



Automated Fruit Scouting Inc.

SERVICES AGREEMENT

Last Updated: August 26, 2020

By signing this Services Agreement and/or any AFS Order Form(s) that references this AFS Service Agreement (together, the Order Form(s) and these Services Agreement are the “**Agreement**”), the entity identified on the signature page below and said Order Form (“**Customer**”) and Automated Fruit Scouting Inc. (“**AFS**”) each signifies that it has read, understands, and agrees to be bound by the terms and conditions hereof. AFS and Customer may be referred to individually as a “**Party**” and collectively as the “**Parties.**” For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to these terms and conditions through their undersigned authorized representatives.

1. DEFINITIONS.

1.1. “Action” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

1.2. “Aggregated Statistics” means data and information related to Customer’s use of the Hardware or Services that is used by AFS in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

1.3. “Authorized User” means Customer’s employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder.

1.4. “Customer Data” means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services.

1.5. “Customer Systems” means the Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services.

1.6. “Damage” has that meaning set forth in [Section 2.3](#).

1.7. “Disabling Device” means any software, hardware, or other technology, device, or means (including any back door, time bomb, time out, drop dead device, software routine, or other disabling

device) used by AFS or its designee to disable Customer's or any Authorized User's access to or use of the Services automatically with the passage of time or under the positive control of AFS or its designee.

1.8. *"Disguised Security Interest"* means a sale of the equipment subject to a security interest under Article 9 of the UCC to secure the purchase price of the equipment.

1.9. *"Documentation"* means AFS's user manuals, handbooks, and guides relating to the Hardware and/or Services provided by AFS to Customer either electronically or in hard copy form.

1.10. *"Hardware"* means the computers, camera arrays, and all other parts or other related equipment provided by AFS used in connection with the Services and any upgrades, alterations, and attachments thereto. "Hardware" shall include but not limited to the AFS FruitScout™ system, central processing units and other processors, controllers, modems, communications and telecommunications equipment (voice, data and video), cables, storage devices, printers, terminals, other peripherals and input and output devices, and other tangible mechanical and electronic equipment intended for the processing, input, output, storage, manipulation, communication, transmission and retrieval of information and data.

1.11. *"Intellectual Property Rights"* means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

1.12. *"Law"* means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

1.13. *"Losses"* means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

1.14. *"Order Form"* means an ordering document executed by the Parties that specifies the Hardware and Services purchased by Customer under this Agreement. Each Order Form shall incorporate this Agreement by reference.

1.15. *"Person"* means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

1.16. *"AFS IP"* means the Services, the Hardware, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, AFS IP includes Aggregated Statistics and any information, data, or other content derived from AFS's monitoring of Customer's access to or use of the Services, but does not include Customer Data.

1.17. *"Services"* means the provision, use, and support of any services described in a Work Order, which may include, but is not limited to, the Hardware, the AFS FruitScout™ Report, and other AFS FruitScout™ products and services.

1.18. *"Third-Party Products"* means any third-party products provided with or incorporated into the Services.

1.19. "UCC" means the Uniform Commercial Code as in effect in the state of Delaware from time to time.

2. HARDWARE LEASE, SERVICES, AND USE.

2.1. Hardware Lease. AFS may, from time to time lease Hardware and other equipment to Customer. AFS agrees to lease to Customer, and Customer agrees to lease from AFS, the Hardware detailed in any Order Forms attached hereto. The lease of any Hardware is governed by the terms and conditions of this Agreement, as well as by the terms and conditions set forth in any Order Form as it pertains to the Hardware leased pursuant to such Order Form.

2.2. UCC Generally. The parties intend that this Agreement constitutes a true lease under the UCC and not a Disguised Security Interest. AFS has title to the Hardware at all times. Customer acquires no ownership, title, property, right, equity or interest in the Hardware other than its leasehold interest solely as lessee subject to all the terms and conditions of this Agreement. Customer consents and authorizes AFS to pursue any filings relating to the UCC or Hardware that it may reasonably require.

2.3. Risk of Damage; Impairment. While an item of Hardware is leased to Customer under this Agreement and any applicable Order Form, Customer shall bear all risk of loss, damage, destruction, theft, and condemnation to or of such item of Hardware from any cause whatsoever ("**Damage**"). Customer shall notify AFS in writing within 15 days of any material Damage. In the event AFS determines in its reasonable discretion that the Damage has materially impaired the Hardware, Customer shall pay for the actual cost to replace or repair such item of Hardware, as determined by AFS in its reasonable good faith discretion.

2.4. Subleases. Customer shall not enter into any sublease of any item of Hardware except as approved in writing by AFS.

2.5. Operation. Customer shall operate each item of Hardware exclusively in connection with its business.

2.6. Personal Property. Customer shall not affix or attach any Hardware to real property or any improvements. The parties intend that each item of Hardware remains at all times personal property and not a fixture under applicable law, even if the Hardware, or any part thereof, may be or becomes affixed or attached to real property or any improvements.

2.7. Inspection. Customer shall permit AFS (through any of its officers, employees, or agents) on reasonable notice to inspect the Hardware, and in compliance with Customer's reasonable security procedures.

2.8. Documentation License. Subject to the terms and conditions contained in this Agreement, AFS hereby grants to Customer a non-exclusive, non-sublicenseable, non-transferable (except in compliance with Section 14.6) license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.

2.9. Use Restrictions. Customer shall not use the Hardware or Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Hardware, Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Hardware, Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any component and/or software of the Hardware, Services, in whole or in part; (iv) remove any proprietary notices from the Hardware, Services or Documentation; (v) use the Hardware, Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any person, or that violates any applicable law; or (vi) attach any unauthorized device to or otherwise tamper with the Hardware.

2.10. Reservation of Rights. AFS reserves all rights not expressly granted to Customer 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 Customer or any third party any Intellectual Property Rights or other right, title, or interest in or to the AFS IP or Hardware.

2.11. Suspension. Notwithstanding anything to the contrary in this Agreement, AFS may temporarily suspend Customer's and any Authorized User's access or ability to utilize any portion or all of the Hardware or Services (a "**Service Suspension**") if: (i) AFS reasonably determines that (A) there is a threat or attack on any of the AFS IP; (B) Customer's or any Authorized User's use of the AFS IP disrupts or poses a security risk to the AFS IP or to any other customer or vendor of AFS; (C) Customer, or any Authorized User, is using the AFS IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) AFS's provision of the Hardware and/or Services to Customer or any Authorized User is prohibited by applicable law; or (ii) any vendor of AFS has suspended or terminated AFS's access to or use of any third-party services or products required to enable Customer to access the Hardware and/or Services. AFS shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Hardware or Services following any Service Suspension. AFS shall use commercially reasonable efforts to resume providing access to the Hardware and/or Services as soon as reasonably possible after the event giving rise to the Hardware and/or Service Suspension is cured. AFS will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

2.12. Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, AFS may monitor Customer's use of the Services and collect and compile Aggregated Statistics. As between AFS and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by AFS. Customer acknowledges that AFS may compile Aggregated Statistics based on Customer Data input into the Services. Customer agrees that AFS may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the

manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

2.13. Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:

2.13.1 AFS has and will retain sole control over the operation, provision, maintenance, and management of the AFS IP; and

2.13.2 Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the AFS IP by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions, or materials provided by any of them in relation to the Hardware, Services or any other AFS IP; (ii) results obtained from any use of the Hardware, Services or any other AFS IP; and (iii) conclusions, decisions, or actions based on such use.

2.14. Service Management. Each party shall, throughout the Term, maintain within its organization a service manager to serve as such party's primary point of contact for day-to-day communications, consultation, and decision-making regarding this Agreement. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Agreement. Each party shall ensure its service manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity.

2.15. Changes. AFS reserves the right, in its sole discretion, to make any changes to the Hardware, Services and AFS IP that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of AFS's services to its customers; (ii) the competitive strength of or market for AFS's services; or (iii) the Hardware and/or Services' cost efficiency or performance; or (b) to comply with applicable Law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such requested changes. No requested changes will be effective unless and until memorialized in a written change order signed by both parties. Customer shall permit AFS to, from time to time with reasonable notice, install alterations, modifications, additions, and upgrades to any Hardware that AFS may require or deem necessary.

2.16. Subcontractors. AFS may from time to time in its discretion engage third parties to perform Services (each, a "**Subcontractor**").

2.17. Suspension or Termination of Services. AFS may, directly or indirectly, and by use of a AFS Disabling Device or any other lawful means, suspend, terminate, or otherwise deny Customer's, any Authorized User's, or any other Person's access to or use of all or any part of the Services or AFS IP, without incurring any resulting obligation or liability, if: (a) AFS receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires AFS to do so; or (b) AFS determines, in its sole discretion, that: (i) Customer or any Authorized User has failed to comply with any term of this Agreement, including, but not limited to, the failure to pay any amounts when due hereunder; (ii) accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction

or requirement of the Specifications; (iii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities; or (iv) this Agreement expires or is terminated. This Section 2.17 does not limit any of AFS's other rights or remedies, whether at law, in equity, or under this Agreement.

3. CUSTOMER OBLIGATIONS.

3.1. General. Customer is responsible and liable for all uses of the Services, Hardware, and Documentation resulting from access or equipment provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is 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 Customer will be deemed a breach of this Agreement by Customer. Customer 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.

3.2. Third-Party Products. AFS may from time to time make Third-Party Products available to Customer, or integrate such Third-Party Products in the Hardware or Services. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions. AFS shall provide commercially reasonable notice of any Third-Party Products which relate to the Services. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install or use such Third-Party Products. Third-Party Products includes, but is not limited to, the Google G Suite (the terms and conditions of which can be accessed at https://gsuite.google.com/terms/2013/1/premier_terms.html).

3.3. G Suite Account. In connection with the Services, Customer shall be required to create and maintain a Google G Suite account and appropriate service plan in order to receive the data generated in connection with the Services. The maintenance of a Google G Suite plan with adequate storage capacity is the sole responsibility of Customer, and AFS shall be under no obligation to monitor Customers usage of Google G Suite or available data storage associated thereto.

4. Reserved.

5. DATA BACKUP. The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. AFS HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER DATA.

6. SECURITY.

6.1. Information Security. AFS will employ security measures in accordance with AFS's data privacy and security policy as amended from time to time.

6.2. Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks,

whether operated directly by Customer or through the use of third-party services (“**Customer Systems**”); and (d) all access to and use of the Services and AFS IP directly or indirectly by or through the Customer Systems, with or without Customer’s knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

6.3. Access and Security. Customer shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) protect against any unauthorized access to or use of the Hardware or Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Services.

7. FEES AND PAYMENT.

7.1. Fees. In consideration for the Hardware lease and the provision of the Services Customer shall pay to AFS all fees specified in all applicable Order Form(s) (“**Fees**”). Except as otherwise specified herein or in any Order Form, all Fees are quoted and payable in United States dollars, payment obligations are non-cancelable, and Fees paid are non-refundable. Fees for the Service are based on Subscriptions purchased and not actual usage. For purposes of clarity, the Subscription purchased cannot be decreased during a Term. Fees may be increased by AFS in advance of any Renewal Term. AFS shall provide commercially reasonable notice of any Renewal Term fee increase.

7.2. Payment. Unless otherwise set forth in an Order Form, Customer will pay to AFS (by wire transfer or other method mutually acceptable to the Parties) all Fees on receipt of the applicable invoice. Late payment of Fees may be subject to interest on the past due amount at the lesser of 1.5% per month or the maximum rate permitted by applicable law. Customer is responsible for providing complete and accurate billing address and contact information to AFS. If Customer believes a particular invoice is incorrect, Customer must contact AFS in writing at [CONTACT EMAIL/ADDRESS] within sixty (60) days of such invoice date to be eligible to receive an adjustment or credit.

7.3. Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on AFS’s income.

7.4. Suspension. If Customer is thirty (30) days or more overdue (except for charges then under reasonable and good faith dispute), then, following five (5) business days’ written notice and opportunity to cure (which notice may be provided via email), in addition to any of its other rights or remedies, AFS reserves the right but not obligation to suspend Customer’s access to the Hardware or Service until such amounts are paid in full. For purpose of clarity, and avoidance of doubt, Customer will continue to be charged for the Subscription during any period of suspension.

8. CONFIDENTIAL INFORMATION.

8.1. Confidential Information. In connection with this Agreement each party (as the “*Disclosing Party*”) may disclose or make available Confidential Information to the other party (as the “*Receiving Party*”). Subject to Section 8.2, “*Confidential Information*” means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party’s technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as “confidential”. Without limiting the foregoing: all AFS IP are the Confidential Information of AFS and the financial terms and existence of this Agreement are the Confidential Information of each of the Parties.

8.2. Exclusions. Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information’s being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party’s or any of its Representatives’ noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that[, to the Receiving Party’s knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

8.3. Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

8.3.1 not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

8.3.2 except as may be permitted by and subject to its compliance with Section 8.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party’s exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party’s obligations under this Section 8.3; and (iii) are bound by [written] confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 8;

8.3.3 safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care;

8.3.4 promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and use its best efforts to prevent further unauthorized use or disclosure; and

8.3.5 ensure its Representatives’ compliance with, and be responsible and liable for any of its Representatives’ non-compliance with, the terms of this Section 8.

8.3.6 Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 8 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

8.4. Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 8.3; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 8.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

9. INTELLECTUAL PROPERTY OWNERSHIP; FEEDBACK.

9.1. AFS IP. Customer acknowledges that, as between Customer and AFS, AFS owns all right, title, and interest, including all intellectual property rights, in and to the AFS IP and, with respect to Third-Party Products, the applicable third-party AFSs own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.

9.2. Customer Data. AFS acknowledges that, as between AFS and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data, and AFS is bound by the confidentiality obligations detailed in Section 8 herein as it may relate to Customer Data. Customer hereby grants to AFS a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for AFS to provide the Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.

9.3. Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to AFS by mail, email, telephone, or otherwise, suggesting or recommending changes to the AFS IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), AFS is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to AFS on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and AFS is free to use, without any attribution or compensation to any party,

any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although AFS is not required to use any Feedback.

10. REPRESENTATIONS AND WARRANTIES.

10.1. Mutual Representations and Warranties. Each Party represents and warrants to the other Party that:

10.1.1 it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

10.1.2 it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement;

10.1.3 the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and

10.1.4 when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

10.2. Additional AFS Representations, Warranties, and Covenants. AFS represents, warrants, and covenants to Customer that AFS will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

10.3. Additional Customer Representations, Warranties, and Covenants. Customer represents, warrants, and covenants to AFS that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by AFS and processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights, of any third party or violate any applicable Law.

10.4. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 10.1 AND SECTION 10.2, ALL SERVICES AND AFS IP ARE PROVIDED "AS IS." AFS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, AFS MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR AFS IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY

OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

11. INDEMNIFICATION.

11.1. AFS Indemnification. AFS shall indemnify, defend, and hold harmless Customer and Customer's officers, directors, employees, agents, permitted successors, and permitted assigns (each, a "***Customer Indemnitee***") from and against any and all Losses incurred by Customer Indemnitee resulting from (i) the negligence or more culpable act or omission (including recklessness or willful misconduct) by AFS or its officers, employees, or agents, or (ii) in connection with this Agreement, any Action by a third party (other than an Affiliate of a Customer Indemnitee) that Customer's use of the Services (excluding Customer Data and Third-Party Materials) in accordance with this Agreement (including the Specifications) infringes or misappropriates such third party's US Intellectual Property Rights. The foregoing obligation does not apply to the extent that the alleged infringement arises from:

11.1.1 Third-Party Materials or Customer Data;

11.1.2 access to or use of the AFS IP in combination with any hardware, system, software, network, or other materials or service not provided by AFS or specified for Customer's use in the Documentation, unless otherwise expressly permitted by AFS in writing;

11.1.3 modification of the AFS IP other than: (i) by or on behalf of AFS; or (ii) with AFS's written approval in accordance with AFS's written specification; or

11.1.4 act, omission, or other matter described in Section 12.1.1, Section 12.1.2, Section 12.1.3, or Section 12.1.4, whether or not the same results in any Action against or Losses by any AFS Indemnitee.

11.2. Customer Indemnification. Customer shall indemnify, defend, and hold harmless AFS and its respective officers, directors, employees, agents, successors, and assigns (each, a "***AFS Indemnitee***") from and against any and all Losses incurred by such AFS Indemnitee resulting from any Action by a third party (other than an Affiliate of a AFS Indemnitee) that arise out of or result from, or are alleged to arise out of or result from:

11.2.1 Customer Data, including any Processing of Customer Data by or on behalf of AFS in accordance with this Agreement;

11.2.2 any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Customer or any Authorized User, including AFS's compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User to the extent prepared without any contribution by AFS;

11.2.3 allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants, or obligations under this Agreement;

11.2.4 the lease, sublease, possession, maintenance, use, condition, repair, return, disposition, or operation of any Item of Equipment or any Parts or Upgrades thereto

(including, without limitation, latent and other defects, whether or not discoverable by Lessor or Lessee);

11.2.5 negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with this Agreement.

11.3. Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to Section 11.1 or Section 11.2, as the case may be. The party seeking indemnification (the “*Indemnitee*”) shall cooperate with the other party (the “*Indemnitor*”) at the Indemnitor’s sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action on any terms or in any manner that adversely affects the rights of any Indemnitee without the Indemnitee’s prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitee’s failure to perform any obligations under this Section 11.3 will not relieve the Indemnitor of its obligations under this Section 11, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

11.4. Mitigation. If any of the Services or AFS IP are, or in AFS’s opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Customer’s or any Authorized User’s use of the Services or AFS IP is enjoined or threatened to be enjoined, AFS may, at its option and sole cost and expense:

11.4.1 obtain the right for Customer to continue to use the Services and AFS IP as contemplated by this Agreement; or

11.4.2 modify or replace the Services and AFS IP, in whole or in part, to seek to make the Services and AFS IP (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and AFS IP, as applicable, under this Agreement.

11.5. Sole Remedy. THIS SECTION 11 SETS FORTH CUSTOMER’S SOLE REMEDIES AND AFS’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES AND AFS IP OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

12. LIMITATIONS OF LIABILITY.

12.1. EXCLUSION OF DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR

EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO THE SLA; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12.2. CAP ON MONETARY LIABILITY. EXCEPT FOR AFS'S INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS HEREUNDER, IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF AFS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID TO AFS UNDER THIS AGREEMENT. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13. TERM AND TERMINATION.

13.1. Term of Agreement. The "**Term**" of the Agreement shall be the duration of the then-current Initial Term or Renewal Term(s) of the applicable Order Form(s). For purposes of clarity, the Term of this Agreement will commence on the Effective Date specified in the first Order Form and will continue until either (a) the Order Form(s) are terminated in accordance with Section 13.3 herein, or (b) all Order Forms under this Agreement have expired.

13.2. Term of Subscriptions. The "**Initial Term**" of each Order Form will commence on the Effective Date set forth on such Order Form and will continue for the subscription period outlined on such Order Form. Unless otherwise set forth on the relevant Order Form, each Order Form will automatically renew after the Initial Term for successive twelve-month periods (each a "**Renewal Term**"), unless either Party gives prior written notice (Section 14.1) of its intent not to renew such Order Form at least thirty (30) days prior to the end of the Initial Term or then-current Renewal Term.

13.3. Termination. A Party may terminate this Agreement or an Order Form, for cause: (i) if the other Party is in material breach under this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice (Section 14.1) of such material breach from the non-breaching Party; or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors and such proceeding is not favorably resolved within sixty (60) days.

