

## Broker-Agent Agreement

This Broker-Agent Agreement ("Agreement") is entered in to on \_\_\_\_\_, by and between **HCI LOGISTICS COMPANY**, a tribal corporation incorporated under the laws of the Winnebago Tribe of Nebraska, having its principal place of business at 1 Mission Drive, Winnebago, NE 68071, (the "Broker"), and \_\_\_\_\_, an individual, with an address at \_\_\_\_\_ (the "Agent")(each a "Party" and collectively the "Parties").

### 1. REPRESENTATION

- 1.1. Term.** The Broker engages the Agent, and the Agent agrees to act as Agent for the Broker, for a period of one (1) year from the date hereof, and this Agreement shall be automatically renewed from year to year with the same terms and provisions, unless this Agreement shall be terminated sooner in the manner hereinafter provided.
- 1.2. Duties.** Agent accepts his position with the Broker on the terms and conditions set forth in this Agreement, and agrees to devote his time and attention necessary to the performance of his duties under this Agreement. Such duties shall consist of securing freight from shippers to be brokered and invoiced by Broker (the "Services"). Each freight shipment secured by Agent will be considered one (1) load ("Load"). The Services shall be provided in a workmanlike and professional manner and in accordance with the highest industry standards.
- 1.3. Independent Contractor Status.** The Agent will serve as an independent contractor and be responsible to pay all applicable Social Security, withholding, other taxes, licenses and registration fees required in the performance of the duties imposed under this Agreement. The Agent will bear all expenses incurred in performance of the Services except for those for which the Broker agrees to pay in section 3 of this Agreement.

### 2. COVENANT NOT TO COMPETE; CONFIDENTIALITY

- 2.1. Noncompetition.** During the term of this Agreement and for a period of twenty four (24) months after the termination of representation for any reason with the Broker, Agent shall not, directly or indirectly perform services using Broker information in order to directly or indirectly solicit Broker's customers or carriers as an employee, consultant, contractor or otherwise. Such customers and carriers shall include all customers and carriers that Agent did business with and had personal contact with during the term of this Agreement.
- 2.2. Confidentiality.** Agent acknowledges and agrees that all product and service specifications, list of the Broker's customers and carriers, product and service planning information, plans, drawings and other Broker data related to its business ("Confidential Information") are valuable assets of the Broker. Except for disclosures reasonably made to advance the business of the Broker and information which is a matter of public record, Agent shall not, during the term of this Agreement or after the termination of representation with the Broker disclose any Confidential Information to any person or use Confidential Information for the benefit of Agent or any other person, except with the prior written consent of the Broker. This duty to protect confidential information shall remain in effect for twenty four (24) months after the termination of this Agreement.
- 2.3. Return of Documents.** Agent acknowledges and agrees that all originals and copies, including electronic media, of records, reports, document, lists, plans drawings, memoranda, notes, and other documentation related to the business of the Broker or containing any Confidential Information shall be the sole and exclusive property of the Broker and shall be returned to the Broker upon termination of representation with the Broker or upon written request of the Broker.

**2.4. Injunction.** Agent agrees that it would be difficult to measure damage to the Broker from any breach by Agent of Section 2.1, 2.2, or 2.3 and that monetary damages would be an inadequate remedy for any such breach. Accordingly, Agent agrees that if Agent shall breach section 2.1, 2.2 or 2.3, the Broker shall be entitled, in addition to all other remedies it may have at law or in equity, to an injunction or other appropriate orders to restrain any such breach without showing or proving any actual damage sustained by the Broker.

**2.5. No Release.** Agent agrees that the termination of representation with the Broker or expiration of the term of this Agreement shall not release Agent from any obligations under section 2.1, 2.2, or 2.3.

### 3. COMPENSATION

**3.1. Commission.** In consideration of all Services to be rendered by Agent to the Broker, the Broker shall pay to Agent commission on the net profit of each Load generated by the Agent at a rate equal to \_\_\_\_\_% of the Broker's net profit per Load.

**3.2. Acceptance.** The Agent shall only be entitled to compensation on those Loads accepted in writing by the Broker. Broker may cancel or reject any Load submitted by the Agent for any reason. Upon termination of the relationship between Agent and Broker, the Agent shall not be entitled to any other commission other than those specific Loads accepted in writing by the Broker prior to said termination.

**3.3. Payment.** Broker shall pay Agent bi-weekly for all Loads secured by the Agent during the preceding two week period. Agent is responsible to present claims of discrepancies in commission payments to Broker in writing within fifteen (15) calendar days of payment, failure to do so will result in forfeiture of any such discrepancies.

**3.4. Expenses.** The Agent is responsible for all normal business expenses, such as computer, telephone, local travel, and related expenses. No expenses incurred by the Agent are reimbursable without prior written approval by Broker.

### 4. TERMINATION

**4.1. Termination by Prior Notice.** The relationship between Agent and the Broker may be terminated by either Party without cause upon the giving of thirty (30) calendar days' prior written notice to the other Party.

**4.2. Immediate Termination.** In the event Agent shall willfully and continuously fail or refuse to comply with the policies, standards, and regulations of the Broker from time to time established, the Broker may terminate this Agreement immediately by giving written notice to Agent.

**4.3. Fraud.** In the event Agent shall be guilty of fraud, dishonesty, or any other act of misconduct in the performance of Agent's duties on behalf of the Broker, the Broker may terminate this Agreement immediately by giving written notice to Agent.

**4.4. Nonperformance.** In the event Agent shall fail to perform any provision of this Agreement to be performed by Agent, the Broker may terminate this Agreement immediately by giving written notice to Agent.

### 5. REPRESENTATIONS AND WARRANTIES OF SALES REPRESENTATIVE

**5.1.** Agent represents and warrants to the Broker that there is no representative contract, or any other contractual obligation to which Agent is subject which prevents Agent from entering into this Agreement or from performing fully Agent's duties under this Agreement.

- 5.2. Agent represents and warrants to the Broker that Agent is not employed by any shipper that Agent secures Loads from to be brokered by the Broker. If Agent is or becomes employed by any such shippers then Agent must immediately notify Broker in writing and present written approval from said shipper of Agent's continued relationship with Broker, including permission to secure Loads for Broker and receive a commission payment on such Loads from said shipper.

## 6. MISCELLANEOUS PROVISIONS

- 6.1. **Indemnification.** The Agent agrees to indemnify and save Broker harmless from any and all liability, loss, or damage, including reasonable attorney's fees, which Broker may suffer as a result of claims, demands, costs, or judgments against Broker arising out of or resulting from Agent's acts or omissions, violation of any law or governmental regulation, infringement of any patent, trade mark or trade name, product liability, law suits, or failure to ship acceptable goods timely.
- 6.2. **Notice.** All notices and other communications shall be in writing and shall be personally delivered or transmitted by certified United States Mail, return receipt requested, to Agent's address as stated below, or by email to \_\_\_\_\_, and to Broker at 1404 Fort Crook Road South, Bellevue, NE 68005 or by email to legal@hochunkshareservices.com. A different address may be specified by either Party by written notice to the other Party. The effective date of any notice shall be deemed to be (i) the date of receipt if delivered personally or (ii) the date of transmission if delivered by mail or (iii) the date of receipt if delivered by email.
- 6.3. **Remedies.** Neither Party shall be liable to the other for lost profits, special, indirect, incidental or consequential damages, even if advised in advance of the possibility of such damages, or upon any third party claim. The exercise of one remedy shall not constitute an election of such remedy to the exclusion of others.
- 6.4. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws and regulations of the Winnebago Tribe of Nebraska. Any right to trial by jury with respect to any claim or proceeding related to or arising out of this Agreement or any transaction or conduct in connection herewith, is waived by the Parties.
- 6.5. **Force Majeure.** Neither Party shall be deemed in default if its performance or obligations hereunder are delayed or become impossible or impractical by reason of any act of God, war, fire, earthquake, labor dispute, accident, civil commotion, epidemic, act of government or government agency or officers, or any other cause beyond such Party's reasonable control.
- 6.6. **Complete Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes and renders null and void all prior agreements, understandings and proposals, whether oral or written, between the Parties relating to the subject matter of this Agreement.
- 6.7. **Severability.** If any provision of this Agreement shall be held invalid in a court of law, the remaining provisions shall be construed as if the invalid provision were not included in this Agreement.
- 6.8. **Assignability.** Agent shall not be entitled to assign this Agreement or its rights or obligations under this Agreement, whether voluntarily or by operation of law, except with the written consent of Broker. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 6.9. **No Waiver.** A failure by either Party to assert its rights under this Agreement shall not be deemed to be a waiver of such rights nor shall any waiver be implied from any act or omission. All waivers to be effective must be in writing. No waiver by either Party with respect to any right shall extend its effect to any subsequent breach of this Agreement of like or different kind unless such waiver explicitly provides otherwise.

**6.10. Amendments.** This Agreement may be altered, modified, or amended only by a written agreement duly executed by both Parties.

**6.11. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which when taken together will constitute one agreement between the Parties.

*(Signature Page Follows)*

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above-written. Each party represents and warrants that its respective signatory is duly authorized to execute this Agreement on its behalf.

**HCI LOGISTICS COMPANY**  
**1 Mission Drive**  
**Winnebago, NE 68071**


Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Duly authorized as he/she so declares  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Duly authorized as he/she so declares  
Date: \_\_\_\_\_

Authorized Point of Contact:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

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