



SHIPPER/ BROKER TRANSPORTATION AGREEMENT
Moe-Mentum Transportation Tariff

THIS AGREEMENT, "Agreement", made and intended to effective this _____ day of _____ By and between _____ (BROKER), and _____ having offices at _____ (SHIPPER), collectively, the PARTIES"

RECITAL

- A. **WHEREAS BROKER** is licensed as a Property Broker by the Federal Motor Carrier safety Administration (FMCSA) in Docket Number MC 267635, or by appropriate State agencies, and as a licensed broker, arranges for freight transportation.
- B. WHEREAS SHIPPER, to satisfy some of its transportation needs, desires to utilize the services of BROKER to arrange for transportation of SHIPPER's freight. **NOW THEREFORE, intending to be legally bound, BROKER and SHIPPER agree as follows:**

AGREEMENT

1. TERM. Subject to paragraph 11, the term of this Agreement shall be one (1) year, commencing on the date first mentioned above, and shall automatically renew for successive one year periods: provided, however, that either Party may terminate this Agreement on 30 days written notice to the other Party, with or without cause, or as otherwise provided in this Agreement.

2. SERVICE. BROKER agrees to arrange for transportation of SHIPPER's freight pursuant to the terms and conditions of this Agreement and in compliance in all material respects with all federal, state and local laws and regulations relating to the brokerage of the freight covered by this Agreement. BROKER's responsibility under this Agreement shall be limited to arranging for, but not actually performing, transportation of SHIPPER's freight. The PARTIES may, upon written mutual agreement, included additional service terms to be attached as Appendix D

3. VOLUME.

- A. SHIPPER agrees to tender a minimum of two (2) shipments per month to BROKER, and BROKER agrees to arrange for the transportation of said shipments, as well as any other shipments offered by SHIPPER. Shippers are not restricted from tendering freight to other brokers, or directly to motor carriers. BROKER is not restricted from arranging transportation for other parties.
- B. SHIPPER shall be responsible to BROKER for timely and accurate delivery instructions and description of the cargo, including special handling requirements, for any shipment, BROKER must fulfill these requirements.
- C. SHIPPER may not request more than seven (7) rate requests per month with out tendering a shipment to the broker.

4. FREIGHT CARRIAGE BROKER warrants that it has entered into, or will enter into, bilateral contracts with each **CARRIER** it utilizes in the performance of this Agreement. BROKER further warrants that those contracts comply with all applicable federal and state regulations and shall include the following provisions:



A. Carrier shall agree to defend, indemnify and hold BROKER and SHIPPER harmless from all damages, claims or losses arising out of its performance of the Agreement, including cargo loss and damages, theft, delay, damage to property, and personal injury or death

B. carrier shall agree that its liability for cargo loss or damages shall be no less than that of a Common Carrier as provided for in 49 USC 14706 the Carmack Amendment). Exclusions in Carrier's insurance coverage shall not exonerate Carrier from this liability

C. BROKER shall agree to have in its possession, at all times during the term of the contract, a copy of carriers' insurance certificate.

| | |
|-----------------------------------|--------------------|
| General Liability/Property Damage | \$ 100,000 |
| Auto Liability | \$ 100,000 |
| Cargo Liability | \$ 100,000 |
| Worker's Compensation | as required by law |

D. Carrier shall agree that the provisions contained in 49 CFR 370.1 et seq. shall govern the processing of claims for loss, damages, injury or delay to property and processing of salvage.

E. Carrier shall authorize BROKER to invoice SHIPPER for services by the Carrier. Carrier shall further agree that BROKER is the sole party responsible for payment of its invoices and that, under no circumstance, will Carrier seek payment from the Shipper, consignee or BROKER's customer.

5. RECEIPTS AND BILLS OF LADING. If requested by SHIPPER, BROKER agrees to provide SHIPPER with proof of acceptance and delivery of such loads in the form of signed Bill of Lading or Proof of Delivery, as specified by SHIPPER. SHIPPER's insertions of BROKERS's name on the bill of lading shall SHIPPER convenience only and shall not change BROKERS's status as a property broker. The terms and conditions of any freight documentation used by BROKER or carrier selected by BROKER may not supplement, alter, or modify the terms of this Agreement

6. PAYMENTS. BROKER shall invoice SHIPPER for its services in accordance with the rates, rate proposal and accessorial charges and any after supplements or revisions that are mutually agreed to between the PARTIES. If rates are negotiated between the PARTIES and not otherwise confirmed in writing, such rates shall be considered "written," and shall be binding, upon BROKERS's invoice to SHIPPER and SHIPPER's payment to BROKER. SHIPPER agrees to pay BROKER's invoice within **30 DAYS** of invoice date without deduction or setoff. BROKER shall apply payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. Payment of the freight charges to BROKER shall relieve SHIPPER, Consignee or other responsible party of any liability to the carrier for non-payment of its freight charges: and BROKER hereby covenants and agrees to indemnify SHIPPER, Consignee or other responsible part against such liability

7. CLAIMS

A Freight Claims: Shipper must file claims for cargo loss or damage with BROKER within thirty (30) days from the date of such loss, shortage or damage, which for purposes of the Agreement shall be the delivery date or, in the event of non-delivery the scheduled delivery date. The carriers' cargo liability for any one shipment shall not exceed \$100,000, unless BROKER is notified by SHIPPER of the increased value **prior** to procure additional insurance coverage.

It is understood and agreed that the BROKER is not a Carrier and that the BROKER shall not be held liable for loss, damage or delay in the transportation of SHIPPER'S property unless causes by BROKER's negligent act or omissions in the performance of this Agreement. BROKER shall assist SHIPPER in filing and/or processing of claims with the Carrier. If payment of claim is made by BROKER to SHIPPER, SHIPPER automatically assigns its right and interest in the claim to BROKER's to allow BROKER to subrogate its loss. In no event shall BROKER or BROKER's Carrier be liable to SHIPPER or anyone else for special, incidental, or consequential damages that relate to loss, damage or delay to a shipment, unless SHIPPER has informed BROKER in written or electronic form, prior to or when tendering a shipment or series of shipments to BROKER, of the potential nature, type and approximate value of such damages, and BROKER specifically agrees in written or electronic form to accept responsibility for such damages



8. SURETY BOND: BROKER shall maintain a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration in the amount of \$10,000 and furnish SHIPPER with proof upon request. (**COPY ON WEB-SITE**)

9. HAZARDOUS MATERIALS: SHIPPER and BROKER shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR § 172.800 and § 173 et seq. to the extent that any shipments constitute hazardous materials. SHIPPER is obligated to inform BROKER immediately if any such shipments do constitute hazardous materials. SHIPPER shall defend, indemnify and hold BROKER harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of SHIPPER's failure to comply with applicable hazardous materials laws and regulations

10. DEFAULT: Both parties will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes in good faith. However, if either party materially fails to perform its duties under this Agreement, the party claiming default may terminate this Agreement on ten (10) days written notice to the other Party. SHIPPER shall be responsible to pay BROKER for any services performed prior to the termination of this Agreement and for shipments not yet completed and/or not yet invoiced to SHIPPER

11. INDEMNIFICATION: BROKER and SHIPPER shall defend, indemnify and hold each other harmless against any claims, actions or damages, including, but not limited to, cargo loss, damage, or delay, and payment of rates and/or accessorial charges to Carriers, arising out of their respective performances under this Agreement, provided, however, the indemnified party shall not offer settlement in any such claim without the agreement of the indemnifying party which agreement shall not be unreasonably withheld. If the indemnified party offers or agrees to a settlement for such a claim without the written agreement of the indemnifying party, the indemnifying party shall be relieved of its indemnification obligation. Neither party shall be liable to the other party for any claims, actions or damages due to the negligence of the other party

12. ASSIGNMENT/MODIFICATIONS OF AGREEMENT: Neither party may assign or transfer this Agreement, in whole or in part, without the prior written consent of the other party. No amendment or modification of the terms of this Agreement shall be binding unless in writing and signed by the PARTIES.

13. SEVERABILITY/SURVIVABILITY: In the event that the operation of any portion of this Agreement results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion of provision shall be severable and that the remaining provisions of the Agreement shall continue in full force and effect. The representations and obligations of the PARTIES shall survive the termination of this Agreement for any reason.

14. INDEPENDENT CONTRACTOR: It is understood between BROKER and SHIPPER that BROKER is not an agent for the CARRIER or SHIPPER and shall remain at all times an independent contractor. SHIPPER does not exercise or retain any control or supervision over BROKER, its operations, employees, or carriers.

15. NONWAIVER: Failure of either party to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of this Agreement, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred



16. NOTICES: Unless the PARTIES notify each other in writing of a change of address, any and all notices required or permitted to be given under this Agreement shall be in writing (or fax with machine imprint on paper acknowledging successful transmission) and shall be addressed as follows'

(BROKER)

(SHIPPER)

Moe-Mentum Trans, Inc.

Attn: Steve Myers

1420 Boston Providence Hwy

SUITE 100, Norwood Ma. 02062

Phone: (781) 762 – 1966

Fax: (781) 551 – 8299

_____ **Attn:** _____

_____ **Address:** _____

_____ **Phone:** _____

_____ **Fax** _____

17. FORCE MAJEURE: Neither Party shall be liable to the other for failure to perform any of its obligations under this Agreement during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of the SHIPPER or BROKER, provided that the Party so prevented uses its best efforts to perform under this Agreement and provided further, that such Party provide reasonable notice to the other Party of such inability to perform

18. CHOICE OF LAW AND VENUE: All questions concerning the construction, interpretation, validity and enforceability of this Agreement whether in a court of law or in arbitration, shall be governed by and construed and enforces in accordance with the laws of the Sate of Massachusetts., without giving effect to any choice or law provision or rule that would cause the laws of any other jurisdiction to apply

19. ARBITRATION: (Optional. Initial her if accepting this option _____ SHIPPER, _____ BROKER)
In event of a dispute arising out of this Agreement, the party's sole recourse shall be to arbitration with in two years from the date of the alleged loss. 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 the discretion of than party filing the complaint. 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 the award of the arbitrator may be entered in a court of competent jurisdiction. The prevailing party shall be entitled to recovery of cots, expenses and reasonable attorney fees as well those incurred in any action for injunctive relief, or in the event further legal action is taken to enforce the award of arbitrators. The arbitration provisions of the paragraph shall not apply to enforcement of the award of arbitration.

19. CONFIDENTIALITY: BROKER shall not utilize SHIPPER's name or identity in any advertising or promotional communications without written confirmation of SHIPPER's consent and the PARTIES shall not publish, use or disclose the contents or existence of this Agreement except as necessary to conduct operations pursuant to this to this Agreement. BROKER will require its carriers and/ or other brokers to comply with this confidentiality clause.

20. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement intended by and between the PARTIES and supersedes all prior agreements, representations, warranties, statements promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter hereof.

21. BACK SOLICITATION: If SHIPPER in any way form or means tenders freight to carrier originally contact and used by BROKER a penalty of \$1000 per occurrence will be billed to shipper



IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed in their respective name by their fully-authorized representatives as of the dates first above written.

BROKER

SHIPPER

Signed

Signed

Printed

Printed

Title

Title