**Master Services Agreement – Inbound Transportation Services**

THIS AGREEMENT (hereinafter referred to as “Agreement”), is entered into as of **\*INSERT DATE\***, by and between **Mercedes-Benz U.S. International, Inc.** (hereinafter referred to as "CUSTOMER"), with principal offices at **1 Mercedes Drive, Vance, AL 35490** and **\*INSERT SUPPLIER LEGAL NAME**\*, (hereinafter referred to as "SUPPLIER"), with its principal office located  **\*INSERT SUPPLIER ADDRESS\*.**

**WITNESSETH:**

SUPPLIER shall furnish certain contract services and/or work product (hereinafter referred to collectively or individually as the “SERVICES”) as required by the CUSTOMER and as described in a written document (hereinafter referred to as the “SERVICE SPECIFICATION”) prepared by CUSTOMER for each order made to SUPPLIER. Each “SERVICE SPECIFICATION” shall contain without limitation a description of the SERVICES, performance schedule and rates for the SERVICES. Each “SERVICE SPECIFICATION” shall be subject to and include by this reference the terms and conditions of this Agreement, pursuant to SUPPLIER’s authority and safety rating granted by the Federal Motor Carrier Safety Administration (“FMCSA”) of the Department of Transportation (“DOT”) and subject to all applicable statutes governing such granted authority;

WHEREAS, SUPPLIER shall furnish transportation services to CUSTOMER as applicable pursuant to SUPPLIER’s operating authority as evidenced by the following active authority number(s): **(MC #\_\_\_\_\_\_\_\_\_\_\_)**, and WHEREAS SUPPLIER, or SUPPLIER’s choice of third party provider, maintains a Carrier Safety Rating of **Satisfactory or none**;

WHEREAS SUPPLIER desires to transport goods of CUSTOMER, and to facilitate such transportation; and WHEREAS for the convenience in handling such transactions and meeting CUSTOMER's distinct needs regarding CUSTOMER's transportation requirements the parties wish to enter into this Agreement;

NOW, THEREFORE, in consideration of the promises and conditions herein contained, it is hereby agreed as follows:

1. **Term**
	1. The term of this AGREEMENT shall commence on the effective date and shall continue until terminated as set forth herein. Either party may terminate this Agreement by written notice to the other party, effective immediately, if the other party fails to meet any of its obligations hereunder, and fails to cure such breach to the other non-breaching party’s reasonable satisfaction within thirty (30) days after receipt of notice thereof. In addition, (i) Customer may terminate this Agreement without cause or for any reason upon at least sixty (60) days prior written notice to Supplier; and (ii) Supplier may terminate this Agreement without cause or for any reason upon at least one hundred twenty days (120) days prior written notice to Customer. Termination of this Agreement will also terminate any SERVICE SPECIFICATIONS associated with it.
	2. In the event that all or any portion of SUPPLIER’s registration, rating, or authority required by this Agreement shall be revoked, canceled, suspended, or discontinued by operation of law or otherwise, or SUPPLIER’s insurance policy is canceled, reduced or otherwise invalidated, SUPPLIER agrees to promptly notify CUSTOMER. In the event SUPPLIER is unable to provide the service called for in this Agreement as a direct result of its registration or authority being revoked canceled or suspended and/or its insurance coverage being cancelled, reduced or invalidated, this Agreement shall immediately terminate as of the effective date of any such revocation, cancellation, suspension or discontinuance, to the extent thereof.
2. **Bills of Lading**

The terms, conditions, and provisions of bills of lading, manifests, or other forms of freight receipts or agreements shall be subject to and subordinate to the terms, conditions, and provisions of this Agreement and associated Service Specification(s), and, in the event of a conflict between the terms, conditions, and provisions of such bill of lading, manifest or other form and of this Agreement and associated Service Specification(s), the terms, conditions, and provisions of this Agreement and associated Service Specification(s), shall govern.

1. **Contract Retention**

In compliance with Federal requirements, the Parties agree to keep this Agreement on file while in effect and for a minimum of thirty six (36) months thereafter. In compliance with individual State requirements, the Parties agree to keep this Agreement on file in accordance with State requirements.

1. **Lien**

SUPPLIER shall have no lien for the retention of freight or to secure payment of any freight or other charges under this Agreement.

1. **Invoicing**
	1. EDI is the preferred method of freight invoice transmission and will be arranged per specification of CUSTOMER. Paper invoicing may be allowed at CUSTOMER discretion.
	2. SUPPLIER shall endeavor to submit its invoice in accordance with CUSTOMER instructions within twenty one (21) days of the date of the shipment, and CUSTOMER shall pay SUPPLIER within (30) thirty days of its receipt of such invoice. All rates and charges are to be billed in U.S. funds unless otherwise expressly and mutually agreed in writing by the parties.
	3. CUSTOMER or CUSTOMER’s agent (hereinafter referred to as “Claimant”) shall submit claims for overcharge or duplicate payment in writing within one hundred eighty (180) days of receipt of original invoice, and SUPPLIER shall submit claims for undercharge in writing within one hundred eighty (180) days of CUSTOMER’s receipt of original invoice. CUSTOMER/SUPPLIER shall acknowledge such claims in writing to the Claimant within thirty (30) days of receipt. CUSTOMER/SUPPLIER shall settle each claim or provide detailed reason(s) for disallowance or any part thereof, within sixty (60) days of receipt. Both parties will have eighteen (18) months after the date of delivery to bring a lawsuit to recover unresolved over or undercharges.
2. **Covenants, Representations and Warranties of SUPPLIER**

SUPPLIER covenants, represents and warrants as follows:

* 1. SUPPLIER shall at all times be in compliance with FMCSA regulations governing registration, insurance, and safety fitness. SUPPLIER shall notify CUSTOMER within ten (10) days of any change in SUPPLIER Safety Rating per the FMCSA.
	2. SUPPLIER shall operate at its cost and expense its motor vehicle equipment in a legal and lawful manner and further agrees to maintain the equipment in good, safe and lawful operating condition at all times.
	3. SUPPLIER shall, at its cost and expense, employ in the operation of such vehicles and equipment fully qualified personnel, shall procure and maintain such licenses and permits as are required by local, state, or federal authorities with respect to such transportation services and shall comply with the laws and regulations applicable thereto.
	4. SUPPLIER shall use best efforts to maintain a minimum of 98% on‑time percentage on a lane by lane basis. (A lane is defined as a movement between a vendor or a CUSTOMER facility, a CUSTOMER or dealer facility, and between CUSTOMER facilities.) Performance will be monitored by use of a report generated by the SUPPLIER on a regular basis as defined by CUSTOMER. This measurement and reporting should be based on time of tender as reflected on the SUPPLIER bill of lading and stated transit times as submitted by SUPPLIER and reflected in associated Service Specifications.
	5. In the event of a service failure(s) during a month, the SUPPLIER will be expected to address and correct the problem(s) promptly. Failure to improve service to an acceptable level as determined by CUSTOMER in its sole discretion may result in the SUPPLIER being removed from the traffic lane(s).
	6. SUPPLIER shall have conducted or shall immediately conduct a criminal background investigation covering the previous 7 years on each of Supplier’s employees, consultants, contractors, partners, and agents who have been or will be involved in the performance of any Services on Customer’s premises. Supplier represents and warrants that each such Supplier employee, consultant, contractor, partner, and agent have not been convicted of any felony; or any misdemeanor involving crimes of violence, fraud, theft, misappropriation, breach of trust, crimes against children under the age of 18, and sexual offenses.
1. **Third Party Motor Carriers**
	1. SUPPLIER shall have the right to broker shipments to third party motor carriers under this Agreement pursuant to federal statute governing this practice. SUPPLIER nevertheless understands and agrees that brokering shall have no negative or detrimental impact on transport quality and transit-time. SUPPLIER also understands and agrees that it is fully liable for cargo loss or damage as defined in section 9 for all SUPPLIER’s third party motor carriers with regard to any services that they perform under this Agreement as though SUPPLIER had performed the services itself in accordance with the terms and conditions of this Agreement
	2. SUPPLIER will ensure that SUPPLIER’s choice of third party motor carrier maintains a Carrier Safety Rating of **Satisfactory**. SUPPLIER will use sound commercial judgment in selecting third party motor carriers and will only engage motor carriers that are reliable, solvent, and recognized within the shipping/freight-carrying industry, and that otherwise satisfy the requirements of this Agreement. Upon CUSTOMER’s request at any time, SUPPLIER must submit to CUSTOMER a list of SUPPLIER’s then-current third party motor carriers engaged to perform the Services. SUPPLIER must update such list in case of any changes. CUSTOMER may reject any third party motor carrier of SUPPLIER at any time and in CUSTOMER’s sole discretion, and SUPPLIER will stop using any such rejected third party motor carrier to perform the Services. SUPPLIER understands that any knowing or willful violation of the provisions of this section shall constitute a material breach of this Agreement.
	3. SUPPLIER will honor its rates as set forth in the applicable Service Specifications to this Agreement, and any discounts thereto, from origin to destination, for all CUSTOMER’s freight origination with the SUPPLIER. In the event of an interline shipment, the rates and charges set forth in the applicable Service Specifications will apply for the entire shipment. SUPPLIER will charge no more than such rates and charges, and will indemnify CUSTOMER against any request or requirement to pay SUPPLIER or any other party an amount above or in addition to the established rates and charges.
2. **Impossibility of Performance**

Neither party hereto shall be liable to the other for default in performance of any of the terms and provisions hereof if caused by fire, strikes or labor disputes, riot, war, the public enemy or acts of terror, Act of God, acts of public authorities, governmental order or regulation, inherent nature of the goods, or other similar contingency beyond the control of the respective parties. In the event of an occurrence, the affected party shall notify the other party promptly in writing, setting forth the particulars of the circumstances, its expected duration and steps they are taking to overcome the cause. Notice shall also be given after the effect of such occurrence has ceased.

1. **Liability for Loss or Damage**

Consistent with Section 8 of this Agreement, SUPPLIER shall be liable to CUSTOMER for any loss, damage or injury to shipments tendered to it for the purpose and under the terms of this Agreement. The measures of such liability shall be the full actual value of the lost, damaged or injured freight plus all direct incidental expenses arising from the loss, damage or injury as required below.

* 1. **US and Canada** - up to a maximum liability for loss and damage of five hundred thousand dollars ($500,000 USD) per occurrence for cargo.
	2. To the extent this Section 9 conflicts with any rights or remedies afforded by Title 49 U.S.C., and regulations promulgated thereunder, the parties hereby expressly agree to waive all such conflicting rights and remedies. The foregoing waiver is specific to this Section 9 and shall not apply to any other section contained in this Agreement.
	3. The filing and disposition of loss or damage claims shall be governed by 49 C.F.R., Part 370, as may be revised from time to time. Customer shall file a claim for loss or damage with Supplier within nine (9) months of the date of delivery or in the event of non-delivery within nine (9) months after a reasonable time for delivery has elapsed. Legal action for recovery must be instituted in a court of appropriate jurisdiction within two (2) years and one (1) day of CUSTOMER’s receipt of Supplier’s written declination.
1. **Indemnification**
	1. SUPPLIER hereby agrees to reimburse, indemnify, defend and save CUSTOMER, its parent, subsidiaries, affiliates, officers, directors, agents and employees, harmless from any loss, damage or expense, including reasonable attorneys fees, which CUSTOMER may suffer, sustain, or incur as a result of any violation or breach hereof or default hereunder by SUPPLIER, and as a result of any bodily injury or death to third parties or damages to property caused by SUPPLIER for any reason in the performance by SUPPLIER hereunder, except that SUPPLIER shall not indemnify CUSTOMER to the extent of such loss or portion of such loss as is directly attributable to the negligence and/or intentional misconduct of CUSTOMER. This section 10 excludes any cargo claims, which claims are subject only to those terms and conditions set forth in Section 9.
	2. CUSTOMER hereby agrees to reimburse, indemnify, defend and save SUPPLIER, its parent, subsidiaries, affiliates, officers, directors, agents and employees, harmless from any loss, damage or expense, including reasonable attorneys fees, which SUPPLIER may suffer, sustain, or incur as a result of any violation or breach hereof or default hereunder by CUSTOMER, and as a result of any bodily injury or death to third parties or damages to property caused by CUSTOMER for any reason in the performance by SUPPLIER hereunder, except that CUSTOMER shall not indemnify SUPPLIER to the extent of such loss or portion of such loss as is directly attributable to the negligence and/or intentional misconduct of SUPPLIER.
2. **Relationship of Parties**
	1. It is understood and agreed that in performing the services for CUSTOMER hereunder, SUPPLIER and its employees and its agents or contractors shall in all respects act only as independent contractors and not as employees or agents of CUSTOMER. SUPPLIER agrees further that neither it nor its employees, agents and contractors shall represent any of themselves as the agent or legal representative of CUSTOMER for any purpose whatsoever. SUPPLIER shall, with respect to all of its employees or those who are construed by Local, State or Federal authorities to be its employees irrespective of title who are assigned to provide work hereunder, comply with all requirements of State and Federal law with respect to Federal Withholding Tax, Social Security, State Withholding Tax, Unemployment Tax, Unemployment Compensation Tax, State Disability Laws, Workers Compensation and any other applicable laws affecting or regulating the employer/employee relationship (“Employment Related Benefits"). SUPPLIER further agrees that it will take all steps necessary to assure that any of its agents or contractors used to provide services hereunder shall be independent contractors of SUPPLIER who shall have no claims for Employment Related Benefits against CUSTOMER.
	2. SUPPLIER shall indemnify, defend and save CUSTOMER, its parent, subsidiaries, affiliates, officers, directors, employees, as well as its authorized dealers and their respective officers, directors and employees, harmless from and against any damages, losses, claims, demands, suits and liabilities that arise out of or result from, any failure by SUPPLIER to perform its obligations under this Section 11. SUPPLIER shall also indemnify, defend and save CUSTOMER harmless from any entitlement assertion or claim which any of SUPPLIER’s employees, agents or contractors might have or might make relative to rights or privileges in any CUSTOMER employees benefit plan which arises out of the SUPPLIER providing services hereunder.
3. **Insurance**

