

53A mlc



## New Hampshire Liquor Commission

50 Storrs Street, P.O. Box 503  
Concord, N.H. 03302-0503  
(603) 230-7015

Joseph W. Mollica  
Chairman

Michael R. Milligan  
Deputy Commissioner

Christopher T. Sununu  
Governor

November 26, 2018

His Excellency, Governor Christopher T. Sununu  
And the Honorable Council  
State House  
Concord, New Hampshire 03301

### REQUESTED ACTION

Authorize the New Hampshire Liquor Commission ("NHLC") to amend the contract agreement with Exel Inc. d/b/a DHL Supply Chain Americas ("DHL"), Westerville, Ohio, for transportation services by exercising the first of two options to extend the completion date and by amending the transportation service and fuel charges. The original contract was approved by Governor and Executive Council on August 14, 2013 (Item # 48A) and expires on January 31, 2019. This amendment will extend the contract for a five-year term, ending on January 31, 2024.

Funding is 100% Liquor Funds. Funding is available in account 02-77-77-771512-1030-1056 and 02-77-77-771512-8886-106.

### EXPLANATION

DHL provides transportation services for spirits, wines and related products from the NHLC's contracted warehouse in Bow, New Hampshire to the NHLC's network of 78 liquor and wine retail stores, as well as the NHLC's state-owned warehouse in Concord. Over the past five years, DHL has proven to be a reliable, responsive and efficient business partner. It has streamlined its delivery system such that stores know when deliveries will be made and can schedule employees to meet and unload trucks with a minimum of down time. Since contracting with DHL for both transportation and warehousing, savings are estimated at \$7 million based on pricing and efficiencies.

Based on current and estimated volumes anticipated over the next five years, the aggregate estimated cost for transportation services is \$11,208,203.

The contract has been approved by the Attorney General's Office as to form, substance and execution. Your favorable action on this request would be greatly appreciated.

Respectfully Submitted,



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Joseph W. Mollica, Chairman  
New Hampshire Liquor Commission

STATE OF NEW HAMPSHIRE  
LIQUOR COMMISSION

1st AMENDMENT TO AGREEMENT

This Amendment #1 is made this 28<sup>th</sup> day of November 2018, between the State of New Hampshire acting by and through the New Hampshire Liquor Commission (hereinafter "NHLC") and Exel Inc. d/b/a DHL Supply Chain (USA) with a principal place of business at 570 Polaris Parkway, Westerville, OH 43082 (hereinafter the "Contractor" or "DHL").

WHEREAS, pursuant to an agreement (hereinafter the "Agreement") approved by Governor and Council on August 14, 2013 (item #48A) effective November 1, 2013 and extending through January 31, 2019, Contractor agreed to provide transportation services to transport spirit and wine and related products from and between warehouses utilized by the NHLC to its state liquor and wine outlets and related services upon the terms and conditions specified in the Agreement; and

WHEREAS, pursuant to Exhibit C Section 29 of the Agreement, the Agreement may be extended for up to two, five-year periods; and

WHEREAS, pursuant to paragraph 18 of the General Provisions of the Form P-37, the agreement may be amended by a written instrument executed by the parties thereto; and

WHEREAS, the NHLC and Contractor desire to amend the Agreement to exercise the first option to extend the Agreement for a five-year period.

NOW THEREFORE, in consideration of the foregoing and the covenants and conditions contained in the Agreement, as herein amended, the NHLC and Contractor do hereby mutually agree as follows:

1. Amend Exhibit B by deleting paragraph 1.a and replacing it with the following:
  - a. Rates Effective -Term. The Transportation Services Charges ("Rates") listed in Exhibit F are valid for the sixty (60) months of the contract: from February 1, 2019 until January 31, 2024. The Rates are subject to a fuel surcharge as defined in Exhibit F. The Rates are for the Transportation Services outlined in the RFP. The NHLC may request DHL to provide Transportation Services that are accessorial to the RFP, and DHL and the NHLC will work in good faith to adopt Rates for such services.
2. Amend Exhibit F by deleting it in its entirety and replacing it with:

**TRANSPORTATION SERVICE CHARGES**

	Weekday	Weekend/Holiday
Beverage Cases -Pallet Unload (Lift Gate & Loading Dock)	\$0.54	\$0.61
Beverage Cases -Hand Unload	\$0.63	\$0.73
Totes and other store supplies to and from all stores	No charge	No charge
Pallets, unuseable pallets and empty boxes from NHSLC sites to Vendor's Warehouse then to Bow Warehouse	No charge	
Product at the Concord Warehouse to the Bow Warehouse	No charge	

**Fuel Surcharge**

State and Contractor agree that in the event the combined cost of diesel fuel and applicable diesel fuel taxes (hereinafter the - fuel cost) shall exceed \$3.25 per gallon for a period of thirty (30) days, as verified by documentation submitted by Contractor to establish its fuel cost, then the transportation rate shall increase by \$0.01 per case. The transportation rate shall further increase by \$0.01 per case for each documented \$0.25 per gallon increase in fuel cost above \$3.25 per gallon which remains in effect for a period of thirty (30) days. If the fuel cost decreases below \$3.25 per gallon or below any additional \$0.25 per gallon decrease in fuel cost, as the case may be, for a period of thirty (30) days, then the transportation rate increase shall not apply. The Contractor and State further agree that in the event the fuel cost shall be less than \$3.25 per gallon for a period of thirty (30) days, then the transportation rate shall decrease by \$0.01 per case. If the fuel cost further decreases by \$0.25 per gallon below \$3.25 per gallon for a period of thirty (30) days, then the transportation rate shall decrease an additional \$0.01 per case. The adjusted transportation rate as provided in this appendix shall take effect the first day of the next calendar month following the applicable thirty-day period of documented increased or decreased fuel cost. Contractor shall maintain records acceptable to the State, documenting its cost of diesel fuel and applicable diesel fuel taxes for vehicles used in providing the distribution services under this Agreement, which shall be subject to inspection by the State upon request.

3. Amend Section 1.7, Completion Date, of the General Provisions of Form P-37 to reflect a revised completion date of January 31, 2024.
4. Except as specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

STATE OF NEW HAMPSHIRE:

By: [Signature]  
Joseph W. Mollica, Chairman  
New Hampshire Liquor Commission

Date: 11/28/2018

CONTRACTOR SIGNATURE:

By: [Signature]  
Name: Robert C. Whipple  
Title: Acc + Asst. Sec.

Date: 11/27/2018

STATE OF Ohio  
COUNTY OF Delaware

On this 27<sup>th</sup> day of November 2018, before me, Leslie DeMarco the undersigned officer, personally appeared, Robert Whipple known to me (or satisfactorily proven) to be the person whose name is signed above and acknowledged that he/she executed this document in the capacity indicated above.

In witness thereof I hereto set my hand and official seal.

[Signature]  
Notary Public / Justice of the Peace

My Commission Expires: 01/29/23



Leslie I. DeMarco  
Notary Public, State of Ohio  
My Commission Expires 01-29-2023

Approved for Form, Substance and Execution

[Signature]  
NH Attorney General's Office

Date: 11/28/18

OFFICER'S CERTIFICATE  
OF

**EXEL INC.**

D/B/A DHL SUPPLY CHAIN (USA)  
A Massachusetts Corporation

The undersigned, as Vice President, General Counsel and Secretary of Exel Inc. d/b/a DHL Supply Chain (USA), a Massachusetts corporation (the "Company"), does hereby certify on behalf of the Company that:

1. Robert Whipple, Associate General Counsel and Assistant Secretary of the Company, has the authority to sign, on behalf of the Company, any and all contracts, agreements, filings, licensure, and/or related documents.

IN WITNESS WHEREOF, the undersigned has signed his name as Vice President, General Counsel and Secretary of the Company as of November 27, 2018.

**Exel Inc. d/b/a DHL Supply Chain (USA)**

By: 

Mark Smolik, Vice President, General Counsel  
and Secretary





AGENCY CUSTOMER ID: 57000054594

LOC #:

**ADDITIONAL REMARKS SCHEDULE**

Page \_ of \_

AGENCY Aon Risk Services Central, Inc.		NAMED INSURED Exel Inc. DBA DHL Supply Chain (USA)	
POLICY NUMBER See Certificate Number: 570073975699			
CARRIER See Certificate Number: 570073975699	NAIC CODE	EFFECTIVE DATE:	

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER	
INSURER	
INSURER	
INSURER	

**ADDITIONAL POLICIES** If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
	WORKERS COMPENSATION						
D		N/A		WC018176975 MA ND WA WI WY	05/01/2018	05/01/2019	
B		N/A		WC018176974 FL	05/01/2018	05/01/2019	





**ADDITIONAL REMARKS SCHEDULE**

<small>AGENCY</small> Aon Risk Services Central, Inc.		<small>NAMED INSURED</small> Exel Inc. DBA DHL Supply Chain (USA)	
<small>POLICY NUMBER</small> See Certificate Number: 570073975699			
<small>CARRIER</small> See Certificate Number: 570073975699	<small>NAC CODE</small>	<small>EFFECTIVE DATE:</small>	

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance**

**Named Insured List**

Exel Inc. d/b/a DHL Supply Chain (USA)  
 Power Packaging, Inc.  
 Hyperion Properties, Inc.  
 Exel Freight Connect Inc. dba DHL Tansport Brokerage  
 Tibbett & Britten Group North America, LLC  
 Advance Logistics Inc.  
 Genesis Logistics Inc.  
 Heartland Logistics Inc.

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## Business Information

### Business Details

Business Name: DHL SUPPLY CHAIN (USA)	Business ID: 737962
Business Type: Trade Name	Business Status: Active
Expiration Date: 1/20/2021	Last Renewal Date: Not Available
Business Creation Date: 01/20/2016	Name in State of Formation: Not Available
Date of Formation in Jurisdiction: 01/20/2016	
Principal Office Address: 570 Polaris Parkway, Westerville, OH, 43082, USA	Mailing Address: NONE
Business Email: NONE	Phone #: NONE
Notification Email: NONE	Fiscal Year End Date: NONE

### Principal Purpose

S.No	NAICS Code	NAICS Subcode
1	OTHER / any lawful business activity including logistics, warehousing and related services	

Page 1 of 1, records 1 to 1 of 1

### Trade Name Information

Business Name	Business ID	Business Status
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### Trade Name Owned By

Name	Title	Address
EXEL INC. <a href="#">(/online/BusinessInquire/TradeNameInformation?businessID=45375)</a>	Business	Good Standing
EXEL NEW HAMPSHIRE <a href="#">(/online/BusinessInquire/TradeNameInformation?businessID=528380)</a>	Business	Expired

### Trademark Information

Trademark Number	Trademark Name	Business Address	Mailing Address
No records to view.			

[Filing History](#)  
 [Address History](#)  
 [View All Other Addresses](#)  
 [Businesses Linked to Registered Agent](#)  
 [Return to Search](#)  
[Back](#)

48A *etc*



## New Hampshire Liquor Commission

50 Storrs Street, P.O. Box 503  
Concord, N.H. 03302-0503  
(603) 230-7015

Joseph W. Mollica  
Chairman

Michael R. Milligan  
Commissioner

Margaret Wood Hassan  
Governor

July 31, 2013

Her Excellency, Governor Margaret Wood Hassan  
And the Honorable Council  
State House  
Concord, New Hampshire 03301

### REQUESTED ACTION

Authorize the New Hampshire Liquor Commission to enter into a contract agreement with Exel, Westerville, Ohio, for transportation services for the period from November 1, 2013 through January 31, 2019, with the option to renew for two additional five-year periods upon consent of both parties and subject to Governor and Council approval. Funding is 100% Liquor Funds.

### EXPLANATION

On March 8, 2013 the Liquor Commission issued a request for proposal, (RFP) for transportation services for spirit and wine and related product from our contracted warehouse in Bow, New Hampshire to our network of 77 liquor and wine outlets as well as our state-owned warehouse in Concord. Our goal was to identify transportation vendors who would be properly licensed, registered and insured to provide timely and efficient transportation of product to the Commission's retail outlets.

The contract agreement with Exel for transportation services for the period from November 1, 2013 through January 31, 2019, has an aggregate estimated cost of \$10,608,703.00 for transportation service charges. This is based on current and estimated volumes anticipated over the next five years.

The RFP was publicly advertised on March 8, 2013 in the New Hampshire Union Leader newspaper for three days, and also advertised on the Liquor Commission and Department of Administrative Services Vendor Resource Center web site. Additionally, the Commission sent letters and emails to approximately 50 potential transportation vendors.

Proposals were received from the following four vendors in accordance with the requirements for submission, including the stipulated deadline of April 30, 2013:

- Laconia Best Warehousing & Distribution (Laconia, NH)
- LB&B (Columbia, MD)
- Law Motor Freight (Nashua, NH)
- Exel (Westerville, OH)

Her Excellency, Governor Margaret Wood Hassan  
And the Honorable Council  
July 31, 2013  
Page 2

Proposals from each vendor were reviewed and rated by a Selection Committee, comprised of three representatives from the Liquor Commission and one representative from the Department of Information Technology (see attached list of members). The Selection Committee members all brought different strengths and knowledge to the table which allowed for independent evaluation during the scoring process through discussion and weighing of the components of each vendor's proposal.

The proposals were rated by the panel according to the criteria set out in the RFP, including vendor experience and qualifications, vendor financial stability and capacity, vendor technical, service and project management competence, vendor overall solution, and vendor pricing.

On June 28, 2013, all four firms were chosen to come in to the Liquor Commission headquarters to make a presentation of their respective proposals to the evaluation committee. This was followed by a question and answer period. All four firms were then invited back on July 22-23, 2013 to meet with the commissioners and to make a brief presentation followed by a question and answer period. Site visits were also conducted where necessary.

As a result of the scores, Exel was the qualified bidder on transportation service charges that include delivery charges as outlined in Exhibit F, Transportation Service Charges, and the Pricing Detail on the RFP Scoring Sheet. The panel unanimously recommended Exel to the Commission, subject to Governor and Council approval, to provide our transportation services over the next five years. Exel's proposal was very competitive and responsive to the RFP, and it offers significant savings to the NHSLC over the next five years. A rating summary of the four firms is attached.

The contract has been approved by the Attorney General's Office as to form and execution.

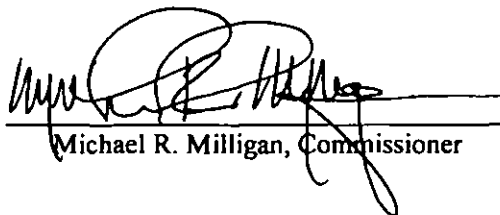
Your favorable action on this request would be greatly appreciated.

Respectfully Submitted,  
New Hampshire State Liquor Commission



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Joseph W. Mollica, Chairman



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Michael R. Milligan, Commissioner

Attachments



**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF INFORMATION TECHNOLOGY**

27 Hazen Dr., Concord, NH 03301  
Fax: 603-271-1516 TDD Access: 1-800-735-2964  
[www.nh.gov/doit](http://www.nh.gov/doit)

**Peter C. Hastings**  
*Commissioner*

August 1, 2013

Joseph W. Mollica  
Chairman  
NH Liquor Commission  
50 Storrs St.  
Concord, NH 03302

Dear Chairman Mollica:

This letter represents formal notification that the Department of Information Technology ("DoIT") has approved your Agency's request to enter into a contract Exel of Westerville, OH ("Exel") as described below and referenced as DoIT 2014-050.

This is a request to enter into a contract with Exel to provide transportation for spirits, wine, and related products from the contracted warehouse in Bow, NH and our state-owned warehouse in Concord, NH to the 77 state retail stores. The contract shall become effective upon Governor and Executive Council approval and shall extend through January 31, 2019.

A copy of this letter shall accompany the Department of Information Technology's submission to the Governor and Executive Council for approval.

Sincerely,

A handwritten signature in cursive script that reads "Peter C. Hastings".

Peter C. Hastings

PCH/ltn  
2014-050

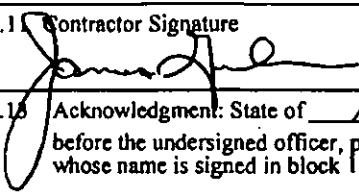
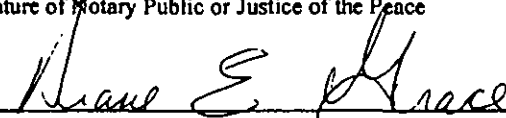

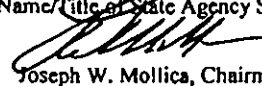

Subject: Transportation Services for Spirit & Wine and Related Product, Equipment & Supplies (2013 & 14)

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**I. IDENTIFICATIONS.**

1.1 State Agency Name New Hampshire State Liquor Commission		1.2 State Agency Address P.O. Box 503, 50 Storrs St., Concord, NH 03302-0503	
1.3 Contractor Name Exel Inc.		1.4 Contractor Address 570 Polaris Parkway, Westerville, Ohio 43802	
1.5 Contractor Phone Number 614-865-8279	1.6 Account Number 02-77-77-77	1.7 Completion Date January 31, 2019	1.8 Price Limitation See Exhibit B & F
1.9 Contracting Officer for State Agency George P. Tsiopras, CFO		1.10 State Agency Telephone Number 603-230-7010	
1.11 Contractor Signature 		1.12 Name & Title of Contractor Signatory Jim Gehr, President, Retail Division, Exel Inc.	
1.13 Acknowledgment: State of <u>PA</u> , County of <u>Dauphin</u> On <u>August 1, 2013</u> before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  (Seal)		<p style="text-align: center;">COMMONWEALTH OF PENNSYLVANIA</p> <p style="text-align: center;">Notarial Seal Diane E. Grace, Notary Public Susquehanna Twp., Dauphin County My Commission Expires May 17, 2016 MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES</p>	
1.13.2 Name and Title of Notary Public or Justice of the Peace <u>Diane E. Grace Administrative Assistant</u>			
1.14 State Agency Signature		1.15 Name/Title of State Agency Signatory  Joseph W. Mollica, Chairman  Michael R. Milligan, Commissioner	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by Attorney General (Form, Substance, and Execution) By: <u>Mike. Ben</u> On: <u>8/5/13</u>			
1.18 Approval by Governor and Council By: _____ On: _____			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/ COMPLETION OF SERVICES.**

3.1. Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement, ("Effective Date")

3.2. If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**

5.1. The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2. The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3. The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4. Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payment authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/EQUAL EMPLOYMENT OPPORTUNITY.**

6.1. In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

6.2. During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3. If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplement by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulation and guidelines as the State New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1. The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2. Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other persons, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3. The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials                       
Date 8-1-13

**8. EVENT OF DEFAULT/REMEDIES.**

8.1. Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1. failure to perform the Services satisfactorily or on schedule;

8.1.2. failure to submit any report required hereunder; and/or

8.1.3. failure to perform any other covenant, term or condition of this Agreement.

8.2. Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1. give the contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice, and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2. give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3. set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Defaults; and/or.

8.2.4. treat the Agreement as breached and pursue any of its remedies at law or in equity, or both

**9. DATA/ACCESS/CONFIDENTIALITY/PRESEVATION.**

9.1. As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda papers, and documents, all whether finished or unfinished.

9.2. All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3. Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject

matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.**

In the performance of this Agreement the Contractor is in all respects and independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.**

The contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.**

14.1. The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1. Comprehensive general liability insurance against all claims of bodily injury, death or property damage in amounts of not less than \$250,00 per claim and \$2,000,000 per occurrence; and

14.1.2. fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2. The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance and issued by insurers licensed in the State of New Hampshire.

Contractor Initials

Date

S-F-13



14.3. The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under the Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modified of the policy.

**15. WORKER'S COMPENSATION.**

15.1. By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance, with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*")

15.2. To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH** No failure by the State to enforce any provisions herof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

This agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Contractor Initials

Date 8/1-13



## **New Hampshire Liquor Commission**

50 Storrs Street, P.O. Box 503  
Concord, N.H. 03302-0503  
(603) 230-7026

Joseph W. Mollica  
Chairman

Michael R. Milligan  
Commissioner

Margaret Wood Hassan  
Governor

### **Transportation Services RFP** **Evaluation Committee Members**

1. John Bunnell – former Director of Marketing, Merchandising & Warehousing of the NHSLC; 20 years experience with the Commission; 45 years in retail management
2. George Tsiopras – Chief Financial Officer of the NHSLC; 14 years experience with the Commission; 20 years experience in finance, accounting, and auditing
3. Craig W. Bulkley – Director, Division of Administration & COO of the NHSLC; 16 years experience with the Commission; 40 years experience in administrative management
4. Peter Hastings – Chief Information Officer for the State of New Hampshire; 6 ½ years experience with the state; 23 years experience in information technology and 10 years in warehousing and logistics.

**SUMMARY OF TRANSPORTATION BID RESULTS: (BEST & FINAL OFFERS)**

		<b>APPENDIX-D</b>	
		<b>NO CO-MINGLING</b>	
	<b>TOTAL POINTS*</b>	<b>TOTAL COST</b>	<b>\$ Diff</b>
<b>EXEL</b>	<b>55.00</b>	<b>\$ 10,608,703</b>	
<b>LACONIA BWD</b>	<b>42.84</b>	<b>\$ 13,620,500</b>	<b>\$ 3,011,797</b>
<b>LB&amp;B</b>	<b>40.60</b>	<b>\$ 14,371,200</b>	<b>\$ 3,762,497</b>
<b>LAW</b>	<b>34.44</b>	<b>\$ 16,940,000</b>	<b>\$ 6,331,297</b>

**Additional Notes:**

- \* Points allocated using Appendix D: No Co-Mingling

The lowest bid cost receives the maximum points (55). Each additional vendor's cost is divided into the lowest vendor's cost to determine their percentage of the maximum points available.

**Transportation Services RFP  
SCORING SHEET**

FACTOR	RATIONALE	DETAILED CRITERIA	Laconia Best Warehousing	LB&B	Low Motor Freight	Fuel	Weight
Vendor's general approach and understanding of the RFP	Vendor must understand the RFP and respond adequately in the required format. Vendor exceptions must be acceptable.	Vendor exceptions and alternative proposal(s). If any, to the RFP may be acceptable to the NHSLC.	Qualified	Qualified	Qualified	Qualified	Qualified / Disqualified
Vendor Experience & Qualifications	Vendor must be committed to implement business relationships and protocols with the NHSLC, its suppliers and other business partners.	Vendor has adequate transportation knowledge and experience consistent with the nature and magnitude of the NHSLC's operation. Vendor must be able to demonstrate operational ability including a seamless transition from the current vendor.	5.0	12.0	13.0	14.0	15%
Vendor Financial Stability & Capacity	Vendor must demonstrate suitable financial strength, stability and capacity to undertake a sophisticated and capital intensive operation with a very high degree of performance.	Must be registered to do business in NH. Vendor must provide at least three years of financial statements. Vendor must agree to submit to the audit and oversight requirements of the RFP.	Qualified	Qualified	Qualified	Qualified	Qualified / Disqualified
Vendor Technical, Service, Project Management & IT Competence	Vendor must have ability to properly accept, transport, manage, and track outgoing shipments - all electronically.	Vendor must be able to electronically report realtime inventories 24/7/365. Vendor's IT solution must be compatible with NHSLC software.	8.0	10.0	7.0	15.0	15%
Vendor Overall Solution	Vendor must be able to properly accept, transport, manage, and track outgoing shipments in most timely, efficient, and cost effective manner.	Vendor's solution will anticipate growth in points of distribution and product and the increasing complexity in the process. Must demonstrate ability to handle anticipated workload during periods of peak demand.	7.0	12.0	10.0	14.0	15%
Pricing	Vendor must provide proposal which secures the lowest price for the NHSLC.		43.0	41.0	34.0	55.0	55%
Vendor References	Vendor references must provide positive and relevant information regarding capability and experience.		Qualified	Qualified	Qualified	Qualified	Qualified / Disqualified
			<b>63.0</b>	<b>75.0</b>	<b>64.0</b>	<b>98.0</b>	<b>100%</b>

Cost to Deliver Beverage Cases & related supplies, to our 77 retail stores and warehouses

A strong proposal secures the lowest price for delivery of product to our stores and warehouses.

Total Estimated Cost to Deliver Product Over the Term of the Contract (11/1/13-1/31/19)

\$ 13,620,500    \$ 14,371,200    \$ 16,940,000    \$ 10,608,703

Cost to deliver cases to our stores:

Pallet Unload Delivery Cost	9,392,500	10,404,000	11,560,000	7,364,116
Hand Unload Delivery Cost	3,968,000	3,686,400	5,120,000	3,110,187

Cost to move product to warehouses:

Nashua - Bow	250,000	260,000	250,000	130,000
Concord - Bow	10,000	20,800	10,000	4,400

42.84    40.60    34.44    55.00    55.00

## **EXHIBIT A**

### **CONTRACT SERVICES**

#### **TRANSPORTATION SERVICES FOR SPIRIT AND WINE AND RELATED PRODUCT, EQUIPMENT AND SUPPLIES**

1. Contractor shall provide transportation services to transport spirit and wine and related products from and between warehouses utilized by the NHSLC to its state liquor and wine outlets. Contractor shall be properly licensed, registered and insured to provide timely and efficient delivery of alcohol product, related products, supplies and equipment to the NHSLC's retail outlets.

2. The NHSLC currently operates 77 retail liquor and wine stores located throughout the state of New Hampshire. Eleven of these locations are owned by the state and 66 are located in leased retail space. The various store locations are listed in Appendix F to the RFP. The frequency of deliveries varies based on the size and location of each store. Current data shows orders ranging from a low of one case for delivery to a store to approximately 2,200 cases in one order to one store. The NHSLC and Contractor shall mutually agree on the most efficient delivery schedule on a daily basis.

3. Contractor shall comply with the requirements for transportation of spirit and wine and related product services ("Transportation Services") as specified in the Request for Proposals issued by the NHSLC and attached hereto as Exhibit D including, all appendices and all clarifications and amendments ("RFP") only to the extent that Contractor has agreed to any such requirements as specified in Contractor's proposal and replies submitted in response to the RFP (the "Proposal") the proposal and replies attached as Exhibit E; the RFP and Proposal being incorporated herein by reference. Contractor shall also comply with all applicable administrative rules adopted by the NHSLC regulating Transportation Services and any amendments thereto and all applicable state law. Except as otherwise provided herein, in the event that any provision of the RFP or Proposal shall conflict or be inconsistent with any provision of Exhibits A, B, or F of this Agreement, the RFP shall govern.

4. By executing this Agreement, NHSLC makes no promises or guarantees as to the required volume of Transportation Services for the duration of this Agreement or any extension thereof. Notwithstanding any provision of this Agreement or the RFP and amendments thereto to the contrary, this Agreement is an exclusive agreement, and NHSLC will not retain any other person or entity to provide any Transportation Services for NHSLC during the term of this Agreement and any extensions/renewals thereof.

5. Force Majeure. Notwithstanding any other provision of this agreement or the RFP to the contrary, Contractor shall not be liable or responsible for delays or failures in performance, or any loss or damage to any liquor and wine Product of the NHSLC resulting from events beyond the reasonable control of the Contractor. Such events shall include, but not be limited to, acts of God, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, or other disasters, whether or not similar to the foregoing.

6. Consequential and Indirect Damages. Notwithstanding any other provision of this agreement or the RFP to the contrary, neither party, in the performance of their obligations under this agreement shall be liable to the other for any indirect or consequential damages such as, but not limited to: loss of profits, loss of business, loss of customer goodwill or exemplary damages or the costs and expenses in providing or securing substitute revenues even if the parties have been advised of the possibility of the same, and without regard to the nature of the claim or the underlying theory or cause of action whether in contract, tort or otherwise.

7. In the event the Contractor owes damages due to a material breach or the Contractor owes liquidated damages due to not achieving the Target Level for the KPI as referenced in paragraphs 10-12 of this Exhibit A, the Contractor shall pay the damages or liquidated damages. If the Contractor fails to pay the damages or liquidated damages within a reasonable time, the NHSLC shall recover the damages or liquidated damages from the Performance Bond, provided, however, that the Contractor shall restore the bond to its original or any increased amount within a reasonable time.

8. The Contractor is responsible for the reasonable costs of making modifications and updates to the Contractor's systems to stay current with the future systems utilized by NHSLC.

9. Contractor shall not assign any personnel to perform the services who Contractor knows or should have known, after reasonable investigation and other employment screening to the extent permitted by applicable law, (i) has been convicted of fraud, embezzlement or other similar crimes involving dishonesty (as evidenced by background checks by Contractor which seeks information for the past seven (7) years), or (ii) does not meet the requirements under New Hampshire or immigration law to be employed or to perform services at such locations as may be required. Contractor agrees to defend and indemnify NHSLC from losses or claims incurred by NHSLC to the extent arising from Contractor's breach of the above requirements.

10. Key Performance Indicators (KPI)

a. In order to evaluate the performance of the Services, the parties agreed to the KPI listed on the KPI Schedule below. The KPI Schedule sets forth the KPI, the Goal and the Target Level. The Contractor's failure to meet the KPI shall be excused to the extent such

failure is caused by the acts or omissions of the NHSLC, the Suppliers, other third parties or because of Force Majeure events.

b. In the event of a significant service failure, Contractor will promptly notify the NHSLC (or NHSLC will notify Contractor) of such failure, and will advise the NHSLC as to the course of action that will be taken in order to correct such failure. The NHSLC will either agree with the course of action or advise Contractor that alternative measures should be taken. The Contractor will act to resolve the issue as swiftly as possible to the satisfaction of the NHSLC

c. Each week, or as otherwise agreed by the parties, the Contactor will prepare a written status report and meet with NHSLC staff to review performance and resolve issues, if any.

d. For the KPI described in the KPI Schedule, if the average of the Contractor's daily performance over a thirty (30) day rolling consecutive period fails to meet the Target Level as described in the KPI Schedule, the NHSLC may require the Contractor to pay the NHSLC liquidated damages in the amount of 0.25% (0.0025) of the Contractor's daily revenue in November 2013, 0.5% (0.005) in December 2013, 0.75% (0.0075) from January 2014 through the initial term of the Agreement, 1% (0.01) of the Contractor's daily revenue for each day that the Contractor fails to meet the Target Level.

e. Notwithstanding any other provision of this agreement or the RFP to the contrary, the liquidated damages described in paragraph (d) above are the NHSLC's sole and exclusive remedy if the Contractor is not performing the Services adequately. For the sake of clarity, NHSLC retains the right to pursue direct damages arising from a breach of this Agreement outside the scope of this paragraph. Furthermore, in the event of a failure to cure a material breach, the NHSLC may terminate the Agreement and/or pursue its remedies at law and in equity pursuant to the provisions of new paragraph 8 set forth in Exhibit C.

## 11. KPI Schedule

a. The KPI detailed in the chart below shall apply as of November 1, 2013.

b. This Schedule describes the service levels and performance standards that the Contractor shall provide to the NHSLC with respect to the Transportation Services. The KPI shall be measured according to the Contractor's standard operating procedures as approved by the NHSLC. The Parties shall in good faith mutually agree to these standard operating procedures prior to November 1, 2013. The method agreed to measure the standard may result in an adjustment to the Target Level.

c. At any time during the term of this Agreement, the NHSLC and the Contractor may upon agreement in writing revise the KPI, or add a new KPI.

d. The Contractor shall keep and maintain complete and accurate daily reports regarding the KPI and provide them to the NHSLC during the term of this Agreement.

e. Regular management review meetings between the NHSLC and the Contractor shall be scheduled to review the actual performance against projected performance.

Key Performance Indicator	Goal	Target Level
On-time Performance time	For every day a delivery route is created, the stores on that route will receive their delivery that day within the agreed upon delivery hours.	95%

## 12. Operating Parameters

The following operating parameters were used by the Contractor to develop the routes and pricing for its proposal. The NHSLC provided its data from historical information and projections. The future projections are estimates, and the purpose of providing the operating parameters is to assist with delineating accessorial services.

- Cases Per Pallet (from file name appendixMrevised41613.xlsx)
- Weight per case
- Frequency of Delivery by Store (from file name appendixMrevised41613.xlsx)
- Day of delivery by Store (from file name appendixMrevised41613.xlsx)
- Opening hours, Store receiving hours match operating hours (unless there's a special requirement for an early delivery) – must arrive no later than 1 hour before close (or earlier if it is a hand unload and delivery stop time is greater than 1 hour) (operating hours by store posted in Appendix F in original RFP document)
- Store delivery restrictions. Unless a store has a specific requirement the general rule above applies (store restrictions posted in revised Appendix I on 3/29/13)
- Store delivery type hand v pallet v trailer drop (revised Appendix I on 3/29/13)
- Quantity of hand v pallet v trailer drop by store by day (quantities obtained from file named appendixMrevised41613.xlsx and type of delivery from revised Appendix I on 3/29/13)
- Holiday closures

**END OF EXHIBIT A**



## **EXHIBIT B**

### **CONTRACT PRICE, METHOD AND TERMS OF PAYMENT**

1. **NHSLC Charges.**
  - a. **Rates Effective -Term.** The Transportation Services Charges ("Rates") listed in Exhibit F are valid for the sixty three (63) months of the contract: from November 1, 2013 until January 31, 2019. The Rates are subject to a fuel surcharge as defined in Exhibit F. The Rates are for the Transportation Services outlined in the RFP. The NHSLC may request Exel to provide Transportation Services that are accessorial to the RFP, and Exel and the NHSLC will work in good faith to adopt Rates for such services.
  - b. **Invoices.** Contractor shall submit to NHSLC weekly invoices for payment which shall identify all charges incurred by NHSLC for the previous week. All invoices shall specify the total number of cases for which services were provided, the rate per case and total charge. Invoices shall be accompanied with adequate backup data supporting all charges.
  - c. **Payment Terms.** Contractor fees invoiced to NHSLC shall be due upon receipt. No late charges or interest charges shall be billed to NHSLC.

**END OF EXHIBIT B**

## EXHIBIT C

### SPECIAL PROVISIONS

1. Certificate of Vote

This authorization notification must be consistent with Contractor's corporate structure and must accompany the contract.

An officer of the company, name and title, must certify that the person signing the contract has been given the authority to do so. That authority must be in effect the day the contract is signed. The certifying official must not be certifying him or herself.

The document must certify that:

- A. The signature of Jim Gehr, President, Retail of the Corporation affixed to any Proposal shall bind the corporation to its terms and conditions.
- B. The foregoing signature authority has not been revoked, annulled or amended in any manner whatsoever, and remains in full force and effect as of the date of the contract.

2. Carrier Licenses

Contractor shall produce a current NHSLC Carrier License (RSA 178:14) and a US DOT common carrier operating authority on demand by the NHSLC. Prior to November 1, 2013, this demand shall provide the Contractor with a reasonable opportunity to acquire such licenses.

3. The Agreement is amended as follows:

**INSERT NEW PARAGRAPHS 4.1 AND 4.2 BELOW:**

4.1. In the event the NHSLC has insufficient funds available to make continued payments under the Agreement for any Services, the NHSLC will immediately:

4.1.1. Use best efforts and in good faith seek the necessary funding from the General Court and other governmental authorities to fulfill its obligation to make continued payments under the Agreement; and,

4.1.2 Provide Contractor with written notice of any such funding shortfall.

4.2. Contractor may cease providing Transportation Services to the NHSLC for which the NHSLC cannot or fails to make payment, and will not be obligated to resume

provision of Transportation Services to the NHSLC if funding for continued payments under the Agreement is not obtained, including without limitation, funding for any arrearages.

**DELETE PARAGRAPH 5.2 AND ADD THE NEW PARAGRAPH 5.2 BELOW**

**5.2**

(a) Rates. The Transportation Service charges listed in Exhibit F are valid, for the entire initial term of the contract: from November 1, 2013 until January 31, 2019.

(b) Extraordinary Circumstances. Pursuant to RFP section 1.10.3, if during any year of this Agreement extraordinary circumstances arise leading either Party, in good faith, to believe that a Rate adjustment (whether an increase or decrease) is equitable in order to continue to provide or receive Transportation Services, it shall notify the other Party of the same, and the Parties shall endeavor in good faith to mutually agree upon a temporary or permanent Rate adjustment as promptly as possible. Any party requesting a change in Rates shall submit a comprehensive proposal providing detailed support for the requested change. For clarity, Extraordinary Circumstances shall be defined as the continuing consequences of events, beyond the reasonable control of the Contractor, such as, but not limited to, acts of God, riots, acts of war, epidemics, acts of government (other than acts of the NHSLC), fire, power failures, nuclear accidents, earthquakes, unusually severe weather, or other disasters, whether or not similar to the foregoing.

(c) Any Rate change(s) or adjustment(s) shall be reflected in an amendment to the Agreement, dated and signed by each Party.

(d) If the parties are not able to mutually agree upon an extraordinary circumstances Rate change or adjustment, then either party may invoke the Contract Protest Process.

**DELETE PARAGRAPH 5.4**

ADD to the end of paragraph 7.3

Notwithstanding the foregoing or any provision of the Agreement to the contrary, Contractor retains the right to pursue any of its remedies, both at law and in equity.

**DELETE PARAGRAPH 8 AND INSERT NEW PARAGRAPH 8:**

**8. EVENT OF MATERIAL BREACH/REMEDIES.**

Either party may terminate the Agreement and/or pursue its remedies at law and in equity for the material breach of the Agreement by the other party. The injured party shall give the other party written notice of such material breach. If there has been a failure to cure such material breach within thirty (30) business days after receipt of such notice by the

other party, the Parties shall utilize the Contract Protest Process set out in paragraph 25. Provided, however, in the event of a material breach of the Agreement which necessitates the State to obtain temporary substitute Transportation Services, the notice requirement shall be no less than twenty-four (24) hours.

#### **DELETE PARAGRAPH 10**

**In paragraph 12**, delete the reference to N.H. Department of Administrative Services and substitute New Hampshire State Liquor Commission.

**Amend Paragraph 14.1.1** by adding after “insurance” and before “against” the following phrase, “with the State named as an additional insured.”

#### **Delete Paragraph 14.1.2**

**Amend Paragraph 14** by adding Subparagraphs 14.1.3 through 14.1.7 as follows:

14.1.3 All Risk insurance coverage including but not limited to flood, fire and extended coverage solely for goods on hand belonging to the NHSLC in an amount of \$500,000 per occurrence, and \$10,000,000 aggregate. The All Risk insurance shall cover 100 % of NHSLC’s Replacement Cost (defined as the NHSLC’s purchase price for such goods plus related storage and transportation costs, if any). In the event of a claim payment; insurer or Contractor agrees to make payment directly to NHSLC. A certificate of insurance demonstrating compliance with the requirements of this Paragraph 14 shall be provided to NHSLC upon request. For insurance purposes, title to Supplier’s product shall transfer to the NHSLC when the bill of lading is issued by the warehouse.

14.1.4 Performance Bond. Upon final approval of this Agreement, Contractor shall provide to NHSLC in a form satisfactory to NHSLC, a Performance Bond in the amount of One Million Dollars (\$1,000,000.00), which shall be retained by the NHSLC for the initial term of this Agreement and any extension(s).

14.1.5 The Contractor shall be fully bonded and registered to the extent required by applicable state law. A copy of such registration shall be provided to NHSLC upon request.

14.1.6 Once licenses are issued, the Contractor shall maintain all licenses to the extent required by applicable law.

14.1.7 Transition Bond for completion of all necessary steps to provide Transportation Services on or before November 1, 2013. Prior to October 1, 2013, Contractor shall provide to NHSLC in a form satisfactory to NHSLC, a Transition Bond in the amount of One Million Five Hundred Thousand (\$1,500,000.00), which shall be retained by the NHSLC until January 31<sup>st</sup>, 2014.

**Amend Paragraph 14.3** by deleting the last sentence and replacing it with the following sentence, "The Contractor shall endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

**AMEND PARAGRAPH 16** as follows:

Add "or Contractor" after "the State" in both sentences. Strike "on the part of the Contractor" at the end of the paragraph. In addition, the phrase "Event of Default" where it occurs in this paragraph is amended to read "Material Breach".

