

# CONTRACT CARRIER – BROKER CONTRACT

## AGREEMENT

made this \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between  
hereinafter referred to as CARRIER, and PINNACLE  
FREIGHT SYSTEMS, INC. hereinafter referred to as BROKER.

## WITNESSETH;

(1) CARRIER is a motor contract carrier of property authorized by Permit No. MC \_\_\_\_\_ (a copy of which permit is attached hereto and made a part hereof) to provide transportation of property under contract with shippers and receivers of general commodities, and

(2) BROKER is a motor carrier broker, licensed to arrange for the transportation of property by License No. MC 199993, (a copy of which license is attached hereto and made a part hereof), and 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 shipper under those criteria.

**NOW THEREFORE**, in consideration of the representation made herein, the parties agree as follows:

## I. SPECIFIC OBLIGATION OF CARRIER

### Liability of CARRIER

(a) The CARRIER shall issue a bill of lading for property it receives for transportation under this contract and shall be liable to the person entitled to recover under the bill of lading. The liability imposed by this paragraph is for the actual loss or injury to the property caused by the CARRIER. The CARRIER's liability shall be the same as a carrier's liability under 49 U.S.C. 11707.

(b) CARRIER agrees to maintain cargo insurance in the amount of \$ \_\_\_\_\_ to compensate those parties entitled to recover under the preceding paragraph. CARRIER shall cause the insurance carrier to forward forthwith to BROKER a standard Certificate of Insurance which Certificate shall require the insurance carrier to give BROKER written notice thirty (30) days prior to the cancellation of such cargo insurance. The cargo insurance shall be in the form required by 49 C.F.R. 1043.2 (b), and shall have no exclusions or restrictions that would not be accepted by the statutory requirements of the above-cited section, but shall, in all respects, be identical to the cargo insurance filed in accord with the said section.

(c) CARRIER's liability shall begin at the time cargo is loaded upon CARRIER's equipment at point of origin, and continue until said cargo is delivered to the designated consignee at destination, or to any intermediate stop-off party.

(d) CARRIER agrees to defend and hold harmless BROKER against any and all loss or damage claims on each shipment transported by CARRIER pursuant to this Agreement. CARRIER further agrees to defend and hold harmless BROKER from any and all liability, costs and damages to persons and/or property arising out of CARRIER's operations hereunder, including but not limited to all road, fuel, and other taxes, fees or permits, related to the shipments transported by CARRIER as arranged by BROKER.

## **II. SPECIFIC OBLIGATION OF BROKER**

- (a) BROKER shall offer to CARRIER for shipment a minimum quantity of \_\_\_\_\_ pounds per year, or a minimum of four (4) shipments for each year this agreement remains in effect, and the CARRIER shall agree to transport those shipments tendered during that period of time.
- (b) BROKER agrees to pay CARRIER for the transportation of the commodities moved under this agreement in accordance with the rate set forth herein or Addenda thereto, within 30 days of the receipt by BROKER of CARRIER's invoice covering such transportation.

## **III. RATES AND CHARGES**

The basic transportation rate negotiated between the parties is:

Freight, all kinds: truckload shipment \$.1.10/mile, between all points in the United States.

Additional rates or modifications of the above rate may be established or amended verbally in order to meet specific shipping schedules, as mutually agreed, but such changes shall be sent by the party initiating the change, by facsimile machine, to the other party, and the approval of the change shall be demonstrated by the second party initialing the change, and returning, by facsimile machine, the proposed change with the initialed approval. These changes shall be separately numbered as Appendix A, Addendum 1, et seq. A sample is attached hereto which is marked as "sample" in the upper right hand corner.

CARRIER authorizes BROKER to invoice Shipper, receiver, consignor or consignee for freight charges as agent for and on behalf of CARRIER. Payment of the freight charges to BROKER shall relieve Shipper, receiver, consignor or consignee of any liability to the CARRIER for non-payment of charges.

## **IV. BILLS OF LADING**

The Bill of lading shall note that the shipments were transported by CARRIER, acting as a carrier, and that the shipment was arranged by BROKER, acting as a broker. The name of the underlying shipper shall be inserted in the blank for the shipper, and the name of the consignee shall be inserted in the blank for the consignee. When BROKER has assembled multiple shipments into carload or truckload lots, the list of underlying shippers will be attached as an Appendix to the bill of lading.

## **V. COMPLIANCE WITH 49 U.S.C. 10102**

Both parties recognize that motor contract service is based on the CARRIER, either (1) assigning motor vehicles for a continuing period of time for the exclusive use of a shipper; or (2) providing a service designed to meet the distinct needs of a shipper. This Agreement does not contemplate the assignment of motor vehicles under continuing agreements, but the contract arrangement has been designed to meet the distinct needs of the BROKER.

The BROKER needs the CARRIER to assume full liability for the actual loss of or injury to the property tendered by the CARRIER to negate a possibility of the CARRIER moving these goods on released rates with a limitation of liability, and paragraph I. Specifically imposes this obligation upon the CARRIER. Paragraph VI. (a) imposes a further obligation on the CARRIER that claims shall be settled in accordance with 49 C.F.R. 1005, and this is also designed to meet the distinct needs of the BROKER. Further, the BROKER needs a single forum for the settlement of disputes, and paragraph VI. (b) meets this distinct need of the BROKER.

## **VI. PROVISIONS AS TO THE SETTLEMENT OF CARGO CLAIMS AND OTHER DISPUTES**

- (a) Cargo claims shall be settled in accordance with the regulations codified at 49 C.F.R. 1005.
- (b) If any dispute arises about any matter covered by the terms of this Motor Contract Carrier Agreement, the dispute must be submitted, by the party who alleges a violation filing a complaint with the Interstate Commerce Commission. The complaint shall contain specific references to pertinent statutory provisions and regulations of the Commission, and the terms of this contract that the complainant believes have been violated.

Such a complaint shall be submitted in accordance with all the provisions of 49 C.F.R. 1111.

No court action can be taken by either party prior to the decision of the Commission, and the decision of the Commission shall be a binding, final and non appealable decision. If for any reason the Commission refuses to accept the complaint, or refuses to make a ruling on the subject matter of the complaint, then the parties' recourse shall be to the judicial system, either state or federal.

## **VII.**

The relationship of the CARRIER to the BROKER shall, at all times, be that of an independent contractor, except that the BROKER shall be the agent for the collection of charges, when the shipper pays the BROKER.

**VIII.**

CARRIER shall not solicit traffic from any shipper, consignor, consignee or customer of BROKER where (1) the availability of such traffic first became known to CARRIER as a result of BROKER's efforts, or (2) where the traffic of the shipper, consignor, consignee or customer of the BROKER was first tendered to the CARRIER by the BROKER. If CARRIER breaches this agreement and "back-solicits" the BROKER's customers, and obtains traffic from such a customer, the BROKER then is entitled, for a period of 15 months after the involved traffic first begins to move, to a commission from the CARRIER of 10 % of the transportation revenue received on the movement of the traffic.

**IX.**

Neither party hereto 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, civil disorder, or through compliance with legally constituted order of civil or military authorities.

**X.**

This AGREEMENT shall be governed by Title 49 of the United States Code and Title 40 of the Code of Federal Regulations.

This AGREEMENT is to become effective \_\_\_\_\_, 20\_\_ , and shall remain in effect for a period of one year from such date, and from year to year thereafter, subject to the right of either party hereto to cancel or terminate the AGREEMENT at any time upon not less than thirty (30) days' written notice of one party to the other.

**IN WITNESS WHEREOF,**

The parties have set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ .

CARRIER:

BROKER:

BY

BY

TITLE

TITLE