

**MOTOR TRANSPORTATION**  
**BROKER SERVICES AGREEMENT**

This Transportation Broker Agreement ("Agreement") is made this \_\_\_ day of \_\_\_\_\_, 200( ), by and between \_\_\_\_\_ with its principle place of business at \_\_\_\_\_ (hereinafter "\_\_\_\_\_"), and \_\_\_\_\_, a [\_\_\_\_\_ corporation / partnership / individual], with its principle place of business at \_\_\_\_\_ (hereinafter "Broker").

RECITALS

WHEREAS, \_\_\_\_\_ desires to ship various types and quantities of \_\_\_\_\_ products (hereinafter the "Products") from various locations to customers of \_\_\_\_\_;

WHEREAS, Broker is a broker of transportation by motor carrier properly registered with the U.S. Department of Transportation (authority formerly issued by the Interstate Commerce Commission), license \_\_\_\_\_; and

WHEREAS, \_\_\_\_\_ desires the non-exclusive transportation brokerage services of Broker. NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions herein contained, the parties hereby covenant and agree as follows:

Section 1. Carriage Services. Broker agrees to arrange transportation of the Products from points of origin (hereinafter "Origin Locations") to points of destination (hereinafter "Destination Locations") designated by \_\_\_\_\_. Charges for all shipments shall be at the rates set forth herein or as agreed by Broker and \_\_\_\_\_, in writing, at the time Broker finalizes transportation services.

Section 2. Term. This Agreement shall become effective on the date first written above and shall continue indefinitely until terminated by either party. This Agreement may be terminated by either party for any reason at any time by giving thirty (30) days written notice to the other party.

Section 3. Charges and Invoicing.

- A. Rates. \_\_\_\_\_ agrees to pay Broker for all transportation services performed \_\_\_\_\_ rates include all currently applicable taxes, assessments, surcharges and other charges. Payment to the carriers for services arranged by Broker in the performance of this Agreement shall be the sole and exclusive responsibility of Broker. Broker agrees to pay each carrier for services performed as arranged by Broker.
- B. Invoicing. \_\_\_\_\_ agrees to pay Broker promptly, but in no less than thirty (30) days upon receipt of Broker's invoices. Should \_\_\_\_\_ fail to pay Broker within the time provided herein, Broker pay impose an additional charge on the unpaid balance of 1 ½% per month or the maximum rate permitted by law, whichever is lower.

Section 4. Broker's Obligations.

- A. Broker agrees to arrange transportation only with carriers that are under contract pursuant to 49 USC 14101 (b) (hereinafter "Carrier") and agrees that Carriers retained by Broker shall meet and/or comply with the following:
- (i) Carrier will provide motor vehicles and equipment (collectively the "Equipment") for use in the transportation of the Products hereunder which are clean, sanitary, and in good working condition and which comply with appropriate laws, rules, and regulations. Carrier will bear all expenses relating to procuring , operating and maintaining the Equipment in accordance with the terms of this Agreement.

- (ii) Carrier will provide only competent, able, and legally qualified drivers to operate the Equipment and will ensure said drivers have been trained in the proper care and operation of the Equipment and the handling of the Products.
  - (iii) Carrier represents and warrants that it has the necessary permits from the appropriate governing state and federal authorities, and has a "satisfactory" safety rating from the FHWA.
  - (iv) Carrier agrees to accept shipments of Products tendered to it by \_\_\_\_\_ or Broker or others on behalf of \_\_\_\_\_ or Broker and to load, transport, unload, and deliver such Products promptly to customers designated by \_\_\_\_\_ or Broker. Each shipment shall be evidenced by a receipt signed by Carrier and the customer receiving the shipment, showing the kind and quantity of Product received and delivered by Carrier at the Origin and Destination Locations, respectively. Absence or loss of such receipt form, however, shall not relieve Carrier of responsibility for the cargo delivered to it.
  - (v) Carrier will be liable to \_\_\_\_\_ or Broker for loss or damage to any Products transported by Carrier. Such liability shall begin at the time Product is loaded upon Carrier's equipment at the Origin Location and shall continue until Product is delivered to and accepted at the Destination Location. The liability for loss shall be that of Carrier.
  - (vi) Carrier will procure and maintain in force, at its own expense, throughout the term of this Agreement, with a responsible company or companies, insurance coverage in amounts not less than the minimum required by law.
  - (vii) Carrier guarantees that all shipments transported hereunder shall be of legal state or federal weight, as the case may be. Carrier is responsible for (a) any act or omission of its employees, agents, independent contractors and those acting under the Carrier's direction; and (b) any claims made against \_\_\_\_\_ arising out of or resulting from an overweight motor vehicle. \_\_\_\_\_ may reject any shipment not in compliance with federal and/or state motor vehicle weight restrictions. Carrier shall pay all fines, penalties and expenses associated with any overweight violations incurred performing hereunder
  - (viii) Carrier acknowledges the basic characteristics of \_\_\_\_\_ Products and waives any claim for damage to its equipment by reason of such Product.
  - (ix) Carrier specifically agrees to provide, at its own cost and expense, vehicles and equipment which are in good, clean, sanitary condition, free of contaminants, and suitable for hauling \_\_\_\_\_ Products. Carrier will comply with cleanout procedures contained in FDA regulation 21 CFR 589.2000 to prevent carryover of mammalian protein products from one load to the next. Carrier agrees to maintain the mechanical condition of its equipment or any leased equipment in good repair, condition, and appearance so as to assure minimum service interruption due to mechanical failure. \_\_\_\_\_ has the right to inspect, at any reasonable time, any equipment furnished by Carrier.
- B. Broker shall comply with all applicable laws, rules, regulations and ordinances governing the services to be performed by Broker hereunder.
- C. Broker shall procure and maintain in force, at its own expense, with a responsible company or companies, insurance or a surety bond in an amount not less than the minimum required by law.
- Section 5. Force Majeure. Neither party hereto shall be liable for the failure to perform its obligations hereunder to the extent prevented from doing so by causes beyond its reasonable control, including, but not limited to, war, civil disturbances, strikes, lockouts, fires, floods, cyclones, accidents, intervention by any governmental unit, or acts of God. If such events prevent performance by Broker hereunder, Broker shall promptly notify \_\_\_\_\_ in writing and \_\_\_\_\_ shall have the right to make other arrangements for the transportation of the Products.
- Section 6. Default and Termination.
- A. Events of Default. The following shall be considered Events of Default:

- (i) Either party, at any time during the term of this Agreement, breaches any of the covenants, terms or conditions of this Agreement;
- (ii) Broker's privilege to operate as a broker or other insolvent proceeding is filed by or against either party, or a general assignment is made for the benefit of either party's creditors, or either party is unable or unwilling to pay its debts as they fall due.

**B. Termination.**

- (i) If any event of Default occurs, the non-defaulting party may, but shall not be obligated to, terminate this Agreement by giving fourteen (14) days prior written notice to that effect to the defaulting party. Notwithstanding the foregoing, if the defaulting party fully remedies all such breaches or defaults within the fourteen (14) day notice period, such notice shall be of no effect and this Agreement shall continue in full force and effect in the same manner as if no such Even of Default had occurred.
- (ii) In addition to the right of termination contained in this paragraph, each party shall have all of the rights and remedies permitted by law or in equity.

Section 7. Independent Contractor. The relationship of Broker to \_\_\_\_\_ created by this Agreement is that of an independent contractor. \_\_\_\_\_ is only interested in the results of Broker's performance under this Agreement. Broker is not an employee of \_\_\_\_\_, and no agent, officer, director or employee of Broker is, will be, or will be deemed to be, an officer, director or employee of \_\_\_\_\_. None of the benefits provided by \_\_\_\_\_ to its employees including, without limitation, compensation, insurance, or unemployment insurance, will be available to Broker or the agents, officers, directors, employees, or representatives of Carrier, if any. Carrier assumes full responsibility for the payment and reporting of all local, state and federal taxes and other contributions imposed or required under unemployment, Social Security, or income tax laws, with respect to the rendition of the Services by, or on behalf of, Broker to \_\_\_\_\_.

Section 8. Indemnification.

- A. Broker agrees to indemnify, defend, and hold harmless \_\_\_\_\_ to its directors, officers, employees, agents or representatives, and its successors or assigns, from and against injury, damage, claims, suits, fines, penalties or loss, including, but not limited to, reasonable attorney's fees, to the extent such injuries, damages, or losses arise from (i) Broker's performance or attempted performance hereunder, (ii) any negligent, reckless, or willful misconduct of Broker, or its employees or agents, (iii) any act or omission of Broker or its employees or agents, or (iv) the breach of any obligation or covenant contained in this Agreement. Broker's obligations under this indemnification provision shall survive the termination of this Agreement.
- B. Broker agrees to indemnify, defend, and hold harmless \_\_\_\_\_ from and against any and all liability for any fines, levies, or any other charges of a similar nature, including, but not limited to, reasonable attorney's fees, imposed by federal, state, or local authorities against (i) Broker or (ii) as a result of Broker's performance hereunder.

Section 9. Back Solicitation. Broker shall not solicit transportation services from any carrier or customer of \_\_\_\_\_ where (i) the availability of such service first became known to Broker as a result of \_\_\_\_\_ efforts, or (ii) where the services of the Carrier or customer of \_\_\_\_\_ were first tendered to Broker by \_\_\_\_\_ during the term of this Agreement. If Broker breaches this Agreement by back soliciting \_\_\_\_\_ customers, Broker shall pay \_\_\_\_\_ for a period of twelve (12) months after the traffic is first moved by Carrier, a commission of 15% of the gross transportation revenue paid to the Carrier for such movements, plus an amount equal to any legal fees paid by \_\_\_\_\_ to enforce this provision.

Section 10. Confidentiality. Broker and \_\_\_\_\_ agree not to disclose, and agree to cause their employees and agents not to disclose, the terms and conditions of this Agreement without the prior written consent of the other party.

Section 11. Waivers and Amendments. This Agreement and other instruments to be executed pursuant hereto may be amended, superseded, cancelled, renewed, or extended, and their terms or covenants hereof may be waived, only by a written instrument executed by the parties hereto or in the case of a waiver, by the party waiving compliance. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by any party of the breach of any term or covenant contained in this Agreement or in any other such instrument, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, as construed as, a further or continuing waiver of any breach,, or a waiver of the breach of any other term or covenant container herein. The parties reserve the right by mutual written consent to amend, modify, supersede, and cancel this Agreement, or waive the terms or condition hereof, without the consent of any other party (natural or otherwise).

Section 12. Non-Assignment. Neither this Agreement, nor any right or obligation under it, shall be assigned or transferred by Broker without the prior written consent of \_\_\_\_\_.

Section 13. Entire Agreement. This Agreement and exhibit contain the entire agreement between the parties hereto with respect to the subject matter hereof and may not be modified, terminated, or discharged except in writing specifically referring to this Agreement and executed by both parties.

Section 14. Notice. Any notice, request, demand, statement, or consent required or permitted to be given hereunder shall be in writing, shall be signed by or on behalf of the party giving notice, and shall be sent by United States mail, facsimile, or recognized overnight delivery service to the other party to the respective address given hereinbelow:

If to \_\_\_\_\_ Incorporated

\_\_\_\_\_

Attn: \_\_\_\_\_

Facsimile: \_\_\_\_\_

If to Broker:

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Any such notice given as aforesaid shall be conclusively deemed to have been given and received on the third business day following the day on which such notice was mailed. Either party may, from time to time, furnish, in writing, to the other party, notice of a change in the address to which notices are to be given hereunder.

Section 15. Applicable Law. The terms of this Agreement shall be governed by the laws of the State of \_\_\_\_\_ without regard to its conflicts of law rules. Broker expressly agrees and irrevocably submits to the non-exclusive jurisdiction of any court of the State of \_\_\_\_\_ over any matter arising out of or related to this Agreement. Broker hereby waives any and all defenses that would negate or avoid the jurisdiction of \_\_\_\_\_ courts.

Section 16. Compliance with Laws. Broker represents and warrants that, its Carrier(s), and Carrier's drivers have the necessary permits and licenses from the appropriate governing state and federal authorities. Broker shall, at its own expense, procure and at all times during the term of this Agreement, maintain all necessary permits, licenses, and operating certificates required to perform the carriage contemplated by this Agreement. Broker also agrees to comply with all applicable federal, state and local laws, rules, regulations, ordinances and orders, including without limitation all requirements of the Federal Food, Drug and Cosmetics Act, the Sanitary Food Transportation Act of 1990, and the Interstate Commerce Acts, and all regulations promulgated thereunder in conducting its operations under this Agreement.

Section 17. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute one and the same Agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures transmitted by facsimile shall be deemed to be original signatures for any purpose whatsoever.

Section 18. Non-Exclusive Agreement. This Agreement is a non-exclusive agreement. Broker shall be free to tender freight for transportation from companies other than \_\_\_\_\_ and \_\_\_\_\_ shall be free to accept freight for transportation to other brokers or carriers.

\_\_\_\_\_ INCORPORATED

\_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_