

## **INDEPENDENT CONTRACTOR AGREEMENT**

This Agreement (“Agreement”) is made and entered into by and between you, the undersigned contractor (“CONTRACTOR”), an independent contractor engaged in the business of performing the delivery services contemplated by this Agreement, and AitemConnect, Inc. (“AITEMCONNECT” or “COMPANY”). CONTRACTOR may enter this Agreement either as an individual or as a corporate entity. This Agreement will become effective on the date it is accepted regardless of whether you are eligible to, or ever do, perform any Contracted Services.

**IMPORTANT: PLEASE REVIEW THIS AGREEMENT CAREFULLY. IN PARTICULAR, PLEASE REVIEW THE MUTUAL ARBITRATION PROVISION IN SECTION XI, AS IT REQUIRES THE PARTIES (UNLESS YOU OPT OUT OF ARBITRATION AS PROVIDED BELOW) TO RESOLVE DISPUTES ON AN INDIVIDUAL BASIS, TO THE FULLEST EXTENT PERMITTED BY LAW, THROUGH FINAL AND BINDING ARBITRATION. BY ACCEPTING THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD ALL OF THE TERMS, INCLUDING SECTION XI, AND HAVE TAKEN THE TIME AND SOUGHT ANY ASSISTANCE NEEDED TO COMPREHEND THE CONSEQUENCES OF ACCEPTING THIS AGREEMENT.**

### **THE PARTIES**

AITEMCONNECT is a company that provides an online marketplace connection using web-based technology that connects contractors and shoppers directly to retailers for product viewing, purchasing, and immediate product delivery (“AITEMCONNECT platform” or “platform”). AITEMCONNECT’s software permits registered users to place orders for goods from various retailers and businesses. Once such orders are made, AITEMCONNECT software notifies contractors that a delivery opportunity is available and the AITEMCONNECT software facilitates completion of the delivery. AITEMCONNECT is not a retailer or a delivery service.

CONTRACTOR is an independent provider of delivery services, authorized to conduct the delivery services contemplated by this Agreement in the geographic location(s) in which CONTRACTOR operates. CONTRACTOR possesses all equipment and personnel necessary to perform the delivery services contemplated by this Agreement in accordance with applicable laws. CONTRACTOR desires to enter into this Agreement for the right to receive delivery opportunities made available through AITEMCONNECT’S platform. CONTRACTOR understands and expressly agrees that he/she is not an employee of AITEMCONNECT or any retailer, other business, or consumer and that he/she is providing delivery services on behalf of him/herself and his/her business, not on behalf of AITEMCONNECT. CONTRACTOR understands (i) he/she is free to select those times he/she wishes to be available on the platform to receive delivery opportunities; (ii) he/she is free to accept or reject the opportunities transmitted through the AITEMCONNECT platform by consumers, and can make such decisions to maximize his/her opportunity to profit; and (iii) he/she has the sole right to control the manner in which deliveries are performed and the means by which those deliveries are completed.

In consideration of the above, as well as the mutual promises described herein, AITEMCONNECT and CONTRACTOR (collectively “the parties”) agree as follows:

### **I. PURPOSE OF THE AGREEMENT**

1. This Agreement governs the relationship between AITEMCONNECT and CONTRACTOR, and establishes the parties’ respective rights and obligations. In exchange for the promises contained in this Agreement, CONTRACTOR shall have the right and obligation to perform the “Contracted Services” as defined herein. However, nothing in this Agreement requires CONTRACTOR to perform any particular volume of Contracted Services during the term of this Agreement, and

nothing in this Agreement shall guarantee CONTRACTOR any particular volume of business for any particular time period.

2. CONTRACTOR shall have no obligation to accept or perform any particular "Delivery Opportunity" (as that term is defined herein) offered by AITEMCONNECT. However, once a Delivery Opportunity is accepted, CONTRACTOR shall be contractually bound to complete the Contracted Services in accordance with all consumer specifications and the terms laid out in this Agreement.

