

## **MASTER BROKER/MOTOR CARRIER AGREEMENT**

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between DHT Logistics, LLC, 339 Cold Springs Road, Mountain City, Tennessee 37683 ("DHT Logistics") in its capacity as a broker for motor carrier transportation of property pursuant to regulations of the United States Department of Transportation, and \_\_\_\_\_ ("Carrier"), provides as follows:

### **1. SERVICES TO BE RENDERED**

In the course of its overall business, DHT Logistics arranges for the transportation of freight and products owned or controlled by customers (singly, "Shipper" or collectively, "Shippers" or "Customers") for the benefit of such Customers, and, accordingly, DHT Logistics agrees to tender for highway transportation, and Carrier shall transport in a timely manner, shipments of such products from the origin(s) to the destination(s) as specified in the Appendix attached hereto, incorporated by reference herein, to the extent of Carrier's capacity and operating authority. At all times hereunder, Carrier shall render such transportation services as a motor carrier providing contract carriage pursuant to 49 U.S.C. §§ 13102(4)(B), 13102(12) and 14101(b), respectively. Carrier shall be compensated for such transportation in accordance with the rates and charges in the Appendix attached hereto, as may be amended by the Rate Confirmation and Pricing Agreement Addendum, attached to this Agreement and incorporated by reference herein. All Appendices and Addenda to this Agreement must be approved and executed in writing by authorized representatives of both DHT Logistics and Carrier in order to be effective for any purpose whatsoever. Except as otherwise specified, any reference herein to this Agreement shall be deemed to include all Appendices attached hereto, any other effective Appendices, all effective Addenda, and any governing publications or schedules referenced herein. Any increases in rates and charges in Appendix attached hereto are subject to the giving of thirty (30) days' written notice by Carrier to DHT Logistics, which will provide written confirmation of whether it accepts any or all of the proposed increases within thirty (30) days of receipt by DHT Logistics. Any requests for rate adjustment must be accompanied with justification. Increases in rates and charges will be considered by DHT Logistics on a lane-by-lane basis only. Decreases in existing rates and charges, as well as rates and charges for new services offered by Carrier, shall be effective on one day's notice upon acceptance in writing by DHT Logistics. For lanes not included in Appendix attached hereto, Carrier will be compensated at such rates as the parties may mutually agree to in writing as Addenda to this Agreement.

### **2. CONTRACT NATURE OF SERVICE**

This Agreement is a contract within the meaning of 49 U.S.C. §14101(b)(1). Carrier hereby expressly waives any and all rights and remedies that Carrier may have under Part B of Subtitle IV (49 U.S.C. §13101 through 14914) that are contrary to specific provisions of this Agreement, provided, however, that nothing in this Agreement shall be construed as waiving any provision governing Carrier's compliance with all statutory registration, insurance and/or safety fitness requirements relative to motor carriers, such as Carrier. DHT Logistics expressly reserves all rights and remedies of DHT Logistics, Shipper or customers of Shipper as set forth in 49 U.S.C. §§ 14101(a), 14701, and 14704, inclusive. The fact that Carrier may provide

common carrier services as part of its overall operations, and maintain schedules, rules, rates and charges relative thereto, shall have no applicability to the contract relationship between the parties created hereunder.

### **3. CARRIER'S COVENANTS**

In performing any transportation services hereunder, Carrier, at its own expense, shall at all times provide and maintain: (i) safe and adequate freight handling facilities; (ii) sufficient and duly qualified, competent, skilled and properly trained and licensed drivers; (iii) all other personnel, motor vehicles and transportation related equipment in good working order necessary to perform the required transportation services in a safe manner; and/or (iv) all requisite operating permits and authorities. Carrier, at its own expense, shall maintain its vehicles and their drivers and helpers in compliance with the safety rules, including Hazardous Materials rules and regulations, of the United States Department of Transportation ("DOT") and other relevant federal, state, provincial, and local regulatory agencies. At all times during the term of this Agreement, Carrier shall maintain a DOT safety rating of "Satisfactory." In the event that a Carrier has not been audited by DOT and therefore does not have a safety rating, DHT Logistics may check Carrier's Summary of Safety Evaluations (SEA) on Safestat. Carrier must maintain SEA number below 75 to remain an approved carrier for DHT Logistics. Carrier shall at all times provide trailers, the interior of which shall be clean, odor free, dry, leak proof, free of contamination, debris and infestation. Carrier will make no substitution of equipment or mode without specific approval from DHT Logistics. Shipments delayed, refused or otherwise undeliverable, must be reported to DHT Logistics' dispatch office as soon as any irregularity is evident. Carrier shall comply with all pertinent federal, state, provincial, and local statutes, ordinances, and administrative rules and regulations relating to compensation, employment, taxes, insurance, labor relations, safety or record keeping and nondiscrimination against employees or applicants for employment due to race, color, religion, sex, national origin, handicap, disability or veteran status. Any change in Carrier's safety rating other than "Satisfactory" shall be grounds for DHT Logistics to terminate immediately this Agreement on one day's notice to Carrier.

### **4. DHT LOGISTICS' WARRANTY**

DHT Logistics warrants that it has full authority to tender product for transportation under this Agreement.

### **5. INSURANCE**

a. Carrier shall obtain and maintain in effect during the term of this Agreement the following types of insurance which are checked below. All such insurance will be written on a primary basis and be required to respond and pay prior to any other available coverage:

- Cargo Liability insurance with limits of liability not less than \$\_\_\_\_\_ per occurrence or in such greater amount as may be required by regulatory bodies having jurisdiction;

- Commercial Automobile Liability insurance with limits of liability of not less than \$1,000,000 per occurrence, or in such greater amount as may be required by regulatory bodies having jurisdiction;
- Worker's Compensation coverage as statutorily required;
- Commercial General Liability insurance written on a current ISO standard form or it's equivalent providing extended coverage including but not limited to, blanket contractual liability; personal injury and advertising liability; fire legal liability; broad form property damage liability, including completed operations; additional persons insured (employees); and extended bodily injury coverage; with limits of liability of not less than \$\_\_\_\_\_ per occurrence; and
- Any other insurance required by DOT, or any other governmental agency whose rules and regulations may apply to the Carrier's performance under this Agreement.

b. Carrier shall furnish DHT Logistics with a certificate of insurance in a form satisfactory to DHT Logistics evidencing that the coverage required in this paragraph are in effect. Such certificate shall reflect that the policies described under (1), (2), (4) and (5) above have been endorsed to name DHT Logistics as an additional insured, and that such policies shall provide DHT Logistics with at least thirty (30) days' notice prior to cancellation, material change or non-renewal. Carrier shall cause its insurance Carrier to provide DHT Logistics with a waiver of the insurer's rights of subrogation against DHT Logistics as respects the coverage in (1) through (5) above. All insurance as required in this paragraph shall be maintained with reliable insurance companies having a Best rating of A-VII or better.

c. All liability policies will name DHT Logistics as an additional insured. All policies will contain a severability of interest provision in favor of DHT Logistics or a full and complete breach of warranty endorsement to the effect that the insurance coverage will not be invalidated as regards the interest of DHT Logistics by any act, failure to act, or neglect of Carrier which is in violation of the terms and conditions of such insurance.

## **6. CARGO LIABILITY AND CLAIMS**

Without limiting any remedy available to DHT Logistics under Part B of the ICC Termination Act of 1995 ("ICCTA"), 49 U.S.C. §13101 et seq., Carrier, in performing freight transportation services pursuant to this Agreement, shall be liable to DHT Logistics, any involved Shipper, and any involved customer of such Shipper, for the full value of any loss, damage or injury to property occurring while in the possession of Carrier or under Carrier's care, custody or control, or resulting from Carrier's performance of or failure to perform the services provided herein, to the same extent as though Carrier were acting as a common Carrier subject to the provisions of the National Motor Freight Classification, except as herein set forth. Notwithstanding the above, provisions of the National Motor Freight Classification which make reference to released value or limitations of liability as to any product transported hereunder are and for all purposes will be null and void. For purposes of this section "full value" shall mean the invoice value of any product lost or damaged while under the care, custody or control of Carrier,

up to a maximum of One Million Dollars (\$1,000,000) per occurrence. DHT Logistics expressly reserves any other rights and remedies available under federal or state laws in the event of any such loss or damage.

Carrier shall pay or decline all claims for loss and damage to cargo submitted within sixty (60) days of the date the claim is received by Carrier. If Carrier fails to pay or declines any claim for recovery made against it hereunder within sixty (60) days following the date of submission of such claim to Carrier, DHT Logistics may terminate this Agreement by sending written notice of termination to Carrier, which termination shall be effective immediately upon receipt of such notice. In addition, DHT Logistics shall be entitled to offset the amount of any claim which remains unpaid or unsolved after such sixty (60) day period against amounts owing from DHT Logistics to Carrier hereunder, provided the claim was not denied for reasonable cause in writing to DHT Logistics by Carrier. Carrier will be notified in writing and given copies of all relevant documentation prior to DHT Logistics' taking any action to offset.

## **7. INDEPENDENT CONTRACTOR**

The relationship between the parties hereto shall be that of independent contractor. Carrier and its employees or agents shall employ, pay, discipline, discharge, supervise, and direct those persons required for the performance of the freight transportation services required by this Agreement. Under no circumstances shall Carrier or its subcontractors, agents or employees be deemed, or hold themselves out as, employees or agents of DHT Logistics and/or any customers of DHT Logistics.

## **8. BILL OF LADING**

Carrier shall issue its usual form of bill of lading or any such form as may be prescribed by DHT Logistics' customer, as a receipt upon loading of a shipment. In the event of any conflict between the term of such bill of lading and the terms of this Agreement, the terms of this Agreement shall prevail and govern the conduct of the parties hereunder. Carrier shall not issue or execute bills of lading with terms differing from those specified in National Motor Freight Classification Series 100 ("Nonstandard Terms") without first providing DHT Logistics with a copy of such bill and obtaining DHT Logistics' advance written consent. If Carrier intentionally or inadvertently executes a bill of lading containing Nonstandard Terms without DHT Logistics' prior written consent, Carrier shall indemnify DHT Logistics under paragraph 16 of this Agreement for all risks and liability which the Nonstandard Terms may attempt to impose on DHT Logistics. Under no circumstances shall Carrier execute a bill of lading or any other document which represents or holds out DHT Logistics as the motor carrier responsible for delivery of any cargo.

## **9. CONTRACT RATES GOVERN**

Invoices, bills of lading and signed delivery receipt for all transportation services hereunder shall be submitted by Carrier to DHT Logistics in accordance with the rates and charges in Appendix attached hereto, as amended or supplemented in Addenda from time to time or according to the load confirmation sheet, if applicable. There shall be no alteration of contract and tariff rates under this Agreement. Pricing and other terms in Appendix attached hereto or

Addenda thereto shall govern all shipments tendered by DHT Logistics to Carrier while this Agreement remains effective, regardless of whether another pricing provision published by Carrier might be more favorable to DHT Logistics or Shipper. Client specific rates and mileage agreements may apply and are contained in addenda attached hereto or in the individual load confirmation sheets. Such agreements will supersede any other rate and mileage calculations.

## **10. RECOURSE TO SHIPPERS**

Subject to the following, Carrier (a) agrees to look solely to DHT Logistics for any payment of freight and other charges owing under Appendix attached hereto, (b) agrees that its sole recourse in the event of nonpayment shall be against DHT Logistics, and not against any Shipper or customer of Shipper, and (c) waives any and all claims Carrier may subsequently have against DHT Logistics' Customers for payment of charges for services rendered by Carrier hereunder. Notwithstanding the foregoing, should any shipper hereunder become involved in a voluntary or involuntary bankruptcy filing, Carrier's waiver set forth herein shall be automatically and immediately revoked, and Carrier agrees to look solely to the shipper for any payment of freight and other charges owing under Appendix attached hereto, and agrees that its sole recourse in the event of nonpayment shall be against the Shipper, and not against DHT Logistics. This undertaking by Carrier shall survive the termination of this Agreement.

## **11. TERM OF AGREEMENT**

Except as otherwise provided herein, this Agreement shall be effective from the date first above written and shall continue in effect thereafter until terminated, with or without the consent of the other party, by either party upon not less than thirty (30) days' prior written notice to the other party.

## **12. CONFIDENTIALITY**

Carrier shall keep the contents of this Agreement and all information pertaining to Shippers' or their customers' business operations strictly confidential, unless disclosure is required by law or judicial process or such information is publicly known or obtained by Carrier without any breach of any confidentiality agreement. DHT Logistics shall keep the contents of this Agreement and all information pertaining to Carrier's business operations strictly confidential, unless disclosure is required by law or judicial process or such information is publicly known or obtained by DHT Logistics without any breach of any confidentiality agreement.

## **13. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. Except as otherwise specified, all references in this Agreement to said Title 49 or its subdivisions relate to the statutory text enacted by the ICC Termination Act of 1995 and effective January 1, 1996.

#### **14. FREIGHT BILLS**

DHT Logistics and Carrier shall use their best efforts to ensure the accuracy of all freight charge billings tendered by DHT Logistics to Shippers for the transportation services performed by Carrier pursuant to this Agreement. DHT Logistics shall have the right to audit from time to time any and all freight charge billings by Carrier, and Carrier shall cooperate fully with such audits. DHT Logistics shall have eighteen (18) months from date of each original or correct freight bill to contest such bill with Carrier. Carrier has eighteen (18) months from date of original bill to present a corrected freight bill for additional charges, if any.

