



### **BROKER - CARRIER AGREEMENT**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between West Plains Co. DBA CT Freight Services (“BROKER”), a Registered Property Broker, Lic. No. MC-392482, and \_\_\_\_\_, a Registered Motor Carrier, Permit/Certificate No. MC-\_\_\_\_\_ (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 broke 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 Par.
- F. Is in, and shall maintain compliance during the terms of this agreement, with all applicable federal, state and local laws relating to the provision of it 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; 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 and temperature requirements for transporting food and other perishable 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. Will notify BROKER immediately if CARRIER's federal Operating Authority is revoked, suspended or rendered inactive for any reason; and/or if CARRIER is sold, or if there is a change in control of ownership of CARRIER; and/or any of its insurance required hereunder is threatened to be or is terminated, cancelled, suspended, or revoked for any reason.

H. INSURANCE REQUIREMENTS

- i. Subject to the express monetary insurance limits in Par 3.D as to CARRIER, and BROKERS monetary insurance limits for public liability, and property damage, or such other amounts as mutually agreed by the Parties in writing, BROKER and CARRIER shall defend, indemnify and hold each other harmless from any claims, actions or damages, arising out of their respective performances under this Agreement. Neither Party shall be liable to the other for any claims, actions or damages due to the negligence of the other Party. The obligation to defend shall include all costs of defense as they accrue.
  - ii. Except for CARRIERS liability under Par 1.E, unless otherwise agreed in writing, and regardless of whether the Parties insurance as referred to in sub part 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 CARRIERS freight charges to shipper, consignee, or third parties responsible for payment.
- K. Has investigated, monitors, and agrees to conduct business hereunder based on the creditworthiness 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 one (1) load/shipment 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 rate shall automatically be incorporated herein by reference as part of Exhibit A, Amendment 1, *et seq* shall automatically be incorporated herein by reference as part of Exhibit A, Amendment 1, *et seq*.
- C. The BROKER is authorized to invoice and collect from the shipper, consignee, or other responsible payee all applicable freight charges due as agent for and on behalf of the CARRIER. Payment to the BROKER as authorized by this agreement shall relieve such shipper, consignee or other payee of any liability to the CARRIER for non-payment of such charges.
- D. RATES: Additionally, any rates, 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 references 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.

E. MILEAGE AND ACCESSORIAL CHARGES: For each freight movement or shipment, the Parties may specify the mileage to apply for the purposes of computing transportation charges if a mileage rate schedule applies. There shall be no charge for waiting time or demurrage other than as provided for in this paragraph. CARRIER shall allow 4 hours of free time for loading and after that free time has expired CARRIER may be entitled to waiting time fees. In order to be eligible to receive payment for waiting time, CARRIER must first furnish to broker written proof of the time of arrival of the subject vehicle for loading/unloading and the time of completion of the loading/unloading on the bill of lading for the subject shipment or other appropriate and acceptable (to BROKER) shipping document. Time spent waiting prior to the time of opening for business of the consignor or consignee, as the case may be, shall not be included in the computation of either free time or waiting time. In order to receive payment for waiting time, CARRIER must first give BROKER telephonic notice that chargeable waiting time is about to commence or accrue so that BROKER has an opportunity to intervene with the consignor/consignee in order to advert or minimize such charges for waiting time. CARRIER shall not be entitled to any payment for waiting time which was caused due to an act of God, the public enemy, the authority of law, strikes, or act of the CARRIER. Upon the request of the consignor and/or consignee or any shipment transported by CARRIER pursuant to this agreement for CARRIER to load and/or load such shipment from CARRIER's vehicle, CARRIER shall provide such loading and or unloading service, at its own, sole expense, unless otherwise provided for in a rate confirmation sheet from BROKER for a specific shipment.

F. 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 30 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's sole recourse shall be to seek payment from the Shipper or other party responsible for payment after giving BROKER 90 (business days) advance written notice CARRIER shall not seek payment from Shipper if Shipper can provide 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.

G. BOND: BROKER shall maintain a surety bond/trust fund on file with the Federal Motor Carrier Safety Administration (FMCSA) in the form and amount required by that agency's regulations.

### **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. CARRIER agrees that all shipments will be transported and delivered with reasonable dispatch or as otherwise agreed in writing.

B. SANITARY CONDITIONS: CARRIER acknowledges the expansion in growth of governmental agro terrorism-prevention, record keeping and sanitary requirements for transportation.

CARRIER shall make full disclosure of previous load hauled in all trailers

presented for loading; CARRIER's driver must present previous load ticket, or similar supporting documentation upon request.

CARRIER must implement effective controls to maintain the quality and integrity of all agricultural products/goods, and prevent the adulteration of such products during loading, transportation, and unloading. These controls shall include procedures to avoid commingling and/or cross-contamination of any products/good with: prohibited material as defined under the Food and Drug Administration's (FDA) BSE-prevention feed regulations (21 CFR 589 2000, *et seq*); substances deemed to be unsafe within the meaning of Federal Food, Drug and Cosmetic Act, including but not limited to sections 406, 409, 512, 721 of that Act; any other equipment under its control accordingly and shall be responsible for any shortcomings and any liability arising there from.

CARRIER shall assure that trailers will be thoroughly swept clean of all residual material prior to arriving, including edges of trailer tarp brackets, top rails, door areas and corners. Sweeping of trailers and inspection for cleanliness is always required before loading here under.

CARRIER's driver must present washout certificate from a commercial washout facility upon request. Commercial Washouts are required when a trailer's previous load included: animal waste (raw or unprocessed); coal; debris or demolition material; fertilizer materials including DAP, MAP, TSP, Phosphate, Poly-Phosphate, Potash, Ammonium Nitrate, Ammonium Sulfate, Urea; glass, hazardous materials, metal, salt sludge or other waste materials, or any other substance that may affect the quality of safety of any products hauled.

Failure of shipper to request or obtain a washout certificate or to determine the condition of a trailer prior to loading shall not relieve carrier of its liability for cargo loss or damage or for adverse effects on the quality or safety of products/goods.

- C. 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 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.

D. CARRIER shall be responsible for obtaining “legible” signature from an authorized representative at the point of delivery, unless shipper is released from this obligation by shipper’s customer. Said release will be stated on the bill of lading. Broker shall be responsible for maintaining a file of said signed bill of lading for a period of one year as shipper may require proof of delivery from time to time. Original signed copy of the bill of lading is required.

E. 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 E (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

under this sub par (ii) above.

- iv. 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 (ten) 10 days of receipt of the claim. Failure of CARRIER to pay, decline or offer settlement within this (ten) 10 day period shall be deemed admission by CARRIER of full liability for the amount claimed and a material breach of this Agreement.
- vi. CARRIERS liability for cargo damage, loss, or theft from any cause for any one shipment, under sub part b) above, shall not exceed \$ 100,000 unless CARRIER is notified by BROKER or Shipper of the increased value 1 days prior to shipment pick up.

F. INSURANCE: CARRIER shall furnish BROKER with Certificate(s) of Insurance, or insurance policies providing thirty (30) days advance notice of cancellation or termination, and unless otherwise agreed, subject to the following minimum limits: Public liability \$ 1,000,000; motor vehicle (including hired and non-owned vehicles), property damage, and personal injury liability \$ 1,000,000 (\$ 2,000,000 if transporting hazardous materials including environmental damages due to release or discharge of hazardous substances); cargo damage/loss \$ 25,000; 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.

G. 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 of 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), the American Arbitration Association (AAA), or Transportation ADR Council, Inc. (ADR) at BROKER's sole discretion. Arbitration proceedings shall be started

within twelve (12) 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, AAA or ADR. The decision of the arbitrators shall be binding and final and the award of the arbitrator 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 or TAM nearest North Platte, Nebraska 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 Nebraska. Unless preempted or controlled by federal law and regulations, the laws of the State of Nebraska shall be controlling. The arbitration provisions of this paragraph shall not apply to enforcement of the award of arbitration.

E. NO BACK SOLICITATION:

i. CARRIER shall not knowingly solicit freight shipments from any shipper, consignor, or consignee, or other customer of BROKER, when: such shipments of the shipper, consignor, or consignee or BROKER customer were first tendered to the CARRIER by the BROKER.

F. Neither BROKER nor CARRIER shall be liable for any loss or damage or from failure of or delays in performance resulting from, but not limited to: Acts of God, fire, floods, wars, riots, sabotage accidents, strikes, labor disputes, lock-outs, or requirements or limitations of governmental authority of any kind.

G. 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 agree that the remedy at law, including monetary damages, any be inadequate and that the Parties shall be entitled, in addition to any other remedy they 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.

H. 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.

I. 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).

J. 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.

- K. 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 or any reason, the Parties shall be obligated to complete performance of any work in progress in accordance with the terms of this agreement.
- L. 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.
- M. COUNTERPARTS: This Agreement may be executed in any number of counterparts each of which shall be deemed to be a duplicate original hereof.
- N. FAX CONSENT: The Parties to this Agreement are authorized to fax 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.
- O. 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.

(BROKER)

(CARRIER)

West Plains Co. DBA CT Freight

Jack Neyens

Director of Transportation

14210 Hillside Circle

Omaha, NE 68137

Phone: 800-607-4989

Fax: 402-829-5170

Email: jackn@ctfreightservices.com

\_\_\_\_\_

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

\_\_\_\_\_

Printed name: \_\_\_\_\_

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

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Signature: \_\_\_\_\_

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