



SHIPPER-BROKER TRANSPORTATION AGREEMENT

This Shipper-Broker Transportation Agreement (“Agreement”) is made and intended to be effective this ____ day of _____, 20__ (“Effective Date”), by and between MegaCorp Logistics, LLC, a Delaware limited liability company having offices at 1011 Ashes Drive, Wilmington, NC 28405 (“BROKER”), and _____ [State limited liability company or corporation] having offices at _____, (“SHIPPER”). BROKER and SHIPPER are each a “Party” and collectively the “Parties.”

RECITALS

WHEREAS, BROKER is licensed as a property BROKER by the Federal Motor Carrier Safety Administration (“FMCSA”) in Docket Number MC-671004, or by appropriate State agencies, and, as a licensed BROKER, arranges for freight transportation by qualified motor carrier;

WHEREAS, SHIPPER is a user of transportation, logistics, or warehousing services, either for its own account or for the accounts of its customers, who are generally the beneficial owners (“Beneficial Cargo Owners”) of the freight being transported or stored under this Agreement. Where this Agreement refers to the transportation or storage of “SHIPPER’s property,” this is understood to refer to the property belonging to the SHIPPER or the Beneficial Cargo Owner; and

WHEREAS, BROKER and SHIPPER desire to set forth the terms of their business relationship pursuant to which BROKER will arrange services for SHIPPER and its Beneficial Cargo Owners.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations, warranties, covenants and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, BROKER and SHIPPER hereby agree as follows:

AGREEMENT

1. **TERM AND TERMINATION.** The Initial Term of this Agreement is one (1) year, commencing on the Effective Date, and automatically renews for successive one year periods (each a “Renewal Term,” and, together with the “Initial Term”, the “Term”). Either Party may terminate this Agreement on 30 days written notice to the other Party, with or without cause, or as otherwise provided in this Agreement.

2. **SERVICES.** BROKER agrees to arrange for transportation of SHIPPER’s freight by qualified motor carrier pursuant to the terms and conditions of this Agreement and in compliance with applicable federal, state, and local laws and regulations relating to the arrangement of freight transportation (“Services”). BROKER’s responsibility under this Agreement is limited to arranging for, but not actually performing, transportation of SHIPPER’s freight.

3. **VOLUME.**

- A. SHIPPER agrees to tender to BROKER, and BROKER agrees to arrange for the transportation of, shipments offered by SHIPPER. SHIPPER is not restricted from tendering freight to other BROKERS, or directly to motor carriers. BROKER is not restricted from arranging transportation for other parties.
- B. SHIPPER shall provide timely and accurate delivery instructions and description of the cargo to BROKER, including any special handling or security requirements for all shipments.

4. **FREIGHT CARRIAGE.** BROKER warrants that it has entered into, or will enter into, a bilateral written contract with each carrier it utilizes in the performance of this Agreement. BROKER further warrants that those contracts comply with all applicable federal and state laws and regulations and shall include the following provisions:

- A. Carrier 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:
 - 1) Transportation of Hazardous Materials, (including the licensing and training of drivers), as defined in 49 C.F.R. §172.800, §173, and §397 et seq. to the extent that any shipments hereunder constitute Hazardous Materials;
 - 2) Security regulations;

- 3) Owner/operator lease regulations;
 - 4) Loading and securement of freight regulations;
 - 5) Implementation and maintenance of driver safety regulations, including but not limited to: hiring, controlled substances, and hours of service regulations;
 - 6) Sanitation, temperature, and contamination requirements for transporting food, perishable commodities, and similar products;
 - 7) Qualification, licensing, and training of drivers;
 - 8) Implementation and maintenance of equipment safety regulations;
 - 9) Maintenance and control of the means and method of transportation, including but not limited to the performance of its drivers;
- B. Carrier shall agree to defend, indemnify, and hold BROKER and SHIPPER harmless from all damages, claims or losses arising out of its transportation services, including damage to property and personal injury or death, to the fullest extent permissible under applicable law. Carrier's indemnity will not apply to the extent third-party claims result from BROKER's or SHIPPER's negligent or willful acts or omissions.
- C. Carrier shall agree that its liability for cargo loss or damage will be governed by federal law codified at 49 U.S.C. 14706 (the Carmack Amendment). Exclusions in Carrier's insurance coverage shall not exonerate carrier from this liability.
- D. Carrier shall agree during the Term and for two (2) years thereafter to maintain insurance coverage with limits not less than the following (and BROKER agrees to verify that such coverage exists):
- 1) Auto Liability insurance of at least \$1,000,000.
 - 2) Cargo Liability of at least \$100,000 and in sufficient amounts to cover the value of SHIPPER's property.
 - 3) Workers Compensation as required by statute.
- E. Carrier shall agree that the provisions contained in 49 CFR Part 370 govern the processing of claims for loss, damage, injury or delay to shipments and the processing of salvage.
- F. The Parties agree that BROKER is the sole party responsible for payment of carrier's charges. Failure of BROKER to collect payment from its SHIPPER will not exonerate BROKER of its obligation to pay carrier. BROKER agrees to pay carrier's undisputed invoice within 30 days of receipt of the bill of lading or proof of delivery, provided carrier is not in default under the terms of the agreement. If BROKER has not paid carrier's undisputed invoice as agreed, and CARRIER has complied with the terms of this Agreement, Carrier may seek payment from the SHIPPER or other party responsible for payment after giving BROKER (business days) advance written notice. Carrier shall not seek payment from SHIPPER or any other Party responsible for payment if SHIPPER or such other Party can prove payment to BROKER.
- G. Carrier shall agree that, at no time during the term of its contract with BROKER shall it have an "Unsatisfactory" safety rating as determined by the Federal Motor Carrier Safety Administration (FMCSA). If Carrier receives an "Unsatisfactory" safety rating, it shall immediately notify BROKER. BROKER shall not knowingly utilize any carrier with an "Unsatisfactory" safety rating in the performance of this Agreement.
- H. Carrier shall agree that the terms and conditions of its contract with BROKER will apply to all shipments it handles for BROKER. Any terms in a carrier tariff or other document belonging to carrier will be subordinate to the agreement between BROKER and carrier.
- I. Carrier shall expressly waive all rights and remedies under Title 49 U.S.C. 14101(b) to the extent they conflict with the contract.

BROKER further warrants it will require proof of insurance and operating authority from each Carrier and, should BROKER utilize the services of any Carrier or other BROKER on SHIPPER's behalf, which Carrier and/or BROKER does not have proof of insurance and/or operating authority, BROKER agrees to indemnify and hold harmless SHIPPER from all legitimate claims not paid by Carrier, including but not limited to cargo loss and damage claims.

5. **RECEIPTS AND BILLS OF LADING.** If requested by SHIPPER, BROKER agrees to provide SHIPPER with proof of acceptance

and delivery of such loads in the form of a signed Bill of Lading or Proof of Delivery, as specified by SHIPPER. SHIPPER's insertion of BROKER's name on the bill of lading is for SHIPPER convenience only and does not change BROKER's status as a property BROKER. The terms and conditions of any freight documentation, including carrier tariffs, used by BROKER or carrier may not supplement, alter, or modify the terms of this Agreement.

