

**BRANDED TRACKING AGREEMENT**  
UPS-BTA02-0919

This Branded Tracking Agreement (this “Agreement”) sets forth the terms and conditions pursuant to which UPS Market Driver, Inc. (“UPS”) will provide the tracking notification and customer self-serve tracking service known as Branded Tracking (the “Solution”) to you (the “Merchant”). As part of the Solution, UPS will enable an Administrative Tool and an Analytics Dashboard whereby Merchant can manage certain aspects of the Solution and package status notifications (e.g., email, SMS text, or Facebook Messenger) that Merchant’s Customer can receive after enrolling to receive delivery status updates. Capitalized terms used in this Agreement have the meanings set forth in Section XIII, or as otherwise expressly set forth herein.

**I. Services.**

A. Services. Subject to and conditioned on Merchant’s compliance with the terms and conditions of this Agreement, UPS hereby grants to Merchant a non-exclusive, non-transferable (except as expressly provided in this Agreement), and limited right during the Term for Merchant to access and use the Solution including for the purposes of utilizing the Solution’s marketing and analytics capabilities and managing Merchant’s Assets used in the Solution. This license also includes the right for Merchant to use the Solution, and to permit its Customers to solely use the Solution, to obtain tracking information concerning delivery of Merchant’s goods.

B. Support Services. UPS agrees to provide, in response to Merchant’s request, at no charge to Merchant, technical support services as determined by UPS in its sole discretion (“Support Services”). Merchant may request Support Services by emailing UPS at [bvsupport@ups.com](mailto:bvsupport@ups.com).

C. Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties: (1) UPS has and will retain sole control over the provision and development of the Solution, including the deployment, modification, and performance of the Solution; and (2) Merchant has and will retain sole control over the operation, maintenance and management of, and all access to and use of its systems, and sole responsibility for all access to and use of the Solution by any Internal Employee through its systems or any other means controlled by Merchant and any information provided to UPS.

**II. Fees.** The rights granted to Merchant under this Agreement are conditioned upon Merchant’s payment of monthly fees in accordance with the fee schedule set forth in Exhibit A (the “Fees”). The Fees will be charged to a UPS account number issued to Merchant and mutually agreed to by the parties. UPS reserves the right to modify the charges for access to or use of the Solution in the future, in its sole discretion, and to modify this Agreement as set forth in Section XII(B).

**III. Intellectual Property.**

A. Solution. Merchant hereby acknowledges and agrees that the Solution, including without limitation all software and programming for the Solution and all intellectual property rights therein, any modifications made thereto by UPS on behalf of Merchant, whether or not at the direction of Merchant, and any intellectual property therein or thereto is the sole property of UPS, its Affiliates or licensors and that Merchant has not acquired any ownership or interest in the Solution and will not acquire any ownership or interest in the Solution by reason of this Agreement. All rights not expressly granted in this Agreement are hereby exclusively reserved by UPS, its Affiliates and licensors. UPS may use any feedback or suggestions about the Solution without any obligation to Merchant or any other party.

B. Merchant’s Assets. Merchant hereby grants UPS a non-exclusive, revocable, royalty-free, limited, non-sublicensable license to copy and use Merchant’s Assets in connection with the Solution for Merchant’s benefit. Merchant represents and warrants that it either owns and retains all right, title and interest in the Merchant Assets, or has the right and authority to grant a license in the Merchant Assets sufficient for their use in the Solution.

**IV. Confidentiality.** During the Term of this Agreement and for a period of five (5) years thereafter, Merchant shall not disclose, or permit any third party access to any Confidential Information. Notwithstanding anything in this Agreement to the contrary, Merchant acknowledges that if Merchant breaches this Section IV, UPS may have no adequate remedy at law available to it, may suffer irreparable harm, and will be entitled to seek equitable relief in addition

to and not in lieu of any other rights and remedies including monetary damages.

**V. Restrictions.**

A. Transfer and Access. Except for such rights required to allow Merchant’s Customer to access and use the Solution under the terms of this Agreement, Merchant agrees not to in any manner (1) modify, translate, create derivative works, give, distribute, transfer the Solution, or (2) assign, sell, lend, publish, lease, license, grant access to, or otherwise disclose or make available the Solution to any other Person.

B. Harmful Code. Merchant shall not input, upload, transmit or otherwise provide to or through the Solution any information or materials that are unlawful or injurious, or contain, transmit or activate any harmful code, virus, worm, malware or other malicious computer code, or damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Solution, or UPS’s provision of services to any third party, in whole or in part.

C. Responsible Use. Merchant shall use the Solution for lawful purposes and in accordance with applicable law. Merchant is prohibited from storing, distributing, or transmitting through the Solution any unlawful material or any material that is obscene, hateful, profane, racist, sexually explicit, harmful to minors, or that may, in UPS’s opinion, be harmful to UPS. UPS may remove or modify any such material without notice or liability at any time in UPS’s sole discretion.

**VI. Exclusion of Warranties and Limitation of Damages.**

A. Disclaimer. THE SOLUTION IS PROVIDED BY UPS, ITS AFFILIATES AND LICENSORS “AS IS” AND IN ITS PRESENT STATE AND CONDITION. NO WARRANTY, REPRESENTATION, GUARANTEE, CONDITION, UNDERTAKING OR TERM, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO THE CONDITION, QUALITY, DURABILITY, AVAILABILITY, ACCURACY, COMPLETENESS, PERFORMANCE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, QUIET ENJOYMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF THE SOLUTION IS GIVEN OR ASSUMED AND ALL SUCH WARRANTIES, REPRESENTATIONS, CONDITIONS, UNDERTAKINGS AND TERMS ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW, AS ARE ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE. NO WARRANTY IS MADE BY UPS, ITS AFFILIATES AND LICENSORS THAT DEFECTS IN THE SOLUTION WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY UPS OR ANY UPS REPRESENTATIVE SHALL CREATE A WARRANTY.

B. Limitation on Damages. MERCHANT HEREBY AGREES AND ACKNOWLEDGES THAT UPS, ITS AFFILIATES AND LICENSORS SHALL NOT BE LIABLE TO MERCHANT OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, MULTIPLE, INCIDENTAL, OR SPECIAL DAMAGES, LOST PROFITS, LOSS OF DATA OR DATA USE, LOST SAVINGS, OR COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES ARISING OUT OF THIS AGREEMENT, DUE TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), DELICT, USE OF THE SOLUTION OR OTHERWISE, EVEN IF UPS, ITS AFFILIATES AND LICENSORS HAVE BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. IN NO EVENT SHALL UPS’S, ITS AFFILIATES’ AND LICENSORS’ LIABILITY UNDER THIS AGREEMENT EXCEED TEN DOLLARS (\$10.00). MERCHANT’S CLAIMS NOT MADE WITHIN SIX (6) MONTHS AFTER THE FIRST EVENT GIVING RISE TO A CLAIM SHALL BE DEEMED WAIVED. THE LIMITATION OF LIABILITY PROVIDED UNDER THIS SECTION VI.B SHALL BE APPLICABLE ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN THE EVENT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF UPS OR IN THE EVENT OF PERSONAL INJURY OR DEATH.

**VII. Indemnification.** Merchant will, at Merchant’s sole cost and expense, indemnify and hold harmless, and at UPS’s option defend, UPS and its Affiliates from and against any and all third party claims incurred directly or

indirectly by UPS or its Affiliates that arise out of or relate to (a) Merchant's breach of this Agreement, including, but not limited to, any breach of Section IV and Merchant's representations and warranties under this Agreement; (b) any action or inaction by an Internal Employee, if such action or inaction had been performed by Merchant would constitute a breach of this Agreement or basis for indemnification under this Section VII; (c) UPS's use of Merchant's Assets, including, but not limited to, claims that such use infringes or is a misappropriation of the intellectual property rights of a third party or constitutes an act of unfair competition in violation of any applicable law; or (d) the quality of Merchant's products or services or any breach of Merchant's representations and warranties to its Customers with respect to such products or services.

**VIII. Data Use.** Merchant warrants that (a) Merchant has the right to provide UPS the data it transfers to UPS through the Solution; and (b) if required by applicable law, Merchant has provided notice to and secured consent from the Merchant's Customer, or any other Person as applicable, prior to transfer of such data to or use by UPS. Merchant acknowledges that all data Merchant transfers to UPS will be stored, processed and managed by UPS and its Affiliates consistent with the UPS Privacy Policy in force at the time of the submission.

**IX. Term and Termination.** This Agreement will become effective on the Effective Date and will remain in full force and effect thereafter until terminated as provided herein (the "**Term**"). Either party may terminate this Agreement (a) with thirty (30) days prior written notice, which notice shall specify the effective date of termination; or (b) immediately, if the other party fails to cure any material breach of this Agreement within three (3) days of receipt of written notice of such breach.

**X. Consequences of Termination or Expiration.** Upon termination or expiration of this Agreement, any rights to access and use the Solution granted hereunder shall immediately terminate and Merchant shall immediately cease any access and use of the Solution. Within five (5) calendar days after termination or expiration of this Agreement for any reason, Merchant shall, at UPS's direction, return to UPS or destroy (with such destruction certified in writing) all materials provided to Merchant by UPS, including, without limitation, all Confidential Information and delete all copies of such materials stored on electronic media and certify in writing to the deletion of same.

**XI. Dispute Resolution.**

A. Binding Arbitration of Disputes. Except as to disputes that qualify for state courts of limited jurisdiction (such as small claims, justice of the peace, magistrate court, and similar courts with monetary limits on their jurisdictions over civil disputes), Merchant and UPS agree that any controversy or claim, whether at law or equity, arising out of or related to this Agreement regardless of the date of accrual of such dispute, shall be resolved in its entirety by individual (not class-wide nor collective) binding arbitration. Arbitration is the submission of a dispute to a neutral arbitrator, instead of a judge or jury, for a final and binding decision, known as an "award." Arbitration provides for more limited discovery than in court, and is subject to limited review by courts. Each party has an opportunity to present evidence to the arbitrator in writing or through witnesses. An arbitrator can only award the same damages and relief that a court can award under the law and must honor the terms and conditions in this Agreement. Merchant and UPS agree that their sole relationship is a contractual one governed by this Agreement.

B. Institutional Arbitration. The arbitration shall be conducted by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules (the "AAA Rules"), and judgment on the award may be entered in any court of competent jurisdiction. The AAA Rules, including instructions for how to initiate arbitration, are available at <https://www.adr.org>. The arbitrator shall decide all issues of the case on the basis of the applicable law, not equity. If Merchant initiates arbitration, Merchant must serve UPS's registered agent for service of process, Corporation Service Company, which has locations in every state. Information also can be found on the website of your local Secretary of State. Any arbitration under this Agreement will take place on an individual basis; class, mass, consolidated or combined actions or arbitrations or proceeding as a private attorney general are not permitted. Merchant and UPS each waives the

right to trial by jury. Merchant and UPS further waive the ability to participate in a class, mass, consolidated or combined action or arbitration.

C. Place of Arbitration/Number of Arbitrators/Costs of Arbitration. Any arbitration will take place in New York, New York and will be determined by a single arbitrator. Any filing fee or administrative fee required of Merchant by the AAA Rules shall be paid by Merchant to the extent such fee does not exceed the amount of the fee required to commence a similar action in a court that otherwise would have jurisdiction. For all non frivolous complaints, UPS will pay the amount of such fee in excess of that amount. The arbitrator will allocate the administrative costs and arbitral fees consistent with the applicable rules of the AAA. Reasonable attorney's fees and expenses will be allocated or awarded only to the extent such allocation or award is available under applicable law. All issues are for the arbitrator to decide, except that issues relating to the scope, application, and enforceability of the arbitration provision are for a court to decide. This Agreement shall be governed by the substantive laws of the State of New York, United States, except that the Federal Arbitration Act governs the interpretation and enforcement of this provision.

D. Severability. Notwithstanding anything to the contrary in the AAA Rules, if any part of this arbitration provision is deemed invalid or ineffective for any reason, this shall not affect the validity or enforceability of the remainder of this arbitration provision, and the arbitrator shall have the authority to amend any provisions deemed invalid or ineffective to make the same valid and enforceable.

E. Desk Arbitration. For all disputes concerning an amount less than fifteen thousand dollars (\$15,000.00), the parties shall submit their arguments and evidence to the arbitrator in writing and the arbitrator shall make an award based only on the documents; no hearing will be held unless the arbitrator in his or her discretion, and upon request of a party, decides it is a necessity to require an in-person hearing. Notwithstanding this provision, the parties may agree to proceed with desk arbitration at any time.

F. Access to Small Claims Courts. All parties shall retain the right to seek adjudication in a state court of limited jurisdiction, such as small claims, justice of the peace, magistrate court, and similar courts with monetary limits on their jurisdiction over civil disputes, for individual disputes within the scope of such court's jurisdiction.

G. Acknowledgements. MERCHANT AND UPS ACKNOWLEDGE AND AGREE THAT EACH PARTY WAIVES THE RIGHT TO:

- (i) HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST MERCHANT, UPS OR RELATED THIRD PARTIES;
- (ii) HAVE A COURT, OTHER THAN A STATE COURT OF LIMITED JURISDICTION AS DEFINED ABOVE, RESOLVE ANY DISPUTE ALLEGED AGAINST MERCHANT, UPS OR RELATED THIRD PARTIES;
- (iii) HAVE A COURT REVIEW ANY DECISION OR AWARD OF AN ARBITRATOR, WHETHER INTERIM OR FINAL, EXCEPT FOR APPEALS BASED ON THOSE GROUNDS FOR VACATUR EXPRESSLY SET FORTH IN SECTION 10 OF THE FEDERAL ARBITRATION ACT; AND
- (iv) SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, JOIN AS A CLASS MEMBER, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS IN ANY CLASS, MASS, CONSOLIDATED OR COMBINED ACTION OR ARBITRATION FILED AGAINST MERCHANT, UPS AND/ OR RELATED THIRD PARTIES.

H. Award. The arbitrator may award money or equitable relief in favor of only the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. Similarly, an arbitration award and any judgment confirming it apply only to that specific case; it cannot be used in any other case except to enforce the award itself. To reduce the time and expense of the arbitration, the arbitrator will not provide a statement of reasons for his or her award unless a brief explanation of the reasons is requested by one of the parties. Unless both Merchant and UPS agree otherwise, the arbitrator may not consolidate more than one person's

claims, and may not otherwise preside over any form of a representative, private attorney general or class proceeding.

I. Confidentiality of Arbitration. Notwithstanding anything to the contrary in the AAA Rules, UPS and Merchant agree that the filing of arbitration, the arbitration proceeding, any documents exchanged or produced during the arbitration proceeding, any briefs or other documents prepared for the arbitration, and the arbitral award shall all be kept fully confidential and shall not be disclosed to any other party, except to the extent necessary to enforce this arbitration provision, arbitral award or other rights of the parties, or as required by law or court order. This confidentiality provision does not foreclose the AAA from reporting certain consumer arbitration case information as required by state law.

## **XII. Miscellaneous.**

A. Assignment. Merchant may not assign any of Merchant's rights or delegate any of Merchant's duties under this Agreement without prior written consent of UPS, which consent may be withheld in UPS's sole discretion. Any attempted assignment or delegation without such consent shall be void.

B. Modifications, Waiver and Interpretation. Except as set forth in this Section XII(B), no modifications of this Agreement or waiver of any of its terms will be effective unless set forth in a writing signed by both parties. NOTWITHSTANDING THE FOREGOING, UPS MAY MODIFY THE AGREEMENT IN ITS SOLE DISCRETION AT ANY TIME BY POSTING A REVISED VERSION AT <https://www.ups.com/us/en/help-center/legal-terms-conditions.page> OR OTHERWISE MAKING IT AVAILABLE FOR YOUR REVIEW. ANY MODIFICATIONS TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY MODIFICATIONS TO THE WARRANTY DISCLAIMERS OR LIMITATIONS OF LIABILITY, WILL SUPERSEDE THE PRIOR AGREEMENT TERMS FOR ALL USE OF THE SOLUTION OCCURRING AFTER THE EFFECTIVE DATE OF SUCH CHANGES TO THIS AGREEMENT, AND THE CONTINUED USE OF THE SOLUTION AFTER THE EFFECTIVE DATE OF SUCH CHANGES TO THIS AGREEMENT CONSTITUTES YOUR AGREEMENT TO THE MODIFICATIONS. HOWEVER, MERCHANT MAY TERMINATE THIS AGREEMENT WITHOUT PENALTY IN ACCORDANCE WITH SECTION IX IF IT OBJECTS TO SUCH CHANGES. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion. The headings of sections in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of the Agreement in any way.

C. Independent Parties. Nothing in this Agreement or elsewhere shall be construed to make the parties partners, joint venturers, representatives or agents of each other, nor shall either party, directly, indirectly, in writing or otherwise, so represent to any other Person. The parties hereunder are acting in performance of this Agreement as independent contractors engaged in the operation of their own respective businesses.

D. Publicity. Merchant will not use the name of UPS or its Affiliates, or refer to its or their products, directly or indirectly, in any press release, publication, or other materials publicly disseminated in print or electronic format, papers, articles, advertisements, or sales presentations, to any third party without the prior written approval of UPS for each such use.

E. Survival. Sections III, IV, VI, VII, X, XI, XII and XIII shall survive (for the maximum period of time permitted by applicable law) any termination or expiration of this Agreement for any reason.

F. Entire Agreement, Language and Severability. This Agreement, together with any attachments or documents incorporated herein by reference, constitutes the entire agreement between Merchant and UPS as to the subject matter hereof and supersedes any prior written or oral agreements between them with respect thereto. The parties hereto confirm their express wish that this Agreement, and all documents, and agreements directly or indirectly relating hereto, be drawn up in the English language. If one or more provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

G. Jurisdiction. The parties hereby irrevocably submit to the exclusive jurisdiction of a federal or state court in Atlanta, Georgia, United States for the purpose of hearing and determining any suit, action or proceedings and/or to settle any disputes arising out of or in connection with this Agreement or its formation or validity, not addressed by arbitration in Section XI and the parties hereby consent to such exclusive jurisdiction and irrevocably waive and agree not to assert any defenses based on lack of *in personam* jurisdiction, improper venue or inconvenient forum. Notwithstanding anything herein to the contrary, UPS will be entitled to seek interim relief or provisional remedies, and both parties shall be entitled to enforce judgments or awards, before any court having jurisdiction.

## **XIII. Defined Terms.**

“**Administrative Tool**” means a portal provided by UPS that allows Merchants to manage marketing messages and advertising images used in the Solution.

“**Affiliate**” means, collectively, parties that control, are controlled by, or under common control with UPS.

“**Analytics Dashboard**” means a reporting portal provided by UPS that performs certain analysis of statistics related to Customer's interaction with the Solution.

“**Confidential Information**” means any data, information or documentation provided by UPS to Merchant under this Agreement that (1) is of value to UPS or its Affiliates and is not generally known to third parties, or (2) was disclosed to UPS by a third party that UPS is obligated to treat as confidential or secret.

“**Customer**” means any of Merchant's customers that have placed an order with Merchant that is delivered by UPS.

“**Internal Employee**” means any of Merchant's employees, contractors, vendors and agents that have access to the Administration Tool for marketing and advertising purposes and/or to the Analytics Dashboard where reporting information can be analyzed.

“**Merchant's Assets**” means the logos, trademarks, images of products, and other content (including content owned by third parties) provided to UPS by Merchant for use in the Solution.

“**Person**” means any natural person, corporation, partnership, limited liability company, or other legal entity.

EXHIBIT A  
Monthly Fee Schedule

Monthly Subscription Fee: \$9.99