

TERMS OF SERVICE

1. Introduction and Agreement.

This Agreement includes these Terms of Service (“Terms”) governing the BOC-3 Blanket Agent Program (the “Program”) offered by the American Trucking Associations (“ATA”), and American Trucking Associations (ATA)’s Privacy Policy, available [here](#) (collectively, the “Agreement”). Your continued use of the Program shall constitute your ongoing consent and agreement to any revisions and additions. ATA makes to this Agreement from time to time. This Agreement is a legally binding contract between you and ATA governing use of the Program.

BY USING THE PROGRAM, YOU AGREE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE, YOU MAY NOT ACCESS OR OTHERWISE USE THE PROGRAM.

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2. Material Terms.

Without in any way limiting the express language of the Agreement, you agree and acknowledge that this Agreement includes the following material terms:

- a. Member Eligibility and Cost. ATA members and members of the ATA Moving & Storage Conference (“MSC”) may participate in the Program as a member benefit, at no additional cost. Enrollment in the Program will be terminated upon the cancellation or termination, of ATA or MSC membership. A member may terminate its enrollment in the Program upon written notice to ATA at the notice email address provided in Paragraph 12(b).
- b. Non-member Eligibility and Cost. For motor carriers who are not members of the ATA or the MSC, ATA charges a fee for participation in the Program. Currently, the fee is \$99 per calendar year, per operating authority. ATA will send non-member participants a renewal notice each December for the following calendar year. A participant’s failure to pay the annual renewal fee by the date indicated on the renewal notice will result in termination from the Program, and ATA’s withdrawal as blanket agent for the participant. A non-member participant may terminate its enrollment in the Program upon written notice to ATA at the notice email address provided in Paragraph 12(b). Program fees are per calendar year, are not pro-rated for partial years, and are non-refundable.
- c. Third-Party Services. As a Blanket Agent, ATA works with a network of state process agents, who will accept the served process document(s) on behalf of your for-hire transportation company and will transmit those served process document(s) to your attention by a delivery method such as certified mail or an expedited package delivery service. Certain services provided as part of the Program may be subject to separate third-party terms of service and fees, including, but not limited to, the terms of service and fees imposed by a state specific BOC-3 process agent, according to the *Agreement between American Trucking Associations and Attorney as Statutory Agent for Its Participating Carriers*, including fees charged for process transmittal, which are your sole responsibility. State process agents will separately invoice you in the amount of \$50 for process

transmittal fees, and by participating in the Program you agree that you will pay any such invoice within sixty (60) days of receipt of the process transmittal and invoice. If you are served process and fail to issue timely payment to a state process agent, in keeping with this paragraph, ATA will make payment to the state process agent and thereafter be subrogated to the right of the state process agent with respect to your obligation for payment and payment thereto. ATA reserves the right to terminate Company's participation in the Program for non-payment of transmittal fees.

- d. Duty to maintain complete and accurate records. It is your duty to maintain complete and accurate records with the Federal Motor Carrier Safety Administration ("FMCSA") and with ATA. It is your duty to inform the FMCSA and ATA of any changes in ownership, changes in address, or changes in company name.
- e. Term. Unless there is a change in ownership, change in address or company name change, FMCSA does not require the BOC-3 form filing to be refilled every year. ATA will continue to maintain this filing year after year for you provided you comply with Paragraphs 2(a) or 2(b) above.
- f. Privacy. You consent to the collection, use and storage of your personally identifiable and non-personally identifiable information in accordance with ATA's Privacy Policy, including, but not limited to, the collection of your information contained within BOC-3 form filing which will be provided in DocuSign format and/or the process document(s) transmitted to you by a state BOC-3 process agent.
- g. Messaging. Messaging in, to, or about the Program or other ATA services may occur via a variety of electronic communications mechanisms, including but not limited to electronic mail ("email").
- h. Claims and Class Action Proceedings. **YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST ATA ONLY IN YOUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.**

3. Eligibility.

You must be at least eighteen (18) years of age to use the Program. By agreeing to this Agreement, you represent and warrant to ATA: (i) that you are at least eighteen (18) years of age; (ii) that you have not previously been suspended or prohibited from accessing the Program; (iii) that your registration and your use of the Program is in compliance with any and all applicable laws and regulations; and (iv) that you have complied with all FMCSA rules and regulations pertaining to obtaining and maintaining your interstate authority and your assigned Motor Carrier (MC#) and/or Freight Forwarder (FF#) number. If you are using the Program on behalf of an entity, organization, or company, you represent and warrant that you have the authority to bind such organization to this Agreement and you agree on behalf of such organization that it shall be bound by this Agreement.

4. Accounts and Registration.

You agree that all information provided by you to gain access to the Program shall be in all material respects accurate and that you will update and maintain such information in a currently accurate

state at all times, by informing ATA of any changes at the notice email address provided in Paragraph 12(b).

5. Termination.

This Agreement shall remain effective until terminated by you or ATA. Your rights under this Agreement will terminate automatically without notice from ATA if you fail to comply with any term(s) of this Agreement.

6. Indemnification.

You will indemnify, defend and hold ATA, its affiliated entities and their respective members, managers, officers, directors, employees, agents, contractors, attorneys, representatives, successors and assigns (each, an "Indemnified Party" and collectively, the "Indemnified Parties") harmless from and against any and all claims, damages, losses, costs, liabilities or expenses including, without limitation, attorneys' and experts' fees and costs incurred in connection with any judicial or non-judicial third-party claim, demand or action (each, a "Claim"): (a) arising out of or allegedly arising out of (i) your use of the Program (ii) your breach of this Agreement; (iii) your negligence or willful misconduct; or (iv) your violation of or failure to comply with any applicable law, regulation or government agency guideline, including without limitation any rule or regulation of the FMCSA as it pertains to the Form BOC-3 (Designation of Agents for Service of Process) and/or 49 CFR §366. ATA may, but shall not be obligated to, participate in the defense of any Claim. You will not settle any Claim against an Indemnified Party without ATA's prior written consent.

7. LIMITATIONS ON LIABILITY.

TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER ATA NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND/OR AGENTS SHALL BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SIMILAR DAMAGES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, ANY DAMAGES RESULTING FROM: (I) ERRORS, MISTAKES, OR INACCURACIES OF OR IN ANY INFORMATION CONTAINED WITHIN THE BOC-3 FORM; (II) ANY PERSONAL INJURY OR PROPERTY DAMAGE RELATED TO YOUR USE OF THE PROGRAM; (III) ANY INTERRUPTION OR CESSATION OF TRANSMISSION OF THE PROGRAM; AND/OR (IV) EVENTS BEYOND ATA'S REASONABLE CONTROL, INCLUDING BUT NOT LIMITED TO ANY INTERNET FAILURES, EQUIPMENT FAILURES, ELECTRICAL POWER FAILURES, STRIKES, LABOR DISPUTES, RIOTS, INSURRECTIONS, CIVIL DISTURBANCES, SHORTAGES OF LABOR OR MATERIALS, FIRES, FLOODS, STORMS, EARTHQUAKES, EXPLOSIONS, ACTS OF GOD, WAR, PUBLIC HEALTH EMERGENCIES, TERRORISM, GOVERNMENTAL ACTIONS, ORDERS OF COURTS, AGENCIES OR TRIBUNALS OR NON-PERFORMANCE OF THIRD PARTIES. YOU ACKNOWLEDGE AND AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR PROVISION OF THE PROGRAM SERVICES TO YOU, AND SUCH LIMITATIONS WILL APPLY EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY

OF SUCH LIABILITIES. YOU ACKNOWLEDGE AND AGREE THAT UNDER NO CIRCUMSTANCES SHALL ATA HAVE ANY LIABILITY TO YOU FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR OTHER SIMILAR DAMAGES OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE RELATIONSHIP OF THE PARTIES HEREUNDER OR ANY OF THE SERVICES. FURTHERMORE, ATA SHALL HAVE NO LIABILITY FOR ANY LOST PROFITS OR REVENUE INCLUDING, BUT NOT LIMITED TO, ANY LOSSES INCURRED AS THE RESULT OF THE LOSS OF USE OF ANY OF THE PROGRAM SERVICES, ANY REVOCATION OR SUSPENSION BY THE FMCSA OF YOUR FMCSA OPERATING AUTHORITY, ANY NONCOMPLIANCE BY YOU WITH FMCSA RULES AND REGULATIONS, INCLUDING BUT NOT LIMITED TO THE FORM BOC-3 (DESIGNATION OF AGENTS FOR SERVICE OF PROCESS) AND/OR 49 CFR §366, LOSS OF ANY DATA FROM ANY CAUSE, BUSINESS INTERRUPTION OR OTHER SIMILAR LOSSES. ATA'S TOTAL LIABILITY FOR ALL CLAIMS OF EVERY KIND AND NATURE WHATSOEVER UNDER THIS AGREEMENT REGARDLESS OF THE MANNER IN WHICH THE CLAIMS ARE ASSERTED INCLUDING, BUT NOT LIMITED TO, ANY CLASS ACTION, SHALL NOT EXCEED IN THE AGGREGATE THE TOTAL FEES YOU HAVE PAID FOR USE OF THE SERVICE DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE ASSERTION OF SUCH CLAIMS.

8. NO WARRANTY.

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE PROGRAM SERVICES IS AT YOUR SOLE RISK. WITHOUT LIMITING THE FOREGOING, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL PROGRAM SERVICES, MATERIALS AND CONTENT, ARE PROVIDED "AS IS" AND "AS AVAILABLE", AND ATA HEREBY DISCLAIMS, ON BEHALF OF ITSELF, ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. ATA DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE PROGRAM, THAT THE FUNCTIONS CONTAINED IN OR SERVICES PERFORMED OR PROVIDED BY THE PROGRAM WILL MEET YOUR REQUIREMENTS, THAT THE USE OF PROGRAM SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN PROGRAM SERVICES WILL BE CORRECTED. ATA EXPRESSLY DISCLAIMS ANY WARRANTIES RELATING TO THE ACCURACY OF INFORMATION FOR WHICH THE PROGRAM SERVICES ARE DERIVED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU, BUT IN SUCH A CASE THE FOREGOING SHALL BE APPLIED TO THE GREATEST EXTENT ENFORCEABLE UNDER APPLICABLE LAW.

9. Third-Party Disputes.

ANY DISPUTE YOU HAVE WITH ANY STATE PROCESS AGENT OR OTHER THIRD PARTY, INCLUDING WITHOUT LIMITATION ANY OTHER USER OF THE PROGRAM, IS DIRECTLY BETWEEN YOU AND SUCH THIRD PARTY, AND YOU IRREVOCABLY RELEASE ATA (AND ATA'S OFFICERS, DIRECTORS, MEMBERS, AGENTS, SUBSIDIARIES, JOINT VENTURES AND EMPLOYEES) FROM CLAIMS, DEMANDS AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE §1542, WHICH STATES THAT "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

10. Governing Law.

The laws of the District of Columbia shall govern this Agreement, and your use of the Program. To the extent that any action relating to this Agreement is permitted to be brought in a court of law, such action shall be subject to the exclusive jurisdiction of the courts located in Washington, DC, and you hereby irrevocably submit to personal jurisdiction in such courts. With respect to any dispute involving this Agreement, venue shall lie exclusively in either (i) the United States District Court for the District of Columbia or (ii) the Superior Court of the District of Columbia sitting in Washington, DC.

11. Modification of this Agreement.

ATA reserves the right, in its sole discretion, to amend and/or modify this Agreement on a going-forward basis at any time, with or without prior notice, and such changes will be effective as provided herein. ATA will make reasonable efforts to notify you of the change, via email to the email address you have provided to ATA. Any modification to the Agreement will be effective upon the earlier of (i) your continued use of the Program with actual notice of such change; or (ii) 30 days from posting of such. Your use of the Program following the date that any such change becomes effective constitutes your agreement to be bound by the modified Agreement. If you do not agree to the modified Agreement, your sole and exclusive remedy is to terminate your enrollment in the Program by written notice to ATA at the notice email address provided in Paragraph 12(b). Disputes arising under this Agreement will be resolved in accordance with the version of the Agreement that was in effect at the time the dispute arose.

12. General.

- a. Entire Agreement. This Agreement constitutes the entire agreement between you and ATA with respect to the subject matter contained in this Agreement.

- b. Notice: Any notice to ATA relating to this Agreement or the Program shall be sent via email to moving@trucking.org. Any notice to you by ATA relating to this Agreement or the Program shall be sent via email to the email address you have provided.
- c. Headings. Titles and section headings in this Agreement are for the purpose of reference, are inserted for convenience only and shall in no way limit, define, or otherwise affect the provisions of this Agreement.
- d. Independent Contractors. The relationship between you and ATA is that of independent contractors. Neither you, on the one hand, nor ATA, on the other hand, has or will have any power to bind the other or to create any obligation on behalf of the other, nor shall either represent that it has any such power.
- e. No Representations or Warranties. Other than as specifically set forth herein, there are no other representations, agreements, arrangements, or other understandings, oral or written, between you and ATA with respect to the subject matter of this Agreement. Additional terms and conditions to this Agreement will not be valid or enforceable unless approved in writing by both you and ATA, or made pursuant to Paragraph 11.
- f. No Waiver. The failure by either you or ATA to enforce any provision or provisions of this Agreement shall not in any way be construed as a waiver of any such provision or provisions or prevent you or ATA from thereafter enforcing that provision or provisions and every other provision of this Agreement.
- g. Severability. The provisions of this Agreement are severable, and if any one or more provisions are determined by a court of competent jurisdiction to be unenforceable, in whole or in part, then the remaining provisions shall nevertheless be binding and enforceable.
- h. Binding Effect. Except as otherwise provided herein, this Agreement is binding upon and inures to the benefit of you and ATA and, as applicable, the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of you and ATA.
- i. Dispute Resolution. You and ATA shall use best efforts to resolve any and all Claims and disputes arising under this Agreement, first through good faith negotiations and without initially resorting to litigation or other similar proceedings; provided, however, that either you or ATA shall be entitled to: (i) seek injunctive relief in any court of competent jurisdiction to avoid irreparable harm for breach of this Agreement; or (ii) commence litigation in the venue set forth below to avoid a Claim being barred by an applicable statute of limitations, without first attempting to resolve such Claim or dispute through good faith negotiations or mediation. If you and ATA are unable to resolve any Claim or dispute via good faith negotiations, then you and ATA shall, prior to commencement of any legal action or suit, participate in arbitration accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided that nothing shall prevent a party from seeking interim or provisional relief, including a temporary restraining order, preliminary injunction or other interim equitable relief if necessary to protect such party's interests in its intellectual property or confidential information. The arbitral proceedings shall be conducted in the English language and be held in Washington, DC or other jurisdiction selected by ATA. All arbitral proceedings conducted, all information disclosed, and all documents submitted or issued by or on behalf of any of the disputing parties or the arbitrators in any such proceedings as well as all decisions and awards made or declared in the course of any such proceedings shall be kept strictly confidential and may not be used for any other purpose than such proceedings or the enforcement of any such decision or

award, nor be disclosed to any third party without the prior written consent of the Party to which the information relates, or as regards to a decision or award, the prior written consent of all disputing parties.

- j. WAIVER OF JURY TRIAL. YOU WAIVE, IRREVOCABLY AND UNCONDITIONALLY, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION BROUGHT ON, UNDER, OR BY VIRTUE OF, OR RELATING IN ANY WAY TO THIS AGREEMENT, OR ANY CLAIMS, DEFENSES, RIGHTS OF SET-OFF OR OTHER ACTIONS PERTAINING TO THIS AGREEMENT OR TO ANY OF THE FOREGOING.
- k. Attorney's Fees. If any legal action arises under this Agreement or by reason of any asserted breach of it, then the prevailing party in such action shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in such action. The amount of attorneys' fees shall be determined by the court sitting without a jury.
- l. Assignment. This Agreement is and shall be freely assignable by ATA. You shall not assign or otherwise transfer this Agreement or any of its rights or obligations thereunder to any other person or entity without the prior written consent of ATA.
- m. Force Majeure. The performance by ATA of its obligations under this Agreement shall be excused by any cause or circumstance beyond ATA's reasonable control including, but not limited to, acts of God or nature, war or warlike conditions, terrorism, riot, embargoes, acts of civil or military authority, fire, flood, accidents, pandemic or other public health emergency, strikes or labor shortages, sabotage, shortages in fuel, transportation facilities or materials, or failures of equipment, internet, telecommunications facilities or third party software programs.
- n. Survival. Upon termination of this Agreement, any provision that by its nature or express terms should survive, will survive.

14. Contacting ATA.

You can contact ATA by email at moving@trucking.org, or by U.S. post 80 M Street, SE Washington, DC 20003.

15. Notice to California Residents.

If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding this Agreement.