

# **PROPERTY BROKER AGREEMENT**

This transportation or Property Agreement ("Agreement") is made and entered into by and between VIRGINIA TRANSPORTATION CORP. hereafter (VTC) a Rhode Island corporation with its principle office located in Coventry, Rhode Island and an automobile carrier, hereafter ("Carrier")

## **RECITALS**

**A.** VTC is a regulated transportation broker, licensed to arrange for the transportation of property pursuant to authority issued by the Federal Highway Administration, a copy of which is attached hereto and incorporated herein by reference, and VTC controls the transportation of the commodities to be tendered to carrier in accordance with the criteria established in 132 M.C.C. 795 and thus is a shipper under those criteria;

**B.** Carrier is a regulated motor carrier engaged in the transportation of automobiles and light trucks pursuant to certificates of public convenience and necessity and permits issued by the Interstate Commerce Commission, copies of which are attached hereto and incorporated herein by reference; and

**C.** VTC and carrier desires to provide for the transportation by carrier of load of automobiles and light trucks originated and designated by VTC, all upon the terms and conditions set forth herein below.

NOW THEREFORE, for and in consideration of the above mutual premises and the covenants and agreements contained herein, the parties hereto agree as follows:

**1. NON-EXCLUSIVE ENGAGEMENT OF CARRIER FOR TRANSPORTATION SERVICES:** VTC agrees to offer to carrier for shipment, and carrier agrees to transport by motor vehicle from and to such locations which transportation service may be designed by VTC such loads of automobiles and light trucks as VTC may desire, subject to the availability of suitable equipment of carrier, as follows:

**a.** Time is of the essence with respect to both pick-up and delivery of loads. Carrier shall insure that loads tendered by VTC to carrier pursuant to this Agreement are picked up and delivered in accordance with the shippers' requirements.

**b.** Carrier shall comply with and meet the contractual requirements of any shipper whose loads are tendered to carrier by VTC. Carrier shall comply with and meet any and all of said requirements. If requested by VTC, carrier shall acknowledge in writing to VTC carrier's understanding of said requirements and carrier's agreement to meet said requirements.

**c.** In addition to the foregoing, carrier hereby agrees to comply with all operation standards of VTC which VTC determines necessary or appropriate to provide to VTC's customers quality service. If carrier is unable to comply with such standard, it agrees to not accept the tendered load.

**d.** Carrier specifically agrees that all freight tendered to it by VTC shall be transported on equipment operated only under the authority of carrier, and that carrier shall not, in any manner, subcontract, broker or in any other form, arrange for the freight to be transported by a third party without the prior written consent of VTC.

**2. CARRIER'S INSURANCE:** During the term of this Agreement, carrier shall maintain the insurance coverage set forth herein below. On or before execution of the Agreement, carrier shall submit to VTC certificates of insurance for said insurance coverage. All said certificates of insurance shall provide that the applicable insurance carrier shall give VTC written notice not less than 30 days prior to cancellation, expiration or material change of such insurance covered by the applicable certificate. Certificates of insurance indicating renewal coverage must be received by VTC before previous coverage expires. VTC shall be named as an additional insured with respect to the coverage's identified in 2a and 2d below.

**a. Automobile Insurance:** Automobile/liability insurance with minimum limit of \$1,000,000.00. Combined single limits for Property Damage and Bodily Injury. This limit can be realized by means of an Umbrella Liability policy which extends coverage over the Automobile Policy.

**b. General Liability Insurance:** Commercial General Liability Insurance must be carried in limits of at least \$1,000,000.00 per Occurrence and \$2,000,000.00 Aggregate for Property Damage, Bodily Injury and include Personal Injury. The policy must name VTC as "Additional Insured".

**c. Worker's Compensation Insurance:** Worker's Compensation insurance in full compliance with the laws of all the States and Provinces in which the transportation services shall be performed covering carrier and its employees in such amounts as required by such laws. Workers' Compensation will be provided in the name of carrier, even though carrier may use independent contractors as drivers. Additionally, carrier should maintain not less than \$100,000 per Accident, \$100,000 per Employee, \$500,000 Policy Limit.

**d.** Carrier must maintain "all risk" broad form motor truck cargo legal liability insurance in an amount not less than \$250,000.00 per occurrence. Such insurance policy shall provide coverage to Virginia Transportation Corp., VTC's customer or the owner and/or co-signer for any loss, damage or delay related to any property coming in to the

possession of carrier under this Agreement. The coverage provided under the policy shall have no exclusions or restrictions of any type that would foreseeable preclude coverage relating to cargo claims.

e. All the foregoing insurance coverage shall be placed with insurance companies licensed to do business in the applicable jurisdiction and that are acceptable to VTC. Any restrictions of coverage other than normal policy exclusions must be identified on the applicable certificate of insurance. As an additional insured, a copy of the policy with all endorsements shall be sent to VTC. Coverage is to be provided on policies using insurance service office (ISO) forms for automobile and general liability coverage and national council of compensation insurance policies for worker's compensation.

3. **BILL OF LADING:** In the performance of its service, hereunder, carrier shall use either the bill of lading provided by VTC to carrier at the time of loading or a bill of lading of carrier, which substantially complies with VTC's requirements for bills of lading for the service hereunder. Carrier shall provide VTC with the original copy of the bill of lading executed by the consignee as proof of delivery, where the carrier delivers during normal working hours or after working hours. Carrier shall perform its services pursuant to the terms and conditions of said bill of lading. If the provisions of this agreement conflict with the provision of the bill of lading, then the provisions of this agreement shall control.

4. **PAYMENTS:** Carrier will charge and Virginia Transportation Corp. will pay for transportation services performed under this agreement the rates and charges as shown on separate rate confirmation sheets to be signed and agreed to be carrier and VTC and incorporated into this agreement before each shipment made under this agreement. Carrier represents and warrants that there are no other applicable rates or charges except those established in this agreement or in any rate confirmation sheet signed by VTC. Payment by VTC will be made within forty-five (45) days of receipt by VTC of carrier's freight bill, bill of lading, clear delivery receipt, and any other necessary billing documents enabling VTC to ascertain that service has been provided at the agreed upon charge. In the event service is provided and it is subsequently discovered that there was no applicable rate in the existing schedule of rates or supplements, the parties agree the rate paid by VTC and collected by the carrier shall be the agreed upon contract rate. Carrier agrees that VTC has the exclusive right to handle all billing of freight charges to the customer for the transportation services provided herein, and, as such, carrier agrees to refrain from all collection efforts against the shipper, receiver, consigner, consignee or the customer.

5. **CONTROL OF EQUIPMENT AND DRIVERS:** The equipment and drivers of carrier shall remain under the sole and exclusive control of carrier and such drivers shall not be, nor be deemed to be the employees of VTC.

#### 6. **CARRIERS LIABILITY RISK OF LOSS:**

a. **Claims Handling Procedure:** Carrier shall indicate on the delivery receipt any damage to those transported by carrier under this agreement. Except as otherwise provided herein, all claims for loss and damage, and any salvage arising there from, shall be handled and processed in accordance with the regulation of the Federal Highway Administration as set forth in 49 C.F.R. Part 370. Payment by carrier to VTC or VTC's customers, pursuant to the provisions of this section, shall be made within ten (10) days following receipt by carrier of VTC's written notification of the claim. In the event payment is not made, VTC shall have the right, at its sole discretion, to offset the amount of the claim against any monies owed carrier under this agreement. Carrier agrees to defend, indemnify and hold harmless VTC against any and all claims, cost, actions, expenses, including without limitation, reasonable attorney's fees and defense costs, incurred by VTC in the defense and investigation of any claims arising from the transportation services provided by carrier under this agreement.

b. **Cargo Liability:** Carrier assumes the liability of a common carrier (i.e. Carmack Amendment Liability) for loss, delay, damage to or destruction of any and all of the goods or property being transferred by carrier under this agreement. Such liability shall begin at the time the cargo was accepted by carrier at point of origin and/or to or loaded upon carrier's equipment at point of origin and continue until said cargo is delivered to the designated consignee and accepted by such consignee at destination, or to the designated consignee and accepted by such consignee at destination, or to any intermediate stop or party. Carrier's liability for any cargo loss, damage or delay shall be for the full invoice value of the item. In addition carrier shall be liable to VTC for all economic loss, including consequential damages that are incurred by VTC or its customer for any freight loss, damage or delay claim.

7. **IDEMNIFICATION:** Carrier shall indemnify and hold harmless VTC from and against any an all claims, losses, damages, liability, expenses or costs of any kind or nature whatsoever ("losses") including without limitation attorney's fees, court costs and other cost and expenses of investigation and litigation arising from or as a result of (a) the transportation party losses for accidents, losses for taxes and fines and losses for any acts of the employees, servants, agents or contractor or carrier; and (b) enforcing this indemnity.

8. **MOTOR CONTRACT CARRIER:** Both parties hereto recognize and agree that motor contract carrier services based upon the carrier either assigning motor vehicles for a continuing period of time for the exclusive use of a shipper or providing a service designed to meet the distinct needs of a shipper. This agreement does not contemplate the assignment of motor vehicles under continuing agreements, but the contract arrangement has been designated to meet the distinct needs of VTC. Carrier will assume full liability of the actual loss of, or injury to the property tendered to carrier and Sections 6 & 7 to this agreement specifically imposes this obligation upon carrier. Section 6 of this agreement further imposes obligation of the carrier that claims shall be settled in accordance with 49 C.F.R. 1005 and

are also designated to meet the distinct needs of VTC. Further VTC needs a single forum for the settlement of disputes, and Section 14 of this agreement meets and distinct needs of VTC.

**9. COMPLIANCE WITH LAW:** Carrier hereby represents and warrants that it is and will remain in compliance with all applicable Federal, State and local laws, rules and regulations.

**10. CONFIDENTIALITY AND NON-SOLICITATION:** Neither party may disclose the terms of this agreement to a third party without the written consent of the other party except (1) as required by law or regulation; (2) disclosure is made to its, subsidiary or affiliate company; or (3) to facilitate rating or auditing of transportation charges by an authorized agent and such agent agrees to keep the terms of the agreement confidential. Carrier will not solicit traffic from any shipper, consigner, consignee or customer of VTC where (1) the availability of such traffic first became known to carrier as a result of VTC's efforts, or (2) the traffic of the shipper, consigner, consignee or customer of VTC was first tendered to carrier by VTC. The carrier breaches his agreement and directly or indirectly solicits traffic from customer of VTC and obtains traffic from such customer during the term of this agreement or for twelve (12) months thereafter. Carrier shall be obligated to pay VTC, for a period of fifteen (15) months thereafter, commission, in the amount of thirty-five (35%) percent of the transportation revenue resulting from traffic transported from the customer, and carrier shall provide VTC will all documentation requested by VTC to verify such transportation revenue.

**11. TERM:** this agreement shall become effective upon the date hereof and shall continue for a period of twelve (12) months, subject to carrier's compliance with the terms and conditions of this agreement. This agreement shall atomically renew for successive periods of twelve (12) months each, unless either party notifies the other writing of such parties intention not to renew at least ninety (90) days prior to the end of the initial term any renewal term, as applicable; subject, however, to earlier termination pursuant to the terms and provisions of this Agreement. For purposes of this Agreement, the initial term and any renewal terms shall sometimes hereinafter be referred to collectively as the "term". VTC shall notify Carrier of any default of this Agreement, and Carrier shall have thirty (30) days from the date of said notice in which to cure said default. Failure of VTC to notify Carrier of any default is not a waiver by VTC of said default.

**12. TERMINATION:** this Agreement shall terminate automatically without notice to the other party if a petition in bankruptcy is filed by or against any party hereto, or it a party shall have made an assignment for the benefit of creditors, shall have been voluntarily or involuntarily adjudicated bankruptcy by any court of competent jurisdiction, or if a petition is filed for the reorganization of a party, if a receiver shall have been appointed for all or a substantial part of a party's business, or if a party shall have permitted or suffered any attachment, levy or execution to be made or levied against all or a substantial part of the property of a party.

Either party may terminate this Agreement with thirty (30) days written notice to the other if said other party is in default under this Agreement and said default has been cured within thirty (30) days from the date of said notification.

**13. NOTICES:** Notices hereunder shall be effective when mailed or delivered to the respective addresses set forth below. Either party may notify the other in writing of a change of address.

**14. GOVERNING LAW; JURISDICTION:** this Agreement shall be governed by, and construed in accordance with the laws of the State of Rhode Island without regard to any choice of law principles thereof, except that any statute or period of limitation applicable to interstate transportation shall apply. All actions arising from, or out of this Agreement shall be brought in any court of competent jurisdiction in Providence County, Rhode Island. The prevailing party shall be entitled to all court cost and expenses of litigation, including reasonable attorney fee.

**15. ENITRE AGREEMENT; SUCCESSORS AND ASSIGN; ASSIGNMENT:** this Agreement, together with the rate confirmation sheets, agreements and schedules referred to herein, shall constitute the entire Agreement between the parties hereto with respect to the subject matter hereof. This Agreement shall be binding upon and inure to the benefit of the parties hereto and there respective successors and assigns. The Agreement may not be assigned without the express prior written consent of the other party hereto. The terms of this Agreement shall apply if in conflict with the Rate Confirmation sheets.

**16. INDEPENDENT CONTRACTOR:** The relationship of the parties to each other shall be that of an independent contractor and shall not be deemed to be that of a partnership or a joint venture of any kind.

**17. WAIVER OF CARRIER'S LIEN:** carrier shall not withhold any goods of the Customer on account of any dispute as to rates or any alleged failure of VTC to pay charges incurred under this Agreement. Carrier is relying upon the general credit of VTC and hereby waives and releases all liens which Carrier might otherwise have to any goods of VTC or its Customer in the possession or control of Carrier.

The parties hereto have duly executed this agreement as of the date and signatures below written.

**CARRIER**

BY: \_\_\_\_\_

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

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

**VIRGINIA TRANSPORTATION CORPORATION**

BY: \_\_\_\_\_

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

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