

The Davey Tree Benefits Engine, powered by i-Tree

API Agreement

This Application Programming Interface (API) Agreement (this "**Agreement**"), effective as of the Effective Date as identified on the API Term Sheet (the "Term Sheet"), is by and between Davey Tree Expert Company, an Ohio corporation with offices located at 1500 North Mantua Street, Kent, OH 44240 ("**Provider**"), and the Customer as identified on the Term Sheet. Provider and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

WHEREAS, Provider provides access to the Services (defined below) to its customers;

WHEREAS, Customer desires to access the Services, and Provider desires to provide Customer access to the Services, subject to the terms and conditions of this Agreement; and

WHEREAS, Customer may be provided a Term Sheet with basic terms as outlined in this Agreement, and which incorporates this Agreement by reference.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

(a) "**Authorized User**" means Customer's employees, consultants, contractors, and agents who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement.

(b) "**Confidential Information**" means information about or relating to the Disclosing Party or the Disclosing Party's Affiliates or their respective products, inventions (whether patentable or not), trade secrets, know-how, software, confidential Intellectual Property, specimens, data, samples, plans, designs methods, processes, test results or reports, marketing or pricing activities or plans, costs or profits, and/or any other information or materials and that is not generally known to the public, whether in oral, written, electronic, or other form or media, whether or not such information is marked, designated, or otherwise identified as "confidential" and whether or not such items would be considered trade secrets under applicable law.

(c) "**Customer Data**" means 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. Customer Data may include data provided by Customer through the Services, such as Tree Site Data, or Tree location data.

(d) "**Disclosing Party**" means the Party disclosing or making available an item of Confidential Information or with respect to which an item of Confidential Information is about or relates.

(e) "**Documentation**" means Provider's material, including without limitation online user guides and support documentation relating to the Services provided by Provider to Customer

either electronically through an online support portal or in hard copy form/end user documentation relating to the Services available at <https://dtbe-api.daveyinstitute.com>.

(f) **"Provider IP"** means the Services, and 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, Provider IP does not include Customer Data.

(g) **"Intellectual Property"** means any and all registered and unregistered throughout the world (i) patents, patent applications, patent disclosures and related improvements, including without limitation all provisionals, nonprovisionals, utilities, continuations, divisionals, continuations-in-part, reexaminations, reissues designs, and utility models with all renewals and extensions thereof (ii) trademarks, service marks, trade dress, logos, trade names, , corporate names, URLs, Internet domain names, and second-level domain names, along with any associated goodwill, (iii) copyrights and copyrightable works, software, including any derivative works (iv) trade secrets and confidential business information (including ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, research and development information, software, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information), (v) social media, (vi) registrations and applications to register any of the foregoing, if applicable, and (vii) rights to sue with respect to past and future infringements of any of the foregoing.

(h) **"i-Tree Cooperative"** means the cooperative partnership formed to develop and disseminate i-Tree software, which provides users with urban and rural forestry analysis and benefits assessment tools. The i-Tree Cooperative includes the U.S. Forest Service, Davey Tree Expert Company, The Arbor Day Foundation, Society of Municipal Arborists, International Society of Arboriculture, and Casey Trees.

(i) **"Receiving Party"** means the Party receiving any item of Confidential Information from or with respect to the Disclosing Party.

(j) **"Services"** means the access to the Davey Tree Benefits Engine Application Programming Interface (API) to provide a data interface with i-Tree software, which is a software package that provides users with urban and rural forestry analysis and benefits assessment tools, and any Documentation.

2. Access and Use.

(a) Provision of Access. Provider hereby grants Customer a non-exclusive, nontransferable, nonsublicensable, limited (except in compliance with Section 11(f)) right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Provider shall provide to Customer the necessary Application Programming Interface (API) key, which is unique to the Customer, and network links or connections to allow Customer to access the Services within five (5) days following the Effective Date. This Agreement is binding on all Authorized Users, and Customer shall ensure compliance of all the terms and conditions herein by its Authorized Users.

- (b) Customer Usage. Customer bears the responsibility of interfacing and interacting with the Davey Tree Benefits Engine API within Customer's proprietary or third-party software. Provider support is limited to Provider's Basic API Description in the Documentation. Customer is responsible for all use of Services under Customer's unique API key, including any fees owed resulting from any authorized or unauthorized use of Services under Customer's unique API key. Provider may, at Provider's sole discretion, restrict or block Customer's access to the Services under Customer's API key in the event that Customer's usage causes an unreasonable load on Provider's servers, as determined by Provider. For example, Provider may restrict Customer's usage of the Services on a per-minute or per-day basis, or block access entirely. Provider may disable Customer's unique API key without notice, for any reason. Upon disabling Customer's API key, Provider shall contact Customer within (2) two weeks to inform Customer of the status of Customer's access to the Services.
- (c) Development Testing Phase. Provider may allow, at Provider's sole discretion and for a limited time and/or limited usage, a development testing phase to allow Customer to integrate their proprietary or third-party software with the Davey Tree Benefits Engine API. During the development testing phase, Customer will not accumulate fees for any activity through Customer's unique API key.
- (d) Attribution. Along with any display of data or information acquired through Customer's use of the Davey Tree Benefits Engine API, Customer must indicate that the data or information is "Powered by i-Tree", include a legible display of the i-Tree logo provided by Provider, and list, and where applicable, link to the www.itreetools.org website. Provider may update or change the language and/or logo that is to be indicated under this Section 2(d) with prior written notice to Customer.
- (e) Documentation License. Provider hereby grants to Customer a non-exclusive, revocable, non-sublicensable, non-transferable (except in compliance with [Section 11\(f\)](#)) license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.
- (f) Specifications. Customer shall ensure that its network and systems comply with the relevant specifications provided by Provider from time to time and shall provide Provider with information as may be required by Provider in order to provide the Services. Customer is responsible for obtaining, maintaining, and supporting all Internet access, computer hardware, and other equipment, products and services needed for it to utilize the Services, including but not limited to keeping any third party license in good standing. In the event Customer fails to obtain, maintain and support the necessary access to use the Services, Customer acknowledges and agrees that it may lose access to the Services. In the event Customer does not provide the information, licenses and other such information as set forth herein then Provider shall not be deemed to be in breach of this Agreement. Customer will determine the access controls for its authorized users and will be responsible for activity occurring under Customer's account under Customer's unique API key, including compliance with this Agreement. Customer agrees to: (i) timely (within thirty (30) days of any change) maintain the accuracy and completeness of information provided to Provider, and (ii) notify Provider immediately of any unauthorized use of Customer's API key or any other known breach of security. In the event of any unauthorized

use of Customer's API key, or if Customer shares its unique API key with any person other than an Authorized User, Provider reserves the right to deactivate Customer's API key without notice as well as charge Fees (in accordance with Section 4(a)) for any unauthorized uses.

(g) Scheduled Downtime and Outages. Provider may, from time to time, perform scheduled outages of the Services in whole or in part ("Scheduled Downtime"). Provider shall use commercially reasonable efforts for Scheduled Downtime in a manner that is of minimum interruption to Customer. Provider makes no guarantee of availability of the Services.

(h) Use Restrictions. Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall be responsible for Authorized Users' adherence to the terms and conditions set forth in this Agreement, and shall not permit any Authorized Users at any time to directly or indirectly: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; (v) remove and/or alter any trademark, logo, copyright and/or other proprietary and/or confidentiality notices, legends symbols and/or labels on and/or in the Services made available by Provider hereunder; (vi) take any action that materially interrupts or interferes with, or that might reasonably have been expected to materially interrupt or interfere with, the Services, Provider's business operations and/or other customers; and/or (vii) permit any other person and/or entity to engage in any of the foregoing conduct.

3. Service.

(a) Service Levels and Support. Provider offers no Service Level Agreement under this Agreement. Support is limited to the basic API Description included in the Documentation. It is Customer's responsibility to notify Provider in the event that Customer believes that the Services are not providing accurate or expected values.

(b) Changes and Updates. Provider reserves the right to change or update functionality of the Services from time to time. Provider shall notify Customer of any significant changes to the Services. Customer acknowledges that the tree benefits estimation science used in providing the Services evolves with time and said estimates will change from time to time. Provider shall notify Customer of any significant changes to the tree benefits estimation that may affect the Services. Changes or updates to functionality of the Services or of the tree benefits estimation science shall have no effect on the fees under Section 4.

(c) Errors. Provider shall provide error messages to Customer via an API response in the event of a Services error. Customer may refer to Documentation regarding error tags and status fields for Services errors. Provider shall provide server error codes (such as HTTP 500 and 403) in the event of a server failure.

4. Fees and Payment.

(a) Fees. Customer shall pay Provider the fees ("**Fees**") set forth in **Exhibit A**. Provider shall invoice Customer for all Fees in accordance with the invoicing schedule and requirements set forth in **Exhibit A**. Provider may change the Fees with at least thirty (30) days' written notice to Customer. Provider will track all activity under Customer's unique API key and will invoice Customer on a quarterly basis, based on the calendar year (e.g. first quarter starting on Jan. 1, etc.). Customer shall pay all invoices upon receipt. Customer shall make all payments hereunder in US dollars, which shall be paid in full without any deduction, set-off, counterclaim or withholding of any kind unless required by law. Provider may allow Customer, on an as-needed basis, to access Services for a bulk update of existing tree inventories at a reduced fee, which shall be separately negotiated and put in writing between Provider and Customer.

(b) Payment Disputes. Customer may withhold from payment any and all payments of Fees that Customer disputes in good faith, pending resolution of such dispute, provided that Customer: (i) timely renders all payments and amounts that are not in dispute; (ii) notifies Provider of the dispute at least ten (10) days prior to the due date for payment, specifying in such notice the amount in dispute and the reason for the dispute; (iii) works with Provider in good faith to promptly resolve the dispute; and (iv) promptly pays any amount determined to be payable by resolution of the dispute. Provider shall not fail to perform any obligation hereunder by reason of Customer's good faith withholding of any Fees in accordance with this Section 4(b).

(c) Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. 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 Provider's income.

5. Confidentiality.

(a) Confidential Information. Except as expressly permitted under this Agreement, or as otherwise permitted in writing by the Disclosing Party, neither the Receiving Party, any Affiliate of the Receiving Party or any officer, director, manager, employee or agent of either the Receiving Party or any Affiliate of the Receiving Party (the "Related Parties") will (a) disclose to any person all or any part of any Confidential Information, (b) act unreasonably or fail to act reasonably so as to impair the confidential or proprietary nature of any Confidential Information, or (c) use all or, any part of any Confidential Information for any purpose whatsoever other than performing the Receiving Party's rights and obligations under this Agreement. The Receiving Party will be responsible to the Disclosing Party for any breach by a Related Party of its obligations under this Section 5(a).

The Confidential Information may be given to and used by Related Parties solely for performing the Receiving Party's rights and obligations under this Agreement. The Receiving Party will take all such actions as are reasonably necessary to ensure that each Related Party having access to any Confidential Information does not disclose, use, act or fail to act as required by this Article 5, and Receiving Party will be liable to the Disclosing Party for any breach of these obligations by the Related Parties.

The Receiving Party shall use reasonable care, at least as protective as the efforts it uses for its

own Confidential Information of a similar nature, to safeguard the Disclosing Party's Confidential Information from use or disclosure other than as permitted hereby.

Each Party hereby retains its entire right, title and interest, including all intellectual property rights, in and to all of its Confidential Information. Any disclosure of such Confidential Information under this Agreement shall not be construed as an assignment, grant, option, license or other transfer of any such right, title or interest whatsoever to the Receiving Party or any of its Related Parties.

(b) Limitations on Application of Confidentiality Obligations. Notwithstanding anything to the contrary, "Confidential Information" will not mean information that (i) is in the public domain at the time of its disclosure to the Receiving Party, (ii) goes into the public domain after disclosure to the Receiving Party through no breach of any obligation of confidentiality to the Disclosing Party or any third person by the Receiving Party or any Related Party, (iii) is disclosed to the Receiving Party by a third party who is under no obligation of confidentiality to the Disclosing Party, (iv) is already known to the Receiving Party at the time of disclosure to the Receiving Party as evidenced by written documentation, (v) is independently developed by the Receiving Party without using Confidential Information of the Disclosing Party as evidenced by written documentation, or (vi) is required to be disclosed by the Receiving Party pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction (a "Legal Order"); provided, however, that prior to making any disclosure pursuant to a Legal Order, Receiving Party shall (unless legally prohibited) provide Disclosing Party with (i) prompt written notice of such requirement so that Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy and (ii) reasonable assistance, at Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance, Receiving Party remains subject to a Legal Order to disclose any Confidential Information, Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of Receiving Party's legal counsel, such Legal Order specifically requires Receiving Party to disclose and, upon Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment. A Party disclosing Intellectual Property pursuant to this Section 5 will remain the exclusive owner of such Intellectual Property and the disclosure will not be considered a license with respect to such disclosed Intellectual Property.

(c) Methods of Disclosure. Confidential Information disclosed under Section 5, will be disclosed by each Party to the other Party in any and all ways reasonably acceptable to the Receiving Party and appropriate for the Intellectual Property that is subject to disclosure. Confidential Information that is in or has been reduced to tangible or written form will be disclosed in such form to the Receiving Party. Confidential Information that may be disclosed only by visual observation or teaching will be disclosed by demonstrating it or teaching it to technically competent representatives of the Receiving Party. Any meetings or visits at which demonstration or teaching of Confidential Information or Intellectual Property is to occur will be at mutually agreeable times and places. All such disclosures shall remain subject to the confidentiality provisions herein and any other non-disclosure agreement entered into by the

Parties.

(d) Unauthorized Access to Confidential Information. In the event any Confidential Information provided to the Receiving Party is accessed by a third party who is not authorized to receive such information under this Agreement, the Receiving Party shall promptly notify the Disclosing Party of the events and circumstances involving such unauthorized access and provide a summary of the Confidential Information that was improperly accessed, the remedial actions it plans to take and will (to the extent legally permitted) reasonably cooperate with the Disclosing Party to regain possession of the Confidential Information and prevent its further unauthorized use or disclosure in breach of this Agreement.

6. Intellectual Property Ownership.

(a) Provider IP. Customer acknowledges that, as between Customer and Provider, Provider owns and shall retain all right, title, and interest, including all Intellectual Property rights, in and to the Provider IP. Provider shall retain exclusive ownership to all inventions, improvements, designs, drawings, documentation, plans, schedules, programs, specifications, software, technology, discoveries, its Confidential Information, ideas, and other works of authorship, that are conceived, created, or reduced to practice in connection with the products supplied and services performed by Provider in connection with the Services under this Agreement (collectively “Work Product”) and all related Intellectual Property. To the extent Customer creates, conceives, develops, or reduces to practice any Work Product based on the Services, Documentation, Provider IP, or Provider’s Confidential Information, such Work Product and related Intellectual Property shall be deemed a work made for hire such that Provider is the author and owner, and if not deemed a work made for hire, Customer hereby irrevocably assigns to Provider all such Work Product and related Intellectual Property.

(b) Cooperation. Customer shall, and shall cause its employees or any contractors to, take all appropriate action and execute and deliver all documents necessary or reasonably requested by Provider to effectuate any of the provisions or purposes of Section 6 or otherwise, as may be necessary or useful for Provider to prosecute, register, perfect, record, maintain, enforce or defend its rights in or to any Work Product or any Intellectual Property related to the Services. Customer hereby appoints Provider as Provider’s attorney-in-fact with full irrevocable power and authority to take any such actions and execute any such documents if Customer refuses or otherwise fails, to do so within a period deemed reasonable by Provider.

(c) Customer Data. Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all Intellectual Property, in and to the Customer Data. Customer is responsible for providing all Customer Data and/or information and responsible for the accuracy, quality, integrity and legality of such data and of the means by which Authorized Users access and use the Customer Data. Further, as between Provider and Customer, Customer shall maintain data privacy at a level at least as stringent as Provider. Customer hereby grants to Provider and the i-Tree Cooperative a non-exclusive, royalty-free, irrevocable, transferable, sublicensable, worldwide license to reproduce, distribute, prepare derivative works, display, perform, transmit, and use the Customer Data (i) to the extent necessary for Provider to provide the Services to Customer; and (ii) to use nonidentifiable

Customer Data for their own business purposes as well as for non-commercial, scientific analyses, the results of which may be published in the aggregate in such a manner that individual trees and their locations are nonidentifiable.

(d) Cyber Incidents. Customer shall take all reasonable and appropriate steps to protect all of its systems used to view, receive, collect or store any of its Customer Data, Confidential Information, and data against all cyber incidents and breaches, including without limitation, ransomware attacks (collectively, “Cyber Incidents”). Upon the occurrence of a Cyber Incident, Customer shall cooperate with Provider in resolving the matter, including without limitation, providing prompt and on-going communication and details regarding the Cyber Incident. Additionally, Customer shall not introduce, permit or cause, directly or indirectly, any computer code, program, or programming device designed to disrupt, modify, delete, damage, deactivate, disable, harm, or otherwise impede the operation of the Services, or any other associated programs, firmware, hardware, computer system, or network (sometimes referred to as “Trojan horses,” “viruses,” or “worms”), or any other similar harmful, malicious, or hidden procedures, routines, or mechanisms that would intentionally cause such Services to cease functioning or to damage or corrupt data, storage media, programs, equipment, or communications

7. Warranty Disclaimer.

(a) DISCLAIMER. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE SERVICES, DOCUMENTATION, AND ALL UPDATES THERETO ARE BEING PROVIDED ON AN “AS IS” “AS AVAILABLE” BASIS AND ANY USE IS AT CUSTOMER’S SOLE RISK. PROVIDER DOES NOT REPRESENT, WARRANT OR COVENANT THAT THE SERVICES, DOCUMENTATION AND PROVIDER IP (INCLUDING, BUT NOT LIMITED TO, ANY DOCUMENTATION, REPORTS, ADVICE AND RECOMMENDATIONS, IN ANY FORM) PROVIDED BY PROVIDER IN CONNECTION WITH THIS AGREEMENT, ARE OR WILL NECESSARILY ALWAYS BE COMPLETELY ACCURATE, CURRENT, COMPLETE AND/OR CONTINUOUSLY AVAILABLE. PROVIDER DOES NOT REPRESENT, WARRANT, OR COVENANT THAT THE SERVICES WILL BE AVAILABLE WITHOUT INTERRUPTION OR TOTALLY ERROR-FREE, OR THAT ALL DEFECTS (INCLUDING, BUT NOT LIMITED TO, MINOR OR COSMETIC DEFECTS THAT DO NOT SIGNIFICANTLY AND ADVERSELY AFFECT FUNCTIONALITY OR FEATURES) WILL BE CORRECTED. PROVIDER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE (EVEN IF PROVIDER HAS BEEN INFORMED OF SUCH PURPOSE), OF ACCURACY, AGAINST INFRINGEMENT, AND OF QUIET ENJOYMENT. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR THE ACCURACY AND SUITABILITY OF THE SERVICES FOR A SPECIFIC APPLICATION OR USE.

(b) Third-Party Services and Products. Customer acknowledges and agrees that (i) Provider has not verified or pre-screened any third-party services and/or products, (ii) Customer is responsible for and assumes all risk arising from its use of any third party service and/or product, and (iii) Provider will not be responsible or liable for the availability or accuracy of such third-

party services and/or product or the content, products, or services on or available from such third parties.

8. Indemnification.

(a) Indemnification by Customer.

(i) For Ohio municipalities and Ohio governmental agencies, there is no responsibility to indemnify Provider.

(ii) For any other municipality or any other entity that is not a municipality, to the fullest extent permitted by law, Customer shall indemnify, defend and hold Provider and its officers, employees, agents, and representatives harmless against all Third-Party Claims arising out of or related to (i) Customer's acts and/or omissions; (ii) Customer's use of the Services or Downloadable Components; or (iii) Customer's material breach of this Agreement.

9. Limitations of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY INJURY TO OR LOSS OF GOODWILL, REPUTATION, BUSINESS, PRODUCTION, REVENUES, PROFITS, ANTICIPATED PROFITS, CONTRACTS OR OPPORTUNITIES (REGARDLESS OF HOW THESE ARE CLASSIFIED AS DAMAGES), OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE OR ENHANCED DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE (INCLUDING THE ENTRY INTO, PERFORMANCE OR BREACH OF THIS AGREEMENT), REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE OR THE PARTY AGAINST WHOM SUCH LIABILITY IS CLAIMED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE, PROVIDED, HOWEVER, THESE LIMITATIONS SHALL NOT APPLY TO EITHER PARTY'S LIABILITY FOR (I) CLAIMS THAT ARE SUBJECT TO INDEMNIFICATION UNDER SECTION 8 AND (II) BREACH OF SECTION 2, SECTION 5, OR SECTION 6.

10. Term and Termination.

(a) Term. The term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect until the expiration of the subscription term set forth in **Exhibit A** ending on the pertinent anniversary date of the Effective Date ("Term"). This Agreement will automatically renew for an additional Term absent Customer's advanced written notice indicating that Customer does not wish to renew the Agreement.

(b) Termination. In addition to any other express termination right set forth in this Agreement:

- (i) Provider may terminate this Agreement for convenience, for any reason or no reason, upon ninety (90) days prior written notice to Customer;
- (ii) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; or
- (iii) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- (c) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Provider IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Provider IP and Provider's Confidential Information.
- (d) Survival. This Section 10(d) and 1, 5, 6, 7, 8, 9, 10 and 11 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

11. Miscellaneous.

- (a) 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 first page of this Agreement (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), facsimile 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: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.
- (b) Force Majeure. Notwithstanding anything herein to the contrary, neither party shall be liable or deemed to be in default for any delay or failure in performance hereunder to the extent resulting, directly or indirectly, from acts of God, acts of war, terrorism, or civil insurrection, strikes, walkouts, or other organized labor interruptions, telecommunications or utility interruptions or failures, fire, explosions, floods, pandemic, disease outbreaks, endemics, including without limitation COVID-19, or other natural disasters, any similar cause or any third party beyond the reasonable control of such party, and any delay or failure of the other party to fulfill its obligations hereunder ("Force Majeure Event"). Notwithstanding the foregoing, a

Force Majeure Event shall never excuse the failure to make a payment due under this Agreement, except to the extent that the Force Majeure Event physically interferes with the delivery of the payment. The party whose performance is affected shall use commercially reasonable efforts to minimize the impact of such Force Majeure Event.

(c) Amendment and Modification; Waiver. Provider may modify the Terms and Conditions within this Agreement from time to time. It is Customer's obligation to review the Agreement regularly. Provider will provide notice to Customer of material modifications. No amendment to or modification of this Agreement by Customer 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.

(d) 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.

(e) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Ohio 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 Ohio. Any legal suit, action, or proceeding arising out of this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Ohio in each case located in the city of Cleveland and County of Cuyahoga, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(f) Assignment. Provider may 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 Customer. However, 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 Provider. Any purported assignment, delegation, or transfer by Customer in violation of this Section 11(f) is void.

(g) 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.

(h) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under 5 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.

(i) Binding Effect. This Agreement will be binding upon and inure to the benefit of the Parties and their successors or permitted assigns.