

Terms of Use

These Terms of Use were last updated on 16 February 2017

Welcome to Agrigate,

Agrigate is an online platform through which farmers can:

- access key information about their farming business in one place;
- identify areas where they can benchmark their performance on a scale that they have not been able to in the past;
- make smarter and faster decisions to maximise their on-farm performance, productivity and profitability; and
- manage their environmental information (e.g. nutrient management).

Agrigate Solutions is committed to protecting Your personal information and the information supplied by You or a third party. These Terms of Use incorporate the Agrigate Privacy Policy which sets out how Agrigate Solutions collects, uses, protects and discloses personal and business information to ensure that Agrigate Solutions complies with its obligations to You, including under the Privacy Act 1993.

These Terms of Use set out Agrigate Solutions' obligations as a service provider and Your obligations as a Subscriber to Agrigate, including (without limit) restrictions on access and use, intellectual property, payment terms, termination and liability.

"Access Fee"

means the monthly access fee (excluding any taxes and duties) in respect of each Farm payable by You in accordance with these Terms and the fee schedule set out on the Website (which may change from time to time in accordance with these terms).

"Agrigate"

means the online data aggregation platform available through the Website.

"Agrigate Solutions"

refers to Agrigate Solutions Limited Partnership, a Limited Partnership between Fonterra Enterprises Limited ("**Fonterra**"), Livestock Improvement Corporation Limited, and Agrigate GP Limited.

"Business Unit"

means, in relation to Fonterra farms, a distinct business identified by a unique Fonterra Supplier Number, and in relation to farms that are not Fonterra farms, a measure equivalent to that used as the basis for allocation of the Fonterra Supplier Number.

"Confidential Information"

includes all information exchanged between the parties to these Terms, whether in writing, electronically or orally, including via the Service but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

"Data"

means any data inputted by You or with Your authority into Agrigate.

"Farm"

means each separate Business Unit involved in the business of producing primary products (including agriculture, dairy, meat and wool horticulture, viticulture and silviculture) whether physically located on the same property or not.

"Intellectual Property Right"

means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or

industrial property rights, anywhere in the world whether registered or not.

"Invited User"

means any person or entity, other than the Subscriber, that uses the Service with the authorisation of the Subscriber from time to time.

"Purpose"

means, in respect of a Subscriber or Invited User, improving productivity and performance of the relevant Subscriber's Farm(s) for which it has paid an Access Fee.

"Service"

means access to Agrigate via the Website.

"Solution"

means any functionality or other features that may developed by us or a third party to utilize the functionality of Agrigate.

"Subscriber"

means the entity or person who registers to use the Service, and, where the context permits, includes any entity on whose behalf that entity or person registers to use the Service.

"we", "us" and "our"

refers to Agrigate Solutions Limited Partnership.

"Website"

means (a) the Internet website at the domain www.agrigate.co.nz or any other website operated by Agrigate Solutions; and (b) any application (for use on an electronic device) that is made available by Agrigate Solutions and relates to the website specified in paragraph (a) of this definition and which provides similar functionality to that website.

"You"

means the Subscriber, and where the context permits, an Invited User. "Your" has a corresponding meaning.

Acceptance

Your access to and use of the Website and the Service is subject to the following terms and conditions ("**Terms**"). By using the Website and the Service you accept the most recent Terms posted on this Website and agree to be bound by them. If you do not agree to these Terms, and to be bound by any changes to them in future, please do not use the Website or the Service.

Changes to these Terms

We reserve the right, at our sole discretion, to update or revise these Terms. Any such update or revision to these Terms will be effective upon the date those modified terms are stated to take effect. Please check these Terms periodically for changes. Your continued use of the Website or the Service following the effective date of any changes to the Terms indicates your acceptance of those changes.

Username and Password

You may register an Agrigate account using Your existing Farmsource MPQ or MINDA credentials, or by creating a new username and password ("**Login Details**"). You must:

- (a) keep Your Login Details strictly confidential and not disclose it to any other person;
- (b) effect and maintain security measures to prevent unauthorised access to, use of or interference with the Website or the Service; and
- (c) notify Agrigate Solutions immediately if You become aware of any unauthorised disclosure or use of Your Login Details or the Website and, at Your cost, take any action which is necessary or which Agrigate Solutions may require to prevent any further unauthorised use.

Use of the Website and the Service

Agrigate Solutions grants You the right to access and use the Service via the Website with the particular user roles available to You according to Your subscription type. This right is non-exclusive, non-transferable, and limited by and subject to these Terms. You acknowledge and agree that, subject to any applicable laws:

- (a) you determine who is an Invited User and what level of access to the Data and the Service that Invited User has;
- (b) you are responsible for all Invited Users' use of the Website and the Service; and
- (c) you control each Invited User's level of access to the Data and Service at all times and can revoke or change an Invited User's access, or level of access, at any time and for any reason, in which case that person or entity will cease to be an Invited User or shall have that different level of access, as the case may be.

General obligations

You will (and you will ensure your Invited Users will) only use the Service and the Website for the Purpose, in accordance with these Terms and any policies or guidelines sent by Agrigate Solutions or condition posted on the Website.

Intellectual property rights

We acknowledge and agree that You own the Intellectual Property Rights in, and are solely responsible for the legality, reliability, integrity, accuracy and quality of Your Data. You grant to Agrigate Solutions a non-exclusive right to use Your Data:

- (a) to provide the Service to You, which may include (without limit) using and/or combining Your Data with other data to develop applications and provide You with information or insights;
- (b) to provide You with access to and, assistance in using, the Website and the Service;
- (c) to create anonymised versions of the Data ("**Anonymised Data**") and then aggregate this Anonymised Data with third party data ("**Aggregated Data**"); and
- (d) as otherwise expressly permitted by these Terms.

Subject to the above, the Website, all modifications, enhancements and other developments to the Website (whether or not recommended or suggested by You), all Anonymised Data and Aggregated Data, and any new Intellectual Property Rights that are created or developed as a result of or in connection with the input or use of Your Data in the Website are confidential and proprietary to Agrigate Solutions and/or its licensors.

Warranties

You acknowledge that you are using the Website and the Service for business purposes and agree that the Consumer Guarantees Act 1993 does not apply to the supply of the Website and the Service.

Agrigate Solutions warrants that the Website and the Service will conform in all material respects to any description or specifications posted on the Website or otherwise notified by Agrigate Solutions to You from time to time.

Except any warranties expressly provided in these Terms, all conditions, warranties, undertakings, or representations whether express, implied, statutory or otherwise in respect of the supply of the Website and the Service by Agrigate Solutions are excluded to the fullest extent permitted by law.

Limitation of liability

You acknowledge and agree that:

- (a) Your use of the Website and the Service may rely on the provision of services by third parties (including telecommunications providers and Solutions providers) ("**Third Party Providers**") and that access to the Service and the Website may be subject to limitations, delays and other problems inherent in the use of such services provided by Third Party Providers;
- (b) Agrigate Solutions will not be responsible for any delays, delivery failures, or any other loss or damage arising out of or is in connection with any services provided by Third Party Providers, including any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet;
- (c) Agrigate may contain data or information supplied by third parties ("**Third Party Data**"). While we will take reasonable steps to ensure that those third parties who supply Third Party Data in turn take reasonable measures to ensure that their Third Party Data is accurate, Agrigate Solutions will not be responsible for any loss or damage arising out of or in connection with Your use of Third Party Data. If it comes to our attention that Third Party Data is inaccurate, we will take reasonable steps to resolve any such issues; and
- (d) Third Party Data may be delivered to You via Solutions and that Your use of Solutions will be dealt with under a separate Solution agreement. Accordingly, Agrigate Solutions will not under these Terms be responsible for any delays, delivery failures, or any other loss or damage arising out of or in connection with any services provided to You via those Solutions. To the extent that a Solution is provided by Agrigate Solutions, our liability to You in relation to that Solution will be set out in the relevant Solution agreement.

Agrigate Solutions will not be liable to You for any loss of profits, loss of revenue, loss of data, or any indirect, consequential

or special loss or damage suffered or incurred by You arising out of or in connection with our provision of the Service or Your use of the Website or the Service.

Agrigate Solutions' liability to the You arising out of all claims for loss or damage under these Terms will not exceed in aggregate the value of one month's Access Fee actually paid by You to Agrigate Solutions under these Terms.

Indemnity

You agree to indemnify Agrigate Solutions against all costs, losses, expenses and damages incurred through:

- (a) any claims made against Agrigate Solutions by an Invited User relating to their use of the Website and/or the Service;
- (b) Any claims made against Agrigate Solutions relating to any Data you or your Invited Users have provided;
- (c) Any access by you of the Website or use by you of the Service in a manner that is inconsistent with any use guidelines or policies that we may notify you of from time to time;
- (d) any person who accesses the Website and/or the Service by using Your Login Details.

Confidentiality

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

- (a) Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms.
- (b) Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.

Each party's obligations under this clause will survive termination of these Terms.

Your payment obligations

1. Access Fee:

The Access Fee applies to each Farm that is subscribed to the Service and will be invoiced monthly in advance. Unless otherwise specified by Agrigate Solutions, the billing period for monthly Access Fees commences upon subscription to the Service and will continue until the same day in the following calendar month ("**Billing Period**"). Invoices for each Billing Period will be sent to You, or to a billing contact whose details are provided by You, by email. You must pay or arrange payment of all amounts specified in any invoice by the due date for payment. You are responsible for payment of all taxes and duties in addition to the Access Fee.

Agrigate Solutions will continue invoicing You monthly in accordance with this clause until this Agreement is terminated in accordance with the clause entitled "Termination".

2. Changes to fees

We reserve the right to change the Access Fee at any time upon thirty (30) days written notice by updating the fee schedule on the Website or by notifying You via email. Should You continue to use the Service (as applicable) after these changes take effect, You will be responsible for paying the new Access Fee.

3. Preferential pricing or discounts:

You may from time to time be offered preferential pricing or discounts for the Access Fee by us or through sponsorship or other arrangements with third parties. Where such preferential pricing or sponsorship applies for a period ("**Discount Period**"), you will be liable for the full Access Fee at the end of the Discount Period.

Without prejudice to any other rights that Agrigate Solutions may have under these Terms or at law, Agrigate Solutions reserves the right to suspend or terminate Your use of the Service in the event that any invoices for the Access Fee are not paid in full by the due date for payment.

4. Other fees:

Where you choose to add Solutions to Your subscription you may be charged additional fees for Your use of those Solutions by the Solution providers. The Solution providers' payment terms and conditions will apply in respect of such additional fees.

Termination

You can cancel Your use of the Service by emailing us at info@agrigate.co.nz no less than 20 days prior to the end of Your then-current Billing Period. If you cancel Your subscription in accordance with these Terms, You will continue to have access to the Website and the Service from the effective date of cancellation until the end of Your then-current Billing Period. If You give notice to cancel Your use of the Service less than 20 days before the end of Your then-current Billing Period then You will be charged the Access Fee for the following Billing Period and will continue to have access to the Website and the Service from the date You gave notice to cancel until the end of that following Billing Period.

We may suspend Your use of the Service immediately and at any time if, in our sole discretion, we consider You have committed a material or persistent breach of these Terms or any other terms applying to Your use of the Service and/or the Website. Where we suspend Your use of the Service we will contact You to advise You of the basis for the suspension and where, acting reasonably, we consider that Your breach of these Terms is incapable of being remedied in a reasonable manner that is satisfactory to us, we may cancel Your subscription.

Your feedback

Upon request, You agree to complete a survey and/or periodically provide feedback on the Website and/or the Service. You agree that all data/responses You provide in Your survey response or feedback will not be considered Data and will belong to Agrigate Solutions and may be used by us (on an anonymised basis) for any of our business purposes.

No Assignment

You may not assign or transfer any rights accrued under these Terms to any other person without Agrigate Solutions' prior written consent.