

**WAREHOUSE SERVICE AGREEMENT  
("AGREEMENT")**

**THIS AGREEMENT** is entered into as of the \_\_\_ day of \_\_\_\_\_, 201\_\_,

**BETWEEN:**

**DIRECT INTEGRATED TRANSPORTATION ULC  
d/b/a DIRECT DISTRIBUTION CENTRES  
( "Service Provider" )**

**AND:**

**ABC COMPANY, INC  
( "Customer" )**

**WHEREAS** the Customer requires storage, handling and transportation services to enable the Customer to carry on its business;

**AND WHEREAS** Service Provider is engaged in the provision of storage, handling and transportation services;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the promises and of the covenants and agreements herein contained, the Parties hereto do hereby covenant and agree each with the other as follows:

**1. Definitions**

- 1.1. "Parties" means, collectively, Service Provider and the Customer and "Party" means either one of them as the context requires;
- 1.2. "Person" means a natural person, firm, trust, partnership, association, corporation, syndicate, government or governmental board or agency;
- 1.3. "Goods" means such products or commodities that the Customer designates and Service Provider agrees to store, handle or transport from time to time; and
- 1.4. "Services" means the storage, handling and transportation services requested by Customer and provided by Service Provider as set forth in **Schedule "A"** ("**Scope of Work**") herein.

**2. Term**

- 2.1. This Agreement and all Schedules herein shall be effective \_\_\_\_\_, **201\_\_** (the "**Effective Date**") and shall continue for a term of two year(s) until \_\_\_\_\_, **201\_\_** (the "**Initial Term**") unless terminated earlier under the provisions contained in this Agreement.
- 2.2. Parties agree to discuss renewal of Agreement one hundred and twenty (120) days prior to the expiry of the Initial Term. Any renewal, and terms and conditions thereof, must be agreed upon by the Parties in writing

**3. Services**

- 3.1. Service Provider shall in general provide the equipment, facilities and personnel necessary to provide the Services at Service Provider's facilities set forth in **Schedule "A"**.
- 3.2. The responsibility of the Service Provider is the reasonable care and diligence required by the laws of the province where the Goods are stored.
- 3.3. Customer shall provide a list of the Goods that will be stored, handled or transported. Customer represents and warrants that Customer is lawfully possessed of the Goods and has the right to and authority to store them with Service Provider.

- 3.4. Customer may, subject to the Service Provider's security and insurance regulations and other reasonable limitations, have access to the Goods at any reasonable time, provided the Customer or his authorized representative is accompanied by an employee of the Service Provider.
- 3.5. No explosives, other dangerous article or Goods that are or may become spoiled and that may, in the opinion of Service Provider, create a condition hazardous to any personnel or Goods ("hazardous Goods") in the warehouse shall be delivered to the warehouse and any such hazardous Goods may, upon being discovered, be destroyed, dumped, sold or otherwise disposed of as the Service Provider reasonably sees fit, the whole at the risk and expense of the Customer. Service Provider shall have the right to require the removal from its premises, any hazardous Goods, at any time without stated reasons, upon written notice of not less than thirty (30) days.

#### **4. Subcontractors**

- 4.1. Service Provider agrees that, in the event it engages subcontractors to perform Services hereunder, it will be a term and condition of such subcontract agreement that the subcontractors agree to comply with all the provisions of this Agreement; provided however that such engagement of any subcontractors shall not relieve Service Provider of its responsibilities to the Customer hereunder for the portion of the Service subcontracted to the subcontractor and for the purposes of this Agreement such engagement shall be considered as if Service Provider itself were performing the service. No contractual relationship shall be implied between any subcontractor and the Customer.

#### **5. Compensation and Invoicing**

- 5.1. In consideration of the Service, the Customer shall compensate Service Provider in accordance with the rates set forth in **Schedule "B" ("Rate Schedule")**.
- 5.2. Any proposed change to the Rate Schedule shall be presented by Service Provider to Customer in writing and any change in rates will be subject to mutual agreement after good faith negotiations. To the extent a rate change is not agreed to, Service Provider shall have the right to terminate this Agreement upon not less than thirty (30) days written notice. Any proposed change in the Rate Schedule may be made by Service Provider:
- 5.2.1. At any time during the term of this Agreement based on a change in the Scope of Work or unforeseen changes in Service Provider's operational expenses, including but not limited to items such as licensing or other regulatory costs, insurance, maintenance and labour costs.
- 5.2.2. By Service Provider, annually, on the anniversary date of this Agreement. Rates will be adjusted by the Consumer Price Index ("CPI") (All-Items) for the Province in which services are provided. The source information for the rate change shall be provided by Statistics Canada at <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/cpis01a-eng.htm>
- 5.3. Service Provider shall invoice the Customer for all charges due and owing. Customer agrees to pay the invoices as submitted, without deduction or hold back, within thirty (30) days after receipt. Overdue amounts will be subject to an interest charge of two percent (2%) per month. Any dispute as to the amount of the invoice shall be promptly resolved by Service Provider and the Customer. Claims for loss or damage to Product shall not be deducted from invoices, but shall be handled separately. All invoices to be paid in Canadian Funds.
- 5.4. Payment of an invoice shall not prejudice the right of the Customer to protest or question the correctness thereof; provided however, that all statements rendered to the Customer shall be conclusively presumed to be true and correct three (3) months following the submission thereof unless within the said three (3) month period the Customer takes written exception thereto and submits a claim to Service Provider for adjustment. The Customer, upon advanced written notice to Service Provider, shall have the right to audit Service Provider's records during normal business hours solely to confirm the correctness of any invoice.
- 5.5. Service Provider shall have a lien upon, right of retention and security interest in all Goods of Customer at any time heretofore and hereafter deposited by Customer in any warehouse operated by the Service Provider. Such lien, right of retention and security interest shall be for all charges, advances and expenses in relation to such Goods of Customer, whether or not heretofore released from the warehouse. In the event of nonpayment of any such amounts, Service Provider has the right, after reasonable notice, to sell or otherwise dispose of the Goods in a commercially reasonable manner to satisfy his lien, with such sale or disposal being at the expense of Customer. The net proceeds of any sale of the Goods may be applied in or towards satisfaction of the

indebtedness to Service Provider, and Service Provider will not be liable for any deficiencies or reduction in value received on the sale of the Goods and Customer shall not be relieved from any liability, other than to the extent of the net proceeds realized from the sale, due to the sale of the Goods.

## **6. Confidentiality**

6.1. The Parties agree that all rates, data and information provided or to be provided in connection with the Services shall be kept confidential by the Party receiving such data and information, and the receiving Party shall neither disclose such rates, data and information to any third party without first obtaining the written consent of the disclosing Party, nor use such rates, data and information for any purpose other than that relating to the provision of Service herein. All rates, data and information shall remain the property of the Party providing such rates, data and information. It is understood and agreed that the Rate Schedule is and shall remain the property of Service Provider and, as such, shall be subject to the provisions of this Section.

## **7. Non-Solicitation**

7.1. The Parties agree that they will not, during the period in which Services are provided and for a period of (1) year following, directly or indirectly, whether for themselves or any other Person, or other entity affiliated with the other Party, without the prior written consent of the other Party: (i) employ or engage or contract; (ii) solicit for employment engagement or contract; (iii) encourage to leave their employment or engagement; or (iv) encourage to terminate their contract any employee, consultant or independent contractor, who was involved in the Service provided to the Customer.

## **8. Documentation**

- 8.1. All incoming shipments should be consigned to the Customer c/o the Service Provider, freight prepaid. Service Provider reserves the right to refuse acceptance of any Goods improperly consigned or shipped freight collect.
- 8.2. If a Checker is not furnished by the Customer or its transportation company, the Service Provider's load or unload count shall be conclusively deemed to be correct.
- 8.3. It is the Customer's responsibility to provide the Service Provider in advance with detailed written information and instructions on any of its Goods that may be considered hazardous, whether or not they are regulated under the *Transportation of Dangerous Goods Act* or other applicable legislation, and the Customer assumes all liability for costs incurred and/or damages resulting from his failure to do so.
- 8.4. Service Provider shall have no responsibility for error resulting in corruption of electronically transmitted data, or from verbal or telephoned shipping instructions, unless written confirmation of such instructions is received not less than twenty-four hours prior to the shipment of Goods.
- 8.5. When errors in shipment occur, any liability of the Service Provider shall be strictly limited to the transportation costs involved to rectify any such error, and shall not, under any circumstances include liability for damages due to the acceptance or use of said Goods. The Service Provider shall not be liable for consequential damages of any kind whatsoever.

## **9. Ownership of Goods**

9.1. Except as set forth in Section 5.5, title to the Goods shall at all times remain with the Customer.

## **10. Indemnification**

10.1. Each Party shall indemnify, defend and hold the other Party harmless from all losses, damages, expenses (including reasonable attorney's fees), actions and claims for injury or death to persons and damage to property (including the property of the Customer or its employees but excluding the Goods) asserted against other such Party by any person (including, without limitation, Service Provider's and the Customer's employees) arising out of or resulting from the performance of this Agreement or its subcontractors, agents, or employees except to the extent caused by the actions of the other Party, its agents or employees.

## 11. Liabilities and Claims for Product Loss

- 11.1. The quality, condition, contents and value of Goods are not known to the Service Provider except as declared by the Customer and described on the face of the shipping documentation.
- 11.2. All Goods are stored and transported at the Customer's risk of loss, damage or delay in delivery caused by or through poor transportation or transport provider loading/unloading methods, inaccuracies, obliteration or absence of marks, numbers, address or description, Act of God, irresistible force, enemies of the Queen, civil or military authorities, insurrection, riot, strikes, picketing or any other labour trouble, water, steam, sprinkler leakage, floods, rain, wind, storm, fire, frost, vermin, heating or corrosion, deterioration, drainage, dampness, rust, decay, collapse of the building, inevitable accident, depreciation or perishing by the elapse of time, changes in temperature, contact with or odours from other Goods, inherent defects, lack of any special care or precaution, injury to articles insufficiently protected or arising from the nature of the Goods, loss in weight, insufficient cooperage, boxing, crating or packing, ordinary wear and tear in handling, leakage, concealed damage or any cause beyond the control of the Service Provider or failure to detect any of the foregoing. All storage and other applicable charges must be paid on Goods stored for additional time, or lost or damaged by any of the above causes.
- 11.3. Subject to section 11.8, for Goods in the warehouse, the legal liability of the Service Provider shall be strictly limited to the lesser of the monetary amount of the damage incurred (based on manufacturers' cost of goods) or 100 times the monthly storage rate on any stored unit with the contents (or, in cases where the warehouseman's charges are calculated for other than actual storage, maximum \$ 25.00 per unit) to a maximum of \$100,000 (aggregate), unless the Customer specifically requests a higher limit in writing and declares any excess value, in which case the Service Provider may, at his option, accept liability and assess an additional charge to the monthly storage or other applicable rate.
- 11.4. Subject to section 11.8, for Goods being transported, the measurement of the loss, damage or injury to the Goods shall be the Standard Legal Limit of Liability of \$2.00/lb (\$4.41/kg) unless otherwise stated on the operative Bill of Lading, in which case damage shall be based upon wholesale invoice cost, subject to a limit of \$250,000 (aggregate). Where the Customer has indicated a declared value on the Bill of Lading (or other Shipping Document completed by the Customer or Customer's agent), the amount of any loss or damage (as determined by an Independent Adjuster appointed by the insurer) for which Service Provider shall be liable shall not exceed the amount of the declared value. In the event that the Goods or any part thereof is deemed not repairable, the control and disposal of the salvage items will be handled by Service Provider or its agent(s).
- 11.5. Service Provider shall not, in any event, be liable for any claim of any type whatsoever without respect to the Goods unless such claim is presented in writing within a reasonable time, not exceeding 30 days after Customer learns of, or, in the exercise of reasonable care, should have learned of the loss, damage or destruction of said Goods.
- 11.6. No action may be maintained by Customer against Service Provider for loss or damage to the Goods unless timely written notice of claim has been given as provided in Section 11.5 above, and unless such action is commenced either within nine (9) months after the date of delivery by Service Provider or within nine (9) months after Customer is notified by Service Provider that loss or damage to the Goods has occurred, whichever time is shorter.
- 11.7. Under no circumstances will Service Provider be liable for consequential damages.
- 11.8. Service Provider shall be entitled to an inventory loss allowance of 0.1% ("inventory loss allowance") for lost, damaged or destroyed Goods based on an estimated 200,000 unit throughput (in and out) per year of service. The method for evaluating and compensating Customer for losses in excess of the inventory loss allowance ("Customer losses in excess of inventory loss allowance") is set forth on **Schedule "C" (Loss Allowance)**. Goods subject to the Service Provider's inventory loss allowance and Customer's losses in excess of the inventory loss allowance, shall be valued at Customer's manufactured cost of the Goods plus transportation costs to the Service Provider's storage facility, less any amounts received by the Customer on disposition of the Goods, including, but not limited to, insurance proceeds. The Parties agree to use commercially reasonable efforts to settle all disputed amounts promptly. On request, Customer shall make available to Service Provider all relevant documents and records relating to disputed cost of Goods subject to the inventory loss allowance, the Customer's losses in excess of the inventory loss allowance or the proceeds received by Customer upon the disposition of any Goods.

## 12. **Insurance**

- 12.1. Service Provider shall ensure that the following insurance with respect to the Services is procured and maintained:
- 12.1.1. **Commercial General Liability**, with not less than a \$2,000,000.00 (Canadian \$) combined single limit for bodily injury or death to persons and property damage on an occurrence form; and
  - 12.1.2. Any additional insurance coverage or any increases in any of the foregoing amounts as required by applicable Canadian or Provincial law, rule or regulation.
- 12.2. Goods are not insured by Service Provider. Any such insurance on Goods shall be the responsibility of Customer.

## 13. **Force Majeure**

- 13.1. If either Party shall be prevented or delayed from performing any of its obligations hereunder by reason of any Act of God, strike, threat or imminent strike, walkout, labour disruptions, fire, war, insurrection or mob violence, requirement or regulation of government or governmental authority or unavoidable casualty, or any act or event which is beyond the reasonable control of a Party, then, and in any such event, such failure to perform shall not be deemed a breach of this Agreement or the basis of any claim for damage hereunder. Performance of any of the obligations of the Party so prevented or delayed shall be suspended during such period of disability and the Party so delayed shall use reasonable diligence either through itself or of an affiliate or subsidiary to remove such causes of disability as may occur from time to time. The inability of a Party to obtain funds shall not be deemed as a force majeure under this clause. If a Party is affected by force majeure prompt notice shall be provided to the other Party to be confirmed in writing. The Party affected shall use all reasonable efforts to rectify the cause. The Customer has the right to secure transportation elsewhere during the periods of force majeure. In no event shall a Party hereto be liable for any indirect, consequential or special damages in respect of any such delay. Service Provider's decision not to deliver to a location that is the subject of a labour disruption shall be deemed to be an event of force majeure hereunder.

## 14. **Mediation**

- 14.1. If a dispute arises between the Parties relating to this Agreement or the provision of Services, the Parties agree to use the following procedure prior to any Party pursuing other available remedies:
- 14.1.1. a meeting shall be held between the Parties promptly after the dispute has arisen at which time the Parties will attempt in good faith to negotiate a resolution of the dispute;
  - 14.1.2. if, within 30 days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, the dispute shall be submitted to mediation;
  - 14.1.3. the Parties will jointly appoint the mediator and will bear equally the costs of the mediation;
  - 14.1.4. the Parties agree to participate in good faith in the mediation and related negotiations for a period of 30 days; and
  - 14.1.5. if the Parties are not successful in resolving the dispute through the mediation, then a Party may commence litigation proceedings.

## 15. **General**

- 15.1. This Agreement shall be governed by the laws of the province in which Services are provided.
- 15.2. This Agreement contains the complete understanding of the parties hereto. There are no understandings, representations, or warranties of any kind, expressed or implied, not specifically set forth herein. This Agreement may be amended only by a written document signed by duly authorized representatives or employees of each of the parties hereto.

- 15.3. The failure of any Party to exercise any right granted hereunder shall not impair or be deemed to be a waiver of such Party's privilege of exercising such right at any subsequent time or times, except where specifically stated.
- 15.4. Service Provider is an independent contractor and nothing herein is intended to constitute Service Provider as an agent, partner or employee of the Customer. Service Provider has no authority to assume or to create any obligation or liability, express or implied, on behalf of or in the name of the Customer, unless provided for herein.
- 15.5. This Agreement embodies the entire agreement and understanding between the parties and supersedes all prior agreements and understandings between them relating to the subject matter hereof. No provision of this Agreement shall be deemed to be waived as a result of the failure of any Party hereto to require the performance of any term or condition or by other course of conduct. To be effective, a waiver must be in writing, signed by each of the Parties hereto and must state specifically that it is intended to constitute a waiver of a term or breach of this Agreement. The waiver by any Party hereto of any term or breach of this Agreement shall not prevent a subsequent enforcement of such term or any other term and shall not be deemed to be a waiver of any subsequent breach.
- 15.6. Neither Party shall assign or transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party. Consent is not to be unreasonable withheld.
- 15.7. If either Party shall fail to perform any of the covenants or obligations of substantial performance and payment imposed upon it under and by virtue of this Agreement (except where such failure is excused under other provisions of this Agreement), the other Party shall give the defaulting Party written notice, stating specifically the cause for which the notice of default is given. If, within a period of thirty (30) days after such notice the defaulting Party does not commence with diligence to remove and remedy the default then the Party not in default may cancel this Agreement without any further obligation by furnishing the defaulting Party a thirty (30) day notice of termination.
- 15.8. Any notice to either Party to this Agreement by the other shall be deemed to have been properly given if mailed to said Party by certified mail return receipt requested to such other address or person as either Party may designate by notice to the other Party hereunder.

**To Customer:**

**ABC COMPANY, INC**

Address 1  
Address 2  
Attention:

**To Service Provider:**

Direct Integrated Transportation ULC  
1115 Cardiff Blvd  
Mississauga, Ontario L5S 1L8  
Attention: Vice President, General Manager

***A notice hereunder shall be deemed to have been given as of the date it was received.***

- 15.9. Any amendment or modification to this Agreement shall be effective only if in writing and signed by each Party hereto.
- 15.10. If any term of provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement or any other application of such term or provision shall not be affected thereby.
- 15.11. Counterparts. This Agreement may be executed by facsimile and in any number of counterparts and all such counterparts shall for all purposes constitute one agreement and be binding on the parties hereto, and each shall be deemed to be an original, notwithstanding that all parties are not signatory to the same counterpart.

**In Witness Whereof**, the parties have caused this Agreement to be executed by their authorized representatives as of the day and year first above written.

**ABC COMPANY, INC**

**DIRECT INTEGRATED TRANSPORTATION ULC**

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

**Name:** \_\_\_\_\_

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

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

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

**Name:** \_\_\_\_\_

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

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