

BROKER/CARRIER AGREEMENT

This **Broker/Carrier Agreement** is being entered into by and between **Excellence Transport, LLC** (hereinafter referred to as “**BROKER**”), and _____, (hereinafter referred to as “**CARRIER**”) as defined below, on this ____ day of _____, 20__.

I. PARTIES

- A. **Excellence Transport, LLC** is the “Broker” as that term is defined under 49 U.S.C. § 13102(2) or any regulation, amendment or renumbered law by which the United States or any agency thereof defines a trucking broker and any applicable federal or state regulations, statutes, decisional law or administrative law. BROKER will arrange for the freight tendered by a shipper to be transported by CARRIER under the means, manner, method, and terms selected by the shipper or CARRIER, but BROKER is not engaged in the business of and will not act as a “Carrier,” “Motor Carrier,” or “Freight Forwarder,” as those terms are defined under 49 U.S.C. § 13102, and BROKER is not engaged in the business of and will not act as a “Rail Carrier” as that term is defined under 49 U.S.C. § 11706.
- B. _____ is the “CARRIER,” and hereby agrees to transport freight identified by BROKER as requiring transportation services.
- C. BROKER and CARRIER will sometimes be referred to collectively as “The Parties.”

II. RECITALS

1. **Term-** The term of this Agreement shall be one (1) year, commencing on the date listed above. If not cancelled by one of The Parties, the Agreement shall automatically renew itself for consecutive one year terms. The Agreement can be terminated at any time by either of The Parties with thirty (30) days written or electronic notice to the other party, provided all balances are settled, and the termination can be with or without cause.
2. **Broker Requirements-** BROKER warrants that it is licensed to arrange for the transportation of freight pursuant to license MC-949770 (**fill in for specific broker**), but that it does not transport freight, and that it will maintain such authority as required by all applicable federal and state laws and regulations throughout the course of this Agreement. BROKER also warrants that it will maintain a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration in the amount of \$75,000.00 or in such amount as may be amended from time to time and furnish CARRIER with proof of same upon request.

3. **Broker Obligations**- Broker shall pay CARRIER for services rendered in an amount equal to the rates and charges agreed to as set forth in Appendix A upon receipt of payment from the shipper. As a condition precedent to payment, CARRIER must submit proof of delivery with its invoices, and the invoices must reflect that CARRIER delivered the freight to its final destination.
 - a. BROKER agrees to arrange for the transportation of a shipper's freight with CARRIER pursuant to the terms of this Agreement, and to comply with all federal, state, and local laws and regulations pertaining to the brokerage services covered by this Agreement.
 - b. The Parties agree that BROKER'S responsibilities under this Agreement are limited to arranging for the transportation of a shipper's freight with CARRIER, and not actually performing the transportation services, possessing the freight, or controlling the means or methods of the transportation.

4. **Carrier Obligations** - CARRIER warrants that at all times during this Agreement it will act as a "motor carrier," as that term is defined under 49 U.S.C. § 13102 and any applicable federal or state regulations, statutes, decisional law or administrative law. CARRIER further warrants that at all times during this Agreement it will remain licensed and authorized by the Department of Transportation to provide interstate transportation services, and warrants that it will maintain insurance or otherwise demonstrate financial responsibility in accordance with all applicable federal and state regulations.

CARRIER is solely responsible for the operation of the equipment, actions of the driver, any other persons associated with the operation of the equipment, transportation of freight, securement or any other aspect of actions of a motor carrier as that term is defined by law. CARRIER is solely responsible for the safety and operation of the equipment, and the actions of all drivers and other persons or entities responsible for the transportation of freight. Nothing in this Agreement abrogates the responsibility of the CARRIER to operate safely and in accordance with all law and good accepted best practices of a motor carrier.

CARRIER represents that it is in compliance with and shall maintain, during the terms of this Agreement, compliance with all applicable federal, state and local laws relating to the provision of its services including, but not limited to: training of drivers, qualification of drivers, transportation of Hazardous Materials, (including the licensing and training of Haz Mat qualified drivers, as defined in 49 F.C.R. §172.800, §173, and §397 et seq. to the extent that any shipments hereunder constitute Hazardous Materials; security regulations, Part 309.46 as well as any other regulations relating to Intermodal equipment; 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; and all applicable insurance, financial responsibility and surety laws and regulations including but not limited to workers' compensation; as well as the Federal Motor Carrier Safety Regulations (FMCSRs), and any applicable state trucking regulations.

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 (whether by an insurer or surety provider by CARRIER, or by any person or entity), suspended, or revoked for any reason.

- a. CARRIER agrees to maintain a U.S. DOT safety rating or evaluation of "fit," "satisfactory," or whatever is the highest rating described by the U.S. DOT, FMCSA, CSA or equivalent governmental agency authority or evaluation method for the duration of this Agreement. Any change in CARRIER'S safety rating requires immediate written notification to BROKER. CARRIER may not have an unsatisfactory or conditional rating under any rating system. If CARRIER'S rating becomes conditional or unsatisfactory, CARRIER's no longer authorized as a CARRIER under this Agreement.

CARRIER represents that it is not on alert status as to any BASIC under the DOT/FMCSA, CSA safety management system. If CARRIER receives an alert status as to any BASIC, it must immediately notify BROKER by fax at **(956) 269-9777**, by e-mail at **excellencetransportllc@gmail.com** and by regular U.S. Mail to **801 Bass Blvd, Edinburg TX, 78542** and forward a copy of any alert status as to any BASIC, or whether or not that BASIC is available for public viewing under any governmental website. CARRIER will not be permitted to be on BROKER'S approved list should CARRIER be on alert status as to two or more BASIC'S

- b. CARRIER agrees that only drivers qualified under Part 391 of the Federal Motor carrier Safety Regulations (FMCSRs) will transport freight under this Agreement. CARRIER further agrees that it will

maintain adequate internal procedures to evaluate its drivers through Pre-Employment Screenings, Driver Information Resource, the U.S. DOT Safety Management System, CSA and any other official resources related to driver fitness, and ensure that its drivers are otherwise qualified under the FMCSR's throughout the duration of this Agreement.

- c. Upon reasonable demand, CARRIER shall provide to BROKER copies of its DOT Operating Authority Policy of Insurance, including all endorsements, Certificate of Insurance surety or financial responsibility.
5. **Shipper-Broker Relationship**- The Parties agree that BROKER at all times will be acting as an independent contractor, and not an employee, agent, or principal of a shipper.
6. **Broker-Carrier Relationship**- CARRIER agrees and acknowledges that as the motor carrier transporting a shipper's freight pursuant to this Agreement, CARRIER is an independent contractor, and not an employee, agent or principal of BROKER. CARRIER further agrees and acknowledges that its employees and agents, including the driver or drivers transporting freight, are not the employees or agents of BROKER, and that BROKER does not control or have the right to control the CARRIER, its employees, agents, drivers, or any person or entity associated with the CARRIER. BROKER further makes no representations as to CARRIER'S safety status/representation or any other aspect of CARRIER'S fitness beyond that set forth in Section 4 above.

At times the BROKER may suggest when pickup and delivery should be made in order to reflect the wishes and desires of the shipper and/or consignee. However, these times are not mandated or required times. In no event shall CARRIER be required to, and in no event shall BROKER require CARRIER to meet any times, violate any safety regulations or best practice or otherwise act unsafely in order to meet the suggested or target time.

7. **No Broker Liability**- CARRIER agrees and acknowledges that BROKER will not be liable to a shipper for any act or omission of the CARRIER or any of its "employees" which transport a shipper's freight, as the term "employee" is defined under 49 C.F.R. §390.5 or for any of Carrier's Agents, Principals, Assigns or Subcontractors. CARRIER thus agrees and acknowledges to indemnify and hold harmless BROKER for any cargo loss or damage, or for delay in the delivery of a shipper's freight, or for any actual or consequential damages resulting therefrom.

