

BROKER- CONTRACT CARRIER AGREEMENT

THIS AGREEMENT made and dated _____ between **Churchill Freight Services, Inc.**, a Michigan corporation located at 2455 24th Street, Detroit, MI 48216, hereinafter referred to as Broker, and _____ hereinafter referred to as Carrier.

WITNESSETH

WHEREAS, Carrier is a motor contract carrier of property, authorized by the Federal Motor Carrier Safety Administration ("FMCSA") in Docket No. MC _____ to conduct operations and provide service in interstate and foreign commerce in the transportation of General Commodities (except Household Goods), between points in the United States (except Alaska and Hawaii), under continuing contract(s) with Broker; and

WHEREAS, Broker is a freight broker duly licensed by the FMCSA to arrange the transportation of property by authorized motor carriers; and

WHEREAS, Broker desires from time to time to use the services of Carrier to transport freight for or on behalf of its customers; and

WHEREAS, both Broker and Carrier enter into this Contract pursuant to 49 U.S.C. §14101 (b) for the purpose of providing and receiving specified services under specified rates and conditions, and under which the parties intend to waive certain rights and remedies permitted to be waived under the Interstate Commerce Act, and, to the fullest extent possible, have all of their dealings governed by the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing terms, conditions and mutual promises contained herein, Carrier and Broker agree as follows:

1. **Term.** This Agreement shall remain in effect for one (1) year from the date hereof and, if not canceled, shall automatically renew for additional periods of one (1) year. Either party may terminate this Agreement, with or without cause, upon giving the other thirty (30) days prior written notice of its intention to do so. Broker hereby agrees to cause to be tendered to Carrier a minimum of one (1) shipment and Carrier agrees to transport such shipment.
2. **Carrier Paid Only by Broker.** On all shipments tendered to Carrier pursuant to this Agreement, compensation shall be paid to Carrier solely and exclusively by Broker, in the amount(s) set forth in Broker's rate confirmation agreement. Broker's rate confirmation agreement, including all warranties, terms and conditions contained there is hereby incorporated herein by reference and shall be considered a part of this Agreement. As a condition precedent to payment, Carrier shall submit to Broker the proof of delivery and any other required shipping documents within fifteen (15) days of delivery of each shipment transported pursuant to this Agreement. Broker shall not be responsible for the payment of any freight bills for any charges which are not submitted to Broker by Carrier within 180 days of the date of delivery of the shipment(s) represented on any such freight bills.
3. **Services & Warranties.** Carrier specifically warrants and agrees that all freight tendered to it pursuant to this Agreement shall only be transported by Carrier on, in or with equipment operating under Carrier's legal authorities. Carrier shall serve Broker as an independent contractor and nothing herein or otherwise shall be construed as inconsistent with that status. Carrier agrees that all drivers, agents, employees and representatives shall at all times remain under Carrier's exclusive direction and control. Carrier shall comply with any and all laws, rules and regulations of any duly constituted governmental authority in any manner relating to the performance of the transportation and transportation related services rendered pursuant to this Agreement. Carrier warrants that it will at no time allow its U.S. DOT Safety Rating to become "Unsatisfactory". An "Unsatisfactory" Safety Rating shall be considered to be a material breach of this Agreement by Carrier. If Carrier's safety rating becomes "Unsatisfactory" or if Carrier is issued a proposed "Unsatisfactory" safety rating Carrier agrees to immediately cease its provision of services and notify Broker of such fact so that alternative services may be arranged. Carrier's violation of any of these provisions shall be considered a material breach of this Agreement by Carrier. Carrier will be solely responsible for any acts, omissions, and/or violations by Carrier, its employees, contractors, agents or representatives and will defend, indemnify and save Broker and Broker's customers harmless from any loss, damage, fine, penalty, judgment, claim(s), action or liability arising in any manner from the actions of Carrier.

It is agreed that the reference, notation or identification of Broker as the motor carrier on any bill of lading or other shipping document(s) shall be for the shipper's, consignor's or consignee's convenience only and such reference, notation or identification shall not alter Broker's status as a property broker or Carrier's status as both a motor carrier as well as the motor carrier of record. Carrier shall be responsible for requesting and obtaining instructions concerning all handling, securing and product/freight protection requirements (heat, cold, moisture, etc.) of each shipment, including specifications on the bill of lading or otherwise, and Carrier shall be solely liable for any damages occurring from any such cause if Carrier fails to request, obtain and/or comply with such instructions. Carrier is responsible for determining that the goods being shipped are in apparent good order and condition as well as ensuring that all freight is properly blocked and braced for transportation.

