



## FREIGHT BROKERAGE AGENCY AGREEMENT

This **FREIGHT BROKERAGE SALES AGENT AGREEMENT** (“Agreement”) is made and entered into effective this \_\_\_\_\_ day of \_\_\_\_\_ 2019 by and among **SPIRIT LOGISTICS, LLC**, a Tennessee limited liability company (“**SPIRIT LOGISTICS**”) and \_\_\_\_\_ (**Agent**).

### WITNESSETH:

In consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** As used in this agreement, the following capitalized terms or phrases shall have the meanings set forth in this paragraph:

A. “Carrier” means any trucking or hauling company registered with the Federal Motor Carrier Safety Administration as a freight motor carrier with which Agent (as agent of SPIRIT LOGISTICS) contracts with to perform the services described in a Customer Contract as defined below.

B. “Carrier Contract” means any contract or agreement between Agent (as agent of SPIRIT LOGISTICS) and a Carrier for the performance of the services described in a Customer Contract.

C. “Customer” means any individual or entity with which Agent (as agent of SPIRIT LOGISTICS) enters into a Customer Contract. Such term shall include, but not be limited to, any of the companies listed on **Exhibit A** attached hereto.

D. “Customer Contract” means any agreement with a Customer for the hauling of freight which is procured by Agent (as agent of SPIRIT LOGISTICS) and to be performed by a Carrier pursuant to a Carrier Contract.

2. **Appointment as Sales Agent.** SPIRIT LOGISTICS hereby appoints Agent as sales agent of SPIRIT LOGISTICS and Agent hereby accepts such appointment, for the purpose of selling brokered freight hauling services for SPIRIT LOGISTICS. Said appointment is limited to Agent’s appointment and operation as an agent working under SPIRIT LOGISTICS and not as a broker. SPIRIT LOGISTICS is licensed with the Federal Motor Carrier Safety Administration as a freight Broker. The term of this Agreement shall be for a period of two (2) years following the execution hereof. However, SPIRIT LOGISTICS may terminate this Agreement at any time with or without cause upon not less than thirty (30) days written notice to Agent and upon payment of all Commissions which are, under the terms contained herein, payable by SPIRIT LOGISTICS to Agent upon the effective date of such termination. The services Agent performs for SPIRIT LOGISTICS as an agent for the purpose of brokering freight hauling services shall be exclusive to SPIRIT LOGISTICS. During the term of this Agreement and any extension hereof, Agent shall not work, serve, or operate as an agent for the purpose of brokering freight hauling services for



any other entity or individual. SPIRIT LOGISTICS acknowledges that Agent can book freight on trucks both as a fleet owner for his own trucks and in the capacity as a booking agent. Neither of these activities shall be considered a breach of the above restriction.

3. **Approval of Contracts.** Agent shall present all proposed Customer Contracts and Carrier Contracts to SPIRIT LOGISTICS before presenting any Customer Contract or Carrier Contract to any customer. SPIRIT LOGISTICS shall review and approve in writing all Customer Contracts and corresponding Carrier Contracts prior to Agent's execution of such contracts as agent for SPIRIT LOGISTICS. Once such Customer Contracts and corresponding Carrier Contracts are approved in writing by SPIRIT LOGISTICS, Agent may execute such contracts by signing on behalf of SPIRIT LOGISTICS, as an authorized agent for SPIRIT LOGISTICS. Written approval by SPIRIT LOGISTICS with regards to such Customer Contracts and corresponding Carrier Contracts may be delivered in electronic form including fax and/or email.

4. **Payments from Customers/to Carriers.** All payments due under any Customer Contract shall be paid directly from the Customer to SPIRIT LOGISTICS on or before the date when due under each Customer Contract which date shall not be more than sixty (60) days after completion of each Customer Contract. Likewise, all payments due to Carriers under any Carrier Contract will be made by SPIRIT LOGISTICS to the Carrier on or before the date when due under each Carrier Contract.

5. **Commission.** As consideration for Agent's work as an agent of SPIRIT LOGISTICS in procuring the Customer Contracts and coordinating the Carrier Contracts and performing his obligations pursuant to this Agreement, SPIRIT LOGISTICS shall pay a commission on a weekly basis to Agent on each load as defined in Appendix A. Said commissions shall be paid by SPIRIT LOGISTICS to Agent by the 15<sup>th</sup> of the month following the end of each calendar month and shall be based upon Customer Contracts and Carrier Contracts executed during the preceding calendar month and for which all documentation required by SPIRIT LOGISTICS to invoice, including signed Carrier Contracts, signed Customer contracts, signed bill of lading, and signed proof of delivery has been collected by SPIRIT LOGISTICS or is reasonably believed to be forthcoming. In the event that SPIRIT LOGISTICS does not collect on any Customer Contracts within sixty (60) days of their completion despite their reasonable best efforts then an amount equal to any commissions previously paid on such uncollected amounts shall be deducted from Agent's weekly commission payments until fully recouped.

6. **Authority of Agent.** Agent shall have all authority, reasonable and/or necessary, to solicit and procure Customer Contracts and to solicit and procure corresponding Carrier Contracts on behalf of SPIRIT LOGISTICS. However, as set forth in Section 3 hereof, Agent may not enter into any Customer Contract or Carrier Contracts on behalf of SPIRIT LOGISTICS without first obtaining written approval of each Customer Contract or Carrier Contract from an authorized representative of SPIRIT LOGISTICS. SPIRIT LOGISTICS hereby appoints and designates Ricky Taylor as its authorized representative for the approval of such contracts. Agent is specifically not authorized to enter into any contracts on behalf of SPIRIT LOGISTICS outside of the scope of his activities as SPIRIT LOGISTICS's agent for freight brokerage services as defined by this Agreement. Additionally, without limitation, Agent shall not enter into: (i) any agreements for the purchase of products or services; (ii) any agreements relating to employment of any person



or entity or sub-agency agreements; or (iii) any agreements relating to the borrowing of money, lending of money or the acquisition of property (real or personal). Should Agent breach this covenant and engage in activities outside of the scope of his authority as agent as granted hereunder and such activities result in any claim against SPIRIT LOGISTICS or payment made by SPIRIT LOGISTICS, then Agent, personally, agrees to fully indemnify, repay, and hold SPIRIT LOGISTICS harmless from and against any and all such claims, damages or amounts paid, including SPIRIT LOGISTICS's reasonable attorney's fees.

7. **Covenants, Representations and Warranties of Agent.** To induce SPIRIT LOGISTICS to enter into this agreement and to perform the actions set forth above, Agent represents and warrants to SPIRIT LOGISTICS as follows:

(a) The execution and delivery of this Agreement does not violate any agreement to which Agent is a party or to which he is subject;

(b) Agent will provide sufficient information to SPIRIT LOGISTICS for SPIRIT LOGISTICS to determine the creditworthiness of all Customers and prospective Customers and, for the term of this Agreement, Agent will diligently relay to SPIRIT LOGISTICS any information acquired by Agent which may relate to or effect any Customer's ability or inability to pay under a Customer Contract; and

(c) Agent will, for so long as there are any amounts owed but unpaid under any Customer Contract, cooperate with SPIRIT LOGISTICS and provide reasonable assistance to SPIRIT LOGISTICS in its efforts to collect such amounts owed from any Customer.

8. **Indemnification of SPIRIT LOGISTICS.** Agent shall indemnify, defend and hold SPIRIT LOGISTICS harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, losses, or reasonable attorney's fees (including, without limitation, diminution in value of the SPIRIT LOGISTICS brand, goodwill or business relationships) which may arise as a result of any breach of this Agreement by Agent, the negligence and/or misconduct of Agent in the performance of his duties pursuant to this Agreement any activities of Agent, as agent for SPIRIT LOGISTICS, which are outside the scope of his agency granted hereunder in this Agreement.

9. **Confidentially.** Agent hereby covenants and agrees that he will protect and maintain in confidence any and all information related to the business of SPIRIT LOGISTICS which he may acquire in the course of performing his duties pursuant to this Agreement. Such information (the "Information") includes but is not limited to information relating to: (i) current and prospective customers; (ii) pricing; (iii) marketing techniques; (iv) business relationships and contacts; (v) vendors; (vi) suppliers; (vii) financial information; or (viii) information relating to the corporate structure of SPIRIT LOGISTICS, including expansion plans and/or mergers and acquisitions (collectively, the "Information"). Agent shall take all measures necessary to safeguard and protect the Information against disclosure to any third party. Agent shall not divulge the Information, or any part thereof, to any person or entity unless specifically authorized in writing by a duly authorized representative of SPIRIT LOGISTICS. Agent agrees that his breach of any



of the foregoing obligations with regard to the Information may cause irreparable injury to SPIRIT LOGISTICS, and there can be no adequate remedy at law for any breach of such obligations. Agent, therefore, agrees that, upon any such breach or any threat thereof, SPIRIT LOGISTICS shall be entitled to seek appropriate equitable relief in addition to whatever remedies it might have at law, including, but not limited to, injunctive relief which may be brought to enforce any provision of this Agreement, without the necessity of proof that SPIRIT LOGISTICS's remedy at law is inadequate. If SPIRIT LOGISTICS is compelled to bring an action to enforce any provision of this Agreement and a court of competent jurisdiction determines that Agent breached any such provision, Agent agrees to pay SPIRIT LOGISTICS's court costs and attorney's fees.

10. **Assignment.** Agent may not assign this Agreement or any rights or obligations hereunder without the prior written consent of SPIRIT LOGISTICS which consent may be withheld in SPIRIT LOGISTICS's sole discretion. SPIRIT LOGISTICS may assign this Agreement without Agent's consent to an affiliated entity or any entity which purchases substantially all of the assets or membership interests of SPIRIT LOGISTICS.

11. **General Provisions.** The following miscellaneous provisions are applicable to this agreement:

(a) This agreement shall be interpreted and construed in accordance with the laws of the State of Tennessee without regard to conflicts of laws principles;

(b) If either party shall engage the services of an attorney in order to enforce the provisions of this Agreement or as a result of a breach of this Agreement, then the party prevailing in any such action shall be entitled to recover reasonable attorneys' fees and all costs and expenses reasonably incurred in connection with the enforcement of this Agreement.

12. **Notices.** All notices or other written communications required or permitted to be given hereunder (with the exception of Customer and Carrier Contract approvals which may be faxed or emailed) shall be in writing and shall be delivered by hand delivery, or sent postage prepaid by first class mail, or deposited with reputable overnight courier service, and shall be deemed given when so delivered by hand, or if mailed, on the third (3rd) business day after mailing, or if deposited with overnight courier, one (1) business day after depositing of same; as follows:

To SPIRIT LOGISTICS:

Spirit Logistics LLC of Chattanooga, TN  
Attn: Ricky Taylor  
6819 Gayda Lane Apt A  
Chattanooga, TN 37421

To Agent:

Agent



13. **Independent Contractor.** Agent acknowledges that he is an independent contractor, separate and apart from SPIRIT LOGISTICS and nothing contained herein shall operate to create any employment relationship, partnership, joint venture or similar relationship between Agent and SPIRIT LOGISTICS. Agent will be responsible for all actual or incidental costs related to his performance of his responsibilities of this Agreement and Agent will not receive or request any reimbursement other than as set forth on Exhibit A. As such, Agent shall be solely responsible for the payment of all federal, state or local income taxes, unemployment taxes, Social Security contributions, Worker's Compensation premiums, and all similar taxes and payments concerning or relating to Agent's performance of this Agreement.

14. **Counterparts.** This Agreement may be executed in one or more counterparts, and by different parties hereto in separate counterparts, each of which, when executed shall be deemed to be an original, but all of which taken together, shall constitute one and the same instrument.

15. **Entire Agreement.** This Agreement contains all agreements, understandings, conditions, warranties, and representations of any kind, oral or written, between the parties hereto, and constitutes the entire and final agreement between them with respect to the subject matter addressed herein. Accordingly, all prior agreements, understandings, conditions, warranties, and representations of any kind, oral or written are hereby superseded and canceled by this Agreement.

16. **Mediation, Choice of Venue.** If any dispute arises pursuant to this Agreement, the parties agree to participate in mediation in Chattanooga, Tennessee within thirty (30) days of the date that either party requests mediation. If the parties cannot agree to a mediator, each party shall choose a mediator in Chattanooga, Tennessee and each of those two will select one person from Chattanooga, Tennessee to serve as the mediator. The parties agree that the venue for any lawsuits arising to of this Agreement that are not resolved by mediation shall be the Chancery Court of Hamilton County, Tennessee and the parties consent to the venue, personal jurisdiction and subject matter jurisdiction of the Chancery Court of Hamilton County, Tennessee as the sole venue for litigation of any disputes related to this Agreement.

17. **Direct Agent and Employees of Agent,** Should Agent break up the agency then SPIRIT LOGISTICS could hire direct employees or contractors of Agent without any conflict or delay.



**IN WITNESS WHEREOF**, the parties have executed this agreement effective as of the day and year first above written.

**SPIRIT LOGISTICS, LLC**

By: \_\_\_\_\_  
Ricky Taylor – Owner & CEO

**Agent**

By: \_\_\_\_\_  
Agent – Agent and Franchise Owner



## **EXHIBIT A**

### **Commission Schedule**

- Agent shall receive 70% of the net profit margin for each load moved by the agent of SPIRIT LOGISTICS's brokerage of the Agent's customers
- Agent shall receive 70% of the net profit margin for each customer load moved by Agent and/or his employees
- SPIRIT LOGISTICS shall make a minimum of 50% per load on each load that is moved by SPIRIT LOGISTICS brokers
- SPIRIT LOGISTICS shall make a minimum of 50% per load on each load moved by Agent and/or his employees