To the extent permissible under applicable federal and state law, and subject to

the express monetary insurance limits in Paragraph 13 as to CARRIER and BROKER'S monetary insurance limits for general liability or such other amounts as mutually agreed by the Parties in writing, 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, and BROKER shall defend, indemnify, and hold CARRIER harmless from any claims, actions, or damages, including cargo loss and damage, theft, delay, damage to property, personal injury or death, arising out of its performance hereunder. Neither Party shall be liable to the other for any claims, actions or damages due to the negligence, culpable conduct or intentional act of the other Party, or the shipper. The obligation to defend shall include all costs of defense as they accrue.

Except for CARRIERS'S liability under Paragraph 10, unless otherwise agreed in writing, and regardless of whether the Parties insurance as referred to in paragraph above, is valid or provides coverage, the Parties indemnity obligations shall not exceed the monetary insurance limits referred to in the paragraph above.

8. **No Broker Control**- The Parties agree that BROKER will not assert any control nor have any right to control over a shipper's freight, including, but not limited to, taking possession of a shipper's freight, and BROKER shall not direct or control the routes taken by CARRIER in the transportation of a shipper's freight.
9. **Carrier Liability**- CARRIER hereby assumes the liability of a motor carrier as provided in §11707 of Title 49 of the United States Code as well as the Carmack Amendment and all other applicable law relating to the liability of a Motor Carrier for Cargo Loss, and all claims for loss, damage and/or salvage will be handled and processed in accordance with that law.
10. **Bills of Lading**-
 - a. For each shipment tendered to CARRIER, CARRIER will provide to the shipper a standard bill of lading that is in accordance with 49 C.F.R. §373, listing the consignor and consignee, the origins and destinations, the number of packages, the description of the freight, and the weight, volume or measurement of the freight. The Parties agree that BROKER will not be a party to the bill of lading.
 - b. CARRIER agrees that a BROKER'S name WILL NOT BE LISTED, as the carrier on a bill of lading. Such a listing is not authorized by BROKER and if it should occur the listing shall not change BROKER'S status as a property broker nor CARRIER'S status as a motor carrier. In no event shall the BROKER be listed or referenced on or be a party to the bill of lading.

- c. CARRIER will not re-broker, assign or interline the shipments hereunder, written consent of BROKER prior to the shipment being tendered to any other CARRIER. If CARRIER breaches this provision, 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. In addition to the indemnity obligation in Paragraph 7 CARRIER will be liable for consequential damages for violation of this Paragraph.
- i. The Parties agree that the shipment of freight will move under the terms and conditions listed in the bill of lading.
 - ii. CARRIER agrees to list itself on the bill of lading as the party in possession and control of the freight.
 - iii. The terms and conditions of the bill of lading shall not operate to alter or modify the terms of this Agreement between CARRIER and BROKER.
 - iv. 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) also commonly known as the Carmack Amendment, for the property it receives for transportation under this Agreement. Unless otherwise agreed in writing, CARRIER shall become fully or constructive possession, 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 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 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. Said Bills of Lading are intended by the Parties to be Bills of Lading, as that term is interpreted under the Carmack Amendment and applicable law and not merely as "delivery receipts", "freight receipts" or any similar term.

11. **Non-Solicitation of Shippers**- CARRIER agrees that it will not directly or indirectly conduct business with any shipper whose freight was transported pursuant to this Agreement for a period of two (2) years beginning with the last day such service was performed for that shipper. The Parties agree that a breach of this provision shall entitle BROKER to the full amount of commissions and/or compensation under the terms set forth in Appendix “A” that would have been due to BROKER had it arranged for the movement of said freight.

12. **Assignment/Modifications of Agreement**- Neither CARRIER or BROKER may assign or transfer any rights under this Agreement, in whole or in part, without the prior written or electronic consent of the other party. Further, neither CARRIER or BROKER may amend or modify the terms of this Agreement without the prior written or electronic consent of the other party. Any amendments or modifications to this Agreement not agreed to by both CARRIER and BROKER shall be null and void.

13. **Insurance** - CARRIER shall furnish BROKER with Certificate(s) of Insurance; financial responsibility 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; commercial auto or commercial motor vehicle insurance (including hired and non-owned vehicles) \$1,000,000 (\$5,000,000) if transporting hazardous materials including environmental damages due to release or discharge of hazardous substances); cargo damage/loss, \$1,000,000; workers’ compensation with limits required by law. Except for the higher coverage limits which may be specified above, the insurance policies and financial responsibility shall comply with minimum requirements of the Federal Motor Carrier Safety Administration and any other applicable regulatory state agency. Nothing in this Agreement shall be construed to avoid CARRIER’S liability due to any exclusion or deductible of any insurance policy or to limit CARRIER’S liability for contribution and/or indemnification and defense of the BROKER. A MCS-90 endorsement will be part of any insurance policy obtained by CARRIER, and all proper filings, including but not limited to the BMC-90 will be made with the applicable federal and state agencies.

As regard cargo coverage, the coverage must be All Risk Broad Form Motor Truck Cargo Legal Liability Coverage in an amount not less than \$100,000 per occurrence. The coverage provided under the policy shall have no exclusions or restrictions of any type that would foreseeably preclude coverage relating to cargo claims including, but not limited to, exclusions of unattended or unattached trailers, theft, or for any commodities transported under this Agreement, refrigeration breakdown or lack of refrigerator fuel. Furthermore, if the commodity being hauled is refrigerated, refrigeration breakdown coverage will be

provided and the CARRIER will honor and abide by the servicing requirements set forth in the insurance policy or endorsement. Furthermore, if the commodity being hauled is on a flatbed or similar open conveyance, that there be no exclusion for wetness, rust, corrosion or moisture.

Coverage must be written with a CARRIER rated A- or better as rated by AM Best Company.

14. **Miscellaneous**

a. **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.

b. **Waiver of Provisions:**

i. Failure of either Party to enforce a breach of 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.§1410(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.

15. **Severability**- If any portion or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, The Parties agree that said portion or provision of the Agreement shall be severable, and that the remaining provisions of the Agreement shall continue in full force and effect.

16. **Notices**- Any and all written or electronic notices required or permitted to be given under this Agreement shall be addressed as follows:

(BROKER)
 Excellence Transport, LLC
 8000 IH 10 West Ste. 600
 San Antonio, TX 78230
 (888) 318-6848
 info@excellence-transport.com

(CARRIER)

17. **Force Majeure**- In the event that fire, flood, other natural disaster, war, embargo, riot, or civil disobedience prevents the performance of either BROKER or CARRIER'S obligations under this agreement, that party shall not be liable to the other party for such failure to perform.
18. **Choice of Law and Venue**- All issues concerning the construction, interpretation, validity, and enforceability of this Agreement, and any other dispute arising out of this Agreement, whether in a court of law or in alternative dispute resolution, shall be governed by and construed and enforced in accordance with the laws of the State of Ohio, including the applicable statutes of limitations under Ohio law, without giving effect to any choice of law provision applying the laws of another jurisdiction.
19. **Indemnification**: CARRIER will indemnify and hold harmless BROKER, its employees, officers, directors, agents, principals and assigns from any liability, settlements, judgments, verdicts, attorney fees or expense or any nature whatsoever arising out of any claims, demands or suits against BROKER which in any way relate to a claim of BROKER's liability or culpability for the actions of CARRIER, including negligent or improper hiring or retention of the CARRIER, its employees (statutory or otherwise) agents, principals, officers, directors, assigns or anyone acting by or for CARRIER, for any aspect of the transportation of freight, public liability, personal injury, bodily injury, emotional or mental distress, wrongful death, loss of consortium, cargo liability or any claim or cause of action recognized by any state, municipality, county or any jurisdiction, Administrative Agency, or the Government of the United States.
20. **Entire Agreement**- This Agreement, including all appendices and addenda, constitutes the entire agreement intended by and between The Parties and supersedes all prior agreements, representations, warranties, and understandings, whether oral or in writing.
21. **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.



IN WITNESS WHEREOF, The Parties have caused this Agreement to be executed on the effective date listed above in their respective names by their fully authorized representatives below:

BROKER

CARRIER

Signed

Signed

Printed

Printed

Title

Title