

BROKER/CARRIER TRANSPORTATION AGREEMENT

THIS BROKER/CARRIER TRANSPORTATION AGREEMENT, including Appendix A and any subsequent appendices, addenda, exhibits or schedules (together, the “**AGREEMENT**” is made and entered on _____, 20__ by and between _____ (“**CARRIER**”) and Knight Logistics, LLC and Swift Logistics, LLC (individually as applicable “**BROKER**”).

RECITALS

WHEREAS, CARRIER is a motor carrier of property duly authorized by all applicable state, provincial, or federal authorities to provide compensated contract carriage of property for shippers and receivers of regulated and non-regulated property, and provides transportation services and related services in the U.S. and, where applicable, Canada or Mexico.

WHEREAS, BROKER is a transportation broker, duly authorized by the U.S. Department of Transportation (“DOT”), to arrange for the transportation of property by contract motor carriers on behalf of shippers and receivers.

WHEREAS, CARRIER recognizes the special, distinct, varying and continuing transportation needs of **BROKER** and its customer base of shippers and receivers, and in order to serve a portion of those transportation needs, **CARRIER** desires to provide contract carriage and related services to **BROKER** pursuant to the terms of this **AGREEMENT**.

AGREEMENT

1) **EFFECTIVE DATE AND TERM.** This **AGREEMENT** is to become effective on the date first written above, or to the extent applicable, upon the date which **CARRIER** and **BROKER** commenced doing business together, whichever is earlier, and shall remain in effect for a period of one year from such date, and shall automatically renew from year to year thereafter, subject to the right of either party to terminate this **AGREEMENT** at any time upon thirty (30) days advance written notice to the other party, except as otherwise provided herein.

2) **SCOPE OF AGREEMENT.** This **AGREEMENT** shall govern all shipments tendered to **CARRIER** by **BROKER** (or upon **BROKER**'s instructions), and accepted by **CARRIER**, whether regulated or non-regulated property, in interstate, intrastate, or international transportation. The Parties expressly acknowledge and agree that the terms of this **AGREEMENT** and any addendums incorporated herein, shall apply to all shipments tendered to **CARRIER** and shall control over any conflicting terms contained in: (i) the **CARRIER**'s tariffs, circulars, rate sheets or service guides; or (ii) any bill of lading, shipping document, receipt or other transportation document issued for any shipment tendered by **BROKER**.

3) **STATUS OF PARTIES.** The relationship of **CARRIER** to **BROKER** shall, at all times, be that of an independent contractor. Nothing herein shall be construed as establishing an agency, partnership, joint venture, hiring or any form of employer-employee relationship between **BROKER** and **CARRIER**. Neither party shall be responsible for any debts, obligations or liabilities incurred by the other in performance of its business activities, except as expressly provided herein. **CARRIER** assumes full responsibility for the payment of all: (i) wages, fees, local, state, federal, and provincial payroll taxes, (ii) contributions or taxes for unemployment insurance, workers' compensation insurance and/or claims, (iii) pensions, and other social security or related protection, and (iv) any and all other expenses with respect to the persons engaged by **CARRIER** in the performance of transportation and related services in connection with this **AGREEMENT** (“Expenses”). **CARRIER** shall indemnify, defend and hold **BROKER** and its customer harmless against all claims related to or arising from such Expenses. Notwithstanding the foregoing provisions, **BROKER** shall be the agent for the **CARRIER** for the limited and express purpose of billing and collecting freight charges and fees from shippers and receivers, and **CARRIER** hereby appoints **BROKER** as its agent for such express and limited purpose. **CARRIER** further agrees that a Shipper's insertion of **BROKER**'s name as the carrier on a bill of lading shall be for the shipper's convenience only and shall not change **BROKER**'s status as a property broker nor **CARRIER**'s status as a motor carrier. This **AGREEMENT** does not bind either party to mutually exclusive services with each other. Both the **BROKER** and **CARRIER** understand and agree that **BROKER** will enter similar agreements with other carriers, and **CARRIER** may enter similar agreements with other brokers and/or shippers.

4) **FREIGHT RATES.** For all shipments tendered by **BROKER** and accepted by **CARRIER** under this **AGREEMENT**, the rates, charges, and fees for the transportation and services shall be set forth in a Load or Rate Confirmation Sheet or similar document (“Confirmation Sheet”) in a form provided by **BROKER**. Each Confirmation Sheet shall be issued by **BROKER**, shall be deemed accepted by **CARRIER** upon the written (includes electronic means of transmission) response by the **CARRIER**, and shall be incorporated into this **AGREEMENT**, provided; however, that if the terms and conditions specified in this **AGREEMENT** are different from the terms and conditions contained in the Confirmation Sheet, the terms and conditions of this **AGREEMENT** shall prevail. **CARRIER** agrees and acknowledges that that **CARRIER**'s dispatchers and other personnel are authorized to enter

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into Confirmations with **BROKER**. The rates and charges included in the Confirmation Sheet shall be **CARRIER**'s sole and exclusive compensation for rendering the services. **CARRIER** agrees that any other rates, tariffs, circulars, pricing authorities or other similar documents published or offered by **CARRIER** shall not apply to the performance of services under this **AGREEMENT**. Such written Confirmation Sheet shall include the charges for the shipment and shall also contain, as applicable, the conditions and any additional or accessorial services required to be performed. The Confirmation Sheet shall be sent by **BROKER** to **CARRIER** prior to loading a load. **CARRIER** represents and warrants that there are no other applicable rates or charges applicable to the Services herein, including those contained in any tariff, terms and conditions, or bill of lading, except those established in this **AGREEMENT** or any Confirmation Sheet. **CARRIER shall advise BROKER at or before incurring Detention, Accessorial (including Lumpers), and/or additional charges ("Charges"), otherwise the CARRIER forfeits its right to collect such Charges.** Such Charges may be established verbally in order to meet specific shipping schedules, but must be confirmed in writing within **24** hours, via fax or email, in order for the **CARRIER** to receive compensation.

5) **PAYMENT.** **BROKER** shall pay **CARRIER** for the transportation of property under this **AGREEMENT** in accordance with the shipping rates as established in any Confirmation Sheet with said payment to be made not later than thirty (30) days from receipt by **BROKER** of **CARRIER**'s (1) Confirmation Sheet, (2) uncontested invoice, (3) bill of lading, and (4) proof of delivery covering such transportation and services. **CARRIER** agrees that it shall bill **BROKER** for all services in a timely, accurate and complete manner. If, after shipment of property under this **AGREEMENT**, the party responsible for payment of freight charges and fees defaults on its obligation to pay **BROKER** for freight charges and fees which **BROKER** has already paid to **CARRIER**, **CARRIER** agrees that all its right, title and interest in such charges and fees shall be, and hereby are, transferred and assigned to **BROKER** for purposes of collection and recovery from the responsible party(s). **CARRIER shall look solely to BROKER for payment of freight bills and agrees to hold the customer harmless therefrom**, and, as such, **CARRIER** agrees to refrain from all collection efforts against any other party. **CARRIER** shall furnish, if capabilities exist, transmissions of data elements ("EDI") on each shipment and receipt in the specified format, as well as similar data elements for automated payment of freight bills.

The parties shall process all overcharge, undercharge, and duplicate payments as provided in 49 C.F.R. §378 and 49 U.S.C. §13710, as amended from time to time. Should a shipper or consignee notify **BROKER** of a claim for loss or damage to property transported hereunder, **CARRIER** agrees that **BROKER** shall have the right to set-off an amount sufficient to cover such claim and to deduct and withhold such amount from any payments due to **CARRIER**.

6) **SERVICES.** Subject to specific shipment instructions, **CARRIER** shall provide motor transportation services for the property of **BROKER** and its customers, operating as a motor carrier under its own authority. **CARRIER** shall transport freight with reasonable dispatch in accordance with the terms of the Confirmation Sheet in a safe, competent, and efficient manner. **CARRIER** will promptly notify **BROKER** of any delay. **CARRIER** will protect and preserve all cargo in accordance with prudent industry standards. **CARRIER** will be responsible for any charges imposed by a customer or receiver that were caused by actions of the **CARRIER**, including charges for unreasonable delay.

7) **BILLS OF LADING.** **CARRIER** shall issue a bill of lading in its own name, or sign a bill of lading, produced by shipper in compliance with 49 C.F.R. §373.101 (and any amendments thereto) ("Bill of Lading"), showing the kind, condition and numerical quantity of the property received and delivered by **CARRIER** at the loading and unloading points. **SHIPPER**'s insertion of **BROKER**'s name on the bill of lading shall be for **SHIPPER** convenience only and shall not change **BROKER**'s status as a property broker. **CARRIER** shall assume full and complete responsibility and liability for all loss and/or damage to, or delay of, any shipment of property while in the possession or control of **CARRIER**, provided, however, that if the terms and conditions specified in this **AGREEMENT** are different from the terms and conditions contained in the Bill of Lading, the terms and conditions of this **AGREEMENT** shall prevail. 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**.

8) **EQUIPMENT & LABOR.** **CARRIER**, at its sole cost and expense, shall furnish all equipment required for transportation and services hereunder and shall maintain all equipment in clean condition, good repair and working order, and meet all minimum government vehicle standards. **CARRIER** shall employ only competent and properly licensed personnel, who shall be well-trained in the care, safety procedures applicable to shipments being handled and transported. **CARRIER** has exclusive management, control, and direction of its drivers and acknowledges that **BROKER** has no control or input on such decisions. All trailers furnished by **CARRIER** shall meet the specifications described and identified in the applicable Confirmation Sheet and shall be clean, dry and free of any defects or contaminating odor and must be suitable in all respects for the transportation of the property of **BROKER**'s customer tendered to **CARRIER**. The trailers shall not have been used to transport garbage, hazardous waste, solid waste or toxic materials.

9) **COMPLIANCE WITH LAW.** **CARRIER** shall comply with all applicable DOT laws and FMCSA regulations as well as any other federal, state, and provincial laws, regulations and ordinances applicable to the operations of a motor carrier.

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CARRIER represents and warrants that, by accepting tender, the time between time of tender and the due date designated by **BROKER** or shipper is reasonable and can be performed by **CARRIER** and its drivers without violating any speed, safety, hours of service, or other related regulations. **CARRIER** will promptly notify **BROKER** in the event that (i) any designated delivery due date cannot be legally met because of such federal regulations, or (ii) any accident, theft or other occurrence impairs the safety of or delays the delivery of the goods. **CARRIER** further represents and warrants that it shall ensure all equipment used to provide services under this **AGREEMENT** is compliant with each individual state law, including, but not limited to, all regulations and requirements under the California Air Resources Board's ("CARB") Transport Refrigeration Unit ("TRU"), Airborne Toxic Control Measure ("ATCM"), Truck and Bus Regulation and Greenhouse Gas regulation ("GHG"). If applicable, **CARRIER** agrees to implement and adhere to Customs Trade Partnership Against Terrorism ("C-TPAT") security criteria applicable to highway carriers published at www.cbp.gov. **CARRIER** shall be liable for and agrees to indemnify, defend, and hold **BROKER** and its customers harmless for any penalties or other liabilities imposed upon **BROKER** and its customer(s) as a result of **CARRIER**'s use of equipment found to be noncompliant with any laws, statutes, regulations, or requirements, including but not limited to those set forth above. Upon **BROKER**'s request, **CARRIER** shall provide proof of **CARRIER**'s compliance with any such laws, statutes, regulations, or requirements.

10) **SAFETY & COMPLIANCE STATUS.** **CARRIER** shall maintain appropriate governmental authority during the term of this **AGREEMENT**. If, at any time, **CARRIER**'s safety rating issued by any applicable authority is amended or changed to, or, in the case of an initial rating, is first assigned as "Conditional" or "Unsatisfactory", **CARRIER** shall immediately provide **BROKER** with written notification of that fact. **CARRIER** shall also provide immediate written notice if it receives an out-of-service order issued by the DOT or any other governmental agency. In the event of a "Conditional" rating or an out-of-service order, such notice shall set forth any and all action which **CARRIER** has taken to ensure the safety of **CARRIER**'S operations and to correct the negative change in **CARRIER**'S safety rating. Upon such notice or if **BROKER** independently determines that **CARRIER** does not meet **BROKER**'s qualifications as a **CARRIER**, **BROKER** may elect to take any action necessary at **BROKER**'s sole discretion, including, but not limited to, (1) cease using the services of **CARRIER**, or (2) immediately terminate this **AGREEMENT**. **CARRIER** agrees to immediately notify **BROKER** in the event that **CARRIER** is sold or there is a change in control or ownership.

11) **SANITARY FOOD TRANSPORTATION REQUIREMENTS.** Where applicable, **CARRIER** shall comply with all laws and regulations governing the safe and secure transportation of food that will ultimately be consumed by humans or animals. **CARRIER** acknowledges and agrees that the temperature of the goods is a material condition of this **AGREEMENT** during the transportation of Food Shipments, as defined in the Food Safety Addendum. Where applicable, **CARRIER** shall comply with all laws and regulations governing the safe and secure transportation of food that will ultimately be consumed by humans or animals including, but not limited to, the Food Safety Modernization Act (21 U.S.C. § 2201, *et seq.*), the Food, Drug and Cosmetic Act (21 U.S.C. § 341, *et seq.*) ("FD&C Act"), the Sanitary Food Transportation Act (49 U.S.C. 5701 *et seq.*), and the U.S. Food and Drug Administration's Final Rule on the Sanitary Transportation of Human and Animal Food (21 C.F.R. § 1.900 *et seq.*), collectively (the "Food Safety Laws"). **CARRIER** agrees that food that has been transported or offered for transport, pursuant to this **AGREEMENT**, under conditions that are not in compliance with the customer's instructions as provided to **CARRIER** by the customer, through **BROKER** or otherwise, will be considered "adulterated" within the meaning of the FD&C Act (21 U.S.C. §§ 342(a)(i)(4), 342(i)). **CARRIER** understands that adulterated shipments may be refused by the customer, consignee or receiver upon their tender for delivery at destination, as set forth in the attached Food Safety Addendum, which is incorporated herein by reference and made a part hereof.

12) **SUBCONTRACT PROHIBITION.** **CARRIER** shall not re-broker, co-broker, subcontract, assign, interline, warehouse, or transfer the transportation of shipments hereunder to any other persons or entity conducting business under a different operating authority, without prior written consent of **BROKER**. It is expressly understood that **CARRIER**'s violation of this prohibition shall be deemed a material breach of this contract and shall nullify and vitiate any **CARRIER** limitation of liabilities or damages herein or otherwise. 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**. **CARRIER** shall also be liable to **BROKER** or any third party, including the shipper, customer, consignee or any third-party payor, for any and all liabilities for losses, damages or delays resulting in any way from the actions of the carrier utilized. Upon **BROKER**'s payment to delivering carrier, **CARRIER** shall not be released from any liability to **BROKER** under this **AGREEMENT**. **CARRIER** further agrees that its indemnifications obligations in this **AGREEMENT** shall also apply for breach of this provision. In addition to the indemnity obligation herein, **CARRIER** will be liable for consequential damages for violation of this provision.

13) **INSURANCE.** During the term of this **AGREEMENT**, **CARRIER** shall procure and maintain, at its sole cost and expense, the following minimum insurance coverages with properly licensed and reputable insurance companies.

- a) **Commercial Automobile Liability Insurance** covering all vehicles utilized by the **CARRIER** with the minimum combined single limit for bodily injury, death and property damage of \$1 million per occurrence (or additional coverage

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as necessary pursuant to the Confirmation Sheet or 49 CFR Part 387) covering all vehicles used by **CARRIER** in performing the services set forth in this **AGREEMENT**.

- b) **Motor Truck Cargo Legal Liability Insurance** in an amount equal to the full value of the property to be transferred by **CARRIER** under this **AGREEMENT**, but in no event less than \$100,000 per occurrence. Such cargo liability policy must include coverage for unattended vehicles and shall have no other exclusions or restrictions of any type that would foreseeably preclude coverage related to any cargo loss, damage, or delay claim. In no event shall a rejection of any claim by the **CARRIER**'s insurance alleviate the **CARRIER**'s responsibility for full liability of loss. If **CARRIER** is transporting temperature-controlled loads, this insurance must contain an endorsement extending coverage to cargo loss or damage occurring due to malfunction of the temperature control equipment.
- c) Statutory **Workers' Compensation Insurance** as required by applicable state law. If **CARRIER** is not required to maintain such insurance and elects not to purchase such coverage, it shall execute the Workers' Compensation Insurance Addendum, attached hereto. If **CARRIER** is self-insured, a certificate of the state of domicile must be furnished by such state agency directly to **BROKER**.
- d) Any other insurance or surety bonding as agreed upon by **CARRIER** and **BROKER** from time to time to meet special insurance requirements of **BROKER**'s customers or as may be required under the laws, ordinances, and regulations of any governmental authority. At all times during the terms of this **AGREEMENT**, **CARRIER** shall comply with the financial responsibility requirements of federal, state, and provincial departments and agencies through which it is regulated and authorized to operate.
- e) Prior to performing services under this **AGREEMENT**, **CARRIER** shall furnish to **BROKER** written certificates obtained from **CARRIER**'s insurance provider showing that the insurance coverages required in this **AGREEMENT** have been procured, are being properly maintained, stating the expiration date, and specifying that written notice of cancellation or modification of the policy shall be given to **BROKER** at least thirty (30) days prior to such cancellation or modification. Regardless of such requirement, **CARRIER** shall also send notification to **BROKER** upon the cancellation or modification of any insurance coverage. Upon request, **CARRIER** shall provide **BROKER** with copies of all applicable insurance policies. **CARRIER**'s cargo and liability insurance shall comply with DOT requirements in all respects. **BROKER** reserves the right to determine its acceptable qualifications for the insurance company utilized by the **CARRIER** and may accept or reject the insurance company provided by the **CARRIER** at its sole discretion. The policy limits of an insurance policy shall not act to decrease the amount for which the **CARRIER** is ultimately liable in any claim or action.

14) **INDEMNIFICATION.** To the maximum extent provided by law, **CARRIER** shall defend, indemnify and hold **BROKER** and its shipper and receiver customers harmless from any and all liability and/or claims arising from **CARRIER**'s breach of this **AGREEMENT**, for loss or damage to any property in the possession and/or control of **CARRIER** arising from the transportation and services provided by **CARRIER** under this **AGREEMENT**, and for any and all liability and/or claims for personal injury or death or property damage arising out of the acts or omissions of **CARRIER** or its employees, agents, or contractors in providing transportation and services hereunder. **CARRIER**'s obligation shall include liability for payment of any and all costs and/or fees incurred by **BROKER** in the adjustment or defense of any claim for cargo loss or damage and/or claim for personal injury or death or property damage arising out of transportation operations and services under this **AGREEMENT**. **CARRIER** agrees that its obligation to defend, indemnify and hold harmless the **BROKER** and its shipper and receiver customers from and against any and all claims and liabilities resulting from or arising out of transportation operations and services under this **AGREEMENT** shall survive any termination of this **AGREEMENT**.

15) **LIABILITY FOR CARGO CLAIMS.** **CARRIER** shall maintain the sole and exclusive care, custody, and control of all shipments from the time the shipment is delivered to **CARRIER** for transportation until delivery to the consignee accompanied by the appropriate delivery receipt as specified in this **AGREEMENT**. **CARRIER** assumes the liability of a common carrier (i.e. Carmack Amendment liability under 49 U.S.C. §14706) for any loss, delay, damage to or destruction of any and all shipments while under **CARRIER**'s care, custody, and control. **CARRIER** will process cargo claims in accordance with 49 CFR Part 370. **CARRIER**'s liability under this **AGREEMENT** for any cargo claims shall be the full value of the property, meaning its replacement cost as established by trade sell or other invoice documentation, plus any mitigation costs that may be incurred by **BROKER** or its customer.

16) **SALVAGE CLAIMS.** **CARRIER** shall waive any and all right of salvage or resale of any of a 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 a customer's damaged and overage goods shipped by **CARRIER**. **CARRIER** shall not under any circumstance, without **BROKER**'s prior written consent, allow a 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 the customer or **BROKER** salvages goods, **CARRIER** shall receive a credit for the actual salvage value of such goods.

17) **NO LIENS.** CARRIER shall have no right to assert any lien on or against any property transported under this AGREEMENT.

18) **NON-SOLICITATION COVENANTS.** CARRIER and BROKER agree that BROKER, at great expense and effort, has developed a broad customer base of shippers, receivers, and vendors that is essential to the successful operations of the BROKER. CARRIER and BROKER agree that disclosure of the identity of one or more of BROKER's said customers to CARRIER constitutes valuable consideration. During the term of this AGREEMENT and for a period of one (1) year from its termination, CARRIER shall not, directly or indirectly, solicit or do business of a transportation or warehousing nature with any of BROKER's customers who are serviced by CARRIER as a result of this AGREEMENT unless otherwise agreed to by BROKER in writing. Solicitation prohibited under this AGREEMENT means participation in any conduct, whether direct or indirect, the purpose of which involves transportation and/or handling of property by CARRIER for which CARRIER does, or did in the past, provide such services for that customer under arrangements first made or procured by BROKER. Solicitation includes conduct initiated or induced by CARRIER, or accepted by CARRIER upon inducement by BROKER's customer. If CARRIER should perform services of a transportation or warehousing nature for compensation for any BROKER customer without prior documented authorization from BROKER during the applicable time period in violation of this AGREEMENT, CARRIER shall pay to BROKER within ten (10) days of each such violation an amount equal to twenty-five percent (25%) of all revenues invoiced by CARRIER to the solicited customer, together with any and all costs of collection, including reasonable attorney fees, incurred by BROKER in enforcing this provision. BROKER shall identify its customers to CARRIER as each first load from each customer is tendered to CARRIER. CARRIER's acceptance of the load will acknowledge that this new customer is a BROKER customer.

19) **CONFIDENTIALITY.** CARRIER shall limit disclosure of information regarding this AGREEMENT, including CARRIER's rates and charges, only to CARRIER's agents, employees, and subcontractors directly involved in its execution and performance and those parties internally who have a need to know of this AGREEMENT. Throughout the term of this AGREEMENT and for three (3) years thereafter, CARRIER specifically agrees to keep confidential all of BROKER's and its customers' technical and business information which CARRIER has received or may receive as a result of this AGREEMENT, and the Rate Confirmation Sheets, and the performance thereof, and not to reveal or to divulge such information to third parties or to use or publish such information in any manner whatsoever, without obtaining BROKER's prior written consent; provided, however, that CARRIER shall not be bound to keep confidential any such information (i) which was known to CARRIER prior to the date of the applicable Rate Confirmation Sheets from sources other than BROKER or its customers (ii) which is, or becomes, available to the public without fault on CARRIER's part, or (iii) which is disclosed to CARRIER by a party not related, directly or indirectly, to BROKER or its customers, and such party has a rightful claim to such information. CARRIER shall only use BROKER's and its customer's technical and business information to provide the transportation and related services required under this AGREEMENT and the Rate Confirmation Sheets.

20) **RESOLUTION OF DISPUTES.** The parties desire that the provisions of this AGREEMENT will have precedence over any federal or state provisions governing or dealing with the specific provisions of this AGREEMENT. The parties agree that pursuant to 49 U.S.C. § 14101(b)(1) they expressly waive only those rights and remedies under the Interstate Commerce Commission Termination Act and Interstate Commerce Act as amended, and regulations promulgated thereunder, including Part B of Subtitle IV Interstate Transportation, 49 U.S.C. § 13101, et seq., (the "Acts") that conflict with the provisions of this Agreement. No Party shall challenge any provision of this AGREEMENT on the ground that any such provision or provisions violates the waived rights and remedies under the Acts. To the extent not governed by applicable federal law, the laws of the State of Arizona will govern the validity, construction, and performance of this Agreement. All controversies, claims, suits, actions, or proceedings arising hereunder shall be adjudicated in the state and federal courts located in Maricopa County, Arizona and the parties expressly waive any objection thereto on the basis of personal jurisdiction or venue.

21) **ENTIRE CONTRACT.** The provisions contained in this AGREEMENT properly express and memorialize the complete understanding and agreement between the parties, including those contained in all prior agreements, both verbal or written, and there are no other agreements or understandings between the parties, express or implied, except as set forth herein.

22) **LOGO/TRADEMARK.** CARRIER shall not use the name, logo, trademarks or trade names of BROKER in publicity releases, promotional material, customer lists, advertising, marketing or business generating efforts, whether written or oral, without obtaining BROKER's prior written consent, which consent shall be given at BROKER's sole discretion.

23) **CAPTIONS.** The descriptive heading of the sections and subsections of this AGREEMENT are for convenience only and do not constitute a part of this AGREEMENT nor do they affect this AGREEMENT's construction or interpretation.

24) **AMENDMENTS.** This AGREEMENT may not be modified or amended except by a subsequent written amendment signed by both parties. The AGREEMENT may not be modified by "course of performance," "course of dealing," "usage of trade" or in any other manner than as described.

