

Terms of Service

Effective day August 30, 2021

This Rate Guide Subscription Terms of Service ("**Agreement**") is entered into by and between the Loadsmart Inc. ("Loadsmart") and the entity or person placing an order for or accessing any Services ("**Customer**" or "**you**"). If you are accessing or using the Services on behalf of your company, you represent that you are authorized to accept this Agreement on behalf of your company, and all references to "you" or "Customer" reference your company.

This Agreement permits Customer to purchase subscriptions to online software-as-a-service products and other services from Loadsmart pursuant to any Loadsmart ordering documents, online registration, order descriptions, or order confirmations referencing this Agreement ("**Order Form(s)**") and sets forth the basic terms and conditions under which those products and services will be delivered. This Agreement will govern Customer's initial purchase on the Effective Date as well as any future purchases made by Customer that reference this Agreement.

The "**Effective Date**" of this Agreement is the date which is the earlier of (a) Customer's initial access to any Service (as defined below) through any online provisioning, registration, or order process or (b) the effective date of the first Order Form referencing this Agreement.

As used in this Agreement, "Loadsmart" means (a) Loadsmart, Inc., a Delaware corporation with headquarters in Chicago, IL.

Modifications to this Agreement: From time to time, Loadsmart may modify this Agreement. Unless otherwise specified by Loadsmart, changes become effective for Customer upon renewal of Customer's current Subscription Term (as defined below) or entry into a new Order Form. Loadsmart will use reasonable efforts to notify Customer of the changes through communications via Customer's account, email, or other means. Customer may be required to click to accept or otherwise agree to the modified Agreement before renewing a Subscription Term or entering into a new Order Form, and in any event continued use of the Services after the updated version

of this Agreement goes into effect will constitute Customer's acceptance of such updated version. If Loadsmart specifies that changes to the Agreement will take effect prior to Customer's next renewal or order (such as for legal compliance or product change reasons) and Customer objects to such changes, Customer may terminate the applicable Subscription Term and receive as its sole remedy a refund of any fees Customer has pre-paid for use of the applicable Services for the terminated portion of the Subscription Term.

BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT OR ACCESSING OR USING ANY SERVICES, YOU ARE AGREEING TO BE BOUND BY ALL TERMS, CONDITIONS, AND NOTICES CONTAINED OR REFERENCED IN THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, PLEASE DO NOT USE ANY SERVICES. FOR CLARITY, EACH PARTY EXPRESSLY AGREES THAT THIS AGREEMENT IS LEGALLY BINDING UPON IT. THIS AGREEMENT CONTAINS MANDATORY ARBITRATION PROVISIONS THAT REQUIRE THE USE OF ARBITRATION TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS. PLEASE READ IT CAREFULLY.

1. Definitions

"Affiliate" means any entity under the control of Customer where "control" means ownership of or the right to control greater than 50% of the voting securities of such entity.

"Contractor" means an independent contractor or consultant who is not a competitor of Loadsmart.

"Customer Data" means any data of any type that is submitted to the Services by or on behalf of Customer, including without limitation: data submitted, uploaded, or imported to the Services by Customer (including from Third Party Platforms).

"Dashboard" means Loadsmart's user interface for accessing and administering the Services that Customer may access via the web.

"Documentation" means the technical user documentation provided with the Services.

"Feedback" means comments, questions, suggestions, or other feedback relating to any Loadsmart product or service.

"Laws" means all applicable local, state, federal, and international laws, regulations and conventions, including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data.

"Permitted User" means an employee or Contractor of Customer or its Affiliate who is authorized to access the Service.

"Sensitive Personal Information" means any of the following: (i) credit, debit, or other payment card data subject to the Payment Card Industry Data Security Standards ("**PCI DSS**"); (ii) patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act ("**HIPAA**"); or (iii) any other personal data of an EU citizen deemed to be in a "special category" (as identified in EU General Data Protection Regulation or any successor directive or regulation).

"Services" means Loadsmart's proprietary software-as-a-service solution(s) - the RFP Guide, as described in the applicable Order Form.

