

**BROKERAGE AGREEMENT  
BETWEEN LICENSED TRANSPORTATION BROKERS**

THIS BROKERAGE AGREEMENT BETWEEN LICENSED TRANSPORTATION BROKERS (this "Agreement") is entered into effective as of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date") by and between NAS, LLC, an Iowa limited liability company d/b/a Northern Ag Transportation ("BROKER"), and \_\_\_\_\_, a(n) \_\_\_\_\_  corporation  limited liability company  partnership  sole proprietorship ("SUB-BROKER"). For purposes of this Agreement, all references herein to "parties" shall include the parties identified herein and their respective divisions, subdivisions, and affiliates.

**RECITALS**

- A. BROKER is licensed as a property broker by the Federal Motor Carrier Safety Administration ("FMCSA") in Docket Number MC-425412, or by appropriate State agencies, and as a licensed broker, arranges for freight transportation;
- B. SUB-BROKER is licensed as a property broker by FMCSA in Docket Number \_\_\_\_\_, or by appropriate State agencies, and as a licensed broker, arranges for freight transportation;
- C. BROKER, to satisfy some of its transportation needs, desires to utilize the services of SUB-BROKER to arrange for transportation of certain freight; and
- D. SUB-BROKER desires to arrange for transportation of certain freight that may be assigned to it by BROKER.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**AGREEMENT**

1. Term. The term of this Agreement shall be one (1) year commencing on the Effective Date. Unless terminated as provided herein, the Agreement shall automatically renew for additional one-year terms. Either party may terminate this Agreement on thirty (30) days' written notice to the other party, with or without cause, or as otherwise provided herein.

2. Broker Assignments. BROKER may assign to SUB-BROKER certain freight for transportation ("Tendered Freight"). Any assignment of Tendered Freight shall be 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 Tendered Freight. BROKER agrees to tender to SUB-BROKER at least two (2) loads of Tendered Freight per year under this Agreement.

3. Sub-Broker Obligations. SUB-BROKER shall solicit, obtain and arrange for transportation and delivery of Tendered 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 Tendered Freight. The parties acknowledge and agree that SUB-BROKER will utilize Carriers (defined below) in the actual transportation and delivery of the Tendered Freight. Notwithstanding the foregoing, SUB-BROKER is and shall remain, at all times, responsible and liable to BROKER for the transportation and delivery of the Tendered Freight, and nothing in this Agreement imposing any responsibility on a Carrier shall be construed to relieve SUB-BROKER of its obligations or responsibilities under this Agreement.

4. Carrier Contracts. SUB-BROKER warrants that it has entered into, or will enter into, bilateral contracts with each carrier (each, a “Carrier,” and collectively, the “Carriers”) it utilizes to transport Tendered Freight in the performance of this Agreement. Such contracts between SUB-BROKER and Carriers are herein referred to, collectively, as “Carrier Contracts.” Further, SUB-BROKER represents and warrants that it: (i) will implement safeguards and utilize procedures for investigating the Carriers prior to entering into a Carrier Contract; (ii) will verify that each Carrier has the insurance coverages required below; and (iii) will not utilize any Carrier for Tendered Freight with an “unsatisfactory” or “conditional” rating by the U.S. Department of Transportation (“USDOT”) or under any other rating system.

5. Required Carrier Contract Provisions. SUB-BROKER warrants that each Carrier Contract shall comply with all applicable federal and state laws and regulations, and the terms of a Carrier Contract shall apply on all shipments of Tendered Freight a Carrier transports at SUB-BROKER’s request. Each Carrier Contract shall include the following provisions and requirements:

a. At minimum, Carrier’s liability for cargo loss or damage shall be that of a “carrier” as provided for in 49 U.S.C. § 14706 (the “Carmack Amendment”). Exclusions in Carrier’s insurance coverage shall not exonerate Carrier from such liability. For shipments outside of the United States, the terms in Appendix B attached hereto (Foreign Shipments) shall apply.

b. Carrier shall obtain and maintain, at all times during the term of the contract, insurance coverage with the following coverages and minimum limits, unless otherwise agreed in writing:

- i. Commercial General Liability insurance with a combined bodily injury and property damage in the minimum amount of One Million Dollars (\$1,000,000) each occurrence to include broad form blanket contractual liability, broad form property damage liability, personal injury liability and products/completed operations coverages.
- ii. Commercial Automotive or Commercial Motor Vehicle liability insurance with a combined bodily injury and property damage in the minimum amount of: (1) One Million Dollars (\$1,000,000) each occurrence when the Carrier is hauling non-hazardous material; and (2) Five Million Dollars (\$5,000,000) each occurrence (including environmental damages due to release or discharge of hazardous substances ) when the Carrier is hauling product described in the

Schedule of Limits Table in 49 C.F.R. § 387.9 (Financial Requirements, Minimum Levels of the Federal Motor Carrier Safety Regulations) as prescribed by the FMCSA. Each occurrence coverage to include all owned, non-owned and hired vehicles. Coverage shall include the endorsement for motor carrier policy of insurance for public liability under sections 29 and 30 of the Motor Carrier Act of 1980. Hazmat carriers must have endorsement CA9948 (or equivalent), sudden and accidental pollution coverage.

