

**AGENCY OPERATIONS AGREEMENT**

Agency Appointment Contract

Broker:

Agent:

KTI LOGISITCS LLC

Address:

3794 HWY 411 NE

RYDAL GA 30171

Contact: \_\_\_\_\_

Fed. ID # \_\_\_\_\_

Soc. Sec. # \_\_\_\_\_

This agreement is entered into between \_\_\_\_\_ hereinafter referred to as the "Agent", and KTI LOGISTICS LLC, hereinafter referred to as the "Broker."

Contract dated: \_\_\_\_\_, 20\_\_\_\_ (hereinafter known as the "effective date"). Broker and Agent agree as follows:

**1. Limited Agent Appointment.**

Broker appoints Agent, and Agent accepts such appointment, as Broker's Agent for the limited purpose of representing and acting on behalf of Broker as specifically set forth herein in connection with Broker's business as a licensed transportation broker. This is an exclusive agreement. Agent is an independent business which has chosen to affiliate with Broker for the limited purposes set forth herein. During the term of this agreement, Agent may not perform any of the functions outlined herein for its sole benefit or the benefit of others not a party to this agreement. Nothing in this Agreement shall be construed as affecting the duties and obligations of Agent as an independent contractor who is solely responsible for all costs, wages, licensing, taxes, and liabilities associated with his conduct as an independent businessman.

This is a limited agency appointment. Broker appoints Agent as a sales Agent for the limited purpose of soliciting shipments of freight for the Broker. Agent shall not have the power, unless specifically authorized in writing by the Broker in advance, to appoint sub-agents, to commit Broker to pay monies, to incur liabilities or indebtedness for Broker, to contract for Broker, to compromise or settle claims against Broker, to represent that Agent has greater authority or a broader relationship with Broker than as provided for in this contract, or to accept service of process for Broker. Agent recognizes and agrees that the authority granted hereunder is not exclusive to the Agent, but rather Broker has, or may have in the future: (a) granted similar authority to other agents, (b) also employed salespeople to solicit Loads or Contracts for Broker, and (c) taken any other actions it deems consistent with its business interest which are not prohibited by law. Agent may add additional sales staff or in-house commission sales representatives to help Agent with additional services. Any staff or sales agent shall be fully compensated by Agent and subject to its exclusive dominion and control. Broker shall have no responsibility to compensate same. Agent shall be solely responsible for all acts or omissions of its sales staff, in-house commission agents or sub-agents that are approved sub-agents. Agent will monitor and ensure that all employees, commission agents and approved sub-agents comply with the terms and conditions of this Agreement.

(a) Term. This Contract shall commence upon the Effective Date first written above, and may be canceled by either party without cause on 30 days written notice. Broker reserves the right to terminate this Agreement for cause on 24 hours written notice in the event of a material breach by Agent. A material breach shall include failure to obtain Shipper or carrier approval of freight prior to dispatch, the commission

of ultra vires acts, misappropriation of freight charges or settlement, failure to transmit claims information. Upon termination, Agent's rights and privileges under this Contract shall cease. Except to the extent necessary to comply with Broker's explicit instructions relating to the completion of Loads solicited by the Agent and accepted by the Broker prior to termination, Agent shall immediately: (1) stop acting as, or representing itself as an agent of the Broker, (2) stop using or displaying "marks" as defined below. Agent agrees that Broker will be irreparably harmed if Agent, its employees or sub-agents fail to comply with the terms of this Agreement and understands that the exact amount of damages will be difficult, if not impossible, to determine. The parties agree that Broker may seek injunctive relief and that in addition to attorney's fees and compensatory damages, Agent shall be responsible for exemplary or punitive damages which may be awarded for its misrepresentation of fraud under state law. In the event the Agreement is terminated without cause on 30 days notice, the parties agree to work together to facilitate an orderly transition to permit Agent to continue to service its account if identified accounts post termination while ensuring that all services arranged by and with Broker to and through the termination date are properly provided, billed and collected without claim. Subsequent to the termination date, Broker shall make a weekly accounting to Agent for all works in progress compensating Agent for unpaid commissions as freight charges are received.

