

ORIGINAL CONTRACT  
CONTRACT REGISTRY NO.

**TRUCKING SERVICE AGREEMENT**

This Agreement is made by and between THOROUGHbred DIRECT INTERMODAL SERVICES, INC. ("TDIS"), having its principal place of business at 5165 Campus Drive Suite 400 Plymouth Meeting, P A 19462, and \_\_\_\_\_ ("Contractor"), having its principal place of business at \_\_\_\_\_, to provide motor carrier service for TDIS under the terms and conditions specified herein. In furtherance of that object, the parties hereto, intending to be legally bound, mutually agree as follows:

**1) Effective Date. Term and Termination**

This Agreement shall become effective \_\_\_\_ and will remain effective for a period of sixty (60) months unless sooner cancelled on thirty (30) days prior written notice by either party for any reason or for no reason.

This Agreement is terminated at the end of the initial term unless renewed by TDIS, which renewal must be provided at least thirty days in advance of the termination date. Termination of this Agreement shall not release either party from any liability which either party incurs pursuant to this Agreement, and which arose hereunder prior to such termination.

**2) Authorization to Transport Equipment**

Contractor represents and warrants that it is a party to the Uniform Intermodal Interchange Agreement ("UIIA"), and has valid addenda to the UIIA in effect with all class I railroads. TDIS authorizes Contractor and its qualified drivers to move TDIS controlled and/or owned equipment (loaded or empty) from the terminal premises of TDIS or its agents to locations and facilities for delivery and/or pickup and to either return the TDIS controlled and/or owned equipment to the same terminal or to another location as directed by TDIS. Contractor may not use TDIS controlled and/or owned equipment for any purpose except for the movement of TDIS shipments and empty repositioning. Contractor's use of the TDIS controlled and/or owned equipment is subject to the provisions of the TDIS Rules Circular.

**3) Authority**

Contractor shall maintain all necessary authority, and shall comply with all applicable laws, regulations and rules, including without limitation those of the Surface Transportation Board, the Department of Transportation, and any governing state authorities. Contractor's drivers shall be competent, able, properly licensed, and shall meet all Department of Transportation qualifications, including medical, drug and alcohol standards.

**4) Service and Compensation**

Contractor agrees to provide, on demand by TDIS, motor carrier services to meet TDIS's distinct service needs, as described in Addendum 1, under the conditions, terms and for the compensation shown in that Addendum, which may be amended from time to time in writing by

mutual agreement between the Parties. Nothing contained herein shall require contractor to supply transportation equipment and drivers at any location(s) unless contractor has adequate notice to purchase and or lease transportation equipment and hire such additional drivers as TDIS's service needs require.

**5) Independent Contractor Status**

Contractor shall have the status of an "independent contractor". Contractor shall employ and direct all persons engaged in the performance of any and all of its services under this Agreement, and such agents, servants or employees are subject to the sole control and direction of Contractor, and shall not be agents, servants or employees of TDIS.

TDIS shall not have any authority to supervise or direct the manner in which Contractor shall perform the service to be rendered hereunder.

**6) Assignment and Subcontracting**

Contractor may not assign this contract without the express written approval of TDIS.

Contractor may enter into contracts with individual(s), partnership(s), or corporation(s) ("Subcontractor(s)") for performance on its behalf of services which Contractor herein agrees to perform, provide, however, that if the contract(s) are for other than short-term peak supplementary service, Contractor will first advise TDIS of its contract(s) and secure TDIS's approval, which approval will not be unreasonably withheld.

Contractor agrees to impose on any Subcontractor all of the requirements Contractor undertakes with respect to TDIS pursuant to its performance under this Agreement, and to be liable to TDIS for the Subcontract or in the same manner as though Contractor had performed the work itself. Contractor will assure that such Subcontractor is covered under Contractor's insurance policies for the work performed.

TDIS's rights and remedies against Contractor under this Agreement shall not be affected by any assignment or subcontract arrangement entered into by Contractor regardless of whether it is entered into with or without TDIS' s consent.

**7) No Back Solicitation**

Contractor agrees that under no circumstances will it communicate directly with customers introduced to Contractor by TDIS without the written permission of TDIS, except for operational purposes to facilitate the handling of a TDIS shipment. It is understood by Contractor that the provisions of this paragraph relate to back solicitation. Contractor agrees that neither it nor its employees, agents, subcontractors or affiliates will approach customers introduced to Contractor by TDIS for the purpose of selling its service directly or accepting traffic from such customers. However, the preceding sentence will not apply to Contractor with respect to customers that have purchased services directly from Contractor within two (2) years from the effective date of this Agreement. Notwithstanding the foregoing, however, Contractor is in no event permitted to back solicit traffic that it is handling for TDIS. The parties agree that the prohibitions described in this section shall continue during the term of this Agreement and for a period of one (1) year after termination of this Agreement. The parties agree that it would be difficult to determine the amount of actual damages TDIS would suffer for a breach of this

section, and accordingly agree to the amount of \$500 per shipment as liquidated damages, and not as a penalty, for each shipment that is tendered to Contractor, by any person, in violation of this section.

**8) Indemnification**

Contractor shall release, protect, indemnify, defend and hold TDIS, its parent(s), subsidiaries, affiliates, successors and assigns harmless from and against any and all loss, cost or expense, including without limitation, reasonable attorney's fees, in conjunction with any loss, damage, liabilities, claims, actions, investigations, proceedings, or lawsuits, whether actual or threatened, arising from any of the following:

a) Injury to or death of any person to the extent such injury or death is caused by or arises from the operations of Contractor, its employees, subcontractors, or agents, or the performance of Contractor under this Agreement, or by Contractor's breach of its obligations under this Agreement;

b) Loss, damage or destruction of any property (other than lading), including property of TDIS, caused by or arising from the performance by Contractor, its employees, subcontractors, or agents, of its duties and responsibilities under this Agreement, or by Contractor's breach of its obligations under this Agreement;

c) Loss, damage or destruction of any lading while in the possession of the Contractor, its employees or agents for which a common carrier would be liable under the terms of the Uniform Straight Bill of Lading, the provisions of 49 C.F.R. Part 1005 and 49 U.S.C. 11707 and other "loss and damage to lading" provisions of the applicable tariff, exempt circular, or contract under which the lading moved. This provision supersedes all other provisions governing loss and damage claims between Contractor and TDIS that would otherwise apply;

d) Material acts of misrepresentation, fraud, theft, embezzlement by Contractor, its agents, or employees;

e) Contractor's failure to comply with any rules, regulations, or requirements of any governmental entity having jurisdiction over Contractor's operations including the contractual services; and

f) Any discharge, leakage, spill or emission of any hazardous materials or pollutant being shipped in any trailer or container, provided TDIS gave Contractor notice that such trailer or container contained hazardous materials or pollutants, or Contractor otherwise knew or should have known of such hazardous material or pollutant contents.

In any claim, suit, action, demand or proceeding wherein TDIS seeks to enforce the terms of this Agreement and TDIS is successful, and in any claim, suit, action, demand or proceeding wherein Contractor seeks to enforce the terms of the Agreement and Contractor is unsuccessful, Contractor shall be liable for any and all costs and expense, including reasonable attorney's fees, incurred by TDIS.

TDIS shall release, protect, indemnify, defend and hold Contractor harmless from and against any and all loss, cost, or expense, including without limitation, reasonable attorney's fees, in conjunction with any claim, action, investigation, proceeding, or lawsuit, whether actual or threatened, arising from any of the following:

a) Injury to or death of any person to the extent such injury or death is caused by or arising from the negligence of TDIS, its employees, subcontractors, or agents;

b) Loss, damage or destruction of any property (other than lading) caused by or arising from the negligence of TDIS, its employees, subcontractors, or agents other than Contractor;

c) Material acts of misrepresentation, fraud, theft or embezzlement by TDIS, its agents or employees;

d) TDIS's failure to comply with any rules, regulations, or requirements of any governmental entity having jurisdiction over TDIS's operations including the contractual services; and,

In any claim, suit, action, demand or proceeding wherein Contractor seeks to enforce the terms of this Agreement and Contractor is successful, and in any claim, suit, action, demand or proceeding wherein TDIS seeks to enforce the terms of the Agreement and TDIS is unsuccessful, TDIS shall be liable for any and all costs and expense, including reasonable attorney's fees, incurred by Contractor.

## **9) Insurance Requirements**

Contractor, at its own cost and expense, shall procure and maintain insurance coverage satisfactory to TDIS, which shall include not less than the following coverage:

Worker's Compensation Insurance to meet fully the requirement of any Compensation act, plan, legislative enactment applicable in connection with the death, disability, or injury of Contractor's officers, agents, servants or employees arising directly or indirectly out of performance of the services herein undertaken;

II. Employer's Liability Insurance with limits of not less than \$500,000 each accident, \$500,000 policy limit for disease, and \$500,000 each employee for disease;

III. Commercial General Liability Insurance with a combined single limit of not less than \$2,000,000 per occurrence for injury to or death of persons and damage to or loss or destruction of property. Such policy shall be endorsed to provide products and completed operations coverage and contractual liability coverage for liability assumed under this Agreement. The contractual liability coverage shall be of a form that does not deny coverage for operations conducted within 50 feet of any railroad hazard. In addition, said policy or policies shall be endorsed to name TDIS and its parent(s), subsidiaries and affiliates as additional insureds, and shall include a severability of interests provision;

IV. Trucker's Liability Insurance with a combined single limit of not less than \$2,000,000 each occurrence for injury to or death of persons and damage to or loss or destruction of property. Such policy shall be endorsed to provide Form MCS-90 coverage as presently prescribed by the Federal Motor Carrier Safety Administration and shall meet all insurance

requirements of the Motor Carrier Act of 1980, as amended from time to time, and/or any other governmental regulation requiring insurance of motor carriers as a prerequisite for operating authority, as such Act or other regulation shall be implemented from time to time by any duly authorized government agency, regardless of whether such requirements would otherwise have applied to Contractor. Said policy or policies shall also be endorsed to name TDIS and its parent(s), subsidiaries, and affiliates as additional insureds, and shall include a severability of interests provision.

V. Insurance covering damage to lading or cargo with limits of not less than \$250,000 for freight in each trailer.

Contractor shall furnish certificates of insurance to TDIS, 5165 Campus Drive Suite 400 Plymouth Meeting, PA, Attn: Director of Assets, certifying the existence of such insurance. Each insurance policy required by this clause shall be endorsed to state that thirty (30) days advance written notice will be given to TDIS of any material change in, or cancellation of such insurance.

If Contractor uses "owner operators" or subcontractors, Contractor will assure the same insurance coverage is extended to cover any and all operations by said owner operators or subcontractors. The furnishings by Contractor of the above insurance, and acceptance of same by TDIS, is not intended, to, and shall not, limit, affect or modify the contractual obligations of Contractor under any provision of this Agreement. The existence of insurance obtained by TDIS covering any part or all of the operations covered by this Agreement shall not limit, affect, or modify the obligations of Contractor under any provision of this Agreement.

The insurance coverage required herein shall in no way limit the Contractor's liability under this Agreement.

## **10) Compliance with Law**

Contractor shall comply with all laws, rules, regulations, ordinances and orders, from any and all federal, state or local bodies including administrative agencies applicable to the operations and service to be performed by Contractor hereunder. This shall not include, but not limited to, employer's liability, worker's compensation and worker's insurance and, where applicable, the provisions of the Service Contract Act of 1965 (41 U.S.C. 351-358) and all regulations and directives made by any organization pursuant to that Act, all federal, state and local laws prohibiting discrimination, requiring affirmative action programs, or otherwise addressing the equal treatment of all persons, regardless of age, race, color, religion, sex, national origin or Vietnam Era Veterans, and all laws, rules, regulations, and requirements pertaining to the safe and lawful operation of motor vehicles.

Contractor accepts full and exclusive responsibility for the payment of contributions or taxes for unemployment insurance, old-age retirement benefits, pensions or annuities now or in the future imposed under law, which are measured with respect to wages, salaries, or other remuneration paid to persons employed by Contractor on work performed under this Agreement.

Contractor acknowledges that he has read and agrees to the terms of the Nondiscrimination provisions promulgated by the Federal Railroad Administration appended as Addendum 2, and the terms of the Service Contract Act of 1965 and the applicable wage determinations of the U. S. Department of Labor appended as Addendum 3.

**11) Severability**

Each provision of this Agreement shall be severable from every other. In the event that any provision or provisions of this Agreement shall be held to be null and void in a judicial proceeding or otherwise, such finding shall have no effect on the remaining provisions.

**12) Waiver of Breach**

The Waiver of a breach of any of the terms or conditions hereof shall be limited to the act or acts constituting such breach only, and shall not be construed as being continuing or permanent waiver permitting the commission of the same breach in the future. All terms and conditions shall be and remain in full force and effect as to future acts or happenings, notwithstanding any waiver or a breach in the past.

**13) Force Majeure**

In the event that any party is unable to perform as stated in this Agreement due to or as a result of one or more of the following causes: Act of God. including, but not limited to, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions; act of public enemy, war, blockade, insurrection, riot, fire; wreck, derailment, washout or explosion, strike, lockout or labor dispute, embargoes, economic conditions beyond control of the party(s), or governmental laws, orders or regulations beyond the reasonable control of the parties, the Agreement shall be suspended, but only for the duration and the extent of such disability.

Any party claiming Force Majeure shall promptly notify the other party by telephone, followed by written confirmation of the commencement of Force Majeure and of its nature and expected duration. The affected party will do everything possible to end the Force Majeure as promptly as possible and to resume service under the terms of this Agreement. The party claiming Force Majeure will also provide prompt telephonic and written notice of the termination of such disability. Neither party, however, shall be required to resolve a strike, lockout or other labor dispute in a manner that it alone does not deem proper and advisable.

**14) Notices**

Notices and modifications to this Agreement must be in writing and shall be sent to the parties identified below, via First Class Mail, e-mail, Fax or Express:

If to TDIS

If to Contractor:

TDIS  
Director of Operations  
5156 Campus Drive Suite 400  
Plymouth Meeting, PA 19462  
[Joe.Radecke@NS-direct.com](mailto:Joe.Radecke@NS-direct.com)

**15) Integration**

This Agreement, which includes all Addenda attached hereto, represents the entire understanding of the parties and supersede any prior written or oral understanding between the

parties, which shall be null and void. Any change, modification, addition to or deletion from this Agreement subsequent to its effective date must be in written form, signed by both parties.

**16) Independence of Management**

Contractor warrants and represents that no director, officer, employee, or agent of TDIS, its parent or affiliates, is a director, officer, employee or agent of Contractor, and that no director, officer, employee or agent of Contractor is a director, officer, employee or agent of TDIS, its parent or affiliates.

**17) Benefit of Parties**

This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto, and not any third parties. Nothing herein contained shall be construed as creating or increasing any rights in any third party to recover, by way of damages or otherwise against either of the parties hereto.

**18) Applicable Law**

This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be duly executed.

THOROUGHbred DIRECT  
INTERMODAL SERVICES, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_