

**BNSF CONTRACT _<Segment initial>_ - _<contract number>_
INTERMODAL _<Segment>_ TRANSPORTATION
FOR <Shipper>**

This Contract is made by and between **BNSF Railway Company**, hereinafter referred to as "BNSF" and **<Shipper>**, hereinafter referred to as "Shipper".

1. EFFECTIVE PERIOD

This Contract shall become effective on _____ and shall continue for a one (1) year period until _____. Thereafter, the contract will be automatically extended. Either party may terminate the agreement at any time with thirty (30) days notice to the other party, provided, however, that the rights and obligations of the parties specified in the Sections -- Shipper's Commitments, Tending Shipments, Loss and Damage, and General Terms shall survive any termination of this Contract.

2. SHIPPER'S COMMITMENT

Shipper agrees to implement full Electronic Data Interchange (EDI) or use the shipping instructions web application as found on the secured area of bnsf.com.

Domestic Shipper --Shipper agrees to balance private trailer or container shipments on BNSF in both directions for each region. (The regions are defined on bnsf.com, under Markets, Intermodal, References - <http://www.bnsf.com/markets/intermodal/references.html>.) Each month, each region balance should be at least ninety percent (90%), but not greater than one-hundred-ten percent (110%), as measured by BNSF. Balance will be reviewed each calendar quarter. Failure to tender the specified balance in any region may be subject to unilateral rate action (separate from scheduled rate adjustments) or cancellation of the Contract by BNSF.

International Shipper --Shipper agrees to balance container shipments on BNSF within each corridor. Each quarter the corridor balance should be at least ninety percent (90%), but not greater than one-hundred-ten percent (110%), as measured by BNSF. Failure to tender the specified balance in any corridor (defined on the web or in this contract) will be assessed three-hundred dollars (\$300) per container shortfall or excess.

OR

Shipper agrees to balance the container shipments on BNSF within each corridor. Each quarter the corridor balance should be at least eighty percent (80%), but not greater than one-hundred-twenty percent (120%), as measured by BNSF. Failure to tender the specified balance in any corridor (defined on the web or in this contract) will be assessed five-hundred dollars (\$500) per container shortfall or excess.

If volume commitments are applicable, each one (1) year period shall be referred to as the "volume period".

Shipments tendered under any joint-line publication in which BNSF participates may be used to meet the volume requirements of this Contract. If revenue requirements are set forth in this Contract or another Agreement, and the Shipper fails to achieve the revenue requirement for any reason whatsoever, then Shipper shall pay BNSF \$300 per each \$1,000 of revenue shortfall.

Shipper must maintain records establishing its entitlement its right and obligations under this Contract. Such records shall be made available to BNSF for inspection upon reasonable request.

3. GOVERNING PUBLICATION AND OBLIGATION

Transportation shall be governed by the terms and conditions herein, and those set forth in the applicable provisions of the "*BNSF Intermodal Rules and Policies Guide*" (herein referred to as "*R&PG*"), or successor publication(s), in effect at the time of transportation. Shipper acknowledges that it has received, read and understands the applicable provisions of the "*R&PG*", or successor publication(s). BNSF's obligation shall be as set forth in the "*R&PG*".

4. TENDERING SHIPMENTS

At or before the time any vehicle is tendered for shipment, the Shipper must furnish shipping instructions containing the information as stated in the "*R&PG*". In the event that Shipper enters into a co-loading arrangement with any person or entity not a party to this Contract, or otherwise authorizes any person or entity not a party to this Contract, to tender shipments to BNSF for movement under the rates specified in this Contract, Shipper shall notify BNSF in writing of its agreement, identifying the person or entity involved in Shipper's co-loading arrangement or who otherwise is authorized by Shipper to tender shipments to BNSF under this Contract, and such shipments shall be tendered to BNSF only on Shipper's bills of lading, whether the shipments were tendered to BNSF by Shipper or by a person or entity authorized by Shipper. In the event that any such shipments are tendered pursuant to any co-loading arrangement, Shipper shall remain liable for the shipment as if the same had been tendered solely by the Shipper.

5. CALCULATION AND PAYMENT OF FREIGHT CHARGES

Subject to the rules set forth in "*R&PG*" and in effect at the time of the shipment, the freight charges will be determined by applicable BNSF Intermodal Price Authorities in effect at time of shipment and shown on the shipping

instructions. Shipper agrees to pay all freight and accessorial service charges on all shipments moving under this Contract in accordance to terms in the "R&PG".

6. LOSS AND DAMAGE

Shipper may ship pursuant to the liability terms contained in 49 U.S.C., Section 11706 if Shipper notifies BNSF per the applicable provisions of the "R&PG" or successor publication(s) in effect at the time of the shipment. Shipper must comply with the applicable provisions of the "R&PG", or successor publication(s) in effect at the time of any shipments, if protection against unlocated damage to lading is desired. Unless Shipper elects in writing, prior to tendering a shipment for movement, the liability terms contained in the applicable "R&PG" shall apply.

7. GENERAL TERMS

All shipments must be made pursuant to this Contract only. This Contract represents the entire agreement between BNSF and Shipper, however, any additional terms or provisions to this Contract will be handled under either written attachments or amendments hereto, and must be signed by both BNSF and Shipper to be of legal force and effect.

No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

The parties agree that the terms, data, and information developed under the scope of this Contract are confidential and shall not be disclosed by either party to any third party without the prior written consent of the other party. In the event production of the Contract is sought in any legal, administrative or legislative proceeding, both parties hereto agree to cooperate in resisting production and not to produce the Contract absent a legal order compelling such production.

The offer and transportation contract are interpreted according to Texas State laws.

Parcel and package (also known as LTL) shipments are prohibited under this contract.

8. BREACH FOR MISREPRESENTATION

This Contract may be deemed by BNSF to have been breached by Shipper, and may be terminated by BNSF upon five (5) days written notice to the Shipper, without limitation in the event of one of the following events:

- 1) Shipper tenders commodities for which special arrangements are required pursuant to the applicable provisions of the applicable "R&PG", or successor publication(s), if effect at the time of the shipment without prior special arrangements having been made; or
- 2) Shipper tenders a shipment which is not properly described; or
- 3) Shipper furnishes incorrect billing information and it results in the assessment of lower rates and charges than would otherwise have applied.
- 4) If material breach occurs for thirty (30) days by shipper, this contract may be terminated.

9. FUEL SURCHARGE, SURCHARGES, AND SPECIAL ASSESSMENTS

BNSF and Shipper agree that this Contract or rates utilized under this Contract, shall be subject to any Fuel Cost Recovery Surcharge or Other Surcharges that BNSF may implement during the term of this Contract. BNSF Intermodal Fuel Surcharge information, calculation, and application are located on [bnsf.com](http://www.bnsf.com/markets/intermodal/references.html), under Markets, Intermodal, and References (<http://www.bnsf.com/markets/intermodal/references.html>). BNSF and Shipper agree that BNSF shall pass on to Shipper any cost or special charges assessed to BNSF by any federal, state, port, local or other governmental agency that apply to the transport by BNSF of traffic subject to this Contract.

10. NOTICES

All notices given under this Contract shall be effective when received. Notices except as otherwise provided herein, shall be in writing and shall be delivered to the party entitled to receive the same by hand, fax, or by U.S. Mail, addressed as follows:

| | |
|----------------------------|-------------------------------|
| BNSF Intermodal Department | <Shipper> |
| P.O. Box 961065 | <Address |
| Fort Worth, TX 76161-0065 | <City State ZIP> |
| Telephone: 1-888-428-2673 | Telephone: |
| Fax: 817-352-7151 | Fax: |

These addresses may be changed by giving written notice in the manner provided above. Any notice pertaining to matters of an emergency or any operating nature may be given by any reasonable means. If given by telephone, telegraph or orally, the notice shall be confirmed in writing as soon as practicable, if requested by party receiving notice.

11. CANCELLATION OF PREVIOUS CONTRACT(S)

This Contract shall supersede BNSF Contract _____ for Exempt Transportation in TOFC/COFC Service, which was in effect immediately prior to the effective date hereof, and any amendments to the above Contract. The above Contract is terminated on the effective date of this Contract, provided, however, that neither Shipper nor BNSF is released from any obligation which accrued prior to the date of termination of that Contract, including without limitation, the making of any and all payments due thereunder.

IN WITNESS THEREOF, this Contract is signed by BNSF and **<Shipper>**.

BNSF Railway Company

<Shipper>

By: _____

By: _____

Name (printed): _____

Name (printed): _____

Title: _____

Title: _____

Date: _____

Date: _____

In providing services to our customers, BNSF is committed to the highest standards of ethical behavior. The BNSF Code of Conduct is designed to foster a standard of conduct that will reflect positively on the company and its employees and protect the reputation and financial well-being of BNSF. The BNSF Code of Conduct can be found on our website at <http://www.bnsf.com/investors/governance.html>. If you become aware of a BNSF employee conducting business in a manner inconsistent with the BNSF Code of Conduct or if you suspect fraud by an employee you may report the incident to BNSF's Hotline at 800-533-BNSF.