May 6, 2016

**3PLF Third Party Logistics (3PL) Service Provider Shipper/Customer Contract**

**Suggestion:**

THIS AGREEMENT, made and entered into this \_\_\_\_\_\_\_\_\_\_ day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_by and between (hereinafter termed OWNER) and 3PFL

**Witnesseth:**

**WHEREAS**, OWNER/SHIPPER desires to engage 3PLF to provide storage space, facilities, transportation, and personnel necessary for the receipt, storage, and delivery of its goods (herein termed GOODS), and

**WHEREAS**, WAREHOUSE has such space available and the facilities and personnel to provide the service required;

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions herein the parties agree as follows:

**1. TERM**: The term of this Agreement shall commence on \_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, and shall continue thereafter in full force and effect for a period of\_\_\_\_\_\_\_year(s) and shall thereafter automatically renew for\_\_\_\_\_\_\_\_\_\_provided either party has the right to terminate this Agreement in writing. Notwithstanding,

rates are subject to review on an annual basis and/or in the event of a change in the scope of services to be provided by 3PLF

**2.** **FACILITIES AND EQUIPMENT:**

A. 3PFL will provide\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_square feet of storage space and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of office space located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereafter termed FACILITIES) These facilities shall be used exclusively for the storing and handling of the GOODS).

B. 3PFL will provide utilities (list of 3FPL utilities) OWNER will pay 3FPL for telephone calls, telex, fax, overnight delivery, EDI exchanges (if 3FPL has EDI?) and other communication expenses incurred in dealing with OWNER’S GOODS. The payment schedule (detailed by 3FPL) for such expenses is included in Appendix B.

C. OWNER is responsible for securing specified equipment and fixtures associated with the operation. OWNER shall be responsible for all costs associated with such equipment and fixtures, regardless of whether 3FPL provides it.

D. The OWNER shall be considered the owner responsible for federal income tax purposes of identified equipment, as may be revised from time to time by mutual agreement. OWNER reserves the right to claim all deductions and credits including those for depreciation where applicable.

**3. RATES AND CHARGES:**

A. Appendix A contains the rates and charges which will apply during the initial term of this Agreement. The rates and charges are based upon the transaction volumes and other applicable criteria by the OWNER. Notwithstanding, all rates and charges shall be reviewed and/or adjusted on an annual basis and/or in the event of a change in the scope of services or variation in other applicable criteria.

If actual volumes for each SKU differ from forecasted volumes given by SHIPPER/OWNER, prices will be adjusted with proper written notice to the OWNER/SHIPPER.

B. The rates and charges shall also be adjusted by a Consumer Price Index (CPI) on the anniversary of the first anniversary of the contract commencement date, and annually thereafter on the of the commencement date. The index used will be obtained from the region in which the facility is located.3FPL will provide the OWNER with 30 days prior written notice of the increase.

C. Commencing ninety (90) days after the first ship date and throughout the initial term, OWNER agrees the pay a minimum monthly charge to 3FPL when the total of all unit rates multiplied by the applicable transactions, excluding pass through expenses and hourly rates, in a particular calendar month fall below the amount of the minimum charge. The minimum charge shall be specified in Appendix A.

D. Start-up fees: OWNER shall pay start up fees as payment for the services agreed by the parties, which are identified in Appendix A.

**4. SERVICES TO BE PERFORMED:**

A. 3FPL shall receive, store, and ship OWNER’S goods at and from the FACILITIES. The specific services which 3FPL provide OWNER, during the term of this Agreement are in set forth in Appendix A.

B. 3FPL shall be responsible for selecting the area within the FACILITIES for storing the goods and may, without notice, move the goods within the FACILITY but shall not, without prior notice to the OWNER, move the goods to another location.

C. If the OWNER has Standard Operating Procedures (SOPs) or a warehouse operating manual, 3FPL will not accept this manual or set of SOPs without first reviewing them and agreeing to them. 3FPL will not be liable for loss or damage to the GOODS resulting from complying with the OWNER’s operating procedures

D. Billing and Payment: 3FPL shall bill/invoice OWNER at the beginning of each week for all charges due and owing under this agreement, for the prior week. Any disputes will be promptly resolved. In the event of late payment, 3FPL reserves the right to modify the billing terms and conditions.

