

EXPRESS SHIPPING AND LOGISTICS EA LIMITED

-AND-

SHAKE DISTRIBUTORS LIMITED

**SERVICE LEVEL AGREEMENT
FOR**

**TRANSPORTATION AND HANDLING OF CARGO MOMBASA TO
HINTERLAND KENYA AND TRANSIT CARGO**

THIS SERVICE LEVEL AGREEMENT is made the 1ST day of March 2017

BETWEEN:

1. **EXPRESS SHIPPING AND LOGISTICS EA LIMITED** a corporation registered and existing under the laws of Kenya and having its principal place of business at Canon Towers II, Moi Avenue Mombasa, P.O Box 1922-80100 Mombasa, Kenya (Hereafter referred to as "ESL" which expression shall where the context so admits include its successors and assigns); as first party AND
2. **SHAKE DISTRIBUTORS LIMITED** a limited liability Company of Post Office Box Number 8-80300, Voi, Kenya (hereinafter called "**SHAKE DISTRIBUTORS** " which expression shall where the context so admits include its successors and assigns (whether immediate or derivative) as second party

NOW THEREFORE in consideration of the mutual covenants herein contained **IT IS HEREBY AGREED AND DECLARED as follows:**

1. INTERPRETATION

- 1.1. In this SERVICE LEVEL AGREEMENT (including its recitals), unless the context otherwise requires:
 - 1.1.1. The "Pick-up and Delivery Schedules" means written instructions in the format issued from time to time by ESL to SHAKE DISTRIBUTORS directing the execution of specific transport services to be performed by SHAKE DISTRIBUTORS.
 - 1.1.2. words denoting the singular number shall include the plural number also and words importing the masculine gender include the feminine gender and neuter gender and vice versa;
 - 1.1.3. references to recitals clauses, paragraphs and sections shall be construed as references to the recitals clauses, paragraphs and sections of this SERVICE LEVEL AGREEMENT;
 - 1.1.4. the expression "person" shall include any legal or natural person, partnership, trust company, joint venture, government or any agency thereof local authority or other body (whether corporate or unincorporated);
 - 1.1.5. the word "tax" shall be construed so as to include any tax levy, duty or other charge of a similar nature (including, without limitation, value added tax and any penalty or default charges payable in connection with any failure to pay or any delay in paying any of the same) and "taxation" shall be construed accordingly and the expression "competent taxing authority" means any state or administrative division thereof or any governmental authority, monetary agency or central bank having power to collect or levy taxes;

- 1.1.6. references to any statute or statutory provision shall be deemed to include references to any statute regulation or statutory instrument which amends extends consolidates or replaces the same (or shall have done so) and any other regulation statutory instrument or other subordinate legislation made thereunder or pursuant thereto **PROVIDED THAT** no such reference shall include any amendment extension consolidation or replacement of the same which has retrospective effect;
- 1.1.7. references to indemnifying any person against any circumstance include indemnifying, defending and keeping him harmless from all actions claims and proceedings from time to time made against that person and all loss or damage and all payments costs and expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;
- 1.2. Headings to Sections are for convenience only and shall not affect the construction or interpretation of this SERVICE LEVEL AGREEMENT.
- 1.3. In this SERVICE LEVEL AGREEMENT any reference to any document means that document as is supplemented amended or varied from time to time between the parties thereto in accordance with the terms (if applicable) hereof and thereof.

2. EQUIPMENT AND PERSONNEL

For transportation business solicited or obtained by ESL and brokered to SHAKE DISTRIBUTORS hereunder, SHAKE DISTRIBUTORS shall at its cost furnish motor vehicles, equipment, drivers and personnel necessary to transport commodities to and from those locations and in accordance with pick-up and delivery schedules designated by ESL. SHAKE DISTRIBUTORS shall perform all such transportation services in accordance with all applicable local and international laws, rules and regulations and with schedules and directions supplied by ESL.

3. COMPENSATION

- 3.1. Commodities will be transported at mutually agreed rates. The agreed rates are as per attached schedule **TRANSPORTATION RATES-SCHEDULE A**. Transportation shall be conducted according to the terms of and conditions under this SERVICE LEVEL AGREEMENT and as may be supplemented by any written instructions provided by ESL.
- 3.2. The parties agree that SHAKE DISTRIBUTORS shall invoice ESL directly for its fees chargeable for transportation. As a condition for payment, SHAKE DISTRIBUTORS shall provide to ESL all documents necessary for ESL to make payment including the delivery note duly signed and stamped by consignee evincing receipt of commodities in good order by consignee.
- 3.3. ESL shall be entitled to deduct from any fees or other sums owing to SHAKE DISTRIBUTORS hereunder amounts for which SHAKE DISTRIBUTORS is liable to ESL under

the terms of this SERVICE LEVEL AGREEMENT, including but not limited to paragraph 5 below, or amounts for which SHAKE DISTRIBUTORS is liable to ESL by reason of any default by SHAKE DISTRIBUTORS of any provisions hereof.

- 3.4. ESL stipulates all liability standards and burden of proof are herein determined by the common, statutory and regulatory law applicable to common carriers as per *lex loci contractus* notwithstanding the fact that SHAKE DISTRIBUTORS is providing service herein solely as a contract carrier.

4. INDEPENDENT CONTRACTOR STATUS

- 4.1. The relationship of ESL to SHAKE DISTRIBUTORS shall at all times be that of independent contractor, and nothing herein shall be deemed to create the relationship of employee/employer, partner, principal/agent, or joint venture between the parties.
- 4.2. Unless written or verbal instructions are submitted by ESL to SHAKE DISTRIBUTORS, SHAKE DISTRIBUTORS shall be free to determine the means and methods of the performance of transportation services, including the methods of loading and unloading commodities, the selection of routes, and the selection of drivers and personnel.
- 4.3. SHAKE DISTRIBUTORS shall bear and retain all responsibility and liability for the payment of all costs and expenses in connection with transportation services provided by it here under which costs and expenses shall be deemed to include, but not be limited to, equipment repair, fuel and lubricants, taxes arising from transportation services, salaries and other compensation for SHAKE DISTRIBUTORS's employees, tolls, fines and penalties and insurance coverage of the transportation process.

5. INDEMNITY

- 5.1. SHAKE DISTRIBUTORS shall indemnify, hold harmless and defend ESL, its affiliates, employees and assigns, against any and all claims, taxes, fines, penalties, demands, liabilities, losses and expenses including reasonable lawyer's fees, for injury or death to persons, damage to property, violation of state or local law, regulation or ordinance, or consignee claims for cargo loss, damage, shortage or late delivery, arising from or in connection with SHAKE DISTRIBUTORS 's performance of the transportation services brokered to it under this Agreement.
- 5.2. SHAKE DISTRIBUTORS shall indemnify, hold harmless and defend ESL its affiliates, employees and assigns against all third party claims including but not limited to those of shipping lines and such other related entities on account of demurrage and/or container damage occasioned by SHAKE DISTRIBUTORS's performance of the transportation services brokered to it under this Agreement.
- 5.3. SHAKE DISTRIBUTORS shall be fully liable and responsible for all loss, destruction, shortage, theft, spoilage, contamination or other liability of any kind to or for all cargo or commodities, the transportation of which has been arranged by ESL, while such cargo or

commodities is in the care, custody or control of SHAKE DISTRIBUTORS or otherwise arising out of SHAKE DISTRIBUTORS transportation, or failure to transport, such cargo or commodities. SHAKE DISTRIBUTORS is responsible for ensuring the count of all cargo or commodities transported are accurate and documented.

- 5.4. SHAKE DISTRIBUTORS's liability hereunder shall include any claims made by consignee or its customers related to any delayed or late delivery by SHAKE DISTRIBUTORS of cargo or commodities brokered to it hereunder.
- 5.5. SHAKE DISTRIBUTORS 's liability for loss or damage of any cargo or commodities transported by it hereunder shall begin at the time Cargo or Commodities is loaded on SHAKE DISTRIBUTORS 's equipment at point of origin and shall continue until said cargo or commodities is delivered to the designated consignee(s) or destination(s). SHAKE DISTRIBUTORS's liability hereunder shall be based on the replacement cost of the lost or damaged cargo or commodities.

6. INSURANCE

- 6.1. SHAKE DISTRIBUTORS shall procure and maintain, at its expense, a policy automotive liability insurance with limits as required by law, as well as cargo insurance sufficient to cover the replacement value of each load transported.
- 6.2. SHAKE DISTRIBUTORS will procure, maintain and enforce continuously through the term of this SERVICE LEVEL AGREEMENT insurance required under Workers Compensation Laws or their equivalent of the states in which transportation services shall be performed. ESL shall have no responsibility to either defend any workers compensation claims that arise due to SHAKE DISTRIBUTORS's operations under this SERVICE LEVEL AGREEMENT or to pay an awards resulting from such claims. Such insurance shall include a waiver of subrogation in favor of ESL.
- 6.3. SHAKE DISTRIBUTORS shall arrange where appropriate, to name ESL, and, if so directed by ESL, the consignee as additional insured(s) on all such policies hereunder and shall furnish to ESL certificates of insurance evidencing the above coverage. SHAKE DISTRIBUTORS shall procure such insurance from companies acceptable to ESL. Such insurance shall provide that ESL shall receive thirty (30) days prior written notice of any alteration, modification, or cancellation thereof.
- 6.4. Nothing contained herein shall be construed to limit SHAKE DISTRIBUTORS's liability to the insurance limits set forth above, and at all times hereunder, SHAKE DISTRIBUTORS assumes common carrier liability for the safe transportation of cargo or commodities tendered to it.

7. TERM

- 7.1. This SERVICE LEVEL AGREEMENT shall commence on the date above written and shall continue in effect until terminated by either party providing to the other party thirty (30)

days written notice of its intention to terminate this SERVICE LEVEL AGREEMENT. This SERVICE LEVEL AGREEMENT shall govern the parties rights and obligations with respect to cargo or commodities which are brokered to SHAKE DISTRIBUTORS by ESL from time to time during the term hereof;

- 7.2. Nothing contained in this SERVICE LEVEL AGREEMENT, however, shall be deemed to oblige ESL to tender any minimum amount of freight to SHAKE DISTRIBUTORS or to utilize the services of SHAKE DISTRIBUTORS exclusively, and ESL makes no representation with respect to any specific amount of freight to be solicited by ESL for SHAKE DISTRIBUTORS hereunder.

8. SOLICITATIONS BY CARRIER PROHIBITED

SHAKE DISTRIBUTORS will support and protect ESL's efforts hereunder by refraining from any solicitation or direct dealing with consignee, provided SHAKE DISTRIBUTORS shall upon request be permitted to communicate with consignee of cargo or commodities for operational and scheduling purposes only.

9. ASSIGNMENT

SHAKE DISTRIBUTORS may not assign, sublet, or delegate its rights or obligations under this SERVICE LEVEL AGREEMENT without the prior written consent of ESL.

10. VARIATIONS

ESL is entitled to raise a variation to the Pick-up and Delivery Schedules by way of written or verbal notice to SHAKE DISTRIBUTORS and at any time during the term of this SERVICE LEVEL AGREEMENT.

11. NO WAIVER

No failure to exercise or delay in exercising any right to remedy under this SERVICE LEVEL AGREEMENT by either party shall operate as a waiver thereof or any other right or remedy which either party may have hereunder, nor shall any single or partial exercise of such right or remedy preclude any further exercise thereof or of any right or remedy which either party may have hereunder.

