

CONFIDENTIAL TRANSPORTATION AGREEMENT

Agreement made and entered into as of the ____ day of _____, 20____ by and between: ACCESS TRANSPORT & LOGISTICS, a California Corporation with principal offices at 595 N. East Street Woodland, CA 95776 (hereinafter called "Access" and underlying clients of Access hereinafter called "CLIENT") and _____, a _____ corporation with principal offices at _____ (hereinafter called "CARRIER")

RECITALS

WHEREAS, CARRIER, as an independent contractor, desires to furnish motor carrier service to Access for the transportation of general commodities and represents that it is a duly registered carrier in interstate commerce with the Federal Motor Carrier Safety Administration (FMCSA) [and/or intrastate commerce with the appropriate state regulatory agencies], copy [copies] of which is [are] annexed hereto as Appendix A:

WHEREAS the parties hereto intend to enter into a contract as authorized under 49 U.S.C. 14101(b) to provide specified services under specified rates and conditions, and expressly waive any or all rights and remedies under the Interstate Commerce Act for the transportation provided hereunder:

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the parties agree as follows:

1. APPLICABILITY Transportation services pursuant to this agreement shall be performed between origin and destination points and/or places as more specifically named in Appendix B and additions thereto. Additional services may be included from time to time upon amendment of this Agreement in the manner designated herein.
2. TERM OF AGREEMENT The term of this agreement shall be for a period of one (1) year commencing _____, 20____ and shall automatically renew for additional one (1) year periods unless written notice of non-renewal is given by either party at least sixty (60) days prior to the end of any term.
3. TERMINATION
 - a. Termination without Cause This Agreement may be terminated by either party upon sixty (60) days' written notice
 - b. Termination for Cause
 - i. If either party violates any material provisions of this Agreement, the other party shall have the right to immediately terminate the same.
 - ii. If a petition in bankruptcy is filed by or against CARRIER, or CARRIER becomes insolvent or makes general assignment for the benefit of creditors, Access may terminate this Agreement immediately without notice and or further obligation.
 - iii. If all or any portion of CARRIER's operating authority shall be revoked or suspended, or CARRIER's insurance policy is cancelled, reduced or otherwise invalidated, or CARRIER received an "Unsatisfactory" safety rating from FMSCA, CARRIER shall promptly notify ACCESS, and ACCESS may terminate this Agreement immediately without further obligation.
 - iv. If CARRIER fails to notify ACCESS of any events set forth in subparagraphs ii. or iii. Above, CARRIER will not access transportation charges occurring after the date of such events. Furthermore, CARRIER will immediately terminate handling ACCESS's business and relinquish control over all of ACCESS's good in its possession and control on such date.
 - c. Notice of Termination Any notice of termination shall be delivered by certified mail or express courier to the appropriate party as identified in Paragraph 16 of this Agreement.
 - d. Unsatisfactory Performance If CARRIER performance is, in ACCESS's judgment, unsatisfactory, ACCESS shall make demand upon CARRIER to improve its performance. If CARRIER does not improve its performance within ten (10) days after such demand, ACCESS shall be entitled to terminate the Agreement forthwith at any time thereafter with no further obligation or liability to CARRIER.



Initials _____

4. ACCESS'S OBLIGATION

- a. Minimum Tender ACCESS agrees to tender to CARRIER, and CARRIER agrees to accept from ACCESS, a series of shipments but not less than one (1) shipment during the term of this Agreement.
- b. Liquidated Damages If ACCESS fails to tender said minimum number of shipments during such period, ACCESS agrees to pay CARRIER, as liquidated damages and not as a penalty, the sum of \$100 per deficit shipment. If this Agreement is terminated for cause, no liquidated damages shall be paid to CARRIER.

5. CARRIER OBLIGATIONS

- a. Compliance with Laws, Rules and Regulations CARRIER shall comply with all of the provisions of the Interstate Commerce Act, related laws, rules and regulations of the FMSCA to the extent they govern CARRIER's operations. CARRIER shall also comply with all provision of applicable state and local laws, rules and regulations to the extent they govern CARRIER's operations.
- b. Distinct Needs: Priority CARRIER agrees to meet ACCESS's distinct needs and or/or special requirements for dedicated equipment.
- c. Prompt Service CARRIER shall promptly and efficiently receive, transport and deliver safely and with reasonable dispatch and without delay, the goods entrusted to it hereunder, whether received from ACCESS or from third parties at the request of ACCESS. CARRIER agrees to expedite shipment when so requested by ACCESS and deliver them in good order and condition to the named consignees. If ACCESS receives "charge backs" from consignees due to CARRIER's failure to keep delivery appointments, CARRIER shall reimburse ACCESS for same, not to exceed \$50.00 for the first offense. CARRIER shall reimburse ACCESS \$100.00 for the second offense and will be terminated upon the third offense.
- d. Receipts and Bills of Lading
 - i. Bill of Lading or Proof of Delivery Each shipment received by CARRIER shall be evidenced by a bill of lading or receipt in a form agreed to by the parties, signed by CARRIER showing the kind, quantity and condition of commodities received by CARRIER. Such bill of lading or receipt shall be evidence of receipt of such commodities by CARRIER in apparent good order and condition unless such commodities are not readily observable (contents and condition of contents of packages unknown) or as may be otherwise noted on the face of such receipt.
 - ii. Through Bill of Lading All bills of lading shall be "through bills of lading" to ultimate destination and CARRIER shall be liable to ACCESS for loss, damage or delay in accordance with the terms of this agreement regardless of any separate agreements entered into by CARRIER with connecting carriers, subcontractors, cartage agents, or third parties. Liability for delay will apply on guaranteed service shipments when specified delivery date and time is noted on the bill of lading.
 - iii. Delivery Receipt CARRIER shall obtain and acknowledgement of delivery for all shipments by notation on the bill of lading or delivery receipt signed and dated by the consignee. At the request of ACCESS, CARRIER agrees to provide copies of same to ACCESS in sufficient detail to substantiate billing for services provided. CARRIER shall retain such records for three (3) years after delivery of the involved shipments or for such greater period of time as may be required by federal or state laws, rules, or regulations.
 - iv. Period of Carrier Responsibility CARRIER's duties or responsibilities under this Agreement shall commence when CARRIER takes possession and control of ACCESS's CLIENT's property or upon execution of such bill of lading receipt by CARRIER, whichever occurs first, and shall and when consignee signs the bill of lading or delivery receipt and CARRIER delivers ACCESS's CLIENTS' property.
 - v. Conflict between Contract and Bill of Lading To the extent any term or condition of such bill of lading or receipt conflicts in any way with any term or condition of this Agreement, this Agreement shall govern.



- e. Interlining: Substitute Service When CARRIER is the originating CARRIER; CARRIER agrees not to interline or use other motor carriers, or brokers, or to use “substituted services” by rail for ACCESS’s goods without prior written agreement of ACCESS. When for CARRIER’s convenience, CARRIER elects to use a pickup or delivery agent to serve a point it is authorized to serve, CARRIER may do so at its expense, in which case CARRIER shall continue to be fully liable for loss, damage or delay to said shipments. If CARRIER uses a substituted service of any type, with or without ACCESS’s permission, CARRIER agrees to remain liable for any loss, damage or delay to ACCESS’s CLIENT’s property incurred in transit to the same extent that CARRIER would be liable if it performed the transportation directly. Liability for delay will apply on guaranteed service shipments when specified delivery date and time is noted on the bill of lading.
- f. COD Shipments CARRIER agrees to collect in cash or by certified check for all “COD” shipments prior to delivery of such shipments to the consignee. Monies or checks collected, whether on COD shipments or otherwise, shall be kept separate and apart from all other monies and turned over promptly to ACCESS, but in no event later than ten (10) days from collection.
- g. Disclosure: Freight bills CARRIER agrees to comply with the provisions of 49 U.S.C. 13708 requiring carriers to disclose the actual rates, charges or allowances on freight bills, prohibiting false or misleading information on documents, and requiring a statement on freight bills that “ a reduction, allowance or other adjustments may apply” when this agreement provides for such reductions, allowances or other adjustments dependent upon ACCESS’s performance of a service, such as tendering a volume of freight over a period of time.
- h. Financial Reports This paragraph left blank due to its not being applicable to a privately held company.
- i. Diversion and Reconsignment CARRIER shall not divert or reconsign any shipment except upon written instructions of ACCESS. CARRIER shall not accept instruction for diversion or reconsignment from any consignee without notice to ACCESS, and written consent of ACCESS.
- j. Equipment and Drivers
 - i. Lawful Operation CARRIER shall, at its cost and expense, operate its motor vehicle equipment in a proper and lawful manner and further agrees to maintain the equipment in good, safe and lawful operating condition at all times. ACCESS shall have the right to terminate the Agreement if CARRIER’s equipment is not so maintained.
 - ii. Qualified Personnel CARRIER shall, at its cost and expense, employ in the operation of such vehicles and equipment full qualified personnel; shall procure and maintain such licenses and permits as are required by local, state or federal authorities with respect to such transportation services and shall comply with the laws and regulations applicable hereto.
 - iii. Operating Expenses CARRIER shall bear the cost and expense of all fuel, oil, tires, parts, road service, maintenance and repair in connection with the use and operation of the equipment and which may be required to keep the equipment in good repair and mechanical condition. ACCESS shall not be liable to CARRIER for any damage sustained by or to CARRIER’s equipment or for loss by confiscation or seizure of CARRIER’s equipment by any public authority.
 - iv. Exclusive Control CARRIER shall have sole and exclusive control over the manner in which CARRIER and its agent perform the transportation service provided for hereunder, and CARRIER shall utilize such individuals as it may deem necessary in connection here with, it being understood and agreed that such individual shall be subject to discharge, discipline, and control solely and exclusively by CARRIER. CARRIER represents that it is entirely independent and that it is not substantially economically dependent upon ACCESS and there is no functional integration of the ACCESS’s and CARRIER’s respective operations.
- k. Display of ACCESS’s Name Carrier shall not display name of ACCESS or its CLIENT’s upon CARRIER’s vehicles.
- l. Clean Equipment CARRIER’s equipment offered to ACCESS’s CLIENT’s for lading of the commodities to be transported is to be clean, odor free, dry, leak proof and free of contamination and infestation. Said equipment shall be subject to inspection for suitability and cleanliness by ACCESS. The cleanliness or suitability of equipment must meet ACCESS’s standards of acceptability for the specific products to be transported.



- m. Hazardous Waste CARRIER hereby covenants and agrees that not trailer or other vehicle which transports commodities for ACCESS hereunder shall ever have been used to transport refuse, garbage, trash or solid or liquid waste of any kind whatsoever, whether hazardous or non-hazardous. Notwithstanding anything to the contrary herein, in the vent that CARRIER breaches terms of this Paragraph, ACCESS shall have the right to immediately terminate the Agreement.
- n. Delay: Accidents CARRIER shall immediately notify ACCESS by telephone, fax, or e-mail of any accidents, spills, theft, hijacking or any other events which impair the safe and prompt delivery of the goods in its control.
- o. On-Hand Freight CARRIER shall immediately notify ACCESS by telephone, fax or e-mail of any refused or “on-hand” freight and request additional instructions regarding delivery or storage of the “on-hand” goods. Such notice by CARRIER shall be immediately confirmed in writing, stating the amount, date and time storage charges will begin to accrue, if any.

6. COMPENSATION AND PAYMENT

a. Rate and Charges

- i. Applicable Rates ACCESS agrees to pay CARRIER the rates and charges set forth in Appendix B hereto as full and complete compensation for the services to be provided hereunder. Said rates and charges are intended to apply to all goods shipped or received by ACCESS and/or third parties for ACCESS’s account from or to all of ACCESS’s CLIENT’s shipping and receiving points.
- ii. Amendments to Rate Schedule Rates may be established or amended verbally in order to meet ACCESS’s changing shipping schedules and needs. CARRIER shall immediately confirm each such rate by a signed fax transmission to ACCESS and said document shall constitute an addendum to Appendix B.
- iii. Shipments Not Covered by Rate Schedule If CARRIER accepts shipments from ACCESS or its agents which are not covered by Appendix B, ACCESS agrees to pay reasonable rates and charges for such contract transportation. In determining the reasonable rates and charges for such transportation, the parties shall consider the then-prevailing level of rates and charges being quoted and assessed for similar transportation services.
- iv. Prepaid, Collect and Third Party Billing *This Agreement shall govern shipments tendered on a freight “prepaid”, “collect” or “bill to third party” basis. When shipped “collect”, such charges shall be collected from consignee provided, however, in the event that CARRIER is unable to collect such charges from consignee, ACCESS shall be notified as promptly as possible, and ACCESS shall be liable to CARRIER for such charges.*
- v. ACCESS’s Affiliate *The provision of this Agreement shall endure to the benefit of ACCESS, as well as its wholly owned subsidiary corporations, divisions and its parent company. If any such affiliated company has rates and charges in effect on the date of this Agreement lower than those resulting from this Agreement, such lower rates and charges shall take precedence over this Agreement.*
- vi. Inbound Collect Shipments from Vendors It is ACCESS’s intent to provide through this agreement, a contractual relationship with CARRIER for ACCESS’s CLIENT’s, vendors and suppliers on shipments transported into ACCESS’s CLIENT’s facilities on inbound collect shipments unless a lower rate results from application of vendors’ and suppliers’ rates, contracts or discounts.

b. Rules Tariffs

- i. Applicable Rules Shipments tendered to CARRIER pursuant to this Agreement shall be subject to the rules annexed hereto as Appendix C.
- ii. Non-Applicability of Tariffs Tariffs, service guides or similar publications maintained by CARRIER are not applicable to transportation provided pursuant to this Agreement unless, and to the extent, they are expressly incorporated herein.
- iii. Mileage Mileage will be determined through the use of [the currently effective PC Miler].
- iv. Pallet Weights If freight charges are based on weight, the chargeable weight will not include the weight of pallets, skids or other protective devices, unless the weight shown as separate line item on the bill of lading.



- v. Non-Alternation Except as provided in Paragraphs 6(v) and (vi) herein, the rules, rates and charges in this Agreement will apply to the exclusion of all other rules, rates or charges published between the same points, and the same routes, in CARRIER's tariffs of publications, if any.
- c. Payment: Procedure CARRIER shall invoice ACCESS promptly following delivery of freight, and payment of each invoice shall be made by ACCESS within 30 days of receipt of a valid, uncontested freight bill. ACCESS may require submittal of a bill of lading and/or proof of delivery with invoice as a condition of payment. CARRIER agrees that no penalties, loss of discount or interest will be assessed to ACCESS for past due amounts, unless a pattern of late payment is established.
- d. Right to Set Off Claims In the event that CARRIER ceases operations permanently, files bankruptcy, or does not timely resolve freight claims, ACCESS shall have the right to set off claims for loss, damage or delay, and claims for overcharge or duplicate payment, against freight or other charges owed to CARRIER. CARRIER shall have no lien for the retention of freight to secure payment of freight charges.
- e. Time Limits: Overcharge and Undercharge Claims The time limit for filing overcharge and uncharged claims on shipments moved pursuant to this Agreement shall be 180 days from the date of the shipment, except that clerical errors, mathematical errors, extension errors and duplicate payments may be corrected at any time. All overcharges and duplicate payments shall be processed by CARRIER in accordance with 49 CFR Part 378.
- f. Timely Billing Carrier agrees that after a period of 30 days has elapsed and ACCESS has not been presented with a freight bill that no such bill shall be accepted by ACCESS.

7. LIABILITY FOR LOSS, DAMAGE OR DELAY

- a. Common Carrier Liability CARRIER agrees that, in the transportation of all good hereunder, it assumes the liability of a common carrier for full actual loss, subject to the provisions of 49 U.S.C. 14706, ("Carmack Amendment") and 49 CFR Part 370 (claim regulations), such liability to exist from the time of the receipt of any said goods by CARRIER until the proper delivery has been made.
- b. Measure of Damages The measure of damages for loss or damage shall be: (i) for goods sold to a customer, the invoice price to the customer, subject to limits of liability states in paragraph 7(a) above.
- c. Additional Damages CARRIER shall be liable for ACCESS's reasonable expenses incurred during mitigation of damage, including inspection, sorting, segregating, refurbishing, repackaging, and re-shipping, plus a portion of the freight charge for the whole shipment, equal to the ratio of the weight of lost or damaged goods to the weight of the entire shipment.
- d. Non-Applicability of Tariffs Irrespective of any provisions in CARRIER's tariffs, service guides or similar publications, CARRIER's liability for loss, damage or delay shall be determined solely by the terms of this Agreement and Appendix C. Any attempts to limit CARRIER's liability by tariff or other provisions incorporated by reference in a bill of lading or shipping document shall be deemed null and void.
- e. Refused Shipments If a shipment is refused by the consignee, or CARRIER is unable to deliver it for any reason, CARRIER's liability as a warehouseman shall not begin until it has placed the goods in CARRIER's terminal or in a public warehouse or other storage facility under reasonable security. Notification of refused goods is to be relayed to ACCESS within 24 hours of rejection. Storage charges, should they occur, will not commence until written notification is presented and accepted by ACCESS.
- f. Replacement Shipments CARRIER acknowledges that ACCESS may utilize other carriers to facilitate the movement of delayed shipments, or to ship replacement goods. If CARRIER fails to make timely delivery of any shipment, CARRIER shall be responsible for reasonable and necessary costs, charges, fees and expenses resulting from such delay. Charges subject to prior agreement with CARRIER's personnel.
- g. Return of Damaged Shipments CARRIER shall return all damaged shipments at its expense to the point of origin or, with CARRIER's consent, to other points as instructed by ACCESS.
- h. Claims: Filing Requirements The following shall constitute filing a claim:
 - i. Mailing a written notice of claim to the CARRIER.
 - ii. An exception notation written on the delivery receipt by the consignee or its agent.
 - iii. CARRIER's receipt and/or sales of damaged or rejected goods with knowledge of facts sufficient to identify the shipment and the claim.



- iv. A claim shall not be invalidated when ACCESS is unable to determine the amount of the claim within nine (9) months. Claims for uncertain amounts shall not be disallowed for that reason alone.
 - i. Time Limits: Claims for Loss and Damage The time limit within which ACCESS must file a claim against CARRIER shall be nine (9) months from the date of delivery or within 9 months of a reasonable time for delivery if a complete loss. All claims shall be paid, settled or disallowed by CARRIER within 30 days of filing. Disallowances shall state a lawful reason for declining to accept responsibility for the claim, and shall be stated by the CARRIER, not its insurer.
 - j. Time Limits, Suits for Loss and Damage The time limit within which ACCESS must institute suit against CARRIER to recover on a claim shall be two years and a day from the date ACCESS receives a written disallowance from CARRIER.
 - k. Suits: Expenses and Attorneys' Fees If either party is successful in recovering a claim against the other party in a court of law or arbitration proceeding, either party shall be entitled to recover all of its expenses incurred in collecting its claim, including reasonable attorneys' fees, costs and interest from the date of delivery or scheduled delivery of the shipment.
 - l. Concealed Damage Claims Claims based on a concealed loss or damage reported to the CARRIER within 15 days of the date of delivery shall be treated by CARRIER as though an exception notation had been made on the delivery receipt at the time of delivery.
 - m. Damaged or Refused Shipments: Salvage CARRIER shall not dispose of damaged or rejected product without prior written consent of ACCESS. ACCESS may determine, within its sole discretion, subject to a reasonableness standard, whether the goods may be salvaged, and if salvageable, the value of such salvage. Any salvage receipts shall be credited against ACCESS's claim against CARRIER. ACCESS shall have the right to remove all identifying marks or labels when CARRIER pays ACCESS for the full value of the damaged goods and requests possession of the goods for salvage. Alternatively, the goods shall be permanently marked as "damaged" or a similar notation, without debiting ACCESS for such notations.
 - n. Shipper Load and Count If shipments are loaded and counted by the shipper (SL&C), CARRIER will count the goods at the first break bulk point and report damages, overages and shortages via phone to ACCESS, and confirmed in writing, or CARRIER will be liable for all such damages and shortages. Attached hereto as Appendix.
 - o. Willful Misconduct Willful Misconduct, gross negligence, fundamental material breach or conversion on the part of the CARRIER, its employees, officers, directors or agents shall vitiate any and all liability limitations contained in this agreement.
 - p. Survival of Provisions The provisions of this Paragraph shall survive cancellation, termination or expiration of this Agreement.
8. CONTRACT CARRIAGE The transportation service provided herein is intended by the parties to be contract carriage as defined by U.S.C. 13102(4) and 14101(b). The parties hereto intend that the contractual arrangement by continuous in nature until such time as the agreement terminates or is terminated by one or both of the parties. Any use of bills of lading, or other freight documents referring to "common carriers" and/or "tariffs", shall not alter the contract relationship created hereunder between the parties.
9. INSURANCE
- a. Public Liability, Cargo, Workers Compensation CARRIER shall at all times during the term of this agreement have and maintain in full force and effect, Public Liability, Property Damage, Cargo, and Workers' Compensation Insurance with reliable insurance companies acceptable to ACCESS, and in the following minimum amounts, which amounts may be modified by ACCESS subsequently upon thirty days' written notice: \$1,000,000/\$3,000,000 Bodily Injury; \$500,000 Property Damage, \$100,000 Cargo per shipment, and Workers' Compensation which complies with applicable state requirements. CARRIER will hold harmless and indemnify ACCESS or its CLIENT's for any claim for insurance premium or any claim by any employee of the CARRIER



for injuries sustained in the ordinary course of business, including, but not limited to, drivers, lumpers, helpers, agents, or sub-contractors or CARRIERS.

