

THIRD PARTY SOFTWARE DEVELOPER TERMS

1. BACKGROUND

- 1.1 NGR has established a Register known as the National Grower Register and has appointed an Operator to maintain the Register.
- 1.2 NGR has created an internet based software application known as myNGR which establishes a unique online portal for a Data Subscriber and its Authorised User to access the Register and Grower Data.
- 1.3 A Data Subscriber may appoint a Third Party Software Developer to undertake integration works between NGR Data retrieved from the Register or myNGR and use it to develop an Application for a Data Subscriber for the term of engagement of the Third Party Software Developer by the Data Subscriber, and during the financial year in which the Data Subscriber is Listed on the Grower and the Grower Listing is maintained.
- 1.4 These terms and conditions apply to the Third Party Software Developer's use of and access to Grower Data and Confidential Information retrieved or in any manner otherwise obtained by the Third Party Software Developer including from the Register, myNGR or via a Data Subscriber.

2. INCORPORATION OF TERMS

- 2.1 Use of the Grower Data and Confidential Information by a Third Party Software Developer is subject to these Terms and NGR's Privacy Policy.
- 2.2 A Third Party Software Developer may only agree to be bound by these Terms if a Third Party Software Developer can enter into a legally binding contract under any applicable law. If a Third Party Software Developer cannot enter into a legally binding contract, the Third Party Software Developer must immediately cease using Grower Data and Confidential Information.
- 2.3 By accepting these Terms and using the Grower Data, a Third Party Software Developer:
 - (a) accepts and agrees to be bound by these Terms;
 - (b) warrants and represents it has full legal capacity to enter into a legally binding contract, and has full legal capacity and power to comply with these Terms and NGR's Privacy Policy;
 - (c) agrees these Terms constitute legal, binding, valid and enforceable agreements against it; and
 - (d) consents to electronically enter into transactions and sign agreements and documents with NGR.
- 2.4 If a Third Party Software Developer does not accept these Terms, a Third Party Software Developer must not collect, hold, access or use the Grower Data or Confidential Information in any way.
- 2.5 These Terms become binding on a Third Party Software Developer on the first to occur of the following:
 - (a) when a Third Party Software Developer agrees to be bound by these Terms;
 - (b) when the Third Party Software Developer first holds or accesses Grower Data or Confidential Information or otherwise obtains Grower Data or Confidential Information.
- 2.6 Unless otherwise agreed between the parties in writing, these Terms form the terms and conditions of the contract between NGR and a Third Party Software Developer.
- 2.7 NGR may amend these Terms:
 - (a) to address NGR's operational requirements;
 - (b) due to legal or regulatory changes; or
 - (c) due to changes to the Services NGR may provide from time to time, including the features or the functionality of myNGR or the Register.
- 2.8 NGR will publish amended Terms to the Website. A Third Party Software Developer will be asked by NGR to accept the updated Terms but are not obliged to and the Third Party Software Developer may terminate this agreement with NGR if the Third Party Software Developer does not accept the amended Terms before they take effect.
- 2.9 A Third Party Software Developer agrees the amended Terms will immediately apply from the time it accepts them, and as they are published on the Website www.ngr.com.au and on myNGR.
- 2.10 Third Party Software Developer's continued use of the Grower Data and Confidential Information after NGR publish updated Terms constitutes acceptance to be bound by the amended Terms.

3. ACCESS AND USE OF CONFIDENTIAL INFORMATION BY THIRD PARTY SOFTWARE DEVELOPER

- 3.1 NGR may at any time change or cancel (or direct a Data Subscriber to change or cancel) a Third Party Software Developer's access to and use of Grower Data and Confidential Information:
 - (a) to protect the integrity of myNGR, the Register, and all Confidential Information and Grower Data;
 - (b) to address legal or regulatory change or compliance;
 - (c) to ensure compliance with these Terms;
 - (d) if NGR believe, acting reasonably, that a Third Party Software Developer has breached these Terms and if the breach is capable of remedy, has failed to remedy that breach on reasonable notice; or
 - (e) for any other reason that NGR considers, acting reasonably, compels or requires NGR to do so, and
 - (f) will inform a Third Party Software Developer of that change or cancellation and the reason for it.