E. 3FPL expects an advance deposit on projected monthly expenses at contract signing. These include, but are not limited to:

* One month’s rent
* A deposit for utilities
* One month’s payment on any leases entered into on behalf of the OWNER (handling equipment, computers, power units and trailers)

F. Delivery and Release of Goods: OWNER shall deliver the GOODS to the FACILITIES in a segregated manner, properly marked and packaged for handling. At or prior to the delivery of GOODS, OWNER shall furnish a bill of lading along with an inbound ASN (Advance Shipping Notice) showing the GOODS to be tendered for storage, with any instructions concerning storage, services, accounting, segregation, or any other requirements relating to these GOODS.

OWNER shall schedule delivery appointments no less than two (2) days in advance. The OWNER is the main consignee with 3FPL as the “in care of” party. OWNER agrees to indemnify and hold 3FPL harmless from all unpaid transportation charges, including undercharges, demurrage, detention, or charges of any nature where 3FPL is designated as the Consignee.

OWNER shall provide 3FPL with written instructions concerning the release, or other disposition of GOODS. Confirmed e-mail, FAX, EDI or other similar communication is satisfactory, provided 3FPL may rely upon the information contained in the writing as received. 3FPL shall not be liable for loss, error, charge backs and/or consequential damages in the event data is transmitted via such written communications.

G.3FPL shall act as an independent contractor under this Agreement. It shall perform its obligations under this Agreement using its own employees or agents. It shall decide on the manners and means of its obligations and shall direct, control, and supervise its employees. It shall comply with all payroll tax, withholding, social security, unemployment and related employer obligations. OWNER shall be responsible for any applicable taxes associated with 3Fpl servicing the account, with the exception of employer related taxes referenced above.

H. TITLE: 3FPL shall not permit any lien or other encumbrance, to be placed against the GOODS while they are in 3FPL’s possession. Title to the GOODS shall remain in OWNER. On GOODS in 3FPL’s possession, it shall have a general warehouseman’s lien for any unpaid charges, which lien is released by delivering the GOODS and/or payment of the charges.

I. A physical inventory of all GOODS shall be conducted by 3FPL, at OWNER’S expense each year at a date agreed upon by both parties. A full report of this inventory will be given to the OWNER. Any additional inventories or cycle counting requested by the OWNER, will be at the OWNER’S expense.

J. The OWNER has the right to audit during normal business hours with providing 30 days’ notice to inspect the GOODS and audit 3FPL’s books., records, and accounts pertaining to the OWNER’s operation under when accompanied by 3FPL’s personnel. To be billed at a rate of 4 40 per hour this Agreement.

 **5 A:** **Service Levels:** Service Level Agreement with Key Performance Indicators have been developed collaboratively as a “win-win” Service Level Agreement between Owner and 3PFL, and are outlined as appendix Appendix C

**6. Term; Termination**

6.1 This Agreement shall commence on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and shall continue in effect until terminated in writing pursuant to the following provisions of this Section 6.

6.2 Either party may terminate this Agreement in writing without cause upon 90 days prior written notice to the other party, such termination not to be effective prior to (insert time frame).

6.3 3FPL shall have the right to terminate this Agreement on thirty (30) days' prior written notice if Shipper has failed to comply with the terms for payment of any undisputed amount for more than thirty (30) days, and such amount remains outstanding for more than thirty (30) days after written demand for payment by 3FPL. Either party may cancel or modify this contract with a 30 day written notice

6.4 Shipper shall have the right to terminate this Agreement immediately on notice to 3FPL, if, in the reasonably judgment of Shipper, 3FPL has failed to provide Transportation Logistics Services in accordance with the required standards, or has consistently failed to provide such services on a timely basis, as set forth in Exhibit (list exhibit letter), provided 3FPL has been notified in writing and such failure(s) continues for thirty (30) days after receipt by 3FPL of such notice.

