

Carrier Services Agreement

This Carrier Services Agreement (this "Agreement") is made and entered into as of _____, 20__ (the "Effective Date") by and between _____, a(n) _____ corporation, (the "Carrier") and US Perishables, a California corporation, ("USP"). Carrier and USP are sometimes individually referred to herein as a "Party" and together as the "Parties."

WHEREAS, Carrier desires to perform motor carrier transportation service for USP in accordance with the terms and subject to the conditions of this Agreement; and

WHEREAS, USP desires to hire Carrier to perform motor carrier transportation service for USP's customers in accordance with the terms and subject to the conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual agreements and provisions hereinafter set forth, the Parties hereby mutually agree as follows:

1. Definitions.

- a. **Accessorial Fees.** Charges for additional services provided by Carrier or at Carrier's direction outside of the standard shipping services (for example, see "Detention Fees" and "Lumper Fees" below).
- b. **Bill of Lading.** A legal document between the USP Shipper of a particular good and Carrier detailing the type, quantity and destination of the good being transported. This document must accompany the shipped goods and must be signed by an authorized representative from the Carrier and the USP Shipper. The Bill of Lading can serve as a Proof of Delivery when the goods are delivered to the predetermined destination and signed for by the consignee.
- c. **Detention Fees.** Charges levied by Carrier for delay in loading and/or unloading a shipment. Detention Fees are incurred when the delay is an hour or more for a LTL shipment and two or more hours for a TL shipment. To document Detention Fees for reimbursement by USP, Carrier must submit notice signed by consignee showing the times of arrival and departure of the Carrier's truck.
- d. **Load Tender or Rate Confirmation.** Either term applies to USP's offer of cargo for transport which provides Carrier with detailed shipment information and mutually agreed upon pricing (the tender) prior to scheduling pickup.
- e. **Lumper Fees.** Fees paid to load and/ unload the contents of trucks and trailers.
- f. **Proof of Delivery.** A receipt provided by consignee to the Carrier upon delivery of each shipment made hereunder. Such receipt will state the kind and quantity of product delivered to the consignee of such shipment at the destination specified by the Bill of Lading. Carrier shall require such receipt to be signed by the consignee.
- g. **Transportation Services.** Services performed by Carrier for USP and USP Shippers in accordance to Section 4 below.
- h. **USP Shipper.** Person or firm (usually the seller) who delivers goods for Carrier to transport to a consignee (usually to buyer) named in the Bill of Lading. Herein

USP Shipper is assumed to be a USP customer for whom USP is providing freight brokerage services.

2. Term. This Agreement shall remain in full force and effect beginning on the date first written above and continuing thereafter indefinitely. Either Party may terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to the other Party. Termination of this Agreement, however, shall not release either Party from any liability or obligation existing or accrued at or prior to the termination date, including non-solicitation as established in Section 7.j. of this Agreement. Also, see "Events of Default", Section 9, which may result in termination of this Agreement.

3. Scope of Services.

- a. **Motor Carrier.** Carrier warrants that it is a motor carrier under 49 U.S.C. 13102(12) duly registered with the Department of Transportation pursuant to 49 U.S.C. 13902 and 13905 and USDOT License MC# _____. Carrier warrants that its Motor Carrier Safety Rating is not "conditional" or "unsatisfactory." In addition and as required, Carrier is duly registered and licensed with all state and local jurisdictions to perform Transportation Services in which the Carrier operates. Carrier warrants it and all independent contractors under Carrier's direction and covered by this Agreement will provide lawful and responsible Transportation Services to USP and USP Shippers.
- b. **USP as Freight Broker.** USP is a Property Broker and is licensed by U.S. Department of Transportation with USDOT License MC# 718514. USP's role under this Agreement is limited to that of a freight or cargo broker and as such USP does not assume the role, function, responsibilities, and liabilities of a shipper or carrier. USP, in its sole discretion, will tender freight to Carrier from time to time for transportation by Carrier. Nothing in this Agreement shall preclude USP from arranging freight transportation with other carriers or directly for shippers.
- c. **Independent Contractor.** Carrier shall be an independent contractor of USP. As between the Parties, Carrier shall have the sole and exclusive control, direction, and responsibility for the costs, freight loss, damage, or injury and over the manner in which its employees and/or independent contractors perform the Transportation Services, including the equipment, vehicles, and personnel provided, pursuant to this Agreement. Carrier shall not be required to furnish USP with any specific number of vehicles or to haul any specific amount of freight.