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- 3.2 NGR may cancel a Third Party Software Developer's access to and use of Grower Data and Confidential Information, if the Third Party Software Developer requests in writing.

4. THIRD PARTY SOFTWARE DEVELOPER'S UNDERTAKINGS AND WARRANTIES

- 4.1 Each Third Party Software Developer must:

- (a) comply with these Terms and NGR's Rules and act honestly and in good faith in all of its dealings with NGR;
 - (b) comply with NGR's Privacy Policy and Privacy Laws in respect of the Grower Data, Confidential Information and myNGR and the Register;
 - (c) ensure any Grower Data and Confidential Information is stored, used, disclosed and destroyed in a secure manner;
 - (d) if they are added as an Authorised User to the Data Subscriber Account, if requested by NGR provide Identification Documents to enable an Information Match Request to be performed;
 - (e) ensure the Grower Data and Confidential Information is protected against misuse and loss, or unauthorised access, modification or disclosures;
 - (f) notify NGR of potential bugs, issues, or vulnerabilities identified during development associated with the NGR integration;
 - (g) notify NGR of and otherwise comply with the law relating to a Notifiable Data Breach as that term is used and defined in the Privacy Laws;
 - (h) notify NGR if it becomes aware of a breach of its obligations under NGR's Privacy Policy or these Terms and comply with any reasonable direction from NGR with respect to how it may remedy that breach;
 - (i) ensure its employees and agents are aware of and comply with NGR's Privacy Policy, Privacy Laws and the requirements of these Terms;
 - (j) not attempt to obtain Grower Data or Confidential Information except as permitted by these Terms;
 - (k) not disclose or make the Confidential Information or Grower Data available to any third party;
 - (l) not:
 - (i) take commercial advantage of or use Grower Data or Confidential Information other than as prescribed by these Terms;
 - (ii) allow any of its Associated Entities, Subsidiaries, directors, shareholders, employees or agents to use for commercial advantage any Grower Data or Confidential Information belonging to NGR other than as prescribed by these Terms;
 - (m) take all reasonable steps to:
 - (i) protect NGR's Grower Data or Confidential Information obtained by a Third Party Software Developer; prevent any conflict between NGR's business interests and the Third Party Software Developer's financial interests;
 - (n) after termination of this agreement, or the cancellation of the Third Party Software Developer's access to and use of Grower Data and Confidential information, a Third Party Software Developer must:
 - (i) not use or continue to use Grower Data or Confidential Information;
 - (ii) return to NGR or destroy (as NGR directs in writing) all Grower Data or Confidential Information in the possession or under the control of the Third Party Software Developer; and
 - (iii) destroy any credentials used by the Third Party Software Developer to access and use Grower Data and Confidential Information and ensure that the Data Subscriber who appointed the Third Party Software Developer also removes and/or destroys the credentials utilised by the Third Party Software Developer to access Grower Data or Confidential Information;
 - (o) indemnify NGR against any loss or damage suffered or incurred because of a breach of these Terms or a breach of our Privacy Policy, by it, its employees, agents and independent contractors, (including any person a Third Party Software Developer otherwise authorises or requests to access Grower Data or Confidential Information);
 - (p) only use the Confidential Information and Grower Data solely for the purpose of developing the Application and must not use the Confidential Information or Grower Data for any other purpose;
 - (q) not access any of the Grower's Details or Confidential Information unless they have entered into Terms with NGR;
 - (r) keep the Confidential Information and Grower Data secret and confidential and must return all documents and any copies (whether in electronic format or otherwise), notes, extracts of all written documents, drawings, forms, hardware, discs, photos, operations manuals and any other documents that it may have obtained through the course of its engagement.
- 4.2 The Third Party Software Developer acknowledges and agrees that:
- (a) all Intellectual Property Rights that subsist in the part of the Confidential Information shall at all times remain the absolute property of NGR;
 - (b) nothing in these Terms confers upon the Third Party Software Developer any right or license to any part of the Confidential Information or any Intellectual Property Rights;
 - (c) the confidential nature of the Confidential Information can subsist for an indefinite period of time;
 - (d) the lapsing of a predetermined period of time does not by reason of that alone cause the Confidential Information to cease having its confidential character, and that the passage of any particular period of time does not extinguish the need to maintain the secrecy of the Confidential Information;

