

August 31, 2020

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5.4 Modifications To the Agreement. With prior approval from the government, Licensor has the right to modify this Agreement and any policies affecting the AccessPath Services, including without limitation the AccessPath Privacy Policy. Any modification is effective immediately upon posting by Licensor. Your continued use of the AccessPath Services hereunder following notice of any modification to these Terms of Use shall be conclusively deemed an acceptance of all such modification(s). Your only right with respect to any dissatisfaction with any modifications made pursuant to this provision, or any policies or practices of Licensor in providing the AccessPath Services, including without limitation any change to the AccessPath Content, is to cease using the AccessPath Services.

5.5 Governing Law. You agree with Licensor that these Terms of Use shall be considered a contract governed by the laws of the Commonwealth of Pennsylvania and that by clicking to accept these Terms of Use you are entering into a legally binding agreement with Licensor using electronic signatures pursuant to the laws of the Commonwealth of Pennsylvania. Any disputes regarding these Terms of Use shall be heard by the state and federal courts located in the Commonwealth of Pennsylvania, and each party consents to the exclusive jurisdiction of such courts. AccessPath Content is provided by Licensor from its facilities in the United States of America. Licensor makes no representation that AccessPath Services or AccessPath Content are appropriate or available for use in other locations, and access to them from territories where any of the AccessPath Services or AccessPath Content are illegal is prohibited. Those who choose to use and/or access AccessPath Services or AccessPath Content from other locations do so of their own volition and are responsible for compliance with applicable local laws.

5.6 No Waiver. Failure to insist on strict performance of any of the Terms of Use will not operate as a waiver of any subsequent default or failure of performance.

5.7 Severability. If any part of these Terms of Use is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of these Terms of Use shall continue in effect.

5.8 Relationship Between the Parties. Nothing contained in these Terms of Use shall be construed to constitute you and Licensor as partners or joint venturers or to constitute employment or any type of agency.

5.9 Events Beyond Licensor's Control. Licensor will use reasonable efforts to keep the Application and AccessPath Services available for your use; however, Licensor cannot and will not be responsible for any loss or unavailability of access to AccessPath Services that results from any cause including a cause over which it does not have direct control, including, but not limited to, failure of electronic or mechanical equipment or communication lines, wireless data or other interconnect problems, computer viruses, unauthorized access, theft, operator errors, severe weather, earthquakes, or natural disasters, strikes or other labor problems, wars, or governmental restrictions.

5.10 Descriptive Headings. The headings of the various sections herein are for convenience of reference only and shall not define, limit or otherwise affect any of the terms or provisions hereof.

5.11 Mandatory Arbitration.

UNLESS YOU OPT-OUT, YOU AGREE THAT ALL DISPUTES BETWEEN YOU AND LICENSOR (WHETHER OR NOT SUCH DISPUTE INVOLVES A THIRD PARTY) WITH REGARD TO YOUR RELATIONSHIP WITH PATHVU, INCLUDING, WITHOUT LIMITATION, DISPUTES RELATED TO THESE TERMS OF USE, YOUR USE OF THE ACCESSPATH SERVICES, AND/OR RIGHTS OF PRIVACY AND/OR PUBLICITY, WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION UNDER THE AMERICAN ARBITRATION ASSOCIATION'S RULES FOR ARBITRATION OF CONSUMER-RELATED DISPUTES AND YOU AND PATHVU HEREBY EXPRESSLY WAIVE TRIAL BY JURY. As an alternative, you may bring your claim in your local "small claims" court, if permitted by that small claims court's rules. You may bring claims only on your own behalf. Neither you nor Licensor will participate in a class action or class-wide arbitration for any claims covered by this Agreement. You also agree not to participate in claims brought in a private attorney general or representative capacity, or consolidated claims involving another person's account, if Licensor is a party to the proceeding. This dispute resolution provision will be governed by the Federal Arbitration Act. Judgment on the award rendered by the arbitrator shall be issued to both parties in a writing setting forth in reasonable detail the reasoning for the decision and award and such award may be entered in any court having competent jurisdiction. Any provision of applicable law notwithstanding, the arbitrator will not have authority to award damages, remedies or awards that conflict with these Terms of Use.

You may opt out of this agreement to arbitrate. If you do so, neither you nor Licensor can require the other to participate in an arbitration proceeding. To opt out, you must notify Licensor in writing within 30 days of the date that you first became subject to this arbitration provision. You must use this address to opt out:

Pathway Accessibility Solutions, Inc.
1401 Forbes Ave., Ste. 303
Pittsburgh, PA 15219

You must include your name and residence address, an email address, and a clear and specific statement that you want to unconditionally opt out of this arbitration agreement.

If the prohibition against class actions and other claims brought on behalf of third parties contained above is found to be unenforceable, then all of the preceding language in this Arbitration section will be null and void. This arbitration agreement will survive the termination of your relationship with Licensor.

Notwithstanding anything to the contrary set forth above, this Arbitration section shall not apply to disputes relating to: (1) your or Licensor's intellectual property (such as trademarks, trade dress, domain names, trade secrets, copyrights and patents); (2) violations of the API Terms; (3) violations of the Acceptable Use Policy; or (4) any dispute in which Licensor is seeking injunctive or equitable relief to prevent further breaches of these Terms of Use by a User.