

**FREIGHT BROKER-MOTOR CARRIER AGREEMENT**

THIS AGREEMENT (“Agreement”) is made and entered into on \_\_\_\_\_, 20\_\_\_\_, by and between **Choice Transport, LLC**, a Nebraska limited liability company, having offices at **2902 Whitetail Dr., Columbus Nebraska 68601**, (“Broker”) and \_\_\_\_\_, whose principal place of business is \_\_\_\_\_ (“Carrier”), each a “Party” and, collectively, the “Parties” to this Agreement.

WHEREAS, Carrier is a for-hire motor carrier operating under Federal Motor Carrier Safety Administration (FMCSA) License No. MC \_\_\_\_\_ (a copy of which is attached hereto and made a part of hereof as Appendix A), to provide transportation of goods; and

WHEREAS, Broker is a broker licensed to arrange for transportation of property by the FMCSA under License No. MC-587619 (a copy of which is attached hereto and made a part hereof as Appendix B), and arranges the for the transportation of goods by for-hire motor carriers.

1. **TERM.** The Term of this Agreement shall be for one (1) year and shall automatically renew for a successive one (1) year period; provided, however, that this Agreement may be terminated as set forth herein or at any time by at least thirty (30) days’ prior written notice.

2. **CARRIER’S QUALIFICATIONS.** Carrier represents and warrants that it is duly and legally qualified to provide the transportation services contemplated herein, and Carrier agrees to comply with all federal, state, and local laws regarding the provision of such services. Carrier further represents and warrants that it does not have a conditional or unsatisfactory safety rating or a proposed safety rating change issued from the U.S. Department of Transportation (“DOT”), and further agrees to comply with all federal, state, and local laws regarding the provisions of the transportation services contemplated under this Agreement. In the event Carrier is audited by the DOT and/or receives a conditional or unsatisfactory safety rating from the DOT, Carrier agrees to notify Broker within twenty-four (24) hours of such event. Broker shall have the right to terminate this Agreement immediately upon receipt of such notice of DOT audit, safety rating change or threatened audit or change.

3. **POTENTIAL CLAIM NOTIFICATION.** Carrier agrees to furnish Broker immediately, or as soon as is reasonably possible, notice by telephone of any occurrence or transaction which may give rise to a claim against either Carrier, Broker or Broker’s customer(s) under the terms of this Agreement, and in accordance with Broker’s or Broker’s customer’s policy for reporting claim incidents. Carrier hereby acknowledges that Carrier is solely responsible for the inquiring of, understanding and complying with the reporting requirements of Broker or Broker’s customer. Carrier further agrees to cooperate, as requested by Broker or its authorized representative, in the investigation, negotiation, settlement, or litigation of any claim or suit, which may be encountered by the Broker, or its representative under the terms of this Agreement.

4. **SPECIFIED SERVICES.** Carrier’s services under this Agreement are specifically designed to meet the distinct needs of Broker under the specified rates and conditions set forth herein.

5. **RECEIPTS AND BILLS OF LADING.** Each shipment hereunder shall be evidenced by a receipt in such form as specified by Broker or Broker’s customer, signed by Carrier, and showing the kind and quantity of product received by Carrier at origin. The absence or loss of any such receipt shall not relieve

Carrier of any obligations under this Agreement. Such receipt shall be *prima facie* evidence of receipt of such shipment in good delivery and condition. Carrier shall obtain a receipt showing the kind and quantity of product delivered to the consignee of any such shipment at the destination specified by Broker, and Carrier shall cause such receipt to be signed by the consignee. 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. If any terms conflict, the terms and conditions of this Agreement shall control. Carrier shall notify Broker immediately, prior to proceeding from the location, of any exceptions made on the bill of lading, manifest or other receipt.

6. CARRIER'S OPERATIONS AND EMPLOYEES. Carrier shall, at its sole cost and expense:

- (a) furnish all equipment necessary or required for the performance of its obligations hereunder and Carrier hereby agrees that Carrier will not supply any equipment that has been used to transport hazardous wastes whether solid or liquid (the "Equipment"), without disclosing such to Broker and receiving Broker's explicit permission to use such Equipment;
- (b) pay all expenses related, in any way, with the use and operation of the Equipment;
- (c) maintain the Equipment in good repair, mechanical condition and appearance in order to comply with all federal, state, or local rules and regulations; 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. It is the intention of the parties and acknowledged by the parties that neither the Carrier, nor any of its employees, shall be deemed to be agents, servants, or employees of Broker or Broker's customers for any purpose whatsoever, but the Carrier is and shall be an independent contractor and is responsible to the Broker as to the results to be accomplished and not as to the means and methods for accomplishing the results.

7. INDEMNITY. Carrier hereby agrees to defend, indemnify, and hold harmless Broker and its customers from and against all loss, damage, delay, expense, cost, including reasonable attorneys' fees, fines, actions and claims for injury to persons (including death) and for damage to property arising out of or in connection with this Agreement, including but not limited to loading, handling, transportation, unloading or delivery of any shipments made hereunder. Broker shall not be liable to the Carrier for any claims, actions, damages due to the negligence of Carrier, or the shipper.

8. INSURANCE. Upon Broker's Request, Carrier is required to purchase and maintain the following forms and amounts of insurance coverage, acceptable to Broker, as part of this Agreement:

- a) Automobile Liability Coverage of \$1,000,000.00 per occurrence with no annual aggregate;
- b) Commercial General Liability coverage in amounts and form acceptable to Broker;
- c) Occupational Accident for owner-operators or Workers' Compensation for all employees of owner-operator/fleet drivers in limits set forth by applicable statute;
- d) Non-trucking Liability in limits of at least \$1,000,000.00;
- e) Cargo coverage for property damage in no less than the value of each load, but in no circumstance less than \$100,000.00, with a deductible of no greater than \$1,000.00, with no annual aggregate, and with no exceptions for theft or mysterious disappearance, and which includes coverage for refrigerated goods in the event of a breakdown.

Further, Carrier agrees to provide and maintain, at Carrier's sole expense, the above-required coverage by purchasing same from an insurance company with an A.M. Best's rating of A- or better and, upon Broker's request, to provide Broker with a Certificate of Insurance evidencing such coverage naming Broker as an additional named insured and loss payee. This certificate of insurance must be provided to

Broker upon execution of this Agreement and such certificate will state that insurance Carrier will provide Broker with ten (10) days' notice of cancellation or change in coverage.

9. FREIGHT LOSS, DAMAGE OR DELAY. Broker shall submit to Carrier written notice of any cargo claim, including loss or expenses resulting from Carrier's delay in providing service, within nine (9) months of the delivery date of the shipment, or, if no delivery occurs, the date of the occurrence resulting in the claim. Carrier hereby acknowledges and agrees that Carrier assumes the same liability as a Common Carrier for full actual loss, subject to the provisions of 49 U.S.C. 14706 (Carmack Amendment). Carrier hereby acknowledges and agrees that no limitation of liability for loss, damage or delay is applicable for any services provided by Carrier without the prior written authorization of Broker. Carrier hereby acknowledges and agrees that Carrier's right to salvage, whether Carrier receives prior notice or not, for any product transported by Carrier is based on and limited to the extent the customer of Broker allows salvage and to the extent the customer disallows salvage Carrier hereby waives its claim to salvage. Any claims arising from the services provided by Carrier shall be handled in the following manner:

- a) Claims for loss, damage, injury or delay to cargo may be filed with Carrier within nine (9) months of the date of delivery of shipment or within twelve (12) months of a reasonable time for delivery (three months beyond agreed transit time), or within nine (9) months of the date Carrier notifies Broker that the shipment is lost.
- b) Carrier agrees to pay Broker for all such claims filed with Carrier within ninety (90) days of receipt of such claims. For claims not resolved within ninety (90) days of the claim notice date, Broker will automatically deduct from Carrier's settlement(s) the amount of the claim.

The filing, processing and disposition of all cargo claims shall be governed by 49 C.F.R. 370 et seq. to the extent not modified herein. The parties agree that federal Common Carrier laws of liability (i.e. Carmack Amendment liability) shall apply to all shipments made, except that Carrier shall be liable to Broker for all economic loss, including consequential damages, and attorneys' fees, that are incurred by Broker or Broker's customers for any freight loss, damage or delay claim.

10. WAIVER OF CARRIER'S LIEN. Carrier shall not withhold any goods transported pursuant to this Agreement for any reason including the existence of any dispute as to prices or any alleged failure of general credit of Broker. Further, Carrier hereby waives and releases all liens that Carrier might otherwise have to any such goods in the possession or control of Carrier or Carrier's agents.

11. PAYMENTS. Carrier will charge, and Broker will pay for, transportation services performed under this Agreement the rates and charges as shown on rate schedule attached to this Agreement as Appendix C, or any written communications, supplements or revisions (hereinafter "Rate Confirmation") thereto signed by Broker and provided to Carrier. Carrier hereby acknowledges and agrees that any Rate Confirmation provided to Carrier by Broker shall be deemed accepted by Carrier unless objected to, in writing to Broker, within twenty-four (24) hours. In the event service is provided and it is subsequently discovered that there was no applicable rate in the Rate Confirmation, the parties agree that the rate paid by Broker shall be the agreed upon rate. Payment by Broker will be made within thirty (30) days of receipt by Broker of the uncontested Carrier invoice. Carrier shall provide to Broker, at the time of invoicing, all applicable freight bills, bills of lading, clear delivery receipts, and any other necessary billing documents enabling Broker to ascertain that service has been provided. In no event shall Broker be liable for any transportation charges for which Broker did not have primary responsibility for payment under the circumstances surrounding the involved shipment. Compensation paid to Carrier under this Agreement may be withheld in whole or in part by Broker, or any or its subsidiaries or related companies, to satisfy claims or shortages arising out of this or any other Agreement with Carrier, or to satisfy advances made to, or on behalf of Carrier, or to satisfy any debt owed by Carrier to Broker or any of its subsidiaries or related companies.