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- (e) in the event of a breach or threat of breach of these Terms, NGR is entitled to an injunction restraining the Third Party Software Developer and any of its agents, employees or independent contractors from committing any breach of these Terms without showing or proving any actual damage sustained by NGR;
- (f) the Third Party Software Developer must not lodge any patent application or any other application for the statutory protection of the Confidential Information, without the prior written consent of NGR; and
- (g) the Third Party Software Developer must not disclose to any person or make known in any manner any part of the Confidential Information or Grower Data, except as authorised by these Terms or our Privacy Policy.

5. ACCURACY, COMPATIBILITY AND SUITABILITY OF INFORMATION

- 5.1 NGR does not represent that the supply in electronic form of information will be compatible with the Third Party Software Developer's information systems. It is the responsibility of each Third Party Software Developer to satisfy itself about these matters.
- 5.2 To the maximum extent permitted by law NGR gives no warranty or undertaking and makes no representation to a Third Party Software Developer about the suitability of, or fitness of, information including Grower Data or Confidential Information for the Third Party Software Developer's purposes other than those warranties, undertakings or representations expressly set out in these Terms or which cannot be excluded by law.

6. LIMITATION OF LIABILITY, INDEMNITY AND INSURANCE

- 6.1 Subject to the other provisions of these Terms, a Third Party Software Developer must indemnify and keep indemnified NGR and the Supplier from and against all Claims and Liabilities sustained by NGR or the Supplier arising out of an unremedied breach by a Third Party Software Developer, or its agents, employees and independent contractors of these Terms or our Privacy Policy.
- 6.2 Neither party is liable to the other for any cyber event or cyber attack (unless caused by or contributed to by the other party) and neither party is liable to the other for any indirect, special, economic or consequential loss or damage or loss of revenue, potential profits, profits, goodwill, bargain or opportunities incurred or suffered by a party, whether caused by a breach of these Terms, negligence or otherwise, and whether a party is aware or should have been aware of the possibility of such loss or damage.
- 6.3 Each Third Party Software Developer agrees that under no circumstances (including but not limited to any act or omission by NGR or negligence on NGR's part), will NGR or the Supplier be liable to a Third Party Software Developer in relation to the misuse of information including Grower Data, Confidential Information, the Register or myNGR or a Third Party Software Developer's information by any third party.
- 6.4 Each Third Party Software Developer assumes the entire risk for any use made of information including Grower Data and Confidential Information.
- 6.5 Each Third Party Software Developer acknowledges and agrees that:
 - (a) Grower Data, Confidential Information, and if relevant, myNGR and the Register is provided on a "as is, as available" basis only;
 - (b) neither NGR nor the Supplier can guarantee that Grower Data, Confidential Information and the Data recorded on either myNGR or the Register is correct, accurate, up to date, complete, reliable or not subject to errors or malfunctions of any kind, as it is reliant on information and Data provided by third persons; and
 - (c) all works, remediation fixes, bug fix costs and the costs of the Third Party Software Developer are at the expense of the Data Subscriber who appointed the Third Party Software Developer, and NGR is in no way responsible for or liable for such costs.
- 6.6 Each Third Party Software Developer agrees to indemnify NGR and the Supplier against any Claims or Liabilities arising out of a Third Party Software Developer's misuse (including unauthorised use) of or unauthorised access to Grower Data, Confidential Information, the Register or myNGR, or the lawful exercise of NGR's rights pursuant to these Terms as a consequence.
- 6.7 All Obligations to indemnify a party are continuing Obligations separate and independent of other Obligations, and survive the expiration or termination of these Terms or cancellation of the Third Party Software Developer's authority to use the Grower Data or Confidential Information.

