

**TERMS OF USE FOR
COMMTREX PLATFORM and COMMTREX WEBSITE**

Commtrex, Inc. (referred to in this document as “**Commtrex**,” “**we**” or “**us**”) provides website features to the applicable customer of Commtrex (referred to in this document as “**you**”) subject to the following terms of use (“**Terms of Use**”) and a Platform Agreement between you and us, if any (“**Platform Agreement**”). These Terms of Use govern your access to the Commtrex Platform found at www.commtrex.com (collectively referred to herein as the “**Site**”). Unless otherwise specified, all references to “**Site**” include any software that Commtrex provides to you that allows you to access the Site from a mobile device (a “**Mobile Application**”) and any and all content, functionality and services offered through the Site and any web pages, interactive features, applications, widgets, blogs, social network pages or other online or wireless offerings that post a link to the Site that are administered or controlled by Commtrex. PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE YOU START USE OF THE SITE. These Terms of Use contain important information regarding, among other things, your use of any text, graphics, data, documents, images, design elements, video or audio content as well as logos, trademarks or registered trademarks, copyrighted elements, service marks or registered service marks, trade dress or other materials (collectively referred to as “**Content**”) that appear on this Site. By using the Site (whether as a guest or a registered user) you accept and agree to these Terms of Use and our Privacy Policy <http://www.commtrex.com/privacy> (the “**Privacy Policy**”), and any other policies, agreements, and terms and conditions contained on this Site. You agree to be bound by all terms and conditions during your use, regardless of any actions that may allow you to bypass viewing any terms or conditions. If you do not want to agree to these Terms of Use or our Privacy Policy, you must not access the Site.

NOTE: THESE TERMS CONTAIN A DISPUTE RESOLUTION AND ARBITRATION PROVISION, INCLUDING CLASS ACTION WAIVER THAT AFFECTS YOUR RIGHTS UNDER THESE TERMS OF USE AND WITH RESPECT TO DISPUTES YOU MAY HAVE WITH COMMTREX YOU MAY OPT OUT OF THE BINDING INDIVIDUAL ARBITRATION AND CLASS ACTION WAIVER AS PROVIDED BELOW.

1. Accessing the Site.

To access the Site or certain parts of it, you may be asked to provide certain registration details or other information. You agree that all information provided on the Site is correct, current and complete. You agree that all information provided to register with the Site, including but not limited to information provided for the creation of an account, is governed by the Privacy Policy, which is available on the Site, and you consent to all actions Commtrex takes with respect to your information consistent with the Privacy Policy.

You agree you are responsible for maintaining the confidentiality of your account and any applicable usernames and passwords of your authorized representatives and for restricting access to your computer(s) and you agree to accept responsibility for all activities that occur under your account or those user names or passwords. You also acknowledge that your account is personal to you and agree not to provide any other person other than your authorized representatives with access to this Site or portions of it using user names, passwords, or other security information provided to your authorized representatives. You further agree to notify Commtrex immediately of any unauthorized access to or use of such user names or passwords or any other breach of security.

Commtrex retains the right to disable any user name, password, or other identifier, whether chosen by you or provided by us, at any time in our sole discretion and for any reason, including if, in our opinion, you have violated any provision of these Terms of Use.

Commtrex also reserves the right to change, amend, and modify the Site, and any service or materials we provide on this Site, in our sole discretion without notice. We will not be liable for any reason if all or any part of the Site is unavailable at any time or for any period of time. For time to time, we may also restrict access to some parts of the Site, or the entire Site, to users, including registered users.

2. No Unlawful or Prohibited Use.

Any use or attempted use of the Site (i) for any unlawful, unauthorized, fraudulent or malicious purpose; (ii) that could damage, disable, overburden, or impair any server, or the network(s) connected to any server; (iii) that could interfere with any other party's use and enjoyment of the Site; (iv) to gain unauthorized access to any other accounts, computer systems or networks connected to any server or systems through hacking, password mining or any other means; (v) to access systems, data or information not intended by Site to be made accessible to a user; (vi) to attempt to obtain any materials or information through any means not intentionally made available by us; or (vii) any use other than the purpose for which it was intended, is prohibited.

In addition, you and each of your authorized representatives agree that, in connection with your use of the Site, you will not:

- a. Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Site, the server(s) on which the Site is stored, or any server, computer or database connected to the Site;
- b. Attack the Site via a denial-of-service attack or a distributed denial-of-service attack;
- c. Upload or transmit any message, information, data, text, software or images, or other content that is unlawful, immoral, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, or otherwise objectionable, or that may invade another's right of privacy or publicity;
- d. Create a false identity for the purpose of misleading others or impersonate any person or entity, including, without limitation, any representative of Commtrex, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- e. Upload or transmit any material that you do not have a right to reproduce, display or transmit under any law or under contractual or fiduciary relationships (such as nondisclosure agreements);
- f. Upload files that contain viruses, Trojan horses, worms, logic or time bombs, cancel-bots, corrupted files, or any other similar software or programs that may damage the operation of another's computer or property of another or which is malicious or technologically harmful;
- g. Delete any author attributions, legal notices or proprietary designations or labels that you upload to any communication feature;
- h. Use of any of the Site's communication features in a manner that adversely affects the availability of its resources to other users (e.g., excessive shouting, use of all caps, or flooding continuous posting of repetitive text);

- i. Upload or transmit any unsolicited advertising, promotional materials, “junk mail,” “spam,” “chain letters,” “pyramid schemes” or any other form of solicitation, commercial or otherwise;
- j. Violate any applicable local, state, national or international law or regulations (including, without limitation, any laws regarding the export of data or software to and from the US or other countries);
- k. Upload or transmit any material that infringes any patent, trademark, service mark, trade secret, copyright or other proprietary rights of any party;
- l. Delete or revise any material posted by any other person or entity;
- m. Probe, scan, test the vulnerability of or breach the authentication measures of, the Site or any related networks or systems;
- n. Register, subscribe, attempt to register, attempt to subscribe, unsubscribe, or attempt to unsubscribe, any party for any products or services if you are not expressly authorized by such party to do so;
- o. Harvest or otherwise collect information about others, including e-mail addresses; or
- p. Use any robot, spider, scraper, or other automated or manual means to access the Site, or copy any content or information on the Site.

You agree with Commtrex that, so long as you have access to the Site:

- a. You will deliver to Commtrex or a to third party, as necessary: (i) any forms, documents or certificates relating to taxation necessary for any transaction agreed to using the Platform (each, a “**Transaction**”) and; (ii) any other documents necessary for a Transaction;
- b. You will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by you with respect to your use of the Platform and any Transaction, and you will use all reasonable efforts to obtain any that may become necessary in the future; and
- c. You will comply in all material respects with all applicable laws and orders to which you may be subject.

3. Use of the Platform; Transactions; Fees; Terms of Payment.

- a. This Section 3 shall apply in the event that you have not executed a Platform Agreement with Commtrex that is in full force and effect as of any date on which you access the Site. To the extent that you have executed a Platform Agreement with Commtrex, and such Platform Agreement remains in full force and effect as of any date on which you access the Site, the terms and conditions set forth in that the Platform Agreement shall supersede this Section 3; provided, that if you have executed a Platform Agreement that does not contain terms and conditions regarding Listings or Transload Pro (as defined below), then your Platform Agreement with Commtrex will not supersede the terms and conditions set forth herein regarding Listings or Transload Pro, including Sections 3.c, d, f, g, h, i and j.
- b. You acknowledge and agree that these Terms of Use govern your access to and use of Commtrex’s electronic platform, the Commtrex Platform (the “**Platform**”), accessible at <https://www.commtrex.com>,

including any content, functionality and services offered through the Platform, for the following purposes, as further described below: (i) leasing or subleasing railroad freight cars (“**Rail Assets**”) to or from third parties (“**Leasing Transactions**”); (ii) storing Rail Assets for or with third parties (“**Storage Transactions**”); (iii) selling or purchasing Rail Assets to or from third parties (“**Buy-Sell Transactions**”); (iv) unloading and loading of various products and/or cargoes from/to various modes of transportation or storage, including railcars, barges, trucks, vessels, warehouse facilities, storage facilities and terminals, and other transactions that may be available to Commtrex users and any other similar types of information or services that Commtrex may offer information about on the Platform regarding providers and users of such services from time to time (“**Transloading Services**”); (v) providing Transloading Services or otherwise enters into a Transloading Transaction (as hereinafter defined) as a provider of the Transloading Services (“**Transloading Service Provider**”); (vi) utilizing Transloading Services or otherwise enters into a Transloading Transaction (as hereinafter defined) as a user (or recipient) of the Transloading Services (“**Transloading Service User**”) and (vii) any transaction or agreement between a Transloading Service Provider and Transloading Service User in connection with Transloading Services (“**Transloading Transactions**”). Leasing Transactions, Storage Transactions, Buy-Sell Transactions and Transloading Transactions may be referred to herein individually as a “**Transaction**” or collectively as “**Transactions.**”

For the purposes of these Terms of Use: (A) “**Lessor**” shall mean, with respect to Leasing Transactions, an individual or entity owning or leasing Rail Assets and seeking to lease or sublease one or more of such Rail Assets to one or more third parties on the Platform; (B) “**Lessee**” shall mean, with respect to Leasing Transactions, individuals or entities seeking to lease or sublease Rail Assets from one or more third parties on the Platform; (C) “**Storage Provider**” shall mean, with respect to Storage Transactions, an individual or entity owning or leasing property appropriate for the storage of Rail Assets and seeking to use the Platform to enter into one or more Storage Transactions with Shippers; (D) “**Shipper**” shall mean, with respect to Storage Transactions, an individual or entity seeking to use the Platform to enter into one or more Storage Transactions with one or more Storage Providers; (E) “**Seller**” shall mean, with respect to Buy-Sell Transactions, an individual or entity owning one or more Rail Assets available for sale on the Platform; and (F) “**Buyer**” shall mean, with respect to Buy-Sell Transactions, an individual or entity seeking to purchase one or more Rail Assets listed on the Platform.

c. You also acknowledge and agree that these Terms of Use govern your placement of Listings (as defined below) to advertise to users of the Platform that services with respect to Rail Assets are available at particular geographical locations (each, a “**Rail Services Location**”). Subject to the terms and conditions set forth in these Terms of Use, you may place an unlimited number of Listings on the Platform at any given time through, and as permitted by, the functionality of the Site; provided, however, that each such Listing shall pertain to services available at a single Rail Services Location only, and (unless otherwise permitted by Commtrex in its sole discretion) you may place only one Listing with respect to a given Rail Services Location. For the purposes of this Agreement: (i) “**Basic Listing**” shall mean a Listing on the Platform, in the standardized format specified by Commtrex for all such Basic Listings, which Listing shall be displayed in the results of any user search on the Platform; (ii) “**Verified Listing**” shall mean a Listing on the Platform, in a format that may be customized as permitted by Commtrex for similar Verified Listings, which Listing shall be identified in a manner equivalent to other Verified Listings and displayed in the results of any user search on the Platform; (iii) “**Featured Listing**” shall mean a Listing on the Platform, in a format that may be customized as permitted by Commtrex for similar Featured Listings, which Listing shall be identified in a manner equivalent to other Featured Listings and displayed in the results of any user search on the Platform above Basic Listings and Verified Listings;

and (iv) Basic Listings, Verified Listings, and Featured Listings may be referred to collectively as “**Listings**” or individually as a “**Listing**”.

d. You also acknowledge and agree that these Terms of Use govern the information entered using your Transload Pro (as defined below) to advertise to offer Transloading Services as either a Transloading Service Provider or a Transloading Service User. Subject to the terms and conditions set forth in these Terms of Use, you may offer Transloading Services on the Platform at any given time through, and as permitted by, the functionality of the Site. For the purposes of this Agreement: (i) “**Transload Pro (Verified)**” shall mean that for each transloading location Commtrex shall provide: (A) basic transloading capabilities, (B) search engine optimization public page, (C) facility details that are customized (including but not limited to: logo, banner image, company colors and additional information), (D) prominent marker on the marketplace search results map; (ii) “**Transload Pro (Featured)**” shall mean that for each transloading location Commtrex shall provide: (A) basic transloading capabilities, (B) search engine optimization public page, (C) optional facility details that are customized (including but not limited to: logo, banner image, company colors, multiple images, customized images and additional information), (D) top third (3rd) row marker on the marketplace search results map; (E) facility promotion in the Commtrex marketplace, website and social media; (F) Commtrex weekly email sponsorship, (F) increased exposure in the “search box” results page, and (iii) “**Transload Pro (Enterprise)**” shall mean (A) basic transloading capabilities, (B) search engine optimization public page, (C) facility details that are customized (including but not limited to: logo, banner image, company colors and additional information), (D) prominent marker on the marketplace search results map; and (E) data analytics. Transload Pro (Verified), Transload Pro (Featured) and Transload Pro (Enterprise) may be referred to collectively as “**Transload Pro**”.

e. You further understand and agree that: (i) all information you provide and all actions you take in connection with the Platform will be honest and forthright, and that you will be solely responsible for the accuracy of any information you make available in a Listing, with respect to a Rail Services Location (including any contact information with respect thereto) or Transload Pro; (ii) you will act in good faith; (iii) you will be bound by any agreements entered into with Lessors, Lessees, Storage Providers, Shippers, Buyers, Sellers, Transloading Service Provider or Transloading Service User, as applicable, using the Platform; (iv) in using the Platform, you shall be bound by the Terms of Use and Privacy Policy of the Platform, as set forth above; and (v) Commtrex in no way guarantees that use of the Platform will result in a Transaction, that any Transaction will achieve any expected results, or that entering information for a Listing, Rail Services Location or Transload Pro on the Platform will result in any customer leads or commercial activity.

f. In the event that, using the Platform, you act as a Storage Provider and agree to a Storage Transaction with a Shipper, (i) within two business days following such agreement, you shall provide written notice to Commtrex setting forth the material economic terms of the Storage Transaction, including without limitation the price payable by the Owner and any other fees or charges payable by a party pursuant to the Storage Transaction, and (ii) for each month during such term when Rail Assets enter storage or leave storage, provide written notice to Commtrex within two business days following such month of the number of Rail Assets that entered storage or left storage during such month pursuant to such Transaction. In the event that, using the Platform, you (x) act as a Lessor, and agree to a Leasing Transaction with a Lessee, or (y) act as a Seller, and agree to a Buy-Sell Transaction with a Buyer, within two business days following such agreement, you shall provide written notice to Commtrex setting forth the material economic terms of the applicable Transaction, including without limitation the aggregate value of such

Transaction. Within two weeks following the date on which you agree to a Storage Transaction with a Shipper, agree to a Leasing Transaction with a Lessee, or agree to a Buy-Sell Transaction with a Buyer, you shall record the material economic terms of such Transaction in the applicable page of the Platform; provided, that if Customer does not record such material economic terms in accordance with the foregoing, Customer agrees that Commtrex may do so on its behalf based on the notice provided pursuant to the foregoing. Customer represents to Commtrex as of any day on which Customer provides notice or records information in the Platform pursuant to the foregoing that the material economic terms set forth therein are true, accurate and complete.

