

## BROKER - CARRIER AGREEMENT

This Agreement is entered into this [redacted] day of [redacted], 20[redacted], by and between Transport Logix, Inc. ("BROKER"), a Registered Property Broker, Lic. No. MC-932474-B, and [redacted], a Registered Motor Carrier, Permit/Certificate No. DOT-[redacted] ("CARRIER"); collectively, the "Parties". ("Registered" means operated under authority issued by the Federal Motor Carrier Safety Administration (or its predecessors) within the U.S. Department of Transportation.)

### 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 Shipper's convenience only and shall not change BROKER's status as a property broker nor CARRIER's status as a motor carrier.
- E. Will not re-broker, assign or interline the shipments hereunder, without prior written consent of BROKER. If CARRIER breaches this provision, BROKER shall have the right of paying the monies it owes CARRIER directly to the delivering carrier, in lieu of payment to CARRIER. Upon BROKER's payment to delivering carrier, CARRIER shall not be released from any liability to BROKER under this Agreement. In addition to the indemnity obligation in Par 1.H CARRIER will be liable for consequential damages for violation of this Paragraph.
- F. Is in, and shall maintain compliance during the term 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 C.F.R. §172.800, §173, and §397 et seq. to the extent that any shipments hereunder constitute Hazardous Materials; security regulations; 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, temperature, and contamination requirements for transporting food, perishable, and other 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.
- G. CARRIER will notify BROKER immediately if its federal Operating Authority is revoked, suspended or rendered inactive for any reason; and/or if it is sold, or if there is

a change in control of ownership, and/or any insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.

H.

i. Subject to the express monetary insurance limits in Par 3.D as to CARRIER, and BROKER'S monetary insurance limits for public liability, \$2,000,000, and property damage, \$2,000,000, or such other amounts as mutually agreed by the Parties in writing, CARRIER shall defend, indemnify and hold BROKER and its shipper customer harmless from any claims, actions or damages, arising out of its performance under this Agreement, including cargo loss and damage, theft, delay, damage to property, and personal injury or death, arising out of its performance hereunder. Neither Party shall be liable to the other for any claims, actions or damages due to the negligence of the other Party, or the shipper. The obligation to defend shall include all costs of defense as they accrue.

ii. Except for CARRIER's liability under Par 1.E, unless otherwise agreed in writing, and regardless of whether the Parties insurance as referred to in sub par i) above, is valid or provides coverage, the Parties indemnity obligations shall not exceed the monetary insurance limits referred to in sub par i).

I. 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" or "Conditional".

J. Authorizes BROKER to invoice CARRIER's freight charges to shipper, consignee, or third parties responsible for payment.

K. Has investigated, monitors, and agrees to conduct business hereunder based on the credit-worthiness of BROKER and is granting BROKER credit terms accordingly.

## **2. BROKER RESPONSIBILITIES:**

A. SHIPMENTS, BILLING & RATES: BROKER agrees to solicit and obtain freight transportation business for CARRIER to the mutual benefit of CARRIER and BROKER, and shall offer CARRIER at least three (3) loads/shipments annually. BROKER shall inform CARRIER of (a) place of origin and destination of all shipments; and (b) if applicable, any special shipping instructions or special equipment requirements, of which BROKER has been timely notified.

B. BROKER agrees to conduct all billing services to shippers. CARRIER shall invoice BROKER for its (CARRIER's) charges, as mutually agreed in writing, by fax, or by electronic means, contained in BROKER's Load Confirmation Sheet(s) incorporated herein by reference (Exhibit A, et seq.). Additional rates for truckload or LTL shipments, or modifications or amendments of the above rates, or additional rates, may be established to meet changing market conditions, shipper requirements, BROKER requirements, and/or specific shipping schedules as mutually agreed upon, and shall be confirmed in writing (or by fax) by both Parties. Any such additional,

modified, or amended rates, changes in rates shall automatically be incorporated herein by reference as part of Exhibit A, Amendment 1, et seq.

C. RATES: Additionally, any rates, which may be verbally agreed upon, shall be deemed confirmed in writing where CARRIER has billed the agreed rate and BROKER has paid it. All written confirmations of rates, including confirmations by billing and payment, shall be incorporated herein by reference as part of Exhibit A, Amendment 1, et seq. Rates or charges, including but not limited to stop-offs, detention, loading or unloading, fuel surcharges, or other accessorial charges, released rates or values, or tariff rules or circulars, shall only be valid when specifically agreed to in a signed writing by the Parties.

