



BROKER CARRIER AGREEMENT

This Agreement is entered into this ____ day of ____ 2019, by and between **Big Bird Transportation Inc ("BROKER")**, a Registered Property Broker, **MC# 119945-B**.

And

_____, a Registered Motor Carrier, MC# _____, DOT# _____ ("**CARRIER**"); collectively, the "Parties". ("Registered" means operated under authority issued by the Federal Motor Carrier Safety Administration (or its predecessors) within the U.S. Department of Transportation).

1. CARRIER REPRESENTS AND WARRANTS THAT IT:

A. 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. Shall transport the property under its own operating authority and subject to the terms of this Agreement;

C. Makes the representations herein for the purpose of inducing **BROKER** to enter into this Agreement.

D. Agrees that a Shipper's insertion of **BROKER's** name as the carrier on a bill of lading shall be for the Shipper's convenience only and shall not change **BROKER's** status as a property broker no **CARRIER's** status as a motor carrier. **BROKER** is not a motor carrier and assumes no motor carrier responsibility for cargo loss and damage in the event that the National Motor Freight Traffic Association (NMFTA) (effective in August 2016) form of bill of lading is utilized.

E. Will not re-broker, co-broker, subcontract, assign, interline, or transfer the transportation of shipments hereunder to any other persons or entity conducting business under a different operating authority without prior written consent of **BROKER**. If **CARRIER** breaches this provision, among all other remedies (whether at equity or in law), **BROKER** shall have the right of paying the monies it owes **CARRIER** directly to the delivering carrier in lieu of payment to **CARRIER**. Upon **BROKER's** payment to delivering carrier, **CARRIER** shall not be released from any liability to **BROKER** under this Agreement or otherwise, including any claims under MAP-21 (49 U.S.C. § 13901 et seq.). In addition to the indemnity obligation in Par 1.H, **CARRIER** will be liable for consequential damages for violation of this provision.

- (i) Is in and shall maintain compliance during the term of this Agreement with all applicable federal, state and local laws relating to the provision of its services including, but not limited to: transportation of Hazardous Materials (including the licensing and training of HAZMAT 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 alcohol testing, and hours of service regulations; sanitation, temperature, and contamination requirements for transporting food, perishable, and other products, including without limitation the Food Safety Modernization Act, the Sanitary Food Transportation Act of 2005 and the FDA's Final rule pertaining to Sanitary Transportation of Human and Animal Food, 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. **CARRIER** agrees to provide proof of compliance upon request.

(ii) Is solely responsible for any and all management, governing, discipline, direction, and control of its employees, owner/operators and equipment with respect to operating within all applicable federal and state legal and regulatory requirements to ensure the safe operation of **CARRIERS** vehicles, drivers, and facilities. **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.

F. **CARRIER** will notify **BROKER** immediately if its federal Operating Authority is revoked, suspended or rendered inactive for any reason; and/or if it is sold or if there is a change in control of ownership, and/or any insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.

G. **CARRIER** shall defend, indemnify and hold **BROKER** and its shipper customer harmless from any claims, actions or damages, arising out of its performance under this Agreement, including cargo loss and damage, theft, delay, damage to property, and personal injury or death. Neither Party shall be liable to the other for any claims, actions or damages due to the negligence or intentional act of the other Party, or the shipper. The obligation to defend shall include all costs of defense as they accrue.

H. 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" or "Conditional". Authorizes **BROKER** to invoice **CARRIER's** freight charges to shipper, consignee, or third parties responsible for payment.

I. Has investigated, monitors, and agrees to conduct business hereunder based on the credit-worthiness of **BROKER** and is granting **BROKER** credit terms accordingly.

J. To the extent that any shipments subject to this Agreement are transported into, out of, through or within the State of California on refrigerated equipment, **CARRIER** warrants that it shall only utilize equipment which is in full compliance with the California Air Resources Board (CARB) Transport Refrigerated Unit (TRU) Airborne Toxic Control Measure (ATCM) in-use regulations. **CARRIER** shall be liable to **BROKER** for any penalties or any other liability, imposed on, or assumed by **BROKER** due to penalties imposed on **BROKER'S** customer because of **CARRIER's** use of non-compliant equipment.

