

Matson Logistics Warehousing, Inc.

CUSTOMER SERVICES AGREEMENT

This Customer Services Agreement ("Agreement") is entered into this ___ day of _____, 201__ ("Effective Date") by and between **Matson Logistics Warehousing, Inc.**, a Hawaii corporation with a primary address of 1855 Gateway Blvd., Ste. 250, Concord, CA 94520 ("**Matson Logistics**"), and _____, a _____ corporation, with a primary business address of _____ ("**Customer**").

The term of this Agreement is for a (____) year period commencing on the Effective Date set forth above.

This Agreement has been signed by the authorized representatives of Matson Logistics and Customer as of the Effective Date set forth above. The parties agree to the terms set forth herein for the services initialed by both parties, below.

Matson Logistics

Customer

Matson Logistics Warehousing, Inc.

By: _____

By: _____

Title: _____

Title: _____

Address: _____

Address: _____

Address: _____

Address: _____

Fax No.: _____

Fax No.: _____

Phone No.: _____

Phone No.: _____

Recitals

A. Matson Logistics is a third party intermediary with the necessary expertise and resources to arrange for the shipment and/or storage of various goods (the "Goods") via the services described in this Agreement.

B. Customer desires to utilize the services of Matson Logistics to arrange for the shipment and/or storage of the Goods in accordance with the terms and conditions set forth in this Agreement.

Agreement

In consideration of the premises and mutual promises and conditions herein contained, it is agreed as follows:

1. Services.

In consideration of the mutual promises and conditions herein contained, it is agreed that in its capacity as a logistics company and licensed freight forwarder, Matson Logistics shall provide the below listed services, and other services agreed to in writing by the parties, required for the transportation and/or care of the Goods in international and domestic transit (the "Services"). Along with the general terms set forth

in the main body of this Agreement, the terms specific to each Service provided to Customer by Matson Logistics are set forth in each applicable appendix (“Appendix” or “Appendices”). The parties shall initial in the space, below, of each Service to be provided to Customer by Matson Logistics:

Warehousing Services.

(Matson Logistics) (Customer)

The warehousing services to be arranged by Matson Logistics, if any, are set forth in **Appendix A**.

Surface Freight Forwarder Services.

(Matson Logistics) (Customer)

The surface freight forwarder services, including without limitation arranging motor carrier and rail transportation, if any, are set forth in **Appendix B**.

Ocean Freight Forwarder / Non-Vessel Operating Common Carrier Services.

(Matson Logistics) (Customer)

The ocean freight forwarder and/or non-vessel operating common carrier services to be arranged by Matson Logistics, if any, are set forth in **Appendix C**.

Air Freight Forwarder and/or Indirect Air Carrier Services.

(Matson Logistics) (Customer)

The air freight forwarder and/or indirect air carrier services to be arranged by Matson Logistics, if any, are set forth in **Appendix D**.

Custom Brokerage Services.

(Matson Logistics) (Customer)

The custom brokerage services to be arranged by Matson Logistics, if any, are set forth in **Appendix E**.

Miscellaneous Services.

(Matson Logistics) (Customer)

Miscellaneous services to be arranged by Matson Logistics, if any, are set forth in **Appendix F**.

The Services intended by both parties are set forth in the appendices attached to this Agreement which are initialed by both parties above and hereby incorporated by reference. Any appendices not initialed by both parties shall be void and have no force or effect. In the event of a conflict or inconsistency between the terms of this Agreement and any of the Appendices, the terms of the Appendices shall control.

2. General Terms Related to Services.

a. Compliance with Applicable Laws. Both Customer and Matson Logistics shall respectively comply with all applicable laws, rules and regulations relating to the performance of the Services.

b. Special Instructions. The parties acknowledge that special services or instructions may occasionally arise with respect to the Services. In such event, Customer shall provide Matson Logistics with written requests as to its needs for such special service, and Matson Logistics may provide the requested service upon payment by Customer of the associated charge for such services.

c. Control. Matson Logistics shall have sole and exclusive control over the manner in which Matson Logistics performs the Services, and Matson Logistics shall utilize such persons and/or entities as Matson Logistics deems necessary in connection therewith.

3. Term and Termination.

a. The term of this Agreement is for the period set forth above.

b. Each party may terminate this Agreement, effective at the expiration of the thirty (30) day period immediately following notice and description of default to the defaulting party, in the event the default has not been cured to the reasonable satisfaction of the non-defaulting party within the thirty (30) day period. Matson Logistics may also terminate this Agreement at any time upon providing Customer ninety (90) days prior written notice

c. Upon termination or expiration of this Agreement, Matson Logistics will, within thirty (30) days, provide Customer with an invoice for all Services for which Matson Logistics has not yet received payment, and Customer agrees to pay any undisputed amounts set forth in such invoice within thirty (30) days.

4. Subcontractors.

a. Matson Logistics agrees that the Services to be provided shall be arranged by Matson Logistics and performed by either a properly licensed Matson Logistics employee or properly licensed warehouseman, customs broker, air carrier, water carrier, rail carrier, motor carrier or other transportation provider (collectively, the "Subcontractors") selected by Matson Logistics pursuant to the requirements of this Agreement. Customer understands and agrees that the Subcontractors are independent contractors with exclusive control over their respective employees, and not agents, employees or authorized representatives of Matson Logistics.

b. When Matson Logistics utilizes Subcontractors, Matson Logistics shall take reasonable efforts to ensure such Subcontractors shall: (i) have such licenses and permits as are required by applicable governmental authority for the lawful provision of the sub-contracted services; and (ii) perform the Services pursuant to the requirements set forth in this Agreement.

c. Matson Logistics shall at all times during the term of this Agreement be responsible for payment to such Subcontractors, including without limitation, freight charges and any other charges or compensation as required by applicable laws and regulations.