4. Transportation Services.

- a. **Specification of Services.** Freight brokered by USP and tendered by the USP Shipper to Carrier shall be accompanied by a Bill of Lading that, together with the Load Tender, will specify the Transportation Services agreed upon between Carrier and USP for each freight shipment. The Bill of Lading and Load Tender may be supplemented with additional instructions such as temperature control requirements as communicated in writing between the Parties (collectively, the Bill of Lading, Load Tender, and such supplemental documents are referred to as

- the "Load Documents"). Documents for each USP shipment for which Carrier provides transportation shall name USP as "broker" and Carrier as "carrier." If there is a wrongly worded document, the Parties will treat it as if prepared according to the preceding sentence.
- b. **Acceptance.** Carrier's acceptance of the freight tendered and the corresponding Load Documents shall constitute acceptance of the terms and conditions set forth in the Load Documents. By accepting the freight, Carrier acknowledges that such freight is in good order and condition unless otherwise noted on the face of the Bill of Lading. Carrier shall notify USP immediately of any exception made on the Load Documents, manifest or other receipt.
 - c. **Providing Documentation.** Either Party, at its option, may supply any document required by or referenced in and consistent with this Agreement in either paper or electronic form (including, but not limited to, electronic image, facsimile, or photocopy), and any such version shall be sufficient for all purposes under this Agreement.

5. Carrier Compensation.

- a. **Rates and Fees.** USP will pay Carrier for its performance of the Transportation Services in accordance with the rates and fees set forth in the accepted Load Documents. Carrier shall take such steps as are required by applicable law to ensure such rates and fees are lawful.
- b. **Accessorial Fees.** Accessorial Fees and any other charges by Carrier not specified and included in the Load Documents or in any written addendum, email or subsequent notice shall be the sole obligation of Carrier. Furthermore, to qualify for reimbursement, Carrier must notify USP prior to or at the time such fees are incurred or levied.
- c. **Invoicing USP.** Carrier will invoice USP for all rates, Accessorial Fees and other charges upon completion of Carrier's performance of Transportation Services. As proof of performance, each invoice or statement will include the applicable Bill(s) of Lading, a copy of Proof(s) of Delivery, receipts for Accessorial Fees, and other documents as requested by USP. Carrier shall email legible copies of such documents to pod@usperishables.com or fax to (510) 686-5100 within forty-eight (48) hours. There will be a penalty of \$25 per day assessed for PODs not received within 48 hours, and \$50 per day after 7 days. USP should also receive the originals within 14 days. Carrier shall not bill or seek to collect transportation rates and fees from USP Shippers.
- d. **Payment.** Invoices submitted along with all required proof of performance documents will be due and payable within twenty-one (21) days of their receipt by USP. No invoices will be paid by USP until invoiced by Carrier and proof of performance documents are received by USP. All invoices with proof of performance documents not submitted to USP within sixty (60) days of the ship date specified on the Bill of Lading are waived.

6. Claims and Liability Standards.

- a. **Carrier's Liability.** Carrier shall assume all risk of loss, damage, delay and liability in the transportation of any goods for USP Shippers from the time of

Carrier's receipt of such goods from a USP Shipper until proper delivery has been made. Carrier is responsible for full actual loss. All claims will be filed and resolved in accordance with the provisions of 49 C.F.R. § 1005 and 49 U.S.C. § 14706 (the Carmack Amendment) or applicable state law.

- b. **Limits to Carrier's Liability.** Notwithstanding Section 6.a. above, Carrier shall not have any liability for any loss or damage to freight that USP, USP Shippers, consignor, beneficial owner or other party misdeclared or misdescribed in a material way, including the temperature at the time of pick up and temperature control requirements during transit.
 - c. **Carrier Cancellation Fee.** In the event Carrier cancels or fails to pick up a shipment as scheduled without providing two (2) business days prior notice, Carrier shall pay to USP a \$250 cancellation fee.
 - d. **USP's Liability.** USP shall not be liable to Carrier or any third parties for any losses, damages or costs, except those established hereunder and in the Load Documents.
 - e. **Returned Freight.** Carrier does not guarantee or assert the condition of return goods, or shipments otherwise reconsigned, with respect to condition or product temperature under any circumstances.
 - f. **Waiver of Carrier's Lien.** Carrier shall not withhold and Carrier shall instruct Carrier's independent contractors not to withhold any goods of USP Shipper on account of any dispute as to prices or any alleged failure of USP to pay charges incurred under this Agreement. Carrier is relying upon the general credit of USP and hereby waives and releases all liens which Carrier might otherwise have to any goods of USP Shippers in the possession or control of Carrier.
 - g. **Filing Claims.** All damages, loss, overcharge, duplicate payment, and over-collection claims will be filed and resolved in accordance with the provisions of 49 C.F.R. § 1008. All overcharge, duplicate payment, and over-collection claims not filed by USP within 270 days of the ship date specified on the Bill of Lading are waived.
 - h. **Undercharge Procedures.** All undercharge claims not filed by Carrier within 270 days of the ship date specified on the Bill of Lading are waived.
7. **Carrier Responsibilities.** In addition to Carrier responsibilities detailed above, Carrier's responsibilities shall include the following:
- a. **Warranty of Subcontract Compliance.** Carrier warrants that all independent contractors under its direction and covered by this Agreement are in compliance with all regulatory requirements that apply to their role, function, responsibilities, and liabilities in their performance of the Transportation Services and as detailed in this Section 7 and elsewhere in this Agreement. Carrier also warrants it has taken reasonable steps to assure itself of the accuracy of its warranties with respect to its independent contractors.
 - b. **Carrier Licensing.** Carrier, at its sole cost and expense, shall procure and maintain all licenses and permits required by local, state, or Federal authorities for the performance of Transportation Services and shall file and maintain appropriate tariffs required by any applicable jurisdiction. Carrier shall comply with all applicable local, state, or Federal laws, ordinances, codes, rules, and

regulations in performing the Transportation Services. A copy of Carrier's Interstate Commerce Commission Permit or successor Federal agency Permit and a copy of Canadian Provincial Licenses and Permits, where applicable, will be provided as evidence of Carrier's registration.

c. **California Air Resources Board (ARB) Compliance.**

- i. Carrier is required to dispatch only trucks and trailers in California that are equipped with Transport Refrigeration Units that comply with the ARB's Airborne Toxic Control Measure in-use performance standards; and,
- ii. Carrier's drivers are to be provided with USP's contact information to present to authorized enforcement personnel upon request:

USP's Contact Information is:

US Perishables

7700 Edgewater Dr.

Oakland, CA 94621

Contact Person: Sean MacKay, (510) 569-9584

d. **Insurance Coverages.**

- i. **Essential to This Agreement.** Carrier's warranty that it shall procure and maintain insurance is an essential part of this Agreement. Receipt by USP of insurance certificates for all Carrier insurance coverages must be prior to time of shipment.
- ii. **Required Notifications.** Each Carrier insurance policy shall be addressed to USP, naming USP as the Certificate holder, and will contain a clause requiring that USP be given not less than thirty (30) days written notice prior to the effective date of any cancellation, termination, renewal or material change in such policies. Furthermore, Carrier warrants to USP that Carrier has not done and will not do anything that would cause the insurance policy or policies carried by Carrier to be suspended, impaired, canceled, or otherwise adversely affected.
- iii. **No Perishable Food Restrictions.** Carrier shall obtain a Certificate of Insurance as evidence that the cargo insurance including mechanical breakdown protection coverage on temperature controlled shipments, shall be in the form required by the applicable Code of Federal Regulations and shall have no exclusions for seafood or frozen foods or any other exclusions or restrictions that would not be accepted by the Surface Transportation Board (the "STB") for filing under the statutory requirements of the aforementioned section but, in all respects, be identical to the cargo insurance filed in accordance with that section.
- iv. **Carrier Insurance Coverages.** During the term of this Agreement and at any other time when Carrier performs Transportation Services for USP, Carrier's insurance certificates shall specify USP as a certificate holder. Carrier shall maintain a policy or policies of insurance with coverage as follows:

1. Freight liability insurance with minimum limits of \$100,000 per occurrence, which policy or policies shall name USP, its officers, directors and employees as certificate holder;
 2. Automobile liability insurance covering its owned, hired and non-owned automobiles with minimum limits of \$1,000,000 per occurrence which policy or policies shall name USP, its officers, directors and employees as certificate holders,
 3. Comprehensive general liability insurance, including contractual liability coverage, with minimum limits of \$1,000,000 per occurrence; and
 4. Workers Compensation and Employer's Liability insurance in such amounts as may be required by applicable statutes.
 5. Carrier shall meet the insurance requirements of the project site it services, if such insurance requirements exceed the minimum allowed as specified above.
 6. In the event the STB increases the minimum amount of cargo insurance for the regulated common carriers to an amount in excess of one hundred thousand (\$100,000), Carrier agrees to automatically increase the cargo insurance to that amount.
- e. **Drivers and Personnel.** Carrier warrants that its drivers, personnel, and independent contractors shall be properly licensed and qualified for the operation of Carrier's equipment and vehicles and they shall lawfully perform the Transportation Services.
- f. **Vehicles and Equipment.** Carrier shall provide serviceable equipment and vehicles maintained in good and legal operating condition. Carrier shall, at all times, be responsible for and pay all costs and expenses necessary or incidental to the maintenance and operation of the equipment and vehicles, including the cost of fuel, supplies, licenses, permits and tolls.
- g. **USP Shipper's Transportation Needs.** Carrier will meet with representatives of USP at USP's request to discuss the transportation requirements of USP and USP Shippers. Carrier and USP acknowledge and agree that the Transportation Services are designed to meet the distinct needs of USP Shippers. Carrier will comply with all service expectations established by USP Shippers for Transportation Services provided to them.
- h. **Freight Handling.** Carrier shall protect and preserve USP Shippers' freight and shall transport all freight with prompt, responsible, and reasonable dispatch in accordance with the scheduled delivery requirements of USP. Carrier will train its drivers in the proper handling of USP Shippers' freight (including hazardous materials when shipped in accordance with the provisions of 49 C.F. R. §70, et seq.) from the point of origin to the point of delivery, including the loading and unloading of the vehicles, if required.
- i. **Status and Reports.** Upon request of USP, Carrier will provide USP with Electronic Data Interchange, Internet, fax, or voice notification upon arrival for scheduled pick-up, at the time pick-up is effectuated, of in-transit shipment status, and at the time delivery is completed. Information relayed to USP by Carrier shall include, but not be limited to Proof of Delivery, billing information,

Bill of Lading execution, exceptions, special service requirements and receipts, and claims information.

- j. **Non-Solicitation of Customers.** Carrier agrees to not solicit business from any USP Shipper, consignor, consignee or customers (collectively "USP Customers") for which Carrier is performing Transportation Services pursuant to this Agreement. If Carrier breaches this provision, Carrier will pay USP twenty percent (20%) of the total revenue received by Carrier on the movement of the USP Customer's freight for a period of twelve (12) months after such freight first begins to be transported by Carrier. Carrier shall provide USP with all documentation requested by USP to verify such transportation revenue. USP Customers with whom Carrier has agreements and business with prior to the signing of this Agreement shall not be subject to this restriction or penalty.

8. Carrier Indemnification.

- a. **Performance and Responsibilities.** Carrier shall indemnify, defend and hold harmless USP, its officers, directors, employees and agents from and against any and all claims, liabilities, losses, damages, fines, judgments, penalties, payments, costs, and expenses (including reasonable attorneys' fees and costs) resulting from or arising out of Carrier's performance of the Transportation Services and/or dereliction of Carrier's responsibilities under this Agreement, including any loss of, damage to or destruction of property, freight, and vehicles, or from the death of or injury to any person, unless arising from USP's grossly negligent or wrongful act. The obligations of Carrier under this Section shall survive termination or expiration of this Agreement.
- b. **Enforcement Costs.** Except for any applicable Federal excise tax levied upon the transportation of freight for USP, Carrier shall pay any and all taxes, together with penalties, fines or interest thereon, imposed or levied by any Federal, state or local taxing authority having jurisdiction over the operation, use, maintenance or ownership of the vehicles and the performance of its employees and independent contractors. Carrier shall indemnify and hold harmless USP, its officers, directors, employees and agents from any and all such taxes, penalties, fines or interest.

9. Events of Default.

- a. If any one or more of the following events of default (herein "Events of Default") shall happen, then this Agreement may, at the option of the Party not in default, be immediately terminated:
 - i. **Cease and Desist Order.** If either Party shall be required to cease and desist from the performance of Transportation Services or other obligations set forth in this Agreement by reason of any provision of law, order of any court, commission or other public authority;
 - ii. **Failure to Cure Breach.** If either Party shall default in the performance of any of its obligations contained in this Agreement, which default shall continue for a period of five (5) business days after written notice of default is given by the non-defaulting Party;

- iii. **Bankruptcy.** If either Party shall file a voluntary petition in bankruptcy, or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking reorganization, composition, readjustments liquidation or similar relief for itself under any present or future statutes, laws or regulations, or shall seek or consent or acquiesce in the appointment of any trustee, or shall make any general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due;
 - iv. **Reorganization.** If a petition shall be filed against either Party seeking any reorganization, composition, re- adjustment, liquidation or similar relief under any present or future statute, law or regulation, and the same shall remain undismitted or unstayed for an aggregate of sixty (60) days (whether or not consecutive), or if any trustee, receiver or liquidator shall remain unvacated or unstayed for an aggregate of sixty (60) days (whether or not consecutive); or
 - v. **Untrue Statements.** If any representation or warranty made by either Party herein or made in any statement or certificate furnished or required here-under, or in connection with this Agreement, proves untrue in any material respect as of the date of the issuance or making thereof.
 - vi. **DOT Audit.** In the event Carrier is audited by the Department of Transportation, Carrier shall notify USP and, if there is a change in the safety rating from Satisfactory, USP shall have the option to cancel the contract.
 - vii. **Change in Ownership.** USP shall have the right to immediately terminate this Agreement upon any change (i) in the ownership or voting control of fifty one percent (51%) or more of the capital stock or assets of Carrier, if a corporation, or (ii) in the ownership of Carrier or its assets, if not a corporation. Carrier shall notify USP in writing at least thirty (30) days before any such change in control of the capital stock, business or assets of Carrier.
- b. **Right to Terminate.** Upon the occurrence of an Event of Default, the non-defaulting Party may terminate this Agreement and seek further remedies as may be available to it at law or in equity.

10. Miscellaneous.

- a. **Incorporation.** This Agreement incorporates all documents included as appendices to this Agreement and any documents, including the Load Documents referenced by this Agreement and used by the Parties at a future time.
- b. **Prevailing Document.** In the event of any conflict between any term or provision of this Agreement and any term or provision in any attached documents or any outside documents, including the Load Documents and related documents, the term or provision in this Agreement shall govern to the extent of the conflict.
- c. **Entire Agreement.** This Agreement, together with any attached documents, constitutes the entire agreement between USP and Carrier and supersedes all

prior written or oral agreements, understandings, representations, negotiations, and correspondence between them.

- d. **Amendments.** This Agreement may only be supplemented, amended or modified by a written instrument duly executed by authorized representatives of both Parties.
- a. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.
- b. **Force Majeure.** If, by any reason of Force Majeure, either Party is rendered unable, in whole or in part, to perform any of its obligations herein, such obligations shall be suspended insofar as it is affected by Force Majeure. As used herein, Force Majeure shall mean acts of God, public enemy, war, floods, storms or other acts of the elements, accidental fires, strikes, lockouts or other labor acts or regulations, or any other circumstances or conditions beyond the reasonable control of said Party and without the fault or neglect of such Party.
- c. **Further Assurances.** Each Party agrees that it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party during the term of this Agreement.
- d. **Notices.** All notices, requests, consents, approvals and other communications required in this Agreement shall be in writing and shall be deemed to have been duly given if hand-delivered, sent by facsimile, sent by overnight service or sent by United States Certified or Registered mail, return receipt requested, to the following addresses:

If to USP:
US Perishables®
P.O. BOX 4681
Hayward, CA 94540
Attention: David Evans

If to Carrier:

Attention: _____

Notices shall be effective (i) if sent by overnight service, the day after tender to the overnight service for delivery; (ii) if sent by United States mail, upon receipt or three days following deposit in the mail, whichever is first to occur, (iii) if sent by facsimile, the day following dispatch of the facsimile; or (iv) hand-delivered, upon receipt.

- e. **Waiver.** No consent or waiver, express or implied, by either Party to or of any breach of default by the other Party in the performance of any of its obligations shall be deemed or construed to be a consent or waiver to or of any other breach or default by such Party. Failure on the part of either Party to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such Party.
- f. **Assignment.** This Agreement shall not be assigned, delegated or transferred in whole or in part by either Party, nor shall either Party assign any monies due or to become due to it pursuant to this Agreement without the prior written consent of the other Party; except that USP may assign its rights hereunder to a wholly-

owned subsidiary of USP without the Carrier's consent, provided that USP shall remain primarily liable for the performance of this Agreement notwithstanding such assignment.

- g. **Successors.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective heirs, administrators, successors, assigns and legal representatives.
- h. **Severability.** If any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but it shall be construed as if such invalid, illegal or unenforceable provision had never been contained in it.
- e. **Disputes.** Any dispute arising from this Agreement which cannot be resolved by the Parties shall be submitted to mediation, by written notice from either Party to the other. In the mediation process, the Parties will in good faith attempt to resolve the dispute voluntarily with the aid of an impartial mediator, who will encourage and attempt to facilitate negotiations. The mediator will be selected by agreement of the parties, but if they cannot agree on a mediator one will be appointed by JAMS/ENDDISPUTE in San Francisco, California. However, any mediator so appointed must be acceptable to both Parties. The mediation will be conducted as specified by the mediator and agreed upon by the Parties, will be treated as a settlement negotiation and will therefore be confidential. No mediator may testify for either Party in any later proceeding relating to the dispute, and no recording or transcript will be made of any mediation proceeding. Each Party will bear its own costs of mediation, and the mediator's fees and expenses will be shared equally by the Parties. If mediation does not resolve the dispute, any subsequent civil action filed by either Party must be filed in either the California Superior or Municipal Court in Oakland, California, or (if jurisdictional requirements are met) in the United States District Court for the Northern District of California, unless the Parties agree to a different forum. In the event of litigation of a dispute, the prevailing Party shall recover its reasonable costs, expenses and attorney fees from the other Party.
- i. **Governing Law.** This Agreement is entered into in California and shall be governed by and construed according to the laws of California.
- j. **Urgency.** Time is of the essence of all purposes in this Agreement.
- k. **Validity of Agreement.** This Agreement shall not be valid nor binding upon USP unless it shall have been executed by an officer of USP.

IN WITNESS THEREOF, the Parties have made and executed this Agreement as of the day and year first above written.

US Perishables

By: _____

Title: _____

Date: _____

Carrier: _____

By: _____

Title: _____

Date: _____