2. BROKER RESPONSIBILITIES:

A. **SHIPMENTS, BILLING & RATES:** **BROKER** shall offer **CARRIER** at least one (1) loads/shipments annually. **BROKER** shall inform **CARRIER** of (i) place of origin and destination of all shipments; and (ii) if applicable, any special shipping and handling instructions, special equipment

requirements, or value of shipments in excess of the amount specified in Par. 3C(vi) below, of which **BROKER** has been timely notified.

B. **BROKER** agrees to conduct all billing services to shippers, consignees, or other party responsible for payment. **CARRIER** shall invoice **BROKER** for its (**CARRIER**'s) charges, as mutually agreed in writing, by fax, or by electronic means, contained in **BROKER**'s Load Confirmation Sheet(s) / dispatch sheets incorporated herein by this reference. Additional rates for truckload or LTL shipments, or modifications or amendments of the above rates, or additional rates, may be established to meet changing market conditions, shipper requirements, **BROKER** requirements, and/or specific shipping schedules as mutually agreed upon and shall be confirmed in writing (or by fax or email) by both Parties. Any such additional, modified, or amended rates, changes in rates shall automatically be incorporated herein by this reference.

C. **RATES**: Additionally, any rates, which may be verbally agreed upon, shall be deemed confirmed in writing where **CARRIER** has billed the agreed rate and **BROKER** has paid it. All written confirmations of rates, including confirmations by billing and payment, shall be incorporated herein by this reference. Rates or charges, including but not limited to stop-offs, detention, loading or unloading, fuel surcharges, or other accessorial charges, tariff rates, released rates or values, or tariff rules or circulars, shall only be valid when their terms are specifically agreed to in a writing signed by both Parties.

D. **PAYMENT**: The Parties agree that **BROKER** is the sole party responsible for payment of **CARRIER**'s charges. Failure of **BROKER** to collect payment from its customer shall not exonerate **BROKER** of its obligation to pay **CARRIER**. **BROKER** agrees to pay **CARRIER**'s invoice within 30 days of receipt of the bill of lading or proof of delivery, provided **CARRIER** is not in default under the terms of this Agreement. If **BROKER** has not paid **CARRIER**'s invoice as agreed, and **CARRIER** has complied with the terms of this Agreement, **CARRIER** may seek payment from the Shipper or other party responsible for payment after giving **BROKER** 90 (business days) advance written notice. **CARRIER** shall not seek payment from Shipper, consignees, or third parties, if they can prove payment to **BROKER**.

E. **BOND**: **BROKER** shall maintain a surety bond / trust fund as agreed to in the amount of \$75,000.00 and on file with the Federal Motor Carrier Safety Administration (FMCSA) in the form and amount not less than that required by the agency regulation.

F. **BROKER** will notify **CARRIER** immediately if its federal Operating Authority is revoked, suspended or rendered inactive for any reason; and/or if it is sold or if there is a change in control of ownership, and/or any insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.

G. **BROKER**'s responsibility is limited to arranging for, but not actually performing, transportation of s shipper's freight.

3. CARRIER RESPONSIBILITIES:

A. **EQUIPMENT**: Subject to its representations and warranties in Paragraph 1 above, **CARRIER** agrees to provide the necessary equipment and qualified personnel for completion of the transportation services required for **BROKER** and/or its customers. **CARRIER** will not supply equipment that has been used to transport hazardous wastes, solid or liquid, regardless of whether they meet the definition in 40 C.F.R. §261.1 et. seq. **CARRIER** will furnish equipment for transporting cargo which is sanitary, and

free of any contamination, suitable for the particular commodity being transported and which will not cause in whole or in part adulteration of the commodity as defined in 21 U.S.C § 342. **CARRIER** agrees that all shipments will be transported and delivered with reasonable dispatch, or as otherwise agreed in writing.

