**BROKER/CARRIER AGREEMENT**

THIS Broker/Carrier AGREEMENT (this “Agreement”) is entered into as of the date set forth on the signature page hereto (the “Effective Date”) by and between CrossCountry Courier Inc., DBA CrossCountry Freight Solutions, a North Dakota Corporation (“Broker”) and and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Carrier”). Broker and Carrier are each a “Party” and together the “Parties”.

**Recitals**

WHEREAS, Carrier is motor carrier duly authorized to provide interstate motor carrier services pursuant to authority issued by the Federal Motor Carrier Safety Administration (“FMCSA”) (copies of said authorities together with Carrier's Declaration Page and/or Endorsements of Insurance are attached hereto and made a part hereof);

WHEREAS, Broker is engaged in the business of arranging transportation services as a duly authorized property broker pursuant to MC-209657; and

WHEREAS, Broker desires to use the services of Carrier to transport property for or on behalf of Broker’s customers and Carrier desires to provide transportation services to Broker’s customers as provided herein.

**Agreement**

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. **Services; Carrier Status.** Broker agrees to offer for shipment on a non-exclusive basis and Carrier agrees to transport by motor vehicle from and to such points between which service may be required on a non-exclusive basis, such shipments as Broker may tender, subject to the availability of suitable equipment. Broker may tender to Carrier shipments on an as-needed basis. Carrier represents that it is a qualified motor carrier as that term is defined under 49 U.S.C. § 13102 and is authorized to perform transportation service pursuant to DOT No.\_\_\_\_\_\_\_\_\_\_\_. Carrier represents that it maintains a “satisfactory” safety rating pursuant to applicable United States Department of Transportation (“USDOT”) and FMCSA regulation, and that there are no legal or contractual obstacles existing or pending which will affect its ability to provide transportation services hereunder. Carrier shall notify Broker immediately in the event of any suspension, modification, cancellation or termination of its authority to operate as a motor carrier. Carrier shall further immediately notify Broker if it or a substantial portion of its assets are sold, if there is a change in control of ownership or management of the Carrier. A “conditional” rating may warrant further review by Broker and require approval of an action plan submitted by Carrier prior to Carrier providing any transportation services under this Agreement.

1. **Equipment and Personnel.** Carrier shall, at its sole cost and expense, provide tractors, trailers and other vehicles and equipment (the “Equipment”) necessary to provide safe and efficient transportation services as provided for under this Agreement. Carrier shall, at all times during the term of this Agreement, maintain the Equipment in good repair, mechanical condition and appearance. If any Equipment is not available due to breakdown, Carrier will promptly repair such Equipment or provide similar equipment at no additional cost to the Broker or its customers. If Carrier fails to deliver a shipment and cannot service the replacement shipment within a reasonable period of time, as determined in Broker’s sole discretion, then Broker may obtain alternative transportation and Carrier will be liable for the costs thereof. Carrier shall be further solely responsible for and, at its sole cost and expense, employ fully qualified and licensed drivers to operate Carrier’s Equipment and provide the transportation services hereunder. Carrier further agrees that it will maintain adequate internal procedures to screen and evaluate its drivers through pre-employment screenings, driver information resources, the USDOT Safety Management System and any other resource related to driver fitness, and ensure that its drivers are otherwise qualified under all Legal Requirements.
2. **Cargo Liability.**
   1. Carrier agrees to meet any promised pick-up and delivery schedule and deadlines regardless of whether established verbally or as set forth in Bills of Lading or other shipping documents tendered to Carrier at the time of shipment pick up (“Load Confirmation”). Load Confirmation will not be accepted if pick-up and delivery schedules cannot be made in compliance with then-applicable hours-of-service regulations. If Carrier has means of receiving Load Confirmations, either through fax, email, or some other mutually agreed upon means of electronic communication (“Electronic Communication”), then those terms and/or directions in the verbal agreement and/or the Electronic Communication (including, but not limited to, shipping directions and rate of payment) shall control.
   2. The parties agree that all liability standards and burdens of proof are herein governed by the Interstate Commerce Termination Act, 49 U.S.C. Section 14706 (the Carmack Amendment), or its successors. Carrier agrees it shall be liable for the full, actual value of the goods transported. For purposes of this section “full value” shall mean the retail price or invoice value, whichever is greater, of any cargo tendered for transport hereunder. No limitation on liability shall apply, whether contained in Carrier’s tariffs, classifications or otherwise.
   3. All claims for loss, damage, or delay of or injury to freight shall be processed and adjusted in accordance with 49 C.F.R. §370.1 et seq., as the same may be amended or renumbered from time to time, unless stated otherwise in this Agreement. Carrier shall not dispose of any damaged goods transported hereunder without the prior written consent of Broker. Carrier shall call Broker for instructions immediately if damage occurs and take reasonable steps to protect the integrity of the freight. Each Party shall promptly notify the other Party of any claim that is asserted against the disclosing Party by anyone arising out of the disclosing Party’s performance of this Agreement. Broker, on its behalf or on behalf of its customer, may file with Carrier, administer and cooperate with Carrier in the resolution of any loss and damage claims. Claims for loss or damage shall be filed in writing within one year after delivery of the property; or, in the case of the failure to make delivery, then within one year after a reasonable time for delivery has elapsed. Carrier shall pay, decline or make settlement offer in writing on all cargo loss or damage claims within ninety (90) days of receipt of the claim. Failure of Carrier to pay, decline or offer settlement within this 90-day period shall be deemed admission by Carrier of full liability for the amount claimed and a material breach of this Agreement. In no event shall the declination, denial or exclusion of coverage by Carrier’s insurer absolve or otherwise impact Carrier’s liability hereunder. Any lawsuits relative to loss or damage to cargo shall be instituted against the Carrier within two (2) years from the day that the Carrier has disallowed the claim or any part or parts thereof specified in the notice.
3. **Indemnification.** Carrier shall indemnify, defend, and hold Broker, its customers, and their respective affiliates, officers, managers, directors, owners, employees and any similar persons or entities, harmless from and against any and all losses, harm, injuries, damages, claims, costs (including reasonable attorneys’ fees), expenses, and liabilities that are arising out of any third-party claim alleging:
   * 1. breach or non-fulfillment of any representation, warranty, or covenant in this Agreement by Carrier, its employees, or agents;
     2. any negligent or more culpable act or omission of Carrier, its employees, drivers, owner/operators, or agents (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement;
     3. any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Carrier, its employees, drivers, owner/operators or agents (including, without limitation, any reckless or willful misconduct); or
     4. any failure by Carrier, its employees, drivers, owner/operators, or agents to comply with any Legal Requirements.

This Section 4 of this Agreement shall survive the termination of this Agreement and shall not be limited by any limitation contained in any insurance policy or the insurance limits described herein.

1. **Insurance.** Carrier, at its sole cost and expense, will maintain and keep in force during the term of this Agreement, the following policies of insurance:
   1. “All risk” cargo insurance in an amount for each load that shall be equal to either the value of the cargo transported or $100,000 per load, whichever amount is greater. Carrier shall maintain sole responsibility for confirming the value of each load prior to transport and obtaining any additional insurance or attendant insurance rider, as the case may be. Said policy shall contain a refrigerated goods coverage endorsement, if Carrier transports any such cargo for Broker’s customers, and shall have no exclusions applying to any cargo transported by Carrier on behalf of Broker’s customers. Carrier’s insurance coverage shall be broad form/all-risk cargo insurance and include insurance coverage for wetness, dampness and humidity and without exclusion for unattended or unlocked vehicles.
   2. Automobile Liability Insurance policy with limits not less than $1,000,000 per occurrence and shall provide Broker with a valid insurance certificate, updated as renewal occurs.
   3. Worker’s Compensation and Employer’s Liability Insurance in the amount not less than $1,000,000 per occurrence.
   4. Commercial General Liability Insurance, including blanket contractual coverage, for bodily injury and property damage in the amount of not less than $1,000,000 ($1,000,000) combined single limit per occurrence.
   5. Carrier agrees to procure and maintain any other insurance required by the Department of Transportation or any other governmental agency whose rules and regulations may apply to Carrier’s performance under this Agreement. Carrier shall notify Broker immediately in the event any insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.

The coverages above do not limit Carrier’s liability for personal injury, property damage or any other liability. Carrier will furnish Broker with an endorsement of insurance coverage showing Broker as an additional insured on the coverages provided under paragraphs (a) and (b) above and will require its insurance carrier to give Broker written notice thirty (30) days before the cancellation or reduction in the coverage of all insurance. Where Carrier is required to indemnify Broker pursuant to the provisions this Agreement, the insurance provided by Carrier will be primary and not entitled to contribution from any insurance maintained by Broker. Carrier will provide Broker with enforceable insurance certificates or executed endorsements of all these coverages within thirty (30) days of Carrier’s execution of this Agreement.

1. **Bill of Lading.** Carrier shall issue a bill of lading in compliance with 49 U.S.C. §80101 et seq., 49 C.F.R. §373.101 (and any amendments thereto), for the property it receives for transportation under this Agreement (each a “Bill of Lading”). To the extent any of the terms of a Bill of Lading are inconsistent with the terms hereof, the terms of this Agreement shall prevail. If such Bill of Lading or Load Confirmation indicates that shipment covered therein is “C.O.D.”, then Carrier shall collect from the consignee at the time of delivery the dollar amount indicated on the Bill of Lading and remit such sum to Broker. If Carrier fails to collect such sum from consignee, then Carrier shall remain responsible for remitting such sum to Broker. If Carrier permits a shipper to prepare the Bill of Lading, Carrier warrants that it shall ensure that the Bill of Lading properly names Carrier as the “carrier” on the load prior to signing it, and shall strike through and correct any erroneous designation of any other person as “carrier” (including Broker) on the Bill of Lading. **In the event that a Bill of Lading issued in connection with cargo hauled under the terms of this Agreement names Broker as the “carrier” in contravention of this Section 6, Broker’s status as property broker shall not change and Carrier agrees that Carrier shall be deemed to be the “carrier of record” on the Bill of Lading upon acceptance of a tendered load.** 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. Any terms and conditions written or printed on the Bill of Lading shall have no effect against Broker, unless specifically agreed to by Broker in this Agreement or in a separate signed writing apart from the Bill of Lading. The Bill of Lading issued or executed by Carrier shall be prima facie evidence of receipt of the shipment in good order and condition by Carrier unless otherwise noted on the face of said document. Carrier shall submit a copy of the Bill of Lading to Broker evidencing delivery of the shipment unless otherwise instructed by Broker, in which case Carrier shall retain custody of the Bill of Lading and provide it to Broker upon request. If Carrier fails to maintain and provide the Bill of Lading, Carrier assumes all risk of loss resulting from the failure to prove good delivery. Any provisions in any such Bill of Lading purporting to make the underlying transportation subject to the terms of any of Carrier's tariffs, schedules, service guides, classification or other similar documents is not enforceable and deemed null and void.
2. **Rates and Charges.** Compensation shall be paid to Carrier solely and exclusively by Broker on all shipments tendered to Carrier under this Agreement. Carrier shall be compensated by Broker based on the following:
   1. Carrier shall be compensated for the transportation services it provides hereunder based upon mutually acceptable rates as set forth in Appendix A hereto and any applicable accessorial charges as set forth in Appendix B, or as otherwise confirmed in writing or by facsimile or e-mail transmission accepted by representatives of each Party (the “Rate Confirmation”). Unless Carrier objects to the contents of the Rate Confirmation within twenty-four (24) hours of receipt, Carrier shall be deemed to have assented to the Rate Confirmation, which shall be binding. Each Rate Confirmation shall be incorporated into and considered to be a part of this Agreement. Carrier agrees that it shall seek payment of all freight invoices exclusively from Broker, and under no circumstances shall Carrier seek payment from any customer, shipper, consignee or any other third party in relation to the transportation services rendered hereunder, and all such customers, shippers, and consignees or any other third parties shall be deemed third-party beneficiaries to this Agreement for the purposes of prohibiting Carrier and any other persons from contacting or seeking to collect said charges from any person or entity except Broker. Carrier will not make any demand, nor contact or communicate with the Broker’s customer, including any shipper or the consignee of any shipment, to directly or indirectly seek payment of Carrier’s charges under this Agreement. Accordingly, Carrier hereby transfers and assigns to Broker all right, title and interest in and to any claims Carrier may have relating to the payment of freight charges for transportation services rendered under this Agreement against any customer, shipper, consignee or third party pursuant to applicable transportation documents, including the Bill of Lading. Carrier hereby agrees to fully cooperate with Broker and execute any further documents necessary to effectuate said assignment.
   2. All shipments moving under this Agreement shall be subject to the terms and conditions of this Agreement. The Parties agree that this Agreement exclusively controls the relationship of the Parties and the Parties agree this Agreement exclusively controls and supersedes any other shipping documents including, but not limited to, Bills of Lading, tariffs, rates, rules, service circulars, rule circulars, and/or classifications of Carrier and/or those of any classification.
   3. In its sole discretion, Broker may withhold compensation owed to Carrier arising out of this Agreement, or any other agreement between Broker and Carrier, to satisfy advances made by Broker to, or on behalf of Carrier, or to satisfy any debt or obligation owed by Carrier to Broker. Broker’s right to withhold compensation shall arise only if the underlying claim or debt has not been acknowledged in writing by Carrier within thirty (30) days of presentation by Broker, or the claim or debt has neither been paid nor denied for a valid reason. Broker’s withholding of compensation shall not allow or permit Carrier to seek payment from Broker’s customers, or any other third party, and Carrier agrees that it shall not, under any circumstances, claim, demand, or pursue payment from Broker’s customers, or any other third parties for transportation services provided hereunder.
3. **Payment of Freight Charges.**
   1. Upon delivery of each shipment, Carrier shall submit its invoice together with a copy of the proof of delivery (to be certified upon request) to Broker as an agent for the customer. Broker in turn will invoice the customer for the Carrier’s freight charges and its brokered services. Carrier shall not submit any invoices directly to any customer for Carrier’s freight charges. Customers shall be billed exclusively by Broker for the Carrier’s freight charges and Broker’s brokered services. To the extent Broker has not advanced Carrier’s freight charges to it, Broker will receive unpaid freight charges in trust and transmit payment to Carrier upon receipt.
   2. Broker shall pay Carrier for services rendered in an amount equal to the rates and accessorial charges agreed to on Broker’s Load Confirmation upon receipt of payment from the customer or other responsible party. Carrier must submit proof of delivery with invoices to Broker as agent for the customer. Payment terms shall be thirty (30) days from receipt, without offset.
4. **Compliance, Qualifications and Obligations.**
   1. Carrier will promptly receive, transport and deliver safely and without delay all shipments which it accepts under this Agreement. All shipments accepted by Carrier under this Agreement shall remain the property of Broker’s customer and ownership of said property shall not pass to Carrier or any other third party under any circumstances. Carrier shall not claim any lien in any property transported hereunder and will not encumber, lease, transfer, or otherwise dispose of any part of such property without Broker’s approval. Any delay in shipment will be immediately reported to Broker.
   2. Carrier agrees to comply with all applicable federal, state, and local laws, rules, orders, and regulations of the respective regulatory bodies having jurisdiction over the subject matter of this Agreement (collectively, “Legal Requirements”). Carrier shall pay any and all fees, taxes, assessments, fines, penalties, and other amounts payable in respect of Carrier’s compliance (or non-compliance) with Legal Requirements directly or indirectly related to the services provided under this Agreement. If a shipment is covered under any law or regulation governing the transportation of food, including the Food, Drug and Cosmetic Act (21 U.S.C. § 341, et seq.), Food Safety Modernization Act (21 U.S.C. § 2201, et seq.), the Sanitary Food Transportation Act (49 U.S.C. § 5701, et seq.), and the FDA’s Final Rule on the Sanitary Transportation of Food for Human and Animal Food (21 C.F.R. § 1.900 et seq.) (collectively, the “Food Safety Laws”), then it shall be the obligation of the Carrier to ensure that the Shipper (as defined herein) specifies the applicable body or bodies of law, statutes and/or regulations on the face of the governing bill of lading for the shipment (“Covered Food Shipment”). For the purposes of this Section 9(b), the term “Shipper” shall mean the person or company from whom the Carrier receives Covered Food Shipment for transport, and as that term is further defined or interpreted under 21 C.F.R. § 1.900 et seq.
   3. Carrier represents and warrants that only Equipment in full compliance with this Agreement and applicable Legal Requirements shall enter the origins and destinations to receive and/or deliver product. Carrier’s vehicles shall be compatible with the loading and unloading equipment at the origins and destinations.
   4. Carrier agrees to utilize only drivers qualified pursuant to applicable federal, state and local laws and regulations including, specifically, 49 C.F.R. § 391.2, et. seq. Carrier further agrees that it will maintain adequate internal procedures to evaluate its drivers through pre-employment screenings, driver information resource, drug clearinghouse, the USDOT Safety Management System and any other official resources related to driver fitness, and ensure that its drivers are otherwise qualified under applicable laws and regulations throughout the duration of this Agreement. Carrier further shall ensure that all such drivers and other personnel shall have been properly instructed in the characteristics and safe handling methods associated with the products to be loaded, transported, and unloaded Without limiting the foregoing, Carrier shall likewise retain sole responsibility for any and all management, governing, discipline, direction and control, as applicable, of its personnel, owner/operators, and Equipment within all applicable Legal Requirements to ensure the safe operation of the Equipment and transport of shipments hereunder. Carrier and Broker agree that safe and legal operation of the Carrier and its drivers shall completely, and without question, govern and supersede any service requests, demands, preferences, instructions, and information from Broker or Broker's customer with respect to any shipment at any time.
   5. Carrier represents and warrants that it shall be solely responsible for all hazardous material requirements, including, but not limited to, all (i) licenses and endorsements; (ii) employee and owner-operator training, licenses, and endorsements; (iii) vehicle and placarding requirements; (iv) safety requirements in loading, unloading, and transporting; (v) security matters; and (vi) other Legal Requirements concerning hazardous materials.
   6. Carrier shall be liable for and agrees to indemnify Broker and its customers from and against, and shall compensate and reimburse Broker and Broker’s customers for, any and all fees, taxes, assessments, fines, penalties, and other amounts payable in respect of Carrier’s compliance (or non-compliance) with Legal Requirements, including, without limitation, directly or indirectly related to the services provided under this Agreement.
5. **Independent Contractor.**
   1. Nothing in this Agreement is intended, nor shall be construed, to constitute either Party as a partner, joint venturer, agent, or representative of the other. Carrier shall be an independent contractor retaining complete control over and complete responsibility for its own operations and employees. Carrier shall exercise exclusive control, supervision, and direction over (i) the manner in which transportation services are provided, (ii) the persons engaged in providing transportation services, and (iii) the Equipment selected and used to provide transportation. Broker may provide routing information; however, these instructions are for informational purposes only and are not mandated. Nothing in this Agreement shall be construed to grant either Party any right or authority to assume or create any obligation on behalf, or in the name of the other, to accept summons or legal process for the other, or to bind the other in any manner whatsoever.
