

## **MASTER CONTRACT FOR MOTOR CARRIER SERVICE**

This Agreement is made by and between UNION PACIFIC DISTRIBUTION SERVICES COMPANY, a Delaware corporation (hereinafter "Company"), having offices at 206 South 19th Street, Omaha, NE 68102 and **Transload Name**, a **State** Corporation (hereinafter "Contractor"), having offices at **Address**

### **RECITALS:**

This Agreement states the terms and conditions under which Company agrees to use the transportation service of Contractor on a non-exclusive basis and Contractor agrees to provide such service as described in the attached Exhibit(s), and by this reference incorporated herein, which specifies the commodity(ies) to be transported, ("Commodity") the points between which such transportation shall be performed and the rates to be charged by Contractor for such service.

When used herein, the word "Railroad" shall mean Union Pacific Railroad Company, a Delaware corporation, which is Company's parent.

The parties are entering into this Agreement with the intent that it sets forth the terms and conditions for all current and future motor carrier service provided by Contractor for Company at the locations and rates identified in the attached exhibits, as amended from time to time.

### **AGREEMENT:**

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

#### **1. TERM:**

This Agreement shall become effective as of \_\_\_\_\_, and expire on \_\_\_\_\_, (hereinafter "Initial Term") and shall be automatically renewed for four (4) additional one-year periods unless either party gives the other party written notice at least sixty (60) days prior to the end of the Initial Term or the anniversary date of any subsequent term of its election to terminate this Agreement at the end of such period.

#### **2. INDEPENDENT CONTRACTORS:**

It is the intention and agreement of the parties that Contractor and its employees, agents and subcontractors will be and shall remain independent contractor (s) with its or their own employees and subcontractors and shall not be considered employees of Company or Railroad, and all provisions of this Agreement will be interpreted in accordance with that intent and agreement.

#### **3. AMENDMENT OF EXHIBITS AND CONTRACTOR SERVICES:**

The attached Exhibits identify the locations and rates at which Contractor shall provide motor carrier service for Company under the terms of this Agreement as well as obligations Contractor is expected to meet. The Exhibits may be amended from time to time, with the consent of the parties, to either add or delete locations at which Contractor shall provide service for Company. An amended Exhibit or Exhibits shall supercede all prior such Exhibits. The Contractor agrees to perform, either directly or through its agents or independent contractors, the following services (hereinafter the "Work):

- (a) Contractor shall provide motor carrier transportation of Commodity moving in continuance of interstate rail shipments or intrastate rail shipments as identified in the attached Exhibit(s).
- (b) Contractor, at Contractor's sole cost and expense, shall arrange to furnish all necessary equipment with competent persons in charge thereof and arrange for all other persons required to adequately furnish the services herein provided for. Contractor shall employ and/or contract with and direct (or

cause the employment and direction of) all persons performing any services hereunder, and such persons shall be competent and qualified to do the Work performed under this Agreement and shall remain subject to the control and direction of the Contractor, its agents or subcontractor(s), without limitation (even though they are working on or about the facilities and/or equipment of third parties).

- (c) Contractor represents and warrants that it is fully qualified and adequately equipped to perform the transportation service described herein and that Contractor will comply with all applicable regulations of the Department of Transportation, including without limitation drivers hours of service and records thereof, driver qualification and physical requirements, and equipment maintenance standards and reports.
- (d) Contractor, at its expense, shall provide all necessary equipment, (except rail cars), fuel, supplies, labor, tools and material, and shall maintain all such equipment in good repair and safe and efficient condition.
- (e) Contractor, its agents or subcontractor(s) shall pay all taxes, assessments, fees, and charges of any kind whatsoever imposed upon Contractor, its agents or subcontractor(s) for or because of the services to be performed by Contractor, its agents or subcontractor(s) for use of highways, use or operation of any equipment in such service or operation, or sale, purchase, or use of fuel or supplies for the equipment of Contractor, or Contractor's agents or subcontractor(s).
- (f) Contractor agrees to meet the loading and delivery schedule(s) specified by Company with respect to transportation of freight tendered to Contractor under this Agreement.
- (g) Inbound truckloads held at the Transload Facility, identified in Exhibit A, beyond the 48 hour loading time or in excess of agreed upon storage time shall be subject to a penalty charge of \$50.00 per truckload per twenty-four (24) hr. period, or any fraction thereof, (hereinafter "Penalty Charge"), and Contractor shall be responsible for payment to Company for such Penalty Charges.
- (h) Penalty Charges do not apply when loads are held at the request of Company or Company's Customer.
- (i) In the event Contractor fails to pay any Penalty Charges owed to Company within fifteen (15) days form the date of Company's bill therefore, Company reserves the right to deduct Penalty Charges from the Compensation due Contractor.

#### **4. COMPENSATION:**

All payments due the Contractor shall be made not later than thirty (30) days after receipt of bills by Company from Contractor. An assigned Vendor Code Number must be referenced on each bill submitted. Bills shall be submitted by Contractor to:

Union Pacific Distribution Services  
206 South 19th Street Suite 600  
Omaha, NE 68102  
Attn: Accounts Payable

**5. INDEMNITY AND INSURANCE:**

(a) To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Company and the Railroad, jointly and severally, and their respective affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against any and all loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with:

- (i) the Work, or
- (ii) any act or omission of Contractor, its officers, agents, employees or subcontractors, or
- (iii) any breach of this Agreement by Contractor.

(b) The right to indemnify under this Section shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

(c) Contractor expressly and specifically assumes potential liability under this Section for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify Company or Railroad under this Section. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

(d) No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against Railroad or the Company.

(e) The provisions of this Section shall survive the completion of the termination or expiration of this Agreement. In no event shall this Section or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

(f) The party against which a demand for indemnification is made under this Agreement shall have the right to control the settlement and defense of all claims and demands and shall have the exclusive right to select counsel to defend against any such matter.

(g) Contractor agrees to obtain at its sole cost and expense, and to keep in force during the life of this Agreement insurance coverage set forth in the **Exhibit Z** hereto attached and hereby made a part hereof.

**6. LIABILITY FOR LOSS AND DAMAGE:**

(a) A Commodity transported by Contractor under this Agreement shall be deemed to be in the possession of Contractor:

(i) from the time the Commodity is received by Contractor from a rail carrier, Company's Customer (or transloader) until the time the Commodity is delivered by Contractor to Company's Customer or a warehouse, or

(ii) from the time the Commodity is received by Contractor from a warehouse or Company's Customer until the time the Commodity is delivered by Contractor to a rail carrier, Company's Customer or transloader.

(b) Liability for loss, damage or delay claims upon Commodity transported by Contractor shall be apportioned between the parties as follows:

(i) Liability for claims for loss, damage, delay or detention to Commodity occurring while Commodity is in the possession of Contractor, as defined above, shall be assumed by Contractor.

(ii) All claims by Customers for Commodity loss or damage and the standards of performance of the parties hereto shall be governed by the provisions of Union Pacific Railroad Company's Master Intermodal Transportation Agreement (MITA) A copy of MITA can be obtained by contacting Company's representative. Customer claims shall be handled initially by Company with subsequent final settlement to be made between Company and Contractor with Contractor reimbursing Company for Contractor's proportionate share of any such claim.

(iii) Contractor shall assume liability for claims for concealed loss and damage on the basis that the highway mileage of the movement by Contractor bears to the total highway and rail mileage over which the shipment involved moved from consignor's place of business at origin to consignee's facility at destination.

(c) Contractor shall assist Company and Railroad in defense of claims or suits for loss, damage, delay or detention that accrued during the term of this Agreement.

(d) Contractor shall arrange for suitable inspection of Commodity upon arrival at the Transload Facility, and in the event of discovery of loss, infestation or damage to Commodity, Contractor shall immediately notify Company's Freight Claim Processing Office at Palestine, TX by telephone, 1-800-521-3252, as to such loss, infestation or damage.

## **7. REGULATIONS AND AUTHORITIES:**

(a) In the performance of the services hereunder, Contractor, its agents and subcontractor(s), shall comply with all applicable federal and state enactments with reference to Employers' Liability, Workmen's Compensation and Workmen's Insurance (and when requested by the Company, shall furnish proof of such compliance) and shall indemnify and hold harmless Company against and from any and all loss, liability, damages, claims, demands, costs, and expenses of whatsoever nature, including without limitation any claim of subrogation provided for in such enactments.

(b) Contractor covenants that Contractor has secured all necessary authority from the Surface Transportation Board and/or other regulatory bodies having jurisdiction over the services provided for herein, and Contractor covenants and agrees to comply strictly at all times with all laws, rules, regulations and ordinances, state, federal and municipal, applicable to operations and services to be performed by Contractor hereunder. Without limiting in any way the generality of the foregoing, Contractor covenants and agrees to furnish for the transportation to be performed hereunder equipment which conforms to all applicable laws, rules, regulations and ordinances, and which is adequate for transporting maximum loads permissible under governing highway laws, rules, regulations and ordinances. Contractor agrees to indemnify Company and to save it harmless from all liability for any failure or default on the part of Contractor with respect to the covenants and agreements set out in this paragraph

(c) Contractor warrants that it is competent and fully qualified to provide the services to Company as described in this Agreement

**8. RECORDS:**

Contractor shall keep records pertaining to operations under this Agreement and permit inspection thereof at reasonable times by authorized representatives of the Company during the term of this Agreement and for a period of three (3) years following expiration or termination of this Agreement.

**9. SOLICITATION OF COMPANY'S CUSTOMERS:**

Contractor expressly agrees that for the term of this Agreement and for a period of six (6) months subsequent to its expiration or termination, Contractor shall not solicit Company's customers or otherwise induce or attempt to induce any customers of Company to cease doing business with Company or in any way interfere with the relationship between Company and its customers.

**10. FORCE MAJEURE:**

If at any time during the term hereof either party is unable to keep, observe and perform its obligations herein by reason of Force Majeure (as hereinafter defined), then such performance shall be suspended for the period during which Force Majeure applies. The term "Force Majeure", as used herein, means any period during which either party is prevented from keeping, observing or performing its obligations hereunder due to causes or conditions beyond its control, as, by way of example, but not limited to, embargoes, strikes, lockouts or other defensive shutdowns, acts of God, governmental restriction, enemy actions, terroristic acts, civil commotion, fire or other casualty, storms, floods or other inclement weather conditions.

Written notice of the event causing Force Majeure and the dates of the beginning and termination of the Force Majeure condition shall be given by the party claiming Force Majeure to the other party.

**11. ASSIGNMENT:**

Neither party may assign this Agreement, in whole or in part or any interest arising under the Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that no such consent shall be required where assignment is to a successor in interest of all of the assets of such party by way of merger. Any assignment of this Agreement, whether voluntary, by operation of law or otherwise, without such consent in writing, shall be absolutely void, and at the option of the party whose written consent should have been obtained, this Agreement may be terminated. Subject to this Section, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

**12. CONFIDENTIALITY:**

Neither party may disclose any of the terms of this Agreement to any non-party without the prior written consent of the other party except (1) as required by law; (2) to a corporate parent, subsidiary or affiliate; (3) to auditors retained by a party for the purpose of assessing the accuracy of the charges, or (4) to any insurance provider of the parties if, the auditor, and/or insurance provider agrees in a legally binding instrument that it will abide by this confidentiality clause as if the auditor, and/or insurance provider were a party to this Agreement. Each party agrees to indemnify the other from and against any damage suffered by a party as a result of any disclosure by auditor(s), insurance provider(s) or otherwise in violation of this confidentiality provision.



**17. TERMINATION:**

(a) Notwithstanding the provisions of Section 1, this Agreement may be terminated upon the occurrence of any of the following:

(i) Either party will have the right to terminate this Agreement by giving not less than thirty (30) days advance written notice to the other party.

(ii) Company may immediately terminate this Agreement if at any time during the term of this Agreement, Contractor shall file, or there shall be filed against Contractor, in any court, pursuant to any statute either of the United States or any state, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of the property of the Contractor, and such petition is not discharged within thirty (30) days after the filing thereof, or if Contractor makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement, or permits its interest in this Agreement to be taken under any writ of execution or attachment.

(iii) Company may immediately terminate this Agreement should Contractor fail to correct a default in performance of its obligations hereunder within thirty (30) days of receipt of written notice by Company requesting that such correction(s) be made. Conditions, including default, for early termination by Company may be, but are not limited to safety and permit violations, shipper and/or receiver dissatisfaction, and/or impaired community relations.

(iv) Either party may terminate this Agreement upon ten (10) days written notice to the other party in the event of condemnation of all or a substantial part of the property that is essential to operation of this Agreement.

(v) This Agreement will automatically terminate without recourse by any party if Railroad ceases service to, abandons, sells or disposes of a line or station of Railroad essential to operation of this Agreement.

(b) Any notice of termination shall be given in writing and delivered via Certified U.S. Mail (Return Receipt Requested) or via overnight courier and shall include the effective date of such termination.

(c) Termination of this Agreement for any reason shall not relieve either party of its obligations hereunder which arise prior to the date of such termination.

**18. RELEASE OF LIENS:**

Company is not required to make any payment to Contractor unless Contractor shall previously have provided releases to Company and Railroad executed by all persons who have asserted or might have mechanic's or materialmen's liens, stop notices, or labor and material bond rights arising out of the Work performed under this Agreement.

**19. CHOICE OF FORUM:**

Litigation arising out of or connected with this Agreement may be instituted and maintained only in the District Court in the City of Omaha, Nebraska, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in those courts and consent to service of process issued by such courts. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Nebraska.

**20. MODIFICATION - ENTIRE AGREEMENT:**

No modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by Contractor and Company and specifying with particularity the nature and extent of such modification or amendment. This Agreement and the Exhibit(s) attached hereto and made a part hereof, as amended from time to time, constitute the entire understanding between Contractor and Company and cancel and supercede any prior negotiations, understandings and agreements, whether written or oral, with respect to the Work or any part thereof. Upon execution of this Agreement by both parties this Agreement will supercede and cancel all previous agreement (s) covering operations at points listed in the attached Exhibit(s)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written:

**COMPANY NAME**

**UNION PACIFIC DISTRIBUTION SERVICES,**

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

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

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

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

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

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

**EXHIBIT Z**  
**CONTRACT INSURANCE REQUIREMENTS**  
**Transloading First Party Contractors**

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

**Commercial General Liability** This insurance shall contain a single limit of at least \$1,000,000 each occurrence or claim and an aggregate limit of at least \$2,000,000 and contain broad form contractual coverage. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- ◆ Bodily injury including death and personal injury
- ◆ Property damage
- ◆ Fire legal liability
- ◆ Products and completed operations

Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- ◆ Bodily injury including death and personal injury
- ◆ Property damage
- ◆ Fire legal liability
- ◆ Products and completed operations

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance**:

- ◆ "The workers compensation and employee related exclusions in the above policy apply only to Contractors employees."

**B Business Automobile Coverage** insurance. This insurance shall contain a combined single limit of at least \$5,000,000 per occurrence or claim, including but not limited to coverage for the following:

- ◆ Bodily injury and property damage
- ◆ Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance**:

- ◆ "The workers compensation and employee related exclusions in the above policy apply only to Contractors employees."
- ◆ Motor Carrier Act Endorsement- Hazardous Materials clean-up MCS-90 if required by law
- ◆ Intermodal Interchange covering physical damage to non-owned trailers with limits of at least \$25,000 per trailer

**C. Workers Compensation and Employers Liability** insurance including but not limited to:

- ◆ Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- ◆ Employers' Liability (Part B) with limits of at least
  - (i) \$500,000 each accident, \$500,000 disease policy limit
  - (ii) \$500,000 each employee

If Workers Compensation insurance will not cover the liability of Contractor in states that require participation in state workers' compensation fund, Contractor shall comply with the laws of such states. If Contractor is self-insured, evidence of state approval must be provided along with evidence of excess

workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall also contain the following endorsement **to be indicated on the certificate of insurance:**

- ◆ Alternate Employer Endorsement (WC 00 03 01A)
- ◆ FELA (WC 00 01 04)

**D. Umbrella or Excess Policies** In the event Contractor utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

**E. Motor Truck Legal Liability** insurance equal to the replacement costs of the property and covering all risks of physical loss or damage to property of others in the Contractor's care, custody and control

### **Other Requirements**

**F.** Punitive damage exclusion must be deleted, **which deletion shall be indicated on the certificate of insurance.**

**G.** Contractor's insurance shall be primary with respect to any insurance carried by Railroad.

**H. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and have attached the following endorsements: CG 24 27 10 01, CG 24 04 10 93, CG 20 33- which names Railroad and Company as additional insured. The coverage provided to the Company and Railroad as additional insureds shall provide coverage for the Company's and Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the Indemnity provisions of this Agreement. All endorsements must be indicated on the certificate of insurance.**

**I.** Prior to commencing the Work, Contractor shall furnish Company with original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Company in writing of any cancellation or material alteration. **Upon request from Company, a certified duplicate original of any required policy shall be furnished.**

**J.** Any insurance policy shall be written by a reputable insurance company acceptable to Company or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

**K.** Contractor **WARRANTS** that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement and acknowledges that Contractor's insurance coverage will be primary.

**L.** If Contractor fails to procure and maintain insurance as required, Company may elect to do so at the cost of Contractor plus a 25% administration fee.

**M.** The fact that insurance is obtained by Contractor or Company on behalf of Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad or Company shall not be limited by the amount of the required insurance coverage.

**EXHIBIT  
(Drayage)  
City, State  
TRANSLOAD AND DRAYAGE AGREEMENT  
DATE EXHIBIT CREATED:  
TRANSPORTATION RATES  
FREIGHT, ALL KINDS, IN VANS (ON FLATS)  
BETWEEN POINTS SHOWN**

This Exhibit is part of and subject to the Agreement of the above date between Contractor and Company.

**I. COMMODITY DESCRIPTION**

Freight, all kinds, moving as continuances of interstate shipments or intrastate shipments.

**II. TRANSPORTATION RATES**

Between contract warehouse and the following city(ies)

**A. origin points or delivery destinations:**

**Rate/TL:(Based on a 42,000lbs minimum net weight per truckload)**

Origin or Destination:	Rate:

**III. ACCESSORIAL CHARGES**

(Contractor to bill any extra charges directly to the Customer.

UPDS requires advance approval prior to accepting and paying any **accessorial invoices**)

Driver Assistance	\$	per hour.
Pallet Exchange	\$	per truckload.
Hand load/unload	\$	per hour.
Free Time	\$	one (1) hour load/two (2) hour(s) unload.
Detention Charge	\$	per hour, 1/4 hour minimum.
Stop Charge	\$	per stop.

Special Notes Section

Exhibit Amendment Section

**Contractor hereby agrees to and accepts this Exhibit as being effective this date, understanding that this Exhibit supercedes all prior Exhibit's to this contract which are hereby cancelled.**

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
UPDS

\_\_\_\_\_  
Date

\_\_\_\_\_  
Amnd#