

## FLOATING OCEAN TRANSPORTATION TERMS OF SERVICE

These Floating Ocean Transportation Terms of Service (“**TOS**”) govern CastleGate Forwarding’s (“**Carrier**”) provision of Floating Ocean transportation services for Shipper’s cargo.

THE NEGOTIATED RATE ARRANGEMENT, TOGETHER WITH ANY EXHIBITS, RATE CARDS, OR ADDENDA, EXPRESSLY INCORPORATED THEREIN (COLLECTIVELY THE “**NRA**”) INCORPORATES AND IS GOVERNED BY THESE TOS (THE NRA AND THESE TOS COLLECTIVELY, THE “**AGREEMENT**”). BY ENDORSING THE NRA, SHIPPER ACKNOWLEDGES THAT IT HAS READ, UNDERSTANDS, AND AGREES TO BE BOUND BY THESE TOS AND REPRESENTS AND WARRANTS THAT THE INDIVIDUAL EXECUTING THE NRA HAS THE RIGHT, POWER, AND AUTHORITY TO BIND THE SHIPPER. IF SHIPPER DOES NOT AGREE TO THESE TOS, SHIPPER MAY NOT USE THE SERVICES GOVERNED BY THE AGREEMENT. THESE TOS, CARRIER’S BILL OF LADING, AND CARRIER’S APPLICABLE TARIFFS MAY BE AMENDED FROM TIME TO TIME. SHIPPER AGREES TO REVIEW EACH BILL OF LADING ISSUED BY CARRIER AND TO REVIEW CARRIER’S WEBSITE FOR UPDATES TO THESE TOS AND BILL OF LADING TERMS AND CONDITIONS, AND TO REVIEW CARRIER’S APPLICABLE TARIFF MADE AVAILABLE BY CARRIER AT THE TIME OF EACH SHIPMENT. SHIPPER’S CONTINUED USE OF SERVICES FOLLOWING ANY SUCH MODIFICATION SHALL CONSTITUTE ACCEPTANCE OF THE MODIFIED TOS, BILL OF LADING OR TARIFF; PROVIDED, HOWEVER, THAT NO UNILATERAL MODIFICATION SHALL AMEND OR SUPERSEDE THE NEGOTIATED RATES, MINIMUM QUANTITY COMMITMENTS, LIQUIDATED DAMAGES, OR OTHER MATERIAL COMMERCIAL TERMS EXPRESSLY SET FORTH IN THE NRA OR ANY EXHIBIT THERETO, UNLESS EXPRESSLY AGREED IN WRITING BY BOTH PARTIES. IF SHIPPER DOES NOT ACCEPT ANY SUCH MODIFICATION, SHIPPER’S SOLE REMEDY IS TO TERMINATE THE AGREEMENT IN ACCORDANCE WITH SECTION 5.

1. **DESCRIPTION OF SERVICES.** Carrier will provide, on a non-exclusive basis, ocean transportation and related services for shipments of Shipper cargo to and from the locations set forth in the incorporated Exhibit to the Agreement (“**Services**”) for Shipper during the Term, in accordance with this Agreement, its exhibits and appendices, Carrier’s governing rules tariff (available at [www.dpiusa.com/members/web\\_users/GUEST123](http://www.dpiusa.com/members/web_users/GUEST123)), and Carrier’s bill of lading (available at <https://www.castlegateforwarding.com/>), the terms and conditions of each of which are incorporated herein. The order of priority in the event of a conflict will be: (a) the terms of the Agreement, including all of its Exhibits and appendices, (b) Carrier’s bills of lading; and then (c) Carrier’s tariff. The Agreement shall not apply to drayage or consolidation services which, to the extent provided, shall be governed by a separately executed agreement stating the terms and conditions of such services. An “**Affiliate**” means any entity that is under more than 50% common ownership or control with Shipper by reason of being parent and subsidiary or entities associated with, under common control with or otherwise related to Shipper through more than 50% common stock ownership or more than 50% common directors or officers. Carrier may subcontract any or all of its duties or obligations under these TOS to Affiliates or third party contractors in Carrier’s sole discretion without notice to Shipper.

2. **RATES, FEES AND CHARGES.** Shipper shall pay all applicable rates, fees, and charges in full and without deduction or offset at the rates set forth in the Rate Card or otherwise referenced or stated herein, as applicable and as directed within thirty (30) days of the earlier of (a) the date of Carrier’s invoice, or where applicable, (b) the date of the electronic data interchange notification of completion of the respective Services. References to “days” in this Section and throughout these TOS shall mean calendar days unless otherwise specified by Carrier. Shipper’s payment obligation is not conditioned or contingent upon Shipper’s receipt of a purchase order or other related shipping documentation from Carrier or its Affiliates or contractors. Such rates, fees, and charges are based on the container gated-in date at the origin port. Carrier may modify the rates, fees and charges set forth in the Rate Card, all of which are subject to peak season surcharges (“**PSS**”) upon written notice (email acceptable). Shipper shall pay Bunker charges as indicated in the applicable Rate Card and Low Sulfur Fuel charges and other regulatory-related fees set forth in the governing tariff, which fees and charges may be modified by Carrier monthly according to market changes. Shipper is responsible for and shall pay all charges and fees that are imposed by third parties relating to the goods, which charges and fees may be passed through to Shipper by Carrier. Other than taxes on Carrier’s net income, Shipper is solely responsible for, and shall pay all taxes, including personal property, inventory, gross receipts, sales, and use taxes on storage or transfer of or title to the goods to its internal and external customers, and any taxes arising from Services provided under the Agreement, including those required to be paid by the user of any Services or facilities.

For the avoidance of doubt, Shipper is responsible for and shall pay all costs, charges, and fees: (i) caused by late presentation of or the failure to present documentation to the customs broker or freight forwarder; (ii) arising from containers exceeding weight limits; (iii) arising from Shipper’s request; (iv) arising out of or in connection with a Force Majeure Event as defined in this Agreement, irrespective of whether such event or clause herein has been formally declared or invoked; and (v) for and relating to detention, demurrage or chassis fees or charges incurred in connection with shipments: (a) destined for a third party warehouse not operated by a Carrier, a Carrier Affiliate or Carrier contracted third party; (b) shipments transported to a warehouse operated by Carrier, a Carrier Affiliate or a Carrier-engaged third party service provider by a motor or drayage carrier engaged by Shipper or its Affiliate, employee, agent or contractor; and (c) shipments where Carrier arranges for the drayage transportation to a warehouse operated by Carrier, a Carrier Affiliate or a Carrier contracted third party but does not arrange or provide ocean transportation services, in which case Shipper must pay the detention and demurrage charges directly to the ocean carrier. Detention and demurrage free time and per diem charges for goods made under this Agreement shall be applied in accordance with Carrier’s governing tariff(s). Notwithstanding the foregoing, where Carrier arranges for the transportation of shipments to a warehouse operated by a Carrier Affiliate or contractor engaged by Carrier, Shipper will not be responsible for the payment of detention and demurrage charges directly and proximately caused by Carrier, its Affiliate or a third party warehousing operator engaged by Carrier or its Affiliate.

For less-than-container loads consolidated by Carrier at origin, Shipper will be billed and shall pay a prorated portion of the rates set forth in the Rate Card based on cubic meters occupied by the goods. If an accessorial charge is imposed because of Shipper’s actions including, but not limited to, those set forth in subsections (i) through (v), above, Shipper may be required to pay the entire rate amount without proration. If an accessorial charge is imposed due to the collective actions of Shipper and any other shipper with loads consolidated by Carrier at origin, the accessorial charge shall be prorated by cubic meter on a proportionate basis.

In cases where an accessorial is listed as “No” on the Accessorial Rate Card, Shipper may, in Carrier’s sole discretion, be charged the tariff rate if the charges and fees are imposed due to: (i) customs, governmental or house bill holds; (ii) customs or other governmental inspections or examinations; (iii) Shipper or third-party owned or operated warehouse performance issues or disruptions; (iv) late presentation or failure by the Shipper, the Shipper’s agent, or any third-party contractor to present proper documentation; and (v) the inability to obtain an appointment within free time, despite Carrier’s due diligence (collectively, the “**Accessorial Rate Exceptions**”) and the accessorial is charged during one of the following (a) a Force Majeure Event; (b) non-Force Majeure circumstances caused by the Shipper; or (c) non-Force Majeure circumstances outside of Carrier’s reasonable control. Upon Shipper’s request, Carrier may

divert containers to alternative destinations if operationally feasible in Carrier's sole discretion, in which case Shipper will pay a diversion fee as set forth in Carrier's governing tariff. Shipper shall also pay any additional operational costs invoiced by Carrier for such diversions.

Shipper shall notify Carrier in writing of any dispute with any invoice (along with substantiating documentation and a reasonably detailed description of the dispute) within thirty (30) days from the date of such invoice. Invoices for which no such timely notification is received shall be deemed accepted by the Shipper as true and correct, and Shipper shall pay all amounts due under such invoices within thirty (30) days of the invoice date as set forth above. Unless reasonably disputed by Shipper in writing, invoiced amounts not paid by Shipper within thirty (30) days of the invoice date may, at Carrier's option, accrue interest at a rate of 1.5% per month. Should Shipper fail to pay any undisputed invoice within terms, Carrier shall have no further liability or obligation to provide Services hereunder, unless and until all amounts owing by Shipper hereunder are paid in full. Shipper is responsible for any collection costs incurred by Carrier, including, without limitation, legal and collection agency fees and expenses, plus interest at 1.5% per month. Carrier and its Affiliates may set off or recoup any amounts owed to Shipper against any amounts Shipper owes to Carrier or its Affiliates. If Carrier or its Affiliate normally pays Shipper by credit card, Carrier or its Affiliate may charge Shipper an additional 3% of all such offset amounts as an administrative fee. Invoices will be issued and paid in USD unless otherwise agreed between the Parties in writing (email acceptable). Any suit or other proceeding involving a claim for undercharge or overcharge must be commenced within eighteen (18) months of the date of invoice.

