



SHIPPER/BROKER TRANSPORTATION AGREEMENT

THIS AGREEMENT, "Agreement", made and intended to be effective this _____ day of _____ by and between Cornerstone Systems, Inc., having offices at 3250 Players Club Parkway, Memphis, TN 38125-8844 (BROKER), and _____ having offices at _____ (SHIPPER), collectively, the PARTIES".

RECITALS

A. WHEREAS BROKER is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (FMCSA) in Docket Number MC-321007 or by appropriate State agencies, and as a licensed broker, arranges for freight transportation by utilizing railroads and actual motor carriers. A copy of BROKER's authority is attached as Appendix A and a copy of BROKER's Surety Bond or trust fund agreement is attached as Appendix B; and

B. WHEREAS SHIPPER, to satisfy some of its transportation needs, desires to utilize the services of BROKER to arrange for transportation of SHIPPER's freight.

NOW THEREFORE, intending to be legally bound, BROKER and SHIPPER agree as follows:

AGREEMENT

1. **TERM.** Subject to paragraph 11, the term of this Agreement shall be one (1) year, commencing on the date first mentioned above, and shall automatically renew for successive one year periods; provided, however, that either Party may terminate this Agreement on 30 days written notice to the other Party, with or without cause, or as otherwise provided in this Agreement.

2. **SERVICE.** BROKER agrees to arrange for transportation of SHIPPER's freight pursuant to the terms and conditions of this Agreement and in compliance in all material respects with all federal, state and local laws and regulations relating to the brokerage of the freight covered by this Agreement. BROKER's responsibility under this Agreement shall be limited to arranging for, but not actually performing, transportation of SHIPPER's freight. The PARTIES may, upon written mutual agreement, include additional service terms to be attached as Appendix D.

3. **VOLUME.**

- A. SHIPPER agrees to tender a minimum of three (3) shipments per year to BROKER, and BROKER agrees to arrange for the transportation of said shipments, as well as any other shipments offered by SHIPPER. Shipper is not restricted from tendering freight to other brokers, or directly to motor carriers. BROKER is not restricted from arranging transportation for other parties.
- B. SHIPPER shall be responsible to BROKER for timely and accurate delivery instructions and description of the cargo, including any special handling requirements, for any shipment.

- C. SHIPPER shall solely be responsible for packaging, loading, unloading, blocking and bracing of the shipment for safe transportation. SHIPPER shall be responsible for the proper securing and application of a high security cable or bolt type seal to the container prior to transportation. The type of seal utilized in securing the container must be agreed upon by the parties.

4. **FREIGHT CARRIAGE.** BROKER warrants that it has entered into, or will enter into, bilateral contracts with each railroad and motor carrier it utilizes in the performance of this Agreement. BROKER further warrants that those contracts comply with all applicable federal and state regulations and shall include the following provisions:

- A. Carrier shall agree to defend, indemnify and hold BROKER and SHIPPER harmless from all damages, claims or losses arising out of its performance of the Agreement, including cargo loss and damage, theft, delay, damage to property, and personal injury or death.
- B. Carrier shall agree that its liability for cargo loss or damage shall be no less than that of a Common Carrier as provided for in 49 USC 14706 (the Carmack Amendment). Exclusions in Carrier's insurance coverage shall not exonerate Carrier from this liability. For shipments outside of the United States the terms in Foreign Shipments Appendix D of this Agreement shall apply.
- C. Carrier shall agree to maintain at all times during the term of the contract, insurance coverage with limits not less than the following:

General Liability/Property Damage -	\$1,000,000
Auto Liability -	\$1,000,000
Cargo Liability -	\$100,000
Worker's Compensation -	As required by law

BROKER shall verify that each carrier it utilizes in the performance of this Agreement has insurance coverage as defined above.

- D. Carrier shall agree that the provisions contained in 49 CFR 370.1 et seq. shall govern the processing of claims for loss, damage, injury or delay to property and the processing of salvage.
- E. Carrier shall authorize BROKER to invoice SHIPPER for services provided by the Carrier. Carrier shall further agree that BROKER is the sole party responsible for payment of its invoices and that, under no circumstance, will Carrier seek payment from the shipper, consignee or BROKER's customer.
- F. Carrier shall agree that, at no time during the term of its contract with BROKER, shall it have an "Unsatisfactory" safety rating as determined by the Federal Motor Carrier Safety Administration (FMCSA). If Carrier receives an Unsatisfactory safety rating, it shall immediately notify BROKER. BROKER shall not knowingly utilize any carrier with an unsatisfactory safety rating in the performance of this Agreement.
- G. Carrier shall agree that the terms and conditions of its contract with BROKER shall apply on all shipments it handles for BROKER. Any terms in a tariff that are referenced in the carrier contract which are inconsistent with the contract shall be subordinate to the terms of the contract.
- H. Carrier shall expressly waive all rights and remedies under Title 49 U.S.C., Subtitle IV, Part B to the extent they conflict with the contract.
- I. BROKER further warrants it will require proof of insurance and operating authority from each Carrier and, should BROKER utilize the services of any Carrier or other BROKER on SHIPPER's behalf, which Carrier and/or BROKER does not have proof of insurance and/or operating authority, BROKER agrees to indemnify and hold harmless SHIPPER from all legitimate claims not paid by Carrier, including but not limited to cargo loss and damage claims.

5. **RECEIPTS AND BILLS OF LADING.** If requested by SHIPPER, BROKER agrees to provide SHIPPER with proof of acceptance and delivery of such loads in the form of a signed Bill of Lading or Proof of Delivery, as specified by SHIPPER. SHIPPER's insertion of BROKER's name on the bill of lading shall be for SHIPPER convenience only and shall not change BROKER's status as a property broker. The terms and conditions of any freight documentation used by BROKER or carrier selected by BROKER may not supplement, alter, or modify the terms of this Agreement.

6. **PAYMENTS.** BROKER shall invoice SHIPPER for its services in accordance with the rates, charges and provisions set forth in Appendix C. Rail rates and charges are subject to arbitrary changes at the same rate of change by the railroad when supporting documentation is provided to the SHIPPER. All other rate and accessorial charge modifications must be mutually agreed upon and confirmed in writing by the Parties. If rates are negotiated between the PARTIES and not otherwise confirmed in writing, such rates shall be considered "written," and shall be binding, upon BROKER's invoice to SHIPPER and SHIPPER's payment to BROKER. SHIPPER agrees to pay BROKER's invoice within 30 days of invoice date without deduction or setoff. BROKER shall apply payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. Payment of the freight charges to BROKER shall relieve SHIPPER, Consignee or other responsible party of any liability to the carrier for non-payment of its freight charges; and BROKER hereby covenants and agrees to indemnify SHIPPER, Consignee or other responsible party against such liability.

7. **CLAIMS.**

A. **Freight Claims:** SHIPPER must file claims for cargo loss or damage with BROKER within nine (9) months from the date of such loss, shortage or damage, which for purposes of the Agreement shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. SHIPPER must file any civil action against BROKER in a Court of Law within two (2) years from the date the carrier or BROKER provides written notice to SHIPPER that the carrier has disallowed any part of the claim in the notice. Carriers utilized by BROKER shall agree in writing with BROKER to be liable for cargo loss or damage as outlined in paragraph 4.b above. The carriers' cargo liability for any one shipment shall not exceed \$100,000 unless BROKER is notified by SHIPPER of the increased value prior to shipment pickup and with reasonable advance notice to allow BROKER and/or the carrier to procure additional insurance coverage. It is understood and agreed that the BROKER is not a Carrier and that the BROKER shall not be held liable for loss, damage or delay in the transportation of SHIPPER's property unless caused by BROKER's negligent acts or omissions in the performance of this Agreement. BROKER shall assist SHIPPER in the filing and/or processing of claims with the Carrier. If payment of claim is made by BROKER to SHIPPER, SHIPPER automatically assigns its rights and interest in the claim to BROKER so as to allow BROKER to subrogate its loss. In no event shall BROKER or BROKER's Carrier be liable to SHIPPER or anyone else for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless SHIPPER has informed BROKER in written or electronic form, prior to or when tendering a shipment or series of shipments to BROKER, of the potential nature, type and approximate value of such damages, and BROKER specifically agrees in written or electronic form to accept responsibility for such damages.

B. **All Other Claims:** The PARTIES shall notify each other within sixty (60) days of learning of any claims other than cargo loss or damage claims, and shall file any such claims with the other Party within one hundred eighty (180) days from the date of notice. Civil action, if any, shall be commenced in a Court of Law within two (2) years from the date either Party provides written notice to the other Party of such a claim.

8. **INSURANCE.** BROKER agrees to procure and maintain at its own expense, at all times during the term of this Agreement, the following insurance coverage amounts:

- | | |
|---|--------------|
| A. Comprehensive general liability insurance covering bodily injury and property damage | \$1,000,000 |
| B. Automobile Liability Insurance | \$ 1,000,000 |
| C. Contingent Cargo Insurance | \$ 100,000 |

BROKER shall submit to SHIPPER a certificate of insurance as evidence of such coverage and which names SHIPPER as a "Certificate Holder".

9. **SURETY BOND.** BROKER shall maintain a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration in the amount of \$10,000 and furnish SHIPPER with proof upon request.

10. **HAZARDOUS MATERIALS.** SHIPPER and BROKER shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800 and §173 et seq. to the extent that any shipments constitute hazardous materials. SHIPPER is obligated to inform BROKER immediately if any such shipments do constitute hazardous materials. SHIPPER shall defend, indemnify and hold BROKER harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of SHIPPER's failure to comply with applicable hazardous materials laws and regulations.

11. **DEFAULT.** Both parties will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes in good faith. However, if either party materially fails to perform its duties under this Agreement, the party claiming default may terminate this Agreement on 10 (ten) days written notice to the other Party. SHIPPER shall be responsible to pay BROKER for any services performed prior to the termination of this Agreement and for shipments not yet completed and/or not yet invoiced to SHIPPER.

12. **INDEMNIFICATION.** Subject to the insurance limits in Section 8, BROKER and SHIPPER shall defend, indemnify and hold each other harmless against any claims, actions or damages, including, but not limited to, cargo loss, damage, or delay, and payment of rates and/or accessorial charges to Carriers, arising out of their respective performances under this Agreement, provided, however, the indemnified party shall not offer settlement in any such claim without the agreement of the indemnifying party which agreement shall not be unreasonably withheld. If the indemnified party offers or agrees to a settlement for such a claim without the written agreement of the indemnifying party, the indemnifying party shall be relieved of its indemnification obligation. Neither party shall be liable to the other party for any claims, actions or damages due to the negligence of the other party. Although Section 8 only imposes insurance requirements upon BROKER, for purpose of this Section 12, those amounts also shall limit the scope of SHIPPER's indemnification obligations. The obligation to defend shall include all costs of defense as they accrue.

13. **ASSIGNMENT/MODIFICATIONS OF AGREEMENT.** Neither party may assign or transfer this Agreement, in whole or in part, without the prior written consent of the other party. No amendment or modification of the terms of this Agreement shall be binding unless in writing and signed by the PARTIES.

14. **SEVERABILITY/SURVIVABILITY.** In the event that the operation of any portion of this Agreement results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the Agreement shall continue in full force and effect. The representations and obligations of the PARTIES shall survive the termination of this Agreement for any reason.

15. **INDEPENDENT CONTRACTOR.** It is understood between BROKER and SHIPPER that BROKER is not an agent for the Carrier or SHIPPER and shall remain at all times an independent contractor. SHIPPER does not exercise or retain any control or supervision over BROKER, its operations, employees, or carriers.

16. **NONWAIVER.** Failure of either party to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of this Agreement, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

17. **NOTICES.** Unless the PARTIES notify each other in writing of a change of address, any and all notices required or permitted to be given under this Agreement shall be in writing (or fax with machine imprint on paper acknowledging successful transmission) and shall be addressed as follows:

(BROKER)
Cornerstone Systems, Inc.
Attn: Jonathan Ward
Address: 3250 Players Club Parkway

(SHIPPER)

Attn: _____
Address: _____

Memphis, TN 38125-8844

Phone: 901-842-0660
Fax: 901-328-6320

Phone: _____
Fax: _____

18. **FORCE MAJEURE.** Neither Party shall be liable to the other for failure to perform any of its obligations under this Agreement during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of the SHIPPER or BROKER, provided that the Party so prevented uses its best efforts to perform under this Agreement and provided further, that such Party provide reasonable notice to the other Party of such inability to perform.

19. **CHOICE OF LAW AND VENUE.** All questions concerning the construction, interpretation, validity and enforceability of this Agreement, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply.

20. **ARBITRATION.** In the event of a dispute arising out of this Agreement, the Party's sole recourse shall be to arbitration within one year from the date of the alleged loss. Proceedings shall be conducted under the rules of the Transportation Arbitration and Mediation PLLC (TAM), or the Transportation ADR Council, Inc., (ADR) at the discretion of the party filing the complaint. Upon agreement of the PARTIES, arbitration proceedings may be conducted outside of the administrative control of the TAM, or ADR. The decision of the arbitrators shall be binding and final and the award of the arbitrator may be entered in a court of competent jurisdiction. The prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees as well those incurred in any action for injunctive relief, or in the event further legal action is taken to enforce the award of arbitrators. The arbitration provisions of this paragraph shall not apply to enforcement of the award of arbitration.

21. **CONFIDENTIALITY.** BROKER shall not utilize SHIPPER's name or identity in any advertising or promotional communications without written confirmation of SHIPPER's consent and the PARTIES shall not publish, use or disclose the contents or existence of this Agreement except as necessary to conduct their operations pursuant to this Agreement. BROKER will require its carriers and/or other BROKERS to comply with this confidentiality clause.

22. **ENTIRE AGREEMENT:** This Agreement, including all Appendices and Addenda, constitutes the entire agreement intended by and between the PARTIES 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 hereof.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed in their respective names by their fully-authorized representatives as of the dates first above written.

BROKER

SHIPPER

Signed

Signed

Printed

Printed

Title

Title