



PER DIEM PLUS FLEETS USER AGREEMENT

THIS PER DIEM PLUS FLEETS AGREEMENT ("Agreement") is and between **Per Diem Plus, LLC**, a Missouri limited liability company ("**Per Diem Plus**"), and the undersigned ("**Company**") effective on ("**Effective Date**").

WHEREAS, Per Diem Plus has the right to license the software defined below as Licensed Software; and

WHEREAS, the parties desire that Per Diem Plus license to Company the rights use Per Diem Plus's software product subject to the terms and conditions hereof;

NOW, THEREFORE, in consideration of the foregoing, and in reliance on the mutual agreements contained herein, the parties agree as follows:

1. **Definitions.**

- 1.1. "Licensed Software" means Per Diem Plus ® Mobile App for Android and iOS software, any improvements or modifications made thereto, for use by truck drivers on mobile digital devices which automatically activate after defined number of miles driven, track locations relative to defined tax home, calculate a per diem tax deduction if the applicable government tax agency requirements are met, and provides a mechanism by which drivers can upload and categorizes receipts and records of travel and other expenses.
- 1.2. "Fleets White Labeled Product", "Fleets Premium", herein referred to as "White Label" and/or "White Labeled Product" means a Company rebranded version of the Licensed Software only to be marketed and promoted by Company for Member Subscribers as described in accordance with Exhibit A.
- 1.3. "Member Subscribers" means Truck Drivers of Company who have signed up and enrolled (subscribed) to the White Label Product on the Platform.
- 1.4. "Platform" shall mean Google Play Store and Apple App Store.
- 1.5. "Proprietary Rights" means any and all rights, whether registered or unregistered, in and with respect to patents, copyrights, confidential information, know-how, trade secrets, moral rights, contract or licensing rights, branding features, and confidential and proprietary information protected under contract or otherwise under law, and other similar rights or interests in intellectual or industrial property.
- 1.6. "Branding features" means proprietary domain names, trade names, trademarks, logos, or other distinctive branding features.

2. **Grant of License and Restrictions.** Subject to the terms and conditions herein, Per Diem Plus hereby grants to Company a non-exclusive, United States license, subject to Per Diem Plus Proprietary Rights, to use Per Diem Plus Fleets app and/or distribute the Licensed Software in White Labeled Product format only to Member Subscribers.

3. **Limitations on License.** Company is not authorized (i) to incorporate the Licensed Software into any product or code other than the White Labeled Product, or (ii) to attempt to distribute the Licensed Software on a standalone basis, independent of the White Labeled Product, nor may Company sublicense the right to White Label Product to any third party.



4. **Branding Requirements: "White Label" Rights and Obligations.** Marketing and promotion of the White Labeled Product is authorized only with the Company Branding features, which shall be created in conjunction with Company and approved in advance by Per Diem Plus in advance as set forth in Exhibit B. Company does not acquire any rights to Per Diem Plus Branding features or associated goodwill hereunder. All marketing rights and licenses granted herein for Licensed Software are subject to the branding requirements contained herein.
5. **Proprietary Rights Notice(s).** Company shall affix Proprietary Rights notices to the advertisement and distribution of White Labeled Product in accordance with Exhibit A.
6. **Branding Features.** Parties recognize that the branding features used by both parties have different images and truck driver perceptions.
7. **Reservation of Rights.** All rights not expressly granted to Company herein are expressly reserved by Per Diem Plus including but not limited to Per Diem Plus retaining all rights to license the Licensed Software to truck drivers and to other white label companies.
8. **White Label Licensing Fee.** Licensee shall pay Enrollment and Recurring Monthly License Fees in accordance with Exhibit A attached. Licensee has the right to review account and billing records
9. **Marketing and Support Obligations.** Each party shall perform the marketing and support obligations in accordance with Exhibit B attached.
10. **Warranty Disclaimers.** TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, EACH PARTY ON BEHALF OF ITSELF AND ITS SUPPLIERS HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE SOFTWARE AND ANY RELATED WRITTEN MATERIALS, SYSTEM INTEGRATION, AND DATA ACCURACY. EACH PARTY ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION THAT IS NOT EXPRESSLY SET OUT HEREIN.
11. **Indemnification.**
 - 11.1 **Company Indemnity.** Company shall indemnify, defend and hold Per Diem Plus and its employees, officers, directors, and licensors harmless from any and all liabilities, losses, claims, demands, actions, proceedings, damages, costs and expenses including without limitation, reasonable legal fees and expenses in connection with any suit or claim arising out of Company's marketing or distribution of the Licensed Software.
 - 11.2 **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PER DIEM PLUS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES FOR PERSONAL INJURY, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THIS PRODUCT, EVEN IF PER DIEM PLUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, PER DIEM PLUS'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE PRICE PAID BY COMPANY FOR ONE LICENSE OF WHITE LABELED PRODUCT.



12. **Ownership and Title of Licensed Software.** Title to the Proprietary Rights embodied in the Licensed Software shall remain in and be the sole and exclusive property of Per Diem Plus. Company receives no title, license or interest in the Licensed Software as a result of this Agreement, and Per Diem Plus receives no title, license or interest in Company's intellectual property as a result of this Agreement. Company shall take no action to challenge the validity of any of Per Diem Plus's Proprietary Rights and Per Diem Plus may terminate this Agreement upon notice to Company if such event occurs.
13. **Member Subscriber Account Ownership/Exclusivity.**
- 13.1. **Account Ownership.** Company shall obtain sole and exclusive ownership of the Member Subscriber account. During the Term, Company shall take no action, directly or indirectly, by itself or through other third parties to solicit the Member Subscriber Account for the purpose of the Member Subscriber modifying, terminating or moving said account to a competitor of Per Diem Plus.
- 13.2. **Exclusivity.** Company has the sole and exclusive ownership of the White Labeled Product,
14. **Reciprocal Disclosure of Confidential Information.** The parties anticipate that each may disclose confidential information to the other. Accordingly, the parties desire to establish in this Section terms governing the use and protection of certain information one party ("Owner") may disclose to the other party ("Recipient"). For purposes hereof, "Confidential Information" means the terms and conditions hereof, and other information of an Owner (i) which relates to designs and programming techniques embodied in the Licensed Software in the case of Per Diem Plus and the White labeled Products in the case of Company, and the business models and plans, and technical information and data of an Owner or its customers or suppliers regarding the Licensed Software in the case of Per Diem Plus and the White labeled Products in the case of Company, or (ii) which, although not related to the Licensed Software or White labeled Products, is nevertheless disclosed hereunder, and which, in any case, is disclosed by an Owner in document or other tangible form bearing an appropriate legend indicating its confidential or proprietary nature, or which, if initially disclosed orally or visually is identified as confidential at the time of disclosure and a written summary hereof, also marked with such a legend, is provided to Recipient within fifteen (15) days of the initial disclosure. Recipient may use Confidential Information of Owner only for the purposes of this Agreement and shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own proprietary information of like importance, but in any case, using no less than a reasonable degree of care. Recipient may disclose Confidential Information received hereunder only as reasonably required or permitted hereunder and only to its employees or contractors who have a need to know for such purposes and who are bound by signed, written agreements to protect the received Confidential Information from unauthorized use and disclosure. The restrictions of this Agreement on use and disclosure of Confidential Information shall not apply to information that: (i) is in the possession or control of Recipient at the time of its disclosure hereunder; (ii) is, or becomes publicly known, through no wrongful act of Recipient; (iii) is received by Recipient from a third party free to disclose it without obligation to Owner; or (iv) is independently developed by Recipient without reference to Confidential Information. All Confidential Information shall be returned to the Owner at the end of the Term or Termination.
15. **Injunctive Relief.** The parties hereby agree that any breach of any provision of this Agreement regarding confidentiality or protection of Proprietary Rights would constitute irreparable harm, and that the aggrieved party shall be entitled to specific performance and/or injunctive relief in addition to other remedies at law or in equity.



16. **Term and Termination.**

16.1. **Term of Agreement.** Subject to Section 16.3, the initial term of this Agreement shall commence as of the Effective Date hereof. The Effective Date shall be set forth on page 1. Subject to Section 16.3, the Term shall automatically renew for annually unless one party gives the other party sixty (60) days' notice of non-renewal.

