



## Flex point Motor Carrier/Broker Agreement

This Agreement between \_\_\_\_\_, a \_\_\_\_\_ Organized under the law of \_\_\_\_\_ (“Carrier”), and FLEX POINT LOGISTICS, LLC, a limited liability corporation organized under the laws of Maryland (“Broker”) (or collectively “Parties”) is entered into for the purpose of specifying the terms and conditions under which Broker will engage Carrier to perform Motor contract carriage and specifying the terms and conditions under which Broker will engage Carrier to perform motor contract carriage and related services for Shippers (the “Services”), and under which Carrier will render those Services.

### TERMS AND CONDITIONS

#### 1. LEGAL STATUS OF PARTIES AND SERVICES

1.1 Representations. Carrier represents and warrants that it duly registered with FMCSA as a for-hire motor carrier of property in interstate and foreign commerce pursuant to 49 U.S.C. § 13902. Broker represents and warrants that it is duly registered with FMCSA as a property transportation broker pursuant to 49 U.S.C. § 13904. If such registration is no longer required in the future, Broker represents and warrants that it meets the definition of “broker” found at 49 U.S.C. § 13102 (2) and shall function accordingly. The Parties shall render all Services in a competent and professional manner, and in accordance with all applicable federal and state laws and regulations of the jurisdiction(s) within which the Services are rendered.

1.2 Contract Carriage. All Services performed by Carrier pursuant to this Agreement shall be as a motor carrier of property in United States interstate or foreign commerce and shall be rendered as Contracted carriage within the meaning of 49 U.S.C. §§ 13102 (4)(b) and 14101 (b). In connection with Contract carriage Services, Broker and Carrier hereby expressly waive all provisions of Chapters 137 and 147 and any other provisions of Subtitle IV, Part B Of Title 49, United States Code, to the extent that such provisions are in conflict with express provisions of this Agreement. The Parties do not, however, waive the provisions of that subtitle relating to registration, insurance, of safety fitness.

1.3 Relationship of parties. The relationship of Carrier to Broker is that of an independent contractor. This agreement creates a rental agreement between the Broker and the Carrier. This agreement reflects no intent to create an employer-employee relationship. By this Agreement the Parties do not intend to provide for division of profits between Carrier, Broker and/or any Shipper, or to the Broker and/or any Shipper with joint control over Carrier's performance of the Services, or otherwise to create a de facto or de jure joint venture, joint enterprise or partnership between Carrier, Broker and/or any Shipper. Under no circumstances shall employees or agents of Carrier be deemed employees or agents of Broker or Shipper, nor shall Broker or Shipper be liable for any wages, fees, payroll taxes, assessments or other expenses relating to employees or agents of Carrier, including Workers Compensation Insurance. If carrier is not required by their state to provide workers compensation for their employee drivers, by electing to this agreement they are acknowledging their decision to not be covered by any insurance policy with regards to workers compensation that applies to the broker.

#### 2. SCOPE OF SERVICES

2.1 Territories and Commodities. The Geographic and commodity scope of the Services shall be as set forth, and amended from time to time, in Attachment 1, attached to this Agreement. As Follows.

Under no circumstances, however, shall Carrier render Services beyond the scope of its FMCSA registration (as it may be amended from time to time) unless the Services are exempt from legal requirements for such registration or authority.

2.2 Carrier shall not subcontract any Services to third parties without giving prior notice to Broker and obtaining Broker's consent. Any such subcontracting, with or without notice and consent, shall not affect Carrier's responsibilities or liabilities to Broker under this Agreement. As between Broker and Carrier, all costs of rendering the Services (including compensation of subcontractors as well as payment of all taxes or other governmental assessments imposed on carrier) shall be borne solely and exclusively by Carrier. The prohibition against subcontracting does not apply to a person leased to the Carrier pursuant to the provisions of 49 C.F.R. Part 376.

2.3 Broker shall not ask or in any way pressure Carrier to violate any federal, state or other applicable law with regards to the performance of the Services. By arranging for transportation of shipments by carrier pursuant to this Agreement, Broker represents and warrants that it has conducted due diligence with regard to the creditworthiness of Shippers tendering such shipments, and that it vouches for the same.

2.4 Non-Exclusivity of Services. Neither party intends to give the other Party any exclusive rights or privileges under this Agreement. Except as otherwise stated in this Agreement, either party may contract with or otherwise provide service to any other motor carrier, broker, other intermediary or shipper.

### 3. RATES, CHARGES, TERMS AND CONDITION FOR SERVICES

3.1 Rates and Charges. Carrier shall be entitled to the rates and charges set forth in Attachment 2 as its sole and exclusive compensation for rendering the Services (including any Services subcontracted to third parties or performed in a capacity other than as a motor carrier, with or without the notices and consents required under Sections 2.2) Any rates or charges intended to apply only to particular Shippers shall be separately set forth in Customer-Specific Addenda to Attachments 2. No Shipment tendered by Broker to Carrier within the geographic and commodity scope of this Agreement shall be subject to rates or charges set forth in any tariff or rate schedule maintained by carrier, unless those rates and charges are specifically set forth in Attachment 2. Rates and charges set forth in Attachment 2 on the effective date of this Agreement shall not be changed except by following the amendment procedures set for in Article 12.3. Attachment 2 also sets forth miscellaneous terms, conditions, and business rules for specific Services (if applicable).

3.2 Invoicing and Payments. Invoicing Procedures (including electronic invoicing), payment due dates and any late payment penalties shall be as specifically set forth in Attachment 2. Except as otherwise provided in Customer-Specific Addenda with respect to particular Shippers, the parties agree as follows:

- (a) it shall be Carrier's responsibility to invoice Broker for the freight charges owing to Carrier.
- (b) it shall be Broker's responsibility to invoice Shippers for Carrier's freight charges and Broker's commissions or other fees, and to take necessary measures to collect such invoices.

(c) it shall be Broker's responsibility to remit freight charges owed to Carrier within the time periods set forth in Attachment 2, regardless of any late payment or non-payment to Broker by Shippers.

(d) Carrier with have no responsibility for collection or payment of Broker's commissions or other fees.

3.3 Pricing Disputes. If Carrier alleges underpayment of applicable freight rates and charges by Broker, or if Broker alleges overcharges, over collection or receipt of duplicate payments by Carrier, notice of such claims must be given in writing by the aggrieved Party to the other Party within one hundred eight (180) days after delivery or the first attempted delivery of the involved shipment(s) by Carrier. The party receiving any such claim shall process it in accordance with the provision 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) by Carrier.

3.4 Customs and Security Requirements.

(a) Carrier shall be responsible for ensuring compliance with those customs and security laws that are applicable to motor carriers transporting goods either domestically in the United States or for import or export from or to the United States.

(b) Broker shall be responsible for ensuring that the shipper and consignee of any freight tendered to motor carrier under this Agreement have complied with all customs and security laws of the United States and other country, as applicable, with respect to motor carrier transportation of goods either domestically in the United States or for import of export form or to the United States, including the preparation of all documents and the payment of all applicable fees required by any government agency.

#### 4. FREIGHT DOCUMENTATION

The Terms of this Agreement and any addendums thereto shall apply to all shipments tendered to motor carrier within the scope of Article 2.1 Attachment 1 and shall take precedence over any conflicting terms contained in any bill of lading, receipt or other transportation document (Shipment Document) issued for all shipments tendered by a shipper within the scope of the Services, Except as otherwise permitted by Customer-Specific Addenda to Attachment 2, the Shipment Document shall show Broker as the bill-to party for freight charges, shall not show Broker as the shipper, consignee or motor carrier, and shall not show any entity other than Carrier as the carrier.

#### 5. INSURANCE, BROKER BOND

5.1 Broker shall at all times maintain a surety bond/trust in an amount no less than \$75,000. The form and terms of the surety bond shall be consistent with provisions of FMCSA form BMC 34 as that form was in effect on January 1, 2005.

5.2 Carrier shall maintain Motor Carrier Commercial Liability insurance in the amount of \$1,000,000 per occurrence. Evidence of this insurance shall be made available to Broker as part of the acceptance of this agreement.

5.3 Carrier shall maintain cargo liability insurance in the amount of \$100,000 per occurrence.

5.4 Upon either Party's request, the non-requesting Party shall furnish the requesting Party with certificated from the insurers or trustee evidencing such coverages and providing for not less than thirty (30) days' advance written notice of cancellation or non-renewal of coverage or trust, or shall cause the insurers or trustee to name the requesting Party as an additional insured or beneficiary for the sole purpose of receiving such 30-day advance written notices or cancellation or non-renewal.

## 6. CARGO LIABILITY

6.1 Generally. Except as otherwise provided herein, the Carrier's liability for cargo, loss or damage shall be governed by the provisions of 49 U.S.C § 14706, Claims for loss of or damage to cargo shall be filed and processed in accordance with 49 C.F.R. Part 370 as in effect on the Effective Date of this Agreement, except that if the claim is filed by Broker it must be accompanied by proof (such as a signed power of attorney, a written assignment of the claim, or other evidence satisfactory to Carrier) that the involved Shipper has granted Broker full authority to resolve the claim. Claims must be filed, and any litigation on such claims must be commenced, within the minimum time frames (9 months and two years, respectively as permitted in 49 U.S.C. § 14706(e).

6.2 Sealed Trailers. IF Shipper loads and seals a trailer or semitrailer tendered to Carrier without a representative of Carrier inspecting and counting the cargo during the loading process. Carrier shall be absolved of any liability for shortages or damages upon delivery of the trailer or semitrailer with the seal intact. Carrier shall be similarly absolved if the seal was broken only at the direction and under the supervision of an agent for the Bureau of Customs and Border Protection or other governmental authority and Carrier applies another seal to the trailer under the observation of said Customs and Border Protection agent and notes the new seal number on the uniform receipt or other shipping document.

6.3 Shipper's Load and Count. If a shipper preloads trailers or semitrailers and a representative of Carrier is not present to verify cargo count or stowage adequacy during the loading process, the load shall be considered as moving on a "shipper's load and count" basis regardless of whether it is sealed or whether "SL&C" or a similar notation appears on the Uniform Receipt.

## 7. REFUSEED FREIGHT; SALVAGE AND WAREHOUSE LIABILITY

The provisions of the most current version of the National Motor Freight Classification's Uniforms Straight Bill of Lading governing refused freight, salvage and Carrier's status and liability as a Warehouse shall be incorporated by reference into this Agreement.

## 8. INDEMNIFICATION; NO CONSEQUENTIAL DAMAGES

8.1 Hold Harmless. Except as otherwise specifically provided in Article 6 with regard to cargo loss and damage liability, Broker and Carrier shall indemnify each other (including their respective employees and agents) and hold each other harmless from and against all claims, liabilities, losses,

damages, fines, penalties, payments, costs and expenses (including reasonable legal fees) to the extent proximately caused by or resulting from the negligence or intentional acts of the indemnifying Party, including its employees or agents, in connection with the performance of this Agreements or the Services. The previous sentence, however, shall not apply to the extent that such claims, liabilities, losses, damages, fines, penalties, payments, costs or expenses are proximately caused by or result from the negligence or intentional acts of the indemnified Party, including its employees or agents.

8.2 Consequential Damages Excluded. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER AND CARRIER SHALL NOT BE LIABLE TO SHIPPER OR INDEMNIFY BROKER FOR ANY LIABILITY TO SHIPPER FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES (SUCH AS, BUT NOT LIMIED TO, LOSS OF PROFITS, LOSS OF MARKET, LOSS OF CUSTOMER GOODWILL, ASSEMBLY LINE SHUTDOWNS, OR PUNITIVE OR EXEMPLARY DAMAGES), REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES SOUNDS IN CONTRACT, TORT, BREACH OF WARRANTY, CONSUMER FRAUD, OR OTHERWISE.

Broker shall indemnify Carrier (including the Carrier's employees and agents) and hold Carrier harmless from and against all claims by a shipper for any indirect or consequential damages, or liabilities, losses, damages, fines, penalties, payments, cost and expenses (including reasonable legal fees) arising from such claims.

#### 9. FORCE MAJEURE; LEGAL RESTRAINT

If either Broker or Carrier is prevented from or delayed in performing any of its obligation under this Agreement by reason of statutes; regulations or 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, civil unrest, or any cause beyond the reasonable control of such Party, that Party shall not be liable to the other Party for damages by reason of any delay or suspension of performance resulting from such legal restraints or force majeure. The party invoking this Article, however, shall furnish the other Party with Subsequent Notice of same no more than two Business Days after the onset of the conditions delaying or preventing performance.

#### 10. DISPUTE RESOLUTION

Having entered into this Agreement in good faith, the Parties agree that the terms and procedures set forth in Attachment 3 hereto shall be controlling if a dispute arises with regard to its application or interpretation.

#### 11. CONFIDENTIALITY; BACK-SOLICATION

Except to the extent required by law, neither Party shall disclose to third parties (other than to freight bill auditors, prospective capital providers, and outside professionals, if such parties agree to similar confidentiality terms) either the terms of this Agreement or any confidential or proprietary information

either Party learns about that other in the course of performing Services under this Agreement, including but not limited to software, business methods, customer lists, or the rates, valuation, origin, destination and consignee identity for any shipment within the scope of the Services. Except upon a material breach of this Agreement by Broker, Carrier shall refrain from directly soliciting freight business during the term of this Agreement, or for 6 months thereafter, from any entity which (i) was not solicited by Carrier prior to the Effective Date and (ii) actually tenders at least 2 shipments to Carrier during the term of this Agreement.

12. MISCELLANEOUS

12.1 Governing Law. Except to the extent that the application of such laws prohibited by the provisions of 49 U.S.C. §14501(c) or other law, this Agreement shall be interpreted in accordance with the laws of the State of **Maryland** disregarding any choice-of-law principle under which that State would look to the laws of another jurisdiction.

12.2 Notices. Any Notice required or permitted under this Agreement shall be deemed sufficient if sent by prepaid first-class mail, by a nationally recognized overnight courier, or by facsimile transmission, if such Notice is sent to the address or fax number of and marked to the attention of the individual noted in the signatory provision of this Agreement or to any other individual designated by the Party. Notices shall be considered to have been received by the addressee party on the third Business Day after mailing. On the first Business Day after deposit with an overnight courier, or on the day a facsimile is transmitted if the sending machine produces written confirmation of a successful transmission. Each Party may change its designated contact, or update the contact information for such individuals, by Prior Notice to the other Party in accordance with this Article 14, and without formal amendment of this Agreement under Article 12.3

12.3 Entire Agreement; Amendments. This Agreement represents the entire agreement and understanding of the Parties with regards 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 obligation under this Agreement in any way. Except as provided in Article 12.2 with regard to changes in Designated Contact information and listings, no amendment to this Agreement shall be valid unless it is set forth in writing, is marked with a unique amendment number, specifies the article, sections and/or Attachments being amended specifies an effective date for the amendments, and is signed by Designated Contacts of both Parties.

12.4 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.

12.5 Waiver. Neither the failure of a party to exercise any right, power, or privilege under this Agreement, nor its delay in any such exercise, shall operate as a waiver of that right power or privilege. No such waiver shall be binding on either Party unless it is in writing and signed by a designated Contact of the Party against which the waiver is asserted. No such waiver on one occasion shall preclude



Subsequent full enforcement of a Party's right, powers and privileges under this Agreement or at law or in equity.

12.6 Successors and Assigns. This Agreement shall be binding on, and shall 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 the Consent by the other Party. Neither Party shall unreasonably withhold Consent for an assignment by the other Party to an Affiliate of the assigning Party, provided that the Affiliate first agrees in writing to comply with all terms and conditions of this Agreement.

12.7 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 Prior 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 in particular circumstances by particular provisions of this Agreement as amended from time to time). If any shipment with the scope of the Services remains in transit on the effective date of a Termination of this Agreement, both Parties' rights and duties under this Agreement shall remain in Effect with respect to such shipment until it is delivered and all related invoices and claims are satisfied.

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

12.9 Captions. The captions and headings set forth in this Agreement are for convenience only. They shall not be considered a part of this Agreement, nor affect in any way the meaning of its terms and conditions.

WHEREFORE, the Parties have executed this instrument as their legally binding agreements as of the Effective Dates first written above.

Flex Point Logistics LLC

\_\_\_\_\_

(Broker)

(Carrier)

By its Designated Contact:

By its Designated Contact:

Signature Tara Bacon

Signature \_\_\_\_\_

Printed Name Tara Bacon

Printed Name \_\_\_\_\_

Title Carrier Compliance Manager

Title \_\_\_\_\_

Address 913 Ridgebrook Road

Address \_\_\_\_\_

Phone 443-338-4322

Phone \_\_\_\_\_



LIST OF ATTACHMENTS

Geographic and Commodity scope of Services

1. Rates, Charges, terms, and conditions for Services (including Customer-Specific Addenda)
2. Dispute Resolution
3. Addendum Page for Flex Point Logistics LLC Carrier Broker Agreement

Attachment 1

Scope of Services as defined in operating Authority

ATTACHEMENT 2

FLEX POINT LLC AS DEFINED POINT TO POINT FREIGHT CHARGES ACCESSORAIL AND MISC. CHARGES AS DEFINED IN ATTACHEMENT 2





ATTACHEMNT 3  
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.

1. Meet and Confer, Mediation. Either Party may give Prior 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 a effort to resolve the dispute among themselves. If such efforts fail, the Parties shall engage an experienced mediator upon such terms and such cost allocation as may be mutually agreeable to the Parties.
2. Arbitration. If after the expiration of the thirty (30) day period set forth in 11.1 a dispute is not resolved voluntarily, the Parties shall submit the matter for final and binding arbitration under the Commercial Rules of the American Arbitration Association ("AAA"), as modified herein, before a single arbitrator with appropriate subject matter expertise. Such arbitration shall take place at a mutually agreed location or, failing agreement on a location, then at a location most nearly equidistant between the respective headquarters location of the Parties. The award of the arbitrator may be enforced in any court of competent jurisdiction.
3. Selection of Arbitrator. If the parties are unable to agree on a mediator or arbitrator, the parties shall each submit to the other a list of acceptable and qualified mediators or arbitrators in order of preference. The first name to appear on both lists shall be appointed the arbitrator. The arbitrator shall be reimbursed all expenses and compensated at his or her standard rate.
4. Discretion of Arbitrator
  - a. The Arbitrator shall base the award on the terms of this Agreement, federal transportation law, including existing judicial and administrative precedence, and by the arbitration law of the Federal Arbitration Act, Title 9 U.S. Code. The arbitrator shall apply each in the order of precedence with the former having primary control.
  - b. The arbitrator shall have the power to order the parties to present evidence, including documents or testimony that the arbitrator deems necessary to the rendering of a fair and equitable decision. The arbitrator shall have the final judgment, in accordance with the federal rules of civil procedure as to what evidence and testimony to permit to be entered in the proceeding and the weight to be accordedeach.
  - c. The arbitrator shall have no power to award punitive damages and any award of damages shall be limited to actual damages.
  - d. The Parties expressly agree that this Agreement shall condor no power or authority upon the arbitrator to render any judgment or award that is erroneous in its application of the terms of this Agreement or substantive law.
  - e. The arbitrator shall render the award in writing and, unless both parties agree otherwise, shall include an explanation of the reasons for the award, which explanation may be limited to the extent necessary to support the award and need not attempt to cover all issues raised by the parties.
5. Equitable Relief The arbitrator shall have the power to order equitable relief, including protection of the status quo pending the completion of the arbitration and the issuance of the decisions. Pending the settlement of the dispute by voluntary means pursuant to paragraph 11.1 or the appointment of an arbitrator under paragraph 11.2 Either party may go to a court of competent jurisdiction to seek equitable relief, including a temporary injunction or restraining order. Upon the appointment of the arbitrator any relief granted by the court shall remain in effect until reversed or remove by the arbitrator or until a final arbitration decision is issued and entered.
6. Cargo Claims and Pricing Disputes. If a dispute involves a cargo claim or the pricing of Services, the provisions of Article 10 are subject to any inconsistent provision of Article 6 or Section 3 of Articles 3, respectively.



## Addendum Page for Flex Point Logistics LLC Carrier-Broker Agreement

### Certificate of Election

#### To not maintain Worker's Compensation Coverage

The undersigned, as authorized representative of the motor carrier named below, hereby warrants and represents to Flex Point Logistics LLC, that such motor carrier is not required by the laws of \_\_\_\_\_ (State), its governing state, to maintain Worker's Compensation insurance, and further that it elected not to maintain such insurance.

In the event that motor carrier subsequently either (1) becomes subject to any State's applicable Worker's Compensation law, or (2) motor carrier's maintenance of Worker's Compensation insurance remains elective but the motor carrier elects to maintain such insurance, then the motor carrier will provide Flex Point Logistics LLC, with evidence of such insurance in compliance with the terms of Contract Carrier Contract between parties.

Motor Carrier: \_\_\_\_\_

Signature: \_\_\_\_\_

By: \_\_\_\_\_ Name Typed or Printed

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

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

Broker-Carrier Contract Addendum

Carriers Initials \_\_\_\_\_

Date \_\_\_\_\_