

**MONTAGE**  
**TERMS OF SERVICE**  
**Last Updated: December 29, 2017**

These terms of service (the “**Agreement**”) is entered into between Montage for Ag, Inc., a California corporation (“**Montage**”) and the person or entity named in the Order Form submitted to Montage for access and use of the Services and Montage Platform (as each term is defined below).

PLEASE CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT GOVERNING THE ACCESS AND USE OF THE SERVICES AND MONTAGE PLATFORM. THIS AGREEMENT ALSO CONTAINS AN AGREEMENT TO ARBITRATE IN SECTION 13 BELOW WHICH WILL REQUIRE YOU TO SUBMIT CLAIMS YOU HAVE AGAINST MONTAGE TO BINDING AND FINAL ARBITRATION. BY SUBMITTING AN ORDER FORM, CHECKING “I AGREE” OR BY USING OR ACCESSING THE MONTAGE PLATFORM OR SERVICES IN ANY MANNER, (1) YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT (INCLUDING ALL OF THE TERMS AND CONDITIONS SPECIFIED OR REFERENCED BELOW), (2) YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT (INCLUDING ALL OF THE TERMS AND CONDITIONS SPECIFIED OR REFERENCED BELOW), ON BEHALF OF THE CUSTOMER, AND TO BIND CUSTOMER TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND (3) YOU AGREE THAT CUSTOMER IS ENTERING INTO THIS AGREEMENT (INCLUDING ALL OF THE TERMS AND CONDITIONS SPECIFIED OR REFERENCED BELOW) WITH MONTAGE.

IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR IF YOU DO NOT HAVE SUCH AUTHORITY, DO NOT CREATE AN ACCOUNT, DISCONTINUE THE REGISTRATION PROCESS AND DO NOT ACCESS OR USE MONTAGE PLATFORM OR ANY SERVICES. IF YOU ARE A COMPETITOR OF MONTAGE YOU MAY NOT ACCESS OR USE THE SERVICES WITHOUT MONTAGE’S PRIOR WRITTEN CONSENT.

**TERMS & CONDITIONS**

**1. Definitions**

**1.1. “Acceptable Use Policy” or “AUP”** means Montage’s then-current acceptable use policy available at [https://app.montageforag.com/assets/files/montage\\_for\\_ag\\_acceptable\\_use\\_policy.pdf](https://app.montageforag.com/assets/files/montage_for_ag_acceptable_use_policy.pdf) or any other link Montage may designate.

**1.2. “Account Data”** means any and all data and information provided by Authorized Users in connection with such Authorized User’s account including, without limitation, account profile information, usernames, and passwords.

**1.3. “Administrator”** means the Customer User designated by Customer who manages and administers the Services to Authorized Users on Customer’s behalf, including, without limitation managing Authorized User accounts, and accessing, disclosing, restricting or removing Customer Data in or from Authorized User accounts or from the Montage Platform.

**1.4. “Admin Portal”** means the administrative portal made available to Customer for the purpose of administering the Services.

**1.5. “Authorized Users”** means Customer Users and End Users.

**1.6. "Authorized User Account"** means an account to access and use the Services established by Customer or an Administrator through the Services for an Authorized User.

**1.7. "Blind Data"** means any and all aggregated non-personally identifiable data or information resulting from Customer's or its Authorized Users' use of the Services or Montage Platform, or any other services provided by Montage.

**1.8. "Customer Data"** means any and all data, documents, electronic files, information, and Account Data (including personally identifiable information) provided to Montage by Customer or its Authorized Users in connection with the Services or submitted or uploaded to the Montage Platform by Customer or its Authorized Users or a third party on behalf of Customer.

**1.9. "Customer Users"** means employees or contractors of Customer who are authorized to use the Services and Montage Platform, solely for Customer's internal business purposes, and otherwise in compliance with this Agreement.

**1.10. "Documentation"** means the operating instructions, user manuals, product specifications, "read-me" files, and other documentation that Montage makes available to Customer or its Authorized Users in hard copy or electronic form for the Montage Platform, and any modified, updated, or enhanced versions of such documentation.

**1.11. "Effective Date"** means the date this Agreement is accepted by Customer.

**1.12. "End Users"** means Customer's end user partners and vendors who have been authorized by an Administrator to access and use the Montage Platform in compliance with this Agreement.

**1.13. "Feedback"** means any and all suggestions and feedback provided to Montage by Customer or Authorized Users regarding the functioning, features, and other characteristics of the Services, Montage Platform, Documentation, or other materials or services provided or made available by Montage hereunder.

**1.14. "Fees"** means the Fees set forth on the Order Form and payable by Customer to Montage for the Services.

**1.15. "Initial Term"** means the initial term for the applicable Services ordered by Customer beginning on the date Montage makes the Services available to Customer as set forth on the Order Form.

**1.16. "Intellectual Property Rights"** means patents and patent applications, inventions (whether or not patentable), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, mask-work rights, moral rights, author's rights, and other intellectual property rights, as may exist now or hereafter come into existence, and all derivatives, renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction.

**1.17. "Montage Content"** means all information, data, computer code, software, functionality, displays, technology, text, messages, software, sound, music, video, photographs, graphics, images, tags and the design, selection and arrangement thereof that Montage incorporates into the Services, Montage Platform, and/or Montage Website.

**1.18. “Montage Platform”** means the proprietary online platform provided by Montage made available to Customer and its Authorized Users, over the Internet, as part of the Services.

**1.19. “Montage Website”** means Montage’s website located at [www.montageforag.com](http://www.montageforag.com) or any other website designated by Montage.

**1.20. “Order Form”** means the written or electronic ordering document, or ordering page, for the Services.

**1.21. “Privacy Policy”** means Montage’s privacy policy available at [https://app.montageforag.com/assets/files/montage\\_for\\_ag\\_privacy\\_policy.pdf](https://app.montageforag.com/assets/files/montage_for_ag_privacy_policy.pdf) or any other link Montage may designate.

**1.22. “Renewal Term”** means the renewal term period set forth on the Order Form following either the Initial Term or a previous Renewal Term.

**1.23. “Services”** means the services ordered by Customer pursuant to an Order Form and provided by Montage, as further described at [www.montageforag.com/features](http://www.montageforag.com/features), or other link that Montage may designate, or any other services provided by Montage to Customer hereunder.

**1.24. “Term”** means the Initial Term and all Renewal Terms.

**1.25. “Third-Party Integrations”** means any third-party service, applications and/or integrations that may be accessed and used through the Montage Platform.

## **2. Services; Access to the Montage Platform; Restrictions**

**2.1. Services.** Subject to the terms and conditions of this Agreement (including the payment of applicable Fees), Montage will provide Customer and Authorized Users, during the Term, access and use of the Services and the Montage Platform.

**2.2. Access to the Montage Platform.** Subject to the terms and conditions of this Agreement (including payment of applicable Fees), Montage hereby grants to Customer a non-exclusive, non-transferable, limited license, solely during the Term, to (i) access and use, and permit Customer Users to access and use, the Montage Platform, over the Internet, in each case, solely for Customer’s own internal business purposes and in accordance with the Documentation; (ii) permit End Users to access and use the Montage Platform, over the Internet, solely to view Customer’s Data for Customer’s own internal business purposes and in accordance with the Documentation; and (iii) reproduce and use a reasonable number of copies of the applicable Documentation in support of the exercise of the licenses granted in this Section.

**2.3. Restrictions.** Customer acknowledges that the Montage Platform and Documentation embodies, contains, and constitutes valuable trade secrets of Montage. Customer agrees that it will not, and it will not permit any Authorized User or third party to: (i) modify, adapt, translate or create derivative works based on the Montage Platform or Documentation; or (ii) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Montage Platform; or (iii) sell, rent, lease, time-share, distribute, license, sublicense, assign, transfer or otherwise make available to any third party the Services, Montage Platform or Documentation, except to the extent expressly permitted in Section 2.2; or (iv) access or use the Montage Platform other than as expressly set forth in this Agreement. In addition, Customer acknowledges and agrees that the Montage

Platform, Documentation, Feedback, and the terms of this Agreement are the confidential information of Montage and shall not disclose to any third party (except to its Authorized Users in accordance with this Agreement) any such confidential information of Montage. Montage reserves all rights and licenses not expressly granted to Customer in Section 2.2 and no implied license is granted by Montage. Customer agrees not to remove, alter, or obscure in any way any proprietary rights notices (including copyright notices) of Montage or its suppliers on or within the Montage Platform or Documentation.

### 3. Customer Obligations

**3.1. Use and Administration of the Services.** Customer may specify Customer Users as Administrators through the Admin Portal. Customer is responsible for maintaining the confidentiality of passwords and Admin Accounts, and managing access to Admin Accounts. Montage has no responsibility to Customer with respect to the internal management or administration of the Services for Customer. Customer will prevent unauthorized use of the Services and Montage Platform by its Authorized Users and terminate any unauthorized use of or access to the Services and/or Montage Platform. Authorized User Accounts may only be provided to and registered and used by a single Authorized User. Customer will promptly notify Montage of any unauthorized use of or access to the Services or Montage Platform.

**3.2. Customer Data.** Customer understands and agrees that Customer will be solely responsible for Customer's, and its Authorized Users', use of Customer's account associated with the Services. Customer acknowledges and agrees that Customer is solely responsible for the security of Customer Data. Customer grants to Montage, during the term of this Agreement a non-exclusive, royalty-free, fully paid, worldwide license, under all of Customer's intellectual property and proprietary rights, to any and all Customer Data reasonably necessary for Montage to provide Customer the Services and other services hereunder. Customer represents and warrants that it has all the rights necessary to grant the licenses granted herein to Montage in and to such Customer Data. Customer agrees that Montage's obligation to maintain any Customer Data obtained in the course of providing the Services shall not extend beyond the Term. Montage will use reasonable measures to protect the personally identifiable information of Customer and its Authorized Users submitted or provided to Montage in connection with the Services. Montage will use any such personally identifiable data in accordance with this Agreement and the Privacy Policy located at [https://app.montageforag.com/assets/files/montage\\_for\\_ag\\_privacy\\_policy.pdf](https://app.montageforag.com/assets/files/montage_for_ag_privacy_policy.pdf) or any other link Montage may designate.

**3.3. No Sensitive Data; Backup of Customer Data.** Customer acknowledges that the Services are not intended for use with protected health information under HIPAA, credit card numbers, financial account numbers, or other similarly sensitive personal information, and that Customer assumes all risk arising from use of any such sensitive information with the Services, including the risk of any inadvertent disclosure or unauthorized access thereto. The Customer is solely responsible for the backup of its Customer Data. Customer is encouraged to back up its Customer Data on at least a weekly basis. **MONTAGE SHALL HAVE NO OBLIGATION TO BACK UP CUSTOMER DATA, AND ASSUMES NO RESPONSIBILITY FOR, NOR ANY LIABILITY FOR LOSS OF DATA, NOR CUSTOMER'S FAILURE TO BACK UP ITS CUSTOMER DATA ON A REGULAR BASIS.**

**3.4. Compliance and Authorized Users.** Customer is responsible for ensuring that Customer and its Authorized Users' use of the Service is in compliance with all applicable laws and governmental regulations and Customer acknowledges that Customer assumes all risk arising from any such use that is not compliant with applicable laws and regulations. The Services and Montage Platform are not intended for Authorized Users under the age of thirteen (13). Customer will ensure that it does not allow any person under thirteen (13) to use or access the Services or Montage Platform. Customer will obtain and maintain from Authorized Users any

consents necessary to allow Administrators to engage in the activities described in this Agreement and to allow Montage to provide the Services. Customer and its Authorized Users must use the Services and Montage Platform in compliance with Montage's then-current AUP. Customer agrees that it shall not permit any person other than Authorized Users to access and use the Services and Montage Platform. With respect to each Authorized User, Client shall ensure that: (i) such Authorized User uses the Services and Montage Platform solely in accordance with this Agreement and the applicable usage permissions, and (ii) such Authorized User complies with Montage's then-current AUP. Customer acknowledges and agrees that any non-compliance by any Authorized User with any of the requirements above will be deemed a breach by Customer of this Agreement.

**3.5. Third-Party Integrations.** Customer shall be solely responsible for the integration, access, and use of any Third-Party Integrations used by Customer or its Authorized Users in connection with the Services, including, without limitation, any additional fees payable for such Third-Party Integration, any terms and conditions, license agreement, terms of use or any other applicable conditions governing Customer's use of such Third-Party Integration. Customer acknowledges and agrees that Montage is not responsible for Third-Party Integration, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect thereof. Montage does not assume and will not have any liability or responsibility to Customer, Authorized User or any other person for any Third-Party Integrations. Customer acknowledges and agrees that when Customer uses a Third-Party Integration, the applicable third party's terms and policies apply, including the third party's privacy and data gathering practices.

**3.6. Indemnification.** Customer will defend at its own expense any claim or action against Montage or its officers, directors, employees or contractors (each an "**Montage Indemnified Party**") brought by a third party, and will indemnify and hold harmless each Montage Indemnified Party from and against all costs (including reasonable attorneys' fees) and damages incurred by such Montage Indemnified Party in any such claim or action, to the extent that the action is based on: (i) Customer Data; (ii) Third-Party Integrations; (iii) use of the Montage Platform in such a manner that produces a recommendation that the Montage Platform would not otherwise produce (for example, overrides Montage's internal recommendation algorithms for usage parameters or limitations) or bypasses or breaches any security device or protection used by the Montage Platform; (iv) Authorized User claims; or (v) your breach of any warranties made by you hereunder or your violation of any other provision of this Agreement or the AUP. The foregoing obligations are conditioned on Montage notifying Customer promptly in writing of such action, giving Customer sole control of the defense thereof and any related settlement negotiations, and at Customer's reasonable request and expense, cooperating and assisting in such defense. Under no circumstances shall Customer enter into any settlement that involves an admission of liability, negligence or other culpability of Montage or any Montage Indemnified Party or requires Montage or any Montage Indemnified Party to contribute to the settlement without Montage's prior written consent.

## **4. Ownership**

**4.1. By Montage.** Montage and its suppliers retain all right, title and interest in and to all Intellectual Property Rights in the Montage Platform, Documentation, Montage Content, Montage Website and all other materials provided or made available to Customer in connection with the Services, and any and all modifications, updates, and enhancements to the foregoing items. In addition, Customer hereby licenses Feedback and Blind Data to Montage on a worldwide, perpetual, irrevocable, non-exclusive, freely transferable, fully paid, and royalty-free basis, for Montage to use and exploit in any manner and for any purpose.

**4.2. By Customer.** Subject to the licenses granted to Blind Data and Feedback granted to Montage, Customer shall retain all right, title and interest, including all Intellectual Property Rights, in and to Customer Data.

**5. Publicity.** Montage may refer generally to the existence of this Agreement and use the Customer's name in press releases, on web sites, and other promotional material, but will not reveal any specific terms of this Agreement or any non-public and proprietary information designated "confidential" in writing by Customer.

## **6. Fees; Auto-Renewal and Trial Payment; Taxes**

**6.1. Fees.** Customer shall pay to Montage all applicable Fees for the Services set forth on the Order Form, in accordance with the terms specified therein. Customer authorizes Montage to charge Customer for all applicable Fees using Customer's selected payment method. All Fees are non-refundable and non-returnable except as required by law or as otherwise specifically permitted in this Agreement. Montage may increase the amount of Fees and rates payable by Customer upon at least thirty (30) days written notice to Customer prior to Customer's next charge or payment.

**6.2. Auto-Renewal and Trial Payment Terms.** IF CUSTOMER HAS ENROLLED IN AUTO-RENEWAL OR IS IN A TRIAL PERIOD, MONTAGE MAY CHARGE AUTOMATICALLY AT THE END OF THE TRIAL OR FOR THE RENEWAL TERM, UNLESS THE CUSTOMER NOTIFIES MONTAGE THAT THE CUSTOMER WANTS TO CANCEL OR DISABLE AUTO-RENEWAL PRIOR TO THE EXPIRATION OF THE TRIAL PERIOD OR THE THEN-CURRENT TERM. THE SERVICE WILL BE RENEWED AT MONTAGE'S THEN-CURRENT FEES FOR CUSTOMER'S EXISTING SERVICES.

**6.3. Taxes.** The Fees are exclusive of all applicable sales, use, value-added and other taxes, or other similar charges, and Customer will be responsible for payment of all such taxes (other than taxes based on Montage's income), and any related penalties and interest, arising from the payment of the Fees, the delivery of the Montage Platform, or performance of the Services.

## **7. Term and Termination**

**7.1. Term.** This Agreement will commence as of the Effective Date and remain in effect until the earlier of (i) termination of this Agreement or (ii) expiration of Customer's then-current Term.

**7.2. Termination.** Either party may terminate this Agreement for material breach by the other party that remains uncured thirty (30) days after delivery of written notice of such breach or (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within thirty (30) days. The foregoing rights of termination are in addition to any other rights and remedies provided in this Agreement or under applicable law.

**7.3. Effects of Termination.** Upon expiration or termination of this Agreement or any specific for any reason, Customer shall cease (and require all Authorized Users to cease) using the Services, Montage Platform, and Documentation and destroy, any and all information or materials supplied by Montage, including any related Documentation provided by Montage, and all copies thereof in Customer's possession or control. Upon expiration or termination of this Agreement for any reason, all Fees due to Montage under all Order Forms, shall be immediately due and payable, provided that if Customer terminates this Agreement for Montage's material breach, Montage will refund to Customer any Fees paid in advance by Customer for any unused portion of Customer's then-current Term for which such payment was made. If Customer terminates the Agreement for any reason other than in accordance with Sections 7.2, the Fees for the entire Term shall be immediately due

and payable. The following Sections will survive expiration or termination of this Agreement: 1, 2.3, 3, 4, 5, 6, 7.3, 8, 9, 10, 11, 12, 13, 14 and 15.

## **8. Disclaimer**

**8.1.** MONTAGE MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH REGARD TO THIS AGREEMENT, THE SERVICES, THE MONTAGE PLATFORM, DOCUMENTATION OR ANY OTHER MATERIALS OR SERVICES PROVIDED BY MONTAGE, INCLUDING ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. MONTAGE DOES NOT WARRANT THAT THE SERVICES, MONTAGE PLATFORM, DOCUMENTATION OR ANY OTHER MATERIALS OR SERVICES PROVIDED BY MONTAGE WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT THE SERVICES, MONTAGE PLATFORM, DOCUMENTATION OR ANY OTHER MATERIALS OR SERVICES PROVIDED BY MONTAGE WILL BE CORRECT, ACCURATE, OR RELIABLE. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES AND THAT NO WARRANTIES ARE MADE BY ANY OF MONTAGE'S SUPPLIERS

**8.2.** MONTAGE MAKES NO REPRESENTATION OR WARRANTY AS TO ANY THIRD-PARTY INTEGRATIONS, AND CUSTOMER AGREES THAT MONTAGE SHALL NOT BE RESPONSIBLE OR LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY DAMAGE OR LOSS CAUSED OR ALLEGED TO BE CAUSED BY OR IN CONNECTION WITH USE OF OR RELIANCE ON ANY SUCH THIRD-PARTY INTEGRATIONS.

## **9. Limitation of Liability**

**9.1.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MONTAGE BE LIABLE, UNDER ANY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER THEORY, FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF OR DAMAGE TO DATA, COST OF COVER, LOSS OF ANTICIPATED REVENUE OR PROFITS, WORK STOPPAGE, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR LOSS OR IMPAIRMENT OF OTHER ASSETS, ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR MONTAGE'S PERFORMANCE HEREUNDER OR THE USE, MISUSE, OR THE INABILITY TO USE, IN WHOLE OR IN PART, THE SERVICES, MONTAGE PLATFORM, DOCUMENTATION OR ANY OTHER MATERIALS OR SERVICES PROVIDED BY MONTAGE, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT MONTAGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9.2.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MONTAGE'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, THE SERVICES, MONTAGE PLATFORM, DOCUMENTATION AND ANY OTHER MATERIALS AND SERVICES PROVIDED BY MONTAGE, UNDER ANY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER THEORY, EXCEED THE TOTAL FEES ACTUALLY PAID TO MONTAGE BY CUSTOMER UNDER THE ORDER FORM CORRESPONDING TO THE SERVICES IN RESPECT OF WHICH THE LIABILITY AROSE AND LIMITED TO THE AMOUNT OF SUCH FEE CORRESPONDING TO THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE FIRST CLAIM GIVING RISE TO SUCH LIABILITY AROSE. CUSTOMER AGREES THAT MONTAGE'S SUPPLIERS AND AFFILIATES WILL HAVE NO LIABILITY OF ANY KIND UNDER OR AS A RESULT OF THIS AGREEMENT. THE FOREGOING LIMITATIONS OF LIABILITY ARE INDEPENDENT OF ANY EXCLUSIVE REMEDIES SET FORTH IN THIS AGREEMENT.

**10. Exclusions.** Notwithstanding anything in this Agreement to the contrary, Montage will have no responsibility or liability of any kind under this Agreement, arising or resulting from: (i) problems caused by failed Internet connections or other hardware, software or equipment which is not owned, controlled or operated by Montage; (ii) Third-Party Integrations; (iii) nonconformities resulting from Customer's, its Authorized Users', or any third party's misuse, abuse, negligence, or improper or unauthorized use of all or any part of the Services, Montage Platform, or other services provided hereunder by Montage; (iv) modification,

amendment, revision, or change to the Montage Platform by any person other than Montage; or (v) any other factor outside of Montage's reasonable control.

**11. Basis of Bargain.** The warranty disclaimer and limitation of liability set forth above are fundamental elements of the basis of the agreement between Montage and Customer. Montage would not be able to provide the Services on an economic basis without such limitations. The warranty disclaimer and limitation of liability inure to the benefit of Montage's suppliers.

**12. Availability of the Services.** Information describing the Services is accessible worldwide but this does not mean the Services or certain portions thereof are available in Customer's country. Montage may restrict access to the Services, the Montage Platform, or portions thereof in certain countries. It is Customer's responsibility to make sure its use of the Services is legal in Customer's country of residence. The Services may not be available in all languages. If at Montage's reasonable determination, Customer uses the Services, Montage Platform, Documentation or any other material or services provided by Montage under this Agreement in a manner that violates laws, creates an excessive burden or potential adverse impact on Montage's systems, in addition to any of its other rights or remedies, Montage may, without liability to Montage, immediately suspend or terminate Customer's access to the Services and/or the Montage Platform.

### **13. Governing Law; Dispute Resolution**

**13.1. Governing Law.** This Agreement shall be governed by the laws of the state of California, United States, without giving effect to any conflicts of laws principles

**13.2. Informal Resolution.** Before resorting to formal dispute resolution in accordance with this Section, Customer and Montage agree to first attempt to resolve the dispute by contacting the other party through the notice procedures set forth in Section 15. In the event a dispute is not resolved within thirty (30) days of notice, Customer or Montage may institute arbitration in accordance with the procedures set forth in this Section.

**13.3. Dispute Resolution.** Any and all disputes that cannot be resolved through informal resolution in accordance with Section 13.2 above shall be resolved exclusively through final, binding and confidential arbitration and shall take place in Fresno, California unless otherwise mutually agreed to by the parties. The arbitration shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association (AAA) as such rules are then prevailing, provided that the arbitrator and the parties shall comply with the following: (i) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration; (ii) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (iii) any judgment on the award rendered by the arbitrator shall be binding, final, and confidential, and may be entered in any court of competent jurisdiction.

**13.4. Exception to Arbitration.** Notwithstanding anything in this Agreement to the contrary to the extent you have in any manner violated or threatened to violate any of Montage's intellectual property rights, Montage may seek injunctive or other appropriate relief in any state or federal court with competent jurisdiction in any country, including in the State of California, United States of America, without first engaging in arbitration or the informal dispute process set forth in this Section, and you hereby consent to the personal jurisdiction and exclusive venue in such courts.

**13.5. NO CLASS ACTIONS.** Customer may only resolve disputes with Montage on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. Class

arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations aren't allowed under this Agreement.

**14. Miscellaneous.** Neither the rights nor the obligations arising under this Agreement are assignable by Customer, and any such attempted assignment or transfer shall be void and without effect. Any waiver, amendment or modification of any provision of this Agreement must be in writing and executed by both parties. The failure of either party to exercise any right provided for by this Agreement shall not be deemed a waiver of that right. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations have been duly authorized and that this Agreement is a valid and legal agreement binding on the party and enforceable according to its terms. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, that provision shall be stricken from this Agreement and shall not affect the legality, enforceability or validity of the remainder of this Agreement. The parties acknowledge and agree that they are dealing with each other as independent contractors and nothing in this Agreement and its performance shall be construed as creating a joint venture or agency between Montage and Customer. Montage may delegate the performance of any services hereunder to its affiliates and contractors. This Agreement together with the Order Form(s), Privacy Policy, and AUP constitutes the entire agreement between the parties regarding this subject matter, and supersedes all prior oral or written agreements or communications with regard to the subject matter described. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to." Any delay in performance of any duties or obligations of either party will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, telecommunications or Internet failure, or any other event beyond the reasonable control of such party. Notices must be sent via email, first class, airmail, or overnight courier and are deemed given when received. Notices to Customer may also be sent to the applicable account email address and are deemed given when sent. Notices to Montage must be sent to legal@montageforag.com, with a copy to ATTN Legal, Montage for Ag, Inc., 2344 Tulare Street, Suite 200, Fresno, CA 93721.

**15. Changes to this Agreement.** Montage reserves the right to change the terms and conditions of this Agreement in its sole discretion from time to time. All such changes will be effective when posted on the Montage Website or emailed to Customer at the e-mail designated in Customer's account. Customer agrees to review the Montage Website periodically for changes. Montage reserves the right to change or discontinue the Services or Montage Platform, in whole or in part, including without limitation, the Internet based services, pricing, technical support options, and other product-related policies. Customer's continued use of the Services and/or Montage Platform after such changes are made to the Agreement and are made available on the Montage Website or emailed to Customer will indicate Customer's acceptance to the changes.

**16. Questions or Additional Information.** If Customer has questions regarding this Agreement, please send an e-mail to legal@montageforag.com.

**Montage for Ag, Inc.  
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