

## TRANSPORTATION SERVICE PROVIDER AGREEMENT

**THIS TRANSPORTATION SERVICE PROVIDER AGREEMENT** ("Agreement") is made and entered into as of the date of the last signatory below (the "Effective Date") by and between the undersigned, referred to individually as "Party" and collectively as "Parties."

1. **Agreement for Services.** CFIL hereby agrees to tender shipments, with no minimum requirement, to TSP for transportation in Interstate, Intrastate, Inter-Provincial/Territorial, or Intra-Provincial/Territorial Commerce and TSP hereby agrees to transport such shipments with reasonable dispatch and without unreasonable delay in accordance with the terms and conditions of this Agreement.

2. **CFIL Representations and Warranties.** CFIL represents and warrants that (i) it is a duly licensed property broker by the Federal Motor Carrier Safety Administration (FMCSA); and (ii) it shall maintain all necessary operating authorities and comply with all applicable laws, rules and regulations, including its obligation to maintain a surety bond.

3. **TSP Representations and Warranties.** TSP represents and warrants as follows:

a. TSP (i) is registered with FMCSA as a motor contract, common, or for-hire carrier in interstate, intrastate, and/or foreign commerce and is in all respects qualified to transport freight as required by CFIL (ii) is legally qualified to perform the contemplated transportation services; (iii) has a "Satisfactory" FMCSA safety rating; and (iv) shall immediately notify CFIL in writing of any adverse change in its safety rating or any suspension or revocation of its operation authorities. If TSP has never been issued a rating, CFIL may elect, at its sole discretion, to continue using TSP's services under this Agreement provided that TSP's CSA scores maintained by the USDOT are within acceptable limits according to CFIL's internal policies and procedures. TSP agrees to comply with all applicable provisions of any international, federal, provincial, state and/or local law, rule and regulation. Without limiting the foregoing, TSP shall, at TSP's expense, comply with all laws, rules and regulations, including, obtaining all permits and licenses, which are required for TSP to provide CFIL the transportation and related services under this Agreement. TSP agrees not to accept a shipment from CFIL if that shipment would require TSP or any of its employees, agents or permitted subcontractors to exceed or violate any speed or safety law, rule or regulation. TSP will indemnify CFIL and all other parties from any loss or damage resulting from Carrier's failure to comply with all applicable laws, rules or regulations now or hereafter in effect, including, but not limited to: (i) California Air Resources Board (CARB) compliance promulgated under the Clean Air Act; (ii) FSMA Food Modernization Safety Act (FSMA) compliance promulgated under the Federal Food, Drug, and Cosmetic Act; and (iii) Electronic Logging Devices (ELD) compliance promulgated under Commercial Motor Vehicle Safety Enhancement Act.

b. TSP assumes full responsibility for the payment of all local, state, federal and provincial payroll taxes, and contributions or taxes for unemployment insurance, workers' compensation insurance, pensions, and other social security or related protection with respect to the persons engaged by TSP for TSP's performance of the transportation and related services for CFIL or the customer, and TSP agrees to indemnify, defend and hold CFIL and its customer harmless therefrom. TSP shall be solely responsible for performing the contemplated transportation services and for all costs and expenses of such transportation, including, without limitation, costs and expenses of all TSP's transportation equipment, its maintenance, and those persons who operate the equipment. TSP further represents and warrants that the drivers utilized by TSP are competent and properly licensed, and are fully informed of their responsibilities for the protection and care of the involved commodities. TSP acknowledges and agrees that TSP is an independent contractor of CFIL and that TSP has exclusive control and direction of the work TSP performs pursuant to this Agreement.

c. TSP will perform the services under this Agreement in accordance with the highest standards of the industry, operating under its own authority, using its own employees or Owner-operators operating under TSP's USDOT authority, and using its own equipment. TSP understands and agrees that double brokering and/or substitute service and/or any other transportation intermediary is strictly prohibited and shall be considered a material breach of this Agreement. In the event TSP uses substitute service, there shall be no obligation on the part of CFIL, or the shipper or consignee of any shipment transported by such substitute service to pay TSP's charges. If TSP's freight charges have been paid and a claim for freight charges is made by the party that provided the substitute service against CFIL, shipper and/or the consignee, TSP shall be required to defend, indemnify and hold harmless CFIL, shipper and/or consignee against any such claim, including all attorney's fees and CFIL is authorized to pay for said substitute service and deduct the amount paid from any amounts due to TSP for other transportation services provided pursuant to this Agreement.

d. TSP will not solicit customers of CFIL where the traffic was first tendered to TSP pursuant to this Agreement. If TSP accepts shipments directly from a CFIL customer, CFIL shall be entitled to (as reasonable liquidated damages and not as a penalty) a commission of fifteen percent (15%) of the base linehaul revenue for a period of twelve (12) consecutive months from the date of the first shipment. If either Party becomes aware of a violation of this provision, such Party shall provide immediate written notice to other Party, and TSP shall have thirty (30) days after receipt of written notice to either cease shipping for the customer, provide adequate documentation of an independent relationship with such customer, or continue the business relationship with the customer and issue payment to CFIL as provided herein. Notwithstanding the foregoing, CFIL may immediately terminate this Agreement for breach of this section. This non-solicitation provision shall not apply if: (i) customer and TSP have entered or do enter into a direct relationship as a result of a formal bid/RFQ; or (ii) customer otherwise contacts TSP directly without a formal bid/RFQ, and TSP provides documented evidence to CFIL or obtains CFIL prior written consent.

4. **Communication.**

a. CFIL shall send TSP a shipment tender by either sending a Rate Confirmation sheet via facsimile ("Fax") or electronic mail ("E-Mail"), through a web tendering process, or Electronic Data Interchange ("EDI"), with the following minimum information: CFIL load number, origin, destination, pickup and delivery dates and times, and rate. TSP shall acknowledge the acceptance of the shipment tender by either signing the Rate Confirmation sheet and returning it via Fax or E-Mail, or accepting the load via the web tendering process or EDI.

b. TSP, at its sole cost and expense, shall provide CFIL with shipment status updates through EDI, E-Mail, and/or phone. Information transmitted in this manner shall include: (a) notification upon arrival for scheduled pickup, (b) notification upon arrival at scheduled delivery point, and (c) the time the delivery is completed. All of these status updates must be completed within two (2) hours of an event occurrence if between

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8:00 a.m. and 5:00 p.m. If after hours, by 8:00 a.m. the following business day. In addition, CFIL may require in-transit shipment status updates periodically.

**5. Customer Specific Addendums.** CFIL and TSP may enter into one or more addendums executed by CFIL and TSP (each a "Customer Specific Addendum") to this Agreement for the purpose of amending this Agreement to add provisions which shall be applicable to the specified customer. If any provision contained in a Customer Specific Addendum to this Agreement conflicts with any provision contained in this Agreement, the provision contained in the Customer Specific Addendum to this Agreement shall govern.

### **6. Insurance.**

a. TSP shall procure and maintain, at its sole cost and expense, insurance with a reputable and financially responsible insurance carriers reasonably satisfactory to CFIL, with coverage limits of not less than the standard requirements as set forth below throughout the term of this Agreement and/or provide proof of self insurance approval from the USDOT or any successor agency. CFIL does not represent that the types or minimum limits of the insurance set forth herein are adequate to protect TSP interests or with respect to certain classes or types of insurance, and that the minimum insurance amounts do not limit TSP's liabilities hereunder.

#### **b. Standard Insurance Requirements.**

- i. \$1,000,000 Commercial General Liability per occurrence, including contractual liability and bodily injury, including death, and property damage;
- ii. \$1,000,000 Commercial Automobile Liability per occurrence for owned and hired vehicles (\$5,000,000 hazardous materials and/or surety bond filed with the FMCSA in compliance with 49 CFR 387);
- iii. \$100,000 Cargo Liability per occurrence, which shall not exclude coverage for loss from an unattended vehicle or from a trailer detached from the power unit, breakdown or failure of mechanical refrigeration equipment, transportation of food products, infidelity, theft or other criminal act of the employees or agent of TSP or third party(ies). If said policies contain such exclusions, TSP shall obtain and furnish a policy extension or endorsement providing such coverage;
- iv. \$100,000 Employer Liability per occurrence;
- v. Workers' Compensation in accordance with applicable state law.

#### **c. Customer Insurance Requirements.**

i. CFIL customers may require higher levels of insurance than those specified above. Eligibility for hauling freight shall depend upon the levels of insurance specified in TSP's Certificate of Insurance. TSP represents and warrants that it will not accept tendered freight for customers whose insurance requirements exceed TSP coverages.

ii. CFIL shall be primary and additional insured under TSP's Commercial General Liability and Commercial Automobile Liability policies and Loss Payee on TSP's Cargo Liability policy, and shall be named as Certificate Holder. TSP shall provide CFIL with Certificates of Insurance evidencing such coverages for each policy renewal period or upon request. If TSP is self-insured, it shall provide evidence of such, including proof of acceptance of self-insured status by the FMCSA pursuant to 49 CFR §387.309. TSP shall provide CFIL with thirty (30) days prior written notice of cancellation or any material change in its policies. TSP shall bear any losses within insurance deductibles or self-insured retention amounts.

**7. Indemnification.** TSP shall indemnify, defend and hold harmless CFIL, its customer, shipper, consignor and consignee, and their respective affiliates, parent companies, subsidiaries, employees, directors, officers, agents and representatives from and against any and all claims, fines, penalties, actions, suits, settlements, judgments, damages, court costs, reasonable attorney's fees, other litigation expenses, and other dispute resolution and/or claim investigation costs and expenses to the extent arising out of, based upon or resulting from: (i) any failure to comply with applicable laws, rules or regulations, including failure to maintain insurance; and/or (ii) breach of TSP's representations and warranties hereunder; and/or (iii) the negligent acts or omissions or willful or intentional misconduct of TSP, its agents, employees or contractors in the performance of its duties.

**8. Cargo Liability Claims.** TSP shall be liable for the full actual loss of or to shipper's goods or other true owner of the cargo as and to the same extent that liability is imposed on motor carriers pursuant to 49 USC §14706, with such liability to exist from the time of receipt of any goods by TSP, signified by a bill of lading signed by TSP's driver, until proper delivery and receipt by receiver has been made. Unless otherwise agreed by the parties in a Customer Specific Addendum or Rate Confirmation, TSP's liability for cargo loss or damage shall not exceed \$100,000 per occurrence. TSP agrees to obtain and follow the specific instructions of customer or CFIL for disposition of claims and disposal of salvage. The failure of TSP to properly respond to a cargo claims may result in the claim being processed or paid by CFIL and/or deducted from TSP invoices. TSP shall be responsible for all costs of collection, including reasonable attorney fees.

### **9. Receipts and Bills of Lading.**

a. Each shipment hereunder shall be evidenced by a receipt in such form as specified by CFIL or, alternatively, by a CFIL customer, signed by TSP showing the kind and quantity of product received by TSP at origin. The absence or loss of any such receipt shall not relieve TSP of its obligations and responsibilities with respect to any shipment made hereunder. Such receipt shall be prima facie evidence of receipt of such shipment in good order and condition unless otherwise noted on the face of such receipt by TSP. Upon delivery of each shipment made hereunder, TSP shall obtain a receipt showing the kind and quantity of product delivered to the consignee of such shipment at the destination specified by CFIL, and TSP shall cause such receipt to be signed by the consignee.

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b. Any terms, conditions and provisions of the bill of lading, manifest or other form of receipt or contract shall be subject and subordinate to the terms, conditions and provisions of the Agreement. TSP shall notify CFIL immediately of any exception made on the bill of lading, manifest or other receipt. TSP and CFIL agree to maintain their e-documents or original records of transportation performed pursuant to this Agreement, and to preserve this Agreement, for a period of 3 (three) years following the last shipment transported by the TSP.

### 10. Rates and Charges.

a. Rates and charges for shipments moved under this Agreement shall be as agreed to between the Parties at the time of the shipment being tendered and confirmed in writing pursuant to CFL LOGISTICS' form of Rate Confirmation. The Rate Confirmation shall be all-inclusive of any charges for movement of said shipment, including any accessorial services, which may be required or performed by the TSP.

b. If additional charges are incurred, TSP must contact CFIL for written approval immediately during business hours, or if after business hours, within the first two business hours of the next business day of the occurrence. In the event of potential detention, the TSP must contact CFIL at least an hour prior of detention charges being incurred to allow CFIL the opportunity to address the occurrence. If the additional charges are approved in writing, CFIL shall either send a revised Rate Confirmation document to be signed and returned to CFIL or an update via the web tender or EDI process.

### 11. Payment Procedures.

a. TSP hereby appoints CFIL as TSP's agent for purposes of billing, collecting and receiving payment for all of TSP's freight bills and other charges, and shall look solely to CFIL for payment of charges due hereunder. TSP shall have no right of lien on customer's property or other true owner of the cargo. Any action taken with respect thereto shall constitute a material breach of this Agreement. The filing, investigation, processing and disposition of all overcharge or undercharge claims for freight charges hereunder shall be governed by the provisions of §49 CFR Part 378. TSP shall only invoice CFIL for all freight charges and/or accessorial charges upon the completion of the services. Each invoice and all required documentation shall reference CFIL's load number.

b. CFIL shall pay TSP invoices within twenty (20) days following receipt of the invoice and any requested documentation, including, but not limited to, signed proof of delivery to validate such charges, or as otherwise agreed by the Parties in writing. Invoices and required documentation not received by CFIL within ninety (90) days of being incurred shall be deemed waived by TSP and neither CFIL nor its customer shall have any obligation to pay such invoices. The Parties may agree to expedited payment terms.

12. **Term and Termination.** This Agreement shall be effective for an initial period of one (1) year from the Effective Date, and shall automatically renew for additional one (1) year terms, unless earlier terminated as provided herein. Either Party may terminate this Agreement, in whole or in part, at any time, with or without cause, upon thirty (30) days prior written notice to the other Party. Any obligations accruing prior to the termination hereof, or which by their nature would survive same, shall survive any cancellation, termination or expiration of this Agreement. Either Party may terminate this Agreement for cause in the event that the other Party breaches or defaults in the performance of its obligations hereunder. In such instances, the non-breaching Party shall provide the other Party with written notice of the alleged breach or default, and shall allow said Party fifteen (15) calendar days to cure said breach or default. On the 16th day following the date of the above described notice, the non-breaching Party may terminate this Agreement as of that date, if the breach or default remains uncured. This Agreement shall automatically terminate in the event of either Party's insolvency, liquidation, or dissolution, or if either Party makes any assignment for the benefit of creditors, or if a proceeding in bankruptcy, reorganization, receivership, or other debt relief proceedings are instituted by or against said Party.

13. **Confidential Information.** Each party may disclose confidential and/or proprietary information or trade secrets to the other party. Receiving party will hold in confidence disclosing party's information, including the terms of this Agreement, using the same degree of care that it uses for its own information of a similar nature, but not less than reasonable care, to prevent the unauthorized use, dissemination or publication of the information to anyone other than its parent company, affiliates, employees or agents and those acting on its behalf, except for information that (i) is now or hereafter comes to be in the public domain through no breach of this Agreement by receiving party; (ii) is now or hereafter comes to be in receiving party's lawful possession without restriction as to use or disclosure; (iii) is developed independently by receiving party evidenced by documentation; (iv) is disclosed with prior written consent of disclosing party; or (v) is required to be disclosed by court order or by administrative or governmental agency, provided that receiving party gives disclosing party reasonable written notice of such required disclosure to enable disclosing party to contest such order or requirement.

14. **Dispute Resolution; Choice of Law; Forum Selection.** This Agreement, all matters arising out of or relating hereto, and all aspects of the Parties' current or future transportation transactions or relationships shall, except to the extent preempted by applicable Federal law, be governed by Missouri law without regard to Missouri's conflicts of law provisions, and for value received, TSP irrevocably consents and agrees to submit any and all such matters, claims and disputes to the exclusive jurisdiction of the Circuit Court of Jasper County, Missouri, and waives any jurisdictional or venue objections to said court (including but not limited to objections related to personal jurisdiction or forum non conveniens) and any removal or transfer rights therefrom. If either Party commences an action against the other Party arising out of or in connection with this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party all reasonable attorneys' fees and costs associated with said action.

15. **Force Majeure.** Neither Party hereto shall be liable to the other for failure or delay in the performance of a required obligation if and to the extent such failure or delay is caused by acts of God, natural disasters, strikes, acts of terrorism, war (declared or undeclared), riot or other civil disturbances, compliance with governmental laws or orders, delay or performance failure of third parties (including suppliers), events that are unforeseeable or unavoidable and beyond remedy if foreseen or other events which are beyond the reasonable control of such Party and render the full or partial performance of this Agreement impossible or impracticable, provided that such Party gives prompt written notice of such condition and resumes its performance as soon as reasonably possible.

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16. **Negotiated Terms.** The language, terms, conditions, and provisions of this Agreement are the result of arm's-length negotiations between the Parties and this Agreement shall not be construed in favor of or against any Party merely because of draftsmanship. Each Party has had the opportunity to seek the advice of legal counsel, and each represents that they are voluntarily signing this Agreement without any duress or undue influence. The Parties acknowledge that they have read this Agreement and are fully aware of its legal effect.

17. **Notices.** All notices shall be in writing and shall be sent by U.S. Mail, return receipt requested, or by a nationally recognized overnight courier to the addresses provided herein, or as may be provided hereafter by the Parties.

18. **Relationship of the Parties.** Nothing in this Agreement or otherwise shall be deemed to establish or otherwise create an agency, partnership, joint venture, principal and agent, or employer and employee relationship between the Parties. Each Party (including its respective agents, employees, contractors, or subcontractors) is and shall remain at all times hereto an independent contractor in relation to the other Party and shall not be deemed an agent of the other Party for any purpose whatsoever, and neither Party nor its respective agents, employees, contractors, or subcontractors) shall have any right or authority to assume or create any obligation of any kind, whether express or implied, on behalf of the other Party.

19. **Severability.** In the event that any of the terms, conditions or provisions of this Agreement are held to be illegal, unenforceable or invalid by any court of competent jurisdiction, the remaining terms, conditions or provisions hereof shall remain in full force and effect. Any unenforceable provisions shall be replaced, if possible, by a mutually acceptable provision which, being valid and enforceable, most nearly approximates the intent and economic effect of the stricken provision.

20. **Entire Agreement.** This Agreement, together with any exhibits attached hereto, which are incorporated herein by this reference, constitutes the entire agreement between the Parties and supersedes all prior oral or written negotiations and agreements between the Parties with respect to the subject matter hereof. No modification, variation, extension or amendment of this Agreement shall be effective unless made in writing and signed by an authorized representative of each Party. Neither Party shall assign any of its rights or obligations, in whole or in part, under this Agreement, without the prior written consent of the other Party. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns. The failure or delay of either Party to enforce at any time any provision of this Agreement shall not constitute a waiver of such Party's right thereafter to enforce each and every provision of this Agreement. This Agreement may be executed in any number of counterparts or by the exchange of electronic signatures, each of which shall be deemed an original, but all of which together shall constitute one and the same original document.

**IN WITNESS WHEREOF,** the authorized representatives of the Parties hereto have executed this Agreement made effective as of the earlier of the first shipment accepted by TSP hereunder or the date of the last signatory below.

<b>PARTY(IES)</b>	<b>"TSP"</b>	<b>"CFIL"</b>
Registered Business Name		TForce LSM, LLC d/b/a CFI Logistics
Principal Business Address		4701 East 32nd Street Joplin, MO 64804
Printed Name   Title		
Signature   Date		