



INDEPENDENT COMMISSION AGENT AGREEMENT

THIS AGREEMENT made and entered into this _____ day of June, 2019, ("Effective Date") by and between *Quality Produce Shippers, Inc.*, an Illinois corporation with its principal place of business in Lincolnshire, IL (herein referred to as "Broker") and _____, an _____ corporation with its principal place of business at _____ (herein referred to as "Agent"):

W I T N E S S E T H

WHEREAS Broker is duly authorized by the Federal Motor Carrier Safety Administration in License **No. MC-387613** to arrange for transportation services in interstate commerce using licensed for-hire motor carriers of property, and desires to engage the services of various independent commission agents at various strategic locations throughout the United States; and

WHEREAS Agent possesses skill, knowledge and experience in arranging for-hire motor transportation services; has regular customers which are familiar with Agent and the motor carriers used by Agent from time to time; and desires to conduct regulated brokerage operations as an independent commission agent on behalf of Broker;

NOW THEREFORE, in consideration of the mutual covenants and conditions herein set forth, the sufficiency of which is hereby acknowledged, the parties do mutually agree as follows:

1. Scope of Engagement. Agent hereby agrees to conduct operations as a property broker as defined in 49 U.S.C. 13102(2) on behalf of Broker, using the name and legal credentials of Broker in all transactions which are conducted pursuant to this Agreement. It is understood and agreed that Agent shall, at all times, be considered an independent contractor, and not an employee of Broker at any time, or for any purpose. Nothing herein shall be construed as inconsistent with the independent contractor relationship and status which the parties mutually intend to create pursuant to this Agreement.

2. Duties of Agent. Agent agrees to maintain offices at the location set forth above, as well as such other locations as may be mutually agreed from time to time between the parties, which offices shall conduct property broker operations exclusively in the name of Quality Produce Shippers, Inc during the term of this Agreement. Agent shall maintain business hours which, in the judgment of Agent, are reasonable and sufficient for Agent to conduct operations on a continuing basis to provide adequate service to the customer. Nothing



herein shall be construed as requiring Agent to maintain specific office hours or to provide any minimum number of loads, customers,

revenues or services. Agent shall always conduct operations which comply with all applicable statutes and rules of the Federal Motor Carrier Safety Administration and to act in an ethical and responsible manner towards all shippers, receivers, consignors, consignees, carriers and the public at all times. All shipments arranged by Agent shall be tendered to motor carriers capable of performing the services, and shall not be double brokered, assigned or otherwise allowed to be transported by anyone other than the carrier to whom the shipment is tendered. Agent agrees to keep Broker advised of its activities on a daily basis and to promptly report to Broker all shipments arranged by Agent (including the origin, destination, consignor, consignee, commodity description, requested pickup and delivery dates, any additional pickup or delivery points, and the identity of the carrier performing the transportation services) as well as the dollar amount which the shipper or party responsible for payment of freight charges has agreed to pay, the amount the Agent has agreed to pay the carrier, and any additional information required for billing and payment purposes. Agent further agrees to inform Broker of any problems encountered by the carrier providing the transportation, including but not limited to, any delays in making timely pickup or delivery, any reports by the consignor or consignee of loss of or damage to cargo, and any unforeseen circumstances which may create liability on the part of the Broker to any party to the transaction or to any third party. Agent agrees to utilize only carriers which have been pre-approved by Broker, or which have produced satisfactory proof of proper operating authority; cargo and liability insurance as required by the customer and the applicable federal and state regulatory agencies; and if appropriate, acceptable third-party references as well as acceptable standing with the Federal Motor Carrier Safety Administration concerning compliance with the Federal Motor Carrier Safety Regulations. To the extent Agent may be authorized to execute carrier contracts on behalf of Broker, Agent shall use only contract formats which have been pre-approved by Broker.

3. Compensation. Broker agrees to pay Agent for the full, complete and satisfactory performance of each transportation activity arranged by Agent, commission equal to seventy percent _____ of the difference between the compensation received by Broker and the total compensation paid to the carrier or carriers performing the transportation services, hereinafter referred to as "the margin". Broker shall perform all invoicing and billing for all such services, subject to



Agent and the carriers providing Broker with all documentation required to secure payment from the customer.

(a) Payments to Agent. Broker will remit the commission to Agent on the second Friday after the commissions are earned by Agent. Commissions shall be deemed to have been earned by Agent when (i) Broker has received all documents necessary for billing the customer and (ii) customer has been invoiced.

(b) Payments Contingent Upon Payment By Customer. In the event Broker pays a commission to Agent before Broker has received payment from the customer, all such payments made by Broker to Agent shall be contingent upon full payment to Broker of the amounts due by the customer within sixty (60) days ("Customer Payment Period") of the date of invoicing. In the event full payment is not received by Broker within the Customer Payment Period, Broker may, at its option, by proper notice to Agent, charge back to Agent the amounts Broker has paid to Agent as well as fifty percent (50%) of the amounts Broker has paid to the carrier (including advances to the carrier's drivers, if any). Agent hereby authorizes Broker to offset any such chargebacks against current or future commissions or other compensation due Agent by Broker. Broker will endeavor to advise Agent of amounts not received by Broker within forty (40) days of each invoice.

(c) Collection Risks. Broker further reserves the right to designate any customer of Agent as a collection risk for any reason, and once a customer has been so designated, Broker may, at Broker's option, either (i) refuse to accept shipments involving that customer or (2) delay commission payments to Agent until Broker has received full compensation of all outstanding invoices due from Agent's customer, even if some of the invoices have been paid. In the event Broker agrees to accept shipments from a customer whom Broker has designated a collection risk, Agent shall be responsible for one hundred percent (100%) of the amounts paid to carriers for all such shipments, and Agent hereby authorizes Broker to deduct such amounts from Agent's commissions.

Escrow Funds. Agent will establish an escrow fund with Broker to ensure Sales Agents performance of all of its responsibilities, duties and obligations set forth in the Agreement. The escrow fund is to be maintained by Broker. The amount of principal to be held in escrow (the "Escrow Funds") shall be the greater of (i) five Thousand Dollars (\$5,000.00), or (ii) one half percent (.5%) of the anticipated annual sales to be reviewed annually, which amount is to be deducted from Sales Agent's commission at the



(d) rate of five percent (5.0%) of total compensation per week upon first commission settlement after the execution

of this Agreement and continue until funded in full. If, at any time, the principal amount in Escrow Funds falls below \$5,000.00, or one-half percent (.5%) of the anticipated annual sales, after it has been fully funded by Sales Agent, Sales Agent further authorizes Broker to deduct from Sales Agent's commissions at a rate of five percent (5.0%) of total compensation per week and continue until the amount of principal held in Escrow funds reaches a balance of \$5,000.00, or one-half percent (.5%) of the anticipated annual sales. The Escrow Funds shall be held by Broker for the purposes of ensuring Agent's compliance with the Agreement, and to reimburse Broker for any expense, Claim, loss or damage sustained by Carrier or its affiliates for which Sales Agent is responsible under this Agreement or any contract with the Broker or Broker's affiliates. While Escrow Funds are under Broker's control, Broker, upon Sales Agent's request, shall provide an accounting to Sales Agent of all transactions involving the Escrow Funds by indicating any deductions made to the Escrow Funds. Escrow Funds, less any deductions allowed for under this Agreement or any Addendum, shall be repaid to Sales Agent within six (6) months from the date of termination of this Agreement; provided, however, that the Escrow Funds shall not be repaid until the prompt return by Sales Agent of all Broker property and documents obtained or generated pursuant to this Agreement.

4. Expenses Paid By Agent. Agent shall be fully responsible for all of its own operating costs and expenses including, but not limited to, rent of all space and facilities used by Agent; all telephone, fax and Internet charges incurred by Agent in furtherance of its business; all compensation paid to any employee, agent or servant of Agent; all federal, state and local taxes levied against Agent in connection with Agent's conduct of its business; all insurance coverage required of or desired by Agent for the operation of its business; all costs incurred by Agent or Broker for credit checks; as well as any other expenses incurred by Agent in performing under this contract, except such expenses as Broker has expressly agreed to pay as set forth in paragraph 5 below. With respect to any persons employed by Agent in the conduct of its business, Agent agrees to properly withhold, report and pay all federal, state and local employment taxes as are required by law; to report and pay all required employer contributions including, but not limited to, FICA and Medicare; and to carry and pay for unemployment compensation, workers compensation, and any other forms of worker protection as are required by applicable federal, state and local laws and regulations. Agent further agrees to indemnify, defend and hold harmless Broker,



its employees, agents and servants, from any claims, actions, demands, lawsuits, settlements and causes of action of every nature whatsoever which are, or may be, asserted against Broker which are the responsibility of Agent under this Agreement, and this indemnification obligation of Agent shall include responsibility for any fees, costs or expenses (including attorney's fees) incurred by Broker in responding to or defending any such claims. If Agent is a corporation, limited partnership, limited liability company or limited liability partnership, the officers, directors, shareholders, general partners and members of such entities agree to personally guarantee the obligations of Agent to Broker set forth in this paragraph.

5. Expenses Paid By Broker. Broker agrees to pay all expenses incurred in operating its own offices, including but not limited to such things as rent, compensation of employees, telephone, fax and internet costs (including the costs of toll-free telephone and fax services at its offices), as well as all taxes and insurance of its own operations and the Broker compensation set forth in this Agreement. In addition, Broker agrees to pay all costs incurred in invoicing Agent's customers; PROVIDED, however, that Broker will not pay any costs of collection of delinquent accounts such as collection agents or attorneys, but will cooperate with Agent in asserting such claims in litigation or other debt collection activities to the extent reasonably necessary to further the objective of proper and legal collection of all sums due Broker under this Agreement. Broker agrees to assign all its rights to delinquent accounts, as well as any account Broker has designated as a collection risk, to Agent upon Agent's request, and upon doing so Broker shall have no further responsibility whatsoever to Agent for further cooperation in subsequent collection efforts. In the event Agent collects all or any portions of delinquent accounts which have been assigned to Agent by Broker, Agent shall reimburse Broker for any amounts Broker has paid to the servicing carriers up to the amounts actually collected by Agent.

6. Term of Agreement; Termination. This Agreement shall take effect on the Effective Date set forth above. (a) Initial Term; Automatic Renewal. The initial term of this Agreement shall be one year from the Effective Date ("Initial Term"). This Agreement shall automatically renew for successive one (1) year terms unless terminated by either party as allowed pursuant to Section 6.



- (b) Termination Without Cause. Either party may terminate this Agreement without cause by giving written notice to the other party not less than ninety (90) days prior to the proposed date of termination.
- (c) Termination For Cause. If either party believes the other party has committed a material breach of a term of this Agreement, it shall give written notice to the other party of the claimed breach and, in addition, shall afford the other party the right to cure the claimed breach within fifteen (15) calendar days of the other party's receipt of said notice ("Cure Period"). The non-defaulting party shall have the right to terminate this Agreement if the other party fails to cure the claimed breach within the Cure Period or to reasonably dispute the claimed breach within the time allowed to cure the breach; PROVIDED, however, that it shall not be necessary to provide an opportunity to cure if there has been previous breaches or defaults of a similar nature, even if cured as provided herein.
- (d) Cessation of Use By Agent of Broker's Name. Upon termination or nonrenewal of this Agreement, Agent shall immediately cease using Broker's name, letterhead, envelopes, business cards and other documentation or advertising containing Broker's name, and shall refrain from answering telephone, fax transmissions or email using Broker's name or from using Broker's name in any communications with third parties, other than to reasonably inform such parties that Agent is no longer affiliated with Broker.

7. Covenant Not to Compete: Agreement Not To Solicit Or Serve The Other Party's Customers. Each party hereby agrees that during the term of this Agreement, and for a period of two years following the termination or expiration of this Agreement, it will not, directly or indirectly, solicit or serve, or attempt to provide transportation services to, any customer of the other party, which customer's identity or shipping requirements became known to a party solely as a result of the other party's performance of this Agreement. Every employee of Agent who actively participates in any business governed by this Agreement shall execute the Personal Guarantee to this Agreement agreeing to be bound by the provisions of this paragraph.



- (a) Scope of Restraints. This covenant will apply to specific origins, destinations and commodities of freight movements concerning which a party would not have been aware but for the other party's performance of this Agreement, even if the party had previously been aware of or served that customer elsewhere. As used herein, the term "performance of this Agreement" shall be construed to mean activities which result in actual movement of freight as a result of direct contact between the party and the customer, but shall not include instances in which freight was moved without any direct contact between the party and the customer that was initiated by the party.
- (b) Confidentiality of Customer Lists. Each party's customer list shall be deemed confidential and proprietary information of said party and shall not be disclosed by the other party to any third persons, or used to the advantage of the other party, without the express written consent of the party in possession of the customer list. As used herein, the term "customer list" shall include all contact names, addresses, telephone numbers, facsimile numbers and email addresses as well as information regarding the customer's locations, commodities, customers, suppliers, traffic volumes, freight rates, payment terms, special service requirements and any other data not generally available to the public, unless such information is already in the possession of the other party prior to the effective date of this Agreement, or has come into the possession of the other party exclusively from sources other than the party possessing the confidential information.
- (c) Broker's Affiliates. This Covenant shall extend to customers of Broker's affiliates, including trucking and warehouse accounts of Broker's motor carrier affiliates.



- (d) Remedies. This clause may be enforced by either declaratory or injunctive relief, or by an award of money damages, or both, at the option of the party seeking to enforce this Covenant. In the event a customer of a party desires to continue using the services of the other party following termination or expiration of this Agreement, which would otherwise be prohibited by this Covenant, but without any prohibited solicitation of that customer's business having taken place, the party losing the business shall be reasonably compensated by the other party for loss of the business for a period of not less than one year following expiration or termination of this Agreement.

8. Applicable Law; Venue; Attorney's Fees. This Agreement shall be deemed to have been entered in the State of Illinois and shall be governed by Illinois law as to both interpretation and performance. In the event of litigation, the parties agree that suit may be venued only in Circuit Court for Lake County, Illinois, located in Waukegan, Illinois. The prevailing party shall be entitled to recover the costs of litigation, including actual, reasonable attorney's fees, except as provided herein or by applicable law. In the event of litigation, the parties agree to use their best efforts to resolve all issues between them in good faith through the use of negotiation, mediation or other available means of alternative dispute resolution. If the Court finds that a prevailing party has failed to do so, such party may be denied recovery of its reasonable attorney's fees and costs, as determined by the sole discretion of the trial court.



IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

**BROKER: Quality Produce Shippers, Inc.,
PO Box 592, Lincolnshire, IL 60069**

BY: _____ (signature)

Name of Person Signing:

AGENT : _____

Address: _____

By: _____ (signature)

Person Signing: _____

