

Meeting w/Keller Trucking—Defiance

- Gary Gilliland, Operations Manager

POP (Power Only Program)

- Our tractors—their trailers
- Paid on % of total revenue—either 75% or 78%
- 78% requires carrier bearing more of the administrative duties
- Fuel card and accompanying fuel discounts available—fuel cost taken out of weekly settlement—substantial savings potential
- Large portion of freight drop & hook
- 95% of freight is direct customer-based

THIS IS A WIN-WIN!!

*Call Gary this week and get us on board!
direct: 419.785.3213 or cell: 419.576.2573*





Thomas E. Keller Trucking
Power Only Program (POP)
Carrier Profile / Application

The information requested below will only be used to select qualified carriers to transport freight. The information will not be used by or shared with anyone other than Thomas E. Keller Trucking and its customers.

of Trucks _____

Tracking System / GPS: Yes ☐ No ☐

General Information

Legal Name:	Phone #
Doing Business As:	Fax #
Physical Address:	ICC MC/MX #
P.O. Box:	DOT#
City:	SCAC
State: Zip Code:	Email Address:

Contact Information

Contact Name	Phone	Extension	Fax	Email
1 st Shift				
After Hours				

Certifications (Circle all that apply)

C-TPAT (include SVI#) _____

PIP ☐

TSA ☐

TWIC ☐

Insurance Information

Insurance Carrier: _____ Policy #: _____

Phone #: _____

Worker's Compensation Coverage Provider: _____

Policy #: _____ Phone #: _____

Carrier Representative Signature: _____ Date: _____

Completed By:

Date:

Active authority verified & received MC authority certificate Satisfactory Safety	<input type="checkbox"/>	<input type="checkbox"/>
Rating Verified	<input type="checkbox"/>	<input type="checkbox"/>
Received ACORD certificate of insurance reflecting:		
-1 mil gen. liability, 1 mil auto liability, \$100K cargo & \$30K trailer interchange	<input type="checkbox"/>	<input type="checkbox"/>
Thomas E. Keller Trucking listed as certificate holder	<input type="checkbox"/>	<input type="checkbox"/>
Received list of insured vehicles	<input type="checkbox"/>	<input type="checkbox"/>
Received W9	<input type="checkbox"/>	<input type="checkbox"/>
Received Certificate (or equivalent) Workers Comp Coverage	<input type="checkbox"/>	<input type="checkbox"/>
Broker-Carrier Agreement signed and dated	<input type="checkbox"/>	<input type="checkbox"/>
Trailer Interchange Agreement signed and dated	<input type="checkbox"/>	<input type="checkbox"/>

TRAILER INTERCHANGE AGREEMENT

THIS TRAILER INTERCHANGE AGREEMENT (the "Agreement") is entered into by and between **Tom Keller Leasing** ("Keller") and _____ ("Carrier").

Carrier currently transports cargo in interstate and intrastate commerce for shippers and may be asked to transport cargo in a trailer owned, leased, or controlled by Keller;

In consideration of the mutual undertakings of the parties hereto, as set forth herein, it is agreed that Carrier may interchange trailers owned, leased, or controlled by Keller ("Equipment") subject to the following terms and conditions.

1. **Equipment.** The term Equipment as used herein shall refer to any trailers owned, leased, or controlled by Keller.
2. **Points of Interchange.** The specific points of interchange shall be at the points mutually agreed upon between the parties. Interchange shall begin as soon as Carrier couples the Equipment to any tractor or other power unit operated by Carrier, its employees, agents, or subcontractors. The interchange shall terminate upon Carrier uncoupling such Equipment at the location agreed upon by the Parties as set forth in Section 3 below.
3. **Use and Return.** Carrier agrees that the Equipment will be utilized only for transportation to complete promptly and expeditiously the motor vehicle movement arranged for by Keller Logistics, LLC or Thomas E. Keller Trucking, Inc. on behalf of their customer shippers and will return the Equipment to Keller in the city and at the terminal where received, unless otherwise specified by Keller. Carrier shall be responsible for the safe and timely return of the Equipment to Keller, ordinary wear and tear excepted. Carrier agrees not to interchange Equipment obtained from Keller hereunder with third parties or to use such Equipment for any services beyond those for which the Equipment is originally interchanged. Carrier shall not permit the Equipment to go out of its possession without the written permission of Keller. Carrier agrees not to pledge, lend, sell, lease, mortgage, or part with possession of the Equipment, or attempt in any other manner to dispose thereof. In addition, Carrier will not allow any liens or legal process to be incurred or levied thereon due to Carrier's fault, negligence, or wrongdoing. This Agreement is one of equipment interchange only, and Carrier does not acquire any right, title, or interest to the leased Equipment other than the right of possession accorded a lessee.
4. **Carrier's Responsibilities.** Carrier shall accept responsibility for all owner operators and their leased power units as if they were Carrier's own employees and vehicles. Proper identification on tractors is mandatory and is obligation of Carrier. Carrier shall have complete control and supervision of such Equipment and such Equipment shall be operated under its authority

while in its possession, and Keller shall have no right to control the detail of the work of any employee or agent operating or using said Equipment during such time. Any person operating, in possession of, or using said Equipment during the period of interchange as described in Paragraph 2, is not the agent or employee of Keller for any purpose whatsoever. Carrier will cause the Equipment to be operated only by a CDL licensed driver and comply and require said driver to comply with all applicable federal, state, and local laws, rules, and regulations not only regarding commercial motor vehicle drivers, but also governing or having jurisdiction over Carrier's use of Equipment and ensure that each piece of Equipment is used and operated with at minimum the same standard of care which Carrier would afford its own equipment. Carrier shall have sole responsibility for claims for loss, damage or delay to cargo occurring with respect to Equipment during the period of interchange.

5. **Taxes.** Carrier shall bear the cost of all federal, state, or municipal taxes, fines, fees or charges levied or imposed or arising out of the use of the Equipment while in its possession, until its proper return to Keller.
6. **Indemnification.** Carrier agrees to indemnify, defend, and hold harmless Keller, shippers, brokers, consignees, and owners of the cargo, their officers, agents, and employees ("Indemnitees") from and against any and all loss, damage, liability, cost, or expense, including but not limited to, attorneys' fees, suffered or incurred in connection with injuries or death of any person, or loss or damage to any property, arising out of the use, operation, or maintenance of said Equipment until such Equipment has been returned to Keller and receipt issued therefore, except to the extent caused by the negligence of Keller; provided, however, that Keller shall have the right, at its expense, to participate in the defense of any litigation instituted against it without thereby relieving Carrier of its obligations under this paragraph..
7. **Insurance.** Before commencing any work hereunder, Carrier shall procure, and shall thereafter maintain in force during the period of this Agreement, all of its own liability insurance, with insurance companies satisfactory to Keller, covering all of the work and services to be performed hereunder by Carrier and each of its subcontractors:
 - a. Carrier agrees to maintain for the duration of this Agreement, insurance coverage for general commercial liability in a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence.
 - b. Carrier agrees to maintain for the duration of this Agreement, insurance coverage for owned and hired automobile liability including bodily injury and property damage, with coverage of at least \$1,000,000.00 combined single limit or the equivalent.
 - c. Carrier agrees to maintain for the duration of this Agreement, insurance coverage for physical damage insurance for loss or damage to the Equipment while in the care, custody and/or control of Carrier, in an amount not less than the full value of the Equipment which, for

purposes of this Agreement, shall be defined to be the cost of the Equipment when new less depreciation.

- d. Carrier agrees to maintain for the duration of this Agreement, insurance coverage for cargo loss insurance for loss and damage to cargo contained in the Equipment while in the care, custody, and/or control of Carrier. Such coverage shall be in minimum amount of \$100,000.00.
 - e. Such insurance shall be primary with respect to the defense and indemnification of Keller. Keller shall be named as an additional insured with respect to each of the foregoing coverages and all certificates of insurance must endeavor to provide Keller with a minimum of thirty (30) days' notice of cancellation.
 - f. Under no circumstances shall Carrier be considered a "permissive Carrier" under Keller's own automobile liability insurance policy (if any).
8. **Charges.** The compensation due from Carrier to Keller, if any, shall be set forth in Exhibit "A", attached hereto, or in any other writing signed by the parties addressing such compensation. In the event that compensation is owed from Carrier to Keller, Keller will bill Carrier for said charges on a monthly basis. Carrier must submit billing disputes to Keller within thirty (30) days of invoice date. In the event Carrier fails to pay all uncontested amounts due within thirty (30) days of invoice date, this Agreement shall be subject to immediate suspension by Keller without formal notice to Carrier. In the event any charge due hereunder remains unpaid more than sixty (60) days from invoice date and Keller thereafter refers collection of such charge to an attorney or collection agency, Carrier agrees to pay, in addition to said charge, an amount equal to 25% of said charge to represent fees and collection expenses.
9. **Maintenance of Equipment.** Ordinary maintenance and other service adjustments on Equipment, tires excluded, occasioned by ordinary use will be:
- a. Absorbed by Carrier when costs thereof do not exceed \$50.00, exclusive of any applicable service charges.
 - b. Billed to and borne by Keller in its entirety when costs thereof would exceed \$50.00 provided such maintenance, service, or repairs are not required as a result of negligent acts of Carrier or its employees; further provided, however, that Keller's authorization is obtained prior to commencement of repairs when the costs thereof is estimated to exceed \$100.00. Nevertheless, the repairs will be made to the reasonable satisfaction of Keller. Any improper repairs will be corrected, rebilled to the Carrier, and paid for by Carrier. If Carrier fails to make repairs to the Equipment and such repairs are necessary due to Carrier's negligence, Carrier shall nevertheless be responsible for the costs of the repairs. Bills for repairs to damaged Equipment for

which Carrier is responsible as provided hereunder will be paid by Carrier within thirty (30) days of the invoice date. Keller will not be responsible for any other consequential costs. Bills for ordinary maintenance of Equipment shall be tendered to Keller within thirty (30) days from the date the repairs were completed, unless otherwise agreed upon in writing by the parties.

10. **Tires.** Keller shall furnish Equipment with tires and tubes of proper size at the time of interchange. Thereafter, until the Equipment is returned to Keller, repairs to tires and tubes shall be made by and at the expense of Carrier. When an unserviceable tire or tube is replaced, it must be with a new tire/tube or newly recapped tire. When a tire is replaced, the empty tube should be reapplied if serviceable. Carrier shall return the blown-out or unserviceable tire to Keller.
11. **Risk of Loss or Damage.** Carrier shall bear all risks of damage or loss of the Equipment, or any portions of the Equipment, and shall be solely liable, whether or not covered by insurance, while any such Equipment is being used hereunder until possession is reclaimed by, or returned to, Keller. Except as provided in Sections 9 and 10 above, all replacements, repairs, or substitutions of parts or equipment as a result of damage shall be at the cost and expense of Carrier and shall be accessions to the Equipment. Carrier shall protect the Equipment furnished under this Agreement from theft and other hazards while in Carrier's care, custody, or control.
12. **Limitation of Warranties.** ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE MERCHANTABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OR ANY WARRANTY OF COURSE OF DEALING OR USAGE OF TRADE, ARE HEREBY EXCLUDED BY THIS AGREEMENT OF THE PARTIES.
13. **Assignment.** Carrier may not assign, transfer, sublet, pledge or encumber any of its rights under this Agreement without the express written consent of Keller.
14. **Notice.** Any notices required hereunder shall be given in person or by United States Mail, Certified Mail, Return Receipt Requested, at the address shown in the signature block below or at such other address as either party may later designate in writing.
15. **Miscellaneous.** In the event of any dispute or disagreement arising from or related to this Agreement, such disagreements or disputes shall be submitted to a court of proper jurisdiction in Defiance County, Ohio, and the Parties hereby agree to the exclusive jurisdiction of such court(s). The Parties hereby waive the right to claim lack of personal jurisdiction or inconvenient forum in the event of such suit. The laws of the state of Ohio shall govern this Agreement in all of its aspects, including execution, interpretation, performance and enforcement. This Agreement together with all exhibits shall constitute the entire agreement between the parties and supersedes all other agreements, oral or written, with respect to such subject matter. This

Agreement may only be amended by mutual written agreement of the parties. Failure of either party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a waiver or such term, condition, right, or privilege in the future. In the event any term, condition, provision, or clause of the Agreement is held invalid or unenforceable, for what ever reason, such provision shall be deemed deleted from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

- 16. Term and Termination.** This Agreement is in effect from the date shown below, and shall continue to in effect until terminated by either party giving the other party ten (10) days’ advance notice or termination, in writing, addressed to the other party. Any Equipment in possession of the Carrier on the date of termination must be returned to Keller within seventy-two (72) hours. If Equipment is not returned by Carrier and it becomes necessary for Keller to have the Equipment returned, Carrier shall bear all expenses for return of Equipment.

IN WITNESS WHEREOF, the Trailer Interchange Agreement is entered into and effective between the parties as of the _____ day of _____, 20____.

KELLER
Tom Keller Leasing
24862 Elliott Rd
Defiance, OH 43512

CARRIER

Signed: _____
Date: _____

Signed: _____
Date: _____

BROKER-CARRIER AGREEMENT

THIS BROKER-CARRIER- AGREEMENT (the "Agreement") is made this ____ day of, _____ 20____, by and between _____ of _____, a _____ corporation, hereinafter referred to as "Carrier", and Thomas E. Keller Trucking, Inc. of Defiance, OH hereinafter referred to as "Broker". Broker and Carrier are sometimes collectively referred to as the "Parties".

Carrier is a contract motor carrier of property authorized by Federal Motor Carrier Safety Administration ("FMCSA") Permit MC- _____ (a copy of which Certificate is attached hereto and made a part hereof) to provide motor carrier service in interstate and/or intrastate commerce for transportation of property under contract with brokers, shippers and receivers of general commodities.

Broker is a motor carrier freight broker, licensed by the FMCSA to arrange for the transportation of property, except household goods, under License MC-156973 (a copy of which license is attached hereto and made a part hereof) and controls for transportation purposes, on behalf of third parties, the commodities to be tendered to Carrier.

NOW, THEREFORE, in consideration of the representations made herein, the Parties agree as follows:

I. SPECIFIC OBLIGATIONS OF CARRIER

1. **Compliance.** Carrier represents that it holds appropriate interstate and/or intrastate authority, where necessary, to perform motor freight services hereunder as a motor carrier for Broker. Carrier agrees to comply with all applicable federal, state and local laws and regulations, including all requirements of the FMCSA, Department of Transportation ("DOT"), Environmental Protection Agency ("EPA"), and any other agency having jurisdiction over its services.
2. **Rates and Distinct Needs.** The rates set forth in Appendix A are designed to meet the distinct needs of Broker and its shipper customers ("Customers"). It is expressly understood that the rate schedules are all inclusive and that no reference to any schedule, classification, rates, or otherwise beyond Appendix A are applicable unless specifically acknowledged in writing.
3. **Equipment.** Carrier, at its own cost and expense, agrees to provide the equipment and properly qualified, trained, and licensed personnel and drivers required by Broker to receive, safely carry and efficiently transport the shipments arranged by Broker and to deliver such goods to stated destinations promptly. Carrier shall operate and maintain the motor vehicles and allied equipment necessary in good working condition and in compliance with all applicable laws and regulations. Carrier agrees that equipment is to be clean, odor-free, in good repair and is appropriate for cargo that is being tendered and accepted. Carrier will not tender trailers which have been used for transporting solid waste or other noxious products. Carrier accepts the responsibility to be fully aware of all potential contamination issues as it relates to their service to Broker and to inquire as to load contents, as necessary, prior to accepting any shipment.

Trailers will be dropped at shipper's facilities for loading as requested by Broker. No detention or other charges will be assessed for the spotting of trailers or tractors unless specifically agreed in writing in advance. All equipment used by Carrier in the performance of transportation functions hereunder shall at all times be under the exclusive control of Carrier. Carrier's drivers shall have a valid (not revoked or suspended) commercial driver's license and shall be fit and able (both mentally and physically) to perform all necessary duties relating to the safe and proper operations of Carrier's equipment. Carrier's personnel and drivers shall not knowingly operate Carrier's equipment in an unsafe manner or a manner which is not recommended (including without limitation, over-loading, improperly loading, driving at excessive speeds, or operating contrary to the equipment manufacturer's recommended method of loading, unloading or operation).

4. Delivery. Upon request by Broker, Carrier will secure delivery appointments for consignees and deliver at such scheduled times and, when requested, report appointment times and delivery times within 24 hours of delivery. Carrier will accept instruction for changes in delivery place or time from Broker only. If Carrier accepts change instructions from parties other than Broker, Carrier does so at its own risk and will forfeit its right to compensation for the shipment.

5. Notice of Loss or Damage. Carrier shall notify Broker immediately after having knowledge of overages, shortages, or damage to products or goods Carrier handles for Broker. Carrier shall return overages to shipper at point of shipment origin. Disposition of damaged goods will be determined by Broker.

6. Delays. In the event of delay in the carriage of Customer's freight, Carrier shall, at its expense, forthwith advise Broker, giving an estimate of the anticipated delay in delivery, and shall, as necessary, promptly take steps to reload the freight in replacement equipment or take other necessary steps to minimize delay, at Carrier's sole expense.

7. Bills of Lading and Delivery Receipts. Carrier shall issue a bill of lading for each shipment and obtain proof of acceptance and delivery receipts for all merchandise tendered by Broker. Carrier will provide copies of same to Broker in sufficient detail to substantiate billing for the services provided. Carrier shall retain such records for three years after delivery of the involved shipments or for such greater period of time as may be required by federal or state laws, rules, or regulations. The terms and conditions of any bill of lading or other freight documentation used by Carrier or its subcontractors will not supplement, alter, or modify the terms of this Agreement. Failure of Carrier to issue a bill of lading will not affect the liability of the Carrier.

8. Scope. This Agreement governs all shipments tendered to Carrier by Broker or by third parties through Broker during the term of the Agreement. Broker is not restricted from tendering shipments to motor carriers other than Carrier. Carrier is not restricted from providing its transportation services to entities other than Broker or Broker's Customers.

9. Taxes and Fees. Carrier, at its cost and expense, shall assume full responsibility for all federal, state, and local taxes, licenses, assessments and tolls and all other costs arising out of the transportation herein described.

10. Insurance. Carrier agrees, at all times during the term of this Agreement, to carry and keep in force public liability, property damage and personal injury insurance under such terms as will meet the requirements of all laws and applicable governmental bodies and agencies. Proof of such insurance shall be provided by Carrier to Broker on an annual basis or more often as necessary to provide Broker with current information. In any event, such insurance shall be maintained in amounts of not less than the following:

- (a) Workers Compensation including employer's liability: \$500,000 or statutory amounts, whichever is greater.
- (b) Public liability and property damage: Commercial general liability, including contractual liability in a combined single limit of \$1,000,000 with a deductible of no more than \$10,000 unless approved in writing by Broker prior to service.
- (c) Automobile coverage: Truckers policy or automobile liability insurance in a combined single limit of \$1,000,000 covering owned, hired and non-owned vehicles with a deductible of no more than \$10,000 unless approved in writing by Broker prior to service.
Cargo liability: \$100,000 per shipment with deductible of no more than \$2,500 unless approved in writing by Broker prior to service. Carrier's cargo insurance policy shall not exclude coverage for fraud, infidelity, unattended vehicle, dishonesty or criminal acts of carrier's employees or agents or for the following types of commodities:

Except for worker's compensation insurance, the above policies and certificates must name Broker as an additional insured. All policies and certificates must require that the insurer provide Broker at least thirty (30) days notice of any material changes or cancellation.

11. Loss, Damage, Overage and Undercharges. Carrier agrees that all freight subject to this Agreement was delivered to Carrier in good condition. Except as otherwise provided herein, Carrier shall have the sole and exclusive care, custody and control of the Customer's property. Carrier agrees to and does assume all liability in accordance with the Carmack Amendment, 49 USCA §14706(a)(1), for any and all loss, delay, damage to, or destruction of Customer's property transported hereunder while in or under Carrier's care, custody or control. Carrier's liability for loss, damage, or delay exists from the time of receipt of the shipment by Carrier until proper delivery has occurred. Written proof of delivery (P.O.D) is required to be provided to Broker and Customer in any reported shortage, damage or loss or when requested of Carrier by Broker and/or Customer. Customer and Broker reserve all rights, including state law, against Carrier. In addition to the remedies of 49 USCA §14706(a)(1), Customer and Broker reserve any

and all other causes of action which may be otherwise available to any Customer or Broker in event of any claim for freight, loss, or damage.

Any claims by Broker or Customer will be handled in the following manner:

- (a) All claims for loss, damage, or delay will be processed in accordance with 49 C.F.R. Part 370, unless otherwise provided herein. A claim for loss, damage, injury, or delay to cargo will be filed in writing, as provided below, with Carrier, within nine (9) months of the date of delivery or tender of delivery, or in the case of non-delivery, within nine (9) months from which a reasonable time for delivery has elapsed.
- (b) Carrier will, upon receipt in writing of a proper claim in the manner and form described herein above, acknowledge receipt of such claim in writing to Broker and/or Customer within 30 days after the date of its receipt by Carrier, unless Carrier will have paid or declined such claims in writing within 30 days thereof. Carrier will indicate in its acknowledgment to Broker or Customer what, if any, additional documentary evidence or other pertinent information may be required by it to process the claim, based on Carrier's preliminary examination of the claim as filed. Carrier agrees that in any case where it does not decline, pay or acknowledge receipt of claims within said 30 days that it has agreed to the validity of the claim and the amount stated therein and will thereafter pay said claim within 30 days.
- (c) Carrier, when it has received written claim for loss or damage, injury, or delay to property transported, will pay, decline, or make a firm compromise settlement offer in writing to Broker and Customer, within 60 days after receipt of the claim by Carrier. If Carrier and Broker and/or Customer do not come to final settlement within 60 days, Broker may cancel this Agreement and Broker and/or Customer may seek to recover the damages through any legal, administrative or equitable remedy available. Carrier shall not be responsible for loss, damage, injury or delay resulting from Acts of God, public enemy, revolution, civil disorder, or war.

Carrier shall be liable for Broker's "full actual loss" resulting from loss, damage, injury or delay. "Full actual loss" is the invoice price of freight tendered to Carrier for transportation. No limitations of liability will apply.
- (d) In the case of overpayments or claims, Broker shall notify Carrier of overpayment or claim value and provide Carrier thirty (30) days to respond to such notification. If Broker does not receive a response from Carrier, Broker is entitled to off-set monies due to Carrier ninety (90) days after the claim is sent. If Carrier responds to the claim, but a settlement is not reached ninety (90) days after the claim is sent, the Parties will submit

the matter to binding arbitration under the rules of the American Arbitration Association.

- (e) In the case of undercharges by Carrier for freight charges billed incorrectly, Carrier shall have a period of ninety (90) days from the date of the original invoice or freight bill to request such adjustments and if not made within such period, any claims for underpayment are waived by Carrier.

12. Salvage. Carrier waives any and all right of salvage or resale of any Customer's damaged freight. Unless otherwise instructed, the Carrier shall promptly return or dispose of, at the cost of the Carrier, the damaged goods to the location specified by Customer. The Carrier will not allow the Customer's freight to be sold, or made available for sale in any salvage markets, employee stores, or any other secondary outlets. In the event that damaged goods are returned to and salvaged by the Customer, in Customer's sole discretion, then the Carrier shall receive a credit for the reasonable salvage value of such goods, less a reasonable administration/handling fee.

13. No Ownership Interest in Cargo. Carrier shall have no right title, interest, ownership or claim for goods tendered for transportation services by or for any Customer. Carrier will not in any way encumber said Customer's ability to take possession of such goods, including, but not limited to, asserting any lien or withholding any goods on account of any dispute as to prices or alleged failure of Broker to pay any charges incurred under this Agreement. Carrier waives any and all lien rights, including statutory lien rights.

If a shipper loads and seals the cargo and the cargo is delivered with the seal intact, the Carrier shall have no liability for shortages or damages, unless there is evidence of a vehicular accident or negligence by Carrier. However, if the seal is broken prior to delivery, Carrier shall accept liability for any and all shortages or damages. If any governmental authority directs the Carrier to break the seal for inspection, the Carrier shall notify the shipper and Broker and shall reseal the cargo prior to continuation of the trip. Carrier may break the seal on a trailer or container if, upon its reasonable determination, it becomes necessary to do so to inspect, reposition, or protect the cargo or the trailer or to comply with federal, state, municipal or provincial laws or regulations, but shall reseal the cargo subsequent thereto and shall remain responsible for any consequential shortages or damages to the cargo. Carrier shall notify Broker prior to breaking the seal.

14. Audits. Carrier shall use its best efforts to ensure the accuracy and completeness of the following:

- 14.1 Manual and electronic invoicing;
- 14.2 Manual and electronic operational updates;
- 14.3 Records pertaining to Equipment insurance, equipment age, any applicable Federal, State, or Provincial safety ratings; and,

- 14.4 Fuel receipts, drivers' logs, shipment receipts and other documentation and records reasonably necessary to permit Broker to confirm the accuracy of Carrier's fees.

In order to confirm Carrier's compliance with the obligations set forth in this Agreement, Broker shall have the right to audit Carrier's shipment activity with Broker from time to time in any and all of the areas referred to in this Agreement regarding Carrier's duties, obligations and representations under this Agreement, by providing no less than one (1) hour's prior notice to Carrier of Broker's intention to audit such materials. Such audits shall enable Broker to review Carrier's performance under

Broker's performance criteria. This Agreement may be terminated if Carrier fails to provide or implement acceptable corrective actions, or if Carrier experiences inconsistencies in two (2) or more consecutive audits.

15. Use of Owner-Operators and Subcontracting. It is agreed and understood that Carrier may, from time to time, utilize the service of "Owner Operators" to facilitate delivery of any cargo hereunder. For the purpose of clarification, such "Owner Operators" are individuals or a company that owns its own equipment and operates the equipment under the exclusive authority of Carrier and pursuant to a signed independent contractor agreement with Carrier. Use of Owner-Operators does not require Broker consent but such use is subject to the requirements of this section. However, Carrier will not, in any situation, "trip lease", broker, or in any way engage the services of another carrier, broker, third party logistics provider or any other person or entity (hereinafter referred to as "Subcontractor") to transport any loads (or portions thereof) tendered to it under this Agreement by Broker or Customer, without prior written consent of Broker. This includes brokerage services operated by the Carrier (or any subsidiaries of Carrier or commonly controlled company with Carrier) under its own, separate brokerage authority. If Carrier accepts any shipment from Broker and Carrier uses a Subcontractor (with or without consent of Broker) to pick up, transport and/or deliver the shipment, (a) the rates in Appendix A attached hereto shall apply, (b) payment to Carrier shall be deemed to be payment in full for the services provided by Carrier or Carrier's Subcontractor, and (c) Carrier shall be solely responsible to pay any such Subcontractor for all services provided by the Subcontractor to Carrier. In any event, Carrier will not use any carrier or subcontractor without a "Satisfactory" or "Unrated" safety or equivalent rating even if Broker authorizes use of another carrier or subcontractor. Carrier shall remain liable to Broker and/or Customer for the full and proper performance of the services as if Carrier performed the services itself as a motor carrier regardless of any subcontract. Such Subcontractor is not under contract with any Customer and Carrier shall indemnify and defend Broker and Customer, and their respective subsidiaries, affiliates, divisions, officers, directors, owners, employees, representatives, agents, successors and assigns, from and against any claims, losses, liabilities, damages, costs and expenses (including without limitation for payment of freight charges and attorneys' fees and costs) arising from or related to services provided by Carrier's Subcontractor. Moreover, if Carrier tenders any load to an unauthorized Subcontractor, it agrees to pay in full all claims for freight

damage and/or loss made by Broker or Customer, which shall then assign such claims to Carrier for collection from Subcontractor.

16. Operation of the Equipment. Carrier shall, at its sole discretion, direct the operation of the Equipment and determine the methods, manner and means of performing the obligations specified in this Agreement. In addition, Carrier agrees to notify Broker and Customer when Carrier takes possession of cargo that appears to be inadequately packaged for normal transportation. Carrier personnel (whether agents, employees or independent contractors of Carrier) will conduct themselves in a professional manner at all times, and shall comply with all of Customer's plant rules and regulations while on Customer's premises. Any Carrier personnel who does not comply with all of Customer's plant rules and regulations may be summarily rejected and directed to immediately leave the Customer's premises at the exclusive risk and expense of Carrier.

17. Independent Contractor. Carrier understands and agrees that Carrier is an independent contractor to Broker and that Carrier has exclusive control and direction of all services Carrier performs pursuant to this Agreement and each tendered shipment. Carrier and Broker agree that employees of Carrier, in performing services hereunder, shall be and remain exclusively the employees of Carrier and shall not, for any purpose, be considered employees of Broker. Broker shall not be responsible for any act or omission of said employees. Carrier shall in no event be considered an employee or agent of Broker but, on the contrary, shall be deemed and treated as an independent contractor of Broker. Broker will have no control over Carrier or any of its personnel.

Carrier shall indemnify, defend, and hold Broker and its Customer(s) harmless of all local, State, and Federal payroll taxes, contributions or taxes for unemployment insurance, worker's compensation, insurances, pensions, and other social security or related costs with respect to all persons engaged by Carrier for performance of Carrier's services.

18. Indemnity. Carrier agrees to indemnify, defend, and hold Broker, Customers, and owners of the goods (including their respective officers, directors, employees, subcontractors, and agents) harmless from and against all liabilities, damages, fines, costs, claims, demands and expenses (including costs of defense, settlement, and reasonable attorneys' fees), including damage or destruction of any property, or injury (including death) to any person, arising out of or related to, directly or indirectly in any way to any act, omission, action, or failure by Carrier, its agents, employees or subcontractors, arising out of Carrier's performance of services under this Agreement.

Broker shall indemnify and hold Carrier harmless from and against any and all third-party claims, costs or expenses (including but not limited to reasonable attorney's fees) for personal injury, death, or damage to or destruction of property, sustained by Carrier to the extent caused by the negligent acts or omissions of Broker.

19. Confidentiality. Carrier acknowledges that Broker deems this Agreement and its terms and conditions, and all Broker, Customer and shipper information derived by Carrier from this business relationship to be confidential commercial information. Carrier agrees to maintain the

confidentiality of this Agreement, including all rate information, customer lists, trade secrets, know-how, marketing plans, traffic lanes, and volumes, and product information, or any other information otherwise considered proprietary or secret by Broker, Customers, and shippers, and shall not disclose any of its terms or information learned during performing the services under the Agreement except to the extent that such disclosure is required by law. Carrier agrees to use such confidential information solely in connection with their business relationship. Carrier agrees that Broker's charges to its Customers are confidential and need not be disclosed to Carrier. Carrier specifically waives any rights it may have under 49 CFR § 371.3.

20. State Registration. Carrier, when not operating in its state of incorporation, agrees to register with any state as a foreign corporation prior to conducting intrastate commerce within the state.

21. Incorporation. Carrier is a valid and active corporation registered with its state of incorporation identified above.

22. CDL's. All operators of Carrier's equipment shall hold valid, current and unrestricted CDLs issued by a proper state agency throughout the term of the this Agreement.

23. Licensing. All of Carrier's equipment is properly permitted and licensed at all times.

24. Safety Ratings. Carrier shall agree that, during the term of its Agreement with Broker, it shall have either a "Satisfactory" or "Unrated" safety rating as determined by the Federal Motor Carrier Safety Administration (FMCSA) or a substantively equivalent rating under the Carrier Safety Measurement System implemented under the Compliance, Safety, Accountability ("CSA") program. If Carrier receives any other level of safety rating, or if Carrier is designated for an "intervention" or exceeds any intervention threshold for any CSA BASIC score, Carrier shall immediately notify Broker in writing by certified mail, and Broker has the option of canceling this Agreement, immediately and without notice.

25. Terms. Carrier shall agree that the terms and conditions of this Agreement shall apply on all shipments it handles for Broker. No terms, conditions, or provisions of any bill of lading or other shipping form, Carrier's tariff, or rule will apply.

26. Waiver. The Parties enter into this Agreement in accordance with 49 U.S.C. Section 14101(b)(1) and expressly waive any and all rights and remedies under Title 49 U.S.C., Subtitle IV, Part B to the extent they conflict with the Agreement.

27. Compliance. Carrier shall agree that at all times it shall operate in full compliance with all federal, state and local laws, regulations, rules and ordinances (including, but not limited to all DOT safety and operations regulations, CSA,, MAP-21, California Air Resources Board (ARB) TRU ACTM in-use regulations, all posted speed and weight limits, all required drug and alcohol testing regulations and requirements, hours of service, and any and all related matters).

28. Changes. Should any of the representations and warranties of Carrier set forth herein change or become modified or no longer applicable in any manner whatsoever, Carrier shall advise Broker immediately and in writing. Should Carrier fail to notify Broker, Carrier shall

agree to hold harmless and indemnify Broker and Broker's Customer or any involved shipper from and against any and all claims, liabilities, cost or damages resulting from such failure to notify and/or such change, modification or failure of continued applicability.

II. SPECIFIC OBLIGATIONS OF BROKER

1. Broker shall offer to Carrier for shipment a minimum quantity of ten thousand pounds per year, or a minimum of four (4) shipments for each year this Agreement remains in effect, and Carrier shall agree to transport those shipments tendered during that period of time.
2. Broker agrees to pay Carrier for the transportation of the commodities moved under this Agreement in accordance with the rates set forth in Appendix A, attached hereto, within 30 days of the receipt by Broker of Carrier's undisputed invoice covering such transportation, with signed proof of delivery, bills of lading, and any other documents necessary to invoice the Customer, reflecting timely completion of delivery without exception or notation of problems and where Broker has not been otherwise notified of any problems with the shipment. Carrier agrees to invoice Broker on a timely basis. Carrier understands that claims or any other offsets may be netted against any and all monies otherwise owed to Carrier. Carrier shall not seek payment from Customers, shippers, consignees, or any other parties and agrees that Broker is the sole party to conduct any and all billing to Customers for services completed by Carrier.

III. ADDITIONAL PROVISIONS

1. Carrier agrees that Broker is the sole party responsible for payment of Carrier's charges. Under no circumstances shall Carrier seek payment directly from Broker's Customers, shippers, consignees, or any other parties and Carrier agrees that Broker is the sole party to conduct any and all billing to Customers for services completed by Carrier.
2. If performance by one Party is affected by any condition beyond the reasonable control of such Party, including but not limited to strikes, Acts of God, war, accidents, civil disorder or compliance with legally constituted order of civil or military authorities, the performance of obligations under the Agreement affected by such condition will be suspended during the continuance of such condition. Neither Party will incur any liability for damages resulting from such suspensions.
3. The bill of lading shall note that the shipments were transported by Carrier, acting as a Carrier, and that the shipment was arranged by Broker, acting as a Broker. The name of the underlying shipper shall be inserted in the blank for the shipper, and the name of the consignee shall be inserted in the blank for the consignee. When Broker has assembled multiple shipments into carload or truckload lots, the list of underlying shippers will be attached as an appendix to the bill of lading.
4. During the existence of this Agreement and for a period of one year after its cancellation, Carrier shall not solicit or transport, directly or indirectly, traffic from any shipper, consignor, consignee or Customers of Broker where (a) the availability of such traffic first became known to Carrier as a result of Broker's efforts, or (b) where the traffic of the shipper, consignor,

consignee or customer of Broker was first tendered to Carrier by Broker. If Carrier breaches this Agreement and "back-solicits" Broker's customers, or obtains traffic from such a customer, Broker then is entitled, for a period of fifteen (15) months after the involved traffic first begins to move, to a commission from Carrier of thirty percent (30%) of the transportation revenue invoiced on the movements of the traffic and payment of all costs and attorney's fees expended to secure the thirty percent (30%). This is in addition to any other compensatory and punitive damages, the right to temporary or permanent injunction and all other legal remedies. For purposes of this paragraph, "Carrier" shall mean Carrier as well as all related companies, whether carrier, broker, freight forwarder, holding company or otherwise, and also includes all principals of Carrier, including officers, directors and shareholders acting directly or indirectly.

5. This Agreement shall be binding upon Carrier and Carrier's successor and assigns. Carrier shall not assign this Agreement or any provisions herein without prior written consent of Broker. This Agreement, including the attached Appendices, supersedes all prior or contemporaneous agreements, proposals, communications and negotiations, both oral and written, and contains the entire understanding of all Parties relating to the subject matter stated herein. The Agreement cannot be amended except in writing, signed and dated by authorized representatives of both Parties. If any part of the Agreement is declared by a court to be invalid, such decision shall not affect the validity of any remaining portion of the Agreement. The failure of either Party to enforce any of the rights given to it under the Agreement shall not be construed as a waiver of that right.

6. The term of this Agreement shall be for one year from the date shown above. That term may be extended for another year by mutual written agreement at or prior to the expiration of the first year, or if no further agreement is executed by that date, this Agreement shall remain in effect until superseded by a subsequent agreement. The Agreement may be canceled at any time during the initial or subsequent terms upon 30 days' written notice of cancellation by either Party. Carrier shall maintain a copy of this Agreement on file for a period of at least three years after it is terminated or canceled.

7. Notwithstanding the above, either Party may terminate this Agreement without penalty on one day's written notice as a result of a material violation or breach by the other Party of any provisions of this Agreement or the execution of a subsequent agreement. If either Party files a petition for or declares bankruptcy, reorganization, or other similar relief from its creditors, the other Party shall have the right, subject to applicable federal bankruptcy law, to continue to enforce the Agreement or to terminate it immediately upon ten (10) days' written notice to the bankrupt or insolvent Party.

8. Unless otherwise stated, all notices which may be given in connection with this Agreement or required by law or regulation shall be in writing, shall be sent postpaid by the Party desiring to give such notice to the other Party by first class mail, addressed to such Party at its address shown herein, and shall be deemed to have been given when so sent.

9. Except to the extent controlled by and governed by Title 49 of the United States Code and Part 49 of the Code of Federal Regulations, this Agreement shall be subject to and shall be interpreted in accordance with the laws of the State of Ohio. Carrier and Broker agree to the

exclusive jurisdiction and venue of the municipal courts and common pleas court of Defiance County, Ohio.

IN WITNESS WHEREOF, the parties have set their hands this ____ day of _____, 20____.

Thomas E. Keller Trucking, Inc.

Address:

Address:

24862 Elliot Rd.
Defiance, OH 43512

Phone Number:

Phone Number:

(419) 784-4805

Signed: _____

Date: _____

Initial _____