6.5 If either party files a petition in bankruptcy or is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law, then the other party may immediately terminate this Agreement on notice.

6.6 Shipper shall have the right to terminate this Agreement immediately if 3FPL fails to maintain the licenses referred to in Section 2 of this Agreement or subcontracts Transportation Services to a Carrier not duly licensed.

6.7 In the event of a breach of this Agreement not set specifically forth in Sections 6.3 through 6.6, the non-breaching party shall have the right to terminate the Agreement upon thirty (30) days' prior written notice delivered by registered mail, return receipt requested, to the breaching party, unless such breach is cured within thirty (30) days from notice.

**7. Claims**

7.1 Loss and Damage: Procedures for the handling of loss and damage claims shall be set forth as a Return Material Authorization (RMA) Policy.

7.2 Timing of Claims: Claims for alleged overcharge or undercharge shall be filed with the appropriate party within one (1) year of the date of 3FPL’s invoice. Claims against 3FPL by Shipper for damages arising under this Agreement shall be filed within nine (9) months from the incident giving rise to such claim. Claims by either party beyond such date shall be deemed invalid.

7.3 Limitation Period on Invoices - Shipper shall not be liable for invoices not submitted within ninety (90) days of service.

**8. Bill of Lading**

Shipper locations or other authorized representatives, shall issue a bill of lading for each shipment, and the terms therein are to be incorporated herein, except to the extent that such terms are contrary to the provisions of this Agreement. In the event of any such conflict, the terms of this Agreement shall prevail. 3FPL shall retain Bills of Lading (B/L) and delivery receipts for a period of at least four (4) years.

**9. Insurance**

At all times during the term of this Agreement, 3PFL shall procure and maintain, and shall confirm that each Carrier has procured and is maintaining, at the sole cost and expense of 3FPL’s Carrier, as applicable, the following:

(a) Workers’ compensation/Employers liability coverage in an amount equal to that which is required by state statute, or, if not so required by state statute, then in an amount not less than (enter amount);

(b) Broad form cargo liability in an amount equal to that which is required by statute, or, if not so required, then in an amount not less than (enter amount); and

(c) General comprehensive liability insurance insuring against any and all liability for injury to or death of a person or persons and for damage or destruction of property occasioned by or arising out of or in connection with the Transportation Services to be provided hereunder, including coverage for losses due to theft, hijacking, damage in transit.

The limits of liability of such insurance shall not be less than (enter amount) combined single limit and shall be written by an insurance company or companies licensed to do business in the states in which 3FPL does business. Shipper shall be named as an additional named insured on all such insurance. The insurance afforded by these policies, except for workers compensation shall apply to Shipper as an additional insured but only to the extent of the obligations of 3FPL as provided under this Agreement. Shipper shall be named as a certificate holder under 3FPL’s workers compensation insurance. 3FPL may self-insure pursuant to the authorization of the FHWA (Federal Highway Association). 3FPL shall provide Shipper with a certificate to such effect from all applicable insurers. Such policies shall provide for thirty (30) days' notice to Shipper from the insurer by registered or certified mail, return receipt requested, in the event of any modification, cancellation or termination of such policies.

**10. Risk of Loss; Liability**

10.1 Shipper and 3FPL acknowledge and agree that the risk of loss to Goods during transit shall be borne by 3FPL once the 3FPL’s truck leaves the Shipper's dock. The driver shall have the right to inspect each shipment for damage prior to leaving the loading dock, and shall have the right to refuse damaged Goods tendered for delivery. In addition, 3FPL’s Carrier's driver shall note and bring to the attention of the appropriate loading dock personnel at the location any damage detected prior to leaving the loading dock where it is receiving goods on behalf of Shipper. In the event that damage occurs to Goods prior to delivery at the ultimate destination, the driver shall note such damage on the bill of lading and further shall so advise the party receiving the shipment, through delivery of a copy of the bill of lading setting forth a description of damaged goods.

