

CUSTOMER SERVICE AGREEMENT

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

WHEREAS, USP desires to perform transportation brokerage services for Customer in accordance with the terms and subject to the conditions of this Agreement; and

WHEREAS, Customer desires to hire USP to perform transportation brokerage services 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 provision hereinafter set forth, the Parties hereby mutually agree as follows:

1. Definitions.

- a. **Accessorial Fees.** Charges for additional services provided by Motor Carrier or at Motor Carrier's direction outside of the standard shipping services (for example, see "Lumper Fees" below).
- b. **Bill of Lading.** A legal document between Customer and Motor Carrier detailing the type, quantity and destination of the goods being transported. This document must accompany the shipped goods and must be signed by an authorized representative from the Customer and the Motor Carrier. The Bill of Lading can serve as Proof of Delivery when the goods are delivered to the predetermined destination and signed for by the consignee.
- c. **Load Tender or Rate Confirmation.** Either term applies to USP's offer of cargo for transport which provides Motor Carrier with detailed shipment information and mutually agreed upon pricing (the tender) prior to scheduling pickup.
- d. **Lumper Fees.** Fees paid to load and/ unload the contents of trucks and trailer.
- e. **Motor Carrier.** Motor Carrier is a duly registered and licensed independent contractor hired by USP, as a freight broker. The Motor Carrier performs the Transportation services pursuant to this Agreement.
- f. **Proof of Delivery.** A receipt provided by consignee to the Motor 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. Motor Carrier shall require such receipt to be signed by the consignee and shall forward the signed proof of Delivery to USP.
- g. **Transportation Services.** Services brokered by USP and performed by Motor Carrier at Customer's direction in accordance to Section 4 below.
- h. **Customer.** Person or firm (usually the seller) who delivers goods to Motor Carrier to transport to a consignee (usually to buyer) named in the Bill of Lading. Herein Customer is assumed to be a USP customer for whom USP is providing freight brokerage services.

2. Term.

- a. **Term and Coverage.** This Agreement shall remain in full force and effect at beginning on the date first written above and continuing thereafter indefinitely, unless otherwise agreed in writing. For the sake of efficiency, this Agreement will cover any services made during the existence of this Agreement, including historical or repetitive services regardless whether the service were established in a signed writing. In such cases, any documents proving the service, including Bill of Ladings, Load Tenders and Load Documents, are incorporated by this agreement.
- b. **Termination with at least 48 Hour Notice.** Nevertheless, either Party may terminate this Agreement, with or without cause, by providing written notice to the other Party at least forty-eight (48) hours prior to the scheduled pickup of a Customer's shipment. 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. In addition, USP may terminate this Agreement and refuse to ship any outstanding orders if Customer's invoices are not paid in a timely manner. Also, see "Events of Default", Section 9, which may result in termination of this Agreement.
- c. **Termination with Less than 48 Hour Notice.** If Customer terminates this Agreement with less than forty-eight (48) hours prior to the scheduled pickup of a Customer's shipment, Customer will be responsible for costs incurred or services provided to Customer by USP and/or any Motor Carrier (referred to as "Transportation Termination Fees") including the following:
 - i. **Less than Truckload (LTL) Shipments.** LTL shipments are those where Customer reserves a portion of space on a truck/trailer for transportation of Customer's freight. The remainder of the truck is filled with the freight of other shippers. If Customer cancels or reduces an order by reserved spots on a LTL shipment within 48 hours, Customer will be liable for the full value of the portion of the space reserved for Customer on the truck/trailer, as if Customer's freight had been shipped. Value will be determined by the specific agreement for shipment, whether in writing or made orally, unless agreement is based on historical pricing, in which case the value will be the historical price.
 - ii. **Full Truckload (FTL) Shipments.** FTL shipments are those where an entire truck/trailer is reserved for transportation of Customer's freight. If Customer cancels a FTL shipment with less than 48 hour notice, Customer will be liable for a truck-order-not-used (TONU) fee of \$300. If Customer reduces an order within 48 hrs originally reserved as FTL, Customer will be liable for the full value of the portion of the space reserved for Customer on the truck/trailer, as if Customer's freight had been shipped.

3. Scope of Services.

- a. **Customer.** Customer, in its sole discretion, will broker freight to USP from time to time for transportation by Motor Carrier(s). Nothing in this Agreement shall preclude Customer from arranging freight transportation with other brokers and/or carriers.
- 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 will not transport Customer's goods, and it will never acquire possession of or responsibility for such good.
- c. **Independent Contractors.** USP shall be an independent contractor of Customer and Motor Carrier shall be an independent contractor of USP. USP and/or Motor Carrier shall not be required to furnish Customer with any specific number of vehicles or to haul any specific amount of freight.

4. Transportation Services.

- a. **Specification of Services.** Customer will provide USP with accurate information related to the requested Transportation Services, including the type of goods, any transportation requirements, such as temperature, abnormal freight dimensions and non-standard pallets, and dates, time and place of pickup and delivery. Customer's freight that is brokered to USP shall be accompanied by a Bill of Lading that, together with the Load Tender, will specify the Transportation Services agreed upon for each freight shipment. The Bill of Lading and Load Tender may be supplemented with additional instructions such as temperature control requirements as communicated between Customer, motor Carrier, and USP (collectively, the Bill of Lading, Load Tender, and such supplemental documents are referred to as the "Load Documents").
- b. **Acceptance.** Customer's tendering of the freight and Motor Carrier's acceptance of it along with the corresponding Load Documents shall constitute acceptance of the terms and conditions set forth in the Load Documents. Tendering and accepting the freight evidences that such freight is in good order, count and condition unless otherwise noted on the face of the Bill of Lading by Motor Carrier and/or Customer. Customer shall notify USP immediately of any exception made on the load Documents, manifest or other receipt.
- c. **Roles of the Participants.** Documents for each Customer shipment for which USP provides brokerage services and Motor Carrier provides Transportation Services shall name USP as "broker", Motor Carrier as "carrier", and Customer as "shipper". If there is a wrongly worded document, the parties will treat it as if prepared according to the preceding sentence.
- d. **Providing Documentation.** Either Customer, Motor Carrier, or USP 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 such versions shall be sufficient for all purposes under this Agreement.

5. USP's Compensation.

- a. **Rates and Added Fees.** Customer will pay USP for the Transportation Services in accordance with the rates and fees set forth in the Load Documents and all additional charges including but not limited to:
 - i. **Transportation Termination Fees** (see Section 2.c. above).
 - ii. **Late Payment Fees** (see Section 5.e. below).
 - iii. **Accessorial Fees** such as Lumper Fees, gate fees, dock fees, special pallet charges, and other shipment related fees.
 - iv. **Detention Charges** that occur if Customer's shippers /agents/ consignees change or delay the agreed-to pick up or delivery dates and/or appointments and over two (2) hours for FTL shipments. USP's Detention Charges are \$75 per hour at increments of 15 minutes.
 - v. **Abnormal Freight Costs** assessed for any extra expenses, including if shipment is not on standard pallets with normal loading and unloading. Customer must notify USP of added expenses or abnormal freight when placing its order.
 - vi. **"Added Fees"** are the additional charges listed above (collectively referred to as "Added Fees"). Added Fees are established in the Fee Schedule (attached to this Agreement as Appendix A).
- b. **Invoicing Customer.** USP will invoice Customer upon completion of the transportation Services. All fees in the Load Documents and Added Fees will be itemized on Customer's invoice for each shipment. Invoices will include the applicable Bill(s) of Lading, a copy of Proof(s) of Delivery, receipts for Accessorial Fees, and other documents.
- c. **Payment of Invoices.** USP consistently pays Motor Carriers within 15 days of receiving their invoice. Customer agrees to pay USP in full, without deductions, within fifteen (15) days of receiving an invoice from USP for Transportation Services rendered.
- d. **Notice of Dispute.** If Customer does not agree with the amount charged in an invoice, Customer must notify USP within fifteen (15) days indicating Customer's dispute, so that a timely resolution may be reached.
- e. **Late Payment.** After 15 days of non-payment of an invoice, USP will charge a past due fee of 1.5% for each 30-day period the bill remains unpaid. For any invoices outstanding over 30 days, USP reserves the right to increase the added Fees 110% of the amount(s) originally billed. The fees in this Section 5.e. are referred to as "Late Payment Fees."

6. Claims and Liability Standards.

- a. **Customer's Liability.** Customer assumes all liability that results if Customer, its agent, consignor, or beneficial owner misdeclared or misdescribed to USP the goods or the required means for transportation, including temperature control requirements during transit, destination, and/or time of loading, or mispackaged or otherwise caused the damage to the goods.
- b. **USP's Liability.** USP is a broker. USP will only negotiate and arrange transportation of Customer's goods. USP does not take title to or assume responsibility for Customer's goods, and USP does not transport Customer's goods. USP does not guarantee Customer's goods will be delivered in satisfactory condition. As a broker, USP shall not be liable to Customer for any damages, including consequential damages and lost profits, arising out of the services of this Agreement, even if USP is advised of the possibility of such damages.
- c. **Motor Carrier Assurances.** USP will broker Customer's good to Motor Carrier(s) for transport. All of USP's Motor Carriers are insured as required by law. In the event Customer's goods are damaged or not delivered, Customer may choose to hold the Motor Carrier(s) responsible for its loss, not USP.
- d. **Returned Freight.** USP and Motor Carrier do not guarantee or assert the condition of returned goods, or shipments otherwise reconsigned, with respect to condition or product temperature under any circumstances.
- e. **Claims Assistance.** In the event Customer has a claim against Motor Carrier, USP will assist Customer in collecting information for its claim, including by providing Motor Carrier contact information and shipment documentation. This administrative service only applies to claims in excess of \$500 where Customer requests USP's assistance. The service does not involve USP indemnifying or otherwise supporting or endorsing Customer's claim. If Customer needs additional information or wishes to use USP's claims check sheet, please contact USP at accounting@usperishables.com or dial 866-294-1189.

7. Customer Indemnification.

- a. **Performance and Responsibilities.** Customer 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 attorney's fees and costs) resulting from or arising out of or relating to (i) its shipment, (ii) the negligence or willful misconduct of it or its employees, agents or contractors, (iii) the breach of any agreement between Customer and a third party, or (iv) Customer under this section shall survive termination or expiration of this Agreement.

8. USP Warranties.

- a. USP represents that it will perform its services in a professional manner that is consistent with industry standards. USP provides no warranties, express or implied, other than those expressly set forth in this Agreement. USP does not warrant that Customer's shipment will be delivered in a timely or satisfactory manner. USP does not warrant that Customer's goods will be delivered in any particular condition.

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) 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 or acquiesce in the appointment of any trustee, 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 undismissed 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 hereunder, or in connection with this Agreement, proves untrue in any material respect as of the date of the issuance or making thereof.
 - vi. **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 Customer, if a corporation, or (ii) in the ownership of Customer or its assets, if not a corporation. Customer shall notify USP in writing at least thirty (30) days before any such change in control of the capital stock, business or assets of Customer.
- 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 Customer 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.
- e. **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.
- f. **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 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.
- g. **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.
- h. **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:

<u>If to USP:</u> US Perishables® P.O. BOX 4681 Hayward, CA 94540 Attention: David Evans	<u>If to Customer:</u> _____ _____ _____ Attention: _____
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Notices Shall be effective (i) if sent by overnight services, 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.

- i. **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 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.

- j. 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 Customer's consent, provided that USP shall remain primarily liable for the performance of this Agreement notwithstanding such assignment.
- k. 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.
- l. Disputes.** Any disputes 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 related 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.
- m. Governing Law.** This Agreement is entered into in California and shall be governed by and construed according to the laws of California.
- n. Urgency.** Time is of the essence of all purposes in this Agreement.
- o. 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

Customer: _____

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____