

FreshOne Distribution Services LLC
Product Delivery Agreement Addendum (rev. 11-4-2020-1)

This Product Delivery Agreement Addendum (the “Addendum”) is entered into by and between FreshOne Delivery Services LLC, a Texas limited liability company, whose principal office address is 14180 Dallas Parkway, Suite 620, Dallas, Texas 75254 (“FIDS”, “Carrier” or “Company”) and Customer, whose name and address are included on its Bill of Lading or other shipping documents (each a “Party” and, collectively, the “Parties”), as of the date of tender/delivery of Products by Customer to FIDS (the “Effective Date”) and is an integral part of that certain Product Delivery Agreement between FIDS and Customer, of even date herewith (the “Agreement”). As used in the Agreement and this Addendum, “Customer” means the person, company, firm, or other entity for whom the Products are stored and the services contemplated hereby are provided, as identified on the Agreement between FIDS and the customer named therein and on the Bill of Lading relating to the Products tendered by such Customer. It is agreed and understood that, upon Customer’s tender/delivery of Products to FIDS, Customer shall be deemed to have accepted this Addendum without modification or amendment (except as provided herein), which shall be deemed incorporated by reference into such Agreement. In the event of a conflict between the terms of this Addendum and the Agreement, the terms of the Agreement shall prevail. Accordingly, in consideration of FIDS’s acceptance of such tender/delivery by Customer, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to the following terms and conditions of the warehousing and storage services provided by FIDS to Customer as follows:

1. Services To Be Provided By Carrier. FIDS shall provide Customer with the transportation and related services described on one or more schedules that are a part of the Agreement, as such schedules may be modified or supplemented from time to time, which schedules and Agreement incorporated herein by reference (each, a “Schedule”).

a) Equipment. Carrier represents and warrants that all equipment used in the provision of the transportation, distribution and related services with respect to the Products complies with all applicable state and federal transportation laws, guidelines and regulations, including but not limited to the Food Safety Modernization Act; and that all equipment is in good condition to ensure the safe transport of the Products.

b) Product Transfer. Carrier will receive Products at the Locations in time to allow non-constrained loading and on-time delivery to each specified Location. Shipper will have all Products ready for transfer to Carrier at a mutually agreed upon time as to not delay Carrier’s ability to make on-time deliveries. Carrier assumes no liability for late deliveries due to Shipper delays.

c) Driver Qualifications. Carrier will engage professional, qualified and licensed drivers in the transportation services delivery process, each of whom shall, at a minimum, be trained in proper Hazard Analysis and Critical Control Points (“HACCP”) guidelines, as implemented by Carrier.

d) Operating Authority. Carrier represents and warrants that it currently has in effect the appropriate operating authorities, if any should be required, from the appropriate regulatory agencies to furnish services hereunder, and Carrier agrees to maintain such operating authorities, where required, in effect during the term of this Agreement.

2. Distinct Needs of Shipper. Carrier agrees that it will provide service to Shipper as a contract carrier by motor vehicle, which is and will be designed to meet the distinct needs of the Shipper. Additional specific needs are described as follows. The parties acknowledge and agree that modification to the specifications provided herein may result in changes to the rates charged by Carrier hereunder.

a) Temperature Requirements.
i) Ambient temperature requirements. Products requiring ambient temperature controls shall be maintained at a temperature range of 55–70 degrees Fahrenheit, or as may otherwise be agreed in writing between the parties.

ii) Refrigerated temperature requirements. Products requiring refrigeration shall be maintained at a temperature range of 33–40 degrees Fahrenheit, or as may otherwise be agreed in writing between the parties.

b) **On Time Delivery.** In view of the fact that the Products being carried and/or delivered pursuant to this Agreement are fresh, have a short shelf-life, Carrier acknowledges and agrees that time is of the essence with respect to the timely delivery of the Products to Shipper's customers. Accordingly, Carrier shall use its best efforts to have a 98% on-time delivery record with delivery "windows" based on pickup and delivery times in Schedule A; provided, however, that, notwithstanding anything to the contrary contained herein or in any other agreement between the parties, Carrier shall be afforded "grace periods" of: a) thirty (30) minutes for Product pickup times; and, b) two hours for delivery times and; provided further that, delivery times shall be based on the Product pickup times from Shipper's commissary.

i) In the event that a delivery is made outside of the delivery window described in Schedule A, Carrier shall: a) notify Shipper of such exception within twelve (12) hours of the scheduled delivery time; and b) the parties will investigate the cause of any such delay(s). Shipper will be credited for a proportionate amount, based upon the reason for the delay, not to exceed the cost of delivery relating to such delayed delivery.

ii) In the event that a delivery is not made, Carrier shall: a) notify Shipper of such exception within twelve (12) hours of the scheduled delivery time; and b) the parties will investigate the cause of any such delay(s); and, c) unless it is mutually determined in good faith that the cause of such delay was not the result of the negligent act or omission of Carrier, the Shipper will be credited for a proportionate amount not to exceed the cost of delivery relating to such delayed (or failed) delivery.

iii) From time to time, it may be necessary for the delivery routes or schedules to be modified or revised. Accordingly, Carrier agrees to accommodate any route and/or schedule changes to the best of its' ability within the scope of the delivery requirements of this Agreement, subject to additional charges.

iv) Carrier agrees to maintain and, upon Shipper's written request to Carrier, provide Shipper with accurate, real-time delivery status and tracking of all shipments.

c) **Documentation Records.** Carrier agrees to maintain and make available all delivery records and transaction information (including proof of delivery with photos) between Shipper and Carrier for the duration of the Term and for twenty-four (24) months thereafter.

d) **Location Personnel Relationships.** Carrier shall be diligent in the performance of Services and be professional in its commitment to meeting its obligations. The Services shall be performed in a professional, workmanlike manner, consistent with industry standards, and in accordance with applicable laws and regulations.

3. **Term.** The Agreement shall be effective for the period indicated on the Proposal relating to this Agreement (the "Term"). Thereafter, the Agreement shall automatically renew for successive two-year periods unless either party gives notice of termination to the other at least ninety (90) days prior to the end of the then current Term ("Extended Term"). Either party may terminate the Agreement in the event that the other party has breached the material terms of the Agreement and has failed to cure such deficiencies or breaches (or failed to diligently proceed to effect such a cure) within thirty (30) days of a prior written notice by the non-defaulting party to the defaulting party notifying the defaulting party of such deficiency or breach in detail. Subject to the other provisions contained in this Agreement, the parties will negotiate in good faith regarding the pricing and other financial terms of this Agreement to be in effect for each year during the Term of this Agreement. The expiration or sooner termination of this Agreement shall not affect any rights or obligations arising prior to such expiration or sooner termination.

4. **Representations and Warranties.** Customer warrants its compliance with all applicable laws, rules, and regulations in respect of the Products and the services requested to be performed by Company, including but not limited to USDA, FDA, HACCP and all other applicable federal, state and local health and safety laws and regulations, customs laws, import and export laws, as well as with the U.S. Foreign Corrupt Practices Act and similar laws related to anti-corruption and anti-bribery.

5. **Payment Terms & Collection Expenses.** Company shall issue monthly invoices to Customer for transportation and freight services provided to Customer, which shall be due and payable within 21 days of the invoice date unless otherwise agreed by the Parties in writing. All invoices not paid by the due date will be subject to a late

fee of 2% per month, or the maximum rate then allowable under applicable law. If it becomes necessary for Company to utilize a collection agency and/or an attorney to collect any unpaid amount owed or to assist in effectuating the lien provisions herein, Customer shall be obligated to pay all costs of collection, including without limitation agency fees, attorneys fees, court costs and other reasonably incurred expenses.

6. Insurance. a) Concurrently with the execution and delivery of this Agreement (and not less than annually thereafter), FreshOne will furnish Shipper with certificates of insurance (and/or such other evidence as Shipper may reasonably request) that the following insurance coverages are in force on behalf of FreshOne: i) comprehensive general liability insurance reflecting minimum coverage as follows: \$1,000,000 for each occurrence/\$2,000,000 in the aggregate for bodily injury; and \$500,000 per occurrence/\$2,000,000 in the aggregate for property damage; ii) Commercial Auto Liability insurance with limits of \$1,000,000 per occurrence for Bodily Injury and Property Damage. Such insurance will apply to both owned and non-owned vehicles; iii) Workers' Compensation insurance covering FreshOne's obligations under all applicable laws and Employers Liability insurance in the amount of \$500,000 per occurrence; and, iv) Umbrella Excess Liability insurance in the amount of \$5,000,000.

All policies of insurance (and such certificates of insurance) will: x) name Shipper as an additional insured (except Workers Compensation); y) provide for waiver of underwriters rights of subrogation against Shipper and, z) provide that such coverage may not be canceled or altered except upon not less than 30 days prior written notice being given to Shipper.

b) Concurrently with the execution and delivery of this Agreement (and not less than annually thereafter), Shipper will furnish FreshOne with certificates of insurance (and/or such other evidence as FreshOne may reasonably request) that the following insurance coverages are in force on behalf of Shipper: i) comprehensive general liability insurance reflecting minimum coverage as follows: \$1,000,000 for each occurrence/\$2,000,000 in the aggregate for bodily injury; and \$500,000 per occurrence/\$2,000,000 in the aggregate for property damage; b) Commercial Auto Liability insurance with limits of \$1,000,000 per occurrence for Bodily Injury and Property Damage. Such insurance will apply to both owned and non-owned vehicles; c) Workers' Compensation insurance covering Shipper's obligations under all applicable laws and Employers Liability insurance in the amount of \$500,000 per occurrence; and, d) Umbrella Excess Liability insurance in the amount of \$5,000,000.

All policies of insurance (and such certificates of insurance) will: x) name each of F1DS and F1F as an additional insured (except Workers Compensation); y) provide for waiver of underwriters rights of subrogation against each of F1DS and F1F; and, z) provide that such coverage may not be canceled or altered except upon not less than 30 days prior written notice being given to each of F1DS and F1F.

c) Freight Loss or Damage Claims. Subject to the other terms, conditions, and provisions contained herein, FreshOne shall be liable to Shipper for loss of or damage to any Product or Goods occurring while any such Product(s) or Goods are under the care, custody, and control of Carrier ("Freight Claim"). The measure of the value of any such loss of or damage to property shall be calculated on the basis of the cost to the kind and quantity of Product so lost or damaged.

Any Freight Claim for loss or damage arising hereunder shall be handled in the following manner:

i. A Freight Claim must be in writing and submitted by Shipper to FreshOne by e-mail, fax or certified mail as soon as possible but, in any case, not later than two weeks after the products are delivered to the relevant Location or Shipper's receipt of a claim from Shipper's customer, whichever is later. FreshOne shall have no obligation to pay (or submit to its insurance carriers for payment) any Freight Claim that is not submitted in a timely manner in accordance with this Section. Shipper shall use its best efforts to permit Carrier the opportunity to promptly inspect all Products affected by such loss or damage. A communication in writing from Shipper that is submitted to Carrier within the notice period set forth above and (1) containing facts reasonably sufficient to identify the shipment involved, (2) asserting liability (and the cause therefor) for alleged loss or damage and (3) making claim for payment of a specified or determinable amount of money, shall be considered sufficient to constitute a Freight Claim.

ii. Within forty-eight (48) hours of Carrier's receipt of a proper Freight Claim in the manner and form described hereinabove, Carrier shall acknowledge receipt of such Freight Claim by e-mail, fax or certified mail to Shipper.

Carrier shall promptly advise Shipper as to any additional documentation or information that may be required to process the Freight Claim.

iii. Each Freight Claim filed against Carrier in the manner prescribed herein shall be promptly and thoroughly investigated by Carrier, if an investigation has not already been made prior to receipt of the Freight Claim.

iv. Carrier shall deal in good faith regarding each such Freight Claim arising hereunder and shall notify Shipper of its decision to pay, decline or offer a compromise resolution in respect of each claim, in writing, within ten (10) business days after the receipt of: a) such Freight Claim; or, b) all documentation and information reasonably requested by Carrier or its insurance carrier with respect to such claim, whichever is later.

v. No lawsuit or other action may be maintained by Shipper or others against FreshOne for loss or damage to the Products or Goods unless timely written claim has been given as provided in subparagraph (i) of this section and unless such lawsuit or other action is commenced by no later than the earlier of: (A) nine (9) months after date of delivery by FIDS or (B) nine (9) months after Shipper is notified that loss or damage to part or all of the Goods/Products has occurred. Shipper must retain and permit FreshOne to inspect the Products/Goods relating to such Freight Claim. Any lawsuit or arbitration proceeding must be commenced within nine (9) months following the date such Freight Claim arose. Failure to comply with any of the foregoing shall preclude Shipper from maintaining any claim or suit against FreshOne.

7. Compliance with Laws. Carrier agrees to strictly comply at all times with any federal, state, or municipal laws, regulations or ordinances applicable to its operations and their services to be performed under this Agreement, including without limitation: the Food Safety Modernization Act, the applicable Surface Transportation Board, United States Department of Transportation, Public Service Commissions, Motor Vehicle Departments.

8. Company will not be responsible for losses or damages incurred to Perishable Products beyond their expiration date.

9. Inspection & Security. All shipments are subject to inspection by Company or Company's Carriers for any transportation services provided, if any, and by any duly authorized government or regulatory entities, including but not limited to the U.S. Transportation Security Administration and U.S. Customs and Border Protection. Notwithstanding the foregoing right to inspect shipments, Company is not obligated to perform any inspections except as mandated by law. Further, Company reserves the right to unilaterally reject any shipment that it deems unfit for transport, or for storage under this Agreement, after inspection.

11. Confidentiality. a) Any proprietary or non-public information supplied by either party to the other party (whether set forth in writing, on any database or in any other medium) including, but not limited to, the existence of, and terms and conditions of this Agreement (the "Confidential Information"), is and shall remain the confidential, proprietary, trade secret information of the disclosing party. The receiving party of any Confidential Information shall not disclose any such Confidential Information to any third person or entity without the prior written consent of the disclosing party in every instance, and shall not use any such Confidential Information, nor permit any such Confidential Information to be used for any reason other than to perform the services contemplated hereunder; provided, however, that either party and its respective successors and assigns may (i) disclose any Confidential Information to the extent compelled by law, regulation, rule, subpoena, or other process of law, provided that the receiving party shall give the disclosing party prompt notice of any such requirement and shall cooperate with any attempt by the disclosing party to obtain a protective order, and (ii) disclose any Confidential Information as may be necessary and appropriate to its employees, auditors and professional advisors on a need-to-know basis, provided that they agree to observe the confidentiality and non-use provisions of this paragraph. The obligations of confidentiality and non-use under this paragraph shall not apply to any of the Confidential Information as to which the recipient of the Confidential Information can reasonably establish that it: (a) was known to the receiving party at the time the Confidential Information was disclosed or made available to the receiving party; (b) was known to the public at the time the Confidential Information was disclosed or made available to the receiving party; (c) became known to the public after the date the Confidential Information was disclosed or made available to the receiving party through no fault or breach of this paragraph by the receiving party; (d) was given or made available to the receiving party by a third party who had a lawful right to disclose the Confidential Information to the recipient party; or, (e) was independently developed by the receiving party without reference to the Confidential Information. The obligations of

the receiving party under this Paragraph as to any particular Confidential Information will survive the termination or expiration of this Agreement and the provisions of this paragraph shall survive the cancellation, termination or expiration of this Agreement for a period of two (2) years.

b) The receiving party agrees that, due to the unique nature of the Confidential Information of the disclosing party, the unauthorized disclosure or use of such Confidential Information may cause irreparable harm and significant injury to the disclosing party, the extent of which will be difficult to ascertain and for which there may be no adequate remedy at law. Accordingly, the parties agree that the disclosing party, in addition to any other available remedies, shall have the right to seek and obtain an immediate injunction and other equitable relief enjoining any breach or threatened breach of this Agreement, without the necessity of posting any bond or other security.

12. Notice of Claim and Filing of Suit.

a. Company shall not be liable for any claim whatsoever for any loss, damage, or destruction of the Products unless it is timely filed, in writing, within a maximum of sixty (60) days after Customer knew or should have known by the exercise of reasonable care of such loss or damage.

b. Any lawsuit or other claim against Company with respect to the Products shall be forever waived unless commenced within nine (9) months after Customer knew or should have known by the exercise of reasonable care about such loss or damage.

13. Compliance with Laws. Carrier agrees to strictly comply at all times with any federal, state, or municipal laws, regulations or ordinances applicable to its operations and their services to be performed under this Agreement, including without limitation: the Food Safety Modernization Act, the applicable Surface Transportation Board, United States Department of Transportation, Public Service Commissions, Motor Vehicle Departments.

14. Governing Law. This Agreement shall be governed by the laws of the State of Texas, without reference to its conflict of laws principles, and venue for any actions arising hereunder shall be had only in Dallas County, Texas.

15. Arbitration. Notwithstanding anything contained herein to the contrary, all actions, disputes, claims or controversies of any kind now existing or hereafter arising between the parties arising out of this Agreement (each, a "Dispute") shall be resolved by binding arbitration in Dallas, Texas, in accordance with the Commercial Arbitration Rules of the American Arbitration Association and, to the maximum extent applicable, the Federal Arbitration Act. Arbitrations shall be conducted before a single arbitrator mutually agreeable to the parties. If the parties cannot agree on an arbitrator within 30 days after the request for arbitration, then each party will select an arbitrator and the two arbitrators will select a third who shall act as the sole arbitrator of the dispute. Judgment on any award rendered by an arbitrator may be entered in any court having jurisdiction. All fees of the arbitrator and other costs and expenses of the arbitration, except as provided herein, shall be paid by the parties in equal shares unless otherwise awarded by the arbitrator.

Nothing in this Section shall be construed to restrict either Party's right to seek and obtain injunctive relief in a court of competent jurisdiction located in Dallas, Texas, in the event a Party has breached or threatens to breach any of its obligations pertaining to Confidential Information. For purposes of seeking injunctive relief, both Parties irrevocably submit to the jurisdiction of the state and federal courts located in Dallas, Texas.

16. Merger; Waiver; Assignment; Severability. This Agreement, including any agreement into which this Agreement may be incorporated by reference, constitutes the entire understanding between Customer and Company regarding the storage of the Products and services provided and, as such or so incorporated, supersedes all prior or contemporaneous verbal or written negotiations, statements, representations, or agreements. This Agreement shall not be assigned, in whole or in part, by either party without the prior written consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement may not be modified except for a written agreement between Customer and an officer of Company. If any section or portion of this Agreement is held by any court to be illegal or unenforceable it shall not affect the legality or enforceability of the remaining provisions or terms and conditions herein. Company's failure to insist upon strict compliance with any provision of this Agreement shall not constitute a waiver or estoppel to later demand strict compliance thereof nor to insist upon strict compliance with all other provisions of this Agreement.

17. Force Majeure. Anything herein to the contrary notwithstanding, neither party shall be subject to any liability to the other party for failure to meet any of its obligations (other than financial obligations) under this Agreement, if such failure results from causes or circumstances beyond the reasonable control of the party affected thereby, including but not limited to any act of God, high winds or comparable dangerous driving conditions, fire, explosion, perils at sea, flood, drought, war, riot, sabotage, accident, embargo, failure or delay in transportation, inability to procure tools or equipment or labor strife, provided that the party whose performance is affected by such cause or circumstance shall notify the other party promptly after the same occurs, shall use commercially reasonable efforts to resume its performance as soon as is practicable and shall resume its performance promptly after such cause or circumstance ceases to occur.

18. Notices. All approvals and notices under this Agreement must be in writing and shall be deemed to have been duly given or made (i) the third business day after the date of mailing, if delivered by registered or certified mail, postage prepaid; (ii) upon delivery, if sent by hand delivery; (iii) upon delivery, if sent by prepaid courier, with a record of receipt; or (iv) the next day after the date of dispatch, if sent by electronic mail or fax (with a copy simultaneously sent by registered or certified mail, postage prepaid, return receipt requested), to the parties at the addresses shown in the Agreement; provided, however that, Shipper shall also provide notice to Michael B. Glazer, Attorney at Law, P.C., 9241 LBJ Freeway, Suite 119, Dallas, TX 75243, Attention: Michael Glazer.

19. Independent Contractor. The Parties are acting as independent contractors in connection with this Agreement and the duties, obligations, and services provided and requested hereunder. Nothing in this Agreement shall place, or be deemed to place FIDS, FIF and/or Client in a relationship of partners, principal, and agent, joint venturers, or employer and employee. Neither Party, their employees, agents, nor representatives are granted any authority to assume or create any obligation or responsibility, express or implied on behalf of, or in the name of the other Party.

20. Headings Not Binding. The use of headings in this Agreement are for ease of reference only. Headings shall have no effect and are not considered to be part of or a term of this Addendum.