

CARRIER AND BROKER AGREEMENT

This **AGREEMENT** is made this date of May 11, 2012, by and between _____, herein referred to as **CARRIER**, and **TRINITY LOGISTICS, INC.**, herein referred to as **TRINITY**.

Abbreviations used in this **AGREEMENT**:

"DOT" means the United States Department of Transportation (including the former I.C.C.)

"STB" means Surface Transportation Board of the DOT

"U.S." means the 48 contiguous United States and District of Columbia

"EDI" means Electronic Data Interchange Standards published by the Transportation Data Coordinating Committee

"USC" means United States Code

"CFR" means Code of Federal Regulations

References to USC and CFR include amendments and modifications thereto, and successor laws and regulations, if enacted.

RECITALS

(1) **WHEREAS, CARRIER** is a motor carrier of property duly authorized by the DOT under **USDOT#** _____ and Permit No. **MC#** _____, a copy of which is attached hereto, to provide compensated contract carriage of property for shippers (sometimes herein "consignors") and receivers (sometimes herein "consignees") of regulated and non-regulated property, and provides transportation services and related services in the U.S. which are designed to meet the distinct needs of shippers and receivers served under contracts of carriage; and,

(2) **WHEREAS, TRINITY** is a transportation broker, duly authorized by the DOT under License No. **MC-205157**, a copy of which is attached hereto, to arrange for the transportation of property by contract motor carriers on behalf of shippers and receivers; and,

(3) **WHEREAS, TRINITY**, as an independent contractor, serves many shipper customers and receiver customers on a continuing basis, which customers have individually and/or collectively varying and distinct transportation needs for shipments between and among various geographic points throughout the U.S. which from time to time require dedication or assignment of motor vehicles and refrigerated, containerized, bulk and other specialized equipment, and require specialized services including short notice driver/ equipment availability, driver loading/unloading/counting requirements, loading/delivery scheduling, detention, overnight and weekend layover, LTL/TL or LCL/CL service, variable traffic/shipment levels, protective service, stops in transit, direct dispatch, drop shipments, internal deliveries, weekend/holiday shipments and deliveries, pooling or spotting trailers, priority traffic, variable released rate valuations, depending on rate, weight, distance or weight, distance or other factors, simplified or special rate systems, such as pricing based solely on weight, or single factor pricing with regard to accessorial services, etc., reduced charges for larger single shipments, seasonal rate adjustments or adjustments based on aggregate volume of sales or other standards, stability of rates or charges over a specified period of time, reduced rates on shipments to distantly located customers to facilitate competition with more advantageously located suppliers, special notices regarding anticipated delays in pick up and/or delivery, confidential treatment of shipment information including origin, destination, product, tonnage, rates, charges, or sales, marketing, purchasing plans or activities and expedited service, and special credit and payment terms, for which reasons **TRINITY**, both for itself and for its customers, has unique, distinct and continuing transportation service needs and must necessarily also enter into similar pattern agreements with more than one motor carrier in order to serve those transportation service needs from origins to destinations throughout the U.S., all of which form an integral part of **TRINITY's** customer base of shippers, receivers and motor carriers; and,

(4) **WHEREAS, CARRIER** recognizes the special, distinct, varying and continuing transportation needs of **TRINITY** and its customer base of shippers and receivers, and in order to serve a portion of those transportation needs, **CARRIER** desires to provide contract carriage and related services to **TRINITY** under a continuing agreement designed to meet the said needs as part of a program of transportation services arranged by **TRINITY** between many shipper, receiver, and motor carrier customers; and,

(5) **WHEREAS, CARRIER** acknowledges that as a single motor carrier it may not be able to reliably and continually serve the broad range of **TRINITY's** customers' transportation service needs and demands throughout the U.S., and in the aggregate multiple motor carrier agreements can and do serve all of **TRINITY's** customer base, and that this **AGREEMENT** may be one of a number of such continuing agreements; and,

(6) **WHEREAS, TRINITY** and **CARRIER** understand that this **AGREEMENT** does not bind them to mutually exclusive services to each other, and that **TRINITY** will enter into similar agreements with other carriers, and **CARRIER** will enter into similar agreements with other brokers and/or shippers; and,

(7) **WHEREAS, TRINITY** and **CARRIER** mutually desire to enter into a continuing agreement for the transportation and service of regulated property as permitted by **49 USC 14101(b)**, and for the transportation and service of non-regulated property as well;

NOW, THEREFORE, in consideration of the mutual promises contained herein, **TRINITY** and **CARRIER** agree as follows:

EFFECTIVE DATE AND TERM

(8) This **AGREEMENT** is to become effective on the date first written above, or to the extent applicable, upon the date which **CARRIER** and **TRINITY** commenced doing business together, whichever is earlier, and shall remain in effect for a period of one year from such date, and shall automatically renew from year to year thereafter, subject to the right of either party to terminate this **AGREEMENT** at any time upon thirty (30) days advance written notice to the other party.

SCOPE OF AGREEMENT

(9) This **AGREEMENT** shall govern any and all shipments tendered to **CARRIER** by **TRINITY** (or upon **TRINITY's** instructions), and accepted by **CARRIER**, whether regulated or non-regulated property, in interstate or intrastate transportation. Any rates, charges, classifications and/or rules in tariffs filed or published by **CARRIER** shall not apply to any such shipment unless they are specifically identified and incorporated herein. As permitted by **49 USC 14101(b)**, the parties expressly waive any and all rights or remedies they may have in connection with claiming a rate, charge or fee which is different from the rate, charge or fee established in this **AGREEMENT**. This being an agreement for contract carriage, the doctrines and principles of common carriage shall not apply.

STATUS OF PARTIES

(10) The relationship of **CARRIER** to **TRINITY** shall, at all times, be that of an independent contractor. Nothing herein shall be construed as establishing an agency, partnership, joint venture, hiring or any form of employer-employee relationship between **TRINITY** and **CARRIER**. Neither party shall be responsible for any debts, obligations or liabilities incurred by the other in performance of its business activities, except as expressly provided herein. All drivers or other persons supplied by **CARRIER** shall be acting under the direction and control of the **CARRIER** and shall be deemed its employees for liability purposes. No such person(s) shall be deemed employees or borrowed servants of **TRINITY**. Notwithstanding the foregoing provisions, **TRINITY** shall be the agent for the **CARRIER** for the limited and express purpose of billing and collecting freight charges and fees from shippers and receivers, and **CARRIER** hereby appoints **TRINITY** as its agent for such express and limited purpose.

TRINITY'S OBLIGATIONS TO CARRIER & PAYMENT PROVISIONS

(11) **TRINITY** shall diligently solicit, obtain and maintain customers having property in need of transportation. **TRINITY** shall tender to **CARRIER** for transportation at least three full truck loads or six partial truck loads of its customers' property per twelve month period, on a continuing basis, during each year this **AGREEMENT** remains in effect. Provided **CARRIER** has sufficient capacity and availability, **CARRIER** shall accept such tender and carry the load in accordance with the terms and conditions herein in its usual business practices. **TRINITY's** obligation to tender loads shall cease if **CARRIER** is in default under this **AGREEMENT**. If, during any annual period, **TRINITY** fails to tender the said minimum number of shipments, **TRINITY** shall pay **CARRIER**, as liquidated damages, the sum of \$25.00 for each deficit shipment.

(12) **TRINITY** shall pay **CARRIER** for the transportation of property under this **AGREEMENT** in accordance with the shipping rates as established herein, said payment to be made not later than twenty-five (25) days from receipt by **TRINITY** of a completed ACH form and **CARRIER's** valid, uncontested invoice and documentation of proof of pick-up and delivery covering such transportation and services. In the event said paperwork has not been received by **TRINITY** within 30 days **CARRIER** could be subject to a \$50 fine. See paragraph 14 for required documents.

(13) In the event that after shipment of property under this **AGREEMENT** the party responsible for payment of freight charges and fees becomes bankrupt, or for any reason defaults on its obligation to pay **TRINITY** for freight charges and fees which **TRINITY** has already paid to **CARRIER**, **CARRIER** agrees that all its right, title and interest in such charges and fees shall be, and hereby are, transferred and assigned to **TRINITY** for purposes of collection and recovery from the responsible party(s).

CARRIER'S OBLIGATIONS

(14) Subject to the availability of suitable equipment for the property tendered for transportation, and subject to the specific shipment instructions, **CARRIER** shall provide motor transportation services for the property, including, as applicable, those specialized services described in Section (3) hereinabove, and shall bill all charges for such services directly to **TRINITY**. **CARRIER** shall provide **TRINITY** with copies of signed Bills of Lading and delivery receipts as evidence of such services.

(15) **CARRIER** shall issue a Bill of Lading, in its own name, showing the kind, condition and numerical quantity of the property received and delivered by **CARRIER** at the loading and unloading points. Bill of Lading shall be a receipt of goods only. **CARRIER** shall assume full and complete responsibility and liability for any and all loss and/or damage to, or delay of, any shipment of property while in the possession or control of **CARRIER**. The liability under this **AGREEMENT** for lost, damaged, delayed, spoiled or destroyed property shall be for the full value of the property, meaning its replacement cost as established by trade sale or other invoice documentation, plus any additional transportation costs that may be required. Failure to issue a bill of lading shall not affect the liability of the **CARRIER**.

(16) **CARRIER** shall furnish, if capabilities exist, transmissions of data elements ("EDI") on each shipment and receipt in the specified format, as well as similar data elements for automated payment of freight bills.

(17) **CARRIER**, at its sole cost and expense, shall furnish all equipment required for transportation and services hereunder and shall maintain all equipment in clean condition, good repair, and working order. **CARRIER** shall employ only competent and properly licensed personnel who shall be well trained in the care, safety procedures applicable to shipments being handled and transported. **CARRIER** shall not cause or permit any shipment tendered hereunder to be brokered to or transported by any other motor carrier, or in substituted service by railroad or by other modes of transportation without prior written consent of **TRINITY**. In the event **CARRIER** does permit any shipment tendered hereunder to be brokered to or transported by any other motor carrier, or in substituted service by railroad or by other means of transportation without prior written consent of **TRINITY**, **TRINITY** reserves the right to pay the actual provider of the service directly and no commission shall be paid to the **CARRIER**. These terms also apply to factored shipments.

(18) In the event that **CARRIER** becomes unable to deliver any load in accordance with the time requirements imposed, **CARRIER** shall immediately notify **TRINITY**, which shall have the right, but not the obligation, to provide alternative transportation. **CARRIER** shall cooperate fully in the transfer of the load to a substitute carrier. Said transfer shall not relieve the parties of their obligations hereunder.

(19) **CARRIER** shall comply with all applicable DOT laws and regulations as well as any other federal and state laws, regulations and ordinances applicable to the operations of a motor carrier.

(20) **CARRIER** shall comply with the financial responsibility requirements of federal and state departments and agencies through which it is regulated and authorized to operate. **CARRIER** shall maintain primary cargo insurance in an amount equal to the **full value** of the property to be transported at any one time in order to compensate **TRINITY**, shipper, consignee and/or beneficial owner for any and all loss or damage to property which was placed in possession and control of **CARRIER**; and in no event shall **CARRIER's** cargo insurance be less than \$50,000 per occurrence and no deductible greater than \$5000. **CARRIER** shall also maintain primary auto liability insurance in an amount sufficient to cover any and all liability risks associated with its activities and operations in connection with transportation services under this **AGREEMENT**, but in no event in an amount less than the minimum Federal required statute (currently \$750,000.00) per occurrence. In such events where the **CARRIER** is carrying loads intrastate, **CARRIER** shall comply with all insurance requirements of said state except that, in such circumstances where the state limits are less than those required by Federal law for interstate commerce, **CARRIER** shall maintain the minimum insurance requirements as required by said Federal statutes, rules and/or regulations. **CARRIER** shall maintain all legally required workers' compensation coverage for personnel employed by **CARRIER** in connection with its transportation operations and services under this **AGREEMENT**. **CARRIER's** cargo and liability insurance shall comply with USC, CFR, DOT, and STB requirements in all respects, with no exclusions, exceptions or restrictions. **CARRIER** agrees that its cargo and liability insurance policies shall require the insurance carrier(s) to give **TRINITY** written notice thirty (30) days prior to the cancellation of such policies. **CARRIER** shall furnish to **TRINITY**, upon request, copies of insurance policies and standard Certificate(s) of Insurance for both the cargo and the liability risks. **CARRIER** shall name **TRINITY** as "additional insured" on both cargo and liability policies. **CARRIER** shall place both cargo and liability policies with only "A" rated insurance companies.

(21) **CARRIER** shall defend, indemnify and hold **TRINITY** and its shipper and receiver customers free and harmless from any and all liability and/or claims for loss or damage to any property in the possession and/or control of **CARRIER** in connection with transportation and services under this **AGREEMENT**, and any and all liability and/or claims for personal injury or death or property damage arising out of the acts or omissions of **CARRIER** in providing transportation and services hereunder. **CARRIER's** obligation shall include liability for payment of any and all costs and/or fees incurred by **TRINITY** in the adjustment or defense of any claim for cargo loss or damage and/or claim for personal injury or death or property damage arising out of transportation operations and services under this **AGREEMENT**. **CARRIER** agrees that its obligation to defend, indemnify and hold harmless the **TRINITY** and its shipper and receiver customers from and against any and all claims and liabilities resulting from or arising out of transportation operations and services under this **AGREEMENT** shall survive any termination of this **AGREEMENT**.

FREIGHT RATES/CONFIRMATION IN WRITING

(22) For all shipments tendered by **TRINITY** and accepted by **CARRIER** under this **AGREEMENT**, the rates, charges and fees for the transportation and services for such property shall be reasonable, and shall be on best terms possible but no greater than the contemporaneously prevailing rates and charges for the same or substantially similar services then being provided by **CARRIER** and other motor carriers. Such rates and charges may be established or amended verbally (by telephone or other means) in order to meet specific shipping schedules, but such verbal agreements shall be confirmed in writing within 48 hours of the loading of **CARRIER's** truck with the property for transportation. Such written "load confirmation" shall include the charges for the shipment and shall also contain, as applicable, the conditions and any additional or accessorial services required to be performed. The "load rate confirmation" shall be sent by **TRINITY** to **CARRIER** via computer generated facsimile transmission (FAX) or EMAIL,

but if FAX or EMAIL confirmation cannot be sent, then **TRINITY** shall send the written "load rate confirmation" to **CARRIER** by First-Class Mail within 72 hours. Failure to sign and return rate confirmation within 24 hours shall constitute acceptance of rate.

(23) **CARRIER** hereby represents to **TRINITY** that any and all rates quoted to **TRINITY** shall be and shall include the true and accurate rate, classification, rule and practice upon which the quoted rate for the applicable shipment is based. **CARRIER** intends that **TRINITY** rely on the foregoing representation. In reliance thereon, **TRINITY**, on behalf of its shipper customers, will not request **CARRIER** to furnish a written or electronic copy of **CARRIER's** rate, classification, rules and practices as is permitted by 49 USC 13710(a)(1). **CARRIER** will issue its written "load confirmation" based upon **CARRIER's** quoted rate.

SHIPMENTS PRODUCING CLAIMS, REJECTIONS, ETC.

(24) When a shipment is partially or wholly refused or rejected by the receiver, or **CARRIER** is unable to deliver it for any reason, **CARRIER** shall notify **TRINITY** and the shipper in order to receive disposition instructions. Until such disposition instructions are received, **CARRIER** must place the shipment in a public warehouse under **TRINITY's** name or in its terminal or storage facility under reasonable security and provide written notice of such act to **TRINITY** and shipper. **CARRIER** shall have no right to sell, auction, or otherwise dispose of any property subject to disagreement which is undeliverable, without providing written notice of intent to do so to **TRINITY** and to shipper at least 30 days in advance of such sale, auction or other disposition. In the event of any such sale or auction, **CARRIER** shall hold the proceeds thereof in trust for **TRINITY** and shipper.

(25) Except as provided in Section (23), **CARRIER** shall have no right to assert any lien on or against any property transported under this **AGREEMENT**. However, should a shipper or consignee notify **TRINITY** of a claim for loss or damage to property transported hereunder, **CARRIER** agrees that **TRINITY** and shipper or consignee shall have the right to set-off an amount sufficient to cover such claim and to deduct and withhold such amount from any payments due to **CARRIER**.

NON-SOLICITATION COVENANTS

(26) **CARRIER** and **TRINITY** agree that **TRINITY**, at great expense, has developed a broad customer base of shippers, receivers and vendors that is essential to the successful operations of the **TRINITY**. **CARRIER** and **TRINITY** agree that disclosure of the identity of one or more of **TRINITY's** said customers to **CARRIER** constitutes valuable consideration. During the term of this **AGREEMENT** and for a period of one (1) year from its termination, **CARRIER** shall not, directly or indirectly, solicit or do business of a transportation or warehousing nature with any of **TRINITY's** customers who are serviced by **CARRIER** as a result of this **AGREEMENT** unless otherwise agreed by the parties in writing.

(27) Solicitation prohibited under this **AGREEMENT** means participation in any conduct, whether direct or indirect, the purpose of which involves transportation and/or handling of property by **CARRIER** for which **CARRIER** does, or did in the past, provide such services for that customer under arrangements first made or procured by **TRINITY**. Solicitation includes conduct initiated or induced by **CARRIER**, or accepted by **CARRIER** upon inducement by **TRINITY's** customer.