#### **15. PAYMENT TERMS**

Carrier shall present billing to DHT logistics within ten (10) days of delivery of entire shipment at destination. DHT Logistics shall have thirty (30) days from the date of receipt of the invoice to make payment.

#### **16. INDEMNIFICATION**

a. Except as otherwise provided below, Carrier agrees that it will protect, defend, hold harmless and indemnify DHT Logistics, Shipper, customers of Shipper and their respective directors, officers, employees, and agents (hereinafter collectively referred to as "Indemnitee") from and against:

(1) Any and all claims made against any Indemnitee by or on behalf of Carrier's employees, agents or subcontractors for salary or other compensation or payments resulting or claimed to have resulted, in whole or in part, from services Carrier, Carriers agents or subcontractors perform hereunder;

(2) Any and all penalties for fines of any character (except such penalties or fines as occasioned by improper loading, overloading, packaging or labeling performed by Shipper or Shipper's employees, or where Shipper furnished improper documentation for transporting hazardous materials) which may be sought to be enforced against Indemnitee by reason of an alleged violation by Carrier, Carrier's agents or subcontractors of any federal, state, or municipal law, rule or regulation;

(3) All claims, demands, actions or causes of action which may at any time be brought against any Indemnitee because of death or injury to persons including Carriers employees, agents or subcontractors or damage to property (including but not limited to cargo being transported hereunder) which may arise from or in connection with: (i) the maintenance, use or operation (including loading and unloading) by Carrier, Carrier's agents or subcontractors of any motor vehicle or allied equipment in performance of services under this Agreement; and/or (ii) any and all acts or omissions of Carrier, its agents, employees or subcontractors in providing the transportation services to be provided under this Agreement; and

(4) Any and all other claims made by or on behalf of a Shipper or its customers against any other Indemnitee, if such claim arises from services rendered by Carrier, Carrier's agents or subcontractors under this Agreement.

b. The indemnity herein provided shall include, but shall not be limited to all costs, expenses and reasonable attorneys' fees incurred or payable by any Indemnitee in settling such claims or penalties or fines or in investigating or defending against same.

c. Notwithstanding any provision in this Agreement stating or implying to the contrary, Carrier shall not indemnify or hold harmless any Indemnitee from or against any such penalty, fine, claim, action, or cause of action to the extent that same results from, arises out of, or in connection with the negligence of such Indemnitee.

#### **17. NO ENCUMBRANCES TO POSSESSION OF GOODS**

Carrier shall not have any right, title, interest, ownership, or claim in the goods tendered for transportation services by or for Shipper under this Agreement. Carrier will not in any way encumber or otherwise impair Shipper's right to 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 Shipper or its customers to pay any charges incurred under this Agreement. Carrier waives and releases any lien or right to a lien. Carrier shall defend, indemnify and hold harmless Indemnities (as that term is used in the previous paragraph) from all claims, losses, attorneys' fees, damages, liabilities, costs, expenses or suits arising out of or resulting from labor, materials, services or supplies furnished by Carrier or by subcontractors or suppliers of Carrier and from all related liens.

#### **18. REDUCED COMPENSATION**

Except as provided in paragraph 19 herein, DHT Logistics reserves the right to reduce compensation to Carrier by the actual amount of additional cost incurred by DHT Logistics when DHT Logistics must arrange alternative transportation services to replace services promised, but not provided, due to the sole negligence of Carrier.

#### **19. FORCE MAJEURE**

The obligations of the parties under the terms of this contract shall be temporarily suspended during any period in which either party is unable to comply reasonably with the provisions of this contract by reason of acts of God, acts of a public authority, acts of a public enemy, fire, flood, labor strike or disorder, civil commotion, closing of the public highways, or other contingencies, whether similar or dissimilar to those named, beyond the reasonable control of such party.

#### **20. AGREEMENT NON-EXCLUSIVE**

It is understood and agreed between the parties hereto that this is a non-exclusive agreement and that Carrier shall be free to accept freight for transportation from shippers other than DHT Logistics and that DHT Logistics shall be free to tender freight for transportation other than Carrier.

**21. NOTICE**

Any and all notices, claims, certificates, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be delivered to the party entitled to receive the same by hand or U.S. Mail, addressed as follows:

If to Carrier to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

If to DHT Logistics, LLC:

DHT Logistics, LLC  
339 Cold Springs Road  
P.O. Box 55  
Mountain City, TN 37683  
Attention: Barbara H. Seals

**22. APPLICABLE LAW**

This Agreement shall be governed by and construed in accordance with the applicable law of the United States or the laws of the State of Tennessee and the parties hereby submit to jurisdiction and venue in the Circuit Court for Johnson County, Tennessee.

**23. INVALIDITY OF PROVISIONS**

Should any part of this Agreement for any reason be declared by any court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall continue in full force and effect as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts or portions which may for any reason be hereafter declared invalid.

**24. ATTORNEY FEES**

In the event of any controversy, claim or dispute between the parties hereto, arising out of or relating to this Agreement or the breach thereof, and subject to the procedures described below, the prevailing party in any litigation in accordance with Section 25.b., shall be entitled to recover from the other party reasonable expenses, attorneys fees, and costs.

**25. DISPUTE RESOLUTION**

a. In the event of any dispute that may arise between the parties regarding services and performance hereunder, and as a condition precedent to any other remedy herein, the parties

agree to: (1) initially, and as soon as practicable, meet and confer with each other in order to reach, to the extent possible, voluntarily resolution of said dispute; and, (2) in the event that such voluntary efforts are not successful in resolving the dispute, the parties agree to submit the matter to non-binding mediation before a mutually agreed upon mediator. The parties shall bear their own costs and fees incurred in such mediation. For disputes having a value of Ten Thousand Dollars (\$10,000) or less, the decision of the mediator shall be binding on the parties for all purposes.

b. Should any of the options described above fail to resolve any dispute hereunder, the parties may resort to any other remedy available to them, under this Agreement or at law, including, without limitation, litigation.

## **26. BANKRUPTCY CONSTITUTING DEFAULT**

In the event either party files a voluntary petition in bankruptcy court, or makes an assignment for benefit of creditors, or is voluntarily or involuntarily adjudicated a bankrupt, or has a receiver appointed for its business, becomes insolvent, or defaults in compliance with one or more provisions of this Agreement, and said default is not remedied within thirty (30) days after written notice of such default, the other party may elect to immediately terminate this Agreement.

## **27. NON-SOLICITATION**

Carrier agrees that it will not solicit traffic from any shipper, consignor, consignee, or customer of DHT Logistics where Carrier transports traffic, or is made aware of such traffic, as a result of DHT Logistics. Carrier further agrees that this non-solicitation clause extends to one year after the termination of this Agreement. In the event that Carrier breaches this non-solicitation clause, Carrier agrees that it will pay to DHT Logistics 15% of the revenue it receives from any such customer for a period of one year.

## **28. ASSIGNMENT**

This Agreement shall apply to and bind the successors and assigns of the parties, provided, however, that no such assignment of interests or obligations under this Agreement or arising from its breach, including but not limited to the assignment or any monies due and payable, shall be effective without the prior written consent of the other party, except that either party may at any time assign and transfer this Agreement and all rights and obligations hereunder to any parent company, or wholly owned subsidiary of its parent corporation, whether such ownership be direct or indirect through intermediate corporations, capable of performing such obligations hereunder in the event of a default by its assignee.

## **29. WAIVER AND DISCHARGE**

This Agreement may not be released, discharged, abandoned, changed, or modified in any manner except by an instrument in writing signed on behalf of each of the parties hereto by their duly authorized representatives. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, or in any way to affect the validity of this Agreement or any part thereof or the right of

any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. In no event shall any party be liable for consequential, indirect special or incidental damages, whether based on contract, tort or any other legal theory.

**30. EXECUTION IN COUNTERPARTS AND FACSIMILE SIGNATURES**

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become a binding agreement when one or more counterparts have been signed by each party and delivered to the other parties. A signature to this Agreement delivered by telecopy or other artificial means shall be deemed valid if a manually signed copy of such signature is delivered within three (3) business days after such telecopy or other signature is delivered.

**31. TITLES AND HEADINGS**

Titles and headings to sections herein are inserted for the convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

**32. ENTIRE AGREEMENT**

This contract constitutes the entire agreement between the parties, and may be modified only by mutual agreement of the parties as evidenced in writing. The parties agree that this Agreement is the product of negotiation and that neither party will be deemed to be the drafter thereof.

**33. SCHEDULES**

The appendices, schedules, and attachments to this Agreement shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein.

Broker: DHT LOGISTICS, LLC

Carrier:

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_