

# GEOAG PRODUCTS AND SERVICES

## TERMS AND CONDITIONS

### PART 1. OVERVIEW

1.1 **GeoAg Products and Services.** GeoAg Solutions is a business unit of United Agri Products. GeoAg provides complete precision agriculture and geographical information system solutions for all types of agriculture and turf industries. These solutions include web-enabled data management services marketed under the trademarks Harvest Pay™, HarvestMap™, HarvestWatch™ and Harvest Complete and custom solutions developed for specific customers. GeoAg provides its web-enabled services on a subscription basis, together with related services, such as consulting, customization, installation, set-up, training, maintenance and support services. GeoAg also provides ruggedized GEOMAX™ computers and other equipment so that authorized users can use its web-enabled services in the field.

1.2 **Customers.** Customers may purchase GeoAg products and services by completing and signing an Order Form or a Statement of Work provided by a GeoAg representative. All GeoAg products and services are provided to Customers pursuant to these Terms and Conditions.

1.3 **Sub-Users.** A Customer may authorize its employees and third-party contractors to access and use the web-enabled services, but only to provide services to the Customer. Before a Customer's third-party contractor may access or use a web-enabled service, the contractor must agree to be bound by these Terms and Conditions. Third-party contractors are referred to as "Sub-Users" in these Terms and Conditions.

1.4 **Overview of these Terms and Conditions.** These Terms and Conditions consist of five parts:

- a. This Part One provides an overview;
- b. Part Two defines terms not defined in the body of the Agreement;
- c. Part Three contains terms applicable only to Customers;
- d. Part Four contains terms applicable only to Sub-Users; and
- e. Part Five contains terms applicable to both Customers and Sub-Users.

### PART 2 . DEFINITIONS

As used in these Terms and Conditions, the following terms are defined as follows:

2.1 **"Account Information"** means all data and other information that an Authorized User transfers or transmits to the Web Services and all data, reports and other information generated by the Web Services based on such information.

2.2 **"Affiliate"** means any entity that controls, is controlled by or is under common control with a Party.

2.3 **"Agreement"** means, with respect to a Customer, these Terms and Conditions and the applicable Order Form or Statement of Work. With respect to a Sub-User, the term "Agreement" means these Terms and Conditions.

2.4 **"Authorized User(s)"** means

- a. the employees of Customer who have been authorized by Customer to access and use the Web Service;

- b. the Sub-Users who have been authorized by Customer to access and use the Web Services to provide services to Customer; and
  - c. the employees of any Sub-User who have been authorized by that Sub-User to access and use the Web Services to provide services to Customer in the course of their employment by Sub-User.
- 2.5 **“CitriTrack™ Network Service”** means the proprietary “client” software installed by GeoAg on the GEOMAX™ Equipment, together with all Updates thereto. The CitriTrack™ Network Service permits Authorized Users to access and use the Web Services from the field.
- 2.6 **“Customizations”** means all modifications, enhancements, customizations, or new versions of any existing Web Services that are developed by GeoAg at Customer’s request and made available to Customer as part of such Web Service, together with all Updates thereto.
- 2.7 **“Customer”** means the entity that executed the applicable Order Form or Statement of Work.
- 2.8 **“Customer Portal”** means the password-protected web pages through which Authorized Users access Account Information and use the Web Services.
- 2.9 **“Documentation”** means the training materials, instructions and other materials (whether in electronic or any other form or format) provided by GeoAg to Customer and its Authorized Users in connection with Customer’s and its Authorized Users’ use of the Web Services, together with all Updates thereto.
- 2.10 **“Feedback”** means all comments, suggestions, ideas, concepts, test results, information and other feedback provided by Customer or its Authorized Users to GeoAg during the term of the Agreement regarding the Products and Services and/or new Products and Services that might be of interest to Customers.
- 2.11 **“Fees”** means the fees and other charges payable by Customer to GeoAg for the Products and Services.
- 2.12 **“GeoAg Application(s)”** means the proprietary data management software application(s) made available to Customer and its Authorized Users on a subscription (SAAS) basis via the Customer Portal, together with all Updates thereto. The GeoAg Applications include the standard HarvestPay™, HarvestMap™ and HarvestWatch™ applications and all customized versions thereof and all new applications developed for specific Customers pursuant to a Statement of Work.
- 2.13 **“GEOMAX™ Equipment”** means the ruggedized computer(s) provided by GeoAg to Customer for use by Customer and its Authorized Users in the field. GeoAg installs the CitriTrack™ Network Service and the Wireless Data Service on the GEOMAX™ Equipment before delivering the GEOMAX™ Equipment to Customer so that Authorized Users can use the GEOMAX™ to access and use the Web Services in the field. To be clear, the term “GEOMAX™ Equipment” does not include the CitriTrack™ Network Service nor the Wireless Data Service.
- 2.14 **“GeoAg Tools”** means all Intellectual Property (and all Intellectual Property Rights therein) licensed to or acquired conceived, created, developed, or reduced to practice by GeoAg, solely or jointly with others, prior to or independently of its performance of the Agreement.
- 2.15 **“GeoAg Site(s)”** means any and all Web sites operated by or on behalf of GeoAg and used by GeoAg to provide the Web Services, including the Web site currently located at [www.geoagsolutions.com](http://www.geoagsolutions.com).
- 2.16 **“Including”** means “including, but not limited to.”
- 2.17 **“Intellectual Property”** means all forms of intellectual property, including original works of authorship (including all computer code and documentation), inventions, discoveries, improvements,

processes, concepts, ideas, techniques, designs, products, methods, know-how, trademarks, goodwill, trade secrets, confidential information, and data bases, whether or not copyrightable or patentable.

2.18 **“Intellectual Property Rights”** means any (rights to) intellectual property, including copyrights (extending to all original works of authorship and other copyrightable materials such as software, including object and source codes), patent rights and rights in know-how, trade secret rights, trademark rights, moral rights, database rights, rights of confidentiality, in all cases whether or not registered or registerable in any country, for the full term of such rights and including registrations and applications for registration of any of these and rights to apply for the same and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere on the world.

2.19 **“Order Form”** means a form, signed by Customer and submitted to GeoAg, that (a) references these Terms and Conditions, and (b) identifies Customer and Customer’s Account Administrator, the Products and Services Customer is ordering, and the applicable Fees.

2.20 **“Party”** means GeoAg, Customer, or a Sub-User, as indicated by the context. **“Parties”** means GeoAg, Customer and any Sub-User.

2.21 **“Products”** means the GEOMAX™ Equipment and any other products provided by GeoAg pursuant to the Agreement that are not part of the Web Services. The term **“Product”** includes Third-Party Products.

2.22 **“Services”** means the Web Services, the Standard Support Services, the Additional Services (as defined in Section 3.4(a) below), and any other services provided by GeoAg pursuant to the Agreement.

2.23 **“Standard Support Services”** means reasonable and necessary installation and set-up services, on-site and off-site training, and telephone, e-mail and on-site support for the Web Services.

2.24 **“Subscription”** means a subscription to access and use an Web Service.

