

TERMS AND CONDITIONS AGREEMENT

Effective: December 1, 2022

This Terms and Conditions Agreement (this “**Agreement**”) governs your use of this website and any branded websites that link to these terms (each, a “**Website**”), the services and resources enabled therein (each, a “**Service**” and collectively, the “**Services**”), and each branded application that includes links to this Agreement (the “**Application**” together with the Website and Services, the “**Properties**”), which are provided to you by CTOS Software, Inc., a Delaware corporation d/b/a Empower Delivery (“**Empower Delivery**”) on behalf of the company whose branding is displayed on the Properties (“**Merchant**”). THIS AGREEMENT IS A LEGAL AGREEMENT IS BETWEEN YOU AND EMPOWER DELIVERY, AND NOT MERCHANT.

PLEASE READ THIS AGREEMENT CAREFULLY. BY ACCESSING OR USING THE WEBSITE OR SERVICES, CLICKING ON THE "I ACCEPT" BUTTON, COMPLETING THE REGISTRATION PROCESS, AND/OR BROWSING THE WEBSITE OR DOWNLOADING THE APPLICATION, YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT, (2) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH EMPOWER DELIVERY, AND (3) YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT PERSONALLY OR ON BEHALF OF THE COMPANY YOU HAVE NAMED AS THE USER, AND TO BIND THAT COMPANY TO THIS AGREEMENT. THE TERM "YOU" REFERS TO THE INDIVIDUAL OR LEGAL ENTITY, AS APPLICABLE, IDENTIFIED AS THE USER WHEN YOU REGISTERED FOR THE SERVICES. **IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THIS WEBSITE, APPLICATION OR SERVICES.**

SECTION 12 OF THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW CLAIMS THAT YOU AND EMPOWER DELIVERY HAVE AGAINST EACH OTHER ARE RESOLVED, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS THAT AROSE OR WERE ASSERTED BEFORE THE EFFECTIVE DATE OF THIS AGREEMENT. IN PARTICULAR, SECTION 11 SETS FORTH OUR ARBITRATION AGREEMENT WHICH WILL, WITH LIMITED EXCEPTIONS, REQUIRE DISPUTES BETWEEN US TO BE SUBMITTED TO BINDING AND FINAL ARBITRATION. UNLESS YOU OPT OUT OF THE ARBITRATION AGREEMENT: (1) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AND SEEK RELIEF AGAINST EMPOWER DELIVERY ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, EXCEPT AS SET FORTH IN SECTION 12(G); AND (2) YOU ARE WAIVING YOUR RIGHT TO SEEK RELIEF IN A COURT OF LAW AND TO HAVE A JURY TRIAL ON YOUR CLAIMS. THE ARBITRATION AGREEMENT COULD AFFECT YOUR RIGHT TO PARTICIPATE IN PENDING PROPOSED CLASS ACTION LITIGATION. PLEASE SEE SECTION 11 FOR MORE INFORMATION REGARDING THIS ARBITRATION AGREEMENT, THE POSSIBLE EFFECTS OF THIS ARBITRATION AGREEMENT, AND HOW TO OPT OUT OF THE ARBITRATION AGREEMENT.

THIS AGREEMENT IS SUBJECT TO CHANGE BY EMPOWER DELIVERY IN ITS SOLE DISCRETION AT ANY TIME. Empower Delivery reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Software or Services at any time, effective upon posting of an updated version of this Agreement through the Services. You should regularly review this Agreement, as your continued use of the Services after any such changes constitutes your agreement to such changes. Notwithstanding any provision in the Agreement to the contrary, Empower Delivery agrees that if it makes any future material changes to the Arbitration Agreement in Section 12, it will not apply to any individual claim(s) that you had already provided notice of to Empower Delivery.

1. Use of the Services

- a. **Application License.** The Properties are protected by copyright laws throughout the world. Subject to your compliance with these Terms of Service, Empower Delivery grants you a limited non-exclusive, non-transferable, non-sublicensable, revocable license to download, install and use a copy of the Application on a mobile device or computer that you own or control and to run such copy of the Application solely for your own personal purposes. Furthermore, with respect to any Application accessed through or downloaded from the Apple iTunes App Store (an "**App Store Sourced Application**"), you will only use the App Store Sourced Application (i) on an Apple-branded product that runs the iOS (Apple's proprietary operating system) and (ii) as permitted by the "Usage Rules" set forth in the Apple App Store Terms of Service.
- b. **Updates.** You understand that the Properties are evolving. As a result, Empower Delivery may require you to accept updates to the Properties that you have installed on your computer or mobile device. You acknowledge and agree that Empower Delivery reserves the right, in its sole discretion, to modify the Properties from time to time, with or without notice. You may need to update third-party software from time to time in order to use the Properties.
- c. **Branded Company Products.** The Properties enable Merchant to offer various food, beverage and other related products ("**Products**") to you and other users. The Products advertised or otherwise made available for purchase on the Properties are determined solely by Merchant and Empower Delivery shall have no liability to you for any modification, unavailability or discontinuation of any Products.
- d. **Delivery Services.** Any delivery service you use, as provided at the option of Merchant, is at your sole discretion and Empower Delivery shall have no liability to you for any delivery-related issues.
- e. **Limitations on Your Use of Services.** The rights granted to you in these Terms of Service are subject to the following restrictions: (a) you may not attempt, or authorize, encourage, or support others' attempts, to circumvent, reverse engineer, decrypt, break or otherwise alter or interfere with the Properties; (b) you may not

copy, distribute, sell, resell, or exploit for any commercial purposes any portion of the Properties, or any Products accessible through the Services; (c) you shall not use any manual or automated software, devices or other processes, including, without limitation, spiders, robots, scrapers, data mining tools, and the like, to "scrape" or download data from any web pages contained in the Website; (d) you shall not access the Properties to build a competing or similar website, application or service; and (e) except as expressly stated herein, no part of the Properties may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means. Any future release, update or other addition to the Properties shall be subject to these Terms of Service. Empower Delivery, its suppliers and services providers, and Merchant reserve all rights not granted in these Terms of Service. Any authorized use of the Properties terminates the licenses granted by Empower Delivery hereunder.

2. Eligibility and Registration

- a. **Registering Your Account.** In order to access certain features of the Properties you may be required to become a Registered User. For purposes of these Terms of Service, a "**Registered User**" is a user who has registered an account on the Website or Application ("**Account**"), has a valid account with a third-party service or social networking service ("**SNS**") through which the User has connected to the Services (each such account, a "**Third-Party Account**").
- b. **Access Through a SNS.** If you access the Services through a SNS as part of the functionality of the Website, the Application and/or the Services, you may link your Account with Third-Party Accounts, by allowing Empower Delivery to access your Third-Party Account, as is permitted under the applicable terms and conditions that govern your use of each Third-Party Account. You represent that you are entitled to disclose your Third-Party Account login information to Empower Delivery and/or grant Empower Delivery access to your Third-Party Account (including, but not limited to, for use for the purposes described herein) without breach by you of any of the terms and conditions that govern your use of the applicable Third-Party Account and without obligating Empower Delivery to pay any fees or making Empower Delivery subject to any usage limitations imposed by such third-party service providers. By granting Empower Delivery access to any Third-Party Accounts, you understand that Empower Delivery may access, make available and store (if applicable) any information, data, text, software, music, sound, photographs, graphics, video, messages, tags and/or other materials accessible through the Properties ("**Content**") that you have provided to and stored in your Third-Party Account ("**SNS Content**") so that it is available on and through the Properties via your Account. Unless otherwise specified in the Terms of Service, all SNS Content is, as between you and Empower Delivery, your content. Depending on the Third-Party Accounts you choose and subject to the privacy settings that you have set in such Third-Party Accounts, personally identifiable information that you post to your Third-Party Accounts may be available on and through your Account on the Properties. Please note that if a

Third-Party Account or associated service becomes unavailable or the Empower Delivery's access to such Third-Party Account is terminated by the third-party service provider, then SNS Content will no longer be available on and through the Properties. PLEASE NOTE THAT YOUR RELATIONSHIP WITH THE THIRD-PARTY SERVICE PROVIDERS ASSOCIATED WITH YOUR THIRD-PARTY ACCOUNTS IS GOVERNED SOLELY BY YOUR AGREEMENT(S) WITH SUCH THIRD-PARTY SERVICE PROVIDERS, AND EMPOWER DELIVERY DISCLAIMS ANY LIABILITY FOR PERSONALLY IDENTIFIABLE INFORMATION THAT MAY BE PROVIDED TO IT BY SUCH THIRD-PARTY SERVICE PROVIDERS IN VIOLATION OF THE PRIVACY SETTINGS THAT YOU HAVE SET IN SUCH THIRD-PARTY ACCOUNTS. Empower Delivery makes no effort to review any SNS Content for any purpose, including but not limited to, for accuracy, legality or noninfringement, and Empower Delivery is not responsible for any SNS Content.

- c. **Registration Data.** In registering for the Services, you agree to (1) provide true, accurate, current and complete information about yourself as prompted by the Services' registration form (the "**Registration Data**"); and (2) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You represent that you are (1) at least eighteen (18) years old; (2) of legal age to form a binding contract; and (3) not a person barred from using the Properties under the laws of the United States, your place of residence or any other applicable jurisdiction. You are responsible for all activities that occur under your Account. You agree that you shall monitor your Account to restrict use by minors, and you will accept full responsibility for any unauthorized use of the Properties by minors. You may not share your Account or password with anyone, and you agree to (1) notify Empower Delivery immediately of any unauthorized use of your password or any other breach of security; and (2) exit from your Account at the end of each session. If you provide any information that is untrue, inaccurate, not current or incomplete, or Empower Delivery has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Empower Delivery has the right to suspend or terminate your Account and refuse any and all current or future use of the Properties (or any portion thereof). You agree not to create an Account using a false identity or information, or on behalf of someone other than yourself. You agree not to create an Account or use the Properties if you have been previously removed by Empower Delivery, or if you have been previously banned from any of the Properties.

3. **Termination**

If you materially breach the terms of this Agreement, Empower Delivery may suspend your ability to use the Properties or may terminate this Agreement effective immediately, with or without notice to you. If you want to terminate this Agreement, you may do so by closing your Account for all Services that you use. Upon termination of this Agreement, your right to use the Services will automatically terminate immediately. Empower Delivery will not have any liability whatsoever to you for any suspension or termination.

All provisions of this Agreement, which by their nature should survive, shall survive termination of this Agreement, including without limitation, ownership provisions, warranty disclaimers and limitation of liability.

4. Payment and Billing

You agree to pay all fees or charges to your Account in accordance with the fees, charges and billing terms from Merchant or any third party acting on their behalf (e.g., a delivery service company) and in effect at the time a fee or charge is due and payable. You must provide Empower Delivery with a valid credit card (Visa, MasterCard, American Express, Discover, or any other issuers accepted by us), charge card, Merchant-specific gift card or Merchant-specific cash card ("**Payment Provider**"). You acknowledge and agree that for each order you place through the Service, the full cost of Products you order will be assessed against your Payment Provider. You acknowledge and agree that a command originating from your Account constitutes an authorization for the Service to charge the designated amount and you assume all liability for, and shall promptly pay, all such charges. Without limiting the foregoing, you acknowledge and agree that you will pay assessed charges for all orders placed from your Account. The Service will provide you with reasonable notice of any material modification in the fees charged for the services, which notice may be provided by posting the new fee schedule on the Website. You agree to immediately notify Empower Delivery of any change in your billing address or the credit card used for payment hereunder.

5. Refund Policy

You acknowledge that Empower Delivery is not responsible for full or partial refunds on purchases of Products or related order fulfillment charges including any associated delivery-related charges. Addressing customer requests for refunds on purchases of Products will be the sole responsibility of the Merchant location at which the order was placed in accordance with such location's refund policies. Contact the location directly with the phone number provided as soon as possible to request a full or partial refund.

6. Disclaimer of Warranties

YOU EXPRESSLY AGREE THAT USE OF THE PROPERTIES IS AT YOUR OWN RISK. THE PROPERTIES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EMPOWER DELIVERY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, AND NON-INFRINGEMENT. EMPOWER DELIVERY MAKES NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE. YOU UNDERSTAND AND AGREE THAT ANY PRODUCTS YOU OBTAIN THROUGH USE OF THE SERVICES IS DONE AT YOUR OWN RISK, AND EMPOWER DELIVERY MAKES NO WARRANTY REGARDING ANY DEALINGS WITH OR TRANSACTIONS ENTERED INTO WITH ANY OTHER PARTIES THROUGH THE SERVICES. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY

YOU FROM EMPOWER DELIVERY OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

7. Limitation of Liability

YOU UNDERSTAND THAT TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL EMPOWER DELIVERY, MERCHANT, ANY THIRD PARTY PROVIDERS OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS OR LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (EVEN IF SUCH PARTIES WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING OUT OF OR RELATED TO YOUR USE OF THE PROPERTIES OR PRODUCTS, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON CONTRACT, TORT OR OTHERWISE. THE PARTIES ACKNOWLEDGE THAT THE TERMS OF THIS PARAGRAPH REFLECT THE ALLOCATION OF RISK SET FORTH IN THESE TERMS OF SERVICE AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF LIABILITY. UNDER NO CIRCUMSTANCES WILL THE AGGREGATE LIABILITY OF EMPOWER DELIVERY TO YOU FOR ALL CLAIMS ARISING FROM OR RELATED TO YOUR USE OF THE PROPERTIES OR PRODUCTS, EXCEED ONE HUNDRED DOLLARS (\$100). Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some of the above limitations and disclaimers may not apply to you. To the extent that we may not, as a matter of applicable law, disclaim any implied warranty or limit its liabilities, the scope and duration of such warranty and the extent of our liability shall be the minimum permitted under such applicable law.

8. Indemnification

You agree to indemnify, defend and hold harmless the Empower Delivery, Merchant, and each of their agents, employees, representatives, licensors, affiliates, officers and directors, from and against any and all claims, liabilities, damages, losses, costs, expenses, fees (including reasonable attorneys' fees and court costs) resulting or arising from any third-party claim in connection with (a) any information you (or anyone accessing the services using your password) submit or transmit through the Services, (b) your use of or access to the Properties, (c) your violation of this Agreement, (d) your violation of any rights of any third party, or (e) any viruses, trojan horses, worms, time bombs, cancelbots, spyware, or other similar harmful or deleterious programming routines input by you into the services.

9. Intellectual Property Ownership

Except for the content and information you upload to the Services, you agree that Empower Delivery and its suppliers (including Merchant) own all rights, title and interest in the Properties, including all trademarks, brand names, and logos therein. All such material is protected by relevant intellectual property laws, including copyright, trademark, patent and/or trade secret laws. Such material may not be modified, reproduced, transmitted, sold, offered for sale, publicly displayed, or redistributed in any way without our prior written permission and the prior written permission of any other

applicable rights licensor. All trademarks, brands, slogans and other indicia of origin ("**Marks**") that appear on or in connection with the Services are the property of Empower Delivery and/or its affiliates, licensors (including Merchant) and/or licensees. You are not authorized to use any such Marks.

10. **App Stores**

You acknowledge and agree that the availability of the Application and the Services is dependent on the third party from whom you received the Application license, e.g., the Apple iTunes or Google Play app stores ("**App Store**"). You acknowledge that this Agreement is between you and Empower Delivery and not with the App Store. Empower Delivery, not the App Store, is solely responsible for the Properties, including the Application, 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 Application, 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 Properties, including the Application. You agree to comply with, and your license to use the Application is conditioned upon your compliance with, all applicable third-party terms of agreement (e.g., the App Store's terms and policies) when using the Properties, including the Application. You acknowledge that the App Store (and its subsidiaries) are third-party beneficiaries of the Terms of Service and will have the right to enforce them.

11. **User Content**

- a. **User Content.** Empower Delivery may provide you with interactive opportunities through the Services, including, by way of example, the ability to post user ratings and reviews (collectively, "**User Content**"). You represent and warrant that you are the owner of, or otherwise have the right to provide, all User Content that you submit, post and/or otherwise transmit through the Services. You further represent and warrant that any User Content that you submit, post and/or otherwise transmit through the Services (i) does not violate any third-party right, including any copyright, trademark, patent, trade secret, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) does not contain material that is false, intentionally misleading, or defamatory; (iii) does not contain any material that is unlawful; (iv) does not violate any law or regulation; and (v) does not violate this Agreement. You hereby grant Empower Delivery a perpetual, irrevocable, transferable, fully paid, royalty-free, non-exclusive, worldwide, fully sublicenseable right and license to use, copy, display, publish, modify, remove, publicly perform, translate, create derivative works, distribute and/or otherwise use the User Content in connection with Empower Delivery's business and in all forms now known or hereafter invented ("**Uses**"), without notification to and/or approval by you. You further grant Empower Delivery a license to use your username, first name and last initial, and/or other user profile information, including without limitation, your ratings history, to attribute User Content to you in connection with such Uses, without notification or approval by you. You agree that this license includes the right for other users to access and use your User

Content in conjunction with participation in the Services and as permitted through the functionality of the Services. In the interest of clarity, the license granted to Empower Delivery herein shall survive termination of the Services or your account. Empower Delivery reserves the right in its sole discretion to remove or disable access to any User Content from the Services, suspend or terminate your account at any time, or pursue any other remedy or relief available under equity or law if you post any User Content that violates this Agreement or any community or content guidelines we may publish or that we consider to be objectionable for any reason. You agree that Empower Delivery may monitor and/or delete your User Content (but does not assume the obligation) for any reason in Empower Delivery's sole discretion. Empower Delivery may also access, read, preserve, and disclose any information as Empower Delivery reasonably believes is necessary to (a) satisfy any applicable law, regulation, legal process, or governmental request, (b) enforce this Agreement, including investigation of potential violations hereof, (c) detect, prevent, or otherwise address fraud, security, or technical issues, (d) respond to User support requests, or (e) protect the rights, property or safety of Empower Delivery, its Users and the public.

- b. **Feedback.** You agree that any submission of any ideas, suggestions, and/or proposals to Empower Delivery through its suggestion, feedback, wiki, forum or similar pages ("**Feedback**") is at your own risk and that Empower Delivery has no obligations (including without limitation, obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback and you hereby grant to Empower Delivery a perpetual, irrevocable, transferable, fully paid, royalty-free, non-exclusive, worldwide, fully sublicenseable right and license to use, copy, display, publish, modify, remove, publicly perform, translate, create derivative works, distribute and/or otherwise use such Feedback.
- c. **Ratings and Reviews.** To the extent that you are asked to rate and post reviews of Merchant ("**Ratings**" and "**Reviews**"), such Ratings and Reviews are considered User Content and are governed by this Agreement. Ratings and Reviews are not endorsed by Empower Delivery and do not represent the views of Empower Delivery or its affiliates. Empower Delivery shall have no liability for Ratings and Reviews or for any claims for economic loss resulting from such Ratings and Reviews. Because we strive to maintain a high level of integrity with respect to Ratings and Reviews posted or otherwise made available through the Services, you agree that: (i) you will base any Rating or Review on first-hand experience with Merchant; (ii) you will not provide a Rating or Review for Merchant if you have an ownership interest, employment relationship or other affiliation or for any of that company's competitors; (iii) you will not submit a Rating or Review in exchange for payment, free food items, or other benefits from Merchant; (iv) any Rating or Review you submit will comply with the Federal Trade Commission's Guides Concerning the Use of Endorsements and Testimonials in Advertising; and (v) your Rating or Review will comply with the terms of this Agreement. If we determine, in our sole discretion, that any Rating or Review could diminish

the integrity of the Ratings and Reviews or otherwise violates this Agreement, we may remove such User Content without notice.

12. Arbitration Agreement; Class Waiver; Waiver of Trial by Jury

Please read this Arbitration Agreement carefully. It is part of your contract with Empower Delivery and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.

- a. **Applicability of Arbitration Agreement.** All claims and disputes (excluding claims for injunctive or other equitable relief as set forth below) in connection with this Agreement or the use of any product or service provided by Empower Delivery that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under the terms of this Arbitration Agreement. This Arbitration Agreement applies to you and Empower Delivery, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of Services or Products provided under this Agreement.
- b. **Notice Requirement and Informal Dispute Resolution.** Before either party may seek arbitration, the party must first send to the other party a written Notice of Dispute ("Notice") describing the nature and basis of the claim or dispute, and the requested relief. A Notice to Empower Delivery should be sent to: 129 Market Street, Suite 700, Indianapolis, IN 46204. After the Notice is received, you and Empower Delivery may attempt to resolve the claim or dispute informally. If you and Empower Delivery do not resolve the claim or dispute within thirty (30) days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.
- c. **Arbitration Rules.** Arbitration shall be initiated through the American Arbitration Association ("AAA"), an established alternative dispute resolution provider ("ADR Provider") that offers arbitration as set forth in this section. If AAA is not available to arbitrate, the parties shall agree to select an alternative ADR Provider. The rules of the ADR Provider shall govern all aspects of this arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with the Terms of Service. The AAA Consumer Arbitration Rules governing the arbitration are available online at www.adr.org or by calling the AAA at 1-800-778-7879. The arbitration shall be conducted by a single, neutral arbitrator. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the Arbitration Rules. Any hearing will be held in a location within 100 miles

of your residence, unless you reside outside of the United States, and unless the parties agree otherwise. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Each party shall bear its own costs (including attorney's fees) and disbursements arising out of the arbitration and shall pay an equal share of the fees and costs of the ADR Provider.

- d. **Additional Rules for Non-Appearance Based Arbitration.** If non-appearance arbitration is elected, the arbitration shall be conducted by telephone, online and/or based solely on written submissions; the specific manner shall be chosen by the party initiating the arbitration. The arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties.
- e. **Time Limits.** If you or Empower Delivery pursue arbitration, the arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a claim) and within any deadline imposed under the AAA Rules for the pertinent claim.
- f. **Authority of Arbitrator.** If arbitration is initiated, the ADR Provider will decide the rights and liabilities, if any, of you and Empower Delivery, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The ADR Provider shall have the authority to grant motions dispositive of all or part of any claim. The ADR Provider shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the AAA Rules, and the Terms of Service. The ADR Provider shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The ADR Provider has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the ADR Provider is final and binding upon you and Empower Delivery.
- g. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in court and are subject to very limited review by a court. In the event any litigation should arise between you and Empower Delivery in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND EMPOWER DELIVERY WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.
- h. **Waiver of Class or Consolidated Actions.** ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE CUSTOMER OR

USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER.

- i. **Confidentiality.** All aspects of the arbitration proceeding, including but not limited to the award of the ADR Provider and compliance therewith, shall be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This Paragraph shall not prevent a party from submitting to a court of law any information necessary to enforce this Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.
- j. **Severability.** If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.
- k. **Right to Waive.** Any or all of the rights and limitations set forth in this Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or effect any other portion of this Agreement.
- l. **Survival of Agreement.** This Arbitration Agreement will survive the termination of your relationship with Empower Delivery.
- m. **Small Claims Court.** Notwithstanding the foregoing, either you or Empower Delivery may bring an individual action in small claims court.
- n. **Emergency Equitable Relief.** Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.
- o. **Claims Not Subject To Arbitration.** Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark, or trade secret shall not be subject to this Arbitration Agreement.
- p. **Courts.** In any circumstances where the foregoing Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within Indianapolis, Indiana, for such purpose.

13. Transactions Involving Alcohol

You may have the option to request delivery of alcohol products in some locations and from Merchant. If you receive your delivery in the United States, you agree that you will only order alcohol products if you are 21 years of age or older. If you receive your delivery in another country, you agree that you will only order alcohol products if you are of legal age to purchase alcohol products in the relevant jurisdiction. You also agree that,

upon delivery of alcohol products, you will provide valid government-issued identification proving your age to the contractor delivering the alcohol products and that the recipient will not be intoxicated when receiving delivery of such products. If you order alcohol products, you understand and acknowledge that neither Empower Delivery nor the contractor can accept your order of alcohol products, and the order will only be delivered if Merchant accepts your order. The contractor reserves the right to refuse delivery if you are not 21 years old, if you cannot provide a valid government issued ID, if the name on your ID does not match the name on your order, or you are visibly intoxicated. If the contractor is unable to complete the delivery of alcohol products for one or more of these reasons, you are subject to a non-refundable \$20 re-stocking fee.

14. Choice of Law

These Terms of Service are governed by U.S. federal law and/or laws of the state of Indiana, consistent with the Federal Arbitration Act, without resort to conflict of law provisions.

15. Notice. Where Empower Delivery requires that you provide an e-mail address, you are responsible for providing Empower Delivery with your most current e-mail address. If the last e-mail address you provided to Empower Delivery is not valid, or for any reason is not capable of delivering to you any notices required/ permitted by this Agreement, Empower Delivery's dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to Empower Delivery only at the following address: CTOS Software, Inc. d/b/a Empower Delivery, 129 E. Market Street, Suite 700, Indianapolis, IN 46204. Such notice shall be deemed given when received by Empower Delivery by letter delivered by nationally recognized overnight delivery service or first-class postage prepaid mail at the above address.

16. Waiver. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

17. Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

18. Export Control. You may not use, export, import, or transfer the Properties except as authorized by U.S. law, the laws of the jurisdiction in which you obtained the Properties, and any other applicable laws. In particular, but without limitation, Empower Delivery Properties may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using the Properties, you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. You also will not use the

Empower Delivery Properties for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You acknowledge and agree that products, services or technology provided by Empower Delivery are subject to the export control laws and regulations of the United States. You shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer Empower Delivery products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.

19. **Electronic Communications.** The communications between you and Empower Delivery use electronic means, whether you visit the Properties or send Empower Delivery e-mails, or whether Empower Delivery posts notices on the Empower Delivery Properties or communicates with you via e-mail. For contractual purposes, you (1) consent to receive communications from Empower Delivery in an electronic form; and (2) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Empower Delivery provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights.
20. **Release.** You hereby release Empower Delivery, its affiliates and each of their respective officers, directors, employees, and agents and their successors from claims, demands, any and all losses, damages, rights, and actions of any kind, including personal injuries, death, and property damage, that is either directly or indirectly related to or arises from your use of the Properties, including but not limited to, any interactions with or conduct of other users or third-party websites of any kind arising in connection with or as a result of this Agreement or your use of the Properties. If you are a California resident, you hereby waive California Civil Code Section 1542, which states, "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor".
21. **Assignment.** This Agreement, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by you without Empower Delivery's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.
22. **Force Majeure.** Empower Delivery shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.
23. **Questions, Complaints, Claims.** If you have any questions, complaints or claims with respect to the Properties, please contact us at: Empower Delivery, Inc. d/b/a Empower Delivery, 129 E. Market Street, Suite 700, Indianapolis, IN 46204. We will do our best to address your concerns. If you feel that your concerns have been addressed incompletely, we invite you to let us know for further investigation.

24. **Consumer Complaints.** In accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.
25. **Entire Agreement.** This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.