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25) **WAIVERS**. No provision of this **AGREEMENT** or any Confirmation Sheet shall be waived by any party unless such waiver is in writing and executed by an authorized representative of the party against whom such waiver is sought to be enforced. Waiver by either party of any failure to comply with any provision of this **AGREEMENT** by the other party shall not be construed as or constitute a continuing waiver of such provision of a waiver of any other breach of or failure to comply with any other provision of this **AGREEMENT**.

26) **ASSIGNABILITY**. **CARRIER** is expressly prohibited from assigning any of their rights or delegating any of their obligations under this **AGREEMENT** to any third parties (such as sub-haulers, sub-brokers and any other form of substituted person or entity), unless the express written consent to such assignment or delegation is first obtained from the other party. Any assignment of this **AGREEMENT** or any Rate Confirmation Sheets, in whole or in part, by **CARRIER** without the prior written consent of **BROKER** shall be void and of no effect. **BROKER**, in its sole discretion, may assign this Agreement to a parent, subsidiary, or affiliate. Affiliate is defined as a party controlling, controlled by, or under common control with **BROKER**.

27) **ELECTRONIC AND FAX COMMUNICATIONS**. During the term of this **AGREEMENT**, the parties anticipate that they will exchange materials and information in electronic form (collectively "Electronic Materials") either through the other party's websites, e-mail other electronic means (collectively "Electronic Connections") and via fax. **AGREEMENTBROKER** and its affiliates take reasonable steps to protect Electronic Materials resident on its networks, stored in its electronic media, or available on its websites, and take reasonable steps to prevent harm arising from Electronic Connections. Due to the nature of Electronic Connections and the Internet, **BROKER** and its affiliates do not provide, and expressly disclaim, any warranty (i) that Electronic Materials received by the **CARRIER** will be free of computer viruses or (ii) that Electronic Connections with the **CARRIER** will be free from harmful effects. It is the **CARRIER's** responsibility (i) to take reasonable steps to protect Electronic Materials resident on its networks, stored in its electronic media, or available on its websites, (ii) to take reasonable steps to prevent harm arising from Electronic Connections, and (iii) to perform any anti-virus scanning, data backup, security, and other precautions reasonably necessary to safeguard against computer viruses, worms, and other intrusive or damaging code (collectively "Computer Viruses") and other threats posed by Electronic Materials and Electronic Connections. Under no circumstances will **BROKER** or its affiliates be responsible for, and **CARRIER** hereby waives and releases **BROKER** and its affiliates from, any liability for any loss or damage caused by Computer Viruses, the **CARRIER's** receipt of Electronic Materials from **BROKER** or its affiliates or Electronic Connections between **BROKER** and its affiliates and the **CARRIER**.

28) **BINDING EFFECT**. This **AGREEMENT** shall be binding upon **CARRIER** and **CARRIER's** successors and assigns, and shall inure to the benefit of the parties and their representatives, successors and authorized assigns.

29) **SEVERABILITY**. If any provision of this **AGREEMENT** is determined by a court of competent jurisdiction to be contrary to the laws or regulations of any applicable jurisdiction, then such invalid provision shall be severed from this **AGREEMENT**; however, such determination shall not affect the validity of any other provisions of this **AGREEMENT**.

30) **AUTHORITY OF REPRESENTATIVES TO BIND PARTIES**. It is agreed and warranted by the parties that the persons signing this **AGREEMENT** respectively for **CARRIER** and **BROKER** are authorized to do so. No further proof of authorization is or shall be required.

31) **COUNTERPARTS**. This **AGREEMENT** may be executed in any number of identical counterparts and each such executed counterpart shall be deemed a duplicate original hereof.

32) **INTERPRETATION**. The language used in all parts of this **AGREEMENT** shall be construed, in all cases, according to its fair and plain meaning. The parties acknowledge that each party and its counsel have had an opportunity to review this **AGREEMENT**, and that any rule of construction to the effect that ambiguities are to be resolved against the drafter of the agreement shall not be employed in the interpretation of this **AGREEMENT**.

33) **NOTICES**. Any notices required or permitted to be given under this **AGREEMENT** shall be in writing and shall be addressed to the other party at the contact information listed below, as updated from time to time.

IN WITNESS WHEREOF the parties have executed this **AGREEMENT** on the date written at the top of this **AGREEMENT**.