

## **END USER LICENSE AGREEMENT (“EULA” or “Terms of Service”)**

These terms of service (the “**Terms of Service**” or this “**Agreement**”) govern Customer’s use of all Westgen Technologies Inc. (“**Westgen**” or “**we**” or “**us**”) products.

When this policy refers to the “**Westgen Parties**” that term means, Westgen Technologies Inc., its subsidiaries and affiliates, and its, and each of their directors, officers, employees, and third party service providers and consultants. Where the Westgen Parties are referenced, Customer explicitly agrees that the Westgen Parties are intended to have the benefit of, and to be able to enforce and rely on, the applicable provisions. When this policy refers to the “**Customer**” that term means any party that purchases or uses Westgen products or services. References to Customer in these Terms of Service shall apply to any company or other legal person accessing the services on behalf of Customer.

Westgen may, from time to time amend or modify these Terms of Service, in which case, it will notify Customer by electronic means.

**These Terms of Service contain specific waivers of legal rights, releases from liability, indemnities and legal authorizations and Customer must read them carefully.**

### **Access**

If Customer is enrolled in a Westgen program (the “**Services**”) for collection and review of Collected Customer Data (as defined herein) and/ or Processed Data (as defined herein), Westgen will provide Customer with a secure account(s) to access the Services and the opportunity to create a secure password(s). The account set up is intended to ensure that only Customer and its authorized personnel are able to access the account. Customer is responsible to safeguard and protect account access and password(s).

All use of Customer’s account and passwords is the sole responsibility of Customer, and Westgen is entitled to rely on any interactions or authorization using Customer account as originating from, and being duly authorized by Customer. If Customer’s password is stolen, misused or otherwise compromised it Customer’s responsibility to immediately notify Westgen and take appropriate steps to change the password or to re-secure the account.

### **COLLECTED CUSTOMER DATA**

Westgen may, from time to time collect certain data based on Customer’s use of Westgen products (“**Collected Customer Data**”). Westgen has no responsibility to provide Customer with data related services without having access to Collected Customer Data.

### **OWNERSHIP AND USE OF COLLECTED CUSTOMER DATA AND PROCESSED DATA**

All of Customer’s Collected Customer Data is Customer’s property. In order to administer its warranty, optimize performance of the products and to provide the Services to Customer and to other users of Westgen products and services, Westgen stores and processes the Collected Customer Data, including but not limited to: (i) comparing it to the similar data collected from other customers; (ii) using Westgen’s algorithms and data processing methods, in order to produce metrics, reports and other processed information; (iii) categorizing and grouping

portions of the Collected Customer Data into identifiable cohorts and categories based on, among other characteristics, vintage and type of the product, operating environment and usage; and (iv) displaying and publishing reports, metrics and analysis (all such processes and activities, collectively, the “**Processed Data**”). The Processed Data includes Collected Customer Data on an anonymous basis. This means that Processed Data displayed to users is not attributable to an identifiable Customer (with the exception that a Customer can identify itself within the data set), unless that Customer gives a specific consent to its data being attributed to it.

#### *Collected Customer Data and Processed Data*

Customer is the owner of, and has exclusive title to, Collected Customer Data and any other information that it enters into or uploads to Westgen’s applications. In exchange for use of the Services, Customer grants to Westgen and its service providers a perpetual, irrevocable, non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use, store, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and publicly display all of the Collected Customer Data (and other data it enters into or uploads to Westgen’s applications) as is necessary for the provision of the services whether directly by Westgen or indirectly by its service providers, so long as such Collected Customer Data remains anonymous and not identifiable as data specific to Customer (unless Customer’s consent is given). In addition, Customer grants to Westgen a perpetual, irrevocable, non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, publicly perform and display all Collected Customer Data within the Processed Data so long as such Collected Customer Data remains anonymous and not identifiable as associated with Customer (unless Customer’s consent is given).

The Services create a community of users and a pool of shared Processed Data and provide an environment for all users to monitor and compare performance of the products and their operations. Westgen is a facilitator and enabler of these interactions but is not responsible for the nature, content and manner of interactions between users of the Services. The truth, accuracy, legality quality and other costs of any information entered into or collected by the Services are the responsibility of each user entering or collecting them. All Customers agree to this disclaimer, and that, as a condition of using the Services, neither the Westgen Parties nor any other user or provider of data, services or content shall be liable for any use by them of the Services.

Customer, and not Westgen, is responsible for the integrity and accuracy of all data collected by Customer, Westgen may, in its sole discretion, screen, monitor, hide, refuse or remove any Collected Customer Data at its sole and exclusive discretion. Although Westgen will make reasonable efforts to ensure the accuracy and integrity of all Processed Data, whether collected from Customer or from other customers, by using the Services, Customer acknowledges and agrees that there remains a possibility that Customer might, through the Services, be exposed to Processed Data or content that is inaccurate. Customer expressly assumes all risks of loss or injury associated with use of the Services.

## **DATA SECURITY**

Westgen makes commercially reasonable and appropriate efforts to protect and safeguard all Collected Customer Data and Processed Data, including by hiring third party experts and hosting services and using such storage and encryption methods and other protections it considers reasonable, practical or advisable to ensure proper security and safety with respect to data. Notwithstanding these, and other efforts undertaken by Westgen, by entering into these Terms of Service, Customer expressly acknowledges and agrees that Westgen provides no absolute guarantee or warranty that information is free from being accessed or compromised by third-parties such as computer hackers, hostile parties, ransomware attackers or government institutions. Westgen's responsibilities with respect to the protection of Collected Customer Data and Processed Data are limited to the obligations to exercise reasonable care in handling and storing data and to provide Customer with any information that it may reasonably request with respect to the handling and security of Collected Customer Data and Processed Data. Where Westgen contracts with a third party service provider for cloud, network or other data hosting or processing services, then provided that such third party service provider is operating within reasonable and customary parameters for such services (as evidenced by the transacting with a credible sampling of customers) in the North American Market, then by retaining such third party service providers, Westgen shall be deemed to have discharged its obligations with respect to data security. Customer indemnifies and releases Westgen to the maximum extent permissible under applicable laws from any claims, losses, fines, penalties or indemnification resulting from any unauthorized use, publication of, access to, or loss of any Collected Customer Data or Processed Data.

Customer also expressly agrees to, and will indemnify and release the Westgen Parties in connection with, any network or computer process that operates by storing and / or pre-populating any account information such as Customer's login or password. Customer agrees that it is solely responsible to understand the limitations of, risks associated with, and to comply with, the terms and conditions of any third party network or services accessed or used in connection with using the Services.

## **DATA STORAGE AND ACCESS**

In order to efficiently deliver the Services and to manage cost, Westgen or its third-party service providers may, at regular intervals move information and data to long term data storage media that are not immediately accessible by Customer. Typically, high resolution data is maintained for a period no longer than ninety (90) days, and other data is maintained for no longer than two (2) years before being archived. Customer consents to the archiving and data storage practices of Westgen and its third-party service providers, as updated from time to time, and acknowledges and understands that, should it require data that has been archived or moved to long term storage, Westgen and its third-party service providers may charge additional fees for any request.

## **USE OF THE SERVICES**

Under these Terms of Service, Westgen grants to Customer a non-transferable, non-sublicensable, non-exclusive license to access and use Westgen's intellectual property and to

access Processed Data and reports available through the Services. This license is revocable for breaches by Customer of these terms and on cancellation of any subscription or agreement to purchase Services. It is a condition of this license that Customer shall not, and shall not permit any third party to, access, change, copy or create derivative works from, or to reverse engineer or otherwise attempt to copy, adapt, mimic or replace all or any part of the Services, products, Westgen-Owned Hardware or Processed Data. Customer is not permitted to encumber or otherwise grant an interest in the licence. Any violation by Customer of restrictions under this license may result in its immediate revocation, at Westgen's discretion and without notice. Any rights not expressly granted to Customer in these Terms of Service are reserved by Westgen.

All logos, copyright, trademarks, product presentations and web page designs used in connection with the Services, are, as between Customer and Westgen, the sole and exclusive property of Westgen, and may not be reproduced, displayed or otherwise reproduced without the prior written consent of Westgen.

### **RESTRICTIONS ON USAGE OF DATA**

By accepting these Terms of Service and using the Services Customer acknowledges and agrees that it is not permitted to do any of the following without Westgen's prior written consent:

- Download, copy or reproduce any Processed Data of any user other than Customer, except as may be enabled by a service offering of Westgen;
- Reverse engineer, decompile or reprogram any feature of the Services,
- Extract, copy or modify any firmware or software,
- Use analytics or software to track the delivery of, or functionality of, the Services, except as may be enabled by a service offering of Westgen,
- Monitor or access the data transmitted by the Westgen Owned Hardware, other than the transmission of information, or
- Publish distribute or disseminate any Processed Data or customer data that is not its own and that is not published, distributed, or disseminated using an authorized feature of the Services.

### **WESTGEN-OWNED HARDWARE**

Westgen reserves the right to install Westgen-owned communication, data collection, data storage and data transmission modules on its products ("**Westgen-owned Hardware**"). By purchasing Westgen products and enrolling in the Services, the Customer consents to the installation of Westgen-owned Hardware on the Westgen products and to the collection, storage, processing and transmission of data through and using the Westgen-owned Hardware. Customer acknowledges and agrees that, subject only to the terms and conditions in these Terms of Service, Westgen shall be entitled to collect any data from Westgen products that it so determines, provided that the data collected is limited to the performance, monitoring, operation, emissions reduction and output of the Westgen products. Westgen shall not use Westgen-owned Hardware to change the operation or function of the Westgen products without Customer's prior written consent. Customer also acknowledges that the transmission of data by the Westgen-owned Hardware shall not necessarily be limited to the transmission of Collected Customer Data and Processed Data, but may include other data or information that Westgen elects to transmit in its

sole and absolute discretion. Westgen shall assume full responsibility for, and shall indemnify Customer for any costs, losses or expenses suffered or incurred by it in connection with the transmission of data other than Collected Customer Data and Processed Data on the Westgen Owned Hardware.

### **ACCEPTABLE USE OF TECHNOLOGY**

As a condition of Customer's use of the Services, Customer is required to obey all applicable laws and conform with all local legal requirements. Customer agrees that it shall not enter, upload or provide Collected Customer Data that it knows or should know to be inaccurate.

By accepting these Terms of Service and using the Services, Customer acknowledges and agrees that it will not use Westgen products or Services to do anything that:

- Might damage, interfere with, or harm the Services, any user account or any third-party equipment, applications, networks, services or websites,
- Might compromise, test or impair Westgen's security settings or controls,
- Might breach, violate, infringe or misappropriate any rights relating to Westgen's or a third-party's intellectual property, privacy or other rights or proprietary information,
- Uses automated processes, artificial intelligence or other means to scrape, harvest or download content from the Services or Westgen Owned Hardware,
- Involves contacting or selling to any member of Westgen's community in a manner other than one authorized by Westgen,
- Might access, monitor, damage or impair the function of any Westgen Owned Hardware, or
- Is fraudulent, deceptive, or misrepresents Customer, Westgen, or its Services.

The Westgen Parties do not accept any responsibility for, and Customer expressly releases them from, any liability or claims associated with network access, livestreaming, uploading or data charges or in relation to any products (whether hardware or software) that are not part of the Westgen products, the Westgen Owned Hardware or otherwise provided by Westgen, but that are used in connection with the Services.

### **OTHER SERVICES**

Westgen-owned Hardware or the provision of the Services may enable Customer to connect to, link with or synchronize to sensors, applications or other services not provided by it. Westgen reserves the right to collect reasonable fees for any such activity. These third-party products and services are not affiliated with Westgen and Westgen disclaims any responsibility whatsoever in relation to them and their connection, link or access through its Services. Customer expressly waives any right to make a claim against the Westgen Parties for any and all claims liabilities, damages or losses of any kind that it may suffer or incur in connection with accessing or linking to services provided by third parties or that are not the Services or Westgen products.

### **INTELLECTUAL PROPERTY AND PROPRIETARY INFORMATION AND RIGHTS**

Westgen's Services are provided using its trade secrets, patents, confidential information, trademarks copyrights and other intellectual property. Customer acknowledges and agrees that by using the Services it does not acquire any right, title or interest in any of the foregoing other

than the right to access the Services as provided through the Westgen applications and as described herein. Customer is not permitted to download, store, alter, sell, create derivatives of or license, assign or transfer any information or works based on the Services.

## **ENHANCEMENTS**

Customer acknowledges and agrees that Westgen is constantly developing, improving and modifying its products and Services, including as a result of customer and user feedback. By using the Services Customer expressly acknowledges and agrees that it has no right or title to, or royalty, profit, ownership or other interest in, any enhancements, changes, developments, or improvements that Westgen may make to the Services, notwithstanding that such enhancements, changes, developments or improvements, may be, or may appear to have been made as a result of feedback or suggestions made by Customer or Collected Customer Data. Customer hereby releases, assigns, transfers to Westgen and waives any ownership, intellectual property or moral rights that may arise in connection with its use of the Services, other than such rights as are expressly stated herein to remain with Customer. If the foregoing release, assignment, transfer or waiver is unenforceable then Customer hereby grants to Westgen a worldwide, non-exclusive, transferable, assignable, sub-licensable, perpetual, irrevocable, royalty-free license to copy, distribute, create derivative works of, publicly display and perform and otherwise exploit any enhancement, change, development or improvement in which Customer may have an interest.

## **WAIVER OF LIABILITY AND DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

The Westgen Parties make no representations or warranties about the hardware, software, reports, data, Collected Customer Data or Processed Data or any comparisons, recommendations insights or other information provided to Customer in connection with the Services. All such products and features are provided to Customer on an as-is where-is basis and without assurances. The Westgen Parties shall not be liable for, and hereby disclaim any and all representations or warranties, whether express or implied, including any representation or warranty as to title, non-infringement, fitness for purpose.

CUSTOMER HEREBY AGREES TO RELEASE THE WESTGEN PARTIES FROM ANY AND ALL CLAIMS LIABILITIES, LOSSES OR DAMAGES FROM, AND WAIVE ANY CLAIM FOR PERSONAL INJURY, ECONOMIC LOSS, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSSES OR PUNITIVE, AGGRAVATED OR SPECIAL DAMAGES, ARISING IN CONNECTION WITH: (I) ITS USE OF THE PRODUCTS AND THE SERVICES; (II) ANY CONNECTIVITY OR LINK BETWEEN THE PRODUCTS AND SERVICES AND ANY THIRD-PARTY HARDWARE, SOFTWARE, NETWORK OR OTHER SERVICES, (III) ANY ARRANGEMENT, CONTACT OR OTHER RELATIONSHIP ARISING OR OCCURRING BETWEEN CUSTOMER AND A THIRD-PARTY IN CONNECTION WITH THE USE OF WESTGEN PRODUCTS AND SERVICES, OR (IV) ANY LOSS OF ACCESS TO, OR DISRUPTION TO, USE OF THE PRODUCTS AND SERVICES.

## **INDEMNIFICATION**

As a condition of having access to the Services, and by agreeing to these Terms of Service, Customer is agreeing to indemnify and hold harmless the Westgen Parties for any and all claims, losses, liabilities, costs (including legal costs) and damages, made by any third party in connection

with its use of the Services and the content that it enters into Westgen applications and devices, and any violation, breach, or offence by it of any privacy laws, other laws or the legal rights of any third party. This indemnification does not impair or alter Customer's other rights as against Westgen.

#### **ARBITRATION OF DISPUTES**

All claims, disagreements and disputes arising in connection with this Agreement shall require that the parties first attempt to resolve them amicably through good faith negotiations. If a claim, dispute or disagreement cannot be resolved through discussion and negotiation within thirty days of it arising, then the parties agree that either may initiate binding arbitration to resolve it. All claims, disputes or agreements shall be resolved pursuant to binding arbitration before a single arbitrator, whose decision shall not be the subject of appeal except as set forth in applicable law. The arbitration shall be conducted in English, in Calgary, Alberta pursuant to the laws of the Province of Alberta and shall be subject to the *Commercial Arbitration Act* (Alberta). The arbitrator appointed by the parties shall have exclusive authority to determine all matters in relation to the claim, and shall be authorized to grant any relief that is within the powers of a court, including to make determinations as to the admissibility of evidence and the enforceability of the agreement, award damages, remedies or require specific performance or grant an injunction. Notwithstanding the foregoing, the arbitrator may not award damages, the nature of which are not consistent with express terms of this Agreement. The parties hereby expressly waive the right to conduct any trial by jury and not to participate in any claim or dispute in a representative matter or as part of a class action.

#### **LIMITATION ON THE TIME TO BRING A CLAIM**

Subject to express provisions set out in applicable laws, Customer expressly agrees that no claim may be brought under or in connection with this Agreement, unless such claim is brought within twelve calendar months of the earlier of (i) the date on which such claim arose; and (ii) the date on which Customer no longer accesses any Collected Customer Data or Processed Data.

#### **GOVERNING JURISDICTION**

Customer's legal relationship with Westgen in relation to the Services and its data shall be exclusively subject to, governed by, and interpreted in accordance with, the laws of the Province of Alberta, Canada without reference to its conflict of laws principles. Customer expressly agrees that any action in connection with this Agreement may only be brought in the province of Alberta, Canada, and irrevocably attorns to the exclusive jurisdiction of such courts.

#### **TERMINATION**

Westgen reserves the right, without notice or cause to immediately suspend or terminate any portion or all of Customer's access to the Services, in which case the sole remedy available to Customer shall be a refund of the subscription amounts or fees actually paid for the term of the agreement over which Services are not available.

#### **SURVIVING PROVISIONS**

The provisions of these terms shall survive its termination.

## **AMENDMENTS**

Westgen reserves the right, from time to time to modify and amend this Agreement, for which purposes communication to Customer from within Westgen's applications or by email shall be sufficient notice, and in respect of which Customer's acknowledgment whether by return email or confirmation in the applications shall constitute its acceptance of any such amendment or modification.

## **OMNIBUS PROVISIONS**

Nothing in this Agreement or as a result of Customer's access to the Services, creates any special, fiduciary, partnership, joint venture, agency or other relationship. These Terms of Service, together as updated by us from time-to-time, constitute the entire agreement between Customer and Westgen in relation to the use of the Services, Westgen Owned Hardware, Collected Customer Data or Processed Data. No action or inaction on the part of any Westgen Parties shall constitute a waiver of rights, acceptance of breach or forbearance, unless explicitly confirmed in writing. In the event that any term of this Agreement is found to be illegal or unenforceable then the parties explicitly agree that any arbitrator or court of competent jurisdiction shall be requested and instructed to interpret these provisions so as to give effect to the intentions set forth herein. Westgen may assign or transfer any and all rights, licenses or obligations hereunder without notice or consent; however Customer may not transfer or assign any rights hereunder without the express prior written consent of Westgen. Any transfer or assignment made in violation of this Agreement is null and void and shall constitute an immediate cancellation of this Agreement and a termination of all of the obligations of Westgen hereunder.

Westgen expressly reserves any and all rights not waived or granted hereunder.