

## **TERMS OF SERVICE**

LAST UPDATED: **August 21, 2018**

Thank you for choosing FuelFox! For your convenience, we have made the Terms of Service as straightforward as possible, including a short, non-binding summary followed by the full legal terms.

**IMPORTANT:** Please review the arbitration clause and class action waiver in Section 6 of this Agreement. Except for certain types of disputes mentioned in the arbitration clause, you and FuelFox agree that disputes between us will be resolved by mandatory binding arbitration. If you reside in the United States, this provision applies to all disputes with FuelFox. If you reside outside of the United States, this provision applies to any action you bring against FuelFox in the United States.

FuelFox is always striving to improve the Services and bring you additional functionality that you will find engaging and useful. This means we may add new product features or enhancements from time to time as well as remove some features, and if these actions do not materially affect your rights or obligations, we may not provide you with notice before taking them.

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### **1. CONTRACTUAL RELATIONSHIP**

#### **Summary**

These terms are a binding agreement. Please read this Agreement carefully before you use FuelFox. By using our site and/or mobile application you agree to be bound by everything in this Agreement and to the collection and use of the information set forth in the FuelFox Privacy Policy, whether you are a registered user of our Services. If you do not agree, please do not use FuelFox.

#### **Contractual Relationship**

This is a contract (“Agreement”) between you and GMS Industries, LLC d/b/a FuelFox, an Alabama Corporation (“FuelFox,” “we,” or “us”), applicable when you use or access the site, services and mobile application by FuelFox, in existence now or in the future (“FuelFox Services,” “FuelFox,” or “Services”). In this Agreement, the words “including” and “include” mean “including, but not limited to.”

Your access and use of the Services constitutes your agreement to be bound by this Agreement, which establishes a contractual relationship between you and FuelFox. If you do not agree to any of the terms of this Agreement, you may not access or use the Services. This Agreement expressly supersedes any prior agreements or arrangements with you. FuelFox may immediately terminate these Terms or any Services with respect to you, or generally cease offering or deny access to the Services or any portion thereof, at any time for any reason.

Supplemental Terms may apply to certain Services, such as policies for a particular event, activity or promotion, and such supplemental terms will be disclosed to you in connection with the applicable Services (“Supplemental Terms”). Supplemental Terms are in addition to, and shall be deemed a part of, the Agreement for the purposes of the applicable Services. Supplemental Terms shall prevail over this Agreement in the event of a conflict with respect to the applicable Services.

FuelFox may amend the terms related to the Services from time to time. Amendments will become effective upon the publication of an amended Agreement. From time to time, the Agreement may change. If/when this occurs, FuelFox will notify you by revising the date at the top of the Agreement, and/or by providing you additional notice. **Your continued access or use of the Services after such posting constitutes your consent to be bound by the amended Agreement. If you do not agree with the amended Agreement, please do not use the Services.**

## **2. THE SERVICES**

### **Summary**

A person must create your account which allows FuelFox to provide you Services; you must be 18 years of age or older and provide a certain amount of personal information to create an account; you allow FuelFox to collect your precise geolocation; and FuelFox may send you informational and marketing text messages. You own your personal information and User Content, permitting FuelFox to use your User Content, and we own our company and intellectual property information. You alone are responsible for keeping your account secure. You may not have more than one account.

### **Services**

The Services constitute a technology platform that enables users of FuelFox's applications or websites (each, an "Application") to arrange and schedule logistics services, including delivery of fuel and other products and services. Unless otherwise agreed by FuelFox in a separate written agreement with you, the Services are made available solely for your personal and noncommercial use.

### **User Eligibility & Accounts**

In order to use most aspects of the Services, you must register for and maintain an active personal user Services account ("Account"). You must be at least 18 years of age, or the age of legal majority in your jurisdiction (if different than 18), to obtain an Account. Account registration requires you to submit to FuelFox certain personal information, such as your name, address, mobile phone number, password, vehicle year, make, model, color, and license plate, as well as at least one valid payment method (either a credit card or accepted payment partner). You agree to maintain accurate, complete, and up-to-date information in your Account. Your failure to maintain accurate, complete, and up-to-date Account information, including having an invalid or expired payment method on file, may result in your inability to access and use the Services or FuelFox's termination of this Agreement with you. You are responsible for all activity that occurs under your Account, and you agree to maintain the security and secrecy of your Account username and password at all times. Unless otherwise permitted by FuelFox in writing, you may only possess one Account.

### **Geolocation**

You agree to allow FuelFox to collect your precise geolocation. We collect this geolocation for the purpose of improving your user experience - such as locating your vehicle or reminding you to request a Service. You may disable your geolocation but be advised this may impact Services from FuelFox to you. We will not disclose your geolocation to any third parties without your consent.

### **User Conduct**

You may not authorize third parties to use your Account. You may not assign or otherwise transfer your Account to any other person or entity. You agree to comply with all applicable laws when using the Services, and you may only use the Services for lawful purposes. You will not use the Services to cause any nuisance, annoyance, inconvenience, or property damage, whether to FuelFox or any other party. In certain jurisdictions and with certain fuel products, FuelFox's mobile refueling service can only be used when there is an emergency fuel need. In certain instances, you may be asked to provide proof of identity to access or use the Services, and you agree that you may be denied access to use of the Services if you refuse to provide proof of identity.

### **Network Access & Devices**

You are responsible for obtaining the data network access necessary to use the Services. Your mobile network's data and messaging rates and fees may apply

if you access or use the Services from a wireless-enabled device. You are responsible for acquiring and updating compatible hardware or devices necessary to access and use the Services and Applications and any updates thereto. FuelFox does not guarantee that the Services, or any portion thereof, will function on any particular hardware or devices. In addition, the Services may be subject to malfunctions and delays inherent in the use of the Internet and electronic communications.

### **License**

Subject to your compliance with this Agreement, FuelFox grants you a limited, non-exclusive, non-sublicensable, revocable, non-transferrable license to:

- access and use the Applications on your personal device solely in connection with your use of the Services; and
- access and use any content, information and related materials that may be made available through the Services, in each case solely for your personal and noncommercial use. Any rights not expressly granted herein are hereby reserved by FuelFox and FuelFox's licensors.

### **Prohibited Activities**

You may not:

- have more than one active Account;
- remove any copyright, trademark or other proprietary notices from any portion of the Services;
- reproduce, modify, prepare derivative works based upon, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Services except as expressly permitted by FuelFox;
- decompile, reverse engineer or disassemble the Services except as may be permitted by applicable law;
- link to, mirror or frame any portion of the Services;
- cause or launch any programs or scripts for the purpose of scraping, indexing, surveying, or otherwise data mining any portion of the Services or unduly burdening or hindering the operation and functionality of any aspect of the Services; or
- attempt to gain unauthorized access to or impair any aspect of the Services or its related systems or networks.

### **Third Party Services & Content**

The Services may be made available or accessed in connection with third party services and content (including advertising) that FuelFox does not control. You acknowledge that different terms of use and privacy policies may apply to your use of such third-party services and content. FuelFox does not endorse such third-party services and content, and in no event shall FuelFox be responsible or liable for any products or services of such third-party providers. Additionally,

Apple Inc., Google, Inc., Microsoft Corporation or BlackBerry Limited will be a third-party beneficiary to this contract if you access the Services using Applications developed for Apple iOS, Android, Microsoft Windows, or Blackberry-powered mobile devices, respectively. These third-party beneficiaries are not parties to this contract and are not responsible for the provision or support of the Services in any manner. Your access to the Services using these devices is subject to terms set forth in the applicable third-party beneficiary's terms of service.

### **Ownership**

The Services and all rights therein are and shall remain FuelFox's property or the property of FuelFox's licensors. Neither this Agreement nor your use of the Services convey or grant to you any rights:

- in or related to the Services except for the limited license granted above; or
- to use or reference in any manner FuelFox's company names, logos, product and service names, trademarks or services marks or those of FuelFox's licensors.

### **Text Messaging**

You agree to allow FuelFox to send you informational text (SMS) messages. We send you messages for the purpose of delivering the service and improving your customer experience - for example, if we need to contact if we are not able to locate your vehicle. You can opt out of receiving the text messages by replying "STOP" after any text message received, but be advised this may impact Services from FuelFox to you.

### **Referral Program & Promotional Codes**

FuelFox may, in FuelFox's sole discretion, create referral and/or promotional codes ("Promo Codes") that may be redeemed for Account credit, or other features or benefits related to the Services and, subject to any additional terms that FuelFox establishes on a per promotional code basis. You agree that Promo Codes:

- must be used for the intended audience and purpose, and in a lawful manner;
- may not be duplicated, sold or transferred in any manner, or made available to the general public (whether posted to a public form or otherwise), unless expressly permitted by FuelFox;
- may only be used for new customers and Accounts, unless expressly permitted by FuelFox;
- may be disabled by FuelFox at any time for any reason without liability to FuelFox;
- may only be used pursuant to the specific terms that FuelFox establishes for such Promo Code;
- are not valid for cash; and

- may expire prior to your use.

FuelFox reserves the right to withhold or deduct credits or other features or benefits obtained through the use of Promo Codes by you or any other user in the event that FuelFox determines or believes that the use or redemption of the Promo Code was in error, fraudulent, illegal, or in violation of the applicable Promo Code terms or this Agreement.

### **User Provided Content**

FuelFox may, in FuelFox's sole discretion, permit you from time to time to submit, upload, publish or otherwise make available to FuelFox through the Services textual, audio, and/or visual content and information, including commentary and feedback related to the Services, initiation of support requests, and submission of entries for competitions and promotions ("User Content"). Any User Content provided by you remains your property. By providing User Content to FuelFox, however, you grant FuelFox a worldwide, perpetual, irrevocable, transferable, royalty-free license, with the right to sublicense, use, copy, modify, create derivative works, distribute, publicly display, publicly perform, and otherwise utilize in any manner such User Content in all formats and distribution channels now known or hereafter devised (including in connection with the Services and FuelFox's business and on third-party sites and services), without further notice to or consent from you, and without the requirement of payment to you or any other person or entity.

### **You represent and warrant that:**

- you either are the sole and exclusive owner of all User Content or you have all rights, licenses, consents and releases necessary to grant FuelFox the license to the User Content as set forth above; and
- neither the User Content nor your submission, uploading, publishing or otherwise making available of such User Content nor FuelFox's use of the User Content as permitted herein will infringe, misappropriate or violate a third party's intellectual property or proprietary rights, rights of publicity or privacy, or result in the violation of any applicable law or regulation.

You agree to not provide User Content that is defamatory, libelous, hateful, violent, obscene, pornographic, unlawful, or otherwise offensive, as determined by FuelFox in its sole discretion, whether or not such material may be protected by law. FuelFox may, but shall not be obligated to, review, monitor, or remove User Content, at FuelFox's sole discretion and at any time and for any reason, without notice to you.

### **Beta Services**

FuelFox sometimes release products and features that we are still testing and evaluating ("Beta Services"). FuelFox will inform you of any Beta Services that may become available by identifying them as "beta", "preview", "early access",

or “evaluation” (or with words or phrases with similar meanings) and may not be as reliable as FuelFox's other services, so please keep that in mind.

### **3. PAYMENT**

#### **Summary**

You are responsible for all fees associated with your use of FuelFox’s Services. We are responsible for communicating those fees to you clearly and accurately. You agree to receive a receipt via email or text or through the FuelFox App itself. If a modification or cancellation of Services is necessary, FuelFox will notify you of this. You are under no obligation to tip your driver for Services, though we would appreciate it you provided feedback about your experience.

#### **Charges**

You understand that use of the Services may result in charges to you for the services or goods you receive from FuelFox (“Charges”). Charges will be inclusive of applicable taxes where required by law. Charges paid by you are final and non-refundable, unless otherwise determined by FuelFox. All Charges are due immediately and payment will be facilitated by FuelFox using the preferred payment method designated in your Account. If your primary Account payment method is determined to be expired, invalid, or otherwise not able to be charged, you agree that FuelFox may use the secondary payment method from your Account, if available. You agree that FuelFox will send you a receipt by email or text message, and/or through the application. This electronic receipt is sufficient for all purposes, including any specific requirements under applicable law. If you prefer to receive a paper receipt, please contact [info@fuelfox.net](mailto:info@fuelfox.net) within 30 days of each Service, to request a physical receipt which will be mailed to you at our earliest convenience.

#### **Modifications & Cancellations**

FuelFox, at its sole discretion, reserves the right to create, modify, and remove Charges for any or all services or goods obtained through the use of the Services. FuelFox may from time to time provide certain users with Promo Codes and discounts that may result in different amounts charged for the same or similar services or goods obtained through the use of the Services. You agree that such Promo Codes and discounts, unless also made available to you, shall have no bearing on your use of the Services or the Charges applied to you. You may elect to cancel your request for Services at any time prior to provision of the Services, in which case you may be charged a cancellation fee.

FuelFox may, at its sole discretion, elect to not fill a requested vehicle if FuelFox deems it unsafe to do so, or if fueling the vehicle would violate an applicable law, code, standard, or procedure. In such an event, the request may be cancelled by FuelFox, or the customer may be notified and asked to move their vehicle to a safe filling area. If the request is cancelled by FuelFox, no payment will be charged. The Account holder will be notified.

**Gratuities**

Gratuities are voluntary. You understand and agree that, while you are free to provide additional payment as a gratuity to any driver who provides you with services or goods obtained through the Services, you are under no obligation to do so. After your Services have been completed, we would appreciate that you rate and leave additional feedback about your experience, but you are under no obligation to do so.

**Rounding Off**

FuelFox may, in its sole discretion, round up or round down amounts that are payable to FuelFox to the nearest whole functional base unit; for example, FuelFox will round up an amount of \$41.505 to \$41.51, or \$41.491 to \$41.490.

**4. DISCLAIMERS & LIMITATION OF LIABILITY****Summary**

We will not be liable for damages or losses arising from your use or inability to use the Services, or otherwise arising under this agreement. Please read this section carefully as it limits our obligations to you.

**DISCLAIMERS**

YOU USE THE FUELFOX SERVICES AT YOUR OWN RISK. THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE."

FUELFOX DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, NOT EXPRESSLY SET OUT IN THESE TERMS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN ADDITION, FUELFOX MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE REGARDING THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, OR AVAILABILITY OF THE SERVICES OR ANY SERVICES OR GOODS REQUESTED THROUGH THE USE OF THE SERVICES, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. FUELFOX DOES NOT GUARANTEE THE QUALITY, SUITABILITY, SAFETY OF FUELS PROVIDED TO YOU. YOU AGREE THAT THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE SERVICES, AND ANY SERVICE OR GOOD REQUESTED IN CONNECTION THEREWITH, REMAINS SOLELY WITH YOU, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

**LIMITATION OF LIABILITY**

FUELFOX SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST DATA, PERSONAL INJURY, OR PROPERTY DAMAGE RELATED TO, IN CONNECTION WITH, OR OTHERWISE



RESULTING FROM ANY USE OF THE SERVICES, EVEN IF FUELFOX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FUELFOX SHALL NOT BE LIABLE FOR ANY DAMAGES, LIABILITY OR LOSSES ARISING OUT OF YOUR USE OF OR RELIANCE ON THE SERVICES OR YOUR INABILITY TO ACCESS OR USE THE SERVICES. FUELFOX SHALL NOT BE LIABLE FOR DELAY, FAILURE IN PERFORMANCE, OR OTHER INJURIES RESULTING FROM CAUSES BEYOND FUELFOX'S REASONABLE CONTROL.