10.2 With respect to returnable Goods, 3FPL shall bear the risk of loss once the 3FPL’s truck leaves the loading dock of a location where Goods are tendered to it on behalf of Shipper, until such time as the Goods reach the ultimate destination as designated on the bill of lading. RMA procedures apply.

10.3 3FPL bears the risk of loss for Goods while in transit, Carrier shall arrange for appropriate insurance for such Goods in transit, the cost of which shall be deemed to be included in the rates set forth in Section 3.

10.4 3FPL shall be liable to Shipper for any loss or injury to Goods caused by the negligence or omissions or failure to act of 3FPL.

10.5 3FPL’s liability under this Agreement shall be limited to (enter amount). In no event will 3FPL be liable for special, incidental or consequential damages regardless of its knowledge of the potential for such. 3FPL shall not be liable for any loss or damage to the extent such is due to a force majeure event, as defined in Section 18 of this Agreement, or an act or default of Shipper.

**11. Indemnification by Carrier**

3FPL agrees that it shall protect, defend, indemnify and hold harmless Shipper, from and against all liabilities, losses, costs, damages, expenses, claims, attorneys' fees, and disbursements of any kind or of any nature whatsoever imposed upon Shipper, whether incurred directly or indirectly by Shipper, by virtue of, or in connection with, or arising out of any:

(a) Failure of 3FPL to maintain appropriate licenses to carry out the purposes of this Agreement, resulting in the inability to, among other things, ship products for Shipper;

(b) Claims made by any employees or agents of 3FPL or by any operations of 3FPL related to 3FPL’s provisions of Transportation Logistics Services to Shipper under the terms of this Agreement, including any claim by 3FPL personnel that they are Shipper employees for any purpose;

(c) Claims arising from the negligence of 3FPL in performing Transportation Logistics Services pursuant to the terms of this Agreement; or

(d) Other claims arising directly or indirectly out of the transportation of Goods on behalf of Shipper by Carriers selected by 3FPL, including but not limited to claim arising from accidents involving equipment used to transport Goods.

The foregoing indemnities shall not apply to the extent that such liability arises from or as a result of any negligent act or omission of Shipper.

**12. Confidential Information**

12.1 3FPL hereby agrees to continue to honor its obligations under the Confidentiality Agreement previously entered into with the Shipper, a copy of which is attached hereto as Exhibit (enter exhibit letter).

12.2 Shipper hereby agrees to maintain in strict confidence, and not disclose to any unauthorized third party, or otherwise use or license any proprietary or confidential information, including strategies, business plans and rates, of 3FPL that it may receive from 3FPL during the term of this Agreement, without 3FPL’s prior written consent. 3FPL hereby acknowledges that disclosure of certain information to employee, representatives and agents of the Shippers shall be deemed authorized third parties, unless 3FPL and Shipper specifically agree otherwise in writing.

12.3 The parties obligations of confidentiality under this Section 12 shall continue during and after the termination of the Agreement.

**13. Severability**

If any clause or provision of this Agreement is illegal or unenforceable under present or future laws, then such clause or provision shall be deemed separable and shall not affect the validity of any other provision.

**14. Applicable Law**

This Agreement shall be subject to and governed by the interpreted and construed in accordance with the laws of the (name 3FPL’s state).

**15. Arbitration**

Any disagreement, dispute, controversy or claim with respect to the validity of this Agreement or arising out of or in relation to the Agreement, or breach hereof, shall be finally settled by arbitration in (name Shipper's city and state), in accordance with articles of the American Arbitration Association for Commercial Arbitration. Each of the Shipper and 3FPL shall select one arbitrator, and the two arbitrators so selected shall mutually agree to the selection of a third arbitrator, or, failing such mutual agreement, the third arbitrator shall be selected by the American Arbitration Association.

**16. Right of Offset**

3FPL and Shipper agree that, to the extent that either of them is at any time owed money by the other Party, including on regular invoices sent as provided herein, such Party may set off such amount against any undisputed monies owed by it to such Party from time to time, any such set-off to be accomplished by written notice to the owing Party, effective upon being sent.

**17. Assignment**

This Agreement shall be binding on and inure to the benefit of the parties thereto, their successors and their legal representatives. Neither of the parties shall assign this Agreement, or any interest nor right therein, without the prior written consent of the other party, except that (i) Shipper shall have the right to assign the Agreement to an affiliated party and (ii) 3FPL shall have the right to subcontract Transportation Services, as contemplated by this Agreement.

**18. Force Majeure**

If, and to the extent that either party may be precluded by a circumstance of force majeure, authority of laws, strikes, lockouts or other causes beyond its control from performing hereunder, such failure or non-performance shall be excused to the extent that it is necessitated by such cause. The party affected by the force majeure event shall use due diligence to remedy such default. If 3FPL is unable, by reason of a labor dispute, governmental action, act of God or the like, to provide Transportation Logistics Services to the extent contemplated by this Agreement, it shall, in any event, to the extent it is still able to provide for shipment and transportation, continue to provide such services to Shipper in proportion to the amount that 3FPL's business consisted of such services to Shipper prior to the occurrence of the event in question.

**19. Trademarks**

19.1 3FPL is hereby granted the right to use the trademarks, trade names, service marks, or logos owned by Shipper (collectively, the "Trademarks"), solely to the extent required specifically in the performance of its duties under this Agreement, including the right to permit 3FPL to affix Trademarks to vehicles when carrying Products; provided, however, that such use shall specifically exclude use which might in any way represent any derogatory connotations that might become attributable to Shipper, its Products or Trademarks, as a result of the derogatory manner in which the Trademarks are used. Except as expressly granted herein, 3FPL acknowledges that no trademark or trade name rights in any of the Trademarks are granted by this Agreement.

19.2 Shipper hereby represents, warrants and covenants that it has and will maintain the right to use the Trademarks and will indemnify and hold harmless 3FPL from any claim of alleged infringement brought by any party against 3FPL, including, but not limited to, 3FPL's reasonable costs of legal expenses, provided that 3FPL immediately notifies Shipper of any such action.

**20. Entire Agreement**

This Agreement constitutes the complete and entire agreement between the parties. If any provisions shall be declared invalid by a court of competent jurisdiction, the remainder thereof shall remain in full force and effect. This Agreement supersedes al prior agreements and/or understandings, whether written or oral, between the parties.

**21. Amendments**

No amendment, notice of loss or damage, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed on behalf of the parties hereto by their duly authorized representatives.

**22. Authorization**

It is agreed and warranted by the parties that the individuals signing this document on behalf of the respective parties are duly authorized to execute such an Agreement. No further proof of authorization is or shall be required.

**23. Non-Waiver**

The mention in this Agreement of any particular remedy shall not preclude Shipper or 3FPL from any other remedy Shipper or 3FPL might have, either in law or in equity. The failure of Shipper or 3FPL to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Agreement shall not be construed as a waiver or a relinquishment thereof for the future. The receipt and acceptance by 3FPL of fees, or the payment of same by Shipper, with knowledge of the breach of any covenant contained in this Agreement shall not be deemed a waiver of such breach.

**24. Notices**

All notices given, or that may be required, shall be in writing, and shall be sent to the parties hereto, by registered or certified mail, return receipt requested, or by courier service and shall be deemed to have been given when received by the party to whom addressed. Notices shall be addressed to the parties at the addresses set forth on Exhibit (list exhibit letter), as the same may be amended from time to time. Either party may change its address for notice by delivering notice of such change to the other party in accordance with the foregoing, which change of address shall be effective five (5) days after notice is received.

In Witness Whereof, Shipper and 3FPL have executed this Agreement in duplicate as of the day and year first written above.

(Insert full name of OWNER/Shipper)

(Insert title of authorized signatory)

(Insert name of authorized signatory)

(Insert signature line)

(Insert full name of 3FPL)

(Insert title of authorized signatory)

(Insert name of authorized signatory)

(Insert signature line)

Today’s Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_