6. **CALCULATION AND PAYMENT OF FREIGHT CHARGES.**

- A. **Freight Charges.** The freight charges will be in accordance with the rates, charges and provisions set forth in Appendix A. SHIPPER agrees to pay all freight and equipment per diem charges and any applicable rail storage charges on all shipments moving under this Agreement.
- B. **Accessorials.** SHIPPER agrees to pay all accessorial service charges set forth in Appendix B.
- C. **SHIPPER Liability for Payment.** SHIPPER is primarily responsible for paying all charges incurred under this Agreement within 30 days of the invoice date, whether or not SHIPPER has been paid by Beneficial Cargo Owner, including all administrative fees and financing charges assessed and accruing thereon, and all costs of collection, including fees and expenses of third-party collection agents, attorney's fees and expenses and court and arbitration fees and costs. The fact or assertion that SHIPPER has not been timely paid by Beneficial Cargo Owner or any other third party will not be a valid defense by SHIPPER to BROKER's claim for payment.
- D. **Invoice Disputes.** SHIPPER will pay the undisputed portion of all invoices and will provide notice of any disputed charges before the payment due date. SHIPPER and BROKER agree to cooperate in good faith to resolve any invoice dispute.
- E. **Right to Sue for Unpaid Charges.** Notwithstanding the provisions in this Agreement regarding arbitration of disputes, BROKER shall have the right to bring suit against SHIPPER in any federal or state court nearest New Hanover County, North Carolina to recover any unpaid charges due to BROKER, and SHIPPER hereby agrees that claims for unpaid charges may be heard in such North Carolina courts, submits to the jurisdiction of such courts, and waives any objection to such venue or any defense of inconvenient forum.
- F. **Subrogation to Carrier's Rights.** If BROKER has paid the underlying carriers for transportation services provided SHIPPER and its Beneficial Cargo Owners and SHIPPER has not paid BROKER's corresponding invoices for valid charges that are due and payable to BROKER, BROKER will be subrogated to the underlying Carriers' rights and claims against SHIPPER and its Beneficial Cargo Owners arising in connection with such transportation services, whether arising under contract, at law, or in equity.

7. **FREIGHT LOSS OR DAMAGE.**

- A. **Cargo Liability.** Except as otherwise provided herein, cargo liability and claims are governed by 49 U.S.C. §14706 and 49 C.F.R. Part 370. BROKER's carrier has primary cargo liability, which is limited to actual loss or damage of cargo, minus salvage value, not to exceed \$100,000 per truckload, unless the Parties agree in writing to a higher declared value and higher applicable rates. BROKER and carrier have no liability to SHIPPER for any incidental, indirect, special, consequential, exemplary, or punitive damages.
- B. **Claims.** SHIPPER shall submit to BROKER a written claim for loss or damage to cargo within time sufficient for BROKER to submit such claims to the carriers within nine (9) months after delivery, in the case of damage, and within nine (9) months after a reasonable time for delivery, in the case of non-delivery. BROKER shall assist SHIPPER in the filing and processing of claims with the carrier and use commercially reasonable efforts to arrange for the settlement of such claim with the carrier.
- C. **BROKER Liability.** It is understood and agreed that BROKER is not a carrier and BROKER will not be liable for loss, damage, or delay in the transportation of SHIPPER's cargo unless caused by BROKER's negligent acts or omissions in the performance of this Agreement. If the carrier fails to pay SHIPPER its lawful damages for undue delay, loss, or damage within the period specified in 49 C.F.R. Part 370, then, subject to cargo liability limits above, BROKER shall make payment of any such claim for damages as contemplated by 49 U.S.C. §14706 and will have available to it all defenses available to a carrier under that statute. If payment of any claim is made by BROKER to SHIPPER, SHIPPER automatically assigns its rights and interest in the claim to BROKER to allow BROKER to subrogate its loss. SHIPPER agrees to reasonably cooperate with BROKER in the assertion and collection of any cargo damage

claim, including but not limited to, furnishing necessary documents and witnesses when needed to successfully prosecute a claim.

- D. **No Offset.** SHIPPER will not deduct or offset amounts due to BROKER hereunder for any disputes or claims, including but not limited to freight claims, disputed invoices, overcharges, or duplicate payments.
- E. **Delay.** BROKER is bound hereunder to arrange for carriers to transport all shipments with reasonable dispatch unless a specified delivery date and/or time for delivery is communicated to BROKER prior to the tender by SHIPPER of any individual shipment. "Reasonable dispatch" is the length of time that it would customarily and ordinarily take to transport a like shipment.

8. **LESS THAN TRUCKLOAD (LTL).**

- A. **LTL Quoted Rate.** All shipments are rated, quoted, and booked based on information provided by SHIPPER. Factors in this calculation include, but are not limited to:

- 1) The gross weight of the shipment including all packaging materials and pallets.
- 2) The commodity being shipped resulting in a National Motor Freight Classification (NMFC) code and freight class.
- 3) The dimensions per shipping unit and volume of space needed.
- 4) The number of shipping units.
- 5) Accessorial services are services provided by the carrier in addition to basic transportation of the cargo. Freight is quoted from dock to dock, therefore any accessorial services are extra charges. This includes, but is not limited to: lift gates, commercial, residential, or inside deliveries, appointments, temperature control, location updates, and other services outside of normal shipping of cargo.

- B. **LTL Billing.**

- 1) Initial Billing: the estimated/initial cost for each shipment is billed and charged to SHIPPER's open account at the time of dispatch. SHIPPER understands that this initial billing is based on the information provided by the SHIPPER and that this billing is done in good faith by BROKER with the assumption that the SHIPPER provided true and accurate information reflecting the actual description of the cargo and services to be provided.
- 2) Adjustments: the carrier reserves the right to verify a shipment's weight, dimensions, class and any accessorial services provided. When a carrier discovers these items are incorrectly described on the freight receipt, a freight inspector will document the differences and a "Billing Adjustment" will be issued. Should this occur, SHIPPER agrees to pay for all adjustments (if any) and adjustments will be automatically charged to SHIPPER's open account with BROKER. Billing adjustments will also incur a reasonable rebilling and reprocessing fee.
- 3) Bill of Lading: SHIPPER is required to use the bill of lading supplied and issued by BROKER. Failure to do so may result in delivery delays and extra charges due to loss of discounts and reprocessing fees.
- 4) Disputes: if rates are adjusted by the carrier, BROKER has ten (10) business days to dispute and appeal the adjustments. BROKER then can provide proof to reverse these adjustments.
- 5) Cancellation of Services: SHIPPER may cancel a shipment at any time. Within twenty-four (24) hours, a fee of up to 10% may be charged to compensate carrier.
- 6) Additional cargo insurance may be arranged and purchased by written request of SHIPPER and approval by BROKER.
- 7) LTL freight liability can range anywhere from ten (\$0.10) cents to twenty (\$20.00) dollars or more per pound, depending on NMFC class of commodity.

- 8) Detention: only the first thirty (30) minutes at the SHIPPER or receiver are free. Any additional hours will require a detention payment of \$50.00/hour.

9. **FOOD SAFETY LAWS.**

- A. **SHIPPER Written Instructions.** If a shipment is covered under any law or regulation governing the transportation of food, including the Food, Drug and Cosmetic Act (21 U.S.C. § 341, *et seq.*), Food Safety Modernization Act (21 U.S.C. § 2201, *et seq.*), the Sanitary Food Transportation Act (49 U.S.C. 5701, *et seq.*), and the FDA's Final Rule on the Sanitary Transportation of Food for Human and Animal Food (21 C.F.R. § 1.900 *et seq.*) (collectively, the "Food Safety Laws") which prohibit the sale or distribution of unsafe or "adulterated" food, SHIPPER must specify the applicable body or bodies of law, statutes and/or regulations on the face of the governing bill of lading for the shipment ("Covered Food Shipment"). At the time of booking, and prior to loading the goods, SHIPPER must further specify in the booking request and on the face of the governing bill of lading all instructions to be followed by the carriers to maintain the safety of the food, including, without limitation, all temperature control requirements and temperature control documentation requirements, including an operating temperature for the transportation and, when necessary, the pre-cooling phase, all sanitation requirements and sanitation documentation requirements for the Covered Food Shipment, including those for the carriers' vehicle and transportation equipment, any design specifications and cleaning procedures ("Written Instructions"). BROKER will assist SHIPPER in providing any Written Instructions to the carriers transporting SHIPPER's food cargo.
- B. **Loading.** If SHIPPER is loading food shipments into the motor vehicles transporting the cargo, then SHIPPER is responsible for ensuring that the vehicle or other transportation equipment being provided by the carriers meets the requirements specified in the Written Instructions and are in an appropriate sanitary condition for transporting the food shipments. SHIPPER must also ensure that mechanically refrigerated storage compartments or containers required in the Written Instructions have been adequately prepared to transport any temperature-controlled food being shipped and, if required by the Written Instructions, properly pre-cooled. Vehicles and other transportation equipment used to transport food shipments will be deemed acceptable to SHIPPER unless otherwise indicated on the governing bill of lading at pickup. SHIPPER's failure to fulfill the obligations under this Section 6.2 will be considered an act or default of the SHIPPER, and a defense to any cargo claim resulting from the condition of the trailer.
- C. **Notice.** If SHIPPER fails to provide Written Instructions, as provided in Section 6.1, above, neither BROKER nor the carrier will be liable for cargo loss or damage or if food shipments are deemed "adulterated", within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 342(a)(i)(4), 342(i).
- D. **Inspection.** If SHIPPER provides notice of a Covered Food Shipment and Written Instructions in accordance with Section 6.1, above, and the safety of any portion of a Covered Shipment is reasonably called into question, SHIPPER will be required to obtain (or ensure that the consignee obtains) an inspection by a Qualified Individual as defined in the Food Safety Laws prior to rejecting any portion of a Covered Food Shipment. BROKER will not be responsible for the cost of the inspection.
- E. **Mitigating Damages.** None of the provisions in this Agreement in any way limits SHIPPER's obligation to mitigate its damages, including by salvaging all portions of a cargo shipment for which there is a secondary market.
- F. **Records.** SHIPPER is responsible for the recordkeeping obligations of a "SHIPPER" under the Food Safety Laws for all food shipments governed by this Agreement.

10. **CONFIDENTIALITY/BACK-SOLICITATION.** SHIPPER acknowledges and agrees that the names, routes, and pricing of the carriers and other service providers utilized by BROKER are BROKER's confidential information and may be considered a trade secret. SHIPPER shall not directly contact or solicit rates, bids, or service from any underlying carrier or service provider where: a) the availability of carrier or service provider to perform such services first became known to SHIPPER because of BROKER's efforts, or b) where SHIPPER's traffic was first tendered to the underlying carrier or service provider by BROKER. If SHIPPER breaches this provision and "back-solicits" BROKER's underlying carriers or service providers, or tenders freight to such carriers or service providers in violation of this Section, BROKER will then be entitled to payment from SHIPPER of fifteen percent (15%) of the gross transportation charges for all freight moved by such carrier or service provider for a period of eighteen (18) months. Such cost will be deemed liquidated damages and not a penalty. Termination of the relationship between BROKER and SHIPPER will not affect the enforceability and applicability of this Section, which will survive termination for a period of two (2) years.

Disclosure to Third Parties. BROKER reserves the right to distribute to third parties certain information about SHIPPER, including, but not limited to, SHIPPER's name and business address(es), phone number(s), email address(es), as well as lane details to include rates and the shipper/consignee name(s) and address(es) related to movements of freight, regardless of mode. BROKER reserves the right to distribute to third parties aggregated information about SHIPPER's use of BROKER's services, unless otherwise expressly prohibited or agreed to in writing between BROKER and SHIPPER.

11. **INSURANCE.** BROKER agrees to procure and maintain the following insurance coverage amounts:

A. Comprehensive general liability insurance (Covering bodily injury and property damage)	\$ 1,000,000
B. Contingent Cargo Insurance	\$ 100,000
C. Contingent Auto Liability	\$ 1,000,000

BROKER shall submit to SHIPPER a certificate of insurance as evidence of such coverage which names SHIPPER as "Certificate Holder".

12. **SURETY BOND.** BROKER maintains a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration in the amount of \$100,000 and furnish SHIPPER with proof upon request.

13. **HAZARDOUS MATERIALS.** SHIPPER and BROKER shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800, §173, and §397 et seq. to the extent that any shipments constitute hazardous materials. SHIPPER is obligated to inform BROKER immediately if any such shipments constitute hazardous materials. SHIPPER shall defend, indemnify, and hold BROKER harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of SHIPPER's failure to comply with applicable hazardous materials laws and regulations.

14. **DEFAULT.** Both parties will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes in good faith. However, if either Party materially fails to perform its duties under this Agreement, the party claiming default may terminate this Agreement on ten (10) days written notice to the other Party. SHIPPER shall be responsible to pay BROKER for any services performed prior to the termination of this Agreement and for shipments not yet completed and/or not yet invoiced to SHIPPER. In the event BROKER retains the services of an attorney to collect any amounts due under this agreement, SHIPPER shall pay BROKER's reasonable attorney's fees.

15. **INDEMNIFICATION.** BROKER and SHIPPER (each an "Indemnitor") shall defend, indemnify, and hold the other Party, its officers, directors, employees, and agents (each, an "Indemnitee") harmless against any claims, actions or damages arising from this Agreement, including for personal injury, death, or damage to property (excluding cargo, which is governed exclusively under Section 7 above) (collectively "Claims") to the extent resulting from Indemnitor's (i) negligent performance of its obligations in this Agreement, (ii) breach of the terms and conditions herein, and (iii) violation of applicable laws. However, Indemnitor shall not offer settlement of any Claim without the agreement of Indemnitees, which agreement will not be unreasonably withheld. Indemnitor will have no indemnity obligation for any Claims to the extent caused by the negligence of any Indemnitee. The obligation to defend includes all costs of defense as they accrue. In the event any Claim is caused by the joint and concurrent negligence of the Parties, liability will be determined per principles of comparative negligence.

Indemnitee shall provide Indemnitor timely notice of any Claims under this Section 15, tender control of defense and settlement of the claim to Indemnitor; and cooperate with Indemnitor in the defense and settlement of the Claims. Indemnitee may participate in the defense of the Claim by engaging counsel at its sole expense. If the settlement of a Claim by Indemnitor may result in ongoing liability, prejudice to, or detrimentally impacts the Indemnitees in any way, then such settlement will require the prior written consent of Indemnitees.

Additionally, BROKER agrees to contractually require all carriers agree to indemnify, defend and hold SHIPPER and BROKER harmless from and against any and all Claims, directly or indirectly caused by: (i) any negligent act or omission by carrier, its agents or employees, (ii) any claims or actions by carrier, its agents or employees, (iii) the failure of carrier to comply with applicable laws or regulations, (iv) carrier's or its employees' performance under this Agreement, the agreement with BROKER, or any rate confirmation sheet, or (v) carrier's debts or obligations regarding wages, salaries, taxes or benefits of its employees. Failure of insurance coverage, for any reason, will not exonerate carrier from its indemnity obligations. The foregoing indemnity will not apply to any Claim caused by the negligence or willful misconduct of BROKER or SHIPPER.

16. **ASSIGNMENT/MODIFICATIONS OF AGREEMENT.** Neither Party may assign or transfer this Agreement, in whole or in part, without the prior written consent of the other Party. No amendment or modification of the terms of this Agreement will be binding unless in writing and signed by the Parties.

17. **SEVERABILITY/SURVIVABILITY.** If the operation of any portion of this Agreement results in a violation of law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision will be severable and that the remaining provisions of the Agreement will continue in full force and effect. The representations and obligations of the Parties will survive the termination of this Agreement for any reason.

18. **INDEPENDENT CONTRACTOR.** It is understood between BROKER and SHIPPER that BROKER is not an agent for the carrier or SHIPPER and will always be considered an independent contractor. SHIPPER does not exercise or retain any control or supervision over BROKER, its operations, employees, or carriers. Similarly, BROKER does not control or supervise carriers or their employees.

19. **WAIVER OF RIGHTS.** Failure of either Party to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein, will not be considered a waiver of any breach of any of the terms, conditions or provisions of this Agreement, and will not prevent the enforcement of such terms, conditions, or provisions in the future.

20. **NOTICES.** Unless the Parties notify each other in writing of a change of address, all notices required or permitted to be given under this Agreement must be in writing and addressed as follows:

MEGACORP LOGISTICS, LLC
Attn: Finance Department
Address: 1011 Ashes Drive
Wilmington, NC 28405
Phone: 910.332.0820
With a copy to: Legal Department
(legal@megacorplogistics.com)

(SHIPPER)
Attn: _____
Address: _____
Phone: _____
Fax: _____
With a copy to:

21. **FORCE MAJEURE.** Neither Party will be liable to the other for failure to perform any of its obligations under this Agreement during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disobedience, pandemic, endemic, the intervention of any government authority, or any other cause outside of a Party's reasonable control, provided that the Party so prevented uses its best efforts to perform under this Agreement and gives reasonable notice to the other Party of the existence of Force Majeure and the estimated duration.

22. **CHOICE OF LAW AND DISPUTE RESOLUTION.** To the extent not preempted by principles of federal transportation law, jurisdiction, and venue, this Agreement is governed by the laws of the State of North Carolina, without regard to its conflict of laws principles. The Parties submit to and consent to the personal and subject matter jurisdiction of the state and federal courts located in New Hanover County, North Carolina. Any litigation arising from or concerning this Agreement shall be filed and heard only in the state or federal courts located nearest to New Hanover County, North Carolina. Any arbitration proceedings arising from or concerning this Agreement shall be held in New Hanover County, North Carolina. The prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees as well those incurred in any action for injunctive relief.

A. Dispute Resolution. In the event of any claim, dispute or controversy between the Parties related to this Agreement ("Dispute"), the Parties to such Dispute shall make a reasonable effort to first resolve such Dispute in accordance with this Section.

- 1) The Parties shall first attempt in good faith to resolve any Dispute between the authorized representatives of such Parties. Any Party may give the other written notice of any Dispute ("Dispute Notice") not resolved during the ordinary course of business, which must include, in reasonable detail, the nature of the Dispute and the estimated Claims pertaining to such Dispute. Within ten (10) business days after delivery of such Dispute Notice, the Party receiving such Dispute Notice shall submit to the other Party a written response accepting all or partial responsibility for the claim or disputing any such Claim (the "Response").

- 2) The Dispute Notice and Response will include: (i) a statement of each Party's position regarding the Dispute and a summary of arguments in support thereof, and (ii) the authorized representatives on behalf of the Parties for the attempt to resolve the Dispute.
 - 3) Within thirty (30) days after delivery of the Response, the designated representatives shall meet at a mutually acceptable time and place, and thereafter, as often as reasonably necessary, to attempt to resolve the Dispute. All reasonable requests for information made by one Party to the other Party must be honored in a timely fashion.
 - 4) If the Dispute has not been resolved within sixty (60) days after delivery of the Response, or, if the Parties fail to meet within thirty (30) days following delivery of the Response, then either Party may initiate court proceedings in accordance with this Agreement.
 - 5) The Parties agree that Disputes will not be subject to this provision in the event (i) a Party makes a good faith determination that a temporary restraining order or other injunctive relief is the only appropriate and adequate remedy, (ii) the utilization of formal proceedings earlier than as provided herein is necessary to avoid the expiration of any applicable limitation periods or to preserve a superior position with respect to creditors or other parties, or (iii) in the event a Party is involved in a Claim with a third party.
- B. Arbitration. At BROKER's sole option, any Disputes arising from or concerning this Agreement may be arbitrated under the rules of Transportation Arbitration and Mediation, PLLC ("TAM"), the American Arbitration Association ("AAA") or Transportation ADR Council, Inc. ("ADR"). The decision of the arbitrator(s) will be final and binding, and the award of the arbitrator(s) may be entered in the court of competent jurisdiction nearest New Hanover County, North Carolina.
- C. Jury Trial Waiver. In the event the Parties are unable to resolve a Dispute and BROKER chooses not to opt for arbitration, such Dispute may be resolved through litigation in the court of competent jurisdiction nearest New Hanover County, North Carolina. Each Party acknowledges and agrees that any controversy that may arise under this Agreement is likely to involve complicated and difficult issues, and therefore IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT.

23. MISCELLANEOUS:

- A. **CONFIDENTIALITY**. BROKER shall not utilize SHIPPER's name or identity in any advertising or promotional communications without written confirmation of SHIPPER's consent and the Parties will not publish, use or disclose the contents or existence of this Agreement except as necessary to conduct their operations pursuant to this Agreement. BROKER will require its carriers and/or other BROKERS to comply with this confidentiality clause.
- B. **ENTIRE AGREEMENT**: This Agreement, including any Appendices, Exhibits, or Addenda, constitutes the entire agreement intended by the Parties and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter 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.
- C. **CREDIT AND BILLING INFORMATION**: SHIPPER must provide minimum billing information as required by BROKER.

[Signature page follows]

IN WITNESS WHEREOF, the Parties' authorized representatives have set their hand hereto and executed this Agreement as of the Effective Date.

SHIPPER

MEGACORP LOGISTICS, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPENDIX A
RATES

APPENDIX B
ACCESSORIALS