

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

EVER BEDOYA, *et al.*,

Plaintiffs,

V.

No. 2:14-cv-02811-ES-JAD

AMERICAN EAGLE EXPRESS, INC.,

d/b/a AEXGROUP,

Defendant.

AMERICAN EAGLE EXPRESS, INC.,

Third-Party Plaintiff,

V.

KV SERVICE LLC,

A&D DELIVERY EXPRESS LLC, and

M&J EXPRESS LLC,

### Third-Party Defendants.

**ANSWER TO PLAINTIFFS' CLASS ACTION COMPLAINT AND COUNTERCLAIM  
FOR INDEMNITY AGAINST PLAINTIFFS BEDOYA, GONZALEZ, AND DECASTRO**

Defendant, American Eagle Express, Inc., d/b/a AEX GROUP (“AEX”), by counsel and pursuant to Fed. R. Civ. P. 8(b) and (c), answers Plaintiffs’ Class Action Complaint (“Complaint”) as follows:

1. Responding to ¶ 1 of the Complaint, AEX denies all allegations, denies that it has violated any laws, denies that class certification is appropriate, and denies that Plaintiffs are entitled to any relief.

2. Responding to ¶ 2 of the Complaint, AEX does not challenge venue or the Court’s jurisdiction.

3. Responding to ¶ 3 of the Complaint, AEX lacks knowledge or information sufficient to admit or deny Plaintiff's place of residence, and therefore denies the same. AEX denies all remaining allegations.

4. Responding to ¶ 4 of the Complaint, AEX lacks knowledge or information sufficient to admit or deny Plaintiff's place of residence, and therefore denies the same. AEX denies all remaining allegations.

5. Responding to ¶ 5 of the Complaint, AEX lacks knowledge or information sufficient to admit or deny Plaintiff's place of residence, and therefore denies the same. AEX denies all remaining allegations.

6. Responding to ¶ 6 of the Complaint, AEX admits that it is a corporation, that it is headquartered in Aston, Pennsylvania, and that it operates a facility in Linden, New Jersey. AEX denies all remaining allegations.

7. Responding to ¶ 7 of the Complaint, AEX denies that class certification is appropriate, denies that Plaintiff's class definition is appropriate, and denies all remaining allegations.

8. Responding to ¶ 8 of the Complaint, AEX denies all allegations.

9. Responding to ¶ 9 of the Complaint, AEX admits that it operates in certain mid-Atlantic states. AEX denies that it is a "package delivery company" and denies all remaining allegations.

10. Responding to ¶ 10 of the Complaint, AEX admits it conducts business out of Linden, New Jersey. AEX denies all remaining allegations.

11. Responding to ¶ 11 of the Complaint, AEX denies the allegations.

12. Responding to ¶ 12 of the Complaint, AEX denies all allegations.

13. Responding to ¶ 13 of the Complaint, AEX denies all allegations.

14. Responding to ¶ 14 of the Complaint, AEX lacks knowledge or information sufficient to admit or deny whether “Bedoya delivers mostly medicines and pharmaceutical scripts to various stores such as CVS or Walgreen’s and sometimes to a hospital or other medical facility,” and whether “Bedoya reports to a warehouse operated by AEX and located in Linden, New Jersey,” and therefore denies the allegations. AEX also lacks knowledge or information sufficient to admit or deny allegations regarding the amount of time Bedoya spends each week operating his business entity, and therefore denies this allegation. AEX denies all remaining allegations.

15. Responding to ¶ 15 of the Complaint, AEX lacks knowledge or information sufficient to admit or deny the allegations and therefore denies the same.

16. Responding to ¶ 16 of the Complaint, AEX denies the allegations.

17. Responding to ¶ 17 of the Complaint, AEX lacks knowledge or information sufficient to admit or deny whether Gonzales and DeCastro “have their own vehicles, which they must pay for and maintain.” AEX denies all remaining allegations.

18. Responding to ¶ 18 of the Complaint, AEX denies the allegations.

19. Responding to ¶ 19 of the Complaint, AEX admits that it has never paid Gonzales and DeCastro overtime premium compensation. AEX lacks knowledge or information sufficient to admit or deny allegations regarding the amount of time Gonzales and DeCastro spend each week operating their respective business entities, and therefore denies such allegations. AEX denies all remaining allegations.

20. Responding to ¶ 20 of the Complaint, AEX lacks knowledge or information sufficient to admit or deny allegations regarding the amount of time Gonzales and DeCastro

spend each week operating their respective business entities, and therefore denies such allegations. AEX denies all remaining allegations.

21. Responding to ¶ 21 of the Complaint, AEX denies the allegations.
22. Responding to ¶ 22 of the Complaint, AEX denies the allegations.
23. Responding to ¶ 23 of the Complaint, AEX denies the allegations.
24. Responding to ¶ 24 of the Complaint, AEX denies the allegations.
25. Responding to ¶ 25 of the Complaint, AEX denies the allegations.

**COUNT I**  
**NEW JERSEY WAGE PAYMENT LAW**

26. AEX incorporates by reference its statements and denials set forth in ¶¶ 1-25 as if fully restated herein.

27. Responding to ¶ 27 of the Complaint, AEX denies that Plaintiffs are its employees and therefore denies all allegations.

28. Responding to ¶ 28 of the Complaint, AEX denies the allegations.

29. Responding to ¶ 29 of the Complaint, AEX denies that it employs or employed Plaintiffs and therefore denies all allegations.

30. Responding to ¶ 30 of the Complaint, AEX denies the allegations.

31. Responding to ¶ 31 of the Complaint, AEX denies the allegations.

**COUNT II**  
**NEW JERSEY WAGE AND HOUR LAW**

32. AEX incorporates by reference its statements and denials set forth in ¶¶ 1-31 as if fully restated herein.

33. Responding to ¶ 33 of the Complaint, AEX denies the allegations.

34. Responding to ¶ 34 of the Complaint, AEX denies that it employs or employed Plaintiffs and therefore denies all allegations.

35. Responding to ¶ 35 of the Complaint, AEX admits that Plaintiffs have accurately quoted the New Jersey Wage and Hour Law, but denies that such law applies in this lawsuit because AEX has never employed Plaintiffs.

36. Responding to ¶ 36 of the Complaint, AEX admits it does not track the hours that Bedoya and Gonzales devote to their respective business entities. AEX denies that any contract presently exists between it and Bedoya or Gonzales, and therefore denies their characterization of themselves as “independent contractors.” AEX denies all remaining allegations.

37. Responding to ¶ 37 of the Complaint, AEX admits it has never paid Plaintiffs overtime premium compensation. AEX denies all remaining allegations.

**COUNT III**  
**UNJUST ENRICHMENT**

38. AEX incorporates by reference its statements and denials set forth in ¶¶ 1-37 as if fully restated herein.

39. Responding to ¶ 39 of the Complaint, AEX admits that the Transportation Brokerage Agreements it enters with contractors expressly designate such contractors as “independent contractors.” AEX denies all remaining allegations.

40. Responding to ¶ 40 of the Complaint, AEX denies the allegations.

41. Responding to ¶ 41 of the Complaint, AEX denies the allegations.

**GENERAL DENIAL**

42. Defendant denies each and every allegation contained in the Complaint unless specifically admitted herein.

**DEFENSES, AFFIRMATIVE DEFENSES, AND STATEMENTS**

1. Plaintiffs and/or class members, if they are employees, are not entitled to 1 ½ times their hourly rate for weekly hours worked in excess of forty because, as to them, the U.S. Secretary of Transportation has authority to prescribe maximum hours of work for the safe operation of vehicles pursuant to section 31502(b) of the federal Motor Carrier Act. *See* N.J.S.A. 34:11-56a4.

2. Some or all of the claims of Plaintiffs are barred because they are preempted, including preemption by the hours of service regulations of the Federal Motor Carrier Safety Administration of the U.S. Dept. of Transportation, 49 U.S.C. § 31502 and 49 C.F.R. Part 395, preemption under the Federal Aviation Administration Authorization Act, 49 U.S.C. § 14501, and preemption under the Supremacy Clause, U.S. Const. art. VI, cl. 2, and the Commerce Clause, U.S. Const. art. I, § 8, cl. 3.

3. As independent contractors, subject to federal safety and leasing regulations, a federally mandated written agreement, and customer requirements, Plaintiffs are not “employees” within the meaning of any relevant statute and are not entitled to any of the relief requested.

4. Some or all of the claims of Plaintiffs should be dismissed because Plaintiffs failed to exhaust all administrative remedies available and required to secure the benefits and protections to which they claim to have been entitled pursuant to New Jersey law.

5. Some or all of the claims of Plaintiffs should be dismissed because questions regarding the benefits and protections to which Plaintiffs claim to have been entitled, including Plaintiffs’ entitlement to those benefits, and the amount of any benefits, are within the exclusive and primary jurisdiction of certain New Jersey state and/or federal administrative agencies.

6. Some or all of the claims of Plaintiffs should be reduced by the doctrines of set off and rescission and restitution.

7. Some or all of Plaintiffs' claims are barred by the doctrine of *res judicata* based upon their inclusion as class members in the class action lawsuit styled *Sherman v. American Eagle Express, Inc.*, E.D. Pa. No. 09-575.

8. Some or all of the claims of Plaintiffs are barred pursuant to N.J.S.A. 34:11-56a25.2 because AEX acted in good faith and based upon a legal ruling or other writing authored by the New Jersey Department of Labor and Industry.

9. Some or all of the claims of Plaintiffs are barred by the doctrine of accord and satisfaction.

10. Some or all of the claims of Plaintiffs are barred because Plaintiffs have been fully reimbursed through their fee structures for any expenses they allegedly incurred and paid.

11. Some or all of the claims of Plaintiffs are barred because Plaintiffs consented to the alleged conduct of AEX.

12. Some or all of the claims of Plaintiffs are barred by the doctrine of payment.

13. Plaintiffs' Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

14. Some or all of the claims of Plaintiffs are barred in whole or in part by the doctrines of estoppel, judicial estoppel, waiver, and/or laches.

15. Some or all of the claims of Plaintiffs are barred in whole or in part by the applicable statute of limitations.

16. Some or all of the claims of Plaintiffs are barred in whole or in part because they have not been injured by any alleged action of AEX.

17. The class and sub-class that Plaintiffs seek to certify do not satisfy the requirements of Fed. R. Civ. P. 23(a) or Fed. R. Civ. P. 23(b).

18. Plaintiffs' requests for relief that are equitable in nature must be dismissed because Plaintiffs have adequate remedies at law.

19. Some or all of the claims of Plaintiffs are barred in whole or in part, by their failure to mitigate their damages.

20. Plaintiffs do not have contracts with AEX and lack standing to sue.

21. Plaintiffs lack standing to pursue relief on behalf of a class of which they are not members.

22. Plaintiffs' claim under the New Jersey Wage Payment Law is based upon deductions that are permissible under such law.

23. Plaintiffs' unjust enrichment claim is preempted or precluded by the existence of a written agreement and state and federal laws.

24. Plaintiffs' claims are barred by the doctrine of unclean hands.

25. AEX hereby states that it intends to rely upon such other defenses as may become available or may appear during discovery in this case or otherwise, and AEX hereby reserves the right to amend this Answer to assert any and all such defenses.

WHEREFORE, AEX respectfully requests that Plaintiffs take nothing by the Complaint, that judgment be entered in favor of AEX, for costs of this action, attorneys' fees, and for all other necessary and proper relief.

#### **COUNTERCLAIM AGAINST PLAINTIFFS**

Defendant AEX, pursuant to Fed. R. Civ. P. 13, alleges its counterclaim against Plaintiffs as follows:



### **PARTIES**

1. AEX is a corporation with its principal place of business in Aston, Pennsylvania.
2. Based upon information and belief predicated upon the allegations contained in their Class Action Complaint, Plaintiffs are residents of New Jersey.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this counterclaim because it is between citizens of different states, seeks damages in excess of \$75,000, and is so related to the claims asserted in the Complaint that it forms a part of the same case and controversy under Article III of the United States Constitution.
4. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(a).

### **FACTS**

5. Plaintiffs filed this putative class action against AEX seeking monetary and declaratory relief on behalf of themselves and others for alleged violations of the New Jersey Wage Payment Law and the New Jersey Wage and Hour Law, and based upon a claim of unjust enrichment.
6. At times relevant to this lawsuit, Plaintiffs provided services as individuals pursuant to Transportation Brokerage Agreements entered between AEX and Plaintiffs. Such Transportation Brokerage Agreements were eventually superseded by similar agreements entered between AEX and business entities that Plaintiffs formed.
7. A true and accurate copy of the Transportation Brokerage Agreement entered between AEX and Plaintiff Bedoya is attached hereto as Exhibit A.
8. A true and accurate copy of the Transportation Brokerage Agreement entered between AEX and Plaintiff Gonzales is attached hereto as Exhibit B.

9. A true and accurate copy of the Transportation Brokerage Agreement entered between AEX and Plaintiff DeCastro is attached hereto as Exhibit C.

10. The Transportation Brokerage Agreements provide, in relevant part, that Plaintiffs agree to,

defend, indemnify, and hold harmless BROKER from any direct, indirect and consequential loss, damage, fine, expense, including reasonable attorneys' fees, action, claim for injury to persons, including death, and damage to property which BROKER may incur arising out of or in connection with the operation of the Equipment, CONTRACTOR's obligations under this Agreement, or any breach by CONTRACTOR or its drivers or workers of the terms of this Agreement. This provision shall remain in full force and effect both during and after the termination of this Agreement.

*Transportation Brokerage Agreements*, ¶ 10.

11. Under the Transportation Brokerage Agreements, the "BROKER" is AEX and the respective "CONTRACTORS" are Plaintiffs.

12. The claims asserted by Plaintiffs in the Class Action Complaint, and the expenses AEX has incurred and will incur to defend against them, fall within the terms of Paragraph 10 of the Transportation Brokerage Agreements.

13. AEX is entitled to enforce the terms of the Brokerage Agreement and recover from Plaintiffs its costs and expenses, including reasonable attorneys' fees, incurred by AEX in defending against the Class Action Complaint.

WHEREFORE, AEX respectfully requests its costs and expenses, including reasonable attorneys' fees, incurred in defending against the Class Action Complaint, plus pre-judgment and post-judgment interest, and all other necessary and proper relief.

**DEMAND FOR JURY TRIAL**

AEX demands a jury trial on all issues so triable.

Respectfully submitted,

/s Michael T. McDonnell, III  
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Motions for admission *pro hac vice* will be filed for  
Mr. Rupe and Mr. Stitt.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of June, 2014, I filed the above and foregoing utilizing the Court's ECF system, which will automatically send an electronic notification to the following attorneys, and served a copy of the above and foregoing via certified mail upon the business entities set forth in the right-hand column at the addresses listed:

Peter Winebrake  
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KV Service LLC  
308 Trenton Ave., FL 1  
Paterson, New Jersey 07503

A&D Delivery Express LLC  
165 Macarthur Ave.  
Garfield, New Jersey 07026

/s Michael T. McDonnell, III  
Michael T. McDonnell, III

# Exhibit A

Effective Date: May 1, 2008

Contract Number: BED3661

**TRANSPORTATION BROKERAGE AGREEMENT**

American Eagle Express, Inc. d/b/a AEXGroup ("BROKER"), and EVER BEDOYA ("CONTRACTOR"), in consideration of the covenants and agreements contained herein, enter into this Transportation Brokerage CONTRACTOR Agreement ("Agreement").

**Recitals**

A. BROKER is a transportation broker that arranges for the transportation of freight under its contractual arrangements with various customers (the "Customer");

B. CONTRACTOR is an independent business person that is qualified, competent and available to provide for the transportation services required by the Customer in motor vehicle equipment owned and operated by CONTRACTOR; and

NOW, THEREFORE, BROKER and CONTRACTOR have entered into this Transportation Brokerage Agreement, subject to the following terms and conditions:

**Agreement**

1. **PROVISION OF SERVICES AND EQUIPMENT.** During the time period set forth in Paragraph 2, CONTRACTOR shall provide BROKER with pick-up and delivery services at such times and to such destinations as may from time to time be designated by the Customer, subject to the provisions of this Agreement, including the service standards set forth in Paragraph 13 below. In performing the transportation services contemplated herein, CONTRACTOR shall furnish the Equipment set forth in Appendix A (the "Equipment"). CONTRACTOR represents and warrants that CONTRACTOR has a substantial financial interest in the Equipment, and has title to or is authorized to contract the Equipment and services to BROKER.

2. **DURATION OF AGREEMENT AND TERMINATION.** The term of this Agreement shall be for a period of one (1) year commencing on the Effective Date set forth at the top of this page, and shall automatically renew for additional one (1) year periods unless otherwise terminated as set forth herein. Either party may terminate this Agreement for any reason by giving ten (10) days' written notice to that effect to the other party either personally or by U.S. mail, at the address or fax number shown at the end of this Agreement. The ability of either party to terminate this Agreement shall in no way be interpreted as an at-will employment provision, and shall not otherwise affect CONTRACTOR's status as an independent contractor under this Agreement. CONTRACTOR shall, upon the termination of this Agreement, if so equipped, remove all BROKER identification from the Equipment and return it to BROKER, via hand delivery or certified mail, together with all of BROKER's property, including all delivery documents, undelivered shipments, pagers, and all other equipment and paperwork provided by BROKER or BROKER's Customer, to BROKER's nearest terminal facility.

3. **FEES FOR SERVICES RENDERED.** It is expressly understood and agreed that CONTRACTOR's fees for transportation services rendered shall be as set forth in Appendix B and such fees shall constitute the total fees for everything furnished, provided, or done by CONTRACTOR in connection with this Agreement, including driver's services. BROKER agrees to make reasonable efforts to make deliveries available from time to time for transportation by CONTRACTOR; provided, however, that there is no guarantee by BROKER to CONTRACTOR of a minimum number of shipments, or that CONTRACTOR is guaranteed a profit under this Agreement. CONTRACTOR may solicit new business opportunities for submission to BROKER, in which case BROKER and CONTRACTOR may mutually agree, in writing, to additional compensation payable to CONTRACTOR related to new business acquired by BROKER as a direct result of CONTRACTOR's solicitation.

4. **COMPLIANCE WITH PERTINENT LAWS, REGULATIONS AND CUSTOMER REQUIREMENTS.**

- a) **Drivers.** CONTRACTOR shall provide competent drivers who meet all of the requirements of BROKER's Customers and, where applicable, of the U.S. Department of Transportation ("DOT"), including but not limited to, familiarity and compliance with state and federal motor vehicle and safety laws and regulations. The parties agree that BROKER shall have the right to disqualify any driver provided by CONTRACTOR in the event that the driver is found to be unsafe, unqualified pursuant to federal or state law, in violation of BROKER's minimum qualification standards or, in violation of any policies of BROKER's customers. Upon a driver's disqualification by BROKER, CONTRACTOR shall be obligated to furnish another competent, reliable and qualified driver that meets the minimum qualification standards established by BROKER.
- b) **Paperwork Requirements.** CONTRACTOR shall file with BROKER, on at least a weekly basis, all delivery documents, manifests, other paperwork, accident reports, and any other data, documents, or reports that may be required by the Customer from time to time.
- c) **Limitations.** CONTRACTOR agrees not to receive any credit extension in BROKER's name or in any way to use BROKER's name to obtain credit.
- d) **Safe Operations.** CONTRACTOR agrees to operate the Equipment in a safe and prudent manner at all times in accordance with the laws of the various jurisdictions in which the Equipment will be operated and pursuant to the operating authorities of BROKER, and in accordance with all rules related to traffic safety, highway protection and road requirements. Moreover, CONTRACTOR agrees that all drivers and/or workers employed by CONTRACTOR will comply with the terms of this Agreement, including the requirement of safe operations, while operating the Equipment on behalf of CONTRACTOR. CONTRACTOR shall ensure that all drivers and/or workers utilized by CONTRACTOR to perform services under this Agreement comply with any safety, security and/or operational requirements of the Customer or CONTRACTOR.

- e) **Interstate Operations.** In the event that contractors performing transportation services in interstate commerce subject to the jurisdiction of the U.S. DOT under 49 U.S.C. § 13501, the parties agree and acknowledge that the supplemental terms and conditions contained in Appendix D shall apply. The parties further agree and acknowledge that Appendix D is not intended to impact the independent contractor status of CONTRACTOR. As specifically set forth in 49 C.F.R. § 376.12(c)(4), compliance with the federal requirements for interstate transportation under 49 C.F.R. Part 376 is not intended to affect whether an individual is an employee or independent contractor. It is the intent of BROKER and CONTRACTOR that CONTRACTOR is an independent contractor for all purposes during the term of this Agreement.

5. **OPERATIONAL EXPENSES.**

- a) **Operating Expenses.** CONTRACTOR shall, at its sole cost and expense, provide all the Equipment ready to operate and fully roadworthy, including the necessary licenses and permits, and shall furnish all necessary oil, fuel, tires, and other parts, supplies and equipment necessary or required for the safe and efficient operation and maintenance of the Equipment, including repairs for the operation of such Equipment; and shall pay all other expenses incident to such operation, including, but not limited to, highway use taxes, weight taxes, state property taxes, fuel taxes, and registration fees, ferry and toll charges. CONTRACTOR shall be charged back pursuant to paragraph 17 of this Agreement for all amounts paid by BROKER on behalf of CONTRACTOR under this provision.
- b) **Maintenance and Inspection.** CONTRACTOR shall have the right to maintain and repair the Equipment at any place CONTRACTOR should choose. CONTRACTOR shall be responsible for maintaining, and shall maintain the Equipment in safe condition and in complete compliance with all laws and regulations of the states in which CONTRACTOR operates and the DOT.
- c) **Fines.** CONTRACTOR agrees to pay all fines imposed for violation of any law or regulation by the state in which CONTRACTOR operates and the DOT, where such violation results, at least partially, from the acts or omissions of CONTRACTOR.
- d) **Communication Equipment.** In order to ensure timely communication with BROKER and the Customer, CONTRACTOR agrees to provide a mobile communication equipment of a type and model compatible with BROKER's communications system. CONTRACTOR may elect, at its sole option, to obtain the required communication equipment from BROKER during the term of this Agreement, in which case the rental charges set forth in Appendix B shall be deducted from CONTRACTOR's compensation. If CONTRACTOR elects to obtain communication equipment through BROKER, CONTRACTOR will be responsible for the return of the communication equipment, in good condition, upon termination of this Agreement or upon BROKER's request. CONTRACTOR shall be responsible for the full replacement cost of any lost or unreturned communication equipment provided by BROKER.



6. **SERVICE FAILURE AND CARGO CLAIMS.** BROKER reserves the right to investigate all reported service failure claims submitted by the Customer, including but not limited to, delays, shortages, misdeliveries, and claims related to lost, damaged or contaminated deliveries, arising out of, or in connection with CONTRACTOR's services to determine if CONTRACTOR's actions or omissions resulted in or contributed to the claim. If it is determined that CONTRACTOR's actions or omissions resulted in or contributed to the claim, then BROKER shall charge back CONTRACTOR the entire amount of all service failure and cargo claims, including any expenses incurred by BROKER with respect to such claim.

7. **EQUIPMENT/PROPERTY DAMAGE.** CONTRACTOR shall be liable for, and pay, all direct, indirect and consequential damage, including but not limited to reasonable attorney fees, arising out of, or in connection with, CONTRACTOR's use of BROKER's equipment, or any other property belonging to BROKER or the Customer.

8. **INSURANCE.** The responsibilities and obligations between BROKER and CONTRACTOR involving insurance shall be as specified in Appendix C. BROKER shall have no insurance responsibilities or obligations pertaining to CONTRACTOR other than those expressly stated in this Agreement or mandated by law.

9. **ACCIDENT REPORTS.** CONTRACTOR shall immediately report any accident to BROKER involving operations under this Agreement, and CONTRACTOR will cooperate with BROKER and its representatives and insurers regarding the investigation of any accident. In the event CONTRACTOR fails to notify BROKER of the accident within one (1) hour from the time of the accident, CONTRACTOR shall be liable for any and all damages resulting from that failure to notify, including but not limited to consequential damages, fines, claims by third parties and reasonable attorney fees.

10. **HOLD HARMLESS.** Except to the extent CONTRACTOR's acts or omissions are covered under the parties' respective insurance policies as set forth in Appendix C with no expense to BROKER, INDEPENDENT CONTRACTOR agrees to defend, indemnify and hold harmless BROKER from any direct, indirect and consequential loss, damage, fine, expense, including reasonable attorney's fees, action, claim for injury to persons, including death, and damage to property which BROKER may incur arising out of or in connection with the operation of the Equipment, CONTRACTOR's obligations under this Agreement, or any breach by CONTRACTOR or its drivers or workers of the terms of this Agreement. This provision shall remain in full force and effect both during and after the termination of this Agreement.

11. **SECURITY IDENTIFICATION OBLIGATIONS.** The Customer may require that CONTRACTOR and any of its workers wear attire that identifies the individual as a contractor of BROKER and a photo identification badge for security purposes when providing delivery or pickup services at the Customer's various locations. CONTRACTOR shall be responsible for any cost or expense incurred in obtaining any Customer-required uniform or identification badge(s). Upon the termination of this Agreement, CONTRACTOR agrees to immediately return any photo identification badge to BROKER. Any identification issued is solely for security purposes and must be worn by CONTRACTOR or its workers in plain view to be granted access to, and while on, the Customer or BROKER's premises. If CONTRACTOR fails to return any photo identification badge to BROKER or if CONTRACTOR requires a replacement badge during the term of this Agreement, then CONTRACTOR understands and agrees that the cost of each replacement badge shall be deducted from CONTRACTOR's compensation.

12. **SECURITY DOCUMENTATION OBLIGATIONS.** Where required by the Customer, CONTRACTOR authorizes BROKER to release security-sensitive documentation, including but not limited to, drug and alcohol test results, photographs, copies of driver's licenses, Motor Vehicle Record ("MVR"), criminal background information, and other identification information to the Customer, and CONTRACTOR hereby agrees to release and hold BROKER harmless related to any damages or injuries sustained by CONTRACTOR as a result of the authorized release of such security-sensitive information.

13. **SERVICE STANDARDS.** In order to meet the service obligations of the Customer, CONTRACTOR agrees to ensure compliance by CONTRACTOR and its drivers of the following service standards. If CONTRACTOR breaches any of these service standards resulting in BROKER incurring a monetary cost to the Customer, including any monetary penalty, then CONTRACTOR agrees and authorizes BROKER to deduct all such charges from CONTRACTOR's compensation.

- a) CONTRACTOR shall make its services and the Equipment available to supply transportation services to the Customers of BROKER in order to enable BROKER to satisfy the terms of its contracts and agreements with the Customer.
- b) CONTRACTOR acknowledges and understands that products and materials transported and delivered for Customers may be of a highly confidential and/or sensitive nature, and that such transportation and delivery be subject to explicit security requirements of Customers.
- c) CONTRACTOR shall have the right to decline any sets of work referred by the BROKER; provided, however, that CONTRACTOR shall provide BROKER timely notice of such declination so that BROKER can obtain substitute transportation service to meet specific Customer needs. In the event CONTRACTOR does not provide timely declination and BROKER incurs additional costs in obtaining substitute transportation or penalties from the Customer for not being able to provide services, CONTRACTOR agrees and acknowledges that BROKER may charge back such expenses to CONTRACTOR.
- d) CONTRACTOR shall have sole discretion over the selection of routes in carrying out deliveries to the Customer subject only to specific Customer requirements.
- e) CONTRACTOR shall devote such time and effort hereunder, as is necessary for the competent and efficient performance of delivery jobs referred by the BROKER and accepted by the CONTRACTOR, and shall be free to devote such time to other endeavors provided such activity does not conflict with accepted obligations to the Customer for the contract work.
- f) CONTRACTOR acknowledges that NO REPRESENTATION HAS BEEN MADE TO IT ORALLY OR IN WRITING AS TO THE AMOUNT OF WORK THAT WILL BE REFERRED TO IT or as to the amount of total compensation CONTRACTOR will receive.

- g) CONTRACTOR specifically agrees not to discriminate against or engage in any unlawful harassment against any person based on race, color, religion, sex, sexual orientation or preference, genetic information, national origin, handicap or disability, Vietnam era or disabled veteran status, and/or any other protected status. CONTRACTOR agrees to save, defend, hold harmless, indemnify and hereby releases the BROKER and the Customer from and against any and all claims alleging that CONTRACTOR has breached its obligations under this provision of the Agreement.
- h) In addition to the confidentiality requirements set forth in Paragraph 19 below, CONTRACTOR also agrees to comply with all security, privacy and confidentiality obligations imposed upon BROKER and/or carrier by each Customer. Such Customer requirements include, but are not limited to, not using, copying, altering or removing any information, document or correspondence provided to CONTRACTOR by the Customer or by BROKER on Customer's behalf (the "Confidential Customer Information"); returning all Confidential Customer Information to either BROKER or Customer upon their request; using reasonable care in implementing reasonable controls to prevent the unauthorized use, disclosure or availability of Confidential Customer Information; and, advising BROKER immediately in the event that any Confidential Customer Information is stolen, lost or otherwise misappropriated. In addition, CONTRACTOR agrees to comply with the privacy, security and confidentiality requirements of all applicable federal and state laws, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Gramm-Leach-Bliley Act of 1999 ("GLB"), the Fair and Accurate Credit Transaction Act ("FACTA"), and the Sarbanes-Oxley Act of 2002 ("SOX"). CONTRACTOR agrees to timely notify BROKER in the event of any possible violation of any federal law, regulation or Customer requirement.

14. **INDEPENDENT CONTRACTOR STATUS.** It is expressly understood and agreed that CONTRACTOR is an independent contractor for the Equipment and driver services provided pursuant to this Agreement. The parties further recognize that CONTRACTOR has a significant financial investment in the Equipment and the driver services provided herein, and that CONTRACTOR has the exclusive right to direct and control the financial aspects of CONTRACTOR's business operations, including the ability to earn a profit or suffer a financial loss under this Agreement. In its capacity as an independent contractor, CONTRACTOR agrees as follows:

- a) To be responsible for the filing and payment of all federal, state and local employment taxes, unemployment insurance, disability insurance, and workers' compensation insurance required by federal, state or local law;
- b) That all payments received by CONTRACTOR from BROKER will not be subject to tax withholding by BROKER; and
- c) That CONTRACTOR is not covered by unemployment insurance or workers' compensation provided by BROKER, and that CONTRACTOR has no right to nor will CONTRACTOR seek benefits or any form of payment from or through BROKER under state unemployment coverage or workers' compensation.

CONTRACTOR shall not be considered, whether under the provisions of this Agreement or otherwise, as having the status of an employee of BROKER for any purpose whatsoever, including but not limited to, federal, state or local tax purposes, and CONTRACTOR shall not be entitled to participate in any plans, arrangements or distributions the BROKER may make in connection with any pension, stock, bonus, profit sharing or similar benefits for BROKER's employees. CONTRACTOR agrees to comply with all applicable laws and regulations with respect to workers' compensation, unemployment compensation, and assume full responsibility for the payment of all state and federal taxes and all other social security or withholding tax laws on CONTRACTOR's own behalf and for any persons hired or contracted by CONTRACTOR.

15. **CONTROL AND RESPONSIBILITY.** CONTRACTOR, as an independent contractor, is responsible for determining the means and methods of the performance of all services undertaken by CONTRACTOR under the terms of this Agreement. For example, CONTRACTOR has and shall retain all responsibility for (i) hiring, setting the wages, hours and working conditions and adjusting the grievances of, supervising, training, disciplining and firing CONTRACTOR's drivers, driver's helpers and other workers, and CONTRACTOR shall be solely responsible for the payment of any compensation to said workers and any taxes and insurances applicable thereto; (ii) selecting, purchasing, financing and maintaining the tools, including the equipment, used by CONTRACTOR in carrying out its duties and responsibilities under this Agreement.

16. **BREACH.** Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated, at any time, by either party in the event of a breach by the other of any term or obligation contained in this Agreement. In the event of a breach and when practicable, written notice shall be served upon the breaching party, notifying such party of the breach and the termination of the Agreement and reason(s) therefore. If, in BROKER's judgment, CONTRACTOR has subjected BROKER to liability because of CONTRACTOR's acts or omissions, BROKER may take possession of any shipment to CONTRACTOR and complete performance. In such event, CONTRACTOR shall waive any recourse against BROKER for such action and CONTRACTOR shall reimburse BROKER for all direct or indirect costs, expenses, or damages including reasonable attorney's fees incurred by BROKER as a result of BROKER's taking possession of the lading and completing performance.

17. **CHARGE BACK.** BROKER shall charge back to CONTRACTOR at the time of payment or settlement, any expenses BROKER has borne that, under this Agreement, CONTRACTOR is obligated to bear; and as more particularly described in Appendix B. Such expenses shall be deducted from the amount of CONTRACTOR's compensation. The amount of each item to be charged back to CONTRACTOR shall be computed based on the actual cost or expense incurred by BROKER and any administrative fee or mark-up assessed by BROKER. BROKER shall provide CONTRACTOR written itemization and documentation, if any, for all charge backs.

18. **FINAL SETTLEMENT.** In the event of termination of this Agreement by either party, BROKER shall be entitled to withhold all compensation until such time as CONTRACTOR has returned the following items to BROKER or a person designated by BROKER:



- (a) All delivery documents and reports with respect to trips completed or cargo carried in the Equipment pursuant to this Agreement;
- (b) All identification signs and devices provided to CONTRACTOR or, alternatively, prove to the satisfaction of BROKER that such devices have been removed and/or destroyed; and
- (c) All other forms, documents, equipment, or other items belonging to or owned by BROKER.

In the event CONTRACTOR breaches any of the terms or conditions of this Agreement and BROKER incurs any attorney's fees, then, in addition to all damages and equitable relief which may be afforded to BROKER, BROKER shall be entitled to recover its attorney's fees and expenses.

19. **CONFIDENTIALITY.** The CONTRACTOR will safeguard and maintain as confidential and privileged all "customer lists", customer rates, bills of lading or trip manifests, charges and pricing schedules, other materials furnished by the BROKER, and all information learned by CONTRACTOR as a result of this agreement. The term customer lists shall be construed to mean the names and addresses of customers, as well as any customer schedules or delivery instructions. CONTRACTOR will not directly or indirectly through another, attempt to use the same or the names of its customers learned by it while performing the services contracted for hereunder for any purpose except in the performance of its duties hereunder to BROKER. The CONTRACTOR acknowledges that all "customer lists" and other such material and information are the exclusive property of the BROKER, and in the event of the termination of this agreement, the CONTRACTOR shall surrender any such "customer list" and material to the BROKER and thereafter may make no use of said lists, material or any information learned by it with respect to the BROKER'S customer or business. CONTRACTOR acknowledges that this paragraph is of the essence of this agreement and agrees that in the event of its failure to comply herewith, in addition to whatever other legal remedies may be available, an injunction may be issued against it to enforce the BROKER'S rights hereunder. In connection with any legal proceeding commenced hereunder, CONTRACTOR agrees to pay to BROKER all reasonable attorney's fees and costs incurred in such proceedings. The parties agree and acknowledge that CONTRACTOR'S confidentiality obligations hereunder shall not apply to any customers of CONTRACTOR that either pre-existed CONTRACTOR'S relationship with BROKER or to any customers for whom CONTRACTOR has provided services for outside of this Agreement.

20. **NO UNAUTHORIZED PASSENGERS.** As prohibited under 49 C.F.R. 392.60, no passenger shall be permitted to travel in the Equipment without prior written authorization from BROKER. Any authorized passenger must sign a waiver of liability as provided in the Passenger Authorization Form to be provided by BROKER.

21. **BENEFIT.** This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors.

22. **NOTICE.** All notice provisions of this Agreement shall be in writing delivered personally, by postage prepaid, first class mail, or by certified/registered mail to the addresses shown at the end of this Agreement.

23. **NON-WAIVER.** The failure or refusal of either party to insist upon the strict performance of any provision of this Agreement, or to exercise any right in any one or more instances or circumstances shall not be construed as a waiver or relinquishment of such provision or right, nor shall such failure or refusal be deemed a customary practice contrary to such provision or right.

24. **SEVERABILITY.** If any Agreement or its appendices is deemed invalid for any reason whatsoever, the Agreement shall be void only as to such provision, and this Agreement shall remain otherwise binding between the parties. Any provision voided by operation of the foregoing shall be replaced with provisions which shall be as close as the parties' original intent as permitted under applicable law.

25. **COMPLETE AGREEMENT.** This Agreement, including any Appendices attached, constitutes the sole, entire, and existing agreement between the parties herein, and supersedes all prior agreements and undertakings, oral and written, expressed or implied, or practices, between the parties, and expresses all obligations and restrictions imposed on each of the respective parties during its term, except those specifically modified or changed by mutual written agreement between BROKER and CONTRACTOR. By signing below, both BROKER and CONTRACTOR hereby acknowledge that they have entered into this Agreement freely and without duress, and both parties have had the opportunity to consult with legal counsel of their own choosing pertaining to their particular rights and obligations under this Agreement and, having done so, now voluntarily agree to the terms set forth in this Agreement and each appendix and addendum. This Agreement shall be deemed to have been drawn in accordance with the statutes and laws of the State of Pennsylvania and in the event of any disagreement or litigation, the laws of this state shall apply and suit must be brought in or near Chester Township, Pennsylvania. Both BROKER and CONTRACTOR hereby waive their right to any jury trial pertaining to the services performed under this Agreement or any dispute pertaining to this Agreement.

**IN WITNESS WHEREOF,** BROKER and CONTRACTOR do hereby sign this Agreement as of the Effective Date set forth on Page 1.

**AEXGroup / BROKER:**

10 C Milton Drive  
Aston, PA 19014

By:

*Dina Lisa Giustozzi*

Dina Lisa Giustozzi, VP Finance  
Printed Name

**CONTRACTOR:**

EVER BEDOYA  
308 TRENTON AVE

PATERSON, NJ 07031

By:

*Ever Bedoya*

Authorized Independent Contractor

**Appendix A**

**Vehicle Information:**

Year: 2020  
Make: Dodge  
VIN No.: 1 2B7HB77X2YK100108  
License Plate No.: XN 420A

**Vehicle Information:**

Year: \_\_\_\_\_  
Make: \_\_\_\_\_  
VIN No.: \_\_\_\_\_  
License Plate No.: \_\_\_\_\_

**Vehicle Information:**

Year: \_\_\_\_\_  
Make: \_\_\_\_\_  
VIN No.: \_\_\_\_\_  
License Plate No.: \_\_\_\_\_

**Vehicle Information:**

Year: \_\_\_\_\_  
Make: \_\_\_\_\_  
VIN No.: \_\_\_\_\_  
License Plate No.: \_\_\_\_\_

**Vehicle Information:**

Year: \_\_\_\_\_  
Make: \_\_\_\_\_  
VIN No.: \_\_\_\_\_  
License Plate No.: \_\_\_\_\_

**Appendix B**

**FEE SCHEDULE**

1. **COMPENSATION..** The parties agree that CONTRACTOR shall be paid a negotiated amount based upon the routes offered by BROKER and accepted by CONTRACTOR during the term of the Agreement. Any compensation payable to CONTRACTOR shall first be decreased by any expense incurred by BROKER as a result of any obligation or expense of CONTRACTOR under this Agreement or any addendum thereto.

2. **CHARGE BACK ITEMS.** The following charges, if initially paid for by BROKER on behalf of CONTRACTOR, will be charged back to CONTRACTOR, along with any administrative fee or mark-up assessed by BROKER, and deducted from the compensation to be paid by BROKER under this Agreement:

- (a) Insurance-related expenses for all insurance coverages procured from or through BROKER;
- (b) Any cargo claim or equipment/property damage assessed against CONTRACTOR under this Agreement;
- (c) C.O.D. and freight collect remittances due BROKER for loads delivered by CONTRACTOR under this Agreement;
- (d) Any monetary damages or penalties incurred by BROKER from its Customer for service failure related to CONTRACTOR's operations;
- (e) Uniform expenses if purchased from BROKER;
- (f) Reasonable attorney fees incurred by BROKER in reducing potential liability incurred as the result of CONTRACTOR's acts or omissions;
- (g) Communication devices leased from BROKER such as cell phones, wireless data collection devices, or other associated expenses;
- (h) Expenses incurred in obtaining background investigation verifications, Motor Vehicle Records, and drug and/or alcohol screens; and
- (i) All other expenses incurred by BROKER which are the responsibility of CONTRACTOR under this Agreement or any addendum to this Agreement.

**BROKER**

**CONTRACTOR**

By: \_\_\_\_\_

*Dina Lisa Giustozzi*

Dina Lisa Giustozzi

By: \_\_\_\_\_

*Ever Bedoya*

EVER BEDOYA



### Appendix C

1. **CONTRACTOR'S INSURANCE OBLIGATIONS.** CONTRACTOR shall maintain, at its sole cost and expense, the following minimum insurance coverages during this Agreement:

(a) **PRIMARY AUTO LIABILITY COVERAGE** - CONTRACTOR shall procure at CONTRACTOR's sole cost and expense, a policy or policies of insurance issued by a company reasonably satisfactory to BROKER with premiums paid thereon by CONTRACTOR, insuring CONTRACTOR in minimum liability coverage in the amount of \$100,000.00 for bodily injury for each person injured, \$300,000.00 for all persons injured during each occurrence. Such insurance shall be primary to any insurance that may be available from BROKER pursuant to this Agreement. CONTRACTOR shall be responsible for all deductible amounts and for any loss or damage in excess of the policy limit.

(b) **WORKERS' COMPENSATION/OCCUPATIONAL ACCIDENT INSURANCE.** CONTRACTOR shall provide workers' compensation insurance coverage for CONTRACTOR (if a natural person), all of its employees and agents, anyone driving the Equipment, and any other persons required to be covered under the worker's compensation law of any state that is reasonably likely to have jurisdiction over CONTRACTOR's business operations and in amounts not less than the statutory limits required by such applicable state law. The worker's compensation insurance policy shall provide principal coverage in Pennsylvania as well as the state in which the work is principally localized, and shall provide "other states coverage" that excludes only Ohio and West Virginia. As evidence of such coverage, CONTRACTOR shall provide BROKER with a copy of the insurance policy declarations page for BROKER's verification before operating the Equipment under this Agreement. If (a) CONTRACTOR is the sole owner and the sole and exclusive operator of the Equipment and (b) the state in which the work is principally localized is not Nevada, New Jersey, New York, or North Carolina, then CONTRACTOR may, as an alternative to obtaining workers' compensation coverage, obtain occupational accident insurance policy that includes either an endorsement or a separate policy provision whereby the insurer provides, or agrees to provide, workers' compensation coverage that becomes effective for a claim by CONTRACTOR alleging employee status. Such occupational accident insurance coverage shall be no less comprehensive than the coverage BROKER will facilitate on CONTRACTOR's behalf if CONTRACTOR so chooses, as provided in Section 4 of this Appendix.

(c) **OTHER INSURANCE.** In addition to the insurance coverages required under this Agreement, it is CONTRACTOR'S responsibility to procure, carry and maintain any fire, theft, uninsured and/or underinsured motorist, and physical damage (collision), or other insurance coverage that CONTRACTOR may desire for the Equipment or for CONTRACTOR's health care or other needs. As provided in this Agreement, CONTRACTOR holds BROKER harmless with respect to loss of or damage to CONTRACTOR's Equipment,

trailer, or other property, and BROKER has no responsibility to procure, carry, or maintain any insurance covering loss of or damage to CONTRACTOR's Equipment, trailer, or other property. CONTRACTOR acknowledges that BROKER may, and CONTRACTOR hereby authorizes BROKER to, waive and reject no-fault, uninsured, and underinsured motorist coverage from BROKER's insurance policies to the extent allowed under Pennsylvania law (or such other state law where the Equipment is principally garaged), and CONTRACTOR shall cooperate in the completion of all necessary documentation for such waiver, election, or rejection.

2. **REQUIREMENTS APPLICABLE TO ALL OF CONTRACTOR'S INSURANCE COVERAGES.** CONTRACTOR shall procure insurance policies providing the above-described coverages solely from insurance carriers that are A.M. Best "A"-rated, and CONTRACTOR shall not operate the Equipment under this Agreement unless and until BROKER has determined that the policies are acceptable (BROKER's approval shall not be unreasonably withheld). CONTRACTOR shall furnish to BROKER written certificates obtained from CONTRACTOR'S insurance carriers showing that all insurance coverages required above have been procured from A.M. Best "A" rated insurance carriers, that the coverages are being properly maintained, and that the premiums thereof are paid. Each insurance certificate shall specify the name of the insurance carrier, the policy number, and the expiration date; list BROKER as an additional insured with primary coverage; and show that written notice of cancellation or modification of the policy shall be given to BROKER at least thirty (30) days prior to such cancellation or modification.

3. **CONTRACTOR'S LIABILITY IF REQUIRED COVERAGES ARE NOT MAINTAINED.** In addition to CONTRACTOR's hold harmless/indemnity obligations to BROKER under the Agreement, CONTRACTOR agrees to defend, indemnify, and hold BROKER harmless from any direct, indirect, or consequential loss, damage, fine, expense, including reasonable attorney fees, actions, claim for injury to persons, including death, and damage to property that BROKER may incur arising out of or in connection with CONTRACTOR'S failure to maintain the insurance coverages required by this Agreement. In addition, CONTRACTOR, on behalf of its insurer, expressly waives all subrogation rights against BROKER, and, in the event of a subrogation action brought by CONTRACTOR's insurer, CONTRACTOR agrees to defend, indemnify, and hold BROKER harmless from such claim.

4. **AVAILABILITY OF INSURANCE FACILITATED BY BROKER.** CONTRACTOR may, if it so chooses by initialing one or more boxes in the right-hand column of the attached "CERTIFICATE OF INSURANCE," authorize BROKER to facilitate, on CONTRACTOR'S behalf, the insurance coverages required or made optional by this Agreement. In any such case, BROKER shall deduct, from CONTRACTOR settlement compensation, amounts reflecting all of BROKER's expense and cost in obtaining and administering such coverage. In addition, if CONTRACTOR fails to provide proper evidence of the purchase or maintenance of the insurance required above, then BROKER is authorized but not required to obtain such insurance at CONTRACTOR's expense and deduct, from CONTRACTOR's settlement compensation, amounts reflecting all of BROKER's expense in obtaining and administering such coverage. CONTRACTOR recognizes that BROKER is not in the business of selling insurance, and any insurance coverage requested by CONTRACTOR from BROKER is subject to all of the terms, conditions, and exclusions of the actual policy issued by the insurance underwriter. BROKER shall ensure that CONTRACTOR

is provided with a certificate of insurance (as required by 49 C.F.R. § 376.12(j)(2)) for each insurance policy under which the CONTRACTOR has authorized BROKER to facilitate insurance coverage from the insurance underwriter (each such certificate to include the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to CONTRACTOR for each type of coverage, and the deductible amount for each type of coverage for which CONTRACTOR may be liable), and BROKER shall provide CONTRACTOR with a copy of each policy upon request.

5. **CHANGES IN COST OR OTHER DETAILS OF COVERAGES.** If BROKER is facilitating any insurance coverages for CONTRACTOR pursuant to Section 5 of this Appendix and the cost to CONTRACTOR for, or other details of, a coverage changes from the information listed in the attached "CERTIFICATE OF INSURANCE", CONTRACTOR will be so notified by personal delivery, fax, or other written notice. In any event, CONTRACTOR shall not be subject to any such change until ten (10) calendar days after such notice or such later time as is set forth in the notice. **CONTRACTOR's failure, by the end of ten (10) calendar days after such notice, to notify BROKER of any objection to the change shall constitute CONTRACTOR's express consent and authorization to BROKER to implement the change and modify accordingly the deductions from CONTRACTOR's settlement compensation, beginning immediately after the 10-day period. Such modified amounts shall replace and supersede those shown in the Certificate of Insurance and BROKER shall not have an obligation to also provide a revised Certificate of Insurance.** If CONTRACTOR fails to notify BROKER of any objection within the 10-day period -- or if CONTRACTOR notify BROKER of its objection within the 10-day period and CONTRACTOR and BROKER is then unable to resolve the matter to our mutual satisfaction -- CONTRACTOR and BROKER shall each have the right to terminate this Agreement effective immediately upon the change becoming effective (although CONTRACTOR shall remain subject to the change until CONTRACTOR's termination's effective date and time).

THIS APPENDIX is agreed to by the undersigned parties as of the latest date set forth below.

BROKER

By: *Dina Lisa Giustozzi*  
Dina Lisa Giustozzi

CONTRACTOR

By: *Ever Bedoya*  
EVER BEDOYA

**CERTIFICATE OF INSURANCE**

CONTRACTOR hereby requests BROKER, through its insurer, to facilitate on CONTRACTOR's behalf (if they are available) the insurance coverages CONTRACTOR has selected by placing CONTRACTOR's initials in the right-hand column below:

TYPE OF COVERAGE	INITIAL "YES" TO REQUEST COVERAGE
<p><b>2. <u>Occupational Accident Insurance:</u></b></p> <p><i>Name of Insurer:</i> _____</p> <p><i>Policy No:</i> _____</p> <p><i>Effective Date(s) of Coverage:</i> _____</p> <p><i>Amount of Coverage:</i> \$_____ per _____</p> <p><i>Current Cost to CONTRACTOR:</i> \$_____ per month</p> <p><b>[COVERAGE IS AVAILABLE ONLY TO A SOLE-PROPRIETOR CONTRACTOR WHO IS EXCLUSIVE DRIVER OF THE EQUIPMENT.]</b></p>	<p>_____ YES</p> <p>_____ NO</p>



## **Appendix D**

### **SUPPLEMENT TO TRANSPORTATION BROKERAGE AGREEMENT FOR DEPARTMENT OF TRANSPORTATION REGULATED OPERATIONS**

1. **Applicability.** This Supplement shall apply only to such transportation services provided by CONTRACTOR as are within the regulatory jurisdiction of the U.S. Department of Transportation ("DOT") as specified in 49 U.S.C. § 13501. This Supplement, together with all provisions of the accompanying Transportation Brokerage Agreement that are not inconsistent herewith, shall constitute the "Lease" required by the DOT for such services pursuant to 49 C.F.R. 376.11(a).

2. **Lease.** CONTRACTOR hereby Leases to BROKER and BROKER hereby leases from CONTRACTOR the equipment, hereinafter called "Leased Equipment." The CONTRACTOR represents and warrants that the CONTRACTOR has title to or is authorized to contract the Leased Equipment to the BROKER during the term of the Service Agreement.

3. **Commencement and Duration.** This Appendix D shall become effective as of the date set forth above and shall remain in effect until the date upon which the Service Agreement to which this Appendix D is attached (the "Service Agreement") is terminated, whereupon this Appendix D shall automatically terminate. Immediately before the first operation of any piece of Leased Equipment under this Appendix D, BROKER shall furnish CONTRACTOR with an equipment receipt meeting the requirements of 49 C.F.R. 376.11(b). CONTRACTOR shall, immediately upon termination of the Agreement, remove all of BROKER's identification devices from the equipment and return them to BROKER via hand delivery or certified mail (provided that if the identification devices have been lost or stolen, a written letter certifying their removal will satisfy this requirement), together with all of the BROKER's other property, including paperwork and cargo to the BROKER's nearest terminal. If CONTRACTOR fails to return this property upon termination of this Agreement, CONTRACTOR shall pay the BROKER all expenses, including reasonable attorney fees, incurred by the BROKER in seeking the return of such items, and the BROKER may pursue all other remedies allowed by law or authorized in the Agreement against CONTRACTOR.

4. **Identification of Equipment.** When required by DOT regulations, CONTRACTOR shall identify the leased equipment with BROKER's name and DOT Identification Number. CONTRACTOR shall remove such required identification upon BROKER's request or upon termination of this Agreement. BROKER may withhold final settlement to CONTRACTOR until verification that the required identification on the leased equipment has been removed.

3. **Payment.** CONTRACTOR shall receive payment for services in accordance with Appendix B to this Transportation Brokerage Agreement. As mandated by 49 C.F.R. 376.12(f), such payment shall be made within fifteen (15) days after CONTRACTOR submits to BROKER (i) logbooks required by the DOT and (ii) those documents necessary for BROKER to secure payment from its customers. BROKER will give CONTRACTOR, at the time of payment, a rated freight bill or other document showing equivalent information for each shipment, and a statement showing total hauling revenue and all chargeback items and deductions. CONTRACTOR shall also have the right to inspect, during regular business

hours, BROKER's delivery manifests, tariff and other documents from which chargebacks, deductions rates and charges are computed.

**4. Expenses.** CONTRACTOR shall pay all costs attendant to the operation and maintenance of the Leased Equipment including, without limitation, fuel costs, fuel taxes, empty mileage, all permits, tolls, ferries, detention and accessorial services, base plates, licenses, any unused portions of such items and all costs and expenses described in Section 4 of the Service Agreement. As required by 49 C.F.R. 376.12(e), BROKER shall assume the risks and costs of fines for overweight and oversize vehicles, when such vehicles are pre-loaded, sealed or the load is containerized, or when the trailer or lading is otherwise outside of CONTRACTOR's control, and of fines for improperly permitted overdimension and overweight loads, and shall reimburse CONTRACTOR for any such fines paid by CONTRACTOR, except when the violations occasioning such fines result from the acts or omissions of CONTRACTOR. The CONTRACTOR is not required to purchase or rent any products, equipment, or services from the BROKER as a condition of entering into the Service Agreement. However, in the event the CONTRACTOR elects to purchase or rent any such items from the BROKER or from any third party, for which the CONTRACTOR requests Carrier to make deductions from CONTRACTOR's compensation, then the parties mutually agree to attach and incorporate the terms of such purchase or lease to the Service Agreement as a separate addendum.

**5. Insurance.**

- (a) BROKER shall maintain insurance coverage for the protection of the public pursuant to applicable regulations under 49 U.S.C. 13906. CONTRACTOR will carry, at its own expense, public liability and property damage insurance upon the leased Equipment used by him naming BROKER as an additional insured.
- (b) If CONTRACTOR requests to obtain coverage from BROKER's insurer in lieu of providing his own coverage, BROKER will seek to obtain and provide to CONTRACTOR a quotation for such Coverage.

**6. Loss or Damage.** CONTRACTOR will be liable for loss or damage to items intended for transport occurring while such items are in CONTRACTOR's possession or under his dominion and control. Before making deductions from settlements with CONTRACTOR to reflect such loss or damage, BROKER shall provide CONTRACTOR with a written explanation and itemization of such deductions.

**7. Control and Exclusive Use.** BROKER shall have such possession, control and use of the Leased Equipment and its operation as required by 49 C.F.R. Section 376.12(c) (1). BROKER shall assume complete responsibility for operation of the equipment for the duration of this Agreement. Notwithstanding the foregoing, in performing services under this Appendix D, CONTRACTOR will direct the operation of the Leased Equipment in all respects and will determine the means of performance including, but not limited to, such matters as choice of any routes, points of service of equipment, rest stops and timing and scheduling of customer deliveries. The parties intend to create an independent-contractor relationship and not an employer-employee relationship.

**8. Laws.** CONTRACTOR shall comply with all federal, state and local laws, rules and regulations pertaining to his performance under this Appendix D.

**9. Effect of Validity on Provision.** In case any one or more of the provisions contained in this Appendix D should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall in no way be affected, prejudiced or disturbed thereby.

**THIS APPENDIX** is agreed to by the undersigned parties as of the latest date set forth below.

**BROKER**

By: *Dina Lisa Giustozzi*  
Dina Lisa Giustozzi

**CONTRACTOR**

By: *Ever Bedoya*  
EVER BEDOYA

# Exhibit B



Effective Date: May 1, 2008

Contract Number: GON3170

### **TRANSPORTATION BROKERAGE AGREEMENT**

American Eagle Express, Inc. d/b/a AEXGroup ("BROKER"), and DIEGO GONZALEZ ("CONTRACTOR"), in consideration of the covenants and agreements contained herein, enter into this Transportation Brokerage CONTRACTOR Agreement ("Agreement").

#### **Recitals**

A. BROKER is a transportation broker that arranges for the transportation of freight under its contractual arrangements with various customers (the "Customer");

B. CONTRACTOR is an independent business person that is qualified, competent and available to provide for the transportation services required by the Customer in motor vehicle equipment owned and operated by CONTRACTOR; and

NOW, THEREFORE, BROKER and CONTRACTOR have entered into this Transportation Brokerage Agreement, subject to the following terms and conditions:

#### **Agreement**

1. **PROVISION OF SERVICES AND EQUIPMENT.** During the time period set forth in Paragraph 2, CONTRACTOR shall provide BROKER with pick-up and delivery services at such times and to such destinations as may from time to time be designated by the Customer, subject to the provisions of this Agreement, including the service standards set forth in Paragraph 13 below. In performing the transportation services contemplated herein, CONTRACTOR shall furnish the Equipment set forth in Appendix A (the "Equipment"). CONTRACTOR represents and warrants that CONTRACTOR has a substantial financial interest in the Equipment, and has title to or is authorized to contract the Equipment and services to BROKER.

2. **DURATION OF AGREEMENT AND TERMINATION.** The term of this Agreement shall be for a period of one (1) year commencing on the Effective Date set forth at the top of this page, and shall automatically renew for additional one (1) year periods unless otherwise terminated as set forth herein. Either party may terminate this Agreement for any reason by giving ten (10) days' written notice to that effect to the other party either personally or by U.S. mail, at the address or fax number shown at the end of this Agreement. The ability of either party to terminate this Agreement shall in no way be interpreted as an at-will employment provision, and shall not otherwise affect CONTRACTOR's status as an independent contractor under this Agreement. CONTRACTOR shall, upon the termination of this Agreement, if so equipped, remove all BROKER identification from the Equipment and return it to BROKER, via hand delivery or certified mail, together with all of BROKER's property, including all delivery documents, undelivered shipments, pagers, and all other equipment and paperwork provided by BROKER or BROKER's Customer, to BROKER's nearest terminal facility.

3. **FEES FOR SERVICES RENDERED.** It is expressly understood and agreed that CONTRACTOR's fees for transportation services rendered shall be as set forth in Appendix B and such fees shall constitute the total fees for everything furnished, provided, or done by CONTRACTOR in connection with this Agreement, including driver's services. BROKER agrees to make reasonable efforts to make deliveries available from time to time for transportation by CONTRACTOR; provided, however, that there is no guarantee by BROKER to CONTRACTOR of a minimum number of shipments, or that CONTRACTOR is guaranteed a profit under this Agreement. CONTRACTOR may solicit new business opportunities for submission to BROKER, in which case BROKER and CONTRACTOR may mutually agree, in writing, to additional compensation payable to CONTRACTOR related to new business acquired by BROKER as a direct result of CONTRACTOR's solicitation.

4. **COMPLIANCE WITH PERTINENT LAWS, REGULATIONS AND CUSTOMER REQUIREMENTS.**

- a) **Drivers.** CONTRACTOR shall provide competent drivers who meet all of the requirements of BROKER's Customers and, where applicable, of the U.S. Department of Transportation ("DOT"), including but not limited to, familiarity and compliance with state and federal motor vehicle and safety laws and regulations. The parties agree that BROKER shall have the right to disqualify any driver provided by CONTRACTOR in the event that the driver is found to be unsafe, unqualified pursuant to federal or state law, in violation of BROKER's minimum qualification standards or, in violation of any policies of BROKER's customers. Upon a driver's disqualification by BROKER, CONTRACTOR shall be obligated to furnish another competent, reliable and qualified driver that meets the minimum qualification standards established by BROKER.
- b) **Paperwork Requirements.** CONTRACTOR shall file with BROKER, on at least a weekly basis, all delivery documents, manifests, other paperwork, accident reports, and any other data, documents, or reports that may be required by the Customer from time to time.
- c) **Limitations.** CONTRACTOR agrees not to receive any credit extension in BROKER's name or in any way to use BROKER's name to obtain credit.
- d) **Safe Operations.** CONTRACTOR agrees to operate the Equipment in a safe and prudent manner at all times in accordance with the laws of the various jurisdictions in which the Equipment will be operated and pursuant to the operating authorities of BROKER, and in accordance with all rules related to traffic safety, highway protection and road requirements. Moreover, CONTRACTOR agrees that all drivers and/or workers employed by CONTRACTOR will comply with the terms of this Agreement, including the requirement of safe operations, while operating the Equipment on behalf of CONTRACTOR. CONTRACTOR shall ensure that all drivers and/or workers utilized by CONTRACTOR to perform services under this Agreement comply with any safety, security and/or operational requirements of the Customer or CONTRACTOR.

- e) **Interstate Operations.** In the event that contractors performing transportation services in interstate commerce subject to the jurisdiction of the U.S. DOT under 49 U.S.C. § 13501, the parties agree and acknowledge that the supplemental terms and conditions contained in Appendix D shall apply. The parties further agree and acknowledge that Appendix D is not intended to impact the independent contractor status of CONTRACTOR. As specifically set forth in 49 C.F.R. § 376.12(c)(4), compliance with the federal requirements for interstate transportation under 49 C.F.R. Part 376 is not intended to affect whether an individual is an employee or independent contractor. It is the intent of BROKER and CONTRACTOR that CONTRACTOR is an independent contractor for all purposes during the term of this Agreement.

5. **OPERATIONAL EXPENSES.**

- a) **Operating Expenses.** CONTRACTOR shall, at its sole cost and expense, provide all the Equipment ready to operate and fully roadworthy, including the necessary licenses and permits, and shall furnish all necessary oil, fuel, tires, and other parts, supplies and equipment necessary or required for the safe and efficient operation and maintenance of the Equipment, including repairs for the operation of such Equipment; and shall pay all other expenses incident to such operation, including, but not limited to, highway use taxes, weight taxes, state property taxes, fuel taxes, and registration fees, ferry and toll charges. CONTRACTOR shall be charged back pursuant to paragraph 17 of this Agreement for all amounts paid by BROKER on behalf of CONTRACTOR under this provision.
- b) **Maintenance and Inspection.** CONTRACTOR shall have the right to maintain and repair the Equipment at any place CONTRACTOR should choose. CONTRACTOR shall be responsible for maintaining, and shall maintain the Equipment in safe condition and in complete compliance with all laws and regulations of the states in which CONTRACTOR operates and the DOT.
- c) **Fines.** CONTRACTOR agrees to pay all fines imposed for violation of any law or regulation by the state in which CONTRACTOR operates and the DOT, where such violation results, at least partially, from the acts or omissions of CONTRACTOR.
- d) **Communication Equipment.** In order to ensure timely communication with BROKER and the Customer, CONTRACTOR agrees to provide a mobile communication equipment of a type and model compatible with BROKER's communications system. CONTRACTOR may elect, at its sole option, to obtain the required communication equipment from BROKER during the term of this Agreement, in which case the rental charges set forth in Appendix B shall be deducted from CONTRACTOR's compensation. If CONTRACTOR elects to obtain communication equipment through BROKER, CONTRACTOR will be responsible for the return of the communication equipment, in good condition, upon termination of this Agreement or upon BROKER's request. CONTRACTOR shall be responsible for the full replacement cost of any lost or unreturned communication equipment provided by BROKER.

6. **SERVICE FAILURE AND CARGO CLAIMS.** BROKER reserves the right to investigate all reported service failure claims submitted by the Customer, including but not limited to, delays, shortages, misdeliveries, and claims related to lost, damaged or contaminated deliveries, arising out of, or in connection with CONTRACTOR's services to determine if CONTRACTOR's actions or omissions resulted in or contributed to the claim. If it is determined that CONTRACTOR's actions or omissions resulted in or contributed to the claim, then BROKER shall charge back CONTRACTOR the entire amount of all service failure and cargo claims, including any expenses incurred by BROKER with respect to such claim.

7. **EQUIPMENT/PROPERTY DAMAGE.** CONTRACTOR shall be liable for, and pay, all direct, indirect and consequential damage, including but not limited to reasonable attorney fees, arising out of, or in connection with, CONTRACTOR's use of BROKER's equipment, or any other property belonging to BROKER or the Customer.

8. **INSURANCE.** The responsibilities and obligations between BROKER and CONTRACTOR involving insurance shall be as specified in Appendix C. BROKER shall have no insurance responsibilities or obligations pertaining to CONTRACTOR other than those expressly stated in this Agreement or mandated by law.

9. **ACCIDENT REPORTS.** CONTRACTOR shall immediately report any accident to BROKER involving operations under this Agreement, and CONTRACTOR will cooperate with BROKER and its representatives and insurers regarding the investigation of any accident. In the event CONTRACTOR fails to notify BROKER of the accident within one (1) hour from the time of the accident, CONTRACTOR shall be liable for any and all damages resulting from that failure to notify, including but not limited to consequential damages, fines, claims by third parties and reasonable attorney fees.

10. **HOLD HARMLESS.** Except to the extent CONTRACTOR's acts or omissions are covered under the parties' respective insurance policies as set forth in Appendix C with no expense to BROKER, INDEPENDENT CONTRACTOR agrees to defend, indemnify and hold harmless BROKER from any direct, indirect and consequential loss, damage, fine, expense, including reasonable attorney's fees, action, claim for injury to persons, including death, and damage to property which BROKER may incur arising out of or in connection with the operation of the Equipment, CONTRACTOR's obligations under this Agreement, or any breach by CONTRACTOR or its drivers or workers of the terms of this Agreement. This provision shall remain in full force and effect both during and after the termination of this Agreement.

11. **SECURITY IDENTIFICATION OBLIGATIONS.** The Customer may require that CONTRACTOR and any of its workers wear attire that identifies the individual as a contractor of BROKER and a photo identification badge for security purposes when providing delivery or pickup services at the Customer's various locations. CONTRACTOR shall be responsible for any cost or expense incurred in obtaining any Customer-required uniform or identification badge(s). Upon the termination of this Agreement, CONTRACTOR agrees to immediately return any photo identification badge to BROKER. Any identification issued is solely for security purposes and must be worn by CONTRACTOR or its workers in plain view to be granted access to, and while on, the Customer or BROKER's premises. If CONTRACTOR fails to return any photo identification badge to BROKER or if CONTRACTOR requires a replacement badge during the term of this Agreement, then CONTRACTOR understands and agrees that the cost of each replacement badge shall be deducted from CONTRACTOR's compensation.



12. **SECURITY DOCUMENTATION OBLIGATIONS.** Where required by the Customer, CONTRACTOR authorizes BROKER to release security-sensitive documentation, including but not limited to, drug and alcohol test results, photographs, copies of driver's licenses, Motor Vehicle Record ("MVR"), criminal background information, and other identification information to the Customer, and CONTRACTOR hereby agrees to release and hold BROKER harmless related to any damages or injuries sustained by CONTRACTOR as a result of the authorized release of such security-sensitive information.

13. **SERVICE STANDARDS.** In order to meet the service obligations of the Customer, CONTRACTOR agrees to ensure compliance by CONTRACTOR and its drivers of the following service standards. If CONTRACTOR breaches any of these service standards resulting in BROKER incurring a monetary cost to the Customer, including any monetary penalty, then CONTRACTOR agrees and authorizes BROKER to deduct all such charges from CONTRACTOR's compensation.

- a) CONTRACTOR shall make its services and the Equipment available to supply transportation services to the Customers of BROKER in order to enable BROKER to satisfy the terms of its contracts and agreements with the Customer.
- b) CONTRACTOR acknowledges and understands that products and materials transported and delivered for Customers may be of a highly confidential and/or sensitive nature, and that such transportation and delivery be subject to explicit security requirements of Customers.
- c) CONTRACTOR shall have the right to decline any sets of work referred by the BROKER; provided, however, that CONTRACTOR shall provide BROKER timely notice of such declination so that BROKER can obtain substitute transportation service to meet specific Customer needs. In the event CONTRACTOR does not provide timely declination and BROKER incurs additional costs in obtaining substitute transportation or penalties from the Customer for not being able to provide services, CONTRACTOR agrees and acknowledges that BROKER may charge back such expenses to CONTRACTOR.
- d) CONTRACTOR shall have sole discretion over the selection of routes in carrying out deliveries to the Customer subject only to specific Customer requirements.
- e) CONTRACTOR shall devote such time and effort hereunder, as is necessary for the competent and efficient performance of delivery jobs referred by the BROKER and accepted by the CONTRACTOR, and shall be free to devote such time to other endeavors provided such activity does not conflict with accepted obligations to the Customer for the contract work.
- f) CONTRACTOR acknowledges that NO REPRESENTATION HAS BEEN MADE TO IT ORALLY OR IN WRITING AS TO THE AMOUNT OF WORK THAT WILL BE REFERRED TO IT or as to the amount of total compensation CONTRACTOR will receive.

- g) CONTRACTOR specifically agrees not to discriminate against or engage in any unlawful harassment against any person based on race, color, religion, sex, sexual orientation or preference, genetic information, national origin, handicap or disability, Vietnam era or disabled veteran status, and/or any other protected status. CONTRACTOR agrees to save, defend, hold harmless, indemnify and hereby releases the BROKER and the Customer from and against any and all claims alleging that CONTRACTOR has breached its obligations under this provision of the Agreement.
- h) In addition to the confidentiality requirements set forth in Paragraph 19 below, CONTRACTOR also agrees to comply with all security, privacy and confidentiality obligations imposed upon BROKER and/or carrier by each Customer. Such Customer requirements include, but are not limited to, not using, copying, altering or removing any information, document or correspondence provided to CONTRACTOR by the Customer or by BROKER on Customer's behalf (the "Confidential Customer Information"); returning all Confidential Customer Information to either BROKER or Customer upon their request; using reasonable care in implementing reasonable controls to prevent the unauthorized use, disclosure or availability of Confidential Customer Information; and, advising BROKER immediately in the event that any Confidential Customer Information is stolen, lost or otherwise misappropriated. In addition, CONTRACTOR agrees to comply with the privacy, security and confidentiality requirements of all applicable federal and state laws, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Gramm-Leach-Bliley Act of 1999 ("GLB"), the Fair and Accurate Credit Transaction Act ("FACTA"), and the Sarbanes-Oxley Act of 2002 ("SOX"). CONTRACTOR agrees to timely notify BROKER in the event of any possible violation of any federal law, regulation or Customer requirement.

14. **INDEPENDENT CONTRACTOR STATUS.** It is expressly understood and agreed that CONTRACTOR is an independent contractor for the Equipment and driver services provided pursuant to this Agreement. The parties further recognize that CONTRACTOR has a significant financial investment in the Equipment and the driver services provided herein, and that CONTRACTOR has the exclusive right to direct and control the financial aspects of CONTRACTOR's business operations, including the ability to earn a profit or suffer a financial loss under this Agreement. In its capacity as an independent contractor, CONTRACTOR agrees as follows:

- a) To be responsible for the filing and payment of all federal, state and local employment taxes, unemployment insurance, disability insurance, and workers' compensation insurance required by federal, state or local law;
- b) That all payments received by CONTRACTOR from BROKER will not be subject to tax withholding by BROKER; and
- c) That CONTRACTOR is not covered by unemployment insurance or workers' compensation provided by BROKER, and that CONTRACTOR has no right to nor will CONTRACTOR seek benefits or any form of payment from or through BROKER under state unemployment coverage or workers' compensation.



CONTRACTOR shall not be considered, whether under the provisions of this Agreement or otherwise, as having the status of an employee of BROKER for any purpose whatsoever, including but not limited to, federal, state or local tax purposes, and CONTRACTOR shall not be entitled to participate in any plans, arrangements or distributions the BROKER may make in connection with any pension, stock, bonus, profit sharing or similar benefits for BROKER's employees. CONTRACTOR agrees to comply with all applicable laws and regulations with respect to workers' compensation, unemployment compensation, and assume full responsibility for the payment of all state and federal taxes and all other social security or withholding tax laws on CONTRACTOR's own behalf and for any persons hired or contracted by CONTRACTOR.

15. **CONTROL AND RESPONSIBILITY.** CONTRACTOR, as an independent contractor, is responsible for determining the means and methods of the performance of all services undertaken by CONTRACTOR under the terms of this Agreement. For example, CONTRACTOR has and shall retain all responsibility for (i) hiring, setting the wages, hours and working conditions and adjusting the grievances of, supervising, training, disciplining and firing CONTRACTOR's drivers, driver's helpers and other workers, and CONTRACTOR shall be solely responsible for the payment of any compensation to said workers and any taxes and insurances applicable thereto; (ii) selecting, purchasing, financing and maintaining the tools, including the equipment, used by CONTRACTOR in carrying out its duties and responsibilities under this Agreement.

16. **BREACH.** Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated, at any time, by either party in the event of a breach by the other of any term or obligation contained in this Agreement. In the event of a breach and when practicable, written notice shall be served upon the breaching party, notifying such party of the breach and the termination of the Agreement and reason(s) therefore. If, in BROKER's judgment, CONTRACTOR has subjected BROKER to liability because of CONTRACTOR's acts or omissions, BROKER may take possession of any shipment to CONTRACTOR and complete performance. In such event, CONTRACTOR shall waive any recourse against BROKER for such action and CONTRACTOR shall reimburse BROKER for all direct or indirect costs, expenses, or damages including reasonable attorney's fees incurred by BROKER as a result of BROKER's taking possession of the lading and completing performance.

17. **CHARGE BACK.** BROKER shall charge back to CONTRACTOR at the time of payment or settlement, any expenses BROKER has borne that, under this Agreement, CONTRACTOR is obligated to bear; and as more particularly described in Appendix B. Such expenses shall be deducted from the amount of CONTRACTOR's compensation. The amount of each item to be charged back to CONTRACTOR shall be computed based on the actual cost or expense incurred by BROKER and any administrative fee or mark-up assessed by BROKER. BROKER shall provide CONTRACTOR written itemization and documentation, if any, for all charge backs.

18. **FINAL SETTLEMENT.** In the event of termination of this Agreement by either party, BROKER shall be entitled to withhold all compensation until such time as CONTRACTOR has returned the following items to BROKER or a person designated by BROKER:

- (a) All delivery documents and reports with respect to trips completed or cargo carried in the Equipment pursuant to this Agreement;
- (b) All identification signs and devices provided to CONTRACTOR or, alternatively, prove to the satisfaction of BROKER that such devices have been removed and/or destroyed; and
- (c) All other forms, documents, equipment, or other items belonging to or owned by BROKER.

In the event CONTRACTOR breaches any of the terms or conditions of this Agreement and BROKER incurs any attorney's fees, then, in addition to all damages and equitable relief which may be afforded to BROKER, BROKER shall be entitled to recover its attorney's fees and expenses.

19. **CONFIDENTIALITY.** The CONTRACTOR will safeguard and maintain as confidential and privileged all "customer lists", customer rates, bills of lading or trip manifests, charges and pricing schedules, other materials furnished by the BROKER, and all information learned by CONTRACTOR as a result of this agreement. The term customer lists shall be construed to mean the names and addresses of customers, as well as any customer schedules or delivery instructions. CONTRACTOR will not directly or indirectly through another, attempt to use the same or the names of its customers learned by it while performing the services contracted for hereunder for any purpose except in the performance of its duties hereunder to BROKER. The CONTRACTOR acknowledges that all "customer lists" and other such material and information are the exclusive property of the BROKER, and in the event of the termination of this agreement, the CONTRACTOR shall surrender any such "customer list" and material to the BROKER and thereafter may make no use of said lists, material or any information learned by it with respect to the BROKER'S customer or business. CONTRACTOR acknowledges that this paragraph is of the essence of this agreement and agrees that in the event of its failure to comply herewith, in addition to whatever other legal remedies may be available, an injunction may be issued against it to enforce the BROKER'S rights hereunder. In connection with any legal proceeding commenced hereunder, CONTRACTOR agrees to pay to BROKER all reasonable attorney's fees and costs incurred in such proceedings. The parties agree and acknowledge that CONTRACTOR's confidentiality obligations hereunder shall not apply to any customers of CONTRACTOR that either pre-existed CONTRACTOR's relationship with BROKER or to any customers for whom CONTRACTOR has provided services for outside of this Agreement.

20. **NO UNAUTHORIZED PASSENGERS.** As prohibited under 49 C.F.R. 392.60, no passenger shall be permitted to travel in the Equipment without prior written authorization from BROKER. Any authorized passenger must sign a waiver of liability as provided in the Passenger Authorization Form to be provided by BROKER.

21. **BENEFIT.** This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors.

22. **NOTICE.** All notice provisions of this Agreement shall be in writing delivered personally, by postage prepaid, first class mail, or by certified/registered mail to the addresses shown at the end of this Agreement.

23. **NON-WAIVER.** The failure or refusal of either party to insist upon the strict performance of any provision of this Agreement, or to exercise any right in any one or more instances or circumstances shall not be construed as a waiver or relinquishment of such provision or right, nor shall such failure or refusal be deemed a customary practice contrary to such provision or right.

24. **SEVERABILITY.** If any Agreement or its appendices is deemed invalid for any reason whatsoever, the Agreement shall be void only as to such provision, and this Agreement shall remain otherwise binding between the parties. Any provision voided by operation of the foregoing shall be replaced with provisions which shall be as close as the parties' original intent as permitted under applicable law.

25. **COMPLETE AGREEMENT.** This Agreement, including any Appendices attached, constitutes the sole, entire, and existing agreement between the parties herein, and supersedes all prior agreements and undertakings, oral and written, expressed or implied, or practices, between the parties, and expresses all obligations and restrictions imposed on each of the respective parties during its term, except those specifically modified or changed by mutual written agreement between BROKER and CONTRACTOR. By signing below, both BROKER and CONTRACTOR hereby acknowledge that they have entered into this Agreement freely and without duress, and both parties have had the opportunity to consult with legal counsel of their own choosing pertaining to their particular rights and obligations under this Agreement and, having done so, now voluntarily agree to the terms set forth in this Agreement and each appendix and addendum. This Agreement shall be deemed to have been drawn in accordance with the statutes and laws of the State of Pennsylvania and in the event of any disagreement or litigation, the laws of this state shall apply and suit must be brought in or near Chester Township, Pennsylvania. Both BROKER and CONTRACTOR hereby waive their right to any jury trial pertaining to the services performed under this Agreement or any dispute pertaining to this Agreement.

**IN WITNESS WHEREOF,** BROKER and CONTRACTOR do hereby sign this Agreement as of the Effective Date set forth on Page 1.

<p><b>AEXGroup / BROKER:</b>  10 C Milton Drive  Aston, PA 19014</p> <p>By: <u><i>Dina Lisa Giustozzi</i></u></p> <p><u>Dina Lisa Giustozzi, VP Finance</u>  Printed Name</p>	<p><b>CONTRACTOR:</b></p> <p>DIEGO GONZALEZ  165 MACARTHUR AVE  GARFIELD, NJ 07026</p> <p>By: <u><i>Diego</i></u></p> <p>Authorized Independent Contractor</p>
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**Appendix A**

**Vehicle Information:**

Year: 2003  
Make: FORD  
VIN No.: 1FTRE14283HB69067  
License Plate No.: XM926N

**Vehicle Information:**

Year: \_\_\_\_\_  
Make: \_\_\_\_\_  
VIN No.: \_\_\_\_\_  
License Plate No.: \_\_\_\_\_

**Vehicle Information:**

Year: \_\_\_\_\_  
Make: \_\_\_\_\_  
VIN No.: \_\_\_\_\_  
License Plate No.: \_\_\_\_\_

**Vehicle Information:**

Year: \_\_\_\_\_  
Make: \_\_\_\_\_  
VIN No.: \_\_\_\_\_  
License Plate No.: \_\_\_\_\_

**Vehicle Information:**

Year: \_\_\_\_\_  
Make: \_\_\_\_\_  
VIN No.: \_\_\_\_\_  
License Plate No.: \_\_\_\_\_

**Appendix B**

**FEE SCHEDULE**

1. **COMPENSATION..** The parties agree that CONTRACTOR shall be paid a negotiated amount based upon the routes offered by BROKER and accepted by CONTRACTOR during the term of the Agreement. Any compensation payable to CONTRACTOR shall first be decreased by any expense incurred by BROKER as a result of any obligation or expense of CONTRACTOR under this Agreement or any addendum thereto.

2. **CHARGE BACK ITEMS.** The following charges, if initially paid for by BROKER on behalf of CONTRACTOR, will be charged back to CONTRACTOR, along with any administrative fee or mark-up assessed by BROKER, and deducted from the compensation to be paid by BROKER under this Agreement:

- (a) Insurance-related expenses for all insurance coverages procured from or through BROKER;
- (b) Any cargo claim or equipment/property damage assessed against CONTRACTOR under this Agreement;
- (c) C.O.D. and freight collect remittances due BROKER for loads delivered by CONTRACTOR under this Agreement;
- (d) Any monetary damages or penalties incurred by BROKER from its Customer for service failure related to CONTRACTOR's operations;
- (e) Uniform expenses if purchased from BROKER;
- (f) Reasonable attorney fees incurred by BROKER in reducing potential liability incurred as the result of CONTRACTOR's acts or omissions;
- (g) Communication devices leased from BROKER such as cell phones, wireless data collection devices, or other associated expenses;
- (h) Expenses incurred in obtaining background investigation verifications, Motor Vehicle Records, and drug and/or alcohol screens; and
- (i) All other expenses incurred by BROKER which are the responsibility of CONTRACTOR under this Agreement or any addendum to this Agreement.

**BROKER**

By: *Dina Lisa Giustozzi*  
Dina Lisa Giustozzi

**CONTRACTOR**

By: *Diego*  
DIEGO GONZALEZ



**Appendix C**

1. **CONTRACTOR'S INSURANCE OBLIGATIONS.** CONTRACTOR shall maintain, at its sole cost and expense, the following minimum insurance coverages during this Agreement:

(a) **PRIMARY AUTO LIABILITY COVERAGE** - CONTRACTOR shall procure at CONTRACTOR's sole cost and expense, a policy or policies of insurance issued by a company reasonably satisfactory to BROKER with premiums paid thereon by CONTRACTOR, insuring CONTRACTOR in minimum liability coverage in the amount of \$100,000.00 for bodily injury for each person injured, \$300,000.00 for all persons injured during each occurrence. Such insurance shall be primary to any insurance that may be available from BROKER pursuant to this Agreement. CONTRACTOR shall be responsible for all deductible amounts and for any loss or damage in excess of the policy limit.

(b) **WORKERS' COMPENSATION/OCCUPATIONAL ACCIDENT INSURANCE.** CONTRACTOR shall provide workers' compensation insurance coverage for CONTRACTOR (if a natural person), all of its employees and agents, anyone driving the Equipment, and any other persons required to be covered under the worker's compensation law of any state that is reasonably likely to have jurisdiction over CONTRACTOR's business operations and in amounts not less than the statutory limits required by such applicable state law. The worker's compensation insurance policy shall provide principal coverage in Pennsylvania as well as the state in which the work is principally localized, and shall provide "other states coverage" that excludes only Ohio and West Virginia. As evidence of such coverage, CONTRACTOR shall provide BROKER with a copy of the insurance policy declarations page for BROKER's verification before operating the Equipment under this Agreement. If (a) CONTRACTOR is the sole owner and the sole and exclusive operator of the Equipment and (b) the state in which the work is principally localized is not Nevada, New Jersey, New York, or North Carolina, then CONTRACTOR may, as an alternative to obtaining workers' compensation coverage, obtain occupational accident insurance policy that includes either an endorsement or a separate policy provision whereby the insurer provides, or agrees to provide, workers' compensation coverage that becomes effective for a claim by CONTRACTOR alleging employee status. Such occupational accident insurance coverage shall be no less comprehensive than the coverage BROKER will facilitate on CONTRACTOR's behalf if CONTRACTOR so chooses, as provided in Section 4 of this Appendix.

(c) **OTHER INSURANCE.** In addition to the insurance coverages required under this Agreement, it is CONTRACTOR'S responsibility to procure, carry and maintain any fire, theft, uninsured and/or underinsured motorist, and physical damage (collision), or other insurance coverage that CONTRACTOR may desire for the Equipment or for CONTRACTOR's health care or other needs. As provided in this Agreement, CONTRACTOR holds BROKER harmless with respect to loss of or damage to CONTRACTOR's Equipment,



trailer, or other property, and BROKER has no responsibility to procure, carry, or maintain any insurance covering loss of or damage to CONTRACTOR's Equipment, trailer, or other property. CONTRACTOR acknowledges that BROKER may, and CONTRACTOR hereby authorizes BROKER to, waive and reject no-fault, uninsured, and underinsured motorist coverage from BROKER's insurance policies to the extent allowed under Pennsylvania law (or such other state law where the Equipment is principally garaged), and CONTRACTOR shall cooperate in the completion of all necessary documentation for such waiver, election, or rejection.

2. **REQUIREMENTS APPLICABLE TO ALL OF CONTRACTOR'S INSURANCE COVERAGES.** CONTRACTOR shall procure insurance policies providing the above-described coverages solely from insurance carriers that are A.M. Best "A"-rated, and CONTRACTOR shall not operate the Equipment under this Agreement unless and until BROKER has determined that the policies are acceptable (BROKER's approval shall not be unreasonably withheld). CONTRACTOR shall furnish to BROKER written certificates obtained from CONTRACTOR'S insurance carriers showing that all insurance coverages required above have been procured from A.M. Best "A" rated insurance carriers, that the coverages are being properly maintained, and that the premiums thereof are paid. Each insurance certificate shall specify the name of the insurance carrier, the policy number, and the expiration date; list BROKER as an additional insured with primary coverage; and show that written notice of cancellation or modification of the policy shall be given to BROKER at least thirty (30) days prior to such cancellation or modification.

3. **CONTRACTOR'S LIABILITY IF REQUIRED COVERAGES ARE NOT MAINTAINED.** In addition to CONTRACTOR's hold harmless/indemnity obligations to BROKER under the Agreement, CONTRACTOR agrees to defend, indemnify, and hold BROKER harmless from any direct, indirect, or consequential loss, damage, fine, expense, including reasonable attorney fees, actions, claim for injury to persons, including death, and damage to property that BROKER may incur arising out of or in connection with CONTRACTOR'S failure to maintain the insurance coverages required by this Agreement. In addition, CONTRACTOR, on behalf of its insurer, expressly waives all subrogation rights against BROKER, and, in the event of a subrogation action brought by CONTRACTOR's insurer, CONTRACTOR agrees to defend, indemnify, and hold BROKER harmless from such claim.

4. **AVAILABILITY OF INSURANCE FACILITATED BY BROKER.** CONTRACTOR may, if it so chooses by initialing one or more boxes in the right-hand column of the attached "CERTIFICATE OF INSURANCE," authorize BROKER to facilitate, on CONTRACTOR'S behalf, the insurance coverages required or made optional by this Agreement. In any such case, BROKER shall deduct, from CONTRACTOR settlement compensation, amounts reflecting all of BROKER's expense and cost in obtaining and administering such coverage. In addition, if CONTRACTOR fails to provide proper evidence of the purchase or maintenance of the insurance required above, then BROKER is authorized but not required to obtain such insurance at CONTRACTOR's expense and deduct, from CONTRACTOR's settlement compensation, amounts reflecting all of BROKER's expense in obtaining and administering such coverage. CONTRACTOR recognizes that BROKER is not in the business of selling insurance, and any insurance coverage requested by CONTRACTOR from BROKER is subject to all of the terms, conditions, and exclusions of the actual policy issued by the insurance underwriter. BROKER shall ensure that CONTRACTOR

is provided with a certificate of insurance (as required by 49 C.F.R. § 376.12(j)(2)) for each insurance policy under which the CONTRACTOR has authorized BROKER to facilitate insurance coverage from the insurance underwriter (each such certificate to include the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to CONTRACTOR for each type of coverage, and the deductible amount for each type of coverage for which CONTRACTOR may be liable), and BROKER shall provide CONTRACTOR with a copy of each policy upon request.

5. **CHANGES IN COST OR OTHER DETAILS OF COVERAGES.** If BROKER is facilitating any insurance coverages for CONTRACTOR pursuant to Section 5 of this Appendix and the cost to CONTRACTOR for, or other details of, a coverage changes from the information listed in the attached "CERTIFICATE OF INSURANCE", CONTRACTOR will be so notified by personal delivery, fax, or other written notice. In any event, CONTRACTOR shall not be subject to any such change until ten (10) calendar days after such notice or such later time as is set forth in the notice. **CONTRACTOR's failure, by the end of ten (10) calendar days after such notice, to notify BROKER of any objection to the change shall constitute CONTRACTOR's express consent and authorization to BROKER to implement the change and modify accordingly the deductions from CONTRACTOR's settlement compensation, beginning immediately after the 10-day period. Such modified amounts shall replace and supersede those shown in the Certificate of Insurance and BROKER shall not have an obligation to also provide a revised Certificate of Insurance.** If CONTRACTOR fails to notify BROKER of any objection within the 10-day period -- or if CONTRACTOR notify BROKER of its objection within the 10-day period and CONTRACTOR and BROKER is then unable to resolve the matter to our mutual satisfaction -- CONTRACTOR and BROKER shall each have the right to terminate this Agreement effective immediately upon the change becoming effective (although CONTRACTOR shall remain subject to the change until CONTRACTOR's termination's effective date and time).

THIS APPENDIX is agreed to by the undersigned parties as of the latest date set forth below.

BROKER

By: *Dina Lisa Giustozzi*  
Dina Lisa Giustozzi

CONTRACTOR

By: *Diego*  
DIEGO GONZALEZ

**CERTIFICATE OF INSURANCE**

CONTRACTOR hereby requests BROKER, through its insurer, to facilitate on CONTRACTOR's behalf (if they are available) the insurance coverages CONTRACTOR has selected by placing CONTRACTOR's initials in the right-hand column below:

TYPE OF COVERAGE	INITIAL "YES" TO REQUEST COVERAGE
<p><b>2. <u>Occupational Accident Insurance:</u></b></p> <p><i>Name of Insurer:</i> _____</p> <p><i>Policy No:</i> _____</p> <p><i>Effective Date(s) of Coverage:</i> _____</p> <p><i>Amount of Coverage:</i> \$_____ per _____</p> <p><i>Current Cost to CONTRACTOR:</i> \$_____ per month</p> <p><b>[COVERAGE IS AVAILABLE ONLY TO A SOLE-PROPRIETOR CONTRACTOR WHO IS EXCLUSIVE DRIVER OF THE EQUIPMENT.]</b></p>	<p>_____ YES</p> <p>_____ NO</p>

**Appendix D**

**SUPPLEMENT TO TRANSPORTATION BROKERAGE AGREEMENT  
FOR DEPARTMENT OF TRANSPORTATION REGULATED OPERATIONS**

1. **Applicability.** This Supplement shall apply only to such transportation services provided by CONTRACTOR as are within the regulatory jurisdiction of the U.S. Department of Transportation ("DOT") as specified in 49 U.S.C. § 13501. This Supplement, together with all provisions of the accompanying Transportation Brokerage Agreement that are not inconsistent herewith, shall constitute the "Lease" required by the DOT for such services pursuant to 49 C.F.R. 376.11(a).

2. **Lease.** CONTRACTOR hereby Leases to BROKER and BROKER hereby leases from CONTRACTOR the equipment, hereinafter called "Leased Equipment." The CONTRACTOR represents and warrants that the CONTRACTOR has title to or is authorized to contract the Leased Equipment to the BROKER during the term of the Service Agreement.

3. **Commencement and Duration.** This Appendix D shall become effective as of the date set forth above and shall remain in effect until the date upon which the Service Agreement to which this Appendix D is attached (the "Service Agreement") is terminated, whereupon this Appendix D shall automatically terminate. Immediately before the first operation of any piece of Leased Equipment under this Appendix D, BROKER shall furnish CONTRACTOR with an equipment receipt meeting the requirements of 49 C.F.R. 376.11(b). CONTRACTOR shall, immediately upon termination of the Agreement, remove all of BROKER's identification devices from the equipment and return them to BROKER via hand delivery or certified mail (provided that if the identification devices have been lost or stolen, a written letter certifying their removal will satisfy this requirement), together with all of the BROKER's other property, including paperwork and cargo to the BROKER's nearest terminal. If CONTRACTOR fails to return this property upon termination of this Agreement, CONTRACTOR shall pay the BROKER all expenses, including reasonable attorney fees, incurred by the BROKER in seeking the return of such items, and the BROKER may pursue all other remedies allowed by law or authorized in the Agreement against CONTRACTOR.

4. **Identification of Equipment.** When required by DOT regulations, CONTRACTOR shall identify the leased equipment with BROKER's name and DOT Identification Number. CONTRACTOR shall remove such required identification upon BROKER's request or upon termination of this Agreement. BROKER may withhold final settlement to CONTRACTOR until verification that the required identification on the leased equipment has been removed.

3. **Payment.** CONTRACTOR shall receive payment for services in accordance with Appendix B to this Transportation Brokerage Agreement. As mandated by 49 C.F.R. 376.12(f), such payment shall be made within fifteen (15) days after CONTRACTOR submits to BROKER (i) logbooks required by the DOT and (ii) those documents necessary for BROKER to secure payment from its customers. BROKER will give CONTRACTOR, at the time of payment, a rated freight bill or other document showing equivalent information for each shipment, and a statement showing total hauling revenue and all chargeback items and deductions. CONTRACTOR shall also have the right to inspect, during regular business



hours, BROKER's delivery manifests, tariff and other documents from which chargebacks, deductions rates and charges are computed.

**4. Expenses.** CONTRACTOR shall pay all costs attendant to the operation and maintenance of the Leased Equipment including, without limitation, fuel costs, fuel taxes, empty mileage, all permits, tolls, ferries, detention and accessorial services, base plates, licenses, any unused portions of such items and all costs and expenses described in Section 4 of the Service Agreement. As required by 49 C.F.R. 376.12(e), BROKER shall assume the risks and costs of fines for overweight and oversize vehicles, when such vehicles are pre-loaded, sealed or the load is containerized, or when the trailer or lading is otherwise outside of CONTRACTOR's control, and of fines for improperly permitted overdimension and overweight loads, and shall reimburse CONTRACTOR for any such fines paid by CONTRACTOR, except when the violations occasioning such fines result from the acts or omissions of CONTRACTOR. The CONTRACTOR is not required to purchase or rent any products, equipment, or services from the BROKER as a condition of entering into the Service Agreement. However, in the event the CONTRACTOR elects to purchase or rent any such items from the BROKER or from any third party, for which the CONTRACTOR requests Carrier to make deductions from CONTRACTOR's compensation, then the parties mutually agree to attach and incorporate the terms of such purchase or lease to the Service Agreement as a separate addendum.

**5. Insurance.**

(a) BROKER shall maintain insurance coverage for the protection of the public pursuant to applicable regulations under 49 U.S.C. 13906. CONTRACTOR will carry, at its own expense, public liability and property damage insurance upon the leased Equipment used by him naming BROKER as an additional insured.

(b) If CONTRACTOR requests to obtain coverage from BROKER's insurer in lieu of providing his own coverage, BROKER will seek to obtain and provide to CONTRACTOR a quotation for such Coverage.

**6. Loss or Damage.** CONTRACTOR will be liable for loss or damage to items intended for transport occurring while such items are in CONTRACTOR's possession or under his dominion and control. Before making deductions from settlements with CONTRACTOR to reflect such loss or damage, BROKER shall provide CONTRACTOR with a written explanation and itemization of such deductions.

**7. Control and Exclusive Use.** BROKER shall have such possession, control and use of the Leased Equipment and its operation as required by 49 C.F.R. Section 376.12(c) (1). BROKER shall assume complete responsibility for operation of the equipment for the duration of this Agreement. Notwithstanding the foregoing, in performing services under this Appendix D, CONTRACTOR will direct the operation of the Leased Equipment in all respects and will determine the means of performance including, but not limited to, such matters as choice of any routes, points of service of equipment, rest stops and timing and scheduling of customer deliveries. The parties intend to create an independent-contractor relationship and not an employer-employee relationship.

**8. Laws.** CONTRACTOR shall comply with all federal, state and local laws, rules and regulations pertaining to his performance under this Appendix D.

**9. Effect of Validity on Provision.** In case any one or more of the provisions contained in this Appendix D should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall in no way be affected, prejudiced or disturbed thereby.

**THIS APPENDIX** is agreed to by the undersigned parties as of the latest date set forth below.

**BROKER**

By: *Dina Lisa Giustozzi*  
Dina Lisa Giustozzi

**CONTRACTOR**

By: *Diego Gonzalez*  
DIEGO GONZALEZ



# Exhibit C

Effective Date: May 1, 2008

Contract Number: DEC3599

### TRANSPORTATION BROKERAGE AGREEMENT

American Eagle Express, Inc. d/b/a AEXGroup ("BROKER"), and MANUEL DE CASTRO ("CONTRACTOR"), in consideration of the covenants and agreements contained herein, enter into this Transportation Brokerage CONTRACTOR Agreement ("Agreement").

#### Recitals

A. BROKER is a transportation broker that arranges for the transportation of freight under its contractual arrangements with various customers (the "Customer");

B. CONTRACTOR is an independent business person that is qualified, competent and available to provide for the transportation services required by the Customer in motor vehicle equipment owned and operated by CONTRACTOR; and

NOW, THEREFORE, BROKER and CONTRACTOR have entered into this Transportation Brokerage Agreement, subject to the following terms and conditions:

#### Agreement

1. **PROVISION OF SERVICES AND EQUIPMENT.** During the time period set forth in Paragraph 2, CONTRACTOR shall provide BROKER with pick-up and delivery services at such times and to such destinations as may from time to time be designated by the Customer, subject to the provisions of this Agreement, including the service standards set forth in Paragraph 13 below. In performing the transportation services contemplated herein, CONTRACTOR shall furnish the Equipment set forth in Appendix A (the "Equipment"). CONTRACTOR represents and warrants that CONTRACTOR has a substantial financial interest in the Equipment, and has title to or is authorized to contract the Equipment and services to BROKER.

2. **DURATION OF AGREEMENT AND TERMINATION.** The term of this Agreement shall be for a period of one (1) year commencing on the Effective Date set forth at the top of this page, and shall automatically renew for additional one (1) year periods unless otherwise terminated as set forth herein. Either party may terminate this Agreement for any reason by giving ten (10) days' written notice to that effect to the other party either personally or by U.S. mail, at the address or fax number shown at the end of this Agreement. The ability of either party to terminate this Agreement shall in no way be interpreted as an at-will employment provision, and shall not otherwise affect CONTRACTOR's status as an independent contractor under this Agreement. CONTRACTOR shall, upon the termination of this Agreement, if so equipped, remove all BROKER identification from the Equipment and return it to BROKER, via hand delivery or certified mail, together with all of BROKER's property, including all delivery documents, undelivered shipments, pagers, and all other equipment and paperwork provided by BROKER or BROKER's Customer, to BROKER's nearest terminal facility.

3. **FEES FOR SERVICES RENDERED.** It is expressly understood and agreed that CONTRACTOR's fees for transportation services rendered shall be as set forth in Appendix B and such fees shall constitute the total fees for everything furnished, provided, or done by CONTRACTOR in connection with this Agreement, including driver's services. BROKER agrees to make reasonable efforts to make deliveries available from time to time for transportation by CONTRACTOR; provided, however, that there is no guarantee by BROKER to CONTRACTOR of a minimum number of shipments, or that CONTRACTOR is guaranteed a profit under this Agreement. CONTRACTOR may solicit new business opportunities for submission to BROKER, in which case BROKER and CONTRACTOR may mutually agree, in writing, to additional compensation payable to CONTRACTOR related to new business acquired by BROKER as a direct result of CONTRACTOR's solicitation.

4. **COMPLIANCE WITH PERTINENT LAWS, REGULATIONS AND CUSTOMER REQUIREMENTS.**

- a) **Drivers.** CONTRACTOR shall provide competent drivers who meet all of the requirements of BROKER's Customers and, where applicable, of the U.S. Department of Transportation ("DOT"), including but not limited to, familiarity and compliance with state and federal motor vehicle and safety laws and regulations. The parties agree that BROKER shall have the right to disqualify any driver provided by CONTRACTOR in the event that the driver is found to be unsafe, unqualified pursuant to federal or state law, in violation of BROKER's minimum qualification standards or, in violation of any policies of BROKER's customers. Upon a driver's disqualification by BROKER, CONTRACTOR shall be obligated to furnish another competent, reliable and qualified driver that meets the minimum qualification standards established by BROKER.
- b) **Paperwork Requirements.** CONTRACTOR shall file with BROKER, on at least a weekly basis, all delivery documents, manifests, other paperwork, accident reports, and any other data, documents, or reports that may be required by the Customer from time to time.
- c) **Limitations.** CONTRACTOR agrees not to receive any credit extension in BROKER's name or in any way to use BROKER's name to obtain credit.
- d) **Safe Operations.** CONTRACTOR agrees to operate the Equipment in a safe and prudent manner at all times in accordance with the laws of the various jurisdictions in which the Equipment will be operated and pursuant to the operating authorities of BROKER, and in accordance with all rules related to traffic safety, highway protection and road requirements. Moreover, CONTRACTOR agrees that all drivers and/or workers employed by CONTRACTOR will comply with the terms of this Agreement, including the requirement of safe operations, while operating the Equipment on behalf of CONTRACTOR. CONTRACTOR shall ensure that all drivers and/or workers utilized by CONTRACTOR to perform services under this Agreement comply with any safety, security and/or operational requirements of the Customer or CONTRACTOR.

e) **Interstate Operations.** In the event that contractors performing transportation services in interstate commerce subject to the jurisdiction of the U.S. DOT under 49 U.S.C. § 13501, the parties agree and acknowledge that the supplemental terms and conditions contained in Appendix D shall apply. The parties further agree and acknowledge that Appendix D is not intended to impact the independent contractor status of CONTRACTOR. As specifically set forth in 49 C.F.R. § 376.12(c)(4), compliance with the federal requirements for interstate transportation under 49 C.F.R. Part 376 is not intended to affect whether an individual is an employee or independent contractor. It is the intent of BROKER and CONTRACTOR that CONTRACTOR is an independent contractor for all purposes during the term of this Agreement.

5. **OPERATIONAL EXPENSES.**

- a) **Operating Expenses.** CONTRACTOR shall, at its sole cost and expense, provide all the Equipment ready to operate and fully roadworthy, including the necessary licenses and permits, and shall furnish all necessary oil, fuel, tires, and other parts, supplies and equipment necessary or required for the safe and efficient operation and maintenance of the Equipment, including repairs for the operation of such Equipment; and shall pay all other expenses incident to such operation, including, but not limited to, highway use taxes, weight taxes, state property taxes, fuel taxes, and registration fees, ferry and toll charges. CONTRACTOR shall be charged back pursuant to paragraph 17 of this Agreement for all amounts paid by BROKER on behalf of CONTRACTOR under this provision.
- b) **Maintenance and Inspection.** CONTRACTOR shall have the right to maintain and repair the Equipment at any place CONTRACTOR should choose. CONTRACTOR shall be responsible for maintaining, and shall maintain the Equipment in safe condition and in complete compliance with all laws and regulations of the states in which CONTRACTOR operates and the DOT.
- c) **Fines.** CONTRACTOR agrees to pay all fines imposed for violation of any law or regulation by the state in which CONTRACTOR operates and the DOT, where such violation results, at least partially, from the acts or omissions of CONTRACTOR.
- d) **Communication Equipment.** In order to ensure timely communication with BROKER and the Customer, CONTRACTOR agrees to provide a mobile communication equipment of a type and model compatible with BROKER's communications system. CONTRACTOR may elect, at its sole option, to obtain the required communication equipment from BROKER during the term of this Agreement, in which case the rental charges set forth in Appendix B shall be deducted from CONTRACTOR's compensation. If CONTRACTOR elects to obtain communication equipment through BROKER, CONTRACTOR will be responsible for the return of the communication equipment, in good condition, upon termination of this Agreement or upon BROKER's request. CONTRACTOR shall be responsible for the full replacement cost of any lost or unreturned communication equipment provided by BROKER.

6. **SERVICE FAILURE AND CARGO CLAIMS.** BROKER reserves the right to investigate all reported service failure claims submitted by the Customer, including but not limited to, delays, shortages, misdeliveries, and claims related to lost, damaged or contaminated deliveries, arising out of, or in connection with CONTRACTOR's services to determine if CONTRACTOR's actions or omissions resulted in or contributed to the claim. If it is determined that CONTRACTOR's actions or omissions resulted in or contributed to the claim, then BROKER shall charge back CONTRACTOR the entire amount of all service failure and cargo claims, including any expenses incurred by BROKER with respect to such claim.

7. **EQUIPMENT/PROPERTY DAMAGE.** CONTRACTOR shall be liable for, and pay, all direct, indirect and consequential damage, including but not limited to reasonable attorney fees, arising out of, or in connection with, CONTRACTOR's use of BROKER's equipment, or any other property belonging to BROKER or the Customer.

8. **INSURANCE.** The responsibilities and obligations between BROKER and CONTRACTOR involving insurance shall be as specified in Appendix C. BROKER shall have no insurance responsibilities or obligations pertaining to CONTRACTOR other than those expressly stated in this Agreement or mandated by law.

9. **ACCIDENT REPORTS.** CONTRACTOR shall immediately report any accident to BROKER involving operations under this Agreement, and CONTRACTOR will cooperate with BROKER and its representatives and insurers regarding the investigation of any accident. In the event CONTRACTOR fails to notify BROKER of the accident within one (1) hour from the time of the accident, CONTRACTOR shall be liable for any and all damages resulting from that failure to notify, including but not limited to consequential damages, fines, claims by third parties and reasonable attorney fees.

10. **HOLD HARMLESS.** Except to the extent CONTRACTOR's acts or omissions are covered under the parties' respective insurance policies as set forth in Appendix C with no expense to BROKER, INDEPENDENT CONTRACTOR agrees to defend, indemnify and hold harmless BROKER from any direct, indirect and consequential loss, damage, fine, expense, including reasonable attorney's fees, action, claim for injury to persons, including death, and damage to property which BROKER may incur arising out of or in connection with the operation of the Equipment, CONTRACTOR's obligations under this Agreement, or any breach by CONTRACTOR or its drivers or workers of the terms of this Agreement. This provision shall remain in full force and effect both during and after the termination of this Agreement.

11. **SECURITY IDENTIFICATION OBLIGATIONS.** The Customer may require that CONTRACTOR and any of its workers wear attire that identifies the individual as a contractor of BROKER and a photo identification badge for security purposes when providing delivery or pickup services at the Customer's various locations. CONTRACTOR shall be responsible for any cost or expense incurred in obtaining any Customer-required uniform or identification badge(s). Upon the termination of this Agreement, CONTRACTOR agrees to immediately return any photo identification badge to BROKER. Any identification issued is solely for security purposes and must be worn by CONTRACTOR or its workers in plain view to be granted access to, and while on, the Customer or BROKER's premises. If CONTRACTOR fails to return any photo identification badge to BROKER or if CONTRACTOR requires a replacement badge during the term of this Agreement, then CONTRACTOR understands and agrees that the cost of each replacement badge shall be deducted from CONTRACTOR's compensation.



12. **SECURITY DOCUMENTATION OBLIGATIONS.** Where required by the Customer, CONTRACTOR authorizes BROKER to release security-sensitive documentation, including but not limited to, drug and alcohol test results, photographs, copies of driver's licenses, Motor Vehicle Record ("MVR"), criminal background information, and other identification information to the Customer, and CONTRACTOR hereby agrees to release and hold BROKER harmless related to any damages or injuries sustained by CONTRACTOR as a result of the authorized release of such security-sensitive information.

13. **SERVICE STANDARDS.** In order to meet the service obligations of the Customer, CONTRACTOR agrees to ensure compliance by CONTRACTOR and its drivers of the following service standards. If CONTRACTOR breaches any of these service standards resulting in BROKER incurring a monetary cost to the Customer, including any monetary penalty, then CONTRACTOR agrees and authorizes BROKER to deduct all such charges from CONTRACTOR's compensation.

- a) CONTRACTOR shall make its services and the Equipment available to supply transportation services to the Customers of BROKER in order to enable BROKER to satisfy the terms of its contracts and agreements with the Customer.
- b) CONTRACTOR acknowledges and understands that products and materials transported and delivered for Customers may be of a highly confidential and/or sensitive nature, and that such transportation and delivery be subject to explicit security requirements of Customers.
- c) CONTRACTOR shall have the right to decline any sets of work referred by the BROKER; provided, however, that CONTRACTOR shall provide BROKER timely notice of such declination so that BROKER can obtain substitute transportation service to meet specific Customer needs. In the event CONTRACTOR does not provide timely declination and BROKER incurs additional costs in obtaining substitute transportation or penalties from the Customer for not being able to provide services, CONTRACTOR agrees and acknowledges that BROKER may charge back such expenses to CONTRACTOR.
- d) CONTRACTOR shall have sole discretion over the selection of routes in carrying out deliveries to the Customer subject only to specific Customer requirements.
- e) CONTRACTOR shall devote such time and effort hereunder, as is necessary for the competent and efficient performance of delivery jobs referred by the BROKER and accepted by the CONTRACTOR, and shall be free to devote such time to other endeavors provided such activity does not conflict with accepted obligations to the Customer for the contract work.
- f) CONTRACTOR acknowledges that NO REPRESENTATION HAS BEEN MADE TO IT ORALLY OR IN WRITING AS TO THE AMOUNT OF WORK THAT WILL BE REFERRED TO IT or as to the amount of total compensation CONTRACTOR will receive.



- g) CONTRACTOR specifically agrees not to discriminate against or engage in any unlawful harassment against any person based on race, color, religion, sex, sexual orientation or preference, genetic information, national origin, handicap or disability, Vietnam era or disabled veteran status, and/or any other protected status. CONTRACTOR agrees to save, defend, hold harmless, indemnify and hereby releases the BROKER and the Customer from and against any and all claims alleging that CONTRACTOR has breached its obligations under this provision of the Agreement.
- h) In addition to the confidentiality requirements set forth in Paragraph 19 below, CONTRACTOR also agrees to comply with all security, privacy and confidentiality obligations imposed upon BROKER and/or carrier by each Customer. Such Customer requirements include, but are not limited to, not using, copying, altering or removing any information, document or correspondence provided to CONTRACTOR by the Customer or by BROKER on Customer's behalf (the "Confidential Customer Information"); returning all Confidential Customer Information to either BROKER or Customer upon their request; using reasonable care in implementing reasonable controls to prevent the unauthorized use, disclosure or availability of Confidential Customer Information; and, advising BROKER immediately in the event that any Confidential Customer Information is stolen, lost or otherwise misappropriated. In addition, CONTRACTOR agrees to comply with the privacy, security and confidentiality requirements of all applicable federal and state laws, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Gramm-Leach-Bliley Act of 1999 ("GLB"), the Fair and Accurate Credit Transaction Act ("FACTA"), and the Sarbanes-Oxley Act of 2002 ("SOX"). CONTRACTOR agrees to timely notify BROKER in the event of any possible violation of any federal law, regulation or Customer requirement.

14. **INDEPENDENT CONTRACTOR STATUS.** It is expressly understood and agreed that CONTRACTOR is an independent contractor for the Equipment and driver services provided pursuant to this Agreement. The parties further recognize that CONTRACTOR has a significant financial investment in the Equipment and the driver services provided herein, and that CONTRACTOR has the exclusive right to direct and control the financial aspects of CONTRACTOR's business operations, including the ability to earn a profit or suffer a financial loss under this Agreement. In its capacity as an independent contractor, CONTRACTOR agrees as follows:

- a) To be responsible for the filing and payment of all federal, state and local employment taxes, unemployment insurance, disability insurance, and workers' compensation insurance required by federal, state or local law;
- b) That all payments received by CONTRACTOR from BROKER will not be subject to tax withholding by BROKER; and
- c) That CONTRACTOR is not covered by unemployment insurance or workers' compensation provided by BROKER, and that CONTRACTOR has no right to nor will CONTRACTOR seek benefits or any form of payment from or through BROKER under state unemployment coverage or workers' compensation.

CONTRACTOR shall not be considered, whether under the provisions of this Agreement or otherwise, as having the status of an employee of BROKER for any purpose whatsoever, including but not limited to, federal, state or local tax purposes, and CONTRACTOR shall not be entitled to participate in any plans, arrangements or distributions the BROKER may make in connection with any pension, stock, bonus, profit sharing or similar benefits for BROKER's employees. CONTRACTOR agrees to comply with all applicable laws and regulations with respect to workers' compensation, unemployment compensation, and assume full responsibility for the payment of all state and federal taxes and all other social security or withholding tax laws on CONTRACTOR's own behalf and for any persons hired or contracted by CONTRACTOR.

15. **CONTROL AND RESPONSIBILITY.** CONTRACTOR, as an independent contractor, is responsible for determining the means and methods of the performance of all services undertaken by CONTRACTOR under the terms of this Agreement. For example, CONTRACTOR has and shall retain all responsibility for (i) hiring, setting the wages, hours and working conditions and adjusting the grievances of, supervising, training, disciplining and firing CONTRACTOR's drivers, driver's helpers and other workers, and CONTRACTOR shall be solely responsible for the payment of any compensation to said workers and any taxes and insurances applicable thereto; (ii) selecting, purchasing, financing and maintaining the tools, including the equipment, used by CONTRACTOR in carrying out its duties and responsibilities under this Agreement.

16. **BREACH.** Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated, at any time, by either party in the event of a breach by the other of any term or obligation contained in this Agreement. In the event of a breach and when practicable, written notice shall be served upon the breaching party, notifying such party of the breach and the termination of the Agreement and reason(s) therefore. If, in BROKER's judgment, CONTRACTOR has subjected BROKER to liability because of CONTRACTOR's acts or omissions, BROKER may take possession of any shipment to CONTRACTOR and complete performance. In such event, CONTRACTOR shall waive any recourse against BROKER for such action and CONTRACTOR shall reimburse BROKER for all direct or indirect costs, expenses, or damages including reasonable attorney's fees incurred by BROKER as a result of BROKER's taking possession of the lading and completing performance.

17. **CHARGE BACK.** BROKER shall charge back to CONTRACTOR at the time of payment or settlement, any expenses BROKER has borne that, under this Agreement, CONTRACTOR is obligated to bear; and as more particularly described in Appendix B. Such expenses shall be deducted from the amount of CONTRACTOR's compensation. The amount of each item to be charged back to CONTRACTOR shall be computed based on the actual cost or expense incurred by BROKER and any administrative fee or mark-up assessed by BROKER. BROKER shall provide CONTRACTOR written itemization and documentation, if any, for all charge backs.

18. **FINAL SETTLEMENT.** In the event of termination of this Agreement by either party, BROKER shall be entitled to withhold all compensation until such time as CONTRACTOR has returned the following items to BROKER or a person designated by BROKER:

- (a) All delivery documents and reports with respect to trips completed or cargo carried in the Equipment pursuant to this Agreement;
- (b) All identification signs and devices provided to CONTRACTOR or, alternatively, prove to the satisfaction of BROKER that such devices have been removed and/or destroyed; and
- (c) All other forms, documents, equipment, or other items belonging to or owned by BROKER.

In the event CONTRACTOR breaches any of the terms or conditions of this Agreement and BROKER incurs any attorney's fees, then, in addition to all damages and equitable relief which may be afforded to BROKER, BROKER shall be entitled to recover its attorney's fees and expenses.

19. **CONFIDENTIALITY.** The CONTRACTOR will safeguard and maintain as confidential and privileged all "customer lists", customer rates, bills of lading or trip manifests, charges and pricing schedules, other materials furnished by the BROKER, and all information learned by CONTRACTOR as a result of this agreement. The term customer lists shall be construed to mean the names and addresses of customers, as well as any customer schedules or delivery instructions. CONTRACTOR will not directly or indirectly through another, attempt to use the same or the names of its customers learned by it while performing the services contracted for hereunder for any purpose except in the performance of its duties hereunder to BROKER. The CONTRACTOR acknowledges that all "customer lists" and other such material and information are the exclusive property of the BROKER, and in the event of the termination of this agreement, the CONTRACTOR shall surrender any such "customer list" and material to the BROKER and thereafter may make no use of said lists, material or any information learned by it with respect to the BROKER'S customer or business. CONTRACTOR acknowledges that this paragraph is of the essence of this agreement and agrees that in the event of its failure to comply herewith, in addition to whatever other legal remedies may be available, an injunction may be issued against it to enforce the BROKER'S rights hereunder. In connection with any legal proceeding commenced hereunder, CONTRACTOR agrees to pay to BROKER all reasonable attorney's fees and costs incurred in such proceedings. The parties agree and acknowledge that CONTRACTOR's confidentiality obligations hereunder shall not apply to any customers of CONTRACTOR that either pre-existed CONTRACTOR's relationship with BROKER or to any customers for whom CONTRACTOR has provided services for outside of this Agreement.

20. **NO UNAUTHORIZED PASSENGERS.** As prohibited under 49 C.F.R. 392.60, no passenger shall be permitted to travel in the Equipment without prior written authorization from BROKER. Any authorized passenger must sign a waiver of liability as provided in the Passenger Authorization Form to be provided by BROKER.

21. **BENEFIT.** This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors.

22. **NOTICE.** All notice provisions of this Agreement shall be in writing delivered personally, by postage prepaid, first class mail, or by certified/registered mail to the addresses shown at the end of this Agreement.

23. **NON-WAIVER.** The failure or refusal of either party to insist upon the strict performance of any provision of this Agreement, or to exercise any right in any one or more instances or circumstances shall not be construed as a waiver or relinquishment of such provision or right, nor shall such failure or refusal be deemed a customary practice contrary to such provision or right.

24. **SEVERABILITY.** If any Agreement or its appendices is deemed invalid for any reason whatsoever, the Agreement shall be void only as to such provision, and this Agreement shall remain otherwise binding between the parties. Any provision voided by operation of the foregoing shall be replaced with provisions which shall be as close as the parties' original intent as permitted under applicable law.

25. **COMPLETE AGREEMENT.** This Agreement, including any Appendices attached, constitutes the sole, entire, and existing agreement between the parties herein, and supersedes all prior agreements and undertakings, oral and written, expressed or implied, or practices, between the parties, and expresses all obligations and restrictions imposed on each of the respective parties during its term, except those specifically modified or changed by mutual written agreement between BROKER and CONTRACTOR. By signing below, both BROKER and CONTRACTOR hereby acknowledge that they have entered into this Agreement freely and without duress, and both parties have had the opportunity to consult with legal counsel of their own choosing pertaining to their particular rights and obligations under this Agreement and, having done so, now voluntarily agree to the terms set forth in this Agreement and each appendix and addendum. This Agreement shall be deemed to have been drawn in accordance with the statutes and laws of the State of Pennsylvania and in the event of any disagreement or litigation, the laws of this state shall apply and suit must be brought in or near Chester Township, Pennsylvania. Both BROKER and CONTRACTOR hereby waive their right to any jury trial pertaining to the services performed under this Agreement or any dispute pertaining to this Agreement.

**IN WITNESS WHEREOF,** BROKER and CONTRACTOR do hereby sign this Agreement as of the Effective Date set forth on Page 1.

<p><b>AEXGroup / BROKER:</b> 10 C Milton Drive Aston, PA 19014</p> <p>By: <u><i>Dina Lisa Giustozzi</i></u></p> <p><u>Dina Lisa Giustozzi, VP Finance</u> Printed Name</p>	<p><b>CONTRACTOR:</b></p> <p>MANUEL DE CASTRO 33 MONTCLAIR AVE CLIFTON NJ 07011</p> <p>By: <u><i>M. De Castro</i></u></p> <p>Authorized Independent Contractor</p>
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**Appendix A**

**Vehicle Information:**

Year: 2002  
Make: Ford EL50  
VIN No.: 1FTNS24252HB49838  
License Plate No.: NBB95D

**Vehicle Information:**

Year: \_\_\_\_\_  
Make: \_\_\_\_\_  
VIN No.: \_\_\_\_\_  
License Plate No.: \_\_\_\_\_

**Vehicle Information:**

Year: \_\_\_\_\_  
Make: \_\_\_\_\_  
VIN No.: \_\_\_\_\_  
License Plate No.: \_\_\_\_\_

**Vehicle Information:**

Year: \_\_\_\_\_  
Make: \_\_\_\_\_  
VIN No.: \_\_\_\_\_  
License Plate No.: \_\_\_\_\_

**Vehicle Information:**

Year: \_\_\_\_\_  
Make: \_\_\_\_\_  
VIN No.: \_\_\_\_\_  
License Plate No.: \_\_\_\_\_



**Appendix B**

**FEE SCHEDULE**

1. **COMPENSATION..** The parties agree that CONTRACTOR shall be paid a negotiated amount based upon the routes offered by BROKER and accepted by CONTRACTOR during the term of the Agreement. Any compensation payable to CONTRACTOR shall first be decreased by any expense incurred by BROKER as a result of any obligation or expense of CONTRACTOR under this Agreement or any addendum thereto.

2. **CHARGE BACK ITEMS.** The following charges, if initially paid for by BROKER on behalf of CONTRACTOR, will be charged back to CONTRACTOR, along with any administrative fee or mark-up assessed by BROKER, and deducted from the compensation to be paid by BROKER under this Agreement:

- (a) Insurance-related expenses for all insurance coverages procured from or through BROKER;
- (b) Any cargo claim or equipment/property damage assessed against CONTRACTOR under this Agreement;
- (c) C.O.D. and freight collect remittances due BROKER for loads delivered by CONTRACTOR under this Agreement;
- (d) Any monetary damages or penalties incurred by BROKER from its Customer for service failure related to CONTRACTOR's operations;
- (e) Uniform expenses if purchased from BROKER;
- (f) Reasonable attorney fees incurred by BROKER in reducing potential liability incurred as the result of CONTRACTOR's acts or omissions;
- (g) Communication devices leased from BROKER such as cell phones, wireless data collection devices, or other associated expenses;
- (h) Expenses incurred in obtaining background investigation verifications, Motor Vehicle Records, and drug and/or alcohol screens; and
- (i) All other expenses incurred by BROKER which are the responsibility of CONTRACTOR under this Agreement or any addendum to this Agreement.

**BROKER**

By: \_\_\_\_\_

*Dina Lisa Giustozzi*

Dina Lisa Giustozzi

**CONTRACTOR**

By: \_\_\_\_\_

*Manuel de Castro*

MANUEL DE CASTRO

### Appendix C

1. **CONTRACTOR'S INSURANCE OBLIGATIONS.** CONTRACTOR shall maintain, at its sole cost and expense, the following minimum insurance coverages during this Agreement:

(a) **PRIMARY AUTO LIABILITY COVERAGE** - CONTRACTOR shall procure at CONTRACTOR's sole cost and expense, a policy or policies of insurance issued by a company reasonably satisfactory to BROKER with premiums paid thereon by CONTRACTOR, insuring CONTRACTOR in minimum liability coverage in the amount of \$100,000.00 for bodily injury for each person injured, \$300,000.00 for all persons injured during each occurrence. Such insurance shall be primary to any insurance that may be available from BROKER pursuant to this Agreement. CONTRACTOR shall be responsible for all deductible amounts and for any loss or damage in excess of the policy limit.

(b) **WORKERS' COMPENSATION/OCCUPATIONAL ACCIDENT INSURANCE.** CONTRACTOR shall provide workers' compensation insurance coverage for CONTRACTOR (if a natural person), all of its employees and agents, anyone driving the Equipment, and any other persons required to be covered under the worker's compensation law of any state that is reasonably likely to have jurisdiction over CONTRACTOR's business operations and in amounts not less than the statutory limits required by such applicable state law. The worker's compensation insurance policy shall provide principal coverage in Pennsylvania as well as the state in which the work is principally localized, and shall provide "other states coverage" that excludes only Ohio and West Virginia. As evidence of such coverage, CONTRACTOR shall provide BROKER with a copy of the insurance policy declarations page for BROKER's verification before operating the Equipment under this Agreement. If (a) CONTRACTOR is the sole owner and the sole and exclusive operator of the Equipment and (b) the state in which the work is principally localized is not Nevada, New Jersey, New York, or North Carolina, then CONTRACTOR may, as an alternative to obtaining workers' compensation coverage, obtain occupational accident insurance policy that includes either an endorsement or a separate policy provision whereby the insurer provides, or agrees to provide, workers' compensation coverage that becomes effective for a claim by CONTRACTOR alleging employee status. Such occupational accident insurance coverage shall be no less comprehensive than the coverage BROKER will facilitate on CONTRACTOR's behalf if CONTRACTOR so chooses, as provided in Section 4 of this Appendix.

(c) **OTHER INSURANCE.** In addition to the insurance coverages required under this Agreement, it is CONTRACTOR'S responsibility to procure, carry and maintain any fire, theft, uninsured and/or underinsured motorist, and physical damage (collision), or other insurance coverage that CONTRACTOR may desire for the Equipment or for CONTRACTOR's health care or other needs. As provided in this Agreement, CONTRACTOR holds BROKER harmless with respect to loss of or damage to CONTRACTOR's Equipment,

trailer, or other property, and BROKER has no responsibility to procure, carry, or maintain any insurance covering loss of or damage to CONTRACTOR's Equipment, trailer, or other property. CONTRACTOR acknowledges that BROKER may, and CONTRACTOR hereby authorizes BROKER to, waive and reject no-fault, uninsured, and underinsured motorist coverage from BROKER's insurance policies to the extent allowed under Pennsylvania law (or such other state law where the Equipment is principally garaged), and CONTRACTOR shall cooperate in the completion of all necessary documentation for such waiver, election, or rejection.

2. **REQUIREMENTS APPLICABLE TO ALL OF CONTRACTOR'S INSURANCE COVERAGES.** CONTRACTOR shall procure insurance policies providing the above-described coverages solely from insurance carriers that are A.M. Best "A"-rated, and CONTRACTOR shall not operate the Equipment under this Agreement unless and until BROKER has determined that the policies are acceptable (BROKER's approval shall not be unreasonably withheld). CONTRACTOR shall furnish to BROKER written certificates obtained from CONTRACTOR'S insurance carriers showing that all insurance coverages required above have been procured from A.M. Best "A" rated insurance carriers, that the coverages are being properly maintained, and that the premiums thereof are paid. Each insurance certificate shall specify the name of the insurance carrier, the policy number, and the expiration date; list BROKER as an additional insured with primary coverage; and show that written notice of cancellation or modification of the policy shall be given to BROKER at least thirty (30) days prior to such cancellation or modification.

3. **CONTRACTOR'S LIABILITY IF REQUIRED COVERAGES ARE NOT MAINTAINED.** In addition to CONTRACTOR's hold harmless/indemnity obligations to BROKER under the Agreement, CONTRACTOR agrees to defend, indemnify, and hold BROKER harmless from any direct, indirect, or consequential loss, damage, fine, expense, including reasonable attorney fees, actions, claim for injury to persons, including death, and damage to property that BROKER may incur arising out of or in connection with CONTRACTOR'S failure to maintain the insurance coverages required by this Agreement. In addition, CONTRACTOR, on behalf of its insurer, expressly waives all subrogation rights against BROKER, and, in the event of a subrogation action brought by CONTRACTOR's insurer, CONTRACTOR agrees to defend, indemnify, and hold BROKER harmless from such claim.


4. **AVAILABILITY OF INSURANCE FACILITATED BY BROKER.** CONTRACTOR may, if it so chooses by initialing one or more boxes in the right-hand column of the attached "CERTIFICATE OF INSURANCE," authorize BROKER to facilitate, on CONTRACTOR'S behalf, the insurance coverages required or made optional by this Agreement. In any such case, BROKER shall deduct, from CONTRACTOR settlement compensation, amounts reflecting all of BROKER's expense and cost in obtaining and administering such coverage. In addition, if CONTRACTOR fails to provide proper evidence of the purchase or maintenance of the insurance required above, then BROKER is authorized but not required to obtain such insurance at CONTRACTOR's expense and deduct, from CONTRACTOR's settlement compensation, amounts reflecting all of BROKER's expense in obtaining and administering such coverage. CONTRACTOR recognizes that BROKER is not in the business of selling insurance, and any insurance coverage requested by CONTRACTOR from BROKER is subject to all of the terms, conditions, and exclusions of the actual policy issued by the insurance underwriter. BROKER shall ensure that CONTRACTOR

is provided with a certificate of insurance (as required by 49 C.F.R. § 376.12(j)(2)) for each insurance policy under which the CONTRACTOR has authorized BROKER to facilitate insurance coverage from the insurance underwriter (each such certificate to include the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to CONTRACTOR for each type of coverage, and the deductible amount for each type of coverage for which CONTRACTOR may be liable), and BROKER shall provide CONTRACTOR with a copy of each policy upon request.


5. **CHANGES IN COST OR OTHER DETAILS OF COVERAGES.** If BROKER is facilitating any insurance coverages for CONTRACTOR pursuant to Section 5 of this Appendix and the cost to CONTRACTOR for, or other details of, a coverage changes from the information listed in the attached "CERTIFICATE OF INSURANCE", CONTRACTOR will be so notified by personal delivery, fax, or other written notice. In any event, CONTRACTOR shall not be subject to any such change until ten (10) calendar days after such notice or such later time as is set forth in the notice. **CONTRACTOR's failure, by the end of ten (10) calendar days after such notice, to notify BROKER of any objection to the change shall constitute CONTRACTOR's express consent and authorization to BROKER to implement the change and modify accordingly the deductions from CONTRACTOR's settlement compensation, beginning immediately after the 10-day period. Such modified amounts shall replace and supersede those shown in the Certificate of Insurance and BROKER shall not have an obligation to also provide a revised Certificate of Insurance.** If CONTRACTOR fails to notify BROKER of any objection within the 10-day period – or if CONTRACTOR notify BROKER of its objection within the 10-day period and CONTRACTOR and BROKER is then unable to resolve the matter to our mutual satisfaction – CONTRACTOR and BROKER shall each have the right to terminate this Agreement effective immediately upon the change becoming effective (although CONTRACTOR shall remain subject to the change until CONTRACTOR's termination's effective date and time).

THIS APPENDIX is agreed to by the undersigned parties as of the latest date set forth below.

**BROKER**

By:   
Dina Lisa Giustozzi

**CONTRACTOR**

By:   
MANUEL DE CASTRO

**CERTIFICATE OF INSURANCE**

CONTRACTOR hereby requests BROKER, through its insurer, to facilitate on CONTRACTOR's behalf (if they are available) the insurance coverages CONTRACTOR has selected by placing CONTRACTOR's initials in the right-hand column below:

TYPE OF COVERAGE	INITIAL "YES" TO REQUEST COVERAGE
<p><b>2. <u>Occupational Accident Insurance:</u></b></p> <p><i>Name of Insurer:</i> _____</p> <p><i>Policy No:</i> _____</p> <p><i>Effective Date(s) of Coverage:</i> _____</p> <p><i>Amount of Coverage:</i> \$_____ per _____</p> <p><i>Current Cost to CONTRACTOR:</i> \$_____ per month</p> <p><b>[COVERAGE IS AVAILABLE ONLY TO A SOLE-PROPRIETOR CONTRACTOR WHO IS EXCLUSIVE DRIVER OF THE EQUIPMENT.]</b></p>	<p>_____ YES</p> <p>_____ NO</p>



## Appendix D

### SUPPLEMENT TO TRANSPORTATION BROKERAGE AGREEMENT FOR DEPARTMENT OF TRANSPORTATION REGULATED OPERATIONS

1. **Applicability.** This Supplement shall apply only to such transportation services provided by CONTRACTOR as are within the regulatory jurisdiction of the U.S. Department of Transportation ("DOT") as specified in 49 U.S.C. § 13501. This Supplement, together with all provisions of the accompanying Transportation Brokerage Agreement that are not inconsistent herewith, shall constitute the "Lease" required by the DOT for such services pursuant to 49 C.F.R. 376.11(a).

2. **Lease.** CONTRACTOR hereby Leases to BROKER and BROKER hereby leases from CONTRACTOR the equipment, hereinafter called "Leased Equipment." The CONTRACTOR represents and warrants that the CONTRACTOR has title to or is authorized to contract the Leased Equipment to the BROKER during the term of the Service Agreement.

3. **Commencement and Duration.** This Appendix D shall become effective as of the date set forth above and shall remain in effect until the date upon which the Service Agreement to which this Appendix D is attached (the "Service Agreement") is terminated, whereupon this Appendix D shall automatically terminate. Immediately before the first operation of any piece of Leased Equipment under this Appendix D, BROKER shall furnish CONTRACTOR with an equipment receipt meeting the requirements of 49 C.F.R. 376.11(b). CONTRACTOR shall, immediately upon termination of the Agreement, remove all of BROKER's identification devices from the equipment and return them to BROKER via hand delivery or certified mail (provided that if the identification devices have been lost or stolen, a written letter certifying their removal will satisfy this requirement), together with all of the BROKER's other property, including paperwork and cargo to the BROKER's nearest terminal. If CONTRACTOR fails to return this property upon termination of this Agreement, CONTRACTOR shall pay the BROKER all expenses, including reasonable attorney fees, incurred by the BROKER in seeking the return of such items, and the BROKER may pursue all other remedies allowed by law or authorized in the Agreement against CONTRACTOR.

4. **Identification of Equipment.** When required by DOT regulations, CONTRACTOR shall identify the leased equipment with BROKER's name and DOT Identification Number. CONTRACTOR shall remove such required identification upon BROKER's request or upon termination of this Agreement. BROKER may withhold final settlement to CONTRACTOR until verification that the required identification on the leased equipment has been removed.

3. **Payment.** CONTRACTOR shall receive payment for services in accordance with Appendix B to this Transportation Brokerage Agreement. As mandated by 49 C.F.R. 376.12(f), such payment shall be made within fifteen (15) days after CONTRACTOR submits to BROKER (i) logbooks required by the DOT and (ii) those documents necessary for BROKER to secure payment from its customers. BROKER will give CONTRACTOR, at the time of payment, a rated freight bill or other document showing equivalent information for each shipment, and a statement showing total hauling revenue and all chargeback items and deductions. CONTRACTOR shall also have the right to inspect, during regular business

hours, BROKER's delivery manifests, tariff and other documents from which chargebacks, deductions rates and charges are computed.

**4. Expenses.** CONTRACTOR shall pay all costs attendant to the operation and maintenance of the Leased Equipment including, without limitation, fuel costs, fuel taxes, empty mileage, all permits, tolls, ferries, detention and accessorial services, base plates, licenses, any unused portions of such items and all costs and expenses described in Section 4 of the Service Agreement. As required by 49 C.F.R. 376.12(e), BROKER shall assume the risks and costs of fines for overweight and oversize vehicles, when such vehicles are pre-loaded, sealed or the load is containerized, or when the trailer or lading is otherwise outside of CONTRACTOR's control, and of fines for improperly permitted overdimension and overweight loads, and shall reimburse CONTRACTOR for any such fines paid by CONTRACTOR, except when the violations occasioning such fines result from the acts or omissions of CONTRACTOR. The CONTRACTOR is not required to purchase or rent any products, equipment, or services from the BROKER as a condition of entering into the Service Agreement. However, in the event the CONTRACTOR elects to purchase or rent any such items from the BROKER or from any third party, for which the CONTRACTOR requests Carrier to make deductions from CONTRACTOR's compensation, then the parties mutually agree to attach and incorporate the terms of such purchase or lease to the Service Agreement as a separate addendum.

**5. Insurance.**

- (a) BROKER shall maintain insurance coverage for the protection of the public pursuant to applicable regulations under 49 U.S.C. 13906. CONTRACTOR will carry, at its own expense, public liability and property damage insurance upon the leased Equipment used by him naming BROKER as an additional insured.
- (b) If CONTRACTOR requests to obtain coverage from BROKER's insurer in lieu of providing his own coverage, BROKER will seek to obtain and provide to CONTRACTOR a quotation for such Coverage.

**6. Loss or Damage.** CONTRACTOR will be liable for loss or damage to items intended for transport occurring while such items are in CONTRACTOR's possession or under his dominion and control. Before making deductions from settlements with CONTRACTOR to reflect such loss or damage, BROKER shall provide CONTRACTOR with a written explanation and itemization of such deductions.

**7. Control and Exclusive Use.** BROKER shall have such possession, control and use of the Leased Equipment and its operation as required by 49 C.F.R. Section 376.12(c) (1). BROKER shall assume complete responsibility for operation of the equipment for the duration of this Agreement. Notwithstanding the foregoing, in performing services under this Appendix D, CONTRACTOR will direct the operation of the Leased Equipment in all respects and will determine the means of performance including, but not limited to, such matters as choice of any routes, points of service of equipment, rest stops and timing and scheduling of customer deliveries. The parties intend to create an independent-contractor relationship and not an employer-employee relationship.

**8. Laws.** CONTRACTOR shall comply with all federal, state and local laws, rules and regulations pertaining to his performance under this Appendix D.

9. **Effect of Validity on Provision.** In case any one or more of the provisions contained in this Appendix D should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall in no way be affected, prejudiced or disturbed thereby.

THIS APPENDIX is agreed to by the undersigned parties as of the latest date set forth below.

**BROKER**

By: *Dina Lisa Giustozzi*  
Dina Lisa Giustozzi

**CONTRACTOR**

By: *M. De Castro*  
MANUEL DE CASTRO