

Note: An auto liability policy with Bodily Injury and Property Damage limits of \$1,000,000 or greater, insuring all equipment involved in transportation must be provided. Those policies written as Scheduled Autos must also contain coverage for Hired Autos. (If the primary auto policy is less than \$1,000,000, an excess policy must be provided to meet the required limit).

(b) CARRIER is required to have its Insurance Agent send a certificate of liability. The Certificate of Insurance should be mailed or faxed to EBIX; UPCS' web based Insurance Management Provider: Union Pacific Railroad Company, EBIX -Insurance Compliance, P.O. Box 12010-UP, Hemet, CA 92546-8010. EBIX Fax number 951-652-2869

3. CARRIER will invoice all charges for transportation services directly to UPCS, and CARRIER shall provide UPCS with a copy of the signed bill of Lading and delivery receipt (if needed). UPCS agrees to pay CARRIER for its services rendered hereunder, upon written receipt of proof of delivery and bill of lading, in accordance with the rates set forth on the UPCS's PRE-NOTE (Advance Shipment Notification). Modifications or additions to these rates may be agreed to in writing or may be made verbally to meet specific shipping schedules. Confirmation of verbally agreed rates must be made by a summary E-Mail, faxed or Letter from CARRIER to UPCS. If UPCS pays the freight invoice in a reduced amount, such amount shall constitute the agreed rate, unless CARRIER indicates to the contrary to UPCS within sixty (60) days of its receipt of payment. All modifications and additions to the rates made either in writing or verbally and confirmed in writing, or as established by the billing and payment by the parties together with the underlying freight bills shall be deemed as addendum to and considered a part of this Agreement. UPCS invoice instructions will be provided to CARRIER separately from this Agreement.

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, UPCS shall have the right to withhold and/or set off any payments owing to CARRIER and/or received from shippers which UPCS is obligated to pay CARRIER. The right of withholding and/or setoff is not an exclusive remedy and UPCS shall have and may exercise 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, any state or federal court seated in the Omaha, Nebraska, shall be deemed to be the Court of jurisdiction and venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, in connection with, or by reason of this Agreement; and all parties hereto submit themselves to the jurisdiction of said Court in the event of any legal proceedings in connection with this Agreement.. The terms of this Agreement will be governed by the laws of the state of Nebraska (without regard to its conflicts of laws rules) except where preempted by federal law..
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 (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 resulting from any delay or suspension of performance resulting from such legal restraints or force majeure. The party invoking a force majeure event shall furnish the other party with written notice of same no more than two (2) business days after the onset of the force majeure conditions delaying or preventing performance.
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, or for tracking and tracing purposes, neither party may use the other party's name, logo(s), service mark(s), trade name(s), copyrights, patents or other intellectual property, except by advance written permission of such other party.
24. This contract is binding upon the parties hereto, their successors and assigns, and shall be construed under the laws of the state of Nebraska.
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. This Agreement shall be effective continuously subject to the right of either party hereto to cancel this Agreement at any time upon not less than thirty (30) days written notice of one party to the other.

UNION PACIFIC CARRIER SERVICES (UPCS)

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

ADDRESS: _____

Exhibit A

CONTRACT INSURANCE REQUIREMENTS First Party Contractors

UPDS Drayage

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability Insurance. Commercial general liability (CGL) shall contain a single limit of at least \$1,000,000 each occurrence or claim and an aggregate limit of not less than \$2,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance: Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Commercial Automobile Coverage Insurance. Truckers Liability Coverage with a combined single limit of not less than \$1,000,000 each accident. Coverage must be written on ISO form CA 00 12 03 06 (or a substitute form providing equivalent liability coverage), and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, which shall be stated on the certificate of insurance:

- ◆ Motor Carrier Act Endorsement – Hazardous materials clean up (MCS-90) if required by law.
- ◆ Intermodal Interchange covering physical damage to non-owned trailers/containers with limits of at least \$25,000 per trailer/container.

C. Workers Compensation and Employers Liability Insurance. Coverage must include but not limited to:

- ◆ CONTRACTOR's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit, \$500,000 each employee

If CONTRACTOR is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance: Alternate Employer Endorsement ISO form WC 00 03 01A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer.

D. Umbrella or Excess Policies. In the event CONTRACTOR utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

E. Motor Truck Cargo. Motor Truck Cargo Legal Liability coverage must be written on AAIS Form IM 7450 04 04 (or a substitute form providing equivalent liability coverage). Limits of insurance must be equal to the greater of the replacement cost of the freight being transported or \$250,000 for any one occurrence in addition to cargo insurance required by applicable State or Federal laws. Freight insurance shall be in the form required by 49 C.F.R. 1043.2(b), and shall have no exclusions or restrictions that would not be accepted by the FMCSA for filing

under statutory requirements. Certain high value accounts may require a higher level of insurance. To meet the added valuation of specific shipments the amount of freight insurance required may be increased by written notification to CONTRACTOR from UPDS.

Other Requirements:

F. All policy(ies) required above (excluding worker's compensation and employers liability) must include Railroad as "Additional Insured" us ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage), The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the Indemnity provisions of this Agreement

G. Punitive damage exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. CONTRACTOR waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by CONTRACTOR required by the UPDS Master Agreement for Motor Carrier Services ("Agreement"), where permitted by law. This waiver must be stated on the certificate of insurance.

I. Prior to commencing the work, CONTRACTOR shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in the Agreement.

J. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

K. The fact that insurance is obtained by CONTRACTOR or Railroad on behalf of CONTRACTOR will not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from CONTRACTOR or any third party will not be limited by the amount of the required insurance coverage.

L. Contractor warrants, for any shipments that it transports into or out of Mexico or Canada, that it will be solely responsible for maintaining insurance or financial responsibility to meet the laws or regulations of the respective country.