

TRKX Website and Mobile Application Terms of Service

Last Modified: September 4, 2019

1. Acceptance of the Terms of Service

These terms of service are entered into by and between You and TRKX, Inc. (“**TRKX**”, the “**Company**,” “**we**,” or “**us**”). The following terms and conditions, together with any documents they expressly incorporate by reference (collectively, “**Terms of Service**”), govern your access to and use of www.TRKXInc.com (the “**Website**”), including any content, functionality, and services offered on or through www.TRKXInc.com or the TRKX Mobile Application (the “**App**”), whether as a guest or a registered user (the **Website** and **App**, and the services provided through them by TRKX are collectively referred to as the “**TRKX Service**”). “**You**” refers to the individual using the TRKX Service and if you use the Service on behalf of a corporation, LLC, partnership, or other business entity, then you shall include that business entity and any individuals associated therewith using our Service. “**Agreement**” for purposes of these Terms of Service refers to your Agreement with TRKX on the terms of these Terms of Service.

Please read the Terms of Service carefully before you start to use the TRKX Service. **By using the TRKX Service or by clicking to accept or agree to the Terms of Service when this option is made available to you, you accept and agree to be bound and abide by these Terms of Service and our Privacy Policy, found at [PRIVACY POLICY URL], incorporated herein by reference.** If you do not want to agree to these Terms of Service or the Privacy Policy, you must not access or use the TRKX Service.

This TRKX Service is offered and available to users who are 18 years of age or older and reside in the United States or any of its territories or possessions. By using the TRKX Service, you represent and warrant that you are of legal age to form a binding contract with the Company and meet all of the foregoing eligibility requirements. If you do not meet all of these requirements, you must not access or use the TRKX Service.

2. Changes to the Terms of Service

We may revise and update these Terms of Service from time to time in our sole discretion. All changes are effective immediately when we post them and apply to all access to and use of the TRKX Service thereafter. However, any changes to the dispute resolution provisions set out in Governing Law and Jurisdiction will not apply to any disputes for which the parties have actual notice on or before the date the change is posted on the Website or App.

Your continued use of the TRKX Service following the posting of revised Terms of Service means that you accept and agree to the changes. You are expected to check this page from time to time so you are aware of any changes, as they are binding on you.

3. Scope, Purpose and Requirements

3.1 Scope and Purpose

The TRKX Service is a neutral platform and marketplace where Carriers and Freight Providers can identify each other and advertise, solicit, and hire Carrier services online. Subject to the Terms of Service, TRKX provides the Website, App, data, information, platform services to Users, including hosting and maintaining the Website and App, offering the platform for Users to connect, and facilitating the formation of Freight Contracts. A binding legal contract is formed when Users agree on the terms of an arrangement for a Carrier to transport a load for a Shipper (each a “**Freight Contract**”). When a User enters a Freight Contract, the User uses the TRKX Service to invoice and pay any amounts owed under the Freight Contract. The basic transportation rate negotiated and agreed upon between a Carrier and a Freight Provider apply to Freight Contract. Payment terms for a Freight Contract must be agreed upon by both the Carrier and Freight Provider in writing or through the TRKX Service.

3.2 Parties

A “Carrier” for purposes of these Terms of Service means a person or entity that is duly registered with FMCSA as a for-hire motor carrier of property in interstate and foreign commerce pursuant to 49 U.S.C. § 13902.

A “Freight Provider” for purposes of these Terms of Service means a person or entity seeking to coordinate or hire a Carrier to transport property in interstate, intrastate, or foreign commerce.

All Freight Providers that are a freight broker must be registered with FMCSA as a property transportation broker pursuant to 49 U.S.C. § 13904. If such registration is no longer required in the future, and if you are a broker that is a Freight Provider using the TRKX Service, you represent and warrant that you will continue to meet the definition of "broker" found at 49 U.S.C. § 13102(2) and shall function accordingly.

Carriers and Freight Providers may be each referred to as a “User” and collectively as the “Users”.

3.3 Party Requirements

Freight Providers using the TRKX Service must at all times maintain a surety bond/trust in the minimum amount required by law. The form and terms of the bond shall be consistent with the provisions of FMCSA Form BMC 34 as that form was in effect on January 1, 2005.

Carriers using the TRKX Service shall maintain cargo liability insurance in the amount of \$100,000 per occurrence.

4. TRKX Disclaimer

TRKX presents information in a number of ways; mostly through our Website and App; and always as a service to you. Our goal is to provide the most accurate information available in our complex, convoluted, and constantly changing transportation marketplace. Although we endeavor to be as accurate and timely as possible, we cannot and do not make any warranty or guarantee concerning accuracy, reliability, completeness, or suitability, and provide all information AS IS. Use of the TRKX Service is at your own risk. TRKX does not make safety determinations; we report safety data using government data including, but not limited to FMCSA records. TRKX Users are responsible for keeping their safety and equipment data up to date. TRKX endeavors to ensure Users keep this information as updated as possible, however, you must make your own determination as to safety, authority and/or business practices. While we may help facilitate relationships between Users, we have no control over

and do not guarantee safety or legality. It is your sole responsibility, as a user of the TRKX Service, to check the credentials, including but not limited to the safety/authority record, of any party introduced to you by our service and ascertain that such party will meet your transportation needs.

5. Carrier Safety

If you are a Carrier, you agree to assume full responsibility to drive safely, observe all traffic rules/laws and use your own personal best judgment while driving. You agree that you will not enter or change information or otherwise interact with the TRKX Service while driving and you waive any claims against TRKX that may arise out of any accidents or damages resulting from use of the TRKX Service in violation of the foregoing.

6. Contractual Relationship Between Users

If a Carrier and a Freight Provider decide to enter into a Freight Contract, the Freight Contract is a contractual relationship directly between the Carrier and Freight Provider. The Carrier and Freight Provider have complete discretion both with regard to whether to enter into a Freight Contract with each other and with regard to the terms of any Freight Contract. You acknowledge, agree, and understand that TRKX is not a party to any Freight Contract, that the formation of a Freight Contract between Users will not, under any circumstance, create an employment or other service relationship between TRKX and any User or a partnership or joint venture between TRKX and any User.

With respect to any Freight Contract, Carriers and Freight Providers may enter into any written agreements that they deem appropriate (e.g., confidentiality agreements, assignment of rights, etc.) provided that any such agreements do not conflict with, narrow, or expand TRKX's rights and obligations under the Terms of Service, including this Agreement.

7. Disputes Among Users

For disputes arising between Carriers and Freight Providers, you agree that TRKX is not a party to any Freight Contracts and that you must pursue your dispute resolution independently. You acknowledge and agree that TRKX will not and is not obligated to provide any dispute assistance for disputes arising out of or related to any Freight Contracts.

If you intend to obtain an order from any arbitrator or any court that might direct TRKX or our Affiliates to take or refrain from taking any action with respect to a Freight Contract, that party will (a) give us at least five business days' prior notice of the hearing; (b) include in any such order a provision that, as a precondition to obligation affecting TRKX, we be paid in full for any amounts to which we would otherwise be entitled; and (c) be paid for the reasonable value of the services to be rendered pursuant to such order.

8. Confidential Information in Freight Contracts

Users may agree to any terms they deem appropriate with respect to confidentiality. If and to the extent that the Users do not articulate any different agreement, then they agree that this Section 8 applies.

To the extent a User provides Confidential Information to the other, the recipient will protect the secrecy of the discloser's Confidential Information with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than due care. On a User's written request, the party

that received Confidential Information will promptly destroy or return the disclosing party's Confidential Information and any copies thereof contained in or on its premises, systems, or any other equipment otherwise under its control.

9. Worker Classification

Nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, franchisor/franchisee or employer-employee relationship between TRKX and a User.

Freight Providers are solely responsible for and have complete discretion with regard to selection of any Carrier for any Freight Contract. Freight Provider are solely responsible, warrant their decisions regarding classification are correct, and assume all liability, for determining whether Carriers should be engaged as independent contractors or employees of Freight Provider and engaging them accordingly; TRKX will have no input into, or involvement in, worker classification as between Carrier and Freight Provider and Users agree that TRKX has no involvement in and will have no liability arising from or relating to the classification of a Carrier generally or with regard to a particular Freight Contract.

10. Fees

10.1 TRKX Service Fee

Carriers pay a TRKX a service fee for the use of the TRKX Service. TRKX charges Service Fees to Carriers for using the TRKX Service's communication, invoicing, reporting and payment services (the "**Service Fee**"). The Service Fee (to use the Website, App, and TRKX Services) are paid solely by Carrier. The Service Fee is \$35.00 per Freight Contract that the Carrier agrees to and fulfills its obligations under. When a Carrier completes its services provided for in a Freight Contract, it must upload the appropriate information and proof of delivery into its Carrier account on the App. Once a Carrier does so, the Freight Provider that hired the Carrier to perform the Freight Contract services pays the fee owed to the Carrier pursuant to the Freight Contract via the TRKX Service. After the Freight Provider pays this fee, TRKX will credit the Carrier account for the full amount paid, less the Service Fee. Carrier hereby irrevocably authorizes and instructs TRKX to deduct the Service Fee from the amount owed to the Carrier.

Users shall pay all fees at the current rates in accordance with the current TRKX payment policies, which may be modified from time to time at the sole discretion of TRKX; customarily by written notice specified on your invoice. You are responsible for all taxes.

Certain services may require pre-paid fees and TRKX payment policy may not apply to certain other services. If these TRKX Services Fees do not apply to any services, said services will be governed by the policy provided and agreed to at the time said services are agreed to.

For credit card customers, you understand that your credit card may be charged for the services selected immediately upon receipt of your access passwords. Your credit card may also be charged in advance for services provided.

If any amount due to TRKX from any User is not paid as specified, such amount will be subject to a finance charge, equal to 1.5% of the unpaid balance per month (18% per annum) or the highest amount allowable by law, whichever is greater. TRKX shall apply all payments on accounts first to finance charges, and the remainder, if any, to the unpaid principal. TRKX reserves the right to hold you

responsible for reasonable costs associated with collection, including but not limited to collection agency or attorneys' fees.

You agree that any returned payment may be subject to a returned payment fee. Prices are subject to change upon notice. TRKX reserves the right to deny service to anyone at its sole discretion and to cancel service upon reasonable notice and/or reasonable attempts to notify.

10.2 Fuel Advance

Fuel costs incurred by a Carrier in carrying out its obligations under a Freight Contract are borne by the Freight Provider who hires the Carrier. Because the Freight Provider who hires the Carrier pays its financial obligations after the Carrier completes its transportation obligations, TRKX may, in its sole discretion, advance a portion of the estimated fuel costs to the Carrier. Any amounts advanced to a Carrier for fuel costs must be included in the Freight Provider's payment through the TRKX Service, and TRKX is entitled to deduct an amount equal to the amount that TRKX advanced to a Carrier from its payment to the Carrier's account.

11. Non-Circumvention

11.1 Making Payments Through TRKX

You acknowledge and agree that a substantial portion of the compensation TRKX receives for making the TRKX Service available to you is collected through the Service Fee described in Section 10. TRKX only receives this Service Fee when a Freight Provider and a Carrier pay and receive payment through the TRKX Service. Therefore, for 24 months from the time you identify or are identified by any party through the TRKX Service (the "**Non-Circumvention Period**"), you agree to use the TRKX Service as your exclusive method to request, make, and receive all payments for work directly or indirectly with that party or arising out of your relationship with that party (the "**TRKX Relationship**"). For the avoidance of doubt, if you, or the business you represent, did not identify and were not identified by another party through the TRKX Service, such as if you and another User worked together before meeting on the TRKX Service, then the Non-Circumvention Period does not apply. If you use the TRKX Service as an employee, agent, or representative of another business, then the Non-Circumvention Period applies to you and other employees, agents, or representatives of the business when acting in that capacity with respect to the other User.

Except if you pay the Opt-Out Fee (see Section 11.2), you agree not to circumvent the payment methods offered by the TRKX Service. By way of illustration and not in limitation of the foregoing, you agree not to:

- Submit proposals or solicit parties identified through the TRKX Service to contract, hire, work with, or pay outside the TRKX Service.
- Accept proposals or solicit parties identified through the TRKX Service to contract, invoice, or receive payment outside the TRKX Service.
- Invoice or report on the TRKX Service or in an Opt-Out Fee request an invoice or payment amount lower than that actually agreed between Users.
- Refer a User you identified on the TRKX Service to a third-party who is not a User of the TRKX Service for purposes of making or receiving payments off the TRKX Service.

You agree to notify TRKX immediately if a person suggests to you making or receiving payments outside of the TRKX Service in violation of this Section 11.1. If you are aware of a breach or potential

breach of this non-circumvention agreement, please submit a confidential report to TRKX by sending an email message to us.

If you refuse to accept any new version of the Terms of Service or elect not to comply with certain conditions of using the TRKX Service, such as minimum rates supported on the TRKX Service, and therefore choose to cease using the TRKX Service, you may pay the Opt-Out Fee for each other User you wish to continue working with on whatever terms you agree after you cease using the TRKX Service.

11.2 Opting Out

You may opt-out of the obligation in Section 11.1 with respect to each TRKX Freight Contract only if the Freight Provider or prospective Freight Provider or Carrier pays TRKX an opt-out fee for each such relationship (the “**Opt-Out Fee**”).

The Opt-Out Fee is computed as follows

- a) interest at the rate of 18% per annum or the maximum rate permitted by applicable law, whichever is less, on the amount calculated in (b), from the date Freight Provider first makes payment to the subject Carrier until the date the Opt-Out Fee is paid; and
- b) The greater of:
 - i. \$3,000; or
 - ii. 25% of the anticipated annualized salary, fees, or wages for one year if the Freight Provider offers Carrier employment directly; or
 - iii. all Service Fees that would be earned by TRKX from the TRKX Freight Contracts during the Non-Circumvention Period, computed based on the annualized amount earned by Carrier from Freight Provider during the most recent normalized 12-week period, or during such shorter period as data is available to TRKX;
 - iv. provided, however, that if the amount in (ii) and (iii) cannot be ascertained due to uncertainty or lack of sufficient information, then TRKX and you agree that fee shall be \$3,000; if only one of (ii) or (iii) can be ascertained, then TRKX and you agree that amount shall be used if it is greater than \$3,000.

To pay the Opt-Out Fee, you must request instructions by sending an email message to us.

If TRKX determines, in its sole discretion, that you have violated this Section 11, TRKX or its Affiliates may, to the maximum extent permitted by law (x) charge your account the Opt-Out Fee (including interest) if permitted by law or send you an invoice for the Opt-Out Fee (including interest), which you agree to pay within 30 days, (y) close your Account and revoke your authorization to use the TRKX Service, and/or (z) charge you for all losses and costs (including any and all time of TRKX’s employees) and reasonable expenses (including attorneys’ fees) related to investigating such breach and collecting such fees.

12. Your Use of the TRKX Service

You acknowledge that the TRKX Service is a neutral platform where Users may meet; as such we have no control over the quality, safety, or legal aspects of the transactions that may take place.

By using the TRKX Services, you represent and warrant that:

- You are a bona fide shipper, freight broker, 3PL, freight forwarder, intermodal or rail company or motor carrier and you are of a legal age to operate and to enter into a legally binding agreement of this nature.
- You will maintain appropriate authority to use the TRKX Service and you will immediately cease use of the TRKX Service if for any reason you no longer maintain such authority.
- You will not represent yourself as operating under the authority of or on behalf of any company or agency without express written permission to do so from such company.
- You will not attempt to broker freight or use the TRKX Service without proper legal authority.
- You will not enter into any transaction to transport freight without the all of the appropriate carrier authority. You must be authorized as an interstate carrier to use the TRKX Service in any way that involves interstate transport. If you are an intrastate carrier only, you are strictly prohibited from the use of TRKX Service other than for intrastate purposes.
- You will not enter into any transaction to transport freight without the appropriate level of insurance coverage or bond specified by these Terms of Service or applicable law, whichever is greater.
- You will not enter into a transaction to transport freight outside the geographic bounds of your carrier authority or FMCSA registration unless doing so is exempt from such registration or authority.
- You will not enter into a transaction to transport commodities that you are not authorized to transport.
- You will not enter into any transaction to transport freight on equipment that fails to meet any applicable Federal or State regulations or laws.
- That your use of the TRKX Service is solely for your commercial purposes related to your movement of freight or other services offered by TRKX on the TRKX Service and that you shall not reproduce, republish, resell, or distribute TRKX Service information in any format, in whole or in part, for sale or commercial use by third parties.
- Your access or use of the TRKX Service is not for the purpose of competing with TRKX with respect to the services offered on the TRKX Service. You agree any violation shall create irreparable harm.
- That without prior written permission of TRKX, you will not allow non-registered users access to the TRKX Service and will never provide your password to any non-registered user, nor will you share any information from the TRKX Service with any non-authorized users. It is a violation of these Terms of Service to share your login or account information.

13. Records of Compliance

Users will each (a) create and maintain records to document satisfaction of their respective obligations under these Terms of Service, including, without limitation, their respective payment obligations and compliance with tax and employment laws, and (b) provide copies of such records to TRKX upon request. Nothing in this subsection requires or will be construed as requiring TRKX to supervise or monitor a User's compliance with these Terms of Service, any agreements between Users, or a Freight Contract. You are solely responsible for creation, storage, and backup of your business records. These Terms of Service and any registration for or subsequent use of the TRKX Service will not be construed

as creating any responsibility on TRKX's part to store, backup, retain, or grant access to any information or data for any period.

14. Accessing the TRKX Service and Account Security

We reserve the right to withdraw or amend the TRKX Service, and any service or material we provide on or through the TRKX Service, in our sole discretion without notice. We will not be liable if for any reason all or any part of the TRKX Service is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the TRKX Service, or the entire Website and App, to users, including registered users.

You are responsible for both:

- Making all arrangements necessary for you to have access to the TRKX Service.
- Ensuring that all persons who access the TRKX Service through your internet connection are aware of these Terms of Service and comply with them.

To access the TRKX Service or some of the resources it offers, you must create an account (an “**Account**”) and you may be asked to provide certain registration details or other information. It is a condition of your use of the TRKX Service that all the information you provide on the TRKX Service is correct, current, and complete. You agree that all information you provide to register with this TRKX Service or otherwise, including, but not limited to, through the use of any interactive features on the TRKX Service, is governed by our *Privacy Policy* [\[LINK TO PRIVACY POLICY\]](#), and you consent to all actions we take with respect to your information consistent with our Privacy Policy.

TRKX reserves the right to decline a registration to join TRKX, for any lawful reason, including supply and demand, cost to maintain data, or other business considerations.

If you create an Account as an employee or agent on behalf of a company, you represent and warrant that you are authorized to enter into binding contracts, including the Terms of Service, on behalf of yourself and the company.

If you choose, or are provided with, a username, password, or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to the TRKX Service or portions of it using your username, password, or other security information. You agree to notify us immediately of any unauthorized access to or use of your username or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information.

We have the right to disable any user name, password, or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of these Terms of Service.

15. Account Eligibility

TRKX offers the TRKX Service for your business purposes only and not for personal, household, or consumer use. To register for an Account or use the TRKX Service, you must, and hereby represent that

you (a) have or are an employee or agent of and authorized to act for an independent business (whether it be as a self-employed individual/sole proprietor or as a corporation, limited liability company, or other entity); (b) will use the TRKX Service for business purposes only; (c) will comply with any licensing, registration, or other requirements with respect to your business, or the business for which you are acting, and the provision of Freight Services; and (d) a legal entity or an individual 18 years or older (or have otherwise reached the age of majority in the jurisdiction in which you conduct business) who can form legally binding contracts.

16. Location Based Services

Some of the features of the TRKX Service enable TRKX to tailor your experience based on your location (“**Location-based Services**”) including, but not limited to, offers, event updates, advertisements, matching you with other users, and other announcements available to you based on your location. In order to use certain Location-based Services, you must allow TRKX access to your localized position (“**Location Data**”) through your device, which TRKX may accomplish through a variety of means, including GPS location, GeoIP, or other available mechanisms. Without limiting the foregoing, even if you have not expressly granted TRKX access to your Location Data, TRKX may nonetheless have access to location information contained in media content metadata, to the extent you have enabled the application originating such media content to capture and store Location Data. If you choose to disable Location-based Services on your device or to the TRKX mobile application, you will not be able to utilize certain features of the TRKX Service. By authorizing TRKX to access your Location Data or media files containing location based metadata, you agree and acknowledge that (i) Location Data we collect from you is directly relevant to your use of the TRKX Service; (ii) TRKX may, for so long as you allow TRKX to access such Location Data or metadata, provide Location-based Services related to your then-current location; and (iii) TRKX may collect, use, store, and/or aggregate your Location Data. PLEASE NOTE THAT LOCATION DATA MAY NOT BE ACCURATE, WHETHER COLLECTED ORIGINALLY BY THE APPLICATION OR A THIRD-PARTY APPLICATION ORIGINATING A PIECE OF MEDIA CONTENT, AND TRKX DISCLAIMS ANY AND ALL WARRANTIES RELATED TO LOCATION DATA AND LOCATION-BASED SERVICES. TRKX may use third party services as part of its Location-based-Services, including but not limited to Google maps. By using our applications you agree to be bound to the terms of such Location-based-Services. For Google such terms can be found here: <https://policies.google.com/privacy?hl=en-US>.

17. Consent to Use of Data

You agree that TRKX may collect and use Location Data, technical data and related information, including but not limited to UDID and other technical information about your device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to you (if any) related to the services provided through the TRKX Service, and to track and report your activity inside of the TRKX Service, including for analytics purposes. If you are located outside of the United States, you expressly consent to the transfer and processing of your data outside your home jurisdiction. Please see the TRKX Privacy Policy for more information regarding information TRKX collects and how it uses and discloses that information.

18. Intellectual Property Rights

The Website, App, and TRKX Service and its entire contents, features, and functionality (including but not limited to all information, software, text, displays, images, video, and audio, and the design, selection, and arrangement thereof) are owned by the Company, its licensors, or other providers of such

material and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws.

These Terms of Service permit you to use the TRKX Service only for the purposes called for in These Terms of Service. You must not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store, or transmit any of the material on our TRKX Service, except as follows:

- Your computer may temporarily store copies of such materials in RAM incidental to your accessing and viewing those materials.
- You may store files that are automatically cached by your Web browser for display enhancement purposes.
- You may print one copy of a reasonable number of pages of the Website or App for your own personal, non-commercial use and not for further reproduction, publication, or distribution.
- If we provide desktop, mobile, or other applications for download, you may download a single copy to your computer or mobile device solely for your own personal, non-commercial use, provided you agree to be bound by our end user license agreement for such applications.
- If we provide *social media features* with certain content, you may take such actions as are enabled by such features.

You must not:

- Modify copies of any materials from this site.
- Use any illustrations, photographs, video or audio sequences, or any graphics separately from the accompanying text.
- Delete or alter any copyright, trademark, or other proprietary rights notices from copies of materials from this site.

You must not access or use for any commercial purposes any part of the TRKX Service or any services or materials available through the TRKX Service.

If you wish to make any use of material on the TRKX Service other than that set out in this section, please address your request to: **[EMAIL ADDRESS]**.

If you print, copy, modify, download, or otherwise use or provide any other person with access to any part of the TRKX Service in breach of the Terms of Service, your right to use the TRKX Service will stop immediately and you must, at our option, return or destroy any copies of the materials you have made. No right, title, or interest in or to the TRKX Service or any content on the TRKX Service is transferred to you, and all rights not expressly granted are reserved by the Company. Any use of the TRKX Service not expressly permitted by these Terms of Service is a breach of these Terms of Service and may violate copyright, trademark, and other laws.

19. Trademarks

The Company name, the terms TRKX and TRKXInc., the Company logo, and all related names, logos, product and service names, designs, and slogans are trademarks of the Company or its affiliates or licensors. You must not use such marks without the prior written permission of the Company. All other

names, logos, product and service names, designs, and slogans on the Website and App are the trademarks of their respective owners.

20. License to Use the TRKX Mobile Application

The TRKX Mobile Application is licensed, not sold, to you for use only under the terms of this Agreement. TRKX reserves all rights not expressly granted to you. Subject to your complete and ongoing compliance with these Terms of Service, TRKX hereby grants you a personal, limited, revocable, non-transferable license to use the App on any compatible device that you own or control, solely for your own use. You shall not (i) rent, lease, lend, sell, redistribute or sublicense the App. You may not copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works from the App, any updates, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or third party terms), or attempt to disable or circumvent any security or other technological measure designed to protect the App or any content available through the App. If you breach these license restrictions, or otherwise exceed the scope of any license granted by this Agreement, you may be subject to prosecution and damages, as well as liability for infringement of intellectual property rights. The terms of this Agreement will govern any updates provided to you by TRKX that replace and/or supplement the original App, unless such upgrade is accompanied by a separate license in which event the terms of that license shall govern.

21. Prohibited Uses

You may use the TRKX Service only for lawful purposes and in accordance with these Terms of Service. You agree not to use the TRKX Service:

- In any way that violates any applicable federal, state, local, or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries).
- For the purpose of exploiting, harming, or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise.
- To send, knowingly receive, upload, download, use, or re-use any material that does not comply with these Terms of Service.
- To transmit, or procure the sending of, any advertising or promotional material without our prior written consent, including any “junk mail,” “chain letter,” “spam,” or any other similar solicitation.
- To impersonate or attempt to impersonate the Company, a Company employee, another user, or any other person or entity (including, without limitation, by using email addresses or screen names associated with any of the foregoing).
- To engage in any other conduct that restricts or inhibits anyone’s use or enjoyment of the TRKX Service, or which, as determined by us, may harm the Company or users of the TRKX Service, or expose them to liability.

Additionally, you agree not to:

- Use the TRKX Service in any manner that could disable, overburden, damage, or impair the site or interfere with any other party’s use of the TRKX Service, including their ability to engage in real time activities through the TRKX Service.

- Use any robot, spider, or other automatic device, process, or means to access the TRKX Service for any purpose, including monitoring or copying any of the material on the TRKX Service.
- Use any manual process to monitor or copy any of the material on the TRKX Service, or for any other purpose not expressly authorized in these Terms of Service, without our prior written consent.
- Use any device, software, or routine that interferes with the proper working of the TRKX Service.
- Introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful.
- Attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the TRKX Service, the server on which the TRKX Service is stored, or any server, computer, or database connected to the TRKX Service.
- Attack the TRKX Service via a denial-of-service attack or a distributed denial-of-service attack.
- Otherwise attempt to interfere with the proper working of the TRKX Service.

22. User Contributions

The TRKX Service may contain message boards, chat rooms, personal web pages or profiles, forums, bulletin board, and any other interactive features (collectively, “**Interactive Services**”) that allow users to post, submit, publish, display, or transmit to the Company or other users or other persons (hereinafter, “**post**”) content or materials (collectively, “**User Contributions**”) on or through the TRKX Service.

All User Contributions must comply with the content standards set out in these Terms of Service.

Any User Contribution you post to the site will be considered non-confidential and non-proprietary. By providing any User Contribution on the TRKX Service, you grant us and our affiliates and service providers, and each of their and our respective licensees, successors, and assigns the right to use, reproduce, modify, perform, display, distribute, and otherwise disclose to third parties any such material for any purpose.

You represent and warrant that:

- You own or control all rights in and to the User Contributions and have the right to grant the license granted above to us and our affiliates and service providers, and each of their and our respective licensees, successors, and assigns.
- All of your User Contributions do and will comply with these Terms of Service.

You understand and acknowledge that you are responsible for any User Contributions you submit or contribute, and you, not the Company, have full responsibility for such content, including its legality, reliability, accuracy, and appropriateness.

We are not responsible or liable to any third party for the content or accuracy of any User Contributions posted by you or any other user of the TRKX Service.

23. Monitoring and Enforcement; Termination

We have the right to:

- Remove or refuse to post any User Contributions for any or no reason in our sole discretion.
- Take any action with respect to any User Contribution that we deem necessary or appropriate in our sole discretion, including if we believe that such User Contribution violates the Terms of Service, including the content standards, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the TRKX Service or the public, or could create liability for the Company.
- Disclose your identity or other information about you to any third party who claims that material posted by you violates their rights, including their intellectual property rights or their right to privacy.
- Take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the TRKX Service.
- Terminate or suspend your access to all or part of the TRKX Service for any or no reason, including without limitation, any violation of these Terms of Service.

Without limiting the foregoing, we have the right to cooperate fully with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any materials on or through the TRKX Service. YOU WAIVE AND HOLD HARMLESS THE COMPANY AND ITS AFFILIATES, LICENSEES, AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY OF THE FOREGOING PARTIES DURING, OR TAKEN AS A CONSEQUENCE OF, INVESTIGATIONS BY EITHER SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES.

However, we do not undertake to review all material before it is posted on the TRKX Service and cannot ensure prompt removal of objectionable material after it has been posted. Accordingly, we assume no liability for any action or inaction regarding transmissions, communications, or content provided by any user or third party. We have no liability or responsibility to anyone for performance or nonperformance of the activities described in this section.

24. Content Standards

These content standards apply to any and all User Contributions and use of Interactive Services. User Contributions must in their entirety comply with all applicable federal, state, local, and international laws and regulations. Without limiting the foregoing, User Contributions must not:

- Contain any material that is defamatory, obscene, indecent, abusive, offensive, harassing, violent, hateful, inflammatory, or otherwise objectionable.
- Promote sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age.
- Infringe any patent, trademark, trade secret, copyright, or other intellectual property or other rights of any other person.
- Violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with these Terms of Service and our Privacy Policy [\[LINK TO PRIVACY POLICY\]](#).
- Be likely to deceive any person.

- Promote any illegal activity, or advocate, promote, or assist any unlawful act.
- Cause annoyance, inconvenience, or needless anxiety or be likely to upset, embarrass, alarm, or annoy any other person.
- Impersonate any person or misrepresent your identity or affiliation with any person or organization.
- Involve commercial activities or sales, such as contests, sweepstakes, and other sales promotions, barter, or advertising.
- Give the impression that they emanate from or are endorsed by us or any other person or entity, if this is not the case.

25. Copyright Infringement

If you believe that any User Contributions violate your copyright, please send us a notice of copyright infringement. It is the policy of the Company to terminate the user accounts of repeat infringers.

26. Reliance on Information Posted

The information presented on or through the TRKX Service is made available solely for general information purposes. We do not warrant the accuracy, completeness, or usefulness of this information. Any reliance you place on such information is strictly at your own risk. We disclaim all liability and responsibility arising from any reliance placed on such materials by you or any other visitor to the TRKX Service, or by anyone who may be informed of any of its contents.

The TRKX Service may include content and information provided by third parties, including materials provided by other users, bloggers, and third-party licensors, syndicators, aggregators, data providers, reporting services, and/or other businesses and servicers. All information, data, statements and/or opinions expressed in these materials, and all articles and responses to questions and other content, other than the content provided by the Company, are solely the sources and the responsibility of the person or entity providing those materials. These materials do not necessarily reflect the opinion of the Company. We are not responsible, or liable to you or any third party, for the content or accuracy of any materials provided by any third parties.

27. Changes to the TRKX Service

We may update the content on this TRKX Service from time to time, but its content is not necessarily complete or up-to-date. Any of the material on the TRKX Service may be out of date at any given time, and we are under no obligation to update such material.

28. Information About You and Your Visits to and Use of the TRKX Service

All information we collect on this TRKX Service is subject to our Privacy Policy [\[LINK TO PRIVACY POLICY\]](#). By using the TRKX Service, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

29. Online Purchases and Other Terms and Conditions

All purchases made through our site or other transactions between Users for the sale of services or information formed through the TRKX Service, or resulting from visits made by you, are governed by

these Terms of Service.

Additional terms and conditions may also apply to specific portions, services, or features of transactions made through the TRKX Service. All such additional terms and conditions are hereby incorporated by this reference into these Terms of Services.

30. Linking to the Website/App and Social Media Features

You may link to our homepage, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it, but you must not establish a link in such a way as to suggest any form of association, approval, or endorsement on our part without our express written consent.

The Website and/or App may provide certain social media features that enable you to:

- Link from your own or certain third-party websites to certain content on the TRKX Service.
- Send emails or other communications with certain content, or links to certain content, on the Website or App.
- Cause limited portions of content on the TRKX Service to be displayed or appear to be displayed on your own or certain third-party websites.

You may use these features solely as they are provided by us, and solely with respect to the content they are displayed with, and otherwise in accordance with any additional terms and conditions we provide with respect to such features. Subject to the foregoing, you must not:

- Establish a link from any website that is not owned by you.
- Cause the TRKX Service or portions of it to be displayed on, or appear to be displayed by, any other site, for example, framing, deep linking, or in-line linking.
- Link to any part of the TRKX Service other than the homepage.
- Otherwise take any action with respect to the materials on this TRKX Service that is inconsistent with any other provision of these Terms of Service.

The website from which you are linking, or on which you make certain content accessible, must comply in all respects with the Content Standards set out in these Terms of Service.

You agree to cooperate with us in causing any unauthorized framing or linking immediately to stop. We reserve the right to withdraw linking permission without notice.

We may disable all or any social media features and any links at any time without notice in our discretion.

31. Links from the Website or App

If the TRKX Service contains links to other sites and resources provided by third parties, these links are provided for your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links. We have no control over the contents of those sites or resources and accept no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third-party websites linked to the TRKX Service, you do so entirely at your own risk and subject to the terms and conditions of use for such websites.

32. Geographic Restrictions

The owner of the TRKX Service is based in the State of California in the United States. We provide the TRKX Service for use only by persons located in the United States. We make no claims that the TRKX Service or any of its content is accessible or appropriate outside of the United States. Access to the TRKX Service may not be legal by certain persons or in certain countries. If you access the TRKX Service from outside the United States, you do so on your own initiative and are responsible for compliance with local laws.

33. Disclaimer of Warranties

You understand that we cannot and do not guarantee or warrant that files available for downloading from the internet or the TRKX Service will be free of viruses or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to our site for any reconstruction of any lost data. TO THE FULLEST EXTENT PROVIDED BY LAW, WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES, OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA, OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE TRKX SERVICE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE TRKX SERVICE OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY WEBSITE LINKED TO IT.

YOUR USE OF THE TRKX SERVICE, ITS CONTENT, INFORMATION, DATA, AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE TRKX SERVICE IS AT YOUR OWN RISK. THE TRKX SERVICE, ITS CONTENT, INFORMATION, DATA, AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE TRKX SERVICE ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER THE COMPANY NOR ANY PERSON ASSOCIATED WITH THE COMPANY MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE TRKX SERVICE. WITHOUT LIMITING THE FOREGOING, NEITHER THE COMPANY NOR ANYONE ASSOCIATED WITH THE COMPANY REPRESENTS OR WARRANTS THAT THE TRKX SERVICE, ITS CONTENT, OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE TRKX SERVICE WILL BE ACCURATE, RELIABLE, ERROR-FREE, OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT OUR SITE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THE TRKX SERVICE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE TRKX SERVICE WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

TO THE FULLEST EXTENT PROVIDED BY LAW, THE COMPANY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE. THE FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

34. Limitation on Liability; Refused Freight

34.1 Limitation on TRKX's Liability

Because TRKX is a neutral platform not a party to any Freight Contracts, TRKX is not liable, and you agree not to hold us responsible, for any damages or losses arising out of or in connection with the Terms of Service, including, but not limited to:

- your use of or your inability to use our Website, App, or TRKX Services;
- delays or disruptions in our Website, App, or TRKX Services;
- viruses or other malicious software obtained by accessing, or linking to, our Website, App, or TRKX Services;
- glitches, bugs, errors, or inaccuracies of any kind in our Website, App, or TRKX Services;
- damage to your hardware device from the use of the Website, App, or TRKX Services;
- the content, actions, or inactions of third parties' use of the Website, App, or TRKX Services;
- a suspension or other action taken with respect to your Account;
- your reliance on the quality, accuracy, or reliability of job postings, Profiles, ratings, recommendations, and feedback (including their content, order, and display), Composite Information, or metrics found on, used on, or made available through the TRKX Service; and
- your need to modify practices, content, or behavior or your loss of or inability to do business, as a result of changes to the Terms of Service.

ADDITIONALLY, IN NO EVENT WILL TRKX, OUR AFFILIATES, OUR LICENSORS, OR OUR THIRD-PARTY SERVICE PROVIDERS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT COSTS OR DAMAGES, INCLUDING, BUT NOT LIMITED TO, LITIGATION COSTS, INSTALLATION AND REMOVAL COSTS, OR LOSS OF DATA, PRODUCTION, PROFIT, OR BUSINESS OPPORTUNITIES. THE LIABILITY OF TRKX, OUR AFFILIATES, OUR LICENSORS, AND OUR THIRD-PARTY SERVICE PROVIDERS TO ANY USER FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE OTHER TERMS OF SERVICE WILL NOT EXCEED THE LESSER OF: (A) \$500; OR (B) ANY FEES RETAINED BY TRKX WITH RESPECT TO SERVICE CONTRACTS ON WHICH USER WAS INVOLVED AS CARRIER OR FREIGHT PROVIDER DURING THE SIX-MONTH PERIOD PRECEDING THE DATE OF THE CLAIM. THESE LIMITATIONS WILL APPLY TO ANY LIABILITY, ARISING FROM ANY CAUSE OF ACTION WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OF SERVICE OR THE OTHER TERMS OF SERVICE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES AND EVEN IF THE LIMITED REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR ALL OF THE FOREGOING EXCLUSIONS AND LIMITATIONS, SO TO THAT EXTENT, SOME OR ALL OF THESE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

Except as otherwise provided herein, a Carrier's liability to a Freight Provider for cargo loss or damage shall be governed by the provisions of 49 U.S.C. § 14706. Claims of loss or damage to cargo shall be filed and processed in accordance with 49 C.F.R. Part 370 as in effect on the date the subject Freight Contract is entered into, except that if the claim is filed by a Broker it must be accompanied by proof (such as a signed power of attorney, a written assignment of the claim, or other evidence satisfactory to Carrier) that the involved shipper has granted Broker full authority to resolve the claim. Claims must be filed, and any litigation on such claims must be commenced, within the minimum time frames (9

months, and two years, respectively) as permitted in 49 U.S.C. § 14706(e).

34.2 Refused Freight; Salvage and Warehouse Liability

The provisions of the most current version of the National Motor Freight Classification's Uniform Straight Bill of Lading governing refused freight, salvage, and Carrier's status and liability as a warehouse shall be incorporated by reference into these Terms of Service and applied to each Freight Contract.

35. Release

In addition to the recognition that TRKX is not a party to any contract between Users, you hereby release TRKX, our Affiliates, and our respective officers, directors, agents, subsidiaries, joint ventures, employees and service providers from claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with any dispute you have with another User, whether it be at law or in equity that exist as of the time you enter into this agreement. This release includes, for example and without limitation, any disputes regarding the performance, functions, and quality of the Freight Services provided to Freight Provider by a Carrier and requests for refunds based upon disputes.

TO THE EXTENT APPLICABLE, YOU HEREBY WAIVE THE PROTECTIONS OF CALIFORNIA CIVIL CODE § 1542 (AND ANY ANALOGOUS LAW IN ANY OTHER APPLICABLE JURISDICTION) WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

This release will not apply to a claim that TRKX failed to meet our obligations under the Terms of Service.

36. Indemnification

You will indemnify, defend, and hold harmless TRKX, our Affiliates, and our respective directors, officers, employees, representatives, and agents (each an "**Indemnified Party**") for all Indemnified Claims (defined below) and Indemnified Liabilities (defined below) relating to or arising out of: (a) the use of the Website, App, and the TRKX Service by you or your agents, including any payment obligations or default incurred through use of the TRKX Service; (b) any Freight Contract entered into by you or your agents, including, but not limited to, the classification of a Carrier as an independent contractor; the classification of TRKX as an employer or joint employer of a Carrier; any employment-related claims, such as those relating to employment termination, employment discrimination, harassment, or retaliation; and any claims for unpaid wages or other compensation, overtime pay, sick leave, holiday or vacation pay, retirement benefits, worker's compensation benefits, unemployment benefits, or any other employee benefits; (c) failure to comply with the Terms of Service by you or your agents; (d) failure to comply with applicable law by you or your agents; (e) negligence, willful misconduct, or fraud by you or your agents; and (f) defamation, libel, violation of privacy rights, unfair competition, or infringement of intellectual property rights or allegations thereof to the extent caused by you or your agents. For purposes of this Section, your "agents" includes any person who has apparent authority to access or use your account demonstrated by using your username and password.

“Indemnified Claim” means any and all claims, damages, liabilities, costs, losses, and expenses (including reasonable attorneys’ fees and all related costs and expenses) arising from or relating to any claim, suit, proceeding, demand, or action brought by you or a third party or other User against an Indemnified Party.

“Indemnified Liability” means any and all claims, damages, liabilities, costs, losses, and expenses (including reasonable attorneys’ fees and all related costs and expenses) arising from or relating to any claim, suit, proceeding, demand, or action brought by an Indemnified Party against you or a third party or other User.

37. Agreement Term and Termination

37.1 Termination

Unless both you and TRKX expressly agree otherwise in writing, either of us may terminate this Agreement in our sole discretion, at any time, without explanation, upon written notice to the other, which will result in the termination of the other Terms of Service as well, except as otherwise provided herein. You may provide written notice to [EMAIL]. In the event you properly terminate this Agreement, your right to use the Website, App, and TRKX Service is automatically revoked, and your Account will be closed. TRKX is not a party to any Freight Contract between Users. Consequently, User understands and acknowledges that termination of this Agreement (or attempt to terminate this Agreement) does not terminate or otherwise impact any Freight Contract entered into between Users. If you attempt to terminate this Agreement while having one or more open Freight Contracts, you agree (a) you hereby instruct TRKX to terminate your access to your Account after the completion of your open Freight Contract(s); (b) you will continue to be bound by this Agreement and the other Terms of Service until all such Freight Contracts have closed on the TRKX Service; (c) TRKXC will continue to perform those TRKX Services necessary to complete any open Freight Contracts or related transaction between you and another User; and (d) you will continue to be obligated to pay any amounts accrued but unpaid as of the date of termination or as of the closure of any open Freight Contracts, whichever is later, to TRKX for any TRKX Services or such other amounts owed under the Terms of Service and to any Carriers for any Carrier Services.

Without limiting TRKX’s other rights or remedies, we may, but are not obligated to, temporarily or indefinitely revoke access to the Website, App, or TRKX Services, deny your registration, or permanently revoke your access to the TRKX Service and refuse to provide any or all TRKX Services to you if: (i) you breach the letter or spirit of any terms and conditions of these Terms of Service or any other provisions of the Agreement or a Freight Contract; (ii) we suspect or become aware that you have provided false or misleading information to us; or (iii) we believe, in our sole discretion, that your actions may cause legal liability for you, our Users, or TRKX or our Affiliates; may be contrary to the interests of the TRKX Service or the User community; or may involve illicit or illegal activity. If your Account is temporarily or permanently closed, you may not use the TRKX Service under the same Account or a different Account or reregister under a new Account without TRKX’s prior written consent. If you attempt to use the TRKX Service under a different Account, we reserve the right to reclaim available funds in that Account and/or use an available payment method to pay for any amounts owed by you to the extent permitted by applicable law.

You acknowledge and agree that the value, reputation, and goodwill of the TRKX Service depend on transparency of User’s Account status to all Users, including both yourself and other Users who have

entered into Freight Contracts with you. You therefore agree as follows: **IF TRKX DECIDES TO TEMPORARILY OR PERMANENTLY CLOSE YOUR ACCOUNT, TRKX HAS THE RIGHT WHERE ALLOWED BY LAW BUT NOT THE OBLIGATION TO: (A) NOTIFY OTHER USERS THAT HAVE ENTERED INTO FREIGHT CONTRACTS WITH YOU TO INFORM THEM OF YOUR CLOSED ACCOUNT STATUS, (B) PROVIDE THOSE USERS WITH A SUMMARY OF THE REASONS FOR YOUR ACCOUNT CLOSURE. YOU AGREE THAT TRKX WILL HAVE NO LIABILITY ARISING FROM OR RELATING TO ANY NOTICE THAT IT MAY PROVIDE TO ANY USER REGARDING CLOSED ACCOUNT STATUS OR THE REASON(S) FOR THE CLOSURE.**

37.2 Account Data on Closure

Except as otherwise required by law, if your Account is closed for any reason, you will no longer have access to data, messages, files, or other material you keep on the TRKX Service and that any closure of your Account may involve deletion of any content stored in your Account for which TRKX will have no liability whatsoever. TRKX, in its sole discretion and as permitted or required by law, may retain some or all of your Account information.

37.3 Survival

After this Agreement terminates, the terms of this Agreement and the other Terms of Service that expressly or by their nature contemplate performance after this Agreement terminates or expires will survive and continue in full force and effect. For example, the provisions requiring arbitration, permitting audits, protecting intellectual property, requiring non-circumvention, indemnification, payment of fees, reimbursement and setting forth limitations of liability each, by their nature, contemplate performance or observance after this Agreement terminates. Without limiting any other provisions of the Terms of Service, the termination of this Agreement for any reason will not release you or TRKX from any obligations incurred prior to termination of this Agreement or that thereafter may accrue in respect of any act or omission prior to such termination.

38. Arbitration

38.1 Dispute, Process, Arbitration, and Scope

If a dispute arises between you and TRKX or our Affiliates, our goal is to resolve the dispute quickly and cost-effectively. Accordingly, you, TRKX, and our Affiliates agree to resolve any claim, dispute, or controversy that arises out of or relates to this Agreement, the other Terms of Service, your relationship with TRKX (including without limitation any claimed employment with TRKX or one of our Affiliates or successors), the termination of your relationship with TRKX, or the TRKX Services (each, a “**Claim**”) in accordance with this Section 38.1 (sometimes referred to as the “**Arbitration Provision**”).

Claims covered by this Arbitration Provision include, but are not limited to, all claims, disputes, or controversies arising out of or relating to this Agreement, the Terms of Service, any Freight Contract, any payments or monies you claim are due to you from TRKX or our Affiliates or successors, trade secrets, unfair competition, false advertising, consumer protection, privacy, compensation, classification, minimum wage, seating, expense reimbursement, overtime, breaks and rest periods, termination, discrimination, retaliation or harassment and claims arising under the Defend Trade Secrets Act of 2016, Civil Rights Act of 1964, Rehabilitation Act, Civil Rights Acts of 1866 and 1871, Civil Rights Act of 1991, the Pregnancy Discrimination Act, Americans With Disabilities Act, Age Discrimination in

Employment Act, Family Medical Leave Act, Fair Labor Standards Act, Employee Retirement Income Security Act (except for claims for employee benefits under any benefit plan sponsored by the Company and (a) covered by the Employee Retirement Income Security Act of 1974 or (b) funded by insurance), Affordable Care Act, Genetic Information Non-Discrimination Act, Uniformed Services Employment and Reemployment Rights Act, Worker Adjustment and Retraining Notification Act, Older Workers Benefits Protection Act of 1990, Occupational Safety and Health Act, Consolidated Omnibus Budget Reconciliation Act of 1985, False Claims Act, state statutes or regulations addressing the same or similar subject matters, and all other federal or state legal claims arising out of or relating to your relationship with TRKX or the termination of that relationship.

Disputes between the parties that may not be subject to pre-dispute arbitration agreement as provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) or as provided by an Act of Congress or lawful, enforceable Executive Order, are excluded from the coverage of this Agreement.

39. Governing Law and Jurisdiction

All matters relating to the TRKX Service and these Terms of Service, and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction).

40. Limitation on Time to File Claims

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF SERVICE OR THE TRKX SERVICE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

41. Waiver and Severability

No waiver by the Company of any term or condition set out in these Terms of Service shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of the Company to assert a right or provision under these Terms of Service shall not constitute a waiver of such right or provision.

If any provision of these Terms of Service is held by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Terms of Service will continue in full force and effect.

42. Entire Agreement

This Agreement, together with the other Terms of Service, sets forth the entire agreement and understanding between you and TRKX relating to the subject matter hereof and thereof and cancels and supersedes any prior or contemporaneous discussions, agreements, representations, warranties, and other communications between you and us, written or oral, to the extent they relate in any way to the subject matter hereof and thereof. The section headings in the Terms of Service are included for ease of

reference only and have no binding effect. Even though TRKX drafted the Terms of Service, you represent that you had ample time to review and decide whether to agree to the Terms of Service. If an ambiguity or question of intent or interpretation of the Terms of Service arises, no presumption or burden of proof will arise favoring or disfavoring you or TRKX because of the authorship of any provision of the Terms of Service.

43. No Assignment

User may not assign the Terms of Service, or any of its rights or obligations hereunder, without TRKX's prior written consent in the form of a written instrument signed by a duly authorized representative of TRKX. TRKX may freely assign this Agreement and the other Terms of Service without User's consent. Any attempted assignment or transfer in violation of this subsection will be null and void. Subject to the foregoing restrictions, the Terms of Service are binding upon and will inure to the benefit of the successors, heirs, and permitted assigns of the parties.

44. Force Majeure

The parties to this Agreement will not be responsible for the failure to perform or any delay in performance of any obligation hereunder for a reasonable period due to labor disturbances, accidents, fires, floods, telecommunications or Internet failures, strikes, wars, riots, rebellions, blockades, acts of government, governmental requirements and regulations or restrictions imposed by law or any other similar conditions beyond the reasonable control of such party.

45. Your Comments and Concerns

The TRKX Service is operated by TRKX, Inc. 11487 SAN FERNANDO RD, SAN FERNANDO, CA 91340.

All other feedback, comments, requests for technical support, and other communications relating to the TRKX Service should be directed to: [EMAIL ADDRESS].

46. Notice to California Residents

If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding this Agreement or to receive further information regarding use of the Platform.

47. Notice Regarding Apple

To the extent that you are using our App on an iOS device, you further acknowledge and agree that this Agreement is between you and TRKX only, not with Apple, and Apple is not responsible for the TRKX Service and the content thereof. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the TRKX Service. In the event of any failure of the Platform to conform to any applicable warranty, you may notify Apple and Apple will refund any applicable purchase price for the mobile application to you and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation whatsoever with respect to the TRKX Service. Apple is not responsible for addressing any claims by you or any third party relating to the TRKX Service or your

possession and/or use of the TRKX Service, including, but not limited to: (i) product liability claims; (ii) any claim that the TRKX Service fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third-party claim that the TRKX Service and/or your possession and use of the App infringe that third-party's intellectual property rights. You agree to comply with any applicable third-party terms when using the TRKX Service. Apple and Apple's subsidiaries are third-party beneficiaries of the provisions of this Section, but not of any other provisions of this Agreement and upon your acceptance of these provisions, Apple will have the right (and will be deemed to have accepted the right) to enforce these provisions against you as a third-party beneficiary. You hereby represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.