

BROKER-SHIPPER AGREEMENT

MDOT Brokerage and Freight LLC a licensed property broker operating under U.S. DOT number 4003538 and docket number MC1505390 (“Broker”), and XXXX (“Shipper”) enter into this broker-shipper agreement and agree as follows:

1.0 TERM. The term of this agreement shall be for one year from the Effective Date under section 23.0 and shall automatically renew for successive one-year periods. Either party may terminate the agreement at any time by giving 60 days’ prior written notice.

2.0 SERVICE.

Broker shall arrange the motor transportation of Shipper’s freight under this agreement and in compliance with all federal, state, and local laws and regulations relating to the arranging of the transportation of freight. Broker’s responsibility under this agreement is limited to arranging the transportation of Shipper’s freight and not to transporting it. Notwithstanding section 4.8, Shipper understands and agrees that it has the duty to review and comply with California Air Resources Board (“CARB”) Heavy-Duty Vehicle Greenhouse Gas Emission Reduction Regulations and Airborne Toxic Control Measures (collectively, “ATCM”) for Transportation Refrigeration Units (“TRU”).

3.0 VOLUME.

3.1 This agreement guarantees no minimum volume of freight.

3.2 Shipper shall provide Broker with timely and accurate delivery instructions and descriptions of the freight, including any special handling or security requirements.

4.0 FREIGHT CARRIAGE. Broker has entered into or will enter into a bilateral written contract of carriage with each motor carrier that Broker uses in the performance of this agreement. Those contracts comply or will comply with all applicable federal, state, and local laws and regulations, and will typically include the following provisions:

4.1 Each motor carrier is and shall remain in compliance during the term of this agreement with all applicable federal, state, and local laws, including the following:

- 4.1.1 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 under this agreement constitute hazardous materials;
- 4.1.2 security regulations;
- 4.1.3 owner/operator lease regulations;
- 4.1.4 loading and securement of freight regulations;
- 4.1.5 implementation and maintenance of driver safety regulations including those governing hiring, controlled substances, and hours of service;
- 4.1.6 sanitation, temperature, and contamination requirements for transporting food, perishable, and other products, qualification and licensing and training of drivers;
- 4.1.7 implementation and maintenance of equipment safety regulations;
- 4.1.8 maintenance and control of the means and method of transportation including performance of its drivers.

4.2 Each motor carrier shall agree to defend and indemnify Broker and Shipper from and against all damages, claims, or losses arising out of such carrier’s performance of motor transportation that Broker arranges under this agreement, including as to freight loss, damage, theft, or delay, as well as damage to property, and personal injury or death.

4.3 Each motor carrier shall agree that its liability for freight loss, damage, or delay shall be that of a motor carrier under 49 U.S.C. § 14706 (the “Carmack Amendment”), notwithstanding its waiver under 49 U.S.C. § 14101(b) in section 10.0. Exclusions in a motor carrier’s insurance policy shall not exonerate the motor carrier from Carmack Amendment liability.

4.4 Each motor carrier shall agree to maintain during the term of its contract of carriage, insurance coverages with limits not less than the following:

4.4.1 Public liability insurance, i.e., liability for bodily injury or property damage and that includes liability for environmental restoration, in an amount not less than \$1,000,000 per occurrence, or \$5,000,000 for freight subject to 49 C.F.R. Part 387.

4.4.2 Motor truck cargo legal liability insurance in an amount not less than \$100,000 per occurrence.

4.4.3 Statutory workers' compensation insurance and employer's liability coverage in such amounts and in such form as the applicable state law requires.

4.5 Each motor carrier shall agree that 49 C.F.R. § 370.1 *et seq.* or any successor regulations shall govern the processing of claims for loss, damage, injury, or delay to freight and the processing of salvage.

4.6 Each motor carrier shall agree that at no time during the term of its contract with Broker shall it have an "unsatisfactory" safety rating as determined by the FMCSA. If the motor carrier receives an "unsatisfactory" or "out of service" safety rating, then it shall immediately notify Broker. Broker shall not knowingly arrange transportation of Shipper's freight by any motor carrier with an "unsatisfactory" or "out of service" safety rating in the performance of this agreement.

