

BROKER CARRIER AGREEMENT

This **BROKER CARRIER AGREEMENT** (“Agreement”) is made and entered into as of the date(s) set forth below by and between SV TRUCKING SERVICES, LLC, an Ohio limited liability company (“Broker”) and _____, an _____ (“Carrier”).

WITNESSETH

WHEREAS, Broker is a Registered Property Broker, Lic. No. MC-521460 and Carrier is a Registered Motor Carrier, Permit Certificate No. DOT _____.

WHEREAS, Broker is engaged in the performance of freight brokerage services and desires to arrange for Carrier to provide transportation services on behalf of Broker and/or Broker’s customers;

WHEREAS, Carrier is ready, willing and able to provide such services to Broker and/or Broker’s customers;

NOW THEREFORE, in consideration of good and valuable consideration had and received, Broker and Carrier, on the basis of and in reliance upon the representations, obligations, and agreements set forth in this Agreement, and upon the terms and subject to the conditions contained herein, hereby agree as follows:

1. Term. The term of this Agreement shall be one (1) year commencing on the ____ day of _____, 2010 (the “Effective Date”). Unless otherwise terminated by the Parties hereto, this Agreement shall automatically renew from year to year for one (1) year terms.

This Agreement shall terminate automatically without notice upon the dissolution either party, insolvency of either party, or the voluntary or involuntary filing of a petition in bankruptcy on the part of either party, or an assignment for the benefit of creditors of either party.

Either party may terminate this Agreement for its own convenience at any time by giving written notice to the other party at least thirty (30) days prior to the intended date of termination.

In the event of termination of this Agreement, for any reason, the Parties shall be obligated to complete the performance of all work in progress in accordance with the terms of this Agreement.

2. Services. Broker agrees to arrange for shipment of freight (“Freight”) on behalf of and as an agent for its customers and Carrier agrees to transport the Freight by motor vehicle from and to such locations which transportation services may be required as indicated on the Rate Confirmation Sheets signed by the Parties throughout the term of this Agreement. A copy of a

Rate Confirmation Sheet is attached hereto as Exhibit "A." Carrier shall transport the Freight under this Agreement without delay, and all occurrences which would be probable or certain to cause delay shall be immediately communicated to Broker by Carrier. Carrier shall notify Broker on a daily basis of the location of the Freight.

3. **Rates and Payment.** Broker shall transmit to Carrier, in writing, a Rate Confirmation Sheet for each individual shipment of Freight that Carrier transports for Broker. The Rate Confirmation Sheet shall set forth the agreed upon charges associated with each individual shipment. Broker shall pay Carrier within thirty (30) days of receipt of proof of delivery, provided Carrier is not in default under the terms of this Agreement.

4. **Independent Contractor Relationship.** The Parties agree that the relationship established by this Agreement is that of an independent contractor and under no circumstances shall such relationship be deemed to be that of an employer/employee, joint venture, partnership or otherwise.

5. **Non-Exclusive Engagement of Carrier.** This Agreement does not grant Carrier an exclusive right to perform the transportation related services for Broker and/or Broker's customers.

6. **Carrier's Representations and Warranties.** Carrier represents and warrants that:

a) Carrier is a Registered Motor Carrier of Property authorized to provide transportation of property under contracts with shippers and receivers and/or brokers of general commodities;

b) Carrier shall transport the Freight under its own operating authority and subject to the terms of this Agreement;

c) Carrier 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 alter Broker's status as a property broker nor Carrier's status as a motor carrier;

d) Carrier shall not re-broker, assign or interline the shipments of Freight without Broker's prior written consent;

e) During the term of this Agreement, Carrier is in, and shall maintain, compliance with all federal, state and local laws relating to the provision of its services, including, but not limited to: training of drivers, transportation of Hazardous Materials, (including the licensing and training of Haz Mat qualified drivers), as defined in 49 C.F.R. § 172.800, § 173, and § 397 et seq. to the extent that any shipments hereunder constitute Hazardous Materials; security regulations; owner/operator lease regulations; loading and securement of freight regulations; implementation and maintenance of driver safety regulations including but not limited to, hiring, controlled substances, and hours of service regulations; sanitation, temperature, and contamination requirements for transporting food, perishable, and other products, qualification and licensing and training of drivers; implementation and maintenance of equipment safety

regulations; maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers; all applicable insurance laws and regulations including but not limited to workers compensation;

f) Carrier shall notify Broker immediately if Carrier's federal Operating Authority is revoked, suspended or rendered inactive for any reason; and/or if it is sold, or if there is a change of ownership, and/or any insurance required hereunder is threatened to be or is terminated, cancelled, suspended or revoked for any reason; and

g) Carrier does not have an "unsatisfactory" safety rating issued by the Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation, and will notify Broker in writing immediately if its safety rating is changed to "unsatisfactory."

7. Equipment. Carrier shall provide the necessary equipment and qualified personnel to transport the Freight. Without the prior written consent of Broker, Carrier shall not use equipment that has been used to transport hazardous wastes, solid or liquid, regardless of whether they meet the definition in 40 C.F.R. Section 261.1 et. seq.

8. Bills of Lading. Carrier shall use a bill of lading in compliance 49 U.S.C. Section 80101 et. seq., 49 C.F.R. Section 373.101 (and any amendments thereto), for the Freight it receives for transportation under this Agreement. Any terms of the bill of lading inconsistent with the terms of this Agreement shall be ineffective.

9. Carrier's Liability Risk of Loss.

a. **Claims Handling Procedure:** Carrier shall indicate on the delivery receipt any damage to the Freight transported by Carrier under this Agreement. Except as otherwise provided herein, all claims for loss and damage, and any salvage arising there from, shall be handled and processed in accordance with the regulation of the Federal Highway Administration as set forth in 49 C.F.R. part 370. Payment by Carrier to Broker or Broker's customers, pursuant to the provisions of this section, shall be made within ten (10) days following receipt by Carrier of Broker's written notification of the claim. In the event payment is not made, Broker shall have the right, at its sole discretion, to offset the amount of the claim against any monies owed Carrier under this Agreement. Carrier agrees to defend, indemnify and hold harmless Broker against any and all claims, cost, actions, expenses, including without limitation, reasonable attorney's fees and defense costs, incurred by Broker in the defense and investigation of any claims arising from the transportation services provided by Carrier under this Agreement.

b. **Cargo Liability:** Carrier assumes the liability of a common carrier (i.e. Carmack Amendment Liability) for loss, delay, damage to or destruction of any and all the Freight being transported by Carrier under this Agreement. Such liability shall begin at the time the Freight is accepted by Carrier at point of origin and shall continue until said Freight is delivered to the designated consignee and accepted by such consignee at destination, or to the designated consignee and accepted by such consignee at destination. Delivery shall not be deemed complete until the consignee's signing of the bill of lading or delivery receipt.

c. Loading: Regardless of whether loading is accomplished by any other person, Carrier shall be responsible for inspecting and testing the load of Freight onto Carrier's equipment and determining whether such loading has been accomplished in a safe, legal and appropriate manner. Carrier's acceptance of a bill of lading or other form of receipt for the Freight shall be deemed its acknowledgment that the Freight has been safely and adequately loaded for transportation.

10. Insurance.

During the term of this Agreement, Carrier shall maintain the insurance coverage set forth herein below. On or before the Effective Date, Carrier shall submit to Broker certifications of insurance for said insurance coverage. All said certificates of insurance shall provide that the applicable insurance carrier shall give Broker written notice not less than thirty (30) days prior to cancellation, expiration or material change of such insurance covered by the applicable certificate. Certificates of insurance indicating renewal coverage must be received by Broker before previous coverage expires. Broker shall be named as an additional insured with respect to the coverage's identified in Sections 10a and 10d below.

a. Automobile Insurance: Automobile/liability insurance with minimum limit of \$1,000,000.00. Combined single limits for Property Damage and Bodily Injury. This limit can be realized by means of an Umbrella Liability policy which extends coverage over the Automobile Policy.

b. General Liability Insurance: Commercial General Liability Insurance must be carried in limits of at least \$1,000,000.00 per Occurrence and \$2,000,000.00 Aggregate for Property Damage, Bodily Injury and include Personal Injury. The policy must name Broker as "Additional Insured."

c. Workers' Compensation Insurance: Workers' Compensation insurance in full compliance with the laws of all the States and Provinces in which the transportation services shall be performed covering Carrier and its employees in such amounts as required by such laws. Workers' Compensation will be provided in the name of Carrier, even though Carrier may use independent contractors as drivers. Additionally, Carrier should maintain not less than \$100,000 per Accident, \$100,000 per Employee, \$500,000 Policy Limit.

d. Carrier must maintain "all risk" broad form motor truck cargo legal liability insurance in an amount not less than \$250,000 per occurrence. Such insurance policy shall provide coverage to Broker, Broker's customer or the owner and/or co-signer for any loss, damage or delay related to any Freight coming into the possession of Carrier under this Agreement. The coverage provided under the policy shall have no exclusions or restrictions of any type that would foreseeably preclude coverage relating to cargo claims.

e. All the foregoing insurance coverage shall be placed with insurance companies licensed to do business in the applicable jurisdiction and that are acceptable to Broker. Any restrictions

of coverage other than normal policy exclusions must be identified on the applicable certificate of insurance. As an additional insured, a copy of the policy with all endorsements shall be sent to Broker. Coverage is to be provided on policies using insurance service office (ISO) forms for automobile and general liability coverage and national council of compensation insurance policies for workers' compensation.

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

12. Confidentiality and Non-Solicitation. Neither party may disclose the terms of this Agreement to a third party without the written consent of the other party except (1) as required by law or regulation; (2) disclosure is made to its parent, subsidiary or affiliate company; or (3) to facilitate rating or auditing of transportation charges by an authorized agent and such agent agrees to keep the terms of the Agreement confidential.

Carrier Shall not solicit traffic from any shipper, consignor, consignee or customer of Broker where (1) the availability of such traffic first became known to Carrier as a result of Broker's efforts, or (2) the traffic of the shipper, consignor, consignee or customer of Broker was first tendered to Carrier by Broker.

If Carrier breaches this Agreement and directly or indirectly solicits and/or obtains traffic from any such shipper, consignor, consignee or customer of Broker during the term of this Agreement or for one (1) year thereafter, Carrier shall pay Broker, for a period of eighteen (18) months thereafter, commission in the amount of thirty-three (33%) of the gross transportation revenue resulting from such traffic and Carrier shall provide Broker with all documentation requested by Broker to verify such traffic and gross transportation revenue. Carrier shall pay said payments to Broker immediately upon Broker's demand for payment.

Carrier acknowledges and agrees that the covenants and agreements set forth in this Section are necessary to protect the legitimate business interests of Broker and that any breach of such covenants and agreements will cause immediate and irreparable harm to the Broker. Carrier acknowledges that damages for the violation of any such covenants or agreements will not give full and sufficient relief to the Broker and agrees that, in the event of any violation of any such covenants or agreements, Broker shall be entitled to injunctive relief with respect to any such breach, which remedy shall be in addition to any other remedy which Broker may have on account of such breach.

13. **Waiver of Carrier's Lien.** Carrier shall not withhold any Freight on account of any dispute with Broker. Carrier is relying on the general credit of Broker and hereby waives and releases all liens which Carrier might otherwise have to any goods of Broker or Broker's customer in the possession or control of Carrier.

14. **Amendment or Modification.** This Agreement may be amended or modified only by an instrument in writing executed by the Parties.

15. **Assignment.** No party shall assign its rights or obligations under this Agreement without the prior written consent of the other party.

16. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Virginia. Any and all disputes and/or controversies associated with the terms of this Agreement or the subject transaction shall be venued in Hampton, Virginia.

17. **Entire Agreement.** This Agreement (including the Rate Confirmation Sheets and other documents executed and delivered in connection herewith throughout the term of the Agreement) contains the entire Agreement between the Parties with respect to the transaction evidenced hereby and any agreement or representation concerning the same or the duties of any party in relation thereto, not expressly set forth in this Agreement, is null and void.

18. **Notice.** All notices, requests, consents or other communications hereunder, shall be in writing and shall be deemed to have been duly given or delivered (a) when received if delivered by hand or facsimile (b) within one day after being sent by recognized overnight delivery services or (c) within three business days after being mailed by First Class Mail, postage pre-paid and in each case addressed as follows:

If to Broker, to:

SV Trucking Services, LLC
2100 56th Street
Hampton VA 23661
Fax No.: _____

If to Carrier, to:

Fax No.: _____

Provided, however, that if Broker or Carrier shall have designated a different address by written notice to the other, then to the last address so designated.

19. Headings. The headings to each of the numbered paragraphs set forth in this Agreement are for convenience only and shall have no effect in determining the rights and/or obligations of the Parties.

20. Severability. In the event that any portion of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the other portions of this Agreement, and the remaining terms and conditions of the portions hereof shall remain in full force and effect, and any court of competent jurisdiction as set forth in Section 9 of this Agreement is hereby empowered and instructed to modify any objectionable provision so as to make it valid, reasonable and enforceable.

21. Time is of the Essence. Time is of the essence of this Agreement.

22. Non-Waiver. Broker's failure to exercise any remedy or right, or Broker's delay in the exercise of any remedy or right shall not operate as a waiver thereof.

23. Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed to be a duplicate original hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date(s) set forth below.

BROKER:

SV TRUCKING SERVICES, LLC, an Ohio limited liability company

By: _____

Date: _____

CARRIER:

By: _____

Date: _____