

## BROKER-CARRIER AGREEMENT

Kair Harbor Express LLC, a licensed property broker operating under U.S. DOT number 3388564 and docket number MC1094853 (“Broker”), and \*\*\* (“Carrier”), a licensed motor carrier operating under U.S. DOT number \*\*\* and docket number \*\*\*, enter into this broker-carrier agreement and agree as follows:

**1.0 TERM AND EFFECTIVE DATE.** The term of this agreement is one year from the Effective Date and shall automatically renew for successive one-year periods. Either party may terminate the agreement at any time by giving 30 days’ prior written notice. “Effective Date” means the date that the second party to sign the agreement has done so, as indicated by the date stated in that party’s signature block on the last page of this agreement.

**2.0 CARRIER’S OPERATING AUTHORITY AND COMPLIANCE WITH LAW.** Carrier has motor carrier operating authority from the Federal Motor Carrier Safety Administration (“FMCSA”). Carrier represents that it does not have an “Unsatisfactory” or “Conditional” safety rating from the FMCSA. Carrier shall immediately notify Broker if Carrier’s safety rating becomes “Unsatisfactory” or “Conditional.” Carrier shall comply with all federal, state, and local laws and regulations in providing transportation services under this agreement, including as to the following:

- 2.1 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 loads under this agreement include hazardous materials;
- 2.2 security regulations;
- 2.3 owner/operator lease regulations;
- 2.4 loading and securement of freight regulations;
- 2.5 implementation and maintenance of driver safety regulations, including hiring, controlled substances, and hours of service regulations;
- 2.6 sanitation, temperature, and contamination requirements for transporting food, perishable, and other products, qualification and licensing and training of drivers;
- 2.7 implementation and maintenance of equipment safety regulations;
- 2.8 maintenance and control of the means and method of transportation, including performance of its drivers;
- 2.9 oversize/overweight permits and routing; and
- 2.10 satisfaction of all final court judgments, tax assessments, or tax liens that may be released to the public under federal and state disclosure laws, including any order, decision, or award obtained by a public or private person or entity pursuant to California Labor Code § 98.1 finding that a port drayage motor carrier has engaged in illegal conduct including failure to pay wages, imposing unlawful expenses on employees, failure to remit payroll taxes, failure to provide workers’ compensation insurance, or misclassification of employees as independent contractors with regard to a port drayage commercial driver.

Carrier understands and agrees that its performance of transportation services under this agreement may include “Port Drayage Services,” which means the movement within California of cargo or intermodal equipment by a commercial motor vehicle whose point-to-point movement has either its origin or destination at a port, including any interchange of power units, chassis, or intermodal containers, or the switching of port drayage drivers that occurs during the movement of that freight. Carrier understands and agrees that to the extent that it will be performing Port Drayage Services within California, under California law, Carrier will be a “port drayage motor carrier” insofar as Carrier hires or engages commercial drivers in the port drayage industry or is a registered owner, lessee, licensee, or bailee of a commercial motor vehicle, as California Vehicle Code § 15210(b) defines that term, that operates or directs the operation of a commercial motor vehicle by a commercial driver on a for-hire or not-for-hire basis to perform port drayage services in the port drayage industry. “Port drayage motor carrier” also means an entity or individual who succeeds in the interest and operation of a predecessor port drayage motor carrier consistent California Labor Code § 2684.

Carrier represents that as of the Effective Date, Carrier is not on the list of port drayage motor carriers appearing on the website of the California Labor Commissioner’s Division of Labor Standards Enforcement

(the "DLSE List"), which is a list of port drayage motor carriers with any unsatisfied final court judgment, tax assessment, or tax lien that may be released to the public under federal and state disclosure laws, including any order, decision, or award obtained by a public or private person or entity under California Labor Code § 98.1 finding that a port drayage motor carrier has engaged in illegal conduct including failure to pay wages, imposing unlawful expenses on employees, failure to remit payroll taxes, failure to provide workers' compensation insurance, or misclassification of employees as independent contractors with regard to a port drayage commercial driver. Carrier's not being on the DLSE List is a condition to Broker's entry into this agreement. If the DLSE were to place Carrier on the DLSE List after the Effective Date, then within one business day of Carrier's placement on the DLSE List, Carrier shall notify Broker in writing of such placement.

**3.0 NON-EXCLUSIVE AGREEMENT.** Carrier and Broker understand and agree that this agreement does not bind them to use each other exclusively. Either party may enter into similar agreements with other carriers, brokers, or freight forwarders.

**4.0 RECEIPTS AND BILLS OF LADING.** Carrier shall issue bills of lading for the transportation of freight under this agreement that comply with 49 U.S.C. § 80101 *et seq.* and 49 C.F.R. § 373.101, and any amendments to those laws or regulations. Unless the parties were to otherwise agree in a writing signed by both, Carrier shall become liable for a given load upon taking possession of it, regardless of whether Carrier issues a bill of lading or one has been issued or signed or delivered to Carrier. Carrier's liability shall continue until it delivers the load to the consignee and the consignee signs the bill of lading or a delivery receipt. If there were to be a conflict between the terms of any bill of lading and the terms of this agreement, then the latter shall prevail.

**5.0 RATE CONFIRMATION.** For each load that Carrier agrees to transport under this agreement, Broker shall e-mail or fax Carrier a Rate Confirmation that will state the pertinent details for that load and Broker's load-specific rules for such transportation. If there were to be a conflict between such rules and the terms of this agreement, then the latter shall prevail.

**6.0 CARRIER'S OPERATIONS AS AN INDEPENDENT CONTRACTOR AND PROOF OF ITS WORKERS' COMPENSATION INSURANCE.** At its expense, Carrier shall (a) furnish all trucks, trailers, and other equipment necessary and proper for Carrier's performance of this agreement (collectively, the "Equipment"); (b) pay all expenses related in any way to the use of the Equipment; (c) maintain the Equipment in good repair, mechanical condition, and appearance; and (d) use only qualified and licensed personnel. Carrier shall have sole control of such personnel, shall perform the services under this agreement as an independent contractor, and shall assume sole responsibility for all federal, state, and local taxes, assessments, insurance, including workers' compensation insurance, and the payment of all premiums, unemployment compensation, disability, pension, and social security insurance, and any other financial obligations that arise out of or are in any way related to Carrier's performance of this agreement. As a condition to Carrier's performance of any services under this agreement, Carrier shall provide Broker a copy of a certificate of insurance that states Carrier's workers' compensation insurance coverage. Carrier shall indemnify and defend Broker from any liabilities, expenses, or claims relating to wages, salaries, benefits, taxes, tax assessments, tax liens, claims, or other payments to, or as to, employees of Carrier, including accrued interest on any of the above. Except as Broker may grant in a power of attorney, Carrier understands and agrees that it is not and it shall not hold itself out as an agent of or in a joint venture with Broker, and Carrier shall have no authority to act on behalf of Broker.

**7.0 FITNESS OF CARRIER'S EQUIPMENT.** Broker has the right to require Carrier, at its expense, to clean or sanitize any Equipment before loading. If Broker were to notify Carrier of any concerns about the potential presence in any trailer of any chemical or biological contaminants, or of unwanted odors or anything else that could affect any freight, then upon Broker's request, Carrier must produce documentation that identifies the prior three loads in that trailer. Carrier shall not supply Equipment that has transported any hazardous wastes, regardless of whether they meet the definitions in 40 C.F.R. Part 261. Carrier shall be liable to Broker for any penalties or any other liability imposed on Broker, its customer, a shipper, or a consignee arising out of or in any way related to Carrier's use of non-compliant Equipment.

**8.0 CALIFORNIA AIR QUALITY COMPLIANCE AND TRANSPORTATION REFRIGERATION UNITS.** Carrier shall review the California Air Resources Board (“CARB”) Heavy-Duty Vehicle Greenhouse Gas Emission Reduction Regulations and Airborne Toxic Control Measures (collectively, “ATCM”) for Transportation Refrigeration Units (“TRU”) online at <https://ww2.arb.ca.gov/>. Carrier understands and agrees that as to its operations in California:

- 8.1 Carrier shall only dispatch Equipment with TRUs that comply with CARB’s TRU ATCM in-use performance standards; and
- 8.2 Before transporting any freight under this agreement, Carrier shall inspect its Equipment for compliance with CARB ATCM TRU regulations, cleanliness, odors, dirt, or debris before loading.

**9.0 CARRIER’S RECORD-RETENTION.** Carrier shall keep all maintenance records for Equipment, including those for refrigeration and temperature-control, for a period of three years from the date of such maintenance, unless the applicable law or regulations require a longer time-period, in which case, the legally-required period shall govern.

**10.0 LIMITED WAIVER OF CARMACK AMENDMENT AND OTHER PARTS OF TITLE 49, SUBTITLE IV, PART B OF THE U.S. CODE**

Where the liability scheme for interstate motor transportation under U.S. laws collectively known as the Carmack Amendment and other parts of Title 49, Subtitle IV, Part B of the United States Code (collectively, the “Title 49 Laws”) would otherwise apply to transportation under this agreement, Broker and Carrier agree to a limited waiver of the Title 49 Laws, but only to the extent that they are inconsistent with sections 11.0, 12.0, 16.0, and 24.0 of this agreement. For such transportation, Carrier agrees that this agreement, and particularly, this section, satisfies the express written waiver that 49 U.S.C. § 14101(b) requires as to the waiver of any of rights and remedies under the Title 49 Laws. The Title 49 Laws shall otherwise apply to Carrier and the transportation it performs under this agreement.

**11.0 FREIGHT LOSS, DAMAGE, DELAY, OR THEFT.**

11.1 Notwithstanding the partial waiver in section 10.0 of this agreement, Carrier assumes the liability of a motor carrier under the Title 49 Laws for the actual loss or injury to the freight arising out of any loss of, damage to, delay of, theft of, destruction of, or non-delivery of any freight that Carrier transports or undertakes to transport under this agreement. Carrier understands and agrees that it shall have the exclusive care, custody, and control of any freight that it transports under this agreement from the time that Carrier receives the freight for transportation until delivery to the consignee. Carrier shall pay Broker or it shall have the right to deduct from any amount Broker owes Carrier, Broker’s customer’s actual loss for the freight so lost, delayed, damaged, or destroyed.

11.2 Carrier understands and agrees that this agreement contains no limitation of Carrier’s liability and that Carrier has no right to otherwise limit its liability under any bill of lading, waybill, receipt, tariff, or other document. Notwithstanding the terms of 49 C.F.R. § 370.9, Carrier shall pay, decline, or make a written settlement offer on all claims for loss, damage, injury, delay, or theft within 60 days of receipt of the claim. Carrier understands and agrees that its failure to so act shall be deemed admission by Carrier of its full liability for the claimed amount and a material breach of this agreement.

**12.0 INDEMNITY.**

Carrier shall indemnify and defend Broker and its customers, as intended third-party beneficiaries, from and against any loss, damage, liability, claim, demand, action, proceeding, cost, or expense, including reasonable attorneys’ fees, expenses of investigation, judgments, tax assessments, tax liens, unpaid wages, fines, or penalties, including accrued interest on any of the above that Broker has paid or incurred, that arises out of or is in any way connected with Carrier’s performance or breach of this agreement, or that of Carrier’s employees or independent contractors, including claims for or related to personal injury or death, freight or property damage, a finding of joint and several liability as to Broker under California Labor Code § 2810.4, and Carrier’s possession, use, maintenance, custody, or operation of Equipment.

**13.0 INSURANCE.** As a condition to performing services under this agreement, Carrier shall procure and maintain, at its expense, the following insurance coverages from insurers with an A.M. Best rating of “A” or above:

- 13.1 Public liability insurance, i.e., liability for bodily injury or property damage and that includes liability for environmental restoration, in an amount not less than \$1,000,000 per occurrence, or \$5,000,000 for freight subject to 49 C.F.R. Part 387.
- 13.2 Motor truck cargo legal liability insurance in an amount not less than \$100,000 per occurrence. Such insurance policy shall (i) name Broker as an additional insured in an endorsement to that policy, (ii) expressly waive subrogation against Broker, and (iii) provide contractual liability coverage for any loss, damage, or delay related to any freight in Carrier’s possession that it has agreed to transport under this agreement.
- 13.3 Statutory workers’ compensation insurance and employer’s liability coverage in such amounts and in such form as the applicable state law requires.

To evidence the above coverages, Carrier shall provide Broker certificates of insurance that state that Broker is a certificate holder and an additional insured, copies of policy endorsements, where applicable, or copies of insurance policies and shall provide 30 days’ prior written notice of cancellation, termination, or modification of any of the above policies. As a condition to Broker’s willingness to enter into this agreement, Carrier states that one or more of the above insurance coverages cover potential liabilities that Carrier has contractually assumed in this agreement. Carrier shall indemnify and defend Broker from and against any loss, damage, liability, claim, demand, action, proceeding, cost, or expense, including reasonable attorneys’ fees, expenses of investigation, judgments, fines, or penalties that Broker has paid or incurred, that arises out of or is in any way connected with the failure of any of the above insurers to cover any claim in its entirety. Carrier shall indemnify and defend Broker from and against any loss, damage, liability, additional insurance premium, claim, demand, action, proceeding, cost, or expense, including reasonable attorneys’ fees, expenses of investigation, judgments, fines, or penalties that Broker has paid or incurred, that arises out of Carrier’s failure to obtain workers’ compensation insurance for Carrier’s drivers, regardless of their classification as Carrier’s employees or as independent contractors.

**14.0 WAIVER OF CARRIER’S LIEN.** Carrier shall not withhold delivery of any freight of any of Broker’s customers because of a dispute between Carrier and Broker as to rates or any alleged failure of Broker to pay charges under this agreement. Carrier is relying upon the general credit of Broker and waives and releases all liens that Carrier might otherwise have as to any property of Broker or that of its customers.

**15.0 PAYMENTS.**

15.1 Carrier will charge and Broker will pay for services under this agreement according to the rates and charges stated on the Rate Confirmation that Carrier and Broker shall sign before transportation of each load under this agreement. Carrier understands and agrees that there are no other applicable rates or charges except those stated in this agreement or in any Rate Confirmation Broker has signed. Broker will pay Carrier’s freight bills within 30 days of Broker’s receipt of Carrier’s freight bill, bill of lading, clean delivery receipt, and any other necessary billing documents that will enable Broker to confirm that Carrier has provided the service. As a condition to Broker’s payment of any freight for such services, Carrier must send each freight bill and all supporting documentation to Broker within 180 days of the delivery date. Carrier’s failure to timely send a freight bill shall extinguish Broker’s duty to pay it.

15.2 Carrier agrees that Broker has the exclusive right to handle and shall handle all billing of freight and related charges to Broker’s customers and, as such, Carrier expressly waives any rights that it may have to collect such freight and related charges from Broker’s customers or any other person. Carrier further agrees that Broker has the right to set off any sums it owes to Carrier under this agreement for liability that Carrier has incurred under sections 11.0, 12.0, or 13.0 of this agreement.

**16.0 WAIVER OF RECORD-KEEPING REQUIREMENT.** Broker and Carrier expressly waive the record-keeping requirements of 49 C.F.R. § 371.3 or those of any successor regulation.

**17.0 CONFIDENTIALITY AND NON-SOLICITATION.** Neither party may disclose the terms of this agreement to any person without the prior written consent of the other party except (1) as required by law or regulation, (2) disclosure to a party's 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 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 through 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 obtains traffic from such customers during the term of this agreement or within 12 months of its termination, then Carrier shall be obligated to pay Broker, for a period of 18 months after Broker's discovery of such breach, commission in the amount of 35 percent of the revenue resulting from traffic transported for such customer, and Carrier shall provide Broker with all documentation requested by Broker to verify such revenue.

**18.0 SUB-CONTRACTING PROHIBITION DUTY AND WAIVER OF CHARGES.** As a condition to Broker's willingness to enter into this agreement, Carrier agrees that it shall not sub-contract, broker, co-broker, double-broker, assign, or interline any loads that Broker tenders to Carrier under this agreement without Broker's prior written consent, which Broker may withhold at its discretion without being subject to a rule of reasonableness. Carrier understands and agrees that if it were to breach the above duty, then such breach would operate as a waiver by Carrier of its right to receive the freight and all other charges for such transportation, and that Broker would have the right to pay such freight and all other charges to the delivering carrier.

\_\_\_\_\_ Carrier's initials agreeing to sub-contracting prohibition duty

**19.0 NON-WAIVER AND NON-ASSIGNMENT.** No waiver by either party of any breach or default under this agreement shall be deemed to be a waiver of any other breach or default under this agreement. Neither party may assign or transfer any right or obligation under this agreement without the prior written consent of the other party's chief executive officer or president. Subject to section 12.0, the parties understand and agree that there are no third-party beneficiaries of this agreement.

**20.0 NO MODIFICATIONS.** The parties may only change this agreement in a writing signed by each party's chief executive officer or president.

**21.0 NOTICES.**

21.1 Any notice, demand, or request that this agreement requires or permits shall be in writing and the parties shall give such written notice by hand delivery or by a nationally recognized express transportation company.

21.2 Notice shall be effective on the date of delivery by hand or, if by a nationally recognized express transportation company, then on the date of its delivery, according to that company's tracking number or data, as follows:

If to Broker:  
Kair Harbor Express LLC  
[CONTACT NAME, TITLE]  
1129 Canal Ave.  
Long Beach, CA 90813

If to Carrier:  
CARRIER NAME  
CONTACT NAME, TITLE  
ADDRESS  
CITY, STATE ZIP

**22.0 ENTIRE AGREEMENT.** This agreement is the parties' final expression and entire agreement arising out of or in any way relating to its subject matter. This agreement states the parties' entire understanding and it supersedes any contemporaneous and prior oral and written understandings and agreements that arise out of or are in any way related to the subject matter of the agreement, including all tariffs, rates, classifications, bills of lading, waybills, service guides, circulars, and schedules of Carrier that it may have published, filed, or otherwise maintained, none of which is incorporated into this agreement. This agreement

shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each party.

**23.0 SEVERABILITY.** If any provision of this agreement shall for any reason be held to be invalid or unenforceable, then the remainder of this agreement shall be unaffected and remain in effect.

**24.0 MANDATORY LAW, VENUE, AND JURISDICTION.** All claims or disputes arising out of or in any way related to this agreement shall be determined under the federal law of the United States of America, without regard to its conflict of laws rules or, in the absence of such federal law, then under the laws of the State of California, without regard to its conflict of laws rules. Without prejudice to a party's right to remove an action to federal court, the exclusive and mandatory venue for any such claims or disputes shall be the federal or state courts in Los Angeles County, California, to the exclusion of all other courts. The parties agree to irrevocably submit to the personal jurisdiction of the above courts and to waive any jurisdictional, venue, or inconvenient forum objections to those courts.

**25.0 COUNTERPARTS.** The parties may sign this agreement in counterparts, and each signed counterpart shall become part of the final agreement and shall have the same force and effect. A copy of any signature on a signature page, including a facsimile or scanned electronic copy, shall be as valid and binding as an original signature.

**KAIR HARBOR EXPRESS LLC**

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AUTHORIZED SIGNATURE

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