Except to the extent otherwise specified herein, Carrier assumes the liability of an interstate motor common carrier, as specified in 49 U.S.C. §14706, for all freight transported pursuant to this Agreement. Claims shall be processed in accordance with 49 C.F.R. Part 370. Carrier is solely responsible for ensuring that proper trailer seals are applied and remain intact until removed by an authorized employee of the consignee upon delivery. Carrier shall be liable for any and all claims, losses or liabilities incurred by Broker arising from or as a result

of seals that are missing, broken, show evidence of tampering or not matching the seal number shown on bill of lading. Carrier shall be solely responsible for ensuring that cargo is maintained according to any requirements stated on the bill of lading or Broker's rate confirmation sheet. Compensation due to Carrier under this Agreement may be withheld by Broker, in Broker's sole discretion, to satisfy claims for loss, damage or delay to shipments tendered to Carrier pursuant to this Agreement or any loss/losses incurred by Broker as a result of services performed by Carrier. Carrier will issue and sign a standard, uniform straight bill of lading. To the extent any terms and conditions of any bill of lading conflict with any terms and conditions of this Agreement, the terms and conditions of this Agreement shall govern and take precedence. Tariffs shall not apply to any services performed pursuant to this Agreement. Carrier agrees to immediately contact Broker to advise any inconsistencies between the information contained in any shipping document and any information provided by Broker and Carrier shall be solely responsible for any consequences, including claims for loss, damage or delay, if Carrier fails to contact Broker and obtain instructions regarding any such inconsistencies.

4. **Insurance.** Carrier agrees at all times to carry general liability, auto liability, public liability and property damage insurance each in an amount not less than one million dollars (\$1,000,000.00) per occurrence, "all risk" cargo liability insurance in an amount not less than one hundred thousand dollars (\$100,000.00) and Workers Compensation insurance in the amounts required by law in the jurisdictions where the services hereunder will be performed and Employers Liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00) per occurrence with all policies listing Broker's customers as additional insured, including a waiver of subrogation in favor of Broker and its customers.
5. **No Back-Solicitation.** Unless otherwise agreed in writing, Carrier shall not knowingly solicit freight shipments (or accept shipments) for a period of twelve (12) months following termination of this Agreement for any reason, from any shipper, consignor, consignee, or other customer of Broker, when such shipments of shipper customers were first tendered to Carrier by Broker. In the event of breach of this provision, Broker shall be entitled to a commission of three (3) times the gross transportation revenue (as evidenced by freight bills) received by Carrier for the transportation of said freight as liquidated damages. Additionally, Broker may seek injunctive relief and in the event it is successful, Carrier shall be liable for all costs and expenses incurred by Broker, including, but not limited to, reasonable attorney's fees.
6. **Confidentiality.** All information furnished to Carrier by Broker in the course of performing its work and/or rendering services pursuant to this Agreement, whether or not it is marked or specifically identified as "Proprietary" or "Confidential" shall be deemed to be business proprietary information of Broker and/or its customer(s). Carrier agrees not to disclose any such information, directly or indirectly to any third party nor to use such information other than in performance of work and/or rendering services pursuant to this Agreement and agrees not to use Broker's or Broker's customers' names for promotional or other purposes without prior written consent
7. **Binding Effect/Assignment.** This Agreement shall extend to and be binding upon the heirs, executors, successors, or assigns of Broker and Carrier. Neither party may assign its rights or obligations hereunder. This Agreement shall not be rendered unenforceable by virtue of any failure or alleged failure to comply with the provisions of any statute or regulation applicable to transportation contracts, and the parties expressly waive any right that they might otherwise have to challenge the validity of this Agreement on such grounds, which waiver shall be binding on their respective assigns, heirs, or successors in interest.
8. **Enforcement/ Attorneys' Fees.** In the event either party incurs attorney's 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 an award of reasonable attorney's fees, costs and expenses against the defaulting party.
9. **Headings, Non-Waiver.** All section headings in this Agreement are inserted for convenience only and shall not affect any construction or interpretation of this Agreement. 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.
10. **Governing Law -Venue.** This Agreement shall be governed by and construed in accordance with the Laws of the State of Michigan. Any legal action arising under or pursuant to this Agreement shall be brought and maintained only in courts located in Wayne County, Michigan.
11. **IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed as of the date first written above.

Carrier

Churchill Freight Services, Inc.
Broker

By: _____
Authorized Representative

By: _____

Name: _____
(Print Name)

Name: _____

Please sign and return via fax, the carrier agreement, along with certificate of insurance (liability, cargo and workmen's compensation) naming Churchill Freight Services, Inc as a certificate holder, and a signed W-9 form. Please fax to (313) 896-6247