



BROKER – CARRIER AGREEMENT

This Agreement (hereinafter referred to as “Agreement”) is made and entered into this _____ day of _____, 20____, (“Effective Date”) by and between CAPACITY SYSTEMS LLC D/B/A CAPACITY (hereinafter referred to as “BROKER”), an Illinois Limited Liability Company with its main headquarters located at 222 Merchandise Mart Plaza, Suite 1212, Chicago, Illinois 60654, a Registered Property Broker, and, _____, (hereinafter referred to as “CARRIER”), with its principle place of business located at _____ [address]; collectively, the “Parties”. (“Registered” means operating under authority issued by the Federal Motor Carrier Safety Administration (or its predecessors) within the U.S. Department of Transportation).

RECITALS

- A. Broker is licensed as a property Broker by the Federal Motor Carrier Safety Administration (“FMCSA”), in Docket No. MC-085514, under USDOT No. 3116399 or by appropriate State agencies, and as a licensed broker it is engaged in the business of arranging for freight transportation.
- B. Carrier represents that it is duly registered as a Motor Carrier of Property, authorized by the FMCSA under USDOT No. _____ and Docket No. MC- _____ and/or Intrastate Permit No. _____, To transport property, conduct operations and provide service as a motor carrier in intrastate, interstate of foreign commerce under continuing contract(s) with shippers, receivers and/or brokers of general commodities.
- C. Broker has a need for Carrier, and Carrier desires, to provide motor transportation service from, to and between certain locations on behalf of Broker’s Customers.

Now therefore, intending to be legally bound, Broker and Carrier mutually agree as follows:

AGREEMENT

- 1. **Applicability and Scope of Agreement.** This Agreement shall apply to motor carrier transportation and related services provided by Carrier, as may be arranged by Broker for or on behalf of the shipper and/or receiver customers of Broker (hereinafter referred to as “Customer” or Customers”).
- 2. **Term and Termination.**
 - A. The Term of this Agreement shall be for one (1) year from the Effective Date and shall automatically renew for successive one (1) year periods, provided, however, that either party may terminate this Agreement at any time by giving thirty (30) days prior written notice.
 - B. Broker may additionally terminate this Agreement immediately for cause, without prejudice to any other right or remedy Broker may have hereunder, upon written notice in any of the following events:
 - i. Carrier has its operating authority revoked or suspended, or fails to maintain a “Satisfactory” safety rating as defined in 49 CFR 385.3, or is declared “Out of Service” by the FMCSA, or otherwise becomes disqualified to perform its obligations under this Agreement;
 - ii. Carrier breaches any covenant, obligation, condition, or requirement imposed upon it by this Agreement, and such breach continues without correction to Broker’s satisfaction for a period of ten (10) days after written notice thereof from Broker to Carrier;
 - iii. Carrier files a petition in bankruptcy, or becomes insolvent or otherwise becomes unable to pay its debts in a timely manner;

- iv. Carrier fails to comply with the performance metrics or selection criteria, if any, imposed upon it at any time by Broker
 - v. Carrier fails to procure and maintain any of the insurance coverages required by this Agreement; or
 - vi. Carrier utilizes the services of any brokers or subcontracts transportation of freight tendered by Broker hereunder to any third-party motor carrier or other transportation provider or utilizes a third-party logistics provider to perform its obligations under this Agreement without prior written consent of Broker.
 - C. Carrier may additionally terminate this Agreement immediately upon written notice if Broker breaches any covenant, obligation, condition, or requirement imposed upon it by this Agreement and such breach continues for a period of thirty (30) days after written notice thereof from Carrier.
- 3. **Carrier's Operating Authority and Compliance with Law.** Carrier represents and warrants that it is duly and legally qualified in accordance with all federal, state, provincial, territorial, and local laws, statutes, regulations, rules and ordinances (collectively, "Applicable Law") to provide, as a motor carrier, the transportation services contemplated herein. Carrier further represents and warrants that it does not have an unsatisfactory or unfit safety rating issued by any regulatory authority with jurisdiction over Carrier's operations, including, but not limited to, the FMCSA of the U.S. Department of Transportation ("DOT"). Carrier agrees to comply with all Applicable Law in the performance of its services under this Agreement. In the event that Carrier receives a "Conditional" or "Unsatisfactory" safety rating, is placed "Out of Service", fails to maintain insurance required hereunder, is notified that such insurance may become ineffective, or is otherwise prohibited by Applicable Law from performing services hereunder, Carrier shall immediately notify Broker of such fact and shall not carry any loads or goods tendered to Carrier by Broker until such prohibition on operations is removed. Carrier shall furnish to Broker a copy of its operating authority upon request.
- 4. **Performance of Services.**
 - A. Carrier services under this Agreement are designed to meet the needs of Broker under specified rates and conditions set forth herein. Carrier agrees that the terms and conditions of this Agreement apply to all shipments handled by Carrier for Broker and that the terms of this Agreement control the relationship between the Parties. 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, or similar documentation apply to services provided under this Agreement.
 - B. Carrier shall promptly and efficiently receive, transport with reasonable dispatch and deliver safety and without delay all shipments tendered to Carrier under this Agreement, and all occurrences which would be probable or certain to cause delay shall be immediately communicated to Broker by Carrier. This Agreement does not grant Carrier an exclusive right to perform any transportation related services for Broker or its Customer.
- 5. **Receipts and Bills of Lading.** Each shipment hereunder shall be evidenced by a bill of lading or receipt acceptable to Broker naming Carrier as the transporting carrier. Such bill of lading or receipt shall be evidence of the receipt of the shipment by Carrier in apparent good order and condition except as otherwise noted on the face of the bill of lading. The fact that Broker is named as a "carrier" upon any applicable bill of lading shall not affect its status as a property broker. Upon delivery of each shipment made hereunder, Carrier shall obtain an acknowledgement of proof of delivery by issuance of a delivery receipt or notation on the bill of lading showing the kind and quantity of product delivered to the consignee of such shipment at the destination specified by Broker or the Customer, and Carrier shall cause such receipt to be signed by the consignee. In the event of a conflict or inconsistency between this Agreement and the terms, conditions and provisions of the bill of lading, manifest, shipping order, delivery receipt or other form of receipt or contract, it is understood and agreed that the terms of this Agreement shall govern and control the rights, duties and obligations of the parties. Carrier's failure to issue a bill of lading shall not affect its liability hereunder. Carrier shall notify Broker immediately of any exception made on the bill of lading or delivery receipt.
- 6. **Carrier's Operations.**

- A. Carrier shall, at its sole cost and expense, furnish all suitable motor vehicles and other equipment that are necessary or required for the performance of its obligations hereunder (the "Equipment"). Such Equipment shall be clean, odor-free, dry, leakproof and free of contamination and infestation. Carrier shall further be solely responsible for the costs and expenses, such as fuel, oil, tires, parts, road service maintenance and repair related, in any way, with the use and operation of the Equipment, and which may be required to keep the Equipment in good repair, mechanical condition and appearance.
- B. To the extent that any shipments subject to this Agreement are transported within the State of California, Carrier represents and warrants that it shall, at all times, fully comply with the regulations of the California Air Resources Board ("CARB"). Carrier further represents and warrants that:
 - i. All 53-foot trailers and 48-foot trailers, including both dry-van and refrigerated equipment it operates and the Heavy-Duty Tractors that haul them within California under this Agreement shall be in compliance with the CARB Heavy-Duty Vehicle Greenhouse Gas (Tractor-Trailer GHG) Emission Reduction Regulations;
 - ii. All refrigerated equipment it operates within California under this Agreement shall be in full compliance with the CARB Transport Refrigerated Unit (TRU) Airborne Toxic Control Measure (ATCM) in-use performance standards and regulations; and
 - iii. Carrier shall indemnify, defend and hold harmless Broker and Broker's Customers against any liability, claims, fines, or civil penalties asserted against Broker or Broker's Customers, or assumed by Broker on behalf of its Customer, as a result of or which arise from Carrier's use of non-compliant Equipment or otherwise fail to comply with this Paragraph.
- C. Carrier shall utilize only competent, able and legally licensed personnel in the performance of services hereunder. Carrier shall have full control of such personnel. 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. Carrier shall be solely responsible for compliance with all provisions of Applicable Law regarding overdimension and overweight loads. 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.
- E. Carrier shall maintain appropriate security infrastructure to ensure the physical security of shipments and Equipment handled under the terms of this Agreement.

7. Food and Related Products.

- A. High Degree of Care: Carrier Acknowledges that the transportation of food and related products intended for human consumption requires a high degree of care in order to prevent possible adulteration, contamination or degradation of product quality, which could have a detrimental effect on the reputation and image of Broker and/or its Customer in the marketplace as well as potential exposure for product liability.
- B. Laws and Regulations: Carrier shall comply at all times with all applicable laws and regulations pertaining to transportation of food and food related products, including, without limitation, the Federal Food, Drug and Cosmetic Act, the Sanitary Food Transportation Act of 2005, the Food Safety Modernization Act of 2011, or any similar state or municipal laws or regulations. Carrier further agrees to hold harmless and indemnify Broker against any liability, claims, fines or civil penalties arising from its failure to comply with the foregoing.

- C. Carrier's Equipment: Carrier's equipment shall at all times be clean, dry, odor free, pest free and insect free. Carrier shall provide suitable equipment for the transportation of temperature-controlled products, and with such equipment manned by drivers properly trained to handle such commodities. For all products requiring temperature control, Carrier shall ensure that temperature control units are properly operating and maintained at all times, that temperature settings are correct and in accordance with customer's requirements as set forth on the shipping order or bill of lading. If temperature requirements are not set forth on shipping documents Carrier shall request instructions prior to transporting the shipment. Carrier will immediately report any failure to maintain temperatures in accordance with Customer's instructions.
- D. Other Use of Trailers: Carrier covenants and agrees that no trailer or other vehicle that transports food or food-related commodities for Customers hereunder shall be used to transport refuse, garbage, trash, or solid or liquid waste of any kind whatsoever, whether hazardous or nonhazardous, or any toxic, noxious or odiferous substances.
- E. Shipper's Seals: If Carrier is required to use seals by the shipper, such seals shall be supplied by the shipper after loading and shall be affixed by Carrier to all points of potential entry into Carrier's equipment. Such seals shall not be removed or replaced without the prior approval of Broker's Customer, except when required by customs or other governmental agencies for the purposes of inspection and with appropriate re sealing. Upon delivery, Carrier's driver shall not break or remove seals unless authorized to do so by the consignee.
- F. Transfer of Product: Carrier shall not transfer product or goods from one trailer to another without prior express written authorization of Broker or its Customer.
- G. Inspection: Carrier shall comply with the shipper's requests to inspect any equipment offered for the transportation of Customer's good, and if requested, cleaning of equipment shall be performed and paid for by Carrier.
- H. Temperature Abuse: Contamination. Carrier further agrees and acknowledges that exposure of food and food-related products to improper temperatures or unreasonable delay may cause spoilage or affect the quality, flavor, consistency or shelf life, and that contamination by foreign substances or any break in the chain of custody that creates a possibility of adulteration or contamination may result in rejection by the consignee and/or render product unsuitable for its intended use and /or for human consumption and therefore worthless, and that such product may require destruction or disposal without any salvage.

8. Rates and Payments.

- A. Unless otherwise stated in a separate Addendum to this Agreement signed by the Parties ("Rate Addendum"), the rates and charges agreed upon between Broker and Carrier for transportation services performed under this Agreement shall be set forth in Broker's Load Confirmation. Carrier represents and warrants that there are no other applicable rates or charges except those established in the Rate Addendum to this Agreement, if any, or in any Load Confirmation issued by Broker and signed by Carrier. A facsimile, PDF, photocopy or other electronic signature of a Load Confirmation by Carrier shall have the same legal binding effect as on original signature. In the absence of Carrier signature, it is understood and agreed that Carrier's acceptance of the shipment described in the Load Confirmation shall constitute acceptance of the rates, charges and other terms and conditions set forth therein. In the event of a conflict or inconsistency between a Rate Addendum or Load Confirmation and Carrier's invoice, the Rate Addendum or Load Confirmation shall govern and control over Carrier's freight invoice.
- B. In the event service is provided and it is subsequently discovered that there was no applicable rate established in the Load Confirmation Agreement, the Parties agree that the rate paid by Broker and collected by Carrier shall be the negotiated rate as agreed upon by the Parties for the services provided or such other rate that may be reasonable under the circumstances, unless such rate is objected to by Carrier in writing within ten (10) days of payment by Broker.

- C. Carrier will send its freight invoices to Broker, Broker will invoice its Customer, per Broker's separate agreement with its Customer. It is understood that Broker is a conduit for transmittal of payment of the Carrier's freight charges from its Customers, pursuant to 49 CFR 371.10, and, as such Carrier agrees that Broker shall serve as Carrier's limited agent for the limited purpose of collecting and remitting freight charges to Carrier.
 - D. Broker shall transmit payment to Carrier on behalf of Broker's Customer, in accordance with 49 CFR 371.10, within thirty (30) days of receipt by Broker of Carrier's freight invoice. As a condition of payment, Carrier's freight invoices must be accompanied by the bill of lading, clear delivery receipt, and any other necessary billing documents enabling Broker to ascertain that service has been provided at the agreed upon charge. Carrier's failure to provide Broker with a legible copy or photocopy of the bill of lading or other proof of delivery will result in Carrier being held responsible to Broker for any and all revenues that are uncollected by Broker because of Carrier's failure to provide needed support paperwork to Broker. Carrier further agrees that no penalties, loss or discount, interest or other charges will be assessed for past due amounts.
 - E. Carrier agrees that Broker has the exclusive right to handle all billing of freight charges to the Customer for the transportation services provided herein. Carrier further agrees that it will not contact, pursue or engage in any collection efforts against Broker's Customer, the shipper, consignee or other party involved in the shipping transaction for payment owed to Carrier for freight or accessorial charges for transportation services rendered hereunder, and agrees that it is limited to collecting said charges only from Broker, except as otherwise provided herein. In the event Carrier's undisputed freight invoice(s) remains outstanding for more than thirty (30) days after receipt of the invoice and all supporting documentation by Broker and Broker has not received payment for undisputed freight charges. Notwithstanding the foregoing, it is understood and agreed that Carrier shall not, under any circumstances, invoice or seek payment from Broker's Customer or other party responsible for the freight charges are being disputed for any reason.
 - F. Carrier further agrees that Broker has the discretionary right to offset any payments owed to Carrier hereunder for liability incurred by Carrier, including, but not limited to, claims for freight, loss, damage, or delay.
 - G. Carrier shall submit all freight bills within one hundred and eighty (180) days of delivery or waive its right to payment for services rendered with respect to such late submitted invoices. Claims for undercharges or other charges in addition to the original freight charges must be filed with Broker within one hundred and eighty (180) days of Broker's receipt of the original invoice giving rise to such claim. Provided Carrier has complied with the foregoing invoicing obligations, any suit related to the recovery of unpaid freight charges or undercharges must be brought or commenced by Carrier within eighteen (18) months of the date of delivery or its right to sue or otherwise seek payment shall be time-barred and waived.
 - H. Broker shall have one hundred and eighty (180) days from the date the original freight bill and all supporting documentation was received by Broker to file a claim with Carrier for overcharges, except that claims resulting from or based on duplicate or unidentified payments may be filed within one (1) year from the date Broker discovers such payment. All overcharges, unidentified and duplicate payment claims shall be processed by Carrier in accordance with 49 CFR Part 378. Broker shall bring suit to recover overcharges, unidentified or duplicate payments within eighteen (18) months from the date Broker receives written declination of its claim from Carrier.
9. **Waiver of Carrier Lien.** Carrier shall not withhold delivery of or otherwise exercise a lien on any goods transported under this Agreement on account of any dispute as to rates or any alleged failure of Broker to pay charges incurred under this Agreement. Carrier is relying upon the general credit of Broker and hereby waives and releases all liens which Carrier might otherwise have to any goods of Broker or its Customer in the possession or control of Carrier. Carrier agrees that if it imposes a lien it will cause irreparable damage to the Broker and/or its Customers; and further agrees that Broker, its Customer, the shipper consignee or owner of the goods that are the subject to the Carrier's lien shall have the right to immediate injunctive relief to secure release of the goods, in addition to any and all other remedies available at law or in equity, including but not limited to the right to reimbursement of reasonable attorneys' fees incurred in any action to release goods held by Carrier in violation of this provision.

10. Freight Loss, Damage or Delay.

- A.** Carrier shall have the sole and exclusive care, custody and control of the cargo tendered hereunder from the time it is delivered to Carrier for transportation until delivery to the consignee accompanied by the appropriate receipts. Carrier shall notify Broker immediately in the event any such cargo is lost (including stolen), damaged or destroyed, or in the event Carrier becomes aware that applicable delivery schedules will not be met.
- B.** 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 delay of any and all goods or property tendered to Carrier pursuant to this Agreement from the time the shipment is tendered to Carrier until delivery. Carrier shall not be liable for any loss, damage, injury to, or delay of a shipment caused by an Act of God, the public enemy, the authority of law, the inherent vice of the goods, or the act or default of the shipper, and where the Carrier is free from negligence, it being understood that the burden to prove freedom from negligence is on the Carrier.
- C.** The measure of damages for loss, damage or delay claims shall be the full invoice value of the cargo lost, damaged, delayed, or destroyed, as well as any additional costs or fees imposed upon Broker by the cargo claimant. No limitation of liability in any bill of lading, tariff, service guide or similar publication shall apply unless specifically agreed to in writing by Broker prior to Carrier's receipt of the specific shipments to which such limitation applies, and Broker's agreement to a limitation shall not be construed as a waiver of full value liability with respect to any other goods tendered to Carrier.
- D.** Notwithstanding any other provision of this Agreement, in consideration of the rates agreed upon by the Parties, Carrier's liability for loss, damage or delay of goods or property in transit shall be limited to \$50.00 per lb., based on the weight of the entire shipment, and further subject to a maximum liability of \$100,000 for all shipments carrier in any one trailer or container. Broker or its Customer may request that Carrier accept a higher maximum liability for higher value shipments ("High Value Shipment") and, in such an event, the increased valuation will be stated in a Load Confirmation or on the bill of lading. Carrier's acceptance of a High Value Shipment shall constitute Carrier's agreement to accept liability for the increased valuation associated with the High Value Shipment. Upon request, Carrier will provide Broker or Customer evidence of such increased cargo insurance limits, which shall otherwise be in compliance with the provisions governing cargo liability insurance set forth in Paragraph 11 of this Agreement.
- E.** Claims for freight loss, damage or delay shall be filed, in writing or electronically, with Carrier by Broker or its Customer within eleven (11) months from the date of delivery or within eleven (11) months of a reasonable time for delivery in the event of a non-delivery. Each written or electronic notice of claim filed with Carrier shall contain facts sufficient to identify the shipment and reasonably informs Carrier that loss, damage or delay has occurred. Any suit to recover a claim for freight loss, damage or delay must be instituted against Carrier by Broker, its Customer, or any other claimant within two years and a day from the date that the claimant receives written disallowance of such claim from Carrier.
- F.** Except as otherwise provided for in this Agreement, claims for freight loss, damage or delay shall be processed by Carrier in accordance with the provisions of 49 C.F.R Part 370. Carrier shall pay 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. Payments by Carrier to Broker's or Customer's undisputed claim and supporting documentation. Carrier shall fully assist Broker in investigating any claim for cargo loss, damage, delay, or destruction.
- G.** Carrier waives any right to salvage damaged goods, as well as any right to claim an offset for the value of salvage, except to the extent agreed to by Broker's Customer.
- H.** Claims based on a concealed loss or damage reported to Carrier within 15 days if the date of delivery shall be treated by Carrier as though an exception notation had been made on the delivery receipt at the time of delivery if concealed loss or damage is reported more than 15 days after the date of delivery, Broker or other claimant shall request, by telephone or e-mail, that the Carrier make an inspection, and

Broker or other claimant will be responsible to offer reasonable evidence to the Carrier's representative when inspection is made that such loss or damage was not incurred after delivery of shipment by Carrier. While awaiting inspection by Carrier, Broker or other claimant will endeavor to hold the shipping container and its contents in the same condition they were in when damage was discovered insofar as it is possible to do so.

- I. Carrier's liability for freight loss, damage, or delay hereunder shall not be affected, limited or reduced based on the amount of coverage provided under Carrier's Cargo Liability Insurance Policy, or any exclusions, limitations or conditions within such policy.

11. Insurance. Unless otherwise set forth in an Addendum to the Contract, Carrier shall procure and maintain, at its sole cost and expense, the following insurance coverages:

- A. Commercial Auto Liability Insurance ("CAL") covering all owned, non-owned, leased and hired vehicles (including any Trailers provided by Broker or its Customer as addressed below) with a reputable and financially responsible insurance company insuring Carrier in an amount not less than \$1,000,000.00 (U.S. Dollars) per occurrence, or such larger amount as required by applicable law. Such insurance shall include an MCS-90 Endorsement providing for public liability coverage for bodily injury and property damage, including environmental restoration coverage, in compliance with 49 CFR Part 387.
- B. Commercial General Liability ("CGL") Insurance covering the transportation of shipments and other operations under this Agreement in an amount not less than \$1,000,000.00 (U.S. Dollars) per occurrence. Such insurance shall also cover Carrier's contractual liability under this Agreement.
- C. All Risk Broad Form Motor Truck Cargo Legal Liability ("Cargo") insurance in an amount not less than \$100,000.00 (U.S. Dollars) per occurrence. The coverage provided under the policy shall not exclude or restrict coverage, or limit insurer's liability, for loss(es) from an unattended vehicle or unattached trailers, breakdown or failure or mechanical refrigeration equipment, lack of fuel in the refrigeration equipment, the commodities accepted for transport under this Agreement, infidelity, theft or other criminal acts of Carrier or its employees. In the event said insurance policy contains such exclusions, restrictions or limitations. Carrier shall obtain and furnish a policy extension or endorsement providing such coverage and overriding such exclusions, restrictions or limitations.
- D. Statutory Workers' Compensation Insurance coverage in such amounts and in such form as required by applicable state law.
- E. All insurance policies required by this Agreement shall, as applicable, be primary and shall waive subrogation and contribution against Broker. Carrier shall furnish to Broker written certificates obtained from the insurance carrier showing that such insurance has been procured, is being properly maintained, the expiration date, and specifying that written notice of cancellation or modification of the policies shall be given to Broker at least thirty (30) days prior to such cancellation or modification. In addition, Broker shall be named as an additional insured on Carrier's CGL and CAL policies, and a loss payee on the Cargo policy as evidenced by an endorsement on the certificates of insurance. Upon request of Broker or its designated insurance consultant, Carrier shall provide Broker, Broker's consultant, or Customer with copies of the applicable insurance policies.

12. Governing Law; Venue. Unless preempted by or controlled by Federal Transportation Laws and Regulations, this Agreement shall be governed by the laws of the State of Illinois. Carrier and Broker further agree that the exclusive jurisdiction and venue for any lawsuit necessary to resolve a dispute arising out of this Agreement shall be in state court in Cook County, Illinois. Action for injunctive relief may be brought in a court of competent jurisdiction. Carrier agrees to pay all reasonable expenses, attorney fees and costs including court costs that Broker incurs in any such actions in which Broker prevails.

13. Indemnity. Carrier shall defend, indemnify, and hold Broker and the Customer harmless from and against all loss, liability, damage, claim, fine, cost or expense, including reasonable attorney's fees, arising out of or in any way related to the performance or breach of this Agreement by Carrier, its employees or independent contractors working for Carrier (collectively, the "Claims"), including, but not limited to, Claims for or related to personal injury (including death), property damage and Carrier's possession, use, maintenance, custody or operation of the

Equipment; provided, however, that Carrier's indemnification and hold harmless obligations under this Paragraph will not apply to the prorated extent that any Claim is attributed to the negligence or other wrongful conduct of Broker or the Customer. Carrier's liability for cargo loss or damage under this provision is limited to the liability and amounts set forth in Paragraph 10.

- 14. Independent Contractor.** It is understood and agreed that the relationship between Broker and Carrier is that of independent contractor. None of the terms in this Agreement, or any act or omission of either Party shall be construed for any purpose to express or imply a joint venture, partnership, principal/agent, fiduciary, employer/employee relationship between the Parties. Carrier shall provide the sole supervision and shall have exclusive control over the operations of its employees, contractors, subcontractors, agents, as well as all vehicles and equipment used to perform its transportation services hereunder. Broker has no right to discipline or direct the performance of any driver and/or employees, contractors, subcontractors or agents of Carrier. Carrier represents and agrees that at no time and for no purpose shall it represent to any party that it is anything other than an independent contractor in its relationship to Broker.
- 15. Confidentiality and Non-Solicitation.**
- A. Neither party may disclose the terms of this Agreement to a third party without the written consent of the other party except (1) as required by law or regulation; (2) disclosure is made to its parent, subsidiary or affiliate company; or (3) to facilitate rating or auditing of transportation charges by an authorized agent and such agent agrees to keep the terms of the Agreement confidential. Carrier shall not utilize Broker's or the Customer's name or identity in any advertising or promotional communications without written confirmation or Broker consent.
 - B. Carrier will not solicit or accept traffic, either directly or indirectly, from any shipper, consignor, consignee or Customer of Broker where: (1) the availability of such traffic first became known to Carrier as a result of Broker's efforts; or (2) the traffic of the shipper, consignor, consignee or customer of Broker was first tendered to Carrier by Broker. If Carrier breaches this Agreement and moves shipments obtained from such parties during the term of this Agreement or for twelve (12) months thereafter without utilizing the services of Broker, Carrier shall be obligated to pay Broker, for a period of fifteen (15) months from the date of the first breach event, commissions in the amount of thirty five percent (35%) of the transportation of revenue resulting from traffic transported in violation of this provision, and Carrier shall provide Broker with all documentation requested by Broker to verify such transportation revenue. In the event Broker is required to engage in legal counsel to enforce the provisions of this Paragraph, Carrier shall be liable for all reasonable attorneys' fees incurred by Broker in connection therewith.
- 16. Sub-Contract Prohibition.** Carrier specifically agrees that all freight tendered to it by Broker shall be transported on equipment operated only under the authority of Carrier, and that Carrier shall not in any manner sub-contract, broker, or in any other form arrange for the freight to be transported by a third party without the prior written consent of Broker. In the event that the Carrier breaches this provision, Carrier shall remain directly liable to Broker as if Carrier transported such freight under its own authority in accordance with this provision, and shall further hold harmless and indemnify Broker from any and all loss, liability, damage, claim, fine, freight or other charges, cost or expense, including reasonable attorney's fees, arising out of or in any way related to the use of any subcontractor, or any other third party.
- 17. Broker's Records.** To the extent allowable under Applicable Law, Carrier hereby waives its right to obtain copies of Broker's records as provided for under 49 C.F.R. Part 371. Notwithstanding the foregoing, to the extent that Carrier obtains records set forth in 48 C.F.R § 371.3 by any means whatsoever, Carrier agrees to refrain from utilizing such records in negotiating for the provision of services with any third party, including existing customers of Broker. Carrier further agrees and understands that all such records comprise Broker's confidential information and trade-secrets. Nothing in this section is intended to relieve Carrier or any other obligations imposed upon it by this Agreement, or to limit any rights of Broker to enforce such obligations.
- 18. Assignment/Modification/Benefit of Agreement.** The Agreement may not be assigned or transferred in whole or in part by Carrier absent the prior written consent of Broker, and supersedes all other agreements and all tariffs, rates, classifications and schedules published, filed or otherwise maintained by Carrier. The Agreement



shall be binding upon and inure to the benefit of the parties hereto and, to the extent applicable, Broker's Customers as third-party beneficiaries.

19. **Severability.** In the event that the operation of any portion of this Agreement results in a violation of any law, the parties agree that such portion shall be severable and that the remaining provisions of this Agreement shall continue in full force and effect.
20. **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 Agreement. Failure of Broker to insist upon Carrier's performance under this Agreement or to exercise any right or privilege arising hereunder shall not be a waiver of any Broker's subsequent right to insist upon Carrier's performance or exercise any rights or privileges herein.
21. **Force Majeure.** Neither Party hereto shall be liable to the other for default in the performance of any of the terms and provisions of this Agreement if caused by fire, strikes or labor disputes (including work stoppages or slowdowns), port congestion, riot, war, terrorism, Acts of God, governmental order or regulation, government authorities, embargoes, or other similar contingency beyond the reasonable control of the respective Parties; provided, however, that nothing in this Paragraph shall relieve Carrier from its liability to Broker or other claimant for freight loss, damage, or delay as provided in Paragraph 9, and Carrier's liability for such freight claims shall be governed solely by the Carmack Amendment and the terms and conditions of Paragraph 9.
22. **Dispute Resolution.** In the event of a dispute arising out of this Agreement, the party's sole recourse (except as provided below) shall be to arbitration. Proceedings shall be conducted under the rules of the Transportation ADR Council, Inc. (ADR) or Transportation Arbitration and Mediation PLLC (TAM) at Broker's sole discretion. Upon agreement of the Parties, arbitration proceedings may be conducted outside of the administrative control of the ADR, or TAM nearest Chicago Illinois or such other place as mutually agreed upon in writing or directed by the acting arbitration association. Provided, however, either Party may apply to a court of competent jurisdiction for injunctive relief. Unless preempted or controlled by federal law and regulations, the laws of the State of Illinois shall be controlling. This paragraph shall not apply to enforcement of the award of arbitration.
23. **Complete Agreement.** This Agreement constitutes the entire agreement of the Parties with reference to the subject matters herein, and may not be changed, waived, or modified except in writing signed by both Parties. All prior discussions, understandings, negotiations and agreements are merged herein and superseded.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the Effective Date first above written.