13.4. Return of Customer Data. At any time during the then-current Term, AFS will provide Customer with access to Customer Data in the then-current standard export format or another industry-standard format mutually agreed by the Parties. In the event this Agreement is terminated, if Customer requests Customer Data within 30 days of termination, AFS will make

available to Customer an electronic copy of the Customer Data for an additional fee at AFS's then-current rates. After such 30-day period, AFS shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control in accordance with AFS's then-current practices on the same. AFS will not provide extracts of Customer Data unless all Fees have been paid by Customer. AFS's obligations under this Section 14.4.2 do not apply to any Aggregated Statistics.

13.5. Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

13.5.1 all rights, leases, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate;

13.5.2 Customer shall immediately cease all use of any Services, Hardware, or AFS IP and (i) promptly return to AFS, or at AFS's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any AFS IP or AFS's Confidential Information; and (ii) permanently erase all AFS IP and AFS's Confidential Information from all systems Customer directly or indirectly controls; (iii) deinstall, inspect, properly pack and return each item of Hardware, freight prepaid, to such AFS location as reasonably requested by AFS, by delivering the Hardware on board such common carrier as AFS may specify; and (iv) certify to AFS in a signed written instrument that it has complied with the requirements of this Section 13.5.2;

13.5.3 notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: (i) AFS may retain Customer Data; (ii) AFS may retain and continue to use the Aggregated Statistics; (iii) AFS may also retain Customer Data in its backups, archives, and disaster recovery systems until such Customer Data is deleted in the ordinary course; and (iv) all information and materials described in this Section 13.5.3 will remain subject to all confidentiality, security, and other applicable requirements of this Agreement;

13.5.4 AFS may disable all Customer and Authorized User access to the Hardware, Services, and AFS IP;

13.5.5 if Customer terminates this Agreement due to material breach by AFS, Customer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination and AFS will refund to Customer Fees paid in advance for Services that AFS has not performed as of the effective date of termination; and

13.5.6 if AFS terminates this Agreement pursuant to Section 13.3, all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees, on receipt of AFS's invoice therefor.

13.5.7 Customer shall cause any item of Hardware returned under this Agreement to: (i) be free and clear of any Liens or rights of third parties; and (ii) be in the same condition as when delivered to Lessee, ordinary wear and tear expected.

13.6. Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 2.9, Section 2.12, Section 8, Section 10.4, Section 11, Section 12, Section 13.4, this Section 13.6, and Section 14.

14. MISCELLANEOUS.

14.1. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “**Notice**”) must be in writing and addressed to the Parties at the addresses set forth on the Order Form(s) (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (a) upon receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section.

14.2. Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond such Party’s reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

14.3. Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

14.4. Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

14.5. Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Washington. Any legal suit, action, or

proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Washington in each case located in the city of Seattle and County of King, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

14.6. Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of AFS. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

14.7. Export Regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), that prohibit or restrict the export or re-export of the Services or any Customer Data outside the US.

14.8. Use of Name and Logo. Customer grants to AFS the express right to use Customer's company name and/or logo in marketing, sales, financial, and public relations materials, its website, and other communications solely to identify Customer as an AFS Customer. AFS grants to Customer the express right to use AFS's company name and logo solely to identify AFS as a provider of services to Customer. Other than as expressly stated herein, neither party shall use the other party's names, marks, codes, drawings or specifications without the prior written permission of the other party.

14.9. Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 5 or, in the case of Customer, Section 2.3 would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

14.10. Entire Agreement. This Agreement and Order Form(s) together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, this Agreement, excluding its Exhibits; (b) second, the Exhibits to this Agreement as of the Effective Date; and (c) third, any other documents incorporated herein by reference.

14.11. Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party against the other party arising out of or

related to this Agreement, the prevailing party is entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

14.12. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

AUTOMATED FRUIT SCOUTING, INC.

By: _____

Name: _____

Title: _____

[CUSTOMER NAME]

By: _____

Name: _____

Title: _____