

FORWARDER-CARRIER AGREEMENT

OWI Specialized, Inc. ("Forwarder"), a licensed freight forwarder, docket number FF014008, and XYZ, Inc. ("Carrier"), a licensed motor carrier, U.S. Department of Department of Transportation number _____ and docket number MC _____, enter into this forwarder-carrier agreement (the "agreement") and agree as follows:

1.0 TERM. The term of this agreement shall be for one year from the Effective Date under section 22.0 and shall automatically renew for successive one-year periods. Either party may terminate the agreement at any time by giving 30 days' prior written notice.

2.0 CARRIER'S OPERATING AUTHORITY AND COMPLIANCE WITH LAW. Carrier has motor carrier operating authority from the Federal Motor Carrier Safety Administration ("FMCSA"). Carrier states that it has does not have an "Unsatisfactory" or "Conditional" safety rating from the FMCSA. Carrier shall immediately notify Forwarder if Carrier's safety rating becomes "Unsatisfactory" or "Conditional." Carrier shall comply with all federal, state, and local laws and regulations in providing transportation services under this agreement, including as to the following:

- 2.1 transportation of hazardous materials, including the licensing and training of drivers, as defined in 49 C.F.R. sections 172.800, 173, and 397 *et seq.* to the extent that any shipments hereunder constitute hazardous materials;
- 2.2 security regulations;
- 2.3 owner/operator lease regulations;
- 2.4 loading and securement of freight regulations;
- 2.5 implementation and maintenance of driver safety regulations, including hiring, controlled substances, and hours of service regulations;
- 2.6 sanitation, temperature, and contamination requirements for transporting food, perishable, and other products, qualification and licensing and training of drivers;
- 2.7 implementation and maintenance of equipment safety regulations;
- 2.8 maintenance and control of the means and method of transportation, including performance of its drivers;
- 2.9 oversize/overweight permits and routing, including compliance with all requirements of the Port of Los Angeles & Long Beach Heavy Container Corridor; and
- 2.10 satisfaction of all final court judgments, tax assessments, or tax liens that may be released to the public under federal and state disclosure laws, including any order, decision, or award obtained by a public or private person or entity pursuant to California Labor Code section 98.1 finding that a port drayage motor carrier has engaged in illegal conduct including failure to pay wages, imposing unlawful expenses on employees, failure to remit payroll taxes, failure to provide workers' compensation insurance, or misclassification of employees as independent contractors with regard to a port drayage commercial driver.

Carrier understands and agrees that its performance of transportation services under this agreement may include "Port Drayage Services," which means the movement within California of cargo or intermodal equipment by a commercial motor vehicle whose point-to-point movement has either its origin or destination at a port, including any interchange of power units, chassis, or intermodal containers, or the switching of port drayage drivers that occurs during the movement of that freight. Carrier understands and agrees that to the extent that it will be performing Port Drayage Services within California, under California law, Carrier will be a "port drayage motor carrier" insofar as Carrier hires or engages commercial drivers in the port drayage industry or is a registered owner, lessee, licensee, or bailee of a commercial motor vehicle, as defined in subdivision (b) of section 15210 of the California Vehicle Code, that operates or directs the operation of a commercial motor vehicle by a commercial driver on a for-hire or not-for-hire basis to perform port drayage services in the port drayage industry. "Port drayage motor carrier" also means an entity or individual who

succeeds in the interest and operation of a predecessor port drayage motor carrier consistent with the provisions of section 2684 of the California Labor Code.

Carrier states that as of the Effective Date of this agreement under section 22.0, Carrier is not on the list of port drayage motor carriers appearing on the website of the California Labor Commissioner's Division of Labor Standards Enforcement (the "DLSE List"), which is a list of port drayage motor carriers with any unsatisfied final court judgment, tax assessment, or tax lien that may be released to the public under federal and state disclosure laws, including any order, decision, or award obtained by a public or private person or entity pursuant to California Labor code section 98.1 finding that a port drayage motor carrier has engaged in illegal conduct including failure to pay wages, imposing unlawful expenses on employees, failure to remit payroll taxes, failure to provide workers' compensation insurance, or misclassification of employees as independent contractors with regard to a port drayage commercial driver. Carrier's not being on the DLSE list is a condition of Forwarder's entry into this agreement. If the DLSE were to place Carrier on the DLSE List after the Effective Date of this agreement, then within one business day of Carrier's placement on the DLSE List, Carrier shall notify Forwarder in writing of such placement.

3.0 NON-EXCLUSIVE AGREEMENT. This agreement does not bind the parties to use each other on an exclusive basis. Either party may enter into similar agreements with other carriers or freight forwarders.

4.0 RECEIPTS AND BILLS OF LADING.

4.1 Forwarder shall prepare and provide bills of lading for freight that Carrier transports under this agreement that identify Forwarder as the freight forwarder as to the freight in question. Carrier shall accept such bills of lading in the name of Forwarder and shall cause each consignee to sign those bills of lading at the time of Carrier's delivery.

4.2 Carrier shall prepare and provide a receipt to Forwarder for each shipment that states that Carrier has accepted such shipment and agrees to transport the same between the stated points of origin and destination. Under no circumstances may Carrier represent to any consignor, consignee, or to anyone else that Carrier is the motor carrier that is responsible for the shipment. Carrier's receipt shall be prima facie evidence of receipt of freight in good order and condition.

4.3 When Carrier submits its freight bill to Forwarder, Carrier shall also provide copies of (1) the bill of lading signed by the consignee and (2) a completed delivery receipt from Carrier to Forwarder. Carrier shall present those to Forwarder within five days of the delivery of each shipment. Each freight bill, bill of lading, and receipt shall contain the dispatch load number assigned to that shipment by Forwarder at the time of dispatch.

4.4 Carrier shall become fully liable for a given shipment upon Carrier's receipt of the same, regardless of whether a bill of lading has been issued or signed or delivered to Carrier. Carrier's liability shall continue until it delivers the shipment to the consignee and the consignee signs the bill of lading. In cases of an inconsistency between the terms of any bill of lading for the transportation of a shipment under this agreement and the terms of this agreement, the latter shall prevail. Carrier's failure to sign a bill of lading or a receipt shall have no effect on Carrier's liability, which shall be subject to this agreement.

5.0 CARRIER LOAD CONFIRMATION. For each load that Carrier agrees to transport under this agreement, Forwarder shall fax or e-mail Carrier a "Carrier Load Confirmation" that will state the pertinent details for that load, as well as Forwarder's "Rules of Carrier Load Confirmation." A sample Carrier Load Confirmation is attached hereto as Exhibit "A." If there were to be a conflict between the Rules of Carrier Load Confirmation and this agreement, then the latter shall prevail.

6.0 CARRIER'S OPERATIONS AS AN INDEPENDENT CONTRACTOR. Carrier shall, at its expense: (a) furnish all equipment necessary for Carrier's performance of this agreement (the "Equipment");

(b) pay all expenses related in any way to the use of the Equipment; (c) maintain the Equipment in good repair, mechanical condition, and appearance; and (d) use only qualified and licensed personnel. Carrier shall have sole control of such personnel, shall perform the services under this agreement as an independent contractor, and shall assume sole responsibility for all federal, state, and local taxes, assessments, insurance, including workers' compensation, unemployment compensation, disability, pension, and social security insurance, and any other financial obligations that arise out of or are in any way related to Carrier's performance of this agreement. Carrier shall defend, indemnify, and hold Forwarder harmless from any liabilities, expenses, or claims relating to wages, salaries, benefits, taxes, tax assessments, tax liens, claims, or other payments to, or as to, employees of Carrier, including accrued interest on any of the foregoing. Except as set forth in a duly authorized power of attorney, Carrier shall not hold itself out as an agent of or in a joint venture with Forwarder, and Carrier shall have no authority to act on behalf of Forwarder.

7.0 FITNESS OF CARRIER'S EQUIPMENT. Forwarder shall have the right to require Carrier, at its expense, to clean or sanitize any Equipment before loading. If Forwarder notifies Carrier of any concerns about the potential presence in any trailer of any chemical or biological contaminants, or of unwanted odors or anything else that could affect any goods, then upon Forwarder's request, Carrier must produce documentation that identifies the prior three loads in that trailer. Carrier shall not supply Equipment that has transported hazardous wastes, solid or liquid, regardless of whether they meet the definitions in 40 C.F.R. Part 261. Carrier shall be liable to Forwarder for any penalties or any other liability imposed on or assumed by Forwarder, a shipper, or a consignee due to penalties imposed on Forwarder's customer because of Carrier's use of non-compliant Equipment. Carrier shall review the California Air Resources Board ("CARB") Heavy-Duty Vehicle Greenhouse Gas Emission Reduction Regulations and Airborne Toxic Control Measures (collectively, "ATCM") for Transportation Refrigeration Units ("TRU") on the Internet at <http://www.arb.ca.gov/diesel/tru/tru.htm>. Carrier understands and agrees that:

- 7.1 All refrigerated Equipment, including 53-foot trailers, including both dry-van and refrigerated Equipment, operated within California under this agreement are in full compliance with CARB's ATCM for TRUs; and
- 7.2 Prior to transporting any goods under this agreement, Carrier shall inspect its Equipment for compliance with CARB ATCM TRU regulations, cleanliness, odors, dirt, or debris before loading.

8.0 CARRIER'S RECORD-RETENTION. Carrier shall maintain all maintenance records for Equipment, including, those for refrigeration and temperature-control, for a period of three years from the date of such maintenance, unless the applicable law and regulations require a longer time-period, in which case, the legally-required period shall govern.

9.0 INDEMNITY.

9.1 Carrier shall indemnify and hold Forwarder and Forwarder's customers, as intended third-party beneficiaries, harmless from and against any loss, damage, liability, claim, demand, action, proceeding, cost, or expense, including reasonable attorneys' fees, expenses of investigation, judgments, tax assessments, tax liens, unpaid wages, fines, or penalties, including accrued interest on any of the foregoing, that Forwarder has suffered or incurred, that arises out of or is in any way connected with Carrier's performance or breach of this agreement, or that of Carrier's employees or independent contractors, including claims for or related to personal injury or death, freight or property damage, a finding of joint and several liability as to Forwarder under California Labor Code section 2810.4, and Carrier's possession, use, maintenance, custody, or operation of Equipment.

9.2 Under 49 U.S.C. section 14101(b), Forwarder and Carrier hereby expressly waive any rights and remedies under the Carmack Amendment and other parts of Title 49 of the United States Code that would preclude Forwarder's or Forwarder's customer's right to seek indemnity from Carrier under section 9.1 of this

agreement. The parties do not waive any other provisions of Title 49 of the United States Code, which shall otherwise govern Carrier's liability, as stated in section 11.0 of this agreement.

10.0 INSURANCE. As a condition of performing services under this agreement, Carrier shall procure and maintain, at its sole cost and expense, the following insurance coverages from insurers with an A.M. Best rating of "A" or above:

- 10.1 Public liability and property damage insurance in an amount not less than \$1,000,000 per occurrence.
- 10.2 Motor truck cargo legal liability insurance in an amount not less than \$100,000 per occurrence. Such insurance policy shall (i) name Forwarder as an additional insured in an endorsement to that policy, (ii) expressly waive subrogation against Forwarder, and (iii) provide coverage for any loss, damage, or delay as to any freight in Carrier's possession that it has agreed to transport under this agreement.
- 10.3 Statutory workers' compensation insurance and employee liability coverage in such amounts and in such form as required by applicable state law.

To evidence the above coverages, Carrier shall provide Forwarder certificates of insurance that state that Forwarder is a certificate holder, policy endorsements, where applicable, or copies of insurance policies and shall provide 30 days' prior written notice of cancellation, termination, or modification of any of the above policies. As a condition to Forwarder's willingness to enter into this agreement, Carrier represents that one or more of the above insurance coverages covers potential liabilities that Carrier has contractually assumed in this agreement. Carrier shall defend, indemnify, and hold Forwarder harmless from and against any loss, damage, liability, claim, demand, action, proceeding, cost, or expense, including reasonable attorneys' fees, expenses of investigation, judgments, fines, or penalties that Forwarder has suffered or incurred, that arises out of or is in any way connected with the failure of any of the above insurers to cover any claim in its entirety.

11.0 FREIGHT LOSS, DAMAGE, DELAY, OR THEFT.

11.1 Subject to the partial waiver in section 9.2 of this agreement, Carrier shall have the liability of a motor carrier under the Carmack Amendment, 49 U.S.C. section 14706, for the actual loss or injury to the freight arising out of any loss, delay, or damage to, destruction of, or non-delivery of any freight that Carrier undertakes to transport under this agreement. Carrier understands and agrees that it shall have the exclusive care, custody, and control of any freight that it transports under this agreement from the time that Carrier receives the freight for transportation until delivery to the consignee. Carrier shall pay Forwarder, or allow Forwarder to deduct from the amount Forwarder owes Carrier, Forwarder's customer's full actual loss for the freight so lost, delayed, damaged, or destroyed.

11.2 Carrier understands and agrees that this agreement contains no limitation of Carrier's liability and that Carrier has no right to otherwise limit its liability or transport the freight under released rates under any bill of lading, waybill, receipt, tariff, or other document. Notwithstanding the terms of 49 C.F.R. section 370.9, Carrier shall pay, decline, or make a written settlement offer on all claims for loss, damage, injury, delay, or theft within 60 days of receipt of the claim. Carrier understands and agrees that its failure to so act shall be deemed admission by Carrier of its full liability for the amount claimed and a material breach of this agreement.

12.0 WAIVER OF CARRIER'S LIEN. Carrier shall not withhold delivery of any freight of any of Forwarder's customers because of any dispute between Carrier and Forwarder as to rates or any alleged failure of Forwarder to pay charges under this agreement. Carrier is relying upon the general credit of Forwarder and hereby waives and releases all liens that Carrier might otherwise have as to any property of Forwarder or that of its customers.

13.0 PAYMENTS. Carrier will charge and Forwarder will pay for transportation services under this agreement according to the rates and charges stated on Carrier Load Confirmation that Carrier and Forwarder shall sign before each shipment under this agreement. Carrier understands and agrees that there are no other applicable rates or charges except those stated in this agreement or in any Carrier Load Confirmation signed by Forwarder. Forwarder will pay Carrier's freight bills within 30 days of Forwarder's receipt of Carrier's freight bill, bill of lading, clear delivery receipt, and any other necessary billing documents that will enable Forwarder to confirm that Carrier has provided the service at the agreed-upon charge. Carrier agrees that Forwarder has the exclusive right to handle and shall handle all billing of freight and related charges to Forwarder's customers and, as such, Carrier expressly waives any rights that it may have to collect such freight and related charges from Forwarder's customers or any other person. Carrier further agrees that Forwarder has the right to set off any sums it owes to Carrier hereunder for liability that Carrier has incurred under section 11.0 of this agreement.

14.0 CONFIDENTIALITY AND NON-SOLICITATION. Neither party may disclose the terms of this agreement to any person without the written consent of the other party except (1) as required by law or regulation, (2) disclosure to a party's parent, subsidiary, or affiliate company, or (3) to facilitate rating or auditing of transportation charges by an authorized agent and such agent agrees to keep the terms of the agreement confidential. Carrier shall not solicit traffic from any shipper, consignor, consignee, or customer of Forwarder where (1) the availability of such traffic first became known to Carrier because of Forwarder's efforts or (2) the traffic of the shipper, consignor, consignee, or customer of Forwarder was first tendered to Carrier by Forwarder. If Carrier breaches this agreement and directly or indirectly solicits traffic from customers of Forwarder and obtains traffic from such customers during the term of this agreement or within twelve months thereafter, then Carrier shall be obligated to pay Forwarder, for a period of fifteen months thereafter, a commission of 35 percent of the revenue resulting from traffic transported for such customer, and Carrier shall provide Forwarder with all documentation requested by Forwarder to verify such revenue.

15.0 SUB-CONTRACTING PROHIBITION WARRANTY. As a condition to Forwarder's willingness to enter into this agreement, Carrier represents that it shall not sub-contract, broker, co-broker, double-broker, assign, or interline any loads that Forwarder tenders to Carrier under this agreement without the Forwarder's prior written consent. If Carrier violates the preceding representation, then Forwarder shall have the right to pay the monies it owes to Carrier for such transportation directly to the delivering Carrier, in lieu of payment to Carrier.

_____ Carrier's initials as to sub-contracting prohibition warranty

16.0 ASSIGNMENT/MODIFICATION/BENEFIT OF AGREEMENT. Neither party may assign or transfer any right or obligation under this agreement without the prior written consent of the other party. Subject to section 9.1, the parties understand and agree that there are no third-party beneficiaries of this agreement.

17.0 ENTIRE AGREEMENT. This agreement is the parties' final expression and entire agreement arising out of or in any way relating to its subject matter. This agreement sets forth the parties' entire understanding and it supersedes any contemporaneous and prior oral and written understandings and agreements that arise out of or are in any way related to the subject matter of the agreement, including all tariffs, rates, classifications, and schedules of Carrier that it may have published, filed, or otherwise maintained. This agreement shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each party.

18.0 SEVERABILITY. If any provision of this agreement shall for any reason be held to be invalid or unenforceable, then the remainder of this agreement shall be unaffected thereby, and remain in full force and effect.

19.0 NON-WAIVER. A waiver of any right by either party will not constitute a waiver of such right on any subsequent occasion.

20.0 MANDATORY LAW, VENUE, AND JURISDICTION

20.1 MANDATORY CHOICE OF LAW. The parties agree all that claims or disputes arising out of or in any way connected to this agreement shall be determined under the laws of the State of California, without regard to its conflict of laws rules.

20.2 MANDATORY VENUE. The exclusive and mandatory venue for any of the above claims or disputes shall be the United States District Court for the Central District of California in Los Angeles, California, to the exclusion of all other courts. But if in the plaintiff's judgment there were to be no federal subject matter jurisdiction as to a given claim or dispute, then the exclusive and mandatory venue for any of the above claims or disputes would become the Los Angeles County Superior Court in Long Beach, California, to the exclusion of all other courts, subject to the defendant's right to remove the action to the above federal court if, in the defendant's judgment, there exists federal subject matter jurisdiction as to the given claim or dispute.

20.3 MANDATORY CONSENT AND WAIVER. The parties agree to irrevocably submit to the personal jurisdiction of the above court, and thereby waive any jurisdictional, venue, or inconvenient forum objections to that court.

21.0 COUNTERPARTS. The parties may sign this agreement in counterparts, and each signed counterpart shall become part of the final agreement and shall have the same force and effect. A copy of any signature on a signature page, including a facsimile or scanned electronic copy, shall be as valid and binding as an original signature.

22.0 EFFECTIVE DATE. This agreement will become effective when all the parties have signed it. The date this agreement is signed by the last party to sign it, as indicated by the date stated under that party's signature, will be deemed the date of this agreement.

OWI SPECIALIZED, INC.

Carrier

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

PRINTED NAME

PRINTED NAME

TITLE

TITLE

DATE

DATE