## **II. CONTRACTOR'S OPERATIONS**

1. CONTRACTOR represents that he/she operates an independently established enterprise that provides delivery services, and that he/she satisfies all legal requirements necessary to perform the services contemplated by this Agreement. As an independent contractor/enterprise, CONTRACTOR shall be solely responsible for determining how to operate his/her business and how to perform the Contracted Services.
2. CONTRACTOR agrees to fully perform the Contracted Services in a timely, efficient, safe, and lawful manner. AITEMCONNECT shall have no right to, and shall not, control the manner, method or means CONTRACTOR uses to perform the Contracted Services. Instead, CONTRACTOR shall be solely responsible for determining the most effective, efficient, and safe manner to perform the Contracted Services, including determining the manner of pickup, delivery, and route selection.
3. As an independent business enterprise, CONTRACTOR retains the right to perform services (whether delivery services or other services) for others and to hold him/herself out to the general public as a separately established business. The parties recognize that they are or may be engaged in similar arrangements with others and nothing in this Agreement shall prevent CONTRACTOR or AITEMCONNECT from doing business with others. AITEMCONNECT does not have the right to restrict CONTRACTOR from performing services for other businesses, customers or consumers at any time, even if such business directly competes with AITEMCONNECT, and even during the time CONTRACTOR is logged into the AITEMCONNECT platform. CONTRACTOR's right to compete with AITEMCONNECT, or perform services for business that compete with AITEMCONNECT, will survive even after termination of this Agreement.
4. CONTRACTOR is not required to purchase, lease, or rent any products, equipment or services from AITEMCONNECT as a condition of doing business with AITEMCONNECT or entering into this Agreement.
5. CONTRACTOR agrees to immediately notify AITEMCONNECT in writing at [www.aitemconnect.com](http://www.aitemconnect.com) if CONTRACTOR's right to control the manner or method he/she uses to perform services differs from the terms contemplated in this Section.

## **III. CONTRACTED SERVICES**

1. From time to time, the AITEMCONNECT platform will notify CONTRACTOR of the opportunity to complete deliveries from retailers or other businesses to consumers in accordance with orders placed by consumers through the AITEMCONNECT platform (each of these is referred to as a "Delivery Opportunity"). For each Delivery Opportunity accepted by CONTRACTOR ("Contracted Service"), CONTRACTOR agrees to retrieve the orders from retailers or other businesses and deliver the order to consumers in a safe and timely fashion. CONTRACTOR understands and agrees that the parameters of each Contracted Service are established by the consumer, not AITEMCONNECT, and represent the end result desired, not the means by which CONTRACTOR is to accomplish the result. CONTRACTOR has the right to cancel, from time to time, a Contracted Service when, in the exercise of CONTRACTOR's reasonable discretion and business judgment, it is appropriate to do so. Notwithstanding the foregoing, CONTRACTOR agrees to maintain customer ratings, completion ratings, and

timeliness ratings as of the date this Agreement becomes effective. Failure to satisfy the minimum rating obligations constitutes a material breach of this Agreement, and AITEMCONNECT shall have the right to terminate this Agreement and/or deactivate CONTRACTOR'S account.

2. CONTRACTOR acknowledges that AITEMCONNECT has discretion as to which, if any, Delivery Opportunity to offer, just as CONTRACTOR has the discretion whether and to what extent to accept any Delivery Opportunity.
3. CONTRACTOR acknowledges that CONTRACTOR is engaged in CONTRACTOR's own business, separate and apart from AITEMCONNECT'S business, which is to provide an online marketplace connection using web-based technology that connects contractors and shoppers directly to retailers and/or other businesses.
4. CONTRACTOR authorizes AITEMCONNECT, during the course of a Contracted Service, to communicate with CONTRACTOR, shopper, retailer, and/or other business to assist CONTRACTOR, to the extent permitted by CONTRACTOR, in facilitating deliveries. However, under no circumstances shall AITEMCONNECT be authorized to control the manner or means by which CONTRACTOR performs delivery services. This includes, but is not limited to, the following:
  - AITEMCONNECT does not require any specific type, or quality, of CONTRACTOR's choice of transportation.
  - CONTRACTOR does not have a supervisor or any individual at AITEMCONNECT to whom they report.
  - CONTRACTOR is not required to use any signage or other designation of AITEMCONNECT on his or her vehicle or person at any point in their use of the platform to perform the Contracted Services.
  - AITEMCONNECT has no control over CONTRACTOR's personal appearance.
  - CONTRACTOR does not receive regular performance evaluations by AITEMCONNECT.
5. In the event CONTRACTOR fails to fully perform any Contracted Service (a "Service Failure") due to CONTRACTOR's action or omission, CONTRACTOR shall forfeit all or part of the agreed upon fee for that service. If CONTRACTOR disputes responsibility for a Service Failure, the dispute shall be resolved pursuant to the "Payment Disputes" provision below.
6. CONTRACTOR agrees to immediately notify AITEMCONNECT in writing by submitting a Support inquiry through [www.aitemconnect.com](http://www.aitemconnect.com) if CONTRACTOR's services or scope of work differ in any way from what is contemplated in this Section.

#### **IV. RELATIONSHIP OF PARTIES**

1. The parties acknowledge and agree that this Agreement is between two co-equal, independent business enterprises that are separately owned and operated. The parties intend this Agreement to create the relationship of principal and independent contractor and not that of employer and employee. The parties are not employees, agents, joint venturers, or partners of each other for any purpose. Neither party shall have the right to bind the other by contract or otherwise except as specifically provided in this Agreement.
2. AITEMCONNECT shall not have the right to, and shall not, control the manner or the method of accomplishing Contracted Services to be performed by CONTRACTOR. The parties acknowledge and agree that those provisions of the Agreement reserving ultimate authority in AITEMCONNECT have been inserted solely for the safety of consumers and other CONTRACTORS using the AITEMCONNECT platform or to achieve compliance with federal, state, or local laws, regulations, and interpretations thereof.

3. AITEMCONNECT shall report all payments made to CONTRACTOR on a calendar year basis using an appropriate IRS Form 1099, if the volume of payments to CONTRACTOR qualify. CONTRACTOR agrees to report all such payments and any cash gratuities to the appropriate federal, state and local taxing authorities.

## V. PAYMENT FOR SERVICES

1. Unless notified otherwise by AITEMCONNECT in writing or except as provided herein, CONTRACTOR will receive payment per accurate Contracted Service completed in an amount consistent with the current pay model, which you can view here. From time to time, AITEMCONNECT may offer opportunities for CONTRACTOR to earn more money for performing Contracted Services at specified times or in specified locations.
2. Consumers may pay a gratuity to CONTRACTOR in cash. CONTRACTOR shall retain 100% of any gratuity paid by the consumer. AITEMCONNECT acknowledges it has no right to interfere with the amount of gratuity given by the consumer to the CONTRACTOR.
3. AITEMCONNECT will process payments made by consumers and transmit to CONTRACTOR. Payments for all deliveries completed in a given week will be transferred via direct deposit on no less than a weekly basis unless it notifies CONTRACTOR otherwise in writing.
4. From time to time, AITEMCONNECT may offer various promotions or referral programs. CONTRACTOR agrees that he or she will not manipulate or abuse the referral programs or promotions by, among other things: (a) tampering with the location feature on his or her mobile phone; (b) collecting incentive or promotional pay when not eligible to receive such pay under relevant policies; or, (c) creating multiple consumer accounts. CONTRACTOR understands that engaging in this type of manipulation or abuse constitutes a material breach of this Agreement and may lead to deactivation of his or her account.

## VI. PAYMENT DISPUTES

1. CONTRACTOR's Failure: In the event there is a Service Failure, CONTRACTOR shall not be entitled to payment as described above (as determined in AITEMCONNECT's reasonable discretion). Any withholding of payment shall be based upon proof provided by the consumer, retailer, or other business, CONTRACTOR, and any other party with information relevant to the dispute. AITEMCONNECT shall make the initial determination as to whether a Service Failure was the result of CONTRACTOR's action/omission. CONTRACTOR shall have the right to challenge AITEMCONNECT's determination through any legal means contemplated by this Agreement; however, CONTRACTOR shall notify AITEMCONNECT in writing at [www.aitemconnect.com](http://www.aitemconnect.com) of the challenge and provide AITEMCONNECT the opportunity to resolve the dispute. CONTRACTOR should include any documents or other information in support of his/her challenge.
2. AITEMCONNECT's Failure: In the event AITEMCONNECT fails to remit payment in a timely or accurate manner, CONTRACTOR shall have the right to seek proper payment by any legal means contemplated by this Agreement and, should CONTRACTOR prevail, shall be entitled to recover reasonable costs incurred in pursuing proper payment, provided, however, CONTRACTOR shall first inform AITEMCONNECT in writing at [www.aitemconnect.com](http://www.aitemconnect.com) of the failure and provide a reasonable opportunity to cure it.

## VII. EQUIPMENT AND EXPENSES

1. CONTRACTOR represents that he/she has or can lawfully acquire all equipment, including vehicles with able storage to accommodate purchased products ("Equipment") necessary for performing contracted services, and CONTRACTOR is solely responsible for ensuring that the

vehicle used conforms to all vehicle laws pertaining to safety, equipment, inspection, and operational capability.

2. CONTRACTOR agrees that he/she is responsible for all costs and expenses arising from CONTRACTOR's performance of Contracted Services, including, but not limited to, costs related to CONTRACTOR's Personnel (defined below) and Equipment. Except as otherwise required by law, CONTRACTOR assumes all risk of damage or loss to its Equipment.

## VIII. PERSONNEL

1. In order to perform any Contracted Services, CONTRACTOR must, for the safety of consumers on the AITEMCONNECT platform, pass a background check administered by a third-party vendor, subject to CONTRACTOR's lawful consent. CONTRACTOR is not required to perform any Contracted Services personally, but may, to the extent permitted by law and subject to the terms of this Agreement, hire or engage others (as employees or subcontractors of CONTRACTOR) to perform all or some of the Contracted Services, provided any such employees or subcontractors meet all the requirements applicable to CONTRACTOR including, but not limited to, the background check requirements that CONTRACTOR must meet in order to perform Contracted Services. To the extent CONTRACTOR furnishes his/her own employees or subcontractors (collectively "Personnel"), CONTRACTOR shall be solely responsible for the direction and control of the Personnel it uses to perform all Contracted Services.
2. **CONTRACTOR assumes full and sole responsibility for the payment of all amounts due to his/her Personnel for work performed in relation to this Agreement, including all wages, benefits and expenses, if any, and for all required state and federal income tax withholdings, unemployment insurance contributions, and social security taxes as to CONTRACTOR and all Personnel employed by CONTRACTOR in the performance of Contracted Services under this Agreement. AITEMCONNECT shall have no responsibility for any wages, benefits, expenses, or other payments due CONTRACTOR's Personnel, nor for income tax withholding, social security, unemployment insurance contributions, or other payroll taxes relating to CONTRACTOR or his/her Personnel. Neither CONTRACTOR nor his/her Personnel shall receive any wages, including vacation pay or holiday pay, from AITEMCONNECT, nor shall they participate in or receive any other benefits, if any, available to AITEMCONNECT's employees.**
3. **Unless mandated by law, AITEMCONNECT shall have no authority to withhold state or federal income taxes, social security taxes, unemployment insurance taxes/contributions, or any other local, state or federal tax on behalf of CONTRACTOR or his/her Personnel.**
4. CONTRACTOR and his/her Personnel shall not be required to wear a uniform or other clothing of any type bearing AITEMCONNECT's name or logo, but CONTRACTOR may be offered the opportunity to wear AITEMCONNECT marketing materials during promotional periods, or during the initial launch period in a new location.
5. If CONTRACTOR uses the services of any Personnel to perform the Contracted Services, CONTRACTOR's Personnel must satisfy and comply with all of the terms of this Agreement, which CONTRACTOR must make enforceable by written agreement between CONTRACTOR and such Personnel. A copy of such written agreement must be provided to AITEMCONNECT at least 7 days in advance of such Personnel performing the Contracted Services. The parties acknowledge that the sole purpose of this requirement is to ensure CONTRACTOR's compliance with the terms of this Agreement.

## IX. INSURANCE

1. CONTRACTOR agrees, as a condition of doing business with AITEMCONNECT, that during the term of this Agreement, CONTRACTOR will maintain current insurance, in amounts and of types required by law to provide the Contracted Services, at his/her own expense. CONTRACTOR

acknowledges that failure to secure or maintain satisfactory insurance coverage shall be deemed a material breach of this Agreement and shall result in the termination of the Agreement and the loss of CONTRACTOR's right to receive Delivery Opportunities.

2. **NOTIFICATION OF COVERAGE:** CONTRACTOR agrees to deliver to AITEMCONNECT, upon request, current certificates of insurance as proof of coverage. CONTRACTOR agrees to provide updated certificates each time CONTRACTOR purchases, renews, or alters CONTRACTOR's insurance coverage. CONTRACTOR agrees to give AITEMCONNECT at least thirty (30) days' prior written notice before cancellation of any insurance policy required by this Agreement.
3. **WORKERS' COMPENSATION/OCCUPATIONAL ACCIDENT INSURANCE:** CONTRACTOR agrees that CONTRACTOR will not be eligible for workers' compensation benefits through AITEMCONNECT, and instead, will be responsible for providing CONTRACTOR's own workers' compensation insurance or occupational accident insurance, if permitted by law.

## **X. INDEMNITY**

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

## **XI. MUTUAL ARBITRATION PROVISION**

1. CONTRACTOR and AITEMCONNECT mutually agree to this arbitration agreement, which is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") and shall apply to any and all claims arising out of or relating to this Agreement, CONTRACTOR's classification as an independent contractor, CONTRACTOR's provision of Contracted Services to consumers, the payments received by CONTRACTOR for providing services to consumers, the termination of

this Agreement, and all other aspects of CONTRACTOR's relationship with AITEMCONNECT, past, present or future, whether arising under federal, state or local statutory and/or common law, including without limitation harassment, discrimination or retaliation claims and claims arising under or related to the Civil Rights Act of 1964 (or its state or local equivalents), Americans With Disabilities Act (or its state or local equivalents), Age Discrimination in Employment Act (or its state or local equivalents), Family Medical Leave Act (or its state or local equivalents), Federal Credit Reporting Act (or its state or local equivalents), Telephone Consumer Protection Act (or its state or local equivalents), or Fair Labor Standards Act (or its state or local equivalents), state and local wage and hour laws, state and local statutes or regulations addressing the same or similar subject matters, and all other federal, state or local claims arising out of or relating to CONTRACTOR's relationship or the termination of that relationship with AITEMCONNECT. The parties expressly agree that this Agreement shall be governed by the FAA even in the event CONTRACTOR and/or AITEMCONNECT are otherwise exempted from the FAA. Any disputes in this regard shall be resolved exclusively by an arbitrator. In the event, but only in the event, the arbitrator determines the FAA does not apply, the state law governing arbitration agreements in the state in which the CONTRACTOR operates shall apply.

