



Hub Group, Inc.

Terms and Conditions of Storage, Transportation and Cross-Dock Services (“Conditions”)

Issuance Date: June 1, 2023

Effective Date of Revised Conditions: June 1, 2023

Except to the limited extent expressly disclaimed or superseded by a written agreement signed by an officer of Hub Group, Inc. (“Hub Group”), these Conditions apply to any Services, as defined below, provided or arranged by Hub Group. By requesting that Hub Group provide Services, or otherwise tendering Goods to Hub Group or a Provider retained by Hub Group in the provision of Provider Services, Customer expressly accepts these Conditions and warrants that acceptance of these Conditions has been authorized by a representative of Customer as of the date the Services were first provided to Customer by Hub Group. “Customer” means the entity identified as such in the Master Logistics Services Agreement (“MLSA”), but also includes any person or entity at whose request, for whose benefit, or on whose behalf Hub Group provides any Services, or any such entity having an interest in the Goods, including any shipper, consignor, beneficial cargo owner, or any agent acting on behalf of such person or entity (including any third-party logistics provider engaging Hub Group to provide Services with respect to Goods owned by the customer of such third-party logistics provider). If Customer is not the owner of the Goods, Customer warrants and represents that it is authorized to arrange for the Services with respect to the Goods under the terms and conditions set forth herein.

Hub Group will provide thirty (30) days’ written notice of any revision to the Conditions (other than operational changes to Consolidation Programs if less time is required by the retailer). Unless Customer expressly objects in writing prior to the Effective Date of the changed Conditions, Customer will be bound by such revised Conditions as of such Effective Date.

1. Services.

1.1. Services Defined. Hub Group’s services include arranging for various warehousing, fulfillment, transportation, and logistics services with respect to goods in which Customer has an interest (the “Goods”) to be performed by underlying providers retained by Hub Group (each, a “Provider”) including, but not limited to, the following: (i) warehousing and fulfillment of Goods, including storage of Goods, fulfillment of customer orders, inventory management, kitting, packaging, labelling and reverse logistics, at Warehouse Fulfillment Centers (“WFC”) owned or operated by Providers (“Warehouse Services”); (ii) surface transportation of full truckload shipments, meaning shipments with a volume of more than 700 cubic feet (each an “FTL Shipment”), via motor carrier between points in the United States as well as points between the United States and Canada (“FTL Services”); (iii) surface transportation of less-than-truckload shipments, meaning shipments with a volume of 700 cubic feet or less (each an “LTL Shipment”), via motor carrier between points in the United States as well as points between the United States and Canada (“LTL Services”); (iv) transportation of individual parcels where each parcel is deemed by the underlying carrier-Provider to be a separate shipment (“Parcel Services”); and (v) cross docking and transloading services with respect to Goods remaining in transit (“Cross-Dock Services”). Any services arranged by Hub Group under these Conditions or any applicable SOW (as defined below) and provided by Providers shall collectively be referred to as the “Provider Services”. Hub Group’s arrangement of the Provider Services shall be referred to herein as the “Services”. Customer acknowledges and agrees that any transportation of Goods via international ocean carriage is not subject to these Conditions and that any such services will be provided and invoiced directly by third parties to Customer.

Hub Group operates one or more retailer-specific consolidation programs pursuant to which Hub Group arranges for consolidated truckload quantities of goods tendered by multiple customers of Hub Group to be delivered to participating retailers for sale by such retailers (each a “Consolidation Program”). Rules and pricing applicable to



each Consolidation Program are set forth in a Consolidation Program Schedule specific to each Consolidation Program. Hub Group makes no warranties and representations as to whether Consolidation Programs will be in place with any specific retailer, nor that any Consolidation Program in which Customer participates will continue.

1.2. Compliance with Applicable Law.

1.2.1. Agreement to Comply. Except to the extent expressly set forth in these Conditions, Hub Group and Customer will each comply in all material respects with any and all laws and regulations applicable to their respective operations (“Applicable Law”) in connection with the Services rendered hereunder.

1.2.2. Licensing. Hub Group shall maintain all licenses, qualifications, permits and approvals necessary to provide the Services and shall arrange for the provision of Provider Services only with Providers that are duly authorized to perform such Provider Services. Without limiting the foregoing, Hub Group shall ensure that any entity engaged by Hub Group to provide interstate for-hire motor carrier services is authorized by the Federal Motor Carrier Safety Administration (“FMCSA”), does not hold an Unsatisfactory or Unfit safety rating.

2. Termination.

2.1. Termination upon Occurrence of Insolvency Events. Either Party may terminate the Agreement immediately and without further obligation to the other Party (except for the obligations incurred or accruing prior to the termination date) upon written notice in the event the other Party: (a) becomes insolvent or makes a general assignment for the benefit of creditors, (b) files or has filed against it any petition under applicable bankruptcy, insolvency, reorganization or similar debtor relief law which is not dismissed or discharged within thirty (30) calendar days of such filing, or (c) requests or suffers the appointment of a trustee or receiver, or the entry of an attachment or execution as to a substantial part of its business or assets.

2.2. Effect of Termination or Expiration. Upon issuance of any notice of termination by either Party or expiration of the Agreement, all amounts owed by Customer to Hub Group, including all outstanding invoices and estimated charges (based on then-current pricing in place between Hub Group and Customer) necessary to arrange for removal of the Goods currently in possession of Providers, will become immediately due and payable (provided, however that Hub Group may allow Customer to continue to pay within its previous payment terms). Notwithstanding any other rights or obligations in these Conditions, all outstanding Hub Group invoices will be immediately due and payable as of the date of the invoice. Between provision of the notice of termination until the effective date of termination or expiration, Customer agrees that it must make an advance payment to Hub Group for services to be provided up to and including the date of termination or expiration. Overpaid amounts will be refunded by Hub Group to Customer after all Goods have been removed from WFC. Provided, further, Customer shall pay within ten (10) business days of receipt of an invoice following completion of all services contemplated hereunder all underpaid amounts (other than Disputed Charges). Customer acknowledges and agrees that additional charges may apply if Services requested with respect to termination or expiration are not otherwise covered by existing charges.

3. Payment Matters.

3.1. Compensation for Services. Customer agrees to pay Hub Group, as compensation for the Services performed hereunder, the rates and charges quoted by Hub Group to Customer, or as otherwise documented in Appendix A. In addition, Customer shall pay such other charges as Hub Group may impose with respect to Services provided which are not covered by rates in Appendix A if Customer has consented in advance to such charges, or if Hub Group reasonably determines that Hub Group does not have sufficient time to obtain prior consent while complying with Customer’s instructions or requests. In Hub Group’s discretion, Hub Group may enact a rate adjustment; provided, however, that if Customer disagrees in any respect with any such rate adjustment, Customer may terminate this Agreement thirty (30) days after providing notice of such disagreement (unless such increase is revoked by Hub Group prior to such termination). In addition, the Parties may mutually agree to a



change in applicable rates and charges if such change is in a writing signed by the Parties. For the avoidance of doubt, Hub Group assumes full responsibility, and shall be solely and exclusively liable and responsible, for the payment of all fees and charges imposed by any Provider with respect to the Provider Services.

3.2. Assumptions.

3.2.1. Certain assumptions were held by the Parties in entering into their business relationship. If, during the course of performing Services pursuant to these Conditions, Hub Group determines in its reasonable discretion that the assumptions were inaccurate when made, or have become inaccurate in such a way that impacts Hub Group's pricing or cost structure, Hub Group may provide written notice to Customer of such inaccuracy along with a new proposed rate structure, which revised rate structure will take effect unless objected to within writing by Customer within thirty (30) calendar days of the date of such notice. If Customer objects, in writing, to such proposed rate structure during such thirty (30) day period, then the rates prevailing prior to such notice by Hub Group shall continue to control, provided, however that Hub Group may terminate the business relationship with Customer by providing not less than thirty (30) days' written notice.

3.2.2. Without limiting the foregoing, in the event of any potential significant reconfiguration or modification by Customer of its Goods (with respect to size, weight or density), Customer acknowledges that any such change is a material change in assumptions triggering applicability of Section 3.2.1, and shall provide not less than thirty (30) days' advance notice thereof to Hub Group prior to tendering such Goods to Hub Group hereunder. Customer will be responsible for all additional costs incurred by Hub Group (including, but not limited to, handling charges) arising from or related to Customer's failure to provide such notice.

3.3. Taxes and Fees. All payments to Hub Group shall be exclusive of federal, state, local and foreign taxes, duties, tariffs, levies and similar assessments, if any, that may be assessed by a governmental entity on Customer in respect of the use of the Services hereunder, and Customer agrees to bear and be responsible for the payment of all such charges, other than taxes based on Hub Group's net income. In addition, Customer shall solely be responsible for any property taxes imposed on the Goods themselves or any other taxes imposed on the sale of the Goods. If Hub Group advances any such charges, Customer will remit payment of such advanced amounts promptly following demand.

3.4. Additional Payment Terms. Customer shall pay all invoices within fifteen (15) days except as otherwise set forth herein or in the MLSA. All payments must be applied to the invoices to which they are identified and Customer will assist Hub Group with Hub Group's reasonable efforts to properly allocate payments. No deductions or set offs shall be made by Customer to any invoices for any reason whatsoever, except for those amounts included on the invoices that do not accurately reflect the charges set forth herein and are disputed in good faith by Customer ("Disputed Charges"). Disputed Charges shall be resolved by the Parties in accordance with the provisions herein. In no event will a cargo or warehouse claim against Hub Group constitute a Disputed Charge.

3.5. Disputed Charges. If Customer, in a writing received by Hub Group prior to the due date of the invoice in question, disputes any charge on an invoice in good faith as being not in accordance with the applicable rates and charges, then, until the Parties resolve the Disputed Charges, Customer shall have the right to suspend payment of the Disputed Charges and will make timely payment of any and all other amounts. Customer shall provide a detailed written explanation substantiating its claim for Disputed Charges with Customer's notice of such Disputed Charges. The Parties will work together in good faith to resolve any Disputed Charges. If any such Disputed Charges cannot be resolved by the Parties within thirty (30) days of notice of such Disputed Charges, either Party may initiate dispute resolution in accordance with these Conditions.



3.6. Late Fees. Customer's failure to pay amounts due under any Invoice in accordance with the provisions of these Conditions may result in the imposition of late fees in the amount of not more than 1% per month of the past due balance, not including any Disputed Charges.

3.7. Collection Costs and Interest. In any referral for collection or action against Customer for amounts due to Hub Group, upon recovery by Hub Group, Customer shall pay all expenses of collection and/or litigation, including reasonable attorneys' fees, collection agency fees, and court costs.

3.8. Lien Rights. (NOT APPLICABLE TO CROSS-DOCK SERVICES): To the extent not prohibited by applicable law, Hub Group shall have a general lien securing payment for the Services on any goods that have come into its possession or the possession of any Provider, and on any proceeds thereof, regardless of whether those charges relate to the goods or proceeds against which the lien is being enforced (the "Hub Group Lien"). Hub Group shall not hold title to the Goods stored at the WFC or claim any right, title or interest in or to any of the Goods (other than the Hub Group Lien).

3.9 Credit Limits. Hub Group may establish a credit limit applicable to any Services rendered by Hub Group for the account of Customer, which credit limit Hub Group may revise at any time in its reasonable discretion (the "Credit Limit"). Hub Group may discontinue provision of Services at any time when Customer has exceeded the Credit Limit, including in any situation where a request for Services will result in Customer exceeding its Credit Limit, or in any situation in which amounts owed to Hub Group are past due. If Customer exceeds the Credit Limit or is past due in its payment obligations, Hub Group reserves the right to exercise the Hub Group Lien.

4. Warranties and Obligations of the Parties.

4.1. Cooperation. Customer will provide Hub Group with such assistance, cooperation, and information that is timely, accurate, complete and sufficient as is reasonably necessary, or as is otherwise reasonably requested by Hub Group, in order to allow Hub Group to provide the Services. Except where a longer time frame has been agreed upon or is otherwise specified in these Conditions, in no event will Customer provide less than forty-eight (48) hours' notice of Goods moving inbound to or outbound from a WFC. If Customer is not in compliance with all conditions for the applicable Consolidation Program, Hub Group shall be under no obligation to ensure that orders are included on shipments within such Consolidation Programs, and shall have no liability arising from or related to exclusion of any shipment from the Consolidation Program. Hub Group shall have no obligation to comply with or arrange for compliance with any special handling or storage requirements unless agreed to in a writing signed by both Parties.

4.2. Tender. Customer agrees that all Goods delivered by Customer and/or tendered for storage shall be shipped for delivery to a WFC properly marked and packaged in a safe, secure and appropriate manner to prevent spillage and damage in the course of shipping and handling, and shall be labeled and packaged in accordance with all applicable laws and regulations. Customer shall notify Hub Group of any special handling requirements, such as temperature control required for food safety, permeable packaging or Goods that are not otherwise completely enclosed in a container, Safety Data Sheets for Hazardous Materials or other special requirements that arise at any point during the term of the Agreement. Customer acknowledges that any such special handling requirements may impact pricing. If Customer does not specify any special handling or temperature control requirements for the Goods, then Customer expressly agrees that Hub Group and Providers shall store, handle and transport the Goods with no temperature or humidity regulation. The terms at <http://carrterms.com/ShipperFoodSafety> apply to shipments covered by the Sanitary Transportation of Human and Animal Food rule set forth in Title 21, part 1, subpart O of the Code of Federal Regulations, as issued under the Food Safety Modernization Act, currently codified at 21 USC 2201 (Chapter 27) and the Food, Drug & Cosmetic Act, currently codified at 21 USC 2201 (Chapter 9). Customer shall furnish to Hub Group, at or prior to delivery, a manifest showing marks, brands and/or sizes to be kept and accounted for separately, and the class of storage and other Services desired.