(28) If **CARRIER** should perform services of a transportation or warehousing nature for compensation for any **TRINITY** customer without prior documented authorization from **TRINITY** during the applicable time period in violation of this **AGREEMENT**, **CARRIER** shall pay to **TRINITY** within ten (10) days of each such violation an amount equal to ten percent (10%) of all revenues invoiced by **CARRIER** to the solicited customer.

(29) **TRINITY** shall identify its customers to **CARRIER** as each first load from each customer is tendered to **CARRIER**. **CARRIER's** acceptance of the load and movement of the property will acknowledge that this new customer is a **TRINITY** customer. **CARRIER** has ten (10) days after such "first load" is accepted by **CARRIER** to challenge, in writing, why the customer should not be considered a **TRINITY** customer. In any case of challenge, **TRINITY** and **CARRIER** will agree in writing exactly how this customer will be handled.

RESOLUTION OF DISPUTES

(30) Unless mutually agreed otherwise, any controversy or claim arising out of or related to this Contract, or the breach thereof, shall be settled by arbitration and administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof. Said arbitration shall be held at a mutually agreeable location in the state of Delaware. Prior to commencement of arbitration the parties will agree to mediation before a mutually agreeable mediator; said mediation to be held in Dover, Delaware.

(30i) Disputes over loss and damage claims will be submitted to the Transportation Arbitration Board (TAB). If so submitted to arbitration, no court action can be taken by either party prior to conclusion of the arbitration proceeding (other than the filing suit to protect against the running of any period of limitations set forth in this Contract or applicable statute) and the Arbitrator's decision shall be final and binding.

(30ii) Any proceedings in Arbitration, or in any State or Federal Court forum for the recovery of freight charges relating to any shipment tendered to **CARRIER** pursuant to this **AGREEMENT**, must be filed within one (1) year from the date of delivery of such shipment.

(31) Proceedings based upon loss, damage, injury or delay to property transported pursuant to this **AGREEMENT** shall be initiated within two (2) years from the later of the dates on which the shipper or receiver claimant and **TRINITY** receive written notice of disallowance of claim from **CARRIER**.

CONCLUDING PROVISIONS

(32) ENTIRE CONTRACT: The provisions contained in this **AGREEMENT** properly express and memorialize the complete understanding and agreement between the parties, including those contained in all prior agreements, both verbal or written, and there are no other agreements or understandings between parties, express or implied, except as set forth herein.

(33) AMENDMENTS: This **AGREEMENT** may not be modified or amended except by a subsequent written agreement signed by both parties.

(34) WAIVERS: Waiver by either party of any failure to comply with any provision of this **AGREEMENT** by the other party shall not be construed as or constitutes a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this **AGREEMENT**.

(35) ASSIGNMENTS: Neither party may assign its rights or obligations under this **AGREEMENT** without the express written consent of the other party being first obtained.

(36) BINDING EFFECT: This **AGREEMENT** shall be binding upon the parties and their legal representatives, successors and authorized assigns.

(37) SEVERABILITY: If any provision of this **AGREEMENT** is determined by the Arbitrator or a court of competent jurisdiction to be contrary to the laws or regulations of any applicable jurisdiction, then such invalid provision shall be severed from this **AGREEMENT**; however, such determination shall not affect the validity of any other provisions of this **AGREEMENT**.

(38) AUTHORITY OF REPRESENTATIVES TO BIND PARTIES: It is agreed and warranted by the parties that the persons signing this **AGREEMENT** respectively for **CARRIER** and **TRINITY** are authorized to do so. No further proof of authorization is or shall be required.

(39) COUNTERPARTS: This **AGREEMENT** may be executed in any number of identical counterparts and each such executed counterpart shall be deemed a duplicate original hereof.

(40) NOTICES: Any notices required or permitted to be given under this **AGREEMENT** shall be in writing and shall be sent by first class mail **and** by fax transmission. The mailed notices shall be addressed to the parties, respectively, at the address shown below, and the contemporaneously faxed notices shall be likewise transmitted to the facsimile numbers shown below.

IN WITNESS WHEREOF the parties have executed this seven (7) page **AGREEMENT** on this day _____, 20_____.

BROKER

Trinity Logistics
50 Fallon Ave
P.O. Box 1620
Seaford, DE 19973

Ph No. 800-319-6968

Fax: 302-253-0214

Tax I.D. #: 51-0357757

Carrier Compliance Department
bookedcarriers@trinitylogistics.com

CARRIER

Company Name

Physical Address of Principal Office

Address 2 or P.O. Box

City, State, Zip Code

Phone Number

Fax Number

Tax ID #

Printed Name

Signature

