

## INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT ("Agreement") is entered into by and between ClusterTruck Transportation, LLC, an Indiana limited liability company with a principal office address of 129 E. Market St., Indianapolis, IN 46204 ("Company") and you ("Contractor") as of the date you accept it (the "Effective Date"). Company and/or Contractor from time to time hereinafter may be individually referred to as a "Party" or collectively as the "Parties". Contractor represents that Contractor is at least eighteen (18) years of age.

BY USING THE COMPANY SOFTWARE ("COMPANY SOFTWARE"), CONTRACTOR UNDERSTANDS AND AGREES TO THE TERMS OF THIS AGREEMENT, INCLUDING SECTION 8 ARBITRATION, WHICH SHALL REQUIRE CONTRACTOR TO RESOLVE DISPUTES WITH THE COMPANY ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION. IF CONTRACTOR WISHES TO OPT OUT OF THE ARBITRATION PROVISION, CONTRACTOR MAY DO SO IN WRITING WITHIN THIRTY (30) DAYS OF THE EFFECTIVE DATE, BY SENDING WRITTEN NOTICE TO COMPANY IN ACCORDANCE WITH THE NOTICE PROVISION OF THIS AGREEMENT.

### SECTION 1. RETENTION OF INDEPENDENT CONTRACTOR

**1.1. Retention.** As of the Effective Date, the Company shall retain the Contractor as an independent contractor, and the Contractor by agreeing to this Agreement and any use of the Company Software, accepts such relationship, upon the terms and conditions set forth in this Agreement.

**1.2. License; Services.** During the Term, Company grants Contractor a non-exclusive, non-transferable, non-sublicensable, nonassignable license to use the Company Software solely for the purpose of seeking, receiving and fulfilling requests made by certain registered customers of the Company (each, a "Customer", collectively, "Customers") for meal delivery services (each, a "Delivery" collectively, "Deliveries") and tracking any resulting fees. For purposes of clarification, a Delivery begins upon acceptance by Contractor of an opportunity (via scan by Contractor's mobile device using Company Software of a ticket associated with delivery of a meal to a Customer) ("Acceptance") and ends upon transfer of the meal from the Contractor to the specified Customer. The Contractor desires to enter into this Agreement in order to access and use the Company Software and shall perform and discharge well and faithfully meal delivery services on behalf of Customers as may be assigned to the Contractor from time to time during the Term ("Services").

**1.3. Performance.** Contractor represents and warrants that (a) the Services shall be performed in the highest professional manner, accomplished in a timely, efficient, and safe way, in compliance with all applicable laws and regulations, and in accordance with industry standards and any terms and conditions set forth herein; (b) Contractor is a fully-licensed, independent provider of Services, authorized to conduct the Services contemplated by this Agreement in the geographic location(s) in which the Contractor operates; and, (c) Contractor is in lawful possession of all equipment, including a motor vehicle, bicycle or any other non-motorized form of transportation (each a "Vehicle", collectively, "Vehicles") necessary to perform the Services in accordance with all applicable laws. Contractor shall provide its Services on its own schedule and may log-in or log-out of the Company Software at any time in order to accept opportunities transmitted through the Company Software. Contractor acknowledges and agrees that Contractor (a) shall voluntarily log-out of the Company Software if Contractor does not wish to accept opportunities; (b) shall timely complete a Delivery upon an Acceptance; (c) may be logged-out of the Company Software by the Company after a period of inactivity or non-acceptance of opportunities; and, (d) shall not be guaranteed a minimum number of Deliveries.

**1.4. Suspension or Termination of License.** Company may, directly or indirectly, by any lawful means, suspend, terminate, or otherwise deny Contractor's access to or use of all or any part of the Company Software, without incurring any resulting obligation or liability, if: (a) Company receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Company to do so; or (b) Company believes, in its good faith and reasonable discretion, that: (i) Contractor has failed to comply with any term of this Agreement, including non-acceptance of an assigned Delivery opportunity, or solicitation of a Customer for compensation; (ii) Contractor has accessed or used the Company Software beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with its intended use; (iii) Contractor is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities; or (iv) this

Agreement expires or is terminated. This Section does not limit any of Company's other rights or remedies, whether at law, in equity, or under this Agreement.

**1.5. Restrictions.** Contractor shall not access or use the Company Software except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Contractor shall not, except as this Agreement expressly permits:

- (a) copy, modify, or create derivative works or improvements of the Company Software;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Company Software to any person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;
- (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Company Software, in whole or in part;
- (d) bypass or breach any security device or protection used by Company Software or access or use the Company Software other than through the use of his or her own then valid access credentials;
- (e) input, upload, transmit, or otherwise provide to or through the Company Software, any information or materials that are unlawful or injurious, or contain, transmit, or activate any harmful code;
- (f) damage, destroy, disrupt, disable, impair, interfere or tamper with, or otherwise impede or harm in any manner the Company Software, in whole or in part;
- (g) remove, delete, alter, or obscure any trademarks, specifications, documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Company Software, including any copy thereof;
- (h) access or use the Company Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any Customer), or that violates any applicable law;
- (i) access or use the Company Software for purposes of competitive analysis of the Company Software, the development, provision, or use of a competing software service or product or any other purpose that is to the Company's detriment or commercial disadvantage; or
- (j) otherwise access or use the Company Software beyond the scope of the authorization granted in this Agreement.

**1.6. Company Discretion.** Contractor understands and acknowledges that Company retains discretion regarding which, if any, delivery opportunities are made available to Contractor through the Company Software. Contractor authorizes Company, during the provision of any Services, to communicate with Contractor and/or Customer to assist Contractor, to the extent permitted by Contractor, in facilitating deliveries. Notwithstanding the foregoing, under no circumstances shall Company be authorized to nor does it retain the right to control the manner or means by which Contractor performs the Services.

**1.7. Failure to Perform.** In the event Contractor fails to fully perform any Services due to Contractor's action or omission (a "Failure"), Contractor shall forfeit all or part of its fee for the Services. Any reduction in the fee shall be based upon information provided by the Customer, Contractor, and any other party with information relevant to the dispute. If Contractor disputes responsibility for a Failure, Contractor shall provide written Notice to Company within ten (10) days of such Failure.

**1.8 Company Software Availability.** Access to the Company Software is provided on a first-come, first-served basis. Contractor may not be able to log-in to the Company Software from time to time, including unavailability as a result of any: (a) maximum user limitation of the Company Software; (b) act or omission by Contractor; (c) Contractor's Failure; (d) Contractor's Internet connectivity; (e) any circumstances beyond Company's reasonable control; (f) failure, interruption, outage, or other problem with any software, hardware, system, network or facility; (g) scheduled downtime of the Company Software; or the (h) disabling, suspension, or termination of the Company Software.

## SECTION 2. COMPENSATION

**2.1. Independent Contractor Fee.** In full satisfaction for the Services rendered by the Contractor under this Agreement, the Company shall pay the Contractor a fee on a per Delivery basis (the "Fee"), payable via direct deposit through the Company Software to Contractor by Company. Company may change the Fee based upon local market factors, provided that Company notifies Contractor prior to such change. Contractor's continued use of the Company Software after any change in the Fee shall constitute Contractor's consent. Contractor shall not solicit Customers for compensation.

**2.2. Incentive Payments.** Company may offer incentive or bonus payments ("Incentive Payments") in addition to the Fee from time to time. Availability of any such Incentive Payments will be communicated to the Contractor if and when they may become available.

**2.3 Reimbursement, Other Compensation and Fringe Benefits.** The Contractor shall not receive any other reimbursement or compensation from the Company or participate in or receive benefits under any of the Company's employee fringe benefit programs or receive any other fringe benefits from the Company on account of the Services to be provided under this Agreement, including without limitation health, disability, life insurance, retirement, pension, and profit sharing benefits.

## SECTION 3. NATURE OF RELATIONSHIP; EXPENSES

**3.1. Independent Contractor.** It is agreed that the Contractor shall be an independent contractor and shall not be an employee, servant, agent, partner, or joint venturer of the Company, or any of its officers, directors, or employees. The Contractor shall not have the right to or be entitled to any of the employee benefits of the Company. The Contractor has no authority to assume or create any obligation or liability, express or implied, on the Company's behalf or in its name or to bind the Company in any manner whatsoever. Company shall have no right to, and shall not, control the manner, means or method Contractor uses to perform the Services. With the exception of any signage required by local law or permit/license requirements, Company shall have no right to require Contractor to: (a) display Company's names, logos or colors on Contractor's Vehicle(s); or (b) wear a uniform or any other clothing displaying Company's names, logos or colors. Contractor shall be solely responsible for determining the most effective, efficient and safe manner to perform each instance of Services, including determining the manner of delivery and route selection.

**3.2. Other Business.** Contractor retains the right to perform services for others and to hold itself out to the general public as a separately established business. The Parties recognize that they are or may be engaged in similar arrangements with others and nothing in this Agreement shall prevent Contractor or Company from doing business with any third parties. Company neither has nor reserves the right to restrict Contractor from performing services for other entities or customers at any time, even if such business directly competes with Company. Notwithstanding the foregoing, Contractor shall not transport passengers or carry and/or deliver goods for any third parties while performing a Delivery requested by a Customer through the Company Software.

**3.3. Requirements.** Contractor shall (a) hold and maintain (i) a valid driver's license with the appropriate level of certification to operate Contractor's Vehicle(s), and (ii) all licenses, permits, certifications, approvals and authority, including safe food handling, applicable to Contractor that are necessary to provide Services to third parties; (b) possess the appropriate and current level of training, expertise and experience to provide Services in a professional manner with due skill, care and diligence; and (c) maintain high standards of professionalism, service, quality and courtesy. Contractor may be subject to certain background and driving record checks from time to time in order to qualify to provide, and remain eligible to provide, Services. Company reserves the right, at any time in Company's sole discretion, to disable Contractor's access to Company Software if Contractor fails to meet any requirements set forth in this Agreement. Contractor's vehicle shall at all times be: (a) properly registered and licensed to operate; (b) owned or leased by Contractor, or otherwise in Contractor's lawful possession; (c) suitable for performing the Services contemplated by this Agreement; (d) maintained in good operating condition, consistent with industry safety and maintenance standards for a vehicle of its kind and any additional standards or requirements that may be applicable, and in a smoke-free, clean and sanitary condition; and, (e) free of any pets or animals while performing the Services. Contractor must provide Company with written copies of all such licenses, permits, approvals, authority, registrations and certifications (the "Documents") upon request. Thereafter, Contractor must submit to Company written evidence of all Documents as they are renewed. Company shall, upon request, be entitled to review the Documents from time to time, and Contractor failure to provide or maintain any of the foregoing shall constitute a material breach of this Agreement. Company reserves the right to independently verify Contractor's Documents from time to time. Furthermore, Contractor represents and warrants that Contractor has had no more than three (3) speeding violations in the past three (3) years, and has not been convicted of a violation

of:

- (a) any Federal or State Alcoholic Beverage Laws, rules, regulations within the past five (5) years;
- (b) any chemical test failure or possession of a controlled substance within the past five (5) years;
- (c) any crime involving a motor vehicle, including vehicular homicide or assault;
- (d) driving while suspended or driving without insurance within the past three (3) years; or
- (e) reckless driving or excessive speed (+25 mph over speed limit) in the past two (2) years.

**3.4. Insurance.** Contractor shall arrange for the Contractor's own liability, vehicle, disability, health, and workers' compensation insurance, including comprehensive and auto collision coverage necessary for any Vehicles. Contractor acknowledges that (a) personal automobile insurance policies may not permit commercial use of Vehicles; (b) workers' compensation coverage may be required in accordance with applicable law; (c) it is Contractor's sole responsibility to fully understand (i) any applicable law and (ii) the terms of its own insurance policies and coverage; and (d) failure to (i) abide by applicable law and (ii) secure or maintain satisfactory insurance coverage shall be deemed a material breach of this Agreement and shall result in the termination of the Agreement and access by Contractor to the Company Software. Contractor agrees to deliver to Company current certificates of insurance as proof of coverage upon request. Contractor agrees to give Company at least thirty (30) days prior written Notice prior to the cancellation of any insurance policy required by this Agreement. Company is not responsible for, and Contractor assumes all risk of, any loss, theft, vandalism, or property damage to its Vehicle or its contents while being used to provide Services. Contractor's Motor Vehicle Report shall be checked by Company periodically to verify Contractor's eligibility to provide Services.

**3.5. Incident Reporting.** Contractor shall notify Company immediately of any accident or other on-road incident that occurs while providing Services and cooperate with Company and the applicable insurance company in the investigation of any such accident or on-road incident.

**3.6. Taxes.** Contractor shall be responsible for the Contractor's own tax obligations accruing as a result of payments for services rendered under this Agreement, as well as for the tax withholding obligations with respect to the Contractor's employees, if any. This includes unemployment tax where required by law. It is expressly understood and agreed by the Contractor that should the Company for any reason incur tax liability or charges whatsoever as a result of not making any withholdings from payments for services under this Agreement, the Contractor will reimburse and indemnify the Company for the same. Contractor shall consult with its own tax advisor and shall not rely in any way upon any information provided by Company to Contractor regarding taxes. Contractor is free to choose the form in which to operate Contractor's business. Contractor agrees to file all tax forms and returns that Contractor may be required by law to file, on account of Contractor's workers used in the performance of this Agreement, if any, and to pay when due all taxes and contributions reported in the forms and returns. In that regard, Contractor knows (a) of Contractor's responsibilities to pay estimated social security taxes and state and federal income taxes with respect to remuneration received from Company; (b) that the social security tax Contractor must pay is higher than the social security tax the individual would pay if he or she were an employee; and (c) that the service provided by Contractor to Company under this Agreement is not work covered by the unemployment compensation laws of any State. Contractor agrees to furnish Company such evidence of compliance with the foregoing as Company may reasonably require, including but not limited to proof of income and payroll taxes currently paid by Contractor or withheld by Contractor from the wages of Contractor's workers. Company will file a Form 1099 with the Internal Revenue Service with respect to Contractor as required by applicable law.

**3.7. Equipment, Tools and Overhead.** The Contractor shall provide, at the Contractor's expense, all equipment and tools, including its own mobile device compatible with the Company Software and Vehicle, needed to provide Services. Except as otherwise provided in this Agreement, the Contractor shall be responsible for all of the Contractor's overhead costs and expenses, including any costs for fuel, taxes, registration fees, permits of any and all types, tolls, and any other assessment, citation, fine, or fee imposed or assessed against any Vehicle or Contractor by any applicable governmental authority or otherwise. Contractor acknowledges and agrees that the Fee would be significantly lower if the Company were to be responsible for the overhead costs and expenses of Contractor.

**3.8. Geo-location.** Contractor's geo-location information must be provided to Company in order to provide Services. Contractor acknowledges and agrees that: (a) Contractor's geo-location information may be obtained by the Company while Contractor is logged

in to the Company Software; and (b) the approximate location of Contractor will be displayed to the Customer during a Delivery. In addition, Company may monitor, track and share with third parties Contractor's geo-location information obtained by the Company Software for safety and security purposes.

**3.9. Certification.** Contractor represents and warrants any and all information provided to Company is true and complete, and the Company is authorized to investigate Contractor through prior employers, references and law enforcement agencies. Contractor releases all persons, employers, references agencies and Company from any and all liability arising from their giving or receiving information about employment history, qualifications or criminal record. Contractor further authorizes Company to conduct whatever background checks necessary to verify any information provided by Contractor to Company, or verify any change in Contractor's background from time to time. In the event Contractor is rejected or terminated by Company based on a report received from a background check, Contractor will receive a full copy of such report and will have an opportunity to dispute the accuracy of the information contained in the report. Contractor understands that any false answers or statement or misrepresentations by omission made by Contractor will be sufficient for rejection of termination.

#### **SECTION 4. TERM AND TERMINATION**

This Agreement is effective upon Contractor's use of the Company Software. Contractor may discontinue use of the Company Software at any time, for any reason. Company may disable Contractor's access to the Company Software, at any time, for any reason. Company reserves the right to refuse access to the Company Software for any reason not prohibited by law. Either Party may terminate the Agreement for any reason upon written Notice to the other Party. If Contractor has not logged into the Company Software for a period of sixty (60) days, the term shall automatically expire. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement: (a) all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate; and, (b) Contractor shall immediately uninstall and cease all use of the Company Software. Sections 5, 6, 7, and 8 shall survive any termination or expiration of this Agreement.

#### **SECTION 5. DISCLOSURE OF INFORMATION**

**5.1 Proprietary Software.** Contractor shall not, and shall not allow any third party to: (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise provide or make available to any other party the Company Software in any way; (b) modify or make derivative works based upon the Company Software; (c) improperly use the Company Software, including creating Internet "links" to any part of the Company Software, "framing" or "mirroring" any part of the Company Software on any other websites or systems, or "scraping" or otherwise improperly obtaining data from the Company Software; (d) reverse engineer, decompile, modify, or disassemble the Company Software, except as allowed under applicable law; or (e) send spam or otherwise duplicative or unsolicited messages. In addition, Contractor shall not, and shall not allow any other party to, access or use the Company Software to: (i) design or develop a competitive or substantially similar product or service; (ii) copy or extract any features, functionality, or content thereof; (iii) launch or cause to be launched on or in connection with the Company Software an automated program or script, including web spiders, crawlers, robots, indexers, bots, viruses or worms, or any program which may make multiple server requests per second, or unduly burden or hinder the operation and/or performance of the Company Software; or (iv) attempt to gain unauthorized access to the Company Software or its related systems or networks.

**5.2. Confidentiality.** Contractor acknowledges that the Company's trade secrets, private or secret processes as they exist from time to time, and information concerning products, processes, methods, sales activities and procedures, promotion and pricing techniques, and credit and financial data concerning Customers, as well as information relating to the management, operation, or planning of the Company ("Proprietary Information") are valuable, special, and unique assets of the Company, access to and knowledge of which may be essential to the performance of Contractor's duties under this Agreement. Contractor agrees that all Proprietary Information obtained by Contractor as a result of Contractor's relationship with the Company shall be considered confidential. In recognition of this fact, Contractor agrees that Contractor will not, during and after the Term, disclose any of such Proprietary Information to any person or entity for any reason or purpose whatsoever, and Contractor will not make use of any Proprietary Information for Contractor's own purposes or for the benefit of any other person or entity (except the Company) under any circumstances.



**5.3. Customer Privacy.** Contractor acknowledges and agrees that the Company Software may provide certain information regarding Customers, including name, contact information, photo, and location. Contractor shall not contact any Customers or use any such personal information for any reason other than for the purpose of fulfilling the Services and shall treat all such information as confidential.

**5.4. Contractor Information.** Company may collect Contractor personal data during the course of application for, and use of, the Company Software, or may obtain information about Contractor from third parties. Such information may be stored, processed, transferred, and accessed by Company, third parties, and service providers for business purposes, including for marketing, lead generation, service development and improvement, analytics, industry and market research, and such other purposes consistent with Company's legitimate business needs. Contractor expressly consents to such use of its personal data.

## **SECTION 6. DISCLAIMER OF WARRANTY; INDEMNITY**

**6.1 DISCLAIMER OF WARRANTY.** COMPANY PROVIDES, AND CONTRACTOR ACCEPTS, THE COMPANY SOFTWARE ON AN "AS IS" AND "AS AVAILABLE" BASIS. COMPANY DOES NOT REPRESENT, WARRANT OR GUARANTEE THAT ACCESS TO OR USE OF THE COMPANY SOFTWARE: (A) WILL BE UNINTERRUPTED OR ERROR FREE; OR (B) WILL RESULT IN ANY REQUESTS FOR SERVICES. COMPANY FUNCTIONS AS AN ON-DEMAND LEAD GENERATION AND RELATED SERVICE ONLY AND MAKE NO REPRESENTATIONS, WARRANTIES OR GUARANTEES AS TO THE ACTIONS OR INACTIONS OF THE CUSTOMERS WHO MAY REQUEST OR RECEIVE SERVICES FROM CONTRACTOR, AND COMPANY DOES NOT SCREEN OR OTHERWISE EVALUATE CUSTOMERS. BY USING THE COMPANY SOFTWARE, CONTRACTOR ACKNOWLEDGES AND AGREES THAT CONTRACTOR MAY BE INTRODUCED TO A THIRD PARTY THAT MAY POSE HARM OR RISK TO CONTRACTOR OR OTHER THIRD PARTIES. CONTRACTOR IS ADVISED TO TAKE REASONABLE PRECAUTIONS WITH RESPECT TO INTERACTIONS WITH THIRD PARTIES ENCOUNTERED IN CONNECTION WITH THE USE OF THE COMPANY SOFTWARE. NOTWITHSTANDING COMPANY'S APPOINTMENT AS THE LIMITED PAYMENT COLLECTION AGENT FOR THE PURPOSE OF CONTRACTOR'S ACCEPTANCE OF PAYMENT FROM CUSTOMERS, COMPANY EXPRESSLY DISCLAIM ALL LIABILITY FOR ANY ACT OR OMISSION OF CONTRACTOR, ANY CUSTOMER OR OTHER THIRD PARTY. COMPANY DOES NOT GUARANTEE THE AVAILABILITY OF THE COMPANY SOFTWARE. CONTRACTOR ACKNOWLEDGES AND AGREES THAT THE COMPANY SOFTWARE MAY BE UNAVAILABLE AT ANY TIME AND FOR ANY REASON (e.g., DUE TO SCHEDULED MAINTENANCE OR NETWORK FAILURE). FURTHER, THE COMPANY SOFTWARE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, AND COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES, LIABILITIES OR LOSSES THAT MAY RESULT.

**6.2 Indemnity.** Contractor agrees to indemnify, protect and hold harmless Company, including any parent, subsidiary and/or affiliated companies, as well as its and their past and present successors, assigns, officers, owners, directors, agents, representatives, attorneys, employees, and Customers, from any and all (a) claims, demands, damages, suits, losses, liabilities and causes of action arising directly or indirectly from, as a result of or in connection with, the actions of Contractor arising from the performance of Services under this Agreement, including personal injury or death to any person (including to Contractor), as well as any liability arising from Contractor's failure to comply with the terms of this Agreement; (b) tax liabilities and responsibilities for payment of all federal, state and local taxes, including, but not limited to all payroll taxes, self-employment taxes, workers compensation premiums, and any contributions imposed or required under federal, state and local laws, with respect to Contractor; and (c) any and all costs of Contractor's business, including, but not limited to, the expense and responsibility for any and all applicable insurance, local, state or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities. Contractor's obligations hereunder shall include the cost of defense, including attorneys' fees, as well as the payment of any final judgment rendered against or settlement agreed upon by Company or any affiliated companies.

**6.3. LIMITATION OF LIABILITY.** COMPANY SHALL NOT BE LIABLE UNDER OR RELATED TO THIS AGREEMENT FOR ANY OF THE FOLLOWING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES: (i) ANY INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES OF ANY TYPE OR KIND; OR (ii) CONTRACTOR'S OR ANY THIRD PARTY'S PROPERTY DAMAGE, OR LOSS OR INACCURACY OF DATA, OR LOSS OF BUSINESS, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE. EXCEPT FOR COMPANY'S OBLIGATIONS TO PAY AMOUNTS DUE TO CONTRACTOR PURSUANT TO

SECTION 2, BUT SUBJECT TO ANY LIMITATIONS OR OTHER PROVISIONS CONTAINED IN THIS AGREEMENT WHICH ARE APPLICABLE THERETO, IN NO EVENT SHALL THE LIABILITY OF COMPANY UNDER THIS AGREEMENT EXCEED THE AMOUNT OF FEES ACTUALLY PAID TO OR DUE TO CONTRACTOR HEREUNDER IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. Nothing in this Agreement limits or excludes either Party's liability for any matter that may not be limited or excluded by applicable laws, rules or regulations.

## **SECTION 7. INTELLECTUAL PROPERTY**

Company Software and Proprietary Information, including all intellectual property rights therein, are and shall remain the property of Company. Neither this Agreement nor Contractor's use of the Company Software conveys or grants to Contractor any rights in or related to the Company Software, except for the limited license granted in Section 1. Other than as specifically permitted by the Company in connection with the Services, Contractor are not permitted to use or reference in any manner Company's names, logos, products and service names, trademarks, service marks, trade dress, copyrights or other indicia of ownership (the "IP"). Contractor agrees that it will not try to register or otherwise use and/or claim ownership in any of the IP, alone or in combination with other letters, punctuation, words, symbols and/or designs, or in any confusingly similar mark, name or title, for any goods and services, and that this engagement does not violate the terms of any agreement between the Contractor and any third party. Contractor acknowledges and agrees that any questions, comments, suggestions, ideas, feedback or other information ("Submissions") provided by Contractor to Company are non-confidential and shall become the sole property of Company. Company shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to Contractor. If Contractor creates any materials bearing the IP (in violation of this Agreement or otherwise), Contractor agrees that upon their creation Company exclusively owns all right, title and interest in and to such materials, including without limitation any modifications to the IP or derivative works based on the IP. Contractor further agrees to assign any interest or right Contractor may have in such materials to Company, and to provide information and execute any documents as reasonably requested by Company to enable Company to formalize such assignment.

## **SECTION 8. ARBITRATION**

**8.1. Covered Claims.** If there is a dispute between the parties, the parties agree to resolve the dispute as described in this Section 8, which is governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq. Pursuant to this Section 8, the parties agree to bring all "Covered Claims" (as defined below) exclusively through final and binding arbitration before a neutral arbitrator. Except as set forth in Section 8.3 below, "Covered Claims" means any disputes brought by either Contractor or Company arising out of or related to (1) this Agreement, (2) Contractor's relationship with Company (including termination of the relationship), (3) the service arrangement contemplated by this Agreement, including payment disputes, and, (4) all disputes arising out of or relating to the interpretation or application of this Section 8, including as to the formation, enforceability, revocability or validity of this Section 8 and any portion of Section 8. Covered Claims includes, without limitation, to disputes regarding any city, county, state or federal wage-hour law, trade secrets, unfair competition, compensation, meal or rest periods, expense reimbursement, uniform maintenance, training, termination, discrimination or harassment. BY AGREEING TO ARBITRATE ALL SUCH DISPUTES, THE PARTIES TO THIS AGREEMENT AGREE THAT ALL SUCH DISPUTES SHALL BE RESOLVED THROUGH BINDING ARBITRATION BEFORE AN ARBITRATOR AND NOT BY WAY OF A COURT OR JURY TRIAL. In the event the Federal Arbitration Act is deemed not to apply to this Agreement, the arbitration act of the state in which the Services are rendered shall apply.

**8.2. Excluded Claims.** Covered Claims does not include worker's compensation, state disability insurance, and unemployment insurance claims; claims brought in small claims court; or claims that are not permitted to be subject to a pre-dispute arbitration agreement under applicable law or regulation. Regardless of any other terms of this Section 8, Contractor may participate in agency investigations, and claims may be brought before and remedies awarded by an administrative agency if applicable law permits access to such an agency notwithstanding the existence of an agreement to arbitrate. Such administrative claims include without limitation claims or charges brought before the Equal Employment Opportunity Commission ([www.eeoc.gov](http://www.eeoc.gov)), the U.S. Department of Labor ([www.dol.gov](http://www.dol.gov)), and the National Labor Relations Board ([www.nlr.gov](http://www.nlr.gov)). Nothing in this Agreement shall be deemed to preclude or excuse a party from bringing an administrative claim before any agency in order to fulfill the party's obligation to exhaust administrative

remedies before making a claim in arbitration.

**8.3. CLASS ACTION WAIVER.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, CONTRACTOR AND COMPANY AGREE TO BRING ANY DISPUTE IN ARBITRATION ON AN INDIVIDUAL BASIS ONLY, AND NOT ON A CLASS, COLLECTIVE, OR REPRESENTATIVE BASIS; CONTRACTOR AND COMPANY ALSO AGREE NOT TO JOIN OR PARTICIPATE AS A PARTY OR MEMBER IN ANY CLASS, COLLECTIVE, CONSOLIDATED, OR REPRESENTATIVE BROUGHT BY ANOTHER PERSON. The Arbitrator shall have no authority to consider or resolve any claim or issue any relief on any basis other than an individual basis. In no event shall any class, collective, consolidated or representative proceeding be permitted to proceed in arbitration. If a court or arbitrator nevertheless allows or requires a class, collective, consolidated, or representative arbitration, the Parties agree that such a determination is immediately appealable to the State or Federal courts serving the City of Indianapolis, in the State of Indiana, as contrary to the intent of the Parties in entering into this Agreement and that all arbitral proceedings, including discovery, shall be stayed pending appeal. IN THE EVENT THE DETERMINATION IS NOT REVERSED ON APPEAL, THE PARTIES AGREE THAT THIS SECTION 8.3 IN ITS ENTIRETY, AND ANY PRIOR OR SUBSEQUENT ARBITRATION AWARD UNDER IT, SHALL BE NULL AND VOID, AND ANY CLAIMS BETWEEN THE PARTIES SHALL BE RESOLVED BY COURT ACTION, NOT ARBITRATION, IN THE FOREGOING STATE OR FEDERAL COURTS. IF AT ANY POINT THIS PROVISION IS DETERMINED TO BE UNENFORCEABLE, THE PARTIES AGREE THAT THIS PROVISION SHALL NOT BE SEVERABLE, UNLESS IT IS DETERMINED THAT THE ARBITRATION WILL STILL PROCEED ON AN INDIVIDUAL BASIS ONLY.

**8.4. Injunctive Relief.** Contractor agrees that, in addition to arbitration, at the Company's option, all rights of the Contractor under this Agreement may be terminated, and the Company shall be entitled without posting any bond to obtain, and the Contractor agrees not to oppose a request for, equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction, or any other equitable remedy which may then be available.

**8.5. Procedure.** A demand for arbitration must be in accordance with the Notice provision of this Agreement. Any controversy or claim covered by this Section 8 shall be settled by arbitration before a single arbitrator. The Arbitrator shall be selected by mutual agreement of Contractor and Company. Unless Contractor and Company mutually agree otherwise, the Arbitrator shall be an attorney licensed to practice in the location where the arbitration proceeding will be conducted or a retired federal or state judicial officer who presided in the jurisdiction where the arbitration will be conducted. The location of the arbitration proceeding shall be no more than 45 miles from the geographic area where Contractor performed delivery services arranged by Company, unless each party to the arbitration agrees in writing otherwise. Due to the simplicity, informality, and expedited nature of arbitration proceedings, absent a showing of compelling need and in favor of targeted identification of specific information, there shall be no broad or widespread collection, search and production of documents, including electronically stored information ("ESI"). If compelling need is demonstrated by the requesting party, the production shall: (i) be narrowly tailored in scope; (ii) only come from sources that are reasonably accessible without undue burden or cost; (iii) be produced in a searchable format if ESI and which is usable by the receiving party and convenient and economical for the producing party; and (iv) not require electronic metadata. Where the costs and burdens of the requested discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, and the importance of the discovery in resolving the issues, the arbitrator will deny such requests or order production on condition that the requesting party advance to the producing party the reasonable costs involved in making the production, subject to the allocation of costs in the final award. The arbitrator shall have the authority to issue an award or partial award without conducting a hearing on the grounds that there is no claim on which relief can be granted or that there is no genuine issue of material fact to resolve at a hearing, consistent with Rules 12 and 56 of the Federal Rules of Civil Procedure. The arbitrator shall decide all disputes related to discovery and to the agreed limits on discovery and may allow additional discovery upon a showing of substantial need by clear and convincing evidence by either party. The arbitrator has the authority to require the requesting party to bear some or all of the costs related to discovery, or to impose other fair and reasonable conditions or restrictions on discovery. For discovery purposes only, the arbitrator may consolidate claims filed by multiple individual Contractors, each on their own behalf, in a single arbitration proceeding, or may conduct a joint hearing for efficiency purposes, so long as the arbitrator does not certify (conditionally or otherwise) a collective, class, or representative action that includes individuals who have not themselves already submitted their own individual claims.

**8.6. Post-arbitration Procedures.** Within thirty (30) days of the close of the arbitration hearing (which period may be extended by stipulation of the parties), any party shall have the right to prepare, serve on the other party and file with the Arbitrator a postarbitration brief. The Arbitrator may award any party any remedy to which that party is entitled under applicable law, but such remedies shall be limited to those that would be available to a party in its or her or his individual capacity in a court of law for the claims presented to and



decided by the Arbitrator, and no remedies that otherwise would be available to an individual in a court of law will be forfeited by virtue of this Section 8. The Arbitrator shall issue a decision or award in writing, stating the essential findings of fact and conclusions of law. Except as may be permitted or required by law, as determined by the Arbitrator, or as needed to enforce an arbitration award, neither a party nor an Arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of the parties. A court of competent jurisdiction shall have the authority to enter a judgment upon the award made pursuant to the arbitration.

**8.7. Application and Right to Opt Out.** This Section 8 is intended broadly to apply to all controversies arising out of or related to the parties' relationship or Contractor's performance of services for Company or its Customers, as well as any controversy that has arisen from the parties' relationship or Contractor's performance of services for Company or its Customers, including those that existed at the time of or prior to the effective date of this Agreement, as is permitted under Section 2 of the Federal Arbitration Act. If Contractor wants to opt out of this Section 8, he/she must notify Company of his or her intention to opt out by sending written Notice to the Company. In order to be effective, Contractor's opt-out Notice must be provided within thirty (30) days of the Contractor's acceptance of this Agreement. If Contractor timely opts out as provided in this subparagraph, he/she will not be subject to any adverse consequences as a result of that decision and may pursue available legal remedies without regard to this Section 8. Should a Contractor not opt out of this Section 8 within thirty (30) days of the Contractor's acceptance of this Agreement, Contractor's acceptance of this Agreement shall constitute mutual acceptance of the terms of this Section 8 by Contractor and Company.

## **SECTION 9. MISCELLANEOUS PROVISIONS**

**9.1. Assignment.** This Agreement shall not be assignable by either party, except by the Company to any subsidiary or affiliate of the Company or to any successor in interest to the Company's business.

**9.2. Binding Effect.** The provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties.

**9.3. Notice.** Each Party shall deliver all written notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "**Notice**") addressed to the other Party at the addresses set forth in this Agreement (or to such other address that the receiving Party may designate from time to time. Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if through the Company Software or by email (with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third (3rd) day after the date mailed by certified or registered mail, return receipt requested, postage prepaid. Notice by Contractor to Company shall be sent to:

ClusterTruck Transportation, LLC.  
ATTN: Legal Department  
129 E. Market St., Suite 700  
Indianapolis, IN 46204  
generalcounsel@clustertruck.com

**9.4. Arbitration Expense.** If Contractor initiates arbitration or files a counterclaim, Contractor will pay only that portion of the arbitration filing fee that is equal to the amount Contractor would be required to pay to initiate a lawsuit in the applicable state or federal court, including if Contractor is unable to pay the arbitration filing fee. Company will pay the remainder of the arbitration administrative fees, the arbitrator's fees and costs, and any other fees or costs unique to arbitration. Each party shall be responsible for paying its own litigation costs for the arbitration, including, but not limited to, attorneys' fees, witness fees, transcript fees, or other litigation expenses that each party would otherwise be required to bear in a court action, subject to any relief awarded by the arbitrator in accordance with applicable law.

**9.5. Modification; Supplement.** In the event Company modifies the terms and conditions of this Agreement at any time, such modifications shall be provided in writing and be binding on Contractor only upon Contractor's acceptance of the modified Agreement.

Company reserves the right to modify any information referenced from this Agreement from time to time. Contractor hereby acknowledges and agrees that, by using the Company Software, Contractor is bound by any future amendments and additions to information or documents incorporated herein, including with respect to fees. Continued use of the Company Software after any such changes shall constitute consent to such changes. Unless changes are made to the arbitration provisions herein, Contractor acknowledges and agrees that modification of this Agreement does not create a renewed opportunity to opt out of arbitration. Supplemental terms may apply to Contractor's use of the Company Software, such as use policies or terms related to certain features and functionality, which may be modified from time to time ("Supplemental Terms"), which may be presented to Contractor from time to time. Supplemental Terms are in addition to, and shall be deemed a part of, this Agreement. Supplemental Terms shall prevail over this Agreement in the event of a conflict.

**9.6. Acknowledgment.** Each of the Parties hereto has read this Agreement and knows and understands its terms and contents. Each Party acknowledges that such Party has consulted with such Party's own attorney and has had adequate and reasonable time to evaluate the Agreement. Each Party further acknowledges that such Party is fully aware of such Party's rights, or has been afforded the opportunity to seek qualified legal counsel relating to each Party's rights, has knowingly and voluntarily waived those rights, and has carefully read and fully understands all provisions of the Agreement. In view of such reading and understanding, and because each party has also had the opportunity to consult with legal counsel, the terms of this Agreement shall be interpreted and construed without any presumption or inference against a party causing the Agreement or any part of it to be drafted.

**9.7. Waiver.** No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**9.8. Severability.** If any provision of this Agreement is or becomes invalid or non-binding, the Parties shall remain bound by all other provisions hereof. In that event, the Parties shall replace the invalid or non-binding provision with provisions that are valid and binding and that have, to the greatest extent possible, a similar effect as the invalid or non-binding provision, given the contents and purpose of this Agreement.

**9.9. Applicable Law.** The choice of law provisions contained in this Section 9.9 do not apply to the arbitration clause contained in Section 8, such arbitration clause being governed by the Federal Arbitration Act. Accordingly, and except as otherwise stated in Section 8, the interpretation of this Agreement shall be governed by Indiana substantive law, without regard to the choice or conflicts of law provisions of any jurisdiction. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Company Software that are not subject to the arbitration clause contained in Section 8 shall be subject to the exclusive jurisdiction of the state and federal courts located in Marion County, Indiana. However, neither the choice of law provision regarding the interpretation of this Agreement nor the forum selection provision is intended to create any other substantive right to non-Indiana residents to assert claims under Indiana law whether that be by statute, common law, or otherwise. These provisions, and except as otherwise provided in Section 8, are only intended to specify the use of Indiana law to interpret this Agreement and the forum for disputes asserting a breach of this Agreement, and these provisions shall not be interpreted as generally extending Indiana law to Contractor if Contractor does not otherwise reside or provide services in Indiana. The foregoing choice of law and forum selection provisions do not apply to the arbitration clause in Section 8 or to any arbitrable disputes as defined therein. Instead, as described in Section 8, the Federal Arbitration Act shall apply to any such disputes. In the event the Federal Arbitration Act is deemed not to apply, Section 8 shall be governed by Indiana substantive law without regard to the choice or conflicts of law provisions of any jurisdiction. The failure of Company to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Company in writing. Other than disputes regarding the intellectual property rights of the parties and other claims identified in Section 8, any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Company Software shall be subject to arbitration pursuant to Section 8.

**9.10. Entire Agreement.** This Agreement, including all Supplemental Terms, constitutes the entire agreement and understanding of the parties with respect to its subject matter and replaces and supersedes all prior or contemporaneous agreements or undertakings regarding such subject matter.

**9.11. Headings.** Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.

