

WAREHOUSE AND FULFILLMENT SERVICES AGREEMENT

Last modified on March 13, 2013.

This **WAREHOUSE AND FULFILLMENT AGREEMENT** (this “Agreement”), is entered into as of:

_____ (“Commencement Date”),

by and between:

_____ (“Vendor”),

and Crowd Supply, Inc., a Delaware corporation (“Fulfillment Service”) (together, the “Parties”).

INITIAL TERM

The initial term of this Agreement shall begin on the Commencement Date and extended on a month-to-month basis until terminated by providing 30 days advance notice in writing by either party hereto (the “Term”).

WAREHOUSING AND SERVICES; PAYMENT

During the Term, Fulfillment Service shall perform certain services for Vendor, including, without limitation, receipt, put away, storage, picking, shipment, related customer service and administrative functions and other services described in Schedule A to this Agreement (collectively, the “Services”). Fulfillment Service shall furnish all personnel, materials, equipment, supplies and other ancillary accessories necessary to perform safely and efficiently the Services. The Services shall be performed by Fulfillment Service in a good and workmanlike manner.

Rates and charges for the Services are as set forth in Schedule B to this Agreement. Vendor and Fulfillment Service shall review such rates annually. For any services not specified in this Agreement or in Schedule A, Vendor shall pay to the Fulfillment Service such consideration as may be mutually agreed upon in advance in writing. Charges shall be paid by Vendor within thirty (30) days after receipt of Fulfillment Service’s statement or invoice for such services with terms of net 30 days.

Unless otherwise specified, the warehouse (“Warehouse”) shall be located at one or more of the locations specified on Schedule C. Vendor shall have full access to the Warehouse during normal business hours and shall have the right to examine, inspect, inventory and count all or any of its goods. If Vendor desires access outside of normal business hours, Vendor will coordinate access with Fulfillment Service.

Fulfillment Service shall be responsible for all operating expenses and fees in connection with the operation of the Warehouse, including rent, utilities, dock doors, seals, HVAC system, common area charges and real estate taxes unless otherwise agreed to by the Parties.

Fulfillment Service shall maintain the Warehouse in a good and orderly condition and shall be responsible for any such related costs.

RELATIONSHIP; SHIPPING

Fulfillment Service shall operate at all times as a warehouseman under the Uniform Commercial Code as adopted in the State of Oregon. Vendor shall not ship goods to Fulfillment Service as a named consignee. Shipments will be consigned to Vendor c/o Fulfillment Service.

TENDER FOR STORAGE

All goods tendered for storage shall be delivered at the Warehouse in a segregated manner, properly marked and packaged for handling. Vendor shall furnish or cause to be furnished to Fulfillment Service, at or prior to such delivery, a manifest showing goods to be kept and accounted for separately.

TRANSFER; REMOVAL OF GOODS

Instructions to transfer goods on the books of Fulfillment Service shall not be effective until delivered to and received by Fulfillment Service, and all charges up to the time transfer is made shall be chargeable to Vendor.

Fulfillment Service may, without notice, move goods within the Warehouse or between Warehouses in the case of the use of more than one. Fulfillment Service shall not, except as provided in Schedule C, move goods to another location without the prior written consent of Vendor.

If, as a result of the quality or conditions of goods of which Fulfillment Service had no notice at the time of deposit, goods are a hazard to other property, the Warehouse or persons, Fulfillment Service shall immediately notify Vendor and Vendor shall thereupon claim its interest in such goods and remove them from the Warehouse at Vendor's expense.

HANDLING

Handling rates and charges set forth in Schedule B shall cover ordinary labor and administration involved in receiving goods at the Warehouse door or dock, placing goods in storage and returning goods to the Warehouse door or dock.

Receiving of inbound shipments will be on a mutually agreed upon schedule utilizing drop trailers. Outbound shipments will be coordinated between Vendor, Fulfillment Service and Transportation Services Provider.

DELIVERY REQUIREMENTS

No goods shall be delivered or transferred except upon receipt by Fulfillment Service of complete instructions properly authorized and executed by Vendor.

INBOUND SHIPMENTS

Fulfillment Service shall promptly notify Vendor of any known discrepancy on inbound shipments and shall protect Vendor interest by placing an appropriate notation on the delivering carrier's shipping documents. Returned goods shall be governed by Vendor returned goods policy, a copy of which is attached as Schedule D to this Agreement.

Fulfillment Service shall immediately notify Vendor if any goods are tendered that, because of infestation, contamination or damage, might cause infestation, contamination or damage to the Warehouse or other goods stored therein. Fulfillment Service and Vendor shall determine whether any such goods should be refused. Fulfillment Service shall have no liability for any demurrage, detention, transportation and other charges by virtue of any such refusal by Vendor, unless the infestation, contamination, or damage is the result of a negligent action or omission of the Fulfillment Service or a violation of the procedures set forth in this Agreement.

LIABILITY

Fulfillment Service shall be liable for damages or the loss of or injury to goods stored or handled and caused by Fulfillment Service's failure to exercise such care in regard to the goods as a reasonably careful Fulfillment Service would exercise under like circumstances.

Fulfillment Service shall not be liable for damages for any delay or failure in the performance of this Agreement resulting from any cause, except financial, beyond its control, such as acts of God, fires, explosions, floods, wars, sabotage, riots or governmental action.

LEGAL LIABILITY INSURANCE

During the Term, Fulfillment Service shall maintain at its expense a legal liability insurance policy. Such policy shall include general liability coverage

of at least \$1,000,000, employer liability coverage of at least \$1,000,000 and statutory workers' compensation coverage. The cancellation or termination of this Agreement by either party hereto shall not affect the insurance coverage for losses occurring during the Term.

NOTICE OF LOSS; DAMAGE CLAIM

The Fulfillment Service shall promptly notify Vendor of any loss or damage, howsoever caused, to goods stored or handled.

All claims by Vendor relating to the losses or damages disclosed as a result of a Vendor physical inventory reconciliation, shall be presented in writing to the Fulfillment Service.

Fulfillment Service will receive a loss allowance of 0.25% of units received (1 out of 400 units). Fulfillment Service shall reimburse Vendor for any losses or damages to goods in excess of its loss allowance at an amount equal to manufactured price for such goods.

RECORDS

Fulfillment Service shall maintain an accurate count of all shipments of goods into and out of the Warehouse. Fulfillment Service shall report to Vendor the count taken on each inbound and outbound shipment and, once reported to Vendor, such count shall establish the number of units and/or cases and/or pallets received or shipped unless other documentation can prove to the contrary.

Fulfillment Service shall maintain complete and accurate books and records, recording all inbound and outbound shipments, so as to produce a continuous balance that shows the number of units, cases or pallets of each Vendor product that should be in the Warehouse, based on the Fulfillment Service's count, at any given time.

Upon request, Vendor shall have the right to examine all of the books and records maintained by Fulfillment Service in connection with this Agreement.

INDEPENDENT CONTRACTOR

Fulfillment Service is performing the Services as an independent contractor of Vendor. Nothing contained in this Agreement shall be construed to place Vendor and Fulfillment Service in a relationship as partners, joint venturers, employer/employee or principal/agent, nor shall Fulfillment Service be considered in any sense an affiliate or subsidiary of Vendor. Fulfillment Service shall not have any authority to create or assume in Vendor name or on its behalf any

obligation, express or implied, or to act or purport to act as Vendor agent or legally empowered representative for any purpose whatsoever.

All of Fulfillment Service's personnel shall be considered employees of Fulfillment Service and under no circumstances shall they be construed or considered to be employees or agents of Vendor.

Fulfillment Service shall pay and discharge, at its expense, any and all expenses, charges, fees and taxes arising out of or incidental to the carrying on of its business including, without limitation, workmen's compensation, unemployment insurance and social security taxes levied or assessed with respect to employees of Fulfillment Service.

COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS

Fulfillment Service shall comply with all applicable laws, ordinances, rules and regulations of federal, state, local and other governmental authorities and entities governing the performance of the Services.

REPRESENTATIONS AND WARRANTIES

Vendor represents and warrants that neither the execution and delivery of this Agreement, nor any other document, agreement, certificate and instrument to which it is a party or by which it is bound in connection herewith or therewith, nor the consummation of the transactions contemplated hereunder or thereunder, or the compliance with or performance of the terms and conditions herein or therein will result in the creation or imposition of any material lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Vendor except as permitted in or anticipated by this Agreement, or is prevented by, limited by, conflicts with or will result in the breach or violation of or a default under the terms, conditions, or provisions of (1) its certificate or articles of incorporation or by-laws and other organic documents, (2) any material indenture, evidence of indebtedness, loan or financing agreement, or other agreement or instrument of whatever nature to which it is a party or by which it is bound, or (3) any provision of any existing law, rule regulation, order, writ, injunction or decree of any court or governmental authority to which Vendor is subject.

Vendor represents and warrants that (1) it is a legal entity that is organized and validly existing under the laws of its state, and it is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such authorization, licensing or qualification, and (2) it has all requisite power, authority, permits and licenses to (a) execute and deliver this Agreement and other document, agreement, certificate or instrument necessary to consummate the transactions and perform its obligations hereunder and (b)

to own its properties and assets and to carry on and conduct its business as presently conducted. All necessary action to authorize the execution, delivery and performance of this Agreement and to consummate the transactions contemplated hereunder has been taken by Vendor.

Fulfillment Service represents and warrants that neither the execution and delivery of this Agreement, nor any other document, agreement, certificate and instrument to which it is a party or by which it is bound in connection herewith or therewith, nor the consummation of the transactions contemplated hereunder or there under or the compliance with or performance of the terms and conditions herein or therein will result in the creation or imposition of any material lien, charge or encumbrance or any nature whatsoever upon any of the property or assets of Fulfillment Service except as permitted in or anticipated by this Agreement, or is prevented by, limited by, conflicts with or will result in the breach or violation of or a default under the terms, conditions or provisions of (1) its certificate or articles of incorporation or by-laws and other organic documents, (2) any material indenture, evidence of indebtedness, loan or financing agreement, or other agreement or instrument of whatever nature to which it is a party of by which it is bound, or (3) any provision of any existing law, rule, regulation, order, writ, injunction or decree of any court or governmental authority to which Fulfillment Service is subject.

Fulfillment Service represents and warrants that (1) it is a corporation duly organized and validly existing under the laws of the State of Delaware, and it is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such authorization, licensing or qualification, and (2) it has all requisite power, authority, franchises, permits and licenses to (a) execute and deliver this Agreement and any other document, agreement, certificate or instrument necessary to consummate the transactions and perform its obligations hereunder and (b) to own its properties and assets and to carry on and conduct its business as presently conducted or proposed to be conducted. All necessary action to authorize the execution, delivery, and performance of this Agreement and to consummate the transactions contemplated hereunder has been taken by Fulfillment Service.

TERMINATION

Either party may terminate this Agreement with 30 days written notice in which case Vendor shall make arrangements for the removal of its goods from all Fulfillment Service's Warehouses at Vendor's expense.

Upon termination of this Agreement, both Parties shall cooperate in the timely return of goods or the orderly transition of the Services to another Fulfillment Service.

ASSIGNMENT

Neither party shall, without the prior written consent of the other party (which consent shall not be unreasonably withheld), assign this Agreement by operation of law or otherwise. Notwithstanding the foregoing consent requirement, but without releasing the parties of their obligations under this Agreement, either party may assign this Agreement to one of its wholly-owned affiliates.

APPLICABLE LAW

This Agreement shall be governed by, enforced, interpreted and construed under the laws of the State of Oregon. Venue for any action to enforce this Agreement shall be in the County of Multnomah, State of Oregon for any such action filed in state court or in the United States District Court for the District in which the Warehouse is located for any such action filed in federal court.

MEDIATION

All disputes, claims and other matters in controversy arising directly or indirectly out of or related to this Agreement, or the breach thereof, whether contractual or non-contractual, shall be submitted first to voluntary mediation, by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties can not agree on a mediator, a mediator will be designated by the American Arbitration Association in the location of Portland, OR (“AAA”) at the request of a party. The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and, therefore, will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties. If a dispute can not be resolved within ninety days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the parties shall have the right to file a judicial proceeding in a court with competent jurisdiction seeking equitable or injunctive relief after the expiration of said ninety day or extended period.

NOTICE

Any notice or other communication required or permitted to be given under this Agreement shall be in writing (including facsimile or similar transmission) and mailed (by U.S. certified mail, return receipt requested, postage prepaid), sent or delivered (including by way of overnight courier service):

If to Fulfillment Service, addressed to:
Director of Operations
Crowd Supply, Inc.
422 NW 8th Ave., Suite C
Portland, OR 97209
Telephone: 800-554-2014

or to such other address as Vendor or Fulfillment Service shall give notice to the other by like means. All such notices, demands, and communications, if mailed, shall be effective upon the earlier of (1) actual receipt by the addressee, (2) the date shown on the return receipt of such mailing, or (3) three days after deposit in the mail. All such notices, demands, and communications, if not mailed, shall be effective upon the earlier of (1) actual receipt by the addressee, (2) with respect to facsimile and similar electronic transmission, the earlier of (a) the time that electronic confirmation of a successful transmission is received, or (b) the date of transmission, if a confirming copy of the transmission is also mailed as described above on the date of transmission, and (3) with respect to delivery by overnight courier service, the day after deposit with the courier service, if delivery on such day by such courier is confirmed with the courier or the recipient orally or in writing.

MISCELLANEOUS PROVISIONS

The headings contained herein are inserted for convenience only and shall not be deemed to have any substantive meaning.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable in any manner, the remaining provisions of this Agreement shall nonetheless continue in full force and effect without being impaired or invalidated in any way. In addition, if any provision of this Agreement may be modified by a court of competent jurisdiction such that it may be enforced, then that provision shall be so modified and as modified shall be fully enforced.

Except as otherwise stated in this Agreement, this Agreement contains the entire understanding of the parties respect to its subject matter, and supersedes all prior or contemporaneous agreements, understandings and negotiations. No modification or alteration of this Agreement shall be deemed effective unless in writing and signed by the parties.

The terms used in this Agreement, regardless of the number and gender in which they are used, shall be construed to include the other number (singular or plural), and other genders (masculine, feminine or neuter), as the context or sense of this Agreement or any paragraph or clause may require.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one Agreement. The signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart. Facsimile or scanned signatures shall be deemed effective as originals.

Each party agrees to sign and deliver all documents, instruments, certificates and applications reasonably necessary to consummate the transactions contemplated by this Agreement.

Each of the parties acknowledges that they and their counsel have reviewed this Agreement and suggested changes to its language. Therefore, any rule of construction that any ambiguity shall be construed against the drafter of this Agreement shall not apply in interpreting the provisions of this Agreement.

This Agreement is solely for the benefit of the parties hereto and shall not confer upon third parties any remedy claims or actions or other right.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first set forth above.

By **VENDOR**:

By:

Title:

By Crowd Supply, Inc.:

By:

Title: