

# **1. User Acknowledgement, Acceptance, and Warranties**

These terms and conditions of use for Indieats constitute a legal agreement and are entered into by and between you (the “User”) and Indieats Inc. (“Company,” “we,” “us,” “our”, together with you the “Parties” and each a “Party”). The following terms and conditions, together with any documents and/or additional terms they expressly incorporate by reference (collectively, these “Terms and Conditions” or the “Agreement”), govern your access to and use, including any content, functionality, and Services offered on or through our Applications, as defined herein.

BY USING THE SERVICES OR BY CLICKING TO ACCEPT THE TERMS AND CONDITIONS, YOU ACCEPT AND AGREE TO BE BOUND AND COMPLY WITH THESE TERMS AND CONDITIONS AND OUR PRIVACY POLICY, INCORPORATED HEREIN BY REFERENCE. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS OR THE PRIVACY POLICY, YOU MUST NOT ACCESS OR USE THE SERVICES.

Each of the Parties agrees that this Agreement is the complete and exclusive statement of the agreement between the Parties, which supersedes all other proposals, documents, writings, communications, or prior agreements, whether oral or written, between the Parties relating to the subject matter of this Agreement.

You warrant and represent that you are of legal age in the jurisdiction in which you reside to form a binding contract with Indieats (the “Minimum Age”).

You warrant and represent that you have the authority to enter into the Agreement personally and/or, if applicable, on behalf of any organization on whose behalf you have created an account and to bind such organization to the Agreement and to perform its obligations hereunder;

## **2. Modifications**

Indieats reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Services at any time, effective upon posting of an updated version of this Agreement on the Services. You are responsible for regularly reviewing this Agreement. Continued use of the Services after any such changes shall constitute your consent to such changes.

## **3. Additional Terms**

Any personal information you provide to us (in any capacity) via our Applications, over the telephone or otherwise may be collected, stored, processed and used in accordance with our Privacy Policy. By continuing to use our Services you consent to such use of your personal information.

Certain additional and supplemental terms and provisions may apply to certain features of our Services and are incorporated herein by this reference to the extent permitted by the applicable laws.

## **4. Rules and Prohibitions**

You shall not use the Services for any purposes beyond the scope of the access explicitly granted in this Agreement. You shall not at any time, directly or indirectly: (i) copy, modify, or create derivative works of the Services or documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or related documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or related documentation; or (v) use the Services or related documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

## **5. The Services and Relation to Independent Third-Party Contractors**

The “Services” constitute a technology platform that enables users of Indieats mobile applications or websites (“Applications”, and each, an “Application”) to arrange and schedule transportation and/or logistics services with independent third party providers of such services, including independent third party transportation providers and independent third party logistics providers under agreement with Indieats or Indieats affiliates (“Independent Contractors”); and independent food service providers and others that provide the products offered through the Services (“Merchants”, together with the Independent Contractors the “Third Party Providers”). Unless otherwise agreed by Indieats in a separate written agreement with you, the Services are made available solely for your personal, noncommercial use. Indieats does not itself provide transportation, logistics, or food services.

## **6. User Account**

You may be required to register for an account to use parts of the Services (“Account”).

If you are so required, you must provide accurate, current, and complete information during the registration process and at all other times when you use the Services, and to update the information to keep it accurate, current, and complete.

If you register an Account for use of the Application, you will create a password while completing the registration process. You are responsible for maintaining the confidentiality of the password and account and other account or service codes issued to you, and you are fully responsible for all activities that occur under your password or account. You agree not to use the

Account or password of another registered user without permission or to disclose your password to any third party. You agree to immediately notify Indieats of any unauthorized use of your password or account or any other breach of security. Indieats shall not be liable for any loss or damage arising from your failure to comply with this section.

## **7. Intellectual Property and User Content**

The Services enable you to (i) create, upload, send, receive, store, and share content, such as text, photos, audio, video or other materials and information, including, but not limited to:

- a) ideas, suggestions, and/or proposals to Indieats (“Feedback”)
- b) ratings and reviews of Merchants, Independent Contractors, Indieats, or other businesses (“Reviews”)

on or through the Services (“User Content”); and (ii) access and view User Content and any content that Indieats itself makes available on or through the Services, including proprietary Indieats content and any content licensed or authorized for use by or through Indieats from a third party (“Indieats Content” and together with User Content, “Collective Content”).

