

## **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 property broker operating under authority issued by the Federal Motor Carrier Safety Administration (“*FMCSA*”) and registered as Docket Number MC 543764-C (“*Broker*”) and \_\_\_\_\_, a motor carrier with operating authority issued by the FMCSA and registered as Docket Number MC \_\_\_\_\_, (“*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, and thereafter shall be renewed automatically on a year-to-year basis unless terminated as set forth in the following sentence (the “*Term*”). Notwithstanding the foregoing, either party may terminate this Agreement at any time, with or without cause, by providing the other Party with at least a thirty (30) calendar day written notice of intent to terminate (unless a shorter notice is specified in particular circumstances by other provisions of this Agreement). If any shipment within the scope of this Agreement remains in transit or subject to pending invoice payment, claim, or dispute of any kind, on the effective date of a termination of this Agreement, both Parties’ rights and obligations shall remain in effect with respect to such shipment until it is delivered and/or all related invoices and claims are satisfied.

**2. SERVICES.** Broker specializes in providing transportation of new and used automobiles and light trucks (“*Vehicles*”) on behalf of manufacturers and other shippers. Carrier is engaged in the business of transporting Vehicles by truck utilizing specialized equipment and personnel trained in the hauling of such shipments. Carrier’s services are specifically designed to meet the distinct needs of Broker under the specified rates and conditions set forth herein. With respect to shipments that Carrier agrees to haul pursuant to this Agreement, Broker will provide a listing of Vehicles comprising the shipment with each Vehicle identified by its Vehicle Identification Number (“*Trip Sheet*”). Each Trip Sheet shall identify the location where the Vehicles are to be picked up (the “*Origin Location*”), and the location where the Vehicles are to be delivered (the “*Delivery Destination*”), and any other terms relevant to the particular delivery.

### **3. CARRIER’S OBLIGATIONS.**

- b. a.** Carrier represents and warrants that it is a duly and legally qualified and registered motor carrier and is authorized to provide the transportation services contemplated herein. Carrier shall comply with all federal, state, and local laws regarding the provision of services hereunder, including, but not limited to the Federal Motor Carrier Safety Act and implementing regulations.
- c.** Carrier shall comply with all motor vehicle registration, reporting, and operating regulations promulgated by the U.S. Department of Transportation (“*DOT*”). Carrier represents and warrants that it does not have a conditional or unsatisfactory safety rating or a proposed safety rating change issued from the DOT. In the event Carrier is notified of an audit 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 may at its discretion terminate this Agreement immediately upon

receipt of notification of a DOT audit, safety rating change, or an impending audit or change.

- d. Carrier shall 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 shall not cause or permit any shipment tendered hereunder to be brokered to, or transported by, any other carrier, or in substitute service by railroad or other modes of transportation, without the written consent of Broker.
- f. Carrier shall invoice Broker for all services hereunder and under no circumstances will Carrier seek payment from Broker's customer or a consignee.
- g. Carrier shall comply with the written claim incident reporting requirements as implemented, and amended from time to time, by Broker or Broker's customer ("**Incident Reporting Requirements**"). Any event or transaction associated with a shipment hereunder that may give rise to a claim against the Carrier, the Broker, or the Broker's customer (an "**Incident**") is subject to the Incident Reporting Requirements. Carrier is solely responsible for ascertaining, and training its personnel in compliance with, the Incident Reporting Requirements. All Incident reports shall be submitted to Broker as quickly as reasonable possible via the most expeditious mode of communication.
- h. Carrier shall 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 shall further 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.
- i. Carrier shall promptly remit, upon demand, any monies due and owing to Broker or Broker's customer(s) and authorizes such monies to be deducted from any sums then or in the future owed to Carrier.

**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 at a minimum identifies the Vehicles and documents the 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 the shipment in good delivery.

