

**BROKER/SHIPPER AGREEMENT**

 **THIS BROKERAGE AGREEMENT** (“Agreement”) is made and entered on \_\_\_\_\_\_\_\_\_\_\_\_\_, 2023, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“SHIPPER”) and **Kings Peak Logistics, LLC** (“BROKER”) (individually a “Party” and collectively, the “Parties”).

**I.**

**RECITALS**

 A. **WHEREAS** BROKER is licensed as a Property Broker by the Federal Motor Carrier Safety Administration (“FMCSA”), or by appropriate State agencies, and as a licensed broker, arranges for freight transportation under MC-1525745.

 B. **WHEREAS** SHIPPER seeks to utilize the services of BROKER to facilitate the transportation of goods on behalf of SHIPPER; and

 **NOW THEREFORE**, intending to be legally bound, BROKER and SHIPPER agree as follows:

**II.**

**AGREEMENT**

1. **SCOPE**.

 a. This Agreement applies to all services performed by BROKER with respect to shipments tendered by SHIPPER. If there is a conflict between this Agreement and any other agreement, contract, bill of lading, or any other document between BROKER, SHIPPER, or a servicing motor carrier (as defined below) then the terms of this Agreement shall prevail.

 b. This Agreement shall not be exclusive: Nothing herein shall grant BROKER any exclusive right to perform property brokerage services on behalf of SHIPPER or obligate SHIPPER to tender any minimum amount of cargo to BROKER.

2. **TERM AND TERMINATION**.

 a. The term of this Agreement shall be for one (1) year and shall automatically be renewed for successive one (1) year periods; provided, however, that either Party may terminate this Agreement with or without cause at any time by giving the other Party thirty (30) days prior written notice.

 b. Either Party may additionally terminate this Agreement immediately upon written notice to the other of the following events:

 i. Breach of any covenant, obligation, condition or requirements imposed by this Agreement if such breach continues for a period of ten (10) days after written notice thereof; or

 ii. A Party becomes insolvent, unable to pay its debts in a timely manner, seeks protection under bankruptcy or receivership laws, or is forced into bankruptcy or receivership.

 c. SHIPPER may additionally terminate this Agreement immediately upon written notice if:

 i. Broker loses its operating authority;

 ii. Fails to procure or maintain the insurance coverages required by this Agreement; or

 iii. Utilizes the services of Servicing Motor Carriers (as defined below) that do not hold the requisite authority to provide services required by SHIPPER.

3. **BROKER’S SERVICE.** BROKER agrees to arrange for the transportation of SHIPPER’s freight pursuant to the terms of this Agreement. BROKER represents and warrants that it is duly and legally qualified to operate as a Property Broker and to arrange the transportation services contemplated in this Agreement. BROKER shall not co-broker, double broker otherwise subcontract its broker services. BROKER agrees to comply with all federal, state and local laws regarding the provision of BROKER’s brokerage services. The Parties understand and agree that BROKER functions as an independent entity, and not as a carrier, in selling, negotiating, providing and arranging for transportation for compensation, and that the actual transportation of shipments tendered to BROKER shall be performed by third-party motor carriers (“Servicing Motor Carriers”). BROKER represents and warrants that it has entered in to, or will enter into, contracts with each Servicing Motor Carrier (“Servicing Motor Carrier Contract”) it utilizes in the performance of this Agreement and that the contracts with each Servicing Motor Carrier shall comply with the terms of this Agreement.

4. **PAYMENT AND CHARGES**. SHIPPER shall tender certain shipments, from time to time, to BROKER. With respect to any shipment tendered by SHIPPER to BROKER, BROKER shall invoice SHIPPER for its services in accordance with the rates and charges as agreed to in writing by both Parties prior to the movement of the shipment. If rates are negotiated between the Parties and not otherwise confirmed in writing, such rates shall be considered “written,” and shall be binding upon BROKER’s invoice to SHIPPER and SHIPPER’s payment to BROKER. In the event that brokerage services are provided and it is subsequently discovered that there was no applicable or understood rate, the Parties agree that the charges invoiced by BROKER shall be the agreed upon contract rate of the Parties for the services provided, unless such payment is objected to by SHIPPER within thirty (30) days of the invoice date. SHIPPER agrees to pay BROKER within thirty (30) days of receiving invoice, without offset. BROKER shall be solely responsible for making payments of freight and other accessorial charges to Servicing Motor Carriers utilized by BROKER to provide the transportation services. BROKER will implement and maintain in its written contracts with Servicing Motor Carriers that BROKER has the exclusive right to handle all billing of freight charges to the Shipper for the transportation services provided, and as such, the Servicing Motor Carrier shall agree to refrain from all collection efforts against the SHIPPER, or the receiver of the shipment. Payment of the freight charges to BROKER under this Agreement shall relieve SHIPPER or any other party of any liability to the Servicing Motor Carrier for non-payment of its freight charges; and BROKER hereby covenants and agrees to indemnify, defend, and to hold SHIPPER, or any other party harmless from any such claim of nonpayment by the Servicing Motor Carrier, or any party acting through or under the Servicing Motor Carrier.

5. **SERVICING MOTOR CARRIERS**. BROKER shall enter into a written contract with each Servicing Motor Carrier providing transportation services to SHIPPER and each written agreement shall contain the following provisions:

 a. The Servicing Motor Carrier shall agree, represent and warrant that it is duly and legally licensed under all applicable state, provincial and federal laws to provide any transportation services required under this Agreement, and that the Servicing Motor Carrier does not have an unsatisfactory or unfit safety rating issued by the United States Department of Transportation (“DOT”) or any other state or provincial authority with jurisdiction over the operations of the Servicing Motor Carrier. BROKER shall not utilize any Servicing Motor Carrier with an unsatisfactory safety rating in the performance of this Agreement.

 b. The Servicing Motor Carrier is performing services pursuant to a written contract with BROKER and in no event shall any provision in any tariff, service guide, bill of lading, delivery receipt, or other shipment documentation apply to services performed with respect to shipments tendered by or to SHIPPER.

 c. The Servicing Motor Carrier will obtain a receipt showing the kind and quantity of product delivered to the consignee of each shipment at the destination.

 d. The Servicing Motor Carrier will furnish all equipment necessary, at its sole cost and expense, and bear all expenses related to the use or operation of the equipment; that it will utilize only legally licensed personnel qualified in accordance with governing law; and that it shall provide all services as an independent contractor and assume responsibility for financial obligations arising out of the transportation services.

 e. The Servicing Motor Carrier shall agree that the liability for cargo loss or damage shall be no less that of a common carrier as provided in the Carmack Amendment (as currently codified at 49 U.S.C. § 14706 and as amended from time to time). Exclusions in the Servicing Motor Carrier’s insurance coverage shall not exonerate the Servicing Motor Carrier from this liability. Carrier’s liability shall be limited to $100,000 per truckload unless otherwise agreed in writing.

 f. The Servicing Motor Carrier shall agree to be responsible for, and shall comply with all local, state and federal laws regarding, the inspection of cargo and devices used to secure cargo, and the Servicing Motor Carrier shall cause any adjustments made to the cargo or load securement devices as necessary, to ensure that cargo cannot shift on or within, or fall from, the commercial motor carrier.

 g. The Servicing Motor Carrier will, at its sole cost and expense, procure and maintain during any period in which it handles shipments tendered by or to SHIPPER the following insurance coverage:

 i. Commercial General Liability Insurance (“CGL”) covering the transportation of shipments and other operations under this Agreement in an amount not less than $1,000,000.00 (U.S. Dollars) per occurrence;

 ii. Commercial Automobile/Trucking Liability insurance (“AL”) coverage with limits of not less than $1,000,000.00 (U.S. Dollars) per occurrence;

 iii. All Risk Broad Form Motor Truck Cargo Legal Liability insurance (“Cargo”) in an amount not less than $100,000 (U.S. Dollars) per occurrence; and

 iv. Workers’ Compensation insurance for its employees or analogous coverage with statutory limits (or compliance with monopolistic state funds).

