



ARABLE

Arable Labs, Inc.

51 Federal Street, San Francisco, CA 94107

<https://www.arable.com>

SUBSCRIPTION AGREEMENT

This Subscription Agreement (“Agreement”) is made as of the Agreement Effective Date by Arable Labs, Inc., a Delaware corporation (“Arable” or “we” or “our”) and the customer listed below (“Customer” or “you” or “your”), and includes the Terms and Conditions (below) and each Order signed by the parties.

Agreed by Customer **AT CHECKOUT**

Terms and Conditions

1. OVERVIEW

1.1. Products. By this Agreement, Arable provides to Customer goods and services (“Products”), including hardware and equipment (“Equipment”), software (“Software”) and services (“Services”). The core piece of Equipment is called the “Mark”, an easy-to-install device that measures and uploads weather, plant and equipment data (“Field Data”) to a database you can use (“Field Record”). Each set of Products (“Project”) is provided on a subscription basis pursuant to a written document signed by the parties at checkout (“Order”) specifying the Products, their geographic location (“Location”), payments (“Fees”), and any other terms not specified in these Terms and Conditions. At any time, you and we may agree to modify or replace an existing Project, or add a new Project, by signing an Order. When accepted at checkout, each Order becomes a part of this Agreement.

1.2. Term and Termination. This Agreement takes effect on the Agreement Effective Date defined on the Order and continues for the duration of each Order. The “Initial Term” of each Order begins on the “Start Date” stated on the Order, and continues for 12 months. Thereafter, the Order automatically renews indefinitely for additional term of one month each (each, a “Renewal Term”). This Agreement may be terminated by either party for convenience on no less than five days prior written notice effective at or after the effective date of termination of the last Order then in effect. In addition, each Order and this agreement may be terminated within the first 90 days for convenience or by either party for material breach if the breaching party fails to cure its breach within thirty days of the date of a written notice of breach. On any termination of an Order or this Agreement, Customer at its expense will return all Products to Arable in good repair, condition and working order (ordinary wear and tear resulting from proper use excepted) by delivering the Products at Customer's cost and expense to the address specified by Arable within 10 calendar days.

1.3. Fees and Payment. The Fees cover the license and use of all Products stated in the Order, including Equipment, Software and Services. Each Order states the Fees for the Initial Term and each Renewal Term. Unless the Order states otherwise, all payments are due on the Start Date for the Initial Term and on the first day of each Renewal Term. Customer is responsible for any shipping costs incurred at the time of deployment and for any return shipping costs incurred at the end of the Order, and will reimburse Arable's shipping costs within 30 days of the invoice for those costs. The Fees may be modified by Arable on no less than 90 days prior written notice effective at the beginning of a Renewal Term. For 30 days from the date of a written notice of modification of Fees, you will have the option to terminate the applicable Order, which will be treated as a termination for convenience. Except as expressly stated in this Agreement, all Fees are non-refundable. If you fail to pay an invoice when due, Arable may suspend or terminate all Services and the right to use all Products, add late payment charges in the amount of one percent (1.0%) of the overdue amount each calendar month, and recover late payment fees, reasonable attorney's fees and expenses in any collection action.

1.4. Taxes. Unless you are informed otherwise by Arable, you are responsible for all sales, import and other taxes for the Products, which you may pay directly by you to the taxing authorities, or at Arable's option, added to Arable's invoice and remitted by Arable to the appropriate taxing authorities.

2. EQUIPMENT

2.1. Lease of Equipment. All Equipment provided to Customer by Arable remains the sole property of Arable. You agree not to disassemble or reverse-engineer any Equipment, or permit any other person to do so. You agree to use the Equipment in a careful and proper manner and you will comply with and conform to all applicable national, state, municipal, police and other laws, ordinances and regulations in any way relating to the possession, use or maintenance of the Equipment.

2.2. Installation. Customer shall inspect the Products within seven (7) business days after receipt thereof. Unless Customer within said period of time gives written notice to Arable specifying any defect in or other proper objection to the Products. Customer agrees that it shall be conclusively presumed, as between Arable and Customer, that Customer has fully inspected and acknowledged that the Products are in full compliance with the terms of the applicable Order and this Agreement, in good condition and repair, and that Customer is satisfied with and has accepted the Products in such good condition and repair. Arable may provide you Services to assist you with installation of Products at additional cost. For each Order, you have 90 days from the Start Date to return the Products and cancel the Order for a full refund, if you are unsatisfied for any reason, in which case this Agreement shall be deemed terminated for convenience of the parties.

2.3 Maintenance. Unless expressly covered by an Arable Care Agreement in good standing, the Customer hereby assumes and shall bear the entire risk of loss and damage to the Equipment from actions resulting from the Customer's direct management of the Equipment and deployment. Customer will be responsible for the cost of such repairs not related to a warranted condition, e.g., damage caused by shipping or by Customer's negligence or willful actions. In the event of loss or irreparable damage to the Equipment, Customer shall pay Arable the current value of the Equipment as stated on Arable's published enterprise web price less a discount percentage, determined as the product of the number of paid months under the applicable Order and 2% (e.g. 12 paid months x 2% = 24% discount off of Arable's enterprise web pricing).

2.4 Arable Care Agreement. Upon receipt of payment of the Fees for the Care Agreement, Arable will maintain Equipment manufactured and leased by Arable to Customer during the term of each Order. Customer will notify Arable of the need to repair damage to the Equipment and agrees to return Equipment to Arable for repair work upon receipt of a written "Return Materials Authorization" ("RMA") issued by Arable. If Arable verifies a defect in the Equipment, then at its option Arable will repair the Equipment at no charge, or exchange the Equipment with new or refurbished Equipment that is at least functionally equivalent to the original Equipment.

2.5 Shipping. It is the responsibility of Customer to ship any defective Product back to the Arable facility for maintenance, repair or exchange during the term. Arable will return the repaired or replacement Product at the expense of Customer to the Location of the Project or other address, as directed by Customer.

2.6 Telecommunications. The Equipment communicates with Arable through third-party communications networks (each, a "Network"). While the Equipment is configured by Arable to connect to a particular Network, Arable does not control any Networks, and does not warrant that the Equipment will work consistently with any Network. Moreover, the placement of the Equipment may affect the quality of each wireless connection between the Equipment and the Network. Arable makes no warranties regarding the connectivity between the Equipment and any Network.

2.7 No Levy. Customer shall give Arable immediate notice in the event that any of said Equipment is levied upon or is about to become liable or is threatened with seizure, and Customer shall indemnify Arable against all loss and damages caused by such action.

3. ARABLE SOFTWARE

3.1. "Software" means any and all computer software and code, whether in source code, object code, or executable code format, including, but not limited to, systems software, application software (including mobile apps), firmware, middleware, programming tools, scripts, routines, interfaces, libraries, and databases, and all related specifications and documentation, user manuals, and training materials relating to any of the foregoing, as well as any new versions, updates, revisions, improvements, or modifications of any of the foregoing.

3.2. Any and all Software installed on the Equipment or otherwise provided or made available to you by Arable in connection with the Equipment or the Services (collectively, "**Arable Software**") is licensed, not sold, to you by Arable, and you acknowledge and agree that you do not have any ownership interest in any Arable Software, or in any related intellectual property rights under or in connection with this Agreement. Arable hereby grants you a limited, non-exclusive, non-sublicensable, and non-transferable license to use the Arable Software during the term of each Order pursuant to which the Arable Software was provided solely in and for the operation of any Equipment

and Services provided to you pursuant to the applicable Order (“**Software License**”). Only Equipment provided by Arable to you under this Agreement is covered by this Software License. This Software License applies individually to each specific Equipment and cannot be transferred or shared between Equipment or other Products. This Software License does not extend to any Equipment acquired outside of this Agreement, and does not grant you any rights to use any Arable Software, including, but not limited to, any Arable proprietary interfaces or other intellectual property, in the design, development, manufacture, licensing, distribution, or operation of third party devices or accessories, or third party software applications.

3.3. You agree that you that you will not, and you will not permit or enable any third party to, directly or indirectly, during or after the Term: (i) distribute or make any Arable Software available where it could be used by multiple devices at the same time; (ii) copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of any Arable Software; or (iii) lease, lend, sell, or sublicense any Arable Software. You acknowledge and agree that Arable, in its sole discretion, may modify, replace, remove, update, or upgrade any Arable Software at any time. Without limiting the generality of the foregoing, you acknowledge and agree that Arable, in its sole discretion, may use remote means to remove or disable any Arable Software following the expiration or termination of the applicable Order.

3.4. **Intellectual Property.** You will not remove, alter, disfigure or cover up any numbering, lettering, insignia, or intellectual property rights notices displayed on the Products. As between you and Arable, any and all intellectual property, including, but not limited to, any Software, analysis, trademarks, service marks, logos, icons, images, or other content, displayed on or contained in the Equipment, Arable Software and other Products are the exclusive property of Arable (or its licensors) and may not be used without Arable’s prior written consent. You acknowledge that the lease of the Equipment and the license of the Arable Software to you does not transfer to you title to or ownership of any Equipment, Arable Software or other Products, or any other intellectual property or proprietary rights of Arable or its licensors. The Equipment, Services, Arable Software, and other Products may be covered by one or more patents or pending patent applications. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants to you or any third party, by implication, waiver, estoppel or otherwise, any license or other right, title, or interest in or to any intellectual property or other proprietary rights of Arable or its licensors.

4. DATA GENERATED BY ARABLE EQUIPMENT

4.1. Data Definitions

“Field Data” means data collected by the Equipment in Customer’s Locations.

“Processed Content” means data that is the output of data processing performed by Arable on Field Data uploaded by Customer’s Equipment to the Arable servers.

“Derivative Product” means any information or data product (other than a Value-Added Product) or information derived and developed by Customer from Processed Content (including any reasonable facsimile of Processed Content). Examples of a Derivative Product include calculations based on Processed Content such as the calculation of an average temperature from time series temperature data.

“Value-Added Product” or “VAP” means any information or data product generated by Customer from Processed Content (including any reasonable facsimile of Processed Content) that has been by modified through higher processing, technical manipulations, or the integration of additional data, in such a manner that the underlying Processed Content is obscured and cannot be discerned from the Value-Added Product. Examples of a Value-Added Product includes a disease model or frost alert.

These descriptions are not exhaustive and subject to change over time as data descriptions evolve.

4.2. **Data License and Permitted Uses.** As between Customer and Arable, the Field Data and the Processed Content are owned by Arable. Arable grants Customer a non-exclusive, worldwide, limited license during the Term to use the Processed Content as further stated in this Agreement (“Sole License”). The Sole License only permits the Customer to:

- use Processed Content for Customer’s internal use.
- use Processed Content to create Derivative Products for Customer’s internal use.
- use Processed Content or Derivative Products to create VAPs for Customer’s internal or external use.

- make Processed Content or Derivative Products available to consultants and contractors for customization, solely for the benefit of Customer and consistent with Customer's permitted uses hereunder, with no right to sublicense or otherwise transfer the Processed Content or Derivative Products to a third party .
- display Processed Content or Derivative Products on an internet website at full resolution solely in a non-downloadable, non-interactive fashion that does not allow a third party to access the Processed Content or Derivative Products as a standalone file.
- publish Processed Content in a nondigital format.
- sublicense, sell, rent, lease, or otherwise transfer or assign VAPs to one or more third parties.
- any other uses to which you and Arable agree in writing.

Unless otherwise agreed in writing by Arable, Customer shall not, and shall not permit or enable any third party to, directly or indirectly:

- sublicense, sell, rent, lease, or otherwise transfer or assign any Processed Content, Derivative Product or VAP to any third party, except as expressly provided in this Agreement.
- copy or otherwise reproduce any Processed Content, Derivative Product or VAP except as provided in this Agreement.
- use any Processed Content, Derivative Product or VAP for any purpose not expressly permitted under this Agreement,
- remove, bypass, or circumvent any electronic or other form of security or other protection included in any Processed Content.
- reverse engineer or otherwise attempt to derive the algorithms, databases, or data structures from which any Processed Content is derived.

4.3. **Reservation of Rights.** Arable is processing both personally-identifiable information ("Personal Data") and data that is not Personal Data ("Non-Personal Data"). You acknowledge and agree that Arable reserves the right to create anonymous or de-identified data by removing, replacing, or obscuring Personal Data such as your name and address to create Non-Personal Data. You further acknowledge and agree that any Non-Personal Data may be freely utilized by Arable for any purpose permitted by applicable law, commercial or otherwise, including, but not limited to, improving existing product or service offerings or developing new product or service offerings, and Arable may freely sell, modify, create derivative works from, and otherwise exploit any anonymous or de-identified data, in any form, medium, or technology without compensation to you. Examples include analyses that identify devices with data quality or performance issues and development of remedies to address these.

4.4. **Sharing with Distributors and Trusted Advisors.** If you are working with an Arable Distributor, then you consent to our sharing your data with your Distributor, including Personal Data, Field Data and Processed Content. At your request, Arable grant certain Trusted Advisors access to view, edit, upload and download Personal Data, Field Data, or Processed Content. "**Trusted Advisors**" are persons designated by you, including agronomists, crop consultants, seed dealer representatives, employees, family members, landowners, and others involved with your operations. Each Trusted Advisor must first sign the appropriate Arable agreements that requires the Trusted Advisor to abide by the confidentiality, data transfer, use and control restrictions of this Agreement. You may stop sharing Personal Data, Field Data, or Processed Content with any Trusted Advisor at any time by revoking its permission.

4.5. **Sharing with Other Technology Providers.** At your request, Arable may share Personal Data, Field Data, or Processed Content with other agricultural technology providers through links established by Arable and such third parties. Any use of third party links may require you to agree to additional terms with that third party technology provider.

4.6. **Sharing with Distributor.** If you obtained your Equipment through a relationship with a Distributor, you consent to allow such Distributor to access, view, edit, and download Personal Data, Field Data, and Processed Content. The Distributor's access to Personal Data, Field Data, and Processed Content may be subject to additional restrictions or requirements in your agreements and our agreements with the Distributor.

4.7. **Change in Control.** You acknowledge and agreement that Arable may share any Personal Data, Field Data, or Processed Content with any subsidiaries, joint ventures, or other companies under a common control (hereafter referred to as "Affiliates"). If another company acquires Arable or its assets, that company will thereafter manage the Personal Data, Field Data, and Processed Content collected by us and will assume the rights and obligations as described in the current version of the Privacy Statement as well as this Agreement.

4.8. Limitations on Arable's Liability. Arable is not liable for any damages that result from any use or disclosure of Personal Data, Field Data, or Processed Content to any person or entity pursuant to this Agreement or the then-current version of the Privacy Statement. Arable is not responsible for a loss or unauthorized disclosure of Personal Data, Field Data, or Processed Content due to (a) an Act of God, (b) a catastrophic event, or (c) a data breach caused by something. Arable may disclose Personal Data, Field Data, or Processed Content to third parties if reasonably necessary to comply with any applicable law, regulation, legal order, or request, or if Arable is defending itself or its affiliates and personnel in any legal or regulatory proceedings.

5. LIMITATION OF LIABILITIES AND DISCLAIMER OF WARRANTIES

5.1 NEITHER ARABLE NOR ITS SUPPLIERS OR LICENSORS SHALL BE LIABLE TO YOU OR ANYONE ELSE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF ANY ALLEGED BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE EQUIPMENT, THE SERVICES, THE SOFTWARE, OR ANY OTHER PRODUCTS HEREUNDER, INCLUDING, BUT NOT LIMITED TO, ANY DAMAGES ARISING OUT OF LOSS OF PROFITS, REVENUE, DATA OR USE, EVEN IF ARABLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, ARABLE'S AGGREGATE LIABILITY IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO ARABLE. THE LAWS OF CERTAIN JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DAMAGES IN CERTAIN CASES. THE FOREGOING LIMITATIONS AND EXCLUSIONS DO NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

5.2 Disclaimer. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN THIS AGREEMENT: (A) ARABLE DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, ORAL, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING BY VIRTUE OF CUSTOM OF TRADE OR COURSE OF DEALING; (B) ARABLE DOES NOT REPRESENT OR WARRANT THAT THE EQUIPMENT OR ANY OTHER PRODUCTS OR SERVICES WILL MEET REQUIREMENTS OR THAT THEY ARE SUITABLE FOR ANY PARTICULAR NEEDS OR THAT THE DATA OR RESULTS ARE CORRECT, ACCURATE, TIMELY, COMPLETE, SUITABLE, OR RELIABLE; (C) DATA IS COMPILED FROM SOURCES BEYOND ARABLE'S CONTROL AND ERRORS, GAPS, AND INACCURACIES MAY EXIST; AND (D) THE EQUIPMENT, THE SERVICES, AND ALL OTHER PRODUCTS OR SERVICES (INCLUDING, BUT NOT LIMITED TO, ANY AND ALL DATA) ARE PROVIDED ON AN "AS IS, WITH ALL FAULTS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND. CUSTOMER ASSUMES ALL RISK OF ERRORS AND OMISSIONS. THE FACT THAT THE EQUIPMENT MAY WORK AND CONNECT TO A NETWORK IN ONE PLACE DOES NOT MEAN IT WILL WORK OR CONNECT TO A NETWORK IN ANOTHER PLACE. CUSTOMER SHALL IMPLEMENT SUFFICIENT PROCEDURES AND CHECKS TO SATISFY ITS REQUIREMENTS FOR ACCURACY AND SUITABILITY. CUSTOMER MAINTAINS MEANS FOR THE RECONSTRUCTION OF LOST DATA AND REPLACEMENT FOR ANY LOSS OF USE. THE PRODUCTS ARE A SUPPLEMENT TO, NOT A SUBSTITUTE FOR, THE KNOWLEDGE, EXPERTISE, SKILL, AND JUDGMENT OF PROFESSIONALS. CUSTOMER ACCEPTS ALL RISKS IN ITS USE OF THE PRODUCTS INCLUDING BUT NOT LIMITED TO ANY AGRICULTURAL, INVESTMENT, OR FINANCIAL DECISIONS. YOU RELEASE ARABLE FROM ALL CLAIMS OF DAMAGES TO YOUR PROPERTY AND BUSINESS RESULTING FROM INSTALLATION AND USE OF THE EQUIPMENT AND OTHER PRODUCTS. IT IS THE SOLE AND EXCLUSIVE RESPONSIBILITY OF CUSTOMER TO DETERMINE THE SUITABILITY OF ANY AND ALL PRODUCTS FOR USE BY CUSTOMER. THESE DISCLAIMERS SHALL APPLY REGARDLESS OF ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SOME OF THE ABOVE MAY NOT APPLY IN JURISDICTIONS THAT DO NOT ALLOW THE LIMITATION OR EXCLUSION OF CERTAIN WARRANTIES. THE FOREGOING LIMITATIONS AND EXCLUSIONS DO NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

6. REMEDIES FOR BREACH; INDEMNITY; SURVIVAL

6.1. Breach by Customer. If Customer shall default in the payment of any Fees or in making any other payment hereunder when due, Arable shall have the right to exercise any one or more of the following remedies.

- a. To electronically restrict or secede support, connectivity, device functionality and access to data.
- b. To sue for and recover all Fees and other payments, then accrued or thereafter accruing, with respect to any or all Products.

- c. To take possession of any or all Products without demand, notice, or legal process, wherever they may be located. Any said taking of possession shall not constitute a termination of this Agreement as to any or all items of Products unless Arable expressly so notifies Customer in writing.
- d. To terminate this Agreement as to any or all Products.
- e. To pursue any other remedy at law or in equity.
- f. Arable shall be entitled to any attorneys' fees incurred enforcing this Agreement.

Notwithstanding any said repossession, or any other action which Arable may take, Customer shall be and remain liable for the full performance of all obligations on the part of Customer to be performed under this Agreement. All such remedies are cumulative, and may be exercised concurrently or separately.

6.2. Breach by Arable. In the event of any breach of this Agreement by Arable, you shall provide Arable with written notice of the breach. Arable shall have thirty (30) days to cure the breach. In the event Arable fails to cure the breach, this Agreement and each Order shall terminate. In any such event, Arable shall not be liable for indirect or consequential damages, and your recovery shall be limited to a refund of the Fees paid during the prior 12 months.

6.3. Indemnity. You agree to indemnify, defend, and hold harmless Arable, including its employees, agents, officers, developers, and licensors, from any damages, costs, claims, injuries, and liabilities (including attorneys' fees) arising from your use of the Products and the Processed Content or other data. This provision shall apply if another person causes damages, costs, claims, injuries, or liability using the Products at any of your Locations, or using your Arable account, with or without your knowledge.

6.4. Survival. In the event of any termination of this Agreement for any reason, any of the rights or obligations of the parties in this Agreement that, by its nature or terms, should survive termination or expiration of this Agreement, will survive.

7. GENERAL TERMS

7.1. Complete Agreement. If any provision of this Agreement is determined to be unenforceable, the remainder of this Agreement shall remain in effect. This Agreement shall be interpreted as drafted by both parties. Any failure by Arable to enforce any provision shall not be a waiver of such provision. This Agreement is the complete agreement and understanding between the parties. This Agreement may not be modified or amended except pursuant to a writing executed by both parties.

7.2. Assignment. You may not assign your rights or obligations under this Agreement without the prior written consent of Arable. Arable may assign its rights or obligations under this Agreement effective on written notice to you. Subject to the foregoing, this Agreement inures to the benefit of, and is binding upon, the permitted successors, and assigns of the parties.

7.3. Governing Law. This Agreement shall be governed by the laws of the State of Delaware without regard to conflicts of laws provisions or principles. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any dispute between the parties shall be determined by one arbitrator in binding arbitration administered by the American Arbitration Association. Hearings will be conducted only by audio conference and video conference. The award of the arbitrator shall be final and binding on the parties, and may be entered and enforced in any court of competent jurisdiction.

7.4. Notice. All notices required by this Agreement shall be sent by registered or certified mail, return receipt requested, to Customer at the address listed above and to Arable at Arable Labs Inc, Attn: CEO, 40 North Tulane Street, Princeton NJ 08542.

7.5. Confidentiality. You acknowledge and agree that you may learn or have access to certain non-public information that is confidential to Arable, and that the continued confidentiality of this information is essential to Arable's continuing business operations. You agree to maintain the confidentiality of that information as described in this Agreement. Confidential information to which this Agreement applies includes, but is not limited to, the following information: (i) all information relating to the Products, Services, data, technology, software, instruments, manufacturing operations, trade secrets, services, sales or business practices of Arable. This information shall

include, without limitation, data and techniques, data access API, technical processes, designs and design projects, inventions and research programs, trade know-how, specific software algorithms, computer processing systems, object and source codes, user manuals system documentation, marketing plan strategies, forecasts, reports, copyrightable and patentable material, trademarks and service marks, customer lists, sources of supply, prospects or projections, finances, and/or any other proprietary or confidential information relating to the present business of Arable or to the potential to expand and develop that business in the future; and (ii) information relating to current, former or potential customers or clients of Arable. This information may include, but is not limited to, proprietary information concerning the identity, business affairs, methods of operation or other data pertaining to the businesses of former or current customers or potential customers of Arable.