

## SUBSCRIPTION SERVICES AGREEMENT

1. If the Order Form indicates that Customer has an Evaluation Period, then this Agreement shall be effective commencing on the Effective Date and shall continue for thirty (30) days (the “**Evaluation Period**”), otherwise, this Agreement shall commence on the Effective Date. During the Evaluation Period, the following provisions of the Agreement shall not apply: Section 5 (Fees, Billing, and Payment Terms), Sections 11.A and 11.B (Limited Warranty), Sections 13.A and 13.B (Indemnification), and Section 7.A (Term). During the Evaluation Period Customer may terminate this Agreement at any time by providing prior written notice to Supplier. Upon expiration of the Evaluation Period all of the terms and conditions of the Agreement shall apply unless Customer cancels prior to the end of the Evaluation Period.

### 2. DEFINITIONS

The following terms shall have the ascribed meanings.

- A. “**Add-On**” is an optional component, which, depending on the particular item, can be an additional WSI Trader component or particular content or data.
- B. “**Authorized User**” means an employee or contractor of Customer for which Customer has purchased a Unit of Services.
- C. “**Customer Data**” means all information Customer loads or otherwise inputs into the Platform (or provides to AG2 for loading or inputting into the Platform on Customer’s behalf).
- D. “**Order Form**” means an order form provided by AG2 for Services to which Customer has agreed.
- E. “**Normal Business Hours**” means 8 am - 5 pm, EST, Monday to Friday, excluding AG2 holidays.
- F. “**Platform**” means AG2’s proprietary online hosted energy related weather information software.
- G. “**Professional Services**” means customization or other professional services as set forth in an Order Form.
- H. “**Schedule**” means the first and signatory page of this Agreement, as well as any addenda thereto, listing the Equipment, Software, and Services provided hereunder and the fees associated therewith.
- I. “**Services**” means providing weather and other information via the Platform, including those data feed services set forth in the Order Form, and all Professional Services.
- J. “**Unit**” means a set of individual Login Credentials for a single Authorized User purchased by Customer during this Agreement pursuant to one or more Order Forms.

### 3. USE OF AG2 SERVICES BY CUSTOMER

- A. Grant of Right to Access Services. Subject to Customer’s continued compliance with its obligations under this Agreement, AG2 hereby grants to Customer a limited, nonexclusive, nontransferable right to access and use the Services solely for Customer’s own internal use for the purchased number of Units as set forth in one or more Order Forms during this Agreement.
- B. Login Credentials. Each Authorized User of Customer shall be assigned a unique user code and password (“**Login Credentials**”) by AG2, and Customer shall keep the Login Credentials strictly confidential and used solely by Customer’s employees and Contractors solely at the Designated Site. If Customer suspects that a Login Credential has been compromised, it is Customer’s responsibility to report this to AG2 immediately via email. Deliberate sharing of Login Credentials or failure to report compromised Login Credentials is grounds for immediate cancellation of the Services and forfeiture of any prepaid fees. Customer agrees that the maximum number of Authorized Users that it authorizes to access and use the Services shall not exceed the number of Authorized User Subscriptions it has purchased. Customer agrees that it will not allow any one set of Login Credentials to be used by more than one individual Authorized User unless it has been reassigned in its entirety to another individual Authorized User, in which case the prior Authorized User shall no longer have any right to access or use the Services. At all times during this Agreement, Customer shall designate one or more of its employees to serve as the “**User Administrator**” for Customer. The User Administrator shall solely be responsible for authorizing, issuing and deauthorizing Login Credentials to its Authorized Users, administering security profiles of Authorized Users, and inputting data regarding the Authorized Users. Customer agrees that each Authorized User will be assigned unique Login Credentials, and that no Login Credentials will be shared or otherwise utilized by two or more individuals at any time. Customer shall be solely responsible for the security of Login Credentials issued to each Authorized User. Customer shall timely deauthorize all Authorized Users that are no longer to have access to the Software. Customer agrees to comply with the procedures specified by AG2 from time to time regarding obtaining and updating passwords or other security measures for the Software. Customer is responsible for all acts and failures to act of its Authorized Users, and for ensuring that all Authorized Users are permitted by applicable law to access the Customer data. AG2 shall have no responsibility or liability for any damage or loss caused by the failure of Customer to deauthorize an Authorized User.

- C. **Restrictions on Use.** With respect to the Services, Customer shall not: (a) distribute, resell, or permit access to the Services by any third party; (b) permit multiple End Users to access the Service using shared Login Credentials; (c) use the Service other than in accordance with the instructions or documentation AG2 provides; (d) use the Service or allow the Service to be used by anyone other than in compliance with applicable federal, state, and local laws; (e) interfere with the Service or disrupt any other AG2 customer's access to the Service; (f) reverse engineer, decompile, create derivative works of, disassemble, or attempt to gain unauthorized access to or attempt to discover the underlying source code or structure of the software related to the Service; (g) submit to the Service any content or data that is false, misleading, defamatory, threatening, offensive, or infringing of intellectual property rights, or that contains mass mailings or any form of "spam"; (h) submit any routine, device, or other undisclosed feature including, without limitation, a virus, software lock, drop dead device, malicious logic, worm, Trojan horse, "time bomb", or trap or back door or software routine, that is designed to delete, disable, deactivate, interfere with, or otherwise harm any software, program, data, device, system, or service, or which is intended to provide unauthorized access or to produce unauthorized modifications; (i) use any robot, spider, data scraping, screen scraping, harvesting, data extraction tool, or other data gathering method with respect to the Service; (j) copy or distribute (other than as expressly permitted in this Agreement), modify, create derivative works of, sublicense, sell, or market the Service; (k) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third party privacy rights; or (l) access or use the Service for the purpose of building a competitive product or service or copying its features or user interface or authorize or permit a direct competitor of AG2 to do so. This Section 3.C shall survive any expiration or termination of this Agreement.
- D. **Improvement and Discontinuance of Services.** In order to improve or maintain the quality of the Services to Customer, AG2 reserves the right to make changes from time to time to the Services with or without notice to Customer. Customer acknowledges that AG2 receives certain data included in the Services from third parties ("**Third-Party Content**") and Customer agrees that in the event that receipt or use of such Third-Party Content by AG2 is suspended, delayed, or terminated for any reason, AG2 shall have the right to suspend or terminate transmission inclusion, or use of such Third-Party Content or to provide substitute Third-Party Data. In the event AG2 determines not to provide substitute Third-Party Content, AG2 may make an equitable adjustment in the fees payable for the Services or may terminate this Agreement and provide Customer with a pro rata refund for Services paid for but not yet provided.

#### 4. AVAILABILITY AND SUPPORT

- A. **Availability.** AG2 shall use commercially reasonable efforts to provide continuous access to the Service. However, AG2 does not guarantee that the Service will be accessible at all times.
- B. **Support.** AG2 shall use commercially reasonable efforts to provide support for the Service as set forth in the Service Level Agreement, available online at [www.atmosphericG2.com/agreements/SLA](http://www.atmosphericG2.com/agreements/SLA) and incorporated by reference herein ("**SLA**"), provided that the SLA shall not be deemed violated by AG2 in the event the Service or the Platform is unavailable due to a Force Majeure Event. Notwithstanding Section 18.B, AG2 may modify the SLA at any time, with or without prior notice, provided that no modification will materially diminish the level of support.

#### 5. FEES, BILLING, AND PAYMENT TERMS

- A. Fees for the Service are set forth in the Order Form. Additional Add-Ons and additional blocks of Units may be purchased by Customer using an additional or amended Order Form, but the number of Units may not be decreased during the applicable Term. AG2 may adjust its fees after the Initial Term (as defined below) by up to and not to exceed seven percent (7%) annually. Customer will be billed in advance on a monthly, quarterly or annual basis, as applicable, as indicated on the Order Form. All invoices shall be due and paid within thirty (30) days of the invoice date. All amounts will be invoiced and paid in the currency specified in the invoice. Customer agrees to pay interest on any overdue balance at the rate of the lesser of two percent (2%) per month or the maximum amount allowed under applicable law. In the event Customer defaults on its payment obligations hereunder, Customer shall be liable to AG2 for all costs and expenses, including reasonable attorney's fees, incurred in the collection of any balance owed.
- B. The amounts paid by Customer hereunder for Services and other services are exclusive of any sales, purchase, use, value added, gross receipts, excise, withholding or similar taxes which may be levied thereon. Customer shall be liable for all such taxes. If any governing authority shall impose any income, royalty or withholding tax on any payment due pursuant to this Agreement and shall require that such tax be deducted from such payment, then Customer agrees to pay such tax on behalf of AG2 (and supply AG2 with proof of payment), or reimburse AG2 for any such tax, so that the full amount of any payments due hereunder shall be remitted to AG2.

#### 6. SUSPENSION OF SERVICES

- A. AG2 may suspend or restrict access to the Services, in whole or in part, upon at least three (3) days' prior written notice to Customer if: (a) Customer fails to timely pay an undisputed invoice; or, (b) AG2 reasonably believes that Customer has violated applicable law or regulation, or the continued access may cause AG2 to violate applicable law or regulation, which may have a potentially adverse effect on AG2 or its other clients.
- B. AG2 may suspend or restrict access to the Services, in whole or in part, without notice to Customer if: (i) AG2 reasonably believes that it is necessary to protect the servers, systems, infrastructure, data, or information of AG2 or its respective third-party providers or other customers from a denial of service attack, security breach, introduction of a virus or other malware, ransomware attack, or potentially

harmful event or act; (ii) requested or ordered by a law enforcement agency, government agency, or similar authority; or, (iii) Customer fails to promptly cooperate with AG2 to investigate suspected violations of this Agreement.

- C. Upon removal, cessation or mitigation of the underlying cause for any of the above that occurs, AG2 will resume providing access to the affected Services. During any period of suspension under this Section 6, Customer's payment obligations shall not be suspended.

## 7. TERM AND TERMINATION; RENEWALS

- A. Term. This Agreement shall commence on the Effective Date and the initial term shall be as indicated on the applicable Schedule ("Initial Term"). At the end of the Initial Term this Agreement shall automatically renew for additional sequential periods each of twelve (12) months (each a "Renewal Term" and, together with the Initial Term, referred to as the "Term") unless either party provides the other with written notice at least thirty (30) days prior to the end of the then-current Term.
- B. Termination for Cause. Either party may terminate this Agreement for cause if the other party commits a material breach of this Agreement that remains uncured (if curable using commercially reasonable efforts) (other than a failure of Customer to timely pay any fees owed) thirty (30) days after written notice of such breach is delivered to the other party. Notwithstanding anything to the contrary in this Agreement, any willful unauthorized access, use, copying, disclosure, distribution, or sublicensing of intellectual property or any related methods, algorithms, techniques, or processes of AG2 by Customer will be deemed a material breach of this Agreement that cannot be cured and will entitle AG2 to immediately terminate this Agreement. If Customer files a petition for bankruptcy or becomes insolvent AG2 may terminate this Agreement upon written notice thereof to Customer. Termination by AG2 in case of default by Customer shall be in addition to any other remedies AG2 may have in law or in equity.
- C. Termination Without Cause. Customer may terminate this Agreement without cause by providing thirty (30) days' prior written notice to AG2, provided that Customer shall pay AG2 within thirty (30) days of such termination the fees owed under the then-applicable Order Form(s) for the remainder of the then-current Term.
- D. Suspension/Termination Based on Threat of Infringement. In the event that either AG2 or Customer is threatened in writing or is sued for infringement or violation of any third party intellectual property right relating to the performance of the Services, then the party receiving the threat or lawsuit shall notify the other party within five (5) days of receipt. In such an event AG2 may, at its option and by providing written notice to Customer, either (a) suspend performance of the Services until the threat is removed to the reasonable satisfaction of AG2 or the lawsuit dismissed or, (b) if the threat is not resolved or the lawsuit dismissed within three (3) months of AG2 receiving notice thereof, AG2 may terminate this Agreement by providing notice in writing to Customer. In such an event, AG2 shall be paid for all completed Services and for all in-process Services provided up to the date of termination on a pro rata basis. Further, in such an event Customer shall immediately discontinue use of any Service of Software that is the subject of the threat or lawsuit until such threat is removed or the lawsuit is dismissed. If Customer does not immediately discontinue such use or commercialization, AG2 shall have no obligation to indemnify, defend, or hold Customer harmless for such continued use or commercialization, and further, Customer shall indemnify, defend and hold AG2 and its licensors harmless pursuant to Customer's obligations in Section 13 (Indemnification).
- E. Effect of Termination. Upon expiration or termination of this Agreement, all rights granted herein by AG2 will automatically terminate and Customer's access to the Service will be terminated. Termination of this Agreement shall not affect either Customer's obligation to pay any amounts due hereunder or any additional remedies available to AG2 in law or equity. Upon termination of this Agreement, any pre-payments or deposits held by AG2 shall be applied to any fees or amounts due. Pre-payments or deposits will not be refunded to Customer. Upon termination, Customer shall pay (as set forth in Section 5 AG2 for all completed and all in-process Professional Services provided up to the date of termination.

## 8. INTELLECTUAL PROPERTY

- A. Customer acknowledges that the Software contains proprietary information of AG2 and is protected by copyright, trademark, patent, trade secret and/or other intellectual property rights; and that all such intellectual property rights are and shall be owned by AG2. Customer also agrees that, except as expressly provided in this Agreement, nothing in this Agreement or the conduct of the parties shall be construed as conferring on the Customer any license or right, by implication, estoppel, or otherwise, under copyright or other intellectual property rights. Customer also agrees to abide by this Agreement regardless of whether any portion of the Software is deemed not copyrightable. Customer agrees not to challenge any intellectual property right of AG2 in the Service or any software related thereto during this Agreement or at any time after any termination or expiration thereof. All of Customer's obligations and acknowledgements under this Agreement, including without limitation those regarding limitations on use and the intellectual property rights of AG2, shall survive any termination or expiration of this Agreement.
- B. Feedback. In the event that Customer provides any suggestions, comments, ideas, improvements or other feedback including, but not limited to, new features, feature ideas, or functionality, or any questions, comments, suggestions, ideas, original or creative materials, or other information relating to the Service or AG2's business ("Feedback"), Customer hereby assigns to AG2 automatically on disclosure to AG2 all right, title, and interest in the Feedback, without any need for further consideration or notice to Customer.

## 9. CONFIDENTIALITY

- A. Customer agrees to treat as confidential and not disclose any Confidential Information of AG2 or its licensors, including without limitation, AG2’s information security documents. The term “**Confidential Information**” means any and all information revealed by AG2 to Customer relating in any way to the business of AG2, which information is of value to AG2 because it is not generally known, including, without limitation, product plans, technical information, ideas, inventions, customer or vendor lists, and pricing information; unless Customer can prove that the information: (i) is or becomes part of the public domain through no fault of Customer; (ii) was received by Customer from a third party as a matter of right without any restriction on disclosure; or (iii) was developed by Customer independently. Confidential Information is being revealed by AG2 to Customer in confidence solely in furtherance of the transactions contemplated herein and Customer shall not use any of the Confidential Information provided by AG2 for any other purpose whatsoever. Customer shall reveal the Confidential Information provided by AG2 to its employees only on a “need to know” basis and only to employees who agree in writing to maintain the confidentiality of the Confidential Information; and AG2 shall be responsible for any breach of this section by its employees. Customer shall not reveal, or induce others to reveal, any of the Confidential Information in any way to any third party without the prior written approval of AG2.

