



AGREEMENT FOR MOTOR CARRIER SERVICES

This Agreement for Motor Carrier Services ("Agreement") is dated _____ 20__ and is between **Johanson Transportation Service**, a corporation with its principal place of business at 5583 E. Olive Avenue, P.O. Box 55003, Fresno, CA 93747-5003, ("Johanson"), and _____ a company with its principal place of business at _____ ("Carrier"). The foregoing named parties are sometimes subsequently referred to herein collectively as "the Parties" and individually as "the Party."

Carrier is an interstate motor carrier of property, registered with the Federal Motor Carrier Safety Administration ("FMCSA") in Docket No. MC-_____, an intrastate motor carrier registered, if required, with the applicable State in the U.S. where Carrier operates, and/or a motor carrier for transportation of property in Canada, licensed or registered with each applicable Canadian provincial transport board or ministry where Carrier operates and is engaged in the business of transporting property by motor vehicle in interstate, intrastate, and foreign commerce; and

Johanson is duly registered as a broker of property with the FMCSA in Docket No. MC-159429 and arranges transportation of property by motor carriers for its customers;

Johanson desires to engage the services of Carrier to transport property for or on behalf of its customers ("Services") and Carrier desires to provide Services to Johanson's customers; and

The parties agree as follows:

TERMS AND CONDITIONS

- 1. **Term and Termination.** This initial term of this Agreement is for a period of one (1) year, beginning on the date first shown above, and will automatically renew at the end of the initial and subsequent terms for additional one (1) year periods until terminated. Either Party may terminate this Agreement at any time, with or without cause, upon thirty (30) days' prior written notice to the other Party.
- 2. **Shipments to be tendered by Johanson.** During the term of this Agreement, Johanson agrees to tender shipments to Carrier on a non-exclusive basis and Carrier agrees to transport such shipments in accordance with the terms and conditions stated in this Agreement. This Agreement does not require Johanson or its customer(s) to tender any volume of cargo to Carrier. Each shipment tendered by Johanson and accepted for transportation by Carrier shall be confirmed via a "Load Confirmation."
- 3. **Subcontractors.** Carrier will not re-broker, co-broker, subcontract, assign, interline, or transfer the transportation of shipments hereunder to any other persons or entity conducting business under a different operating authority. Carrier shall remain fully liable to Johanson under the terms of this Agreement for any work or service performed by any of its agents or subcontractors in connection with a shipment tendered hereunder, whether the agent or subcontractor is known or unknown to Johanson. If carrier breaches this provision, Johanson shall have the right of paying the monies it owes Carrier directly to the delivering carrier, in lieu of payment to the Carrier. Carrier shall indemnify, defend, and hold Johanson and its customer harmless from and against any claim of any kind made by or based on any action of any such agent or subcontractor.

Date _____ Carrier Initial _____



4. **Determination of Carrier's Compensation.** Carrier shall seek payment for services rendered hereunder solely and exclusively from Johanson, and shall not, under any circumstances, present an invoice, bill, demand, or other claim for payment to Johanson's customers or any consignor or consignee of a shipment tendered hereunder. Johanson shall compensate Carrier as set forth below:

Either:

- A. In accordance with rates and charges set forth in Appendix A, attached hereto and made a part hereof if applicable, which rates and charges are mutually agreed upon and apply to all shipments tendered under this Agreement.

Or:

- B. In accordance with rates orally agreed upon for a specific shipment tendered hereunder by Johanson. Johanson shall subsequently confirm this oral agreement by issuing a confirmation to Carrier in written or electronic format ("Rate Confirmation"), setting forth the agreed upon rates and charges. Unless Carrier objects to the contents of the Confirmation prior to shipment pick-up, Carrier shall be deemed to have assented to the Rate Confirmation, which shall be binding. Each Rate Confirmation shall be incorporated as an addendum to, and considered to be a part of this Agreement, and the Parties agree to retain all such addenda for at least two (2) years subsequent to the expiration of this Agreement or longer to the extent required by law.
- C. Carrier agrees that none of its tariffs, circulars, pricing authorities, and/or similar documents shall apply to the Services rendered hereunder.

5. **Payment of Compensation**

- A. Except as provided in 5B, below, Johanson shall pay compensation to Carrier, as set forth in Paragraph 5, hereof, within twenty-five (25) days of its receipt of Carrier's undisputed invoice. Each invoice submitted by Carrier shall be accompanied by the bill of lading or delivery receipt for the shipment covered by the invoice, showing delivery without loss, damage, or delay. Carrier (i) waives and relinquishes any and all rights to claim, demand, or seek payment from any person other than Johanson for any shipment tendered hereunder; (ii) agrees not to contact Johanson's customers, consignors, consignees or any party other than Johanson concerning payment for Services; and, (iii) agrees to indemnify, defend, and hold Johanson, its customers, consignors, and consignees harmless from any claim or demand made by any subcontractor or other party for payment for transportation services related to a shipment tendered hereunder.
- B. Johanson may exercise its right to set off or recoup any monies owed to Johanson by Carrier. Johanson may withhold compensation owed to Carrier (i) on any occasion when a shipment tendered hereunder is lost, damaged, or delayed in transit; (ii) to satisfy any unpaid debt owed by Carrier to Johanson; or, (iii) to satisfy any un-reimbursed advance made to Carrier, or on its behalf. In such case, Johanson shall provide written notice to Carrier indicating the amount withheld and the reason(s) therefore. Withholding of compensation shall not allow, permit, or entitle Carrier to seek payment from Johanson's customers, consignors, consignees, or any other third party.

Date _____ Carrier Initial _____

- C. Any claim for overcharge or undercharge shall be presented within thirty (30) days of its discovery, provided that neither Party may assert such a claim more than six (6) months after the delivery date of the shipment giving rise to the claim. A Party shall support its claim with documentation identifying the amount of the overcharge or the undercharge, the delivery date, the goods, the consignor, and the consignee. The Parties shall pay, deny, or make a firm compromise offer within forty-five (45) days of receiving a claim. Any civil action to recover overcharges or undercharges shall be instituted within eighteen (18) months of the date of delivery of the shipment giving rise to the claim.

- 6. Carrier's Operating Authority.** Carrier represents and warrants that it is legally qualified to provide, as a motor carrier, the Services specified herein and agrees to comply with all applicable federal, state, local, and provincial statutes, ordinances, rules, and regulations regarding Services. At all times, Carrier shall have and maintain such FMCSA authority and any other registrations, licenses, or authorities issued by state, provincial, or local governments that are applicable to, or necessary for its operations hereunder. If Carrier is performing drayage services, it is in good standing with the Intermodal Association of North America (IANA) and the Uniform Intermodal Interchange Agreement (UIIA) and performs drayage services for intermodal shipments. To the extent that Carrier performs services within, or to or from Canada or Mexico, under this Agreement, it shall obtain and hold any necessary operating authorities, permits, licenses and insurance under applicable laws, regulations, or rules, including, but not limited to, Articles 8 and 50 of the Federal Road, Bridges and Auto Transportation Law, and Articles 6 and 9 of the Federal Auto Transportation and Ancillary Services Rules, with respect to Carriers operating within Mexico. Carrier shall notify Johanson immediately of any suspension, termination, or revocation of any operating authority, in which event Johanson shall have the right to terminate this Agreement immediately upon written notice to Carrier.

7. Drivers, Equipment, and Safety.

- A. Carrier shall ensure that its drivers are properly trained, licensed, qualified, and competent to operate the motor vehicles used to transport shipments tendered by Johanson, and to provide related services under this Agreement. Specifically, for any transport involving a vehicle that requires a Commercial Drivers' License ("CDL"), it is Carrier's sole responsibility to ensure that each driver is in possession of a valid CDL or equivalent license, not disqualified from driving a commercial motor vehicle under 49 C.F.R. § 383, and otherwise meets all of the physical, training and other qualifications for commercial motor vehicle drivers set forth in the FMCSA regulations or as may be applicable in the jurisdiction of operation, including, but not limited to, conducting queries of the FMCSA Drug and Alcohol Clearinghouse on at least an annual basis for each current CDL driver and as part of the pre-employment screening process for each driver applicant and reporting driver-specific drug and alcohol violations under 49 C.F.R. § 382. Carrier and its drivers shall comply with rules, policies, and procedures in effect at customer or consignee facilities to the maximum extent practicable. By acceptance of a shipment hereunder, Carrier warrants that it will assign to perform the Services a driver who has sufficient time remaining under the Hours of Service Rules to complete the duties assigned by the Carrier.
- B. At its own expense, Carrier shall provide and maintain all equipment required for the services requested by Johanson and shall only use and provide equipment that is (i) clean; (ii) in good operating condition and repair; (iii) in compliance with all federal and/or state laws, regulations, and rules; (iv) suitable and properly configured to safely load, transport, and unload each shipment tendered hereunder; and (v) equipped with an Electronic Logging Device ("ELD") from a provider listed on the FMCSA's ELD Registry and will notify

Date _____ Carrier Initial _____

Johanson if the ELD malfunctions during provision of Services. Carrier shall 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., the Transportation of Dangerous Goods Act, or other similarly applicable laws or regulations.

- 8. Food Safety.** Carrier shall comply with the laws and regulations governing the safe and secure transportation of shipments consisting of food that will ultimately be consumed by humans or animals ("Food Shipments"), including those required by local, provincial, state and federal laws, regulations, ordinances and rules including, but not limited to, the Food Safety Modernization Act (21 U.S.C. § 2201, et. seq.), Federal Food, Drug, and Cosmetic Act ("FFDCA") and all applicable implementing regulations, including the U.S. Food and Drug Administration's ("FDA") rules and regulations addressing Sanitary Transportation of Human and Animal Food (21 C.F.R. Part 1, Subpart O (§ 1.900 et seq.)), as in effect from time to time (collectively, the "Food Safety Laws"). Carrier further agrees as follows:
- A. Carrier shall ensure that all vehicles and transportation equipment that will be used in providing the services, including transporting Food Shipments, are in appropriate sanitary condition and satisfy the conditions set forth in Section 9 (the "Sanitary Conditions").
 - B. Carrier shall transport all food that requires temperature control ("Temperature Controlled Food") at an operating temperature consistent with the requirements provided in any written instructions (the "Temperature Control Standards"). In the event of a conflict between the temperature requirements on the applicable tender document and the temperature requirements on the applicable Bill of Lading, Carrier shall (i) transport the Food Shipments at an operating temperature consistent with that provided on such Bill of Lading, and (ii) immediately notify Johanson of the discrepancy before undertaking the applicable transportation operation. Further, prior to and during loading and unloading, Carrier shall confirm the temperature of any Temperature Controlled Food and record such temperatures on the Bill of Lading. If the temperature of the Temperature Controlled Food reads higher than the requested temperature on the Bill of Lading, Carrier shall immediately notify Johanson of this variance.
 - C. If any written instructions specify that the Food Shipment requires a cargo seal, the lack of a seal or seal irregularities may be sufficient to render the shipment unsafe and a total loss, at the discretion of Johanson or its customer. Carrier agrees that when transporting Food Shipments for human consumption, late delivery, i.e. delivery after the deadline indicated on the transportation documents, alone may be sufficient to reject a shipment and render the cargo "adulterated" at the discretion of Johanson or its customer.
 - D. Carrier shall ensure that all equipment used to transport Temperature Controlled Food are pre-cooled when required by the Temperature Control Standards.
 - E. Before loading any Temperature Controlled Food, Carrier must verify that each mechanically refrigerated cold storage compartment or container to be loaded is adequately prepared for the transportation of such Temperature Controlled Food, including that such compartment or container has been properly pre-cooled when required, considering the Temperature Control Standards.
 - F. Upon the request of Johanson or its customer following completed transportation of Temperature Controlled Food, and within 48 hours of such request, Carrier shall demonstrate in writing to Johanson (or its customer) that Carrier has maintained

Date _____ Carrier Initial _____

temperature conditions during such transportation consistent with the specified operating temperature in Temperature Control Standards.

- G. Carrier shall assign competent supervisory personnel to ensure all services are carried out in compliance with the requirements set forth in this Section and the Food Safety Laws.
- H. Carrier shall take effective measures, such as segregation, to protect food from contamination by raw foods and nonfood items transported in the same load.
- I. If Carrier becomes aware of a possible material failure of temperature control or other conditions during transportation or handling that may render the food unsafe, Carrier shall not sell or otherwise distribute such food, and the Carrier must take appropriate action including, as necessary, communication with Johanson or its customer, to ensure that the food is not sold or otherwise distributed unless a determination is made by a qualified individual that the temperature deviation or other condition did not render the food unsafe.
- J. Carrier shall implement and develop written procedures that:
 - i. Specify practices for cleaning, sanitizing when necessary, and inspecting vehicles and transportation of equipment to ensure they are maintained in appropriate sanitary condition.
 - ii. Describe how Carrier will comply with the requirements under this Section to demonstrate that it maintained appropriate temperature conditions during shipment, when applicable.
 - iii. Record traceability of transportation equipment, including previous cargo hauled and any maintenance and intervening cleaning procedures for docks and equipment.
 - iv. Establish appropriate training processes for each person under Carrier's supervision or control involved in providing the services.
- K. Before loading food, Carrier must confirm that the applicable vehicle or transportation equipment is in appropriate sanitary condition of the transport of such food in accordance with the Sanitary Conditions.

9. Sanitary Conditions. All trailers are subject to and shall meet the following requirements:

- A. Interior/Exterior must be free of any damage which could affect the food (e.g., holes in ceiling, container walls intact, protrusions in the floor).
- B. Door closure and door seals must prevent entry of water, pests, dirt, and other foreign substances as well maintain temperature for applicable loads. Door seals must be completely intact around the entire door opening.
- C. Shipping container floor should be ribbed or channeled construction for refrigerated loads. A flat floor design is acceptable if the product is stacked on pallets or remains on the trailer for less than four hours, or the load is ambient.

Date _____ Carrier Initial _____

- D. Refrigeration unit must be (1) free of external damage, unusual noises, and error codes that may indicate a malfunction; and (2) equipped with a temperature display device that is capable of displaying the set point and actual temperature of the unit.
- E. Trailers must be free of any general condition that would adversely affect product safety during transportation, as well as free of foreign of unusual odors, wood chips, pallet splinters, dirt, filth and other objectionable debris, the abnormal presence of moisture, water, or chemical that may have been the result of trailer leaks or improper cleaning, and any signs of insects, rodents, or other pest activity.
- 10. Performance and Delivery Time.** Carrier shall transport each shipment tendered hereunder to its specified destination with reasonable dispatch and without delay caused by anything within Carrier's control. If Johanson or its customer informs Carrier of a specified delivery date and/or schedule prior to pick-up of any shipment or series of shipments, then Carrier shall makes its best efforts to meet such specified date and/or schedule. **However, Carrier shall not violate any law, rule, or regulation pertaining to highway or motor vehicle safety in order to make timely delivery of a shipment.** Nothing in this Agreement shall be interpreted as requiring a driver to perform Services within a certain time or to violate the Hours of Service Rules.
- 11. Shipment Tracking Technology.** Carrier agrees to use third-party mobile load tracking services (the "Tracking System") at its own expense if requested by Johanson for a particular account or shipment. Johanson may deduct an administrative fee that will be waived if Carrier, at its option, elects to implement the Tracking System(s) compatible with Johanson's and/or its customer's shipment tracking software. Carrier accepts sole responsibility to ensure that its drivers each download the Tracking System on their mobile device and enable the Tracking System for each requested shipment tendered by Johanson's customer from pickup through delivery. Carrier acknowledges and agrees that the third-party terms of service exclusively govern the relationship between Carrier and the Tracking System, including Carrier's receipt of and ability to send any communications, messages, or notifications facilitated by or issued through the Tracking System. Any driver training required for the use of the Tracking System is the exclusive responsibility of Carrier, who remains solely responsible to ensure that no laws, rules, policies or regulations related to driver safety are violated by the use of the Tracking System by its drivers. The Tracking System is exclusively intended to track shipments while hauled by Carrier on behalf of Johanson's customers, and no aspects of Carrier's services, including but not limited to, its equipment, routes, or personnel, will be monitored, tracked or managed by Johanson through the Tracking System.
- 12. Compliance with Laws.** Carrier shall comply with all foreign, federal, state, provincial and local laws, regulations, and rules applicable to its operations and its performance of Services under this Agreement, including without limit those pertaining to safety, hazardous materials, and the environment. Carrier shall observe and obey all laws, regulations, and rules pertaining to load securement, weight restrictions, speed limits, routing restrictions, hours of service, controlled substances testing, driver training and qualifications, vehicle inspection, and/or safe operation of motor vehicles. During performance hereunder, Carrier shall maintain a "satisfactory" or "unrated" USDOT safety rating or a substantially similar rating under any revised or replacement carrier safety fitness program, or, as the case may be, a similar rating for Canadian or Mexican operations. Carrier shall be solely responsible for, and shall bear any fines, penalties, costs, or expenses arising from any failure to comply with the requirements of this Paragraph.
- 13. CARB Compliance. On behalf of shipper, consignee, and broker interests, to the extent that any shipments subject to this Agreement are transported within the State of California, CARRIER warrants that:**

Date _____ Carrier Initial _____

- A. **All 53 foot trailers, including both dry-van and refrigerated equipment it operates and the Heavy-Duty Tractors that haul them within California under this Agreement are in compliance with the California Air Resource Board (ARB) Heavy-Duty Vehicle Greenhouse Gas (Tractor-Trailer GHG) Emission Reduction Regulations.**
 - B. **All refrigerated equipment it operates within California under this Agreement is in full compliance with the California Air Resource Board (ARB) TRU ACTM in-use regulations.**
 - C. **All TRU's it operates within California are registered in ARB's Equipment Registration (ARBER) system; a copy of either the ARBER certification for each TRU or evidence of Carrier's inclusion on ARBER's 100 Percent Compliance list are maintained by Carrier and will be provided to Johanson upon request..**
 - D. **CARRIER shall be liable to BROKER for any penalties, or any other liability, imposed on BROKER because of CARRIER's use of non-compliant equipment.**
- 14. Shipment Instructions.** Before, or at the time of shipment pick-up, Carrier shall obtain instructions as to requirements for handling, securing, and protection of the load. Carrier shall ensure that all freight is properly blocked and braced for transportation, unless tendered to Carrier in a pre-loaded, sealed trailer, in which case Carrier shall note the seal numbers on the bill of lading or receipt.
- 15. Exclusive Use and Seal Policy.** All shipments will be considered to be full truckload and exclusive use unless Johanson advises in writing prior to shipment that the subject will be less than truckload. No additional freight may be added to the trailer. If a Customer requires that a load be sealed, a seal policy will accompany the rate confirmation and must be signed and returned to Johanson prior to pickup. Failure to comply with the Seal Policy may render the Carrier liable for the full value of the shipment.
- 16. Broker's Compensation.** Carrier waives the provisions of 49 CFR Section 371.3 and shall not claim or demand, in whole or in part, any commissions earned by Johanson on shipments tendered hereunder. Johanson shall not be required to disclose the amount of its commission to Carrier, and Carrier shall not attempt to ascertain the amount of such commission from any person.
- 17. Independent Contractor.** Carrier is an independent contractor and shall exercise exclusive control, supervision, and direction over (i) the manner in which Services are provided; (ii) the persons engaged in providing Services; and, (iii) the equipment selected and used to provide Services. Carrier shall have full responsibility for the payment of federal, state, and local payroll taxes, workers compensation, social security, and similar withholdings for all persons engaged in the performance of Services. This Agreement does not create, nor shall it be deemed to create a partnership, joint venture, agency or employee relationship between Johanson and Carrier. Carrier is solely responsible for any and all management, governing, discipline, direction, and control of its employees, owner-operators, and equipment with respect to operating within all applicable federal and state legal and regulatory requirements to ensure the safe operation of Carriers vehicles, drivers, and facilities. Carrier and Johanson agree that safe and legal operation of the Carrier and its drivers shall completely and without question govern and supersede any service requests, demands, preferences, instructions, and information from Johanson or Johanson's customer with respect to any shipment at any time.

Date _____ Carrier Initial _____

- 18. Labor and Employment Exposure.** Carrier represents and warrants that it is not in violation of the California Labor Code and does not and will not at any time have unsatisfied final judgments for unpaid wages, damages, unreimbursed expenses, and penalties, including applicable interest, for which Johanson, its subsidiaries and affiliates, and its and their customers (collectively for the purposes of this Section, the "Johanson Parties") may bear joint and several liability with Carrier pursuant to Cal. Lab. C. § 2810.4. Carrier shall indemnify, defend, and hold harmless Johanson Parties from and against all liabilities, costs, claims, penalties, forfeitures, causes of action, suits, and the costs and expenses incident thereto (including the cost of defense, settlement, and attorneys' fees) that the Johanson Parties may suffer, incur, become responsible for, or pay arising out of or resulting from breach of the foregoing representation and warranty or any civil legal responsibility or civil liability owed to a port drayage driver engaged by Carrier. This Section is in addition to and cumulative to any other right, indemnification, or contribution that Johanson Parties may have at law, in equity, or otherwise, and will survive termination or expiration of this Agreement.
- 19. Carrier's Cargo Liability and Claims.**
- A. Carrier shall have sole and exclusive care, custody, and control of each shipment tendered by Johanson from the time of pick-up until completion of delivery of the shipment to the consignee. Carrier shall be liable to Johanson's customer, or to Johanson, as assignee of the claim, for loss of, damage to, or delay of shipments according to the provisions of 49 U.S.C. Section 14706, regardless of the actual jurisdiction of loss or performance. For any Carrier domiciled in Mexico, such Carrier accepts cargo liability as set forth herein to the exclusion of liability terms provided in Articles 66 and 67 of the Federal Transportation Roads and Bridges Law or any bill of lading.
- B. Carrier shall be liable for the full, actual value of each shipment transported hereunder, which shall be the invoice price of the goods at destination. No released value or other limitation of liability shall be valid or enforceable against Johanson or its customer unless expressly agreed to by Johanson in writing separate from any bill of lading or other delivery receipt issued by Carrier. The limit set by Carrier's cargo insurance policy shall not limit, or be deemed to limit Carrier's liability on any shipment accepted hereunder.
- C. Johanson or its customer shall file a written claim (i) for loss, damage, or delay to shipments within nine (9) months from the date of delivery, and (ii) or non-delivery within nine (9) months of the date that delivery reasonably should have been made. Johanson or its customer shall support any written claim with pertinent documents, provided that failure to supply such documents shall not affect the validity of the claim. Within thirty (30) days of receiving a claim from Johanson or its customer for loss, damage, or delay, Carrier shall pay or deny the claim (in which case the reasons for denial shall be fully explained), or make a firm compromise offer.
- D. In the event branded or labeled goods are damaged, Johanson's customer may decide in its sole discretion, whether the goods may be salvaged, and if salvageable, the value of such salvage. Any salvage receipts shall be deducted from the amount of the claim against Carrier. If Carrier pays the full, actual value of the damaged goods and requests possession of the goods for salvage, then Johanson's customer shall have the right to remove all identifying marks or labels. Alternatively, if the customer deems goods to be unsalvageable due to safety, branding or labeling, the goods shall be permanently marked as "damaged" or similarly noted in which carrier shall bear any cost or expense of such as part of the claim.

Date _____ Carrier Initial _____

- E. Carrier agrees that food that has been transported under conditions that are not in compliance with the shipper's instructions, as provided to Carrier by Johanson, will be considered "adulterated" within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §342(i) Carrier understands and agrees that adulterated shipments may be refused by the consignee or receiver, upon their delivery, at destination without diminishing or affecting Carrier's liability in the event of a cargo claim

20. Carrier's Insurance. At its own expense, Carrier agrees to procure and maintain, from a company having an A.M. Best rating of not less than A-VIII, the following insurance during the term of this Agreement: (a) All Risk Broad Form Motor Truck Cargo loss or damage: \$150,000 per shipment; (b) General liability: \$2,000,000 per occurrence; (c) Automobile liability: \$2,000,000 per occurrence (\$5,000,000 per occurrence if Carrier transports hazardous materials or dangerous goods); and, (d) Worker's compensation: as required by law. For performance in Canada, Carrier will additionally provide Johanson (and its customers, upon request) with a clearance certificate issued by each workers' compensation board ("WCB") with jurisdiction over Carrier's operations, confirming that Carrier has a Worker's Compensation account in good standing with such WCB. If Carrier is providing Services in Canada or Mexico, the insurance company must be licensed to do business in Canada or Mexico, as applicable. Carrier's insurance agent shall provide current certificates of the foregoing insurance to Johanson upon execution of this Agreement, and, if requested, copies of the underlying policies. At any time during the term hereof, Johanson may request, and Carrier shall provide suitable proof of insurance coverage. Carrier shall advise Johanson of any change in its insurance coverage thirty (30) days prior to the effective date of such change. Carrier further agrees to procure and maintain any and all insurance required by federal, state, local, provincial or to the extent applicable, foreign laws. Carrier's insurance coverage shall not exclude any claim, loss, injury, damage, or liability related to transportation of hazardous materials, loading or unloading operations, vehicle or trailer theft, or specific classes or kinds of goods, and Carrier shall not invoke any such exclusion in order to avoid liability, responsibility, or obligation, arising hereunder.

