

## **AGREEMENT FOR MOTOR TRANSPORTATION**

**THIS AGREEMENT**, (the “Agreement”) made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ located at \_\_\_\_\_ (hereinafter referred to as “Carrier”) and IMS Transport Solutions LLC d/b/a IMS Logistics Management Solutions, a New Jersey limited liability company located at 265 Industrial Way West, Ste 1, Eatontown, NJ 07724 (hereinafter referred to as “Broker”).

### **WITNESSETH**

1. Broker is duly licensed by the Federal Motor Carrier Safety Administration (“FMCSA”) under license number MC# 337093B to engage in operations, in interstate or foreign commerce, as a broker, arranging for transportation of freight, except household goods, (each a “Shipment,” collectively “Shipments”) by motor vehicle.
2. Carrier represents that it is, and at that at all times during the Term of this Agreement it shall be, a duly licensed contract motor carrier operating under license number MC# \_\_\_\_\_ issued by the FMCSA for the purpose of providing the transportation of Shipments.
3. Carrier agrees to accept lawful Shipments of property offered it by Broker subject to the capacity of Carrier’s equipment and facilities, and to transport such Shipments to the destinations designated by Broker (the “Services”). Carrier agrees to take all necessary steps to ensure the Shipment is secured while in Carrier custody, including and not limited to, Carrier parking a Shipment in a secure location at all times. In the event Carrier is unable to supply the Services within the time requested by Broker, it shall so advise Broker and arrange to provide the Service at a later date, or Broker may, if it desires, elect to avail itself of the services of another carrier. Under such circumstances, there shall be no breach of the terms of this Agreement.
4. Carrier agrees to maintain and keep in full force and effect, at its own expense, applicable to all Shipments made during the Term of this Agreement and with an insurance carrier acceptable to Broker, a minimum of \$100,000 per vehicle cargo liability insurance and a minimum of \$1,000,000/\$5,000,000 per occurrence/aggregate automobile liability insurance as well as workers’ compensation covering all claims by any person arising from, relating to or connected with the Services provided by Carrier in connection with this Agreement. Carrier shall furnish to Broker a certificate of insurance evidencing said insurance coverage and naming Broker as an additional insured on said policies.
5. Carrier, at its own cost and expense, shall at all times during the Term of this Agreement provide suitable motor vehicles, equipment and personnel for use in the Services to be performed hereunder; shall maintain such vehicles and equipment in good, safe and efficient condition, both as to operation and appearance; and shall provide only personnel who have valid and effective licenses to provide the Services required hereunder, including without limitation valid driver’s licenses to operate the equipment used by Carrier at the time such equipment is used. At all times

during the Term of this Agreement, Carrier, at its own cost and expense, shall also maintain in and for the operation of its vehicles such licenses and permits as are required by local, state and federal authorities with respect to such Services. Carrier represents and warrants that: (i) it shall comply with all applicable laws, ordinances, safety standards, good maintenance practices and regulations at all times during the Term hereof; (ii) it shall maintain a safety rating of at least “satisfactory” with the FMCSA; and (iii) it shall immediately notify Broker if its safety rating ever falls below “satisfactory.”

6. From the date of this Agreement forward, each Shipment tendered to Carrier for transportation between points of origin and destination shall be deemed to be tendered to Carrier as a contract motor carrier and such Shipments will be governed solely by the provisions of law applicable to contract motor carriage as set forth in this Agreement. Carrier acknowledges and agrees that its contractual and legal relationship in connection with each Shipment tendered to Carrier by Broker hereunder is solely and exclusively with Broker and not with any other party, including without limitation the shipper/consignee. Notwithstanding the foregoing, Carrier further acknowledges and agrees that it owes to the shipper/consignee, who shall be an intended third-party beneficiary hereunder in that respect, traditional duties imposed on carriers in connection with Shipments accepted for motor transport, including without limitation a duty to exercise reasonable care in connection with the handling and delivery of all Shipments, and the duty to provide its Services in a manner consistent with industry standards.

7. Carrier shall immediately notify Broker of any accident or event which impairs the safety of, or delays delivery of, Shipments, and shall use reasonable care and due diligence in the protection of said Shipments.

8. Carrier will issue and sign a standard bill of lading or receipt acceptable to Broker and to underlying shippers/consignees on acceptance of the Shipments, and Carrier assumes the liability of interstate carrier from the time of receipt of said Shipment by the Carrier until proper delivery is made, and such receipt or bill of lading shall be prima facie evidence of receipt of such Shipment in good order and condition unless otherwise noted on the face of the document. All such documents shall show the actual consignor and consignee and Broker shall appear in the “Bill To” section and in the “Special Instructions” section as being “shipped under contract authority.”

9. Carrier will bill Broker and Broker will pay Carrier for freight charges payable to Carrier on Shipments tendered by Broker to Carrier. Carrier’s freight charges will be based on an amount negotiated between Broker and Carrier on each individual Shipment before Carrier is dispatched to pick up the Shipment (the “Rate Confirmation”). Each Rate Confirmation will be considered an Addendum to this Agreement.

10. Carrier agrees to look solely to Broker for payment of any and all fees and charges associated with any Shipment tendered to Carrier hereunder, and Carrier expressly waives any and

all rights to assert any claims, legal or equitable, against any party, including without limitation the shipper/consignee, other than Broker.

11. Broker agrees to offer for Shipment and Carrier agrees to transport by motor vehicle, subject to the availability of suitable equipment, a minimum of three (3) Shipments during the Term of this Agreement.

12. It is the intent of the parties that Carrier shall be and remain an independent contractor and nothing herein contained shall be construed to be inconsistent with that relationship or to otherwise create any employment, partnership, joint venture or other relationship between the parties hereto. Carrier agrees to assume full responsibility for all salaries, commissions, insurance, taxes, pension, and benefits of Carrier's employees and agents (including owner-operators) utilized by Carrier in the performance of this Agreement.

13. (a) Carrier shall be liable for full actual loss resulting from loss, damage, injury, or delay on Shipments transported under the terms of this Agreement. Full actual loss is the replacement cost of freight tendered to the carrier for transport. All claims for loss and damage shall be handled and processed in accordance with regulations published in the Code of Federal Regulations at 49 C.F.R. Part 370. The terms, conditions or provisions of the governing bill of lading or any other shipping form, tariff or rule utilized shall subject and subordinate to the terms of this Agreement and, in the event of a conflict, this Agreement shall govern. This Agreement cannot be changed, modified, limited or supplemented by reference to any carrier rates, rules, classification, practice, schedule or tariff. (b) Carrier agrees to indemnify and save harmless Broker from any and all claims, damages and losses of any and all kinds and nature whatsoever arising out of Carrier's operations and activities hereunder, including without limitation, claims, losses, or liability for personal injury, property damage, cargo loss or damage, or any combination thereof, whether resulting from the negligence or legal liability of Carrier, its employees or agents, or otherwise, which may occur during or relating to or arising from the performance of Services under this Agreement, including court costs and attorney's fees (to be calculated, irrespective of the amounts due, based on the time spent by such attorneys and their staff at the regular hourly rates then in effect and billed to Broker by Broker's attorneys) which are incurred in defending or prosecuting such claims. Broker shall have the right to choose its own counsel in connection with any such claim, and Carrier shall reimburse Broker for all such costs, attorneys' fees and expenses incurred by Broker within thirty (30) days after such costs, attorneys' fees and expenses are incurred.

14. This Agreement shall remain in effect until 11:59 p.m. on December 31 of the calendar year after the year in which this Agreement was executed by the parties hereto (the "Initial Term"), unless it is earlier terminated pursuant to the terms hereof. Upon the expiration of the Initial Term, the Agreement shall automatically renew for successive one-year terms (collectively, the "Term"), unless earlier terminated by either party hereto. All references in this Agreement to the Term of this Agreement shall include all renewal periods hereof. Either party may terminate the Agreement at any time for any reason or for no reason upon thirty (30) days written notice to the other party,

which shall be sent to the other party by certified mail at the address for such party listed above (or such other address as the party may have notified the other party in writing prior to the giving of such notice). In addition, Broker may terminate this Agreement immediately for cause, which shall include a breach by Carrier in connection with any of its obligations under this Agreement.

15. (a) This Agreement shall be governed by the laws of the State of New Jersey, without giving effect to the conflict of laws principles thereof, except that any statute or period of limitation applicable to interstate transportation shall also apply. Subject to paragraph 15(b), both parties consent to the laying of venue and personal jurisdiction in the State or Federal courts located in the State of New Jersey, and in or having jurisdiction over, the County of Monmouth, which courts shall have exclusive jurisdiction with respect to any and all disputes between the parties hereto. (b) Any disagreement, dispute, controversy or claim with respect to the validity of this Agreement or arising out of or in relation to the Agreement, or breach hereof, shall be finally settled by arbitration in Somerset, New Jersey in accordance with articles of the American Arbitration Association for Commercial Arbitration and each of Customer and Broker consent to arbitration in such jurisdiction in accordance herewith. Each of Customer and Broker shall select one arbitrator, and the two arbitrators so selected shall mutually agree to the selection of a third arbitrator, or, failing such mutual agreement, the third arbitrator shall be selected by the American Arbitration Association. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction, in accordance with paragraph 15(a). In any arbitration arising out of or related to this Agreement, the arbitrator shall award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration (to be calculated, irrespective of the amounts due, based on the time spent by such attorneys and their staff at the regular hourly rates then in effect and billed to the prevailing party by the prevailing party's attorneys). (c) In the event of any dispute between and among Carrier and Broker that results in any legal proceedings, the prevailing party in such proceedings shall be awarded its attorneys' fees (to be calculated, irrespective of the amounts due, based on the time spent by such attorneys and their staff at the regular hourly rates then in effect and billed to the prevailing party by the prevailing party's attorneys), and costs, including experts' fees and costs and all other out-of-pocket costs relating to the dispute. Carrier understands that in connection with any claims that it might assert, or threaten to assert, in any action or proceeding against third parties arising from, related to or connected with this Agreement, including without limitation claims against shippers, consignors and consignees, such claims could result in liability against, and losses to, Broker as a result of the terms of Broker's agreements with such third parties or otherwise by operation of law, even to the extent that Broker is not named as a party listed in the caption of such action or proceeding and even to the extent that no action or proceeding is commenced against Broker. The parties hereto agree that to the extent any party hereto actually pays such fees and costs, such payment shall establish conclusively that such amounts are reasonable for all purposes. Carrier further agrees that for purposes of this Agreement, it is not necessary for Broker to have been named or listed as a party in any action or proceeding or for there to have been any action or proceeding commenced against Broker, in order for Broker to be found to be a "prevailing party" hereunder. Rather, to the extent that the position taken by Broker (or by any third party in whose shoes Broker effectively stands with respect to such claim), is meritorious, Broker shall be deemed to have been a prevailing party hereunder for all purposes and entitled to all remedies listed herein.

16. If any part of this Agreement is determined to be contrary to the law or regulation of any jurisdiction, such determination shall not affect the validity of any other terms or conditions hereof.

17. Carrier shall have no lien, and hereby waives its right to any lien, upon any Shipment and any portion thereof.

18. Broker agrees to pay Carrier, in accordance with the Rate Confirmation pertaining to each Shipment, within thirty (30) days of receipt of Carrier's invoice referencing Broker's Rate Confirmation number, the original bill of lading, and proof of delivery. Broker may withhold from compensation due Carrier, amounts sufficient to satisfy claims for loss, damage, injury, or delay arising out of transportation of Shipments under this Agreement.

19. Except as required by law, the Rate Confirmation and all information contained in any receipt, bill of lading or shipping document shall be confidential and shall not be disclosed by Carrier to persons other than its officers, directors, employees, agents, attorney, accountants, and auditors. Broker has the right at its sole and absolute discretion to disclose any such information to one or more of its vendors, customers, or consignees. The provisions of this section shall survive the termination, expiration or cancellation of this Agreement for a period of five (5) years.

20. Without the prior written consent of Broker, which Broker may withhold for any or for no reason and solely in its discretion, Carrier shall not cause or permit any Shipment tendered hereunder to be transported by any other motor carrier or substituted by railroad or other modes of transportation, and Carrier shall not have the right to assign to any third party any of its obligations or rights under this Agreement. Any such purported assignment by Carrier without first obtaining Broker's written consent as required herein shall be deemed null and void and of no legal force and effect (other than with respect to Paragraph 15 hereof, which shall bind and apply to any and all such purported assignees) and nullify and void any and all of Carrier's rights under this Agreement *in toto*. No assignment, other than one expressly authorized hereunder, shall, in any way, create any obligation by Broker or any other person to any third party.

21. This Agreement may be executed in counterparts and by facsimile or .pdf, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Signatures delivered by electronic methods shall be deemed original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CARRIER

BROKER

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

Name: IMS Transport Solutions LLC d/b/a  
IMS LOGISTICS MANAGEMENT  
SOLUTIONS

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

Address: 265 Industrial Way West, Ste 1

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

Eatontown, NJ 07724

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

Phone: (732) 935-8400

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

Fax: (732) 935-9555

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

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

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

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

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