- b. Receipt at Delivery Destination.** Carrier shall obtain a receipt that identifies the Vehicles and documents the quantity of Vehicles delivered to the consignee at the destination specified by Broker., Carrier shall cause such receipt to be signed by a representative of the consignee. Carrier will ensure that all signed bills of lading (“**BOL**”) are transmitted to Broker at the time of Vehicle delivery.
- c.** Any terms, conditions and provisions of the BOL, 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 shall notify Broker prior to proceeding from the Delivery Destination, of any exceptions made on the BOL, manifest, or other receipt.
- e.** Carrier will submit all signed BOLs in accordance with the practices and system used by Broker. Broker currently utilizes an electronic documentation system for BOLs and Carrier agrees to submit BOLs in accordance with that system.
- f.** BOL’s that are received as “Subject to Inspection” are not acceptable forms of receipt and will delay payment or result in non-payment of Carrier’s compensation, as amounts due for services will not be fully determined unless, and until, the consignee has inspected and accepted the shipment without noting damage or other delivery exceptions.
- g.** 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 shall, 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 shall have full supervisory control of its personnel and shall perform the services hereunder as an independent contractor. Carrier will transport the 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 provision of services hereunder, including but not limited to loading, handling, transportation, unloading, or delivery of any shipments.

**8. 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. Workers compensation (in limits set forth by applicable statute) or if the Carrier is domiciled in a state other than North Carolina, California, Nevada, New Jersey or New York, a certificate of exemption from workers compensation coverage and occupational injury or illness coverage for owner-operator/fleet drivers (in limits set forth by applicable statute).
- c. All Risk cargo coverage for property damage as follows:
  - i. not less than \$150,000 per occurrence, with no annual aggregate and subject to a maximum deductible of \$\_\_\_\_\_, for Trips involving the delivery of three (3) or fewer vehicles;
  - ii. not less than \$250,000 per occurrence, with no annual aggregate and subject to a maximum deductible of \$\_\_\_\_\_, 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 and subject to a maximum deductible of \$\_\_\_\_\_, 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 evidencing 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 a thirty (30) day notice of cancellation or change in coverage. If at any time during the term of this Agreement, Carrier increases the per load number of Vehicles it is capable of delivering it shall increase its "per occurrence" All Risk Cargo coverage at its sole expense to an amount required by Broker prior to acceptance of any shipment with a Vehicle count in excess of eight (8).

**9. CARGO LOSS, DAMAGE, OR DELAY.** 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. Claims for cargo loss shall be subject to the following terms:

- 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 in providing services as more fully described in subsection e. below. All time limitations on the exercise of rights and obligations of the Parties with respect to a cargo claim will begin to run on the transmittal date affixed to the written claim notice (the "**Claim Notice Date**").
  
- b. Without limiting the liability of Carrier, Carrier shall be responsible for any loss, diminution in value of cargo in the event of damage, loss and/or delay to the cargo. Determination of any diminution in value amount shall be at the sole discretion of the Broker and/or Broker's customer and/or the Vehicle manufacturer. For example, in the event that the Vehicle manufacturer determines that the extent of damage to one or more Vehicles constitutes a total loss, Carrier shall 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, without regard to loss payment limits imposed by Carrier's cargo insurance.
  
- c. 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 an officer of Broker.
  
- d. In the event damage to a Vehicle constitutes a total loss, the damaged Vehicle remains the property of the Broker's customer and any salvage credit or release of the Vehicle as salvage to Carrier and/or Carrier's insurer shall be at the sole discretion of the Broker's customer. Provided, however, that Carrier shall be entitled to the proceeds of any sale of salvage or any salvage allowance allowed by Broker's customer. To the extent the Broker's customer disallows salvage, Carrier hereby waives its claim to salvage.
  
- e. 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 accept, decline in writing, or make a settlement offer in writing on all cargo loss or damage claims within fifteen (15) days of the Claim Notice Date. Failure of Carrier to pay, decline, or offer settlement of the claim within the above referenced 15-day period shall be deemed an admission by Carrier of full liability for the amount claimed as damage. Carrier's written denial of all or part of a damage claim must contain all purported reasons for the denial supplemented by a detailed recitation of facts and attachment of witness statements, photos, or other documents supporting the Carrier's position. Broker will present the Carrier's denial and supporting data to the Broker's customer for final determination. Broker shall accept Carrier's claim denial only to the extent that Broker's customer accepts the denial or mitigates the damage claim.

- iii. Broker is authorized to deduct from any funds due Carrier the lesser of (A) the dollar amount of Carrier's cargo insurance deductible, or (B) the dollar amount of the damage claim less any mitigation of claim amount agreed to by Broker and its customer.
- iv. If Carrier, or its cargo insurer, has not finally resolved a damage claim to the satisfaction of Broker and its customer with within forty-five (45) days of the Claim Notice Date, Broker is authorized to deduct from any funds due Carrier the remaining 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.

**10. WAIVER OF CARRIER'S LIEN.** Carrier will not withhold any Vehicles or other goods transported pursuant to this Agreement for any reason including the existence of any dispute as to rates or applicable charges or any alleged failure of general credit of Broker. Carrier agrees to waive any and all liens against Vehicles or other shipped goods that might otherwise inure to Carrier

**11. 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 approved charges described on the applicable Trip Sheet. The rates and approved charges provided to Carrier by Broker shall be deemed accepted by Carrier unless objected to, in writing to Broker, within (24) hours of receipt by Carrier of the Trip Sheet. (the "*Agreed Upon Rates and Charges*").
- b. **Default Rates& Charges.** In the event that services are provided by Carrier related to a particular shipment and the applicable Trip Sheet does not contain rates and approved charges for the shipment, then Carrier will charge, and Broker will pay, for transportation services at the rates and approved charges described on attached Appendix A to this Agreement (the "*Default Rates& Charges*").
- c. **Carrier's Invoicing Obligations.** Carrier will invoice Broker after the Vehicles or other 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, properly signed and dated delivery receipts with no noted exceptions, 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 will be made upon receipt by Broker of payment from Broker's customer, but in no even later than thirty (30) days from the date the delivery documents described in subsection (c.) above have been received by Broker. In no event shall Broker be liable for payment of any invoice for a shipment for which Broker was not designated on the Trip Sheet or other trip assignment document as the party responsible for payment.

- e. Carrier agrees that with respect to all shipments on which Broker is the designated party responsible for payment of Carrier's invoice for services, Carrier shall look solely to Broker for payment. Carrier shall initiate no collection efforts against Broker's customer(s).

**12. 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 shall 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 Broker. In the event of a violation 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 Carrier, and any person or entity working in concert with Carrier, from disclosure or unauthorized use of Confidential Information.
- b. Carrier will not, during the Term of this Agreement or at any time during the twelve (12) month period immediately following the termination of this Agreement (the "**Restricted Term**"), directly or indirectly solicit transportation 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 provision, 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 determine whether a violation has occurred and the amount of damages due Broker.

**13. SUB-CONTRACT PROHIBITION.** All shipments undertaken by Carrier shall be transported on equipment bearing Carrier's DOT number and operated pursuant to Carrier's supervision and control. Carrier shall not in any manner sub-contract, broker, or in any other form arrange for any shipment to be transported by a third party without prior written consent of Broker.

**14. SEVERABILITY.** In the event that the operation of any portion of this Agreement results in a violation of any law, or any provision is determined by a court of competent jurisdiction to

be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provision of this Agreement shall continue in full force and effect.

**15. WAIVER.** Carrier and Broker expressly waive any and all rights and remedies permitted to be waived under 49 U.S.C. §14101(b) to the extent that such rights and remedies conflict with this Agreement. 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. Failure by Broker to exercise any right or privilege herein or under law or at equity shall not be a waiver of any of Broker's rights or privileges.

**16. GOVERNING LAW AND ATTORNEY FEES.** Except to the extent that the application of such laws is prohibited by applicable provisions of federal statutes, this Agreement shall be interpreted in accordance with the laws of the State of Texas, without reference to the conflict of law provisions contained therein. Venue and jurisdiction for resolution of any dispute arising from this Agreement or other dealings between the Parties, shall be in the United States District Court for the Northern District of Texas. If jurisdictional requirements are not met for filing or removal to federal court, venue and jurisdiction shall lie in the Dallas County Texas District Court. Broker and Carrier agree that should any litigation arise between the parties to this Agreement, the prevailing Party shall be awarded reasonable attorney fees and court costs.

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

**18. 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.

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

**20. 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**