"Taxes" means any sales, use, GST, value-added, withholding, or similar taxes or levies, whether domestic or foreign, other than taxes based on the income of Loadsmart.

"Third-Party Platform" means any software, software-as-a-service, data sources, or other products or services not provided by Loadsmart that are integrated with Services as described in the Documentation.

2. Loadsmart Services

2.1. **Services Overview.** Loadsmart's RateGuide is a web-based platform for Customers to create a base rate spot quote on a US shipping lane and manipulate that price using custom lane margins.

2.2. **Provision of Services.** Each Service is provided on a subscription basis for a set term designated on the Order Form (each, a "**Subscription Term**").

2.3. **Access to Services.** Customer may access and use the Services solely for its own benefit and in accordance with the terms and conditions of this Agreement, the Documentation and any scope of use restrictions designated in the applicable Order Form. Use of and access to the Services is permitted only by Permitted Users. If Customer is given passwords to access the Services on Loadsmart's systems, Customer will require that all Permitted Users keep the user ID and password information strictly confidential and not share such information with any unauthorized person. Customer will be responsible for any and all actions taken using Customer's accounts and passwords. If any Permitted User who has access to a user ID is no longer an employee (or Contractor, as set forth below) of Customer, then Customer will immediately delete such user ID and otherwise terminate such Permitted User's access to the Service.

2.4. **Contractors and Affiliates.** Customer may permit its Contractors and its Affiliates' employees and Contractors to serve as Permitted Users, provided Customer remains responsible for compliance by such individuals with all of the terms and conditions of this Agreement, and any use of the Services by such individuals is for the sole benefit of Customer.

2.5. **General Restrictions.** Customer will not (and will not permit any third party to): (a) rent, lease, provide access to or sublicense the Services to a third party; (b) use the Services to provide, or incorporate the Services into, any product or service provided to a third party; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the Services, except to the extent expressly permitted by applicable law (and then only upon advance notice to Loadsmart); (d) copy or modify the Services or any Documentation, or create any derivative work from any of the foregoing; (e) remove or obscure any proprietary or other notices contained in the Services (including without limitation notices on any reports or data printed from the Services); or (f) publicly disseminate information regarding the performance of the Services.

3. Customer Data

3.1. Rights in Customer Data. As between the parties, Customer will retain all right, title, and interest (including any and all intellectual property rights) in and to the Customer Data as provided to Loadsmart. Subject to the terms of this Agreement, Customer hereby grants to Loadsmart a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of and display the Customer Data solely to the extent necessary to provide the Services to Customer.

3.2. Storage of Customer Data. Loadsmart does not provide an archiving service on behalf of Customer. Loadsmart agrees only that it will not intentionally delete any Customer Data from any Service prior to termination of Customer's applicable Subscription Term. Loadsmart expressly disclaims all other obligations with respect to storage.

3.3. Customer Obligations.

a) In General. Customer is solely responsible for the accuracy, content and legality of all Customer Data. Customer represents and warrants to Loadsmart that Customer has all necessary rights, consents and permissions to collect, share and use all Customer Data as contemplated in this Agreement (including granting Loadsmart the rights in Section 3.1 (Rights in Customer Data)) and that no Customer Data will violate or infringe (i) any third party intellectual property, publicity, privacy or other rights, (ii) any Laws, or (iii) any terms of service, privacy policies or other agreements governing the Customer Properties or Customer's accounts with any Third-Party Platforms. Customer will be fully responsible for any Customer Data submitted to the Services by any Person as if it was submitted by Customer.

b) No Sensitive Personal Information. Customer specifically agrees not to use the Services to collect, store, process or transmit any Sensitive Personal Information. Customer acknowledges that Loadsmart is not a Business Associate or subcontractor (as those terms are defined in HIPAA) or a payment card processor and that the Services are neither HIPAA nor PCI DSS compliant. Loadsmart will have no liability under this Agreement for Sensitive Personal Information, notwithstanding anything to the contrary herein.

c) Compliance with Laws. Customer agrees to comply with all applicable Laws in its use of the Services. Without limiting the generality of the foregoing, Customer will not engage in any unsolicited advertising, marketing, or other activities using the Services, including without limitation any activities that violate the Telephone Consumer Protection Act of 1991, CAN-SPAM Act of 2003 or any other anti-spam laws and regulations.

