

SHIPPER BROKER/FREIGHT FORWARDER AGREEMENT

This Shipper Broker Agreement (“Agreement”) is dated _____, 20__ and is between RLS Distribution, Inc. doing business as RLS Logistics (“RLS”) and _____, (“Shipper”).

RLS is licensed as a property broker by the Federal Motor Carrier Safety Administration (“FMCSA”) in Docket Number 188896 and a freight forwarder authorized by FF 01045, and by appropriate State agencies. RLS arranges for transportation of cargo, both general commodities and exempt commodities, by motor carrier.

Shipper, to satisfy some of its transportation needs, desires to use the services of RLS either to arrange for transportation of Shipper’s cargo (“Goods”) as a broker or to provide for transportation of Goods as a freight forwarder.

The parties enter into this Agreement pursuant to 49 U.S.C. § 14101(b (1)) and expressly waive any and all rights and remedies that each may have under 49 U.S.C. § 13101 through § 14914 that are contrary to the specific provisions of this Agreement.

1. Term and Termination.

A. Term. The initial term of this Agreement is one year, starting on the date shown above. At the end of the initial term and each subsequent term, this Agreement will automatically renew for an additional one-year period.

B. Termination.

(i) For Convenience. Either party may terminate this Agreement at any time, without cause, on 60 days written notice to the other party.

(ii) For Cause. If either party breaches the terms of this Agreement, the other party may terminate this Agreement on 10 days written notice.

2. Service. RLS agrees, when acting as a broker, to arrange for transportation of Goods by motor carriers (“Motor Carriers”) and when acting as a freight forwarder, to provide transportation of Goods in compliance with all federal, state, and local laws and regulations. When acting as a broker, RLS’s responsibility is limited to arranging for, but not actually performing, transportation of Goods. The Parties may, upon written mutual agreement, include additional services in Appendix __.

3. No Exclusivity. Shipper is not restricted from tendering cargo to other brokers, or directly to motor carriers. RLS is not restricted from arranging transportation for other persons or entities.

4. Shipper’s Obligations.

A. Compliance with Food Safety Laws. Shipper shall comply with all applicable laws and regulations governing the safe and secure transportation of food products that will be ultimately 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.), the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 341, et seq.) (“FD&C Act”), the Sanitary Food Transportation Act (49 U.S.C. 5701, et seq.), the U.S. Food and Drug Administration’s Final Rule on the Sanitary Transportation of Human and Animal Food (21 C.F.R. § 1.900, et seq.) and all applicable U.S. Department of Agriculture and Food Safety and Inspection Service regulations (collectively, the “Food Safety Laws”). Shipper represents and warrants that any Food

Shipments offered for transportation pursuant to the Agreement are tendered in safe condition for human or animal consumption, as applicable.

B. Shipper Written Instructions.

(i) Shipper must provide necessary shipping instructions and properly identify all Goods in the bill of lading or other shipping instructions. Shipper will not tender any restricted commodities including, but not limited to, hazardous materials and waste, oversize or overweight shipments, coiled or rolled products, or commodities requiring protection from heat or cold, without properly identifying such shipments and making necessary prior arrangements for transportation.

(ii) If a Food Shipment is covered under any of the Food Safety Laws that prohibit the sale or distribution of unsafe or “adulterated” food, Shipper must specify the applicable body or bodies of law, statutes, and/or regulations on face of the governing bill of lading for the shipment. At the time of booking, and prior to loading the goods, Shipper must further specify in the booking request and on the face of the governing bill of lading all instructions to be followed by the motor carriers to maintain the safety of the food, including, without limitation, all temperature control requirements and temperature control documentation requirements, including an operating temperature for the transportation and, when necessary, the pre-cooling phase, all sanitation requirements and sanitation documentation requirements for the Food Shipment, including those for the motor carriers’ vehicle and transportation equipment, any design specifications and cleaning procedures (“Written Instructions”). RLS will assist Shipper in providing any Written Instructions to the motor carriers transporting Shipper’s food cargo. Shipper, including its consignors and consignees, shall permit the performing motor carrier to verify the temperature of Food Shipments prior to acceptance of tender and upon delivery at destination.

(iii) Shipper warrants that it will not directly or indirectly interfere with, or attempt to adversely influence, the performing motor carrier’s safe operation of equipment including performance pursuant to the federal hours of service regulations.

C. Loading.

(i) Shipper is responsible for ensuring that Goods are properly and safely loaded, supported, blocked, braced, and secured. Shipper will be responsible for expenses arising out of any load shift that occurs during transportation due to improper or insufficient loading, blocking, or bracing. If Shipper is loading food shipments into the motor vehicles transporting the cargo, Shipper is responsible for ensuring that the vehicle or other transportation equipment provided by the motor carrier meets the requirements specified in the Written Instructions and are in an appropriate sanitary condition for transporting the food shipments. Shipper must also ensure that mechanically refrigerated storage compartments or containers required in the Written Instructions have been adequately prepared to transport any temperature-controlled food being shipped and, if required by the Written Instructions, properly pre-cooled.

(ii) Shipper is responsible for checking all empty containers or trailers tendered for loading and rejecting any equipment that is not in apparent suitable condition to protect and preserve the Goods during transportation. Vehicles and other transportation equipment used to transport food shipments will be deemed acceptable to Shipper upon loading. Shipper’s failure to fulfill the obligations under this Section 4 will be considered an act or default of the Shipper, and a defense to any cargo claim resulting from the condition of the trailer.

(iii) Unless Shipper has requested that RLS arrange for the Motor Carrier to provide driver count services before dispatch and the Motor Carrier performs such driver count

services, Shipper is responsible for properly counting and recording the number of pieces transported and applying a protective seal to the loaded equipment.

D. Inspection and Loss or Damage to Food Shipments. Shipper acknowledges and agrees that the definition of “adulterated” as applicable to Food Shipments shall be that provided in the FD&C Act (21 U.S.C. §§ 342(a)(i)(4), 342(i)). In the event of apparent adulteration of any portion of a Food Shipment, Shipper warrants that it will at its own expense obtain a reliable inspection of the Food Shipment as soon as possible after delivery by a qualified expert. Shipper acknowledges that the performing motor carrier will bear no liability for Food Shipments wrongfully refused by Shipper without a timely and documented determination by a qualified expert of adulteration. Shipper additionally acknowledges that if it fails to provide written instructions, as required in Section 4(B) above, the performing motor carrier will not be liable for loss or damage to Food Shipments deemed adulterated.

E. Mitigating Damages. None of the provisions in this Agreement in any way limit Shipper’s obligation to mitigate its damages, including by salvaging all portions of a shipment for which there is a secondary market.

F. Recordkeeping. Shipper is responsible for the recordkeeping obligations of a “Shipper” under the Food Safety Laws for all food shipments governed by this Agreement.

G. Dropped Trailers. If Shipper requests that RLS arrange for equipment to be dropped at a location for Shipper’s convenience and left unattended by Motor Carrier, Shipper and its consignors or consignees will not lose, damage, or misuse the equipment and Shipper will pay for loss or damage to the equipment occurring during or as a result of such custody, control, possession, or use of the equipment.

5. Motor Carriage. RLS will not use any Motor Carrier with an “unsatisfactory” safety rating. RLS will require proof of insurance and operating authority from each Motor Carrier engaged by it. RLS agrees to enter into Broker-Carrier contracts with its Motor Carriers that comply with all applicable federal and state regulations and will include the following provisions:

A. Motor Carrier Insurance. Each RLS-Carrier Contract must contain the agreement of the Motor Carrier to maintain at all times during the term of the contract insurance coverage with limits not less than the following and to provide certificates of insurance to RLS verifying the following coverage:

Comprehensive General Liability (including contractual liability)	\$ 1,000,000
Comprehensive Automobile/Truckers Liability (including UIIA and trailer interchange endorsements)	\$ 1,000,000 \$ 5,000,000 if transporting Hazardous Materials
Cargo Insurance	\$ 100,000
Workers Compensation Insurance	As required by law

B. Motor Carriers’ Safety Rating. Each Broker-Carrier Contract must prohibit the Motor Carrier, during the term of its contract with RLS, from having an “unsatisfactory” safety rating as determined by the FMCSA.

C. Motor Carrier Waiver. Each RLS-Carrier Contract must state that pursuant to 49 U.S.C. § 14101(b), the parties expressly waive, to the extent permitted by law, all rights and remedies under Title 49 U.S.C. Subtitle IV, Part B to the extent they conflict with the RLS-Carrier Contract.

D. Equipment. Each RLS-Carrier Contract must require the Motor Carrier to provide safe, operational equipment and not to supply any trailers or containers that have been used to transport hazardous wastes (as defined in 40 CFR § 261), trash, or solid or liquid waste, whether or not defined as hazardous wastes under 40 CFR Part § 261.

6. Receipts and Bills of Lading. If requested by Shipper, RLS will provide Shipper with proof of acceptance and delivery in the form of a signed Bill of Lading or Proof of Delivery, as specified by Shipper. Any document required by this Agreement may be presented in either paper or electronic form. Shipper's insertion of RLS's name on the bill of lading will be for convenience only and will not change RLS's status as a property broker or as a freight forwarder. The terms and conditions of any documentation used by RLS or a Motor Carrier will be subordinate to the terms of this Agreement.

7. Payments.

A. Payment for Services. RLS will invoice Shipper for its services in accordance with the rates, charges and provisions in Appendix ___ and any written supplements or revisions that are mutually agreed to between the parties. If rates are negotiated between the parties and are not otherwise confirmed in writing, such rates will be considered "written," and will be binding, upon RLS's invoice to Shipper and Shipper's payment to RLS. Shipper agrees to pay RLS's invoice, if undisputed, within fifteen (15) days of receipt. RLS may assess a service charge of 1 ½% per month (or the highest lawful rate, if less) on any late payments. RLS will apply payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. Payment of the charges to RLS will relieve Shipper, consignee and all other entities of liability to any Motor Carrier for non-payment of freight charges; and subject to Shipper's payment to RLS, RLS covenants and agrees to indemnify Shipper and its consignee, consignor or other responsible person or entity against liability for payment of freight charges to the Motor Carriers engaged by RLS.

B. Time Limits on Payment Related Claims. If Shipper does not pay the invoiced amounts, RLS must commence a civil action or final and binding arbitration proceedings to recover such invoiced amounts within eighteen (18) months of delivery or tender of delivery of the shipments involved. If RLS alleges undercharges, or Shipper alleges overcharges, duplicate payment, or over collection, notice of such claims or unidentified payments must be given within 180 days of receipt of the invoice and a civil action or arbitration proceeding must be filed within eighteen (18) months of delivery or tender of delivery of the shipments involved. The processing, investigation, and disposition of overcharge, unidentified payment, duplicate payment, or over collection claims will be handled by Shipper and RLS consistent with the procedures set forth in 49 CFR Part 378.

8. Provisions Regarding Handling of Cargo and Cargo Loss and Damage.

A. Liability of the Motor Carriers. RLS will select only Motor Carriers that agree (1) to assume the liability of a motor carrier for full actual loss of cargo, subject to the provisions of the 49 U.S.C. 14706 (or successor regulation to such Carmack Amendment), up to a maximum liability of \$100,000 per shipment. Motor Carriers must agree to process and pay cargo claims in accordance with and subject to 49 CFR §370. The Motor Carriers' cargo liability for any one shipment will not exceed \$100,000, unless RLS is notified by Shipper of a higher value prior to shipment pickup and with reasonable advance notice and RLS and/or the Motor Carrier have accepted the increased liability

B. Cargo Liability of RLS. It is understood and agreed that when acting as a broker, RLS is not a carrier or freight forwarder, and RLS will not be held liable for loss, damage or delay in the transportation of Goods unless such loss, damage, or delay is caused solely by the negligence or willful misconduct of RLS. When acting as a freight forwarder, RLS agrees to be subject to 49 U.S.C. 14706 up to a maximum liability of \$100,000 per shipment. All cargo claims must be filed by Shipper directly with the responsible Motor Carrier (when RLS is acting as a broker) and with RLS (when RLS is acting as a freight

forwarder) within nine (9) months of the date of delivery or expected delivery of the Cargo. Any action at law regarding a cargo claim must be filed with the Motor Carrier or RLS, whichever is appropriate, within two (2) years and one (1) day of the date the Motor Carrier or RLS declines to pay any part of the cargo claim.

C. Defenses. Unless negligent, neither RLS nor the Motor Carriers will be liable for the following: (1) damage to cargo to the extent due to packaging, loading, unloading, blocking, bracing or securing of the cargo (unless the Motor Carrier has provided loading or unloading services at Shipper's request, in which case such Motor Carrier (but not RLS) may be liable for cargo damage caused by such loading or unloading services); (2) inherent vice or defect in the cargo transported, including, without limitation, rusting of metals, swelling of wood caused by humidity, moisture or condensation, or deterioration of perishable products; (3) act of God or the public enemy; or (4) an act or default of Shipper, consignor, consignee or beneficial owner of the cargo.

D. Disclaimer of Liability for Certain Types of Damages. In no event will RLS or the Motor Carrier be liable to Shipper for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless Shipper has informed RLS or the Motor Carrier in written or electronic form, prior to or when tendering a shipment or series of shipments, of the potential nature, type and approximate value of such damages, and the Motor Carrier specifically agrees in written or electronic form to accept responsibility for such damages. In no event will RLS or the Motor Carrier be liable to Shipper for punitive or exemplary damages that relate to loss, damage or delay to a shipment.

E. Refused Shipments –Warehouse Liability. If any consignee refuses to accept Goods tendered by the Motor Carrier engaged by RLS or if such Motor Carrier is unable to deliver the cargo for any reason outside its control, RLS will notify Shipper within twenty-four (24) hours of failed delivery of such failure and the reason therefor. Upon notification, Shipper will have three business days within which to decide whether to store or re-route the cargo to an alternative destination or back to the Shipper. If Shipper advises and instructs RLS to stop movement of the cargo and to hold it in transit or Shipper fails to provide timely instruction, at such point, the liability of the Motor Carrier engaged by RLS will become that of a warehouseman. In such event, RLS will advise the Motor Carrier to use ordinary care to keep the cargo in a safe and suitable place for storage. Shipper will be responsible for storage costs and other reasonable costs incurred by RLS for warehouseman services. If Shipper gives RLS timely disposition instructions, RLS will or will cause the Motor Carrier to use any commercially reasonable steps to abide with such instructions. Shipper will pay any additional transportation or other costs incurred in complying with Shipper's disposition instructions.

9. Insurance. RLS agrees to procure and maintain at its own expense, at all times during the term of this Agreement, the following minimum insurance coverage amounts:

A. Comprehensive liability insurance (including contractual liability)
\$1,000,000

B. Contingent Cargo Insurance
\$100,000

RLS will cause its insurance broker or carrier to submit to Shipper a certificate of insurance as evidence of such coverage and which names Shipper as "Certificate Holder."

10. Surety Bond. RLS will maintain a surety bond or trust fund agreement as required by the FMCSA and furnish Shipper with proof upon request.

11. Hazardous Materials. Shipper and RLS will comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.101 (or any successor regulation) to the extent that any shipments constitute hazardous materials. Shipper is obligated to inform RLS immediately if any such shipments do constitute hazardous materials.

12. Assignment/Modifications of Agreement. This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. This Agreement may not be assigned by either Party without the written consent of the other Party, except to any wholly owned subsidiary of such Party. No amendment or modification of the terms of this Agreement will be binding unless in writing and signed by the Parties.

13. Severability / Survivability. If the operation of any portion of this Agreement results in a violation of any law, or a court of competent jurisdiction determines any provision to be invalid or unenforceable, the Parties agree that such portion or provision will be severable and that the remaining provisions of the Agreement will continue in full force and effect.

14. Independent Contractor. It is understood between RLS and Shipper that RLS is not an agent for the Motor Carrier or Shipper and will remain at all times an independent contractor. Shipper does not exercise or retain any control or supervision over RLS, its operations, employees, or the Motor Carriers.

15. Nonwaiver. Failure of either Party to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of this Agreement, will not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same will continue and remain in full force and effect as if no forbearance or waiver had occurred. No waiver of any right, power, or privilege hereunder will be binding upon any Party unless in writing and signed by or on behalf of the Party against which the waiver is asserted.

16. Notices. All notices under this Agreement will be in writing and will be deemed to be sufficient if (a) delivered personally, (b) sent by facsimile or e-mail transmission if confirmed by notice sent by one of the other notice methods permitted hereunder, (c) sent by nationally-recognized, overnight courier guaranteeing next business day delivery, or (d) mailed by registered or certified mail (return receipt requested), postage prepaid, to the Parties at the following addresses (or at such other address for a Party as will be specified by like notice):

(RLS)

Attn: _____
Address: _____

Phone: _____
Fax: _____
E-Mail: _____

(Shipper)

Attn: _____
Address: _____

Phone: _____
Fax: _____
E-Mail: _____

All such notices and other communications will be deemed to have been given and received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of facsimile or e-mail transmission that is confirmed by notice sent on the same day by one of the other methods permitted hereunder, on the date of transmission if sent on a business day, (or if sent on other than a business day, on the next business day after the date sent), (c) in the case of delivery by nationally-recognized, overnight courier, on the business day following dispatch if sent by guaranteed next day delivery, or (d) in the case of mailing, on the third business day following such mailing.

17. Force Majeure. If performance by one Party is affected by any condition beyond the reasonable control of such Party, including fire, labor strife, riot, war, weather conditions, acts of the public enemy, acts of God, acts of terrorism, local or national disruptions to transportation networks or operations, material equipment repairs, fuel shortages, governmental regulations, or governmental request or requisition for national defense, and provided that the applicable condition is not attributable to the acts or omissions of such Party, and such Party is taking reasonable measures to remove or mitigate the effects of the applicable condition, then the performance of obligations under this Agreement (other than Shipper's obligation to pay for services performed) affected by such condition will be suspended during the continuance of such condition, and such Party will promptly notify the other Party of such condition. Such period of suspension will not in any way invalidate this Agreement, but on resumption of operations, any affected performance by such Party will be resumed. The Motor Carriers engaged by RLS will be permitted an extension period equal to the period of suspension to complete shipments adversely affected by the suspension. Neither Party will incur any liability for damages resulting from such suspensions.

18. Choice of Law. All questions concerning the construction, interpretation, validity and enforceability of this Agreement, whether in a court of law or in arbitration, will be governed by and construed and enforced in accordance with the laws of the State of New Jersey, without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply.

19. Confidentiality.

A. Publicity. RLS will not use Shipper's name or identity in any advertising or promotional communications without Shipper's written consent.

20. Confidentiality. The Parties will not publish, use or disclose the contents or existence of this Agreement except (1) as necessary to conduct their operations pursuant to this Agreement, (2) to the extent required by a governmental agency, under a court order or as otherwise required by law, provided that the receiving Party has notified the other Party of such governmental or court action before disclosing the Information, (3) to obtain financing, or (4) to auditors retained for the purpose of assessing the accuracy of freight bills or similar purposes. RLS will require its Motor Carriers to comply with this confidentiality clause. These confidentiality obligations will not prohibit or limit the receiving Party's use of information (1) previously known to it and not subject to any confidentiality restrictions, (2) acquired by it from a third party which is not, to the receiving Party's knowledge, under an obligation not to disclose such information, or (3) which is or becomes publicly available through no breach of these obligations by the receiving Party or its employees or agents of these confidentiality obligations.

21. Entire Agreement. This Agreement, including all Appendices attached hereto, constitutes the entire agreement intended by and between the Parties and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter hereof.

22. Counterparts and Facsimile Execution. This Agreement may be executed in two or more counterparts, and each such counterpart will be deemed to be an original instrument and will be considered validly delivered and become effective when one or more counterparts have been signed by each of the Parties and delivered (by facsimile or otherwise) to the other Parties.

23. Captions. The captions set forth in this Agreement are for convenience only and will not be considered a part of this Agreement nor affect in any way the meaning of the terms and provisions hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names by their fully authorized representatives as of the dates first above written.

RLS

Shipper

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPENDIX A