

INDEPENDENT LOGISTICS Co.
MC# 816926

BROKER – CARRIER AGREEMENT

THIS AGREEMENT (“Agreement”), effective _____, 20__, by and between Independent Logistics Co., an Indiana corporation (“Independent”) and _____ (“CARRIER”).

RECITALS

- A. Independent is an authorized transportation broker that controls the transportation of freight under its contractual arrangements with various consignors and consignees (collectively referred to as the “Customer”); and
- B. CARRIER is authorized to operate in interstate and/or intrastate commerce and is qualified, competent and available to provide for the transportation services required by Independent; and
- C. Independent desires to utilize CARRIER for transportation services and CARRIER desires to provide transportation services.

AGREEMENT

1. **Term.** The Term of this Agreement shall be for an initial period of one (1) year and shall automatically renew for successive one (1) year periods; provided, however, that this Agreement may be terminated at any time by either party with or without cause upon not less than thirty (30) days’ prior written notice provided in accordance with Section 14, or as otherwise provided in this Agreement.

2. **CARRIER’s Operating Authority and Compliance with Law.** CARRIER represents and warrants that it is duly and legally qualified to provide, as a contract Carrier, the transportation services contemplated herein. CARRIER will at all times provide the services required herein under its own authority. CARRIER shall provide Independent with a copy of CARRIER’s local, state and federal operating authorities upon execution of this Agreement. CARRIER agrees to immediately notify Independent in the event its operating authorities are suspended or revoked. Upon notification, CARRIER will have a sixty (60) day right to cure at which point Independent may terminate this Agreement without written notice if CARRIER’s operating authorities have not been reinstated. CARRIER further represents and warrants that it does not have a conditional or unsatisfactory safety rating issued from the U.S. Department of Transportation, or any state or local agency, and further agrees to comply with all federal, state and local laws regarding the provision of the transportation services contemplated under this Agreement. In the event that CARRIER is requested by Independent to transport any shipment required by the U.S. Department of Transportation to be placarded as a hazardous material, the parties agree that the additional provisions included in Appendix A shall apply for each such shipment.

3. **Performance of Services.** CARRIER’s services under this Agreement are specifically designed to meet the distinct needs of Independent under the specified rates and conditions set forth herein. CARRIER, when notified to do so by Independent or an authorized agent of Independent, shall promptly transport to the destination specified by Independent or its Customer, all freight of every kind and nature billed to such Customer which CARRIER is licensed to handle, as specifically described on separate Rate Confirmation Sheets to be signed and agreed to by CARRIER and Independent prior to each shipment made under this Agreement. With the exception of a force majeure event, CARRIER shall

transport all shipments provided under this Agreement without delay, and all occurrences which would be probable or certain to cause delay shall be immediately communicated to Independent by CARRIER. At all times during the term of this Agreement, service levels shall be maintained at 90.0% or above with regard to on-time delivery. CARRIER shall not in any way hold itself out as being part of Independent.

4. **Receipts and Bills of Lading.** Each shipment hereunder shall be evidenced by a Bill of Lading naming CARRIER or Independent as the transporting Carrier. Upon delivery of each shipment made hereunder, CARRIER shall obtain a receipt showing the kind, quantity and condition of product delivered to the consignee of such shipment at the destination specified by Independent or the Customer, and CARRIER shall cause such receipt to be signed by the consignee. CARRIER shall forward to Independent all such receipts, along with the corresponding manifests, upon its delivery of the shipment. Upon notification from Independent, any delivery in which the corresponding receipt was not returned will be investigated by CARRIER and the status thereof reported to Independent in a timely manner. Any terms, conditions and provisions of the bill of lading, manifest or other form of receipt or contract shall be subject and subordinate to the terms, conditions and provisions of this Agreement. CARRIER shall notify Independent of all shortages at time of delivery or any other exception made on the bill of lading or delivery receipt.

5. **CARRIER's Operations.** CARRIER shall, at its sole cost and expense: (a) furnish all vehicles and other equipment necessary or required for the performance of its obligations hereunder (the "Equipment"); (b) pay all expenses related, in any way, with the use and operation of the Equipment; (c) maintain the Equipment in reasonable condition and appearance; and (d) provide and compensate competent, able and legally licensed personnel. CARRIER shall have full control of such personnel; shall perform the services hereunder as an independent contractor; and shall assume complete responsibility for all state and federal taxes, assessments and any other financial obligations arising out of the transportation performed hereunder. Further, CARRIER shall assume full and complete responsibility and liability, regardless of the fault of any person, for any and all damage to or destruction of the Equipment while the Customer's goods or property are under CARRIER'S care, custody or control. The Equipment shall at all times display CARRIER's name or trademark and operating authorities.

6. **Indemnity.** CARRIER shall defend, indemnify, and hold Independent harmless from and against all loss, liability, damage, claim, fine, cost or expense, including reasonable attorney's fees, arising out of or in any way related to the performance or breach of this Agreement by CARRIER, its employees or independent contractors working for CARRIER (collectively, the "Claims"), including, but not limited to, Claims for or related to personal injury (including death), property damage and CARRIER's possession, use, maintenance, custody or operation of the Equipment; provided, however, that CARRIER's indemnification and hold harmless obligations under this paragraph will not apply to any portion of such claim attributable to the negligent conduct of Independent.

7. **Insurance.** CARRIER shall procure and maintain, at its sole cost and expense, the following primary insurance coverages:

(a) Public liability and property damage insurance with a reputable and financially responsible insurance company, as determined by Independent at its sole discretion, insuring CARRIER in an amount not less than \$1,000,000 (U.S. Dollars) per occurrence.

(b) All Risk Broad Form Motor Truck Cargo Legal Liability insurance in an amount not less than \$200,000 (U.S. Dollars) per occurrence. Such insurance policy shall name CARRIER and Independent as insureds and provide coverage to Independent, the Customer or the owner and/or consignee for any loss, damage or delay related to any property coming into the possession of CARRIER under this Agreement. The coverage provided under the policy shall have no

exclusions or restrictions of any type that would foreseeably preclude coverage relating to cargo claims.

(c) Workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CARRIER's employees and employers' liability insurance as required by applicable state law.

(d) CARRIER shall furnish to Independent written certificates obtained from the insurance provider showing that such insurance has been procured, is being properly maintained, the expiration date, and specifying that written notice of cancellation or modification of the policies shall be given to Independent at least thirty (30) days prior to such cancellation or modification. Upon request, CARRIER shall provide Independent with copies of the applicable insurance policies.

8. **Freight Loss, Damage or Delay.** CARRIER shall have the sole and exclusive care, custody and control of the Customer's property from the time it is delivered to CARRIER for transportation until delivery to the consignee accompanied by the appropriate receipts as specified in Paragraph 4. CARRIER shall assume full and complete responsibility and liability, regardless of the fault of any person, for any and all loss, delay, damage to or destruction of any and all of Customer's goods or property while under CARRIER's care, custody or control, and in no event shall that liability be less than that of a Common Carrier as provided for in 49 U.S.C. § 14706 (the Carmack Amendment). Exclusions in CARRIER's insurance coverage shall not exonerate CARRIER from this liability. CARRIER shall pay to Independent, or Independent may deduct from amounts it owes CARRIER, the Customer's full actual loss for the kind and quantity of commodities so lost, delayed, damaged or destroyed. CARRIER shall be liable to Independent for all economic loss, including consequential damages that are incurred by Independent or the Customer for any freight loss, damage or delay claim. Payments by CARRIER to Independent or the Customer, pursuant to the provisions of this section, shall be made within thirty (30) days following receipt by CARRIER of Independent's or the Customer's invoice and supporting documentation for the claim.

9. **Waiver of CARRIER's Lien.** CARRIER shall not withhold any goods of the Customer on account of any dispute as to rates or any alleged failure of Independent to pay charges incurred under this Agreement. CARRIER is relying upon the general credit of Independent and hereby waives and releases all liens which CARRIER might otherwise have to any goods of Independent or its Customer in the possession or control of CARRIER.

10. **Payments.** CARRIER will charge and Independent will pay for transportation services performed under this Agreement the rates and charges as shown on separate Rate Confirmation Sheets to be signed and agreed to by CARRIER and Independent prior to each shipment made under this Agreement. CARRIER represents and warrants that there are no other applicable rates or charges except those established in this Agreement or in any Rate Confirmation Sheet signed by Independent. Payment by Independent will be made within thirty (30) days of receipt by Independent of CARRIER's freight bill, bill of lading, clear delivery receipt, and any other necessary billing documents enabling Independent to ascertain that service has been provided at the agreed upon charge. CARRIER agrees that Independent has the exclusive right to handle all billing of freight charges to the Customer for the transportation services provided herein, and, as such, CARRIER agrees to refrain from all collection efforts against the shipper, receiver, consignor, consignee or the Customer. CARRIER further agrees that Independent has the discretionary right to offset any payments owed to CARRIER hereunder for liability incurred by CARRIER pursuant to Section 8 of this Agreement.

11. **Detention time and Trucks ordered not used.** Independent will pay detention time after the first two hour's (which are included in the original rates for both loading and/or unloading) at \$25.00 per hour. A truck ordered and not used (TONU) will be paid at \$150.00. A layover will be paid at \$400.00 per occurrence.

12. **Confidentiality and Non-Solicitation.** Neither party may disclose the terms of this Agreement to a third party without the written consent of the other party except (1) as required by law or regulation; (2) disclosure is made to its parent, subsidiary or affiliate company; or (3) to facilitate rating or auditing of transportation charges by an authorized agent and such agent agrees to keep the terms of the Agreement confidential. CARRIER will not solicit traffic from any shipper, consignor, consignee or customer of Independent where (1) the availability of such traffic first became known to CARRIER as a result of Independent's efforts, or (2) the traffic of the shipper, consignor, consignee or Customer of Independent was first tendered to CARRIER by Independent. If CARRIER breaches this Agreement and directly or indirectly solicits traffic from customers of Independent and obtains traffic from such customers during the term of this Agreement or for twelve (12) months thereafter, CARRIER shall be obligated to pay Independent, during the term of this Agreement and for a period of fifteen (15) months following its termination, commission in the amount of thirty-five percent (35%) of the transportation revenue resulting from traffic transported for the Customer, and CARRIER shall provide Independent with all documentation requested by Independent to verify such transportation revenue.

13. **Sub-Contract Prohibition.** CARRIER specifically agrees that all freight tendered to it by Independent 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 such freight to be transported by a third party without the prior written consent of Independent, such consent to be provided at Independent's sole discretion.

14. **Not Exclusive.** This Agreement does not grant CARRIER an exclusive right to perform transportation related services for Independent or its Customer.

15. **Notices.** All notices, requests, and other communications pursuant to this Agreement shall be in person or in writing and delivered by mail or by facsimile transmission and shall be deemed to have been duly given (i) on the date of service if delivered in person or by facsimile transmission (with the facsimile confirmation of transmission receipt acting as confirmation of service when sent); or (ii) forty-eight (48) hours after mailing by first-class, registered or certified mail, postage prepaid, and properly addressed as follows:

If to Independent:

Independent Logistics Co.
Attn: Brett Bojrab
2250 W 900 N
Decatur, IN 46733

If to CARRIER:

Attn: _____

15. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may not be assigned or transferred in whole or in part without the prior written consent of the other party hereto.

16. **Modification.** This Agreement may only be modified in writing and with the agreement of both parties.

17. **Headings.** The descriptive headings of the several sections of this Agreement are inserted for convenience only and shall not control or alter the meaning or construction of any of the provisions hereof.

18. **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.

19. **Waiver.** CARRIER and Independent expressly waive all rights and remedies under Part B of Subtitle IV of Title 49 of the U.S. Code, as allowed in 49 U.S.C. § 14101, to the extent such rights and remedies conflict with this Agreement. Independent's waiver from to time of any of its rights, or its failure to exercise any remedy available to it, shall not operate or be construed as a continuing waiver of the same or of any other of its rights or remedies provided in this Agreement.

20. **Use of Name Prohibited.** CARRIER shall not use Independent's or any Customer's name or identity in advertising or promotional communications without the prior written consent of Independent. Neither party to this Agreement may use the other party's name, trademarks, or trade names, in any manner, without the prior written consent of the other party.

21. **Choice of Law and Consent to Jurisdiction.** The terms of this Agreement are subject to the provisions of the United States Transportation Code, at 49 U.S.C. § 101, et seq., and its corresponding rules and regulations, subject to the waiver of certain rights and remedies found thereunder as provided in Section 19 of this Agreement. To the extent federal law does not govern, this Agreement shall be governed by and interpreted under the laws of the State of Indiana, without regard to principles of conflict of laws. The parties hereto agree that any action arising in connection with this Agreement shall be filed only in a state or federal court of competent jurisdiction located in or having a division which includes Allen County, Indiana, and further agree that any service of process in such action or proceeding may be made by personal service upon such party wherever such party may be then located, or by certified or registered mail directed to such party at such party's last known address.

22. **Default.** The parties hereto will discuss any perceived deficiency in either party's performance under this Agreement and will promptly endeavor to resolve all disputes in good faith. However, if either party materially fails to perform its duties under this Agreement, the party claiming default may terminate this Agreement immediately.

23. **Counterparts.** This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

24. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties regarding the subject matter of this Agreement and specifies all the covenants and agreements between the parties with respect to that subject matter, and each party acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party which are not specified in this Agreement; and any other agreement, statement or promise concerning the subject matter specified in this Agreement shall be of no force or effect except in a subsequent modification in writing signed by the party to be charged. Further, this Agreement supersedes all tariffs, rates, classifications and schedules published, filed or otherwise maintained by CARRIER.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the date first above written.

“INDEPENDENT”

INDEPENDENT LOGISTICS CO.
MC# 816926

Signed By: _____

Title: _____

CARRIER: _____

DOT# _____

MC# _____

Signed By: _____

FIN# _____ - _____

Title: _____

PHYSICAL ADDRESS:

1099'S WILL BE SENT VIA EMAIL BY JAN 30TH
PLEASE PROVIDE THE EMAIL ADDRESS YOU
WOULD LIKE IT SENT TO:

Email: _____

REMIT TO ADDRESS (IF DIFFERENT)

NAME OF FACTORING CO (IF USED)

PHONE: _____

FAX: _____

APPENDIX A

HAZARDOUS MATERIAL REQUIREMENTS

With respect to the transportation of hazardous materials or waste requiring compliance with federal and/or state hazardous material statutes and regulations, Independent and CARRIER agree that the following additional provisions shall apply for all such shipments:

1. CARRIER represents and warrants that it has obtained all necessary federal and state permits and registrations to transport hazardous materials or waste in interstate and/or intrastate commerce. Upon request, CARRIER shall provide Independent with a copy of all such federal and state permits and registrations. Additionally, CARRIER agrees to notify Independent immediately upon any revocation or suspension of CARRIER's federal or state hazardous material permits or registrations as well as the suspension or revocation of CARRIER's "Satisfactory" Safety Fitness Rating issued by the U.S. Department of Transportation, or any similar state safety rating, which satisfactory rating is a prerequisite to providing transportation for hazardous materials under this Agreement.

2. CARRIER represents and warrants that all drivers used to transport hazardous material shipments have undergone the necessary training requirements of federal and state laws, including, but not limited to, the training requirements under 49 C.F.R. Parts 172(H) and 177. CARRIER further warrants and certifies that all drivers used to transport hazardous material have the proper endorsements on their Commercial Driver's Licenses to legally transport such shipments.

3. CARRIER agrees to comply with all federal, state and local laws regarding the transportation of hazardous material, including, but not limited to, the requirements specified under 49 C.F.R. Part 177 and 49 C.F.R. Part 397.

4. CARRIER shall procure and maintain, at its sole cost and expense, public liability and property damage insurance with a reputable and financially responsible insurance company insuring CARRIER in an amount not less than \$5,000,000 (U.S. Dollars) per occurrence. Such insurance policy shall name CARRIER and Independent as insureds with respect to any and all liabilities for personal injuries (including death) and property damage, including environmental damage due to the release of a hazardous material or waste, arising out of the ownership, maintenance, use or operation, including loading and unloading, of the Equipment operated by CARRIER under this Agreement.