

PART II
Surface Transportation Agreement -
Broker/Motor Carrier

1. Definitions

In this Agreement save where the context otherwise requires, the following words and expressions shall have the meanings hereby assigned to them.

"*Motor Carrier*" means the Party identified in Box 3 of Part I that may be the owner, operator, contactor, agent, and/or employee of any of them that is approved by Broker to transport and deliver Freight for and on behalf of a Shipper.

"*Shipper*" means the beneficial owner of the Freight subject to this Agreement that may be either the consignor or the consignee.

"*Freight*" means Shipper's cargo transported in Equipment provided by Motor Carrier.

"*Broker*" means the Party identified in Box 2 of Part I that is an agent authorized by its Shipper-customers to arrange for transportation of their Freight and, if Crowley Logistics, Inc. ("CLI") is so identified, "*Broker*" shall, in the context of Clause 11, include CLI's parent company and each of its parent company's direct and indirect subsidiaries, affiliated or related corporations or entities thereof, and their insurance underwriters including but not limited to Beacon Insurance Company, Ltd. and its reinsurers.

"*Equipment*" means any and all vehicles, tractors, trailers, containers, chassis, bogies, flatbeds, tanks, refrigerator vans or containers either owned, leased, interchanged or otherwise under the custody and control of the Motor Carrier (including, but not limited to any containers, chassis or trailers owned or leased by CLI or its affiliates but interchanged to Motor Carrier) which, from time to time, may be operated or hauled by Motor Carrier under this Agreement.

"*Roadworthy*" means the vehicle or tractor meets or exceeds then current DOT safety requirements, (including but not limited to FHWA requirements) and is reasonably fit for its intended use.

"*Evergreen*" means that this Agreement shall be automatically extended by successive contract periods from the first termination date if neither party gives the other notice of cancellation in accordance with Clause 10.

2. Scope of Service, Equipment and Personnel of Motor Carrier

2.1 Motor Carrier warrants and represents it is a motor carrier registered with under 49 U.S.C. §13102(12) and is duly registered with the Federal Motor Carrier Safety Administration ("FMCSA") pursuant to 49 U.S.C. §13902 and §13905 with no less than a Satisfactory - Motor Carrier Safety Rating. Motor Carrier shall keep in full force and effect at all times, all of the necessary federal and state permits, licenses, and operating authorities to enable it to lawfully serve Broker and its Shipper-customer as a motor carrier pursuant to this Agreement. The scope of the service contemplated by the parties is as follows:

(i) **Service** - Motor Carrier agrees to provide lawful and responsible transportation service to Broker and its Shipper-customers in intrastate, interstate and/or foreign commerce at such times and places as Broker may from time-to-time direct and to transport and deliver Freight loads properly and in like good order and condition in accordance with the pickup and delivery schedules established by Broker and the terms and conditions contained in this Agreement. Motor Carrier represents and warrants that it is fully qualified and adequately equipped to perform the motor carrier services it is obligated to provide hereunder and that all transportation shall be performed in a good and workmanlike manner in accordance with standard industry practices.

(ii) **Vehicles** - Motor Carrier shall, at its sole cost and expense, operate, maintain and provide Broker such Equipment agreed from time to time suitable for Broker's intended use and in proper operating condition for the transportation of Broker's traffic under this Agreement. Motor Carrier warrants that such Equipment meets or exceeds DOT standards as set forth in C.F.R. Part 393 and is Roadworthy and otherwise reasonably fit for its intended use, i.e. safe,

clean, well maintained and in compliance with all applicable Federal and State Regulations.

(iii) **Personnel** - Motor Carrier shall provide Broker only CDL licensed, DOT qualified drivers with the proper endorsements that meet the standard set by the FMCSA in C.F.R. Part 391. Motor Carrier shall also provide, supervise, and control competent, skilled and properly licensed drivers, dispatchers, and other personnel necessary to perform its services hereunder, and furnish all Equipment and supplies necessary to properly operate the Equipment so furnished.

3. Rates, Accessorial Charges and Payment Terms

3.1 Rates and Charges Motor Carrier shall be compensated for the transportation services it actually provides hereunder based on previously agreed rates and accessorial charges as evidenced by a signed written Rate Confirmation in the form set forth as ANNEX "A" or as otherwise confirmed in writing by either facsimile or e-mail transmission properly acknowledged by representatives of each party. If rates and charges for a load have not been previously agreed at the time of pick-up or no evidence of previously agreed rates and charges exist, rates and charges shall be pursuant to Broker's "Authorization Number," which Broker and Motor Carrier agree shall be conclusive proof of the rates and charges applicable to such load. Where rates are dependent upon mileage, the applicable mileage guide shall be as specified in Part I, Box 4.1 hereto or set forth in an applicable Rate Confirmation or other written acknowledgement between the Parties. Motor Carrier hereby waives, all service conditions or other accessorial charges and any specific service or ground rules shall not apply unless specifically incorporated by reference in Box 4.4 of Part I.

3.2 Payment No later than ninety (90) days following completion of each shipment, Motor Carrier shall provide Broker (as agent for its Shipper-customer) an invoice including the authorization number provided by Broker at time of dispatch for the amount of any compensation due hereunder and any additional charges permitted together with proof of delivery. Broker shall, in turn, timely invoice its Shipper-customer for Motor Carrier's services and Broker's commission. To the extent Broker has not advanced Motor Carrier's charges, Broker shall receive unpaid freight charges in trust and forward such to Motor Carrier upon receipt. If Broker or its Shipper-customer does not pay the invoiced amounts, Motor Carrier must commence civil action or final and binding arbitration proceedings to recover such invoiced amounts within eighteen (18) months of delivery or tender of delivery of the loads involved. If Motor Carrier alleges undercharges, or Broker alleges overcharges, duplicate payment, or overcollection, notice of such claims or unidentified payments must be given within 180 days of receipt of the invoice and a civil action or arbitration proceeding must be filed within eighteen (18) months of delivery or tender of delivery of the loads involved. The processing, investigation, and disposition of overcharge, unidentified payment, duplicate payment, or overcollection claims shall be governed by present federal regulations codified at 49 C.F.R. Part 378; provided, that Motor Carrier shall have no lien and hereby waives its right to any lien upon any shipment or portion thereof covered by this Agreement and Broker shall have the right to set-off or withhold payments on the portion of any invoice that is the subject of a dispute.

4. Requirements of Broker

Broker is licensed by the FMCSA as a property broker as identified in Box 2 of Part I and is duly authorized as its Shipper-customer's agent to arrange for transportation of Freight by entering into, tendering loads under, and receiving and transmitting Freight payments in accordance with, this Agreement.

5. Service Standards

5.1 On Time Performance - Motor Carrier shall maintain an on-time delivery measure of no less than 98% on all deliveries made by Motor Carrier. Upon request of Broker, Motor Carrier shall submit on-time performance reports to Broker monthly in the format required by Broker.

5.2 Load/Equipment Security - Motor Carrier shall not drop Equipment or Freight other than at the designated business facilities of consignee or at a location designated by Broker. Motor Carrier shall indemnify, defend and hold Broker harmless from and against any and all liabilities, including but not limited to suits, demands, causes of action, damages adjudged due or claims reasonably settled, penalties, costs and expenses (including reasonable attorneys' fees) arising from or in connection with breach of this sub-clause 5.2.

5.3 Driver Communication - All drivers shall have working cell phones or pagers. Motor Carrier is responsible to notify Broker of any delays that will cause the driver to be late for an appointment. Failure to notify Broker prior to a stated appointment time shall result in a \$25.00 penalty to Motor Carrier.

5.4 Refrigerated Loads - Motor Carrier's drivers shall ensure paperwork received from Broker or its Shipper-customer specifies a set temperature requirement and that the Genset temperature gauge on the Equipment reflects the temperature noted on the Broker's or its Shipper-customer's paperwork. Motor Carrier's driver shall not depart from Shipper or consignor's facility until any discrepancies are reconciled with respect to this requirement.

5.5 Hazardous Material (HAZMAT) Loads - Motor Carrier certifies that its employees, including drivers, have been trained and instructed in the proper method of transporting Hazardous Materials. Motor Carrier shall ensure that all drivers dispatched on Hazmat loads have proper endorsements, insurance coverage and training to transport such loads in accordance with 49 C.F.R. 172.704. Drivers shall ensure that all Hazmat loads are properly placarded before hooking tractor to Equipment load.

5.6 Substituted Services - In its performance of the services hereunder, Motor Carrier agrees that it shall not subcontract to other motor carriers or brokers without the advanced prior written consent of Broker. Broker shall pay all charges resulting from such transportation but will not pay for any non-approved subcontracted service.

6. Motor Carrier Authority and Compliance with Laws and Regulations

6.1 Motor Carrier, in performing its obligations under this Agreement, shall at all times comply fully with all applicable federal, state, and municipal laws, ordinances, orders and permits relating in any respect to the operation of its business, and with the rules and regulations of all regulatory bodies having jurisdiction over Motor Carrier, and over its motor vehicle(s) and Equipment, its employees, and the transportation services provided hereunder. Motor Carrier further warrants that motor carrier Equipment used by it in its performance hereunder shall at all times conform to the requirements of this Agreement and to all laws, ordinances, rules and regulations applicable to such vehicles and/or Equipment. Motor Carrier shall comply with all applicable laws and regulations of government authorities, including, among others, Executive Order 11246, as amended; 38 USC 2012 of the Vietnam Era Veterans Readjustment Assistance Act of 1974; Section 503 of the Rehabilitation Act of 1973, as amended; regulations at 41 CFR 60-1 through 60-61, 60-250, and 60-741; the Civil Rights Act of 1964; the "Americans with Disabilities Act" at Chapter 26, 42 USCA 12101 through 12213; the Occupational Safety and Health Act of 1970; and all pertinent State and Federal occupational safety and health laws. Hazard communication information such as complete Material Safety Data Sheets (MSDS) shall be supplied to Broker for all hazardous material. Motor Carrier further agrees to indemnify, defend and hold harmless Broker for any loss, damage, fine, penalty or any expense whatsoever as a result of Motor Carrier's failure to comply with all applicable laws and regulations.

6.2 Motor Carrier shall cause its personnel to maintain the highest standards of professionalism in the performance of services provided hereunder. Motor Carrier shall conduct pre-employment drug tests as well as random drug tests and post accident testing for all temporary or permanent drivers in accordance with DOT regulations. Broker recommends that Motor Carrier conduct

criminal background checks on all applicants. Broker reserves the right to audit Motor Carrier for compliance with Federal Motor Carrier Safety regulations ("FMCSR") and its driver hiring practices. In any event, neither Motor Carrier nor any of its personnel shall take any action that adversely affects the public image, goodwill, or reputation of Broker. When on Broker's or its Shipper-customer's premises, Motor Carrier shall comply with the safety practices and procedures established for those premises.

6.3 Motor Carrier acknowledges that the services to be performed under this Agreement include the transportation of Hazardous Materials, as defined in the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq., as amended, and DOT regulations made thereunder. Motor Carrier represents and warrants that it is fully qualified and authorized to transport Hazardous Materials in the United States. Motor Carrier certifies that it is familiar with U.S. laws and regulations applicable to transportation of Hazardous Materials and that it will comply with all such laws and regulations.

7. Independent Contractor

Motor Carrier agrees that no authority has been conferred upon Motor Carrier by Broker to hire any persons on behalf of Broker or its Shipper-customer, that each person employed or used by Motor Carrier in transporting loads hereunder shall be paid by Motor Carrier and shall be the sole employee, servant, or agent of Motor Carrier, and that no such person shall be considered to be in the employ of Broker. It is understood that Motor Carrier shall have the exclusive right to select, engage, and discharge its employees and otherwise to direct and control their services. It is further understood that for all purposes of this Agreement, Motor Carrier shall be an Independent Contractor, shall have exclusive control and direction of the persons operating its Equipment or otherwise engaged in performing the transportation services provided for hereunder, and neither Broker, nor any of its employees shall be deemed to be employees or agents of Motor Carrier.

8. Cost and Expenses of Operations

Motor Carrier shall bear all the cost, expense, and liability for providing transportation under this Agreement, including, but not limited to, all of the cost and expenses required for the operation, maintenance, and repair of Equipment, all labor cost and expenses, and all cost and expenses for the procuring and maintaining of all insurance, licenses and permits, all fees, fines, licenses, bonds or taxes as may be required for the performance of its transportation service hereunder. Except as provided herein, Motor Carrier shall not be responsible for any expenses incurred by Motor Carrier in performing services for Broker.

9. Duration of the Agreement

This Agreement shall commence as of the date set forth in Box 1 of Part I and remain in full force and effect through the date set forth in Box 5 of Part I, the "Initial Contract Period". This Agreement shall continue Evergreen after the date set forth in Box 5 of Part I unless terminated by either Party in accordance with Clause 10.

10. Termination

This Agreement may be terminated upon notice by the terminating party to the other party, which notice shall specify the reason for the termination and the effective date of such termination, upon or after the occurrence of the following events:

- (i) Motor Carrier's failure to meet the Service Standards set forth in this Agreement; or
- (ii) Either party provides the other with written notification of termination for any reason effective not less than thirty (30) days after receipt thereof;

Termination of this Agreement shall not terminate or otherwise affect any accrued obligations of one party to the other party under this Agreement, which have arisen prior to such termination. In the event of a termination under this paragraph, Motor Carrier shall be paid only for services rendered through the date of termination.

11. Responsibilities

11.1 Force Majeure – In the event performance by one party is affected by any cause beyond the reasonable control of such party, including without limitation, fire, labor strife, riot, war, acts of the public enemy, acts of God, acts of terrorism, local or national disruptions to transportation networks or operations, governmental regulations, or governmental request or requisition for national defense, and provided that the applicable cause is not attributable to the acts or omissions of such party, and such party is taking reasonable measures to remove or mitigate the effects of the applicable cause, then the running of all periods of time mentioned herein and the performance of all obligations required herein shall be suspended during the continuance of such interruption, and such party shall promptly notify the other party of such interruption. Such period of suspension shall not in any way invalidate this Agreement, but on resumption of operations, any affected performance by such party shall be resumed. Motor Carrier shall be permitted an extension period equal to the period of suspension to complete shipments adversely affected by the suspension. No liability shall be incurred by either party for damages resulting from such suspensions.

11.2 Liability to Broker and Third Parties - Motor Carrier shall be liable to Broker and all third parties (including but not limited to Broker's Shipper-customer) for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect, (including but not limited to loss of profit or use arising from or in connection with detention of or delay to Freight or the injury to or death of any person or damage to any property) arising from or in connection with the negligence, gross negligence or willful misconduct of Motor Carrier, its employees, agents, subcontractors and all others acting under Motor Carrier's direction or control in the performance of this Agreement.

11.3 Freight - Without limiting the generality of the foregoing sub-clause 11.2, Liability to Broker and Third Parties, Motor Carrier shall be liable to Broker for all Freight damage or loss, including but not limited to shortage, of containerized or trailerized cargo while in the care, custody and control of Motor Carrier arising from or in connection with the negligence, gross negligence or willful misconduct of Motor Carrier, its employees, agents, subcontractors and all others acting under Motor Carrier's direction or control in the performance of this Agreement. Motor Carrier shall, immediately upon discovering evidence of Freight loss, damage or shortage, give notice of such to Broker. Motor Carrier shall provide to Broker a detailed written incident report within 24 hours of discovering any Freight loss, damage or shortage. Motor Carrier's liability for Freight loss and damage shall be as described in the provisions of the Carmack Amendment, 49 U.S.C. §14706. Claims will be filed and resolved in accordance with federal regulations codified at 49 C.F.R. Part 370.

11.4 Indemnity – Motor Carrier shall indemnify, defend and hold Broker harmless from and against any and all liabilities, including but not limited to suits, demands, causes of action, damages adjudged due or claims reasonably settled, penalties, costs and expenses (including reasonable attorneys' fees) arising from or in connection with:

- (i) The negligence, gross negligence or willful misconduct or breach of this Agreement or violation of any applicable law or regulation by Motor Carrier or its employees, agents, subcontractors and all others acting under Motor Carrier's direction or control in the course of performing Services under this Agreement, and
- (ii) Claims by any of Motor Carrier's employees for injuries or damages under the workmen's compensation or similar acts, and
- (iii) Claims alleged against Broker and/or Motor Carrier that any services provided by Motor Carrier under this Agreement caused the injury to or death of any person or damage to any property, including but not limited to all third party claims arising from the injury to or death of any person or damage to any property, and
- (iv) Claims by all third parties (including but not limited to Broker's Shipper-customer) against Broker and/or Motor Carrier for those liabilities Motor Carrier specifically assumes in sub-clauses 5.2, 11.2 and 11.3 hereof.
- (v) Claims alleged against Broker and/or Motor Carrier in excess of or otherwise not covered by Motor Carrier's Liability

Insurance to the extent that any damages are caused by Motor Carrier's negligence.

11.5 Consequential Loss - In no event shall any claim for loss of profits or incidental, special, consequential, or liquidated damages of any nature whatsoever be made by Motor Carrier against Broker in any way arising from or in connection with this Agreement.

12. Insurance

Motor Carrier, at its sole cost and expense, including the cost of all deductibles, shall procure and maintain in force during the term of this Agreement the following insurance coverage:

(i) Liability insurance, including auto liability, personal injury and property damage, with limits of liability of at least \$1,000,000 per occurrence and as required by the Federal Motor Carrier Safety Administration (Forms BMC-91X and BMC-34 on file); and at least no less than \$5,000,000 per occurrence for any liability associated with the move of Hazardous Materials as addressed in Clause 5.5 above and more fully set forth in 49CFR 171.8, 172.101 and 173.403.

(ii) Broad Form Cargo Legal Liability insurance in an amount of at least that which is identified in Box 7 of Part I (any one occurrence) or, if an amount is not identified in Box 7, in an amount of at least \$200,000.00 any one occurrence in addition to cargo insurance required by applicable State or Federal Laws; and

(iii) Commercial General Liability (CGL) insurance, on a per occurrence basis, endorsed to cover premises operations, products/completed operations, personal injury and contractual liability, including any and all liability assumed under this Agreement; with limits of liability of at least \$1,000,000 any one occurrence; and

(iv) Workers' Compensation insurance, covering applicable statutory benefits in the State where work is being performed; Employer's Liability insurance in an amount of at least \$1,000,000.

All policies shall be endorsed to waive all rights of subrogation against Broker. Broker shall be an additional assured with respect to the Liability Policies and shall receive a minimum of thirty (30) days advance notice of any cancellation of such coverages. Should Motor Carrier fail to procure or maintain any of the required insurance coverages, or by any act or omission, vitiate or invalidate any of the aforementioned coverages, then Motor Carrier shall indemnify Broker to the extent Broker suffers or incurs loss, damage, liability or expense in consequence of such failure, act or omission.

13. General Provisions

13.1 Headings - Captions used in this Agreement are for convenience of reference only and shall have no legal effect or meaning in the construction or enforcement of this Agreement.

13.2 Drafting - Whenever used in this Agreement, the singular shall include the plural and the plural shall include the singular, and the neutral gender shall include the male and female as well as a trust, firm, company, or corporation, all as the context and meaning may require.

13.3 Severability - If, in any legal proceeding, it is determined that any provision of this Agreement is unenforceable under applicable law, then the unenforceable provision shall automatically be amended to conform to that which is enforceable under the law. In any event, the validity or enforceability of any provision shall not affect any other provision of this Agreement, and the Agreement shall be construed and enforced as if such provision had not been included.

13.4 Third Party Beneficiaries - Except as specifically provided for elsewhere in this Agreement, this Agreement shall not be construed to confer any benefit on any third party not a party to it nor shall the Agreement provide any rights to such third party to enforce its provisions.

13.5 Waiver - No benefit or right accruing to either party under this Agreement shall be waived unless the waiver is reduced to writing and signed by both Broker and Motor Carrier. The failure of either party to exercise any of its rights under this Agreement, including but not limited to either party's failure to comply with any time limit set out in this Agreement, shall in no way constitute a

waiver of those rights, nor shall such failure excuse the other party from any of its obligations under this Agreement.

13.6 Warranty of Authority - Broker and Motor Carrier each warrant and represent that the person whose signature appears in Part I of this Agreement is its representative and is duly authorized to execute this Agreement as a binding commitment of such Party.

13.7 Applicability of Bills of Lading and Governing Rules - All loads moved under this Agreement shall be subject to the terms and conditions of the Standard Truckload Bill of Lading ("STBOL") containing terms and conditions no less favorable to Broker's customer-Shipper or beneficial owner of the cargo than those contained in the form of STBOL published as of the time of shipment and naming Motor Carrier as the transporting carrier. Motor Carrier's drivers shall be instructed to sign their company's name and record the seal number on every Bill of Lading evidencing a shipment under this Agreement. Motor Carrier's drivers shall execute non-conforming bills of lading as receipt for goods only. Under no circumstances shall Motor Carrier prepare a freight document, which lists Broker as "Carrier" or "Shipper". Documents for each of Broker's loads shall name Broker as "Broker" and Motor Carrier as "Carrier". If there is a wrongly worded document, the Parties will treat it as if it showed Broker as "Broker" and Motor Carrier as "Carrier". If there is a conflict between this Agreement and any transportation document related to any load, including but not limited to Bill of Lading, Rate Confirmation or Motor Carrier's Rules Circular, this Agreement shall govern. Motor Carrier agrees to indemnify and hold Broker harmless from any direct, indirect and consequential loss, damage, fine, expense, including reasonable attorneys' fees, arising from any errors in the bill of lading, including by way of illustration without limitation, the showing of Broker as "Carrier" or "Shipper".

13.8 Counterparts - This Agreement may be executed and delivered by each party in separate counterparts (including execution and delivery by facsimile transmission), each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same agreement, notwithstanding that all the parties have not signed the same counterpart.

13.9 Integration - To the extent not in direct conflict with the terms and conditions of this Agreement, the terms and conditions of the STBOL are incorporated herein by this reference. This Agreement shall be read and construed in harmony with the STBOL and, in the event of any direct conflict, this Agreement shall control. This Agreement, the STBOL and any annexes,

schedules or other documents attached to each constitute the entire agreement between the parties hereto and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed, or implied, with respect to the subject matter pertaining thereto.

14. Governing Law and Arbitration

14.1 The parties desire that the provisions of this Agreement will have precedence over any federal or state provisions governing or dealing with the specific provisions of this Agreement. The parties agree that pursuant to 49 U.S.C. §14101(b)(1) they expressly waive any and all rights and remedies under the Interstate Commerce Commission Termination Act and Interstate Commerce Act as amended, and regulations promulgated thereunder, including Part B of Subtitle IV Interstate Transportation, 49 U.S.C. § 13101, *et seq.* (the "Acts") that are inconsistent with the provisions of this Agreement. No Party shall challenge any provision of this Agreement on the ground that any such provision or provisions violates the waived rights and remedies under the Acts. To the extent no conflicts exist with this Agreement or federal law, this Agreement will be governed by and construed in accordance with the laws of the State of Florida.

14.2 The sole remedy for the resolution of disputes between the parties under this agreement will be the arbitration before one arbitrator, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The decision of the sole Arbitrator shall be final, and for the purpose of enforcing any award this agreement may be made a rule of any court of competent jurisdiction over this Agreement.

15. Notices

15.1 Any notice required or permitted to be given under this Agreement, unless otherwise indicated, shall be deemed sufficiently given if it is delivered by hand or sent by prepaid mail, registered or certified, return receipt requested, by a nationally recognized overnight courier, or facsimile, e-mail (providing for electronic confirmation) if sent to the address, fax number or e-mail address and to the attention of the individual noted in the signatory provision of Part I.