

SERVICE FREIGHT SYSTEMS – BROKER-CARRIER AGREEMENT – CANADIAN CARRIERS

I.

Recitals

A. WHEREAS BROKER is duly licensed in accordance with applicable Provincial, State and Federal law and regulation in which capacity it arranges for freight transportation; and

B. WHEREAS CARRIER is duly authorized to operate in the inter-state, inter-provincial, intra-provincial and cross-border (U.S. to Canada and Canada to U.S.) carriage of goods as required in connection with any mandate(s) from BROKER and is qualified, competent and available to provide for the transportation services required by BROKER; and

NOW THEREFORE, intending to be legally bound, BROKER and CARRIER agree as follows:

II.

Agreement

1. TERM AND TERMINATION.

- a The Term of this Agreement shall be for one (1) year and shall automatically renew for successive one (1) year periods; provided, however, that either PARTY may terminate this Agreement at any time by giving forty-five (45) days prior written notice.
- b BROKER may additionally terminate this Agreement immediately upon written notice in any of the following events:
 - i. CARRIER loses its operating authority 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 for a period of ten (10) days after written notice thereof from BROKER to CARRIER;
 - iii. CARRIER becomes insolvent or 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 herein;
 - 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.

2. 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 and local laws, statutes, regulations, rules, and ordinances (collectively, "Applicable Law") to provide, 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, those of any Canadian province, or the Federal Motor Carrier Safety Administration ("FMCSA") of the U.S. Department of Transportation ("DOT"). CARRIER further agrees to comply with all Applicable Law in the performance of its services under this Agreement including and without restricting the generality of the foregoing, that pertaining to the transportation of Dangerous Goods (or Hazardous Materials) to the extent that any shipments hereunder constitute Dangerous Goods (or Hazardous Materials). 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 use of CARRIER to provide any services until such time as CARRIER's operations are acceptable to BROKER. In the event that CARRIER receives an unsatisfactory safety rating, is notified that it may receive an unsatisfactory safety, 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.

In addition to and without prejudice to any other indemnity provided herein, CARRIER shall be liable for and agrees to indemnify BROKER and BROKER's Customer(s) for any penalties, or any other liabilities, imposed upon BROKER and/or BROKER's Customers as a result of CARRIER's use of equipment found to be noncompliant with any laws, statutes, regulations or requirements, including but not limited to those set forth above. Upon BROKER's request, CARRIER shall provide proof of CARRIER's compliance with any such laws, statutes, regulations or requirements.

3. BROKER'S OBLIGATIONS

BROKER is not restricted from tendering freight to other carriers. The Parties agree that this is not an exclusive arrangement between BROKER and CARRIER.

4. PERFORMANCE OF SERVICES

- a. CARRIER's services under this Agreement are designed to meet the needs of BROKER under the 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 transport all shipments provided under this Agreement without delay, 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

CARRIER shall issue a bill of lading in a form and with content as prescribed by the governing regulation in effect at the place of origin naming CARRIER as the transporting carrier for the cargo it receives for transportation under this Agreement. The fact that BROKER may be named as a "carrier" upon any applicable bill of lading shall not affect its status as a broker arranging the transportation. Upon delivery of each shipment made hereunder, CARRIER shall obtain a receipt 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. Subject to the provisions at paragraph 9b) below no terms, conditions and provisions of the bill of lading, manifest or

other form of receipt or contract shall apply to services provided under this Agreement. 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:
 - i. furnish all equipment necessary or required for the performance of its obligations hereunder (the "Equipment");
 - ii. pay all expenses related, in any way, with the use and operation of the Equipment; and
 - iii. maintain the Equipment in good repair, mechanical condition and appearance.
- b. 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.
- c. CARRIER shall perform the services hereunder as an independent contractor, and assumes complete responsibility for all provincial, 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 arising out of the transportation performed hereunder.
- 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. RATES & PAYMENTS.

- a. CARRIER will invoice and BROKER will pay the rates and charges agreed to in writing by the Parties for transportation services performed under this Agreement. CARRIER will send invoices to BROKER. CARRIER represents and warrants that there are no other applicable rates or charges except those established by this Agreement. The rates and charges for transportation services provided under this Agreement can be supplemented or revised only by written agreement signed by both PARTIES.
- b. Payment by BROKER will be made within forty-five (45) days of receipt by BROKER of CARRIER's freight bill, 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.
- c. CARRIER agrees that BROKER has the exclusive right to handle all billing of freight charges to the Customer for the transportation services provided herein, and, as such, CARRIER agrees to refrain from any collection efforts against the shipper, receiver, consignee or the Customer. CARRIER hereby waives the requirement under any applicable statute or regulation for BROKER to maintain a trust account or be subject to any trust obligations in respect of monies owed to CARRIER hereunder.

- d. CARRIER further agrees that BROKER has the discretionary right to offset any payments owed to CARRIER hereunder for any liability incurred by CARRIER in accordance with the terms of this Agreement, including, but not limited to, claims for freight, loss, damage, or delay.
- e. 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. CARRIER shall bring suit related to unpaid freight charges within 18 months of the date of delivery or its right to sue or otherwise seek payment shall be waived.

8. WAIVER OF CARRIER'S LIEN.

CARRIER shall not withhold 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.

9. 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 receives any delivery receipt suggesting the same or in the event CARRIER becomes aware that applicable delivery schedules will not be met.
- b. CARRIER shall be liable for cargo loss, damage or delay in accordance with the carrier liability provisions in force in the jurisdiction in which the bill of lading is issued or where no bill of lading is issued where the cargo is received for carriage.
- c. CARRIER shall not be liable for special, incidental or consequential damages that relate to loss, damage or delay to a shipment unless BROKER has informed CARRIER in written or electronic form, prior to or when tendering a shipment to CARRIER of the potential nature, type and approximate value of such damages, and CARRIER specifically agrees in written or electronic form to accept responsibility for such damages.
- d. In any event BROKERS or shippers agreement to any limitation of liability on the part of CARRIER shall not be construed as a waiver of full invoice value liability with respect to any other goods tendered to CARRIER.
- e. CARRIER waives any Applicable Law regarding notice of and processing of claims and handling of salvage, including, but not limited to, the provisions of any governing provincial "uniform bill of lading". CARRIER shall pay to BROKER, or allow BROKER to deduct from the amount BROKER owes CARRIER, any amounts respecting CARRIERS liability herein for lost, delayed, damaged or destroyed cargo. Payments by CARRIER to BROKER or its Customer, pursuant to the provisions of this section, shall be made within thirty (30) days following receipt by CARRIER of 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.
- f. 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.
- g. Exclusions from coverage contained in CARRIER's Motor Truck Cargo Liability Insurance as required herein shall not affect CARRIER's liability for freight loss, damage, or delay.

10. INSURANCE.

CARRIER shall procure and maintain, at its sole cost and expense, the following insurance coverages:

- a. Public liability and property damage insurance ("Automobile Liability Insurance" or "AL") covering all owned, non-owned, 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 \$2,000,000.00 (CAD) per occurrence, or such larger amount as required by applicable law.
- b. Commercial General Liability ("CGL") Insurance covering the transportation of shipments and other operations under this Agreement in an amount not less than \$2,000,000.00 (CAD) 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 sufficient to cover CARRIERS liability herein and in any event for not less than \$125,000 (CAD) for each shipment carried. In the event that a Carrier has agreed to a higher liability limit for cargo loss, damage or delay than \$125,000 (CAD) pursuant to and in accordance with the provisions of paragraph 9b) herein Carrier will have sufficient insurance to cover the value of such shipment. The coverage provided under the policy shall have no exclusions or restrictions of any type that would foreseeably preclude coverage relating to cargo claims including, but not limited to, exclusions for unattended or unattached trailers, theft, commodities transported under this Agreement, refrigerator breakdown or lack of refrigerator fuel.
- d. Statutory Workers' Compensation Insurance coverage in such amounts and in such form as required by applicable provincial law.
- e. All insurance policies required by this Agreement shall, as applicable, be primary and shall waive subrogation and contribution against BROKER [and it's Shipper Customer]. 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 AL policies, and as 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.

11. USE OF BROKER'S TRAILER(S) BY CARRIER.

In the event that CARRIER utilizes a trailer, container, chassis or other equipment owned by or leased to BROKER or its Customer, or otherwise provided to CARRIER by BROKER or its Customer ("Trailer(s)") for the performance of the Services contemplated hereunder, CARRIER shall be liable for any damage to Trailers, destruction of Trailers, theft from Trailers, theft of any contents of Trailers, and for any claims for bodily injury (including death) or property damage caused by any Trailer(s) regardless of whether such damage, injury, destruction, or theft is caused or occurs while the Trailer is attached or unattached to any power unit operated by CARRIER, except to the extent such damage, destruction, or theft is caused by the negligence, recklessness, or willful misconduct of BROKER or the Customer. The initial burden of proving such damage, injury, destruction, or theft was the result of the negligence, recklessness, or willful misconduct of BROKER or the Customer in any proceeding brought pursuant to this Agreement shall rest on CARRIER. In the event that applicable provincial or state law does not allow waiver of liability to the extent contained in this provision, the Parties expressly agree that BROKER's and Customer's liability will be waived to the fullest extent allowed by applicable state law. In no event will any such Trailer be used for any purpose other than performing Services hereunder, and in no event will CARRIER allow any third party or any power unit not operating under CARRIER's for-hire motor carrier authority to operate any such Trailer, unless expressly authorized to do so in writing which written notice must be specific to the movement at issue. CARRIER ACKNOWLEDGES AND AGREES THAT NEITHER BROKER NOR THE CUSTOMER MAKE ANY WARRANTIES, WHETHER EXPRESS OR IMPLIED, REGARDING THE

TRAILER INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR USE.

12. CUSTOMER REQUIREMENTS.

CARRIER agrees that CARRIER and any worker utilized by CARRIER will fully comply with any service and/or compliance standards or operational requirements of BROKER's customer's (the "Customer Requirements"). BROKER shall provide CARRIER with written copies of such Customer Requirements and such Customer Requirements shall be incorporated by reference as part of this Agreement. CARRIER's breach of any of the Customer Requirements shall be declared a breach of this Agreement and should such breach result in BROKER incurring a monetary cost to a customer, including any monetary penalty, then CARRIER agrees and authorizes BROKER to deduct all such charges from CARRIER's compensation and/or the Agreement shall be subject to the termination provisions of Paragraph 1 of this Agreement.

13. INDEMNITY

CARRIER shall defend, indemnify, and hold BROKER and it's Shipper Customer (and their officers, directors, agents and employees) harmless from and against all loss, liability, damage, including but not limited to consequential damages, claims, fines, costs or expenses, 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 cargo loss, damage and/or theft, 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 attributable to the negligence or other wrongful conduct of BROKER or it's Shipper Customer. CARRIER's liability for cargo loss or damage under this provision is limited to the liability and amounts set forth in Paragraph 9 above.

14. CONFIDENTIALITY AND NON-SOLICITATION.

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 will not 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 thereafter, commissions in the amount of thirty-five percent (35%) of the transportation 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. CARRIER shall not utilize BROKER's or the Customer's name or identity in any advertising or promotional communications without written confirmation of BROKER consent.

15. 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 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 and it's Shipper Customer from any and all loss, liability, damage, including but not limited to consequential damages, claim, fine, cost or expense, including reasonable attorney's fees, arising out of or in any way related to the use of any subcontractor in violation of this provision regardless of whether arising from the conduct or omissions of CARRIER, the subcontractor, or any other third party.

16. GENERAL RIGHT TO AUDIT.

BROKER, BROKER's designated representative, and/or BROKER's customer(s) shall have the right to inspect and audit CARRIER's books, records, and all associated documents pertaining to BROKER's services under this Agreement in order to ensure compliance with the terms and conditions of this Agreement. CARRIER agrees to maintain such books, records and associated documents during the term of this Agreement and for a period of seven (7) years following the termination of the Agreement and to make such books, records, and associated documents available to BROKER, BROKER's designated representative, and/or BROKER's customer(s) at all reasonable times within such period and for so long thereafter as any dispute remains unresolved. BROKER, BROKER's designated representative, and/or BROKER's customer(s) may photocopy or reproduce any such books, records, and associated documents.

17. ASSIGNMENT/MODIFICATION/BENEFIT OF AGREEMENT.

This 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. This Agreement shall be binding upon and inure to the benefit of the parties hereto.

18. 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.

19. CHOICE OF LAW AND VENUE:

All questions concerning the construction, interpretation, validity and enforceability of this Agreement, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the laws of the Province of Ontario, without giving effect to any choice of conflict of law provision or rule that would cause the laws of any other jurisdiction to apply.

The Parties agree that the Courts of Ontario shall have exclusive jurisdiction to any questions, issues or disputes arising out of the performance (or non-performance as the case may be) of either or both of the Parties of this Agreement. Notwithstanding the foregoing, the PARTIES may mutually agree in writing to submit any such disagreement or dispute to binding arbitration.

20. COMPLETE AGREEMENT.

This Agreement including the Appendices hereto 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. In the event of any inconsistency between this Agreement and its Appendices the provisions of the Appendices will govern to the extent of any such inconsistency only.