



PARTICIPATION AGREEMENT

This Participation Agreement (“Agreement”) is entered between CARRIER NAME, at ENTER ADDRESS, CITY, STATE ZIPCODE, as represented by INDIVIDUAL’S NAME (“*****”), and the National Motor Freight Traffic Association, at 1001 N. Fairfax Street, Alexandria, VA 22314 (“NMFTA”), to set forth the terms and understandings by which ***** will participate in the Benchmarking Group Service program (the “Program”) facilitated for NMFTA by KSM Transport Advisors (“KSMTA”).

1. **Participation.** Carriers in good standing with NMFTA shall be allowed to participate in the Program free of charge (“Participants”). However, there must be a minimum of 5 Participants for the Program to operate and no single Participant can represent more than 25 percent of the business sector.
2. **KSMTA Services.**
 - a) NMFTA shall appoint an employee of KSMTA to manage and operate the Program. Guided by that individual, KSMTA will provide data aggregation, analytics and reporting services for Participants. This will include the collection, analysis, and dissemination of financial data in the agreed-upon format. The data will be provided anonymously and disseminated in a composite/comparison format without carrier identifying information.
 - b) KSMTA will also provide meeting facilitation services for any in-person or virtual ‘Best Practice Group’ meetings that are created and scheduled related to this new initiative.
3. **Antitrust Oversight and Compliance.**
 - a) Because Participants in the Program include carriers that provide less-than-truckload (“LTL”) motor carrier services in competition with each other (“Participants”), NMFTA will provide Antitrust Guidelines that help to ensure that the sharing and dissemination of data, the discussions about that data at meeting attended by their representatives, and other matters of interest to the group that are discussed at Best Practice Group and/or other Program meetings are conducted in a manner that minimizes the likelihood of anti-competitive discussions that could deprive the marketplace of the benefits of full competition, in violation of the antitrust laws.
 - b) Participants agree that all meetings will follow agendas approved by NMFTA that are distributed to Participants prior to or at the start of any meeting. Meetings will follow those agendas. Any other materials or information shared with Participants at meetings will be approved by NMFTA. Subjects included on those agendas and materials, and related discussions, shall avoid the discussion of rates and prices, any particular component of pricing practices for transportation services, markets or particular customers, marketing/sales strategies, and future competitive actions the company might take to improve its market position. This ban even extends to informal discussions outside of the meeting room among Participants.
 - c) By entering into this Agreement, Participant acknowledges that it has been informed of the antitrust risks involved with taking part in the Program, and agrees to avoid discussions at any

Program meeting of the subjects identified above that could be problematic and otherwise comply with the Antitrust Guidelines. Participant waives and releases NMFTA and KSMTA from any and all potential antitrust liability that may arise from their participation and involvement in the Program.

4. **Confidential Information.** a) All forms, composites, comparisons, surveys, special reports, benchmarking data and information, or best practice ideas which Participant obtains or gains access to as a result of its participation in the Program shall be considered to be “Confidential Information”.

b) The Confidential Information is for Participant’s own internal use only, and Participant agrees to hold all Confidential Information in confidence and not discuss, disclose, transmit, or otherwise communicate such information to third parties or make any unauthorized copies of the Confidential Information. The individualized and private financial and operating data submitted by Participant to KSMTA will also be treated as Confidential Information. The parties agree to take all reasonable steps and actions necessary or appropriate, to prevent unauthorized use or disclosure of the Confidential Information

5, **Intellectual Property.** Participant hereby grants NMFTA a non-exclusive, unrestricted, perpetual royalty-free license to all information or data it submits in connection with the Program, and to any presentations provided in any format in connection with the Program. Further, Participant recognizes that NMFTA owns all copyrights or other property rights in all agendas, minutes, surveys, data, databases, composites, comparisons, questionnaires, worksheets, analyses, reports, correspondence, memoranda, notes, tables, graphs, best practices presentations, and other intellectual property that are created, assembled, or commissioned in connection with the Program. NMFTA’s intellectual property rights extend to all uses, including the right to publish and sell, to the extent that is not prohibited by this Agreement.

6. **Violation of Confidentiality or Intellectual Property Provisions.** a) Participant acknowledges that breach of the Confidentiality and/or Intellectual Property provisions of this Agreement may result in irreparable harm to NMFTA or other participating carriers (“Injured Parties”).

b) Participant shall be liable for all harm and damages suffered by the Injured Parties as a result of Participant’s violation of the Confidentiality and/or Intellectual Property provisions of this Agreement. Because monetary damages may not make the Injured Parties whole Participant consents to injunctive relief to either prevent or stop any publication, disclosure or other unauthorized use of the Confidential Information or Intellectual Property.

c) Participant agrees that if it has breached the Confidentiality or Intellectual Property provisions of the Agreement, Participant shall pay all costs and expenses incurred by the Injured Parties in bringing legal action to enforce this Agreement, including the Injured Parties reasonable attorneys’ fees, costs, and expenses, through any appeals.



7. **Term; Termination.** a) This Agreement will become effective on the date of the first Program meeting, June 5, 2023, and shall continue for an initial term of twelve (12) months (“Initial Term”), and shall automatically renew for an additional year, unless terminated by either party as provided herein.

b) This Agreement is terminable at will by either party for any reason without cause upon written notice to the other party at the addresses provided below:

If to NMFTA:

NMFTA
1001 N. Fairfax Street, Suite 600
Alexandria, VA 22314
Debbie.Sparks@nmfta.org

If to Participant:

INSERT COMPANY NAME
INSERT ADDRESS
INSERT ADDRESS
INSERT E-MAIL CONTACT

c) NMFTA may also terminate this Agreement on written notice to Participant if NMFTA ends the Program.

8. **Applicable law; Arbitration.** This Agreement shall be governed by and interpreted in accordance with Virginia law, and any dispute, controversy, or claim arising out of or related to this Agreement shall be submitted to and decided by binding arbitration, to be held in the Alexandria, Virginia area.

9. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, and may not be altered or amended except by a written agreement executed by both parties.

By: _____
INSERT NAME AND TITLE
for INSERT COMPANY NAME

By: _____
Debbie Ruane Sparks
Executive Director
for NMFTA