

## BROKER-CARRIER AGREEMENT

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (“BROKER”), a Registered Property Broker, Lic. No. MC-\_\_\_\_\_ and \_\_\_\_\_, a Registered Motor Carrier, Permit/Certificate No. DOT-\_\_\_\_\_ (“CARRIER”); collectively, the “Parties”. (“Registered” means operated under authority issued by the Federal Motor Carrier Safety Administration (or its predecessors) within the U.S. Department of Transportation.)

**WHEREAS**, BROKER desires to utilize the services of CARRIER for the transportation of general commodities and/or goods owned or shipped by BROKER'S customer(s);

**WHEREAS**, CARRIER desires to furnish contract carrier service to BROKER and/or its customer(s) for the transportation of general commodities and/or goods;

The parties hereto intend to enter into the Contract as outlined under 49 U.S.C. § 14101 (b) to provide specified services under specified rates and conditions.

**NOW THEREFORE**, BROKER and CARRIER mutually agree as follows:

### **CONTRACT TERMS AND CONDITIONS:**

**Section I. Carrier Services:** CARRIER agrees to transport Goods, from time to time, in accordance with the terms of a Rate Confirmation Sheet. CARRIER agrees to load and deliver the Goods on the dates indicated on each Rate Confirmation Sheet. CARRIER agrees to provide and meet the equipment requirements set forth (if any) in each Rate Confirmation Sheet. CARRIER agrees to maintain satisfactory U.S. DOT safety ratings and is otherwise authorized to provide the proposed services.

CARRIER represents and warrants that it is in, and shall maintain compliance during the term of this Agreement, with all applicable federal, state and local laws relating to the provision of its services including, but not limited to: transportation of Hazardous Materials, (including the licensing and training of drivers) as defined in 49 C.F.R. §172.800, 173, and §397, et seq. to the extent that any shipments hereunder constitute Hazardous Materials; security regulations; owner/operator lease regulations; loading and securement of freight regulations; implementation and maintenance of driver safety regulations including, but not limited to, hiring, controlled substances, and hours of service regulations; sanitation, temperature and contamination requirements for transporting food, perishable, and other products, qualification and licensing and training of drivers; implementation and maintenance of equipment safety regulations; maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers.

CARRIER agrees to immediately terminate handling BROKER'S freight under the Agreement and will notify BROKER immediately if its federal Operation Authority is revoked, suspended or rendered inactive for any reason; and/or if it is sold, or if there is a change in control of

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ownership and/or any insurance required thereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.

CARRIER represents and warrants that it shall transport the property, under its own operating authority. It will not re-broker, assign or interline any shipments hereunder. If CARRIER breaches this provision, CARRIER has breached this AGREEMENT and CARRIER shall not be released from any liability to BROKER under this AGREEMENT. In addition to the indemnity obligation in Section 2, CARRIER will not be liable for any and all consequential damages for violation of this Paragraph.

CARRIER agrees that a customer's insertion of BROKER'S name as the carrier on a bill of lading shall be for the shipper's convenience only and shall not change BROKER'S status as a property broker nor CARRIER'S status as a motor carrier.

CARRIER represents and warrants that it does not have an "unsatisfactory" safety rating issued by the Federal Motor Carrier Safety Administration (FMCSA), US Department of Transportation, and CARRIER will notify BROKER in writing immediately if its safety rating is changed to "unsatisfactory" or "conditional".

**Section 2. General Liability:** CARRIER shall be liable for loss, damage, or delay caused by CARRIER'S negligence, willful misconduct or disregard for the condition, safety or timely delivery of the Goods. The CARRIER agrees to defend, indemnify and hold BROKER and BROKER'S customers harmless of and from any and all claims and causes of actions arising from or related to the services provided or to be provided by CARRIER, and from any and all claims or losses resulting from CARRIER'S failure to perform in accordance with the terms of this Agreement including cargo loss and damage, theft, delay, damage to property and personal injury or death. CARRIER'S liability shall begin at the time the Goods are loaded on Carrier's equipment, and shall continue until the Goods are delivered to the party designated and at the location shown, on the Rate Confirmation Sheet.

**Section 3. Limitation of Liability:** CARRIER shall not be liable for loss of damage or delay caused by an act of god. The value of the Goods, for purposes of this Agreement, shall be the Goods' replacement cost. The CARRIER shall not be liable for any event or condition relating to the Goods that arise after receipt of the Goods by a party designated in the Rate Confirmation Sheet.

**Section 4. Quarantine Conditions:** In case of quarantine the Goods may be discharged at the risk and expense of Owner into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the CARRIER'S dispatch at the nearest available point in CARRIER'S judgment, and in any such case CARRIER'S responsibility shall cease a) when the Goods are so discharged, and b) written notice of the date, time and place of discharge is received by the Owner, Shipper and BROKER.

**Section 5. Insurance.** BROKER shall have the full benefit of any insurance that may have been effected upon or on account of the Goods, so far as this shall not void the policies or contracts of insurance.

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CARRIER shall furnish BROKER with Certificate(s) of Insurance, and shall provide thirty (30) days advance written notice of cancellation or termination, and unless otherwise agreed in writing, subject to the following minimum limits: Motor vehicle (including hired and non-owned vehicles), property damage, and personal injury liability \$1,000,000.00; cargo damage/loss, \$100,000.00; worker's compensation with limits required by law. Except for the higher coverage limits which may be specified above, the insurance policies shall comply with minimum requirements of the Federal Motor Carrier Safety Administration and any other application regulatory state agency. Nothing in this Agreement shall be construed to avoid CARRIERS liability due to any exclusion or deductible in any insurance policy. The cargo insurance shall be in the form required by Federal Law, and shall have no exclusions or restrictions, but shall, in all respects, be identical to the cargo and/or liability insurance followed in accordance with said Federal Law.

**Section 6. Filing of Claims and Suits.** As a condition precedent to recovery, and claim BROKER rising out of this contract or the shipment of the Goods must be made in writing and delivery to BROKER at least thirty (30) days prior to the filing of any suit. Any suit for the recovery of shipping charges, or any suit arising out of or relating to the terms of this Agreement or the Goods must be filed in \_\_\_\_\_ County, Texas, the county of venue and of BROKER'S principal place of business. This Agreement and any disputes arising thereunder shall be interpreted and enforced in accordance with the laws of the State of Texas and applicable Federal Law.

**Section 7. Processing Insurance Claims.** Carrier agrees to reasonably cooperate with BROKER and/or the Owner and to take whatever actions are reasonably necessary to hand, file, process, adjust and/or present any claim for loss or damage to the CARRIER'S insurer and to further handle, process and present any and all claims necessary in accordance with Federal Law.

**Section 8. Risk on Unattended Delivery or Pickup.** Goods destined to or picked up from any location where there is no regularly appointed representative of the Shipper. Owner or delivery recipient shall be the responsibility of the CARRIER and at CARRIER'S risk.

**Section 9. Agreed Rate.** BROKER shall pay CARRIER compensation for services rendered in accordance with a schedule of rates and charges, freight bill or other documents as may be agreed upon between CARRIER and BROKER which amount shall be known as the "Agreed Rate" and shall be set forth on the Rate Confirmation Sheet for each load. The Agreed Rate set forth on the Rate Confirmation Sheet shall be the amount to be paid by BROKER. If the CARRIER disputes the accuracy of the Agreed rate on the Rate Confirmation Sheet the CARRIER must notify BROKER prior to dispatching its driver. Once the CARRIER'S driver is dispatched the terms set forth on the Rate Confirmation Sheet shall become the terms applicable to such shipment.

**Section 10. Payment of Charges.** BROKER shall pay the Agreed Rate, subject to a) Carrier's performance under the terms of this Agreement, b) any offset resulting from loss or damage to the Goods, and/or c) any deductions otherwise described in this Agreement. The charge for freight is due from BROKER 30 days from the date of receipt of carrier's invoice and the signed

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bill of lading. BROKER shall be allowed to offset from any such freight charges any amount owed to it, the Shipper or the Owner by Carrier. Payment of the freight charges by the Owner, Shipper, Receiver, Consignor or Consignee of the Goods to BROKER shall relieve any such Owner, Shipper, Receiver, Consignor or Consignee of any liability to Carrier for the charges from Shipper or any responsible third party and agrees not to attempt to collect freight charges directly from BROKER'S Customer.

**Section 11. Alterations.** Any alteration, addition or erasure on this Agreement or a Rate Confirmation Sheet that is made without the special notation hereon by a authorized agent of BROKER shall be without effect and this Agreement shall be enforceable according to it original tenor.

**Section 12. Independent Contractor Relationship.** The relationship of the Carrier to BROKER shall, at all times, be that of an independent contractor, except that BROKER shall be the agent for the Carrier for the collection of charges when the Sipper, Owner, Receiver, Consignor or Consignee have actually paid all freight charges owed to BROKER.

**Section 13. Nonexclusive Agreement.** Carrier and BROKER agree that there is no minimum shipment of Goods agreed to be provided to Carrier by BROKER. This is a nonexclusive agreement. Carrier may provide its transportation services to other freight broker, Owners, Shippers, Consignors, and/or Consignees. BROKER'S demand for motor carrier services may fluctuate from year to year and during certain times.

**Section 14. Term of Agreement.** The Agreement shall be effective as of the Effective Date and shall remain in effect until such time as either party cancels or terminates this Agreement in writing providing written notice to the other party at least thirty (30) days in advance. For this purpose, notices shall be delivered to the parties at the addresses indicated below.

**Section 15. Restriction Regarding Solicitation.** CARRIER shall not solicit business BROKER transportation services, shipping services or other traffic from any Shipper, Owner, Consignor, Consignee or customer of BROKER if a) the availability of such business first become known to CARRIER as a result of BROKER'S efforts or this AGREEMENT; or b) where the business of the Shipper, Owner, Consignor, Consignee or customer of BROKER was first introduced to CARRIER by BROKER. If CARRIER breaches this Agreement and solicits BROKER'S customers and obtains business in violation of the terms of this AGREEMENT a commission from the CARRIER of fifteen percent (15%) of the gross transportation revenue received for such business shall be paid to BROKER for a period of one (1) year. Such amount shall be due and payable immediately upon BROKER'S written demand for the payment thereof. In addition to such commission BROKER shall have the right to enforce this covenant by temporary restraining order and/or injunction and shall further be permitted to collect BROKER'S actual damages from CARRIER.

**Section 16. Assignment.** This AGREEMENT cannot be assigned by CARRIER without BROKER 'S prior written consent.

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**Section 17. Amendments and Modifications.** This AGREEMENT cannot be modified, amended, limited or supplemented, except by mutual written agreement by CARRIER and BROKER.

**Section 18. Loading.** Regardless of whether loading is accomplished by any other person, the CARRIER shall be responsible for inspecting and testing the load of the Goods onto the CARRIER'S equipment and determining whether such loading has been accomplished in a safe, legal and appropriate manner. CARRIER'S acceptance of a bill of lading or other form of receipt for the Goods shall be deemed its acknowledgement that the Goods have been safely and adequately loaded for transportation.

**Section 19. Tracing.** CARRIER shall maintain a system of communication whereby BROKER is advised at least once a day of the location of the Goods and any circumstances which might prevent the CARRIER from accomplishing timely and safe delivery thereof.

**Section 20. Confidentiality:**

a. In addition to Confidentiality information protected by law, statutory or otherwise, the Parties agree that all of their financial information and that of their customers, including but not limited to freight and brokerage rates, amounts received for brokerage services, amounts of freight charges collected, freight volume requirements, as well as personal customer information, customers shipping or other logistics requirements shared or learned between the Parties and their customers, shall be treated as Confidential, and shall not be disclosed or used for any reason without prior written consent.

b. In the event of violation of this Confidentiality paragraph, the Parties agree that the remedy at law, including monetary damages, may be inadequate and that the Parties shall be entitled, in addition to any other remedy that may have, to an injunction restraining the violation party from further violation of this AGREEMENT in which case the prevailing Party shall be liable for all costs and expenses incurred, including but not limited to reasonable attorney's fees.

**Section 21. No Waiver.** BROKER'S failure to exercise any remedy or right or its delay in the exercise of any remedy or right shall not operate as a waiver thereof.

**Section 22. Attorney's Fees.** Should either party sue or arbitrate disputes arising from this Agreement, the prevailing party shall be entitled to recover its expert fees, collection costs, attorney's fees and court/arbitration costs, including fees and costs incurred on appeal.

**Section 23. Definitions.** As used herein the following capitalized terms shall have the meanings and definitions given:

"CARRIER" means the CARRIER first above indicated.

"Effective Date" means \_\_\_\_\_, 200\_.

"Federal Law" means any and all provision of the United States Code including but not limited to those contained in Title 49 thereof relating to motor carrier transportation services, shipments,

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freight brokers and including but not limited to the Motor Carrier Act of 1980 (as such Act is thereafter amended or modified ) and including all rules, regulations and other provisions including but not limited to those provisions set forth in Title 49 of the Code of Federal Regulations as such rules and regulations are hereafter amended.

“Goods” means the Goods to be shipped by CARRIER and made the subject of each Rate Confirmation Sheet.

“Owner” means the Owner of the Goods made the subject of each Rate Confirmation Sheet.

“Rate Confirmation Sheet” means the Rate Confirmation Sheet for each shipment of Goods made the subject of this AGREEMENT.

“Shipper” means the Shipper designated on any Rate Confirmation Sheet, bill of lading or other instrument describing the shipment of goods.

“BROKER” means “Your Name” Logistics Services, LLC, its successors and assigns.

**Section 24. Notices:**

a. All notices provided or required by this AGREEMENT shall be made in writing and delivered, return receipt requested, to the addresses shown herein with postage prepaid; or by confirmed (electronically acknowledged on paper) fax.

b. THE PARTIES shall promptly notify each other of any claim that is asserted against either of them by anyone arising out of the Parties performance of this AGREEMENT.

c. Notices sent as required hereunder, to the addresses shown in this AGREEMENT shall be deemed sent to the correct addresses, unless the Parties are notified in writing of any changes in address.

**Section 25. Contract Term.** The term of this AGREEMENT shall be one year from the date hereof and thereafter it shall automatically be renewed for successive one (1) year periods, unless terminated, upon thirty (30) days prior written notice, by either Party. In the event of termination of this AGREEMENT for any reason, the Parties shall be obligated to completed performance of any work in progress in accordance with the terms of this AGREEMENT.

**Section 26. Severance; Survival.** In the event any of the terms of this Agreement are determined to be invalid or unenforceable, no other terms shall be affected and the unaffected terms shall remain valid and enforceable as written. The representations, rights and obligations of the parties hereunder shall survive termination of this AGREEMENT for any reason.

**Section 27. Counterparts.** This AGREEMENT may be executed in any number of counterparts each of which shall be deemed to be a duplicate original hereof.

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**Section 28. Fax Consent.** The Parties to this AGREEMENT are authorized to fax each other at the number shown herein, (or otherwise modified in writing from time to time) shipment availabilities, equipment and rate promotions, or any advertisements of new services.

**Section 29. Entire Agreement.** Except individual Rate Confirmation Sheets, and unless otherwise agreed in writing this AGREEMENT contains the entire understanding of the Parties and supersedes all verbal or written prior agreements, arrangements, and understandings of the Parties relating to the subject matter stated herein. The Parties further intend that this AGREEMENT constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence may be introduced to reform this AGREEMENT in any judicial or arbitration proceeding involving this AGREEMENT. No agent or employee of BROKER shall have the authority to waive any AGREEMENT provision.

IN WITNESS WHEREOF, we have signed this AGREEMENT the date and year first shown above.

(BROKER)  
Company Name:

(CARRIER)  
Company Name:

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Authorized Signature

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Authorized Signature

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