g. In the event that, using the Platform, you act as a Transloading Service Provider and agree to a Transloading Transaction with a Transloading Service User, within two business days following such agreement, you shall provide written notice to Commtrex setting forth the material economic terms of the Transloading Transaction, including without limitation the price payable by the Transloading Service User and any other fees or charges payable by a party pursuant to the Transloading Transaction. In the event that, using the Platform, you act as a Transloading Service User and agree to a Transloading Transaction with a Transloading Service Provider, within two business days following such agreement, you shall provide written notice to Commtrex setting forth the material economic terms of the Transloading Transaction, including without limitation the price payable to the Transloading Service Provider and any other fees or charges payable by a party pursuant to the Transloading Transaction. Within two weeks following the date on which you agree to a Transloading Transaction you shall record the material economic terms of such Transaction in the applicable page of the Platform; provided, that if Customer does not record such material economic terms in accordance with the foregoing, Customer agrees that Commtrex may do so on its behalf based on the notice provided pursuant to the foregoing. Customer represents to Commtrex as of any day on which Customer provides notice or records information in the Platform pursuant to the foregoing that the material economic terms set forth therein are true, accurate and complete.

h. All payments under a Transaction shall be made directly between the parties thereto and shall not be made to Commtrex. On a monthly basis with respect to all Transactions effective during the prior month, including without limitation all rolls, extensions, amendments or modifications of any existing Transaction, Commtrex will charge Customer the following fees for its services (the “**Transaction Fee**”): (i) for each Storage Transaction where Customer acts as a Storage Provider, (A) a pre-determined fee (exposed to the Storage Provider at the time the offer is made), (B) a pre-determined dollar amount (exposed to the Storage Provider at the time the offer is made) for each Rail Asset that enters storage during such month, and (C) a pre-determined dollar amount (exposed to the Storage Provider at the time the offer is made) for each Rail Asset that leaves storage during such month; (ii) for each Leasing Transaction where Customer acts as a Lessor, Commtrex’s prevailing rate for such Transactions during such month; and (iii) for each Buy-Sell Transaction where Customer acts as Seller, Commtrex’s prevailing percentage rate of 5% (full-service management of the sale) or 2% (standard sale listing) of the total Transaction price payable by the Buyer. For Customers that do not agree to a Subscription Fee (as defined below), in Transloading Transactions the Transaction Fee shall be fifty dollars (\$50) per carload.

i. On a monthly basis with respect to all Listings effective during the prior month, Commtrex will charge Customer the following fees (the “**Listing Fee**”): (i) each Verified Listing requires a Listing Fee of \$100.00 per month for a minimum of one (1) year; and (ii) each Featured Listing requires a Listing Fee of \$299.00 per month but may be cancelled at any time upon thirty (30) days’ prior written notice

to Commtrex. You may place an unlimited number of Basic Listings without incurring any Listing Fee to Commtrex.

j. Prior to the commencement of the Initial Period (as that term is defined in the Platform Agreement), Commtrex will charge the Customer the following fees (a “**Subscription Fee**”) and annually thereafter for any Subsequent Period (as that term is defined in the Platform Agreement): (i) Transload Pro (Verified) a fee of \$249 per month, (ii) Transload Pro (Featured) a fee of \$549 per month and (iii) Transload Pro (Enterprise) a fee of \$999 per month but may be canceled at any time upon sixty (60) days’ prior written notice form either Commtrex or Customer.

k. Commtrex may discount any Transaction Fee or Listing Fee at its sole discretion.

l. With respect to any month for which a Transaction Fee(s) is due to Commtrex or any month in which a Verified Listing or Featured Listing remains effective with respect to a Rail Services Location, Commtrex shall provide to you, promptly following such month, a detailed written invoice with respect to the Fee(s) due to Commtrex, as applicable in connection with the applicable Transaction(s) or Listing(s) (a “**Storage Invoice**”). Payment by you of the Storage Invoice is due in full by the twenty-fifth (25th) calendar day of the month following the month in which you incurred the applicable Fee(s) (the “**Storage Due Date**”) and must be made using one of the payment methods specified in the Storage Invoice.

m. With respect to any month for which Transaction Fee(s) is due to Commtrex for a Transloading Transaction (a “**Transloading Invoice**”), Commtrex shall provide to you, promptly following such month, a detailed written invoice with respect to the Fee(s) due to Commtrex. Payment by you of the Transloading Invoice is due in full upon receipt (the “**Transloading Due Date**”) and must be made using one of the payment methods specified in the Transloading Invoice.

n. Prior to the commencement of the Platform Agreement subject to a Subscription Fee and annually thereafter, Commtrex shall provide to you a detailed written invoice with respect to the Subscription Fee due to Commtrex (the “**Subscription Fee Invoice**”). Payment by you of the Subscription Fee Invoice is due in full upon receipt (the “**Subscription Due Date**”) and must be made using one of the payment methods specified in the Subscription Invoice. The Storage Due Date, Transloading Due Date and Subscription Due Date are collectively referred to herein as the “**Due Date**”.

o. In the event you fail to make payment by the Due Date, Commtrex may charge you simple interest at a monthly rate of one percent (1%) on the overdue amount beginning on the day after the Due Date to the date of actual payment.

p. With respect to Logistics Services, Commtrex provides a full-service logistics capability through which a shipper, transloader, shortline railroad, and/or any other entity can hire our team to provide logistics and rail fleet management services. These services must be engaged in through entering into a separate agreement with the Commtrex Logistics team. Commtrex does not guarantee that any services requested through our system will be accepted or acted upon by Commtrex and/or any of Commtrex’s partners.

q. Commtrex may also refer members and non-members to third party logistics providers, freight forwarders, freight brokers, and/or any other entity that may be able to fulfill a shippers logistics needs. All members and non-members will contract for services for their needs directly with these third party logistics providers and when doing so Commtrex will not be liable for any errors, omissions, damages,

and other issues that may arise out of this direct contract between the member/non-member and the third party logistics provider.

4. Recording of Conversations.

You (i) consent to the recording of telephone conversations between the relevant personnel of Commtrex and you in connection with your use of the Site or any potential Transaction using the Site; (ii) agree to obtain any necessary consent of, and give any necessary notice of such recording to, your relevant personnel; and (iii) agree, to the extent permitted by applicable law, that recordings may be submitted in evidence of any Proceedings.

5. Copyright.

All content included on the Site, including but not limited to text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, data collected through the Site (including in connection with Commtrex's "Rail Insights"), and software, is the property of Commtrex or its content suppliers and protected by United States and international copyright laws. The compilation of all content on the Site (including in connection with Commtrex's "Rail Insights") is the exclusive property of Commtrex and protected by United States and international copyright laws. All software used on the Site is the property of Commtrex or its software suppliers and protected by United States and international copyright laws. Commtrex and its affiliates reserve all ownership rights in all such Intellectual Property, including all of Commtrex's content that is the subject of copyright protection, and strictly prohibit you from copying, downloading, uploading, modifying, distributing, transmitting, transferring, reproducing, publishing or creating derivative works of it without prior written consent from Commtrex. You are further prohibited from selling, exploiting or engaging in the sale of any Intellectual Property contained on this Site.

