

## **MOTOR CARRIER SERVICE AGREEMENT**

THIS AGREEMENT is made and entered into on \_\_\_\_\_, 2010, by and between \_\_\_\_\_, whose office is located at \_\_\_\_\_, hereinafter referred to as the CLIENT and Harbour Link Container Services Inc. whose office is located at 7420 Hopcott Road, Delta, BC Canada V4G 1B6, hereinafter referred to as the CARRIER.

### **RECITALS:**

- A. WHEREAS the CLIENT arranges the transportation of containerized cargo moving in international commerce and in the performance of such services requires motor carrier transportation services to, from, and within ocean ports and other points; and
- B. WHEREAS the CARRIER is authorized to operate and provide motor transportation services for the transport of international and domestic trade inter and intra-provincially in Canada under NSC Safety Certificate 201-748-350 and in the US under US-DOT# 1963528 MC# 695925 and is qualified, competent and available to provide the transportation services required by the Client;

NOW THEREFORE, the CLIENT and the CARRIER agree as follows:

### **1. APPLICATION**

In the absence of any valid agreement between the PARTIES to the contrary, or in the event this agreement is not signed, if rates have been submitted in writing to the CLIENT and the transport services have been performed by the CARRIER, all of the terms and conditions herein contained shall be deemed accepted by and binding upon the CLIENT.

### **2. SCOPE**

This agreement covers the transport of containerized goods between container terminal facilities located in Port Metro Vancouver and points designated by the CLIENT within the Greater Vancouver Lower Mainland and other regions in Western Canada and the Pacific Northwest region of the USA.

The CLIENT appoints the CARRIER as the preferred motor transport carrier and agrees to tender each and every shipment to the CARRIER on or after the date of this agreement.

### **3. TERM AND TERMINATION**

The Term of this Agreement shall be for one (1) year and shall automatically renew for successive one (1) year periods; provided, however, that either PARTY may terminate this Agreement (i) by giving prior written notice on the earlier of six (6) months from the date of this Agreement or at any time after six (6) months from the date of this Agreement by giving ninety (90) days prior written notice.

The CLIENT may additionally terminate this Agreement immediately upon written notice in the event of the following:

- a) CARRIER loses its operating authority or otherwise becomes disqualified to perform its obligations under this Agreement;

- b) CARRIER breaches any covenant, obligation, condition, or requirement imposed upon it by this Agreement, and such breach continues for a period of ten (10) days after written notice thereof from CLIENT to CARRIER;
- c) CARRIER becomes insolvent or becomes unable to pay its debts in a timely manner or makes an assignment for the benefit of creditors or if a petition in bankruptcy, reorganization or other insolvency proceeding shall be instituted by or against CARRIER and is not dismissed within thirty (30) days following the date such proceeding is commenced;
- d) CARRIER fails to comply with the performance metrics imposed upon it by CLIENT as set forth in this Agreement;
- e) CARRIER fails to procure and maintain any of the insurance coverage required by this Agreement; or
- f) CARRIER utilizes the services of any brokers or subcontracts transportation of freight tendered by CLIENT hereunder to any third party motor carrier or other transportation provider or utilizes a third party logistics provider to perform its obligations under this Agreement without prior written consent of CLIENT.

The CARRIER may terminate this Agreement immediately upon written notice if CLIENT breaches any covenant, obligation, condition, or requirement imposed upon it by this Agreement and if such breach continues for a period of fifteen (15) days after written notice thereof from CARRIER.

4. CARRIER’S OPERATING AUTHORITY AND COMPLIANCE WITH LAW.

CARRIER represents and warrants that it is duly and legally qualified in accordance with all federal, state, provincial, territorial, and local laws, statutes, regulations rules, and ordinances (collectively, “Applicable Law”) to provide, as a contract carrier, the transportation services contemplated herein.

CARRIER represents and warrants that it does not have an unsatisfactory or conditional safety rating issued by any regulatory authority with jurisdiction over CARRIER’s operations.

CARRIER agrees to comply with all Applicable Law in the performance of its services under this Agreement including those related to preservation of health, safety and the environment, and the avoidance of discrimination in accordance with applicable Law and standards of fair and equal practice.

In the event that the CARRIER receives an unsatisfactory or conditional safety rating, or otherwise becomes unauthorized to perform any services hereunder, the CARRIER shall immediately notify CLIENT of such fact and shall not carry any loads tendered to CARRIER by CLIENT until such loss of authorization is rectified.

5. PERFORMANCE OF SERVICES

CARRIER services under this Agreement are tailored to meet the needs of the CLIENT under the specified rates and conditions set forth herein. CARRIER agrees that the terms and conditions of this Agreement apply to all shipments handled by CARRIER for the CLIENT.

CARRIER shall transport all shipments provided under this Agreement without delay, and all occurrences which may cause delay shall be immediately communicated to the CLIENT by CARRIER.

6. RECEIPTS AND BILLS OF LADING

Initials:	Date:	2	Harbour Link – H&M
-----------	-------	---	--------------------

Each shipment shall be evidenced by a bill of lading or delivery receipt acceptable to the CLIENT which names the CARRIER as the transporting carrier.

Upon delivery of each shipment made hereunder, CARRIER shall obtain the signature of the CLIENT on the bill of lading or delivery receipt showing the kind of containerized cargo delivered at the destination specified by the CLIENT. Any terms, conditions and provisions of the bill of lading, manifest or other form of delivery receipt or contract shall be subject and subordinate to the terms, conditions and provisions of this Agreement. The CARRIER's failure to issue a bill of lading shall not affect its liability hereunder. CARRIER shall notify CLIENT immediately of any exception made on the bill of lading or delivery receipt. CARRIER acknowledges that it shall only follow the instructions for delivery provided by the CLIENT and shall not follow the instructions of any other PARTY.

7. CARRIER'S OPERATIONS.

CARRIER shall, at its sole cost and expense:

- a) Furnish all equipment necessary or required for the performance of its obligations hereunder (the "Equipment")
- b) Pay all expenses related, in any way, with the use and operation of the Equipment; and
- c) Maintain the Equipment in good repair, mechanical condition and appearance.

The CARRIER shall utilize only competent, able and legally licensed personnel in the performance of services hereunder. CARRIER shall have full control of such personnel. CARRIER shall be solely responsible for ensuring, and will ensure, at CARRIER's cost and expense, that such personnel are fully qualified to perform services hereunder, and that such personnel have access to all locations into which access is necessary to perform services under this Agreement. The foregoing obligation will include, as necessary, the requirement that the personnel obtain a Transportation Worker Identification Card ("TWIC") for access to ports in the United States and port access passes for ports in Canada.

The CARRIER shall ensure, where necessary, that personnel comply with the requirements of the Marine Transportation Security Clearance Program ("MTSCP") of Transport Canada.

The CARRIER shall perform the services hereunder as an independent contractor, and shall assume complete responsibility for all provincial and federal taxes, assessments, insurance (including, but not limited to, workers' compensation, employment insurance, disability, pension and social security insurance) and any other financial obligations arising out of the transportation performed for the CLIENT.

The CARRIER shall be solely responsible for compliance with all provisions of Applicable Law regarding over-dimension and over-weight loads as well as the carriage of dangerous or hazardous goods.

The CARRIER shall be solely responsible for its day to day operations including, but not limited to, setting appropriate routes to ensure that the transportation of shipments is accomplished in accordance with all Applicable Laws and to otherwise ensure shipments are not damaged in transit.

The CARRIER shall maintain appropriate security infrastructure to ensure the physical security of shipments and equipment handled under the terms of this Agreement.

8. RATES & PAYMENTS.

The CARRIER will invoice and the CLIENT will pay the rates and charges set forth in Appendix A which forms part of this agreement, plus a fuel surcharge (if applicable). The CARRIER represents and warrants that there are no other applicable rates or charges except those expressly set forth in Appendix A.

If the CLIENT agrees to use the CARRIER for specific services under rates and charges that are different to those stated on Appendix A, the rates and charges shall be included as a component of Appendix A.

Invoices shall be submitted by the CARRIER no later than 14 days after completion of each drayage activity and the CLIENT will pay all valid invoices received within 14 days of receipt.

Invoicing by the CARRIER for services rendered shall be through internet EDI, Facsimile, Canada Post or Email attachments as instructed by the CLIENT.

9. FREIGHT LOSS & DAMAGE.

The CARRIER shall have the sole and exclusive care, custody and control of containerized cargo tendered by the CLIENT for transport from the time it is delivered to the CARRIER for transportation until delivery is made to the premises designated by the CLIENT as evidenced by an appropriate receipt executed by the receiver. The CARRIER shall notify the CLIENT immediately in the event any such containerized cargo is lost (including stolen), damaged or destroyed, or in the event the CARRIER becomes aware that applicable delivery schedules will not be met.

The CARRIER assumes the liability of a common carrier for loss, delay, damage to or destruction of any and all cargo or property tendered to the CARRIER pursuant to this Agreement while under CARRIER's care, custody or control.

The CARRIER shall be liable to the CLIENT for the full actual value of any loss or damage to shipments, provided such loss or damage occurred while in the CARRIER'S care, custody and control and such loss or damage is governed by the terms and conditions of carriage set forth in the CARRIER'S Straight Bill of Lading, which by reference is incorporated as part of this agreement. The measure of loss or damage shall be the actual value less reasonable salvage, if any.

The CARRIER shall not be liable for loss or damage unless notice of claim is filed by the CLIENT setting out the particulars of the shipment and the estimated amount claimed in respect of such loss, damage within thirty days after the delivery of the shipment to the CLIENT, or, in the case of failure to make delivery, within six months from the date of the shipment and a final statement of the claim is filed within (6) months from the date of the shipment and legal proceedings to enforce a claim for such loss, destruction or damage are instituted within one (1) year from the time the delivery of the shipment was made to the CLIENT.

10. INDEMNIFICATION

The CARRIER agrees to indemnify, save harmless and defend the CLIENT from and against any and all claims for loss, damage or injury from the tangible property of third parties, or for or on account of any injuries received or sustained by any person, including but not limited to, employees of the CARRIER, and employees and agents of the CLIENT, caused by or growing out of, any intentional or negligent act or omission of the CARRIER or its employees in performing the services provided for under this agreement. This indemnification shall not be applicable and of no force or effect if the damage or injury to any person is caused solely by the intentional or negligent act or omission of the CLIENT'S employees, agents, or third parties with whom the

Initials:	Date:	4	Harbour Link – H&M
-----------	-------	---	--------------------

CARRIER comes into contact.

11. INSURANCE.

The CARRIER shall procure and maintain in good standing, at its sole cost and expense, the following insurance coverage:

- (a) Motor Vehicle Liability and property damage insurance with a reputable and financially responsible insurance company insuring CARRIER in an amount not less than \$1,000,000.00 (Canadian Dollars) combined single limit
- (b) Commercial General Liability Insurance covering the transportation of shipments and other operations under this Agreement in an amount not less than \$1,000,000.00 (Canadian Dollars) combined single limit.
- (c) All Risk Broad Form Motor Truck Cargo Legal Liability ("Cargo") insurance in an amount not less than \$100,000.00 (Canadian Dollars) per occurrence.
- (d) All insurance required pursuant to the Uniform Intermodal Interchange and Facilities Access Agreement ("UIIA"), and any Addendum thereto which is applicable to CARRIER's services.

12. FORCE MAJEURE

Except as otherwise provided, the obligation of the CARRIER to furnish and of the CLIENT to use the transportation services provided for in this agreement shall be suspended temporarily during any period in which either of the PARTIES is unable to comply with the requirements of this agreement by reason of acts of God or the public enemy, fire, flood, labor disorder, civil commotion, closing of the public highway(s), government interference or regulations, or other contingencies similar to the foregoing beyond the reasonable control of the affected PARTY. The PARTY experiencing an event of force majeure shall notify the other PARTY of the event as soon as possible, take reasonable action to eliminate the cause for the force majeure and resume normal operations as soon as possible.

13. CONFIDENTIALITY.

Neither PARTY shall disclose the terms and conditions of this Agreement to a third party without the written consent of the other PARTY except:

- a) as required by law or regulation;
- b) disclosure is made to its parent company or
- c) to facilitate the auditing of transportation charges by an authorized agent and such agent agrees to keep the terms of the Agreement confidential.

14. SUB-CONTRACT PROHIBITION.

CARRIER specifically agrees that all freight tendered to it by the CLIENT shall be transported on equipment operated only under the authority of the CARRIER, and the CARRIER shall not in any manner sub-contract, broker, or in any other form arrange for the freight to be transported by a third party without the prior written consent of CLIENT. In the event the CARRIER breaches this provision, the CARRIER shall remain directly liable to CLIENT as if CARRIER transported such freight under its own authority in accordance with this provision, and shall further hold harmless and indemnify the CLIENT from any and all loss, liability, damage, claim, fine, cost or expense, including reasonable attorney's fees, arising out of or in any way related to the use of any

Initials:	Date:	5	Harbour Link – H&M
-----------	-------	---	--------------------

subcontractor in violation of this provision regardless of whether arising from the conduct or omissions of CARRIER, the subcontractor, or any other third party.

15. ASSIGNMENT OF AGREEMENT.

This Agreement may not be assigned or transferred in whole or in part by either PARTY without the written consent of the other PARTY.

16. SEVERABILITY.

In the event that the operation of any portion of this Agreement results in a violation of any law, the PARTIES agree that such portion shall be severable and that the remaining provisions of this Agreement shall continue in full force and effect.

17. DISPUTE RESOLUTION.

This Agreement shall be deemed to have been drawn in accordance with the statutes and laws of the Province of British Columbia. In the event of any disagreement or dispute arising out of or in connection with this Agreement, the laws of the Province of British Columbia shall apply.

18. NOTICES.

All notices pertaining to this agreement shall be in writing and addressed as follows.

If to the CLIENT:

\_\_\_\_\_  
\_\_\_\_\_

Fax:

If to the CARRIER:

Harbour Link Container Services Inc  
7420 Hopcott Road  
Delta, B.C. V4G 1B6  
Fax: 1 604 940 5511

Either PARTY may change its address for the purposes of this paragraph by giving the other PARTY written notice of the new address in the manner set forth above.

19. COMPLETE AGREEMENT.

This Agreement, its appendices constitute the entire agreement of the PARTIES with reference to the subject matters herein, and supersedes and expunges any prior written or oral agreement or understanding relating to the transactions contemplated herein, and may not be changed, waived, or modified except in writing signed by both PARTIES. The CLIENT hereby acknowledges and warrants that the individual signing below is duly authorized to enter into this Agreement on behalf of CLIENT and the CARRIER hereby acknowledges and warrants that the individual signing below is duly authorized to enter into this Agreement on behalf of CARRIER.

To signify acceptance of the agreement each party has initialed each page of this agreement and signed in the designated spaces below and issued a signed copy of the agreement to each other by

Initials:	Date:	6	Harbour Link – H&M
-----------	-------	---	--------------------

fax, with the individual signed copies collectively constituting the binding agreement of each party to the full content of this agreement.

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

CLIENT:

Signature

CARRIER:

Harbour Link Container Services Inc

Signature:

\_\_\_\_\_

Printed: \_\_\_\_\_

\_\_\_\_\_

Printed: \_\_\_\_\_

# APPENDIX A

## Schedule of Rates and Accessorial Charges

Effective Date:  
\_\_\_\_\_

**Point of Origin:**

**Destination:**

**Rate:**

<u>Accessorial Charges</u>	
<u>Fuel Surcharge</u>	

Signature

\_\_\_\_\_  
CARRIER: Harbour Link      Date  
Authorized Representative  
Signature

\_\_\_\_\_  
CLIENT: \_\_\_\_\_      Date  
Authorized Representative