

## GENERAL TERMS AND CONDITIONS OF CLIMATEPARTNER LLC

### 1. Scope and Validity

1.1 These General Terms and Conditions ("GTC") govern the conclusion, content and termination of contracts for the provision of services ("Services") by ClimatePartner LLC, a Delaware limited liability company ("ClimatePartner").

1.2 These GTC are deemed to be accepted if a customer ("Customer") of the Services, orders from ClimatePartner and reference is made to them in an Offer, as defined herein, order confirmation ("Order Confirmation"), upon acceptance of Services, through online purchase, or any other separate contractual agreement, whichever occurs first. All Orders, as defined herein, related to any of the foregoing shall be subject to these GTC unless otherwise provided by ClimatePartner. Any terms and conditions or similar instruments of the Customer are explicitly excluded.

1.3 These GTC, together with all relevant documentation such as proposals, offers, estimates or quotations (including referenced documents) (collectively, an "Offer") from ClimatePartner, and all accepted orders placed by the Customer for the Services, through a written instrument, electronically, website or other process (an "Order") along with any other order specific ClimatePartner terms and conditions and other relevant documents, as determined by ClimatePartner, constitute the contract ("Contract") between ClimatePartner and the Customer (collectively, the "Parties" and each individually a "Party"). The application of these GTC may only be varied by agreement in writing between the Parties.

1.4 In the event the Parties enter into a separate agreement to stipulate the terms of an agreement, unless otherwise stated therein, such an instrument shall take precedent over these GTC.

1.5 For Orders placed through ClimatePartner's website, any uncompleted processes may be stored for up to thirty (30) days. Notwithstanding the foregoing, ClimatePartner reserves the right to delete any uncompleted processes on its website at any time.

### 2. Offer and Order

2.1 Offers made by ClimatePartner are, unless stated otherwise in such documents, subject to these GTC.

2.2 An Offer submitted by ClimatePartner, which is not binding but rather an invitation for the Customer to place an Order, is valid during the period specified therein, or otherwise determined by ClimatePartner. The Offer may be subject to

amendment or alteration at any time by ClimatePartner prior to ClimatePartner's acceptance of an Order.

2.3 Any drawings, plans, measurements, proposals or property provided by ClimatePartner as part of or related to an Offer or information which is generally accessible, including any press releases or advertisements shall be solely for illustration purposes, and in no way constitute binding terms, and unless otherwise set forth in writing remains the exclusive property of ClimatePartner, which, if applicable, are to be promptly returned upon request.

2.4 If an Order alters or deviates from the corresponding Offer or the Order Confirmation provided by ClimatePartner, the terms of an Order Confirmation applies, unless the Customer objects, in writing, to ClimatePartner within two (2) business days of the Customer's receipt thereof. Any alteration or deviation by Customer shall not binding until and unless ClimatePartner confirms the new terms in writing. ClimatePartner's silence shall not be deemed to be acceptance of any altered terms.

2.5 An Order placed by the Customer becomes a Contract only upon its acceptance by ClimatePartner. ClimatePartner's acceptance of any Order lodged by the Customer may be in writing or by ClimatePartner performing the Services which are the subject of an Order. However, any terms and conditions contained in any Order or other document issued by the Customer will not form part of the Contract unless they are expressly accepted by ClimatePartner in writing.

2.6 If Customer issues an Order on behalf of a third party, ClimatePartner may perform the Services for such a third party; provided that any and all rights and obligations related thereto will remain with the Customer.

2.7 Once accepted by ClimatePartner, Orders may not be cancelled or varied by the Customer without the prior written consent of ClimatePartner.

2.8 ClimatePartner reserves the right to correct any errors or omissions in its Offers, Order Confirmations or invoices.

2.9 Customer shall bear all costs associated with the cancellation or modification of an Order.

### 3. Provision of Services

3.1 Subject to Customer's full compliance with the terms hereof, ClimatePartner agrees to perform the Services.

3.2 Customer shall cooperate with ClimatePartner in all matters relating to the Services and provide such access to Customer's physical and virtual premises as may reasonably be requested by ClimatePartner, for the purposes of performing the Services. In the event of a physical access, Customer shall ensure the safety of ClimatePartner's personnel.

3.3 Customer shall respond promptly to any ClimatePartner request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for ClimatePartner to perform Services in accordance with the requirements of the Contract.

3.4 Customer shall provide such materials or information as ClimatePartner may request to carry out the Services in a timely manner and ensure that such materials or information are complete and accurate in all respects. By submission to ClimatePartner, Customer represents and warrants that provided materials and information are true and correct.

3.5 ClimatePartner will use reasonable endeavors to meet any set date, but such date or time is a bona fide estimate only and is not to be construed as a fixed date or time unless specifically agreed to by ClimatePartner in writing.

3.6 ClimatePartner reserves the right to sub-contract all or any portion of the performance of the Services thereof to any other person in its sole discretion. In such case, ClimatePartner remains responsible to the Customer for the performance of Services by such third party.

3.7 Upon request, Customer shall confirm in writing in the form determined by ClimatePartner, the work performed during a particular time period.

3.8 In addition to any fees for the Services, Customer shall also pay for any and all expenses incurred by ClimatePartner and/or its employees in connection with or arising out of the Services.

3.9 If ClimatePartner determines, at its sole discretion, that the provision of Services will have detrimental effects on its operations or otherwise, ClimatePartner may suspend any Order. Should Customer fail to cure any of its concerns, ClimatePartner may, in addition to any other remedies available, including but not limited to Section 13, terminate any and all Order(s).

3.10 ClimatePartner may from time to time and at its sole discretion implement reasonable changes to the Services, including but not limited to updates or other alterations to the Software, as defined herein; provided that if these changes materially affect the requirements and/or specifications agreed upon by

the Parties, ClimatePartner shall provide written notice to Customer.

#### **4. SaaS Service**

4.1 Subject to Customer's adherence to terms hereof as set forth in Section 3.1, ClimatePartner agrees to grant Customer a revocable, non-exclusive, non-sublicensable, non-transferable right to access and use certain interface as software-as-a-service (the "Software") until expiration or termination of the Contract. The specific scope of the Software and provided Services related thereto are set forth in an Offer and/or Order Confirmation.

4.2 Without negating any other applicable restrictions, the rights granted regarding the Software and performance of Services is limited to authorized users and for Customer's internal utilization. Any access to the Software shall occur only in authorized means, such as through a designated browser or mobile application.

4.3 ClimatePartner hereby grants to Customer a revocable, non-exclusive, non-sublicensable, non-transferable license to use any instructions and other documentation as long as access to the Software remain valid, solely for Customer's internal business purposes in connection with its use of the Software. The Customer shall refrain from and cause its personnel to refrain from distributing or other make publicly available the documentation or instructions for use.

4.4 The Customer must at its sole cost ensure ability to receive the Services, including but not limited to any hardware and software, and maintain adequate security measures for its IT infrastructure. Any delays, costs or damages resulting from the Customer failing to meet the requirements of the Software or being unfamiliar therewith are the sole responsibility of the Customer. If unsure about compliance herewith, Customer shall promptly contact ClimatePartner.

4.5 Any customized or other specific implementation of the Software are subject to a separate written agreement.

4.6 ClimatePartner does not warrant uninterrupted access to the Software. Subject to the foregoing limitation and terms and conditions of the Contract, ClimatePartner will use commercially reasonable efforts to make the Software available continuously, excluding unavailability as a result of any of the Exceptions, as defined herein. Without providing any warranty, uninterrupted access to the Software shall be deemed to have occurred in the event of unavailability, excluding Exceptions, of five (5) full business days (one hundred twenty (120)

hours) or less. For the purpose of these GTC, the following are "Exceptions" to the availability set forth in the preceding sentence, and neither the Software will be considered unavailable nor any failure be deemed to occur in connection with any failure to meet the availability or impaired ability of Customer or its authorized users to access or use the Software that is due, in whole or in part, to any: (a) act or omission by Customer or any authorized user; (b) Customer's or its authorized user's Internet connectivity; (c) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by ClimatePartner; (d) scheduled maintenance or other regular processes of ClimatePartner; (e) any disruption caused by an event outside of ClimatePartner's control; or (f) disabling, suspension, or termination of the Services.

4.7 ClimatePartner may, at its sole discretion, extend and further develop the functional scope of the Software. ClimatePartner reserves the right to offer extensions and/or further developments only against payment of an additional fee. If the Customer books an extension or further development for a fee through a separate written agreement, these GTC apply. Any development or additional features provided on a free of charge basis will be provided as a courtesy subject to the applicable terms hereof, yet without any warranty or right of expectation for certain performance levels or otherwise.

4.8 Customer shall not and shall not permit any other person or entity to, access or use the Software, Services or provided documentation except as expressly permitted hereby and, in the case of third-party documentation, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not: (a) copy, modify, or create derivative works or improvements of the Software, Services or provided documentation; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software or provided documentation to any person or entity; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software, Services or provided documentation, in whole or in part; (d) bypass or breach any security device or protection used by the Software, Services or provided documentation; (e) input, upload, transmit, or otherwise provide to or through the Software any information or materials that are unlawful or injurious, or contain, transmit, or activate any

harmful code; (f) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Software or Services, in whole or in part; (g) remove, delete, alter, or obscure any trademarks, documentation, or disclaimers, or any other aspect of the Software; (h) access or use the Software, Services or provided documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right, as defined herein, or other right of any third party, or that violates any applicable laws, including but not limited integration into other systems or frameworks; (i) access or use the Software, Services or provided documentation for purposes of competitive analysis, the development, provision, or use of a competing software service or product or any other purpose that is to the ClimatePartner's detriment or commercial disadvantage; (j) otherwise access or use the Software, Services or provided documentation beyond the scope of the authorization granted hereunder.

4.9 ClimatePartner may, directly or indirectly, and by use of a disabling device or any other lawful means, suspend, block, terminate, or otherwise deny Customer's, any authorized user's, or any other person's access to or use of all or any part of the Software, Services or provided documentation, without incurring any resulting obligation or liability, if: (a) ClimatePartner receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires ClimatePartner to do so; (b) ClimatePartner believes, in its sole discretion, that: (i) Customer or any authorized user has failed to comply with any term hereof; or (ii) Customer or any authorized user is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities; or (c) there are indications that third parties have otherwise gained access to the Software provided to the Customer; (d) technical reasons; (e) the Customer is more than two (2) weeks in delay with the payment of the agreed fees; (f) the Customer has provided incorrect or invalid contact information and communication between ClimatePartner and the Customer is no longer possible; or (g) the Customer has deposited incorrect payment data and regular fulfillment of the Customer's performance obligations is not ensured.

## **5. CO<sub>2</sub> Offset Services**

5.1 Subject to the terms hereof, ClimatePartner may offer certain services for the offset of CO<sub>2</sub> to a Customer (the "CO<sub>2</sub> Offset").

5.2 Performance of CO<sub>2</sub> Offset services is subject to certain prerequisites, as determined by ClimatePartner, including but not limited to minimum order one (1) kilogram (kg) of CO<sub>2</sub>. If requirements are not met, ClimatePartner may change an Order to meet the requirements or issue a rejection.

5.3 For the purpose of these GTC, "CO<sub>2</sub> Certificates" are verifiable emission reductions from verified climate protection projects, as determined by ClimatePartner.

5.4 ClimatePartner will perform the CO<sub>2</sub> Offset service by means of selection, purchase, accounting and contractual decommissioning of CO<sub>2</sub> Certificates from recognized climate protection projects for the Customer. ClimatePartner will ensure that a sufficient quota of suitable emission certificates is available for contractually agreed CO<sub>2</sub> Offset. Unless the Customer has provided more detailed specifications for the selection of CO<sub>2</sub> Certificates, ClimatePartner will determine suitable projects at its sole discretion.

5.5 Emission reduction credits issued for a CO<sub>2</sub> Offset are to be utilized and classified as allowed by applicable laws. Any utilized CO<sub>2</sub> Certificate will be retired by ClimatePartner. Upon retirement, no further transfer or other usage of a CO<sub>2</sub> Certificate.

5.6 ClimatePartner will inform a Customer of a retirement of a CO<sub>2</sub> Offset. No other rights are granted related to a CO<sub>2</sub> Offset or CO<sub>2</sub> Certificate.

5.7 ClimatePartner receives, manages, retires and take any other actions regard all CO<sub>2</sub> Certificates. To the extent applicable CO<sub>2</sub> Certificates are registered with an applicable agency, in a registry or other formal means, as determined by ClimatePartner.

5.8 Without affecting the limitations under Section 14, ClimatePartner provides the CO<sub>2</sub> Offset services without any representation or warranties. For avoidance of doubt, Customer (a) acknowledges that CO<sub>2</sub> Certificates may not be permanently available or used for intended purposes, and (b) agrees to provide true and correct information required or requested for the CO<sub>2</sub> Offset services. Customer shall be solely liable for any damages or cost arising from incorrect, incomplete or otherwise insufficient provided information.

5.9 If chosen CO<sub>2</sub> Certificates are unavailable, ClimatePartner reserves the right to utilize comparable project(s) for the CO<sub>2</sub> Offset.

5.10 Customer may only utilize climate-neutral and other labels related to the CO<sub>2</sub> Offset upon prior written approval by ClimatePartner.

5.11 Unless otherwise agreed to in writing, full retirement or other utilization of CO<sub>2</sub> Certificates is subject to Customer's full payment for relevant amounts to ClimatePartner.

5.12 As CO<sub>2</sub> Certificates are based on third party projects, ClimatePartner disclaims any liability relating thereto. Due to ClimatePartner having no influence of such third party project, ClimatePartner acknowledges that ClimatePartner shall not be responsible for any damages arising therefrom and covenants not to assert claims against ClimatePartner related thereto.

5.13 Any statements or other communication related to projects, third parties and corresponding documentation by ClimatePartner or its personnel shall not be construed as consulting or assessment of the validity thereof, and are only provided as a courtesy for informational purposes.

## **6. Customer Obligations**

6.1 The Customer shall keep login data to the Software in a safe place and may only make them accessible to authorized users. The Customer shall ensure any authorized user is to handle the login data confidentially and to inform ClimatePartner immediately if there is any suspicion that the login data may have become known to unauthorized person or entity.

6.2 The Customer shall perform regular back-ups and be responsible for all risks related to data processing, storage and its systems related to usage of the Software and receipt of Services.

6.3 The Customer grants ClimatePartner a non-exclusive right of use, unrestricted in time and place, to all content and raw data that the Customer transfers to ClimatePartner's servers in the context of the use of the Software, to use the content to the extent necessary to perform the Services and any other processes as ClimatePartner deems necessary. ClimatePartner is entitled to grant sublicenses for the performance of the Service. ClimatePartner is entitled to retain data and any other content of the Customer beyond the term of the Contract, as far as this is technically or legally necessary. In particular, ClimatePartner is authorized to keep backup copies of the content provided by the Customer and to temporarily or permanently store such information which is required for accounting, documentation and billing purposes.

6.4 ClimatePartner is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations hereunder.

## **7. Customer's Acts or Omissions**

If ClimatePartner's performance under the Contract is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, ClimatePartner shall not be in breach of its obligations or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

## **8. Remuneration**

8.1 Unless otherwise agreed to in writing or set forth in an Order Confirmation, the prices for the Services are in US Dollars and based on the then current ClimatePartner standards, excluding taxes, duties, levies or other costs.

8.2 In the event ClimatePartner expressly grants Customer the right to pay amounts under the Contract by check or another method, Customer shall be solely responsible for any fees arising therefrom.

8.3 In the event the Services to be performed at a later time, ClimatePartner reserves the right to adjust prices based on its then current standards or other internal policies.

8.4 If Customers requests Services in excess of those set forth in an Offer or Order Confirmation, ClimatePartner may reject such requests or charge for the Services at its then current prices.

8.5 Unless otherwise agreed to in writing, Customer shall be solely responsible for all of ClimatePartner's and/or its employee's cost arising out of or relating to the performance of Services, including but not limited to travel, meals and lodging.

8.6 Any supplemental services, such as support and maintenance are subject to ClimatePartner's then current prices.

## **9. Taxes**

The Customer shall be responsible for payment of all taxes, including sales and use tax, inventory tax, duties, fees or other taxes of any nature assessed by governmental authorities applicable to the performance of Services hereunder.

## **10. Terms of Payment**

10.1 Unless otherwise agreed between the Parties, all payments are due in full, payable to ClimatePartner immediately upon receipt of an invoice, but in no event later than fifteen (15) days from the invoice date or the date when the Customer receives the invoices, whichever is earlier ("Due Date"). Notwithstanding the foregoing, ClimatePartner reserves the right to implement other payment methods, including but not limited to upfront or partial pre-payments, and cancel without notice any discounts, rebates and the like.

10.2 All payments must be received by the Due Date or at a specific date for alternative payment methods as set forth in Section 10.1, in each instance a form acceptable to ClimatePartner, even if the performance of Services is delayed for reasons for which ClimatePartner is not responsible or slight corrections are necessary. Payment shall only be deemed received if the outstanding funds are disposable by ClimatePartner.

10.3 Should the Customer fail to pay within the time frame specified in Section 10.1, ClimatePartner may:

(a) impose a service charge on the unpaid balance at one point five percent (1.5%) per month (i.e. eighteen percent (18%) per annum), or the maximum rate permitted by law, from the Due Date until the invoice and all service charges thereon have been paid in full. If allowed by applicable law, Customer shall also pay on demand any costs incurred by ClimatePartner (including reasonable attorneys' fees and legal expenses) in connection with the collection of any amounts due from Customer to ClimatePartner which are not paid as agreed herein;

(b) request prepayment of the entire amount due for all future Orders;

(c) demand any assurances or securities concerning Customer's ability to make all payments for the Contract;

(d) refuse any further performance until the amount due has been fully paid; and/or

(e) treat the failure of the Customer to make payments as a repudiation of the Contract by the Customer if the amount due remains unpaid after providing seven (7) days' notice to the Customer of such breach and an opportunity to rectify the breach. Such repudiation shall entitle ClimatePartner to elect, without prejudice to any other rights of ClimatePartner to terminate the Contract in whole or in part (including any Order or part thereof) and, in either case, to recover damages for the breach of the Contract.

10.4 Without limiting any other rights, ClimatePartner may utilize the remedies set forth under Section 10.3, in case the Customer's financial viability or credit worthiness is; (a) less stable than expected at the time of an Order Confirmation, (b) has substantially deteriorated, or (c) will likely deteriorate substantially in the near future.

10.5 The Customer is not entitled to withhold any payment as set off, counterclaim or retention unless the terms and conditions of such set off or retention are agreed to in writing by ClimatePartner prior to the performance of the Services, or upon written

acceptance of the relevant amounts by ClimatePartner.

10.6 Any claim for warranty or other issues shall not relieve a Customer from its payment obligations.

10.7 In case Customer has incurred any services charges, ClimatePartner, in its sole discretion, may credit any future payments first towards such charges as well as any other outstanding amount(s).

#### **11. Force Majeure**

11.1 ClimatePartner shall not be held responsible for failure to perform or delay in performing any of its contractual obligations if such failure or delay is due to unforeseeable events beyond ClimatePartner's reasonable control ("Force Majeure"), including but not limited to acts of God, war, insurrection, pandemics, epidemics, outbreak of an infectious disease in any relevant area, sabotage, labor disputes, strikes, lock-outs, shortages of labor, interruption or delays in transportation, fire, explosion, equipment or machinery breakdown, failure or delays of ClimatePartner's source of supply, shortage in material or energy, acts, orders or priorities of any government, embargo and any other cause whether arising from natural causes, human agency or anything beyond the reasonable control of ClimatePartner.

11.2 ClimatePartner shall notify the Customer in writing within one (1) week following the occurrence of any event of Force Majeure citing this Section 11 in said notice and shall supply all relevant information about its effects on the performance of the Contract.

11.3 Unless otherwise agreed in writing between the Parties, if ClimatePartner is unable to perform the Contract because of Force Majeure, ClimatePartner is temporarily excused from performance while the incident of Force Majeure is occurring and shall perform as soon as reasonably possible after the incident ends. The duration of the incident of Force Majeure shall be added to the time of performance granted to ClimatePartner. ClimatePartner shall not be subject to damage claims.

11.4 In case the duration of Force Majeure exceeds six (6) months, the Parties will have the right to terminate the Contract immediately. Contractual obligations performed up to such date of termination along any actually incurred expenses of ClimatePartner related to its performance hereunder shall be remunerated. If the purchase price has been paid by the Customer in full, ClimatePartner will refund the fees paid less the accrued cost and expenses of the contractual obligations.

#### **12. Place of performance**

Unless otherwise agreed in writing between the Parties, ClimatePartner's principal office is the place of performance.

#### **13. Termination**

13.1 In addition to any other remedies that ClimatePartner may have in law, ClimatePartner may terminate or suspend the Contract or any part thereof if the Customer:

(a) fails to pay any amount by the Due Date and such failure continues for fifteen (15) days after the Customer's receipt of a written notice demanding payment ("Notice of Demand") from ClimatePartner;

(b) has not otherwise performed or complied with any of the terms and conditions of this Contract in whole or in part; and/or

(c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors or otherwise deteriorates financially.

13.2 If the Contract (or parts thereof) is terminated, as specified in Section 13.1 of these GTC:

(a) ClimatePartner will have an immediate right to remove any provided property from relevant premises;

(b) Customer shall return or destroy any and all information provided by ClimatePartner; and

(c) all other outstanding amounts owed to ClimatePartner by the Customer as well as any costs arising out of damages from the return or retrieval of provided property shall be due and payable by the Customer on demand by ClimatePartner, per the terms of the Notice of Demand from ClimatePartner.

#### **14. Limited Warranty**

14.1 ClimatePartner represents, warrants, and covenants to Customer that ClimatePartner will use commercially reasonable efforts perform the Services using personnel of required skill and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services.

14.2 In the event of a defect materially interrupting the Services, Customer shall immediately inform ClimatePartner in writing.

14.3 If the Services are materially defective, as determined by ClimatePartner, ClimatePartner shall, at its sole discretion, within a reasonable period of time and upon receipt of a written notice of defect from the Customer, either remedy the defect or provide the Services again; provided that if the defect may be resolved by the Customer following guidance set forth in provided documentation, ClimatePartner may instruct the Customer accordingly. Regarding

third party software that ClimatePartner has licensed for use by the Customer, the remedy of defects shall consist of the procurement and installation of generally available upgrades, up-dates or patches.

14.4 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 14.1, THE SOFTWARE AND ALL SERVICES AND PROVIDED DOCUMENTATION, INCLUDING TRADEMARKS, AS DEFINED HEREIN, ARE PROVIDED "AS IS." CLIMATEPARTNER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, CLIMATEPARTNER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR PROVIDED MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

14.5 THIS SECTION 14 SETS FORTH CUSTOMER'S SOLE REMEDIES AND CLIMATEPARTNER'S SOLE LIABILITY AND OBLIGATION FOR ANY DEFECTS TO THE SERVICE.

**15. Limitation of Liability**

15.1 IN NO EVENT WILL CLIMATEPARTNER OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION HERewith UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY

OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

15.2 IN NO EVENT WILL THE AGGREGATE LIABILITY OF CLIMATEPARTNER ARISING OUT OF OR RELATED HERETO, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID TO CLIMATEPARTNER HEREUNDER DURING THE PRECEDING TWELVE (12) MONTHS, WHICHEVER IS LESS.

15.3 THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

**16. Indemnity**

Customer shall indemnify, defend, and hold harmless ClimatePartner and its and affiliates, and each of its and their respective managers, officers, directors, employees, agents, successors, and assigns from and against any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers from or relating to any action or claim by a third party arising out of, or are alleged to arise out of or result from: (a) any materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Customer or any authorized user, including ClimatePartner's compliance with any specifications or directions provided by or on behalf of Customer or any authorized user to the extent prepared without any contribution by ClimatePartner; (b) allegation of facts that, if true, would constitute Customer's breach hereof; or (c) negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any authorized user, or any third party on behalf of Customer or any authorized user, in connection herewith.

**17. Insurance**

Customer shall, at its sole expense, maintain and carry all customary insurance in full force and effect with insurance companies rated A- or better by a rating service. Upon ClimatePartner's request, Customer shall provide ClimatePartner with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in this Section 17. Customer shall provide ClimatePartner

with thirty (30) days' advance written notice in the event of a cancellation or material change in Customer's insurance policy. Except where prohibited by law, Customer shall require its insurer to waive all rights of subrogation against ClimatePartner's insurers and ClimatePartner.

#### **18. Intellectual Property Rights**

18.1 Except as explicitly set forth in these GTC, nothing herein grants any right, title, or interest in or to (including any license under) any intellectual property rights, which shall encompass any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, source code, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world ("Intellectual Property Rights") in or relating to, the Software, Services, and materials or other documentation of ClimatePartner or any third party, whether expressly, by implication, estoppel, or otherwise.

18.2 All right, title, and interest in and to the Software, Services, and materials or other documentation of ClimatePartner or any third party are and will remain with ClimatePartner and the respective rights holders in the third-party documentation.

18.3 If required, as determined by ClimatePartner, Customer is granted a non-exclusive, non-assignable, revocable and non-transferable right to use relevant Intellectual Property Rights for the agreed purpose in the Contract.

18.4 If ClimatePartner creates software or similar property in accordance with Customer's instructions, Customer shall ensure that such instructions and resulting software do not infringe on any third party rights. Customer shall be solely liable for any damages or other costs arising from a third party claim related to infringement of Intellectual Property Rights on software or other property created in accordance with Customer's or a designated third party's specifications or requests.

18.5 Customer shall not and shall cause its personnel to not remove or alter serial numbers displayed on any material containing Intellectual Property Rights provided hereunder.

#### **19. Trademarks**

19.1 Subject to the terms of an Offer and/or Order Confirmation, ClimatePartner may provide access to certain labels and other trademarks (collectively, the "Trademarks") to the Customer, and grant a revocable, non-exclusive, non-sublicensable,

non-transferable license to the Trademarks solely for the purposes of advertising and external communication related to a collaboration with ClimatePartner, as determined by ClimatePartner. The foregoing license shall be subject to content and territorial limitations as stipulated by ClimatePartner. ClimatePartner hereby reserves all rights not expressly granted to Customer hereunder.

19.2 If set forth in an Offer and/or Order Confirmation, Customer may attach relevant Trademarks to its products, packaging and related materials. Any usage of ClimatePartner's labels shall only be in the appropriate colors, which are to be presented to and approved by ClimatePartner prior to any usage. Without limiting the foregoing, Customer shall adhere to ClimatePartner's then current label guide or similar policies.

19.3 The use of certain labels, such as the climate-neutral label, shall be subject to specific requirements, including completion of a CO<sub>2</sub> Offset. Certain labels will be categorized with identification number. Subject to Customer's continued adherence to the terms of the Contract, third party designed by the Customer may utilize such an identification number in accordance with ClimatePartner's then current labeling requirements.

19.5 Any misleading labeling, batch labeling or other actions conflicting with ClimatePartner's policies and/or requirements shall be strictly prohibited.

19.6 Customer acknowledges that (a) ClimatePartner is the owner of the Trademarks and all goodwill related thereto, and (b) all use of the Trademarks and any goodwill accruing from such use will inure solely to ClimatePartner's benefit. If Customer acquires any rights in the Trademarks, by operation of law or otherwise, Customer hereby irrevocably assigns such rights to ClimatePartner without further action by any of the Parties. Customer shall not dispute or challenge, or assist any person or entity in disputing or challenging, ClimatePartner rights in and to the Trademarks or the Trademark's validity.

19.7 Customer shall not grant or attempt to grant a security interest in, or otherwise encumber, the Trademarks or record any such security interest or encumbrance against any application or registration regarding the mark in the United States Patent and Trademark Office or elsewhere.

19.8 Customer shall regularly, in the event less than one (1) time per year, provide a written overview and other requested information on usage of the Trademark to ClimatePartner.



19.9 Any rights granted hereunder shall automatically terminate upon expiration of the term set forth in Order Confirmation or earlier termination thereof. Upon termination of right, Customer shall immediately cease to use the Trademarks and material related thereto, including labels, and return any provided property bearing the Trademarks to ClimatePartner. Notwithstanding the foregoing, subject to continued adherence to applicable obligations, including but not limited to being climate neutral, as determined by ClimatePartner, Customer may continue to sell residual products bearing the Trademark for up to three (3) months following termination. During the foregoing period, upon request, Customer shall within forty-eight hours (48) upon request, provide satisfactory proof of required compliance to ClimatePartner.

19.10 Customer shall immediately notify ClimatePartner in writing with reasonable detail of any: (a) actual, suspected, or threatened infringement of the Trademarks, claim that the Trademarks is invalid, or opposition to the Trademarks; (b) actual, suspected, or threatened claim that use of the Trademarks infringes the rights of any third party; (c) person applying for, or granted, a registered trademark by reason of which that person may be, or has been, granted rights which conflict with any of the rights granted to Customer hereunder; or (d) other actual, suspected or threatened claim to which the Trademarks may be subject.

19.11 With respect to any of the matters listed in Section 19.10: (a) ClimatePartner has exclusive control over, and conduct of, all claims and proceedings; (b) Customer shall provide ClimatePartner with all assistance that ClimatePartner may reasonably require in the conduct of any claims or proceedings; and (c) ClimatePartner shall bear the cost of any proceedings and will be entitled to retain all sums recovered in any action for its own account.

## **20. Confidentiality**

20.1 Both Parties shall treat in strict confidence all information which is neither generally known nor generally accessible, including but not limited to illustrations, drawings, calculations and other documents, and shall use it only for the purpose of fulfilling the Contract. The Parties shall ensure the confidential treatment of all information relating to the Contract by their personnel and consulted specialists. In case of doubt, all information is to be treated confidentially.

20.2 Confidential information of a Party does not include information which:

- (a) was already known to the other Party, before it was made accessible by the disclosing Party;
  - (b) is or becomes generally known without the other Party's responsibility;
  - (c) was disclosed to the other Party by a third party without any transfer restriction;
  - (d) was developed by the other Party itself without using or referring to the confidential information of the protected Party; and/or
  - (e) has to be disclosed based on a legally binding decision of a court, administrative or other authority.
- In this case the Party under the obligation to disclose shall inform the other Party immediately about the decision and consider protective measures the other Party may want to implement.

20.3 This obligation of confidentiality already exists prior to the conclusion of the Contract and remains valid until such information is no longer of proprietary nature. Any information concerning a Party's trade secret shall be kept confidential as long as such information remains protected by applicable law.

20.4 A Party must not disclose any confidential information to a third party without the prior written approval of the other Party to the Contract. If the approval is given, the obligations of confidentiality are to be transferred to the receiving third party.

20.5 Notwithstanding Section 20.4 of these GTC, ClimatePartner may disclose confidential information to its affiliates and advisors (attorneys, auditors, experts).

## **21. Data Usage / Protection**

21.1 Customer shall provide to ClimatePartner all relevant information related to the Services and Software. Subject to any limitations pursuant to applicable law and to ensure compliance with the obligations set forth in the Contract, ClimatePartner may utilize as it sees fit any data provided by the Customer hereunder.

21.2 Customer agrees to carry out such steps as may be necessary to reasonably ensure adequate data protection, corresponding with respective applicable law.

## **22. Compliance**

22.1 The Customer agrees to comply with any and all applicable laws, regulations, ordinances, legal standards, and industry practices.

22.2 Without limiting the obligations under Section 22.1, Customer shall ensure any third party customer or other third party shall comply with all applicable laws, regulations, ordinances, legal

standards, and industry practices related to the Software and Services.

### **23. Miscellaneous**

23.1 Assignment. Customer shall not assign any of its rights under the Contract, except with the prior written consent of ClimatePartner. The preceding sentence applies to all assignments of rights, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law or any other manner. Any change of control transaction is deemed an assignment hereunder. Any purported assignment of rights in violation of this Section 23.1 is null and void.

23.2 Notices. With the exceptions for communication provided by ClimatePartner in its regular course of business, which may be transmitted with email or other electronic transmissions, all notices required or permitted by the Contract shall be in writing and shall be deemed to have been given (a) on the date of personal delivery to an officer of or personally to the other Party, or (b) the day following deposit when properly deposited for overnight delivery with a nationally recognized commercial overnight delivery service, prepaid, and addressed as provided in the Contract, unless and until either of such Parties notifies the other in accordance with this Section 23.2 of a change of address.

23.3 Waiver. No waiver by ClimatePartner of any of the provisions of the Contract is effective unless explicitly set forth in writing and signed by ClimatePartner. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Contract operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

23.4 Survival. Provisions of the GTC, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of the Contract, including but not limited to Section 15, 16, 18, 19, 20, 21, 22 and 23.

23.5 No-Third Party Beneficiaries. The Contract is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the GTC and/or Contract.

23.6 Governing Law and Dispute Resolution.

(a) Any claims, disputes or controversies arising between the Parties hereunder shall be governed by

and construed in accordance with the internal laws of the State of Delaware, without regard to conflicts of laws that would require the application of the laws of another jurisdiction.

(b) The Parties shall attempt to resolve any dispute, controversy, or claim arising under or relating to the Contract, or to a material breach, including its interpretation, performance, or termination. If no settlement is reached within a period of twenty (20) days after receipt of notice by a claiming Party, the Parties hereto shall submit the dispute to mediation on the terms and at a location determined by the Parties. If the Parties are unable to resolve a dispute through the methods outlined herein, either Party may refer the dispute to arbitration. The arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association, which shall administer the arbitration and act as appointing authority. The arbitration, including the rendering of the decision and/or award, shall take place in a location determined by the Parties, and shall be the exclusive forum for resolving the dispute, controversy, or claim. The arbitrator shall make the final determination as to any discovery disputes between the Parties. The award or decision of the arbitrator shall state the reasons upon which the award or decision is based and shall be final and binding upon the Parties. The prevailing party shall be entitled to compensation for the expense of the arbitration, including, but not limited to, the award of reasonable attorneys' fees, at the discretion of the arbitrator. Both Parties waive their right to any appeal under any system of law. The award shall be enforceable before any court of competent jurisdiction upon the application to such court by either Party. The arbitrator shall have no authority to award any of the types of damages excluded by hereunder and shall be so instructed by the Parties.

(c) Notwithstanding anything to the contrary herein, any Party may seek injunctive relief against the other Party with any court of proper jurisdiction with respect to any and all preliminary injunctive or restraining procedures pertaining to this Agreement or the breach of any relevant obligations, including but not limited to Sections 19 and 20.

23.7 Entire Agreement. The Contract contains the entire agreement between the Parties with respect to the performance of Services and supersedes all prior agreements and understandings between the Parties.

23.8 Independent Contractor. For the purpose of the Contract, ClimatePartner is an independent contractor and nothing in herein shall be deemed to

make ClimatePartner an agent, employee, partner, or joint venturer of Customer. Neither Party shall have any authority to bind, commit, or otherwise obligate the other Party in any manner whatsoever.

23.9 Severability. Should any provision of the GTC and/or Contract be deemed incomplete, legally invalid or unenforceable, such provision may be severed from the GTC and/or Contract and be replaced by as closely an equivalent effective provision as possible. The remaining terms of the GTC and/or Contract shall remain in full force and effect.

23.10 Amendments. The GTC may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of ClimatePartner.

[12/06/2021]