer Information, and access to any information and materials provided by Customer to Company or any third party which may be useful to Company in connection with the Services. Access to additional Customer Information pursuant to this Agreement shall terminate following five business days prior written notice.

Customer Information. The Customer Information shall include and be limited to personal identifying information of Customer and information related to Customer’s agricultural business operations when directly identifiable as the operations of Customer. Customer Information shall not include any other information, including without limitation, aggregated information of Customer or regarding Customer and others when not directly or readily identifiable as related to Customer, and information developed by Company or others within the Use Rights, even if such information incorporates or is based upon Customer Information (collectively, “Company Information”). As between the parties, any information other than Customer Information shall constitute Company Information.

Use Rights. The Customer Information constitutes confidential information of Customer and shall be protected and secured by Company in a commercially reasonable manner. The Use Rights shall include the right to use the Customer Information to provide, modify, replace or expand the Services, the right to acquire support or supplemental services from third parties in connection with provision, modification, replacement or enhancement of the Services, the right to assess current or potential Services on an individualized or aggregate basis, the right to integrate the Customer Information into and with other information, materials, processes and systems of Company or any third party subject to the confidentiality provisions hereof, the right to disclose the Customer Information to any third party, including with regard to Company’s participation in agricultural industry initiatives and regulatory efforts, subject to the confidentiality provisions hereof, and the right to disclose the Customer Information as required for legal and regulatory compliance. Customer grants to Company an irrevocable, royalty-free license and right to use the Customer Information for the foregoing purposes to the extent that Customer Information is integrated into or constitutes the basis for Company Information. The Use Rights shall terminate following five business days prior written notice in which case Company shall destroy Customer Information in Company’s possession within thirty days following the effective date of such notice; provided however, that termination of Use Rights shall not require the destruction of any Company Information and Use Rights shall not terminate to the extent related to Company Information incorporating Customer Information, but any integrated and retained Customer Information shall continue to remain subject to the confidentiality obligations hereof.

Liability. Company shall not be liable for nonperformance or any costs resulting from any event beyond the control of Company, including without limitation, interruption in the Services. COMPANY SHALL NOT BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE AMOUNTS PAID HEREUNDER TO COMPANY FOR THE SERVICES DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY EVENT ALLEGED TO CAUSE LIABILITY FOR COMPANY, NOR SHALL COMPANY BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOST PROFITS OR ANY FORM OF CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT.

Miscellaneous. This Agreement constitutes the entire understanding of the parties with regard to the subject matter hereof and shall not be amended except by Company from time to time as posted on Company’s website, which amendment shall be effective and binding up the parties with regard to subsequent Services, access, and Use Rights hereunder without notice upon posting to such website. Company shall have the right to assign this Agreement at any time without restriction or obligation; provided however, that this Agreement shall benefit and bind the heirs, successor and assigns of the parties. The Services are provided as is, without representation or warranty, the entry into and performance of this Agreement shall create no future duty for Company, including any obligation to provide additional Services, and this Agreement, the Services and Customer use of Company’s website are subject to, and this Agreement hereby incorporates, Company’s online terms and conditions as posted on Company website and amended from time to time; provided however, that the terms of this Agreement shall control in the event of any conflict between such terms and conditions and the terms hereof. The terms hereof shall be deemed to be the language of both parties, and no rule of strict construction shall be applied. If any term, clause or provision hereof is held invalid, such invalidity shall not affect the validity or operation of any other term. Notices required hereunder shall be effective three days following mailing to Company’s principal place of business. This Agreement shall be governed in accordance with Illinois law, and any action hereunder shall be brought only in courts located in Illinois. This Agreement and any amendment shall be effective with Consent and without any signature required of either party.