

Warehouse Agreement

This Warehouse Agreement, dated as of [DATE] (this “**Agreement**”), is entered into between [WAREHOUSE OPERATOR NAME], a [STATE OF ORGANIZATION] [TYPE OF ENTITY] (“**Warehouse Operator**”) and [DEPOSITOR NAME], a [STATE OF ORGANIZATION] [TYPE OF ENTITY] (“**Depositor**”, and together with Warehouse Operator, the “**Parties**”, and each, a “**Party**”).

WHEREAS, Warehouse Operator is in the business of warehousing and storing goods; and

WHEREAS, Depositor is in the business of [DESCRIPTION OF BUSINESS];

WHEREAS, Depositor desires to engage Warehouse Operator to provide warehousing and related services, and Warehouse Operator desires to provide such services to Depositor.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

WAREHOUSE AGREEMENT

1. Provision of Storage and Related Services.

(a) Warehouse Operator shall provide warehousing, storage, handling, delivery and related services (the “**Services**”) for the goods described on the attached Exhibit 1 (the “**Goods**”) on behalf of Depositor, which are tendered for storage by Depositor from time to time under this Agreement. Warehouse Operator shall provide the Services in its facility identified on the attached Exhibit 2 (“**Warehouse**”). The Parties acknowledge and agree that each is subject to an agreement with Flowspace, Inc. (“**Flowspace**”) related to the Services (the “**Flowspace Agreement**”). In connection with the Flowspace Agreement, the Parties have agreed on the scope of the Services, the identity of the Goods and the Warehouse, and payment terms with respect to the subject matter hereunder. Nothing herein (including Section 1(c) below) shall serve to supersede or amend either Party’s obligations set forth in the Flowspace Agreement.

(b) If Warehouse Operator provides additional services, including the special handling services set forth on the attached Exhibit 3 and as agreed in connection with the Flowspace Agreement, it shall provide them (i) for the additional fees agreed in the Flowspace Agreement, and (ii) solely as agent for Depositor, and not as a bailee or warehouseman.

(c) The terms and conditions of this Agreement, together with the quotations, terms and conditions contained in any warehouse receipts issued by Warehouse Operator for the Goods stored under this Agreement, constitute the sole and entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

(d) Depositor acknowledges that Warehouse Operator will only issue non-negotiable warehouse receipts.

(e) [The Parties acknowledge and agree that if there is any conflict between the terms and conditions of this Agreement and the terms and conditions of any warehouse receipt issued to Depositor in connection with the Goods, the terms and conditions of this Agreement shall supersede and control.]

2. Tender of Goods for Storage.

(a) Depositor represents and warrants that it is the owner or has lawful possession of the Goods and all right and authority to store them with Warehouse Operator and thereafter direct the release and/or delivery of the Goods.

Depositor shall (i) tender any Goods for storage only during Warehouse Operator's posted business hours for the Warehouse; (ii) tender all Goods to the Warehouse properly marked and packed for storage and handling; (iii) provide Warehouse Operator with information concerning the Goods that is accurate, complete and sufficient to allow Warehouse Operator to comply with all laws and regulations concerning the storage, handling, processing, and transportation of the Goods; and (iv) furnish at or prior to tender of the Goods for storage a manifest in a form approved by Warehouse Operator listing any categories of Goods, brands or sizes to be separately kept and accounted for, and the types of storage and other services requested.

(b) Warehouse Operator may refuse to accept any goods for storage if the goods tendered for storage do not conform to the description contained on Exhibit 1. Before tendering Goods that require specialized handling or which are dangerous or hazardous, Depositor shall identify such goods and special handling requirements to Warehouse Operator in writing and Warehouse Operator may decline to store such goods. Depositor is solely responsible for providing complete and accurate handling and storage instructions for any nonconforming Goods, including any applicable safety procedures. If Warehouse Operator accepts any such nonconforming goods for storage, Depositor agrees to rates and charges **as may be set forth in the Flowspace Agreement** as well as all terms and conditions of this Agreement.