4.3. Goods to be in Possession of Providers. Customer agrees that Goods shall be in the possession of the relevant Provider at least one (1) business day prior to order fulfillment. If Goods are not in a Provider's possession in accordance with cut-off times for inclusion in an outbound conveyance qualifying for pricing under a Consolidation Program, Consolidation Program pricing shall not apply.

4.4. Authorization. All information provided by Customer will be accurate and complete, and Customer will provide any and all information reasonably necessary in the performance of the Services. Customer is also solely responsible for advising Hub Group, in writing, of any and all obligations imposed by Applicable Law with respect to such Services. Customer represents and warrants that it is or will be lawfully in possession of any Goods delivered to Providers hereunder and has the right and authority to arrange for Services by Hub Group pursuant to these Conditions.

5. Indemnification.

5.1. Mutual Indemnity. Each Party (an "Indemnitor") shall indemnify, defend and hold harmless the other Party, their respective parent companies, subsidiaries, and affiliates under common controlling ownership, and each of their respective employees, directors, officers, representatives and agents (each, an "Indemnified Party") from, and shall pay and reimburse, any and all third party losses, claims, demands, damages, liabilities, obligations, costs and/or expenses, including reasonable attorney's fees and costs (each a "Claim"), to the extent directly and proximately caused by, (i) negligence or intentional misconduct of the Indemnitor, or (ii) breach of Applicable Law by the Indemnitor or (iii) the breach of these Conditions by the Indemnitor, including, without limitation, any representation or warranty made hereunder. Indemnified Party shall notify the Indemnitor in writing of any claim, demand or liability it deems to be covered by this subsection within thirty (30) calendar days after it first has actual knowledge of the facts giving rise to such claim, demand or liability, or thirty (30) calendar days prior to the running of any applicable statute of limitations with respect to such claim, demand or liability, whichever is earlier.

5.2 Damage Claims. The provisions of this Section 5 shall not apply to impose any liability on Hub Group, any Hub Group Indemnified Party, nor any Provider with respect to any Damage Claim.

5.3 Beneficiaries. Providers and Indemnified Parties are each intended third party beneficiaries of these Conditions with the right to enforce rights and protections bestowed upon them pursuant as set forth herein.

6. Loss or Damage to Goods.

6.1. Liability of Hub Group.

6.1.1. Standard of Care. With respect to any Damage Claim (as defined in the next sentence), the sole liability of Hub Group, and the sole rights of Customer or any other party with any interest in the Goods, shall be as set forth in this Section 6. Hub Group shall be liable for instances of loss, shortage, damage, and destruction to Goods (each a "Damage Claim"), to the extent any such Damage Claim is caused by Hub Group's failure to exercise that degree of care that a reasonable person would exercise under similar circumstances except to the extent any such liability is otherwise disclaimed or limited below. Except as otherwise set forth herein, Hub Group will obtain the agreement of Providers: (i) of FTL and LTL services to accept liability pursuant to the Carmack Amendment as currently codified at 49 U.S.C. 14706; and (ii) of all other Provider Services (including Warehouse Services or Cross-Dock Services) to accept liability for loss or damage to Goods to the extent proximately caused by the Provider's failure to exercise that degree of care that a reasonable person would exercise under similar circumstances. Without limiting the foregoing, Hub Group is not liable for any Damage Claim caused by the act, default, or omission of Customer (including, but not limited to, improper or insufficient packing, securing, marking or addressing), or any other party who claims any interest in the shipment, or caused by the nature of the shipment, the Goods or any defect thereof. Claims may only be made based upon actual, physical loss, not the presumption of contamination or a presumptive failure of Customer's quality assurance process. A seal breach at the time of delivery shall not, in and of itself, result in any presumption that a shipment is unsafe, contaminated,



adulterated, damaged or otherwise unfit for its intended use or purpose absent any actual, physical loss or damage.

6.1.2. Limitation of Liability for Warehouse Services Damage Claims and Cross-Dock Damage Claims Occurring in a WFC.

6.1.2.1. The total recovery of the owner of the Goods, and the total joint liability of Hub Group and the Provider, with respect to any Damage Claim occurring due to Warehouse Services and Cross-Dock Damage Claims occurring in a WFC shall in no event exceed the lower of:

- (i) the cost to repair or replace the Goods actually lost, damaged or destroyed; and
- (ii) \$1,500 per occurrence.

Warehouse Services Damage Claims and Cross-Dock Damage Claims occurring in a WFC are subject to an aggregate limit of \$10,000 per calendar year. Any amounts recovered by the claimant against the Provider will be credited against any liability of Hub Group, and the claimant will assign any rights it may have against the Provider to Hub Group as a condition to payment of any Damage Claim by Hub Group.

6.1.2. Limitation of Liability for FTL Services Damage Claims, LTL Services Damage Claims, Parcel Services Damage Claims and Cross-Dock Damage Claims Occurring in Transit.

6.1.2.1. The total recovery of the owner of the Goods, and the total joint liability of Hub Group and the Provider, with respect to any Damage Claim occurring due to FTL Services Damage Claims, LTL Services Damage Claims, Parcel Services Damage Claims and Cross-Dock Damage Claims occurring in transit shall in no event exceed the lower of:

- (i) the cost to repair or replace the Goods actually lost, damaged or destroyed;
- (ii) \$100,000 per trailer for FTL Services;
- (iii) \$2.00 per pound not to exceed \$100,000 per trailer for LTL Services and Cross-Dock Damage Claims occurring in transit;
- (iv) \$100 per package for Parcel Service; and
- (v) \$0.20 per pound for shortages identified following delivery of Goods moving outbound from a WFC when such Goods are delivered in a sealed trailer without evidence of tampering at the time of delivery.

Any amounts recovered by the claimant against the Provider will be credited against any liability of Hub Group, and the claimant will assign any rights it may have against the Provider to Hub Group as a condition to payment of any Damage Claim by Hub Group.

6.1.2.2. Section 6.1.1 notwithstanding:

6.1.2.2.1. in no event will Hub Group bear any responsibility for any Damage Claim arising from or related to temperatures or humidity to which Goods are exposed during transportation or storage except to the extent: (i) Hub Group has agreed in a writing signed by an executive officer of Hub Group to arrange for controlled temperature transit with respect to the Goods in question; (ii) Hub Group fails to communicate those instructions to the Provider; and (iii) such failure is the direct and proximate cause of the Damage Claim. Customer warrants and represents that controlled temperature and controlled humidity handling is not required to maintain the safety or quality of the Goods (unless Hub Group has agreed to such handling requirements in writing).

6.1.2.2.2. In no event will Hub Group or any Provider be liable for any chargebacks or other fees, fines, or penalties, including but not limited to those related to any missed pick-up or delivery appointment or low fill rates, with



respect to transportation (including Cross-Dock Services) or warehousing being arranged by Hub Group. Hub Group's sole liability with respect to delay, late delivery or non-delivery will be to the extent Hub Group's failure to exercise that degree of care that a reasonable person would exercise under similar circumstances results in an unreasonable delay that causes physical loss or damage to the Goods themselves.

6.1.2.2.3. Hub Group is not responsible for loss or damage for orders that are not routed by Hub Group, including but not limited to outbound orders from the WFC shipping as collect or third party or inbound orders into the WFC shipping as prepaid or third party, including in instances where the driver does not count or sign for case count on the Bill of Lading.

6.1.3. Notification of Concealed Damage and Shortage. In the event of a Damage Claim where loss, shortage or damage was not specifically noted on the delivery receipt at the time of delivery, Customer must notify either (i) notify the delivering Provider in writing of such loss or damage within the period stated in the National Motor Freight Classification (NMFC), currently five (5) business days of delivery of Goods, or (ii) notify Hub Group in writing of such loss or damage within a period that is two (2) days less than the period stated in the NMFC, currently three (3) business days of delivery of Goods. Neither Hub Group nor Provider will be liable for damage reported after the foregoing time limits. With respect to situations where a loaded trailer is dropped at the destination point, delivery shall mean the date on which the loaded trailer is dropped at the destination point. General disclaimers purporting to reserve the right to subsequently count or inspect Goods, or indicating the possible or potential existence of shortage or damage without specifically identifying shortage or damage shall not constitute notice of loss, shortage or damage on the delivery receipt at the time of delivery.

6.2. Physical Inventories, Loss Allowance and Shortage.

6.2.1. Warehouse Services:

6.2.1.1. Physical Inventory. As part of the Warehouse Services, Hub Group shall allow, at a date agreed upon between Customer and Hub Group, for one physical inventory count of Goods stored in a WFC to be conducted annually, the cost of which will be borne by Customer. If shortages are identified at delivery of Goods moving outbound from a WFC following provision of Warehouse Services and such Goods are delivered in a sealed trailer with the seal intact at the time of delivery, then any shortage identified on the bill of lading at the time of delivery shall be held in abeyance and netted against the inventory count. All Consolidation Program shipments are sealed trailer shipments.

6.2.1.2. Shortages and Overages Related to Physical Inventory. If after such inventory (which will take into account shortages at delivery in accordance with the foregoing and inventory adjustments made subsequent to the previous physical inventory) there are shortages for unaccounted Goods constituting a Damage Claim, Hub Group shall be liable in accordance with the limitations set forth in these Conditions for Damage Claims arising during Warehouse Services. If there is an overage identified by such inventory, the inventory count will be adjusted accordingly (the overage will be netted against any shortages), and no claims will be filed by either party if the net is an overage.

6.2.1.3. Loss Allowance. Customer agrees to a damage and inventory shrinkage allowance of one-half of one percent (0.5%) for the total manufacturer cost of the total throughput of Goods with respect to which Warehouse Services have been supplied at each WFC: (i) with respect to the first inventory performed at each WFC under these Conditions, the date Goods were first tendered for storage at the WFC; and (ii) with respect to all other inventories, since the date of the last inventory at the same WFC (as applicable, the "Loss Allowance"). The Loss Allowance is applied to sealed trailer shortages prior to claim payment.

6.2.2. Cross-Dock Services. With respect to Cross-Dock Services, Hub Group's sole responsibility with respect to quantity of Goods is to ensure that the pallet count on inbound and outbound shipments to/from the WFC is consistent with the bills of lading or other delivery receipts. In no event will Hub Group have any responsibility for any shortage or missing Goods with respect to Cross-Dock Services as long as pallet counts inbound to and



outbound from any facility at which Cross-Dock Services are provided remain consistent. When tendering Goods for Cross-Dock Services, Customer shall provide bills of lading for both inbound and outbound shipments that include both pallet and case quantity counts.

6.3. Liability of Providers. Other than as provided in these Conditions, Hub Group shall have no duty or obligation to arrange for any minimal recovery against any Provider except to the extent Customer has requested Declared Value in accordance with the procedures below.

6.4. Declared Value. Customer may request that Hub Group accept, and arrange for Providers to accept, increased limitations of liability. Customer must make such request to Hub Group in writing at least seventy-two (72) hours prior to the time when the Goods are first scheduled to be tendered to a Provider pursuant to these Conditions. Customer's request must include a sum certain limitation level of liability (the "Declared Value"). If such request is accepted by Hub Group in a signed writing, and Customer pays additional fees assessed by Hub Group with respect thereto, then: (i) Hub Group's liability for any Damage Claim shall capped at the lesser of the cost to repair or replace the Goods in question, or the Declared Value; and (ii) Hub Group shall arrange with the Provider to accept liability with respect to such Goods at the lesser of the cost to repair or replace the Goods in question or the Declared Value.

6.5. Claim Filing Obligations and Assistance.

6.5.1. Claims Against Hub Group. Each individual occurrence of loss or damage constitutes an individual Damage Claim. In order to preserve any right to recover, the Customer must file a Damage Claim specific to each such occurrence. Customer shall not file, and Hub Group shall have no liability for, any individual Damage Claim where the amount of Hub Group's liability as computed hereunder is less than \$50.00. Customer must file a written notice of Damage Claim against Hub Group by the earlier of: (i) with respect to FTL Services or LTL Services, within eight (8) months from the date of delivery, or if no delivery, eight (8) months from the date on which delivery should have occurred; and (ii) with respect to all other services, within the earlier of thirty (30) days after the Goods are delivered by a Provider to their destination, or thirty (30) days after Hub Group or any Provider engaged by Hub Group notifies Customer of loss or damage to any Goods. Failure to abide by these time limits shall be a complete bar to recovery from Hub Group. In no event will Customer file a Damage Claim directly against a Provider engaged in the provision of Warehouse Services or Cross-Dock Services.

6.5.2. Past Due Charges. All past due charges owing to Hub Group pursuant to these Conditions must be paid prior to Hub Group having any obligation to pay such claim.

6.5.3. Claim Documentation. Customer shall submit reasonable documentation supporting Customer's claim and evidencing loss or damage to the Goods to assist Hub Group in investigating claims and filing claims with Providers.

6.5.4. Salvage. The consignee, or with respect to rejected Goods, the consignor, must retain Goods with respect to which a Damage Claim has been filed until the earlier of the date on which: (i) such Goods are sold for salvage or repaired; or (ii) Hub Group provides written consent to their destruction. Hub Group, any Provider, and their designees will be provided with reasonable access to such Goods during normal business hours. Customer will either (i) use its best efforts to salvage Goods subject to a Damage Claim or (ii) grant Hub Group and/or the Provider a reasonable salvage credit for such Goods.

6.6. Estimated Transit Time. Estimated transit time is an approximation and does not include pickup day, weekends, or holidays. Shipments which require notification before delivery or a delivery appointment will require extra transit days in addition to the estimated transit time. Requested pickup dates and requested delivery dates are not guaranteed.

7. Insurance.



7.1 Insurance of the Parties. Each Party shall obtain and maintain at all times while Services are being rendered or received under these Conditions at least the following insurance coverages:

7.1.1. Commercial general liability insurance: with minimum limits of liability of not less than \$1,000,000 per occurrence.

7.1.2. Workers compensation insurance: in accordance with statutory requirements of jurisdiction where employees are domiciled.

7.1.3. A copy of the certificates of insurance evidencing the maintenance of such insurance maintained by Hub Group shall be delivered to Customer promptly upon request.

7.2 Motor Carriers. Hub Group shall require that any Provider operating as a motor carrier maintains: (i) automobile liability insurance with limits of liability of not less than \$1,000,000 per occurrence; (ii) cargo liability insurance with limits of not less than \$100,000 per occurrence; and (iii) workers' compensation to the extent required by state law.

7.3 Warehouse Operators. Hub Group shall require that any Provider operating as a warehouse maintains: (i) commercial general liability insurance with limits of liability of not less than \$1,000,000 per occurrence; (ii) warehouseman's legal liability insurance with limits of not less than \$2,000,000 per occurrence; and (iii) workers' compensation to the extent required by state law.

7.4 Customer. Customer acknowledges and agrees that neither Hub Group nor any Provider is an insurer of the Goods and Customer warrants that Customer has obtained and will maintain at all times, property insurance covering the full value of the Goods against casualty loss.

8. Independent Contractor Status. Hub Group is and will remain an independent contractor, and not an agent or employee, with respect to Customer and the Services being provided hereunder. Nothing in these Conditions shall be construed to create a legal partnership, employment relationship or joint venture between the parties.

9. Warehouse Services. The following provisions apply solely to Warehouse Services arranged by Hub Group:

9.1. Receipts and Tender. Each receipt or tender of Goods at a WFC will be evidenced by a written or electronic receipt, showing the kind and quantity of Goods received by Provider or tendered to Hub Group. Provider will perform a visual scan of Goods to the extent they are readily observable, and shall notate any visible damage, but shall not break down pallets or otherwise be obligated to inspect Goods. Providers shall have up to two (2) hours from the time driver signs in to complete loading and/or unloading of appointed, palletized, or slip-sheeted trailers or containers of Goods, with the exception of spotted (dropped) trailers or containers at the WFC which may take longer than two (2) hours. Providers shall have up to six (6) hours to unload appointed floor loads, or up to one (1) business day (24 hours) for dropped containers. Hub Group shall not be liable for demurrage or detention, delays in unloading inbound cars, trailers or other containers, or delays in obtaining and unloading cars, trailers or other containers for outbound shipment. These Conditions will prevail in all circumstances over any inconsistent provision in a receipt, any bill of lading, any other shipping document, or inconsistent term and/or condition contained in any other document or instrument. Customer will initially deliver to Hub Group, and from time to time replenish, supplies of Goods in such amounts as will enable Hub Group to efficiently and effectively perform the Services hereunder.

9.2. No Goods Consigned. The bill of lading and other shipping documents for the Goods shipped to Hub Group or any Provider pursuant to these Conditions shall show Customer as named "consignee," with Hub Group or the Provider as the "in care of" party. Hub Group shall not be named as shipper, carrier or consignee of any Goods accepted for shipment; or, if so incorrectly named, Customer shall provide a written notification to the carrier (with copy to Hub Group) that Hub Group is a "warehouseman" for purposes of the shipment and has no beneficial title or interest in the Goods. Customer agrees that, if Hub Group is named as "shipper," "carrier," and/or "consignee": (a) Hub Group shall have the right to refuse acceptance of such Goods under these Conditions and shall not be



liable or responsible for any loss, injury or damage of any nature related to such Goods or their shipment or non-shipment; and (b) Customer agrees to indemnify and hold Hub Group harmless from and against any liability or expense to Hub Group for unpaid transportation charges, including undercharges, demurrage, detention or other charges of any kind, arising from such Goods or their shipment or non-shipment, where Hub Group is incorrectly designated as “shipper,” “carrier,” and/or “consignee.”

9.3. Hazardous Materials and Removal for Safety. For purposes of this Agreement, “Hazardous Materials” shall be as defined as (i) materials within 49 C.F.R. Parts 105 through 180, (ii) any “Hazardous Substances”, as defined in 42 U.S.C. Section 9601, and/or (iii) as defined by any corresponding federal, state or local statute, ordinance or regulation.

Customer hereby represents and warrants to Hub Group that it has and will continue to disclose to Hub Group, prior to tendering of any Goods to Hub Group, any and all potential health, safety and/or environmental hazards that may be associated with transportation, storage or handling of the Goods, including specifically the tender of any Hazardous Materials. If Goods are a hazard to the WFC, to other property or other persons, Hub Group may, dispose or sell such Goods in the manner and to the fullest extent provided by applicable law without recourse; provided, however, nothing contained in these Conditions shall require Hub Group to sell such Goods.

9.3.1. Customer shall not deliver to Hub Group or Provider any Goods that constitute or contain Hazardous Materials, as defined in this Agreement, unless, prior to delivery of such Hazardous Materials, Customer has:

- (1) notified Hub Group, in writing, of Customer’s intent to deliver such Hazardous Materials;
- (2) provided current SDS sheets or other written information, satisfactory to Hub Group, in Hub Group’s sole discretion, which details the nature of the Hazardous Materials and any packaging or shipping specifications or limitations, and;
- (3) Hub Group, in Hub Group’s sole discretion, has, in writing, approved the delivery of such Hazardous Materials.

9.3.2. If any Goods which were not Hazardous Materials at the time Customer delivered them to the possession of Hub Group shall subsequently be classified to constitute or contain Hazardous Materials, as defined in this Agreement, Customer shall immediately notify Hub Group that such Goods have been classified to constitute or contain Hazardous Materials, and shall provide Hub Group the information required by Section (a) above within twenty-four (24) hours of Customer learning that the Goods have been classified to constitute or contain Hazardous Materials.

9.3.3. If Customer gives notice to Hub Group, as provided for in Section 9.3.2 above, that Goods which have been previously delivered to Hub Group have subsequently been classified as containing Hazardous Materials, Hub Group may (in Hub Group’s sole discretion) elect to either continue to store, handle and ship the Goods constituting or containing Hazardous Materials, or alternatively, give notice to Customer that all such Goods will be returned to Customer or Customer’s designee at Customer’s expense.

(1) If Hub Group elects to continue to store, handle and ship such Goods, Hub Group may relocate such Goods within the WFC for purpose of proper storage, and all expenses and costs so incurred shall be considered as services rendered for purposes of this Agreement.

(2) If Hub Group elects to require the return of such Goods to Customer, then Hub Group may (at its sole discretion), utilize the services of an independent contractor which specializes in handling, packaging and shipment of Hazardous Materials, and charge all expenses and costs so incurred back to Customer. Any such expenses and costs shall be considered as services rendered for purposes of this Agreement.

