

SOFTWARE AS A SERVICE AGREEMENT

THIS SOFTWARE AS A SERVICE AGREEMENT (THIS “AGREEMENT”) CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT APPLY TO YOU. PLEASE READ IT CAREFULLY.

By clicking any button or box marked “Agree” or “Accept” (or a similar term) in connection with this Agreement, or by accessing or using our software, you acknowledge that you have read, understood, and agree to be bound by all of the terms and conditions in this Agreement. You also affirm that if you are entering into this Agreement on behalf of an organization or company, you have the legal authority to bind such organization or company to this Agreement.

You acknowledge that this Agreement forms a binding contract between you and us, even though it is electronic and is not physically signed, and that it governs, without limitation, your use of and access to our software and our services.

This Agreement is by and between Davey Resource Group, Inc., a Delaware corporation with offices located at 295 South Water Street, Kent, OH 44240 (“Provider”), and the customer (“you” or “Customer”) named in the Contract Documents (as defined below), and is effective as of the date accepted by you by clicking the provided button or box marked “Agree” or “Accept” (or similar term) (the “Effective Date”). Provider and Customer may be referred to in this Agreement collectively as the “Parties” or individually as a “Party.”

RECITALS:

- A. This Agreement is entered into in connection with a separate proposal, contract, services agreement, and/or other written agreement involving the Services (as defined below), as the case may be (the “Contract Documents”).
- B. Provider provides access to the Services to its customers.
- C. Customer desires to access the Services, and Provider desires to provide Customer access to the Services, upon the terms and subject to the conditions set forth in this Agreement.

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

1. **Exclusive Terms.** The Parties intend for this Agreement, together with each of the Contract Documents, to exclusively govern and control each of the Parties’ respective rights and obligations regarding the Services. Customer’s acceptance of the Services is strictly limited to the terms and conditions in this Agreement. Without limiting the foregoing, any additional or different terms contained in any purchase order or other request or communication from Customer pertaining to the Services, or any attempt to modify, supersede, supplement, or otherwise alter this Agreement, will not modify this Agreement nor be binding on the Parties. In the event of a conflict or inconsistency between the terms and conditions in this Agreement and the Contract Documents, the terms and conditions in (a) this Agreement will control with regards to the Services and (b) the Contract Documents will control for all other matters.

2. **Definitions.**

(a) “Affiliate” means any other individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such individual,

corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

(b) “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.

(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, work history data, call history data, or caller information.

(d) “Documentation” means Provider’s materials provided in any form, including, without limitation, electronically or in hard copy form, including, without limitation, online user guides, and end user documentation relating to the Services available at <https://daveyresourcegroup.atlassian.net/wiki/spaces/TKS/overview>.

(e) “Downloadable Components” means any downloadable tools, modules, components, or other software that Provider makes available for download specifically for purposes of facilitating access to, operation of, or use with the Services, and any updates Provider may make available to such software from time-to-time.

(f) “Provider IP” means the Services, the Documentation, the Downloadable Components, 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 pages and any associated content, (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) “Services” means all software-as-a-service offerings provided to you by Provider or otherwise described in any Documentation.

3. Access and Use.

(a) Provision of Access. Provider hereby grants Customer a non-exclusive, nonsublicensable, nontransferable (except in compliance with Section 13(g)), revocable, limited right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions in this Agreement. Such use is limited to Customer’s internal use. Provider shall provide to Customer the necessary passwords 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 and be responsible for compliance of all the terms and conditions in this Agreement by its Authorized Users.

(b) Downloadable Components and Documentation License. Provider hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 13(h)), revocable, limited license to use of the Downloadable Components, in object code format only, and the Documentation during the Term, solely for Customer's internal business purposes in connection with its use of the Services.

(c) 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 Customer 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 licenses and information required by Provider, then Provider shall not be deemed to be in breach of this Agreement if the Services are not provided. Customer shall determine the access controls for its Authorized Users and shall be responsible for activity occurring under Customer's account by its Authorized Users or any other third-party, including, without limitation, compliance with this Agreement. Customer agrees to: (i) timely (and in any event, 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 account or any other known breach of security.

(d) Scheduled Downtime and Outages. Provider shall notify Customer at least twenty-four (24) hours in advance of all scheduled outages of the Services, in whole or in part ("Scheduled Downtime"). Provider shall use commercially reasonable efforts to minimize interruption of the Services in connection with any Scheduled Downtime. In the event of a service failure where the Services are not accessible to Customer (a "Service Failure"), Provider shall resolve the service failure within seventy-two (72) hours. If the service failure is not resolved in seventy-two (72) hours, as determined by Provider, Provider shall extend the Term by the equivalent amount of days of the service failure. Notwithstanding anything to the contrary, this Section sets forth Provider's sole obligation and liability, and Customer's sole remedy, for any service failure.

(e) Use Restrictions. Customer shall not use the Services or the Downloadable Components 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, Downloadable Components, or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services, Downloadable Components, or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services or Downloadable Components, in whole or in part; (iv) remove any proprietary notices from the Services, Downloadable Components, or Documentation; (v) remove or alter any trademark, logo, copyright, or other proprietary or confidentiality notices, legends, symbols, or labels on or in the Services; (vi) merge any Services or Downloadable Components or any portion thereof with any other program or materials; (vii) take any action that materially interrupts or interferes with, or that might reasonably have been expected to materially interrupt or interfere with, the Services or Provider's systems, business, operations, or other customers; or (viii) permit any other person or entity to engage in any of the foregoing conduct.

(f) Changes to Services. Provider may change, alter, or modify the Services from time-to-time without any liability to Customer, provided the Services retain substantially the same functionality originally provided to Customer at the beginning of the Term (as defined below).

4. Service Levels and Support. Provider shall make the Services available during the Term in accordance with the Contract Documents. The access rights granted under this Agreement entitle Customer to the support services described in the Contract Documents for the applicable period commencing on the Effective Date.

5. Fees and Payment.

(a) Fees. Customer shall pay Provider the fees (“Fees”) set forth in the Contract Documents. Provider shall invoice Customer for all Fees in accordance with the invoicing schedule and requirements set forth in the Contract Documents. Customer shall pay all invoices upon receipt. Customer shall make all payments under this Agreement in U.S. dollars, which will be paid in-full without any deduction, set-off, counterclaim, or withholding of any kind, except as required by law or permitted under this Agreement.

(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 prior to the due date for payment, specifying in such notice the amount in dispute and the reason for the dispute; (iii) actively 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 under this Agreement by reason of Customer’s good faith withholding of any Fees in accordance with this Section.

(c) Expenses. Customer shall promptly reimburse Provider for any out-of-pocket expenses reasonably incurred in connection with the provision of Services and related services including, without limitation, the delivery, installation, support, or configuration of any Services, training or support at Customer’s location or facilities. Provider shall use commercially reasonable efforts to provide Customer with estimates for such expenses.

(d) 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, as applicable, imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer under this Agreement, other than any taxes imposed on Provider’s income.

6. Confidentiality.

(a) Confidential Information. For purposes of this Agreement, “Confidential Information” shall mean all information furnished by or on behalf of one Party (“Discloser”) to the other (“Recipient”), including, but not limited to, information relating to products, inventions (whether patentable or not), trade secrets, know-how, software, tools, data, plans, protocols, processes, methodologies, schematics, designs, tests, patents, scientific and technical data, and other business, financial, customer and product development information, whether obtained before or after the Effective Date and irrespective of the form of communication, including, but not limited to, oral, written, and electronic communications, and information obtained or observed by Recipient through reviews of products, tours, or demonstrations, together with any and all analyses, abstracts, studies, summaries, or other documents, reports, or records prepared by Recipient that contain or otherwise reflect, in whole or in part, or are generated from any of this information, 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.

(b) Exclusions. Confidential Information shall not include information that: (a) was generally available to and known by the public other than as a result of, directly or indirectly, any violation of this Agreement by Recipient or any of its Representatives (as defined below); (b) was available to Recipient on a non-confidential basis from a third-Party, provided that such third-party was not prohibited from disclosing such Confidential Information to Recipient by an obligation to Discloser; (c) was known by or in the possession of Recipient or its Representatives, as established by documentary evidence, prior to being disclosed by or on behalf of Discloser pursuant to this Agreement; or (d) was independently developed by Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of Discloser’s Confidential Information.

(c) Recipient Obligations. Recipient shall protect and safeguard the confidentiality of all of Discloser’s

Confidential Information with at least the same degree of care as Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care. Recipient shall not use Discloser's Confidential Information, or permit it to be accessed or used, for any purpose other than in performance of this Agreement without the written consent of Discloser. Recipient shall not disclose any Confidential Information to any person or entity, except to Recipient's Representatives (excluding any Representative who competes directly or indirectly with Discloser) who: (i) need to know the Confidential Information to assist Recipient in relation to performing or exercising its rights under this Agreement; (ii) are informed by Recipient of the confidential nature of the Confidential Information; and (iii) are subject to confidentiality duties or obligations to Recipient that are substantially similar to the terms and conditions of this Agreement. Recipient shall not copy or reverse engineer Discloser's Confidential Information. Recipient shall not export or re-export (within the meaning of U.S. or other export control laws or regulations) any of Discloser's Confidential Information or product thereof. Recipient shall be responsible for any breach of this Agreement caused by any of its Representatives. "Representative" shall mean, collectively, with respect to any person, such person's officers, directors, employees, temporary employees, contractors, agents, financial advisors, attorneys, accountants, and consultants (and any representatives of the foregoing).

(d) Required Disclosure. Any disclosure by Recipient or its Representatives of any of Discloser's Confidential Information 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") shall be subject to the terms of this Section. Prior to making any such disclosure, Recipient shall (unless legally prohibited) provide Discloser with (a) prompt written notice of such requirement so that Discloser may seek, at its sole cost and expense, a protective order or other remedy and (b) reasonable assistance, at Discloser'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, Recipient remains subject to a Legal Order to disclose any Confidential Information, Recipient shall disclose no more than that portion of the Confidential Information which, on the advice of Recipient's legal counsel, such Legal Order specifically requires Recipient to disclose and, upon Discloser'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.

(e) Unauthorized Access to Confidential Information. In the event any Confidential Information provided to Recipient is accessed by a third-party who is not authorized to receive such information under this Agreement, Recipient shall promptly notify Discloser 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 Discloser to regain possession of the Confidential Information and prevent its further unauthorized use or disclosure in breach of this Agreement. This Section shall survive termination of this Agreement.

(f) Return or Destruction of Confidential Information. At any time during, or after the termination of, this Agreement, at Discloser's written request, Recipient and its Representatives shall promptly return to Discloser all copies, whether in written, electronic, or other form or media, of Discloser's Confidential Information, or destroy all such copies and certify in writing to Discloser that such Confidential Information has been destroyed. Notwithstanding the foregoing, Recipient and its Representatives may retain a copy of the Confidential Information solely to the extent required to comply with regulatory document retention policy requirements or its internal document retention policies. Any Confidential Information so retained shall continue to be subject to the terms of this Agreement.

(g) No Representations or Warranties. Each Party acknowledges that all Confidential Information is provided on an "AS IS" basis. Neither Discloser nor any of its Representatives make any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information disclosed to Recipient. To the extent permitted by law, neither Discloser nor any of its Representatives shall be liable to Recipient or any of its Representatives relating to or resulting from Recipient's use of any of the Confidential Information or any errors in or omissions from the Confidential Information.

(h) No Transfer of Rights, Title, or Interest. 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 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 Recipient or any of its Representatives.

7. 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 and Downloadable Components 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, Downloadable Components, 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 this Section 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 and Downloadable Components.

(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 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 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 and Downloadable Components to Customer; and (ii) to use nonidentifiable Customer Data for its own business purposes.

(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, the Party experiencing the Cyber Incident shall cooperate with the other Party in resolving the matter, including, without limitation, providing prompt and on-going communication and details regarding the Cyber Incident. Additionally, neither Party shall 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 Downloadable Components, 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 or Downloadable Components to cease functioning or to damage or corrupt data, storage media, programs, equipment, or communications.

8. Data

(a) Customer Data can be extracted from the Services by the user through data interfaces or reports. Authorized Users may also request a raw data extract from Provider. Customer's raw data may be provided within a reasonable time after the expiration or termination of this Agreement at a reasonable fee as determined by Provider.

(b) The Services or Downloadable Components may include a GIS Mapping component which makes use of base layer information as provided to Provider by Customer. Any base layer provided to Provider by Customer is presumed to be authorized for distribution and usage.

(c) Provider will maintain a nightly backup of Customer Data, which can be restored upon request by Customer. Such nightly backups will be retained for seven (7) calendar days, with a weekly backup retained for four (4) weeks. After such four (4) week period, Provider will be unable to provide restoration of Customer Data.

9. Warranties and Warranty Disclaimer.

(a) Provider warrants that during the Term the Services will conform in material respects to the specifications provided by Provider and will be performed in a workmanlike and professional manner and by personnel that has the necessary skills, training, and background to perform such Services.

(b) DISCLAIMER. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION, CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE SERVICES, DOWNLOADABLE COMPONENTS, 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, DOWNLOADABLE COMPONENTS, 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 OR CONTINUOUSLY AVAILABLE. PROVIDER DOES NOT REPRESENT, WARRANT, OR COVENANT THAT THE PRODUCTS AND MATERIALS 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, NON-INFRINGEMENT, 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, AND OF QUIET ENJOYMENT.

(c) Applicability of Warranties. Notwithstanding anything in this Agreement to the contrary, no warranties shall apply if the Services or Downloadable Components: (i) have been modified by Customer unless the modification was minor, done upon the instruction, or with the approval, of Provider; (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Provider; (iii) is used in ultrahazardous activities; or (iv) has been used in any manner contrary to the terms and conditions of this Agreement.

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

10. Indemnification.

(a) Provider shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("Losses") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("Third-Party Claim") that the Provider IP, or any use of the Services in accordance with this Agreement, directly infringes or misappropriates such third-party's intellectual property rights, provided that Customer promptly notifies Provider in writing of the claim, cooperates with Provider, and allows Provider sole authority to control the defense and settlement of such claim.

(b) If such a Third-Party Claim is made or appears possible, Customer agrees to permit Provider, at Provider's sole expense, to (A) modify or replace the Provider IP, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If neither of these alternatives are commercially reasonable, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer, provided that Provider shall refund or credit to Customer all amounts Customer paid in respect of the Provider IP that Customer cannot reasonably use as intended under this Agreement. The indemnity in this Section, shall not apply (i) to a Third-Party Claim arising from any modification of the Services or Downloadable Components by Customer or any third-party, or from the use of the Services or Downloadable Components in combination with any other items not provided by Provider, to the extent such modification or use in combination resulted in the infringement claim, (ii) to use of the Services or Downloadable Components in a manner contrary to the terms specified in this Agreement, (iii) if such Third-Party Claim results from Customer's use of the Services or Downloadable Components after notice of the alleged or actual infringement from Provider or any appropriate authority, or (iv) in the event of any breach of Customer's obligations under this Agreement, or the use of the Services or Downloadable Components other than in connection with this Agreement or in a manner not reasonably contemplated by this Agreement.

(c) Indemnification by Customer.

(i) 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 or omissions; (ii) Customer's use of the Services or Downloadable Components; or (iii) Customer's material breach of this Agreement.

(ii) Notwithstanding the foregoing, municipalities and other governmental agencies shall not be responsible to indemnify Provider under this Agreement if and to the extent prohibited by applicable law or code.

11. Limitations of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT WILL PROVIDER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, THIS AGREEMENT, THE SERVICES, OR IN CONNECTION WITH ANY BREACH UNDER THIS AGREEMENT BY PROVIDER OR ANY SUBCONTRACTOR, EMPLOYEE, OR AGENT OF PROVIDER, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (D) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AMOUNT OF FEES PAID TO PROVIDER IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

12. Term and Termination.

(a) Term. The Term 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 the applicable Contract Documents (the "Term"). This Agreement may renew for additional Terms with Customer's written notice and payment of additional subscription fees.

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

(i) either Party may terminate this Agreement for convenience, for any reason or no reason, upon ninety (90) days prior written notice to the other Party;

(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. Any provision of this Agreement which contemplates performance or obligations subsequent to termination of this Agreement shall survive such termination, including, without limitation, Sections 5, 6, 7, 10, 11, 12 and 13. Termination of this Agreement will not affect the rights and obligations accrued before the date of such termination.

13. Miscellaneous.

(a) Entire Agreement. This Agreement, together with any other documents incorporated in this Agreement by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated in this Agreement by reference, this Agreement will govern.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "Notice") must be in writing and addressed to Provider at the address set forth in the first paragraph of this Agreement and to Customer at the address set forth in the Contract Documents (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 Recipient; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c) Force Majeure. Notwithstanding anything in this Agreement to the contrary, neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement 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, including, without limitation, epidemics, 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 under this Agreement (“Force Majeure Event”). Notwithstanding the foregoing, a Force Majeure Event shall never excuse the failure to make a payment due under this Agreement. The party whose performance is affected shall use commercially reasonable efforts to minimize the impact of such Force Majeure Event.

(d) Amendment and Modification. The terms and conditions in this Agreement are subject to change by Provider without prior written notice at any time, in Provider’s sole discretion. The latest version of this Agreement will be posted in the same or similar manner as this Agreement was originally posted. Your continued use of the Services after a posted change in this Agreement will constitute your acceptance of and agreement to such changes.

(e) Waiver. 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 under this Agreement will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(f) Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, the 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.

(g) Choice of Law; Forum. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas, without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Texas. Any legal suit, action, or proceeding arising out of or related to this Agreement, or the matters contemplated under this Agreement, shall be instituted exclusively in the federal or state courts located in Denton County, Texas, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding and waives any objection based on improper venue or *forum non conveniens*. Neither the Uniform Law on International Sale of Goods, Uniform Law on Formation of Contracts for International Sale of Goods nor the United Nations Convention on the International Sale of Goods of 1980 (and any amendments or successors thereto) shall apply to this Agreement.

(h) Assignment. Provider may assign any of its rights or delegate any of its obligations under this Agreement, 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 under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Provider, which may be withheld in its sole discretion. Any purported assignment, delegation, or transfer by Customer in violation of this Section is void and of no force or effect.

(i) 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.

(j) Equitable Remedies. Each Party acknowledges and agrees that money damages would not be a sufficient remedy for any breach of Section 6 or Section 7 and that the non-breaching Party is entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach (or threatened breach), in each case. Such remedy shall not be deemed to be the exclusive remedy for such breach of this Agreement but shall be in addition to all other remedies available at law or in equity.

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