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# Broker Carrier Agreement

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## BROKER CARRIER AGREEMENT

This agreement made this \_\_\_\_ day of \_\_\_\_\_, shall govern the services provided by, \_\_\_\_\_, a licensed motor carrier pursuant to Docket No. MC# \_\_\_\_\_ (hereinafter referred to as Carrier) and Humming Transport LLC, (hereinafter referred to as Broker), a licensed broker of property authorized by the Federal Highway Administration, pursuant to Docket No. MC# 1727912.

1. BROKER is an agent authorized by its customers to negotiate and arrange for transportation of their shipments in interstate commerce.

1.1 INDEPENDENT CONTRACTOR. Carrier understands and agrees that Carrier is an independent contractor of Broker, and that Carrier has exclusive control and direction of the work Carrier performs pursuant to this Agreement and each Transportation Schedule. Carrier agrees to assume full responsibility for the payment of all local, state, federal and intra-provincial payroll taxes, and contributions or taxes for unemployment insurance, worker's compensation insurance, pensions, and other social security or related protection with respect to the persons engaged by Carrier for Carrier's performance of the transportation and related services in a Transportation Schedule, and Carrier shall indemnify, defend and hold Broker, and its Customer harmless there from. Carrier shall provide Broker, with Carrier's Federal Tax ID number and a copy of Carrier's IRS Form W-9 prior to commencing any transportation or related services for Broker, under this Agreement.

2. CARRIER shall transport a series of interstate shipments arranged by Broker pursuant to carrier load confirmation agreement(s) included herewith or subsequently incorporated by reference.

2.1 CARRIER agrees to not solicit any customer of Broker, either directly or indirectly. As liquidated damages, Carrier agrees to pay back a ten percent (10%) commission on all traffic handled by customers first introduced to Carrier by Broker for a period of one (1) year following cancellation of this Agreement.

3. BROKER shall pay Carrier for services rendered in an amount equal to the rates and accessorial charges agreed to on the load rate confirmation sheet or other signed writing. Carrier must submit proof of delivery with invoices to Broker as agent for the shipper. Payment terms shall be thirty (30) days from receipt.

3.1 CARRIER agrees that BROKER is the sole party responsible for payment of CARRIER'S invoices and that, under no circumstance, will CARRIER seek payment from the shipper or consignee.

4. CARRIER warrants to Broker (and its shipper's principals) that it meets the following criteria: (a) Carrier shall maintain cargo insurance in the amount of not less than (\$100,000.00) per shipment; (b) Carrier shall maintain public liability insurance in the amount of not less that (\$1,000,000) as required by federal regulation (BMC-91 on file); (c) Carrier shall maintain workers compensation insurance as required by state law; (d) Carrier shall agree to provide certificates of insurance upon request; (e) Carrier shall maintain satisfactory U.S. DOT safety ratings and is otherwise authorized to provide the proposed services; and (f) Carrier shall be in compliance with all applicable laws.

4.1 Any insurance coverage's required by any government body for the types of transportation and related services specified in a Transportation Schedule. All insurance

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required by this Agreement or a Transportation Schedule must be written by an insurance company having a Best's rating of "B+" or better and must be authorized to do business under the laws of the state(s) or province(s) in which Carrier provides the transportation and related services under all of the Transportation Schedules. Carrier's insurance shall be primary and required to respond and pay prior to any other available coverage. Carrier agrees that Carrier, Carrier's insurer(s), and anyone claiming by, through or under Carrier shall have no claim, right of action, or right of subrogation against Broker, its affiliates, or its Customer based on any loss or liability insured under the foregoing insurance. Carrier shall, prior to providing transportation and related services pursuant to this Agreement, name Broker, as a certificate holder on each of the foregoing insurance policies and shall cause its insurance company to issue a certificate to Broker, evidencing the foregoing coverage. Carrier represents and warrants that it will continuously fulfill the requirements of this Section throughout the duration of this Agreement. Broker, shall be notified in writing by Carrier's insurance company at least thirty (30) days prior to the cancellation, change or non-renewal of the submitted insurance policies.

5. GOVERNING RULES. The following rules shall apply: (a) The terms of the uniform straight bill of lading; (b) Standard claims rules otherwise applicable to common carriers (49 C.F.R. Section 370 and carrier's rules tariffs); (c) Cargo claims liability as set forth in the Carmack Amendment (49 U.S.C. Section 14706); (d) Destination market value for lost or damaged cargo, no special or consequential damages unless by special agreement; (e) Claims will be filed with Carrier by Shipper; and (f) Broker's customer is third party beneficiary of this Agreement.

6. SHIPPING DOCUMENT EXECUTION. Carriers are to be named on the bill of lading as the Carrier of Record. Broker shall be shown as the third party payer of all freight charges.

7. INDEMNIFICATION. Carrier agrees to indemnify and hold Broker and its customers harmless from any claims or loss resulting out of any act or omission of Carrier, its employees or agents in the performance of this Agreement or the services provided hereunder.

8. CARRIER'S CARGO LIABILITY. Carrier assumes liability as a common carrier for loss, damage to or destruction of any and all of Customer's goods or property while under Carrier's care, custody or control. Carrier shall inspect each load at the time it is tendered to Carrier to assure its condition. If Carrier is tendered a load which is not in suitable condition, it shall notify Broker, immediately. Cargo which has been tendered to Carrier intact and released by Carrier in a damaged condition, or lost or destroyed subsequent to such tender to Carrier, shall be conclusively presumed to have been lost, damaged or destroyed by Carrier unless Carrier can establish otherwise by clear and convincing evidence. Carrier shall either pay Broker, directly or allow Broker, to deduct from the amount Broker, owes Carrier, Customer's full actual loss, or the amount determined by Broker, and Carrier to be Carrier's responsibility. Broker, shall deduct from the amount Broker, otherwise owes Carrier, the Customer's full actual loss of all claims that are not resolved within ninety (90) days of the date of the claim. Carrier agrees to indemnify Broker, for any payments made hereunder.

8.1 SALVAGE CLAIMS. Carrier shall waive any and all right of salvage or resale of any of Customer's damaged goods and shall, at Brokers reasonable request and direction, promptly return or dispose, at Carrier's cost, any and all of Customer's damaged and overage goods shipped by Carrier under a Transportation Schedule. Carrier shall not under any circumstance allow Customer's goods to be sold or made available for sale or otherwise disposed of in any salvage markets, employee stores, or any other secondary outlets. In the

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event that damaged goods are returned to Customer and salvaged by Customer, Carrier shall receive a credit for the actual salvage value of such goods.

9. LAW AND INTEGRATION. This written Agreement, together with any load confirmation, contains the entire agreement between the parties and may only be modified by signed written agreement. State law, venue and jurisdiction shall apply in the state of           **Texas**          .

10. SAVINGS CLAUSE. If any provision of this Agreement or any Transportation Schedule is held to be invalid, the remainder of the Agreement or the Transportation Schedule shall remain in full force and effect with the offensive term or condition being stricken to the extent necessary to comply with any conflicting law.

11. This agreement shall be for the period of one (1) year and shall be automatically renewed unless cancelled. Either party may terminate this Agreement upon fifteen (15) days written notice.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

          Humming Tansport LLC          

By:           Dalia Salazar          

Title:           Broker Agent