**ADD THE FOLLOWING NEW PARAGRAPHS:**

**25. Contract Protest Process**

The Parties shall use the Contract Protest Process to resolve any dispute with respect to the Agreement

The Issuing Officer, or his or her successor, shall be the NHSLC's representative.

Prior to the filing of any formal proceedings with respect to a dispute (other than an action seeking injunctive relief with respect to intellectual property rights), the party believing itself aggrieved (the "Invoking Party") shall call for dispute negotiation by written notice to the other party. Such notice shall be without prejudice to the Invoking Party's right to any other remedy permitted by this Agreement.

The parties shall use all reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between negotiators for the parties.

In the event that the Parties are unable to reach agreement after good faith negotiations, the parties may agree to utilize a Mediator with experience in the issue in dispute. The selection of the Mediator shall be by mutual agreement of the Parties. The decision by such Mediator shall be non-binding and not evidence in any further proceeding. Following the decision of the Mediator, if any, the matter shall be submitted to the NHSLC for a determination following a hearing. The resulting Order may be appealed pursuant to RSA 541.

**26. Contract Transition Period**

If this contract expires or is terminated before a vendor is selected and prepared to provide Transportation Services to the NHSLC, Contractor agrees to use best efforts to continue the Transportation Services described under the current contract for up to 6 months at the prices to be negotiated by the parties ("Transition").

Contractor also agrees, at the discretion of the NHSLC, to assist the NHSLC in all transition services.

For the purposes of this paragraph, the Contractor shall be known as the old ("old") and the new contractor shall be known as new ("new"). The NHSLC, in conjunction with both "old" and "new" contractors, shall establish a deadline for the Transition. The NHSLC will, if possible, select a period during a time of slow sales (such as January-March) and schedule as short a period as is practical for the Transition from the "old" to the "new" contractors. Notification of the deadline will be given within a reasonable period, to be arranged with the old and new contractors at award.

**27. News Releases**

After award and final approval, the Contractor may make public the existence of the contract and the business relationship with the NHSLC. All other information must be approved by the NHSLC before it is made public, such approval not to be unreasonably withheld.

**28. Confidentiality/Sensitive Information**

Contractor may have access to confidential/sensitive information in the course of performing its obligations under the contract, and may be required to sign a mutually agreed upon confidentiality agreement.

**29. Extension of Contract**

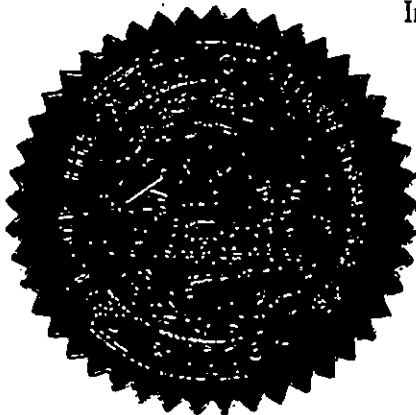
This contract may be extendable by the NHSLC for no more than two (2), five (5) year periods, unless a shorter period is negotiated between the parties. The NHSLC shall give the Contractor one (1) year's notice of its decision to offer an extension. Following said notice, the Contractor and the NHSLC shall have four (4) weeks to negotiate new rates for the extension period. If the Parties do not reach agreement on Rates for the extension period within the four (4) week period, the NHSLC will notify the Contractor of its intention not to renew or in its discretion extend the time to negotiate.

END OF EXHIBIT C

State of New Hampshire  
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Exel Inc. doing business in New Hampshire as Exel New Hampshire, a(n) Massachusetts corporation, is authorized to transact business in New Hampshire and qualified on July 17, 1991. I further certify that all fees and annual reports required by the Secretary of State's office have been received.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 6<sup>th</sup> day of May, A.D. 2013

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State

From: Rob Whipple (Exel US) [Rob.Whipple@exel.com]  
Sent: Monday, August 05, 2013 12:55 PM  
To: Stephen Judge  
Subject: NHSLC Transportation Contract

Steve,

As Associate General Counsel for Exel Inc., I confirm that Exel Inc. undertook and completed the Business Case Analysis ("BCA"); an internal control mechanism in which key internal stakeholders reviewed the terms and conditions of the proposed Transportation Services Agreement with the NHSLC and granted approval for Exel Inc. to enter into the agreement. Exel Inc.'s CEO and CFO granted BCA approval on August 1, 2013. Jim Gehr, President of Exel Inc.'s Retail Division, signed the Transportation Agreement later that same day, following the BCA receiving such approval.

Rob Whipple  
Associate General Counsel

DHL Global Business Services  
Dept. 230  
570 Polaris Parkway  
Westerville, Ohio 43082  
U.S.A.

Telephone: 614.865.----  
Mobile: 614.203.----  
Facsimile: 614.865.8879

[www.dhl.com](http://www.dhl.com)



**MINUTE OF ACTION  
TAKEN BY WRITTEN CONSENT  
OF  
THE BOARD OF DIRECTORS  
OF  
EXEL INC.**

July 21, 2010

This Minute of Action was taken by written consent of the Board of Directors of Exel Inc. (the "Company") as of the date first set forth above, pursuant to Chapter 15B, Section 59 of the Massachusetts Business Corporation Law and without formality of a meeting, and the undersigned hereby waive any notice required to be given in connection herewith.

The Board of Directors takes the following action:

RESOLVED that authority be granted to certain individuals to execute documents on behalf of the Company, such individuals and authority to be limited as described below:

<b>Name</b>	<b>Title</b>	<b>Signing Authority Granted</b>
Jim Gehr	President, Retail	any and all contracts, agreements, leases and/or related documents for projects or matters involving the Retail Sector that have been approved through the DSC Business Case Approval process.
Ted Nikolai	President, Automotive & Industrial, Chemical & Energy (AICE)	any and all contracts, agreements, leases and/or related documents for projects or matters involving the AICE Sector that have been approved through the DSC Business Case Approval process.
Scott Sureddin	President, Consumer/Life Sciences	any and all contracts, agreements, leases and/or related documents for projects or matters involving the Consumer/Life Sciences Sector that have been approved through the DSC Business Case Approval process.
Marc Blouin	Vice President, TASL	any and all contracts, agreements, leases and/or related documents for projects or matters involving the TASL Sector that have been approved through the DSC Business Case Approval process.
Jim Damman	President, TASL	any and all contracts, agreements, leases and/or related documents for projects or matters involving the TASL Sector that have been approved through the DSC Business Case Approval process.
Geoff Campbell	President, Power Packaging	any and all contracts, agreements, leases and/or related documents for projects or matters involving Power Packaging that have been approved through the DSC Business Case Approval process.

Kevin Huber	Controller, DSC Americas	any and all contracts, agreements, leases or related documents for projects that have been approved through the DSC Business Case Approval process; and any and all documents relating to financial audits or governmental filings.
David Bailey	Controller, US & Canada	any and all contracts, agreements, leases and/or related documents for projects that have been approved through the DSC Business Case Approval process; and any and all documents relating to financial audits or governmental filings.
Mick Dragash	Sr. Legal Counsel	any and all carrier and related carrier arrangements with respect to The Exel Delivery Network Services, including but not limited to Network Carrier Delivery Agreements and Linehaul Carrier Agreements.
David Purcell	Sr. Director, Tax	any and all federal, state and local tax documents, including but not limited to tax returns and annual reports.

BE IT FURTHER RESOLVED that any previous actions taken by the above-named individuals in such capacity identified are hereby approved, ratified and confirmed.

The foregoing resolution constitutes a complete record of the above action taken by the Directors of the Company and the undersigned have executed this Minute of Action as of the date first set forth above.

  
 \_\_\_\_\_  
 John Gilbert

  
 \_\_\_\_\_  
 Scott Hofacker



# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
04/25/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Aon Risk Services Central, Inc. Chicago IL Office 200 East Randolph Chicago IL 60601 USA	<b>CONTACT NAME:</b> PHONE (AG. No. Ext): (866) 283-7122      FAX (AG. No.): (847) 953-5390	
	<b>E-MAIL ADDRESS:</b>	
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURED</b> Exel Inc 570 Polaris Parkway #220 Westerville OH 43082-7900 USA	<b>INSURER A:</b> National Union Fire Ins Co of Pittsburgh      19445	
	<b>INSURER B:</b> New Hampshire Ins Co      23841	
	<b>INSURER C:</b> Insurance Co of the State of PA      19429	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
<b>INSURER F:</b>		

Holder Identifier :

Certificate No : 570049729316

**COVERAGES**      **CERTIFICATE NUMBER:** 570049729316      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURER	SUBRIN WYVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GENTL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			GL3372428	05/01/2013	05/01/2014	EACH OCCURRENCE \$5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$5,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$5,000,000 GENERAL AGGREGATE \$15,000,000 PRODUCTS - COMP/OP AGG \$6,000,000
A	<b>AUTOMOBILE LIABILITY</b>			CA 4882356	05/01/2013	05/01/2014	COMBINED SINGLE LIMIT (Ea accident) \$5,000,000
B	<input checked="" type="checkbox"/> ANY AUTO			AOS CA 4882359	05/01/2013	05/01/2014	BOODY INJURY (Per person)
A	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS		HA CA 4882358	05/01/2013	05/01/2014	BOODY INJURY (Per accident)
A	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS		VA CA 4882357	05/01/2013	05/01/2014	PROPERTY DAMAGE (Per accident)
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <b>DED</b> <b>RETENTION</b>						EACH OCCURRENCE AGGREGATE
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in IN) If yes, describe under DESCRIPTION OF OPERATIONS below			WC062790535	05/01/2013	05/01/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$5,000,000 E.L. DISEASE-EA EMPLOYEE \$5,000,000 E.L. DISEASE-POLICY LIMIT \$5,000,000
B				AOS WC062790531	05/01/2013	05/01/2014	
				CA			

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
See Attached List of Named Insureds. Aon Risk Services Central, Inc. is not the broker of record for the Excess Liability Policy# 23002713. This policy is placed direct between the named insured and Chartis Insurance UK Ltd. Evidence of Insurance.

**CERTIFICATE HOLDER****CANCELLATION**

Exel, Inc.  
 570 Polaris Parkway  
 Westerville OH 43082 USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE  
*Aon Risk Services Central, Inc*



# ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Central, Inc.		NAMED INSURED Exel Inc	
POLICY NUMBER See Certificate Number: 570049729316			
CARRIER See Certificate Number: 570049729316	NAIC CODE	EFFECTIVE DATE:	

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER	
INSURER	
INSURER	
INSURER	

**ADDITIONAL POLICIES** If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
	WORKERS COMPENSATION						
C		N/A		WC062790529 MA SIR applies per policy terms & conditions	05/01/2013	05/01/2014	
B		N/A		WC062790530 WA WI WY SIR applies per policy terms & conditions	05/01/2013	05/01/2014	
B		N/A		WC062790528 FL	05/01/2013	05/01/2014	
B		N/A		WC062790532 AZ GA	05/01/2013	05/01/2014	
B		N/A		WC062790533 IL KY NC NH UT VT	05/01/2013	05/01/2014	
B		N/A		WC062790534 NJ PA	05/01/2013	05/01/2014	
A		N/A		XSWC1307544 XS Work Comp - OH SIR applies per policy terms & conditions	05/01/2013	05/01/2014	

## EXHIBIT F

### TRANSPORTATION SERVICE CHARGES

	Weekday	Weekend/Holiday
Beverage Cases – Pallet Unload (Lift Gate & Loading Dock)	\$0.51	\$0.59
Beverage Cases – Hand Unload	\$0.61	\$0.70
Totes and other store supplies to and from all stores	No charge	No charge
Pallets, unuseable pallets and empty boxes from NHSLC sites to Vendor's Warehouse then to Bow Warehouse	No charge	No charge
Product at the Concord Warehouse to the Bow Warehouse	No charge	No charge
Discounted rate for movement of remaining cases from Nashua to Bow.	\$0.26	\$0.26
Discounted rate for movement of cases from Concord to Bow	\$0.11	\$0.11

#### Fuel Surcharge

State and Contractor agree that in the event the combined cost of diesel fuel and applicable diesel fuel taxes (hereinafter the - fuel cost) shall exceed \$3.50 per gallon for a period of thirty (30) days, as verified by documentation submitted by Contractor to establish its fuel cost, then the transportation rate shall increase by \$0.01 per case. The transportation rate shall further increase by \$0.01 per case for each documented \$0.25 per gallon increase in fuel cost above \$3.50 per gallon which remains in effect for a period of thirty (30) days. If the fuel cost decreases below \$3.50 per gallon or below any additional \$0.25 per gallon decrease in fuel cost, as the case may be, for a period of thirty (30) days, then the transportation rate increase shall not apply. The Contractor and State further agree that in the event the fuel cost shall be less than \$3.50 per gallon for a period of thirty (30) days, then the transportation rate shall decrease by \$0.01 per case. If the fuel cost further decreases by \$0.25 per gallon below \$3.50 per gallon for a period of thirty (30) days, then the transportation rate shall decrease an additional \$0.01 per case. The adjusted transportation rate as provided in this appendix shall take effect the first day of the next calendar month following the applicable thirty-day period of documented increased or decreased fuel cost. Contractor shall maintain records acceptable to the State, documenting its cost of diesel fuel and applicable diesel fuel taxes for vehicles used in providing the distribution services under this Agreement, which shall be subject to inspection by the State upon request.

END OF EXHIBIT F