

# CROPX

## CUSTOMER TERMS AND CONDITIONS

These Customer Terms and Conditions (these “**T&Cs**”) apply to all subscriptions to the CropX Service (as defined below) that you purchase (each a “**Subscription**”) and all Sensors (as defined below) that you purchase from Us. By completing the Order Form or a different purchase document and submitting it to Us (by which you subscribed to the CropX Service and/or purchased Sensors) (the “**Order Form**”), You agree to all the terms and conditions contained in these T&Cs.

Please read these T&Cs carefully. They govern your subscriptions and access to, and use of, the CropX Service and your purchase and use of Sensors. In order to access, subscribe to use, download, share or otherwise use any part of the CropX Service or use any software scripts provided by Us in order to make the CropX Service available or usable, you must accept these T&Cs and our Privacy Policy, which is available [here](#), both of which may be modified or otherwise changed by Us from time to time at Our discretion. Your continued use of the CropX Service and Your Sensors (as defined below) will be deemed acceptance to any such amended or updated T&Cs and Privacy Policy. If you do not agree to any of the terms or conditions contained in these T&Cs, You should not use the CropX Service or any Sensors.

### **Article I – Definitions**

The following terms shall have the following meanings:

“**Affiliate**” means with respect to any Person, any Person which, directly or indirectly, controls, is controlled by or is under common control with such Person, including, without limitation any parent, subsidiary, equityholder, officer, director, member, employee, representative or agent of such Person. For the purposes of this definition, “**control**” shall mean the ability, directly or indirectly, to direct the activities of the relevant Person.

“**Aggregated Data**” means: (a) Your Farm Data that We collect, use and may disclose on an anonymous, non-identifiable and aggregated basis only; and (b) the Output Service Data that We generate, compile, use and may disclose on an anonymous, non-identifiable and aggregated basis only.

“**Applicable Law**” means all local, state, national and international laws, statutes, rules and regulations applicable to You and Us in connection with the Agreement, as applicable.

“**Business Day**” means any day other than Saturday and any legal holiday on which national banks are not open for general business.

“**CropX Service**” means Our adaptive software services which optimize and automatize farm management, including irrigation, fertilization and spraying, and include Our Software, Our proprietary technology, Our Hardware, Our App and Sensors.

“**Intellectual Property Rights**” means all right, title and interest to a Person’s: (a) patents, patent applications, patent disclosures and all related continuations, continuations-in-part, divisionals, reissues, reexaminations, utility models, certificates of invention and design patents, registrations and applications for registrations; (b) trademarks, service marks, trade dress (including the look and feel of Our App), internet domain names, logos, trade names and corporate names and registrations and applications for registration thereof; (c) copyrights and registrations and applications for registration thereof; (d) computer software, data and documentation; (e) inventions, trade secrets and confidential business information, whether patentable or nonpatentable and whether or not reduced to practice, know-how, processes and techniques, formulae, algorithms, research and development information, copyrightable works, financial, marketing and business data, pricing and cost information, business and marketing plans and strategies and customer and supplier lists and information; (f) other proprietary rights relating to any of the foregoing (including remedies against infringements thereof and rights of protection of interest therein

under the laws of all jurisdictions); and (g) copies and tangible embodiments thereof.

“**Our App**” means our mobile software application which You must download onto Your Device in order to receive the CropX Service.

“**Our Hardware**” means any computer hardware owned or leased by Us and that is utilized in connection with the CropX Service, if any.

“**Our Software**” means any computer software owned or licensed by Us and that is utilized in connection with the CropX Service.

“**Output Service Data**” means the data and/or information that we transmit to You in connection with the CropX Service via Our App or otherwise. For purposes of clarification, Output Service Data does not include Your Farm Data.

“**Parties**” means You and Us.

“**Person**” means any individual or entity.

“**Sensors**” means Our cellular soil moisture sensors that You must purchase in order to receive the CropX Service.

“**Taxes and Charges**” means all: (1) sales, use, value-added and other taxes (other than taxes based on Our income), and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, fees, duties, and charges and any related penalties and interest, arising from: (a) the provision of the CropX Service to You under the Agreement; or (b) the sale of Sensors to You under the Agreement; and (2) all shipping charges that are incurred in shipping Your Sensors (as defined below) to You.