The Services, Indieats Content, and User Content may in its entirety or in part be protected by copyright, trademark, and/or other laws of Canada and other countries. You acknowledge and agree that the Services and Indieats Content, including all associated intellectual property rights, are the exclusive property of Indieats and/or its licensors or authorizing third-parties. You will not remove, alter or obscure any copyright, trademark, or other proprietary rights notices incorporated in or accompanying the Services, Indieats Content or User Content. All trademarks, service marks, logos, trade names, and any other source identifiers of Indieats used on or in connection with the Services and Indieats Content are trademarks or registered trademarks of Indieats in Canada and abroad. Trademarks, service marks, logos, trade names and any other proprietary designations of third parties used on or in connection with the Services, Indieats Content, and/or Collective Content are used for identification purposes only and may be the property of their respective owners.

You will not use, copy, adapt, modify, prepare derivative works of, distribute, license, sell, transfer, publicly display, publicly perform, transmit, broadcast or otherwise exploit the Services or Collective Content, except to the extent you are the legal owner of certain User Content or as expressly permitted in this Agreement. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Indieats or its licensors, except for the licenses and rights expressly granted in this Agreement.

Subject to your compliance with this Agreement, Indieats grants you a limited, non-exclusive, non-sublicensable, revocable, non-transferable license to access and view any Collective Content made available on or through the Services and accessible to you, solely for your personal and non-commercial use.

You retain all rights to such User Content that you post, share or log in the Services. By providing your User Content to the Services, you (a) grant Indieats a non-exclusive, transferable, sublicensable, worldwide, royalty-free license to use, copy, modify, publicly display, publicly perform and distribute your User Content in connection with providing and operating the Services and for Indieats' promotional purposes, subject to the Privacy Policy; and (b) you agree to indemnify Indieats and its affiliates, directors, officers, and employees and hold them harmless from any and all claims and expenses, including attorneys' fees, arising from the media and/or your failure to comply with the terms described in this Agreement.

You are solely responsible for all User Content that you make available on or through the Services. Accordingly, you represent and warrant that: (i) you either are the sole and exclusive owner of all User Content that you make available on or through the Services or you have all rights, licenses, consents and releases that are necessary to grant to Indieats the rights in and to such User Content, as contemplated under this Agreement; and (ii) neither the User Content nor your posting, uploading, publication, submission or transmittal of the User Content or Indieats' use of the User Content (or any portion thereof) as contemplated under these Terms will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other proprietary or intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

You will not post, upload, publish, submit or transmit any User Content that: (i) is fraudulent, false, misleading (directly or by omission or failure to update information) or deceptive; (ii) is defamatory, libelous, obscene, pornographic, vulgar or offensive; (iii) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (iv) is violent or threatening or promotes violence or actions that are threatening to any other person or animal; or (v) promotes illegal or harmful activities or substances.

Indieats reserves the right to review all User Content prior to submission to the Services and to remove any media for any reason, at any time, without prior notice, at our sole discretion.

## **8. Communications with Indieats**

By entering into this Agreement or using Services, you agree to receive communications from Indieats, including via e-mail, text message, calls, and push notifications. You agree that texts, calls or prerecorded messages may be generated by automatic telephone dialing systems. Email communications from us and our affiliated companies may include but are not limited to: operational communications concerning your Account or the use of the Services, updates concerning new and existing features on the Services, communications concerning promotions run by us or our third-party partners, and news concerning Indieats and industry developments. Text message communications from Indieats and its affiliated companies may include operational communications concerning your Account or the use of the Services. Standard text messaging charges applied by your cell phone carrier will apply to text messages that we send.

IF YOU WISH TO OPT OUT OF PROMOTIONAL EMAILS, YOU CAN UNSUBSCRIBE FROM OUR PROMOTIONAL EMAIL LIST BY FOLLOWING THE UNSUBSCRIBE OPTIONS IN THE PROMOTIONAL EMAIL ITSELF. IF YOU WISH TO OPT OUT OF ALL TEXTS OR CALLS FROM US (INCLUDING OPERATIONAL OR TRANSACTIONAL TEXTS OR CALLS), YOU CAN EMAIL US AT: [help@indieats.ca](mailto:help@indieats.ca). HOWEVER, YOU ACKNOWLEDGE THAT OPTING OUT OF RECEIVING ALL TEXTS MAY IMPACT YOUR USE OF THE SERVICES OR RELATED SERVICES.

## **9. E-Sign Disclosure**

You agree that we may use an electronic record, including e-mail, to make and keep this Agreement. You need not agree to use an electronic record. By a written notice to Indieats, you have the right to withdraw your consent to have a record of this Agreement provided or made available to you in electronic form, but that does not permit you to withdraw your consent to the Agreement itself once it has been signed.

## **10. Payment Terms, Refunds, and Credits/Promotions**

You acknowledge and understand that:

- a. Any prices displayed on the Services may differ from the prices of the same goods or services made available at the Merchant directly or through other third-parties. Indieats makes no warranty or representation about such prices.
- b. Indieats has no obligation to itemize its costs, profits or margins when displaying such prices;
- c. Indieats reserves the right to change such prices at any time, at its discretion.
- d. You shall be responsible for all transaction taxes, including goods and services/harmonized sales taxes, on the Services.

Any payments made by you for completed and delivered orders are final and non-refundable. Indieats has no obligation to provide refunds or credits, but may grant them, in each case in Indieats sole discretion.

Indieats, at its sole discretion, may make promotional offers, including granting Indieats credits, to any user. Any promotional offers so offered may only be used in a lawful manner and in accordance with these Terms and Conditions as well the additional terms of each offer, if any, solely by the recipient user. Under no circumstances will any credit issued by Indieats have any monetary value or be exchangeable or exchanged for cash, including but not limited before, at or after the termination of Services. Credits may not be assigned, transferred, sold or assigned to any other account, and may only be applied to the account to which they were provided. All credits shall expire pursuant to the terms of purchase or provision by Indieats. Likewise, to the extent that Indieats offers discounts or promotions, such discounts and/or promotions shall only be available at the time of the Customer's purchase of the Services to which the discount or

promotion applies. Such discounts and/or promotions shall not be available unless requested at the time of purchase and may not be used cumulatively or retroactively. You acknowledge and agree that in the event that Indieats offers or provides discounts or promotional services for Services or an Account, Indieats may terminate or modify the scope of such promotional services at any time without notice, unless Indieats specifically agrees otherwise in writing in connection with its provision of the discounts or promotional services.

## **11. Arbitration**

Any dispute, controversy or claim arising out of or relating to this contract including any question regarding its existence, interpretation, validity, breach or termination or the business relationship created by it shall be referred to and finally resolved by arbitration under the Canadian Arbitration Association Arbitration Rules (the “ADRIC Rules”). The parties further agree that:

- a. The place of the arbitration shall be the City of Greater Sudbury, Ontario, Canada.
- b. A sole arbitrator shall be appointed by agreement of the parties. If the parties have not agreed on the appointment of a sole arbitrator within 30 days of the respondent’s receipt of a notice of arbitration, then, at the request of one of the parties, a sole arbitrator shall be appointed by the Canadian Arbitration Association pursuant to the ADRIC Rules.
- c. The language of the arbitration shall be English.
- d. An oral hearing need not be held.
- e. There will be no appeal from the decision of the arbitrator on questions of fact, law, or mixed fact and law.
- f. This Agreement, including this Section 11 shall be governed by the substantive law of the Province of Ontario and the federal laws of Canada applicable therein, exclusive of any conflict-of-laws rules that could require the application of any other law.

In addition to, and without limiting the foregoing, Each party acknowledges and agrees that any controversy that may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby. Each party to this Agreement acknowledges that (a) no representative of any other party has represented, expressly or otherwise, that such other party would not seek to enforce the foregoing waiver in the event of a legal action; (b) such party has considered and understood the implications of this waiver; (c) such party makes this waiver knowingly and voluntarily; and (d) such party has been induced to enter into this Agreement by, among other things, the mutual waivers and acknowledgments in this Section.

In addition to, and without limiting the foregoing, this Arbitration Provision affects your ability to participate in class or collective actions. Both Indieats and you agree to bring any dispute in arbitration on an individual basis only, and not on a class or collective basis on behalf of others.

There will be no right or authority for any dispute to be brought, heard or arbitrated as a class or collective action, or for you to participate as a member in any such class or collective proceeding (“Class Action Waiver”). Notwithstanding any other provision of this Arbitration Provision or the ADRIC Rules, disputes in court or arbitration regarding the validity, enforceability, conscionability, or breach of the Class Action Waiver, or whether the Class Action Waiver is void or voidable, may be resolved only by a court and not by an arbitrator. In any case in which (1) the dispute is filed as a class or collective action and (2) there is a final judicial determination that all or part of the Class Action Waiver is unenforceable, the class or collective action to that extent must be litigated in court, but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration.

## **12. Third Party Websites and App Store**

Any website, application, or advertisement (“Third Party Website”) you visit by a link from the Services is solely the responsibility of the third party providing the website. The content of, including materials and information contained on, any Third Party Website to which you link from the website is solely the responsibility of the provider of that Third Party Website. Any transactions that you enter into with a third party listed in this website or linked from this Third Party Website are solely between you and that third party. We are not responsible for any such third-party content that may be accessed via the Third Party Website, nor the organizations publishing those Third Party Website, and hereby disclaim any responsibility and liability for such content. The inclusion of any links does not constitute or imply an endorsement or recommendation by us of the third-party, of the quality of any product or service, advice, information or other materials displayed, purchased, or obtained by you as a result of an advertisement or any other information or offer in or in connection with the Third Party Website.

You acknowledge and agree that the availability of the Services is dependent on the third party from whom you received the applications that deliver the Services, e.g., the Apple App Store or Google Play (each, an “App Store”). You acknowledge that the Agreement is between you and Indiats and not with the App Store. Indiats, not the App Store, is solely responsible for the Services, the content thereof, maintenance, support services, and warranty therefor, and addressing any claims relating thereto (e.g., product liability, legal compliance or intellectual property infringement). In order to use the Services, you must have access to a wireless network, and you agree to pay all fees associated with such access. You also agree to pay all fees (if any) charged by the App Store in connection with the Services. You agree to comply with, and your ability to use the Services is conditioned upon your compliance with all terms of agreement imposed by the applicable App Store when using any Service, including the App. You acknowledge that the App Store (and its subsidiaries) are third-party beneficiaries of the Agreement and will have the right to enforce it.

## **13. Social Media**

Indieats maintains certain social media pages for the benefit of the Indieats community. By posting, commenting, or otherwise interacting with these pages, you agree to abide by our IndiEats Code of Conduct.

## **14. Alcohol**

If you request delivery of alcoholic products through the Services, you warrant and represent that you are of legal age in the jurisdiction in which you reside to purchase alcohol. Independent Contractors reserve the right to verify your age by requesting government-issued identification proving your age, and to refuse delivery if such identification is not made available to the Independent Contractors.

## **15. Indemnification**

To the maximum extent permitted by applicable law, you agree to defend, indemnify, and hold harmless the Company, its parent, subsidiaries, affiliates, and their respective directors, officers, employees, agents, service providers, contractors, licensors, suppliers, successors, and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys' fees) arising out of or relating to your breach of these Terms and Conditions or your use of the Services, including, but not limited to, your User Content, third-party sites, any use of the Collective Content, services, and products other than as expressly authorized in these Terms and Conditions.

## **16. Disclaimer of Warranty**

THE SERVICES ARE PROVIDED "AS IS" WITHOUT A WARRANTY OF ANY KIND. TO THE EXTENT NOT PROHIBITED BY LAW, THIS WARRANTY IS EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

## **17. Limitation of Liability**

IN NO EVENT WILL INDIEATS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, AGGRAVATED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE, OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER INDIEATS WAS ADVISED OF THE

POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL INDIEATS'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO INDIEATS UNDER THIS AGREEMENT IN THE 6 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

## **18. Internet Delays**

Indieats' services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Indieats is not responsible for any delays, delivery failures, or other damage resulting from such problems.

## **19. Choice of Forum and Law**

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein without giving effect to any choice or conflict of law provision or rule (whether of the province of Ontario or any other jurisdiction).

Any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby or will be instituted in the courts of the province of Ontario, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such action or proceeding. The parties irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

## **20. Termination**

All provisions which by their nature should survive to give effect to those provisions shall survive the termination of this Agreement.

## **21. Miscellaneous**

- a. No Partnership. Nothing in this Agreement shall be construed to make the Parties partners or joint venturers or impose any liability as such on either of them.
- b. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

- c. Notice. Any requirement for “written notice” to you shall be satisfied by notice by email, where it is dispatched to the last email address associated with your Account, as the case may be, and may be relied upon as valid and authentic written communication. In the event that the last e-mail address you provided to Indieats is not valid, or for any reason is not capable of delivering to you any notices required or permitted by this Agreement, Indieats dispatch of the e-mail containing such notice will nonetheless constitute effective notice. Notice to Indieats may be given to [notice@indieats.ca](mailto:notice@indieats.ca).
- d. Assignment. You may not assign any of its rights or delegate any of its obligations hereunder. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve you of any of its obligations hereunder.
- e. Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.