4.7 Each motor carrier shall agree that its contract of carriage with Broker shall apply to all transportation that Broker arranges under this agreement. Any terms in a motor carrier's tariff, bill of lading, or any other document that are inconsistent with the contract of carriage shall be subordinate to the terms of the contract of carriage.

4.8 Each motor carrier shall agree to review and abide by the CARB ATCM for TRUs on the Internet at www.arb.ca.gov/diesel/tru/tru.htm and www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm and that all refrigerated equipment necessary or required for the performance of each motor carrier's obligations ("Equipment"), including 53-foot trailers, both dry-van and refrigerated Equipment, operated within California are in compliance with CARB's ATCM for TRUs and that prior to transporting any goods under the agreement, each motor carrier shall inspect its Equipment for compliance with CARB ATCM TRU regulations, cleanliness, odors, dirt, or debris before loading.

4.9 Each motor carrier shall agree that Broker is the sole party responsible for the payment of any motor carrier's freight and other charges. Broker shall pay each motor carrier's invoice according to its terms. Broker agrees and each motor carrier shall agree that no motor carrier will seek payment from Shipper if it can prove its payment to Broker. Each motor carrier shall agree that its extension of credit as to the transportation of freight under this agreement shall be solely to Broker, with no right of recourse against Shipper if it can prove that it or any other party has paid the corresponding freight and other charges to Broker.

5.0 RECEIPTS AND BILLS OF LADING. Upon request by Shipper, Broker agrees to provide Shipper with proof of acceptance and delivery of such loads in the form of a signed bill of lading or proof of delivery, as Shipper may specify. Shipper understands and agrees that its insertion of Broker's name on any bill of lading shall be for Shipper's convenience only and shall not change Broker's status as anything other than a broker that arranges motor transportation. Shipper understands and agrees that Broker is not a motor carrier or freight forwarder and that Broker has not held itself out as being a motor carrier or freight forwarder. The terms and conditions of any freight documentation that either Broker or an underlying motor carrier may use shall not supplement or modify the terms of this agreement.

6.0 PAYMENTS. Broker shall invoice Shipper according to the rates, charges, and provisions to which the parties have agreed in a writing signed by both of them before any transportation of freight that Shipper

may request. Shipper shall pay Broker's invoice within 15 days of its date. Broker shall apply payment to the amount due for the specified invoice, regardless of whether there are earlier unpaid invoices. Shipper's payment of invoiced freight and related charges to Broker shall relieve Shipper, the consignee, and any other potentially responsible party from any liability to the underlying motor carrier for non-payment of its freight and other charges.

7.0 FREIGHT CLAIMS: NOTICES OF CLAIM AND TIME-BARS

7.1 NOTICE OF CLAIM TO BROKER FOR ITS ASSISTANCE WITH FREIGHT CLAIMS TO MOTOR CARRIER. Shipper must provide Broker with written notice of a claim for any freight loss, damage, or non-delivery within 90 days after the freight's date of delivery or from the date on which the freight should have been delivered. Conditioned on Shipper's timely notice of claim, Broker will forward the same onto the motor carriers that performed or undertook to perform the transportation of the freight. As a further condition to Broker's assisting of Shipper with such a freight claim, Shipper must first pay all freight charges in full. Shipper's failure to provide written notice to Broker within the above 90-day period shall extinguish Broker's duty to forward the claim to the potentially responsible motor carriers.

7.2 NOTICE OF CLAIM TO BROKER AS TO ITS SERVICES. Shipper must provide Broker with written notice of a claim arising out of any services within 90 days of the date of Broker's performance of such services or from the date on which Broker should have performed such services. As a further condition to Broker's processing of such a claim, Shipper must first pay all charges as to such services. Shipper understands and agrees that the consequence of its failure to provide a timely written notice of claim is that Shipper's action against Broker will be time-barred.

7.3 TIME-BAR AS TO BROKER. In any event, Broker shall be discharged from all liability to Shipper as to any services that the Broker has provided unless Shipper files an action in the mandatory venue under section 20.0 within nine months after the date of delivery of the freight or from the date on which the Freight should have been delivered.

7.4 NOTICE OF CLAIM TO MOTOR CARRIERS. Motor carriers typically have contractual notice-of-claim periods within which a claimant must make a claim for the loss of or damage to freight. Unless the transportation is exempt carriage under 49 U.S.C. § 14101(b) or subject to compulsorily applicable state law, then under the federal law known as the "Carmack Amendment," a contractual notice-of-claim cannot be less than nine months after the date of delivery of the freight or from the date on which the freight should have been delivered. Subject to section 7.1, Shipper understands and agrees that it, and not Broker, shall be responsible to make such a timely notice of claim, understanding that the consequence of Shipper's failure to make such a timely notice of claim is that Shipper's claim against the motor carriers of the freight will be time-barred.

7.5 TIME-BAR AS TO MOTOR CARRIERS. Motor carriers also typically have contractual time-bar or limitations periods within which a claimant must sue the Carrier for the loss of or damage to cargo. Unless the Carriage is exempt carriage under 49 U.S.C. § 14101(b) or subject to compulsorily applicable state law, then under the Carmack Amendment, a contractual limitations period cannot be less than two years from the day on which the motor carrier has given written notice to the claimant that the motor carrier has disallowed the claim or any part or parts of the claim stated in the timely notice of claim. Shipper understands and agrees that it, and not Broker, shall be responsible to file such a timely action, understanding that the consequence of Shipper's failure to timely file such an action is that Shipper's action against the motor carriers of the freight will be time-barred.

7.6 NON-FREIGHT CLAIMS. The parties shall notify each other within 90 days of any claims other than freight claims. The claiming party must file any civil action against Broker in the mandatory venue under section 20.0 within one year from the date a party provides written notice to the claiming party that the other party has disallowed any part of the claim in the notice.

8.0 BROKER'S LIMITATION OF LIABILITY AND SHIPPER'S OPPORTUNITY TO AVOID LIMITATION. Shipper understands and agrees that Broker is not a motor carrier or a freight forwarder. Accordingly, Shipper understands and agrees that Broker shall not be liable for loss, damage, or delay in the transportation of Shipper's freight unless it was Broker's acts or omissions that proximately caused any of the above contingencies. In any event, Broker has established and offered alternative rates of booking freight for transportation and Shipper acknowledges that it has made an election between those alternative booking rates, between (1) Broker's regular/lower booking rates for freight with limited value, and (2) ad valorem

booking rates for freight not so limited, which rates are dependent on the value declared by Shipper, which Broker uses as the basis on which to arrange transportation by the underlying motor carriers. Unless Shipper declares in writing to Broker the nature and value of the freight prior to Broker's arranging of that freight's transportation and pays the corresponding ad valorem freight, Shipper knowingly and willingly elects to ship under the Broker's regular/lower booking rates, the consequence of which shall be that the Broker's liability to Shipper shall be limited to the greater of \$.50 per pound or \$50.

9.0 INSURANCE. Broker shall procure and maintain, at its expense, the following insurance coverages from insurers with an A.M. Best rating of "A" or above:

- | | | |
|-----|--|---------------------------------|
| 9.1 | Contingent auto liability | \$1 million per occurrence; and |
| 9.2 | Contingent motor truck cargo legal liability | \$100,000 per occurrence. |

To evidence the above coverages, Broker shall provide certificates of insurance to Shipper that state that it is a certificate holder.

10.0 HAZARDOUS MATERIALS. Shipper and Broker shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 C.F.R. §§ 172.800, 173, and 397, to the extent that any shipments constitute hazardous materials. Shipper is obligated to inform Broker immediately if any such shipments constitute hazardous materials.

11.0 CONTRACTUAL WAIVER UNDER 49 U.S.C. § 14101(b). The parties understand and agree that this agreement is for contract carriage, i.e., a contract for Broker to provide specified services under specified rates and conditions. Further to 49 U.S.C. § 14101(b), the parties waive all rights and remedies under Title 49, Subtitle IV, Part B of the United States Code, and its related regulations, as to all transportation under this agreement, which transportation shall not be subject to the waived rights and remedies. The above waiver excludes the provisions in Title 49 that govern registration, insurance, or safety fitness.

12.0 DEFAULT. The parties will discuss any perceived deficiency in performance and will promptly attempt to resolve all disputes in good faith. But if either party were to materially fail to perform its duties under this agreement, then the other party may terminate this agreement on 10 days' written notice.

13.0 INDEMNIFICATION. Each party will defend and indemnify the other party from and against any damages, losses, fines, penalties, duties, taxes, interest, and expenses the other party pays or incurs, including reasonable attorneys' fees, arising out of or in any way connected with or caused by, in whole or in part, any claim, demand, action, or proceeding that a third-party may bring caused by or resulting from the indemnifying party's breach of this agreement or any other negligent or intentional act or omission by the indemnifying party, whether or not related to its performance of or exercise of rights under this agreement.

14.0 ASSIGNMENT/MODIFICATION 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 chief executive officers or president of both parties.

15.0 SEVERABILITY/SURVIVABILITY. If any provision of this agreement shall for any reason be held to be invalid or unenforceable, then the remainder of this agreement shall be unaffected and remain in effect.

16.0 INDEPENDENT CONTRACTORS. The parties understand and agree that neither is the agent of the other. Each party is and shall remain an independent contractor. Neither party exercises or retains any control or supervision over the other party, its operations, employees, or any motor carriers that such party contracts.

17.0 NON-WAIVER. A waiver of any right by either party will not constitute a waiver of such right on any subsequent occasion.

18.0 NOTICES. Any notice, demand, or request that this agreement requires or permits shall be in writing and the parties shall give such written notice by hand delivery or by a nationally recognized express transportation company. Notice shall be effective on the date of delivery by hand or, if by a nationally recognized express transportation company, then on the date of its delivery, according to that company's tracking number or data, as follows:

MDOT Brokerage and Freight LLC
Attn: _____
[ADDRESS]
[CITY, STATE, ZIP]

[Broker]
Attn: _____
[ADDRESS]
[CITY, STATE, ZIP]

19.0 FORCE MAJEURE.

19.1 If a Force Majeure Event were to occur, then the party that is prevented by that Force Majeure Event from performing any one or more obligations under this agreement (the "Nonperforming Party") will be excused from performing those obligations, on condition that it complies with its obligations under section 19.3.

19.2 "Force Majeure Event" means any event or circumstance, regardless of whether it was foreseeable, that prevents a party from performing any of its obligations under this agreement, other than an obligation to pay money, on condition that that party uses reasonable efforts to do so.

19.3 Upon occurrence of a Force Majeure Event, the Nonperforming Party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance, and how long that party expects it to last. The Nonperforming Party shall update that information as reasonably necessary. During a Force Majeure Event, the Nonperforming Party shall use reasonable efforts to limit damages to the Performing Party and to resume its performance under this agreement.

20.0 MANDATORY LAW, VENUE, AND JURISDICTION. All claims or disputes arising out of or in any way related to this agreement shall be determined under the federal law of the United States of America, without regard to its conflict of laws rules or, in the absence of such federal law, then under the laws of the State of California, without regard to its conflict of laws rules. Without prejudice to a party's right to remove an action to federal court, the exclusive and mandatory venue for any such claims or disputes shall be the federal or state courts in Los Angeles County, California, to the exclusion of all other courts. The parties agree to irrevocably submit to the personal jurisdiction of the above courts and to waive any jurisdictional, venue, or inconvenient forum objections to those courts.

21.0 ENTIRE AGREEMENT. This agreement is the parties' final expression and entire agreement arising out of or in any way relating to the subject matter of the agreement. This agreement states the parties' entire understanding and it supersedes any contemporaneous or prior oral or written understandings or agreements that arise out of or are in any way related to the subject matter of the agreement. This agreement shall be binding upon and inure to the benefit of each party's executors, administrators, personal representatives, heirs, successors, and assigns.

22.0 COUNTERPARTS. The parties may sign this agreement in counterparts and each signed counterpart shall become part of the final agreement and shall have the same force and effect. A copy of any signature on a signature-page, including a facsimile or scanned electronic copy, shall be as valid and binding as an original signature.

23.0 EFFECTIVE DATE. This agreement will become effective when all the parties have signed it. The date this agreement is signed by the last party to sign it, as indicated by the date stated under that party's signature, will be deemed the date of this agreement.

MDOT BROKERAGE AND FREIGHT LLC

[SHIPPER]

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

PRINTED NAME

PRINTED NAME

TITLE

TITLE

DATE

DATE