

AGREEMENT FOR TRANSPORTATION BROKERAGE

THIS AGREEMENT, made and entered into this ____ day of _____, 20____, by and between _____, having its principal place of business at _____, hereinafter referred to as “Shipper”, and _____, and its affiliated broker subsidiaries, with its principal place of business at _____, hereinafter referred to as “Broker”.

WITNESSETH

WHEREAS, Broker is in the business of arranging the transportation of property by motor carriers and holds authority from the Federal Motor Carrier Safety Administration to engage in operations as a transportation broker of property for General Commodities (except Household Goods) in interstate or foreign commerce;

WHEREAS, Broker desires to arrange for the transportation of Shipper’s property by motor carriers and represents that it is fit, willing and able to perform transportation broker services;

WHEREAS, Shipper has a need for transportation of property to, from and between various points and places in intrastate, interstate and/or foreign commerce, limited to within the U.S., Canada and Mexico and desires to engage Broker to perform transportation brokerage services as described in this Agreement and Addenda attached hereto and made a part hereof. Services may include, but are not limited to, full truckload (FTL), less than truckload (LTL), and intermodal (via rail, air or ocean).

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises contained herein, Broker and Shipper agree as follows.

1. **Term and Termination.** This Agreement shall take effect on the date hereof and remain in effect for one (1) year from the effective date (“Initial Term”). Unless terminated as provided herein, this Agreement shall automatically renew for additional periods of one (1) year at the expiration of the Initial Term or any anniversary thereof. Either party may terminate this Agreement upon giving the other thirty (30) days’ prior written notice of its intention to terminate. Termination may be with or without cause. Termination of this Agreement shall not release either party from any liability to the other arising pursuant to this Agreement, whether or not such was ascertained at the time of termination. Termination of this Agreement shall not terminate any shipments then being performed under this Agreement. Such shipments shall continue under the terms of this Agreement until completed or terminated by Shipper in its sole discretion.

2. **Tender of Shipments.** Shipper agrees to tender and/or cause to be tendered a shipment or series of shipments to Broker for the purpose of having Broker arrange the transportation of the shipments by motor carriers to be selected by Broker. Nothing in this Agreement shall be construed to require Shipper to tender shipments to Broker, nor require Broker to accept any shipments so tendered.

3. **Brokerage Services.** For all shipments tendered by Shipper to Broker and accepted by Broker, Broker agrees to arrange for the pick-up, transport, and delivery of the shipments, as Shipper may reasonably request, exclusively by motor carriers that hold the proper government authority to perform the requested service(s). In arranging transportation services for Shipper, Broker shall not be responsible

for packaging, handling, loading or unloading of freight which shall instead be the responsibility of Shipper and/or the underlying carrier selected by Broker to transport the shipments. Every shipment arranged for transport by Broker for or on behalf of Shipper while this Agreement is in effect will be deemed tendered to Broker under this Agreement. Broker has the sole right to select the carriers used to perform the transportation services, subject to Shipper's right to timely reject the selection of any particular carrier as being unacceptable, and Broker is solely authorized to make the necessary transportation arrangements with regard to Shipper's property that has been tendered to Broker. In performing brokerage services for Shipper, Broker shall only select carriers that meet the following criteria:

- A. **FMCSA Authority.** Carriers selected by Broker shall maintain proper authority from the Federal Motor Carrier Safety Administration ("FMCSA") and any applicable state agency to perform transportation services in intrastate, interstate and/or foreign commerce.
- B. **Safety.** Broker will only select carriers that maintain a safety rating from the U.S. Department of Transportation that is either "Satisfactory" or "Unrated" or "Conditional", and that agree to perform transportation of Shipper's shipments in compliance with all applicable safety laws and requirements.
- C. **Insurance.** Carriers selected by Broker shall maintain insurance of the kind and in the amounts set forth in Article 13 hereof.

Broker shall also require the carriers selected to transport Shipper's property to adhere to the following requirements:

- D. **Carriers' Equipment.** Carriers selected by Broker shall be required to provide equipment that is clean, safe, properly maintained, and hazard free, and that meets all applicable governmental regulatory standards and requirements. Carriers selected by Broker shall also be required to provide equipment that is sufficient in quality and quantity to meet Shipper's transportation needs as are or may be contemplated by this Agreement.
- E. **Carriers' Drivers.** Carriers selected by Broker shall be required to furnish drivers and other operating personnel who are fully qualified, licensed, trained and experienced to properly and safely handle and transport Shipper's property.
- F. **Shipment Schedules.** Carriers selected by Broker shall be required to perform timely and reliable pick-up and delivery of all shipments in accordance with reasonable schedules communicated in writing by Shipper, its vendors, suppliers and customers to Broker, and or Broker's arranged carriers providing the actual, physical transportation of such shipments.

4. **Performance of Services.** Broker will arrange the transport of all shipments tendered to it by Shipper promptly upon tender of same by Shipper. Broker will provide Shipper with prompt notification by telephone or electronic communication when this obligation cannot be met for any reason. Broker will communicate to each carrier that it engages to transport Shipper's shipments any schedule for delivery provided by Shipper for a particular shipment. Broker warrants that it will perform in a good and workmanlike manner in accordance with good industry practices, and in conformity with the terms of any tender.

5. **Independent Contractor.** Broker's relationship to Shipper is that of an independent contractor, not an agent or employee, and nothing in this Agreement shall be construed as establishing an employment relationship, partnership or joint venture between the parties. Broker shall make

arrangements it deems appropriate for the transportation of shipments tendered by Shipper under this Agreement. Shipper is not and will not be responsible for any debts or obligations incurred by Broker in the performance of its business. Neither party shall be liable for any obligation incurred by the other, except as is expressly provided in this Agreement.

6. **Compliance with Law.** Broker shall comply with all laws, rules and regulations of any duly constituted governmental authority applicable to its performance of the transportation services to be rendered pursuant to this Agreement. Broker will be solely responsible for any acts, omissions, and/or violations by its employees and will defend and save Shipper harmless from any fine, penalty or liability that may result from such acts, omissions or violations; provided, however, that Broker shall not be responsible for any wrongful or negligent acts, omissions, or violations by Shipper, its vendors, customers, agents or employees.

7. **Compensation to Broker.** Compensation shall be paid by Shipper to Broker for all shipments tendered to Broker in the amounts or in accordance with the **[choose one]** **[Option 1:** rate schedules set forth in "Appendix A" attached hereto and made a part hereof; provided, however, that the parties hereto may at any time, agree, in writing, or orally to be subsequently confirmed in writing, to change such compensation for any specific shipment or shipments **[Option 2:** specific charges for the services agreed between Shipper and Broker, which shall be confirmed by Broker in writing within five (5) days of the oral agreement by preparing and faxing or e-mailing a written confirmation accurately reflecting the charges and terms applicable to the specific shipment. If Shipper disagrees with or objects to any of the terms of the confirmation, Shipper shall have twenty-four (24) hours from its receipt to object in writing.]

8. **Payment to Broker, Credit Terms.** Shipper shall pay Broker the agreed compensation for each shipment tendered pursuant to this Agreement within thirty (30) days from receipt by Shipper of (a) Broker's invoice or statement and (b) if applicable, a written amendment to Appendix A acknowledging a supplement or change in a rate or compensation, for any specific shipment or shipments (Appendix B). Shipper may contest any amounts invoiced and withhold or pay any amounts so disputed. No payment of any amount, disputed or undisputed, shall act as a waiver of any rights of Shipper, including the right to later contest such payment and obtain reimbursement.

9. **Receipts.** Shipper shall issue a bill of lading at origin, and the motor carrier engaged by Broker shall sign, evidencing receipt of each shipment tendered to it and shall obtain a receipt for delivery for each shipment from the consignee thereof or other party accepting delivery. In the event of a conflict between this Agreement and a provision in the bill of lading, the provisions of this Agreement shall govern.

10. **Carriers' Charges.** Broker shall be solely and exclusively liable and responsible for the payment of rates and charges to carriers engaged by Broker that relate to the transportation of shipments tendered by Shipper to Broker pursuant to this Agreement. Shipper's sole obligation with regard to the payment of transportation charges for services provided under or in relation to this Agreement is to pay Broker as required by Article 7 hereof. Broker shall specifically provide in its contracts with the carriers that it utilizes to transport Shipper's freight that Broker will bill Shipper for transportation charges on the carriers' behalf and remit such proceeds to which such carriers may be entitled, but that all such carriers shall specifically agree that they will look solely to Broker, and not to Shipper, for the payment of their charges.

11. **Cargo Liability.**

A. **Claims.** If any shipment tendered to Broker pursuant to this Agreement suffers loss or damage, Shipper shall, as a condition precedent to any recovery or payment from Broker or a

carrier arranged by Broker, submit, or cause to be submitted, to Broker a detailed claim, in writing, within six (6) months after delivery, in the case of damage, and within six (6) months after a reasonable time for delivery by the carrier has elapsed, in the case of loss or non-delivery. Broker will promptly forward all such claims to the responsible carrier. In the event that Shipper submits a claim to Broker, as set forth above, Broker shall use commercially reasonable efforts to arrange for the settlement of such claim by the carrier. In no event may Shipper withhold any payment due to Broker based upon a pending cargo claim. In the event that Shipper, in violation of this paragraph, withholds any payment due to Broker, Broker shall be entitled to recover from Shipper, in addition to its charges, compound interest at the rate of 1½ % per month, plus all costs of collection, including attorneys' fees.

B. Liability Limits. Unless Broker receives written notice from Shipper, prior to the acceptance of the shipment by Broker, of the value of each individual shipment, liability for any claim for loss or damage shall be limited to no more than \$100,000.00 per shipment. To the extent that multiple shipments are tendered by shipper at the same time and are transported at the same time and in the same vehicle, such shall be considered a "single shipment" for the purposes of this article. There shall be an additional charge assessed by Broker for arranging the transportation of individual shipments or truckloads having a declared value in excess of \$100,000.00 per shipment. In the event Shipper gives written notice of a declared value in excess of \$100,000.00 per shipment prior to the tender of a shipment, the liability of Broker's arranged carrier and/or Broker shall be limited to the amount stated or declared in such written notice of valuation or the sum of such valuations in the event of multiple shipments being transported in the same vehicle.

C. Broker Liability.

- (a) The actual carrier arranged by Broker to transport Shipper's property shall have the primary liability to Shipper with respect to damages for loss or damage of or to any shipment tendered by Shipper pursuant to this Agreement. If the arranged carrier fails to pay Shipper its lawful damages for delay, loss or damage then, subject to Article 11.B hereof, Broker will undertake responsibility for payment of any such claim for damages as contemplated by 49 U.S.C. § 14706, and shall have available to it all defenses available to a carrier under that statute and case law construing that statute. Broker's responsibility shall not, under any circumstances, exceed the sum of \$100,000.00 per shipment for actual loss or damage, unless such greater limit of liability has been agreed to in writing by Broker prior to the tender by Shipper of any individual shipment to which Shipper desires a higher limit of liability to apply. Shipper acknowledges and agrees that (1) rail carriers provide transportation services subject to provisions, restrictions and limitations in their rail circulars ("Rail Circulars"), and (2) the Rail Circulars address, among other matters, standards for loading, blocking and bracing, prohibitions and restrictions on certain types of commodities, limitations of liability, procedures and limitations on cargo claims, and requirements for proper descriptions of commodities, (3) applicable provisions of a rail carrier's Rail Circular in effect on the date of a shipment will apply, as between Shipper, Broker, the rail carrier and/or any other third party, to any shipment transported by such rail carrier, (4) the Rail Circulars are generally available through the rail carrier's website, and (5) persons and entities that use intermodal transportation by the rail carriers should be familiar and comply with the provisions, restrictions and limitations of the Rail Circulars.

(b) Broker and/or the arranged carrier shall not be liable for any loss, damage or delay caused by an act of God, the public enemy, the authority of law, the act or omission of the Shipper or owner, or due to the inherent vice of the goods shipped. The acceptance of responsibility by Broker for payment of claims, subject to the limitations set forth in Article 11B. and 11C.(a), is expressly conditioned upon:

(i) The execution by Shipper of an assignment of all of its right, title and interest in and to any claim it may hold against the arranged carrier to Broker, together with a warranty that it is the owner of all right, title and interest in and to any such claim, that it has not sold, assigned or otherwise alienated any such claim or received any payment thereon, and that the amount claimed is true accurate and correct. This is a condition precedent to any obligation of Broker to pay Shipper on account of any cargo claim; and

(ii) A representation that Shipper agrees to cooperate fully with Broker in the assertion and collection of any cargo claim, including but not limited to furnishing whatever documents and witnesses may be necessary, when and as necessary, to successfully prosecute a claim. The failure of Shipper to comply with this subpart shall be considered a critical, material breach of the terms of the assignment of any claim which shall require Shipper to immediately return to Broker all sums that Broker has paid to Shipper on account of such claim. Shipper shall also be required to pay to Broker all costs, expenses and attorneys' fees expended by Broker in the prosecution of such claim within fifteen (15) days of presentation by Broker of an itemized statement of all such costs, expenses and attorneys' fees.

(c) **Broker Liability during Storage of Freight.** Regardless of the mode of transportation, in all instances if a shipment is unable to deliver due to an act or omission of Shipper or a consignee, and is placed in a warehouse for storage, Broker's liability for any claim for loss, damage, or delay shall cease to be that of a common carrier, airfreight or ocean freight carrier, and Broker's liability shall be that of a warehousemen.

D. **Delay.** With respect to claims for delay, Broker shall only be bound to arrange, and the arranged carrier shall only be bound to transport, any shipment tendered by Shipper pursuant to this Agreement with reasonable dispatch, unless a specified delivery date and/or time for delivery is communicated to Broker prior to the tender by Shipper of any individual shipment. "Reasonable dispatch" is the length of time that it would customarily and ordinarily take to transport a like shipment.

12. **Indemnification, Limitation of Liability.**

A. **Indemnification.** Broker agrees to contractually require the arranged carrier to defend, indemnify and hold harmless Shipper, its parent, subsidiary, and affiliated entities, its and their joint owners, co-owners, and co-lessees, its and their other contractors and subcontractors of every tier and the officers, directors, employees, agents, representatives, vendors and customers of all of the foregoing ("Shipper Group") against any and all claims, demands, actions, causes of action and/or liabilities (actual, potential, threatened or pending) and all expense relating to or arising from the transportation services rendered by the arranged carrier hereunder. This Article does not require the arranged carrier to indemnify Shipper Group against that portion of any claim or liability which results from any negligent or willful act or omission on the part of Shipper Group. Broker shall, in all instances where the carrier engaged by Broker is indemnifying

Shipper, act as the representative of Shipper, and assist Shipper (as a direct contact with the engaged carrier) in the facilitation, administration and resolution of any claim related to the indemnification.

B. Limitation of Liability. EXCEPT TO THE EXTENT SPECIAL DAMAGES, AS DEFINED BELOW, ARE CAUSED BY EITHER PARTY'S GROSS NEGLIGENCE AND/OR WILLFUL MISCONDUCT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (COLLECTIVELY REFERRED TO AS "SPECIAL DAMAGES") OF ANY KIND IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY WHO IS LIABLE HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS MADE BY THIRD PARTIES FOR INJURY TO PERSONS, INCLUDING DEATH, OR DAMAGE TO PROPERTY.

13. **Insurance.** Broker agrees at all times to carry public liability and property damage insurance, endorsed to name Shipper Group as an "Additional Insured" with "Waivers of Subrogation" in favor of Shipper, in the amount of at least Two Million Dollars (\$2,000,000.00) and cargo liability insurance, endorsed to name Shipper Group as an "Additional Insured" with "Waivers of Subrogation" in favor of Shipper Group, in the amount of One Hundred Thousand Dollars (\$100,000.00), or the Shipper's declared value if in excess of \$100,000.00, with reliable insurance companies. Broker will promptly furnish Shipper with certificates of insurance or other acceptable evidence of coverage. Such certificate shall provide that Broker's underwriter will provide at least thirty (30) days notice to Shipper in the event of any cancellation, material change, or non-renewal of Broker's insurance. Broker shall require all carriers to which it tenders Shipper's property to have and maintain auto liability, public liability and property damage insurance in the amount of at least Two Million Dollars (\$2,000,000.00) and cargo liability insurance in the amount of One Hundred Thousand Dollars (\$100,000.00), or the Shipper's declared value if in excess of \$100,000.00. Broker agrees to maintain a complete and up to date file of all certificates of insurance evidencing auto liability, public liability, property damage, and cargo insurance policies of all motor carriers that it contracts with regarding transportation arranged for or on behalf of Shipper.

Broker agrees that, during the term of this Agreement, it shall maintain the identified liability insurance covering any and all claims, damages and injury to the freight to be transported exclusively for ground shipments within the contiguous U.S. and Canada hereunder.

In lieu of other coverage in place on behalf of Shipper, (whether purchased by Shipper from Broker; or provided by Shipper independent of Broker), the terms and conditions of the applicable bill of lading (ocean or air) will apply. Shipper understands that inland freight insurance ends at the port of entry/exit for ocean destined freight unless the Shipper has purchased separate maritime insurance coverage.

14. **Hazardous Materials.** Shipper shall not tender Broker any Hazardous Materials, as defined within 49 C.F.R., Subtitle B, Parts 105 through 180, for the purpose of having Broker arrange the transportation of such Hazardous Materials shipments, unless Shipper and Broker have executed a written amendment to this Agreement containing terms specifically relating to Hazardous Materials shipments ("Hazardous Materials Addendum"). In the instance the parties have not executed a Hazardous Materials Addendum and Shipper knowingly or unknowingly tenders Broker a Hazardous Materials shipment which Broker accepts, such acceptance with or without notice of the nature of the shipment, the parties hereby acknowledge and agree that Shipper shall indemnify, defend and hold Broker and the underlying carrier harmless against any and all liability which may arise from or relate to the transportation of such Hazardous Materials shipment, such liabilities including but not limited to any cargo loss or damage

and/or any party and/or third party claims for personal injury, death and/or property damage, including but not limited to damage to the environment.

15. **Notices.** Any notice, request, direction, instruction or other communication relating to the transactions contemplated by this Agreement shall be in writing, shall be sent postage prepaid, and shall be deemed to have been given when sent: (a) by certified mail, return receipt requested, (b) by premium private courier or delivery service to the addresses recited herein above, (c) by fax or telecopier, with proof of receipt by the intended recipient, (d) by email with proof of receipt by the intended recipient or (e) in such other manner or to such other address as shall have been designated by the party to which such notice, request, direction, instruction or other communication is to be given.

16. **Force Majeure.** If either party is prevented from performing its obligations under this Agreement because of a cause beyond the control of the party so affected, including (but not limited to) fire, earthquake, flood, explosion, accident, wind, water, strike, lockout, acts of terror, or any other cause, such party will be excused from the performance of its obligations under this Agreement for the duration of such specified circumstances (excluding an obligation to pay money or provide defense and indemnity).

17. **Non-Disclosure of Information.**

A. Broker and Shipper agree to keep confidential any information provided to it by the other party relating to that party's operations or business activities, including, but not limited to, the names of suppliers, carriers, vendors and customers. Each party agrees to hold all such information in confidence and shall not use any such information other than for the benefit of the other party or in performance of its obligations under this Agreement.

B. Neither party shall disclose any information set forth in subpart A. hereof, nor shall either party disclose any information regarding this Agreement or any amendments or attachments hereto (collectively "Confidential Information"), except:

- (a) as may be required by law or regulation;
- (b) as is necessary to effect or further the purposes of this Agreement;
- (c) when such disclosure is between a parent and its subsidiary or corporate affiliate; or
- (d) when required in connection with an audit by an accounting or law firm, so long as the disclosing party is responsible for ensuring compliance with this confidentiality requirement by the audit or law firm.

The restriction against disclosure of Confidential Information as specified herein shall not apply to information which (i) was already known prior to the time it was imparted to the disclosing party by the other party, (ii) is available or becomes generally available to the public other than through a breach of this Agreement, (iii) is acquired or received rightfully and without confidential limitation from a third party, or (iv) is independently developed without breach of this Agreement. If either party becomes legally required to disclose Confidential Information, or any part thereof, that party will give the other prompt notice of such requirement. If the non-disclosing party waives compliance with any of the terms of this Agreement or is unable to obtain a protective order or other appropriate remedy with respect to such disclosure of Confidential Information, then the disclosing party will disclose only that portion of the Confidential Information necessary to ensure compliance with such legal requirement.

18. **Counterparts.** This Agreement may be executed in one or more counterparts and each of such counterparts shall, for all purposes, be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

19. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the Laws of the State of Texas, without regard to its conflict of laws provisions.

20. **Assignment.** Except as expressly set forth within the Agreement, neither party may assign, voluntarily, by operation of law or otherwise, any rights or delegate any duties under this Agreement without the other party's prior written consent, which consent will not be unreasonably withheld, except in the case of a merger, acquisition or sale of all or substantially all of the assets of the party, subject to the successor entity expressly assuming the obligations of the assigning party. This Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

21. **Entire Agreement.** This Agreement cancels and supplants any and all other written or oral agreements and understandings for transportation or transportation related services between Broker and Shipper.

22. **Headings.** Any headings or numbering of paragraphs or articles of this Transportation Agreement are for organizational convenience only and all terms and conditions of this Agreement are intended to take precedence over any such heading or numbering. If any part, term, paragraph or provision of this Agreement is found or declared to be invalid or unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect.

23. **Waiver.** The failure of a party to object to or take action with respect to any breach of any term of this Agreement by the other shall not be construed as a waiver of any rights hereunder by the non-objecting party, nor of any claims, past, present or future, for any breach of this Agreement.

24. **Severability.** If any part of this Agreement is held void or unenforceable, such provision shall be deemed modified to the extent necessary to best achieve its purpose. If such provision cannot be effectively modified, it shall be deemed stricken, and the remainder of the Agreement shall be enforced.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

EOG Resources, Inc.
Shipper

Broker

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**APPENDIX A
SCHEDULE OF RATES**

**FOR REFERENCE ONLY
NOT AN OFFICIAL DOCUMENT**

**APPENDIX B
 SUPPLEMENT OR CHANGE IN RATE
 FOR TRANSPORTATION SERVICES
 FOR SHIPMENT(S) SPECIFIED BELOW**

EOG Resources, Inc.	Date
Bill of Lading or Freight Bill No.	Weight
Consignor (Origin)	Consignee (Destination)
Commodity	Commodity
Assigned rate or charge	Additional Charges (Describe)

APPROVED _____ (date)

EOG Resources, Inc.
 Shipper

Broker

By: _____

By: _____

Title: _____

Title: _____

FOR REFERENCE ONLY
 NOT AN OFFICIAL DOCUMENT