SUPPLIER shall furnish and maintain in force such insurance coverage as is named below(or equivalent) at the specified amounts required below, as well as any additional coverage which may be required by FMCSA regulations, and CUSTOMER shall be given at least ten (10) days notice in advance of any cancellation thereof. SUPPLIER shall list CUSTOMER as certificate holder for each of the following:

* 1. Commercial general liability insurance (or equivalent) (including blanketcontractual coverage) for bodily injury and property damage in the minimum combined single limit of (one million) $1,000,000 USD per occurrence or such greater amount as may be required of SUPPLIER, in general or for a shipment in particular, by federal, state, or local authorities.
	2. Commercial automobile liability insurance (or equivalent) for bodily injury (including death) and property damage in the minimum combined single limit per occurrence of (one million) $1,000,000 USD (for hazardous substance, (five million) $5,000,000 USD or any higher amount required by 49 CFR 1043.2(b)(2), subtitle B, chapter X) or such greater amount as may be required of SUPPLIER, in general for shipments in particular, by federal, state, or local authorities.
	3. Worker compensation insurance in full compliance with the laws of all of the states and provinces in which the transportation services shall be performed, covering SUPPLIER and its employees in such amounts as are required by such laws. Employer’s liability insurance in the amount of not less than (five hundred thousand) $500,000 USD combined single limit per occurrence.
	4. Cargo insurance which specifies coverage to the full actual value and with policy limits in an amount sufficient to cover the maximum full actual value of CUSTOMER’s freight which SUPPLIER transports up to a maximum liability for loss and damage of five hundred thousand dollars ($500,000 USD) per occurrence for cargo.
1. **Compliance**
	1. SUPPLIER agrees to comply with all applicable federal, state and local laws, regulations and ordinances and to indemnify CUSTOMER against all liability for SUPPLIER’s failure so to comply. The foregoing obligation includes without limitation compliance with all statutory, regulatory and contractual requirements that may be applicable to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Within the framework of its commercial dealings with CUSTOMER, SUPPLIER is obliged to desist from all practices which may lead to penal liability due to fraud or embezzlement, insolvency crimes, crimes in violation of competition, guaranteeing advantages, bribery, acceptance of bribes or other corruption crimes on the part of persons employed by SUPPLIER or other third parties. In the event of violation of the above, CUSTOMER has the right to immediately withdraw from or terminate all legal transactions existing with SUPPLIER and the right to cancel all negotiations.
	2. Notwithstanding the obligations set forth in Section 13.1, SUPPLIER shall comply with all laws, executive orders, and governmental rules and regulations applicable to its performance under this Agreement and its commercial relationship with CUSTOMER. Additionally, in performing under this Agreement, SUPPLIER agrees to comply with the standards and requirements for suppliers set forth in the latest version of MBST 36 and the Responsible Sourcing Standards which can be found on the Mercedes-Benz Supplier Portal (https://supplier.mercedes-benz.com).
2. **Inspection of Records/Right to Audit**
	1. SUPPLIER shall throughout the term of this Agreement and for a period of three (3) years after its expiration or termination keep up-to-date records with respect to all work and services performed hereunder in accordance with standard accounting and record keeping practices.
	2. The CUSTOMER upon reasonable notice to the SUPPLIER shall have the right to examine and/or audit any directly pertinent books, documents, papers, invoices and/or records (e.g. delivery receipts and claims reports) of the SUPPLIER relating to or involving transactions under this Agreement. The CUSTOMER right of examination and/or audit shall remain in effect for a period of three (3) years after the expiration of this Agreement.
3. **Notices**

All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed given upon personal delivery, by overnight carrier with confirmation of delivery, or upon the expiration of the second day after the date of deposit in the United States mail as registered or certified mail, return receipt

requested, postage prepaid, addressed to the parties attention Transportation Manager and cc General Council at same address or their then current address if notice of such change of address has been given pursuant to this Section:

**CUSTOMER:**

**Mercedes-Benz U.S. International, Inc.**

**Attn: Transportation Manager**

**ADDRESS:** **1 Mercedes Drive, Vance, AL 35490**

**With Additional Copy to: General Counsel**

**SUPPLIER: \*INSERT SUPPLIER NAME\***

**ATTN: Pricing Manager**

 **ADDRESS: \*INSERT SUPPLIER ADDRESS\***

1. **Assignments**

The rights and obligations hereunder are personal to each party to this Agreement, and this Agreement shall not be assignable or otherwise transferable by either party, in whole or in part, without the written consent of the other party.

1. **Nondisclosure**
	1. Both CUSTOMER and SUPPLIER agree that they will not make use of, reproduce, disseminate, or in any way disclose to any person, firm or business, any Confidential Information exchanged in relation to this Agreement, except to the extent necessary for negotiations, discussions, and consultations with personnel or authorized representatives of either the CUSTOMER or the SUPPLIER in connection with a potential business relationship.
	2. Both CUSTOMER and SUPPLIER agree that they shall disclose Confidential Information exchanged in relation to this Agreement only to those of its employees, contractors or other agents who need to know such Confidential Information and who have agreed in writing to be bound by terms and conditions substantially similar to, and no less restrictive with respect to limitations on use and disclosure than those of this Agreement.
	3. Both CUSTOMER and SUPPLIER agree that they shall treat all Confidential Information exchanged in relation to this Agreement with the same degree of care as it accords to its own Confidential Information, and represents that it exercises at least reasonable care to protect its own Confidential Information.
	4. Neither party shall communicate any information to the other in violation of the proprietary rights of any third party.
	5. Confidential Information shall not include any information that either: (a) was in the public domain at the time it was communicated to either party by the other; (b) entered the public domain subsequent to the time it was communicated to either party by the other, through no fault of either party; (c) was in either party’s possession, free of any obligation of confidence, at the time it was communicated to the CUSTOMER or the SUPPLIER; (d) was rightfully communicated to the either party by a third party, free of any obligation of confidence, subsequent to the time it was communicated to the CUSTOMER or the SUPPLIER; or (e) was developed by employees or agents of the either party independently of and without reference to any information communicated to the CUSTOMER or the SUPPLIER. In addition, either party may disclose Confidential Information in response to a valid order by a court or other governmental body, as required by law or as necessary to establish the rights of either party under this Agreement provided that each party is given prior notice of the intent to disclose to the extent reasonably practical and an opportunity to seek appropriate protection of the confidential nature of the information to the extent reasonably practical.
2. **Waiver**

The failure of either party hereto to insist in any one or more instances upon strict performance of any of the obligations of the other party pursuant to this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of the performance of any such obligation or relinquishment of any such right for the future.

1. **Attorney Fees**

In the event of any dispute or breach under this Agreement, the prevailing party shall be entitled, whether or not any action or arbitration is instituted, to recover from the other party its reasonable costs, disbursements, and attorney fees, including without limitation at trial, on appeal, on denial of any petition for review, and in connection with enforcement of any judgement.

1. **Choice of Law/Jurisdiction**

This Agreement is and shall be deemed accepted in the State of **Alabama**, and shall be governed, interpreted, construed and enforced in accordance with the laws of the State of **Alabama** applicable to contracts to be made and performed entirely within such state. The parties hereto agree that any suit or action brought pursuant to, to enforce or to construe this Agreement shall be brought and defended in the Circuit Court for the County of **Tuscaloosa**, State of **Alabama**, or the Federal Court for the Northern District of **Alabama.**

1. **Final Agreement; Modification; Savings Clause**

This Agreement together with its associated Service Specifications is the final and entire Agreement of the parties with respect to the subject matter and supersedes all prior or contemporaneous oral or written communications or agreements between the parties. It shall not be modified in any way except in a writing signed by the parties which expressly states that it is an amendment to this Agreement. If any provision of this Agreement shall become less than fully operative, the remaining portion thereof and all other provisions of this Agreement shall, nevertheless, remain in full force and effect. If the terms of any addendum to this Agreement should conflict with the Agreement; the terms of the addendum shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed below by their duly authorized representatives.

SUPPLIER: **\*INSERT SUPPLIER NAME\***

By:

Title:

Date:

By:

Title:

Date:

CUSTOMER: **Mercedes-Benz U.S. International, Inc.**

By:

Title:

Date:

By:

Title:

Date: