

## **BROKER - CARRIER AGREEMENT**

This Broker-Carrier Agreement (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between Logistics Direct LLC (“Broker”), a Registered property broker, MC-682061, and \_\_\_\_\_, a Registered motor carrier, DOT\_\_\_\_\_ / MC-\_\_\_\_\_ (“Carrier”) (collectively, the “Parties”). “Registered” means operating under authority issued by the Federal Motor Carrier Safety Administration (“FMCSA”) or its predecessor.

### **1. CARRIER REPRESENTS AND WARRANTS THAT IT:**

- A. Is a Registered motor carrier of property authorized to provide transportation of property under contracts with shippers, receivers, and/or brokers of general commodities.
- B. Shall transport the property under its own operating authorities and subject to the terms of this Agreement.
- C. Makes the representations herein for the purpose of inducing Broker to enter into this Agreement.
- D. Will not insert, or authorize anyone else to insert, Broker’s name on a bill of lading as the shipper or Carrier without the Broker’s express written consent. In addition, Carrier agrees that any insertion of Broker’s name as the Carrier on a bill of lading shall be for convenience only and shall not change Broker’s status as a property broker or Carrier’s status as a motor carrier.
- E. **Will not re-broker, co-broker, subcontract, assign, interline, or transfer the transportation of shipments hereunder to any other persons or entity conducting business under a different operating authority, without the prior written consent of Broker which consent may be withheld in Broker’s sole discretion. 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 or its customer. In addition to the indemnity obligation in paragraph 1.H below, Carrier will be liable for consequential damages for violation of this provision.**
- F. (i) Is in, and shall maintain compliance during the term of this Agreement, with all applicable federal, state and local laws relating to the provision of its services including, but not limited to: transportation of hazardous materials (including the licensing and training of hazardous material qualified drivers) to the extent that any shipments hereunder constitute hazardous materials; security regulations; owner/operator lease regulations; loading and securement of freight regulations; implementation and maintenance of driver safety regulations including, but not limited to, hiring, controlled substances and alcohol testing, and hours of service regulations; sanitation, temperature, and contamination requirements for transporting food, perishable, and other products; qualification

and licensing and training of drivers; implementation and maintenance of equipment safety regulations; maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers; and all applicable insurance laws and regulations including but not limited to workers' compensation.

(ii) Is solely responsible for any and all management, discipline, direction and control of its employees, owner/operators, and equipment with respect to operating within all applicable federal and state legal and regulatory requirements to ensure the safe operation of Carrier's vehicles, drivers and facilities. Carrier and Broker agree that safe and legal operation of the Carrier and its drivers shall completely and without question govern and supersede any service requests, demands, preferences, instructions, and information from Broker or Broker's customer with respect to any shipment at any time.

G. Carrier will notify Broker immediately if any of its operating authorities are revoked, suspended or rendered inactive for any reason, and/or if it is sold, or if there is a change in control or ownership of Carrier, and/or any insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.

H. Carrier shall defend, indemnify and hold Broker and its customers harmless from any claims, actions or damages, arising out of its performance under this Agreement, including cargo loss and damage, theft, delay, damage to property, and personal injury or death. The aforementioned obligations shall survive the expiration or earlier termination of this Agreement. Carrier's obligation to defend and indemnify Broker and its customers shall include payment of all costs, including reasonable attorneys' fees, as they accrue.

I. Does not have an "Unsatisfactory" or equivalent safety rating under any safety program and will notify Broker in writing immediately if its safety rating is changed to "Unsatisfactory" or "Conditional" or their respective equivalent.

J. Authorizes Broker to invoice Carrier's freight charges to the shipper, consignee, or third party responsible for payment. Moreover, on each bill of lading issued by Carrier, Broker shall be shown as the third party payor for all freight charges.

K. Has investigated, monitors, and agrees to conduct business hereunder based on the credit-worthiness of Broker and is granting Broker credit terms accordingly and without any additional expense.

## **2. BROKER RESPONSIBILITIES:**

A. **SHIPMENTS:** Broker agrees to solicit and obtain freight transportation business for Carrier to the mutual benefit of Carrier and Broker. Broker shall inform Carrier of (i) the place of origin and destination of all shipments and (ii) if applicable, any special shipping and handling instructions,

time-sensitivity requirements, or special equipment requirements; provided Broker has received such information from the shipper. While Broker will use its best efforts to arrange shipments for transportation by Carrier, it is expressly understood and agreed that this Agreement creates no obligation on the part of the Broker to make any particular loads or number of loads available to Carrier for transportation. Nothing herein, nor any course of dealings hereunder, shall be construed to give rise to any guarantee or implied agreement that Carrier shall receive or continue to receive any particular amount of revenue, minimum earnings or profit. Further, Carrier is not restricted in any way from seeking work outside of the terms of this Agreement.

B. BILLING AND RATES: Broker agrees to conduct all billing services to shippers, consignees, or such other party responsible for payment. Carrier shall invoice Broker for its charges, as mutually agreed upon in writing, by facsimile, or by electronic means, and contained in Broker's load confirmation sheets/dispatch sheets, which are incorporated herein by this reference. Additional rates for truckload or LTL shipments, or modifications or amendments of the above rates, or additional rates, may be established to meet changing market conditions, shipper requirements, Broker requirements, and/or specific shipping schedules as mutually agreed upon, and shall be confirmed in writing (or by facsimile or electronic means) by both Parties. Any such additional, modified, or amended rates shall automatically be incorporated herein by this reference.

C. OTHER RATES: Additionally, any rates, which may be verbally agreed upon, shall be deemed confirmed in writing where Carrier has billed the agreed rate and Broker has paid such rate. All written confirmations of rates, including confirmations by billing and payment, shall be incorporated herein by this reference. Rates or charges, including but not limited to stop-offs, detention, loading or unloading, fuel surcharges, or other accessorial charges, tariff rates, released rates or values, or tariff rules or circulars, shall only be valid when their terms are specifically agreed to in a writing signed by both Parties.

D. PAYMENT: The Parties agree that Broker is the sole party responsible for payment of Carrier's charges. Failure of Broker to collect payment from its customer shall not exonerate Broker of its obligation to pay Carrier. Broker agrees to pay Carrier's invoice within thirty (30) days of receipt of the original bill of lading, proof of delivery, and/or any other documents Broker needs in order to secure payment from its customer; provided Carrier is not in default under the terms of this Agreement. Carrier acknowledges and agrees that payment of the freight charges by the Broker's customer to Broker shall relieve the shipper, the receiver, the consignor and consignee of any liability to Carrier for non-payment of charges.

E. BOND: Broker shall maintain a surety bond on file with the FMCSA in the form and amount not less than that required by the FMCSA's regulations.

F. BROKER'S responsibility is limited to arranging for, but not actually performing, transportation of a shipper's freight.

### **3. CARRIER RESPONSIBILITIES:**

A. **EQUIPMENT:** Subject to its representations and warranties in Section 1 above, Carrier, at its sole cost and expense, agrees to provide the necessary equipment and qualified personnel for completion of the transportation services required for Broker's customers. Carrier agrees that all motor vehicles, including trailers, used to transport product hereunder shall be in good and suitable operating condition so as to avoid any loss of or damage to product in loading and unloading or while in transit. Carrier agrees that all trailer equipment shall be clean, dry, leakproof and not contaminated and will not have been used previously to transport garbage, trash, or solid or liquid waste or any other articles, whether hazardous or non-hazardous, which might taint or otherwise contaminate the customers' goods. Carrier shall inspect all such motor vehicle equipment for each shipment to ensure that the motor vehicle equipment conforms to the mandates of this paragraph. Carrier agrees that all shipments will be transported and delivered with reasonable dispatch, or as otherwise agreed in writing.

B. **BILLS OF LADING:** Carrier shall issue a bill of lading for the property it receives for transportation under this Agreement. Unless otherwise agreed in writing, Carrier shall become fully responsible/liable for the freight when it takes/receives possession thereof, and the trailer is loaded, regardless of whether a bill of lading has been issued, and/or signed, and/or delivered to Carrier, and which responsibility/liability shall continue until delivery of the shipment to the consignee and the consignee signs the bill of lading or delivery receipt. Carrier agrees that the terms and conditions of this Agreement shall apply on all shipments it handles for Broker and its customers. Any terms contained in Carrier's tariff or referenced in its other freight documentation, including but not limited to a bill of lading, shall be inapplicable to such shipments. Failure to issue a bill of lading, or sign a bill of lading acknowledging receipt of the cargo, by Carrier, shall not affect the liability of Carrier.

### **C. LOSS AND DAMAGE CLAIMS:**

(i) Carrier shall comply with 49 C.F.R. § 370.1 *et seq.* and any amendments thereto, or any other applicable regulations adopted by the FMCSA, or any applicable state or federal regulatory agency, for processing all loss and damage claims;

(ii) Carrier's liability for any cargo damage, loss, or theft from any cause shall be determined under the Carmack Amendment, 49 U.S.C. § 14706;

(iii) Notwithstanding anything to the contrary contained herein, Carrier agrees that during any cargo loss or damage situation, the Broker's customer or such other owner of the cargo, as applicable, will have the right to reasonably determine whether to repair, repackage, salvage or scrap damaged freight. If the Broker's customer or such other owner of the cargo, as applicable, elects to salvage freight, they shall notify Carrier to return the freight to them or allow Carrier to dispose of the freight. Carrier agrees that any monies received in salvage will be paid to the Broker's customer

or such other owner of the cargo, as applicable, as part payment for any amounts Carrier owes as a result of the loss or damage claim;

(iv) Freight claims shall be filed in writing by Broker and/or its customer with Carrier within nine (9) months from the date of delivery of a shipment, or, in the case of nondelivery, within nine (9) months from the date the shipment should have been delivered. All freight claims shall be paid, declined or resolved within sixty (60) days of the date received by Carrier. Failure of Carrier to pay, decline or offer settlement within this sixty (60) day period shall be deemed admission by Carrier of full liability for the amount claimed and a material breach of this Agreement. Carrier shall provide Broker with written acknowledgment of the freight claim within fifteen (15) days of the receipt of the claim; and

(v) Carrier's liability hereunder is not limited and may not be limited by any provision purporting to limit Carrier's liability including, without limitation, any such provision contained in a bill of lading, tariff, schedule, service guide or similar document issued by or on behalf of Carrier.

D. INSURANCE: Carrier shall furnish Broker with certificates of insurance, or insurance policies providing thirty (30) days advance written notice of cancellation, termination, or modification (ten (10) days in the event of non-payment of premium) and unless otherwise agreed, subject to the following minimum limits: general liability \$1,000,000.00; motor vehicle (including hired and non-owned vehicles) \$1,000,000.00; cargo damage/loss \$100,000.00; workers' compensation with limits required by law; and any additional insurance required by applicable laws, rules and regulations. Except for the higher coverage limits which may be specified above, the insurance policies shall comply with the minimum requirements of the FMCSA and any other applicable federal or state agency. Nothing in this Agreement shall be construed to avoid or limit Carrier's liability due to any exclusion or deductible in any insurance policy. Notwithstanding the foregoing, should any federal, state, or local law or regulation prescribe minimum amounts of insurance in excess of the amounts prescribed herein, such required excess minimum amounts shall take precedence over the aforementioned amounts and shall be provided by Carrier to Broker and its customer. The required insurance shall cover the entire geographic scope in which the Carrier will operate under this Agreement and, as applicable, be "Broad Form". Carrier shall cause Carrier's insurance provider to name Broker and its customer as additional insureds or loss payees, as appropriate, on a primary and non-contributing basis, on all of the aforementioned insurance policies (except the workers' compensation insurance policy), upon execution of this Agreement. Carrier and its insurance provider shall forward to Broker insurance certificates reflecting such coverage. Failure of Broker to demand a certificate of insurance or failure of Broker to identify a deficiency in the Carrier's certificate of insurance shall not be construed as a waiver of Carrier's obligation to maintain such insurance. It is expressly understood that Broker does not represent that the coverage and limits of insurance set forth herein will necessarily be adequate to protect the Carrier and such coverage and limits shall not be deemed a limitation on Carrier's liability under this Agreement.

E. ASSIGNMENT OF RIGHTS: Carrier automatically assigns to Broker all of its rights to collect freight charges from the shipper or any responsible third party on receipt of payment of its freight charges from Broker.

F. Carrier assumes full responsibility and liability for payment of the following items: all applicable federal, state, and local payroll taxes, taxes for unemployment insurance, old age pensions, workers' compensation, and social security with respect to persons engaged in the performance of its transportation services hereunder. Broker shall not be liable for any of the payroll-related tax obligations specified above and Carrier shall indemnify, defend, and hold Broker harmless from any claim or liability imposed or asserted against Broker for any such obligations. The aforementioned obligations shall survive the expiration or earlier termination of this Agreement.

G. Carrier agrees that it will not have any lien on any freight transported hereunder and that it will not permit any lien to attach to any freight transported hereunder. If freight transported hereunder should become subject to any lien or adverse claim caused by Carrier's failure to comply with the preceding sentence then the Broker's customer and/or Broker may take any action available to them for the purpose of procuring a release of such lien or adverse claim. Carrier shall reimburse Broker's customer and/or Broker on demand for all costs including, without limitation, investigation costs, legal fees and disbursements, incurred by them in taking such actions.

#### 4. MISCELLANEOUS:

A. INDEPENDENT CONTRACTOR: It is understood and agreed that the relationship between Broker and Carrier is that of independent contractor. None of the terms of this Agreement, or any act or omission of either party shall be construed for any purpose to express or imply a joint venture, partnership, principal/agent, fiduciary, or employer/employee relationship between the Parties. Carrier shall provide the sole supervision and shall have exclusive control over the operations of its employees, contractors, subcontractors, agents, as well as all vehicles and equipment used to perform its transportation services hereunder. Broker has no right to discipline or direct the performance of any driver and/or employees, contractors, subcontractors, or agents of Carrier. Carrier represents and agrees that at no time and for no purpose shall it represent to any party that it is anything other than an independent contractor in its relationship to Broker.

B. NON-EXCLUSIVE AGREEMENT: Carrier and Broker acknowledge and agree that this Agreement does not bind the respective Parties to exclusive services to each other. Either party may enter into similar agreements with other carriers, brokers, or freight forwarders.

C. WAIVER: Failure of either party to enforce a breach or waiver of any provision or term of this Agreement shall not be deemed to constitute a waiver of any subsequent failure or breach, and shall not affect or limit the right of either party to thereafter enforce such term or provision.

D. DEFAULT: In the event of a breach or default by Carrier of or under this Agreement, Broker shall have the right to withhold and/or set off any payments owing to Carrier and/or received from its customers which Broker is obligated to pay Carrier. The right of withholding and/or set off is not an exclusive remedy and Broker shall have and may exercise all other remedies it may have at law or in equity against Carrier.

E. NO BACK SOLICITATION: Carrier agrees that under no circumstances will it communicate directly with customers introduced to it by Broker. It is understood by Carrier that the provisions of this paragraph pertain to "Back Soliciting." Carrier hereby agrees that neither it nor anyone under its control will approach those customers who were introduced to it by Broker for the purpose of selling Carrier's services directly to or accepting traffic from such customers without Broker's participation. It is agreed by Carrier that if such event occurs Carrier will pay Broker a commission of twenty percent (20%) of Carrier's freight charges on all traffic obtained as a result of such Back Solicitation for a period of eighteen (18) months from each instance of such Back Solicitation.

F. MODIFICATION OF AGREEMENT: This Agreement may not be amended, except by mutual written agreement, or the procedures set forth above (paragraphs 2.B and 2.C).

G. NOTICES:

(i) All notices provided or required by this Agreement, shall be made in writing and delivered, certified mail, return receipt requested, to the addresses shown herein with postage prepaid; or by confirmed facsimile; or by email with electronic receipt.

(ii) The Parties shall promptly notify each other of any claim that is asserted against either of them by anyone arising out of the Parties performance of this Agreement.

(iii) Notices sent as required hereunder, to the addresses shown in this Agreement shall be deemed sent to the correct address, and if sent certified mail, return receipt requested, postage prepaid, deemed received three (3) days after being deposited with the United States Postal Service, unless the Parties are notified in writing of any changes in address.

H. CONTRACT TERM: The term of this Agreement shall be for one (1) year from the date first set forth above and thereafter it shall automatically be renewed for successive one (1) year periods, unless terminated, upon thirty (30) day's prior written notice, with or without cause, by either Party at any time, including the initial term. In the event of termination of this Agreement for any reason, the Parties shall be obligated to complete performance of any work in progress in accordance with the terms of this Agreement.

I. SEVERANCE; SURVIVAL: In the event any of the terms of this Agreement are determined to be invalid or unenforceable, no other terms shall be affected and the unaffected terms shall remain

valid and enforceable as written. The representations, rights and obligations of the Parties hereunder shall survive termination of this Agreement for any reason.

J. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, provided, however, that this Agreement shall not be assignable by either of the Parties without the prior written consent of the other party.

K. COUNTERPARTS: This Agreement may be executed in any number of counterparts each of which shall be deemed to be a duplicate original hereof. Facsimile or portable document format (pdf) signatures on this Agreement shall be deemed to constitute original signatures.

L. ENTIRE AGREEMENT: This Agreement contains the entire understanding of the Parties and supersedes all prior verbal or written agreements, arrangements, and understandings of the Parties relating to the subject matter stated herein. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence may be introduced to reform this Agreement in any judicial proceeding involving this Agreement.

M. ATTORNEYS' FEES: In the event of a dispute between the Parties which arises out of or relates to this Agreement, the prevailing party in such dispute shall be entitled to recover its costs and reasonable attorneys' fees from the other party.

N. GOVERNING LAW; JURISDICTION. The terms of this Agreement shall be governed by the laws of the State of Colorado and applicable federal law. All actions and proceedings arising from or related to this Agreement will be litigated in courts having situs within either Adams County, Colorado or the United States District Court for the District of Colorado. The Parties hereto consent and submit to the jurisdiction and venue of any such local, state and federal court.

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IN WITNESS WHEREOF, the Parties have signed this Agreement the date and year first shown above.

BROKER:  
Logistics Direct LLC

[INSERT CARRIER NAME]:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Broker Address:

5590 East 55<sup>th</sup> Avenue  
Commerce City, Colorado 80022

Carrier Address:

\_\_\_\_\_  
\_\_\_\_\_