

## Broker – Carrier Agreement

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**THIS BROKER–CARRIER AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by an between METRO EXPRESS TRANSPORTATION SERVICES, INC., a Missouri corporation and licensed property transportation broker holding authority conferred by the Federal Motor Carrier Safety Administration (“FMCSA”) in Docket No. MC–272436 (hereinafter referred to as “Broker”) and \_\_\_\_\_, a licensed motor carrier conducting interstate property transportation services under operating authority conferred by the FMCSA in Docket No. MC–\_\_\_\_\_ (hereafter referred to as “Carrier”). Carrier and Broker are sometimes referred to individually as a “Party” or collectively as the “Parties.”

**WHEREAS**, Broker is a federally licensed property transportation broker providing broker services as defined under 49 U.S.C. §13102(2) (“broker services”), is authorized by its customer(s) (hereafter referred to as “Shipper(s)”) to negotiate rates and arrange for transportation of shipments in intrastate and interstate commerce and has a need for duly licensed and qualified motor carriers to perform transportation services for Shipper–customers of Broker; and

**WHEREAS**, Carrier is a motor carrier, conducting for–hire interstate and intrastate transportation services as defined under 49 U.S.C. §13102(19) and similar state laws, were applicable, in compliance with all applicable federal and state laws and regulations; and

**WHEREAS**, Broker and Carrier wish to enter into this Agreement for the purpose of having Broker arrange for and offer certain shipments to Carrier, and for Carrier to accept and transport said shipments for Broker’s Shippers, pursuant to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing premises and the representations, warranties, promises and obligations set forth herein, and other good and valuable consideration, the sufficiency of which each Party hereby acknowledges to the other, the Parties hereby agree as follows:

### ***Legal Status and Relationship of Parties & Services***

- 1.1 **Broker Services:** Subject to the provisions of this Agreement, Broker hereby agrees to offer and tender, from time to time and on a non–exclusive basis, shipments of Shippers’ freight, goods, products and/or commodities (hereafter at times referred to individually as a “shipment” or collectively as the “shipments”) to Carrier for transportation and the provisions of other Transportation Services, as defined herein, by Carrier as a common carrier in interstate and/or intrastate commerce, provided, however, that Broker shall not be obligated to tender any specific number of shipments to Carrier under this Agreement. As used herein, the term “non–exclusive” shall, in addition to the meaning set forth in Section 1.6, below, mean that Broker has no obligation to make any offer to Carrier and may, at its sole option and discretion, engage other carriers to perform Transportation Services for Broker’s Shippers. The term “Transportation Services,” as used herein, means loading, transportation, unloading, temporary storage, shuttle services, accessorial services, and other services performed by Carrier, which are necessary to meet the Shipper’s reasonable requirements as presented by Broker when offering shipment(s) to Carrier under this Agreement and/or under any governing bill of lading issued for a shipment offered under this Agreement, including services defined under 49U.S.C §13102(19).
- 1.2 **Carrier Service:** Carrier agrees to provide Transportation Services for those shipment(s) (or series of shipments) arranged for and tendered to it by Broker, which Carrier accepts, pursuant to Load Confirmations in substantially the form as set forth in Exhibit 1 hereto, under terms agreed to by Broker and Carrier as set forth in this Agreement and in such Load Confirmations, in compliance with all applicable Federal, State and local laws and regulations governing its activities hereunder and, at all times, to perform its services hereunder in a good and workman like manner in accordance with the highest standards of the industry and to use its best efforts in doing so. Offers of shipments to and acceptance of shipments by Carrier are subject to the availability of Carrier’s equipment and drivers. If, after agreeing to provide Transportation Services for any shipment ten–

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dered by Broker hereunder, Carrier is unable to provide and perform same pursuant to the terms, condition and provisions of this Agreement and of the Load Confirmation for such shipment, Carrier shall notify Broker immediately; and, whether Carrier has so notified Broker or not, Broker may, in its sole discretion, tender the shipment to another carrier for performance of the requested Transportation Services. Carrier will not re-broker, assign nor interline the shipments tendered by Broker hereunder, without the prior written consent of Broker. If Carrier breaches this provision, transportation charges shall be payable directly to the delivering carrier, in lieu of payment to Carrier, and Carrier hereby waives its right to receipt of same; provided however, that Carrier shall not be released from any liability to Broker under this agreement.

- 1.3 **Warranties & Representations:** Carrier warrants and represents, as material terms of this Agreement, (a) that it is a duly authorized, registered and licensed for-hire motor carrier of property in interstate and intrastate commerce pursuant to 49 U.S.C. §13902 and all applicable State Laws, (b) that it has and shall maintain a "satisfactory" U.S DOT safety rating, (c) that it maintains insurance coverages in the amounts required by applicable laws and regulations and that it has provided and shall continue to provide Broker with Certificates of Insurance or other proof of insurance for all coverages required, (d) that the drivers it utilizes to perform the Transportation Services hereunder are qualified, properly licensed, trained and experienced drivers, and (e) that all the equipment utilized by Carrier to perform Transportation Services hereunder will be in good working order and inspected on a regular basis and certified and/or licensed as required by law. Broker warrants and represents that it is a duly registered and authorized property broker pursuant to 49 U.S.C. §13904. The Parties mutually agree that they 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. Further, each of the Parties warrants and represents that it will immediately notify the other Party of any change which renders any of its foregoing representations or warranties no longer valid or true.
- 1.4 **Bills of Lading:** Carrier shall issue a bill of lading for each shipment it accepts hereunder, in compliance with 49 U.S.C. §80101 et seq., and 49 C.F.R. Part 373 (and any amendments thereto). Carrier shall become fully responsible and liable for the such shipments when it takes and/or receives possession thereof, regardless of whether a bill of lading is actually issued or not, and said Carrier responsibility and/or liability for each shipment shall continue thereafter until delivery of each such shipment to the consignee and the consignee signs the bill of lading or delivery receipt. In the event of any inconsistency between the terms of a Bill of Lading (including, but not limited to, payment terms) and any of the terms, conditions and/or provisions of this Agreement, the terms, conditions and provisions of this Agreement shall supersede and govern. Failure to issue a bill of lading or sign a bill of lading acknowledging receipt of a shipment by Carrier shall not affect the liability of Carrier.
- 1.5 **Relationship of Parties:** The relationship of the Parties is that of independent contractors. Carrier shall have exclusive control and direction of the equipment, supplies and personnel used in and/or providing service hereunder. 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.
- 1.6 **Non-Exclusive Agreement:** Broker and Carrier acknowledge and agree that this Agreement does not bind either Party to provide exclusive services to other Party. Carrier may choose to accept or reject any particular shipment offered by Broker and Broker may utilize other carriers to provide Transportation Services for Broker's shipper-customers. Either Party may enter into similar agreements with other carriers, brokers or freight forwarders.

### ***Rates, Charges & Compensation***

- 2.1 **Rates & Charges:** Carrier shall be entitled to the rates, charges and compensation set forth in Load Confirmation(s) as its sole and exclusive compensation for providing Transportation Services hereunder; and Carrier's acceptance of a shipment offered pursuant to this Agreement shall be deemed as the acceptance by the Carrier of the rates and terms offered by Broker. No shipment tendered by Broker to Carrier 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 the Load Confirmation.

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2.2 **Invoicing & Payment:** The Parties hereby agree to the following:

a. It shall be Carrier's responsibility to invoice Broker for the transportation charges owing to Carrier, using Epay Manager, within thirty (30) days of delivery of the goods shipped. Broker's responsibility to invoice Shippers/customers shall be contingent upon Carrier's properly invoicing Broker and providing the supporting documentation required herein, using Epay Manager. Electronic invoicing and documentation submission procedures are detailed in the Accounts Payable Procedures Addendum.

b. It shall be Broker's responsibility to invoice Shippers for Carrier's transportation charges and Broker's commission or other fees and to use its best efforts to collect payment of Carrier's said transportation charges on Carrier's behalf. However, Broker shall not be directly liable to Carrier for transportation charges due and owing to Carrier by Shippers when Shippers fail or refuse to remit payment to Broker. Broker will be directly liable to Carrier for transportation charges that are remitted by Shippers to Broker; and payment by Shipper, consignor or other designated party to Broker of any payment which includes Carrier's charges, shall relieve such Shipper, consignee or other party of any liability to Carrier for non-payment of such portion of the Carrier's charges.

c. Carrier shall not be responsible for collection or payment of Broker's commission or other fees.

d. Broker shall pay Carrier its compensation earned hereunder, using Epay Manager, within (30) days of Broker's receipt of payment from the Shipper, consignee or other third party, subject, however, to Broker's right of deduction and offset (i) for any amount of freight charges due Broker from its Shippers which is unpaid because of Carrier's fault, (ii) for freight loss, damage or delay claims as provided in Sections 4.1, 4.2, 4.3, 4.4 and 4.5, below, and (iii) for any other amounts due Broker from Carrier as otherwise provided herein.

e. Until Broker receives payment from Shipper, consignee, or any other party, Carrier's sole recourse for payment of Transportation Services rendered by Carrier under this Agreement shall be against the Shipper, consignee, or beneficial owner of the shipment; but, after Broker receives payment from the Shipper, consignor, or any other party, Carrier's sole recourse for the payment of any compensation due hereunder which has been received or collected by Broker shall be against Broker.

f. Carrier shall provide Broker written notice of any assignment, factoring, or other transfer of its right to receive payments arising under this Agreement thirty (30) days prior to such assignment, factoring or other transfer taking legal effect. Such written notice shall include the name and address of assignee/transferee, date, date assignment is to begin, and terms of the assignment, and shall be considered delivered upon receipt of such written notice by Broker. Carrier shall be allowed to have only one assignment, factoring or transfer legally effective at any one point in time, and no multiple assignments, factoring or transfers by the Carrier shall be permitted. Carrier shall indemnify Broker against and hold Broker harmless from any and all lawsuits, claims, actions, damages (including reasonable attorney's fees, obligations, liabilities and liens) arising or imposed in connection with the assignment or transfer of any account or right arising thereunder where the Carrier has not complied with the notification of assignment requirements of this section. Carrier also releases and waives any right, claim or action against Broker for amounts due and owing under this Agreement where Carrier has not complied with the notice requirements of this section.

2.3 **Documentation Required:** As a condition precedent to Broker's duty to invoice and collect Carrier's transportation charges, Carrier must submit to Broker proof of delivery (including copies of signed Bills of Lading, delivery receipts or tickets or other agreed upon documents) and freight bills or other invoices itemizing the Transportation Services performed by Carrier and its charges therefore. Documentation must be submitted electronically using Epay Manager. Electronic invoicing and documentation submission procedures are detailed in the Accounts Payable Procedures Addendum.

### ***Insurance & Broker's Bond***

3.1 Broker shall at all times maintain a surety bond or trust fund agreement in the amount required under applicable federal statutes and regulations. The form and terms of the bond shall be consistent with the provisions of FMCSA Form BMC 34 and the form and terms of the trust fund agreement shall be consistent with the provisions of FMCSA Form BMC-35.

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- 3.2 Carrier shall maintain, at least, all insurance coverages required by law and applicable regulations for the protection of the general public and such cargo liability insurance as is required of motor common carriers of property by law and applicable regulations.
- 3.3 In addition to other specific requirements set forth elsewhere in the Agreement, upon either Party's request, the non-requesting Party shall furnish the requesting Party with certificates from the insurers, surety or trustee, as the case may be, evidencing coverages and providing for not less than thirty (30) days' advance written notice of cancellation or non-renewal or shall cause the insurers, surety or trustee to name the requesting Party as an additional named insured or beneficiary for the sole purpose of receiving such 30-day advance written notices of cancellation or non-renewal.

### ***Carrier Liability; Cargo Loss and Damage Claims***

- 4.1 **Generally:** Except as provided herein, the Carrier's liability for cargo loss or damage shall be governed by the provisions of 49 U.S.C. §14706 (the Carmack Amendment to the Interstate Commerce Act). It is understood and agreed that Carrier shall be liable for the actual fair market value of any goods lost or damaged while in the Carrier's possession and no limitations of liability set forth in Carrier's tariff shall apply. Exclusions in Carrier's insurance coverage shall not exonerate Carrier of its liability for cargo loss or damage or delay in delivery.
- 4.2 **Claims & Legal Proceedings:** Claims for loss or damage to goods transported by Carrier and/or for delay in delivery shall be filed and processed in accordance with 49 C.F.R. Part 370, as in effect on the Effective Date of this Agreement. The Shipper or Broker, on Shipper's behalf, may file such claim(s) with Carrier. Claims must be filed in writing and the timing and filing of such claims and the institution of litigation concerning such claims shall be in accordance with the minimum time limitations permitted under 49 U.S.C. §14706(e) (that is, not less than (a) nine (9) months for the filing of a claim and (b) two (2) years from the date Carrier gives written notice that it has disallowed any part of the claim for the bringing of a civil action for such claim).
- 4.3 **Broker Not Liable:** Broker shall have no liability for any loss or damage to any goods transported by Carrier on shipments tendered by Broker. Carrier shall be solely and exclusively responsible for loss or damage to, or delay in delivery of, goods and shipments transported by Carrier under this Agreement. If, despite the fact that Broker is not liable for cargo loss, damage or delay claims, it pays such claim(s) to the Shipper, consignee, or other third party, Carrier shall then be responsible to Broker for such claim(s), as though Broker (i) were the Shipper or (ii) had received an assignment of such claim(s) from the Shipper.
- 4.4 **Deduction for Claim:** Broker shall have the right, but not the obligation to deduct from any amount due Carrier hereunder the amount of any and all outstanding and unsettled claims against Carrier for delay, loss or damage; and said amount shall be held in escrow by Broker and applied to the corresponding underlying claim filed by Broker's Shipper or refunded to Carrier, as appropriate, depending upon the ultimate resolution of the claim.
- 4.5 **Disposition of Damaged Freight:** In the event of an accident or any other incident resulting in the loss, contamination or spillage of or damage to a shipment handled under this Agreement, Carrier shall immediately contact Broker's designated representative by telephone for instructions regarding disposition of damaged or contaminated shipments, clean up of any spills and/or replacement of lost shipments. Carrier specifically agrees not to dispose of damaged or contaminated shipments nor to allow any third party, including insurance companies, to assume custody thereof, except such temporary custody as may be necessary, until Broker's instructions are received.

### ***Indemnification & Damages***

- 5.1 **Indemnification:** Carrier shall indemnify, defend and hold harmless Broker from and against any and all claims, demands or causes of action asserted against Broker by Shippers or third parties which in any way arise from or relate to Carrier's breach of its representations or warranties or its performance or failure to perform hereunder, including, but not limited to, claims for loss or damage to goods transported by Carrier, claims for delay in delivery, claims for conversion, claims for personal injuries or property damages, or any other claims arising from Carrier's performance or failure to perform services hereunder, and for all related court costs and reasonable attorney's and expert witness fees.

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- 5.2 **Consequential Damages Excluded:** EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF MARKET, LOSS OF CUSTOMER GOODWILL, OR PUNITIVE OR EXEMPLARY DAMAGES, REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES SOUNDS IN CONTRACT, TORT, BREACH OF WARRANTY, CONSUMER FRAUD, OR OTHERWISE.
- 5.3 **Customer Satisfaction Guarantee:** If a Carrier delivers a shipment after the agreed to delivery time, the Carrier agrees that it will not invoice Metro Express for the freight charges associated with the shipment. A shipment is considered a late, when it arrives at the consignee after the agreed to delivery time. A shipment is considered on time, when it arrives at the consignee at or before the agreed to delivery time and is ready to unload. The only acceptable reasons for a Carrier not to meet its service commitment are as follows: closure or changes in customer shipping and/or receiving requirements, the closing of public highways, acts of terrorism, strikes or work stoppages, weather conditions which make operations unsafe or impractical, Acts of God or war. If the Carrier is prevented or delayed in performing its obligations under this Agreement for any of these reasons, the Carrier shall not be liable for damages by reason of any delay or suspension of performance resulting from such legal restraints or force majeure. The Carrier agrees to furnish the Broker with subsequent notice no more than two (2) business days after the onset of the conditions delaying or preventing performance. Furthermore, under such circumstance, Broker may, in its discretion, tender any and all freight through any means of transportation other than the Carrier subject to this Agreement, while such a Force Majeure condition, as described herein, is pending.

### ***Term & Termination of Agreement***

- 6.1 **Term:** This Agreement shall be effective on the date of this Agreement first referenced above (the "Effective Date"), shall continue in full force and effect for a period of one (1) year and shall automatically renew on a year-to-year basis, unless either Party provides the other Party with thirty (30) days advanced written notice of termination.
- 6.2 **Termination:** Either Party may terminate this Agreement at any time, for any reason, effective upon the terminating Party providing thirty (30) days advanced written notice of termination. Upon termination, the terms and conditions set forth herein shall survive termination and shall be binding and enforceable by and between the Parties.

### ***Confidentiality & Solicitation***

- 7.1 **Confidentiality:** Carrier acknowledges that, during the course of rendering services for Broker and its Shippers and customers, it will have access to and gain confidential information and information which is proprietary to Broker, including, but not limited to, Shipper and customer lists pricing lists and business methods, practices and procedures, and that said confidential and/or proprietary information constitutes trade secrets, the release of which to unauthorized persons would be extremely detrimental to Broker. As a consequence, Carrier hereby agrees and acknowledges that it owes a duty to Broker not to disclose and agrees that, during or after the term of this Agreement, without the prior written consent of the Broker, it will not communicate, publish or disclose to any person anywhere, or use, any confidential or proprietary information for any purpose other than carrying out its obligations as contemplated by this Agreement. The Parties acknowledge and agree that Broker's remedy at law for a breach or threatened breach of any of the provisions of this section would be inadequate; and, in recognition of that fact, in the event of any such breach or threatened breach, it is agreed that, in addition to its remedy at law and any other remedies which it may have, Broker shall be entitled to equitable relief, including but not limited to, injunctive relief and its costs and expenses incurred in protecting its rights under this paragraph, including court costs and reasonable attorney's and expert witness fees.
- 7.2 **Non-Solicitation of Customers:** Unless otherwise agreed in writing, Carrier shall not knowingly solicit freight shipments for a period of two (2) years following termination of this Agreement, for any reason, from any shipper, consignor, consignee, or other customer of Broker, when such shipments of shipper/customers were first tendered to Carrier by Broker. In the event of a breach of this provision, Broker shall be entitled, for a period of two (2) years following delivery of the last shipment transported by Carrier under this Agreement, to a commission of twenty five (25%) of the gross transportation revenue received by Carrier for the transportation of said freight, as liquidated damages. In addition, Broker may seek injunctive relief. In the event

Broker is successful in enforcing its rights under this section, Carrier shall be liable for all costs and expenses incurred by Broker, including, but not limited to, reasonable attorney's fees and court costs.

### ***Miscellaneous Provisions***

- 8.1 **Governing Law, Venue & Jurisdiction and Costs:** Except for issues regulated under federal law, such as the collection of transportation charges and the Carrier's liability for cargo loss, damage or delay, the Parties agree that all other provisions of this Agreement shall be governed and interpreted in accordance with the laws of Missouri. The Parties further agree that all legal proceedings by either Party seeking to enforce rights and/or obligations under this Agreement or otherwise relating to the interpretation or enforcement of this Agreement shall be commenced and litigated in the Circuit Court of St. Louis County, Missouri, or in the United States District Court for the Eastern District of Missouri, Central Division (St. Louis); and the Parties hereby submit themselves to the jurisdiction of the aforesaid courts. In the event either Party to this Agreement initiates legal proceedings to enforce rights under this Agreement, the prevailing Party shall be entitled to its court costs, reasonable attorney's and expert witness fees and other expenses incurred in asserting and defending such rights.
- 8.2 **Entire Agreement & Severability:** This Agreement and its attachments constitute the entire Agreement between the Parties and may not be altered, amended or varied without the written consent of the both Parties. No prior understandings or agreements of the Parties, whether oral or written, nor any documents not specifically incorporated into this Agreement, nor any course of conduct of the Parties before the Effective Date of this Agreement, shall have the effect of modifying the Parties' rights and obligations under this Agreement in any way. 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.
- 8.3 **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 an authorized representative 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.
- 8.4 **Successors & Assigns:** This Agreement shall be binding on and shall inure to the benefit of both Parties as well as their respective successors and assigns. Assignment of this Agreement by either Party requires prior written notice to and consent of the other Party.
- 8.5 **Notices:** Unless the Parties notify each other in writing of a change of address, any and all notices required or permitted to be given under this Agreement shall be in writing and shall be sent to the addresses and/or telecopier (fax) numbers listed under the Parties' signatures below.
- 8.6 **Signatures & Counterparts:** This Agreement may be executed in one or more counterparts, any and all of which shall constitute one and the same instrument. The Parties may sign this Agreement and exchange copies of same by facsimile, which shall be binding and enforceable between the Parties.

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IN WITNESS WHEREOF the Parties have executed this Agreement as their legally binding Agreement as of the effective date first written above.

**BROKER:**

Company Name

Metro Express Transportation Services

Signature

Print Name

Debra Bronaugh

Title

Senior Logistics Coordinator

Address

875 Fee Fee Road

Phone Number

St. Louis, MO 63043

FAX Number

314 - 993 - 8707

**CARRIER:**

Company Name

Signature

Print Name

Title

Address

Phone Number

FAX Number

Date