



BROKER/SHIPPER MODEL TRANSPORTATION AGREEMENT

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THIS AGREEMENT ("Agreement") is made and intended to be effective this (the) _____ day of _____, 20____ by and between _____, having offices at _____ ("BROKER") and _____, having offices at _____ ("SHIPPER"); collectively, the "PARTIES".

RECITALS

A. BROKER is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (FMCSA) in Docket Number USDOT _____ or MC-_____, or by appropriate State agencies, and as a licensed broker, arranges for freight transportation. Upon shippers request, a copy of BROKER's authority Appendix A, and a copy of BROKER's Surety Bond Appendix B or trust fund agreement will be furnished; and

B. SHIPPER, to satisfy some of its transportation needs, desires to utilize the services of BROKER to arrange for transportation of SHIPPER's freight.

NOW, THEREFORE, intending to be legally bound, BROKER and SHIPPER agree as follows:

AGREEMENT

1. TERM. Subject to the terms of Paragraph 12, the term of this Agreement shall be one (1) year, from intended Effective ____ (DATE), commencing on the date shown above, and shall automatically renew for successive one year periods; provided that either Party may terminate this Agreement on 30 days prior written notice to the other Party, with or without cause, or as otherwise provided in this Agreement.

2. SERVICE. BROKER agrees to arrange for transportation of SHIPPER's freight pursuant to the terms and conditions of this Agreement and in compliance in all material respects with all federal, state and local laws and regulations relating to the brokerage of the freight covered by this Agreement. BROKER's responsibility under this Agreement shall be limited to arranging for, but not actually performing, transportation of SHIPPER's freight. The Parties may, upon written mutual agreement, include additional service terms to be attached as Appendix C.

3. VOLUME.

- A. SHIPPER agrees to tender a minimum of one (1) shipment to BROKER, and BROKER agrees to arrange for the transportation of said shipment, as well as any other shipments offered by SHIPPER as accepted by BROKER. SHIPPER is not restricted from tendering freight to other brokers, freight forwarders, third-party logistics providers, or directly to motor carriers. BROKER is not restricted from arranging transportation of freight for other parties.
- B. SHIPPER shall be responsible to BROKER for: Timely written, accurate and complete delivery specifications and description of the cargo, including, but not limited to, dimensions, weight, temperature, any special handling and security requirements, including any protocols employed to reduce the risk of cargo theft.

4. FREIGHT CARRIAGE. BROKER warrants that it has entered into, or will enter into, bilateral written contracts with each carrier it engages to perform the transportation services required by this Agreement. BROKER further warrants that those contracts comply with all applicable federal, state and local laws and regulations and shall include (but not be limited to) the substance of the following terms:

- A. Carrier is in, and shall maintain compliance during the term of this Agreement, with all applicable federal, state and local laws relating to the provision of its services including, but not limited to:
 - 1. Transportation of Hazardous Materials, (including the licensing and training of drivers), as defined in 49 C.F.R. §172.800, §173, and §397 et seq. to the extent that any shipments hereunder constitute Hazardous Materials;
 - 2. Security regulations;
 - 3. Owner/operator lease regulations;
 - 4. Loading and securement of freight regulations;
 - 5. Implementation and maintenance of driver safety regulations including, but not limited to, hiring, controlled substances, and hours of service regulations;
 - 6. Shippers sanitation, temperature, and safety from contamination requirements for transporting food, perishable, and other products;
 - 7. Qualification, licensing and training of drivers;
 - 8. Implementation and maintenance of equipment safety regulations;
 - 9. Maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers;
 - 10. All registration, licensing, and insurance requirements required to perform the services; and
 - 11. Comply with the Food Safety Modernization Act (21 U.S.C. § 2201 et seq.) and its implementing regulations, as well as applicable FDA regulations, including the Federal Food, Drug and Cosmetic Act and the Food Safety Modernization Act (FSMA) and Sanitary Transportation of Human and Animal Food.
- B. Carrier shall agree to defend, indemnify and hold BROKER and SHIPPER harmless from all damages, claims or losses arising out of its performance of the Agreement, including cargo loss and damage, theft, delay, damage to property, and personal injury or death.
- C. Carrier shall agree that its liability for cargo loss or damage shall be determined by 49 USC §14706 (the Carmack Amendment). Exclusions in carrier's insurance coverage

shall not exonerate carrier from this liability. No limitation of carrier's liability shall apply, unless BROKER first obtains the express written consent of SHIPPER.

- D. Carrier shall agree to maintain at all times during the term of the contract, insurance policies with limits not less than the following:

(Left blank in accordance with anti-trust laws, which prohibit entering a dollar value. The issue of broker insurance, par 8 and liability is addressed elsewhere in the contract. The parties can negotiate special terms based on their specific situation.)

General Liability -	\$ _____
Auto Liability -	\$ _____
Cargo Liability -	\$ _____
Worker's Compensation -	as required by law.

NOTE: CARRIERS "SCHEDULED AUTO" POLICIES DO NOT COMPLY WITH INSURANCE REQUIREMENTS OF THIS AGREEMENT.

BROKER shall verify that each carrier it utilizes in the performance of this Agreement has insurance policies with the minimum limits as defined above.

- E. Carrier shall agree that the provisions contained in 49 CFR 370.1 et seq. shall govern the processing of claims for loss, damage, injury or delay to property and the processing of salvage, unless otherwise agreed in writing in an instrument other than a bill of lading, tariff or shipping document. Carrier may agree in such written instrument to an alternative claims process for exempt commodities and BROKER shall provide SHIPPER with advance notice of any such process.
- F. BROKER and carrier agree that BROKER is the sole party responsible for payment of carrier's charges. Failure of BROKER to collect payment from its customer shall not exonerate BROKER of its obligation to pay carrier. BROKER agrees to pay carrier's undisputed invoice within ____ days of receipt of the bill of lading or proof of delivery, provided carrier is not in default under the terms of this Agreement. If BROKER has not paid carrier's undisputed invoice as agreed, and carrier has complied with the terms of this Agreement, carrier may seek payment from the Shipper or other party responsible for payment after giving BROKER ____ (business days) advance written notice, except that carrier shall not seek payment from Shipper or any other Party responsible for payment if SHIPPER or such other Party can prove payment to BROKER.
- G. Carrier agrees that at no time during the term of this contract with BROKER, shall it have an "Unsatisfactory" safety rating as determined by the Federal Motor Carrier Safety Administration (FMCSA), and that it has no knowledge of any threatened or pending interventions by FMCSA; if carrier receives an "Unsatisfactory" safety rating, or a rating has changed from "Satisfactory" to "Conditional" or if any future safety rating has otherwise been downgraded by FMCSA, it shall immediately notify BROKER and shall not transport any freight hereunder without BROKER's prior written consent. The provisions of this paragraph are intended to include safety rating designations which may replace those above, which are subject to change by FMCSA at any time.
- H. Carrier shall agree that the terms and conditions of its contract with BROKER shall apply on all shipments it handles for BROKER. Any tariff terms of carrier which are

inconsistent with the contract shall be ineffective and inapplicable to the shipments tendered under this Agreement.

- I. Carrier shall expressly waive all rights and remedies under Title 49 U.S.C., Subtitle IV, Part B to the extent they conflict with the contract.
- J. Carrier will not broker, re-broker, assign, interline, or subcontract the shipments without prior written consent of BROKER. If Carrier breaches this provision, BROKER shall have, in addition to all the other rights and remedies at law or in equity, the right of paying the monies it owes its contracted Carrier, directly to the delivering carrier in lieu of payments to its contracted Carrier. Regardless of BROKER's payment to delivering carrier, the contracted Carrier shall not be released from any liability to BROKER under this Agreement, or from liability under 49 U.S.C. §14916. Carrier will not have recourse against Shipper for Broker's nonpayment of freight bill(s) to Carrier associated with any brokerage, re-brokerage, assignment, interline, or subcontracting by Carrier.
- K. To the extent that any shipments subject to this agreement are transported into, out of, through or within the State of California, BROKER will require that carrier contractually agrees that it shall only utilize that equipment which is in full compliance with all California Air Resources Board (ARB) regulations. Carrier agrees that it shall be liable to BROKER, SHIPPER and/or CONSIGNEE for any penalties, or any other liability, imposed on BROKER, SHIPPER, and/or CONSIGNEE because of Carrier's use of non-compliant equipment.

5. RECEIPTS AND BILLS OF LADING. If requested by SHIPPER, BROKER agrees to provide SHIPPER with proof of acceptance and delivery of shipments in the form of a signed Bill of Lading or Proof of Delivery via US Mail, courier, or electronically by fax or email. SHIPPER's insertion of BROKER's name on the bill of lading shall be for SHIPPER convenience only and shall not change BROKER's status as a property broker. The terms and conditions of any freight documentation used by BROKER or carrier selected by BROKER may not supplement, alter, or modify the terms of this Agreement. (Between Shipper and Broker.)

