



## Terms and Conditions

These terms and conditions (this "Agreement") create a contract between you ("Buyer," "you" or "your") and Outpost Central Corporation, a California corporation doing business as Wildeye and Wildeye Enterprise ("Wildeye", "we", "us", "our").

### 1. INTRODUCTION TO OUR PRODUCTS AND SERVICES

Wildeye provides online monitoring services, which are comprised of certain hardware ("Hardware") and cloud-based website services (the "Hosted Services", and together with other services provided under this agreement, the "Services"). The Hardware reads/collects data from attached meters and sensors ("Sensors" and together with the Hardware, the "Products"). These Sensors are manufactured by third parties. The Hardware transmits the Sensor data, using a cellular wireless service, provided by third party operators ("Operators"), to the Hosted Service. The Hosted Service is sold on a subscription only basis ("Subscription").

This Agreement governs your use of the Products and Services provided by Wildeye under this Agreement.

THIS AGREEMENT TAKES EFFECT WHEN YOU CLICK THE ACCEPT BUTTON OR BY PURCHASING OR USING THE PRODUCTS OR SERVICES (the "Effective Date"). BY CLICKING ON THE ACCEPT BUTTON OR BY PURCHASING OR USING THE PRODUCTS OR SERVICES YOU (I) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (II) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT; AND (III) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS.

YOU SHOULD CAREFULLY READ THIS AGREEMENT BEFORE PURCHASING OR USING ANY PRODUCTS OR SERVICES. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT CLICK ON THE ACCEPT BUTTON OR PURCHASE OR USE THE PRODUCTS OR SERVICES. IF YOU DO NOT ACCEPT THESE TERMS, YOU MAY NOT PURCHASE OR USE THE SERVICES.

YOU AGREE TO THE ARBITRATION AGREEMENT AND CLASS ACTION WAIVER DESCRIBED IN SECTION 13.2 TO RESOLVE ANY DISPUTES WITH SELLER (EXCEPT FOR MATTERS THAT MAY BE TAKEN TO SMALL CLAIMS COURT).

### 2. USING OUR PRODUCTS AND SERVICES

#### 2.1 Hardware

When you purchase any Hardware, you understand and accept that the Hardware will only operate with an associated Subscription to the Hosted Service.

Hardware is designed to be waterproof and operate in harsh external environments, typically agricultural. You are responsible for ensuring that Hardware is not damaged or misused, either accidentally or deliberately. If the Hardware has been damaged or destroyed through misuse of any kind, it will not be covered under the below listed "Warranties" in Section 9.

Some Hardware units have internal batteries. These internal batteries cannot be changed by you. If you attempt to change the batteries, the Hardware warranty will be void as described in Section 9.2.

#### 2.2 Sensors

Wildeye uses, sells and installs Sensors manufactured by third parties.

In the case where you purchase the Sensors from Wildeye, Wildeye will assist you in obtaining third party manufacturer warranty assistance.

If you purchase any Sensors from a third party, and/or install the Sensors on its own or through a third party, Wildeye will not be responsible for the Sensors, their warranties or their compatibility with the

## 2.3 Cellular Radio Coverage

Wildeye does not have any control over the cellular coverage of the Operator that transmits the data from the Hardware to the Hosted Service.

The Hardware utilizes AT&T 3G or 4G mobile data technology to connect to the Hosted Service. You are responsible for ensuring that AT&T 3G or 4G capable mobile phone networks are available in the area that you wish to install the Hardware. You understand and accept that Wildeye relies on the Operator to provide and continue to provide 3G or 4G services in your area. Under no circumstances will Wildeye be held responsible or liable for any losses that may occur should the Operator decide to discontinue service to your area.

If within 30 days of a purchase of any Hardware, you notify Wildeye in writing that the cellular coverage in your area provided by the Operator is not adequate for the Hardware to operate, Wildeye, will, at its discretion, either:

- a. Send you a larger antenna, adequate for the Hardware to operate, free of charge;
- b. Send you a replacement Hardware device with a different cellular technology; or
- c. Refund to you the purchase price of the Hardware after you have returned the Hardware in its original condition (normal wear and tear excepted).