6. **Assignment of Freight.** Carrier specifically agrees that it shall be the Party solely responsible for providing the transportation services and operating the Equipment necessary to transport property under this Agreement and that it shall not, *in any manner, sub-contract, broker, re-broker, double broker, interline, or tender to any third party for transportation any freight tendered to Carrier pursuant to this Agreement.* If Carrier breaches the foregoing provision, Broker shall have the right of paying the monies Broker owes to Carrier directly to the delivering carrier, in lieu of payment to Carrier. Upon Broker’s payment to the delivering carrier, Carrier shall not be released from any liability to Broker under this Agreement. Notwithstanding anything herein to the contrary, Carrier will be liable for indirect or consequential damages (such as, but not limited to, loss of profits, loss of market, loss of customer goodwill, down time, assembly line or job-site shutdowns, or for any punitive or exemplary damages) for violation of this Section 11. In the event that Carrier shall employ any owner-operator or other person for the performance of all or any portion of the services required hereunder to be performed by Carrier, Carrier shall be and remain liable to Broker under the terms of this Agreement, including, without limitation, liability for loss, damage, or delay of any shipments, regardless of whether such loss, damage, or delay occurred while such shipment was in the possession of Carrier or such owner-operator or other person. Carrier shall be solely and exclusively responsible to pay any charges of any owner-operator or other person and agrees to indemnify and defend Broker and its customers from and against any claims made by any such owner-operator or other person in connection with its provision of services required to be performed by Carrier hereunder. Notwithstanding anything herein to the contrary, the prohibition against sub-contracting does not apply to a person leased to Carrier pursuant to the provisions of 49 C.F.R. Part 376.
7. **Term and Termination.** The term of this Agreement shall be one (1) year from the Effective Date and thereafter it shall automatically be renewed for successive one (1) year periods, unless terminated upon thirty (30) days’ prior written notice, with or without cause, by either Party at any time, including the initial term; provided that in the event Carrier violates any material provisions of this Agreement, then Broker shall have the right to terminate this Agreement immediately. Broker and Carrier shall have no obligations under this Agreement after the effective date of termination, except for any liability under this Agreement that accrues prior to termination or any obligations that expressly survive termination or expiration of this Agreement and the Parties shall be obligated to complete performance of any work in progress in accordance with the terms of this Agreement.
8. **Non-Solicitation.** During the term of this Agreement and for a period of two (2) years following termination, Carrier shall not, directly or indirectly, solicit traffic from or provide any services to any customer of Broker where (a) the availability of such traffic first became known to Carrier as a result of working with Broker, or (b) where the traffic of the Broker’s customer was hauled by Carrier through Broker. If Carrier breaches this Agreement and “back solicits” or provides other services to Broker’s customer or obtains traffic from such customer in violation of this provision, Broker shall then be entitled to a commission from Carrier of twenty-five percent (25%) of the gross revenue generated by Carrier or any associated third party or entity on the movement of such traffic, plus eighteen percent (18%) interest per annum, plus all reasonable attorneys’ fees and costs incurred by Broker in enforcing this Agreement in general and this paragraph in particular. This paragraph is not intended to affect any traffic arrangements between Carrier and others that predate this Agreement. This Section 13 shall survive the termination of this Agreement. Carrier agrees that if Carrier engages, or causes or permits any other person to engage, in any act in breach of this Section 13, then Broker will be entitled, in addition to all other remedies, damages, and relief available under applicable Legal Requirements, to seek an injunction (without posting bond) prohibiting Carrier (or such other person) from engaging in any such act or specifically enforcing this Agreement.
9. **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, down time, assembly line or job-site shutdowns, or for any punitive or exemplary damages), regardless of whether the claim for such damages sounds in contract, tort, breach of warranty, consumer fraud, under state unfair or deceptive trade practice laws, or otherwise.
10. **Waiver of Provisions.**
    1. Carrier shall not withhold any goods of a customer on account of any dispute as to rates or any alleged failure of Broker to pay charges incurred under this Agreement. Carrier hereby waives and releases all liens that Carrier might otherwise have to any goods of Broker or its customer(s) in the possession or control of Carrier.
    2. Failure of either Party to enforce a breach or waiver of any provision or term of this Agreement shall not be deemed to constitute a waiver of any subsequent failure or breach, and shall not affect or limit the right of either Party to thereafter enforce such a term or a provision.
11. **Scope of Agreement.** This Agreement shall govern any and all shipments tendered to Carrier by Broker (or upon Broker’s instructions), and accepted by Carrier, whether regulated or non-regulated property, in interstate or intrastate transportation. Any rates, charges, classifications, and/or rules in tariffs filed or published by Carrier shall not apply to any such shipment unless they are specifically identified and incorporated herein. As permitted by Title 49 Section 14101(b) of the United States Code, as the same may be amended and/or renumbered from time to time, and except as provided herein, the Parties expressly waive any and all rights or remedies they may have in connection with claiming a rate, charge, or fee that is different from the rate, charge, or fee established in this Agreement.
12. **Force Majeure.** Neither Broker nor Carrier shall be liable for any delay in the performance of its respective obligations under this Agreement resulting from conditions reasonably beyond its control, including, but not limited to, acts of God, acts of government or other civil or military authorities, and acts of terror, war, or riots. Whenever possible, in the event of force majeure, the affected Party shall promptly notify the other Party in writing, stating the reasons for the inability to comply with the provisions of this Agreement, and the expected duration of force majeure.
13. **Confidentiality.** Carrier hereby recognizes and acknowledges that any list of Broker’s customers, employees, and independent contractors as they may exist now or from time to time, are a valuable, special, and unique asset of the business of Broker. Carrier agrees, during and after the term of this Agreement, not to disclose the list of Broker’s customers, employees, or independent contractors or any part thereof to any individual, firm, corporation, association, or other entity (collectively, “Person”) for any reason or purpose whatsoever without Broker’s prior written consent. Carrier also agrees that Carrier will not (whether for its own account or the account of any other Person) use, solicit, employ, or otherwise engage as an employee, independent contractor, or otherwise, any Person who is or was at any time an employee, independent contractor, or agent of Broker, or in any manner induce or attempt to induce any employee, independent contractor, or agent of Broker to terminate his or her employment, engagement, or relationship with Broker, or at any time interfere with Broker’s relationship with any Person, including any Person who was an employee, independent contractor, supplier, agent, or customer at any time of Broker. Carrier also agrees to preserve as “Confidential Matters,” all trade secrets, know-how, and information relating to Broker’s business, forms, processes, developments, sales and promotional systems, proprietary software, source code, system functionality, freight and brokerage rates, amounts received for brokerage services, amounts of freight charges collected, freight volume requirements, other pricing information, and operations, which information may be obtained from tariffs, contracts, freight bills, letters, reports, disclosures, reproductions, books, records, or other contractors, and other sources of any kind resulting from this Agreement. Carrier agrees to regard such Confidential Matters as the sole property of Broker, and shall not publish, disclose, or disseminate the same to others without the written consent of Broker. In the event of any breach or threatened breach by Carrier of the provisions of this Section, Broker shall be entitled to injunctive relief (without posting bond or proving actual damages), including, without limitation, an *ex parte* temporary restraining order, restraining any breach or threatened breach of this Section, including, but not limited to, an injunction restraining Carrier from disclosing, in whole or in part, the list of Broker’s customers, employees, and/or independent contractors, and all other Confidential Matters. Nothing hereunder shall be construed as prohibiting Broker from pursuing any remedies available to Broker at law or in equity for such breach, including the recovery of monetary damages from Carrier. This provision shall survive the termination of this Agreement.
14. **Notices.** All notices and notifications required or permitted by this Agreement shall be in writing (unless permitted elsewhere in this Agreement to be oral) and shall be deemed to have been fully given (unless otherwise specified in this Agreement) (a) upon delivery if delivered in person or by facsimile or e-mail transmission; (b) on the next business day after being deposited with an overnight delivery company with the express charges prepaid; or (c) on the date indicated on the return receipt, or if there is no such receipt, on the third business day after being deposited in the United States mail with first-class postage prepaid; in each event properly addressed to the other party at the address, e-mail address, or fax number set forth on the signature page hereto. Notice of an address, telephone-number, e-mail, or fax-number change shall be given in writing.
15. **Entire Agreement.** This Agreement, together with the Confirmations, contains the entire agreement between the parties and cancels and supersedes any prior agreements between the Parties pertaining to the same subject matter hereof. General principles of federal transportation law apply.
16. **Governing Law; Jurisdiction.** To the extent not preempted by federal law, this Agreement shall be governed by the applicable laws of the State of North Dakota both as to interpretation and performance. THE PARTIES HERETO AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE BROUGHT AND VENUED IN THE STATE AND FEDERAL COURTS LOCATED IN BURLEIGH COUNTY, STATE OF NORTH DAKOTA. THIS CHOICE OF VENUE IS INTENDED BY THE PARTIES TO BE MANDATORY AND NOT PERMISSIVE IN NATURE. ACCORDINGLY, THE PARTIES HERETO FURTHER AGREE AND VOLUNTARILY CONSENT THAT THE STATE AND FEDERAL COURTS LOCATED IN BURLEIGH COUNTY, STATE OF NORTH DAKOTA SHALL HAVE PERSONAL JURISDICTION AND VENUE OF THE PARTIES HERETO. THE PARTIES HEREBY WAIVE ANY RIGHT TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR SIMILAR DOCTRINE OR OBJECT TO VENUE OR JURISDICTION OF THE COURTS RESIDING IN BURLEIGH COUNTY, STATE OF NORTH DAKOTA.
17. **No Strict Construction**: Each Party has participated fully in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.
18. **Miscellaneous.** This Agreement may not be amended or modified except by a writing signed by the Parties hereto. Headings are for reference only and do not affect the meaning of any paragraph. This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and their respective successors. Carrier shall not assign this Agreement or any rights or obligation hereunder to anyone without the prior written consent of Broker. Broker may assign this Agreement at any time. Carrier shall promptly notify Broker in the event there is a change in control of ownership of Carrier. In the event any provision of this Agreement violates any Legal Requirement, such provision shall be amended to conform thereto without invalidating the remainder of the Agreement. This Agreement may be executed in one or more counterparts and each such counterpart shall, for all purposes, be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of \_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_, 20\_\_\_\_\_.

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| Title: | |  | |  | Title: | |  | |
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|  |  |  | DOT# |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Address: | 1929 Hancock Dr |  | Address: |  |
|  | Bismarck, ND 58501 |  |  |  |
| Telephone: | 701-222-8498 |  | Telephone: |  |
| Fax: | 701-323-9873 |  | Fax: |  |
| E-mail: |  |  | E-mail: |  |

The undersigned hereby absolutely, unconditionally, and jointly and severally guarantees the performance of Carrier’s obligations under this Agreement. Such guaranty shall be deemed irrevocable and shall terminate only upon the full and complete satisfaction of all of Carrier’s obligations under this Agreement.

Signature

Name (typed or printed)

APPENDIX A

RATES

**$ PER MILE PLUS FUEL SURCHARGE**

Please sign the payment agreement below,

Name (Typed/Printed) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPENDIX B

ACCESSORIAL CHARGES