



## MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (the "Agreement") is made and entered into as the date executed by both parties below, by and between \_\_\_\_\_ ("Company") and Cargo Maritime, Inc. ("Shipper").

- A. Shipper and Company are involved in discussions regarding cargo handling, storage, packaging and transportation by air, land and sea. In the course of such discussions, Shipper and Company may each provide the other with information regarding their services, products, customer lists, customer identities, customer contacts, technology, financial results and business affairs which they deem proprietary and confidential and which they would not disclose without assurances that such information would be held in confidence.
- B. Shipper and Company each acknowledge and understand the importance of maintaining the confidentiality of the other's Confidential Information (as defined below) and that the other's business will suffer substantial damage if Recipient discloses Confidential Information to any other person or if Recipient uses Confidential Information for any purpose other than the Business Objective. Shipper and Company are each "Discloser" with respect to their own Confidential Information disclosed, and "Recipient" with respect to Confidential Information disclosed to them by Discloser.

THEREFORE, in consideration of the disclosure of one another's Confidential Information, Shipper and Company agree as follows:

1. **Confidential Information.** Whenever used in this Agreement, the term "Confidential Information" will mean any confidential, nonpublic or proprietary information which (a) is treated by Discloser as confidential or proprietary; (b) would reasonably be viewed as confidential; (c) would reasonably be viewed as having value to a competitor of Discloser; (d) concerns or relates to pricing or services or products, or (d) Discloser is under an obligation to a third party to keep confidential, including all such information disclosed in writing or other fixed media or disclosed in any other manner, including without limitation, oral, visual, or electronic disclosures, whether disclosed by Discloser or by a third party under Discloser's authority, or discovered by Recipient in connection with any such disclosure. Consistent with this definition, Confidential Information shall include, without limitation, information concerning Discloser's technology, ideas, inventions, drawings, models, prototypes, specifications, test methods and results, methods of production, processes, research, development, operations, systems, algorithms, improvements, know-how, current or future products, financial affairs, methods of conducting or obtaining business, marketing plans or strategies, current or future business opportunities, customer or contact lists, relationships with third party companies (including licensors, vendors, customers, contacts or Shippers) contract terms, reports, trade secrets, legal affairs or any



## MUTUAL NONDISCLOSURE AGREEMENT

Other information.

2. **Exception.** Notwithstanding the foregoing, the restrictions on use and disclosure shall not apply to information which Recipient can demonstrate (a) is or becomes generally available to the public other than as a result of a breach of this Agreement by Recipient or its representatives; (b) was within Recipient's possession prior to its being furnished to Recipient by or on behalf of Discloser, provided that the source of such information is not and was not bound at the time of delivery by an obligation of confidentiality to Discloser; (c) is or becomes available to Recipient on a non-confidential basis from a source other than Discloser or any of its representatives, provided that such source is not and was not bound by an obligation of confidentiality to Discloser of any other party with respect to such information; or (d) is independently developed by Recipient without reference to Confidential Information.
3. **Required disclosures.** The restrictions on disclosure of Confidential Information set forth below shall not apply to the extent Recipient is required to disclose information by a court or government agency, provided that Recipient promptly notifies Discloser of the required disclosure, uses diligent efforts to limit disclosure and obtain confidential treatment for the information, and allows discloser to intervene in the action.
4. **Trade Secret/Ownership.** Recipient acknowledges that all Confidential Information, including, without limitation, any information developed or derived by Recipient therefrom and all notes, working papers and the like containing or otherwise reflecting Confidential Information, are Discloser's valuable trade secrets; that Discloser has taken steps that are reasonable under the circumstances to maintain the confidentiality of such information; and that such information derives independent economic value from not generally being known to others. Recipient further acknowledges that Discloser retains all title and ownership in the Confidential Information and any modifications, enhancements, updates or derivative works thereof and that Recipient acquires no license, rights, or interest, except the limited license to use the Confidential Information for the Business Objective of this Agreement and agrees not to assert any ownership interest of any type in or to any Confidential Information.
5. **Restrictions on Use/Disclosure of Confidential Information.** Recipient agrees to keep the Confidential Information confidential and under access and use restrictions sufficient to prevent copying, use or disclosure thereof in violation of the terms of this Agreement, and further agrees not to: (a) copy, use or disclose any Confidential Information or any tangible or intangible work product containing or referring to such Confidential Information for any purpose except the Business Objective; (b) remove, obscure or alter any notice of patent, copyright, trade secret or other proprietary right from the Confidential Information; or (c) communicate, disclose, divulge, report, distribute, publish, transmit, display, transfer or reveal any Confidential Information to any person or entity except (i) employees or advisors directly involved in the Business Objective who have agreed to be bound by



## MUTUAL NONDISCLOSURE AGREEMENT

the terms of this Agreement, or (ii) persons who are under a similar obligation of confidentiality. Recipient agrees to be responsible for any breach of this Agreement by any of Recipient's employees or others to whom it discloses Confidential Information as if they were themselves parties to this Agreement. Under no circumstances shall recipient disclose any Confidential Information to any person or entity that might reasonably be expected to use such Confidential Information in any manner in competition with Discloser. Recipient shall not disclose the fact that Confidential Information has been disclosed hereunder, or that discussions are taking place in connection with the Business Objective, unless such disclosure is required for the Business Objective. To protect Confidential Information, Recipient shall take reasonable preventive measures as requested by Discloser, and under no circumstances use less care than it uses for its own most sensitive information.

6. **No warranty.** Recipient understands and acknowledges that neither Discloser nor any of its representatives makes any representations or warranties, express or implied, as to the accuracy or completeness of any Confidential Information.
7. **Return of Confidential Information.** Upon the earlier of termination of the Business Objective, or request by Discloser, Recipient shall return to Discloser all Confidential Information received from Discloser and all copies thereof, unless otherwise agreed by Discloser in writing. In the event documents created by Recipient, such as notes, calculations, working papers, worksheets, drafts, and final accounts contain or otherwise reflect Confidential Information, such documents of the Confidential Information contained therein shall be destroyed.
8. **Term/Survival of Obligations.** The term of this Agreement shall be the longer of (a) three (3) years after the date of execution of the Agreement by both parties or (b) the term set forth in a subsequent agreement between Discloser and Recipient relating to the Business Objective. In the event Discloser and Recipient enter into such as agreement, all Confidential Information disclosed under this Agreement shall be deemed "confidential information" for purposes of the subsequent agreement, unless specified otherwise by the parties. The restrictions on the use and disclosure of Confidential Information contained in this Agreement shall survive the expiration of this Agreement and remain in effect until such Confidential Information becomes known to the general public other than as a result of Recipient's breach of obligations to Discloser.
9. **Injunctive Relief.** Recipient acknowledges that disclosure of Confidential Information in violation of the terms of this Agreement would irreparably injure Discloser, which injury could not adequately be compensated by money damages. Accordingly, Recipient agrees that Discloser may seek and obtain injunctive relief from the breach or threatened breach of any provision of this Agreement without requirement to post bond, in addition to other legal remedies.
10. **Miscellaneous.**



## MUTUAL NONDISCLOSURE AGREEMENT

- (a) *Attorney's Fees.* In any action to enforce this Agreement, including without limitation gaining injunctive relief, the prevailing party shall be entitled to recover, in addition to all other relief, its reasonable attorney's fees, costs and expenses incurred in such enforcement action.
- (b) *Governing Law/Jurisdiction.* This Agreement shall be construed and enforced in accordance with Arizona law without giving effect to its choice of law provisions. The parties agree that the state and federal courts located in the State of Arizona and shall have exclusive jurisdiction and venue over any dispute arising out of this Agreement.
- (c) *Assignment.* Neither Shipper nor Company shall have the right to assign this Agreement without the prior written consent of the other party. Subject to the preceding sentences, this Agreement shall be binding upon and inure to the benefit of each of the parties to this Agreement and their respective heirs, personal representatives, and successors and permitted assigns.
- (d) *Severability.* If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- (e) *Modification.* This Agreement may be modified only by written consent signed by authorized representatives of both parties hereto.
- (f) *No Waiver.* No failure by Discloser to insist upon the strict performance of any provision of this Agreement shall be construed as depriving Discloser of the right to insist on strict performance of that provision or of any other provision of this Agreement in the future and no waiver may be deemed to have been made unless agreed to Discloser in writing.
- (g) *Entire Agreement.* This Agreement sets forth the entire agreement between Shipper and Company with respect to the Confidential Information, including, without limitation, any information disclosed prior to execution of this Agreement.

SHIPPER:     Cargo Maritime, Inc.	COMPANY:
Signature:	Signature:
Printed Name:	Printed Name:
Date:	Date:
Title:	Title: