

## **Dutchie Dispensary Terms and Conditions**

Last Updated: July 7, 2020

Courier Plus Inc. dba Dutchie (“Company” or “Dutchie”) will provide the services ordered by the Retailer (“Brand”) on the Dutchie website (the “Service(s)”) for the duration of the Term and in accordance with the Dutchie Dispensary Terms and Conditions (“Terms and Conditions”) and the applicable Terms of Service (if any) on the Dutchie website (<https://dutchie.com/terms>) (collectively, the “Agreement”). The Agreement represents Brand’s agreement to purchase and pay for the Services set forth below pursuant to the Terms. Brand represents and agrees that by signing up for the Services, (i) Brand has reviewed and expressly agrees to all of the terms of this Agreement and the Terms and Conditions, (ii) this is a legally binding order for and purchase of Services, and (iii) the individual who has agreed to this Agreement on Brand’s behalf is authorized to do so and to bind Brand to the obligations hereunder. This Agreement shall be in effect as of the date that Brand signs up for the Services on the Dutchie website (the “Effective Date”). Brand may engage Company to reduce the Service provided, or to provide additional Services under this Agreement by requesting an amendment to the Agreement or executing additional Agreements. Any such amendment to any Agreement must be agreed to by the parties in writing. All payments shall be made by check, ACH, or credit card. Company may change the Agreement from time to time by providing thirty (30) days prior notice either by emailing the email address associated with your account or by posting a notice on the Company site (“Update Notice”). You can review the most current version of this Agreement at any time [at <https://admin.dutchie.com/images/legal-terms.pdf>]. The revised Agreement will become effective upon your review and acceptance of the revised Agreement on the Dutchie website after being prompted on the Dutchie website, or your use after the Updated Notice will constitute acceptance of the revised Agreement. If any change to this revised Agreement is not acceptable to you, you may either discontinue use of the Services or send a cancellation email to [support@dutchie.com](mailto:support@dutchie.com).

### **1. SERVICES AND SUPPORT**

Company shall provide mutually agreed Services to or on behalf of Brand as set forth in this Agreement. All placement of advertising, menu listing, and promotional content on Brand’s behalf on the Dutchie Platform shall be provided at Company’s sole discretion, subject to said Agreement. Company is not a courier or curb-side pickup service, Brand is fully responsible for actual delivery of any products offered by Brand through the Dutchie Platform.

Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Brand the Services and support for all Software, and hereby grants Brand a non-exclusive right to access and use the Services and Software.

### **2. RESTRICTIONS; RESPONSIBILITIES; INDEMNITY**

Brand will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“Software”); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for time sharing or service bureau purposes or otherwise for the benefit of a third party; or remove or alter any proprietary notices or labels. With respect to any Software that is distributed or provided to Brand for use on Brand premises or devices, Company hereby grants Brand a non-exclusive, non-transferable, non-sublicensable license to use such Software during the Term only in connection with the Services and only for the locations authorized in the Agreement.

Brand shall be responsible for obtaining and maintaining any Company Order Terminal, equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation,

tablets, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Brand shall also be responsible for maintaining the security of the Equipment, Brand account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Brand account or the Equipment with or without Brand's knowledge or consent. Access to the Dutchie Platform may be through a secure connection with the public internet and Brand acknowledges and agrees that Company is not responsible or liable for public internet disruptions or third-party network provider disruptions.

Brand and Company each represent and warrant that during any period in which Brand's products are listed on the Dutchie Platform or Company otherwise provides Services (a) it is legally organized under and is and will be in compliance with all applicable local, state, provincial, and federal laws and regulations, (b) Brand's products, marketing materials, and packaging are in compliance with all provincial and federal laws and regulations, (c) Company's Services and the Dutchie Platform are in compliance with all local, provincial, and state laws and regulations, and (d) Brand and Company each hold and maintain all required provincial, state, or federal licenses and permits necessary to operate each of their businesses.

Brand agrees to comply with all applicable truth-in-advertising, *Health Canada Act* requirements, *Cannabis Act* requirements, and other advertising and consumer protection laws and regulations with respect to the marketing of Brand's products listed on the Company website and Brand agrees that (a) Brand is solely liable for information ("Brand Information") it provides to Company regarding the listing of Brand products on the Dutchie Platform, (b) Company has no duty to verify or research the Brand Information provided by Brand, and (c) Company has no liability with respect to the display or advertising of such Brand Information, including but not limited to third party claims, governmental actions, or consumer actions or complaints.