## 10. DATA SECURITY, PRIVACY, AND USE

- A. The only personal information AG2 collects about Customer’s Authorized Users as part of the Services is the following:
- first and last name
  - user name (which may include first and last name)
  - email address
  - customer/account name or number
  - IP address, protocol, and sequence information;
  - cookies
  - browser language and type
  - domain name system requests
  - material and pages viewed
  - time and date of access to the Services
  - number of bytes transferred
  - number of clicks per visit
  - operating system and platform, device type and device identifiers
  - MAC address, device ID / UDID, or similar device-specific code
- B. AG2 shall implement and maintain administrative, technical, and physical security measures consistent with industry standards designed to protect the confidentiality, integrity, and availability of data maintained on and processed by the Platform. The Platform will be hosted in a secure data center environment consistent with industry standards. AG2 shall maintain a written incident response plan. AG2 will run commercially appropriate anti-virus, malware, and similar protocols on the software and data residing in the AG2 Platform.
- C. AG2 shall comply with all applicable laws and regulations regarding data privacy of any Customer Data.
- D. As between Customer and AG2, Customer shall own all Customer Data.
- E. “**Derivative Information**” means, collectively, (i) information derived or generated from or based on Customer Data, but not containing Customer Data, (ii) Customer Data which has been de-identified or anonymized so that it no longer identifies a specific individual; and, (iii) Customer Data which has been aggregated with other data but which no longer identifies a specific individual. During this Agreement and after any expiration or termination AG2 may create and use Derivative Information for any legitimate business purpose of AG2 without a duty of accounting to Customer, such purposes including, but not limited to, (a) to create, test, train, and inform algorithms, machine learning and product automation models and software; (b) and to develop, create, extract, compile, synthesize, analyze and commercialize statistics, analytics, metrics, reports, benchmarks, measures and other information; and, (c) to improve or develop products and services.
- F. AG2 shall comply with the “Data Privacy Policy”, available at <http://www.atmosphericg2.com/dataprivacy>, which are incorporated herein by reference, and as AG2 may modify from time to time, the modified version to be effective when posted online.
- G. Upon request by Customer, AG2 is willing to enter into an additional agreement, to be negotiated by the parties in good faith, as required by law for the protection of regulated personal data to be received by AG2. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

## 11. LIMITED WARRANTY, DISCLAIMERS

- A. Limited Warranty. AG2 warrants to Customer that the Services shall be performed or provided in a professional and workmanlike manner. AG2 shall use commercially reasonable efforts to prevent the Service, Customer’s use thereof, and any data or reports downloaded therefrom by Customer from containing or introducing into Customer’s systems any time bomb, Trojan horse, back door, worm, virus, malware, spyware, ransomware, or other device or code designed or intended to, or that could reasonably be expected to,

(a) disrupt, disable, harm, or otherwise impair the normal and authorized operation of, or provide unauthorized access to, any computer system, hardware, network, or device; or (b) damage, destroy, or prevent the unauthorized access to or use of any data or file of Customer.

- B. Customer acknowledges and agrees that the Services are wholly advisory in nature and all actions and judgments taken with respect to the Services are Customer's sole responsibility. AG2 and its suppliers make no representations with respect to the reliability, timeliness, predictive value or accuracy of the weather or other information contained within the Services and AG2 and its suppliers shall not be responsible for errors resulting from any inaccurate, delayed, omitted, misstated, incorrectly displayed or other erroneous information. Customer acknowledges the inherent risk of relying upon weather data and forecasts and Customer is urged to verify the Services against other sources prior to use. The Services should not be considered investment advice or any form of recommendation to buy, sell or subscribe for any assets. AG2 and its suppliers shall not be liable for any losses or expenses arising directly or indirectly out of the use of or reliance on the forecasts or information included within the Services.
- C. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY STATED HEREIN, AG2 MAKE NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED, TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INTENDED USE, TITLE, AND NONINFRINGEMENT WITH RESPECT TO THE SERVICES. AG2 AND ITS SUPPLIERS ASSUME NO RESPONSIBILITY WITH RESPECT TO THE USE BY CUSTOMER OR ITS EMPLOYEES OR CLIENTS OF THE SERVICES. AG2 DOES NOT WARRANT THAT THE SERVICES ARE SECURE OR FREE FROM BUGS, VIRUSES, INTERRUPTION, OR ERRORS, OR THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS.

## 12. LIMITATION OF LIABILITY

- A. EACH PARTY'S CUMULATIVE LIABILITY TO THE OTHER ARISING OUT OF OR RELATING TO THE SERVICE OR ANY OTHER ASPECT OF THIS AGREEMENT, FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ANY CLAIM, ACTION OR PROCEEDING, WHETHER BASED IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, SHALL NOT EXCEED THE AGGREGATE FEES PAID BY CUSTOMER TO AG2 DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO AG2 RECEIVING NOTICE OF THE CLAIM. IN NO EVENT SHALL AG2, ITS LICENSORS OR CONTRACTORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, OR COSTS OF SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, REVENUE OR GOODWILL ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF AG2 HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE. THE ALLOCATIONS OF LIABILITY REPRESENT THE AGREED AND BARGAINED-FOR UNDERSTANDING OF THE PARTIES AND PROVIDER'S COMPENSATION FOR THE SERVICES REFLECTS SUCH ALLOCATIONS.

## 13. INDEMNIFICATION

- A. **Intellectual Property Indemnification.** AG2 will defend Customer against a claim that the Services supplied hereunder infringes a third-party patent or copyright enforceable in the United States, and AG2 will pay any resulting costs, damages, and reasonable attorney's fees finally awarded or as part of a settlement, provided that Customer promptly notifies AG2 in writing of the claim, AG2 has sole control of the defense and all related settlement negotiations, Customer reasonably cooperates with AG2 at AG2's expense and provides AG2 with complete information and cooperation concerning the claim. AG2's liability hereunder shall not apply to the extent that Customer or any third party not affiliated with AG2 has modified the Services or if the infringement claim arises from a combination of the Services with any other technology, products or services and the infringement would not have arisen but for the combination. AG2's obligation hereunder is conditioned on Customer's agreement that, if any part of the Services become, or in AG2's opinion is likely to become, the subject of such claim, Customer will permit AG2, at its option and expense, either to procure the right for Customer to continue using the Services or to replace or modify the same so that it becomes non-infringing while retaining equivalent functionality. If neither of the foregoing alternatives is available on terms that are reasonable in AG2's judgment, AG2 shall have the right to terminate this Agreement without further liability to Customer, but shall refund to Customer a pro rata portion of any fees paid but unused during the remaining portion of the then-current Term. This Section states AG2's entire liability and Customer's sole and exclusive remedy for infringement of the intellectual property rights of any third party.
- B. AG2 agrees to indemnify, defend, and hold harmless Customer and its successors, assigns, parents and subsidiaries and the officers, directors and employees of each of them, from and against any and all third-party claims, losses, actions, damages, fines, penalties, assessments, expenses and all other liabilities, including, but not limited to, attorneys' fees and expenses (collectively, "**Claim(s)**") arising out of or in connection with (a) the breach of any representation, warranty, covenant, or other terms or conditions of this Agreement by AG2, (b) the negligent acts or omissions of AG2 (or its contractors or services providers) in connection with its obligations set forth in this Agreement, (c) the unauthorized access, exposure, disclosure, use, or transmission of Customer Data to a third party.
- C. Customer agrees to indemnify, defend, and hold harmless AG2 and its successors, assigns, parents and subsidiaries and the officers, directors and employees of each of them, from and against any and all third-party Claims arising out of or in connection with (a) the breach of any representation, warranty, covenant, or other terms or conditions of this Agreement by Customer, or (b) the negligent acts or omissions of Customer (or its contractors or services providers) in connection with its obligations set forth in this Agreement.



- D. **Indemnification Procedure.** Either party that is seeking to be indemnified under this Section 13 (an “**Indemnified Party**”) for a third party claim must (i) promptly notify the other party (the “**Indemnifying Party**”) of the claim; and (ii) give the Indemnifying Party the sole control over the defense of such claim. However, if an Indemnified Party fails to notify the Indemnifying Party promptly, the Indemnifying Party will be relieved of its obligations under this Section 9 only if and to the extent that its ability to defend the claim is materially prejudiced by such failure. The Indemnifying Party may settle or compromise a claim without the Indemnified Party’s prior approval of any such settlement or compromise only if (a) such settlement involves no finding or admission of any breach by an Indemnified Party of any obligation to any third party, (b) such settlement has no effect on any other claim that may be made against an Indemnified Party or any defense that an Indemnified Party may assert in any such claim, and (c) the sole relief provided in connection with such settlement is monetary damages that are paid in full by the Indemnifying Party. Approvals required under this Section 13 shall not be unreasonably withheld, delayed, or conditioned. Upon the Indemnifying Party’s assumption of the defense of such claim, the Indemnified Party will reasonably cooperate with the Indemnifying Party in such defense, at the Indemnifying Party’s expense.

#### 14. NONSOLICITATION OF EMPLOYEES

- A. Customer agrees that during this Agreement and for a period of twelve (12) months after any termination Customer will not directly or indirectly, on its own behalf or in the service or on behalf of others, solicit, recruit or hire, or attempt to recruit or hire, directly or by assisting others, any employee of AG2. Nothing in this Section 14 shall be construed to prohibit a party from hiring or engaging an employee or independent contractor of the other party who has responded to a published advertisement for employment or engagement not specifically directed at that employee or independent contractor, so long as there was no other prior contact with such employee or independent contractor by Customer (directly or indirectly) related to such solicitation.

#### 15. DISPUTE RESOLUTION

- A. **Mandatory Arbitration.** The parties will attempt in good faith to resolve any dispute. Each party will designate an officer or senior level management executive with decision making authority (collectively, an “**Executive**”) with the responsibility and the authority to resolve the dispute. These Executives will meet or hold a telephone conference call within thirty (30) days after the request to identify the scope of the dispute and the information needed to discuss and attempt to resolve such dispute. These Executives will then gather relevant information regarding the dispute and will meet or hold a telephone conference call promptly to discuss the issues and to negotiate in good faith to resolve that issue. In the event the parties are unable to resolve the dispute within sixty (60) days after the specific meeting of the designated Executives as specified above (or such longer time as the parties agree), then the dispute shall be resolved by mandatory arbitration, which may be submitted by either party. Such arbitration will be conducted at a location to be mutually agreed to by the parties, or in the absence of such agreement, in Atlanta, Georgia in accordance with the commercial rules (“**Rules**”) then in effect of the American Arbitration Association by one (1) arbitrator appointed in accordance with such rules. The award rendered by the arbitrator will be final and binding, and judgment may be entered upon it in any court having jurisdiction thereof. In the event the arbitrator determines that either party fails to resolve any dispute in good faith, the arbitrator may award (in any amount deemed appropriate by the arbitrator) the prevailing party its costs and expenses of arbitration, including filing fees and attorneys, accountants, and experts fees. All aspects of the arbitration shall be treated as confidential, as provided in the Rules. Before making any disclosure permitted by the Rules, a Party shall give written notice to the other party and afford such Party a reasonable opportunity to protect its interests. Each Party shall bear its own costs in the arbitration; however, the Parties shall share the fees and expenses of the arbitrator equally.
- B. The arbitrator(s) will have no authority to award attorneys’ fees, punitive damages, or any other monetary relief not measured by the prevailing party’s actual damages. The arbitrator(s) will not make any ruling, finding, or award that does not otherwise conform to the terms and conditions of this Agreement. The arbitrator(s) may render a summary disposition relative to all or some of the issues, provided that the responding party has had an adequate opportunity to respond to any such application for such disposition.
- C. **Exceptions to Arbitration Requirement.** Notwithstanding the foregoing in this Section 15, either party is free to seek equitable relief in a court having jurisdiction in the event of a breach or threatened breach of a party’s obligations with respect to Confidential Information or intellectual property rights.
- D. **Time Limitation for Claims.** No action arising out of any claimed breach of this Agreement may be brought by Customer more than twelve (12) months after the event which gives rise to the specific cause of action.

#### 16. FORCE MAJEURE EVENTS

- A. A “**Force Majeure Event**” means a cause or event beyond the reasonable control of the party claiming delay of performance, including, but not limited to, (i) labor disputes, strikes, or lockouts (but excluding nonunion labor shortage or disputes), or labor unavailability or workplace closure or restrictions as required or recommended by government or agency due to pandemic, epidemic, or other widespread health emergency (e.g., viruses or other diseases, such as, but not limited to, COVID-19, SARS, etc.); (ii) riots, war, acts of terrorism, or other civil disturbance; (iii) fire, flood, earthquake, tornado, hurricane, snow, ice, lightning, or other natural disasters, elements of nature or acts of God, (iv) outages, cable cuts, power crisis shortages, infrastructure outages or failures, internet failures, interruption or failure of telecommunications carriers or digital transmission links, network congestion, computer equipment failures,

telecommunication equipment or other equipment failures, electrical power failures, loss of or fluctuations in heat, light, or air conditioning, all of the foregoing in this Subsection (iv) being of or due to third party providers or utility service providers; (v) acts of computer, system, or network sabotage or file lockup (e.g., ransomware attack), DDOS or other network attacks, intrusion, or other failures not arising out of a breach of AG2's data security obligations set forth in this Agreement; (vi) any law, order, regulation, direction, action or request of the United States, state or local governmental agency, department, commission, court, bureau, corporation or other instrumentality of any one or more of such instrumentality, or of any civil or military authority, or national emergencies, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown; (vii) change in law or regulation making performance impracticable without having material impact on such party's ability to perform under this Agreement without material increase in cost, resources, or time; or, (viii) national or regional shortage of adequate power or telecommunications or transportation.

- B. With the exception of the payment of monies owed, if by reason of a Force Majeure Event either party is unable to perform in whole or in part its obligations as set forth in this Agreement, then such party shall be relieved of those obligations to the extent it is so unable to perform and such inability to perform shall not make such party liable to the other party. A party shall promptly notify the other party in the event of a Force Majeure Event affecting the party's ability to perform. Neither party shall be liable for any loss, injury, delays or damages suffered or incurred by the other party due to the above causes. AG2 shall credit Customer a pro rata amount of fees for any Force Majeure Event lasting more than five (5) days during which the Service is unavailable.

## 17. APPLICABLE LAW; VENUE

- A. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the substantive laws of the state of New Hampshire, without regard to conflicts of laws principles. The parties hereby consent to personal jurisdiction of the courts of the State of Georgia with respect to any legal action permitted pursuant to Section 15, to enforce the terms and conditions of this Agreement or otherwise arising under or with respect to this Agreement, and agree that the state courts in Atlanta, Georgia, or, if applicable, federal District Court sitting in the Northern District of Georgia, shall be the sole and exclusive venue. The prevailing party shall be entitled to recover its reasonable attorneys' fees, expenses and costs.

## 18. GENERAL

Notice. Customer consents that notice concerning the Service or this Agreement (collectively, "**Communications**") may be provided to Customer at Customer's address provided at signup by AG2 by mail and electronic communication and/or by posting the Communications on AG2's website (e.g., by posting notices on Customer's account profile page). Communications may be those that AG2 is required to send to you by law concerning AG2, your account or the Services ("**Required Communications**"), e.g., notices regarding data privacy or security. The Communications may also be those that AG2 send to Customer for other reasons. Customer may change the email on file for its account by visiting Customer's account profile page or by contacting AG2. Any notices sent by Customer shall be in writing and shall be (1) delivered by hand; (2) sent by U.S. post office or nationally recognized overnight courier, in either case with a return receipt or signature confirmation with tracking; or (3) sent via email; in the case of (1), (2), or (3) to AG2's address as follows: 1266 W. Paces Ferry Rd. Suite 627, Atlanta, GA 30327; email: admin@atmosphericG2.com. A notice will be deemed received if delivered (1) by hand, upon written confirmation of receipt; (2) by U.S. post office or nationally recognized overnight courier, at the time of delivery; or, (3) by verifiable, non-automated confirmation email, upon a reply by the recipient to the original message.

- A. Assignment. This Agreement may not be assigned, conveyed or transferred, whether by contract, merger, or operation of law (collectively referred to in this Subsection 18.A as "assign" or "assignment") by Customer without the prior written consent of AG2, which consent shall not be unreasonably withheld, delayed, or conditioned, and any assignment in violation of this Subsection 18.A shall be of no power or effect.
- B. Agreement. This Agreement and all attachments attached hereto constitute the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties. Other than as expressly provided for otherwise herein, this Agreement may be amended by the parties only in writing signed by each party. The section headings are not to be considered part of this Agreement and are included solely for convenience and are not intended to be full or accurate descriptions of the contents thereof. The background recitals form a material part of this Agreement. The waiver of any term or condition of this Agreement in any one instance shall not operate as a continuing waiver of such term or condition or as a waiver of any other term of condition. The provisions of this Agreement are severable, and in the event that any one or more provisions are deemed illegal or unenforceable, the remaining provisions shall remain in full force and effect. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signature hereto delivered by a party by facsimile, electronic mail, or any other electronic transmission shall be deemed an original signature hereto. As each party had an opportunity for its counsel to review this Agreement, there shall be no application of any rule of construction against the drafter.