B. **BILLS OF LADING:** **CARRIER** shall sign a bill of lading, produced by shipper or **CARRIER** in compliance with 49 C.F.R. §373.101 (and any amendments thereto), for the property it receives for transportation under this Agreement. Unless otherwise agreed in writing, **CARRIER** shall become fully responsible/liable for the freight when it takes/receives possession thereof, and the trailer(s) is loaded, regardless of whether a bill of lading has been issued, and/or signed, and/or delivered to **CARRIER**, and which responsibility/liability shall continue until delivery of the shipment to the consignee and the consignee signs the bill of lading or delivery receipt. Any terms of the bill of lading (including but not limited to payment and credit terms, released rates or released value) inconsistent with the terms of this Agreement shall be ineffective. 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**.

C. **LOSS & DAMAGE CLAIMS:**

- (i) **CARRIER** shall comply with 49 C.F.R. §370.1 et seq. and any amendments and/or any other applicable regulations adopted by the Federal Motor Carrier Safety Administration, U.S. Department of Transportation, or any applicable state regulatory agency, for processing all loss and damage claims and salvage. **CARRIER** agrees that food that has been transported or offered for transport under conditions that are not in compliance with Shipper's or **BROKER'S** instructions, as provided to **CARRIER** by Shipper or **BROKER**, will be considered "adulterated" within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 342 (i). **CARRIER** understands and agrees that adulterated shipments with broken/removed seal may be refused by the consignee or receiver, at destination without diminishing or affecting **CARRIER'S** liability in the event of a cargo claim. **CARRIER** shall not sell, salvage or attempt to sell or salvage any goods without the **BROKER'S** express written permission; and
- (ii) **CARRIER'S** liability for any cargo damage, loss or theft from any cause shall be determined under the Carmack Amendment, 49 U.S.C. §14706 if applicable; however, liability for exempt commodities and processing cargo loss and damage claims shall be determined by: DRC Trading Practices, or Blue Book Transportation Guidelines, or NAPTWG Best Practices by agreement of the Parties and if no agreement then by one of the above associations' guideline named above at the selection of the **BROKER**. and
- (iii) Special Damages: **CARRIER'S** indemnification liability (Par 1.I) for freight loss and damages claims under this sub-par C (ii) shall include legal fees which shall constitute special damages, the risk of which is expressly assumed by **CARRIER**, and which shall not be limited by any liability of **CARRIER** under Subp. (ii) above.
- (iv) Except as provided Par 1.E above, neither Party shall be liable to the other for consequential damages without prior written notification of the risk of loss and its approximate financial amount, and agreement to assume such responsibility in writing.
- (v) Notwithstanding the terms of 49 CFR 370.9, **CARRIER** shall pay, decline or make settlement offer in writing on all cargo loss or damage claims within 30 days of receipt of the claim. Failure of **CARRIER** to pay, decline or offer settlement within this 30 day period shall be deemed admission by **CARRIER** of full liability for the amount claimed and a material breach of this Agreement.

(vi) **CARRIER's** liability for cargo damage, loss, or theft from any cause for any one shipment, under Subp. ii above shall not exceed \$100,000 unless **CARRIER** is notified by **BROKER** or Shipper of the increased value prior to shipment pick up.

D. **INSURANCE: CARRIER** shall furnish **BROKER** with Certificate(s) of Insurance, or insurance policies providing thirty (30) days advance written notice of cancellation or termination, and unless otherwise agreed, subject to the following minimum limits: General liability \$1,000,000.00; motor vehicle (including hired and non-owned vehicles) \$1,000,000.00, (\$5,000,000 if transporting hazardous materials including environmental damages due to release or discharge of hazardous substances); cargo damage/loss, \$100,000.00; worker's compensation with limits required by law. Except for the higher coverage limits which may be specified above, the insurance policies shall comply with minimum requirements of the Federal Motor Carrier Safety Administration and any other applicable regulatory state deductible in any insurance policy.

E. **ASSIGNMENT OF RIGHTS: CARRIER** automatically assigns to **BROKER** all its rights to collect freight charges from Shipper or any responsible third party on receipt of payment of its freight charges from **BROKER**.

F. **CARRIER** assumes full responsibility and liability for payment of the following items: All applicable federal, state, any local payroll taxes, taxes for unemployment insurance, old age pensions, worker's compensation, social security, with respect to persons engaged in the performance of its transportation services hereunder. **BROKER** shall not be liable for any of the payroll-related tax obligations specified above and **CARRIER** shall indemnify, defend, and hold **BROKER** harmless from any claim or liability imposed or asserted against **BROKER** for any such obligations.

4. MISCELLANEOUS:

A. **INDEPENDENT CONTRACTOR:** The relationship of the Parties to each other shall at all times be that of independent contractors. None of the terms of this Agreement, or any act or omission of either Party shall be construed for any purpose to express or imply a joint venture, partnership, principal/agent, fiduciary, or employer/employee relationship between the Parties. Each Party shall provide sole supervisions and shall have exclusive control over the actions and operations of its employees, and agents used to perform its services hereunder. Neither Party has any right to control, discipline or direct the performance of any employees, or agents of the other Party. Neither Party shall represent to any party that it is anything other than an independent contractor in its relationship to the other Party.

B. **NON-EXCLUSIVE AGREEMENT: CARRIER** and **BROKER** acknowledge and agree that this contract does not bind the respective Parties to exclusive services to each other. Either party may enter into similar agreements with other carriers, brokers, or freight forwarders.

C. **WAIVER OF PROVISIONS:**

- (i) 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 provision.
- (ii) This Agreement is for specified services pursuant to 49 U.S.C. §14101(b). To the extent that terms and conditions herein are inconsistent with Part (b), Subtitle IV, of Title 49 U.S.C. (ICC Termination Act of 1995), the Parties expressly waive any or all rights and remedies they may have under the Act.

D. **DISPUTES:** In the event of a dispute arising out of this Agreement, including but not limited to Federal or State statutory claims, the Party's sole recourse (except as provided below) shall be to arbitration. Proceedings shall be conducted under the rules of the (select one): ___American Arbitration Association (AAA), ___Transportation ADR Council, Inc. (ADR), ___DRC (Fruit and Vegetable Dispute Resolution Corp) for fresh produce related claims, upon mutual agreement of the Parties, or if no agreement, then at **BROKER's** sole discretion. Arbitration proceedings shall be started within eighteen (18) months from the date of delivery or scheduled date of delivery of the freight, whichever is later. Upon agreement of the Parties, arbitration proceedings may be conducted outside of the administrative control of the AAA, ADR, or DRC. The decision of the arbitrators shall be binding and final and the award of the arbitrator may be entered as judgment in any court of competent jurisdiction. The rationale and reasoning of the decision of arbitrator(s) shall be fully explained in a written opinion. The prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees as well as those incurred in any action for injunctive relief, or in the event further legal action is taken to enforce the award of arbitrators. Arbitration proceedings shall be conducted at the office of the AAA, ADR, or DRC nearest **BROKER** or such other place as mutually agreed upon in writing, or by conference call or video conferencing upon agreement of the Parties, or as directed by the acting arbitration association. Provided, however, either Party may apply to a court of competent jurisdiction for injunctive relief. Unless preempted or controlled by federal transportation law and regulations, the laws of the State of Illinois shall be controlling notwithstanding applicable conflicts of laws rules. The arbitration provisions of this paragraph shall not apply to enforcement of the award of arbitration.

E. **NO BACK SOLICITATION:**

- (i) Unless otherwise agreed in writing, **CARRIER** shall not knowingly solicit freight shipments (or accept shipments) for a period of 24 month(s) 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**.
(OPTIONAL)
- (ii) In the event of breach of this provision, **BROKER** shall be entitled, for a period of 24 months following delivery of the last shipment transported by **CARRIER** under this Agreement, to a commission of twenty percent (20%) of the gross transportation revenue (as evidenced by freight bills) received by **CARRIER** for the transportation of said freight as liquidated damages. Additionally, **BROKER** may seek injunctive relief and in the event it is successful, **CARRIER** shall be liable for all costs and expenses incurred by **BROKER**, including, but not limited to, reasonable attorney's fees.

F. **CONFIDENTIALITY:**

- (i) In addition to Confidential Information protected by law, statutory or otherwise, the Parties agree that all of their financial information and that of their customers, including but not limited to freight and brokerage rates, amounts received for brokerage services, amounts of freight charges collected, freight volume requirements, as well as personal customer information, customer shipping or other logistics requirements shared or learned between the Parties and their customers, shall be treated as Confidential, and shall not be disclosed or used for any reason without prior written consent.
- (ii) In the event of violation of this Confidentiality paragraph, the Parties agree that the remedy at law, including monetary damages, may be inadequate and that the Parties shall be entitled, in addition to any other remedy they may have, to an injunction restraining the violating Party from further violation of this Agreement in which case the prevailing Party shall be liable for all costs and expenses incurred, including but not limited to reasonable attorney's fees.

G. The limitations of liability for cargo loss and damage as well as other liabilities, arising out of the transportation of shipments, which originate outside the United States of America, may be subject to the laws of the country of origination.

H. **MODIFICATION OF AGREEMENT:** This Agreement and Exhibit A et. seq. attached may not be amended, except by mutual written agreement, or the procedures set forth above (Pars 2.B and 2.C).

(i) Should CARRIER modify any provision of this agreement, whether in handwritten form, modified text or otherwise, such amendment shall not be effective, unless **BROKER** has initialed such change in close proximity thereto evidencing **BROKER's** specific acceptance of such modification.

(i) Additionally, the provisions of this Agreement shall be deemed to supersede and shall prevail over any conflicting terms set forth in any load confirmation, rate confirmation, dispatch sheet or other document pertaining to this Agreement, whether any such document was signed prior to, contemporaneously with or subsequent to execution of this Agreement.

I. **NOTICES:**

(i) All notices provided or required by this Agreement, shall be made in writing and delivered, return receipt requested, to the addresses shown herein with postage prepaid; or by confirmed (electronically acknowledged on paper) fax, or by email with electronic receipt.

(ii) The Parties shall promptly notify each other of any claim that is asserted against either of them by anyone arising out of the Parties performance of this Agreement.

(iii) Notices sent as required hereunder, to the addresses shown in this Agreement shall be deemed sent to the correct address, unless the Parties are notified in writing of any changes in address.

J. **CONTRACT TERM:** The term of this Agreement shall be one year from the date hereof and thereafter it shall automatically be renewed for successive one (1) year periods, unless terminated, upon thirty (30) day's prior written notice, with or without cause, by either Party at any time, including the initial term. In the event of termination of this Agreement for any reason, the Parties shall be obligated to complete performance of any work in progress in accordance with the terms of this Agreement.

K. **SEVERANCE: SURVIVAL:** In the event any of the terms of this Agreement are determined to be invalid or unenforceable, no other terms shall be affected and the unaffected terms shall remain valid and enforceable as written. The representations, rights and obligations of the parties hereunder shall survive termination of this Agreement for any reason.

L. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts each of which shall be deemed to be a duplicate original hereof.

M. **FAX CONSENT:** The Parties to this Agreement are authorized to fax to each other at the numbers shown herein, (or otherwise modified in writing from time to time) shipment availabilities, equipment and rate promotions, or any advertisements of new services.

N. **FORCE MAJEURE.** In the event that either Party is prevented from performing its obligations under this Agreement because of an occurrence beyond its control and arising without its fault or negligence, including without limitation, war, riots, rebellion, acts of God, acts of lawful authorities, fire, strikes, lockouts or other labor disputes, such failures to perform (except for any payments due hereunder)

shall be excused for the duration of such occurrence. Economic hardships, including, but not limited to, recession and depression, shall not constitute Force Majeure events.

O. ENTIRE AGREEMENT: Unless otherwise agreed in writing, this Agreement contains the entire understanding of the Parties and supersedes all verbal or written prior agreements, arrangements, and understandings of the Parties relating to the subject matter stated herein, whether any such document was signed prior to, contemporaneously with or subsequent to execution of this Agreement. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence may be introduced to reform this Agreement in any judicial or arbitration proceeding involving this Agreement.

IN WITNESS WHEREOF, we have signed this Agreement the date and year first shown above.

Big Bird Transportation Inc

CARRIER

Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Title

Company Address

Company Address

Phone and Fax

Phone and Fax

E-Mail

E-Mail