

SEQUOIA TRANSPORTATION SERVICES, INC.

AGREEMENT FOR MOTOR CONTRACT CARRIER SERVICES

THIS AGREEMENT is entered into this ____ day of _____, 20__, by and between SEQUOIA TRANSPORTATION SERVICES, INC., a California Corporation, whose main offices are located in Exeter, California, (“BROKER”) a Registered Property Broker, Lic. No. MC-814725, and _____, a Registered Motor Carrier, Permit/Certificate No. MC-_____ (“CARRIER”); collectively, the “Parties.”

1. CARRIER REPRESENTS AND WARRANTS THAT IT:

- a. Is a Registered Motor Carrier of property authorized to provide transportation of property under contracts with shippers and receivers and/or brokers of general commodities;
- b. Shall transport the property, under its own operating authority and subject to the terms of this Agreement;
- c. Makes the representations herein for the purpose of inducing BROKER to enter into this Agreement;
- d. Agrees that a Shipper’s insertion of BROKER’s name as the carrier on a bill of lading shall be for the Shippers convenience only and shall not change BROKER’s status as a property broker or CARRIER’s status as a motor carrier.
- e. Is in, and shall maintain compliance during the terms of this Agreement, with all applicable Federal, state and local laws relating to the provision of its services including, but not limited to: transportation of hazardous materials, (including the licensing and training of drivers), as defined in 49 CFR §172.800, §173, and 397 et. seq., to the extent that any shipments hereunder constitute hazardous materials; owner/operator lease regulations; loading and securement of freight regulations; implementation and maintenance of driver safety regulations including, but not limited to, hiring, controlled substances, and hours of service regulations; sanitation and temperature requirements for transporting food and other perishable products, qualification and licensing and training of drivers; implementation and maintenance of equipment safety regulations; maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers, all applicable insurance laws and regulations, including, but not limited to workers’ compensation.
- f. Will notify BROKER immediately if CARRIER’s Federal Operating Authority is revoked, suspended, or rendered inactive for any reason; and/or if CARRIER is sold, or if there is a change in control of ownership of CARRIER; and/or any of its insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.
- g. Does not have an “Unsatisfactory” safety rating issued by the Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation, and will notify BROKER in writing immediately if its safety rating is changed to “Unsatisfactory,” “Conditional,” “Unfit,” or “Marginal.” CARRIER shall be responsible for all liability and damages asserted against or imposed on BROKER arising out of violation of this paragraph including but not limited to, attorneys’ fees, expert costs, and all other related costs.
- h. Authorizes BROKER to invoice CARRIER’s freight charges to shipper, consignee, or third parties responsible for payment.
- i. Has investigated, monitors, and agrees to conduct business hereunder based on the creditworthiness of BROKER and is granting BROKER credit terms accordingly.

Intials: _____

2. DRIVERS AND EQUIPMENT:

CARRIER shall ensure that its drivers are properly trained and licensed, and are competent and capable of safely handling and transporting BROKER's shipments. CARRIER agrees that drivers will be dispatched in accordance with the maximum available hours of service as provided in rules promulgated by the FMCSA while in the United States or as provided by can Canadian authority whose jurisdiction is within CARRIERs route/trip.

CARRIER shall provide and maintain all equipment required for the services requested by BROKER and shall only use and provide equipment that is clean, in good operating condition and repair, in compliance with any and all Federal and/or State statutes and regulations, and is suitable and properly configured to safely load, transport, and unload the shipments tendered by BROKER.

CARRIER shall ensure that all equipment and all loads are in compliance with the environmental standards of any and all jurisdictions on its route and must act in accordance with these environmental standards. Any, deviation from prescribed environmental standards is contrary to BROKER's policy and the CARRIER shall be solely and independently responsible for any consequence flowing from said deviation. All equipment provided for the transportation of food or food grade products will comply with the requirements of The Sanitary Food Transportation Act. CARRIER will not supply equipment that has been or will be used for the transportation of any waste of any kind, garbage, hazardous waste, solid or liquid, regardless of whether they meet the definition in 40 CFR §261, or other commodity that might adulterate or contaminate food or food products.

