



Agent Carrier Transportation Contract

APPENDIX D

MUTUAL CONFIDENTIALITY & NONCOMPETE AGREEMENT

PARTIES. This Agreement is between TDS, Inc. ("TDS") and _____ ("Carrier"), each having the address as set forth below.

1. BACKGROUND AND PURPOSE OF DISCLOSURE

Carrier and TDS are evaluating or are engaged in a business relationship (the "Project(s)"), during which the parties will disclose to each other certain valuable confidential and proprietary information.

2. DESCRIPTION OF CONFIDENTIAL INFORMATION

Each party's interest in the Project and the fact that the parties are working together on the Project is confidential information. Unless such information falls within the exceptions set forth below, any and all information disclosed by one party to the other, which by its nature is generally considered proprietary and confidential, disclosed in any manner and regardless of whether such information is specifically labeled as such, also is considered confidential information, (hereinafter any and all such information shall be collectively referred to as "Confidential Information").

3. AGREEMENT TO MAINTAIN CONFIDENTIALITY

Each party shall hold any Confidential Information disclosed to it in confidence, and shall cause its employees, agents or other third parties to hold such Confidential Information in confidence, and to use the same standard of care used to protect its own proprietary and confidential information in protecting the Confidential Information. The recipient shall not disclose the Confidential Information to others or use it for purposes other than the Project. Nothing in this Agreement shall prevent TDS, in connection with the Project, from disclosing to its subsidiaries any Confidential Information received from Carrier. Notwithstanding anything in this Agreement to the contrary, each party's obligation to hold any Confidential Information disclosed to it in confidence shall not be construed to limit either party's right to independently develop or acquire products or enter into business relationships with parties in the same field as the other party, without the use of such other party's Confidential Information. Further, either party shall be free to use for any purpose the residuals resulting from access to the other party's Confidential Information, provided that each party otherwise maintains the confidentiality of the Confidential Information as provided herein. The term "residuals" means information in non-tangible form which, without the premeditated intent to memorize, may be retained by persons who have had access to the ideas, concepts, know-how or techniques described by or contained in the Confidential Information. The foregoing shall not be deemed to be a grant of a license under the disclosing party's copyrights or patents.

4. LIMITED DISCLOSURE

The recipient further agrees to limit disclosure of Confidential Information to those employees or agents necessary for the Project who have agreed to be bound by the obligations herein.

5. SOLICITATION

From the effective date of any Appendix or Addendum and for the duration of any TDS/Shipper Agreement, CARRIER agrees not to solicit TDS-managed transportation business directly from the Shipper referenced in the applicable Appendix or Addendum. If Carrier breaches this provision, Carrier shall pay liquidated damages to TDS equal to **fifteen (15%)** percent of the total revenue received from Shipper for a period of **twelve (12)** months after Carrier's first violation of this provision. Carrier agreements in existence prior to the TDS/Shipper relationship will



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not be subject to this provision. Upon the expiration of any TDS/Shipper Agreement, Carrier is no longer bound by this provision.

6. EFFECTIVE DATE AND LENGTH OF OBLIGATION

This Agreement is effective as of the last date of execution by both parties and may be terminated by either party at any time upon written notice. The recipient's obligation of confidentiality and non-use for Confidential Information hereunder shall last for **three (3) years from** the date of such written notice.

7. EXCEPTIONS TO CONFIDENTIAL INFORMATION

Confidential Information shall not include any information which (a) was publicly available at the time of disclosure; (b) became publicly available after disclosure without breach of this Agreement by the recipient; (c) was in the recipient's possession prior to disclosure, as evidenced by the recipient's written records, and was not the subject of an earlier confidential relationship with the disclosing party; (d) was rightfully acquired by the recipient after disclosure by the disclosing party from a third party who was lawfully in possession of the information and was under no obligation to the disclosing party to maintain its confidentiality; (e) is independently developed by the recipient's employees or agents who have not had access to the Confidential Information; or (f) is required to be disclosed by the recipient pursuant to judicial order or other compulsion of law, provided that the recipient shall provide to the disclosing party prompt notice of such order and comply with any protective order imposed on such disclosure.

8. RETURN OF CONFIDENTIAL INFORMATION

At any time requested by the disclosing party, the recipient shall return or destroy all documents, samples or other materials embodying Confidential Information, shall retain no copies thereof, and shall certify in writing that such destruction or return has been accomplished.

9. JOINTLY DEVELOPED CONFIDENTIAL INFORMATION

All Confidential Information disclosed in connection with the Project shall remain the exclusive property of the disclosing party. Nothing in this Agreement grants the recipient any rights in or to the Confidential Information of the other. However, as a result of the mutual exchange of Confidential Information hereunder, it is possible that new ideas, inventions and other Confidential Information may be jointly developed by the parties. Jointly developed Confidential Information shall include new information created by combining Confidential Information of each party and new information developed during or resulting from the Project which cannot be proven by written evidence to be the Confidential Information of either party. If jointly developed information results from the Project, the parties agree to negotiate a mutually acceptable written agreement setting forth the rights and obligations of the parties. In the absence of an agreement, neither party shall have the right to use or disclose jointly developed Confidential Information.

10. DISCLAIMER OF OTHER RELATIONSHIPS

This Agreement does not create a relationship of agency, partnership, joint venture or license between the parties. This Agreement does not obligate either party to purchase anything from or sell anything to the other party, and each party acknowledges that the other party may enter into (a) other similar activities, and/or (b) business relationships with third parties, provided no Confidential Information of the other party is disclosed or used. Unless authorized in writing by the party to be bound, neither party shall have the authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other.

11. GOVERNING LAW



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This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to conflicts of law principles. The parties hereby submit and consent to the jurisdiction of the federal and state courts of Webb County, Texas, for purposes of any legal action or proceeding arising out of this Agreement.

12. AMENDMENTS

This Agreement supersedes all previous agreements between the parties regarding the Confidential Information and cannot be canceled, assigned or modified except by the written agreement of both parties.

13. BREACH

In the event a recipient breaches the term(s) of this Agreement, the disclosing party shall have the right to (a) terminate this Agreement and/or demand the immediate return of all Confidential Information; (b) obtain injunctive relief to prevent such breach or to otherwise enforce the terms of this Agreement; and (c) pursue any other remedy available at law or in equity. Failure to properly demand compliance or performance of any term of this Agreement shall not constitute a waiver of a party's rights hereunder.

Date: _____

Date: _____

TDS, Inc.

Agent Name

Carrier Name

By: _____
Signature

By: _____
Signature

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Telephone: _____

Telephone: _____

Fax: _____

Fax: _____