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## Client Terms of Service

Last Modified: April 6, 2021

### PLEASE READ THESE CLIENT TERMS OF SERVICE CAREFULLY.

Our Client Terms of Service is a contract that governs our clients' use of IGEN services. It consists of the following documents:

Master Terms - These contain the core legal and commercial terms that apply to your subscription.

**Your Order Form** is the IGEN-approved form created following your purchase of one of our products or services through our online payment process or via invoice. It contains all of the details about your purchase, including your subscription term, products purchased and your fees.

We've aimed to keep these documents as readable as possible, but in some cases for legal reasons, some of the language is necessarily "legalese".

We update these terms from time to time.

### Master Terms

Last modified April 6, 2021

1. Definitions
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## 1. Definitions

- A. "Action" shall mean any claim, suit or proceeding.
- B. "Client Data" means all electronic data or information submitted to and stored in the Service by Users.
- C. "Documentation" means any manuals or instructions that Company provides or makes available to Client which describe or relate to the Service and its installation, use, operation, features, functionality, capabilities, and maintenance.
- D. "Error" means a reproducible failure of the Service to perform in substantial conformity with the Documentation, whose origin can be isolated to a single cause.
- E. "Incident" means a support request that begins when Client contacts Company to report a specific Error and ends when Company either (i) Resolves the Error, or (ii) determines in its reasonable discretion that the Error cannot be Resolved.
- F. "Intellectual Property Rights" means all present or future intellectual property rights at any time protected by statute, common law, equity or any corresponding law throughout the world, including but not limited to patents, copyrights, designs, moral rights, trademarks and service marks, domain names and trade names, know-how, methodologies, trade secrets and any right to have confidential information kept confidential.
- G. "Licensed Forms" means those forms and schedules identified in your order form.
- H. "Loss" means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees.
- I. "Maintenance Release" means any update, upgrade, release or other adaptation or modification of the Service, including any updated Documentation, that Company may provide to Client from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Service, but does not include any New Feature.
- J. "Maximum Number of Users" means the maximum number of Users identified in your order form.
- K. "New Feature" means any new feature or version of the Service that Company may from time to time introduce and market generally as a distinct licensed feature or product.

L. "Permitted Use" means use of the Service by a User in accordance with the relevant Documentation to access and use the Licensed Forms for the benefit of Client in connection with filing motor fuel excise taxes in the ordinary course of its internal business operations.

M. "Representatives" means, with respect to a party, that Party's employees, officers, directors, contractors, agents and representatives.

N. "Resolve" means the provision of: (a) services that, in Company's reasonable discretion, corrects the Error; (b) information to Client that corrects the Error; (c) information to Client on how to obtain a software solution that corrects the Error; (d) notice to Client that the Error is caused by a known, unresolved issue or an incompatibility issue with the Service; (e) information to Client that identifies the Error as being corrected by upgrading to a newer release of the Service; or (f) notice to Client that the Error has been identified as arising out of or resulting from a Service Exception.

O. "Service" means the IGenFuels software, as described in your order form.

P. "Territory" means the territory identified in your order form.

Q. "Trademarks" means all trademarks, trade names, logos or identifying slogans contained within the Service, whether or not registered, including, but not limited to, the term IGENFUELS and related logos.

R. "Users" means each of those employees or contractors of Client authorized by Client to use the Service.

## **2. Service Subscription**

A. License Grant. Subject to the terms and conditions of this Agreement and conditioned on Client's and its Users' compliance therewith, Company hereby grants to Client a limited, non-exclusive, non-transferable, non-sublicenseable license throughout the Territory to access and use the Service and to use the Documentation solely for the Permitted Use during the Term. Company shall host the Service as per Client's election on your order form and may update the Service, including its functionality, and the Documentation from time to time.

B. Users. Users are the only persons authorized to access and use the Service under this Agreement. Customer shall ensure that all access and use of the Service by Users is in accordance with the terms and conditions of this Agreement. Client shall be responsible for Users' compliance with this Agreement and for any use of the Service using any Users' credentials. Any action or breach by any User shall be deemed an action or breach by Customer. Users' Service login credentials are for those Users only and may not be shared with or used by others. Client and Users are responsible for maintaining the confidentiality of such credentials, and for ensuring that unauthorized third parties do not access or use the Service using such credentials. The number of Users may not exceed the Maximum Number of

Users. Upon Company's request, Client shall provide to Company a list of all then-current Users.

C. Copies. Except as otherwise set forth in this paragraph, Client may not copy, reproduce or distribute the Service or Documentation for any reason without the express written permission of Company. Any copy of the Documentation made by Client (i) will be subject to the terms and conditions of this Agreement, (ii) must be an exact copy of the original as provided by Company, and (iii) must include any copyright or proprietary labels, legends, or notices placed upon or included in the Documentation by Company.

D. Access to the Service. Client agrees not to access the Service by any means other than through the interfaces that are provided or authorized by Company. Client shall not do any "mirroring" or "framing" of any part of the Service or create Internet links to the Service which include log-in information, user names, passwords, and/or secure cookies.

E. Internet. The Service does not include Internet access or connectivity. Client is solely responsible for obtaining and maintaining Internet access and connectivity at its own cost and expense. Client shall take commercially reasonable steps to ensure that Client's servers, Client's network and Client Data are reasonably protected from viruses, worms, Trojan horses or other unintended malicious or destructive code and other unauthorized use. Company is not responsible for any data, including Customer Data, which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or operated by Company, including, but not limited to, the Internet and Client's network.

F. Prohibited Uses. Client may not, and may not permit or assist others to: (i) copy, translate, disassemble, decompile, reverse engineer, decode, alter or attempt to derive the source code of the Service or any portion thereof; (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Service to any person or entity, including on or in connection with the Internet or any time-sharing, service bureau, software as a service, cloud or other service; (iii) modify, correct, adapt or create derivative works based upon the Service; (iv) attempt to delete, disable, or otherwise circumvent any security measures or usage restrictions implemented by Company with respect to the Service; (v) write or develop any software based upon or developed with reference to the Service; (vi) obtain unauthorized access to the Service; (vii) transmit any harmful code to the Service; (viii) use any tools to probe, scan or benchmark the Service; (ix) assist, permit, or authorize any third party entity to perform any of the activities prohibited by this Agreement; (x) modify, obscure or remove any product identifications, trademarks or proprietary notices on the Service, Documentation or copies thereof; (xi) use the Service or Documentation in violation of any applicable law, rule, regulation or ordinance; or (xii) use the Service or Documentation for any purpose that is to Company's detriment or commercial disadvantage.

G. Additional Client Obligations. Client shall: (i) report to Company promptly and in writing all reported, suspected and actual problems with the Service; (ii) comply with all applicable local,

state, national and/or international laws, statutes, codes, rules and/or regulations in connection with its use of the Service and performance under this Agreement; (iii) refrain from making any false or misleading representations with regard to the Service and the goodwill and reputation of Company; and (iv) avoid deceptive, misleading or unethical practices which are or may be detrimental to Company or the Service. Without limiting the foregoing, Client acknowledges and agrees that the Service may be subject to the export control laws and regulations of the United States, including but not limited to the Export Administration Regulations, and sanctions regimes of the U.S. Department of Treasury, Office of Foreign Asset Controls, and Client will comply with these laws and regulations to the extent applicable to Client. Client acknowledges that the Service may include technological means of determining Client's compliance with this Agreement, which means may disable the Service in the event of Client's breach or the termination of this Agreement.

H. Suspension. Company reserves the right to suspend or immediately terminate access to the Service at any time, with or without notice, for any conduct that Company, in its sole discretion, believes is in violation of this Agreement or any applicable laws or is harmful to Company or any other party. Client will be charged all applicable fees, during any period of suspension for any reason.

### **3. Payments**

A. Subscription Fees. Client shall pay to Company the subscription fees set forth in your order form in accordance with the schedule shown therein and the terms of this Section 3.

B. Implementation Fees. Client shall pay to Company the implementation fees set forth in the statement of work in accordance with the schedule shown therein and the terms of this Section 3.

C. Expenses. Client shall reimburse Company for Client pre-approved travel, lodging, subsistence and out-of-pocket expenses incurred by Company.

D. Interest Charges. Client shall pay, in addition to all other amounts owed to Company, interest calculated at 1 percent per month (or such lesser amount as may be the maximum permitted by law) on all amounts that remain unpaid more than ten (10) days after the due date. If Company employs any legal process to recover any amount due and payable from Client hereunder, Client shall pay all costs of collection and reasonable attorneys' fees. Company may suspend Client's access to the Service upon failure by Client to timely pay any amount due hereunder. Company's remedies under this paragraph shall be in addition to any other remedies that may be available to Company.

E. Taxes. All amounts payable hereunder are exclusive of any applicable federal, state, and local taxes, which shall be the responsibility of Client.

F. Non-Refundable Sums. All sums paid or payable to Company hereunder are non-refundable, except as specifically set forth in Sections 7.c. and 8.d. of this Agreement.

#### **4. Confidentiality**

A. Confidential Information. In connection with this Agreement each party (as the “Disclosing Party”) may disclose or make available to the other party (as the “Receiving Party”) Confidential Information. Subject to Section 4.b., “Confidential Information” means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party’s technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated or otherwise identified as “confidential.” Without limiting the foregoing, Client agrees that the Service and Documentation and pricing hereunder are Confidential Information which constitute trade secrets of Company.

B. Exceptions. Confidential Information of the Disclosing Party does not include information that: (i) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information’s being disclosed or made available to the Receiving Party in connection with this Agreement; (ii) was or becomes generally known by the public other than by the Receiving Party’s or any of its Representatives’ noncompliance with this Agreement; (iii) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party’s knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (iv) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any of the Disclosing Party’s Confidential Information.

C. Protection of Confidential Information. The Receiving Party agrees not to disclose and to take all steps as may be necessary (including, but not limited to, all steps it takes to protect the confidentiality of its own most confidential information but in no event less than a commercially reasonable standard of care) to protect the Disclosing Party’s Confidential Information from disclosure. Such confidentiality shall be maintained and shall only be disclosed or made accessible to those Representatives of the Receiving Party who have a bona fide need to know such Confidential Information in relation to the Receiving Party’s performance under this Agreement and who shall be bound by all of the terms, conditions and restrictions on the Receiving Party set forth in this Agreement relating to the Disclosing Party’s Confidential Information. The Receiving Party will advise its Representatives that such information is confidential and that by receiving such information the Representatives are agreeing to be bound by this Agreement and shall not use such Confidential Information for any purpose other than as described in this Agreement. In any event, the Receiving Party shall be responsible for any actions of its Representatives in violation of this Agreement. The Receiving Party shall not use or duplicate the Disclosing Party’s Confidential Information other than in connection with its performance under this Agreement. Except as expressly permitted

herein, the Receiving Party shall not directly or indirectly disclose, divulge, reveal or transfer the Confidential Information to any other person or entity without the Disclosing Party's prior written consent. Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party's Confidential Information pursuant to a valid order of a court or regulatory agency or other governmental body or any political subdivision thereof, provided, however, that the Receiving Party shall first have given notice to the Disclosing Party and made a reasonable effort to obtain a protective order requiring that the Confidential Information be used only for the purposes for which the order was issued.

D. Remedies. Both parties understand and agree that a breach or threatened breach by the Receiving Party of any of the provisions of this Section 4 will give rise to irreparable injury that is not adequately compensable in money damages. Both parties further agree that the Disclosing Party, in addition to and not in limitation of any other rights, remedies or damages available, at law or in equity, shall be entitled to seek equitable relief or any other comparable relief without any requirement to prove the economic value of any Confidential Information or post a bond or other security. The remedies described in this paragraph are cumulative and in addition to any other rights a party may have at law or in equity.

E. Duration of Confidentiality Obligations. Receiving Party's obligations of confidentiality and non-use set forth in this Section 4 shall continue during the Term and for three (3) years thereafter. Notwithstanding the foregoing, Receiving Party's obligations of confidentiality and non-use under this Agreement with respect to Confidential Information that constitutes trade secret information shall continue for so long as such information constitutes trade secrets or, in the event of the misappropriation or unauthorized disclosure of such trade secrets, would have remained trade secrets, but for such misappropriation or unauthorized disclosure.

F. Privacy Policy. Client acknowledges and accepts the Company's privacy policy as published at: <https://igentax.com/privacy-policy/>.

## **5. Ownership and Rights**

A. Title and Ownership of Service and Documentation. Client acknowledges and agrees that (i) Company and its licensors, as applicable, have and will retain all right, title and interest in and to the Service and Documentation, including all Intellectual Property Rights therein and relating thereto; (ii) Client does not and will not have or acquire any interest in the Service or Documentation, except as a licensee under this Agreement; and (iii) portions of the Service, including without limitation the source code of the software comprising the Service, constitute or contain valuable trade secrets of Company or its licensors, as applicable. All rights not expressly granted to Client under this Agreement are reserved by Company and its licensors, as applicable.

B. Title and Ownership of Data. As between Company and Client, all title and intellectual property rights in and to the Client Data is owned exclusively by Client. Client represents, warrants and covenants to Company that Client owns or otherwise has and will

have the necessary rights and consents in and relating to the Client Data so that, as received by Company and used in connection with the Service, the Client Data does not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights, of any third party or violate any applicable law, rule or ordinance. Client grants to Company the right to use, process and store the Client Data in connection with the Service, including as backups made pursuant to Company's standard business processes.

C. Trademarks. All Trademarks (as defined below) constitute the exclusive property of Company and cannot be used by Client without Company's prior written approval. Client shall have no interest in the Trademarks by virtue of this Agreement except as herein expressly provided, and Client's use of the Trademarks shall cease immediately upon expiration of this Agreement. Company reserves the right to change the Trademarks without notice. Client shall not change or remove any of the Trademarks, or third-party trademarks or other proprietary notices, contained within the Service

D. Feedback. Client grants to Company a royalty-free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Service any suggestions, recommendations, or other feedback or information provided by Client or Users related to the Service.

## **6. Term and Termination**

A. Term. This Agreement shall commence on the Effective Date hereof and shall continue for the duration set forth in your order form, including any renewal terms, unless terminated earlier pursuant to this Agreement (the "Term").

B. Termination.

(I) *Termination for Cause*. In the event that either party hereto materially breaches this Agreement and does not cure such default within thirty (30) days after being given written notice specifying the default, then the non-breaching party may, by giving written notice thereof to the breaching party, terminate this Agreement as of a date specified in such notice of termination.

(II) *Termination for Insolvency*. In the event that Client becomes or is declared insolvent or bankrupt, is the subject of any proceedings relating to its liquidation, insolvency or for the appointment of a receiver or similar officer for it, makes an assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, then Company may, by giving written notice thereof to Client, terminate this Agreement as of a date specified in such notice of termination.

C. Effect of Expiration or Termination.



(I) Except to the extent otherwise set forth in Section 6.c.iv. below, upon the expiration or termination of this Agreement for any reason, all rights, licenses and authorizations granted to Client will immediately terminate and Client shall (a) immediately cease all use of the Service and Documentation, (b) within five (5) working days, deliver to Company, or at Company's written request destroy, and permanently erase from all devices and systems Client directly or indirectly controls, the Documentation and Company's Confidential Information, including all documents, files and tangible materials (and any partial and complete copies) containing, reflecting, incorporating or based on any of the foregoing, whether or not modified or merged into other materials; and (c) certify to Company in writing that it has complied with the requirements of this paragraph.

(II) Upon the expiration or earlier termination of this Agreement, all amounts payable, and all amounts which would have been payable but for the earlier termination of this Agreement, by Client to Company of any kind under this Agreement are immediately payable and due no later than the effective date of the expiration or termination of this Agreement

(III) Upon the termination of this Agreement, Company may immediately deactivate all Client and User access to and use of the Service and Company shall be entitled to delete all Client Data. Client agrees that Company shall not be liable to Client or any third party for any termination of access to the Service or deletion of Client Data.

(IV) Upon the expiration of this Agreement and for so long as Client is not in breach of any surviving terms of this Agreement, Client shall have the limited, non-exclusive, non-transferable, non-sublicenseable right for a period of twelve (12) months to access and use the Service and the Documentation for the limited purpose of archiving, retrieving and amending filings made in connection with the Permitted Use during the Term (the "Post-Term Access Period"). Following the conclusion of the Post-Term Access Period, Company may deactivate all Client and User access to and use of the Service and Company shall be entitled to delete all Client Data. In such event, Client agrees that Company shall not be liable to Client or any third party for any termination of access to the Service or deletion of Client Data.

D. Surviving Terms. The provisions set forth in the following sections, and any other right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 1 (Definitions), Section 4 (Confidentiality), Section 3 (Payments), Section 5 (Intellectual Property Rights), Section 7 (Representations and Warranties), Section 8 (Indemnification), Section 9 (Limitations of Liability) and Section 11 (General Provisions).

## **7. Representations and Warranties**

A. Mutual Representations. Each party represents and warrants to the other that as of the Effective Date of this Agreement: (i) it is a corporation or other business entity duly organized, validly existing, and in good standing under the laws of the state of its incorporation or formation; (ii) it has all requisite power and authority to enter into and perform its obligations under this Agreement; (iii) the person signing on its behalf is authorized to execute this Agreement; and (iv) when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against it in accordance with its terms.

B. Limited Warranty. Company warrants for the Term of this Agreement that the Service will substantially conform in all material respects to the functional specifications set forth in the Documentation, when operated and used in accordance with the Documentation and this Agreement. The foregoing limited warranty only applies if Client: (i) notifies Company in writing of the warranty breach before the expiration of the warranty period; and (ii) as of the date of notification, is in compliance with all terms and conditions of this Agreement (including the payment of all fees then due and owing). Notwithstanding anything to the contrary in this Agreement, the foregoing limited warranty does not apply to (and Company shall have no obligation with respect to) any failure of the Service arising from or related to: (w) any alternative use of the Service not authorized in advance in writing by Company; (x) any equipment or software not created or approved in advance by Company; (y) noncompliance with the Documentation or this Agreement; or (z) electrical failures or surges, poor circuitry, or other accidents, causes, or conditions not within the reasonable control of Company.

C. Remedial Efforts. If Company breaches, or is alleged to have breached, any of the warranties set forth in Section 7.b., Company may, at its sole option and expense, take any of the following steps to remedy such breach: (i) replace any damaged or defective media on which Company supplied the Service; (ii) amend, supplement or replace any incomplete or inaccurate Documentation; (iii) repair the Service; (iv) replace the Service with functionally equivalent hosted software (which software will, on its replacement of the Service, constitute "Service" hereunder); and/or terminate this Agreement and, provided that Client fully complies with its post-Term obligations as set forth in Section 6, promptly refund to Client, on a *pro rata* basis, the share of any subscription fees prepaid by Client for the future portion of the Term that would have remained but for such termination. If Company does not cure a warranty breach or terminate this Agreement as provided in this paragraph within sixty (60) days after Company's receipt of written notice of such breach, Client shall have the right to terminate this Agreement as provided in Section 6.b.i. Provided that Client fully complies with its post-Term obligations as set forth Section 6, Company shall promptly refund to Client, on a *pro rata* basis, the share of any subscription fees prepaid by Client for the future portion of the Term that would have remained but for such termination. THIS PARAGRAPH SETS FORTH CLIENT'S SOLE REMEDY AND COMPANY'S ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF ANY WARRANTY OF THE SERVICE OR DOCUMENTATION SET FORTH IN THIS AGREEMENT.

D. DISCLAIMER. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH IN THIS SECTION 7 ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, COMPANY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO

THE SERVICE AND DOCUMENTATION, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND CLEAR TITLE.

## **8. Indemnification**

A. Client Indemnification. Client shall indemnify, defend and hold harmless Company and its Representatives, successors and assigns (each, including Company, a "**Company Indemnitee**") from and against any and all Losses incurred by each Company Indemnitee in connection with any Action by a third party (other than an affiliate of a Company Indemnitee) to the extent that such Losses arise out of or relate to any allegation:

(I) that any Intellectual Property Right or other right of any Person, or any Law, is or will be infringed, misappropriated or otherwise violated by any use or combination of the Service by or on behalf of Client or any of its Representatives with any hardware, software, system, network, service or other matter whatsoever that is neither provided by Company nor authorized by Company in this Agreement and the Documentation;

(II) of or relating to facts that, if true, would constitute a breach by Client of any representation, warranty, covenant or obligation under this Agreement;

(III) of or relating to negligence, abuse, misapplication, misuse or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Client or any of its Representatives with respect to the Service or Documentation or otherwise in connection with this Agreement; or

(IV) of or relating to use of the Service or Documentation by or on behalf of Client or any of its Representatives that is outside the purpose, scope or manner of use authorized by this Agreement or the Documentation, or in any manner contrary to Company's instructions.

B. Company Indemnification. Company shall indemnify, defend and hold harmless Client from and against any and all Losses incurred by Client arising out of or relating to any Action by a third party (other than an affiliate of Client) to the extent that such Losses arise from any allegation in such Action that the Service, or any use of the Service, in the Territory in accordance with this Agreement (including the Documentation) infringes any U.S. Intellectual Property Right. The foregoing obligation does not apply to the extent that such Action or Losses arise from any allegation of or relating to any:

(I) combination, operation or use of the Service in or with, any technology (including any software, hardware, firmware, system or network) or service not provided by Company or specified for Client's use in the Documentation;

(II) modification of the Service other than: (i) by Company in connection with this Agreement; or (ii) with Company's express written authorization and in strict accordance with Company's written directions and specifications;

(III) failure to timely implement any replacement of the Service made available to Client by Company;

(IV) use of the Service after Company's notice to Client of such activity's alleged or actual infringement, misappropriation or other violation of a third party's rights;

(V) negligence, abuse, misapplication or misuse of the Service or Documentation by or on behalf of Client, Users or a third party;

(VI) use of the Service or Documentation by or on behalf of Client that is outside the purpose, scope or manner of use authorized by this Agreement or in any manner contrary to Company's instructions;

(VII) events or circumstances outside of Company's commercially reasonable control (including any third-party hardware, software or system bugs, defects or malfunctions);  
or

(VIII) Action or Losses for which Client is obligated to indemnify Company pursuant to Section 8.a.

C. Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which it believes it is entitled to be indemnified under this Agreement. The party seeking indemnification (the "**Indemnitee**") shall cooperate with the other Party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this paragraph will not relieve the Indemnitor of its indemnification obligations except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

D. Mitigation. If the Service, or any part of the Service, is, or in Company's opinion is likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Client's use of the Service is enjoined or threatened to be enjoined, Company may, at its option and sole cost and expense:

(I) obtain the right for Client to continue to use the Service materially as contemplated by this Agreement;

(II) modify or replace the Service, in whole or in part, to seek to make the Service non-infringing, while providing materially equivalent features and functionality, and such modified or replacement hosted software will constitute "Service" under this Agreement; or

(III) terminate this Agreement, in its entirety or with respect to the affected part or feature of the Service, effective immediately on written notice to Client, in which event:

- A. Client shall cease all use of the Service and Documentation immediately on receipt of Client's notice; and
- B. provided that Client fully complies with its post-Term obligations set forth in Section 6, Company shall promptly refund to Client, on a *pro rata* basis, the share of any license fees prepaid by Client for the future portion of the Term that would have remained but for such termination.

E. Sole Remedy. THIS SECTION 8 SETS FORTH CLIENT'S SOLE REMEDIES AND COMPANY'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THE SERVICE OR DOCUMENTATION INFRINGE, MISAPPROPRIATE OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

## **9. Limitations of Liability**

A. EXCLUSION OF DAMAGES. IN NO EVENT WILL COMPANY, OR ANY OF ITS REPRESENTATIVES, LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY (a) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES OR PROFITS, (b) LOSS OF GOODWILL OR REPUTATION, (c) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY SOFTWARE, (d) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, (e) COST OF REPLACEMENT GOODS OR SERVICES, OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

B. LIMITATION OF DAMAGES. IN NO EVENT WILL THE AGGREGATE LIABILITY OF COMPANY AND ITS REPRESENTATIVES, LICENSORS, SUPPLIERS AND SERVICE PROVIDERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL OF THE AMOUNTS PAID TO COMPANY UNDER THIS

AGREEMENT IN THE ONE YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

C. APPLICATION. THE FOREGOING EXCLUSIONS AND LIMITATIONS OF LIABILITY SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW.

**10. Support; Service Levels**

A. Support. During the Term, Company will provide Client with access to the latest supported version of the Service. Company may make modifications to the Service or particular components of the Service from time to time. For clarity, such modified Service will still constitute “Service” under this Agreement. As Company modifies the Service, it will no longer provide support for any earlier version of the Service. Company reserves the right to discontinue offering the Service at the conclusion of the Term. Company shall not be liable to Client or any third party for any modification or discontinuation of the Service as described in this paragraph. Client does not have any right under this Agreement to receive any New Feature of the Service that Company may, in its sole discretion, release from time to time.

B. Service Level. During the Term and so long as Client is not in breach of this Agreement, Company will use commercially reasonable efforts during normal business hours to respond to and Resolve any Incidents reported by Client in accordance with the following timeframes:

<b>Severity 1 – Service not operational</b>	<b>Severity 2 – Service operational but major impairment to material functionality – No workaround</b>	<b>Severity 3 - Non critical problems/bugs</b>	<b>Severity 4 - Cosmetic and functional anomalies</b>
Response Time - 1 hour	Response Time - 4 hours	Response Time - Next Business Day	Response Time - 4 Business Days
Resolution Effort - Continuous during Company business hours until Resolved	Resolution Effort - Continuous during Company business hours until Resolved	Resolution Effort - Future Maintenance Release	Resolution Effort - Future Maintenance Release or New Feature

Company has the sole right to determine, in its reasonable discretion, (i) the severity level of an Incident, (ii) what constitutes an Incident, and (iii) when an Incident is Resolved.

C. Service Exceptions. Company has no obligation to provide support services relating to Errors that, in whole or in part, arise out of or result from any of the following (each a “Service Exception”): (i) Service that is modified or damaged by Client or a third party, (ii) any negligence, abuse, misapplication or misuse of the Service (including, without limitation, use of the Service other than as specified in the Documentation), (iii) problems with Client’s computers unrelated to the Service, and (iv) operation or use of the Service in or with, any technology (including any software, hardware, firmware, system or network) or service not provided by Company or specified for Client’s use in the Documentation.

D. Billable Service. Any service required for anything that is not an Incident will be billable to Client at a rate of \$225 per hour for IT resources and \$325 per hour for tax resources. At Client’s request, non-company business, weekend and United States federal holiday support is available and billed at 200% of standard rates.

## **11. General Provisions**

A. Independent Contractor. No partnership, joint venture or employment relationship is created by this Agreement or the parties’ performance hereunder. Each party shall, in relation to its obligations hereunder, act as an independent contractor, and nothing in this Agreement shall be construed to give any party hereto the power or authority to act for, bind or commit the other.

B. Publicity. Except as provided herein, no press release, announcement, publication, or other use of the other party’s insignias, logos, trademarks, trade names or service marks (collectively, the “Marks”) shall be made by either party without the other party’s prior written approval. All use by either party of the other party’s Marks will inure to the benefit of the party owning the Marks. Upon termination of this Agreement, neither party shall have any continuing right to use the other party’s Marks and each party shall immediately cease all such use of the other party’s Marks. Notwithstanding anything in this paragraph to the contrary, Company may list Client’s name and logo (whether alone or in tandem with other Company clients) both during and after the Term as a current or historical client of Company in any Company marketing materials, such as, by way of example, representative client lists, screen shots, case studies and printed and digital sales material, all of which will be prepared in a manner consistent with the highest standards of professionalism.

C. Non-solicitation. During the Term of this Agreement and for two (2) years thereafter, Client agrees to refrain from, directly or indirectly, soliciting for employment (whether as an employee or independent contractor) any employee of Company. The restrictions in this paragraph will not apply to employment or engagements resulting from general solicitations of employment or engagements not specifically directed towards Company’s employees or contractors (e.g., general advertising).

D. Assignment. Client shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement (in each instance, whether by merger, sale of capital securities, operation of law or otherwise), without Company's prior written consent. Any purported assignment, delegation or transfer in violation of this paragraph is void. This Agreement is binding on and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

E. Entire Agreement. This Agreement, including its exhibits, represents the entire agreement between the parties on the subject matter hereof and supersedes all prior discussions, agreements and understandings of every kind and nature between them. No amendment, modification or other change of this Agreement will be effective unless in writing and signed by both parties.

F. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin without regard to its conflict of laws principles and the parties hereto irrevocably commit to the jurisdiction and venue of the Outagamie County Circuit Court, State of Wisconsin, or the United States Federal District Court, Eastern District of Wisconsin, to adjudicate any dispute arising under or related to this Agreement.

G. Notices. All notices under this Agreement shall be in writing and shall either be delivered by certified mail, return receipt requested, or nationally recognized overnight courier (e.g., FedEx), all charges prepaid. Except as otherwise provided in this Agreement, such notices shall be deemed given when mailed or deposited with a nationally recognized overnight courier. Notices of change of address shall be effective only after the actual receipt thereof.

Notices to Company shall be sent to:

IGenFuels LLC  
340 N. Broadway St., Suite 260  
Green Bay, Wisconsin 54303  
Attention: CEO

H. Amendment and Waiver. This Agreement shall not be modified, rescinded or waived except in writing signed by the parties hereto. The waiver by either party of any breach by the other (or any other provision hereunder) shall not prevent the subsequent enforcement of any such provision as to any aspect of such provision which has not been waived, nor shall it be deemed a waiver of any subsequent breach thereof. No waiver of any breach or violation hereof shall be implied from forbearance or failure by a party to take action thereon.

I. Severability. If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement or any other application of such term or provision shall not be affected hereby. If a court of competent jurisdiction determines that any restriction in this Agreement is overbroad or unreasonable under the circumstances,



such restriction will be modified or revised by such court to include the maximum reasonable restriction allowed by law.

J. Force Majeure. Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation, in whole or in part, as a result of causes beyond its reasonable control, and without its fault or negligence including without limitation, acts of God, acts of war, epidemics, communication line failures, and power failures.

K. Interpretation. The headings of the sections of this Agreement are included for ease of references only, are not part of this Agreement and are not to be used in the construction and interpretation of the terms hereof.

L. Counterparts. Either the original or copies, including by facsimile or PDF signature, of this Agreement, may be executed in counterparts, each of which shall be an original as against any party whose signature appears on such counterpart and all of which together shall constitute one and the same instrument.