

BROKER/CO-BROKER AGREEMENT

THIS AGREEMENT is made and entered into on _____, 20 __, by and between H & F Logistics, LLC (“BROKER”) and _____ (“CO-BROKER”), (collectively, the “PARTIES”).

I.

Recitals

A. **WHEREAS** BROKER is licensed as a property broker by the Federal Motor Carrier Safety Administration (“FMCSA”), or by appropriate State agencies, and as a licensed broker, arranges for freight transportation; and

B. **WHEREAS** CO-BROKER is authorized to operate in inter-provincial, interstate and/or intrastate commerce and is qualified, competent and available to provide for the transportation services required by BROKER; and

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

II.

Agreement

1. TERM AND TERMINATION.

- (a) The Term of this Agreement shall be for one (1) year and shall automatically renew for successive one (1) year periods; provided, however, that either PARTY may terminate this Agreement at any time by giving forty-five (45) days prior written notice.
- (b) BROKER may additionally terminate this Agreement immediately upon written notice in any of the following events:
 - i. CO-BROKER loses its operating authority or otherwise becomes disqualified to perform its obligations under this Agreement;
 - ii. CO-BROKER breaches any covenant, obligation, condition, or requirement imposed upon it by this Agreement, and such breach continues for a period of ten (10) days after written notice thereof from BROKER to CO-BROKER;
 - iii. CO-BROKER becomes insolvent or becomes unable to pay its debts in a timely manner;
 - iv. CO-BROKER fails to comply with the performance metrics or selection criteria, if any, imposed upon it at any time by BROKER;
 - v. CO-BROKER fails to procure and maintain any of the insurance coverages required by this Agreement; or
- (c) CO-BROKER may additionally terminate this Agreement immediately upon written notice if BROKER breaches any covenant, obligation, condition, or requirement imposed upon it by this Agreement and such breach continues for a period of thirty (30) days after written notice thereof from CO-BROKER.

2. CO-BROKER’S OPERATING AUTHORITY AND COMPLIANCE WITH LAW.

- (a) CO-BROKER represents and warrants that it is duly and legally qualified in accordance with all federal, state, provincial, territorial, and local laws, statutes, regulations, rules, and ordinances (collectively, “Applicable Law”) to provide, as a contract CO-BROKER, the transportation services contemplated herein. CO-BROKER further represents and warrants that it does not have an unsatisfactory or unfit safety rating issued by any regulatory authority with jurisdiction over CO-

BROKER's operations, including, but not limited to, the Federal Motor CO-BROKER Safety Administration ("FMCSA") of the U.S. Department of Transportation ("DOT"). CO-BROKER further agrees to comply with all Applicable Law in the performance of its services under this Agreement. In the event that CO-BROKER receives an unsatisfactory or unfit safety rating, is notified that it may receive an unsatisfactory or unfit safety rating, fails to maintain insurance required hereunder, is notified that such insurance may become ineffective or is otherwise prohibited by Applicable Law from performing services hereunder, CO-BROKER shall immediately notify BROKER of such fact and shall not carry any loads or goods tendered to CO-BROKER by BROKER until such prohibition on operations is removed. CO-BROKER shall be solely responsible for its day to day operations including, but not limited to, setting appropriate routes to ensure that transportation of shipments is accomplished in accordance with all Applicable Laws and to otherwise ensure shipments are not damaged in transit.

3. PERFORMANCE OF SERVICES.

- (a) CO-BROKER shall be solely responsible for controlling the method, manner and means of accomplishing CO-BROKER's services. Any directions provided by BROKER to CO-BROKER are provided as a convenience only and CO-BROKER shall have no obligation to follow such directions.
- (b) CO-BROKER's services under this Agreement are designed to meet the needs of BROKER under the specified rates and conditions set forth herein. CO-BROKER agrees that the terms and conditions of this Agreement apply to all shipments handled by CO-BROKER for BROKER and that the terms of this Agreement control the relationship between the PARTIES.
- (c) CO-BROKER shall transport all shipments provided under this Agreement without delay, and all occurrences which would be probable or certain to cause delay shall be immediately communicated to BROKER by CO-BROKER. This Agreement does not grant CO-BROKER an exclusive right to perform any transportation related services for BROKER or the entity that has retained BROKER (hereinafter, the "Customer").
- (d) Any equipment used by CO-BROKER Brokered Carrier to transport cargo pursuant to this Agreement shall be used exclusively for such purpose while loaded with Customer cargo, and in no event will property of any other party be loaded on such equipment unless BROKER expressly consents thereto in writing.

4. RECEIPTS AND BILLS OF LADING. Each shipment hereunder shall be evidenced by a bill of lading acceptable to BROKER naming CO-BROKER as the transporting CO-BROKER. The fact that BROKER is named as a "CO-BROKER" upon any applicable bill of lading shall not affect its status as a property broker. Upon delivery of each shipment made hereunder, CO-BROKER shall obtain a receipt showing the kind and quantity of product delivered to the consignee of such shipment at the destination specified by BROKER or the Customer, and CO-BROKER shall cause such receipt to be signed by the consignee. CO-BROKER shall notify BROKER immediately of any exception made on the bill of lading or delivery receipt.

5. CO-BROKER'S OPERATIONS.

- (a) CO-BROKER Brokered Carrier shall, at its sole cost and expense:
 - i. furnish all equipment necessary or required for the performance of its obligations hereunder (the "Equipment");
 - ii. pay all expenses related, in any way, with the use and operation of the Equipment;
 - iii. maintain the Equipment in good repair, mechanical condition, and appearance; and
 - iv. maintain records of Equipment use which will be provided to BROKER upon request.

- (b) CO-BROKER shall be responsible for the work and activities of each of its employees, agents, representatives, contractors, and subcontractors and shall make commercially reasonable efforts to utilize only competent and able personnel that are legally licensed in accordance with all Applicable Law to perform the services hereunder. CO-BROKER shall have full control of any personnel used in the provision of motor CO-BROKER services hereunder. CO-BROKER shall be solely responsible for ensuring, and will ensure, at CO- BROKER's cost and expense, that such personnel are fully qualified to perform services hereunder, and that such personnel have access to all locations into which access is necessary to perform services under this Agreement. Without limiting the foregoing, CO-BROKER shall ensure that any personnel providing services have sufficient hours available to complete scheduled deliveries in accordance with, and without violation of, applicable hours of service regulations. CO-BROKER shall be solely responsible for determining whether scheduled services can be completed without violation of Applicable Law, and if services cannot be completed without violation of Applicable Law, shall notify BROKER prior to acceptance of load.
- (c) CO-BROKER shall perform the services hereunder as an independent contractor and assumes complete responsibility for all state and federal taxes, assessments, insurance (including, but not limited to, workers' compensation, unemployment compensation, disability, pension and social security insurance) and any other financial obligations arising out of the transportation performed hereunder.
- (d) CO-BROKER shall be solely responsible for compliance with all provisions of Applicable Law regarding air quality and environmental standards including, but not limited to, those of the California Air Resources Board ("CARB"). By entering into this Agreement, CO-BROKER acknowledges and agrees that it is aware of applicable CARB regulations, including the Truck and Bus Regulation ("TBR") at 13 C.C.R. § 2025, the Drayage Truck Regulation ("DTR") at 13 C.C.R. § 2027, the regulation on Transportation Refrigeration Units ("TRU") at 13 C.C.R. § 2477 et. Seq., and the Tractor Trailer Greenhouse Gas ("GHG") regulation at 17 C.C.R. § 95300 et. Seq., and has adopted policies and procedures to ensure compliance with such regulations, as they may be revised, adopted, and amended from time to time. CO-BROKER shall only dispatch and operate compliant vehicles (including vehicles with compliant TRUs) and shall maintain shipment specific records evidencing such compliance, which records shall be provided to BROKER upon request. Without limiting the foregoing, if CO-BROKER operates TRUs in California under this Agreement, it shall ensure all such units are registered with the CARB's Equipment Registration system ("ARBER").
- (e) With respect to transportation governed by regulations of the Food and Drug Administration ("FDA") codified at 21 C.F.R. Part 1.900, and regardless of whether such FDA regulations apply to CO-BROKER, CO-BROKER shall be responsible for the safety and sufficiency of all items used in the transportation of the goods, including all vehicles and Transportation Equipment as defined in such regulations. CO-BROKER is responsible for all sanitary conditions during transport. CO-BROKER must confirm the vehicle and Transportation Equipment: (i) is in appropriate physical condition to transport the goods tendered; (ii) is dry, leak proof, free of harmful or offensive odor, free from pest infestation and free from evidence of prior cargo that could render the shipment unsafe; and (iii) shall never have been used to transport any waste (whether hazardous or not), refuse, garbage, rodenticide, pesticide, or insecticide.
- (f) In the event CO-BROKER is requested to transport waste or hazardous materials, CO-BROKER represents and warrants that it has obtained all necessary federal, state and provincial permits and registrations to transport hazardous materials or waste in inter-provincial, interstate and/or intrastate commerce. Upon request, CO-BROKER shall provide BROKER with a copy of all such federal and state permits and registrations. CO-BROKER further represents and warrants that: (i) it is in compliance with any and all applicable laws, rules and regulations applicable to such transportation, including, but not limited to 49 C.F.R. Parts 171-178; (ii) all drivers used to transport such shipments have undergone the necessary training requirements of all applicable state, provincial and federal laws; and (iii) all drivers used to transport hazardous material have the proper endorsements on their Commercial Driver's License (or such analogous operator permit as is applicable to such driver) to legally transport such shipments. CO-BROKER acknowledges and agrees that BROKER's sole obligation with respect to requesting services with respect to such shipments is to pass through

information (including commodity descriptions and classifications) and documentation (including shipping papers) provided to BROKER by the Customer. BROKER shall have no obligation to independently verify the accuracy of such information or documentation.

- (g) CO-BROKER shall maintain appropriate security infrastructure to ensure the physical security of shipments and equipment handled under the terms of this Agreement.

6. RATES & PAYMENTS.

- (a) Unless otherwise stated in a separate Rate Confirmation Agreement signed by the PARTIES, CO-BROKER will invoice and BROKER will pay the rates and charges set forth in Appendix A, for transportation services performed under this Agreement. CO-BROKER will send invoices to BROKER. CO-BROKER represents and warrants that there are no other applicable rates or charges except those established in this Agreement or in any Rate Confirmation Sheet signed by BROKER. Appendix A can be supplemented or revised only by written agreement signed by both PARTIES. Rates for any and all accessorial services that might be provided by CO-BROKER must be set forth in Appendix A to be valid. In no event will BROKER be responsible for payment of such rates unless paid by the Customer. Without limiting the foregoing, BROKER must receive notice from CO-BROKER at least sixty (60) minutes prior to the time when detention would start to accrue.
- (b) The Rate Confirmation Agreement shall be in the form specified in Appendix B. The Rate Confirmation Agreement shall be signed and agreed to by CO-BROKER and BROKER before each shipment to which such Rate Confirmation Agreement applies.
- (c) In the event service is provided and it is subsequently discovered that there was no applicable or understood rate in Appendix A or in a separate Rate Confirmation Agreement, the PARTIES agree that the rate paid by BROKER and collected by CO-BROKER shall be the agreed upon contract rate of the PARTIES for the services provided, unless such rate is objected to by CO-BROKER in writing within 10 days of payment by BROKER.
- (d) Payment by BROKER will be made within forty-five (45) days of receipt by BROKER of CO-BROKER's freight bill, bill of lading, clear delivery receipt, and any other necessary billing documents enabling BROKER to ascertain that service has been provided at the agreed upon charge. As a condition to payment, CO-BROKER shall provide BROKER with a legible copy or photocopy of the bill of lading or other proof of delivery. Broker will make commercially reasonable efforts to provide such documentation within forty eight (48) hours.
- (e) CO-BROKER agrees that BROKER has the exclusive right to handle all billing of freight charges to the Customer for the transportation services provided herein, and, as such, CO-BROKER agrees to refrain from all collection efforts against the shipper, receiver, or the Customer unless BROKER, in its sole discretion, expressly authorizes CO-BROKER in writing to collect from any such party, in which case, CO-BROKER's sole recourse will be against such party. Upon receipt of payment by BROKER, any right of CO-BROKER to payment from the Customer or any other third-party for services performed will be automatically assigned to BROKER.
- (f) With written authorization from CO-BROKER, BROKER may offset any payments owed to CO-BROKER hereunder for liability incurred by CO-BROKER, including but not limited to, claims for freight, loss, damage, or delay.
- (g) CO-BROKER shall submit all freight bills within 180 days of delivery or waive its right to payment for services rendered with respect to such late submitted invoices. Claims for undercharges must be brought within 180 days of BROKER's receipt of the original invoice giving rise to such undercharge claim. Assuming CO-BROKER has complied with the foregoing invoicing obligations, CO-BROKER shall bring suit related to unpaid freight charges or undercharges within 18 months of the date of delivery or its right to sue or otherwise seek payment shall be waived.

- (h) CO-BROKER shall provide BROKER with written notice providing BROKER with remittance instructions a (“Notice of Release”) in the event CO-BROKER enters into from any factoring, assignment, pledge, hypothecation, or granting of a security interest in CO-BROKER’s right to payment under this Agreement. Any factoring, assignment, pledge, hypothecation, or granting of a security interest in CO-BROKER’s right to payment under this Agreement shall in no event modify, limit, or terminate BROKER’s or its Customer’s right to offset or recoup or claims of BROKER or its Customer for offset, recoupment, loss, or damage to any cargo or other property, including personal injury, or any other claim which BROKER or its Customer may have against CO-BROKER for any reason. All of BROKER’s and its Customer’s claims and rights are specifically preserved and shall be superior to any such assignee’s, factor’s, or creditor’s rights or claims to payment, regardless of any notice to BROKER or its Customer to the contrary. CO-BROKER shall notify any such factor, secured creditor, or assignee of BROKER’s and its Customer’s rights in this regard. Further, if BROKER discovers that CO-BROKER has not provided a valid Notice of Release, CO-BROKER shall be deemed in breach of this Agreement and BROKER may at its sole discretion terminate this Agreement. BROKER’s remittance of payment in accordance with any Notice of Release shall be deemed payment to CO-BROKER in all regards and shall absolve BROKER of any liability with respect to payment to CO-BROKER for the services underlying such invoice. Should CO-BROKER provide multiple or conflicting Notices of Release, BROKER’s compliance with instructions in any Notice of Release shall absolve BROKER of any liability with respect to amounts owed to CO- BROKER for the services in question.

7. **WAIVER OF CO-BROKER’S LIEN.** CO-BROKER shall not withhold any goods transported under this Agreement on account of any dispute as to rates or any alleged failure of BROKER to pay charges incurred under this Agreement. CO-BROKER is relying upon the general credit of BROKER and hereby waives and releases all liens which CO-BROKER might otherwise have to any goods of BROKER or its Customer in the possession or control of CO- BROKER.

8. **FREIGHT LOSS, DAMAGE OR DELAY.**

- (a) CO-BROKER and its Brokered Carrier shall have the sole and exclusive care, custody and control of the cargo tendered hereunder from the time it is delivered to CO-BROKER Brokered Carrier for transportation until delivery to the consignee accompanied by the appropriate receipts. CO-BROKER shall notify BROKER immediately in the event any such cargo is lost (including stolen), damaged or destroyed, or in the event CO-BROKER becomes aware that applicable delivery schedules will not be met.
- (b) CO-BROKER assumes the liability of a motor carrier under the Carmack Amendment as currently codified at 49 U.S.C. § 14706 for loss, delay, damage to or destruction of any and all goods or property tendered to CO-BROKER pursuant to this Agreement from the time the shipment is tendered to CO-BROKER’s Brokered Carrier until delivery. CO-BROKER shall assist BROKER in the filing and/or processing of claims with the CO-BROKER Brokered Carrier.
- (c) CO-BROKER and its Brokered Carrier shall be liable for the full invoice value of the cargo at the time the cargo is lost, damaged, delayed, or destroyed, as well as any additional costs or fees imposed upon BROKER by the cargo claimant. In no event will any limitation of liability apply, unless specifically set forth in this Agreement. If payment of claim is made by CO-BROKER to Broker, Broker shall assign its rights and interest in the claim to CO-BROKER in writing in a form reasonably satisfactory to CO-BROKER so that CO-BROKER may subrogate against Brokered Carrier.
- (d) Payments by CO-BROKER to BROKER or its Customer, pursuant to the provisions of this section, shall be made within ninety (90) days following receipt by CO-BROKER of BROKER’s or Customer’s undisputed claim and supporting documentation. CO-BROKER shall fully assist BROKER in investigating any claim for cargo loss, damage, delay, or destruction.
- (e) Exclusions from coverage contained in CO-BROKER’s Cargo Insurance as required herein shall not affect CO-BROKER’s liability for freight loss, damage, or delay. Without limiting CO-BROKER’s contractual liability to BROKER hereunder, CO-BROKER acknowledges and agrees that BROKER may, in its sole discretion, but is not required, to pursue claims for cargo loss and damage on behalf of its Customer, and in such instances is not required to obtain an assignment of claim from its Customer in order to pursue such a claim.

9. **INSURANCE.** All insurance required by this Agreement must be written by an insurance company having a Best's rating of "B+" VII or better and must be authorized to do business under the laws of the state(s) or province(s) in which CO-BROKER provides the transportation and related services as specified in load confirmation communications received from Broker.

- (a) Public liability and property damage insurance ("AL") covering all owned, non-owned, and hired vehicles (including any Trailers provided by BROKER or its Customer as addressed below) in an amount not less than \$1,000,000.00 (U.S. Dollars) per occurrence, or such larger amount as required by applicable law.) if CO-BROKER provides Transportation Services for hazardous materials under United States Department of Transportation ("DOT") regulations, public insurance including Commercial Automobile insurance limits required for the commodity transported under 49 C.F.R § 387.7 and 387.9 (or successor regulations thereto) and statutory required Commercial Automobile insurance limits pertaining to the hazard classification of the cargo as defined by DOT, an MCS-90 and Broadened Pollution Liability endorsements for limits required by law and full policy limits. CO-BROKER shall, prior to providing transportation and related services pursuant to this Agreement, name Broker, as a certificate holder, as required on the foregoing insurance policies and shall cause its insurance company to issue a certificate to Broker, evidencing the foregoing.
- (b) Commercial General Liability ("CGL") Insurance covering the transportation of shipments and other operations under this Agreement in an amount not less than \$1,000,000.00 (U.S. Dollars) per occurrence. Such insurance shall also cover CO-BROKER's contractual liability under this Agreement.
- (c) In the case of Brokered Carrier, All Risk Broad Form Motor Truck Cargo Legal Liability, or contingent cargo/truck broker liability in the case of Broker ("Cargo") insurance in an amount not less than \$100,000.00 (U.S. Dollars) per occurrence. The coverage provided under the policy shall have no exclusions or restrictions of any type that would foreseeably preclude coverage relating to cargo claims including, but not limited to, exclusions for unattended or unattached trailers, theft, commodities transported under this Agreement, refrigerator breakdown or lack of refrigerator fuel.
- (d) Statutory Workers' Compensation Insurance coverage in such amounts and in such form as required by applicable state law.
- (e) All insurance policies required by this Agreement shall, as applicable, be primary and shall waive subrogation and contribution against BROKER. CO-BROKER shall furnish to BROKER written certificates obtained from the insurance CO-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 BROKER at least thirty (30) days prior to such cancellation or modification. In addition, BROKER shall be named as an additional insured on CO-BROKER's CGL and AL policies, and as a loss payee on the Cargo policy as evidenced by an endorsement on the certificates of insurance. Upon request of BROKER or its designated insurance consultant, CO-BROKER shall provide BROKER, BROKER's consultant, or Customer with copies of the applicable insurance policies.

10. **USE OF BROKER'S TRAILER(S) BY CO-BROKER.** In the event that CO-BROKER Brokered Carrier utilizes a trailer, container, chassis or other equipment owned by or leased to BROKER or its Customer, or otherwise provided to CO- BROKER Brokered Carrier by BROKER or its Customer ("Trailer(s)") for the performance of the Services contemplated hereunder, CO- BROKER Brokered Carrier shall be liable for any damage to Trailers, destruction of Trailers, theft from Trailers, theft of any contents of Trailers, and for any claims for bodily injury (including death) or property damage arising from or related to any accident involving Trailer(s) regardless of whether such damage, injury, destruction, or theft is caused or occurs while the Trailer is attached or unattached to any power unit operated by CO-BROKER Brokered Carrier, except to the extent such damage, destruction, or theft is directly and proximately caused by the negligence, recklessness, or willful misconduct of BROKER or the Customer. The

initial burden of proving such damage, injury, destruction, or theft was directly and proximately caused by the negligence, recklessness, or willful misconduct of BROKER or the Customer in any proceeding brought pursuant to this Agreement shall rest on CO-BROKER Brokered Carrier. In the event that applicable state law does not allow waiver of liability to the extent contained in this provision, the Parties expressly agree that BROKER's and Customer's liability will be waived to the fullest extent allowed by applicable state law. In no event will any such Trailer be used for any purpose other than performing Services hereunder, and in no event will CO-BROKER Brokered Carrier allow any third party or any power unit not operating under CO-BROKER's Brokered Carrier for-hire motor CO-BROKER Brokered Carrier authority to operate any such Trailer, unless expressly authorized to do so in writing which written notice must be specific to the movement at issue. CO-BROKER Brokered Carrier ACKNOWLEDGES AND AGREES THAT NEITHER BROKER NOR THE CUSTOMER MAKE ANY WARRANTIES, WHETHER EXPRESS OR IMPLIED, REGARDING THE TRAILER INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR USE. CO-BROKER shall handle the filing and/or processing of claims with CO-BROKER Brokered carrier. If payment of claim is made by CO-BROKER to Broker, Broker shall assign its rights and interest in the claim to CO-BROKER so that CO-BROKER may subrogate against Brokered Carrier.

11. INDEMNITY. CO-BROKER shall defend, indemnify, and hold BROKER, its Customer, and each of their affiliated entities harmless from and against, and shall pay and reimburse, any and all direct or indirect loss, liability, damage, claim, fine, cost or expense, including reasonable attorney's fees, arising out of or in any way related to the performance or breach of this Agreement by CO-BROKER, its employees or independent contractors working for CO- BROKER (collectively, the "Claims"), including, but not limited to, Claims for or related to personal injury (including death), property damage and CO-BROKER's possession, use, maintenance, custody or operation of the Equipment; provided, however, that CO-BROKER's indemnification and hold harmless obligations under this paragraph will not apply to the prorated extent that any Claim is directly and proximately caused by the negligence or other wrongful conduct of the party to be defended, indemnified or held harmless. CO-BROKER's liability for cargo loss or damage under this provision is limited to the liability and amounts set forth in Paragraph 8. CO-BROKER hereby expressly waives any exclusive remedy defense, including, but not limited to, those available under any workers' compensation or other occupational accident statutory regime, to the extent necessary to effectuate CO-BROKER's obligations under this provision.

12. HANDLING, LOADING AND SEALING.

- (a) CO-BROKER will ensure Brokered Carrier will comply with handling instructions provided by BROKER, the shipper, consignor, or consignee including, but not limited to, compliance with requirements related to transportation of temperature controlled shipments. Without in any way limiting the generality of the foregoing, CO- BROKER shall ensure that any shipments requiring controlled temperature transit are maintained at all times within required temperature ranges.
- (b) If goods are tendered to CO-BROKER and a reasonable person would understand that the goods require controlled temperature transportation, and CO-BROKER has not been provided instructions regarding controlled temperature goods, CO-BROKER shall request and obtain such instructions prior to loading the goods. If CO-BROKER receives contradictory or confusing instructions regarding any shipment, CO-BROKER must resolve the contradictory or confusing instructions prior to accepting the shipment for transport.
- (c) With respect to cargo requiring controlled temperature transportation, CO-BROKER shall ensure Brokered Carrier shall abide by the following: (i) CO-BROKER Brokered Carrier shall perform regularly scheduled maintenance on any refrigeration unit used to transport cargo pursuant to this Agreement in accordance with manufacturer recommendations, and shall maintain records of such maintenance; (ii) CO-BROKER Brokered Carrier shall ensure all refrigeration units are sufficiently fueled; (iii) CO-BROKER Brokered Carrier is responsible to ensure pre-cooling of all transportation equipment prior to pick-up; (iv) CO-BROKER Brokered Carrier shall ensure that all trailers are equipped with functioning temperature monitoring devices capable of demonstrating that required temperatures were maintained during the entire period of transit; and (v) CO-BROKER Brokered Carrier will only use refrigeration equipment capable of producing a downloadable report demonstrating that required temperatures were maintained throughout the entire period of transit, which reports will be maintained for at least three (3) years after delivery and provided to BROKER or its Customer upon request.
- (d) Unless a shipment is loaded and sealed prior to arrival of CO-BROKER personnel, the manner of loading and securing freight upon Equipment shall be the sole responsibility of CO-BROKER Brokered

Carrier. With respect to unsealed loads loaded prior to CO-BROKER's Brokered Carrier arrival, CO-BROKER Brokered Carrier shall be obligated to inspect such loading prior to departing. CO-BROKER Brokered Carrier represents that each driver utilized by it shall be competent to manage the loading and transportation of the goods subject to this Agreement.

- (e) When required by BROKER, the shipper or the consignor, CO-BROKER shall ensure Brokered Carrier secure shipments with a serialized seal. CO-BROKER Brokered Carrier shall ensure that the serialized seal number appears on the bill of lading or other form of manifest or receipt. CO-BROKER shall be solely responsible for maintaining seal integrity during transportation of the shipment. Except as is required by law enforcement personnel, under no circumstances shall CO-BROKER or any of its personnel break any seal without the express consent of BROKER. CO-BROKER shall immediately notify BROKER to report a missing or broken seal.
- (f) In the event that law enforcement personnel require that CO-BROKER break any seal on any shipment, CO-BROKER Brokered Carrier shall document such fact on the bill of lading or other form of manifest or receipt by noting the law enforcement agency, time, location, and officer name and badge number. Upon completion of inspection by law enforcement personnel, CO-BROKER Brokered Carrier personnel shall immediately re-seal the shipment with a serialized seal and shall indicate the second seal number on the bill of lading or other form of manifest or receipt. Furthermore, CO-BROKER shall, as soon as reasonably possible after being required to break a seal by law enforcement personnel, communicate such fact to BROKER and, if not BROKER, the consignee of the shipment.
- (g) CO-BROKER agrees that food that has been transported or offered for transport under conditions that are not in compliance with the load handling instructions, as provided to CO-BROKER, may be considered "adulterated" within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C § 342(i), and its implementing regulations. CO-BROKER Brokered Carrier understands and agrees that adulterated shipments may be refused by the consignee or receiver, upon their delivery, at destination and CO-BROKER shall bear sole risk of rejection of cargo arising from or related to broken seals or failure to comply with load handling instructions.

13. CONFIDENTIALITY AND NON-SOLICITATION.

- (a) CO-BROKER shall maintain records related to shipments transported under this Agreement, and with respect to shipments consisting of food, shall also obtain records related to prior shipments transported in the same equipment, for a period of not less than three (3) years from the date of delivery. CO-BROKER shall provide such records to BROKER upon request, and regardless of whether this Agreement remains in effect at the time of such request. Neither party may disclose the terms of this Agreement to a third party without the written consent of the other party except (1) as required by law or regulation; (2) disclosure is made to its accountants, tax advisors, attorneys, or any parent, subsidiary or affiliate company; or (3) to facilitate rating or auditing of transportation charges by an authorized agent and such agent agrees to keep the terms of the Agreement confidential. In addition, in no event will CO-BROKER disclose any information regarding BROKER's customers (including identities, locations, volumes, etc.), the rates for services agreed between BROKER and CO-BROKER, or the rates paid by BROKER to CO-BROKER with respect to services hereunder.
- (b) CO-BROKER will not accept traffic, either directly or indirectly, from any shipper, consignor, consignee, or customer of BROKER where: (1) the availability of such traffic first became known to CO-BROKER as a result of BROKER's efforts; or (2) the traffic of the shipper, consignor, consignee or customer of BROKER was first tendered to CO-BROKER by BROKER. If CO-BROKER breaches this paragraph during the term of this Agreement or for twelve (12) months thereafter, CO-BROKER shall be obligated to pay BROKER, for a period of fifteen (15) months thereafter, commissions in the amount of thirty-five percent (35%) of the transportation revenue resulting from traffic transported in violation of this provision, and CO-BROKER shall provide BROKER with all documentation requested by BROKER to verify such transportation revenue. CO-BROKER shall not utilize BROKER's or the Customer's name or identity in any advertising or promotional communications without written confirmation of BROKER consent.

14. SUB-CONTRACT PROHIBITION. CO-BROKER responsibility under this Agreement shall be limited to arranging for, but not actually performing, transportation of BROKER's freight.

15. **BROKER'S RECORDS.** CO-BROKER hereby waives its right to obtain copies of BROKER's records as provided for under 49 C.F.R. Part 371. Notwithstanding the foregoing, to the extent that CO-BROKER obtains records set forth in 49 C.F.R. § 371.3 by any means whatsoever, CO-BROKER agrees to refrain from utilizing such records in negotiating for the provision of services with any third party, including existing customers of BROKER. CO-BROKER further agrees and understands that all such records comprise BROKER's confidential information and trade-secrets. Nothing in this section is intended to relieve CO-BROKER of any other obligations imposed upon it by this Agreement, or to limit any rights of BROKER to enforce such obligations.

16. **ASSIGNMENT/MODIFICATION/BENEFIT OF AGREEMENT.** This Agreement may not be assigned or transferred in whole or in part by CO-BROKER absent the prior written consent of BROKER, and supersedes all other agreements and all tariffs, rates, classifications and schedules published, filed or otherwise maintained by CO-BROKER. This Agreement shall be binding upon and inure to the benefit of the parties hereto. In addition, Customers are express intended third party beneficiaries of this Agreement.

17. **SEVERABILITY.** In the event that the operation of any portion of this Agreement results in a violation of any law, the parties agree that such portion shall be severable and that the remaining provisions of this Agreement shall continue in full force and effect.

18. **WAIVER.** CO-BROKER and BROKER expressly waive any and all rights and remedies allowed under 49 U.S.C. § 14101 to the extent that such rights and remedies conflict with this Agreement. Failure of BROKER to insist upon CO-BROKER's performance under this Agreement or to exercise any right or privilege arising hereunder shall not be a waiver of any BROKER's rights or privileges herein.

19. **NOTICE.** With the exception of shipment specific communications (including, but not limited to, rate confirmation forms, shipment specific instructions, status updates, proofs of delivery), all of which may be exchanged via email, fax or other electronic means, all notices or other communications required or permitted by this Agreement shall be effective upon receipt; shall be in writing; and shall be personally delivered, or mailed by registered or certified mail, return receipt requested, or sent by an overnight delivery service which provides proof of delivery, or sent by telecopy with a duplicate copy sent by first class mail, postage prepaid, as follows:

If to CO-BROKER:

If to Broker:

20. **DISPUTE RESOLUTION.** This Agreement shall be deemed to have been drawn in accordance with the statutes and laws of the state of Indiana. In the event of any disagreement or dispute, the laws of _____ Indiana shall apply except to the extent superseded by applicable federal law. All such disagreements or disputes shall be submitted to the court of proper jurisdiction serving Marion County, Indiana, the PARTIES hereby agree to the exclusive jurisdiction such courts, except that if BROKER is a party to a lawsuit involving a third-party, including any Customer, with respect to any claim with respect to which CO-BROKER has potential liability to BROKER, BROKER may initiate suit against CO-BROKER in the same jurisdiction where the lawsuit involving BROKER is pending. The PARTIES hereby agree to the jurisdiction of and waive any defenses to venue in or personal jurisdiction of such courts. Notwithstanding the foregoing, the PARTIES may mutually agree in writing to submit any such disagreement or dispute to binding arbitration.

21. **COMPLETE AGREEMENT.** This Agreement constitutes the entire agreement of the Parties with reference to the subject matters herein, and may not be changed, waived, or modified except in writing signed by both Parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the date first above written.

BROKER: H & F Logistics, LLC

CO-BROKER

Printed: Timothy M. Harris II _____
Date: _____

Printed: _____
Date: _____

Address: 9307 E. 56th St _____
Indianapolis, IN 46216 _____

Address: _____

Phone: 317-813-4845 _____
Fax: 317-813-3933 _____

Phone: _____
Fax: _____
FID No: _____

APPENDIX A

1. Rates. In accordance with Paragraph 6 of the Agreement, the rates applying to the transportation services to be provided pursuant to the Agreement are set forth below:

BROKER: H & F Logistics, LLC

CO-BROKER

Printed: Timothy M. Harris II
Date: _____

Printed: _____
Date: _____

APPENDIX B

“BROKER”: H & F Logistics, LLC

Address
Telephone
Fax

Rate Confirmation

Date: _____ CO-BROKER: _____ Contact: _____
Phone: _____
Pro #: _____ Fax: _____
Driver: _____

Have Driver Call (_____) _____ for dispatch.

LOAD INFORMATION

Origin: _____ Destination: _____ Date: _____
Time: _____
Pickup/Release #: _____
Contact: _____ Contact: _____
Qty: _____ Qty. Type: _____ Commodity: _____
Rate of Item: _____ Total: _____ Weight: _____

Special Load Requirements: _____

This rate includes all stop-off charges, fuel surcharges, loading, unloading, etc. This rate cannot be changed, modified, or supplemented by reference to any other rates, rules, classification, schedule, or tariff. CO-BROKER shall be liable for full loss resulting from loss, damage, injury, or delay.

We understand that this contract has been approved by a person authorized to do so. If any information is incorrect, please contact us by fax or telephone before executing the above contract.

Confirmation must be signed and faxed to Broker before Loading. All truck invoices must be presented for payment with original Bill of Lading proof of deliveries, and a signed copy of this rate confirmation.

- * For sealed loads, seal numbers and “Seal Intact” notation must appear on Bill of Lading
- * Driver must count during loading or get SLC notation on Bill of Lading

ALL LOADING AND UNLOADING FEES MUST BE PRE-APPROVED.

Special Instructions: _____ *Signature and Fax back to* _____ *required prior to dispatch.*

Booked by: _____
CO-BROKER _____ Date
Authorized Representative
Broker _____ Date

Your signature constitutes a contractual agreement between your company and Broker.

