

## BROKERAGE MASTER SERVICES AGREEMENT

THIS AGREEMENT, "Agreement", made and intended to be effective this day of \_\_\_\_\_, 20\_\_\_\_ by and between **GULF WINDS INTERNATIONAL, INC.** ("BROKER") and \_\_\_\_\_ ("SHIPPER"), collectively, the "PARTIES."

### 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. A copy of BROKER's authority is attached as Appendix A and a copy of BROKER's Surety Bond or trust fund agreement is attached as Appendix B; and

**B. WHEREAS**, SHIPPER, to satisfy some of its transportation needs, desires to utilize the services of BROKER to arrange for transportation of SHIPPER's freight.

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

### AGREEMENT

1. **TERM.** Subject to paragraph 11, the term of this Agreement shall be one (1) year, commencing on the date first mentioned above, and shall automatically renew for successive one year periods; provided, however, that either Party may terminate this Agreement on 15 days written notice to the other Party, with or without cause, or as otherwise provided in this Agreement.

2. **SERVICE.** BROKER agrees to arrange for transportation of SHIPPER's freight pursuant to the terms and conditions of this Agreement and in compliance in all material respects with all federal, state and local laws and regulations relating to the brokerage of the freight covered by this Agreement. BROKER's responsibility under this Agreement shall be limited to arranging for, but not actually performing, transportation of SHIPPER's freight. It is understood that BROKER is retained by SHIPPER to arrange for transports by Gulf Winds International, Inc. or third party Carriers, and that BROKER performs the services under this agreement only as a broker and not as a carrier. BROKER may place the shipments with another transportation intermediary who may ultimately place the shipment with a motor carrier or rail carrier.

### 3. **VOLUME.**

A. SHIPPER agrees to tender shipments to BROKER, and BROKER agrees to arrange for the transportation of said shipments, as well as any other shipments offered by SHIPPER. Shipper is not restricted from tendering freight to other brokers, or directly to motor carriers. BROKER is not restricted from arranging transportation for other parties.

B. SHIPPER shall be responsible to BROKER for timely and accurate delivery instructions and description of the cargo, including any special handling or security requirements, for any shipment.

#### 4. FREIGHT CARRIAGE.

A. BROKER warrants that it has entered into, or will enter into a written contract of carriage with each carrier it utilizes in the performance of this Agreement. BROKER further warrants that those contracts comply with all applicable federal and state laws and regulations and may include the following provisions:

1. Carrier is in, and shall maintain compliance during the term of this Agreement, with all applicable federal, state and local laws relating to the provision of its services;

2. Carrier shall agree to maintain at all times during the term of the contract, insurance coverage with limits not less than the amounts required by law.

3. 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, except to the extent otherwise stated herein, in which case, the terms of this agreement shall control.

4. Carrier shall agree that, at no time during the term of its contract with BROKER shall it have an "Unsatisfactory" safety rating as determined by the Federal Motor Carrier Safety Administration (FMCSA). If Carrier receives an "Unsatisfactory" safety rating, it shall immediately notify BROKER. BROKER shall not knowingly utilize any carrier with an "Unsatisfactory" safety rating in the performance of this Agreement.

5. Carrier shall agree that the terms and conditions of its contract with BROKER shall apply on all shipments it handles for BROKER. Any terms in a tariff that are referenced in the carrier contract which are inconsistent with the contract shall be subordinate to the terms of the contract.

6. Carrier shall agree to maintain at all times during the term of the contract, insurance coverage with limits not less than the following:

a. Workers' Compensation Insurance of at least the statutory minimum in the state where the Services will be performed and Employers Liability with limits not less than \$500,000.00. Where workers' compensation insurance is not required by law and for Carrier's using Owner-Operators, Occupational Accident Insurance with limits of \$1,000,000. 00 (\$1 million)

may be acceptable.

- b. Commercial General Liability Insurance 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.
  - c. Commercial Automobile/Trucking Liability insurance coverage, including an MCS-90 endorsement, with limits of not less than \$1,000,000.00 (U.S. Dollars) per occurrence.
  - d. Broad Form Motor Truck Cargo Legal Liability insurance in an amount not less than \$250,000.00 (U.S. Dollars) per occurrence.
- B. SHIPPER warrants it shall provide a full and accurate description of goods to be transported and that such goods are marked and packaged in a manner suitable for transport and in conformance with all rules and regulations, including those pertaining to hazardous materials, where applicable. SHIPPER further warrants that any trailers, containers or equipment are not over dimension or overweight, unless specified in the Load Confirmation and Rate Agreement and shall be liable for any damages or permit expenses sustained by Carrier or BROKER for breach of such warranty.

**5. RECEIPTS AND BILLS OF LADING.** If requested by SHIPPER, BROKER agrees to provide SHIPPER with proof of acceptance and delivery of such loads in the form of a signed Bill of Lading or Proof of Delivery, as specified by SHIPPER. SHIPPER's insertion of BROKER's name on the bill of lading shall be for SHIPPER's convenience only and shall not change BROKER's status as a property broker. The terms and conditions of any freight documentation used by BROKER or carrier selected by BROKER may not supplement, alter, or modify the terms of this Agreement.

**6. RATES AND PAYMENTS.** BROKER shall invoice and collect freight and broker charges from SHIPPER in accordance with the rates, charges and provisions set forth in any Load Confirmation and Rate Agreement and any written supplements or revisions that are mutually agreed to between the PARTIES. 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. SHIPPER shall pay BROKER the rates and charges set forth in the Load Confirmation and Rate Agreement or other writings or communications pursuant to these terms. SHIPPER agrees to pay BROKER's invoice within 30 days of invoice date without deduction or setoff. In the event of a claim or lawsuit for collection SHIPPER agrees to pay all reasonable, attorney's fees and court costs. Shipper agrees it shall not have the right of set off for any compensation due to BROKER or Carrier under any Load Confirmation or Rate Agreement or this Agreement against any amount in dispute with Carriers or BROKER concerning claims of any kind.

The Rates set forth in the Load Confirmation and Rate Agreement do not include accessorial services, including but not limited to detention charges, equipment ordered and not used (dry run), re-delivery, and inside pickup/delivery. Such accessories are subject to the transporting Carrier's standard rates or tariff terms and conditions and shall be billed separately and in addition to the rates reflected in the Load Confirmation and Rate Agreement, unless specified therein.

In the event SHIPPER cancels a scheduled load before the movement thereof, SHIPPER shall pay BROKER a flat fee of \$250.

Payment of the freight charges to BROKER shall relieve SHIPPER or other responsible party of any liability to the Carrier for non-payment of its freight charges; and BROKER hereby covenants and agrees to indemnify SHIPPER or other responsible party against such liability.

**8. CLAIMS.**

**A. Freight Claims:** SHIPPER must file claims for cargo loss or damage with BROKER within one hundred eighty (180) days from the date of such loss, shortage or damage, which for purposes of the Agreement shall be the delivery date or, in the event of non-delivery, the scheduled delivery date. SHIPPER must file any civil action against the Carrier or BROKER in a Court of Law within two (2) years from the date the Carrier or BROKER provides written notice to SHIPPER that the Carrier has disallowed any part of the claim in the notice.

It is understood and agreed that the BROKER is not a Carrier and that the BROKER shall not be held liable for claims including but not limited to (1) loss, damage or delay in the transportation of SHIPPER's property, or (2) bodily injury or property damage claims asserted by third Parties against Carrier or SHIPPER. All damage claims will be handled by SHIPPER directly with the Carrier and its insurance representatives. If payment of claim is made by BROKER to SHIPPER, SHIPPER automatically assigns its rights and interest in the claim to BROKER.

In the event of a cargo loss, damage or shortage claim, SHIPPER agrees to notify BROKER immediately 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 within twenty (20) days following the date of delivery. No claims or allowances for shortages, damage or delay will be considered unless clearly noted on the delivery receipt or bill of lading signed by the consignee at delivery.

SHIPPER agrees that only the Carrier shall be liable for cargo loss, delay or damage and that the Carrier's prevailing terms and conditions shall apply to all such claims, including limitation of liability. In no event shall BROKER or BROKER's Carrier be liable to SHIPPER for special, incidental, consequential damages that relate to loss, damage or delay to a shipment, or any action, proceeding or dispute arising out of or relating to this Agreement or its

performance or non-performance by either party, including but not limited to loss of sales, income, interest, profit, attorney's fees or other costs.

**B. All Other Claims:** The PARTIES shall notify each other of all known material details within sixty (60) days of receiving notice of any claims other than cargo loss or damage claims, and shall update each other promptly thereafter as more information becomes available. Civil action, or arbitration, if any, shall be commenced within two (2) years from the date either Party provides written notice to the other Party of such a claim.

**C. Limitation of Liability:** SHIPPER acknowledges and agrees that the Servicing Motor Carrier's liability for cargo loss and damage is limited to \$100,000 per shipment. Total liability for any one shipment shall not exceed \$100,000, unless BROKER is notified by SHIPPER of the increased or excess value prior to shipment pickup and with reasonable advance notice to allow BROKER or the Carrier to procure additional insurance coverage and BROKER has confirmed in writing to SHIPPER that insurance coverage in excess of \$100,000 has been procured for that specific load. It is understood and agreed that BROKER is not a carrier and that BROKER shall not be held liable for loss, damage or delay in the transportation of SHIPPER's property. Subject to the to the terms set forth above, it is further agreed that in no event shall BROKER or Carrier be liable for any claim for damages of any sort in excess of available insurance policy limits for such claims.

**9. SURETY BOND.** BROKER shall maintain a surety bond or trust fund agreement as required by the Federal Motor Carrier Safety Administration and furnish SHIPPER with proof upon request.

**10. INDEMNITY.** SHIPPER shall indemnify BROKER and its directors, officers, employees, agents, subsidiaries and other affiliates for, and hold each of them harmless from and against, any and all Losses arising from or in connection with (i) the breach of any covenant or agreement of shipper contained in this Agreement, or (ii) any wrongful or negligent act or omission of Shipper or with respect to SHIPPER'S cargo, including but not limited to claims for bodily injury or property damage to any person arising out of SHIPPER'S failure to properly pack, load, stow or otherwise adequately describe or prepare the goods for shipment.

**11. HAZARDOUS MATERIALS.** SHIPPER and BROKER shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.800, §173, and §397 et seq. to the extent that any shipments constitute hazardous materials. SHIPPER is obligated to inform BROKER immediately if any such shipments constitute hazardous materials. **SHIPPER SHALL DEFEND, INDEMNIFY AND HOLD BROKER HARMLESS FROM ANY PENALTIES OR LIABILITY OF ANY KIND, INCLUDING REASONABLE ATTORNEY FEES, ARISING OUT OF SHIPPER'S FAILURE TO COMPLY WITH APPLICABLE HAZARDOUS MATERIALS LAWS AND REGULATIONS.**

12. **HOMELAND SECURITY.** As applicable to each, respectively, BROKER and SHIPPER shall comply with state and federal Homeland Security related laws and regulations.

13. **DEFAULT.** Both parties will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes in good faith. However, if either Party materially fails to perform its duties under this Agreement, the party claiming default may terminate this Agreement on 10 days written notice to the other Party. SHIPPER shall be responsible to pay BROKER for any services performed prior to the termination of this Agreement and for shipments not yet completed and/or not yet invoiced to SHIPPER.

14. **SEVERABILITY/SURVIVABILITY.** In the event that the operation of any portion of this Agreement results in a violation of any law, or any provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the Agreement shall continue in full force and effect. The representations and obligations of the PARTIES shall survive the termination of this Agreement for any reason.

15. **INDEPENDENT CONTRACTOR.** It is understood between BROKER and SHIPPER that BROKER is not an agent for the Carrier or SHIPPER and shall remain at all times an independent contractor. SHIPPER does not exercise or retain any control or supervision over BROKER, its operations, employees, or carriers.

16. **NONWAIVER.** Failure of either party to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of this Agreement, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

17. **NOTICES.** Unless the PARTIES notify each other in writing of a change of address, any and all notices required or permitted to be given under this Agreement shall be in writing (or fax with machine imprint on paper acknowledging successful transmission) and shall be addressed to the address reflected below.

18. **FORCE MAJEURE.** Neither Party shall be liable to the other for failure to perform any of its obligations under this Agreement during any time in which such performance is prevented by fire, flood, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of the SHIPPER or BROKER, provided that the Party so prevented uses its best efforts to perform under this Agreement and provided further, that such Party provide reasonable notice to the other Party of its inability to perform.

**19. CHOICE OF LAW AND VENUE.** The parties agree that this agreement shall be deemed to be entered into in Harris County, Texas and services will be deemed to have been performed there. All questions concerning the construction, interpretation, validity and enforceability of this Agreement, whether in a court of law or in arbitration, shall be subject to and governed by the laws of the State of Texas or applicable federal law, irrespective of the fact that one or more of the parties may be or may become a resident of a different state. The Parties agree that any and all disputes under this Agreement shall be filed in the appropriate state and federal courts located within the State of Texas. Jurisdiction and venue shall be proper in the State of Texas for any and all claims or disputes arising out of any transactions between BROKER and SHIPPER. SHIPPER agrees that BROKER may, at its option, commence or transfer any legal actions or proceedings to courts having situs within the State of Texas, SHIPPER hereby submits itself to the personal jurisdiction of the state of federal courts in Texas and venue for any cause of action shall be in the courts within Texas. SHIPPER hereby waives any claims or objections that such courts will be improper or inconvenient forums.

**20. DISPUTE RESOLUTION.** The Parties agree that this Agreement is being entered into in good faith and that if a dispute arises in its application or interpretation that they shall attempt to resolve said dispute between themselves. If such efforts fail, the Parties agree to submit such claims or disputes to mediation with an experienced mediator in Harris County, Texas, with the costs and expenses to be paid by the party incurring same, except with respect to mediation fees which shall be divided and paid equally, prior to the filing of any suit by either Party against the other, unless such provision is subsequently waived in writing by both parties. This mediation requirement shall not apply to claims for indemnity.

**21. LITIGATION.** In the event of a dispute arising out of this Agreement, the Party's sole recourse after proceeding in good faith with mediation as set forth herein, shall be litigation which shall be filed in accordance with paragraph 8 above within two years from the date of the alleged loss. The prevailing party shall be entitled to recovery of costs, expenses and reasonable attorney fees as well those incurred in any action for injunctive relief.

**22. CONFIDENTIALITY; BACK-SOLICITATION.** In consideration of the Broker locating Carriers and arranging for Carrier's to transport Shipper's freight and in further consideration of disclosing confidential information to Shipper in the form of vendors, contacts and the like, and other good and valuable consideration, the sufficiency of which Shipper acknowledges by its signature below, except upon a material breach of this Agreement by Broker, Shipper shall refrain from directly soliciting transportation services from Carrier's contracted by Broker during the term of this Agreement, or for 12 months thereafter, from any Carrier which (i) was not solicited by Shipper prior to the Effective Date and (ii) actually tenders at least 1 shipment to Shipper during the term of this Agreement. In the event of breach of this provision, BROKER shall be entitled, for a period of 12 months following delivery of the last shipment transported by a Carrier referenced above, to a commission of fifteen percent (15%) of the gross transportation revenue (as evidenced by freight bills).

23. **ENTIRE AGREEMENT:** This Agreement, including the Rate Confirmation and Load Sheet and all Appendices and Addenda, if any, constitutes the entire agreement intended by and between the PARTIES and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter hereof. 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 involving this Agreement.

**IN WITNESS WHEREOF**, the PARTIES hereto have caused this Agreement to be executed in their respective names by their fully-authorized representatives as of the dates first above written.

**REPRESENTATIVE OF BROKER**

**REPRESENTATIVE OF SHIPPER**

**GULF WINDS INTERNATIONAL, INC.**

\_\_\_\_\_, (SHIPPER)

\_\_\_\_\_  
Signed / Date

\_\_\_\_\_  
Signed / Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

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