6. Trademarks.

Commtrex's names, logos, product names and other indicated marks are the trademarks and service marks owned by Commtrex or its affiliates used on the Site are trademarks, registered trademarks or trade dress of Commtrex in the United States and/or other countries. Commtrex's trademarks and trade dress may not be used in connection with any product or service that is not Commtrex's, in any manner that is likely to cause confusion among consumers or in any manner that disparages or discredits Commtrex. All other trademarks not owned by Commtrex that appear on the Site are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by Commtrex.

7. License and Site Access.

Commtrex grants you a non-exclusive, non-transferable, revocable limited license to access and use the Site (including, where applicable, Commtrex's "Rail Insights") for internal business purposes only and not to download (other than page caching), modify, create derivative works from, distribute or publish it, or any portion of it, except with express written consent of Commtrex. This license does not include any resale use of the Site or its contents; any collection and use of any commercial listings, descriptions, or prices of Rail Assets or commodities to be delivered using Rail Assets; any derivative use of the Site or its contents; any downloading or copying of account information for the benefit of another merchant; any recreating or reproducing of information from the Site into a spreadsheet or any other document; or any use of data mining, robots, or similar data gathering and extraction tools. The Site or any portion of the Site may not be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purpose without express written consent of Commtrex. You may not frame or utilize framing techniques to enclose

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

8. Site Content.

The Site may include content provided by third parties (“**Third Party Materials**”). All Third Party materials must comply with the Content Standards set out in these Terms of Use and are the responsibility of the person or entity providing such Third Party Materials. Third Party Materials available on the Site do not necessarily reflect or constitute the endorsement of such Third Party Materials by Commtrex.

Commtrex is not responsible, or liable to you or any third party, for the content or accuracy of any information on the Site, and makes no representation regarding the accuracy, completeness, or timeliness of such information. By using the Site, you assume all responsibility for and risk arising from use of and reliance upon any information on the Site. Commtrex disclaims all liability and responsibility arising from any reliance placed upon any information on the Site.

By providing any Third Party Materials to the Site, you grant Commtrex, its affiliates, service providers and respective licensees, successors, and assigns the right and license to use, reproduce, modify, perform, display, distribute and/or to otherwise disclose to third parties any such material for the purpose of conducting the work of Commtrex and effectively facilitating the exchange of information through the Site and the Commtrex Platform.

Commtrex has the right to take the following actions with regard to Third Party Materials:

(i) refuse to post any Third Party Materials at its sole discretion; (ii) take any action with regard to Third Party Materials that it deems appropriate, including but not limited to instances where Commtrex discovers the Third Party Materials are infringing the Intellectual Property or other rights of others, violate the Terms of Use or Content Standards, threaten the safety of individuals or the public or create liability for Commtrex; (iii) take appropriate legal action for any illegal or unauthorized use of the Site; (iv) disclose your identity to a party claiming that the Third Party Materials you provided violate that parties’ rights, including but not limited to its Intellectual Property rights; and (v) terminate or suspend access to all or part of the Site.

Commtrex also has the right to fully cooperate with any law enforcement authorities or court order requesting or directing use to disclose the identity or other information of anyone posting any materials on or through the Site. YOU WAIVE AND HOLD HARMLESS THE COMPANY AND ITS

AFFILIATES, LICENSEES, AND DEVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN DURING OR AS A RESULT OF ITS INVESTIGATIONS AND FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF THE INVESTIGATIONS.

9. Content Standards.

These Content Standards apply to Third Party Materials. Third Party Materials must in their entirety comply with all applicable federal, state, local, and international laws and regulations and must be accurate. Third Party Materials must not in any way: (i) violate the legal rights of others or give rise to civil or criminal liability under applicable laws or regulations, (ii) be likely to deceive others, (iii) infringe any patent, trademark, trade secret, copyright or other Intellectual Property or other rights of any other person, (iv) contain any material which is defamatory, obscene, indecent, abusive, offensive, harassing, violent, hateful or otherwise objectionable, (v) promote illegal activity or advocate or assist others in an unlawful act, (vi) impersonate any person, or misrepresent your identity or affiliation with any person or organization, and/or (vii) give the impression that they emanate from or are endorsed by us or any other person or entity, if that is not the case.

10. Submissions.

You are responsible for the information, opinions, messages, comments, photos, videos, graphics, sounds and other content or material that you submit, upload, post or otherwise make available on or through the Site (each a “**Submission**”) and through the services available in connection with this Site. You may not upload, post or otherwise make available on this Site any material protected by copyright, trademark, or any other proprietary right without the express permission of the owner of such copyright, trademark or other proprietary right owned by a third-party, and the burden of determining whether any material is protected by any such right is on you. You shall be solely liable for any damage resulting from any infringement of copyrights, trademarks, proprietary rights, violation of contract, privacy or publicity rights or any other harm resulting from any Submission that you make. You have full responsibility for each Submission you make, including its legality, reliability and appropriateness.

Unless otherwise explicitly stated herein or in Commtrex Privacy Policy, you agree that any Submission provided by you in connection with this Site is provided on a non-proprietary and non-confidential basis. You hereby grant to Commtrex a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up, worldwide license (including the right to sublicense through multiple tiers) to use, reproduce, process, adapt, publicly perform, publicly display, modify, prepare derivative works, publish, transmit and distribute each of your Submissions, or any portion thereof, in any form, medium or distribution method now known or hereafter existing, known or developed, and authorize others to use the Submissions. We may modify or adapt your Submissions in order to transmit, display or distribute them over computer networks and in various media and/or make changes to the Submissions as necessary to conform and adapt them to any requirements or limitations of any networks, devices, services or media. Commtrex agrees to use any personally identifiable information contained in any of your Submissions in accordance with the Commtrex Privacy Policy.

You agree to pay for all royalties, fees, damages and any other monies owing any person by reason of any Submissions posted by you to or through this Site.

When you provide Submissions you agree that those Submissions shall not be in violation of Section 2 No Unlawful or Prohibited Use. Those prohibitions do not require Commtrex to monitor, police or remove any Submissions or other information submitted by you or any other user.

You represent and warrant that you own or otherwise control all of the rights to the Submissions that you submit; that the Submissions are accurate; that use of the content you supply does not violate this policy and will not cause injury to, or violate the rights of, any person or entity; and that you will indemnify Commtrex for any and all claims resulting from your Submissions (including, without limitation, for reasonable attorneys' fees). Commtrex has the right (but not the obligation) to monitor and edit or remove any activity or content in its sole discretion, for any reason or no reason. Commtrex takes no responsibility and assumes no liability for any content submitted by you or any third party.

11. Links from the Site.

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

12. Representations.

You hereby make the following representations to Commtrex, which representations will be deemed to be repeated by you on each date on which you use the Platform (including as a Storage Provider, Shipper, Lessor, Lessee, Seller, Buyer, Rail Services Provider, Transloading Service Provider or Transloading Service User) or on each date on which you enter information in a Listing, Rail Services Location or Transload Pro on the Platform:

- a. You are duly organized and validly existing under the laws of the jurisdiction of your organization or incorporation and, if relevant under such laws, in good standing;
- b. You have the power to execute and deliver (i) the Platform Agreement (if any), (ii) any other documentation relating to such Platform Agreement to which you are a party or that is required to deliver and to perform your obligations under (x) the Platform Agreement, (y) these Terms of Use and (z) any agreements you have executed using the Site (each, a "Transaction Agreement"), and have taken all necessary action to authorize such execution, delivery and performance;
- c. Such execution, delivery and performance do not violate or conflict with any law applicable to you, any provision of your constitutional documents, any order or judgment of any court or other agency of government applicable to you or any of your assets or any contractual restriction binding on or affecting you or any of your assets;
- d. All governmental and other consents that are required to have been obtained by you with respect to this Agreement or any Transaction Agreements to which you are a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with;
- e. Your obligations under these Terms of Use, the Platform Agreement (if any) and any Transaction Agreements constitute your legal, valid and binding obligations, enforceable in accordance with their

respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law));

f. There is not pending or, to your knowledge, threatened against you, any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against you of these Terms of Use, the Platform Agreement (if any) or any Transaction Agreements to which you are a party or your ability to perform your obligations under these Terms of Use, the Platform Agreement (if any) or any Transaction Agreement; and

g. You are entering into the Platform Agreement (if any), and each Transaction, as principal and not as agent of any person or entity.

13. Confidentiality

a. "Confidential Information" means any non-public information disclosed by Commtrex under the Terms of Use or through the Site that you know or reasonably should know is confidential to Commtrex, including but not limited to the names or contact information of other parties using the Site known to you by using the Site, or details of any offers by you or other parties, as applicable, made or being made on the Site.

b. You agree to hold Confidential Information in the confidence and not to use or disclose such Confidential Information to any third party, except as otherwise expressly provided by the Terms of Use. You shall, however, be permitted to disclose relevant aspects of such Confidential Information to its officers, employees, or contractors, all on a need-to-know basis, on condition that such individuals or entities are under obligations of confidentiality that require them to protect the Confidential Information to the same extent as required under the Terms of Use. You shall employ reasonable steps to protect the Confidential Information from unauthorized or inadvertent disclosure or use, including, without limitation, the steps that it takes to protect its own information of like kind. You shall give Commtrex notice immediately upon learning of any unauthorized use or disclosure of the Commtrex's Confidential Information. The obligations set forth in this Section do not apply to any portion of the Confidential Information where you establishes that: (a) you already possessed the information at the time of disclosure, (b) you received the information in good faith on a non-confidential basis from a third party lawfully in possession thereof; (c) the information was publicly known or available at the time of your receipt or becomes publicly known or available other than by a breach of the Terms of Use or in violation of any confidentiality obligation applicable to such information; or (d) the information is independently developed by you without use of, or reference to, the Confidential Information. A disclosure of Confidential Information required by applicable statute or regulation or by judicial or administrative process shall not be considered a breach of this Section, provided that you notifies Commtrex of such requirements at least fifteen (15) days in advance so as to provide the discloser the opportunity to obtain such protective orders or confidential treatment or otherwise limit or prevent the disclosure.

c. Commtrex agrees that it will keep and maintain the confidentiality of, and not at any time divulge, disclose, communicate or reproduce, to or for any person, firm, corporation or any other entity in any manner whatsoever, your name or any details of any Transactions entered into by you using the Site in any manner that without your permission involves the identification of your role in such Transaction.

- d. The provisions of this Section 13 will survive indefinitely.
- e. Notwithstanding anything to the contrary in the Platform Agreement (if any) or these Terms of Use, you agree that Commtrex may disclose publicly, including through press releases, marketing materials or otherwise (the “Materials”), that Customer is a user of the Platform, and that Commtrex may depict, reproduce and incorporate Customer’s logos, trademarks, service marks, trade names, and copyrights in such Materials, in each case for the purpose of promoting and marketing the Platform.

14. Intellectual Property Rights; Non-Competition.

- a. To the extent Commtrex has any Intellectual Property rights in the Site, you acknowledge and agree that these rights are solely those of Commtrex and no one else, and that nothing herein prevents Commtrex from: (i) collecting, copying, maintaining, aggregating, compiling, processing, analyzing or otherwise using Transaction information on the Site for internal, regulatory, business or commercial purposes; (ii) performing data analytics of any kind with respect to any such data; (iii) producing compilations, interpretations, presentations, calculations and other processed output based on such data including, without limitation, pricing information by type and term and/or price indexes of any of the same; and (iv) communicating information to potential lessors, lessees, sellers, buyers, or brokers of products; provided, however, that no such use by Commtrex shall violate Commtrex’s confidentiality obligations under Section 13 above.
- b. You agree that under no circumstance will you replicate or seek to replicate the Site, or the functions and uses thereof, by creating or maintaining, or seeking to create or maintain, an internet-based electronic platform, interface or forum that is similar to the Site in content, form or function, including, without limitation, any such platform, interface or forum that would be used by you and/or third parties to facilitate transactions similar to Transactions.
- c. You agree that Commtrex owns all data collected through the Site.
- d. For purposes of these Terms of Use, “Intellectual Property” shall mean any and all of the following in any jurisdiction throughout the world: (i) trademarks and service marks, including all applications and registrations and the goodwill connected with the use of and symbolized by the foregoing; (ii) copyrights, including all applications and registrations related to the foregoing; (iii) trade secrets and confidential know-how, including proprietary information, customer lists, technical information, data, process technology, plans, inventions and discoveries, whether or not patentable; (iv) patents and patent applications; (v) internet domain name registrations; and (vi) other intellectual property and related proprietary rights, interests and protections, whether registered or unregistered.
- e. If you send or transmit any communications, comments, questions, suggestions, or related materials to Commtrex, whether by letter, email, telephone, or otherwise (collectively, “**Feedback**”), suggesting or recommending changes to the Site, any services offered through the Site or Materials, including, without limitation, new features or functionality relating thereto, all such Feedback is, and will be treated as, non-confidential and non-proprietary. Except as prohibited by applicable law, you hereby assign all right, title, and interest in, and Commtrex is free to use, without any attribution or compensation to you, any ideas, know-how, concepts, techniques, or other intellectual property and proprietary rights contained in the Feedback, whether or not patentable, for any purpose whatsoever, including but not limited to, developing, manufacturing, having manufactured, licensing, marketing, and selling, directly or indirectly, products and services using such Feedback. Where the foregoing assignment is prohibited by

law, you hereby grant Us an exclusive, transferable, worldwide, royalty-free, fully paid up license (including the right to sublicense) to use and exploit all Feedback as Commtrex may determine in our sole discretion. Notwithstanding the foregoing, you understand and agree that Commtrex is not obligated to use, display, reproduce, or distribute any such ideas, know-how, concepts, or techniques contained in the Feedback, and you have no right to compel such use, display, reproduction, or distribution.

f. The provisions of this Section 14 will survive indefinitely.

15. Changes to Terms of Use.

Commtrex reserves all rights to modify, delete or append portions of the Terms of Use, the Privacy Policy and any other terms and conditions at any time and Customer will assent to such updates. We recommend you review the Terms of Use and Privacy Policy from time to time during your visits to the Site and note any changes before your continued use of the Site. Each time you access the Site, you agree to be bound by these Terms of Use then in effect. Accordingly, your continued use of the Site after we post any revisions of the Terms of Use and Privacy Policy constitutes your acceptance of the revised terms and conditions.

16. Disclaimer of Warranties and Limitation of Liability.

Commtrex will not be responsible for any losses or damages to Rail Assets or any cargo, or any other losses, claims or damages, arising from any Transaction to which you are a party. Commtrex shall not be responsible if for any reason all or any part of the Site is unavailable at any time or for any period. From time to time and without liability, Commtrex may restrict access to some parts of the Site, or the entire Site.

You understand that Commtrex cannot and does not guarantee or warrant that files available for downloading from the internet or the Site will be free of viruses or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to the Site for any reconstruction of any lost data.

COMMTREX WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE SITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE SITE OR YOUR DOWNLOADING OF ANY MATERIAL POSTED ON THE SITE, OR ON ANY WEBSITE LINKED TO IT.

YOUR USE OF THE SITE AND ALL INFORMATION, CONTENT, MATERIALS, PRODUCTS (INCLUDING SOFTWARE) AND SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SITE ARE PROVIDED BY COMMTREX ON AN “AS IS” AND “AS AVAILABLE” BASIS. NEITHER COMMTREX NOR ANY PERSON ASSOCIATED WITH COMMTREX MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE SITE OR THE INFORMATION, CONTENT, MATERIALS, PRODUCTS (INCLUDING SOFTWARE) OR SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SITE. WITHOUT LIMITING THE FOREGOING, NEITHER COMMTREX NOR ANYONE ASSOCIATED WITH COMMTREX REPRESENTS OR WARRANTS THAT THE SITE, ITS CONTENT OR ANY SERVICES OR ITEMS

OBTAINED THROUGH THE SITE WILL BE ACCURATE, RELIABLE, ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT THE SITE OR THE SERVER THAT MAKES IT AVAILABLE OR E-MAIL SENT FROM COMMTREX ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT THE SITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE SITE WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITE IS AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, COMMTREX DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

IN NO EVENT WILL COMMTREX OR ITS LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH A PLATFORM AGREEMENT, THESE TERMS OF USE, THE USE OF THE SITE OR FROM ANY INFORMATION, CONTENT, MATERIALS, PRODUCTS (INCLUDING SOFTWARE) OR SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SITE, INCLUDING, BUT NOT LIMITED TO INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES, WHICH CONSEQUENTIAL DAMAGES INCLUDE, BUT ARE NOT

LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE. IN NO EVENT WILL COMMTREX'S AGGREGATE LIABILITY, ARISING OUT OF OR RELATING TO THESE TERMS OR THE PLATFORM OR YOUR USE THEREOF, HOWEVER ARISING, UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EXCEED ONE HUNDRED DOLLARS (\$100.00), REGARDLESS OF WHETHER COMMTREX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY SET FORTH IN THESE TERMS.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

17. Notice Regarding Copyright Agent.

Commtrex respects the Intellectual Property rights of others and requests that users of the Site do the same. If you believe that any content on the Site violates or infringes upon your Intellectual Property rights pursuant to Title 17, United States Code, Section 512, you may provide a written notice of claimed copyright infringement to the designated Copyright Agent (as set forth below) for the Site and such written notice must contain the following:

- a. Contain your physical or electronic signature;
- b. Identify the copyrighted work or other intellectual property alleged to have been infringed;

- c. Identify the allegedly infringing material in a sufficiently precise manner to allow us to locate that material;
- d. Contain adequate information by which we can contact you (including postal address, telephone number, and e-mail address);
- e. Contain a statement that you have a good faith belief that use of the copyrighted material or other intellectual property is not authorized by the owner, the owner's agent or the law;
- f. Contain a statement that the information in the written notice is accurate; and
- g. Contain statement, under penalty of perjury, that you are authorized to act on behalf of the copyright or other intellectual property right owner.
- h. Copyright infringement claims and notices should include "Notice of Alleged Service Provider Infringement" in the title/subject and should be sent to:

Commtrex, Inc.

2245 Texas Street, Suite 300

Sugar Land, Texas 77479

Email: support@commtrex.com

Submitting a DMCA Counter-Notification

We will notify you that we have removed or disabled access to copyright-protected material that you provided, if such removal is pursuant to a validly received DMCA take-down notice. In response, you may provide Our Copyright Agent with a written counter-notification that includes the following information:

- a. Your physical or electronic signature;
- b. Identification of the material that has been removed or to which access has been disabled, and the location at which the material appeared before it was removed or access to it was disabled;
- c. A statement from you under the penalty of perjury, that you have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled; and
- d. Your name, physical address and telephone number, and a statement that you consent to the jurisdiction of a court for the judicial district in which your physical address is located, or if your physical address is outside of the United States, for any judicial district in which we may be located, and that you will accept service of process from the person who provided notification of allegedly infringing material or an agent of such person.

Termination of Repeat Infringers

We reserve the right, in our sole discretion, to terminate the account or access of any user of this Site or the service who is the subject of repeated DMCA or other infringement notifications.

18. Indemnification.

You agree to indemnify, defend, and hold Commtrex and its officers, directors, employees, affiliates, agents, licensors, and suppliers harmless from and against all claims, losses, expenses, damages, and costs, including reasonable attorneys' fees, resulting from (i) any breach of a Platform Agreement, these Terms of Use, the Commtrex Privacy Policy, or applicable law by you, or (ii) any third party claim against Commtrex in connection with or related to the performance by you of your obligations under any Transaction or your failure to perform such obligations.

19. Limitation on Time to File Claims.

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

20. Site Policies, Modification, and Waiver and Severability.

Please review our other policies posted on this Site. These policies also govern your visit to the Site. We reserve the right to make changes to the Site, policies, and these Terms of Use at any time. No waiver by Commtrex of any term or condition set forth in these Terms of Use shall be deemed a further or continuing waiver of any other term or condition, and any failure of Commtrex to assert a right or provision under these Terms of Use shall not constitute a waiver of such right or provision. If any of these conditions shall be deemed invalid, void, or for any reason unenforceable, that condition shall be deemed severable and shall not affect the validity and enforceability of any remaining condition.

21. Language; Governing Law.

This Site is controlled and operated by Commtrex from its offices in the United States. The parties hereto have expressly required that these Terms of Use and all documents and notices relating thereto be drafted in the English language. All sales and payments of fees will be in US Dollars. The Federal Arbitration Act, Texas state law and applicable U.S. federal law, without regard to the choice or conflicts of law provisions, will govern these Terms of Use. Foreign laws do not apply. The United Nations on Contracts for the International Sale of Goods and any laws based on the Uniform Computer Information Transactions Act (UCITA) shall not apply to these Terms of Use. Except for Disputes subject to arbitration as described below, any disputes relating to these Terms of Use or this Site will be heard in the courts located in Fort Bend County in the State of Texas. If any of these Terms of Use is found to be inconsistent with applicable law, then such term shall be interpreted to reflect the intentions of the parties, and no other terms will be modified. The proprietary rights, disclaimer of warranties, representations made by you, indemnities, limitations of liability and general provisions shall survive any termination of these Terms of Use.

22. Dispute Resolution and Arbitration; Class Action Waiver.

Please read the following (this "**Provision**") carefully. It affects your rights.

Most customer concerns can be resolved quickly and to a customer's satisfaction by contacting us at support@commtrex.com. This Provision facilitates the prompt and efficient resolution of any disputes that may arise between you and Commtrex. Arbitration is a form of private dispute resolution in which persons with a dispute waive their rights to file a lawsuit, to proceed in court and to a jury trial, and instead

submit their disputes to a neutral third person (or arbitrator) for a binding decision. You have the right to opt-out of this Provision (as explained below), which means you would retain your right to litigate your disputes in a court, either before a judge or jury.

Please read this Provision carefully. It provides that all Disputes between you and Commtrex shall be resolved by binding arbitration. Arbitration replaces the right to go to court. In the absence of this arbitration agreement, you may otherwise have a right or opportunity to bring claims in a court, before a judge or jury, and/or to participate in or be represented in a case filed in court by others (including, but not limited to, class actions). Except as otherwise provided, entering into these Terms of Use constitutes a waiver of your right to litigate claims and all opportunity to be heard by a judge or jury. There is no judge or jury in arbitration, and court review of an arbitration award is limited. The arbitrator must follow these Terms of Use and can award the same damages and relief as a court (including attorney's fees).

For the purpose of this Provision, "Commtrex" means Commtrex, Inc. and its parents, subsidiary, and affiliate companies, and each of their respective officers, directors, employees, and agents. The term "Dispute" means any dispute, claim, or controversy between you and Commtrex regarding, arising out of or relating to any aspect of your relationship with Commtrex, whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, or negligence), or any other legal or equitable cause of action or claim for relief, and includes the validity, enforceability or scope of this Provision (with the exception of the enforceability of the Class Action Waiver clause below). "Dispute" is to be given the broadest possible meaning that will be enforced, and shall include any claims against other parties relating to services or products provided or billed to you (such as Commtrex's licensors, suppliers, dealers or third-party vendors) whenever you also assert claims against us in the same proceeding.

WE EACH AGREE THAT, EXCEPT AS PROVIDED BELOW, ANY AND ALL DISPUTES, AS DEFINED ABOVE, WHETHER PRESENTLY IN EXISTENCE OR BASED ON ACTS OR OMISSIONS IN THE PAST OR IN THE FUTURE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION RATHER THAN IN COURT IN ACCORDANCE WITH THIS PROVISION.

Pre-Arbitration Claim Resolution

For all Disputes, whether pursued in court or arbitration, you must first give Commtrex an opportunity to resolve the Dispute. You must commence this process by mailing written notification to Commtrex, Inc., 2245 Texas Street, Suite 300, Sugar Land, Texas 77479. That written notification must include (1) your name, (2) your address, (3) a written description of your Claim, and (4) a description of the specific relief you seek. If Commtrex does not resolve the Dispute within 45 days after it receives your written notification, you may pursue your Dispute in arbitration. You may pursue your Dispute in a court only under the circumstances described below.

Exclusions from Arbitration/Right to Opt Out

Notwithstanding the above, you or Commtrex may choose to pursue a Dispute in court and not by arbitration if (a) the Dispute qualifies, it may be initiated in small claims court; or (b) YOU OPT-OUT OF THESE ARBITRATION PROCEDURES WITHIN 30 DAYS FROM THE DATE THAT YOU FIRST CONSENT TO THESE TERMS OF USE (the "**Opt-Out Deadline**"). You may opt out of this Provision by mailing written notification to Commtrex, Inc., 2245 Texas Street, Suite 300, Sugar Land, Texas 77479.

Your written notification must include (1) your name, (2) your address, and (3) a clear statement that you do not wish to resolve disputes with Commtrex through arbitration. Your decision to opt-out of this Arbitration Provision will have no adverse effect on your relationship with Commtrex. Any opt-out request received after the Opt-Out Deadline will not be valid and you must pursue your Dispute in arbitration or small claims court.

Arbitration Procedures

If this Provision applies and the Dispute is not resolved as provided above (Pre-Arbitration Claim Resolution) either you or Commtrex may initiate arbitration proceedings. The American Arbitration Association (“AAA”), www.adr.org, or JAMS, www.jamsadr.com, will arbitrate all Disputes, and the arbitration will be conducted before a single arbitrator. The arbitration shall be commenced as an individual arbitration only, and shall in no event be commenced as a class arbitration or a consolidated or representative action or arbitration. All issues shall be for the arbitrator to decide, including the scope of this Provision.

For arbitration before AAA, for Disputes of less than \$75,000, the AAA’s Supplementary Procedures for Consumer-Related Disputes will apply; for Disputes involving \$75,000 or more, the AAA’s Commercial Arbitration Rules will apply. In either instance, the AAA’s Optional Rules For Emergency Measures Of Protection shall apply. The AAA rules are available at www.adr.org or by calling 1-800-778-7879. For arbitration before JAMS, the JAMS Comprehensive Arbitration Rules & Procedures and the JAMS Recommended Arbitration Discovery Protocols For Domestic, Commercial Cases will apply. The JAMS rules are available at www.jamsadr.com or by calling 1-800-352-5267. This Provision governs in the event it conflicts with the applicable arbitration rules. Under no circumstances will class action or representative action procedures or rules apply to the arbitration.

Because the Site and these Terms of Use concern interstate commerce, the Federal Arbitration Act (“FAA”) governs the arbitration of all Disputes. However, the arbitrator will apply applicable substantive law consistent with the FAA and the applicable statute of limitations or condition precedent to suit.

Arbitration Award – The arbitrator may award on an individual basis any relief that would be available pursuant to applicable law, and will not have the power to award relief to, against or for the benefit of any person who is not a party to the proceeding. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party or if required by applicable law. Such award will be final and binding on the parties, except for any right of appeal provided by the FAA or other applicable law, and may be entered in any court having jurisdiction over the parties for purposes of enforcement.

Location of Arbitration – You or Commtrex may initiate arbitration in either Houston, Texas or the federal judicial district that includes your billing address.

Payment of Arbitration Fees and Costs – Commtrex will pay all arbitration filing fees and AAA or JAMS hearing fees and any arbitrator's hearing fees, costs and expenses upon your written request to the arbitrator given at or before the first evidentiary hearing in the arbitration. You are responsible for all additional fees and costs that you incur in the arbitration, including, but not limited to, attorneys or expert witnesses. Fees and costs may be awarded as provided pursuant to applicable law. In addition to any rights to recover fees and costs under applicable law, if you provide notice and negotiate in good faith with Commtrex as provided in the section above titled “Pre-Arbitration Claim Resolution” and the arbitrator concludes that

you are the prevailing party in the arbitration, you will be entitled to recover reasonable attorney's fees and costs as determined by the arbitrator.

Class Action Waiver

Except as otherwise provided in this Provision, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a class or representative proceeding or claims (such as a class action, consolidated action, representative action, or private attorney general action) unless both you and Commtrex specifically agree to do so in writing following initiation of the arbitration. If you choose to pursue your Dispute in court by opting out of the Arbitration Provision, as specified above, this Class Action Waiver will not apply to you. Neither you, nor any other user of the Site can be a class representative, class member, or otherwise participate in a class, consolidated, or representative proceeding without having complied with the opt-out requirements above.

Jury Waiver

You understand and agree that by entering into these Terms of Use you and Commtrex are each waiving the right to a jury trial or a trial before a judge in a public court. In the absence of this Provision, you and Commtrex might otherwise have had a right or opportunity to bring Disputes in a court, before a judge or jury, and/or to participate or be represented in a case filed in court by others (including class actions). Except as otherwise provided below, those rights are waived. Other rights that you would have if you went to court, such as the right to appeal and to certain types of discovery, may be more limited or may also be waived.

Severability

If any clause within this Provision (other than the Class Action Waiver clause above) is found to be illegal or unenforceable, that clause will be severed from this Provision, and the remainder of this Provision will be given full force and effect. If the Class Action Waiver clause is found to be illegal or unenforceable, this entire Provision will be unenforceable and the Dispute will be decided by a court.

Continuation

This Provision shall survive the termination of your service with Commtrex or its affiliates. Notwithstanding any provision in these Terms of Use to the contrary, we agree that if Commtrex makes any change to this Provision (other than a change to the Notice Address), you may reject any such change and require Commtrex to adhere to the present language in this Provision if a dispute between us arises.

23. Google Maps Pass-Through Terms of Service

The Site include and make use of certain functionality and services provided by third-parties that allow us to include maps, geocoding, places and other Content from Google, Inc. (“**Google**”) as part of the Site (the “**Geo-Location Services**”). Your use of the Geo-Location Services is subject to Google's then current Google Maps/Google Earth Additional Terms of Service https://maps.google.com/help/terms_maps.html (including the Google Privacy Policy <https://www.google.com/intl/ALL/policies/privacy/index.html>) and by using the Geo-Location Services, you are agreeing to be bound by Google's Terms of Service.

24. Mobile Applications.

Commtrex may make available Mobile Applications to access the Site via a mobile device. To use the Mobile Application you must have a mobile device that is compatible with the mobile service. Commtrex does not warrant that the Mobile Application will be compatible with your mobile device. Commtrex hereby grants to you a non-exclusive, non-transferable, revocable license to use an object code copy of the Mobile Application for one registered account on one mobile device owned or leased solely by you, for your personal use. You may not: (i) modify, disassemble, decompile or reverse engineer the Mobile Application, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the Mobile Application to any third-party or use the Mobile Application to provide time sharing or similar services for any third-party; (iii) make any copies of the Mobile Application; (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of the Mobile Application, features that prevent or restrict use or copying of any content accessible through the Mobile Application, or features that enforce limitations on use of the Mobile Application; or (v) delete the copyright and other proprietary rights notices on the Mobile Application. You acknowledge that Commtrex may from time to time issue upgraded versions of the Mobile Application, and may automatically electronically upgrade the version of the Mobile Application that you are using on your mobile device. You consent to such automatic upgrading on your mobile device, and agree that these Terms of Use will apply to all such upgrades. The foregoing license grant is not a sale of the Mobile Application or any copy thereof, and Commtrex and its third-party licensors or suppliers retain all right, title, and interest in and to the Mobile Application (and any copy of the Mobile Application). Standard carrier data charges may apply to your use of the Mobile Application.

The following additional terms and conditions apply with respect to any Mobile Application that Commtrex provides to you designed for use on an Apple iOS-powered mobile device (an “**iOS App**”):

- a. You acknowledge that these Terms of Use are between you and Commtrex only, and not with Apple, Inc. (“**Apple**”).
- b. Your use of Commtrex’s iOS App must comply with Apple’s then-current App Store Terms of Service.
- c. Commtrex, and not Apple, are solely responsible for our iOS App and the Services and Content available thereon. You acknowledge that Apple has no obligation to provide maintenance and support services with respect to our iOS App. To the maximum extent permitted by applicable law, Apple will have no warranty obligation whatsoever with respect to our iOS App.
- d. You agree that Commtrex, and not Apple, are responsible for addressing any claims by you or any third-party relating to our iOS App or your possession and/or use of our iOS App, including, but not limited to: (i) product liability claims; (ii) any claim that the iOS App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation, and all such claims are governed solely by these Terms of Use and any law applicable to us as provider of the iOS App.
- e. You agree that Commtrex, and not Apple, shall be responsible, to the extent required by these Terms of Use, for the investigation, defense, settlement and discharge of any third-party intellectual property infringement claim related to our iOS App or your possession and use of our iOS App.
- f. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) You are not listed on any U.S. Government list of prohibited or restricted parties.
- g. You agree to comply with all applicable third-party terms of agreement when using our iOS App (e.g., you must not be in violation of your wireless data service terms of agreement when using the iOS App).

h. The parties agree that Apple and Apple's subsidiaries are third-party beneficiaries to these Terms of Use as they relate to your license of Commtrex's iOS App. Upon your acceptance of these Terms of Use, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms of Use against you as they relate to your license of the iOS App as a third-party beneficiary thereof.

The following additional terms and conditions apply with respect to any Mobile Application that Commtrex provides to you designed for use on an Android-powered mobile device (an "**Android App**"):

- a. You acknowledge that these Terms of Use are between you and Commtrex only, and not with Google, Inc. ("**Google**").
- b. Your use of Commtrex's Android App must comply with Google's then-current Android Market Terms of Service.
- c. Google is only a provider of the Android Market where you obtained the Android App. Commtrex, and not Google, are solely responsible for Commtrex's Android App and the Services and Content available thereon. Google has no obligation or liability to you with respect to Commtrex's Android App or these Terms of Use.
- d. You acknowledge and agree that Google is a third-party beneficiary to the Terms of Use as they relate to Commtrex's Android App.

The following additional terms and conditions apply with respect to any Mobile Application that Commtrex provides to you designed for use on an Android-powered mobile device and obtained from the Amazon App Store (an "**Amazon Android App**"):

- a. You acknowledge that these Terms of Use are between you and Commtrex only, and not with Amazon.com, Inc. ("**Amazon**").
- b. Information that Commtrex collects from you or your device are subject to these Terms of Use and the Privacy Policy, and will not be subject to the Amazon.com Privacy Notice.
- c. Amazon has no obligation or liability to you with respect to Commtrex's Amazon Android App and the Services and Content available thereon or these Terms of Use. Commtrex, and not Amazon, are solely responsible for Commtrex's Amazon Android App and the Services and Content available thereon. For the avoidance of doubt, the Amazon Android App does not include any software that you may need to install on your mobile device in order to download applications from the Amazon App Store (the "Appstore Software"). The Appstore Software is licensed to you by Amazon pursuant to the terms of the then current Amazon Appstore for Android Terms of Use.

25. Notices; Contact Information.

Any notice required under a Platform Agreement or these Terms of Use may be given as follows to the address or number or email address provided to the Platform during the registration process (as applicable) and will be deemed effective as indicated: (i) if sent by certified or registered mail or the equivalent (return receipt requested), on the date it is delivered or delivery is attempted; (ii) if sent by facsimile, on the date it is received by a responsible employee of the recipient in legible form; (iii) if sent by email, on the date it is delivered, unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a day other than a Saturday or Sunday on which commercial banks are open for business in New York (a "**Business Day**"), or that notice is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication will be deemed given and effective on the first following day that is a Business Day. You may, at any time by written notice to Commtrex, change the address, telephone number, facsimile number or email details at which notices are to be given to you.

If you have any questions about these Terms of Use, Privacy Policy or about the content, information, or services on this Site, please visit our Contact Us page and use any of the methods described on that page found at www.commtrex.com.

26. Miscellaneous.

All remedies herein expressly conferred upon you or Commtrex will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon the applicable party, and the exercise by you or Commtrex of any one remedy will not preclude the exercise of any other remedy. No failure or delay by Commtrex in exercising any right, power or privilege in respect of these Terms of Use or a Platform Agreement will be presumed to operate as a waiver thereof, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise of that right, power or privilege or the exercise of any other right, power or privilege. Should any provision of these Terms of Use or a Platform Agreement for any reason be declared invalid or unenforceable by final and non-appealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions, and the remaining portions will remain in full force and effect as if the Terms of Use and/or a Platform Agreement, as applicable, had been executed without the invalid portion. In the event any provision of these Terms of Use or a Platform Agreement is declared invalid, you and Commtrex may, but are not required to, renegotiate to restore these Terms of Use or a Platform Agreement, as applicable, as near as possible to its original intent and effect. The proprietary rights, disclaimer of warranties, representations made by you, indemnities, limitations of liability and general provisions shall survive any termination of these Terms of Use. The headings used herein and in a Platform Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting these Terms of Use or such Platform Agreement, as applicable. The Terms of Use, Platform Agreement (if any) and Privacy Policy constitutes the entire agreement between you and Commtrex relating to the subject matter hereof and supersedes any other agreements, written or oral, between you and Commtrex concerning such subject matter. In the event of any inconsistency between the provisions of any Transaction Agreement and these Terms of Use or a Platform Agreement, the Terms of Use or the Platform Agreement, as applicable, will prevail.