



End User License Agreement

This End User License Agreement (referred to as the **EULA**), is between you and Farmware Applications Australia Pty Ltd (**Farmware**). Your use of the Farmware Software is governed by the EULA. It is a legal agreement between you and Farmware.

By Installing the Farmware Software (whether you elect to use it or not), you confirm acceptance of all of the terms and conditions of the EULA. The date you Install will be deemed to be the effective date of the EULA. You may not make use of the Farmware Software unless you have accepted the terms and conditions of the EULA. Your agreement with Farmware will always include, at a minimum, the terms of the EULA.

1. DEFINITIONS

Farmware is the entity described in the first paragraph.

Farmware Material means all material provided to you by Farmware prior to and during your operation of the Farmware Software, including all software, manuals and any other written communications that are commercially sensitive to Farmware.

Farmware Software means the offline and web-based applications and platform provided by Farmware via www.farmware.net and/or other websites or platforms designated by Farmware from time to time including any associated components, but excluding Third Party Applications.

Intellectual Property Rights means intellectual and industrial property rights conferred on a party or recognised at law in any territory throughout the world including any copyright, trademark, business name, patent, innovation concept, formula, trade secret, method, circuit layout, invention and any other results of intellectual activity in any field of industry or endeavour and includes (a) the right to have any Confidential Information kept confidential, (b) any right to use an Intellectual Property Right owned by a third party where the terms of that right of use or licence permit a use of that Intellectual Property Right as contemplated under the EULA.

Installation means installation of the Farmware Software on any computer or other device, and includes the act of installation on behalf of any person as a user, or an act carried out by a person which indicates that a person has installed the Farmware Software. **Installed**, **Installing** and other similar grammatical variances of this word in the EULA have the corresponding meaning of this concept in the context they are used.

Losses means, in relation to any fact, matter or circumstance, all losses, costs, damages, expenses, penalties, third party claims and other liabilities arising out of or in connection with that fact, matter or circumstance and including all legal and other professional expenses on a solicitor-client basis incurred in connection with investigating, disputing, defending or settling any claim, action, demand or proceeding relating to that fact, matter or circumstance (including any claim, action, demand or proceeding based on the terms of this EULA), and including all foreseeable and consequential loss, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation, any loss of data suffered, cost of procurement of substitute goods or services, or other intangible loss.



Malicious Code means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

Network means the network of devices operated by your Network of Users in connection with, and intended by your Network of Users to be enhanced by, the Farmware Software.

Subscription Arrangements means the terms that Farmware has arranged with you in relation to payment of the subscription fee for use of the Farmware Software and associated services. The Subscription Arrangements include any period of time that is designated by Farmware as a period during which you may have a free or complimentary use of the Farmware Software by prior arrangement with Farmware.

Third-Party Applications means online, web-based applications and offline software products that are (a) provided by third parties, (b) interoperate with the Farmware Software, and (c) may be either separate or con-joined with the Farmware Software, whether or not they are identified to you by Farmware as third-party applications.

your Network of Users means other parties who are using any iteration of the Farmware Software that you have Installed. Your Network of Users may include but is not limited to your employees, consultants, contractors and agents; or other third parties that may use any iteration of the Farmware Software that you have Installed, subject always to the limitation that your Network of Users (regardless of the actual number of users in your Network of Users) must not operate the Farmware Software on more than 6 devices without the prior written consent of Farmware.

you means any party who has Installed the Farmware Software. Where there is more than one party involved in that instance of Installation, those parties are jointly and severally liable to Farmware. Where you are an individual, the expression includes your personal representatives and in the case of a corporation the expression includes the successors of the corporation. Where you are a partnership the expression includes the partnership as it is constituted at the date of this EULA and each of its members and also the successors of the partnership whether comprising the same of a different name and each of the members of the partnership or its successors as it may be constituted from time to time (provided that the successors constituting the partnership have been expressly approved by Farmware). Where you are or become a trustee (whether or not that fact is disclosed to us) the expression includes you in your personal capacity as well as your capacity as a trustee. In this EULA, **your, yours** and other grammatical variances of these terms in the EULA have the corresponding meaning of this concept in the context they are used.

your Data means all electronic data or information submitted by you making use of the Farmware Software, whether that data or information is submitted by you, your Network of Users, or data that is intended by you and your Network of Users to be utilized for operation of the Farmware Software.