9.3.4. If Customer knowingly or unknowingly tenders Hub Group Goods which constitute or contain Hazardous Materials, without complying with the requirements of this Section 9.3, Customer shall indemnify, defend and hold Hub Group harmless against any and all liability which may arise from or relate to the storage or



transportation of such Hazardous Materials, such liabilities including, but not limited to, any cargo loss or damage and/or any party and/or third party claims for personal injury, death and/or property damage, including but not limited to damage to the environment, attorney's fees and/or any penalties or fines levied upon Hub Group by any local, state or federal agency. The provisions of this subsection are in addition to and independent of any indemnification which may be required by other sections of this Agreement.

9.4. Refusal of Goods. Hub Group reserves the right to reasonably refuse to accept any Goods tendered by Customer that reasonably constitute unacceptable or previously undisclosed hazards, or may cause contamination or damage to the WFC or other Goods stored in the WFC. Unless otherwise expressly provided herein, Hub Group may also reasonably refuse to accept any Goods which are classified as Hazardous Materials except when the hazardous Goods have been approved in writing for acceptance by Hub Group.

9.5. WFCs. Customer representatives will have access to the WFCs for inventory or inspection purposes during normal business hours upon reasonable advance request to Hub Group. Hub Group may utilize the WFCs to serve customers other than the Customer.

9.6. Handling Services. The Services shall include arrangement by Hub Group for handling of Goods at the WFCs (or other facilities) at which the Goods are stored. The handling services covered by the basic storage and handling charge include the ordinary labor involved in receiving Goods at the WFC dock door, placing Goods in storage in the WFC, and returning Goods to the WFC dock door.

9.7. Transfer of Goods at Customer Request. Instructions to transfer Goods out of a WFC are not effective until delivered to and accepted by Hub Group, and all charges up to the time transfer is made are chargeable to Customer. If the transfer involves rehandling of Goods, such rehandling will be invoiced by Hub Group for which Customer will be responsible. When Goods in storage are transferred from one party to another through the issuance of a new warehouse receipt, a new storage date will be established on the date of transfer.

9.8. Transfer of Goods at Hub Group Election. Hub Group reserves the right to move, at its expense, upon 14 days' written notice provided to Customer or the last known holder of a negotiable warehouse receipt ("Holder"), any Goods stored in one WFC to any other WFC. The Uniform Commercial Code Section 7-104 defines a warehouse receipt, bill of lading or other document of title as "negotiable," if by its terms, the goods to be delivered to bearer or to the order of a named person; or where recognized in overseas trade, if it runs to a named person or assigns. Customer or Holder may elect to take delivery of its Goods in lieu of such transfer by written notice to Hub Group prior to the expiration of such 14 day period. Hub Group reserves the right to charge a pro-rated storage fee from the first of the month to the actual date of delivery to Customer or Holder. Notwithstanding the above, Hub Group reserves the right, without notice to Customer or Holder, and at Hub Group's sole expense, to move Goods within and between any one or more of its regional WFC buildings.

9.9. Failure to Carry Out Instructions. Without limiting the generality of other limitations on liability contained in these Conditions, if Hub Group is unable to carry out instructions because of any act constituting a Force Majeure, seizure under legal process or any other reason beyond Hub Group's control, Hub Group shall not be liable for failure to carry out such instructions, and Goods remaining in storage shall continue to be subject to regular storage and other charges.

9.10. Physical Inventories. Hub Group, at Customer's request, conduct a physical inventory of all Goods. Hub Group shall also perform periodic cycle counting as reasonably requested by Customer. An hourly labor charge will apply for all physical inventory as well as cycle count activities requested by Customer.

9.11. Recall. In the event that a recall, field alert, product withdrawal or field correction (collectively, a "Recall") may be necessary with respect to any Goods provided under these Conditions, Customer shall immediately notify Hub Group in writing. Hub Group will not act to initiate a Recall without the express prior written approval of Customer, unless otherwise required by Applicable Laws. In the event Customer believes a Recall may be



necessary with respect to any Goods provided under these Conditions, Customer shall promptly notify Hub Group in writing and Hub Group shall provide reasonable cooperation and assistance to Customer. The cost of any Recall shall be borne by Customer; provided that this sentence shall not act to limit any potential recovery by Customer with respect to any Damage Claims hereunder.

9.12. Removal of Goods. Hub Group may, upon written notice of not less than 30 days to Customer and any other person known by Hub Group to claim an interest in the Goods, require the removal of any Goods. Such notice shall be given to the last known place of business of the person to be notified. If Goods are not removed before the end of the notice period, Hub Group may sell or, if a sale is not reasonably possible due to expiration or other factors, dispose of them in accordance with applicable law.

10. Consolidation Program Conditions.

10.1. Goods to be On-Hand. Goods to be shipped out as part of a Consolidation Program shipment must be received by the WFC and on-hand on or prior to the applicable Consolidation Program order issuance date. If the inbound Goods arrive after the Consolidation Program order issuance date, Hub Group will have no responsibility to include the Goods in the Consolidation Program shipment. The foregoing notwithstanding, if Hub Group receives the inbound orders after the Consolidation Program order issuance date and Hub Group is able to process the Goods and include them in the Consolidation Program shipment, Customer will be responsible for a rush order charge stated in Appendix A.

10.2. Shipments Inbound to Providers. For Customer-routed inbound, the Customer shall ask the motor carriers to schedule for delivery appointments into the Provider's location in the mornings whenever possible. Inbound delivery appointments shall be scheduled two (2) business days prior to delivery.

10.3. Cross-Dock Only Customers. If Customer is participating in a Consolidation Program, but is only receiving Cross-Dock Services and not Warehouse Services, the following shall apply and shall govern in the event of a conflict with other provisions of these Conditions addressing Consolidation Programs:

10.3.1. All pallets need to be ready for shipping to the retailer when the Provider unloads the inbound truck. Each shipment must have:

10.3.1.1. Stretch wrapped pallets.

10.3.1.2. Individual BOLs that match each outbound shipment from the WFC to the retailer. These outbound BOLs must indicate the PO number, number of cases per PO and pallets per PO, product item # and description, weight, and the consignee information (such as DC # and address). The outbound BOLs must indicate the freight terms as "3rd Party Billing to Hub Group" at the address provided by Hub Group or otherwise as instructed by Hub Group.

10.3.1.3. A packing list containing itemization of Goods and quantities shipped.

10.3.1.4. An 8 ½" x 11" pallet placard indicating the destination DC number, city, state, PO number, and total number of cases on the pallet.

10.3.2. Customer must submit a written cross dock manifest or submit cross dock manifest via EDI/API, which contains a summary per inbound truck. Each inbound truck's summary should contain: (a) ship from location; (b) ship to location; (c) shipper contact name, telephone number, and email address; and for each retailer purchase order: (d) the retailer consignee's distribution center number, (e) the retailer consignee's city and state; (f) number of pallet(s); (g) retailer's purchase order number; (h) gross weight (including pallet weight); (i) Bill of Lading number; (j) number of pallets per purchase order; and (k) number of cases per purchase order. The cross dock manifest must be submitted on a weekly basis and must be received by a representative of Hub Group's Account Management Team at least one business day (24 hours) prior to the arrival of the first inbound shipment. The cross dock manifest should also provide the total pallet count and total gross weight for each inbound truck. Retailer purchase orders shipping to the same destination cannot be split amongst multiple inbound trucks. If the



cross dock manifest is not provided in a timely fashion (or provided at all), then for the purposes of the Hub Group-generated delivery receipt, the weight and case quantity shall be based on the information provided by the retailer.

10.3.3. All inbound trucks must arrive at the Provider's by noon local time during normal unloading hours at least one (1) business day prior to the outbound shipping day. Inbound trucks need to be level loaded and, as such, must arrive in a manner to ensure a consistent volume of outbound shipping orders at the Provider's location. For Customers that ship more than one (1) inbound truck per week, Customer's inbound trucks must be scheduled to evenly distribute orders through the week (no stockpiling or pooling of outbound shipping orders).

Acceptable examples: If Customer is shipping two (2) inbound trucks for the week – the first inbound truck may be scheduled to arrive on Friday and the second inbound truck may be scheduled to arrive on Tuesday;

If Customer is shipping four (4) inbound trucks for the week – the first inbound truck may be scheduled to arrive on Friday, the second inbound truck may be scheduled to arrive on Monday, the third inbound truck may be scheduled to arrive on Tuesday and the fourth inbound truck may be scheduled to arrive on Wednesday.

Unacceptable examples: If Customer is shipping two (3) inbound trucks for the week – two (2) inbound trucks are planned to arrive on Friday and one (1) inbound truck is planned to arrive on Wednesday;

If Customer is shipping five (5) inbound trucks for the week – two (2) inbound trucks are planned to arrive on Friday and the remaining three (3) inbound trucks are planned to arrive on Wednesday.

11. Warranty and Disclaimer. Certain Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, by Hub Group or by Providers, or because of other causes beyond Hub Group's reasonable control. Hub Group shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled downtime. THE SERVICES ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND OTHER THAN WARRANTIES EXPRESSLY CONTAINED IN THE AGREEMENT OR THE CONDITIONS OR ANY SCHEDULE OR EXHIBIT THERETO. WITHOUT LIMITING THE FOREGOING, Hub Group DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES OR THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS. PROVIDER DISCLAIMS ALL OTHER WARRANTIES (OTHER THAN WARRANTIES EXPRESSLY CONTAINED IN THE AGREEMENT OR THE CONDITIONS OR ANY SCHEDULE OR EXHIBIT THERETO), EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES IMPLIED FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

12. Limitations and Disclaimers.

12.1. HUB GROUP IS NOT LIABLE FOR THE ACTS OR OMISSIONS OF ANY PERSON OTHER THAN EMPLOYEES OF HUB GROUP. IN NO EVENT SHALL ANY PARTY, INCLUDING ANY INDEMNIFIED PARTY AND ANY PROVIDER, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, LOST SALES, LOST DATA OR USE, ARISING FROM OR RELATED TO SERVICES RENDERED OR RECEIVED HEREUNDER, OR FAILURE TO RENDER SERVICES, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE AND CUMULATIVE LIABILITY OF HUB GROUP ARISING FROM OR RELATING TO SERVICES COVERED BY THESE CONDITIONS OR ANY AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY DAMAGE CLAIM, SHALL IN NO EVENT EXCEED THE LESSER OF \$1,000,000.00 PER OCCURRENCE OR THE



AMOUNTS PAID BY CUSTOMER TO HUB GROUP FOR SERVICES PROVIDED UNDER THIS AGREEMENT DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH ANY SUCH CLAIM AROSE.

12.2. In some WFC locations, Providers may have the ability to track the number of CHEP and PECO pallets being used to move Customer Goods into the WFC. At such locations, Hub Group may, in its sole discretion, and as a convenience to the Customer without charge, offer to arrange for the Provider to: (i) track the number of such pallets being used to deliver Goods into the WFC, and either being returned, or being used to deliver Customer's Goods outbound from the WFC; (ii) update pallet counts at the location within systems maintained by CHEP or PECO (assuming Customer provides access to such systems); and (iii) provide a physical count of such pallets in the WFC associated to Customer's account. CUSTOMER ACKNOWLEDGES AND AGREES THAT ALL SUCH SERVICES ARE PROVIDED AS A CONVENIENCE TO CUSTOMER WITHOUT ADDITIONAL CHARGE AND THAT NEITHER HUB GROUP NOR THE PROVIDER WILL HAVE ANY LIABILITY TO CUSTOMER ARISING FROM OR RELATED TO PROVISION OF, OR REFUSAL TO PROVIDE, SUCH SERVICES, INCLUDING, BUT NOT LIMITED TO, PROVISION OF SUCH SERVICES IN A NEGLIGENT FASHION.

13. Confidentiality and Records.

13.1. Applicability. Each Party (the "Receiving Party") understands that the other Party (the "Disclosing Party") or its representatives has disclosed or may disclose information relating to its finances, business, marketing plans, customers, operations, technology or software. "Proprietary Information" refers to any such information (including all originals, copies, notes, analyses, digests and summaries) which: (a) is disclosed in writing and marked as confidential at the time of disclosure or (b) is disclosed in any manner such that a reasonable person would understand the nature and confidentiality of the information or is customarily deemed to be confidential information, or (c) sets forth information relating to a Party's business, suppliers, pricing, volumes, traffic lanes, or customers. Proprietary Information shall not include any information which: (i) is or becomes generally known or available without breach of these Conditions, (ii) was in Receiving Party's possession or known by it prior to receipt from the Disclosing Party, as demonstrated by Receiving Party's data or written information, (iii) was rightfully disclosed to Receiving Party by a third party who, to the best of Receiving Party's knowledge, was not prohibited from so disclosing, or (iv) was independently developed without use of any Proprietary Information of the Disclosing Party.

13.2. Prohibitions. Except for the specific rights granted by these Conditions and the Agreement, neither party shall use or disclose to any individual or other third party (other than the Receiving Party's employees or contractors with a need to know) any Proprietary Information of the other party without its written consent. The Receiving Party shall use commercially reasonable degree of care to protect the Proprietary Information which shall mean at least that degree of care to which the Receiving Party subjects its own Proprietary Information. Promptly after requested by the Disclosing Party, the Receiving Party shall return to the Disclosing Party originals and copies of all Proprietary Information and all information, records and materials developed therefrom by the Receiving Party, subject in all instances to the Receiving Party's right to maintain an archival copy. Neither Party may disclose any information regarding the terms or existence of the Agreement and these Conditions without the prior consent of the other party; provided, either party may provide a copy of these Conditions and the Agreement (or otherwise disclose its details) in connection with any financing transaction or due diligence inquiry or to its legal representatives, but only if the recipient agrees to keep these Conditions, the Agreement and its details confidential.

13.3. Permitted Disclosures. Nothing herein shall prevent a Receiving Party from disclosing all or part of the other's Proprietary Information: (a) to any parent, subsidiary, or affiliate under common controlling ownership of the Disclosing Party; (b) as necessary pursuant to the lawful requirement of a governmental agency or when disclosure is required by due legal process; provided, that prior to any such disclosure, it uses reasonable efforts to notify the Disclosing Party in writing of such requirement to disclose; (c) to the extent disclosure is reasonably necessary for, and contemplated by, the performance of the Services including, but not limited to, disclosures by



Hub Group to Providers (d) disclosure by Hub Group of inventory records to Customer's customers if Customer participates in a Consolidation Program; or (e) disclosure is made to auditors, attorneys, consultants or insurance professionals subject to similar confidentiality restrictions.

13.4. Relief. Money damages will not be an adequate remedy if this section is breached and, therefore, the Disclosing Party shall, in addition to any other legal or equitable remedies, be entitled to seek an injunction or similar equitable relief against such breach or threatened breach without the necessity of posting any bond.

13.5. Access to Records. Hub Group shall retain such electronic inventory and shipping records regarding the services provided to Customer as it deems prudent in its sole discretion. Such records will be maintained for three (3) years from date of service. After such time, Hub Group may destroy such records. Without limiting any express obligation on the part of Hub Group to provide records to Customer, if any, Customer hereby waives any right that may exist to obtain copies of Hub Group records as provided for under 49 C.F.R. Part 371.

13.6. Proprietary Rights. Except as specifically permitted in these Conditions, Customer shall not, directly or indirectly: (a) use any of Hub Group's Proprietary Information (as defined herein) to create any software or system that is derived in whole or part from the systems used by Hub Group in delivering Services; (b) decompile, disassemble, or reverse engineer to attempt to discover the source code of the software or the trade secrets therein; (c) encumber, transfer, rent, lease, or time-share such software, systems or Services, or use them for the benefit of any third party; (d) copy (except for archival purposes), distribute, manufacture, adapt, create derivative works of or otherwise modify any software or system; (e) remove any proprietary notices or labels; or (f) permit any third party to engage in any of the acts proscribed in clauses (a) through (e).

14. No Implied Licenses. Except for the limited rights expressed hereunder, if any, Hub Group shall retain all right, title and interest in and to any and all hardware and software systems used to deliver the Services, and the Services themselves. Customer shall not take any action inconsistent with such ownership or otherwise use any such systems or services in a manner inconsistent with these Conditions or with Hub Group's rights and interests.

15. Non-Solicitation. During the term of the Agreement and any extensions thereof, and for a period of twelve (12) months thereafter, neither Party shall directly or indirectly solicit for employment or actually employ, retain, contract or otherwise hire any employees of the other Party involved in the performance, provision, consumption or evaluation of the Services, unless agreed to in writing by the other Party; provided that this prohibition shall not apply to any general solicitation not directed exclusively or primarily to individuals providing services to the other Party. Further, during the term of the Agreement and any extensions thereof, and for a period of twelve (12) months thereafter, Customer shall refrain from active solicitation, retention, or use of Providers used by Hub Group to perform any Cross-Dock Services or Warehouse Services for Customer.

16. Waiver; Survivability. The waiver by either Party of any default or breach of these Conditions, including any Agreement, shall not constitute of waiver of any other or subsequent default or breach. Except for actions for breach of confidentiality and non-payment of amounts owed hereunder and for claims under the indemnity provisions of Section 5 (which shall be covered by the time periods set forth therein), no action, regardless of form, arising out of the Agreement may be brought by either Party more than one (1) year after the cause of action has accrued. The provisions of the Agreement which by their nature should survive the termination of the Agreement, such as payment provisions, the Hub Group Lien provisions, confidentiality, removal of goods, indemnity provisions, choice of law and venue, shall in fact survive any such termination.

18. Force Majeure. In the event performance by one Party is affected by any cause beyond the reasonable control of such Party, including without limitation, fire, labor strife, riot, war, weather conditions, acts of the public enemy, acts of God, acts of terrorism, cyber attacks, epidemics, pandemics, local or national disruptions to transportation networks or operations, fuel shortages, criminal acts by third parties, governmental regulations, or governmental request or requisition for national defense, and such Party is taking reasonable measures to remove or mitigate the effects of the applicable cause, then the performance of all obligations required herein shall, with the



exception of payment of invoices as and when due, be suspended during the continuance of such interruption. Such period of suspension shall not in any way invalidate these Conditions, but on resumption of operations, any affected performance by such Party shall be resumed. No liability shall be incurred by either Party for damages resulting from such suspensions. Hub Group is not liable for losses to Goods caused by acts constituting a force majeure event. If the force majeure continues for a period of greater than sixty (60) days, the other Party shall have the right to terminate the business relationship established hereunder without penalty.

19. Successors and Assigns; Assignment. The Agreement and any rights or obligations arising from the Conditions will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither the Agreement nor any rights granted hereunder may be sold, leased, assigned or otherwise transferred, in whole or in part, by either Party, and any such attempted assignment shall be void and of no effect without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed; provided, however, that such consent shall not be required if (i) either Party assigns the Agreement (if any) to an affiliate under common controlling interest or to a successor by consolidation, acquisition or merger or to any entity that acquires all or substantially all of the assets and business of such entity, subject in each case to the successor entity expressly assuming the obligations of the assigning party, or (ii) Hub Group assigns its right to receive and collect payments hereunder. Customer will provide prior written notice of not less than thirty (30) days to Hub Group of any change or anticipated change in majority ownership of Customer, including, but not limited to, sale of all or substantially all of the assets of Customer.

20. Governing Law; Venue. These Conditions and the entire relationship of the parties shall be construed and governed according to the laws of the state of Illinois without giving consideration to principles of conflict of laws. If litigation arising from or related to Services rendered or received hereunder or the relationship of the Parties is commenced, any such action shall be filed and litigated exclusively in the Circuit Court of the Eighteenth Judicial Circuit of the State of Illinois located in DuPage County, Illinois or in the United States District Court for the Northern District of Illinois, Eastern Division, and in no other court, and the parties irrevocably consent to the exclusive jurisdiction and venue of such courts. JURY TRIALS ARE IRREVOCABLY WAIVED BY THE PARTIES IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

21. Dispute Resolution. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to these Conditions promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this contract. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Within fifteen (15) days of delivery of the notice, the receiving Party shall submit to the other a written response. The notice and the response shall include a statement of each Party's position and a summary of arguments supporting that position and the name and title of the executive who will represent that Party and any other person who will accompany that executive. Within thirty (30) days after delivery of the disputing Party's notice, the executives of both Parties shall meet at a mutually-acceptable time and place and, thereafter, as often as they deem reasonably necessary to attempt to resolve the dispute. All negotiations pursuant to this section are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.