

Electronic Delivery of Documents

By tapping or clicking the “Agree” button below, you agree that you accept electronic delivery of the following documents, and that you have carefully reviewed and agree to the terms of each and will retain copies for your records:

[Statement of Additional Information](#)

[Terms of Use](#)

[Privacy Policy](#)

The documents listed above, in addition to the Account Terms and Conditions, below, constitute the “Application Agreement.” Capitalized, undefined terms in this Application Agreement have the meaning given in the

Account Terms and Conditions

You represent and warrant that:

You are the person identified in this Account Application, and all of the information you have provided in this Account Application is accurate; Todd can rely on such information; and you agree to notify Todd promptly regarding any change in such information or circumstances which may jeopardize Agreement compliance.

You agree that:

You consent to electronic delivery of all future account information as described in the Client Agreement.

You will establish and maintain complete and adequate records concerning all aspects of farm operations and make such records available to Todd immediately upon request; you will comply with audits; and you consent to allow Todd or its authorized agents to access all facilities and documents, including non-productions areas and facilities at any reasonable time without prior notice.

You authorize Todd to verify, and re-verify as necessary, all information provided in this Account Application to comply with our regulatory obligations.

You will comply with all local, regional, state and Federal laws and standards governing farm management, processing operations and food safety and you will not hold Todd responsible in the event any crop is found to be uncertifiable, contains residue of prohibited materials or toxic agents.

Tapping or clicking the “Agree” button below is equivalent to your own written signature, and you understand that you are entering into legal agreements.

You are about to finalize your Account Application. By clicking or tapping the “Agree” button below, you agree that you have read the Client Agreement which contains a predispute arbitration clause (Section 39 on Page 31) and you agree in advance to arbitrate any controversies which may arise between you and Todd in accordance with such Section 39.

These Terms and Conditions constitute a legally binding agreement between Todd Agriscience, Inc. and its affiliates (together, "Todd," "our," "us," "we," or "company") and you, the user of our data and management services (the "Services") and seed products (the "Products") on behalf of the Farm (the "User"). By using the Services and Products, you acknowledge that you have read and agree to these Terms and Conditions. These Terms and Conditions govern your access and use of the Services and Products. Please read these Terms and Conditions carefully. If you do not agree with any of the Terms and Conditions contained herein, please do not access or use the Services or Products.

There are three parts to these Terms and Conditions: Account Agreement, Product Information, and Legal Rights. The Account Agreement describes the Terms and Conditions for the User, the Product Information describes the specific terms related to our seed products. The Legal Rights will summarize certain rights provided to you related to this Agreement.

THIS AGREEMENT REQUIRES CLAIMS TO BE ARBITRATED AND FORBIDS CLASS ACTIONS UNLESS YOU (1) ARE SUBJECT TO THE PROTECTIONS OF APPLICABLE LAW OR (2) EXERCISE YOUR RIGHT TO REJECT ARBITRATION AS PROVIDED IN THE ARBITRATION PROVISION OF THIS AGREEMENT.

ACCOUNT AGREEMENT

Last Updated: June 29, 2023

CLIENT ADVISER AND ADMINISTRATOR

Todd serves as the management adviser and the administrator (serving in its capacity as client adviser, the "Client Adviser," and serving in its capacity as administrator, the "Administrator") for the Farm. Subject to the supervision of the Management Committee (the "Committee"), Todd is responsible for managing the management activities of the Farm and the Farm's operational affairs and other administrative matters. Todd also serves as the management adviser for the Subsidiary.

MANAGEMENT FEES

Each Farm pays for the advisory, supervisory and administrative services it requires under what is essentially an all-in fee structure. The Management Fees shown in tables reflect both an advisory fee and supervisory and administrative fee. Farms pay monthly Management Fees to Todd at the following rates (stated as average monthly fees which may vary based on aggregate scale):

- Advisory Fees. Each Farm pays Todd fees in return for providing operational advisory services.
- Supervisory and Administrative Fees. Each Farm pays for the supervisory and administrative services it requires under what is essentially an all-in fee structure. Farms pay a supervisory and administrative fee to Todd, computed based on aggregate scale. Todd, in turn, provides or procures supervisory and administrative services for Farms and also bears the costs of various third-party services required by the Farm, including soil testing, shipping, and other costs. The Farm bears other expenses which are not covered under the supervisory and administrative fee which may vary and affect the total level of expenses paid by the Farm, such as taxes and government fees, payment and other transactional expenses, certification and audit expenses, and any other extraordinary expenses (such as litigation and indemnification expenses) and fees and expenses to Todd and their counsel.
- Past Due Fee. We will charge a Past Due Fee to your Account beginning the day a Statement becomes delinquent as disclosed to you in your Statement. However, we will not charge you Past Due Fee on a subsequent Statement provided you have paid your previous balance in full by the due date.
- Express Delivery Fee. We may charge you this Fee each time you request express delivery of soil test kits or any Account documentation. Before we charge you this fee, we will notify you of the amount and provide an opportunity to opt out of this service.

FEE LIMITATION AGREEMENT

Todd may consider waiving a portion of the Farm's supervisory and administrative fees, or reimburse the Farm, to the extent that the Farm's operational expenses. The Fee Limitation Agreement will automatically renew for one-year terms unless Todd provides written notice to the Farm at least 30 days prior to the end of the then current term. In any month in which the Account Agreement is in effect, Todd is entitled to

reimbursement by the Farm of any portion of the supervisory and administrative fee waived or reimbursed is in effect as set forth above (the "Reimbursement Amount") within thirty-six months of the time of the waiver, provided that such amount paid to Todd will not: 1) exceed the total Reimbursement Amount; or 2) include any amounts previously reimbursed to Todd.

ACCOUNT INFORMATION AND AUTHORIZED USERS

To help Todd combat fraudulent activities, we will obtain, verify and record the identities of each person, or the control person(s) and/or owners of the Farm's legal entity, that opens a new account, and to determine whether such person's name, or the names of such control person(s) and/or owners of the Farm's legal entity appears on lists of known or suspected fraud or proprietary thief groups. As a result, Todd must obtain the following information for each person, or the control person(s) and/or owners of the Farm's legal entity, that opens or intends to use the Account:

1. Name;
2. Residential or business street address; and
3. Email
4. Phone number

Individuals may also be asked for a copy of their driver's license, passport or other identifying document in order to verify their identity. In addition, it may be necessary to verify an individual's identity with a consumer report or other electronic database. Additional information may be required to open accounts for Farm corporations and other entities. We maintain the right to restrict or close your Account if your information cannot be verified or if you do not provide additional information as requested.

You are required to update your information as necessary in order to keep your Account information accurate. You will need to maintain the confidentiality of your account password. Do not disclose your account password to anyone. Todd will never request this information. If you become aware of any unauthorized use of your password or your account, immediately notify Todd to secure your account.

All correspondence, including letters, statements, and notifications will be sent to the name and address on file for the primary account holder. The primary account holder is responsible for repaying all balances on this account. Authorized Users will have the same privileges as the primary account holder but will not be financially responsible. When you inform us to add an Authorized User to your Account, you're confirming that you have a transactional relationship with the person or people whose name(s), email address(es), and phone number(s) you've told us, that all their information is correct, and that you have their consent to add them. If we determine you've given us fraudulent name(s), email address(es), or phone number(s) or did not have such consent, we may close this Account without notice. It is your responsibility to notify us if you wish to remove an Authorized User from your Account.

PAYMENTS

Payments for, platform support, data and advisory services (but not including certain account services), are in certain circumstances, bundled and allocated among these categories in Todd's discretion. In addition, payment made to Todd to a particular category of services can in some cases result in benefits related to, or enhance the eligibility of a client to receive, services that may be characterized or allocated to one or more other categories of services.

Payments are automatically charged to the payment method enrolled to your account on the due date. The total amount may vary each month, but will not exceed 10% variance from your Average Monthly Balance without prior notice. The amount due may vary more or less from additional fees, charges, taxes and/or credits. We may also resubmit and electronically collect returned payments or adjust your Account as necessary to correct errors, to process returns and reversed payments, and to handle similar issues. Your payments will be in U.S. dollars. We do not accept cash, check or money order payments. The only notice of the amount charged to your payment method will be a monthly Statement available on the Dashboard. The Statement will reflect the total amount due and additional fees for the period indicated. Clients must inspect each Statement and notify Todd about any errors or questions. If Clients do not notify us, we may assume that all information is correct. You may have additional contingent fees and charges that may not be shown on the Statement.

Todd uses an "Average Monthly Balance" method to figure the monthly charges. Average Monthly Balance serves only as a hypothetical illustration calculated from previous monthly expenses. Your actual Monthly Balance will likely differ than the Average Monthly Balance.

Even if we credit your payment to your Account, we may delay the acceptance of payment until we confirm that your payment has cleared. Our acceptance of payments labeled "payment in full" or restrictive words to that or any similar effect, will not constitute an accord and satisfaction nor a waiver of any rights we have to receive a full payment on all balances due.

TAXES

The following information is meant as a general summary for U.S. taxpayers. You should rely on your own tax adviser for advice about the particular federal, state, and local tax exemption for commercial agriculture production. Todd is obligated to collect sales tax for applicable transactions where a valid exemption document has not been presented. If you hold a valid exemption document covering the period of purchase, please contact Todd within 28 days of payment for a refund. To obtain a tax refund outside of the 28 day window, please contact your state or local tax authority. Foreign clients may be subject to U.S. sales tax. Clients may be requested to provide additional information to enable Todd to determine whether tax exemption is applicable. This "Tax Exemptions" section relates only to sales tax; the exemption under other tax laws may differ. Clients should consult their tax advisors as to the possible application of other tax exemptions.

ACCOUNT DEFAULT

We may consider you in default of your Agreement with us if:

- You do not make any payment when it is due;
- Any payment you make is rejected, not paid, or cannot be processed;
- We determine that you provided false, incomplete, or misleading information to us;
- You do not comply with any term of this Agreement or any other agreement with us;
- A bankruptcy or other insolvency proceeding is filed by or against you;
- You die or are legally declared incompetent or incapacitated; or

Paying the fees charged in connection with a Past Due default will not by itself cure the default. In addition, if you are in default, we may take the following actions without notifying you, unless otherwise required under law to do so:

- Close or suspend your Account;
- Demand that you immediately pay the entire balances owing on your Account;
- Continue to charge you Past Due fees as long as your balances remain outstanding; and/or
- Pursue any other action against you that the law allows, which includes the filing of a lawsuit against you.

You are required to pay us the full amount incurred for collection expenses, attorneys' fees, and court costs unless otherwise restricted under law.

YOUR PROMISE TO PAY

You promise to pay us all amounts due on your Account. This includes amounts where you did not sign a purchase slip or other documents for the transaction. Your promise to pay us will apply to your estate if you die.

ELECTRONIC DELIVERY OF DOCUMENTS

Todd relies on the electronic delivery of the following documents, and that by opening an Account you have carefully reviewed and agree to the terms of each, and will retain copies for your records:

- Statement of Additional Information
- Annual Letter
- Terms of Use
- Privacy Policy

The documents listed above, in addition to these Terms and Conditions, constitute the "Application Agreement." We may provide paper copies of the above documents under certain circumstances.

SUPPLEMENTARY PRIVACY POLICIES

In addition to these Terms and Conditions, your use of and access to the Services is also subject to our Website Privacy Policy (the "Privacy Policy") and our California Website Privacy Policy (the "California Privacy Policy"), which are incorporated by reference herein, as applicable. Our Privacy Policy and our California Privacy Policy contain additional terms relating to our potential collection, use and disclosure of your personal information, as applicable. You agree that you have read, agreed to and understand our Privacy Policy and our California Privacy Policy, as applicable.

COMMUNICATION

Todd and our service providers may contact you from time to time regarding your Account. We may contact you in any manner we choose unless otherwise restricted by law. We may monitor or record any conversation or other communication with you. Unless otherwise restricted by law, we may modify or suppress caller ID and similar services and identify ourselves in any manner we choose. When you give us or we obtain your mobile telephone number, we may contact you at this number using an Autodialer and can also leave prerecorded and other messages. We may do these things whether we contact you or you contact us.

COMPLIANCE

For the life of this Agreement or the expected lifespan of the Products, you grant Todd and its affiliates the complete and unencumbered right, at all times, to (i) observe and/or take video and/or pictures of the crop or products, farming activities, applications of fertilizers or other applications, and harvesting activities; and/or (ii) enter upon and have reasonable ingress to and egress from, through, over, under, across and across the property where the customer has planted or is storing products as well as have similar access to compost area, storage areas and bins, tractor trailers or seed storage containers (collectively, "Right of Entry") for purposes of data collection, field and crop inspection, testing and examining the land and crops and taking samples of soil, crops, crop residue or seed located thereon.

Such collection, inspection, examination, testing or sampling shall be performed by Todd at any reasonable time without prior notice, but Todd will make a reasonable attempt to mail you a written notification of our visit at least seven (7) days in advance or we have reasonably attempted to discuss our visits with you in advance of such visit. You agree that such ingress and egress may be made by means of roadway and driveways, to be used in common with other having right of passage thereon. If you are not the owner of premises where such access is needed, then you shall be solely responsible for obtaining consent from the applicable landowner for the visit.

You agree to establish and maintain complete and adequate records for the purpose of conducting on-farm inspections and verifying compliance with the Terms and Conditions of this Agreement. You must provide such records within seven (7) business days after the date of a written request from Todd or notify Todd immediately of any changes, including locations of all fields with crops; changes in circumstance which may jeopardize farm integrity; source of materials used for production; and NOP report information, as well as written or oral reports on the use, growth characteristic, days to maturity, and tolerances witnessed from such Products supplied.

To the extent of Personnel's negligent acts or omissions arising out of or in connection with Right of Entry, Todd indemnification of the customer shall be limited to losses of the applicable crop fields or personal property.

ADVERTISING

If for other than a public event purpose, we desire to use your Marks in any advertising or promotion, we will first submit a sample or the concept of the proposed advertisement or promotion to you in electronic writing for approval, which approval shall not be unreasonably withheld. You shall use your best efforts to advise Todd of your approval or disapproval of the concept within five business days of its receipt thereof. Your disapproval notice shall set forth in reasonable detail the basis for such disapproval. Any submitted item that has not been disapproved within ten business days of receipt by Todd shall be deemed approved. Once a submitted sample or concept is approved, Todd shall not depart therefrom in any material respect without re-submission of the item and obtaining your further approval.

In the event you desire to use the Todd marks in any advertising or promotion, you shall first submit a sample or the concept of the proposed advertisement or promotion to Todd for approval, which approval shall not be unreasonably withheld. Any submitted item that has not been approved within ten calendar days of receipt by Todd shall be deemed disapproved.

SPONSORSHIP RIGHTS

You hereby grant to Todd, and their successors and assigns, and such Todd entities hereby accept: i) the designation as “the exclusive service provider of [farm name]”, “the official agriculture partner of [farm name]”, and/or such similar designations as the parties may agree upon in writing, and;

The right to utilize (subject to the terms and conditions of the Service Agreement) your marks, the farms properties and the designations worldwide, in any media, platform, or technologies now known or later created, in connection with the production, advertising, marking, promotion and sale of Todd Services and/or Products. Such rights shall specifically include the right to use farm photographs, videotape and/or film footage of any and all activities, subject to applicable privacy rules and regulations with respect to the depiction of people in connection therewith. At Todd’s request, you shall permit Todd to utilize, consistent with the above terms and conditions, farm photographs and footage (owned and controlled by you), without a use fee, other than reasonable search and edit charges. To the extent that such materials are not controlled by you, you shall provide reasonable (non-financial) assistance as Todd may request in obtaining access to, and approval of, such third party materials. Todd acknowledges that you are a party to pre-existing contracts and/or supply arrangements and Todd agrees that such contracts and/or arrangements may be maintained and extended and/or replaced during this Account Agreement, provided, however, in the event any such agreement or arrangement is replaced by another supplier, such replacement supplier cannot be a company or brand known to the public as an agriculture company or brand.

CYBER SECURITY

As the use of technology, including cloud-based technology, has become more prevalent and interconnected in the course of business, Todd has become potentially more susceptible to operational and information security risks resulting from breaches in cyber security. A breach in cyber security refers to both intentional and unintentional cyber events that may, among other things, cause Todd to lose proprietary information, suffer data corruption and/or destruction or lose operational capacity, result in the unauthorized release or other misuse of confidential information, or otherwise disrupt normal business operations. Cyber security breaches may involve unauthorized access to the digital information systems that support Todd (e.g., through “hacking,” ransomware or malicious software coding) or outside attacks such as denial-of-service attacks (i.e., efforts to make network services unavailable to intended users), but may also result from unintentionally harmful acts of Todd personnel. In addition, cyber security breaches may involve third party service providers that provide services to Todd (including but not limited to vendors, advisers, sub-advisers, administrators, transfer agents, regulatory authorities, custodians, registry operators, distributors and other third parties). Recently, geopolitical tensions may have increased the scale and sophistication of deliberate cybersecurity attacks, particularly those from nation-states or from entities with nation-state backing. Todd’s use of cloud-based service providers could heighten or change these risks. In addition, work-from-home arrangements by Todd and its service providers could increase all of the above risks, create additional data and information accessibility concerns, and make Todd or its service providers susceptible to operational disruptions, any of which could adversely impact their operations. Like with operational risk in general, Todd has established business continuity plans and risk management systems designed to reduce the risks associated with cyber security. However, there are inherent limitations in these plans and systems, including that certain risks may not have been identified, in large part because different or unknown threats may emerge in the future. As such, there is no guarantee that such efforts will succeed, especially because Todd does not directly control the cyber security systems or third party service providers to Todd, and therefore cannot be held liable if outages occurs. Such entities have experienced cyber attacks and other attempts to gain unauthorized access to systems from time to time, and there is no guarantee that efforts to prevent or mitigate the effects of such attacks or other attempts to gain unauthorized access will be successful. There is also a risk that cyber security breaches may not be detected.

REGULATORY CHANGES

Agriculture is generally subject to government and third-party regulation and intervention. Government regulation and/or intervention may change the way Todd operates, affect the management strategy and the practices of the growers, and limit and/or preclude Todd’s ability to achieve its

management objectives. Government regulations may change frequently and many have significant adverse consequences. Todd has historically been eligible for exemptions from certain regulations. However, there is no assurance that Todd will continue to be eligible for such exemptions. Actions by governmental entities may also impact certain techniques for which we recommend.

Moreover, government regulation may have unpredictable and unintended effects. Legislative or regulatory actions to address perceived issues in food production or certification standards may alter or impair Todd's ability to pursue its management objectives or utilize certain management strategies or practices.

BUSINESS CONDUCT

Todd and you have a shared commitment to responsible business practices and consumer relations. Todd will provide its Services in accordance with our Code of Conduct, which is publicly available here. You have an indirect responsibility to uphold Todd's Code of Conduct in your business practices.

OWNERSHIP

The wordmarks, trade names, trademarks, service marks, trade dress, and other indicia of source (collectively, "Marks") found on the Services or Products and any and all information and content available through the Services (including strategies, policies, decisions, research, concepts and other information (collectively, the "Content")) are proprietary to Todd or its licensors and are protected by intellectual property rights and unfair competition and other laws. You may not use any Mark or Content without the express written permission of the owner (whether Todd or otherwise), and nothing contained in these Terms of Service or anywhere on the Services shall be construed as granting any license or right to use any Mark or Content. You shall not (nor shall you permit or cause your employees, agents, attorneys, accountants or representatives to) disclose the financial or operational knowledge of other Todd clients, the proprietary management material or information, marketing plans, or other sensitive material or information supplied by Todd to any third party, except as may be required by law.

PRODUCT INFORMATION

Last Updated: June 29, 2023

NEW PRODUCTS

From time to time during the term of this Agreement, Todd may introduce new Products. If at any time during the terms of the Agreement, Todd shall have a bona fide intention to introduce a new Product, Todd shall give you advance written notice of the particular varieties then in production. Once such items are processed and meet industry standards, such varieties shall thereafter be deemed to be included in "Products" as defined above.

PRODUCT USE

Todd will provide information and set forth requirements and guidelines for the use of our Products. Throughout these Terms and Conditions, you shall make Products available on an exclusive basis to all production programs, to be used by farm employees, agents and managers during the scheduled production seasons. You must ensure that no farm employees tamper or permit the alternation of any Products. Harvesting and using second-year seed is a gross violation of this Agreement, which grants you the right to plant a Product for only one season. Planting professionally produced seed is the best way to ensure the highest-quality crops, improved yields, and continued seed development to drive farm productivity.

PRODUCE MARKETING AND APPROVALS

Produce and certain crop by-products from Products might not be approved for sale in all markets. You shall discuss individual produce marketing policies with Todd prior to delivering produce. You may access produce marketing resources, direct-to-consumer presence information and receive global export approvals by contacting contacttodd.us@todd.com.

You should discuss the purchasing policies with your purchaser(s) or handler(s) prior to the delivery and sale of crop products and only deliver produce to purchaser(s) or handler(s) that agree your products will be marketed in approved markets. For more detailed information, please visit toddagriscience.com/export.

OWNERSHIP

The Genetics (including plant tissue, plant parts, pollen, seed produced therefrom or seed byproducts in its original genetic or modified forms (collectively, "Genetics") are proprietary to Todd or its subsidiaries and are protected by intellectual property rights and unfair competition and other laws. Todd has chosen not to seek formal patenting of the genetics, breeding techniques, or plant variety protection, because we believe that the only way to protect the resiliency and diversity of global genetic resources is open access to cultivars, genetics, traits and techniques. However, we strongly urge you not use any Genetic Material for breeding (including genetic modification and new plant breeding techniques (collectively, "Breeding"), research, seed production, or any other purpose whatsoever, other than for the production of a single commercial crop, without the express written permission of the owner (whether Todd or otherwise), and nothing contained in these Terms of Service, anywhere on the website or through any Services or Content, or acceptance of the Products shall be construed as granting any license or right to reproduce, resell, assign, distribute or otherwise transfer any Genetic Material.

LEGAL RIGHTS

Last Updated: June 29, 2023

THE LAW THAT APPLIES TO YOUR AGREEMENT

These Terms of Service (including Account and services related to this Account) shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its conflict of law rules. Federal law, including but not limited to the Federal Arbitration Act, will also be used when it applies. Any legal proceeding arising out of or relating to these Terms of Service against or relating to Todd or any indemnified party under these Terms of Service will be subject to the exclusive jurisdiction of any state or federal court sitting in the County of Los Angeles, California and you irrevocably consent to the jurisdiction of such courts, subject to the Arbitration Provision below.

Accordingly, it is important that you read the provisions of this section, the Arbitration Provision below, and the entire Agreement carefully. If any part of this Agreement is found to be unenforceable, the remaining parts will remain in effect.

DISCLAIMER OF WARRANTIES

THE SERVICES AND PRODUCTS ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND, TO THE MAXIMUM EXTENT PERMITTED UNDER LAW, ARE PROVIDED WITHOUT WARRANTIES, CLAIMS OR REPRESENTATIONS MADE BY TODD, EITHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SERVICES OR PRODUCTS, INCLUDING WARRANTIES OF QUALITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE OR TRADE USAGE. TODD FURTHER DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR PRODUCTS WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE OR ERROR-FREE. YOU ACKNOWLEDGE THAT THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SERVICES AND PRODUCTS REMAINS WITH YOU TO THE MAXIMUM EXTENT PERMITTED UNDER LAW.

LIMITATION OF LIABILITY

TODD DOES NOT ASSUME ANY LIABILITY OR RESPONSIBILITY FOR THE SERVICES OR PRODUCTS. TO THE FULLEST EXTENT NOT PROHIBITED BY LAW, TODD IS NOT LIABLE TO YOU OR ANYONE ELSE FOR ANY CLAIM OF ANY NATURE WHATSOEVER BASED ON (1) THE SERVICE OR PRODUCTS, INCLUDING ANY DECISION MADE OR ACTION TAKEN IN RELIANCE ON THE SERVICE OR ANY FEATURE OF THE SERVICE, OR (2) YOUR BREACH OF ANY PROVISION OF THESE TERMS OF USE. UNDER NO CIRCUMSTANCES WILL TODD BE LIABLE FOR ANY DAMAGES OR LOSSES (INCLUDING DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, LOSS OF DATA OR ANY OTHER DAMAGES OR LOSSES) ARISING OUT OF

OR IN CONNECTION WITH THESE TERMS OF SERVICE OR YOUR USE OF ANY SERVICE OR PRODUCT, REGARDLESS OF THE THEORY OF LIABILITY, WHETHER TORT (INCLUDING NEGLIGENCE OF ANY KIND), CONTRACT OR ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF THE DAMAGES OR IF THE DAMAGES COULD HAVE BEEN FORESEEN. THE FOREGOING DOES NOT AFFECT ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

INDEMNITY

You agree that you will be solely responsible for, and that you will defend, indemnify and hold Todd, its parents, subsidiaries and other affiliates and each of their respective officers, directors, agents, employees and representatives harmless from and against any and all claims, demands, liabilities, costs or expenses, including reasonable attorneys' fees, resulting from your violation of these Terms of Service or otherwise resulting from your use of the Services or Products. Todd reserves the right, at its own expense, to assume the exclusive defense and control of any matter for which it is entitled to indemnification, but you must still indemnify Todd for all liabilities, losses or damages. You agree to provide Todd with whatever cooperation it reasonably requests.

LIMITATION ON TIME TO FILE CLAIMS

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF SERVICE, THE SERVICES OR PRODUCTS MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED, UNLESS OTHERWISE REQUIRED BY LAW.

WAIVER OF JURY TRIAL

Unless prohibited by applicable law, if you accept this Agreement, you waive your right to have a jury trial to resolve any claim (defined below in the Arbitration Provision) you may have against us, our service providers, our respective affiliates or a related third party. This Waiver of Jury Trial provision does not apply to you if, at the time of entering into this Agreement, you are a resident of Arkansas.

CLASS ACTION WAIVER

Unless prohibited by applicable law, if you sign this Agreement, you waive your right to ask a court or an arbitrator to allow you to pursue any Claims on a class action basis or in a representative capacity on behalf of the general public, other borrowers or other persons similarly situated. Furthermore, Claims brought by you against us or by us against you may not be joined or consolidated with claims brought by or against someone other than you, unless otherwise agreed to in writing by all parties. For purposes of this Class Action Waiver, the terms "we," "us" and "our" shall also include Celtic Bank and each of its employees, directors, officers, shareholders, governors, managers, members, parent companies, affiliated entities, successors or assignees (including but not limited to Deserve, Inc.), the servicer of your Card and any third party who is named as a co-defendant with us in a claim asserted by you. In the event of a conflict between this CLASS ACTION WAIVER provision and the ARBITRATION PROVISION, the ARBITRATION PROVISION shall control.

ARBITRATION PROVISION

Arbitration is a process in which persons with a dispute(s): (a) agree to submit their dispute(s) to a neutral third person (an "arbitrator") for a decision; and (b) waive their rights to file a lawsuit in court to resolve their dispute(s). Each party to the dispute(s) has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute(s), which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision.

THIS ARBITRATION PROVISION APPLIES UNLESS YOU HAVE EXERCISED OR EXERCISE YOUR RIGHT TO REJECT ARBITRATION. IF YOU WOULD LIKE MORE INFORMATION ABOUT THIS ARBITRATION PROVISION, PLEASE CONTACT US AT contacttodd.us@toddagriscience.com. READ THIS ARBITRATION PROVISION CAREFULLY AS IT WILL HAVE A SUBSTANTIAL IMPACT ON HOW LEGAL CLAIMS YOU AND WE HAVE AGAINST EACH OTHER ARE RESOLVED.

YOU HAVE THE RIGHT TO OPT-OUT OF (NOT BE BOUND BY) THIS ARBITRATION PROVISION AS DESCRIBED BELOW. IF YOU DO NOT DO SO:

- YOU ARE WAIVING YOUR RIGHT TO HAVE A JURY OR A COURT, OTHER THAN A SMALL CLAIMS COURT OR SIMILAR COURT OF LIMITED JURISDICTION, RESOLVE ANY CLAIM THAT IS SUBJECT TO ARBITRATION; AND
- YOU ARE WAIVING YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN COURT OR IN ARBITRATION WITH RESPECT TO ANY CLAIM THAT IS SUBJECT TO ARBITRATION.

THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:

INTERSTATE COMMERCE

This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq., and not by any state arbitration law.

SCOPE

For purposes of this Arbitration Provision, the word "Claim" has the broadest possible meaning and includes, without limitation (a) all federal or state law claims, disputes or controversies, whether preexisting, present or future, arising from or relating directly or indirectly to this Agreement, the relationship between you and us, the information you gave us before entering into this Agreement, including your application, and/or any past agreement or agreements between you and us, any loan or credit product or related product or services obtained from us and any advice, recommendations, solicitations, communications, disclosures, promotions or advertisements concerning the same; (b) all initial claims, counterclaims, cross-claims and third-party claims and claims which arose before the effective date of this Arbitration Provision; (c) all common law claims based upon contract, tort, fraud, or other intentional torts; (d) all claims based upon a violation of any local, state or federal constitution, statute, ordinance or regulation, including without limitation all claims alleging unfair, deceptive or unconscionable trade practices; (e) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (f) all claims asserted by you individually against us and/or any of our employees, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities, or assignees (including but not limited to Deserve, Inc.) or against the servicer of your Card (hereinafter collectively referred to as "related third parties"), including claims for money damages, restitution and/or equitable or injunctive relief; (g) claims asserted by you against other persons and entities if you assert a Claim against such other persons and entities in connection with a Claim you assert against us or related third parties; and (h) all data breach or privacy claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you. Notwithstanding the foregoing, the word "Claim" does not include any dispute or controversy about the validity, enforceability, coverage or scope of this Arbitration Provision or any part thereof (including, without limitation, the provision titled "Class Action Waiver" set forth below, subparts A and B of the provision titled "Binding Effect; Survival; Severability" set forth below and/or this sentence); all such disputes or controversies are for a court and not an arbitrator to decide. However, any dispute or controversy that concerns the validity or enforceability of the Agreement as a whole is for the arbitrator, not a court, to decide. In addition, this Arbitration Provision will not apply to (1) any individual action brought by you in small claims court or your state's equivalent court, unless such action is transferred, removed, or appealed to a different court; or (2) any disputes that are the subject of a class action filed in court that is pending as of the effective date of this Arbitration Provision in which you are alleged to be a member of the putative class for as long as such class action is pending.

CLASS ACTION WAIVER

Notwithstanding any other provision of this Arbitration Provision, if either you or we elect to arbitrate a Claim, neither you nor we will have the right: (a) to participate in a class action, private attorney general action or other representative action in court or in arbitration, either as a class representative or class member, or (b) to join or consolidate Claims with Claims of any other persons. (Provided, however, that the Class Action Waiver does not apply to any lawsuit or administrative proceeding filed against us by a state or federal government agency even when such agency is seeking relief on behalf of a class of borrowers including you. This means that we will not have the right to compel arbitration of any claims brought by such an agency).

An award in arbitration shall determine the rights and obligations of the named parties only, and only with respect to the Claim(s) in arbitration, and shall not (i) determine the rights, obligations, or interests of anyone other than a named party, or resolve any Claim of anyone other than a

named party; nor (ii) make an award for the benefit of, or against, anyone other than a named party. No arbitration administrator or arbitrator shall have the power or authority to waive, modify, or fail to enforce this section, and any attempt to do so, whether by rule, policy, arbitration decision or otherwise, shall be invalid and unenforceable. Any challenge to the validity of this Class Action Waiver shall be determined exclusively by a court and not by the administrator or any arbitrator.

ELECTING ARBITRATION

A party may elect arbitration of a Claim by sending the other party written notice by certified mail return receipt requested of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested. Your notice must be sent to Todd Agriscience, Inc., ATTN: General Counsel, P.O. Box 10019, Los Angeles, CA 84157-0780, and our notice must be sent to the most recent address for you in our files. If a lawsuit concerning the Claim has been filed, such notice can be provided by papers filed in the lawsuit, such as a motion to compel arbitration.

ADMINISTRATOR

Regardless of who demands arbitration, you shall have the right to select either of the following arbitration organizations to administer the arbitration: the American Arbitration Association, 120 Broadway, Floor 21, New York, NY 10271 (1-800-778-7879), <http://www.adr.org>; or JAMS, 8401 N. Central Expressway, Suite 610, Dallas, TX 75225 (1-800-352-5267), <http://jamsadr.com>. However, the parties may agree to a local arbitrator who is an attorney, retired judge, or arbitrator registered and in good standing with a bona fide arbitration association with at least 10 years of experience arbitrating agriculture or biological life and arbitrate pursuant to the arbitrator's rules. If the AAA and JAMS are unable or unwilling to serve as administrator, or the parties are unable to agree upon another administrator, a court with jurisdiction shall determine the administrator or arbitrator. The arbitration hearing will take place at a location reasonably convenient to where you reside.

If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within 20 days in writing by certified mail, return receipt requested, of your decision to select an arbitration organization or your desire to select a local arbitrator. Your notice must be sent to Todd Agriscience, Inc., ATTN: General Counsel, P.O. Box 10019, Los Angeles, CA 84157-0780. If you fail to notify us, then we have the right to select an arbitration organization. The arbitration will be governed by the rules and procedures of this arbitration organization applicable to individual consumer disputes. You may get a copy of the rules and procedures by contacting the arbitration organization listed above. In an event of a conflict between the provisions of the Arbitration Provision, on the one hand, and any applicable rules of the AAA or JAMS or other administrator used or any other terms of this Agreement, on the other hand, the provisions of this Arbitration Provision shall control. If a party files a lawsuit in court asserting Claim(s) that are subject to arbitration and the other party files a motion to compel arbitration with the court which is granted, it will be the responsibility of the party prosecuting the Claim(s) to select an arbitration administrator in accordance with this paragraph and commence the arbitration proceeding in accordance with the administrator's rules and procedures.

NON-WAIVER

Even if all parties have opted to litigate a Claim in court, you or we may elect arbitration with respect to any Claim made by a new party or any Claim later asserted by a party in that or any related or unrelated lawsuit (including a Claim initially asserted on an individual basis but modified to be asserted on a class, representative or multi-party basis). Nothing in that litigation shall constitute a waiver of any rights under this Arbitration Provision. For example, if we file a lawsuit against you in court to recover amounts due under the Agreement, you have the right to request arbitration, but if you do not elect to request arbitration, we reserve and do not waive the right to request arbitration of any Claim (including any counterclaim) you later assert against us in that or any related or unrelated lawsuit. This Arbitration Provision will apply to all Claims, even if the facts and circumstances giving rise to the Claims existed before the effective date of this Arbitration Provision.

ARBITRATION AND AWARD

Any arbitrator must be a practicing attorney with ten or more years of experience or a retired judge. The arbitrator will not be bound by judicial rules of procedure or evidence that would apply in a court, nor by state or local laws that relate to arbitration proceedings. The arbitrator will apply the same statutes of limitations and privileges that a court would apply if the matter were pending in court. The arbitrator may decide, with or

without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In determining liability or awarding damages or other relief, the arbitrator will follow the applicable substantive law, consistent with the FAA, which would apply if the matter had been brought in court. The arbitrator may award any damages or other relief or remedies that would apply under applicable law to an individual action brought in court, including, without limitation, punitive damages (which shall be governed by the Constitutional standards employed by the courts) and injunctive, equitable and declaratory relief (but only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim). No arbitration award involving the parties will have any preclusive effect as to issues or claims in any dispute involving anyone who is not a party to the arbitration, nor will an arbitration award in prior disputes involving other parties have preclusive effect in an arbitration between the parties to this Arbitration Provision.

FEES AND COSTS

At your written request, we will pay all filing, hearing and/or other fees charged by the administrator and arbitrator to you for Claim(s) asserted by you in an individual arbitration after you have paid an amount equivalent to the fee, if any, for filing such Claim(s) in state or federal court (whichever is less) in the judicial district in which you reside. (If you have already paid a filing fee for asserting the Claim(s) in court, you will not be required to pay that amount again). We will not seek reimbursement of such fees from you even if we prevail in the arbitration. In addition, the administrator may have a procedure whereby you can seek a waiver of fees charged to you by the administrator and arbitrator. We will always pay any fees or expenses that we are required to pay by law or the administrator's rules or that we are required to pay for this Arbitration Provision to be enforced. The arbitrator will have the authority to award fees and costs of attorneys, witnesses and experts to the extent permitted by this Agreement, the administrator's rules or applicable law. With respect to Claim(s) asserted by you in an individual arbitration, we will pay your reasonable attorney, witness and expert fees and costs if and to the extent you prevail, if applicable law requires us to or if we must bear such fees and costs in order for this Arbitration Provision to be enforced. At the timely request of either party, the arbitrator shall write a brief explanation of the grounds for the decision.

APPEAL

The arbitrator's award shall be final and binding on all parties, except for any right of appeal provided by the FAA. However, if the amount in controversy exceeds \$50,000, and if permitted by the Administrator's rules, you or we can, within 14 days after the entry of the award by the arbitrator, appeal the award to a three-arbitrator panel administered by the Administrator. The panel shall reconsider anew any aspect of the initial award requested by the appealing party. The decision of the panel shall be by majority vote. Reference in this Arbitration Provision to "the arbitrator" shall mean the panel if an appeal of the arbitrator's decision has been taken. The costs of such an appeal will be borne in accordance with the paragraph above titled "Fees and Costs." Any final decision of the appeal is subject to judicial review only as provided under the FAA. A judgment on the award may be entered by any court having jurisdiction.

NOTICE AND CURE; SPECIAL PAYMENT

Prior to initiating a Claim, you may send us a written Claim Notice. In order for a Claim Notice to be valid and effective, it must: (a) state your name, address and farm name; (b) be signed by you; (c) describe the basis of your Claim and the amount you would accept to resolve the Claim; (d) state that you are exercising your rights under the "Notice and Cure" paragraph of the Arbitration Provision; and (e) be sent to us by certified mail, return receipt requested, at Todd Agriscience, Inc., Attn: General Counsel, P.O. Box 10019, Los Angeles, CA 84157-0780. This is the sole and only method by which you can submit a Claim Notice. Upon receipt of a Claim Notice, we will credit you for the standard cost of a certified letter. You must give us a reasonable opportunity, not less than 30 days, to resolve the Claim. If, and only if, (i) you submit a Claim Notice in accordance with this paragraph on your own behalf (and not on behalf of any other party); (ii) you cooperate with us by promptly providing the information we reasonably request; (iii) we refuse to provide you with the relief you request before an arbitrator is appointed; and (iv) the matter then proceeds to arbitration and the arbitrator subsequently determines that you were entitled to such relief (or greater relief), you will be entitled to a minimum award of at least \$7,500 (not including any arbitration fees and attorneys' fees and costs to which you will also be entitled). We encourage you to address all Claims you have in a single Claim Notice and/or a single arbitration. Accordingly, this \$7,500 minimum award is a single award that applies to all Claims you have asserted or could have asserted in the arbitration, and multiple awards of \$7,500 are not contemplated.

BINDING EFFECT; SURVIVAL; SEVERABILITY

This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision shall survive any bankruptcy to the extent consistent with applicable bankruptcy law. The Arbitration Provision survives any termination, amendment, expiration or performance of this Agreement and any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any part of this Arbitration Provision is deemed or found to be unenforceable for any reason, the remainder shall be enforceable, except as follows: The parties to this Arbitration Provision acknowledge that the provision titled "Class Action Waiver" is material and essential to the arbitration of any disputes between the parties and is non-severable from this Arbitration Provision. If the Class Action Waiver is limited, voided or found unenforceable, then the parties' Arbitration Provision (except for this sentence) shall be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver. The parties acknowledge and agree that under no circumstances will a class action be arbitrated.

If a Claim is brought seeking public injunctive relief and a court determines that the restrictions in the provision titled "Class Action Waiver" prohibiting the arbitrator from awarding relief on behalf of third parties are unenforceable with respect to such Claim (and that determination becomes final after all appeals have been exhausted), the Claim for public injunctive relief will be determined in court and any individual Claims seeking monetary relief will be arbitrated. In such a case the parties will request that the court stay the Claim for public injunctive relief until the arbitration award pertaining to individual relief has been entered in court. In no event will a Claim for public injunctive relief be arbitrated.

OPT-OUT PROCESS

You may choose to opt out of this Arbitration Provision but only by following the process set forth below. If you do not wish to be subject to this Arbitration Provision, then you must notify us in writing postmarked within sixty (60) calendar days of the date of Account opening at the following address: Todd Agriscience, Inc., P.O. Box 10019, Los Angeles, CA 84157-0780. Your notice must be sent to us by certified mail, return receipt requested. Upon receipt of an Opt-Out Notice, we will credit you for the standard cost of a certified letter. Your Opt-Out Notice must include your name, address, a statement that you wish to opt out of the Arbitration Provision and must not be sent with any other correspondence. Indicating your desire to opt out of this Arbitration Provision will not affect your other rights or responsibilities under this Agreement and applies only to this Arbitration Provision between you and us. If you fail to opt out and file a complaint in state or federal court instead of first resolving the matter through arbitration, you must immediately and voluntarily dismiss the complaint or Todd or its agent may file a motion to compel arbitration and collect attorneys' fees and any other costs associated with the motion.

WAIVER

We, our agents, assignees, successors, providers, and respective affiliates will not lose any of our rights if we delay taking any action for any reason or if we do not notify you. We may always enforce our rights later and may take other actions not listed in these Terms and Conditions if the law allows them. You do not have to receive notice from us of any waiver, delay or demand. We may proceed against you before proceeding against someone else.

ASSIGNMENT

These Terms and Conditions will be binding on, and benefit, any of your and our successors and assigns. You may not transfer your rights or responsibility under this Agreement to someone else without our written permission.

We may transfer your Account and this Agreement to another company or person without your permission and without prior notice to you. They will take our place under this Agreement. You must pay them and perform all of your obligations to them and not us. If you pay us after you are informed or learn that we have transferred your Account or this Agreement, we can handle your payment in any way we think is reasonable. This includes returning the payment to you or forwarding the payment to the other company or person. We reserve the right to use third party service providers to perform any activity we are permitted or obligated to perform under these Terms and Conditions, to the extent permitted by applicable law.

MISCELLANEOUS

Nothing in these Terms and Conditions may be used to construe you and Todd as joint venturers, co-employers, partners or agents of each other, and neither you nor Todd has the power to obligate or bind the other in any way whatsoever. Todd reserves the right to amend these Terms and Conditions in its sole discretion. Todd will post any changes to these Terms and Conditions on the website, and changes are effective immediately upon posting. However, if changes affect your ability to access your account, we will notify you by electronic or other means. Your continued use of the Services and Products after any such changes constitute your acceptance of the new Terms and Conditions. You should consult the "Legal" tab on the website each time you visit the website. Should any term or provision hereof be deemed invalid, void or unenforceable either in its entirety or in a particular application, the remainder of these Terms and Conditions shall nonetheless remain in full force and effect. The failure of Todd at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same unless the same is waived in writing. The terms and conditions set forth and any agreements included or referred to in these Terms and Conditions constitute the final, complete and exclusive agreement with respect to the Services and Products and may not be contradicted, explained or supplemented by evidence of any prior agreement, any contemporaneous oral agreement or any consistent additional terms. By agreeing to these Terms and Conditions, you promise us that you are not planning to file bankruptcy at the time of your application for your Account.

Headings and captions throughout these Terms and Conditions are for convenience only and should not be considered part of these Terms and Conditions. The word "including" means "including without limitation."

If you have any questions or concerns about these Account Terms and Conditions or any issues raised in these Terms and Conditions, please contact us [here](#).