21. Carrier's Indemnification. Carrier shall indemnify, defend, and hold Johanson, its customers, consignors, and consignees, and their respective officers, directors, and employees harmless from and against any and all losses, harm, injuries, damages, claims, costs, expenses, and liabilities ("Claims") arising from, or in connection with services provided by Carrier, its employees, agents, and contractors, including any Claims imposed or asserted against Johanson or its customer by Carrier's personnel or their personal representatives, unless resulting exclusively from the negligence of Johanson or its customer.

22. Bills of Lading/Receipts. Any bill of lading or similar receipt ("Receipt") issued for the purposes of the transportation involved herein shall not modify, supplement, or supersede the terms and conditions of this Agreement. Carrier's issuance and execution of the Receipt shall constitute prima facie evidence that Carrier received the shipment in good order and condition, unless exceptions are specifically noted. Carrier shall submit an original copy of the Receipt to Johanson evidencing delivery of the shipment, unless otherwise instructed by Johanson, in which case Carrier shall retain custody of the Receipt and provide it to Johanson upon request. Carrier assumes all risks and liability arising from its loss of any Receipt issued hereunder. Under no circumstances, will the terms of the Receipt, any bill of lading or other document alter the terms of this Agreement.

- A. Carrier acknowledges that Shipper's insertion of JTS's name on the bill of lading, freight tender, or any other document shall be for Shipper's convenience only and shall not change JTS's status as a transportation broker. In the event JTS's name is listed on the bill of

Date _____ Carrier Initial _____



lading, shipping manifest or other similar document, as the carrier, Carrier shall cross-out or otherwise remove JTS's name and enter Carrier's name as applicable.

- 23. **Communications.** Carrier and Johanson shall seek to communicate by the most efficient means to exchange information, including instructions, equipment, shipment location, and other information useful or necessary to achieve for performance of this Agreement. Such means shall include without limit telephone, fax, e-mail, internet, electronic funds transfer, EDI, and satellite.
- 24. **Assignment.** This Agreement may be assigned only upon the express written consent of both Parties, which consent may be withheld for any reason. If assigned pursuant to the terms of this Paragraph, then this Agreement shall inure to the benefit and be binding upon the assignee. Any assignment that is not in full conformity with this Paragraph shall be null and void.
- 25. **Notices.** Except for routine communications made in the course of performance of this Agreement, all notices shall be in writing and delivered by facsimile, email, certified mail, or express mail. Notices transmitted by facsimile or email shall be deemed received as of the date and time of sender's fax or email transmission report indicating successful transmission. Notices transmitted by certified mail or express mail shall be deemed received as of the date and time signed for by recipient. Notices shall be addressed as follows:

Johanson Transportation Service
P.O. Box 55003
Fresno, CA 93747-5003
Attention: Carrier Relations

To Carrier: _____

Attention: _____

- 26. **Force Majeure.** Each Party shall be relieved of its respective obligations under this Agreement to transport property and to pay for the transportation of property for the duration of any force majeure event, which shall include acts of God, flood, earthquake, hurricane, tornado, acts of a public enemy, acts of terror, war, insurrection, sabotage, labor disturbance, governmental order or decree, or similar unusual events beyond the reasonable control of the Party. The Party experiencing a force majeure shall provide written notice to the other Party within three (3) days of the onset of the event and again within five (5) days of termination of the event. The initial notice shall fully describe the force majeure, including its cause and likely duration. These obligations will resume upon termination of the force majeure event.
- 27. **Carrier's Lien.** Carrier shall not have and shall not assert any lien on any shipment tendered hereunder by Johanson or Johanson's Customer.
- 28. **Confidentiality.** The Parties shall protect the confidentiality of all business, proprietary, and/or non-public information exchanged hereunder, during the Term and for two years after expiration or termination. This obligation shall not prevent disclosure of information (a) as required by law; (b) to a corporate parent, subsidiary, or affiliate; (c) to auditors retained by a Party for the purpose of assessing the accuracy of freight charges; or, (d) to counsel. Prior to any disclosure pursuant to (a) above, the disclosing Party shall provide the other Party with at least ten (10) days written notice.

Date _____ Carrier Initial _____

29. **Cross-Border Shipments.** Carrier agrees that in the event of cross-border shipments it will promptly and thoroughly cooperate with Johanson, its customer, and its customer's named customs broker, to accomplish border crossings without delay. Specifically, Carrier will assist border entry when called upon to do so by: (i) promptly responding to inquiries and providing required information; (ii) ensuring the correctness of all documentation and information it prepares or submits; and (iii) operating in conformance with all applicable industry best practices and industry guidelines that address Carrier's operation.
30. **Non-Solicitation.** During the term of this Agreement and for a period of one (1) year following its expiration or termination, Carrier shall not accept shipments or solicit traffic from Johanson's customers (a) when such traffic first became known to Carrier as a result of Johanson's efforts, or (b) when such traffic was first tendered to Carrier by Johanson. If Carrier breaches the foregoing requirement, then it shall be liable for and shall pay liquidated damages to Johanson equal to the amount of ten percent (10%) of its gross revenue for all shipments transported in violation of this Paragraph. The Parties agree that the remedy provided in this Paragraph is reasonable, and shall not limit or exclude any other rights and remedies available to Johanson. For purposes of enforcing this Paragraph, Johanson shall have the right to inspect Carrier's records and books, during regular business hours, upon ten (10) days written notice.
31. **Non-Exclusivity.** Nothing in this Agreement is intended to require Johanson to use only the services of Carrier or to require the Carrier to provide services only to Johanson.
32. **Severability.** In the event that the operation of any part of this Agreement is determined by a court of competent jurisdiction to result in a violation of any foreign, federal, state or local law or regulation, the Parties agree that such part shall be severable as to the jurisdiction in which the operation results in a violation and that the remaining parts of this Agreement shall continue in full force and effect.
33. **Waiver.** The parties enter into this Agreement in accordance with 49 USC Section 14101(b) and expressly waive any and all rights and remedies that each may have under 49 USC Section 13101 through Section 14914 that are contrary to the specific provisions of this Agreement. The failure of either Party to enforce any right, privilege, or obligation established by this Agreement on any occasion, or number of occasions, shall not constitute, or be deemed to constitute a waiver or relinquishment of such right, privilege, or obligation. To the fullest extent allowed by law, rights, privileges, and obligations created hereunder shall remain effective and enforceable by the Parties.
34. **Entire Agreement and Merger.** This Agreement, the Appendices attached hereto, if applicable and any Confirmations constitute the entire agreement between the Parties, and supersede all previous communications, statements, representations, writings, and instruments with respect to the subject matter hereof. This Agreement may be modified, supplemented, or amended only through a writing signed by authorized representatives of both Parties.
35. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to rules relating to conflict of laws. Any lawsuit concerning the interpretation, performance, enforcement of this Agreement shall be brought in the state or federal courts of California and the Parties irrevocably consent to the jurisdiction of such courts. The prevailing party in any litigation or arbitration will be entitled to recover from the other party all of the costs and expenses incurred by the prevailing party in connection with such litigation or arbitration, including, without limitation, reasonable attorneys' fees and interest from the date of loss. The Parties have specifically requested that this Agreement be written in English.

Date _____ Carrier Initial _____



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date and year first written above.

Johanson Transportation Service



Signed By: Alicia Ruiz

Title: Vice President of Corporate Operations
and Legal Affairs

(Carrier) _____

MC/DOT/Intrastate Number: _____

Signature: _____

Signed By: _____
(Please Print)

Title: _____

Date: _____

Date _____ Carrier Initial _____

PO Box 55003, Fresno, CA 93747 | 800-742-2053 | Fax: 559-456-4962 | CR@johansontrans.com
