

# Merchant Partner Terms and Conditions of Service

Last modified: 2/25/2021

## Merchant Partner Parcel Delivery Terms and Conditions of Service:

These Trellus delivery terms and conditions (this “Agreement”) are entered into by and between the company accepting this Agreement (“Merchant”) and Trellus LLC, a New York limited liability company (“Trellus”). Capitalized terms used herein shall have the meaning ascribed to them in this Agreement.

This Agreement sets forth the terms under which a Merchant may utilize (i) Trellus Same Day Delivery (including website and/or mobile application based) shipper platform. The “Trellus Delivery” is a Trellus service consisting of arranging for the transportation of parcel delivery and other services offered by Trellus related thereto. By accessing or using the Trellus Service, Customer confirms its agreement to be bound by this Agreement. If Customer does not agree to the terms of this Agreement, Customer may not access or use Trellus Services. Merchants use of the Trellus Parcel Delivery Service is subject to this Agreement, as may be modified or updated by Trellus from time to time, effective upon posting of an updated version of this Agreement on Trellis.co. Continued use of the Service after any such modifications or updates shall constitute Merchants consent to such changes.

## 1. PROVISION OF SERVICES

### 1.1 Access to Services.

Trellus will establish a Merchant Customer account that will enable the Merchant to access the Services offered. The Merchant agrees to pay all applicable charges for the Trellus Services tendered or otherwise and Merchant agrees that it is responsible for all charges incurred by Merchant and any individual or customer authorized by Merchant when using Trellus services

### 1.2 License.

Subject to Merchant’s compliance with the terms of this Agreement, Trellus grants Merchant a limited, non-exclusive, non-sub licensable, revocable, non-transferable license to access and use the service solely in connection with arranging for the transportation of its parcels and for matters directly related thereto. Any rights not expressly granted herein are reserved by Trellus and its licensors.

### **1.3 Restrictions.**

Merchant agrees to, and to cause all Merchant Users to, use the Trellus Service as set forth in this Agreement. Trellus reserves the right to suspend or terminate use of Trellus Services to Merchant and/or any Customer Users for violations of this Agreement. Merchant shall not, and shall not authorize others to: (a) remove any copyright, trademark or other proprietary notices from any portion of the Services platform; (b) reproduce, modify, prepare derivative works based upon, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit any portion of the Trellus materials or the Trellus Service except as expressly permitted by Trellus; (c) decompile, disassemble, reverse engineer or otherwise attempt to derive the source code or underlying technology, methodologies or algorithms of the platform or any other Trellus technology, except to the extent allowed by applicable law; (d) link to, mirror or frame any portion of the services platform or the Trellus Service; (e) cause or launch any programs or scripts for the purpose of scraping, indexing, surveying or otherwise data mining any portion of the Services platform or the of Trellus Service or unduly burdening or hindering the operation and/or functionality of any aspect of the platform or the Trellus Service; or (f) attempt to gain unauthorized access to or impair any aspect of the platform or the Trellus Service.

### **1.4 Delivery/Package Restrictions**

Merchant agrees that it will not tender to Trellus or to any Trellus delivery engaged by Trellus in connection with this Agreement any parcel containing any of the following:

- Items over 50lbs total weight
- Max size any item: 36" x 36" x 36" measurement
- Live animals
- hazardous materials
- illicit or illegal products
- cigarette, tobacco or vape products
- combustible, flammable, or dangerous goods
- perishable food items (needing heating or refrigeration)

As it pertains to delivery of alcohol products. Any delivery which contains alcohol products for consumption requires special handling to include all of the below:

- The merchant / seller must collect all fees associated with the purchase and delivery of alcohol products.
- The merchant/seller must confirm the purchaser and recipient are of legal age to consume the product.
- All products being delivered must be sealed and packaged which will conceal the contents.

- Merchant must inform the customer/recipient that no packages will be left without and recipient proof of age and/or signature.
- Merchant must inform the customer that a return fee will be charged for all returns/undeliverable items.
- All requirements must be met in order to provide service for alcohol delivery.

