

## MASTER SHIPPER - MOTOR CARRIER AGREEMENT

**THIS SHIPPER-MOTOR CARRIER AGREEMENT** (“Agreement”) is made and entered into, effective as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“Effective Date”), between Loftin Equipment Co. Inc., an Arizona corporation with its principal place of business at 1220 N. 52<sup>nd</sup> St., Phoenix, AZ 85008 (“Loftin”) and \_\_\_\_\_, a \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ (“Carrier”). Carrier is a for-hire motor carrier registered with the Federal Motor Carrier Safety Administration (“FMCSA”) within the United States Department of Transportation (“U.S. DOT”) under MC number \_\_\_\_\_ and U.S. DOT number \_\_\_\_\_. Loftin and Carrier are sometimes referred to collectively in this Agreement as the “Parties” or individually as a “Party.”

### RECITALS

Loftin desires to utilize the motor carrier services of Carrier for the transport of freight/property (herein “Loftin’s Cargo”), in accordance with Loftin’s distinct and specialized needs, including but not limited to such distinct and specialized needs which are described in this Agreement.

Carrier, as an independent contractor, is engaged in the transportation of freight by motor vehicle as a motor carrier and desires to furnish interstate and intrastate motor carrier service to Loftin.

Carrier represents that it is an authorized for-hire motor carrier and that it has in effect all required governmental operating authorities to transport freight as a for-hire motor carrier to meet Loftin’s involved for-hire motor carrier transportation shipping needs and requirements.

NOW, THEREFORE, in consideration of the premises and the mutual promises and conditions herein contained, the Parties hereby agree and intend to be legally bound as follows:

### TERMS AND CONDITIONS

1. Services and Compensation.

(a) Loftin agrees to tender Loftin’s Cargo either directly or cause to be tendered by third parties, to Carrier for transportation, according to the shipment rates and charges agreed to in accordance with Article 1(d) of this Agreement, and Carrier further agrees to transport such other of Loftin’s Cargo as may be tendered for transportation by Loftin, all subject to the provisions hereinafter set forth, provided that, this Agreement does not obligate Loftin to provide Carrier with any minimum or maximum number of shipments during the Term (as defined in Article 3 of this Agreement).

(b) Carrier agrees to provide and maintain any equipment necessary to meet the distinct needs of Loftin in transporting goods pursuant to this Agreement. These distinct needs include, but are not limited to (1) flexible and economic motor carrier service, (2) scheduled appointment loading and unloading of equipment, and (3) availability of a sufficient number of trucks, trailers and drivers to meet the for-hire motor carrier

transportation shipping needs and requirements of Loftin as communicated from time to time by Loftin to Carrier. Carrier warrants that such equipment shall be in a good and safe working condition and properly licensed. Carrier agrees that it will not transport Loftin's Cargo in any trailers previously employed by Carrier for the shipment of any solid waste, liquid waste, hazardous waste or other commodities which could cause, or might tend to cause, contamination or adulteration of any of Loftin's Cargo.

(c) Carrier agrees that it shall employ or otherwise secure the services of, supervise, compensate and be responsible for all drivers operating motor vehicles used by Carrier to transport Loftin's Cargo, and that all such drivers shall be properly licensed and qualified and shall operate in accordance with all applicable laws.

(d) Carrier's rates and charges to Loftin for the services to be provided by Carrier under this Agreement shall be as set forth in Appendix A attached to this Agreement and incorporated herein by reference. Carrier agrees to transport Loftin's Cargo at the rates or charges as set forth in Appendix A.

(e) All Loftin's Cargo transported by Carrier for Loftin during the Initial Term or during a Renewal Term of this Agreement (as defined in Article 3 hereof), whether received directly from Loftin or from a third party designated by Loftin, shall be transported by Carrier under the provisions of this Agreement.

2. Indemnification.

(a) Carrier agrees to indemnify, defend and hold Loftin, its officers, employees and agents harmless against any and all liability, claims or expenses, including but not limited to, attorneys' fees and other costs of defense, asserted against Loftin by any person or entity to the extent caused by Carrier's or its subcontractor's negligence, by Carrier's breach of any provision of this Agreement, or by Carrier's or its subcontractor's failure to comply with any Federal or state law or regulation (including but not limited to driver hours of service laws and regulations) applicable to Carrier's performance under this Agreement. This indemnification includes, but is not limited to, any and all liabilities, claims or expenses for death of or injury to persons or property damage (other than loss or damage to Loftin's Cargo – which is governed by Article 5 of this Agreement). Carrier agrees to indemnify, defend and hold harmless Loftin, its officers, employees and agents regardless of whether or not such liability, claims or expenses are caused in part by Loftin, its officers, employees and agents. This indemnification shall not apply to the extent the liability, claim or expense is caused by Loftin's sole negligence, Loftin's intentionally wrongful conduct, Loftin's breach of any provision of this Agreement, or Loftin's failure to comply with any Federal or state law or regulation applicable to Loftin's performance under this Agreement.

(b) The indemnification obligations of Carrier under this Article 2 of this Agreement shall survive the cancellation, termination or expiration of this Agreement.

3. Term.

(a) Unless terminated as provided in Article 3(b) of this Agreement, the term of this Agreement shall be for a period of one (1) year from the Effective Date ("Initial Term").

This Agreement shall automatically renew for additional one (1) year periods (each a “Renewal Term”) unless and until terminated as provided in Article 3(b) of this Agreement.

(b) Either Party may terminate this Agreement at any time for any reason or no reason by giving thirty (30) days prior written notice to the other Party as set forth in Article 15 of this Agreement. This Agreement may be terminated immediately upon the happening of any one or more of the following:

(i) By either Party, if the other Party shall make an assignment for the benefit of its creditors, file a voluntary petition for relief under the Bankruptcy Act, or similar law, or suffer to remain on file for more than thirty (30) days an involuntary petition for such relief.

(ii) By Loftin, if Carrier should, at any time, fail to have the requisite registration(s), license(s), permit(s) or authority(ies) for the lawful performance of its obligations under this Agreement.

(iii) By either Party, if the other Party shall materially breach or fail to perform and comply with the provisions of this Agreement to be performed by it, or complied with by it, and such breach or nonperformance shall continue after fifteen (15) days prior written notice thereof from such other Party, which notice shall specify the breach or nonperformance complained of.

(c) Termination of this Agreement pursuant to this Article 3 shall not relieve either of the Parties from obligations to the other, imposed hereby, and incurred at or before the effective date of the termination. In the event this Agreement is, or is sought to be, wrongfully terminated by either of the Parties, or in the event of either Party’s failure or inability in any material respect to perform and comply with the provisions of this Agreement to be performed by it or complied with by it, the Parties shall have all legal and equitable rights and remedies provided to them by applicable law. Termination of this Agreement by either Party under the provisions of this Article 3 of this Agreement shall not be deemed a wrongful termination for the purposes of this paragraph.

4. Receipts for Loftin’s Cargo.

Carrier agrees, upon receipt of Loftin’s Cargo from Loftin or from third parties, to give Loftin or such third party a written receipt therefor, which shall be evidence of receipt of Loftin’s Cargo by Carrier.

5. Carrier’s Liability for Shipments.

(a) Carrier agrees, upon receipt of Loftin’s Cargo from Loftin or from third parties, to assume the liability of a motor carrier for actual loss of, damage to, or delay in delivery of Loftin’s Cargo subject to the provisions of 49 U.S.C. § 14706 (the “Carmack Amendment”) and 49 C.F.R. § 370.1 through 370.9 (claim regulations), from the time of the receipt of Loftin’s Cargo by Carrier until proper delivery has been made. Such liability shall apply regardless of whether the motor carrier transportation of the involved Loftin’s Cargo is subject to FMCSA regulation. Should such statute and/or regulations be amended, the

statutory and/or regulatory provisions in effect on the date this Agreement is signed shall govern Carrier's liability under this Agreement. Carrier's liability for loss, damage, or delay shall be determined solely by the provisions of this Agreement. Any limitation of liability contained in a Carrier tariff or Carrier issued bill of lading shall not apply to a shipment tendered to Carrier pursuant to this Agreement.

(b) Carrier shall notify Loftin immediately by telephone, text message and e-mail of any accidents, spills, theft, hijacking, delays or shortages which may affect the safe and prompt delivery of Loftin's Cargo, and shall request additional instructions regarding delivery or storage of Loftin's Cargo.

(c) The time limit within which Loftin must file a claim for cargo loss, damage or delay against Carrier shall be nine (9) months from the date of delivery or nine (9) months after a reasonable time for delivery. All claims shall be paid, settled or disallowed by Carrier within sixty (60) days of the filing of a claim by Loftin. Disallowances shall state a lawful reason for declining to accept responsibility for the claim, and shall be stated by the Carrier, not its insurer. The time limit within which Loftin must institute a legal action against Carrier to recover on a claim of cargo loss, damage or delay shall be two (2) years from the date Loftin receives a written disallowance of the claim from Carrier.

(d) Carrier shall be responsible for, and hereby assumes all liability for loss of, destruction of or physical damage to the following: all vehicles, trailers, equipment, tools and machinery that are owned or leased to Carrier, and all personal property of Carrier's employees and contractors, whether or not such vehicles, trailers, equipment, tools, machinery and personal property are located on Loftin's premises, unless such loss, destruction or damage is caused by the sole negligence or willful act or omission of Loftin, its employees or agents.

(e) Insurance coverage, sufficient to replace with like kind and quality, should be in place for any/all Loftin property that is in the care, custody or control of \_\_\_\_\_  
(carrier name)

(f) The provisions of Article 5 of this Agreement shall survive termination of this Agreement.

6. Insurance.

(1)

**(a) LOFTIN EQUIPMENT COMPANY WILL NOT ISSUE PAYMENTS TO SUBCONTRACTORS UNLESS A CURRENT INSURANCE CERTIFICATE IS ON FILE AND APPROVED.**

Following are minimal insurance requirements for subcontractors. Where these general requirements are less than the requirements set by the contract documents the contract documents will prevail. The certificate must show that the issuing

company will mail thirty (30) days' written notice (ten (10) days for nonpayment of premium) of cancellation (not "will endeavor to", as some certificates state).

General Liability Insurance

Per Occurrence Limit:	\$1,000,000
Personal & Advertising Limit:	\$1,000,000
General Aggregate Limit:	\$2,000,000
Products & Completed Operations Aggregate:	\$2,000,000

**Must Include:**

- Current ISO CG 0001 07/98 General Liability Form (Or Its Equivalent)
- “Occurrence” Form coverage, “claims-made” coverage is not acceptable
- XCU Coverage
- Waiver of Subrogation Endorsement
- Per Job Aggregate Endorsement
- Primary and Non-contributory Endorsement
- Additional insured endorsement - a combination of the CG 20 10 10 01 and CG 20 37 10 01 endorsements
- Data Liability Coverage

**Must Not Include:**

- Mold/Fungus Exclusion
- Subsidence Exclusion
- Punitive Damage Exclusion
- Any other exclusion or endorsement that significantly limits, or removes, the coverages required above or those provided in the ISO general liability form referenced above.
- Must not include a deductible, or self-insured retention, of greater than \$5,000.
- Any deductible, or self-insured retention, must not apply per claimant.

Automobile Insurance

Combined Single Limit Liability Coverage  
1,000,000  
Must apply on a “Symbol 1” basis as defined by ISO.  
Must Include Additional Insured Endorsement  
Must Include Waiver of Subrogation Endorsement  
Must Include Primary and Non-contributory Endorsement

Workers Compensation Insurance/ Employers Liability

Statutory Workers Comp plus Employers Liability of:	
Policy Limit-Accident	\$1,000,000
Policy Limit-Disease	\$1,000,000
Each Employee-Disease	\$1,000,000
Must Include Waiver of Subrogation Endorsement	

Cargo Insurance for Loftin's Cargo

Insurance coverage, sufficient to replace Loftin's cargo with like kind and quality, should be in place for any/all Loftin property that is in the care, custody or control of Carrier.

Umbrella/Excess Liability

Limit \$5,000,000

Underlying Policies:

General Liability

Auto Liability

Employers Liability

Foreign Coverages

Must Include Additional Insured Endorsement

Must Include Waiver of Subrogation Endorsement

Must Include Primary and Non-contributory Endorsement

Coverage must be with Best's "A-VII or greater" rated carriers reasonably acceptable to LOFTIN EQUIPMENT COMPANY.

(b) Within three (3) days of execution of the agreement, Carrier shall provide Loftin with current Certificates of Insurance listing Loftin as a "Certificate Holder" for the Workers' Compensation, Employer's Liability, Commercial General Liability, and Automobile Liability coverages described above. If Carrier is self-insured, Carrier shall provide Loftin with proof of self-insurance for the Workers' Compensation, Employer's Liability, Commercial General Liability, Automobile Liability, and Cargo Insurance coverages described above. Where applicable, such proof shall consist of a Certificate of Insurance or a Consent to Self-Insure. All insurance required under Article 6 of this Agreement shall be primary insurance and not contributing to or in excess of any similar insurance coverage procured and kept by Loftin. Carrier shall, at Loftin's request, provide to Loftin a copy of each such insurance policy.

(c) Carrier agrees that the policies of insurance with the required coverages described above shall not be terminated nor shall the limits of liability be amended. Failure of Loftin to demand such certificates or to identify any deficiency in the insurance procured shall not be construed as or deemed to be a waiver of Carrier's (or its agent's or subcontractor's) obligation to procure, maintain and keep such coverage. Carrier agrees to advise Loftin immediately if its Automobile Liability insurance and/or Cargo Insurance is (are) ever revoked or cancelled.

(d) Carrier shall also require its agents and subcontractors who conduct work at the request of Carrier pursuant to this Agreement to procure, maintain and keep the same insurance coverage required in this Agreement. Should insurance policy limits be exhausted or should Carrier or its agents or subcontractors fail to procure, maintain and keep the required insurance coverage, neither Carrier nor any of its agents or subcontractors will in any way be relieved from liability provided for in this Agreement to Loftin should a loss occur. Loftin will have the right, but not the obligation, to prohibit Carrier or any of

its agents or subcontractors from performing work under this Agreement until evidence that the insurance has been procured in complete compliance with these requirements is received and approved by Loftin.

7. Licenses and Lawful Operation.

(a) Carrier represents and warrants that it is authorized by the U.S. DOT, the FMCSA and as may be required by each state agency which regulates intrastate for-hire motor carrier transportation in a state within which Carrier agrees with Loftin to provide intrastate for-hire motor carrier transportation to operate as an interstate and intrastate motor carrier, and that Carrier's U.S. DOT number and FMCSA motor carrier registration numbers are as set forth above. Carrier agrees to give notice to Loftin immediately if such motor carrier authority is ever revoked, suspended or cancelled.

(b) Carrier agrees to transport Loftin's Cargo from and to the points requested by Loftin in full compliance with all applicable laws, rules and regulations.

(c) Carrier represents and warrants that it has now and will maintain in full force and effect throughout the Initial Term and any Renewal Term of this Agreement, all necessary federal, state and local registrations, licenses, permits and authority to perform the services provided for under this Agreement, at the rates and charges as set forth in Appendix A of this Agreement.

(d) Carrier agrees to immediately give notice by telephone, by email and by any other method described in Article 15 of this Agreement to Loftin if Carrier's motor carrier safety rating is ever other than: (i) "Satisfactory," (ii) "Unrated," (iii) "None", or (iv) "Continue To Operate."

8. Independent Contractors.

Carrier and Loftin are entirely independent of one another; and Carrier shall be an independent contractor and shall have exclusive control and direction of the persons operating vehicles or otherwise engaged by Carrier in services pursuant to this Agreement. Nothing contained in this Agreement shall be construed to create the relationship of principal and agent, or employer and employee between Loftin and Carrier, or to make Loftin or Carrier partners, joint venturers, principals, agents or employees of the other. Carrier shall neither act nor represent itself as an agent or employee of Loftin to any person or entity. Carrier agrees that it has full responsibility for the payment of all local, state and federal taxes and contributions including, but not limited to, all required taxes and/or contributions related to payroll, unemployment insurance, pensions, workers' compensation and social security. Where appropriate, however, Loftin will provide Carrier with an Arizona Form 5000 TPT Exemption Certificate. Carrier shall not have the authority to act on behalf of or bind Loftin for any purpose whatsoever.

9. Undercharges and Overcharges.

Either Party to this Agreement must institute an action for contesting overcharges and undercharges on shipments moved under this Agreement within six (6) months from

receipt of Loftin's Cargo by the consignee. All claims for overcharges or duplicate payments shall be processed in accordance with 49 C.F.R. Part 378.

10. Payment Terms.

Loftin shall pay to Carrier the applicable rates and charges as agreed to in Appendix A within thirty (30) days after Loftin has received from Carrier proof of delivery of the applicable shipment and Carrier's invoice for the charges. If invoices are sent electronically, remit to \_\_\_\_\_. If invoices are sent by mail, remit to the address stated in Section 15 of this Agreement, Attention: \_\_\_\_\_. Payment will be remitted by Loftin within thirty (30) days of receipt by Loftin of mailed invoice. If Loftin disputes any invoices, partial payments will be remitted by Loftin while resolution of a disputed invoice is sought. Loftin will have thirty (30) days from resolution of a disputed invoice to pay the outstanding amount, if any.

11. Industrial and Intellectual Property Rights; Trade Secrets; Use of Loftin's Name.

(a) Carrier acknowledges that this Agreement creates a confidential relationship between Carrier and Loftin that is the basis on which (i) Carrier shall provide to Loftin the services referred to in Article 1 of this Agreement, and (ii) Loftin has disclosed and may in the future disclose Loftin's commercially valuable, proprietary, confidential information pertaining to the services provided for in this Agreement (collectively, the "Confidential Information"). Such Confidential Information of Loftin may constitute trade secrets, technology, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which Loftin has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as "confidential." Carrier shall safeguard using at least the degree of care it uses to protect its most sensitive information and in no event less than a reasonable degree of care all Confidential Information, and computer software and written materials (collectively, the "Software"), which Loftin supplies to Carrier, shall not copy or duplicate such Confidential Information or Software without Loftin's prior written consent, and shall return to Loftin, or at Loftin's request destroy and provide evidence of destruction, such Confidential Information and Software upon completion of services under this Agreement or upon Loftin's request. Carrier shall use such Confidential Information and Software only to carry out Carrier's performance, duties and obligations under this Agreement, and shall not copy or duplicate such materials without Loftin's prior written consent.

Confidential Information does not include information that: (a) was rightfully known to Carrier without restriction on use or disclosure prior to such information's being disclosed or made available to Carrier in connection with this Agreement; (b) was or becomes generally known by the public other than by Carrier's or any of its representatives' noncompliance with this Agreement; (c) was or is received by Carrier on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) Carrier can demonstrate by written or other documentary records was or is independently developed by Carrier without reference to or use of any Confidential Information.



(b) All right, title and interest in and to (a) the Software and (b) all works, inventions and other subject matter incorporating, based on or derived from any Software, including all customizations, enhancements, improvements and other modifications thereof, in each case (subclause (a) and subclause (b)) by whomsoever made and including all intellectual property rights therein, are and will remain, as appropriate, with Loftin and respective third-party rights holders. Carrier has no right or license with respect to the Software except as provided for in this Agreement during the Initial Term or a Renewal Term. All other rights in and to the Software and its derivatives are expressly reserved by Loftin.

(c) In the event of a breach or threatened breach of the foregoing provisions of Article 11 of this Agreement, damages to be suffered by Loftin will not be fully compensable in money damages alone, and accordingly, Loftin shall, in addition to other available legal or equitable remedies, be entitled to an injunction against such breach or threatened breach without any requirement to post bond as a condition of such relief.

(d) If disclosure of Loftin's Confidential Information is required by law, Carrier shall first give reasonable notice to Loftin stating the nature of the demanded disclosure and the anticipated due date of the disclosure so that Loftin may, if it deems necessary, seek a protective order or the like to prevent such disclosure.

(e) If Loftin is successful in recovering on a claim for breach of Article 11 of this Agreement against Carrier, Loftin shall be entitled to recover all of its costs incurred in collecting its claim, including reasonable attorneys' fees. Carrier shall be entitled to recover said expenses only upon a finding that the suit was instituted by Loftin in bad faith.

(f) Without Loftin's prior written approval, Carrier shall not publish or use any advertising, sales promotion or publicity matter relating to services, equipment, materials, products and reports furnished by Carrier wherein the names of Loftin and/or its subsidiaries are mentioned or their identity implied.

(g) The confidentiality obligations set forth in Article 11 of this Agreement shall survive the termination or expiration of this Agreement.

12. Applicable Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of Arizona without regard to such state's conflict of laws principles, except to the extent mandatory applicable federal law applies to this Agreement.

13. Special Damages.

In no event shall either Party be liable to the other Party for special, incidental, consequential, punitive or exemplary damages.

14. Non Assignment.

This Agreement may not be assigned in whole or in part by a Party without the prior written consent of the other Party – which consent shall not be unreasonably withheld, conditioned

or delayed; provided, however, that Loftin may assign this Agreement in whole or in part to an affiliated entity without the prior written consent of Carrier.

15. Notices.

Unless otherwise specified in this Agreement, all notices, requests, consents, directions and other instruments and communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person, by courier or by overnight delivery service, with proof of delivery, addressed to the respective Party at the address set forth below, or if sent by electronic mail (with receipt confirmed) to the respective Party at the electronic mail address set forth below:

If to Loftin, to:  
Loftin Equipment Co., Inc.  
Attention: \_\_\_\_\_  
1220 N. 52<sup>nd</sup> St., Phoenix, AZ 85008

Email: \_\_\_\_\_

If to Carrier, to:

\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

or to such other address and to the attention of such other Person(s) as either Party may designate by written notice.

16. Audit Rights.

For a period of at least seven (7) years following the date particular services are provided by Carrier to Loftin under this Agreement, or for such longer period as may be required by applicable law, Carrier agrees to maintain records necessary to verify the basis for all charges billed to Loftin under this Agreement. If Carrier, its driver, other employee or subcontractor is involved in an accident arising out of or related to Carrier's performance under this Agreement, Carrier agrees to maintain all records which are or could be deemed evidence which is relevant or material to the accident, until such time that any and all claims related to the accident are finally resolved. Loftin will have the right to audit such records during normal business hours.

17. Agreement Entered into Pursuant to 49 U.S. Code Section 14101 (b); Waiver Pursuant to 49 U.S. Code Section 14101(b).

To the extent this Agreement is applicable to FMCSA regulated interstate or foreign commerce shipments, Loftin and Carrier agree that this Agreement is a contract entered

into pursuant to 49 U.S. Code Section 14101(b) for the purpose of providing and receiving specified services under specified rates and conditions. Loftin and Carrier, in connection with any FMCSA regulated interstate or foreign commerce transportation services to be provided by Carrier under this Agreement, expressly waive pursuant to 49 U.S. Code Section 14101(b) any and all rights and remedies under Part B, Subtitle IV, Title 49, U.S. Code which are inconsistent with or conflict with any provision of this Agreement. All rights and remedies provided by Part B, Subtitle IV, Title 49, U.S. Code which have not been specifically waived in this Agreement and which are not inconsistent with or in conflict with any provision of this Agreement shall continue to apply to the Parties' duties and responsibilities under this Agreement.

18. Dispute Resolution.

Any controversy or claim between the Parties arising out of, or relating to, this Agreement or a breach of this Agreement, shall be resolved by arbitration, in accordance with the rules then prevailing of the Transportation ADR Council (c/o Transportation Lawyers Association, 111 West Jackson Blvd., Suite 1412, Chicago, Illinois 60604; (913) 222-8652) and Arizona's Revised Uniform Arbitration Act (Arizona Revised Statutes §12-3001, et seq.), and judgment upon the award rendered may be entered in any court having jurisdiction. The arbitrator(s) shall have no authority to award punitive or exemplary damages, or to certify a class of participants to be included in any arbitration.

19. Proper Handling of Environmental Spills and Accidents.

If Carrier or any of its employees or agents becomes aware of any spill or incident involving Loftin's Cargo or any other substance (e.g., a fuel spill) from any motor vehicle or trailer carrying Loftin's Cargo under this Agreement, or any accident involving such motor vehicle or trailer, then Carrier shall immediately notify and consult with Loftin. With the exception of a) appropriate emergency actions necessary to prevent or contain the spread of a spill, or to deal with the accident in question, and b) legally required notification requirements of the U.S. Environmental Protection Agency, U.S. Department of Transportation, or other federal, state or local regulatory authority(ies), Carrier shall not take, and shall not authorize any agent(s) of Carrier or any tow truck or accident response service provider(s) to take, any action with respect to such spill or accident (including disposition of the involved cargo) without first consulting with Loftin. Carrier shall provide a written incident report to Loftin by email within 48 hours after the occurrence of any such incident by courier, overnight delivery service, by email or by fax within five (5) business days after such spill or incident.

20. Warranties of Carrier.

Carrier represents and warrants to Loftin that:

(a) It has the experience and ability in the fields and disciplines necessary to perform all services required by this Agreement with a high standard of quality, including any specialized knowledge required therefor;

(b) Its services under this Agreement will be performed in a workmanlike and professional manner, and all services, equipment and reports furnished under this Agreement will be as represented by Carrier;

(c) It has full power to enter into and fully perform this Agreement; and no service, equipment or reports furnished under this Agreement will in any way infringe upon or violate any rights of any third person, including, without limitation, rights of patent, trade secret, trademark or copyright;

(d) Carrier issues W 2s and makes all appropriate tax payments and tax withholding for all individuals whom Carrier employs to perform Carrier's services required under this Agreement; and

(e) Carrier will take appropriate measures to verify that any individual that Carrier assigns to or directs to enter Loftin's premises to perform work of any nature is legally eligible to work in the United States (will complete, execute and maintain a federal Form I-9 for all individuals that it assigns or directs to enter Loftin's premises to perform work of any nature prior to such individual entering Loftin's premises) and will not knowingly or intentionally direct or allow any individual to enter Loftin's premises to perform work of any nature who is not legally eligible to work in the United States.

(f) Carrier will comply with all federal, state and local labor laws, regulations and orders, including but not limited to those that relate to or pertain to harassment and discrimination in employment. Carrier will hold Loftin harmless from and against any and all claims, liability and expense arising out of Carrier's legal responsibilities under the laws for workers' compensation, social security, unemployment compensation, minimum wage and overtime, immigration, payroll withholding and employment taxes.

(g) Carrier has not entered into, and during Initial Term or a Renewal Term of this Agreement, will not enter into, any other agreements which would prevent it from fully complying with the provisions of this Agreement.

21. Miscellaneous.

(a) This Agreement may not be amended except in separate written agreement(s) between Loftin and Carrier.

(b) This Agreement, including the appendices hereto, embody the entire understanding and agreement between the Parties regarding the services to be provided by Carrier to Loftin, and supersedes any and all prior agreements and understandings, if any, between the Parties, and no other representations, agreements, arrangements or understandings, oral or written, concerning the subject matter of this Agreement, which are not expressed in this Agreement, exist between the Parties. Any forms or other documents used by the Parties, other than a bill of lading, shall be for convenience only and shall have no effect on this Agreement, and shall not be deemed to add to or delete any provisions of this Agreement. To the extent any provision(s) in this Agreement conflict(s) with any provision(s) in a bill of lading, the provision(s) in this Agreement shall control.

(c) Should any provision(s) of this Agreement be declared or be determined to be illegal, invalid or unenforceable, the validity of the remaining provisions shall not be affected thereby, and said illegal, invalid or unenforceable provision(s) shall be deemed not to be a part of this Agreement.

(d) The failure of either Party to this Agreement to perform its obligations under this Agreement shall be excused when occasioned by any of the following events of force majeure: acts of God, floods, fires, storms, riots, insurrections, prohibitions, regulations or other interferences beyond the control of the Parties to the extent that the same prevent or delay the performance of the obligations contained in this Agreement, provided that the Party claiming such force majeure event provides the other Party with prompt written notice of the force majeure event.

(e) The duties, obligations, rights and remedies under this Agreement are in addition to and not in limitation of those otherwise imposed or available by law.

(f) Loftin's or Carrier's failure or delay in exercising any rights or remedies under this Agreement shall in no way constitute a waiver of such rights or remedies.

(g) The language of this Agreement shall be interpreted in accordance with its fair meaning and shall not be construed against the Party or Parties drafting.

(h) The Parties agree that this Agreement is non-exclusive. Carrier agrees that Loftin may tender cargo shipments to carriers other than Carrier, and Loftin agrees that Carrier may transport cargo for shippers other than Loftin. Notwithstanding the foregoing, all shipments tendered pursuant to this Agreement shall be governed by the provisions of this Agreement and Appendix A.

(i) Copies of this Agreement shall be retained by both Carrier and Loftin while this Agreement remains in force, and for at least two (2) years thereafter.

IN WITNESS WHEREOF, the Parties have signed this Agreement on the date first written above.

**LOFTIN:**

**CARRIER:**

**LOFTIN EQUIPMENT CO., INC.**

\_\_\_\_\_

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

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

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

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

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

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



**MASTER SHIPPER - MOTOR CARRIER AGREEMENT  
APPENDIX A**

**Rates and Charges**