



## SUPPLEMENTARY AGREEMENT

**THIS SUPPLEMENTARY AGREEMENT** (hereinafter referred to as "Supplementary Agreement"), is made by and among the following:

**PACIFIC FINANCIAL ASSOCIATION, INC.**, a California corporation (hereinafter referred to as "Trustee"); and,

[REDACTED] hereinafter referred to as "Trustor"), a pending or currently active transportation broker or freight forwarder subject to regulation by the Federal Motor Carrier Safety Administration (FMCSA) under DOT Docket No. [REDACTED].

The purpose of this Supplementary Agreement is to further define the relationship between Trustee and Trustor pursuant to a current or pending BMC-85 Broker's or Freight Forwarder's Trust Fund Agreement (hereinafter referred to as the "BMC-85") under 49 U.S.C. 13906, the entirety of which hereby is incorporated as an organic element of this Supplementary Agreement by this reference.

### **RECITALS**

WHEREAS, Trustee is a "Financial Institution" within the meaning of 49 CFR 387.307 authorized to accept and hold collateral for and issue the BMC-85; and,

WHEREAS, Trustor is or intends to become a licensed transportation broker or freight forwarder pursuant to the provisions of 49 U.S.C. 13904 and the rules and regulations of the FMCSA. Trustor further represents and warrants that no one having or expecting to have any financial, proprietary, or other significant interest in Trustor, including Trustor's principals, directors, officers, or key employees, is in default of any debt or obligation owed to Trustee; and,

WHEREAS, the parties have entered into or will enter into a BMC-85 and also desire to enter into this Supplementary Agreement to further define the relationship between the parties pursuant to the provisions of that BMC-85;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, and the mutual covenants and undertakings set forth herein and in the BMC-85 supplemented hereby, the parties hereto agree as follows:

### **PROVISIONS**

#### **Article I. Fees**

- (a) Trustor shall pay to Trustee costs and/or fees, including but not limited to the Standard Administrative Fee which shall be determined by the character of the collateral as set forth in Article V, and which shall be subject to change annually without notice to Trustor, and legal or administrative costs incurred by Trustee in connection with its administration of claims on the BMC-85 and in connection with enforcement of this Supplementary Agreement and any other written or oral undertakings between the Trustor and Trustee, (collectively referred to as "Fees") as set forth in this Supplementary Agreement.

- (b) The parties acknowledge that the Standard Administrative Fee covers only the sum total of three (3)

inquiries and/or claims made in relation to the BMC-85 per quarter unless Trustee shall determine otherwise in light of specific circumstances. The parties acknowledge and agree that inquiries and/or claims in excess of the limit shall be deemed Excessive Claims and shall be invoiced to Trustor in the amount of \$50.00 per claim inquiry and \$100.00 per completed claim application (such price shall be subject to change annually without notice to Trustor). Excessive Claims invoiced shall be paid by Trustor to Trustee within the due date indicated on the invoice.

- (c) Any payments owed by Trustor to Trustee for any Fees which are not paid on or before the due date may be deemed a default by Trustor, and may accrue interest at 15% per annum.
- (d) The payment of Fees by Trustor to Trustee is due in advance of services rendered and all Fees shall not be refundable once received by Trustee.

## **Article II. Trustee Responsibilities**

### ***Section 2.01 General***

- (a) Trustee shall, after execution of this Supplementary Agreement and upon receipt of fees and/or proper assignment of the collateral as required pursuant to Paragraph 4 of the BMC-85, such Collateral being in the form described in Article V herein, electronically file with the Federal Motor Carrier Safety Administration (FMCSA) the BMC-85.
- (b) Trustee may delegate its duties hereunder, or assign any of its rights, titles, or interest herein, to any other persons or entities, so long as such delegation or assignment is not prohibited by applicable law.

### ***Section 2.02 Fees***

Any Fees owed to Trustee by Trustor shall not be deducted or withheld from any portion of the BMC-85 Collateral without Trustor's express written consent in each particular instance.

### ***Section 2.03 Notice of Cancellation***

Trustee may file a "Notice of Cancellation" for the BMC-85 at any time Trustee determines, in good faith, that Trustor has breached any provision of the BMC-85 or this Supplementary Agreement or any other written or oral undertaking between the parties which the Trustee determines to be material to such arrangements.

### ***Section 2.04 Refunds***

- (a) In the event that a Notice of Cancellation for the BMC-85 is filed, Trustor is entitled to a refund, subject to the holdbacks set forth below, of the collateral remaining in the BMC-85 trust account. Such refund shall be made after Trustor submits to Trustee a written request for such refund but in any event such refund shall be made no earlier than sixty (60) days from the effective cancellation of the BMC-85 with the FMCSA, subject to the following holdbacks:
  - (i) An amount equal to the outstanding obligations owed to Trustee by Trustor for Fees; and,
  - (ii) An amount Trustee, in its sole and absolute discretion, deems necessary to satisfy any reserve requirements occasioned by pending or anticipated third party claims and/or litigation necessitated by Trustee's statutory obligations to the public in such regards.

## ***Section 2.05 Bankruptcy or Insolvency of Trustor***

- (a) In accordance with the relevant provisions of the BMC-85, any unsatisfied obligations between Trustor and Trustee regarding the full Collateral shall be construed as surviving bankruptcy, and therefore not be discharged in connection therewith — a measure necessary to ensure that the statutory requirements for such federally mandated agreements, restricted to indemnification of a narrow category of the public, specifically those established through the October 1998 amendments to the U.S. Bankruptcy Code, are met.
- (b) If Trustor experiences financial failure or insolvency, Trustee shall: (a) submit a Notice of Cancellation; (b) publically advertise claims for 60 days beginning on the date of publication of the Notice of Cancellation; and (c) pay, not later than 30 days after the expiration of the 60-day period for submission of claims: (i) all uncontested claims received during such period; or (ii) a pro rata share of such claims if the total amount of such claims exceeds the Collateral available.

## **Article III. Trustor Responsibilities**

### ***Section 3.01 General***

- (a) Trustor shall not delegate its duties hereunder, or assign any of Trustor's rights, titles, or interest herein, to any other persons or entities, except upon the express written consent of Trustee. All of Trustor's agents, employees and owners shall be deemed to have actual authority to bind the Trustor in all matters regarding this Supplementary Agreement and any other written or oral undertaking between the Trustor and Trustee.
- (b) Trustor shall keep Trustee apprised of Trustor's physical location, as well as all other appropriate contact information, at all times within the pendency of the BMC-85. Any failure of such shall be deemed as consent by Trustor to cancel Trustee's underlying BMC-85 filing with the FMCSA.

## **Article IV. Claims**

### ***Section 4.01 Administration of Claims***

- (a) In the event a claim is filed with Trustee pursuant to the provisions of the BMC-85, Trustee, or its Administrative Contractor, shall promptly deliver to Trustor via US First Class Mail, facsimile, or other electronic means, all information provided by the claimant regarding any such claim.
- (b) In the event Trustor disputes a claim, Trustor shall, within five business days after delivery of the information described above in Item (a) of this Section, deliver to Trustee a written notice of such dispute. Such written notice shall contain an explanation of the nature of the dispute with supporting documentation. By submitting such written notice to Trustee, Trustor hereby agrees to defend, indemnify, and hold Trustee harmless against all claims brought against Trustee by any party, including Trustor, in relation to the disputed claim.
- (c) In the event the written notice described above in Item (b) of this Section is not timely delivered to Trustee, Trustor shall be deemed to have admitted to Trustor's "legal liability" in relation to the claim.

In the event written notice described above in Item (b) of this Section is timely received by Trustee and Trustee determines, in its sole and absolute discretion, that such dispute is made in good faith, Trustee shall not pay the underlying shipper or carrier which submitted the disputed claim unless "legal liability" has been established through either admission, investigation or a complete process of adjudication. However, any failure on Trustor's part to cooperate fully with Trustee's investigation of any disputed



claim(s) shall be construed as an admission that Trustor no longer contests any such claim made against it, subject to Trustee's sole and absolute discretion in such regards.

## **Article V. Collateral Arrangements**

Both parties agree that the Collateral shall be established on the following basis:

**Plan 3:** An Internal Irrevocable Standby Letter of Credit (ILOC) secured by Trustee and issued through an alternative third party financial institution for the benefit of Trustor and wherein:

**Option C:** If partial Collateral in the amount of at least \$25,000.00 has been tendered in a form acceptable to Trustee and the remaining Collateral is tendered in the form of an ILOC, then Trustor shall be assessed a Standard Administrative Fee, payable in advance, in the amount of:

\$1,500 annually

## **Article VI. Indemnification and Exculpation**

### **Section 6.01 Indemnification**

██████████ individually who by signing this agreement acknowledges, represents and warrants that he/she has some financial, proprietary, or other interest in Trustor and he/she received a copy of the BMC-85 and this Supplementary Agreement (for purposes of this Section 6.01, collectively referred to as "Agreements"), and further agrees to the terms contained herein and understands that the provisions of this Section 6.01 are effective immediately and will continue to be valid and effective until terminated in the manner set forth herein.

Trustor and ██████████ (for purposes of this Section 6.01, collectively referred to as the "Indemnifying Party") shall, jointly and severally, absolutely and unconditionally, indemnify defend and hold Trustee harmless for any and all claims paid by Trustee on the BMC-85 as well as for all expenses advanced directly by Trustee or by third parties (including, but not limited to, amounts demanded by beneficiary from a 3rd party financial institution pursuant to an Irrevocable Standby Letter of Credit) at the request or direction of Trustee, for such purposes, whether in settlement for or compromise of any such action taken in good faith and subject to Trustee's determination, made in Trustee's sole and absolute discretion, that Trustor would have "legal liability". Indemnifying Party shall deposit with Trustee, on demand, a sum amount deemed sufficient by Trustee to discharge any claim made against Trustee on this undertaking. This sum may be used by Trustee to pay such claim or be held by Trustee as collateral security against loss or cost on its undertaking.

Indemnifying Party, jointly and severally, absolutely and unconditionally, hereby indemnify and promise to pay to Trustee or its order, upon demand, the amount necessary to satisfy Trustor's obligations contained herein, including, but not limited to, the payment of Fees (for purposes of this section 6.01 "Trustor's Obligations"). The liability of each Indemnifying Party shall be the total value of all Trustor's Obligations which remain outstanding and unperformed, plus interest thereon, plus all of Trustee's costs, expenses and fees, including attorney fees, incurred in connection with or relating to (i) the collection and enforcement of the value of Trustor's Obligations; (ii) the collection and sale of any property securing Trustor's Obligations, and (iii) the enforcement of such Indemnifying Party's obligations to Trustee under this Section 6.01, with such interest, costs, expenses and fees continuing to accrue until such Indemnifying Party's obligations are fully paid and satisfied. This obligation is one of payment and not collection. Indemnifying Party intends to guarantee at all times the Trustor's Obligations and prompt payment to Trustee when due. No part of the indemnification conveyed hereby shall be revoked without the written consent of an authorized representative of Trustee. Indemnifying

Party agrees that Trustee shall have the immediate right to garnish any real or personal property of Indemnifying Party in the event of default on any obligations herein.

Indemnifying Party agrees that its obligations shall continue in full force and effect until all Trustor's Obligations (past, present and future) to Trustee shall have been performed in full. Indemnifying Party's obligations shall include and extend to any and all renewals, extensions, modifications, rearrangements and refinancing thereof. Trustor and each other Indemnifying Party agrees that Trustor shall have the sole and absolute responsibility to notify the Indemnifying Party of any such renewal, extension, modification, rearrangement and refinancing and the Indemnifying Party agrees to defend, indemnify and hold Trustee harmless for Trustor's failure to so notify the Indemnifying Party.

Except as prohibited by applicable law, Indemnifying Party waives any right to require Trustee to: (a) make any presentment, protest, demand or notice of any kind, including notice of change of any terms of Trustor's obligations under the Agreements, default by Trustor or any other guarantor or surety, any action or nonaction taken by Trustor, Trustee or any other guarantor or surety of Trustor, or the creation of new or additional obligations imposed on Trustor; (b) proceed against Trustor before proceeding against Indemnifying Party; (c) apply any payments or proceeds received by Trustor in any order; (d) disclose any information about Trustor's Obligations, Trustor, or any other guarantor or surety, or about any action or nonaction of Trustee; or (e) pursue any remedy or course of action in Trustee's power whatsoever.

Indemnifying Party and Trustee agree that the provisions of this Section 6.01 shall not constitute security for any or all of the Collateral. Further, Indemnifying Party agrees to the provisions of this Section 6.01 in order to induce Trustee to issue the BMC-85.

## ***Section 6.02 Exculpation***

Trustee shall have the power and authority to perform every lawful act it considers, in its sole and absolute discretion, advisable in the management and investment of the Collateral, and may invest and reinvest the Collateral in every kind of property, real, personal, or mixed, and every kind of investment, including but not limited to private sector or government obligations or equities of every kind, commodities, currencies and exchange funds, shares of investment trusts, investment companies, whether offered privately or traded in the public market. Trustee shall act in good faith in the physical preservation and custody of the Collateral consistent with Trustee's fiduciary obligation under applicable law. In particular, but without limitation, Trustee shall have no responsibility (a) for the collection or protection of any income on the Collateral; (b) for the preservation of rights against issuers of the Collateral or against third persons; (c) for ascertaining any maturities, conversions, exchanges, offers, tenders, or similar matters relating to the Collateral; nor (d) for informing Trustor about any of the above, whether or not Trustee has or is deemed to have knowledge of such matters.

## **Article VII. General Arrangements**

### ***Section 7.01 Term of Agreement***

**The effective term of this Supplementary Agreement shall begin with the issuance of the BMC-85 and shall continue until all of Trustor's Obligations, as set forth in Section 6.01, are satisfied in full.**

### ***Section 7.02 Procedural Considerations***

The terms of this Supplementary Agreement and the BMC-85 or addenda referenced or otherwise incorporated herein are severable, and in the event any provision or term of such instruments is or are declared illegal or unenforceable the remainder of both this Supplementary Agreement and any sub-

agreements or addenda referenced or otherwise incorporated herein shall remain effective and binding on both parties. No waiver of any breach or violation of any of the covenants or provisions of this Supplementary Agreement, the BMC-85 and/or any sub-agreements or addenda referenced or otherwise incorporated herein shall be construed as a waiver of any subsequent breach or violation of the same or any other covenant or provision thereof.

### ***Section 7.03 Cumulative Remedies***

All of Trustee's rights and remedies whether evidenced by this Supplementary Agreement, the BMC-85 and of any sub-agreements or addenda referenced or otherwise incorporated herein or by any other writing between the parties, shall be cumulative and may be exercised singularly or concurrently. Election by Trustee to pursue any remedy shall not exclude pursuit of any other remedy, and an election not make expenditures or to take action to perform an obligation of Trustor under this Supplementary Agreement, after Trustor's failure to perform, shall not affect Trustee's right to declare a default and to exercise its remedies.

### ***Section 7.04 Governing Law***

The validity of this Supplementary Agreement between the parties, whether as to construction, interpretation and/or enforcement, or as to the corresponding rights of either of the parties hereto in such regards, shall be determined under, governed by, and construed in accordance with the laws of the State of Arizona to the extent not inconsistent with federal law or necessary judicial preemption. All legal actions or proceedings arising in connection with this Supplementary Agreement and the BMC-85 or addenda referenced or otherwise incorporated herein or supplemented hereby shall be litigated only in state or federal courts located in the County of Maricopa, State of Arizona. Furthermore, Trustor hereby waives any right to assert the doctrine of forum non-convenient, or to object in any other way to such state or federal venue within such geographical boundaries, as appropriate, and hereby consents to any court-ordered relief which might eventuate therefrom.

**IN WITNESS WHEREOF** the authorized representatives of the parties hereto hereby set their hands below, further reaffirming (a) that they are indeed the authorized representatives of their respective parties for such purposes, (b) that they have read the foregoing text of this Supplementary Agreement in its entirety and know and understand the contents thereof, and (c) that each of them hereby acknowledges receipt of an executed example hereof.

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**TRUSTEE: TRUS**  
PACIFIC FINANCIAL ASSOCIATION, INC.

**TOR:**

[REDACTED]

\_\_\_\_\_  
Daniel J. Larson, President

\_\_\_\_\_  
[REDACTED]

**INDEMNIFYING PARTY**

[REDACTED]

\_\_\_\_\_  
[REDACTED]