

Climate Engine Master Services Agreement

This Master Services Agreement, together with your Order Form and any other terms or documents incorporated by reference herein, constitute a single, binding agreement (this “Agreement”) between you (“you” or “Customer”) and Climate Engine, Inc., with a place of business at 845 West Robinson Street, Carson City, NV, USA, 89703 (“we,” “us” or “Climate Engine”).

By executing an Order Form in connection with purchasing any of the Services, you accept this Agreement as of the effective date indicated on such Order Form (the “Effective Date”). If you do not agree with any of the terms contained in this Agreement, you must not use the Services.

If you are accepting this Agreement on behalf of your employer or another entity, you represent and warrant that (i) you have full legal authority to bind your employer or such other entity to this Agreement; (ii) you have read and understood the Agreement; and (iii) you agree to this Agreement on behalf of your employer or such other entity. If you do not have such authority or do not agree with the terms of this Agreement you must not use the Services.

1. Definitions.

- a. “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control”, for purposes of this definition, means possessing, directly or indirectly, the power to direct or cause the direction of the management, policies or operations of an entity, whether through ownership of voting securities, by contract or otherwise.
- b. “**Agreement**” has the meaning given to it in the first paragraph written above.
- c. “**Authorized User**” means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder.
- d. “**Cause**” means a breach of any representation, condition or covenant of this Agreement by either Party (and in the case of Customer, any Authorized User).
- e. “**Change in Control**” means the sale of all or substantially all the assets of a party; any merger, consolidation or acquisition of a party with, by or into another corporation, entity or person; or any change in the ownership of more than fifty percent (50%) of the voting capital stock of a party in one or more related transactions.
- f. “**Climate Engine Intellectual Property**” means the Services, related documentation, and any and all intellectual property provided to Customer or its Authorized Users by Climate Engine in connection with the Services.
- g. “**Climate Engine Output**” means data output including but not limited to Earth insights, Earth analytics, remote-sensing data aggregation and presented to the end user as an interactive, metadata, and/or exportable map layer(s) thru Licensed Products.
- h. “**Commercial Product**” means a software, data product, or other type of product or service created for a Commercial Use by Customer using the Services.
- i. “**Commercial Product License**” means a license to use the Licensed Products or Climate Engine Output to develop a Commercial Product.
- j. “**Content**” means all content of any type, including without limitation, data, text, graphics, maps, logos, images, illustrations, software or source code, audio and video, and animations.
- k. “**Contributed Database**” means Databases licensed by Contributors to Climate Engine with the right to grant sublicenses or access rights as set forth herein and identified in an applicable Order Form, Statement of Work, or identified Schedule.

- l. “**Contributor**” means a third-party licensor of any Contributed Databases to Climate Engine, in which Climate Engine has secured the necessary rights to sublicense or provide access to third parties.
 - m. “**Customer Content**” means Content owned or licensed by you or your Authorized Users that is stored or processed using the Services.
 - n. “**Database**” means a compilation of geographic, cartographic, engineering, scientific, tabular, text, and/or other data, information, or works, including, but not limited to, graphic and/or file data in automated or manual form.
 - o. “**Derivatives Works**” shall mean all works created by Customer that incorporate a portion of the Climate Engine Output, including, but not limited to, any revision, modification, translation, abridgment, condensation, expansion, collection, compilation or any other form of, or modification to the Climate Engine Output.
 - p. “**Effective Date**” has the meaning set forth in the introduction above.
 - q. “**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
 - r. “**Internal Business Use**” means for internal use by Customer, or other authorized individuals acting for the benefit of Customer or its Affiliates. Customer is expressly prohibited from reselling Licensed Products or Derivative Works to any third-party.
 - s. “**Licensed Products**” means the products and data sets ordered by Customer on any Order Form and may include portions of the Contributed Databases.
 - t. “**Non-Commercial Product**” means a software, data product, or other type of product or service created for an Internal or Non-Commercial Use by Customer using the Services.
 - u. “**Order Form**” means the document specifying the Services purchased by Customer from Climate Engine, the pricing associated with such Services and other information related to such purchase.
 - v. “**Party**” means each of Customer and Climate Engine and together, the “Parties.”
 - w. “**Person**” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.
 - x. “**Service Suspension**” has the meaning set forth in Section X.
 - y. “**Service Term**” means the period for which you have acquired the license and right to use the Services, as specified in the Order Form.
 - z. “**Services**” means the License Products and services included in the Order Form.
 - aa. “**Third-Party Materials**” means data sets, materials, and information, in any form or medium, including any software (including open source software), documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to Climate Engine.
2. **Incorporated Documents; Conflicts**. This Master Services Agreement incorporates the following documents by reference:
- a. your Order Form;
 - b. if your Order Form includes a Climate Engine GCP Instance, the Climate Engine GCP Instance License and Terms of Use;

- c. if your Order Form includes professional services, the Professional Services Addendum;
- d. if your Order Form includes any Third-Party Materials requiring adherence to or acceptance of terms of use, an end user license agreement, or the like, one or more third-party agreements, the corresponding Third-Party Materials agreements, exhibits or addenda; and
- e. any other agreements, exhibits, appendices, addenda or other terms incorporated by reference anywhere in this Agreement.

If there is any conflict between the terms of this Master Services Agreement, an Order Form, one of the order-specific documents listed above or any other incorporated terms, the documents will control in the following order (from most to least controlling): the Order Form, this Master Services Agreement, the relevant order-specific agreements and the other incorporated terms. If purchasing through the Google Cloud Platform Marketplace (“GCPM”), in the event any of the commercial terms of this Master Services Agreement or its incorporated documents conflict with the commercial terms agreed to through the GCPM, including but not limited to payment terms (“GCPM Terms”), the GCPM Terms will control.

3. **Charges and Payment.**

- a. **Obligation to Pay.** You shall pay Climate Engine all fees set forth on your Order Form (“Fees”).
- b. **Taxes.** Our Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “Taxes”). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 3, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.
- c. **Invoices.** We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net thirty (30) days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information. In the absence of specific provisions in the applicable Order Form(s) agreed to by Customer, (i) Fees for one-time Services (e.g., installation, onboarding and Training Services) are due upon acceptance of any Order Form(s) and prior to delivery of the applicable Services.
- d. **Overdue Charges.** Except as otherwise specified in the applicable Order Form, if any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.0% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future purchases and Order Forms on payment terms shorter than those specified herein.
- e. **Suspension of Service and Acceleration.** If any amount owing by You under this Agreement is forty-five (45) or more days overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full without incurring any obligation or liability to Customer or any other Person by reason of such suspension. We will give You at least 10 days’ prior notice that Your account is overdue before suspending services to You.
- f. **Refunds. ALL PAYMENTS MADE PURSUANT TO THIS AGREEMENT ARE NON-REFUNDABLE UNLESS EXPLICITLY STATED OTHERWISE HEREIN OR OTHERWISE PROVIDED BY APPLICABLE LAW.**
- g. **No Setoff.** Customer shall pay all amounts due under this Agreement without setoff, deduction, recoupment or withholding of any kind for amounts owed or payable by

Climate Engine whether under this Agreement, applicable law or otherwise and whether relating to Climate Engine's breach, bankruptcy or otherwise.

- h. **GCPM Purchases.** If purchasing through the GCPM, in the event any of the terms of this Section 3 conflict with any GCPM Terms, the GCPM Terms will control.

4. Proprietary Rights and Licenses.

- a. **All Right Reserved.** Except as expressly provided otherwise in this Agreement, title, ownership and all rights and interest including, without limitation, patents, copyrights, trademarks, trade secrets and other intellectual property rights, in and to the Services and any authorized copies made by You remain with Us and Our licensors. The structure, organization, and code of the Services are valuable trade secrets of Climate Engine and its licensors and You shall keep such trade secrets confidential. The software used to deliver the Service is neither licensed nor sold. Customer may not use, access, or allow others to use or access the Services in any manner not permitted under this Agreement.
- b. **Your Content.** You will retain all right, title and interest in and to Your Content, subject to any rights or interests retained in by Climate Engine or its licensors in any portion of any Derivative Works. You agree that with respect to the Data, Your Content and your use of the Services, you will comply with all laws, policies and regulations, including those pertaining to privacy and/or data protection.
- c. **Third-Party Materials.** You understand that when using the Services you may be exposed to Third-Party Materials that are inaccurate or out of date. Climate Engine does not represent or guarantee the accuracy or timeliness of any Third-Party Materials. Under no circumstances will Climate Engine be liable in any way for or in connection with any Third-Party Materials, including, but not limited to, any inaccuracies, errors, omissions, or intellectual property infringement within such Third-Party Materials, or for any loss or damage of any kind incurred as a result of the use of any Third-Party stored, aggregated, derived, or otherwise displayed or transmitted through the Services.

5. Use of the Services.

- a. **General Responsibilities.** You are solely responsible and liable for all use of the Services resulting from access that you provide, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, you are solely responsible and liable for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by you will be deemed a breach of this Agreement by you. You shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.
- b. **Commercial Products.** Customer shall limit its use of the Services to Internal or Non-Commercial Use unless Customer is developing a Commercial Product pursuant to a Commercial Product License issued by Climate Engine. Climate Engine reserves the right to determine if Customer's use of the Services qualifies as a Commercial Use that requires a separate Commercial Product License and license fee. All Commercial Products are subject to the following requirements:
 - i. Customer's Order Form must specify any Commercial Products to which its Commercial Product License is to apply. Customer's Commercial Product License will apply only to those Commercial Products so specified, and additional Commercial Products will require a separate Commercial Product License.
 - ii. Customer's Commercial Product License is subject to the limitations specified on Customer's Order Form. Such limitations may include, without limitation, number of customers or end users, limitations on use for Contributed Databases, and required pricing thresholds.
 - iii. If, during the Service Term, Customer exceeds any of the limitations specified on Customer's Order Form, Climate Engine shall invoice Customer, and Customer shall pay for any amounts corresponding to such overages.

- c. **Third-Party Materials.** Climate Engine may from time to time make Third-Party Materials available to Customer. For purposes of this Agreement, such Third-Party Materials are subject to their own terms and conditions and the applicable flow through provisions referred to in this Agreement, an applicable Addendum or Third-Party terms of service and/or license agreements. If Customer does not agree to abide by the applicable terms for any such Third-Party Materials, then Customer should not install or use such Third-Party Materials. Upon termination of this Agreement, you shall remove and destroy all Third-Party Materials from your internal systems unless otherwise allowed under the respective third-party terms of service and/or license agreements.
- d. **Prohibited Uses.** All licenses granted in this Agreement are subject to the limitations specified in your Order Form. In addition, Customer shall not, and shall not permit any other Person to, access or use any Services except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, and shall not permit any other Person to, except as this Agreement expressly permits:
- i. interfere with or disrupt the Services or servers, networks or devices connected to the Services, including by transmitting any worms, viruses, spyware, malware or any other code of a destructive or disruptive nature;
 - ii. inject content or code or otherwise alter or interfere with the way any of the Services are rendered or displayed in a user's browser or device;
 - iii. reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Services or any part thereof, other than those components subject to Open Source Software licenses that permit such actions;
 - iv. take any action that imposes an unreasonable load on our infrastructure or that of our Third-Party providers (where Climate Engine reserves the right to determine what is reasonable or unreasonable);
 - v. access, tamper with or use non-public areas or parts of the Services, or shared areas of the Services that Climate Engine has not invited you to access;
 - vi. copy, modify, or create derivative works or improvements of the Services, except to the extent permitted by this Agreement;
 - vii. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services to any other Person, including through or in connection with any time-sharing, service bureau, software as a service, cloud or other technology or service;
 - viii. remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services, including any copy thereof;
 - ix. use any Services in a manner or for any purpose that infringes, misappropriates, or otherwise violates any law or Intellectual Property Right;
 - x. use the Services for purposes of competitive analysis, the development of a competing software product or service, or any other purpose that is to Climate Engine's commercial disadvantage including without limitation, to develop a general database of Earth insights or Earth analytics or any other general purpose database; or
 - xi. otherwise use the Services beyond the scope of the licenses granted in this Agreement.
- e. **Branding.** All logos and product names appearing on or in connection with the Services are proprietary to Climate Engine or its licensors and/or suppliers. You agree to never remove or obscure any proprietary notices, logos or product identification labels from

Climate Engine' software, maps, and other content, as applicable.

- f. **Transfer.** Your right to use the Services may not be transferred to anyone without our prior written consent. Any authorized transferee shall agree in writing to be bound by this Agreement. In no event may you copy, loan, rent, time-share, sublicense, assign, transfer, lease, sell or otherwise dispose of Climate Engine software, data, or other Content on a temporary or permanent basis except as expressly provided herein.
- g. **Suspension by Climate Engine.** Climate Engine may temporarily suspend Customer's access to any portion or all of the Services if: (A) Customer or its Authorized Users violate the terms of this Agreement, (B) in response to a credible security threat or (C) Climate Engine loses access to any third-party services or products required for Customer to access the Services (any such suspension, a "Service Suspension").

Climate Engine will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension pursuant to this Section. Unless otherwise specified in this Agreement, any Service Suspension will not affect the Fees due hereunder.

6. **Termination.**

- a. Either Party may terminate this Agreement for Cause in the event the other Party has not cured its material breach of this Agreement within thirty (30) days of receiving written notice of such breach from the non-breaching Party.
- b. We may terminate this Agreement immediately upon written notice to Customer if a bankruptcy or insolvency proceeding is commenced by or against Customer or if the Customer is dissolved, liquidated or deemed insolvent.
- c. Customer's right to use the Services will terminate immediately on the date of termination for Cause.
- d. Upon termination, you and Authorized Users might not have access to Customer Content. You are responsible for backing up Customer Content.
- e. Unless terminating for Cause, termination of the Agreement by Customer will not alter Customer's obligations to pay all charges due to Climate Engine at the time of termination. If Customer terminates for Cause, we will issue a partial refund, prorated based on the Service Term.
- f. Unless otherwise specified, numerical limits applied to the Services are only valid during the relevant Service Term, and do not roll over to any future Service Terms.

7. **Indemnification.**

- a. **Climate Engine Indemnification.** In the event any Third-Party brings a claim against you based upon an allegation that the Services infringe on a copyright or misappropriate a trade secret of any Third-Party, we shall indemnify you and hold you harmless from all damages and costs (including reasonable legal fees) finally awarded by a court of final appeal attributable to such a claim, provided that you notify us in writing of any such claim as soon as reasonably practicable and allow us to control, and reasonably cooperate with us in the defense of, any such claim and related settlement negotiations. In connection with such claim, we may (i) procure for you the right to continue using the Services; (ii) replace or modify the Services so that it is non-infringing and substantially equivalent in function. If either of those options is not commercially practicable in our reasonable estimation, we will refund the fees that Customer has paid and cancel access to the Services.
- b. **Customer Indemnification.** You agree to indemnify and hold harmless Climate Engine (including its subsidiaries, affiliates, officers, agents, partners, and employees) from any claim or demand, including reasonable attorneys' fees, made by any Third-Party due to or arising from your use of the Services, your violation of this Agreement and any schedules, addenda, or terms incorporated by reference or your violation of any rights of another,

including without limitation that Customer Content violates or infringes upon any copyright, trademark, patent or other proprietary right.

- c. **Sole Remedy.** THIS SECTION SETS FORTH CLIMATE ENGINE'S SOLE AND EXCLUSIVE OBLIGATIONS, AND YOUR SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.
- d. **Limitations.** We shall have no obligation to indemnify Customer for any claim that is based on (i) your use of the Services other than as authorized by this Agreement; (ii) your failure to use updated or modified versions of the Services that have been made available to you; (iii) your use of the Services after receiving notice from Climate Engine to stop doing so in order to avoid infringement or misappropriation; or (iv) the combination, operation or use of the Services with equipment, devices, software, systems, or data that were not supplied by Climate Engine.

8. **Representations and Warranties.**

- a. **Mutual Warranties.** Each Party represents and warrants that: (i) it is duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization; (ii) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; (iii) when executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of each Party, enforceable against either Party in accordance with its terms; and (iv) neither this Agreement nor its performance of its obligations hereunder shall knowingly place either Party in breach of any other contract or obligation with a Third-Party

9. **Confidentiality.**

- a. **Confidential Information.** "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. For purposes of this Agreement, Confidential Information shall include (a) any information disclosed in documentary or other tangible format that is marked as confidential at the time of disclosure, or, if disclosed orally or in other intangible format, that is designated as confidential in writing by the Disclosing Party within thirty (30) days of the disclosure; (b) pricing under this Agreement; and (c) any other non-public information (such as product specifications, manufacturing processes and operations, testing data, future market and strategic plans, marketing and financial data, know how, trade secrets, ideas and other non-public information of a technical, scientific, or economic nature).
- b. **Protection of Confidential Information.** The Receiving Party agrees to maintain a confidential status for such Confidential Information, to treat such Confidential Information in the same manner as it treats its own Confidential Information (but, in any case, with at least reasonable care), not to use such Confidential Information for any purpose other than the purpose for which it was originally disclosed to the Receiving Party, and not to disclose any of such Confidential Information to any Third-Party, except to such vendors, consultants, contractors, agents and employees who have a need to know for purposes of performance of this Agreement and have been notified that such information is Confidential Information of the Disclosing Party to be used solely in connection with this Agreement, provided that such vendors, consultants, contractors, agents and employees first have entered into binding confidentiality agreements no less protective of the Disclosing Party's Confidential Information than this Agreement, or unless such information, as established through documentary evidence: a) is or has become available to the public from sources other than the other Party at the time it was disclosed to the Receiving Party; b) is disclosed to the Receiving Party by a Third-Party who is not under any legal obligation prohibiting such disclosure; c) is required to be disclosed by law (subject to 9(c) below); or d) was independently developed by the Receiving Party without reference to the other Party's Confidential Information.
- c. **Compelled Disclosure.** If the Receiving Party is required to produce the Confidential

Information by law, governmental proceeding or court order, the Receiving Party may disclose such Confidential Information without liability hereunder; provided, however, before producing any Confidential Information, the Receiving Party shall notify the Disclosing Party promptly of any such proceeding or court order in order to provide the Disclosing Party with a reasonable amount of time so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy and/or waive the Receiving Party's compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Disclosing Party grants a waiver hereunder, the Receiving Party may furnish that portion of the Confidential Information which it is legally required by applicable law to disclose and will reasonably cooperate with the Disclosing Party's efforts, at the Disclosing Party's expense, to obtain confidential treatment of the Confidential Information so furnished.

- d. **Return of Confidential Information.** Upon termination of this Agreement and at any time upon the Disclosing Party's option or request, the Receiving Party shall immediately return or destroy all Confidential Information provided by the Disclosing Party, and destroy all information developed therefrom, from which the Confidential Information is revealed or could be ascertained. Upon returning Confidential Information, an officer of the Receiving Party shall, upon request, certify that the Receiving Party has complied with the provisions of this section; provided, however, the Receiving Party may retain one copy of the Confidential Information solely for archival purposes.
- e. **Period.** The nondisclosure obligations and restrictions on use of the Confidential Information under this Agreement shall continue for a period of five (5) years from the date of expiration or termination of this Agreement, except for any trade secrets of the Disclosing Party, which such nondisclosure obligations and restrictions on use shall continue for as long as such information is deemed a trade secret.
- f. **Injunctive Relief.** Each Party acknowledges that the other Party's Confidential Information is an important asset of such Party and/or its Affiliates and that the Disclosing Party and/or its Affiliates shall likely suffer irreparable harm as a result of a breach of this Section 9(f). Therefore, the Parties agree that the Disclosing Party and/or its Affiliates shall be entitled to pursue equitable relief, including temporary and permanent injunctive relief without the obligation of posting a bond (cash or otherwise), in the event of actual or threatened unauthorized disclosure or use of Confidential Information in breach of this Section 9(f).
- g. **Ownership.** The Receiving Party acknowledges that the Disclosing Party (or any third-party entrusting its own confidential information to the Disclosing Party) claims ownership of the Confidential Information disclosed by the Disclosing Party and all Intellectual Property Rights therein, or arising from, such Confidential Information. Except as expressly set forth in this Agreement, no option, license, or conveyance of such rights to the Receiving Party is granted or implied under this Agreement and if any such rights are to be granted to the Receiving Party, such grant shall be expressly set forth in a separate written instrument.

10. **Disclaimers.**

- a. **"As Is" Basis.** EXCEPT AS OTHERWISE SET FORTH HEREIN, YOU EXPRESSLY AGREE THAT THE USE OF CLIMATE ENGINE IS AT YOUR SOLE RISK. THE SERVICES, MAPS AND OTHER CONTENT, INCLUDING ANY THIRD-PARTY MATERIAL, SERVICES, MEDIA, OR OTHER CONTENT MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE SERVICES, ARE PROVIDED ON AN "AS IS," "AS AVAILABLE," "WITH ALL FAULTS" BASIS AND WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED.
- b. **No warranties.** TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, CLIMATE ENGINE DISCLAIMS ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM CLIMATE ENGINE OR THROUGH THE SERVICES, WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN.

- c. **Service Quality.** CLIMATE ENGINE DOES NOT WARRANT THAT THE SERVICES, INCLUDING ANY SOFTWARE, MAPS, OR CONTENT OFFERED ON OR THROUGH THE SERVICES OR ANY THIRD-PARTY SITES REFERRED TO ON OR BY CLIMATE ENGINE WILL BE UNINTERRUPTED, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND DOES NOT WARRANT THAT ANY OF THE FOREGOING WILL BE CORRECTED.
- d. **Accuracy.** CLIMATE ENGINE DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS FROM THE USE OF THE SERVICES OR ANY THIRD-PARTY SITES REFERRED TO ON OR BY THE SERVICES, INCLUDING ANY MAPS RENDERED THEREBY, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. THE CONTENT IS PROVIDED FOR PLANNING PURPOSES ONLY. YOU MAY FIND THAT CERTAIN EVENTS CAUSE THE CONTENT TO DIFFER FROM CURRENT CIRCUMSTANCES OBSERVABLE ON THE GROUND.
- e. **Harm to Your Computer System.** YOU UNDERSTAND AND AGREE THAT YOU USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAIN SOFTWARE, SERVICES, MAPS, OR CONTENT THROUGH THE SERVICES OR ANY THIRD-PARTY SITES REFERRED TO ON OR BY THE SERVICES AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM) OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD OR USE.
- f. **Statements and Advice.** NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CLIMATE ENGINE OR A CLIMATE ENGINE AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE SERVICES AND THEIR FUNCTIONALITY IN ANY COMMUNICATION WITH YOU CONSTITUTE TECHNICAL INFORMATION AND NOT AN EXPRESS WARRANTY OR GUARANTEE.
- g. **Exception.** SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.
- h. **Third-Party Materials.** CLIMATE ENGINE IS NOT RESPONSIBLE FOR ANY THIRD-PARTY MATERIAL YOU ACCESS WITH THE SERVICES, OR THIRD-PARTY REPRESENTATIONS, AND YOU IRREVOCABLY WAIVE ANY CLAIM AGAINST US WITH RESPECT TO SUCH THIRD-PARTY SITES, MATERIAL, AND REPRESENTATIONS. CLIMATE ENGINE SHALL HAVE NO LIABILITY, OBLIGATION OR RESPONSIBILITY FOR ANY SUCH CORRESPONDENCE, PURCHASE, OR PROMOTION BETWEEN YOU AND ANY SUCH THIRD-PARTY.

11. Limitation of Liability and Damages.

- a. **Limitation of Liability.** UNDER NO CIRCUMSTANCES, AND UNDER NO LEGAL THEORY, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, SHALL CLIMATE ENGINE OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD-PARTY PARTNERS OR SUPPLIERS, BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, OR USE OR COST OF COVER) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THAT RESULT FROM YOUR USE OR THE INABILITY TO USE THE SERVICES, EVEN IF CLIMATE ENGINE OR A COMPANY AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b. **Limitation of Damages.** IN NO EVENT SHALL THE TOTAL LIABILITY OF CLIMATE ENGINE OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD-PARTY PARTNERS, LICENSORS, OR SUPPLIERS TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR YOUR USE OF THE SERVICES (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, OR OTHERWISE) EXCEED THE TOTAL AMOUNT OF FEES PAID BY YOU PURSUANT TO THIS AGREEMENT IN THE PRECEDING TWELVE (12) MONTHS.

- c. **Jurisdiction.** CERTAIN JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF YOU RESIDE IN SUCH A JURISDICTION, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS. THE LIMITATIONS OR EXCLUSIONS OF WARRANTIES, REMEDIES, OR LIABILITY CONTAINED IN THIS AGREEMENT APPLY TO YOU TO THE FULLEST EXTENT SUCH LIMITATIONS OR EXCLUSIONS ARE PERMITTED UNDER THE LAWS OF THE JURISDICTION IN WHICH YOU ARE LOCATED. CLIMATE ENGINE DISCLAIMS ALL WARRANTIES IN CONNECTION WITH THE SERVICES, AND WILL NOT BE LIABLE FOR ANY DAMAGE OR LOSS RESULTING FROM YOUR USE OF THE SERVICES.
- d. **Claim Period.** YOU AND CLIMATE ENGINE AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

12. Additional Terms.

- a. **Notice.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “Notice”) (i) must be given to the individual who executed the Order Form on behalf of the Party receiving the Notice; (ii) must be made in writing and in English, and (iii) will be deemed given when delivered to such individual by hand or, after being sent using a method that provides for confirmation of delivery, upon receipt of such confirmation by the Party sending the Notice. If the individual who executed the Order Form on behalf of a Party is no longer available or willing to receive Notices, such Party shall promptly appoint another individual authorized to receive Notices under this Section.
- b. **Publicity.** Climate Engine and Customer may issue a joint press release announcing the Parties’ relationship. The timing and content of such press release will be subject to the approval of each Party, which approval may not be unreasonably withheld. Except as required by law, neither Party will make any public statements, press releases or other public announcements regarding the Parties’ relationship without the prior written approval of the other Party, which approval may not be unreasonably withheld.
- c. **Non-solicitation.** During the term of this Agreement and for a period of two (2) years after its expiration or termination, Customer will not, either directly or indirectly, solicit for employment any person employed by Climate Engine.
- d. **Dispute Resolution; Arbitration.** In the event of any controversy or claim arising out of or relating to this Agreement, the Parties shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both Parties. If the Parties do not reach settlement within a period of 60 days, any unresolved controversy or claim arising out of or relating to this Agreement shall proceed to binding arbitration under the Rules of Arbitration of the International Chamber of Commerce. The parties shall seek to mutually appoint an arbitrator. If the parties cannot agree on a single arbitrator, then there shall be three (3) arbitrators: one selected by each Party, and a third selected by the first two. Arbitration will take place in one of the following cities as mutually agreed between the parties: Chicago (United States of America) or New York (United States of America). If the parties are unable to agree to one of these cities, then the arbitration shall proceed in Chicago, IL USA. All negotiations and arbitration proceedings pursuant to this Section will be confidential and treated as compromise and settlement negotiations for purposes of all similar rules and codes of evidence of applicable legislation and jurisdictions. The language of the arbitration shall be English.
- e. **Governing Law; Jurisdiction;** This Agreement will be governed by and construed in accordance with the applicable laws of the State of Nevada, USA, without giving effect to the principles of that State relating to conflicts of laws. Each Party irrevocably agrees that any legal action, suit or proceeding that is not otherwise subject to the arbitration provisions must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the State or Federal court in Reno, NV, USA, and each Party irrevocably submits to the sole and exclusive personal jurisdiction of the courts in Reno, NV, USA, generally and unconditionally, with respect to any action,

suit or proceeding brought by it or against it by the other Party. Notwithstanding the foregoing, Climate Engine may bring a claim for equitable relief in any court with proper jurisdiction.

- f. **Waiver.** A provision of any of the terms in this Agreement may be waived only by a written instrument executed by the Party entitled to the benefit of such provision. The failure of either Party to assert a right hereunder or to insist upon compliance with any term or condition will not constitute a waiver of that right or excuse any subsequent nonperformance of any such term or condition by the other Party
- g. **Severability.** If any provision of this Agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions.
- h. **Force Majeure.** Notwithstanding anything to the contrary: if and to the extent that a party's performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed directly or indirectly by fires, floods, earthquakes, elements of nature, acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes/labor difficulties, epidemics, pandemics, electronic virus, electronic attack or infiltration, internet or wireless access disturbance, or any other cause beyond the reasonable control of such party (each, a "Force Majeure Event"), and such non-performance, hindrance or delay could not have been prevented by reasonable precautions, then the non performing, hindered or delayed party shall be excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as the Force Majeure Event continues and, except as otherwise provided in this Section, such party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means. The party whose performance is prevented, hindered or delayed by a Force Majeure Event shall notify the other party as soon as reasonably possible of the occurrence of the Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event and plan for resuming its performance. If any Force Majeure Event continues for a period in excess of ninety days, the other party shall have the right to terminate this Agreement effective upon notice. In the event of any such delay or failure, the affected party shall send written notice of the delay or failure and the reason thereof to the other party within fourteen (14) calendar days from the time the affected party knew or should have known of the Force Majeure in question.
- i. **Export Controls.** This Agreement is subject to all applicable export restrictions. You must comply with all export and import laws and restrictions and regulations of any United States or foreign agency or authority relating to the software and its use.
- j. **Survival.** The following Sections will survive expiration or termination of this Agreement: 1, 2, 3, 4, 7, 8, 9, 10, 11, and 12.
- k. **Relationship of the Parties.** Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
- l. **Assignment.** This Agreement shall not be assigned by either Party without the prior written consent of the other Party, which shall not be unreasonably withheld; provided, however, that either Party may, without the prior consent of the other, assign all of its rights under this Agreement upon a Change in Control.
- m. **Entire Agreement.** This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.
- n. **Amendment.** This Agreement can only be modified in a writing signed by both Parties.
- o. **No Third-Party Benefit.** The provisions of this Agreement are for the sole benefit of the

Parties and confer no rights, benefits or claims upon any Person or entity not a party hereto.

- p. **Further Assurances.** Upon a Party's reasonable request, the other Party shall, at the requesting Party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

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