

BROKER - CARRIER MASTER AGREEMENT "B"

FOR AND IN CONSIDERATION of the mutually advantageous business opportunities created through the relationship established hereby, the receipt and sufficiency of which consideration hereby is acknowledged, this standard form, when completed and executed by an authorized representative for each of the two parties hereto, and with each page except the last initialed at the bottom, shall constitute a master agreement by and between _____, the independent business entity or succession of business entities known to the Federal Motor Carrier Safety Administration under Docket No. MC _____, hereinafter referred to as "BROKER", and _____, the independent business entity or succession of business entities known to the Federal Motor Carrier Safety Administration under Docket No. MC _____ and/or Safety Registration No. DOT _____, and/or known to any state level safety and/or economic regulatory agency under that same business name, hereinafter referred to as "CARRIER".

WHEREUPON, by and through this master agreement CARRIER, as a "motor carrier" engaged in "for hire carriage" within the meaning of 49 CFR 387.5, a definition which includes but is not limited to "authorized carriers" within the meaning of 49 CFR 376.2(a), hereby nominates and retains BROKER as CARRIER's non-exclusive agent for purposes of "the arranging of transportation or the physical movement of a motor carrier or of property" within the meaning of 49 CFR 371.2(c) for common law as well as statutory purposes, with this master agreement establishing CARRIER's acceptance of and concurrence in all such arrangements in all such regards. Further to that relationship, both parties agree that under no circumstances relevant to this master agreement shall BROKER be construed as the agent of any "consignor", "consignee", or other possible category of "shipper" within the meaning of 49 CFR 376.2(k), nor as a "statutory shipper" within the meaning of *Dixie Midwest*, 132 MCC 794 (1982 ICC), nor as a "bona fide agent" within the meaning of 49 CFR 371.2(b), with the sole exception provided for in subparagraph 5 below.

WHEREFORE, this master agreement shall determine the general provisions of the contractual relationship between BROKER and CARRIER as independent business entities engaged in a joint effort with respect to the series of underlying relationships between CARRIER and each underlying "shipper" involved facilitated hereby, such that the relationship established hereby in each particular instance shall be subject to both

- (i) the particular provisions of each "Load Confirmation" (however actually captioned or styled) negotiated by BROKER on CARRIER's ultimate behalf determinative of the contractual relationship between CARRIER and each underlying "shipper" involved finalized by due execution and/or other dispositive verification of each "Bill of Lading", "Delivery Receipt", and/or any other appropriate document (however actually captioned or styled) pertaining to the numeric designation, contract terms, and/or verified outcome of the physical movements facilitated hereby, the combined elements of which instruments shall constitute the common law as well as statutory "contract for carriage" for each transaction pursuant to this master agreement, and

- (ii) the particular provisions of each “Rate Confirmation” (however actually captioned or styled) negotiated between BROKER and CARRIER determinative of their respective entitlements out of the projected receipts from each “contract for carriage” for each transaction pursuant to this master agreement, whether stated in terms of a percentage-based division of revenue, a flat fee to either or both parties, or a per mile fee acceptable to CARRIER with the balance being allocated to BROKER in consideration for BROKER’s non-exclusive agency representation as an independent business entity, in each particular instance,

THE ENTIRETY OF WHICH “Load Confirmations”, “Rate Confirmations”, and related undertakings (however actually captioned or styled), which may be established orally in default of discreet written subagreements to that effect, hereby are incorporated as organic elements of the contracts deemed to have been established for each transaction pursuant to this master agreement, subject to the further general provisions hereof set forth in subparagraphs 1 through 21 below:

1. BOTH PARTIES AGREE that BROKER shall be responsible for soliciting and securing for shipment such freight as CARRIER shall be capable of scheduling and transporting on CARRIER’s owned or hired equipment, subject to CARRIER’s stated financial requirements regarding such traffic, such that BROKER’s authorization to negotiate rates and otherwise arrange for such “for hire carriage” on CARRIER’s behalf shall meet and in all instances shall be deemed to have met the threshold established for legitimate motor carrier “agency” representation in *Dal-Tile Corp. v. Red Arrow Freight Lines*, No. 40437 (1990 ICC Lexus 350), that being the original function for which transportation brokers representing two or more “authorized motor carriers” with overlapping routes were licensed under the Motor Carrier Act of 1935, an arrangement since perpetuated under the Motor Carrier Act of 1980, with BROKER’s status as a legitimate “agent” for such purposes being deemed to apply to activities not subject to federal economic regulation as well, under common law and as a matter of contract established hereby.
2. BOTH PARTIES AGREE that in consideration for BROKER’s contribution to the mutually advantageous business opportunities created through the relationship established hereby any freight solicited and secured by BROKER for shipment on CARRIER’s owned or hired equipment shall remain subject to BROKER’s exclusive right to assume all sales, dispatch, billing, and freight charge collection responsibilities with respect to all consignors, consignees, and any other third party beneficiaries involved in such physical transportation by CARRIER, except that nothing herein shall preclude or hinder BROKER from entering into similar arrangements with other transportation vendors with respect to soliciting and securing freight of the same character for carriage on any other transportation vendor’s owned or hired equipment.
3. BOTH PARTIES AGREE that in the event freight of the same character made available to CARRIER through BROKER’s efforts also might be made available to CARRIER directly or through other sources, such as other transportation brokers or freight forwarders, the burden of proof that BROKER’s discovery of such traffic would not have been a factor in such availability shall be borne by CARRIER, except that in the case of

large volume shippers presumably known already to a large segment of the industry the issue of whether or not freight of the same character would have been involved in any such instance shall be determined by whether or not the same individual traffic managers and/or particular local facilities solicited initially by BROKER in the process of developing such traffic would have been involved in any such process.

4. BOTH PARTIES AGREE that further to the provisions of subparagraphs 2 and 3 above CARRIER shall be prohibited from communicating directly or through any third party with any executive, traffic, or accounting representative of any consignor, consignee, or any other third party beneficiary involved in the physical transportation by CARRIER facilitated hereby regarding any traffic discovered by BROKER, except (i) to accommodate any legitimate need for CARRIER's drivers and/or helpers to obtain signatures and otherwise communicate with operational level employees at consignees' and/or consignors' loading docks or other appropriate locations, or (ii) to accommodate any legitimate need for any of CARRIER's staff responsible for claims investigation and resolution to become involved directly in that process further to the provisions of subparagraph 17 below, nor shall CARRIER communicate in any fashion with any of BROKER's employees or subcontractors for the purpose of hiring or establishing any direct relationship with any such individual or business entity to BROKER's possible detriment.

5. BOTH PARTIES AGREE that in the event CARRIER violates the "no communications" covenant established through subparagraph 4 above, whether for purposes of "back soliciting" traffic reserved for BROKER's exclusive sales and dispatch representation further to the provisions of paragraphs 2 and 3 above or for purposes of assuming any direct billing or collection responsibilities whatsoever for any movement arranged by BROKER once completed, CARRIER shall be deemed to have relegated BROKER to "bona fide agent" status within the meaning of 49CFR 371.2(b) for all statutory purposes with respect to each such account for which CARRIER thus has asserted direct responsibility, whether or not activity subject to economic regulation by the Federal Motor Carrier Safety Administration would be involved, such that BROKER shall be entitled to earned commissions at a rate no less than fifteen percent (15%) of CARRIER's gross receipts from transporting freight of that same character, or at a rate determined by the historical average of BROKER's share of revenues for identical or similar movements previously, whichever shall be greater, which commissions shall continue to be earned for so long as CARRIER shall enjoy such traffic as BROKER's residual entitlements for mere discovery, without any corresponding requirement that BROKER perform any further services whatsoever for CARRIER with respect to any such account in order to merit payment, subject to the statutory limitations regarding the duration allowed for such residual entitlements in whichever jurisdiction shall be appropriate, which may be no more than one (1) year.

6. BOTH PARTIES AGREE that in consideration for CARRIER's authorization for BROKER to assume exclusive billing and collection responsibilities for all transactions pursuant to this master agreement BROKER shall undertake such responsibilities on a "best efforts" basis, and both further agree that CARRIER's share of the division of

revenue from each such transaction pursuant to this master agreement shall be deemed constructively paid to CARRIER immediately upon collection of such payments by BROKER or any of BROKER's agents or assignees for such purposes, and accordingly such payments shall be due to CARRIER immediately upon collection unless otherwise agreed upon in individual "Rate Confirmations" (however actually captioned or styled) incorporated herein as referenced above, subject to BROKER's bank's acknowledgement of "collected funds" status for payments received in the form of checks, such that BROKER shall handle CARRIER's own entitlements generated through CARRIER's physical transportation activities only as CARRIER's fiduciary in all such regards, except that both parties also agree that further to the provisions of subparagraphs 9 through 12 below BROKER's efforts to undertake such billing and collection responsibilities effectively are entirely contingent upon CARRIER's completion of the "for hire carriage" involved to the satisfaction of whichever party may be deemed the "shipper" in each particular instance, as evidenced by CARRIER providing broker with all documentation necessary to complete each transaction, responsibilities which CARRIER cannot delegate and BROKER shall not assume under any possible interpretation of any provision hereof.

7. BOTH PARTIES AGREE that further to BROKER's responsibilities established through subparagraph 6 above CARRIER hereby authorizes BROKER to arrange for collection agencies, attorneys, and/or any other third party assignees which BROKER shall deem necessary or expedient for the purposes of accelerating or otherwise facilitating the collection of accounts from which both CARRIER and BROKER are entitled to shares of a division of revenues pursuant to this master agreement, except that BROKER shall bear the entire cost of such subcontracted collection procedures unless CARRIER shall agree otherwise in writing in each particular instance.
8. BOTH PARTIES AGREE that as surety for satisfaction of BROKER's fiduciary obligations with respect to handling CARRIER's own entitlements further to the provisions of subparagraph 6 above, insofar as movements by "authorized carrier" within the meaning of 49 CFR 376.2(a) would be involved, BROKER shall be responsible for maintaining a current Ten Thousand Dollar (\$10,000) Surety Bond (Form BMC-84) or Trust Fund (Form BMC-85) filed with the Federal Motor Carrier Safety Administration as required by 49 CFR 387.307(a) and (b), in order to facilitate CARRIER's statutory rights as a third party beneficiary of such arrangements pursuant to the provisions of 49 USC 13906 under the Motor Carrier Act of 1980, which legislation expanded the scope of such statutory rights beyond that established under the Motor Carrier Act of 1935.
9. BOTH PARTIES AGREE that CARRIER shall be responsible for every aspect of the actual "transportation or the physical movement of a motor carrier or of property" involving CARRIER's owned or hired equipment pursuant to this master agreement, with BROKER's contribution thereto being deemed to be limited strictly to "the arranging of" such underlying "motor carrier" activity within the meaning of 49 CFR 371.2(c) for common law as well as statutory purposes, such that CARRIER shall be deemed to be the only party to "take possession" of any freight solicited and secured by BROKER for transportation on CARRIER's owned or hired equipment under the terms of each "contract for carriage" established and/or implied by each "Load Confirmation" and

“Rate Confirmation” (however actually captioned or styled) subject to each “Bill of Lading”, “Delivery Receipt”, or other document pertaining to such arrangements further to the provisions of items (i) and (ii) set forth in the body of the third introductory paragraph above, with CARRIER and whichever party shall be deemed the “shipper” for each such transaction within the meaning of 49 CFR 376.2(k) being the only principal parties to any such “contract for carriage” established thereby, irrespective of whether or not such activity would be subject to economic (as opposed to safety) regulation by any federal or state agency.

