JOHN WALKER
LOGISTICS

STANDARD TERMS & CONDITIONS

BROKER-SHIPPER

John Walker Logistics ("JWL") holds authority from the U.S. Federal Motor Carrier Safety Administration ("FMCSA"), as a property broker under FMCSA License Number MC 1640455 and is hereinafter referred to as "Broker." Broker's services for its customers ("Shipper(s)") include, but are not limited to, arranging for the transportation of full truckload ("FTL"), less than truckload ("LTL"), and intermodal (via a combination of motor carrier and rail) transportation shipments for its Shippers by contracted motor carriers ("Carrier(s)").

Broker and Shipper (also sometimes referred to individually as a "Party", and collectively as the "Parties") agree that their relationship with respect to shipments tendered to Broker by Shipper (their "Agreement") shall be governed by the following terms and conditions:

1. **Tender of Shipments.** Shipper agrees to tender and/or cause to be tendered by Shipper on its own behalf and/or as agent for and on behalf of Shipper's customer(s) one or more shipments to Broker for the purpose of having Broker arrange the transportation of the shipments by Carriers to be selected by Broker. Shipper and Broker agree that this Agreement does not restrict Shipper from tendering shipments to other property transportation brokers or directly to motor carriers.

2. **Brokerage Services.** For all shipments tendered by Shipper to Broker and accepted by Broker, Broker agrees to arrange for the pick-up, transport, and delivery of the shipments, as Shipper may reasonably request, exclusively by Carriers that hold the proper government authority to perform the requested service(s). In arranging transportation services for Shipper, Broker shall not be responsible for packaging, handling or loading of shipments – which shall instead be the responsibility of Shipper and/or the underlying Carrier selected by Broker to transport the shipments. Every shipment handled by Broker for or on behalf of Shipper while this Agreement is in effect will be deemed tendered to Broker under this Agreement. Broker has the sole right to select the Carriers used to perform the transportation services, and Broker is solely authorized to make the necessary transportation arrangements with regard to each shipment tendered by Shipper to Broker. In performing brokerage services for Shipper, Broker shall only select Carriers that meet the following criteria:

    A. **FMCSA Authority.** Carriers selected by Broker shall have and maintain proper and necessary authority from the FMCSA and any applicable state agency to perform transportation services in intrastate, interstate and/or foreign commerce.

    B. **Safety.** Broker shall only select a Carrier to transport a shipment if: (i) at the time the shipment is to be transported, the Carrier has a safety rating or determination from the U.S. Department of Transportation ("U.S. DOT")/FMCSA that is either "Satisfactory," "Unrated," "None," "Continue To Operate" or similar safety rating issued by the FMCSA, or (ii) the Carrier has an FMCSA safety rating or fitness determination of "Conditional" or the equivalent, but has furnished evidence satisfactory to Broker regarding corrective action taken by the Carrier to fully correct the safety deficiency(ies) which resulted in the Carrier receiving such rating. Broker shall only select a

Carrier to transport a shipment if the Carrier has agreed to perform transportation of the shipment in full compliance with all applicable safety laws and requirements.

C. **Insurance.** Carriers selected by Broker shall maintain insurance of the kind and in the amounts as required in Section 12 of this Agreement.

D. **Cargo Loss or Damage.** Broker shall require that Carriers selected by Broker agree to be liable to Shipper for damages, including cargo loss or damage, as provided in Section 11 of this Agreement.

E. **Shipment Schedules.** Carriers selected by Broker shall be required to perform timely and reliable pick-up and delivery of all shipments in accordance with reasonable schedules communicated in writing by Shipper to Broker and/or Broker's arranged Carriers providing the actual, physical transportation of such shipments.

F. **CARB Compliance.** To the extent that a shipment subject to this Agreement is transported within the State of California in refrigerated equipment, Broker shall require its selected Carrier to warrant to Broker and Shipper that the Carrier will only utilize equipment that is in full compliance with the California Ari Resources Board ("CARB") Transport Refrigerated Unit ("TRU") Airborne Toxic Control Measure ("ATCM") in-use regulations. Such Carrier shall be liable to the Parties for any penalties or other liabilities imposed on them by the carrier's use of non-compliant equipment.

3. **Performance of Services.** Broker will arrange the dispatch and transport of each shipment tendered to it by Shipper promptly upon tender of the shipment by Shipper. Broker will provide Shipper with prompt notification by telephone or electronic communication when this obligation cannot be met for any reason. Broker will communicate to each Carrier that it engages to transport Shipper's shipments any schedule for delivery provided by Shipper for a particular shipment. Broker will require that its selected Carriers perform the actual physical transportation of the shipment, and agree not to "double broker" such transportation to another motor carrier.

4. **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. Parts 171 et seq. to the extent that any shipments constitute hazardous materials. Shipper is obligated to inform Broker immediately if any shipments constitute hazardous materials. Shipper shall defend, indemnify and hold Broker harmless from any penalties or liability of any kind, including reasonable attorneys' fees, arising out of Shipper's failure to comply with applicable hazardous materials laws and regulations.

5. **Independent Contractor.** Broker's relationship to Shipper is that of an independent contractor, not an agent or employee, and nothing in this Agreement shall be construed as establishing an employment relationship, partnership or joint venture between the parties. Broker shall make arrangements it deems appropriate for the transportation of shipments tendered by Shipper under this Agreement. Shipper is not and will not be responsible for any debts or obligations incurred by Broker in the performance of its

business. Neither Party shall be liable for any obligation incurred by the other, except as is expressly provided in this Agreement.

6. **Compliance with Law and Indemnity.** Shipper shall comply with all laws, rules and regulations of any duly constituted governmental authority applicable to its tendering of shipments for transportation pursuant to the terms of this Agreement and applicable to Shipper's performance obligations pursuant to this Agreement. Shipper shall be responsible for any wrongful or negligent acts, omissions and/or violations by Shipper, its employees and/or agents, and shall defend, indemnify and save Broker harmless from any fine, penalty, liability, court costs and attorney's fees that may result from such acts, omissions or violations; provided, however, that Shipper shall not be responsible to the extent any such fine, penalty, liability, court costs and attorney's fees are caused by any wrongful or negligent acts, omissions or violations by Broker, its employees and/or its agents. Broker shall comply with all laws, rules and regulations of any duly constituted governmental authority applicable to its performance of the transportation services to be rendered pursuant to the terms of this Agreement. Broker shall be responsible for any wrongful or negligent acts, omissions and/or violations by Broker, its employees and/or agents, and shall defend, indemnify and save Shipper harmless from any fine, penalty, liability, court costs and attorney's fees that may result from such acts, omissions or violations; provided, however, that Broker shall not be responsible to the extent any such fine, penalty, liability, court costs and attorney's fees are caused by any wrongful or negligent acts, omissions or violations by Shipper, its employees and/or its agents.

7. **Compensation to Broker and Payment Terms.** Compensation for Broker's services shall be paid by Shipper to Broker for all shipments tendered by Shipper to Broker in accordance with rates and/or charges agreed to by Broker and Shipper through written agreement, email correspondence, facsimile transmission, text message, other electronic transmission or verbal communication. The payment terms applicable to Shipper shall be those included on the Credit Application executed and delivered by Shipper to Broker, or net thirty (30) days, whichever is later.

8. **Consent to Telephone Recording, Confirmation of a Transaction, Taping of Transactions.** Each Party hereby agrees that the other Party or its agents may electronically record all telephone conversations between officers or employees of the consenting Party and the officers or employees of the other Party who quote on, agree to, or otherwise discuss terms of transactions, potential transactions, or other general business discussions on behalf of the Party. Each Party may, at each Party's respective expense, maintain equipment necessary to record transactions on audiotapes and/or digital recording media ("Transaction Tapes") and retain Transaction Tapes and the electronic evidence of transactions on such Transaction Tapes in such manner and for so long as each Party deems necessary in its sole respective discretion, but is not obligated to do so. The Parties hereby consent to the electronic recording of their oral agreements and related telephone discussions. Each Party also (i) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (ii) agrees, to the extent permitted by applicable law, that recordings may be submitted as evidence in any proceedings.

9. **Bill of Lading and Receipt.** Broker shall require each Carrier it selects to transport a shipment tendered by Shipper to Broker: (i) to issue a bill of lading at origin evidencing receipt of the shipment tendered to the

Carrier, and (ii) to obtain a receipt for delivery of the shipment from the consignee or other Party accepting delivery.

10. **Carriers' Charges.** Broker shall be solely and exclusively liable and responsible for the payment of rates and charges to Carriers engaged by Broker that relate to the transportation of shipments tendered by Shipper to Broker pursuant to this Agreement. Shipper's sole obligation with regard to the payment of transportation charges for services provided under or in relation to this Agreement is to pay Broker as required by Section 7 of this Agreement.

11. **Cargo Liability.**

    A. **Liability Limits.** The Carrier arranged by Broker (and not Broker) shall have liability for cargo loss or damage. Except as otherwise provided in this Section 12 of this Agreement, recovery (as opposed to liability) for cargo loss or damage may be limited to a maximum of One Hundred Thousand Dollars and 00/100 ($100,000.00) per shipment or per consolidated shipments – unless insurance coverage for increased cargo value has been requested by Shipper, and Broker has advised Shipper in writing prior to tender of the shipment(s) that it has arranged higher cargo loss or damage coverage. To the extent that multiple shipments or consolidated shipments are tendered by Shipper at the same time and at the specific written request of Shipper are transported at the same time and in the same vehicle, such multiple shipments or consolidated shipments shall be considered a "single shipment" for the purposes of this Section.

    B. **Liability of Carrier.**

        a. The Carrier arranged by Broker to transport Shipper's property shall be liable as a motor carrier under 49 U.S.C. § 14706 and as a common carrier to Shipper with respect to damages for loss of or damage to any shipment tendered by Shipper pursuant to this Agreement.

        b. The Carrier arranged by Broker shall not be liable for any loss or damage caused by an act of God, the public enemy, the authority of law, the act or omission of Shipper, or due to the inherent vice of the goods shipped.

    C. **Processing of Cargo Loss or Damage Claims.** In processing of cargo loss or damage claims, the Carrier arranged by Broker shall comply with 49 C.F.R. § 370.1, *et seq*. and any amendments and/or any other applicable regulations adopted by the U.S. DOT/FMCSA, or any applicable state regulatory agency, for processing loss or damage claims.

12. **Insurance.** Broker shall require all Carriers which it uses to transport a shipment tendered to Broker by Shipper to have and maintain public liability and property damage insurance in the amount of One Million Dollars ($1,000,000.00) and cargo loss or damage insurance in the amount of One Hundred Thousand Dollars ($100,000.00) per shipment. Broker agrees to maintain a complete and up to date file of all Certificates of Insurance evidencing public liability and property damage insurance policies, and cargo loss

or damage insurance policies of all Carriers that it contracts with regarding transportation arranged for or on behalf of Shipper.

13. **Indirect, Incidental, Consequential, Special or Punitive Damages.** Neither Party shall be liable to the other for any indirect, incidental, consequential, special or punitive damages (such as, but not limited to, loss of profits, loss of market, loss of customer goodwill, shutdown, or punitive or exemplary damages) without prior written notification of the risk of loss and its approximate financial amount, and the written agreement of the Party to assume such responsibility.

14. **Notice.** Any notice and other communication relating to this Agreement shall be in writing and be sent: (a) by certified mail, return receipt requested, postage prepaid, (b) by nationally recognized overnight courier service to the addresses stated above, (c) by fax, with proof of receipt by the intended recipient, (d) by email with proof of receipt by the intended recipient, or (e) in such other manner or to such other address as shall have been designated by the Party to which such notice or other communication is to be given. All such notices and other communications will be deemed to have been given and received (1) in the case of personal delivery, on the date of such delivery, (2) in the case of facsimile or e mail transmission on the date of transmission if sent on a business day (or if sent on other than a business day, on the next business day after the date sent), (3) in the case of delivery by nationally recognized overnight courier service, on the business day following dispatch if sent by guaranteed next day delivery, or (4) in the case of mailing, on the third business day following such mailing.

15. **Force Majeure.** If either Party is prevented from performing its obligations under this Agreement because of fire, earthquake, flood, explosion, wind, water, strike, lockout, acts of terror, or any other cause beyond the control of the affected Party, such Party shall immediately give notice of such prevention to the other Party, and shall be excused from the performance of any and all its obligations under this Agreement for the duration of such specified circumstances. No liability for any loss, damage or delay with respect to freight shipped or transported shall accrue on account of the occurrence of any such special circumstance absent the actual negligence of Broker.

16. **Non-Disclosure of Information.**

    A. Broker and Shipper agree to keep confidential any information provided by the other Party relating to such Party's operations or business activities, including, but not limited to: (i) the names of motor carriers, customers, suppliers and vendors, and (ii) freight rates and charges. Each Party agrees to hold all such information in confidence and shall not use any such information other than for the benefit of the other Party or in performance of its obligations under this Agreement.

    B. Neither Party shall disclose any information set forth in paragraph A of Section 16 of this Agreement, nor shall either Party disclose any information regarding this Agreement or any amendments or attachments hereto (collectively "Confidential Information"), except:

        a. as may be required by law or regulation;

b. as is necessary to effect or further the purposes of this Agreement;

c. when such disclosure is between a parent and its subsidiary or corporate affiliate; or

d. when required in connection with an audit by an accounting or law firm, so long as the disclosing Party is responsible for ensuring compliance with this confidentiality requirement by the audit or law firm.

The restriction against disclosure of Confidential Information as specified in this Article 16 of this Agreement shall not apply to information which (i) was already known prior to the time it was imparted to the receiving Party by the other Party, (ii) is available or becomes generally available to the public other than through a breach of this Agreement by the receiving Party, (iii) is acquired or received by the receiving Party rightfully and without confidential limitation from a third Party, or (iv) is independently developed by the receiving Party 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. If the non-disclosing Party waives compliance with any of the terms of this Agreement or is unable to obtain a protective order or other appropriate remedy with respect to such disclosure of Confidential Information, then the disclosing Party shall disclose only that portion of the Confidential Information necessary to ensure compliance with such legal requirement.

17. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey except to the extent any mandatory federal law is applicable to this Agreement and all actions brought to enforce the terms of this Agreement or other disputes between the Parties shall be brought in the courts situated in Hudson County, New Jersey.

18. **Assignment, No Third Party Beneficiary.** Neither Party shall assign this Agreement or any interest in this Agreement, without the prior written consent of the other Party, except if notice is provided and the assignment is to a parent, subsidiary or affiliated entity. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the successors and assigns of the Parties. Neither a motor carrier arranged by Broker nor any other third party shall be a third party beneficiary to this Agreement between Broker and Shipper.

19. **Entire Agreement.** This Agreement cancels and supplants any and all other written or oral agreements and understandings for property transportation broker services between Broker and Shipper. This Agreement may not be amended except in a written amendment executed by Shipper and Broker.

20. **Headings.** Any headings or numbering of paragraphs or articles of this Agreement are for organizational convenience only, and all terms and conditions of this Agreement are intended to take precedence over any such heading or numbering. If any part, term, paragraph or provision of this Agreement is found or declared to be invalid or unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect.

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21. **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 Party shall not be construed as a waiver of any rights under this Agreement by the non-objecting Party, nor of any claims, past, present or future, for any breach of this Agreement.

22. **Disputes.** Unless preempted by or controlled by federal transportation laws and regulations, this Agreement is entered into in the State of New Jersey and shall be governed by the laws of the State of New Jersey without regard to conflicts of law principles. Any action or proceeding seeking to enforce any provision of, or based upon any right arising out of, this Agreement, or the business between the Parties, may be brought only in the courts of the State of New Jersey, Hudson County, or in the United States District Court for the District of New Jersey, and each Party consents to the exclusive jurisdiction of such courts (and the appropriate appellate courts) in any such action and waives any objection to personal jurisdiction or venue in such courts. Process in any action referred to in the preceding sentence may be served upon a Party anywhere in the world. Shipper agrees to pay all reasonable expenses, attorney fees and costs (including court costs) that Broker incurs in any such actions in which Broker prevails.

23. **Compliance by Parties with Food Safety Laws.** When Shipper engages Broker for arranging transportation of cargo regulated under the Sanitary Transportation of Food Rule at 21 C.F.R. §§ 1.900 through 1.934 ("STF Rule"), as adopted by the U.S. Food & Drug Administration ("FDA") under the Food Safety Modernization Act, Pub. L. No. 111-353 ("FSMA"), the duties otherwise assigned to Broker as a "shipper" under the STF Rule are hereby re-allocated under this Agreement to Shipper and to motor carriers selected by Broker. Such re-allocation among supply-chain participants by written agreement is permitted by 21 C.F.R. § 1.908(a), subject to applicable recordkeeping requirements under 21 C.F.R. § 1.912(d). By tendering shipments for brokerage by Broker, Shipper agrees to the following re-allocations of responsibilities under the STF Rule in accordance with these terms and conditions:

    A. **Duties Re-Allocated to Selected Motor Carriers.** The duties assigned to Broker as a "shipper" under the SFT Rule are delegated to Broker's selected carrier insofar as they relate to assuring that vehicles and equipment are operated in an appropriate sanitary condition, that temperature controls specified by Shipper are maintained during transportation, and that previous cargo movements do not render the equipment unsafe for FSMA-regulated shipments.

    B. **Duties Re-Allocated to Shipper.** All other duties assigned to Broker as a "shipper" under the SFT Rule are hereby delegated to Shipper under these terms and conditions. These duties include, without limitation, providing written instructions to Carrier regarding equipment design and dimensional requirements, adequate preparation (including any required pre-cooling) of equipment presented for loading, and specification of any temperatures required to be maintained during transportation.

The Parties further recognize and agree that the standards prescribed by the STF Rule relate to maintaining the safety and sanitation of food rather than preserving any particular appearance or market value, and that any suspected departures from such safety and sanitation standards shall be investigated by a "qualified individual" (as

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per 21 C.F.R. § 1.906(a)(6)) before any determination is made that the food cargo in question is unsanitary, unsafe or adulterated within the meaning of FSMA.

In order to comply with the recordkeeping requirements of 21 C.F.R. § 1.912(d), both Parties shall retain copies of these terms and conditions in written or electronic form for not less than twelve (12) months after the date on which Shipper ceases to tender shipments to Broker hereunder.