“**Us**”, “**We**”, “**Our**” or the “**Company**” means CropX Technologies Ltd.

“**Your Device**” means any computer or mobile device onto which You download Our App.

“**Your General Characteristics Data**” means all personally-identifiable information data which We collect about You which may include, without limitation, Your: (a) first and last name; (b) credit card information; (c) billing address; (d) shipping address; (e) phone number; and (f) email address.

“**Your Farm Data**” means all data concerning Your farm or fields which is collected by Your Sensors or otherwise and transmitted to Our App.

“**Your Representatives**” means Your and Your Affiliates’ authorized employees, agents and representatives.

### **Article II – Your Purchase of Sensors; Warranty; Return**

2.1. **Your Purchase of Sensors.** By completing the Order Form and submitting it to Us, You have agreed to: (i) purchase the number of Sensors that You have indicated on the Order Form (“**Your Sensors**”); and (ii) allow Us to charge the purchase price of Your Sensors plus applicable Taxes and Charges (“**Your Sensors Purchase Price**”). We will not ship any Sensors to You until you have paid in full Your Sensors Purchase Price plus applicable Taxes and Charges for the Sensors that you purchase.

2.2. **Title and Risk of Loss.** Title to Your Sensors will only pass to You upon payment in full of Your Sensor Purchase Price. All shipments of Sensors from Us to You are DAP (Incoterms 2010) to Your Notice Address (as you have indicated it in the Order Form) (“**Your Address**”) - this means that risk of damage or loss relating to Your Sensors remains with Us until Your Sensors arrive at Your Address.

2.3. **Limited Warranty; Exclusions.** Upon Your payment in full of Your Sensors Purchase Price and Our delivery to You of Your Sensors, we warrant to You that for a period of the earlier of: (a) 24 months following the delivery of Your Sensors to You; or (b) the

expiration or termination of Your Subscription to the CropX Service (the "**Limited Warranty Period**"), Your Sensors will operate in accordance with the written specifications for the Sensors (the "**Sensor Specifications**") located [here](#) (the "**Limited Warranty**"). The Limited Warranty does not apply in the event that any part of Your Sensors (including any of Our Software therein) have been: (i) used other than in accordance with these T&Cs, the Sensor Specifications or other written operating instructions provided by Us or Our agents to You; (ii) modified, repaired, serviced, maintained or altered by anyone other than Us or one of Our authorized agents without Our prior written approval in each instance; (iii) combined with or installed on/with operating systems, hardware or other equipment that do not constitute Our Hardware or Our Software or are authorized by Us; (iv) used or installed not in accordance with the Sensor Specifications; (v) damaged by causes beyond Our reasonable control; or (vi) sold or transferred to any Person other than You. The Limited Warranty extends only to You and does not extend to any other Person. EXCEPT FOR THE LIMITED WARRANTY, YOUR SENSORS ARE PROVIDED WITHOUT ANY WARRANTY OR CONDITION WHATSOEVER, AND WE EXPRESSLY DISCLAIM ALL OTHER IMPLIED OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT WARRANT THAT YOUR SENSORS WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF YOUR SENSORS WILL BE UNINTERRUPTED OR ERROR-FREE.

**2.4 Warranty Claims.** Our sole obligation and Your exclusive remedy for any failure of Your Sensors to conform to the Limited Warranty is the repair or replacement, at Our discretion, of Your Sensors such that they shall conform with the Sensor Specifications. If You believe that Your Sensors do not conform with the Sensor Specifications during the Limited Warranty Period, please contact Us at [support@cropx.com](mailto:support@cropx.com). If You are entitled to have Your Sensors repaired or replaced by Us during the Limited Warranty Period under the Limited Warranty, then We shall pay for any applicable shipping charges necessary for: (a) You to return Your Sensors to Us; and (b) for Us to ship repaired or replacement Sensors to You ("**Your Replacement Sensors**"). If You are not entitled to have Your Sensors repaired or replaced by Us during the Limited Warranty Period under the Limited Warranty, but You ship Your Sensors to Us anyway, then You shall be responsible for all shipping charges associated with: (i) Your shipping of Your Sensors to Us; and (ii) Our shipping of Your Sensors back to You. If We replace Your Sensors pursuant to the Limited Warranty, Your Replacement Sensors will be: (x) covered by the Limited Warranty only for the remainder of the Limited Warranty Period that was applicable to Your (original) Sensors; and (y) shall be considered Your Sensors under these T&Cs.

### **Article III - Your Subscription to the CropX Service**

**3.1 Subscription Generally; Term and Renewal.** Your Subscription to the CropX Service shall: (a) begin on the Effective Date (as indicated in the Order Form); and (b) expire upon the one (1) year anniversary of the Effective Date (or after a longer period indicated in the Order Form), unless earlier terminated pursuant to the other provisions of this Article III, or automatically renew if indicated in the Order Form (collectively, the "**Term**"). Please note that: (i) Unless indicated otherwise in the Order Form, Your Subscription to the CropX Service does not automatically renew and Your access to the CropX Service will cease immediately at the end of the Term if the Re-Subscription Procedures (as defined below) have not been completed; and (ii) if You re-subscribe to the CropX Service you will be deemed to have agreed to the version of our T&Cs and Privacy Policy that are effective on the date of Your re-subscription. If You want to renew Your Subscription to the CropX Service after the end of the Term: (x) You should contact [support@cropx.com](mailto:support@cropx.com); and (y) We will charge you for the full amount for the CropX Service that you subscribe for plus any applicable Taxes and Charges (collectively, the "**Re-Subscription Procedures**").

**3.2. Termination for Cause.** If You materially breach any provision of the Agreement, then We shall give written notice to You of such breach (which written notice shall describe, in reasonable detail, the alleged breach). If such breach(es) cannot be cured, then, at Our sole discretion, Your Subscription to the CropX Service shall terminate immediately upon the delivery of such notice. If such

breach(es) can be cured, but remain(s) uncured more than thirty (30) calendar days after receipt of such written notice by You, then, at Our sole discretion, We may terminate Your Subscription to the CropX Service at any time after the conclusion of such thirty (30) calendar day cure period by written notice to You. If We terminate Your Subscription to the CropX Service: (a) Your access to the CropX Service will terminate immediately upon such termination; and (b) unless otherwise required by Applicable Law, You will not receive any refund for any of Your Sensors or any portion of Your Subscription Fee.

**3.3 Effect of Termination.** Upon expiration or termination of your Subscription to the CropX Service, all rights and obligations of You and Us shall immediately terminate. Notwithstanding the foregoing, the provisions of Articles VII, VIII, IX and X of these T&Cs shall survive any expiration or termination of Your Subscription, the Term and the Agreement.

### **Article IV - Our Obligations; Upgrades/Maintenance; Your Obligations**

#### **4.1. Our Obligations; Upgrades and Maintenance.**

(a) If You have any questions, comments and/or complaints about the CropX Service or Your Sensors during the Term, please contact Us at [support@cropx.com](mailto:support@cropx.com).

(b) We agree that during the Term we will provide the CropX Service to You in accordance with the terms of the Agreement and as specified in the Order Form.

(c) We agree that during the Term and for a period of 24 months after the expiration or termination of the Term (the "**Open Account Period**"), we will maintain an account for You ("**Your CropX Account**") with an independent "cloud" storage provider (an "**Account Storage Provider**"). Your CropX Account will contain: (i) Your Farm Data; and (ii) the Output Service Data. During the Open Account Period, You will be able to access Your CropX Account, view the data contained in it and download such data to Your Devices. Please note that although We will endeavor to select an Account Storage Provider that maintains commercially reasonable security protections: (x) We will not control the security of Your CropX Account; (y) We cannot guaranty the security of Your CropX Account; and (z) We will not be responsible for any unauthorized access or use of any information contained in Your CropX Account.

(d) Notwithstanding anything in the Agreement to the contrary, We agree that although we may use and disclose Your Farm Data and the Output Service Data on an anonymous, non-identifiable, aggregated basis, we will not: (i) disclose to any third Person any of Your Farm Data, Your General Characteristics Data or the Output Service Data in any manner which identifies You or Your farm; or (ii) use Your Farm Data, Your General Characteristics Data or the Output Service Data for unlawful or anti-competitive activities (such as using such data to speculate in commodities markets).

(e) You acknowledge that: (i) We may, but are not obligated to, modify, update and/or upgrade the CropX Service and/or perform maintenance to the CropX Service; (ii) when and if We modify, update and/or upgrade and/or perform maintenance, the CropX Service may be unavailable for a period of time; and (iii) in no event will We be liable to You, any of Your Affiliates or any third Person for any unavailability of the CropX Service caused by modifications of, updates and/or upgrades to and/or maintenance performed to the CropX Service. You acknowledge that your failure to accept, download and install such modifications, updates and/or upgrades may adversely affect Your use of and access to CropX Service and/or Our App.

#### **4.2. Your Obligations.** You agree:

(a) to use the CropX Service and Your Sensors in compliance with all terms and conditions of the Agreement and these T&Cs;

(b) to give Us access to Your Farm Data and Your General Characteristics Data as is necessary for Us to provide the CropX Service;

- (c) to maintain in compliance with their specifications all of Your Devices, Your hardware and internet/mobile connections, necessary for Us to provide the CropX Service to You during the Term;
- (d) that You **will not**:
  - (i) interfere with or disrupt the CropX Service or networks connected to or comprising the CropX Service;
  - (ii) violate any Applicable Law in connection with the use of the CropX Service or Your Sensors;
  - (iii) reproduce, duplicate, copy, sell, resell, license, distribute or otherwise transfer any portion of the CropX Service and/or Your Sensors (including any content from Our App except for the Output Service Data), or allow the use of the CropX Service and/or Your Sensors by any third Person except for Your Representatives;
  - (iv) attempt to disable or circumvent any security or access control mechanism used by or associated with the CropX Service;
  - (v) attempt to gain unauthorized access to the CropX Service, or use the CropX Service for any unauthorized or unintended purpose;
  - (vi) harvest or otherwise collect information about Our other customers who use the CropX Service;
  - (vii) modify or enhance the CropX Service or Your Sensors without our express prior written consent; or
  - (viii) use the CropX Service in a manner that introduces any virus, corrupted data or other harmful, disruptive or destructive code or files (collectively, "**Harmful Code**") to or otherwise interferes with or disrupts, overloads or burdens the CropX Service, Our App, and/or Our Hardware and/or networks or those of Our service providers.

#### **Article V – Our App; Communications**

5.1. **Use of Our App.** If You Subscribe to the CropX Service and pay the Subscription Fee, We agree that You may install Our App on Your Devices. You agree to use the CropX Service (including Our App) only as authorized in these T&Cs and will instruct Your Representatives having access to the CropX Service to act accordingly. You agree that You shall be liable for any breach of Your obligations under these T&Cs by any of Your Representatives.

5.2. **Downloading of Our App and Setting Up Your CropX Account.** If You wish to Subscribe to and use the CropX Service, You must download Our App onto one of Your Devices and complete a registration process which will create Your CropX Account. By completing the registration process and creating Your CropX Account, You consent to receive messages and other content in connection with the CropX Service via email, text message or any other means, either through Our App or otherwise. You agree that You will provide Us with truthful and accurate information when setting up Your CropX Account and will keep such information up-to-date. You agree that You: (a) will not share Your CropX Account or login information with any third Person, nor let any third Person access Your CropX Account, except Your Representatives and as otherwise permitted by these T&Cs; (b) are responsible for maintaining the confidentiality of the login information for Your CropX Account; (c) will notify Us immediately at [support@cropx.com](mailto:support@cropx.com) if You know or suspect that Your CropX Account or CropX Account login information has been compromised or that Your CropX Account has been used without Your authorization; and (d) are fully and solely responsible for the security of Your Devices and all activity on Your CropX Account (except for activity initiated by Us).

5.3. **Links and Third Person Property.** Our App may contain links or other content related to websites, products and/or services offered by third Persons (the "**Third Person Property**"). We have no control

and make no representation with respect to any such Third Person Property or any information provided or transmitted via such Third Person Property, or otherwise provided by any such third Persons. YOU UNDERSTAND AND AGREE THAT USE OF SUCH LINKS AND THIRD PERSON PROPERTY IS AT YOUR OWN RISK, THAT SUCH LINKS AND THIRD PERSON PROPERTY ARE GOVERNED BY SUCH THIRD PERSONS' TERMS OF USE AND PRIVACY POLICIES, AND THAT WE ARE NOT RESPONSIBLE FOR THE PRIVACY OR BUSINESS PRACTICES OR OTHER POLICIES OF SUCH THIRD PERSONS. YOU SHOULD CAREFULLY REVIEW THE APPLICABLE TERMS AND POLICIES THAT APPLY TO ANY SUCH THIRD PERSONS. WE ARE NOT RESPONSIBLE OR LIABLE IN ANY MANNER FOR SUCH THIRD PERSONS, OR FOR ANY LOSS OR DAMAGE OF ANY SORT INCURRED BY YOU AS THE RESULT THEREOF, AND WE EXPRESSLY DISCLAIM, AND YOU EXPRESSLY RELEASE US FROM, ANY AND ALL LIABILITY WHATSOEVER FOR ANY CLAIM, LOSS AND/OR DAMAGE, ARISING FROM AND/OR IN ANY WAY RELATED TO SUCH THIRD PERSONS.

#### **5.4. Messaging and Communications.**

5.4.1. **Messaging Frequency:** By opting in to receive messages, You consent to receive recurring messages from Us. The frequency of these messages may vary depending on the CropX Services You are subscribed to (e.g., weekly, monthly, or as events or promotions arise).

5.4.2. **Potential Fees:** Standard messaging and data rates may apply depending on Your mobile carrier and plan. You are responsible for any charges incurred from receiving messages.

5.4.3. **Opt-In Method:** To opt-in to our messaging service, You must provide explicit consent by submitting your email through Our website, by signing a contract with Us, or providing Your email when opening a CropX account.

5.4.4. **Opt-Out Method:** You can opt out of receiving further messages at any time by replying with STOP. After opting out, you will no longer receive further messages unless You opt back in.

#### **Article VI – Additional Representations and Warranties**

6.1 **Power and Authority.** You represent and warrant that You have the full right and power to enter into and perform the Order Form and the Agreement, which constitute valid and binding obligations enforceable against You in accordance with their terms.

#### **Article VII – Ownership of Data; Licenses; Aggregated Data**

7.1 **Ownership of Your General Characteristics Data, Your Farm Data, the Output Service Data.** Subject to the licenses that You are providing to Us in Section 7.2 and the license that We are providing to You in Section 8.5: (a) We agree that You own all right, title and interest to the Output Service Data that We send to You through Our App, Your General Characteristics Data and Your Farm Data; and (b) You agree that We own all of the right, title and interest to the Aggregated Data and all other information, reports, notes, designs, drawings, documentation, flow charts, memoranda, and other data or materials prepared and/or produced in connection with our compilation and analysis of the Aggregated Data.

7.2 **Licenses Given by You to Us; Aggregated Data.** Notwithstanding the provisions of Section 7.1, You hereby grant to Us a limited, non-revocable, non-exclusive, perpetual, assignable, fully paid-up, royalty free, worldwide license to incorporate Your Farm Data and Output Service Data (on an anonymous and aggregated basis only) into the Aggregated Data (w) to modify and enhance the CropX Service that We provide to You; (x) to modify and enhance the CropX Service that We provide to Our other customers; (y) to develop, market, sell and license new product and service offerings; and (z) for sales and marketing purposes.

#### **Article VIII – Intellectual Property**

8.1 **Ownership.** You understand and agree that the CropX Service and all information, techniques, methodologies and materials provided by Us to You in connection with performing Our obligations under the Agreement, including, but not limited to, all of Our

Intellectual Property Rights and all modifications to, improvements of or derivatives thereof and all rights of ownership therein (collectively, "**Our Property Rights**") are Our sole and exclusive property. Except for the limited license granted pursuant to Section 8.5 below, You do not claim and agree to not: (a) assert or challenge, on Your behalf or on behalf of any third Person, or assist any third Person in asserting or challenging, Our ownership, now or in the future, with regard to any right, title or interest in or to any of Our Property Rights and/or the validity of Our Property Rights; or (b) sell, assign, attempt to assign or sublicense to any third Person any of Our Property Rights.

8.2 Further Assurances. You agree that upon Our written request and without further consideration, You shall execute and deliver such further instruments of transfer and assignment and take such other action as We may reasonably require to more effectively transfer, assign, and/or vest in, Us Our Property Rights and the Aggregated Data.

8.3 Trademarks. You agree that You shall not alter or remove from any of Our Software, Our App or Your Sensors any proprietary, copyright or trademark legend.

8.4 Reverse Engineering/Distribution. You agree that You shall not, and shall not allow Your Representatives to, decompile, reverse assemble or reverse engineer, or prepare any derivative works or translations of, any of Our App, Our Software, Our Property Rights or Your Sensors or any of the underlying code thereof or any part thereof.

8.5 License. During the Term only and subject to the provisions of the Agreement, We hereby grant to You a limited, revocable, non-exclusive, non-assignable, non-sublicensable, worldwide license to use the CropX Service for Your internal business purposes only, in compliance with the provisions of Section 4.2.

8.6 Know-How. Notwithstanding anything in this Agreement to the contrary, You acknowledge and agree that: (a) We are in the business of providing product and services based, in part, on the knowledge, experience and know-how We gain in providing products and services to customers; and (b) nothing shall be deemed to prohibit Us and/or Our personnel from using any general knowledge, ideas, concepts, processes, experience and know-how developed or created in the course of providing the CropX Service or Your Sensors to You and retained by Our personnel (collectively, "**Know-How**") in connection with: (i) the provision of products and services to other Persons; and/or (ii) the development of Our future products and services, and You shall have no ownership rights in such Know-How or in any Intellectual Property Rights created or derived from such Know-How.

8.7 Feedback. You agree that: (a) We shall be the exclusive owner of any feedback that You may provide to Us in respect of the CropX Service, any Sensors and/or Our business (the "**Feedback**"); and (b) Your provision of Feedback to Us does not give You any Intellectual Property Right or any other right, title, or interest in or to any software, hardware inventions, or other assets created by Us, even if such Feedback leads Us to create software, hardware, an invention, or other asset.

#### **Article IX – Indemnification; Limitation of Liability**

9.1 Indemnification by Us. We agree to defend, indemnify and hold You harmless from any and all claims, losses, damages, liabilities or expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "**Losses**") incurred by You and arising out of or in connection with a claim brought or instituted by a third Person (each a "**Third Person Claim**") alleging that the CropX Service and/or Your Sensors constitute an unauthorized use or infringement of any third Person's Intellectual Property Right. If the use of the CropX Service and/or Your Sensors are enjoined during the Term in connection with such Third Person Claim, We may, at Our expense: (a) procure for You the right to continue using the CropX Service and/or Your Sensors as set forth in the Agreement; (b) replace the CropX Service and/or Your Sensors with a non-infringing service and/or sensor of equivalent function and performance; or (c) modify the CropX Service and/or Your Sensors to be non-infringing, without detracting from function or performance. If We elect not to employ any of the options contained in the

previous sentence, We agree that the Term (and the Agreement) and Your Subscription to the CropX Service shall immediately terminate upon written notice and You agree to immediately cease using the CropX Sensors and Your Sensors upon receipt of such written notice. In such event, We shall repay to You an amount equal to the portion of the Subscription Fee that is attributable to the remainder of the Term (had it not been terminated).

9.2 Indemnification by You. You shall defend, indemnify and hold harmless Us and Our present and former directors, officers, equity owners, employees, representatives, agents, insurers and other Affiliates (collectively, "**Our Indemnified Persons**") from and against any Losses (collectively, "**Our Indemnified Claims**") resulting from or arising out of: (a) the negligent or intentional misuse of the CropX Service and/or Your Sensors by You or Your Representatives; (b) Your or any Your Representatives' noncompliance or alleged noncompliance with Applicable Law; or (c) Your or Your Representatives' breach of any provision of the Agreement (including any of Your representations, warranties and/or covenants).

9.3 Specific Limitations on Indemnification. You shall not be liable for any Losses of Our Indemnified Persons under this Article IX to the extent that such Losses are found in a final and binding arbitration award or a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of any of Our Indemnified Persons. We shall not be liable for any of Your Losses under this Article IX to the extent that such Losses are found in a final and binding arbitration award or a final non-appealable judgment by a court of competent jurisdiction to have resulted from: (a) the gross negligence or willful misconduct of You or any of Your Representatives; (b) the use of the CropX Service, or the use and/or installation of Your Sensors (as applicable), other than in accordance with these T&Cs, the Sensor Specifications or other written operating instructions provided by Us or Our agents to You; and/or (c) the combination of the CropX Service or Your Sensors with, or the installation of the CropX Service or Your Sensors on/with (as applicable), operating systems, software, hardware or other equipment that do not constitute Our Hardware or Our Software or which were not authorized by Us.

#### 9.4 Limitation of Liability.

(a) (I) EXCEPT AS SET FORTH IN SECTION 2.3, WE ARE PROVIDING NO WARRANTIES, EXPRESS OR IMPLIED, TO YOU REGARDING THE CROPX SERVICE AND YOUR SENSORS, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; (II) IN NO EVENT SHALL EACH PARTY OR ITS PRESENT AND FORMER AFFILIATES, MANAGERS, DIRECTORS, OFFICERS, EQUITYHOLDERS, EMPLOYEES, REPRESENTATIVES, AGENTS, INSURERS, SUPPLIERS, DISTRIBUTORS OR LICENSORS BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROPERTY OR EQUIPMENT, LOSS OF PROFITS, LOSS OF REVENUES, LOSS OF DATA, BUSINESS INTERRUPTION, DAMAGE TO BUSINESS REPUTATION, OR LOSS OF USE); EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) EXCEPT AS PROVIDED IN SECTIONS 2.4 AND 9.1, TO THE MAXIMUM EXTENT PROVIDED BY APPLICABLE LAW, THE MAXIMUM LIABILITY OF US AND OUR PRESENT AND FORMER AFFILIATES, MANAGERS, DIRECTORS, OFFICERS, EQUITYHOLDERS, EMPLOYEES, REPRESENTATIVES, AGENTS, INSURERS, SUPPLIERS, DISTRIBUTORS AND LICENSORS ARISING OUT OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE CREATION, LICENSE, SALE, SUPPLY OR USE OF THE CROPX SERVICE AND/OR YOUR SENSORS, WHETHER BASED UPON CONTRACT, TORT, TRADE PRACTICES OR OTHERWISE, SHALL NOT EXCEED THE FEES RECEIVED BY US FROM YOU DURING THE 180 CALENDAR DAYS PRECEDING THE DATE ON WHICH THE EVENTS GIVING RISE TO THE CLAIM IN QUESTION OCCURRED.

(c) You acknowledge and agree that: (i) the provision of the CropX Service is subject to many factors both within and outside



Our control; (ii) services such as the CropX Service are subject to outages and/or interruptions, including, but not limited to, internet, power, utility and mobile network outages and interruptions; and (iii) We only offer the use of the CropX Service when available. In light of the above, You acknowledge and agree that We shall not be liable to You, any of Your Affiliates or any third Person relating to any of the foregoing in any manner whatsoever.

(d) The limitations on liability and exclusion of certain damages contained in this Article IX shall apply regardless of the availability, success or effectiveness of other remedies. We and You understand and agree that the limitations of liability contained in the Agreement are reflected in the pricing of the subscriptions to the CropX Service and Your Sensors.

(e) You hereby covenant and agree that You shall not bring any suit, action, proceeding or alternative dispute resolution claim against Us or Our present and former managers, directors, officers, equity owners, employees, representatives, agents, insurers or Affiliates, for any reason whatsoever more than one (1) year after the related cause of action has accrued.

#### **Article X – Miscellaneous**

10.1 Publicity. You agree to not use Our name, logo or other trademarks, directly or indirectly, in any form of publicity, advertising or written reference without Our prior written consent.

10.2 Force Majeure. You agree that We will not be liable for any failures or delays resulting from circumstances or causes beyond Our reasonable control, including, without limitation, fire or other casualty, act of God, war or other violence, pandemic, or any law, order or requirement of any governmental agency or authority.

10.3 Entire Agreement/Amendment. The Agreement constitutes the entire agreement between Us and You and supersedes all prior or contemporaneous, oral or written, representations, understandings or agreements relating to the subject matter hereof. The Agreement, or any portion thereof, may only be amended in writing signed by the Parties.

10.4 Governing Law; Venue. The Agreement shall be governed by and construed in accordance with the internal laws of the State of Israel (without reference to the conflicts of law provisions thereof that would require the application of the law of any other jurisdiction). Any claim, action, suit or other proceeding initiated by either Us or You arising under or in connection with the Agreement may be asserted, brought, prosecuted and maintained only in a court of competent jurisdiction located in Tel-Aviv Jaffa (each a "Court") and We and You agree that neither of us shall object to the jurisdiction of any such Court based upon an argument of lack of jurisdiction, improper venue, forum non conveniens or any other grounds.

10.5 Waiver. No waiver of any obligation under this Agreement shall be valid unless in writing and signed by the Parties. No delay or omission by either Us or You in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either Us or You of any of the obligations to be performed by the other Party or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other obligation.

10.6 Successors and Assigns. The Agreement shall be binding upon and inure solely to the benefit of Us and You and both of our respective permitted successors and assigns, and nothing in the Agreement shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever as a third-party beneficiary under or by reason of the Agreement, except for those third Persons mentioned in Section 9.2.

10.7 Assignment. You may not assign or transfer the Agreement or any of Your rights or obligations under the Agreement to any third Person without Our prior written consent. Any attempt by You to assign or transfer the Agreement or such rights or obligations in violation of this Section 10.7 shall be void and of no force and effect. We may freely assign or transfer the Agreement or any of Our rights or obligations under the Agreement to any third Person without Your prior written consent.

10.8 Notices. Whenever under the Agreement We or You are required or permitted to give notice to the other, such notice shall be given in writing and shall be deemed to be given: (a) three Business Days after deposited with a nationally recognized overnight delivery service; (b) one Business Day after sending if sent by e-mail; or (c) the day of delivery if personally delivered with written evidence of such delivery, and, in any case, addressed to the Party's respective notice address located in the Order Form. Either You or We may change our respective addresses for notification purposes from time to time by giving the other Party prior written notice in accordance with this Section 10.8 of the new address and the date upon which it will become effective.

10.9 Conflicting Terms. The Parties understand and agree that: (a) the provisions of the Agreement will supersede any inconsistent provisions contained in any invoice, purchase order, quotation, confirmation, acceptance, acknowledgement or similar form; (b) all terms or conditions proposed in any Invoice, purchase order, quotation, confirmation, acceptance, acknowledgment or similar form which add to, vary from, or conflict with the provisions in the Agreement will be void; (c) any pre-printed terms in an Invoice, purchase order, quotation, confirmation, acceptance, acknowledgement or similar form will also be void; and (d) in the event of any conflict between the provisions of these T&Cs and the provisions of the Order Form, the provisions of the Order Form shall govern.

10.10 Severability. If any provision of the Agreement is held to be illegal, invalid or unenforceable under present or future Applicable Law while the Agreement or any provision of the Agreement remains in effect: (a) the legality, validity and enforceability of the remaining provisions of the Agreement will not be affected thereby so long as the economic or legal substance of the transactions contemplated by the Agreement is not affected in any manner materially adverse to either Party; and (b) You and We agree that the body making the determination of illegality, invalidity or unenforceability shall have the power to reduce the scope, duration and/or area of the provision, to delete specific words or phrases and to replace any illegal, invalid or unenforceable provision with a provision that is legal, valid and enforceable and that comes closest to expressing the intention of the illegal, invalid or unenforceable provision, and the Agreement shall be enforceable as so modified.