- b. Cargo Insurance; Employee Infidelity CARRIER's cargo insurance policies shall not exclude coverage for infidelity, fraud, dishonesty or criminal acts of CARRIER's employees, agents, officers or directors. If said policy contains such exclusions, CARRIER shall obtain and furnish a surety bond providing such coverage to the satisfaction of ACCESS.
 - c. Cargo Insurance: BMC-32 Endorsement CARRIER shall also obtain and deliver to ACCESS a BMC 32 Endorsement to its cargo insurance policy in the form required by the FMCSA in 49 CFR 387.313. Said endorsement shall protect ACCESS for loss of or damage to its goods while in the possession or control of CARRIER under this Agreement, up to the limit of said endorsement, and subject to its limitations.
 - d. Additional Insured on Public Liability Policy ACCESS shall be named as an "Certificate Holder" on the Bodily Injury and Property Damage policies and said policies shall provide that:
 - i. ACCESS shall not be obligated to pay premiums for any such insurance;
 - ii. Such insurance shall be primary with respect to all insured;
 - iii. Such insurance shall be applicable separately to each insured and shall cover claims, suits, actions or proceedings by each insured against any other insured.
 - e. Waiver of Underwriter's Rights CARRIER's insurance policies shall provide for waiver of underwriter's subrogation rights against ACCESS, its officers, directors, employees, subsidiaries and affiliates.
 - f. Certificates of Insurance CARRIER shall provide certificates of insurance evidencing the insurance coverage required under this Agreement. The certificates of insurance shall contain a clause providing that the insurer will not cancel or change coverage of the insurance without first giving ACCESS thirty (30) days prior written notice. In the event such notice is not given, CARRIER shall be liable for all resulting damages.
 - g. Insurance Policies, Copies Upon request of ACCESS, CARRIER shall deliver to ACCESS full and complete copies of the insurance policies required under this Agreement.
 - h. Self-Insurance If CARRIER is self-insured, it shall provide evidence of such, including proof of acceptance of self-insurance status by the FMCSA or other governing agency.
 - i. No representations as to Adequacy It is expressly understood that ACCESS does not represent that the types or minimum limits of the insurance set forth herein are adequate to protect the CARRIER's interests. Deductible amounts under the foregoing policies shall be paid by CARRIER.
10. CO-BROKERAGE PROHIBITED CARRIER agrees that it shall transport all loads tendered to it under its own authority, on equipment owned, leased by it, and use employees or independent contractors under contract with it. Should a violation of the preceding sentence occur, CARRIER agrees to pay any and all charges relating to the movement of the shipment, and all freight charges claimed to owe the underlying motor carrier. CARRIER also agrees to settle any cargo claims that may arise in connection with a violation of the paragraph pursuant to 49 U.S.C. 14706. If CARRIER is truly a broker as defined by 49 U.S.C. 14706, CARRIER agrees to be treated as a carrier as defined by this same amendment for purposes of resolving freight damage and loss claims and freight charge disputes.
11. INDEMNITY Unless due to negligence on the part of ACCESS, CARRIER shall at all times indemnify, defend and hold harmless ACCESS, its CLIENT's, agents and employees against and from any and all claims arising from the services provided hereunder (including, without limitation, claims for personal injury, death and damage to property, clean-up costs from commodity spills and damage to the environment, whether or not caused by ACCESS's CLIENT's packaging, loading or other acts) asserted against ACCESS (a) by any agent or employee of CARRIER or (b) by any other person. The provisions of this Paragraph shall survive cancellation, termination, or expiration of this Agreement.
12. NON-EXCLUSIVE AGREEMENT It is understood and agreed between the parties hereto that this is a non-exclusive Agreement and that CARRIER shall be free to accept freight for transportation from shipper's other than ACCESS and that ACCESS shall be free to tender freight for transportation to carriers other than CARRIER.
13. INDEPENDENT CONTRACTOR CARRIER shall perform the services hereunder as an independent contractor and shall have exclusive control and direction of the persons operating equipment, loading or unloading, or otherwise engaged in



providing transportation services. CARRIER assumes full responsibility for the acts and omissions of such persons and, when applicable, shall have exclusive liability for the payment of local, state and federal payroll taxes or contributions or taxes for unemployment insurance, workers' compensation, old age pensions or other social security and related protection, and agrees to comply with all applicable rules and regulations pertaining thereto. If under the applicable State Unemployment Compensation Law, CARRIER has the right to elect whether or not to come under and be bound by the terms of such law, CARRIER shall either self-insure or promptly register under said law.

14. ALTERNATIVE DISPUTE RESOLUTION If the parties agree to arbitrate, disputes shall be submitted to Transportation Arbitration Bureau for arbitration under that organization's Rules and Procedures. If so submitted to arbitration, no court action can be taken by either party prior to conclusion of the arbitration proceeding (other than the filing of suit to protect against the running of any period of limitations set forth in this Agreement or applicable statute), and the Arbitrator's decision shall be final and binding.
15. ELECTRONIC DATA INTERCHANGE Shipping instructions, bills of lading, delivery receipts, claims for loss, damage, undercharges or overcharges, and related communications may be transmitted by EDI in such format as may be agreed to by the parties. Each party shall retain or archive such transmissions in a suitable permanent media for a period of at least three years and shall mark print copies of such records available on request. It is stipulated that records maintained in the manner provided herein shall be admissible for all purposes in the event of dispute or litigation.
16. ASSIGNMENT (NON-ASSIGNABILITY) The rights and obligations of this Agreement hereunder are personal to CARRIER and ACCESS and this Agreement shall not be assignable or otherwise transferable by either party, in whole or in part, without consent of the other party.
17. NOTICES Notices hereunder shall be given by U.S. mail, postage prepaid, to the parties at the following addresses:

ACCESS: Access Transport & Logistics, Inc.
 PO Box 8728
 Woodland, CA 95776

CARRIER: Name
 Address
 City, State, Zip

18. APPENDICES Attached hereto and expressly made part hereof are various Appendices. Subsequent to the execution hereof by ACCESS and CARRIER, further addenda may be added hereto and shall also become a part hereof. Each addendum shall be executed by an authorized officer of each party and dated.
19. GOVERNING LAW It is the intention of the parties that the provisions of this Agreement shall be construed and enforced according to the laws of the State of California to the extent that they are not inconsistent with any applicable federal or state regulatory laws. All controversies and claims arising hereunder, and all actions and proceedings shall be brought in the State of California.
20. CONFIDENTIALITY As part of the business relationship between CARRIER and ACCESS, CARRIER may be in or come into possession of information or data which constitute trade secrets, know-how, confidential information or are otherwise considered secret by ACCESS (hereinafter "Information"). In consideration of the receipt of such information and potential business, CARRIER agrees to maintain such Information in the utmost of confidence; to use such solely in connection with such business relationship; and to take all measures necessary to protect such Information.
21. FORCE MAJEURE Neither party hereto shall be liable to the other for defaults in the performance of any of the terms and provisions of this Agreement if caused by fire, strikes or labor disputes, riot, war, Act of God, governmental order or



Initials _____

regulation, or other similar contingency beyond the reasonable control of the respective parties; provided, however, that nothing in this Paragraph shall relieve CARRIER from its liability to ACCESS for the full actual loss, damage, or injury to the good shipped as provided in Paragraph 7 hereof unless such loss, damage, or injury is caused by the Act of God, the public enemy, the authority of law, or the sole negligence of the shipper.

- 22. SEVERABILITY If any phrase, clause, sentence, or other provision contained in this Agreement violates any applicable statute, ordinance, rule or law, such phrase, clause, sentence or provision shall be ineffective to the extent of such violations without invalidating any other provision of this Agreement.
- 23. ENTIRE AGREEMENT This Agreement and the attached Appendices represent the entire understanding of the parties and cannot be amended except in writing signed by both parties. All prior discussions, understandings, negotiations and agreements are merged herein. All prior oral or written agreements between the parties are hereby canceled.
- 24. EQUAL OPPORTUNITY All of the provisions of this Agreement shall be performed in strict compliance with all applicable Federal, State and local laws, rules and regulations pertaining to employment discrimination and the parties hereto agree that in performing their respective obligations hereunder, neither shall discriminate by reason of race, color, creed, religion, national origin, age, sex or as otherwise provided by law.
- 25. ENVIRONMENTAL IMPACT This Agreement will not result in an adverse effect on the quality of the human environment.
- 26. NO BACK SOLICITATION BY CARRIER CARRIER shall not solicit traffic from any shipper, consignor, consignee, CLIENT or customer of ACCESS where the availability of such traffic first became known to CARRIER as a result of ACCESS's efforts or, where the traffic of the shipper, consignor, consignee, CLIENT or customer of ACCESS was first tendered to the CARRIER by ACCESS. If CARRIER breaches this agreement and "back solicits" ACCESS's customers and/or obtains traffic from such a customer, ACCESS is entitled, for a period of fifteen (15) months after the involved traffic first begins to move, to a commission from CARRIER of 15% of the transportation revenue received on the movement of traffic, as liquidated damages. Termination of this agreement shall not affect the enforceability of the forgoing provisions of this clause for a period of fifteen (15) months after termination.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ACCESS: Access Transport & Logistics, Inc.

By: Name

Signature: _____

Title:

CARRIER: _____

By: Name

Signature: _____

Title:



Initials _____