5. Transportation Documents. Each shipment under this Agreement shall be evidenced by one or more transportation documents, which may include, but not be limited to, bills of lading, air waybills, ocean bills of lading, warehouse receipts manifests or any other documents purporting to control the custody and/or movement of the Goods (collectively, the "Transportation Documents"), showing the kind, quantity and condition of the Goods received and delivered by Matson Logistics or its Subcontractors at the loading and unloading points, respectively. Except as provided herein, to the extent any term or condition of such Transportation Documents conflict in any way with any term or condition of this Agreement or the Appendices, this Agreement and the Appendices shall govern. In the event that Matson Logistics shall issue a through bill of lading to the ultimate destination, Matson Logistics shall be liable to Customer for loss or damage in accordance with the terms of this Agreement and the Appendices regardless of the number of separate contracts of carriage entered into by Matson Logistics with Subcontractors, if any.

6. Non-Exclusivity. It is understood and agreed between the parties hereto that this Agreement is non-exclusive and that Matson Logistics shall be free to accept goods from companies other than Customer and that Customer shall be free to utilize logistics services from companies other than Matson Logistics.

7. Title to and Risk of Loss of the Goods. It is understood and agreed between the parties hereto that, unless otherwise expressly agreed to by Matson Logistics in this Agreement or the Appendices, Matson Logistics shall not acquire title to or assume risk of loss for any of the Goods on behalf of Customer, and shall not, in the course of providing the Services in accordance with this Agreement, acquire title to or assume risk of loss for, or be deemed to have acquired title to or assumed risk of loss for, the Goods.

8. Rates and Charges.

a. Invoice. Customer shall pay Matson Logistics, at the address shown on Matson Logistics' invoice, the rates and charges described in Appendix G or other Appendices, attached hereto and incorporated herein, and any other amount which becomes due and payable under this Agreement. Except as otherwise provided in the Appendices, payment shall be due from Customer within fifteen (15) days from the date of invoice by Matson Logistics, and if the payment is not made within fifteen (15) days, Customer agrees that interest shall accrue daily and be payable to Matson Logistics at the interest rate of

one and one-half percent (1½%) per month, together with any and all collection costs, including attorney fees. The parties agree that any payments made hereunder are made in payment of debts incurred in the ordinary course of business and are made according to ordinary business terms.

b. Overcharge and Undercharge Claims. No action or claim to recover any overcharge or undercharge for Services may be brought by either party more than one hundred and eighty (180) days after receipt of the initial invoice.

c. Offset. Customer may not offset against amounts owed to Matson Logistics hereunder.

d. Spot Quotes. The parties understand that additional services and charges other than those initially set forth herein may periodically arise. In those circumstances, Matson Logistics shall spot quote the requested services in writing, which will become the applicable rate upon Matson Logistics receiving written acceptance of the spot quote from Customer (written acceptance includes e-mail from a representative of Customer). Upon request from Customer, Matson Logistics shall include with its invoice for the spot quote a copy of the written acceptance. Unless the spot quote and the written acceptance clearly indicate that the services provided and the applicable rate are to be on an extended basis (e.g., for the remainder of the Agreement term), the spot quote will apply only to the immediate services provided. Services provided pursuant to spot quotes will be subject to the terms of this Agreement and the Appendices.

9. Independent Contractor's Operations. Unless Customer provides its own trailers or containers, Matson Logistics or the Subcontractor shall, at their sole cost and expense, furnish all equipment necessary or required for the performance of the Services. Matson Logistics or Subcontractor shall have full control of its personnel and shall perform the Services as an independent contractor.

10. Insurance by Matson Logistics. Matson Logistics shall at all times during the term of this Agreement have and maintain in full force and effect the types and amount of insurance coverage set forth below:

a. Commercial general liability insurance for bodily injury and property damage in the amount of \$1,000,000 per occurrence;

b. Warehouseman's legal liability insurance in the amount of \$1,000,000 per occurrence; and

c. Worker's compensation insurance in accordance statutory law.

At the request of Customer, Matson Logistics shall deliver to Customer certificates of insurance.

11. Cargo Loss or Damage.

a. Subcontractors.

(i) Motor Carriers and Rail Carriers Liability. Except as otherwise set forth in Paragraph 11(a)(ii) below, Matson Logistics shall ensure that, with respect to any portion of services provided within the United States, motor carriers and rail carriers assume liability as a common carrier (i.e. Carmack Amendment liability under 49 U.S.C. § 14706) for loss or damage of any and all of the Goods while under such carrier's care, custody or control, notwithstanding that a bill of lading, circular or tariff of a Subcontractor may state otherwise, subject to the standard exceptions to common carrier liability. For any portion of the Services provided outside the United States, Matson Logistics shall insure that motor carriers and rail carriers assume liability for loss or damage in accordance with the laws governing said Services.

(ii) Ocean Carriers Liability. Matson Logistics shall ensure that ocean carriers assume liability in accordance with Carriage of Goods by Sea Act ("COGSA") 46 U.S.C. § 1300 et seq. In addition, COGSA shall apply with respect to the inland surface transportation of any Goods transported under an ocean bill of lading with a Himalaya clause, in which case the liability of Matson Logistics and

any of its Subcontractors, including any motor carriers and rail carriers, shall be limited to \$500 per package or per customary freight unit unless a higher valuation is declared on the face of the ocean bill of lading in which case the liability shall be the actual amount of the loss or damage not to exceed the value declared on the ocean bill of lading. In the event a court of competent jurisdiction determines that COGSA is inapplicable to such inland transportation, then the liability of any inland carrier for any loss or damage occurring to the Goods within the United States shall be as set forth in 49 U.S.C. §§ 11706 and 14706.

(iii) Air Carriers Liability. Matson Logistics shall ensure that indirect and direct air carriers assume liability for international air freight in accordance with the rules of the Warsaw Convention, as amended or altered by any applicable protocol adopted or ratified by the United States, and for any United States domestic shipments in accordance with common carrier liability.

(iv) Warehouseman Liability. Matson Logistics shall ensure that warehousemen assume liability for any loss or injury to the Goods, however caused, if such loss or injury resulted from the failure by such warehousemen to exercise such care in regard to the Goods as a reasonably careful man would exercise under like circumstances subject to any liability limitations set forth in Appendix A.

b. Matson Logistics Liability.

(i) With respect to transportation of the Goods, Matson Logistics' liability shall be in accordance with the applicable statutory liability standards for the particular mode of transportation described above (e.g., COSGA for ocean movements), absent specific liability terms in this Agreement or the Appendices. In the event Matson Logistics issues the pertinent Transportation Document in its name (e.g., bill of lading, air waybill) and is acting as a surface freight forwarder, Matson Logistics shall be liable for any loss or damage of Goods subject to any liability limitations set forth in this Agreement, the Appendices or the Transportation Document. In the event Matson Logistics does not issue the Transportation Document or is acting as an air or ocean freight forwarder or property broker, Matson Logistics shall not have liability for any loss or damage of Goods, all such liability shall be borne by the applicable Subcontractor in accordance with the terms of this Agreement.

(ii) Notwithstanding anything to the contrary in this Agreement, in no event shall Matson Logistics be liable to Customer for loss of profits or business, or any indirect, special, consequential or punitive damages.

c. Claims Procedures. The following provisions and claims handling procedures will apply during the term of this Agreement with respect to any cargo loss or damage to the Goods:

(i). Claims Handling Procedures. Any claim made by Customer against Matson Logistics for loss or damage to the Goods will be handled in the following manner:

a. Customer will notify Matson Logistics promptly once Customer discovers a possible cargo loss or damage claim. The parties agree that Customer shall have four (4) months after delivery of the shipment of Goods or, if no delivery, the scheduled delivery date, to file a written claim for loss or damage to the shipment. The term "written claim" means delivering a written claim or notice of claim which reasonably notifies Matson Logistics that loss or damage has occurred to the shipment of Goods, and the nature of the problem.

b. Each claim filed against Matson Logistics will be promptly investigated by Matson Logistics. Matson Logistics will pay each claim, decline payment with explanation, or make a compromise settlement offer, or reasonably request additional information in writing, within ninety (90) days after the receipt of the claim by Customer.

c. Any action at law to recover any cargo claim shall be instituted by Customer against Matson Logistics no later than one (1) year after a written declination of claim has been delivered to Customer by Matson Logistics.

d. Customer shall not off-set cargo claims against freight charges without Matson Logistics' written permission.

e. If governing law mandates a longer period of time for notice of a claim or time in which to file suit, such longer period of time will control.

(ii). Salvage. Any salvage value will be deducted from Customer's claim against Matson Logistics for the loss or damage. If Customer chooses to not sell or allow the sale of Goods for salvage, the reasonable salvage value shall be deducted from the claim amount due Customer. With respect to the handling of any damaged Goods, Matson Logistics agrees that Customer shall have the right to dispose of or destroy such Goods within ninety (90) business days of Customer providing Matson Logistics with written notice of Matson Logistics' right to inspect the damaged Goods. CUSTOMER agrees to provide Matson Logistics with an inspection notification form with pertinent information regarding the damage and the location where the Goods may be inspected if so desired by Matson Logistics.

(iii). Liability During Storage of Goods. If Matson Logistics, due to no fault of its own, is unable to deliver a shipment of Goods or if a shipment of Goods is refused by the consignee, Matson Logistics' liability as a warehousemen, rather than a contract Matson Logistics pursuant to the terms of this Agreement, shall commence upon non-delivery.

(iv). Limitations of Liability. In entering into this Agreement, Customer understands that the Goods will likely move pursuant to Matson Logistics' and/or Subcontractor's limitations of liability, and that Customer's rights to pursue Matson Logistics and/or Subcontractors for full actual loss or damaged Goods may be limited or prohibited by contractual terms and/or applicable law. Neither Matson Logistics nor Subcontractors shall be liable for service delays. Unless responsibility is expressly assumed in writing by Matson Logistics, Customer shall be responsible for procuring and reinstating any additional insurance coverage to reduce or eliminate any potential loss exposure.

12. Indemnification by Matson Logistics. Matson Logistics will indemnify, defend, and hold Customer harmless from and against any and all claims, demands, damages, losses, liabilities, costs or expenses, including without limitation reasonable attorneys' fees (collectively, the "Claims") with respect to:

a. any actual loss, damage to or destruction of tangible property, and/or illness, injury or death to any person, arising out of Matson Logistics' negligent acts or omissions; and

b. any violation by Matson Logistics of applicable laws or regulations, or breach of any terms of this Agreement or the Appendices.

Matson Logistics shall not have a duty of indemnification to the extent that the Claims arise due to the negligent or willful act or omission of Customer. Matson Logistics shall not be liable for any incidental, special, exemplary, consequential, or punitive damages, whether direct or indirect, including but not limited to loss of income, opportunity, or profits, in excess of the limitations of liability contained herein, regardless of whether Matson Logistics had knowledge that such damages might be incurred.

13. Indemnification by Customer. Customer will indemnify, defend, and hold Matson Logistics harmless from and against any and all Claims with respect to:

a. any actual loss, damage to or destruction of tangible property, and/or illness, injury or death to any person, arising out of Customer's acts or omissions; and

b. any violation by Customer of applicable laws or regulations, or breach of the terms of this Agreement or the Appendices.

Customer shall not have a duty of indemnification to the extent that the Claims arise due to the negligent or willful act or omission of Matson Logistics. Customer shall not be liable for any incidental, special, exemplary, consequential, or punitive damages, whether direct or indirect, including but not limited to loss of income, opportunity, or profits, in excess of the limitations of liability contained herein, regardless of whether Customer had knowledge that such damages might be incurred.

14. Information Systems and Proprietary Information.

a. Information Services Provided. Any management information system or computer hardware or software used or supplied by Matson Logistics in connection with the Services provided under this Agreement is and will remain Matson Logistics' exclusive property. Neither the use or any access to such systems or property by the Customer will convey to Customer any use, license or ownership rights in Matson Logistics' property.

b. Proprietary Information. The parties agree and understand that they have or may gain confidential and proprietary information and trade secrets (the "Proprietary Information") of the other party during the term of this Agreement. The parties agree that all Proprietary Information of one party known or obtained by the other shall be kept confidential and shall not be disclosed or permitted to be disclosed to any third party without prior written authorization from the other party or unless otherwise required by law. For purposes of this provision, Proprietary Information shall include, but not be limited to, technical information including computer software and systems, report formats, pricing and financial information, and management information systems

15. Hazardous Material Transportation. Customer shall provide Matson Logistics and the Subcontractors with advance written notice of the proposed shipment of any hazardous material, as that term is used and defined in the Hazardous Material Transportation Act, 49 U.S.C. § 5101, et seq. or any other applicable statute, regulation or other law ("Hazardous Material"). Prior to the transportation, Customer shall provide Matson Logistics and the Subcontractors with a current Material Safety Data Sheet or any other Hazardous Material document required to be prepared and provided by Customer or its agent for the Hazardous Material shipment. Customer shall indemnify, defend and hold harmless Matson Logistics and the Subcontractors, their officers, employees, agents and insurers, against all claims, liabilities, losses, fines, reasonable attorney fees and other expenses arising out of or related to, exposure to or release of any Hazardous Material, including without limitation, fines or expenses relating to the removal or treatment of Hazardous Material or any other remedial action pertaining to the Hazardous Material under federal, state or foreign law, if (i) Customer fails to provide the notice required by this provision prior to tendering the Hazardous Material to the Subcontractors, (ii) the contact, exposure or release resulted from the improper packaging or loading or other acts or omissions of the Customer, its employees or agents, or (iii) the contact, exposure or release occurred subsequent to the transport or storage of the Hazardous Material by Matson Logistics or the Subcontractors.

16. Force Majeure. Neither party, nor any Subcontractor utilized to provide Services under this Agreement, will be liable to the other for failing to perform or discharge any obligation of this Agreement where such failure is caused by acts of God, labor disorders, fire, weather, closing of public highways, government interference and other causes beyond the affected parties' control.

17. Accurate Information. Customer shall provide Matson Logistics and the Subcontractors with complete, accurate and timely information regarding the Goods to be transported or stored. Customer shall indemnify, defend and hold harmless Matson Logistics and the Subcontractors, their officers, employees, agents and insurers, against all claims, liabilities, losses, fines, reasonable attorney fees and other expenses arising out of or caused by incomplete, inaccurate and/or untimely information being provided by Customer to Matson Logistics and/or the Subcontracts regarding the Goods to be transported or stored.

18. Miscellaneous.

a. Successors and Assigns. This Agreement is binding and for the benefit of both parties and their respective successors and permitted assigns. Neither party may assign this Agreement without the written consent of the other party, except Matson Logistics may, without consent, assign this

Agreement to a subsidiary or other related company.

b. Waiver. Either party's failure to strictly enforce any provision of this Agreement will not be construed as a waiver of that provision or is excusing the other party from future performance.

c. Notices. All notices required or permitted under this Agreement must be in writing (unless otherwise indicated in this Agreement) either telefaxed, sent via overnight courier, hand delivered or sent via certified mail, return receipt requested, postage prepaid, to the address or telefax number set forth below. Telefaxes, overnight courier and hand delivered notices will be effective upon actual receipt. Certified mail notices will be effective on the third business day after the mailing date.

d. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to its subject matter, and supersedes all prior proposals, agreements, oral representations, memoranda or understandings with respect to this Agreement or its subject matter. Any future modification, representation, agreement, understanding or waiver will be binding only if in writing signed by the parties sought to be bound. The parties' intent that this Agreement constitutes the complete and exclusive statement of its terms and that no extensive evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any, involving this Agreement.

e. Appendices. Each appendix to this Agreement will become a part of and subject to this Agreement upon execution by both parties.

f. Applicable Law. All civil actions filed as a result of disputes arising out of this Agreement shall be filed in the court of proper jurisdiction in Alameda County, California, and the laws of the State of California or applicable federal law shall apply. If any provision in this Agreement violates any applicable law, that provision will be ineffective to the extent of the violation without invalidating any other provision of this Agreement.

g. Signatures. The parties have executed this Agreement as of the date set forth above by their authorized representatives. Please note that if this Agreement is not fully executed by both parties, the act of the Customer tendering goods to Matson Logistics for services shall constitute the Customer's acceptance of the original terms set forth herein.

h. Survival. Sections 11, 12, 13, 14, 15 and 17 shall survive the termination or expiration of this Agreement.

APPENDIX A

Warehousing Services

1. **Warehouse and Storage Services.** Contingent upon both parties having initialed their mutual intent in Section 1 of the main body of this Agreement (or having effected such agreement in another mutually agreed upon written form) to have Matson Logistics provide such services, Matson Logistics or its Subcontractors shall provide warehousing and storage services to, and for the benefit of, Customer in accordance with the terms of this Appendix.

2. **Shipping.** Customer agrees not to ship Goods to Matson Logistics as a named consignee. If, in violation of this Agreement, Goods are shipped to Matson Logistics as named consignee, Customer agrees to notify the delivering carrier in writing prior to such shipment, with a copy of such notice to the Matson Logistics, that Matson Logistics named as consignee is a warehouseman and has no beneficial title or interest in such property. Customer further agrees to indemnify and hold harmless Matson Logistics from any and all claims for unpaid transportation charges, including undercharges, demurrage, detention or charges of any nature, in connection with Goods so shipped. Customer further agrees that, if it fails to notify the delivering carrier as required by this provision, Matson Logistics shall have the right to refuse such Goods and shall not be liable or responsible for any loss, injury or damage of any nature of, to, or related to such Goods. Customer agrees that this Agreement will be binding on Customer's representatives, successors and assigns.