2. If either CONTRACTOR or AITEMCONNECT wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery within the applicable statute of limitations period. This demand for arbitration must include (1) the name and address of the party seeking arbitration, (2) a statement of the legal and factual basis of the claim, and (3) a description of the remedy sought. Any demand for arbitration by CONTRACTOR must be delivered to Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, Illinois, 60606.
3. Arbitration Class Action Waiver. CONTRACTOR and AITEMCONNECT mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action—including but not limited to actions brought pursuant to the Private Attorney General Act ("PAGA"), California Labor Code section 2699 et seq., and any request seeking a public injunction—and an arbitrator shall not have any authority to hear or arbitrate any class, collective or representative action, or to award relief to anyone but the individual in arbitration ("Arbitration Class Action Waiver"). Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Arbitration Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Arbitration Class Action Waiver is unenforceable, the class, collective and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Arbitration Class Action Waiver that is enforceable shall be enforced in arbitration. Notwithstanding any other clause contained in this Agreement or the AAA Rules, as defined below, any claim that all or part of this Arbitration Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. All other disputes with respect to whether this Mutual Arbitration Provision is unenforceable, unconscionable, applicable, valid, void or voidable shall be determined exclusively by an arbitrator, and not by any court.
4. CONTRACTOR agrees and acknowledges that entering into this arbitration agreement does not change CONTRACTOR's status as an independent contractor in fact and in law, that CONTRACTOR is not an employee of AITEMCONNECT or its customers and that any disputes in this regard shall be subject to arbitration as provided in this agreement.
5. Any arbitration shall be governed by the American Arbitration Association Commercial Arbitration Rules ("AAA Rules"), except as follows:
  - a. The arbitration shall be heard by one arbitrator selected in accordance with the AAA Rules. The Arbitrator shall be an attorney with experience in the law underlying the dispute.

- b. If the parties cannot otherwise agree on a location for the arbitration, the arbitration shall take place within 45 miles of CONTRACTOR's residence as of the effective date of this Agreement.
  - c. Unless applicable law provides otherwise, in the event that AITEMCONNECT and CONTRACTOR have agreed to this Mutual Arbitration Provision, AITEMCONNECT and CONTRACTOR shall equally share filing fees and other similar and usual administrative costs, as are common to both court and administrative proceedings. AITEMCONNECT shall pay any costs uniquely associated with arbitration, such as payment of the costs of AAA and the Arbitrator, as well as room rental.
  - d. The Arbitrator may issue orders (including subpoenas to third parties) allowing the parties to conduct discovery sufficient to allow each party to prepare that party's claims and/or defenses, taking into consideration that arbitration is designed to be a speedy and efficient method for resolving disputes.
  - e. Except as provided in the Arbitration Class Action Waiver, the Arbitrator may award all remedies to which a party is entitled under applicable law and which would otherwise be available in a court of law, but shall not be empowered to award any remedies that would not have been available in a court of law for the claims presented in arbitration. The Arbitrator shall apply the state or federal substantive law, or both, as is applicable.
  - f. The Arbitrator may hear motions to dismiss and/or motions for summary judgment and will apply the standards of the Federal Rules of Civil Procedure governing such motions.
  - g. The Arbitrator's decision or award shall be in writing with findings of fact and conclusions of law.
  - h. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.
  - i. Either CONTRACTOR or AITEMCONNECT may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief on the ground that without such relief the arbitration provided in this paragraph may be rendered ineffectual.
6. Nothing in this Mutual Arbitration Provision prevents you from making a report to or filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Mutual Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Mutual Arbitration Provision. This Mutual Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Mutual Arbitration Provision. Nothing in this Mutual Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. AITEMCONNECT will not retaliate against CONTRACTOR for filing a claim with an administrative agency or for exercising rights (individually or in concert with others) under Section 7 of the National Labor Relations Act. Disputes between the parties that may not be subject to predispute arbitration agreement, including as provided by an Act of Congress or lawful, enforceable Executive Order, are excluded from the coverage of this Mutual Arbitration Provision.



7. The AAA Rules may be found at [www.adr.org](http://www.adr.org) or by searching for “AAA Commercial Arbitration Rules” using a service such as [www.google.com](http://www.google.com) or [www.bing.com](http://www.bing.com) or by asking AITEMCONNECT to provide a copy.
8. **CONTRACTOR’s Right to Opt Out of Arbitration Provision.** Arbitration is not a mandatory condition of CONTRACTOR’s contractual relationship with AITEMCONNECT, and therefore CONTRACTOR may submit a statement notifying AITEMCONNECT that CONTRACTOR wishes to opt out and not be subject to this MUTUAL ARBITRATION PROVISION. In order to opt out, CONTRACTOR must notify AITEMCONNECT in writing of CONTRACTOR’s intention to opt out by sending an email to [optout@aitemconnect.com](mailto:optout@aitemconnect.com). The email must state CONTRACTOR’s intention to opt out. In order to be effective, CONTRACTOR’s opt out email must be sent within 30 days of the effective date of this Agreement. The email must be sent by CONTRACTOR himself/herself, and not by any agent or representative of CONTRACTOR. The email may opt out, at most, only one CONTRACTOR, and emails that purport to opt out multiple CONTRACTORS will not be effective as to any. No CONTRACTOR (or his or her agent or representative) may effectuate an opt out on behalf of other CONTRACTORS. If CONTRACTOR opts out as provided in this paragraph, CONTRACTOR will not be subject to any adverse action from AITEMCONNECT as a consequence of that decision and he/she may pursue available legal remedies without regard to this Mutual Arbitration Provision. If CONTRACTOR does not opt out within 30 days of the effective date of this Agreement, CONTRACTOR and AITEMCONNECT shall be deemed to have agreed to this Mutual Arbitration Provision. CONTRACTOR has the right to consult with counsel of CONTRACTOR’s choice concerning this Mutual Arbitration Provision (or any other provision of this Agreement).
9. This Mutual Arbitration Provision is the full and complete agreement relating to the formal resolution of disputes covered by this Mutual Arbitration Provision. In the event any portion of this Mutual Arbitration Provision is deemed unenforceable, the remainder of this Mutual Arbitration Provision will be enforceable. The award issued by the Arbitrator may be entered in any court of competent jurisdiction.

## **XII. LITIGATION CLASS ACTION WAIVER**

1. To the extent allowed by applicable law, separate and apart from the Mutual Arbitration Provision found in Section XI, CONTRACTOR agrees that any proceeding to litigate in court any dispute arising out of or relating to this Agreement, whether because CONTRACTOR opted out of the Arbitration Provision or any other reason, will be conducted solely on an individual basis, and CONTRACTOR agrees not to seek to have any controversy, claim or dispute heard as a class action, a representative action, a collective action, a private attorney-general action, or in any proceeding in which CONTRACTOR acts or proposes to act in a representative capacity (“Litigation Class Action Waiver”). CONTRACTOR further agrees that no proceeding will be joined, consolidated, or combined with another proceeding, without the prior written consent of all parties to any such proceeding. If a court of competent jurisdiction determines that all or part of this Litigation Class Action Waiver is unenforceable, unconscionable, void or voidable, the remainder of this Agreement shall remain in full force and effect.

## **XIII. TERMINATION OF AGREEMENT**

1. CONTRACTOR may terminate this Agreement upon seven (7) days written notice. AITEMCONNECT may terminate this Agreement and deactivate CONTRACTOR’S AitemConnect account only for the reasons set forth in the AITEMCONNECT Deactivation Policy, or for a material breach of this Agreement. Notwithstanding any other provision in this Agreement, AitemConnect reserves the right to modify the Deactivation Policy if, in AitemConnect’s good faith and reasonable discretion, it is necessary to do so for the safe and/or effective operation of the AitemConnect platform. AITEMCONNECT shall provide notice of any

such changes to CONTRACTOR via e-mail. Changes to the Deactivation Policy shall be effective and binding on the parties upon CONTRACTOR's continued use of the AITEMCONNECT platform following AITEMCONNECT's e-mail notice of such modifications. Nothing will prevent CONTRACTOR from attempting to negotiate an exemption from any modification to the Deactivation Policy.

