

## Climate FieldView™ Terms of Service

Last Updated: December 18, 2019

The following Climate FieldView™ Terms of Service constitute a legal agreement (this “Agreement”) between you and either the Climate Corporation or an Affiliate of the Climate Corporation, as described in Appendix 1, depending upon the “Service Territory” in which your service address is located (Climate Corporation or the applicable Affiliate referred to herein as “we”, “us” or “Climate”). An “Affiliate” (in the singular or plural) means with respect to an entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with that entity. Climate is an Affiliate of the Bayer Group of companies (“Bayer”). Your use of Climate FieldView products, software, hardware, services and web sites, excluding any products or services provided to you by Climate under a separate written agreement (referred to collectively as “FieldView Services”), is subject to the general terms and conditions set forth in this Agreement (“Terms of Service”). Additional terms may apply to certain FieldView Services as described below, which hereby are incorporated by reference (“Additional Terms”). If you are participating in a pre-commercial test of Climate’s FieldView Services, you may be asked to enter into testing agreement with Climate or one of Climate’s Affiliates. The Climate FieldView Terms of Service apply to the use of Climate’s FieldView Services by you if you are participating in a precommercial test; except that, if there is a conflict between the Climate FieldView Terms of Service and any of the terms contained in the testing agreement you entered into, the terms contained in the applicable testing agreement shall govern.

FieldView Services are for business use only. This Agreement establishes a business-to-business relationship between you and Climate. By downloading, installing, activating or otherwise using the FieldView Services, you represent and warrant that you are at least 18 years of age or the age of majority under the laws of where you reside, that you are acting for business purposes, and you agree to be bound by these Terms of Service. If you are accepting these terms on behalf of a company or other legal entity, you represent that you have authority to bind the entity, in which case “you” and “your” shall refer to you and such entity. **If you are not 18 years or older, or do not agree to these Terms of Service, you may not use the FieldView Services.**

**THIS AGREEMENT LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE AND ALSO IN THE UNITED STATES, REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES RATHER THAN JURY TRIALS OR CLASS ACTIONS.** Users in other Service Territories, see Section 6 below and Appendix 1 for applicable governing law and dispute settlement provisions.

### 1. SERVICES

- 1.1 **Scope of Service:** FieldView Services provide information, estimates, prescriptions or other recommendations based on models and third-party sources, and help you organize and evaluate data provided or inputted by you, your mobile device or your equipment. FieldView Services may not be available in all languages or in your Service Territory, and may not be appropriate or available for use in any particular location. Our services, models, data and recommendations may change over time. Individual results may vary, as weather, growing conditions and farming practices differ across growers, locations and time. We do not guarantee any results, and neither the FieldView Services nor Climate Generated Works (defined below) should be used as a substitute for sound farming practices, including regular and diligent field monitoring, or as the sole means for making farming, risk management or financial decisions. We recommend that you consult your agronomist, commodities broker and other service professionals before making financial, risk management and farming decisions.
- 1.2 **Personal Data:** Providing FieldView Services requires us to collect, share, and use some personal data about you. The Climate Privacy Statement, which is incorporated herein by reference, is available online at <https://climate.com/us-privacy-statement>. It explains how we collect, share, and use your personal data. It also explains the many ways you can control your personal data, including in the preferences and settings accessible within your FieldView Account.
- 1.3 **FieldView Account:** You must create a Climate FieldView account to access FieldView Services (“FieldView Account”). Your Service Territory is determined based upon the Service Territory in which your service address is located when you create your FieldView Account. You must have a separate FieldView Account for each Service Territory where you use the FieldView Services, and the applicable Additional Terms and Privacy Statement will be determined based upon your Service Territory. You may have no more than one FieldView Account per Service Territory. When you create a FieldView Account, you will be asked to provide certain information about you and your business, such as your name, service address, email address, payment method and authorization, or other user information (“Account Information”). By

entering Account Information, you represent and warrant that all such information you enter is true and accurate and you agree to keep the information up to date if it changes at any time during the term of this Agreement.

