

## **BROKER / MOTOR CARRIER AGREEMENT**

This Broker / Motor Carrier Agreement (“*Agreement*”) is made and entered into on (“*Effective Date*”), by and between **Moore Transport of Tulsa, LLC**, a licensed property broker pursuant to MC No. 543764-C (“*Broker*”) and \_\_\_\_\_, a licensed motor carrier pursuant to MC No. \_\_\_\_\_, (“*Carrier*”). Broker and Carrier are sometimes referred to herein collectively as the “*Parties*” or individually as a “*Party*”.

**1. TERM.** The Term of this Agreement shall begin on the Effective Date and continue for a period of one (1) year (“*Term*”). Notwithstanding the foregoing, either party may terminate this Agreement prior to the expiration of the Term based upon the breach by the other Party of a material term of this Agreement, provided said breach has not been cured within a reasonable period of time (not to exceed 3 days) from the date on which the allegedly breaching Party received written notice from the other Party describing the alleged breach(es). In the event that, Carrier has or is breaching a material term of this Agreement in a manner that, in Broker’s sole discretion, cannot be cured, Broker may terminate this Agreement immediately and without any prior notice.

**2. SERVICES.** With respect to loads that Carrier agrees to haul at the request of Broker, a Trip Sheet will be issued and Carrier agrees to provide transportation services with respect to the vehicles identified on the Trip Sheet submitted by Broker to Carrier. Each “*Trip Sheet*” will provide the Vehicle Identification Number for each of the vehicles to be picked up and delivered by Carrier as part of a delivery, the location where the vehicles are to be picked up (the “*Origin Location*”), and the location of where the vehicles are to be delivered (the “*Delivery Destination*”), any other terms relevant to the particular delivery. Carrier’s services under this Agreement are specifically designed to meet the distinct needs of Broker under the specified rates and conditions set forth herein.

### **3. CARRIER’S OBLIGATIONS.**

- a.** Carrier represents and warrants that it is a duly and legally qualified and authorized motor carrier and is authorized to provide the transportation services contemplated herein.
- b.** Carrier agrees to comply with all federal, state, and local laws regarding the provision of such services, including, but not limited to the Federal Motor Carrier Safety Act and implementing regulations.
- c.** Carrier represents and warrants that it does not have a conditional or unsatisfactory safety rating or a proposed safety rating change issued from the U.S. Department of Transportation (“*DOT*”). In the event Carrier is audited by the DOT and/or receives a conditional or unsatisfactory safety rating from the DOT, Carrier agrees to notify Broker within twenty-four (24) hours of such event. Broker will have the right, at the option of the Broker, to terminate this Agreement immediately upon receipt of such notice, or any other notice, of a DOT audit, safety rating change or threatened audit or change.
- d.** Carrier will notify Broker immediately if any Operating Authority is revoked, suspended or rendered inactive for any reason; and/or any insurance required hereunder is threatened to be or is terminated, cancelled, suspended or revoked for any reason.

- e. Carrier will not re-broker, assign or interline the shipments under this Agreement.
- f. Carrier agrees to comply with Broker's or Broker's customer policy for reporting claim incidents ("**Incident Reporting Requirements**"). Carrier agrees to furnish Broker immediately or as soon as is reasonably possible notice by telephone of any occurrence or transaction which may give rise to a claim against any of the following: the Carrier, the Broker, or the Broker's customer (s) under the Incident Reporting Requirements (each, an "**Incident**"). Carrier hereby acknowledges that Carrier is solely responsible for the inquiring of, understanding and complying with the reporting requirements of Broker or Broker's customer. The Carrier further agrees to cooperate, as requested by the Broker or its authorized representative, in the investigation, negotiation, settlement, or litigation of any claim or suit, which may be filed against or otherwise involve the Broker, the Broker's customer, or their respective representatives. Carrier agrees to provide Broker with copies of any and all documents related to any Incident including, but not limited to, copies of accident reports and police reports.

**4. NON-EXCLUSIVE AGREEMENT.** Carrier and Broker acknowledge and agree that this Agreement 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. Further, Carrier acknowledges and agrees that this Agreement does not bind or obligate Broker to place any specified number or quota of shipments with Carrier, nor does Broker guarantee any volume of usage or bookings for Carrier.

**5. RECEIPTS AND BILLS OF LADING ("BOL").**

- a. **Receipt at Origin Location.** Each shipment hereunder shall be evidenced by a receipt in such form as specified by Broker, or alternatively, by Broker's customer. At the place of origin, Carrier must sign a receipt that Carrier, at a minimum, describes the kind and quantity of vehicles received by Carrier at origin. The absence or loss of any such receipt shall not relieve Carrier from any liability hereunder. Such receipt shall be *prima facie* evidence of receipt of such shipment in good delivery.
- b. **Receipt at Delivery Destination.** Carrier will obtain a receipt showing the kind and quantity of vehicles delivered to the consignee of such shipment at the destination specified by Broker, and Carrier will cause such receipt to be signed by the consignee. Carrier will ensure that all signed BOLs are sent to Broker at the time of delivery.
- c. Any terms, conditions and provisions of the bill of lading, manifest or other form of receipt or contract shall be subject and subordinate to the terms, conditions, and provisions of this Agreement, which shall control.
- d. Carrier will notify Broker immediately, prior to proceeding from the location, of any exceptions made on the bill of lading, manifest, or other receipt.
- e. Carrier will submit all signed BOLs in accordance with the practices and system used by Broker; Broker currently uses an electronic documentation system for BOLs and Carrier agrees to submit required BOLs in accordance with that system.

f. BOL's that are received as Subject to Inspection ("STI") are not acceptable forms of receipt and will delay payment or result in the forfeiture of Carrier's entitlement to payment, as payment for services will not be fully determined unless and until the consignee has inspected the shipment and accepted same.

**h. Carrier's failure to comply with Section 5 of this Agreement may result in non-payment for services.**

**6. CARRIER'S OPERATIONS AND EMPLOYEES.** Carrier will, at its sole cost and expense: (a) furnish all equipment necessary or required for the performance of its obligations hereunder (the "*Equipment*"); (b) pay all expenses related, in any way, with the use and operation of the Equipment; (c) maintain the Equipment in good repair, mechanical condition and appearance; and (d) utilize only competent, able and legally licensed drivers. Carrier will have full control of its personnel and shall perform the services hereunder as an independent contractor. Carrier will transport the goods or product (e.g., vehicles) under Carrier's own Operating Authority and subject to the terms of this Agreement. It is the intention of the parties and acknowledged by the parties that neither the Carrier nor any of its employees shall be deemed to be agents, servants, or employees of the Broker or Broker's customers for any purpose whatsoever, but the Carrier is and shall be an independent contractor and is responsible to the Broker or its customer as to the results to be accomplished and not as to the means and methods for accomplishing the results. Carrier and Broker agree that a customer's insertion of Broker's name as the carrier on a bill of lading shall be for the customer's convenience only and shall not change Broker's or Carrier's status as defined in this Agreement.

**7. INDEMNITY.** Carrier will defend, indemnify, and hold harmless Broker and Broker's customers from and against all loss, damage, expense, cost, including reasonable attorney fees, fines, actions and claims for injury to persons (including death) and for damage to property arising out of or in connection with Carrier's actions, including but not limited to loading, handling, transportation, unloading, or delivery of any shipments made hereunder.

