

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

Eric R. Brandt,

Plaintiff,

v.

Schneider National, Inc., Schneider National
Carriers, Inc., Schneider Finance, Inc., & DOE
Defendants 1-10,

Defendants.

Case No. 1:20-cv-01049-WCG

Judge William C. Griesbach

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO
CONDITIONALLY CERTIFY FLSA COLLECTIVE ACTION, FOR ISSUANCE OF
NOTICE, AND FOR EQUITABLE ESTOPPEL REGARDING THE LIMITATIONS
PERIOD**

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Plaintiff Brandt moves this Court, pursuant to 29 U.S.C. § 216(b), for an Order conditionally certifying this action as an FLSA collective action against the Defendants jointly and severally (collectively referred to as “Schneider”) and authorizing notice of the right to opt-in to the following persons:

All individuals who drove trucks for Schneider National, Inc. and any of its subsidiary, related, or affiliated companies pursuant to an Owner-Operator Operating Agreement at any time during the period December 2013 to the present.¹

STATEMENT OF FACTS

This motion is based on the allegations of the Second Amended Complaint and the following evidence supporting those allegations:

1. Ex. 1. Declaration of M. Sweeney;
 - a. Ex. 1-A. Eric Brant’s OA with Schneider National Carriers, Inc. from 2018;
 - b. Ex. 1-A. Thomas Campbell’s OA with Schneider National Bulk Carriers, Inc. from 2018;
 - c. Ex. 1-B. William Meyer’s OA with Schneider National Carriers, Inc. from 2018;
 - d. Ex. 1-C. Edward Oden’s OA with Schneider National Carriers, Inc. from 2013;
 - e. Ex. 1-D. DeAngelo Smith’s OA with Schneider National Bulk Carriers, Inc.

¹ “Individuals” includes individuals who operated under a business name and/or who signed an Owner-Operator Operating Agreement (“OA”) using a business name. *See Ruiz v. Affinity*, 754 F.3d 1094, 1103-4 (9th Cir. 2014) (discounting significance of forming a business entity in determining employee status). Excluded from the FLSA collective are Defendants’ legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the relevant class period has had, a controlling interest in any Defendant. Also excluded are Fleet Drivers—i.e., individuals who signed operating agreement(s) to lease two or more operational trucks to Schneider at the same time. A driver who leased one truck after another to Schneider but only one at a time, or who leased a second truck while his or her original truck was inoperative would be a member of the class.

from 2018;

2. Ex. 2. Declaration of Jeremy Baldwin

a. Ex. 2-A Jeremy Baldwin's OA with Schneider National Carriers, Inc. from 2018;

3. Doc. 32-1 Declaration of Jeremy Baldwin;

4. Doc 32-2 Declaration of Eric Brandt;

5. Doc. 42 Declaration of Thomas Campbell;

6. Doc. 43 Declaration of Serena Rich;

7. Doc 20-2 (OA of E. Brandt dated Dec. 4, 2018);

8. Doc 20-3 (OA of E. Brandt dated Jan. 3, 2018);

9. Doc 20-4 (Brandt Lease Agreement with Schneider Finance, Inc. dated Dec. 4, 2018).

The Complaint and the above evidence support the following facts for purposes of this motion:

1. Schneider is a regulated, for-hire motor carrier authorized by the Federal Motor Carrier Safety Administration (FMCSA) to provide trucking services to customers throughout the United States. Doc 39-1.

2. Schneider hauls freight for its customers using two kinds of drivers: Company drivers whom Schneider classifies as employees (hereafter "Company drivers") and drivers whom Schneider refers to as "Owner Operators" and classifies as independent contractors (hereafter referred to as "Owner Operators" or "Drivers"). *See* Doc. 42 ¶¶ 4, 5, 16, 20, 24, 40, 42, 43.. Both kinds of drivers perform the same work under the same conditions. Doc 32-2 ¶ 17; Doc 42 ¶ 20; Doc 44 ¶ 16.

3. All of Schneider's Owner-Operators enter into an OA with Schneider pursuant to which they agree to lease their truck to Schneider and use it to haul freight for Schneider. Doc 32-1 ¶ 8; Doc. 32-2 ¶ 8; Ex. 1-A-D.

4. Few of Schneider's Owner-Operators own the truck that they lease to Schneider; most lease a truck from Schneider Financing, Inc., and at the same time sign the OA that, *inter alia*, leases the truck back to Schneider. Doc 32-1 ¶ 7; Doc 42 ¶¶ 10-12; Doc 43 ¶¶ 7-8.

5. Both the lease from Schneider Financing, Inc. (hereafter "Lease") and the OA are non-negotiable form documents drafted by Schneider that are presented to Drivers as a package. Doc 32-2 ¶¶ 7-11; Doc 32-1 ¶ 9-11; Doc 42 ¶¶ 13-14; Doc 43 ¶¶ 10-11.

6. Plaintiff Brandt leased a truck from Schneider Finance, Inc. on December 4, 2018, Doc 20-4, and at the same time entered into an OA with Schneider. Doc 20-2. He signed a second OA on January 3, 2019. Doc 20-3.

7. The form OAs utilized by Schneider have been materially the same for all Drivers since at least December 2013. Doc 32-2 ¶ 9; Doc 32-1 ¶ 9; Doc 42 ¶ 12; Doc 43 ¶ 9; Ex. 1-A-D ; Ex. 2 & 2-A.

8. Plaintiff Brandt hauled freight for Schneider pursuant to his OA from December 2018 until August 2019. Doc 32-2 ¶ 2.

9. The OAs set forth terms and conditions of work applicable to Plaintiff and other Drivers hauling freight for Schneider. Doc 32-2 ¶ 2; *see also* Doc. 32-1; Doc. 42; Doc. 43; Ex. 1-A-D.

10. Drivers were also trained in and required to comply with Schneider's policy manual—the same policies as were applicable to Schneider's Company drivers. Doc 32-2 ¶¶ 21-23; Doc 32-1 ¶¶ 6, 19, 32-33, 45; Doc 42 ¶¶ 16, 24-26; Doc 43 ¶¶ 4, 20-22, 30.

11. Plaintiff Brandt alleges that the OA, as interpreted and implemented by Schneider, created an employer/employee relationship as defined by the FLSA. Compl. ¶¶ 66-68. The declarations of Plaintiff Brandt (Doc 32-2), J. Baldwin (Doc 32-1), T. Campbell (Doc 42), and S. Rich (Doc 43), support the factual allegations upon which Plaintiff's claim of employee status is based.

12. As a result of its decision to classify Drivers as independent contractors, Schneider paid Drivers less than the minimum wage in certain workweeks. Compl. ¶¶ 73, 89; Doc 32-2 ¶¶ 20, 34-35; Doc 42 ¶¶ 23, 37-38; Doc 32-1 ¶ 18; Doc 43 ¶¶ 19, 33.

13. The December 2013 version of the OA, Ex. 1-C, contains a Paragraph 8(e) (entitled "Reclassification") that requires the Driver to indemnify Schneider for all attorney's fees and litigation expenses that result from any claim brought by the Driver alleging that the Driver is an employee of Schneider that does not result in a judicial or administrative decision "holding the allegation to be true." Paragraph 24 of the December 2013 version requires the Driver to defend and indemnify Schneider for any claims "brought by employees . . . arising out of the operation of the Equipment or the providing of driver services under this Agreement." Ex. 1-C.

14. At some point after 2013, Schneider amended Paragraph 8(e) of the OA, to require the Owner-Operator to indemnify Schneider, its subsidiaries and related or affiliated companies for any damages, attorneys fees, and costs of investigation that result from any suit or claim relating to "any labor or employee-based matters," including, *inter alia*, compliance or non-compliance with federal or state employment laws or claims that "Owner-Operator . . . should be treated as an employee of. . . [Schneider]." Doc. 20-2 ¶ 8(e); Exs. 1-A-D ¶ 8(e).

15. Paragraphs 8(f) and/or 24(e) of the post 2013 version of the OA, titled "The Parties Financial Obligations if Owner-Operator is Determined to Be An Employee" state that if the

“Owner Operator is determined to be an employee of [Schneider] by any federal, State, . . . court, administrative body or other governmental body (“Reclassification Decision”) . . . the [OA] shall be rescinded back to the time of its formation” Upon rescission, the Driver shall immediately owe Schneider all compensation paid to the Driver pursuant to the OA, less certain deductions, and Schneider shall owe the Driver “only the then applicable federal minimum hourly wage or, if higher, a State’s then-applicable minimum hourly wage but only to the extent Owner-Operator’s wage-earning activities occurred in that State” The paragraphs also authorize Schneider to terminate the contract on one day’s notice after an initial “Reclassification Decision,” and provide that the provisions of Paragraphs 8(f) and 24(e), respectively, survive the termination of the OA. Exs. 1-A, 1-B, 1-D; Doc. 20-2; Doc. 20-3.

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO CONDITIONAL FLSA CERTIFICATION

A. Standard for FLSA Conditional Certification

The FLSA allows aggrieved workers to maintain a collective action against their employers on behalf of “themselves and other employees similarly situated.” 29 U.S.C. § 216(b). This procedure is distinct from the procedure for class litigation under the Fed. R. Civ. Pro. 23. *See Woods v. N.Y. Life Ins.*, 686 F.2d 578, 579-80 (7th Cir. 1982). Unlike a Rule 23 class action, where class members are automatically part of the class unless they affirmatively opt-out, an employee cannot participate in an FLSA collective action “unless he gives his consent in writing” 29 U.S.C. § 216(b). *See Mitchell v. Trilliant Food & Nutrition, LLC*, No. 19-C-147, 2020 WL 1181945, at *1 (E.D. Wis. Mar. 12, 2020) (Griesbach, J.). District courts may, in their discretion, implement this “opt-in” procedure by facilitating notice to potential plaintiffs to

an FLSA action. *Id.* “[T]he critical inquiry in determining whether a court should exercise its discretion to authorize the sending of notice to potential plaintiffs is whether the representative plaintiff has shown that she is similarly situated to the potential class plaintiffs.” *Id.* (quoting *Austin v. CUNA Mut. Ins. Soc’y*, 232 F.R.D. 601, 605 (W.D. Wis. 2006)). To determine whether the representative plaintiff is “similarly situated” to the potential opt-in plaintiffs, this court follows a two-step certification approach. *Mitchell*, 2020 WL 1181945, at *1; *Adair v. Wis. Bell, Inc.*, No. 08-cv-280, 2008 WL 4224360, at *8 (E.D. Wis. Sept. 11, 2008).

The first step, conditional certification, generally occurs as early as possible after the case is filed because the statute of limitations continues to run against similarly situated workers until they receive notice of the case and file their consent to sue forms. “The sole consequence of conditional certification is the sending of court-approved written notice to employees, who in turn become parties to a collective action only by filing written consent with the court.” *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 75 (2013). To determine whether notice should issue, the Court “examines whether the plaintiff has demonstrated a ‘reasonable basis’ for believing that she is similarly situated to the potential class members.” *Mitchell*, 2020 WL 1181945, at *2. That is, the plaintiff must present factual support in the form of affidavits, declarations, deposition testimony, or other documents in order to demonstrate some “factual nexus between the plaintiff and the proposed class or a common policy that affects all of the collective members.” *Mitchell*, 2020 WL 1181945, at *1 (quoting *Nehmelman v. Penn Nat’l Gaming, Inc.*, 822 F.Supp.2d 745, 750 (N.D. Ill. 2011)). The plaintiff’s burden at this initial stage is variously described as “modest,” “minimal,” or “low.” *Id.* at *2; *Hannah v. Huntington Nat’l Bank*, No. 18-cv-7564, 2020 WL 2571898, at *6 (N.D. Ill. May 21, 2020). The Court “does not make merits determinations, weigh evidence, determine credibility or specifically consider opposing

evidence presented by a defendant.” *Bergman v Kindred Healthcare, Inc.*, 949 F. Supp. 2d 852, 855 (N.D. Ill. 2013). But the conditional certification step is not a mere formality. *Mitchell*, 2020 WL 1181945, at *2. The plaintiff must “make a modest ‘plus’ factual showing that there is a group of potentially similarly situated plaintiffs that may be discovered by sending opt-in notices.” *Bergman*, 949 F. Supp. 2d at 856.

The second step occurs after class members have opted in and discovery is complete and is usually triggered by the defendant’s motion to decertify the collective. *Mitchell*, 2020 WL 1181945, at *2; *Bergman*, 949 F. Supp. 2d at 856. It is only at the second stage that the Court determines whether the collective members are, in fact, similarly situated. *Paswaters v. Krones, Inc.*, No. 19-cv-993-JPS, 2020 WL 419336, at *2 (E.D. Wis. Jan. 27, 2020) (citing *Brabazon v. Aurora Health Care, Inc.*, No. 10-cv-714, 2011 WL 1131097, at *2 (E.D. Wis. Mar. 28, 2011)). At that stage, the Court can reevaluate the conditional certification based on a full factual record and “determine whether there is sufficient similarity between the named and opt-in plaintiffs to proceed to trial on a collective basis.” *Id.* (citing *Jirak v. Abbott Labs, Inc.*, 566 F. Supp. 2d 845, 848 (N.D. Ill. 2008)).

B. Plaintiffs Have Met the Conditional Certification Standard

Plaintiff’s Complaint alleges that he and other Drivers were together victims of Schneider’s policy of misclassifying Drivers who signed OAs as independent contractors and, as a result of that policy, that Drivers did not receive the minimum wage for each work week in which they drove for Schneider. Compl. ¶¶ 66-68, 73-89. In addition to this “common policy that affects all of the collective members,” *Mitchell*, 2020 WL 1181945, at *1, Plaintiff also alleges that there is a “factual nexus between the Plaintiff and the proposed class,” *id.*, because all Drivers signed materially similar operating agreements and were, therefore, subject to the same

terms and conditions of work. Compl. ¶¶ 57-100. Thus, the central liability question presented by Plaintiff's FLSA claim—whether Drivers were employees of Schneider for purposes of the FLSA—is common to all members of the class. If Plaintiff's OA as implemented by Schneider establishes that he was an employee entitled to the protections of the FLSA, then all of other Drivers who worked pursuant to materially similar OAs were also employees.

Plaintiff has provided factual support for these allegations, including his declaration and the declarations of three other Drivers. Those declarations attest to the fact that all Drivers worked pursuant to the same terms and conditions of work, that they signed substantially the same OAs, that they performed the same work as Schneider's employee drivers, and that they were expected to comply with the same Schneider policies as employee drivers. The declarations also attest to the fact that, as a result of Schneider's policy of treating Owner-Operators as independent contractors, Drivers did not receive minimum wage in each work week. To the contrary, they attest to the fact that Drivers frequently ended up owing Schneider money after a week's work.

Of course, Plaintiff need not prove at this point that he and the other collective action members were employees. The focus of the inquiry at the conditional certification stage “is ‘not on whether there has been an actual violation of law but rather on whether the proposed plaintiffs are similarly situated . . . with respect to their allegations that the law has been violated.’” *Mitchell*, 2020 WL 1181945, at *3 (quoting *Jimenez v. GLK Foods LLC*, No. 12-C-209, 2013 WL 3936928, at *3 (E.D. Wis. July 30, 2013)). Because Plaintiff and the other collective action members all worked under similar terms and conditions of work, they are similarly situated with respect to the claim that they are not, in fact, independent contractors, but rather employees

protected by the FLSA. Accordingly, conditional certification is appropriate here for the same reason it was in *Mitchell*.

Courts across the country have found FLSA certification to be appropriate where, as here, truck drivers working under materially similar operating agreements allege they were illegally classified as independent contractors. *See, e.g., Canava v. Rail Delivery Serv., Inc.*, 2020 WL 2510648, at *6-8 (C.D. Cal. Feb. 27, 2020) (certifying collective of truck driver and holding that the “assertion that the Drivers all signed the Contract or a materially similar agreement . . . is sufficient to establish the Drivers are ‘similarly situated’”); *Carter v. XPO Last Mile, Inc.*, 2016 WL 5680464, at *3-6 (N.D. Cal. Oct. 3, 2016) (certifying collective of delivery drivers working under five different versions of delivery service agreements who allege that all agreements misclassified them as independent contractors); *Villalpando v. Exel Direct, Inc.*, 2016 WL 1598663 (N.D. Cal. Apr. 21, 2016) (refusing to decertify collective action alleging that contract signed by collective members improperly misclassified them as independent contractors); *Collinge v. Intelliquick Delivery Inc.*, 2015 WL 1292444, at *1-10 (D. Az. 2015) (same); *Flores v. Velocity Exp., Inc.*, 2013 WL 2468362 (N.D. Cal. June 7, 2013) (“Plaintiffs have alleged, and Defendants do not dispute, that each individual delivery driver signed an independent contractor agreement, subjecting them to a uniform company policy of treating them as exempt workers under FLSA.”); *Scott v. Bimbo Bakeries, USA, Inc.*, 2012 WL 645905 (E.D. Pa. Feb. 29, 2012) (granting conditional certification to bakery delivery drivers who alleged they were misclassified as independent contractors and, as a result, failed to receive minimum wage and overtime); *Spellman v. Am. Eagle Exp., Inc.*, 2011 WL 4102301 (E.D. Pa. May 18, 2011) (same); *see also, Doe v. Swift Transp. Co.*, 2017 WL 67521, at *15 (D. Ariz. Jan. 6, 2017) (granting summary judgment to drivers that hauling agreements between drivers and carrier that purported to

establish independent-contractor relationships were “contracts of employment” making them employees); *Ortega v. Spearmint Rhino Cos Worldwide, Inc.*, 2019 WL 2871156, at *7-9 (C.D. Cal. May 15, 2019) (granting conditional certification where all collective members worked pursuant to the same form contract which classified them as independent contractors).

Seventh Circuit courts also recognize that misclassification claims by workers employed under similar contracts or working conditions are appropriate for conditional certification. *Rosebar v. CSWS LLC*, No. 18-cv-7081, 2020 WL 43015 (N.D. Ill. Jan. 3, 2020) (exotic dancers); *Woods v. Club Cabaret, Inc.*, 140 F. Supp. 3d 775, 782 (C.D. Ill. 2015) (same); *Smith v. Alamo Claim Serv.*, No. 13-cv-1481, 2015 WL 13594414, at *4 (C.D. Ill. Mar. 31, 2015) (claims adjusters); *Simmons v. Broadway Home Imp. Inc.*, No. 14-cv-483, 2014 WL 3734510 (S.D. Ind. July 28, 2014) (satellite installers); *Brown v. Club Assist Road Serv. U.S., Inc.*, No. 12-cv-5710, 2013 WL 5304100, at *13 (N.D. Ill. Sept. 19, 2013) (emergency road service drivers operating under similar form contracts).

This case is indistinguishable from the cases cited above. Plaintiff has alleged that he and the collective action members were all victims of the same unlawful policy, and he has produced substantial evidence supporting those allegations. Thus Plaintiff has more than satisfied his modest burden of showing that the collective action members are similarly situated with respect to Plaintiff’s FLSA claim. Accordingly, this Court should grant the motion for conditional certification and direct that notice be issued to the collective members.

II. NOTICE SHOULD BE ISSUED TO THE COLLECTIVE ACTION MEMBERS

Once conditional certification is deemed to be appropriate, “the Court has discretion to facilitate the opt-in process and authorize court-supervised notice to potential opt-in plaintiffs.” *Frazier v. PJ Iowa, L.C.*, 337 F. Supp. 3d 848, 861–62 (S.D. Iowa 2018); *see also Saleen v.*

Waste Mgmt., Inc., 649 F. Supp. 2d 937, 939 (D. Minn. 2009) (citing *Hoffmann–La Roche Inc. v. Sperling*, 493 U.S. 165, 169 (1989)).

A. Form of Notice

The FLSA’s collective action provisions require that the proposed notice provide “accurate and timely notice concerning the pendency of the collective action, so that [potential plaintiffs] can make informed decisions about whether to participate.” *Hoffmann–La Roche*, 493 U.S. at 170. The proposed notice and opt-in form attached to Plaintiff’s Motion as Ex. A, which is modeled on the notices approved by this Court in *Mitchell*, 2019 WL 1181945 and *Meetz v. Wis. Hosp. Grp., LLC*, 16-cv-1313, 2017 WL 3736776 (E.D. Wis. Aug. 29, 2017), meets this standard, and Plaintiff urges the Court to approve the notice.

The proposed notice calls for an opt-in period of 120 days. This period of time is appropriate given that the collective action members are truck drivers who are frequently away from home for extended periods of time and may not receive notice in a timely fashion. Courts certifying collective actions involving truck drivers routinely grant opt-in periods ranging from 90 to 150 days. *See, e.g., Elmy v. Western Express, Inc.*, 2019 WL 6715115, at *1 (M.D. Tenn. Dec. 10, 2019) (120 days); *Huddleston v. John Christner Trucking, LLC.*, 2018 WL 7373644, at *3 (N.D. Okla. May 1, 2018) (90 days); *Brown v. Phenix Transp. W. Inc.*, 2016 WL 3648274, at *5 (S.D. Miss. Mar. 31, 2016) (150 days); *Gatdula v. Schneider Int’l, Inc.*, 2012 WL 12884919, at *7 (C.D. Cal. Aug 21, 2012) (90-days); *Mowdy v. Beneto Bulk Transp.*, 2008 WL 901546, at *11 (N.D. Cal. Mar. 31, 2008) (90 days).

The proposed notice also contains language to ensure that Paragraphs 8(e), (f), and 24(e) of Schneider’s OA do not chill participation in this action. *See* Section III, *infra*.

B. Method of Disseminating the Notice

Plaintiff proposes to disseminate the notice by first-class mail and email, along with a reminder post-card to be sent to those class members who do not opt-in within 60 days of mailing. (A copy of the proposed reminder card is attached to Plaintiff's Motion as Ex. B). The use of these three forms of notice is especially important in this case because of the current problems and delay being experienced with postal delivery and because, as over-the-road drivers, the collective action members are dispersed around the country and may be absent from their mailing addresses for long periods of time during the opt-in period. Courts routinely approve all three forms of notice in cases involving over-the-road truck drivers. *See Haworth v. New Prime, Inc.*, 2020 WL 1899276, at *2 (W.D. Mo. Apr. 16, 2020) (mail, email and reminder notice); *Elmy*, 2019 WL 6715115, at *3 (mail, email and reminder notice); *Ortega*, 2019 WL 2871156, at *8 (mail, email and text reminder); *DeLaRosa v. J&GK Props., LLC*, 2019 WL 7067130, at *4 (E.D. Tex. Dec. 23, 2019) (mail, email, and reminder notices); *Reyes v. Pier Enters. Grp.*, 2017 WL 10619856, at *5 (C.D. Cal. June 9, 2017) (mail, email and reminder notice); *Brown v. Phenix Transp. W., Inc.*, 2016 WL 3648274, at *4 (S.D. Miss. Mar. 31, 2016) (mail, email and reminder post card).²

² Even apart from truck driver cases, Courts in the Seventh Circuit routinely approve all three forms of notice where, as here, there is a reason for it. *See Rossman v. EN Eng'g, LLC*, No. 19-cv-5768, 2020 WL 5253861, at *6 (N.D. Ill. Sept. 3, 2020) (mail, email, text and reminder notice); *Cobb v. Anthem, Inc.*, No. 20-cv-820, 2020 WL 4351349, at *4 (S.D. Ind. July 27, 2020) (mail, email, reminder notice); *Lucas v. JJ's of Macomb, Inc.*, No. 16-cv-3328, 2019 WL 993657, at *6 (C.D. Ill. Feb. 8, 2019) (mail, email, text and reminder notice); *Kujat v. Roundy's Supermarkets Inc.*, No. 18-cv-5326, 2019 WL 1953107, at *4-5 (N.D. Ill. May 2, 2019) (mail, email, and reminder notice); *Boltinghouse v. Abbott Labs., Inc.*, 196 F. Supp. 3d 838, 844 (N.D. Ill. 2016) (mail, email and reminder notice); *Knox v. Jones Grp.*, 208 F. Supp. 3d 954, 963-964 (S.D. Ind. 2016) (mail, email, reminder notice); *see also Rego v. Liberty Mut. Managed Care LLC*, No. 17-C-66, 2017 WL 11418354, at *1 (E.D. Wis. Aug. 23, 2017) (Griesbach, C.J.) (mail, email, but no reminder notice because no evidence was presented that a single notice is inadequate to notify the class).

In order to be able to disseminate the notice in this manner, Plaintiff requests that the Court order Schneider to provide Plaintiffs' counsel, in an electronic spreadsheet format such as Excel, the following information: first name, last name, street address, city, state, zip, email address, employee number, and telephone number. *Rego v. Liberty Mut. Managed Care, LLC*, No. 17-C-66, 2017 WL 11418354, at *2 (E.D. Wis. Aug. 23, 2017 (Griesbach, C.J.) (ordering production of street addresses, email addresses and telephone numbers); *Nuchell v. Cousins Submarines, Inc.*, 2017 WL 782443 *6 (E.D. Wis. Feb. 28, 2017) (ordering production of street address, telephone number and dates of employment). Because of the extremely large number of class members, this information should be provided in electronic spreadsheet format capable of manipulation, such as Excel, with each item of information appearing in a separate column, in order to facilitate use of the data.

Plaintiff requests that the last four digits of the social security number be provided for those class members who notices are returned as undeliverable in order to allow Plaintiff to search for more up-to-date addresses. Courts generally require defendants to provide such information for individuals whose notices are returned to ensure the best notice practicable. *See Kujat v. Roundy's Supermarkets, Inc.*, 2019 WL 1953107, at *5 (N.D. Ill. May 2, 2019); *Reyes*, 2017 WL 10619856, at *5 (C.D. Cal. June 9, 2017); *Rees v. Souza's Milk Transp., Co.*, 2006 WL 3251829, at *1 (E.D. Cal. Nov. 08, 2006) (ordering defendant to disclose social security numbers for eleven FLSA class members for whom mailing to a last known address was insufficient); *Gieseke v. First Horizon Home Loan Corp.*, 2007 WL 445202, at *4 (D. Kan. Feb. 7, 2007), *aff'd as modified*, 2007 WL 1201493 (D. Kan. Apr. 23, 2007) ("[D]istrict courts appear to routinely order defendants in FLSA collective actions to produce information, including social

security numbers, necessary for locating putative class members.”). The requested information should be provided within 14 days.

Finally, Plaintiff seeks an Order requiring the Defendants to issue a short text through its communications network to all currently employed class members advising them of the existence of this case, their right to participate, and where they can receive a copy the notice. (Proposed text attached to Plaintiff’s Motion as Exhibit C). Schneider requires all currently employed class members to have a computer communication device in their truck which is used to transmit and receive written communications from Schneider. *See* Doc. 20-2 ¶ 15 (describing communication device). Schneider should be ordered to post a message through this communication system, without pulling the message, once a week within a 9 am to 5 pm window during the notice period.³ This is an important and non-burdensome way to ensure that current Drivers receive notice of the action and their right to opt-in; it is especially important as a means of providing notice to truck drivers who may be away from home (and mail delivery) for extended periods. *See Doe 1 v. Swift Transp. Co.*, 2017 WL 735376, at *7 (D. Ariz. Feb. 24, 2017) (ordering curative notice to be sent to putative class members via Qualcomm truck communication device); *Petrone v. Werner Enters. Inc.*, 2013 WL 12176452, at *2 (D. Neb. Apr. 1, 2013) (ordering FLSA notice to be sent to putative class members via Qualcomm because defendant “use[d] its Qualcomm messaging system as a means of regular communication” with drivers).

III. REMEDY FOR DEFENDANTS DELIBERATE EFFORTS TO CHILL PARTICIPATION IN THIS SUIT

³ Upon information and belief, Schneider can deliver the notice to current Drivers, but can also pull it off the recipients’ screens. Thus, the Court should direct Schneider not to pull the advisory once sent. Further, if such delivery is made at night, it might be missed by the driver the next day, when followed by the numerous other instructions and information transmitted to drivers around the clock.

At least as early as December 2013, Schneider began inserting paragraphs in its OAs in order to intimidate and coerce Drivers into not filing or joining any wage claims, including FLSA actions. Because these paragraphs are patently illegal and highly likely to chill participation in this collective action, Plaintiff asks the Court to state in the Notice that the offending paragraphs are of no force and effect and that, contrary to those paragraphs, Drivers will not be required to pay Schneider's attorney's fees or repay Schneider the gross wages they received from Schneider in the event that this suit is successful. In addition, because these paragraphs undoubtedly deterred Drivers in the past from filing FLSA claims, Plaintiff requests that FLSA Notice be sent to all Drivers who entered in to an OA on or after the date that Schneider first inserted the offending paragraphs (which, appears to be at least as early as December 2013). All of these Drivers may, potentially, be able to equitably estop Schneider from asserting limitations as a defense to their claims. They should be afforded an opportunity to join this case and assert that defense.

The paragraphs at issue are Paragraphs 8(e), (f), and 24(e) of the OA. The current version of Paragraph 8(e) requires the Driver to indemnify Schneider and all of its subsidiaries, related or affiliated companies for any and all damages, attorneys fees, and costs of litigation that Schneider may incur as a result of a claim that the Driver was misclassified as an independent contractor or a claim that Schneider violated federal, state or local employment laws. In other words, win or lose, the Driver must reimburse Schneider for whatever costs it and any of its subsidiaries, related or affiliated companies incur. The 2013 version required indemnification unless there was a final judgment holding the allegations of employee status to be true.

Paragraphs 8(f) and 24(e), of the OA signed by Plaintiff, entitled "The Parties Financial Obligations if Owner-Operator is Determined to Be An Employee," state that if the "Owner

Operator is determined to be an employee of [Schneider] by any federal, State, local Native American tribal, or foreign court, administrative body or other governmental body (“Reclassification Decision”) . . . the [OA] shall be rescinded back to the time of its formation” Upon rescission, the Driver shall immediately owe Schneider all compensation paid to the Driver pursuant to the OA, less certain deductions, and Schneider shall owe the Driver “only the then applicable federal minimum hourly wage or, if higher, a State’s then-applicable minimum hourly wage but only to the extent Owner-Operator’s wage-earning activities occurred in that State” The paragraphs also authorize Schneider to terminate the contract on one day’s notice after an initial “Reclassification Decision” and provide that the provisions of Paragraphs 8(f) and 24(e) survive the termination of the OA.

These paragraphs are clearly unlawful. The 2013 version of ¶8(e), which makes Drivers liable for Schneider’s attorney’s fees and expenses if Drivers fail to obtain a judgment that they are employees, is contrary to 29 U.S.C. § 216(b) and is clearly illegal. *Mach v. Will Cnty. Sheriff*, 580 F.3d 495, 501 (7th Cir. 2009) (“The FLSA’s fee-shifting provision refers only to a prevailing plaintiff, ... and says nothing of a prevailing defendant” and thus a prevailing defendant “may obtain attorneys’ fees only if the plaintiff litigated in bad faith”) (citing *Alyeska Pipeline Serv. Co. v. Wilderness Soc’y*, 421 U.S. 240, 258–59 (1975)); *Richardson v. Alaska Airlines, Inc.*, 750 F.2d 763, 767 (9th Cir. 1984) (“A prevailing employer may not recover attorney’s fees in an action under the FLSA”)). The more recent version of ¶8(e) only compounds this illegality by making Drivers liable for Schneider’s fees and expenses *even if the Drivers win their suit* and further makes Drivers liable for any damages assessed against Schneider. *Herman v. RSR Sec. Servs., Ltd.*, 172 F.3d 132, 143-44 (2d Cir. 1999) (“There is no right of contribution or indemnification for employers found liable under the FLSA.”); *Scalia v. MICA Contracting LLC*,

2019 WL 6711616, at *2-3 (S.D. Ohio Dec. 10, 2019) (“[A]llowing defendants to shift their liability to another entity or individual would allow employers to contract away their obligations under the FLSA—a result that would be contrary to the purpose of the statute”); *Advanced Pain Consultants v. Richmond*, No. 15-cv-479, 2015 WL 4972231, at *2 n.4 (N.D. Ill. Aug. 18, 2015). Even if indemnity is sought in the form of a breach of contract claim, it is still prohibited. *Scalia*, 2019 WL 6711616, at *3.

Paragraph 8(f) and 24(e)'s attempt to evade FLSA liability by requiring the contract to be reformulated to pay minimum wage in the event that Drivers are found to be employees is equally illegal. The FLSA requires minimum wages to be paid in a timely fashion each workweek, not years after the fact as a result of the contract's rescission. 29 U.S.C. § 206. *See Biggs v. Wilson*, 1 F.3d 1537 (9th Cir. 1993) (discussing FLSA requirement of timely payment); *Dominici v. Bd. Of Ed.*, 881 F. Supp. 315, 319 (N.D. Ill. 1995) (same). In addition, the FLSA categorically prohibits an employer from exacting waivers of FLSA rights, including rights to liquidated damages, which is one of the effects of ¶¶8(f) and 24(e). *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 707 (1945) (“No one can doubt but that to allow waiver of statutory wages by agreement would nullify the purposes of the Act. We are of the opinion that the same policy considerations which forbid waiver of basic minimum and overtime wages under the Act also prohibit waiver of the employee's right to liquidated damages.”).

Plaintiff is aware of only one Court that has addressed a provision like the one in *Schneider's* OA. It is probably not a coincidence that that case also arose in the context of an interstate transportation company trying to prevent its contract drivers from pursuing their FLSA rights: *Doe v. Swift Transp. Co.*, 2017 WL 735376 (D. Ariz. Feb. 2, 2017). In *Swift*, after the Court held that Swift's independent contractor agreements were, in fact, contracts of

employment, Swift demanded that its drivers sign new OAs containing indemnification and rescission provisions virtually identical to Paragraphs 8(e), (f), and 24(e) of the Schneider OA. *See id.* The *Swift* court found the rescission provision to be “misleading in that it suggests Swift may impose its own measure of damages in the event of a reclassification decision,” and because it “suggests that Swift’s approach of recapture and substitution will satisfy its FLSA obligations.” *Id.* at 4. The court further found the indemnification provision misleading because “[a] successful defendant is generally not entitled to attorneys’ fees under the FLSA.” *Id.* Most importantly, the court concluded that the indemnification and rescission paragraphs, taken together, “**have a coercive effect on potential class members** who, after reading the agreement, have a well-founded fear that they may end up owing Swift money whether or not the case is ultimately resolved in their favor. . . . **The threat of owing money undoubtedly has a chilling effect** on participation in the class action, particularly in the context of an employer-worker relationship such as here.” *Id.* at *5 (emphasis added).

At the time the *Swift* court addressed these illegal contract provisions, it had not yet ruled on the plaintiffs’ motion for conditional certification. Nevertheless, it was concerned that the new provisions would discourage drivers from opting into the case in the event that the motion to issue notice was eventually granted. Accordingly, the court ordered Swift to issue a notice to its Drivers clearly stating that (1) that the two paragraphs “will not apply with respect to any relief granted to the parties in the [*Swift*] lawsuit” and (2) that the two offending paragraphs “do not waive or limit any rights or remedies you may have under any state or federal wage payment laws and statutes including the Fair Labor Standards Act. The indemnification provision . . . will not require you to pay the Company’s attorneys’ fees or expenses for any claims you bring or which are brought on your behalf in the [*Swift*] lawsuit.” *Id.* at *7.

The same language should be inserted in the Notice in this case for the same reason the *Swift* court ordered such notice to the class members in that case – i.e. to ensure that the unlawful provisions inserted by Schneider in its OAs do not operate to deter class members from joining this case. *See, e.g., Jimenez v. GLK Foods, LLC*, 12-C-0209, 2013 WL 3936928, at *4 (E.D. Wis. July 30, 2013) (Griesbach, C.J.) (including reference to FLSA anti-retaliation provisions in class notice over defendant’s objection because “among the ‘central aim[s]’ of the FLSA was to proscribe retaliatory acts because ‘fear of economic retaliation might often operate to induce aggrieved employees quietly to accept substandard conditions.’”) (quoting *Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 292 (1960)).

But including such language in the Notice is not sufficient to cure the past chilling effects of Defendants’ unlawful contract language. Unlike the *Swift* case, where the court was addressing new contract provisions that had not yet gone into effect (and hence had not yet caused any driver to delay filing a claim), Schneider added its unlawful provisions to its OAs at least as early as December 2013, if not before. Thus, those provisions have been deterring drivers from filing FLSA and state wage claims since that time. Rather than allow Defendants to benefit from the delay caused by its illegal and coercive contract provisions, the appropriate remedy is to equitably estop Defendants from asserting the statute of limitations with respect to Drivers who signed OAs containing the coercive provisions.

Equitable estoppel “comes into play if the defendant takes active steps to prevent the plaintiff from suing in time. *Hentosh v. Herman M. Finch Univ. of Health Scis.*, 167 F.3d 1170, 1174 (7th Cir. 1999); *see also Mull v. Durethene Plastics, Inc.*, 784 F.2d 284, 292 (7th Cir. 1986) (stating that equitable estoppel may be available when an employee’s untimely filing was a result of “a deliberate design by the employer or of actions that the employer should unmistakably have

understood would cause the employee to delay filing his [claim].”). Equitable estoppel “springs from basic considerations of fairness,” *Fields v. Gen. Motors Corp.*, 121 F.3d 271, 275 (7th Cir. 1997), and the principle that “a defendant should not be allowed to ‘obtain a benefit from his inequitable conduct.’” *Wheeldon v. Monon Corp.*, 946 F.2d 533, 537 (7th Cir. 1991) (quoting *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 450 (7th Cir. 1990)). Although the “granting of equitable estoppel should be premised on a defendant’s improper conduct as well as a plaintiff’s actual and reasonable reliance thereon,” *Hentosh*, 167 F.3d at 1174, “it is the nature of the representations and the conduct of the defendant which are of crucial significance in determining whether the plaintiff was induced to delay filing suit.” *Theriot v. Capt. James Sprinkle, Inc.*, 30 F.3d 136 (7th Cir. 1994).

Here, the written provisions in the OA clearly reflect a “deliberate design” by Schneider to dissuade Drivers from claiming to be employees and raising federal and state wage claims against Schneider. Those provisions constitute improper conduct on the part of Schneider sufficient to justify equitable estoppel for any Driver who reasonably relied upon those paragraphs to delay filing his or her claims in a timely fashion. And it would be entirely reasonable for Drivers who signed the offending provisions to be deterred. After all, no reasonable person would file a lawsuit knowing that no matter what the outcome, they could gain nothing from the suit other than liability for defendant’s attorneys’ fees *and* the obligation to reimburse defendants for any damages a court might award them. Schneider’s design was even more pernicious because by requiring Drivers to contractually *agree* to the indemnification and rescission provisions before they could begin working, and including the “Financial Obligations” provision twice in the same contract (§§ 8(f) and 24(e)), Schneider ensured that the Drivers would feel legally bound and incapable of challenging the provisions of Paragraphs 8 and 24.

Opt-In Plaintiff Baldwin has submitted his declaration indicating that paragraphs 8 and 24, which were in his OA from the day he started driving for Schneider, caused him to delay pursuing his FLSA claims. Ex. 2 ¶¶ 5-6. Accordingly, Defendants should be equitably estopped from raising the statute of limitations as an affirmative defense to the extent Plaintiff's or any collective action member's claims arose more than two years before filing their consent to sue. It is impossible to say at this time, before the opt-in period has closed, how many other Drivers will join this action and assert that they too were deterred from filing their claims in a timely fashion as a result of Paragraphs 8 and 24. But those Drivers certainly should be afforded the opportunity to join the action and make such assertion, if applicable. Accordingly, Plaintiff requests that all drivers who may have been deterred by the offending paragraphs—i.e., all drivers who entered into an OA on or after December 2013, or whatever earlier date Schneider first started putting the paragraph 8(e) in its OA—receive the FLSA Notice and be afforded the opportunity to opt-into this case. After the close of the opt-in period, the Parties and the Court can determine which of the class members, if any, who chose to opt-in relied on Paragraphs 8 and 24 and are entitled to equitable estoppel.

The fact that defendants may contest their claims is no reason not to give notice to Drivers who potentially have valid claims for estoppel. Courts typically issue notice to all employees who potentially have valid claims and leave for later the question of whether their claims are, in fact, timely. *See e.g., Bessy v. Per Mar Sec. & Research Corp.*, No. 17-cv-34, 2018 WL 1583297, at *5 (W.D. Wis. Mar. 30, 2018) (approving notice to all workers employed within three year limitations period and deferring until later question of whether limitations period should be two or three years); *Espenscheid v. DirecStat USA, LLC*, No. 09-cv-625, 2010 WL 2330309, *13 (W.D. Wis. June 7, 2010) (same); *Harvey v. AB Electrolux*, 857 F. Supp. 815, 819-

20 (N.D. Iowa 2012) (approving notice to all workers employed within three-years of the collective action motion despite defendants claim that the two year statute applies and noting that a ruling on tolling of limitations may be made at a later time); *Resendiz-Ramirez v. P & H Forestry LLC*, 515 F. Supp. 2d 937, 942-43 (W.D. Ark. 2007).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court:

- (1) grant conditional certification of an FLSA collective action on behalf of a collective defined as:

All individuals who drove trucks for Schneider National, Inc. and any of its subsidiary, related, or affiliated companies pursuant to an Owner-Operator Operating Agreement at any time during the period December 2013 to the present.⁴

- (2) Order Defendants to provide Plaintiffs' Counsel within 14 days, the following information with respect to individuals within the above-defined collective: first name, last name, street address, city, state, zip, email address, and a unique employee identification number. The information should be provided in an electronic spreadsheet format such as Excel, and each item of information should be set forth in a separate column;
- (3) Order Defendants to produce the last four digits of the social security number and telephone number for any collective member whose notice is returned because the address is incorrect so that Plaintiff can attempt to find the proper address and re-issue notice.
- (4) Authorize Plaintiff to send the Notice and Opt-In Form, attached together to Plaintiff's Motion as Exhibit A, to the FLSA collective through first-class mail and email;

⁴ As defined and limited in footnote 1 above.

- (5) Authorize Plaintiff to send reminder post-cards, attached to the Motion as Exhibit B, to collective members who do not opt-in within 60 days of the issuance of Notice;
- (6) Order Defendant to issue a short statement, attached to the Motion as Exhibit C, through its communication device to collective members currently working for Defendants indicating that a lawsuit that may affect them has been filed and indicating where they can obtain a copy of the notice;
- (7) Approve the Notice, Opt-in Form, Reminder Postcard, and statement to be issued on Defendant's communication system (all of which are attached to Plaintiff's motion);
- (8) Approve an opt-in period of 120 days;
- (9) Equitably estop Defendants from claiming statute of limitations as a defense to claims from December 2013 to the present as a result of the illegal, deceptive, and coercive provisions set forth in ¶¶ 8(e), 8(f), and/or 24(e) of the OA.

Respectfully submitted this 20th day of November, 2020.

By: /s/ Michael J.D. Sweeney

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ATTORNEYS FOR PLAINTIFF

EXHIBIT 1-A

**Owner-Operator Operating Agreement
Between
Schneider National Bulk Carriers, Inc.
And
Owner-Operator**



Owner-Operator Operating Agreement
Between
Schneider National Bulk Carriers, Inc. and Owner-Operator

THIS OWNER-OPERATOR OPERATING AGREEMENT ("Agreement" or "OOOA") and its Exhibits, Addenda, Amendments, Schedules, and/or Attachments, is made and entered into by and between Schneider National Bulk Carriers, Inc. ("Carrier") and CTHOMASO II LLC ("Owner-Operator"), an independent business.

WITNESSETH:

WHEREAS, Carrier intends to engage independent contractor owner-operators, free from any control or direction, to transport freight;

WHEREAS, Owner-Operator is separately and independently engaged in the trade, business, and profession of transporting freight through the use of equipment owned or leased by Owner-Operator (the "Equipment") on behalf of the public and has full control and direction of all aspects of Owner-Operator's business, under this Agreement and in fact, to the full extent permitted by law;

WHEREAS, Carrier desires to engage Owner-Operator to transport freight in the course of Owner-Operator's independently established trade, business, and profession; and

WHEREAS, Carrier and Owner-Operator desire to enter into this Agreement for the purpose of carrying out the foregoing purposes and intent of the parties on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties mutually agree as follows:

1. Freight Availability.

During the term of this Agreement, Carrier agrees to make freight available to Owner-Operator to select for transportation by Owner-Operator. Owner-Operator understands and agrees that in no event shall Carrier guarantee to Owner-Operator any specific number of miles or Shipments, any specific amount of freight or any specific times, dates, or routes. Owner-Operator further understands and agrees that it is free to accept or reject Shipments (as used in this Agreement the term "Shipments" includes freight and box moves) from the Carrier, subject to the notification requirements set forth in Paragraph 25.

2. Owner-Operator Services and Representations.

- (a). ***Freight Transportation Services.*** During the term of this Agreement, Owner-Operator shall render freight loading, transporting, and unloading services ("Freight Transportation Services") and do all other things as reasonably required for the full and proper performance of such Freight Transportation Services using any manner, means and method it sees fit, as described below. Owner-Operator may use its own, Carrier's (whether owned or leased by Carrier), or Carrier's customer's trailing units, as

applicable, in providing the Freight Transportation Services. For the sake of clarification, as used throughout this Agreement, the term "Trailer" shall include any type of trailing unit attached to a semi-tractor including, without limitation, box trailers, specialty trailers, bulk tankers, intermodal chassis, and intermodal containers.

- (b). ***Owner-Operator Representations.*** Except as required of Carrier by any applicable federal, State, local, Native American tribal, and foreign authorities, including but not limited to USDOT (including FMCSA's Compliance, Safety, Accountability ("CSA") Program), State, provincial, or local highway safety, vehicle inspection, vehicle maintenance, traffic, road, truck size-and-weight, hazardous materials transportation, environmental, health, cargo security, or other laws and regulations (collectively throughout this Agreement, "Applicable Law"), Owner-Operator shall determine the manner, means and methods of performance of all Freight Transportation Services rendered hereunder and shall retain all responsibility for same including, but not limited to, the following:
- (i.) The wages, hours, meal, and rest breaks, working conditions, management, supervision and all other aspects and requirements of any kind whatsoever related to Owner-Operator and/or its employees. Because Owner-Operator is exclusively responsible for setting and controlling the work schedule of Owner-Operator and any employees of Owner-Operator, Owner-Operator is responsible for complying with the break requirements of 49 C.F.R. Sec. 395.3 and any other federal or state laws applicable to the Owner-Operator's employees. Owner-Operator specifically agrees that the contractual payments Carrier makes to Owner-Operator, as set forth in Exhibit B, compensate Owner-Operator for all tasks directly related to and required to complete deliveries and for everything furnished, done by, or required by the Owner-Operator's workers in connection with this Agreement, including but not limited to, time spent fueling, washing trucks, taking all breaks required by state and federal law, trip planning, and selecting freight, etc.;
 - (ii.) Selecting, purchasing, leasing, financing, maintaining, operating, and insuring the Equipment;
 - (iii.) Selecting all routes and properly weighing, inspecting, and measuring all Shipments;
 - (iv.) Paying, except to the extent otherwise specified herein, all operating expenses incurred by Owner-Operator of any kind whatsoever, including, but not limited to:
 - (1.) cost of fuel
 - (2.) fuel taxes
 - (3.) tolls
 - (4.) ferry fees
 - (5.) equipment maintenance and repairs
 - (6.) road taxes
 - (7.) securement equipment, tarp replacement costs and repairs

- (8.) mileage taxes
 - (9.) fines of all types, except as otherwise provided by 49 C.F.R. § 376.12 or any successor regulations
 - (10.) All other costs, expenses, levies, or assessments related either directly or indirectly to Owner-Operator's operation of the Equipment or the conduct of Owner-Operator's business.
- (v.) Owner-Operator's business operations are independent of those of Carrier and are not subject to cancelation or destruction in the event that the Agreement is terminated by either party. As an independent business, Owner-Operator shall gain the profits and bear any losses of its business and is not economically dependent on Carrier.
 - (vi.) Owner-Operator shall obtain any necessary licenses or permits in Owner-Operator's name, or shall pay Carrier for the reasonable use of any necessary licenses or permits in accordance with the terms set forth in this Agreement.
 - (vii.) Owner-Operator and any drivers employed by Owner-Operator shall not represent itself as an employee of Carrier to any third party, including any of Carrier's customers, but may be asked to identify itself as affiliated with Carrier as an independent contractor where security or other customer concerns require such identification.
 - (viii.) Carrier expects Owner-Operator to own or lease its own Equipment and any other associated tools, supplies and materials (including, but not limited to tarps, personal protective equipment, supplies and other related equipment) necessary to perform the services described in this Agreement.
- (c). **Reasonable Efforts.** Owner-Operator shall perform Freight Transportation Services in compliance with all Applicable Law(s). Owner-Operator agrees to update Carrier on the customer service provided by Owner-Operator, including but not limited to information on any disputes involving shippers or their agents, employees or consignees that would tend, in any way, to detract from the quality and reliability of Carrier's services.
 - (d). **Drivers.** Owner-Operator shall provide competent professional drivers who, at minimum, meet Carrier's minimum standards all driver standards found in the Federal Motor Carrier Safety Regulations, including without limitation those requirements set forth in 49 C.F.R. Part 390, and any other Applicable Law(s). As part of the driver qualification process, Owner-Operator and Owner-Operator's drivers shall authorize Carrier to access applicable driver files, Pre-Qualification Screening Program, safety scores, Compliance, Safety, and Accountability ("CSA") scores, and any other driver data or information available as part of FMCSA's programs, both during the qualification process and at any time thereafter. Owner-Operator shall disqualify, for at least the relevant period specified in 49 C.F.R. § 383.51, any driver (including Owner-Operator himself or herself, if Owner-Operator is a sole proprietor) provided by Owner-Operator who has been convicted of any violation set forth in that regulation. Carrier shall have the right to request that Owner-Operator disqualify temporarily or permanently any driver (including Owner-Operator himself or herself, if Owner-Operator is a sole proprietor) provided by Owner-Operator if the driver is found to be in violation of any provision of this Agreement, or to be unsafe, unqualified, unfit, uninsurable, or marginal as defined by any applicable federal or state law or the criteria established by the FMCSA, in violation of Carrier's minimum qualification standards, or in violation of any requirements of Carrier's customers, as all amended from time to time. Upon a driver's disqualification, Owner-Operator shall be obligated to furnish another professional driver that meets all driver standards found in the Federal Motor Carrier Safety Regulations and any other Applicable Law(s) and as set forth herein. Owner-Operator shall retain full

discretion, at any time during this Agreement, to assign any qualified driver or drivers employed by Owner-Operator, who meet the minimum driver qualification standards under Applicable Law(s) to perform some or all of Owner-Operator's obligations under this Agreement.

- (e). **Paperwork Requirements.** As required by applicable federal law, including but not limited to 49 C.F.R. Part 395 and 395.51, Owner-Operator shall submit to Carrier, on a timely basis, all log sheets and supporting documents (including original toll receipts for Carrier's reproduction), vehicle inspection documents, physical examination certificates, accident reports, and any other required data, documents, or reports. Carrier shall, as set forth in 49 C.F.R. Part 376, keep the original of this Agreement, and Owner-Operator shall maintain a copy of this Agreement in the Equipment during the term of this Agreement.
- (f). **Shipping Documents.** As required by applicable federal law, including but not limited to 49 C.F.R. Part 373, Owner-Operator agrees that all bills of lading, waybills, freight bills, manifests, or other papers identifying the property carried on the Equipment shall be those of Carrier, or as authorized by Carrier, and shall indicate that the property transported is under the responsibility of Carrier or a carrier with which the Equipment has been subcontracted.
- (g). **Drug and Alcohol Testing.** Owner-Operator and its drivers shall comply with all laws and regulations applicable to drug and alcohol testing, including but not limited to 49 C.F.R. Part 382. Owner-Operator shall participate in a random alcohol and controlled substance testing program as required by 49 C.F.R. § 382.103; provided that, at Carrier's election, Owner-Operator will participate in any qualifying testing program approved and implemented by Carrier.
- (h). **Safe Operations.** Owner-Operator agrees to operate the Equipment in a safe manner at all times in accordance with the laws of the various jurisdictions in which Owner-Operator operates its Equipment, and in accordance with all applicable rules related to traffic safety, highway protection and road requirements. Moreover, Owner-Operator agrees that all drivers and/or workers employed by Owner-Operator will comply with the terms of this Agreement, including the requirement of safe operations, while operating the Equipment. Owner-Operator agrees that any driver utilized by Owner-Operator shall comply with customer contracts, Carrier policies and procedures, and any requirements dictated by Applicable Law(s). Pursuant to 49 C.F.R. § 390.3(e), every driver, including Owner-Operator's driver, shall be instructed in (and comply with) all FMCSA regulations and, pursuant to 49 C.F.R. § 390.11, whenever a duty or prohibition is imposed on a driver, it shall be the duty of the motor carrier to require observance of such duty or prohibition. As a result of said regulations, and in accordance therewith, Owner-Operator shall submit to such instruction and observance requirements as may be required by Carrier from time to time such as, without limitation, the completion of an annual certification of driving ability and knowledge of Applicable Law.
- (i). **Accidents and Other Claims.** Under applicable federal law and customer contracts, Carrier is required to meet certain federally-regulated safety and reporting standards. Therefore, to enable Carrier to meet these obligations Owner-Operator shall immediately report any accident, cargo loss or damage claim, theft or other potential claim to Carrier involving operations under this Agreement. Owner-Operator and its drivers shall cooperate fully with Carrier (or its designated representative) with respect to any legal action, regulatory hearing or other similar proceeding arising from the operation of the Equipment, the relationship created by this Agreement or the services performed hereunder. Owner-Operator shall, upon Carrier's request and at Owner-Operator's sole expense, provide written reports or affidavits, attend hearings and trials, and assist in securing evidence or obtaining the attendance of witnesses. Owner-Operator shall provide Carrier with any assistance as may be necessary for Carrier or Carrier's representatives or insurers to investigate, settle or litigate any accident, claim or potential claim by or against Carrier including, without limitation, by providing Carrier with access to any information, video (including dash-cam video), or other data requested by Carrier in connection with any accident, claim or potential claim.

- (j). ***Business Entity Status.*** In the event that Owner-Operator is a limited liability company, corporation, or other business entity type that is required to be registered with a state or federal jurisdiction in accordance with Applicable Law(s), Owner-Operator represents and warrants that it will, at all times, maintain such registration up-to-date and the business entity shall, in all times, be in good standing (or other similar designation) with the applicable state and/or federal jurisdiction. Owner-Operator has an affirmative obligation to immediately notify Carrier if Owner-Operator's business entity status has changed in any respect (e.g., change in standing, change of name, change in state of registration, etc.). Owner-Operator shall, on a no less than annual basis, provide Carrier with an updated Certificate of Good Standing (or similar document) from the applicable jurisdiction denoting that Owner-Operator's business is in good standing; failure to provide such updated Certificate of Good Standing (or otherwise losing such good-standing designation, or failing to notify Carrier of any change in business entity status) shall be deemed a material breach which shall entitle Carrier to terminate this Agreement immediately.

3. **Equipment.**

- (a). ***OOOA Riders.*** In rendering Freight Transportation Services during the term of this Agreement, Owner-Operator shall lease to Carrier the Equipment as more fully described in one (1) or more OOOA Riders attached hereto as Exhibit A, which when executed by Owner-Operator and Carrier shall be subject to and become a part of this Agreement. Owner-Operator represents and warrants that Owner-Operator has title to or is authorized to contract the Equipment and related driver services to Carrier. The execution of this Agreement or, with respect to supplemental equipment added under this provision, each additional OOOA Rider shall constitute the receipt required by 49 C.F.R. § 376.11(b) acknowledging that such equipment is subject to Carrier's possession and control as required by applicable federal law.
- (b). ***Exclusive Possession and Responsibility.*** As required by 49 C.F.R. § 376.12(c)(1), the Equipment shall be for Carrier's exclusive possession, control, and use for the duration of this Agreement. As such, Owner-Operator shall not operate the Equipment for any other motor carrier or entity during the term of this Agreement without prior written consent from Carrier. Carrier shall assume complete responsibility for the operation of the Equipment for the duration of this Agreement. This subparagraph is set forth solely to conform with DOT regulations and shall not be used for any other purposes, including any attempt to classify Owner-Operator as an employee of Carrier. Nothing in the provisions required by 49 C.F.R. § 376.12(c)(1) is intended to affect whether Owner-Operator or its drivers are an independent contractor or an employee of Carrier. The parties agree and acknowledge that an independent contractor relationship may exist when a carrier complies with 49 U.S.C. § 14102 and attendant administrative requirements. Notwithstanding the above, Owner-Operator is not prohibited from providing transportation services for other common or contract carriers, business community, general public, or any other person or entity, on whatever basis and whenever it chooses, provided that Owner-Operator complies with the trip lease requirements set forth under federal law in 49 C.F.R. Part 376 and Paragraph 18 below.
- (c). ***Length of Time Equipment Deemed Leased.*** For purposes of determining eligibility for certain types of OO Payments, Equipment shall be deemed to be leased to Carrier commencing on the date the Equipment is first leased by Owner-Operator to Carrier (whether under this Agreement or any prior agreement) and shall continue until termination of this Agreement as to such Equipment. The length of time for which a piece of Equipment shall be deemed to be leased hereunder shall include any Equipment upgrade or any Equipment transfer whereby the Equipment is immediately transferred to and put under lease with any affiliate of Carrier following termination of this Agreement, provided, however, that Owner-Operator continues to operate under the same federal employer identification number.

4. **Payments and Settlements.**

- (a). **Owner-Operator Payments.** During the term of this Agreement, in consideration for Freight Transportation Services rendered by Owner-Operator hereunder, Carrier shall remit to Owner-Operator those amounts in payment and/or incentives (collectively, "OO Payments") as more fully set forth in the Payment and Fee Schedule in Exhibit B. All OO Payments will be made payable to Owner-Operator's trade or business name and shall be reported on a Federal Income Tax form 1099 (or on an equivalent Canada Revenue Agency form, as required by Applicable Law(s)).
- (b). **OO Payment Schedule.** OO Payments shall be compensated to Owner-Operator in accordance with the usual settlement practices of Carrier within fifteen (15) days after submission by Owner-Operator to Carrier of necessary delivery documents and other paperwork showing full and proper performance of each trip. Necessary delivery documents and other paperwork required by Carrier shall include logbooks required by the DOT and those documents necessary for Carrier to secure payment from Carrier's customers, such as bills of lading or shipping orders and delivery receipts. Owner-Operator shall promptly submit any additional documents required by law or Carrier, but not as a prerequisite to payment. Upon termination of this Agreement, Carrier may withhold final settlement to Owner-Operator until Carrier's identification devices, or a letter from Owner-Operator certifying their removal from the Equipment, are received by Carrier. This Paragraph 4(b) shall be construed and applied in a manner consistent with 49 C.F.R. § 376.12(f) or any successor regulations.
- (c). **Statements.** All OO Payments shall be supported by a statement providing, in reasonable detail, the calculations used in determining the OO Payments owed to Owner-Operator and any deductions made by Carrier pursuant to Paragraph 11, below. If Owner-Operator has more than one unit of Equipment contracted to Carrier, Carrier may, in its sole discretion, issue a single Owner-Operator settlement statement covering all such units.
- (d). **Under Payment/Over-Payment.** In the event Carrier determines that any OO Payments previously paid to Owner-Operator for the performance of Freight Transportation Services hereunder was improperly underpaid or overpaid (for example, a Shipment was paid as Overdimensional when it was not), then Carrier (i) shall promptly pay Owner-Operator any additional amounts due and owing, or (ii) shall deduct, and/or Owner-Operator shall pay to Carrier, such amounts as were overpaid pursuant to Paragraph 11 below. Owner-Operator must notify Carrier of any alleged underpayment within 180 days of the Owner-Operator's payment that Owner-Operator seeks to contest or such claim is waived, as such claims are tied to 49 U.S.C. Sec. 13710. Carrier and Owner-Operator hereby waive any claim that they may have against the other for any underpayment or overpayment if that party does not commence a legal action to collect such underpayment or overpayment, as applicable, within eighteen (18) months after the Freight Transportation Services were rendered by Owner-Operator. Carrier and Owner-Operator acknowledge and agree that eighteen (18) months is a reasonable limit on the time within which to file any such lawsuit as such claims are tied to 49 U.S.C. Sec. 14705.
- (e). **Right to Examine Tariffs and Other Documents.** Owner-Operator shall have the right to examine copies of Carrier's tariffs at Carrier's home office during reasonable business hours. Carrier shall provide a copy of the rated freight bill (or a computer-generated summary) to Owner-Operator for those Shipments on which Owner-Operator's linehaul payment is based on a percentage of revenue. However, Carrier may, in its sole discretion, delete confidential business information on such tariffs and freight bills, including, but not limited to, references as to the identity and names of customers, shippers, and consignees. Owner-Operator will also be permitted to review, at Carrier's corporate headquarters, any other documents from which rates and charges are computed, in Carrier's sole discretion, provided that where rates and charges are computed from a contract, only those portions of the contract containing the same information that would appear on a rated freight bill will be disclosed by Carrier. Notwithstanding the foregoing, Carrier shall have the right reasonably limit the initial review by Owner-Operator of such tariffs, freight bills, or other documents to those documents applicable to the ninety (90) day period immediately preceding the date of request by Owner-Operator.
- (f). **Calculation of OO Payments.** To the extent not done so by shipper, Owner-Operator is responsible for

selecting all routes and properly weighing, inspecting, and measuring all Shipments. Unless otherwise indicated in the applicable Exhibit B, OO Payments will be calculated based on a percent of Carrier's revenue. Unless otherwise indicated in the applicable Exhibit B, to the extent Carrier's revenue calculations are based on mileage, Carrier will use Carrier's most current (at time of Owner-Operator's trip) computerized mileage guide, regardless of which route Owner-Operator elects to follow for any given Shipment. OO Payments will not be based on mileage as set forth on an odometer, "hubometer," GPS or other navigational systems, Electronic On-Board Recorder, or other mileage counter or calculator systems used by Owner-Operator. If Owner-Operator so chooses, Carrier shall make available for viewing and printing any point-to-point mileage calculations. Owner-Operator may request point-to-point mileage calculations at any Carrier terminal during normal business hours. Owner-Operator understands that the mileage amounts used to determine the revenue calculations hereunder, including to calculate Carrier's revenue (and, therefore, Owner-Operator's OO Payments if based on a percent of revenue) and any OO Payment based directly on mileage (if indicated in Exhibit B), may be more or less than the actual number of miles driven by Owner-Operator or actual legal of Freight Haul. Owner-Operator agrees and confirms that such calculation is a reasonable method of determining OO Payments hereunder and is valid and enforceable even Owner-Operator's actual miles driven differ from the mileage amounts used to determine the revenue calculations.

- (g). **Relays.** Unless otherwise stated in Exhibit B, Section II, specific to Owner-Operator's individual Agreement, relayed Shipments relate to Shipments for which the party who has picked up the Shipment at the initial point of pickup does not transport the Shipment over the entire linehaul to its destination. In the event a Shipment is relayed as a result of Owner-Operator's request, or Owner-Operator's failure or inability to complete delivery of a Shipment originally accepted by Owner-Operator for any reason, Owner-Operator shall pay to Carrier the greater of the amount set forth in the Payment and Fee Schedule or the actual costs arising from the relay as determined by Carrier's records for such Owner-Operator initiated relay. Carrier shall make the necessary deductions pursuant to Paragraph 11, below, for such amounts. In the event that a Shipment is relayed as a result of customer or Carrier needs, Carrier shall pay Owner-Operator a prorated amount reflective of the miles actually completed in furtherance of the Shipment by Owner-Operator. Notwithstanding anything in this Agreement or any Exhibit to the contrary (including Exhibit B), delays or detention caused by Owner-Operator requested (or caused) relays do not qualify for detention pay. Further, for the sake of clarity, detention pay will only be provided with the delay and/or detention is directly caused by the Customer at the point of pick-up or destination.
- (h). **Authority to Bind Owner-Operator.** Upon execution of this Agreement, Owner-Operator shall complete the Owner-Operator Authorization Form attached hereto as Exhibit C. Owner-Operator specifically understands and agrees that Carrier may take or not take any action under this Agreement as directed by a fleet driver employed or contracted to work for Owner-Operator, and Carrier shall not be liable to Owner-Operator with respect to any such action; provided, however, that any OO Payments shall be exclusively made to the Owner-Operator executing this Agreement. Unless specifically prohibited in Exhibit C, fleet drivers may utilize Owner-Operator's fuel card to take fuel card cash advances against OO Payments.
- (i). **Specialty Shipments.** From time to time Carrier may offer Owner-Operator the opportunity to select "Specialty Shipments," which will be designated as such by Carrier. Specialty Shipments may occur in connection with customer promotions, special events, or other unique customer opportunities which do not occur on a regular basis. Specialty shipment payment rates will be individually listed by Carrier and may not correspond to the OO Payment rates set forth in Exhibit B. By selecting a Specialty Shipment Owner-Operator acknowledges and agrees that the rates for Specialty Shipment may differ from the rates set forth in Exhibit B, and Owner-Operator agrees that such rates are reasonable, binding and constitute full payment to Owner-Operator for the particular Specialty Shipment.

5. Compliance with Laws.

- (a). **Truth in Leasing.** Carrier and Owner-Operator shall comply at all times with all laws and regulations governing their respective performance hereunder including, but not limited to, in the case of Carrier, all regulations of the DOT or any successor agency promulgated for the protection of independent contractors, commonly referred to as the "Truth in Leasing Regulations," found at 49 C.F.R. § 376 or any successor regulations.
- (b). **No Discrimination.** Owner-Operator agrees to comply with the various state and federal employment laws to which it may be subject.
- (c). **Equipment Inspections/Records.** The DOT's Federal Motor Carrier Safety Regulations found at 49 C.F.R. § 396 et seq. or any successor regulations specify that all motor vehicles subject to an owner-operator operating agreement be subjected to systematic inspections and repairs. Owner-Operator hereby agrees that, as required by such regulations and at such times as Carrier may reasonably specify, including the annual inspection of the Equipment, Owner-Operator shall select one of the inspection facilities that Carrier has pre-approved, cause the Equipment to be inspected at such facility, and shall make needed repairs at Owner-Operator's sole cost and expense. Owner-Operator shall submit to Carrier, records of inspections, repairs, and maintenance for each piece of Equipment leased by Owner-Operator under this Agreement within 30 days after such repair or completion is completed pursuant to 49 C.F.R. Sec 396.3 and 49 C.F.R. 396.9.
- (d). **Medical Examinations.** Pursuant to Paragraph 2 above, Owner-Operator is required to provide properly qualified drivers. The DOT's Federal Motor Carrier Safety Regulations further provide that any individual who uses a "Schedule 1" drug is not medically qualified to drive a commercial motor vehicle and that a motor carrier shall not permit an unqualified individual to drive. In order to assure that any drivers provided by Owner-Operator pursuant to this Agreement are and remain medically qualified to drive, Owner-Operator shall, from time to time cause its drivers to undergo physical examinations by an examiner listed on the National Register of Certified Medical Examiners and be tested for drugs at as required by Applicable Law(s). Owner-Operator shall be responsible for and pay the cost of the physical examination(s) and/or drug test(s).
- (e). **OSHA Recording and Reporting.** Owner-Operator shall bear sole responsibility for maintaining Occupational Health and Safety ("OSHA") records and for making OSHA reports as required by OSHA regulations, including OSHA Form 300 and OSHA Form 301 for all injuries and illnesses of Owner-Operator and/or the employees of Owner-Operator.
- (f). **Compliance with Traffic Laws.** In addition to any other requirements to comply with applicable laws (whether or not set forth in this Agreement, Owner-Operator specifically represents and warrants that, as a business operator providing transportation services on public roadways, it fully understands, and will comply with, all applicable traffic laws (the "Traffic Laws") including, without limitation, Traffic Laws pertaining to speed limits, distracted driving, usage of mobile devices while driving, reckless driving, seat belt requirements, and vehicle specifications. Owner-Operator specifically understands (i) that Owner-Operator's violation of any such Traffic Laws may pose a distinct and severe threat to Carrier's ability to operate as a motor carrier in interstate commerce, and (ii) that Carrier's decision to enter into this Agreement with Owner-Operator is based upon Owner-Operator's representation that Owner-Operator will comply with such Traffic Laws; Owner-Operator's violation of such Traffic Laws will constitute a material breach of this Agreement for which Carrier shall have the right (in addition to any other remedies which it has under law, equity, or this Agreement) to immediately terminate this Agreement. As Traffic Law violations, and other violations, have the ability to affect Carrier's ability to operate as a motor carrier (including by, without limitation, affecting Carrier's Safety Rating, Compliance Safety and Accountability Scores, etc.), Carrier shall have the right, through the Mobile Computing Platform (or any other method or manner Carrier deems reasonable), to obtain information regarding Owner-Operator's: (i) driving operations including, without limitation, Owner-Operator's speed, hard braking incidents, collisions, and critical driving events, (ii) hours of service, records of duty status, and other operational data, (iii) engine operational data, and (iv) any other telematics data

which may be captured by the Automatic On-Board Recording Device or Electronic Logging Device associated with, or connect to, the Owner-Operator's Equipment or its related systems and devices. Owner-Operator hereby consents to the sharing with, and retrieval by, Carrier of such information and understands that such information may be utilized by Carrier for any reason Carrier deems advisable, including for the purpose of assessing Owner-Operator's compliance with the terms of this Agreement.

- (g). **California Air Resources Board Truck Laws, Rules, and Regulations.** Owner-Operator acknowledges that, when operating in California, Owner-Operator must meet the requirements of the California Air Resources Board Truck and Bus Regulation(s) (as amended) (currently codified at Title 13, California Code of Regulations, Section 2025), and any other applicable environmental or emissions laws and regulations promulgated by California including, without limitation, the Heavy-Duty Vehicle Greenhouse Gas (Tractor-Trailer GHG) Emission Reduction Regulations (collectively, the "CARB Laws"). In connection therewith, Owner-Operator warrants that all Equipment furnished or used by Owner-Operator within the state of California is, and shall be, in full compliance with California's CARB Laws. Owner-Operator shall be liable for, and will indemnify, defend, and hold Carrier harmless from, any and all penalties, fines, costs, and expenses imposed on Carrier as a result of Owner-Operator's use of non-compliant Equipment and/or violation of CARB Laws. OWNER-OPERATOR SPECIFICALLY AGREES THAT IT WILL NOT OPERATE ANY EQUIPMENT IN CALIFORNIA UNLESS SUCH EQUIPMENT IS IN COMPLIANCE WITH SUCH CARB LAWS (INCLUDING, WITHOUT LIMITATION, THE TRUCK AND BUS REGULATION). In the event that Owner-Operator operates, or will operate in California as a result of the transportation services provided under this Agreement, Owner-Operator agrees to submit, to Carrier, prior to operating in California, and then annually by January 31st of each and every year thereafter, evidence that Owner-Operator is in compliance with the Truck and Bus Regulation. This compliance can be established by providing Carrier with the following:
- (i.) A Certificate of Compliance from the California Air Resources Board indicating that Owner-Operator is in compliance with the Truck and Bus Regulation; or
 - (ii.) If Owner-Operator does not report individual tractor information to the California Air Resources Board due to compliance with the Truck and Bus Regulation's engine model year schedule, then Owner-Operator may provide, in lieu of the Certificate of Compliance, a dated and signed written statement from Owner-Operator which (1) certifies that Owner-Operator is aware of, and is in compliance with, the Truck and Bus Regulation, and (2) provides engine model year and particulate matter filter information (i.e. type of filter (OEM or aftermarket) and serial number), along with license plate information and other vehicle information, with respect to each commercial motor vehicle that Owner-Operator operates in California.
 - (iii.) In addition, within five (5) days of Carrier's request, Owner-Operator shall furnish Carrier with the following information pertaining to each piece of Equipment which Owner-Operator uses to perform transportation services:
 - (1.) Gross Vehicle Weight Rating of the Equipment;
 - (2.) Year, Make and Model of the Equipment;
 - (3.) Engine serial number, engine model year, and engine family;
 - (4.) Particulate matter filter information; and
 - (5.) Whether such equipment travelled into the State of California in connection with transportation services provided by Owner-Operator and, if so, the date(s) on which such Equipment travelled into the State of California.

6. Taxes.

- (a). **Income Taxes.** Consistent with Paragraph 4(a) above, all OO Payments shall be reported on a Federal Income Tax form 1099 (or on an equivalent Canada Revenue Agency form as required by Applicable Law(s)). Owner-Operator shall pay all taxes and fees (including penalties and interest) imposed by any federal, provincial, state or local government on account of the receipt of income by Owner-Operator for Freight Transportation Services rendered under this Agreement. Owner-Operator understands and agrees that Carrier shall not be required to withhold any income or other taxes imposed on income earned by Owner-Operator hereunder and Owner-Operator agrees to take any action necessary to ensure that Carrier is not subject to such a requirement. Owner-Operator shall file all federal, provincial, state and/or local government tax forms and returns as required in connection with the receipt of income by Owner-Operator and shall pay when due all taxes and contributions reported in such forms and returns. Owner-Operator shall furnish Carrier with such evidence of compliance with the foregoing as Carrier may reasonably request.
- (b). **Use and Fuel Taxes.** Owner-Operator is responsible for all use and fuel taxes that arise out of Owner-Operator's obligations under this Agreement. However, as the authorized motor carrier under whose authority Owner-Operator is operating, Carrier is required to prepare and file all reports required under the International Fuel Tax Agreement ("IFTA") or other applicable federal, state and/or provincial laws with respect to fuel, Federal Heavy Vehicle Use, and road and mileage taxes incurred by the Equipment during the term of this Agreement. Owner-Operator understands and agrees that it must fully comply with all Carrier requests for information, as set forth in subparagraph 6(c) below, to fulfill these obligations.
- (c). **Fuel Cards.** Owner-Operator or its drivers may elect to use its own fuel card. If Owner-Operator or its drivers use its own fuel card, Owner-Operator shall be responsible for providing Carrier with all original fuel receipts and an accurate accounting of all fuel purchases and miles traveled so that Carrier can fulfill its legally-required obligations as set forth above. If Owner-Operator so chooses, Carrier will issue Owner-Operator a fuel card to be used for all fuel purchases to assist Owner-Operator with the computation and payment of all state fuel taxes. If Owner-Operator elects to use Carrier's fuel card, Fuel charges apportioned to Owner-Operator and state fuel taxes will be charged to Owner-Operator as allowed for under this Agreement. Carrier will calculate each month the taxes owed based on the Equipment's mileage computed from a mobile computing platform and the fuel purchased by Owner-Operator for use with the Equipment. Any net tax debit for all taxing jurisdictions combined will be deducted from OO's Payments, and any net fuel tax credit for all taxing jurisdictions combined will be refunded to Owner-Operator on a monthly basis. Itemization of the tax liability incurred through the operation of the Equipment under this Agreement will be set forth in a monthly fuel tax statement provided to Owner-Operator. If Owner-Operator elects to use a Carrier-issued fuel card, Owner-Operator shall cooperate fully with Carrier, and provide Carrier with any and all documentation requested by Carrier to assist Carrier in reporting and paying all use and fuel tax liability for the Equipment. Ordinarily Carrier shall compute Owner-Operator's fuel use and mileage taxes on a fleet wide average basis. If, however, Owner-Operator fails to provide Carrier complete and accurate fuel-tax-related records, as required above, in time for Carrier's computation, on the seventh (7th) day of each month, of Carrier's fuel and mileage tax reports and payments for the preceding month, Carrier shall compute Owner-Operator's fuel use taxes based on total miles dispatched by Carrier at 4.9 miles-per-gallon rate.
- (d). **Employment Taxes.** Owner-Operator shall pay or withhold all employment-related taxes and fees and other related taxes and fees (including penalties and interest) imposed by any federal, provincial, state and/or local government by virtue of Owner-Operator's status as an employer or sole proprietor, as the case may be for its employees and agents. Owner-Operator shall file all federal, provincial, state or local government tax forms and returns as required in connection with its status as an employer or sole proprietor and shall pay or withhold when due all taxes and contributions reported in such forms and returns. Owner-Operator shall furnish Carrier with such evidence of compliance with the foregoing as

Carrier shall reasonably request. In that regard, Owner-Operator understands and acknowledges that:

- (i.) Owner-Operator may be liable for self-employment (social security) tax and state and federal income taxes with respect to any payments that Owner-Operator receives from Carrier pursuant to this Agreement;
 - (ii.) The self-employment social security taxes Owner-Operator must pay may be higher than social security taxes an individual would pay if he or she were an employee; and
 - (iii.) The service provided by Owner-Operator under this Agreement is not work covered by the unemployment compensation laws of any state, including Georgia; provided, however, that should Owner-Operator employ or use drivers, helpers, or other workers to fulfill Owner-Operator's obligations under this Agreement, and the drivers, helpers, or other workers are covered by the unemployment laws of any state, including Georgia, Owner-Operator is solely responsible for providing unemployment insurance for the drivers, helpers, or other workers employed by Owner-Operator.
- (e). ***Property and Ad Valorem Taxes.*** Carrier shall calculate, report and pay all property taxes and ad valorem taxes and fees imposed on Carrier by any federal, provincial, state and/or local government entity related to the property value of the Equipment leased by Owner-Operator to Carrier hereunder, and Carrier shall deduct, from Owner-Operator's OO Payment(s), the amount set forth in the Payment and Fee Schedule set forth in Exhibit B for all such taxes. Owner-Operator agrees and acknowledges that the ad valorem taxes calculated by Carrier are based on a fleet average rather than the specific operation of the Equipment by Owner-Operator.

7. **Insurance.**

- (a). ***Carrier's Insurance Obligations.*** Pursuant to FMCSA regulations (49 C.F.R. Part 387) promulgated under 49 U.S.C. § 13906 and applicable state laws, Carrier shall maintain, at Carrier's expense, public liability insurance (meaning, throughout this Agreement, bodily-injury property-damage coverage and environmental-restoration coverage), and cargo loss-and-damage insurance for the Equipment at all times while the Equipment is being operated on behalf of Carrier. **Carrier's public liability insurance policy, trailer physical-damage insurance policy, and cargo insurance policy do not list Owner-Operator, either by class or individually, as an additional insured. Accordingly, if Owner-Operator wishes to insure himself/herself against bodily-injury, property-damage, environmental-restoration, and cargo claims asserted directly against Owner-Operator by an injured third party, Owner-Operator shall purchase and maintain his/her own insurance policies covering such claims. In addition, Carrier's possession of this insurance shall in no way affect Carrier's rights of indemnification against Owner-Operator as provided for in Paragraph 8 and elsewhere in this Agreement.**
- (b). ***Owner-Operator's Insurance Obligations.*** Owner-Operator shall maintain, at Owner-Operator's expense, the following minimum insurance coverages during this Agreement:
- (i.) ***Non-Trucking Liability.*** Owner-Operator shall maintain public liability insurance that shall provide coverage to Owner-Operator whenever the Equipment is not being operated on behalf of Carrier (including, but not limited to, whenever the Equipment is being operated on behalf of others pursuant to Paragraph 18 of this Agreement or whenever the Equipment is being operated on behalf of Owner-Operator alone) in a combined single limit of not less than \$1,000,000. This coverage shall be no less comprehensive than the coverage Carrier may facilitate on Owner-Operator's behalf if Owner-Operator so chooses and if such facilitation is offered by Carrier. In addition, the required coverage shall be primary and non-contributory to

any other insurance that may be available from Carrier. Owner-Operator shall be responsible for all deductible amounts and for any loss or damage in excess of the policy limit.

(ii.) ***Workers' Compensation/Occupational Accident Insurance***

(1.) **Workers' Compensation/Occupational Accident Coverage.** Owner-Operator shall provide workers' compensation insurance coverage for Owner-Operator (if a natural person), all of its employees and agents, anyone driving the Equipment, and any other persons required to be covered under the workers' compensation law of any state that is reasonably likely to have jurisdiction over Owner-Operator's business operations and in amounts not less than the statutory limits required by such applicable state law. The workers' compensation insurance policy shall provide principal coverage in Wisconsin as well as the state in which the work is principally localized, and shall provide "other states coverage" that excludes only North Dakota, Ohio, Washington, and Wyoming. As evidence of such coverage, Owner-Operator shall provide Carrier with a copy of the insurance policy declarations page for Carrier's verification before operating the Equipment under this Agreement. This coverage shall be no less comprehensive than the coverage Carrier may facilitate on Owner-Operator's behalf if Owner-Operator so chooses and if such facilitation is offered by Carrier. If Owner-Operator is the sole owner and the sole and exclusive operator of the Equipment (or Owner-Operator operates the Equipment as a "team" using a single co-driver), then, subject to Carrier's approval of the coverage, Owner-Operator may, as an alternative to obtaining workers' compensation coverage, obtain an occupational accident insurance policy that provides coverage of at least \$1,000,000 that includes either an endorsement or a separate policy provision whereby the insurer provides, or agrees to provide, workers' compensation coverage that becomes effective for a claim by Owner-Operator alleging employee status. Owner-Operator shall provide Carrier with written evidence of such coverage satisfactory to Carrier. This coverage shall be no less comprehensive than the coverage Carrier may facilitate on Owner-Operator's behalf if Owner-Operator so chooses and such facilitation is offered by Carrier.

(2.) ***Certain Texas and Utah-Domiciled Contractors.*** If domiciled in Texas, or Utah, Owner-Operator must provide evidence of:

(A.) ***Texas.*** If Owner-Operator is the sole owner (as that term is defined in 49 C.F.R. § 376.2(d)) and exclusive operator of the Equipment, is domiciled in Texas, and does not wish to be covered by workers' compensation insurance, Owner-Operator shall sign and submit to Carrier a Texas Department of Insurance, Workers' Compensation Division ("DWC") DWC Form-82 (Rev. 10/05), check-marking the option (in upper right quadrant) of "Agreement to Require Owner-Operator to Act as Employer" and completing the "Owner-Operator's Affirmation" in the lower half of the form. Carrier shall retain the original of the completed form, file a copy with DWC, obtain a date-stamped copy back, and furnish copies of the date-stamped version to Owner-Operator and to Carrier's workers' compensation insurance carrier. Any workers' compensation coverage obtained by Owner-Operator shall be no less comprehensive than the coverage Carrier may facilitate on Owner-Operator's behalf if Owner-Operator so chooses and if such facilitation is offered by Carrier.

(B.) ***Utah.*** If Owner-Operator is domiciled in Utah and is the sole "owner" (as

that term is defined in 49 C.F.R. § 376.2(d)) and exclusive driver of the Equipment, Owner-Operator shall provide Carrier with evidence of occupational accident insurance coverage and a copy of a valid Workers' Compensation Coverage Waiver ("WCCW") issued by the Industrial Accidents Division of the Utah Labor Commission (through Owner-Operator's application at <https://webaccess.laborcommission.utah.gov/wccoveragewaivers>). If Owner-Operator is domiciled in Utah and is not the sole "owner" (as so defined) and exclusive driver of the Equipment, Owner-Operator shall provide evidence of workers' compensation insurance coverage on both Owner-Operator (unless Owner-Operator has provided Carrier with a copy of a valid WCCW) and those of Owner-Operator's drivers, employees, agents, and other persons required to be principally covered under the workers' compensation law of Utah.

(C.) **Disclaimer: Owner-Operator understands and acknowledges that it is not entitled to workers' compensation benefits under any insurance policy maintained by Carrier on behalf of Carrier's employees.**

- (iii.) ***Passenger Insurance.*** If Owner-Operator wishes to carry passengers in the Equipment (subject to Carrier so authorizing in advance), Owner-Operator shall procure, carry, and maintain passenger liability insurance that shall provide coverage to Owner-Operator and Carrier (as an additional insured) whenever the Equipment is being operated (whether or not on behalf of Carrier) in a combined single limits, and aggregate limit of liability, of not less \$300,000 (single) and \$600,000 (aggregate). This coverage shall be no less comprehensive than the coverage Carrier may facilitate on Owner-Operator's behalf if Owner-Operator so chooses and such facilitation is offered by Carrier. In addition, the required coverage shall be primary to any other insurance that may be available from Carrier. Owner-Operator shall be responsible for all deductible amounts and for any loss or damage in excess of the policy limit.
- (iv.) ***Other Insurance.*** In addition to the insurance coverages required under this Agreement, it is Owner-Operator's responsibility to maintain any fire, theft, uninsured and/or underinsured motorist, physical damage (collision), or other insurance coverage that Owner-Operator may desire for the Equipment or for Owner-Operator's health care or other needs. **As provided in Paragraph 8 of this Agreement, Owner-Operator holds Carrier and its affiliates, subsidiaries, officers, agents, and employees harmless with respect to loss of or damage to Owner-Operator's Equipment, trailer, or other property, and Carrier has no responsibility to procure, carry, or maintain any insurance covering loss of or damage to Owner-Operator's Equipment, trailer, or other property. Owner-Operator acknowledges that Carrier may, and Owner-Operator hereby authorizes Carrier to, waive, reject, or reduce no-fault, uninsured, and underinsured motorist coverage from Carrier's insurance policies to the extent allowed under the law of the State of Wisconsin (the State in which Carrier's insurance policies are delivered), and Owner-Operator shall cooperate in the completion of all necessary documentation for the waiver, election, rejection, or reduction.**
- (c). ***Requirements Applicable To All Of Owner-Operator's Insurance Coverages.*** Owner-Operator shall procure insurance policies providing the above-described coverages solely from insurance carriers that are A.M. Best "A"-rated (or of equivalent financial strength in the commercially-reasonable judgment of Carrier), and Owner-Operator shall not operate the Equipment under this Agreement unless and until Carrier has determined that the policies are acceptable (Carrier's approval shall not be unreasonably withheld). Owner-Operator shall furnish to Carrier written certificates (or in the case of workers' compensation coverage, the insurance policy declarations page) obtained from Owner-Operator's insurance carriers showing that all insurance coverages required above have been procured from the above-rated insurance carriers, that the coverages are being properly maintained, and that the

premiums thereof are paid. Each insurance certificate shall specify the name of the insurance carrier, the policy number, and the expiration date; and list Carrier as an additional insured with primary and non-contributory coverage (except that any work's compensation policy shall contain an alternate employer endorsement in favor of Carrier and any non-trucking policy or occupational accident policy will not be required to name Carrier as an additional insured). If a certificate of insurance provided to Carrier under this Subparagraph does not show that written notice of cancellation or modification of the policy shall be given to Carrier at least thirty (30) days prior to such cancellation or modification, Owner-Operator shall provide, or cause its insurance carrier to provide, this notice to Carrier.

- (d). ***Owner-Operator's Liability If Required Coverages Are Not Maintained.*** Not subject to the indemnity limits in Paragraph 8 of this Agreement, Owner-Operator agrees to defend, indemnify, and hold Carrier harmless from any direct, indirect, or consequential loss, damage, fine, expense, including reasonable attorney fees, actions, claim for injury to persons, including death, and damage to property that Carrier may incur arising out of or in connection with Owner-Operator's failure to maintain the insurance coverages required by this Agreement. In addition, Owner-Operator, on behalf of Owner-Operator's insurer, expressly waives all subrogation rights against Carrier, and if a subrogation action is brought by Owner-Operator's insurer, Owner-Operator agrees to defend, indemnify, and hold Carrier harmless from the claim.
- (e). ***Availability of Insurance Facilitated by Carrier.*** Owner-Operator may, if Owner-Operator so chooses and Carrier so offers, authorize Carrier to facilitate, on Owner-Operator's behalf, certain insurance coverages required or made optional by this Agreement. In any such case, Carrier shall, if Carrier agrees, deduct or otherwise recover pursuant to Paragraph 11 of this Agreement amounts reflecting all of Carrier's expense and cost in obtaining and administering, on Owner-Operator's behalf, the coverage; provided that Carrier will have no obligation to submit, on behalf of Owner-Operator, any premiums for such insurance if Owner-Operator's OO Payments and/or Escrow Funds (if selected by Owner-Operator) do not contain sufficient funds for full payment (and subsequent deduction by Carrier) of such premiums. It is Owner-Operator's sole obligation to ensure payment of such premiums, and Owner-Operator acknowledges that the insurance coverages selected hereunder may lapse if payment is not made.

If Owner-Operator fails to provide proper evidence of the purchase or maintenance of the insurance required above, then Carrier is authorized but not required to obtain the insurance at Owner-Operator's expense and deduct or otherwise recover pursuant to Paragraph 11 of this Agreement amounts reflecting all of Carrier's expense in obtaining and administering the coverage. Owner-Operator recognizes that Carrier is not in the business of selling insurance, and any insurance coverage requested by Owner-Operator from Carrier is subject to all of the terms, conditions, and exclusions of the actual policy issued by the insurance underwriter. Carrier shall ensure that Owner-Operator is provided with a certificate of insurance (as required by 49 C.F.R. § 376.12(j)(2)) for each insurance policy under which the Owner-Operator has authorized Carrier to facilitate insurance coverage from the insurance underwriter (each certificate to include the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to Owner-Operator for each type of coverage, and the deductible amount for each type of coverage for which Owner-Operator may be liable), and Carrier shall provide Owner-Operator with a copy of each policy upon request.

- (f). ***Changes in Cost or Other Details of Coverages.*** If Carrier is facilitating any insurance coverages for Owner-Operator pursuant to Subparagraph (e) above and the cost to Owner-Operator for, or other details of, a coverage changes, Owner-Operator shall be so notified by personal delivery, fax, by any electronic means allowed by this Agreement, or by other written notice. In any event, Owner-Operator shall not be subject to any such change until fifteen (15) days after the notice or such later time as is set forth in the notice, unless Owner-Operator signs an addendum making changes to the cost or other details of facilitated insurance coverages, in which case the changes described in the addendum will go into effect as the Effective Date stated in the addendum. Owner-Operator's failure, by the end of fifteen (15) days after such notice, to notify Carrier of any objection to the change shall constitute

Owner-Operator's express consent and authorization to Carrier to implement the change and modify accordingly the deductions from Owner-Operator's settlement payments, beginning immediately after the 15-day period. Carrier shall thereupon provide Owner-Operator with a revised Certificate of Insurance, required by Subparagraph (e) above, reflecting the change and, upon request, a copy of the corresponding insurance policy. If Owner-Operator fails to notify Carrier of any objection within the 15-day period – or if Owner-Operator notifies Carrier of Owner-Operator's objection within the 15-day period and Owner-Operator and Carrier are then unable to resolve the matter to their mutual satisfaction – Owner-Operator and Carrier shall each have the right to terminate this Agreement effective immediately upon the change becoming effective (although Owner-Operator shall remain subject to the change until Owner-Operator's termination effective date and time).

8. Indemnification and Hold Harmless.

- (a). ***In General.*** Except to the extent Owner-Operator's acts or omissions are covered under the parties' respective insurance policies as set forth in Paragraph 7 of this Agreement with no expense to Carrier, Owner-Operator agrees to defend, indemnify and hold harmless Carrier and Carrier's affiliates, subsidiaries, officers, agents, and employees from any loss, damage, delay, fine, civil penalty, including reasonable attorneys' fees and costs of litigation, action, claim for injury to persons (including to Carrier's employees or agents), including death, damage to property, cargo loss or damage, damage to Carrier's Trailer or Carrier's other real or personal property, or other expense that Carrier pays or otherwise incurs arising out of or in connection with Owner-Operator's (including Owner-Operator's agents' or employees') negligence, gross negligence, willful misconduct, material breach of this Agreement, or other culpable acts or omissions (together, "Carrier Damages"). Owner-Operator hereby authorizes Carrier to deduct or otherwise recover pursuant to Paragraph 11 of this Agreement any amounts due Carrier under this Paragraph 8. Carrier shall furnish Owner-Operator with a written explanation and itemization of any deduction for cargo or property damage before the deduction is made. If Owner-Operator operates the Equipment or Carrier's Equipment (as defined below) for any Alternative Use(s) of Equipment (defined below) or purpose other than the carriage of Carrier's lading, Owner-Operator shall hold Carrier harmless and indemnify Carrier for any damage (including attorneys' fees) arising from this use. This Paragraph shall remain in full force and effect both during and after the termination of this Agreement.
- (b). ***Indemnity Limits.*** With respect to any claim of Carrier Damages under Subparagraph (a) of this Paragraph, Owner-Operator's indemnity obligation under Subparagraph (a) of this Paragraph shall be limited to paying Carrier up to fifteen hundred dollars (\$1,500) of the total amount of personal injury and/or property damage claim Carrier paid or otherwise incurred per occurrence, up to five hundred dollars (\$500) of the total amount of cargo damage claim Carrier paid or otherwise incurred, per occurrence. In no event shall Owner-Operator's indemnity obligation under Subparagraph (a) of this Paragraph exceed two thousand dollars (\$2,000) where multiple claims arise in combination out of any one occurrence. This Subparagraph's indemnity limit applies only to Owner-Operator's indemnification obligation to Carrier and thus will not limit in any way the losses, damages, attorneys' fees, or other expenses that Owner-Operator may sustain as a result of an injured third party's assertion of a claim directly against Owner-Operator. Further, this indemnity limit will not apply with respect to any Carrier Damages arising out of an Alternative Use(s) of Equipment or when Owner-Operator is operating for a purpose other than the carriage of Carrier's lading.
- (c). ***Carrier's Coverages.*** Carrier has secured certain insurance policies and coverages directly relevant to certain risks and liabilities for which Owner-Operator has agreed to indemnify Carrier under this Paragraph (for example, automobile liability, general liability, and cargo liability arising out of or in connection with Owner-Operator's, and/or Owner-Operator's agents or employees, negligence, gross negligence, willful misconduct, or other culpable acts or omissions). These policies are expressly for the benefit of Carrier and incidentally may benefit Owner-Operator. Terms of the policies may change (for example, higher or lower deductibles, length of coverage, UM/UIM waivers or limitations, or insurance underwriters). Owner-Operator has neither any obligations under the policies nor any right

to change the terms of coverages.

- (d). ***Claims by Owner-Operator or Other Contractors.*** Notwithstanding Subparagraph (a) of this Paragraph and not subject to the limits of Subparagraph (b) of this Paragraph, Owner-Operator agrees to defend, indemnify, and hold Carrier harmless from any claim by Owner-Operator of loss of or damage to Owner-Operator's Equipment or other property (and any related fine, civil penalty, or expense, including reasonable attorneys' fees and costs of litigation) due to the negligence, gross negligence, willful misconduct, material breach of this Agreement, or other culpable acts or omissions of Owner-Operator or any other contractor of Carrier (including agents or employees of Owner-Operator or any other contractor of Carrier, respectively); and from any claim by any other contractor of Carrier of loss of or damage to the other contractor's truck, tractor, trailer, or other property (and any related fine, civil penalty, or expense, including reasonable attorneys' fees and costs of litigation) due to the negligence, gross negligence, willful misconduct, material breach of this Agreement, or other culpable acts or omissions of Owner-Operator (including Owner-Operator's agents or employees).
- (e). ***Reclassification.*** PARAGRAPH 24 AND OTHER PROVISIONS OF THIS AGREEMENT REFLECT THAT OWNER-OPERATOR IS, AND BOTH OWNER-OPERATOR AND CARRIER INTEND OWNER-OPERATOR TO BE, AN INDEPENDENT CONTRACTOR, NOT AN EMPLOYEE OF CARRIER. IN LIGHT OF THIS FACT AND INTENT: Notwithstanding Subparagraph (a) of this Paragraph and not subject to the limits of Subparagraph (b) of this Paragraph, Owner-Operator agrees to defend, indemnify and hold harmless Carrier, its subsidiaries, related or affiliated companies, its customers and their respective officers, directors, and past and current employees, employee benefit programs (and the trustees, administrators, fiduciaries and insurers of such programs), agents, attorneys, owners, stockholders, representatives, and insurers (the "Carrier Indemnified Parties") from and against any and all suits, actions, legal or administrative proceedings, claims, liens, demands, damages, liabilities, losses, costs, fees, penalties, fines and expenses (including without limitation reasonable attorneys' fees and expenses (both in-house and outside attorneys), and costs of investigation, litigation, settlement, and judgment ("Losses") arising out of or related to any labor or employee-based matters relating to the Owner-Operator and/or any employees or agents of the Owner-Operator, including, but not limited to, claims relating to: (i) compensation, insurance and employment benefits, income tax withholding, and severance related matters; (ii) compliance or non-compliance with any applicable federal, state or local employment laws; (iii) any employment issues relating to Owner-Operator or its agents or employees, including but not limited to, allegations of discrimination, retaliation, violations of public policy, failure to pay overtime or wages when due, failure to comply with any applicable federal, state or local law entitling eligible employees to meal and/or rest breaks; (iv) Owner-Operator's classification as non-Carrier employees; and/or (v) de facto, common law or joint employment claims, including claims that any Owner-Operator or its agents or employees should be treated as an employee of, is entitled to the employment benefits accorded to employees of, and/or is being supervised or otherwise controlled by, Carrier or any Carrier Indemnified Party.
- (f). ***The Parties' Financial Obligations if Owner-Operator Is Determined to Be an Employee.*** If, whether on Owner-Operator's initiative or not, Owner-Operator is determined to be an employee of Carrier by any federal, State, local, Native American tribal, or foreign court, administrative agency, or other governmental body ("Reclassification Decision"), Owner-Operator and Carrier hereby agree that this Agreement shall be rescinded back to the time of its formation and that both parties shall be returned to their respective positions before this Agreement was signed. Specifically, Owner-Operator and Carrier agree that notwithstanding any other provision of this Agreement:
- (i.) Owner-Operator shall, upon the Reclassification Decision becoming final and no longer appealable, immediately: (A) owe Carrier, for each week or other period this Agreement was in effect, all gross compensation under Paragraph 4 and Exhibit B, less any deductions (or other withholdings or chargebacks) under Paragraph 11 of this Agreement, previously paid to Owner-Operator by Carrier; (B) relinquish all rights in any balances in required or voluntary Escrow

Funds then under Carrier administration that are traceable to compensation previously paid to Owner-Operator by Carrier; and (C) owe Carrier any cash advances provided by Carrier to Owner-Operator that Owner-Operator used for personal, household, or other expenses not in performance of Owner-Operator's obligations under this Agreement or that Owner-Operator retained unspent. Owner-Operator shall be entitled to deduct from these amounts any expenses (including, for Equipment, other equipment, or tools used in performing work for Carrier, any actual rent or installment-purchase payments made by Owner-Operator or, if none, payments that would equal fair-market rent for items of similar kind, age, and condition) Owner-Operator incurred in performance of Owner-Operator's obligations under this Agreement that were not covered by charge-backs or paid by Carrier;

- (ii.) Carrier shall, upon the Reclassification Decision becoming final and no longer appealable, immediately owe Owner-Operator, for all work activities during each week or other period this Agreement was in effect (including any activities for which Carrier has not yet paid Owner-Operator), only the then-applicable federal minimum hourly wage or, if higher, a State's then-applicable minimum hourly wage but only to the extent Owner-Operator's wage-earning activities occurred in that State, multiplied by Owner-Operator's total hours actually performing on-duty work for Carrier, consisting of both driving and non-driving time, under the FMCSA Hours of Service Regulations, 49 C.F.R. Part 395 (Line 3 and Line 4 time), or under a State's hours of service regulations to the extent applicable. The total hours worked shall be computed based on any relevant, reliable evidence, which may include estimates or projections based on Owner-Operator Settlement Statements, driver logs, shipment and/or vehicle tracking data, bills of lading, fuel receipts, toll receipts, and testimony; and
- (iii.) Because reclassification of Owner-Operator's status from Owner-Operator to employee would fundamentally change the parties' contracting assumptions and expectations, either party may, immediately upon initial issuance (even if appealed or appealable) of a Reclassification Decision, terminate this Agreement on one day's notice to the other. The provisions of this Sub paragraph 8(f) shall be deemed to survive any termination of this Agreement.

9. **Indemnification by Carrier.**

- (a). Carrier agrees to defend, indemnify, and hold Owner-Operator and Owner-Operator's affiliates, subsidiaries, officers, agents, and employees harmless from any claim (including any for which Owner-Operator is not indemnified by Carrier's insurance) of direct, indirect, or consequential loss, damage, delay, fine, civil penalty, or expense, including reasonable attorneys' fees and costs of litigation (collectively, "Owner-Operator Damages") that Owner-Operator pays or otherwise incurs arising out of or in connection with Carrier's and/or its employees) negligence, gross negligence, willful misconduct, material breach of this Agreement, or other culpable acts or omissions. This indemnification shall not apply to any claim of loss or damage to the Equipment or to Owner-Operator's other property or to any claim arising out of or in connection with Owner-Operator's operation of the Equipment for any purpose other than the performance of Owner-Operator's obligations under this Agreement. Owner-Operator shall furnish Carrier with a written explanation and itemization of any claim for cargo or property damage. This Paragraph shall remain in full force and effect both during and after the termination of this Agreement.
- (b). Carrier's indemnity obligation under Subparagraph (a) of this Paragraph shall be limited to a maximum of two thousand dollars (\$2,000) of the total amount in Owner-Operator Damages that Owner-Operator paid or otherwise incurred per occurrence.
- (c). Carrier shall credit to Owner-Operator's next OO Payment any amounts due Owner-Operator under this Paragraph from Carrier.

10. Escrow Funds.

- (a). **Required Balance.** Upon execution of this Agreement, Owner-Operator shall, as partial security for obligations of Owner-Operator to Carrier which may arise from time to time under this Agreement or any other agreement or document executed in connection herewith, deposit and thereafter maintain in an escrow account the amount as set forth in the Payment and Fee Schedule, Exhibit B, and in the manner set forth therein, for the Equipment leased to Carrier ("Escrow Funds"). Carrier shall deduct amounts from OO Payments as set forth in the Payment and Fee Schedule, Exhibit B, over a period of time as may be necessary to reach and maintain the required balance for the Escrow Funds.
- (b). **HVUT Set-off.** It is Owner-Operator's obligation to pay the Federal Heavy Vehicle Use Tax (HVUT) as required under Paragraph 6(b), above. Owner-Operator may choose to report and pay such taxes itself where indicated by election on Exhibit B attached hereto. If Owner-Operator does not so choose, Carrier will file and submit payment on behalf of Owner-Operator for such tax. If Owner-Operator elects to have Carrier file and submit payment of the HVUT tax on Owner-Operator's behalf, Carrier shall deduct additional amounts from OO Payments as set forth in the Payment and Fee Schedule, Exhibit B, over a period of time leading up to the filing date as may be necessary until the required amount to pay such tax has been accumulated and deposited in the Escrow Funds.
- (c). **Right to Replenish Funds.** In the event Escrow Funds are reduced below the required balance as a result of deductions made therefrom Carrier shall have the right to replenish the Escrow Funds by setting-off amounts from OO Payments over a period of time as may be necessary to reach again the required balance.
- (d). **Statements.** Carrier shall provide Owner-Operator with an accounting for transactions involving the Escrow Funds by clearly indicating on individual settlement sheets the amount and description of any deductions or additions made to the Escrow Funds at any time during the term of this Agreement. In addition, an accounting of all transactions involving the Escrow Fund(s) will be provided to Owner-Operator by Carrier upon request.
- (e). **Interest.** Interest shall accrue on the Escrow Funds from time to time on at least a quarterly basis. For purposes of calculating the balance of the Escrow Funds on deposit on which interest shall be paid, Carrier may deduct a sum equal to the average weekly advance paid to Owner-Operator, including the average weekly amount owed by Owner-Operator to Carrier, during the period of time for which interest is paid. The interest rate paid by Carrier shall be established on the date the interest period begins and shall be at least equal to the average yield or equivalent coupon issue yield on a 91-day, 13-week Treasury Bill, as established in the weekly auction by the Federal Department of Treasury. Should the Escrow Funds on deposit, less the deductions specified in this Paragraph, result in a deficit, Owner-Operator shall pay Carrier interest on the amount of the deficit at the time, period, and rate established above.

11. Deductions.

- (a). **Authority of Carrier.** Owner-Operator understands and agrees that Carrier may withhold funds from OO Payments and/or the Escrow Funds to compensate Carrier for Owner-Operator's financial obligations to Carrier arising under this Agreement or any other agreement or document executed in connection herewith. Therefore, Owner-Operator grants to Carrier a lien in such funds related to OO Payments and the Escrow Funds to secure such Owner-Operator obligations. Owner-Operator hereby authorizes Carrier to withhold the necessary amounts from OO Payments and/or the Escrow Funds as follows: (i) Carrier shall first withhold amounts from OO Payments due or becoming due to Owner-Operator in connection with Owner-Operator's performance of the Freight Transportation Services as described herein, then (ii) to the extent such withholdings from OO Payments do not satisfy the

Owner-Operator obligation(s) to Carrier, Carrier may, at its option, make the necessary deductions for the balance of such obligation from the Escrow Funds. Owner-Operator understands and agrees that Carrier may withhold funds from OO Payments and/or the Escrow Funds for any other deductions or withholdings authorized in writing by Owner-Operator and/or required by Applicable Law(s), and that Carrier shall have the sole discretion to determine the priority of any applicable deductions.

- (b). ***Withholdings Amount.*** In addition, the following amounts shall be withheld from OO Payments: any fees and/or costs disclosed in this Agreement, including but not limited to as set forth more fully in Exhibit B, any administrative expenses incurred by Carrier, any garnishment or other funds required to be withheld by Applicable Law(s). Carrier shall provide Owner-Operator with copies of any documents that may be necessary to determine the validity of a withholding.
- (c). ***Obligations.*** Obligations of Owner-Operator to Carrier for which Carrier shall make the necessary deductions, as authorized under this Paragraph 11, shall include all amounts listed in the Payment and Fee Schedule set forth in Exhibit B.
- (d). ***Priority of Deductions.*** Notwithstanding anything contained herein to the contrary (including, without limitation, in Paragraph 11(a), above), Carrier shall have the right to determine, at its discretion, the priority of any deductions, chargebacks, and withholdings that may be deducted, charged back, or withheld from Owner-Operator's OO Payments.

12. Overweight/Oversize Shipments.

- (a). ***Owner-Operator's Responsibility.*** Owner-Operator shall assume responsibility for reading permit instructions and complying with permit conditions with respect to overweight/oversized trailers and for inspecting, measuring and weighing all Shipments prior to departure to ensure that the trailers and Shipments are loaded properly and are otherwise in compliance with all Applicable Law(s) (collectively, the "Inspection and Verification Responsibilities"). Any penalties or fines resulting from Owner-Operator's failure to undertake such Inspection and Verification Responsibilities promptly and properly, or failure to take appropriate action to bring the Shipments and trailers in compliance with all Applicable Law(s), including fines and penalties for overweight and oversized trailers and for improperly permitted overdimension and overweight Shipments, shall be deemed to be the obligation of Owner-Operator.
- (b). ***Carrier's Responsibility.*** If Owner-Operator does (and can produce proof that Owner-Operator did) perform the Inspection and Verification Responsibilities prior to incurring the citation and then provided Carrier with a meaningful opportunity to make changes to the Shipment before proceeding further, Carrier shall assume responsibility and risk for the cost of fines and penalties for overweight and oversized trailers and for improperly permitted overdimension or overweight Shipments, and shall reimburse Owner-Operator for any fines and penalties paid by Owner-Operator relating thereto. If Owner-Operator fails to meet such Inspection and Verification Responsibilities (and provide proof thereof), any fines and penalties associated with the Shipment(s) shall be the responsibility of the Owner-Operator. In addition, when specifically authorized by Carrier in advance, Carrier shall reimburse Owner-Operator for any ferry expenses, tolls, pilot or escort cars and flagmen as required by state authorities, sufferance warehouse storage charges, lift truck service charges, excess value costs and special loading and unloading charges with respect to the transportation of overweight and oversized trailers by Owner-Operator.

13. Carrier's Equipment.

- (a). ***Use of Carrier's Equipment by Owner-Operator.*** For purposes of this Agreement, the term "Carrier's Equipment" includes Trailers, and other parts, supplies, or equipment (e.g., tarps, chains, etc.) owned

(or leased) by Carrier. Carrier expects Owner-Operator to provide its own Equipment and any other associated tools, supplies and materials necessary to perform the services described in this Agreement. In the limited event Owner-Operator utilizes Carrier Trailers, or other Carrier Equipment in rendering Freight Transportation Services hereunder, Owner-Operator shall make every reasonable effort to keep same in good repair, condition and working order, normal wear and tear excepted. In the case of Trailers, Owner-Operator shall keep the Trailers hooked to Owner-Operator's Equipment and secure the Trailers at all times unless an alternative security arrangement has been made with Carrier. Owner-Operator shall not use Carrier's Trailers or other Carrier Equipment for any purpose other than Carrier's authorized business, except as otherwise provided by this Agreement.

- (b). ***Return of Equipment.*** Owner-Operator agrees, at its sole cost, to return Carrier's Equipment to Part Distribution Center, 2538 S. Broadway, Green Bay, Wisconsin 54304, or any other point reasonably requested by Carrier, in the same original condition as received, normal wear and tear excepted, along with all other Carrier Equipment and/or property, within three (3) days either upon written notice to Owner-Operator at any time or upon termination of this Agreement as to any or all Carrier Equipment. Carrier shall be the sole judge of the condition of all Carrier Equipment and/or other property returned. In the event Carrier's Equipment is not in the condition required by this Paragraph, Carrier may restore the Carrier Equipment to the condition required and charge Owner-Operator the expenses incurred by Carrier thereby. Carrier shall make the necessary deductions, pursuant to Paragraph 11 above, for such expenses and amounts.
- (c). ***Failure to Return.*** In the event Owner-Operator fails to return Carrier's Equipment as required by this Paragraph, Carrier shall have the right to take possession of such Carrier Equipment without further demand or notice wherever same may be located and without any court order or any process of law, and Carrier shall be entitled to receive the costs and expenses (including reasonable attorneys' fees) incurred by Carrier in recovering such Carrier Equipment. In addition, Owner-Operator shall be liable to Carrier for the replacement value of any Carrier Equipment which is not so recovered or which is not returned to Carrier for any reason. Carrier shall make the necessary deductions, pursuant to Paragraph 11 above, for any such costs, expenses, and amounts. Any delay in the return of the Carrier Equipment to Carrier shall result in a per diem charge of \$150 per unit per day and continuing thereafter until the return to Carrier in good condition. Carrier may notify Owner-Operator of a change in these rates from time to time, which change shall be immediately effective upon notice.
- (d). ***Carrier Equipment Repairs.*** If any Carrier Equipment is damaged while in Owner-Operator's possession or control, or at any time after pick up and before delivery back to the sole control and possession of Carrier, then Owner-Operator shall immediately notify Carrier of such damage and Owner-Operator shall be responsible for the cost of all such repairs, loss, or damage to such Carrier Equipment. Carrier shall have the option to instruct Owner-Operator, at Owner-Operator's cost, to perform the repairs so long as Owner-Operator can repair the Carrier Equipment to Carrier's specifications. In the alternative, if Owner-Operator returns the damaged Carrier Equipment to Carrier, Carrier may repair the damaged Carrier Equipment to Carrier's fleet specifications and Owner-Operator shall be responsible for all such repair costs. Carrier may deduct the cost of such repairs from the OO Payments and/or invoice Owner-Operator for such repair costs, in which case Owner-Operator shall pay such invoice within fifteen (15) days of receipt.
- (e). ***Lost, Stolen, Irreparably Damaged or Destroyed Carrier Equipment; Delayed Return.*** If any Carrier Equipment is lost, stolen, irreparably damaged or destroyed while in the possession of Owner-Operator, all as determined within the sole discretion of Carrier, then Owner-Operator shall immediately notify Carrier of such loss, theft, damage or destruction, and Owner-Operator shall be responsible for the replacement value of the lost, stolen, irreparably damaged or destroyed Carrier Equipment. In the event Owner-Operator retains Carrier Equipment without Carrier's permission, and/or that lost or stolen Carrier Equipment is recovered after Owner-Operator's payment hereunder, Owner-Operator may recover, from Carrier, its prior payment to Carrier, less a charge of \$100 per unit per day that the Carrier Equipment was retained, lost or stolen (such charge representing a reasonable

estimate of revenue lost by Carrier as a result of not having use of the Carrier Equipment), but only after Owner-Operator has returned the Carrier Equipment in the same condition as received by Owner-Operator, normal wear and tear only excepted.

14. No Obligation to Purchase/Lease and Fuel/Equipment Savings Apportionment.

Carrier expects Owner-Operator to provide its own Equipment and any other associated tools, supplies and materials necessary to perform the services described in this Agreement. Owner-Operator is not required to purchase or lease from Carrier any product, equipment, insurance, or service as a condition of entering into this Agreement. Notwithstanding the above, the parties agree and acknowledge that Carrier, from time to time, may obtain volume discounts or rebates from third party vendors as a result of the optional purchase of goods or services by Owner-Operator. The parties further agree that any such discount or rebate may be retained in whole or in part by Carrier at its sole discretion. Specifically, Carrier negotiates fuel and equipment savings programs with suppliers to obtain discounts on fuel and equipment. These fuel and equipment savings/discount programs may apply to, without limitation, fuel, tires maintenance, and other OEM or after-market parts. Carrier may choose to make some percentage of such savings available to Owner-Operator, provided however, that in doing so Carrier will apportion, at its sole discretion, any savings, or discounts such that if Owner-Operator chooses to purchase discounted fuel or equipment, Owner-Operator may or may not realize a savings as compared to general market rates, but Carrier, by retaining some percentage of the savings negotiated by Carrier will generate income for itself. For the avoidance of doubt, Owner-Operator acknowledges that the price it pays Carrier for fuel, equipment, or services will be higher than the price Carrier pays the applicable supplier(s) for such fuel, equipment, or services and that the difference in price shall be retained by Carrier as profit. Owner-Operator hereby agrees that it is not entitled to any set percentage or proportion of fuel or equipment savings and that Carrier will decide how much, if any, savings to pass on to Owner-Operator.

15. Mobile Computing Platform.

Owner-Operator understands and agrees that Carrier has developed the capacity to transmit messages to drivers in Equipment via satellite, provided such Equipment is equipped with a mobile computing platform ("MCP"). Owner-Operator further understands and agrees that the capacity to receive and to send messages via satellite from and to Carrier with a MCP is a prerequisite for performance under this Agreement. Carrier has leased certain MCP's from Schneider National Leasing, Inc. ("SNL") and is willing to sublease some of these units to Owner-Operator. Owner-Operator further understands and agrees that there are alternative sources such as Qualcomm, Incorporated (the manufacturer of the MCP leased by Carrier) and other manufacturers or distributors, from which Owner-Operator can acquire or lease an MCP, and that Owner-Operator is not required to sublease or purchase an MCP from Carrier. Should Owner-Operator elect to sublease an MCP from Carrier, the terms and conditions of such sublease are set forth in the Exhibit D attached hereto. Should Owner-Operator lease or acquire an MCP from an alternative source, Owner-Operator shall nevertheless be subject to the terms and conditions set forth in Exhibit D, as applicable.

16. Failure to Complete Trip.

In the event Owner-Operator fails to complete a Shipment, abandons a Shipment or otherwise subjects Carrier to liability, directly or indirectly related to Owner-Operator's failure to perform or to perform adequately Freight Transportation Services hereunder, Carrier shall have the right to require Owner-Operator to disconnect from the Shipment at a reasonable location (if Owner-Operator had not previously disconnected from, or abandoned, the Shipment) and Carrier may complete performance of the Shipment in any reasonable manner or method (including by completing the Shipment directly or through the use of an alternative third-party vendor). Owner-Operator shall be liable to Carrier for any and all costs, losses, expenses, liabilities, judgments, and/or damages that Carrier may incur. Carrier shall make the necessary deductions, pursuant to Paragraph 11 above, for any such costs, expenses, losses, or damage for such amounts.

17. "Out-of-Service" Status and Trailer Disposition and Acquisition.

Owner-Operator may elect "Out-of-Service" status prior to selecting a Shipment. If Owner-Operator accepts particular freight, any losses incurred by Carrier due to Owner-Operator's subsequent rejection of that same freight shall be borne by Owner-Operator. Prior to going Out-of-Service, Owner-Operator shall notify Carrier of the date and time that Owner-Operator's Out-of-Service status shall begin and end and the Owner-Operator's anticipated next available location. Upon receiving Owner-Operator's "Out-of-Service" notification, Carrier shall provide Owner-Operator with a Trailer Disposition Location at which Owner-Operator may drop off Carrier's Trailer prior to Owner-Operator's "Out of Service" time. To the extent Owner-Operator drives from the Last Shipment Completion Location (as defined below) to the identified Trailer Disposition Location before going Out-of-Service, Carrier shall provide Owner-Operator payment for such services (Spot Payment), in accordance with Exhibit B. Owner-Operator may, alternatively, elect not to drop the Trailer at the identified Trailer Disposition Location and instead drop the Trailer at the Last Shipment Completion Location; provided however that if Owner-Operator chooses this option, Owner-Operator agrees to return to the Last Shipment Completion Location (or to within 100 miles thereof) upon coming back into service or to pay Carrier the amount set forth in Exhibit B to cover Trailer repositioning costs (Repositioning Fee). In any situation where Owner-Operator is in possession of Carrier's Trailer at the completion of a Shipment or has dropped the Trailer at the point designated with the Shipment or as required by the customer, this shall be referenced as the Last Shipment Completion Location. If Owner-Operator's next-selected Shipment originates from a point more than 100 miles from the Last Shipment Completion Location the parties agree that Carrier will experience a cost burden as a result of the Trailer repositioning or availability (as determined by the Carrier) needed to facilitate a Trailer for Owner-Operator's selected Shipment and, further, that Owner-Operator will, in Carrier's discretion, share in assuming such cost burden. To provide predictability, and given the uncertainty and variation in the costs which may be incurred in each instance of required Trailer repositioning, Owner-Operator and Carrier agree that the cost of the Repositioning Fee to be charged to Owner-Operator shall be that amount set forth in Exhibit B, regardless of the actual cost incurred by Carrier (which may be more or less than the amount set forth in Exhibit B). To avoid paying the Repositioning Fee, Owner-Operator may choose to return to a location within 100 miles of the Last Shipment Completion Location for Trailer acquisition. The above provisions regarding Trailer acquisition and disposition are applicable both when Owner-Operator is in Service and when Owner-Operator goes in and out of Service.

18. Right to Trip Lease.

- (a). ***Exclusive Possession and Responsibility.*** Pursuant to FMCSA regulations, Carrier shall have exclusive possession, control, and use of the Equipment, and shall assume complete responsibility for the operation of the Equipment, for the duration of this Agreement. The foregoing declarations are made solely to conform to FMCSA regulations and shall not be used for any other purposes, including any attempt to classify Owner-Operator as an employee of Carrier. Nothing in the provisions required by 49 C.F.R. § 376.12(c)(1) is intended to affect whether Owner-Operator or Owner-Operator's drivers are an independent contractor or an employee of Carrier. As provided by 49 C.F.R. § 376.12(c)(4), "an independent contractor relationship may exist when a carrier complies with 49 U.S.C. § 14102 and attendant administrative requirements." Because of the limitations of 49 C.F.R. §§ 376.12(c)(1) and (2), Owner-Operator may operate the Equipment for another motor carrier or entity during the Agreement only with the prior written consent of Carrier pursuant to Subparagraph (b) of this Paragraph 18.
- (b). ***Alternative Uses of Equipment.*** At Owner-Operator's request, Carrier may, with respect to any trip or trips, approve uses of the Equipment to perform transportation services other than on behalf of Carrier only under the terms and conditions set forth in this Subparagraph. The other uses may consist of (together, "Alternative Uses of Equipment"): (i) Sublease – Carrier subleases the Equipment (including services furnished by Owner-Operator's driver) to another authorized for-hire motor carrier of property ("Sublease" Carrier) for the provision of for-hire motor carriage, exempt or non-exempt from the jurisdiction of the U.S. Secretary of Transportation under 49 U.S.C. §§ 13501 et seq., to Sublease Carrier's customers pursuant to Sublease Carrier's operating authority; (ii) Owner-Operator Motor Carriage – Owner-Operator uses Owner-Operator's own motor carrier operating authority to provide for-hire motor carriage, exempt or non-exempt from the jurisdiction of the U.S. Secretary of Transportation under 49 U.S.C. §§ 13501 et seq., to a shipper (directly or through a motor freight

broker), in which event, the provisions of this Subparagraph (b) relating to Owner-Operator Motor Carriage shall be deemed to constitute the sublease required by 49 C.F.R. § 376.12(c)(2); and (iii) Exempt Motor Carriage – Owner-Operator, lacking motor carrier operating authority of Owner-Operator's own but possessing a validly issued DOT Number, lawfully provides for hire motor carriage, exempt from the jurisdiction of the U.S. Secretary of Transportation under 49 U.S.C. §§ 13501 et seq., to a shipper (directly or through a motor freight broker).

(i.) *Carrier's Authorization and Release.* To obtain Carrier's authorization for each Alternative Use of Equipment, Owner-Operator shall take the following steps BEFORE ACCEPTING TRIP:

- (1.) For Alternative Uses of Equipment Involving Subleases. Have the Sublease Carrier complete, sign, date, and then fax, or scan and email, to Carrier a sublease in a form Carrier shall provide on request ("Sublease"), together with (i) proof (including in the form of a printout of a search on <http://li-public.fmcsa.dot.gov>) that it has a fully-issued and active (not revoked) motor carrier registration and MC Number from FMCSA (and the name and State under which FMCSA has listed the MC Number) and (ii) the Sublease Carrier's certificate of insurance required by the Sublease. If Carrier approves the Alternative Use, Carrier shall sign, date, and fax, or scan and email, the Sublease to both the Sublease Carrier and Owner-Operator;
- (2.) For Alternative Uses of Equipment Involving Owner-Operator Motor Carriage. Owner-Operator shall submit to Carrier proof (including in the form of a printout of a search on <http://li-public.fmcsa.dot.gov>) that it has a fully-issued and active (not revoked) motor carrier registration and MC Number from FMCSA (and the name and State under which FMCSA has listed the MC Number) and proof of any intrastate operating authority issued by a State. Owner-Operator also shall telephone or email Carrier's dispatch and provide it with valid information about the shipper or broker wishing to arrange the Alternative Use of Equipment – name, address, identification number (which shall be the MC number for interstate brokers, any applicable State number for intrastate brokers, and the Federal Employer Identification Number for other entities, including shippers), phone number, email address, and individual contact's name – and about the planned trips (commodity(ies) to be hauled, dates, times, and city and State of pickup and delivery). If Carrier approves the Alternative Use, Owner-Operator shall be given an oral or emailed release from Carrier's dispatch. Owner-Operator shall display the Carrier release number on the trip sheet submitted to Carrier after the trip; or
- (3.) For Alternative Uses of Equipment Involving Exempt Motor Carriage. Owner-Operator shall submit to Carrier proof (including in the form of a printout of a search on <http://li-public.fmcsa.dot.gov>) that it has obtained a validly-issued DOT Number (and the name and State under which DOT has listed the DOT Number) and the certificate of insurance, or other proof of financial responsibility, if any, required by Paragraph 18(b)(iii)(3) of this Agreement. Owner-Operator shall also telephone or email Carrier's Owner-Operator advisor, and provide it with valid information about the shipper or broker (same information as required in Paragraph 18(b)(i)(2) above) and about the planned trips (dates, times, and city and state of pickup and delivery). Owner-Operator shall obtain an oral or emailed release number from Carrier's Owner-Operator advisor, and Owner-Operator shall display the Carrier release number on the trip sheet submitted to Carrier after the trip.
- (4.) Indemnification if Trip Performed Without Carrier Release or Sublease. If Owner-Operator performs a Sublease trip, Owner-Operator Motor Carriage trip, or Exempt Motor Carriage trip without obtaining the required sublease having been signed

under Paragraph 18(b)(i)(1) above, or the required Carrier release under Paragraph 18(b)(i)(2) or 18(b)(i)(3) above, Owner-Operator shall be deemed to have materially breached this Agreement. In that event and in light of the administrative, claims-investigation, insurance coverage-litigation, and other expenses Carrier may incur in the event of an Owner-Operator highway accident or incident in connection with such an unauthorized trip, Owner-Operator shall, without Carrier having to first issue a demand, immediately pay Carrier liquidated damages in the sum of one thousand dollars (\$1,000) in addition to the unlimited indemnification Owner-Operator shall owe Carrier under Paragraph 8(a). In addition, Carrier may, at its option, immediately terminate this Agreement.

- (5.) CSA Monitoring Service. Because of the possibility that any substandard safety performance under FMCSA's CSA program of Owner-Operator's drivers will be counted by FMCSA against Carrier's own CSA performance – or be the source of liability claims against Carrier in the event of any accident – even when such drivers are performing Owner-Operator Motor Carriage, Carrier shall have the right to arrange, at Owner-Operator's expense, to have a qualified third-party vendor monitor Owner-Operator's drivers' CSA performance while performing Owner-Operator Motor Carriage and regularly report such monitoring results to Carrier. Carrier shall deduct or otherwise recover such expense pursuant to Paragraph 11 of this Agreement.

- (ii.) Compensation for All Alternative-Uses-Of-Equipment Operations. In connection with a Sublease or other Alternative Use of Equipment, Owner-Operator shall submit any necessary Sublease- or other Alternative Use-related shipping documents to, and obtain settlement compensation directly and exclusively from, Sublease Carrier (in the case of Sublease trips) or the shipper or broker (in the case of Owner-Operator Motor Carriage or Exempt Motor Carriage trips). Notwithstanding anything in this Agreement to the contrary, Carrier shall have no responsibility for collecting freight charges or paying settlement compensation to Owner-Operator for any Alternative-Use-of-Equipment trip.

- (iii.) Carrier's Identification
 - (1.) Subleases. For the duration of any Sublease, Owner-Operator shall remove or cover up all of Carrier's identification on the Equipment and display instead the Sublease Carrier's identification;

 - (2.) Owner-Operator Motor Carriage. For any trip under Owner-Operator's own operating authority to provide for-hire motor carriage, exempt or non-exempt from the jurisdiction of the U.S. Secretary of Transportation under 49 U.S.C. §§ 13501 et seq., to a shipper or property broker, Owner-Operator shall remove from or cover up all of Carrier's identification on the Equipment and display instead Owner-Operator's identification. If Owner-Operator possesses interstate or intrastate operating authority and no other motor carrier booked the shipment, the shipment, even if exempt from the jurisdiction of the U.S. Secretary of Transportation under 49 U.S.C. §§ 13501 et seq., shall be deemed to be one involving Owner-Operator Motor Carriage for purposes of this Subparagraph (b); and

 - (3.) Exempt Motor Carriage. For any trip by Owner-Operator, lacking Owner-Operators own operating authority but possessing a validly-issued DOT Number, on which Owner-Operator provides for-hire motor carriage, exempt from the jurisdiction of the U.S. Secretary of Transportation under 49 U.S.C. §§ 13501 et seq., to a shipper or broker, Owner-Operator shall remove from or cover up Carrier's identification

on the Equipment and shall display Owner-Operator's DOT Number, DOT-listed name (or, if applicable, D.B.A. Name), and, for intrastate Exempt Motor Carriage trips, any intrastate operating authority identification required by the Applicable Law of the State in which the trip will be performed, on the Equipment for the duration of each Exempt Motor Carriage trip.

- (4.) Control and Responsibility for the Equipment. As required by 49 C.F.R. § 376.12(c)(1), Carrier, except for Sublease and Owner-Operator Motor Carriage trips, shall with respect to the public have exclusive possession, control, and use of the Equipment, and assume complete responsibility for the operation of the Equipment, for the duration of this Agreement. For Sublease trips, Carrier's sublease to Sublease Carrier shall, in accordance with 49 C.F.R. § 376.22(c)(2), provide that Sublease Carrier shall have exclusive possession, control, and use of the Equipment, and shall assume complete responsibility for the operation of the Equipment, for the duration of the Sublease. For Owner-Operator Motor Carriage trips, which also constitute subleasing, Owner-Operator shall have exclusive possession, control, and use of the Equipment, and shall assume complete responsibility for the operation of the Equipment, for the duration of trip.
- (5.) Insurance. For Alternative-Use-of-Equipment trips, just as for trips performed on behalf of Carrier, Carrier's and Owner-Operator's insurance obligations shall be as set forth in Paragraph 7 of this Agreement provided that:
- (A.) Subleases. As between Sublease Carrier and Carrier, the sublease shall provide that Sublease Carrier's Public Liability insurance and motor truck cargo loss-and-damage insurance shall cover the Equipment for the duration of the Sublease; be in at least the amounts required by FMCSA regulations promulgated under 49 U.S.C. § 13906 and by applicable State laws (for Public Liability insurance, in a combined single limit of not less than the amount set forth in Paragraph 7, with a deductible no greater than the amount set forth in Paragraph 7 or applicable CERTIFICATE OF INSURANCE, for injury or death to any person or for damage to property in any one occurrence); and be primary to any insurance coverages that Carrier maintains;
- (A.) Owner-Operator Motor Carriage. If Owner-Operator has FMCSA motor carrier registration or other operating authority and wishes to perform Alternative-Use-of-Equipment trips involving Owner-Operator Motor Carriage, Owner-Operator shall maintain Public Liability insurance and motor truck cargo loss-and-damage insurance, in at least the amounts required by FMCSA regulations promulgated under 49 U.S.C. § 13906 and by applicable State laws, covering the Equipment for the duration of the Alternative-Use-of-Equipment trips. Owner-Operator shall provide a valid certificate of insurance evidencing these coverages to Carrier before accepting any Alternative-Use-of-Equipment trips involving Owner-Operator Motor Carriage. On these trips, as between Owner-Operator and Carrier, Owner-Operator's public-liability insurance and motor truck cargo loss-and-damage insurance policies shall be primary to any insurance coverages that Carrier maintains; and
- (B.) Exempt Motor Carriage. Carrier's Public Liability insurance and motor truck cargo loss-and-damage insurance pursuant to Paragraph 7(a) of the Agreement shall provide coverage for Carrier with respect to Owner-Operator's Exempt Motor Carriage trips, provided that if Owner-Operator or

any entity owned or controlled by Owner-Operator holds, at the time of a trip, an active motor carrier of property registration with FMCSA, Owner-Operator's Public Liability insurance and motor truck cargo loss-and-damage insurance policies shall be primary to Carrier insurance policies. In addition, before accepting or performing any intrastate Exempt Motor Carriage trip, Owner-Operator shall, if any Public Liability insurance or indemnity bond is required by the Applicable Law of the State in which the trip will be performed, provide Carrier with a valid certificate of insurance (or proof of indemnity bond) evidencing such insurance (or indemnity bond) in the amounts specified by such Applicable Law, and such intrastate motor carriage insurance or bond shall be primary to Carrier's insurance.

- (6.) Fuel Tax Reporting and Payment. With respect to fuel tax reporting for all Alternative-Use-of-Equipment trips (including a Sublease, Owner-Operator Motor Carriage, or Exempt Motor Carriage), Carrier shall be deemed the reporting entity with respect to the Equipment and the fuel consumed by the Equipment, and Carrier shall perform (directly or through an outside vendor) all fuel and mileage reporting on Owner-Operator's behalf. Owner-Operator shall provide Carrier promptly with all properly completed driver logs, original fuel receipts (each to be submitted with the corresponding log indicating the fuel purchase for which the receipt was obtained), original toll receipts, and an accurate accounting of all fuel purchases and miles traveled by State. Carrier shall deduct or otherwise recover pursuant to Paragraph 11 of this Agreement any amount described in Paragraph 6(b) of this Agreement.
- (7.) International Registration Plan. With respect to International Registration Plan reporting for all Alternative-Use-of-Equipment trips (including a Sublease, Owner-Operator Motor Carriage, or Exempt Motor Carriage), Carrier shall be responsible for reporting all miles traveled by Owner-Operator's Equipment and in what State(s). Owner-Operator shall provide Carrier promptly with documentation showing all miles traveled by State for each trip.
- (8.) Driver Logs. With respect to Sublease trips, Owner-Operator or Owner-Operator's driver shall submit a copy of all driver logs to both Carrier and Sublease Carrier after each trip. All driver logs should name both Carrier and Sublease Carrier; show all duty time for each 24-hour period of each trip; and the beginning and finishing time (designating a.m. or p.m.) worked for each identified motor carrier. Pursuant to 49 C.F.R. § 395.8(j), before each Sublease trip, Owner-Operator or Owner-Operator's driver shall provide to Sublease Carrier a signed statement stating the driver's total time on duty during the immediately preceding seven days and the time at which the driver was last relieved from duty prior to beginning work for Carrier.
- (9.) Driver Vehicle Inspection Reports and Repair Records. With respect to Sublease and Owner-Operator Motor Carriage trips, Owner-Operator or Owner-Operator's driver shall prepare and submit to Carrier a written Driver Vehicle Inspection Report complying with the requirements of 49 C.F.R. § 396.11, and Carrier shall obtain and maintain all records relating to repairs of the Equipment.
- (10.) Remaining Agreement Terms. In all other respects, the terms of this Agreement shall apply to Owner-Operator's Alternative-Use-of-Equipment operations.

19. Rejected Shipments.

Any Shipments which are rejected by the consignee, in whole or in part, due to loss of or damage to cargo, shall be returned to the shipper or Carrier or as otherwise instructed by Carrier. For purposes of Owner-Operator payment as set forth in the Payment and Fee Schedule, Exhibit B, the miles incurred in such return trips shall not be deemed to be contractually dispatched miles if such loss or damage is deemed by Carrier, in its sole discretion, to have been preventable. Owner-Operator shall be liable to Carrier for the full actual loss of any Shipment or partial Shipment not returned by Owner-Operator following rejection by the consignee. Carrier shall make the necessary deductions, pursuant to Paragraph 11, for such loss and amounts.

20. Equipment Identification.

All Equipment identification, permits, plates and decals provided by Carrier to Owner-Operator hereunder are and shall remain the property of Carrier at all times. The same shall be removed from the Equipment by Owner-Operator immediately upon termination of this Agreement, and returned to Carrier within three (3) days as to any and/or all Equipment leased hereunder. Where Owner-Operator violates the terms of this Paragraph 20, Carrier may take any steps necessary to recover its property and, in addition to any other remedies, at law or in equity shall be entitled to withhold the final OO Payments settlement in the manner set forth in Paragraphs 4, 11 and 22.

21. Term and Termination; Breach.

This Agreement shall begin on the date a copy of this Agreement, executed by Owner-Operator, is received by Carrier ("Effective Date"), and shall continue thereafter for a fixed term which shall end on [@End Date@]. This Agreement will not automatically renew. Should both parties desire to enter into another fixed term agreement, they must each execute either a new agreement or a renewal addendum to this Agreement extending the term. Carrier makes no representation whatsoever as to whether it will enter into a new agreement, or extend this Agreement, with Owner-Operator; all such decisions are made by Carrier on a case-by-case basis. Notwithstanding the foregoing, either party may terminate this Agreement at any time during the term for any reason by giving fifteen (15) days written notice to that effect to the other party either personally, by mail, by fax machine at the address or fax number shown at the end of this Agreement, or by appropriate electronic means as allowed by this Agreement. The ability of either party to terminate this Agreement shall in no way be interpreted as an at-will employment provision and shall not otherwise affect Owner-Operator's status as an Owner-Operator under this Agreement. The effective date and time of termination shall be as set forth in the written notice. Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated immediately by either party in the event of (i) a party's actual or threatened commitment of a felony or intentional tort; (ii) violation of, or failure to comply fully with, the requirements of any applicable federal, state, local, and foreign authorities, including but not limited to DOT, state, provincial, or local highway safety, vehicle inspection, vehicle maintenance, traffic, road, truck size-and-weight, hazardous materials transportation, cargo security, Traffic Law(s), or other laws and regulations; (iii) a breach of this Agreement; (iv) negligence in the performance of either parties' duties under this Agreement; (v) any "accident," as that term is defined by FMCSA in 49 C.F.R. § 390.5, that, in Carrier's reasonable judgment, was caused in whole or in part by Owner-Operator's negligence, gross negligence, or willful misconduct; (vi) Owner-Operator's failure to comply with its obligations regarding fees, escrow, or payments; (vii) any action which Carrier deems inconsistent with its values or which tends to devalue Carrier's brand or reputation or with diminishes Carrier's ability to service or maintain customers; (viii) upon Owner-Operator becoming "balance due" (i.e. Owner-Operator owes more money to Carrier than the amount of Owner-Operator OO Payment) to Carrier upon or after Owner-Operator's receipt of an OO Payment, (ix) Owner-Operator fails to maintain its business which is contracted with Carrier in good standing with the applicable governmental authorities, and/or fails to provide Carrier with updated Certificates of Good Standing (or similar titled documents) from the applicable governmental authority indicating that Owner-Operator's business entity is in good standing, or (x) Owner-Operator utilizes Carrier's Equipment without Carrier's explicit permission. If, in Carrier's judgment, Owner-Operator has subjected Carrier to liability because of Owner-Operator's acts or omissions, Carrier may take possession of the Shipment entrusted to Owner-Operator and complete performance. In such event, Owner-Operator shall waive any recourse against Carrier for such action and Owner-Operator shall reimburse Carrier for all direct or indirect costs, expenses, or damages, including attorney's fees, incurred by Carrier as a result of Carrier's taking possession of the Shipment and completing performance. Upon the commission of a material breach by Owner-Operator, Carrier reserves the right to terminate the Agreement for cause at its sole discretion, pursuant to this paragraph of the Agreement.

Where Owner-Operator commits a material breach of the Agreement, Carrier will investigate the circumstances surrounding the breach and make a determination whether the Agreement is to be terminated or continued. While the investigation is underway, Carrier reserves the right to prohibit Owner-Operator from selecting or hauling any shipments. An example of a material breach of the Agreement could involve Owner-Operator's obligation to obey all legal requirements related to the safe operation of the Equipment or compliance with DOT hours of service requirements – both are directly related to issues of safety and Carrier requires Owner-Operator to adhere to legal safe operation laws, rules, and regulations. The Agreement also imposes upon Owner-Operator lesser obligations (e.g., ensuring a bill of lading is signed, etc.) in addition to the more significant obligations that can give rise to a material breach. While failing to meet a lesser obligation on a single occasion will likely not constitute a material breach, repeated failures to meet lesser obligations will, in the aggregate, amount to a serious departure from the proper services Owner-Operator agreed to provide to Carrier pursuant to the terms of the Agreement. As such, Carrier has the right to issue a notice to Owner-Operator when Owner-Operator has committed a minor breach of the Agreement. Should Owner-Operator (a) commit three (3) minor breaches, or (b) receive two (2) minor breach notices in any period of six (6) consecutive months, Carrier has the contractual right to commence an investigation into the minor breaches at issue. While the investigation is underway, Carrier reserves the right to prohibit Owner-Operator from selecting or hauling any shipments. Where, following the conclusion of an investigation, Carrier decides to continue with the Agreement (rather than terminate the Agreement), Owner-Operator shall be considered on notice that any subsequent minor breach will give rise to a final notice and a letter from Carrier asserting Owner-Operator's material breach of the Agreement. The final notice will advise Owner-Operator that Owner-Operator has materially breached the Agreement. At that time, Carrier may exercise, in its sole discretion, its right to terminate the Agreement for cause.

22. Effect of Termination.

Upon termination of this Agreement as to any or all Equipment leased hereunder:

- (a). Owner-Operator shall do all of the following:
 - (i.) submit to Carrier all necessary delivery documents and other paperwork showing full and proper performance of all trips,
 - (ii.) all identification, permits, plates and decals of Carrier on each Equipment shall have been removed by Owner-Operator and returned to Carrier in accordance with the provisions of Paragraph 20 above, or if such identification, permits, plates and decals have been lost or stolen, Owner-Operator shall have given written notice to Carrier certifying that same have been removed from the Equipment,
 - (iii.) any MCP shall have been returned to Carrier in accordance with the provisions of Exhibit D and any Carrier-issued equipment utilized by Owner-Operator shall have been returned to Carrier in accordance with the provisions of Paragraph 13 above.
- (b). Notwithstanding anything contained in Paragraph 4(b) above to the contrary, and without affecting Carrier's rights under Paragraph 11 above, the funds on deposit in the Escrow Funds shall be paid and disbursed to Owner-Operator within forty-five (45) days of termination. Carrier shall provide Owner-Operator with an accounting of all such final settlements and disbursements, and any deductions thereto, as to any or all Equipment so terminated.
- (c). In the event any Equipment terminated hereunder shall thereafter be leased by Owner-Operator to any parent, subsidiary and/or affiliate of Carrier under another agreement, funds on deposit in the Escrow Funds, less any deductions authorized by this Agreement, shall be transferred to such affiliate, provided, however, Owner-Operator operates under the same federal employer identification number.

- (d). Neither party hereto shall, by reason of the termination of this Agreement, or other reason, as to any or all Equipment leased hereunder or otherwise, be liable to the other for payment, compensation, reimbursement or damages on account of the loss of prospective profits or anticipated revenues or on account of any expenditures, investments or commitments made in connection with the business or goodwill of Owner-Operator or Carrier or for any other loss arising by reason of the termination hereof, or other reason.

23. Cumulative Remedies.

The rights and remedies of Carrier under this Agreement and available to it under Applicable Law(s) or in equity shall be cumulative and the exercise of any of them shall not be exclusive of any other right or remedy provided by this Agreement or allowed under Applicable Law(s) or in equity.

24. Owner-Operator Not Employee of Carrier.

- (a). ***In General.*** It is expressly understood and agreed that Owner-Operator is an independent contractor for the Equipment and driver services provided pursuant to this Agreement and in no way shall be deemed an employee of Carrier at any time, under any circumstances or for any purposes. Neither party is an agent for the other, and neither party shall have the right to bind the other by contract or otherwise, except for signing bills of lading, securing applicable state and federal permits in Carrier's name or as specifically provided in this Agreement.
- (b). ***Certification of Status.*** Owner-Operator shall provide necessary documentation and apply for certification of Owner-Operator's independent-contractor status where mandated by Applicable Law, including but not limited to, the State of South Dakota (where, if Owner-Operator is domiciled in that State, Owner-Operator shall successfully complete and submit to the proper authorities an Owner-Operator Verification Application, SD E-Form 1658).
- (c). ***Right to Control.*** Subject only to all Applicable Law and safety considerations, it shall be the sole responsibility of Owner-Operator to select, purchase or lease, and finance the Equipment; to decide when, where, and how maintenance and repairs are to be performed on the Equipment; and to select all routes and decide all meal, rest, and refueling stops, provided that to meet Carrier's customers' demands, Owner-Operator agrees to make timely and safe deliveries of all loads (but nothing contained herein shall be deemed to require, or request, Owner-Operator to violate or ignore any Applicable Law(s) (including, without limitation, DOT and FMCSA hours-of-service regulations, in connection with such deliveries)), and also agrees to notify Carrier when delivery has been made or when delivery will be delayed for any reason.
- (d). ***Owner-Operator's Workers.*** Owner-Operator acknowledges that neither it nor its drivers, agents, contractors, or other workers, if any, are entitled to any of the benefits Carrier maintains for its employees such as health, life, and workers' compensation insurance and 401(k) participation. Subject again only to all Applicable Law and safety considerations, Owner-Operator hereby assumes full control and responsibility for the direction and control of drivers, drivers' helpers, and other workers of Owner-Operator, including selecting; hiring; transferring; suspending; laying off; recalling; promoting; firing; training; supervising; directing; assigning; rewarding; disciplining; setting wages, hours, terms and conditions of employment, meal and rest breaks; providing for unemployment insurance, State and federal taxes, fringe benefits, workers' compensation insurance (or, if Owner-Operator prefers and the requirements of Paragraph 7(b)(ii) of this Agreement are met, occupational injury/employer's liability insurance); setting of grooming and dress standards, performance standards, and attendance requirements; payment of payroll taxes and benefits, if any; and adjusting grievances of the drivers, drivers' helpers, and other workers of Owner-Operator; and all acts and omissions, and all other matters relating to or arising out of Owner-Operator's use or employment of drivers, drivers' helpers, and other workers to perform any aspect of this Agreement. Each such worker shall be paid and

otherwise treated by Owner-Operator as Owner-Operator's employee, including Owner-Operator's reporting of such worker's pay to the IRS on IRS Form W-2, and no such worker shall be considered Carrier's employee. Owner-Operator shall be solely responsible for complying with all Applicable Law applicable to the terms and conditions of employment of Owner-Operator's employees or applicants for employment, including, without limitation, compliance with the Federal Fair Credit Reporting Act; verification of immigration and naturalization status; proof of proper taxpayer identification number; proof of highway use tax being currently paid when the Owner-Operator purchases a license; proof of payment of income; unemployment; Medicare and other State and federal payroll taxes; and other required withholdings for Owner-Operator's employees. Owner-Operator's performance of these responsibilities shall be considered proof of Owner-Operator's status as an independent contractor in fact. Owner-Operator and Carrier agree that any employee or agent of Owner-Operator is not an employee of Carrier. For the purposes of this paragraph, the term Owner-Operator refers to the owner of the Equipment as well as drivers that may be operating the Equipment on behalf of the owner. As required by law, Carrier agrees to file information tax returns (Form 1099 or Canadian Tax Form T4) on behalf of Owner-Operator if Owner-Operator is paid more than the statutory amount during a calendar year.

- (e). ***The Parties Financial Obligations if Owner-Operator is Determined to Be an Employee.*** If, whether on Owner-Operator's initiative or not, Owner-Operator is determined to be an employee of Carrier by any federal, State, local, Native American tribal, or foreign court, administrative agency, or other governmental body ("Reclassification Decision"), Owner-Operator and Carrier hereby agree that this Agreement shall be rescinded back to the time of its formation and that both parties shall be returned to their respective positions before this Agreement was signed. Specifically, Owner-Operator and Carrier agree that notwithstanding any other provision of this Agreement:
- (i.) Owner-Operator shall, upon the Reclassification Decision becoming final and no longer appealable, immediately (A) owe Carrier, for each week or other period this Agreement was in effect, all OO Payments under Paragraph 4 and Exhibit B, less any deductions, chargebacks or withholds under Paragraph 11 and Exhibit B of this Agreement, previously paid to Owner-Operator by Carrier; (B) shall relinquish all rights in any balances in required or voluntary escrow funds then under Carrier administration that are traceable to compensation previously paid to Owner-Operator by Carrier; and (C) shall owe Carrier any cash advances provided by Carrier to Owner-Operator that Owner-Operator used for personal, household, or other expenses not in performance of Owner-Operator's obligations under this Agreement or that Owner-Operator retained unspent. Owner-Operator shall be entitled to deduct from these amounts any expenses (including, for Equipment, other equipment, or tools used in performing work for Carrier, any actual rent or installment-purchase payments made by Owner-Operator or, if none, payments that would equal fair-market rent for items of similar kind, age, and condition) Owner-Operator incurred in performance of Owner-Operator's obligations under this Agreement that were not covered by charge-backs or paid by Carrier;
 - (ii.) Carrier shall, upon the Reclassification Decision becoming final and no longer appealable, immediately owe Owner-Operator, for all work activities during each week or other period this Agreement was in effect (including any activities for which Carrier has not yet paid Owner-Operator), only the then-applicable federal minimum hourly wage or, if higher, a State's then-applicable minimum hourly wage but only to the extent Owner-Operator's wage-earning activities occurred in that State, multiplied by Owner-Operator's total hours actually performing on-duty work for Carrier, consisting of both driving and non-driving time, under the FMCSA Hours of Service Regulations, 49 C.F.R. Part 395, or under a State's hours of service regulations to the extent applicable. The total hours worked shall be computed based on any relevant, reliable evidence, which may include estimates or projections based on Owner-Operator Settlement Statements, driver logs, shipment and/or vehicle tracking data, bills of lading, fuel receipts, toll receipts, and testimony; and

- (iii.) Because reclassification of Owner-Operator's status from independent contractor to employee would fundamentally change the parties' contracting assumptions and expectations, either party may, immediately upon initial issuance (even if appealed or appealable) of a Reclassification Decision, terminate this Agreement on one day's notice to the other. The provisions of this Subparagraph shall be deemed to survive any termination of this Agreement.

25. Notice.

Any written notice required or permitted to be given or made by any party to the other hereunder shall be deemed to be sufficiently given and received in all respects when (i) personally delivered, (ii) sent by facsimile transmission (receipt confirmed), (iii) one (1) day after sent by prepaid express or courier service, (iv) three (3) days after deposited in the United States mail, postage prepaid, in each case addressed to the parties' respective addresses, or (v) by appropriate electronic means, as allowed by this Agreement.

26. Equipment Upgrades.

For purposes of this Agreement, Equipment originally leased by Owner-Operator to Carrier hereunder, which is thereafter upgraded by Owner-Operator with another piece of equipment shall not cause a termination of this Agreement as to the first piece of equipment, and the OOOA Rider and other documents shall be amended accordingly to reflect such upgrade.

27. Tax Forms.

Carrier shall, as required by law, provide Owner-Operator with IRS Form 1099 (US) and/or equivalent Canadian tax form.

28. Waiver of Breach.

Subject to the AAPs set forth in Paragraph 34, a waiver by Carrier of any breach of any provision of this Agreement by Owner-Operator shall not be deemed to be a waiver by Carrier of any subsequent and/or other breach.

29. Severability.

Subject to the AAPs set forth in Paragraph 34, invalidity of any part of any provision or provisions of this Agreement shall not invalidate the remainder of this Agreement or the remainder of any provision or provisions not invalidated. Any provision shall only be invalidated to the extent necessary to cure any defect or invalidity contained therein. This Agreement is negotiated between the parties and there shall be no presumption of drafting.

30. Assignment.

This Agreement shall not be assigned by Owner-Operator without the prior written consent of Carrier, which may be withheld in Carrier's sole discretion. This Agreement, including any duties, obligations, and/or rights hereunder (including exclusive use of the Equipment under this Agreement), may be assigned by Carrier for any reason to any party (including, without limitation, to Carrier's parent, subsidiary or affiliated (including sister) companies) by providing written notice thereof to Owner-Operator no later than thirty (30) days after such assignment has been made; for the sake of clarification, Carrier shall have the right to assign this Agreement to any fleet operator entity which Carrier deems advisable.

31. Binding Effect.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

32. Paragraph Headings.

The headings in this Agreement are for purposes of convenience and ease of reference only and shall not be construed to limit or otherwise affect the meaning of any part of this Agreement.

33. Schedules and Exhibits.

All Schedules, Addenda, Amendments, Attachments, and Exhibits and other instruments and documents referred to herein or executed by the parties in connection herewith are intended to be and hereby are specifically made a part of this Agreement.

34. Governing Law; Arbitration.

- (a). ***Governing Law.*** This Agreement, any documents and instruments relating hereto, and/or the relationship created thereby will be governed by, and will be construed and enforced in accordance with, the substantive laws of the State of Wisconsin, without regard to principles of conflicts of laws as applied to contracts entered into and to be performed entirely within that state by its residents (the "State Laws") and any applicable federal laws; provided, however, as set forth in the arbitration agreement provisions of this Agreement ("AAPs") set forth below, that the AAPs will be governed exclusively by the Federal Arbitration Act, subject to the waivers and limitations thereof set forth in the AAPs. Any dispute arising under, out of or in connection with and/or relating to this Agreement, any documents and instruments relating hereto, its and/or their terms, performance, or implementation, and/or the relationship created thereby that are not otherwise subject to mandatory final and binding arbitration under the AAPs will be heard and decided only in the state or federal courts venued in Green Bay, Wisconsin, and Carrier and Owner-Operator hereby consent to the exclusive jurisdiction and venue of such courts for resolving any such disputes that are not otherwise arbitrable under those provisions. Owner-Operator waives personal service of any summons, complaint, or other process in any such action or proceeding and agrees that such service may be made by certified mail, which will be effective on the third weekday after mailing, or by any other means that is permitted by Wisconsin state law.
- (b). ***Arbitration.***
 - (i.) ***Mandatory Final & Binding Arbitration.*** Formal resolution of all Covered Disputes (as defined below) must be sought and accomplished in accordance with these AAPs. Nothing in these provisions is intended to prohibit an Owner-Operator from speaking with others about the terms and conditions of their relationship with Carrier under this Agreement or otherwise, except as otherwise set forth in the Confidentiality provisions of this Agreement. The terms of these AAPs will survive the termination of this Agreement and/or of Owner-Operator's relationship with Carrier and remain binding and in effect, subject to the Election Notice provisions set forth in these AAPs, below.
 - (ii.) ***Parties Subject to Arbitration Provisions.*** As used in these AAPs: (a) "Carrier" means and refers, individually and collectively, to Carrier as defined in this Agreement and its parent, subsidiary, sibling and other affiliated operating divisions and entities, and its or their respective agents, employees, officers, directors, and owners; and (b) "Owner-Operator" and its

plural form "Owner-Operators" means and refers to Owner-Operator as defined in this Agreement and any other person or entity who has, either an individual or a business entity, entered into any independent contractor or owner-operator operating agreement with Carrier, and each of their respective employees, agents and independent contractors, who wishes to initiate or participate in formal dispute resolution proceedings to resolve any Covered Disputes (as defined below).

- (iii.) *Covered Disputes.* These AAPs apply to any and all claims, causes of action or other disputes, other than Excluded Disputes (as defined below), arising out of or relating to this Agreement, or any other agreement between Carrier and Owner-Operator, its and/or their terms, or its implementation, including any allegation of breach thereof or violations of the requirements of any Applicable Law(s), that have already accrued, now exist or arise in the future between Owner-Operator and Carrier based on any legal, equitable or other ground or theory (including whether any such ground or theory constitutes an unwaivable statutory right) and would constitute cognizable claims or causes of action in a federal, state, or local court or agency under applicable federal, state, or local laws (referred to in these AAPs as "Covered Disputes"). Unless falling within the definition of Excluded Disputes below, Covered Disputes include those arising out of or related to an Owner-Operator's actual or alleged contractual or other relationship with Carrier and the actual or alleged terms, conditions, benefits and/or termination of such relationship, work performed for and/or services provided to Carrier, seeking to perform such work or provide such services, issues of arbitrability (such as the formation, interpretation, applicability or enforceability of these AAPs, except to the extent it is an Excluded Dispute), the procedures to be followed in the arbitration proceedings other than any type of Representative Action or PAGA Action (both as defined below) procedures, allegations of delay and waiver, and whether prerequisites such as time limits, notice, laches, estoppel and other conditions precedent to an obligation to arbitrate have been met. Subject to the Representative Action Waiver and PAGA Action Waiver provisions of these AAPs (as set forth below), and unless falling within the definition of Excluded Disputes (as set forth below), Covered Disputes also include those that (1) arose or accrued before the date of becoming bound by this Agreement, including if the subject of or asserted in a previously-threatened or filed and/or currently-pending Representative Action or PAGA Action (both as defined below) in which no certification or permission of any type to proceed in that manner has been granted by the court as of the date of becoming bound by these AAPs, (2) are asserted or threatened in any subsequently-filed Representative Action or PAGA Action (both as defined below) in which an Owner-Operator or Carrier is allegedly representing (or seeking to represent) or being represented as a member of a putative or certified class or collective, a group of aggrieved employees or the general public, or (3) arise or accrue before, upon or after Owner-Operator's actual or alleged relationship with, performing work for and/or providing services to Carrier, terminates.
- (iv.) *Excluded Disputes.* The following are "Excluded Disputes" not subject to these AAPs: (1) putative claims for workers' compensation benefits under state law; (2) putative claims for unemployment or disability insurance or other health or welfare benefits under government-administered programs; (3) putative claims within the jurisdiction of the National Labor Relations Board; (4) putative claims under federal law for which there is an unwaivable specific statutory or regulatory enactment making such claims not arbitrable; (5) claims for temporary equitable relief in aid of arbitration under these AAPs, as permitted under Applicable Law(s), which may be brought either before the appointed arbitrator or in a court of competent jurisdiction; (6) any disputes regarding the applicability, interpretation, enforceability and/or severability of the Representative Action Waiver and PAGA Action Waiver provisions of these AAPs (as set forth below), including whether such provisions are governed by the Federal Arbitration Act, which must be decided only by a court of competent jurisdiction; (7) any disputes as to whether Carrier and Owner-Operator agreed to allow any type of Representative Action or PAGA Action (both as defined below) to be arbitrated under these AAPs, which must be decided only by a court of competent jurisdiction; and (8) any disputes as to whether a claim

or dispute falls within this definition of Excluded Disputes, which must be decided only by a court of competent jurisdiction.

- (v.) *Waiver of Right to Judge or Jury Trial & Administrative Hearings.* There are no judge or jury trials or administrative hearings of Covered Disputes permitted under these AAPs. With respect to any Covered Disputes between Owner-Operator and Carrier, existing or accrued now or in the future, Owner-Operator and Carrier waive any and all rights to a judge or jury trial and/or administrative hearing of their Covered Disputes and agree to their resolution exclusively by final and binding individual arbitration in accordance with the terms of these AAPs, whether initiated by any Owner-Operator or by Carrier. No formal dispute resolution proceedings concerning any Covered Disputes will take place in any local, state or federal court or agency.
- (vi.) *Commencement of Arbitration.* A demand for arbitration of any Covered Disputes must be made in writing, comply with the requirements for pleadings under the Federal Rules of Civil Procedure ("FRCP") and be served on the other party in the manner provided for service of a summons under the FRCP within the applicable statute of limitations periods (including on a registered agent for service of process), which will abate the further running of the limitations periods applicable to the Covered Disputes being asserted. If such service cannot be effectuated within the applicable limitations periods, then protective service may be made through delivery before the expiration of such periods via the United States Postal Service (USPS) or private courier (such as FedEx, UPS, or DHL) using delivery services that produce a written record establishing the dates of sending and receipt (a "Mail Record"), which must be maintained by the party making such protective service and will abate the further running of the applicable limitations periods.
- (vii.) *Arbitrator Appointment.* An individual Owner-Operator and Carrier must mutually agree on the selection and appointment of a neutral arbitrator who is experienced in the laws at issue to resolve their respective individual Covered Disputes at issue. If no such agreement can be reached, the individual Owner-Operator and Carrier must mutually agree on a dispute resolution services provider ("DRS Provider") to administer the arbitration, whose procedures for appointing an arbitrator will be followed. The appointed arbitrator must be located, and the Covered Disputes between the individual Owner-Operator and Carrier must be heard and decided by the arbitrator, within the geographic district for the United States District Court in which the individual Owner-Operator who is a party to the Covered Disputes being arbitrated is located, as set forth on the signature page of this Agreement. The appointed arbitrator must interpret, apply, and enforce these AAPs only as written. If mutual agreement on the selection and appointment of an arbitrator or a DRS Provider as set forth herein is not reached, then appointment of an arbitrator and DRS Provider consistent with the terms and requirements of this AAPs may be sought in a court of competent jurisdiction pursuant to Applicable Law(s).
- (viii.) *Arbitration Procedures.* Absent the agreement of the Owner-Operator and Carrier after a demand for arbitration under these AAPs is made, neither the American Arbitration Association ("AAA") nor JAMS will be permitted to serve as a DRS Provider to administer any aspect of any arbitration under these AAPs. The Federal Rules of Civil Procedure (the "FRCP") and the Federal Rules of Evidence (which are accessible via links at <http://www.uscourts.gov/RulesAndPolicies/rules/current-rules.aspx>), except any such rules or procedures which would allow for or permit any type of jury trial or Representative Action or PAGA Action (both as defined below and unless otherwise expressly made applicable under these AAPs), are incorporated into these AAPs and will apply to and must be followed and enforced by the appointed arbitrator in any arbitration proceedings held pursuant to these AAPs. During any such arbitration proceedings, the parties will have the right to conduct normal civil discovery and to bring motions, other than as to any Representative Action or PAGA Action claims except as expressly provided in the PAGA Action Waiver provisions below, as provided

by the FRCP rules and procedures to the extent incorporated into these AAPs. To the extent the rules or procedures of any DRS Provider administering an arbitration pursuant to these AAPs are different than or inconsistent with those required to be applied or followed under these AAPs, then the terms of these AAPs will supersede them, control and be followed as written.

- (ix.) *Representative Action Waiver.* As used in these AAPs, a "Representative Action" is any action or proceeding brought or sought to be brought against an Owner-Operator or Carrier by any person or entity (whether or not bound by these AAPs or any other arbitration agreement) in a representative capacity on behalf of or for the benefit of (in whole or in part) an Owner-Operator, Carrier, and/or any governmental entity, other than as a PAGA Action (as defined below). A Representative Action includes any type of (a) class action, (b) class arbitration, (c) collective action, (d) collective arbitration, (e) private attorney general action (other than a PAGA Action as defined below), (f) joined, consolidated or coordinated actions or arbitrations, and (g) claims or disputes brought in a representative capacity on behalf of the general public, of any governmental entity (other than a PAGA Action as defined below), of other Owner-Operators or Carrier, or of other persons or entities alleged to be similarly situated. A Representative Action is not permitted under these AAPs in connection with any Covered Disputes, and there is no agreement, right or authority under these AAPs for any Covered Disputes to be heard, arbitrated, or decided as any type of Representative Action. An Owner-Operator and Carrier with any Covered Disputes, now existing or arising in the future, waive any and all rights to bring or participate in any type of Representative Action to resolve, decide, or adjudicate any Covered Disputes and are prohibited from doing so. The appointed arbitrator will have no power, authority or jurisdiction to (a) hear or decide any Covered Disputes as any type of Representative Action; (b) award any type of remedy or relief for any Covered Disputes in connection with any type of Representative Action; (c) join or consolidate in the arbitration any Covered Disputes brought by or against any other Owner-Operators or Carrier; (d) award injunctive relief other than in favor of the individual Owner-Operator or Carrier seeking such relief and only to the extent permitted by Applicable Law(s) and necessary to provide relief warranted by that individual Owner-Operator's or Carrier's Covered Disputes; or (e) interpret, apply, enforce or modify these AAPs in any manner that would empower or authorize the arbitrator to do any of the foregoing. The foregoing provisions are not intended to be severable and shall not be severed if they are held or ruled to be unenforceable in any material respect. If such a holding or ruling is made, any party the Representative Action is brought against will not be required to arbitrate any Covered Disputes being pursued against that party as any type of Representative Action. Any Owner-Operator who does not properly elect to not be bound by these AAPs in the manner set forth below acknowledges, understands and agrees that Covered Disputes under these AAPs include any claims now being or hereafter brought putatively on Owner-Operator's behalf as a proposed Representative Action to the extent that certification or permission to proceed as a Representative Action has not been granted as of the time the Owner-Operator becomes bound by the terms of these AAPs, and that the Owner-Operator may obtain information about any such actions now pending by requesting it from Carrier's below-listed Authorized Signatory.
- (x.) *PAGA ACTION WAIVER.* Without any type of express, implied or intended waiver or limitation of the independent contractor status and related obligations under this Agreement, which are expressly preserved and acknowledged, and without in any way conferring employee status on any Owner-Operator, as used in these AAPs, a "PAGA Action" is any action or proceeding brought or sought to be brought against Carrier on behalf of the State of California for alleged violations of the California Labor Code suffered by aggrieved employees in addition to the actual or alleged employee bringing the action or proceeding pursuant to the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), which is codified in California Labor Code Section 2698 et seq. Under PAGA, aggrieved employees, acting as private attorneys general of the State of California, are allowed to recover civil penalties for violations of the California Labor Code suffered by aggrieved employees. Thus, under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former

employees to recover civil penalties for violations of the California Labor Code. Of the civil penalties recovered, 75 percent goes to the California Labor and Workforce Development Agency (the "LWDA"), and the remaining 25 percent goes to the aggrieved employees. Prior to bringing a PAGA Action, an aggrieved employee must give notice to the LWDA and the employer that describes the facts and theories supporting the claimed violations of the California Labor Code. The aggrieved employee is permitted to commence a PAGA Action only after giving such notice and the LWDA either decides not to investigate or issue a citation, or fails to give notice of its decision within specified periods. A PAGA Action functions as a substitute for an action brought by the State of California itself, and a judgment in such an action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the State of California. Except as expressly set forth below, an Owner-Operator is not permitted to bring a PAGA Action under these AAPs in connection with any Covered Disputes, and there is no agreement, right or authority under these AAPs for any Covered Disputes to be heard, arbitrated, or decided as any type of PAGA Action. An Owner-Operator with any Covered Disputes, now existing or arising in the future, waives any and all rights to bring or participate in any type of PAGA Action to resolve, decide, or adjudicate any Covered Disputes and is prohibited from doing so. Any Owner-Operator who does not properly elect to not be bound by these AAPs in the manner set forth below acknowledges, understands and agrees that the Owner-Operator has or may have claims that can or could be asserted now or in the future under PAGA, that the Owner-Operator has had a sufficient opportunity to learn and understand the nature and extent of any such PAGA claims, and that the Owner-Operator is knowingly and voluntarily waiving any and all rights to bring or participate in any type of PAGA Action to resolve, decide or adjudicate any such Covered Disputes, including but not limited to claimed violations of California laws related to the payment of compensation or wages of any type (including bonuses and commissions), accrual or use or payment of vacation or sick pay or other paid time off, providing or authorizing and permitting meal or rest periods, reimbursement of employment-related expenses, inaccurate wage statements and timely payment of wages. Any Owner-Operator who does not properly elect to not be bound by these AAPs in the manner set forth below also acknowledges, understands and agrees that Covered Disputes under these AAPs include any claims now being or hereafter brought putatively on Owner-Operator's behalf as a proposed PAGA Action to the extent that permission to proceed as a PAGA Action has not been granted as of the time the Owner-Operator becomes bound by the terms of these AAPs, and that the Owner-Operator may obtain information about any such actions now pending by requesting it from the below referenced Authorized Signatory of this Agreement. Except as expressly set forth below, the appointed arbitrator will have no power, authority or jurisdiction to (a) hear or decide any Covered Disputes as any type of PAGA Action; (b) award any type of remedy or relief for any Covered Disputes in connection with any type of PAGA Action; (c) join or consolidate in the arbitration any Covered Disputes brought by or on behalf of any other Owner-Operators or the State of California pursuant to PAGA; or (d) interpret, apply, enforce or modify these AAPs in any manner that would empower or authorize the arbitrator to do any of the foregoing. Notwithstanding and without limiting the applicability of any of the foregoing provisions of this PAGA Action Waiver in the first instance in any way: (a) an Owner-Operator retains any actual right to individually arbitrate a Covered Dispute under PAGA pursuant to these AAPs but only with respect to recovering penalties for any violations of the California Labor Code actually suffered solely by the Owner-Operator personally and not by any other aggrieved employees; (b) should any asserted PAGA Action claims be held by a court of competent jurisdiction to not be subject to this PAGA Action Waiver (including due to being held not enforceable), then such asserted PAGA Action claims shall not be arbitrated and shall instead be stayed by the court while any individual and/or Representative Action claims held to be subject to the Representative Action Waiver provisions of this MAP are arbitrated and only on an individual basis, with the asserted PAGA Action claims only litigated in court thereafter as a PAGA Action seeking to recover penalties for actual violations of the California Labor Code suffered by aggrieved employees if the requirements for certifying the PAGA Action claims as a class action pursuant to Applicable Law(s) are held to be satisfied by the court; and (c) should any PAGA Action claims be held by a court of competent jurisdiction to be required under

Applicable Law(s) to be arbitrated under these AAPs other than only as to alleged violations of the California Labor Code suffered by the Owner-Operator bringing the PAGA Action, then, at the Carrier's election, any Covered Disputes being pursued as a PAGA Action will either (i) be litigated in the court as a PAGA Action seeking to recover penalties for violations of the California Labor Code suffered by aggrieved employees only if the requirements for certifying the PAGA Action claims as a class action pursuant to Applicable Law(s) are held to be satisfied by the court, or (ii) be arbitrated with the appointed arbitrator, who will only allow a PAGA Action seeking to recover penalties for violations of the California Labor Code suffered by alleged aggrieved employees to be arbitrated if the requirements for certifying the PAGA Action claims as a class action under the class action provisions of the FRCP and applicable decisional law are satisfied.

- (xi.) *Arbitrator's Award.* Within 30 days following the close of the arbitration merits hearing, Owner-Operator and Carrier will have the right to submit to the arbitrator, and must serve on each other, a post-hearing brief not to exceed 50 pages in length. The parties, with the arbitrator's approval, may agree to extend this time deadline and increase this page limitation, and the arbitrator will have the authority to grant requests for such extensions and increases by either Owner-Operator or Carrier for good cause shown. Subject to and without waiver or limitation of the Representative Action Waiver and PAGA Action Waiver provisions of these AAPs, the arbitrator will be empowered to award Owner-Operator or Carrier any individual remedy at law or in equity that the party otherwise would have been entitled to had the matter been individually litigated in a court or before a governmental agency with jurisdiction over the Covered Disputes being arbitrated. The authority to award any remedy, however, is subject to whatever limitations on such remedies exist under Applicable Law(s). The appointed arbitrator will have no authority or jurisdiction to issue any award that is contrary to or inconsistent with the terms and provisions of these AAPs and the Applicable Law(s) at issue. Within 30 days after a dispositive motion is fully-briefed and heard, and within 30 days after a merits hearing is closed and all post-hearing briefing has been submitted, the arbitrator must issue an award in writing on the dispositive motion and/or on the merits which must be accompanied by or include a written, reasoned statement of decision with findings of fact and conclusions of law supporting the award. A judgment of any court having jurisdiction may be entered on the arbitrator's award upon it being confirmed by such court. However, the arbitrator will not have any power or authority to commit errors of law or legal reasoning and, to the extent permitted under Applicable Law(s), any award by the arbitrator shall be vacated or corrected for any such error on petition or appeal to a court of competent jurisdiction.
- (xii.) *Confidentiality.* Unless otherwise not permitted under Applicable Law(s), the parties to the Covered Disputes being arbitrated and the arbitrator shall maintain the existence, content and outcome of any arbitration proceedings held pursuant to these AAPs in the strictest confidence and shall not disclose the same without the prior written consent of all the parties.
- (xiii.) *Arbitration Costs.* Owner-Operator and Carrier will each pay the costs and fees for their respective attorneys' prosecution or defense of the Covered Disputes being arbitrated, subject to any remedies to which Owner-Operator and Carrier may later be entitled under Applicable Law(s). To the extent required by binding United States Supreme Court precedent, Carrier will pay up to all of the arbitration forum costs (including arbitrator fees), as apportioned by the arbitrator in accordance with such legal authority. Any dispute over the payment or apportionment of the arbitration forum costs (including arbitrator fees) is a Covered Dispute which must be resolved only by the appointed arbitrator. Unless binding United States Supreme Court precedent requires one party or the other to bear all or a greater share of the arbitration forum costs (including arbitrator fees), such costs shall be apportioned equally between Owner-Operator and Carrier.
- (xiv.) *Sole & Exclusive Remedies.* Mandatory final and binding individual arbitration in accordance

with the terms of these AAPs is the sole and exclusive remedy for the formal resolution of any and all Covered Disputes, except as otherwise expressly provided in these AAPs.

- (xv.) *Exhaustion of Other Remedies.* These AAPs do not prevent or excuse an Owner-Operator or Carrier from satisfying any applicable statutory and/or regulatory conditions precedent or jurisdictional prerequisites to pursuing any Covered Disputes by, for example, giving proper notices to, filing administrative charges with or obtaining right to sue notices or letters from federal, state or local governmental agencies. After complying with and exhausting all such remedies, conditions, or prerequisites, final and binding individual arbitration in accordance with these AAPs is the sole and exclusive remedy or formal method of resolving the Covered Disputes.
- (xvi.) *Filing Administrative Charges or Complaints.* To the extent any such rights exist, Owner-Operator retains the right under the National Labor Relations Act ("NLRA") to file unfair labor practice charges with the National Labor Relations Board ("NLRB"), and to file charges or complaints with the United States Equal Employment Opportunity Commission ("EEOC"), the United States Department of Labor and other federal administrative agencies under Applicable Law(s) within their administrative jurisdiction. However, nothing in these AAPs is intended or should be construed as any type of express or implied waiver or limitation of Carrier's right to enforce the provisions of these AAPs to the maximum extent permitted by controlling law.
- (xvii.) *Election to Not Be Bound by AAPs.* Not later than the 15th calendar day after the date Owner-Operator has signed this Agreement as set forth below (the "Election Deadline"), the Owner-Operator can elect to not be bound by these AAPs by giving Carrier written notice of such election (an "Election Notice"). To elect to not be bound by these AAPs, an Owner-Operator's Election Notice to Carrier must be in writing and:

- (1.) state Owner-Operator's name, mailing address, phone number, e-mail address (if any) and Carrier identification number or other unique identifier used by Carrier to identify Owner-Operator (if any);
- (2.) state that Owner-Operator is electing to not be bound by these AAPs;
- (3.) be signed and dated by the Owner-Operator;
- (4.) and be sent or delivered by the Owner-Operator to Carrier on or by the Election Deadline to Schneider National Bulk Carriers, Inc., Attn: Legal Department, P.O. Box 2545, Green Bay, WI 54306-2545, Fax: (920) 403-8445; LegalDepartment@schneider.com, via either (i) hand delivery, with the Owner-Operator being given an Acknowledgment of Receipt of the Election Notice; (ii) fax transmission which generates an accurate written confirmation of the fax transmission; (iii) e-mail with the word "ELECTION NOTICE" in the subject line of the e-mail message; or (iv) the United States Postal Service (USPS) or private courier (such as FedEx, UPS, or DHL) using delivery services that produce a written record establishing the dates the notice was sent to and received by Carrier (a "Mail Record").

Before deciding whether to elect to not be bound by these AAPs, Owner-Operator is being provided with an opportunity to consult with an attorney and/or other advisors of Owner-Operator's choosing. If an Owner-Operator elects to not be bound by these AAPs, he or she must maintain a copy of the Election Notice sent to Carrier and, as may be applicable, a copy of (i) the Acknowledgment of Receipt received from Carrier, (ii) the fax transmission confirmation; (iii) the Owner-Operator's e-mail message, including any

attachment(s) thereto, or (iv) the Mail Record. In the event of any dispute as to whether an Owner-Operator made such an election, the Owner-Operator will have the burden of proving Owner-Operator did so by producing a copy of the Election Notice and the Acknowledgment of Receipt, fax confirmation, e-mail message (and any attachment) or Mail Record. If an Owner-Operator fails to comply with these requirements for electing to not be bound by these AAPs or for proving such an election was made, the Owner-Operator will be deemed to have irrevocably agreed to be bound by all of the AAPs and to be exercising the any rights under the National Labor Relations Act to not engage in concerted activity, including without limitation as to any Representative Action or PAGA Action. In the event Owner-Operator makes a timely and proper Election Notice, within 15 calendar days after its receipt of such Election Notice, Carrier will have the right to give notice of termination of and to terminate this Agreement as provided in the termination provisions of this Agreement.

- (xviii.) *Prior Arbitration Agreements.* Except with respect to any Covered Disputes currently being arbitrated on an individual basis under or pursuant to the current version of these AAPs in effect before an Owner-Operator becomes bound by the terms of this version of the AAPs, these AAPs supersede and replace all prior policies or agreements providing for arbitration of any Covered Disputes between Owner-Operator and Carrier (a "Prior Arbitration Agreement"). However, if an Owner-Operator properly elects to not be bound by these AAPs as set forth above, or these AAPs are otherwise not binding on an Owner-Operator in whole or in part, then the Prior Arbitration Agreement binding the Owner-Operator and Carrier will not be superseded and replaced to that extent, and will remain in force and effect to that extent as between the Owner-Operator and Carrier.
- (xix.) *Integration & Modification.* These AAPs are the full and complete policy and agreement between Owner-Operator and Carrier relating to the formal resolution of Covered Disputes. They may not be modified or terminated except in writing, or as otherwise expressly permitted or required by this Agreement or controlling law. Any modification or termination of these AAPs will be prospective only and will not apply to the individual arbitration of any accrued or pending Covered Disputes that have been initiated pursuant to the current version of these AAPs prior to the modification or termination becoming effective.
- (xx.) *Severability.* If any provision of these AAPs other than the Representative Action Waiver provisions is deemed invalid or unenforceable, it will be severed and the remainder of these AAPs will not be affected.
- (xxi.) *Waiver.* The failure of Carrier at any time to require any Owner-Operator's performance of any of the AAPs shall not affect its right thereafter to enforce the same; nor shall the waiver by Carrier of any breach of any provision of these AAPs be construed to be a waiver of any succeeding breach of any such provision, or as a waiver of the provision itself, or as the waiver of the breach of any other provision of these AAPs.
- (xxii.) *Governing Law.* These AAPs, any arbitration proceedings held pursuant to these AAPs, and any court or other proceedings concerning arbitration under these AAPs are expressly subject to and governed by the Federal Arbitration Act, 9 U.S.C. Section 1 et seq. (the "FAA"), including the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. Section 201 et seq. (the "Convention"), if the Convention is applicable, and Owner-Operator and Carrier hereby irrevocably waive the application or enforcement of any provision of the FAA which would otherwise exclude these AAPs from its coverage. Only to the extent that state law is applicable under the FAA and/or the Convention, then the laws of the State of Wisconsin will be the applicable state law, without regard to or application of any conflict of laws principles. In the event a court of competent jurisdiction holds or decides that the Representative Action Waiver provisions of these AAPs, as applied to any Covered Disputes being asserted, are not

subject to and governed by the FAA, then these AAPs shall be of no force or effect as to any such Covered Disputes being pursued as any type of Representative Action. In the event a court of competent jurisdiction holds or decides that the PAGA Action Waiver provisions of these AAPs, as applied to an action or proceeding in which Covered Disputes are being asserted only as a PAGA Action, are not subject to and governed by the FAA, then these AAPs shall be of no force or effect as to any such action or proceeding.

35. Confidentiality.

Owner-Operator hereby acknowledges and agrees that any list of Carrier's customers, as it may exist now or from time to time, is a valuable, special, and unique asset of the business of Carrier. Owner-Operator warrants, represents, acknowledges, and agrees, during and after the term of this Agreement, not to disclose the list of Carrier's customers or any part thereof, to any person, firm, corporation, association, or other entity for any reason or purpose whatsoever without Carrier's prior written consent. Owner-Operator agrees to preserve as "Confidential Matters", all trade secrets, trademarks, service marks, copyrights, patents, know-how and any and all other Carrier confidential and proprietary information relating to Carrier's or its parent entities' affiliates' and subsidiaries' business, forms, processes, developments, sales and promotional systems, prices and operations, which information may be obtained from tariffs, contracts, freight bills, letters, reports, disclosures, reproductions, books, records, or other contractors, and other sources of any kind resulting from this Agreement. Owner-Operator agrees to regard such Confidential Matters as the sole property of Carrier, and shall not publish, disclose, or disseminate the same to others without the prior written consent of Carrier. In the event of any breach or threatened breach by Owner-Operator of the provisions of this paragraph, Carrier shall be entitled to an injunction, restraining Owner-Operator from disclosing, in whole or in part, the list of Carrier's customers, and all other Confidential Matters. Nothing hereunder shall be construed as prohibiting Carrier from pursuing any and all remedies available to Carrier at law or in equity for such breach, including the recovery of monetary damages from Owner-Operator.

36. Consent to Conduct Business Using Electronic Methods

- (a). Pursuant to Regulatory Guidance Concerning Electronic Signatures and Documents, 76 Fed. Reg. 411 (Jan. 4, 2011), issued by the Federal Motor Carrier Safety Administration ("FMCSA"), Carrier and the Owner-Operator hereby consent and agree to conduct business using, to the extent either party elects to do so in a particular instance, one or more of the following methods:
 - (i.) *Captured Image Method.* Under the Captured Image Method, an image of a scripted name or legal mark is created using a stylus on an electronic pad, and that image is then used to populate an electronic version of the document to be signed electronically by Carrier, Owner-Operator, or both, as authorized by FMCSA in its guidance in response to Question 6 at 76 Fed. Reg. 411, 413. Owner-Operator and Carrier agree that the OOOA, Agreement or Exhibit thereto may be executed in one or more counterparts, each, and all of which shall constitute, and shall be construed as a single original instrument upon execution, delivery, and exchange of such signed counterparts by and among the Parties hereto. In addition, the Parties agree that the OOOA, Agreement or Exhibit may be executed via facsimile, scan, or Transflo, and that any such signatures have the same force and effect as an original signature. A fully executed copy of the OOOA, Agreement or any Exhibit thereto may be used with the same force and effect as the original of this Agreement.
 - (ii.) *Email Method.* Under the Email Method, electronic signatures are accomplished through the parties' use of an Internet-based electronic-signature service such as eSignLive®, DocuSign® or Digital Ink® and/or through the exchange of email correspondence in a manner that identifies and authenticates Owner-Operator as the sender of the email correspondence (in other words, by Owner-Operator's furnishing to Carrier in advance Owner-Operator's email address and/or appending to the email correspondence the last four digits of Owner-Operator's Social Security Number or another form of identification known only to Owner-Operator).

- (iii.) *Communications Equipment Method.* Under the Communications Equipment Method, communications with Carrier are accomplished via the Mobile Computing Platform, described in Paragraph 15 of this Agreement, installed in the Equipment in a manner that identifies and authenticates Owner-Operator as the user of the Mobile Computing Platform and the source of the electronic communication (in other words, by Owner-Operator's logging into the Mobile Computing Platform with Owner-Operator's unique Driver Number or Owner Number and/or electronically sending information through the Mobile Computing Platform.)
 - (iv.) *Web-Portal Method.* Under the Web-Portal Method, electronic signatures are accomplished via a web portal in a manner that identifies and authenticates Owner-Operator as the source of the electronic communication transmitted through the web portal (in other words, by Owner-Operator's logging onto the web portal using unique credentials) and indicates Owner-Operator's approval of the information contained in the electronic communication (in other words, by Owner-Operator's clicking on an "I Accept" dialog box after reviewing electronic communications on the web portal).
- (b). This consent encompasses the use of electronic methods to transmit and effect the signature of any document, including, without limitation, this Agreement, any Exhibits thereto, any supplement, modification, addendum, amendment, notice, consent and/or waiver, required by this Agreement or required by FMCSA regulations to be generated and maintained (or exchanged by private parties), including, without limitation, driver applications, driver histories, and other qualification records, leases formed under 49 C.F.R. Part 376, driver-vehicle inspection reports, and records of duty status.
 - (c). The parties agree that when Owner-Operator uses any of the electronic methods described in subparagraph (a), above, to accomplish electronic signatures, the chosen method: (1) identifies and authenticates Owner-Operator as the source of the electronic communication; (2) indicates Owner-Operator's approval of the information contained in the electronic communication; and (3) produces an electronic document with the same integrity, accuracy, and accessibility as a paper document or handwritten signature.
 - (d). The parties agree that when Carrier uses any of the electronic methods described in subparagraph (a), above, to accomplish electronic signatures, the method: (1) identifies and authenticates Carrier as the source of the electronic communication; (2) indicates Carrier's approval of the information contained in the electronic communication; and (3) produces an electronic document with the same integrity, accuracy, and accessibility as a paper document or handwritten signature.
 - (e). Either party may elect, with respect to any document, to use a manual/hardcopy signature, provided that the election shall not preclude the other party from applying an electronic signature to the same document.

37. Prior Agreements Terminated.

Subject to the AAPs set forth in Paragraph 34, the Agreement (including the Exhibits, Appendices and any addendums) constitute the entire agreement between Carrier and Owner-Operator pertaining to the subject matter contained herein and fully replaces, supersedes and terminates all prior and contemporaneous agreements, representations, understandings and/or Prior OOOA (other than with respect to unsatisfied liabilities or obligations of a party which accrued prior to the termination of the Prior OOOA or any previous provisions which specifically survive termination of the Prior OOOA). No supplement, modification, or amendment to the Agreement shall be binding unless in writing and signed by both Carrier and Owner-Operator, except as may otherwise be provided in Exhibit B. To the extent Owner-Operator (which for purposes of this Paragraph shall include any other person or entity who has, either as an individual or as a business entity, entered into any independent contractor or owner-operator operating agreement with Carrier, and each of their respective employees, agents and independent contractors) has or had any prior escrow funds ("Prior Escrow Funds") with Carrier under any OOOA or

independent contractor operating agreement predating this Agreement (collectively, the "Prior OOOA"), Owner-Operator, as defined in this Paragraph, hereby agrees that Carrier shall transfer all such Prior Escrow Funds to the Escrow Funds identified in Paragraph 10 of this Agreement and acknowledges that this may result in the Escrow Funds under this Agreement containing an initial surplus or an initial shortage. In addition, any balance due amount or other liabilities or obligations for which Owner-Operator is obligated under the Prior OOOA, (collectively, "Liabilities") shall become due and owing to Carrier under this Agreement and shall continue to be valid under this Agreement. To the extent that it may be required by law, Owner Operator and Carrier agree that such Liabilities and Prior Escrow Funds are hereby assigned from the Prior OOOA to this OOOA.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Owner-Operator Operating Agreement as of the latest date set forth below. Owner-Operator and Carrier agree that the OOOA, Agreement or Exhibit thereto may be executed in one or more counterparts, each and all of which shall constitute, and shall be construed as a single original instrument upon execution, delivery, and exchange of such signed counterparts by and among the Parties hereto. In addition, the Parties agree that the OOOA, Agreement or Exhibit may be executed via eSignLive®, facsimile, scan, or Transflo, and that any such signatures have the same force and effect as an original signature. A fully executed copy of the OOOA, Agreement or any Exhibit thereto may be used with the same force and effect as the original of this Agreement.

CARRIER:**Schneider National Bulk Carriers, Inc.**

/s/ Ezra Berrios

Title:Authorized Signatory**Date:****OWNER OPERATOR:****CTHOMASO II LLC****Title:** Owner Operator**Date:**

EXHIBIT A
OOOA RIDER
Receipt for Equipment and Certificate of Authorized Operation

1. Owner Information

Supplier Name: CTHOMASO II LLC

2. Equipment Specifications

Description of Equipment covered by this Rider: Each OOOA requires an Exhibit A

Power Number (assigned by Carrier)	Year/Make	Vehicle Identification Number
30298	FRTLINER UFS CASC OWNER OPERATOR 2018	1FUJGLDV5JLHF4056

3. This OOOA Rider is intended to be the "OOOA Rider" as described in the "Owner Operator Operating Agreement" ("OOOA") between the undersigned. Upon execution of this OOOA Rider by the parties as set forth below, this OOOA Rider shall be subject to and become a part of the OOOA.
4. This OOOA Rider certifies that the Equipment described above is owned or properly leased by the Owner-Operator named below and has been leased to the Carrier named below under the OOOA for a period of time beginning with the lease date described above and continuing thereafter until terminated.
5. The commodities to be transported are restricted to those commodities Carrier is authorized to transport under its Certificates of Authority granted by the DOT (or any successor agency) and various state/provincial agencies, and any and all commodities the transportation of which require no such Certificate of Authority.
6. The original OOOA is kept at Carrier's office located at 3101 Packerland Drive, Green Bay, Wisconsin.
7. All defined terms used in this **Exhibit A**, unless herein otherwise defined, shall have the meanings assigned to such terms in the OOOA.
8. From time to time, Owner-Operator may lease new or additional equipment to Carrier and, in such event, a new Exhibit A will be executed by the Parties. Such new Exhibit A will supersede and replace any prior Exhibit A's, but will remain subject to the terms of the OOOA.

[Exhibit A Signature Page to Follow]

EXHIBIT A
OOOA RIDER

IN WITNESS WHEREOF, the undersigned have executed this OOOA Rider (Exhibit A) as of the latest date set forth below.

CARRIER:

OWNER OPERATOR:

Schneider National Bulk Carriers, Inc.

CTHOMASO II LLC

/s/ Ezra Berrios

Title:Authorized Signatory

Title:: Owner Operator

Date:

Date:

EXHIBIT B**Schneider National Bulk Carriers, Inc. CHOICE****Payment and Fee Schedule**

BKSK 3.2018

This Payment and Fee Schedule is made and entered into by and between Schneider National Bulk Carriers, Inc. ("Carrier") and CTHOMASO II LLC("Owner-Operator"). This Payment and Fee Schedule is entered into in connection with an Owner-Operator Operating Agreement ("Agreement") executed by Owner-Operator and Carrier. All defined terms used in this Exhibit B, Payment and Fee Schedule, unless herein otherwise defined, shall have the meanings assigned to such terms in the Agreement.

I. Owner Operator ("OO") Payment

Pursuant to Paragraph 4(a) of the Agreement, Carrier shall pay Owner-Operator the applicable OO Payment for each trip fully and properly performed as set forth in the OO Payment Rate Table commencing on the following page. A trip may include multiple shipments for multiple shippers involving multiple pickups and deliveries. For purposes of determining OO Payments, a trip shall commence at the initial point of pickup and shall terminate at the final point of delivery.

OO CHOICE - PAYMENT RATE TABLE (BULK)

OO Payments	SNBC-System
Published Payment	As posted on the OO Portal and selected by Owner-Operator
Delay Payment – 2 to 8 Hours	\$50
Delay Payment – 8.01 to 10 Hours	\$75
Delay Payment – 10.01 to 12 Hours	\$100
Delay Payment – 12.01 to 14 Hours	\$150
Delay Payment – delay above 14.1 hours (note: Delay Payments are always capped at \$300)	\$300
Tank Acquisition or Repositioning at Carrier's Request (Out of Route ("OOR") miles between 51 and 100)	51-100 = \$50
Tank Acquisition or Repositioning at Carrier's Request (ORR miles between 101 and 150)	101-150 = \$100
Tank Acquisition or Repositioning at Carrier's Request (ORR miles between 151 and 200)	151 – 200 = \$150
Tank Acquisition or Repositioning at Carrier's Request (OOR miles greater than 200)	> 200 = \$200
Vehicle requested not used (Payment only applicable if Owner-Operator has selected a Shipment and, in Carrier's reasonable discretion, Owner-Operator has also taken a substantial step toward executing said Shipment).	\$150

Bulk Equipment Use Payment (per Exhibit H)	\$40 per week
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Please refer to the definitions below for an explanation of the OO Payments set forth in the OOCHOICE – PAYMENT RATE TABLE (BULK). Mileage determinations, if any, will be made based on the HHMG mileage package.

A. Published Payment

Carrier shall pay Owner-Operator at the rate published on the OO Portal ("Portal") for any load selected and completed by Owner-Operator. Once a load is selected by Owner-Operator (by clicking "Assign"), each such selected load automatically becomes a specific attachment to the OOOA and Carrier will be contractually obligated to provide said published rate payment to the Owner-Operator provided the Owner-Operator fully and properly completes the shipment. Carrier bases published rates on a variety of economic factors, which from time to time may change, but which may include current market conditions, projected miles to be driven, projected Carrier capital equipment costs and depreciation, whether the load requires Heat-in-Transit, and any accessorial that are a necessary part of the shipment. Carrier's payments are not based on any set formula or percentage, but Carrier and Owner-Operator agree that the Published Payment amount reflected on the Portal at the time the Owner-Operator selects a load will be the full and fair payment for that load once completed. For the sake of clarity, Tank Washes and any other accessorial payments Carrier receives from Customer are not separately compensable. The published rate shall be reflected in the "Revenue to the Truck" amount posted on the Portal at the time Owner-Operator selects the Shipment, and not any subsequent changes to the "Revenue to the Truck" amount. Carrier does not pay bobtail to start and end the day. Selected freight is not guaranteed until picked up. From time to time customer or operational needs may necessitate appointment changes or cancellations.

B. Delay Payment

Not more than one of the Delay Payments will be made per the above matrix listed within the above Payment Table (i.e., If Owner-Operator is delayed 9 hours, Owner-Operator will receive one (1) payment of \$75 (not a payment of \$50 for the first 2-8 hours plus another \$75 payment for the additional 1 hour). In order to receive a Delay Payment, Owner-Operator must actually pick up or drop off the same Shipment that Owner-Operator continued to wait for during the delay or have been standing by and prepared to pick up or drop off that Shipment at the location when Shipment cancels. If Owner-Operator is late for a delivery appointment or designated delivery time and Owner-Operator was responsible for the delay in arrival, then no payment shall be paid. Owner-Operator will be responsible for recording actual arrival and departure times via the Mobile Computing Platform. Failure to record accurate detention will void the requirement for payout of this premium. Premium will not be paid when resulting from time spent for normal equipment maintenance or repairs.

C. Tank Acquisition or Repositioning at Carrier's Specific Request

On an exceptional basis, Carrier shall provide Owner-Operator additional payment if, at Carrier's specific request, Owner-Operator drives Out of Route miles from Owner-Operator's previous location to reposition a Tank or in the event of a Carrier-initiated change to tank acquisition location or to obtain a Tank for use as part of Owner-Operator's next-selected Shipment. Such payments are listed in the matrix within this Exhibit B and Owner-Operator is not eligible for such payments in general situations where an Owner-Operator selects a load from the Portal and, in order to complete the load, needs to acquire a Tank; such payments are only applicable at Carrier's specific request separate and apart from loads selected from the Portal

II. Fees, Charges, Balances and Other Amounts

The items listed in the table below shall be deducted from Owner-Operator's OO Payment or from Owner-Operator's escrow funds in the event that Owner-Operator's OO Payment is insufficient. Where no dollar figure

is listed in the "amount or method of computation, of deduction" column, the deduction will vary in amount and will be computed as indicated in that column. Carrier shall provide Owner-Operator with a written explanation of itemization of any deductions for cargo or property damage before making such deduction(s). With respect to all other deductions, Carrier shall make available to Owner-Operator, upon request, copies of those documents which Carrier used to determine the validity of the deduction.

TABLE OF AGREEMENT FEES AND RELATED AMOUNTS

Nature of Fee	Applicable Provision of Agreement	Amount or Method of Computation of Deduction from OO Payment(s)
Over Payment	4(d)	The amount that was improperly overpaid to Owner-Operator by Carrier.
Owner-Operator Initiated Relay: Minimum Charge	4(g)	\$400 or the actual cost incurred by Carrier because of Owner-Operator's failure or inability to complete delivery, whichever is greater.
Medical Examination	5(d)	Actual cost of medical examination.
Heavy Vehicle Use Tax (HVUT) Check if Owner-Operator elects to file and submit Heavy Vehicle and Use Tax (HVUT) payments on its own behalf.	6(b)	Full annual amount of HVUT will be deducted from the Escrow or OO Payment at Carrier's election. If Owner-Operator elects to file and submit its own HVUT, no deduction shall be made by Carrier.
Fuel, Road, Mileage Taxes	6(b)	Actual amount of state and federal required fuel, road, mileage and other taxes and fees related to the operation of the Equipment (including IFTA) (calculated on a monthly basis by Carrier).
Property and Ad Valorem Taxes	6(e)	A per year, per vehicle fee based on fleet averages as calculated by Carrier.
Workers' Compensation Insurance	7(b), 11(a)	Any amounts facilitated through Carrier.
Occupational Accident Insurance	7(b), 11(a)	Any amounts facilitated through Carrier.
Non-trucking Liability Insurance	7(b), 11(a)	Any amounts facilitated through Carrier.
Other Optional Insurance Coverages	7(b), 11(a)	Any amounts facilitated through Carrier.
Rejected Shipments	19	Carrier's full actual loss for any shipment or partial shipment not returned by Owner-Operator to the shipper or Carrier after rejection by the consignee.
Carrier Damages (as defined in the Agreement)	8	Amount of Carrier Damages that Carrier pays or otherwise incurs as set forth in Paragraph 8(a) of the Agreement, but subject to indemnity limits set forth in Paragraph 8(b), if applicable
Escrow Funds: Required Balance	10	Consistently maintain a balance \$3,000.00; \$50.00 per week to be deducted from OO Payments and applied to the Escrow Fund to reach, and maintain, such balance.
Cash or Other Advances	11	Amount Carrier advances to Owner-Operator, plus all

Nature of Fee	Applicable Provision of Agreement	Amount or Method of Computation of Deduction from OO Payment(s)
		<p>transaction fees charged by Carrier or the third party vendor, including, without limitation:</p> <ul style="list-style-type: none"> • \$10.00 for each EFS/TCH check • \$3.00 for each card cash advance • \$2.00 for each promissory note advance • \$1.00 for each ATM advance at Carrier's operating center. • \$2.00 for each ATM advance at another location, plus any charges assessed by the ATM provider
Damage to Carrier Equipment	13(d), 13(e)	The actual damages or repair cost to any Carrier Equipment, regardless of whether Owner-Operator reports or fails to; report such damage or the need for such repair, normal wear and tear excepted.
Late Loading or Unloading Service Failure Charges	11(a)	The amount of any such charges assessed against Carrier by the shipper, consignee or their agents.
Lost, Stolen, Irreparably Damaged, or Destroyed Carrier Equipment; Delayed Return	11(a), 13(e)	The replacement value of any Equipment issued to Owner-Operator by Carrier which is lost, stolen or irreparably damaged beyond repair or destroyed. Charges for delayed return are set forth in the Agreement.
Base Plates	11(a), <u>Exhibit E</u>	Owner-Operator is responsible for base plates; provided that, at Owner-Operator's election, Carrier can facilitate the purchase of base plates through settlement deductions. The actual base plate cost will be settlement deducted on a weekly basis in 52 equal installments.
Permits	11(a), <u>Exhibit E</u>	Owner-Operator is responsible for required permits; provided that, at Owner-Operator's election, Carrier can facilitate the purchase of Permits through settlement deductions. The actual cost of permits will be settlement deducted from Owner-Operator's first settlement following execution of this Agreement and, thereafter, on January 1st of each subsequent year.
Annual Administrative Fee for Permit and Licensing Work	11(a), <u>Exhibit E</u>	\$50.00 per year per vehicle.
License Plate Transfer Fee	11(a)	Any plate transfer fee imposed by the applicable state and necessitated by Owner-Operator changing Equipment will be deducted from Owner-Operator's OO Payments.
King Pin Lock	11(a)	\$60.00 per lock in the event Owner-Operator elects to purchase this equipment from Carrier.
EZ Pass or Other Toll Transponder Device	11(a), <u>Exhibit C</u>	\$40.00 per device if purchased through Carrier (deducted from OO Payment, but fee waived if returned upon request or upon termination of this Agreement).

Nature of Fee	Applicable Provision of Agreement	Amount or Method of Computation of Deduction from OO Payment(s)
Toll Charges	11(a), 2(b)	Carrier shall deduct from OO Payments the cost of all toll expenses incurred on Owner-Operator's EZ Pass or other toll transponder device.
Garnishment Orders (including but not limited to child support payments and IRS levies)	11(a)	Amount Carrier pays to comply with any lawfully issued order or lien, a copy of which Carrier shall supply to Owner-Operator at or before the first deduction related to it.
Replacement Photo Identification Card	11(a)	Carrier's cost of providing a replacement photo identification card or the cost of the original card if it is not returned to Carrier upon Carrier's request or termination of the Agreement.
Fuel Purchases	14, 11(a)	<p>If offered by Carrier (at Carrier's sole discretion), Owner-Operator may purchase fuel through Carrier's discount program(s) with various fuel suppliers. In the event Carrier provides such a discount, the cost to be deducted from Owner-Operators OO Payments shall be an amount equal to the retail cash pump price, less the amount of a varying discount given by Carrier. Carrier will notify Owner-Operator of the level of discount every two (2) weeks; provided however that the amount of the discount, timing of the notification, and whether the discount is tied to the cash or credit pump price are all subject to change at Carrier's discretion.</p> <p><u>Owner-Operator acknowledges that the amount paid by Owner-Operator for such fuel through OO Payment deductions may exceed the amount that Carrier pays the fuel supplier for such fuel. Independent Contract acknowledges that Carrier may make a profit based upon such practice, and agrees that Carrier may maintain all such profit.</u></p> <p>In addition, Owner-Operator shall pay a \$1.00 per transaction fee for direct fuel transactions and a \$2.00 per transaction fee for each non-funded fuel transaction, and any fees charged to Carrier by Comdata or EFS.</p>
Tires, Maintenance, and other OEM or after-market parts	14, 11(a)	<p>If offered by Carrier (at Carrier's sole discretion), Owner-Operator may purchase tires, maintenance, and other OEM or after-market parts through Carrier's discount program(s) with various suppliers. In the event Carrier provides such a discount, the cost to be deducted from Owner-Operators OO Payments shall be a discounted amount established by Carrier and/or the supplier. The amount of any discount and the availability of any such discounts programs are subject to change at Carrier's discretion and without notice.</p> <p><u>Owner-Operator acknowledges that the amount paid by Owner-Operator for such tires, maintenance, and other OEM or after-market parts through OO Payment deductions may exceed the amount that Carrier pays the</u></p>

Nature of Fee	Applicable Provision of Agreement	Amount or Method of Computation of Deduction from OO Payment(s)
		<u>supplier for such tires, maintenance, and other OEM or after-market parts. Independent Contract acknowledges that Carrier may make a profit based upon such practice, and agrees that Carrier may maintain all such profit</u>
Extra Copies of Documents Requested by Owner-Operator, Including 1099's, Settlement Statements or Contracts	11(a)	An administrative fee of \$10.00 per document plus \$2.00 for each additional page within the first year and \$50.00 for each document and \$2.00 each additional page for documents requested after a one-year period.
Tire Chains for Trailer	11(a)	\$65.00 per set if purchased through Carrier (deducted from OO Payment, but fee waived if returned upon request or upon termination of this Agreement).
Hiring of Carrier Driver	11(a)	In the event Owner-Operator hires a driver that is currently employed by Carrier, Owner-Operator shall be pay the amount of \$150.00 to cover Carrier's administrative cost in re-qualifying the driver as an employee of Owner-Operator.
Replacement Driver	11(a)	For each second and subsequent replacement driver employed (or contracted) by Owner-Operator, the deduction amount will be \$300.00 for Carrier's orientation costs for the new driver.
Processing of Driver Application	11(a)	Carrier shall charge a \$50.00 per application processing fee if Owner-Operator submits more than one driver application for each vehicle.
Fines and Penalties	2(b),12, 11(a)	Amount Carrier paid or otherwise incurred in connection with fines or penalties (including related court costs, attorneys' fees, and other legal costs and expenses) for which Owner-Operator is responsible.
Failure to Return Carrier's Equipment	13(c), 11(a)	Amount Carrier incurs, including all costs and expenses of repossession and attorneys' fees, in recovering any of its Equipment from Owner-Operator.
Miscellaneous Equipment	13(c), 11(a)	Varies – Supplementary information will be provided to Owner-Operator by Carrier related to specific deductions , where applicable
MCP Indemnification	2(b)(4), 11(a), <u>Exhibit D</u>	Amount Carrier paid or otherwise incurred due to Owner-Operator's possession, use or operation of the MCP.
MCP Replacement	2(b)(4), 11(a), <u>Exhibit D</u>	The amount incurred by Carrier for replacing an MCP that is not returned to Carrier upon request or upon termination of the Agreement.
Failure to Complete Trip	16	All costs, losses or damages that Carrier may incur due to Owner-Operator's failure to complete a Shipment selected by Owner-Operator.
Miscellaneous Deductions	Agreement, Exhibits, or	Any amount set forth in the Agreement, an Exhibit, or Addendum signed by Owner-Operator authorizing such

Nature of Fee	Applicable Provision of Agreement	Amount or Method of Computation of Deduction from OO Payment(s)
	Addendums	additional deduction.
Lease Payments	11(a)	At Independent's Contractor's election, the amount Owner-Operator specifically authorizes Carrier, in writing, to deduct and transfer to Schneider Finance, Inc. in connection with Owner-Operator's tractor lease obligations.
Repositioning Fee	17	Repositioning Fee Applies if Owner-Operator's next-selected Shipment originates from a point more than 100 miles from the Last Shipment Completion Location (See OOOA Paragraph 17 for full details). Fees are assessed based on the following mileage bands beyond the Last Shipment Completion Location: <ul style="list-style-type: none"> • 101 to 250 miles: \$500 • 251 to 500 miles: \$900 • 501 or more miles: \$1,500
Unauthorized Use of Equipment Fee	13	\$150
Bulk Equipment	Exhibit H (Bulk Pump and Compressor Equipment Lease Agreement)	\$40 per week
Personal Protective Equipment Kit (includes fitting kits and IM fitting)	2(b)(viii)	Owner-Operator payment to SNBC of \$200 (settlement deducted in the amount of \$50 per week for the first 4 weeks of contractual relationship). Fitting kit must be returned upon end of business relationship; if Owner-Operator fails to return the complete fitting kits and IM fitting at that time, Owner-Operator will automatically be assessed an additional \$150 charge.

III. Miscellaneous

A. Prior Agreements Terminated

THIS PAYMENT AND FEE SCHEDULE SUPERSEDES ANY AND ALL PRIOR PAYMENT AND FEE SCHEDULES BETWEEN THE PARTIES, WHETHER ORAL OR IN WRITING. BY EXECUTING THIS PAYMENT AND FEE SCHEDULE, OWNER-OPERATOR AND CARRIER HEREBY AGREE THAT ALL PRIOR PAYMENT AND FEE SCHEDULES OF A SIMILAR CHARACTER BETWEEN THE PARTIES HERETO ARE HEREBY TERMINATED.

[Signatures on Next Page]

EXHIBIT B

Schneider National Bulk Carriers, Inc. CHOICE

Payment and Fee Schedule

BKSK 2.2018

IN WITNESS WHEREOF the parties hereto have executed this Payment and Fee Schedule as of the Effective Date.

CARRIER:

OWNER OPERATOR:

Schneider National Bulk Carriers, Inc.

CTHOMASO II LLC

/s/ Ezra Berrios

Title:Authorized Signatory

Title:: Owner Operator

Date:

Date:

EXHIBIT C
PRODUCTS AND SERVICES USE AGREEMENT

This Agreement is entered into in connection with the Owner-Operator Operating Agreement ("OOOA" or "Agreement") between Schneider National Bulk Carriers, Inc. and CTHOMASO II LLC. All capitalized terms used in this Agreement, unless herein defined, shall have the meaning ascribed to such terms in the OOOA.

In consideration of the use of those Products and Services by Owner-Operator which Owner-Operator has elected as set forth below, Owner-Operator hereby agrees to the following terms and conditions:

- A) The use of the Products and Services shall be limited to individuals or entities who maintain an active driving status with Carrier or its wholly owned affiliates. Carrier shall have the option to suspend without prior notification the privileges under this Agreement.
- B) Owner-Operator may, at his discretion, authorize a third party to use those Products and Services which have been elected below, provided that the third party is a driver qualified by Carrier and acting on behalf of or as an employee of Owner-Operator.
- C) Owner-Operator shall pay Carrier or its wholly owned affiliate for all contractually obligated charges and transaction fees as a result of the use of those Products and Services which have been elected below, including those incurred by an authorized third party as set forth in Paragraph B, above, and those incurred by any unauthorized use as set forth in Paragraph E, below.
- D) No interest shall accrue against charges and fees incurred as a result of the use of any Products and Services hereunder.
- E) In the event of lost or stolen cards issued in connection with the use of the Products and Services or the unauthorized use of such cards, Owner-Operator shall immediately notify Carrier. Prior to notification to Carrier, Owner-Operator shall be liable for any unauthorized charges and transaction fees incurred resulting from lost or stolen cards or the unauthorized use of such cards. After notification to Carrier, Owner-Operator shall not be liable for any unauthorized charges and transaction fees.
- F) Owner-Operator hereby authorizes Carrier or its wholly owned affiliate with which the Owner-Operator has entered into an OOOA, to deduct or offset in full all charges and fees incurred as a result of the use of any Products and Services hereunder from any Payments due Owner-Operator under the terms of the OOOA or funds held by Carrier pursuant to the OOOA.
- G) Owner-Operator agrees that he shall not incur or allow to be incurred charges and fees resulting from the use of the Products and Services which exceed the applicable limits as set forth herein.
- H) The applicable limits related to the use of the Products and Services set forth herein shall be subject to decrease from time to time at Carrier's sole discretion.
- I) This Agreement shall become effective as of the date hereof and shall remain in full force and effect until:
 - i) the OOOA is terminated; or

- ii) either party provides written notice of termination to the other, at which time this agreement shall immediately terminate.

Notwithstanding termination of this Agreement, Owner-Operator's obligation to pay Carrier or any of its wholly owned affiliates for any outstanding charges and fees incurred as a result of the use of the Products and Services hereunder shall survive the termination of this Agreement.

- J. All cards issued in conjunction with the use of the Products and Services are the property of Carrier, and upon termination of this Agreement, Owner-Operator must promptly return and surrender to Carrier all cards issued under this Agreement.
- K. Neither Carrier nor any of its wholly owned affiliates shall be liable for the refusal or failure of any merchant or automated equipment to honor or accept the use of any cards issued in connection with the use of the Products and Services, nor shall Carrier or any of its wholly owned affiliates be liable in any way for any goods or services purchased under this Agreement.
- L. Owner-Operator shall indemnify and hold harmless Carrier and its wholly owned affiliates and their respective successors and assigns from and against any and all losses, damages, liabilities, claims, actions, deficiencies, costs and expenses (including reasonable attorneys' fees) incurred or suffered by Carrier or its wholly owned affiliates and their respective successors and assigns that result from or relate to a breach of any of the terms and conditions of this Agreement by Owner-Operator, and any occurrence or matter with respect to use of the Products and Services hereunder. Owner-Operator's indemnification obligation shall survive the termination of this Agreement.
- M. This Agreement shall not be assigned by Owner-Operator without the express prior written consent of Carrier.
- N. This Agreement shall be binding upon and inure to the benefit of the parties hereto and Carrier's successors and assigns.
- O. The waiver by Carrier of any breach of any of the terms and conditions of this Agreement by Owner-Operator shall not be deemed a waiver by Carrier of any subsequent breach.

[Exhibit C Selection and Signature Page to Follow]

OOOA EXHIBIT C SELECTION

SELECT <u>ONE</u> OF THE FOLLOWING TOLL TRANSPONDER. OPTIONS: *If no election is made, Owner-Operator shall be deemed to have elected Option A.		
{{	OPTION A	Owner-Operator elects to obtain a Toll Transponder.
checkbox}}	OPTION B	Owner-Operator declines a Toll Responder

SELECT <u>ONE</u> OF THE FOLLOWING FUEL CARD OPTIONS: If no election is made, Owner-Operator shall be deemed to have elected Option A.		
{{	OPTION A	Fuel Card (Product used to purchase diesel and reefer fuel at any fuel location where the card is accepted.). Limits: 300 Gallons Diesel Fuel Per Day 55 Gallons Reefer Fuel Per Day
	OPTION B	Owner Operator declines a Fuel Card

SELECT <u>ONE</u> OF THE FOLLOWING FUEL CARD CASH ADVANCE OPTIONS: If no selection is made, \$325.00 Per Week shall be deemed elected.		
Fuel Card Cash Advance (Service provided using the fuel card to advance cash for operating expenses.) *Note: Owner-Operator has no right under this OOOA to receive an advance on Payments. All advances shall be subject to Carrier's sole discretion.		
\$0	\$100.00 Per Week checkbox}}	\$325.00 Per Week {{

[Signature on Next Page]

OOOA EXHIBIT C

IN WITNESS WHEREOF, the undersigned have fully reviewed this Exhibit C, including the selection options contained herein, and confirm that this Exhibit C accurately reflects the undersigned's selections. The undersigned have executed this Exhibit C as of the latest date set forth below.

CARRIER:

OWNER OPERATOR:

Schneider National Bulk Carriers, Inc.

CTHOMASO II LLC

/s/ Ezra Berrios

Title:Authorized Signatory

Title:: Owner Operator

Date:

Date:

EXHIBIT D

MOBILE COMPUTING PLATFORM SUBLEASE

In the event Owner-Operator elects to obtain a Mobile Computing Platform from Carrier, the following provisions shall apply and shall supplement and constitute an exhibit to the Owner-Operator Operating Agreement ("OOOA") executed between the parties. All defined terms used in this Exhibit D, unless herein otherwise defined, shall have the meanings assigned to such terms in the OOOA.

- a.)** Sublease. Carrier hereby subleases to Owner-Operator and Owner-Operator hereby subleases from Carrier the Mobile Computing Platform ("MCP") as more fully described on one (1) or more OOOA Riders, Exhibit A, which when executed by Owner-Operator and Carrier shall be subject to and become a part of this sublease.
- b.)** Term of Sublease. The sublease shall commence as to each MCP(s) subleased to Owner-Operator hereunder as of the date set forth on the respective OOOA Rider, Exhibit A, and shall continue thereafter until the earlier of: (i) termination of the OOOA as to any or all Equipment subject hereto to which an MCP(s) has been assigned; or, (ii) termination of this sublease only by Carrier as to any or all MCP's subject to this Sublease upon notice to Owner-Operator.
- c.)** Location of MCP(s). Owner-Operator understands and agrees that each MCP shall be assigned to specific Equipment as set forth in the OOOA Rider, Exhibit A. Owner-Operator further understands and agrees that such MCP(s) shall not be removed from the Equipment or reassigned to different Equipment at any time without Carrier's prior written consent.
- d.)** Use. Owner-Operator understands and agrees that the MCP(s) shall only be used to transmit messages to and receive messages from Carrier or its designated agent in connection with rendering Freight Transportation Services under the OOOA. Owner-Operator shall not use the MCP(s), or permit its use, for any non-business purposes, and Carrier may charge Owner-Operator for transmission and other charges related to Owner-Operator's use of the MCP(s) for such non-business purposes. Carrier shall make the necessary deductions pursuant to Paragraph 11 of the OOOA, in the amount of such charges arising out of the unauthorized non-business use of the MCP(s) by Owner-Operator.
- e.)** Non-Use While in Motion. Owner-Operator hereby represents and warrants to Carrier that the MCP(s) will not be used while Equipment is in motion. If, and only if, Equipment is being operated by a team, then the non-driver may use the MCP(s) while such Equipment is in motion, provided the non-driver takes all reasonable precautions to ensure that such use and operation does not distract the driver. IN NO EVENT SHALL THE DRIVER OF EQUIPMENT BE AUTHORIZED TO USE THE MCP(s) WHEN THE EQUIPMENT IS IN MOTION.
- f.)** Disclaimer of Warranties. Owner-Operator hereby acknowledges and agrees that Owner-Operator shall accept the MCP(s) in its "As Is" condition. CARRIER MAKES NO WARRANTIES AS TO THE MCP(S) SUBJECT TO THIS OOOA AND/OR SUBLEASE, EXPRESS OR IMPLIED, AND CARRIER SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- g.)** Limitation of Liability. With the exception of Carrier's duty to repair or replace a defective or damaged MCP(s) set forth below, in no event shall Carrier be liable or obligated to Owner-Operator for any loss, damage or expense of any kind or nature, including but not limited to the drilling of holes on the Equipment during installation of an MCP(s), whether direct, special, exemplary, punitive, incidental or consequential, occasioned directly or indirectly by the MCP(s) or the subleasing, use, operation or maintenance thereof or for any repair, replacement, service or adjustment thereto or by any delay or failure to provide any of the foregoing or by any interruption of service or loss of use thereof, or for any loss of business, lost revenue or profits or damage whatsoever caused.
- h.)** Maintenance. Owner-Operator shall protect the MCP(s) from damage and abuse so as to keep the MCP(s) in good repair, condition and working order during the term of the OOOA, normal wear and tear excepted. Owner-Operator shall not make or allow any alterations, additions, modifications, or improvements in, on or to the MCP(s).

i.) Repairs or Replacement of MCP(s).

- 1). Carrier has arranged for Owner-Operator to be able to take advantage of the manufacturer's warranty for the MCP(s) subleased hereunder. Accordingly, Carrier may, at its own cost and expense, and in its sole discretion, subject to subparagraph (2), below, repair or replace a defective or damaged MCP covered under such manufacturer's warranty.
- 2). Carrier shall have no obligation to repair or replace any MCP(s) that has been damaged or rendered defective: (i) as a result of misuse, abuse, negligence or any casualty covered by subparagraph (1), below; (ii) by failure to use the MCP(s) in accordance with applicable care and use guidelines; (iii) as a result of any unauthorized non-business use; and (iv) as a result of repair or maintenance services performed by unauthorized personnel (note: breaking of the seal of any portion of the MCP(s), including the outdoor unit or communication unit, will be deemed to be an unauthorized repair).
- 3). In the event the MCP(s) becomes defective or is damaged during the term of this Sublease, Owner-Operator shall promptly notify Carrier of any such defect or damage and shall, at its own cost and expense, deliver the MCP(s) to such point as requested by Carrier for the performance of any necessary repairs or replacement by Carrier in its sole discretion. In no event shall Owner-Operator perform or attempt to perform any repairs or replacement of a damaged or defective MCP(s). Carrier may, in its sole discretion, as soon as practicable, repair or replace the MCP(s).

j.) Risk of Loss. Owner-Operator shall bear the entire risk of loss, damage or destruction of the MCP(s) resulting from any theft, fire, flood or other casualty whatsoever. Owner-Operator shall promptly notify Carrier of any such loss, damage or destruction. If the MCP(s) is lost, stolen, destroyed or damaged beyond repair, Owner-Operator shall pay to Carrier the amount as set forth in the Payment and Fee Schedule, Exhibit B. Carrier may, at its option, make the necessary deductions pursuant to Paragraph 11 of the OOOA for such amount. Upon such payment, the MCP(s) shall become the property of Owner-Operator and the sublease shall be terminated as to such MCP(s).**k.) Access.** Carrier or Carrier's authorized agent shall have the right, upon reasonable notice to Owner-Operator, to enter into or upon any Equipment in order to inspect and/or repair or replace the MCP(s).**l.) Title.** Owner-Operator understands and agrees that the MCP(s) shall at all times remain Carrier's or its parent or affiliates' personal property and the title thereto shall remain solely with Carrier's or its parent or affiliates at all times. The parties specifically agree that the MCP(s) is wholly independent of the Equipment to which it is assigned and attached, and that the MCP(s) is not and shall not become a part of or accession to any such Equipment. Owner-Operator shall keep the MCP(s) free and clear from all liens, claims and encumbrances.**m.) Filing.** Owner-Operator hereby agrees to execute any financing statements and other documents requested by Carrier to provide notice of interest with respect to the MCP(s) subleased hereunder.**n.) Indemnification.** Owner-Operator hereby agrees to reimburse, indemnify and hold Carrier and its parent and affiliates and their respective officers, directors, employees, agents, successors and assigns harmless from and against any and all claims, actions, liabilities, damages, costs and expenses (including reasonable attorneys' fees) incurred or suffered by Carrier and its parent and affiliates or their respective officers, directors, employees, agents, successors and assigns as a result of (i) any breach by Owner-Operator the OOOA or (ii) the possession, use or operation of the MCP(s), regardless of when, where, how or by whom possessed, used or operated.**o.) Termination.** Upon termination of the OOOA as to any or all MCP(s) subleased hereunder:

- 1). Owner-Operator shall, at its sole cost and expense, deliver the Equipment to such point as requested by Carrier for removal of the MCP(s) by Carrier. In the event Owner-Operator unilaterally removes and returns the MCP(s), Carrier shall charge an inspection fee as set forth in the Payment and Fee Schedule, Exhibit B, which amount shall be deducted by Carrier pursuant to Paragraph 11 of the OOOA. Owner-Operator shall return the MCP(s) in the same condition as when received, normal

wear, and tear excepted.

- 2). In the event Owner-Operator fails to return the MCP(s) within three (3) days of termination of the OOOA or Sublease, Owner-Operator shall pay to Carrier the replacement cost of the MCP(s). Carrier shall make the necessary deductions pursuant to Paragraph 11 of the OOOA for any such amounts.
- 3). Further, in the event Owner-Operator fails to return the MCP(s) within three (3) days of termination, Carrier shall have the right to take possession of the MCP(s) without further demand or notice, wherever same may be located and without any court order or any process of law, and Carrier shall be entitled to receive the costs and expenses (including reasonable attorneys' fees) incurred by Carrier in recovering such MCP(s). Carrier shall make the necessary deductions pursuant to Paragraph 11 of the OOOA for any such amounts.

[Exhibit D Signature Page to Follow]

EXHIBIT D
MOBILE COMPUTING PLATFORM SUBLEASE

IN WITNESS WHEREOF, the parties hereto have executed this Mobile Computing Platform Sublease (Exhibit D) as of the latest date set forth below.

CARRIER:

OWNER OPERATOR:

Schneider National Bulk Carriers, Inc.

CTHOMASO II LLC

/s/ Ezra Berrios

Title:Authorized Signatory

Title:: Owner Operator

Date:

Date:

EXHIBIT E
LICENSE AND PERMIT ELECTION

Owner-Operator shall obtain, and properly display on or retain in the Equipment (whichever is required by law), the license base plate and permits necessary to operate the Equipment on Carrier's behalf. If Owner-Operator so chooses to have Carrier obtain the base plate and/or permits, and deduct the expense from Owner-Operator's OO Payments, Owner-Operator shall so indicate by designating below.

1. BASE PLATE AND PERMITS.

- a. **Base Plate.** If Owner-Operator so elects (by checking Option A, "Carrier shall obtain base plate...", below), Carrier shall obtain a base plate in Carrier's name, initially pay the amount owed to the issuing jurisdiction, and deduct that expense from Owner-Operator's OO Payments at a rate not to exceed \$50.00 per week (to be adjusted annually based upon the actual cost of the base plate). If Owner-Operator removes and returns the base plate to Carrier upon the termination of this Agreement and if Carrier then receives a refund or credit for the base plate or resells it to another contractor, Carrier shall refund to Owner-Operator a prorated share of the amount received by Carrier equal to the amount of the unused portion of the base plate actually purchased by Owner-Operator through the weekly payments, if any, less any transfer or replacement fees owed to the plating jurisdiction. If no election is made, Owner-Operator shall be deemed to have elected Option A.
- b. **Permits.** If Owner-Operator so elects (by selecting Option A, "Carrier shall obtain ALL permits...", below), Carrier shall obtain in Carrier's name all applicable operational permits (excluding, e.g., oversize permits, etc.), initially pay the amounts owed to the issuing jurisdictions, and deduct the total permit expense from Owner-Operator's OO Payments at the annual rate not to exceed \$100. If Owner-Operator instead elects below to obtain all applicable operational permits, he/she hereby authorizes Carrier to obtain for the Equipment all necessary permits for which only a motor carrier may lawfully apply and to deduct from Owner-Operator's OO Payments the amounts paid to the issuing jurisdictions. Under both options, the permit amounts shall be computed on a fleet wide average amount-per-owner-operator basis. If no election is made, Owner-Operator shall be deemed to have elected Option A.

2. **ADMINISTRATIVE FEE.** Carrier shall deduct from Owner-Operator's OO Payments \$50.00 annually to cover the administrative costs associated with processing Owner-Operator's plate and/or permits into Carrier's system.

3. **INFORMATION REGARDING DEDUCTIONS.** With respect to the deductions referenced below, Carrier shall make available to Owner-Operator, upon request, copies of those documents that are necessary to determine the validity of the deduction.

[Exhibit E Selection & Signature Pages to Follow]

EXHIBIT E
LICENSE AND PERMIT SELECTION

<p style="text-align: center;">SELECT <u>ONE</u> OF THE FOLLOWING <i>BASE PLATE</i> OPTIONS: *If no election is made, Owner-Operator shall be deemed to have elected Option A.</p>		
{{ X")}}	OPTION A	Carrier shall obtain base plate and deduct the costs and fees from Owner-Operator's OO Payments.
checkbox}}	OPTION B	Owner-Operator shall obtain its own base plate – to be apportioned in all 48 contiguous states.
<p style="text-align: center;">SELECT <u>ONE</u> OF THE FOLLOWING <i>PERMIT</i> OPTIONS: If no election is made, Owner-Operator shall be deemed to have elected Option A.</p>		
	OPTION A	Carrier shall obtain ALL permits and deduct the costs and fees from Owner-Operator's OO Payments.
checkbox}}	OPTION B	Owner-Operator shall obtain, to the extent lawfully obtainable by a non-carrier, permits at Owner-Operator's expense (and shall furnish the issuing jurisdictions and Carrier with all necessary documentation and cooperation in the event an audit is performed by Owner-Operator's applicable jurisdictions). Carrier shall obtain for the Equipment all remaining necessary permits for which only a motor carrier may lawfully apply and shall deduct, from Owner-Operator's OO Payments, the amounts paid to the issuing jurisdictions.

[Exhibit E Signature Page to Follow]

EXHIBIT E
LICENSE AND PERMIT ELECTION

IN WITNESS WHEREOF, the undersigned have fully reviewed this Exhibit E, including the selection options contained herein, and confirm that this Exhibit C accurately reflects the undersigned's selections. The undersigned have executed this Exhibit E as of the latest date set forth below.

CARRIER:

OWNER OPERATOR:

Schneider National Bulk Carriers, Inc.

CTHOMASO II LLC

/s/ Ezra Berrios

Title:Authorized Signatory

Title:: Owner Operator

Date:

Date:

EXHIBIT F
BULK PUMP AND COMPRESSOR EQUIPMENT LEASE AGREEMENT

THIS BULK PUMP AND COMPRESSOR EQUIPMENT LEASE AGREEMENT("Exhibit F") is made and entered into by and between Schneider National Bulk Carriers, Inc. ("Carrier") and CTHOMASO II LLC. This Agreement is entered into in connection with an Owner Operator Operating Agreement ("OOOA") executed by Owner Operator and Carrier. All capitalized terms used in this Exhibit F, unless herein defined, shall have the meaning assigned to such terms in the OOOA. This Exhibit F shall be deemed an addendum to, and subject to the terms of, the OOOA.

1. **Bulk Equipment.** Subject to the terms and conditions herein, Carrier hereby agrees to lease to Owner Operator and Owner Operator hereby agrees to lease from Carrier the equipment described more fully below ("Bulk Equipment"):

1. Bulk Equipment Description
J150SS Compressor, DH325 HydraPac, Blackmer TX206A product pump, PTO, Heat-In-Transit System (including miscellaneous parts – e.g., brackets, hoses, connections, fluid), steel or aluminum hose rack, and labor charges for installation.
<p><i>**Note: The Bulk Equipment Description set forth above is meant only as an example of the type of equipment that will be provided by Carrier. At its sole discretion, Carrier reserves the right to substitute equipment that is functionally equivalent to the above description, based upon availability.</i></p> <p><i>**Note: Fifth wheel risers, fitting boxes, or specific modifications that require an estimated 5 hours or more of labor are not included as part of this Exhibit F. Any such items or modification costs are Independent Contractor's sole responsibility and payment shall be due in full at time of installation.</i></p>

2. **Term and Lease Payments.**

- a. **Term.** The term of this Exhibit F shall be for the term of the OOOA. If the OOOA terminates for any reason, this Exhibit F will automatically terminate.
- b. **Lease Payments.** Owner Operator shall pay Carrier, as rent for the use of the Bulk Equipment, the amount of \$40.00 per week until the expiration date of this Exhibit F, together with all such additional charges as may be provided herein. Owner Operator hereby authorizes Carrier to deduct such payments from OO Compensation earned under the OOOA.
- i. **Information in Exhibit B.** To allow the deduction of the aforementioned charges, Section II of Exhibit B of the OOOA includes the below line item in the "Table of Agreement Fees and Related Amounts":

Bulk Equipment	Bulk Pump and Compressor Equipment Lease Agreement	\$40.00 per week
----------------	--	------------------

In addition, because Owner Operator will be using Bulk Equipment for the benefit of Carrier, the OO Choice - Payment Rate Table in Exhibit B of Section I of Exhibit B of the OOOA includes the following line item:

Bulk Equipment Use Payment	\$40.00 per week
----------------------------	------------------

- c. **Termination.** In the event that the OOOA between Carrier and Owner Operator is terminated, for any

reason, prior to the time that Owner Operator otherwise obtains full and complete ownership of the Bulk Equipment, Owner Operator shall immediately return the Bulk Equipment to a place selected by Carrier in Carrier's reasonable discretion. Such a termination of the OOOA will also constitute a termination of this Exhibit F. If the OOOA is terminated, the cost associated with the removal of the Bulk Equipment from OO's tractor will be at the OO's sole expense. Carrier shall have the right to make the necessary set-offs and deductions from Independent Contractors IC Compensation settlements, pursuant to Paragraph 11 of the OOOA, in order to recover such amounts.

3. Security Interest.

- a. **Grant.** In addition to the security interest and lien granted by Owner Operator to Carrier in IC Compensation, and funds on deposit in the General Fund and Escrow Funds pursuant to Paragraph 11 of the OOOA, Owner Operator hereby grants to Carrier a purchase money security interest in the Bulk Equipment and all additions and accessions to, all spare and repair parts, all replacements of and substitutions for, and all proceeds (including insurance proceeds) and products of such Bulk Equipment to secure the amounts due hereunder.
- b. **Perfection of Security Interest.** Solely for the purposes of enabling Carrier to perfect its security interest in the Bulk Equipment, Owner Operator irrevocably appoints Carrier as Independent Contractor's attorney, with power to endorse the name of Owner Operator upon any financing statement or any other documents necessary or reasonably required for the perfection of Carrier's security interest.
4. **Transfer of Equipment to New Tractor.** During the Term (as defined in Paragraph 2 above) of this Exhibit F, if Owner Operator upgrades the tractor equipment leased to Carrier as part of the OOOA (on which the Bulk Equipment has been installed), Owner Operator will transfer the Bulk Equipment to the new tractor at a Carrier-approved maintenance facility at Owner-Operator's. Owner Operator Carrier shall have the right to make the necessary set-offs and deductions from Independent Contractors IC Compensation settlements, pursuant to Paragraph 11 of the OOOA, in order to recover such amounts.
5. **Disclaimer of Warranties.** Owner Operator hereby acknowledges and agrees that Owner Operator has selected the Bulk Equipment based upon the sole judgment of Owner Operator and disclaims any reliance upon any statements or representations made by Carrier with respect to the Bulk Equipment. Owner Operator acknowledges and agrees that Owner Operator shall accept the Bulk Equipment in its "As Is" condition. CARRIER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, QUALITY OR DURABILITY OF THE CARRIER EQUIPMENT, AND CARRIER SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
6. **Limitation of Liability.** In no event shall Carrier be liable, whether in contract or in tort or otherwise, for any loss, damage or expense of any kind or nature, whether direct, special, indirect, incidental or consequential, related to the Bulk Equipment or the use or operation thereof.
7. **Title To and Transactions Involving Bulk Equipment.** Carrier shall retain full legal title to the Bulk Equipment, and it is understood that Owner Operator shall acquire no right, title, or interest to the Bulk Equipment, except as expressly set forth in this Exhibit F.
8. **Taxes.** Owner Operator shall keep the Bulk Equipment free and clear of all levies, liens and encumbrances and shall pay when due all fees, assessments and taxes imposed upon the ownership, possession or use of the Bulk Equipment.
9. **Maintenance and Repairs.** Owner Operator shall, at Independent Contractor's expense, keep and maintain the Bulk Equipment in good repair, condition and working order and shall supply and install all replacement parts and accessories when required to maintain the Bulk Equipment in good working condition. Any such additions or improvements to the Bulk Equipment shall be deemed to be a part of the Bulk Equipment.

10. **Risk of Loss.** Owner Operator shall bear the entire risk of loss, damage or destruction of the Bulk Equipment resulting from any theft, fire, flood or other casualty whatsoever, and no such casualty shall relieve Owner Operator of the obligation to pay for the Bulk Equipment in full. In the event of damage to the Bulk Equipment, Owner Operator shall immediately place the same in good repair. In the event the Bulk Equipment is stolen, destroyed or damaged beyond repair, Owner Operator shall promptly notify Carrier in writing of any such occurrence and Owner Operator shall pay to Carrier promptly upon such occurrence an amount equal to the fair market value of the Bulk Equipment at the time of the loss. For context, the new Equipment has fair market value of \$12,600. Carrier may, at its option, make the necessary set-offs and deductions pursuant to Paragraph 11 of the OOOA for such amount.
11. **Insurance.** During the term of this Exhibit F, Owner Operator shall, at Owner-Operator's expense, carry and maintain in full force and effect fire, theft and extended coverage insurance that covers the Bulk Equipment hereunder against risk of loss, damage or destruction from every cause whatsoever in an amount of not less than the full replacement value of the Bulk Equipment. Such insurance policy shall be non-cancelable and non-amendable without at least thirty (30) days prior written notice to Carrier. The Owner Operator shall furnish to Carrier the most current certificate of insurance for such policy. The proceeds of the insurance shall be applied to the restoration or repair of the Bulk Equipment damaged, or for payment of any unpaid balance, as provided for in this Exhibit F.
12. **Inspection.** Carrier or Carrier's authorized agent shall have the right, upon reasonable notice to Independent Contractor, to enter into or upon any tractor or trailer in order to inspect the Equipment.
13. **Default.**
 - a. **Acceleration.** If Owner Operator fails to pay any amount due Carrier hereunder or breaches any other provision of this Exhibit F or upon termination of the OOOA as to any or all tractors leased thereunder, the unpaid balance of the obligations due hereunder shall, at the option of Carrier and without notice or demand, become immediately due and payable and Carrier shall make the necessary set-offs and deductions pursuant to Paragraph 11 of the OOOA for such amount.
 - i.
 - b. **Additional Remedies.** In addition to Carrier's right to make the necessary set-offs and deductions, upon default of Independent Contractor, as set forth in subparagraph (a) above, Carrier shall have the right, but shall not be obligated, to exercise any one or more of the following remedies: (i) sue for and recover the amounts due hereunder, including and up to the full market value of the Bulk Equipment totaling \$12,000, (ii) require Owner Operator to deliver the tractor to such point as reasonably requested by Carrier for removal of the Bulk Equipment by Carrier, (iii) take possession of the Bulk Equipment without further demand or notice, wherever same may be located and without any court order or any process of law (damages occasioned by such taking being hereby expressly waived by Independent Contractor) and (iv) exercise all other rights and remedies available to Carrier in law or in equity.
 - c. **Fees and Expenses.** In the event of any default on the part of Independent Contractor, Owner Operator shall pay all costs, expenses and disbursements (including reasonable attorneys' fees) incurred by Carrier in exercising its rights or remedies hereunder or enforcing any of the provisions or terms hereof.
 - d. **Cumulative Remedies.** The rights and remedies of Carrier under this Exhibit F and available to it under applicable law or in equity shall be cumulative and the exercise of any of them shall not be exclusive of any other right or remedy provided by this Exhibit F or allowed under applicable law or in equity.
 - e. **No Waiver.** No delay or omission on the part of Carrier in exercising any right or option herein given to Carrier shall impair such right or option or be considered as a waiver thereof or acquiescence in any default hereunder on the part of Independent Contractor.
14. **Indemnification.** Owner Operator hereby agrees to reimburse, indemnify and hold Carrier and its parent entities, affiliates, subsidiaries, successors and assigns harmless from and against any and all

claims, actions, liabilities, damages, costs and expenses (including reasonable attorneys' fees) incurred or suffered by Carrier or its parent entities, affiliates, subsidiaries, successors or assigns that result from, relate to or arise out of (i) any breach by Owner Operator of this Exhibit F (ii) act or omission of Owner Operator and/or (iii) any injury (including death) or damage to any person or property or any other losses resulting from or arising out of the possession, use or operation of the Bulk Equipment, regardless of when, where, how or by whom possessed, used or operated.

15. **Waiver of Breach.** A waiver by Carrier of any breach of any provision of this Exhibit F by Owner Operator shall not be deemed to be a waiver by Carrier of any subsequent breach.
16. **Severability.** Invalidity of any part of any provision or provisions of this Exhibit F shall not invalidate the remainder of this Exhibit F or the remainder of any provision or provisions not invalidated. Any provision shall only be invalidated to the extent necessary to cure any defect or illegality contained therein.

[Signatures on Next Page]

EXHIBIT F

IN WITNESS WHEREOF, the undersigned have executed this Exhibit F as of the latest date set forth below.

CARRIER:

OWNER OPERATOR:

Schneider National Bulk Carriers, Inc.

CTHOMASO II LLC

/s/ Ezra Berrios

Title:Authorized Signatory

Title:: Owner Operator

Date:

Date: