

UPDATED 01/16/20



# EQUIPMENT LEASE AND DATA UPLOAD AGREEMENT

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NOTE: THIS IS FARMOBILE'S STANDARD CUSTOMER AGREEMENT USED IN MOST SITUATIONS. INDIVIDUAL USERS WHO HAVE SUBSCRIPTIONS FROM ONE OF FARMOBILE'S ENTERPRISE CUSTOMERS MAY HAVE RECEIVE A SOMEWHAT DIFFERENT VERSION OF THIS AGREEMENT. REST ASSURED, THE PROVISIONS GOVERNING DATA OWNERSHIP WILL NEVER CHANGE UNLESS A DATA OWNER HAS EXPRESSLY AGREED OTHERWISE WITH THEIR AG RETAILER OR OTHER SUBSCRIPTION PROVIDER.

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## COMPANY INFORMATION

Farmobile LLC  
4001 W 114th St., Ste 300  
Leawood, KS 66211  
(844) 337-2255

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Farmobile LLC, a Kansas limited liability company ("**Farmobile**"), offers to farmers a unique data collection system ("**Services**") utilizing a simple, out- of-the-box plug-in device called the PUC device that automatically uploads machinery and field activity data to a farmer's unique, cloud-based Electronic Field Record ("**EFR**") as farm machinery passes over the farmer's field. This Equipment Lease and Data Upload Agreement ("**Agreement**") establishes the terms by which you, the User, lease the PUC device and transfer and store your EFRs with Farmobile. If you obtained the PUC device from a person other than Farmobile, such person is identified as a distributor ("**DISTRIBUTOR**") at the top of this page. Your relationship with your Distributor may be subject to additional terms and conditions not part of this Agreement.

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## TERMS AND CONDITIONS

### 1. LEASE OF PUC DEVICE

- 1.1. **Lease of PUC device.** Farmobile leases to you, the User, the PUC device and associated equipment for the duration of the Term (as defined below), subject to the requirements of this Agreement. Farmobile may at any time during the Term replace, upgrade or otherwise update the PUC device, our firmware or software.
- 1.2. **Term.** This Agreement shall be for a one (1) year period (the "Term") beginning on the due date for the first Annual Fee. This Agreement shall be extended

automatically for additional one (1) year periods, unless notice of termination is provided by either party within thirty (30) days prior to the expiration of any Term. You commit to a minimum of three (3) consecutive Terms, and any termination by you during these three Terms shall be subject to an early cancellation fee as indicated in Appendix A: Pricing Addendum. Any renewal Term shall be considered part of the original Term and all provisions of this Agreement shall apply.

- 1.3. **Trial Period.** Any time period after a PUC device is placed into service and before a Term begins shall be considered a trial period. All provisions of this Agreement shall apply during any trial period, as if such period were part of the Term. If you decide not to begin the Term, you must return the PUC device as required in this Agreement.
- 1.4. **Payment.** You will pay Farmobile an annual fee as indicated in Appendix A: Pricing Addendum (the "Annual Fee"). The Annual Fee is subject to an increase or decrease after the initial three (3) year Term and every year thereafter, but you will be notified prior to any increase or decrease and have the option to discontinue use of the PUC device on the anniversary of the Term. We may choose to decrease the annual payment during your active term.
- 1.5. **Taxes.** Any such taxes on the PUC device and associated Services provided by Farmobile shall be paid by you, or at Farmobile's option, added into the Annual Fee and remitted by Farmobile. Unless you are informed otherwise by Farmobile, you are responsible for all taxes related to the PUC device or Services.
- 1.6. **Ownership of the PUC.** The PUC device, including the PUC device's software, patents, and other Intellectual Property, is the exclusive property of Farmobile at all times during the Term and afterwards. In the event of damage to the PUC device during the Term, you shall pay to repair or replace the PUC device, at Farmobile's option.
- 1.7. **License to Use PUC Device and Farmobile DataEngine Software.** The PUC device runs software owned by Farmobile and licensed to you during the Term. Data obtained using the PUC device is sent to the cloud via a cellular connection and is ingested by the Farmobile DataEngine. The PUC device and DataEngine software are collectively referred to herein as the "Software". Farmobile may update the Software during the Term, and this license shall cover any updates. You are granted a limited non-exclusive license to use the Software on a single PUC device. You may not distribute, copy, or make the Software available over a network where it could be used by multiple devices at the same time. This License does not grant you any rights to use Farmobile proprietary interfaces and other intellectual property in the design, development, manufacture, licensing or distribution of third party devices and accessories, or third party software applications. You may not, and you agree not to enable others to copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the Software or any services provided by the Software. You may not lease, lend, sell, or sublicense the Software.
- 1.8. **Intellectual Property.** All images, trademarks, service marks, logos, icons, and other intellectual property ("**Intellectual Property**") displayed on or contained in

