

Terms and Conditions

These Terms and Conditions (“Terms”) are entered into by and between Homer Logistics, Inc., 335 Madison Ave, 4th FL, New York, NY 10017 (“Company”) and the Merchant signing the insertion order (“Insertion Order”) to which these Terms are attached (“Merchant”). These Terms together with Insertion Order and the Service Offerings & Procedures (“SOP Document”) and any applicable guaranty set forth the terms and conditions under which Company will provide the Services (as defined below) to Merchant. These Terms together with the Insertion Order, the SOP Document and any applicable guaranty, shall hereinafter be collectively referred to as the “Agreement.”

Scope of Services

- 1.1 Company agrees to provide the delivery services (“Services”) described in this Agreement.
- 1.2 Merchant understands and agrees that the Services are designed so that Company can make deliveries to Merchant’s customers (“Customers”) in the Delivery Zone utilizing Company’s website, interface, application program interface (“API”) and all other software or services offered by Company in connection therewith (collectively, the “Merchant Interface”).
- 1.3 Each Insertion Order shall be governed by these Terms and the SOP Document; however, in the event of any conflict between these Terms or the SOP Document and an Insertion Order, the provisions of the Insertion Order shall prevail.
- 1.4 Company shall have the right to use third parties (the “Contractors”) in performance of some or all its obligations and Services hereunder.

2 Term

- 2.1 The term of the Agreement shall begin on the Effective Date and continue in effect for a period of one (1) year unless earlier terminated in accordance with the terms of the Agreement. Thereafter, the Agreement shall automatically renew for successive one (1) year terms unless and until earlier terminated in accordance with the terms of the Agreement.
- 2.2 The Agreement shall remain in effect until terminated by either party as provided herein.

3 Price and Payment

- 3.1 The Services provided by Company shall be at the pricing set forth in the Insertion Order. Company may change its pricing upon thirty (30) days prior written notice to Merchant and Merchant’s continued use of the Services beyond such thirty (30) day notice shall constitute Merchant’s acceptance of the new pricing.
- 3.2 Unless set forth otherwise in the Insertion Order, Company will submit invoices to Merchant on a seven (7) day payment cycle for all amounts due, and full payment of all invoices are due within fifteen (15) days of the date of the invoice. The preferred payment method and billing cycle schedule are set forth in SOP Document.
- 3.3 Any late payment shall be subject to any costs of collection (including reasonable legal fees) and shall bear interest at the rate of one and one-half percent (1.5%) per month calculated daily and compounded monthly from the due date (prorated for partial periods) or at the maximum rate permitted by law,

whichever is less. In addition to all other remedies available under the Agreement or at law (which Company does not waive by the exercise of any rights hereunder or under the Agreement), Company shall be entitled to suspend the provision of any Services if the Merchant fails to pay any amounts when due under the Agreement or otherwise terminate the Agreement.

- 3.4 The charges required to be paid hereunder do not include any amount for taxes or levy (including interest and penalties). Merchant shall reimburse Company and hold Company harmless for all sales, use, excise, property, or other taxes or levies which Company is required to collect or remit to applicable tax authorities. This provision does not apply to Company’s income or franchise taxes, or any taxes for which Merchant is exempt, provided Merchant has furnished Company with a valid tax exemption certificate.

4 Confidential/Proprietary Information

- 4.1 “Confidential Information” includes the Services, the Terms of the Agreement (including pricing), the Merchant Interface and any other software and other related materials furnished by Company, any information, business plan, concept, idea, know-how, process, technique, program, design, formula, algorithm or work-in-process, any engineering, manufacturing, marketing, technical, financial, data, or sales information, or any information regarding suppliers, customers, employees, investors, or business operations, and any other information or materials, whether in written, or graphic, or any other form or that is and whether disclosed orally, or electronically, whether tangible or intangible and in whatever form or medium provided, or otherwise which is learned or disclosed in the course of discussions, studies, or other work undertaken between the parties disclosed by either party, before or after the Effective Date, as well as any information generated by a party that contains, reflects, or is derived from such information. Any information obtained from Merchant by Company other than through the Merchant Interface is deemed to be Merchant’s Confidential Information. For purposes of clarity, such information obtained through the Merchant Interface is deemed to be Confidential Information of Company and Merchant and either party may use such information in connection with its business and operations including providing the same to current and prospective investors, lenders and business partners as well as its accountants and attorneys.
- 4.2 Without granting any right or license, the obligations of the parties hereunder shall not apply to any material or information that: (i) is or becomes a part of the public domain through no act or omission by the receiving party; (ii) is independently developed by the receiving party without use of the disclosing party’s Confidential Information; (iii) is rightfully obtained from a third party without any obligation of confidentiality to the receiving party; or (iv) is already known by the receiving party without any obligation of confidentiality prior to obtaining the Confidential Information from the disclosing party. In addition, neither party shall be liable for disclosure of Confidential Information if made in response to a valid order of a court or authorized agency of government, provided that notice (where permitted by law or regulation) is promptly given to the party whose Confidential Information is to be disclosed so that such party may seek a protective order and engage in other efforts to minimize the required disclosure. The parties shall cooperate fully in seeking such protective order and in engaging in such other efforts.
- 4.3 Nothing in the Agreement shall be construed to convey any title or ownership rights to the Services, the Merchant Interface or other Company Confidential Information, or to any patent,

copyright, trademark, or trade secret embodied therein, to Merchant, or to grant any other right, title, or ownership interest to the Company Confidential Information, including the Merchant Interface. Nothing in the Agreement shall be construed to convey any title or ownership rights to Merchant's Confidential Information, or to any patent copyright, trademark, or trade secret embodied therein, to Company, or to grant any other right, title, or ownership interest to the Merchant Confidential Information. Neither party shall, in whole or in part, sell, or disclose the Confidential Information to any third party and shall not copy, reproduce or distribute the Confidential Information except as expressly permitted in the Agreement. Each party shall take every reasonable precaution, but no less than those precautions used to protect its own Confidential Information, to prevent the theft, disclosure, and the unauthorized copying, reproduction or distribution of the Confidential Information.

- 4.4 Except as set forth elsewhere in this Agreement, each party agrees at all times to keep strictly confidential all Confidential Information belonging to the other party. Each party agrees to restrict access to the other party's Confidential Information only to those employees or Contractors who (i) require access in the course of their assigned duties and responsibilities and (ii) have agreed in writing to be bound by provisions no less restrictive than those set forth herein or are under a legal obligation or ethical duty to be bound by the confidentiality obligations contained herein.
- 4.5 Merchant shall not reverse engineer the Services, including the Merchant Interface, or disassemble, decompile, or otherwise apply any procedure or process to the Services or Merchant Interface in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Services, Merchant Interface or other software provided hereunder or any algorithm, process, procedure or trade secret information contained in the Services, Merchant Interface or any other software provided by Company. In addition, Merchant shall not interfere with, damage or disrupt any part of the Merchant Interface or any network or equipment used in the provision of the Services.
- 4.6 Each party acknowledges that any unauthorized disclosure or use of the Confidential Information would cause the other party imminent irreparable injury and that such party shall be entitled to, in addition to any other remedies available at law or in equity, temporary, preliminary, and permanent injunctive relief (without the need to post bond) in the event the other party does not fulfill its obligations under this Section.
- 4.7 Notwithstanding this Section, unless otherwise expressly agreed in writing, all suggestions, solutions, improvements, corrections, and other contributions provided by Merchant regarding the Services, Merchant Interface or other Company materials provided to Merchant shall be owned by Company, and Merchant hereby agrees to assign any such rights to Company. Nothing in the Agreement shall preclude Company from using in any manner or for any purpose it deems necessary, the know-how, techniques, or procedures acquired or used by Company in the performance of the Services hereunder.

5 Representations, Warranties and Indemnification

- 5.1 Merchant and Company represent and warrant to the other that they have the right to enter into the Agreement and that their acts and omissions under this Agreement shall comply with all applicable laws, rules, regulations and ordinances and shall be performed in a professional and workmanlike manner. Merchant represents and warrants to Company that the items packaged for delivery by Company will not contain any harmful

or unsafe items or result in any injury (including death) to person or property.

- 5.2 EXCEPT AS OTHERWISE STATED IN THE AGREEMENT, NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS, WARRANTIES, EXPRESS OR IMPLIED INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.
- 5.3 Each party shall indemnify (the "Indemnifying Party") and hold the other party (the "Indemnified Party") and its directors, officers, affiliates and employees harmless from and against (i) for a material breach of the Agreement by the Indemnifying Party including any representation and warranty contained herein, and (ii) for any failure of the Indemnifying Party to comply with any applicable federal, state or local laws, rules or regulations.

6 Limitation of Liability

- 6.1 IN NO EVENT SHALL COMPANY BE LIABLE ON ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, EXCEED THE GREATER OF (a) THE AMOUNT OF CHARGES PAID BY MERCHANT HEREUNDER FOR THE SERVICES IN THE SIX (6) MONTHS PRIOR TO THE CLAIM INWHICH GAVE RISE TO SUCH DAMAGES (BUT IF AT SUCH TIME THE AGREEMENT HAS BEEN IN EFFECT FOR LESS THAN SIX (6) MONTHS, THE AVERAGE MONTHLY REVENUE SINCE INCEPTION, TIMES SIX (6) , OR (b) \$250,000, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.
- 6.2 IN NO EVENT SHALL COMPANY OR ITS CONTRACTORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED, INCLUDING BUT NOT LIMITED TO BUSINESS INTERRUPTION OR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOOD WILL EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.
- 6.3 COMPANY ACTS AS A COMMON CARRIER. THE MERCHANT IS RESPONSIBLE FOR CONSUMER QUALIFICATION AND RIGHT TO PURCHASE ALL ITEMS DELIVERED BY COMPANY. SEALED, NON-TRANSPARENT PACKAGING MUST BE USED BY MERCHANT ON ALL ITEMS REQUIRING CONSUMER VERIFICATION. IN NO EVENT SHALL COMPANY BE LIABLE TO PRODUCTS SOLD TO CONSUMERS UNDER THE LEGAL AGE OF CONSUMPTION. MERCHANT TAKES FULL LIABILITY FOR CONSUMER QUALIFICATION. EXAMPLES OF TYPICAL GOODS INCLUDE ALCOHOL, PHARMACUETICALS, AND MARIJUANA AMONG OTHERS.

7 Termination

- 7.1 The Agreement may be terminated prior to expiration or completion in accordance with the following:
 - 7.1.1 By Company if Merchant (i) fails to make any payments due hereunder within fifteen (15) days after Company

delivers notice of default to Merchant; or by either party if the other party (ii) files a petition for bankruptcy or insolvency, has an involuntary petition filed against it, commences an action providing for relief under bankruptcy laws, files for the appointment of a receiver, or is adjudicated a bankrupt concern.

- 7.1.2 By either party in the event the other has failed to perform any material obligation required to be performed under the Agreement or an Insertion Order and such failure is not corrected within ten (10) days from receipt of written notice from the other party advising of such failure.
- 7.1.3 By either party upon fifteen (15) days' notice for any reason or no reason; provided, however, that Merchant shall be required to notify its designated account manager in writing in order to effect proper notice in accordance with this section. Further, cancellations by Merchant pursuant to this section must occur on or before the 15th day of the month in order to go into effect by the 1st day of the following month; notice of cancellation received after the 15th day of the month will result in being billed for the entire following month.
- 7.2 Upon termination or expiration of the Agreement, Merchant shall promptly (and in no event more than ten (10) days thereafter) pay Company for all Services prior to the time of termination and for which payments have not been made.

8 General Terms

- 8.1 **Independent Contractor.** There parties to the Agreement are independent contractors and nothing in the Agreement shall be deemed to make either party an agent, employee, partner or joint venturer of the other party. Neither party shall have any authority to bind, commit, or otherwise obligate the other party in any manner whatsoever.
- 8.2 **Tip Pass Through Acknowledgement.** Merchant hereby acknowledges and agrees that any tipped amounts or gratuities paid by delivery Customers in connection with deliveries shall be retained in full by Company for distribution to Company delivery personnel. Neither Merchant nor its employees or independent contractors have any entitlement to any portion of any such tipped amounts or gratuities. Merchant shall inform all its employees and independent contractors who prepare and package the orders that they are not entitled to any tips or gratuities in connection therewith and that such work is not tipped work within the meaning of any applicable laws, statutes, regulations or orders.
- 8.3 **Expenses and Attorneys' Fees.** In the event any action is brought to enforce any provision of the Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and other related costs and expenses.
- 8.4 **Insurance.** During the term of the Agreement and for a period of one (1) year thereafter, the parties shall, at their own expense, maintain and carry insurance in full force and effect as follows: Commercial General Liability with limits of no less than \$1,000,000 combined single limit for bodily injury, personal injury and property damage per occurrence and \$2,000,000 in the aggregate. Upon a party's request, the other party shall provide such party with a certificate of insurance from the other party's insurer evidencing the insurance coverage
- 8.5 **Assignment.** Neither party may assign or transfer its rights under the Agreement without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign the Agreement without prior written consent to a successor in interest via merger or stock or asset purchase or sale. Any assignment or transfer in violation of this Section shall be null and void.
- 8.6 **Survival.** The provisions of the Agreement that by their nature and context are intended to survive termination of the Agreement, which includes but shall not be limited to, Sections 1.5, 3, 3.4, 5.2, 6 and 7.3 of the Agreement, shall survive termination. Each party's confidentiality obligations shall survive the termination of the Agreement for a period of three (3) years.
- 8.7 **Notices.** Any notice, approval or consent required or permitted under this Agreement shall be in writing and sent to the addresses set forth on the Insertion Order and will be deemed to have been duly given upon (i) delivery if delivered personally, (ii) within three (3) days if mailed by first-class, registered or certified U.S. mail, postage prepaid, return receipt requested, (iii) upon the date of delivery if sent via overnight delivery service, or (iv) upon the date of the confirmed email or facsimile if sent via email or facsimile, provided that in all cases of email notification, a physical copy of such notice is promptly sent to the recipient's address as set forth on the Insertion Order.
- 8.8 **Force Majeure.** Neither party shall be liable to the other party for any delay or failure of said party to perform its obligations hereunder (except for payment obligations) if such delay or failure arises from any cause or causes beyond the reasonable control of such party. Such causes shall include, but are not limited to, acts of God, floods, fires, loss of electricity or other utilities (including Internet outages and failures in electronic communication), or delays by either party in providing required resources or support or performing any other requirements hereunder.
- 8.9 **Reservation of Rights.** Each party reserves all rights not specifically granted herein.
- 8.10 **Entire Agreement.** The Agreement, the Insertion Order, the SOP Document and any applicable guaranty constitute the entire agreement between the parties regarding the subject matter hereof and supersede all proposals, prior discussions and writings between the parties with respect thereto. The terms and conditions of any purchase order or other instrument issued by Merchant in connection with the Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement shall not be binding on Company.
- 8.11 **Modifications.** The parties agree that the SOP Document may be altered, amended or modified, by Company at any time and such updated agreement shall go into effect fifteen (15) days after written notice to Merchant of such altered, amended or modified agreement. If Merchant does not agree to such altered, amended or modified agreement, Merchant may terminate the Agreement as set forth above. Merchant's continued use of the Services after such fifteen (15) day period shall constitute Merchant's acceptance of such altered, amended or modified agreement. The parties hereto agree that the most recent version of the SOP Document shall govern.
- 8.12 **Nonsolicitation.** Merchant agrees that during the term of the Agreement and for a period of one (1) year after the termination of the term of the Agreement, neither Merchant nor any of its affiliates or representatives shall directly or indirectly, for itself or on behalf of another person or entity, solicit for employment or otherwise induce, influence or encourage to terminate his or her employment or contracting relationship with Company, or employ or engage as an independent contractor, any current

employee or independent contractor (or former employee or independent contractor who left the employ or engagement by Company within the previous three (3) months) of Company or any of its affiliates (each, a "Covered Employee"), or discuss any potential employment or business relationship with any Covered Employee, regardless of whether Merchant initiated the discussions or sought out contact with such Covered Employee.

- 8.13 **Headings.** Headings are for reference purposes only, have no substantive effect, and shall not enter into the interpretation hereof.
- 8.14 **No Waiver.** No failure or delay in enforcing any right or exercising any remedy will be deemed a waiver of any such right or remedy or any future right or remedy.
- 8.15 **Publicity.** Neither party shall issue a press release or make any public announcement regarding this Agreement without the other party's prior written approval; provided, however, that

either party may use the other party's name and logo in a list of its customers or service providers, as applicable, on its website or in its marketing materials, .

- 8.16 **Severability and Reformation.** If any portion of the Agreement is determined to be or becomes unenforceable or illegal, such portion shall be reformed to the minimum extent necessary in order for the Agreement to remain in effect in accordance with its terms as modified by such reformation.
- 8.17 **Choice of Law and Venue.** THE AGREEMENT SHALL BE GOVERNED AND INTERPRETED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS OF ANY STATE OR JURISDICTION. VENUE SHALL LIE EXCLUSIVELY IN AND THE PARTIES HEREBY IRREVOCABLY CONSENT TO JURISDICTION OF THE STATE COURTS LOCATED IN MANHATTAN OR THE FEDERAL COURTS IN THE SOUTHERN DISTRICT OF NEW YORK.