

## **SHIPPER/BROKER TRANSPORTATION AGREEMENT**

THIS SHIPPER/BROKER TRANSPORTATION AGREEMENT (this “Agreement”) is made and intended to be effective this 19th day of March, 2021 by and between Thoroughbred Direct Intermodal Services, Inc., a Pennsylvania corporation having offices at 5165 Campus Drive Suite 400 Plymouth Meeting, PA 19462 (“TDIS”) and \_\_\_\_\_, a \_\_\_\_\_ corporation having offices \_\_\_\_\_ (“Shipper”). Shipper and TDIS are sometimes individually referred to herein as a “Party” and together as the “Parties”.

### **RECITALS**

**A. WHEREAS** TDIS is licensed as a property broker by the Federal Motor Carrier Safety Administration (“FMCSA”) in Docket Number MC-371347 P, or by appropriate State agencies. As a licensed broker and an intermodal marketing company, Broker arranges for exempt and/or nonexempt intermodal freight transportation by rail, motor carrier and vendors providing cross dock and incidental warehouse services.

**B. WHEREAS** Shipper, to satisfy some of its transportation needs including the transportation of less-than-truckload freight (collectively, the “Lading”), desires to utilize the services of TDIS to arrange for transportation of Shipper’s Lading.

**NOW THEREFORE**, for and in consideration of the foregoing premises and the mutual agreements and provisions set forth in this Agreement, TDIS and Shipper, intending to be legally bound, agree as follows:

### **AGREEMENT**

1. **TERM**. Subject to Section 12, the term of this Agreement shall be for a one year period, commencing on the date first mentioned above, and shall automatically renew for successive one year periods; provided, however, that either Party may terminate this Agreement at any time on thirty (30) days written notice to the other Party, with or without cause, or as otherwise provided in this Agreement.

2. **SERVICE**. Shipper acknowledges that TDIS’s responsibilities are limited to arranging for, but not actually performing, transportation of Shipper’s Lading. TDIS agrees to arrange for freight transportation by rail carriers or rail transportation arrangers or providers (collectively, “Rail Carriers”) and local transportation by motor carriers (“Motor Carriers” and collectively with Rail Carriers, “Carriers” and each a “Carrier”) and vendors providing cross dock and incidental warehouse services (“Cross Dock Vendor”) of Shipper’s Lading pursuant to the terms and conditions of the respective Shipper’s bills of lading and in compliance in all material respects with all federal, state and local laws and regulations relating to freight transportation arranged under this Agreement. All rail transportation services provided by a Rail Carrier will be subject to the circulars, tariffs, directories, agreements, rules or policies governing transportation published by the Rail Carrier in effect at the time of shipment (each a “Rail Circular”). As such, Shipper agrees that TDIS shall act solely as a facilitator with respect to any claims for damage as discussed herein.

3. **NO EXCLUSIVITY**. Nothing in this Agreement shall prevent TDIS and Shipper from arranging and utilizing other persons or entities in satisfaction of its transportation needs.

4. **FREIGHT CARRIAGE**. TDIS warrants that it has entered into or will enter into contracts with each Motor Carrier (and the Rail Carriers if practicable) it utilizes in the performance of this Agreement. TDIS warrants that its contracts with the Rail Carriers will be no less favorable to Shipper than the provisions of the Rail Circulars. In order to interchange any intermodal chassis, container or trailer (“Intermodal Equipment”), each Motor Carrier engaged by TDIS must have entered into any equipment interchange agreement required by the applicable Intermodal Equipment provider.

5. **RECEIPTS AND BILLS OF LADING.** If requested by Shipper, TDIS will provide Shipper with proof of acceptance and delivery of such loads in the form of a signed Bill of Lading or Proof of Delivery, as specified by Shipper. Either Party, at its option, may supply any document required by or referenced in this Agreement in either paper or electronic form (including, but not limited to, an electronically imaged, faxed, photocopied, or online posted version), and any such version shall be sufficient for all purposes under this Agreement. Shipper's insertion of TDIS's name on the bill of lading shall be for Shipper's convenience only and shall not change TDIS's status as a broker. The terms and conditions of any documentation used by TDIS or a Motor Carrier selected by TDIS shall not be effective to the extent of any inconsistency with the terms of this Agreement.

6. **PAYMENTS.** Shipper is authorized to, and shall be responsible for, billing and collection from its shippers, consignees, and other parties responsible for payment of its charges. Shipper agrees to pay TDIS for agreed upon charges within fifteen (15) days of receipt of TDIS's invoice and proof of delivery. Shipper agrees that claims made against Carrier, Cross Dock Vendor, or TDIS may not be offset by customer, shipper, consignee or payer against freight charges otherwise owed to TDIS.

## **7. SHIPPER'S OBLIGATIONS.**

- A. **Application of Rail Circulars.** Shipper acknowledges that (1) Rail Carriers provide transportation services subject to the provisions, restrictions and limitations in their Rail Circulars, (2) the Rail Circulars address, among other matters, standards for loading, blocking and bracing standards, prohibitions and restrictions on certain types of commodities, limitations of liability, requirements for shipping hazardous materials, procedures and limitations on cargo claims, and requirements for proper descriptions of commodities, (3) applicable provisions of a Rail Carrier's Rail Circular in effect on the date of shipment will apply to any shipments transported by that Rail Carrier, (4) the Rail Circulars are generally available through the Rail Carrier's website, and (5) persons and entities that use intermodal transportation provided by the Rail Carriers should be familiar and comply with the provisions, restrictions and limitations of the Rail Circulars.
- B. **Shipping Instructions.** Shipper will provide necessary shipping instructions and will properly identify all cargo in the bill of lading or other shipping instructions provided to TDIS. Shipper will not tender any commodities restricted under the Rail Circulars, including but not limited to hazardous materials and waste; shipments valued more than the cargo insurance limits in Section 4B; oversize or overweight shipments; coiled or rolled products and commodities requiring protection from heat or cold, without properly identifying such shipments and making necessary prior arrangements for transportation thereof.
- C. **Proper Packaging, Count and Load.** Shipper agrees to ensure that proper packaging is used and that contents of packages are adequately and securely packed, wrapped and cushioned for transportation. TDIS shall have no liability for superficial damage to shipping containers. Shipper is responsible for causing all contents of shipments moving under this Agreement to be properly counted and recorded.
- D. **Inspection of Equipment.** Shipper will cause all empty containers or trailers tendered for loading to be inspected before loading and to reject any equipment that is not in apparent suitable condition to protect and preserve the cargo during transportation. Shipper will promptly notify TDIS of any rejected equipment.

- E. **Use of Equipment.** If Shipper requests that TDIS arrange for equipment to be dropped at a location for Shipper's convenience and left unattended by the Motor Carrier, Shipper and its consignors or consignees will not lose, damage or misuse the Intermodal Equipment and Shipper will pay for loss or damage to the Intermodal Equipment occurring during or as a result of such possession or use of the Intermodal Equipment if caused by Shipper or its consignees or consignor or their agents or employees.

8. **PROVISIONS REGARDING HANDLING OF CARGO AND CARGO LOSS AND DAMAGE.**

- A. **Liability.** Shipper understands and agrees that Carrier or Cross Dock Vendor, as applicable, is primarily liable for any loss, damage or delay and TDIS is not responsible for or liable for the acts or omissions of Carrier or Cross Dock Vendor. TDIS's sole liability with respect to loss or damage to shipment shall be to the extent that such loss or damage is caused by the intentional misconduct of TDIS. TDIS shall not be liable for loss, damage or for any delay to a shipment caused by an act of God, the public enemy, the authority of law, the inherent nature or vice of the goods (including but not limited to natural shrinkage), or resulting from an act or default of the shipper, consignee or customer. TDIS SHALL NOT BE LIABLE, AND HEREBY DISCLAIMS RESPONSIBILITY, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL PUNITIVE, OR MULTIPLIED DAMAGES OR OTHER INDIRECT COSTS, LOST PROFITS, FEES, LEGAL FEES, COURT COSTS, OR CHARGES OF ANY KIND ARISING FROM ANY CLAIMS FILED HEREUNDER OR ANY OTHER ACTS, INCLUDING DELAYS OR OMISSIONS OF TDIS, WHETHER FORESEEABLE, DISCLOSED OR NOT.
- B. **Claims for Damage or Loss.** As an accommodation to Shipper, TDIS will facilitate the investigation of cargo loss and damage claims under common carrier provisions as set forth in 49 C.F.R. Part 370. Claims for damage must be filed in writing to TDIS not more than nine (9) months from the date of delivery which, for export traffic is the delivery at the port of export and, for import traffic is the pickup at the place of tender. Claims for loss must be filed not more than nine (9) months from the date of the bill of lading.
- C. **Damage Evidence Requirements.** Delivery receipts without written notice of damage by the consignee will be evidence that the shipment was delivered in good condition. Visible loss or damage apparent at the time of delivery should be recorded in detail on the delivery receipt. Likewise, bills of lading containing written notice of damage at time the freight is tendered to Carrier shall be considered evidence that the freight was received damaged. TDIS, Carrier, or Cross Dock vendor shall accept no liability for damage claims stemming from the transport, handling or delivery of said freight.
- D. **Liability Limits.** Except as otherwise specifically provided herein, or modified to the extent specifically outlined in participating tariffs, in the event of loss of and/or damage to any shipment, liability for the damage or loss of freight will not exceed the lesser of:
- a. The actual value of the article(s);
  - b. \$2.00 per pound per lost or damaged package;
  - c. The lowest value of any new commodity contained in the shipment will be used if the Shipper does not properly describe the freight on the Bill of Lading or uses a description of "FAK" or "Freight All Kinds" or other language that does not properly identify the commodities shipped including subsequent claims for shortage or damage;
  - d. \$100,000 per shipment;
  - e. Any general statutory or regulatory domestic or international cargo liability limitations;

- f. **\$1.00 per pound per lost or damaged package for household goods; or**
- g. **The amount stated on any Carrier's or Cross Dock Vendor's coverage which controls any portion of the shipment's movement throughout transit of the shipment.**

E. **Used Commodities.** All commodities other than new (including household goods and personal effects), when accepted and transported, will be subject to a maximum liability of \$0.10 per pound with a maximum of \$5,000 per shipment.

9. **INSURANCE.** TDIS agrees to procure and maintain at its own expense, at all times during the term of this Agreement, insurance coverage amounts adequate to facilitate TDIS's obligations under this agreement. 10. **SURETY BOND.** Broker shall maintain a surety bond or trust fund agreement as required by the FMCSA in the amount of \$75,000 and furnish Shipper with proof upon request.

11. **HAZARDOUS MATERIALS.** Shipper and TDIS shall comply with all applicable laws and regulations relating to the transportation of hazardous materials as defined in 49 CFR §172.101 (or any successor regulation) to the extent that any shipments constitute hazardous materials. Shipper is obligated to inform TDIS immediately if any such shipments do constitute hazardous materials. Shipper shall defend, indemnify and hold TDIS harmless from any penalties or liability of **any** kind, including, without limitation, reasonable legal fees, arising out of Shipper's failure to comply with applicable hazardous materials laws and regulations.

12. **DEFAULT.** Both Parties will discuss any perceived deficiency in performance and will promptly endeavor to resolve all disputes in good faith. However, if either Party materially fails to perform its duties under this Agreement, the Party claiming default may terminate this Agreement on thirty (30) days written notice to the other Party. Shipper shall be responsible to pay TDIS for any services performed prior to the termination of this Agreement and for shipments not yet completed and/or not yet invoiced to Shipper. The Parties' obligations regarding indemnification, confidentiality, limitations of liability, time limits, and other provisions that by their nature should remain in effect after termination shall survive any termination of this Agreement.

13. **INDEMNIFICATION.** Shipper shall indemnify and hold harmless TDIS, its parent and affiliate companies, and their agents, employees, representatives, officers and directors, from and against any and all claims for loss, liability, or damage brought by a third party to the extent that such loss of life or personal injury or property loss or damage is case by the negligence of Shipper in connection with the transportation of Shipper's Lading.

## 12. **ASSIGNMENT / MODIFICATIONS OF AGREEMENT**

- A. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. This Agreement may not be assigned by either Party without the written consent of the other Party, except to any wholly-owned subsidiary of such Party and, except in the case of TDIS, an assignment in connection with the sale of substantially all of the assets of TDIS or merger by TDIS with or into another entity. No amendment or modification of the terms of this Agreement shall be binding unless in writing and signed by the Parties.

13. **SEVERABILITY / SURVIVABILITY.** If the operation of any portion of this Agreement results in a violation of any law, or a court of competent jurisdiction determines any provision to be invalid or unenforceable, the Parties agree that such portion or provision shall be severable and that the remaining provisions of the Agreement shall continue in full force and effect.

14. **INDEPENDENT CONTRACTOR.** It is understood between TDIS and Shipper that TDIS is not an agent for the Shipper, Carrier or Cross Dock Vendor and shall remain at all times an independent contractor. Shipper does not exercise or retain any control or supervision over TDIS, its operations, employees, or the Carriers or Cross Dock Vendor.

15. **NONWAIVER**. Failure of either Party to insist upon performance of any of the terms, conditions or provisions of this Agreement, or to exercise any right or privilege herein, or the waiver of any breach of any of the terms, conditions or provisions of this Agreement, shall not be construed as thereafter waiving any such terms, conditions, provisions, rights or privileges, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred. No waiver of any right, power, or privilege hereunder shall be binding upon any Party unless in writing and signed by or on behalf of the Party against which the waiver is asserted.

16. **NOTICES**. All notices under this Agreement will be in writing and will be deemed to be sufficient if (a) delivered personally, (b) sent by facsimile or e-mail transmission if confirmed by notice sent by one of the other notice methods permitted hereunder, (c) sent by nationally-recognized, overnight courier guaranteeing next business day delivery, or (d) mailed by registered or certified mail (return receipt requested), postage prepaid, to the Parties shown in the signature lines below.

All such notices and other communications will be deemed to have been given and received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of facsimile or e-mail transmission that is confirmed by notice sent on the same day by one of the other methods permitted hereunder, on the date of transmission if sent on a business day, (or if sent on other than a business day, on the next business day after the date sent), (c) in the case of delivery by nationally-recognized, overnight courier, on the business day following dispatch if sent by guaranteed next day delivery, or (d) in the case of mailing, on the third business day following such mailing.

17. **FORCE MAJEURE**. If performance by one Party is affected by any condition beyond the reasonable control of such Party, including without limitation, fire, labor strife, riot, war, weather conditions, acts of the public enemy, acts of God, acts of terrorism, local or national disruptions to transportation networks or operations, material equipment repairs, fuel shortages, governmental regulations, or governmental request or requisition for national defense, and provided that the applicable condition is not attributable to the acts or omissions of such Party, and such Party is taking reasonable measures to remove or mitigate the effects of the applicable condition, then the performance of obligations under this Agreement (other than Shipper's obligation to pay for services performed) affected by such condition shall be suspended during the continuance of such condition, and such Party shall promptly notify the other Party of such condition. Such period of suspension shall not in any way invalidate this Agreement, but on resumption of operations, any affected performance by such Party shall be resumed. The Carriers and Cross Dock Vendors engaged by TDIS shall be permitted an extension period equal to the period of suspension to complete shipments adversely affected by the suspension. Neither Party will incur any liability for damages resulting from such suspensions.

18. **CHOICE OF LAW**. All questions concerning the construction, interpretation, validity and enforceability of this Agreement, whether in a court of law or in arbitration, shall be governed by and construed and enforced in accordance with the laws of the State of Virginia, without giving effect to any choice or conflict of law provision or rule that would cause the laws of any other jurisdiction to apply.

19. **CONFIDENTIALITY**.

- A. **Publicity**. TDIS shall not utilize Shipper's name or identity in any advertising or promotional communications without Shipper's written consent.
- B. **Confidentiality**. The Parties agree that they shall not use or disclose any of the contents of this Agreement including but not limited to, all sales and marketing information received from each other or from shipper customers or carriers providing transportation services to them, financial information received, brokerage fees charged and received, non-brokerage fees charged and received, amounts charged to and paid by shippers, consignees or others responsible for payment,

amounts of freight charges billed and received, and motor carrier rates, given or exchanged with any person or entity (collectively, "Confidential Information") Confidential Information shall not include information that:

- i. Is or becomes available to the public through no breach of this Agreement.
- ii. Is already known to the recipient at the time of the disclosure.
- iii. Is subsequently received by the recipient from a third party that is not under a similar non-disclosure obligation to the disclosing party.
- iv. Is independently developed by personnel of the recipient that have no knowledge of relevant information disclosed under this Agreement; or
- v. Is required to be disclosed by law.

20. **ENTIRE AGREEMENT**: This Agreement, including all Appendices attached hereto, constitutes the entire agreement intended by and between the Parties and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed or implied, with respect to the subject matter hereof.

21. **COUNTERPARTS AND FACSIMILE EXECUTION**. This Agreement may be executed in two (2) or more counterparts, and each such counterpart will be deemed to be an original instrument and will be considered validly delivered and become effective when one or more counterparts have been signed by each of the Parties and delivered (by facsimile or otherwise) to the other Parties.

22. **CAPTIONS**. The captions set forth in this Agreement are for convenience only and shall not be considered a part of this Agreement nor affect in any way the meaning of the terms and provisions hereof.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed in their respective names by their fully-authorized representatives as of the dates first above written.

**TDIS**

**SHIPPER**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Print Name & Title

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