3.4. Indemnification by Customer. Customer will indemnify, defend and hold harmless Loadsmart from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with any claim arising from or relating to any Customer Data or breach or alleged breach by Customer of Section 3.3 (Customer Obligations). This indemnification obligation is subject to Customer receiving (i) prompt written notice of such claim (but in any event notice in sufficient time for Customer to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (iii) all necessary cooperation of Loadsmart at Customer's expense. Notwithstanding the foregoing sentence, (a) Loadsmart may participate in the defense of any claim by counsel of its own choosing, at its cost and expense and (b) Customer will not settle any claim without Loadsmart's prior written consent, unless the settlement fully and unconditionally releases Loadsmart and does not require Loadsmart to pay any amount, take any action, or admit any liability.

3.5. Aggregated Anonymous Data. Notwithstanding anything to the contrary herein, Customer agrees that Loadsmart may obtain and aggregate technical and other data about Customer's use of the Services that is non-personally identifiable with respect to Customer ("**Aggregated Anonymous Data**"), and Loadsmart may use the Aggregated Anonymous Data to analyze, improve, support and operate the Services and otherwise for any business purpose during and after the term of this Agreement, including without limitation to generate industry benchmark or best practice guidance, recommendations or similar reports for distribution to and consumption by Customer and other Loadsmart customers. For clarity, this Section 3.5 does not give Loadsmart the right to identify Customer as the source of any Aggregated Anonymous Data.

4. Security

Loadsmart agrees to use commercially reasonable technical and organizational measures designed to prevent unauthorized access, use, alteration or disclosure of any Service or Customer Data. However, Loadsmart will have no responsibility for errors in transmission, unauthorized third-party access or other causes beyond Loadsmart's control.

5. Ownership

5.1. **Loadsmart Technology.** This is a subscription agreement for access to and use of the Services. Customer acknowledges that it is obtaining only a limited right to the Services and that irrespective of any use of the words "purchase", "sale" or like terms in this Agreement no ownership rights are being conveyed to Customer under this Agreement. Customer agrees that Loadsmart or its suppliers retain all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Services and all Documentation, professional services deliverables and any and all related and underlying technology and documentation and any derivative works, modifications or improvements of any of the foregoing, including as may incorporate Feedback (collectively, "**Loadsmart Technology**"). Except as expressly set forth in this Agreement, no rights in any Loadsmart Technology are granted to Customer. Further, Customer acknowledges that the Services are offered as an on-line, hosted solution, and that Customer has no right to obtain a copy of any of the Services.

5.2. **Feedback.** Customer, from time to time, may submit Feedback to Loadsmart. Loadsmart may freely use or exploit Feedback in connection with any of its products or services.

6. Subscription Term, Fees & Payment

6.1. **Subscription Term and Renewals.** Unless otherwise specified on the applicable Order Form, each Subscription Term will automatically renew for additional twelve

month periods unless either party gives the other written notice of termination at least thirty (30) days prior to expiration of the then-current Subscription Term.

6.2. Fees and Payment . All fees are as set forth in the applicable Order Form and will be paid by Customer within thirty (30) days of invoice, unless (a) Customer is paying via Credit Card (as defined below) or (b) otherwise specified in the applicable Order Form. Except as expressly set forth in Section 9 (Limited Warranty) and Section 14 (Indemnification), all fees are non-refundable based on Services purchased and not actual usage. The rates in the Order Form are valid for the initial twelve (12) month period of each Subscription Term and thereafter may be subject to an automatic adjustment increase per year. Customer is responsible for paying all Taxes, and all Taxes are excluded from any fees set forth in the applicable Order Form. If Customer is required by Law to withhold any Taxes from Customer's payment, the fees payable by Customer will be increased as necessary so that after making any required withholdings, Loadsmart receives and retains (free from any liability for payment of Taxes) an amount equal to the amount it would have received had no such withholdings been made. Any late payments will be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.

6.3. Payment Via Credit Card. If you are purchasing the Services via credit card, debit card or other payment card ("Credit Card"), the following terms apply:

1. **Recurring Billing Authorization.** By providing Credit Card information and agreeing to purchase any Services, Customer hereby authorizes Loadsmart (or its designee) to automatically charge Customer's Credit Card on the same date and month of each calendar year in accordance with the applicable Order Form.
2. **Foreign Transaction Fees.** Customer acknowledges that for certain Credit Cards, the issuer of Customer's Credit Card may charge a foreign transaction fee or other charges.
3. **Invalid Payment.** If a payment is not successfully settled due to expiration of a Credit Card, insufficient funds, or otherwise, Customer remains responsible for any amounts not remitted to Loadsmart and Loadsmart may, in its sole discretion, either (i) invoice Customer directly for the deficient amount, (ii)

continue billing the Credit Card once it has been updated by Customer (if applicable) or (iii) terminate this Agreement.

4. Changing Credit Card Information. At any time, Customer may change its Credit Card information by communicating with a Loadsmart representative.
5. Termination of Recurring Billing. In addition to any termination rights set forth in this Agreement, Customer may terminate the Subscription Term by sending Loadsmart notice of non-renewal in accordance with Section 6.1 (Subscription Term and Renewals).

6.4. Suspension of Service. If Customer's account is thirty (30) days or more overdue, in addition to any of its other rights or remedies (including but not limited to any termination rights set forth herein), Loadsmart reserves the right to suspend Customer's access to the applicable Service (and any related services) without liability to Customer until such amounts are paid in full.

7. Term and Termination

7.1. Term. This Agreement is effective as of the Effective Date and expires on the date of expiration or termination of all Subscription Terms.

7.2. Termination for Cause. Either party may terminate this Agreement (including all related Order Forms) if the other party (a) fails to cure any material breach of this Agreement (including a failure to pay fees) within thirty (30) days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter).

7.3. Effect of Termination. Upon any expiration or termination of this Agreement, Customer will immediately cease any and all use of and access to all Services (including any and all related Loadsmart Technology) and delete (or, at Loadsmart's request, return) any and all copies of the Documentation, any Loadsmart passwords or access codes and any other Loadsmart Confidential Information in its possession. Provided this Agreement was not terminated for Customer's breach, Customer may retain and use internally copies of all reports exported from any Service prior to

termination. Customer acknowledges that following termination it will have no further access to any Customer Data input into any Service, and that Loadsmart may delete any such data as may have been stored by Loadsmart at any time. Except where an exclusive remedy is specified, the exercise of either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise.

7.4. **Survival.** The following Sections will survive any expiration or termination of this Agreement: 2.7 (General Restrictions), 3.2 (Storage of Customer Data), 3.4 (Indemnification by Customer), 3.5 (Aggregated Anonymous Data), 5 (Ownership), 6.2 (Fees and Payment), 6.3 (Payment Via Credit Card), 7 (Term and Termination), 8.2 (Warranty Disclaimer), 9 (Limitation of Remedies and Damages), 10 (Indemnification), 11 (Confidential Information) and 13 (General Terms).

8. Limited Warranty

8.1. **Limited Warranty.** Loadsmart warrants, for Customer's benefit only, that each Service will operate in substantial conformity with the applicable Documentation. Loadsmart's sole liability (and Customer's sole and exclusive remedy) for any breach of this warranty will be, at no charge to Customer, for Loadsmart to use commercially reasonable efforts to correct the reported non-conformity, or if Loadsmart determines such remedy to be impracticable, either party may terminate the applicable Subscription Term and Customer will receive as its sole remedy a refund of any fees Customer has pre-paid for use of such Service for the terminated portion of the applicable Subscription Term. The limited warranty set forth in this Section 8.1 will not apply: (i) unless Customer makes a claim within thirty (30) days of the date on which Customer first noticed the non-conformity, (ii) if the error was caused by misuse, unauthorized modifications or third-party hardware, software or services, or (iii) to use provided on a no-charge, trial or evaluation basis.

8.2. **Warranty Disclaimer** . EXCEPT FOR THE LIMITED WARRANTY IN SECTION 8.1, ALL Services ARE PROVIDED "AS IS". NEITHER LOADSMART NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR

PURPOSE OR NONINFRINGEMENT. Loadsmart does not warrant that Customer's use of THE Services will be uninterrupted or error-free, nor does Loadsmart warrant that it will review the Customer Data for accuracy or that it will preserve or maintain the Customer Data without loss OR CORRUPTION. LOADSMART SHALL NOT BE LIABLE FOR THE RESULTS OF ANY COMMUNICATIONS SENT OR ANY COMMUNICATIONS THAT WERE FAILED TO BE SENT USING THE SERVICES. LOADSMART SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, THIRD-PARTY PLATFORMS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF LOADSMART. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

9. Limitation of Remedies and Damages

9.1. **Consequential Damages Waiver.** EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW), NEITHER PARTY (NOR ITS SUPPLIERS) SHALL HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOSS OF USE, LOST DATA, LOST PROFITS, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

9.2. **Liability Cap.** LOADSMART'S AND ITS SUPPLIERS' ENTIRE LIABILITY TO CUSTOMER ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO LOADSMART DURING THE PRIOR TWELVE (12) MONTHS UNDER THIS AGREEMENT.

9.3. **Excluded Claims.** "Excluded Claims" means any claim arising (a) from Customer's breach of Section 2.7 (General Restrictions); (b) under Section 3.3 (Customer Obligations) or 3.4 (Indemnification by Customer); or (c) from a party's breach of its obligations in Section 11 (Confidential Information) (but excluding claims arising from operation or non-operation of any Service).

9.4. **Nature of Claims and Failure of Essential Purpose.** The parties agree that the waivers and limitations specified in this Section 9 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and

will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

10. Indemnification

Loadsmart will defend Customer from and against any claim by a third party alleging that a Service when used as authorized under this Agreement infringes a U.S. patent, U.S. copyright, or U.S. trademark and will indemnify and hold harmless Customer from and against any damages and costs finally awarded against Customer or agreed in settlement by Loadsmart (including reasonable attorneys' fees) resulting from such claim, provided that Loadsmart will have received from Customer: (i) prompt written notice of such claim (but in any event notice in sufficient time for Loadsmart to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense and settlement (if applicable) of such claim; and (iii) all reasonable necessary cooperation of Customer. If Customer's use of a Service is (or in Loadsmart's opinion is likely to be) enjoined, if required by settlement or if Loadsmart determines such actions are reasonably necessary to avoid material liability, Loadsmart may, in its sole discretion: (a) substitute substantially functionally similar products or services; (b) procure for Customer the right to continue using such Service; or if (a) and (b) are not commercially reasonable, (c) terminate this Agreement and refund to Customer the fees paid by Customer for the portion of the Subscription Term that was paid by Customer but not rendered by Loadsmart. The foregoing indemnification obligation of Loadsmart will not apply: (1) if such Service is modified by any party other than Loadsmart, but solely to the extent the alleged infringement is caused by such modification; (2) if such Service is combined with products or processes not provided by Loadsmart, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of such Service; (4) to any action arising as a result of Customer Data or any third-party deliverables or components contained within such Service; (5) to the extent the alleged infringement is not caused by the particular technology or implementation of the Service but instead by features common to any similar product or service; or (6) if Customer settles or makes any admissions with respect to a claim without Loadsmart's prior written consent. THIS SECTION 10 SETS FORTH Loadsmart's AND ITS SUPPLIERS' SOLE LIABILITY AND CUSTOMER'S SOLE AND

EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

11. Confidential Information

Each party (as "**Receiving Party**") agrees that all code, inventions, know-how, business, technical and financial information it obtains from the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any Loadsmart Technology, performance information relating to any Service, and the terms and conditions of this Agreement will be deemed Confidential Information of Loadsmart without any marking or further designation. Except as expressly authorized herein, the Receiving Party will (1) hold in confidence and not disclose any Confidential Information to third parties and (2) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement. The Receiving Party may disclose Confidential Information to its employees, agents, contractors, and other representatives having a legitimate need to know (including, for Loadsmart, the subcontractors referenced in Section 17.8 (Subcontractors)), provided that such representatives are bound to confidentiality obligations no less protective of the Disclosing Party than this Section 11 and that the Receiving Party remains responsible for compliance by any such representative with the terms of this Section 11. The Receiving Party's confidentiality obligations will not apply to information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may make disclosures to the extent required by law or court order, provided the Receiving Party notifies the Disclosing Party in advance and cooperates in any effort to obtain confidential treatment. The Receiving Party acknowledges that disclosure of Confidential Information would

cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

12. Co-Marketing

At the request of Loadsmart, Customer agrees to the issuance of a joint press release ("**Press Release**") on a mutually agreed upon date or the 90th day from the Effective Date, whichever is earlier. Each party will have the right to approve the Press Release in advance, but such approval will not be unreasonably delayed or withheld.

Customer also agrees to participate in other reasonable marketing activities that promote the benefits of the Services to other potential customers and to use of Customer's name and logo on Loadsmart's website and in Loadsmart promotional materials. Customer agrees that Loadsmart may disclose Customer as a customer of Loadsmart.

13. General Terms

13.1. **Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement without the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such party's assets or voting securities. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 13.1 will be null and void.

13.2. **Severability.** If any provision of this Agreement will be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect.

13.3. **Governing Law; Dispute Resolution.**

a) Direct Dispute Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, whether arising in contract,

tort or otherwise, ("**Dispute**"), the parties shall first use their best efforts to resolve the Dispute. If a Dispute arises, the complaining party shall provide written notice to the other party in a document specifically entitled "Initial Notice of Dispute," specifically setting forth the precise nature of the dispute ("**Initial Notice of Dispute**"). If an Initial Notice of Dispute is being sent to Loadsmart it must be emailed to legal@loadsmart.com and sent via mail to:

Attn: Legal Department, Loadsmart Inc., 150 N. Michigan Ave, 19th Floor, Chicago, IL 60601

Following receipt of the Initial Notice of Dispute, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interest, attempt to reach a just and equitable solution of the Dispute that is satisfactory to both parties ("**Direct Dispute Resolution**"). If the parties are unable to reach a resolution of the Dispute through Direct Dispute Resolution within thirty (30) days of the receipt of the Initial Notice of Dispute, then the Dispute shall subsequently be resolved by arbitration as set forth below.

b) Arbitration. IN THE EVENT THAT A DISPUTE BETWEEN THE PARTIES CANNOT BE SETTLED THROUGH DIRECT DISPUTE RESOLUTION, AS DESCRIBED ABOVE, THE PARTIES AGREE TO SUBMIT THE DISPUTE TO BINDING ARBITRATION. BY AGREEING TO ARBITRATE, THE PARTIES AGREE TO WAIVE THEIR RIGHT TO A JURY TRIAL. The arbitration shall be conducted before a single neutral arbitrator, before JAMS in New York, New York. The arbitration shall be administered by JAMS in accordance with this document and the JAMS Streamlined Rules and Procedures for the Arbitration, with one addition: The limitation of one discovery deposition per side shall be applied by the arbitrator, unless it is determined, based on all relevant circumstances, that more depositions are warranted. The arbitrator shall consider the amount in controversy, the complexity of the factual issues, the number of parties and the diversity of their interests, and whether any or all of the claims appear, on the basis of the pleadings, to have sufficient merit to justify the time and expense associated with the requested discovery.

The arbitration will occur in Chicago, Illinois, but the parties may choose to appear by person, by phone, by another virtual means, or through the submission of documents.

The arbitrator will issue a ruling in writing. Any issue concerning the extent to which any dispute is subject to arbitration, the applicability, interpretation, or enforceability of this agreement shall be resolved by the arbitrator. To the extent state law is applicable, the arbitrator shall apply the substantive law of Delaware.

All aspects of the arbitration shall be treated as confidential and neither the parties nor the arbitrators may disclose the content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. The result of the arbitration shall be binding on the parties and judgment on the arbitrator's award may be entered in any court having jurisdiction. The arbitrator shall award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration.

c) Choice of Law and Jurisdiction. FOR ANY CLAIM WHICH IS NOT SUBJECT TO THIS DISPUTE RESOLUTION PROVISION, CUSTOMER AGREES TO SUBMIT AND CONSENT TO THE PERSONAL AND EXCLUSIVE JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE STATE AND FEDERAL COURTS LOCATED WITHIN CHICAGO, ILLINOIS. IN ANY DISPUTE, DELAWARE LAW SHALL APPLY.

d) Construction and Joinder. THIS AGREEMENT MUST BE CONSTRUED AS IF IT WAS JOINTLY WRITTEN BY BOTH PARTIES. BOTH CUSTOMER AND LOADSMART AGREE THAT EACH MAY BRING OR PARTICIPATE IN CLAIMS AGAINST THE OTHER ONLY IN THEIR RESPECTIVE INDIVIDUAL CAPACITIES, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS. NO ARBITRATION OR CLAIM UNDER THIS AGREEMENT SHALL BE JOINED TO ANY OTHER ARBITRATION OR CLAIM, INCLUDING ANY ARBITRATION OR CLAIM INVOLVING ANY OTHER CURRENT OR FORMER USER OF THE SERVICES, AND NO CLASS ARBITRATION PROCEEDINGS SHALL BE PERMITTED. IN THE EVENT OF ANY DISPUTE CONCERNING THE VALIDITY OR ENFORCEABILITY OF THIS PROVISION, SUCH CLAIM MUST BE ADJUDICATED BY A COURT AND NOT BY AN ARBITRATOR.

e) Injunctive Relief. Notwithstanding the above provisions, Loadsmart may apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

13.4. **Notice.** Any notice or communication required or permitted under this Agreement will be in writing to the parties at the addresses set forth on the Order Form or at such other address as may be given in writing by either party to the other in accordance with this Section and will be deemed to have been received by the addressee (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier service, the first business day following dispatch or (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail.

13.5. **Amendments; Waivers.** Except as otherwise provided herein, no supplement, modification, or amendment of this Agreement will be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement will be for administrative purposes only and will have no legal effect.

13.6. **Entire Agreement.** This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. Customer acknowledges that the Services are on-line, subscription-based products and that in order to provide improved customer experience Loadsmart may make changes to the Services, and Loadsmart will update the applicable Documentation accordingly.

13.7. **Force Majeure.** Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events that occur after the signing of this Agreement and that are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.

13.8. **Subcontractors.** Loadsmart may use the services of subcontractors and permit them to exercise the rights granted to Loadsmart in order to provide the Services under this Agreement, provided that Loadsmart remains responsible for (i) compliance of any such subcontractor with the terms of this Agreement and (ii) for the overall performance of the Services as required under this Agreement.

13.9. **Subpoenas.** Nothing in this Agreement prevents Loadsmart from disclosing Customer Data to the extent required by law, subpoenas, or court orders, but Loadsmart will use commercially reasonable efforts to notify Customer where permitted to do so.

13.10. **Independent Contractors.** The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

13.11. **Export Control.** In its use of the Services, Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) 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, (ii) Customer will not (and will not permit any of its users to) access or use the Services in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will not submit to the Services any information that is controlled under the U.S. International Traffic in Arms Regulations

13.12. **Government End-Users.** Elements of the Services are commercial computer software. If the user or licensee of the Services is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Services, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement

227.7202 for military purposes. All Services were developed fully at private expense.
All other use is prohibited

13.13. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will be considered one and the same agreement.