

## User Agreement

On \_\_\_\_\_, 20 \_\_\_\_\_ (Customer) and Northwest Kansas Groundwater Conservation Foundation (Water District) (collectively Parties) entered into this User Agreement (Agreement). Water District has licensed the use of certain technology developed by Mammoth Trading BPC (Mammoth Water) on behalf and for use by Customer. The technology allows Customer to track and manage Customer's water use. This Agreement specifies the terms under which Customer will utilize the Mammoth Water's technology. Additionally, Customer shall enter into Mammoth Water's terms and conditions when they sign up to use the technology and those terms shall govern Customer's use of the Mammoth Water technology.

Customer and Water District agree as follows:

1. **Eligible Meters.** Only meters located in the Northwest Kansas Groundwater Management District 4 (GMD 4) are eligible for participation. "Meter" means a single flow meter device used to measure an amount of water.
2. **Payment for Services.** Customer will pay Water District a fee of \$50 per meter per year for any and all meters, and in any and all years, that Customer enrolls a meter for tracking with Mammoth Water. Water District will pay amounts collected from Customer to Mammoth Water. For the first year that Customer uses Mammoth Water's technology, Customer will pay the fee before being allowed access to the technology. In all subsequent years, Customer must pay the annual fee by March 1.
3. **Termination.** This Agreement will end if:
  - 3.1. **Termination of Agreement between Water District and Mammoth Water.** If the Water District or Mammoth Water terminates the Services Agreement with Mammoth Water, then this Agreement will terminate immediately. Water District is not required to provide, and Customer is not entitled to receive, notice of the termination of the Services Agreement between Water District and Mammoth Water.
  - 3.2. **Termination of Agreement between Customer and Mammoth Water.** If Customer or Mammoth Water terminates the Customer Agreement between Mammoth Water and Customer, then this Agreement will terminate immediately.
  - 3.3. **Termination for Failure to Pay.** If Customer fails to pay the annual fee by March 1 of any year, then Water District is entitled to request Mammoth Water suspend or terminate providing services to Customer. Upon payment of the fee, Water District will request that Mammoth Water reinstate providing services to Customer; whether and when Mammoth Water reinstates providing services to Customer will be in Mammoth Water's sole discretion.
4. **Customer Data.** Customer consents and requests that Water District collect, use, and share Customer's data with Mammoth Water to fulfill Water District's obligations under the Services Agreement with Mammoth Water.
5. **Warranty and Disclaimer.** *Except as specifically provided herein and in the standard terms, Mammoth Water's services and Water District's services are provided "as is". Mammoth Water and Water District disclaim all warranties, express, implied, or statutory as to any matter whatsoever, including all implied warranties of merchantability, fitness for a particular purpose and non-infringement of third party rights.*
6. **Limitations of Liability.** *Neither Mammoth Water or Water District will be liable to the customer for any consequential, indirect, special, incidental, reliance, or exemplary damages, or lost profits, arising out of or relating to this agreement or the services, whether foreseeable or unforeseeable, and whether based on breach of any express or implied warranty, breach of contract, misrepresentation, negligence, strict liability in tort, or other cause of action (including, but not limited to, damages for loss of data, goodwill, profits, investments, even if such Party has been advised of the possibility of such damages.*
7. **General Provisions**
  - 7.1. **Amendments and Waiver.** Except as otherwise expressly provided in this Agreement, any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be

waived, only by a writing signed by the Party to be bound. Each Party agrees to comply with all laws, regulations, rules, ordinances, and orders applicable to its rights and obligations under this Agreement.

**7.2. Construction.** If this Agreement requires interpretation or construction, then this Agreement will not be interpreted or construed more strictly against any one Party by reason of any rule of interpretation or construction under which a document is to be construed more strictly against the drafting Party.

**7.3. Entire Agreement.** This Agreement, and that attached Exhibits, contain the entire understanding and agreement of the Parties with respect to the subject matter and supersede all prior and contemporaneous agreements or understandings between the Parties.

**7.4. Force Majeure.** Neither Party will be deemed in default or hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder (excluding payment obligations) due to earthquake, pandemic, international health emergency, quarantine, travel restrictions, flood, fire, storm, natural disaster, acts of God, war, terrorism, armed conflict, labor strike, lockout, boycott, or other similar events beyond the reasonable control of such Party, provided that the Party relying upon this provision:

**7.4.1.** gives prompt written notice thereof; and

**7.4.2.** takes all steps reasonably necessary to mitigate the effects of the force majeure event; provided further, that if force majeure event extends for a period in excess of thirty (30) days in the aggregate, either Party may immediately terminate this Agreement or the affected Customer Agreement upon written notice.

**7.5. Governing Law.** This Agreement will be governed by, construed, and enforced in all respects under the laws of the State of Kansas, United States of America, excluding its conflict of laws rules. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**7.6. Jurisdiction.** For all disputes arising out of or related to this Agreement, the Parties submit to the exclusive subject matter jurisdiction, personal jurisdiction, and venue of the District Court of Thomas County, Colby, Kansas.

**7.7. Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement will be interpreted so as best to reasonably effect the intent of the Parties.

**8. Signatures.** The Parties to this Agreement have executed this Agreement on the day and year first written above:

Northwest Kansas Groundwater Conservation Foundation    Customer

\_\_\_\_\_  
Shannon Kenyon, Manager of the Northwest Kansas  
Groundwater Conservation Foundation  
1290 West 4<sup>th</sup> Street  
Colby, KS 67701

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_