FUELFOX SHALL NOT BE LIABLE TO YOU FOR ANY DAMAGES RESULTING FROM YOUR DISPLAYING, COPYING, OR DOWNLOADING ANY MATERIALS TO OR FROM THE WEBSITE OR THE MOBILE APPLICATION. IN ADDITION, FUELFOX SHALL NOT BE LIABLE TO YOU FOR ANY DAMAGES ARISING OUT OF, OR RELATING TO, ANY OF THE FOLLOWING, REGARDLESS OF WHETHER SOUNDING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE:

- LEAVING THE GAS TANK DOOR OPEN — YOU AGREE THAT YOU LEAVE THE GAS TANK DOOR TO YOUR VEHICLE OPEN AT YOUR OWN RISK, AND THAT WE SHALL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND RESULTING FROM LEAVING YOUR GAS TANK DOOR OPEN.
- ANY SIPHONING OF GASOLINE FROM YOUR VEHICLE.
- ACCESS BY ANY THIRD PARTY TO ANY AREA WITHIN WHICH YOUR VEHICLE IS LOCATED, WHETHER OR NOT YOU HAVE GIVEN US ANY KEY, PIN OR PASSCODE TO ALLOW US ACCESS TO SUCH AREA.
- ANY SPILLAGE OF GASOLINE, WHETHER OR NOT RELATED TO OUR SERVICES.
- THE GASOLINE USED TO FILL YOUR GAS TANK.
- ANY DAMAGE TO YOUR VEHICLE OR OTHER REAL OR TANGIBLE PERSONAL PROPERTY, WHETHER OWNED BY YOU OR BY A THIRD PARTY — BY AGREEING TO THESE TERMS OF USE AND GRANTING ACCESS TO YOUR VEHICLE GAS TANK AND THE PROPERTY ON WHICH YOUR VEHICLE IS LOCATED, YOU ASSUME ALL LIABILITY FOR ANY DAMAGES ARISING FROM OUR ACCESS TO YOUR VEHICLE.

IN NO EVENT WILL FUELFOX'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OF ACTION EXCEED THE AMOUNT YOU HAVE PAID FUELFOX IN SERVICE FEES (WHICH DOES NOT INCLUDE FEES ALLOCATED TO THE PRICE OF GASOLINE) DURING THE LAST SIX (6) MONTHS, OR, IF GREATER, ONE HUNDRED DOLLARS (\$100).

YOU AGREE THAT ANY INSURANCE UNDER WHICH YOU ARE INSURED, WHICH MAY BE AVAILABLE TO ADDRESS ANY DAMAGES ARISING OUT OF, OR RELATING TO, ANY OF THE PRECEDING LISTED EVENTS, SHALL BE THE PRIMARY SOURCE OF INSURANCE TO ADDRESS ANY SUCH DAMAGES. YOU AGREE THAT ANY INSURANCE UNDER WHICH WE ARE

INSURED SHALL NOT BE THE PRIMARY SOURCE OF INSURANCE TO ADDRESS ANY DAMAGES, AND MAY ONLY BE ACCESSED AT OUR SOLE DISCRETION AND ELECTION, OR NOT AT ALL.

FURTHERMORE, FUELFOX IS NOT LIABLE FOR ANY OTHER INTANGIBLE LOSSES RESULTING FROM:

- THE USE OF OR RELIANCE ON THE SERVICES OR YOUR INABILITY TO USE THE SERVICE;
- THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE;
- UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR ACCOUNT OR DATA;
- STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR
- ANY OTHER MATTER RELATING TO FUELFOX SERVICES.

FUELFOX ALSO ASSUMES NO LIABILITY OR RESPONSIBILITY FOR A DELAY, FAILURE IN PERFORMANCE, ANY BUGS, VIRUSES, TROJAN HORSES OR THE LIKE THAT BE TRANSMITTED TO OR THROUGH THE SERVICES BY ANY THIRD PARTY AND/OR ANY USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY, OR ANY OTHER INJURY RESULTING FROM CAUSES BEYOND FUELFOX'S REASONABLE CONTROL.