## 2. ACCOUNT ADMINISTRATION

### 2.1 Merchant Platform.

Trellus HUB Merchants shall set-up their access credentials at the time of registration and provided with access to the Trellus platform via log-in once approved. Shopify users are provided access to same-day services via direct APP download in the Shopify APP Store. Trellus's primary contact with Merchant shall be by way of Merchant's owner, administrator or other responsible person at Merchant who is identified to Trellus ("Administrator"). Trellus will inform the Administrator of platform login credentials. The platform will enable Merchants to do one or more of the following (as may be available in the platform from time to time): (a) view detailed shipment and shipment transportation information, which may include, without limitation, Merchant User name together with request time and date, information about the parcel and shipment, the name and other identifying information of the carrier and carrier driver performing the transportation services, location information of the carrier and/or carrier driver performing the transportation services, shipment pick-up and delivery time and date, pick-up and delivery address and related merchant information, pick-up and delivery facility contact persons and their contact information (which may include phone numbers and email addresses), Trellus personnel contact persons and their contact information (which may include phone numbers and email addresses), trip route, distance, duration, price charged by Trellus ("Platform Data") and prepare and review activity reports including Platform Data. Merchant agrees to use Platform Data solely for legitimate business purposes. Trellus reserves the right to add, remove and update features and functionality of the Platform at any time.

### 2.2 Administration.

Merchant may appoint Merchant Users at its discretion. Merchant agrees to (a) maintain all platform login credentials in confidence, (b) only permit the Administrator and Merchant Users to access the platform, and (c) update all information of the Administrator and Merchant Users as necessary to ensure that it is current, accurate,

and complete. Customer shall limit access to Platform Data to only those Merchant personnel who have a legitimate business need to access such Platform Data. Merchant shall be responsible for all activity that occurs under its Platform login credentials.

## 3. PRIVACY AND DATA SECURITY

### 3.1 Definition.

“Personal Data” means any information that can reasonably relate to an identified or identifiable natural person (which may include certain Platform Data (as defined in Section 2.1)), or that may otherwise be considered “Personal Data” Personal Data” is subject to Trellus’s Privacy Notice, as may be modified or updated by Trellus from time to time, effective upon posting of an updated version of the Privacy Notice at <https://bytrellus.com/privacy/> and by using the Platform, Merchant hereby consents and agrees to the Privacy Notice.

### 3.2 Restrictions.

Customer agrees that (a) any Personal Data obtained from Trellus shall be processed by Merchant solely for legitimate business purposes and retained only so long as necessary, (b) access to Personal Data will be limited to Merchant’s employees who have a legitimate business need to access such Personal Data, and (c) Customer will not disclose Personal Data to any third party, except as permitted under this Agreement. Platform Data and any Personal Data therein will at all times remain the property of Trellus. Customer shall not rent or sell Personal Data for any purpose. Customer shall not use Personal Data in any way that harms Trellus or that benefits a competitor of Trellus.

### 3.3 Security.

Customer agrees to implement appropriate legal, technical and organizational measures to protect Personal Data against unauthorized or unlawful processing and against unauthorized loss, destruction, damage, alteration, or disclosure, as well as any breach or attempted breach of Merchant’s security measures (“Information Security Incident”). Customer shall promptly notify Trellus in the event that Merchant learns or has reason to believe that an Information Security Incident has occurred including at least: (1) the nature of the breach of security measures; (2) the types of potentially compromised Personal Data; (3) the duration and expected consequences of the Information Security Incident; and (4) any mitigation or remediation measures taken or planned in response to the Information Security Incident. Upon any such discovery,

Merchant will (a) take all reasonable steps to investigate, remediate, and mitigate the effects of the Information Security Incident, and (b) provide Trellus with assurances reasonably satisfactory to Trellus that such Information Security Incident will not recur. Additionally, if and to the extent any Information Security Incident occurs as a result of an act or omission of Customer, and if Trellus determines that notices (whether in Trellus's or Merchant's name) or other remedial measures are warranted, Customer will, at Trellus's request and at Merchant's cost and expense, undertake the aforementioned remedial actions.

### **3.4 Standard Contractual Clauses.**

To the extent this Agreement involves Personal Data of residents of jurisdictions outside the United States, Customer agrees that the Standard Contractual Clauses, as required by Article 26(2) of Directive 95/46/EC shall apply.

## **4. FEES AND PAYMENTS**

### **4.1 Fees.**

In consideration of Trellus's provision of the Trellus Service, Merchant shall pay to Trellus all applicable charges (collectively, the "Fees") on the terms set forth below and in the Platform direct or through third party partners (Shopify.com)

### **4.2 Payment Terms.**

Merchant agrees to the following with respect to the Trellus Service: Merchant will pay to Trellus the amount of any shipment price quote accepted by a Customer on the Platform or otherwise agreed between the parties and, in addition, will pay to Trellus the accessorial rates set forth below when any accessorial event occurs on Merchant shipments; Merchant agrees to Trellus terms of payment for all Fees via ACH or credit card for auto payments; The Merchant will be liable for any expenses Trellus incurs in collecting past due payments; Merchant will accept electronic versions of proofs of delivery and other shipping documents; and all payments from Merchant to Trellus will be made by ACH. Trellus will email remittance details for each shipment and fees associated with each payment.

