



THIS AGREEMENT (“Agreement”) is made and entered into and intended to be effective this \_\_\_\_\_ (date) by and between SCARBROUGH TRANSPORTATION, 10841 NW Ambassador Drive, Kansas City, MO 64153 (“Scarborough”) and \_\_\_\_\_ of \_\_\_\_\_ collectively, the “Parties”.

**RECITALS**

1. WHEREAS, the Parties are authorized to arrange for the transportation of property by Permit Nos. MC-843370, DOT 2447857 (Scarborough) and MC- \_\_\_\_\_, DOT \_\_\_\_\_ (Broker 2) issued by the U.S. Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA), or its predecessor agencies. Copies of the Parties’ Permits are attached as Exhibits A1 and A2.
2. The Permits of each Party are currently valid and not subject to threatened or pending revocation or suspension proceedings.
3. Bond: The Parties each has a broker bond in the form required by the Code of Federal Regulations, which bond is maintained in compliance with USDOT-FMCSA regulations. True and correct copies of the Parties’ bonds are attached as Exhibits B1 and B2.
4. The persons signing this Agreement have the authority to do so, without the need for further corporate or other approval actions on behalf of the entities they represent.

NOW, THEREFORE, in consideration of the terms, conditions and representations made herein, the Parties agree as follows:

**REPRESENTATION OF BROKER 2:**

1. No Co-Brokering: Broker 2 will not assign, co-broker, subcontract, interline, or warehouse the shipments hereunder without the prior written consent of Scarborough. If Broker 2 violates this provision, Scarborough’s obligation to pay Broker 2 for its services shall immediately terminate, and Broker 2 shall defend, indemnify and hold Scarborough harmless from any liability arising out of violation of this term, including, but not limited to, consequential damages, costs, expenses, and reasonable attorney’s fees.
2. Insurance: Broker 2 has, and will maintain \$100,000 of contingent cargo liability insurance, comprehensive general liability insurance covering bodily injury and property damage of \$1,000,000, and workers’ compensation as required by applicable state law. Proof of insurance shall be furnished to Scarborough and attached as Exhibit C.
3. Indemnity: BROKER 2 agrees to defend, indemnify and hold Scarborough harmless against and from: (1) any and all liability, costs, losses or damages to freight for which BROKER 2 arranges transportation pursuant to this Agreement; and (2) any damages to persons and/or property arising out of BROKER 2’s performance of this Agreement and /or the performance of any motor carrier selected by BROKER 2 to transport freight pursuant to this Agreement; and (3) from all losses, damages and liability arising out of Broker 2’s material breach of any of the terms of this Agreement; and (4) “damages” as used in this Agreement shall include, but not be limited to, reasonable attorney’s fees.
4. Broker 2 shall arrange the transportation of freight by motor carrier from pick-up points to destinations, subject to timely receipt of written instructions (including fax and/or email) from Scarborough.
5. Broker 2 acknowledges and represents that Scarborough is not an agent of Broker 2 for any reason.
6. Bills of Lading: Bills of lading related to the shipments hereunder shall note that the shipments were arranged for by Scarborough. The name of the underlying shipper shall be inserted in the blank for the shipper, and the name of the consignee shall be inserted in the blank for the consignee. In the event of a

Broker 2 Initials \_\_\_\_\_



conflict between the terms of any bill of lading and this Agreement, the terms of this Agreement shall be controlling.

7. Motor Carrier Selection: Broker 2 agrees to arrange transportation of freight only with: USDOT-FMCSA registered motor carriers, who: Provide proof of insurance as required by federal regulation with limits of not less than \$1,000,000 property damage and personal injury liability, \$1,000,000 auto liability, \$100,000 primary cargo coverage, and workers' compensation insurance as required by applicable state law; provide Broker 2 with a copy of its current registration with the FMCSA and sign a written Broker/Carrier Agreement with Broker 2; Broker 2 represents and agrees that it will not conduct business with any motor carrier which does not comply with the above requirements. Broker 2 acknowledges and agrees that the above requirements are not exclusive and that its exercise of due diligence in the selections of motor carriers is in no way directed or dictated by Scarborough.

8. Notice of Claims/Cooperation. Broker 2 will provide Scarborough with immediate notice of any cargo loss or damage claims as well as any other claims arising out of this Agreement and will co-operate with and furnish Scarborough with all information and documentation pertaining to any such claims for shipments brokered to motor carriers hereunder. Broker 2 will not settle any claims of any kind arising out of this Agreement with the prior written consent of Scarborough.

9. Proof of Payment: Broker 2 shall provide Scarborough with proof of payment to motor carriers in such form as the Parties mutually agree.

### REPRESENTATION OF SCARBROUGH

1. Minimum Shipments: Scarborough shall offer Broker 2 a minimum of three (3) shipments per year for each year this Agreement remains in effect. Broker 2 agrees to arrange for the transportation of those and any other shipments tendered to it by Scarborough under this Agreement.

2. Shipments, Billing and Rates:

(a) Scarborough is authorized to and shall be responsible for billing and collection from shippers, consignees, and third parties responsible for payment. Scarborough shall pay Broker 2 via check or electronic funds transfer and in accordance with the terms set forth in Par. (b), Rates, below. Payments shall not be made until a completed ACH form has been received by Scarborough. Broker 2 shall not bill or collect freight charges from shippers, consignees, or other third parties responsible for payment. In the event Broker 2 receives payment by a shipper, consignee, or third party, it shall immediately remit the payment to Scarborough.

(c) Rates: All transportation rates negotiated between the Parties shall be separately designated as Exhibit D1, et seq., and shall include: shipping instructions applicable to each shipment, which shall be confirmed in writing, fax, or email; rates, shipping instructions, or any other modifications of the rate agreement may be established verbally as mutually agreed upon, but shall not be binding until confirmed by the Parties by mail, fax, or email; rates shall include, but are not necessarily limited to, Broker 2's brokerage fees and the amount to be paid to any carrier selected by Broker 2 to transport the freight pursuant to this Agreement.

(d) Scarborough agrees to remit payment to Broker 2 in accordance with the Rates set forth in Par. 2(b) above within thirty (30) days of receipt of payment from shipper or other responsible Party.

(e) Scarborough shall assume responsibility for assisting and managing any cargo loss and damage claims, as well as any other claims arising out of this Agreement for shipments brokered to motor carriers hereunder.

3. Indemnity: Subject to Scarborough's insurance limits, Scarborough agrees to defend, hold harmless and indemnify Broker 2 from and against all liability or damages arising out of Scarborough's material breach of the terms of this Agreement.

4. Scarborough acknowledges and represents that Broker 2 is not an agent of Scarborough for any reason.



### MISCELLANEOUS

1. **Contract Term:** This Agreement shall be effective on the day and year first above written and shall remain in effect for one (1) year from such date and shall automatically renew from year to year thereafter. Provided, however, either party may cancel this Agreement at any time, for any reason, on ten (10) days prior written notice. In the event of termination, for any reason, the Parties shall be obligated to one another to complete all work-in-process and including payments required under Par. 2(b) Rates, above.
2. **Disputes:** In the event of any dispute arising out of this Agreement (either in contract or tort), the Party's sole recourse (except as provided below) shall be to arbitration under the rules of the American Arbitration Association (AAA). Alternatively, if mutually agreed upon by the Parties, arbitration may be conducted under the rules of the Transportation ADR Council, Inc. (TAC), or Transportation Arbitration & Mediation PLLC (TAM). The decision of the arbitrators shall be binding and final and the award of the arbitrator may be entered as judgment in any court of competent jurisdiction. Attorney's fees and costs shall be awarded to the prevailing party in arbitration or any action to enforce an award of arbitration. Arbitration proceedings shall be conducted at the offices of the AAA in Missouri, or arranged by TAC or TAM, or such other place as mutually agreed upon in writing. 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, or otherwise controlled by the USDOT-FMCSA laws and regulations, the laws of the State of Missouri shall be controlling. This paragraph shall not apply to enforcement of the award of arbitration.
3. **No Back Solicitation:** Broker 2 will not solicit any freight shipments from Customers of Scarborough for twelve (12) months following termination of this Agreement. "Customers", for purposes of this Agreement, shall mean:
  - (1) any shipper, for whom Scarborough agreed to arrange the transportation of freight, and who paid Scarborough (or its designee) for such services within the twelve (12) months immediately preceding the termination of this Agreement; and
  - (2) shall apply only to a shipper at the physical location of the shipper from which the agreement (verbal or written) between shipper and Scarborough was made. In the event of a material violation of this Agreement, Scarborough shall be entitled to fifteen percent (15%) of the gross receipts Broker 2 receives from the prohibited activity, for a period of one (1) year following termination of this Agreement.
4. **Confidentiality:** The Parties agree that they shall not use or disclose any of the contents of this Agreement to any person or entity except as necessary to conduct the business contemplated hereunder.
5. **Independent Contractor:** The relationship of Scarborough to Broker 2 shall at all time be that of an independent contractor.
6. **Waiver of Provisions:** Failure of either party to enforce a breach or waiver of any provision or term of this Agreement shall not be deemed to constitute a waiver of any subsequent failure or breach and shall not effect or limit the right of either party to thereafter enforce such term or provision.
7. **Controlling Law:** Unless preempted by federal law, the laws of the State of Missouri shall be controlling in the event of a default or dispute arising out of this Agreement.
8. **Modification of the Agreement:** This Agreement and the rate schedules attached may not be amended except by mutual written agreement, or by the procedures set forth in this Agreement.
9. **Notices:** All notices provided or required by this Agreement shall be made in writing and delivered, return receipt requested, to the addresses shown herein with postage prepaid; or by confirmed (electronically acknowledged on paper) fax.



- 10. Severance: In the event any of the terms of this Agreement are determined to be invalid or not enforceable, no other terms shall be affected and shall remain valid and enforceable as written.
- 11. Representations of the Parties shall survive termination of this Agreement for any reason.
- 12. Entire Agreement: This Agreement and its Exhibits contain the entire understanding of the Parties and supersede all verbal or written prior agreements, arrangements, and understandings of the Parties relating to the subject matter stated herein. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence may be introduced to reform this Agreement in any judicial or arbitration proceeding.
- 13. The relationship of each broker to the other hereunder shall at all times be that of independent contractor.
- 14. The Recitals set forth above are contractual as well as recital.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed the day and year first above written.

**BROKER**

**Scarborough Transportation, LLC**  
**10841 NW Ambassador Drive**  
**Kansas City, MO 64153**  
**PH: 816-584-2448**  
**FX: 816-891-8416**  
**Federal ID: 46-3760531**  
**Email Address**

[dompricing@scarborough-intl.com](mailto:dompricing@scarborough-intl.com)

**Tony Harrelson**

**Printed name**

**Domestic Transportation Manager**

**Title**

**Signature**

**BROKER 2**

**Company:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**City/ST/Zip:** \_\_\_\_\_  
**PH:** \_\_\_\_\_  
**FX:** \_\_\_\_\_  
**Fed ID:** \_\_\_\_\_  
**Email Address**

\_\_\_\_\_

\_\_\_\_\_

**Printed name**

\_\_\_\_\_

**Title**

\_\_\_\_\_

**Signature**

Broker 2 Initials \_\_\_\_