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THIS AGREEMENT, made \_\_\_\_\_, 2012, by and between US Perishables ("USP"),  
P.O. BOX 4681, Hayward, CA 94540 and \_\_\_\_\_  
having its principal place of business at \_\_\_\_\_  
DOT # \_\_\_\_\_ ("Carrier").

**RECITALS**

1. Carrier owns or controls motor vehicles, and is ready, willing, and able to operate the vehicles for cargo transportation services (herein "Services").
2. USP, a licensed transportation broker, desires to hire Carrier to perform the Services for USP's customers in accordance with the terms and subject to the conditions of this Agreement.

For and in consideration of the mutual covenants herein contained, Carrier and USP agree as follows:

**SECTION I –TRANSPORTATION SERVICES**

(A) USP, in its sole discretion, will tender cargo to Carrier from time to time for transportation by Carrier. Cargo tendered shall be accompanied by USP's Uniform Short Form Straight Bill of Lading or USP's customer's Uniform Short Form Straight Bill of Lading (herein "Bill of Lading"). Notwithstanding, Carrier shall not be required to furnish any specific number of vehicles or to haul any specific amount of cargo. Nothing in this Agreement shall preclude USP from using the services of other carriers. Carrier's service shall be provided at its own expense and under its entire control as an independent contractor.

(B) Carrier shall provide serviceable equipment and vehicles maintained in good and legal operating condition. Carrier shall, at all times, be responsible for and pay all costs and expenses necessary or incidental to the maintenance and operation of the equipment and vehicles, including the cost of fuel, supplies, licenses, permits and tolls. Carrier shall have exclusive control and direction of the equipment and vehicles used in the performance of Services pursuant to this Agreement.

(C) Carrier, at its sole cost and expense, shall procure and maintain all licenses and permits required by local, state, or Federal authorities for the performance of Services and shall file and maintain appropriate tariffs required by any applicable jurisdiction. Carrier shall comply with all applicable laws, ordinances, codes,

rules, and regulations in performing the Services, including those of the Surface Transportation Board, the U.S. D.O.T. and those of Canadian Provincial Authorities where applicable. A copy of Carrier's Interstate Commerce Commission Permit or successor Federal agency Permit and a copy of Canadian Provincial Licenses/Pen-nits, where applicable, will be provided as evidence of Carrier's registration.

(D) Carrier's drivers shall be properly licensed and qualified for the operation of Carrier's vehicles and the performance of the Services.

(E) Carrier shall protect and preserve USP's customers' cargo and shall transport all cargo with prompt and reasonable dispatch in accordance with the scheduled delivery requirements of USP. Carrier will train its drivers in the proper handling of USP's customers' cargo (including hazardous materials when shipped in accordance with the provisions of 49 C.F. R. §70, et seq.) from the point of origin to the point of delivery, including the loading and unloading of the vehicles, if required.

(F) Carrier will meet with representatives of USP at USP's request to discuss the transportation requirements of USP. Carrier agrees not to solicit transportation business directly from any of USP's customers for which Carrier is doing business. If Carrier breaches this provision, carrier will pay USP 5(five)% of the total revenue received on the movement of the transportation for a period of 12 months after the involved traffic first begins to move with the carrier. Agreements and business in existence prior to USP and USP's customer relationship will not be subject to the restriction or penalties.

(G) Carrier and USP acknowledge and agree that these services are designed to meet the distinct needs of USP's customers.

(H) Carrier will comply with all service expectations established by USP's customers for services provided to them.

(I) Upon request of USP, Carrier will provide USP with Electronic Data Interchange, Internet, fax, or voice notification upon arrival for scheduled pick-up, at the time pick-up is effectuated, of in-transit shipment status, and at the time delivery is completed. Information relayed to USP by Carrier shall include, but not be limited to, billing information, bill of lading execution, exceptions, special service requirements, etc.

## **SECTION 2 –COMPENSATION**

USP will pay Carrier for its performance of the Services in accordance with the rates set forth in the Rate Schedule. The Rate Schedule must include all accessorial charges applicable. Both parties must sign the Rate Schedule and addenda to it. Carrier shall take such steps as are required by applicable law to ensure such rates are lawful. Carrier will invoice USP upon completion of Carrier's performance of Services and each invoice or statement will reference the applicable Bill(s) of Lading, include a certified copy of Proof of Delivery as evidence of Carrier's performance of service, and other material as specified by USP. An addendum may be added for procedures requiring payment by EDI. Invoices will be due and payable within fifteen (15) days of their receipt by USP. USP will pay on "practical" miles calculated utilizing an agreeable version of ALK's PC Miler.

### **SECTION 3 – TERM**

The term of this Agreement shall commence on \_\_\_\_\_, 2012, and continue thereafter until terminated by either party at any time without liability upon thirty (30) days prior written notice to the other party. Such termination shall not release either party from any liability or obligation existing or accrued at or prior to the date of such termination. Notwithstanding, if either party shall be required to cease and desist from the performance of Services or other obligations set forth in this Agreement by reason of any provision of law, order of any court, commission or other public authority, either party shall have the right to terminate this Agreement immediately upon written notice to the other party.

### **SECTION 4 - CARRIER'S INDEMNIFICATION**

(A) Carrier shall indemnify, defend and hold harmless USP, its officers, directors and employees from and against any and all claims, actions, losses, damages, expenses, judgments and costs (including reasonable attorneys' fees and costs) resulting from or arising out of Carrier's performance of the Services, including any loss of, damage to or destruction of property and vehicles, or from the death of or injury to any person, unless arising from USP's grossly negligent or wrongful act. The obligations of Carrier under this Section shall survive termination or expiration of this Agreement.

(B) Except for any applicable Federal excise tax levied upon the transportation of cargo for USP, Carrier shall pay any and all taxes, together with penalties, fines or interest thereon, imposed or levied by any Federal, state or local taxing authority having jurisdiction over the operation, use, maintenance or ownership of the vehicles and Carrier shall indemnify and hold harmless USP from any and all taxes the payment of which is the responsibility of Carrier.

### **SECTION 5 –INSURANCE**

(A) During the term of this Agreement and at any other time when Carrier performs Services for USP, Carrier's insurance certificates shall specify USP as a certificate holder. Carrier shall maintain a policy or policies of insurance with coverage as follows:

(i) Cargo liability insurance with minimum limits of \$100,000 per occurrence, which policy or policies shall name USP, its officers, directors and employees as certificate holder;

(ii) Automobile liability insurance covering its owned, hired and non-owned automobiles with minimum limits of \$1,000,000 per occurrence which policy or policies shall name USP, its officers, directors and employees as certificate holders,

(iii) Comprehensive general liability insurance, including contractual liability coverage, with minimum limits of \$1,000,000 per occurrence; and

(iv) Workers Compensation and Employer's Liability insurance in such amounts as may be required by applicable statutes.

(v) Carrier shall meet the insurance requirements of the project site it services, if such insurance requirements exceed the minimum allowed in Section 5(A)(i)-(iv) above.

(B) Carrier warrants to USP that Carrier has not done and will not do anything that would cause the insurance policy or policies carried by Carrier to be suspended, impaired, canceled, or otherwise adversely affected. Each policy shall require that USP be given not less than thirty (30) days prior written notice by the insurer of any cancellation, renewal or material change in Carrier's policy or policies of insurance.

(C) Carrier shall supply to USP certificates of insurance evidencing the coverage required herein and copies of the applicable policies immediately upon execution of this Agreement by Carrier and prior to providing any Services. Such certificates shall be attached as evidence of documents.

## **SECTION 6 - CLAIMS AND LIABILITY STANDARDS**

(A) Carrier shall assume all risk of loss and liability in the transportation of any goods for USP's customers from the time of Carrier's receipt of such goods from USP's customers until proper delivery of same has been made. Carrier is responsible for full actual loss. All claims will be filed and resolved in accordance with the provisions of 49 C.F.R. § 1005. All liability standards and burdens of proof will be governed by the common law applicable to motor carriers and by the provisions of 49 U. S.C. § 14706 (the Carmack Amendment).

(B) All overcharge, duplicate payment, and over-collection claims will be filed and resolved in accordance with the provisions of 49 C.F.R. § 1008. All overcharge, duplicate payment, and over-collection claims not filed by USP within 270 days of the ship date specified on the Bill of Lading are waived.

(C) All undercharge claims will be filed and resolved in accordance with the provisions outlined in the accompanying USP Undercharge Procedures document. All undercharge claims not filed by Carrier within 270 days of the ship date specified on the Bill of Lading are waived.

(D) All invoices not submitted to USP within 270 days of the ship date specified on the Bill of Lading are waived.

## **SECTION 7 - EVENTS OF DEFAULT**

(A) If any one or more of the following events of default (herein "Events of Default") shall happen, then this Agreement may, at the option of the party not in default, be immediately terminated:

(i) If either party shall default in the performance of any of its obligations contained in this

Agreement, which default shall continue for a period of five (5) business days after written notice of default is given by the non-defaulting party;

(ii) If either party shall file a voluntary petition in bankruptcy, or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking reorganization, composition, readjustments liquidation or similar relief for itself under any present or future statutes, laws or regulations, or shall seek or consent or acquiesce in the appointment of any trustee, or shall make any general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due;

(iii) If a petition shall be filed against either party seeking any reorganization, composition, re-adjustment, liquidation or similar relief under any present or future statute, law or regulation, and the same shall remain undismitted or unstayed for an aggregate of sixty (60) days (whether or not consecutive), or if any trustee, receiver or liquidator shall remain unvacated or unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(iv) If any representation or warranty made by either party herein or made in any statement or certificate furnished or required here-under, or in connection with this Agreement, proves untrue in any material respect as of the date of the issuance or making thereof.

(v) In the event Carrier is audited by the Department of Transportation, Carrier shall notify USP and, if there is a change in the safety rating from Satisfactory, USP shall have the option to cancel the contract.

(B) Upon the occurrence of an Event of Default, the non-defaulting party's exercise of the right to terminate this Agreement shall not be deemed an election of remedies and the non-defaulting party shall have such further remedies against the defaulting party as may be available to it at law or in equity.

## **SECTION 8 - CHANGE IN CONTROL**

In addition to such other rights as USP may have, USP shall have the right to immediately terminate this Agreement upon any change (i) in the ownership or voting control of fifty one percent (51 %) or more of the capital stock or assets of Carrier, if a corporation, or (ii) in the ownership of Carrier or its assets, if not a corporation. Carrier shall notify USP in writing at least thirty (30) days before any such change in control of the capital stock, business or assets of Carrier.

## **SECTION 9 - FURTHER ASSURANCES**

Each party agrees that it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other party during the term of this Agreement.

## **SECTION 10 - MISCELLANEOUS**

If, by any reason of Force Majeure, either party is rendered unable, in whole or in part, to perform any of its obligations herein, such obligations shall be suspended insofar as it is affected by Force Majeure. As used herein, Force Majeure shall mean acts of God, public enemy, war, floods, storms or other acts of the elements, accidental fires, strikes, lockouts or other labor acts or regulations, or any other circumstances or conditions beyond the reasonable control of said party and without the fault or neglect of such party. No consent or waiver, express or implied, by either party to or of any breach of default by the other party in the performance of any of its obligations shall be deemed or construed to be a consent or waiver to or of any other breach or default by such party. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party.

(C) In the event of any conflict between any term or provision of this Agreement and any term or provision in any attached documents, the term or provision in this Agreement shall govern to the extent of the conflict.

(D) All documents described in this Agreement shall be deemed to be incorporated and made a part of this Agreement.

(E) This Agreement shall not be assigned, delegated or transferred in whole or in part by either party, nor shall either party assign any monies due or to become due to it pursuant to this Agreement without the prior written consent of the other party; except that USP may assign its rights hereunder to a wholly-owned subsidiary of USP without the Carrier's consent, provided that USP shall remain primarily liable for the performance of this Agreement notwithstanding such assignment.

(F) This Agreement is entered into in California and shall be governed by and construed according to the laws of California.

(G) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

(H) Section headings contained in this Agreement are for ease of reference only and shall not affect the interpretation or meaning of this Agreement.

(I) This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, administrators, successors, assigns and legal representatives.

(J) If any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but it shall be construed as if such invalid, illegal or unenforceable provision had never been contained in it.

(K) All notices, requests, consents, approvals and other communications required in this Agreement shall be in writing and shall be deemed to have been duly given if hand-delivered, sent by facsimile, sent by overnight service or sent by United States Certified or Registered mail, return receipt requested, to the following addresses:

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

If to Carrier:

Attention:

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

(L) This Agreement, together with any attached documents, constitutes the entire agreement between USP and Carrier and supersedes all prior written or oral agreements, understandings, representations, negotiations, and correspondence between them. This Agreement shall not be supplemented, amended or modified by any course of dealing, course of performance or usage of trade and may only be supplemented, amended or modified by a written instrument duly executed by authorized representatives of both parties.

(M) Time is of the essence of all purposes in this Agreement.

**SECTION 11 - VALIDITY OF AGREEMENT**

This Agreement shall not be valid nor binding upon USP unless it shall have been executed by an officer of USP.

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

US Perishables

And

By:

By

\_\_\_\_\_

\_\_\_\_\_

David Evans

Title: President

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2012

Date: \_\_\_\_\_, 2012