

# TRANSPORTATION BROKERAGE CONTRACT

**THIS AGREEMENT** is made and entered into on this \_\_ day of \_\_\_\_\_, 20\_\_, by and between LOGISTICS ONE BROKERAGE, INC. (“Broker”) with its principal place of business located at 33 Cady Hill Boulevard, Saratoga Springs, New York 12866, and \_\_\_\_\_ (“Carrier”), with its principal place of business located at \_\_\_\_\_.

## WITNESSETH

**WHEREAS**, the Carrier represents and warrants that it is a motor carrier registered with the U.S. Department of Transportation under Permit Number \_\_\_\_\_, and desires to furnish contract carrier services to Broker for the transportation of general commodities. Carrier is fully authorized, qualified and adequately equipped to perform the freight transportation services required herein, and will continue to comply with the safety regulations of the Federal Motor Carrier Safety Administration, Department of Transportation (“DOT”) (or of any other applicable governmental authority), including, but not limited to, drivers’ hours of service and records thereof, driver qualification requirements and physicals, and equipment maintenance standards and reports. Carrier has obtained all necessary approvals, permits, licenses and authorities from all federal, state, local and other regulatory agencies having jurisdiction with respect to the transportation services described herein.

**WHEREAS**, the Broker is a registered broker of transportation services operating pursuant to U.S. Department of Transportation Permit Number MC497799, and shall have “practical working control” of the involved freight as that term is defined by the Interstate Commerce Commission, or its successor agency, for the routing of freight from origin to destination. Broker has distinct transportation needs and desires to engage the services of the Carrier within the limits of the Carrier’s various operating authorities for the transportation of its customer’s freight, pursuant to the terms and provisions of this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the parties mutually agree as follows:

### **1. TERM**

The term of this Agreement shall be one (1) year commencing on the date first written above and shall automatically renew for successive one (1) year periods; provided however, that this Agreement may be terminated by either party at any time by giving thirty (30) days written notice to the other party at the address stated above or at such other address as either party shall notify the other in writing.

### **2. PAYMENT FOR SERVICES**

- A. Rates for line-haul freight movements and all accessorial charges shall be evidenced under separate documentation in any form (e-mail, fax or US mail) and format agreed upon by both parties. Such documentation shall automatically be incorporated herein and any conflict between any such documentation and this Agreement shall be resolved in favor of this Agreement. Broker agrees to pay Carrier at such agreed rates for the full and proper performance of the transportation services made by the Carrier under the terms of this Agreement. This amount shall constitute full payment to the Carrier for said services including all payments for pickup, delivery, loading, unloading, and the transportation between points of origin and destination.
- B. Any amount overpaid by Broker for pickup, delivery, overcharge claims on previous loads of similar items, or other items more specifically identified in this Agreement, shall be deducted from any amounts owed to Carrier.
- C. The Broker shall pay the Carrier within thirty (30) days of submission by the Carrier, by mail or in person, of documents showing full and proper performance of the terms of this Agreement for each shipment of freight. The required documents shall include original Delivery Receipts, Bills of Lading, Pallet Receipts

and such other evidence of proper delivery and such other documents as may be required by the Rules and Regulations of the National Surface Transportation Board, the Federal Highway Administration, and/or the Federal Motor Carrier Safety Administration, Department of Transportation.

- D. CARRIER AGREES THAT THE BROKER HAS THE EXCLUSIVE RIGHT TO HANDLE ALL BILLING OF FREIGHT CHARGES TO BROKER'S CUSTOMERS FOR THE TRANSPORTATION SERVICES PROVIDED HEREIN, AND CARRIER FURTHER AGREES TO REFRAIN FROM ALL COLLECTION EFFORTS AGAINST THE SHIPPERS OR RECEIVERS OF GOODS OR THE BROKER'S CUSTOMERS. CARRIER ACKNOWLEDGES THAT A VIOLATION OF THIS SECTION SHALL RESULT IN INESTIMABLE DAMAGES TO BROKER'S RELATIONSHIP WITH ITS CUSTOMERS. ACCORDINGLY, CARRIER AGREES THAT ANY VIOLATION OF THIS SECTION BY CARRIER OR ANY SUBCONTRACTOR OF CARRIER SHALL ENTITLE BROKER TO LIQUIDATED DAMAGES OF \$5,000.00, IN ADDITION TO ALL OTHER DAMAGES AND REMEDIES AVAILABLE AT LAW OR IN EQUITY, INCLUDING ATTORNEYS' FEES.**

### **3. OVERCHARGE/UNDERCHARGE**

The time limit for filing overcharge and undercharge claims on shipments transported pursuant to this Agreement shall be one hundred and eighty (180) days.

### **4. INSURANCE**

- A. The Carrier shall maintain general liability insurance in the amount of one million dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury and property damage; cargo insurance in the amount of one hundred thousand dollars (\$100,000.00) to protect cargo transported by Carrier against loss by fire, theft, and other perils of transportation; and comprehensive automobile liability insurance with a combined single limit per occurrence of not less than one million dollars (\$1,000,000.00) to protect against liability arising from the maintenance or use of all owned, non-owned and hired vehicles of Carrier.
- B. In the event the Carrier is authorized by the Broker to utilize trailer equipment owned or leased by the Broker in the performance of transportation services described herein, the Carrier shall provide the Broker with trailer interchange insurance covering the Broker's trailer equipment for physical damage while such equipment is in the possession, use and control of the Carrier, its agents or employees. Such policy shall provide for physical damage coverage in an amount equal to the full replacement value of said equipment. The limit of liability of such coverage shall not be less the thirty thousand and 00/100 dollars (\$30,000.00) per trailer.
- C. The Carrier shall at all times maintain workers' compensation insurance for the benefit of its employees in accordance with applicable law.
- D. The Carrier shall at all times maintain a surety bond in accordance with applicable law.
- E. The Carrier shall supply Broker with written certificates obtained from the Carrier's insurance company or companies showing that all such insurance has been obtained, is properly maintained, that the premiums are paid, specifying the name of the insurance company or companies, the policy numbers, the expiration dates, and specifying that written notice of cancellation or modification of the policies shall be given to Broker at least thirty (30) days prior to such cancellation or modification. Upon request, Carrier shall provide Broker with copies of all applicable insurance certificates. Carrier shall add Broker as an additional insured to all of the insurance policies herein described, except workers' compensation. If the Carrier is authorized to be self-insured, then the Carrier shall provide Broker with evidence satisfactory to Broker of Carrier's self-insured status and that Carrier is able to provide the same coverage as that required by carriers under this Agreement that are not self-insured.

### **5. INDEMNIFICATION**

- A. Carrier shall release, defend, indemnify, and hold Broker harmless from and against all loss, liability, damage, claim, fine, cost or expense, including reasonable attorneys' fees, arising out of or in any way related to the performance or breach of this Agreement by Carrier, its employees or independent

contractors working for Carrier, including but not limited to, claims for or related to personal injury, including death, property damage (excluding cargo) and/or Carrier's possession, use, maintenance, custody or operation of Carrier's equipment or Broker's equipment, as the case may be.

- B. Carrier shall assume complete responsibility for any cargo loss or damage occurring while cargo is in the possession, custody or control of Carrier up to one hundred thousand and 00/100 (\$100,000.00) dollars per occurrence, and shall indemnify, defend and hold Broker harmless for any such loss or damage claim asserted against Broker.
- C. Carrier shall assume complete responsibility for any delay claims made against Broker for Carrier's delay in performing freight services and shall indemnify, defend and hold Broker harmless for any such claim asserted against Broker.
- D. Carrier shall indemnify and hold harmless Broker from any and all claims made by Carrier's employees, or by any federal, state or local agencies, for withholding taxes, employment taxes of any kind, workers' compensation, disability benefits, pension or social security taxes, or any other actions arising from the Carrier's relationship with its employees.
- E. Notwithstanding the foregoing and under no other section of this Agreement shall Carrier be liable for incidental or consequential damages.

#### **6. FREIGHT LOSS OR DAMAGE**

- A. Carrier shall have the sole and exclusive care, custody and control of the freight tendered to the Carrier from the time it is accepted by the Carrier for transportation until delivery is made, accompanied with the appropriate receipts. Carrier assumes all liability for loss or damage to or destruction of any and all of said freight while under Carrier's care, custody or control, subject to the provisions of Section 5.
- B. Carrier shall report to Broker any freight loss, shortage, overage or damage prior to leaving the shipper's or receiver's facility. All loss, shortage, overage or damage must be noted in detail on the Bill of Lading. All claims made against the Carrier for loss, theft, conversion, shortage or damage shall be submitted to Carrier in writing in an amount equal to the landed cost of the goods identified in any such claim. Carrier shall be obligated to satisfy, or refute to the satisfaction of Broker, any claims submitted to Carrier within thirty (30) days of its receipt of said notice of claim.
- C. The terms of this Section shall not apply to concealed damage on a pre-loaded trailer or any damage on a pre-sealed trailer, which in either case results in Carrier's inability to inspect before taking custody and control of the freight, except to the extent any such damage is caused by a traffic accident or other obvious driver error (i.e.: hard braking or load shift due to imprudent speed).

#### **7. PERFORMANCE OF SERVICES**

Carrier's services under this Agreement are specifically designed to meet the distinct needs of the Broker and its customers under the specified rates and conditions set forth herein. Carrier shall transport all shipments provided under this Agreement without delay, and all occurrences which would be probable or certain to cause delay shall be timely communicated to Broker by Carrier. This Agreement does not grant the Carrier an exclusive right to perform the transportation services for Broker or its customers.

#### **8. PERFORMANCE FAILURE**

Broker shall have the right (for any reason other than a failure of Broker's equipment not caused by the acts or omissions of Carrier) to complete the required performance, and to hold the Carrier liable for any costs or damages incurred by Broker due to Carrier's (i) failure to complete the transportation of commodities in transit, (ii) abandoning a shipment, (iii) failure to perform any required driver assist loading or unloading service or (iv) otherwise subjecting the Broker to liabilities, fines, charges or any expenses from the shipper, consignee or any governmental agencies which result from the acts or omissions of the Carrier. The Carrier hereby waives any recourse against the Broker for such action and agrees to reimburse Broker for any and all reasonable costs, expenses or other damages for which Broker may be found liable as a result thereof, subject to the limitations contained in Section 5 above. Furthermore, Broker shall not be required to pay Carrier any amount whatsoever,

including deadhead and/or bobtail miles, in connection with any load tendered by the Broker which is not completed by the Carrier.

## **9. ACCIDENTS**

- A. In the event the Carrier is involved in any accident, regardless of fault, the Carrier must notify the Broker as soon as possible and provide the Broker with all relevant information.
- B. In the event Carrier is involved in an accident which causes damage to the Broker's trailer to the extent that said trailer must be towed or otherwise removed from the scene of the accident, Carrier shall be liable to the Broker and shall be responsible for all fines, towing expenses and storage charges assessed for the damaged trailer while in the possession of any garage or storage facility pending resolution with Broker's insurance company and subject to any interchange agreement between the parties.
- C. If, as a result of any accident, Carrier is unable to complete a shipment, Carrier shall be liable to the Broker for all of Broker's reasonable costs associated with the retrieval and delivery of the goods including mileage charges from the point of dispatch to the location of the goods, any labor and equipment costs incurred in order to transfer the goods onto another trailer (if necessary), any towing and/or storage fees of any kind, and any late delivery charges or penalties of any kind which may be assessed by the Broker's customer, subject to the limitations contained in Section 5 above. In such an event, the Broker shall not be required to pay the Carrier any amount whatsoever, including deadhead and/or bobtail miles, in connection with such a load which cannot be delivered by the Carrier as a result of an accident however caused.

## **10. DAMAGE TO BROKER'S EQUIPMENT**

In the event the Carrier receives written authorization to utilize trailer equipment owned or leased by the Broker in the performance of transportation services provided herein:

- A. The Carrier shall be responsible and liable to the Broker and agrees to pay one hundred percent (100%) of the reasonable costs incurred to repair any and all physical damages to equipment owned or leased by the Broker occurring while such equipment is in the possession, use or control of the Carrier, its agents or employees. The Broker shall have sole discretion in effectuating repairs to its equipment as a result of any such damage and the Carrier shall be wholly liable to the Broker for said costs.
- B. The Carrier shall be responsible for all costs, including roadside service charges, to repair or replace tires on Broker's trailers which are cut from curbs, railroad tracks or the negligence of the Carrier, and for all tires which have been run flat due to Carrier's negligence. It is the responsibility of the Carrier to stop the trailer immediately upon any tire going flat, set-up all warning devices and protect the disabled unit, and then contact the Broker or Broker's designated service agent for roadside service. All damaged tires will be returned by the Carrier to the Broker for inspection. Failure to do so will result in the Carrier assuming full responsibility for the tire replacement costs including all roadside service fees.
- C. In the event any trailer owned or leased by Broker is lost, stolen or irreparably damaged or destroyed while in the custody, care or control of the Carrier, Carrier shall pay the Broker the fair market value of said trailer upon demand by Broker. In the event a lost or stolen trailer is recovered after settlement has occurred, the Carrier may recover from the Broker the settlement value after Carrier has returned the trailer to Broker in the same condition as received by Carrier, less a fee of twenty and 00/100 dollars (\$20.00) per day for each calendar day the trailer was presumed lost or stolen.
- D. Carrier may not permanently retain possession of any trailer owned or leased by Broker.
- E. Carrier shall not utilize Broker's trailers for any purpose other than the transporting of freight subject of this Agreement. In the event Carrier violates this provision, Broker may immediately terminate this Agreement and Carrier shall be responsible for all costs of cleaning and decontaminating any trailers that were loaded with contaminating commodities without Broker's authorization and for all costs for removing any dunnage or debris.

### **11. NON-EXCLUSIVITY**

The parties agree that this is a non-exclusive agreement and that the Carrier shall be free to accept freight for transportation from parties other than the Broker, subject to Section Eighteen (18) herein, and that the Broker shall be free to tender freight for transportation to carriers other than Carrier.

### **12. RECEIPTS AND BILLS OF LADING**

Each shipment made shall be evidenced by a Uniform (Standard) Bill of Lading naming Carrier as the transporting carrier. Upon delivery of each shipment, Carrier shall obtain a receipt showing the kind and quantity of product delivered, and Carrier shall have each receipt signed by the Broker's customer or by the receiver of goods, as the case may be. 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. Carrier shall notify Broker immediately of any discrepancy between the Bill of Lading and the actual goods delivered.

### **13. CARRIER'S OPERATIONS**

Carrier shall, at its sole expense: (a) furnish all equipment and personnel necessary or required for the performance of its obligations hereunder; (b) pay all expenses related, in any way, with the use and operation of its equipment, including any fines; (c) maintain its equipment in good repair, mechanical condition and appearance; and (d) utilize only competent, able and legally licensed personnel. Carrier shall have full control of such personnel and shall perform the services hereunder as an independent contractor, and shall assume complete responsibility for all state, federal and foreign taxes, assessments, insurance, including but not limited to, workers' compensation, unemployment compensation, disability, pension and social security insurance, and any other financial obligations arising out of the transportation performed hereunder. Broker shall have no responsibility for the maintenance, upkeep or repair of Carrier's equipment.

### **14. SUB-CONTRACTING**

- A. Carrier specifically agrees not to use subcontractors (other than owner-operators under a written agreement), to interline with other carriers, to broker shipments, or to use substituted services by rail without the prior written consent of Broker.
- B. If Carrier uses owner-operators, Carrier warrants and represents: (i) Carrier shall comply with all applicable laws and regulations; (ii) Carrier shall enter into a written agreement that shall provide that Carrier shall have exclusive possession, control, and use of the equipment for the duration of the agreement and that Carrier shall assume complete responsibility for the operation of the equipment for the duration of the agreement; and (iii) under no circumstances will Carrier's obligations under this Agreement, including but not limited to its liability to third parties or its liability for loss, damage or delay, be affected or diminished by reason of its use of owner-operators.
- C. If Carrier should directly or indirectly subcontract or broker any shipment to another carrier (with Broker's written consent or in violation of this Section), Carrier shall (i) remain bound by all terms and conditions of this Contract in the same manner as if it were performing such services directly for Broker, (ii) assume full responsibility and liability for the acts and omissions of the carrier handling the shipment as though Carrier transported the shipment itself, and (iii) indemnify and hold harmless Broker from and against any and all damages which Broker may suffer as a result of such sub-contracting. Under no circumstances will Carrier's obligations under this Agreement, including but not limited to its liability to third parties or liability for loss, damage or delay, be affected or diminished by reason of its brokering of shipments to another carrier.
- D. Carrier Acknowledges That A Violation Of This Section Shall Result In Inestimable Damages To Broker's Relationship With Its Customers. Accordingly, Carrier Agrees That Any Violation Of This Section Shall Entitle Broker To Liquidated Damages Of \$5,000.00, In Addition To All Other Damages And Remedies Available At Law Or In Equity, Including Attorneys' Fees.**

**15. WAIVER OF CARRIER'S LIEN**

Carrier shall not withhold any goods of the Broker's customer on account of any dispute as to rates or any alleged failure of the Broker to pay charges incurred under this Agreement. Carrier is relying upon the general credit of the Broker and hereby waives and releases all liens which Carrier might otherwise have to any goods of Broker or its customer in the possession or control of Carrier.

**16. CARRIER'S FINANCIAL REPORTS**

Carrier agrees to submit to Broker evidence of its financial condition upon Broker's reasonable request.

**17. CONFIDENTIAL INFORMATION**

It is understood that in the course of performing this Agreement, the Carrier will obtain proprietary and confidential information concerning the business and affairs of the Broker and Carrier agrees to hold such information (including freight rates) in strict confidence and, without the written consent of the Broker, not to disclose or make use of such information except as may be necessary for the performance of this Agreement.

**18. ACCOUNT PROTECTION**

Carrier understands and agrees that Broker has devoted substantial effort to develop its customer accounts. Neither Carrier, nor any affiliate of Carrier nor any entity acting on Carrier's behalf, shall, without the express written permission of Broker, during the term of this Agreement and for a period of one (1) year after the termination hereof, directly or indirectly, solicit, attempt to solicit or perform freight services for any customer of Broker for which Carrier provides transportation services under this Agreement. The terms of this Section shall not prevent Carrier from continuing to perform independent freight services for Broker's customer if Carrier can demonstrate it has provided freight services directly for Broker's customer during the six (6) months preceding the initial tendering of such customer's freight by Broker to Carrier under this Agreement. Notwithstanding the foregoing, Carrier shall remain subject to the restrictions of this Section with regard to any and all freight lanes (load origin to specific destination) tendered to Carrier by Broker. Any violation by Carrier of the foregoing shall constitute a breach of this Agreement entitling Broker to (a) injunctive relief and to all other rights and remedies it may have at law or in equity, or at Broker's option, (b) an amount equal to twenty percent (20%) of all amounts billed by Carrier to any customer of Broker in violation of this Section, with such payment being due immediately and payable within twenty (20) days after each billing date for such services.

**19. INDEPENDENT CONTRACTOR**

- A. The Carrier is an independent contractor and is not the agent or representative of the Broker for any purpose whatsoever. The Carrier shall not create any obligations, express or implied, on behalf of the Broker, or bind the Broker in any manner whatsoever except as provided herein. The employees of the Carrier are not to be considered employees of the Broker at any time, under any circumstances.
- B. The relationship of the Carrier to Broker shall, at all times, be that of the Carrier and the Broker under contract carriage and in no instance shall Carrier provide services to Broker under any authority permitted or granted to Broker, unless otherwise agreed to in a writing signed by Broker.

**20. ASSIGNMENT**

- A. The Carrier shall not have the right to assign this Agreement.
- B. The Broker shall have the right to assign this Agreement without requiring the consent of the Carrier.

**21. AMENDMENTS**

This Agreement shall not be amended except by written agreement duly authorized and signed by the parties hereto.

**22. NOTICES**

All notices required to be given or authorized to be given by either party pursuant to this Agreement shall be in writing and shall be delivered by hand or sent by registered or certified mail, postage prepaid, return receipt

requested, to the addresses first above written, or at such other address as either party may from time to time so notify the other in writing.

**23. GOVERNING LAW; SUBMISSION TO JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The parties consent to the exclusive jurisdiction of and laying of venue in the courts of the State of New York located in the County of Saratoga or the federal courts located in Albany, New York.

**24. FORCE MAJEURE**

If either party to this Agreement is prevented from or delayed in performing any of its obligations hereunder on account of any law or legally binding order, regulation, or act of any government or any department or agency thereof, or on account of war, acts of God, labor disturbances, or any cause beyond the control of such party, such party shall be excused from performing its obligations hereunder to a like extent and neither party shall be liable to the other for damages by reason of any delay or suspension of performance resulting from the disabilities listed herein.

**25. SEVERABILITY**

If any term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid and unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

**26. BINDING EFFECT**

All of the covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the successors and/or assigns of the parties hereto to the same extent as if each such successor and/or assign were in each case named as a party to this Agreement. Any person, corporation or other legal entity acquiring any or all of the right or interest of the Carrier in this Agreement as a result of any legal process or proceedings shall thereby become liable under and be fully bound by all of the provisions of this Agreement.

**27. WAIVER**

The failure of either party to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Agreement, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. No provision of this Agreement shall be deemed to have been waived unless such waiver be in writing and signed by the party providing such waiver.

**28. HEADINGS**

The headings to the various paragraphs of this Agreement have been inserted for convenient reference only and shall not to any extent have the effect of modifying, amending or changing the expressed terms and provisions of this Agreement.

**29. POWER AND AUTHORITY**

The execution, delivery and performance of this Agreement by all parties are within the parties' respective powers, and have been duly authorized by all necessary action of each. If required, all parties agree to furnish such proof to the other and to execute any further instruments necessary to carry out this Agreement.

**30. DEFAULT; REMEDIES**

In the event either party shall default in the performance of any obligations specified herein, the non-defaulting party shall notify the other party in writing, and if such default is not remedied within ten (10) days after receipt of notice, then the non-defaulting party shall have the right to any and all remedies available at law or in equity, including the termination of this Agreement. Termination shall not relieve or release either party from any

liabilities which may have accrued prior to the date of termination. The prevailing party, in any dispute under this Agreement, shall also be entitled to reasonable attorneys' fees and costs.

**31. ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding between the Broker and the Carrier regarding its subject matter, and no other agreements written or oral shall in any way affect the liabilities of either party as set forth herein. This Agreement supersedes any other Transportation Brokerage Contract previously signed by the parties hereto.

**32. COUNTERPARTS, ELECTRONIC OR FACSIMILE SIGNATURES**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be binding upon any of the signatories hereto unless and until it has been executed by all of the entities and persons whose signatures are provided for below. The exchange of electronic or scanned signature pages shall be acceptable and binding upon the parties.

**IN WITNESS WHEREOF**, Carrier and Broker have caused this Agreement to be executed on the date first above written.

**CARRIER**

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BROKER**

**LOGISTICS ONE BROKERAGE, INC.**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_