## 2.4 Hosted Service Subscription

You understand and accept that access to your monitoring data will only operate with a Subscription to the Hosted Service. You may cancel the Subscription at any time by providing at least 30 days' prior written notice of cancellation as described in [Section 7.2](#), and you understand and accept that if you cancel the Subscription then the Hardware will no longer collect and send data to the Hosted Service. You will still own the Hardware and have access to any data collected prior to cancellation.

The Subscription, when paid and maintained current, includes:

- a. Operator data and communication costs to send data from the Hardware to Hosted Service;
- b. Access to the Service to view your monitoring data; and
- c. Access to Wildeye user support as described in [Section 12](#).

## 3. ORDERS

You may purchase the Products and Services under this Agreement by entering into purchase orders (each an "[Order](#)"), which shall incorporate by reference the terms and conditions of this Agreement. In the event that an Order conflicts with or is inconsistent with this Agreement, this Agreement shall control.

## 4. DELIVERY; AND INSTALLATION OF PRODUCTS

**4.1 Timing of Shipment.** The Products will be delivered within a reasonable time after the date of any Order, subject to availability of finished Products. Wildeye shall not be liable for any delays, loss or damage in transit.

**4.2 Delivery Point.** Unless otherwise agreed in writing by the parties, Wildeye shall deliver the Products to the location designated in the Order (the "[Delivery Point](#)") using Wildeye's standard methods for packaging and shipping such Products. You shall take delivery of the Products within one day of Wildeye's written notice that the Products have been delivered to the Delivery Point. You shall be responsible for all costs and provide all equipment and labor reasonably suited for receipt of the Products at the Delivery Point, and will unload and release all transportation equipment promptly so Wildeye incurs no demurrage or other expense.

**4.3 Delayed Acceptance.** If for any reason you fail to accept delivery of any Products on the date fixed pursuant to Wildeye's notice that the Products have been delivered at the Delivery Point, or if Wildeye is unable to deliver the Products at the Delivery Point on such date because you have not provided appropriate instructions: (i) risk of loss of the Products shall pass to you; (ii) the Products shall be deemed to have been delivered; and (iii) Wildeye, at its option, may store the Products until you pick them up, whereupon you shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

**4.4 Non-Delivery.** Wildeye shall not be liable for any non-delivery of Products unless you give written

notice to Wildeye of the non-delivery within 10 business days of the date when the Products would in the ordinary course of events have been received. Any liability of Wildeye for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or adjusting the invoice respecting such Products to reflect the actual quantity delivered. You acknowledge and agree that the remedies set forth in this Section 4.4 are your exclusive remedies for any non-delivery of Products.

**4.5 Shipping Terms.** Delivery of the Products shall be made FOB (shipping point).

#### **4.6 Installation of Products**

The parties may agree in the Order that Wildeye will install the Products for Buyer at the location(s) indicated in the Order. Wildeye shall devote adequate resources to complete any such installation and shall use personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services.

You will in a timely manner allow Wildeye such access as reasonably required to install the Products to property and equipment that you control and will obtain, at your expense, timely access for Wildeye as reasonably required to install the Products to property controlled by third parties. Wildeye will coordinate with and obtain your consent to enter on your property, which consent shall not be unreasonably withheld. You will have the property ready for you to perform its work according to a mutually agreed schedule.

You will ensure that the location(s) at which Wildeye installs the Products is a safe working environment, free of Hazardous Materials and reasonably suitable for the Products. "Hazardous Materials" means any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal or release is regulated by any law related to pollution, to protection of air, water or soil or to health and safety. Wildeye shall have no obligation to perform installation services at a location that is not a suitable and safe working environment.

You are responsible for (i) selecting the locations of where Wildeye will install the Products, and (ii) ensuring that, for Sensors that are to be buried, there are no underground utilities in the areas where the Sensors are buried. In any case where you are not certain of the location of utilities in the area where Sensors are to be buried, you assume at your own risk and cost the hiring a third party detection service to verify location of utilities. Under no circumstances will Wildeye be held responsible or liable for any damage to buried utilities and you agree to indemnify Wildeye and its Representatives in accordance with Section 10 for any such damage.

### **5. ACCESS TO HOSTED SERVICES**

**5.1 Provision of Access.** Subject to and conditioned on your, and your Authorized Users' (as defined below), compliance with the terms and conditions of this Agreement, Wildeye grants to you a non-exclusive, non-transferable (except in compliance with Section 13.4) right to access and use the Hosted Services during the Subscription Term (as defined in Section 7.1) set forth in the applicable Order, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to your internal use. Wildeye shall provide to you the Access Credentials following the Effective Date. The total number of Authorized Users will not exceed the number set forth in the Order, except as expressly agreed to in writing by the parties and subject to any appropriate adjustment of the fees payable hereunder. "Authorized Users" means your employees, consultants, contractors, and agents (a) who are authorized by you to access and use the Hosted Services under the rights granted to you pursuant to this Agreement; and (b) for whom access to the Subscription has been purchased hereunder.

**5.2 Suspension of Access.** Further, you understand and accept that Wildeye may suspend, terminate, or otherwise deny your, and any Authorized User's, access to or use of all or any part of the Hosted Services, without incurring any resulting obligation or liability, if: (a) Wildeye receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Wildeye to do so; or (b) Wildeye believes, in its sole discretion, that: (i) you or any Authorized User has failed to comply with any obligation of this Agreement, or accessed or used the Hosted Service beyond the scope of the rights granted or for a purpose not authorized under this Agreement; (ii) you or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities; or (iii) this Agreement or the Subscription expires or is terminated. This section does not limit any of Wildeye's other rights or remedies, whether at Law, in equity, or under this Agreement.

**5.3 Restrictions.** You shall not, and shall not permit any Authorized User or other person to, access or use the Hosted Services except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, you shall not, except as this Agreement expressly permits:

a. copy, modify, or create derivative works or improvements of the Hosted Service or any Wildeye Materials (as defined below);

b. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make

available the Hosted Services or Wildeye Materials to any person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;

c. reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Hosted Service or Wildeye Materials, in whole or in part;

d. bypass or breach any security device or protection used by the Hosted Service or Wildeye Materials or access or use the Hosted Service or Wildeye Materials other than by an Authorized User through the use of his or her own then valid Access Credentials (as defined in [Section 5.5](#));

e. input, upload, transmit, or otherwise provide to or through the Hosted Service or Wildeye Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any virus, worm, malware or other harmful code ("[Harmful Code](#)");

f. damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Hosted Service or Wildeye Systems;

g. remove, delete, alter, or obscure any trademarks, specifications, documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Hosted Service, or Wildeye Materials, including any copy thereof;

h. access or use the Hosted Service or Wildeye Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any third party or that violates any applicable Law (as defined below);

i. access or use the Hosted Service or Wildeye Materials for purposes of competitive analysis of the Hosted Service or Wildeye Materials, the development, provision, or use of a competing software service or product or any other purpose that is to Wildeye's detriment or commercial disadvantage; or

j. otherwise access or use the Hosted Service or Wildeye Materials beyond the scope of the authorization granted under this [Section 5](#).

"[Law](#)" means any statute, law, ordinance, regulation, rule, code, order or other requirement of any federal, state, or local government or any arbitrator, court or tribunal of competent jurisdiction.

"[Wildeye Materials](#)" means: Wildeye Systems; any documentation, specifications or other materials Wildeye makes available to you in any form or medium that describe the functionality, features or requirements of the Hosted Services; any information, data, documents or materials provided by Wildeye in connection with the Hosted Services; or any data or information derived from Wildeye's monitoring or your, or your Authorized User's, access to or use of the Hosted Services, but not including Buyer Data (as defined in [Section 6.1](#)).

"[Wildeye Systems](#)" means any hardware, computers, software, databases, electronic systems, networks and other information technology infrastructure used by Wildeye in providing the Hosted Service.

**5.4 Notification of Violations.** If you become aware of any actual or threatened activity prohibited in this [Section 5](#), you shall, and shall cause your Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Hosted Services and Wildeye Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Wildeye of any such actual or threatened activity.

**5.5 Access Credentials.** You are responsible for keeping your usernames and passwords associated with the Hosted Services ("[Access Credentials](#)") confidential. You may not sell, disclose or transfer them to any other person or entity, and agree to promptly notify Wildeye about any unauthorized access or use of the Access Credentials.

**5.6 Account Use.** You are responsible and liable for all uses of the Hosted Services resulting from access provided by you, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, you are responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by you will be deemed a breach of this Agreement by you. You shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services and shall cause Authorized Users to comply with such provisions.

**5.7 Cooperation.** You shall at all times during the Subscription Term: (a) set up, maintain, and operate in good repair and in accordance with the specifications all Buyer systems on or through which

the Hosted Service is accessed or used; (b) provide Wildeye personnel with such access to your premises and systems as is necessary for Wildeye to perform the Services in accordance with the availability requirement and specifications; and (c) provide all cooperation and assistance as Wildeye may reasonably request to enable Wildeye to exercise its rights and perform its obligations under and in connection with this Agreement.

**5.8 Third-Party Products.** The Hosted Service may permit access to products (such as Sensors), content, services, information, websites, services (such as services by Operators), or other items that are owned by third parties and are incorporated into or accessible through the Hosted Service ("Third-Party Products"). For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions presented to you for acceptance within the Hosted Service by website link or otherwise. If you do not agree to abide by the applicable terms for any such Third-Party Products, then you should not install, access, or use such Third-Party Products.

## **6. PROPRIETARY RIGHTS**

### **6.1 Buyer Data**

You will retain all property rights, including title and intellectual property rights, to:

- a. Data you or your Authorized Users enter into the Hosted Service; and
- b. Monitoring data readings collected by the Sensors and transmitted to Hosted Service via the Hardware (collectively "Buyer Data").

You hereby grant to Wildeye a license to use, copy, transmit, store, and back-up Buyer Data for the purposes of enabling you to access and use the Hosted Service and for any other purpose related to provision of Services provided by Wildeye to you. You also understand and accept that Wildeye may include Buyer Data in an aggregated and anonymized data sets ("Aggregated Data"), which Wildeye may disclose to third parties. As between Wildeye and you, all right, title, and interest in Aggregated Data, and all intellectual property rights therein, belong to and are retained solely by Wildeye.

**6.2 Reservation of Rights.** Wildeye reserves all rights not expressly granted to you in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to you or any third party any intellectual property rights or other right, title, or interest in or to the Products, Services, Wildeye Materials or any other intellectual property provided to you or any Authorized User in connection with the foregoing.

## **7. TERM AND TERMINATION**

### **7.1 Term**

Buyer's Subscription shall begin on the Subscription effective date set forth in the applicable Order and continue until terminated by either party in accordance with the provisions of this Section 7 (the "Subscription Term").

The Agreement shall begin on the Effective Date and continue until terminated by either party in accordance with this Section 7.

**7.2 Termination without Cause.** Either party can terminate this Agreement, in whole or in part (including without limitation any Subscription), upon at least 30 days prior written notice to the other party.

**7.3 Termination for Cause.** Each party shall have the right to terminate this Agreement, in whole or in part (including without limitation any Subscription), in the event of the other party's material breach of an obligation set forth in this Agreement; provided, however, that such termination will not become effective unless and until (a) the party not in default has given the other party written notice of breach, which notice shall state in reasonable detail the nature of said breach, and (b) the party allegedly in default shall have failed to remedy said default to the reasonable satisfaction of the party not in default within 10 business days following the giving of the notice. Material breach shall include, without limitation, your failure to pay any amounts when due under this Agreement.

**7.4 Effect of Termination.** Any early termination of this Agreement, whether for a party's breach or otherwise, shall be without prejudice to any claims or damages or other rights of one party against the other party. In the event of any expiration of this Agreement or termination of this Agreement by either party:

a. You shall pay Wildeye all amounts due for Products and Services rendered and, if applicable, non-refundable expenses incurred, prior to the termination date.

b. You shall promptly return to Wildeye all Confidential Information of Wildeye. For one year following the expiration or termination of this Agreement, Wildeye shall maintain, and you will have

access to, any historical Buyer Data collected through the Services prior to such expiration or termination. Upon the expiration of such period, Wildeye may destroy all such Buyer Data and other Confidential Information of Buyer.

c. The provisions of Sections 6 (Proprietary Rights), 7.4 (Effect of Termination), 10 (Indemnification), 11 (Limitation of Liability), 13 (General), or any other provisions which by their nature should survive, shall survive any expiration or termination of this Agreement.

## **8. PRICING AND PAYMENT OBLIGATIONS**

### **8.1 Pricing**

You shall purchase the Products and Services from Wildeye at the prices (the “Prices”) set forth in each Order. Wildeye reserves the right to modify the Prices for the Products and Services; provided that Wildeye will notify Buyer of any increase in the Prices for the Subscription at least 30 days prior to the beginning of any Renewal Term.

You shall reimburse Wildeye for all reasonable travel and out-of-pocket expenses incurred by Wildeye in connection with installation services provided under Section 4.6

All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by you. You shall be responsible for all such charges, costs and taxes; provided that you shall not be responsible for any taxes imposed on, or with respect to, Wildeye’s income, revenues, gross receipts, personal or real property, or other assets.

### **8.2 Payment**

- a. Invoices. Wildeye will invoice you periodically for all fees and expenses incurred by you.
- b. Payment. Unless otherwise agreed by the parties in writing, you shall pay all invoiced amounts due to Wildeye within 30 days of the date of Wildeye’s invoice (the “Payment Period”).
- c. Effect of Non-Payment. If you do not pay all invoiced amounts to Wildeye within the applicable Payment Period, Wildeye reserves the right to (i) contact you to request immediate payment of all outstanding invoiced amounts; (ii) suspend connectivity to the Hosted Service, which will deactivate the Hardware; and (iii) restore connectivity to the Hosted Service and reactivate the Hardware promptly upon full payment of all outstanding invoiced amounts. You shall reimburse Wildeye for all costs incurred in collecting any late payments, including, without limitation, attorneys’ fees.

## **9. LIMITED WARRANTIES**

### **9.1 One-Year Warranty**

Wildeye warrants to you that for a period of one year from the later of (a) the date of shipment of any Hardware pursuant to Section 4.5, or (b) the date of any installation of Hardware by Wildeye pursuant to Section 4.6 (the “One-Year Warranty Period”), the Hardware will be free of material defects in material and workmanship (the “One-Year Warranty”).

As your sole remedy for a breach of the One-Year Warranty, if you notify Wildeye in writing of a breach of the One-Year Warranty, Wildeye agrees to (a) either repair or replace the non-conforming Hardware with equivalent Hardware free of charge, or (b) if repair or replacement is not feasible, as determined by Wildeye in Wildeye’s sole discretion, terminate the applicable Order and refund to you the price of such Hardware.

### **9.2 Three-Year Warranty**

Wildeye warrants to you that for a period of 3 years from the later of (a) the date of shipment of any Hardware pursuant to Section 4.5, or (b) the date of any installation of Hardware by Wildeye pursuant to Section 4.6 (the “Three-Year Warranty Period”), (y) the batteries included with the Hardware upon shipment or installation will remain fully functional and (z) the cellular technology included with Hardware upon shipment or installation will be adequate to connect to the Operator’s then-current cellular network (collectively “Three-Year Warranty” and together with the One-Year Warranty, the “Warranties”).

As your sole remedy for a breach of the Three-Year Warranty, Wildeye agrees to:

- a. In the case you notify Wildeye in writing during the Three-Year Warranty Period of a breach of Section 9.2(y), Wildeye agrees to repair or replace the depleted batteries; and
- b. In the case you notify Wildeye in writing during the Three-Year Warranty Period of a breach of Section 9.2(z), Wildeye agrees to (i) repair or replace the Hardware containing to any next

generation capability made available by the Operator, if any, or (ii) if repair or replacement is not feasible, as determined by Wildeye in Wildeye's sole discretion, terminate the applicable Order and refund to you the price of such Hardware.

### **9.3 Warranty Exclusions**

You hereby understand and accept that the Warranties will be voided if:

- a. The Hardware has been altered by anyone other than Wildeye personnel;
- b. You, your Authorized Users or any of your employees, consultants, contractors or agents (collectively "Buyer Personnel"), damages or misuses the Hardware, either accidentally or deliberately;
- c. Hardware has not been installed, operated, repaired, or maintained in accordance with the supplied user manual;
- d. You have cancelled your Subscription;
- e. Buyer have unpaid invoices due to Wildeye; or
- f. You assign the Hardware to third party without obtaining prior authorization from Wildeye.

You further understand and accept that (a) that the warranty in Section 9.2(v) shall be void if anyone other than Wildeye personnel attempts to change the Hardware batteries; and (b) the warranty in Section 9.2(z) shall be void if the Hardware fails to communicate with Service for the sole reason that the 3G or 4G network is no longer operated in the required location by the Operator.

EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN THIS SECTION 9, WILDEYE MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS OR SERVICES, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (III) WARRANTY OF TITLE; OR (IV) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. THE SERVICES ARE PROVIDED "AS-IS," AND WILDEYE MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET BUYER'S OR ANY OTHER PERSON'S OR ENTITY'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF BUYER'S OR ANY THIRD PARTY'S SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. FURTHERMORE, WILDEYE MAKES NO WARRANTY THAT ALARMS OR ALERTS ROUTED THROUGH THE SERVICES WILL BE ROUTED WITHOUT ERROR OR INTERRUPTION, AND BUYER IS ADVISED AGAINST USING THE HARDWARE OR SERVICES AS ITS SOLE MEANS OF RECEIVING CRITICAL ALARMS AND ALERTS.

PRODUCTS MANUFACTURED BY A THIRD PARTY ("THIRD PARTY PRODUCT"), INCLUDING ANY SENSORS, ARE NOT COVERED BY THE WARRANTIES IN THIS SECTION 9. FOR THE AVOIDANCE OF DOUBT, WILDEYE MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (III) WARRANTY OF TITLE; OR (IV) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

THE REMEDIES SET FORTH IN SECTIONS 9.1 AND 9.2 SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND WILDEYE'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTIONS 9.1 AND 9.2, RESPECTIVELY.

### **10. INDEMNIFICATION**

You shall indemnify, hold harmless, and at Wildeye's option, defend Wildeye and its officers, directors, employees, agents, affiliates, successors and assigns ("Representatives") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including attorneys' fees ("Losses") resulting from any third-party claim, suit, action or proceeding based on (a) any breach or non-fulfillment of any representation, warranty or covenant in this Agreement by you or any of your agents, employees, subcontractors, affiliates, successors or assigns or (b) any negligent or more culpable act or omission by you or any of your agents, employees, subcontractors, affiliates, successors or assigns (including any recklessness or willful misconduct) in connection with the performance of any obligations under this Agreement.

## 11. LIMITATION OF LIABILITY

IN NO EVENT SHALL WILDEYE AND ITS REPRESENTATIVES BE LIABLE TO BUYER OR ANY THIRD PARTY FOR (I) ANY LOSS ARISING OUT OF OR RELATING TO INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE GOODS OR SERVICES WITH APPLICATIONS, DATA, EQUIPMENT, SERVICES, CONTENT OR NETWORKS PRODUCED OR PROVIDED BY BUYER OR THIRD PARTIES; (II) SERVICES DEFECTS, SERVICE LEVELS, DELAYS OR ANY SERVICE ERROR OR INTERRUPTION; (III) LOST OR ALTERED MESSAGES OR TRANSMISSIONS; (IV) UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF BUYER'S APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION OR SYSTEMS; OR (V) ANY LOSS OF USE, REVENUES, PROFITS, DATA, CONTRACTS OR ORDERS, DIMINUTION IN VALUE, OVERHEADS, BUSINESS INTERRUPTION COSTS, CROP DAMAGE, INJURY TO REPUTATION OR REMOVAL OR REINSTALLATION COSTS, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT WILDEYE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN NO EVENT SHALL WILDEYE'S AND ITS REPRESENTATIVES' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO WILDEYE FOR THE GOODS AND SERVICES SOLD HEREUNDER IN THE TWELVE-MONTH PERIOD PRECEDING THE DATE WHEN THE APPLICABLE LIABILITY AROSE.

## 12. TECHNICAL ASSISTANCE

You may obtain technical assistance by calling your sales manager, calling support at (559) 290-7915, visiting Wildeye's dedicated support platform at <https://info.mywildeye.com/hc/en-us>, or sending an email request to [info@mywildeye.com](mailto:info@mywildeye.com).

## 13. GENERAL

**13.1 Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal Laws of the State of California without giving effect to any choice or conflict of Law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than those of the State of California.

**13.2 Arbitration.** IN THE EVENT OF ANY DISPUTE (OTHER THAN ONE FILED IN A COURT THAT IS LIMITED TO ADJUDICATING SMALL CLAIMS, OR AS SET FORTH IN SECTION 13.3) BETWEEN BUYER AND WILDEYE, BUYER AND WILDEYE CONSENT TO ARBITRATE THAT DISPUTE BEFORE A SINGLE ARBITRATOR UNDER THE THEN CURRENT RULES OF THE AMERICAN ARBITRATION ASSOCIATION RATHER THAN LITIGATE THE DISPUTE IN COURT. BUYER AND WILDEYE ALSO AGREE THAT THE FEDERAL ARBITRATION ACT GOVERNS THE ARBITRABILITY OF ALL DISPUTES BETWEEN BUYER AND WILDEYE. IF BUYER DOES NOT WANT TO BE BOUND BY THIS ARBITRATION PROVISION, YOU MUST NOTIFY WILDEYE IN WRITING, BY MAIL TO WILDEYE AT 5811 E. PRINCETON AVENUE, FRESNO, CA 93727, WITHIN 30 DAYS OF THE EFFECTIVE DATE, STATING THAT YOU DO NOT WANT TO RESOLVE DISPUTES WITH WILDEYE BY ARBITRATION. IN ADDITION, YOU AGREE NOT TO PARTICIPATE IN A CLASS ACTION, A CLASS-WIDE ARBITRATION, CLAIMS BROUGHT IN A REPRESENTATIVE CAPACITY, OR CONSOLIDATED CLAIMS INVOLVING ANOTHER PERSON'S ACCOUNT, IF WILDEYE IS A PARTY TO THE PROCEEDING. THE ARBITRATOR SHALL INTERPRET AND DETERMINE THE VALIDITY OF THE ARBITRATION PROVISION, INCLUDING ANY ALLEGED UNCONSCIONABILITY.

**13.3 Equitable Remedies.** You agree that Wildeye would be irreparably damaged if this Agreement were not specifically followed and enforced. In such an event, you agree that Wildeye shall be entitled, without bond or other security, or proof of damages, to appropriate equitable relief in the event you breach this Agreement, and that the awarding of equitable relief to Wildeye will not limit its ability to receive remedies that are otherwise available to Wildeye under applicable Laws. Notwithstanding Section 13.2, you agree that Wildeye shall still be allowed to apply for equitable relief in any jurisdiction.

**13.4 Assignment.** You may not assign this Agreement without prior written consent of Wildeye. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves you of any of your obligations under this Agreement.

**13.5 Compliance with Law.** You shall comply with all applicable Laws. You shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.



**13.6 Waiver.** No waiver by Wildeye of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Wildeye. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement 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.

**13.7 Privacy Policy.** By accessing, using, and providing information to or through the Products or Services, You acknowledge that You have reviewed and accepted Wildeye's Privacy Policy (available at: <https://www.mylildeye.com/privacy-policy/>), and your consent to all actions taken by Wildeye with respect to your information in compliance with the then-current version of Wildeye's Privacy Policy.

**13.8 Confidential Information.** All non-public, confidential or proprietary information of Wildeye, including but not limited to, specifications, documents, data, business operations, pricing, discounts, or rebates, disclosed by Wildeye to you, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Wildeye in writing. Upon Wildeye's request, you shall promptly return all documents and other materials received from Wildeye. Wildeye shall be entitled to injunctive relief for any violation of this Section 13.8. This Section 13.8 does not apply to information that is: (a) in the public domain; (b) known to you at the time of disclosure; or (c) rightfully obtained by you on a non-confidential basis from a third party.

**13.9 Force Majeure.** Wildeye shall not be liable or responsible to you, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Wildeye including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

**13.10 Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**13.11 No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto 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 (including Authorized Users) any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

**13.12 Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

**13.13 Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**13.14 Amendment and Modification.** This Agreement may only be amended or modified in a writing stating specifically that it amends this Agreement and is signed by an authorized representative of each party.

**13.15 Entire Agreement.** This Agreement, including any exhibits and Orders to this Agreement which are incorporated herein by reference, comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties and communications, both written and oral. This Agreement prevails over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted any purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend this Agreement.

**13.16 Changes in Services.** Notwithstanding anything to the contrary contained in this Agreement, Wildeye may, from time to time, change the Services without the consent of Buyer, provided that such changes do not materially affect the nature or scope of the Services set forth in the Order.

**13.17 Buyer's Acts or Omissions.** If Wildeye's performance of its obligations under this Agreement is prevented or delayed by any act or omission of you or any Buyer Personnel, Wildeye shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by you, in each case, to the extent arising directly or indirectly from such prevention or delay.