12. UPDATED TERMS AND CONDITIONS. Carrier acknowledges and understands that Broker maintains and makes available Terms and Conditions on its website, found at <https://www.choicetransportllc.com/>. Such Terms and Conditions may be updated from time to time and are incorporated as part of this Agreement as if attached hereto. It shall be Carrier's responsibility to review such Terms and Conditions once every sixty (60) days. Should Carrier object to any update or amendment of such Terms and Conditions, Carrier must inform Broker, in writing, of such objection within 60 days. Failure to inform Broker, in writing, of any such objection within 60 days will constitute acceptance on the part of Carrier.

13. CONFIDENTIALITY AND NON-SOLICITATION. Neither party may disclose the terms of this Agreement to a third party without the written consent of the other party except (1) as required by law or regulation; (2) disclosure is made to its parent, subsidiary or affiliate company; or (3) to facilitate rating or auditing of transportation charges by an authorized agent and such agent agrees to keep the terms of the Agreement confidential. Carrier will 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) the traffic of the shipper, consignor, consignee or Customer of Broker was first tendered to Carrier by Broker. If Carrier breaches this Agreement and directly or indirectly solicits traffic from customers of Broker and Carrier obtains traffic from such customer during the term of this Agreement, or for twelve (12) months thereafter, Broker shall receive ten percent (10%) commission from the revenue resulting from traffic transported for the Customer. Carrier shall provide Broker with all documentation requested by Broker to verify such transportation revenue.

14. SUB-CONTRACT PROHIBITION. Carrier specifically agrees that all freight tendered to it by Broker shall be transported on equipment operated only under the DOT authority and control of Carrier, and that Carrier shall not in any manner sub-contract, broker, or in any other form arrange for the freight to be transported by a third party without the prior written consent of Broker. Carrier shall defend, indemnify, and hold harmless Broker and its customers from and against all loss, damage, expense, costs, including reasonable attorney fees, actions and claims arising out of or in connection with Carrier's breach of this Section 14.

15. SEVERABILITY. In the event that the operation of any portion of this Agreement results in a violation of any law, the parties agree that such portion shall be severable and that the remaining provision of this Agreement shall continue in full force and effect.

16. WAIVER. Carrier expressly waives any and all rights and remedies allowed under 49 U.S.C. 14101 to the extent that such rights and remedies conflict with this Agreement. Failure by Broker to exercise any right or privilege herein or under law or at equity shall not be a waiver of any of Broker's rights or privileges.

17. ARBITRATION. Nothing contained herein shall preclude Broker from bringing any action pertaining to this Agreement, however, at Broker's option, any controversy, claim, or dispute arising out of, relating to, or pertaining to this Agreement that cannot be settled by mutual agreement of the Parties may be submitted for arbitration by a single arbitrator in accordance with the rules of the ADR Council, Inc. or through any alternative dispute resolution procedure provided for under the laws of the State of Nebraska. Judgment upon any arbitration or alternative dispute resolution may be entered in a court having jurisdiction. The costs of any such arbitration or alternative dispute resolution shall be borne equally by the Parties.

**18. GOVERNING LAW AND ATTORNEY FEES. It is agreed by Broker and Carrier that Nebraska law shall govern, without reference to the conflict of laws contained therein, disputes involving any terms of this Agreement or interpretation thereof, whether arising in contract, tort or otherwise. Carrier hereby waives any jurisdictional rights it might otherwise have. It is also agreed that venue shall be in Platte County, Nebraska. Broker and Carrier agree that should any conflict or litigation arise between the parties to this Agreement, the prevailing party shall be awarded reasonable attorneys' fees and court costs.**

19. NOTICES. For purposes of this Agreement, any notice required to be given shall be deemed sufficiently given or served if sent by United States Certified Mail, Return Receipt Requested, to the Parties at the following addresses, or by confirmed fax to the following fax numbers.

If to Broker:

Choice Transport, LLC  
P.O. Box 2053  
Columbus, Nebraska 68602  
Attn: Heidi Loop  
Fax: (402) 210-2714

If to Carrier:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the date first above written.

\_\_\_\_\_  
CARRIER

**Choice Transport, LLC  
BROKER**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_