

BRENNY TRANSPORTATION, INC.

INDEPENDENT CUSTOMER SERVICE AGENT AGREEMENT

THIS AGREEMENT is made and entered into on this ___ day of _____, 20 __, by and between BRENNY TRANSPORTATION, INC., a Minnesota corporation, hereinafter known as "BRENNY" and _____, hereinafter known as "INDEPENDENT AGENT".

WITNESSETH:

WHEREAS, BRENNY is engaged in the trucking and hauling business and wishes to enter into a contract with INDEPENDENT AGENT as an independent contractor;

WHEREAS, independent contractor is a business which utilizes, among other things, trucking and hauling services on a contracted for basis; and

WHEREAS, BRENNY and INDEPENDENT AGENT wish to enter into an agreement as hereinafter provided for the trucking and hauling of goods and materials as required by INDEPENDENT AGENT on an independent contract basis.

NOW, THEREFORE, the parties hereto, hereby agree to the following terms, conditions and provisions:

1. BRENNY TRANSPORTATION, INC.

Full Legal Name: Brenny Transportation, Inc.
Type of Entity: Trucking and Hauling
Address: 8505 Ridgewood Road
City/State/ZIP: St. Joseph, MN 56374
Business Telephone: (320) 363-6999
Business Fax: (320) 363-6988

2. **IDENTITY OF INDEPENDENT AGENT.**

The INDEPENDENT AGENT is identified as follows:

Full Legal Name of INDEPENDENT AGENT: _____

Type of Entity: Sole proprietorship Partnership

Corporation Other

Address: _____

City/State/ZIP: _____ Business Telephone: (____) _____ - _____

Social Security Number or Federal EIN: _____

3. **JOB TO BE PERFORMED.** BRENNY, as a broker licensed by the

Department of Transportation (DOT), has entered into numerous independent contracts with

independent carriers to provide services to its customers and has agreed pursuant to this

Agreement to provide INDEPENDENT AGENT with a copy of its Confidential Carrier List

("Carrier List") for the sole and limited purpose of permitting INDEPENDENT AGENT to make

direct contact with carriers listed on the Carrier List and to directly arrange for the transportation

of its goods.

4. **TERMS OF PAYMENT.** As compensation for the work performed,

INDEPENDENT AGENT shall be entitled to receive _____ percent of the net proceeds

actually received for each job performed by INDEPENDENT AGENT. The amount shall be

calculated on the net amount of the payment charged for the work after deducting for returns,

allowances, freight charges, discounts, bad debts, expenses and similar items and shall be

deemed to be due and payable only as and when orders have been shipped and actually paid for.

Any prepayment of compensation shall not constitute nor be deemed to be a waiver by

BRENNY of any of the foregoing provisions, and in all cases in which returns or allowances are subsequently made, appropriate adjustments shall be made as necessary to the account of the INDEPENDENT AGENT. It is further understood that BRENNY shall retain the net proceeds received for each job performed for the benefit of INDEPENDENT AGENT until INDEPENDENT AGENT has fully paid for its truck. Said amount shall either be retained by BRENNY or, if collected by INDEPENDENT AGENT, paid to BRENNY within five (5) days of receipt of the same by INDEPENDENT AGENT.

5. **REIMBURSEMENT OF EXPENSES.** BRENNY shall not be liable to INDEPENDENT AGENT for any expenses paid or incurred by INDEPENDENT AGENT unless otherwise agreed in writing, and INDEPENDENT AGENT shall reimburse, indemnify and hold BRENNY harmless from and against the same. It is specifically agreed that the INDEPENDENT AGENT shall be responsible for providing its own phone and facsimile and all related supply expenses that may be desired or necessary to perform its obligations under this Agreement and INDEPENDENT AGENT agrees to reimburse, indemnify, and hold BRENNY harmless with regard to the same.

6. **EQUIPMENT, TOOLS, MATERIAL OR SUPPLIES.** INDEPENDENT AGENT shall supply, at INDEPENDENT AGENT'S sole expense, all equipment, tools, material and/or supplies necessary to accomplish the JOB TO BE PERFORMED.

7. **TAXES.** INDEPENDENT AGENT shall be an independent contractor and not an employee of BRENNY and BRENNY shall determine the scope of the services to be assigned to INDEPENDENT AGENT. INDEPENDENT AGENT shall not be entitled to receive any compensation, commissions, or benefits other than those expressly provided for in this Agreement. Except as otherwise required by law, BRENNY shall not withhold any sums from

the payments to be made to INDEPENDENT AGENT for social security or other federal, state or local tax liabilities or contributions, and all withholdings, liabilities and contributions shall be solely INDEPENDENT AGENT'S responsibility.

8. **BENEFITS.** INDEPENDENT AGENT is not eligible for, and shall not participate in, any employee pension, health plan, or other benefit plan of BRENNY.

9. **INSURANCE.** INDEPENDENT AGENT agrees that it will purchase and pay for any medical insurance, life insurance, worker's compensation insurance, disability coverage and/or any other insurance or fringe benefits it wishes to provide to itself or its employees at limits which are in accordance with applicable industry standards. INDEPENDENT AGENT shall comply with the worker's compensation laws concerning INDEPENDENT AGENT and the employees of INDEPENDENT AGENT.

10. **TERM OF AGREEMENT.** The term of this Agreement shall commence on _____, 20__ (the "Term") and remain in effect until formally terminated by the parties as provided in Paragraph 14 below. In the event the parties continue their relationship after termination of the Agreement, such continued relationship shall be subject to the terms and conditions of this Agreement including, but not limited to, the provisions with respect to Confidential Data and Restrictions on Competition set forth in Paragraphs 15 and 16 of this Agreement for so long as the parties continue to act or until a new agreement is mutually accepted. Both parties agree that this Agreement shall be binding and enforceable against the other concerning the matters covered herein as of the date it is executed, notwithstanding the fact that INDEPENDENT AGENT may or may not be immediately assigned or required to perform any work hereunder.

11. **OTHER TERMS OF AGREEMENT.** INDEPENDENT AGENT will not be

paid for work done until such time as BRENNY receives payment. Furthermore, it shall be the INDEPENDENT AGENT'S responsibility to assist BRENNY in pursuing and obtaining collections from customers of INDEPENDENT AGENT.

To the extent BRENNY so desires to perform credit evaluations on new customers, BRENNY shall be solely responsible for performing any such credit evaluations and for the payment of all costs associated with the performance thereof. INDEPENDENT AGENT shall indemnify and hold BRENNY harmless from and against any and all claims arising out of the credit evaluations conducted by BRENNY.

After a job has been completed through INDEPENDENT AGENT, BRENNY will then be responsible for all paperwork involved with billing of the customer, with the exception that INDEPENDENT AGENT shall be responsible to assist with the collection of the billings once they are sent by BRENNY to the customer. INDEPENDENT AGENT agrees to reimburse BRENNY for any and all amounts, costs and expenses incurred by BRENNY, including reasonable attorney's fees, resulting from the failure of any of INDEPENDENT AGENT'S customers to pay when due any of the amounts owed for services performed by BRENNY.

12. MOTOR CARRIER BROKERAGE AUTHORITY. It is understood and agreed that the INDEPENDENT AGENT shall be allowed to operate under BRENNY'S Motor Carrier Brokerage Authority while, and only while, the INDEPENDENT AGENT is performing under this contract.

13. TERMINATION. This Agreement may terminate upon the mutual consent of INDEPENDENT AGENT and BRENNY in writing. This Agreement may be terminated by either INDEPENDENT AGENT or BRENNY for any or no reason upon sixty (60) days written notice to the other party or immediately following written notice in the event of any of the following:

- (a) Cancellation, whether voluntarily or involuntarily, of BRENNY'S Motor Carrier

Brokerage Authority; or

- (b) Either party hereto commits a material breach of the terms of this Agreement and the non-breaching party elects to terminate the Agreement.

The parties shall deal with each other in good faith during the 60-day period after any notice of intent to terminate without cause has been given.

14. CONFIDENTIAL DATA. INDEPENDENT AGENT acknowledges that certain information provided to it by BRENNY, including, but not limited to the Carrier List and rate structure, is confidential data and that the same constitutes a part of BRENNY'S trade secrets. This pertains to all knowledge and information which INDEPENDENT AGENT acquires on BRENNY'S premises or from BRENNY or any of its employees or other consultants regarding BRENNY'S methods of operation, systems and technical data, written material and any other similar information which is disclosed to INDEPENDENT AGENT. During this Agreement's term and for a period of five (5) years thereafter, INDEPENDENT AGENT agrees that unless this information has already become common knowledge or unless required to disclose the information by governmental process, INDEPENDENT AGENT will hold the information in whatever form, in trust solely for BRENNY'S benefit and use and shall not directly or indirectly disclose the information to any person or entity without BRENNY'S written permission. With respect to all confidential information, INDEPENDENT AGENT will instruct personnel under its control and/or direction to keep the confidential information confidential and not to disclose it directly or indirectly to any person or entity without BRENNY'S written permission.

Upon the written request of BRENNY or upon this Agreement's termination, INDEPENDENT AGENT shall return to BRENNY all materials supplied by BRENNY,

acquired by INDEPENDENT AGENT or developed in the course of INDEPENDENT AGENT'S engagement under this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the provisions of this Paragraph 14 shall survive the termination of this Agreement and shall remain enforceable by the parties for so long as the same remains applicable.

15. RESTRICTION ON COMPETITION. INDEPENDENT AGENT recognizes and acknowledges that by virtue of being allowed to work with BRENNY as an Independent Contractor hereunder, INDEPENDENT AGENT will acquire valuable knowledge and learn proprietary trade secrets and Confidential Information of BRENNY. In consideration of the foregoing and this Agreement, INDEPENDENT AGENT agrees that during the term of the Agreement and any continuations or renewals thereof and until the one (1) year anniversary of the date on which this Agreement finally terminates or the parties cease to continue to perform in accordance with the terms and conditions of the Agreement, whichever is the latter to occur, (the "Non-Compete Period"), INDEPENDENT AGENT will not directly or indirectly (whether as employee, director, owner, stockholder, consultant, partner (limited or general), independent contractor or otherwise) own, manage, control, participate in, consult with, advertise on behalf of, render services for or in any manner engage in any competitive business in the operation, in interstate or foreign commerce, as a broker arranging for transportation of freight or any other related businesses which BRENNY is engaged in during and at the expiration of the Agreement and/or the cessation of performance under the terms of the Agreement, at any location within a one hundred (100) mile radius of BRENNY'S St. Cloud location or at any location within a one hundred (100) mile radius of the INDEPENDENT AGENT'S location (the "Restricted Territories"); nor shall INDEPENDENT AGENT knowingly solicit, request, induce or attempt

to influence any then existing carrier, customer, referral source or supplier of BRENNY to curtail any business they are currently, or in the last thirty-six (36) months have been, transacting with or through BRENNY. Nothing herein will prevent INDEPENDENT AGENT from being a passive owner of not more than 1% of the outstanding stock of any class of a corporation which is engaged in a competitive business with BRENNY and which is publicly traded, so long as INDEPENDENT AGENT has no participation in the business of such corporation. Furthermore, during the Non-Compete Period, INDEPENDENT AGENT shall not, without BRENNY'S prior written consent, directly or indirectly, knowingly solicit or encourage or attempt to influence any carrier on BRENNY'S Confidential Carrier List to sever or in any other manner breach its relationship with BRENNY or to cause any such carrier to directly or indirectly provide any service on behalf of or for the benefit of INDEPENDENT AGENT. INDEPENDENT AGENT agrees that the restraint imposed under this Paragraph 15 of the Independent Contractor Agreement is reasonable and not unduly harsh or oppressive.

The parties have attempted to limit INDEPENDENT AGENT'S right to compete only to the extent necessary to protect BRENNY from unfair competition. The parties recognize, however, that reasonable people may differ in making this determination. The parties agree that if the restrictive covenant scope or enforceability is in any way disputed at any time, the court or other trier of fact may modify and enforce the covenant to the extent it believes to be reasonable under the circumstances existing at that time. Notwithstanding anything contained in this Agreement to the contrary, the provisions of this Paragraph 15 shall survive the termination of this Agreement and shall remain enforceable by the parties for so long as the same remain applicable.

16. REMEDIES. INDEPENDENT AGENT acknowledges that compliance with

Paragraphs 14 and 15 is necessary to protect BRENNY'S business and goodwill and that a breach of any of these provisions will irreparably and continually damage BRENNY for which money damages may not be adequate. In the event that INDEPENDENT AGENT breaches or threatens to breach Paragraph 14 or Paragraph 15 of this Agreement, INDEPENDENT AGENT shall forfeit its right to receive additional payments under this Agreement. In addition, BRENNY shall also be entitled to preliminarily or permanently enjoin INDEPENDENT AGENT from violating this Agreement to prevent the continuation of harm and obtain money damages in so far as they can be determined. Nothing in this Agreement shall be construed to prohibit BRENNY from also pursuing any other remedy available to it, the parties having agreed that all remedies are to be cumulative. Notwithstanding anything contained in this Agreement to the contrary, the provisions of this Paragraph 16 shall survive the termination of this Agreement and shall remain enforceable by the parties for so long as the same remain applicable.

17. **NON-WAIVER.** The failure of BRENNY to exercise any of its rights under this Agreement for a breach thereof shall not be deemed a waiver of such rights or a waiver of any subsequent breach.

18. **NO AUTHORITY TO BIND.** INDEPENDENT AGENT has no authority to enter into contracts or agreements on behalf of BRENNY. This Agreement does not create a partnership between the parties.

19. **LICENSES AND PERMITS.** INDEPENDENT AGENT declares that INDEPENDENT AGENT has complied with all Federal, State and local laws regarding business permits, certificates and licenses that may be required to carry out the work to be performed by it under this Agreement.

20. **RISK.** INDEPENDENT AGENT shall perform the work at its own risk.

INDEPENDENT AGENT assumes all responsibility for the condition of tools, equipment, materials and job site. The INDEPENDENT AGENT hereby assumes the entire responsibility and liability in and for any and all damage or injury of any kind, or nature whatsoever to all persons, whether employees or otherwise and to all property, growing out of or resulting from the execution of work provided for in this Agreement or occurring in connection therewith, and agrees to indemnify, reimburse, and hold harmless BRENNY, its agents, servants and employees, from and against any and all losses, expenses, including attorney's fees, damage or injury growing out of or resulting from or occurring in connection with the execution of the work provided for herein or occurring in connection with or resulting from the use by the INDEPENDENT AGENT, its agents or employees of any materials, tools, implements, appliance, machinery, or other property of BRENNY, which arise under the work contemplated under this Agreement.

21. **NOTICE.** Notice shall be given to BRENNY at:

P.O. Box 7155
St. Cloud, MN 56302

Notice shall be given to INDEPENDENT AGENT at:

22. **ASSIGNABILITY.** INDEPENDENT AGENT agrees that this Agreement and its rights, interest and benefits cannot be assigned, transferred, pledged or hypothecated in any way and shall not be subject to execution, attachment or other similar process. Any attempt to do so contrary to the terms of this Agreement shall be null and void and shall relieve BRENNY of any and all liability under this Agreement.

23. **CHOICE OF LAW.** Any dispute under this Agreement or related to this

Agreement shall be decided in accordance with the laws of the State of Minnesota.

24. **ENTIRE AGREEMENT.** The parties agree that this instrument constitutes the entire Agreement between the parties hereto and supersede all prior agreements and understandings of the parties relating to the subject matter hereof and shall be binding upon the respective parties. This Agreement and any schedules or addenda now or hereafter made a part thereof; may not be amended or altered in any manner unless such amendment or alteration is in writing and signed by the respective parties hereto.

25. **SEVERABILITY.** If any provision of this Agreement is held unenforceable, the rest of this Agreement will never the less remain in full force and effect.

26. **AMENDMENTS.** This Agreement may be supplemented, amended or revised only in writing and signed by each of the parties.

27. **BINDING EFFECT.** This Agreement shall be binding upon and inure to BRENNY and INDEPENDENT AGENT and their respective successors, heirs, legal representatives, executors and administrators.

28. **ATTORNEYS' FEES.** If a party to this Agreement breaches any of the Agreement's terms then that breaching party shall pay to the non-breaching party all of the non-breaching party's costs and expenses, including the non-breaching party's reasonable attorneys' fees incurred by that party in enforcing this Agreement's terms.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, in duplicate originals, by their duly authorized representatives, as of the day and year indicated above.

[Signatures appear on the following page]

Amendment A to Independent Customer Service Agent Agreement:

-if Brenny's home office helps assist an agent moving a load and the only thing that the home office does is secure the carrier, the agent will be paid 50% of net proceeds.

-if Brenny's home office helps assist an agent moving a load and the only thing that the agent has done is secure the customer, the agent will be paid 30% of net proceeds.

Example: when agent is out on vacation, etc...

BRENNY TRANSPORTATION, INC.

Dated: _____

By: _____

Its: _____

Dated: _____

INDEPENDENT AGENT