

Davis Instruments Service Agreement

Last Updated: June 25, 2020

This SERVICE AGREEMENT is made as of _____, 20____, by and between Davis Instruments Corporation, a California corporation (“Davis”), and _____ (“Customer”). Davis and Customer are each referred to herein as a “Party” and collectively as the “Parties.”

RECITALS:

Davis develops, manufactures and markets environmental monitoring products and services, including its WeatherLink® Live, Vantage Connect®, and EnviroMonitor®, products, which are more fully described in the catalogs and product literature published by Davis from time to time.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual agreements and understandings herein, the Parties agree as follows:

A. **Definitions.** The following terms when used herein have the meanings indicated:

“Carrier” means the underlying wireless carrier of the Service and its subsidiaries and affiliates.

“Catalogs” means the catalogs, manuals and product literature published by Davis from time to time that describe the Equipment and Services.

“End User” means a customer of Reseller that purchases Equipment or Services from Reseller.

“Equipment” refers to Davis weather and automotive monitoring products designed to transmit data over wireless networks and/or internet networks to a Davis-hosted website for viewing and analysis.

“Reseller” means and refers to Customer, if Customer is entering into this Agreement to procure service plans for End Users.

“Service” means Davis’ and Carrier’s data network and includes the features and services described in the Catalogs, as in effect from time to time, and as amended by Davis or Carrier at any time without prior notice.

“Software” means any and all parts of the binary code portions of Davis Equipment.

B. Term of Agreement.

1. The term of this Agreement shall commence on the activation date of applicable device(s) and continue for a period of one year and thereafter shall automatically renew for successive one-year terms. Davis Instruments will automatically renew the service and process payment with the default payment method on file unless we receive written notification to terminate service at the end of the period by notifying

Davis Instruments via email to sales@davisinstruments.com at least 30 days prior to renewal date.

C. Data and Information Collected.

1. By agreeing to use our site and/or data transmission services you grant Davis a non-exclusive, worldwide, perpetual, irrevocable, unrestricted, royalty-free, fully paid-up, transferable license with the right to sub-license (through multiple tiers), to use, copy, display, and distribute (through multiple tiers) all content collected, and after removing personal information, sell, modify, create derivative works from and/or incorporate such content into other works in any form, medium, or technology for any purpose whatsoever, commercial or otherwise without compensation to you

D. Customer's Obligations; Limitations.

1. The SIM supplied with the Equipment shall be used only in such equipment and shall not be used in any other device or equipment.

2. Customer understands that Carrier or Davis may deny or terminate Service in certain circumstances, such as degradation of service on Carrier's network, use by Customer or any End User of any application or equipment that Davis shall not have approved, or non-compliance with law, and neither Carrier nor Davis will have any liability whatsoever to Customer resulting from any such denial or termination.

3. Customer acknowledges that Service may be temporarily refused, interrupted, curtailed or limited because of atmospheric, terrain or other natural or artificial conditions, usage concentrations, modifications, upgrades, relocation and repairs of transmission facilities. Neither Carrier nor Davis shall be responsible for any such refusal, interruption, curtailment or limitation of Service or the inability to use the Service outside the Territory. Customer understands that neither Davis nor Carrier can or does guarantee the security of wireless transmissions or will be liable for any lack of security relating to use of the Service.

4. In no event shall Davis, the Carrier or any underlying data provider be liable for any cost, delay, failure or disruption of the Service, lost profits, or incidental, special, punitive or consequential damages.

5. Customer shall indemnify and defend Carrier and Davis and their respective officers, employees and agents, and hold each of them harmless, from and against any and all claims, causes of action, losses, liabilities, damages and expenses (including reasonable attorneys' fees and costs), including for any property damage, personal injury or death, arising in any way directly or indirectly in connection with (a) this Agreement or any agreement between Reseller and any End User, (b) use, failure to use, or inability to use the Service, unless caused by the gross negligence or willful misconduct of Davis or Carrier, or (c) the use, failure to use or inability to use any Number. This Section D.5 shall survive any termination of this Agreement.

6. You will not reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code, techniques, processes, algorithms, know-how or other information from the Equipment (collectively "Reverse Engineering") or permit or induce the foregoing. If however, directly applicable law prohibits enforcement of the foregoing, You may engage in Reverse Engineering solely for the purposes of obtaining such information as is necessary to achieve interoperability of independently created software and products with Davis technology, or as otherwise and to the limited extent permitted by directly applicable law, but only if: (a) Reverse Engineering is strictly necessary to obtain such information; and (b) You have first requested such information from Davis and Davis failed to make such information available (for a fee

or otherwise) under reasonable conditions. Any information supplied to or obtained by You under this section is confidential information of Davis subject to the obligations of section E, may only be used by You for the purpose described in this section, and will not be disclosed to any third party or used to create software or products which are substantially similar to the expression of Davis Equipment and/or Software.

1.

1. Limitations on Reverse Engineering. Decompilation, Disassembly, or Modification. You may not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software or modify, adapt, translate, recast, alter or create derivative works from the Equipment or any portion of it, or provide, or disclose any such Software or any portion of it to any third party, except and only to the extent that such activity is expressly permitted by applicable law or by prior written approval of Davis (which approval may be conditioned, restricted, or denied in the sole discretion of Davis), notwithstanding this limitation.
2. Transfer Restrictions. You may not distribute, rent, sell assign, sublicense, lease or make available on a network or otherwise, to multiple users (except as may be expressly permitted by your license to use and/or subscription to Software) or otherwise transfer the Software or use the Software for timesharing or service bureau purposes or otherwise for the benefit of a third party. You may not transfer or assign this Agreement or any of your rights hereunder to any other party.
3. Use in Other Products. You may not incorporate the Software or any portion of it into, or use the Software or any portion of it to develop other algorithms, programs, software, applications, or products unless expressly approved in writing in advance by Davis, which approval may be conditioned, restricted, or denied in the sole discretion of Davis.
4. Separation of Components. The Software is licensed as a platform of products. Its components, as initially provided to you, may not be further separated for any purpose, including but not limited to, inclusion in any other software, algorithms, programs, applications, system, or platform.
5. Copying Restrictions. The Software may be copied onto the hard disk drive of any authorized and compatible computing device owned or lawfully controlled by you for the sole purpose of installing and using the Software. All such copies shall include the same proprietary and copyright notices and legends as included in the authorized copy of the Software originally provided by Davis or an authorized third party and you shall not remove any such notices or legends from the Software or any copies of modifications of the Software, or otherwise modify the Software. You may not otherwise copy or modify the Software or provide copies of the Software, in whole or in part, to any other party except as may be expressly permitted by your license or subscription to the Software or other written Agreements with Davis.
6. Ownership. The Software is licensed, not sold, to you for use only under the terms of this Agreement. You acknowledge that Davis retains ownership of the Software, any and all portions, copies, or authorized modifications of it, and all rights in and to it, throughout the world, including, but not limited to, intellectual property rights. Upon termination of this license or subscription for any reason, the license and subscription and all rights granted to you under this Agreement shall terminate and you shall cease to use the Software.

E. Limitations of Warranties and Liability.

1. EXCEPT AS TO ANY WRITTEN LIMITED WARRANTY THAT DAVIS MAY PROVIDE WITH THE EQUIPMENT THAT DAVIS SELLS TO CUSTOMER, ALL SERVICE AND EQUIPMENT IS PROVIDED ON AN "AS IS" AND "WITH ALL FAULTS" BASIS, AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND CUSTOMER ASSUMES ALL RESPONSIBILITY AND RISK FOR USE OF THE SERVICE OR EQUIPMENT. DAVIS DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF AND CUSTOMER ACKNOWLEDGES IT IS NOT RELYING ON ANY SUCH STATEMENT. ANY STATEMENTS MADE IN CATALOGS, PACKAGING OR OTHER DOCUMENTS, ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND NOT AS WARRANTIES BY DAVIS OF ANY KIND. NEITHER DAVIS NOR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, DEALERS OR SUPPLIERS WARRANTS THAT THE INFORMATION, PRODUCTS, PROCESSES, OR SERVICES AVAILABLE THROUGH THE SERVICE OR EQUIPMENT WILL BE UNINTERRUPTED, ACCURATE, COMPLETE, USEFUL, FUNCTIONAL OR ERROR-FREE. CUSTOMER HAS NOT RELIED ON AND WILL NOT CLAIM THAT IT IS ENTITLED TO THE BENEFITS OF ANY REPRESENTATIONS, PROMISES, DESCRIPTION OF THE SERVICE OR OTHER STATEMENT NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT.

2. Davis shall not be liable for any deficiency or delay in performance caused as a whole or in part by any act or omission of Carrier, equipment failure, facility failure, facilities problem, lack of coverage or network capacity, equipment or facility upgrade or modification, equipment or facility shortage or relocation, or cause beyond Davis's reasonable control.

F. Entire Agreement. This Agreement contains the entire agreement of the Parties and supersedes all prior or contemporaneous negotiations, correspondence, understandings and agreements, whether written or oral, between the Parties, regarding the subject matter hereof.

G. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of California, without reference to the principles of conflicts of laws.

H. Dispute Resolution.

1. The Parties waive their rights to seek remedies in court, including any right to a jury trial. Subject to Section H.3, any dispute between the Parties arising out of, relating to or in connection with this Agreement shall be resolved exclusively through non-binding mediation and binding arbitration conducted under the auspices of JAMS pursuant to its Mediation and Arbitration Rules and Procedures. In the event of a dispute that the Parties are unable to resolve by mutual agreement, the Parties shall first participate in a non-binding mediation before a mutually selected and agreed to JAMS neutral. The mediation shall last one business day, unless extended by agreement of the Parties. The Parties shall bear all JAMS costs and expenses on a pro rata basis. In the event that the Parties are not able to resolve their dispute by way of non-binding mediation, the Parties shall promptly take steps to commence a JAMS arbitration as set forth in paragraph 2 below. The Parties may continue to use the JAMS mediator as their arbitrator, or, at the request of either Party, select a different mutually agreed to arbitrator.

2. The arbitration hearing shall be held in the City and County of San Francisco, State of California. Disputes shall not be resolved in any other forum or venue. The arbitration shall be conducted by a retired judge who is experienced in resolving disputes regarding business transactions and shall continue from day to day until completed, weekends and holidays excepted. The arbitrator shall apply the

substantive law of California to all state law claims. Limited discovery shall be conducted in accordance with JAMS' Arbitration Rules and Procedures. The arbitrator may not award punitive or exemplary damages, unless (but only to the extent that) such damages are required by statute to be an available remedy for any of the specific claims asserted. In accordance with JAMS' Arbitration Rules and Procedures, the arbitrator's award shall consist of a written statement as to the disposition of each claim and the relief, if any, awarded on each claim. The award shall not include or be accompanied by any findings of fact, conclusions of law or other written explanation of the reasons for the award. The Parties understand that the right to appeal or to seek modification of any ruling or award by the arbitrator is severely limited under state and federal law. Any award rendered by the arbitrator shall be final and binding, and judgment may be entered on it as provided by law.

3. Notwithstanding anything in Section H.1 to the contrary, either Party shall have the right to seek injunctive relief before any court of competent jurisdiction in the City and County of San Francisco, State of California.

I. Consent to Use of Electronic Signatures. As a convenience to you, Davis provides access to Services online which may require you to enter into agreements.

1. You have read and understand the electronic copy of contracts, notices and records, including, without limitation, this Agreement and any amendments hereto.
2. You agree to, and intend to be bound by, the terms of the particular agreement, contract or transaction into which you entered.
3. By clicking on the "I Accept" button you acknowledge that you have read this Agreement, and that you understand the provisions of the Agreement and that you agree to be bound by the terms and conditions of this Agreement.