

# MODEL MOTOR CARRIER/BROKER AGREEMENT

This Agreement between \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of \_\_\_\_\_ (“Carrier”), and \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of Upland Logistics INC (“Broker”)(or collectively “Parties”) is entered into for the purpose of specifying the terms and conditions under which Broker will engage Carrier to perform motor contract carriage and related services for Shippers (the “Services”), and under which Carrier will render those Services.

## TERMS AND CONDITIONS

### 1. LEGAL STATUS OF PARTIES AND SERVICES

1.1 Representations. Carrier represents and warrants that it is duly registered with FMCSA as a for-hire motor carrier of property in interstate and foreign commerce pursuant to 49 U.S.C. § 13902. Broker represents and warrants that it is duly registered with FMCSA as a property transportation broker pursuant to 49 U.S.C. § 13904. If such registration is no longer required in the future, Broker represents and warrants that it meets the definition of “broker” found at 49 U.S.C. §13102(2) and shall function accordingly. The Parties shall render all Services in a competent and professional manner, and in accordance with all applicable federal and state laws and regulations of the jurisdiction(s) within which the Services are rendered.

1.2 Contract Carriage. All Services performed by Carrier pursuant to this Agreement shall be as a motor carrier of property in United States interstate or foreign commerce and shall be rendered as contract carriage within the meaning of 49 U.S.C. §§ 13102(4)(B) and 14101(b). In connection with contract carriage Services, Broker and Carrier hereby expressly waive all provisions of Chapters 137 and 147 and any other provisions of Subtitle IV, Part B of Title 49, United States Code, to the extent that such provisions are in conflict with express provisions of this Agreement. The Parties do not, however, waive the provisions of that subtitle relating to registration, insurance, or safety fitness.

1.3 Relationship of parties. The relationship of Carrier to Broker is that of an independent contractor. By this Agreement the Parties do not intend to provide for division of profits between Carrier, Broker and/or any Shipper, or to clothe Broker and/or any Shipper with joint control over Carrier’s performance of the Services, or otherwise to create a de facto or de jure joint venture, joint enterprise or partnership between Carrier, Broker and/or any Shipper. Under no circumstances shall employees or agents of Carrier be deemed employees or agents of Broker or Shipper, nor shall Broker or Shipper be liable for any wages, fees, payroll taxes, assessments or other expenses relating to employees or agents of Carrier.

## 2. SCOPE OF SERVICES

2.1. Territories and Commodities. The geographic and commodity scope of the Services shall be as set forth, and amended from time to time,

[Option 1] in Attachment 1, attached to this Agreement.

[Option 2] as follows:

Under no circumstances, however, shall Carrier render Services beyond the scope of its FMCSA registration (as it may be amended from time to time) unless the Services are exempt from legal requirements for such registration or authority.

2.2 Carrier shall not subcontract any Services to third parties without giving prior notice to Broker and obtaining Broker's consent. Any such subcontracting, with or without notice and consent, shall not affect Carrier's responsibilities or liabilities to Broker under this Agreement. As between Broker and Carrier, all costs of rendering the Services (including compensation of subcontractors as well as payment of all taxes or other governmental assessments imposed on Carrier) shall be borne solely and exclusively by Carrier. The prohibition against subcontracting does not apply to a person leased to the Carrier pursuant to the provisions of 49 C.F.R. Part 376. (© American Trucking Associations, Inc. All rights reserved. Reproduction and redistribution in a manner inconsistent with the General Instructions for the Completion of the ATA Model Motor Carrier/Broker Agreement is prohibited.)

2.3 Broker shall not ask or in any way pressure Carrier to violate any federal, state or other applicable law with regards to the performance of the Services. By arranging for transportation of shipments by Carrier pursuant to this Agreement, Broker represents and warrants that it has conducted due diligence with regard to the creditworthiness of Shippers tendering such shipments, and that it vouches for same.

2.4 Non-Exclusivity of Services. Neither Party intends to give the other Party any exclusive rights or privileges under this Agreement. Except as otherwise stated in this Agreement, either party may contract with or otherwise provide service to any other motor carrier, broker, other intermediary or shipper.

## 3. RATES, CHARGES, TERMS AND CONDITIONS FOR SERVICES

3.1 Rates and Charges. Carrier shall be entitled to the rates and charges set forth in Attachment 2 as its sole and exclusive compensation for rendering the Services (including any Services subcontracted to third parties or performed in a capacity other than as a motor carrier, with or without the notices and consents required under Sections 2.2). Any rates or charges intended to apply only to particular Shippers shall be separately set forth in Customer-Specific Addenda to Attachment 2.

No shipment tendered by Broker to Carrier within the geographic and commodity scope of this Agreement shall be subject to rates or charges set forth in any tariff or rate schedule maintained by Carrier, unless those rates and charges are specifically set forth in Attachment 2. Rates and charges set forth in Attachment 2 on the effective date of this Agreement shall not be changed except by following

the amendment procedures set forth in Article 12.3. Attachment 2 also sets forth miscellaneous terms, conditions and business rules for specific Services (if applicable).

3.2 Invoicing and Payment. Invoicing procedures [including electronic invoicing], payment due dates and any late payment penalties shall be as specifically set forth in Attachment 2. Except as otherwise provided in Customer-Specific Addenda with respect to particular Shippers, the Parties agree as follows:

- (a) it shall be Carrier's responsibility to invoice Broker for the freight charges owing to Carrier.
- (b) it shall be Broker's responsibility to invoice Shippers for Carrier's freight charges and Broker's commissions or other fees, and to take necessary measures to collect such invoices.
- (c) it shall be Broker's responsibility to remit freight charges owed to Carrier within the time periods set forth in Attachment 2, regardless of any late payment or non-payment to Broker by Shippers.
- (d) Carrier will have no responsibility for collection or payment of Broker's commissions or other fees.

3.3 Pricing Disputes. If Carrier alleges underpayment of applicable freight rates and charges by Broker, or if Broker alleges overcharges, overcollection or receipt of duplicate payments by Carrier, notice of such claims must be given in writing by the aggrieved Party to the other Party within one hundred eighty (180) days after delivery or the first attempted delivery of the involved shipment(s) by Carrier. The Party receiving any such claim shall process it in accordance with the provisions codified at 49 C.F.R. Part 378 as of the Effective Date of this Agreement. Any civil action or arbitration proceeding with respect to such a claim shall be filed within eighteen (18) months after delivery or the first attempted delivery of the involved shipment(s) by Carrier.

3.4 Customs and Security Requirements.

*(a) Carrier shall be responsible for ensuring compliance with those customs and security laws that are applicable to motor carriers transporting goods either domestically in the United States or for import or export from or to the United States.*

*(b) Broker shall be responsible for ensuring that the shipper and consignee of any freight tendered to motor carrier under this Agreement have complied with all customs and security laws of the United States and other country, as applicable, with respect to motor carrier transportation of goods either domestically in the United States or for import or export from or to the United States, including the preparation of all documents and the payment of all applicable fees required by any government agency.]*

#### 4. FREIGHT DOCUMENTATION

The terms of this Agreement and any addendums thereto shall apply to all shipments tendered to motor carrier within the scope of Article 2.1, Attachment 1 and shall take precedence over any

conflicting terms contained in any bill of lading, receipt or other transportation document (Shipment Document) issued for all shipments tendered by a Shipper within the scope of the Services. Except as otherwise permitted by Customer-Specific Addenda to Attachment 2, the Shipment Document shall show Broker as the bill-to party for freight charges, shall not show Broker as the shipper, consignee or motor carrier, and shall not show any entity other than Carrier as the carrier.

## 5. INSURANCE; BROKER BOND

5.1 Broker shall at all times maintain a surety bond/trust in an amount no less than 75,000\$. The form and terms of the bond shall be consistent with the provisions of FMCSA Form BMC 34 as that form was in effect on January 1, 2005.

5.2 Carrier shall maintain cargo liability insurance in the amount of \$ 100,000 per occurrence.

5.3 Upon either Party's request, the non-requesting Party shall furnish the requesting Party with certificates from the insurers or trustee evidencing such coverages and providing for not less than thirty (30) days' advance written notice of cancellation or non-renewal of coverage or trust, or shall cause the insurers or trustee to name the requesting Party as an additional insured or beneficiary for the sole purpose of receiving such 30-day advance written notices of cancellation or non-renewal.

## 6. CARGO LIABILITY

6.1. Generally. Except as otherwise provided herein, the Carrier's liability for cargo loss or damage shall be governed by the provisions of 49 U.S.C. § 14706. Claims for loss of or damage to cargo shall be filed and processed in accordance with 49 C.F.R. Part 370 as in effect on the Effective Date of this Agreement, except that if the claim is filed by Broker it must be accompanied by proof (such as a signed power of attorney, a written assignment of the claim, or other evidence satisfactory to Carrier) that the involved Shipper has granted Broker full authority to resolve the claim. Claims must be filed, and any litigation on such claims must be commenced, within the minimum time frames (9 months and two years, respectively) as permitted in 49 U.S.C. § 14706(e).

