



BROKER CARRIER AGREEMENT

Larkin Express Logistics LLC
d/b/a Larkin Express Logistics
737 Delaware Avenue, Suite #104
Buffalo, NY 14209

BROKER CARRIER AGREEMENT

This BROKER CARRIER AGREEMENT (this “Agreement”) is entered into as of _____, ____, 2018 (“Effective Date”), by and between _____, with a place of business at _____ (“Carrier”), and LARKIN EXPRESS LOGISTICS, LLC, a New York limited liability company with a place of business at 737 Delaware Avenue, #104, Buffalo, New York 14209 (“Broker”).

RECITALS

WHEREAS, Broker is a freight broker duly licensed by the Federal Motor Carrier Safety Administration to arrange the transportation of property by authorized motor carriers; and

WHEREAS, Broker desires to obtain motor carrier transportation services through Carrier in order to transport the products and cargo required by Broker’s customers; and

WHEREAS, Carrier desires to provide such motor transportation services, on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises set forth in this Agreement, the parties agree as follows:

1. **Scope of Agreement.** Broker will from time to time tender shipments to Carrier for transportation (the “Shipments”). Carrier agrees to transport any shipments tendered hereunder in accordance with the distinct needs of Broker and its customer(s) and the terms of this Agreement.
2. **Status of Parties.** Broker is a freight broker which arranges for third party motor carriers to provide cargo transportation for its customers. Carrier provides transportation services and has authority to operate in intrastate, interstate and international commerce as a motor carrier. A copy of said authorities shall be provided to Broker prior to Carrier commencing its services pursuant to this Agreement.
3. **Compensation.** The compensation to be paid to Carrier shall be determined on a load-by-load basis as mutually agreed upon by the parties prior to the commencement of services. Broker shall prepare, issue and deliver to Carrier a rate confirmation setting forth the commodity to be transported, the point of origin, the point of destination, any special instructions concerning the services to be rendered and the rates and accessorial charges to be paid (a “Rate Confirmation”). Said Rate Confirmation shall be signed and returned by Carrier. Unless objected to by Carrier in writing within fifteen (15) days of receipt of the Rate Confirmation, Carrier shall be conclusively presumed to have agreed to the terms and conditions set forth on such Rate Confirmation.
4. **Payment.** Payment of the compensation due to Carrier shall be made thirty (30) days after receipt of Carrier’s freight bill accompanied by (i) the customer’s signed delivery receipt indicating delivery of all goods rendered in good order, without exception or notation; (ii) the original signed bill of lading; and (iii) the Rate Confirmation signed by Carrier. Furthermore, the parties mutually agree that any payment due Carrier is subject to revision if the amount is

based on an error, including, but not limited to, an error in calculating mileage or an adjustment for a claim. Upon mutual agreement, Broker and Carrier may amend payment terms to provide for accelerated payment which may be subject to discount as negotiated between Broker and Carrier.

5. Carrier Rights and Responsibilities. Carrier shall provide Broker with Carrier's Federal Tax ID number and a copy of Carrier's IRS Form W-9 prior to commencing any transportation or related services for Broker under this Agreement and shall meet all requirements to be an Approved Carrier set forth in Exhibit A and Exhibit B. Carrier shall determine the means and methods of the performance of all services undertaken by Carrier under the terms of this Agreement. Carrier shall be in compliance with all applicable governmental laws and regulations and shall maintain log sheets, physical examination certificates, drug and alcohol testing documentation, and other reports, documents and data required by law to be maintained by Carrier. Carrier has and shall retain sole responsibility for:

a. Hiring, wages, benefits, hours, working conditions, grievances, scheduling, supervising, training, disciplining and firing all drivers, helpers and other workers Carrier deems necessary for the performance of the obligations of Carrier under the terms of this Agreement, with such drivers, helpers and other workers being the employees of Carrier at all times and for all purposes.

b. Selecting, purchasing, leasing, financing and maintaining equipment in accordance with applicable state and federal laws and regulations.

c. Paying all operating and maintenance expenses incidental to the performance of this Agreement, including the costs of fuel, oil, lubricants and tires, including changing and repair, empty miles, permits of all types, tolls, ferries, detention and accessorial services, base plates and licenses and any unused portions of such items.

d. Loading and unloading of all freight whenever required by a customer and securing all cargo whenever required.

e. Paying for public liability and property damage insurance on or relating to the equipment and Carrier's operations.

f. Reporting and paying for all taxes, including, but not limited to, road taxes, mileage taxes, fuel use taxes, gross revenue taxes and third structure taxes, and providing Broker with written proof of same.

g. Paying all fines imposed for, and assuming all costs relating to, violations of any laws or regulations arising out of, or in connection with, the services rendered pursuant to this Agreement.

h. Paying all workers' compensation and unemployment premiums and all withholding and employment taxes due to federal, state or local governmental agencies on account of drivers, helpers and other workers necessary for the performance of the obligations of Carrier under the terms of this Agreement.

i. Maintaining in force at all times proper workers' compensation insurance covering all drivers, helpers and other workers used by it in the performance of this Agreement.

j. Filing all federal, state and local income, withholding, employment and highway use tax forms and returns, which it may be required by law to file, on account of itself and all drivers, helpers and other workers used by it in the performance of this Agreement, at the time and place which may be specified by the applicable federal, state and local laws, and to pay when due all taxes and contributions reported in such forms and returns.

k. Ensuring by physical inspection that truck and trailer beds are in good working order and free of all contaminants and residue prior to the loading of each shipment.

l. Maintaining motor carrier operating authority from all required local, state or federal agencies or authorities, and providing Broker with proof of same.

m. Complying with all applicable safety laws, rules and regulations, including those imposed by customers of Broker.

n. Furnishing Broker with such evidence of compliance with any of the foregoing as Broker shall reasonable require.

6. Relationship of Parties. In the performance of transportation services hereunder, Carrier shall be an independent contractor and not an agent or employee of Broker. Carrier represents and warrants that the driver or drivers utilized herein are competent and properly licensed drivers and are fully informed concerning their responsibilities for the protection and care of the involved goods. Carrier shall endeavor to maintain a satisfactory U.S. DOT Safety Rating but under no circumstances is Carrier allowed to provide services under this contract if their safety rating falls to "unsatisfactory." If Carrier's safety rating changes at any time during the term of this Agreement or if Carrier is sold, merges or dissolves or experiences a change in control of ownership, Carrier will notify Broker immediately (within 24 hours). Carrier agrees that it shall not look to the customers of Broker under any circumstances for payment of freight or other charges.

7. No Right to Lien or Delay Release of Cargo or Equipment. Carrier will not assert any lien or make any claim on any cargo or equipment, and no lien will attach against Broker, its customers or any cargo or equipment, for failure of Broker, the customer or any other third party to pay Carrier for charges due to Carrier.

8. Waiver of Rights. Notwithstanding any other terms of this Agreement, the parties expressly waive all rights and remedies under Title 49 U.S.C., Subtitle IV, Part B to the extent they conflict with this Agreement.

9. Sub-Contract Prohibition. Carrier expressly 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. If Carrier breaches this provision, Broker shall have the right of paying the monies it owes Carrier directly to the delivering carrier, in lieu of payment to Carrier. Upon Broker's payment to delivering

carrier, Carrier shall not be released from any liability to Broker under this Agreement. In addition to the indemnity obligation reflected in this Agreement, Carrier will be liable for consequential damages for violation of this clause of the Agreement.

10. Liability Standards. Broker assumes no responsibility for delivery by Carrier of any Shipment without loss, damage, injury or delay from point of origin to point of destination. Carrier shall be responsible for all claims for loss, damage, injury or delay. Carrier's liability shall begin when it signs the bill of lading and has received any such goods for a Shipment and shall continue until such time as Carrier receives a signed delivery receipt from the proper named customer and nothing remains to be done by Carrier to deliver the Shipment to the customer.

Carrier's liability hereunder may not be limited by any provision purporting to limit Carrier's liability, including, without limitation, any bill of lading or common carrier tariff, schedule, service guide or similar document issued by or on behalf of Carrier. The use of or reference to any such bill of lading, tariff, schedule, service guide or similar document or any provisions thereof shall not alter in any manner the terms of this Agreement. In the event of a conflict between the terms, conditions, and provisions of any such bill of lading, tariff, schedule, service guide or similar document, on the one hand, and, on the other, this Agreement, the terms, conditions and provisions of this Agreement shall govern.

11. Insurance. Carrier agrees to provide any insurance coverage's required by any government body for the types of transportation and related services specified in load confirmation communications received from Broker. All insurance required by this Agreement must be written by an insurance company having a Best's rating of "B+" VII or better and must be authorized to do business under the laws of the state(s) or province(s) in which Carrier provides the transportation and related services as specified in load confirmation communications received from Broker. Carrier's insurance shall be primary and required to respond and pay prior to any other available coverage. Carrier agrees that Carrier, Carrier's insurer(s), and anyone claiming by, through or under Carrier shall have no claim, right of action, or right of subrogation against Broker, its affiliates, or its Customer based on any loss or liability insured under the insurance stipulated herein. Carrier represents and warrants that it will continuously fulfill the requirements of this Section throughout the duration of this Agreement. Broker shall be notified in writing by Carrier's insurance company at least thirty (30) days prior to the cancellation, change or non-renewal of the submitted insurance policies. Carrier shall at all times during the term of this agreement have and maintain in full force and effect, at its expense, (i) Motor Truck Cargo insurance or a superior equivalent, with limits for the full value of the cargo under carriage subject to a minimum limit never less than US\$100,000 per shipment, a deductible no greater than US\$10,000 per shipment and at least the same coverage limit and deductible per shipment while in storage or at a storage facility enroute to the consignee, (ii) Commercial Automobile Liability insurance with a combined single limit of not less than US\$1,000,000 per occurrence and without aggregate limits, (iii) Commercial General Liability insurance, in a limit of not less than US\$1,000,000 per occurrence, (iv) Worker's Compensation insurance in the amounts required by statute, and Employer's Liability insurance with limits not less than US\$500,000 per occurrence, and (v) if Carrier provides Transportation Services for hazardous materials under United States Department of Transportation ("DOT") regulations, public insurance including Commercial Automobile insurance limits required for the commodity transported under 49 C.F.R § 387.7 and 387.9 (or successor regulations thereto) and

statutory required Commercial Automobile insurance limits pertaining to the hazard classification of the cargo as defined by DOT, an MCS-90 and Broadened Pollution Liability endorsements for limits required by law and full policy limits. Carrier shall, prior to providing transportation and related services pursuant to this Agreement, name Broker, as a certificate holder, as required on the foregoing insurance policies and shall cause its insurance company to issue a certificate to Broker, evidencing the foregoing. When Carrier provides Transportation Services that involve origins and destinations solely within Canada, Carrier shall be current in its remittances to the appropriate Worker's Compensation Board of the Carrier's province, shall provide a certificate issued by the appropriate Worker's Compensation Board of the Carrier's province certifying that the Carrier is not delinquent and is current in its remittances to that authority, and shall have such other insurance or higher coverage limits required by applicable Canadian national or provincial law or regulation. Insurance will meet or exceed the requirements of federal, state and/or Provincial regulatory bodies having jurisdiction over Carrier's performances pursuant to this agreement. During this Contract's term, the insurance policies required hereunder and any replacement policies will (i) insure the interests of Broker and, (ii) cover all drivers, equipment and cargo used in providing Transportation Services and (iii) not contain any exclusions or restrictions as to designated premises or project, pertaining to unattended equipment or cargo, for unscheduled equipment, for unscheduled drivers or cargo, for fraud or infidelity, for tarp warranty, for wetness or dampness, for geographical location in the United States, for trailers unattached to the power unit, or for a particular radius of operation.

12. Carrier Moving Perishables. Carrier warrants that the carrier will inspect or hire a service representative to inspect a vehicle's refrigeration or heating unit at least once each month. Carrier warrants that they shall maintain a record of each inspection of refrigeration or heating unit and retain the records of the inspection for a least one year. Copies of these records must be provided upon request to the carrier's insurance company and Broker. Carrier warrants that they will maintain adequate fuel levels for the refrigeration or heating unit and assume full liability for claims and expenses incurred by the Broker or the shipper for failure to do so. The carrier must provide their cargo insurance carrier with all records that relate to a loss and permit copies and abstracts to be made from them upon request. The following rules shall apply: (a) Destination market value for lost or damaged cargo, no special or consequential damages unless by special agreement; (b) Claims will be filed with Carrier by Shipper; (c) claims notification procedures will be followed in accordance with procedure described in 49 C.F.R. 370.1-11.

13. Indemnification. Carrier agrees to indemnify, defend, and hold Broker, its officers, agents, employees and customers harmless from and against any and all actual or consequential losses, damages, costs, liability, claims, or expenses, including, without limitation, attorneys' fees and other costs of defense (collectively, "Losses"), with respect to those claims (whether or not involving a third party claim) relating in any way to or arising in connection with Carrier's, its employee's, agent's and subcontractor's breach or performance of or failure to perform under this Agreement including in connection with the loading, unloading, handling, transportation, possession, custody, use or maintenance of cargo or equipment in performance of this Agreement including any liability resulting from personal injury (including death) or property damage asserted against Broker or its customer(s) by any person or entity. The foregoing indemnity shall not apply if the Loss in question is caused solely by the negligence of Broker.

Broker shall not be liable for any enforcement action taken, or fines, penalties or other Losses assessed by or resulting from a governmental agency or other entity in connection with any shipment subject to this Agreement due to Carrier's or its employee's, agent's or subcontractor's noncompliance with applicable foreign, federal, state, provincial and local laws, rules and regulations pertaining thereto. Carrier agrees to indemnify, defend and hold Broker, and its customer, harmless against any and all Losses which Broker or its officers, agents, employees or customers may incur by reason of any such noncompliance.

The provisions of this indemnification section shall survive termination of this Agreement.

14. Carrier's Cargo Liability. Carrier assumes full liability for the greater of replacement cost, customer's commercial invoice or market value for loss, damage or destruction of any and all goods or property tendered to Carrier by Broker in a Shipment, and for the full course of carriage. Carrier shall inspect each load in a Shipment, at the time it is tendered to Carrier, to assure its condition. If Carrier is tendered a load which is not in suitable condition, it shall notify Broker immediately. Cargo which has been tendered to Carrier intact and released by Carrier in a damaged condition, or lost or destroyed subsequent to such tender to Carrier, shall be conclusively presumed to have been lost, damaged or destroyed by Carrier unless Carrier can establish otherwise by clear and convincing evidence. Deliveries with broken seals shall be rejected and declared a total loss for which Carrier is held responsible.

Carrier shall either pay Broker directly or allow Broker to deduct from the amount Broker owes Carrier, the amount of the customer's full actual loss. Carrier agrees that it will assert no lien against cargo transported hereunder. Broker shall deduct from the amount Broker otherwise owes Carrier, the customer's full actual loss of all claims that are not resolved within ninety (90) days of the date of the claim. Carrier agrees to indemnify Broker for any payments relating to such loss or damage incurred hereunder. In the event of an accident, Carrier shall notify Broker immediately for further instructions. Carrier shall return all damaged shipments at its expense to the point of origin or to other points as instructed by Broker. Carrier will make all payments pursuant to the provisions of this Section within thirty (30) days following receipt by Carrier of the customer's invoice or demand and supporting documentation for the claim.

15. Salvage Claims. Carrier shall waive any and all right of salvage or resale of any of the customer's damaged goods and shall, at Broker's reasonable request and direction, promptly return or dispose, at Carrier's cost, any and all of the customer's damaged and goods shipped by Carrier. Carrier shall not under any circumstance allow the customer's goods to be sold or made available for sale or otherwise disposed of in any salvage markets, employee stores, or any other secondary outlets. In the event that damaged goods are returned to the customer and salvaged by the customer, Carrier shall receive a credit for the actual salvage value of such goods.

16. Contract Terms Govern. The fact that Carrier may provide common carrier services to other customers or may hold authority or licenses to provide common carrier service, and maintains a tariff/schedule/service guide or similar document related thereto shall have no effect in the contract relationship between the parties created by this Agreement. Similarly, any use of form bills of lading or other freight documents referring to "common carrier" service,

“tariffs,” “schedules,” “service guides,” and/or “classifications” shall not alter in any manner the contractual relationship created under this Agreement.

17. Bill of Lading. The terms, conditions, and provisions of any bill of lading for any shipments made pursuant to this Agreement shall be subject and subordinate to the terms, provisions, and conditions of this Agreement, and in the event of a conflict between the terms, conditions, and provisions of such bill of lading and of this Agreement, the terms, conditions and provisions of this Agreement shall govern. In addition, any provisions in any such bill of lading purporting to make the underlying transportation subject to the terms of any of Carrier’s tariff’s guides or other similar documents are specifically made inapplicable to shipments hereunder.

18. Governing Law; Consent to Jurisdiction and Integration. This Agreement will be construed, to the extent not preempted by applicable federal law, under the laws of the State of New York, without giving effect to any choice or conflict of law rules. Each of the parties hereby irrevocably and unconditionally (a) submits to the exclusive jurisdiction of any federal or state court sitting in the County of Erie and State of New York in any suit, action or arising out of, connected with, related to, or incidental to the relationship established among them in connection with this Agreement, and (b) waives, to the fullest extent permitted by law, any objection to venue or any defense of inconvenient forum in connection with any such court. This Agreement contains the entire agreement between the parties and may only be modified by signed written agreement.

19. Confidentiality Obligations. Carrier acknowledges that in carrying out this Agreement, it will learn proprietary and other confidential information about Broker and its business, including, but not limited to, its rates, services, personnel, computer systems, customers, traffic volumes, origins and destinations, commodity types, shipment information and business practices (the “Information”). During this Agreement’s term and for five (5) years after its termination, Carrier will hold the Agreement provisions and Information in confidence, restrict disclosure to those Carrier representatives with a need to know, and not use the Information to Broker’s competitive detriment or for any purpose except as contemplated hereby. Carrier may disclose Information to the extent required by a governmental agency or under a court order, provided that Carrier notifies Broker of such requirements before disclosure and provides Broker with an opportunity to object to such disclosure.

20. Nonsolicitation of Customers. During this Agreement’s term and for twenty-four (24) months after its termination, Carrier will not, and will cause the Carrier representatives not, to directly or indirectly solicit or provide transportation services to any customer without Broker’s prior written consent if (a) that customer first became known to Carrier as a result of Broker’s engagement of Carrier, (b) the type of transportation services, such as the origins and destinations served or commodity types, provided to that customer first became known to Carrier as a result of Broker’s engagement of Carrier, or (c) the first shipment transported by Carrier for that customer was tendered to Carrier by Broker. If Carrier or any Carrier representative solicits a customer in violation of this Section, Carrier shall pay to Broker as a commission twenty-five percent (25%) of the total charges per shipment, for transportation services provided by Carrier to such customer.

21. Injunctive Relief. A breach or threatened breach of the provisions of Section 18 or Section 19 of this Agreement in any respect will be material and will result in substantial and irreparable injury to Broker. In the event of a breach or threatened breach by Carrier, Broker shall be entitled to an injunction restraining Carrier therefrom without the necessity of posting a bond or other security. This provision shall not be construed as prohibiting Broker from pursuing any other available remedies for such breach or threatened breach, including the recovery of damages from Carrier.

22. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If, however, any such provision shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law, or if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any other such provision being prohibited or invalid.

23. Term. This term of this Agreement shall be for a period of two (2) years beginning on the Effective Date and shall be automatically renewed unless terminated as provided herein. Either party may terminate this Agreement upon sixty (60) days' written notice. In the event of termination, the obligations of the parties pursuant to this Agreement shall remain in full force and effect with respect to any Shipments made or tendered prior to the termination and as otherwise set forth in this Agreement.

24. Counterparts. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including .pdf), or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their authorized representatives as of the date first set forth above.

BROKER:

CARRIER:

LARKIN EXPRESS LOGISTICS, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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EXHIBIT A

Insurance

To become an Approved carrier you must provide a Certificate of Insurance that meets the minimum insurance requirements below. Certificates may be submitted from Carrier's insurance company or obtained through RMIS or similar system by Broker.

1. \$100,000 Cargo Coverage
2. \$1,000,000 Auto Coverage
3. Workers Compensation will be statutory limits.
4. \$1,000,000 General Liability

EXHIBIT B

Approved Carrier Requirements

To become an Approved carrier you must provide and meet the following criteria:

1. Read and ACCEPT the "Broker Carrier Agreement".
2. Validate or provide the carrier contact information.
3. Complete the Carrier Profile.
4. Provide MC/MX# or DOT#
 - a. *Intrastate carriers without a DOT# may provide an applicable state registration number.*
5. Carrier Contact must be authorized to enter into and bind your company to the Transportation Services Contract.
6. Submit an electronic W9.
7. Provide a Certificate of Insurance that meets the insurance minimum requirements in Exhibit A.
8. Carrier Compliance Requirements:
 - a. Carrier shall endeavor to maintain a satisfactory U.S. DOT Safety Rating but under no circumstances is Carrier allowed to provide services under this contract if their safety rating falls to "unsatisfactory."
 - b. Appropriate Federal, State, or Provincial Authority.
 - c. 180 days minimum time of Authority.