

BROKER - CARRIER AGREEMENT

This Broker- Carrier Agreement ("Agreement") is entered into this ____ day of _____, 20____, ("Effective Date") by and between **GD Freight, LLC**. ("BROKER") a Registered Property Broker pursuant to **MC-9270**, and _____ a Registered Motor Carrier, Permit/Certificate No. DOT-_____; (hereinafter referred to as "CARRIER") collectively, the "Parties." In exchange for the mutual consideration expressed below, the Parties agree as follows:

RECITALS

WHEREAS, BROKER is licensed as a Property Broker by the Federal Motor Carrier Safety Administration ("FMCSA") MC #9270, and as a licensed broker, arranges for freight transportation. A copy of Broker's Surety Bond or trust fund agreement is available upon request; and

WHEREAS, CARRIER is engaged in the business of transporting general commodities, in interstate commerce, as a Motor Contract Carrier under operating authority issued by the FMCSA pursuant to MC#_____.

WHEREAS, BROKER desires to arrange for the transportation of such freight by CARRIER as a BROKER may tender to it;

WHEREAS, BROKER desires to utilize the services of CARRIER, as a licensed Motor Contractor Carrier. In order to facilitate the performance of such transportation and/or transportation services, the parties hereto have agreed to the terms and conditions under which all of such transportation and transportation services shall be rendered, provided and/or arranged, and such terms and conditions are herein set forth in this Agreement and various Addenda attached hereto and made a part hereof.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PARTIES agree as follows:

1. **CONTRACT TERM:** The term of this Agreement shall be one year from the Effective Date and shall automatically renew for successive one (1) year periods; provided, however, that this Agreement may be terminated as set forth herein or upon thirty (30) days' prior written notice, with or without cause, by either Party at any time. In the event of termination of this Agreement for any reason, the Parties shall be obligated to complete performance of any work in progress in accordance with the terms of this Agreement.
2. **SERVICES TO BE RENDERED.** CARRIER's services under this Agreement are specifically designed to meet the distinct needs of BROKER's customers under the specified rates and conditions set forth herein. At all times herein, CARRIER shall render such transportation services as a motor carrier providing contract carriage pursuant to 49 U.S.C. §§ 13102(4)(B) and 14101(b), respectively.
3. **CARRIER REPRESENTS AND WARRANTS THAT IT:**
 - A. Is a Registered Motor Carrier of Property authorized to provide transportation of property under contracts with shippers and receivers and/or brokers of general commodities;
 - B. Shall transport the property under its own operating authority and subject to the terms of this Agreement;
 - C. Makes the representations herein for the purpose of inducing BROKER to enter into this Agreement;
 - D. Agrees that a shipper's insertion of BROKER's name as the carrier on a bill of lading shall be for the shipper's convenience only and shall not change BROKER's status as a property broker nor CARRIER's status as a motor carrier.
 - E. Will not re-broker, assign or interline the shipments hereunder, and that all freight tendered to CARRIER under this Agreement shall be hauled on equipment owned or leased by CARRIER. In the event that CARRIER breaches this provision, in addition to other rights herein, CARRIER shall forfeit payment for

the load at issue, shall waive any and all legal rights and remedies against BROKER with regard to the load at issue and shall re-pay BROKER any funds paid or advanced on the load at issue within seven (7) days of request by BROKER. Notwithstanding termination based on breach of this section, CARRIER shall be deemed the agent of the motor carrier(s) that performed the transportation for the purposes of payment and will remain liable to BROKER as if it had hauled the load for any loss incurred by BROKER. In addition to the indemnity obligation in paragraph 3.H CARRIER will be liable for consequential damages for violation of this Paragraph, regardless of whether arising from the conduct or omissions of CARRIER, subcontractor, or any other third party.

- F. Will notify BROKER immediately if its federal Operating Authority is revoked, suspended or rendered inactive for any reason; and/or if it is sold, or if there is a change in control of ownership, and/or any insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.
- G. Is in, and shall maintain compliance during the term of this Agreement, with all applicable federal, state and local laws relating to the provision of its services including, but not limited to: applicable laws and regulations governing the shipment of wine and alcoholic beverages; transportation of Hazardous Materials, (including the licensing and training of drivers), as defined in 49 C.F.R. § 172.800, § 173, and § 397 et seq. to the extent that any shipments hereunder constitute Hazardous Materials; security regulations; owner/operator lease regulations; loading and securement of freight regulations; implementation and maintenance of driver safety regulations including, but not limited to, hiring, controlled substances, and hours of service regulations; sanitation, temperature, and contamination requirements for transporting food, perishable, and other products; qualification and licensing and training of drivers; implementation and maintenance of equipment safety regulations; maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers. In addition, CARRIER represents and warrants to BROKER that CARRIER will be in compliance with 49 C.F.R. 395.15, et seq., (the Electronic Logging Device Rule) effective December 18, 2017. If, prior to December 18, 2017, CARRIER has installed and requires its drivers to use an automatic on-board recording device in accordance with 49 C.F.R. 395.15, CARRIER may continue to use the compliant automatic on-board recording device no later than December 16, 2019, at which time CARRIER agrees to install ELD technology in compliance with 49 C.F.R. 395.15 and agrees to maintain an electronic logging device ("ELD") that is compatible with CARRIER'S unit.
- H. Shall defend, indemnify and hold BROKER, Shipper, Shipper's customer, and their respective directors, officers, employees and agents (collectively referred to as "Indemnatee"), harmless from:
- (1) ANY AND ALL CLAIMS MADE AGAINST ANY INDEMNITEE BY OR ON BEHALF OF CARRIER'S EMPLOYEES, AGENTS OR SUBCONTRACTORS FOR SALARY OR OTHER COMPENSATION OR PAYMENTS RESULTING OR CLAIMED TO HAVE RESULTED, IN WHOLE OR IN PART, FROM SERVICES CARRIER, CARRIER'S AGENTS OR SUBCONTRACTORS PERFORM HEREUNDER;
 - (2) ANY AND ALL PENALTIES FOR FINES OF ANY CHARACTER WHICH MAY BE SOUGHT TO BE ENFORCED AGAINST ANY INDEMNITEE BY REASON OF AN ALLEGED VIOLATION BY CARRIER, CARRIER'S AGENTS OR SUBCONTRACTORS OF ANY FEDERAL, STATE, OR MUNICIPAL LAW, RULE OR REGULATION;
 - (3) ALL CLAIMS, DEMANDS, ACTIONS OR CAUSES OF ACTION WHICH MAY AT ANY TIME BE BROUGHT AGAINST ANY INDEMNITEE BECAUSE OF DEATH OR INJURY TO ANY PERSON, INCLUDING CARRIER'S EMPLOYEES, AGENTS OR SUBCONTRACTORS OR DAMAGE TO PROPERTY (INCLUDING BUT NOT LIMITED TO CARGO BEING TRANSPORTED HEREUNDER) WHICH MAY ARISE FROM OR IN CONNECTION WITH: (I) THE MAINTENANCE, USE OR OPERATION (INCLUDING LOADING AND UNLOADING) BY CARRIER, CARRIER'S AGENTS OR SUBCONTRACTORS OF ANY MOTOR VEHICLE OR EQUIPMENT IN PERFORMANCE OF SERVICES UNDER THIS AGREEMENT; AND/OR (II) ANY AND ALL ACTS OR OMISSIONS OF CARRIER, CARRIER'S AGENTS OR SUBCONTRACTORS IN PROVIDING THE TRANSPORTATION SERVICES TO BE PROVIDED UNDER THIS AGREEMENT; AND,

(4) ANY AND ALL OTHER CLAIMS MADE BY OR ON BEHALF OF A SHIPPER OR ITS CUSTOMERS AGAINST ANY OTHER INDEMNITEE, IF SUCH CLAIM ARISES FROM SERVICES RENDERED BY CARRIER, CARRIER'S AGENTS OR SUBCONTRACTORS UNDER THIS AGREEMENT.

THE INDEMNITY HEREIN PROVIDED SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO ALL COSTS, EXPENSES, EXPERTS' FEES AND REASONABLE ATTORNEYS' FEES INCURRED OR PAYABLE BY ANY INDEMNITEE IN SETTLING SUCH CLAIMS OR PENALTIES OR FINES OR IN INVESTIGATING OR DEFENDING AGAINST SAME. The indemnity herein provided is notwithstanding whether the Parties insurance as referred to in paragraph 5.F is valid or provides coverage. This provision shall remain in full force and effect both during and after the Term of this Agreement.

- I. Does not have an "Unsatisfactory" safety rating issued by the Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation, and will notify BROKER in writing immediately if its safety rating is changed to "Unsatisfactory" or "Conditional". BROKER shall have the right, at the option of BROKER, to terminate this Agreement immediately upon receipt of such notice of DOT audit, safety rating change or threatened audit or change.
- J. Authorizes BROKER to invoice CARRIER's freight charges to shipper, consignee, or third parties responsible for payment.
- K. Is in compliance with 49 C.F.R. § 395.8, et seq. (the Electronic Logging Device Rule).
- L. Is compliance with and will abide by the requirements and delegable duties set forth in the Food Safety Moderation Act, including but not limited to those in **Appendix A**.

4. **BROKER RESPONSIBILITIES:**

- A. **RATES:** CARRIER shall be compensated for such transportation in accordance with the rates and charges on the applicable Rate Form, regardless of whether another pricing provision published by CARRIER might be more favorable to CARRIER, BROKER or Shipper. Additionally, any rates, which may be verbally agreed upon, shall be deemed confirmed in writing where CARRIER has billed the agreed rate and BROKER has paid it. Compensation for stop-offs, detention, loading or unloading, fuel surcharges, or other accessorial charges, as well as references in shipping documents to released rates or values, or tariff rules or circulars, shall only be valid when specifically agreed to in a signed writing by the Parties.
- B. **BILLING AND PAYMENT:**
 - i. BROKER agrees to conduct all billing services to shippers. CARRIER shall invoice BROKER for its (CARRIER's) charges, as mutually agreed in writing, by fax, or by electronic means, contained in BROKER's Rate Form(s) incorporated herein by reference. Additional rates for truckload or LTL shipments, or modifications or amendments of the above rates, or additional rates, may be established to meet changing market conditions, shipper requirements, BROKER requirements, and/or specific shipping schedules as mutually agreed upon, and shall be confirmed in writing (or by fax) by both Parties.
 - ii. The Parties agree that BROKER is the sole Party responsible for payment of CARRIER's charges. CARRIER waives any and all claims CARRIER may subsequently have against the Shipper or Shipper's customer for payment of charges for services rendered by CARRIER hereunder. This undertaking by CARRIER shall survive the termination of this Agreement.
 - iii. Compensation paid to CARRIER under this Agreement may be withheld in whole or in part by BROKER, or any of its subsidiaries or related companies, to satisfy claims or shortages arising out of this or any other Agreement with CARRIER, or to satisfy advances made to, or on behalf of CARRIER, or to satisfy any debt owed by CARRIER to BROKER or any of its subsidiaries or related companies.

- iv. Provided CARRIER is not in default under the terms of this Agreement, and subject to 4(B)(iii), BROKER agrees to pay CARRIER's invoice within thirty (30) days of receipt of the bill of lading or proof of delivery.
 - v. Upon CARRIER's acceptance of payment for a load, CARRIER agrees to waive all rights and remedies it has or may have against BROKER under 49 C.F.R. part 371 with regard to that particular load. Payment and other disputes are subject to the terms of paragraph 7.D, which provides in part that prevailing parties are entitled to recovery of costs, expenses and reasonable attorney fees.
 - vi. BROKER reserves the right to reduce compensation to CARRIER by the actual amount of additional cost incurred by BROKER when BROKER must arrange alternative transportation services to replace services promised, but not provided, due to CARRIER's negligence.
- C. **BOND:** BROKER shall maintain a surety bond on file with the Federal Motor Carrier Safety Administration (FMCSA) in the form and amount not less than that required by that agency's regulations.

5. CARRIER RESPONSIBILITIES:

- A. **SERVICES:** In performing any transportation services hereunder (the "Services"), CARRIER, at its own expense, shall at all times provide and maintain: safe and adequate freight handling facilities; sufficient and duly qualified, competent, skilled and properly trained and licensed drivers; all other personnel, motor vehicles and transportation related equipment in good working order necessary to perform the required transportation services in a safe manner; and all requisite operating permits and authorities.
- B. **EQUIPMENT:** Subject to its representations and warranties in Paragraph 5(A) above, all vehicles and equipment supplied by CARRIER for the performance of the Services under this Agreement are fully licensed for operation and comply with all licensing conditions and/or safety requirements in jurisdictions that may be required in performing Services hereunder. CARRIER will not supply equipment that has been used to transport hazardous wastes, solid or liquid, regardless of whether they meet the definition in 40 C.F.R. § 261.1 et. seq. CARRIER will pay all expenses related, in any way, with the use and operation of the Equipment and will not obligate BROKER for payment, use or operation of vehicles and equipment it uses to provide the Services. CARRIER will maintain the Equipment in good repair, mechanical condition and appearance, and meet all safety and other requirements of all applicable laws, rules, and regulations of the United States and any other jurisdiction required in order to perform the Services hereunder. CARRIER shall comply with all testing and inspection requirements set forth in 49 CFR § 396. CARRIER agrees that all shipments will be transported and delivered with reasonable dispatch, or as otherwise agreed in writing and/or stated on rate confirmation.
- C. **DRIVERS:** All drivers operating vehicles and equipment pursuant to this Agreement will meet all legal requirements, and will be drug and alcohol free at all times while performing any Services hereunder. All drivers shall be enrolled in a random drug and alcohol testing program as outlined in 49 C.F.R. § 382 (the "Testing Program"). CARRIER is responsible for providing BROKER with evidence of current enrollment. CARRIER shall also provide BROKER with proof that the CARRIER's employees or agents are participating in the Testing Program. Nothing in this paragraph alters the independent contractor relationship between BROKER and CARRIER and shall not in any way be construed to make CARRIER, its employees or contractors, employees of BROKER. CARRIER shall immediately notify BROKER of any violation of the rules and regulations of the United States DOT or other legally required alcohol and drug rules and regulations as they apply to commercially licensed carriers. CARRIER shall immediately notify BROKER if any of CARRIER's drivers or other personnel test positive for drugs or alcohol under the Testing Program or fail to comply with testing requirements.
- D. **BILLS OF LADING:** CARRIER shall issue a bill of lading in compliance with 49 U.S.C. § 80101 et seq., 49 C.F.R. § 373.101 (and any amendments thereto), for the property it receives for transportation under this Agreement. If CARRIER intentionally or inadvertently executes a bill of lading containing Nonstandard Terms without BROKER'S prior written consent, CARRIER shall indemnify BROKER under paragraph 3(H) of this Agreement for all risks and liability which the Nonstandard Terms may attempt to impose on BROKER. Under no circumstances shall CARRIER execute a bill of lading or any

other document, which represents or holds out BROKER as the motor carrier responsible for delivery of any cargo. Unless otherwise agreed in writing, CARRIER shall become fully responsible/liable for the freight when it takes/receives possession thereof, and the trailer(s) is loaded, regardless of whether a bill of lading has been issued, and/or signed, and/or delivered to CARRIER, and which liability shall continue until delivery of the shipment to the consignee and the consignee signs the bill of lading or delivery receipt. Any terms of the bill of lading (including but not limited to payment terms) inconsistent with the terms of this Agreement shall be controlled by the terms of this Agreement. Failure to issue a bill of Lading or sign a bill of lading acknowledging receipt of the cargo, by CARRIER, shall not affect the liability of CARRIER. CARRIER shall notify BROKER immediately, prior to proceeding from the location, of any exceptions made on the bill of lading, manifest or other receipt.

E. LOSS & DAMAGE CLAIMS:

- i. CARRIER agrees to furnish BROKER notice immediately, or as soon as is reasonably possible, by telephone of any occurrence or transaction which may give rise to a claim against either the CARRIER, the BROKER, or the BROKER's customer(s) under the terms of this Agreement.
- ii. CARRIER assumes the same liability as a common carrier for full actual loss, subject to the provisions of 49 U.S.C. § 14706 (Carmack Amendment). For purposes of this section, the measure of CARRIER's liability shall be the full invoice value of any product lost or damaged plus all incidental expenses arising from the loss, damage or injury. BROKER expressly reserves any other rights and remedies available under federal or state law. CARRIER shall comply with 49 C.F.R. § 370.1 et seq. and any amendments and/or any other applicable regulations adopted by the Federal Motor Carrier Safety Administration, U.S. Department of Transportation, or any applicable state regulatory agency, for processing all loss and damage claims and salvage. CARRIER shall not sell or salvage any goods without the express written consent of BROKER.
- iii. Special Damages: CARRIER's indemnification liability (Paragraph 3.H) for freight loss and damage claims under this sub-paragraph E(ii) shall include legal fees which shall constitute special damages, the risk of which is expressly assumed by CARRIER, and which shall not be limited by any liability of CARRIER under sub-paragraph (ii) above. No limitation of liability found in CARRIER's tariff, rules or classifications, including NMFC shall in any way lessen or limit CARRIER's liability.
- iv. Notwithstanding the terms of 49 C.F.R. § 370.9, CARRIER shall pay, decline or make settlement offer in writing on all cargo loss or damage claims within 30 days of receipt of the claim. Failure of CARRIER to pay, decline or offer settlement within this 30-day period shall be deemed admission by CARRIER of full liability for the amount claimed and a material breach of this Agreement. Past due claims shall be interest at the highest rate allowed by law.

F. INSURANCE: CARRIER agrees to purchase and maintain, at CARRIER's sole expense, the below-required coverage by purchasing same from an insurance company with an A.M. Best's rating of A- or better and unless otherwise agreed, subject to the following minimum limits:

- i. Automobile Liability Coverage of \$_____ per occurrence and aggregate (except for intrastate carriers, which shall be in limits set forth by applicable state statute);
- ii. Non-Trucking General Liability (Limits of \$_____per occurrence and aggregate)
- iii. Cargo insurance for coverage of damage to or loss of cargo (including an endorsement for coverage of the transport of wine and alcoholic beverages, theft by employee, driver error, mysterious disappearance, unattended vehicle, breakdown, loss or damage due to freezing, spoilage, contamination, mildew, moss or deterioration, and any other endorsements required by BROKER or its customer) in the amount of \$_____ per occurrence unless otherwise agreed in writing by BROKER prior to CARRIER taking possession of the shipment.
- iv. Occupational accident for owner-operators (\$_____ or in limits equal to state workers' compensation requirements) or, if CARRIER is domiciled in a state that requires workers' compensation insurance coverage, CARRIER shall provide workers compensation insurance coverage on CARRIER and shall provide workers' compensation insurance coverage in all states on those of CARRIER's drivers, employees, agents and other person required to be principally covered under the workers compensation law of the domicile state. Workers' compensation coverage, where required, shall be in amounts not less than the statutory limits required by the applicable state's law.

G. **CARRIER** shall furnish **BROKER** with Certificate(s) of Insurance naming **BROKER** as a loss payee and additional insured. Such certificate will state that insurance carrier will provide **BROKER** with thirty (30) days advance written notice of cancellation or termination or change in coverage. **CARRIER** shall cause its insurance carrier to provide **BROKER** with a waiver of the insurer's subrogation against **BROKER** and shipper as to the above outlined coverage (i) through (iv). Except for the higher coverage limits which may be specified above, the insurance policies shall comply with minimum requirements of the Federal Motor Carrier Safety Administration and any other applicable regulatory state agency. All policies will contain a severability of interest provision in favor of **BROKER** or a full and complete breach of warranty endorsement to the effect that the insurance coverage will not be invalidated as regards the interest of **BROKER** by any act, failure to act, or neglect of **CARRIER** which is in violation of the terms and conditions of such insurance. Nothing in this section shall be construed to limit **CARRIER's** liability due to any exclusion, deductible or policy limit or provision contained in the contract of insurance maintained by **CARRIER**.

H. **ASSIGNMENT OF RIGHTS:** **CARRIER** automatically assigns to **BROKER** all its rights to collect freight charges from Shipper or any responsible third party on receipt of payment from **BROKER**.

6. **WAIVER OF CARRIER'S LIEN.** **CARRIER** shall not have any right, title, interest, ownership, or claim in the goods tendered for transportation services by or for Shipper under this Agreement. **CARRIER** shall not in any way encumber or otherwise impair Shipper's right to possession of any goods transported pursuant to this Agreement for any reason including the existence of any dispute as to prices or any alleged failure of general credit of **BROKER** and **CARRIER** hereby waives and releases all liens that **CARRIER** might otherwise have to any such goods in the possession or control of **CARRIER** or **CARRIER's** agents, including but not limited to those under 49 U.S.C. § 13707 and 49 U.S.C. § 80109.

7. **MISCELLANEOUS:**

A. **INDEPENDENT CONTRACTOR:** The relationship between the parties hereto shall be that of independent contractor and not a partner, joint venture, agent or employee of Shipper or **BROKER** for any purpose. **CARRIER** has complete responsibility for the management and control of its business and for the nature, extent and methods of conducting its business, including but not limited to routing of freight. **CARRIER** and its selected subcontractors or agents shall employ, pay, discipline, discharge, supervise, and direct those persons required for the performance of the freight transportation services required by this Agreement, and each shall have exclusive authority over its own respective employees. Under no circumstances shall **CARRIER** or its subcontractors, agents or employees be deemed, or hold themselves out as employees of **BROKER** and/or any customers of **BROKER**.

B. **NON-EXCLUSIVE AGREEMENT:** **CARRIER** and **BROKER** acknowledge and agree that this contract does not bind the respective Parties to exclusive services to each other. Either Party may enter into similar agreements with other carriers, brokers, or freight forwarders.

C. **WAIVER OF PROVISIONS:**

i. Failure of either Party to enforce a breach or waiver of any provision or term of this Agreement shall not be deemed to constitute a waiver of any subsequent failure or breach, and shall not affect or limit the right of either Party to thereafter enforce such a term or provision.

ii. This Agreement is a contract within the meaning of 49 U.S.C. § 14101(b)(1). Carrier hereby expressly waives any and all rights and remedies that Carrier may have under Part B of Subtitle IV (49 U.S.C. §§ 13101 through 14914) that are contrary to specific provisions of this Agreement, provided, however, that nothing in this Agreement shall be construed as waiving any provision governing Carrier's compliance with all statutory registration, insurance and/or safety fitness requirements relative to motor carriers, such as Carrier. **BROKER** expressly reserves all rights and remedies of **BROKER**, Shipper or customers of Shipper as set forth in 49 U.S.C. §§ 14101(a), 14701, and 14704, inclusive. The fact that Carrier may provide common carrier services as part of its overall operations, and maintain schedules, rules, rates and charges relative thereto, shall have no applicability to the contract relationship between the parties created

hereunder. The terms of this Agreement shall apply to all BROKER loads hauled by Carrier, regardless of whether received directly or indirectly from BROKER.

D. GOVERNING LAW AND ATTORNEY'S FEES: It is agreed by BROKER and CARRIER that California law shall govern, without reference to the conflict of laws contained therein, disputes involving any terms of this Agreement or interpretation thereof, whether arising in contract, tort or otherwise. CARRIER hereby waives any jurisdictional rights it might otherwise have. It is also agreed that venue shall be in Sutter County, California. In the event of a legal action or other proceeding arising under this Agreement or a dispute regarding any alleged breach, default, claim or misrepresentation arising out of this Agreement, the prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees as well as those incurred in any action for injunctive relief, or in the event further legal action is taken. THE BROKER AND CARRIER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY OR AGAINST EACH OTHER ON, OR IN RESPECT OF, ANY MATTER ARISING OUT OF, RELATING TO OR PERTAINING TO THIS AGREEMENT, OR THE INTERPRETATION, BREACH, ENFORCEMENT OR SUBJECT MATTER THEREOF.

E. NO BACK SOLICITATION:

- i. During the terms of this agreement and for one year thereafter, CARRIER agrees not to back solicit any shipper, consignor, consignee or customers of BROKER for any business where (1) the availability of such traffic became known to CARRIER as a result of BROKER's efforts, or (2) the traffic was first tendered to CARRIER by BROKER, either directly or indirectly.
- ii. In the event of breach of this provision, BROKER shall be entitled, for a period of twelve (12) months following delivery of the last shipment transported by CARRIER under this Agreement, to a commission of 15 percent of the gross transportation revenue (as evidenced by freight bills) received by CARRIER for the transportation of said freight as liquidated damages. Additionally, BROKER may seek injunctive relief and if successful, CARRIER shall be liable for all costs and expenses incurred by BROKER, including, but not limited to, reasonable attorneys' fees.

F. CONFIDENTIALITY:

- i. In addition to Confidential Information protected by law, statutory or otherwise, the Parties agree that all of their financial information and that of their customers, including but not limited to freight and brokerage rates, amounts received for brokerage services, amounts of freight charges collected, freight volume requirements, as well as personal customer information, customer shipping or other logistics requirements shared or learned between the Parties and their customers, shall be treated as Confidential, and shall not be disclosed or used for any reason without prior written consent. In the event of violation of this Confidentiality paragraph, the Parties agree that the remedy at law, including monetary damages, may be inadequate and that the Parties shall be entitled, in addition to any other remedy they may have, to an injunction restraining the violating Party from further violation of this Agreement in which case the prevailing Party shall be liable for all costs and expenses incurred, including but not limited to reasonable attorneys' fees.

G. MODIFICATION OF AGREEMENT: This Agreement may not be amended, except by mutual written agreement).

H. NOTICES:

- i. All notices provided or required by this Agreement, shall be made in writing and delivered, return receipt requested, to the addresses shown herein with postage prepaid; or by confirmed electronically acknowledged on paper, or fax.
- ii. The Parties shall promptly notify each other of any claim that is asserted against either of them by anyone arising out of the Parties performance of this Agreement.
- iii. Notices sent as required hereunder, to the addresses shown in this Agreement shall be deemed sent to the correct address, unless the Parties are notified in writing of any changes in address.

- I. **SURVIVAL:** In the event any of the terms of this Agreement are determined to be invalid or unenforceable, no other terms shall be affected and the unaffected terms shall remain valid and enforceable as written. The representations, rights and obligations of the Parties hereunder shall survive termination of this Agreement for any reason.
- J. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be a duplicate original hereof.
- K. **DEFAULT:** In the event either party files a voluntary petition in bankruptcy court, or makes an assignment for benefit of creditors, or is voluntarily or involuntarily adjudicated a bankrupt, or has a receiver appointed for its business, becomes insolvent, or defaults in compliance with one or more provisions of this Agreement, and said default is not remedied within thirty (30) days after written notice of such default, the other Party may elect to immediately terminate this Agreement.
- L. **ASSIGNMENT.** This Agreement shall apply to and bind the successors and assigns of the parties, provided, however, that no such assignment of interests or obligations under this Agreement or arising from its breach, including but not limited to the assignment of any monies due and payable, shall be effective without the prior written consent of the other party.
- M. **ENTIRE AGREEMENT:** Except as provided herein, and unless otherwise agreed in writing, this Agreement contains the entire understanding of the Parties and supersedes all verbal or written agreements and understandings of the Parties relating to the subject matter stated herein. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence may be introduced to reform this Agreement in any judicial or arbitration proceeding involving this Agreement.

IN WITNESS WHEREOF, we have signed this agreement the date and year first shown above.

GD FREIGHT, LLC. (BROKER)

CARRIER

Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Title

Address

Address

City, State, Zip Code

City, State, Zip Code

Broker MC# 9270

APPENDIX A
COMPLIANCE WITH FOOD SAFETY MODERNIZATION ACT

All contracting carriers agree to the following terms and conditions when transporting refrigerated commodities, human and animal foods and other shipments which may be subject to adulteration in transit:

1. CARRIER agrees to comply with all delegable duties permitted under the Act as well as shipper or carrier requirements as set forth by the shipper or broker in writing as part of the load confirmation process or as set forth on the bill of lading at time of pickup.
2. All transportation operations must be conducted under such conditions and controls necessary to prevent the food from becoming unsafe during transportation operations including:
 - a. Taking effective measures such as segregation, isolation, or the use of packaging to protect food from contamination by raw foods and nonfood items in the same load.
 - b. Taking effective measures such as segregation, isolation, or other protective measures, such as hand-washing, to protect food transported in bulk vehicles or food not completely enclosed by a container from contamination and cross-contact during transportation operations.
 - c. Taking effective measures to ensure that food that requires temperature control for safety is transported under adequate temperature control.
 - d. Taking measures to ensure vehicles and transportation equipment meet the shipper's specifications and are otherwise appropriate to prevent the food from becoming unsafe during the transportation operation. Such equipment shall be clean, odor free, dry, leak-proof, free of contamination, free of infestation, and that has never, to the best of CARRIER's knowledge, been used to transport refuse, garbage, trash or solid or liquid waste or hazardous materials.
 - e. Once the transportation operation is complete and upon request, provide the operating temperature specified by the shipper, if requested by the shipper, receiver or BROKER, demonstrate that it has maintained temperature conditions during the transportation operation consistent with the operating temperature specified by the shipper.
 - f. Before offering a vehicle or transportation equipment with an auxiliary refrigeration unit for use for the transportation of food that requires temperature control for safety under the conditions of the shipment during transportation, CARRIER must pre-cool each mechanically refrigerated cold storage compartment as specified by the shipper.
 - g. If requested by the shipper or BROKER, a carrier that offers a bulk vehicle for food transportation must provide information to the shipper that identifies the previous cargo transported in the vehicle.
 - h. If requested by the shipper or BROKER, a carrier that offers a bulk vehicle for food transportation must provide information to the shipper that describes the most recent cleaning of the bulk vehicle.
 - i. Develop and implement written procedures subject to the records requirements of 21 CFR § 1.912(b).
 - j. Retain records to demonstrate compliance with the Act, including training records and any other written agreements assigning tasks in compliance with 21 CFR § 1.912(c) and (d) for a period of 12 months beyond the termination of the agreements.
3. CARRIER further agrees to ensure its trailer equipment is inspected and certified by the shipper as fit to load at point of origin, shall properly pulp shipments if required to do so, shall maintain seal integrity during transit, and evidence of temperature in transit.
4. In the event of a rejected delivery, CARRIER shall immediately contact BROKER, shall note the extent of any damage, and shall thereafter maintain temperature awaiting BROKER's direction for redelivery, inspection and salvage.

THIS APPENDIX is agreed to by the undersigned parties as of this ____ day of _____, 20__:

GD FREIGHT, LLC (BROKER)

CARRIER

Authorized Signature

Printed Name

Title

Authorized Signature

Printed Name

Title