



MOTOR CARRIER SERVICES AGREEMENT

This Agreement for Motor CARRIER Services ("Agreement") is entered into on _____(Date) and shall govern all of the services provided by _____, a licensed motor carrier pursuant to Docket No. MC- _____(hereinafter referred to as "CARRIER"), to Arrow 3PL Corp, 165 Hidden Ridge Drive, Syosset, NY 11791 (hereinafter "A3PL"), a licensed property broker (MC-1601359-B) and freight forwarder (Yet to be issued)) which undertakes to arrange the interstate transportation of cargo through CARRIER on behalf of A3PL's Customer(s). As used herein, "Customer" shall mean the individual, corporation or other entity which has retained A3PL to perform property brokerage or freight forwarder services, as well as all agents, representatives and subcontractors of said individual, corporation or entity, including, but not limited to all shippers and consignees of the cargo being transported, or any other party claiming a right or interest in the cargo. The terms of this Agreement are supplemented by Addendum A, Intermodal Drayage Addendum, which applies when CARRIER performs drayage services for intermodal s h i p m e n t s .

1. **TERM AND TERMINATION.** This Agreement shall be for one (1) year from the date written above and shall be automatically renewed for additional periods of one year, unless cancelled by either party. Either party shall have the right to terminate this Agreement upon thirty (30) days' prior written notice.

2. **OPERATING AUTHORITY, SAFETY AND COMPLIANCE WITH LAW.** CARRIER

represents and warrants that:

- a. CARRIER is a Registered Motor carrier of Property authorized to provide, as a contract carrier, transportation of property under contracts with shippers and receivers and/or brokers of general commodities.
- b. CARRIER is in compliance, and shall maintain compliance during the term of this Agreement, with all applicable federal, state (including, but not limited to, as applicable, Title 13 of the California Code of Regulations, §2477, et al., commonly referred to as the California CARB reefer rules, California Air Resources Board (ARB) Heavy-Duty Vehicle Greenhouse Gas (Tractor-Trailer GHG) Emission Reduction Regulations, and California ARB TRU ACTM in-use regulations) and local laws relating to the provision of its services including, but not limited to: transportation of Hazardous Materials,

(including the licensing and training of drivers), as defined in 49 C.F.R §172.800, §173, and §397 et seq. to the extent that any shipments hereunder constitute Hazardous materials; security regulations; owner/operator lease regulations; loading and securement of freight

regulations; implementation and maintenance of driver safety regulations including, but not limited to, hiring, controlled substances, hours of service regulations; sanitation, temperature, contamination requirements for transporting food, perishables, and other products; qualifications and licensing and training of drivers; implementation and maintenance of equipment safety regulations; maintenance of and control of the means and method of transportation including, but not limited to, performance of its drivers. CARRIER shall be liable for and agrees to indemnify A3PL and its Customer(s) for any penalties or other liabilities imposed upon A3PL and its Customer(s) as a result of CARRIER's use of equipment found to be noncompliant with any laws, statutes, regulations, or requirements, including but not limited to those set forth above.

- c. CARRIER does not have an "Unsatisfactory" safety rating issued by the Federal Motor Carrier Safety Administration ("FMCSA"), U.S. Department of Transportation, and will notify A3PL in writing immediately if its safety rating is changed to "Unsatisfactory" or "Conditional," or if its authority has been suspended or revoked.

3. SHIPMENTS OF FOOD PRODUCTS AND REFRIGERATED SHIPMENTS.

- a. CARRIER represents and warrants that it is experienced in transporting food products and refrigerated products. CARRIER agrees that food which has been transported or offered for transport under conditions that are not in compliance with the load handling instructions, as provided to CARRIER, may be considered "adulterated" within the meaning of the Food, Drug and Cosmetic Act, 21 U.S.C. § 342(i), and its implementing regulations, 21 C.F.R. Part 1.900.
- b. CARRIER understands and agrees that adulterated shipments may be refused by the consignee or receiver, upon their delivery, at destination, and CARRIER agrees that it shall bear sole risk of rejection of cargo arising from or related to broken seals or failure to comply with load handling instructions, and that failure to comply with either such specifications may result in partial or total damage to the shipment and/or partial or total rejection of the shipment. CARRIER further understands and agrees that such products are commonly subject to strict quality control specifications that may require destruction of the shipment in the event required temperatures are not maintained, which may eliminate the ability to salvage the shipment in whole or in part.
- c. With respect to the transportation of shipments of food products governed by regulations of the Food and Drug Administration ("FDA"), 21 C.F.R. Part 1.900, and regardless of whether such FDA regulations apply to CARRIER by force of law:
 - (i) CARRIER shall be responsible for the safe and sanitary condition of all equipment used during the transportation of the goods, including all vehicles and Transportation Equipment, as defined in applicable food safety regulations, and shall transport the goods without adulteration.
 - (ii) All Transportation Equipment must be sanitary, dry and leak proof, and free from harmful or offensive odors, pest infestation or any residue or contaminants which would cause adulteration of the particular commodity being transported, as defined in 21 U.S.C. §342.

- d. CARRIER will not accept shipments until CARRIER's trailer has been pre-cooled to the proper temperature.
- e. CARRIER will confirm that delivery dates and temperature requirements are the same on the bill of lading received at the loading dock and the Rate Confirmation Agreement CARRIER received from A3PL. If there is a discrepancy between the delivery dates and temperature requirements in the bill of lading and the Rate Confirmation Agreement, CARRIER shall not depart the loading dock without notifying A3PL of the discrepancy and receiving further instructions, and CARRIER assumes all risk of loss to the cargo if it proceeds with transporting the cargo in the absence of notice to the A3PL and receipt of further instructions.
- f. CARRIER shall transport perishables at the required temperature during the entire period of transportation, accepts all risk of loss for loading or transporting shipments at incorrect temperatures, and agrees to defend, indemnify and hold A3PL harmless from and against any and all damages which may be claimed by the owner of the goods as a result of the seal being broken in transit, even if:
 - (i) the refrigeration equipment does not suffer a mechanical breakdown or derangement during the CARRIER's possession of the goods; or
 - (ii) the goods have suffered no verifiable physical loss but have been rejected on the sole basis that the temperature was not maintained during transit at the temperature set forth in the bill of lading.
- g. CARRIER shall use trailers equipped with downloadable temperature readings where temperature control is required and shall report to A3PL any temperature variance immediately.
- h. CARRIER shall provide temperature readings and all other data relevant to the operation of its refrigeration equipment immediately upon A3PL's demand. A3PL may request CARRIER to provide temperature reading and data at any point during transit, and CARRIER agrees to provide this information immediately and at no additional charge to A3PL. Failure to do so will entitle broker to withhold payment of any freight owed to

CARRIER for the load for which records are requested and for any other freight for any other shipments which may then be owed under this Agreement by A3PL to CARRIER.

- i. CARRIER shall be responsible for maintaining all required temperature controls and records of the same, and will unconditionally hold harmless, indemnify and defend A3PL for failure to do so. CARRIER warrants and represents that it has maintained its refrigeration systems and all associated mechanisms, as well as hard break records as required by state and federal law and agrees to provide all records and documentation concerning the same to A3PL.
- j. CARRIER agrees that when it is transporting goods which require the trailer to be sealed immediately after loading, CARRIER accepts responsibility to confirm that the trailer has been appropriately sealed before it leaves the dock to commence any transit. CARRIER further agrees that the trailer will remain sealed during transit, with the seal remaining unbroken and intact until the trailer is accepted and opened by the consignee. In the event the trailer arrives at the place of unloading of the goods with a broken seal, CARRIER is solely responsible for such

condition, and agrees to defend, indemnify and hold A3PL harmless from and against any and all damages which may be claimed by the owner of the goods as a result of the seal being broken in transit, even if the goods have suffered no verifiable physical loss and were rejected on the sole ground that the seal was broken in transit.

- k. In the event a food product and/or refrigerated shipment is partially or wholly rejected (for any reason), or CARRIER is unable to deliver a shipment for any reason, CARRIER will immediately notify A3PL (or shipper if directed by A3PL), for disposition/salvage instructions. Pending receipt of disposition instructions, CARRIER shall place the shipment in a holding facility as instructed by A3PL, or A3PL's Customer, or if no instructions then at a receiver, a public warehouse, or in its own storage facility at the required temperature.

4. SHIPMENTS AND PERFORMANCE OF SERVICES.

- a. A3PL agrees to solicit and obtain freight transportation business for CARRIER on a non-exclusive basis to the mutual benefit of CARRIER and A3PL. This Agreement does not grant CARRIER an exclusive right to perform the transport related services for A3PL or its Customer, and A3PL is free to engage other motor carriers to engage in similar transportation services. Neither party has any volume commitment obligations. CARRIER agrees and acknowledges that all calls are recorded by A3PL.
- b. CARRIER shall not claim, or demand broker's commissions earned by A3PL on shipment subject to the Agreement. CARRIER expressly waives its right to receive and review information, including broker's commission information, pursuant to 49 C.R.R. §371.3.
- c. CARRIER agrees that, when A3PL is acting as a property broker, the insertion of A3PL's name as the carrier on a bill of lading shall be for A3PL's Customer's convenience only and shall not change A3PL's status as a property broker or CARRIER's status as a motor carrier.
- d. CARRIER represents and warrants that it will not broker, subcontract, interline, co broker, assign or trip lease any shipments which A3PL has tendered to CARRIER to any other person or entity conducting business under a different operating authority without the prior written consent of A3PL. Without such written consent, all tendered shipments shall be transported only on equipment insured, placarded and controlled by CARRIER. In the event that CARRIER breaches this warranty, CARRIER shall remain directly liable to A3PL and its customer as if CARRIER transported such shipment under its own authority in accordance with this provision, and shall further defend, hold harmless and indemnify A3PL and its customer from and against any and all loss, liability, damage to the shipment or any other damage, claim, fine, cost or expense, including reasonable attorney's fees, arising out of or in any way related to the breach of this warranty, including any demand for freight charges by the actual delivering carrier. A3PL shall also have the right to pay any freight it may owe CARRIER directly to the delivering carrier, in lieu of payment to CARRIER. CARRIER agrees that, as liquidated damages, A3PL is entitled to reimbursement of all freight A3PL paid CARRIER, as well as (1) any freight A3PL paid to the actual delivering carrier; (2) any freight for any other any other shipments under this Agreement which may be owing by A3PL to CARRIER; (3) \$25,000 as liquidated damages for the damages for loss of business and reputation caused

by the breach of this provision.

e. CARRIER shall transport shipments to the destination specified in the bill of lading without delay caused by anything within CARRIER's control and with reasonable dispatch, unless the shipper specifies a delivery date and/or time prior to CARRIER's receipt of the shipment, in which case, delivery shall be performed in accordance with the schedule specified by the shipper.

f. CARRIER agrees that the safe transportation of the shipment over the road is the non-delegable duty of the CARRIER. When each shipment is received by CARRIER from A3PL's customer, CARRIER will request and obtain instructions about all handling, securing and cargo protection requirements from the customer, including specifications noted on the bill of lading. CARRIER agrees that it has the non-delegable duty to inspect all Bills of Lading and the shipment for any overweight, over dimension, bracing, blocking, securing and balancing issues or requirements prior to commencing transportation, and that it does not rely on A3PL for this information or assessment. CARRIER is solely responsible for ensuring that all shipments are properly blocked and braced for transportation. CARRIER is responsible for confirming the actual weight and count received from the shipper prior to commencing anyis responsible for any shortage on delivery.

5. PAYMENT TERMS.

a. CARRIER has investigated, monitored, and agrees to conduct business hereunder based on the creditworthiness of A3PL and is granting A3PL credit terms accordingly.

b. On all shipments tendered to CARRIER pursuant to this Agreement, compensation shall be paid to CARRIER solely and exclusively by A3PL, in the amount(s) set forth in the Carrier Rate Confirmation Agreement sent by A3PL to CARRIER for shipments brokered to CARRIER. The Carrier Rate Confirmation Agreement, including all warranties, terms and conditions contained therein, is hereby incorporated herein by reference and shall be considered a part of this Agreement. Any accessorial charges such as loading-unloading fee, entry fee, pallet exchange, etc., are included in agreed freight rate, and no such separate accessorial charges will be paid by A3PL unless specifically itemized and agreed to in the Carrier Rate Confirmation Agreement as separate from the agreed freight rate.

c. As a condition precedent to payment, CARRIER shall submit to A3PL the bill of lading and proof of delivery, and any other documents which A3PL may require for the shipment, WITHIN FIVE (5) DAYS of delivery of each shipment transported pursuant to this Agreement. CARRIER'S invoice must contain A3PL's Pro No. to identify the shipment to which it pertains. A3PL agrees to pay CARRIER's uncontested invoice within 30 days of receipt of the bill of lading, proof of delivery and any other required shipping documents, provided CARRIER is not otherwise in default under the terms of this Agreement.

d. A3PL shall not be responsible for the payment of any freight bills for any charges which are not

submitted to A3PL by CARRIER within 180 days of the date of delivery of the shipment(s) represented on any such freight bills. Any claim for overpayment or underpayment for the motor carrier services provided pursuant to this Agreement shall be presented by the party asserting the claim to the other party within 60 days of the discovery of the claim, but in no event will any such claim(s) be asserted more than one hundred and eighty (180) days after the delivery of the shipment(s) giving rise to any such claim. Any civil action to recover or collect any unpaid freight charges, overcharges or undercharges shall be instituted within 18 months of the date of delivery, or its right to sue or otherwise seek payment shall be waived.

- e. CARRIER authorizes A3PL, and grants A3PL the exclusive right to invoice CARRIER's freight charges directly to A3PL's Customer or any party to the bill of lading. CARRIER

ACKNOWLEDGES AND AGREES THAT CARRIER IS PROHIBITED UNDER THIS AGREEMENT FROM CONTACTING A3PL'S CUSTOMERS, CONSIGNORS, CONSIGNEES, OR ANY OTHER PARTY APART FROM A3PL, CONCERNING PAYMENT FOR CARRIER'S SERVICES UNDER THIS AGREEMENT, AND SHALL REFRAIN FROM ALL COLLECTION EFFORTS AGAINST ANY SUCH PERSON OR ENTITY. CARRIER FURTHER AGREES THAT THIS PROHIBITION EXTENDS TO AND INCLUDES ANY AND ALL COLLECTION AGENTS, FACTORING AGENTS OR ATTORNEYS ACTING ON CARRIER'S BEHALF. CARRIER shall be liable for all damages A3PL incurs as a result of any breach of this provision, including damages for loss and interruption of business, damage to broker's commercial reputation, loss of profits and tortious interference with business relations, and agrees that A3PL shall be entitled to seek injunctive relief.

- f. CARRIER hereby assigns to A3PL all its rights to collect freight charges from A3PL's customers or any responsible third party on receipt of payment from A3PL.
- g. CARRIER agrees that A3PL has the discretionary right to offset any payments owed to CARRIER hereunder for liability incurred by A3PL as a result of CARRIER's breach of this agreement, including, but not limited to, claims for cargo loss, damage, or delay.
- h. CARRIER agrees that any tariffs, circulars, pricing authorities and/or similar documents that it publishes shall not apply to the transportation services provided by the CARRIER under this Agreement.
- i. Waiver of Lien. CARRIER shall not withhold any goods of any A3PL'S customer on account of any dispute as to rates or any alleged failure to receive payment of freight charges incurred under this Agreement.
- j. **Factoring.** CARRIER shall provide A3PL written notice of any assignment, factoring, or other transfer of its right to receive payments arising under this Agreement at least THIRTY (30) days prior to any such assignment, factoring or other transfer taking legal effect as to A3PL's payment obligation hereunder. A3PL shall not be obligated to honor any factoring, assignment or any other transfer of CARRIER's right to receive payment hereunder unless such notice is timely received per the terms of this Agreement.
- k. Surety Bond Claims. In the event CARRIER files any claim against A3PL's surety bond and that claim is rejected, denied or withdrawn, CARRIER shall be liable for A3PL's attorney's fees and

costs in defending against such claim, and for any damages A3PL has sustained as a result of such claim being lodged against its bond.

6. BILLS OF LADING.

- a. CARRIER shall issue and sign a standard, uniform straight bill of lading or other receipt (“Bill of Lading”) in compliance with 49 C.F.R. §373.101 (and any amendments thereto), for the property it receives for transportation under the Agreement. If the CARRIER permits the shipper to prepare the Bill of Lading, CARRIER warrants that it shall ensure that the Bill of Lading properly names CARRIER as the “carrier” before signing it and shall strike out any incorrect designation of the A3PL, or any other entity, as carrier, and write in the CARRIER’s name.
- b. Unless otherwise agreed in writing, CARRIER shall become fully liable for the cargo when it takes and/or receives possession thereof, or the CARRIER’s trailer is loaded, regardless of whether a Bill of Lading has been issued, signed by and/or delivered to CARRIER. CARRIER’s liability shall continue until delivery of the shipment to the consignee and receipt of signature from the consignee on the Bill of Lading or delivery receipt.
- c. The Bill of Lading shall be prima facie evidence of the receipt of the shipment in good order and condition by the CARRIER, unless otherwise noted on the face of the Bill of Lading. CARRIER shall notify A3PL immediately of any exception made on the Bill of Lading or delivery receipt. CARRIER shall submit the original of the Bill of Lading to A3PL. If CARRIER fails to retain custody of the original Bill of Lading, CARRIER assumes all risk of loss from any resulting failure in being able to prove delivery in good condition.
- D. Any terms of the Bill of Lading (including payment and credit terms, released rates and released value) inconsistent with the terms of this Agreement shall be controlled and superseded by them.

7. CARGO LOSS, DAMAGE OR DELAY.

- a. CARRIER shall have the sole and exclusive care, custody and control of cargo tendered by A3PL from the time the CARRIER picks up the cargo for transportation until delivery to the consignee. CARRIER shall be liable to A3PL, its Customer, bill of lading parties and other cargo interests (collectively “cargo claimants”) for the full actual loss or damage to the cargo tendered pursuant to this Agreement occurring during interstate or intrastate motor truck transit, and shall indemnify, defend and hold harmless A3PL, and its Customer, from and against any loss, delay (including late delivery penalties), damage to or destruction to the cargo arising from CARRIER’S performance of or failure to perform services under this Agreement. CARRIER’s indemnification liability herein for cargo loss and damage claims shall include A3PL’s reasonable attorneys’ fees incurred in its own defense and to enforce its right to indemnity and defense, which shall constitute special damages, the risk of which is expressly assumed by CARRIER. CARRIER is prohibited from limiting liability based on released rates, and any attempt to limit liability in a bill of lading or otherwise shall be null and void.
- b. CARRIER shall comply with 49 C.F.R. §370.1 et seq., and any amendments and/or any other applicable regulations adopted by the FMCSA, or any applicable state regulatory agency, for processing all loss and damage claims.

- c. CARRIER shall pay, decline or make a settlement offer in writing on all cargo loss and damage claims within 30 days of receipt of a claim from A3PL. Failure of CARRIER to pay, decline or offer settlement within such 30-day period shall be deemed admission by CARRIER of full liability for the amount claimed and shall be deemed a material breach of this Agreement.
- d. In the event a claim is not resolved to the satisfaction of A3PL or its customer within 30 days of presentation, A3PL, in its sole discretion, may elect to offset the full amount of the claimed amount against freight charges otherwise due and owing to CARRIER until the merits of the claim are resolved. In addition, in such event, A3PL may, in its sole discretion, elect to pay its customer's claim, in whole or in part, and A3PL (a) shall be entitled to indemnity from CARRIER pursuant to paragraph 7.a above for the full claim amount A3PL pays its customer in settlement of any cargo claim; (b) shall be entitled to sue CARRIER in A3PL's name and/or as assignee of its Customer, as a claim for indemnity and breach of contract under this Agreement; and (c) CARRIER expressly waives any right to claim A3PL paid its customer's claim as a volunteer, or that any aspect of A3PL's claim is preempted by 49 U.S.C. 14706.
- e. CARRIER waives any right to salvage goods subject to this provision, as well as any right to claim an offset for the value of salvage.
- f. In the event of damage to branded or labeled goods, or to food products governed by regulations of the FDA, 21 C.F.R. Part 1.900, A3PL's customer may determine, in its sole discretion, whether goods may be salvaged. If A3PL's customer permits its goods to be salvaged, and carrier pays the full, actual value of the damaged goods, CARRIER may then, and only then, retain custody of the goods after removing any identifying marks or labels and/or complying with the customer's specific conditions of salvage, and, in the case of food products, CARRIER must do so in compliance with all applicable food safety regulations.
- g. Any exclusion from coverage contained in CARRIER's cargo insurance as required herein shall not affect CARRIER's liability for cargo loss, damage, or delay.

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8. **EQUIPMENT AND DRIVERS.** CARRIER represents and warrants, that at its sole cost, it shall (1) provide the necessary equipment ("Equipment") and qualified personnel for completion of the transportation services required for A3PL and/or its customers under this Agreement; (2) pay all expenses related, in any way, with the use and operation of the Equipment; (3) maintain Equipment in good repair, mechanical condition and appearance; and (4) utilize only competent, able and legally licensed personnel. CARRIER shall have full control of such personnel. CARRIER will not supply equipment that has been used to transport hazardous wastes, solid or liquid, regardless of whether they meet the definition in 40 C.F.R. §261.1 et. seq.

9. **INDEPENDENT CONTRACTOR.** It is understood and agreed that the relationship between A3PL and CARRIER is that of an independent contractor and that no employer/employee relationship exists or is intended. A3PL has no control over CARRIER, including routing of cargo, and nothing contained herein shall be construed as inconsistent with this provision. CARRIER shall perform the

services hereunder as an independent contractor and shall assume complete responsibility for all state and federal taxes, assignments, insurance, including but not limited to workers compensation, unemployment compensation, disability, pension and social security insurance and any other financial obligation arising out the transportation hereunder. This Agreement does not create, nor shall it be deemed to create a partnership, joint venture or agency relationship between A3PL and CARRIER. CARRIER shall have the exclusive control over its operations, equipment, employees, contractors, subcontractors, and agents, as well as tractors, trailers and other equipment, used to perform transportation services under this Agreement. CARRIER admits that A3PL has no right to control, discipline or direct the performance of CARRIER, its employees, contractors, subcontractors, agents or drivers, and neither the terms this Agreement, nor any act or omission of A3PL, shall be construed to imply coercion of CARRIER or CARRIER's drivers, employees or agents to violate any driver safety rules and regulations, including but not limited hours-of-service rules and regulations.

10. **INSURANCE.** CARRIER represents and warrants to A3PL (and to its customers) that it meets the following criteria:

- a. CARRIER shall maintain Broad Form Motor Truck Cargo Liability ("Cargo") insurance, covering all owned, non-owned and hired vehicles, scheduled and unscheduled, in the amount of not less than \$100,000 per shipment. Such insurance policy shall provide coverage to A3PL, A3PL'S customer and the beneficial owner and/or consignee for any loss, damage or delay related to any property coming into the possession of CARRIER under this Agreement. The coverage provided under the policy shall have no exclusions or restrictions of any type that would foreseeably preclude coverage relating to cargo claims.
- b. CARRIER shall maintain Automobile Public Liability and Property Damage Insurance, marked as either an "Any Auto," "Scheduled and Hired" or "All Owned and Hired", in the amount of not less than \$1,000,000 (\$5,000,000.00 if transporting hazardous materials including environmental damages due to release or discharge of hazardous substances) per occurrence (with BMC-91 on file), including any additional BMC 32 and MCS 90 Endorsements as required by law.
 - c. CARRIER shall maintain worker's compensation insurance as required by state law.
- D. CARRIER shall have Commercial General Liability coverage of at least \$1,000,000 per occurrence.
- e. CARRIER shall provide a certificate of insurance naming A3PL as additional insured on any Commercial General Liability of Automobile Liability insurance policy, and as a "loss payee" on the Cargo policy.
- f. CARRIER shall furnish to A3PL written certificates obtained from the insurance carrier(s) showing that such insurance has been procured, is being properly maintained, the expiration date, and specifying that written notice of cancellation or modification of the policies shall be given to A3PL at least thirty (30) days prior to such cancellation or modification. Upon request of A3PL or its designated insurance consultant, CARRIER shall provide A3PL, A3PL's consultant, or customer with copies of the applicable insurance policies.

- g. If CARRIER's insurer denies coverage for any claim for cargo loss and damage for which payment is owed to A3PL or its customer under the terms of this Agreement, or otherwise fails or refuses to pay such claim, then the officer of CARRIER signing this agreement (the "Guarantor") hereby absolutely and unconditionally personally guarantees the prompt, complete, and full and punctual payment of CARRIER's obligations hereunder. The obligation of the Guarantor is primary and independent of CARRIER's obligations under this Agreement and may be enforced directly against the Guarantor independently of and without proceeding against CARRIER or exhausting or pursuing any remedy against CARRIER or any other person or entity.
- h. Limited Power of Attorney. CARRIER does, by this Agreement, make and appoint A3PL, and A3PL's duly appointed agents, its true and lawful attorney, in CARRIER's place and stead, for the following specific purpose only: to communicate with CARRIER's Motor Truck Cargo Liability Insurer regarding any and all aspects of any cargo claim arising under the scope of the Agreement, including, but not limited to, the coverage, adjustment and disposition of such claims, giving and granting A3PL full power and authority to do and perform all and every act and thing whatsoever necessary to be done in and about the specific and limited premises (set out herein) as fully, to all intents and purposes, as might or could be done if performed by CARRIER, hereby ratifying and confirming all that A3PL shall lawfully do or cause to be done by virtue hereof.
11. **INDEMNIFICATION.** CARRIER shall defend, indemnify, and hold A3PL, its customer, and their respective parents, subsidiaries, affiliates, employees, officers, directors and agents affiliated entities, harmless from and against any and all losses, harm, injuries (including personal injury and death), damages (including cargo loss and damage, theft and delay), claims, costs, expenses (including reasonable attorney's fees incurred in the defense of claims and in enforcing the right of indemnity and defense) and liabilities, arising out of or in any way related to the services provided by CARRIER, its employees, agents and contractors, under this Agreement, unless resulting directly from the negligence or willful act or omission of A3PL or its customer.
12. **BACK SOLICITATION.** CARRIER shall not knowingly solicit shipments (or accept shipments) for a period of 15 month(s) following termination of this agreement for any reason, from any shipper, consignor, consignee, or other customer of A3PL, when such shipments of shipper customers were first tendered to CARRIER by A3PL. In the event of breach of this provision, A3PL shall be entitled, for a period of twelve (12) months following delivery of the last shipment transported by CARRIER under this Agreement, to a commission of fifteen percent (15%) of the gross transportation revenue (as evidenced by freight bills) received by CARRIER for the transportation of said freight as liquidated damages. Additionally, A3PL may seek injunctive relief and in the event, it is successful, CARRIER shall be liable for all costs and expenses incurred by A3PL, including, but not limited to, reasonable attorney's fees.
13. **ASSIGNMENT/BENEFIT OF AGREEMENT/CUSTOMER AS THIRD-PARTY BENEFICIARY.** Neither this Agreement nor any of the rights or obligations hereunder may be assigned (including, without limitation, by operation of law, merger, change of control or otherwise), delegated or subcontracted, without the prior written consent of A3PL. Any unauthorized assignment, delegation or subcontracting of this Agreement or any of the rights or obligations hereunder shall be null, void and of no effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto,

their heirs, executors, successors and assigns. IT IS EXPRESSLY AGREED BETWEEN THE PARTIES THAT A3PL'S CUSTOMER IS INTENDED TO BE A THIRD-PARTY BENEFICIARY UNDER THIS AGREEMENT AS TO ALL PROVISIONS, INCLUDING, BUT NOT LIMITED TO, PARAGRAPH 5 OF THIS AGREEMENT PROHIBITING CARRIER, OR ANY COLLECTION AGENT OR ATTORNEY RETAINED BY CARRIER, FROM SEEKING COLLECTION OF FREIGHT CHARGES FROM A3PL'S CUSTOMER, and no other party shall be considered a third-party beneficiary of this Agreement, except as otherwise set forth in this Agreement.

14. **SEVERABILITY AND SURVIVAL.** In the event any of the terms of this Agreement are determined to be invalid or unenforceable, no other terms shall be affected, and the unaffected terms shall remain valid and enforceable as written. The representations, rights and obligations of the parties hereunder shall survive termination of the Agreement.
15. **CONFIDENTIALITY.** In addition to confidential information protected by law, statutory or otherwise, the parties agree that all of their financial information and that of their respective customers, including, but not limited to, freight and brokerage rates, amounts received for brokerage services, amounts of freight charges collected, freight volume requirements, as well as personal customer information, customer shipping or other logistics requirements shared or learned between the parties and their respective customers, shall be treated as Confidential and shall not be disclosed or used for any reason without prior written consent. In the event of violation of this Section, the parties agree that the remedy at law, including monetary damages, may be inadequate and that the parties shall be entitled, in addition to any other remedy they may have, to an injunction restraining the violating party from further violation of this Agreement, in which case the prevailing party shall be entitled to payment or reimbursement from the violating party for all costs and expenses incurred by or on behalf of the prevailing party, including, but not limited to, reasonable attorney's fees.
16. **WAIVER.** This Agreement is for specified services pursuant to 49 U.S.C. §14101(b). To the extent that terms and conditions herein are inconsistent with Part (b), Subtitle IV, of Title 49 U.S.C. (ICC Termination Act of 1995), the Parties expressly waive any or all rights and remedies they may have under the Act. However, nothing in this Agreement shall be construed as waiving any provision governing CARRIER'S compliance with all statutory registration, insurance, and/or safety related requirements relative to motor carriers, such as CARRIER. Failure of A3PL to insist upon CARRIER'S strict performance under this Agreement or to exercise any right or privilege arising hereunder shall not be a waiver of any A3PL's rights or privileges herein.
17. **CONSEQUENTIAL LOSSES.** Except as provided herein, neither A3PL nor CARRIER shall be liable to the other for consequential damages without prior written notification of the risk of loss and its approximate financial amount, and agreement to assume such responsibility in writing. Loss or damages arising out of delayed delivery, failed delivery, or failure to maintain required temperatures of refrigerated shipments shall not constitute consequential damages.
18. **NOTICES.**
 - a. All notices provided or required by this Agreement, shall be made in writing and delivered, return receipt requested, to the addresses shown herein with postage prepaid; or by confirmed (electronically acknowledged on paper) fax, or by email with electronic receipt.

- b. The Parties shall promptly notify each other of any claim that is asserted against either of them by anyone arising out of the Parties performance of this Agreement.
- c. Notices sent as required hereunder, to the addresses shown in this Agreement shall be deemed sent to the correct address, unless the Parties are notified in writing of any changes in address.
19. **EMAIL AND FAX CONSENT.** The Parties to this Agreement are authorized to email or fax to each other at the numbers shown herein, (or otherwise modified in writing from time to time) shipment availabilities, equipment and rate promotions, or any advertisements of new services.
20. **FORCE MAJEURE.** In the event that either Party is prevented from performing its obligations under this Agreement because of an occurrence beyond its control and arising without its fault or negligence, including without limitation, war, riots, rebellion, acts of God, pandemics, public health emergencies, quarantines and business restrictions by public health authorities and other acts of lawful authorities, fire, strikes, lockouts or other labor disputes, such failures to perform shall be excused for the duration of such occurrence. Whenever possible, in the event of a force majeure event, the affected party shall promptly notify the other party in writing, stating the reasons for the inability to comply with the provisions of this Agreement, and the expected duration of the force majeure event. Economic hardships, including recession and depression, shall not constitute Force Majeure events.
21. **CHOICE OF LAW, VENUE AND FEES.** This Agreement shall be governed by Illinois law without application of its conflict of laws principles. Any suit relating to this Agreement shall be instituted in a state or federal court in either Cook County, Illinois, or in the Counties of Nassau or Suffolk, New York, and the parties irrevocably consent and waive all objections to the jurisdiction of any such court. If CARRIER fails to make any payment for any obligation due under this Agreement, CARRIER shall reimburse A3PL for its costs of collection, including court costs and reasonable attorneys' fees.
22. **MODIFICATION OF AGREEMENT.** This Agreement may not be amended, except by mutual written agreement.
23. **ENTIRE AGREEMENT.** Unless otherwise agreed in writing, this Agreement, in addition to Addendum A Intermodal Drayage Addendum, the Carrier Rate Confirmation Agreement sent by A3PL to CARRIER for shipments under this Agreement, contains the entire understanding of the Parties and supersedes all prior verbal or written agreements, arrangements, or understandings of the Parties relating to the subject matter stated herein, including, but not limited to all tariffs, rates, classifications and schedules published, filed or otherwise maintained by CARRIER.
24. **COUNTERPARTS.** This Agreement and any amendments hereto may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. The delivery of signed counterparts by facsimile or email transmission (including PDF and TIF formats) that includes a copy of the sending party's actual or electronic signature is as effective as signing and delivering the counterpart in person.
25. **CONSENT TO CONDUCTING BUSINESS USING ELECTRONIC METHODS.** Pursuant to the

regulatory guidance concerning electronic signatures and documents, 74 Fed. Reg. 411, issued by the Department of Transportation, the parties hereby consent and agree to conduct business using electronic signatures. CARRIER agrees and acknowledges that the electronic method which Broker has adopted to allow for electronic signatures: (1) identifies and authenticates CARRIER as the source of the electronic communication; (2) indicates CARRIER'S approval of the information contained in the electronic communication; and, (3) produces an electronic document with the same integrity, accuracy, and accessibility as a paper document or hand written signature. Either party may elect with respect to any document to use a manual/hard copy signature, provided that such election shall not preclude the other party from applying an electronic signature to that same document.

ADDENDUM A – INTERMODAL DRAYAGE ADDENDUM

The terms of this Addendum shall apply when CARRIER performs drayage services for intermodal shipments on behalf of A3PL under this Agreement.

1. CARRIER represents and warrants that it is in good standing with the intermodal Association of North America (IANA) and is a current signatory to the Uniform intermodal Interchange Agreement (UIIA). CARRIER further warrants and represents that it currently has and shall continue to maintain during the Term of this Agreement active and in good standing interchange agreements with all railroads, trailer leasing companies, and steamship lines necessary to provide the services contemplated by this Addendum. CARRIER further represents and warrants that it has affected and/or obtained, and shall maintain all necessary approvals, authorizations and rights of access to the terminals to and from which freight shall be transported on A3PL'S behalf. CARRIER does hereby indemnify and hold harmless A3PL from any liability, loss or expense on account of CARRIER's failure to comply with the terms and conditions of the UIIA and any such interchange agreements.

2. CARRIER assumes the risk of loss or damage to any trailer, container, or chassis while under CARRIERS care, custody, or control, and shall defend and indemnify A3PL and its Customer from any such loss or damage.

3. CARRIER will comply with American Association of Railroads ("AAR") and UIIA rules regarding loading and blocking/bracing of intermodal shipments. CARRIER shall be liable for all freight loss or damage arising out of loading deficiencies performed by CARRIER.

4. CARRIER shall ensure that all loaded and empty containers transported by CARRIER under this Addendum are delivered to the correct location and/or dropped in the correct yard designated by A3PL. CARRIER's failure to do so will result in a monetary assessment of \$200 per calendar day (from date of drop at incorrect delivery point until the container is delivered to the correct delivery point) up to a maximum of \$1000 per incident. A3PL is authorized to deduct this monetary assessment against CARRIER's compensation payable under this Agreement.

5. Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage Charges. No Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage charges will apply or be paid by A3PL to CARRIER unless a pickup/delivery appointment time has been scheduled and the driver has arrived on time, and such charges are documented as being caused by A3PL's customer in taking delivery of the goods and/or releasing the intermodal equipment back to the CARRIER for return to the UIAA Equipment Provider. CARRIER must notify A3PL 1/2 hour before any Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage charges start, and any claim for such charges must be supported by proper documentation, including the invoice from the UIAA Equipment Provider, the J-1 Interchange, Bill of Lading/Proof of Delivery showing in/outdates and times. Proper documentation of Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage charges must be received within 10 business days of delivery of the shipment to be considered by A3PL for payment, unless CARRIER notifies A3PL in writing within those 10 days that its expects, but has not yet received, such charges from the UIAA Equipment Provider (given the 60 days the Equipment Provider has to issue the same) to enable A3PL to give similar notice to its Customer. Reimbursement of Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage charges will only be made if CARRIER can establish that no action or inaction on its part caused the charges to be incurred under the UIAA and were wholly the fault of A3PL's Customer.

6. Insurance. In addition to the insurance requirement of paragraph 10 of this Agreement, the following endorsements must be attached to the CARRIER's Automobile Liability Policy: the Truckers Uniform Intermodal Interchange Endorsement (Form UIIE-1), and a trailer interchange insurance endorsement.

In Witness Whereof, the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the date written below.

A3PL: ARROW 3PL, CORP

CARRIER: _____

X _____
Authorized Signature

X _____
Authorized Signature

MUST BE SIGNED BY THE OFFICER OF THE COMPANY.

MUST BE SIGNED BY OFFICER OF THE COMPANY

Name & Title

Name & Title

Date:

Date:

165 Hidden Ridge Drive, Syosset, NY 11791
Company Address.

Company Address

Phone: 855-203-2020_____

Phone: _____

Fax: 516-347-2306_____

Fax: _____

Email: Carriers@arrow3pl.com_____

Email: _____