

### **Broker - Carrier Agreement**

This Broker Carrier Agreement (this “Agreement”), is made effective as of 20th day of September, 2021 (the “Effective Date”), by and between RPM LLC, located at 301 W. Fourth Street, Royal Oak MI 48067, MC # 767565 (“Broker”), and xxxxxxx located in, Ashville, NY, a licensed motor carrier authorized by Permit No. MC094358 that provides transportation and related services under contract (“Carrier”).

WHEREAS, Broker arranges for the transportation of freight and products owned or controlled by its customers (individually and collectively, “Customers”), which includes the selection of a carrier and the payment of transportation charges; and

WHEREAS, Broker desires that Carrier perform transportation of shipments that Broker has obtained under its arrangements with its Customers, subject to the terms and conditions of this Agreement.

THEREFORE, for valid consideration received, the parties agree as follows:

### **GENERAL BUSINESS COVENANTS**

1. **Term**. The term of this Agreement shall commence on the Effective Date and shall continue thereafter from year to year until terminated by either party, with or without cause, on thirty (30) days prior written notice at any time.
2. **Independent Contractor; Performance of Services**. Carrier understands and agrees that Carrier is an independent contractor of Broker and that Carrier has exclusive control and direction of the work Carrier performs pursuant to this Agreement and each Tender Document (defined below). Carrier represents that it is registered with Federal Motor Carrier Safety Association (“FMCSA”) as a motor carrier in interstate, intrastate, and/or foreign commerce and is in all respect qualified to transport freight as required by Broker. Carrier agrees to assume full responsibility for the payment of all local, state, federal and provincial payroll taxes, and contributions or taxes for unemployment insurance, workers’ compensation insurance, pensions, and other social security or related protection with respect to the persons engaged by Carrier for Carrier’s performance of the transportation and related services for Broker or the Customer, and Carrier agrees to indemnify, defend and hold Broker and Customer(s) harmless therefrom. Carrier agrees to perform the services under this Agreement in accordance with the highest standards of the industry, operating under its own authority, using its own employees and using its own tractor unit. Carrier shall be wholly responsible for performing the contemplated transportation and for all costs and expenses of such transportation, including, without limitation, costs and expenses of all Carrier’s transportation equipment, its maintenance, and those persons who operate it. In providing services, Carrier represents and warrants that the driver(s) utilized are competent and properly licensed, and are fully informed of their responsibilities for the protection and care of the involved commodities.
3. **Compliance with Applicable Laws and Regulations**. Carrier warrants that (1) it is legally qualified to perform the contemplated transportation, (2) it does not have a “conditional” or “unsatisfactory” FMCSA safety rating, (3) maintains all applicable statutory and regulatory required insurance, and (4) it shall immediately notify Broker in writing of any adverse change in its safety rating or any suspension or revocation of its operation authorities. Carrier agrees to comply with all applicable provisions of any international, federal, provincial, state and/or local law, rules and regulations. Without limiting the generality of the foregoing, Carrier agrees to

comply with all laws, rules and regulations governing the sanitary transportation of human and animal food pursuant to the Food Safety Modernization Act, and further agrees to assume the obligations of a shipper as defined thereunder. Without limiting the foregoing, Carrier shall, at Carrier's expense, comply with all laws, rules and regulations (including, without limitation, obtaining all permits and licenses) which are required for Carrier to provide Broker the transportation and related services under this Agreement. Carrier agrees not to accept a shipment from Broker if that shipment would require Carrier or any of its employees, agents or permitted subcontractors to exceed or violate any speed or safety law, rule or regulation. Carrier shall indemnify and hold Broker harmless from and against any and all liabilities, demands, claims, losses, costs, damages, and expenses (including attorneys' and other professional fees) arising from or relating to Carrier's non-compliance with this Section 3.

4. Solicitation of Broker's Customers. Carrier shall not during the term of this Agreement and for twelve (12) months following the termination of this Agreement, directly or indirectly, solicit the traffic of freight between the origins and destinations that were first offered to Carrier by Broker ("Brokered Traffic"). If Carrier transports Brokered Traffic in violation of this provision, then Broker shall be immediately entitled to a commission of fifty percent (50%) on the rates and charges received by Carrier on such Brokered Traffic.
5. Successors and Assigns. This agreement shall be binding upon the successors and permitted assigns of the parties hereto. Carrier shall not assign this Agreement, or any part thereof, without the prior written consent of Broker.
6. Venue and Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the State of Michigan, without regard to any conflict of laws or choice of law provisions. The parties hereby agree that any legal or equitable action or proceeding with respect to this Agreement shall be brought only in any court sitting in Oakland County of the State of Michigan, or the Eastern District Court of the United States sitting in Michigan, and each of the party's hereby submits to and accepts generally and unconditionally the jurisdiction of those courts with respect to it and its property and irrevocably consents to the service of process in connection with any such action or proceeding by personal delivery or by the mailing thereof by registered or certified mail, postage prepaid to its address set forth below.
7. Modification. No waiver, alteration or modification of any of the provisions of this Agreement, or any Tender Documents, shall be binding upon either party unless in writing and signed by the duly authorized representative of the party against whom such waiver, alteration or modification is sought to be enforced.
8. Savings Clause. If any provision of this Agreement or any Tender Document is held to be invalid, the remainder of the Agreement or the Tender Document shall remain in full force and effect with the offensive term or condition being stricken to the extent necessary to comply with any conflicting law, rule or regulation. Carrier agrees that the termination, breach or invalidity of this Agreement or any Tender Document does not cause Carrier's rules tariff (s), circular(s) or other publication(s) to govern the transportation and related services that Carrier provides to Broker or its Customers.
9. Waiver. No provision of this Agreement or any Tender Document shall be waived by any party hereto, unless such waiver is written and signed by the authorized representative of the party against whom such waiver is sought to be enforced. Waiver by either party of any breach or failure to comply with any provision of this Agreement or any Tender Document by the other party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Agreement or any Tender Document.
10. Notices. All notices required by or related to this Agreement shall be in writing and sent to the parties at the addresses set forth below and shall be deemed given when personally delivered,

by confirmed facsimile, or three (3) days after having been mailed by certified mail, return receipt requested, to the following addresses:

Notice Addresses:

**Broker**

RPM  
301 W. Fourth Street  
Royal Oak, MI 48067  
Fax: 248-414-1806

**Carrier**

xxx

Either party may change the address to which future notices are to be addressed by giving written notice of such change to the other party.

11. Non-Exclusive Dealing. This Agreement does not grant Carrier an exclusive right to perform the transportation and related services for Broker or its Customer(s). Broker does not guarantee any specific amount of shipments, tonnage, or revenue to Carrier. Broker is not restricted against tendering its freight to other carriers; Carrier is not restricted against performing transportation for other shippers.
12. Factoring. Carrier shall provide Broker written notice of any assignment, factoring, or other transfer of its right to receive payment arising under this Agreement thirty (30) days prior to such assignment, factoring, or other transfer taking legal effect. Such written notice shall include the name and address of the assignee/transferee, date, date assignment is to begin, and terms of the assignment, and shall be considered delivered upon receipt of such written notice by Broker. Carrier shall be allowed to have only one assignment, factoring or transfer legally effective at any one point in time, and no multiple assignments, factoring or transfers by the Carrier shall be permitted. Carrier shall indemnify Broker against and hold Broker harmless from any and all lawsuits, claims, actions, damages (including reasonable attorney's fees, obligation, liabilities and liens) arising or imposed in connection with the assignment or transfer of any account or right arising thereunder. Carrier also releases and waives any right, claim or action against Broker for amounts due and owing under this Agreement where Carrier has not complied with the notice requirements of this section.
13. Assignment of Rights to Payment by Carrier. Any factoring, assignment, pledge, hypothecation or granting of a security interest in Carrier's right to payment hereunder shall in no event modify, limit or terminate (i) the unlimited and unilateral rights of offset or recoupment provided to Broker hereunder or by law; or (ii) claims of Broker for offset, recoupment, loss or damage to any cargo or other property, including personal injury, or any other claim which Broker may have against Carrier for any reason. All of Broker's claims and rights are specifically preserved and shall be superior to any rights or claims to payment of any assignee, factor or creditor, regardless of any notice to Broker to the contrary. Carrier shall notify any such assignee, factor or creditor of Broker's rights in this regard.
14. Miscellaneous. This Agreement may be executed by facsimile and in one or more counterparts and each of such counterparts shall, for all purposes, be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. In the event either party incurs attorney's fees, costs or expenses in enforcing any of the provision of this Agreement, or in exercising any right or remedy arising out of any breach of this Agreement by the other party

or their agents, subcontractors or representatives, the prevailing party shall be entitled to an award of attorney's fees, costs and expenses against the defaulting party.

### INSURANCE & LIABILITY

15. Insurance. Carrier, at Carrier's expense, shall maintain during the term of this Agreement commercial automobile liability insurance for the benefit of Broker and Customer, covering all vehicles however owned or used by Carrier to transport Broker's shipments and property damage arising out of Carrier transportation under this Agreement, with minimum limits of not less than One Million Dollars (\$1,000,000) per occurrence for personal injury (including death) and property damage, cargo liability insurance with minimum limits of not less than One Hundred Thousand Dollars (\$100,000) per shipment, and if requested by Broker, commercial general liability insurance of One Million Dollars (\$1,000,000) per occurrence. The Carrier shall also maintain any insurance coverages required by any government body including worker's compensation (if applicable) for the types of transportation and related services specified. Carrier shall furnish written evidence of its insurance coverage to Broker upon request and shall advise Broker of any change in its insurance coverage thirty (30) days prior to the effective date of such change. Carrier further agrees to procure and maintain any and all insurance required by federal, state, local or, to the extent applicable, international laws. Carrier shall cause the required insurance to be procured naming Broker as an "additional insured" on any public liability, general liability and/or automobile liability policies. Upon request of Broker, Carrier shall furnish to Broker written certificates obtained from each insurance carrier showing that the required insurance has been procured. Carrier's insurance will be deemed primary in the event of loss or damage. Carrier's indemnification obligations described in this Agreement, including Section 17 below, will not be reduced or limited by the actual insurance policy limits that Carrier chooses to purchase. If Carrier fails to maintain such insurance, Broker may do so and charge Carrier for such cost and offset in accordance with this Agreement.
16. Cargo Liability. Carrier assumes liability as a common carrier for loss, damage to or destruction of the goods entrusted to it or its permitted subcontractor's care, custody or control and shall provide evidence of a BMC-32 Endorsement upon request. Carrier shall pay to Broker, or Broker may offset from the amounts Broker owes Carrier, for any losses arising from goods so lost, delayed, damaged or destroyed. Carrier shall not allow any of the goods tendered to Carrier to be sold or made available for sale or otherwise disposed of in any salvage markets, employee stores or any other secondary outlets without Broker's prior written consent. Carrier agrees to either pay or settle all cargo claims within 60 days of the receipt of a claim. Carrier agrees to notify Broker's Claims Department in writing, immediately whenever an accident or potential claim occurs and provide Broker with any written reports, affidavits or other assistance necessary to assess the claim.
17. Indemnification. Carrier agrees to indemnify, defend and hold Broker and its Customers, and their respective officers, directors, managers, members, shareholders, employees, agents and assigns, harmless from and against any and all fines, penalties, costs, demands, damages, (including bodily injury and property damage) losses, obligations, claims, liabilities and expenses (including reasonable attorney's fees) of whatever type or nature arising out of or related to: (i) the maintenance, use or operation (including loading and unloading by Carrier, Carrier's agents or contractors) of any motor vehicle or equipment in performance of services under this Agreement; (ii) any and all acts or omissions of Carrier, its agents, employees or contractors in providing the transportation services to be provided under this Agreement, (iii) an alleged violation by Carrier, as well as Carrier's agents or contractors, of any federal, state, or municipal law, rule or regulation related to Carrier's transportation services, and (iv) any use, operation,

maintenance or possession of any owned or leased equipment by Carrier, Carrier's agents or contractors. The obligations of Carrier under this Section shall survive termination of this Agreement.

### SERVICE

18. Performance of Services. Carrier agrees to meet Broker's distinct transit and pricing requirements agreed to by the parties from time to time as confirmed by the Broker's issuance of a Tender Sheet, Pre-note, Rate Confirmation, Bill of Lading, Proof of Delivery or other load tender document that Broker may use from time to time (in each case, a "Tender Document"). Additional service requirements of Carrier are as follows:
- Carrier shall transport Broker's shipments without delay. Carrier shall immediately notify Broker of any likelihood of delay. Carrier shall transport all freight tendered by Broker only on equipment operated under Carrier's authority.
  - Carrier shall comply with all of Broker's reasonable shipping instructions communicated to Carrier, and to comply with all applicable provisions of any provincial, federal, state and/or local law or ordinance and all lawful orders, rules and regulations issued thereunder.
  - Carrier shall obtain from the consignee a complete, signed delivery receipt for each shipment, and it shall notify Broker immediately of any exception on any document. Carrier shall send Broker delivery receipts and bills of lading within twenty-four (24) hours of delivery, as Broker directs.
  - If Broker requests Carrier to transport any shipment required to be placarded under DOT rules as a hazardous material, the additional provisions in Appendix A, including additional insurance requirements, shall apply for each such shipment.
  - Documents for each of Broker's shipments shall name Broker as "broker" and Carrier as "carrier". If there is a wrongly worded document, the parties will treat it as if it showed Broker as "broker" and Carrier as "carrier". If there is a conflict between this Agreement and any transportation document related to Broker's shipment, this Agreement shall govern.
  - Carrier is responsible for ensuring that all freight is properly blocked and braced for transportation to allow for the safe and damage-free delivery of the goods and to avoid damage to other property.
  - Carrier shall be responsible for ensuring compliance with all customs and security laws that are applicable to the transportation services either domestically in the United States, Canada or Mexico if within the scope of the Tender Document or for import or export to or from the United States, Canada or Mexico.
  - Carrier is responsible to determine that the goods being shipped are in apparent good order and condition, to the extent that such is ascertainable through a visual examination of the exterior of the goods shipped, before loading and, in the event that they are not, Carrier will contact Broker for further instructions.
19. Bills of Lading and Delivery Receipts. Carrier will issue and sign a standard, uniform straight bill of lading or other receipt acceptable to Broker and Customer, upon acceptance of goods for transportation. All terms or conditions written or printed on the receipts or bills of lading which have not been specifically agreed to by Broker, either in this Agreement or on any signed addenda hereto, shall have no binding effect against Broker. The receipt of a bill of lading issued or executed by Carrier shall be prima-facie evidence of receipt of goods in good order and condition by Carrier unless otherwise noted on the face of said document. Carrier shall submit to Broker the original signed bill of lading evidencing good delivery of the goods, unless

otherwise specifically agreed by Broker; and in that case, Carrier shall maintain custody of the original signed bills of lading and will provide them to Broker upon request. If Carrier fails to maintain and provide the bills of lading as agreed, Carrier assumes all risk of loss resulting from the failure to prove good delivery. In the event that Carrier's personnel are not allowed or afforded an opportunity to view and/or examine the goods in order to ascertain the condition of those goods prior to loading on to Carrier's vehicle, Carrier's personnel shall immediately notify Broker and await instructions prior to transporting the shipment, and shall note on the bill of lading that they were not allowed or afforded an opportunity to view and/or examine the goods shipped.

### **BUSINESS CONDUCT**

20. **Rates and Charges.** The rates and charges that shall be in effect for all movements tendered to Carrier by Broker shall be as set forth on the Tender Document issued by the Broker and given to Carrier (the "Charges"). Carrier represents, warrants and agrees that there are no other applicable rates or charges except those set forth on the Tender Document issued by Broker from time to time. Carrier agrees that it shall not bill the shipper/consignee or any third party directly nor shall it communicate in any manner, directly or indirectly, with Broker's Customers, consignors, consignees or any party other than Broker, concerning the collection of any of the Charges relating to transportation services accruing in connection with or as a consequence of this Agreement; and waives any right it may otherwise have to proceed or commence any action against any such party for the collection of any freight bills arising out of transportation services performed by Carrier under this Agreement. Carrier will not accept payment from any shipper/consignee or any third party for providing transportation under this agreement. Carrier's performance of the work contained in the Tender Document, or commencement to perform, is confirmation of acceptance of the rate and the Charges contained in that document. No other rates, terms, conditions, charges, fees, expenses or any other amounts shall be payable by Broker to Carrier unless such items are included in the written Tender Document. Nothing in any Bill of Lading or other Carrier issued document shall be binding upon Broker. Unless specifically included in the Tender Document, Broker shall not be required to make payment for any accessorial charges, equipment or escort rentals for the tendered movement, or any other special permitting or operating expenses.
21. **Carrier's Right to Subcontract.** Except as provided in this section, Carrier shall not, in any manner, sub-contract, broker or tender to any third party for transportation, any freight tendered to Carrier by Broker for transportation pursuant to this Agreement. Carrier may subcontract the services that Carrier has agreed to perform for Broker under this Agreement, only if: (i) Carrier provides Broker prior written notice of such subcontracting, (ii) Broker acknowledges in writing, that the subcontracting may occur; and (iii) Carrier remains liable for the full and faithful performance of all obligations contained in this Agreement, including the obligation to indemnify Broker and Customer in accordance with Section 17, as if no such subcontracting has taken place. Nothing in this Agreement shall permit or allow Carrier to assign or delegate any of its other duties or obligations under this Agreement.
22. **Payment.** On a monthly basis, Carrier will issue Broker an invoice for any amounts due and owing by Broker pursuant to this Agreement. Payment of all undisputed invoiced amounts shall be made by Broker within thirty (30) days from the date of the invoice.
23. **Waiver of Carrier's Lien.** Carrier, for itself and on behalf of all of its agents or subcontractors, hereby waives and agrees not to assert or make any claim arising out of any motor carrier's lien which Carrier would otherwise be allowed to assert upon any cargo or goods which are tendered by Broker to Carrier or which are otherwise in the possession or control of Carrier or

its subcontractors or agents. Carrier shall not withhold delivery of any freight due to any dispute with Broker or Customer.

24. Insolvency. In the event of insolvency proceedings being instituted by or against Carrier, then Broker, any agent of Broker, or Broker's Customer may immediately enter upon any owned or leased property of Carrier where any cargo, goods or Customer owned or leased equipment may be found and take possession of such goods or owned or leased equipment without notice or liability to Carrier.
25. Set-Off and Recoupment. Broker may set off, withhold, recover or recoup any amounts payable to Carrier hereunder or under any other agreement or arrangement between Carrier and Broker, or any of its affiliates, subsidiaries against. In addition, in the event Broker makes payment to Carrier as provided herein and Carrier fails to make payment to any applicable subcontractor, then Broker may, at its option and sole discretion, pay such subcontractor and offset the amount paid against any amounts owed or to be owing to Carrier by Broker. Failure to comply with any DOT, FMCSA policy, law or regulation, or any breach of any element of this Agreement, howsoever minor, may result in non-payment for freight charges and/or set off and recoupment claims.
26. Hostage Loads. For purposes of this Agreement "hostage loads" is defined as the refusal by Carrier to immediately release shipper's freight upon demand or otherwise exerting unauthorized control over freight, refusal to deliver a load at the scheduled time and place of delivery, refusing to provide Broker with information on the location of shipper's freight or refusing to deliver, or failure to release or produce such freight. In the event that Carrier does hold freight hostage, Carrier agrees to pay Broker \$5,000.00 for each day that freight is held. Carrier agrees that such amount constitutes reasonable liquidated damages for damage to Broker's reputation with the shipper and/or others. Broker shall be entitled to all other available or alternative remedies at law or equity in the case of hostage loads.
27. Contract Carriage. All services performed by Carrier pursuant to this Agreement shall be as a motor carrier of property in interstate or foreign commerce and shall be rendered as contract carriage within the meaning of 49 U.S.C. §§ 13102(4)(B) and 14101(b). Broker and Carrier hereby expressly waive all provisions of Chapters 137 and 147 and any other provisions of Subtitle IV, Part B of Title 49, United States Code, to the extent that such provisions are in conflict with express provisions of this Agreement. The parties do not, however, waive the provisions of that subtitle relating to registration, insurance, or safety fitness.
28. Entire Agreement. This Agreement, together with the Tender Documents issued by Broker constitutes the entire agreement between the parties and supersedes all other oral and written communications, agreements and contracts between Carrier and Broker with respect to the subject matter of this Agreement. Any provisions on any Carrier-provided form whether before or after the execution of this Agreement, shall be deemed null and void and of no effect and shall not modify the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the undersigned individuals have executed this Agreement as of the Effective Date, and by doing so, represent and warrant that they have been or are specifically authorized to do so on behalf of the organization they represent.