THE LIMITATIONS AND DISCLAIMER IN THIS SECTION DO NOT PURPORT TO LIMIT LIABILITY OR ALTER YOUR RIGHTS AS A CONSUMER THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

## **5. INDEMNIFICATION**

### **Summary**

You are responsible for your use of the Services.

### **Indemnification**

You are responsible for your use of the Services, and you will indemnify and hold FuelFox and its officers, directors, employees, consultants, affiliates, subsidiaries, and agents (together, the "FuelFox Entities") from and against any and all claims, demands, losses, liabilities, and expenses (including attorneys' fees), arising out of or in any way connected with:

- your access to, use of, or alleged use of, the Services or services or goods obtained through your use of the Services;

- your breach or violation of any of these Terms, any representation, warranty, or agreement referenced in these Terms, or any applicable law or regulation;
- FuelFox's use of your User Content;
- your violation of the rights of any third party, including any intellectual property right or publicity, confidentiality, other property, or privacy, right; or
- any dispute or issue between you and any third party.

We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of that claim.

## 6. ARBITRATION

### Summary

You agree to binding arbitration which means that you waive your right to have a judge potentially hear your claim and instead agree to neutral third party, an arbitrator, hear both sides and decide upon the claim. You also waive your right to be in a class action suit. **Please read this section carefully as it limits the manner in which you can seek relief from FuelFox.**

### Pre-Arbitration Claim Resolution

For all disputes, whether pursued in court or arbitration, You must first give Us an opportunity to resolve the dispute which is first done by emailing to Us at [info@filld.com](mailto:info@filld.com) the following information:

- your name,
- your address,
- a written description of Your Claim, and
- a description of the specific relief You seek.

If FuelFox does not resolve the dispute within 45 days after receiving Your notification, than You may pursue Your dispute in arbitration.

### Arbitration

By agreeing to the Terms, you agree that you are required to resolve any claim that you may have against FuelFox on an individual basis in arbitration, as set forth in this Arbitration Agreement. This will preclude you from bringing any class, collective, or representative action against FuelFox, and also preclude you from participating in or recovering relief under any current or future class, collective, consolidated, or representative action brought against FuelFox by someone else.

You agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services (collectively, "Disputes") will be settled by

binding arbitration between you and FuelFox. You acknowledge and agree that you and FuelFox are each waiving the right to a trial by jury or to participate as a plaintiff or class in any purported class action or representative proceeding.

Further, unless both you and FuelFox otherwise agree in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this "Dispute Resolution" section will be deemed void. Except as provided in the preceding sentence, this "Dispute Resolution" section will survive any termination of these Terms. Nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to:

- bring an individual action in small claims court;
- pursue an enforcement action through the applicable federal, state, or local agency if that action is available;
- seek injunctive relief in a court of law; or
- to file suit in a court of law to address an intellectual property infringement claim.

### **Arbitration Rules & Governing Law**

The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "AAA Rules") then in effect, except as modified by this "Dispute Resolution" section. The AAA Rules are available at <https://www.adr.org/active-rules> or by calling the AAA at 1-800-778-7879. The Federal Arbitration Act will govern the interpretation and enforcement of this Section.

### **Arbitration Process**

A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. The AAA provides a form Demand for Arbitration at <https://www.adr.org/Forms>. The arbitrator will be either a retired judge or an attorney licensed to practice law in the state of Alabama and will be selected by the parties from the AAA's roster of consumer dispute arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

### **Arbitration Location & Fees**

If you commence arbitration in accordance with these Terms, FuelFox will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in Birmingham, Alabama, but if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted:

- solely on the basis of documents submitted to the arbitrator;
- through a non-appearance based telephone hearing; or
- by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address.

If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse FuelFox for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

#### **Arbitrator's Decision**

The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and the amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. If you prevail in arbitration you will be entitled to an award of attorneys' fees and expenses, to the extent provided under applicable law. FuelFox will not seek, and hereby waives all rights FuelFox may have under applicable law to recover, attorneys' fees and expenses if FuelFox prevail in arbitration.

