

BROKER/SHIPPER AGREEMENT

THIS BROKERAGE AGREEMENT (“Agreement”) is made and entered on _____, 20____, by _____ and _____ between _____ (“SHIPPER”) and Paradise Trucking & Dispatch, LLC (“BROKER”) (collectively, the “Parties”).

I.

Recitals

A. **WHEREAS** BROKER is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (“FMCSA”), MC-1538948 or by appropriate State agencies, and as a licensed broker, arranges for freight transportation; and

B. **WHEREAS** SHIPPER seeks to utilize the services of BROKER to facilitate the transportation of goods on behalf of SHIPPER; and

NOW THEREFORE, intending to be legally bound, BROKER and

SHIPPER agree as follows: **II.**

Agreement

1. **TERM**. The term of this Agreement shall be for one (1) year and shall automatically be renewed for successive one (1) year periods; provided, however, that this Agreement may be terminated without cause at any time by giving thirty (30) days prior written notice to the other Party. This Agreement does not grant BROKER an exclusive right to provide transportation related services to SHIPPER or its Customers.

2. **BROKER’S COMPLIANCE WITH LAW**. BROKER represents and warrants that it is duly and legally qualified to operate as a property BROKER and to provide the transportation services contemplated herein. BROKER agrees to comply with all federal, state and local laws regarding the provision of such brokerage services. The Parties understand and agree that BROKER functions as an independent entity, and not as a carrier, in selling, negotiating, providing and arranging for transportation for compensation, and that the actual transportation of shipments tendered to BROKER shall be performed by third-party motor carriers (“Servicing Motor Carriers”).

3. **PAYMENT AND CHARGES**. SHIPPER shall tender certain shipments, from time to time, to BROKER. BROKER will charge and SHIPPER will pay in accordance with the rates, charges, and payment terms set forth in the SHIPPER’S tender if accepted by BROKER or the BROKER’S signed Rate Confirmation Agreement if accepted by SHIPPER, for transportation services performed under

this Agreement. In cases where there is a conflict in the details of an accepted SHIPPER tender and an accepted BROKER Rate Confirmation, the BROKER Rate Confirmation Agreement shall prevail. The Rate Confirmation Agreement shall be in the form specified in Appendix A. BROKER represents and warrants that there are no other applicable rates or charges except those established in this Agreement. In the event brokerage services are provided and it is subsequently discovered that there was no applicable or understood rate in place, the Parties agree that the charges invoiced by BROKER shall be the agreed upon contract rate of the Parties for the services provided, unless such payment is objected to by SHIPPER within thirty (30) days of the invoice date. SHIPPER agrees to pay BROKER within thirty (30) days of receiving the invoice, with interest accruing monthly at a rate of one percent (1%). SHIPPER shall also be liable for any expenses, including attorney fees, BROKER incurs in collecting its rates and charges.

4. INDEMNIFICATION.

a) BROKER shall indemnify, defend and save SHIPPER, its employees, and agents harmless from and against any and all liability, claims, loss, costs, fines, penalties, expenses (including attorney's fees), judgments, or demands on account or damage of any kind whatsoever, including but not limited to personal injury, property damage, cargo damage, or any combination thereof, suffered or claimed to have been suffered by any person or persons, arising out of BROKER's services provided in connection

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with this Agreement to the extent such claim is caused by 1) the negligence or intentional misconduct of BROKER; 2) BROKER's or its employees' violation of applicable laws or regulations; or 3) BROKER's or its employees' or agents' breach of this Agreement. The foregoing notwithstanding, BROKER shall have no liability to SHIPPER under this provision, or otherwise owe any obligation to SHIPPER under this provision, to the extent such liabilities or obligations represent consequential or special damages, or are the result of or arise from the negligence or other wrongful conduct of SHIPPER.

b) SHIPPER shall indemnify, defend and save BROKER, its employees, and agents harmless from and against any and all liability, claims, loss, costs, fines, penalties, expenses (including attorney's fees), judgments, or demands on account or damage of any kind whatsoever, including but not limited to personal injury, property damage, cargo damage, or any combination thereof, suffered or claimed to have been suffered by

any person or persons, arising out of SHIPPER's performance under this Agreement to the extent such claim is caused by 1) the negligence or intentional misconduct of SHIPPER; 2) SHIPPER's or its employees' or agents' violation of applicable laws or regulations; or 3) SHIPPER's or its employees' or agents' breach of this Agreement, except to the extent such liability, claims or loss represent consequential or special damages, or are the result of the negligence or other wrongful conduct of BROKER.

c) In the event that such claims, liabilities, losses, damages, fines, penalties, payments, costs and expenses (including without limitation, reasonable attorney fees) are caused by the joint and concurrent negligence or other fault of the Parties, or the Parties and a third party, the indemnity obligations for such claims, liabilities, losses, damages, fines, penalties, payments, costs, and expenses shall be borne by each Party in proportion to its degree of negligence or other fault.

d) Any indemnified Party shall promptly tender the defense of any claim to the indemnifying Party.

e) In no event shall either Party be responsible for any special or consequential damages under this Agreement.

5. **INDEPENDENT CONTRACTOR.** BROKER represents and warrants that it is an independent contractor under this Agreement and that its employees are under BROKER's exclusive management and control, and that SHIPPER neither exercises nor retains any control over BROKER, its operations or employees in any manner whatsoever.

6. **CONTRACT CARRIERS.** BROKER shall make reasonable efforts to place SHIPPER's loads with responsible Servicing Motor Carriers authorized to perform the services required by SHIPPER for the purposes of transporting the loads with reasonable dispatch under the direction of SHIPPER. In no event will BROKER tender any goods of SHIPPER to a Servicing Motor Carrier holding an "Unsatisfactory" safety rating. BROKER also agrees to utilize only Servicing Motor Carriers that possess all insurance coverages required by applicable law. However, the Parties understand and agree that BROKER, by signing this Agreement, makes no express or implied warranties or guarantees concerning delivery time or the locating of a Servicing Motor Carrier to provide the transportation services requested by SHIPPER. Moreover, SHIPPER acknowledges and agrees that such Servicing Motor Carrier's might limit SHIPPER's recovery for claims for cargo loss, damage or delay.

7. **BROKER INSURANCE.** BROKER shall comply with all insurance and bonding requirements imposed upon it by law, including its obligation to maintain

a surety bond to benefit the SHIPPER.

8. **CARGO LOSS, DAMAGE, OR SHORTAGE.** In the event of a cargo loss, damage or shortage claim, SHIPPER agrees to notify BROKER immediately by phone and to subsequently submit to BROKER a written claim, fully supported by all relevant documentation, including but not limited to the signed delivery receipt, listing the nature and cause of the claim for cargo damage within twenty (20) days following the date of delivery. No claims or allowances for shortages, damage or delay will be considered unless clearly noted on the delivery receipt or bill of lading signed by the consignee at delivery. BROKER shall have no liability for cargo loss, damage, or shortage except to the extent such claims are caused by BROKER's negligent acts or omissions. With respect to

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the standard for BROKER negligence with respect to Servicing Motor Carrier's insurance, the failure of the Servicing Motor Carrier to possess insurance required by law will be deemed a negligent act or omission on the part of BROKER.

9. **SHIPPING DOCUMENTS.** Unless otherwise agreed in writing, all shipments tendered shall be accepted on a bill of lading which shall function as a receipt of the goods only; the terms and conditions of such bill of lading will not apply to transportation provided pursuant to this Agreement. Upon request of SHIPPER, BROKER shall instruct Servicing Motor Carriers to obtain a delivery receipt from the consignee, showing the products delivered, condition of the shipment and the date and time of such delivery.

10. **NOTIFICATION OF ACCIDENTS OR DELAYS.** BROKER agrees to notify SHIPPER of any accident or other event of which BROKER is apprised and which prevents the motor carrier from making a timely or safe delivery.

11. **ASSIGNMENT/MODIFICATION/BENEFIT OF AGREEMENT.** This Agreement may not be assigned or transferred in whole or in part. This Agreement shall be binding upon and inure to the benefit of the Parties hereto.

12. **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.

13. **DISPUTE RESOLUTION.** This Agreement shall be deemed to have been drawn in accordance with the statutes and laws of the state of Texas and in the event of any disagreement or dispute, the laws of Texas shall apply and suit must be brought in Little Elm, Texas as each party specifically submits to the exclusive personal jurisdiction of such courts for disputes involving this

Agreement.

14. **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.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

BROKER – Parradise Trucking & Dispatch, LLC

Signature: *Elaine Montanez*

Printed: Elaine Montanez

Address: 230 Teaneck Rd
Ridgefield Park, NJ 07660

Phone: 856-803-9312

SHIPPER

Signature:

Printed:

Address:

Phone:

Shipper Initials _____