3. **SHIPPER CARGO VOLUME COMMITMENT.** Less-than-container loads shall count toward the MQC pro rata based on the CBM occupied by the goods and a forty-foot container equaling 65 CBM. The Parties agree that Shipper's breach of this Section will cause not only loss of freight, but also instability and adverse impact on Carrier logistics and capacity planning, rendering the calculation of damages for breach difficult. Except as set forth in Section 4, if Shipper fails to tender the MQC set forth in this Section during the Term, Carrier's remedy shall be to invoice Shipper liquidated damages as set forth in the Rate Card. Shipper shall pay any liquidated damages owed within thirty (30) days of Carrier's invoice. Shipper shall provide at least fourteen (14) days' written notice of bookings prior to vessel scheduled cut-off unless Carrier grants a reduced notice period, in writing (email acceptable), in its sole discretion. Shipper shall not ship any restricted or prohibited goods indicated in Carrier's governing tariff.

4. **CARRIER SERVICE COMMITMENTS.** Carrier will use commercially reasonable efforts to accommodate the MQC. Shipper acknowledges and agrees that Carrier may not be able to accommodate the MQC due to market or other conditions beyond Carrier's control despite Carrier's use of commercially reasonable efforts and that Carrier shall have no liability relating to any such inability to accommodate the MQC. Carrier is not obligated to accommodate more than the MQC, but Carrier may do so in its sole discretion at rates, volumes, and terms to be agreed upon between the Parties. In the event Carrier is unable to accommodate the MQC, Carrier shall reduce the MQC in proportion to the number of units it is unable to accommodate during the Term. If Shipper meets the MQC prior to the end of the Term, Carrier may, in its discretion, provide Shipper with additional MQC for the remainder of the Term, at rate and volume levels determined by the Parties. If the Parties do not agree to terms for any such additional MQC this contract will terminate when Shipper meets the MQC, with no additional bookings accepted during the Term unless the Parties otherwise agree writing (email acceptable). Carrier may decline a shipment for any reason, including, without limitation, because Carrier discovers that it (a) is not accurately described in documents generated by Shipper, or (b) includes goods of a dangerous or hazardous nature, or goods that, in Carrier's sole discretion, may damage shipping equipment or other goods.

5. **TERM AND TERMINATION.** This Agreement shall be valid and effective for the term expressly set forth in the applicable NRA (the "Term"), and these TOS shall have no independent term apart from the NRA. Either Party may terminate this Agreement without cause at any time by providing thirty (30) days prior written notice to the other Party. Either Party may terminate this Agreement for cause following a fourteen (14) day cure period commencing upon written notice in the event that the other Party: (a) fails to make any of the payments when and where required under this Agreement; (b) fails to meet a material obligation or to perform any other agreement or covenant required to be performed by such party under this Agreement; or (c) violates the terms of this Agreement. Either Party may terminate this Agreement for cause immediately upon written notice in the event that the other Party: (i) ceases to do business or otherwise terminates its business operations; (ii) admits in writing its inability to pay its debts generally as they become due; (iii) makes a general assignment for the benefit of its creditors; (iv) files a petition, voluntarily or involuntarily, under any state or federal bankruptcy or insolvency law, has a receiver appointed for its business or becomes insolvent; (v) commits an illegal act; (vi) mis-identifies or mis-classifies goods; (vii) ships goods not permitted to be shipped under this Agreement; (viii) permits a non-party to ship under this Agreement; or (ix) in Carrier's reasonable judgment it appears that any of the conditions described in (i)-(iv) are potentially imminent. In the event that Accessorial Rate Exceptions occur, Carrier may terminate the Agreement following a fourteen (14) day cure period commencing upon Carrier's written notice to Shipper of the occurrence of such Accessorial Rate Exception. If Carrier terminates this Agreement for cause due to Shipper's uncured material breach, Shipper shall remain responsible for any MQC shortfall attributable to the period from the commencement of the Term through the effective date of termination, calculated on a prorated basis. Such MQC shortfall represents a reasonable estimate of Carrier's damages arising from Shipper's failure to tender committed volumes and shall not be deemed a penalty. A terminating Party shall not incur any liability whatsoever for any damage, loss, or expense of any kind suffered or incurred by the other Party arising from any termination according to the terms of this Section, regardless of whether the terminating Party was aware of the possibility of any such damage, loss, or expense. Upon termination of this Agreement, (a) Carrier will continue to fulfil any Services pending as of the termination date; (b) Shipper shall continue to owe and pay to Carrier all fees incurred prior to or subsequent to termination; and (c) these TOS will continue to govern the provision of and payment for all Services.

6. **SHIPPER LEGAL COMPLIANCE.** Shipper and each of its Affiliates represent and warrant that each and all goods tendered or deposited pursuant to this Agreement shall comply at all times with all applicable laws, rules, regulations, conventions, and practices applicable in the countries in or through which the Services will be performed in connection with this Agreement, to include, without limitation, those governing dangerous goods or hazardous materials, substances or waste and applicable export control and trade sanctions laws and regulations ("**Export Control and Trade Sanctions**"), and the following obligations: (a) Shipper warrants that neither it nor its directors, officers, or subsidiaries are designated or sanctioned parties; (b) Shipper agrees not to request Services in connection with goods, countries, regions, or parties subject to Export Control and Trade Sections absent Carrier's prior written agreement; (c) Shipper agrees that Carrier may refuse, suspend, or discontinue Services with respect to any shipment that, in Carrier's reasonable judgment, appears to implicate Export Control and Trade Sanctions or could otherwise expose Carrier to regulatory, civil, or criminal liability, and Carrier shall have no liability to Shipper arising from any such refusal, suspension, or discontinuation; and (d) in the case of cross-border transactions, Shipper agrees to provide Carrier, within a reasonable time before export or entry, with complete and accurate information required by Export Control and Trade Sanctions. Shipper shall be responsible for loading and securing cargo in Carrier supplied containers in compliance with IMO regulations.

7. **INDEPENDENT CONTRACTORS.** The Parties acknowledge and agree that the relationship between the Shipper and Carrier is that of independent contractors and no other relationship is created, except as expressly provided in this Agreement or, solely with respect to the issuance of transportation documents and performance of ministerial or regulatory acts, as incorporated in Carrier's bill of lading. Except as expressly provided in this Agreement, an applicable Exhibit or appendix, nothing herein shall be construed as creating an agency, joint venture, partnership, employment relationship, or any other similar relationship between the Parties. Neither Party will control the manner in which the other Party, the other Party's Affiliates or their

employees and agents perform their obligations under this Agreement, provided that nothing herein limits Carrier's rights to impose reasonable requirements necessary to comply with applicable laws, regulations, or safety, security, or trade compliance obligations. Nothing herein shall imply that independent third parties engaged by Carrier are employees or agents of Carrier, and Carrier does not exercise or retain any control or supervision over such independent third parties engaged by Carrier, their operations, equipment or employees, other than the right of a contracting party to enforce the legal rights and obligations contained in an executed contract. Each Party shall be responsible for its own employees' expenses, including but not limited to wages, workers' compensation insurance, and state and federal taxes and the withholding thereof.

8. **TITLE TO GOODS.** Shipper represents and warrants to Carrier that Shipper has the lawful possession of, and legal right and authority to tender all the goods to Carrier. Shipper represents that it has full right, title and interest in the goods tendered for the Services. Subject to Carrier's lien rights (as further detailed in Carrier's bill of lading), title to goods shall not pass to Carrier under any circumstances or to a Carrier Affiliate until formal acceptance by Carrier or Carrier's Affiliate at its sole discretion.

9. **SHIPPER INSTRUCTION & PACKAGING.** Shipper shall provide Carrier with all information, instructions and authorizations as Carrier may require to perform the Services. Shipper hereby permits Carrier to obtain records from Shipper's agents and brokers and other third parties concerning shipments governed by this Agreement. All information, instructions and authorizations given by Shipper to Carrier shall comply with all applicable laws, rules and regulations. In performing the Services hereunder, Carrier shall act in accordance with, and shall be entitled to rely upon, all written instructions, including those provided by way of electronic transmission, and authorizations provided by or on behalf of Shipper and received by Carrier. Except to the extent that Carrier has accepted instructions and explicitly accepted responsibility in respect of the preparation, packing, stowage, labeling or marking of the goods, Shipper warrants that: (a) all goods have been properly and sufficiently prepared, packed, stowed, are fully and accurately described, labeled or marked, and that the preparation, packing, stowage, labeling and marking are appropriate to any operations or transactions affecting the goods and the characteristics of the goods; (b) the goods are suitable for transportation or storage; and (c) any equipment, trailer, or container provided by Shipper is in suitable condition for the goods loaded therein. Furthermore, if the goods are being transported through intermodal transportation, Shipper warrants that, except to the extent that Carrier has accepted instructions and explicitly accepted responsibility to arrange for the loading, blocking or bracing of the goods: (a) the goods have been packaged, loaded, blocked and braced within the intermodal container in a manner to prevent shifting during intermodal transportation and in accordance with applicable industry standards; and (b) the weight of the goods and the intermodal container or trailer will not exceed applicable weight limitations and will be accurately stated in Shipper's shipping instructions. Carrier's, its agents', or a contracted third party's acceptance of any shipment will not be a waiver of Shipper's obligation to comply with the foregoing.

10. **LIMITATION OF LIABILITY.** Except to the extent otherwise expressly set forth herein, Carrier is not liable for any claims for loss or damage to goods whatsoever except to the limited extent that Shipper's direct damages are directly and proximately caused by the negligence or willful misconduct of Carrier. The liability of Carrier and any independent third party it engages for performance of the Services is subject to otherwise applicable convention, law, rule or regulation, and further limited by any terms and conditions of service or otherwise by contractual arrangements including, without limitation, the applicable house and ocean bills of lading issued for the subject shipment and the liability limitations (including for cargo loss, damage or delay) therein. Any such liability commences when the cargos are received by the service provider at the place of receipt or port of loading as noted on the face of the applicable bills of lading or other applicable lading document, and ceases when the cargo have been delivered to the consignee or its representative at the port of discharge or final place of delivery as noted on the face of the applicable bills of lading, or other applicable lading document. Shipper hereby acknowledges, understands and agrees that Carrier and its third parties have limitations of liability in place that restrict Shipper's recovery with respect to such claims and that, except as otherwise expressly set forth herein, Carrier is under no obligation to arrange for full value liability with respect to goods. Neither Carrier nor any independent third party it engages will be liable for the following: (1) damage to goods or equipment to the extent due to packaging, loading, unloading, blocking, bracing or securing of the Goods; (2) damage to goods or equipment to the extent due to inherent vice or defect in the goods transported, including rusting of metals, swelling of wood caused by humidity, moisture or condensation, deterioration of perishable goods, or damages caused by heat or cold; (3) damage to goods or equipment to the extent due to Force Majeure Events; (4) damage to goods or equipment to the extent due to an act, omission or default of Shipper, including the consignor, the consignee, the beneficial owner of the goods or other third party; (5) shipments stopped and held in transit at Shipper's request; or (6) loss or damage of goods that violate any applicable law or regulation, have not been accurately described, or that have been loaded so that the combined weight exceeds applicable weight limits. Shipper will defend, indemnify and hold Carrier and its independent third parties harmless from any claim for loss, damage or delay to goods in excess of the liabilities assumed under, or the limitations contained in, this Agreement or filed other than in accordance with this Agreement. Other than claims for loss, damage or delay to goods or invoice disputes which are subject to the terms of the applicable house or ocean bill of lading and Section 2 above, respectively, any action against Carrier, whether such claim is founded in contract or tort, is waived unless commenced within two (2) years of the date the conduct giving rise to the claim occurred.

IN NO EVENT WILL CARRIER OR ANY PERFORMING THIRD PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, USE OR OPPORTUNITY, OR DAMAGES RESULTING FROM DELAY, WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN, AND WHETHER OR NOT CARRIER OR SUCH THIRD PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES EXPRESSLY WAIVE ALL RIGHTS AND REMEDIES UNDER PART B, SUBTITLE IV OF TITLE 49 U.S.C. TO THE EXTENT APPLICABLE TO ANY INLAND TRANSPORTATION SERVICES ARRANGED UNDER THIS AGREEMENT, AND ALL SIMILAR LEGISLATED RIGHTS AND REMEDIES FROM TIME TO TIME TO THE EXTENT THEY CONFLICT WITH THE PROVISIONS OF THIS SECTION.

11. **INSURANCE.** Shipper is responsible for maintaining property insurance covering both the goods and harms arising during storage or transit, including loading and unloading. Shipper may consult an insurance broker to arrange insurance appropriate to Shipper's needs. As an alternative, where Carrier agrees to do so, Carrier may offer, for an additional cost and through its designated insurance broker, to arrange for shipment-specific cargo policies to be issued in Shipper's name. Following the issuance of any such policy through their insurance underwriter, Carrier will have no further duty with respect to the procurement or administration of such insurance, and nothing in this Section shall be construed to increase, expand, or alter Carrier's liability, if any, beyond that expressly set forth elsewhere in this Agreement or the applicable bill of lading. Any coverage on the goods will be subject to the terms and conditions of the specific policy or policies procured. Carrier is not liable if Shipper, for any reason whatsoever, fails to recover a loss in whole or in part from the insurer under any applicable policy, even though the premium charged by the insurer may be different from Carrier's charges to Shipper. Shipper acknowledges and agrees that Carrier's role with respect to insurance is limited to facilitating placement of coverage with entities licensed to sell insurance and that Carrier is not in the business of selling insurance or insuring risk. Carrier shall maintain in full force and effect and shall contractually require its independent third parties that participate in delivery of the Services maintain all insurance required by applicable law or regulation for such performance or as may be commensurate with industry practice.

12. **APPLICABLE LAW; VENUE; ATTORNEYS' FEES.** This Agreement shall be governed by the United States Carriage of Goods by Sea Act and the maritime laws of the United States. Nothing herein shall be deemed to deprive Shipper of any mandatory rights or protections afforded under the Hague-Visby Rules or the CMR Convention, where compulsorily applicable. To the extent that the maritime laws of the United States, federal, or foreign laws and regulations are silent on a given legal issue that may arise under this Agreement, including the validity, construction, interpretation and effect of this Agreement, reference shall be made to the laws of the state of New York, USA without regard to any laws that would otherwise govern under applicable conflict of law principles. The Parties agree to submit their disputes or claims arising out of or in any way connected to this Agreement, the breach thereof and the Services provided by Carrier under this Agreement to binding arbitration to be held in New York, New York, before the Society of Maritime Arbitrators ("SMA") in accordance with the current rules of the SMA. The arbitrators shall be members of the Society of Maritime Arbitrators, Inc. The language of the arbitration shall be English. Notwithstanding anything contained herein to the contrary, should the sum claimed by each party not exceed U.S. \$100,000 (exclusive of interest on the sum claimed, costs of the arbitration, and legal expenses), the dispute is to be governed by the Shortened Arbitration Procedure' of the Society of Maritime Arbitrators, Inc. (SMA) of New York, as defined in the Society's current Rules for such procedure. In all cases, the cost and expenses of the arbitration (including reasonable attorneys' fees and costs) shall be borne by the non-prevailing Party or as the arbitrator shall otherwise determine. For the purpose of enforcing any award, this agreement may be made a rule of the Court. The decision of the arbitrator shall be final and may be enforced by any court or other forum having jurisdiction.

13. **CONFIDENTIALITY AND CONFIDENTIAL INFORMATION.** The parties agree that the terms of this Agreement and any other nonpublic information or data that one party (the "**Disclosing Party**") discloses to the other party (the "**Receiving Party**") before or during the term of this Agreement will be considered "**Confidential Information**", whether written, oral, visual or otherwise. Confidential Information shall include, without limitation, all information with respect to Shipper or Carrier's costs, procedures, and other details about Shipper's or Carrier's business obtained by Shipper or Carrier and all information and materials about any Shipper or Carrier Affiliate in whatever format, including customer names, addresses, phone numbers, and email addresses (collectively, "**Customer Information**"). Except as otherwise required by law, during the term of this Agreement, the Receiving Party will cause its Affiliates, employees and representatives to: (i) hold in strict confidence and protect all Confidential Information; (ii) not disclose, publish, distribute, provide or otherwise disseminate Confidential Information to anyone other than its or its Affiliates officers, directors, employees, agents, accountants and attorneys, and other authorized representatives who have a need to know and who are bound by confidentiality obligations at least as restrictive as those in this Agreement without the prior expressed written consent of the respective Disclosing Party; (iii) use the Confidential Information only to fulfill its obligations under this Agreement; and (iv) promptly return or destroy any materials containing Confidential Information upon the request of the Disclosing Party or upon the termination of this Agreement. The Receiving Party will be responsible for any violation of the terms of this Agreement committed by it or its Affiliates' employees or authorized representatives. Confidential Information does not include information that: (a) was in such Party's possession prior to receipt from the disclosing Party; (b) is or becomes available to the public through no fault of the receiving Party; (c) is received in good faith by the receiving Party from an independent third party not subject to any obligation of confidentiality to the disclosing party; (d) is required to be disclosed by applicable law, regulation, a valid order of a court or other governmental body of competent jurisdiction, subpoena or other legal requirement, including governmental investigation or enforcement proceedings; or (e) is independently developed by the receiving Party without reference to confidential information received pursuant to this Agreement. In the event of a breach or threatened breach of this Section, in addition to all other remedies available under applicable law, the Disclosing Party will be entitled to seek injunctive relief or similar remedy to specifically enforce the obligations set forth in this Section without being required to post any bond or prove any damages.

14. **PRIVACY & INTELLECTUAL PROPERTY.** Shipper shall: (a) maintain Confidential Information, and in particular Customer Information, in strict compliance with all applicable privacy and data protection laws; (b) promptly, and in no event more than twenty-four (24) hours after discovery and in any event before notifying any regulatory authority, data subject or third party, notify Carrier upon becoming aware of any unauthorized access to or use of any Confidential Information that compromises the security, confidentiality, or integrity of such information (such event, a "**Supplier Data Security Breach**"); (c) implement appropriate technical and organizational measures to protect the Confidential Information, including an incident response function capable of identifying and mitigating the effects of, and preventing the recurrence of any Supplier Data Security Breach; (d) cooperate with Carrier to assist in the investigation, mitigation, and remediation of any Supplier Data Security Breach and provide Carrier with sufficient information to allow Carrier to meet any obligation to report or inform customers or other impacted parties of such event under applicable privacy and data protection laws; and (e) reimburse Carrier for the reasonable expenses that Carrier incurs as a result of a Supplier Data Security Breach. Carrier will use any Confidential Information or Customer Information received from Shipper solely to provide the Services and to comply with applicable law. Providing this information is voluntary; however, failure to provide the information may prevent Shipper or its customer from being able to obtain certain Services. Information provided by Shipper to Carrier may be disclosed to independent third party service providers, carriers, government personnel, and contractors or other agents, as may be necessary to perform the Services. Carrier has and shall retain exclusive ownership of and rights to all software and software goods developed by Carrier or its Affiliates which may be used to perform the Services hereunder. No license to Shipper under any trademark, patent, copyright or other intellectual property of Carrier is granted or implied under this Agreement. Shipper shall not seek a patent or other intellectual property rights on any Carrier goods (including its intellectual property) or methods utilizing those Carrier goods. Neither Party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects of the other Party provided hereunder.

15. **INDEMNIFICATION.** Except for claims for loss of or damage to goods, Carrier will defend, indemnify and hold Shipper, its Affiliates and their respective managers, directors, officers, employees, and agents (each a "**Shipper Indemnified Party**") harmless from and against any and all damages, injuries, liabilities, settlements, royalties, penalties, fines, costs, expenses (including, without limitation, reasonable attorneys' fees), and losses (collectively, "**Losses**") incurred by a Shipper Indemnified Party arising from any third party claim, demand, lawsuit, proceeding, or action (a "**Claim**") resulting from Carrier's performance of the Services under this Agreement only if and to the extent such Claim is directly and proximately caused by: (1) the negligence, intentional misconduct or fraud of Carrier; or (2) Carrier's violation of applicable laws or regulations. Notwithstanding the foregoing, Carrier's defense, indemnification, and hold harmless obligations shall not apply to the extent such claim represents consequential, punitive or special damages or is the result of the negligence or other wrongful conduct of Shipper, consignee, consignor, a beneficial owner of the goods, or an independent third party service provider.

Shipper will defend, indemnify and hold Carrier, its subsidiaries and Affiliates, and its and their respective managers, directors, officers, employees and agents (each a "**Carrier Indemnified Party**") harmless from and against any and all Losses incurred by a Carrier's Indemnified Party arising out of: (1) the negligence, intentional misconduct or fraud of Shipper, or its employees, agents or third party contractors; (2) Shipper's or its employees', agents' or third party contractor's violation of applicable laws or regulations including, without limitation, those referenced herein; (3) Shipper's or its employees' or agents' failure to comply with this Agreement; (4) Shipper's or its employees' or agents' failure to comply with obligations imposed by underlying third party service providers including, without limitation, the ocean carriers; (5) Carrier's compliance with or reliance on Shipper's instructions; (6) Shipper's breach of the terms or conditions of any agreement with the Goods manufacturer including, without limitation, any buy-sell terms; (7) Shipper's failure to disclose information or any incorrect or false statement by Shipper upon which Carrier or any contracted service provider reasonably relied; or (8) detention and

demurrage fees incurred because of Shipper's actions and that of any third party contractor engaged by Shipper, including those providing warehousing and/or drayage motor carriage services; except in each case to the extent such claim represents consequential, punitive or special damages or is the result of the negligence or other wrongful conduct of Carrier or an independent third party service provider.

If Shipper or Carrier receives a Claim for which the other party is responsible as an indemnifying party, the party receiving the Claim will promptly notify the other party and provide reasonable assistance and information requested in the defense against such Claim. No settlement of any indemnified Claim may be made without the indemnified Party's prior written consent to the terms of settlement, which consent shall not be unreasonably withheld or delayed. An indemnified Party will have the right to participate in the defense of any such Claim at its own expense. If an indemnified Party notifies the indemnifying Party of a Claim, the indemnifying Party shall provide prompt assurance of its ability and intent to indemnify the indemnified Party, to the indemnified Party's reasonable satisfaction, and the indemnifying Party shall commence to defend such Claim, at its sole cost and expense, within ten (10) days of such notice.

16. **FORCE MAJEURE.** A Party shall not be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for Shipper's payment obligations), when and to the extent such failure or delay is caused by or results from an event beyond the impacted Party's reasonable control, whether or not foreseeable (a "**Force Majeure Event**"), which events may include, without limitation, acts of God, floods, hurricanes, fires, explosions, tornadoes or other casualties, natural catastrophe or disaster and exceptional climatic event, earthquakes, unusually severe weather, quarantine restrictions, pandemics, epidemics, or other outbreak of disease or public health emergency war, insurrection, terrorist threats or acts, acts or omissions of public enemy, acts or omissions of public authority, closing of the public highways, riots or other civil unrest, transportation disasters, closure of transportation networks, government orders, governmental restraints and interference (including import restrictions and voluntary quotas arising from the threat of governmental restraints), embargoes or other similar conditions except commercial contingencies (such as changing markets, business declines, etc.), blockades, national or regional emergencies, strikes, lockouts, labor stoppages, slowdowns, shortages or disturbances, and power outages or shortages and other utility failures, and information technology failures. The impacted Party shall provide notice of the Force Majeure Event to the other Party as soon as reasonably practicable under the circumstances, stating the impact on performance and the period the occurrence is expected to continue. The impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of the Force Majeure Event are minimized. The impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. The MQC and Carrier's service commitment will be reduced pro rata based on the duration of non-performance caused by the Force Majeure Event and Carrier reserves the right to amend any tariff or negotiated freight or other rates, fees, accessorial or charges upon written notice, if and as necessary to provide Services hereunder, which notice may be given as soon as reasonably practicable under the circumstances.

17. **PUBLICITY.** Neither Party shall issue any press release or public announcement or make any public disclosure (including promotional materials, marketing materials or otherwise) regarding the relationship between the Parties, or the existence or the terms and conditions of this Agreement, without the prior written consent of the other Party; provided that the foregoing will not prohibit any disclosure to the extent required by applicable law. Shipper shall not, directly or indirectly, act in any way likely to damage or disparage the goodwill or reputation of Carrier, its Affiliates, or any of their services. This provision will survive the expiration or termination of this Agreement.

18. **NOTICES.** All notices required or permitted under this Agreement, including requests, consents, claims, demands, waivers, and other communications (collectively, "**Notices**"), shall be in writing and in English. Notices provided by Carrier to Shipper may be sent by email to a Shipper email address designated in the Shipper platform or otherwise provided by Shipper from time to time, and such email shall constitute written notice to Shipper under this Agreement. Except for Legal Notices (as defined below), Notices provided by Shipper to Carrier may be sent by email to an email address designated by Carrier for operational or business communications, and such email shall constitute written notice under this Agreement. Notices relating to claims, disputes, breach, termination, indemnification, or other matters reasonably expected to result in legal proceedings ("**Legal Notices**") must be delivered by overnight courier, hand delivery, or certified mail (return receipt requested) to Carrier at its principal place of business set forth in the first paragraph of this Agreement, directed to the attention of Carrier's Legal Department, with a copy sent by email to legal@wayfair.com. Overnight courier and hand-delivered Legal Notices shall be effective upon actual receipt, and Legal Notices sent by certified mail shall be effective on the third (3rd) business day after mailing.

19. **ASSIGNMENT.** This Agreement, and any right or obligation under this Agreement, is not assignable by either Party without the written consent of the other Party, except that either Party may assign this Agreement (or any right or obligation under this Agreement) to any Affiliate of that Party or in connection with any merger, consolidation, reorganization, sale or similar transaction, which involves all or substantially all of the assigning Party's assets relating to this Agreement, as long as this Agreement is binding on and enforceable by such assignee, and the assigning Party remains liable for the assignee's performance.

20. **MISCELLANEOUS.**

a. This Agreement, together with its exhibits and appendices, Carrier's governing rules tariff (available at [www.dpiusa.com/members/web\\_users/GUEST123](http://www.dpiusa.com/members/web_users/GUEST123)), and Carrier's bill of lading (available at <https://www.castlegateforwarding.com/>), the terms and conditions for each of which are incorporated herein, represent the entire agreement of the Parties with respect to its subject matter, supersedes all prior proposals, agreements, memoranda, or understandings with respect to this Agreement or its subject matter and effectuates the termination of any letter of intent or similar instrument entered into between the Parties or their Affiliates relating to the Services. This Agreement may be amended only pursuant to a written instrument and any future representation, agreement, understanding or waiver will be binding only if in a writing signed by the Party sought to be bound.

b. The controlling versions of this Agreement, any exhibits, appendices, or other transactional documents shall be the English language versions agreed upon by the Parties, and all notices or other communications or deliveries required or permitted under this Agreement shall be in the English language.

c. Each Party has had the opportunity to be represented by counsel in connection with the drafting and negotiation of this Agreement, and any exhibits or appendices hereto, the terms are not to be construed more severely against one of the Parties than the other.

d. Specifically, no term is to be construed more severely against the Party deemed to be the drafter of such term than against the other Party.

e. The terms of this Agreement which, by their nature, should survive the termination or expiration of this Agreement shall be deemed to survive.

f. If any provision of this Agreement may prove to be illegal or unenforceable, the remaining provisions of this agreement shall continue in force and effect unless the Parties would not have entered into the agreement without the provision that is proven to be illegal or unenforceable.

g. Either Party's failure to strictly enforce any provision of this Agreement will not be construed as a waiver of that provision or as excusing the other Party from future performance.

h. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which, when taken

together, will be deemed to constitute one and the same agreement. Any Party to this Agreement may deliver an executed copy hereof by facsimile or other electronic transmission to the other Party and any such delivery shall have the same force and effect as delivery of a manually signed copy of the NRA.