

## MASTER BROKER/MOTOR CARRIER AGREEMENT

This Master Broker/Motor Carrier Agreement (“Agreement”) is made between Blackrock Brokerage, Inc. (“Broker”), located at 7031 Koll Center Parkway, Suite 250, Pleasanton, California, 94566, and \_\_\_\_\_ (“Contractor”), located at \_\_\_\_\_  
\_\_\_\_\_. Broker and Contractor are sometimes referred to herein collectively as the “parties” or individually as a “party”.

### RECITALS

1. Broker is a property transportation broker registered with the United States Department of Transportation (“USDOT”) to operate. Broker’s USDOT number is 2451561 and its MC number is MC-844685.
2. Broker has trailers and related equipment (collectively the “Equipment”) that Contractor may require to perform motor transportation services.
3. Contractor is a motor carrier of property registered with the USDOT. Contractor’s USDOT number is \_\_\_\_\_ and its MC number is MC-\_\_\_\_\_.
4. Broker desires to engage Contractor to provide motor carrier transportation and other related incidental services (“Services”) for the shipment of cargo belonging to Broker’s customers (individually “Customer” and collectively “Customers”).
5. Contractor is highly skilled and has the licenses, registrations, expertise and qualified personnel necessary and desires to perform such Services for Broker’s Customers.
6. Contractor will require the use of the Equipment.

### TERMS

In consideration of the mutual promises described herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows.

1. **Engagement of Services.** Broker, from time to time in its sole discretion, may utilize the services of Contractor for transportation of shipments for Customers. This Agreement is intended to be non-exclusive to the parties.
2. **Effective Date.** The effective date (“Effective Date”) of this Agreement is \_\_\_\_\_  
\_\_\_\_\_.
3. **Term of Engagement.** This Agreement shall commence upon the Effective Date and will continue until terminated.
4. **Termination.** Either party may terminate this Agreement at any time by giving thirty

(30) days prior written notice to the other party. In the event of a termination, Contractor shall return all Equipment within thirty (30) days of the date of termination, and Broker shall provide a final invoice of all amounts owed between the parties within thirty (30) days after the last of the Equipment is returned, to the extent practicable. For example, if repairs are necessary, that may delay the final invoice.

**5. Rates for Services.** Rates for services shall be contracted rates that shall be established in advance of any shipment by Broker and Contractor. In no event shall Contractor's tariff rates apply except when prior written approval is agreed upon. Rates shall be communicated by Broker to Contractor via EDI, fax, or email. Contractor will acknowledge the acceptance of the rate in writing or by actual acceptance of the tendered shipment. Broker will pay Contractor for its performance of Services in accordance with such rates, charges and terms. Contractor appoints Broker as its agent to bill and collect transportation rates from the Customers. Upon collection, Broker shall pay Contractor the agreed upon rate less any appropriate deductions and any sum over the sum paid Contractor shall be retained by Broker as its commission.

**6. Equipment Interchange.** Pursuant to this Agreement, Contractor will use the Equipment. The parties agree to the provisions relative to such use set forth in the Trailer Interchange Agreement ("Interchange Agreement") attached as Attachment "A" and incorporated into this Agreement by this reference as if set forth here in full.

**7. Rental Rates.** Any rental rates for use of the Equipment are stated in Attachment "A".

**8. Payment Procedures.** Contractor will invoice Broker upon the completion of Services. Each invoice will reference Broker's load number. Contractor shall delivery to Broker the original or a correct copy of the Bill(s) of Lading or Shipping Order, Delivery Receipt, Proof of Delivery, and other requested materials within twenty-four (24) hours after delivery. Payment is due within thirty (30) days of invoice.

**A.** If invoicing by hard copy, Contractor must send invoices and required documents to Broker at this address:

Blackrock Brokerage, Inc.  
7031 Koll Center Parkway, Suite 250  
Pleasanton, CA 94566  
Attn: Accounts Payable

**B.** If invoicing by email or fax, the remit-to information will be noted on the rate confirmation sheet.

- 1) Right to Bill. Contractor hereby appoints Broker as its agent with the sole right and authority to bill for and collect freight charges for shipments Contractor delivers for Broker and its Customers.
- 2) Standard Payment Terms. Broker shall pay invoices on or before thirty (30) days following the receipt by Broker of Contractor's invoice or any requested

documentation required of Contractor by Broker, whichever is later.

- 3) **Waivers.** Contractor agrees that no penalties, interest or late charges will be assessed against Broker for occasionally inadvertent late payments. Contractor further agrees that it shall look **solely** to Broker for payment for any Services rendered under this Agreement, and expressly waives any statutory or common law rights which it may otherwise have to look to any Customers for such payment. Contractor shall not, in any event, contact any Customer or consignee regarding payment of any freight bill or any other payment matter whatsoever without the prior express written consent of Broker. Contractor acknowledges that any difference between the amounts Broker pays to Contractor and collects from a Customer for Services rendered under this Agreement represent Broker's compensation for its services. Charges not invoiced to Broker by Contractor within thirty (30) days of being incurred will be deemed waived by Contractor.

**9. Costs.** Contractor shall pay all costs associated with the use of the Equipment while it is in Contractor's possession. Contractor's costs include but are not limited to:

- A. All tolls, fines and tickets levied on the Equipment while in Contractor's possession.
- B. Repairs to or replacement of the Equipment because of damage or loss that occurs while it's in Contractor's possession.

**10. Advances.** Broker is under no obligation to make any advances to Contractor. Regardless of any advance that may be made by Broker, Broker is not obligated to make any further advances, either for similar or dissimilar costs. Reasonable interest will be charged to Contractor for advances not repaid within thirty (30) days.

**11. Deductions.** To the extent that Broker pays any costs that Contractor is obligated to pay, Contractor agrees that Broker may deduct from Contractor's invoices any advances by Broker including but not limited to fuel or other sums owed by Contractor to Broker, and any sums paid by Broker to any third party, such as a safety compliance service provider to monitor and provide safety and driver compliance services to Contractor.

**12. No Liens; Impound.** Contractor shall not withhold delivery of any freight or return of Equipment due to any dispute with Broker or Broker's Customers regarding freight charges or otherwise. Contractor shall not have any lien, and hereby waives and releases the right to any statutory and common law liens which it might otherwise have upon any cargo transported or stored by Contractor or in the possession of Contractor. If the Equipment is impounded for any reason, Contractor shall pay all expenses associated with immediate release of the Equipment and shipment (if applicable) from impound.

**13. Contractor's Representations.** Contractor represents and covenants to Broker and the Customers as follows:

**A. Contractor's Operating Authority.** Depending on whether Contractor is operating in interstate or intrastate commerce, it is:

- 1) A motor carrier registered with the DOT, or
- 2) An intrastate motor carrier registered, if required, with the applicable state(s) in the United States where Contractor operates and shipments will travel.

**B. Contractor's Safety Information.** Contractor represents that it is, and at all times while this Agreement is in effect will be, rated "Satisfactory" by the DOT or a state agency for safety of operations. If Contractor has not been rated by the DOT or a state agency for safety of operations, then Contractor hereby represents that it is in compliance with all state and federal safety rules and regulations and Contractor knows of no facts that would negatively impact its safety rating. Contractor agrees to immediately report to Broker any safety rating it may receive during the pendency of this Agreement, and understands that a negative safety rating will be grounds for termination of this Agreement. Contractor acknowledges that Broker may research Contractor's safety ratings and safety information. Contractor agrees to provide full and complete answers to all questions Broker has with regard to this information and Contractor agrees to provide additional safety information at Broker's request.

**C. Contractor's Insurance.** Contractor shall at all times maintain liability and cargo insurance as required by this Agreement (see below), and in no event in an amount less than required by law and by any Customer for whom transportation services are provided.

**D. Provision of Documents.** Contractor agrees to furnish documents to Broker evidencing its operating authority, registrations, safety fitness certificates, and insurance compliance.

**E. Compliance With Law.** Contractor agrees to comply with all state and federal laws, ordinances, rules and regulations, as well as standard industry practices with regard to, but not limited to, safety, dispatch, pre-load inspection, delivery, and cleanliness. In this regard, Contractor agrees to retain the services of a qualified safety compliance service provider that is approved by the Broker to monitor Contractor's compliance with all applicable Driver Qualification, Drivers Hours of Service, Vehicle Maintenance, Drug Testing and other applicable safety requirements of the DOT, state and federal patrol, law enforcement, and other governing agencies and regulatory bodies.

**F. Contractor Is Responsible For Damages.** Contractor agrees to cover **all** costs and damages in the event Contractor accepts possession of any shipment differing from the rate confirmation form, Bill of Lading or Manifest in piece count or description of goods, OR, if shipment appears to be damaged or not properly secured or loaded. **Contractor may avoid costs or damages in these cases by immediately, before departing with a load, contacting Broker regarding any discrepancy or condition regarding the shipment.**

**14. Subcontractor, Interline Carriers, and Double Brokering.** Broker enters into this

**Agreement with Contractor as a carrier only. Contractor must obtain Broker's written consent before Contractor interlines or subcontracts the shipments tendered to Contractor under this Agreement to other carriers, affiliate companies, or brokers. Failure to obtain such consent shall release Broker, Customer and consignee from any obligation of payment to Contractor. Payment by Broker regarding such a shipment shall not constitute waiver of this provision with respect to the shipment at issue or any other shipment.**

**A.** In the event any portion of the Services contemplated by this Agreement is interlined or subcontracted, with or without Broker's written consent, by Contractor to another carrier, Contractor shall remain responsible to Broker for full and proper performance of the obligations of Contractor under this Agreement as if all of such Services were performed directly by Contractor.

**B.** In the event any portion of the Services contemplated by this Agreement is interlined or subcontracted, with or without Broker's written consent, by Contractor to another carrier, and a claim arises as a result thereof, Contractor shall defend, indemnify and hold harmless Broker and all Indemnitees to the full extent provided in Section 20 below.

**C.** Contractor shall be liable for payment of any compensation due to Contractor's interlined or subcontracted carrier(s) for any Service performed pursuant to this Agreement.

**15. Customer Specific Addenda.** Broker and Contractor may enter into one or more Customer specific written addenda executed by Broker and Contractor (a "Customer Specific Addendum") to this Agreement for the purpose of amending this Agreement to add provisions applicable to a specific named Customer. If any provision contained in a Customer Specific Addendum to this Agreement conflicts with any provision contained in this Agreement, the provision contained in the Customer Specific Addendum to this Agreement shall govern.

**16. Shipment Tendering and Acceptance.** Broker will send Contractor a shipment tender via Electronic Data Interchange ("EDI"), fax, Broker's Internet Connectivity ("INET") or email with the following minimum information: Broker's order number, origin, destination, pickup and delivery dates and times, and rate to be paid Contractor. Contractor will acknowledge the acceptance of the shipment tendered through an EDI process, a signed returned fax, an INET process or an email.

**17. In-Transit Communication.**

**A.** Contractor shall at its sole expense provide Broker with shipment status updates through INET, email, phone, and/or other means. Information transmitted in this manner should be completed within two (2) hours of an event, occurrence, or transaction if between 8:00 am and 5:00 pm Pacific Time, or by 8:00 am Pacific Time the following business day if an event or transaction occurs after hours. To ensure Customer satisfaction, communications should include, but are not limited to, the following:

- 1) Bill of Lading information and/or any agreed upon exceptions, special service requirements and similar matters;

- 2) Notification upon arrival for scheduled pickup;
- 3) The time the pickup is effective;
- 4) Notification upon arrival for scheduled point;
- 5) The time the delivery is completed; and
- 6) If the load exceeds five hundred (500) miles, Contractor should provide Broker with one (1) in-transit status update per day, so that Broker may communicate progress to Customer.

**B.** Contractor agrees it shall notify Broker and Contractor's insurers in accordance with applicable insurance policies, as soon as possible, in the event any of the following occurs in connection with a shipment to which this Agreement applies:

- 1) Any action on the part of a governmental authority (e.g. Customs) or of an accident, spill, theft or other occurrence, which has caused or could cause loss of all or part of the Equipment or a shipment;
- 2) Damage to all or part of the Equipment or a shipment;
- 3) Delay in Contractor's making a complete delivery to the consignee or refusal of all or part of a shipment;
- 4) Notation of any overage, shortage and/or shipment damage (including adulteration or contamination) at time of delivery of a shipment; and/or
- 5) Loss or damage other property or injury to or death of person(s).

**18. Shipping Documentation.** Except as otherwise set forth herein, all cargo transported by Contractor pursuant to this Agreement shall be deemed to be transported under the terms of the Uniform Straight Bill of Lading. Unless the parties agree otherwise, the Bill of Lading shall be completed as follows in order to reduce Customer confusion and appropriately define the relationships:

**A.** Contractor shall be shown as the carrier, the shipper shall be shown as the consignor, and the receiver shall be shown as the consignee.

**B.** For each pickup, the Contractor's signature on the Bill of Lading will serve as prima facie evidence of receipt of the shipment by Contractor in good order and condition, except as otherwise noted on the Bill of Lading. In the event Contractor observes any damage, discrepancies or other issues with a shipment, Contractor must contact Broker before taking possession of the shipment in accordance with Section 3 and notify all parties in accordance with Section 7. At the time of pick up, Contractor shall write the words "shippers weight, load and

count” on the Bill of Lading.

C. Upon delivering a shipment, Contractor must obtain a signature and a noted delivery date from the consignee on the Bill of Lading. At the time of delivery, Contractor or consignee must note and record any discrepancies, including, but not limited to, shortage, damage and/or missing or broken seal, on the Bill of Lading.

**19. Contesting Rate Payments; Overcharges and Undercharges.** Contractor shall be required to contest any rate payments received from Broker within thirty (30) days of receipt. Otherwise, Contractor relinquishes, releases and forever forgives its right to contest payments of rates or other sums received from Broker. Contractor agrees that this requirement applies to any and all undercharge or overcharge claims that it might otherwise be entitled to make under the law.

**20. Indemnity.**

A. Contractor (“Indemnitor”) shall indemnify, defend and hold harmless Broker and its affiliated companies and subsidiaries, and as to each of them their respective directors, officers, shareholders, members, employees and agents (individually “Indemnitee” and collectively “Indemnites”) from and against any and all fines, penalties, losses, damages, injuries, expenses, costs (including attorneys’ fees), claims, demands, liabilities, actions, and judgments (collectively “Liability”), including but not limited to:

- 1) bodily injury to or death of any person (including injury to or death of any employee or agent of Contractor);
- 2) loss of and damage to property (other than cargo covered by insurance required by this Agreement), including the Equipment, and loss of use thereof;
- 3) damage to the environment pursuant to MCS-90 or otherwise;
- 4) cleanup and remediation of any leak, spill or contamination;
- 5) any liability imposed on or assumed by Contractor under any workers’ compensation act or other employee benefit plan or contract whatsoever;
- 6) any claim based on Contractor’s failure to comply with the terms and provisions of this Agreement;
- 7) any claim relating to the ownership of the Equipment, or the maintenance, custody, use or operation of the Equipment; and
- 8) any damage caused by the transportation or handling of any hazardous or toxic materials or substances.

B. Contractor’s obligations to Indemnites apply if the damage or loss results or

arises directly or indirectly from:

- 1) Contractor's performance under the Agreement;
- 2) the negligent act(s) or omission(s) of Contractor, its independent contractor(s) or subcontractor(s) or their respective employees or agents; or
- 3) Contractor's discharge or, or failure to discharge, its duties and responsibilities as specified in this Agreement.

**C.** This indemnity shall not apply to an Indemnitee to the extent any such liability is solely caused by the gross negligence or intentional act(s) or omission(s) of such Indemnitee(s).

**D.** Each party shall give the other party prompt written notice of any such Liability coming within the purview of these indemnities. The Indemnitor shall assume and pay for the defense of any such Liability and provide qualified counsel Indemnitee deems acceptable in its sole discretion. The Indemnitee shall cooperate fully with the Indemnitor in the defense and shall, at its expense, provide all relevant documents, witnesses and other assistance within its possession or control upon the reasonable request of the Indemnitor. Settlement by the Indemnitee without the Indemnitor's prior written consent shall release the Indemnitor from the indemnity as to the Liability so settled. Indemnitor may not settle any claims without the Indemnitee's prior written consent, and any settlement without the Indemnitee's consent shall not release the Indemnitor from indemnity as to the Liability so settled. Termination of this Agreement shall not affect the continuing obligations of each of the parties with respect to the foregoing indemnities.

**E.** The indemnity required by this section applies whether or not covered by insurance or in excess of the required amounts.

**21. Insurance.** At all times during the term of this Agreement, Contractor shall maintain, at its sole cost and expense, with reputable and reliable insurance underwriters that have an AM Best rating of A or better, insurance policies with coverage of not less than the following amounts. If required by applicable law, regulation or rule to maintain a higher amount than the following, that higher amount shall be the minimum.

**A. Base requirements.** The minimum insurance requirements are as follow.

- 1) Commercial cargo liability insurance covering risks for loss of or damage of shipments, in an amount not less than \$100,000 per shipment. The purchase of cargo insurance at the minimum level, or any other level, shall not limit Contractor's liability for cargo damage. Cargo insurance shall not exclude refrigerated product or perishables, nor shall there be any policy exclusions that would limit coverage for products shipped by Contractor under his Agreement.
- 2) Commercial general liability insurance coverage for bodily injury (including

injury resulting in death) and against all loss of or damage to property, in an amount not less than \$1,000,000 combined single limit per occurrence.

- 3) Automobile liability insurance (including coverage for the Equipment) for bodily injury (including injury resulting in death) and loss of or damage to property, in an amount not less than \$1,000,000 combined single limit per occurrence.
- 4) Commercial trailer physical damage insurance, including a non-owned trailer endorsement, for loss of or damage to the Equipment in an amount not less than \$50,000 per trailer with a maximum deductible of \$1,000.
- 5) Worker's compensation and employer's liability insurance as required by applicable law, or, occupational accident insurance for injuries to Contractor and its subcontractors who are independent contractors.
- 6) Any additional insurance requirements under any and all applicable United States, Canada, and Mexico federal, state, provincial and local laws, regulations and rules.

**B. Increased levels; Customer requirements.** Some of Broker's Customers may require higher levels of insurance than those specified above. Eligibility for hauling freight will depend on the levels of insurance specified in Contractor's Certificate of Insurance. Contractor will not be tendered freight for Customers whose requirements Contractor does not satisfy.

**22. Applicability throughout the United States, and to Interlined or Subcontracted Carrier(s).** Contractor shall ensure that the insurance coverage required as specified above applies throughout the United States. Contractor shall also ensure that any interlined or subcontracted carriers(s) providing Services pursuant to this Agreement maintain the same insurance coverage as is required of Contractor by this Agreement.

**23. Insurance Policy Procedures.** Upon execution of this Agreement, and prior to Contractor providing any Services to Broker or any Customer, Contractor shall provide Broker with: A) certificate(s) of insurance issued by Contractor's insurer(s) evidencing that Contractor has obtained the minimum insurance coverage as set forth in this Agreement; and B) endorsements that identify Broker by its legal name as an additional insured. The certificate(s) of insurance shall provide that Broker be given at least thirty (30) days written notice by the applicable insurer prior to any cancelation of, required renewal of, or change in the insurance policy. Upon Broker's request, Contractor shall make copies of the insurance policies, including a list of any and all exclusions from the insurer's liability, available to Broker.

**24. Cargo Claims Liability Standards.** Contractor shall be liable to Broker and the Customer and any consignor or consignee of a shipment as set forth in 49 *U.S.C.* 14706 (the Carmack Amendment) and applicable United States common law for loss of, damage (injury) to or delay in delivery of cargo transported pursuant to this Agreement.

**25. Handling and Processing of Claims.** All claims for overage, shortage, loss, damage or delay and any salvage arising from transportation brokered to Contractor under this Agreement shall be submitted to Contractor by Customer and handled and processed in accordance with 49 C.F.R. Part 370, irrespective of whether the value of the cargo has been declared or limited, and irrespective of where the loss, damage or delay occurs (in interstate, foreign, intrastate, domestic or trans-border commerce originating at a point in and/or destined to a point in the United States or Canada). Broker may deduct the amount of the claim from payments otherwise due to Contractor. If Broker makes a deduction from Contractor's payments for a claim and Contractor subsequently provides Broker with sufficient proof supporting denial of claim, to be determined in Broker's sole discretion, Broker will release the applicable amount, or a portion thereof, to Contractor.

**26. Branded or Labeled Cargo.** In the event branded or labeled cargo is damaged, Contractor agrees to obtain and follow Broker's and/or Customer's specific instructions regarding disposal or salvage, if any, of the cargo.

**27. Independent Contractors.** The parties acknowledge and agree that each party has independently evaluated the relationship this Agreement will create between them and determined that it creates an independent contractor relationship and not an employer/employee relationship. This Agreement is not and shall not be construed as an agreement of joint venture, partnership, agency, franchise or employment between the parties or their respective employees. Each party has sole authority and responsibility to employ, discharge, discipline and otherwise control and direct its employees, and neither Broker nor Contractor, nor any of their employees are, or shall be deemed to be, employees of the other. Under no circumstances shall Contractor's employees or agents be deemed employees or agents of Broker or shipper, nor shall Broker or shipper be liable for any wages, fees, payroll taxes, assessments, or other expense relating to Contractor's employees or agents.

**28. Tax Reporting.** Broker shall comply with United States IRS tax reporting requirements in sending Form 1099s to individuals, LLCs and other non-corporate entities for any amounts greater than \$600. Corporations, including S-corporations and C-corporation, are exempt from the Form 1099s reporting requirements.

**29. Assignment.** Except as set forth herein, neither party may assign its rights or subcontract its obligations under this Agreement to any other person or entity without the prior written consent of the other. Any unauthorized assignment of this Agreement is void.

**30. Personal Guarantee.** Contractor's authorized agent will provide a personal guarantee and sign the Personal Guarantee and Liability Agreement attached as Attachment "B".

**31. Choice of Law; Venue.** This Agreement is entered in California and it shall be governed under the substantive law of California, without regard to the rules of conflict, except to the extent that mandatory laws, rules and regulations of the United States govern this Agreement. Any lawsuit arising out of this Agreement shall be filed in the Superior Court of California, San Bernardino County, unless there is jurisdiction in federal court, in which case the lawsuit may be filed in the appropriate United States District Court for the Central District of California. The

parties agree to waive all objections and submit to personal jurisdiction, without limitation, in the courts designated above for purposes of participation in any claim arising out of this Agreement.

**32. Entire Agreement.** This Agreement, along with the attachments hereto, contains the entire agreement between the parties pertaining to the subject matter hereof. This Agreement supersedes any prior agreements or other communications between the parties with respect to the subject matter of this Agreement. No agreements, representations, or understandings not specifically contained herein shall be binding upon any of the parties unless reduced to writing and signed by the parties to be bound thereby.

**33. Execution in Counterparts, Fax and by Scan.** The parties may execute this Agreement by executing separate identical counterparts, which together shall constitute one (1) agreement. Any execution by scanned signature or fax signature shall be as effective as execution with original signature.

**34. Electronic Imaging.** The parties intend to allow for the electronic imaging and storage of this Agreement, and the admissibility into evidence of such an image in lieu of the original paper version of this Agreement. The parties stipulate that any computer printout of any such image of this Agreement shall be considered to be an “original” under the applicable court or arbitral rules of evidence when maintained in the normal course of business and shall be admissible as between the parties to the same extent and under the same conditions as other business records maintained in paper or hard copy form. The parties agree not to contest, in any proceeding involving the parties in any judicial or other forum, the admissibility, validity, or enforceability of any image of this Agreement because of the fact that such image was stored or handled in electronic form.

**35. Severability.** If any term in this Agreement is found to be illegal or unenforceable in any respect, the validity and enforceability of the remainder of this Agreement will be unaffected.

**36. Survival.** The provisions of this Agreement that do not expressly and necessarily discontinue on termination of this Agreement shall survive termination of this Agreement. As to any shipment whose transit commenced prior to the termination of this Agreement, all provisions of this Agreement applicable to such shipment shall survive termination.

**37. Force Majeure.** Neither party shall be liable to the other for any failure to perform under this Agreement due to acts of God, war, fires, floods, explosions, or other natural catastrophes, civil disturbances, riots, unusually severe weather such as tornadoes, or failures or fluctuations in electrical power, heat, light, air conditioning, telecommunications lines or equipment, failure in computer software, hardware or related materials, or similar circumstances.

**38. Modifications.** Except as otherwise provided in this Agreement, all modifications must be in writing and signed by the party it is sought to be enforced against.

**39. Notice.** All notices, requests, consents, approvals and other communications (“Notice” or “Notices”) that are required or may be given under this Agreement shall be in writing and hand delivered or sent by certified mail, return receipt requested, or by email to the parties at

their respective addresses listed below, and if sent shall be deemed to have been duly given or made when sent:

**To Blackrock Brokerage, Inc. (“Broker”):**

7031 Koll Center Parkway, Suite 250  
Pleasanton, CA 94566  
Attn: Larry James, Managing Director  
ljames@blackrock-logistics.net

**To \_\_\_\_\_ (“Contractor”):**

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State and Zip

\_\_\_\_\_  
Responsible Individual and Title

\_\_\_\_\_  
Email Address

**40. Waiver.** An effective waiver under this Agreement must be specific, in writing, and signed by the party waiving its right. A waiver by either party of any instance of the other’s noncompliance with any obligation or responsibility under this Agreement will not be deemed a waiver of subsequent instances.

**41. Back Solicitation, Confidentiality and Trade Secret Protections.** The parties agree that during the term of this Agreement Contractor will have access to and become acquainted with confidential and proprietary information of Broker that derives independent economic value from not being generally known to the public. This information includes, but is not limited to, information about traffic, Broker’s customer lists, customer rates, customer contact persons, customer service programs, the names and identities of Broker’s employees and other contractors, and other similar information that belongs to Broker or relates to its affairs. This information constitutes Broker’s trade secrets.

**A.** Contractor agrees that he, she or it will not disclose or violate Broker’s trade secrets, directly or indirectly, to any other person or use them in any way, either during the term of this Agreement or for a period of two (2) years thereafter, except as is required in the course of this Agreement with Broker.

**B.** Contractor shall not solicit traffic from any shipper, consignee, or customer of

Broker's where Contractor first knew the availability of such traffic as a result of Broker's efforts or the traffic of Broker, consignee, or customer of Broker was first tendered to Contractor by Broker. Contractor agrees that he, she or it, individually or in association with any other firm or entity, will not solicit business from Broker's customers or provide any transportation services to any of Broker's customers, and acknowledges that the names and contact information of Broker's customers are trade secrets and acknowledges that Broker's trade secret rights would be violated should Contractor breach this Agreement by soliciting or providing service to any of Broker's customers during the term of this Agreement or for a period of two (2) years after termination of this Agreement.

**C. Default and Liquidated Damages.** If Contractor commits a breach of any of the trade secret protection provisions set forth in this section, the parties agree that it would be impractical or extremely difficult to fix actual damages. In instances where Contractor solicits or provides service to a customer of Broker in violation of these provisions a reasonable estimate of Broker's damages in such event ("liquidated damages") would be equal to one hundred percent (100%) of the total gross revenues derived by Broker from such a customer within the twelve (12) month period immediately preceding Contractor's breach, and the parties agree that Broker may obtain a court order providing for the liquidated damages set forth above on proof of Contractor's breach, and shall be entitled to recover any attorneys' fees or other costs incurred by Broker in enforcing these provisions. Except as set forth below, receipt of these liquidated damages along with its fees and costs, shall be Broker's sole and exclusive remedy for damages in the event of a breach by Contractor of the trade secret protection provisions set forth in this section. The parties to this Agreement acknowledge that they have read and understood the provisions of this section and by their initials immediately below agree to be bound by its provisions.

Initial here: For Contractor: \_\_\_\_\_ For Broker: \_\_\_\_\_

*[Intentionally left blank.]*

**D. Specific Performance and Injunction.** Broker and Contractor recognize and acknowledge that in the event of a breach by Contractor of this section, Broker would experience immediate, substantial and irreparable harm and that Broker will be entitled to institute and prosecute proceedings in a court of competent jurisdiction, either at law or in equity, to obtain liquidated damages as set forth in Subsection C above, without any requirement for a bond which is hereby waived, to enforce the specific performance by Contractor and/or to enjoin Contractor from committing further breaches.

**IT IS SO AGREED.**

**For \_\_\_\_\_ (“Contractor”):**

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

**For Blackrock Brokerage, Inc. (“Broker”):**

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

**ATTACHMENT "A"**  
**TRAILER INTERCHANGE AGREEMENT**

**Contractor owns and operates one or more commercial trucks and provides motor transportation service as an independent contractor under authorities issued by the Federal Motor Carrier Safety Administration and such state agencies as required for authorized intrastate movements. Contractor requires the use of trailers and related equipment on a daily basis to provide service under the attached Master Broker/Motor Carrier Agreement ("Agreement"). Blackrock Brokerage, Inc. ("Equipment Provider") has trailers and related equipment (collectively the "Equipment") available and agrees to allow Contractor to use the Equipment pursuant to the terms and conditions set forth below.**

**1. Rental Rates, Invoicing and Deposit.** So long as Contractor utilizes the Equipment in providing services for Equipment Provider ("Services") there shall be no charge for Contractor's use of the Equipment, it being understood that the rate being paid Contractor for said transportation takes into account Contractor's free use of said equipment. Contractor shall be considered in default of this Trailer Interchange Agreement ("Interchange Agreement") if the Equipment is ever used to provide services not requested pursuant to the Agreement. In such case, Contractor shall pay Equipment Provider **a daily rate of \$300** along with other damages resulting in said default.

**2. Term and Substitution Rights of Equipment Provider.** This Interchange Agreement shall automatically cancel in the event Contractor ceases to provide Services for Equipment Provider under the Agreement for any reason. Contractor is not entitled to any particular trailers or equipment, but only to whatever trailers and equipment that Equipment Provider has available for Contractor's use at any given time. Equipment Provider makes no promises or guarantees that it will always have trailers and equipment available for Contractor's use. Equipment Provider shall have no liability to Contractor for any lost shipping revenues suffered by Contractor if trailers or equipment is not available. In the event Contractor ceases to provide transportation service for Equipment Provider, Contractor shall immediately return the Equipment to Equipment Provider.

**3. Condition of Equipment At Check Out.** An Inspection and Receipt Form for completion and execution by the Contractor at the time the Equipment is checked out is attached as Attachment "C". The Contractor shall not use any Equipment until Contractor has inspected the Equipment, including each and every trailer and the related equipment, completed the Inspection and Receipt Form, noted any damage or abnormal wear and tear on the form, signed it, and given it to the Equipment Provider. The form shall constitute admissible evidence that:

- A. the Equipment has been inspected by Contractor;
- B. the Equipment is in good repair and running order;
- C. the Equipment meets all applicable regulatory requirements; and

**D.** has been accepted by Contractor for possession.

**4. No Warranties.** Equipment Provider makes no warranties, express or implied, with respect to the Equipment or any piece thereof, its fitness for any intended use, the quality of design or manufacture, or for any and all loss or liability (including cargo loss) resulting from any defects or failures of design, manufacture or materials of the Equipment, either latent or patent. Equipment Provider has not made, and shall not be bound by, any statements, agreements, or representations not specifically set out herein, unless the same be reduced to writing and signed by Equipment Provider.

**5. Condition of Equipment On Return.** An Inspection and Receipt Form for completion and execution by Equipment Provider at the time the Equipment is returned is attached as Attachment "D". The Equipment shall be returned to Equipment Provider in the same condition as when checked out by Contractor except for normal "wear and tear." Equipment Provider will inspect the Equipment when returned and complete the Inspection and Receipt Form on return. If there is damage or abnormal wear and tear that was not noted by Contractor on the check out date, Contractor will be responsible for the cost to make the appropriate repairs or replacements.

**6. Use of Equipment.** Contractor shall not use the Equipment for the transportation or storage of unprotected corrosive substances, trash, medical and/or solid waste or hazardous materials. Contractor shall not remove, obscure, obliterate or otherwise alter any marks of identification on the Equipment without Equipment Provider's prior written consent. Contractor shall be responsible for all damage to the Equipment occurring during its possession thereof.

**7. Indemnity.** Contractor shall indemnify the Indemnitees to the full extent required by the attached Agreement.

**8. Insurance.** At Contractor's expense, Contractor shall provide insurance covering the Equipment for the duration of the lease to the full extent required by the attached Agreement.

**9. Maintenance.**

**A.** Contractor must maintain the Equipment while the Equipment is in Contractor's possession.

- 1) Contractor must check all fluids on a daily basis to maintain proper operating levels.
- 2) Contractor must check the tires before and after every trip and at all times make sure that proper pressure is maintained and that there is sufficient tread remaining on each tire.
- 3) Tires must be replaced by Contractor at Contractor's expense, but must be of equivalent size and quality as the existing tires to maintain proper wear.

- 4) Contractor must check the refrigeration units for adequate oil and fill if needed.

**B.** Equipment Provider will not pay for any non-routine maintenance during the lease period unless approved by Equipment Provider in writing. Equipment Provider will perform at its cost all required routine maintenance of the Equipment. Contractor will insure the Equipment is made available to Equipment Provider in a timely fashion to allow for required routine maintenance. Equipment Provider is responsible for the cost to repair any wear and tear to the Equipment caused by Contractor's normal use and possession thereof.

**10. Repairs and Modifications.** In the event Contractor returns the Equipment to Equipment Provider in a damaged condition, Contractor is fully responsible for all reasonable repair costs. Contractor may not conduct repairs or modifications on the Equipment or authorize anyone else to make repairs or modifications on the Equipment without the written approval of Equipment Provider as to the person(s) conducting repairs, the costs involved, and the time required. Equipment Provider has sole discretion to select service providers for work on its equipment and Contractor may only use service providers approved by Equipment Provider. Equipment Provider will not pay for any repairs or modifications during the leased period unless approved by Equipment Provider in writing.

**11. Notification of Damage or Loss.** In the event of damage or loss to the Equipment, Contractor must notify Equipment Provider of the damage or loss as soon as practicable but in no event later than twenty-four ("24") hours after the damage or loss occurs. In the event of damage or loss, Contractor's notification to Equipment Provider must include:

- A. The location of the Equipment for immediate inspection by Equipment Provider or Equipment Provider's agent;
- B. A complete accident report; and
- C. The insurance claim number and contact information for the adjuster.

Equipment Provider shall not be liable for damage or loss to the Equipment or any contents of the Equipment during the lease term, whether or not Equipment Provider's negligence contributed in any way to the damage or loss.

**12. Assignment.** Contractor may not assign, lease, sublet, rent, or otherwise hire out, or part with possession of, any of the Equipment to any person, firm, partnership, association, or corporation other than Equipment Provider, without prior written consent of Equipment Provider.

**13. Default.** Contractor shall be in default of this rental agreement if Contractor: A) fails to comply with any of the terms or conditions of this rental agreement; B) is in default of any of the terms or conditions of any other agreement between the parties hereto; or C) becomes insolvent, or subject to any voluntary or involuntary bankruptcy proceeding (including acquiescence in the appointment of a trustee or receiver, or commencement of any dissolution or liquidation

proceeding) (hereafter individually or collectively referred to as a “default”).

**14. Damages in the Event of Default.** Upon a default by Contractor, Equipment Provider shall have, in addition to any rights or remedies available at law or in equity which Equipment Provider expressly reserves, Equipment Provider shall have the right to: A) take immediate possession of all Equipment without being required to institute any legal action, and exercise any reasonable self-help method to obtain back possession of the Equipment, all of which is to be returned at Contractor’s expense; B) terminate this Agreement, whereupon the terms and conditions shall continue to apply to the Equipment then in the possession of Contractor until returned to Equipment Provider; C) recover any sums due and owing in accordance with the terms of this Agreement including, without limitation, unpaid charges, costs of repossession and cost of repair; D) recover any collection costs incurred in recovery of any sums due or repossession of the Equipment including, without limitation, reasonable attorneys’ fees; and E) recover any lost profits.

**15. No Consequential Damages.** In no event shall Equipment Provider be liable to Contractor for any direct, indirect or consequential damages.

**16. Signer’s Authority.** The person signing below represents and warrants that he/she has the authority to commit to this Interchange Agreement for the Contractor.

**IT IS SO AGREED.**

For \_\_\_\_\_ (“Contractor”):

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

**For Blackrock Brokerage, Inc. (“Equipment Provider”):**

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

**ATTACHMENT "B"**  
**PERSONAL GUARANTEE AND LIABILITY AGREEMENT**

I, \_\_\_\_\_ ("Personal Guarantor")  
reside at:

Street Address: \_\_\_\_\_,

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

My phone number is: \_\_\_\_\_.

This Personal Guarantee and Liability Agreement ("Personal Guarantee") is on behalf of \_\_\_\_\_ ("Contractor"), for the benefit of Blackrock Brokerage, Inc. ("Broker"), in consideration for the services that Broker will provide to Contractor pursuant to the attached agreement ("Agreement") between those parties, and based on my relationship with the Contractor.

By signing this Personal Guarantee, I agree to the following terms.

1. If Contractor fails to pay to Broker any amount owed pursuant to the Agreement, I will pay those amounts on demand.
2. All of my personal assets, including but not limited to my ownership interest in Contractor as well as cash, stock, bonds, income, real estate, vehicles, watches, jewelry, and all other items of value without limit will serve as collateral and security for any and all amounts Contractor may owe to Broker pursuant to the Agreement.
3. Broker has the right, without further notice or approval, to record against me personally all obligations from Contractor to Broker, and to file against me liens and encumbrances as permitted by law for purposes of establishing priority in collection proceedings.
4. This guarantee is a continuing and irrevocable guarantee and action may be taken against me for any non-payment without notice thereof.
5. I consent to any modification or renewal of the Agreement for purposes of this guarantee.
6. I will be personally liable for all charges incurred by Broker pursuant to the Agreement, including without limitation interest, attorneys' fees or collection costs.

**IT IS SO AGREED.**

Signed: \_\_\_\_\_  
Personal Guarantor

Dated: \_\_\_\_\_

**ATTACHMENT “C”  
INSPECTION AND RECEIPT FORM ON CHECK OUT**

<u>Unit No.<sup>1</sup></u>	<u>SLV<sup>2</sup></u>	<u>Check Out Date</u>	<u>Notes</u>

By signing below, the Contractor agrees and acknowledges that each and every trailer identified above and the related equipment:

- A. has been inspected by the Contractor;
- B. is in good operating condition;
- C. meets all applicable regulatory requirements;
- D. does not have any damage or abnormal wear and tear except as noted above;
- E. has been accepted by the Contractor; and
- F. is now in the Contractor’s possession until returned to the Equipment Provider.

For \_\_\_\_\_ (“Contractor”):

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

**For Blackrock Brokerage, Inc. (“Equipment Provider”) as to SLV only:**

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

**Notes:**

1. Add more rows to the table above as needed for additional units.
2. SLV means Stipulated Loss Value. If no SLV is stated, then \$100,000 per trailer is the applicable amount.

**ATTACHMENT “D”  
INSPECTION AND RECEIPT FORM ON RETURN**

<u>Contractor</u> <sup>1</sup>	<u>Unit No.</u> <sup>2</sup>	<u>Return Date</u>	<u>Notes</u>

By signing below, the Equipment Provider agrees and acknowledges that, on return, each and every trailer identified above and the related equipment:

**A.** has been accepted by the Equipment Provider; and

**B.** Any damage or abnormal wear and tear since the date the equipment was checked out that is: 1) observed by the Equipment Provider on return; and 2) not noted by the Contractor on check out, is noted above.

**For** \_\_\_\_\_ (**“Equipment Provider”**):

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

**Notes:**

1. Each Contractor should have a separate form prepared.
2. Add more rows to the table above as needed for additional units.

**MASTER BROKER/MOTOR CARRIER AGREEMENT ADDENDUM**

This Master Broker/Motor Carrier Agreement Addendum (“Addendum”) modifies the Master Broker/Motor Carrier Agreement (“Agreement”) dated \_\_\_\_\_ between Blackrock Brokerage, Inc. (“Broker”), located at 7031 Koll Center Parkway, Suite 250, Pleasanton, California, 94566, and \_\_\_\_\_ (“Contractor”), located at \_\_\_\_\_.

This Addendum modifies the Agreement as follows:

1. Contractor shall delivery to Broker the original or a correct copy of the Bill(s) of Lading or Shipping Order, Delivery Receipt, Proof of Delivery, and other requested materials for each load within twenty-four (24) hours after delivery of the load.
2. To the extent any conflict exists between this Addendum and the Agreement, this Addendum will take precedence and supersede the conflicting terms in the Agreement.
3. Aside from the foregoing change, the Agreement and all terms contained therein along with any authorized modifications remain in full force and effect.

**IT IS SO AGREED.**

For \_\_\_\_\_ (“Contractor”):

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

**For Blackrock Brokerage, Inc. (“Broker”):**

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

## EXHIBIT 4

### Form of Third Party Carrier Agreement

THIS THIRD PARTY CARRIER ACKNOWLEDGMENT (this "Acknowledgment") is made as of \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by [ \_\_\_\_\_ ] ("Third Party Provider"). For the benefit of BLACKROCK LOGISTICS, INC., a California corporation ("BLACKROCK LOGISTICS, INC."), and each of BLACKROCK LOGISTICS, INC.'s customers.

#### ACKNOWLEDGMENT

Third Party Provider desires BLACKROCK LOGISTICS, INC. to use Third Party Provider in the provisioning of transportation services on BLACKROCK LOGISTICS, INC.'s behalf and, as such, Third Party Provider is entering into this Acknowledgment as a condition thereto. Third Party Provider agrees, certifies and acknowledges as follows:

1. Third Party Provider is contracting with BLACKROCK LOGISTICS, INC. for the provision of certain services agreed between Third Party Carrier and BLACKROCK LOGISTICS, INC. ("Third Party Carrier Services"), which are services for which BLACKROCK LOGISTICS, INC. has otherwise contracted to provide to its customers pursuant to separate agreements.
2. Third Party Provider is duly qualified, registered with and licensed by the U.S. Department of Transportation ("USDOT") and all other local and State agencies with jurisdiction over Third Party Carrier Services, has, and will maintain at all times, a safety rating from the USDOT of no less than "Satisfactory" or "Conditional" or any equivalent designation, and is a or employs duly qualified, licensed and trained drivers for the provision of Third Party Carrier Services.
3. All payments for the Third Party Provider Services or liabilities incurred or suffered by Third Party Provider in connection with the provision of Third Party Provider Services will be paid or satisfied solely by BLACKROCK LOGISTICS, INC. and that BLACKROCK LOGISTICS, INC.'s customers will have no responsibility to pay or satisfy any liabilities incurred by such Third Party Provider.
4. The Third Party Provider Services provided by Third Party Provider on behalf of BLACKROCK LOGISTICS, INC. will be in compliance with applicable laws and will be performed at no less than "best of practice" industry standards, including with respect to quality, responsiveness and timeliness. The Third Party Provider will, at its sole cost and expense, timely obtain all permits, licenses, consents or other third-party approvals needed with respect to its performance of the Third Party Provider Services.
5. Notwithstanding any contractual confidentiality limitations, BLACKROCK LOGISTICS, INC. may provide to its customers the name of the Third Party

Carrier, its safety rating, its insurance information (including, without limitation, types and amounts of coverage) and a copy of this executed Acknowledgment.

6. **BLACKROCK LOGISTICS, INC. will be relying on the representations, warranties and covenants contained in this Acknowledgment in BLACKROCK LOGISTICS, INC.'s determination of whether or not to use the Third Party Provider for the provisioning of the Third Party Carrier Services.**
7. **Miscellaneous.**
  - (a) **Successors and Assigns.** This Acknowledgment, and the terms and provisions herein contained, shall insure to the benefit of BLACKROCK LOGISTICS, INC. and its customers, and be binding upon Third Party Carrier, and, in each case, their respective successors and assigns.
  - (b) **Governing Law.** This Acknowledgment shall be governed by and construed in accordance with the laws of the State of California.
  - (c) **Attorneys' Fees.** In the event of any controversy, claim or dispute relating to this Acknowledgment, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses incurred in connection with such controversy, claim or dispute.
  - (d) **Severability.** If any provision of this Acknowledgment shall be held to be invalid, the other provisions shall remain enforceable to the fullest extent of permitted by law.
  - (e) **Authority.** Third Party Carrier covenants and warrants that its has been authorized to enter into this Acknowledgment.

IN WITNESS WHEREOF, Third Party provider has caused this Acknowledgment to be executed as of the date first above written.

[THIRD PARTY PROVIDER]

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_