

FREIGHT FORWARDER - SHIPPER AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2019 by and between JSB Enterprises, LLC d/b/a The Shipping Emporium, with its principal place of business at

7 Fir Tree Ln, Barboursville, VA 22923, (in Orange County, VA) hereinafter referred to as "Freight Forwarder", and _____, having its principal place of business at _____, hereinafter referred to as "Shipper,"

WITNESSETH:

WHEREAS, Freight Forwarder is in the business of arranging the transportation of property by motor carriers and other service providers, and holds authority from the Federal Motor Carrier Safety Administration ("FMCSA") as a property transportation broker under License Number MC-____852417____ reproduced in the attached Exhibit 1, to engage in operations as a broker for transportation of property including general commodities (except household goods) in interstate or foreign commerce;

WHEREAS, Freight Forwarder desires to arrange for motor carriers and other service providers to transport property shipped by Shipper (whether Shipper acts on its own behalf and/or as agent of and on behalf of Shipper's customer(s)), and represents that it is fit, willing and able to perform such services (the "Services") as a property transportation broker;

WHEREAS, Shipper needs such Services between various points and places in the U.S. in interstate and foreign commerce, and desires to engage Broker to perform those Services as further described in this Agreement and Exhibits attached hereto; and

WHEREAS, the Services may include, but are not limited to, Air Freight, Ocean Freight, full truckloads (FTL), less than truckload shipments (LTL), and intermodal shipments (moving via a combination of motor carrier and rail);

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises contained in this Agreement, Broker and Shipper (collectively the "Parties" and each individually a "Party") agree to be legally bound as follows:

1. **Term and Termination.** This Agreement shall take effect on the date first written above and shall remain in effect for one (1) year from such date (the "Initial Term"). Unless terminated as provided in this Agreement, this Agreement shall automatically renew for additional periods of one (1) year at the expiration of the Initial Term or any anniversary thereof. Either Party may terminate or non-renew this Agreement upon giving the other thirty (30) days' prior written notice of such intention. Termination may be with or without cause. Termination or non-renewal of this Agreement shall not release either Party from any liability to the other previously arising pursuant to this Agreement, whether or not such was ascertained at the time of termination.

2. **Tender of Shipments.** Shipper agrees to tender and/or cause one or more shipments to be tendered to Freight Forwarder by Shipper, on its own behalf and/or as agent for and on behalf of Shipper's customer(s), for the purpose of having Forwarder arrange for FTL, LTL and/or intermodal transportation of those shipments by motor carriers and/or other service providers to be selected by Forwarder. Each service request by Shipper shall include, but not necessarily be limited to, the origin and destination of the goods, relevant delivery requirements, hazardous and/or dangerous properties of the goods, the potential fragility of the goods, and any other special handling requests. Shipper shall indemnify forwarder for any costs it incurs because of inaccurate or incomplete information furnished to it by Shipper. Shipper and forwarder agree that this Agreement does not restrict Shipper from tendering shipments to other property transportation brokers or directly to motor carriers, nor does it restrict forwarder from providing similar Services to other shippers.

3. **Brokerage Services Provided.** **THE PARTIES UNDERSTAND AND AGREE THAT JSB ENTERPRISES, LLC d/b/a THE SHIPPING EMPORIUM IS NOT A CARRIER AND WILL ACCEPT NO LIABILITY AS SUCH, BUT RATHER ACTS STRICTLY AS A TRANSPORTATION BROKER/ FREIGHT FORWARDER. IN NO EVENT SHALL BROKER BE LIABLE FOR CARGO LOSS, DAMAGE OR DELAY. SUCH LIABILITY RESTS STRICTLY WITH THE CARRIER(S) SELECTED TO HANDLE SHIPMENTS UNDER THIS AGREEMENT.** For all shipments tendered by Shipper to Broker and accepted by Broker, Broker agrees to arrange for the pick-up, transport, and delivery of the shipments, as Shipper may reasonably request, exclusively by motor carriers that hold the proper regulatory authority to perform the requested Service(s) and/or by reputable and duly authorized intermodal service providers ("ISPs"). In

arranging transportation services for Shipper, Broker shall not be responsible for packaging, handling or loading of shipments – which shall instead be the responsibility of Shipper and/or the underlying motor carrier or ISP selected by forwarder to transport the shipments. Every shipment handled by forwarder for or on behalf of Shipper while this Agreement is in effect will be deemed tendered to Broker under this Agreement. Broker has the sole right to select the motor carriers or ISPs used to perform the transportation services, and Broker is solely authorized to make the necessary transportation arrangements about each shipment tendered by Shipper to Broker. In performing brokerage services for Shipper that involve motor carrier transportation, Broker shall only select motor carriers that meet the following criteria:

A. **FMCSA Authority.** Motor carriers selected by Broker shall have and maintain proper and necessary authority from the FMCSA, a unit of the U.S. Department of Transportation, and from any applicable foreign governmental agency to perform transportation services in interstate and/or foreign commerce.

B. **Safety.** Broker shall only select a motor carrier to transport a shipment in United States interstate or foreign commerce if, at the time the shipment is to be transported, the motor carrier (i) has a safety rating from FMCSA that is either “Satisfactory” or “Unrated,” or (ii) has received an equivalent rating under any future Safety Fitness Determination procedures duly adopted by FMCSA pursuant to 5 U.S.C. § 553. Broker shall only select a motor carrier to transport a shipment if the motor carrier has agreed to perform transportation of the shipment in full compliance with all applicable laws and requirements relating to safety and carrier licensing/registration. Broker shall monitor its chosen carriers’ handling of shipments tendered to them under this Agreement, with the objective of preventing any re-brokering or violations of applicable law in connection with such carriers’ handling of the tendered shipments.

C. **Insurance.** Motor carriers selected by Broker shall maintain insurance of the kinds and in the amounts as required in Article 13 of this Agreement.

D. **Cargo Loss, Damage or Delivery Delay.** Broker shall require that motor carriers selected by Broker agree to be liable to Shipper for damages incurred by Shipper on account of cargo loss, damage or delivery delay as provided in Article 12 of this Agreement. Delivery delay shall be defined as failure to meet the shipment schedules referenced in subpart E of this Article 3 of the Agreement, unless the provisions of subpart B(i) of Article 12 of this Agreement apply.

E. **Shipment Schedules.** Motor carriers selected by Broker shall be required to perform timely and reliable pick-up and delivery of all shipments in accordance with reasonable schedules communicated in writing by Shipper to Broker and/or directly to such motor carriers.

4. **Performance of Services.** Broker will arrange the dispatch and transport of all shipments tendered to it by Shipper promptly upon tender of same by Shipper. Broker will provide Shipper with prompt notification by telephone or electronic communication when this obligation cannot be met for any reason. Broker will communicate to each motor carrier that it engages to transport Shipper’s shipments any delivery schedule provided by Shipper for a particular shipment.

5. **Hazardous Materials.** Shipper and Broker shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 C.F.R. § 172.800 and Parts 173 through 180, to the extent that any shipments constitute hazardous materials. Shipper is obligated to inform Broker immediately if any shipments constitute hazardous materials. Shipper shall defend, indemnify and hold Broker harmless from any penalties or liability of any kind, including reasonable attorney’s fees, arising out of Shipper’s failure to comply with applicable hazardous materials laws and regulations.

6. **Independent Contractor.** Broker’s relationship to Shipper is that of an independent contractor, not an agent or employee, and nothing in this Agreement shall be construed as establishing an employment relationship, partnership or joint venture between the Parties. Broker shall make lawful arrangements it deems appropriate for the transportation of shipments tendered by Shipper under this Agreement. Shipper is not and will not be responsible for any debts or obligations incurred by Broker in the performance of its business. Neither Party shall be liable for any obligation incurred by the other, except as is expressly provided in this Agreement.

7. **Compliance with Law and Indemnity.** Shipper shall comply with all laws, rules and regulations of any duly constituted governmental authority applicable to its tendering of shipments for transportation pursuant to the terms of this Agreement and applicable to Shipper’s obligations or performance pursuant to this Agreement. Shipper shall be responsible for any wrongful or negligent acts, omissions and/or violations by Shipper, its employees and/or agents, and shall defend, indemnify and save Broker harmless from any fine, penalty, liability, court costs and attorney’s fees that may result from such acts, omissions or violations; provided, however, that Shipper shall not be responsible for any wrongful or

negligent acts, omissions or violations by Broker, its employees and/or its agents. Broker shall comply with all laws, rules and regulations of any duly constituted governmental authority applicable to its performance of Services pursuant to this Agreement. Broker shall be responsible for any wrongful or negligent acts, omissions and/or violations by Broker, its employees and/or agents, and shall defend, indemnify and save Shipper harmless from any fine, penalty, liability, court costs and attorney's fees that may result from such acts, omissions or violations; provided, however, that Broker shall not be responsible for any wrongful or negligent acts, omissions or violations by Shipper, its employees and/or its agents.

8. **Compensation to Broker.** Compensation for Broker's services (which shall include the amount(s) to be paid by Broker to its chosen carriers for their handling of shipments under this Agreement) shall be paid by Shipper to Broker for all shipments tendered by Shipper to Broker in accordance with: (a) price quotes based on any schedule of rates and/or charges set forth in Exhibit 2 attached to this Agreement and made a part hereof, and/or (b) other specific rates and/or charges as quoted in writing by Broker and accepted in writing by Shipper.

9. **Payment to Broker, Credit Terms.** If Shipper accepts Broker's price quote, Shipper shall tender payment to Broker immediately upon booking the shipment, unless Broker in its discretion determines to extend credit to Shipper. If credit is extended, Shipper shall pay Broker the agreed compensation for each shipment tendered pursuant to this Agreement within **fifteen (15)** days from receipt by Shipper of Broker's invoice and a copy of the delivery receipt for the shipment signed by or on behalf of the consignee and showing satisfactory delivery of the shipment. As security for any past due invoices, a Shipper to which credit will be extended shall sign the Credit Card Guarantee Form, or to make payment by check or by PAYPAL invoice, whereby Shipper will authorize Broker to charge Shipper's specified credit/debit card for such past due invoices.

10. **Bill of Lading and Receipt.** Broker shall require each motor carrier or ISP it selects to transport a shipment tendered by Shipper to Broker: (a) to issue a bill of lading at origin evidencing receipt of the shipment tendered to the motor carrier, and (b) to obtain a receipt for delivery of the shipment from the consignee or other Party accepting delivery.

11. **Carriers' Charges.** Broker shall be solely and exclusively liable and responsible for the payment of rates and charges to motor carriers and/or ISPs engaged by Broker that relate to the transportation of shipments tendered by Shipper to Broker pursuant to this Agreement. Shipper's sole obligation with regard to the payment of transportation charges for services provided under or in relation to this Agreement is to pay Broker as required by Article 8 of this Agreement. Broker's agreements with its chosen motor carriers and/or ISPs shall require them to waive any cargo liens or rights of recourse to Shipper (or to Shipper's consignors or consignees) which those carriers or ISPs otherwise might have pursuant to shipping documents, applicable regulations, statutes or common law.

12. **Cargo Liability.**

A. **Liability Limits.** Unless Broker receives written notice from Shipper (before Broker accepts a particular shipment) that the value of such shipment exceeds \$100,000, and Broker is able to find a motor carrier or ISP willing to accept liability for such higher value, the liability of the arranged motor carrier or ISP for any claim for loss, damage or delay shall be limited to no more than \$100,000.00 per shipment. To the extent that multiple shipments or consolidated shipments are tendered by Shipper at the same time and at the specific written request of Shipper are transported at the same time and in the same vehicle, such multiple shipments or consolidated shipments shall be considered a "single shipment" for the purposes of this Article. In the event Shipper gives written notice to Broker of a shipment value in excess of \$100,000.00 prior to the tender of the shipment, the liability of the arranged motor carrier or ISP for any claim for loss, damage or delay shall be limited to the amount stated in such written notice of value.

B. **Liability of Motor Carrier.** Broker undertakes to ensure that:

(i) A motor carrier arranged by Broker to transport Shipper's property shall be liable as a motor carrier under 49 U.S.C. § 14706 and as a common carrier under common law to Shipper with respect to damages for loss of, damage to or delay in delivery of any shipment tendered by Shipper pursuant to this Agreement. An ISP so arranged shall be similarly liable as a common carrier at common law

(ii) The motor carrier or ISP arranged by Broker shall not be liable for any loss, damage or delay caused by an act of God, the public enemy, the authority of law, the act or omission of Shipper, or due to the inherent vice of the goods shipped; *provided*, that the carrier asserting such defenses can establish that it was free of negligence in handling such goods.

C. **Processing of Cargo Loss, Damage and Delivery Delay Claims.** Shipper must file all cargo claims with the responsible motor carrier or ISP, and not with Broker. In processing of cargo loss, damage and delivery delay claims, Broker shall cause its arranged motor carrier or ISP to comply with 49 C.F.R. § 370.1 *et seq.* and any amendments and/or any other applicable regulations adopted by FMCSA, or any applicable state regulatory agency.

13. **Insurance.** Broker/Freight Forwarder agrees at all times to have and maintain a \$75,000 surety bond in conformity with FMCSA requirements, and shall provide written proof of such coverage to Shipper on request. If requested, Broker will promptly furnish Shipper with Certificates of Insurance or other acceptable evidence of such coverages, which shall extend to any and all claims and damages arising out of transportation within the contiguous United States pursuant to this Agreement by motor carriers or ISPs arranged by Broker. Broker/Freight Forwarder shall require that all motor carriers and ISPs transporting shipments tendered to Broker by Shipper shall have and maintain public liability and property damage insurance in the amount of one million dollars (\$1,000,000.00) and cargo loss or damage insurance in the amount of one hundred thousand dollars (\$100,000.00) per shipment. Broker agrees to maintain a complete and up-to-date file of all Certificates of Insurance evidencing such insurance policies for all motor carriers and ISPs with which it contracts for Services or on behalf of Shipper.

14. **Notice.** Any notice and other communication relating to this Agreement shall be in writing and be sent (A) by certified mail, return receipt requested, postage prepaid to the addresses set forth in the preamble to this Agreement, (B) by nationally recognized overnight courier service to such addresses, (C) by fax to the fax numbers given in the signature blocks of this Agreement, with proof of receipt by the intended recipient, (D) by e-mail to the electronic addresses given in the signature blocks of this Agreement, with proof of receipt by the intended recipient, or (E) in such other manner or to such other address as shall have been designated by the Party to which such notice or other communication is to be given. All such notices and other communications will be deemed to have been given and received in the following time frames: in the case of personal delivery, on the date of such delivery; in the case of facsimile or e-mail transmission with proof of receipt, on the date of transmission when sent on a business day (or if sent on other than a business day, on the next business day after the date sent); in the case of delivery under a next-day guarantee by a nationally recognized overnight courier service, on the business day following dispatch, or in the case of mailing, on the third business day following such mailing.

15. **Force Majeure.** If either Party is prevented from performing its obligations under this Agreement because of fire, earthquake, flood, explosion, wind, water, strike, lockout, acts of terror, or any other cause beyond the control of the affected Party, such Party shall immediately give written notice of such prevention to the other Party, and shall be excused from the performance of any and all its obligations under this Agreement for the duration of such specified circumstances. Within _____ () days after delivery of such written notice, the Parties shall meet and confer on possible ways of lawfully circumventing the condition creating the force majeure situation. No liability for any loss, damage or delay with respect to freight shipped or transported shall accrue on account of the occurrence of any force majeure circumstance absent the actual negligence of Broker/Freight Forwarder.

16. **Non-Disclosure of Information.**

A. Broker and Shipper agree to keep confidential any information provided to one of them by the other Party relating to such Party's operations or business activities, including, but not limited to: (i) the names of motor carriers, customers, suppliers and vendors, and (ii) freight rates and charges. Each Party agrees to hold all such information in confidence and shall not use any such information other than for the benefit of the other Party or in performance of its obligations under this Agreement.

B. Neither Party shall disclose any information set forth in subpart A of this Article 16 of the Agreement, nor shall either Party disclose any information regarding this Agreement or any amendments or attachments hereto (collectively "Confidential Information"), except:

- (i) as may be required by law or regulation;
- (ii) as is necessary to effect or further the purposes of this Agreement;
- (iii) when such disclosure is between a parent and its subsidiary or corporate affiliate; or
- (iv) when required in connection with an audit by an accounting or law firm, so long as the disclosing Party is responsible for ensuring compliance with this confidentiality requirement by the accounting or law firm.

The restriction against disclosure of Confidential Information as specified in this Article 16 of this Agreement shall not apply to information which was already known prior to the time it was imparted to the disclosing Party by the other Party; is available or becomes generally available to the public other than through a breach of this Agreement; is acquired or received rightfully and without confidential limitation from a third party, or is independently developed without breach of this Agreement. If either Party becomes legally required to disclose Confidential Information, or any part thereof, that Party will give the other prompt notice of such requirement. If the non-disclosing Party waives compliance with any of the terms of this Agreement or is unable to obtain a protective order or other appropriate remedy with respect to such disclosure of Confidential Information, then the disclosing Party shall disclose only that portion of the Confidential Information necessary to ensure compliance with such legal requirement.

17. **Counterparts.** This Agreement may be executed in one or more counterparts and each of such counterparts shall, for all purposes, be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

18. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Virginia (other than its conflict-of-laws doctrines), except to the extent any mandatory and/or preemptive federal law is applicable to this Agreement.

19. **Assignment.** Neither Party shall assign this Agreement or any interest in this Agreement, without the prior written consent of the other Party, except if notice is provided and the assignment is to a parent, subsidiary or affiliated entity. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the successors and assigns of the Parties to this Agreement.

20. **Entire Agreement.** This Agreement cancels and supplants any and all other written or oral agreements and understandings for property transportation broker services between Broker and Shipper. This Agreement may not be amended except in a written amendment executed by Shipper and Broker.

21. **Headings.** Any headings or numbering of paragraphs or articles of this Agreement are for organizational convenience only, and all terms and conditions of this Agreement are intended to take precedence over any such heading or numbering. If any part, term, paragraph or provision of this Agreement is found or declared to be invalid or unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect.

22. **Waiver.** The failure of a Party to object to or take action with respect to any breach of any term of this Agreement by the other shall not be construed as a waiver of any rights under this Agreement by the non-objecting Party, nor of any claims, past, present or future, for any breach of this Agreement.

23. **Disputes.** In the event of a dispute between the Parties arising out of this Agreement, including but not limited to Federal or State statutory claims, each Party's sole recourse shall be to arbitration; *provided, however*, that either Party may apply to a court of competent jurisdiction for injunctive relief. Arbitration proceedings shall be conducted under the rules of Transportation Arbitration And Mediation PLLC (TAM), the American Arbitration Association (AAA), or Transportation ADR Council, Inc. (ADR), at BROKER's sole discretion. Arbitration proceedings shall be started within eighteen (18) months from the date of delivery or scheduled date of delivery of the cargo, whichever is later, and shall be conducted at the office of TAM, the AAA or the ADR nearest McLean, Virginia or at such other place as mutually agreed upon in writing by the Parties or directed by the acting arbitration association. Upon agreement of the Parties, arbitration proceedings may be conducted outside of the administrative control of the TAM, AAA or ADR. Unless preempted or controlled by Federal law and/or regulations, the internal laws of the Commonwealth of Virginia shall be controlling. The decision of the arbitrator(s) shall be binding and final and the award of the arbitrator(s) may be entered as a judgment to be enforced in any court of competent jurisdiction. The prevailing Party shall be entitled to recovery of costs, expenses and reasonable attorney's fees as well as those incurred in any action for injunctive relief, or in the event further legal action is taken to enforce the award of the arbitrator(s). Venue for any such action against BROKER shall be Orange County, Virginia (for state courts) or the City of Alexandria, Virginia (for federal courts). The arbitration provisions of this Article 23 shall not apply to enforcement of the award of arbitration.

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

BROKER:

SHIPPER:

JSB ENTERPRISES, LLC d/b/a THE SHIPPING EMPORIUM

By: _____

By: _____

Printed Name/Title: _____

Printed Name/Title: _____

Fax number: _____

Fax number: _____

E-mail address: _____

E-mail address: _____

EXHIBIT 1

Broker's Property Transportation Broker License

EXHIBIT 2

Schedule of Rates and/or Charges

EXHIBIT 3

Credit Card Guarantee Form