16.2(a) **Termination by Per Diem Plus.** This Agreement may be terminated by Per Diem Plus by written notice to Company upon the happening of any of the following: (i) violation by Company of any regulations or laws or governmental decrees or requirements of the United States or the conviction of a criminal offense in any court of competent jurisdiction; (ii) insolvency or the adjudication of bankruptcy or the petition for or consent to or becoming subject to any relief under any bankruptcy, reorganization or moratorium statutes or similar debtor relief laws by or of Company; (iii) a breach of Sections 3,5, 6, 13, 14, and 17 of this Agreement; and (iv) any material breach by Company of any provision of this Agreement that is not cured within thirty (30) days after written notice by Per Diem Plus to Company specifying the alleged breach in reasonable detail.

16.2(b) **Termination by Company.** This Agreement may be terminated by Company by written notice to Per Diem Plus upon the happening of any of the following: (i) failure by Per Diem Plus, unexcused by the provisions of this Agreement, to deliver services as stated in Exhibit B; (ii) insolvency or adjudication of bankruptcy or the petition for or consent to or becoming subject to any relief under any bankruptcy, reorganization or moratorium statutes or similar debtor relief laws by or of Per Diem Plus; and (iii) any other material breach by Per Diem Plus of this Agreement and which is not cured within thirty (30) days after written notice by Company to Per Diem Plus specifying the alleged breach in reasonable detail.

16.3 **Effect of Expiration or Termination.** Upon the expiration or termination hereof, all rights and licenses granted herein shall terminate, and Company shall cease the marketing of White labeled Products. Each party shall promptly return all Confidential Information of the other party. Per Diem Plus will pay Company any amounts due and owing as of the date of termination. The terms and conditions of Sections 3, 6, 8, 10, 11, 12, 14, 16 and 22, and any payment obligations, and any rights of action for breach of this Agreement that may have arisen prior to termination or expiration, shall survive any termination or expiration of this Agreement.

17. **Assignment.** This Agreement shall inure to the benefit of, and be binding upon, any successor to all or substantially all of the business and assets of each party, whether by merger, sale of assets, or other agreements or operation of law. Except as provided above, Company shall not assign this Agreement or any right or interest under this Agreement without Per Diem Plus's prior written consent. Any attempted assignment or delegation in contravention of this Section shall be void and ineffective.

18. **Independent Contractors.** The relationship of the parties is that of independent contractor, and nothing herein shall be construed to create a partnership, joint venture, franchise, employment, or agency relationship between the parties. Company shall have no authority to enter into agreements of any kind on behalf of Per Diem Plus and shall not have the power or authority to bind or obligate Per Diem Plus in any manner to any third party.

19. **Force Majeure.** Neither Per Diem Plus nor Company shall be liable for damages for any delay or failure of delivery arising out of causes beyond their reasonable control and without their fault or negligence, including, but not limited to, Acts of God, acts of civil or military authority,



fires, riots, wars, embargoes, epidemics, Microsoft/Windows or Google blocks/lockouts or communications failures. Notwithstanding anything to the contrary contained herein, if either party is unable to perform hereunder for a period of thirty (30) consecutive days, then the other party may terminate this Agreement immediately without liability by ten (10) days written notice to the other.

- 20. **Notices.** Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by e-mail or facsimile (provided delivery is confirmed), or mail (registered or certified only), return receipt requested, to the address set forth below or such other addresses as the parties may designate from time to time in writing in accordance with this Section. Notice by mail shall be effective on the date it is officially recorded as delivered to the intended recipient by return receipt or equivalent. Notices sent by facsimile or email shall be deemed effective on the date sent provided that delivery is confirmed.

If to Per Diem Plus: Per Diem Plus, LLC

Attention: Mark W. Sullivan
E-mail: marks@perdiemplus.com

If to Company:

Attention:

E-mail:

- 21. **Treatment of Information.** Per Diem Plus warrants that it will conform to laws regarding security and gathering of personal data.

- 22. **Miscellaneous.** This Agreement shall be construed under the laws of Missouri, without regard to its principles of conflicts of law. Per Diem Plus and Company agree to submit to the personal jurisdiction of any court of competent subject matter jurisdiction in the state of Missouri. This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement and merges all prior communications, understandings, and agreements. Parties agree that the Per Diem Plus White Label Agreement with Company is terminated effective X . This Agreement may be modified only by a written agreement signed by the parties. The failure of either party to enforce at any time any of the provisions hereof shall not be a waiver of such provision, or any other provision, or of the right of such party thereafter to enforce any provision hereof. Parties agree to submit any and all controversies under this Agreement to a minimum of one day mediation prior to initiating litigation. With respect to the Mediation process, all costs of the Mediator will be divided 50/50 between the parties. Each party is responsible for their own travel and preparation expenses. If any provision of this Agreement is deemed to be unlawful or unenforceable, such provision shall be deemed severable, and the other provisions shall remain in full force and effect. The failure of either party to exercise, in any respect, any right provided for herein shall not be deemed a waiver of that right or any other right in this Agreement. The headings herein are provided for ease of reference only and are not to be used in interpreting the provisions of this Agreement. Exhibits A and B are attached hereto and incorporated herein as if fully set forth. This White Label Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement and shall become a binding agreement when signed by all parties.



PER DIEM PLUS, LLC

CUSTOMER NAME

By:

By:

Mark Sullivan, Project Manager

Name/ Title:

Date:

Telephone Number:

Email Address:

Date:



EXHIBIT A

WHITE LABEL LICENSE FEE

1. **Proprietary Right Notice(s) for White Labeled Licensed Products.** The Parties agree that a copyright notice shall at all times appear (somewhere) on promotional material in a type size that is clearly readable as follows: "Copyright © Per Diem Plus, LLC. All rights reserved worldwide".

2. **License Fee.**
 - a. **Initial Setup Fee:**
 - i. **FLEETS:** The standard fee for the White Labeled Licensed product is \$49.00.
 - ii. **FLEET WHITE LABEL:** The standard fee for the White Labeled Licensed product is \$449.00.
 - iii. **FLEETS PREMIUM:** The standard fee for the White Labeled Licensed product is \$1,249.00.
 - b. **Service Fees:** During the Term, Company shall pay a fee of \$5.00/month per driver, and the following:
 - i. **FLEETS:** \$17.00/Month/Active Driver
 - ii. **FLEET WHITE LABEL:** \$15.00/Month/Active Driver
 - iii. **FLEETS PREMIUM:** \$ Month/Active Driver
 1. **Managed Web Services (MWS):** A fee of \$325/month representing MWS cloud storage will be charged upon release of the White Label Product.



EXHIBIT B MARKETING AND SUPPORT OBLIGATIONS

1. Per Diem Plus's Obligations. Per Diem Plus shall perform the following obligations at its cost and expense, unless otherwise indicated.

1.3 Technical Support Consultation. Per Diem Plus shall be responsible for providing "First Line" technical support directly to Member Subscribers and answering general inquiries.

1.4 Error Correction. Per Diem Plus shall undertake commercially reasonable efforts to correct any (i) failure of the Licensed Software to conform, and (ii) any error in the Licensed Software caused by Per Diem Plus that materially affects the use of the Licensed Software.

1.5 Improvements; Upon Licensee's request, Per Diem Plus shall consult with Licensee on specific changes, modifications or improvements to the White Labeled Product: but in all events Licensee shall be responsible for all costs involved and Per Diem Plus shall own all Proprietary Rights resulting from or arising from said changes, modifications or improvements MADE BY Per Diem Plus at Licensee's instructions. Per Diem Plus shall provide the same nonexclusive license described in Section 2 for said changes, modifications or improvements during the remainder Term of the Agreement.

1.6 Provision of Promotion Materials. Per Diem Plus shall provide/ upload graphical assets provided by Licensee for the White Labeled version of the Licensed Software to be as shown on the Platform during Term of Agreement.

- Per Diem Plus shall create / provide Company informational brochures, graphics and Company-branded instructional videos for using the White Labeled Product.

2. Licensee's Obligations. Licensee shall perform the following obligations at its cost and expense, unless otherwise indicated.

2.1 Marketing and Distribution. Licensee shall be solely responsible for preparing all marketing and promotional material for the White Labeled Product. All such material must be approved by Per Diem Plus in advance and shall be owned by Licensee unless it contains Proprietary Rights of Per Diem Plus. If so, Per Diem Plus will provide a non-exclusive license to use same during the Term.