(c) For all Goods shipped to the Warehouse, Depositor shall ensure that the bill of lading or other contract of carriage ("**Transportation Contract**") as well as all declarations to government regulatory agencies (i) identify Depositor as the named consignee, in care of Warehouse Operator, and (ii) do not identify Warehouse Operator as the consignee. If any Goods are shipped to the Warehouse naming Warehouse Operator as named consignee on the Transportation Contract, Depositor shall promptly notify the carrier in writing that Warehouse Operator is (i) the "in care of party" only and (ii) does not have any beneficial title or interest in the Goods. Warehouse Operator may refuse to accept any Goods tendered for storage in violation of this provision, and shall not be liable for any loss or damage to, or misconsignment of, such Goods. Whether Warehouse Operator accepts or refuses goods shipped in violation of this Section 2, Depositor agrees to indemnify and hold Warehouse Operator harmless from all claims for transportation, storage, handling, and other charges relating to such goods, including surcharges, undercharges, rail demurrage, truck/intermodal detention, and other charges of any nature whatsoever. Depositor further agrees to indemnify, defend, and hold Warehouse Operator harmless from any costs, liabilities, actions, penalties, or expenses of any kind associated with the improper declaration of Warehouse Operator as consignee.

3. Access and Release of Goods.

(a) Depositor shall provide Warehouse Operator [NUMBER] hours' [advance] written instructions (each, a "**Release Order**") if it desires to order any Goods released from the Warehouse. Subject to receipt of such Release Order and payment of all outstanding storage and other fees, Warehouse Operator shall release the requested Goods to Depositor or its designee upon return of the warehouse receipt or receipts issued for the applicable Goods, together with the applicable Release Order, signed by Depositor.

(b) When Goods are released from the Warehouse, Depositor shall give Warehouse Operator a reasonable time after Warehouse Operator's receipt of Depositor's [written] instructions to carry out Depositor's instructions to release the Goods to Depositor or its designee. Warehouse Operator may without liability rely on any information contained in any Release Order or other [written] communication from Depositor. Depositor shall be responsible for all shipping, handling and other charges assessed by carriers and/or third parties in connection with the delivery and/or other shipment of the Goods, **as set forth in the Flowspace Agreement**. A Release Order providing instructions to transfer Goods on the books of Warehouse Operator to any other depositor of goods in the Warehouse will not be effective until such Release Order is delivered to and accepted by Warehouse Operator. The depositor of record shall be responsible for all charges up to the time the actual transfer of the applicable Goods is made. When Goods in storage are transferred from one Party to another through issuance of a new warehouse receipt, a new storage date for the transferee will be established effective on the date of transfer.

4. Transfer of Goods. Warehouse Operator may move, upon [NUMBER] days' notice to Depositor any Goods in storage

from the Warehouse to any of the other storage facilities owned or leased by Warehouse Operator. Warehouse Operator may, without notice, move any or all of the Goods from one location within the Warehouse or other warehouse in which the Goods are stored to another location within the same facility.

5. Warehouse Lien. Warehouse Operator shall have a lien on the Goods and upon the proceeds from the sale thereof to secure Depositor's payment of all fees, charges and expenses hereunder in connection with the storage, transportation, preservation, and handling of the Goods [as well as for like charges and expenses in relation to any other goods whenever deposited with Warehouse Operator by Depositor]. Warehouse Operator may enforce this lien at any time, including by selling all or any part of the Goods in accordance with applicable law.

6. Charges and Fees.

(a) Depositor shall pay all charges and fees due hereunder to FlowSpace, and FlowSpace shall remit such payments to Warehouse Operator, in each case on the schedule and in the manner described in the FlowSpace Agreement.

(c) All charges are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Depositor. Depositor shall be responsible for all such charges, costs, and taxes; provided, that Depositor shall not be responsible for any taxes imposed on, or with respect to, Warehouse Operator's income, revenues, gross receipts, personnel, or real or personal property.

7. Limited Warranty.

(a) Warehouse Operator shall not be liable for any loss or damage to the Goods tendered, stored, or handled, however caused, unless such loss or damage resulted from the failure by Warehouse Operator to exercise the level of care with regard to the Goods that a reasonably careful person would have exercised under the circumstances. Warehouse Operator is not liable for damages which could not have been avoided by the exercise of such care.

(b) Warehouse Operator shall be liable for loss of Goods due to inventory shortage or unexplained or mysterious disappearance of Goods only if Depositor establishes such loss occurred because of Warehouse Operator's failure to exercise the care required of Warehouse Operator under Section 7(a). Any presumption of conversion under applicable law shall not apply to a loss with respect to any Goods, and a claim for conversion must be established through affirmative evidence that Warehouse Operator converted the Goods to its own use. Depositor shall permit Warehouse Operator to inspect any damaged Goods for which a claim is submitted hereunder.

(c) Warehouse Operator shall not be liable for any breach of this Section 7 unless: (i) Depositor gives written notice to Warehouse Operator of any claim within [NUMBER] days after release of the Goods by Warehouse Operator or (ii) Depositor is notified by Warehouse Operator that loss or damage to part or all of the Goods has occurred, as the case may be, reasonably described. No lawsuit or other action may be maintained by Depositor against Warehouse Operator for loss or damage to the Goods unless a timely written claim has been given by Depositor as provided in the previous sentence and unless such lawsuit or other action is commenced no later than the earlier of: (x) [NUMBER] months after the date of delivery of the Goods to Depositor or its nominee by Warehouse Operator or (y) [NUMBER] months after Depositor is notified by Warehouse Operator that loss or damage to part or all of the Goods has occurred.

(e) IN NO EVENT SHALL WAREHOUSE OPERATOR'S LIABILITY UNDER THIS SECTION 7 EXCEED (I) THE ACTUAL COST TO REPAIR, RESTORE AND/OR REPLACE ANY DAMAGED GOODS, OR (II) [NUMBER] CENTS PER [UNIT] FOR THE DAMAGED GOODS, WHICHEVER IS LESS. THE REMEDIES SET FORTH IN THIS SECTION 7 SHALL BE DEPOSITOR'S SOLE AND EXCLUSIVE REMEDY AND WAREHOUSE OPERATOR'S ENTIRE LIABILITY FOR ANY BREACH OF WAREHOUSE OPERATOR'S OBLIGATIONS SET FORTH IN THIS SECTION 7.

8. Limitation of Liability. IN NO EVENT SHALL WAREHOUSE OPERATOR'S AGGREGATE LIABILITY UNDER THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, WAREHOUSE OPERATOR'S LIABILITY UNDER SECTION 7 OF THIS AGREEMENT, EXCEED [[NUMBER] TIMES] **THE TOTAL OF THE AMOUNTS PAID AND/OR PAYABLE TO WAREHOUSE OPERATOR (BY FLOWSPACE PURSUANT TO THE FLOWSPACE AGREEMENT)** FOR THE SERVICES RENDERED HEREUNDER [OR \$[AMOUNT], WHICHEVER IS LESS].

In the case of loss or damage to Goods for which Warehouse Operator is not liable, Depositor shall be responsible for all charges incurred in removing and disposing of such Goods, including any environmental clean-up and remediation costs related to such Goods and their removal and disposal.

9. Insurance. During the term of this Agreement [and for a period of [TIME PERIOD] thereafter], each Party shall, at its own expense, maintain and carry insurance in full force and effect against fire or other casualty in a sum no less than \$[AMOUNT] [ADD OTHER INSURANCE COVERAGES AND RESPECTIVE AMOUNTS, AS APPLICABLE] with financially sound and reputable insurers. Upon a Party's ("**Requesting Party**") request, the other Party ("**Insured Party**") shall provide the Requesting Party with a certificate of insurance from the Insured Party's insurer evidencing the insurance coverage specified in this Agreement. [The certificate of insurance shall name the Requesting Party as an additional insured.] The Insured Party shall provide the Requesting Party with [NUMBER] days' advance written notice in the event of a cancellation or material change in the Insured Party's insurance policy. Except where prohibited by law, the Insured Party shall require its insurer to waive all rights of subrogation against the Requesting Party's insurers and Requesting Party.

10. Termination.

(a) [This Agreement [may be canceled by either Party [for the other Party's material breach upon [NUMBER] days' prior written notice (provided such breach is not cured within such notice period) [and/or][upon [NUMBER] days' prior written notice with or without any cause or reason being given or required] and will be terminated without notice by either Party if no storage or other services are performed under this Agreement for a period of [NUMBER] consecutive days.]

(c) If this Agreement is terminated for any reason, Depositor shall, within [NUMBER] days after termination, arrange the removal of all Goods from the Warehouse, **subject to payment of all outstanding fees and charges due with respect to this Agreement, pursuant to the FlowSpace Agreement.** If Depositor does not promptly remove such Goods within [NUMBER] days, Warehouse Operator may without liability remove the Goods and sell the Goods at public or private sale without advertisement and with or without notification to all persons known to claim an interest in the Goods (to the last known place of business of the person to be notified) in the manner provided by law. If Warehouse Operator, after a reasonable effort, is unable to sell the goods, it may dispose of them without liability in any lawful manner.

11. Waiver. No waiver by Warehouse Operator of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Warehouse Operator. No failure by Warehouse Operator to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise by Warehouse Operator of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

12. Force Majeure. Warehouse Operator shall not be liable or responsible to Depositor, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Warehouse Operator including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

If Warehouse Operator has been unable to remove/deliver the Goods due to any reason specified in this Section 12, such Goods may be subject to storage charges (as agreed in the Flowspace Agreement) until such Goods are actually removed/delivered.

13. Choice of Law and Forum. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of [RELEVANT STATE] without giving effect to any choice or conflict of law provision or rule (whether of the State of [RELEVANT STATE] or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of [RELEVANT STATE]. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of [RELEVANT STATE] in each case located in the City of [RELEVANT CITY] and County of [RELEVANT COUNTY], and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

14. Survival. Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein shall survive the expiration or earlier termination of this Agreement; and (b) [SECTIONS] of this Agreement, [as well as any other provision that, in order to give proper effect to its intent,] should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement. [All other provisions of this Agreement shall not survive the expiration or earlier termination of this Agreement.]

15. Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all notices must be delivered by personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

Notice to Seller:

[WAREHOUSE OPERATOR ADDRESS]

[Facsimile: [NUMBER]]

[Email: [EMAIL ADDRESS]]

Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]

Notice to Buyer:

[DEPOSITOR ADDRESS]

[Facsimile: [NUMBER]]

[Email: [EMAIL ADDRESS]]

Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]

16. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any specific situation or jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other situation or jurisdiction[; provided, however, that if any fundamental term or provision of this Agreement (including [FUNDAMENTAL TERMS]), is invalid, illegal, or unenforceable, the remainder of this Agreement shall be unenforceable]. [Upon a determination that any term or provision is invalid, illegal or unenforceable, [the Parties shall negotiate in good faith to/the court may] modify this Agreement to give effect to the original intent of the Parties as closely as possible so that the transactions contemplated hereby will be consummated as originally contemplated to the greatest extent possible].

17. Amendments. No amendment to or modification of [or rescission of] this Agreement is effective unless it is in writing[, identified as an amendment to [or rescission of] this Agreement] and signed by [an authorized representative of] each Party.

18. Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise. Notwithstanding the previous sentence, the Parties intend that Depositor's rights under Section 8 are Depositor's exclusive remedies for the events specified therein.

19. Assignment. Neither Party shall assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of the other Party. Any purported assignment or delegation in violation of this Section 19 shall be null and void. No assignment or delegation shall relieve a Party of any of its obligations hereunder. **Notwithstanding the foregoing, the parties may have obligations and rights that may not be assigned, transferred, or subcontracted pursuant to the Flowspace Agreement.**

20. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

21. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. [Notwithstanding anything to the contrary in Section 15, a signed copy of this Agreement delivered by facsimile or email [or other means of electronic transmission] shall be given the same legal effect as delivery of an original signed copy of this Agreement.]

22. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, franchise, business trust, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever. No relationship of exclusivity shall be construed from this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

[WAREHOUSE OPERATOR NAME]

By _____

Name:

Title:

[DEPOSITOR NAME]

By _____

Name:

Title:

EXHIBITS

EXHIBIT A

- [GOODS]
- [FACILITY]
- [SPECIAL SERVICES]