- iii. Cargo Legal Liability – In the minimum amount of Twenty-Five Thousand Dollars (\$25,000) per shipment of cargoes valued up to Twenty-Five Thousand Dollars (\$25,000) and One Hundred Thousand Dollars (\$100,000) per shipment of cargoes valued in excess of Twenty-Five Thousand Dollars (\$25,000).
- iv. Workers Compensation – as required by law.
- v. Coverage must be written with an Insurance Company rated A- or better as rated by AM Best Company and provide (30) days advanced written notice of cancellation or termination.

c. Carrier acknowledges and agrees that the provisions contained in 49 C.F.R. § 370.1 et seq. shall govern the processing of claims for loss, damage, injury or delay to property and the processing of salvage.

d. Carrier acknowledges and agrees that SUB-BROKER is the sole party responsible for payment of its invoices, and under no circumstance will Carrier seek or accept payment from shipper, consignee, BROKER, or BROKER's customer.

e. Carrier acknowledges and agrees that, at no time during the term of the contract with SUB-BROKER, shall it have a safety rating or evaluation of "unsatisfactory" or "conditional" as rated by the U.S. Department of Transportation or under any other rating system. If Carrier receives an "unsatisfactory" or "conditional" safety rating, it shall immediately notify SUB-BROKER.

f. Any tariff or other terms that are inconsistent with the contract shall be subordinate to the terms of the contract. Carrier expressly waives all rights and remedies under 49 U.S.C. § 1410(b) to the extent they conflict with the contract.

6. Receipts and Bills of Lading. If requested by BROKER, SUB-BROKER agrees to provide BROKER with proof of acceptance and delivery of loads in the form of a signed bill of lading or proof of delivery, as specified by BROKER. BROKER's or SUB-BROKER's insertion of BROKER's or SUB-BROKER's name on such bill of lading or proof of delivery shall be for BROKER's and SUB-BROKER's convenience only and shall not change BROKER's and SUB-BROKER's respective statuses as property brokers. The terms and conditions of any bill of lading,

proof of delivery or other freight documentation used by BROKER, SUB-BROKER, or the carrier selected by SUB-BROKER shall not supplement, alter or modify the terms of this Agreement.

7. Payments. SUB-BROKER shall invoice BROKER for its services in accordance with the rates, charges and provisions set for in Appendix A attached hereto, and any written supplements or revisions that are mutually agreed to between the parties. BROKER agrees to pay SUB-BROKER's invoice within fifteen (15) days of invoice date. SUB-BROKER shall apply payment to the amount due for the specified invoice regardless of whether there are earlier unpaid invoices. BROKER's payment to SUB-BROKER of amounts invoiced by SUB-BROKER shall relieve BROKER, the shipper, the consignee and any other responsible party of any liability to the Carrier for non-payment of its freight charges. SUB-BROKER hereby covenants and agrees to indemnify BROKER, the shipper, the consignee, and any other responsible party against such liability.

8. Claims.

a. Freight Claims: Carriers utilized by SUB-BROKER shall agree in writing with SUB-BROKER to be liable for cargo loss or damage as outlined in Section 5 above. If payment of any cargo loss or damage claim is made by BROKER to any party, BROKER retains the right to pursue collection or indemnification on the claim from SUB-BROKER and the Carrier. SUB-BROKER expressly agrees to defend, hold harmless, and indemnify BROKER from any and all claims, including, without limitation, reasonable attorney fees, asserted against BROKER for cargo loss or damage of Tendered Freight occurring after tender to SUB-BROKER.

b. All Other Claims: The parties shall notify each other, in writing, 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 twenty (120) days from the date of such notice.

9. Insurance. At its sole cost and expense, SUB-BROKER agrees to procure and maintain, at all times during the term of this Agreement, insurance coverage with the following requirements and minimum limits, unless otherwise agreed by the parties in writing:

- a. Commercial general liability insurance with a combined bodily injury and property damage in the minimum amount of One Million Dollars (\$1,000,000) each occurrence to include coverages for broad form blanket contractual liability, broad form property damage, personal injury liability and products/completed operations coverage, covering bodily injury and property.
- b. Hired and Non-Owned Automobile Liability in the minimum amount of One Million Dollars (\$1,000,000) per accident.
- c. Contingent Cargo Legal Liability in the minimum amount of One Hundred Thousand Dollars (\$100,000) per shipment.
- d. Errors and Omissions Insurance in the minimum amount of One Million Dollars (\$1,000,000) per claim.

- e. SUB-BROKER shall submit to BROKER a certificate of insurance evidencing such coverage and naming BROKER as “Certificate Holder.”
- f. Coverage must be written with an Insurance Company rated A- or better as rated by AM Best Company and provide thirty (30) days’ advanced written notice to BROKER of any cancellation or termination.

10. Surety Bond. SUB-BROKER shall maintain a surety bond or trust fund agreement as required by FMCSA in the amount of Seventy-Five Thousand Dollars (\$75,000), and SUB-BROKER shall furnish BROKER with proof thereof upon request.

11. Hazardous Materials. SUB-BROKER’s carriers shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as set forth in 49 C.F.R. §§ 172.800 and 173 et seq., to the extent that any shipments constitute hazardous materials. SUB-BROKER shall defend, indemnify and hold BROKER harmless from any penalties or liabilities of any kind, including, without limitation, reasonable attorney fees, arising out of SUB-BROKER’s carriers’ failure to comply with any applicable hazardous materials laws and regulations.

12. 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 upon ten (10) days’ written notice to the other party. BROKER shall be responsible to pay SUB-BROKER for any services performed prior to the termination of this Agreement.

13. Indemnification. SUB-BROKER shall defend, indemnify and hold BROKER harmless against, to the maximum extent permitted by law, any claims, actions or damages, including, without limitation, cargo loss, damage, delay, and payment of rates and/or assessorial charges to Carriers, arising out of SUB-BROKER’s performances under this Agreement. BROKER shall not offer settlement in any such claim without the prior written agreement of SUB-BROKER, such agreement not to be unreasonably withheld. If BROKER offers or agrees to a settlement for such a claim without written agreement of SUB-BROKER, SUB-BROKER shall be relieved of its indemnification obligation. As provided in Section 9 of this Agreement, SUB-BROKER agrees to have insurance to cover its obligations and liability under the terms of this Agreement, but SUB-BROKER’s indemnification obligations are not capped by the amount of any available insurance. Obligations to defend as required herein shall include all fees, costs and expenses of defense as they accrue.

14. Assignment. Neither party may assign or transfer any rights under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other party.

15. Modification. No amendment or modification of the terms of this Agreement, including all appendices and attachments hereto, shall be binding unless in writing and signed by both parties.

16. Severability. In the event that the operation of any portion or provision of this Agreement results in a violation of any law, or portion 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.

17. Independent Contractor Status. It is understood between BROKER and SUB-BROKER that neither party is an agent for the other party, and each party shall remain, at all times, an independent contractor. Neither party exercises or retains any control or supervision over the other party, its operations, employees, or carriers.

18. Waiver. 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.

19. Notices. Unless the parties notify each other in writing of a change of address, any and all written notices required or permitted to be given under this Agreement shall be delivered to the following mailing address and/or email address:

<u>If to BROKER:</u>	<u>If to SUB-BROKER:</u>
NAS, LLC d/b/a Northern Ag Transportation	_____
Attn: NAT Manager	Attn: _____
P.O. Box 7567	_____
Urbandale, IA 50323-0567	_____
Email: phil@northernagsuppliers.com	Email: _____

20. 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 BROKER or SUB-BROKER, provided that the party so prevented from performing 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.

21. Choice of Law and Venue. The construction, interpretation, validity and enforceability of this Agreement, whether in a court of law or in alternative dispute resolution, shall be governed by and construed and enforced in accordance with the laws of the State of Iowa without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply. Any litigation concerning this Agreement will be filed in the state or federal courts in and for Polk County, Iowa.

22. Confidentiality. SUB-BROKER shall not utilize BROKER's name or identity (or the name or identity of any shipper) in any advertising or promotional communications without the prior written consent of BROKER (or the shipper, as applicable). 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. SUB-BROKER shall require its Carriers and/or other brokers to comply with this confidentiality clause.

23. Non-Solicitation. In recognition of the fact that each of the parties has invested substantial effort and money in developing its customers, and that each party may separately procure new accounts during the term of this Agreement, the parties expressly agree that:

a. SUB-BROKER shall not solicit business from nor perform brokerage services, directly or indirectly, on behalf of any shipper, consignee or third party first introduced to it either by BROKER or through the performance of this Agreement. However, if SUB-BROKER has conducted business with any such shipper, consignee or third party prior to entering into this Agreement, then SUB-BROKER may continue to solicit the Traffic Lanes (defined below) previously served for such shipper, consignee or third party. For purposes of this Agreement, the term "Traffic Lanes" shall mean original location(s) to destination location(s) for both truckload and less-than-truckload (LTL) shipments.

b. It is further agreed that this non-solicitation provision shall be in full force and effect during the term of this Agreement and for a period of one (1) year from the date of the termination of this Agreement for any reason.

c. In the event of non-compliance with any of the provisions of this Section 23, SUB-BROKER shall be liable to BROKER for fifteen percent (15%) of the gross transportation revenue received by SUB-BROKER from said shipper(s), consignee(s), and/or third parties within one (1) year after the date of termination of this Agreement.

24. Entire Agreement. This Agreement, including all appendices and attachments hereto, 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.

25. Counterparts. This Agreement may be executed and delivered in multiple counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

*[Signature page follows.]*

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 Effective Date.

**BROKER:**

**SUB-BROKER:**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Printed

\_\_\_\_\_  
Printed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**Appendix A**

Rates, Charges and Provisions

**Appendix B**

Foreign Shipments