**7. INSURANCE.** Carrier is required to purchase and maintain each of the following forms of insurance in the stated minimum coverage amounts, acceptable to Broker, as part of this Agreement:

- a. Automobile Liability Coverage of \$1,000,000 per occurrence with no annual aggregate.
- b. Occupational injury or illness coverage for owner-operator/fleet drivers (in limits set forth by applicable statute).
- c. Non-trucking Liability (limits of at least \$1,000,000)
- d. All Risk cargo coverage for property damage as follows:
  - i. not less than \$150,000 per occurrence, with no annual aggregate, for Trips involving the delivery of three (3) or fewer vehicles;
  - ii. not less than \$250,000 per occurrence, with no annual aggregate, for Trips involving the delivery of more than three (3), but fewer than eight (8) vehicles; and

- iii. not less than \$350,000 per occurrence, with no annual aggregate, for Trips involving the delivery of eight (8) or more vehicles.

Carrier agrees to provide and maintain, at Carrier's sole cost and expense, the above-required coverage by purchasing same from an insurance company with an A.M. Best's rating of A- or better and Carrier agrees to provide Broker with a Certificate of Insurance evidencing such coverage and naming Broker and/or Broker's customer as an additional named insured and loss payee. The Certificate of Insurance evidence the coverage required by this Agreement must be provided to Broker upon the execution of this Agreement, and such certificate must state that insurance carrier will provide Broker with thirty-(30) days' notice of cancellation or change in coverage. If at any time during the Term of this Agreement, Carrier increases the number of vehicles it may deliver such that it would be required to increase its "per occurrence" coverage, Carrier will obtain and maintain the necessary coverage at its sole cost and expense prior to the first date on which its load, based on an increase in the total number of vehicles to be transported per delivery, required increased All Risk insurance coverage.

#### **8. FREIGHT LOSS, DAMAGE, OR DELAY.**

- a. Broker or Broker's customer shall submit to Carrier written notice of any cargo claim, including loss or expenses resulting from Carrier's delay providing services, within nine (9) months of delivery date of the shipment, or, if no delivery, the date of the occurrence resulting in the claim.
- b. Carrier hereby acknowledges and agrees that Carrier assumes the same liability as a common carrier for full actual loss, subject to provisions of 49 U.S.C. §14706 (Carmack Amendment).
- c. Without limiting the liability of Carrier, Carrier will be responsible for any loss, diminution in value of cargo in the event of damage, loss and/or delay to the cargo. Such diminution in value amount shall be at the sole discretion of the Broker and/or Broker customer and/or the vehicle manufacturer. For example, in the event that the vehicle manufacturer determines that damage to one or more vehicles constitutes a total loss, Carrier will be liable for the full value of the total loss and agrees to pay damages to Broker or its customer in accordance with said determination.
- d. Carrier hereby acknowledges and agrees that no limitation of liability for loss, damage or delay is applicable for any services provided by Carrier without the prior written authorization of Broker, in a document signed by Broker's \_\_\_\_\_. No representative of Broker other than \_\_\_\_\_ has the authority to agree to any limitation of Carrier's liability. Carrier hereby acknowledges and agrees that no limitation of liability for loss, damage, or delay is applicable for any services provided by Carrier without the prior written authorization of Broker, signed by \_\_\_\_\_.
- e. Carrier hereby acknowledges and agrees that Carrier's right to salvage, whether Carrier receives prior notice or not, for any vehicles transported by Carrier is based on and limited to the extent the Broker's customer allows salvage; to the extent the Broker's customer disallows salvage, Carrier hereby waives its claim to salvage.

- f. Any claims arising from the services provided by Carrier will be handled in the following manner:
- i. Claims for loss, damage, injury, or delay to cargo may be filed with Carrier within nine (9) months of the date of delivery of shipment, or within twelve (12) months of a reasonable time for delivery (three months beyond agreed transit time), or within nine (9) months of the date Carrier notifies Broker that the shipment is lost.
  - ii. Notwithstanding the terms of 49 C.F.R. §370.9, Carrier will pay, decline in writing, or make a settlement offer in writing on all cargo loss or damage claims within sixty (60) days of receipt of the claim. Failure of Carrier to pay, decline, or offer settlement within the 60-day period shall be deemed an admission by Carrier of full liability for the amount claimed as damage.
  - iii. If Carrier has not paid Broker for a claim filed with Carrier within ninety (90) days of the claim notice date, Broker is authorized automatically deduct from payments due to the Carrier the amount of the claim, file a claim against Carrier's insurance, pursue remedies for a breach of this Agreement, or any combination of such remedial actions.

The filing, processing and disposition of all cargo claims shall be governed by 49 C.F.R. §370 et seq. to the extent not modified herein. The Parties agree that federal common carrier laws of liability (i.e., Carmack Amendment liability) shall apply to all shipments made, however, Carrier will be liable to Broker for all economic loss, including consequential damages that are incurred by Broker or Broker's customers for any freight loss, damage or delay claim.

**9. WAIVER OF CARRIER'S LIEN.** Carrier will not withhold any vehicles or goods transported pursuant to this Agreement for any reason including the existence of any dispute as to prices or any alleged failure of general credit of Broker or Carrier hereby waives and releases all liens that control of Carrier or Carrier's agents.

**10. RATES AND CHARGES AND PAYMENT TERMS.**

- a. **Agreed Upon Rates & Charges.** Carrier will charge, and Broker will pay, for transportation services at the rates and charges described on the applicable Trip Sheet (the "*Agreed Upon Rates & Charges*"). Carrier hereby acknowledges and agrees that any Rate Confirmation provided to Carrier by Broker will be deemed accepted by Carrier unless objected to, in writing to Broker, within (24) hours.
- b. **Default Rates & Charges.** In the event that services are provided by Carrier related to a particular delivery and the applicable Trip Sheet does not set rates and charges for the said delivery, then Carrier will charge, and Broker will pay, for transportation services at the rates and charges described on Appendix A to this Agreement (attached hereto) (the "*Default Rates & Charges*").
- c. **Carrier's Invoicing Obligations.** Carrier will invoice Broker following the completion of each delivery, after the goods have been delivered to the Destination Location. Carrier will provide to Broker at the time of invoicing all applicable freight bills, bills of lading, clear delivery receipts, and any other necessary billing documents enabling Broker to ascertain that Carrier's services have been provided and that there are no claims,

damages, or other losses arising from, or resulting from, or otherwise related to Carrier's services (e.g., damages resulting from freight loss, damage, or delay).

- d. **Payment Terms.** Payment by Broker will be made within (30) days of receipt by Broker of the uncontested Carrier invoice or directly after receipt of payment from Broker's customer, but not to exceed thirty (30) days from \_\_\_\_\_. In no event shall Broker be liable for any transportation charges for which Broker did not have the primary responsibility for payment under the circumstances surrounding the involved shipment.
- e. Carrier agrees that Broker is solely responsible for payment to Carrier of all freight charges related to the transportation services provided by Carrier pursuant to this Agreement. Carrier agrees it will not attempt any collection efforts against Broker's customer(s) and hereby acknowledges and agrees to look only to Broker for payment of freight charges.

## 11. CONFIDENTIALITY AND NON-SOLICITATION.

- a. Neither party may disclose the terms of this Agreement to a third party without 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. The Parties further agree that Broker's financial information and that of its 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 logistical requirements shared or learned between the Parties and the customers ("**Confidential Information**"), shall be treated as Confidential and will not be used by Carrier except as needed to perform the services under this Agreement and shall not be shared, publicized or disclosed to any person or entity without the prior written consent of the Broker. In the event of a violation(s) of this paragraph, the Parties agree that the remedy at law, including damages, may be inadequate, that the Broker will suffer irreparable harm, and that the Broker will be entitled, in addition to any other remedy it may have, to an injunction restraining the breaching Party from further violation of this Agreement.
- b. Carrier will not, during the Term of this Agreement or at any time during the twelve (12) month period of time immediately following the termination of this Agreement (the "**Restricted Term**"), directly or indirectly solicit delivery services or other services similar to those Carrier performed for Broker ("**Competitive Services**") from any shipper, consignor, consignee, or customer of Broker to whom Carrier was introduced by Broker or with whom Carrier worked pursuant to this Agreement or any Work Order between Carrier and Broker (each, a "**Restricted Customer**"). In the event that Carrier violates this Non-Solicitation agreement, Carrier will pay to Broker a sum calculated as thirty-five percent (35%) of the total transportation revenue received by Carrier related to providing Competitive Services to any and all Restricted Customers during the Restricted Term. Carrier agrees to allow Broker to review and audit Carrier's books and records, including documentation and information regarding all services provided by Carrier during the Restricted Term and all documentation requested by Broker to verify such transportation

revenue to enable Broker to determine whether Carrier has violated this Non-Solicitation agreement and, if so, to calculate the damages Carrier owes to Broker pursuant to this Agreement.

**12. SUB-CONTRACT PROHIBITION.** Carrier specifically agrees that all freight tendered to it by Broker will be transported on equipment operated only under the DOT authority and control of Carrier, and that Carrier will not in any manner sub-contract, broker, or in any other form arrange for the freight to be transported by a third party without prior written consent of Broker.

**13. SEVERABILITY.** In the event that the operation of any portion of this Agreement results in a violation of any law, the Parties agree that such portion shall be severable and that the remaining provision of this Agreement shall continue in full force and effect.

**14. WAIVER.** Carrier and Broker expressly waive any and all rights and remedies allowed under 49 U.S.C. §14101 to the extent that such rights and remedies conflict with this Agreement. As permitted by 49 U.S.C. §14104(b), the parties expressly waive any and all rights or remedies they may have in connection with claiming a rate, charge or fee which is different from the rate, charge or fee established in this Agreement. This being an agreement for contract carriage, the doctrines and principles of common carriage shall not apply. Failure by Broker to exercise any right or privilege herein or under law or at equity shall not be a waiver of any Broker's rights or privileges.

**15. GOVERNING LAW AND ATTORNEY FEES.** It is agreed by Broker and Carrier that the laws of the State of Texas and of the United States District Courts shall govern, without reference to the conflict of laws contained therein, disputes involving any terms of this Agreement or interpretation thereof, the services provided by Carrier, and any other disputes arising between the Parties to this Agreement, whether arising in contract, tort, or otherwise. Carrier hereby waives any jurisdictional rights it may otherwise have. It is also agreed that venue shall be in Dallas County, Texas. Broker and Carrier agree that should any conflict or litigation arise between the parties to this Agreement, the prevailing Party shall be awarded reasonable attorney fees and court costs.

**16. MODIFICATION OF AGREEMENT.** This Agreement may not be amended, modified or waived except by written mutual agreement signed by both Parties.

**17. NOTICES.** All notices provided under or required by this Agreement shall be made in writing and delivered by registered mail, return receipt requested, or by electronic mail or fax with confirmed receipt addressed to the last business address, e-mail address, or fax number provided by the party being served with notice.

**18. COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed to be a duplicate original of this Agreement.

**19. ENTIRE AGREEMENT.** Unless otherwise agreed in writing, this Agreement, with its Appendices, 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. 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 other proceeding involving or arising from this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this agreement to be executed in their respective names by their duly authorized representatives as of the date first above written.

\_\_\_\_\_  
**Motor Carrier**

**MOORE TRANSPORT OF TULSA, LLC**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT: \_\_\_\_\_

PRINT: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

EMAIL: \_\_\_\_\_

FAX: \_\_\_\_\_

FAX: **419-725-2622**

PHONE: \_\_\_\_\_

PHONE: **419-726-4499**

Trailer Size \_\_\_\_\_

Unit Capacity \_\_\_\_\_

MAILING ADDRESS:

MAILING ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Moore Transport of Tulsa, LLC**  
**700 E. Park Blvd, Suite 104**  
**Plano, TX 75074**