Drop Trailer/Interchange. In the event that CARRIER participates in a drop trailer arrangement for the benefit of any BROKER's customers or vendors, CARRIER agrees that it shall address all damage or liability issues directly with the responsible customer or vendor. CARRIER agrees that BROKER shall only be responsible for the direct acts of its employees, and not for the actions of customers, lumpers, draymen, or other carriers, or any other third party. If CARRIER agrees to interchange equipment to another carrier or to use equipment owned by a third party, CARRIER, will address any interchange agreement directly with that motor carrier or equipment owner.

Equipment Use/Commingling. CARRIER agrees not to commingle or consolidate any freight tendered by BROKER with the freight of any of CARRIER's other customers. With regard to the individual tenders accepted by CARRIER from BROKER, CARRIER's equipment shall be dedicated exclusively to the use of BROKER's tendered loads in accordance with each Confirmation. CARRIER's violation of this exclusive use requirement shall result in, as a liquidated damage and not as a penalty; CARRIER's forfeiting its right to be paid for the transportation services as contemplated by the Confirmation. BROKER shall also have the right to terminate this Agreement immediately upon written notice to CARRIER.

3. PERFORMANCE AND DELIVERY TIME:

CARRIER shall transport all shipments to their specified destination without delay caused by anything in CARRIER's control and with reasonable dispatch, unless a specified delivery date and/or time is communicated to it prior to the pick-up of any individual shipment, in which case delivery shall be performed in accordance with the communicated schedule.

4. BILLS OF LADING:

CARRIER shall issue a bill of lading in compliance with 49 U.S.C. §80101 et seq., 49 CFR §373.101 (and any amendments thereto), for the property it receives for transportation under this Agreement. Unless otherwise agreed in writing, CARRIER shall become fully responsible/liable for the freight when it takes/receives possession thereof, and the trailer(s) is/are loaded, regardless of whether a bill of lading has been issued, and/or signed, and/or delivered to CARRIER, and which responsibility/liability shall continue until delivery of the shipment to the consignee and the consignee signs the bill of lading or delivery receipt. Any terms of the bill of lading inconsistent with the terms of this Agreement shall be controlled by the terms of this Agreement. Failure to issue a bill of lading, or sign a bill of lading acknowledging receipt of the cargo, by CARRIER, shall not affect the liability of CARRIER.

Initials: _____

5. CARRIER'S CARGO LIABILITY, LOSS AND DAMAGE CLAIMS:

a. CARRIER shall have the sole and exclusive care, custody and control of the shipments tendered by BROKER from the time CARRIER picks up a shipment until delivery to the consignee. CARRIER shall be liable to BROKER for actual loss and damage to shipments, and for delayed deliveries, arising from CARRIER's performance of or failure to perform the services required by this Agreement; provided, however, that CARRIER shall not be liable for loss, damage, or delay to shipments caused solely by an act of God, public enemy, acts of war, insurrection, riot, inherent vice of the Shipment, or the negligence of BROKER or its customer, in which case CARRIER has the burden of proving applicability of the exception. Any seals applied to trailer are not to be broken or removed prior to delivery at destination without prior written consent from BROKER.

b. CARRIER shall be liable for the full, actual value of the shipments tendered by BROKER to CARRIER. No released value rates, or other limitations of cargo liability, shall be valid or enforceable against BROKER or its customers unless expressly agreed to by BROKER in a signed writing separate from any bill of lading or other delivery receipt issued by CARRIER.

c. BROKER may file a claim for loss or damage to shipments delivered or not delivered. Within ninety (90) days of receiving a claim from BROKER for loss, damage, or delay, CARRIER shall pay or deny the claim (in which case the reasons for denial shall be fully explained), or make a firm compromise offer.

d. In the event branded or labeled good are damaged, BROKER's customer may determine, in its sole discretion, whether the goods may be salvaged, and if salvageable, the value of such salvage. Any salvage receipts shall be deducted from the amount of BROKER's claim against CARRIER. If BROKER's customer permits its goods to be salvaged and CARRIER pays the full, actual value of the damaged goods CARRIER may retain custody of the goods after removing all identifying marks or labels.

e. CARRIER shall comply with 49 CFR §370.1 et seq. and any amendments and/or any other applicable regulations adopted by the Federal Motor Carrier Safety Administration, U.S. Department of Transportation, or any applicable state regulatory agency, for processing all loss and damage claims and salvages; and CARRIER's liability for any cargo damage, loss, or theft from any cause shall be determined under the Carmack Amendment, 49 U.S.C. §14706.

f. Notwithstanding the terms of 49 CFR 370.9, CARRIER shall pay, decline or make a settlement offer in writing on all cargo loss or damage claims within 30 (thirty) days of receipt of the claim. Failure of CARRIER to pay, decline or offer settlement within this 30 day period shall be deemed admission by CARRIER of full liability for the amount claimed and a material breach of this Agreement.

g. CARRIER's indemnification liability for freight loss and damage claims shall include legal fees which shall constitute special damages, the risk of which is expressly assumed by CARRIER, and which shall not be limited by any liability under this Paragraph 5.

6. INSURANCE:

CARRIER shall furnish BROKER with Certificate(s) of Insurance, or insurance policies providing thirty (30) days advance notice of cancellation or termination, unless otherwise agreed, subject to the following minimum limits: Public liability \$1,000,000.00; General/Automobile Liability (motor vehicle (including hired and non-owned vehicles), property damage, and personal injury liability) \$1,000,000.00; Cargo damage/loss, \$100,000.00; workers' compensation with limits required by law.

Except for the higher coverage limits which may be specified above, the insurance policies shall comply with minimum requirements of the Federal Motor Carrier Safety Administration and any other applicable regulatory state agency. Nothing in this Agreement shall be construed to avoid CARRIER'S liability due to any exclusion or deductible in any insurance policy.

Intials: _____

CARRIER shall cause the required insurance to be procured naming BROKER as “additional insured” on any Public Liability, General Liability and/or Automobile liability policies, and as “loss payee” on the Cargo policy. Upon request of BROKER, CARRIER shall furnish to BROKER written certificates obtained from each insurance carrier showing that the required insurance has been procured. CARRIER’s liability for cargo loss or damage described in Section 5 above and its indemnification described in Section 7 below will not be reduced or limited by the actual insurance policy limits that CARRIER chooses to purchase.

7. CARRIER’S INDEMNIFICATION:

CARRIER shall indemnify, defend, and hold BROKER, its customers, consignors, and consignees, and their respective parent, subsidiaries, affiliates, employees, officers, directors and agents harmless from and against any and all losses, harm, injuries, damages, claims, costs, expenses, and liabilities (including reasonable legal fees) arising from, or in connection with services provided by CARRIER, its employees, agents, and contractors, unless resulting directly from the negligence or willful act or omission of BROKER or its customers and their consignors or consignees and their respective parent, subsidiaries, affiliates, employees, officers, directors and agents.

8. CONTRACT TERM AND TERMINATION:

This Agreement shall be effective as of the date written above and shall continue for a period of one (1) year. This Agreement shall thereafter continue in effect from year to year on the same terms and conditions, unless terminated by either party. Either party shall have the right to terminate this contract upon thirty (30) days’ prior written notice to the other party.

9. SHIPMENTS TO BE TENDERED BY BROKER:

BROKER hereby agrees to tender shipments to CARRIER as its needs require for transportation in Interstate or Intrastate. CARRIER hereby agrees to transport such shipments in accordance with the terms and conditions stated in this Agreement.

10. INDIVIDUAL SHIPMENT COMPENSATION AND TERMS:

Compensation shall be paid to CARRIER solely and exclusively by BROKER, and not by BROKER’s customers on all shipments tendered to CARRIER under this Contract. CARRIER shall be compensated by BROKER based on the following:

a. CARRIER and BROKER may orally agree upon the rate or compensation to be paid to CARRIER for, and the terms and conditions applicable to, any shipment tendered by BROKER under this Agreement. BROKER shall subsequently confirm the oral agreement by issuing a confirmation to CARRIER in written or electronic format (“the Confirmation”) that sets forth the rates, terms, and conditions agreed upon. Unless CARRIER objects to the contents of the Confirmation within twenty-four (24) hours of receipt, CARRIER shall be deemed to have assented to the Confirmation, which shall be binding. Each Confirmation shall be incorporated into and considered to be part of this Agreement, and the parties agree to retain all such confirmations for at least three (3) years subsequent to the expiration of this Agreement, or longer to the extent required by law. Unless the rate for any shipment is agreed to by CARRIER and stated on the Confirmation, the rates and charges for the shipment shall be computed at \$.80 per load mile.

b. CARRIER and BROKER may agree in a separate agreement, to apply a discount to the rates and charges set forth in this Agreement and all applicable Confirmations, which separate agreement (“Discount Agreement”), shall be incorporated into and considered to be part of this Agreement. If the parties agree to enter into a Discount Agreement, the discounted amount shall be the compensation owed to CARRIER for shipments covered by the Discount Agreement without additional notation on any Confirmation issued by BROKER.

Initials: _____

c. CARRIER agrees that any tariffs, circulars, pricing authorities, and/or similar documents that it publishes shall not apply to the transportation services provided by CARRIER under this Agreement, unless any such tariff, circular, pricing authority or similar document is expressly incorporated into this Agreement or into a Confirmation.

11. PAYMENT OF RATES AND CHARGES:

a. Within twenty (20) days after BROKER's receipt of CARRIER's delivery receipt (or as otherwise provided by a Discount Agreement), BROKER shall pay CARRIER the rates and charges applicable to the shipment. In exchange for BROKER's guarantee of prompt payment, and other good and valuable consideration, CARRIER (i) appoints and designates BROKER as its agent for the purpose of billing and collection of freight charges; (ii) CARRIER waives any and all rights to claim, demand, or pursue payment from any person other than BROKER for any shipment tendered pursuant to the Agreement; (iii) agrees not to contact BROKER's customers, consignors, consignees or any party other than BROKER concerning payment for transportation services; and, (iv) agrees to indemnify, defend, and hold BROKER, its customers, consignees harmless from any claim or demand made by any subcontractor of carrier or other party for payment for transportation services related to a shipment tendered under this Agreement.

b. In its sole discretion, BROKER may withhold compensation owed to CARRIER to satisfy claims or shortages arising out of this or other Agreements with CARRIER, or to satisfy advances made to, or on behalf of, CARRIER. BROKER's withholding of compensation shall not allow or permit CARRIER to seek payment from BROKER's customers, consignors, consignees, or any other third party, and CARRIER agrees that it shall not, under any circumstances, claim, demand, or pursue payment from BROKER's customers, consignors, consignees, or other parties for transportation services provided hereunder.

c. Any claim for overpayment or underpayment for transportation services provided pursuant to the Agreement shall be presented by the party asserting the claim to the other party within sixty (60) days of discovery of the claim, but in no event will any such claim(s) be asserted more than one hundred eighty (180) days after the delivery of the shipment or shipments giving rise to any such claim. Claims shall be supported by appropriate documentation showing the amount of the overcharge or the undercharge, as the case may be. The parties shall pay, deny, or make a firm compromise offer within forty-five (45) days of receiving a claim. Any civil action to recover overcharges or undercharges shall be instituted within (18) months of the date of delivery of the shipments comprising the overcharge or undercharge claim.

d. CARRIER will pay all licenses, fees, taxes, fuel tax payments, road tax, equipment use fees or taxes, equipment license fees, driver's license fees, tolls and any other fees and fines that may be assessed on its equipment or its operators.

e. CARRIER automatically assigns to BROKER all its rights to collect freight charges from Shipper or any reasonable third party on receipt of payment from BROKER.

12. CARRIER'S OPERATING AUTHORITY AND SAFETY RATING:

a. CARRIER represents and warrants that all transportation performed under this Agreement shall be contract carriage. Without cost to BROKER, CARRIER shall provide and ensure complete all preventive maintenance and ongoing maintenance including, but not limited to, periodic safety inspections, annual safety inspections and emissions testing pursuant to the standards set out in any and all the applicable motor vehicle statutes and regulations of the applicable jurisdiction(s) of operation. CARRIER warrants that it shall notify BROKER in the event of any such suspension, cancellation, termination, or withdrawal of its operating authorities, in which event BROKER shall have the right to terminate this Agreement immediately upon written notice to CARRIER.

Initials: _____

b. CARRIER further represents and warrants that it shall at all times maintain a U.S. DOT safety rating that is “satisfactory” or “unrated”; and will notify BROKER in writing immediately if its safety rating is changed to “Unsatisfactory,” “Conditional,” “Unfit,” or “Marginal.” CARRIER shall be responsible for all liability and damages asserted against or imposed on BROKER arising out of violation of this paragraph including but not limited to, attorneys’ fees, expert costs, and all other related costs.

13. COMPLIANCE WITH LAWS:

CARRIER agrees that all transportation services will be performed in full compliance with Federal, State laws or regulations governing its operations and the regulations of the Federal Department of Homeland Security (“DHS”), the Transportation Security Agency (“TSA”), as well as any legislation and related programs designated to protect transportation activities from terrorist attacks, such as the Customs - Trade Partnerships Against Terrorism and the Free and Secure Trade initiative. CARRIER agrees to indemnify BROKER for any fines, costs, claims, liability or expenses that BROKER may incur and that arise out of violations of any applicable laws and regulations during CARRIER’s performance under this Agreement.

14. SHIPMENT INSTRUCTIONS:

At the time each shipment is received by CARRIER from BROKER’s customer, CARRIER will request and obtain instructions concerning all handling, securing and freight protection requirements, including specifications noted on the bill of lading, on shipment instructions, or as otherwise may be provided. CARRIER is responsible for insuring that all freight is properly blocked and braced for transportation pursuant to any and all applicable standards, unless tendered to CARRIER in a pre-loaded, sealed trailer, in which case CARRIER shall note the seal numbers on the bill of lading or receipt. The goods being shipped shall be considered to be in apparent good order and condition, unless otherwise indicated by CARRIER or receiver on the bill of lading.

15. BROKER’S COMPENSATION:

CARRIER shall not claim or demand, in whole or in part, BROKER’S commissions earned by BROKER on shipments tendered under this Agreement. BROKER shall not be required to disclose the amount of its BROKER’S commission to CARRIER, and CARRIER expressly waives its rights to receive and review information, including BROKER’S commission information, pursuant to 49 CFR §371.3.

16. INDEPENDENT CONTRACTOR:

CARRIER is an independent contractor and shall exercise exclusive control, supervision, and direction over (i) the manner in which transportation services are provided; (ii) the persons engaged in providing transportation services; and, (iii) the equipment selected and used to provide transportation services. CARRIER shall have full responsibility for the payment of local, state, and federal payroll taxes, workers compensation and other social security and related payment requirements with respect to all persons engaged in the performance of transportation services. This Agreement does not create, nor shall it be deemed to create a partnership, joint venture, or agency relationship between BROKER and CARRIER.

Initials: _____

17. BILLS OF LADING AND DELIVERY RECEIPTS:

CARRIER will issue and sign a standard, uniform straight bill of lading or other receipt ("Receipt") acceptable to BROKER and BROKER's customers upon acceptance of a shipment for transportation. If CARRIER permits the shipper to prepare the bill of lading, CARRIER warrants that it shall ensure that the bill of lading properly names CARRIER as the "CARRIER" on the load prior to signing it, and shall strike through and correct any erroneous designation of any other person as "CARRIER" (including BROKER) on the bill of lading. Any terms and conditions written or printed on the Receipt shall have no effect against BROKER, unless specifically agreed to by BROKER in this Agreement or in a separate signed writing apart from the Receipt. The Receipt issued or executed by CARRIER shall be prima facie evidence of receipt of the shipment in good order and condition by CARRIER unless otherwise noted on the face of said document. CARRIER shall submit an original copy of the Receipt to BROKER evidencing delivery of the shipment unless otherwise instructed by BROKER in which case CARRIER shall retain custody of the Receipt and provide it to BROKER upon request. If CARRIER fails to maintain and provide the Receipt, CARRIER assumes all risks of loss resulting from the failure to prove good delivery.

18. FACTORING:

CARRIER shall provide BROKER written notice of any assignment, factoring, or other transfer of its right to receive payments arising under this Contact thirty (30) days prior to such assignment, factoring, or other transfer taking legal effect. Such written notice shall include the name and address of assignee/transferee, date, date assignment is to begin, and terms of the assignment, and shall be considered delivered upon receipt of such written notice by BROKER. CARRIER shall be allowed to have only one assignment, factoring or transfer legally effective at any one point in time, and no multiple assignments, factoring or transfers by the CARRIER shall be permitted. CARRIER shall indemnify BROKER against and hold BROKER harmless from any and all lawsuits, claims, actions, damages, (including reasonable attorneys fees, obligations, liabilities and liens) arising or imposed in connection with the assignment or transfer of any account or right arising thereunder where the CARRIER has not complied with the notification assignment requirements of this section. CARRIER also releases and waives any right, claim or action against BROKER for amounts due and owing under this Agreement where CARRIER has not complied with the notice requirements of the section.

19. SUBCONTRACTORS:

CARRIER specifically agrees that it shall be the party solely responsible for operating the equipment necessary to transport commodities under this Agreement and that it shall not, in any manner, sub-contract, broker or tender to any third party for transportation any freight tendered to CARRIER pursuant to this Agreement. In the event that CARRIER shall employ any subcontractor or other person for the performance of all or any portion of the services required hereunder to be performed by CARRIER, CARRIER shall be and remain liable to BROKER under the terms of this Agreement including, without limitation, liability for loss, damage or delay of any shipments, whether such loss, damage or delay occurred while such shipment was in the possession of CARRIER or such subcontractor or other person. CARRIER shall be solely and exclusively responsible to pay any charges of any subcontractor or other person and agrees to indemnify and defend BROKER and its customers from and against any claims made by any such subcontractor or other person in connection with its provision of services required to be performed by CARRIER hereunder. In addition to the indemnity obligation provided herein, CARRIER will also be liable for any consequential damages that may result due to CARRIER's violation of this Paragraph

Notwithstanding the terms of this provision, if CARRIER violates this Agreement and co-brokers any freight tendered to CARRIER pursuant to this Agreement, BROKER may, in its sole discretion, do one or more of the following: (a) terminate this Agreement and BROKER's relationship with CARRIER; and/or (b) require the CARRIER to immediately provide security (cash, bond or letter of credit) in a minimum amount of \$50,000, or such greater amount required by BROKER, to secure CARRIER's liability to carriers it engages. CARRIER further acknowledges and agrees that BROKER may, in its sole discretion, withhold payment to CARRIER and make payment directly to carriers it engages.

Initials: _____

20. NON-SOLICITATION:

CARRIER agrees to treat all of BROKER's customers as BROKER's accounts during the term of this Agreement. CARRIER further agrees that it will not directly or indirectly contact, communicate with or deal with any account referred to it by BROKER during the term of this Agreement. If this Agreement is terminated for any reason whatsoever, CARRIER agrees not to solicit freight or provide transportation services to any of BROKER's accounts for a period of eighteen (18) months after the termination date of this Agreement. In the event that CARRIER breaches this provision, CARRIER shall be liable to BROKER for a commission in the amount of ten percent (10%) of the gross revenue received by CARRIER on any freight so transported by CARRIER for any of BROKER's accounts during the eighteen (18) month period following the date of termination of this Agreement. CARRIER shall also be liable for all costs and reasonable attorney's fees incurred by BROKER to enforce the terms of this Agreement. The provisions of this paragraph shall be applicable to CARRIER and its officers, directors, shareholders, employees, agents, drivers, owner operators, subsidiaries and affiliates.

21. COMMUNICATIONS AND CONFIDENTIALITY:

CARRIER and BROKER shall endeavor to communicate by the most effective and efficient means to exchange information, including instructions, rates, equipment, shipment location, and other information helpful or necessary to achieve the intentions of the Parties herein. Such communications and information transmission presently includes telephone, telecopier, software, email, internet, electronic data interchange, satellite, and information received from third parties (including affiliates of BROKER, outside billing companies and freight payment entities), but this is not intended to be limiting the manner of future communications as they develop.

All information furnished by one Party to the other in the course of performing work or rendering services under this Agreement shall be deemed to be the confidential and proprietary information of the disclosing Party and/or its customers. The Party receiving information agrees not to disclose any such information unless required to do so by order of court or other legally constituted tribunal, nor to use such information other than in performance of work and/or services under this Agreement. CARRIER agrees not to use BROKER or BROKER's customers' names for promotional or other purposes without prior written consent.

22. ASSIGNMENT:

Neither party shall assign this Agreement or any rights hereunder without the prior written consent of the other party, except that BROKER may assign this Agreement to any of its parent, subsidiary or related companies, or to any surviving company in a merger or acquisition. Any assignment made pursuant to this paragraph shall be binding upon all assigns, heirs, and successors of the assigning party.

23. NOTICES:

Except for regular business communications which may be transmitted through procedures established by agreement or acquiescence, all notices made hereunder shall be provided in writing and delivered by facsimile, certified mail, or overnight courier. Notices transmitted by facsimile shall be deemed received as of the date and time of confirmation printed by sender's machine. Notices transmitted by certified mail or overnight courier shall be deemed received as of the date and time signed for by recipient, Notices shall be addressed to the respective parties as set forth above.

24. FORCE MAJEURE:

Neither BROKER nor CARRIER shall be liable for any delay in the performance of their respective obligations under this Agreement resulting from any force majeure, including, but not limited to, acts of God, acts of Government or other civil or military authorities, acts of terror, war or riots. Whenever possible, in the event of a force majeure, the affected party shall promptly notify the other party in writing, stating the reasons for the inability to comply with the provisions of this Agreement, and the expected duration of the force majeure.

Initials: _____

25. NO LIEN:

CARRIER shall have no lien, and hereby expressly waives its right to any lien in any cargo, freight, or property of BROKER or any of its customers, consignors or consignees.

26. ENTIRE AGREEMENT:

This Agreement constitutes the entire agreement and understanding between the parties and supersedes any and all prior agreements and understanding, either oral or written,

27. EXECUTION:

This Agreement may be executed in one or more counterparts and each such counterpart shall, for all purposes, be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

28. ATTORNEY'S FEES:

In the event either party incurs attorney/lawyers fees, costs, or expenses in enforcing any of the provisions of this Agreement, or in exercising any right or remedy arising out of any breach of this Agreement by the other party, the prevailing party shall be entitled to receive attorney/lawyer fees, costs, and expenses from the other party.

29. CHOICE OF LAW:

The Parties agree that this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California. The parties further agree that all disputes arising under this Agreement shall be submitted to the jurisdiction of the Superior Court venued in Tulare County, California.

30. MODIFICATIONS TO CONTRACT:

With the exception of additional operational requirement and/or shipping instructions set forth in the Confirmation and/or associated written instruction issued by BROKER, no modification of this Agreement and waiver of any of its terms shall be valid or binding unless made in a writing duly executed by the authorized representatives of both parties.

31. SEVERABILITY:

If any provision of this Agreement held to be invalid under the laws of the Federal Government, any State Province, Territory, Municipality or any other jurisdiction having authority, such provision will be deemed to have to effect but all other provisions of this Agreement shall remain in full force and effect.

32. WAIVER:

The Parties have entered into this Agreement pursuant to 49 U.S.C. § 1410(b) for the purpose of providing and receiving transportation services under the rates and conditions set forth in this Agreement. The Parties expressly waive any and all rights and remedies permitted to be waived under the Interstate Commerce Commission Termination Act, to the extent that such rights and remedies are inconsistent with any of the provisions of this Agreement.

Intials: _____

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date and year first written above.

(BROKER)
Authorized Signature

(CARRIER)
Authorized Signature

Printed Name:

Printed Name:

Title:

Title:

Company Address:

Company Address:

Phone:

Phone:

Fax:

Fax:

Email:

Email:

Initials: _____