

SHIPCARSNOW  
SHIPPER AGREEMENT



This agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("SHIPPER"), and ShipCarsNow, Inc. (SCN), a Federally Registered Property Broker with MC#558293 and a wholly owned subsidiary of Insight Network Logistics, LLC (INL), a Delaware limited liability company. INL is a wholly owned subsidiary of Union Pacific Corporation, a Utah corporation ("Corporation"). SCN and SHIPPER are each referred to individually as a "PARTY" and collectively as the "PARTIES."

SHIPPER requires transportation and logistic services, including the use of motor carriers, railroad carriers, ocean vessel operators and drive-away service providers (each a "CARRIER") for its shipments of passenger automobiles, trucks, or sport utility vehicles, hereafter referred to as the FREIGHT. SCN is engaged as a third party logistics provider in the business of arranging and providing for the transportation of FREIGHT for compensation and has agreed to provide or arrange for the provision of such services, either itself or through another property broker (a "SUB-BROKER"), to SHIPPER under the terms and conditions of this Agreement.

1. **SERVICE:** SCN agrees to arrange for transportation of SHIPPER's FREIGHT pursuant to the terms and conditions of this Agreement. SHIPPER agrees to tender shipments to SCN from time to time and be responsible to SCN for providing timely, accurate delivery instructions along with an accurate description of the FREIGHT to be shipped, including any special handling required for a given shipment.
2. **RECEIPTS AND BILLS OF LADING:** Upon request by the SHIPPER, SCN agrees to provide, or cause SUB-BROKER to provide, SHIPPER with proof of delivery for specific FREIGHT shipments in the form of a copy of the Bill of Lading or other delivery documentation signed by the party taking possession of the FREIGHT at the destination delivery location.
3. **FREIGHT REQUIREMENTS:** SHIPPER shall ensure that FREIGHT shall be operable with no material fluid leaks, shall have a minimum of 4" ground clearance, shall have its battery and spare tire secured, shall have antennas fully retracted or removed and shall otherwise be prepared for transport. Gas tank shall contain between 1/8 and 1/4 tank. SHIPPER shall remove all personal and loose items from FREIGHT. Personal and loose items shall not include standard vehicle items such as a jack and a spare tire but shall include, without limitation, food, pets, luggage, contraband, non-built-in radios, car phones, garage door openers and E-Z passes. Neither SCN nor the CARRIER shall be responsible for theft, loss or damage of personal or loose items included with FREIGHT.
4. **RATES:** Rates governing shipments under this agreement may be made verbally at any time to meet specific shipping schedules or business opportunities. All rate quotations shall be confirmed in writing from SCN to SHIPPER once SHIPPER verbally accepts

rate. Written confirmation of verbally agreed upon rates may be made by E-Mail, fax or letter from SCN to SHIPPER. All rate quotations, including modifications to the rates made either in accordance with above, or as established by the billing and payment by the PARTIES, together with the underlying FREIGHT bills shall be deemed an addendum to and considered a part of this Agreement except that no additional terms or provisions shall be included that contradict or waive terms and provisions of this Agreement unless it is agreed in writing and signed by both PARTIES.

5. **PAYMENTS:** SCN shall invoice SHIPPER for its services in accordance with the agreed upon rates and payment terms set forth below.
  - (a) **CREDIT ACCOUNTS** - If SHIPPER wishes to establish "credit" with SCN, (a) SHIPPER shall provide its valid federal employer identification number and D&B number to SCN, (b) SCN may invoice SHIPPER upon delivery of FREIGHT by Carrier and (c) SHIPPER agrees to pay SCN's invoice within fifteen (15) days of invoice date without deduction or setoff. SCN will notify SHIPPER in writing if it is classified as a credit customer and SCN may revoke such classification at any time with or without cause.

A SHIPPER that qualifies for credit can request SCN to send the invoice to another party for payment by the other party in accordance with the SHIPPER's credit terms with SCN; provided, however, that notwithstanding the foregoing, SHIPPER shall not be relieved of its obligations to pay the invoice.
  - (b) **CASH ACCOUNTS** - If SHIPPER does not establish "credit" with SCN, (a) SCN may invoice SHIPPER at the time FREIGHT is tendered by SHIPPER, prior to pick-up or receipt, and (b) SHIPPER agrees to pay SCN's invoice immediately upon receipt of such invoice and prior to vehicles being tendered to a carrier without deduction or setoff via wire transfer, money order or credit card payment.
  - (c) **FINANCE AND OTHER CHARGES** - If payment is not received by SCN when due, any outstanding balances will bear a late payment fee at the rate that is the lesser of: (i) 1.5% of the outstanding balance per month, or (ii) the maximum rate allowed by law, until paid in full. SCN reserves the right to charge SHIPPER the costs of collecting delinquent accounts, including filing and attorney fees. SCN may charge SHIPPER \$75 for each check issued by SHIPPER that is returned unpaid.

6. **CLAIMS FOR THEFT, LOSS & DAMAGE:**
  - (a) SHIPPER acknowledges that SCN and the SUB-BROKER, if applicable, are property brokers and not carriers (motor carrier, railroad carrier or ocean vessel operator).

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- (b) SCN will establish processes and make every reasonable effort to ensure that SHIPPER'S FREIGHT shipments are tendered to reputable, and insured CARRIERS and, in the case of motor carriers, railroad carriers and ocean vessel operators, to licensed CARRIERS. SCN shall collect information to file and process claims as appropriate on behalf of SHIPPER as a service and convenience to the SHIPPER. SHIPPER agrees to hold the CARRIER liable for, and hold SCN and the SUB-BROKER, if applicable, harmless from, expense associated with theft, loss or damage of FREIGHT while in possession of a CARRIER.
- (c) If payment of a claim is made by SCN or SUB-BROKER to SHIPPER, SHIPPER automatically assigns its rights and interest in the claim to SCN so as to allow SCN or SUB-BROKER, as applicable, to subrogate its loss.
- (d) CARRIERS utilized by SCN shall agree in writing with SCN to be liable for FREIGHT loss or damage and (except for railroad carriers and ocean vessel operators) shall provide proof of insurance to SCN in the form of an insurance certificate issued by a bonafide and licensed insurance provider. The liability coverage of CARRIERS utilized by SCN that are railroad carriers and ocean vessel operators will vary based on private contracts held by SCN.
- (e) In the event SCN utilizes a SUB-BROKER in arranging and providing for the transportation of SHIPPER'S FREIGHT, SCN will ensure that its agreement with SUB-BROKER will require the SUB-BROKER to have a writing from the CARRIER to be liable for FREIGHT loss or damage and (except for railroad carriers and ocean vessel operators) shall provide proof of insurance to SUB-BROKER in the form of an insurance certificate issued by a bona-fide insurance provider.
- (f) The CARRIER's insurance certificates referred to in Sections 6(d) and 6(e) above for FREIGHT liability shall report a minimum limit of \$250,000 for any one shipment, unless SCN is notified by SHIPPER of the increased value of FREIGHT prior to shipment pickup and with reasonable advance notice to allow SCN to cause such CARRIER to procure additional insurance coverage.
- (g) SHIPPER must notify SCN in writing of FREIGHT or other cargo loss or damage within 48 hours from the date of such loss, shortage or damage (the "Cargo Loss Date"), which for purposes of this Agreement shall be the delivery date or, in the event of non-delivery, the estimated scheduled delivery date (the "Cargo Loss Date").
- (h) SHIPPER will provide SCN with access and the ability to inspect damaged FREIGHT that is subject to a claim.
- (i) In no event shall SCN, SUB-BROKER, or the CARRIER be liable to SHIPPER or anyone else for special, incidental, or consequential damages (including, without limitation, damages for a loss of sale) that relate to or arise from the loss, damage or delay to SHIPPER'S FREIGHT.
- (j) Any civil action under this Agreement must be commenced in a Court of Law in the state of Michigan within one (1) year from the Cargo Loss Date as applicable.
7. **DELIVERIES OF SHIPPER'S FREIGHT:**
- (a) SCN will in good faith provide transportation logistics services to SHIPPER in an effort to cause SHIPPER'S FREIGHT to be delivered in a timely manner, subject to efficient load building and prevailing market supply of CARRIER resources. SCN makes no guarantee of performance or delivery on a specific date.
- (b) SHIPPER acknowledges that if less than a full conveyance load of FREIGHT (i.e., truckload, railcar load or vessel load) is tendered by SHIPPER, additional time may be required to collect and accumulate other vehicles to complete a load or to locate a CARRIER prepared to accept a partial load.
- (c) SHIPPER acknowledges and agrees that any and all delivery dates provided by SCN, SUB-BROKER, or the CARRIER are estimates and that no SCN, SUB-BROKER or CARRIER representative has the authority to represent, warrant or guarantee a delivery date for the shipment of SHIPPER'S FREIGHT under this Agreement. Estimates of delivery dates are subject to change. SCN shall not be liable for any promises made in reliance upon the estimated delivery date.
- (d) SCN reserves the right to route and utilize all legal and viable arrangement and transportation modes to move SHIPPER'S FREIGHT including the use of a property broker, motor carrier, railroad carrier, ocean vessel operator and drive-away service provider.
- (e) SHIPPER acknowledges and agrees that SCN may engage, on SHIPPER'S behalf, a third-party to drive a vehicle as part of normal yard operations, loading and unloading and for shuttling among local terminals and SCN may engage a drive-away service provider to pick-up and deliver SHIPPER'S FREIGHT. In the event a vehicle included in SHIPPER'S FREIGHT does not have enough fuel to allow the vehicle to be driven 50 miles, SHIPPER will be charged \$5.00 per gallon for such deficiency.
8. **INSURANCE:** SCN is bonded as required by the Federal Motor Carrier Safety Administration. SCN and its affiliates maintain self-insured retentions of varying amounts. General Liability, Property Damage, Automobile Liability, Worker's Compensation, and Leased Property fall within these self-insured retentions. In the event that SCN engages a SUB-BROKER to arrange for the transportation of the SHIPPER'S FREIGHT, SCN shall obtain from such SUB-BROKER proof that SUB-BROKER is bonded as required by the Federal Motor Carrier Safety Administration, and will also obtain proof from SUB-

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**ShipCarsNow**

BROKER that SUB-BROKER is a Federally Registered Property Broker.

**9. HAZARDOUS MATERIALS: SHIPPER REPRESENTS AND WARRANTS TO SCN THAT SHIPPER'S FREIGHT WILL NOT CONTAIN ANY HAZARDOUS MATERIALS AS DEFINED IN 49 CFR Section 172.800 and Section 173 et seq.**

10. **DEFAULT; TERMINATION:** Both PARTIES agree to discuss any perceived deficiency in performance or compliance with terms of this Agreement and will promptly endeavor to resolve all disputes in good faith. Either PARTY may terminate this Agreement upon ten (10) days advance written notice to the other PARTY. SHIPPER shall be responsible to pay SCN for any services performed prior to the termination of this Agreement and for shipments not yet completed and/or not yet invoiced to SHIPPER.

11. **INTELLECTUAL PROPERTY:** SCN hereby asserts that its database functions and software code, its system, services, methods of business, know-how, trade secrets and other intellectual property ("SCN Intellectual Property") are proprietary and confidential, and to the extent applicable, hereby claims and asserts its rights of ownership, trademark and copyright over SCN Intellectual Property. SHIPPER agrees not to use, disclose, discuss, publish or duplicate SCN's Intellectual Property, except (i) as specifically contemplated by this Agreement and only during the term of this Agreement and (ii) to the extent such SCN Intellectual Property is readily available and generally known to the public. SHIPPER agrees to not attempt to discover or reverse engineer SCN Intellectual Property and agrees to in no way attempt to disrupt the function or operation of SCN's systems and/or services.

12. **INDEMNIFICATION:** SCN and SHIPPER shall defend, indemnify and hold each other harmless against any claims, actions or damages, including, but not limited to, FREIGHT loss, damage, or delay, payment of rates and/or accessorial charges to CARRIERS and legal fees, arising out of a breach of their respective obligations under this Agreement, provided, however, the indemnified PARTY shall not offer settlement in any such claim without the agreement of the indemnifying PARTY which agreement shall not be unreasonably withheld. If the indemnified PARTY offers or agrees to a settlement for such a claim without the written agreement of the indemnifying PARTY, the indemnifying PARTY shall be relieved of its indemnification obligation. Neither PARTY shall be liable to the other PARTY for any claims, actions or damages due to the negligence of the other PARTY. The obligation to defend shall include all costs of defense as they accrue.

13. **ASSIGNMENT/MODIFICATIONS OF AGREEMENT:** This Agreement may not be assigned, in whole or in part, by either PARTY without the prior written consent of the other PARTY, which consent shall not be unreasonably withheld, except that SCN reserves the

right to assign the Agreement to a SUB-BROKER, subsidiary or affiliate of SCN. This Agreement shall be binding upon the PARTIES, their successors and permitted assigns. No amendment or modification of the terms of this Agreement shall be binding unless in writing and signed by the PARTIES.

14. **SEVERABILITY:** Sections of this Agreement are separate and divisible and in the event that any clause is deemed unenforceable, the balance of the Agreement shall continue in full force and effect.

15. **INDEPENDENT CONTRACTOR:** It is understood between SCN and SHIPPER, that SCN is not an agent for SUB-BROKER, CARRIER or SHIPPER and shall remain at all times an independent contractor.

16. **NONWAIVER:** Failure of either PARTY to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of this Agreement, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

17. **NOTICES:** Any notice required or permitted to be given under this Agreement, unless otherwise indicated, shall be deemed sufficiently given if it is delivered by hand to the individual noted in the signatory below or sent by prepaid mail, registered or certified, return receipt requested, by a nationally recognized overnight courier, or facsimile or e-mail (providing for electronic confirmation of receipt) transmission if sent to the address, facsimile number or e-mail address and to the attention of the individual and office noted in the signatory below.

18. **FORCE MAJEURE:** Neither PARTY shall be liable to the other for failure to perform any of its obligations under this Agreement during any time in which such performance is prevented by fire, flood, hurricane, hail storm or other natural disaster, war, embargo, riot, strike, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of the SHIPPER or SCN (each a "Force Majeure Event"), provided that the PARTY so prevented uses its best efforts to perform under this Agreement and provided further, that such PARTY provide reasonable notice to the other PARTY of such inability to perform. SCN, SUB-BROKER and the CARRIER shall not be liable to the SHIPPER for loss or damage that relate to or arise from the loss, damage or delay to SHIPPER'S FREIGHT which is caused by a Force Majeure Event.

19. **THIRD PARTY BENEFICIARIES:** In the event that SCN engages a SUB-BROKER to arrange for the transportation of SHIPPER'S FREIGHT, SUB-BROKER shall be considered a third-party beneficiary of this Agreement.

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- 20. **GOVERNING LAW:** This Agreement shall be construed under the laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Michigan.
  
- 21. **CONFIDENTIALITY:** SHIPPER shall not publish, use or disclose the contents or existence of this Agreement except as necessary to conduct their operations pursuant to this Agreement.
  
- 22. **ENTIRE AGREEMENT:** This Agreement, including all Exhibits, constitutes the entire agreement intended by and between the PARTIES and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter hereof.

**IN WITNESS WHEREOF**, the PARTIES have caused this Agreement to be executed in their respective names by their fully-authorized representatives as of the dates first above written.

**CUSTOMER/SHIPPER**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

City, ST, ZIP: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

**SHIPCARSNOW**

SHIPCARSNOW  
1849 Pond Run, Suite 200  
Auburn Hills, MI 48326

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

FACSIMILE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

**Each person signing this Agreement represents and warrants that he or she is a fully authorized representative of the PARTY for whom he or she is signing this Agreement and is authorized to execute this Agreement on behalf of such PARTY.**