

Broker-Carrier Agreement

(“Broker’s company name below”)

This Broker/Carrier contract (the “Contract”) is made this day _____ between _____ (“Carrier”), MC # _____ and _____, (“Broker”), a _____ (“state corporation broker works under”) and operating as a property broker by the Federal Motor Carrier Safety Administration (“FMCSA”) under MC# _____, or by appropriate State agencies, and as a licensed broker, arranges for freight transportation. Broker and Carrier agree that this Contract shall govern Carrier’s performance and obligations pertaining to transportation services for freight tendered to Carrier hereunder.

NOW therefore, in consideration of the mutual covenants, conditions, and agreements set forth in this agreement, the parties agree as follows:

1. Term and Termination.

Broker agrees to offer Carrier to transport as a motor contract carrier, on a non-exclusive basis, shipments for carriage between points that the Carrier is authorized to serve. It is Carrier’s responsibility to refuse any shipment that would violate any part of its authority. Contract shall be for one (1) year and will automatically renew unless terminated in writing with 30 days’ notice by either party. This agreement shall be deemed in effect upon receipt by Broker of a copy signed by Carrier. Broker may suspend or terminate this Contract immediately at Broker’s sole discretion based on CSA BASIC scores, a Conditional or Unsatisfactory Safety Rating, major service failures, double brokering history, or based on the breach of any covenant, obligation, condition, or requirement described in this Contract.

2. Carrier's Obligations.

- a. **Services:** Carrier shall accept said shipments and perform transportation services in a prompt, safe, efficient, and timely manner, and in conformity with all federal, state, and local laws and regulations, including compliance with FMCSA regulations restricting the use of hand-held mobile telephones by drivers of commercial vehicles. Carrier agrees that the terms and conditions of this Contract apply to all shipments handled by Carrier for Broker and that the terms of this Contract control the relationship between the Broker and Carrier. Regardless of whether they are required by law, in no event shall any provisions of Carrier's tariff, terms, and conditions, service guide, bill of lading ("BOL"), or similar documentation apply to services provided under this Contract.

- b. **Authorities and Licenses:** Carrier warrants that it will provide transportation of shipments as a fully qualified motor carrier and that it holds all required federal and state licenses and operating authorities, will comply with all applicable insurance requirements, and will maintain at all times a satisfactory safety rating from the FMCSA of the U.S. Department of Transportation ("DOT") or any other governmental agency issuing fitness ratings. If Carrier's safety rating declines at any time during this Contract's term, Carrier is notified that it may receive an unsatisfactory safety rating, Carrier fails to maintain insurance required hereunder, is notified that such insurance may become ineffective or is otherwise prohibited by applicable state and federal law from performing services hereunder, Carrier will immediately (within 24 hours) notify Broker and will not solicit or accept any loads until the Broker has reviewed the facts and circumstances underlying said decline and reinstated the Carrier to active status. Carrier will comply with all applicable federal, state, and/or local laws, regulations, or ordinances (including obtaining all needed permits and licenses), and any representations or contractual clauses required thereby will be incorporated by reference or by operation of law into this Contract.

Additionally, Carrier warrants that it will use only properly licensed drivers to operate the necessary equipment. Carrier will attach copies of its operating authorities to this contract when signed and returned to Broker. Should any BOL list Broker as "Carrier", it is hereby agreed that such designation is entirely inadvertent, contrary to the express wishes of Broker and not in any way interpreted as changing the status of Broker as defined by pertinent statute under 49 U.S.C. §13102, Definitions (2), 49 C.F.R. §371.2(a) , 49 U.S.C. §14101(a) and 49 U.S.C. §14501(c)(1), and shall not be

interpreted as subjecting the Broker to the liability standards of a motor carrier as defined in federal, state, and local regulations, laws, ordinances, or statutes. Broker may, in its sole discretion, implement a motor carrier selection protocol which may be revised from time to time. If Carrier fails to meet the requirements of any such protocol, Broker may, in addition to any other rights and remedies available, including, but not limited to, termination, disqualify Carrier from providing service to Broker until such time as Carrier is re-qualified in accordance with the provisions of the protocol. Broker may, in its sole discretion, discontinue using Carrier to provide any services until such time as Carrier's operations are acceptable to Broker.

c. Carrier's Operations.

- i. .Carrier shall be solely responsible for compliance with all provisions of applicable state and federal law regarding over dimension and overweight loads and air quality and environmental standards including, but not limited to, those of the California Air Resources Board. Carrier shall be solely responsible for its day to day operations including, but not limited to, setting appropriate routes to ensure that transportation of shipments is accomplished in accordance with all Applicable Laws and to otherwise ensure shipments are not damaged in transit. Carrier shall maintain appropriate security infrastructure to ensure the physical security of shipments and equipment handled under the terms of this Contract.
 - ii. Carrier shall be responsible for the work and activities of each of its employees, agents, representatives, contractors, and subcontractors and shall utilize only competent and able personnel that are legally licensed in accordance with all state and federal applicable law to perform the services hereunder. Carrier shall have full control of any personnel used in the provision of motor carrier services hereunder. Carrier shall be solely responsible for ensuring, and will ensure, at Carrier's cost and expense, that such personnel are fully qualified to perform services hereunder, and that such personnel have access to all locations into which access is necessary to perform services under this Agreement.
- d. Equipment:** Carrier shall transport all accepted shipments only on equipment owned or permanently leased to Carrier. Equipment (tractors and trailers) shall meet all safety requirements and shall have all routine maintenance performed promptly according to manufacturer's specifications. No trailers will have been used to carry hazardous materials, garbage, refuse, or animal waste products.

- e. **Re-Brokering:** No shipment may be sub-leased, re-brokered, sub-contracted, or sub-brokered to another carrier. If Carrier violates the provisions of this paragraph, each such violation shall be deemed a separate material breach of this Contract, and Carrier shall remain responsible to Broker for full and proper performance of the obligations of Carrier under this Contract as if all such services were performed directly by Carrier and shall defend, hold harmless and indemnify Broker, Broker's customer and the consignee from and against all claims, losses and damages arising out of the third-party carrier's conduct or involvement with the load.
- f. **Independent Contractor:** Carrier will perform its transportation services as an independent contractor and will not for any purpose be an agent for Broker. Carrier's employees and permanently leased operators will not be considered employees of Broker. Carrier is responsible for payment of all state and federal taxes, assessments, insurance (including, but not limited to, workers' compensation, unemployment compensation, disability, pension, and social security insurance) and any other financial obligations normally associated with employees and permanently leased operators. This contract is non-exclusive and as such both parties may service other brokers and carriers.
- g. **Billing:** Broker will have the exclusive right to bill its customer for all appropriate charges. Carrier shall not invoice or honor or pay any other payment solicitation from Broker's customer.
- h. **Time of the Essence:** Carrier understands that time is of the essence in the pick-up, transport and delivery of each and every shipment. Carrier will provide transportation with reasonable dispatch and use all reasonable efforts to meet all prearranged pickup and delivery times and will communicate in a timely manner any inability to meet such times. Carrier acknowledges and agrees that delivery and pick-up dates and hours will not require Carrier to violate Hours of Service regulations, and routing instructions, if any, provided by Broker are for informational purposes only. If Carrier cannot assign a driver to a load for pick-up and safe delivery in compliance with all applicable federal, state, or other governing authority's regulations, including but not limited to Hours-of-Service regulations, it shall be the Carrier's responsibility to decline the load.
- i. **Shipment Documentation:** Carrier shall be provided with a written confirmation sheet that shall contain, in summary form, the details of each offered shipment. Such details will include pertinent information for pickup, delivery, and payment for services. Carrier's acceptance of the shipment represents full agreement with all terms of the shipment as outlined on the confirmation sheet. Each

shipment pursuant to this agreement shall be evidenced by a written BOL. Carrier will sign BOL as the motor carrier which shall serve as prima facie evidence of the kind and quantity of property being shipped and verification of the condition of the shipment at time of pickup. Any discrepancies in count or condition of the shipment shall be noted on the face of the BOL and signed by shipper's representative and Carrier's driver. Additionally, Carrier shall instruct their driver to record the seal number and note whether the seal is intact, if applicable, on every BOL evidencing a shipment under this Contract. Carrier's responsibility for shipment shall cease upon obtaining consignee's signature upon delivery. Carrier shall notify Broker immediately of any exception made on the bill of lading or delivery receipt including any shortages, overages, or damage to shipment. Payment to Carrier is dependent upon Broker's receipt of signed BOL and other shipping documents including but not limited to, packing lists, accessorial charges, lumper receipts or other reimbursable expenses. Any terms and conditions related to this shipment that appear on the BOL shall be subordinate to the terms of this agreement. Carrier's failure to issue a bill of lading shall not affect its liability hereunder.

J. Handling, Loading and Sealing:

- iii. Carrier will comply with handling instructions provided by Broker, the shipper, consignor, or consignee including, but not limited to, compliance with requirements related to transportation of temperature-controlled shipments. Without in any way limiting the generality of the foregoing, Carrier shall ensure that any shipments requiring controlled temperature transit are maintained at all times within required temperature ranges. If Carrier is transporting cargo of a type that a reasonable person would understand to require controlled temperature transportation, but is not provided with instructions regarding such service, Carrier shall request such instructions prior to accepting the cargo in question and, if controlled temperature service is declined, shall use reasonable efforts to obtain such declination in writing.
- iv. When required by Broker, the shipper or the consignor, Carrier shall secure shipments with a serialized seal. Carrier shall ensure that the serialized seal number appears on the bill of lading or other form of manifest or receipt. Carrier shall be solely responsible for maintaining seal integrity during transportation of the shipment. Except as is required by law enforcement personnel, under no circumstances shall Carrier or any of its personnel break any seal without the express consent of Broker. Carrier shall immediately notify Broker to report a missing or broken seal.

- v. In the event that law enforcement personnel require that Carrier break any seal on any shipment. Carrier shall document such fact on the bill of lading or other form of manifest or receipt by noting the law enforcement agency, time, location, and officer name and badge number. Upon completion of inspection by law enforcement personnel, Carrier personnel shall immediately re-seal the shipment with a serialized seal and shall indicate the second seal number on the bill of lading or other form of manifest or receipt. Furthermore, Carrier shall, as soon as reasonably possible after being required to break a seal by law enforcement personnel, communicate such fact to Broker and, if not Broker, the consignee of the shipment.

k. Cargo Loss or Damage:

- vi. Carrier shall have exclusive care, custody, and control of cargo from the time Carrier's driver signs for the shipment until the consignee signs upon receipt. Carrier assumes complete liability for the full value of any loss, damages, expenses, or other liabilities related to the transportation of cargo under this agreement, as documented in the formal claim form filed by the Shipper. In the event of a loss or damage to cargo, Carrier shall have no right of salvage or disposal as provided under applicable law, including, but not limited to, the provisions of 49 C.F.R. Part 370, without Broker and Broker's customer's written authorization. Carrier shall pay to Broker or allow Broker to deduct from the amount Broker owes Carrier, customer's full actual loss for the kind and quantity of commodities so lost, delayed, damaged, or destroyed. Carrier will promptly acknowledge receipt of all claims and supporting documentation in writing within 30 days and process all claims and arrange payment within 90 days of the loss or damage event. Broker or Broker's customer shall have the right to (A) file a claim up to nine (9) months after the date of damage or loss and (b) bring suit against Carrier within two (2) years of the date of the written disallowance of the cargo claim. Carrier shall fully assist Broker in investigating any claim for cargo loss, damage, delay, or destruction.
- vii. Carrier assumes the liability of a motor carrier under the Carmack Amendment as currently codified at 49 U.S.C. § 14706 for loss, delay, damage to or destruction of any and all goods or property tendered to Carrier pursuant to this Contract from the time the shipment is tendered to Carrier until delivery.
- vii. Carrier waives any right to salvage goods subject to this provision, as well as any right to claim an offset for the value of salvage.

- l. **Rates:** Each shipment shall be summarized in a confirmation sheet that will be transmitted to Carrier. Confirmation will contain information regarding the nature of the shipment, the pickup date and time, delivery date and time, special handling instructions and the rate to be paid by Broker for the successful delivery of the shipment. It is the Carrier's responsibility to return a signed confirmation to the Broker as evidence of their agreement with the terms outlined therein; however, acceptance of the shipment will also serve as evidence of such agreement if the Carrier fails to return a signed confirmation to the Broker.
- m. **Insurance:** Carrier shall procure and maintain at its own cost, with financially dependable insurance companies, the following coverages:
- i.) Comprehensive General Liability – a minimum of \$1,000,000 combined single limit per occurrence insurance protecting against claims for bodily injury, including death, and loss or damage to property. In any event, policy limits shall not be less than any federal, state, or other governmental organizations minimum required amount for motor carriers. Such insurance shall also cover Carrier's contractual liability under this Contract.
- ii.) Auto Liability – a minimum of \$1,000,000 combined single limit per occurrence, or such larger amount as required by applicable law, insurance protection against claims for bodily injury, including death, and loss or damage to property. In any event, policy limits shall not be less than any federal, state, or other governmental organization's minimum required amount for motor carriers. Such policy shall cover any or all equipment that is owned, non-owned, rented, leased, hired, or otherwise used by Carrier to transport shipments under this contract.
- iii.) Workers' Compensation and Employers' Liability – in such amounts and in such form as required by applicable state law. Broker or Broker's customers shall have no responsibility to either defend or pay any sum related to any workers' compensation claim made by any Carrier employee or contractor.
- iv.) Cargo Liability – an amount of at least \$100,000 covering any and all damages or losses related to cargo in the care, custody and control of Carrier. Such insurance shall contain no exclusions, limitations or restrictions of any type that would foreseeably preclude coverage, or reduce coverage, relating to a cargo loss, damage, or delay claim (including, but not limited to items such as unattended equipment, unattached equipment, unlisted equipment, commodities transported under this Contract, refrigeration breakdown/failure, corrosion, employee theft or dishonesty).

v.) All Policies – Broker shall be named as an “additional insured” on all policies related to this contract except for cargo coverage where Broker will be listed as “loss payee”. Prior to carrying a shipment and annually thereafter, Carrier shall furnish Broker with a certificate of insurance, from a reputable insurance broker, listing all required coverages, limits, exclusions, and endorsements as noted above. All policies shall be primary in coverage and Broker shall have no obligations to pay any premiums related to the required insurance. The policy limits required herein are not to be interpreted as limiting the Carrier’s liability for any claims, lawsuits, causes of action, demands or losses. Furthermore, Carrier agrees to be solely liable for the full amount of loss as documented in the formal claim form filed by the Shipper, notwithstanding any exclusions, limitations or restrictions that may be incorporated into any underlying insurance policy. Carrier shall promptly notify Broker of any cancellation, potential cancellation, or material reduction in coverages or coverage levels. All deductible amounts are the responsibility solely of the Carrier.

- n. Indemnification:** CARRIER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS, BROKER, ITS AFFILIATES AND ITS CUSTOMERS (AS INTENDED THIRD PARTY BENEFICIARIES) FROM ANY AND AGAINST ALL LOSSES ARISING OUT OF OR IN CONNECTION WITH THE TRANSPORTATION SERVICES PROVIDED BY THE CARRIER UNDER THIS CONTRACT, INCLUDING THE LOADING, UNLOADING, HANDLING, TRANSPORTATION, POSSESSION, CUSTODY, USE OR MAINTENANCE OF CARGO OR EQUIPMENT OR PERFORMANCE OF THIS CONTRACT (INCLUDING BREACH HEREOF) BY CARRIER OR ANY CARRIER REPRESENTATIVE. ADDITIONALLY, CARRIER AGREES TO INDEMNIFY AND HOLD BROKER HARMLESS FROM AND AGAINST ANY DIRECT, INDIRECT, SPECIAL AND/OR CONSEQUENTIAL LOSS, DAMAGE, FINE, LIABILITY, JUDGMENT, COST AND EXPENSE, INCLUDING REASONABLE ATTORNEYS’ FEES, ARISING FROM ANY ERRORS IN THE BILL OF LADING, INCLUDING BY WAY OF ILLUSTRATION WITHOUT LIMITATION, THE SHOWING OF BROKER AS CARRIER OR SHIPPER.

“LOSSES” MEAN ANY AND ALL LOSSES, LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, ACTIONS, CAUSES OF ACTIONS, CLAIMS, SUITS, DEMANDS, COSTS AND EXPENSES OF ANY NATURE INCLUDING REASONABLE ATTORNEY’S AND PARALEGAL FEES AND OTHER COSTS OF DEFENSE, INVESTIGATION, SETTLEMENTS, COSTS OF CONTAINMENT, CLEANUP AND REMEDIATION OF SPILLS, RELEASES OR OTHER ENVIRONMENTAL CONTAMINATION AND COST OF ENFORCEMENT OF THESE INDEMNITY OBLIGATIONS. THIS INDEMNIFICATION OBLIGATION WILL SURVIVE AFTER TERMINATION OF THIS CONTRACT.

- o. Non-solicitation of Customers:** During the term of this contract and for a period of one (1) year after its termination, Carrier will not directly or indirectly solicit Broker's customers to provide transportation services. If Carrier or any of its representatives solicits a Broker's customer in violation of this section, Carrier shall pay to Broker as a commission 20% of the total charges for any transportation services provided by Carrier to Broker's customer, and all costs and reasonable attorneys' fees in the event legal proceedings are necessary to collect said amounts. The commission is payable during the period in which this Contract remains in full force and for a period of one (1) year after termination of this Contract by either party. The provisions of this item are applicable to Carrier, its officers, directors, shareholders, employees, agents, subcontractors, drivers, owner-operators, subsidiaries, and affiliates.

3. Broker responsibilities.

a. Payment:

- i.) Broker shall remit payment to Carrier for its services within twenty-eight (28) days of receipt of all necessary documentation including but not limited to, BOL, delivery receipt or other documentation required in the confirmation sheet and the Carrier's invoice referencing all appropriate identifying numbers and codes needed to identify the specific shipment. Carrier will look solely to Broker for payment for services rendered and shall not contact Broker's customer, shipper, receiver, consignor, or consignee regarding payment of freight bills or any other matter without the express written consent of Broker. Upon receipt of payment by Broker, any right of Carrier to payment from the Customer or any other third-party for services performed will be automatically assigned to Broker.
- ii.) If Broker is unable to bill/collect from their customer due to Carrier's failure to provide Broker with a legible copy or photocopy of the bill of lading or other proof of delivery, Carrier agrees that it will not be paid for such services rendered and it will not pursue collection efforts on such services.
- iii.) Carrier shall submit all freight bills within 180 days of delivery or waive its right to payment for services rendered with respect to such late submitted invoices. Claims for undercharges must be brought within 180 days of Broker's receipt of the original invoice giving rise to such undercharge claim. Assuming Carrier has complied with the foregoing invoicing obligations, Carrier shall bring suit related to unpaid freight charges or undercharges within 18 months of the date of delivery or its right to sue or otherwise seek payment shall be waived.

- b. **Confirmation Sheets:** Broker will provide Carrier with a confirmation sheet containing all necessary and required information regarding the proposed shipment.

4. Force Majeure:

If either party is precluded from complying with any portion of this agreement by events beyond such party's reasonable control, including fire, strikes, acts of God, war, riots, terrorism, or acts of governmental authority, such compliance shall be excused to the extent necessitated by such changed events; provided that the party claiming force majeure (a) promptly notifies the other party within 4 hours of the event, (b) takes all reasonable steps to reduce the events impact and (c) immediately resumes performance when event ends.

5. Confidentiality:

Both parties acknowledge that in carrying out this contract each will be exposed to proprietary information regarding the other party and Broker's customers. Such proprietary information includes but is not limited to rates, services, facilities, business plans, shipment volumes and business practices. This provision shall endure for 12 months beyond the termination date of this contract. Each party shall instruct its personnel that they are to make no disclosure of any proprietary information about the other party without the express written consent of the other party except (1) as required by law or regulation; (2) disclosure is made to its accountants, tax advisors, attorneys, or any parent, subsidiary or affiliate company; (3) to facilitate rating or auditing of transportation charges by an authorized agent and such agent agrees to keep the terms of the Contract confidential; (4) as mandated by civil authorities, courts or other governmental bodies; or (5) where proprietary information becomes known to the general public during the course of this contract. This provision shall endure for 12 months beyond the termination date of this contract.

6. No Lien:

Carrier shall have no lien and hereby expressly waives its right to any lien, on any cargo or other property of Broker or Broker's customers. Carrier shall not withhold delivery of any freight due to any dispute with Broker regarding freight charges or otherwise.

7. Choice of Law:

Broker and Carrier irrevocably and unconditionally submit themselves to the exclusive jurisdiction and venue of the state and federal courts serving _____ (“county, state of broker’s origin”) and any appellate court thereof, in any suit, action or proceeding arising out of or relating to this Contract and further irrevocably and unconditionally waive any claim or defense that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Broker and Carrier further agree that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions in any manner provided by law.

8. Waiver:

Carrier and Broker expressly waive any and all rights and remedies allowed under 49 U.S.C. § 14101 to the extent that such rights and remedies conflict with this Contract. Failure of Broker to insist upon Carrier’s performance under this Contract or to exercise any right or privilege arising hereunder shall not be a waiver of any Broker’s rights or privileges herein.

9. Non-Waiver:

If either party fails to enforce or waives any breach of any term of this agreement, such inaction, or waiver shall not operate as a waiver of any other breach of such term or condition.

10. Assignment:

Neither party may assign this agreement without the prior written consent of the other party. This agreement supersedes all other agreements and all tariffs, rates, classifications, and schedules published, filed, or otherwise maintained by Carrier. This Contract shall be binding upon and insure to the benefit of the parties hereto.

11. Severability:

Should any part of this agreement be construed as or declared invalid, unenforceable, or unconstitutional, then said provision shall be considered severed from this agreement but only to the extent of the invalidation, unenforceability, or unconstitutionality. All remaining provisions shall remain in full force.

12. Authority:

Each party warrants that the person signing this agreement has the authority to do so within the Bylaws of the corporation.

CARRIER: _____

Title: _____

Name: _____

Date: _____

Signature: _____

BROKER: _____

Title: _____

Name: _____

Date: _____

Signature: _____