



TERMS AND CONDITIONS OF BROKERAGE

NOTICE

TRIVERGIX GROUP (“TRIVERGIX”), A MESA LOGISTICS GROUP, LLC COMPANY (“MESA”) IS AN INTERSTATE PROPERTY BROKER, AS DEFINED IN 49 U.S.C. SECTION 13102(2) AND 49 C.F.R. SECTION 371.2(a), THAT HAS AUTHORITY TO OPERATE AS SUCH UNDER MC # 710506. TRIVERGIX ALSO HAS AUTHORITY TO OPERATE AS A FREIGHT FORWARDER OPERATING UNDER FF # 9380. FOR PURPOSES OF THIS AGREEMENT, TRIVERGIX IS OPERATING SOLELY AS AN INTERSTATE PROPERTY BROKER IN ARRANGING FOR THE TRANSPORTATION OF FREIGHT BY AUTHORIZED MOTOR CARRIERS UNLESS OTHERWISE EXPRESSLY NOTED IN A WRITING SIGNED BY TRIVERGIX AND CUSTOMER.

The Terms and Conditions set forth herein incorporate the Application for Credit executed by Customer and shall apply to all shipments of freight TRIVERGIX arranges to be transported on Customer’s behalf. The terms “freight” and “cargo” are used interchangeably herein.

Section 1 — Scope and Applicability of Terms and Conditions.

1.1 Applicability of Terms and Conditions. By offering, tendering or referring freight to TRIVERGIX to be arranged for transport, all parties whether such party is acting as a shipper, consignor, receiver, consignee, freight forwarder, broker, intermediary, 3PL, 4PL, carrier, freight agent or otherwise (all of which will be referred to hereafter for convenience as “CUSTOMER”) acknowledge and agree that these terms and conditions set apply to any and all freight that CUSTOMER offers, tenders, or refers to TRIVERGIX. While TRIVERGIX will endeavor to send confirmation of tender of freight by written or electronic means (hereinafter a “Load Confirmation”) to CUSTOMER, which may incorporate by reference the terms and conditions set forth herein, the terms and conditions set forth herein shall nevertheless apply to all freight offered, tendered or referred to TRIVERGIX, whether or not such a Load Confirmation or other document or communication expressly incorporates these terms and conditions.

1.2 Acknowledgment of Broker Status. By offering, tendering or referring freight to TRIVERGIX, CUSTOMER acknowledges and agrees that TRIVERGIX is an interstate property broker (hereinafter a “broker”) as defined in 49 U.S.C. § 13102(2) and 49 C.F.R. § 371.2(a); that TRIVERGIX acts solely as a broker for purposes of this brokerage agreement in arranging for the transportation of freight by authorized motor carriers; and, that TRIVERGIX does not operate or hold itself out as a motor carrier, a freight forwarder, a 3PL, a 4PL, an non-vessel ocean common carrier (“NVOCC”), a rail carrier, a shipper’s agent, a carrier’s agent, or any other type of entity, other than a broker as defined in 49 U.S. Code § 13102(2) and 49 C.F.R. S 371.2(a), unless expressly identifying such role as a freight forwarder in writing with CUSTOMER.

Section 2 — Services to be Provided by TRIVERGIX.

2.1 Arranging for Freight to be Transported by Motor Carrier. TRIVERGIX is an interstate property broker operating pursuant to authority granted to it to do so by the Federal Motor Carrier Safety Administration (“FMCSA”). TRIVERGIX’s brokerage responsibility is limited to arranging for, but not actually performing, transportation of freight by a licensed and insured motor carrier. Upon a CUSTOMER’s offer, tender or referral of freight to TRIVERGIX, TRIVERGIX agrees to arrange for the transportation of such freight. TRIVERGIX will use its best efforts to arrange for such freight to be transported from its designated origin(s) to its appointed destination(s) by a



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motor carrier authorized to operate as such by the FMCSA and the United States Dept. of Transportation (“USDOT”). TRIVERGIX will confirm that any motor carrier with whom it arranges to haul CUSTOMER’s freight holds a current license and is authorized to operate as a motor carrier by the FMCSA and USDOT and that such motor carrier has secured and maintains in place all insurance required to be carried under federal regulations for carriers of non-hazardous materials. TRIVERGIX may, but is not required to, also take such other measures as TRIVERGIX deems appropriate with respect to selection of motor carriers to transport CUSTOMER’s freight. TRIVERGIX reserves the right to decline or refuse to arrange for the transportation of any freight.

2.2 Information Pertaining to Freight. CUSTOMER will provide TRIVERGIX timely and accurate information regarding the freight to be transported including but not limited to: pick-up and delivery locations; description of the freight including, but not limited to, type, dimensions, weight, and quantity; special handling, temperature, storage, and security requirements; and other pertinent information regarding the freight. All rate quotes and other pricing by TRIVERGIX are prepared based upon the type of freight, dimensions and weight, and other information pertaining to the freight provided by CUSTOMER. If the information provided by CUSTOMER is not accurate then; (a) TRIVERGIX may decline to arrange to transport the freight and/or may instruct CARRIER not to transport the freight and CUSTOMER shall pay TRIVERGIX for any reasonable charges incurred by TRIVERGIX including but not limited to cancellation fees charged by CARRIER; or (b) TRIVERGIX may make arrangements for additional transportation services beyond those included in the original quote and CUSTOMER shall pay TRIVERGIX the actual cost plus a reasonable markup for such increased or additional transportation services including but not limited to changes in types of equipment and the need for over-weight/over-dimensional permits, pilot cars, pole cars, route surveys, specialized or alternative routing, restricted hours for transport, utility company support in moving or disconnecting overhead power lines, etc., state highway patrol support, local city planning support, and/or various other requirements.

2.3 Broker’s Bond. TRIVERGIX will at all times maintain a broker’s security bond in at least the minimum amount required by law.

2.4 Agreements with Carriers. TRIVERGIX will endeavor in each case to enter into a written agreement with the carriers with whom it arranges to haul CUSTOMER’s freight, which, among other things, will define the roles and terms that TRIVERGIX and such carrier will undertake with respect to such freight, provided that TRIVERGIX may from time to time enter into a different agreement CARRIER as TRIVERGIX determines to be appropriate in TRIVERGIX’s sole discretion. CUSTOMER may request that TRIVERGIX provide it with a copy of the form agreement that TRIVERGIX typically enters into with carriers.

2.5 Payment to Carriers for Freight Charges. TRIVERGIX will be responsible to pay each of the carriers with whom it arranges to transport CUSTOMER’s freight the appropriate amount of freight charges to be paid to such carriers. TRIVERGIX does require its retained carriers to agree in writing to waive any and all freight charge claims against CUSTOMER or the consignee and to agree to look exclusively to TRIVERGIX for payment of freight charges. Provided CUSTOMER fulfilled its obligations hereunder, TRIVERGIX will indemnify and hold harmless CUSTOMER from claims for freight charges from any carrier with whom TRIVERGIX arranges to transport CUSTOMER’s freight up to the amount of freight charges that TRIVERGIX has agreed in writing to pay.

2.6 Bills of Lading. TRIVERGIX’s role with respect to any freight tendered is that of a broker. Accordingly, each carrier with whom TRIVERGIX arranges to haul CUSTOMER’s freight is required to issue or adopt a bill of lading in compliance with 49 C.F.R. S 373.101. The retained carrier’s name and MC# should be listed on any and all bills of lading. If TRIVERGIX’s name is inadvertently or otherwise listed on a bill of lading or other shipping document as the carrier or in any capacity other than as a “third-party bill to” party or as a broker, such listing shall be deemed to be for convenience only and shall not change, alter, modify or be construed to change or modify TRIVERGIX’s sole role as the broker.



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2.7 No Authority to Control the Means by which Carrier Performs Services. CUSTOMER acknowledges that TRIVERGIX's role is simply to arrange for transportation of freight by a licensed motor carrier. Neither TRIVERGIX nor CUSTOMER has any right to control the means by or manner in which any carrier engaged by TRIVERGIX performs its functions in transporting and delivering the subject freight. The means and manner by which a carrier accomplishes the task of delivery of the subject freight is in the carrier's sole discretion. TRIVERGIX cannot and shall not exercise any control over the manner in which a carrier performs its services or a carrier's operations, nor does TRIVERGIX retain any right to control or otherwise supervise a carrier or a carrier's employees or other agents. A carrier engaged by TRIVERGIX shall be solely responsible for any and all management, control, selection, governance and discipline of its employees, agents, owner/operators, and equipment; and TRIVERGIX has no power or authority to hire or terminate the employment of any of a carrier's employees or other agents. Even though TRIVERGIX, CUSTOMER, shippers/consignors, consignees, or other persons or entities may from time to time provide a retained carrier with verbal or written instructions suggesting routes, types of equipment, methods of securing freight, methods of loading or unloading freight or other means of transporting and delivering the subject freight, such suggestions, if given, shall be for informational purposes only and the carrier shall retain the right to choose routes, times that the carrier will perform its services, employees, equipment to be used, methods of securing loads, methods of loading or unloading freight and all other means of transporting and delivering the freight. Even though a carrier may consider instructions, guidelines and/or other suggestions from TRIVERGIX, CUSTOMER, shippers/consignors and/or consignees, the carrier alone shall remain ultimately responsible to choose and control the method of loading, unloading, and securing the load and transporting the load and so doing in a manner that the same may be loaded, transported, and unloaded safely without damaging the freight or endangering the public or any person or entity.

2.8 Independent Contractor Relationship with Carriers. Customer acknowledges and agrees that: (a) TRIVERGIX's relationship to any carriers with whom it arranges to transport CUSTOMER's freight is and shall at all times be that of an independent contractor and no facts, agreements or other considerations shall be construed to be inconsistent with that status; (b) no term or provision of any agreement with a carrier or any act or omission of TRIVERGIX or a carrier shall be construed for any purpose to express or imply any joint venture, partnership, principal/agent, master/servant, fiduciary, employer/employee or other relationship between TRIVERGIX and a carrier, other than that of an independent contractor relationship; and (c) no employees or other agents of a carrier shall be construed under any circumstance to be the employees, servants, or agents of TRIVERGIX, CUSTOMER, the shipper/consignor, the consignee, or any "bill to" party. Likewise, neither a carrier, nor any of its employees or agents, shall have any authority to act on behalf of TRIVERGIX or to alter in any manner any contractual or other relationship of TRIVERGIX with CUSTOMER, shippers/consignors, consignees, or any other person or entity. Neither TRIVERGIX, nor any carrier are authorized to use the formal name, any business or trade name or any derivative thereof, nor any trademark or service mark of the other or of any other company with which either TRIVERGIX or a carrier may be affiliated. Any carrier that TRIVERGIX arranges to transport any of CUSTOMER's freight shall bear all costs of and shall provide all labor, wages, payroll, equipment, fuel, maintenance, insurance, federal, state and local payroll taxes and any other taxes, unemployment insurance, pensions, social security payments, workers' compensation insurance, and all other costs associated with transportation of the subject freight and performance of such carrier's transportation services. TRIVERGIX shall not be liable for or responsible to pay any such costs. Neither TRIVERGIX nor any carrier will hold itself out to be anything but an independent contractor with respect to each other and CUSTOMER shall not construe or assert TRIVERGIX or any carriers to be anything but independent contractors with respect to each other.

Section 3 — Cargo Loss or Damage and Delay Claims.

3.1 Cargo Loss or Damage and Delay Claims. CUSTOMER acknowledges and agrees that TRIVERGIX, as a broker, has no liability to any person or entity for any delay in delivery or loss of or damage to any cargo transported by a carrier retained by TRIVERGIX hereunder. CUSTOMER, for itself and any of its customers, vendors, shippers, consignors, receivers, consignees, and any others claiming a beneficial or other interest in any cargo and any of their respective insurers, successors, and assigns hereby acknowledges and agrees: (a) to look solely to the carrier arranged



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by TRIVERGIX to transport any subject cargo for recovery of any loss of or damage to such cargo or delay in delivery of such cargo and agrees to hold TRIVERGIX harmless with respect to any claims for loss of or damage to any cargo tendered to TRIVERGIX or and to hold TRIVERGIX harmless with respect to any claims for delay in delivery of any such cargo; (b) that all claims for loss or damage to cargo must be resolved with the responsible carrier pursuant to 49 U.S.C. § 14706 *et seq.* and 49 C.F.R. § 370 *et seq.*, (c) that TRIVERGIX is not liable for any loss or damage to cargo or any delay in the delivery of cargo by any cause, (d) that TRIVERGIX has not agreed (expressly, implicitly or otherwise) to be liable or responsible for loss of or damage to any cargo moved hereunder or damages in relation to any delay in the delivery of the freight; and (e) to indemnify and defend and hold harmless TRIVERGIX against any claims for loss of or damage to the cargo, and against any claims for delay in delivery of any such freight. TRIVERGIX may, at its sole option, assist CUSTOMER or others in pursuing claims for loss of or damage to cargo or delay in delivery of freight against the responsible carrier; but TRIVERGIX shall not be subject to any liability for doing so or otherwise with respect to any such claim. If TRIVERGIX does pay any amount to CUSTOMER or other interested party in connection with a cargo loss or damage or delay claim and such party accepts such payment, then CUSTOMER agrees that TRIVERGIX is deemed to have been assigned all of CUSTOMER's and/or such other party's rights and interests in such claim. If a written assignment is required, CUSTOMER agrees to provide the same after payment at TRIVERGIX's request.

3.2 Limitation of Liability for Any Loss, Damage or Delay Claim. If TRIVERGIX is held or found to be liable for any loss of or damage to any cargo or any delay damages despite the provisions of the foregoing section 3.1, then such liability of TRIVERGIX to CUSTOMER shall be limited to the lesser of an amount equal to \$0.50 per pound up to a maximum of \$75,000 or a refund of the freight charges applicable to the specific load lost or damaged. In no event shall TRIVERGIX be liable for any special, incidental, consequential or compensatory damages relating to any loss or damage to any cargo or any delay in delivery.

3.3 High Value Loads. Most carriers TRIVERGIX retains to transport freight maintain cargo loss and damage insurance in the amount of \$100,000, subject to various exclusions and deductible levels. **Should CUSTOMER offer, refer or tender freight to TRIVERGIX that is worth greater than \$100,000, CUSTOMER shall give TRIVERGIX notice of such greater value and the value of such freight in writing reasonably in advance (preferably forty-eight (48) hours in advance) of the requested pick-up date.** TRIVERGIX may, at its option, assist CUSTOMER in obtaining excess cargo insurance or shippers' interest insurance where the cargo can be insured for amounts greater than \$100,000; however, unless there is a written agreement between CUSTOMER and TRIVERGIX signed by the **President of TRIVERGIX**, together with a certificate of insurance or notice of increased insurance from the insurance company in advance of the pick-up date, no such additional coverage shall be obtained or afforded and TRIVERGIX shall not have any liability therefore or with respect to any loss of or damage to such freight. If, notwithstanding these Terms and Conditions, TRIVERGIX is somehow found to be liable, its liability to CUSTOMER shall be limited as set forth in section 3.2 hereof.

3.4 Time-Sensitive Freight. As set forth herein, TRIVERGIX shall not be liable for any claims for delay in delivery of freight. If CUSTOMER has freight that must be delivered in a time-sensitive manner, CUSTOMER shall notify TRIVERGIX in writing of such fact in advance of pick-up of such freight and shall set forth in such writing the types of foreseeable damages it anticipates suffering for delay in delivery, along with an estimate of damages to be suffered should delivery of such freight be delayed. TRIVERGIX will endeavor to advise the retained carrier of the time-sensitive nature of the freight; however, TRIVERGIX shall not be liable for any delay in delivery of such freight and CUSTOMER's sole remedy, if any, shall lie with the carrier. CUSTOMER acknowledges and agrees that neither CUSTOMER, TRIVERGIX, or any other party involved in the movement will place requirements upon a carrier or request that a carrier meet a pick-up or delivery schedule that will or may require a carrier or its driver(s) to violate any laws relating to safety or which may require violation of any state, federal or local statute, rule or regulation pertaining to safety, including, but not limited to, those pertaining to hours of service; and, that all such requests and requirements for pick-up and delivery will enable a carrier to operate its business and transport such load in a safe and prudent manner and in strict and full compliance with all state, federal, and local statutes, rules, and regulations. Additionally, if any failure or delay in pick-up or delivery of freight shall be the result of an occurrence or event that



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is outside of the control of TRIVERGIX and/or the carrier(s) that TRIVERGIX arranges to transport the freight, including, but not limited to, such causes as severe weather, fires, floods, natural disasters and catastrophes, highway accidents, roadway blockage, closures and/or re-routing, traffic congestion, fuel shortages, acts of God, war or enemy action, civil commotion, riots or insurrection, epidemics, re-routing, or other similar occurrences or event, neither TRIVERGIX or the carrier shall have any liability for such failure or delay in service.

3.5 HAZMAT Loads. Should CUSTOMER request that TRIVERGIX arrange for transportation of freight that constitutes hazardous materials, whether such materials meet the definition contained in 40 C.F.R. § 261.1 et seq. or other definitions or designations, CUSTOMER shall notify TRIVERGIX of the same; and, CUSTOMER shall comply with all applicable laws and regulations relating to the transportation of hazardous materials, including, but not limited to, those defined in 49 C.F.R. § 172.800, § 173 and § 397 et seq. CUSTOMER shall further defend, indemnify and hold TRIVERGIX harmless from any penalties or liability of any kind, including reasonable attorney fees, arising out of CUSTOMER's failure to comply with applicable hazardous materials laws and regulations.

3.6 Canceled Loads. If CUSTOMER requests that TRIVERGIX arranges for a carrier to transport freight and such transport is subsequently canceled or delayed beyond the requested pick-up time and the retained carrier has sent a truck or equipment or has otherwise incurred expenses in connection with such freight, CUSTOMER agrees to pay to TRIVERGIX the amount of costs and expenses incurred by such carrier, plus ten percent (10%) of such amount. TRIVERGIX is obligated to pass through any such payment to the retained carrier.

3.7 Delay/Detention in Loading at Origin or Unloading at Destination. Carriers arranged by TRIVERGIX generally allow a certain amount of "free time" (typically two (2) hours) for loading of freight at origin and unloading of freight at the destination. CUSTOMER shall defend, indemnify and hold TRIVERGIX harmless for any amount of time in excess of the "free time" allowed by the carrier arranged by TRIVERGIX for which such carrier is detained for loading, unloading, or otherwise at the origin or destination.

Section 4 — Payment Terms

4.1 Payment Terms. TRIVERGIX shall invoice CUSTOMER for its services in arranging for the transportation of freight in accordance with the rates and charges agreed to by TRIVERGIX and CUSTOMER. All charges owing to TRIVERGIX are due to be paid within thirty (30) days of the invoice date, without any deduction or setoff. TRIVERGIX shall apply CUSTOMER's payment to the invoice(s) specified on the remittance advice, if any. Otherwise TRIVERGIX may apply payments to such invoice(s) or other amounts owing from CUSTOMER as TRIVERGIX deems appropriate in its sole discretion. If any charges owing to TRIVERGIX are not paid by the due date, interest shall accrue on the amounts owing at the rate of 1.5% per month, compounded monthly. CUSTOMER shall also be liable to pay TRIVERGIX for any and all costs incurred by TRIVERGIX in collecting the amounts owing, including, but not limited to, reasonable attorney fees.

4.2 TRIVERGIX Enforcement of Rights of Carrier. Should CUSTOMER fail to pay TRIVERGIX the full amount owing to TRIVERGIX within the time-period provided for herein and TRIVERGIX has paid the carrier(s) with which it arranged for transportation of CUSTOMER's freight, then TRIVERGIX shall be deemed to be subrogated to and to have received an assignment of all of the carrier's rights under the bill of lading or other applicable documents or law to collect from any other potentially liable parties, including, but not limited to, any and all shippers, consignors, receivers, consignees, or other parties having a beneficial interest in the freight transported or the services provided.

Section 5 — Insurance

5.1 Broker's Bond. TRIVERGIX will at all times maintain the bond or other financial security of the type and in the minimum amount required by law 49 U.S. Code 13906(b)(3).



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5.2 Insurance obtained by TRIVERGIX. Other than a broker's security bond or trust fund, TRIVERGIX is not required to carry any insurance pertaining to the services TRIVERGIX provides hereunder. By way of information and not by way of requirement, however, TRIVERGIX generally carries and maintains the following insurance coverage in the amounts indicated:

- a) Comprehensive General Liability Insurance \$1,000,000;
- b) Contingent Cargo Liability Insurance \$100,000;
- c) Errors and Omissions Insurance (excludes bodily injury) \$100,000.

Section 6 — Indemnification.

6.1 Indemnification of TRIVERGIX. CUSTOMER shall each defend, indemnify and hold TRIVERGIX harmless against any claims, actions, damages and causes of action arising out of or relating to CUSTOMER's negligent or other tortuous acts or omissions or arising out of or relating to CUSTOMER's failure to fulfill any obligations it may have to hereunder or otherwise.

Section 7 — Independent, Non-Exclusive Relationship

7.1 Independent Contractor Relationship. The relationship between TRIVERGIX and CUSTOMER shall at all times be that of an independent contractor and nothing contained herein or otherwise shall be construed to be inconsistent with that status. No term or provision of this or any other agreement or any act or omission of either party shall be construed for any purpose to express or imply any joint venture, partnership, principal/agent, master/servant, fiduciary, employer/employee or other relationship between TRIVERGIX and CUSTOMER, other than that of an independent contractor relationship. No employees or other agents of CUSTOMER shall be construed under any circumstance to be the employees, servants, or agents of TRIVERGIX or any applicable carrier. Likewise, no employees or other agents of TRIVERGIX shall be construed under any circumstance to be the employees, servants or agents of CUSTOMER, the shipper/consignor, the receiver/consignee, or any other party. Neither CUSTOMER, nor any of its employees or agents, shall have any authority to act on behalf of TRIVERGIX or to alter in any manner any contractual or other relationship of TRIVERGIX with its carriers, CUSTOMERS, shippers/consignors, receivers/consignees, vendors, or any other person or entity. Likewise, neither TRIVERGIX, nor any of its employees or agents, shall have any authority to act on behalf of CUSTOMER or to alter in any manner any contractual or other relationship of CUSTOMER with its customers, carriers, shippers/consignors, receivers/consignees, vendors, or any other person or entity. Neither TRIVERGIX nor CUSTOMER are authorized to use the formal name, any business or trade name or any derivative thereof, nor any trademark or service mark of the other party or of any other company with which either party may be affiliated, without express written permission to the contrary. CUSTOMER and TRIVERGIX shall each bear all of their respective costs of and shall provide all labor, wages, payroll, equipment, insurance, federal, state and local payroll taxes and any other taxes, unemployment insurance, pensions, social security payments, workers' compensation insurance, and all other costs associated with their respective businesses and arrangement for and transportation of the subject freight and performance of their respective services. Neither TRIVERGIX nor Carrier will hold itself out to be anything but an independent contractor with respect to the other, nor will TRIVERGIX or CUSTOMER assert that they maintain any relationship with the other that is different from that of an independent contractor.

7.2 Non-Exclusive Use. TRIVERGIX is not restricted from providing freight brokerage or other services to persons or entities different from CUSTOMER; and, subject to the provisions hereof relating to CUSTOMER tendering freight directly to carriers which TRIVERGIX has arranged to haul freight offered, tendered or referred from CUSTOMER, CUSTOMER is not restricted from offering, tendering, or referring freight to other brokers, freight forwarders, other logistics providers or motor carriers different from TRIVERGIX.



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7.3 No Control or Right of Control by TRIVERGIX or CUSTOMER. Neither TRIVERGIX nor CUSTOMER has the right to control nor shall either exercise any control over the manner in which the other performs its services hereunder or carries on their respective operations. Neither TRIVERGIX nor CUSTOMER retains any right to control or otherwise supervise the other's employees or other agents. CUSTOMER and TRIVERGIX shall each be solely responsible for any and all management, control, governance, discipline, of their respective employees and agents; and, neither has any power or authority to hire or terminate the employment of any of the other's employees or other agents.

Section 8 — Confidentiality and Protection of Business Relationships

8.1 Covenant to Not Tender Freight Directly to Carrier Introduced by TRIVERGIX. CUSTOMER recognizes that TRIVERGIX has spent substantial time, money and resources developing a reputation in the freight brokerage industry and developing business relationships with carriers through which it arranges transportation of freight of CUSTOMER and others and that TRIVERGIX is providing a valuable service to CUSTOMER in arranging for transportation of CUSTOMER's freight. Therefore, as part of the consideration for TRIVERGIX arranging for the transportation of CUSTOMER's freight, CUSTOMER agrees that for a period of twelve (12) months following the date of any load of freight for CUSTOMER that TRIVERGIX arranged to be transported by a particular carrier, that CUSTOMER will not offer, tender or refer freight directly to that particular carrier, unless during the twelve (12) month period immediately preceding the first load of freight of CUSTOMER that TRIVERGIX arranged to be hauled by that particular carrier, such carrier had hauled sufficient freight directly for CUSTOMER (and not arranged through TRIVERGIX or another broker or other party) to generate at least \$10,000 of freight charges. If CUSTOMER violates the provisions of this section, then CUSTOMER agrees to pay TRIVERGIX, as liquidated damages, an amount equal to fifteen percent (15%) of the gross amount that CUSTOMER has agreed to pay such carrier for transporting freight for CUSTOMER for a period of twelve (12) months following the date of the last load of CUSTOMER's freight that TRIVERGIX arranged to be transported by that particular carrier.

8.2 Confidential Information. CUSTOMER agrees that it shall protect and keep confidential any and all non-public, confidential, or proprietary information of TRIVERGIX, including, but not limited to, the identity of TRIVERGIX's carriers, carrier lists, freight and brokerage rates, pricing, freight volume requirements, or the like and that CUSTOMER shall not disclose the same, without the prior written approval of TRIVERGIX.

Section 9 — Miscellaneous

9.1 Governing Law/Jurisdiction: Negotiations for the offering, tendering and/or referral of freight to TRIVERGIX are deemed to have been conducted within the State of Missouri. Accordingly, except to the extent (if any) that they are preempted by federal law, the laws of the State of Missouri shall govern the construction and interpretation of these Terms and Conditions and the dealings of CUSTOMER with TRIVERGIX. CUSTOMER expressly submits to the jurisdiction of the Courts of the State of Missouri and the United States District Court for the Eastern District of Missouri and agrees that jurisdiction and venue shall be proper in such Courts and CUSTOMER waives any claim or defense that such Courts will be an inconvenient forum.

9.2 Remedies. In addition to any other remedies that may be available to TRIVERGIX at law or in equity, all provisions of these Terms and Conditions may be specifically enforced, however, the failure of TRIVERGIX to promptly enforce such provisions shall not be construed to be a waiver of TRIVERGIX's rights hereunder. In addition, CUSTOMER recognizes that the payment of damages hereunder may not fully compensate TRIVERGIX for CUSTOMER's breach of the provisions of these Terms and Conditions and that TRIVERGIX will likely suffer irreparable harm from such a breach. Accordingly, CUSTOMER agrees that if it breaches, violates, or threatens to breach or violate the provisions of these Terms and Conditions, then TRIVERGIX will be entitled to injunctive relief prohibiting CUSTOMER's breach, violation or continued breach or violation without the need of TRIVERGIX having to post any bond in connection with such injunctive relief.



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9.3 Miscellaneous. These Terms and Conditions, the Basic Terms and Conditions included with the Application for Credit, and any Load Confirmations issued to CUSTOMER by TRIVERGIX pertaining to freight offered, referred or tendered to TRIVERGIX constitute the entire agreement between the TRIVERGIX and CUSTOMER pertaining to TRIVERGIX's arranging for the transportation of CUSTOMER's freight and are intended to be a complete integration of terms and cannot be altered, except through a written agreement signed by the President of TRIVERGIX. No other prior or contemporaneous agreements exist between TRIVERGIX and CUSTOMER, except as set forth in these Terms and Conditions. If any term or provision hereof is held invalid or unenforceable by a court or tribunal of competent jurisdiction, such term or provision shall be deemed to be modified to be enforceable or, alternatively, shall be deemed to be severed here from, and shall not affect the remaining provisions hereof, which shall remain enforceable to the full extent allowed by law. The failure of either party to enforce a breach or waiver of any term, condition or provision hereof shall not be deemed to constitute a waiver of any subsequent failure or breach. These Terms and Conditions shall be binding upon and inure to the benefit of any successors and assigns of TRIVERGIX and/or CUSTOMER.