D. PAYMENT:

- i. The Parties agree that BROKER is the sole party responsible for payment of CARRIER's charges. Failure of BROKER to collect payment from its customer shall not exonerate BROKER of its obligation to pay CARRIER. BROKER agrees to pay CARRIER's invoice within 90 days of receipt of the bill of lading or proof of delivery, provided CARRIER is not in default under the terms of this Agreement. If BROKER has not paid CARRIER's invoice as agreed, and CARRIER has complied with the terms of this Agreement, CARRIER may seek payment from the Shipper or other party responsible for payment after giving BROKER 15 (business days) advance written notice. CARRIER shall not seek payment from Shipper if Shipper can prove payment to BROKER.
- ii. Payment and other disputes are subject to the terms of Par 4.D, which provides in part that prevailing parties are entitled to recovery of costs, expenses and reasonable attorney fees.

E. BOND:

BROKER shall maintain a surety bond /trust fund as agreed to in the amount of \$75,000.00 and on file with the Federal Motor Carrier Safety Administration (FMCSA) in the form and amount not less than that required by that agency's regulations.

F. BROKER will notify CARRIER immediately if its federal Operating Authority is revoked, suspended or rendered inactive for any reason; and/or if it is sold, or if there is a change in control of ownership, and/or any insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.

**3. CARRIER RESPONSIBILITIES:**

A. EQUIPMENT: Subject to its representations and warranties in Paragraph 1 above, CARRIER agrees to provide the necessary equipment and qualified personnel for completion of the transportation services required for BROKER and/or its customers. CARRIER will not supply equipment that has been used to transport hazardous wastes, solid or liquid, regardless of whether they meet the definition in 40 C.F.R. §261.1 et. seq. CARRIER agrees that all shipments will be transported and delivered with reasonable dispatch, or as otherwise agreed in writing.

B. BILLS OF LADING:

CARRIER shall issue a bill of lading in compliance with 49 U.S.C. §80101 et seq., 49 C.F.R. §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 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 (including but not limited to payment terms) 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.

#### C. LOSS & DAMAGE CLAIMS:

- i. CARRIER shall comply with 49 C.F.R. §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 salvage and
- ii. 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; and
- iii. Special Damages: CARRIERs indemnification liability (Par 1.H) for freight loss and damage claims under this sub par C (ii) 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 of CARRIER under sub par (ii) above.
- iv. Except as provided in Par 1.E above, neither Party shall be liable to the other for consequential damages without prior written notification of the risk of loss and its approximate financial amount, and agreement to assume such responsibility in writing.
- v. Notwithstanding the terms of 49 CFR 370.9, CARRIER shall pay, decline or make settlement offer in writing on all cargo loss or damage claims within 30 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.
- vi. CARRIER's liability for cargo damage, loss, or theft from any cause for any one shipment, under sub par b) above, shall not exceed \$200,000.00 unless CARRIER is notified by BROKER or Shipper of the increased value 10 days prior to shipment pick up.

#### D. INSURANCE:

CARRIER shall furnish BROKER with Certificate(s) of Insurance, or insurance policies providing thirty (30) days advance written notice of cancellation or termination, and unless otherwise agreed, subject to the following minimum limits: Public liability \$2,000,000; motor vehicle (including hired and non-owned vehicles), property damage, and personal injury liability \$2,000,000 (\$5,000,000 if transporting hazardous materials including environmental damages due to release or discharge of hazardous substances); cargo damage/loss, \$200,000; 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 CARRIERS liability due to any exclusion or deductible in any insurance policy.

#### E. ASSIGNMENT OF RIGHTS:

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

#### 4. MISCELLANEOUS:

A. INDEPENDENT CONTRACTOR: It is understood and agreed that the relationship between BROKER and CARRIER is that of independent contractor and that no employer/employee relationship exists, or is intended. BROKER has no control of any kind over CARRIER, including but not limited to routing of freight, and nothing contained herein shall be construed to be inconsistent with this provision.

#### B. NON-EXCLUSIVE AGREEMENT:

CARRIER and BROKER acknowledge and agree that this contract does not bind the respective Parties to exclusive services to each other. Either party may enter into similar agreements with other carriers, brokers, or freight forwarders.

#### C. WAIVER OF PROVISIONS:

- i. Failure of either Party to enforce a breach or waiver of any provision or term of this Agreement shall not be deemed to constitute a waiver of any subsequent failure or breach, and shall not affect or limit the right of either Party to thereafter enforce such a term or provision.
- ii. This Agreement is for specified services pursuant to 49 U.S.C. §14101(b). To the extent that terms and conditions herein are inconsistent with Part (b), Subtitle IV, of Title 49 U.S.C. (ICC Termination Act of 1995), the Parties expressly waive any or all rights and remedies they may have under the Act.

#### D. DISPUTES:

In the event of a dispute arising out of this Agreement, including but not limited to Federal or State statutory claims, the Party's sole recourse (except as provided below) shall be to arbitration. Proceedings shall be conducted under the rules of the Transportation Arbitration and Mediation PLLC (TAM) upon mutual agreement of the Parties, or if no agreement, then at BROKER's sole discretion. Arbitration proceedings shall be started within eighteen (18) months from the date of delivery or scheduled date of delivery of the freight, whichever is later. Upon agreement of the Parties, arbitration proceedings may be conducted outside of the administrative control of the TAM. The decision of the arbitrators shall be binding and final and the award of the arbitrator may be entered as judgment in any court of competent jurisdiction. The prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees as well as those incurred in any action for injunctive relief, or in the event further legal action is taken to enforce the award of arbitrators. Arbitration proceedings shall be conducted at the office of the AAA, ADR, DRC or TAM nearest BROKER or such other place as mutually agreed upon in writing or directed by the acting arbitration association. Provided, however, either Party may apply to a court of competent jurisdiction for injunctive relief. Venue for any such action shall be in PENNSYLVANIA. Unless preempted or controlled by federal

transportation law and regulations, the laws of the State of PENNSYLVANIA shall be controlling. The arbitration provisions of this paragraph shall not apply to enforcement of the award of arbitration.

#### E. NO BACK SOLICITATION:

i. Unless otherwise agreed in writing, CARRIER shall not knowingly solicit freight shipments for a period of **12** month(s) 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.

ii. In the event of breach of this provision, BROKER shall be entitled, for a period of **12** months following delivery of the last shipment transported by CARRIER under this Agreement, to a commission of fifteen percent (15%) of 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.

#### F. CONFIDENTIALITY:

i. In addition to Confidential Information protected by law, statutory or otherwise, the Parties agree that all of their financial information and that of their customers, including but not limited to freight and brokerage rates, amounts received for brokerage services, amounts of freight charges collected, freight volume requirements, as well as personal customer information, customer shipping or other logistics requirements shared or learned between the Parties and their customers, shall be treated as Confidential, and shall not be disclosed or used for any reason without prior written consent.

ii. In the event of violation of this Confidentiality paragraph, the Parties and agree that the remedy at law, including monetary damages, may be inadequate and that the Parties shall be entitled, in addition to any other remedy they may have, to an injunction restraining the violating Party from further violation of this Agreement in which case the prevailing Party shall be liable for all costs and expenses incurred, including but not limited to reasonable attorney's fees.

G. The limitations of liability for cargo loss and damage as well as other liabilities, arising out of the transportation of shipments, which originate outside the United States of America, may be subject to the laws of the country of origination.

#### H. MODIFICATION OF AGREEMENT:

This Agreement and Exhibit A et.seq. attached may not be amended, except by mutual written agreement, or the procedures set forth above (Pars 2.B and 2.C).

#### I. NOTICES:

i. All notices provided or required by this Agreement, shall be made in writing and delivered, return receipt requested, to the addresses shown herein with postage prepaid; or by confirmed (electronically acknowledged on paper) fax.

ii. THE PARTIES shall promptly notify each other of any claim that is asserted against either of them by anyone arising out of the Parties performance of this Agreement.

iii. Notices sent as required hereunder, to the addresses shown in this Agreement shall be deemed sent to the correct address, unless the Parties are notified in writing of any changes in address.

#### J. CONTRACT TERM:

The term of this Agreement shall be one year from the date hereof and thereafter it shall automatically be renewed for successive one (1) year periods, unless terminated, upon thirty (30) day's prior written notice, with or without cause, by either Party at any time, including the initial term. In the event of termination of this Agreement for any reason, the Parties shall be obligated to complete performance of any work in progress in accordance with the terms of this Agreement.

#### K. SEVERANCE:

**SURVIVAL:** In the event any of the terms of this Agreement are determined to be invalid or unenforceable, no other terms shall be affected and the unaffected terms shall remain valid and enforceable as written. The representations, rights and obligations of the parties hereunder shall survive termination of this Agreement for any reason.

**L. COUNTERPARTS:** This Agreement may be executed in any number of counterparts each of which shall be deemed to be a duplicate original hereof.

**M. FAX/EMAIL CONSENT:** The Parties to this Agreement are authorized to fax/email to each other at the numbers shown herein, (or otherwise modified in writing from time to time) shipment availabilities, equipment and rate promotions, or any advertisements of new services.

**N. ENTIRE AGREEMENT:** Except for Exhibit A and its amendments, and unless otherwise agreed in writing, this Agreement contains the entire understanding of the Parties and supersedes all verbal or written prior agreements, arrangements, and understandings of the Parties relating to the subject matter stated herein. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence may be introduced to reform this Agreement in any judicial or arbitration proceeding involving this Agreement.

IN WITNESS WHEREOF, we have signed this Agreement the date and year first shown above.

<b>BROKER</b>	<b>CARRIER</b>
Transport Logix, Inc	Company Name:
Print Name	Print Name
Title	Title
Signature	Signature
Date	Date