12. ARBITRATION

All dispute differences or question which may arise at any time touching upon the construction of this AGREEMENT or on the rights and liabilities of the parties with respect thereto shall be referred to the decision of a single arbitrator to be agreed upon between the Parties or in default of agreement within fourteen (14) days to be appointed at the request of any Party by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators. The decisions of the arbitrator

shall be final and binding upon the Parties. Such arbitration shall be conducted in Mombasa, Kenya in accordance with and subject to the provisions of the Arbitration Act No. 4 of 1995 as amended by the Arbitration Rules of 2009 or any statutory modification or re-enactment thereof for the time being in force.

13. NOTICES

All notices, requests or other communications required or permitted to be given hereunder shall be in writing in the English Language and shall be sent by certified or registered airmail letter, email, telefax, postage pre-paid, to other party at its address set forth hereinabove or to such other addresses as may from time to time be notified by one party to the other in accordance with this AGREEMENT.

If to:

EXPRESS SHIPPING AND LOGISTICS EA LTD

Canon Tower II

Moi Avenue

Mombasa

P.O Box 1922, 80100

Mombasa

KENYA

Attention : Mr. Anselm Mwadime

Telephone : + 254 (0)707 703 716

E-Mail : chao.mwadime@esl-eastafrika.com

All notices shall be deemed to have been given when duly transmitted by email, facsimile, telefax or deposited in the registered mail or courier.

14. SEVERABILITY

If any term or provision in this SERVICE LEVEL AGREEMENT is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part thereof shall to that extent be deemed not to form part of this SERVICE LEVEL AGREEMENT but the validity and enforceability of the remainder of this SERVICE LEVEL AGREEMENT shall not be affected.

15. ENTIRE CONTRACT

This SERVICE LEVEL AGREEMENT constitutes the entire agreement between the parties with respect to the subject matter of this SERVICE LEVEL AGREEMENT and supersedes all prior or written or oral understandings, agreements or representations other than those contained herein in this SERVICE LEVEL AGREEMENT.

IN WITNESS whereof this SERVICE LEVEL AGREEMENT has been duly executed in Mombasa, Kenya by the parties hereto as a legally binding agreement as of the day and year first before written

SHAKE DISTRIBUTORS LIMITED
 Director

EXPRESS SHIPPING AND LOGISTICS EA LTD
 Director

TRANSPORTATION RATES SCHEDULE -A

GENERAL CONTAINERS

MOMBASA		MOMBASA	
DESTINATION	CHARGES (KES)	DESTINATION	CHARGES (USD)
Nairobi	75,000.00	Addis Ababa	8,500.00
Ruiru	80,000.00	Kampala	2,200.00
Nakuru	120,000.00	Jinja	2,000.00
Kisii	145,000.00	Kasese	2,700.00
Kisumu	150,000.00	Kigali	3,500.00
Bungoma	160,000.00	Bujumbura	4,500.00
Eldoret	145,000.00	Goma	6,000.00
Nyeri	118,000.00	Kisangani	7,000.00
Laikipia	135,000.00	Mwanza (via Isibania)	2,400.00
Lodwar	200,000.00	Dar es salaam (via Tanga)	2,000.00
Moyale	200,000.00	Arusha (via Taveta)	1,300.00

Reefer Containers

- Mombasa – Nairobi (flat rate both 20ft and 40ft) – KES. 95,000 +VAT (exclusive of fuel)
- Above Rated are exclusive of VAT
- Rates apply to both 20ft and 40ft Containers up to Gross of 28MT – General Cargo (i.e. single mounting).
- All payments are subject to a Thirty (30) days credit period from the date of invoice receipt.

SHAKE DISTRIBUTORS LIMITED
 Director

EXPRESS SHIPPING AND LOGISTICS EA LTD
 Director