- 1.4 **Login Information:** You agree to keep your FieldView Account user name and password (“Login Information”) confidential and prevent unauthorized users, including minors under the age of 13, from using your Login Information to access FieldView Services. You are solely responsible for the activities of anyone accessing the FieldView Services using your Login Information and for ensuring that all users of your FieldView Account comply with these Terms of Service. You must notify us promptly of any unauthorized use of your FieldView Account and promptly change your login password if you believe your FieldView Account no longer is secure.
- 1.5 **Limited License:** All FieldView Services are licensed, not sold, to you. Subject to these Terms of Service and any applicable Additional Terms, Climate grants you a limited, revocable, personal, non-exclusive, and non-transferrable right for you and individuals authorized by you to access and use the FieldView Services and Climate Generated Works solely for your business use in the applicable Service Territory. We do not grant you any rights or licenses under any of our technology or intellectual property rights, except as expressly granted in this Agreement.
- 1.6 **Restrictions:** You agree NOT to:
  - (a) Use FieldView Services outside of the Service Territory;
  - (b) use FieldView Services on land or equipment that you do not own or have a right to use or on which you have a right to operate;
  - (c) sell, lease, lend, license, export, reexport, otherwise transfer, distribute, re-distribute, copy, publicly perform or display, transmit or publish any FieldView Services or Climate Generated Works or assign, transfer or sublicense this Agreement or the rights granted by us in this Agreement without our prior written consent;
  - (d) use FieldView Services to develop, evaluate, validate or enhance any competing product or service or create any derivative works, without our prior express written consent;
  - (e) use FieldView Services or Climate Generated Works to benchmark or otherwise compare the performance of Climate or Bayer Crop Science division products or services to or against products or services of our Competitors, for the purpose of developing or promoting competing products, without our prior express written consent, but you may make agronomic comparisons and conduct yield testing solely for your own use;
  - (f) use the FieldView Services to harass, abuse, stalk, threaten, defame or otherwise infringe or violate the rights of anyone or to publish material that is false, defamatory, harassing or obscene; or
  - (g) remove or modify any markings or notices of our or our licensors’ proprietary rights, or violate or circumvent, or attempt to do so, any FieldView Services security features, including attempting to access or use any portion of the FieldView Services for which you have not paid all due and applicable amounts.
- 1.7 **Fee-Based Services:** If you subscribe to any fee-based FieldView Services, your terms of service include these general Terms of Service, plus any Additional Terms relating specifically to such fee-based services disclosed to you at the time of subscription, including but not limited to the prices, charges, and terms and conditions provided to you in marketing and informational material associated with the FieldView Services or on the Climate website, all of which are hereby incorporated by reference. Your order for fee-based FieldView Services will become effective only if we accept your order. You agree to pay when due, all amounts set forth in the applicable order for any fee-based FieldView Services and, at the time of renewal, the applicable subscription fees for any renewed FieldView Service subscription, plus applicable taxes (unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority). If your subscription fee payment is overdue, we may suspend your account access until such amounts are paid in full. Unless otherwise specified, overdue amounts will accrue interest at the lesser of 1.5% per month or the highest rate allowed by law.
- 1.8 **Subscription Automatic Renewals:** If you place an order for a fee-based FieldView Service, you can use that FieldView Service only until your subscription for that FieldView Service ends. If you have specified a payment method and provided us your payment information (including credit-card, debit-card or bank-account information), you authorize us to charge your specified payment method for the fees due for your use of the FieldView Services. Except as otherwise specified in the applicable order, each subscription for fee-based FieldView Service will automatically renew at the end of its initial term and each year thereafter until cancelled. Prices for subscriptions of fee-based FieldView Services may change in the future. Unless otherwise provided in the applicable order, the subscription fees for any renewed subscription will be the applicable price for such FieldView Service in effect when the subscription renews. We will notify you of the applicable subscription fees, including any changes in subscription fees, prior to renewal of your subscription. If you do not agree to the applicable subscription fees or if you wish to cancel your subscription for any reason, you may cancel the automatic

renewal of your subscription by giving us notice of cancellation at any time before your current subscription term is set to renew. In the United States and Canada, you may cancel the automatic renewal of your subscription by calling Climate Customer Support at (888) 924-7475 during regular business hours posted on [www.climate.com](http://www.climate.com) (generally, 8:00 AM to 5:00 PM Central Time Monday-Friday except public holidays), or by sending an e-mail to [support@climate.com](mailto:support@climate.com) or by sending a written notice to us as set forth in Section 6.10 below. Users in other Service Territories, see Appendix 1 for contact details. If you cancel the automatic renewal of your subscription before the end of the then-current subscription term, your subscription will end at the end of that term.

## 2. SOFTWARE

- 2.1 **Climate Software:** FieldView Services use and include certain software and/or firmware (“Climate Software”). Some Climate Software resides on equipment licensed or sold to you. Your use of Climate Software is subject to the End User License Agreement that accompanied the Climate Software. With regard to any Climate Software that is not accompanied by an End User License Agreement, Climate, or its applicable third party licensors, grants you a personal, non-transferrable, and non-exclusive right and license to use the object code of the Climate Software in accordance with this Agreement, provided that you do not (and do not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble, or otherwise attempt to discover any source code or structure sequence and organization of, sell assign sublicense, distribute, rent, lease, grant a security interest in, or otherwise transfer any right in the Climate Software. You acknowledge that this license is not a sale of intellectual property and that Climate or its third-party licensors, providers or suppliers continue to own all right, title and interest to the Climate Software and related documentation. The Climate Software is protected by the copyright laws of the United States and international copyright treaties.
- 2.2 **Additional Requirements for Apple App:** Software apps made available through the Apple App Store are subject to your prior acceptance of Apple Inc.’s (“Apple”) Licensed Application End User License Agreement (see, <https://www.apple.com/legal/internet-services/itunes/dev/stdeula> (“Apple EULA”)), which are considered Additional Terms. In the event of any inconsistency between the terms of this Agreement and the terms of the Apple EULA, the terms of the Apple EULA shall prevail. If you are using the FieldView Services through mobile application software on an Apple device, including any iPhone, iPod touch or iPad devices (“Apple App”), you further acknowledge and agree you may use the Apple App on any Apple device you own or control and as permitted by the Usage Rules set forth in the Apple App Store Terms of Service. This Agreement is between you and Climate only, not with Apple, and Apple is not responsible for the Apple App or FieldView Services. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Apple App. In the event of any failure of the Apple App to conform to any applicable warranty, you may notify Apple and Apple will refund any applicable purchase price for the Apple App to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation whatsoever with respect to the Apple App. Climate (and not Apple) is responsible for addressing any claims by you or any third party relating to the Apple App or your possession and/or use of the Apple App, including: (1) product liability claims; (2) any claim that the Apple App fails to conform to any applicable legal or regulatory requirement; and (3) claims arising under consumer protection or similar legislation. In the event of a third party claim that the Apple App and/or your possession and use of the Apple App infringes that third party’s intellectual property rights, Climate (and not Apple) is responsible for the investigation, defense, settlement and discharge of any such claim to the extent any such obligation exists. Apple, and Apple’s subsidiaries, are third party beneficiaries of this Agreement, and upon your acceptance of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary of this Agreement solely with respect to this paragraph. You represent and warrant that (1) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (2) you are not listed on any U.S. Government list of prohibited or restricted parties.
- 2.3 **Third Party Content and Services:** The FieldView Services may enable access to and use of, third-party software, services, and/or websites, that interact with the FieldView Services, and when applicable, subject to those third-parties’ terms and conditions (collectively and individually, “Third Party Services”). You agree to use the Third Party Services at your own risk. Climate is not responsible for examining or evaluating the content or accuracy of any Third Party Services, and shall not be liable to you for any loss or injury arising out of or caused, in whole or in part, by your use of any such Third Party Services. Data displayed by the FieldView Services that originates from any Third Party Services (“Third Party Content”) is for general informational purposes only and is not guaranteed by Climate. You agree not to use the Third Party Services or Third Party Content in any manner that is inconsistent with the terms of this Agreement or that infringes the intellectual property rights any third party. You agree not to use the Third Party Services to harass, abuse, stalk, threaten or defame any person or entity, and that Climate and the third party service provider are not responsible for any such use. Third Party Services and Third Party Content may not be available in all languages or in your Service Territory, and may not be appropriate or

available for use in any particular location. To the extent you choose to use Third Party Services, you are solely responsible for compliance with all applicable laws. Climate reserves the right to change, suspend, remove, disable or impose access restrictions or limits on any Third Party Services at any time without notice or liability to you.

- 2.4 **Software Upgrades:** Climate and its applicable third-party licensors have the unrestricted right, but not the obligation, to provide Climate Software and third-party software upgrades, updates, or supplements (such as, but not limited to adding or removing features or updating security components) at any time. We will use reasonable efforts to notify you of any changes we make to the Climate Software, though this may not always be possible. You must install or use the most recent version of the Climate Software and abide by any additional requirements. An update may result in a change, or discontinuation, of features of the Climate Software. Although unlikely, software upgrades, updates, or supplements could reset your Climate equipment and erase saved preferences or stored content.
- 2.5 **Commercial Items:** The Climate Software and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States.
- 2.6 **Digital Millennium Copyright Act:** We comply with the provisions of the Digital Millennium Copyright Act applicable to Internet service providers (17 U.S.C. 512, as amended). We encourage you to read our Digital Millennium Copyright Act Policy at <https://climate.com/legal/digital-millennium-copyright-act>

### 3. EQUIPMENT

- 3.1 **Lease of Equipment:** Climate may make available certain equipment (such as a Climate FieldView Drive, in-cab monitor, etc.) for use in conjunction with the Services ("Climate Equipment"). Certain Climate Equipment provided to you, including the FieldView Drive, is leased, not sold, to you by Climate, regardless of whether the Climate Equipment is provided free of charge or for a fee. You agree that you will use the Climate Equipment only for its intended use, and not for any other purpose.
- 3.2 **Maintenance and Repair:** Climate will provide support for Climate Equipment in accordance with the applicable written product warranty that accompanied the Climate Equipment at time of delivery. The provisions of Section 6.8 of this Agreement shall apply to all Climate Equipment except as otherwise specified in any such written product warranty accompanying the Climate Equipment at the time of delivery. You agree to use appropriate and reasonable care in maintaining and using any and all Climate Equipment. If the Climate Equipment is damaged due to your intentional acts, negligence, or any use inconsistent with these terms of Service, as determined by Climate, you will be responsible for the price of repair or replacement. You understand that repair or replacement of the Climate Equipment may delete stored content, reset personal settings or otherwise alter the Climate Equipment.
- 3.3 **Monitoring of Equipment:** Climate reserves the right to manage and monitor the status and use of Climate Equipment during the time you are a Climate customer. Neither you nor a third party may change, interfere with, or block Climate's access to the Climate Equipment data or settings. If any of your data is generated or transmitted by or through any third party equipment, hardware or software products and you submit a product support request to us that relates to such third party equipment, hardware or software product, then we may share your data with the provider of such equipment, hardware or software product as we deem reasonably necessary to resolve that product support request, provided that such provider agrees not to use or disclose your data other than to resolve that product support request. If you do not want us to share your data with the provider of any of your third party equipment, hardware or software products, Users in the U.S. and Canada, please notify us by calling Customer Support at (888) 924-7475 during regular business hours, or by sending an e-mail to [support@climate.com](mailto:support@climate.com), or by sending a written notice to us as set forth in Section 6.10 below. Users in other Service Territories, see Appendix 1 for contact details. Please note that not allowing us to share your data with the provider may prevent Climate or the provider from troubleshooting and resolving your issue effectively.
- 3.4 **Return of equipment:** Upon termination of FieldView Services, for whatever reason, if requested by Climate, you must return all Climate Equipment undamaged within 21 calendar days in the manner set forth in the product guide that accompanies the Climate Equipment. If the equipment is not returned to Climate within 21 calendar days, or it is returned damaged, you will be charged for the value of the equipment, less any payment you previously made for the equipment.

No refunds will be made for any returned equipment. In addition to termination of service, these return equipment provisions apply if your existing Climate Equipment is replaced or upgraded for any reason.

#### 4. DATA

- 4.1 **Customer Farm Data and Feedback:** Some FieldView Services may require you or your authorized users to upload, input, transmit, store or otherwise make available to Climate information about your farm operation, such as your field locations, maps or boundaries, recorded environmental, weather or climatic conditions, agronomic practices, crop losses, crop yields, field images, field notes and other information relating to your farm operation ("Customer Farm Data"). You may not be able to use certain features of the FieldView Services if you do not provide this information. As between you and Climate, you own all Customer Farm Data. To the extent permitted by applicable law, you grant us a non-exclusive license to access, use, reproduce, display, modify, and prepare derivative works based on your Customer Farm Data in order to provide the FieldView Services and related support to you, for our internal operations and research and development purposes, and for other purposes set forth in this Agreement. If you submit feedback or suggestions about FieldView Services, we may use your feedback or suggestions without obligation to you.
- 4.2 **Climate Generated Works:** We own any works we generate ("Climate Generated Works"), including data, tools, analyses, results, estimates, prescriptions, recommendations and other information generated, published, displayed, transmitted or made available to you in or by the FieldView Services, except for your personal data, Customer Farm Data, or Third Party Content, whether or not the Climate Generated Works are related to personal data, Customer Farm Data or Third Party Content. Climate Generated Works include "Aggregated or Anonymized Information," which is information that has been aggregated or anonymized such that it is not personally identifiable to you by a person using reasonable skills. Aggregated or Anonymized Information is not considered Customer Farm Data. **It is our policy not to use Customer Farm Data or Aggregated or Anonymized Information derived from Customer Farm Data to make speculative commodities trades, other than hedging we may do during the normal course of business to manage risks associated with our own seed/commodity production operations.**
- 4.3 **Sharing Data with other Climate FieldView Users and Platform Partners:** Climate allows you to share certain information, including Customer Farm Data and Climate Generated Works, with other Climate FieldView users, such as your agronomist or sales representative, within the FieldView Services, or to share certain information with third parties who are Climate Platform Partners by linking your Climate FieldView account to an account with the Platform Partner. Selecting to share your information and data with other Climate FieldView Users authorizes Climate to share your information with such users within the FieldView Services environment. Linking your Climate FieldView account and an account with one or more of our Platform Partners authorizes Climate to share your information with such Platform Partners and enables them to download a copy of your information to the Platform Partner's own system. The terms of service applicable to your account with the Platform Partner and the Platform Partner's privacy policies will govern their processing and use of any information you share with them by linking your FieldView and a Platform Partner account. **Only share your information within FieldView with FieldView users you trust. Sharing your information with other FieldView users may enable them to share your information with Platform Partners and others outside of FieldView without seeking further authorization from you. Climate FieldView users and Platform Partners with whom you share your information are not agents or representatives of, or processors for, Climate. Climate is not responsible for their actions in relation to your information. Further data privacy relevant information with regard to sharing personal data with other Climate FieldView Users and Platform Partners is available in Climate's Privacy Statement.** If you proactively choose to share your information with other Climate FieldView users or Platform Partners, you can provide or revoke such access in your account settings, or by calling Climate Customer Support. Users in the U.S. and Canada, call at (888) 924-7475 during regular business hours, or by sending an e-mail to support@climate.com or by sending a written notice to us as set forth in Section 6.10 below. Users in other Service Territories, see Appendix 1 for contact details.

#### 5. TERM AND TERMINATION

- 5.1 **Term of Agreement:** This Agreement is effective until terminated by you or Climate. Your rights under this Agreement will terminate automatically if you fail to comply with any of its terms.
- 5.2 **Cancelling Orders and Closing your FieldView Account:** You may cancel an order for a fee-based FieldView Service and/or close your FieldView Account at any time with notice to us by cancelling an order or your FieldView Account in your account settings, or users in the U.S. and Canada, by calling Climate Customer Support at (888) 924-7475 during regular business hours, or by sending an e-mail to support@climate.com or by sending a written notice to us as set forth in Section 6.10 below. Users in other Service Territories, see Appendix 1 for contact details. If an order with respect to any

FieldView Services in cancelled or terminated, then your right to use or access such FieldView Services will be terminated immediately, and you must immediately stop using such FieldView Services. If you cancel an order for a fee-based FieldView Service within 30 days from the applicable order date, we will refund amounts already paid by you with respect to that order. If you cancel an order for a fee-based service more than 30 days from the applicable order date, then you will be responsible for all subscription fees with respect to that order and will not be entitled to any credits or refunds as a result of such termination for prepaid but unused FieldView Services. Any such cancellation will automatically terminate this Agreement but only with respect to the FieldView Service associated with that order, and subject to any survival provisions in this Agreement.

Closing your FieldView Account cancels all orders for FieldView Services and terminates this Agreement, subject to any survival provisions in this Agreement. If you close your Fieldview Account, we will de-activate your account. We reserve the right in our sole discretion (without any duty to do so), to keep your Account Information and Customer Farm Data intact for a reasonable period of time to facilitate reactivation, unless you request that we delete your Account.

- 5.3 **Account Deletion Requests:** You may request that we close and permanently delete your account by contacting the Climate Director of Data Privacy using the form or at the address provided in our Privacy Statement. If you terminate your service and request that we delete your FieldView Account, we will handle your personal data and other Customer Farm Data you provide to us in accordance with our Privacy Statement.
- 5.4 **Termination for Breach:** Either you or Climate may terminate this Agreement if the other party materially breaches this Agreement. If you terminate this Agreement because of a breach by Climate, we will refund amounts already paid by you for any active subscriptions or orders at the time of termination. If Climate terminates this Agreement because of a breach by you, you will be responsible for all subscription fees for any active subscriptions or orders at the time of termination and will not be entitled to any credits or refunds as a result of such termination for prepaid but unused FieldView Services.
- 5.5 **Additional Termination Rights:** We may terminate this Agreement with respect to any FieldView Services with or without cause upon written notice to you. For example, we may terminate this Agreement if: (i) we no longer offer the FieldView Service; (ii) you do not pay your applicable amounts on time; (iii) your continued use of the FieldView Services violates the terms of this Agreement or any applicable law or regulation; or (iv) we believe that your account has been accessed without your authorization. If we terminate this Agreement other than for cause, we will refund amounts already paid by you for any active subscriptions or orders at the time of termination.
- 5.6 **Survival.** The rights granted to Climate pursuant to Section 4 and any other obligations of the parties under this Agreement which, by their nature, would continue beyond the termination, cancellation, suspension, or expiration of this Agreement shall survive termination, cancellation, suspension, or expiration of this Agreement.

## 6. MISCELLANEOUS

- 6.1 **Compliance with Law and Export Controls:** You agree to use all FieldView Services strictly in accordance with all applicable laws. You may not use or otherwise export or re-export the FieldView Services, including, but not limited to Climate Software, Climate Equipment, and Climate Generated Works, except as authorized by United States law and the laws of the applicable Service Territory. In particular, but without limitation, FieldView Services, including, but not limited to Climate Software, Climate Equipment, and Climate Generated Works may not be exported or re-exported (a) into any U.S.-embargoed countries or (b) to anyone on the U.S. Treasury Department's Specially Designated Nationals List or the U.S. Department of Commerce Denied Persons List or Entity List or to anyone on any comparable list published by any EU/EEA or Swiss authorities if breaching the European Union Regulation (EC) No. 428/2009 and/or breaching the Swiss Goods Control Act (GCA) and comparable laws and regulations of other countries. By using the FieldView Services, you represent and warrant that you are not located in any such country or included on any such list. You also agree that you will not use these products for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture, or production of nuclear, missile, or chemical or biological weapons. You will not request, from Climate, information or documentation for the purpose of: support, giving effect to or complying with a boycott of any country in contravention of the laws or policies of the United States, including, but not limited to, the Arab League boycott of Israel. Climate expressly rejects any such request and will report receipt of any such made requests to the relevant U.S. government office, as required by law.
- 6.2 **Force Majeure:** Except for payment obligations, neither you nor Climate will be in breach of this Agreement or responsible for damages caused by delay or failure to perform any of its obligations under this Agreement due to circumstances beyond the control of the claiming party.

- 6.3 **Governing Law:** Users in the U.S., this Agreement and all conduct, disputes and causes of action arising out of or relating to this Agreement will be governed by and construed in accordance with the laws of the State of Missouri and the laws of the United States applicable therein (without regard to rules regarding conflicts of laws, which shall be disregarded in their entirety). Users in other Service Territories please see Section 6.7 for applicable governing law. The Uniform Computer Information Transactions Act and the UN Convention on Contracts for the International Sale of Goods are explicitly disclaimed.
- 6.4 **Binding Arbitration For Certain U.S. Claims:** If (a) you are a U.S. citizen; (b) you reside in the U.S.; (c) you are accessing the FieldView Service from the U.S., then you and Climate agree that every claim, action or dispute made or asserted by you against Climate or its Affiliates arising out of or related to this Agreement (each a "Claim") must be resolved by binding arbitration. The foregoing requirement to arbitrate specifically excludes any Claim involving the infringement, validity, or enforceability of a patent or that otherwise arises under the U.S. patent laws. As a condition precedent to asserting any Claim, you must provide notice to Climate by sending a written notice to us as set forth in Section 6.10 below. After you provide that notice, you may request in writing that the parties engage in good faith negotiations, which the parties will undertake within 30 days after Climate's receipt of the request. In the event that a claim is not resolved within the 30 days, or after 30 days following your service of notice of a Claim if you do not request negotiations, any party may initiate arbitration pursuant to the provisions of the Federal Arbitration Act, 9 U.S.C. Sec 1 et seq. and administered under the Commercial Dispute Resolution Procedures established by the American Arbitration Association ("AAA"). **YOU MAY ONLY BRING A CLAIM IN ARBITRATION IN YOUR INDIVIDUAL CAPACITY AND WAIVE ANY RIGHT TO DO SO AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OR PUTATIVE CLASS.** The arbitration hearing shall be conducted in the capital city of the state of your residence or in any other place as the parties decide by mutual agreement. You and Climate shall each pay one half of the AAA filing fee and one half of AAA's administrative and arbitrator fees as those fees are incurred. The arbitrator(s) shall have the power to apportion the ultimate responsibility for all AAA fees in the final award. The arbitration proceedings and results are to remain confidential and are not to be disclosed without the written agreement of all parties, except to the extent necessary to effectuate the decision or award or as otherwise required by law.
- 6.5 **Jurisdiction and Venue for Other U.S. Claims:** FOR ALL CLAIMS AND DISPUTES ARISING OUT OF OR CONNECTED IN ANY WAY WITH THIS AGREEMENT AND/OR THE USE OF THE FIELDVIEW SERVICES THAT ARE NOT SUBJECT TO ARBITRATION IN ACCORDANCE WITH SECTION 6.4 OF THIS AGREEMENT, THE PARTIES CONSENT TO THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE OF THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION FOR FEDERAL CLAIMS, AND THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS, MISSOURI FOR ALL OTHER CLAIMS, (ANY LAWSUIT MUST BE FILED IN ST. LOUIS, MO). THE PARTIES WAIVE ANY OBJECTION TO VENUE IN THE EASTERN DIVISION OF THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, INCLUDING THOSE BASED, IN WHOLE OR IN PART, ON THE DIVISIONAL VENUE LOCAL RULE(S) OF THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI. THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION PURSUANT TO THE PROVISIONS OF THE FEDERAL ARBITRATION ACT, 9 U.S.C. §1 ET SEQ., WHICH MAY BE ENFORCED BY THE PARTIES. THE PARTIES SPECIFICALLY AGREE THAT THIS SECTION COVERS CLAIMS AGAINST CLIMATE AND ANY CURRENT OR FUTURE U.S.-BASED AFFILIATES OF CLIMATE.
- 6.6 **No Class Actions:** YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND CLIMATE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION. YOU AND CLIMATE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER PARTY ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT INVOLVING ANY SUCH DISPUTE.
- 6.7 **Non-US Claims:** Notwithstanding the foregoing, if (a) you are not a U.S. citizen; (b) you do not reside in the U.S.; (c) you are not accessing the FieldView Services from the U.S.; and (d) you are a citizen of one of the countries in one of the Service Territories identified in Appendix 1, you hereby agree that any dispute or claim arising from this Agreement shall be governed by the applicable law set forth in Appendix 1, without regard to any conflict of law provisions, and you hereby irrevocably submit to the non-exclusive jurisdiction of the courts located in the state, province or country identified in Appendix 1 whose law governs. Climate may nevertheless bring claims in other courts of competent jurisdiction, including without limitation in the country in which you have a registered office or for individuals registered residence. UN Convention on Contracts for the International Sale of Goods are explicitly disclaimed.

- 6.8 **Limited Warranties and Disclaimers:** We do not promise that your use of the FieldView Services will be uninterrupted or that the FieldView Services or Climate Generated Works will meet your requirements, be accurate or be error-free. **YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE FIELDVIEW SERVICES AND ANY CLIMATE EQUIPMENT OR CLIMATE SOFTWARE OR CLIMATE GENERATED WORKS IS AT YOUR SOLE RISK. EXCEPT AS SPECIFIED IN SECTION 3.2, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FIELDVIEW SERVICES, CLIMATE SOFTWARE, CLIMATE EQUIPMENT, AND CLIMATE GENERATED WORKS PERFORMED OR PROVIDED BY CLIMATE OR ITS AFFILIATES ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND CLIMATE AND ITS AFFILIATES HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE FIELDVIEW SERVICES, CLIMATE SOFTWARE, CLIMATE EQUIPMENT, AND CLIMATE GENERATED WORKS, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND OF NONINFRINGEMENT OF THIRD-PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CLIMATE OR ITS AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE CLIMATE EQUIPMENT PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION. 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.**
- 6.9 **Limitation of Liability and Indemnity:** Use of the FieldView Services and Climate Generated Works is at your sole risk. In no event shall Climate's total liability to you for any damages (other than as may be required by applicable law in cases involving personal injury) in excess of the amount you actually paid to Climate for such FieldView Services during the 12 months prior to the date on which the relevant claim arises. The foregoing limitations will apply even if the above stated remedy fails of its essential purpose. **You agree to indemnify, defend, and hold harmless Climate and its Affiliates, and each of their respective employees, officers, directors, shareholders, agents, successors, licensors and subcontractors, from and against any claim, liability, damage, loss, or expense, including reasonable attorneys' fees, arising out of or connected with: i) your use of, the FieldView Services, Climate Software, Climate Equipment, or Climate Generated Works; ii) your violation of any portion of this Agreement; and iii) any dispute or issue between you and any third party. TO THE MAXIMUM EXTENT PERMITTED BY LAW, CLIMATE, ITS AFFILIATES, AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUBCONTRACTORS SHALL NOT BE LIABLE FOR PERSONAL INJURY OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR USE OF OR INABILITY TO USE THE FIELDVIEW SERVICES, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE) AND EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR PERSONAL INJURY, OR OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO YOU.**
- 6.10 **Notices:** Notices by either Party in connection with FieldView Services may be provided by electronic or physical mail. The receiving party will be deemed to have received such notice upon delivery or transmission or, in the case of mail, 48 hours after mailing. By installing, downloading, activating or using a Climate Product, you expressly consent and agree that all notices, including without limitation all commercial communications by either Party in connection with FieldView Services, Climate Equipment, Climate Software, Generated Data and this Agreement, may be provided electronically to your primary e-mail address provided in your FieldView Account. **It is your responsibility to keep your Account Information up to date so that we can communicate with you electronically.** For users in the U.S., any legal notice required to be given to Climate must be sent to: The Climate Corporation, Attn: Chief Legal Officer, City Place 4, St Louis, Missouri, 63141 or by e-mail to: [legal@climate.com](mailto:legal@climate.com). Users in other Service Territories, see Appendix 1 for contact details. If we send a notice to your primary e-mail address on file and your primary e-mail address on file is incorrect, out of date, blocked by your service provider, or you are otherwise unable to receive electronic communications, we will be deemed to have provided the notice to you. If electronic notices sent to you by us are returned because of an invalid e-mail address, we may deactivate your account, in which case you will not be able to use your account until you update your Account Information and provide a valid, working e-mail address for you. You may change your primary e-mail address at any time in your account settings or by sending an e-mail message to us at [support@climate.com](mailto:support@climate.com), and in the body of such request, state your previous e-mail address and your new e-mail address.
- 6.11 **Amendments:** Climate may modify this Agreement at any time. Any changes to the Terms of Service will become effective when we post them on our website at <https://climate.com/fieldview-terms-of-service>. Your use of FieldView Services following these changes constitutes your acceptance of the revised Terms of Service. If you do not agree to the revised



Terms of Service, you must stop using the FieldView Services immediately and you may notify us to request a pro-rated refund for unused services.

**6.12 Assignment:** You may not assign or transfer this Agreement or any rights or obligations under it (by assignment, operation of law or otherwise) without the prior written approval of Climate. Any attempted assignment or transfer of this Agreement to any person shall be deemed to be void *ab initio* and of no force or effect. Any breach of this provision shall constitute a material breach of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and permitted assigns.

**6.13 Languages:** This Agreement is available in several other languages, each having the same meaning. In case of any discrepancy between any of these versions, the English language version shall prevail, to the maximum extent permitted by applicable law. Canada users: Both parties declare that they have requested and do hereby confirm their request that this Agreement and related documents be in English. *Les parties déclarent qu'elles ont exigé et par les présentes confirment leur demande que le présent contrat ainsi que les documents qui s'y rattachent, soient rédigés en anglaise.*

**6.14 Entire Agreement:** This Agreement, including the applicable Privacy Statement and any Additional Terms, constitutes the entire agreement between the parties. Headings are for convenience only. In the event of any discrepancy between the terms of this Agreement and the terms of any Additional Terms, the Additional Terms shall govern. This Agreement does not create an association, partnership, joint venture, trust, agency or other relationship between the parties. This Agreement is non-exclusive. No waiver by either party of any breach by the other party of any of the terms of this Agreement shall be construed as a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement. If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the remainder of this Agreement will remain in full force and effect.

**6.15 Electronic Signature.** Your installation, downloading, activation or use of the FieldView Services and internet sites for ordering such FieldView Services includes the capacity and ability to enter into agreements and/or to make transactions electronically. YOU ACKNOWLEDGE THAT SINCE YOU ARE A PROFESSIONAL, YOUR ELECTRONIC SUBMISSIONS CONSTITUTE YOUR AGREEMENT AND INTENT TO BE BOUND BY SUCH AGREEMENTS AND TO PAY FOR SUCH TRANSACTIONS. YOUR AGREEMENT AND INTENT TO BE BOUND BY ELECTRONIC SUBMISSIONS APPLIES TO ALL RECORDS RELATING TO ALL TRANSACTIONS YOU ENTER INTO RELATING TO YOUR FIELDVIEW SERVICES, INCLUDING NOTICES OF CANCELLATION, POLICIES, CONTRACTS, AND APPLICATIONS, SUBJECT TO YOUR RIGHT TO WITHDRAW CONSENT TO RECEIVE NOTICES ELECTRONICALLY AS PROVIDED IN THIS AGREEMENT. In order to access and retain your electronic records, you may be required to have certain hardware and software, which are your sole responsibility.

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## Climate FieldView™ Terms of Service

### APPENDIX 1

These Climate FieldView Terms of Service apply to the Service Territories listed below. Different terms of service or End User License Agreement terms may apply to use of Fieldview Services in Service Territories not listed in this Appendix 1, please see your local Climate FieldView website for applicable terms.

The Terms of Service constitute a legal agreement between you and the Climate Contracting Entity indicated in the table below for the applicable Service Territory. The applicable Service Territory is determined based upon the Service Territory indicated in the table below in which your service address is located when you create your FieldView Account.

For some Service Territories, Additional Terms may apply. Please click on the link below for your Service Territory to review any Additional Terms applicable in your Service Territory. In the event of any conflict between the terms set forth in the Climate FieldView Terms of Service and any of the Additional Terms applicable to your Service Territory, the Additional Terms applicable to your Service Territory shall govern.

Service Territory	Climate Contracting Entity/ Legal Notice Address	Additional Terms	Applicable Privacy Statement	Support
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United States	The Climate Corporation Attn: Chief Legal Officer City Place 4 St Louis, Missouri, 63141 legal@climate.com	(not applicable)	<a href="#">Privacy Statement</a>	1-888-924-7475 <a href="mailto:support@climate.com">support@climate.com</a>
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**Non-US Claims:** In accordance with Section 6.7, if (a) you are not a U.S. citizen; (b) you do not reside in the U.S.; (c) you are not accessing the FieldView Services from the U.S.; and (d) you are a citizen of one of the countries identified below, you hereby agree that any dispute or claim arising from this Agreement shall be governed by the applicable law set forth below, without regard to any conflict of law provisions, and you hereby irrevocably submit to the non-exclusive jurisdiction of the courts located in the state, province or country identified below whose law governs.

[Not applicable at this time]

Climate may nevertheless bring claims in other courts of competent jurisdiction, including without limitation in the country in which you have a registered office or for individuals registered residence. UN Convention on Contracts for the International Sale of Goods are explicitly disclaimed.