6. PAYMENTS. BROKER shall invoice SHIPPER for its services in accordance with the rates, charges and provisions set forth in Appendix D attached, and any written supplements or revisions that are mutually agreed to between the PARTIES in writing. If rates are negotiated between the PARTIES but not reflected in Appendix D they shall be confirmed in writing to be binding upon SHIPPER, or shall become binding upon delivery of the freight. SHIPPER agrees to pay BROKER's invoice within ____ days of invoice date without deduction or setoff. Unless otherwise agreed in a signed writing, BROKER shall apply payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. Payment of the freight charges to BROKER shall unconditionally relieve SHIPPER, Consignee or other responsible party of any liability to the carrier for non-payment of its freight charges. BROKER shall indemnify SHIPPER from and against any claim for freight payment brought by carrier against SHIPPER when SHIPPER has paid BROKER and BROKER has failed to pay carrier.

7. CLAIMS.

- A. Freight Claims: SHIPPER must submit in writing claims for cargo loss or damage within one hundred eighty (180) days from the date of such loss, shortage or damage, which for purposes of this Agreement shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. SHIPPER must file any civil action against the applicable carrier or commence arbitration within two (2) years and one day from the date the carrier provides written notice that the carrier has disallowed any part of the claim. BROKER agrees to facilitate SHIPPER's submission of claims to carriers by forwarding the written claim to carrier in a timely manner.
- B. Carriers utilized by BROKER shall agree in writing with BROKER to be liable for cargo loss or damage as outlined in paragraph 4.C above. The carrier's cargo liability for any one shipment shall not exceed \$ _____, unless BROKER is notified by SHIPPER of the increased value at the time of tendering of the shipment with the BROKER. It is understood and agreed that the BROKER is not a carrier and that the BROKER shall not be held liable for loss, damage or delay in the transportation of SHIPPER's property, unless caused by BROKER's solely negligent acts or omissions in the performance of this Agreement. BROKER shall assist SHIPPER in the filing and/or processing of claims with the carrier. If payment of a claim is made by BROKER to SHIPPER, as a condition of payment, SHIPPER automatically assigns all its rights and interest in the claim to BROKER and shall provide Broker with all documents related to the claim, will provide unrestricted access to all witnesses and will instruct witnesses to cooperate with Broker.
- C. In no event shall BROKER or BROKER's contracted Carrier be liable to SHIPPER for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless SHIPPER has informed BROKER in written or electronic form prior to or when tendering a shipment or series of shipments to BROKER of the potential nature, of assessment of risk, and approximate amount of such damages, and BROKER specifically agrees in written or electronic form to accept responsibility for such damages.
- D. (1) SHIPPER shall not be responsible to salvage food shipments that are inspected by a "qualified individual" as referenced in 21 C.F.R. 1.908(a)(6) and found to be "adulterated" as defined in 21 CFR § 342. BROKER will contractually require its carriers to comply with SHIPPER's written instructions regarding food safety and to be liable for failure to comply with and pay for reasonable disposal instructions
- (2) SHIPPER shall be liable to BROKER for failure to inform BROKER in writing when tendering shipment of any food security/safety requirements regarding temperature and/or seals.
- E. All Other Claims: The Parties shall notify each other of all known material details of claims within sixty (60) days of receiving notice of any claims other than cargo loss or damage claims, and shall update each other promptly thereafter as more information becomes available. Civil actions, or arbitration, if any, shall be commenced within two (2) years from the date either Party first provides written notice to the other Party of such a claim.

8. INSURANCE. BROKER agrees to procure and maintain at its own expense, at all times during the term of this Agreement, the following insurance coverage amounts:

- A. Comprehensive general liability insurance \$ _____
covering bodily injury and property damage

- B. Contingent Cargo Insurance \$ _____
- C. Errors and Omissions Insurance \$ _____
- D. Contingent Auto Liability or Hired and Non-owned Auto Liability Insurance or other insurance providing substantially similar coverage \$ _____

(The Parties should determine which, if any, of the above coverages are appropriate for the anticipated transactions under this Agreement)

BROKER shall submit to SHIPPER a certificate of insurance as evidence of such coverage and which names SHIPPER as "Certificate Holder".

9. SURETY BOND. BROKER shall maintain a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration in the amount of at least \$75,000 or as otherwise required by the FMCSA , or as otherwise agreed by the Parties in excess of \$75,000, and furnish SHIPPER with proof upon request.

10. HAZARDOUS MATERIALS. SHIPPER shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800, §173, and § 397 et seq. to the extent that any shipments constitute hazardous materials. SHIPPER is obligated to inform BROKER immediately if any such shipments constitute hazardous materials. SHIPPER shall defend, indemnify and hold BROKER harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of SHIPPER's failure to comply with applicable hazardous materials laws and regulations. The Parties acknowledge and agree that Broker has provided no guidance, assistance, directions, or any control related in any way to Shippers compliance with any applicable Haz Mat regulations.

11. HOMELAND SECURITY. As applicable to each, respectively, BROKER and SHIPPER shall comply with federal, state and local Homeland Security related laws and regulations.

12. "CURE"/DEFAULT.

A. Both Parties will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes in good faith. However, if either Party materially fails to perform its duties under this Agreement, the Party claiming default for a cause other than those listed in Section 12.B may terminate this Agreement on 10 (ten) days prior written notice to the other Party. SHIPPER shall be responsible to pay BROKER for any services performed prior to the termination of this Agreement, including shipments scheduled and in transit on the date of termination, if ultimately delivered and invoiced to SHIPPER in accordance with this Agreement.

B. Default: The following actions, in addition to any other material breach described elsewhere in this Agreement, shall each constitute a material breach of this Agreement:

1. Either Party files a voluntary petition under Chapter 7 or 11 of the U.S. Bankruptcy Code, or any equivalent state law; or a petition is filed against the Party, under federal or state law which is not dismissed within 60 days.
2. BROKER's license(s) required for BROKER to perform its obligations under this Agreement is revoked, canceled, suspended, or discontinued for any reason.

In the event of the occurrence of any breach(es) listed in this Section 12.B, the non-breaching party may terminate this Agreement effective immediately upon written notice to the breaching party.

13. **INDEMNIFICATION.** SHIPPER shall defend, indemnify and hold BROKER harmless from any liability, and/or claims, including but not limited to actions for damages, reasonable attorney fees and costs, cargo loss, cargo damage, cargo salvage, shipment delay and payment of carrier rates and/or accessorial charges, personal injury and death, arising out of its performance under this Agreement. Neither Party shall be liable to the other Party for any claims, actions or damages due to such other Party's own negligence or intentional acts. Failure of SHIPPERS insurance coverage, for any reason, shall not exonerate SHIPPER from its indemnity obligations hereunder. The obligation to defend shall include all costs of defense as they accrue.

14. **ASSIGNMENT/MODIFICATIONS OF AGREEMENT.** Neither Party may assign or transfer this Agreement, in whole or in part, without the prior written consent of the other Party. No amendment or modification of the terms of this Agreement shall be binding unless in writing and signed by the Parties.

15. **SEVERABILITY/SURVIVABILITY.** In the event that the operation of any portion of this Agreement results in a violation of any law, or any provision is determined by a court of competent jurisdiction (or an arbitrator) to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the Agreement shall continue in full force and effect. The representations and obligations of the Parties shall survive the termination of this Agreement for any reason.

16. **INDEPENDENT CONTRACTOR:** The relationship of the Parties to each other shall at all times be that of independent contractors. None of the terms of this Agreement, or any act or omission of either Party shall be construed for any purpose to express or imply a joint venture, partnership, principal/agent, fiduciary, or employer/employee relationship between the Parties. Each Party shall provide sole supervision and shall have exclusive control over the actions and operations of its employees, and agents used to perform its services hereunder. Neither Party has any right to control, discipline or direct the performance of any employees, or agents of the other Party. Neither Party shall represent to any party that it is anything other than an independent contractor in its relationship to the other Party.

17. **NON-WAIVER.** Failure of either Party to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of this Agreement, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

18. **NOTICES.** Unless the Parties notify each other in writing of a change of address, any and all notices required or permitted to be given under this Agreement shall be made in writing and shall be delivered via fax with machine imprint on paper acknowledging successful transmission or email with confirmed receipt and shall be effective when so delivered to the addresses as follows:

(BROKER)

Attn: _____

(SHIPPER)

Attn: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

Email: _____

Email: _____

After hours phone: _____

After hours phone: _____

19. **FORCE MAJEURE.** Neither Party shall be liable to the other for failure to perform any of its obligations under this Agreement during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of the SHIPPER or BROKER, provided that the Party so prevented uses its best efforts to perform under this Agreement and provided further, that such Party provide reasonable notice to the other Party of such inability to perform. Performance obligations of the Parties shall unless otherwise agreed in writing, be extended by the amount of delay caused by Force Majeure events.

20. **CHOICE OF LAW AND VENUE.** All questions concerning the construction, interpretation, validity and enforceability of this Agreement, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the laws of the State of Tennessee, without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply.

21. **DISPUTE RESOLUTION** (Choose one option below. Both parties must initial the selected option.)

In the event that no selection is made by the parties under Paragraphs A, B or C of this Section 21, any litigation regarding disputes hereunder may be filed in any court of competent jurisdiction and venue.

A. ARBITRATION: _____ SHIPPER _____ BROKER

In the event of a dispute arising out of this Agreement, the SHIPPERS sole recourse shall be to arbitration as provided in paragraph 7A. and for the Broker within two years from the date of the alleged date of delivery or scheduled date of delivery. Proceedings shall be conducted under the rules of the American Arbitration Association (AAA) or Transportation ADR Council, Inc. (ADR) at the discretion of the party filing the complaint. Upon agreement of the Parties: Arbitration proceedings may be conducted outside of the administrative control of the AAA or ADR; unless otherwise agreed in writing, arbitration proceedings may be conducted by tele-conference or video-conference. The decision of the arbitrators shall be "reasoned" including findings of fact and conclusions of law, binding and final and the award of the arbitrator may be entered in a court of competent jurisdiction. The prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees as well as those incurred in any action for appeal or injunctive relief, or in the event further legal action is taken to enforce the award of arbitrators. The arbitration provisions of this paragraph shall not apply to enforcement of the award of arbitration.

B. COMBINATION ARBITRATION/LITIGATION: _____ SHIPPER _____ BROKER

Subject to the time limitations set forth herein and the choice of law and venue provisions of par 20, for disputes where the amount in controversy exceeds \$ _____ the Parties shall have the right, but not the obligation, to select litigation in order to resolve any disputes arising hereunder. In the event of litigation the prevailing Party shall be entitled to recover costs, expenses and reasonable attorney fees, including but not limited to any incurred on appeals. Where amounts in controversy are less than the amount stated above,

unless otherwise agreed in writing, the Parties shall submit such claims to arbitration as described in Par A above.

C. LITIGATION: ____ SHIPPER ____ BROKER

In the event of a dispute arising out of this Agreement, the Party's sole recourse shall be litigation which shall be filed in accordance with time limits stated in paragraph 21A.-The prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees as well those incurred in any action for injunctive relief and appeal.

D. Unless otherwise agreed in writing, in the event that someone / or entity not a party to this Agreement sues Shipper or Broker alleging liability arising out of this Agreement, the arbitration clause above shall not be applicable.

22. CONFIDENTIALITY. Other than as required to comply with law or legal process requiring disclosure, the Parties agree to the following:

- A. BROKER shall not utilize SHIPPER's name or identity in any advertising or promotional communications without written confirmation of SHIPPER's consent and the Parties shall not publish, use or disclose the contents or existence of this Agreement except as necessary to conduct their operations pursuant to this Agreement. BROKER will require its carriers, employees, and agents and co-, if any, to comply with this confidentiality clause.
- B. In addition to Confidential Information protected by law, statutory or otherwise, the Parties agree that all of their financial information and that of their customers, including but not limited to freight and brokerage rates, amounts received for brokerage services, amounts of freight charges collected, freight volume requirements, as well as personal customer information, customer shipping or other logistics requirements shared or learned between the Parties and their customers, shall be treated as Confidential, and shall not be disclosed or used for any reason without prior written consent.
- C. In the event of violation of this Confidentiality paragraph, the Parties agree that the remedy at law, including monetary damages, may be inadequate and that the Parties shall be entitled, in addition to any other remedy they may have, to an injunction restraining the violating Party from further violation of this Agreement in which case the non-prevailing Party shall be liable for all costs and expenses incurred, including but not limited to reasonable attorney's fees.

24. ENTIRE AGREEMENT. This Agreement, including all Appendices and Addenda, constitutes the entire agreement intended by and between the Parties and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter hereof. Any modifications to this model contract, as published and copyrighted by TIA and NITL, shall be highlighted or italicized and initialed by both Parties to be valid. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence may be introduced to reform this Agreement in any judicial or arbitration proceeding involving this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names by their fully-authorized representatives as of the dates first above written.

BROKER

SHIPPER

Authorized signer

Printed Name

Title

Authorized signer

Printed Name

Title