the PUC device or Farmobile website are the exclusive property of Farmobile and may not be used without Farmobile's prior written consent.

- 1.9. **Return of the PUC device.** At the end of the Term, or upon termination or default of this Agreement, you shall return the PUC device to Farmobile in as good as condition as when received; ordinary wear and tear is accepted. Farmobile may exercise any remedy for failure to return the PUC device.
- 1.10. **Installation.** Farmobile may assist you with installation of the PUC device on your farm equipment. You release Farmobile from all claims of damages to your farm equipment resulting from installation or use of the PUC device.

## 2. FARM DATA GENERATED BY THE PUC DEVICE

- 2.1. **Your Personal Information.** When you use the PUC device, Farmobile creates certain unique identifiers to enable Farmobile to record your farm data, create your Electronic Field Records ("**EFR**"), and associate such information with your account (collectively "Farm Data"). These unique identifiers are associated with your Personal Information, such as name, address and phone number. Personal Information is defined in Farmobile's Privacy Policy, which also explains Farmobile's promise to protect your Personal Information.
- 2.2. **Your Ownership of Farm Data.** Farmobile believes that you (farmer) are the owner of your Farm Data. Farmobile believes that ownership should give you the right to share, download, and delete your Farm Data. You agree that you are the owner or have obtained the permission from the owner of any Farm Data you transfer, share, or upload to Farmobile using the PUC device, including any Farm Data you authorize to be transferred to Farmobile from a third party. You release Farmobile from any claims that someone other than you owns the Farm Data uploaded to the Farmobile Server. Farmobile is a signatory to American Farm Bureau Federation's Privacy and Security Principles for Farm Data.
- 2.3. **The types of Farm Data Collected.** The PUC device collects Farm Data when connected to your farm equipment and uploads Farm Data to store on Farmobile servers (the "Services"). "Farm Data" means various categories of information collected on your farm by the PUC device, as described by Ag Gateway ([aggateway.org](http://aggateway.org)), including:
  - 2.3.1. **Agronomic Data:** seed data, planting data, yield data, disease and pest management data, and crop nutrition data.
  - 2.3.2. **Land Data:** tillage, water management, soil fertility, environmental data, geospatial information, and field boundary information.
  - 2.3.3. **Machine Data:** machine health, performance, operation, and function data. These descriptions are not exhaustive and subject to change over time as farm data descriptions evolve with AgGateway and other industry trade organizations.
- 2.4. **Farmobile's Storage of Farm Data on Farmobile Servers.** During the Term, you consent to allow Farmobile to (a) perform the Services, including receiving and storing your Farm Data on the Farmobile servers; (b) create an EFR of your Farm Data; (c) clean your Farm Data by removing perceived errors and omissions; and

- (d) allow third parties to access your Farm Data with your consent. You are responsible for and you assume all risks associated with your Farm Data.
- 2.5. **Right to Delete Farm Data Before a Change in Control.** In the event Farmobile has a change in control, you will be provided notice by email and allowed to delete or remove your Farm Data prior to the change in control. Any third party service provider used by Farmobile that may have access to your Farm Data is required to abide by these same terms.
- 2.6. **Sharing Farm Data with Trusted Advisors.** You have the option of granting certain Trusted Advisors access to view, edit, upload and download your Farm Data. "**Trusted Advisors**" are persons designated by you, including agronomists, crop consultants, seed dealer representatives, employees, family members, landowners, and others involved with your farming operation. Trusted Advisors must agree to the appropriate Farmobile agreements that require Trusted Advisors to abide by the data transfer, use and control restrictions of this Agreement. You may stop sharing your Farm Data with Trusted Advisors at any time by revoking their permission. Trusted Advisors may not delete your Farm Data from the Farmobile PUC device or Services.
- 2.7. **Sharing Farm Data With Other Technology Providers.** Farmobile may also provide you with the ability to share your Farm Data with other agricultural technology providers through links established through the Farmobile servers and such third parties. Farmobile will not share your Farm Data with other technology providers or third parties without first obtaining your consent, which may be given directly to Farmobile or through your request to obtain Farm Data through one of Farmobile's API partners. Any use of third party links may require you to agree to additional terms with that third party technology provider.
- 2.8. **Your Ability to Delete Farm Data.** If you chose to terminate use of the PUC and Services, once Farmobile receives the PUC or PUCs and associated equipment you may delete your Farm Data at any time during the Term. Farmobile shall keep Farm Data for thirty (30) days after termination in order to allow you to download your Farm Data. After that thirty (30) days, Farmobile, in its sole discretion, may delete, erase, or cease storage of Farm Data.
- 2.9. **How Farmobile Stores Your Farm Data.** Once uploaded, Farm Data is stored on servers within the United States that are rented or owned by Farmobile from reliable services. Farmobile takes reasonable and customary security measures to protect the privacy and security of your Farm Data. In the event of a data breach, natural disaster, or other unforeseen event that causes your Farm Data to be deleted or compromised, Farmobile will notify you by email. Farmobile shall have the right to place reasonable limits on the amount of Farm Data submitted to, and stored by, Farmobile.
- 2.10. **Aggregate Data.** You hereby grant to Farmobile a royalty-free, perpetual, irrevocable, transferable, sublicensable, worldwide and non-exclusive license to access, reproduce, copy, distribute, aggregate, create derivative works of, adapt, translate, transmit, arrange, modify, host, bundle, and use the Farm Data for any or all of the following agree to purposes: (i) any internal purpose, including research and product development; (ii) create aggregate and/or de-identified information from Farm Data ("**Aggregate Data**"); (iii) offer personalized

suggestions based on your Aggregate Data; and (iv) combine such aggregate and/or de-identified information with other de-identified Farm Data. You further agree that Farmobile is the exclusive owner of any Aggregate Data and, as such, has the exclusive right to use Aggregate Data for any purpose, including the Farmobile Crop Index or to generate benchmarks or best practice guidance, as long as Farmobile does not use, license or distribute any Aggregate data in a way which identifies the data owner and/or precise geolocation of a single EFR without the Farm Data owner's explicit permission.

- 2.11. **Limitations on Farmobile's Liability.** Farmobile is not liable for any damages that result from the disclosure of your Farm Data to any person or company provided such disclosures are made according to this Agreement. Farmobile is not responsible for a loss or unauthorized disclosure of your Farm Data due to (a) an Act of God, (b) a catastrophic event, or (c) a data breach caused by something other than Farmobile's gross negligence. Farmobile may disclose Farm Data to third parties if reasonably necessary to comply with any applicable law, regulation, legal order, or request; or if Farmobile is defending itself or its affiliates and personnel from any legal proceedings arising out of or related to Farm Data or the PUC device.
- 2.12. **Data Security.** To prevent unauthorized access, maintain data accuracy, and ensure the correct use of information, Farmobile has established appropriate physical, electronic, and managerial procedures to safeguard and secure the information collected from you. Farmobile will notify you by email if Farmobile has reason to believe that your Farm Data was unlawfully accessed by a third party.
- 2.13. **Sharing Farm Data with Distributor.** If you obtained your use of the PUC device through a relationship with a Distributor, you consent to allow such Distributor to access, view, edit, and download your Farm Data through the Services and the Farmobile website. The Distributor's access to your Farm Data may be subject to additional restrictions or requirements in your agreements with the Distributor. Farmobile has no liability to you for any damage caused by, or disclosure of Farm Data resulting from, Distributor's access to your Farm Data. If you do not want Distributor to access your Farm Data, you may sign an Agreement directly with Farmobile.

### 3. FARM DATA MARKETPLACE

- 3.1. **Creation of Farm Data Marketplace.** Farmobile shall create an online marketplace ("**Farm Data Marketplace**") to facilitate the sale of a license to your Farm Data to a third party customer(s) ("**Farm Data Customer**") with the consent of the Farm Data owner. Farmobile will present you with offers to license your Farm Data to Farm Data Customers when an offer arises ("**Farm Data License Offer**"). You shall have the option to accept or reject the Farm Data License Offer. The Farm Data Marketplace may be subject to additional terms and conditions which you must agree to prior to accepting any Farm Data License Offer.

### 4. FARMOBILE LIMITED WARRANTY

- 4.1. **Three Year Warranty.** 1.1. Farmobile warrants that, under normal use and service, the PUC device shall be free from material workmanship defects for a period of

three years after delivery to you. Farmobile's sole obligation for warranty defects shall be to correct the failure by repair, replacement, or adjustment, as determined in the Farmobile's sole discretion.

- 4.2. **General Disclaimer.** EXCEPT TO THE EXTENT EXPRESSLY PROVIDED ABOVE, THE PUC DEVICE AND RELATED SOFTWARE SERVICES ARE PROVIDED "AS IS" AND THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FARMOBILE DOES NOT WARRANT THAT THE RESULTS OBTAINED FROM THE USE OF THE EQUIPMENT WILL BE ACCURATE OR RELIABLE, OR THAT THE QUALITY OF THE EQUIPMENT WILL MEET YOUR EXPECTATIONS.
- 4.3. **SEED VARIETY LIST DISCLAIMER.** The Farmobile DataEngine User Interface and the Electronic Field Record ("EFR") Certification User Interface may include a seed variety list provided by third-party vendor CDMS and the content therein is provided "AS IS," without warranty, express or implied, and is for information use only. Although CDMS endeavors to present current and accurate information, search results contain information created and maintained by a variety of external sources that may not be current or complete. CDMS, as Farmobile's third-party seed variety list vendor, does not control, monitor or guarantee the timeliness or accuracy of the information provided by such external sources. Inclusion of a product in a search result does not constitute our endorsement of that product. It is your responsibility to review the official manufacturer product label information and the applicable regulations, and to otherwise research the accuracy, completeness and usefulness of all information, claims and opinions contained in these search results. In no event will Farmobile or CDMS be responsible or liable directly or indirectly for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any information contained in these search results, including information that is outdated or incorrect. The seed variety list is provided under a limited non-exclusive, revocable, nontransferable license, and may not be redistributed or used to develop a stand-alone database. Further, the seed variety list results may include materials covered by registered copyrights and trademarks. All rights not expressly granted herein are reserved by the intellectual property owners. Use of the seed variety list is subject to the liability limitations set forth in Section 2.10 herein. In no event shall the liability of Farmobile or CDMS, its officers, directors and agents hereunder exceed \$100 (USD) in the aggregate.

## 5. REMEDIES FOR BREACH

- 5.1. **Breach by User.** Upon any breach of this Agreement by you, you shall immediately return the PUC device to Farmobile and cease use of the Farmobile Servers and Farmobile website. In addition to the foregoing, Farmobile may exercise the following non-exclusive remedies: (a) enter onto your premises and remove the PUC device; (b) remotely turn off the PUC device; (c) terminate your use of the Farmobile website and access to Farmobile Servers; and (d) obtain damages caused by your breach. Your breach shall further constitute a permanent non-exclusive license of your Farm Data to Farmobile for any use Farmobile determines is appropriate. Farmobile shall be entitled to any attorneys' fees incurred enforcing this Agreement.



- 5.2. **Breach by Farmobile.** In the event of any breach of this Agreement by Farmobile, you shall provide Farmobile with written notice of the breach. Farmobile shall have thirty (30) days to cure the breach. In the event Farmobile fails to cure the breach, this Agreement shall terminate and you shall return the PUC device to Farmobile. In any event, Farmobile shall not be liable for indirect or consequential damages, and your recovery shall be limited to a refund of the Annual Fees paid.
- 5.3. **Indemnity.** You agree to indemnify, defend, and hold harmless Farmobile, including its employees, agents, officers, developers, and licensors, from any damages, costs, claims, injuries, and liabilities (including attorneys' fees) arising from your use of the PUC device, the Farmobile Server, or the Software. This provision shall apply if another person causes damages, costs, claims, injuries, or liability using the PUC device or your Farmobile account, with or without your knowledge.

## 6. ADDITIONAL LEGAL TERMS

- 6.1. **Updates to this Agreement.** Usage of farm data is rapidly evolving. Farmobile may update this Agreement during the Term to reflect changes in (a) the law, (b) the PUC device's functionality, (c) data sharing options through the Farmobile website, or (d) Farmobile's agreements with other technology providers. No change in this Agreement shall occur without your continued consent.
- 6.2. **Complete Agreement.** If any provision of this Agreement is determined to be unenforceable, the remainder of this Agreement shall remain in effect. This Agreement shall be interpreted as drafted by both parties. Any failure by Farmobile to enforce any provision shall not be a waiver of such provision. This Agreement is the complete agreement and understanding between the parties. This Agreement may not be modified or amended except pursuant to a writing executed by both parties.
- 6.3. **Assignment.** You may not assign your rights or obligations under this Agreement without the prior written consent of Farmobile.
- 6.4. **Governing Law.** This Agreement shall be governed by the laws of the State of Kansas without regard to conflict of laws principles. Any action seeking to enforce any provision of this Agreement may only be brought by the parties in the courts of the State of Kansas or the United States District Court for the District of Kansas.
- 6.5. **Notice.** All notices required by this Agreement shall be sent by registered or certified mail, return receipt requested, to Farmobile LLC, 4001 W. 114th St. Leawood, KS 66211.

### DISTRIBUTOR TYPE (PLEASE SELECT ONE):

- You are a Farmobile direct customer
- You are a customer of a Farmobile Distributor and do **NOT** wish to share data and do **NOT** wish to share your data with Distributor

- You are a customer of a Farmobile Distributor and wish to automatically share your data with Distributor

## SHARING FARM DATA WITH DISTRIBUTOR:

Please **SELECT ALL THAT APPLY** from following options:

- You are a farmer and will generally use the PUC device on your own fields and with your own equipment.
- You are a custom applicator/operator that will use the Farmobile PUC device to generate and record data on behalf of your farmer customers. You warrant that your farmer customers have granted you the right to collect, generate, and access their Farm Data using the PUC device and the Services. You agree to use your best efforts to identify such farmers as the owners of the Farm Data generated of their fields, and provide such information to Farmobile in order to assist Farmobile with creating an accurate EFR of Farm Data ownership. As the lessor of the PUC device, Farmobile deems you the owner of the Farm Data generated by the PUC device unless informed otherwise by you. You agree to defend, indemnify, and hold Farmobile harmless against any claims of farmers arising out of use of the PUC device or the Services, or this Agreement.

The parties hereto agree that this Agreement may be electronically signed in accordance with Kansas law (see K.S.A. 16-1601, et seq.). By clicking on the "Accept" button, you confirm that you have read this Agreement and further represent that you and/or the company are unconditionally consenting to be bound thereby.

- ACCEPT