7. TERMINATION

- 7.1 Either party may terminate this agreement by seven (7) days' written notice to the other, except if there is a data breach in which case either party may terminate this agreement by immediate notice.
- 7.2 Upon termination of this agreement, the Third Party Software Developer must cease all use of Grower Data and Confidential Information and must return to NGR or destroy (as NGR directs in writing) all Confidential Information and Grower Data in the possession or under the control of the Third Party Software Developer.

8. FEES

In the event that the Third Party Software Developer is not a Data Subscriber and otherwise accesses Grower Data, the Third Party Software Developer agrees that it must pay to NGR the Fees that a Third Party Software Developer would pay to NGR if it were a Data Subscriber, such Fees as set out in the Data Subscriber Terms or otherwise set by NGR from time to time.

9. GENERAL

9.1 Governing Law

These Terms are governed by the law in force in Queensland.

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A Third Party Software Developer submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction in Queensland, and any Court that may hear appeals from any of those Courts, for any proceedings in connection with these Terms and Conditions, and waives any right a Third Party Software Developer might have to claim that those Courts are an inconvenient forum.

9.2 Costs

A Third Party Software Developer will bear its own expenses incurred in connection with:

- (a) the transactions that these Terms contemplate; and
- (b) any amendment to, or any consent, approval, waiver, release or discharge of or under, these Terms.

9.3 Good Faith

A Third Party Software Developer must do anything (including execute any Deed), and must ensure that its employees and agents do anything (including execute any Deed), that may reasonably be required to give full effect to these Terms.

9.4 Waiver

A right may be waived if in writing signed by the parties, and:

- (a) no other conduct of the party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

9.5 Entire Understanding

These Terms contain the entire agreement between the parties about its subject matter. A Third Party Software Developer acknowledges that, except as is expressly stated in these Terms, a Third Party Software Developer has not relied on any representation, warranty, promise or undertaking of any kind by any person on NGR's behalf.

Any right that a party may have under these Terms is in addition to, and does not replace or limit, any other right that the party may have at law or in equity. Nothing in these Terms shall be deemed to be, or shall operate as, a waiver of any of our or the Operator's rights that may have accrued or which may exist prior to the commencement of these Terms.

Any provision of these Terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these Terms enforceable, unless this would materially change the intended effect of these Terms.

9.6 Consent

Where these Terms contemplate that a party may agree or consent to something (however it is described), the party may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; or
- (b) agree or consent subject to conditions, unless these Terms expressly contemplate otherwise.

9.7 Set Off

A Third Party Software Developer may not set off any amount that is or may become owing to a Third Party Software Developer against any amount it owes NGR under these Terms.

9.8 No Merger

Nothing in these Terms merges with any other judgment or other right or remedy that a party may hold at any time. Upon termination the antecedent rights of the party remain enforceable and will not merge on termination.

9.9 Statutes

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to these Terms is excluded to the full extent permitted by law.

9.10 Inconsistency

If these Terms are inconsistent with any other document or agreement between the parties, these Terms prevail to the extent of the inconsistency.

9.11 Change of Law

In the event that a change of law makes the performance by a party under these Terms unlawful, the parties agree to use their best endeavours to re-negotiate the terms of these Terms. If they cannot agree within sixty (60) days of the commencement of the relevant legislation, either party may terminate these Terms without prejudice to each party's accrued rights but otherwise without penalty.

9.12 Force-Majeure

A party will not be liable for any delay in or failure of performance caused by Force Majeure (except that delay in payment of money under these Terms is never excused by Force Majeure). In the event of a Force Majeure that causes delay in performance by more than sixty (60) days, either party may terminate these Terms without prejudice to each party's accrued rights but otherwise without penalty.

9.13 Power of Attorney

A Third Party Software Developer must not act on behalf of a party under a Power of Attorney without NGR's prior written consent, such consent not to be unreasonably withheld.

9.14 Assignment and Delegation

A Third Party Software Developer may not assign or delegate any of its rights or obligations under these Terms without NGR's written consent.

Any purported assignment and delegation in the absence of such consent shall be ineffective.

NGR may assign or delegate all of our rights and obligations under these Terms, fully or partially, by notice in writing to you.

10. DEFINITIONS

In these Terms, unless the context otherwise requires:

Application means the software being developed by the Third Party Software Developer upon request and engagement by a Data Subscriber.

Business Day means a day which is not a Saturday, Sunday or public holiday in Toowoomba, Queensland.

Claim means, in relation to a person, any action, allegation, claim, demand, judgment, Liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether:

- (a) it is present, unascertained, immediate, future or contingent;
- (b) it is based in contract, tort, statute or otherwise; or
- (c) it involves a third party or a party to this contract.

Confidential Information means all information whether stored or accessible only by electronic means or held in hard copy relating to the Register, myNGR (including my eDOCS) or NGR including the processes, equipment, techniques, Third Party Software Developers, Authorised Users and their Contact Details, Agreements, Grower Accounts, Authorised User Contact Details and arrangements and agreements with third parties, client information, Grower formulae, concepts or designs, trade secrets, computer programs, software and computer applications, works, inventions, discoveries, facts or data relating to the Register, myNGR or NGR, and including any information which the Third Party Software Developer or Authorised User becomes aware of by observation, deduction, reasoning, inspection and overhearing and including Intellectual Property Rights.

Core Data means the Grower Details and Authorised User Contact Details and may include certain Subscription Data as and when required to enable NGR to provide the Services.

Data means so much of the Core Data, Subscription Data or a combination of certain data fields of either Core Data or Subscription Data, and any other information which may be provided by NGR to a Third Party Software Developer as part of NGR's Services and only in accordance with these Terms, the Grower & User Terms and the Privacy Policy.

Data Subscriber means:

- (a) a person that holds from time to time a current Password to access certain Data on the Register and whose authority to access the Register has not subsequently been cancelled, suspended or whose access to the Register has not been denied for any reason;
- (b) our shareholders and their Associated Entities (including their successors and assigns); and
- (c) includes a Buyer or End User of a Data Subscriber's Growers.

Data Subscriber's Growers means Growers on whom a Data Subscriber is Listed on the Register and whom the Data Subscriber can demonstrate to our reasonable satisfaction have either:

- (a) delivered Agricultural Product to the Data Subscriber, or sold or contracted to sell Agricultural Product to the Data Subscriber; or
- (b) purchased or contracted to purchase Agricultural Product from the Data Subscriber.

Device means a physical device used with Electronic Equipment to access a Data Subscriber Account.

Electronic Equipment includes a computer, tablet, electronic device, telephone and mobile phone.

Fees has the same meaning and effect as that Term is defined in the Data Subscriber Terms.

Grower means:

- (a) an individual producer of Grain, Agricultural Product or other Commodity;
- (b) a Partnership or other entity associated for the purpose of producing and selling Grain or other Agricultural Product or other Commodity;
- (c) a Trader of Agricultural Product which delivers Agricultural Product to a bulk handling facility or which purchases or sells warehoused Agricultural Product;
- (d) any Primary Producer involved in Primary Production;
- (e) any other person or has authority to act for a Grower or who is validly associated with a Grower or a Grower's Account.

Grower Data means the Core Data and if subscribed to by a Data Subscriber the Subscription Data of a Grower.

Grower Details means in respect of each Grower:

- (a) the names of the persons or trading entities that are Payees in respect of the Grower Account;
- (b) the Primary User Contact Details and User Contact Details for Users in respect of that Payee;
- (c) the address, GPS coordinates and location by State and, in the case of South Australian properties, (hundred), of the main grain or Agricultural Product producing property contributing grain or Agricultural Product to be sold using the NGR Card;
- (d) the percentage split of payments to go to each of the Payees;

- (e) the preferred method of payment (cheque or direct credit);
- (f) the bank BSB, account number and account name of each of the Payees;
- (g) the Australian Business Number of the business or trading entity (if provided);
- (h) the GST status of the Payees,

and any other information that NGR may collect from a Payee or Grower and provide to a Data Subscriber or their Authorised Users from time to time.

Grower Registration Number means a form of identification issued by NGR to a Grower Account carrying a unique Register identification number.

Intellectual Property Rights means all intellectual property rights throughout the world, whether registered, unregistered or unregistrable, in and relating to the Register, myNGR and NGR including all names, copyright, patents, trademarks, service marks, trade names, designs, confidential information, trade secrets, know how, data and databases, circuit layout rights, systems, domain names, email addresses, post office box numbers and telephone numbers of NGR or myNGR.

Liability means a debt, liability or Obligation, whether:

- (a) actual, contingent or prospective;
- (b) present or future;
- (c) qualified or unqualified; or
- (d) incurred jointly or severally with any other person.

myNGR means the internet based software application established by NGR for use by you, located at www.ngr.com.au and which contains the Grower Data and the Data Subscriber Account and which forms part of the Register.

NGR means National Grower Register Pty Ltd.

Obligation means any obligation, commitment, liability, covenant, undertaking or duty whether arising by operation of law, in equity or by statute and whether expressed or implied.

Privacy Laws means the *Privacy Act 1988* (Cth) and any other legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to the Grower Details.

Privacy Policy means the privacy policy and procedures implemented by NGR for the collection, storage, use, disclosure and granting of access rights to the Grower Details.

Register means the database of Grower Data and Data Subscriber Account details maintained by NGR.

Rules means the rules from time to time formulated by the Supplier as to the operation of, access to and use of myNGR and the Register.

Subscription Data means such of the Data to which a Data Subscriber may, with NGR's and a Grower's consent, subscribe on a subscription basis during a Subscription Period.

Supplier means National Grower Register Pty Ltd or such other entity as National Grower Register Pty Ltd may appoint from time to time and includes its' Operator, Associated Entities, directors, officers, affiliates, employees, agents, contractors, successors and assigns.

Terms means these terms including any schedules or annexures and all amendments to them from time to time.

Website means www.ngr.com.au or such other website developed and assigned by us.

11. INTERPRETATION

- 11.1 A reference to "you" and "your" is reference to a Third Party Software Developer.
- 11.2 A reference to "We" "us" "our" and "NGR" is a reference to National Grower Register Pty Ltd.
- 11.3 The word "person" includes an individual, a corporation, a partnership, trust or other entity whether incorporated or not.
- 11.4 A reference to a clause, sub-clause, schedule or attachment is, unless the context requires otherwise, a reference to a clause, sub-clause, schedule or attachment to these Terms.
- 11.5 Unless the context requires otherwise, the singular will include the plural and vice versa and any word or expression defined in the singular will have a corresponding meaning if used in the plural and vice versa.
- 11.6 In these terms, certain words or expressions that are used have the same meaning as that word or expression is defined in our Data Subscriber Terms and Privacy Policy.
- 11.7 If a word or phrase is defined, a matching word or phrase containing another part of speech has a corresponding meaning, whether or not the word or words in the matching word or phrase commence with a capital letter.
- 11.8 Headings to these Terms are for ease of reference only and will not in any way affect the construction or interpretation of these Terms.
- 11.9 References to currency are references to Australian dollars.
- 11.10 A reference to these Terms is a reference to these Terms as amended from time to time.
- 11.11 The words "in writing" includes any communication sent by letter, facsimile transmission, email or SMS or any other form of communication capable of being read by the recipient.
- 11.12 A reference to a law includes that law as amended, consolidated, re-enacted or replaced from time to time.
- 11.13 These Terms are binding on your executors, administrators and permitted assigns.

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