The accessorial rates are as follows for Merchants within the United States and its territories.

- Delivery membership rates are on a 30 day cycle. The membership subscription will be charged every 30 days unless canceled.
- Membership Subscriptions are:
  - Basic: \$9.99 per mth/30 days – Home to Home, \$4 per package fee, \$5.99 for first 5 miles, \$1.50 each additional mile
  - Business: \$49.99 mth/30 days- Up to 25 deliveries per mth, \$2.50 per package service fee, \$5.99 for the first 5 miles, \$1.50 each additional mile.
  - Pro: \$99.99 mth/30 days – Over 25 deliveries per month, \$1 per package service fee, \$5.99 for the first 5 miles, \$1.50 each additional mile.
- Shopify Users 'Integration Service Fee = 25% of total delivery fees.
- Delivery/Shipment – total amount based on accepted delivery charge approved my Merchant's customer.
- Additional charges may apply for one or more of the following:
  - Order cancelation after pick-up at Merchant, delivery order not used
  - Extra charges will apply to any unplanned route deviation, for charge amounts please email: [customerservice@bytrellus.com](mailto:customerservice@bytrellus.com)
  - Over-sided / driver assist: [customerservice@bytrellus.com](mailto:customerservice@bytrellus.com)
  - Any other accessorial or similar charges – returns, damaged
  - Package not prepared when driver arrives requiring driver to be re assigned or wait for package.
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### **4.3 Overpayment; Nonpayment.**

If at any time Merchant inadvertently pays Trellus an amount that is more than the amount due, Trellus shall not be obligated to immediately return any such overpayment, but the amount or amounts otherwise payable for any prior or subsequent period or periods shall be reduced by such overpayment without any interest component being imputed on such overpayment. Refund of inadvertent payments in excess of the amount due may be requested, and shall be processed within 60 days if there are no other past due unpaid invoices.

Trellus reserves the right to immediately suspend or terminate Merchant's access to the platform and/or the Trellus Service in the event of any breach of this Agreement, including the payment terms in Section 4.2. Trellus further reserves the right to pursue

any and all remedies available to it under applicable law, including reporting Merchant to applicable credit reporting agencies, in the event of any unpaid Fees hereunder. All late payments shall bear interest at 12% per annum or the maximum allowed by applicable law, if less than 12%.

## 5. TERM AND TERMINATION

### 5.1 Term.

This Agreement shall commence upon the earliest of Merchant's initial use of the Platform or acceptance of this Agreement and shall remain in effect until terminated as set forth herein (the "Term"). Cancellation must be requested in the form of an email to [customerservice@byTrellus.com](mailto:customerservice@byTrellus.com) a minimum of 7 days prior to the monthly subscription cycle. If request for cancellation is less than 7 days prior to subscription cycle, cancellation will be processed for the next billing cycle.

### 5.2 Termination.

Either party may terminate this Agreement with or without cause upon seven (7) days' advance written notice via email to [customerservice@byTrellus.com](mailto:customerservice@byTrellus.com). All outstanding payment obligations and Sections 3 through 10 of these Terms shall survive the termination of this Agreement.

## 6. TRANSPORTATION AND OTHER PROVISIONIST

Trellus is not a motor carrier. No interpretation of written or oral remarks in any agreement or document shall be construed to imply Trellus is a motor carrier. A "motor carrier", as used in this Agreement, means any motor carrier or trucking company, including a motor carrier as defined by 49 USC §13102(14) with authority issued by the federal and/or applicable state governments or a motor carrier with authority issued by any other applicable governmental authority.

The motor carrier shall be solely responsible for (i) controlling the method, manner, and means of accomplishing the motor carrier's services, (ii) the acts and omissions of each

of its employees, agents, contractors, independent contractors, subcontractors and other service providers, (iii) complying with all applicable laws and regulations applicable to the motor carrier and (iv) any cargo loss or damage in accordance with applicable law. Trellus Inc. does not assume any liability or financial responsibility for cargo, including any loss, theft, damage or delayed delivery thereof.

Customer agrees that (i) the amount Trellus pays to drivers for parcel delivery services is proprietary business information of Trellus that will not be provided to Merchant, and Merchant expressly waives any rights it may have under 49 CFR 371.3 to require such information from Trellus and (ii) Trellus may disclose information about the nature, kind, quantity, destination, consignee, routing of property and similar information relating to Merchant's shipments to delivery using the Trellus Service.

Merchant agrees that it will not tender to Trellus or to any Trellus delivery engaged by Trellus in connection with this Agreement any parcel containing any hazardous materials, illicit, illegal, combustible or dangerous goods.

Merchant agrees that Trellus may contact Merchant and its personnel by telephone or text messages (including by an automatic telephone dialing system) at any of the phone numbers provided by Merchant or Merchant personnel in connection with the Trellus Service. Merchant understands that it is not required to provide this consent as a condition of purchasing any property, goods or services.

Merchant acknowledges Merchant's need to be able to freely use any feedback about the Trellus Service, the Platform, the Merchant's app or any related services or technologies (e.g., improvements, fixes, errors, bugs, etc.) provided by Merchant and to own any improvements to the Trellus Service, the Platform, the Merchant's app or any related services or technologies made by using or incorporating such feedback (collectively "Feedback"). Accordingly, Merchant hereby assigns to Trellus any rights that may have, including all intellectual property rights, in the Feedback and Merchant may exercise its ownership rights to such Feedback and intellectual property rights without compensation, attribution or accounting. Without additional consideration, Merchant agrees to perform all acts reasonably necessary to perfect such rights in Trellus Services.

Trellus may, in Trellus's sole discretion, permit Merchant from time to time to submit, upload, publish or otherwise make available to Trellus through the Platform or other Trellus Services textual, audio, and/or visual content and information, including commentary and feedback related to the Services, ratings and reviews of carriers and facilities, initiation of support requests, and submission of entries for competitions and promotions ("User Content"). Any User Content provided by Merchant remains Merchant's property. However, by providing User Content to Trellus, Merchant grants Trellus a worldwide, perpetual, irrevocable, transferable, royalty-free license, with the right to sublicense, to use, copy, modify, create derivative works of, distribute, publicly display, publicly perform, and otherwise exploit in any manner such User Content in all formats and distribution channels now known or hereafter devised (including in connection with the Platform, Trellus Service and Trellus business and on third-party sites and services), without further notice to or consent from Merchant, and without the requirement of payment to Merchant or any other person or entity.



Merchant represents and warrants that: (i) Merchant either is the sole and exclusive owner of all User Content or Merchant has all rights, licenses, consents and releases necessary to grant Trellus the license to the User Content as set forth above; and (ii) neither the User Content, nor Merchant's submission, uploading, publishing or otherwise making available of such User Content, nor Trellus's use of the User Content as permitted herein will infringe, misappropriate or violate a third party's intellectual property or proprietary rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

Merchant agrees to not provide User Content that is defamatory, libelous, hateful, violent, obscene, pornographic, unlawful, or otherwise offensive, as determined by Trellus in its sole discretion, whether or not such material may be protected by law. Trellus may, but shall not be obligated to, review, monitor, or remove User Content, at Trellus's sole discretion and at any time and for any reason, without notice to Merchant.

## 7. WARRANTY AND DISCLAIMER OF LIABILITY

### 7.1 Mutual Warranties.

Each party represents and warrants that: (a) such party has the full right, power and authority to enter into this Agreement; and (b) such party's acceptance of this Agreement, as well as such party's performance of the obligations set forth in this Agreement, does not and will not violate any other agreement to which such party is a party.

### 7.2 Merchant Warranties.

Merchant represents and warrants that: (a) Merchant has all rights and permissions necessary to provide Trellus with any information provided to Trellus hereunder in connection with the Trellus Service and (b) Merchant is in compliance, and shall remain in compliance during the term of the Agreement, with all applicable local, city, municipal, provincial, state, federal, national, and international laws, rules and regulations relating to data protection, privacy, identity theft, data breach, consumer protection, and data security, and any applicable industry standards relating to privacy and data security.

### 7.3 Disclaimer of Warranties.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, TRELLUS PROVIDES THE TRELLUS SERVICE "AS IS" AND WITHOUT WARRANTY. TRELLUS DOES NOT WARRANT THAT THE FUNCTIONS AND INFORMATION CONTAINED IN THE TRELLUS SERVICE WILL MEET MERCHANT'S REQUIREMENTS OR THAT THE OPERATION OF THE TRELLUS SERVICE OR INFORMATION PROVIDED THEREIN WILL BE UNINTERRUPTED OR ERROR FREE. TRELLUS HEREBY DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, (A) ANY IMPLIED OR STATUTORY WARRANTIES COVERING THE TRELLUS SERVICE AND (B) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

## 8. LIMITATIONS

### 8.1 LIMITATIONS OF LIABILITY

IN NO EVENT SHALL TRELLUS OR MERCHANT BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF BUSINESS OR PROFITS, SUFFERED BY THE OTHER PARTY OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF TRELLUS OR MERCHANT (OR THEIR AGENTS) HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OTHER THAN WITH RESPECT TO FEES OWED BY MERCHANT TO TRELLUS HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT.

### 8.2 TIME LIMITATION TO BRING ACTION

NO CLAIM, LITIGATION OR ACTION OF ANY KIND, REGARDLESS OF FORM, ARISING FROM OR PERTAINING TO THIS AGREEMENT AND/OR THE TRELLUS SERVICE MAY BE BROUGHT BY MERCHANT OR TRELLUS MORE THAN ONE YEAR AFTER THE OCCURRENCE OF THE CIRCUMSTANCES UNDERLYING SUCH CLAIM, LITIGATION OR ACTION.

### 8.3 INDEMNIFICATION

(A) To the fullest extent permitted by law, the Merchant:

- (i) shall be solely responsible for and shall indemnify and hold harmless Trellus, and its officers, employees, agents, and servants (collectively, the “Indemnified Parties”), from and against any and all liabilities, losses, costs, expenses (including, without limitation, reasonable attorneys’ fees and disbursements), and damages (collectively, “Losses”), including Losses attributable to acts or omissions of the Trellus Agents arising out of or in connection with this agreement, including losses incurred in connection with any investigation, litigation or other proceeding, or preparing a defense to or prosecuting the same; except, however, that the Trellus shall not be held liable when an occurrence results solely from the negligence of the Merchant or manufacture of products sold by merchant and delivered by Trellus;
  - (ii) The Merchant shall, promptly and diligently defend, at Trellus’s sole risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more of the Indemnified Parties and which arise out of the negligent performance of the Merchant or manufacturer, in connection with this Agreement, and the Merchant shall pay and satisfy any judgment, decree, loss, or settlement in connection therewith; and
- (B) Nothing in this Agreement shall create or give to third parties any claim or right of action against the Trellus beyond that which legally exist regardless of the provisions of this Agreement.
- (C) The Merchant indemnification obligation hereunder shall survive the expiration or termination of this Agreement.

## 9. PROPRIETARY RIGHTS.

### 9.1 No Publicity.

Neither party may use or reference the other party’s name, logo, trademarks or service marks in a press release or otherwise without the prior consent of such other party in each instance.

### 9.2 Ownership.

Trellus and its affiliates are and shall remain the owners of all right, title and interest in and to the Trellus Service, the Platform, the Trellus app, Personal Data and Platform Data including any updates, enhancements and new versions thereof, and all related documentation and materials provided or available to Merchant or Merchant User in connection with this Agreement.

## 10. GENERAL CONDITIONS

### 10.1 Governing Law.

This Agreement shall in all respects be interpreted, construed in accordance with, and governed by the internal laws of the State of New York, without regard to its principles regarding conflict of laws. In the event of any litigation between the parties related to this Agreement, the parties agree to submit to personal and exclusive jurisdiction for such action in the State Courts for the County of Nassau, New York.

### 10.2. Entire Agreement.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof; provided that if Merchant and Trellus are parties to a written and fully executed services agreement

### 10.3 Force Majeure.

Nonperformance of either party under this Agreement shall be excused to the extent and during the period that performance is rendered impossible by strike, fire, flood, earthquakes, weather conditions, war, acts of terrorism, governmental acts, Pandemic or the like or orders or restrictions, local or national disruptions to transportation networks or operations, fuel shortages or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party.

### 10.4 Severability.

If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

### 10.5 Assignment.

This Agreement is not transferable and may not be assigned by Merchant, in whole or in part, without the prior written consent of Trellus. Subject to the foregoing, this Agreement shall be binding upon all successors and assigns of a party.

#### **10.6 Attorney's Fees.**

In any litigation between the parties, the non-prevailing party shall pay the prevailing party the prevailing party's reasonable attorney fees and all other costs of proceedings incurred in enforcing this Agreement.

#### **10.7 Headings.**

Section headings are for convenience only and shall not be considered in the interpretation of this Agreement.

#### **10.8 Relationship.**

Neither party is the representative or agent of the other and neither party shall have any power to assume any obligations on behalf of the other. Merchant hereby represents that the individual accepting this Agreement is authorized by Merchant's to bind, and does hereby bind, Merchant to the terms hereof.

#### **10.9 Confidentiality.**

Merchant agrees to hold in confidence any confidential and proprietary information of Trellus that it becomes aware of in connection with the Trellus Service.

## **SCHEDULE A: Merchant Agreement**