

## **BROKER TO CARRIER AGREEMENT**

This Broker to Carrier Agreement (“Agreement”) is made between Blackrock Logistics, Inc. (“Broker”), located at 7031 Koll Center Parkway, Suite 250, Pleasanton, California, 94566, and \_\_\_\_\_ (“Carrier”), located at \_\_\_\_\_ to herein collectively as the “Parties” or individually as a “Party”.

- 1. Broker.** Broker is a property transportation broker registered with the United States Department of Transportation (“USDOT”) to operate. Broker’s USDOT number is 3704452 and its MC number is MC-1297530.
- 2. Carrier.** Carrier is a motor carrier of property registered with the USDOT to operate. Carrier’s USDOT number is \_\_\_\_\_ and its MC number is MC-\_\_\_\_\_.
- 3. Effective Date and Term.** The effective date (“Effective Date”) of this Agreement is \_\_\_\_\_. This Agreement starts on the Effective Date and continues until terminated.
- 4. Services.** Carrier has and at all times during the term of this Agreement shall maintain and keep current and in good standing all licenses, registrations, and qualifications to provide motor carrier transportation and other related incidental services (“Services”) for the transportation of cargo belonging to Broker’s customers (individually “Customer” and collectively “Customers”).
- 5. Equipment.** Broker has trailers and related equipment (collectively the “Equipment”) available that Carrier may use to perform Services pursuant to the terms and conditions in this Agreement and in the Trailer Interchange Agreement attached as Exhibit “A”.
- 6. Consideration.** 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 to the terms and conditions set forth in this Agreement.
- 7. Termination.** Except as otherwise provided herein, 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 termination, Broker shall provide a final invoice of all amounts owed between the Parties within thirty (30) days after the last date of Service, the date when all Equipment is returned to Broker, or the date when the total cost of repairs or replacement of all damaged Equipment for which Carrier is obligated to pursuant to the terms of this Agreement and Exhibit A hereto is determined, whichever occurs last.
- 8. Rates for Services.** Rates for services shall be contracted rates established by Broker and Carrier in advance of any shipment hereunder. In no event shall any tariff rates apply to any shipment hereunder unless preapproved in writing by Broker. Rates shall be communicated by Broker to Carrier via EDI, fax, or email. Carrier will acknowledge the acceptance of the rate in writing or by actual acceptance of the tendered shipment by Carrier. After Broker is paid by

Customer, Broker shall pay Carrier the agreed rate less any appropriate deductions and any sum over the sum paid Carrier shall be retained by Broker as its commission. Carrier shall pay costs associated with the performance of Services, including but are not limited to all tolls, fines and tickets levied on the cargo, Equipment, or any other equipment used to provide Services under this Agreement.

**9. Trailer Interchange Agreement.** Pursuant to this Agreement and the Trailer Interchange Agreement, Broker will allow Carrier to use the Equipment as needed to provide Services under this Agreement. The Trailer Interchange Agreement is attached as Attachment "A". Before taking possession of or using any Equipment, Carrier must sign the Trailer Interchange Agreement, provide Broker a signed copy and any other required documents or information, such as certificates of insurance (see the Insurance section below) or anything else requested by Broker, and comply with all the terms and conditions. The Carrier's signed copy of the Trailer Interchange Agreement is incorporated into this Agreement by this reference as if set forth in full.

**10. Rental Rates.** There is no fee for use of the Equipment to provide Services to Broker.

**11. Payment Procedures.** Carrier shall deliver 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 ("Paperwork") within twenty-four (24) hours after delivery of each shipment. Payment is due within seven (7) days after submission of Paperwork. This Agreement takes precedence over and is not intended to incorporate any conflicting terms of such collateral documents.

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

Blackrock Logistics, 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.

**C. Right to Bill.** Carrier appoints Broker as its agent with the sole right and authority to bill for and collect freight charges for transportation of shipments that Broker assigns to Carrier. Carrier acknowledges that any difference between the amounts Broker pays to Carrier and collects from a Customer for Services rendered under this Agreement represent Broker's compensation for its services. Charges not invoiced to Broker by Carrier within thirty (30) days of being incurred will be deemed waived by Carrier.

**D. Standard Payment Terms.** Broker shall pay invoices on or before thirty (30) days after Broker's receipt of Carrier's invoice or any documentation or information required by contract or requested by Broker, whichever is later.

**E. Waivers.** Carrier agrees that no penalties, interest or late charges will be assessed against Broker for occasionally inadvertent late payments. Carrier further agrees that it shall look solely to Broker for payment for 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. Carrier 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 written consent of Broker.

**12. Deductions.** Broker is not required to make any advances to Carrier. However, if Broker advances payment for any costs that Carrier is obligated to pay, including but not limited to fuel or other costs, Carrier agrees that Broker may deduct those advances from payments otherwise due to Carrier.

**13. No Liens; Impound.** Carrier shall not withhold delivery of any shipment or cargo or return of any Equipment due to a dispute with Broker or Customers regarding freight charges or otherwise. Carrier shall not have any lien and hereby waives and releases the right to any statutory and common law liens which might otherwise apply to any cargo brokered to Carrier or Equipment while in the possession of Carrier. If cargo or Equipment are impounded for any reason, Carrier shall pay all expenses associated with immediate release from impound and delivery of cargo and Equipment to the intended destination(s).

**14. Carrier's Responsibilities.**

**A. Safety Rating.** Carrier must be rated “satisfactory”, “conditional”, or “unrated” by the DOT or a state agency for safety of operations. Under no circumstances is Carrier allowed to provide Services under this Agreement if its safety rating falls to “unsatisfactory”, and must promptly notify Broker if carrier is accessed as “unsatisfactory”. If Carrier has not been rated by the DOT or a state agency for safety of operations, then it must be in compliance with all state and federal safety rules and regulations and knows of no facts that would negatively impact its safety rating. Carrier shall immediately report to Broker any safety rating Carrier may receive during the pendency of this Agreement. Carrier understands that a negative safety rating will be ground for immediate disqualification from providing Services under this Agreement. On request, Carrier shall provide Broker all documents evidencing Carrier's continued and valid operating authority, licenses, registrations, safety rating, safety fitness certificates, and any other information or documents Broker requests.

**B. Compliance with Law.** Carrier shall at all times comply with all applicable state and federal laws, ordinances, rules and regulations, including but not limited to compliance with the Food Safety Modernization Act (“FSMA”), as well as standard industry practices with regard to, but not limited to, safety, dispatch, pre-load inspection, delivery, and cleanliness.

**C. Carrier Is Responsible for Subcarriers' Compliance.** If Carrier uses a subcarrier (“Subcarrier”) to carry a load brokered under this Agreement, with or without prior approval by Broker, then where any action is required by or any duty or obligation is imposed on Carrier by law or under this Agreement and the accompanying documents incorporated herein, including but not limited to the Trailer Interchange Agreement: 1) Subcarrier shall be obligated

to Broker to the full extent of Carrier's obligations to Broker, as if Subcarrier was included in all references to Carrier in this Agreement; 2) Carrier shall be responsible for Subcarriers' full and complete compliance; 3) Carrier shall defend, indemnify and hold harmless Broker and all Indemnitees under the Indemnity section below to the full extent of Subcarrier's obligations; and 4) Carrier is solely responsible for payment of compensation due to Subcarriers, if any, for Services performed under this Agreement, and, in addition to any other remedies available to Broker, Carrier shall indemnify and hold harmless Broker from and against any claim by any Subcarrier that Carrier failed to pay any such Subcarrier, and any and all charges due Subcarrier as to each shipment tendered to a Subcarrier hereunder. This provision includes, but is not limited to, compliance with all applicable federal, state and local laws, ordinances, rules and regulations, as well as standard industry practices with regard to, but not limited to, safety, dispatch, pre-load inspection, delivery, cleanliness, Driver Qualification, Drivers Hours of Service, Vehicle Maintenance, Drug Testing and other applicable safety requirements of the DOT, state and federal patrol, law enforcement, the California Air Resources Board (consistent with the Compliance with CARB section below), and any other governing agencies and regulatory bodies.

**D. Carrier's Compliance with CARB.** Carrier, as a motor carrier subject to the authority and jurisdiction of the California Air Resources Board ("CARB") hereby represents and warrants that at all times hereunder Carrier is and shall remain compliant with any and all such laws and regulations applicable to its own services and will also monitor and obtain compliance confirmation and verification relative to each and every Subcarrier with whom Carrier contracts pursuant to this Agreement. For purposes of this provision, every year throughout the duration of this Agreement, Carrier shall obtain, for itself and for each Subcarrier with whom it contracts, signed certificates of compliance ("Certificates of Compliance") in the form provided. The form for the "Certificate of Compliance for Carriers" is attached as Attachment "A". The form may be updated from time to time at Broker's sole discretion. Carrier shall provide the Certificates of Compliance for Carrier and Subcarriers to Broker on request. Failure by Carrier or Subcarriers to meet the requirements of this provision shall be ground for Broker to terminate this Agreement on one (1) day's written notice to Carrier. Carrier further represents and warrants that in the event of any audit by CARB relative to the Service provided under this Agreement, Carrier and each Subcarrier shall fully cooperate in any such investigation and provide all documents and materials to Broker and CARB to support and verify compliance by Carrier and the Subcarriers with whom it contracts in connection with the Services under this Agreement. In addition to any other obligations of Carrier herein, Carrier shall defend and indemnify Broker for any actions that might be asserted against Broker for Carrier's and all Subcarriers' compliance with such CARB regulations.

**15. Shipment Tendering and Acceptance.** Broker will send Carrier 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 Carrier. Carrier will acknowledge the acceptance of the shipment tendered through an EDI process, a signed returned fax, an INET process or an email.

**16. In-Transit Communication.**

**A.** Carrier shall provide, at no cost to Broker, shipment status updates to Broker 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 exceptions, special service requirements or similar matters as applicable;
- 2) Notification on arrival for scheduled pickup;
- 3) The time the pickup is effective;
- 4) Notification on arrival for scheduled point;
- 5) The time the delivery is completed (this update must be provided no later than fifteen (15) minutes after arrival at destination); and
- 6) If the distance for any shipment exceeds two hundred (200) miles, one (1) in-transit status update every two (2) hours.

**B.** Carrier shall notify Broker and all applicable insurers as soon as possible in the event any of the following occurs in connection with a shipment under this Agreement:

- 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 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 to other property or injury to or death of person(s).

**17. Shipping Documentation.** Except as otherwise set forth herein, all shipments under 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:

**A.** Carrier's name shall be shown as the named carrier, the Customer shall be shown as the consignor, and the receiver shall be shown as the consignee.

**B.** For each pickup, the Carrier's signature on the Bill of Lading will serve as prima facie evidence of receipt of the shipment by Carrier in good order and condition, except as otherwise noted on the Bill of Lading. At the time of pick up, Carrier shall write the words "shippers weight, load and count" on the Bill of Lading.

**C.** In the event any cargo is damaged, or if there are any discrepancies or differences from the rate confirmation form, Bill of Lading, or Manifest in piece count or description of goods, or if the cargo is not properly secured or loaded, Carrier must notify Broker immediately, before taking possession of the shipment. If Broker is not notified before taking possession, Carrier agrees to cover all costs and damages related to the condition and count of the cargo.

**D.** On delivering a shipment, Carrier must obtain a signature and a noted delivery date from the consignee on the Bill of Lading. At the time of delivery, Carrier 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.

**18. Sealed Shipments.** Shipments are sealed prior to delivery to Carrier. If the seal is missing or broken when the shipment is delivered to Carrier, it must be noted on the Bill of Lading and Carrier will be liable to Broker and Customer for any and all damages and shortages not caused by Broker or Customer.

**19. Trailer Lock.** Carrier shall provide a high-quality padlock for each trailer. The lock must be installed when Carrier takes possession. Except during loading and unloading, the trailer must be locked at all times until it is returned to Broker.

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

**21. Indemnity.**

**A.** Carrier ("Indemnitor") shall indemnify, defend and hold harmless Broker and Broker's Customers, affiliates and subsidiaries, and as to each of them their respective directors, officers, shareholders, members, employees and agents (individually "Indemnitee" and collectively "Indemnitees") from and against any and all fines, penalties, losses, damages, injuries, expenses, costs (including attorneys' fees), claims, demands, liabilities, actions, and judgments that arise directly or indirectly from the Services provided by Carrier under this Agreement (collectively "Liability"), including but not limited to:

- 1) bodily injury to or death of any person (including but not limited to injury to or death of any employee or agent of Carrier, or third parties);
- 2) loss of or 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 claim for workers' compensation act or other employee benefits by or on behalf of Carrier's employees, independent contractors or agents;
- 6) any claim relating to the ownership, maintenance, custody, use or operation of Equipment or other equipment used by Carrier;
- 7) any damage caused by the transportation or handling of any hazardous or toxic materials or substances;
- 8) any claim based on Carrier's performance or failure to comply with or perform their duties and responsibilities under this Agreement or the Trailer Interchange Agreement; and
- 9) any claim based on the acts or omissions of Carrier, or its employees, agents, subcarriers, or other independent contractors.

**B.** This indemnity shall not apply to an Indemnitee if the liability is solely caused by the negligent or intentional acts or omissions of such Indemnitee.

**C.** Each Party shall give the other Party prompt written notice of any such Liability coming within the purview of these indemnities. The Indemnitor shall pay for the defense of any such Liability and provide qualified counsel that 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 at 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.

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

**22. Insurance.** Carrier shall at all times and at no cost to Broker maintain insurance coverage from reputable and reliable insurance providers with an AM Best rating of A or better. Coverage limits must not be less than the amounts stated below, and applicable in all locations and jurisdictions where Services are provided. If required by a Customer or 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 \$150,000 per shipment with a maximum deductible of \$2,500. The purchase of cargo insurance at the minimum level, or any other level, shall not limit Carrier'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 under this 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 \$75,000 per trailer with a maximum deductible of \$2,500.
- 5) Worker's compensation and employer's liability insurance as required by applicable law, or, occupational accident insurance for injuries to Carrier and its subcontractors who are independent contractors.
- 6) Any additional insurance requirements under applicable federal, state and local laws, regulations and rules.

**B. Insurance from Carrier Is Primary.** All insurance coverage provided by Carrier applicable to a given claim shall be considered primary to any coverage provided by Broker that might apply.

**C. Proof of Insurance.** On execution of this Agreement, and prior to Carrier providing any Services to Broker, Carrier shall provide Broker with:

- 1) Certificates of insurance showing that Carrier has obtained at least the minimum insurance coverage required by this Agreement.
- 2) Endorsements for all required policies (except workers' compensation or other employer specific policies) that include Broker and its Customers, affiliates and subsidiaries, and as to each of them their respective directors, officers, shareholders, members, employees and agents as additional insureds.

The certificates of insurance must provide that Broker shall be given at least thirty (30) days written notice by the applicable insurer prior to any cancelation, renewal, or change in the insurance policy. At Broker's request, Carrier shall provide copies of the insurance policies to Broker, including but not limited to all endorsements, riders, and exclusions.

**23. No Riders or Helpers Allowed.** At all times when Carrier is operating as a Carrier for Broker, no one is allowed in the truck or trailer other than the designated driver, and no one can assist the driver with or participate in loading or unloading the trailer in any way except for authorized personnel at the pickup or delivery location. Any violation of this provision is a material breach of the Agreement which shall result in immediate termination of the Agreement.

**24. Cargo Claims.**

**A.** Carrier shall be liable to Broker and Customer to the full extent of its obligations 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.

**B.** Carrier shall provide its cargo insurance provider with all records that relate to a loss and permit copies and abstracts to be made from them on request.

**C.** The following valuation rules shall apply to any claim hereunder: 1) Destination market value for lost or damaged cargo, no special or consequential damages unless by special agreement; 2) Claims will be filed with Carrier by Customer; 3) Claim notification procedures will apply in accordance with the procedures set forth in 49 C.F.R. 370.1-11.

**D.** In the event cargo is damaged, Carrier agrees to obtain and follow Broker's and/or Customer's specific instructions regarding disposal or salvage, if any, of the cargo.

**E.** All claims for overage, shortage, loss, damage or delay and any salvage arising from transportation brokered to Carrier under this Agreement shall be submitted to Carrier 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. Broker may deduct the amount of the claim from payments otherwise due to Carrier. If Broker makes a deduction from Carrier's payments for a claim and Carrier 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 Carrier.

**25. Independent Contractors.** 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 own employees. Under no circumstances shall the employees, independent contractors, or agents of

Carrier be deemed to be employees or agents of Broker or Customers, nor shall Broker or Customers be liable for any wages, fees, payroll taxes, assessments, or other expense relating to employees, independent contractors, or agents of Carrier.

**26. 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.

**27. 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 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.

**28. 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 on any of the Parties unless reduced to writing and signed by the Parties to be bound thereby.

**29. 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.

**30. 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.

**31. 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.

**32. 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.

**33. 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.

**34. 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 below:

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

7031 Koll Center Parkway, Suite 250  
Pleasanton, CA 94566  
Attn: Sam Montes, Operations Manager  
[smontes@blackrock-logistics.net](mailto:smontes@blackrock-logistics.net)  
909-259-5357

**To \_\_\_\_\_ (“Carrier”):**

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

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

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

\_\_\_\_\_  
Phone Number

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

**35. 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.

**IT IS SO AGREED.**

**For \_\_\_\_\_ (“Carrier”):**

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

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

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

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

\_\_\_\_ ("Carrier") owns and operates one or more commercial trucks and provides motor carrier transportation services as an independent contractor under the authority of the United States Department of Transportation and the Federal Motor Carrier Safety Administration, and such state agencies as required for authorized intrastate movements. Carrier requires the use of trailers and related equipment to provide services ("Services") for shipments brokered by Blackrock Logistics, Inc. ("Equipment Provider"). Equipment Provider has trailers and related equipment (collectively the "Equipment") available and agrees to allow Carrier to use the Equipment pursuant to the terms and conditions of this Trailer Interchange Agreement.

**1. Carriers' Operating Authority.** Carrier is a property transportation carrier registered with the United States Department of Transportation ("USDOT") to operate. Carrier's USDOT number is \_\_\_\_\_ and its MC number is MC-\_\_\_\_\_.

**2. Carrier Safety Rating.** Carrier must be rated "satisfactory" by the DOT or a state agency for safety of operations. Under no circumstances is Carrier allowed to use the Equipment if their safety rating falls to "unsatisfactory." If Carrier has not been rated by the DOT or a state agency for safety of operations, then it must be in compliance with all state and federal safety rules and regulations and Carrier warrants that it knows of no facts that would negatively impact its safety rating. Carrier shall immediately report to Equipment Provider any safety rating Carrier may receive during the pendency of this Trailer Interchange Agreement and understands that a negative safety rating will be ground for immediate disqualification and termination. On request, Carrier shall give Equipment Provider all documents evidencing Carriers' operating authority, registrations, safety rating, safety fitness certificates, and any other information or documents.

**3. Compliance with Law.** Carrier shall comply with all applicable 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, as applicable. Carrier shall comply 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.

**4. Rental Rates.** Carrier only has permission to use the Equipment for Services related to shipments brokered by Equipment Provider. There is no charge for the use of the Equipment to provide Services for shipments brokered by Equipment Provider. If Carrier uses the Equipment for any other purpose or fails to return the Equipment to Equipment Provider within twenty-four (24) hours after the Services are completed, Carrier shall pay Equipment Provider at the rate of **\$750 per day for dry trailers and \$2,500 per day for refrigerated trailers \$5 per mile** for each mile the Equipment travels beyond the distance required to perform Services for shipments brokered by Equipment Provider.

**5. Term.** Except as otherwise provided herein, this Trailer Interchange Agreement continues for as long as Carrier provides Services for shipments brokered by Equipment Provider and automatically terminates in the event Carrier ceases to provide Services for Equipment Provider for any reason.

**6. Condition of the Equipment at Check Out.** Carrier shall not use any Equipment until the driver has inspected the Equipment, including each and every trailer and the related equipment, noted any damage or abnormal wear and tear, and if so notified Equipment Provider.

**7. 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 here or in a writing signed by Equipment Provider.

**8. Condition of the Equipment on Return.** The Equipment shall be returned to Equipment Provider in the same condition as when checked out by Carrier except for normal wear and tear. Equipment Provider will inspect the Equipment when returned. If there is damage or abnormal wear and tear that the driver did not notify Equipment provider about in advance, Carrier shall be responsible for the cost to make the appropriate repairs or replacements.

**9. Trailer Lock.** Carriers must provide a high-quality padlock for each trailer. The lock must be installed when Carrier takes possession. Except during loading and unloading, the trailer must be locked at all times until it is returned to Equipment Provider.

**10. Limitations on Use of the Equipment.** Carrier shall not use the Equipment to store or transport unprotected corrosive substances, trash, medical and/or solid waste, or any toxic, hazardous or dangerous materials. Carrier shall not remove, obscure, obliterate or otherwise alter any identification marks on the Equipment without Equipment Provider's prior written consent.

**11. Possession or Use by Other Carriers.** The Equipment is deemed to be in the possessions of Carrier from the time Carrier receives the Equipment until it is returned to Equipment Provider. Carrier is not permitted to allow any other carrier, person or other legal entity to take possession of or use the Equipment without Equipment Providers authorization in writing. However, if for any reason anyone other than Carrier does take possession of or use the Equipment during Carrier's possession, Carrier is responsible for guaranteeing complete compliance with Carrier's obligations to Equipment Provider and Carrier shall remain fully liable to Equipment Provider in accordance with the Indemnity section below.

**12. Collection.** For any amounts that Carrier may owe to Equipment Provider under this Trailer Interchange Agreement, Equipment Provider may withhold such amounts from weekly settlements Equipment Provider would otherwise pay Carrier.

**13. Moving Perishables.** If shipments include perishables that require refrigeration or heating:

- A. Carrier shall inspect or hire a service representative to inspect each vehicle's refrigeration or heating unit at least once each month.
- B. Carrier shall maintain a record of each inspection of refrigeration or heating unit and retain the records of the inspection for a least one year.
- C. Carrier shall provide copies of these records to Broker on request.
- D. Carrier shall maintain adequate fuel levels for the refrigeration or heating unit and assume full liability for claims and expenses incurred by the Broker and Customer for failure to do so.

**14. Maintenance.**

A. Carrier must maintain the Equipment while in Carrier's possession.

- 1) Carrier must check all fluids on a daily basis to maintain proper operating levels.
- 2) Carrier 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) If tires need to be replaced while the Equipment is in a Carrier's possession, they must be replaced by Carrier at Carrier's expense and must be of equivalent size and quality as the existing tires to maintain proper wear.
- 4) Carrier must check the refrigeration units for adequate oil and fill if applicable.

B. Carrier is responsible for all damage to the Equipment during its possession thereof, except normal wear and tear.

C. Carrier shall perform at its cost all **non-routine maintenance** that is necessary while the Equipment is in a Carrier's possession.

D. Equipment Provider shall perform at its cost all required **routine maintenance** of the Equipment. Carrier will make the Equipment available to Equipment Provider in a timely fashion to allow for routine maintenance. Equipment Provider shall repair at its cost any wear and tear to the Equipment caused by Carrier's normal use and possession thereof.

**15. Repairs and Modifications.** Carrier may not conduct repairs or modifications on the Equipment or authorize anyone else to make repairs or modifications on the Equipment without

prior written approval from Equipment Provider as to the person(s) conducting repairs, the costs involved, and the time required. In the event the Equipment is returned to Equipment Provider in a damaged condition, requiring non-routine maintenance, or with unapproved modifications, Carrier is fully responsible for all repair costs. Equipment Provider has sole discretion to select service providers for work on the Equipment and Carrier may only use service providers approved by Equipment Provider. Equipment Provider will not pay for any repairs or modifications to Equipment in a Carrier's possession unless approved by Equipment Provider in writing.

## **16. Indemnity.**

**A.** Carrier ("Indemnitor") shall indemnify, defend and hold harmless Equipment Provider and Equipment Provider's Customers, affiliates and subsidiaries, and as to each of them their respective directors, officers, shareholders, members, employees and agents (individually "Indemnitee" and collectively "Indemnitees") from and against any and all fines, penalties, losses, damages, injuries, expenses, costs (including attorneys' fees), claims, demands, liabilities, actions, and judgments that arise directly or indirectly from the Services provided by Carrier under this Trailer Interchange Agreement (collectively "Liability"), including but not limited to:

- 1)** Any bodily injury to or death of any person (including but not limited to injury to or death of any employee or agent of Carrier or third parties);
- 2)** any loss of or damage to property, including the Equipment, and loss of use thereof;
- 3)** any damage to the environment pursuant to MCS-90 or otherwise;
- 4)** any cleanup and remediation of any leak, spill or contamination;
- 5)** any claim for workers' compensation act or other employee benefits by or on behalf of Carriers' employees, independent contractors or agents;
- 6)** any claim relating to the ownership of the Equipment, or the maintenance, custody, use or operation of the Equipment;
- 7)** any damage caused by the transportation or handling of any hazardous or toxic materials or substances;
- 8)** any claim based on Carrier's performance or failure to comply with or perform its duties and responsibilities under this Agreement;
- 9)** any claim based on the acts or omissions of Carrier, or its employees, agents, independent contractors or subcontractors.

**B.** This indemnity shall not apply to an Indemnitee if the liability is solely caused by the negligent or intentional acts or omissions of such Indemnitee.

**C.** 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 at 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.

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

**17. Insurance.** Carrier shall at all times and at no cost to Equipment Provider maintain insurance coverage from reputable and reliable insurance providers with an AM Best rating of A or better. Coverage limits must not be less than the amounts stated below, and applicable in all locations and jurisdictions where Services are provided. If required by a Customer or 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 \$150,000 per shipment with a maximum deductible of \$2,500. The purchase of cargo insurance at the minimum level, or any other level, shall not limit Carrier'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 under this 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 \$75,000 per trailer with a maximum deductible of \$2,500.

- 5) Worker's compensation and employer's liability insurance as required by applicable law, or, occupational accident insurance for injuries to Carrier and its subcontractors who are independent contractors.
- 6) Any additional insurance requirements under applicable federal, state and local laws, regulations and rules.

**B. Insurance from Carrier Is Primary.** All insurance coverage provided by Carrier applicable to a given claim shall be considered primary to any coverage provided by Equipment Provider that might apply.

**C. Proof of Insurance.** On execution of this Trailer Interchange Agreement, and prior to Carrier taking possession of any Equipment, Carrier shall provide to Equipment Provider:

- 1) Certificates of insurance showing that **Carrier** has obtained at least the minimum insurance coverage required by the Trailer Interchange Agreement; and
- 2) Endorsements for all required policies (except workers' compensation or other employer specific policies) that identify Blackrock Logistics, Inc. and its affiliated companies and subsidiaries, and as to each of them their respective directors, officers, shareholders, members, employees and agents as additional insureds.

The certificates of insurance must provide that Equipment Provider shall be given at least thirty (30) days written notice by the applicable insurer prior to any cancelation, renewal, or change in the insurance policy. At Equipment Provider's request, Carrier shall provide copies of the insurance policies to Equipment Provider, including but not limited to all endorsements, riders, and exclusions.

**17. Notification of Damage or Loss.** In the event of damage or loss to the Equipment, Carrier must notify Equipment Provider as soon as practicable but not later than twenty-four ("24") hours after the damage or loss occurs. The notification must include:

- A. The location of the Equipment;
- B. A complete accident report; and
- C. The insurance claim number and contact information for the adjuster.

**18. Limitation on Liability for Damage or Loss.** Equipment Provider shall not be liable for damage or loss to cargo or Equipment while in Carrier's possession, regardless of any fault by Equipment Provider.

**19. Equipment Must Be Returned to Domiciled Yard.** The truck yard where the Equipment is picked up from Equipment Provider is the domiciled yard for that Equipment. After shipments are delivered, the Equipment must be returned to the domiciled yard. The only exception is if Equipment Provider gives specific directions to Carrier in writing to return it to a different location. For each trailer or other piece of Equipment that is returned to a different yard without Equipment Provider's written authorization, the Carrier will be assessed a **\$30s0 repositioning fee plus \$5 per mile** for each mile the Equipment has to be moved to return it to its domiciled yard. Each trailer is equipped with a GPS device to track its location.

**20. Assignment.** Carrier may not assign, lease, sublet, rent, or otherwise hire out, or part with possession of any of the Equipment to any person or legal entity other than Equipment Provider without prior written consent of Equipment Provider. If the Equipment is used by anyone other than Carrier, with or without Equipment Provider's authorization, Carrier shall remain responsible for the Equipment and liable to Equipment Provider to the full extent of Carrier's obligation under this Trailer Interchange Agreement.

**21. Default.** Carrier shall be in default of this Trailer Interchange Agreement if Carrier:

- A.** fails to comply with any terms or conditions of this Trailer Interchange Agreement;
- B.** is in default of any of the terms or conditions of any other agreement between the Parties hereto; or
- C.** becomes insolvent, unable to pay its obligations as they come due, or subject to any voluntary or involuntary bankruptcy proceeding.

**22. Damages for Default.** In the event of a default by Carrier, Equipment Provider shall have, in addition to any rights or remedies available at law or in equity which Equipment Provider expressly reserves, the right to: A) take immediate possession of all Equipment and cargo without having to institute any legal action, and exercise any reasonable self-help method to take possession of the Equipment and cargo; B) terminate this Trailer Interchange Agreement immediately, whereupon the terms and conditions shall continue to apply until all Equipment is returned to Equipment Provider; C) recover any sums due and owing in accordance with the terms of this Trailer Interchange Agreement including, without limitation, unpaid charges and cost of repair; and D) recover any collection costs incurred in recovery of any sums due or repossession of the Equipment or cargo including, without limitation, reasonable attorneys' fees; and E) recover any lost profits.

*[Intentionally left blank.]*

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

**IT IS SO AGREED.**

**For** \_\_\_\_\_ (“Carrier”):

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

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

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

**ATTACHMENT "B"**  
**CARB COMPLIANCE VERIFICATION for CARRIERS**

**TO BLACKROCK LOGISTICS, INC.:**

\_\_\_\_\_ ("Carrier") provides this CARB Certificate of Compliance pursuant to the active broker to carrier agreement ("Broker to Carrier Agreement") between Blackrock Logistics, Inc. and \_\_\_\_\_ dated \_\_\_\_\_. Carrier certifies and verifies that the information contained in this CARB Compliance Verification is true and correct.

1. In the course and scope of Carrier's business, including but not limited to any services provided under the Broker to Carrier Agreement, Carrier monitors its own compliance with the California Air Resources Board ("CARB") as well as that of any motor carriers with whom it contracts to provide services.
2. Carrier will fully audit its own compliance and cooperate with Blackrock Logistics, Inc. with respect to any investigation by CARB relative to the services provided by Carrier and any motor carrier with whom Carrier contracts to provide services under the Broker to Carrier Agreement.
3. The vehicle(s) which will be used to provide services under the Broker to Carrier Agreement are listed below:

<u>MAKE</u>	<u>MODEL</u>	<u>VIN</u>	<u>ENGINE MODEL YEAR</u>	<u>PM FILTER?*</u>

\* PM Filter is required for engines with a model year of 2010 or older.

4. Attached are the 2021 PSIP test results for the above listed vehicle(s) confirming that the vehicle(s) passed the necessary PSIP test.

LEGAL NAME \_\_\_\_\_ ("Carrier")

ADDRESS \_\_\_\_\_

FMCSA AUTHORITY NO. \_\_\_\_\_

SIGNED \_\_\_\_\_

DATED \_\_\_\_\_