BROKER shall verify that each Servicing Motor Carrier BROKER utilizes in the performance of this Agreement has the required insurance coverage set forth above.

 h. That all insurance coverages set forth above shall be with reputable and financially responsible insurance companies (rated B+ or better). BROKER shall require that the Servicing Motor Carrier furnish to BROKER written certificates showing that the required insurance has been procured.

 i. Servicing Motor Carrier shall agree that the provisions contained in 49 CFR 370.1, *et seq*, shall govern the processing of claims for loss, damage, injury or delay to property and the processing of salvage.

 j. Servicing Motor Carrier shall waive all rights and remedies under Title 49 U.S.C. Subtitle IV, Part B, to the extent they conflict with this Agreement.

 k. Servicing Motor Carrier shall authorize BROKER to invoice SHIPPER for services provided by the Servicing Motor Carrier. The Servicing Motor Carrier shall further agree that BROKER, upon receipt of payment from Shipper, is the sole party responsible for payment of its invoices and that, under no circumstances, will the Servicing Motor Carrier seek payment or repayment from SHIPPER.

 l. Servicing Motor Carrier shall agree to defend, indemnify and hold BROKER and SHIPPER harmless from any and all claims, actions, losses, expenses, fines, fees, verdicts, judgments, or any other damages, obligations, or liabilities, including attorneys’ fees arising out of this Agreement, including cargo loss and damage, theft, delay, damage to property and personal injury or death (“Servicing Motor Carrier Claims”).

 m. Servicing Motor Carrier will perform the transportation services directly with equipment under its own authority and that it shall not co-broker, trip lease, or otherwise subcontract the transportation or handling of any shipment tendered to it pursuant to this Agreement. The foregoing shall not be construed as prohibiting interlining which, for the purposes of this Agreement, shall mean that the Servicing Motor Carrier performs some part of the motor carrier transportation in equipment operating under the Servicing Motor Carrier’s own authority.

 n. Servicing Motor Carrier will waive any and all liens it may otherwise have with respect to goods tendered by or to SHIPPER.

 o. Servicing Motor Carrier warrants that it is, and shall be in compliance during the term of this Agreement, with all applicable federal, state and local laws relating to the provision of its services including, but not limited to:

(i) transportation of Hazardous Materials, (including the licensing and training of drivers), as defined in 49 C.F.R. §172.800, §173, and §397 et seq. to the extent that any shipments hereunder constitute Hazardous Materials;

(ii) security regulations;

(iii) owner/operator lease regulations;

(iv) loading and securement of freight regulations;

(v) implementation and maintenance of driver safety regulations including, but not limited to, hiring, controlled substances, and hours of service regulations;

(vi) sanitation, temperature, and contamination requirements for transporting food, perishable, and other products including the Food Safety Modernization Act (FSMA);

(vii) qualification and licensing and training of drivers;

(viii) implementation and maintenance of equipment safety regulations;

(ix) maintenance and control of the means and method of transportation including, but not limited to, performance of its drivers;

(x) all registration and licensing requirements required to perform the services

(xi) California Air Resource Board (CARB) compliance

(xii) Worker’s compensation and employment law where applicable

(xiii) Carrier will comply with any ex-air, ex-water or ex-rail requirements related to the nature of the shipment.

 p. BROKER warrants that any variance between its standard Broker-Carrier Agreement and the contract requirements set forth in subparagraphs (a) through (n) above are nominal and agrees to indemnify SHIPPER to the extent any carrier duty or obligation is not contractually required.

6. **INDEMNIFICATION**.

 a. BROKER shall indemnify, defend and hold SHIPPER harmless from and against any and all liability, claims, loss, costs, fines, penalties, expenses (including attorney’s fees), judgments, or demands on account or damage of any kind whatsoever, including but not limited to personal injury, property damage, cargo damage, or any combination thereof, suffered or claimed to have been suffered by any person or persons, to the extent caused by BROKER’s negligent services provided in connection with this Agreement or any breach thereof.

 b. BROKER shall also indemnify, defend, and hold SHIPPER harmless from and against any and all claims of payment made by Servicing Motor Carriers.

7. **INDEPENDENT CONTRACTOR**. BROKER represents and warrants that it is an independent contractor under this Agreement and that its employees are under BROKER’s exclusive management and control, and that SHIPPER neither exercises nor retains any control over BROKER, its operations or employees in any manner whatsoever.

8. **BROKER INSURANCE**. BROKER shall comply with all bonding requirements imposed upon it by law, maintaining a surety bond to benefit the SHIPPER.

9. **CARGO LOSS, DAMAGE, OR SHORTAGE**.

 a. In the event of a cargo loss, damage, delay or shortage claim, BROKER agrees to facilitate the filing of cargo claims with the Servicing Motor Carrier. SHIPPER agrees to notify BROKER promptly after becoming aware of any such claim by phone and to subsequently submit to BROKER a written claim, fully supported by all relevant documentation, including but not limited to the signed delivery receipt, listing the nature and cause of the claim for cargo damage.

 b. It is understood and agreed that BROKER is not a motor carrier and as such, BROKER shall have no liability for cargo loss, damage, or shortage, except as provided in Paragraph 6 above.

10. **SHIPPING DOCUMENTS**. Unless otherwise agreed in writing, all shipments tendered shall be accepted on a bill of lading. The bill of lading shall act as a receipt only and in no event shall the terms and conditions of the bill of lading be binding on the Parties. Upon request, BROKER shall instruct Servicing Motor Carriers to obtain a delivery receipt from the consignee, showing the products delivered, condition of the shipment, and the date and time of such delivery.

11. **NOTIFICATION OF ACCIDENTS OR DELAYS**. BROKER agrees to notify SHIPPER of any accident or other event of which BROKER is apprised and which prevents the Servicing Motor Carrier from making a timely or safe delivery.

12. **COMMUNICATIONS**. To the extent practicable, communications between BROKER and SHIPPER, including, but not limited to, invoicing, payment, Rate Confirmation Agreements, and proofs of delivery, will be electronic in a format mutually agreeable to the Parties. The Parties hereby waive any objection to the authenticity of such electronic communications as long as such communications comply with the Electronic Signatures in Global and National Commerce Act, the Uniform Electronic Transactions Act, or related legislation as applicable.

13. **ASSIGNMENT/MODIFICATION/BENEFIT OF AGREEMENT.** This Agreement may not be assigned or transferred in whole or in part. This Agreement shall be binding upon and inure to the benefit of the Parties hereto.

14. **SEVERABILITY**. In the event that the operation of any portion of this Agreement results in a violation of any law, the Parties agree that such portion shall be severable and that the remaining provisions of this agreement shall continue in full force and effect.

15. **GOVERNING LAW AND VENUE**. This Agreement shall be deemed to have been drawn in accordance with the statutes and laws of the State of Utah. Any lawsuit shall be brought in a court of competent jurisdiction for Cache County, Utah. Each Party specifically submits to the exclusive personal jurisdiction of Cache County, Utah courts for disputes involving this Agreement.

16. **COMPLETE AGREEMENT**. This Agreement constitutes the entire agreement of the Parties with reference to the subject matters herein, and may not be changed, waived, or modified except in writing signed by both Parties.

17. **NOTICES**. Any and all notices required or permitted to be given under this Agreement shall be in writing (which shall include electronic delivery in portable document format (.pdf)) and shall be addressed to the BROKER and SHIPPER as below:

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| **SHIPPER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SignatureAddress: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Phone:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Fax/Email:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **BROKER: KINGS PEAK LOGISTICS, LLC**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SignatureAddress: 140 N 400 WHyrum, UT 84319 Phone: 435-890-6310 Email: Mandy@kingspeaklogistics.com |