

Emerge Transportation  
BROKER CARRIER AGREEMENT

This Agreement shall govern the independent contractor services provided by \_\_\_\_\_ (Carrier Name) a licensed motor carrier operating under the authority identified by USDOT# \_\_\_\_\_ hereinafter referred to as "CARRIER" and the services to be provided to EmergeTech LLC, a Delaware corporation, doing business as Emerge Transportation, a licensed freight property broker pursuant to FMCSA Docket No. MC — 945637-B USDOT No. 2939717, hereinafter referred to as "BROKER".

Whereas, Broker is a licensed freight broker authorized by its customers to negotiate and arrange for transportation of their property with motor carriers in interstate commerce.

Whereas, Carrier is registered with the FMCSA as a for hire motor contract carrier in interstate commerce, and is appropriately registered within each state the carrier operates as required by those regulatory bodies. Carriers relationship to broker is that of an independent contractor and is not an employee of Broker.

**1.No specific guarantee of load count:** Carrier shall transport shipments arranged by Broker pursuant to carrier load confirmation sheet(s) subsequently issued and incorporated herein by reference. This agreement does not constitute any guarantee regarding the brokers obligation to utilize the contracted carrier's services.

**2.Warranties:** Carrier warrants to Broker and to Broker's shipper, principals and customers that it meets the following criteria: Carrier will execute all contracted services without delay or immediately notify broker of any adverse conditions that would create a delay. Carrier's drivers will at all time operate in a safe and compliant manor that complies with all local, state, federal laws that pertain to the operation of equipment and care or control of freight as related to the contemplated services. Carrier shall only use qualified, competent and properly licensed and trained drivers in the execution of the services under this agreement. The carrier further agrees to adhere to all operational and safety procedures that may be posted on the private property that they may be required to enter during the execution of the contracted services. Carrier shall at all times maintain active and current insurance policies as outlined in this agreement. Carrier will maintain an active operating authority and status for the duration of all contracted services. Carrier will maintain a "Satisfactory" safety rating as awarded by the FMCSA. Carrier will immediately notify broker of any changes regarding their safety rating or operating authority standings.

**3.Payment:** Broker shall pay Carrier for services rendered in an amount equal to the rates and accessorial charges agreed to on Broker's load confirmation sheet or other signed documentation. Carrier must immediately upon delivery to consignee submit proof of delivery with invoices to Broker. Carrier must submit the signed proof of delivery, applicable receipts and invoice before payment will be released. Payment terms to Carrier shall be clearly notated by Broker on all load confirmations. Carrier agrees that they will only seek compensation from Broker and will not attempt to collect payment from brokers customer or any other party.

**4. Independent Contractor:** It is specifically expressed and understood that Carrier and it's agents, servants, and employees are not the agents, servants or employees of Broker, except as necessary to fulfill the terms and obligations of this agreement; but instead Carrier and its agents, servants, and employees are independent contractors; and Broker will not be liable for the independent contractors'

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actions, decisions, means, methods, routes and other obligations as a motor carrier or commercial vehicle operator in fulfilling the obligations undertaken herein.

**5. Insurance:** Carrier agrees to provide any insurance coverages required by any government body for the types of transportation and related services specified in load confirmation communications received from Broker. All insurance required by this Agreement must be written by an insurance company having a Best's rating of "A-" or better and must be authorized to do business under the laws of the state(s) or province(s) in which Carrier provides the transportation and related services as specified in load confirmation communications received from Broker. Carrier's insurance shall be primary and required to respond and pay prior to any other available coverage. Carrier agrees that Carrier, Carrier's insurer(s), and anyone claiming by, through or under Carrier shall have no claim, right of action, or right of subrogation against Broker, its affiliates, or its Customer based on any loss or liability insured under the insurance stipulated herein. Carrier represents and warrants that it will continuously fulfill the requirements of this Section throughout the duration of this Agreement. Broker shall be notified in writing by Carrier's insurance company at least thirty (30) days prior to the cancellation, change or non-renewal of the submitted insurance policies. Carrier shall at all times during the term of this agreement have and maintain in full force and effect, at its expense, (i) Motor Truck Cargo insurance or a superior equivalent, with limits for the full value of the cargo under carriage subject to a minimum limit never less than US\$100,000 per shipment, a deductible no greater than \$10,000 per shipment and at least the same coverage limit and deductible per shipment while in storage or at a storage facility enroute to the consignee, (ii) Commercial Automobile Liability insurance with a combined single limit of not less than US\$1,000,000 per occurrence and without aggregate limits, (iii) Commercial General Liability insurance, in a limit of not less than US\$1,000,000 per occurrence, (iv) Worker's Compensation insurance in the amounts required by statute, and Employer's Liability insurance with limits not less than US\$500,000 per occurrence, and (v) if Carrier provides Transportation Services for hazardous materials under United States Department of Transportation ("DOT") regulations, public insurance including Commercial Automobile insurance limits required for the commodity transported under 49 C.F.R § 387.7 and 387.9 (or successor regulations thereto) and statutory required Commercial Automobile insurance limits pertaining to the hazard classification of the cargo as defined by DOT, an MCS-90 and Broadened Pollution Liability endorsements for limits required by law and full policy limits. Carrier shall, prior to providing transportation and related services pursuant to this Agreement, name Broker, as a certificate holder, as required on the foregoing insurance policies and shall cause its insurance company to issue a certificate to Broker, evidencing the foregoing. When Carrier provides Transportation Services that involve origins and destinations solely within Canada, Carrier shall be current in its remittances to the appropriate Worker's Compensation Board of the Carrier's province, shall provide a certificate issued by the appropriate Worker's Compensation Board of the Carrier's province certifying that the Carrier is not delinquent and is current in its remittances to that authority, and shall have such other insurance or higher coverage limits required by applicable Canadian national or provincial law or regulation. Insurance will meet or exceed the requirements of federal, state and/or Provincial regulatory bodies having jurisdiction over Carrier's performances pursuant to this agreement. During this Contract's term, the insurance policies required hereunder and any replacement policies will (i) insure the interests of Broker and, (ii) cover all drivers, equipment and cargo used in providing Transportation Services and (iii) not contain any exclusions or restrictions as to designated premises or project, pertaining to unattended equipment or cargo, for unscheduled equipment, for unscheduled drivers or cargo, for fraud or infidelity, for tarp warranty, for wetness or dampness, for geographical location in the United States, for trailers unattached to the power unit, or for a particular radius of operation.

**6. No Rebrokering:** Unless prior written approval is granted, Carrier will only transport freight on equipment that is owned, rented, or lawfully leased and operating under the USDOT authority and insurance advertised in this agreement. Carrier will not in any way solicit or subcontract for the freight to be transported under the authority of another party.

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Carrier agrees that in the event they breach this provision, they will retain primary liability for any and all forms of loss and additional costs associated with the transportation of the freight by a third party. The Broker will retain the right to pay the third party directly. The carrier further agrees that they will forfeit all forms of compensation associated with the transaction.

**7. Indemnification:** To the full extent permitted by law, Carrier agrees to defend, indemnify and hold harmless Broker, Broker's customer, and any other customers and their affiliated entities, directors, officers, employees and agents from and against any and all losses, costs, expenses, claims, demands, liabilities, suit or actions, including all reasonable expenses, attorney and paralegals fees, arising out of or caused in whole or part by claims of injuries to or the death of any person or persons, including the employees of any party, or arising out of loss or damage to the property of any person or persons, including the property of Broker's customers, excluding loss or damage to cargo , which is covered elsewhere in this agreement or in the terms and conditions of Broker, to the extent caused in whole or in part by or resulting from the negligence or willful misconduct of operations contemplated hereunder, in full or in part by Carrier or any of its agents, subcontractors, or employees, except to the extent the loss, damage, or claim is caused solely by a party indemnified herein. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY WHO IS LIABLE HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES, UNLESS CONFIRMED IN WRITING BY BOTH PARTIES.

**8. Rate Confirmations:** When the carrier participates in any act of transportation related act on behalf of broker or brokers customer, any applicable rate confirmation provided at the time of dispatch and the rates and instructions contained within shall be considered as agreed upon and accepted as if they were signed regardless of whether or not the carriers dispatcher, driver or staff has returned a signed copy of the rate confirmation to broker or brokers customer. If the carrier has any concerns regarding the content of any rate confirmation, the issue must be addressed and resolved before the carrier accepts the load for transport.

**9. Independent Contractor:** It is specifically expressed and understood that Carrier and it's agents, servants, and employees are not the agents, servants or employees of Broker, except as necessary to fulfill the terms and obligations of this agreement; but instead Carrier and its agents, servants, and employees are independent contractors; and Broker will not be liable for the independent contractors' actions, decisions, means, methods, routes and other obligations as a motor carrier or commercial vehicle operator in fulfilling the obligations undertaken herein

**10. Claims-** Claim notifications procedures will be followed in accordance with the procedure described in 49 C.F.R. 370.1 to 370.11. Carrier will make all payments pursuant to the provisions of this section within thirty (30) days following receipt by Carrier of customers invoice or demand for supporting documentation of claim. In the event of an accident shall immediately notify Broker for further instruction. Carrier shall at its own expense return all damaged shipments to the point of origin or to other points as instructed by Broker. Carrier agrees to indemnify Broker for any payments relating to such loss or damage incurred hereunder. Carrier shall either pay Broker directly or allow Broker to deduct from the amount Broker owes Carrier for claims that are not resolved within thirty (30) days. When a seal is used by the shipper, the freight must arrive with the same seal intact, evidence of tampering or missing seal will result in the load being rejected and declared a total loss at the discretion of the receiving party. No shipment shall be subject to maximum cargo liability of per pound released rates unless specifically noted in writing as between Carrier and Broker at the time of acceptance of the load sheet; instead cargo liability shall be governed as set forth in the Carmack Amendment (49 U.S.C. 14706). Carrier assumes full liability for the invoice replacement value for the loss damage or destruction of any and all goods or

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property tendered to the carrier by the broker. Carrier expressly agrees to inspect each load at the time it is tendered to the carrier and will immediately notify the broker of any issues or concerns regarding the condition of the freight before leaving the shipping facility. The carrier agrees to waive and will not assert any lien rights it may have either legally or implied in regard to any freight they may become in possession of during the term of this agreement. The carrier further agrees to waive any rights to salvage in the event of a claim.

**11. Back Solicitation & Confidentiality:** Except to the extent required by law or agreed to by the Parties, neither Carrier nor Broker shall disclose to third parties either the terms of this Agreement or any confidential or proprietary information either Party learns in the course of performing services under this Agreement, including business lists, methods, customer lists or names, rates, valuations, origins, destinations, shipper or consignee identities. During this Contract's term and for 12 months after its termination, Carrier will not, and will cause the Carrier Representatives not, to directly or indirectly solicit or provide transportation services to any Customer without Broker's prior written consent if (a) that Customer first became known to Carrier as a result of Broker's engagement of Carrier, (b) the type of transportation services, such as the origins and destinations served or commodity types, provided to that Customer first became known to Carrier as a result of Broker's engagement of Carrier or (c) the first shipment transported by Carrier for that Customer was tendered to Carrier by Broker. If Carrier or any Carrier Representative solicits a Customer in violation of this Section, Carrier shall pay to Broker as a commission 20% of the total charges, for transportation services provided by Carrier to such Customer.

**12. Governing Rules:** The following rules shall apply: (a) the terms of this Agreement and all attached appendix's; (b) Standard Truckload Bill of Lading; (c) standard claims rules otherwise applicable to common carriers (49 C.F.R. 370 but not carrier's Rules Circular); (d) destination market value for lost or damaged cargo, and no special or consequential damages unless by signed special agreement; (e) claims will be filed with Carrier by shipper or consignee; Carrier will submit any such claim to Carrier's insurer at its first opportunity, but Carrier's obligation are not dependent upon Carrier's insurance company decisions on coverage or denials of claim, and (f) Broker's shippers and customers are third party beneficiary of this Agreement. Where rules conflict, the terms of this Agreement shall supersede all others, including cargo claims under the Carmack Amendment. To the extent that terms are not expressed in this agreement, the terms and conditions of Broker will prevail. This contract is to remain in effect for the period of one (1) year and will automatically renew each year on the anniversary date until either party provides a 30 day written notice of intent to terminate this agreement.

**13. Law and Integration:** This written Agreement, together with any load confirmation, contains the entire agreement between the parties and may only be modified by signed written agreement. Except to the extent that the application of such laws is prohibited by 49 U.S.C. section 14501 (c) or other federal law, this Agreement shall be governed and construed in accordance with the laws of the State of Arizona, disregarding any choice-of-law principle under which Arizona would look to the laws of another jurisdiction and Carrier further agrees that any lawsuit shall be brought only in Arizona Superior or federal District Court, in and for the County of Maricopa (or District of Arizona, if brought in federal court), and Carrier hereby submits itself to that Court's jurisdiction.

**14. Additional Regulations:** Carriers equipment and employees will at all times operate within the strict compliance of all federal and state regulations governing the operations of equipment and the care and custody of the freight being transported in association with this agreement, to include but not limited to; the Food Safety Modernization Act (FSMA), California Air Resource Board (CARB) Transport Refrigeration Unit (TRU) Airborne Toxic Control Measures (ATCM), Occupational Health and Safety Administration (OSHA), and all relevant regulations of the United States Department of Transportation (USDOT) Parts 40,303,325, 350 to 399.

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**15. Confidentiality of Agreement:** Except to the extent required by law or agreed to by the Parties, neither Carrier nor Broker shall disclose to third parties either the terms of this Agreement or any confidential or proprietary information either Party learns in the course of performing services under this Agreement, including business lists, methods, customer lists or names, rates, valuations, origins, destinations, shipper or consignee identities.

**CARRIER**

Business Name \_\_\_\_\_

USDOT# \_\_\_\_\_

Name (Print) \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**BROKER**

EMERGE TRANSPORTATION

USDOT# 2939717

Name (Print) \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

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## **Appendix A**

### **Security Seal Procedure for Food Related Material**

This procedure ("the Procedure") addresses the requirements for the application and removal of uniquely identified devices, such as, but not limited to seals (all such devices being referred to herein as "seals") from trailers or containers for shipments tendered to Carrier by Broker. Various statutes, rules and regulations, including, but not limited to, the Food & Drug Administration's (FDA) Final Rule pertaining to Sanitary Transportation of Human and Animal Food issued April 6, 2016 ("STF Rule") (21 CFR Section 1.900 *et seq*), the Food Safety Modernization Act of 2011 ("FSMA") and the Sanitary Food Transportation Act of 2005 ("SFTA") have dictated that actions be taken to protect and reduce risk of contamination of all human and animal food products while the products are in transit.

#### **General Requirements**

These procedures apply to all loads tendered to Carrier where a seal has been presented to the driver by the shipper or where the shipper has affixed a seal to the door(s) of the trailer or container. Only authorized personnel can remove the seal(s) upon arrival to the destination site unless required by in-transit inspections (DOT or other regulatory agencies, including but not limited to law enforcement) or special requirements known to Broker. Exceptions must be investigated and documented in accordance with the specific procedures presented herein and immediately communicated to Broker.

##### **A. Product Loading**

1. All trailers or containers shall be inspected before loading to ensure compliance with standard food safety requirements and ensure any seals from the previous trip are removed.
2. All product whether double stacked, palletized or slip sheeted shall be appropriately blocked and braced to eliminate potential damage.
3. Once loaded, the trailer or container doors (including side doors) shall be sealed with the Shipper's uniquely identified device ("seal") and recorded on the transport documents. Each seal number will be recorded along with the vehicle trailer or container number, date, carrier name, etc. by the person (shipper) applying the seals.
4. The use of key or combination locks in lieu of seals for transported materials does not constitute a sealed load. Although the locks provide a greater level of security, the key protocol required to maintain lock access integrity adds another level of risk to raw material and finished product shipments. All loads must have a seal(s) securing the vehicle during transport.

##### **B. Product Transport**

1. If the seal is broken in the event of an in-transit regulatory inspection (DOT, Ag Dept., law enforcement, etc.) or the driver believes the load has shifted and needs to be inspected and secured, the Carrier's driver must have additional seals with him and must reseal the door(s) after the inspection is completed and record the new seal numbers on the transport documents. Such procedures should be avoided, except in circumstances where that safe transport of the cargo is at issue. In such instances, Carrier must call Broker in advance of removing the seal (if possible without compromising safety) so that potential removal of the seal can be coordinated with the shipper or other party in interest. After affixing the seal, the driver must also record the date, time and circumstances surrounding the in-transit regulatory inspection on the transport documents.

2. Drivers shall not leave an open, unlocked or unsealed trailer or container unattended at any time.

3. Where a shipment is being relayed by two or more drivers, the subsequent driver(s) must visually verify the trailer or container seal integrity and that the transport documents accurately record the correct seal numbers and indicate such inspection on the shipping documents.

##### **C. Product Delivery**

1. When arriving at the receivers (consignee) facility, a receiving location employee must verify seal integrity and ensure the seal numbers match those on the driver's transport documents. Only the receiving location's designated individual may remove the seals once verified to match the driver's transport documents, and neither Carrier, nor its driver or others, shall remove a seal, except for in the immediate presence of and at the instruction of a receiver.
2. In the absence of a receiving location employee for off-shift deliveries or otherwise unattended locations, the driver assumes responsibility for the load until final inspection and subsequent receipt at the location.

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## **Appendix B**

### **Temperature Procedure for Food Related Material**

This procedure ("the Procedure") addresses the requirements for the transportation of shipments tendered to Carrier by Broker when maintaining the temperature of the product is required and conveyed through written communication including but not limited to the Rate Confirmation provided by Broker or a Bill of Lading provided by the shipper. This is to ensure that all Food Related Material is shipped under FDA's Food Safety Modernization Act (FSMA) scope.

#### **General Requirements**

These procedures apply to all loads tendered to Carrier whereas there has been a written request presented to the Carrier or driver to maintain a consistent temperature within the trailer or container (reefer). The Carrier shall ensure temperature control and indicator devices are calibrated and in working condition at the specific temperature required for the product shipped. It is the responsibility of the Carrier to immediately notify Broker (a written notification must be sent after any communication via phone) when the temperature of the product may have been compromised. Exceptions must be investigated and documented in accordance with the specific procedures presented herein and immediately communicated to Broker.

#### **A. Product Loading**

1. All trailers or containers shall be inspected before loading to ensure compliance with standard food safety requirements including cleanliness (free from any evidence of potential contamination) and free from structural defects.
2. The refrigerated trailer or container (Reefer) should be pre-cooled to the appropriate temperature before opening the trailer or container doors.
3. Trailer or container doors should only be opened when shipper is ready to load trailer or container.
4. Once loaded, the trailer or container doors (including side doors) shall be closed and sealed with the Shipper's uniquely identified device ("seal") and recorded on the transport documents. Each seal number will be recorded along with the vehicle trailer or container number, date, carrier name by the person (shipper) applying the seals (see seal procedures Appendix A).

#### **B. Product Transport**

1. If there is no electronic temperature warning system in place on the reefer unit, then the driver must keep a written log checking the temperature of the Reefer unit as often as possible but no less than three (3) times a day.
2. Unless otherwise stated in a rate confirmation or the bill of lading. Upon inspection, if the temperature of the Reefer unit varies from the original setting greater than two (2) degrees plus or minus, the driver must inspect the reefer unit to determine the problem. If temperature reefer unit continues to fail, then the carrier must do everything in its power to correct the problem immediately and notify Broker of the situation.

#### **C. Product Delivery**

1. When arriving at the receivers (consignee) facility, a receiving location employee must verify the temperature of the reefer unit to ensure the temperature matches those on the instructions provided regarding temperature-control with respect to the cargo.
2. Driver will not open the trailer or container doors until the consignee has directed him to do so and is ready to offload the product.
3. If required and made available by the receiver, the driver must be present and witness any product temperature recording upon delivery and note the measurements on all copies of the delivering receipt.

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**Appendix C**  
**Customs-Bonded Shipment Requirements**

Carrier shall provide and maintain a Customs Bond in the amount of not less than Fifty Thousand Dollars (\$50,000). Carrier duly and legally shall be qualified to transport bonded goods across the Canadian US borders. Carrier shall adhere to the customs bond requirements set forth in 19 C.F.R. Part 13. Carrier shall be responsible for all fines and penalties associated with the use of the customs bond and indemnify EmergeTech, its subsidiaries, agents, directors, employees, and affiliates arising out of the incorrect usage of the customs bond by the Carrier, its agents or employees.