



## TERMS AND CONDITIONS

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### 1. SAAS SERVICES AND SUPPORT.

1.1 Subject to the terms of an Agreement, OpenField Co (“Company”) will use commercially reasonable efforts to provide Customer the Services in accordance with the Service Level Terms in the Agreement. As part of the registration process, Customer will identify an administrative user name and password for Customer’s Services account. Company reserves the right to refuse registration of, or cancel passwords it deems inappropriate.

1.2 Subject to the terms hereof, Company will provide Customer with reasonable technical support services.

### 2. RESTRICTIONS AND OBLIGATIONS.

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“Software”); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

2.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury, Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are “commercial items” and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be

prohibited except to the extent expressly permitted by the terms of this Agreement.

2.3 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company’s standard published policies then in effect (the “Policy”), which are incorporated herein by reference, and all applicable laws and regulations. Customer hereby agrees to indemnify, defend and hold harmless Company against any claims, damages, losses, liabilities, settlements and expenses, including costs and attorneys’ fees (collectively, “Damages”) in connection with any third party claim or action that arises from an alleged violation of the foregoing or otherwise from Customer’s use of Services. Although Company has no obligation to monitor Customer’s use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing, or any restrictions, laws or regulations of the United States.

2.4 Customer shall be responsible for obtaining and maintaining Internet connectivity, and any equipment and ancillary services needed to connect to, access or otherwise use the Services, including modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords, including administrative and user passwords and files, and for all uses of Customer account or the Equipment with or without Customer’s knowledge or consent. Customer hereby agrees to indemnify, defend and hold harmless Company against any Damages in connection with any third party claim or action that arises from Customer’s account.

### 3. CONFIDENTIALITY; PROPRIETARY RIGHTS.

3.1 Each Party (the “Receiving Party”) understands that the other Party (the “Disclosing Party”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “Proprietary Information” of the Disclosing Party). Proprietary Information of Company includes the terms of this Agreement and non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer

to Company to enable the provision of the Services (“Customer Data”). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by the Receiving Party prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 Customer shall own all right, title and interest in and to the Customer Data. Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing. Except as expressly stated herein, nothing herein assigns, or will be deemed to assign, a Party's ownership rights in its property.

3.3 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies including information concerning Customer Data and data derived therefrom), and Company will be free (during and after the Term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services, Software and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

#### 4. PAYMENT OF FEES.

4.1 Customer will pay Company the then applicable fees set forth in the Order Form for the Services and Implementation Services in accordance with the terms therein (collectively, the “Fees”). If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then current

renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

4.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of the Services. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

#### 5. TERM AND TERMINATION.

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the “Term”), unless either Party requests termination at least thirty (30) days prior to the end of the then-current term.

5.2 In addition to any other remedies it may have, either Party may also terminate this Agreement upon thirty (30) days' prior notice (or without notice in the case of nonpayment), if the other Party breaches any of the material terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. All sections of this Agreement which by their nature should survive termination will survive termination, including accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

#### 6. WARRANTY AND DISCLAIMER.

6.1 Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a reasonably professional manner. Services may be temporarily unavailable for scheduled maintenance, unscheduled emergency outages, and additional maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing, or verbally, of any scheduled service disruption.

6.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY, COMPANY DOES NOT WARRANT

THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

#### 7. INDEMNITY.

Company shall hold Customer harmless from liability to third parties resulting from infringement by the Service of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement. Company will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Company, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (a) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Service.

#### 8. LIMITATION OF LIABILITY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS INCLUDING ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND

CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### 9. DISPUTES.

Notwithstanding anything to the contrary of the agreement between the Company and Customer, the Superior Court of California of the County of Los Angeles and the U.S. District Court for the Central District of California, Western Division (whichever is more appropriate) shall have exclusive jurisdiction to interpret this Agreement, to hear and decide any suit, action or proceeding, and to settle any dispute between the Parties, which may arise out of or in connection with this Agreement, and for these purposes, each party irrevocably submits to the exclusive jurisdiction of such courts. Each party irrevocably and expressly waives any objection which it might at any time have to these courts being the exclusive forum or venue to hear and decide and to settle any such dispute and agrees not to claim that these courts are not a convenient or an appropriate forum or venue. To the maximum extent of the law, the parties waive any right to a trial by jury.

#### 10. MISCELLANEOUS.

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior, written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. All modifications must be in a writing signed by both Parties, except as otherwise provided

herein. The Parties are independent contractors. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the substantially prevailing Party will be entitled to recover costs and attorneys' fees from the other Party. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of Delaware without regard to its conflict of laws provisions. Any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement shall not apply to this Agreement. The headings of the Sections of this Agreement are for convenience only and shall not affect the meaning of any provision. Except as otherwise specified, references herein to "days" means calendar days. Any use of the term "including" and "include" in this Agreement shall be construed as if followed by the phrase "without limitation." This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement. The facsimile, email or other electronically delivered signatures of the Parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals.