

**PUBLISHERS CIRCULATION FULFILLMENT, INC.**

**TRANSPORTATION TERMS & CONDITIONS**

(Revised 8/12/2020)

**BY TENDERING YOUR SHIPMENT, PACKAGE OR PARCEL TO PUBLISHERS CIRCULATION FULFILLMENT, INC. (“PCF”) FOR TRANSPORTATION OR DELIVERY, OR BY REQUESTING PCF TO PROVIDE ANY TRANSPORTATION, DELIVERY OR BROKERAGE SERVICES, AND IN CONSIDERATION OF PCF’S RATES AND CHARGES FOR SUCH SERVICES, YOU (THE “SHIPPER”) AGREE THAT THE FOLLOWING TERMS, RULES AND CONDITIONS SHALL GOVERN ALL SERVICES PROVIDED BY PCF. NONE OF THESE TERMS AND CONDITIONS CAN BE CHANGED OR AMENDED EXCEPT BY A WRITTEN AGREEMENT SIGNED BY PCF. IF YOU HAVE ANY QUESTIONS, CALL (781) 587 - 0679.**

**1. Definitions.** As used in these Terms and Conditions, the following terms shall have the following respective meanings:

“Articles of Extraordinary Value” mean items in a Shipment valued at more than \$100.00 per pound (\$220 per kilogram).

“Bill of lading” means a receipt or similar origin document issued by a motor carrier upon its receipt of a shipment for transportation.

“Broker” means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation. 49 U.S.C. §13102(2).

“Business Day” means Monday through Saturday except the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day (December 25), and New Year’s Eve.

“Charges” means all applicable transportation and other charges including, but not limited to, all applicable accessorial charges, surcharges, additional handling charges and late payment fees. Any such charges, including but not limited to any surcharges, are not intended solely to cover the cost of providing service and may result in profit to PCF.

“Committed Delivery Time” means where specified in writing by Shipper prior to transportation, PCF shall transport and deliver Shipments within 24-hours of receiving them from the line-haul carrier at PCF’s terminal (hereafter “Transit Time”). Where no such specification is given, the Transit Time within which PCF shall be obligated to transport and deliver Shipments shall be reasonable dispatch.

“Consignee” means the person identified in the bill of lading or similar origin document to whom a shipment of Property is consigned and will receive the shipment at destination. The term “Consignee” includes the Consignee’s actual or apparent agents, representatives or other person designated to act or acting on the Consignee’s behalf.

“Critical Pickup Time” means the time by which the Shipper is to make its Parcels available to PCF for pickup at Shipper’s location.

“Delivery” includes, but is not limited to: (1) delivery of a Shipment, as defined below, to the destination point specified by Shipper, the Consignee or the Consignee’s actual or apparent agent or representative, (2) delivery to the address or location specified by Shipper or to any person present at such address, (3) delivery in accordance with trade, custom or usage, (4) delivery pursuant to PCF’s driver release procedures, (5) delivery pursuant to PCF’s Shipper Release procedures or (6) delivery otherwise permitted under these Terms and Conditions.

“Drop Shipment” means (i) any Shipment tendered by a Shipper directly to PCF at a PCF preapproved location for ultimate (“last mile”) transportation and delivery by PCF to consignees at named destinations and (ii) multiple, individual Shipments consolidated into a single lot for transportation by another motor carrier to a PCF facility, and then for ultimate (“last mile”) transportation and delivery by PCF to individual, separate consignees at different destinations.

“Motor carrier,” “carrier” or “subcontracted motor carrier” mean the person providing motor vehicle transportation for compensation. 49 U.S.C. §13102(14).

“Motor vehicle” means a vehicle, tractor, trailer or semitrailer propelled or drawn by mechanical power and used on a highway in transportation.

“Parcel” means any container and its contents, as well as any article that may be handled without packaging if the handling thereof can be accomplished in a reasonably safe and practicable manner and is not excluded by the various terms and conditions herein. As used in the Terms and Conditions, Shipments of Property and Parcels are synonymous.

“Personal Confidential Information” shall apply to information that is created, received, maintained, used, disclosed to or by either party, or any employee, officer, representative, agent, subcontractor, independent contractor, attorney, or other person or entity on behalf of either party, in whatever form including but not limited to paper, electronic or oral, that contains any identifying information regarding an individual, including, but not limited to, an individual’s last name and first initial in combination with the individual’s social security number, driver’s license number, state issued identification card number, financial account number, credit card or debit card number or any other information regarding an individual that is covered or protected by Government Regulations. Personal Confidential Information shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records that have been lawfully made available to the public.

“Residential” refers to an address that is a home or residence, including, but not limited to, a business operating out of a home. If an address can be construed as either Residential or

Commercial, then it will be considered Residential. “Commercial” refers to any address that is not Residential. Residential status will be determined at PCF’s sole discretion.

“Services” means PCF’s transportation of Shipper’s Property by motor vehicle for compensation, as defined at 49 U.S.C. §§13102(14), (16) and (23), and PCF’s brokering of (arranging for) the transportation of Shipper’s Property by other motor carriers or subcontracted motor carriers registered with the Federal Motor Carrier Safety Administration (FMCSA”) and in compliance with all applicable FMCSA and U.S. DOT safety regulations.

“Shipment” means one or more Parcels or packages of Property or one or more pallets of cargo transported from one origin under a single receipt, bill of lading, air waybill, manifest or similar origin document or PCF’s Automated Shipping System entry consigned for delivery to one Consignee at one destination.

“Shipper” means the beneficial owner of the Property in a Shipment, and any party (including brokers and originating motor or air carriers) on whose behalf or for whose account PCF is performing the Services.

“Shipper Entry Time” means the time by which the Parcels are available at PCF’s Shipping Location.

“Transportation” has the same meaning as prescribed by 49 U.S.C. § 13102(23).

**2. PCF'S Operating Authority and Compliance.** PCF is duly registered with the FMCSA as a motor carrier of property and as a transportation broker in Docket No. MC-1074316 and with the U.S. DOT in No. 3356992 and legally qualified and authorized in accordance with all federal, state, provincial, territorial, and local laws, statutes, regulations, rules, and ordinances to operate as a motor carrier of property and provide the Services. PCF will provide copies of such authorizations to Shipper upon request.

**3. PCF Fees and Rates for Services.** In consideration for PCF’s Services to Shipper under these Terms and Conditions, Shipper agrees to pay PCF: (a) the rates, fees and Charges set forth in the Parties’ previously executed Rate Agreement, (b) any applicable fuel surcharges described in Item 4 below, and (c) all other applicable fees and charges as described in these Terms and Conditions. PCF shall take all steps required by law to make such rates applicable to the services rendered under the Terms and Conditions. Shipper agrees to pay PCF within thirty (30) days after receipt of PCF’s invoice. Additionally, any amounts not timely paid shall bear a late fee of 1.5% of the total invoice due. Thereafter, each additional month that the invoice remains unpaid, interest of 1.5% shall be accrued on the total amount due.

**4. Fuel Surcharges.** PCF reserves the right to institute fuel surcharges, to be billed to Shipper, on some or all Shipments without prior notice. The surcharges are subject to adjustment weekly. The surcharges may apply to any domestic or international transportation or other charges including, but not limited to, any accessorial charge or surcharge. The current fuel surcharges are set forth at [PCF.com/bridge/fuelsurcharge.html](http://PCF.com/bridge/fuelsurcharge.html). Regardless of the mode of transportation used, the effective fuel surcharge for the service selected by the Shipper shall apply.

The surcharges will be applied to such services and for such periods as PCF, in its sole and unlimited discretion, may determine necessary.

**5. Missing/Invalid Account Number or Refusal Fee.** A processing fee will be charged for a missing or invalid account number when the account number, including the Shipper's account number, is missing or the Parcel is shipped to an unauthorized Consignee.

**6. Shipping Charge Corrections; Audit Fee.** PCF also reserves the right to bill Shipper additional Charges based upon the characteristics of, and services requested for, Shipments actually tendered to PCF or to a contracted motor carrier. PCF also reserves the right to audit any Parcel, Shipment and/or invoice to verify service selection, dimensions, or weight, and applicability of any Charges. As part of that audit, PCF may weigh and measure any Parcel or Shipment tendered to PCF using any method PCF deems appropriate, including but not limited to multidimensional measuring devices. PCF may in its sole and unlimited discretion increase or adjust Charges based on the results of such audit. PCF reserves the right in its sole and unlimited discretion to bill for Charges based on shipping characteristics provided by the Shipper, regardless of whether PCF has audited the shipping characteristics. In the event that a Parcel's or Shipment's dimensions are altered during transit, PCF reserves the right to bill for Charges based on the altered dimensions. An audit fee may be assessed for shipping charge corrections, as set forth in the effective PCF Rates.

**7. Equipment Furnished By PCF.** PCF agrees to furnish such motor vehicles as are necessary to perform its obligations under these Terms and Conditions. All such motor vehicle equipment shall be in good, safe and lawful operating condition and in compliance with all applicable safety rules and regulations of the U.S. DOT and any state safety agencies having jurisdiction over its vehicles.

**8. Commodity Exclusions—Parcels Not Accepted; Prohibited Articles.** No Services shall be rendered and PCF shall not be liable or responsible for any loss, damage or claim arising from or related to the transportation of any of the following prohibited commodities:

Alcoholic Beverages.

Articles of Extraordinary Value.

Category A Infectious Substances or Category B Biological Substances as defined in 49 C.F.R. § 173.134.

Fireworks, replica or inert explosives or weapons that bear an appearance to actual explosives or weapons.

Firearms, firearm parts or components, ammunition or ammunition components.

Hazardous materials, defined as those materials regulated under Title 49 of the Code of Federal Regulations, 49 C.F.R. §§ 172, 173, et seq., or commodities the transportation of which is governed by or subject to the Hazardous Materials Transportation Act, 49 U.S.C.

§5101, et seq., (including/excluding Limited Quantity/Other Regulated Materials Shipments (“ORM-D”) Ground Parcels, as referenced below).

Hazardous waste, defined as a solid waste that meets any of the criteria of the hazardous waste as described in 40 C.F.R. § 261.3;

Human remains, fetal remains, human body parts, human embryos, or components thereof.

Live animals.

Commodities otherwise Prohibited by Law. No Service shall be provided by PCF for any Parcel or Shipment prohibited by applicable law or regulation of any federal, state, or local government. It is Shipper’s responsibility to ensure that all Shipments tendered to PCF do not violate any applicable federal, state, provincial or local laws or regulations.

Perishable Commodities, meaning commodities requiring protective service or temperature-controlled transportation—protection from heat or cold. See Section 9 (c) below.

Shipments consigned or addressed to post office boxes, Army Post Office (APO) or Fleet Post Office (FPO) addresses.

Shipments containing drugs or pharmaceuticals.

Shipments containing marijuana, as defined in 21 U.S.C. § 802(16), including marijuana intended for medicinal use, and Parcels containing Hemp, as defined in 7 U.S.C. § 1639o, when in plant form.

Shipments exceeding 50 lbs. and/or 42 inches in length or 42 inches in width.

Shipments with an actual value of more than \$500.00 (“Maximum Value”).

Tobacco Products, including but not limited to any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product, e-cigarettes, e-hookah, e-cigars, vape pens, advanced refillable personal vaporizers, and electronic pipes.

Any other items prohibited in the Terms and Conditions as may be described below.

PCF reserves the right, but is not required, to return to Shipper any Shipment containing a prohibited article, at Shipper’s risk and expense. PCF also reserves the right in its sole and unlimited discretion to dispose of a prohibited article tendered to it for Services. Shipper shall indemnify, defend, and hold harmless PCF, its officers, directors, stockholders, employees, agents from all claims, demands, expenses, liabilities, causes of action, judgments, damages, interest, enforcement procedures, lawsuits, costs and expenses, including reasonable attorney’s fees, of any

kind or nature, arising from or relating to a Shipment consisting of any of the above-described property or prohibited articles in violation of these Terms and Conditions.

**9. Special Service Restrictions:**

- (a) Food Transportation; Assumption of Legal Responsibility. Shipments containing “food,” as defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §321(f) and the FDA Food Safety Modernization Act, 21 U.S.C. §§ 301, *et seq.*, will be accepted for transportation subject to the following terms. Shipper shall assume all responsibility for establishing and maintaining records required under 21 C.F.R. Part 1 Subpart J §§ 1.326-1.363 and 21 C.F.R. §§ 1.900-1.934 (hereafter, “FDA Rules”), including but not limited to the assumption of the legal responsibility under the FDA Rules for establishing and maintaining records that PCF would otherwise be required to maintain. Such records shall comply with all FDA Rules and shall identify the Consignee of the food Shipment; the origin and destination points of the Shipment; the date the Shipment is received and the date released; the number of Parcels in the Shipment; a description of the freight including the type of food received and delivered; and the route of movement. Shipper shall ensure that all records are maintained in accordance with the record retention requirements in the FDA Rules and the record availability requirements provided in said FDA Rules. Shipper agrees that within 45 days of the date of shipment, it will obtain or request from PCF any information needed from PCF to satisfy its responsibility to establish and maintain records. Shipper agrees that the foregoing obligations shall survive termination of the Agreement.
- (b) Dry Ice Parcels. Parcels or Shipments containing dry ice (carbon dioxide, solid) as a refrigerant, but no other Hazardous Materials, are accepted for transportation within the United States provided such Parcels are prepared in accordance with all applicable governmental regulations
- (c) Perishable Commodities. PCF does not deliver or transport commodities that would require PCF to provide protective service (i.e., protection from heat or cold) and shall not be liable to Shipper or any other party for claims, loss or damage to any such shipment, parcel or package or for death or personal injury arising from exposure of a shipment, parcel or package to temperature variations or due to the temperature sensitivity of the shipment, regardless of whether the shipment is delivered pursuant to an applicable PCF Committed Delivery Time or is delayed in transit. Such transportation is solely at Customer’s risk, and Customer shall defend, indemnify and hold PCF harmless from any claim, injury, loss or damage arising from or related to its transportation of shipments, parcels or packages requiring protective service.
- (d) PCF shall not be liable to Shipper or any third Parties for any damage to the Perishable Commodities arising from exposure to heat or cold or the perishable

nature of the item, regardless of whether the Shipment is delivered pursuant to an applicable PCF Committed Delivery Time or is delayed in transit. PCF reserves the right, in its sole and unlimited discretion, to dispose of any Shipment containing a Perishable Commodity it deems to be of no value, unsafe or unsanitary.

- (e) Refusal of Service. PCF reserves the right to refuse to transport or broker any Shipment as determined solely by PCF (i) that due to its contents may damage other Shipments or PCF's equipment; (ii) is improperly labeled, or improperly or insecurely packaged, packed or wrapped; (iii) for which it is economically or operationally impracticable to provide Service; or (iv) for which the Services to be rendered would be in violation of federal, state, or local law, or for fraudulent purposes.
  
- (f) Packaging. Shipper warrants that each Shipment shall be properly packaged to withstand the rigors of ordinary over-the-road transportation, will not contaminate other lading with which it may be co-loaded. Shipper is responsible for adequately packaging, marking and labeling its Property and accurately completing each bill of lading or similar origin document. If Shipper omits the number of packages and/or weight per package, PCF's billing will be based on its best estimate of the number of packages in the Shipment and/or an estimated "default" weight per package as determined by PCF.
  
- (g) Labeling. Each Parcel must be properly and accurately labeled, accurately describing the Property in the Shipment, and have a PCF-approved label showing the Consignee's correct and full name, complete delivery address, zip code and telephone number. When available, ZIP+4 should be used. Each Parcel or pallet in a Shipment shall bear a PCF Saturday Delivery routing label when optional Saturday service is requested and available. Shipper shall ensure that proper packaging is used and that contents are adequately and securely packed, wrapped, and cushioned for transportation. Shipments must also pass tests set forth in the International Safe Transit Association ("ISTA") Procedure 3A, Procedure for Testing Packaged Products, published by ISTA. Acceptance of tender by PCF does not indicate that the Parcel is packed in accordance with PCF's requirements hereunder. In addition, any tested product must be free from damage and the packaging must afford reasonable protection as determined by PCF in its sole judgment. Shipments containing goods of high value or high risk, including without limitation jewelry, pharmaceuticals, computers, hand-held electronic devices, mobile telephones, and electronic components of these, must not have labels, customized shipping labels, markings, logos, or other written notice of contents contained within the Parcel. PCF does not provide special handling for Shipments with "Fragile," orientation markings (e.g., "UP" arrows or "This End Up" markings), or any other similar such markings. PCF is not liable or responsible for loss of, damage to, or irretrievability of data stored on media of any type, or for loss of information, including without limitation personal, health or financial

information. All Shipments must be palletized, stackable, able to be lifted by forklift, and shrink wrapped or banded to a skid. Shipper must ensure that pallets and packaging comply with all applicable laws and regulations.

- (h) If Shipper tenders a Shipment to PCF or to a subcontracted motor carrier for transportation that contains hazardous materials or dangerous goods as defined at 49 U.S.C. §5101 and 49 C.F.R. §§ 171-173 (“hazmat Shipments”) without prior full written disclosure to PCF of their nature, and PCF inadvertently accepts the Shipment for transportation, Shipper shall be liable for and indemnify PCF against all injury, loss, damage, delay and other consequential damages arising from its transportation of such Shipment. Such hazmat Shipments may be warehoused or held in transit by PCF at Shipper’s or owner’s sole risk and expense or destroyed without compensation. If the description of articles or other information on the receipt, bill of lading or other origin document is found to be incorrect or incomplete, PCF’s freight charges will be recalculated accordingly and must be paid based upon the articles actually shipped.

Shipper agrees to defend, indemnify and hold PCF and any subcontracted motor carrier harmless from any claims arising from a breach of the foregoing Service Restrictions (a) through (g).

#### **10. Parcel List and Shipment Documentation.**

- (a) Parcel List. Shipper shall provide PCF with a list (the “Parcel List”) containing all applicable Parcel information to PCF at or before the time Shipments are tendered to PCF, including but not limited to the Consignee’s correct and full contact information including name, complete street delivery address, zip code, telephone number, detailed Shipment description and dimensions and weight to PCF electronically on a daily basis via PCF’s Shipping Software in such format as PCF may reasonably require. If Shipper does not provide all applicable Parcel information to PCF, PCF reserves the right to determine missing Parcel information to be used for invoice purposes in its sole and unlimited discretion, up to and including maximum size and weight for the applicable service and a processing fee will be charged for missing Parcel information.
- (b) Use of Parcel List Obtained Email Addresses and Telephone Numbers. By including the email address or telephone number of the Consignee or associated addressee in Parcel List for a Shipment (“Parcel List Contact(s)”), the Shipper acknowledges and agrees that PCF may use such Parcel List Contact(s) and may send notifications related to the delivery of such Shipment to the Shipment’s associated Parcel List Contact(s). The Shipper warrants that (i) informed and specific consent, in compliance with all applicable laws, rules, and regulations (including, where applicable, of the jurisdiction of Consignee’s domicile), has been secured from the individual associated with each Parcel List Contact to receive notifications from PCF related to the delivery of such Shipments and for use by PCF of the Parcel List Contact(s) and that (ii) the Parcel List Contact(s) is accurate and is controlled by the Consignee or associated addressee for



the Shipment with which it is associated. Shipper will store such consents and, upon request by PCF, make available such consents to PCF. The Shipper shall defend, indemnify and hold harmless PCF, its parent corporation, and affiliated companies, their officers, directors, employees, agents, and their successors and assigns, from and against any and all liability, losses, damages, costs and expenses (including reasonable legal fees) of any nature whatsoever incurred or suffered in connection with damages arising out of or resulting from any breach of the warranties in the previous paragraph. The Shipper agrees that PCF and its representatives may contact the Shipper at any telephone number PCF has on file for the Shipper, including through the use of autodialed and/or prerecorded calls and text messages.

- (c) Shipment Documentation. Upon receiving a Shipment for transportation, PCF or the subcontracted motor carrier shall issue a bill of lading, receipt or similar origin document evidencing its receipt of the Shipment. Upon delivery of each shipment at destination, PCF or the subcontracted motor carrier shall obtain from the consignee or its agent or representative a receipt showing delivery of the Shipment. The signature of the consignee or its agent or representative on the delivery receipt document without exception shall be *prima facie* confirmation that the shipment was delivered in good order and condition. Unless Shipper uses PCF's Delivery Confirmation service requiring a signature, PCF reserves the right, in its sole and unlimited discretion, to deliver any Shipment without obtaining the consignee's signature. Any terms, conditions or provisions in a receipt, bill of lading, manifest or other origin document shall be subject and subordinate to these Terms and Conditions.
- (d) Delivery Confirmation. PCF provides the following electronic Delivery Confirmation Services. An additional charge applies for each service. Electronic Delivery Confirmation information where applicable is available online. A Shipper may request electronic Delivery Confirmation Service by indicating electronic Delivery Confirmation in PCF's Automated Shipping System. Electronic Delivery Confirmation will include the date of Delivery and either the name of the Consignee or the disposition of the Parcel; or, in the event of a return, the reason for the return and the date processed.
- (e) Electronic Delivery Confirmation Signature Required. Shipper may request PCF to obtain the Consignee's signature on Delivery. The Shipper must use a PCF Electronic Automated Shipping System to initiate a request for this service.
- (f) Electronic Delivery Confirmation Adult Signature Required. Shipper may request PCF to obtain the signature of an adult 21 years of age or older on Delivery. PCF, in its sole and unlimited discretion, will determine if Delivery can be completed when such a request is made and may request photo identification indicating the Consignee's age, before completing Delivery. The Shipper must use PCF's Automated Shipping System to initiate a request for this service. PCF reserves the right to assess the Shipper the additional charge for this service when the Shipper requests PCF to obtain an adult signature on Delivery and an approved PCF label is not affixed to the Parcel or pallet indicating such request, or, the Shipper tenders a Parcel or pallet that, based upon its

contents, requires an approved PCF label requesting an adult signature upon Delivery and no such label has been affixed to the Parcel or pallet.

**11. Tracking/Tracing and Refund Request Charges.** PCF reserves the right to assess Shipper an additional charge per request for each Tracking/Tracing and Refund Request initiated by or at the request of the Shipper. This charge will not be assessed for the first 50 tracking requests per calendar week, or for a quantity of tracking requests equal to or less than 20 percent of the Shipper's volume for that week, whichever is greater. This charge will not be assessed for a quantity of tracing requests equal to or less than two percent of the Shipper's volume for that week. PCF also reserves the right to assess the Shipper a charge set forth in the effective PCF Rates for Committed Delivery Time refund requests when the subject Shipment was delivered in accordance with the applicable PCF Committed Delivery Times in the effective Terms.

**12. Undeliverable or Refused Shipments.**

- a) Shipments refused by the Consignee, or which are undeliverable for any reason, will be returned to the Shipper at Shipper's expense, including, but not limited to, forwarding costs, return transportation charges and all other applicable Charges, duties, and taxes. Such Charges will be calculated as a newly-initiated Shipment between the original delivery address and the return address, and will include (but not be limited to) all applicable surcharges. All original Charges will continue to apply as if the Shipment were delivered to the original delivery address.
- b) In the event a Shipment is refused by the Consignee upon tender of delivery, or if PCF attempts to deliver a Shipment but is unable to do so through no fault of its own, PCF's status and that of any subcontracted motor carrier shall immediately change to that of a warehouseman only.
- c) The PCF Committed Delivery Time does not apply to undeliverable Shipments returned to Shipper. PCF reserves the right to dispose of a Shipment, including salvage (for salvaged Shipments, after retention of the Shipment for a reasonable period of time as determined by PCF, not to exceed 30 days) if the Shipment is refused by the Consignee or for any other reason cannot be delivered, and return of the Shipment is refused by the Shipper or the Shipment cannot otherwise be returned to the Shipper for any reason. PCF's right to dispose of a Shipment includes, but is not limited to, situations where PCF determines in its sole and unlimited discretion that it is unsafe or economically or operationally impracticable to provide delivery or return service or where the Shipment is perishable.

**13. Overcharge or Undercharge Claims.** The time limit for filing of claims for alleged undercharges or overcharges under these Terms and Conditions shall be twelve (12) months from the date of delivery of the shipment. Failure to file a claim challenging initial charges within the twelve (12) month period shall forever bar any action at law for recovery of such charges. Any action at law by either party to collect alleged undercharges or overcharges under the terms of these Terms and Conditions shall be commenced not later than eighteen (18) months after delivery of the Shipment. Expiration of the eighteen (18) month term shall be a

complete and absolute defense against any such claim, regardless of any extenuating or mitigating circumstances or excuses of any nature.

**14. Subcontracting.** If PCF is unable for any reason to perform the requested Services with its own motor vehicle equipment, it may fulfill its obligations by brokering or subcontracting the transportation Services to other motor carriers. When PCF arranges for the transportation of Shipper's property under its broker authority, PCF shall remain liable to Shipper as if PCF transported the shipment as a motor carrier and subject to the terms of this Agreement.

**15. PCF's Duties and Obligations.** PCF will:

- (a) furnish Shipper with all Services requested by Shipper;
- (b) process any claim for loss of or damage to Property in accordance with these Terms and Conditions; and
- (c) maintain good standing with the FMCSA and comply with all rules and regulations of the FMCSA applicable to motor carriers of property and transportation brokers.

**16. Insurance.** PCF shall procure and maintain, at its sole cost and expense, all insurance coverages required by any federal, state or local laws or regulations governing its operations, and shall make such insurance available to Shipper on request.

**17. Service Performance Standards and Claims.**

- a) Shipper acknowledges and agrees that PCF's liability for its performance under the Terms and Conditions, including the timely pickup, transportation and delivery of Shipments of Property ("Service Performance Claims")—as distinguished from cargo loss or damage claims which are addressed in Section 18 of these Terms and Conditions— shall be exclusively governed by the liability provisions described herein.
- b) Unless otherwise specified by Shipper upon requesting PCF's Services, PCF shall be required to transport and deliver Shipments with reasonable dispatch.
- c) All claims incident to or arising out of Service Performance Claims, excluding Service Performance Claims related to a Committed Delivery Time as set forth in Section 1, must be submitted in writing to PCF within five (5) days after the scheduled Delivery of the Parcel. Such notice must include the Consignee's name and address, date of shipment, Shipment weight, and PCF tracking number.
- d) All Service Performance Claims, as distinguished from cargo loss or damage claims, excluding Service Performance Claims related to the Committed Delivery Time as set forth in Section 1, must be submitted in writing to PCF

within ten (10) days after the scheduled Delivery of the Parcel. Such notice shall include the Consignee's name and address, date of shipment, Shipment weight, and PCF tracking number.

- f) For any claims arising under these Terms and Conditions based on Service Performance Claims (as distinguished from cargo loss or damage claims which are covered by Section 18 of these Terms and Conditions), under no circumstances shall PCF be liable to Shipper for any amount greater than the total fees paid or payable by Shipper to PCF for Services rendered under the during the twelve (12) months prior to the event giving rise to the claim or liability.

**18. Loss, Damage and Delay Claims.** The liability of PCF and any subcontracted motor carrier for claims for loss, damage or delay to Shipments of Property will be determined in accordance with 49 U.S.C. §14706 and will be subject to the following limitations and provisions:

- (a) Limitation of Liability. In consideration of the rates and charges for its transportation Services, PCF's liability and that of any subcontracted motor carrier for loss, damage or delay on any Shipment of Property shall be limited to the lesser of (i) \$.50 (fifty cents) per pound, per article, (ii) the invoice value of the Shipment (less salvage value) or (iii) \$ 100.00 (one hundred dollars), unless Shipper declares a higher valuation prior to shipment and agrees to pay PCF additional valuation charges. **Contact PCF at (781) 587-0679 for added valuation charges.**
- (b) As a condition precedent to recovery, claims for loss, damage or delay must be filed in writing with PCF at 502 Washington Avenue, Ste. 500, Towson, MD 21204, or sent electronically to [cargo.claims@pcfcorp.com](mailto:cargo.claims@pcfcorp.com), must include sufficient information to identify the Shipment or property, and must set forth a specified or determinable amount of money claimed.
- (c) Written claims for loss, damage or delay must be filed with PCF within nine (9) months after the date of delivery of the Shipment, except that claims for failure to make delivery must be filed within nine (9) months after a reasonable time for delivery has elapsed.
- (d) Lawsuits for loss, damage, or delay must be instituted against PCF no later than two (2) years and one day from the day when written notice is given to the claimant that the PCF has disallowed the claim or any part or parts of the claim specified in the notice. Where claims are not filed or lawsuits are not instituted thereon in accordance with the foregoing provisions, PCF shall not be liable, and such claims will not be paid.
- (e) PCF shall have the full benefit of any insurance that may have been effected, upon or on account of said shipment, so far as this shall not void the policies or contracts of insurance, PROVIDED, that PCF, on receiving the benefit of such insurance, will reimburse Shipper for the premium paid on the insurance policy or contract for the shipment.

- (f) Shipper understands and agrees that PCF's rates and charges do not include insurance or other compensation for loss, other than as expressly provided herein and limited hereby. Accordingly, Shipper agrees that in the event it has or obtains its own insurance coverage for loss, damage or delay, said insurance will contain a waiver of subrogation clause waiving any subrogation rights for and on behalf of such insurance carrier. In the event Shipper fails to obtain a waiver of subrogation, Shipper will defend, indemnify and hold harmless PCF and any carrier retained by it with respect to any claims made by Shipper or third Parties acting as subrogees of Shipper.
- (g) The processing of cargo loss, damage and delay claims will be governed by and resolved in accordance with the FMCSA's claim-processing regulations at 49 C.F.R. § 370 which are incorporated herein by reference.
- (h) Where 49 U.S.C. §14706 is not applicable to a cargo claim, PCF's liability will be determined by and subject to the terms and conditions in any through bill of lading issued by an originating carrier or by federal common law. HOWEVER, in no event will PCF's liability be greater than the limitations prescribed in Section 18(a) above.

**19. No Special, Incidental Or Consequential Damages.** Under no circumstances will PCF or any subcontracted motor carrier be liable for special, incidental or consequential damages, including but not limited to loss of sales, business, interest, lost income, profit, sentimental value, lost opportunity, punitive damages, attorney's fees, costs, and all other forms of damage, whether direct, indirect, incidental, consequential or special and whether or not PCF had knowledge that such damage might occur.

**20. Independent Contractor Status of Parties.** In the performance of services hereunder, the relationship of each party to the other shall be that of independent contractor. Nothing in this Agreement shall be construed as establishing an employment, agency, partnership, franchisor-franchisee or joint venture relationship between the Parties. Under no circumstances may an employee, officer, agent, or contractor of PCF be considered an employee of Shipper. PCF shall have the exclusive control over the manner in which it performs the Services provided hereunder. Neither party shall be responsible for any debts or obligations incurred by the other in performance of its business activities, except as expressly provided herein

**21. Entire Agreement.** The Parties' Rate Agreement and these Terms and Conditions represent the entire Agreement between the PCF and Shipper for the transportation of Shipper's Property. Any bills of lading prepared or issued for any Shipment shall be subject to these Terms and Conditions and shall serve only as evidencing the motor carrier's receipt of a Shipment for transportation. Under no circumstances shall the terms or provisions contained in any Shipper-prepared bill of lading, receipt or other document apply to PCF's Services.

**22. Indemnification.**

- (a) Apart from Service Performance and Cargo Loss and Damage Claims covered elsewhere in this Agreement, PCF shall indemnify, defend and hold Shipper and its respective officers, directors, employees, agents, successors and assigns, harmless from and against any and all losses, liability, claim, costs and expenses (including reasonable attorney's fees and expenses)(individually and collectively "Claims") arising out of or relating to any personal injury (including death) or property damage claims due to the acts or omissions, intentional or unintentional conduct of PCF, its employees, agents or contractors. Shipper agrees to give PCF prompt notice of any such Claim and shall, to the extent Shipper is not adversely affected, cooperate fully with PCF in the defense and settlement thereof.
- (b) Shipper shall indemnify, defend and hold PCF and its employees, agents, directors stockholders and any subcontracted motor carriers harmless from and against any and all losses, liability, claim, costs and expenses (including reasonable attorney's fees and expenses)(individually and collectively "Claims"), incident to and/or arising out: (i) damage or injury to PCF's person or property and to the person or property of those engaged or employed by PCF, or to any person or property of any person or entity injured by the acts or omissions, intentional or unintentional, of Shipper or Shipper's agents, employees or contractors; and (ii) third party Claims related to or arising out of Service Performance Claims.

**23. Term.** The initial term of this Agreement shall be for one (1) year and shall commence as of date of last signature below and shall automatically renew for additional one (1) year periods, unless sooner terminated as provided or permitted herein.

**24. Early Termination for Convenience.** After the initial one-year term, either Party may cancel this Agreement without cause by giving written notice to the other at least thirty (30) days prior to the effective date of the cancellation. In such event, the cancelling party shall designate the effective date ("Effective Date") of termination which shall be not less than thirty (30) days after the date of such notice.

**25. Early Termination for Cause and Remedies.** If at any time either party is in breach of this Agreement, then in addition to all other rights and remedies available under applicable law or in equity, the non-breaching party shall have the right to terminate this Agreement. "Breach" shall mean (a) as to Shipper, that PCF has not received full payment within thirty (30) days after the date of Shipper's receipt of PCF's notice that a payment of fees or other sums was not received when due or (b) as to either party, a material failure of performance of its obligations under this Agreement which remains uncured thirty (30) days after receipt of written notice of the failure; or (ii) if a petition in bankruptcy is filed against either party, or either party becomes insolvent or makes a general assignment for the benefit of creditors, or is generally unable to pay its debts as they come due in the ordinary course of business. Remedies available to the non-breaching party are as follows:

- (a) **PCF's Breach.** If Shipper terminates this Agreement due to PCF's breach, Shipper shall have no further liability or obligation to PCF except for the payment for services actually provided by PCF through the termination date. The termination date shall be thirty (30) days following the date of Shipper's written notice of termination. In the event of such termination by Shipper, PCF covenants that it shall fully cooperate with Shipper prior to the termination date to transition PCF's responsibilities to another carrier and/or freight management provider selected by Shipper.
- (b) **Shipper's Breach.** If PCF terminates this Agreement due to Shipper's breach, PCF shall have no further obligation to provide services to Shipper hereunder, and Shipper shall have no further liability or obligation to PCF except for the invoice of any services provided through the termination date. The termination date shall be thirty (30) days following the date of PCF's written notice of termination.

The remedies provided above are cumulative.

**26. Non-Assignability.** Except with respect to PCF's right to broker or subcontract its obligations under this Agreement to other FMCSA-registered motor carriers as described in Section 14 above, PCF and Shipper covenant that they shall not assign, transfer, or subcontract this Agreement or any portion thereof without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any purported assignment of this Agreement by either party without the other party's prior written consent shall be deemed null and void and the non-assigning party may terminate this Agreement effective upon notice to the other party.

**27. Mutual Cooperation.** It is understood by both Parties that they must cooperate in order to insure the best and most economical transportation service. The Parties therefore agree to cooperate with each other in all matters relating to the Services to be rendered by PCF to Shipper hereunder and the cost thereof.

**28. Confidentiality.**

- (a) **Confidential Information.** Each party agrees and covenants that it shall not, during the Term of this Agreement and at any time thereafter following its termination, divulge, furnish or make accessible the other party's Confidential Information (defined below) to anyone, or use in any way other than in accordance with and in furtherance of its obligations under this Agreement, and for no other purpose. Each party shall use reasonable efforts to ensure that the other party's Confidential Information and all materials relating thereto shall be stored at locations and under such conditions as to prevent the unauthorized disclosure or duplication of such information and materials. Confidential Information shall include Shipper's information regarding its shipping volumes, its operations, business plans, finances, Shipper information, and processes and procedures that may be disclosed to PCF in fulfilling its obligations under this Agreement (collectively "Shipper's Confidential Information"). Confidential Information shall also include PCF's fees, pricing, rates, and other charges, routing and business process information that may be provided or disclosed to Shipper by PCF in fulfilling its obligations under this Agreement (collectively, "PCF's Confidential

Information”). Confidential Information shall further include any documentation or other materials that are marked as “Confidential” by the disclosing party; (iii) information that is disclosed orally and is identified as confidential at the time of disclosure; (iv) documentation, other materials or oral information which should be considered as confidential in the exercise of reasonable judgment; and (v) the terms of this Agreement (but not the fact of the existence of this Agreement).

- (b) Without limiting the generality of the foregoing, each party may disclose the Confidential Information to its attorneys and accountants who are either subject to professional obligations of confidence or to a written confidentiality agreement containing terms at least as protective as those set forth in this Section. Each party agrees to not otherwise disclose any Confidential Information to any third party (including any agent, consultant, or contractor acting on Shipper’s behalf or otherwise authorized, retained, or engaged by Shipper for purposes of obtaining, soliciting, negotiating, or contracting for small package carrier services) without the other party’s prior written consent.
- (c) Notwithstanding anything to the contrary in this Agreement, Confidential Information does not include: (a) information contained in a package tendered to PCF for Services under this Agreement or information on the exterior of such a package, including information in plain text or in bar code form on shipping labels; or (b) package details provided to PCF regarding a specific package, including Consignee’s full name, complete delivery address, package weight and zone, and package labeling that contains maxicode, sortcode, barcoded zip code +4, appropriate service level icon, and address details related thereto ((a) and (b) are, collectively, “Shipping Information”). PCF will handle all Shipping Information in accordance with applicable law. Any Shipping Information that is aggregated and associated with Shipper (e.g., lists of Shipper’s Consignees) is also Shipper’s Confidential Information.

**29. Data Privacy.** The Parties shall (i) comply in all respects with all federal, state and local data privacy and security laws, regulations and ordinances including, without limitation, any data breach notification requirements (“Government Regulations”), and (ii) implement reasonable administrative, physical and technical safeguards to ensure confidentiality, security, integrity and accessibility regarding the access, maintenance, use, protection, processing, disclosure, retention and destruction of all such information of Personal Confidential Information (defined below). Each party shall indemnify, defend and hold harmless the other party, their affiliates, stockholders, directors, officers, and employees, agents, and independent contractors (“Indemnified Person”) from and against any and all claims, suits, causes of action, penalties, damages or judgments (including reasonable attorneys’ fees) which may be imposed on or incurred by or instituted against any such Indemnified Person relating to or arising out of: provided, that the Parties will not be liable under this section to the extent any losses are determined, in a final judgment by a court, not subject to further appeal, to have resulted primarily from the recklessness, willful misconduct or bad faith of such Indemnified Person.

**30. No Waiver.** The failure of either Shipper or PCF in any one or more instances to insist upon the performance of any of the terms, covenants, or conditions of this Agreement, or



to exercise any right or privilege granted by this Agreement, or the waiver of any breach of any of the terms, covenants, or conditions of this Agreement, shall not be construed as thereafter waiving any such terms, covenants, conditions, rights, or privileges against the other party, but they shall continue and remain in full force and effect.

**31. Notices.** All notices to PCF must be sent by hand, U.S. Mail, certified mail, facsimile, or e-mail, addressed as follows:

PUBLISHERS CIRCULATION FULFILLMENT, INC.  
502 Washington Avenue, Suite 500  
Towson, MD 21204  
Attn: Thomas D. Foard, CFO/Executive Vice President  
E-mail: Tom.Foard@pcfcorp.com  
Facsimile: (410) 821-3620

**32. Miscellaneous.**

- (a) Arbitration. Except for claims due to the non-payment of fees, all disputes between PCF and Shipper relating to the interpretation, application, enforcement or breach of the Terms and Conditions shall be resolved in binding arbitration, to be conducted pursuant to the then-prevailing rules and procedures of the American Arbitration Association for the arbitration of commercial disputes. The arbitrator's decision will be final and binding and may be entered as a judgment in any court having jurisdiction. All fees imposed by the American Arbitration Association and the arbitrator shall be borne by the non-prevailing Party. Such arbitration shall take place in Baltimore, Maryland and shall be conducted by a panel consisting of a single arbitrator. The arbitrator shall be selected by mutual agreement of the Parties, pursuant to the rules of the American Arbitration Association. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, the other party is entitled to costs of suit, including a reasonable attorney's fee for having to compel arbitration or defend or enforce the award.
- (b) Attorneys' Fees. In any action or proceeding involving a dispute between the Parties arising out of the Terms and Conditions, or by a party to enforce the provisions hereof, the prevailing party shall be entitled to recover from the other party, its reasonable attorneys' fees and expenses incurred in connection with the prosecution or defense of any such action.
- (c) Governing Law. These Terms and Conditions shall be interpreted in accordance with Title 49, United States Code wherever applicable; otherwise in accordance with the laws of the State of Maryland without reference to its conflicts of law provisions. Subject to the provisions of the foregoing, the exclusive jurisdiction for any legal proceeding regarding the Terms and Conditions shall be the state or

federal courts in Maryland and the Parties expressly submit to the jurisdiction of such courts.

**33. Waiver of Subrogation.** Shipper and PCF each agree to cause their respective insurance companies to waive any rights of subrogation that such companies have against Shipper or PCF.

**34. No Employee Solicitation.** The Parties agree not to hire or solicit for employment any employee of the other who worked in the performance of this Agreement for a period of one (1) year after (i) termination of this Agreement, or (ii) such employee's termination of employment with the other party, whichever first occurs, without the prior written consent of the other party. Such consent shall not be unreasonably withheld, delayed or conditioned.

**35. Severability.** If any provision of these Terms and Conditions is held illegal or unenforceable by a court of competent jurisdiction then such provision(s) shall be severed and the remainder of these Terms and Conditions shall remain in full force and effect unless the business purpose of the Terms and Conditions is substantially frustrated thereby in which case these Terms and Conditions shall automatically be deemed void without the need for a court order or judge to ratify or confirm such termination.

**36. Force Majeure.** Neither PCF nor Shipper shall be liable for a failure to perform its obligations hereunder where such failure is occasioned by strikes, acts of God, natural disasters, war risks, acts of terrorism, acts of public authorities acting with actual or apparent authority, acts or omissions of customs or similar authorities, authority of law, the application of security regulations imposed by the government, or otherwise applicable to the Shipment, riots, strikes or other labor disputes, civil unrest, disruptions in national or local air or ground transportation networks (including, but not limited to, PCF's transportation network), disruption or failure of communication and information systems, and adverse weather conditions or any other cause beyond such party's control.

**37. Express Waiver - 49 U.S.C. §14101(b).** Pursuant to 49 U.S.C. §14101(b), the Parties expressly waive, and these Terms and Conditions shall constitute the parties' express written waiver of, any and all rights and remedies allowed under Title 49, United States Code, to the extent that such rights and remedies conflict with this Agreement. Shipper's express waiver described herein is intended to extend to any subcontracted motor carrier retained to provide Services for Shipper.