

- The Parties agree that UPCS shall be solely responsible for payment of CARRIER's charges and under no circumstance will CARRIER seek payment from UPCS's customer, the shipper or the consignee of any shipment tendered to CARRIER under this AGREEMENT. Upon receipt of payment, CARRIER automatically assigns all of its rights to payment from shippers, consignees, or third parties to UPCS.
4. UPCS and CARRIER agree that transportation services hereunder are to be in compliance with 49 USC 10102 by assigning tractor, driver (s) and conveyance for a movement for the exclusive use of UPCS or by providing specialized services or equipment designated to meet the distinctive needs of UPCS and our customers. Such services shall include, when applicable, but shall not be limited to: protective service multiple stops in transit, "POWER ONLY", direct dispatch, drop shipments, inside deliveries, spotting trailers, and expedited shipments.
 5. CARRIER will be responsible to comply with all applicable FMCSA and U.S. Department of Transportation (DOT) regulation as well as all other federal or state regulations pertaining to the operations of a motor carrier.
 6. CARRIER represents and warrants that it will comply with all applicable laws and regulations relating to the transportation of Hazardous Materials as defined in 49 CFR §173 et seq to the extent that any shipments transported by CARRIER under this Agreement constitute Hazardous Materials. In such instance(s), CARRIER shall be solely responsible for any violation of the applicable laws and regulations and shall defend, indemnify, and hold UPCS and its customers harmless from any liability incurred, including, but not limited to reasonable attorneys' fees arising from any non-compliance.
 7. CARRIER shall keep accurate records of shipments covered by this Agreement and designated UPCS personnel or its agent shall, at reasonable times, have the right to inspect such records kept by CARRIER for the purpose of determining compliance with the terms of this Agreement.
 8. During the term of this Agreement and for a period of two (2) years thereafter, UPCS, or its designated third party agent, shall have the right to audit any pertinent shipping weight, reconciliation and financial records, including those that substantiate CARRIER's charges to UPCS for services CARRIER performed under this Agreement. Unless otherwise arranged with CARRIER, all audits and inspections shall be conducted by UPCS or its designated third party agent during normal business hours, in such a manner as to minimize any disruption to CARRIER's operations.
 9. CARRIER shall issue a bill of Lading in its own name and shall be liable to the owner of the freight for full actual loss and damage to the freight transport under this Agreement while in the care or custody of the CARRIER. CARRIER shall comply with 49 CFR §370.1 et. seq. and any amendments and/or any other applicable regulations issued or adopted by the FMCSA or DOT, for processing all loss and damage claims and salvage, which arise out of the discharge of CARRIER's duties and responsibilities hereunder; and
 - a) The burden of proof for CARRIER's liability for any cargo damage, loss, or theft from any cause shall be determined under the Carmack Amendment, 49 USC §14706; and
 - b) Special Damages: Any liability of CARRIER under Paragraphs 6 and 9 shall constitute special damages, the risk of which is expressly assumed by CARRIER, and which shall not be limited by any liability under subparagraph. (a) above.
 - c) Consequential Damages: Unless otherwise mutually agreed in writing, neither party shall be liable to the other or to any shipper for any indirect or consequential damages (such as, but not limited to, loss of profits, loss of market, loss of customer goodwill, assembling line shutdowns, or punitive or exemplary.
 10. CARRIER represents and warrants that it agrees to hold UPCS harmless from and indemnify UPCS for any liability resulting from loss or damage to any freight transport by CARRIER pursuant to this Agreement including all cost to defend claims. CARRIER also agrees to hold UPCS harmless from and indemnify UPCS for any liability resulting from personal injury or property damage which may occur during the operations of CARRIER pursuant to this Agreement including all cost to defend claims. Freight transported from, to, or within Canada and/or Mexico is subject to the laws of those respective countries while any shipment is moving over the highways of either respective country.

11. UPCS will identify its customers to CARRIER as each first load from each customer is offered to CARRIER. If CARRIER accepts the load and moves the freight this will acknowledge that this new customer is a UPCS customer. CARRIER has ten (10) days after such "first load" moves to challenge, in writing, why the customer should not be considered a UPCS customer. In any case of challenge, UPCS and CARRIER will agree in writing exactly how this customer will be handled.
12. CARRIER and UPCS acknowledge and agree that this contract does not bind the respective parties to exclusive services to each other. Either party may enter into similar agreements with other carriers, brokers, or freight forwarders.
13. CARRIER agrees to support and protect UPCS's efforts in performance of this Agreement by refraining from any direct contact or solicitation of UPCS's Customers. During the term of this Agreement and for a period of two (2) years from the time of the termination of this Agreement, CARRIER shall not, directly or indirectly solicit or do business of a transportation or warehousing nature with any of UPCS's customers who are serviced by CARRIER as a result of this Agreement unless otherwise agreed to in writing.
14. The relationship of CARRIER to UPCS shall, at all times, be that of an independent contractor except that UPCS shall be the agent for CARRIER for the collection and payment of charges to CARRIER. CARRIER agrees that it will look only to UPCS for payment if the billed party has paid UPCS, unless otherwise notified.
15. In cases where, after movement of freight, the ultimate payer of the freight charges for any reason defaults on payment, CARRIER and/or UPCS, after both parties agree in writing, may proceed against the debtor at a cost ratio and collection ratio equal to the ratio applicable to their respective receipts agreed to on the original movements(s), including attorney fees, court costs, and costs to defend counter suits.
16. Obligations of this Agreement are separate and divisible and in the event that any clause is deemed unenforceable, the balance of this Agreement shall continue in full force and effect.
17. CARRIER agrees that UPCS's compensation hereunder for its services are confidential and need not be disclosed to CARRIER. CARRIER further agrees that it will not reveal to anyone the terms of this Agreement, the pricing of transportation service, or any other details of the business conducted between CARRIER and UPCS.
18. In the event of a material breach by CARRIER of any provisions of this Agreement, BROKER shall have the right to withhold and/or set off any payments owing to CARRIER and/or received from shippers which BROKER is obligated to pay CARRIER. The right of withholding and/or setoff is not an exclusive remedy and BROKER shall have and may exercise, subject to Paragraph 5 below, all other remedies it may have at law or in equity against CARRIER.
19. No party may disclose any of the terms of this Agreement to any non-party without the prior written consent of the other party
20. This Agreement is intended for the sole benefit of the signatories to this Agreement and is binding upon their respective successors and assigns. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation or other entity, other than the signatories hereto, their permitted successors and permitted assigns, and their affiliates any legal or equitable right, remedy or claim under this Agreement.
21. In the event of a dispute arising out of this Agreement that cannot be resolved by negotiations of the parties, a party's sole recourse (except as provided below) shall be to arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be binding and final and the award of the arbitrator may be entered as judgment in any court of competent jurisdiction. Arbitration shall be held at a mutually convenient location in Omaha, Nebraska. Provided, however, it is agreed that prior to the formation of the arbitral panel, either party may apply to a court of competent jurisdiction for injunctive relief. Unless preempted by Federal Bankruptcy Law, federal



common law, or otherwise controlled by the FMCSA, DOT laws and regulations, the laws of the State of NEBRASKA shall be controlling. This paragraph shall not apply to enforcement of the award of arbitration.

- 22. If either CARRIER or UPCS is prevented from or delayed in performing any of its obligations under this Agreement by reason of statutes, regulations, or orders of a governmental entity...
23. Except to the extent that use of the parties' respective names or trade names is necessary or appropriate for purposes of preparing Uniform Receipts, invoices or other shipping documentation...
24. This contract is binding upon the parties hereto, their successors and assigns, and shall be construed under the laws of the state of UPCS.
25. This Agreement shall be deemed to be effective on the first date that CARRIER and UPCS commenced business together and the parties agree that the provisions contained herein properly express and memorialize the complete understanding of the parties as contained in all prior agreements, both verbal or in writing.

_____ UNION PACIFIC CARRIER SERVICES (UPCS)
BY: _____ BY: _____
TITLE: _____ TITLE: _____
DATE: _____ DATE: _____
ADDRESS: _____
