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**SHIPPER / BROKER TRANSPORTATION AGREEMENT**

THIS AGREEMENT, made and intended to be effective this \_\_\_\_\_ day of \_\_\_\_\_  
by and between:

**CLS SERVICES, INC., Cleveland, OH (BROKER)**

**and**

\_\_\_\_\_  
(Shipper)

\_\_\_\_\_  
(Location)

collectively, the PARTIES.

**RECITALS**

A. WHEREAS BROKER is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (FMCSA) in Docket Number MC-630059, or by appropriate State agencies, and as a licensed broker, arranges for freight transportation. A copy of BROKER's authority is attached as Appendix A and a copy of BROKER's Surety Bond or trust fund agreement is attached as Appendix B; and

B. WHEREAS SHIPPER, to satisfy some of its transportation needs, desires to utilize the services of BROKER to arrange for transportation of SHIPPER's freight. NOW THEREFORE, intending to be legally bound, BROKER and SHIPPER agree as follows:

**AGREEMENT**

1. **TERM.** Subject to paragraph 11, the term of this Agreement shall be one (1) year, commencing on the date first mentioned above, and shall automatically renew for successive one year periods; provided, however, that either Party may terminate this Agreement on 30 days written notice to the other Party, with or without cause, or as otherwise provided in this Agreement.

2. **SERVICE. BROKER.** agrees to arrange for transportation of SHIPPER's freight pursuant to the terms and conditions of this Agreement and in compliance in all material respects with all federal, state and local laws and regulations relating to the brokerage of the freight covered by this Agreement. BROKER's responsibility under this Agreement shall be limited to arranging for, but not actually performing, transportation of SHIPPER's freight.

3. **VOLUME.** A: SHIPPER agrees to tender a minimum of one (1) shipments per year to BROKER, and BROKER agrees to arrange for the transportation of said shipments, as well as any other shipments offered by SHIPPER. Shipper is not restricted from tendering freight to other brokers, or directly to

motor carriers. BROKER is not restricted from arranging transportation for other parties. B: SHIPPER shall be responsible to BROKER for timely and accurate delivery instructions and description of the cargo, including any special handling requirements, for any shipment. 2004 National Industrial Transportation League & Transportation Intermediaries Association. All right reserved.

4. **FREIGHT CARRIAGE.** BROKER warrants that it has entered into, or will enter into bilateral contracts with each carrier it utilizes in the performance of this Agreement. BROKER further warrants that those contracts comply with all applicable federal and state regulations and shall include the following provisions:

A. Carrier shall agree to defend, indemnify and hold BROKER and SHIPPER harmless from all damages, claims and losses arising out of it's performance of the Agreement, including cargo loss and damage, theft, delay, damage to property, and personal injury or death.

B. Carrier shall agree that its liability for cargo loss or damage shall be no less than that of a Common Carrier as provided for in 49 USC 14706 (the Carmack Amendment). Exclusions in Carrier's insurance coverage shall not exonerate Carrier from this liability. For shipments outside of the United States the terms in Foreign Shipment Appendix D of this Agreement shall apply.

C. Carrier shall agree to maintain at all times during the term of the contract, insurance coverage with limits not less than the following:

General Liability / Property Damage - \$1,000,000

Auto Liability - \$1,000,000

Cargo Liability - \$100,000

Worker's Compensation - as required by law.

BROKER shall verify that each carrier it utilizes in the performance of this Agreement has insurance coverage as defined above.

D. Carrier shall agree that the provisions contained in 49 CFR 370. Shall govern the processing of claims for loss, damage, injury or delay to property and the processing of salvage.

E. All payments for transport must be in the form of a money order, cashier's check or cash on delivery. The Customer (Owner or shipper) agrees that if the payment cannot be made by money order, cashier's check or cash the vehicle will be stored at Customer's expense. Should the customer, for any reason, be unable to accept delivery, the vehicle will be placed in storage. Any and all storage and/or delivery costs will be the responsibility of the customer.

F. Carrier shall agree that, at not time during the term of its contract with BROKER, shall it have an "Unsatisfactory" safety rating as determined by the Federal Motor Carrier Safety Administration (FMCSA). If Carrier receives an Unsatisfactory safety rating, it shall immediately notify BROKER. BROKER shall not knowingly utilize any carrier with an unsatisfactory safety rating in the performance of this Agreement.

G. Carrier shall agree that the terms and conditions of its contract with BROKER shall apply on all shipments it handles for BROKER. Any terms in a tariff that are referenced in the carrier contract which are inconsistent with the contract shall be subordinate to the terms of the contract.

H. Carrier shall expressly waive all rights and remedies under Title 49 U.S.C., Subtitle IV, Part B to the extent they conflict with the contract.

I. BROKER further warrants it will require proof of insurance and operating authority from each Carrier and, should BROKER utilize the services of any Carrier or other broker on SHIPPER's behalf, which Carrier and/or broker does not have proof of insurance and /or operating authority, BROKER agrees to indemnify and hold harmless SHIPPER from all legitimate claims not paid by Carrier, including but not limited to cargo loss and damage claims. 2004 National Industrial Transportation League & Transportation Intermediaries Association. All rights reserved.

5. **RECEIPTS AND BILLS OF LADING** This order is subject to all the terms and conditions of the carrier's straight bill of lading. Copies of the bill of lading are available at the office of the carrier and are incorporated herein.

6. **PAYMENTS. BROKER** shall invoice Shipper for its broker services in accordance with agreed rates. SHIPPER agrees to pay BROKER's invoice within 15 days of invoice date without deduction or setoff. All payments for transport must be in the form of a money order, shier's check or cash on delivery. The Customer (Owner or shipper) agrees that if the payment cannot be made by cashier's check, the vehicle will be stored at Customer's expense. Should the customer, for any reason, be unable to accept delivery, the vehicle will be placed in storage. Any and all storage and/or delivery costs will be the responsibility of the customer.

7. **CLAIMS** Should any damage occur due to negligence of the carrier, all issues must be acknowledge at the time of delivery. All damage must be properly noted in the bill of lading, and signed by the driver and the Customer, regardless of weather conditions or time of day. Signing the bill of lading without any notation of damage serves to verify that the Customer or his agent has received the vehicle in good condition, and that CLS Services, Inc and its agents are relieved of any further responsibility. The Customer or his agent must check the vehicle thoroughly upon delivery. Signing the bill of lading without any notation of damage serves to verify that the Customer or his agent has received the vehicle in good condition, and that CLS Services, Inc and its agents are relieved of any further responsibility. CLS in good faith, will assist the Customer in this effort should such a problem occur, but in no way will CLS Services, Inc assume responsibility for any negligence of the assigned carrier. If the value of the Customer's vehicle is higher than the market value, CLS Services, Inc recommends that the Customer purchase a special insurance rider.

8. **INSURANCE.** BROKER agrees to procure and maintain at its own expense, at all times during the term of this Agreement, the following insurance coverage amounts:

A. Contingent Caro Insurance \$100,000

B. Errors and Omissions Insurance \$100,000 (for date on coverage see [www.tianet.org](http://www.tianet.org))  
BROKER shall submit to SHIPPER a certificate of insurance as evidence of such coverage and which names SHIPPER as "Certificate Holder".

9. **SURETY BOND.** BROKER shall maintain a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration in the amount of \$10,000 and furnish SHIPPER with proof upon request.

**10. HAZARDOUS MATERIALS.** SHIPPER and BROKER shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR 172.800 and 173 to the extent that any shipments constitute hazardous materials. SHIPPER is obligated to inform BROKER immediately if any such shipments do constitute hazardous materials. SHIPPER shall defend, indemnify and hold BROKER harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of the SHIPPER's failure to comply with applicable hazardous materials laws and regulations.

**11. DEFAULT.** Both parties will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes in good faith. However, if either party materially fails to perform its duties under this Agreement, the party claiming default may terminate this Agreement on 10 (ten) days written notice to the other party. SHIPPER shall be responsible to pay BROKER for any services performed prior to the termination of this Agreement and for shipments not yet completed and / or not yet invoiced to SHIPPER.

**12. INDEMNIFICATION.** Subject to the insurance limits in Section 8, BROKER and SHIPPER shall defend, indemnify and hold each other harmless against any claims, actions or damages, including, but not limited to, cargo loss, damage, or delay and payment of rates and/or accessorial charges to Carriers, arising out of their respective performances under this Agreement, provided, however, the indemnified party shall not offer settlement in any such claim without the agreement of the indemnifying party which agreement shall not be unreasonably withheld. If the indemnified party offers or agrees to a settlement for such a claim without the written agreement of the indemnifying party, the indemnifying party shall be relieved of its indemnification obligation. Neither party shall be liable to the other party for any claims, actions or damages due to the negligence of the other party. Although Section 8 only imposes insurance requirements upon BROKER, for purpose of this Section 12, those amounts shall limit the scope of SHIPPER's indemnification obligations. The obligation to defend shall include all costs of defense as they accrue.

**13. ASSIGNMENT/MODIFICATIONS OF AGREEMENT.** Neither party may assign or transfer this Agreement, in whole or part, without the prior written consent of the other party. No amendment or modification of the terms of this Agreement shall be binding unless in writing and signed by the PARTIES.

**14. SEVERABILITY/SURVIVABILITY.** In the event that the operation of any portion of this Agreement results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the Agreement shall continue in full force and effect. The representatives and obligations of the PARTIES shall survive the termination of this Agreement for any reason.

**15. NOTICES.** Unless the PARTIES notify each other in writing of a change of address, any

and all notices required or permitted to be given under this Agreement shall be in writing (or fax with machine imprint on paper acknowledging successful transmission).

16. **FORCE MAJEURE.** Neither Party shall be liable to the other for failure to perform any of its obligations under this Agreement during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of the SHIPPER or BROKER, provided that the Party so prevented uses its best efforts to perform under this Agreement and provided further, that such Party provide reasonable notice to the other Party of such inability to perform.

17. **CHOICE OF LAW and VENUE.** All questions concerning the construction, interpretation, validity and enforce ability of this Agreement, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the laws of the Cuyahoga County, State of OHIO, without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply.

18. **CONFIDENTIALITY.** BROKER shall not utilize SHIPPER's name or identity in any advertising or promotional communications without written confirmation of SHIPPER's consent and the PARTIES shall not publish, use or disclose the contents of existence of this Agreement except as necessary to conduct their its operations pursuant to this Agreement. BROKER will require its carriers and/or other brokers to comply with this confidentiality clause.

19. **ENTIRE AGREEMENT.** This Agreement, including all Appendices and Addenda, 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.

**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.

**BROKER — CLS Services, Inc.**

**SHIPPER**

\_\_\_\_\_  
Betty Nite

\_\_\_\_\_  
Signed by: \_\_\_\_\_

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Independence, OH 44131  
216-524-7711  
Fax 216-524-3275

Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

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