

## TRAILER INTERCHANGE AND INDEMNITY AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between H&N Transport, Inc., a Wisconsin corporation domiciled in Madison, Wisconsin, the owner of the trailer equipment which is the subject of this Agreement ("Owner"), and \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, the party proposing to utilize the equipment ("Carrier"):

WHEREAS Carrier is duly authorized to engage in transportation operations as a for-hire carrier and desires to perform certain transportation services utilizing trailers it does not own;

WHEREAS the parties desire that Carrier utilize certain semi trailers that are owned or controlled by Owner on a recurring basis, in order to supplement H&N Logistics, LLC's transportation business to insure that H&N Logistics, LLC's customers receive prompt and efficient transportation service, especially during times of peak demand;

WHEREAS Carrier is willing to utilize said semi trailers using power units which Carrier owns or controls and personnel who are employees of Carrier or who have a contractual relationship with Carrier; and

WHEREAS Owner holds legal title to certain semi trailers which are designed and maintained for over-the-road commercial transportation and is willing to allow Carrier to utilize said equipment on the terms and conditions herein set forth;

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions herein set forth, the sufficiency of which is acknowledged by both parties, it is agreed as follows:

1. Carrier's Use of Owner's Trailers. The objective of this Agreement is to facilitate the transportation of commodities to and from points designated by H & N Logistics, LLC such that Carrier shall have the use of Owner's trailers on an as-needed basis in furtherance of such transportation services, and for no other purpose without securing permission from Owner in writing. Carrier agrees to use said trailer equipment in a careful and prudent manner and to promptly return such equipment to Owner upon completion of the delivery or deliveries requested by H & N Logistics, LLC.

2. Charges for Use of Owner's Trailers. As specified on rate confirmation, Carrier agrees to pay Owner a percentage of the line haul charges Carrier is receiving from H & N Logistics, LLC for the specific shipment(s) tendered to Carrier for transportation. In addition, Carrier agrees to pay Owner an agreed upon fee for Carrier's use of Owner's trailer. By its signature below, Carrier expressly authorizes H & N Logistics, LLC to deduct such fees

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from the compensation due Carrier. Such deductions when made will relieve Carrier of any further liability to Owner for such trailer use charges.

3. Pickup and Inspection of Trailers. Carrier shall take possession of trailers to be utilized by Carrier under this Agreement at Owner's facility in Arena, Wisconsin unless a different pickup point is agreed upon by the parties. Upon taking possession of a trailer, Carrier's driver will complete and sign a receipt for the trailer in duplicate, on a form provided by Owner, shall conduct a pre-trip inspection of the trailer before leaving Owner's facility, shall complete a pre-trip inspection report on the receipt referred to above, and shall deliver one copy to Owner's representative, keeping the other copy for Carrier's records.

4. Return of Trailers To Owner. Upon completion of the delivery requested by H & N Logistics, LLC Carrier shall promptly return the trailer equipment to Owner's facility in Arena, Wisconsin (or such other location specified by Owner) unless Carrier has been dispatched for further service to H & N Logistics, LLC or unless Owner has expressly approved further use of the trailer for a specified purpose in writing, in which event the trailer will be returned within a reasonable time after the last delivery for H & N Logistics, LLC or the specified purpose authorized by Owner has been completed. Carrier agrees to return the trailer equipment to Owner in the same condition it was in at the time Carrier took possession, except for ordinary and reasonable wear and tear. For purposes of construing this Agreement, a reasonable time shall mean one business day for each 500 miles Carrier must travel to bring the trailer to the point of return. Owner will conduct an inspection of the returned trailer within two business days of receipt and shall promptly notify Carrier of any damage discovered during the inspection.

a. Use of Trailers For Backhauls. Owner hereby gives permission to Carrier to utilize its trailer for backhauls in order to minimize deadhead miles incurred by Carrier, but only on the following conditions: (a) the commodities being transported shall be compatible with ordinary and usual use of the trailer and shall not result in any damage to the trailer or leave any odors, residues, infestation or other conditions which would impair or interfere with future use of the trailer by Owner; (b) such use of the trailer will not result in any delay in returning the trailer to Owner as required by paragraph (4) above; and (c) Carrier thoroughly cleans the trailer, including a washout if reasonably necessary, before returning the trailer. Carrier further agrees to pay or reimburse Owner for any costs incurred by Owner in satisfying any of these requirements if Carrier has failed to satisfy each of the conditions specified herein.

b. Charges For Failure To Return Trailer. Carrier agrees to pay or reimburse Owner for all costs incurred by Owner in recovering any trailer which Carrier has failed to return to Owner in a timely manner. The minimum charge shall be \$1.60 per mile for actual miles incurred, based on round-trip miles between the designated point of return and the location of the trailer. Carrier shall be responsible for all costs of parking, storing and securing the trailer while awaiting pickup by Owner. Carrier agrees to indemnify Owner for any damages to the trailer while awaiting pickup by Owner, including

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but not limited to vandalism, graffiti, loss of fluids or tire pressure, along with any costs of removing the trailer from storage or impound.

c. Charges Delay In Returning Trailer. Carrier agrees to pay Owner the sum of one hundred dollars (\$1 0.00) per day for delays in returning the trailer to Owner, in addition to all other charges due Owner for use of the trailer, unless Owner expressly waives such charges in writing.

d. Deductions From Settlements. Carrier expressly authorizes H & N Logistics, LLC to deduct any charges or damages due to Owner pursuant to this paragraph (4) and its subsections from compensation due Carrier.

5. Independent Contractor Status. The relationship between the parties shall be deemed to be that of independent contractor at all times and for all purposes. Neither party shall be considered an employee, agent or servant of the other in the performance of this Agreement and neither party shall have the power or authority to contractually bind the other in any manner.

6. Legal Duties of Carrier. Carrier shall provide the services contemplated in this Agreement as a for-hire carrier unless the trailers are being used by Carrier in furtherance of Carrier's primary non-transportation business (i.e. private carriage). Carrier shall be responsible for obtaining all operating authorities, permits, certificates, licenses, and other credentials which are necessary to perform the operations, and for reporting and paying all taxes and other obligations relating to the operations, including but not limited to fuel and road taxes, tolls and fees, federal heavy vehicle use taxes, and licensing fees, except as provided in paragraph (7) below. Carrier shall likewise be responsible for compliance with all applicable statutes, rules, regulations and other directives relating to the operation of the equipment, including but not limited to the federal motor carrier safety regulations (except as provided in paragraph (7) below), weight and route limitations and restrictions, all traffic regulations, and other legal requirements. Further, Carrier shall be responsible for providing all labor and other personal services relating to the operations and for fully paying all obligations relating to such labor and personal services including (if applicable) withholding and paying over all federal and state income taxes, FICA, Medicare, unemployment compensation, workers compensation coverage, health insurance and other benefits, vacation pay, sick leave, etc.

7. Legal Duties of Owner. Owner shall be responsible for licensing each trailer transported by Carrier pursuant to this Agreement, and for insuring that the trailers are all in proper physical and mechanical condition and in full compliance with all applicable federal, state and local safety regulations relating to the physical and mechanical condition of the vehicle; PROVIDED, however, that Carrier's driver or other representative shall have a duty to reasonably inspect each trailer before commencing operations involving it, and if such inspection reveals a defect in the trailer, all such defects shall be immediately reported to Owner and the parties shall then agree on the procedure for rectifying the defect. Carrier will be responsible for any adverse consequences resulting from a defect which Carrier either failed to identify in its inspection or failed to correct before operations

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are commenced, unless the defect is one which would not have been apparent to a person conducting a routine daily inspection in accordance with 49 C.F.R. 396.11, in which case Owner shall be responsible for any adverse consequences resulting from said defect. As used herein, the term "adverse consequences resulting from said defect" shall include, but not be limited to, the cost of repairing further damage to Owner's trailer or any components thereof (but not the original defect itself); damage to the property of third parties (including damage to, or delay of cargo in transit); personal injury or death of any person employed by or contracted to either party; personal injury to or death of third parties; and all fines, forfeitures and other monetary penalties as well as adverse safety reports.

8. Insurance. Carrier shall be responsible for procuring, maintaining and paying for all public liability insurance required by applicable governmental authorities, which shall satisfy at least the minimum legal requirements for personal injury, property damage and environmental restoration, as well as all cargo insurance required by applicable governmental authorities or the shipper/receiver of the goods in transit, if applicable. Carrier shall also be responsible for procuring, maintaining and paying for all physical damage, comprehensive and collision insurance coverage for its own equipment. In addition to the foregoing, Carrier shall procure, maintain and pay for "**Trailer Interchange Coverage**" applicable to the operations which are the subject of this Agreement, with limits of coverage which are reasonably satisfactory to Owner, and in addition shall cause its insurance carrier to name Owner as an additional insured, with not less than 15 days written notice to Owner of any material change or cancellation of such coverage. Carrier shall also be responsible for any mandatory workers compensation or other occupational coverage for its drivers and other employees engaged in the performance of the operations contemplated by this Agreement. Either party may demand a certificate of coverage from the other evidencing the existence of such coverage. Failure to obtain Trailer Interchange Coverage shall subject Carrier to full liability to Owner for all events that would have been covered by such insurance.

9. Maintenance and Repairs. Owner shall be responsible for routine maintenance of the trailers which are the subject of this Agreement and shall perform such repairs and service work as are reasonably necessary or appropriate to maintain the trailers in good condition and repair and to prolong the useful life of each trailer. In the event such repairs or service work become necessary while a trailer is in the possession or control of Carrier, Carrier shall perform, or cause to be performed, such repairs or service work in a cost-effective manner, with the prior approval of Owner. Owner shall promptly reimburse Carrier for the reasonable cost of such repair work providing that Owner is notified in advance of the repair work. If Owner agrees to such repair work, Owner will issue a Purchase Order. Owner will not reimburse Carrier for repairs without a pre-approved Purchase Order. Owner shall not be responsible for maintenance, repairs or service work necessitated by the negligence or intentional conduct of Carrier or its employees or agents, and shall have the right of indemnification set forth in paragraph (10) below to recover the cost of repairs so caused. Owner shall be responsible for procurement and replacement of tires, brakes, bearings and other trailer components at Owner's expense except where such items are damaged as a result of negligence or intentional conduct of Carrier.

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10. Indemnity. Each party agrees to indemnify, defend and hold harmless the other party for all claims, lawsuits or other liabilities or legal proceedings which are asserted against one party but which are the responsibility of the other party under this Agreement. This obligation shall include all costs and disbursements incurred by the indemnified party in defending and/or paying any such claims, including all actual reasonable attorneys fees incurred by the indemnified party. If either party becomes aware of any claim, debt, liability, expense or loss of any kind which it believes is the responsibility of the other party pursuant to this Agreement, that party shall promptly notify the other party of the matter and afford the other party a reasonable opportunity to either contest the matter or make arrangements to pay or defend the claim at the other party's expense or at the expense of a liable third party. Failure of the party asserting a claim against the other under this Agreement to give reasonable notice and opportunity to contest or pay the claim to the other party shall constitute a waiver of said indemnity claim. Failure of the other party to defend or pay the claim, or to offer to pay or defend the claim, within a time and in a manner which is reasonable under the circumstances, shall constitute a waiver on the part of the party to be charged of any defense to said indemnification claim.

a. Damage to Trailer. Carrier shall be liable for damage to Owner's trailer unless the damage was caused by a defect in the trailer which a reasonable driver would not have detected in making a reasonably competent inspection of the trailer. Carrier will be held solely responsible to all damages incurred to trailer while under Carrier's possession, unless carrier is able to supple owner in the form of written or visual documentation indisputable evidence that damage was not the result of carrier's negligence.

b. Damage to Carrier's Equipment. Owner shall be liable for damage to Carrier's equipment only if the damage was caused exclusively by a defect in the trailer which a reasonable driver would not have detected in making a reasonably competent inspection of the trailer.

c. Loss of or Damage to Cargo. Carrier shall be liable for any loss of or damage to cargo, or for delay in delivering cargo, unless the damage or delay was caused exclusively by a defect in the trailer which a reasonable driver would not have detected in making a reasonably competent inspection of the trailer. Carrier has the responsibility for proper loading and securing of the cargo.

11. Dispute Resolution. In the event of any dispute or disagreement involving the interpretation or performance of this Agreement, including but not limited to claims for loss of or damage to cargo and disputes regarding applicable freight charges and terms of service, the parties agree that such disputes or disagreements shall be referred to the alternative dispute resolution program sponsored by the Transportation Lawyers Association, or similar mediation or arbitration service, for disposition in accordance with the sponsoring organization's rules and procedures, before bringing legal action in a court of law. The parties mutually agree to exert their best efforts to resolve all disputes by good faith settlement or negotiation whenever possible, and to make use of alternative dispute resolution mechanisms to the maximum extent practicable, and hereby authorize the Court

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to award all or a portion of its attorneys fees to the prevailing party if the Court finds that the non-prevailing party failed to act in good faith to bring about a prompt, reasonable and cost-effective resolution of the dispute. Such an award of attorneys fees shall be committed to the sound discretion of the trial court. Any litigation between the parties to this Agreement which does not involve other parties, relating to the interpretation or performance of this Agreement, shall be venued in Circuit Court for Dane County, Wisconsin and both parties expressly consent to jurisdiction in said court.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin as to both interpretation and performance.

13. Term of Agreement. This Agreement shall take effect on the date of execution hereof and shall continue in full force and effect for a period of not less than thirty (30) days unless sooner cancelled, terminated or modified by mutual agreement of the parties. Thereafter the Agreement shall be deemed renewed on a week-to-week basis unless either party gives written notice of its intent not to renew prior to the end of each week. Notwithstanding the foregoing, either party may terminate this Agreement for good cause upon five (5) days' written notice. As used herein, the term "good cause" shall mean a material breach of a material term of this Agreement, default in payment or other material obligations by either party, or a material change in circumstances not reasonably foreseen by either party.

IN WITNESS WHEREOF, the parties by their duly authorized representatives have caused this Agreement to be executed as of the date first written above.

OWNER: H&N TRANSPORT, INC.

CARRIER: \_\_\_\_\_

BY \_\_\_\_\_

BY \_\_\_\_\_

TITLE \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

DATE \_\_\_\_\_

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