6.2 Sealed Trailers. If Shipper loads and seals a trailer or semitrailer tendered to Carrier without a representative of Carrier inspecting and counting the cargo during the loading process, Carrier shall be absolved of any liability for shortages or damage upon delivery of the trailer or semitrailer with the seal intact. Carrier shall be similarly absolved if the seal was broken only at the direction and under the supervision of an agent for the Bureau of Customs and Border Protection or other governmental authority and Carrier applies another seal to the trailer under the observation of said Customs and Border Protection agent and notes the new seal number on the uniform receipt or other shipping document.

6.3 Shipper's Load and Count. If a Shipper preloads trailers or semitrailers and a representative of Carrier is not present to verify cargo count or stowage adequacy during the loading process, the load shall be considered as moving on a "shipper's load and count" basis regardless of whether it is sealed or whether "SL&C" or a similar notation appears on the Uniform Receipt.

## 7. REFUSED FREIGHT; SALVAGE, AND WAREHOUSE LIABILITY

The provisions of the most current version of the National Motor Freight Classification's Uniform Straight Bill of Lading governing refused freight, salvage and Carrier's status and liability as a Warehouse shall be incorporated by reference into this Agreement.

## 8. INDEMNIFICATION; NO CONSEQUENTIAL DAMAGES

8.1 Hold Harmless. Except as otherwise specifically provided in Article 6 with regard to cargo loss and damage liability, Broker and Carrier shall indemnify each other (including their respective employees and agents) and hold each other harmless from and against all claims, liabilities, losses, damages, fines, penalties, payments, costs and expenses (including reasonable legal fees) to the extent proximately caused by or resulting from the negligence or intentional acts of the indemnifying Party, including its employees or agents, in connection with the performance of this Agreements or the Services. The previous sentence, however, shall not apply to the extent that such claims, liabilities, losses, damages, fines, penalties, payments, costs or expenses are - 4 - proximately caused by or result from the negligence or intentional acts of the indemnified Party, including its employees or agents.

8.2 Consequential Damages Excluded. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER AND CARRIER SHALL NOT BE LIABLE TO SHIPPER OR INDEMNIFY BROKER FOR ANY LIABILITY TO SHIPPER FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES (SUCH AS, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF MARKET, LOSS OF CUSTOMER GOODWILL, ASSEMBLY LINE SHUTDOWNS, OR PUNITIVE OR EXEMPLARY DAMAGES), REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES SOUNDS IN CONTRACT, TORT, BREACH OF WARRANTY, CONSUMER FRAUD, OR OTHERWISE.

Broker shall indemnify Carrier (including the Carrier's employees and agents) and hold Carrier harmless from and against all claims by a Shipper for any indirect or consequential damages, or liabilities, losses, damages, fines, penalties, payments, costs and expenses (including reasonable legal fees) arising from such claims.

## 9. FORCE MAJEURE; LEGAL RESTRAINT

If either Broker or Carrier is prevented from or delayed in performing any of its obligations under this Agreement by reason of statutes, regulations or orders of a governmental entity (including actions taken by a court or by law enforcement officials), or because of war, terrorism, acts of God, labor disturbances, civil unrest, or any cause beyond the reasonable control of such Party, that Party shall not be liable to the other Party for damages by reason of any delay or suspension of performance resulting from such legal restraints or force majeure. The Party invoking this Article, however, shall furnish the other Party with Subsequent Notice of same no more than two Business Days after the onset of the conditions delaying or preventing performance.

## 10. DISPUTE RESOLUTION

Having entered into this Agreement in good faith, the Parties agree that the terms and procedures set forth in Attachment 3 hereto shall be controlling if a dispute arises with regard to its application or interpretation.

## 11. CONFIDENTIALITY; BACK-SOLICITATION

Except to the extent required by law, neither Party shall disclose to third parties (other than to freight bill auditors, prospective capital providers, and outside professionals, if such parties agree to similar confidentiality terms) either the terms of this Agreement or any confidential or proprietary information either Party learns about the other in the course of performing Services under this Agreement, including but not limited to software, business methods, customer lists, or the rates, valuation, origin, destination and consignee identity for any shipment within the scope of the Services. Except upon a material breach of this Agreement by Broker, Carrier shall refrain from directly soliciting freight business during the term of this Agreement, or for \_\_\_ months thereafter, from any entity which (i) was not solicited by Carrier prior to the Effective Date and (ii) actually tenders at least \_\_\_ shipments to Carrier during the term of this Agreement.

## 12. MISCELLANEOUS

12.1. Governing Law. Except to the extent that the application of such laws is prohibited by the provisions of 49 U.S.C. § 14501(c) or other law, this Agreement shall be interpreted in accordance with the laws of the State of Illinois, disregarding any choice-of-law principle under which that State would look to the laws of another jurisdiction.

12.2. Notices. Any Notice required or permitted under this Agreement shall be deemed sufficient if sent by prepaid first-class mail, by a nationally recognized overnight courier, or by facsimile transmission, if such Notice is sent to the address or fax number of, and marked to the attention of the individual noted in the signatory provision of this Agreement or to any other individual designated by the Party. Notices shall be considered to have been received by the addressee Party on the third Business Day after mailing, on the first Business Day after deposit with an overnight courier, or on the day a facsimile is transmitted if the sending machine produces written confirmation of a successful transmission. Each Party may change its designated contact, or update the contact information for such individuals, by Prior Notice to the other Party in accordance with this Article 14, and without formal amendment of this Agreement under Article 12.3.

12.3. Entire Agreement; Amendments. This Agreement represents the entire agreement and understanding of the Parties with regard to its subject matter. No prior understandings or agreements of the Parties, whether written or oral, nor any documents not specifically incorporated into this Agreement, nor any course of conduct of the Parties before or after the Effective Date of this Agreement, shall have the effect of modifying the Parties' rights and obligations under this Agreement in any way. Except as provided in Article 12.2 with regard to changes in Designated Contact information and listings, no amendment to this Agreement shall be valid unless it is set forth in writing, is marked with a unique amendment number, specifies the articles, sections and/or Attachments being amended, specifies an effective date for the amendments, and is signed by Designated Contacts of both Parties.

12.4. Severability. To the extent that any provision of this Agreement may be held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall become ineffective as to all matters within the jurisdiction of that court. The court's holding, however, shall not be treated as affecting the validity or enforceability of any other provision of this Agreement, nor as affecting the validity or enforceability of any part of this Agreement in other jurisdictions.

12.5. Waiver. Neither the failure of a Party to exercise any right, power or privilege under this Agreement, nor its delay in any such exercise, shall operate as a waiver of that right, power or privilege. No such waiver shall be binding on either Party unless it is in writing and signed by a Designated Contact of the Party against which the waiver is asserted. No such waiver on one occasion shall preclude subsequent full enforcement of a Party's rights, powers and privileges under this Agreement or at law or in equity.

12.6 Successors and Assigns. This Agreement shall be binding on, and shall inure to the benefit of, both Parties as well as their respective successors and permitted assigns. Assignment of this Agreement by either Party requires Prior Notice to and Consent by the other Party. Neither Party shall unreasonably withhold Consent for an assignment by the other Party to an Affiliate of the assigning Party, provided that the Affiliate first agrees in writing to comply with all terms and conditions of this Agreement.

12.7 Term of Agreement. This Agreement shall remain in full force and effect for a one-year period following the Effective Date, and thereafter shall be renewed automatically on a year-to-year basis, unless and until terminated as set forth in the next sentence. Either Party has the right to terminate this Agreement at any time, with or without cause, by providing Prior Notice to the other Party at least thirty (30) calendar days in advance of the proposed termination date (unless a shorter notice period is specified in particular circumstances by particular provisions of this Agreement as amended from time to time). If any shipment within the scope of the Services remains in transit on the effective date of a termination of this Agreement, both Parties' rights and duties under this Agreement shall remain in effect with respect to such shipment until it is delivered and all related invoices and claims are satisfied.

12.8 Counterparts. This Agreement may be executed in one or more counterparts, any and all of which shall constitute one and the same instrument.

12.9 Captions. The captions and headings set forth in this Agreement are for convenience only. They shall not be considered a part of this Agreement, nor affect in any way the meaning of its terms and conditions.

WHEREFORE, the Parties have executed this instrument as their legally binding agreement as of the Effective Date first written above.

\_\_\_\_\_ (BROKER)

By its Designated Contact:

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

\_\_\_\_\_ (CARRIER)

By its Designated Contact:

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_