

HELENA AGRI-ENTERPRISES, LLC OFFERINGS ENROLLMENT AGREEMENT

CUSTOMER INFORMATION

DATE: _____ CUSTOMER: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

PHONE: (_____) _____ EMAIL: _____

Please note that Helena Agri-Enterprises, LLC (“Helena” or “us”) reserves the right to update and change this Enrollment Agreement (“Agreement”) from time to time at its sole discretion. Please periodically check Helena’s website at <https://www.helenaagri.com/enrollmentagreement> for changes to this Agreement. Your continued use of the Services following the posting of any changes to this Agreement will confirm your acceptance of those changes.

SERVICE PROGRAMS

From time to time during the Term of this Agreement, you as the customer (“you” or “Customer”) may purchase one or more of Helena’s precision ag products or services which may include, but not be limited to, the products or services outlined on any schedule, plan or program attached hereto, as amended from time to time (“Services”). You may add or cancel Services as mutually agreed upon from time to time by both parties in writing.

CUSTOMER AGREES TO ABIDE BY ALL TERMS AND CONDITIONS SET FORTH ON THE FOLLOWING PAGE(S) DURING THE TERM OF THIS AGREEMENT.

USE AND OWNERSHIP OF DATA; DATA QUALITY AND FORMAT

The Services may relate to obtaining and providing different types of data. “Raw Data” means land data, field boundaries, images, yield data, lab results, soil and tissue samples, agronomic data, information or data that you or your agents provide to Helena, and data generated by any devices used over, under or on the property upon which you operate; provided, however, Raw Data shall not include any information that is either publicly available or capable of being obtained from a third party source without such third party source violating its obligations of confidentiality. You are the sole owner of the Raw Data. “Processed Data” may include, without limitation, features, functionality, tools, analyses, results, estimates, recommendations and other information generated, published, displayed, transmitted or made available in or by the Services other than Raw Data, whether or not related to Raw Data. As between Helena and you, Helena is the sole owner of the Processed Data and all associated technology and intellectual property rights. You hereby represent, warrant, and covenant that, for purposes of this Agreement, you have the right to collect and submit Raw Data and samples for the crops and land and to enter into this Agreement for such crops and land.

By using Services provided by, or on behalf of, Helena, you acknowledge and agree that Helena may collect, store, use and disseminate the Raw Data and the Processed Data to third parties for purposes of providing the Services, for improving the Services, and for other purposes in accordance with Helena’s Privacy Policy (as may be amended from time to time), which is incorporated by reference into, and made a part of, this Agreement. Helena’s Privacy Policy can be found at Helena’s website at <https://www.helenaagri.com/privacypolicy>. Please periodically check the website for changes to the Privacy Policy. Helena’s use, storage and dissemination of the data may continue after the termination of this Agreement. You grant Helena a nonexclusive perpetual, royalty free license to use, store and disseminate the Raw Data in accordance with this Agreement and Helena’s Privacy Policy. The terms of this paragraph shall survive termination of the Agreement.

You shall be responsible for assuring the accuracy and validity of all Raw Data by or otherwise transmitted or provided by you or by a third party on your behalf. You must notify Helena in writing of any errors or omissions in any of the input or output data within sixty (60) days of the time you became or should have become aware of such errors or omissions. All field information must be in good condition, Helena machine-readable and transmitted or provided only in such data entry formats and upon such forms Helena has previously approved, in its sole discretion.

To provide better service to you and to our other customers, Helena stores and pools Processed Data, which may contain your Raw Data, with other customers’ data, including their respective Raw Data. Your personally identifiable information is not included as part of the Raw Data or the Processed Data. Helena will not share your personally identifiable information with any customer or third party regardless of whether you allow your data to be pooled with any other customer’s data or you choose the Private Option except to the extent it is necessary to provide services to you or for other reasons set forth in Helena’s Privacy Policy.

Check the box below if you do not want your Raw Data pooled with any other customer’s data.

- ☐ **Private Option:** Customer does not grant permission for Processed Data containing Customer’s Raw Data to be aggregated (pooled) with others’ data. Please be advised that there are limitations on our ability to remove your Raw Data from our system and from the pooled/aggregated data that we received prior to your request, but we will take steps to ensure that the storage of your Raw Data is promptly adjusted so that any Raw Data that you send to us after you instruct us to remove it from pooled or aggregate data is no longer included in any pooled or aggregated Processed Data.

CUSTOMER’S LIMITED RIGHT TO USE AND RESTRICTIONS ON USE

You agree the Services can only be used only for your internal use in the United States or Canada and only for the agricultural or commercial purposes normally and ordinarily associated with the use of the Services. You also agree that you will not outsource, copy or duplicate, or permit anyone else to copy or duplicate, any of the Services or any output derived from the Services, except for your use of the Services for your agricultural or commercial purposes. This paragraph shall specifically survive the termination of this Agreement.

TERM OF AGREEMENT

This Agreement shall be in effect from the date of signing below for a period of one year, and will automatically be renewed for successive one-year terms under the same terms and conditions even during periods where you are not enrolled in any Services, until either you or us provide written notice of our respective intention to terminate this Agreement (the “Term”).

PAYMENT

Payment shall be made as required by the terms of your current Credit Sales and Services Agreement. If no such agreement is in place, payment in full for the Services is due and payable by you per the terms of the invoice submitted by Helena.

CUSTOMER AGREES TO THE TERMS AND CONDITIONS STATED ABOVE AND THE
TERMS AND CONDITIONS ON PAGE 2 HEREOF

CUSTOMERHELENA AGRI-ENTERPRISES, LLC

SIGNATURE:_____SIGNATURE:_____

NAME (Please Print):_____NAME (Please Print):_____

HELENA AGRI-ENTERPRISES, LLC OFFERINGS ENROLLMENT AGREEMENT

TERMS AND CONDITIONS

CONFIDENTIALITY OF HELENA’S INFORMATION. In the course of this Agreement, Customer may learn confidential, trade secret, or proprietary information concerning Helena or its licensors, agents, or suppliers (“Confidential Information”). Confidential Information shall include, without limitation, business information; information regarding Helena products, services and documentation; Helena and its licensors’ methods of database creation and translation, standardization, enhancement, and data analysis techniques; data profiling methods and formats; software tools for report creation; and associated algorithms, tools, programs, software architecture and technology. Customer agrees that it (a) will use the Confidential Information only as may be necessary in the course of receiving and utilizing Services or exercising rights under this Agreement; (b) treat such information as confidential and proprietary; (c) will not disclose such information orally or in writing to any third party, other than Customer’s authorized agents who have a need to know in the course of performing their duties for Customer, without the prior consent of Helena; (d) will take all reasonable precautions to protect the Confidential Information from disclosure to such third parties; and (e) will not otherwise appropriate the Confidential Information to Customer’s own use or to the use of any other person or entity, or allow others to do so. Upon termination or expiration (without renewal) of this Agreement, Customer shall return to Helena, or certify to Helena in a form and with content acceptable to Helena, in its sole discretion, as destroyed, all tangible items containing Confidential Information that are held by Customer or Customer’s authorized agents. Customer agrees to notify Helena in writing if it becomes aware of any unauthorized use or disclosure of any Confidential Information. If Customer believes it is required by law or by a subpoena or court order to disclose any of the Confidential Information, Customer shall promptly notify Helena prior to any disclosure and shall make all reasonable efforts to allow Helena an opportunity to seek a protective order or other judicial relief. Customer agrees that a breach or imminent breach of this paragraph shall constitute a material breach of this Agreement for which Helena will have no adequate remedy at law and that injunctive relief shall be appropriate. Customer further agrees that, upon such a breach or imminent breach, an *ex parte* temporary injunction may issue until such time as a hearing thereon may be granted upon notice prescribed by the courts. This paragraph shall specifically survive the termination of this Agreement.

NO WARRANTY ON SERVICES. USE OF THE PRODUCT IS AT YOUR SOLE RISK. WE DO NOT PROMISE THAT YOUR USE OF THE PRODUCT WILL BE UNINTERRUPTED OR THAT THE PRODUCT WILL MEET YOUR REQUIREMENTS, BE ACCURATE OR BE ERROR-FREE. HELENA **DISCLAIMS ALL WARRANTIES**, EXPRESS OR IMPLIED, OF ANY VARIETY ON THE SERVICES RENDERED HEREUNDER, AND **THE SERVICES ARE PROVIDED ENTIRELY “AS-IS.”** WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, HELENA DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. HELENA DOES NOT GUARANTEE ANY RESULTS, AND HELENA’S PRODUCTS AND SERVICES SHOULD NOT BE USED AS A SUBSTITUTE FOR SOUND FARMING PRACTICES, INCLUDING DILIGENT FIELD MONITORING, OR AS A SOLE MEANS FOR MAKING FARMING, RISK MANAGEMENT OR FINANCIAL DECISIONS.

LIMITATIONS OF LIABILITY AND REMEDIES. IN NO EVENT SHALL HELENA, ITS LICENSORS, AGENTS, OR SUPPLIERS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY REASON WHATSOEVER. UNDER NO CIRCUMSTANCES OR THEORIES, INCLUDING NEGLIGENCE OR BREACH OF CONTRACT, WILL HELENA OR ITS LICENSORS, AGENTS, OR SUPPLIERS BE LIABLE TO CUSTOMER OR TO ANY THIRD PERSON FOR ANY LOST PROFITS, BUSINESS OR GOODWILL, OR FOR ANY EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, THAT ARE IN ANY WAY RELATED TO, OR ARISE OUT OF, THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, TO OR OUT OF ANY PERFORMANCE OR NONPERFORMANCE BY HELENA, LOSS OF INFORMATION, POOR CROP PERFORMANCE, LOW YIELDS, OR LOW CROP REVENUES, OR CUSTOMER’S USE OR INABILITY TO USE THE SERVICES FOR ANY REASON AND FOR ANY PURPOSE WHATSOEVER, EVEN IF HELENA KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF ANY OF THOSE DAMAGES. WITHOUT LIMITING THE FOREGOING, IN THE EVENT OF ANY ERROR OR OMISSION ON THE PART OF HELENA WHICH IS CORRECTABLE BY THE REPROCESSING OF INFORMATION, HELENA MAY, IF NOTIFIED IN WRITING BY CUSTOMER AS PROVIDED IN THIS AGREEMENT, REPROCESS SUCH INFORMATION WITH THE COOPERATION OF CUSTOMER (AT NO CHARGE TO CUSTOMER), AND SUCH REPROCESSING SHALL BE IN THE FULL AND COMPLETE SATISFACTION OF ALL OF CUSTOMER’S CLAIMS WITH RESPECT TO THE ERROR OR OMISSION IN QUESTION.

INDEMNITY. UPON A REQUEST BY HELENA, USER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS HELENA AND ITS SUBSIDIARIES, AFFILIATES, AGENTS, OR OTHER BUSINESS PARTNERS, AND ITS AND THEIR EMPLOYEES, CONTRACTORS, OFFICERS, AND DIRECTORS FROM ALL LIABILITIES, CLAIMS, AND EXPENSES, INCLUDING ATTORNEY’S FEES, THAT ARISE FROM THE USE OR MISUSE OF THE PRODUCT, INCLUDING A VIOLATION OF ANY THIRD PARTY RIGHT, SUCH AS USE OF THIS PRODUCT WITHOUT PERMISSION FROM THE OWNER OF THE FARM DATA, EXCEPT AS EXPRESSLY LICENSED UNDER THIS AGREEMENT. WE RESERVE THE RIGHT, AT OUR OWN EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY YOU (WITHOUT LIMITING YOUR INDEMNIFICATION OBLIGATIONS WITH RESPECT TO THAT MATTER), AND IN THAT CASE, YOU AGREE TO COOPERATE WITH OUR DEFENSE OF THAT CLAIM.

RIGHTS RESERVED. The Services and proprietary materials used in the provision of the Services may contain patented and copyrighted material, trade secrets, and other confidential or proprietary information and materials of Helena or its licensors, agents, and suppliers (collectively the “Intellectual Property”). The Services are protected by United States patent and copyright laws and international treaty provisions and other federal, state and other laws (collectively the “Intellectual Property Laws”) protecting the trade secrets or confidential or proprietary information and materials of Helena and its licensors, agents, and suppliers. Customer hereby agrees to comply fully with all Intellectual Property Laws. Helena and its licensors, agents, and suppliers reserve all Intellectual Property rights in and to the Services, and these rights in the Services will at all times remain Helena’s or its licensors’, agents’, or suppliers’ sole and exclusive property. Customer hereby warrants and covenants that it will not obscure, remove or otherwise alter any notices of Helena’s or any of its licensors’, agents’, or suppliers’ ownership of the Intellectual Property or their rights therein from any part of the Services or any output derived from the Services.

MISCELLANEOUS. If any term or condition of this Agreement to be performed or observed by Helena or Customer (other than any obligation to make any payment to Helena) is rendered impossible of performance or observance due to any act of God or force *majeure*, including, without limitation, flood, storm, act of war, civil disturbance, fire or casualty, communication line failure, power failure, mechanical failure, equipment malfunction or failure, labor dispute or governmental rule or any other factor beyond the reasonable control of Helena or Customer, Helena or Customer, as the case may be, for so long as such condition exists, shall be excused from such performance or observance. This Agreement is governed by the laws of the State of Tennessee, but without regard to conflicts of law principles thereof. All disputes arising out of this Agreement shall be litigated, or otherwise resolved, exclusively in Shelby County, Tennessee. If any term of this Agreement is held to be invalid, illegal or unenforceable, in whole or in part, the remaining terms of this Agreement will not be affected thereby and will continue to be valid, legal and enforceable, and if any term of this Agreement is held to be invalid, illegal or unenforceable as written, but by limiting such term it would become valid, legal and enforceable, then such term shall be deemed to be written, construed and enforced as so limited. Except for the terms of any Credit Sales Agreement, Credit Sales & Service Agreement, or End User License Agreement in effect between Helena and Customer, this Agreement is the entire agreement between Helena and Customer pertaining to the subject matters of this Agreement, and it supersedes all written or oral preliminary agreements and all prior or contemporaneous discussions and understandings between Helena and Customer in connection with the subject matter of this Agreement. Each party agrees that any electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this Agreement and to have the same legal validity, enforceability, force and effect as original handwritten signatures to the fullest extent permitted by applicable law. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same document. The exchange of executed copies of this Agreement by facsimile, portable document format (PDF) transmission or other reasonable form of electronic transmission shall constitute effective execution and delivery of this Agreement. The Customer may not assign this Agreement. Helena may assign this Agreement, without notice to Customer. The Agreement shall inure to the benefit of, and shall be enforceable by, Helena’s successors and assigns. Where permitted under the applicable law, Customer and Helena agree that each may bring claims against the other only in your or its individual capacity and not as a plaintiff or class member in any purported class or representative action. Unless both Customer and Helena agree, no arbitrator or judge may consolidate more than one person’s (or entity’s) claims or otherwise preside over any form of a representative or class proceeding.

THIS AGREEMENT CONTAINS WARRANTY DISCLAIMERS AND DAMAGE WAIVER PROVISIONS.