2. CONTRACTOR's and AITEMCONNECT's obligations and rights arising under the Mutual Arbitration Provision of this Agreement shall survive termination of this Agreement. Notwithstanding any other provision in this Agreement, the Deactivation Policy is subject to change; such changes shall be effective and binding on the parties upon AITEMCONNECT'S provision of notice to CONTRACTOR via e-mail.

#### **XIV. ENTIRE AGREEMENT, TRANSFERABILITY, AND WAIVER**

1. This Agreement shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall not be modified, altered, changed or amended in any respect, unless in writing and signed by both parties. Before accepting any modifications, alterations, changes or amendments, CONTRACTOR shall have the right to discuss any proposed changes with AITEMCONNECT and consider whether to continue his/her contractual relationship with AITEMCONNECT. This Agreement supersedes any prior contract between the parties. To the extent AITEMCONNECT's consumer facing Terms and Conditions Agreement (or updated consumer facing Terms and Conditions Agreement, if applicable) is inconsistent or conflicts with this Agreement, this Agreement controls. However, the decision to opt-out of the Mutual Arbitration Provision in this Agreement does not affect the enforceability of any arbitration agreement in the consumer facing Terms and Conditions Agreement to which Contractor may be bound (and vice versa). This Agreement may not be assigned by either party without written consent of the other and shall be binding upon the parties hereto, including their heirs and successors, provided, however, that AITEMCONNECT may assign its rights and obligations under this Agreement to an affiliate of AITEMCONNECT or any successor(s) to its business and/or purchaser of substantially all of its stock or assets. References in this Agreement to AITEMCONNECT shall be deemed to include such successor(s).
2. The failure of AITEMCONNECT or CONTRACTOR in any instance to insist upon a strict performance of the terms of this Agreement or to exercise any option herein, shall not be construed as a waiver or relinquishment of such term or option and such term or option shall continue in full force and effect.

#### **XV. MISCELLANEOUS**

1. CAPTIONS: Captions appearing in this Agreement are for convenience only and do not in any way limit, amplify, modify, or otherwise affect the terms and provisions of this Agreement.
2. SEVERABILITY Clause: Except as specifically provided in Section XI, if any part of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect.
3. GOVERNING LAW: Except for the Mutual Arbitration Provision above, which is governed by the Federal Arbitration Act, the choice of law for interpretation of this Agreement, and the right of the parties hereunder, as well as substantive interpretation of claims asserted pursuant to Section XI, shall be the rules of law of the state in which CONTRACTOR performs the majority of the services covered by this Agreement.
4. NOTICE AND OPPORTUNITY TO CURE: CONTRACTOR agrees to notify AITEMCONNECT in writing at [www.aitemconnect.com](http://www.aitemconnect.com) of any breach or perceived breach of this Agreement, of any claim arising out of or related to this Agreement, or of any claim that CONTRACTOR's services or scope of work differ in any way from what is contemplated in this Agreement, including but not limited to the terms in Sections II (Contractor's Operations) and III

(Contractor's Services), or if the relationship of the parties differs from the terms contemplated in Section IV (Relationship of Parties).

5. **PRIVACY POLICY:** CONTRACTOR represents and warrants that he or she has reviewed and understands AITEMCONNECT'S AitemConnect Privacy Statement, which can be found here. By using the AitemConnect Services, you consent to all actions taken by AITEMCONNECT with respect to your information in accordance with the AitemConnect Privacy Statement.

*/s/*

**authorized representative for AitemConnect, Inc.**