3. **Tender for Storage.** All Goods for storage shall be delivered at the warehouse properly marked and packaged for handling. Customer shall furnish, at or prior to such delivery, a manifest showing marks, brands or sizes to be kept or accounted for separately.

4. **Storage Rates and Charges.**

- a. All storage charges are per pallet, carton or other unit per month agreed to by the parties.
- b. Storage charges become applicable upon the date that Matson Logistics accepts care, custody and control of the Goods, regardless of unloading date or date of issuance of warehouse receipt.
- c. A full month's storage charge will apply on all Goods received. All storage charges are due and payable on the first day of storage for the initial month and thereafter on the first day of the calendar month. Customer shall pay Matson Logistics interest at that of 12% per annum on any late payment, together with any and all collection costs, including reasonable attorney fees, incurred by Matson Logistics.
- d. Rates: See attached Appendix G.

5. **Transfer, Termination of Storage, Removal of Goods.**

- a. Instructions to transfer Goods in storage are not effective until delivered to and accepted by Matson Logistics, and all charges up to the time transfer is made are chargeable to the Customer. If the transfer involves rehandling the Goods, there will be additional charges assessed by Matson Logistics. When Goods in storage are transferred from one party to another through issuance of a new warehouse receipt, a new storage date is established on the date of transfer.
- b. Matson Logistics reserves the right to move, at its expense, ten (10) days after notice is sent by certified or registered mail to the Customer, any Goods in storage from the last warehouse in which they may be stored to any other of his warehouses. Matson Logistics may, without notice, move Goods within the warehouse in which they are stored.
- c. Matson Logistics may, upon written notice to Customer, require the removal of any Goods by the end of the next succeeding storage month. Such notice shall be given to the last known place of business or abode of Customer. If the Goods are not removed before the end of the next succeeding month, Matson Logistics may sell them in accordance with applicable state law.

d. If Matson Logistics in good faith believes that the Goods are about to deteriorate or decline in value to less than the amount of Matson Logistics' lien before the end of the next succeeding storage month, Matson Logistics may specify in the notification any reasonable shorter time for removal of the Goods and in case the Goods are not removed, may sell them by public sale held one week after a single advertisement or posting as provided by applicable state law.

e. If, as a result of a quality or condition of the Goods of which Matson Logistics had not noticed at the time of deposit, the Goods are a hazard to other property or to the warehouse or to persons, Matson Logistics may sell the Goods at public sale or private sale without advertisement or reasonable notification to Customer. If Matson Logistics, after a reasonable effort, is unable to sell the Goods it may dispose of them in any lawful manner and shall incur no liability by reasons of such disposition. Pending such disposition, sale or return of the Goods, Matson Logistics may remove the Goods from the warehouse and shall incur no liability by reason of such removal.

f. Unless otherwise allowed by this Appendix, Matson Logistics shall not transfer Goods unless authorized in writing by Customer or an authorized representative of Customer.

6. Handling.

a. Warehouse handling rates and charges as shown in Appendix G include, but are not limited to, receipt of Goods at the warehouse door, placement of Goods in storage, and return of Goods to the warehouse door.

b. Any labor, equipment or materials used by Matson Logistics to load the Goods in any vehicle are chargeable to Customer.

c. Matson Logistics shall not be liable for demurrage, delays in unloading inbound shipments, or delays in obtaining, and loading vehicles for outbound shipments, unless Matson Logistics has failed to exercise reasonable care.

d. If, as a result of the unusual nature of the weight and dimensions of appliances, bulky articles, floor loaded food products, carton or bagged Goods, or delivery driver's collective bargaining or employment agreement, the delivery driver cannot or will not place items on Matson Logistics' dock, Matson Logistics may assist the driver with unloading. Labor furnished by Matson Logistics under those circumstances is chargeable to Customer as a handling charge.

e. If Customer inspects his Goods while in storage, Customer will assume liability for the Goods.

f. Customer agrees not to store any flammables, hazardous wastes, alcoholic beverages, or high valued items (i.e. jewelry) under this Appendix.

7. Extra Services.

a. Warehouse labor required for services other than ordinary handling and storage will be charged to the Customer.

b. Special service requested by the Customer, including, but not limited to, compiling of special stock statements, reporting marked weights, serial numbers or other data from packages, physical check of Goods, and handling transit billing will be subject to additional charges to the Customer.

c. Dunnage, bracing, packing material or other special supplies will be provided for the Customer at charges in addition to the Matson Logistics' cost.

d. By prior agreement, Goods may be received or released during other than usual business hours subject to a charge.

e. Communication expense, including postage, telegrams, telefax, or telephone will be charged to Customer if such concern more than normal inventory reporting or if, at the request of the Customer, communications are made by other than regular United States mail.

f. Rates: See attached Appendix G.

8. Liability.

a. Matson Logistics shall not be liable for any loss or injury to Goods however caused unless such loss or injury resulted from the failure by Matson Logistics to exercise such care in regards to them as a reasonable careful man would exercise under like circumstances and Matson Logistics is not liable for damages which could not have been avoided by the exercise of such care.

b. Goods are not insured by Matson Logistics for loss or injury however caused.

c. Unless boxes, pallets, or other concealed containers are packaged by Matson Logistics, Matson Logistics shall not be liable for any loss or damage.

d. Matson Logistics shall not be liable for damages due to mold, mildew, cracking of joints or veneer, pad imprints or surface blemishes due to wax or polish build-up.

e. In consideration of the rates specified in Appendix G, Customer declares that damages are limited to \$0.25 per pound or repair cost, whichever is less.

f. Customer, for itself and its insurers, hereby waives all claims against Matson Logistics for loss or damage to Goods, however caused, to the extent that such loss or damage claim exceeds the amount of the deductible on the insurance carried by Customer for the stored Goods.

9. Claims Procedures. The procedures and obligations relating to the reporting of loss or damage to Goods and the handling of resulting claims are set forth in the main body of this Agreement.

10. Miscellaneous.

a. Customer shall notify Matson Logistics of the characteristics of any of Customer's products that may in any way be likely to cause damage to Matson Logistics' premises or to other products that may be stored by Matson Logistics.

b. Matson Logistics may refuse to accept any Goods that, because of infestation, contamination or damage, might cause infestation, contamination or damage to Matson Logistics' premises or to other Goods in the custody of Matson Logistics and shall immediately notify Customer of such refusal and shall have no liability for any demurrage, detention, transportation or other charges by virtue of such refusal.

APPENDIX B

Surface Freight Forwarder Services

- 1. Services.** Contingent upon both parties having initialed their mutual intent in Section 1 of the main body of this Agreement (or having effected such agreement in another mutually agreed upon written form) to have Matson Logistics provide such services, Matson Logistics shall arrange for the domestic surface transportation of the Goods in its capacity as a licensed surface freight forwarder, and agrees to use Subcontractors that are duly authorized to transport the Goods pursuant to all applicable regulatory authority. It is understood and agreed that Matson Logistics is not acting as a common or contract carrier in performing the services contemplated herein.
- 2. Receipts and Bills of Lading.** Each shipment of Goods made under this Appendix shall be evidenced by a Uniform Straight Bill of Lading substantially in the form published in the National Motor Freight Classification, Tariff STB NMF 100-X or, for international shipments, any bill of lading or other shipping document required by applicable law. The terms, conditions and provisions of such bill of lading shall be subject and subordinate to the terms, provisions and conditions of this Appendix.
- 3. Subcontractors.** Matson Logistics shall use all reasonable efforts to ensure that the Subcontractors have adequate personnel and equipment needed to perform the transportation services required by Customer, and that such Subcontractors will maintain all licenses and permits required by all applicable governmental authorities. Customer understands and agrees that the Subcontractors are independent contractors with exclusive control over their respective drivers and employees, and not agents, employees or authorized representatives of Matson Logistics.
- 4. Insurance.** Matson Logistics shall take reasonable efforts to ensure that the Subcontractors transporting Goods for Customer will maintain the following insurance coverages (or such coverages and amounts required by applicable law):

 - a. Public liability and property damage insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence;
 - b. Cargo liability insurance in an amount not less than One Hundred Thousand Dollars (\$100,000) per occurrence; and
 - c. Workers' compensation insurance covering its employees, as required by applicable state law.
- 5. Liability for Loss or Damage.** Subcontractors transporting the Goods as surface carriers in the United States or from the United States to Canada shall be required by Matson Logistics to assume liability as a common carrier (i.e. Carmack Amendment liability) for loss, damage, or destruction to any and all of Customer's Goods while under the Subcontractor's care, custody or control. Subcontractors transporting the Goods as surface carriers outside the United States shall be required by Matson Logistics to assume liability for loss in accordance with the laws governing such service. Notwithstanding the Subcontractor's liability, Matson Logistics shall be liable for any loss or damage to the Goods if such loss or damage is caused solely by the negligent acts or omissions of Matson Logistics. Matson Logistics agrees to assist Customer in resolving all cargo claims with the Subcontractors, and to keep Customer advised of the status of all such claims. Upon request by Customer, Matson Logistics shall assign its right against the Subcontractors to Customer. Customer understands and agrees that the liability of Matson Logistics and the Subcontractors for any loss or damage to the Goods will not exceed (i) \$500 per container load for the Goods involved, less any salvage value, or (ii) One Hundred Thousand Dollars (\$100,000) per occurrence, whichever is less. In addition, neither Matson Logistics nor the Subcontractors shall be liable to Customer for any economic loss or consequential damages to Customer beyond actual loss or damage to the Goods. Customer agrees not to deduct or offset any cargo loss or damage claim from the charges owed to Matson Logistics under this Appendix.

6. **Contract Carriage.** To the extent applicable, it is intended that the Subcontractors will be providing services as “contract carriage” within the meaning of 49 U.S.C. § 13012(4)(B). Customer expressly waives all rights and remedies it may have as to Matson Logistics and the Subcontractors under 49 U.S.C. Subsection IV, Part B (excluding Section 13703, 13706, 14101 and 14103) to the full extent permitted by 49 U.S.C. § 14101(b)(1), each as amended from time to time. Except as stated above, neither party waives any rights or remedies it may have as to any third party.

7. **Claims Procedures.** The procedures and obligations relating to the reporting of loss or damage to Goods and the handling of resulting claims are set forth in the main body of this Agreement.

APPENDIX C

Ocean Freight Forwarder and/or Non-Vessel Operating Common Carrier Services

- 1. Ocean Freight Services.** Contingent upon both parties having initialed their mutual intent in Section 1 of the main body of this Agreement (or having effected such agreement in another mutually agreed upon written form) to have Matson Logistics provide such services, Matson Logistics or its Subcontractors shall, as directed by Customer, handle all aspects of the domestic and international shipping needs of Customer involving various Goods tendered to Matson Logistics for domestic or international ocean transportation. The responsibilities of Matson Logistics relating to the services to be provided are more specifically set forth in Schedule C-1, attached hereto and incorporated herein. Matson Logistics agrees that the Services to be provided shall be performed by Matson Logistics or a properly licensed and insured customs broker, carrier or other transportation provider (collectively the "Subcontractor") selected by Matson Logistics pursuant to the requirements of this Agreement in a professional, timely and efficient manner.
- 2. Third Party Costs.** Certain services, e.g. harbor maintenance fee and some third party hazardous materials charges have no set pricing and thus are to be charged to Customer at cost. Matson Logistics shall promptly advise Customer of any changes in pricing procedures that will materially increase or decrease these types of third party costs. With the exception of fuel surcharges, Matson Logistics' invoices will itemize these types of third party costs.
- 3. Cargo Loss or Damage.** Matson Logistics shall ensure that the Subcontractors assume liability in accordance with Carriage of Goods by Sea Act (COGSA) 46 U.S.C. § 1300 et seq. For purposes of cargo claims, the \$500.00 limitation per package shall apply to each individual box, carton or other packaging device utilized in shipping the Goods, rather than a more expansive shipping device such as a pallet or ocean container. The parties further agree that COGSA shall apply to the inland surface transportation of the Goods transported under a ocean bill of lading pursuant to the incorporated Himalaya clause. All Subcontractors, including ocean, motor and rail carriers, will be subject to the \$500 per package limitation set forth under COGSA unless a higher valuation is declared on the face of the ocean bill of lading, in which case the liability of Matson Logistics and any Subcontractor shall be the actual amount of the cargo loss or damage not to exceed the value declared on the ocean bill of lading. Matson Logistics agrees to assist Customer in resolving all cargo claims with the Subcontractors, and to keep Customer advised of the status of all such claims. Upon request by Customer, Matson Logistics shall assign its right or cause of action against the Subcontractors to Customer.
- 4. Claims Procedures.** The procedures and obligations relating to the reporting of loss or damage to Goods and the handling of resulting claims are set forth in the main body of this Agreement.

APPENDIX D

Air Freight Forwarder and/or Indirect Air Carrier Services

1. **Air Freight Services.** Contingent upon both parties having initialed their mutual intent in Section 1 of the main body of this Agreement (or having effected such agreement in another mutually agreed upon written form) to have Matson Logistics provide such services, Matson Logistics shall arrange for its Subcontractors to provide air freight forwarding and related transportation services to, and for the sole benefit of, Customer in accordance with this Appendix. Customer agrees that Matson Logistics shall have the exclusive right to determine how all shipments will be routed, including the mode of transportation, and may use air or ground transportation, or any combination thereof, in providing the Services, as long as any agreed-upon delivery or other performance requirements are met.

2. **Compliance with Applicable Laws.**

a. **TSA Cargo Security.** Customer acknowledges that Matson Logistics may be required by the federal Transportation Security Administration ("TSA") to maintain an air cargo security program. If Customer is acting as an agent, carrier, or other freight intermediary for any other person, Customer shall disclose that fact to Matson Logistics and shall assist Matson Logistics in complying with the TSA requirements by enabling Matson Logistics to obtain any necessary documents from, or otherwise qualify, such other person.

b. **Hazardous Materials/Dangerous Goods Prohibition.** In no event shall Customer tender, or Matson Logistics accept, for air transportation any dangerous goods or hazardous materials, including but not limited to, those materials specified as hazardous or dangerous by U.S. Department of Transportation ("USDOT") regulations (49 C.F.R. Parts 171, 172, 173) or International Air Transport Association ("IATA") Dangerous Goods Regulations. Any hazardous materials or dangerous goods tendered to Matson Logistics for air transportation shall be refused, and Matson Logistics may, at its sole discretion, divert the shipment to ground transportation.

c. **Ground Transportation.** If Matson Logistics decides that a Customer shipment should be transported by ground not air, Matson Logistics shall arrange with authorized motor carriers to perform such transportation, which shall be done, where applicable, as "contract carriage" within the meaning of 49 U.S.C § 13102(4)(B) on the same terms as contained in this Agreement. Customer expressly waives all rights and remedies it may have as to Matson Logistics and its subcontractor motor carriers under 49 U.S.C. Subtitle IV, Part B (excluding §§ 13703, 13706, 14101 and 14103) to the full extent permitted by 49 U.S.C § 14101(b)(1), each as amended from time to time.

3. **Shipping Documents.** Each shipment made or undertaken by Matson Logistics on behalf of Customer shall be subject to the terms and conditions of an Air Waybill. If a Matson Logistics Air Waybill is not used, or if a different bill is used instead or in addition to it, the terms of the Matson Logistics Air Waybill shall govern the shipment, and the terms of any other bill shall be null and void. In the event of a conflict between this Appendix and the Matson Logistics' Air Waybill, this Appendix shall prevail.

4. **Customer Warranties and Indemnities.**

a. **General Warranties.** In tendering Goods to Matson Logistics for air transport, Customer warrants that it is either the owner, or the authorized agent of the owner, of the Goods being shipped, and enters into this Appendix not only for itself but also as agent, and on behalf, of the owner. Customer is responsible for completing an Air Waybill to be tendered to Matson Logistics and further warrants that the Waybill contains full and accurate descriptions and particulars of the Goods being shipped. Customer warrants that it is in compliance with all applicable laws related to the carriage of its shipments, including the USDOT and IATA regulations.

b. **Cargo Security and Hazardous Materials Warranties.** The parties acknowledge that TSA has issued strict cargo security rules for the transportation of air freight, and that USDOT and IATA have

issued strict regulations governing the transportation of hazardous materials and dangerous goods. In order for Matson Logistics to fulfill its cargo-security and hazardous materials compliance obligations, Customer hereby warrants with respect to all Goods it tenders to Matson Logistics that:

(i) Each shipment is intended for air transportation (provided that Matson Logistics is authorized to substitute other modes of transportation pursuant to Section 1 above).

(ii) The description of each shipment tendered to Matson Logistics for transportation is complete, accurate, and proper under all applicable USDOT and IATA regulations.

(iii) Each shipment has been properly and sufficiently prepared, packed, stowed, labeled, packaged, and/or marked (including that its packaging is appropriate to any operations or transactions affecting the shipment and its characteristics), and is in all respects in proper condition for transport under all applicable USDOT and IATA regulations.

(vi) The shipment does not comprise or contain any hazardous materials or dangerous goods, explosive, incendiary, or other device, substance, or weapon that might endanger life or the safety of any airplane, ship, motor vehicle, or other transport conveyance or that might, or is likely to, cause loss, damage, injury, or death to any person or property. Customer is responsible for determining whether the shipments it tenders for transportation are regulated as hazardous materials or dangerous goods under the applicable DOT and/or IATA Regulations.

c. General Indemnification. Customer indemnifies, defends, and holds Matson Logistics harmless against any liability, loss, damage, cost, expense, including attorneys' fees, claim, or penalty whatsoever arising from Matson Logistics' acting in accordance with Customer's instructions, from any breach by Customer of any warranty contained in this Appendix, or from the negligence, gross negligence, or willful misconduct of Customer or its employees or agents.

5. Cargo Liability. Matson Logistics shall not be liable for any claim relating to loss or damage in connection with any shipment accepted on an Air Waybill (the "Claim") except where the Claim arises from the negligence, gross negligence, or willful misconduct of Matson Logistics or its employees or agents (acting in furtherance of their duties as employees or agents). Matson Logistics' maximum liability for any loss or damage, or any other claim with respect to any domestic United States shipment is limited to the least of Customer's damages, fifty cents (50¢) per pound, or fifty thousand dollars (\$50,000) per waybill unless Customer declares a higher value and pays the applicable additional charges specified in the Air Waybill. Matson Logistics' liability for international shipments shall be in accordance with the rules of the Warsaw Convention. In no event shall Matson Logistics' liability exceed the reduction in value (in the case of damage) or replacement value (in the case of loss or destruction) of the damaged Goods, less reasonable salvage value. Matson Logistics shall not be liable for any incidental, special, exemplary, consequential, or punitive damages, whether direct or indirect, including but not limited to loss of income, opportunity, or profits, in excess of the limitations of liability contained herein, regardless of whether Matson Logistics had knowledge that such damages might be incurred.

6. Claims Procedures. The procedures and obligations relating to the reporting of loss or damage to Goods and the handling of resulting claims are set forth in the main body of this Agreement.

APPENDIX E

Custom Brokerage Services

- 1. General Services.** Contingent upon both parties having initialed their mutual intent in Section 1 of the main body of this Agreement (or having effected such agreement in another mutually agreed upon written form) to have Matson Logistics provide such services, Matson Logistics or its Subcontractor(s) shall represent Customer in various aspects of customs clearance and brokerage relating to the Goods, in accordance with the terms and conditions of this Agreement. The services may include, but are not limited to, Matson Logistics acting on Customer's behalf for customs related activities involving the Goods; interfacing with all necessary Subcontractors whose services may be required in the chain of operations; and interfacing with relevant U.S. and foreign governmental agencies, as required for the shipping and handling of the Goods.
- 2. Specific Services.** In addition to the services described above, Matson Logistics or its Subcontractors will specifically provide the following specific services:

 - a. Maintain the necessary registrations, permits, licenses and bonds and other approvals ("Registrations") with the appropriate federal, state and international regulatory agencies as required by applicable law, which Registrations will cover the Goods and geographic scope of all Services provided under this Agreement. Matson Logistics will obtain and make available, upon request, copies of customs related entries, duty, tax and other documentation generated in connection with the Customs Services.
 - b. Properly complete and/or file with government agencies, including custom agencies, classifications of Goods based upon accurate information provided by Customer.
 - c. Properly apply the proper valuations, duties, taxes and other fees or expenses based upon information provided by Customer.
 - d. Properly claim or pursue the appropriate refunds, drawbacks, deductions and other applicable benefits with appropriate documentation supplied by Customer.
 - e. Forward all required documents and related customs and export/import notifications regarding the Goods and transactions.
 - f. Timely pay all customs related taxes, duties and other fees and expenses, upon payment of said required sums by Customer to Matson Logistics.
- 3. Payment Terms.** In the event Goods are ineligible for Generalized System of Preference ("GSP"), Matson Logistics will pay, upon receipt of required payments by Customer, on Customer's behalf, customs duties, bond charges, and taxes. If Customer requests Matson Logistics to process GSP recovery upon the restoration of GSP, Customer will pay Matson Logistics the charges shown on Appendix G. Where prior payment of other customs-related charges is not required, Matson Logistics will invoice Customer for such charges in accordance with the terms of this Agreement, and Customer shall reimburse Matson Logistics on a bi-weekly basis based upon the date of receipt of the invoice. Matson Logistics shall be liable to Customer for untimely notification under this provision.
- 4. Power of Attorney.** In the event Matson Logistics' provision of the services necessitate Matson Logistics to have Power of Attorney or similar designation from Customer, Matson Logistics shall make a written request for such designation, which request shall specifically identify the purpose and the authority needed to achieve that purpose. Upon Customer's request, Matson Logistics will promptly return all signed Power of Attorney forms to Customer. Matson Logistics shall not take any action that exceeds any Power of Attorney granted by Customer. Should any provision in the Power of Attorney conflict with the terms of this Agreement, the terms of this Agreement shall govern.
- 5. Records.** Matson Logistics will prepare and maintain such full and detailed records as may be reasonably necessary to accurately verify payment and performance with respect to the services. Matson

Logistics will maintain all records as necessary under applicable laws but in no event for a period of less than four (4) years.

6. Audit. Matson Logistics agrees to promptly notify Customer in the event that it is audited by any governmental agency with respect to the customs-related services provided to Customer. During any such audit, Matson Logistics agrees to take reasonable action necessary to avoid any aggravating factor that might increase any penalty or assessment, and to promote any mitigating factors that might result in a decrease of any such fine or penalty to either Matson Logistics or Customer.

7. Claims Procedures. The procedures and obligations relating to the reporting of loss or damage to Goods and the handling of resulting claims are set forth in the main body of this Agreement.

APPENDIX F**Miscellaneous Services**

Contingent upon both parties having initialed their mutual intent in Section 1 of the main body of this Agreement (or having effected such agreement in another mutually agreed upon written form) to have Matson Logistics provide such services, Matson Logistics or its Subcontractors shall provide the following:

APPENDIX G

Rates and Charges

Customer shall pay Matson Logistics, at the address shown on Matson Logistics' invoice, the rates and charges described below: