



SATELLITE LOGISTICS GROUP, INC. STANDARD TERMS AND CONDITIONS FOR DOMESTIC CARRIAGE

Effective 01/01/2013

These Standard Terms and Conditions (“Terms”) apply to transportation services (“Services”) provided by a Provider (“Provider”) for Satellite Logistics Group, Inc. (“Broker”) under a Rate Confirmation, a Load Tender, or when the Terms are otherwise incorporated into a contract or other document by express reference.

TERMS AND CONDITIONS

1. DEFINITIONS

The following terms shall have the indicated meanings whenever this Agreement uses them in any grammatical form (unless the context clearly indicates a different meaning):

“**Agreement**” includes the Recitals above; the Terms and Conditions (Sections 1 through 26); the signature blocks; the list of Appendices and each Appendix that is populated with data or text; and, Load Tenders and corresponding Rate Confirmations issued hereunder.

A “**Business Day**” is any calendar day other than a Saturday, a Sunday or a United States Federal holiday.

A “**Distributor**” is a Shipper engaged in selling, shipping, receiving and/or other distribution activities whether as a wholesaler, retailer or both.

“**FMCSA**” means the Federal Motor Carrier Safety Administration within the United States Department of Transportation, or any predecessor or successor agency to the FMCSA.

A “**Load Tender**” is a solicitation from Satellite for transportation of a shipment or series of shipments by Provider, transmitted in either an electronic or a paper-based format describing shipment characteristics, requirements, terms and price, which Provider will either accept or reject. Each accepted Load Tender is governed by and subject to this Agreement, and made a part hereof.

“**Notice**” means written or electronic notification by one Party to the other pursuant to this Agreement.

“**Party**” means either Satellite or Provider, as the case may be; “**Parties**” means both Satellite and Provider.

“**Provider**” means the Party named above that will supply motor carrier services, including motor/rail intermodal services, or brokerage services to Satellite, meeting Satellite’s requirements under this Agreement. A Provider may be registered with FMCSA as a motor carrier of property, a broker of property, or hold both FMCSA registrations.

A “**Rate Confirmation**” is an electronic or paper-based acceptance by Provider of a Load Tender, which refers to the Load Tender by number and/or date, and manifests Provider’s agreement to the



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rates, charges and terms associated with the shipment(s) offered in the Load Tender. Each Rate Confirmation is governed by and subject to this Agreement, and made a part hereof.

“Satellite Proprietary Information” means confidential and/or proprietary business information and data of Satellite and made available to Provider in furtherance of this Agreement in written, oral, electronic, machine readable, graphic, or sample form, including, without limitation customers, vendors, agreements, service lists, routes, lanes, locations, pricing, product descriptions, flow charts (and other business process descriptions), knowledge, know-how, shipping forms, software (including related applications), and performance specifications.

“Services” means transportation services supplied by Provider to Satellite under this Agreement, meeting the requirements of a Load Tender and the terms and conditions of this Agreement. As the case may be, Provider may supply Services through its own asset-based motor carrier transportation, including motor/rail intermodal services, or through arranging transportation by an asset-based, third-party motor carrier.

“Shipper” means the third-party tendering or causing freight to be tendered for transportation in commerce, and typically refers to customers of Satellite, Satellite-managed or controlled shipping facilities, and/or Distributor(s).

2. LEGAL STATUS OF PARTIES AND SERVICES

2.1 Provider’s Operating Authority. (a) Provider represents and warrants that it currently holds and shall maintain, at all times, valid registration with FMCSA as a motor carrier of property and/or as a broker of property. (b) If any operations within Canada or Mexico or any U.S. intrastate operations are required as part of the Services, Provider represents and warrants that it holds all licenses or permits necessary for such Services. (c) Provider shall have and maintain all permits, licenses, and registrations necessary for the transportation of alcoholic beverages to the extent applicable to Provider’s operations. (d) Provider shall give Notice to Satellite concerning any change in its FMCSA registration, or in other licenses or permits, no later than two (2) Business Days after the effective date of the change.

2.2 Compliance with Laws. Provider shall comply with all laws, regulations, and rules applicable to its operations and its provision of transportation and related services, including without limitation those pertaining to security, safety, the environment, and C-TPAT Security Criteria as published by U.S. Customs and Border Protection. In addition, Provider will be subject to the terms cited in Satellite’s Supply Chain Security Best Practices available on Satellite’s website at the following Internet address <http://www.slg.com/admin/SLGSecurityBestPractices.htm>.

2.3 Legal Status of Services. Provider shall provide the Services under its registration as a motor carrier of property within the meaning of 49 U.S.C. § 13902 or as a broker of property within the meaning of 49 U.S.C. § 13904:



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- (a) A Provider that holds **only** FMCSA motor carrier registration must be “asset-based” and must transport the shipment in equipment that it owns or leases.
- (b) A Provider that holds **both** FMCSA motor carrier **and** broker registration may transport the shipment in equipment that Provider owns or leases, **or** may broker the shipment to a third-party, asset-based motor carrier. (A Provider may be treated as having both registrations when motor carrier and broker registrations are held separately by sister companies within the same corporate family.)
- (c) A Provider that holds **only** FMCSA broker registration must re-broker the shipment to a third-party, asset-based, motor carrier, and not to another broker or transportation intermediary.

2.4 Motor Carrier Compliance. When Provider provides Services as a motor carrier to physically transport a shipment in equipment owned or leased by Provider, including motor/rail intermodal service, see Section 2.3(a) or (b), above, then Provider shall comply with the following requirements:

(a) Provider shall have and maintain a “Satisfactory” FMCSA safety rating, unless it has not been assigned a rating. If Provider has not been assigned a safety rating by FMCSA, then Provider shall be allowed to perform Services with “Unrated” status. Provider shall give Notice to Satellite concerning any FMCSA compliance review, any assignment of a FMCSA safety rating, or any change in its existing FMCSA safety rating, no later than two (2) Business Days after the completion of the compliance review or the effective date of the rating action.

(b) Provider shall immediately notify Satellite in writing if one or more of its FMCSA Behavioral Assessment and Safety Improvement Category (“BASIC”) scores exceeds the relevant intervention threshold set by FMCSA, or if Provider is, at any time, cited for a “serious violation” of FMCSA regulations. Upon receiving such notice, Satellite reserves the right to suspend tender of freight until Provider has fully explained in writing its remedial measures to improve effectively its safety performance. Moreover, Satellite reserves the right to suspend tender of freight upon otherwise becoming aware of unsafe operations or practices, or poor safety performance of Provider.

(c) Provider (i) shall ensure that its drivers are properly licensed, qualified, and competent to operate the motor vehicles used to transport each shipment, and to provide related services; (ii) shall provide equipment (tractors, trailers, straight trucks, chassis, containers, etc.) that is at all times (A) clean; (B) in good operating condition and repair; (C) in compliance with all applicable Federal and State laws and regulations; and (D) suitable and properly configured to safely load, transport, and unload each shipment tendered by Satellite.

(d) Provider shall comply with all laws, regulations and rules applicable to its operations, including without limitation FMCSA regulations related to driver training and qualifications; hours of service; controlled substance and alcohol testing; inspection, maintenance and repair of equipment; load securement; and, safe operation of equipment.



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2.5 Brokerage Operations. On any occasion when Provider acts as a broker to arrange transportation of a shipment by a third-party motor carrier, see Section 2.3(b) or (c), above, then Provider must comply with the following requirements in arranging such transportation:

(a) Provider shall confirm that the motor carrier has a “Satisfactory” FMCSA safety rating; provided however that Provider may engage a motor carrier having “Unrated” status. Provider shall verify that the motor carrier holds valid and effective registration with FMCSA and, to the extent applicable, state regulatory agencies having jurisdiction over the motor carrier’s operations. Provider shall obtain and promptly make available to Satellite, upon request, copies of each third-party motor carrier’s FMCSA or state registration.

(b) Provider shall ensure that the motor carrier has valid and effective insurance coverage meeting the requirements of Sections 6.2 and 6.4, below. Provider shall obtain and make available to Satellite, upon request, copies of the motor carrier’s certificates of insurance showing the type and amount of coverage. The stated minimum dollar coverage amounts shall not operate to limit Provider’s or the motor carrier’s liability.

(c) Provider shall ensure that the cargo loss and damage liability of the motor carrier is identical to, or substantially comparable to that existing under 49 U.S.C. § 14706 (the Carmack Amendment) and shall prohibit any limitation of liability that would reduce the motor carrier’s loss and damage liability below a minimum of \$100,000 per shipment.

(d) Provider shall tender each shipment to an asset-based, third-party motor carrier and not to another broker or intermediary. Furthermore, Provider shall mandate that the motor carrier to which Provider tenders the shipment shall not “re-broker” or sub-tender the shipment to another broker or motor carrier.

(e) Provider shall require that the motor carrier comply with all laws, regulations and rules applicable to its operations, including without limitation FMCSA regulations related to driver training and qualifications; hours of service; controlled substance and alcohol testing; inspection, maintenance and repair of equipment; load securement; and, safe operation of equipment.

(f) Provider shall require the motor carrier to invoice Provider for its services, and to waive any right to seek or claim payment from the consignor or consignee of the shipment. Provider shall require the motor carrier to use a standard bill of lading for each shipment; provided however that the terms and conditions of such bill of lading shall not modify, amend, augment or supersede this Agreement or any agreement between Satellite and its customer.

(g) The foregoing requirements (a) – (f) must be memorialized in a written agreement between Provider and the third-party motor carrier, entered into pursuant to 49 U.S.C. § 14101(b), and the parties to such contract must waive all rights and remedies allowed to be waived under the Interstate Commerce Commission Termination Act.



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(h) Provider shall review the motor carrier's publicly-available FMCSA BASIC scores before booking a shipment, and, in the event that the motor carrier has one (1) or more BASIC scores that exceed FMCSA's intervention threshold, and/or in the event that the FMCSA's database shows that the motor carrier has received one (1) or more notices of serious violation, then Provider shall not engage the motor carrier to haul a shipment tendered hereunder.

2.6 Satellite's Authority. Satellite is registered with FMCSA, and operates as a broker of property pursuant to 49 U.S.C. § 13904.

2.7 Contract Carriage. All Services of Provider shall be supplied as contract carriage within the meaning of 49 U.S.C. § 14101(b). In connection with such contract carriage, Satellite and Provider expressly waive all provisions of Subtitle IV, Part B of Title 49, United States Code, that are permitted to be waived. The Parties do not, however, waive the provisions of that subtitle relating to registration, insurance, or safety fitness.

3. SCOPE OF SERVICES

3.1 Scope of Services. Provider shall supply the Services requested by Satellite under each Load Tender, and otherwise as required under this Agreement. On any occasion when Provider is providing Services as a broker, Provider must tender the shipment to an asset-based, third-party motor carrier, and must not tender the shipment to another broker or intermediary.

3.2 Responsibility of Provider. Provider shall supply all Services in a competent and professional manner, and in accordance with all applicable laws and regulations. Provider shall adhere to on-site safety and personnel conduct rules when present at a consignor or consignee facility. As between Satellite and Provider, all costs of supplying the Services (equipment, parts, fuel, labor, tolls, taxes, governmental assessments, etc.) shall be borne by Provider.

3.3 Load Tender; Non-Exclusivity. Unless specifically agreed and set forth in writing, Satellite makes no minimum volume commitment to Provider and shall issue Load Tenders from time to time in accordance with its business needs. This Agreement is non-exclusive, meaning that Satellite is free to arrange transportation of shipments with other motor carriers or brokers and, subject to the prohibitions on back-solicitation in Section 22.3, Provider may offer services to other customers.

3.4 Third-Party Equipment. (a) If Provider utilizes equipment (trailers, chassis, containers, reefers, gensets, etc.) furnished by a third-party equipment provider for use in transporting a shipment tendered hereunder, then Provider shall be responsible to such equipment provider for any damage to, destruction of, or loss of the equipment. Neither Satellite, nor the Shipper shall be responsible for such third-party equipment. (b) This Section 3.4 does not supersede the Uniform Intermodal Interchange and Facilities Access Agreement ("UIIA") on any occasion when the UIIA would govern Provider's rights, duties, and obligations with respect to the use of equipment, including without limitation any obligation of Provider to pay user fees, per diem, or charges for third-party equipment.



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4. RATES, CHARGES, TERMS AND CONDITIONS FOR SERVICES

4.1 Rates and Charges. (a) The rates and charges applicable to Provider's Services shall be fully set forth in the Load Tender which shall govern Provider's compensation; however, from time to time, the Parties may agree upon "spot market" pricing for a particular shipment or series of shipments. The applicable rates and charges for each shipment (or series of shipments) shall also be stated in the relevant Load Tender and/or Rate Confirmation. (b) The rates, charges, surcharges, and/or accessorial contained in any tariff, circular, schedule, pricing authority or similar document, as maintained by Provider or any underlying motor carrier, shall be inapplicable to this Agreement and the Services, unless specifically incorporated herein by a written instrument signed by the duly-authorized representative of each Party.

4.2 Invoicing and Payment. Invoicing procedures (which may include electronic invoicing), payment due dates, and any late payment fees shall be as mutually agreed. However, in the absence of a specific statement, Satellite shall pay Provider's properly-supported invoice within thirty (30) days of the invoice date. An invoice must be supported with shipping documents showing proof of pick-up and delivery in accordance with the Load Tender. Moreover, the Parties agree as follows:

- (a) it shall be Provider's responsibility to invoice Satellite for the rates and charges owing to Provider. Provider agrees to look solely to Satellite for payment of freight charges, and, shall not seek payment from customers of Satellite (Shippers, consignors, consignees).
- (b) it shall be Satellite's responsibility to invoice Shippers for transportation charges, including Satellite's commissions or other fees, and to take necessary measures to collect such invoices.
- (c) it shall be Satellite's responsibility to remit freight charges owed to Provider within the applicable time periods, regardless of any late payment or non-payment to Satellite by Shippers.
- (d) Provider shall cancel all rates and charges applicable to a shipment when Provider's original invoice was not submitted within eighteen (18) months of the shipment's delivery date, and neither Satellite nor any consignor or consignee shall be responsible for payment of such cancelled rates and charges.

4.3 Other Business Rules. Parties to the Agreement may set forth miscellaneous terms, conditions and business rules for the Services as mutually agreed including (without limitation) such matters as (a) mileage computations; (b) fuel, insurance, congestion and security surcharges; (c) tracking and tracing procedures; (d) loading and unloading rules; (e) equipment detention charges; (f) reconsignments, and (g) stops in transit.

4.4 Pricing Disputes. If Provider alleges underpayment of applicable freight rates and charges by Satellite, or if Satellite alleges overcharges, overcollection or receipt of duplicate payments by Provider, Notice of such claims must be given by the aggrieved Party to the other



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Party within one hundred eighty (180) days after delivery or the first attempted delivery of the involved shipment(s). The Party receiving any such claim shall process it in accordance with the provisions codified at 49 C.F.R. Part 378 as of the Effective Date of this Agreement. Any civil action or arbitration proceeding with respect to such a claim shall be filed within eighteen (18) months after delivery or the first attempted delivery of the involved shipment(s).

5. FREIGHT DOCUMENTATION; CARGO SECURITY

5.1 Receipt. When acting as a motor carrier, Provider shall issue a standard bill of lading or similar transport document ("Receipt") for each shipment transported for Satellite. The Receipt shall be non-negotiable and shall properly identify Provider as the motor carrier providing the transportation service. Satellite shall be shown as "bill to" party, and the consignor and consignee shall be properly identified as such. When acting as a broker, Provider shall upon request promptly obtain, and furnish to Satellite a copy of the Receipt issued by the third-party motor carrier. Any terms and conditions stated in the Receipt shall not modify, amend, augment or supersede this Agreement.

5.2 Seal Integrity. Satellite shall cause the Shipper to provide a unique sequentially serialized transportation seal for securement of the rear trailer door upon completion of loading. After the seal is affixed by the Shipper, Provider, when acting as a motor carrier, shall validate the placement of the seal by noting the unique serialized seal number on the Receipt for the shipment. The intent of this process is to establish a chain of custody mitigating pilferage while the shipment is in the care, custody and control of Provider.

- (a) Should the Shipper fail to provide a unique sequentially serialized transportation door seal as provided above, Provider shall provide such a seal, affix it to the rear trailer door upon loading, then note the unique serial number on the Receipt, and then obtain signature confirmation on said Receipt by both the Shipper and Provider.
- (b) If a shipment involves one or more stops in transit, a new unique and sequentially serialized seal shall be utilized and recorded on the Receipt for each segment of the movement. The following applies at the first intermediate stop and at each subsequent intermediate stop (if any). Prior to the commencement of loading and/or unloading at any intermediate stop, Provider shall remove the seal affixed at origin (or at the prior intermediate stop, if any) in the presence of the consignor or consignee at the current stop and Provider shall request such consignor or consignee to confirm in writing that (i) the seal was intact upon arrival and (ii) the seal number is the one applied at the prior stop, by making appropriate notations on the Receipt. Subsequently, upon completion of loading and/or unloading at the current stop, Provider shall validate securement by the consignor or consignee of a new seal with a unique serialized number for the next segment of the movement (or shall provide such seal if the consignor or consignee fails to do so), noting the new number on the Receipt.

5.3 Seals, Broker Operations. If Provider is serving in the capacity of a broker, then it shall instruct its third-party motor carrier to record the Shipper's seal number, and/or to apply or



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reapply seals, as provided in Section 5.2, in order to ensure the integrity of the lading and chain of custody.

6. INSURANCE; BROKER BOND

6.1 Satellite's Bond. Satellite shall at all times maintain a surety bond on file with FMCSA in the form and for the amount required by FMCSA regulations.

6.2 Insurance for Motor Carrier Operations. If Provider holds FMCSA or State motor carrier registration, see Section 2.3(a) or (b), above, then Provider shall maintain all of the following coverages (a) – (d) with reputable insurance companies:

- (a) workers' compensation coverage on all Provider employees as required under applicable state or foreign law;
- (b) general liability insurance written in an occurrence form, with per-occurrence liability limits of not less than \$1,000,000;
- (c) commercial automobile liability insurance written in an occurrence form, and including an "any auto" or "scheduled and hired autos" endorsement, with per-occurrence liability limits of not less than \$1,000,000 (or such greater amount as may be required by Federal law for any of the commodities being transported); and,
- (d) cargo liability insurance with coverage in an amount not less than \$100,000 per occurrence.

6.3 Insurance for Brokerage Operations. Notwithstanding Section 6.2, above, if Provider operates **solely** under FMCSA broker registration, see Section 2.3(c), above, and therefore does not operate as an asset-based motor carrier, then Provider is required to have the insurance coverage set forth in subsections 6.2(a) and (b). In addition, any Provider holding brokerage registration, see Section 2.3(b) or (c), above, must maintain a policy for contingent cargo liability insurance in an amount not less than \$100,000 per occurrence. A Provider operating as a broker must have and maintain, at all times, a trust fund agreement or surety bond meeting FMCSA requirements.

6.4 Certificates; Other Requirements. Upon execution of this Agreement, Provider shall furnish Satellite with insurance certificates for its general, automobile and cargo liability coverage, as set forth above, and Satellite must be designated as "additional insured" for the general and automobile insurance liability policies. Moreover, each certificate shall provide for not less than thirty (30) days' advance written notice of cancellation or non-renewal of coverage to Satellite by the insurer. In addition to the foregoing obligations, Provider shall comply with all applicable insurance requirements under Federal and State law. All insurance policies shall provide "broad form" coverage.

7. CARGO LIABILITY

7.1 Extent of Liability. Except as otherwise specifically provided in Section 7.2, below, Provider shall be directly liable to the Shipper for the full actual value of any cargo lost or



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damaged in connection with the Services pursuant to 49 U.S.C. § 14706 (the Carmack Amendment). Such liability for the full actual value of the cargo shall apply regardless of any released rates, limitations of liability or exclusions established in tariffs, circulars, schedules, service guides, rules books, bills of lading, insurance policies, etc. This standard of liability applies to a Provider falling under Section 2.3(a) or (b), above.

7.2 Liability for Brokerage Operations. If Provider operates **solely** as a broker of property, see Section 2.3(c), above, and does not hold motor carrier registration, then Provider shall be liable for loss of or damage to cargo to the extent caused by Provider's negligent acts or omissions, willful misconduct, or breach of this Agreement. In such case, Provider shall be liable for the full actual value of the cargo lost or destroyed, and no limitation of liability shall apply.

7.3 Filing and Handling of Claims. Claims for loss of or damage to cargo shall be filed and handled by Satellite on behalf of the Shipper. Provider shall acknowledge and process each claim in accordance with 49 C.F.R. Part 370 as in effect on the Effective Date of this Agreement. If Provider believes that it needs additional information to process a claim, then Provider shall promptly notify Satellite in writing, identifying the required information. Written claims must be filed within 9 months of the shipment's delivery date (or the date when delivery reasonably should have occurred, for non-delivery) and any litigation on such claims must be commenced within 2 years of the date of the written denial of the claim, in whole or in part. In the event that Satellite, in its sole discretion, decides to pay a claim of a Shipper, then such payment shall not prejudice Satellite's right to pursue and recover the claim against Provider, and Satellite (or its insurance carrier) shall be treated for all purposes as the lawful subrogee for the claim.

8. DELIVERY ISSUES; WAREHOUSE LIABILITY

If the consignee of a shipment refuses to take delivery, or if Provider is unable to accomplish delivery of the shipment, or if a Shipper instructs Provider to stop and hold the cargo in transit, then Provider's liability for the cargo shall immediately convert to that of a warehouseman. In such circumstances, the following shall occur:

8.1 Ordinary Care. Provider shall exercise ordinary care to keep the cargo in a safe and secure location (warehouse, shipping terminal, gated trailer yard, etc.).

8.2 On-Hand Notice. Provider shall furnish Satellite with a written "on-hand" Notice as soon as possible after placing the cargo at a secure location in accordance with Section 8.1.

8.3 Public Storage. If disposition instructions are not received from Satellite within 48 hours after delivery of the "on-hand" Notice, then Provider shall transfer the cargo to an appropriately-licensed public warehouse, if Provider has not already done so. Provider shall promptly provide the name, address and contact information for the public warehouse to Satellite, and a copy of the warehouse receipt issued for the cargo.

8.4 Public Sale. If Provider does not receive disposition instructions from Satellite within thirty (30) days after having placed the cargo in storage at the public warehouse, then Provider



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may, after providing thirty (30) days advance written notice to Satellite, offer the cargo for public sale and arrange for its removal from the warehouse.

8.5 Warehousing/Disposition Costs. If warehousing of the cargo is not due to the act or fault of Provider, then Provider may invoice Satellite for all reasonable costs so incurred. However, if warehousing arises due to fault or mistake of Provider, then Provider shall bear and pay such costs.

8.6 Allocation of Proceeds. Provider shall remit the proceeds of any public or private sale of the cargo to Satellite within ten (10) days of receiving same together with a detailed statement for the sale transaction, including date/time, location, price(s), quantities sold, and buyer(s) (if known). If Satellite is responsible for a portion of the warehousing and/or disposition costs under Section 8.5, above, then Provider shall also submit an itemized invoice showing the amount due for reimbursement, and Satellite shall pay same within thirty (30) days.

8.7 Perishables. As an exception to Sections 8.3 and 8.4, Provider may dispose of perishable cargo in a commercially reasonable manner, provided that at least three (3) days Notice has been given to Satellite. Proceeds of such sale are governed by Section 8.6, above.

9. SALVAGE

9.1 Authority to Determine Disposition. Satellite, acting on the instructions of Shipper, shall have the sole right to determine whether to repair, repackage, salvage or scrap damaged cargo.

9.2 Salvage Procedures. If salvage is elected, then Satellite shall instruct Provider to return the damaged cargo or to arrange its conveyance to a salvage location. The proceeds of any salvage of the cargo, less salvage costs so incurred (return transportation, repair, reconditioning, marketing, etc.), shall be applied against any liability of Provider for damage to the cargo.

9.3 Salvage by Provider. Provider shall not undertake to salvage the cargo unless expressly authorized to do so by Satellite in writing. Moreover, Provider shall adhere to any instructions issued by Satellite with regard to salvage of the cargo, such as removing all identifying marks or stamps and/or permanently and conspicuously marking the cargo as being "reconditioned" or "repaired". Furthermore, neither Satellite, nor any Shipper shall have any liability with regard to Provider's subsequent use, sale, or disposition of cargo that is salvaged by or for Provider.

10. **INDEMNIFICATION; LIMITATION OF DAMAGES**. Except with regard to cargo loss and damage liability governed by Section 7, above, each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party, including its officers, directors, employees and agents (collectively, the "Indemnified Party") from and against any and all claims, liabilities, losses, damages, harm, injuries, actions, lawsuits, fines, penalties, payments, costs, and expenses (including without limitation reasonable legal fees) to the extent caused by or resulting from the negligence, willful misconduct, and/or material breach of this Agreement by the Indemnifying Party, its employees, agents and/or contractors.



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SATELLITE SHALL NOT BE LIABLE TO PROVIDER FOR INDIRECT OR CONSEQUENTIAL DAMAGES (SUCH AS, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF MARKET, LOSS OF CUSTOMER GOODWILL, ASSEMBLY LINE SHUTDOWNS, OR PUNITIVE OR EXEMPLARY DAMAGES), REGARDLESS OF WHETHER SATELLITE RECEIVED PRIOR NOTICE OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER PROVIDER'S CLAIM FOR SUCH DAMAGES SOUNDS IN CONTRACT, TORT, BREACH OF WARRANTY, CONSUMER FRAUD, OR OTHERWISE.

11. **FORCE MAJEURE; LEGAL RESTRAINT.** If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of orders of a governmental entity (including actions taken by a court or by law enforcement officials), or because of war, terrorism, acts of God, labor disturbances, strike, civil unrest, acts of public enemy, or any cause beyond the reasonable control of such affected Party, it shall not be liable to the other Party for damages by reason of any delay or suspension of performance resulting from such cause. The Party invoking this Section 11, however, shall furnish the other Party with Notice of same no more than two Business Days after the onset of the conditions delaying or preventing performance, and shall use commercially reasonable efforts to mitigate or work around such conditions.

12. RELATIONSHIP OF PARTIES

12.1 **In General.** The relationship of Provider and Satellite is that of an independent contractor. This Agreement does not establish or imply any partnership, joint venture, joint enterprise or employer-employee relationship between the Parties. Under no circumstances shall employees or agents of Provider be deemed employees or agents of Satellite, nor shall Satellite be liable for any wages, overtime, fees, payroll taxes, benefits, assessments or other expenses relating to employees or agents of Provider.

12.2 **Payment and Non-payment.** Provider agrees to invoice only Satellite for its rates and charges, to refrain from seeking recourse against any Shipper for freight charges, to refrain from asserting any trust fund theory with respect to any monies collected by Satellite from Shippers, and to refrain from asserting its carrier or warehouse lien against the cargo of any Shipper, except when Satellite expressly authorizes such action via a separate, mutually executed agreement for a particular Shipper.

12.3 **Unauthorized Brokerage.** (a) If Provider does not have FMCSA broker registration, but nevertheless brokers a shipment to another service provider, such action shall constitute a material breach of this Agreement, and Provider shall be liable for said breach in addition to being liable for all of its duties and obligations to Satellite under this Agreement. (b) If Provider brokers a shipment to another broker or to a non-asset-based transportation intermediary, then such action shall constitute a material breach of this Agreement, and Provider shall be liable for said breach in addition to being liable for all of its duties and obligations to Satellite under this Agreement.



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13. DISPUTE RESOLUTION

Having entered into this Agreement in good faith, the Parties agree that the following shall occur if a dispute arises with regard to its application or interpretation:

13.1 Meet and Confer; Mediation. Either Party may give Notice to the other regarding the existence of a dispute. Within the thirty (30) days following the date of the Notice, representatives of the Parties with full settlement authority shall meet and confer at least once in an effort to resolve the dispute.

13.2 Arbitration at Parties' Option. If a dispute is not resolved voluntarily, the Parties shall give good faith consideration to submitting the matter for final and binding arbitration under the Commercial Rules of the American Arbitration Association ("AAA") before a single arbitrator with appropriate expertise. Such arbitration shall take place at a mutually agreed location or, failing agreement on a location, then at the AAA offices most nearly equidistant between the respective headquarters locations of the Parties. The award of the arbitrator may be enforced in any court of competent jurisdiction.

13.3 Civil Actions; No Jury Trial. If arbitration is not agreed to, or if the dispute involves a remedy not available in arbitration (such as injunctive or other equitable relief), a civil action may be brought in a Federal or State court of proper jurisdiction, in which event the following shall apply:

- (a) THE PARTIES IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY.
- (b) Service by certified mail to the Parties' respective notice addresses as per Section 15 of this Agreement shall constitute valid and binding service of process.

13.4 Cargo Claims and Pricing Disputes. If a dispute involves pricing of Services or a cargo claim, the provisions of this Section 13 are subordinate to any inconsistent provisions of Sections 4.4 or 7.2, respectively.

14. **GOVERNING LAW.** This Agreement shall be governed by, and enforced in accordance with the laws of the State of Texas, disregarding any choice-of-law principle(s) that would require application of the laws of another jurisdiction.

15. **NOTICES.** Any Notice required or permitted under this Agreement shall be deemed sufficient if sent by prepaid, first-class mail; by nationally-recognized express courier; or, by facsimile, if such Notice is sent to the address or fax number listed in the signature block, below, and conspicuously marked as "Notice". Notices shall be considered to have been received by the addressee Party on the third Business Day after mailing, on the second Business Day after deposit with an express courier, or on the day a facsimile is transmitted if the sending machine produces written confirmation of a successful transmission. Each Party may update the contact information for Notices by sending prior Notice to the other Party in accordance with this Section 15.



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16. **ENTIRE AGREEMENT; AMENDMENTS.** This Agreement represents the entire agreement and understanding of the Parties with regard to its subject matter. No prior understandings or agreements of the Parties, whether written or oral, nor any documents not specifically incorporated into this Agreement, nor any course of conduct of the Parties before or after the Effective Date of this Agreement, shall have the effect of modifying the Parties' rights and obligations under this Agreement in any way. Except as provided in Section 15 with regard to changes of Notice information, no amendment to this Agreement shall be valid unless it is set forth in writing, is marked with a unique amendment number, specifies the articles, sections and/or exhibits being amended, specifies an effective date for the amendments, and is signed by duly-authorized representatives of both Parties.

17. **SEVERABILITY.** To the extent that any provision of this Agreement may be held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall become ineffective as to all matters within the jurisdiction of that court. The court's holding, however, shall not be treated as affecting the validity or enforceability of any other provision of this Agreement, nor as affecting the validity or enforceability of any part of this Agreement in other jurisdictions.

TIME IS OF ESSENCE. The Parties agree that time shall be of the essence with respect to the performance of their respective obligations under this Agreement. Provider shall provide all Services with reasonable dispatch, and shall otherwise comply with service schedules as mutually agreed.

18. **19. WAIVER.** Neither the failure of a Party to exercise any right or privilege under this Agreement, nor its delay in any such exercise, shall operate as a waiver of that right or privilege. No waiver shall be binding on either Party unless it is in writing and signed by a duly-authorized representative of the Party against which the waiver is asserted. No waiver on one occasion precludes subsequent full enforcement of a Party's rights and privileges under this Agreement.

20. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on, and inure to the benefit of, both Parties as well as their respective successors and permitted assigns. Assignment of this Agreement by either Party requires prior Notice to and consent of the other Party. Neither Party shall unreasonably withhold consent for an assignment by the other Party to an affiliate of such Party, provided that the affiliate agrees in writing to comply with all terms and conditions of this Agreement.

21. **USE OF SERVICE MARKS, COPYRIGHTS, ETC.** Except to the extent that use of the Parties' respective names or trade names is necessary or appropriate for purposes of preparing Receipts, invoices or other shipping documents, or for tracking and tracing purposes, neither Party may use the other Party's name, logo(s), service mark(s), trade name(s), or copyrights, except by advance written permission of such other Party.

22. **CONFIDENTIALITY; NO BACK-SOLICITATION**

22.1 Use of Satellite Proprietary Information. Any Satellite Proprietary Information furnished or disclosed to Provider shall be: (a) utilized solely for purposes of this Agreement and the Services, and (b) kept in strict confidence for a minimum period of two (2) years from the date of any termination of this Agreement. Such information shall not, without prior written consent of Satellite, be used by Provider for any other purpose whatsoever. Moreover, dissemination of Satellite Proprietary Information within Provider's organization shall be restricted to those



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employees or agents who are involved in supplying Services to Satellite, have a need-to-know, and have been informed that the information is strictly confidential and proprietary.

22.2 Exceptions to Confidentiality. Notwithstanding the above-stated obligations of restricted use and confidentiality with respect to Satellite Proprietary Information, Provider will not be liable for disclosure or use of such part of the information which Provider can establish by substantial evidence: (a) was in its possession or known to it prior to receipt from Satellite; (b) is or has become available to the public in a manner not involving a breach of confidentiality; or (c) was lawfully acquired by Provider from a third-party that generated such information independently of Satellite Proprietary Information and without violating of any other confidentiality requirement.

22.3 Prohibition of Back-Solicitation; Liquidated Damages. Provider understands and agrees that Satellite has invested substantial time, money, energy and other resources in developing Satellite Proprietary Information, including without limitation Satellite's customers, pricing, and business processes. Therefore, Provider, including all of its offices, shall not directly or indirectly solicit freight from any Shipper during the term hereof and for a period of eighteen (18) months following any termination of this Agreement, if the Shipper (a) was previously unknown to Provider and became known to Provider through Satellite Proprietary Information or other efforts of Satellite; or, (b) was previously known to Provider, but had not tendered any freight to Provider within the period of six (6) consecutive months prior to the Effective Date. In the event that Provider violates the foregoing prohibition on back-solicitation, Satellite shall be entitled to payment of fifteen percent (15%) of the gross receipts received on each shipment so transported or arranged by Provider. Such payment shall be considered liquidated damages rather than a penalty.

23. **TERM OF AGREEMENT.** This Agreement shall remain in full force and effect for a one-year period following the Effective Date, and thereafter shall be renewed automatically on a year-to-year basis, unless and until terminated as set forth in the next sentence. Either Party has the right to terminate this Agreement at any time, with or without cause, by providing Notice to the other Party at least thirty (30) calendar days in advance of the proposed termination date (unless a shorter notice period is specified by particular provisions of this Agreement). If any shipment remains in transit on the effective date of a termination of this Agreement, Provider's duties and obligations under this Agreement shall remain in effect with respect to such shipment until it is delivered.

24. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, any and all of which shall constitute one and the same instrument.

25. **CAPTIONS.** The captions and headings of this Agreement are for reference only. They shall not affect the meaning of its terms and conditions.

26. **SURVIVAL.** The provisions of Sections 7, 10, 12 through 15, 19, and 21 through 23 and 26 shall survive termination of this Agreement.