

This Contract is made between; THE CARRIER & THE BROKER

CARRIER NAME: _____

FMSCA – DOT # _____ MC# _____

MAILING ADDRESS:

EMAIL:

PHONE

FAX

RECITALS:

- a) **CARRIER** is a motor **carrier** under 49 USC 13102(12), is duly registered with the USDOT pursuant to 49 USC 13902 and 13905 with a Motor **Carrier** Safety Rating as indicated above; it owns and operates equipment suitable to transport goods shipped and received by **BROKER**; and it is fully equipped to render prompt and uninterrupted service to **BROKER**;
- b) **BROKER** is authorized and qualified as a licensed Property **Broker**, has the opportunity to route shipments with various Customers, and has working control over **carrier** selection, rate negotiation, payment of freight charges, and **BROKER** requires **carrier** services.



BROKER
TRANSBORDER EXPRESS INC.
 920 DAVIS RD, 112, ELGIN, IL 60123
 DOT # 2412605 MC# 758910
 PH. 877-470-2829
 FAX. 888-502-0521
 Email: info@transborderexpress.com

THE PARTIES AGREE:

Transportation Service and Insurance

- a) **BROKER** will tender freight to **CARRIER** for transportation as described in **Addendum "A"** and **BROKER** agrees to pay to **Carrier** the rates stated in Addendum "A" to this **Agreement**.
- b) **CARRIER** shall obtain and maintain in effect;
 - i. personal injury and property damage liability insurance in compliance with the regulations of the FMCSA and the U. S. Department of Transportation;
 - ii. Workers' Compensation insurance as required under the laws of the states in which the transportation services shall be performed, protecting and covering **CARRIER** and its employees in such amounts as are required by such laws;
 - iii. and (c) cargo insurance in the amount sufficient to cover its potential liability pursuant to paragraph 2 of this **Agreement** entitled "Cargo Loss". **CARRIER** shall cause its insurance **carrier** to furnish **BROKER** with a certificate attesting to the personal injury, property damage, workers' compensation, and cargo insurance in force, which certificate shall include a provision that the insurance **carrier** shall notify **BROKER** at least thirty (30) days in advance of any reduction or cancellation of such insurance. Upon **BROKER**'s request, **CARRIER** shall also cause its insurance **carrier** to furnish notice to **BROKER** and/or its designees at least thirty (30) days in advance of any reduction or cancellation of such insurance.

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Cargo Loss

CARRIER shall be liable to **BROKER** for the full actual value of any loss, damage or injury to shipments tendered to it for transportation, except insofar and to the extent that such loss, damage or injury shall have resulted from the causes excepted in the straight Bill of Lading published in the National Motor Freight Classification, the terms of which are incorporated by reference. **BROKER** shall file any claim arising under this paragraph with **CARRIER** within nine (9) months of the delivery or loss of the shipment and bring suit within two (2) years from the date of any claim's declination. In the event **BROKER** shall fail to comply with these time limits, the claim that is not timely filed shall be barred and **CARRIER** shall have no liability to **BROKER** for the loss alleged.

Status of Carrier

CARRIER shall perform the transportation contemplated by this **Agreement** as an independent contractor, and neither its employees nor its agents shall be deemed to be those of the **BROKER**. **CARRIER** shall be responsible for the procuring and operating the vehicles and the employment, hiring, training, supervising and controlling its drivers and helpers. **CARRIER** shall be responsible for the safe and lawful operation of the vehicles used in the performance of the transportation contemplated by this **Agreement** and shall hold **BROKER** harmless for any penalties, fines, assessments, claims or judgments resulting from the operation of the vehicles.

Expenses

CARRIER shall bear the costs and expenses of furnishing all fuel, oil, tires, and any other parts, supplies and equipment, necessary or required for the safe operation and maintenance of the equipment. **CARRIER** shall bear all expenses, including the expense of road service and repair in connection with the use and operation of the equipment and shall bear the cost and expense of maintaining the equipment in good repair and mechanical condition.

Freight Documentation

The Uniform Freight Documentation form set forth as **Addendum "B"** may be utilized by the Parties. The terms and conditions of this **Agreement** shall prevail over those appearing on that form or any other form(s) used by the Parties for the delivery of freight. Any form(s) used by the Parties shall only be used for the purpose of documenting the pick-up and delivery of freight. Either Party, at its option, may supply any document required by or referenced in this **Agreement** in either paper or electronic form (including, but not limited to, an electronically imaged, faxed, photocopied, or online posted version), and any such version shall be sufficient for all purposes under this **Agreement**. Unless specifically agreed to by the Parties, any joint movement involving another transportation entity to or from a point outside the U.S. shall not be considered as moving on a "through" bill of lading. **Carrier** agrees not to subcontract, **broker**, interline, or to use "substituted services" by rail or motor **carrier** without the specific approval of Shipper. If for any reason this is done without permission, **Carrier** shall be liable to Shipper for any cargo loss, damage, or injury to the same extent as if **Carrier** performed the service.

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Prepaid/Collect Shipments

BROKER shall specify whether the terms for any shipment under this contract shall be "prepaid" to be paid by the consignor, or marked "collect" to be paid by the consignee.

Non-Recourse Shipments

BROKER may specify whether the collection of charges from any consignee shall be without recourse to the **BROKER** as the consignor, in accordance with those provisions of Section 7 of the Uniform Bill of Lading as in effect on the date of this **Agreement**.

Shipments Under Contract

Whether or not **CARRIER** is authorized to operate, or does operate as a common motor **carrier**, each and every shipment tendered by **BROKER** to **CARRIER** on or after the date of this **Agreement** shall be deemed to be a tender to **CARRIER** as a motor contract **carrier** and shall be subject only to the terms of this **Agreement** and the provisions of law applicable to motor contract carriers.

Overcharges and Undercharges

- (a) Any action at law by **CARRIER** to recover undercharges pursuant to services provided under this **Agreement**, or by **BROKER** to recover overcharges claimed against **CARRIER** for services rendered under this **Agreement**, shall be commenced not more than one (1) year after **CARRIER**'s receipt of the shipment with respect to which such undercharge or overcharge is claimed to be due.
- (b) The provisions of this section shall survive the cancellation, termination or expiration of this **Agreement**.

Assignment

This **Agreement** may not be assigned, in whole or in part, by either party, without the written consent of the other party.

Confidentiality

- (a) Except as required by law or other provisions of this **Agreement**, the terms and conditions of this **Agreement** and information pertaining to any shipment transported under this **Agreement** shall not be disclosed by either party to persons other than its own directors, officers, employees, agents, attorneys, accountants and auditors.
- (b) **BROKER** shall have the right to disclose any such terms, conditions or information to its vendors, vendees or the consignees of the individual shipments moving between **BROKER** and the applicable vendor, vendee or consignee.
- (c) The provisions of this section shall survive the cancellation, termination or expiration of this **Agreement**.

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Indemnification

CARRIER agrees to indemnify, save harmless and defend **BROKER** from and against any and all claims for loss, damage or injury and from and against any suits, actions and legal proceedings brought against **BROKER** for or on account of any loss or damage to the tangible property of third parties, or for or on account of any injuries received or sustained by any person, including but not limited to, employees of **CARRIER**, and employees and agents of **BROKER** caused by, or growing out of, any intentional or negligent act or omission of **CARRIER** or its employees in performing the services provided for under this **Agreement**. This indemnification is inapplicable and of no force or effect if the damage or injury to any person is caused solely by the intentional or negligent act or omission of **BROKER's** employees, agents, or third parties with whom **CARRIER** comes into contact.

Force Majeure

Except as otherwise provided, the obligation of **CARRIER** to furnish and of **BROKER** to use the transportation services provided for in this **Agreement** shall be suspended temporarily during any period(s) in which either of the parties is unable to comply with the requirements of this **Agreement** by reason of the acts of God or the public enemy, fire, flood, labor disorder, civil commotion, closing of the public highway(s), government interference or regulations, or other contingencies similar to the foregoing beyond the reasonable control of the affected party. The party experiencing an event of Force Majeure shall notify other parties of the event as soon as possible, take reasonable action to eliminate the cause for the Force Majeure and resume normal operations as soon as possible.

Term and Termination Provision

The term of this **Agreement** shall be for an initial period of one (1) year. Following termination of such initial period, this **Agreement** shall continue in force from year to year until termination by either party with or without cause, upon not less than thirty (30) day's prior written notice in accordance with Section "Notices". This provision shall apply from the effective date of this **Agreement**.

Default

If in the opinion of either party the financial responsibility of the other party is impaired, or if either party should persistently or repeatedly refuse or fail to perform any duty, obligation or responsibility required by the terms of this **Agreement**, or persistently disregard laws or regulations applicable to performance under the terms of this **Agreement**, either party may terminate this **Agreement** without prejudice to any other right or remedy, after giving the other party at least thirty (30) days' prior written notice of such termination.

Notices

- (a) Any and all notices required or permitted to be given under this **Agreement** shall be in writing and shall be delivered to the party entitled to receive the same by hand or by U. S. Certified Mail, return receipt requested, addressed as indicated in the heading to this **Agreement**, or to such other addresses as a party shall from time to time advise the other party. Any notice given under this **Agreement** shall be effective, if sent by mail, on the date of placing the same in the United States Mail, and if by personal delivery, the date of such delivery.

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- (b) Alternatively, any such notice may be given by facsimile to the telephone number of the other party as disclosed and indicated in the heading to this **Agreement**. Any notice given by facsimile shall be effective on the date it is sent provided the receiving party gives evidence of receipt or the sending party obtains evidence of receipt by machine confirmation.

No Back Solicitation Agreement

CARRIER shall not solicit traffic from any consignor, consignee, or Customer of **BROKER** (collectively referred to as "CUSTOMERS") where either (1) the availability of such traffic first became known to **CARRIER** as a result of **BROKER**'s efforts, or (2) the traffic of the **BROKER**, consignor, consignee or customer of the **BROKER** was first tendered to the **CARRIER** by the **BROKER**. If **CARRIER** breaches this **Agreement** and "back-solicits" the **BROKER**'s customers, and obtains traffic from such customer, **BROKER** then is entitled, for a period of fifteen (15) months after the involved traffic first begins to move, to a commission from the **CARRIER** equal to Fifteen (15%) Percent of the transportation revenue received on the movement of the traffic. **CARRIER** further agrees that **BROKER** may publicly report this breach of the **Agreement**, if it occurs, to any trade association or publication, and that the facts of the breach may be published.

Miscellaneous

- (a) This **Agreement** contains the entire understanding between the parties with respect to the subject matter treated herein.
- (b) This **Agreement** supersedes and cancels all prior letters of intent, agreements, understandings, offers and assurances, oral or written, of any party, and shall be the sole **agreement** with respect to the matters involved, except as may be agreed to in writing by subsequent amendments.
- (c) This **Agreement** is being delivered and is intended to be performed in the **State of Illinois** and subject to the provisions of Title 49 of the United States Code (49 USC) and the Rules and Regulations of the FMCSA, USDOT, or their successors, which may govern by subject matter and jurisdictional supremacy, shall be construed and enforced in accordance with the laws of Illinois. By execution of the **Agreement**, the **BROKER** and **CARRIER** agree and consent that any action brought to enforce the terms of this **Agreement**, or to collect any monies due under this **Agreement**, or any litigation regarding the transportation services or other matters relating to this **Agreement** shall be brought in the courts in **the County of Cook, State of Illinois**.
- (d) This **Agreement** shall be binding upon and shall inure to the benefit of the parties hereto, their personal representatives, heirs, successors and assigns.
- (e) No modification of this **Agreement** shall be valid unless in writing and executed by all the parties. No breach of any provision of this **Agreement** shall be deemed waived unless specifically waived in writing by the non-breaching party. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or of different nature.
- (f) This **Agreement** may be executed simultaneously in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- (g) **BROKER** and **CARRIER** will discuss any perceived deficiency in performance by either of them, and will promptly attempt to resolve all disputes in good faith.
- (h) In the event that the FMCSA, or any other federal agency or department, or any state government, agency or department shall by regulation, order or statute, directly or indirectly,

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require or prescribe the establishment of any rules or provisions inconsistent with the terms of this **Agreement**, **CARRIER** shall promptly notify **BROKER** and **BROKER** or **CARRIER** may, without prejudice to any other right or remedy, terminate this **Agreement** after giving at least five (5) days' prior written notice of such termination.

- (i) The parties agree that signatures on the **Agreement**, as well as any other documents to be executed under the **Agreement**, may be delivered by facsimile in lieu of an original signature, and the parties agree to treat facsimile signatures as original signatures and agree to be bound by this provision
- (j) The Recitals to the **Agreement** are incorporated into the **Agreement**.

Carrier – Please sign and date below.

Signature: _____

Title: _____

Dated: _____, 20 _____

TO BE COMPLETED BY THE BROKER (CARRIERS PLEASE DO NOT WRITE BELOW THIS LINE)

APPROVED ____ DENIED ____

Signature: _____

Title: _____

Dated: _____, 20 _____

CARRIER TYPE :

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