

## DOMESTIC TRANSPORTATION BROKERAGE AGREEMENT

THIS AGREEMENT (“Agreement”), made as of \_\_\_\_\_, \_\_\_\_\_ (the “Effective Date”), between \_\_\_\_\_ (“Customer”), having offices at \_\_\_\_\_, and IMS Transport Solutions LLC d/b/a IMS Logistics Management Solutions, a New Jersey limited liability company (“Broker”), having offices at 265 Industrial Way West, Eatontown, New Jersey 07724.

WHEREAS, Broker is authorized by the Federal Motor Carrier Safety Administration (“FMCSA”) under brokerage license number MC337093B to arrange for transportation of freight, except household goods; and

WHEREAS, Customer is a shipper or broker and desires to engage Broker for services on behalf of Customer’s customer(s).

NOW THEREFORE, in consideration of the premises and mutual promises and undertakings herein contained, the parties agree as follows:

1. **TERM AND TERMINATION.** This Agreement shall be in full force and effect commencing on the Effective Date and continuing until terminated (the “Term”). Either party hereto has the right to terminate this Agreement at any time upon thirty (30) days’ prior written notice to the other party. Termination shall not release either party from any liability or obligation existing or accrued at or prior to the date of such termination. Termination of this Agreement for any reason will automatically terminate the grant of license set forth in Section 2(b).

2. **SERVICES; LICENSE.**

(a) Broker agrees to arrange for transportation of freight (each a “Shipment,” collectively, “Shipments”) as Customer may tender on behalf of its customers to Broker for such transportation services and at such rates and charges as are and will be more particularly described in rate quotes to be provided by Broker to Customer in connection with moves from designated origins to designated destinations, as more fully described and in effect from time-to-time on Broker’s website (the “Website”) and/or sent to Customer in written confirmation by faxes and/or e-mails (collectively, the “Rate Quotes”). Said Rate Quotes are expressly made a part of this Agreement and incorporated herein by this reference. Broker hereby agrees to arrange for transportation of lawful Shipments offered to it by Customer to the destination or destinations designated by Customer at the Rate Quotes. Broker may, in its discretion, reject an offered Shipment for any reason or no reason.

(b) In arranging transportation services hereunder, Broker shall provide Customer access to Broker’s proprietary logistical management solutions which are part of the System (the “System”). Broker hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable license, during the Term, to access the Software (as defined in Section 6) and the System as a service provided by Broker solely in connection with the provision by Broker of the services provided pursuant to this Agreement and solely through Broker’s Website, in each instance always pursuant to the terms and conditions of this Agreement and as may be provided in any terms

of use and privacy policy and any other terms on the Website. Termination of this Agreement for any reason will automatically terminate the grant of license set forth in this Section 2(b).

(c) Broker may assign Customer one or more unique passwords and usernames to access the System. Customer will take all commercially reasonable steps to prevent the unauthorized use and disclosure of any password and usernames. Customer shall immediately, upon discovery, notify Broker of any unauthorized disclosure or use of any password or username assigned to Customer and take any steps within its control to prevent any further unauthorized disclosure or use. In addition to any remedies available under this Agreement or pursuant to applicable law, Broker may, at any time, limit or suspend in whole or in part Customer's access to the Broker Website to prevent the unauthorized disclosure or use of any password or username.

(d) Prior to pick-up, all trailers must be inspected for and free of holes, damaged floorboards, faulty doors, loose pallets, refuse and odor-free.

3. PAYMENTS FOR SERVICE. Subject to Exhibit A annexed hereto, all charges for Shipment services herein are payable by Customer within thirty (30) calendar days from the date of any invoice to Customer. In connection with Broker providing the payment terms as per the preceding sentence to Customer, Customer has completed the Application for Credit annexed hereto as Exhibit A, and Customer hereby represents and warrants to Broker that the information provided by Customer on Exhibit A is true, correct and complete in all respects. Customer's obligation to pay all amounts due under this Agreement to Broker shall be guaranteed by the individual(s) or entity(ies) identified in Exhibit B annexed hereto, by the execution by such individual or entity of the Personal Guaranty set forth in Exhibit B.

4. INDEPENDENT CONTRACTOR-RIGHT OF SUBSTITUTION. Broker shall be an independent contractor and not an agent or employee of Customer or Customer's customer(s). Customer recognizes that Broker will arrange for the transportation services described herein by entering into sub-contracts with responsible thirdparty carriers. Broker hereby represents and warrants to Customer that to the best of Broker's knowledge after reasonable inquiry, such carriers shall have all licenses, permits, authorizations and insurance, as are required by law. Notwithstanding any arrangements with responsible carriers, Broker shall (i) as between Customer and Broker, be solely responsible for transportation and handling of Shipments between the destinations set out herein from "door to door" in compliance with the terms of this Agreement, including but not limited to all acts or omissions of its agents, employees and subcontractors, (ii) trace, expedite and coordinate each and every Shipment hereunder, and (iii) provide reasonable information that Customer may reasonably require with respect to such Shipments through Broker's System. Any sub-contracting or arrangements with a motor carrier shall in no way relieve Broker of any of its obligations under this Agreement and Broker shall remain responsible for any sub-contractor and its performance.

5. COMPLIANCE WITH LAWS; HAZARDOUS MATERIALS. Broker and Customer are each responsible to observe all applicable laws, ordinances, rules and regulations in connection with Shipments tendered to Broker pursuant to this Agreement. Broker hereby represents and warrants to Customer that to the best of its knowledge its arranged motor carriers shall only provide such equipment used in the performance of services arranged hereunder at all times that conforms to all laws, ordinances, safety standards, good maintenance practices, and regulations applicable to such equipment. Customer hereby represents and warrants to Broker that all cargo tendered pursuant to this Agreement, and the manner in which it is packaged and labeled, loaded and unloaded and all

equipment provided by Customer or its customers, shall at all times conform to all laws, ordinances, safety standards, good practices, and regulations applicable thereto, and that the information provided to Broker with respect to any such Shipments shall be true, correct and complete. Customer shall not tender to Broker any Hazardous Materials, as defined within 49 C.F.R., Subtitle B, Parts 105 through 180, for the purpose of having Broker arrange the transportation of such Hazardous Materials, unless Broker has expressly agreed in writing in advance with respect to each such Hazardous Materials Shipment.

6. **OWNERSHIP OF INTELLECTUAL PROPERTY.** Except as expressly set forth herein, each party shall retain all right, title and interest in and to such party's intellectual property and all improvements, modifications, enhancements and derivative works and any intellectual property developed or created by such party in connection with performing its obligations hereunder, and all copies and embodiments thereof, including all rights in know-how, copyrights, trademarks, patents, patent applications (including reissues, renewals, continuations, continuations-in-part, or divisions of any patent or patent application), trade secrets, know-how, processes, instructions, improvements, modifications and all proprietary information relating to such party's products and services (collectively, all of the foregoing, "Intellectual Property"). Without limiting the generality of the foregoing, Broker owns and shall retain all Intellectual Property rights in and to the System and services rendered in connection therewith (the "Services") and any and all software, software solutions and code contained therein or related thereto and all related documentation, and all portions, derivatives and improvements thereof (collectively, the "Software"), and any data created, processed or stored thereby, and Customer shall not, (a) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any Software component of the Services is compiled, and Customer acknowledges that nothing in this Agreement will be construed to grant Customer any right to obtain or use or examine such source code, (b) alter, revise, enhance or otherwise change or modify or adjust the Software or any part thereof, or create any derivative product from any of the foregoing, except with the prior written consent of Broker, and (c) rent, lease, sell, resell, sublicense or distribute the Services. Each party agrees that it shall not at any time apply for any registration of any patent, copyright or trademark or other designation, which would affect the other party's exclusive ownership of such other party's Intellectual Property, or file any document with any government authority or take any action, which would adversely affect such other party's exclusive ownership thereof. To the extent that any use of the Services, the System or the Software by Customer creates or results in any Intellectual Property rights, Customer hereby assigns and transfers to Broker all such Intellectual Property rights.

7. **RECORD OF SHIPMENT.** Each Shipment shall be evidenced by a receipt showing the kind and quantity of commodities that Broker arranged for the receipt and delivery at each loading and unloading point. Customer will provide a manifest for individual Shipments to be delivered. Neither the receipt nor the manifest shall contain any terms, conditions or agreements that would expand Broker's obligations or liability under this Agreement and any such provisions contained therein shall be null and void.

8. **INSURANCE.** Broker shall procure and maintain, comprehensive general liability insurance ("CGL") and automobile liability insurance ("AL") with a reputable and a financially responsible insurance carrier or carriers properly insuring Broker against liability and claims for injuries to persons including injuries resulting in death or for damage to property in an amount not less than one million dollars (\$1,000,000) combined single limit coverage for each occurrence, and motor cargo liability insurance ("Cargo") with minimum limits of \$100,000. All insurance policies required by this Agreement shall, as applicable, be primary and shall waive subrogation (and Broker

shall provide evidence of such waiver upon Customer's request) and a requirement of contribution against Customer. Broker shall furnish to Customer written certificates obtained from the insurance Broker showing that such insurance has been procured, is being properly maintained, the expiration date, and specifying that written notice of cancellation or modification of the policies shall be given to Customer at least thirty (30) days prior to such cancellation or modification. In addition, Customer shall be named as an additional insured on Broker's CGL and AL policies, and as loss payees on the Cargo policy as evidenced by an endorsement on the certificates of insurance. Upon request, Broker shall provide Customer with copies of the applicable insurance policies.

9. **INDEMNIFICATION.** Broker shall defend, indemnify, and hold Customer harmless from and against all loss (including without limitation, claims for or related to personal injury, death, or property damage), liability (including but not limited to employment or labor related claims), damage, claim, fine, penalty (including but not limited to any fine or penalty arising out of any violation(s) of law or imposed by Customs authorities) cost or expense, including reasonable attorney's fees, arising out of Broker's, use, maintenance, custody or operation of equipment (unless the equipment is provided by Customer and is defective in any way or does not comply with any laws, ordinances, safety standards, good maintenance practices, and regulations applicable thereto) or Broker's gross negligence or willful misconduct; provided, however, that Broker's indemnification and hold harmless obligations under this Section will not apply to the extent that any Claim is attributable to the negligence or other wrongful conduct of Customer or the breach by Customer of this Agreement. Notwithstanding the foregoing or anything else to the contrary contained in this Agreement, Broker's liability, if any, for cargo loss, damage or delay, and any costs related thereto, under this Agreement (including this Section) is limited to the liability and amounts set forth in Section 12 of this Agreement. Customer shall defend, indemnify, and hold Broker harmless from and against all loss (including without limitation, claims for or related to personal injury, death, or property damage), liability (including but not limited to employment or labor related claims), damage, claim, fine, penalty (including but not limited to any fine or penalty arising out of any violation(s) of law or imposed by Customs authorities) cost or expense, including reasonable attorney's fees, arising out of or in any way related to Customer's negligence or other wrongful conduct of Customer or the breach by Customer of this Agreement.

10. **FORCE MAJEURE.** If and to the extent that either party may be precluded by acts of God, authority of laws, strikes, lockouts, casualties, or failure in electrical power, heat, light, air conditioning, or communications equipment, or other causes beyond its control from performance hereunder, such performance shall be excused to the extent that it is necessitated by such causes, other than Customer's payment obligations hereunder. Upon the occurrence of such an event, the party seeking to rely on this provision shall promptly give written notice to the other party of the nature and consequence of the cause.

11. **TRADEMARKS.** Broker is hereby granted the revocable right to use the trademarks, trade names, service marks, or logos owned by Customer (collectively, the "Trademarks"), solely to the extent required specifically in the performance of its duties under this Agreement, including the right to permit Broker to affix Trademarks to shipping documents issued in connection with this Agreement on behalf of Customer. Except as expressly granted herein, Broker acknowledges that no trademark or trade name rights in any of the Trademarks are granted by this Agreement. Customer hereby represents, warrants and covenants that it has and will maintain the right to use the Trademarks and that the Trademarks do not infringe upon the rights of any other party. Customer may revoke the rights granted in this Section 11 at any time upon notice to Broker. Customer's use of the System in connection with the FASTRAK, IRIS, IMS and any other trademarks owned by

Broker inures to the benefit of Broker.

## 12. LIABILITY; LIMITATIONS.

(a) Broker's arranged motor carrier shall have the sole and exclusive care, custody and control of the Shipment tendered hereunder from the time it is received by such carrier for transportation until delivery to the consignee accompanied by the appropriate receipts. Broker shall notify Customer promptly upon Broker becoming aware that any such Shipment is lost (including stolen), damaged or destroyed, or in the event Broker becomes aware that applicable delivery schedules will not be met.

(b) Subject to the limitations set forth herein, Broker assumes the liability of a carrier (as set forth in 49 U. S. C. 14706, commonly referred to as "the Carmack Amendment," with respect to shipments moving in interstate commerce), and any loss, delay, damage to or destruction of any and all Shipments tendered to Broker pursuant to this Agreement while under Broker's arranged carrier's care, custody or control shall be governed by 49 U. S. C. 14706 or any successor statute.

(c) To the extent permitted by law, Broker's total liability for any and all Claims arising out of or related to this Agreement from any cause or causes and regardless of legal theory asserted including, without limitation, tort, breach of contract, warranty, negligence, strict liability or statutory liability (including with respect to the Carmack Amendment, if applicable), shall not, in the aggregate, (i) exceed \$1,000,000 and (ii) with respect to lost, damaged, delayed, or destroyed cargo, exceed the lesser per Shipment of (A) \$100,000, or (B) Customer's liability to its customer or client with respect to such Shipment. The measure of loss or damage for cargo shall be the invoice value less a credit for reasonable salvage value, if any. No other limitation of liability shall apply unless specifically agreed to in a signed writing by Customer prior to Broker's receipt of the specific Shipments to which such limitation applies, and Customer's agreement to any additional limitation shall not be construed as a waiver with respect to any other Shipment tendered to Broker. In no event shall any bill of lading, receipt or similar documentation serve to evidence Customer's signed written agreement to a limitation of Broker's liability. IN ADDITION, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY, ANY OF ITS CUSTOMERS, END USERS OR ANY OTHER PERSONS FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOSSES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, OR DATA OR THE LIKE), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF A PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, EXCEPT AS PROVIDED HEREIN, THERE ARE NO, AND BROKER EXPRESSLY DISCLAIMS ANY, WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF NON-INFRINGEMENT, TITLE, ACCURACY OF DATA, SYSTEM INTEGRATION OR SUITABILITY, OF ANY SERVICES OR SOFTWARE OR THE SYSTEM, AND LIABILITY WITH RESPECT TO A DEFECTIVE OR INFRINGING PRODUCT, SERVICES OR SOFTWARE SHALL BE LIMITED EXCLUSIVELY TO REPLACEMENT OR MODIFICATION THEREOF IN BROKER'S SOLE DETERMINATION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER ACKNOWLEDGES THAT THE SERVICES, SYSTEM AND SOFTWARE ARE MADE AVAILABLE ON AN "AS IS" BASIS

AND THAT BROKER DOES NOT WARRANT THAT THE SERVICES OR SOFTWARE MADE AVAILABLE BY IT WILL BE UNINTERRUPTED OR ERROR-FREE. BROKER SHALL HAVE NO LIABILITY FOR ANY LOSS OF INFORMATION ENTERED BY CUSTOMER INTO THE SYSTEM. Customer hereby represents and warrants that its agreements with its customers shall expressly provide that there shall be no liability for any special, incidental, punitive or consequential damages, whether directly or indirectly, for Customer or its assignees, in connection with any shipment tendered to Customer by its customers.

(d) Broker, on its own behalf and on behalf of its arranged motor carriers, waives any applicable law regarding processing of claims and handling of salvage, including, but not limited to, the provisions of 49 C.F.R. Part 370. In the event that Broker is legally liable to Customer, Customer shall not deduct any amount from the amount Customer owes Broker without Broker's prior written consent. In the event of a disputed claim, Broker shall give its response within 180 days following receipt of the claim and all supporting documentation. The parties shall fully assist each other in investigating any claim for cargo loss, damage, delay, or destruction or any salvage value with respect to cargo.

13. NOTICES. Any notice, request, direction, instruction or other communication relating to the transactions contemplated by this Agreement shall be in writing, shall be sent postage prepaid to a party at its address set forth above, and shall be deemed to have been given when sent: (a) by certified mail, return receipt requested; (b) by express courier or delivery service to the addresses recited herein above; (c) by email with proof of receipt by the intended recipient or (d) in such other manner or to such other address as shall have been designated by the party to which such notice, request, direction, instruction or other communication is to be given.

#### 14. GOVERNING LAW/JURISDICTION.

(a) Except as expressly set forth herein, this Agreement shall be governed in all respect under the laws of the State of New Jersey, without giving effect to the conflict of laws principles thereof. Subject to Section 14(b), all actions or proceedings commenced under or in connection with this Agreement shall be brought exclusively in the State or Federal Courts in or having jurisdiction over the State of New Jersey, County of Monmouth and the parties hereto hereby waive all objections to jurisdiction and the laying of venue in such courts. In any legal proceeding arising out of or related to this Agreement, the prevailing party, if any, shall be entitled to an award of the costs and attorneys' fees reasonably incurred in connection with such proceeding (to be calculated, irrespective of the amounts due, based on the time spent by such attorneys and their staff at the regular hourly rates then in effect and billed to the prevailing party by the prevailing party's attorneys).

(b) Any disagreement, dispute, controversy or claim with respect to the validity of this Agreement or arising out of or in relation to the Agreement, or breach hereof, shall be finally settled by arbitration in Somerset, New Jersey in accordance with articles of the American Arbitration Association for Commercial Arbitration and each of Customer and Broker consent to arbitration in such jurisdiction in accordance herewith. Each of Customer and Broker shall select one arbitrator, and the two arbitrators so selected shall mutually agree to the selection of a third arbitrator, or, failing such mutual agreement, the third arbitrator shall be selected by the American Arbitration Association. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction, in accordance with Section 14(a). In any arbitration arising out of or related to this Agreement, the arbitrator shall award to the prevailing

party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration (to be calculated, irrespective of the amounts due, based on the time spent by such attorneys and their staff at the regular hourly rates then in effect and billed to the prevailing party by the prevailing party's attorneys).

15. **CONFIDENTIALITY.** Broker and Customer agree to keep confidential any information provided to it by the other party relating to that party's operations or business activities, including, but not limited to, non-public Rate Quotes, the names of carriers and vendors and information provided by any such parties, and with respect to Broker, the System, and the Software and all related documentation and all other information and materials that are non-public and/or proprietary (collectively "Confidential Information"). Each party agrees to hold the Confidential Information of the other party in confidence and shall not use any such information other than in performance of its obligations under this Agreement. Neither party shall disclose any Confidential Information of the other party, except: (a) as is necessary to enforce this Agreement; or (b) to the receiving party's professionals and advisers as may be necessary to conduct the business of the receiving party, so long as the receiving party is responsible for ensuring compliance with this confidentiality requirement. The restriction against disclosure of Confidential Information as specified herein shall not apply to information which (w) was already known prior to the time it was imparted to the disclosing party by the other party, (x) is available or becomes generally available to the public other than through a breach of this Agreement, (y) is acquired or received rightfully and without confidential limitation from a third party, or (z) is independently developed without breach of this Agreement. If either party becomes legally required to disclose Confidential Information, or any part thereof, that party will give the other prompt notice of such requirement in advance of disclosing any confidential information and if the non-disclosing party is unable to obtain a protective order or other appropriate remedy with respect to such disclosure of Confidential Information, then the disclosing party will disclose only that portion of the Confidential Information necessary to ensure compliance with such legal requirement. Upon request of a party, the other party shall promptly return to the requesting party such party's Confidential Information.

16. **SUCCESSORS AND ASSIGNS.** This Agreement shall apply to and bind the successors and permitted assigns of the parties; provided, however, that neither party hereto may assign this Agreement, in whole or in part, or any rights granted herein, or delegate to another party any of the duties hereunder, other than as specifically set forth herein, without the prior written consent of the other party, except that either party shall have the right to assign or transfer this Agreement to any affiliate or in connection with a sale of substantially all of its business without such consent.

17. **ENTIRE AGREEMENT.** This Agreement, the associated Rate Quotes (as such may be generated from time-to-time), the Exhibits hereto which are incorporated herein by reference and Customer's Account Terms provided by Broker to Customer pursuant to Exhibit A, together with any terms of use and privacy policy contained on the Website constitute the entire Agreement between the parties hereto, there being no prior or contemporaneous agreements, oral or written, not integrated herein. Any further representation, agreement, amendment hereto, understanding or waiver, to be binding upon the parties must be reduced to writing and signed by the parties.

18. **WAIVER.** The failure of a party to object to or take action with respect to any breach of any term of this Agreement by the other shall not be construed as a waiver of any rights hereunder by the non-objecting party, nor of any claims, past, present or future, for any breach of this Agreement.

19. COUNTERPARTS. This Agreement may be executed in counterparts and by facsimile or .pdf, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Signatures delivered by electronic methods shall be deemed original signatures.

[CUSTOMER]

IMS TRANSPORT SOLUTIONS LLC D/B/A  
IMS LOGISTICS MANAGEMENT  
SOLUTIONS

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**APPLICATION FOR CREDIT; TERMS**

**Company Information:**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

Name and Title of Officers, Partners and Owner(s)/Shareholders/Members:

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

Individual(s) responsible for payment:

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

**Accounts Payable Contact Information (REQUIRED):**

Name \_\_\_\_\_ Title \_\_\_\_\_

Phone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_

Email: \_\_\_\_\_

**Business General Information:**

Type of entity: Corporation \_\_\_ Partnership \_\_\_ Other (specify) \_\_\_\_\_

Line of Business: \_\_\_\_\_

Year Incorporated / Established: \_\_\_\_\_

Total No. of Employees: \_\_\_\_\_

Federal Tax ID # **(REQUIRED)** \_\_\_\_\_

Dun & Bradstreet # **(REQUIRED)** \_\_\_\_\_

MC, ICC or Operating agreement No.: \_\_\_\_\_

Most Recent annual Sales: \_\_\_\_\_ Year: \_\_\_\_\_

Amount of Credit requested: \_\_\_\_\_

**Bank Reference:**

Bank Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_ Account #: \_\_\_\_\_

**Trade Reference:**

(1) Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_ Account #: \_\_\_\_\_

Email: \_\_\_\_\_

Line of Credit Available: \_\_\_\_\_

(2) Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_ Account #: \_\_\_\_\_

Email: \_\_\_\_\_

Line of Credit Available: \_\_\_\_\_

(3) Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_ Account #: \_\_\_\_\_

Email: \_\_\_\_\_

Line of Credit Available: \_\_\_\_\_

The following is a description of Broker's credit policy, to which Customer agrees to adhere by entering into the Agreement to which this Exhibit A is annexed and incorporated into. The standard review, which Customer hereby authorizes Broker to conduct, consists of: a Dun & Bradstreet ("D&B") report; credit reporting agency reports; and inquiries of Customer's and its principals' banking institution(s) and credit and trade references. Credit will not be granted until information satisfactory to Broker, in Broker's sole discretion, is received from Customer and Customer's principals.

Until credit is granted, all Shipments will be tendered on a cash on delivery (“COD”) basis only. Payment must be received by Broker prior to execution of the Shipment. Once credit is granted, Broker will notify Customer of the credit amount and payment terms specifically applicable to Customer’s account (“Customer’s Account Terms”). Broker’s standard credit terms are set forth below (“Standard Credit Terms”). To the extent the Standard Credit Terms conflict with the Customer’s Account Terms, as Broker may notify Customer pursuant to the terms of the Agreement, the Customer’s Account Terms govern. Broker also reserves the right to require a personal guaranty of Customer’s obligations in the form attached hereto as Exhibit B before extending any credit.

1. Credit terms are 30 days from the date of invoice from Broker. All invoices must be paid within 30 days, or within such number of days as set forth in Customer’s Account Terms, if different than 30 days, to ensure good credit standing with Broker.
2. In the event of a billing error, invoices will be corrected and paid accordingly. Settlements will not be withheld on account of any question as to the correctness of charges which cannot be immediately adjusted, or for alleged overcharges, or any accounts that may be claimed to be due from Broker, in such cases, the claim will be filed for refund of charges believed to be in excess of the lawful amount due.
3. All terms and conditions of sale are subject to change by Broker without a prior notice. If Customer wishes to augment its credit limit, Customer will need to discuss it with Broker’s credit department. If Customer exceeds its credit limit, payment will be required on a COD basis prior to executing additional Shipments.
4. If payment is not received within the time required under the payment terms set forth herein or under any invoice rendered to Customer by Broker, it, and all other amounts then due and owing pursuant to any then outstanding invoice(s), will be considered delinquent, and Broker will take all necessary steps to collect the delinquent amounts. In order to induce Broker to extend credit to Customer and to provide services to Customer on credit, Customer agrees that Customer will pay to Broker, in addition to the amounts due (plus interest), all of Broker’s costs of enforcement of this Agreement and the costs of collection, including its attorneys’ fees, (to be calculated, irrespective of the amounts due, based on the time spent by such attorneys and their staff at the regular hourly rates then in effect and billed to Broker by Broker’s attorneys), expert fees, court costs and expenses. Customer further agrees that to the extent that Broker actually pays any such costs of enforcement or collection, including without limitation, its attorneys’ fees (as described above), Customer waives the right to challenge any and all such amounts actually paid by Broker.
5. Broker reserves the right to refuse to accept Shipments for any delinquent account and to hold any Shipments connected with any delinquent account that may be in or come into the possession of Broker when such account becomes delinquent to guaranty payment of any and all amounts due to Broker by such delinquent account.
6. All invoices not paid within the time period applicable to Customer will accrue interest at the rate of 2% per month or, to the extent that such rate is deemed excessive as a matter of law, at the maximum rate allowable by law, from the date of the invoice until paid in full.

**EXHIBIT B**

**PERSONAL GUARANTY**

Date: \_\_\_\_\_, 20\_\_

Guarantor(s): \_\_\_\_\_  
\_\_\_\_\_

Guarantors' Address(es): \_\_\_\_\_  
\_\_\_\_\_

Guarantors' Phones: Home: \_\_\_\_\_ Work: \_\_\_\_\_  
Home: \_\_\_\_\_ Work: \_\_\_\_\_

Whereas, Broker is in the business of providing certain transportation arrangement services for the shipment of freight;

Whereas, Customer is not a consumer and Customer desires to receive such transportation arrangement services from Broker and desires for Broker to extend credit to Customer for such services;

Whereas, Broker is not willing to extend any credit to Customer unless the Guarantors recited above enter into this personal guaranty; and

Whereas, is the transportation arrangement services are not a consumer transaction and all such services provided by Broker to Customer are for business purposes only.

1. **Recitals; Incorporation.** The statements contained in the recitals of fact set forth above (the "Recitals") are true and correct and the Recitals by this reference are made a part of this personal guaranty ("Personal Guaranty"). This Personal Guaranty is hereby incorporated into the Agreement to which it is an Exhibit and the provisions contained in Sections 13 through 19 shall be applicable to this Exhibit B and the terms thereof shall be binding on Guarantors.

2. **Guaranty.** Guarantors, jointly and severally, do hereby irrevocably and **unconditionally** personally **guarantee** to Broker the prompt payment of all debts and amounts now due or that hereafter may become due from Customer to Broker, and from any other entities now or hereafter controlled by, under common control with or controlling Customer, plus interest on amounts now or that hereafter may become due, and all costs of enforcement of the Agreement, this Personal Guaranty and collection of debts owed by Customer, including all attorneys' fees for such enforcement and collection efforts (to be calculated, irrespective of the amounts due, based on the time spent by such attorneys and their staff at the regular hourly rates then in effect and billed to Broker by Broker's attorneys) and expenses, expert fees, court costs and expenses, and any such fees and costs of enforcement and collection actually paid by Broker, as well as the performance and observance by Customer of the terms, conditions, covenants, stipulations and agreements of the Customer contained in any invoice, instrument of security, or other document, including any extensions, modifications, renewals or amendments of any of the foregoing, all of the foregoing being herein called the "Debt".

3. **Indemnity.** Guarantors agree, jointly and severally, to indemnify and save harmless the Broker from and against, and Guarantors also agree to pay, all reasonable costs, expenses and attorneys' fees that may be incurred by the Broker in connection with the collection or enforcement of the Debt hereunder, including but not limited to attorneys' fees (to be calculated, irrespective of the amounts due, based on the time spent by such attorneys and their staff at the regular hourly rates then in effect and billed to Broker by Broker's attorneys) and costs, as well as such attorneys' fees and costs in any pre-trial, trial, post-trial, appeal, and bankruptcy proceedings.

4. **Liability of Guarantors.** Broker can pursue enforcement of the Debt herein independently and apart from any actions Broker may take against Customer regarding the Debt. This Personal Guaranty shall remain in force until the Debt is paid in full. In the event of any discharge of some or all of the Debt in a bankruptcy proceeding, Guarantors shall remain liable for the entire Debt until it is paid in full.

5. **Financial and Other Information.** Guarantors and Customer shall each deliver to Broker and/or its representatives such income and expense statements, balance sheets, financial statements, and other personal and business financial information concerning Guarantors and Customer, or any of them, as Broker demands at any time and from time to time. The information shall, if Broker requests, be prepared by an independent certified public accountant, who shall be paid by Customer and Guarantors.

6. **Default; Acceleration; Liens.** A default in payment of any part of the Debt shall be and constitute a default under the entire Debt, and Broker has the option to accelerate the entire Debt so that it is all due and payable in its entirety immediately and at once without any notice or demand. The Broker is hereby granted a lien upon and a security interest in all property of Guarantors now or at any time hereafter in the possession of the Broker in any capacity whatsoever as security for the payment of the Debt, and the Broker is hereby authorized to apply, on or after maturity (whether by acceleration or otherwise) to the payment of this Debt any such funds or property in possession of the Broker belonging to Guarantors, in such order of application as Broker may from time to time elect, without advance notice.

7. **Enforcement.** Broker may enforce the provisions hereof from time to time as often as occasion therefor may arise. Broker shall not be required to first exercise any rights against any other person or party primarily or secondarily liable in respect to the Debt or the obligations of Guarantors hereunder and shall not be required first to initiate, pursue or exhaust any remedies available to Broker against any other person or party or to resort to or enforce any security in its possession or under its control. Guarantors are jointly and severally liable on the Debt along with the Customer and all other guarantors thereof.

8. **Waiver.** No course of dealing, delay or omission on the part of the Broker in exercising or enforcing any of its rights or remedies regarding the Debt or this Personal Guaranty shall impair or be prejudicial to the rights and remedies of the Broker hereunder and the enforcement hereof. The Broker may extend, modify or postpone the time and manner of payment and performance of the Debt and otherwise amend the Personal Guaranty without notice to or consent by the Guarantors and without thereby releasing, discharging or diminishing Broker's rights and remedies against the Guarantors hereunder. Guarantors waive each of the following: notice of acceptance of this Personal Guaranty; notice of the occurrence of any default; presentments; demands; protests; and notices of any and all action at any time taken or omitted by the Broker in connection with the Debt or the Personal Guaranty.

9. **No Obligation to Extend Credit.** Broker is not obligated hereby to extend credit to Customer or to Guarantors. Broker has the right to refuse the extension of credit at any time and from time to time.

**IN WITNESS WHEREOF**, the Guarantors have executed this Personal Guaranty on the day and year first above written.

GUARANTORS:

\_\_\_\_\_ (SEAL)

\_\_\_\_\_  
Witnesses

\_\_\_\_\_ (SEAL)

\_\_\_\_\_  
Witnesses