2.25 **“Subscription Period”** means, collectively, the Initial Subscription Period and all Renewal Subscription Periods thereof.

2.26 **“Sub-User”** means a Third-Party Contractor of Customer.

2.27 **“Sub-User Identity”** means a User Identity assigned to a Sub-User.

2.28 **“Terms and Conditions”** means these Terms and Conditions.

2.29 **“Third-Party Licensor”** means a third party that has licensed or sublicensed Third-Party Products to GeoAg.

2.30 **“Third Party Products”** means products and related documentation proprietary to an entity or person other than a Party that are used by GeoAg to provide the Web Services or other Services, or installed on the GEOMAX™ Equipment, or embedded in a Deliverable. To be clear, the GeoAg Applications are Third-Party Products.

2.31 **“Third-Party Contractor”** means a third party that performs services on behalf of a Party to the Agreement.

2.32 **“Updates”** means, collectively, any fixes, updates, additions, modifications, enhancements or new versions of or to any part of the Web Services as may from time to time be made available to Customer and its Authorized Users by GeoAg.

2.33 **“User Identity”** means a unique username and password that can be used to access and use the Web Services. To be clear, a **“Sub-User Identity”** is a type of **“User Identity.”**

2.34 **“Web Service(s)”** means the web-based data management solution(s) described in the applicable Order Form. Unless the Order Form provides otherwise, the Web Services are comprised of

- a. the GeoAg Application(s) to which Customer has subscribed;
- b. the CitriTrack™ Network Service;
- c. the Wireless Data Service;
- d. the Customer Portal;
- e. the GeoAg Sites;
- f. all hardware, software, databases, content, and connectivity provided by or on behalf of GeoAg in connection with the hosting, operation, maintenance and ongoing development of the foregoing;
- g. all related Documentation;
- h. all Customizations; and
- i. all Updates to any of the foregoing.

The standard Web Services currently include HarvestPay™, HarvestMap™, HarvestWatch™ and Harvest Complete. The term “Web Services” also includes customized versions of the standard Web Services and new Web Services based on new GeoAg Application(s) developed by GeoAg pursuant to a Statement of Work.

The term “Web Services” does not include Equipment, nor any hardware, software or connectivity purchased or provided by Customer or any Authorized User for use by Customer or its Authorized Users use in connection with the Web Services.

2.35 “**Wireless Data Service**” means the wireless data service provided by GeoAg through a Third-Party Contractor such as AT&T. The term “Wireless Data Service” also includes the wireless service card GeoAg installs on each unit of GEOMAX™ Equipment before delivering the GEOMAX™ Equipment to Customer.

2.36 “**Work Product**” means all Intellectual Property that GeoAg, solely or jointly with others, conceives, creates, develops, makes or reduces to practice in connection with its performance of Services.

### **PART 3. TERMS APPLICABLE ONLY TO CUSTOMERS**

#### **3.1 Web Services And Standard Support Services.**

- a. GeoAg’s Obligations. GeoAg shall host, operate, maintain and provide the Web Services to Customer during the applicable Subscription Period, subject to and in accordance with the terms of the Agreement. GeoAg shall provide the Standard Support Services to Customer and its Authorized Users at no additional charge. In addition, GeoAg shall provide all Updates to Customer (other than Customizations and Updates to Customizations, which will be provided pursuant to a Statement of Work) as and when they become generally available to GeoAg’s Customers at no additional charge.
- b. Right to Use Web Services. GeoAg hereby grants to Customer the non-exclusive and non-transferable right to access and use the Web Services during the applicable Subscription Period, subject to and in accordance with terms of the Agreement.
- c. Authorized Users. Customer shall have the right to authorize its employees and Third-Party Contractors to access and use the Web Services during the applicable Subscription Period, subject to and in accordance with the terms of the Agreement. Customer shall be solely responsible for deciding which of its employees and Third-Party Contractors will be permitted to access and use the Web Services. Customer shall not make any agreement with or warranty or

representation to any Authorized User on behalf of GeoAg. Any such unauthorized agreement, warranty or representation shall be null and void and of no force and effect.

d. Sub-Users.

1) The Account Administrator must inform GeoAg of any Authorized Users that are not employees of Customer. GeoAg will provide one or more separate User Identities to each Sub-User for use by that Sub-User and its employees.

2) Each Sub-User will be required to “click-through” these Terms and Conditions before the Sub-User (and its employees) will be permitted to access and use the Web Services. If the Sub-User does not agree to be bound by these Terms and Conditions, the Sub-User (and its employees) will not be permitted to access and use the Web Services.

3) If the Sub-User agrees to be bound by these Terms and Conditions, the Sub-User will be permitted to access and use the Web Services, subject to these Terms and Conditions, but only in connection with providing services to Customer, only during the Subscription Period, and subject to Customer’s right to withdraw its authorization at any time and for any reason. The Sub-User will be permitted to authorize its employees (but not its Third-Party Contractors) to use a User Identity assigned to the Sub-User to access and use the Web Services, subject to these Terms and Conditions, but only in connection with providing services to Customer, only during the Subscription Period, and subject to Customer’s right to withdraw its authorization at any time and for any reason.

e. Limitations on Use of Web Services. Customer and its Authorized Users shall use the Web Services only for Customer’s internal business use (or in the case of Sub-Users, in connection with providing services to Customer), except that Customer and its Authorized Users may use the CitriTrack™ Network Service and the Wireless Data Service installed on GEOMAX™ Equipment owned by Customer or its Authorized Users to access and use GeoAg Applications on behalf of another Customer who has subscribed to those GeoAg Applications. This exception is intended to permit one Customer to provide services to another Customer (as a Sub-User of that other Customer) using its own GEOMAX™ Equipment. To be clear, a Customer may use the CitriTrack™ Network Service and the Wireless Data Service in connection with the use of Web Services if Customer is 1) the subscribing Customer and/or 2) acting as a Sub-User of the subscribing Customer.

f. Other Restrictions on Use of Web Services. Customer shall not disclose or make available to any person or entity (other than Customer’s Authorized Users) the Web Services or any part or component thereof without GeoAg’s prior written consent, which may be withheld in GeoAg’s sole and absolute discretion. Without limiting the foregoing, Customer shall not and shall not authorize or permit any Authorized User or third party to

1) Use, copy, modify, or prepare derivative works of any part of the Web Services, except as expressly authorized in the Agreement;

2) Distribute, lease, sublicense, lend, give, transfer, assign or otherwise make all or any part of the Web Services available to any third party, except as expressly authorized in the Agreement;

3) Reverse engineer, translate, disassemble, decompile, or cause or allow discovery of the source code of the GeoAg Applications or the CitriTrack Network Service or attempt to do so;

4) Remove, obscure or alter the copyright, trademark or other proprietary notices affixed to or contained in the Web Services;

5) Use the Web Services in any manner or in connection with any data that (A) infringes upon or violates any patent, copyright, trade secret, trademark or other intellectual property right of any third party, or (B) violates any applicable international, federal, state or local law, rule, regulation or ordinance.

### 3.2 **GEOMAX™ Equipment.**

a. Ownership of GEOMAX™ Equipment. Upon receipt by GeoAg of payment in full for any unit of GEOMAX™ Equipment, title to such unit of Equipment shall pass to Customer. The foregoing notwithstanding, Customer shall acquire no right, title or interest in the CitriTrack™ Network Services and/or the Wireless Data Service installed on any unit of Equipment except the right to use them as expressly granted in the Agreement and subject to the terms and conditions of the Agreement.

b. Manufacturer's Warranty. Each unit of Equipment is covered under a standard one-year manufacturer's limited warranty (the "**Manufacturer's Warranty**"). In addition, Customer may purchase an extended manufacturer's warranty at the time of purchase or for a limited time thereafter. For more information about the Manufacturer's Warranty and instructions for obtaining warranty service, please contact a GeoAg representative. Customer agrees and acknowledges that GeoAg has no responsibility to repair or replace defective or damaged GEOMAX™ Equipment. If, however, Customer would like assistance obtaining warranty service, the Account Administrator may contact a GeoAg representative and GeoAg will provide such reasonable assistance as the Account Administrator may request at no additional charge to Customer.

c. Damage Not Covered by Manufacturer's Warranty. If any unit of Equipment requires repair or replacement, and if Customer is not entitled to repair or replacement under the Manufacturer's Warranty, then it shall be Customer's responsibility to repair or replace such Equipment at its sole cost and expense. The foregoing notwithstanding, if Customer would like assistance obtaining maintenance and repair services from the manufacturer that are not covered by the Manufacturer's Warranty, the Account Administrator may contact a GeoAg representative and GeoAg will provide such reasonable assistance as the Account Administrator may request at no additional charge to Customer.

### 3.3 **Access Controls.**

a. Appointment of Account Administrator. Customer shall designate one of its employees (the "**Account Administrator**") to act on behalf of Customer on all matters related to the Web Services. The Account Administrator must have authority to enter into binding contracts on behalf of Customer with respect to Customer's and its Authorized Users' use of the Web Services. The Account Administrator shall follow all protocols and instructions with respect to the administration, configuration, security and use of the Web Services as may from time to time be communicated by GeoAg to the Account Administrator. Customer shall be responsible for ensuring that its Account Administrator complies with the Agreement. The initial Account Administrator is identified on the first Order Form signed by Customer. Customer shall provide five (5) days written notice to GeoAg if Customer wishes to replace the Account Administrator.

b. Access Level Groups. Customer, acting through its Account Administrator, may assign different Authorized Users to different access level groups. Whenever Customer wishes to set up a new access level, the Account Administrator shall provide GeoAg with a written description of the new access level and shall identify any members of the new access level group who are Third-Party Contractors or employees of Third-Party Contractors. GeoAg shall set up the access level in accordance with the Account Administrator's instructions and shall provide a unique User Identity for the members of each new access level group. Each such User Identity shall be

associated in GeoAg's records with Customer's name and a particular level of access. GeoAg shall have no control over or responsibility for assigning Authorized Users to access level groups.

c. Password Security. Customer agrees that it is solely responsible for ensuring that 1) its Authorized Users do not share their User Identities with other individuals, including other Authorized Users, except that the Account Administrator may provide the appropriate User Identity to each member of an access level group, and 2) its Authorized Users understand the need and take appropriate measures to keep all User Identities secret and confidential. GeoAg shall have the right to assume that any individual accessing or using the Web Services under a given User Identity is the individual associated with such User Identity in its records and will grant access to Account Information and other capabilities accordingly. If an individual uses or permits the use of the Web Services under a User Identity not actually assigned to that particular individual, Customer shall be deemed to be in material breach of the Agreement.

d. Harmful Conduct. Customer shall not, and shall not permit its Authorized Users or any other individual or entity to engage in conduct intended to or likely to damage the Web Services, for example, by 1) accessing, tampering with, or using areas of the Web Services that exceed the scope of the Authorized User's authorization; 2) attempting to gather and use information available from the Web Services to transmit any unsolicited advertising; and 3) the knowing transmission of any viruses, worms, other malicious code or computer programming routines that may be introduced to the Web Services as a result of access thereto by Customer or its Authorized Users.

e. Responsibility for Activities of Individuals Accessing the Web Services. Customer is entirely responsible for the activities of anyone using a User Identity associated with Customer's name in GeoAg's records (including all User Identities assigned to Customer's Sub-Users), whether or not the activities or the use of the User Identity were authorized by Customer. Customer shall notify GeoAg immediately of any known or suspected unauthorized use of a User Identity registered to Customer or any other breach of security. Customer is responsible for changing or requiring its Authorized Users to change any password that may have been compromised using the functionality available through the Web Services. At Customer's request, GeoAg shall deactivate any or all User Identities associated with Customer's name in GeoAg's records; provided, however, that GeoAg shall have a commercially reasonable period of time to do so.

f. Security Risks. Customer acknowledges that the Internet is not an inherently secure means of data communication and that data processing entails the likelihood of some human and machine errors, omissions, delays, and losses, including inadvertent loss or corruption of data, which may give rise to loss or damage. Customer accepts responsibility for adopting reasonable measures to limit its exposure with respect to such potential losses and damages, including, without limitation, preparation and storage of backup data.

g. Right to Deny Access. For the protection of Customer and its Authorized Users, GeoAg reserves the right 1) to deactivate any User Identity; 2) to require Authorized User(s) to change User Identities; or 3) to deny, limit or terminate access to the Web Services or any portion thereof, at any time, as necessary or advisable to protect the security and integrity of the Web Services. Whenever GeoAg is able to do so without compromising the security or integrity of the Web Services, GeoAg will give Customer reasonable notice before taking such action. If GeoAg determines, in its reasonable business judgment, that it is advisable to take immediate action, without prior notice to Customer, GeoAg shall notify Customer as soon as reasonably practicable of its action and, if it can do so without compromising the security of the Web Services or any investigation, the reason for the action.

#### 3.4 **Additional Services.**

a. Additional Services. From time to time, Customer may request that GeoAg perform services other than or in addition to the Standard Support Services (“**Additional Services**”). Additional Services may include, for example, consulting services, designing and developing a customized version of a standard Web Service, or developing a new Web Service to meet Customer’s specific needs. Customer may request Additional Services in connection with Customer’s use of the Web Services or prior to or independently of Customer’s use of the Web Services.

b. Statement of Work. Upon receipt of Customer’s request for Additional Services, GeoAg shall, within a reasonable time, submit a proposal to Customer. Customer and GeoAg shall discuss the proposal, which may be modified by mutual agreement. If Customer and GeoAg reach agreement on the proposal, then Customer and GeoAg shall execute a statement of work based on or incorporating the final proposal (each a “**Statement of Work**”). The Statement of Work shall, upon execution by both of the Parties, become a part of the Agreement. GeoAg shall have no obligation to provide Additional Services except as set forth in a duly executed Statement of Work. Each Statement of Work shall include the following information, if applicable:

- 1) A statement that the Statement of Work is subject to these Terms and Conditions;
- 2) A description of the Additional Services to be performed by GeoAg;
- 3) A description of the deliverables to be delivered (directly, or on an ASP basis) by GeoAg, if any (the “**Deliverables**”);
- 4) Either a fixed price or a good faith estimate of the fees for performance of the Additional Services described in the proposal, including a description of the assumptions on which any estimate is based;
- 5) A description of any expenses (or type of expenses) for which GeoAg will be reimbursed by Customer;
- 6) Payment terms;
- 7) A proposed schedule;
- 8) Any special terms and conditions that shall apply to the Additional Services.

c. Cost Estimates and Timetables. Any cost estimate (as opposed to a fixed price) and any proposed timetable set forth in any Statement of Work shall be made in good faith based upon the information available to GeoAg at the time the Statement of Work was executed and the assumptions stated in the Statement of Work. GeoAg shall use commercially reasonable efforts to perform the Additional Services at or below the estimated cost and in accordance with the proposed timetable. GeoAg shall promptly notify Customer of any new information, changed assumptions or other circumstances that could or will affect the cost estimate or the proposed timetable. Upon Customer’s receipt of such notice, Customer shall have the right to terminate the Statement of Work. If Customer does not elect to terminate the Statement of Work, the Parties shall promptly negotiate and execute a Change Order revising the description of the Additional Services and/or the estimated cost of the Additional Services and/or the proposed timetable in a manner that is acceptable to both Parties. If executed by both Parties, the terms and conditions of the Change Order shall amend and govern over any contrary terms and conditions set forth in the applicable Statement of Work.

d. Changes Initiated by Customer. If Customer desires to make any changes in the scope of Additional Services or the timetable during the performance of a Statement of Work, Customer shall discuss the change with GeoAg and GeoAg shall provide Customer with 1) a written description of the proposed change and any impact it may have on price and/or the project timetable, and 2) a Change Order amending the Statement of Work. Customer may accept or

reject the Change Order. If accepted, and executed by both Parties, the terms and conditions of the Change Order shall govern over any contrary terms and conditions set forth in the applicable Statement of Work.

e. Ownership of Work Product and Deliverables.

1) As between Customer and GeoAg, GeoAg shall own all right, title and interest in and to (including all Intellectual Property Rights therein or appurtenant thereto) all Deliverables provided by GeoAg pursuant to the Agreement and all Work Product developed or created in the course of GeoAg's performance of the Agreement.

2) Customizations shall be made available to Customer as part of the applicable Web Service, subject to the terms of the Agreement. All other Deliverables that consist of software or code and all related Documentation, including new applications and/or solutions, shall be made available to Customer on a subscription basis as part of a Web Service, subject to the terms of the Agreement.

3) GeoAg hereby grants to Customer a perpetual, non-exclusive, non-transferable, worldwide (subject to U.S. export restrictions), license to use any Deliverables that do not consist of software, code or related Documentation, but only for Customer's internal business use and subject to Customer's obligations of confidentiality under the Agreement.

### 3.5 **Term.**

a. Subscriptions. The initial subscription period (the "**Initial Subscription Period**") with respect to any Web Service shall start on the later of the Effective Date of these Terms and Conditions or the date shown on the applicable Order Form and shall expire on the date shown on the applicable Order Form unless terminated earlier as provided herein. The Initial Subscription Period may be more or less than a twelve-month period. Upon the expiration of the Initial Subscription Period, the Subscription shall automatically renew from year to year (each a "**Renewal Subscription Period**") unless 1) Customer is in material breach of the Agreement (see Section 3.9(a)(1) below); 2) GeoAg has given Customer at least ninety (90) days notice that it intends to discontinue the Web Services, or 3) Customer has given GeoAg written notice on or before the first day of the Renewal Subscription Period that it wishes to terminate the Subscription.

b. Statements of Work. Each Statement of Work shall commence on the date of such Statement of Work and shall continue until the Additional Services described therein are completed to Customer's reasonable satisfaction or the Statement of Work is terminated as provided in Section 3.9 below.

c. Effective Date of Terms and Conditions. These Terms and Conditions shall become effective on the date on which the Account Administrator agrees to these Terms and Conditions on behalf of Customer (the "**Effective Date**"), as evidenced by the date on an inked document or the time stamp if the Account Administrator agrees to these Terms and Conditions as part of the online registration process. These Terms and Conditions shall remain in effect with respect to each Order Form or Statement of Work for so long as such Order Form or Statement of Work remains in effect.

### 3.6 **Fees And Payment.**

a. Web Services and Standard Support Services.

1) Initial Subscription Period. GeoAg offers the Web Services (including the CitriTrack™ Network Service and the Wireless Data Service) on a subscription basis. The Fees for the Initial Subscription Period Service are set forth on the applicable

Transaction Document. The Fees for the Initial Subscription Period shall be invoiced on the first day of the Subscription Period. Unless otherwise provided in the applicable Order Form, Customer shall pay invoices submitted in accordance with this Section within thirty (30) days of Customer's receipt of such invoices. Standard Support Services are provided at no additional charge.

2) Renewal Subscription Periods. The Fees for each Renewal Subscription Period shall be invoiced annually in advance on the first day of the Renewal Subscription Period. Customer shall pay invoices submitted in accordance with this Section within thirty (30) days of Customer's receipt of such invoices

3) Fee Increases. GeoAg shall have the right to increase the Fees payable with respect to a Renewal Subscription Period, by giving Customer notice of such increase at least thirty (30) days before the expiration of the Initial Subscription Period or the then current Renewal Subscription Period. Any notice required under this Section may be given by e-mail to the Account Administrator.

b. GEOMAX™ Equipment. The Fees for each unit of GEOMAX™ Equipment are shown on the applicable Order Form and shall be invoiced after the GEOMAX™ Equipment is shipped (or if hand-delivered, delivered) to Customer. Unless otherwise provided in the applicable Order Form, Customer shall pay invoices submitted in accordance with this Section within thirty (30) days of Customer's receipt of such invoices.

c. Additional Services.

1) Payment for Additional Services. Customer shall pay GeoAg for Additional Services performed under any Statement of Work at the rates or as otherwise set forth in the applicable Statement of Work. In addition, Customer shall reimburse GeoAg for any reasonable and actual travel and other out-of-pocket business expenses and for any other reimbursable expenses identified in the applicable Statement of Work. Unless otherwise provided in the Statement of Work, Customer shall pay invoices submitted in accordance with these Terms and Conditions within thirty (30) days of Customer's receipt of such invoices.

2) Invoicing. Unless otherwise provided in the applicable Statement of Work, GeoAg shall invoice Customer monthly in arrears for Additional Services as they are rendered. Each invoice shall identify the date and number of the Statement of Work and, if the Additional Services are performed on a time and materials basis, the tasks performed, the individuals who performed the tasks, the number of hours each individual worked, and each individual's hourly rate. Reimbursable expenses shall be itemized and, upon Customer's request, GeoAg shall provide reasonable backup documentation.

**3.7 Taxes.** Customer shall pay all applicable sales, use, transfer or other taxes and all duties, whether international, national, state, or local, however designated, which are levied or imposed by reason of the transaction contemplated hereby, excluding, however, income taxes based on GeoAg's net income. Customer shall reimburse GeoAg for the amount of any such taxes or duties paid or accrued directly by GeoAg as a result of this transaction.

**3.8 Late Payments.** If Customer shall at any time be overdue on the payment of any amounts due and payable hereunder, Customer shall pay interest on the unpaid amount at a rate equal to one (1.0%) percent per month or the maximum interest rate allowed by law, whichever is less, plus all collection costs including attorneys' fees and costs. The foregoing notwithstanding, failure to pay any amounts due and payable hereunder as and when due and payable shall constitute a material breach of the Agreement.

**3.9 Termination.**

a. Termination by Either Party.

1) Either Party may terminate any Order Form or Statement of Work upon written notice to the other Party if the other Party (the “**Breaching Party**”) is in material breach of these Terms and Conditions or the applicable Order Form or Statement of Work; provided, that if such breach is susceptible of cure, the Breaching Party shall have thirty (30) days to cure such breach (except in the case of a failure to pay fees, which must be cured within ten (10) days after receipt of written notice) and the applicable Order Form or Statement of Work shall terminate (automatically and with no further action on the part of the non-breaching Party) if the Breaching Party fails to cure such breach to the reasonable satisfaction of the non-breaching Party within the applicable cure period.

2) Either Party may terminate any or all Order Forms and/or Statements of Work upon written notice to the other Party in the event (A) the other Party ceases to conduct its business in the normal course; (B) a petition for bankruptcy is filed by or against the other Party or a receiver and such petition is not discharged within sixty (60) days of its filing; (C) a trustee or liquidator is appointed for any of the assets of the other Party; or (D) the other Party files a petition for re-organization under any bankruptcy, re-organization or other similar law, or makes an assignment for the benefit of its creditors, or is adjudged bankrupt or insolvent by any court of competent jurisdiction.

3) These Terms and Conditions shall terminate automatically with respect to each Order Form or Statement of Work upon the expiration or termination of such Order Form or Statement of Work.

4) Either Party may terminate any Order Form or Statement of Work on the terms specified therein.

b. Termination by GeoAg. GeoAg may terminate all Order Forms and Statements of Work at any time on ninety (90) days written notice to Customer, but only if GeoAg is ceasing generally to provide the Web Services and is terminating all Order Forms and Statements of Work with respect to the Web Services.

c. Termination by Customer. Unless the applicable Statement of Work provides otherwise, Customer may terminate any Statement of Work at any time upon written notice to GeoAg. In the event of termination of a Statement of Work without cause under this Section, Customer shall pay GeoAg 1) for all Services provided and reimbursable expenses incurred up to the effective date of the termination; and 2) the applicable termination for convenience fee, if any, expressly specified in the Statement of Work.

**3.10 Obligations Upon Termination.** Upon the expiration or termination of any Transaction Document for any reason, Customer shall, as applicable (a) pay GeoAg all amounts owed to GeoAg thereunder through the expiration or termination date; (b) destroy all copies of the Documentation in its possession; (c) completely delete (by reformatting the hard drive) the CitriTrack™ Network Service from the GEOMAX™ Equipment on which it is installed; and (d) remove and return to GeoAg Wireless Data Services cards from the GEOMAX™ Equipment on which they are installed. Upon the termination of any Subscription for any reason, GeoAg shall provide a copy of Customer’s Account Information to Customer in a standard format selected by GeoAg or as reasonably requested by Customer. In addition, if Customer terminates any Subscription under Section 3.9(a)(1) or (a)(2) above, or if any Subscription is terminated by GeoAg under Section 3.9(b) above, GeoAg shall refund to Customer a prorata portion of the Fees paid for such Subscription.

#### **PART 4. TERMS APPLICABLE ONLY TO SUB-USERS**

4.1 Right to Use Web Services. GeoAg hereby grants to Sub-User the non-exclusive and non-transferable right to access and use the Web Services subject to and in accordance with these Terms and Conditions beginning on the date on which Sub-User agrees to be bound by these Terms and Conditions and ending on the earlier of (a) on the date designated by Customer's Account Administrator, who shall have the right to terminate Sub-User's rights hereunder at any time without prior notice to Sub-User or (b) the date on which the applicable Subscription Period expires or is terminated.

4.2 Authorized Users. Sub-User shall have the right to authorize its employees (but not its Third-Party Contractors) to access and use the Web Services subject to and in accordance with these Terms and Conditions during the Subscription Period. Sub-User shall be solely responsible for deciding which of its employees will be permitted to access and use the Web Services. Sub-User shall not make any agreement with or warranty or representation to any Authorized User on behalf of GeoAg. Any such unauthorized agreement, warranty or representation shall be null and void and of no force and effect.

4.3 Limitations on Use of Web Services. Sub-User and its Authorized Users shall use the Web Services only in connection with Sub-User's performance of services on behalf of Customer.

4.4 Other Restrictions on Use of Web Services. Sub-User shall not disclose or make available to any person or entity (other than Sub-User's Authorized Users) the Web Services or any part or component thereof without GeoAg's prior written consent, which may be withheld in GeoAg's sole and absolute discretion. Without limiting the foregoing, Sub-User shall not and shall not authorize or permit any Authorized User or third party to

- a. Use, copy, modify, or prepare derivative works of any part of the Web Services, except as expressly authorized in these Terms and Conditions;
- b. Distribute, lease, sublicense, lend, give, transfer, assign or otherwise make all or any part of the Web Services available to any third party, except as expressly authorized in these Terms and Conditions;
- c. Reverse engineer, translate, disassemble, decompile, or cause or allow discovery of the source code of the GeoAg Applications or the CitriTrack™ Network Service or attempt to do so;
- d. Remove, obscure or alter the copyright, trademark or other proprietary notices affixed to or contained in the Web Services;
- e. Use the Web Services in any manner or in connection with any data that 1) infringes upon or violates any patent, copyright, trade secret, trademark or other intellectual property right of any third party, or 2) violates any applicable international, federal, state or local law, rule, regulation or ordinance.

#### 4.5 **Access Controls.**

a. User Identity. At the request of Customer's Account Administrator, GeoAg will set up one or more User Identities for Sub-User and its Authorized Users. The levels of access assigned to Sub-User and its Authorized Users shall be determined by the Account Administrator. GeoAg shall have no responsibility for assigning Sub-User and its Authorized Users to access level groups.

b. Password Security. Sub-User agrees that it is solely responsible for ensuring that 1) its Authorized Users do not share their User Identities with other individuals, including other Authorized Users, and 2) its Authorized Users understand the need and take appropriate measures to keep all User Identities secret and confidential. GeoAg shall have the right to assume that any individual accessing or using the Web Services using a User Identity assigned to Sub-User has been properly authorized to do so and will grant access to Account Information and other capabilities accordingly.

c. Harmful Conduct. Sub-User shall not, and shall not permit its Authorized Users or any other individual or entity to engage in conduct intended to or likely to damage the Web Services, for example, by 1) accessing, tampering with, or using areas of the Web Services that exceed the scope of the Authorized User's authorization; 2) attempting to gather and use information available from the Web Services to transmit any unsolicited advertising; and 3) the knowing transmission of any viruses, worms, other malicious code or computer programming routines that may be introduced to the Web Services as a result of access thereto by Sub-User or its Authorized Users.

d. Responsibility for Activities of Individuals Accessing the Web Services. Sub-User and Customer shall be jointly and severally liable to GeoAg for the activities of anyone using a User Identity associated with Sub-User in GeoAg's records, whether or not the activities or the use of the User Identity were authorized by Sub-User. Sub-User shall notify GeoAg immediately of any known or suspected unauthorized use of a User Identity registered to Sub-User or any other breach of security. Sub-User is responsible for changing or requiring its Authorized Users to change any password that may have been compromised using the functionality available through the Web Services. At Customer's or Sub-User's request, GeoAg shall deactivate any or all User Identities associated with Sub-User in GeoAg's records; provided, however, that GeoAg shall have a commercially reasonable period of time to do so.

e. Security Risks. Sub-User acknowledges that the Internet is not an inherently secure means of data communication and that data processing entails the likelihood of some human and machine errors, omissions, delays, and losses, including inadvertent loss or corruption of data, which may give rise to loss or damage. Sub-User accepts responsibility for adopting reasonable measures to limit its exposure with respect to such potential losses and damages, including, without limitation, preparation and storage of backup data.

f. Right to Deny Access. For the protection of Customer and its Authorized Users, GeoAg reserves the right 1) to deactivate any User Identity; 2) to require Authorized User(s) to change User Identities; or 3) to deny, limit or terminate access to the Web Services or any portion thereof, at any time, as necessary or advisable to protect the security and integrity of the Web Services. Whenever GeoAg is able to do so without compromising the security or integrity of the Web Services, GeoAg will give Customer and its Sub-Users reasonable notice before taking such action. If GeoAg determines, in its reasonable business judgment, that it is advisable to take immediate action, without prior notice to Customer or its Sub-Users, GeoAg shall notify Customer and its Sub-Users as soon as reasonably practicable of its action and, if it can do so without compromising the security of the Web Services or any investigation, the reason for the action.

## **PART 5. TERMS APPLICABLE TO BOTH CUSTOMERS AND SUB-USERS**

### **5.1 Ownership Of Intellectual Property.**

a. Account Information. GeoAg acknowledges and agrees that as among GeoAg, Customer, and Sub-User, Customer and/or Sub-User owns all right, title and interest in Account Information, including all Intellectual Property Rights therein or appurtenant thereto; provided, however, that Customer and Sub-User hereby grant to GeoAg and any Third-Party Contractors to whom GeoAg subcontracts or delegates its duties hereunder, the right to use Account Information for the purpose of performing GeoAg's obligations hereunder, and provided that Customer and Sub-User hereby grant to GeoAg and its Affiliates the right to use Account Information to better understand its and their customers and markets, to improve its and their products and services, and to market its and their products and services to its and their customers and potential customers.

b. Web Services. Customer and Sub-User acknowledge and agree that, as among GeoAg, Customer, and Sub-User, GeoAg owns all rights, title and interests in and to the Web Services and each and every component thereof, including all Intellectual Property Rights therein or appurtenant thereto. Customer and Sub-User further acknowledge and agree that the Web Services contain the valuable trade secrets of GeoAg and third parties, who individually or jointly own all right, title and interest in and to the Web Services, including all Intellectual Property Rights therein or appurtenant thereto. Neither Customer nor Sub-User shall acquire any right, title or interest in the Web Services or any portion or component of the Web Services pursuant to the Agreement, other than the right to access and use the Web Services as expressly granted in the Agreement, subject to the terms and conditions of the Agreement.

c. Ownership of GeoAg Tools. Notwithstanding anything to the contrary set forth in the Agreement, as among GeoAg, Customer and Sub-User, GeoAg owns and shall retain ownership of, all right, title and interest in and to the GeoAg Tools and all derivative works based thereon, including all Intellectual Property Rights therein or appurtenant thereto. No right, title or interest in the GeoAg Tools is transferred to Customer or Sub-User under the Agreement other than the right to use the GeoAg Tools as a component of the Products and Services as expressly granted in the Agreement, subject to the terms and conditions of the Agreement.

d. Ownership of Feedback. By providing Feedback to GeoAg, Customer or Sub-User, as the case may be, grants to GeoAg a perpetual, non-revocable, worldwide, fully-paid up, royalty free license to use, reduce to practice, make, exploit, reproduce, display and perform publicly, sublicense, distribute, and prepare derivative works based on such Feedback (and all know-how related thereto) for any purpose whatsoever, including but not limited to designing, developing, marketing and operating web-enabled services. GeoAg's use of Feedback is subject to GeoAg's obligations of confidentiality under the Agreement. Upon GeoAg's request, Customer and Sub-User agree to execute such further instruments and take such further actions as GeoAg may reasonably request, at GeoAg's expense, to evidence and/or protect GeoAg's rights in such Feedback.

## 5.2 Confidentiality.

a. Definition of "**Confidential Information.**" As used in the Agreement, "**Confidential Information**" shall mean all trade secrets and other information or data regarding or used in the business of a Party (whether one or more, the "**Protected Party**"), its Affiliates, its Third-Party Licensors, and/or its Third-Party Contractors, including all computer code and related documentation; all data, reports, analyses, business plans, financial information, payroll information; all information regarding products and services and plans for new or improved products and services; and all information regarding employees, customers, vendors, subcontractors; provided, however, that the term "**Confidential Information**" shall not include, and the Other Party (as defined below) shall have no obligation of confidentiality under this Section \_\_\_ with respect to information that does not identify a particular individual and 1) was publicly available at the time it was disclosed by a Protected Party to another Party (the "**Other Party**") or which becomes generally known to the public through no act or omission by the Other Party; 2) the Other Party already rightfully possessed, without obligation of confidentiality, before a Protected Party disclosed it to the Other Party; 3) the Other Party lawfully receives without obligation of confidentiality from any unrelated third-party; or 4) the Other Party develops independently without reliance on any Confidential Information of a Protected Party.

b. Ownership of Confidential Information. As among the Parties, Confidential Information will remain the property of the Protected Party, and no Other Party will be deemed by virtue of the Agreement or any access to Confidential Information to have acquired any right, title or interest in or to any Confidential Information.

- c. Protection of Confidential Information. Each Party shall
- 1) Use the same care to prevent disclosure of the Protected Party's Confidential Information as it uses with respect to its own Confidential Information of a similar nature, which shall not in any case be less than commercially reasonable care;
  - 2) Use the Confidential Information of the Protected Party only for the purposes for which it was disclosed;
  - 3) Not disclose the Confidential Information of a Protected Party to any of its officers, directors, employees, contractors or agents nor to any third party without the Protected Party's prior written consent, except that a Party may disclose the Confidential Information of a Protected Party to its officers, directors, employees, contractors, and agents (A) whose duties justify their "need to know" such Confidential Information in connection with the performance of the Customer Agreement or the Sub-User Agreement; (B) who have been clearly informed of their obligation to maintain the confidential status of such Confidential Information; and (C) in the case of those who are not officers, directors or employees of such Party, who have signed a non-disclosure agreement containing restrictions, terms and conditions that are at least as restrictive as those set forth herein.
  - 4) Notify the Protected Party promptly of any unauthorized use or disclosure of the Confidential Information; and
  - 5) Cooperate with the Protected Party in every reasonable way to stop any unauthorized use or disclosure of the Confidential Information.
- d. Disclosures Required by Law. Notwithstanding anything to the contrary set forth herein, the Other Party may disclose Confidential Information if it reasonably believes that it is required to do so by applicable law, court order, or other legal process; provided, unless prohibited by law, the Other Party has given the Protected Party prior written notice of such required disclosure and, to the extent reasonably possible, has given the Protected Party an opportunity seek 1) an appropriate protective order or other remedy or 2) an assurance that the Confidential Information will be kept confidential and secure and used only for the purposes for which it must be disclosed.
- e. Injunctive Relief. Each Party acknowledges and agrees that its use or disclosure of a Protected Party's Confidential Information in a manner not authorized by the Agreement could cause irreparable harm to the Protected Party that could not be fully remedied by monetary damages. Each Party therefore agrees that a Protected Party may specifically enforce the Agreement and shall be entitled, in addition to any other remedies available to it at law or in equity, to such injunctive or other equitable relief as may be necessary or appropriate to prevent such unauthorized use or disclosure without the necessity of proving actual or irreparable damage by reason of any such unauthorized use or disclosure. Each Party hereby agrees to waive any requirement the Protected Party post bond as a condition of obtaining relief.

5.3 **Right To Modify Web Services.** GeoAg is continually improving and enhancing the Web Services. Accordingly, GeoAg retains the right, in its sole and absolute discretion, to modify, alter or enhance the operation and functionality of the Web Services at any time without notice.

5.4 **Disclaimer Of Representations And Warranties.** EXCEPT FOR ANY MANUFACTURER'S WARRANTY THAT MAY APPLY, ALL PRODUCTS AND SERVICES ARE PROVIDED "AS IS," WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER. GEOAG, ITS AFFILIATES, ITS THIRD-PARTY LICENSORS AND ITS THIRD-PARTY CONTRACTORS MAKE NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR ARISING BY OPERATION OF LAW

OR COURSE OF DEALING, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE, IN CONNECTION WITH THE PRODUCTS AND SERVICES, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING,

a. GEOAG, ITS AFFILIATES, ITS THIRD-PARTY LICENSORS, AND ITS THIRD-PARTY CONTRACTORS DO NOT WARRANT OR REPRESENT THAT THE PRODUCTS AND SERVICES WILL MEET CUSTOMER'S OR ITS SUB-USER'S REQUIREMENTS OR THAT CUSTOMER'S OR ITS SUB-USERS USE OF THEM WILL BE UNINTERRUPTED OR ERROR-FREE.

b. CUSTOMER AND ITS SUB-USERS ARE SOLELY RESPONSIBLE FOR THE ACCURACY, RELIABILITY, CURRENCY, CONTENT AND TECHNICAL QUALITY OF ALL ACCOUNT INFORMATION.

c. GEOAG, ITS AFFILIATES, ITS THIRD-PARTY LICENSORS AND ITS THIRD-PARTY CONTRACTORS DO NOT WARRANT THE AVAILABILITY, ACCURACY, RELIABILITY, CURRENCY, OR CONTENT OF ANY REPORT, DATA OR OTHER INFORMATION DOWNLOADED OR OTHERWISE VIEWED, OBTAINED OR ACQUIRED THROUGH THE USE OF THE WEB SERVICES.

#### 5.5 **Limitations On Liability.**

a. IN NO EVENT SHALL GEOAG, ITS AFFILIATES, ITS THIRD-PARTY CONTRACTORS OR ITS THIRD-PARTY LICENSORS, OR ITS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS, BE LIABLE TO CUSTOMER OR AUTHORIZED USERS (NOR TO ANY THIRD PARTY CLAIMING THROUGH CUSTOMER OR ITS AUTHORIZED USERS) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING LOSS OF PROFITS, REVENUES, SAVINGS, OR GOODWILL OR LOSS, CORRUPTION OR THEFT OF DATA) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PRODUCTS AND SERVICES, OR CUSTOMER'S OR ITS AUTHORIZED USERS' USE OF OR INABILITY TO USE THE PRODUCTS AND SERVICES AND/OR THE ACCOUNT INFORMATION.

b. IN NO EVENT SHALL GEOAG, ITS AFFILIATES', ITS THIRD-PARTY CONTRACTORS' AND/OR ITS THIRD-PARTY LICENSORS' COMBINED AGGREGATE LIABILITY HEREUNDER TO CUSTOMER, ITS AUTHORIZED USERS AND/OR ANY THIRD PARTY FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT IN ANY TWELVE-MONTH PERIOD EXCEED THE AMOUNT PAID HEREUNDER BY CUSTOMER TO GEOAG DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

c. TO THE FULLEST EXTENT PERMITTED BY LAW, THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, STATUTE, NEGLIGENCE, TORT, STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF AN AUTHORIZED REPRESENTATIVE OF GEOAG, ONE OF ITS AFFILIATES, ITS THIRD-PARTY LICENSORS AND/OR ITS THIRD-PARTY CONTRACTORS HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND WITHOUT REGARD TO THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

d. CUSTOMER AND ITS SUB-USERS ACKNOWLEDGE THAT GEOAG COULD NOT PROVIDE THE PRODUCTS AND SERVICES TO CUSTOMER IN EXCHANGE FOR THE FEES SET FORTH HEREIN IF GEOAG'S LIABILITY AND THAT OF ITS AFFILIATES, THIRD-PARTY LICENSORS AND THIRD PARTY SERVICE PROVIDERS WERE NOT LIMITED AS SET FORTH IN THIS AGREEMENT.

5.6 **Infringement.** GeoAg shall indemnify, defend, and hold harmless Customer and its Sub-Users, and its and their directors, officers, employees, and agents, from and against any and all losses, liabilities, damages, fines, penalties, liabilities, costs or expenses (including reasonable attorneys' fees and disbursements) suffered or incurred by Customer or its Sub-Users as a result of a third-party claim, demand, action, arbitration, suit or similar proceeding (hereafter "**Claim**") to the extent it alleges that an Web Service or any Deliverable infringes a patent, copyright, trade secret or other proprietary right of such third party. The foregoing indemnification obligation is subject to: (a) Customer or its Sub-Users providing GeoAg with prompt written notice of the Claim; (b) GeoAg having sole control of the defense and all negotiations for settlement or compromise thereof; and (c) Customer and its Sub-Users reasonably cooperating, at GeoAg expense, in the defense of such Claim. THE RIGHTS AND REMEDIES GRANTED TO CUSTOMER AND ITS SUB-USERS UNDER THIS SECTION 5.6 SHALL BE CUSTOMER'S AND ITS SUB-USERS' SOLE AND EXCLUSIVE RIGHTS AND REMEDIES AND GEOAG'S SOLE OBLIGATION UNDER THIS AGREEMENT WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER PROPRIETARY RIGHT.

5.7 **Indemnification.**

a. By Customer. Customer shall indemnify, defend, and hold GeoAg, its Affiliates, and its Third-Party Contractors, and their respective directors, officers, employees and agents, harmless from and against any claims, demands, causes of action, damages, losses, liabilities, costs or expenses, including, without limitation, reasonable attorneys' fees and disbursements (collectively, "**Losses**"), arising out of or in connection with Customer's and/or an Authorized User's use or misuse of the Products and Services or breach of the terms and conditions of the Agreement, except to the extent that such Losses arise out of or in connection with GeoAg's material breach of the Agreement, gross negligence or willful misconduct.

b. By Sub-User. Sub-User shall indemnify, defend, and hold GeoAg, its Affiliates, and its Third-Party Contractors, and their respective directors, officers, employees and agents, harmless from and against any Losses arising out of or in connection with Sub-User's use or misuse of the Products and Services or breach of the terms and conditions of the Agreement, except to the extent that such Losses arise out of or in connection with GeoAg's material breach of the Agreement, gross negligence or willful misconduct.

5.8 **Relationship Of The Parties.** The Parties agree that each is an independent contractor in the performance of each and every part of the Agreement. Each Party shall be responsible for the management, direction, control, supervision, and compensation of its own employees, agents and contractors (including insurance coverage and taxes in accordance with applicable law). Neither Customer nor its Authorized Users are employees, agents, contractors, or representatives of GeoAg for any purpose, and neither Customer nor its Authorized Users has the power or authority as agent, employee or in any other capacity to represent, act for, bind or otherwise create or assume any obligation on behalf of GeoAg for any purpose whatsoever.

5.9 **Third-Party Contractors.** GeoAg reserves the right to use selected Third-Party Contractors to provide the Products and Services. These Products and Services may include, without limitation, web site hosting and maintenance, software development, and user support. GeoAg shall remain responsible, however, for the proper performance of all of its obligations under the Agreement, whether GeoAg performs those obligations directly or through a subcontractor.

5.10 **Parties In Interest.** The terms, conditions and obligations of the Agreement shall inure to the benefit of and be binding upon the Parties hereto and their permitted successors and assigns. Each Party intends that the Agreement shall not benefit, or create any right or cause of action in or on behalf of, any third party, including any Authorized User of a Party.

5.11 **Assignment.** Neither Customer nor Sub-User may sell, assign, license, sub-license or otherwise convey in whole or in part, by operation of law or otherwise, to any third party the Agreement or any of Customer's or Sub-User's rights or obligations hereunder, without the prior written consent of GeoAg, which consent shall not be unreasonably withheld. GeoAg may assign the Agreement and any or all of its rights and obligations hereunder.

5.12 **Force Majeure.** Except for Customer's obligations to pay GeoAg hereunder, no Party shall be liable to another Party for any failure or delay in performance caused by reasons beyond its reasonable control, including, but not limited to, acts of God, acts of any governmental authority, strikes or labor disputes, acts of war or terrorism, fire, severe weather or natural disasters, or other similar events. Without limiting the foregoing, neither GeoAg, its Affiliates, its Third-Party Licensors, nor its Third-Party Contractors shall be responsible for any loss or unavailability of the Web Services or any Account Information that results from a cause over which it does not have direct control, including, but not limited to, failure of electronic or mechanical equipment, computer viruses, unauthorized access, theft, operator errors, fiber optic cable cuts, interruption or failure of telecommunication or digital transmission links, Internet failures or delays, or other similar events.

5.13 **Notices.** All notices required to be given under the Agreement shall be given in writing and delivered by national overnight courier, or by registered or certified mail, postage prepaid, or hand delivered. Notices shall be deemed received on the next business day if sent by national overnight courier, within three (3) business days if sent by certified or registered mail, and upon receipt if hand delivered. Notices, if to Customer or Sub-User, shall be sent to the Account Administrator identified on the Order Form at the address provided therein. Notices, if to GeoAg, shall be sent to GeoAg Solutions, 430 Lee Boulevard, Lehigh Acres, Florida 33936, Attn. Location Manager, with a copy to United Agri Products, 7251 W 4th Street, Greeley Colorado 80634, Attn. General Counsel. Each Party shall have the right to change its contact information for notice purposes by giving the other Parties ten (10) days written notice of such change.

5.14 **Publicity.** GeoAg may use the name of Customer in a list of representative customers in advertising, publicity, or similar materials distributed or displayed to prospective customers.

5.15 **Governing Law; Personal Jurisdiction.** This Agreement shall be governed under the laws of Colorado, without regard to its conflicts of law provisions. The Parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement. All actions or proceedings arising out of or relating to the Agreement, its validity, performance, enforcement or breach, or the subject matter of the Agreement shall be venued exclusively in state or federal court in Colorado County, Colorado, and the Parties hereby irrevocably consent and submit themselves to the personal jurisdiction of said courts for all such purposes.

5.16 **No Waiver.** The failure of any Party at any time to require performance of any provision of the Agreement or to exercise any right provided for herein shall not be deemed a waiver of such provision or such right. All waivers must be in writing. Unless the written waiver contains an express statement to the contrary, no waiver by a Party of any breach of any provision of the Agreement or of any right provided for herein shall be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under the Agreement.

5.17 **Severability.** If any provision of the Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of

the original provision to the fullest extent allowed by law and the remaining provisions of the Agreement shall remain in full force and effect.

5.18 **Amendment.** These Terms and Conditions may not be modified or amended. Any purported amendment of these Terms and Conditions shall be null and void and have no legal effect.

5.19 **Purchase Orders And Similar Documents.** Notwithstanding any inconsistent or additional terms and conditions that may be contained in a purchase order, voucher, or other similar document issued by a Party, such document shall be conclusively deemed to have been issued for the such Party's internal purposes only and the terms and conditions of the Agreement shall prevail. Therefore, even if such document is acknowledged or accepted by a Party, and regardless of any statement to the contrary which may be contained therein, the inconsistent and/or additional terms and conditions of such document shall have no force or effect on the Agreement.

5.20 **Order Of Interpretation.** These Terms and Conditions apply to all Products and Services covered by an Order Form or a Statement of Work. The terms of any Order Form or Statement of Work apply only to the Products and Services covered by that Order Form or Statement of Work. To the extent the terms set forth in an Order Form or a Statement of Work conflict with these Terms and Conditions, these Terms and Conditions shall prevail.

5.21 **Entire Agreement.** The Agreement is comprised of these Terms and Conditions and the applicable Order Form or Statement of Work Transaction Documents. It contains the entire understanding and agreement between GeoAg and Customer and GeoAg and Sub-User with respect to the subject matter thereof and supersedes all previous communications, negotiations and agreements, whether oral or written, between GeoAg and Customer and GeoAg and Sub-User with respect to such subject matter.

The undersigned Customer or Sub-User accepts and agrees to these Terms and Conditions.

Company \_\_\_\_\_  
Signature \_\_\_\_\_  
Print Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
E-mail \_\_\_\_\_  
Phone \_\_\_\_\_

Revised April 3, 2006

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