#### **NO CLASS ACTION**

YOU AND FUELFOX AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and FuelFox agree otherwise in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

#### **Changes**

If FuelFox makes any future change to this arbitration provision, other than a change to FuelFox's address for Notice, you may reject the change by sending

us written notice within 30 days of the change to FuelFox's address for Notice, in which case your account with FuelFox will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.

### **Enforceability**

If the subsection (Enforceability) is found to be unenforceable or if the entirety of this Section 6 is found to be unenforceable, then the entirety of this Section 6 (other than, in the latter case, this subsection (Enforceability)) will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described in Section 7 will govern any action arising out of or related to these Terms.

## **7. CHOICE OF LAW AND CLAIMS OF COPYRIGHT INFRINGEMENT**

### **Summary**

This agreement is governed by the laws of Alabama.

### **Choice of Law**

This Agreement is governed by and construed in accordance with the laws of the State of Alabama, U.S.A., without giving effect to any conflict of law principles.

### **Claims of Copyright Infringement**

Claims of copyright infringement should be sent to FuelFox's designated agent, at [info@fuelfox.net](mailto:info@fuelfox.net).

### **Notice**

FuelFox may give notice by means of a general notice on the Services, electronic mail to your email address in your Account, or by written communication sent by first class mail or pre-paid post to your address in your Account. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to FuelFox, with such notice deemed given when received by FuelFox, at any time by first class mail or pre-paid post to FuelFox, P.O. Box 530406, Birmingham, Alabama 35253.

## **8. GENERAL PROVISIONS**

### **Summary**

Neither you nor FuelFox may transfer your obligations under this Agreement to anyone else without written consent.

### **Provisions**

You may not assign this Agreement without FuelFox's prior written approval. FuelFox may assign these Terms without your consent to:

- a subsidiary or affiliate;
- an acquirer of FuelFox's equity, business or assets; or
- a successor by merger.

Any purported assignment in violation of this section shall be void. No joint venture, partnership, employment, or agency relationship exists between you, FuelFox as a result of this Agreement or use of the Services. If any provision of these Terms is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced to the fullest extent under law. FuelFox's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by FuelFox in writing.

### **Notice Regarding Apple**

If you are using our mobile applications on an iOS device, the terms of this section (Notice Regarding Apple) apply. You acknowledge that this Agreement is between you and FuelFox only, not with Apple, and Apple is not responsible for the Services. Apple has no obligation to furnish any maintenance or support services with respect to the Services. If the Services fail to conform to any applicable warranty, you may notify Apple and Apple will refund any applicable purchase price for the mobile application to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation with respect to the Services. Apple is not responsible for addressing any claim by you or any third party relating to the Services or your possession or use of the Services, including:

- product liability claims;
- any claim that the Services fail to conform to any applicable legal or regulatory requirement; and
- claims arising under consumer protection or similar legislation.

Apple is not responsible for the investigation, defense, settlement or discharge of any third-party claim that the Services or your possession and use of the mobile application infringes that third party's intellectual property rights. you agree to comply with any applicable third-party terms when using the Services. Apple and Apple's subsidiaries are third party beneficiaries of this Agreement, and upon your acceptance of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you. You hereby represent and warrant that:

- 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

- you are not listed on any U.S. Government list of prohibited or restricted parties.

**Notice Regarding Other App Stores or Services**

If you are accessing or downloading the FuelFox application from any other app stores or services, you may be subject to that app store's or services' terms of use.

**Entire Agreement**

This Agreement, with the Privacy Policy contains the entire agreement between you and FuelFox regarding the use of the Service. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. The failure of the Company to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. You agree that your FuelFox account is non-transferable and all of your rights to your account and its Content terminate upon your death. No agency, partnership, joint venture or employment is created as a result of this Agreement and you may not make any representations or bind FuelFox in any manner.

**Contacting FuelFox**

If you have any questions about these Terms of Service, the practices of FuelFox, or your dealings with FuelFox, you may contact us at FuelFox, P.O. Box 530406, Birmingham, Alabama 35253, or at [info@fuelfox.net](mailto:info@fuelfox.net).