

AGREEMENT BETWEEN LICENSED TRANSPORTATION COMPANIES

This Agreement (Agreement) is made and intended to be effective on this _____ day of _____, 201___ by and between **Thoroughbred Direct Intermodal Services, Inc.** (TDIS) with offices located at 5165 Campus Drive Suite 400 Plymouth Meeting, PA 19462, a Pennsylvania corporation, MC# 371347, and _____, (a corporation), (LLC), (“MC# or FF# _____ “) with offices located at _____, (Party A). PARTIES for purposes of this Agreement shall include both TDIS and Party A, identified herein.

RECITALS

The Parties are licensed property transportation companies as noted above, and authorized by the FMCSA (Federal Motor Carrier Safety Administration, U.S. Department of Transportation) to arrange for the transportation of freight by motor vehicles (including draymen) and/or railroad intermodal service and desire to work with each other to arrange the transportation of freight on behalf of shipper customers.

This Agreement shall apply to transactions where the broker or freight forwarder providing the shipping customer(s) whose freight is to be transported, is designated as Party A, and the broker who contracts with motor carriers (including draymen), and/or rail carriers to transport freight, is designated as TDIS.

The licenses of the Parties are not subject to threatened, or pending revocation or suspension; each Party has and will maintain during the term of this Agreement the surety bond required of property brokers or freight forwarders to be on file with the FMCSA; and the Parties are, and will be during the term of this Agreement, in compliance with all applicable state and federal regulations pertaining to the operation of their businesses.

The persons signing this Agreement are authorized to do so and intend to bind their respective Parties.

NOW, THEREFORE, in consideration of the terms, covenants and conditions herein set forth, it is agreed:

1) TDIS Responsibilities: TDIS shall be solely responsible for exercising due diligence in selecting carriers for the performance of this Agreement, which includes, but is not limited to: verifying the carrier's operating authority (state and/or federal), obtaining proof of the carrier's insurance coverage, verifying the carrier does not have an "Unsatisfactory" safety rating with the FMCSA, executing a written contract with carriers, which includes carriers representation of compliance with all applicable state and federal safety regulations, and for intermodal shipments, contracting only with motor carriers who have executed, and represent that they are in compliance with the terms of a current Uniform Intermodal Interchange Agreement (UIIA).

2) Insurance:

- A. United States and Canada: TDIS shall procure and maintain its own insurance coverage and shall list Party A as a Certificate Holder with proof of insurance satisfactory to Party A of coverage not less than \$1,000,000 for General Liability, \$5,000,000 Auto Liability; and \$250,000 Cargo for domestic shipments within the United States or between the United States and Canada.
- B. Mexico: Shipments between Mexico and the United States are governed by international laws and liability and as such are not subject to the same insurance coverage listed in Item 2A above. TDIS Cargo liability for shipments to Party A and it's Shipper on any interline shipment between the

United States and Mexican rail ramp shall not exceed the liability of any other carrier in the movement.

- i. TDIS will extend the following coverage by carrier so long as claimant can establish that the loss or damage creating liability occurred while the interline shipment was in the possession of that carrier.
 - a. A maximum of \$50,000 US while in the possession of any Mexican rail carrier.
 - b. A maximum of \$250,000 US while in the possession of any United States carrier.
- ii. TDIS will limit Cargo liability to a maximum of \$50,000 for any interline shipment between the United States and Mexican rail ramp where the point of damage or loss cannot be established by the claimant
- iii. TDIS will not be liable to Party A or it's Shipper for cargo loss or damage that occurs once the cargo has been interchanged from the rail ramp in Mexico for shipments going to a consignee nor will TDIS be liable to Party A or it's shipper for cargo that has been picked up from a Shipper in Mexico till it has been interchanged received at the origin rail ramp in Mexico.

3) Prohibition Against Re-Brokering: TDIS shall not, nor allow a carrier to, re-broker, sub-broker, subcontract, assign, interline, or warehouse any shipments hereunder without the prior written consent of Party A.

4) Billings and Payments: Party A is authorized to, and shall be responsible for, billing and collection from shippers, consignees, and third parties responsible for payment of its charges. Party A shall pay TDIS for agreed upon charges (commissions and carrier charges as specified by rate schedule or load confirmations, which are hereby incorporated by reference) within fifteen days of receipt of TDIS's invoice and proof of delivery. TDIS shall pay the motor carrier(s)/railroads as required under its written contract(s) with such carrier(s) regardless of whether Party A timely pays TDIS. In the event that payments to carrier(s) are not made in accordance with the payment terms of the TDIS/carrier agreement(s), and the carrier is in compliance with that agreement, Party A may pay the delivering carrier(s) directly upon written notification to TDIS and, in so doing, shall discharge its entire obligation to pay TDIS. TDIS shall not bill or collect freight charges from Party A's customers/shippers, consignees, or other parties responsible for payment, provided Party A has complied with the terms of this Agreement.

5) Minimum Shipments: Party A shall offer at least one (1) shipment per year to TDIS.

6) 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") excluding information that,

A. Is or becomes available to the public through no breach of this Agreement.

B. Is already known to the recipient at the time of the disclosure.

- C. Is subsequently received by the recipient from a third party that is not under a similar non-disclosure obligation to the disclosing party.
- D. Is independently developed by personnel of the recipient that have no knowledge of relevant information disclosed under this Agreement, or
- E. Is required to be disclosed by law.

7) No Back-Solicitation: In recognition of the fact that each of the Parties has invested substantial effort and money in developing its customers and each Party may separately procure new accounts during the term of this Agreement, the Parties expressly agree that:

TDIS is a wholesale transportation company selling to companies operating under an MC or DOT number. TDIS will not sell directly to any Shipper or Consignee introduced by Party A. This non-solicitation provision shall be in force and effect during the term of this Agreement and for a period of one (1) year from the date of the termination of this Agreement for any reason.

If Shipper or Consignee provides written notice to TDIS that Party A has been terminated, TDIS may provide Intermodal Services to any carrier, broker or freight forwarder replacing Party A.

8) Term: Termination: This Agreement shall be in effect for a period of one year beginning with the date of signing by both Parties and shall be automatically renewed for like periods unless terminated by either Party for any reason, upon at least thirty days advance written notice. Termination of this Agreement shall not relieve either Party from completing and performing their obligations to each other and to carriers and/or shipper customers, or any of the obligations arising out of the terms contained in this Agreement. Unless otherwise provided herein, or agreed in writing in advance, neither Party shall be liable to the other for consequential damages of any kind.

9) Indemnification:

- A. TDIS shall indemnify and hold harmless Party A, 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 caused by the negligence of TDIS in performing the services provided by TDIS under this Contract (the “Indemnified Damages”).
- B. Party A 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 caused by the negligence of Party A in connection with this Contract (the “Indemnified Damages”).
- C. In no event shall the provisions contained in (a) and (b) above be construed to expand upon the remedies or limitations of remedies that are specifically set forth in this Contract.
- D. The indemnities extended above in subsections (a) and (b) above do not extend to any claim with regard to the loss of, damage to or delay of lading. The rights and obligations of the parties hereto with regard to such claims shall be governed by the provisions of the Norfolk Southern Intermodal Rules Circular series or successor publications.

E. Notwithstanding any provision of this Contract to the contrary and regardless of the nature of the cause of action (whether in contract, tort or otherwise), in no event shall either party be liable for any incidental, special, indirect, consequential or punitive damages whatsoever (including but not limited to lost profits, business interruption expenses, attorneys' fees, lost use of equipment, increased equipment rental or replacement cost and shipper's or consignee's liability to their own customers for liquidated damages or other damages) arising out of or related to the services provided under this Contract, even if advised of the possibility of such damages. Under no circumstances shall either party be entitled to recover its attorneys' fees and legal costs and expenses from the other party to this Contract.

10) Claims: Party A shall present all valid claims for loss or damage to cargo on behalf of its customers to TDIS within nine (9) months of the date of delivery, or in the event of non-delivery, within nine (9) months following a reasonable period of time for delivery. TDIS agrees to process all such claims in compliance with Title 49 C.F.R. Part §370, except that all such claims shall be settled by TDIS within one hundred and twenty days (120) of receipt. TDIS's liability for any cargo damage, loss, or theft from any cause shall be determined under the Carmack Amendment, 49 U.S.C. §14706. TDIS and Party A shall deal directly with each other in all claims situations. TDIS shall be liable to Party A for all valid claims of loss, damage or other liability from the transportation of freight under this Agreement. The Parties shall cooperate with each other in resolution of any such claim(s).

11) Disputes: In the event of a dispute arising out of this Agreement the Parties shall provide each other with 15 days prior detailed written notice in which to "cure" any alleged default. If no "cure" is completed (or is not substantially in process), legal proceedings may be commenced in not more than two (2) years from date of the last occurrence of default, in the state(s) in which either of them have their principal offices. Unless preempted or controlled by federal transportation law and regulations, the laws of the state of the Party commencing legal proceedings shall be controlling without regard to conflicts of laws principles. The Parties wave all objections to venue and jurisdiction in those states.

12) No Assignment: This Agreement may not be transferred, assigned, or pledged by either Party without prior written consent of the other Party. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their heirs, executors administrators, successors and assigns.

13) Notices: Unless the Parties notify each other in writing of a change of address, any and all notices required or permitted to be given under this Agreement shall be in writing (certified US mail, return receipt requested, or fax with machine imprint on paper acknowledging successful transmission) and shall be addressed as shown in the signature lines below.

14) Validity/Survival: If any provision of the Agreement shall be held invalid, illegal or unenforceable, the remainder of this Agreement shall not be affected and shall remain in full effect. The representations, rights and obligations of the Parties shall survive termination of this Agreement for any reason.

15) Waiver: No waiver of any provision of this Agreement, or of the breach thereof, shall be construed as a continuing waiver or shall constitute a waiver of any other provision or breach. This Agreement is for specified services pursuant to 49 USC 14101 (b). To the extent that the provisions herein are inconsistent with Part (b), Subtitle IV, of Title 49 USC (ICC Termination Act of 1995) the Parties expressly waive all rights and remedies they may have under the Act.

16) Independent Contractors: The relationship of the Parties to each other shall at all times be that of independent contractors.

17) Recitals: Headings: The Recitals above are contractual as well as recital. Paragraph headings are intended for convenience only, and shall not be considered substantive.

18) Integration: This Agreement contains the entire understanding of the Parties with respect to the subject matter contained herein, and supersedes all prior Agreements and understandings, verbal and/or written between the Parties with respect to such subject matter. The Parties intend that no extrinsic evidence may be introduced to reform this Agreement in any legal or equitable proceeding. This Agreement does not supersede any agreement that either party has with any shipper or carrier.

IN WITNESS whereof the Parties have signed this Agreement this ____ day of _____ 201_

_____ Authorized Signature	_____ Authorized Signature
_____ Print Name & Title	_____ Print Name & Title
_____ 5165 Campus Drive Suite 400 Address	_____ Address
_____ Plymouth Meeting , PA 19462-1308 City, State, Zip	_____ City, State, Zip
_____ (877) 250-2902 Phone Number	_____ Phone Number
_____ (610) 567-3390 Fax Number	_____ Fax Number
_____ E-Mail	_____ E-Mail