**Post Term Covenant:** Agent agrees that for a period of twelve (12) months following termination of this agreement, Agent, its employees and sub-agents will not directly or indirectly engage in any of the following activities:

- 1) Solicit or assist any other person or entity in the solicitation of Company employees to leave their employment with Broker, or
- 2) Solicit customers of Broker whose transportation patterns, needs and volumes were made known to Agent in conjunction with its business relationship with Broker. This covenant includes Broker's relationships existing prior to and during the term of this agreement. This covenant excludes Agent business relationships existing prior to, brought to broker and continuing during the term of this agreement.

(b) Assignment. Agent may not assign its rights or delegate its duties under this Contract without the prior written consent of the Broker. Any attempted assignment without written consent of the Broker is void.

During the term of this Agreement, the Broker agrees that it will endeavor not to directly solicit approved accounts referred to and/or secured by the Agent, without the express knowledge or approval of the Agent.

(c) Non-Disclosure Agreement. Agent agrees that as a result of this Agreement it will be privy to proprietary information of Broker, including but not limited to customer and service provider lists and billing information, computer program materials, lane analyses, etc. Agent agrees that such information remains the proprietary data of Broker and shall not be disseminated, republished or transmitted by Agent, its employees or sub-agents to any third party during the term of this Agreement and for a period of five (5) years following termination. Agent agrees to keep such information strictly confidential and to procure from its employees and sub-agents as a condition of their use a similar non-disclosure agreement. This nondisclosure agreement does not apply to information concerning agent's account which was developed and maintained by agent in the ordinary course of its business.

## **2. Responsibilities and Duties of Agent:**

Whereas, the Agent has the necessary skills in selling and offering for sale or negotiating transportation services for interstate and/or intrastate commerce over public highways and available railways, the Agent shall obtain Broker's pre-approval of all shippers, and carriers. Additionally, the Agent shall diligently, efficiently and exclusively represent the Broker with respect to shipments of general commodities (hereinafter referred to as "Loads"), and perform the following obligations:

- (a) Solicit Loads from approved shippers, and solicit contracts from shippers, in the form as set forth for such Loads, within the scope of Broker's operating permits issued by state, federal and other regulatory governmental bodies, subject, in each instance, to Broker's pre-approval right to reject any Loads or Contracts without a penalty or commission to the Agent or any third party, or

Represent Broker by account assignment as described in Addendum A, "Approved Agent Accounts."

(b) Solicit Contracts from authorized carriers unaffiliated with Broker to transport the Loads solicited by the Agent and accepted by the Broker, in each instance, to Broker's right to reject any contracts without penalty or commission to Agent or any third party, and manage the authorized unaffiliated carriers that Broker contracts with for the transportation of those Loads solicited by the Agent and accepted by the Broker to ensure timely delivery of the Loads.

(c) Upon Broker's request, Agent shall make every reasonable effort to assist Broker to collect all monies due Broker from any shipper, consignee or "Bill To" (any such party that is responsible for paying freight charges) for those Loads solicited by the Agent and accepted by the Broker.

(d) Agent shall not accept claims or legal process on Broker's behalf and shall direct all such claimants, process servers, etc., to contact Broker, Notwithstanding the foregoing, Agent shall immediately notify Broker concerning any claim or potential claim arising out of the performance of this Contract.

(e) Agent shall assist in the investigation and adjustment of claims for damage to cargo and any other claims to Loads solicited by Agent and accepted by the Broker.

(f) Agent shall pay Broker upon receipt of a statement from Broker such amounts as Agent may owe Broker as a result of this Contract.

(g) Agent shall maintain for three (3) years copies of all correspondence including load confirmation sheets and agreements between it and contracts for and on behalf of Broker.

(h) Each party shall give the other immediate notice of the merger, consolidation, transfer, dissolution of their respective assets; any assignment by either party for the benefit of creditors, bankruptcy filing, or the institution of any proceeding against the other alleging that it is insolvent or unable to pay debts; the entry of any judgment against either party or partners of either party if either is a sole proprietorship or partnership, respectively; and any civil or criminal actions instituted against either party, its owners, partners and/or directors.

(i) Agent, without excluding other duties and obligations accepted under this Contract, undertakes to prepare and type in complete, accurate and legible manner all forms, contracts, and other documents used by the Broker, as may be amended from time to time to conduct Broker's business.

(j) Agent agrees and will convey to each Assigned Account and Unaffiliated Authorized Carrier secured by the Agent, that all contracts, agreements, rating, billing, remittances of invoices, the mail-to address for either the shipper or any party responsible for payment of all services, or carriers contracted, The contracting party is exclusively the Broker.

The Agent is not authorized to perform any direct billing functions or payment functions on behalf of the Broker unless with written expressed approval and consent of the Broker.

(k) Agent warrants that all contracts, load confirmation sheets, POD and shipping documents shall be issued in a form prescribed by Broker and shall bear the account identification number assigned by Broker. Carriers shall transmit documents to Broker for execution, examination and retention.

(l) Procedures to be followed. Agent warrants that it and any sub-agent shall follow the following procedures with respect to the solicitation of loads and the retention of motor carriers.

(1) Agent or sub-agent shall enter load confirmation agreements with only shipper/customers whose credit has been approved by Broker and shall utilize the load confirmation sheet.

(2) All loads booked by Agent and its sub-agent shall be numbered in sequence. Copies of all signed load confirmation sheets shall be forwarded together with a load booking summary to Broker daily. The

load booking summary shall be in a format prescribed by Broker and shall show the following: (i) the load identification number; (ii) the shipper or customer; (iii) the origin and destination; (iv) the compensation to be billed; (v) the name of the carrier retained; and (vi) the compensation to be paid.

(3) In retaining qualified service providers, Agent shall ensure that it and its sub-agents use only motor carriers who are licensed, authorized and insured in accordance with broker-carrier qualifications and who have on file with Broker the following: (i) an executed carrier agreement; (ii) a copy of carrier's operating authority, (iii) a copy of carrier's W-9; (iv) certificates of insurance evidencing BI and PD coverage in the amount of not less than \$1,000,000 per occurrence and combined single limit cargo insurance in the amount of \$100,000 per occurrence with an underwriter acceptable to Broker. All carriers must be pre-approved by Broker prior to use and must enjoy an acceptable DOT safety rating.

(4) Agent warrants that all load confirmation sheets with carriers will be transmitted to Broker upon execution and that it will undertake no liability or payment obligation on behalf of Broker not fully reflected on the load confirmation sheet or otherwise without the express prior written agreement of Broker.

(5) Dispatch / Operations Software: AGENT is required to utilize the platform technology provided by BROKER in order to assure seamless transactions. BROKER is required to keep the platform technology in good working order. Agent is required to provide hardware capable of utilizing platform technology provided by broker.

### **3. Additional Agent Warranties and Covenants.**

- (a) Conflict of Interest Prohibited. During the term of this Agreement, Agent and its subscribing officers and directors agree to avoid any relationship with other brokers, carriers or shippers which might conflict with the interests of Broker. Agent, its subscribing officers and directors. Shall have no direct or indirect financial interest in or control over any transportation entity in competition with Broker or which is otherwise a customer or carrier for Broker without the expressed written authorization of Broker.
- (b) Covenant Not to Compete. Agent agrees that new shipper customers solicited by it on Broker's behalf during the term of this Agreement as well as all accounts first introduced to Agent by Broker are deemed to be accounts of Broker and subject to the provision of this covenant. Agent and its signatory principals agree that upon termination of this Agreement and for a period of time twelve (12) months thereafter, they will not directly or indirectly solicit Broker accounts. Broker accounts, as defined herein, exclude accounts identified by Agent and set forth in Addendum A at time of execution. For purposes of this Agreement, Broker's customer shall mean any customer Broker has done business with within the preceding 12 month period. Additionally, in the event of termination of this Agreement, Broker will not directly or indirectly solicit customers first introduced to Broker by Agent (as identified in Addendum A) for a period of sixty (60) days. This covenant not to compete shall not apply with respect to owner-operators under lease with Broker's asset based affiliates as a result of the efforts of agent.
- (c) Non-Disclosure. Agent, and its subscribing principals and employees identified herein acknowledge that Broker has or will provide them with proprietary and/or confidential information to enable the employee to perform services for Broker. Each agrees not to disclose, directly or indirectly, to any competitor or other unauthorized person, any proprietary or confidential information, including without limitation, pricing, marketing information and strategies, pricing strategies, client approaches, potential customer lists or customers' and carriers' names, addresses, purchases, needs, requirements or the like, without regard to whether such information may be deemed confidential by third parties. Agent will surrender to Broker upon termination of this agreement all written or otherwise transcribed memorializations of any proprietary or confidential information of Broker.
- (d) Agent and its identified subscribing employees acknowledge that Broker will suffer irreparable injury if any of the provisions of this Section are not enforced by injunctive relief and each consents

to all such injunctive relief. Any injunction issued shall be in addition to all other rights available to Broker. Broker shall be entitled to reasonable attorneys' fees from enforcement of any breach of this Agreement, in addition to all other damages occasioned by breach of this Agreement.

- (e) Agent warrants that it will not engage in double brokering without the expressed written approval of broker and that any contracting shipper customer shall be the beneficial owner of the goods or its disclosed agent. Agent also warrants that the authorized contracting carriers it solicits will provide services in equipment owned or exclusively leased to them.

**4. Compensation Schedule.** As compensation for the services of Agent (and its sub-agent) Broker shall make weekly settlements with Agent.

**5. Repayment of Freight Charges.** In the event that any freight bill on which commission was advanced to the Agent by the Broker remains unpaid after the lapse of ninety (90) days from the billed date, Agent will, on demand by the Broker, refund to the Broker the amount of all the freight charges payable on account of the Loads that remain unpaid; provided, however, that Broker will repay to Agent all freight charges if the freight bill is subsequently collected by Broker without the assistance of an outside collection agency or an attorney. If the Broker, in its sole discretion, employs the services of an outside collection agency or attorney to effect the collection of a freight bill, and the outside collection agency or attorney is able to collect the entire freight bill, then the Broker will repay to the Agent the amounts recovered less the cost of collection. Furthermore, Broker may withhold payment in the event that 1) there is no clear delivery receipt; 2) the bill of lading fails to indicate the contracting party is responsible for payment of the freight charges, or 3) that the bill of lading is otherwise defective. Provisions of this paragraph shall survive any termination of this Contract.

Broker will endeavor to notify Agent on Tuesday of each week of accounts that are delinquent more than 30 days to allow Agent an opportunity to call accounts to collect past due invoices.

**6. Credit Policy Release/Approval.** Agent agrees to secure a credit release from Broker prior to committing to providing service. Failure to receive credit approval will result in Agent being responsible to Broker for 100% of the full amount of the freight charges and Broker may impose collection from Agent immediately. Agent commission will be held on all freight bills secured with a credit release or receivables extending beyond credit limits, until freight bills are paid. If Agent received a credit approval and approval for the account/customer is rescinded at a later date, Agent will also be held liable to Broker for the full amount of the freight charges of any loads moved subsequently, but after written notification by Broker. Agent will not be permitted to invoice his/her own company for transportation charges. Agent will not be permitted to bill accounts for freight charges direct, as all invoicing will be performed by the Broker and payments of freight charges are to be remitted only to Broker's mail-to address on invoices. Broker does not bill Agent for freight charges, and there will be no exceptions to this agreement. The provisions of this paragraph shall survive the termination of this Contract.

**7. Accounting Practices.** Upon Agent's reasonable request, the Agent shall be entitled to an accounting of its compensation, which accounting shall include either copies of rated freight bills and amounts collected there under, or computer generated documentation containing substantially the same information, in each instance with respect to Loads solicited by the Agent and accepted by the Broker. Agent understands and agrees that in no event shall the Agent be entitled to any accounting of Broker's revenue or commissions on any shipment which the Agent did not participate. The accounting by the Broker shall be the exclusive accounting. Agent will be paid commissions on a weekly basis for Loads, as billed, that are solicited by Agent and accepted by Broker. All required paperwork for complete billing of Agent's account must be received by Broker as necessary for accurate and timely billing and agent payment processes. Weekly statements of Loads billed, amount paid to Agent, as well as loads tendered and accepted and not billed, for whatever reasons, will be supplied by Broker for Agent's review.

**8. Performance by Agent and Insurance.** The Agent and the Broker agree and intend to create by this contract an independent relationship and not a joint venture or an employer and employee relationship in any manner. Neither the Agent nor the Agent's employees shall be considered employees of the Broker. Agent shall determine the manner, means and methods of performance of all services rendered hereunder and shall retain responsibility for same, including, but not limited to items listed below:

(a) The wages, hours, working conditions, management supervision, and all other aspects and requirements of any kind whatsoever related to the Agent's employees and/or the services provided by the Agent hereunder, including, but not limited to, all expenses associated therewith.

(b) All taxes and fees (including penalties and interest) imposed by any federal, provincial, state or local government on account of the receipt of income by Agent for services rendered under this Contract. Agent income earned by Agent hereunder, and Agent agrees to take any action necessary to ensure that Broker is not subject to such requirement. Agent shall promptly file all such tax forms and returns as may be required in connection with the receipt of income by Agent and shall pay all such taxes when due. Upon reasonable request, Agent shall furnish Broker with evidence of compliance with the foregoing.

(c) Agent shall pay or withhold all employment related taxes and fees imposed by any federal, provincial, state or local government by virtue of Agent's status as an employer or sole proprietor, as the case may be.

(d) The Agent shall, at Agent's expense, carry and maintain in full force and effect workers' compensation insurance and other employer's liability insurance as required by applicable law covering all persons employed by the Agent.

(e) Agent shall carry and maintain public liability insurance with respect to the services provided by the Agent to the Broker in an amount not less than one million dollars (\$1,000,000).

(f) Insurance policies shall not be canceled or amended without at least thirty (30) days prior written notice to the Broker. Agent shall furnish the Broker a Certificate of Insurance documenting such coverages, naming Broker as an additional insured as its interest may appear.

**9. Indemnification.** Agent agrees to reimburse, indemnify and hold the Broker and its affiliates harmless from and against any and all claims, liabilities, suits, causes of action, damages, losses, costs and expenses incurred or suffered by Broker or its affiliates that result from, relate to, or arise out of:

(a) Any breach of this Contract by Agent or any misrepresentation by Agent, its employee or sub-agents.

(b) Any negligent acts, omissions or non-conformance by the Agent or Agent's employees or sub-agents under this Contract or any Schedule, Exhibit, instrument or other document executed in connection therewith.

(c) Any claim or liability for taxes, penalties or interest referred to above.

(d) Broker shall indemnify and hold harmless Agents from liability, claim, loss or damage arising out of its negligent act or omission in the performance of this Agreement.

Additional Consideration. The owners guarantee fulfillment of this indemnification to the extent the claim, loss or damage by Broker arises out of misrepresentation or ultra vires act.

Agent's obligation under this paragraph shall survive the termination of this Contract.

**10. Compliance of Laws and Contracts.** Agent shall comply at all times with all laws and regulations governing its performance hereunder and with all rules, policies, and procedures established by the Broker. Agent represents and warrants that it has full authority to execute and perform this Contract, and that such execution and performance does not violate any other Contract to which it may now, or heretofore, be a party.

**11. Trademarks/Broker Logos.** Broker may provide the Agent with advertising and/or sales material that Broker may use to perform the duties and obligations set forth in Section 2 above. Agent may not use any of Broker's trade names, trademarks, service marks, slogans, designs, logos, and similar items or rights owned or used by the Broker (referred to as "marks") without the Broker's prior approval and prior written consent. Agent agrees not to use or register trade names, trademarks, service marks, slogans, designs, or similar items which are confusingly similar to the marks of the Broker or its affiliated entities, or use or include the marks of the Broker in any advertising, except as approved by the Broker in writing.

**12. Mutual Cooperation and Resolution of Disputes.** Both the Agent and the Broker agree to cooperate fully with one another in connection with all matters related to their performance under this Contract. The full cooperation of both parties shall also extend to the resolution of any dispute or controversy that may arise in connection with this Contract. If representatives of the Broker and the Agent primarily responsible for the negotiation and performance of the Contract are unable after reasonably diligent efforts to resolve any dispute or controversy, then the matter shall be referred to an Executive of the Broker and an Executive of the Agent that have not been directly involved in prior efforts to resolve the dispute. If the Executive Panel is unable to resolve any dispute after reasonably diligent efforts, the matter may, by mutual Contract, be referred to binding arbitration or either party may resort to litigation. In the event the matter is then referred to arbitration or is litigated, the nonprevailing party shall bear all related costs, including, but not limited to, the prevailing party's reasonable attorney's fees.

**13. Applicable Law.** The terms and conditions of this Contract, or any Schedule, Exhibit, instrument or other document executed in connection with this Contract shall be governed by, and enforced in accordance with, the laws of the State of Georgia, County of Bartow, and any suit or action enforcing the terms and conditions of this Contract shall be brought and adjudicated in the court of general jurisdiction for Bartow County.

**14. Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Contract shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

**15. Counterparts.** This Contract may be executed by the parties hereto in one or more counterparts, each of which, when so executed, shall be an original, and all such counterparts shall constitute but one and the same instrument.

**16. Headings Contained in this Contract.** Any headings of the paragraphs or subparagraphs of this Contract are solely for the convenience of the parties hereto, are not a part of this Contract, and shall not be used for the interpretation or determination of the validity of this Contract or any provision hereof.

**17. Modification of this Contract.** Except as otherwise provided herein, no waiver, alteration, or modification of any of the provisions of this Contract shall be binding upon any party unless in writing and signed by the authorized representative of the party against whom such waiver, alteration, or modification is sought to be enforced.

**18. Entire Contract.** The provisions of this Contract shall supersede all contemporaneous oral Contracts and all prior oral and written quotations, communications, Contracts and understandings of the parties with respect to the subject matter of this Contract.

**19. Confidentiality.** Neither party may disclose any term or provision of this agreement to a non-signatory party without the written consent of the other party.

20. Addendum Attachments. If there is attached hereto, and by reference made a part hereof, an Addendum A, which identifies those specific approved account assignments of the Agent, and the extent to which this Contract is applicable thereto.

The undersigned has read the foregoing and hereby agrees to comply with the provisions of the Agent's covenants in Paragraph 3 above.

The undersigned hereby guarantees the performance of Agent's duties and obligation as set forth in Paragraph 9 above.

\_\_\_\_\_  
Agent

KTI LOGISTICS LLC  
\_\_\_\_\_  
Broker

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Dave Clark

Title: \_\_\_\_\_

Title: Vice President/Gen Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## COMPENSATION SCHEDULE

**Truck Loads.** With respect to Loads solicited by the Agent and accepted by the Broker, the Agent shall be compensated in an amount equal to 60% of the Broker's gross margin.

Total Revenue Billed Customer Minus Purchased Transportation Expense =  
Gross Margin X 60% = Commission Due Agent

**Intermodal Loads.** With respect to Loads solicited by the Agent and accepted by the Broker, the Agent shall be compensated in an amount equal to sixty percent (60%) of the difference between total revenue billed and collected with respect to each Load, and the total purchased transportation expense with respect to each Load.

Total Revenue Billed Customer Minus Total Purchased Transportation Expense (including origin dray costs, rail charges, destination dray costs, and any accessorial incurred) =

Gross Margin X 60% = Commission Due Agent

Any accessorial charges received on loads subsequent to Agent settlement will be subject to adjustments of Agent's commission. Broker must provide Agent with documentation sufficient to validate these additional charges.

Full compensation will be paid based upon Agent entering order(s) into Broker's Order Entry System. Should Agent or Agent's customer phone, fax, or in any way cause Broker to manually enter order(s) into the Broker's Order Entry System, the Broker shall deduct seven dollars (\$7) per load from Agent's commission on said Loads. Broker reserves the right to deduct from Agent's compensation any amounts due Broker.

**However, in no event will the BROKER retain less than \$50 per load unless agreed to by BROKER.**

BROKER affiliated asset based carrier freight commissions: BROKER is affiliated with other asset based trucking companies that may from time to time utilize AGENT personnel to assist in finding its drivers loads and revenue. When AGENT personnel assists Broker's asset based companies in finding freight revenue, BROKER shall pay AGENT five percent (5% Percent) of the gross line haul revenue not including fuel surcharge for the move AGENT assisted with.

Full compensation will be paid based upon Agent entering order(s) into Broker's Order Entry System.