2. INTERPRETATION

2.1 References – People and Parties. In the EULA a reference to (a) one gender includes the others; (b) the singular includes the plural and the plural includes the singular; (c) a person includes a body corporate; (d) a party includes the party's executors, administrators, successors and permitted assigns.



2.2 References – Statutes and currency. In the EULA a reference to (a) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes: (i) that Statutory Provision as amended or re-enacted from time to time; (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision; and (iii) another regulation or other statutory instrument made or issued under that Statutory Provision; and (b) money is to Australian dollars, unless otherwise stated.

2.3 Interpretation – General In this EULA, (a) “including” and similar expressions are not words of limitation; (b) a reference to a clause or schedule is a reference to a clause of or a schedule to the EULA; (c) A reference to an agreement or document (including, without limitation, a reference to the EULA) is to the agreement or document as amended, novated or replaced; (d) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; (e) headings are for convenience only and do not form part of this document or affect its interpretation; (f) a provision of the EULA must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the EULA; and (g) all references to time are to Australian Eastern Standard time.

3. SERVICES

3.1. Provision of Farmware Software. In consideration for your observing and meeting your obligations under the Subscription Arrangements, Farmware will make the Farmware Software available to you under the terms of the EULA during the relevant period for which you have subscribed to use it. You agree that your use of the Farmware Software is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Farmware regarding future functionality or features.

3.2. Subscriptions. Unless otherwise agreed to in writing by Farmware, Farmware Software is purchased as a subscription and the Farmware Software may be accessed by no more than the specified number of members in your Network of Users. You must pay all fees payable under the Subscription Arrangements when they are due without deduction or set-off. If your Subscription Arrangement requires Farmware to provide the Farmware Software for any period without cost (**Free Licensing Period**), (a) you are responsible for all risks associated with your use of the Farmware Software during the Free Licensing Period; (b) None of Farmware’s warranties or obligations in the EULA or under the *Competition and Consumer Act 2010* are applicable to the Free Licensing Period; but (c) you must meet all of your obligations under the EULA as from Installation.

3.3 License. Farmware grants to you a personal, royalty free, non-assignable and non-exclusive license to use the software provided to you for your use of the Farmware Software in accordance with the EULA for the term of the EULA. This license is granted for the sole purpose of enabling you to enjoy the features of the Farmware Software in the manner contemplated by the EULA. You may not transfer or sublicense your rights under this clause 3.3.

4. USE OF THE SERVICES

4.1. Your Responsibilities. You acknowledge you will (a) be responsible for the compliance of your Network of Users with the EULA, (b) be solely responsible for the accuracy, quality,



integrity and legality of your Data and of the means by which you acquired your Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Farmware Software, and notify Farmware promptly of any such unauthorized access or use, and (d) use the Farmware Software only in accordance with the EULA, any relevant Farmware Material and applicable laws and government regulations.

4.2 Use of Farmware Software. You must not (a) make the Farmware Software available to anyone other than your Network of Users, (b) sell, resell, rent or lease the Farmware Software, (c) use the Farmware Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Farmware Software to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Farmware Software or any Third-Party Applications, or (f) attempt to gain unauthorized access to the Farmware Software or Farmware's related systems or networks. You may not access the Farmware Software for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes. You also agree to receive and implement software updates and fixes in respect of the Farmware Software within a reasonable time of those updates and fixes being supplied to you by Farmware.

4.3. Usage Limitations. Farmware Software may be subject to usage limitations, such as, for example, limits (a) on disk storage space, (b) on the number of calls you are permitted to make against the Farmware application programming interfaces. You must comply with any usage limitations specified by Farmware. You acknowledge Farmware may provide you with information to enable you to monitor your compliance with usage limitations.

4.4 Prohibited Access. You agree not to access or attempt to access the Farmware Software using any portal, interface or means other than the interfaces and application programming interfaces provided by Farmware. Unless Farmware authorises you to do so, you agree that you will not access the Farmware Software using automated means (including the use of scripts and web crawlers). You must also comply with any directives Farmware may make in respect of the Farmware Software using a Robots Exclusion Protocol, robots.txt file, or Robots Exclusion Standard.

4.5 Access Information. You must keep your passwords and the user identification you use to access the Farmware Services secure. You are solely responsible to Farmware for all activities that occur in respect of your Farmware user account, and if you become aware of unauthorized use of your Farmware user account, you agree that you will notify Farmware immediately.

5. THIRD-PARTY PROVIDERS

5.1. Acquisition of Third-Party Products and Services. You acknowledge that (a) Farmware may offer Third-Party Applications in association with the Farmware Software, (b) any other acquisition by you of third-party products or services, including but not limited to Third-Party Applications and implementation, customization and other consulting services, and any exchange of data between you and any third-party provider, is solely between you and the applicable third-party provider, (c) Farmware does not warrant or support any Third-Party Applications or any other product or service that are not a part of the Farmware Software, whether or not they are designated by you as "certified" or otherwise.



5.2. No Representations on behalf of Third Parties. You acknowledge that Farmware makes no representations on behalf of any provider of a Third Party Application. You further acknowledge that no part of the EULA gives you any right to make any claim or reserve any damages against a provider of a Third Party Application on the basis of your rights in the EULA.

5.3. Third-Party Applications and your Data. If you install or enable Third-Party Applications for use with Farmware Software, you acknowledge that Farmware may allow providers of those Third-Party Applications to access your Data as required for the interoperation of those Third-Party Applications with the Farmware Software. Farmware is not responsible for any disclosure, modification or deletion of your Data resulting from this type of access by Third-Party Application providers.

6. PROPRIETARY RIGHTS

6.1. Reservation of Rights. Subject to the limited rights granted to you in the EULA, Farmware reserves all other rights, title and interest in Farmware's Material and to the Farmware Software, including all Intellectual Property Rights in Farmware's Material and the Farmware Software. You acknowledge no rights are granted to you other than the usage rights for the Farmware Software expressly set out in the EULA.

6.2. Restrictions. You shall not (a) permit any third party to access the Farmware Software except as permitted in the EULA, (b) copy, modify, create derivative works of, reverse engineer, decompile or otherwise attempt to extract the source code of the software in respect of the Farmware Software, (c) copy, frame or mirror any part or content of the Farmware Software, other than copying or framing on your own intranets or otherwise for your own internal business purposes, (d) reverse engineer the Farmware Software, or (e) access the Farmware Software in order to build a competitive product or service, or (f) copy any features, functions or graphics of the Farmware Software.

6.3. Ownership of your Data. Subject to the licenses you have granted to Farmware in the EULA in respect of your Data in the EULA, Farmware acknowledges you own all rights, title, and interest in and to all of your Data.

6.4 Other Intellectual Property Rights. During your use of the Farmware Software, you must not utilize content in a way that infringes the Intellectual Property Rights of third parties. You must obtain the consent of the owner of the relevant Intellectual Property Rights in respect of the content you intend to use. You acknowledge that Farmware is not liable to you or to any third party for your use of content in breach of this clause 6.4.

6.5. Information Rights and Publicity. Subject to the terms of its privacy policy (located at a URL as Farmware may provide from time to time), Farmware and its wholly owned subsidiaries may retain and use, information collected in your use of the Farmware Software. Farmware will not share information in respect of your activities with any third parties unless Farmware (a) has your consent; (b) concludes that it is required by law or has a good faith belief that access, preservation or disclosure of such information is reasonably necessary to protect the rights, property or safety of Farmware, its users or the public; (c) uses aggregated information (of which information concerning your activities will form part) for the purposes of statistical, industry or market analysis; or (d) provides such information in certain limited circumstances to third parties to carry out tasks on Farmware's behalf (e.g., billing or data storage) with strict restrictions that prevent the data from being used or shared except as directed by Farmware. When this is done,



it is subject to agreements that oblige those parties to process such information only on Farmware's instructions and in compliance with the EULA and appropriate confidentiality and security measures.

6.6. Trade Marks. You acknowledge that you may not use Farmware's trade marks, logos, domain names or brands to promote your Network or services (or in juxtaposition to them) except in any instance where Farmware has otherwise authorized you to do so.

6.7. Suggestions. You grant to Farmware a royalty-free, worldwide, transferable, sub-licensable, irrevocable and perpetual license to use or incorporate into the Farmware Software any suggestions, enhancement requests, recommendations or other feedback provided by you and your Network of Users that relate to the operation of the Farmware Software.

6.8 Operative license to Farmware. You grant to Farmware a royalty-free, worldwide, transferable, sub-licensable, irrevocable and perpetual license to reproduce, adapt, modify, publish, translate, publicly perform, publicly display and distribute your Data for the purposes of (a) operating the Farmware Software, (b) promoting the Farmware Software, (c) fulfillment of the various functions Farmware specifies are to be part of the Farmware Software. You acknowledge that in providing your Data for these purposes, Farmware may (a) transmit your Data using various media and networks, and (b) make changes to your Data that are required to efficiently transfer your Data from one medium to another.

7. CONFIDENTIALITY

7.1. Definition of Confidential Information. In this clause, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes your personal information. Farmware's Confidential Information includes the Farmware Software. Confidential Information also includes the terms and conditions of the EULA, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by any party. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

7.2. Protection of Confidential Information. Unless authorized by the Disclosing Party in writing, (a) the Receiving Party must use a reasonable degree of care not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of the EULA, and (b) the Receiving Party must limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need the access for purposes that are consistent with the EULA and who have signed confidentiality agreements satisfactory to both parties.

7.3. Protection of your personal information. Farmware will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of your personal information in accordance with Farmware's privacy policies as



modified by Farmware from time to time. Farmware will not (a) modify your personal information, (b) disclose your personal information, except where this EULA permits or requires that disclosure, or (c) access your personal information except to provide the Farmware Software or prevent or address service or technical problems, or at your request in connection with customer support matters.

7.4. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to make the disclosure, provided the Receiving Party gives the Disclosing Party prior notice of the scope of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

8. OPERATION OF SOFTWARE.

8.1 Use of Farmware Software. You are entirely responsible for (a) your use of the Farmware Software and all uses you make of Farmware's web-based applications and platform, (b) the appropriateness and legality of all your Data, (c) safeguarding the privacy of your Network of Users, (d) safeguarding the Intellectual Property Rights of your Network of Users through their use and promotion of the Farmware Software, and (e) ensuring that any member of your Network of Users can contractually disengage from use of the Farmware Software when they desire to do so. You must (aa) make your Network of Users aware of the terms of the EULA, and (bb) ensure that each member of your Network of Users considers itself bound to the terms of the EULA for the benefit of Farmware.

8.2 Bugs and Errors. You must report to Farmware any bugs or errors in the Farmware Software during the course of your operation of it.

9. WARRANTIES AND DISCLAIMERS

9.1. Farmware. Farmware will ensure that (a) the Farmware Software performs in accordance with appropriate specifications, and (b) the functionality of the Farmware Software will not be materially decreased during a subscription term. If Farmware breaches this obligation, your exclusive remedy will be as provided for in clauses 11.3 and 11.4 below together with the remedies available under any applicable laws.

9.2. Acknowledgements. You acknowledge that (a) the management functions of Farmware Software are designed to operate using optimums derived from agricultural statistical information provided by third parties (**Industry Data**); (b) that although Farmware will use its best endeavours to monitor the accuracy of the Industry Data, it is possible that the Farmware Software may fail or may not operate optimally due to inaccuracies or errors in the Industry Data; (c) that Losses incurred by you because of any failure of Farmware Software in reliance on the Industry Data are subject to the limitations in clause 10.3.

9.3. Mutual Warranties. Each party represents and warrants that (a) it has the legal power and capacity to enter into the EULA, and (b) it will not transmit to the other party any Malicious Code.



9.4. Disclaimer. Except as specified in the EULA, neither party makes any warranties of any kind, whether express, implied, statutory or otherwise, and each party specifically disclaims all implied warranties, including any warranties of merchantability or fitness for a particular purpose, to the maximum extent permitted by applicable law.

10. INDEMNIFICATION AND LIABILITY

10.1. Intellectual Property Infringement Claims. Farmware warrants that to the best of its knowledge, no aspect of the Farmware Software infringes the Intellectual Property Rights of any third party. However, in the event that a third party initiates any action against Farmware based on an infringement claim in respect of Intellectual Property Rights of that third party, Farmware may, at its sole option, either (a) obtain for you the right to continue using the Farmware Software, (b) replace or modify the Farmware Software so that the Farmware Software no longer infringes or misappropriates the Intellectual Property Rights of a third party; however, providing substantially the same functionality, or (c) terminate the Farmware Software and give you a refund in accordance with clause 11.3.

10.2. Indemnification by you. You must defend Farmware against any claim, demand, suit, or proceeding ("**Claim**") made or brought against Farmware by a third party alleging that your Data, or your use of the Farmware Software in violation of the EULA infringes or misappropriates the Intellectual Property Rights of a third party or violates applicable law, and you must indemnify Farmware for any damages finally awarded against, and for reasonable legal fees incurred by, Farmware in connection with any such Claim; provided, that Farmware (a) promptly gives you written notice of the Claim; (b) gives you sole control of the defense and settlement of the Claim (provided that you may not settle any Claim unless the settlement unconditionally releases Farmware of all liability); and (c) provides to you all reasonable assistance, at your expense.

10.3. Limitation of Liability. You acknowledge that Farmware, its subsidiaries and affiliates, and its licensors will not be liable to you for (a) Losses due to a failure of the Farmware Software due to an error in the Industry Data as provided in clause 9.2, (b) Losses because of a breach of any statutory guarantee other than to the extent of the amount incurred by Farmware due to (i) a resupply or the Farmware Software, or (ii) the cost of re-supplying the Farmware Software in any one instance, (c) any other loss or damage which may be incurred by you, including but not limited to loss or damage as a result of (i) the deletion of, corruption of, or failure to store your Data or any other content and other communications data maintained or transmitted by or through your use of the Farmware Software; (ii) your failure to provide Farmware with accurate account information; and (iii) your failure to keep your password or account details secure and confidential. The limitations on Farmware's liability to you in this clause 10.3 apply whether or not Farmware has been advised of or should have been aware of the possibility of any such losses arising.

11. TERMINATION

11.1 Termination by Farmware. Farmware may terminate the EULA at any time in writing if: (a) you have breached any provision of the EULA, (b) you have acted in a way that indicates you does not intend to comply with a provision of the EULA (c) Farmware is required to terminate the EULA by law or the operation of the Farmware Software becomes unlawful, (d) Farmware determines that the provision of the Farmware Software is no longer profitable or viable.



11.2 Survival of Terms. Any termination by Farmware in accordance with clause 11.1 will not affect any rights, obligations liabilities or licenses that are either expressed in the EULA to be continuous or are intended to continue indefinitely.

11.3 Termination by you. You may terminate the EULA in writing if (a) Farmware gives you notice that the Farmware Software will no longer be provided, (b) the term of the relevant subscription has expired and you wish to terminate your relationship with Farmware, or (c) the circumstance set out in clause 9.1 applies.

11.4 Refunds. If you terminate the EULA on the basis of Clause 11.3(a) above, or if Farmware terminates the EULA on the basis of Clause 11.1(c) or (d), Farmware will refund you with an amount based on a pro-rata reduction of your annual subscription paid at the time of the termination.

11.5 Returns following Termination. On and after termination in accordance with clause 11, you must (a) return all Farmware Material to Farmware and (b) delete any spare or back-up copies of software provided by Farmware to you prior to or during the period of your operation of the Farmware Software.

12. GENERAL PROVISIONS

12.1. Relationship of the Parties. You and Farmware are independent contractors. The EULA does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

12.2. No Third-Party Beneficiaries. There are no third-party beneficiaries to the EULA.

12.3. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under the EULA shall constitute a waiver of that right. Other than as expressly stated in the EULA, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party under applicable laws.

12.4. Severability. If any provision of the EULA is held by a court of competent jurisdiction to be contrary to law, the provision must be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the EULA will remain in effect.

12.5. Legal Fees. You must pay on demand all of Farmware's reasonable legal fees and other costs incurred by Farmware to collect any fees or charges due to Farmware if you breach the EULA.

12.8. Assignment. Neither party may assign any of its rights or obligations in the EULA, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign its rights under the EULA in its entirety, without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of the EULA upon written notice to the assigning party. In the event of such a termination, Farmware must refund to you any prepaid fees covering the remainder of the



term of all subscriptions after the effective date of termination. Subject to the restrictions on assignment of this clause, the EULA will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.9 Amendments. Farmware may amend the EULA from time to time by either notifying you using notifications provided via the Farmware Software or providing details of the amendments on its website. Farmware will act reasonably within its discretion in electing to make such amendments.

12.10 Governing Law. The EULA, its interpretation, performance, and determination of issues connected with any breach of it will be construed in accordance with the laws of Tasmania and the Commonwealth of Australia. The parties agree to accept the non-exclusive jurisdiction of the courts in Tasmania and the Federal Courts of the Commonwealth of Australia for the settlement of all disputes.

12.11. Entire Agreement. The EULA, together with the Subscription Arrangements constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of the EULA shall be effective unless in writing and either signed or accepted in the manner specified in relevant agreement or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of the EULA or the Subscription Arrangements, the terms of the Subscription Arrangements will prevail.