Brand agrees to defend, indemnify and hold Company, its affiliates, its licensors, and each of their officers, directors, employees, attorneys and agents harmless from and against any and all third-party claims, costs, damages, judgments, decrees, fines, penalties, liabilities and expenses (including reasonable legal fees and litigation costs), or governmental or administrative proceedings, arising out of any third party claim or governmental action in connection with: (a) Brand's breach of this Agreement or violation of any applicable law or regulation (including without limitation laws and regulations regarding cannabis product liability, the marketing and sale of cannabis products, and/or intellectual property infringement), whether or not referenced herein, and/or (b) Brand's (or Brand's employees', contractors' or agents') gross negligence or intentional misconduct. Although Company has no obligation to monitor Brand's use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing. Any claim for indemnification pursuant to this Section 2.5 must be provided promptly in writing to the indemnifying party. The indemnifying party shall have sole discretion over the defense of such claim, provided that it shall not settle such claim whereby any indemnified party must pay any compensation or admit any liability without the indemnified party's prior written authorization (which shall not be unreasonably withheld). At the indemnified party's own cost, the indemnified party shall have the right to retain its own legal counsel. At the indemnifying party's costs, the indemnified party shall provide reasonable cooperation to the indemnifying party in the defense of the indemnifiable claim. The obligation to indemnify and defend under this Section shall not apply to the extent the indemnified party is liable for the indemnifiable claim.

### **3. CONFIDENTIALITY; PROPRIETARY RIGHTS**

Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality, pricing, and performance of the Service, Software and Dutchie Platform ("Company Data"). Proprietary Information of Brand includes non-public data provided by Brand to Company to enable the provision of the Services ("Brand Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not

apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law. Provided however, Company Data shall be kept confidential for so long that any portion of such Company Data remains a trade secret under applicable law.

Company owns all right, title and interest in and to (a) the Services and Software, and all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with the Services or support, (c) all feedback provided by Brand relating to the Services, and (d) all intellectual property rights related to any of the foregoing.

Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Brand Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified and anonymized form in connection with its business for marketing purposes. No rights or licenses are granted except as expressly set forth herein.

Brand hereby grants Company a limited license to use, display, and copy Brand's copyrights, trademarks, trade names, and trade dress as necessary for Company to provide the Services listed in an applicable Agreement.

Company utilizes industry standard data storage and protection measures in the delivery of Services.

#### **4. FEES AND PAYMENTS**

All fees are set forth in an applicable Agreement or have been verbally agreed upon. Company has the right to modify its fees any time upon thirty (30) days' written notice to Brand. Fees are based on the general use of the Company Services and not volume of sales. Payment obligations are non-cancelable and fees paid are non-refundable. Monthly fees will be invoiced by Company and shall be paid within seven (7) days following the date of receipt of said invoice by Brand. Other payment terms shall be as set forth in the applicable Agreement. Company shall not be compensated for procurement or sale of cannabis and shall not be a party to any transaction between any Brand and Brand's customers. The parties agree that such transactions shall solely be between Brand and their customers.

All amounts listed in the Agreement or verbally agreed upon are exclusive of any taxes. Brand will be responsible for all taxes, including sales or use taxes, imposed on such amounts, excluding taxes on Company's net income. Brand will communicate to Company complete and accurate billing and contact information at all times. All prepaid fees (if any) are non-refundable, except as otherwise expressly set forth hereunder, with all balances due and payable to be paid in full. All Services purchased hereunder are non-cancelable, except as otherwise expressly set forth hereunder. If Company has the legal obligation to pay or collect taxes for which Brand is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Brand, unless Brand provides Company with a valid tax exemption certificate authorized by the appropriate taxing authority.

If any charges or fees are not received from Brand by the due date, then at Company's discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month (equivalent to 19.56% per annum), or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. Additionally, Brand will be responsible for paying all fees and costs of collection for unpaid amounts due and owing hereunder, including reasonable attorneys' fees.

If any amount owing by Brand hereunder is more than thirty (30) days overdue, Company may, in addition to all other remedies, suspend the Services immediately until such amounts are paid in full.

If Brand uses the Dutchie Platform for payment processing, Brand acknowledges that payment processing is performed by a third-party processor ("Processor"). Company is not a bank, payment institution, or money services business and the processing and settlement of transactions is carried out solely by Processor. Brand is solely responsible for transactions processed by Processor, verifying the identity of customers and of the eligibility of a presented card used to purchase Brand's products and services, and Company does not guarantee or assume any liability for transactions authorized and completed that may later be reversed or charged back. Brand is solely responsible for all reversed or charged back transactions regardless of the reason for, or timing of the reversal or chargeback and for compliance with all associated applicable laws regulations.

## **5. TERM AND TERMINATION**

Subject to earlier termination as provided below, the Term is as specified in the Agreement, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Term"), unless either party terminates the Agreement termination in writing on at least thirty (30) days' written notice for convenience.

In addition to any other remedies it may have, either party may also terminate this Agreement upon ten (10) days' written notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Brand will pay in full for the Services up to and including the last day on which the Services are provided. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, indemnities, warranties, warranty disclaimers, and limitations of liability.

## **6. LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; OR (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; (D) FOR ANY FINES, PENALTIES, OR COSTS ASSOCIATED WITH OR RELATING TO BREACH OF LAWS, REGULATIONS, OR ARISING FROM REGULATORY OR ADMINISTRATIVE PROCEEDINGS; OR (E) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY BRAND TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY SPECIFICALLY DISCLAIMS AND EXCLUDES ALL WARRANTIES UNDER APPLICABLE SALE OF GOODS ACT LEGISLATION.

## **7. WARRANTIES; DISCLAIMER**

Company represents and warrants that it will, consistent with prevailing industry standards, perform the Services in a professional and workmanlike manner and the Services shall conform in all material respects with documentation. For material breach of the foregoing express warranty, Brand's exclusive remedy shall be the re-performance of the deficient Services. Brand represents and warrants that the pricing provided by Brand for its products and services listed on the Dutchie Platform, whether electronically or otherwise, are complete and accurate.

EXCEPT AS SET FORTH HEREIN, THE SERVICES DELIVERED UNDER THIS AGREEMENT, AND ANY INFORMATION SUPPLIED THEREWITH ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND; WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: I) COMPANY DOES NOT MAKE AND HEREBY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER; II) COMPANY DOES NOT GUARANTEE OR WARRANT CORRECTNESS, COMPLETENESS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE SERVICES OR INFORMATION PROVIDED HEREUNDER, OR THAT THE PRICING FOR ANY PRODUCT LISTED ON THE DUTCHIE PLATFORM REFLECTS THE ACTUAL PRICE FOR SUCH PRODUCT; AND III) COMPANY DISCLAIMS ALL WARRANTIES RELATED TO THIRD PARTY PAYMENT PROCESSORS AND ANY DISCREPANCIES, MISTAKES, OR INACCURACIES CAUSED BY THIRD PARTY PAYMENT PROCESSORS.

## **8. PRIVACY**

The parties to this Agreement acknowledge and agree that Brand and Company are each responsible for complying with their respective obligations under all applicable privacy laws and regulations.

The Parties represent and warrant, in connection with any personal information disclosed by one Party to the other, or otherwise accessed or compiled by or transferred to any Party for handling under arising from the Agreement in the course of Company performing the Services (the "**Personal Information**"), that each Party: (i) has in place the industry standard technical and organizational security measures to protect such Personal Information against accidental or unlawful destruction or unauthorized disclosure or access; (ii) has maintained and will continue to maintain suitable records in commercially reasonable detail with respect to such Personal Information; (iii) will not use such Personal Information for any purpose other than as set out in this Agreement; (iv) will not transfer such Personal Information to any third party except to its employees, subcontractors, or agents who require access to it in order to fulfill such purposes; (v) will not transfer such Personal Information to any foreign jurisdiction outside of Canada or the United States (as applicable) unless in accordance with applicable laws or as otherwise agreed to in writing by the other party; and (v) will comply with all applicable privacy laws.

Where either Party provides the other Party with Personal Information or where Company obtains Personal Information from the Dutchie Platform or the performance of Services, such Party confirms and agrees that such Personal Information has been lawfully obtained and that all data subjects listed or identified have been provided all notices and/or granted all consents as are required under applicable privacy laws for the disclosure and use of their Personal Information as contemplated hereunder. Each Party agrees to promptly inform the other Party of any withdrawn or changed consents of the data subjects which may affect the use of such Personal Information under this Agreement.

## **9. MISCELLANEOUS**

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Brand except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Brand does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and legal fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognized overnight delivery

service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the Province of Ontario if Brand's principal place of business is in Canada, or the State of Oregon if the Brand's principal place of business is in the United States, without regard to applicable conflict of laws provisions. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Any party providing an electronic signature agrees to promptly execute and deliver to the other parties an original signed Agreement upon request. Brand agrees that Company may refer to Brand's name and trademarks in Company's marketing materials and website, including but not limited to displaying the Brand's logo, developing a case study, and/or publishing a press release. Upon request, Brand further agrees to reasonably assist Company and serve as a reference.