

BROKER-CONTRACT CARRIER AGREEMENT

This Broker-Contract Carrier Agreement (A Agreement@) is entered into this _____ day of _____, 20____, by:

Magic Valley Truck Brokers, Inc., an Idaho corporation, whose address is 2906 South Featherly Way, Boise, Idaho 83709 (hereinafter referred to as A Broker@); and

_____, whose address is _____ (hereinafter referred to as A Carrier@).

RECITALS

WHEREAS, Broker is a transportation broker, as defined in 49 USC Section 13102(2), and is registered with the Federal Motor Carrier Safety Administration (hereinafter referred to as AFMCSA@), Docket No. MC-130161, pursuant to 49 USC Section 13904(a), to arrange for the transportation of property by motor carrier on behalf of shippers/consignors or receivers/consignees (hereinafter referred to as A Customers@) and for the purposes of contract controls the transportation of the commodities to be tendered to Carrier, in accord with the criteria established in Dixie Midwest Express, 132 M.C.C. 794 (1982), and, thus is a contract shipper under those criteria.

WHEREAS, Carrier is a motor carrier in interstate and intrastate commerce registered with the FMCSA, Docket No. MC-_____ (or US DOT # _____) and is engaged in providing transportation of property pursuant to its contract carrier operating authority.

WHEREAS, Broker desires to arrange for Carrier to provide services on behalf of Customers; and

WHEREAS, Carrier is ready, willing and able to provide such services.

NOW, THEREFORE, in consideration of the terms, conditions and covenants stated in this Agreement and intending to be legally bound, Broker and Carrier agree as follows:

1. **Transportation Service.** Broker agrees to offer to the Carrier, from time to time, on a non-exclusive basis, shipments for Carrier to transport as a motor carrier pursuant to its contract carrier operating authority, to and from such points between which service may be required. Upon execution of this Agreement, Carrier shall furnish Broker a copy of its contract carrier operating authority as evidence of proper registration with the FMCSA and certificates of Public Liability, Property Damage, and Cargo Insurances in the amounts specified in paragraph 8.

2. **Performance.** Carrier shall perform its transportation services in a prompt,

competent and efficient manner in accordance with the highest standards for the transportation of the commodities involved and within the restrictions, if any, set by Customer(s). Carrier agrees to use utmost care and diligence as to the prompt and safe transportation of all freight tendered by Broker and Customer(s). Carrier agrees to deliver all shipments tendered to it with reasonable dispatch, which shall be the number of days necessary to transport the shipment from origin to destination in compliance with all applicable safety regulations, giving due consideration to weather and road conditions.

- a. All services performed by Carrier at the direction of, or on behalf of, Broker during the term of this Agreement shall be deemed to be that of a contract carrier by motor vehicle subject to all of the terms and conditions of this Agreement and, unless otherwise specifically agreed to in writing, this Agreement shall apply to all services rendered by Carrier to Broker.
- b. Carrier shall not cause or permit any shipment tendered by Broker or Customer under this Agreement to be transported by any other motor carrier or in substituted service by railroad or other modes of transportation, without prior written consent of Broker. Failure to comply with this provision will result in non-payment of freight charges on the shipment.
- c. Carrier agrees that, in the transportation of all goods under this Agreement, it assumes the liability of a motor carrier for full actual loss, subject to the provisions of 49 USC Section 14706 (the Carmack Amendment), such liability to exist from the time of the receipt of any goods by Carrier until proper delivery has been made.

3. **Compensation to Carrier.** Carrier and Broker shall establish mutually acceptable contract rates, rules and accessorial charges, and Carrier shall be paid as its full compensation, solely on the basis of such rates and rules for the specified transportation services performed by Carrier. All such rates and accessorial charges will be confirmed in writing or by facsimile transmission, properly signed by authorized representatives of each party and, by this reference, fully incorporated into this Agreement prior to each shipment. The source for miles to be used in calculation of compensation for mileage based rates shall be the PC Miler reflecting Household Goods Carriers= Bureau Tariff No. 16 and successive reissues thereof, unless otherwise agreed in writing by the parties.

4. **Receipts and Bills of Lading.** Each shipment under this Agreement shall be evidenced by a receipt, which shall be signed by Carrier or Carrier's agent or employee, showing the kind and quantity of product received by Carrier at origin. Such receipt shall be evidence of Carrier's receipt of such shipment in good order and condition unless the contents of such shipment are not readily observable or as may otherwise be noted on the face of such receipt. If Carrier, Broker or Customer elects to use a bill of lading, manifest or similar document, such documents shall not modify or add to, but shall be subject and subordinate to, the terms, conditions and provisions of this Agreement, which shall prevail and take precedent.

- a. Upon delivery of each shipment to the destination specified by Broker or Customer, Carrier shall obtain a signature from the consignee or its agent showing the kind and quantity of product delivered and any damages, overages or shortages in the shipment. Carrier shall notify Broker of any such damages, overages or shortages via phone immediately upon delivery and confirm same in writing to Broker via facsimile within twenty-four (24) hours of delivery.
- b. The parties expressly agree that no shipment shall move subject to released rates unless such limitation of liability shall have been specifically agreed to in writing between the parties, and that a notation on a bill of lading or other similar document shall not constitute the specific agreement required by the preceding clause.

5. **Payment.** Broker shall pay Carrier for its services within thirty (30) days of receipt of all necessary documentation, to be identified at acceptance of the load by Carrier, which may include, but shall not be limited to, the original bill of lading or shipping order. Carrier agrees that it shall look solely to Broker for payment for any services rendered under this Agreement and shall not, in any event, contact Customers on any other matter whatsoever without the prior, express written consent of Broker. Carrier agrees that no penalties, interest or late charges of any nature whatsoever will be assessed against Broker or Customer(s) for occasional and inadvertent late payment. Carrier hereby designates Broker as its agent for the purpose of collecting the agreed-to freight charges from Customers served pursuant to this Agreement.

6. **Compliance with Laws.** Carrier shall comply with all federal, state and local laws, rules, regulations and ordinances, including, but not limited to, all rules and regulations promulgated by FMCSA and all other federal and state agencies and departments having jurisdiction over the transportation services performed. Carrier shall defend, indemnify, and hold Broker harmless from all liability, action, loss, cost, damage, expense, fines, penalty and claims, including reasonable attorneys' fees, cost of suit, settlement, judgments, and all other expenses to which Broker may be subjected, arising or resulting from Carrier's failure to comply with all such laws, rules, regulations and ordinances.

7. **Equipment.** Transportation services to be performed by Carrier shall be performed with equipment that is in good order, condition and repair and that meets with all applicable federal and state laws, rules and regulations, including, but not limited to, those of the United States Department of Transportation. Such equipment shall be well maintained, clean, insect, rodent and odor free, and water tight.

- a. Carrier understands that Broker deals in commodities requiring sanitary equipment that is in compliance with all local, state and federal statutes and regulations. Carrier agrees that it will provide motor carrier equipment that is in compliance with such statutes and regulations. Specifically, Carrier agrees that, in transporting shipments that contain food products intended for human or animal consumption, Carrier will not utilize a trailer that has been utilized for transportation of Hazardous Materials within the meaning of 49 USC Section 6103, or Solid Waste within the meaning of 42 USC Section 6903, or that otherwise is not fully suitable for transportation of any Food,

Food Additive, Drug, Cosmetic or Device within the meaning of those terms as used in 21 USC Section 321. Further, Carrier agrees that all equipment provided complies with the Sanitary Food Transportation Act of 1990 (49 USC Section 5701, *et. seq.*) and regulations adopted under that Act.

- b. Carrier agrees to use either company-owned equipment or permanently leased equipment to transport products under this Agreement.

8. **Insurance.** Carrier shall procure and maintain, at its sole cost and expense, with reputable and financially responsible insurance underwriters acceptable to Broker, the following insurance coverages:

- a. Comprehensive General Liability Insurance, occurrence basis, for personal injury coverage (including injury resulting in death) and loss of or damage to property, with combined single limits of at least One Million Dollars (\$1,000,000.00), which insurance shall include a contractual liability endorsement covering Carrier=s obligations under this Agreement.
- b. Automobile or Motor Carrier Liability Insurance, to include any motor vehicle, or all owned, non-owned and hired motor vehicles, covering bodily injury including injury resulting in death and loss of or damage to property (including environmental restoration), with combined single limits of at least One Million Dollars (\$1,000,000.00) which insurance shall cover liabilities assumed in this Agreement.
- c. All Risk Cargo Liability Insurance, occurrence basis, to include mechanical refrigeration unit breakdown, if applicable, in an amount to compensate those parties entitled to recover under the bill of lading under paragraphs 2(c), 4(a) and 4(b) above, per trailer, which insurance shall not contain any exclusions for employee theft or dishonesty.
- d. Worker=s Compensation Insurance in the amounts required by statute in the jurisdictions where services under this Agreement will be performed, and Employers Liability Insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence.
- e. Any other insurance that may be required by any applicable federal, state or local laws, rules, regulations or ordinances.
- f. Absent applicable state laws or regulations to the contrary, the policies specified in paragraphs 8(a) through 8(e) above, shall not contain any exclusion for punitive damages. Carrier shall furnish to Broker written certificates without request (and, if requested by Broker, copies of insurance policies) showing that the above insurance has been procured and is being maintained, the underwriter, issuing agency or broker, the policy number or numbers and the expiration date or dates. Such insurance policies shall name Broker as a Certificate Holder and provide (without reservation or restriction) that in the event of cancellation or material modification of any policy, written notice shall be given to Broker at least thirty-five (35) days prior to the effective date of such cancellation or shall be given to Broker at least thirty-five (35) days prior to the effective date of such cancellation or modification as to each policy. Carrier shall furnish a complete and true copy

of its Form MCS-90, Form MCS-82, or FMCSA=s authorization to self-insure under 49 CFR Section 387.309.

- g. Carrier specifically acknowledges that providing proof of the insurance coverages required in this Agreement shall in no event be construed as limiting its liability in the performance of its obligation under this Agreement. Carrier further acknowledges that acceptance of such proof of insurance shall not constitute a representation by Broker or Customer(s) that such insurance and its limits of coverage are adequate to protect the interests of Carrier.

9. **Indemnity.** Carrier shall defend, indemnify and hold Broker harmless against all liability, action, loss, cost, damage, expense, fines, penalty and claims, including reasonable attorneys= fees, cost of suit, settlements, judgments, and all other expenses to which Broker may be subjected on account of loss, destruction or damage to any property (including cargo) or injury to, or death of persons arising out of or in connection with the transportation of property under this Agreement by Carrier, its agents, or employees.

10. **Liability and Claims.** Carrier shall be liable to Broker and Customers, for all loss, damage or injury to all cargo occurring, while in the possession or under the control of Carrier under this Agreement, or resulting from Carrier=s performance or failure to perform the services undertaken by Carrier under the terms of this Agreement. Any attempt by Carrier to limit its liability by provisions contained in any bill of lading, delivery receipt or tariff (whether filed, published or independently determined) that have not been specifically incorporated by reference into this Agreement shall be deemed null and void.

- a. For purposes of a loss or damage claim, the measure of damages shall be the invoice price of the goods as destination.
- b. It is understood between the parties that time is of the essence in the transportation services required under this Agreement. If Carrier believes that it will be unable to complete with reasonable dispatch and without loss of, or damage to, any shipment under this Agreement, Carrier shall immediately notify Broker, giving an estimate of the delay and delivery anticipated. If requested by Broker, Carrier shall promptly take steps to reload the freight in replacement equipment, deliver the freight to another carrier or to otherwise arrange for the protection, storage or delivery of such freight. Carrier shall be liable for any excess or premium transportation costs incurred and any detention, storage or similar fees brought about by the delay of Carrier=s transportation of freight under this Agreement, and the same may be deducted from any amount owed to or claimed by Carrier.
- c. Except as specifically set forth to the contrary in this Agreement, all claims of overage and shortage, loss and damage and any salvage arising under this Agreement shall be submitted to Carrier and handled and processed by Carrier in accordance with 49 CFR Section 1005. Carrier shall acknowledge receipt of all such claims within thirty (30) days, and shall settle all claims within sixty (60) days of receipt. Broker reserves the right to withhold payment of any money due for services rendered by Broker where claim lia-

bility is disputed, until the Broker and Carrier come to a mutual understanding.

- d. Concealed loss and damage claims reported to Carrier within fifteen (15) days of delivery shall be treated as if an exception notation had been made on the delivery receipt or bill of lading at the time of delivery.
- e. The time limits for filing of loss and damage claims, and the time limits for filing any action at law for disallowance of claims, shall be governed by the provisions contained in 49 USC Section 14706.

11. **Right to Set Off Claims.** Broker shall have the right to set off claims for loss, damage or delay, and claims for overcharge or duplicate payment, against freight or other charges owed to Carrier.

12. **Undercharge and Overcharge Claims.** Except as otherwise expressly provided for in this Agreement, Carrier shall process all overage and duplicate payments as provided in 49 CFR Section 378. The time limit for filing of initial claims of alleged undercharges or overcharges under the terms of this Agreement shall be one hundred eighty (180) days from the date of delivery of the shipment. Failure to file a claim challenging initial charges within that period shall forever bar any action at law for recovery of same. Any action at law by either party to collect alleged undercharges under the terms of this Agreement shall be commenced no later than eighteen (18) months after delivery of the shipment. Expiration for the eighteen (18) month term shall be a complete and absolute defense against any such claim, regardless of any extenuation or mitigating circumstances or excuses of any nature.

13. **Independent Contractor.** Carrier warrants that it is a lawfully licensed motor carrier with required insurance, process agents and motor contract carrier authority under the FMCSA, and shall provide service under its own permit(s). This Agreement does not make Carrier an agent, a legal representative, joint venture, or partner of Broker for any purpose whatsoever. It is understood between the parties to this Agreement that Carrier is to act as an independent contractor and is in no way authorized to make any contract, warranty or representation on behalf of Broker, or it create any obligation, express or implied (including pallets), on behalf of Broker. It is expressly agreed and understood that Carrier shall not be considered under the provisions of this Agreement or otherwise as having any employment status with Broker, or as being entitled to partake in any plans, distribution, or benefits extended by Broker to its employees. Carrier assumes full responsibility for payment of federal, state and local taxes or contributions for unemployment insurance, pensions, workers compensation or other social security and related protection with respect to the persons engaged in the performance of the services rendered hereunder and agree to comply with applicable federal, state and local laws, ordinances, regulations and rules applicable thereto.

14. **No Lien.** Carrier shall have no lien, and hereby expressly waives its right to any lien, on any cargo or other property of Broker or Customers. If, notwithstanding this waiver, Carrier or anyone purporting to act on its behalf or as its successor in interest or assignee should attempt to assert any such lien, Carrier or such other party shall reimburse Broker for its costs including reasonable attorneys= fees, incurred in obtaining release of the lien.

15. **Termination.** This Agreement shall be effective on the date stated above and shall continue until terminated by ten (10) days= written notice from one party to the other. Unless otherwise specifically agreed to in writing, this Agreement shall apply to all services rendered by Carrier to Broker.

16. **Waiver of Remedies.** Pursuant to Title 49 USC Section 14102(b), the parties hereby expressly agree to waive all rights and remedies allowed under 49 USC Section 14101(b), except as otherwise provided in this Agreement, and excepting those provisions governing registration, insurance and safety fitness. The exclusive remedy for alleged breach of this Agreement shall be in an appropriated state court or United States District Court.

17. **Notices.** All notices as required by any of the terms and conditions of this Agreement shall be deemed given with the notices prepared, adequately addressed and deposited in the United States mail, postage prepaid. Notices to Broker and Carrier are adequately addressed as follows:

Broker: Magic Valley Truck Brokers, Inc.
2906 South Featherly Way
Boise, Idaho 83709
Telephone: (208) 375-5677
Facsimile: (208) 947-8256

Carrier: _____

Telephone: _____
Facsimile: _____

18. **Non-Waiver.** If either party fails to enforce or waives the breach of any term or condition of this Agreement, such action or inaction shall not operate as a waiver of any other breach of such term or condition, nor of any other part of this Agreement, nor of any other rights, in law or equity, or of claims which each may have against the other arising out of, connected with, or related to this Agreement.

19. **Non-Solicitation.** Carrier agrees that during the term of this Agreement or any renewal hereof, it will neither influence or attempt to influence Customers, nor will it contact directly or indirectly any Customer, specifically, but not limited to, those Customers that Carrier has either picked up freight for or delivered freight to; nor shall it attempt directly or indirectly to divert Broker=s business to any individual, partnership, firm, corporation or other entity then in competition or planning to be in competition in the future with the business of Broker or any subsidiary or affiliate of Broker.

a. For a period of twenty-four (24) months following Carrier=s last contact with any Customer, Carrier agrees it shall not either directly or indirectly influence or attempt to influence Customers (or any of its present or future subsidiaries or affiliates) for whom the Carrier has rendered services pursuant to this Agreement to divert their business to the Carrier or any

individual, partnership, firm, corporation or other entity then in competition or planning to be in competition in the future with the business of Broker or any subsidiary or affiliate of Broker.

- b. The Carrier acknowledges that violation of this non-solicitation paragraph would cause irreparable harm to Broker and that in the event of breach of this paragraph, Broker would be entitled to injunctive relief as well as damages in a court of appropriate jurisdiction. Carrier consents and stipulates to the entry of such injunctive relief in such court in the event of a violation of this non-solicitation paragraph.

20. **Subcontract Prohibition.** Carrier specifically agrees that all freight tendered to it by Broker shall be transported on equipment operated only under the authority of Carrier, and that Carrier shall not in any manner subcontract, broker, or in any other form arrange for the freight to be transported by a third party without the prior written consent of Broker.

21. **Assignment/Modification/Benefit of Agreement.** This Agreement contains all the terms and conditions between the parties, and it shall not be altered or amended except in writing signed by all parties. This Agreement may not be assigned or transferred in whole or in part, and supersedes all other agreements and all tariffs, rates, classifications and schedules published, filed or otherwise maintained by Carrier. This Agreement shall be binding upon and inure to the benefit of the parties hereto.

22. **Confidentiality.** The parties to this Agreement shall protect the confidentiality of all non-public information developed by either of them in connection with this Agreement. This Agreement and all such information developed in connection herewith shall be held in confidence by each party for the duration of this Agreement and for a period of two (2) years thereafter unless prior written approval authorizing such disclosure is obtained from the other party or either party is required by law or governmental authority to disclose.

23. **Severability.** If any provision of this Agreement is construed as or declared to be invalid, unenforceable or unconstitutional, then that provision shall be considered severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

24. **Attorneys= Fees.** In the event it becomes necessary to enforce any of the terms or conditions of this Agreement, the prevailing party shall be awarded a reasonable attorney=s fee in addition to any costs allowed by law.

25. **Minimum Volume.** There is no minimum volumes of freight contemplated by this Agreement. Broker is not restricted against tendering its freight to other couriers. Carrier is not restricted against performing transportation for other shippers.

26. **Jurisdiction.** Carrier agrees that this Agreement subjects it to the jurisdiction of the courts of the State of Idaho, and that this Agreement arose in Ada County, Idaho.

27. **Controlling Law.** This Agreement shall be controlled and governed by the laws of the State of Idaho.

28. **Non-Exclusivity**. Nothing in this Agreement is intended to require Broker to utilize only the services of Carrier or to require Carrier to provide services only to Broker.

29. **Legal Counsel**. Carrier has been advised to seek the assistance of legal counsel and has had the opportunity to seek the assistance of legal counsel on its behalf in connection with this Agreement and the execution thereof and that Carrier agrees and acknowledges that it enters into this Agreement upon its own decision to do so voluntarily with or without the assistance of legal counsel and without reliance upon Broker or legal counsel for Broker.

30. **Exception to Performance**. Neither party will be liable for the failure to tender or timely transport freight under this Agreement if such failure, delay or other omission is caused by strikes, acts of God, war accidents, acts of terrorism, civil disorders, or through compliance with legally constituted order of civil or military authorities.

31. **Notification**. Except for routine communications in the course of performance of this Agreement which may derive from day to day operations, any notices sent to parties involved in this Agreement shall be in writing and delivered by telecopier, certified mail, or overnight courier at the addresses set forth in paragraph 17, above. Notices transmitted by telecopier shall be deemed to be received as of the date and time of acknowledgment of receipt. Notices transmitted by certified mail or overnight courier shall be deemed received as of the date and time signed for by recipient.

IN WITNESS WHEREOF, the parties execute this Agreement as of the date first stated above.

BROKER

MAGIC VALLEY TRUCK BROKERS, INC.

By: _____
_____, its President

CARRIER

By: _____
_____, its _____