10. BOTH PARTIES AGREE that further to the provisions of subparagraph 9 above CARRIER shall issue (or accept from the “shippers” involved) and secure all requisite third party signatures for all appropriate documents pertaining to the loading, carriage, and delivery of all freight solicited and secured by BROKER for transportation on CARRIER’s owned or hired equipment in accordance with each “shipper’s” stated requirements as conveyed through BROKER in each particular instance, such that in default of any request by any “shipper” for alternative trip documentation CARRIER always shall issue (or accept from the “shippers” involved) and secure all required third party signatures for “Bills of Lading” conforming at least approximately to the generic “short form” format still standard in the industry despite the lack of any statutory basis for many of the provisions stated or referenced thereon with respect to contract or exempt “for hire carriage”, the only two possible modes of operation CARRIER shall employ for any transportation facilitated hereby, such that appropriate intrastate movements pursuant to this master agreement conducted in a manner consistent with or exempt from economic regulation at that level shall be treated no differently from exempt interstate movements insofar as BROKER’s responsibilities hereunder are concerned.
11. BOTH PARTIES AGREE that further to the provisions of subparagraph 10 above BROKER shall not arrange for and CARRIER shall not conduct any “for hire carriage” under the authority of any Common Carrier Certificate either held by CARRIER or available to CARRIER as an agent and/or lessor under any provision of 49 CFR 376, particularly 376.26, such that all “for hire carriage” within the meaning of 49 CFR 387.5 by an “authorized carrier” within the meaning of 49 CFR 376.2(a) facilitated hereby shall be conducted under the authority of a Contract Carrier Permit either held by CARRIER or otherwise applicable to regulated movements in interstate commerce involving CARRIER’s owned or hired equipment, the establishment of parallel arrangements for “exempt” movements in interstate or intrastate commerce as that term is defined in subparagraph 10 above notwithstanding.
12. BOTH PARTIES AGREE that further to the provisions of subparagraphs 9 through 11 above CARRIER shall be responsible directly to the consignors, consignees, and any other third party beneficiaries of any of the transactions pursuant to this master agreement for all liability and claims occasioned by alleged shortcomings in CARRIER’s conduct of any of the “for hire carriage” activities arranged by BROKER facilitated hereby, even though BROKER shall be authorized to act as CARRIER’s claims representative with respect to all “shipper” claims asserted under such circumstances in accordance with the provisions of subparagraph 17 below, whether such claims shall be consequent to alleged

loss or damage to freight, inadequate insurance coverage, delays in transit (except those resulting from strike, war, accidents, civil disorder, terrorism, acts of God, or through compliance with legally constituted orders of civil or military authorities), or any other third party claim alleging intentional or unintentional breach of contract, negligence, mistake, fraud, or any other basis for any contract or tort claim whatsoever, such that CARRIER's level of responsibility to all consignors, consignees, and any other third party beneficiaries of any of the transactions pursuant to this master agreement shall be deemed to approximate that characteristic of federally regulated common carriage in accordance with industry standards, albeit as a matter of contract established hereby rather than through those particular regulatory arrangements and related case law.

13. BOTH PARTIES AGREE that further to the provisions of subparagraph 12 above CARRIER shall be responsible for securing and maintaining Motor Carrier Cargo coverage conveyed through a policy issued by a reputable provider or risk purchasing group licensed to do business in the United States for an amount deemed reasonable to compensate consignors, consignees, and/or any other third party beneficiaries for any of the transactions pursuant to this master agreement for any loss or damage to any freight anticipated for transportation by CARRIER, such that in default of any specific written requirement to the contrary incorporated herein as an addendum, such as might be occasioned by exceptionally low value or exceptionally valuable freight, such coverage shall be (i) subject to limits of no less than One Hundred Thousand Dollars (\$100,000) per occurrence, (ii) subject to a deductible component of no more than Two Thousand Dollars (\$2,000) per occurrence, as well as (iii) subject to all of the same policy requirements CARRIER would have had to comply with for a BMC-34 filing, such that no exclusions or restrictions which would be unacceptable for federally regulated common carrier cargo coverage shall be incorporated in CARRIER's Motor Carrier policy, whatever per occurrence limit shall be deemed appropriate for CARRIER's anticipated transportation activities hereunder. Nevertheless, such insurance may either (check one)

- (i) include coverage for the mechanical breakdown of refrigeration units, or
- (ii) exclude coverage for the mechanical breakdown of refrigeration units,

as the parties shall determine, subject to a deductible component of no more than Five Thousand Dollars (\$5,000) per occurrence for mechanical breakdown related losses only should option (i) be selected.

14. BOTH PARTIES AGREE that CARRIER also shall be responsible for securing and maintaining Bodily Injury and Property Damage coverage conveyed through one or more insurance policies issued by reputable providers or risk purchasing groups and/or through a legitimate government approved self insurance program, subject to all the same or virtually the same requirements enumerated for "Motor Carriers of Property" in 49 CFR 387 whether or not CARRIER might be engaged entirely in local drayage and/or intrastate operations exempt from safety as well as economic regulation by the Federal Motor Carrier Safety Administration, such that CARRIER's level of responsibility in all

such regards shall be deemed to approximate that characteristic of federally regulated “for hire carriage” for all transactions pursuant to this master agreement as a matter of contract established hereby, whether or not specifically required through those particular regulatory arrangements and related case law.

15. BOTH PARTIES AGREE that CARRIER also shall be responsible for securing and maintaining such workers’ compensation coverage (or corresponding certificate(s) of exemption) as shall be required by the laws of any state with jurisdiction over any such aspect of any of CARRIER’s administrative or operational activities further to any transaction pursuant to this master agreement, and both further agree that CARRIER shall be responsible for ensuring that all appropriate parties, including CARRIER’s workers’ compensation provider (if any), are made aware of the fact that BROKER is CARRIER’s agent rather than the other way around, and that neither CARRIER nor any of CARRIER’s other agents, subcontractors, lessors, or direct employees act or ever could act as “employees” or “statutory employees” of BROKER for any purpose whatsoever.
16. BOTH PARTIES AGREE that CARRIER also shall be responsible for ensuring that the providers and/or risk purchasing groups involved designate BROKER as an “additional insured” on each Motor Carrier Cargo and Bodily Injury and Property Damage policy referenced in subparagraphs 13 and 14 above, though not on any workers’ compensation policy referenced in subparagraph 15 above unless the workers’ compensation provider involved shall require such independent business entities acting as CARRIER’s agents to be thus identified and designated, and both further agree that CARRIER also shall be responsible for ensuring that the provider involved designates all appropriate consignors, consignees or any other anticipated third party beneficiaries of any transaction pursuant to this master agreement as “additional insureds” on each such Motor Carrier Cargo policy upon BROKER’s request in each particular instance, in order to comply with any “shipper’s” requirements in such regards.
17. BOTH PARTIES AGREE that BROKER shall be authorized to act as CARRIER’s claims representatives with respect to all “shipper” claims occasioned by alleged shortcomings in CARRIER’s conduct of any of the “for hire carriage” activities arranged by BROKER facilitated hereby, in accordance with the provisions of subparagraph 12 above, such that BROKER shall be authorized to act as CARRIER’s representative for such purposes with CARRIER’s cargo insurance provider as well for so long as BROKER deems such representation useful for customer relations purposes, except that at any time BROKER may hand off such responsibilities entirely to CARRIER, so that those on CARRIER’s staff responsible for claims investigation and resolution may become involved directly with the consignors, consignees, and other third party beneficiaries of the movements facilitated hereby should that become expedient, in accordance with the provisions of subparagraph 4 above.
18. BOTH PARTIES AGREE that each shall indemnify, save, defend, and hold the other harmless with respect to any negative consequences occasioned by any shortcomings and/or perceived shortcomings in their respective performance of any of the duties and obligations each has assumed responsibility for through the provisions of this master

agreement, such that each shall compensate the other completely and promptly for all financial losses or damage thus incurred by the other, including attorney's fees and any other related costs entailed in investigations, court or arbitration proceedings, and/or judicial appeals from any adverse ruling or finding consequent to any such shortcoming or perceived shortcoming by the other party.

19. BOTH PARTIES AGREE that this master agreement shall be deemed to have been executed in and shall be construed and governed in accordance with the law of any state in which BROKER is required to maintain a process agent in accordance with the provisions of 49 CFR 366, in which state designated for such purposes this master agreement shall be deemed to have been executed, as indicated below, to the extent that state law does not conflict with federal law, further to which both parties also agree
- (i) that the venue of any suit or controversy relevant to any interpretation of this master agreement shall be restricted exclusively to the appropriate local or federal court in that same state in which BROKER is required to maintain a process agent in accordance with the provisions of 49 CFR 366, as a matter of contract established hereby even in those instances where economic regulation by the Federal Motor Carrier Safety Administration would not be a factor, whether or not CARRIER operating on some "exempt" basis might not be required to maintain a process agent in that same state, superfluous BOC-3 designations notwithstanding,
 - (ii) that in the event of any suit or controversy between the parties to this master agreement intended to enforce or interpret any of the provisions hereof, particularly the indemnification provisions of subparagraph 18 above, the prevailing party shall be entitled to recover costs and reasonable legal expenses from the other in that respect as well,
 - (iii) that this master agreement shall not be assignable by either party without the written consent of the other party, such that CARRIER shall not subcontract transportation services to any other vendor not a party to this master agreement without the written consent of BROKER, except under the terms of a lease or other "hired auto" contract which renders each piece of equipment involved the instrumentality of CARRIER for both practical and statutory purposes,
 - (iv) that this master agreement shall be binding as well on the non-corporate principals (whether disclosed or undisclosed), heirs, successors, and assigns of both parties,
 - (v) that the provisions of this master agreement are severable, and that should any of the provisions hereof be deemed invalid then only that invalid provision shall fail, such that the remainder of this master agreement shall continue in full force and effect, and
 - (vi) that this master agreement establishes and conveys the entire understanding of this character between the parties as of the date of execution and supersedes all prior oral or written agreements of the same character accordingly, and therefore cannot be modified,

altered, revised, or amended except by written instruments signed on behalf of both parties, or as otherwise provided herein, to the effect

(vii) that no waiver of any breach of violation of, or any other deviation from any of the covenants or provisions set forth herein or incorporated herein by references shall be construed as a waiver of any subsequent breach of, or any other deviation from the same or any other covenant or provision.

20. BOTH PARTIES AGREE that the effective term of this master agreement shall be one (1) year, unless sooner extended in writing, and that it shall be subject to cancellation by either party on thirty (30) days written notice, except that this master agreement and all subagreements further to such purposes shall remain in effect for so long as (i) any debt asserted by either party against the other shall remain outstanding and/or (ii) any other issue in dispute shall remain unresolved, such that all indemnification and "back solicitation" provisions set forth above, along with any related elements hereof necessary for their enforcement, shall survive until the statute of limitations for contract actions in any state with jurisdiction over any application of this master agreement shall run.

21. BOTH PARTIES AGREE that this master agreement may be executed initially in counterpart, with final examples being circulated among the parties for the signatures of both authorized representatives, and shall be deemed to have been executed on the date shown below, which shall denote the date of the first signature for BROKER on any example or counterpart, regardless of the actual date or dates on which the final examples hereof are circulated and signed. Telefaxed examples or counterparts hereof shall remain binding until and if replaced by the originals.

IN WITNESS WHEREOF the authorized representatives of the parties hereto set their hands below, further reaffirming (i) that they are indeed the authorized representatives of their respective parties for such purposes, (ii) that they have read the foregoing text of this master agreement in its entirety and, as transportation professionals familiar with industry standards and practices, both of them know and understand the contents hereof, and (iii) that each of them hereby acknowledges receipt of an executed example hereof.

EXECUTED IN DUPLICATE this ____ day of _____, 20__ at _____, _____.

FOR THE BROKER:

FOR THE CARRIER:

Signature

Signature

Printed Name & Title

Printed Name & Title