

CowboySmart® Terms of Service

Last Updated: October 8, 2019

These Terms of Service (these "**Terms**") are a legally binding agreement between you and **CowboySmart, LLC**, a Kansas limited liability company (referred to in these Terms as "CowboySmart" "we," "our," "us" and similar terms) and each person who accepts these Terms (referred to as "you," and similar terms).

By accepting these Terms, you expressly acknowledge that you understand and accept these Terms. **IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT USE OR ACCESS THE COWBOYSMART® PLATFORM.**

These Terms govern your use of www.CowboySmart.com (the "**Site**") and all related mobile applications and technology platforms that we provide to you in connection with your use of the Site (collectively, the "**CowboySmart® Platform**").

1. The CowboySmart® Platform. The CowboySmart® Platform provides tools for beef ranch and feedyard managers to track information related to ranch and feedlot information, such as rations, medications, mortality, and other essential information. The CowboySmart® Platform also facilitates transactions and interactions with vendors and nutritionists, and performs other functions related to feedlot operation (collectively, the "**Services**").

2. Subscription. In order to use the CowboySmart® Platform and the Services, you must purchase a subscription (the "**Subscription**") unless you are an authorized Team Account (defined below) under an existing Subscription. Each Subscription will provide for one or more administrator Users (each, an "**Administrator**") and may include one or more team member Users (each a "**Team Member**"). "**Team Accounts**" refers to all User Accounts under the same Subscription.

3. User Accounts. Each user (each, a "**User**") must create a user account (a "**User Account**") in order to use the CowboySmart® Platform and access the Services. You agree by creating an account that you will furnish accurate and current information, and you agree to accept these terms. You will also keep your login information secure and will contact us immediately if you suspect that your login information has been compromised or you otherwise suspect a security breach. If you incur charges or fees in connection with your use of the Services, you agree that you are liable for and responsible for such charges or fees. CowboySmart® may use any legal means to collect any unpaid charges or fees. All of our rights and remedies under these Terms and at law and in equity shall be cumulative, and none shall operate as a limitation of any other right or remedy. In any legal proceeding between the parties in which we prevail or substantially prevail, we will be entitled to recover from you our reasonable attorneys' fees, expenses and other costs of the proceeding.

The Services are intended solely for users who are 18 or older, and any use of the Services by anyone under that age is not authorized by – and is a violation of – these terms. By using the Services, you also certify that you (a) are not identified on the Office of Foreign Assets Control's Specially Designated Nationals List, (b) are not placed on the U.S. Department of Commerce's Denied Persons List or Entity List or any other U.S. export control list, (c) will not use the Services

if any applicable laws in your country prohibit you from doing so in accordance with these terms of use and (d) have not previously had your right to use the Services suspended or terminated.

4. Administrators. Administrators can create, delete and modify each Team Account, to the extent permitted by the CowboySmart® Platform and the Subscription. If you create a User Account for another individual, you agree that you have the permission of the applicable individual(s) to share their information with us. If you are an Administrator, you are responsible for, and legally liable for the acts of all Team Members and Administrators through their Team Accounts. If you are an Administrator, you agree, either on your own behalf or on behalf of your employer or your contractee (“**Principal**”), that you are liable for and obligated to pay all Subscription Fees on the User Account and are liable for all actions of all Team Members and Administrators.

5. Vendor Accounts. If the type of account that you create is a "**Vendor Account**," as designated at the time that you create your account, the terms of this Section shall apply, notwithstanding anything to the contrary in this Agreement. Each Vendor Account will only be entitled to one user (i.e., no related Team Accounts) and will not have the same functionality and will not have access to the same features as standard accounts. Vendor Accounts will only be able to receive requests for quotations, receive purchase orders, and send invoices through the Services, and only within the Territory (defined below) that you subscribe for. "**Territory**" means the geographic radius identified when you create your user account and will be measured from the address you specify for that purpose when you create your user account. You may only change the Territory with our permission, which may require that you change your Subscription and pay additional fees. Vendor Accounts will not be able to access information about any other users or utilize other features of the Services, unless we choose to add features in the future, in our sole discretion. We may modify the features available to Vendor Accounts from time-to-time and will notify you of any changes to the features referenced in this Section. All other terms of this Agreement apply to Vendor Accounts, except as expressly provided in this Section.

6. License. CowboySmart® grants you a limited, personal, non-exclusive, non-assignable, non-commercial, and non-sublicensable license to access and utilize the Services for the sole purpose of using and enjoying the Services in the manner provided by these terms of use.

You agree that CowboySmart® has not granted you any implied or non-express right or license not expressly set out in these Terms of Use.

You agree not to copy, prepare derivative works based on, use for competitive purposes (including in connection with the preparation of, planning for, development of, or in any way related to the operation, marketing, development, deployment, or sale competing products), reverse engineer, or attempt to duplicate any of the Services, in whole or in part. You certify that you are using the Services for their intended purpose and not for any other purpose.

All aspects of the Services, including their underlying code, design, organization, structure, selection, coordination, expression, "look and feel," and arrangement are controlled, owned or licensed by or to CowboySmart®, and are protected by law. No part of the Services may be used in any manner not expressly authorized by these Terms of Use. No part of the Services may be

used, copied, reproduced, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted or distributed without CowboySmart®'s express prior written consent.

7. Team Member Accounts. If you are a Team Member, your Administrator will have the authority to delete or modify your User Account at any time and without your permission. We may inactivate your User Account in other circumstances as provided by these Terms. Your Administrator will also have access to see all information in your User Account. You will not be able to modify the Subscription, and the Subscription Term will automatically end when your Administrator's Subscription Term ends.

8. Pricing and Payment. The amount we charge for the Subscription (the "**Subscription Fees**") will be based upon the Subscription that you selected (or which was selected for you) through www.CowboySmart.com. You can see our current pricing by going to <https://CowboySmart.com/ranch-feedyard-pricing/> or by selecting the "Pricing" option from the menu at www.CowboySmart.com ("Price List"). Subscription fees will be invoiced at the times and in the amounts set forth in the Price List. All payments will be made using the credit card information or other payment information you provided to us when subscribing to the Services. If you are an Administrator, you hereby authorize us to automatically charge the credit card or process any other payment information you provide to us, when the Subscription Fees are due.

If the Subscription was purchased for you by a third-party ("Third-Party Payer"), then we will charge the Subscription Fees to the Third-Party Payer according to our agreement(s) with them. When the Third-Party Payer ceases to pay your Subscription Fees, you agree to assume responsibility for the payment of such Subscription Fees.

We may modify the Subscription Fees at any time by providing written notice to you by posting the new Subscription Fees or by emailing you. To determine current pricing, check our pricing often at www.CowboySmart.com. Subscription Fees that you have paid may be refunded to you if a refund is requested, in writing, prior to your first sign-in to the CowboySmart Platform. Signing in to the CowboySmart Platform waives your right to request a refund for all or any portion of the Subscription Fees.

9. Term. These Terms shall be in full force and effect for all Subscription Terms (defined below). Each Subscription will be for the term specified on the CowboySmart® Platform when the Subscription is purchased (the "**Initial Subscription Term**"). The Initial Subscription Term will automatically renew for an additional Subscription Term (a "**Renewal Term**") of the same length upon the expiration of the Initial Subscription Term (collectively, the Initial Subscription Term and the Renewal Term are "**Subscription Terms**"). The Subscription Term will terminate effective when your Subscription is terminated under these Terms. All Team Accounts will have the same Subscription Term end date as the Subscription, even if the Team Account was created during a Subscription Term.

10. Privacy and Policies. Your use of the CowboySmart® Platform and the Services is subject to our Privacy Policy available at www.CowboySmart.com and all other policies that we provide to you from time-to-time by posting such policies (collectively, the "**Policies**"). You agree that the

Policies are a part of these Terms. We may modify the Policies at any time in the same manner as we may modify the rest of these Terms.

11. Our Right to Modify these Terms. We may modify these Terms at any time by providing to you a modified copy of these Terms by email or by posting them. The modified Terms will be effective when provided to you, unless we specify a later date. If you do not agree to the modified Terms, your only option is to stop using the CowboySmart® Platform or the Services after the effective date of the modified Terms. Your continued use of the CowboySmart® Platform or the Services after the effective date of the modified Terms will be your affirmative agreement to the modified Terms. We may modify any information referenced in the hyperlinks from these Terms from time to time, and such modifications will become effective upon posting, unless a later date is specified. Continued use of the CowboySmart® Platform or Services after the effective date of any such changes shall constitute your consent to the changes. These Terms may only be modified as provided in this Section.

12. Our Right to Suspend Your Account. If Subscription Fees are not paid within 14 days of when due, for any reason, then we may indefinitely suspend all Team Accounts in our sole discretion, without notice to you. If any Administrator or Team Member violates these Terms, we reserve the right to indefinitely suspend all Team Accounts in our sole discretion upon providing notice of the violation to you. During any suspension of your User Account, you will not have access to the CowboySmart® the Services.

13. Terminating the Subscription. An Administrator (or Vendor Account User) may terminate the applicable Subscription at any time, effective at the end of the then current Subscription Term, by providing to us at least 7 days' (unless we permit or require a different amount of time on the CowboySmart® Platform) advance written notice.

We reserve the right to terminate any and all Team Accounts, effective at any time upon providing written notice to you if you or any Administrator or Team Member violates these Terms. We reserve the right to terminate all User Accounts and the Subscription effective at the end of the then current Subscription Term for any reason or no reason.

Upon termination of the Subscription, you will no longer have access to your User Account, the CowboySmart® Platform, the Services nor any information entered into and stored in the CowboySmart® Platform. After your Subscription is terminated we may, in our sole discretion, retain information related to your Subscription, such as your User Accounts and other data you have entered; however, we have no obligation to do so.

If you terminate your Subscription before the end of your Initial Subscription Term, you will be billed the unpaid Subscription Fees for the remainder of the Initial Subscription Term. For example, if you terminate your subscription after eight months, but four months remain on a one-year term, then you will be billed for the remaining four months.

14. Communications. By becoming a User, you agree to receive communications from us, including via e-mail. Communications from us may include but are not limited to: operational communications concerning your User Account or use of the CowboySmart® Platform or Services, updates concerning new and existing features on the CowboySmart® Platform, communications

concerning promotions run by us or our third- party partners, and news concerning Essential and industry developments. You may opt out of receiving promotional emails by following the unsubscribe options in the promotional email itself.

15. Disclaimers. The following disclaimers are made on behalf of CowboySmart, LLC, our affiliates, subsidiaries, parents, successors and assigns, and each of our respective officers, directors, employees, agents, and shareholders. The CowboySmart® Platform is provided on an "as is" basis and without any warranty or condition, express, implied or statutory. We do not guarantee and do not promise any specific results from use of the CowboySmart® Platform and/or the Services, including the ability to provide or receive Services at any given location or time. We specifically disclaim any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement. Some states do not allow the disclaimer of implied warranties, so the foregoing disclaimer may not apply to you. We do not warrant that your use of the CowboySmart® Platform or Services will be accurate, complete, reliable, current, secure, uninterrupted, always available, or error-free, or will meet your requirements or the requirements of any third party, that any defects in the CowboySmart® Platform or Services will be corrected, or that the CowboySmart® Platform is free of viruses or other harmful components. We disclaim liability for, and no warranty is made with respect to, interoperability with any system, connectivity or availability of the CowboySmart® Platform or Services. We expressly disclaim all liability arising from the unauthorized use of your User Account. Should you suspect that any unauthorized party may be using your User account, or you suspect any other breach of security, you agree to notify us immediately.

We make no representation, warranty or guaranty that anyone who uses the CowboySmart® Platform or the Services will be able to achieve any particular result. You should consult a properly licensed veterinary medical professional, a nutritionist, or another qualified consultant before making any decision or taking any action relating to the care, feeding, maintenance, management, or other aspects of feedlot management, cattle husbandry, or cattle ranching.

Without limiting the foregoing, if you have a Vendor Account, we make no representation or warranty as to the legitimacy, accuracy, content, or credibility of any request for quotation or purchase order that you receive through the Services, and we make no representation, warranty or guaranty that you will be paid. If you purchase goods or services through the Services, we make no representation or warranty as to the seller of such goods or services, or to the goods and services themselves. You acknowledge and agree that we are not the seller or buyer in any transaction that results from the use of our Services, and that we have no liability to you for any provision of goods or services or payment of any amount; you agree that your sole recourse is to the person, persons or entities that you have made the transaction with.

16. Limitation of Liability. To the fullest extent permitted under applicable law, you hereby hold us and our officers, directors, shareholders, agents, employees and representatives, and any related or affiliated companies or persons and their respective officers, directors, shareholders, agents, employees and representatives, harmless from all liabilities, including but not limited to any direct, indirect, consequential or punitive damages arising out of or relating to your access to or use of the CowboySmart® Platform and the Services, any liability for damage or injury to any person's property, injury to a person or death, any claim based on any inclusion or omission in the

CowboySmart® Platform or Services, any claim based on our procurement, compilation or delivery of the CowboySmart® Platform on this website, any claim based on any errors, omissions or inaccuracies in the CowboySmart® Platform or the delivery of the Services, regardless of how caused, any claim based on delays, interruptions or incompleteness in the CowboySmart® Platform or the Services, and any claim based on any action or inaction or decision made arising out of, relating to or relying upon the CowboySmart® Platform or the Services.

IN NO EVENT WILL COWBOYSMART, INCLUDING OUR AFFILIATES, SUBSIDIARIES, PARENTS, SUCCESSORS AND ASSIGNS, AND EACH OF OUR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR OWNERS (COLLECTIVELY "ESSENTIAL" FOR PURPOSES OF THIS SECTION), BE LIABLE TO YOU FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR DELETION, CORRUPTION, LOSS OF DATA, LOSS OF PROGRAMS, FAILURE TO STORE ANY INFORMATION OR OTHER CONTENT MAINTAINED OR TRANSMITTED BY THE COWBOYSMART® PLATFORM, SERVICE INTERRUPTIONS, OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES) ARISING OUT OF OR IN CONNECTION WITH THE COWBOYSMART® PLATFORM, THE SERVICES, OR THIS AGREEMENT, HOWEVER ARISING INCLUDING NEGLIGENCE, EVEN IF WE OR OUR AGENTS OR REPRESENTATIVES KNOW OR HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CERTAIN JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

17. Intellectual Property. All intellectual property rights in the CowboySmart® Platform are owned by us absolutely and in their entirety. These rights include and are not limited to database rights, copyright, design rights (whether registered or unregistered), trademarks (whether registered or unregistered) and other similar rights wherever existing in the world together with the right to apply for protection of those rights.

18. Confidentiality. You agree not to use and not to disclose any Confidential Information. "Confidential Information" means all technical, financial, strategic and other proprietary and confidential information relating to the Services, the CowboySmart® Platform, our business, operations and properties that we disclose to you. You agree to take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information in order to prevent it from falling into the public domain.

19. General. These Terms shall be governed by the laws of the State of Kansas without regard to choose of law principles. If any provision of these Terms is or becomes invalid or non-binding, the parties shall remain bound by all other provisions of these Terms. In that event, the parties shall replace the invalid or non-binding provision with provisions that are valid and binding and that have, to the greatest extent possible, a similar effect as the invalid or non-binding provision, given the contents and purpose of these Terms. You agree that these Terms and all incorporated agreements may be automatically assigned by us, in our sole discretion by providing notice to you. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of

such section. A party's failure to act with respect to a breach by the other party does not constitute a waiver of the party's right to act with respect to subsequent or similar breaches. These Terms contain the entire understanding and agreement between you and Essential with respect to the subject matter of these Terms and supersede all previous written or verbal understandings and agreements between the parties.

20. Mandatory Arbitration, Venue, Limitation of Remedies and Damages. All controversies, claims, and disputes of any kind arising out of or relating to these Terms, the Services or the CowboySmart® Platform, shall be subject to mandatory binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The arbitration proceedings shall be held in the County of Sedgwick County, Kansas. If we are ever determined to be liable to you or any third party for any reason, then your sole and exclusive remedy shall be damages payable to you or on your behalf in an amount equal to the Subscription Fees you paid to us during the 12 month period ending on the date of the events that resulted in the claim.

21. Severability. If any part of these Terms is invalid or unenforceable for any reason, then that part will be excluded to the extent of its invalidity or unenforceability while the rest of these Terms remain in full force and effect. The invalid or unenforceable provisions will be deemed to have been replaced by a term that is valid, enforceable, and that comes closest to expressing the intention of such invalid or unenforceable term.

22. Notices. Except as explicitly stated otherwise, any notices to us shall be given by certified mail, postage prepaid and return receipt requested to:

635 Metcalf Road
El Dorado, Kansas
67042

All notices to you shall be provided to you through the CowboySmart® Platform or given to you via the email address or physical you provide to us during the registration process.