

**UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

KIRK ROBERTS,)
FARAJI ARTURO COUNCIL,)
TERRENCE COLVIN-WILLIAMS,)
REGINALD BRADLEY, DAVID COLEMAN,)
and CARL McROBERTS, JR., on behalf of)
themselves and all others similarly situated,)

Plaintiffs,

v.

TRANSAM TRUCKING, INC.,)
OLATHE NOBLE EQUIPMENT LEASING, INC.,)
and JACOBSON HOLDINGS, INC.,)

Defendants.

Civil Action No.
2:21-cv-02073-JWB-GEB

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR
MOTION FOR CLASS CERTIFICATION PURSUANT TO FED. R. CIV. P. 23**

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I. NATURE OF THE MATTER.

Plaintiffs are long-haul truck drivers asserting several claims against Defendant TransAm Trucking, Inc. (“TransAm”), its parent company Jacobson Holdings, Inc. (“Jacobson”), and its sibling company Olathe Noble Equipment Leasing, Inc. (“ONE Leasing”) (collectively, “Defendants”). Specifically, Plaintiffs allege that:

(1) TransAm and Jacobson have violated Article X, section 24, of the Florida Constitution, by failing to pay individuals who have participated in TransAm’s company driver orientation program in Tampa, Florida, the full Florida minimum wage for all compensable hours worked. *See* Third Amended Third Amended Class and Collective Action Complaint [docket no. 109] (“TAC”), Count II.

(2) Defendants have violated the Kansas Consumer Protection Act (“KCPA”), K.S. §§ 50-626, *et eq.*, by:

- (a) encouraging prospective company drivers to accept “independent contractor” lease driver positions and entering into onerous equipment leasing agreements with ONE Leasing while misrepresenting the purported benefits and omitting information concerning the potential drawbacks of lease driving;
- (b) requiring lease drivers to execute so-called “independent contractor agreements” that are unconscionable on their face and in their formation;
- (c) misrepresenting to prospective lease drivers that it will “pass along” all fuel discounts and rebates, when, in fact, it does not;
- (d) deceptively advertising a “fuel surcharge” program as a financial benefit that will be paid to lease drivers, when that program can and does often result in deductions from the lease drivers’ pay; and

- (e) omitting and misrepresenting material information about the terms and costs associated with obtaining physical damage insurance through TransAm.

Id., Count III.

- (3) TransAm and Jacobson have violated the Kansas Wage Payment Act (“KWPA”), K.S. §§ 44-314, *et seq.*, by taking deductions from lease drivers’ pay that either are not permitted by the KWPA, or which reduce the lease drivers’ effective hourly wage rate below the minimum wage.

- (4) Defendants have violated the Truth-in-Leasing (“TIL”) regulations, 49 C.F.R § 376, *et seq.*, by failing to properly maintain and return lease drivers’ escrow funds; overcharging for insurance; taking unlawful chargebacks and deductions from lease drivers’ compensation; and failing to include disclosures required by the TIL regulations in the drivers’ lease agreements. *Id.*, Count VII.

As to these claims, Plaintiffs seek class certification pursuant to Federal Rule of Civil Procedure 23 on behalf of three classes and two subclasses, each defined in Section III, *infra*.

II. SUMMARY OF ARGUMENT.

Defendants are the “TransAm family” – a giant in the trucking industry that has, for years, caused “small[,] dispersed” harms to thousands of individuals who have provided the very services that keep them in business and, in so doing, have “place[d] the social costs of their action on others.” 1 Newberg and Rubenstein on Class Actions § 1:8 (6th ed.). Plaintiffs here challenge Defendants’ conduct and now move this Court for an order certifying the classes defined in Section III, *supra*, because each satisfies Rule 23. Moreover, doing so will “facilitate the final determination of numerous claims in one suit,” which is, “of course,” the “policy behind

the class action device[.]” *Garcia v. Board of Ed., School Dist. No. 1, Denver, Colo.*, 573 F.2d 676, 679 (10th Cir. 1978).

Class certification is appropriate where a liability claim raises questions common to a group of individuals for whom joinder is impracticable and which are capable of generating “common answers apt to drive the resolution of the litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (emphasis removed), *quoting* Richard A. Nagareda, “Class Certification in the Age of Aggregate Proof,” 84 N.Y.U.L. Rev. 97, 131-32 (2009). For three reasons, this is such a case. First, the proposed class members all stand on the same footing in relation to Defendants. They all participated in TransAm’s orientation program. They all drove for TransAm as “lease drivers,” that is, individuals whom TransAm classified as independent contractors and who leased their trucks from ONE Leasing. They all signed the same contracts with TransAm and ONE Leasing. TransAm paid them all the same way, subject to the same policies concerning deductions and work time. And they were all exposed to the same pattern of misrepresentations and omissions concerning the nature of lease driving for Defendants.

Second, Plaintiffs’ claims arise from a common body of evidence that is applicable to every proposed class member. Any determinations that need be made concerning the legality of TransAm’s pay practices will depend upon the same records – the drivers’ duty logs, time records, earnings statements, and like – and the same testimony from TransAm’s representatives concerning the company’s compensation and time-keeping policies. Likewise, Plaintiffs’ claims under the KCPA and TIL regulations turn on classwide proof such as statements and disclosures that Defendants made in (and information they withheld from) their marketing materials, recruitment guides, orientation presentations, and contracts with the drivers. Answers concerning

TransAm’s decision to classify a segment of its driver workforce as independent contractors will similarly derive from a common proof concerning TransAm’s right to control the drivers’ work.¹

Third, class certification is consistent with the case law. Numerous courts have certified classes in cases markedly analogous to this one. In one such case, a district court certified a class of more than 14,000 independent contractor truck drivers who worked for one of TransAm’s competitors, C.R. England. *See Roberts v. C.R. England, Inc.*, 318 F.R.D. 457 (D. Utah 2017).² The court there found that the plaintiffs’ claims – similar to those advanced here – were suited for class treatment because (*inter alia*) they relied upon common evidence and because the “cost and recovery of a single case would make it unlikely that thousands of individuals purportedly harmed would seek recovery outside a class action context.” *Id.* at 524. Conversely, the court found that “a class action not only promotes efficiency but also promotes the public interest, insofar as the class action enables both parties to efficiently test their respective claims and defenses, as well as the reach of consumer protection laws in the forum.” *Id.* The same is true here. Plaintiffs therefore respectfully request that the Court grant this Motion.

III. QUESTIONS PRESENTED.

Plaintiffs request that the Court certify the following classes pursuant to Rule 23, with the followed named plaintiffs acting as class representatives, as follows:

¹ Indeed, having made the decision to uniformly classify *all* its lease driver as independent contractors irrespective of their individual circumstances, Defendants cannot now credibly complain that their determination should not be similarly challenged in a uniform way.

² In another, *Montoya v. CRST Expedited, Inc.*, 311 F. Supp. 3d 411 (D. Mass. 2018), the district court granted Rule 23 certification of a class of truck drivers who worked for another of TransAm’s competitors, CRST Expedited. As here, those plaintiffs alleged claims for failure to pay minimum wages, improper deductions under state law – that state being Iowa – and for unfair and deceptive practices under Iowa’s consumer fraud statute. Counsel here were also counsel in that matter.

Class	Definition and Claim	Representatives
The Florida Class	<p>All individuals who attended TransAm’s orientation program in Tampa, Florida, at any time since February 10, 2016.</p> <p>Count II – Florida Minimum Wage, Fl. Const., Art. 10 § 24.</p>	<p>David Coleman Terrence Colvin-Williams</p>
The KCPA Class	<p><i>Subclass A:</i> All individuals who completed TransAm’s company driver orientation program in Tampa, Florida, or Rockwall, Texas, by becoming lease drivers for TransAm at any time since February 10, 2018.</p> <p><i>Subclass B:</i> All individuals who have personally driven for TransAm while subject to an equipment lease agreement with ONE Leasing and whom TransAm has classified as independent contractors at any time since February 10, 2018.</p> <p>Count III – Kansas Consumer Protection Act, K.S. §§ 50-626, et seq.</p>	<p>Reginald Bradley Terrence Colvin-Williams Carl McRoberts Kirk Roberts</p>
The KWPA Class	<p>All individuals who have worked for TransAm pursuant to an independent contractor agreement while subject to an equipment lease agreement with ONE Leasing at any time since February 10, 2018.</p> <p>Count IV – Kansas Wage Payment Act K.S. §§ 44-314, et seq.</p>	<p>Reginald Bradley Terrence Colvin-Williams Carl McRoberts Kirk Roberts</p>
The TIL Class	<p>All individuals who have executed written lease, as defined by 49 C.F.R. § 376.2(e), with TransAm since February 10, 2017.</p> <p>Count VII – Truth-in-Leasing Regulations, 49 C.F.R § 376.12</p>	<p>Reginald Bradley Terrence Colvin-Williams Carl McRoberts Kirk Roberts</p>

IV. ARGUMENT.

a. The standard for class certification.

Plaintiffs must demonstrate that they have satisfied “Rule 23(a)’s threshold requirements of numerosity, commonality, typicality and adequacy of representation, as well as Rule 23(b)(3)’s requirements of predominance and superiority – that is, common questions must predominate over individual issues and class resolution must be superior to other methods of adjudication.” *Garcia v. Tyson Foods, Inc.*, 255 F.R.D. 678, 687-88 (D. Kan. 2009). The question of class certification is committed to the “broad discretion” of the trial court, which must engage in a “rigorous analysis” of Rule 23’s requirements. *Shook v. El Paso County*, 386 F.3d 963, 967 (10th Cir. 2004). In “exercising this discretion,” the “Court should err on the side of class certification because it has the authority to later redefine or even decertify the class if necessary.” *Bennett v. Sprint Nextel Corp.*, 298 F.R.D. 498, 503 (D. Kan. 2014); *Knight v. Mill-Tel, Inc.*, Case No. 11-1143, 2013 WL 3895341, at *2 (D. Kan. July 29, 2013) (same). Not every aspect of a case needs to be suitable for class treatment to warrant Rule 23 certification. “Certifying a class to determine defendant’s liability, while leaving the class members to pursue their individual damages claims, is a common example of partial certification.” *In re Motor Fuel Temperature Sales Pracs. Litig.*, 292 F.R.D. 652, 665 (D. Kan. 2013).

b. The proposed classes are ascertainable.

A “party seeking class certification must demonstrate that an identifiable and ascertainable class exists.” *Id.* A class is “ascertainable” if one can use the same objective class definition to “determine who is and who is not a member of the class.” *Nieberding v. Barrette Outdoor Living, Inc.*, 302 F.R.D. 600, 607 (D. Kan. 2014). Here, determining who meets the proposed class definitions “would be a relatively simple procedure,” *id.*, because membership in

each class may be ascertained using Defendants’ records. Membership in the proposed Florida Class and KWPA Class, for example, may be determined by cross-referencing Defendants’ records, which identify who attended orientation at which facility, with the agreements those individuals signed and the pay statements and time records that Defendants generated.

Membership in the KCPA Subclasses may similarly be ascertained using TransAm’s orientation attendance records – which include data reflecting the number of drivers who finish company driver orientation by “converting” to independent contractor status (Fact Stmt. ¶ 35)³ – and the drivers’ agreements and pay records. Ascertaining membership in the TIL Class would be an even more straightforward affair: TIL Class members may be identified simply using their signed lease agreements with TransAm and ONE Leasing. Thus, this is not a case where extensive individualized inquiries are necessary to decide who fits within each class or where the proposed class definitions may “sweep in” non-class members. The classes here are “precise, objective, and presently ascertainable.” *Nieberding*, 302 F.R.D. at 607.

c. The proposed classes are too numerous for practicable joinder.

Rule 23(a)(1) requires that the proposed classes be too numerous for practicable joinder. Fed. R. Civ. P. 23(a)(1). “A number of factors are relevant in determining whether joinder is impracticable, including the class size, the geographic diversity of class members, the relative ease or difficulty in identifying members of the class for joinder, the financial resources of class members, and the ability of class members to institute individual lawsuits.” *Pueblo of Zuni v. U.S.*, 243 F.R.D. 436, 444 (D.N.M. 2007). Courts may accept “good faith,” “reasonable” estimates concerning the size of a class in assessing numerosity. *In re Aluminum Phosphide*

³ Citations to Plaintiffs’ Consolidated Statement of Facts are denoted as “Fact Stmt. ¶ [paragraph number].”

Antitrust Litig., 160 F.R.D. 609, 612-13 (D. Kan. 1995); *Zapata v. IBP, Inc.*, 167 F.R.D. 147, 157 (D. Kan. 1996).

TransAm’s records show that nearly 9,400 drivers have “graduated” from its orientation program between February 2018 and January 2022:

Location	Lease drivers	Company Drivers	Total (All Drivers)
Olathe, Kansas	323	222	679
Rockwall, Texas	1,340	3,239	5,796
Tampa, Florida	549	1,756	2,906

(Fact Stmt. ¶ 35). All of these individuals would have signed TransAm’s – and, in the case of the lease drivers, ONE Leasing’s – standard form contracts. (*Id.* ¶¶ 73, 80-81, 83). They would also been paid the same way, subject to the same policies, disclosures, and time-keeping practices. (*Id.* ¶¶ 90, 94, 100-101, 106, 109-110, 121, 125-126). Based on this evidence, it is reasonable to infer that each proposed class conservatively numbers in the hundreds, and likely the thousands. *See Rex v. Owens ex rel. State of Okla.*, 585 F.2d 432, 436 (10th Cir. 1978) (plaintiffs “must produce some evidence or otherwise establish by reasonable estimate the number of class members who may be involved.”). Requiring joinder of even a fraction of those individuals is impracticable.⁴

d. The proposed classes present common issues of law and fact.

Rule 23(a)(2) requires that a class present at least one question of law or fact, common to the class as a whole, that is capable of generating “common *answers* apt to drive the resolution of

⁴ Compare, e.g., *Burdette v. Vigindustries, Inc.*, Case No. 10-1083, 2012 WL 405621, at *12 (D. Kan. Feb. 8, 2012) (“easily find[ing]” that 217 individuals is “so numerous as to make joinder impracticable.”); *Eatinger v. BP America Prod. Co.*, 271 F.R.D. 253, 258 (D. Kan. 2010) (class of 2,000 too numerous for joinder); *Sibley v. Sprint Nextel Corp.*, 254 F.R.D. 662, 672 (D. Kan. 2008) (50 class members living in 20 states sufficient to satisfy numerosity); *Zapata*, 167 F.R.D. at 157 (plaintiffs’ allegation that putative classes included 5,000 to 7,000 current and former employees at two different facilities satisfied numerosity); *Heartland Communications, Inc. v. Sprint Corp.*, 161 F.R.D. 111, 115 (D. Kan. 1995) (class of 1,000 too numerous for joinder).

the litigation.” *Dukes*, 564 U.S. at 350 (emphasis original), *quoting* Nagareda, “Class Certification in the Age of Aggregate Proof,” 84 N.Y.U. L. Rev. at 132. As to that inquiry, “‘even a single [common] question’ will do.” *Id.* at 359, *quoting* Ginsburg, J., concurrence. To demonstrate commonality, plaintiffs must show that the members of a proposed class “possess the same interest and suffer the same injury.” *Eatinger*, 271 F.R.D. at 259, *quoting* *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982). Evidence that a defendant has engaged in “standardized conduct toward the proposed class members,” *Sibley*, 315 U.S. at 655, *quoting* *Buchanan v. Hamos*, Case No. 11-C-6866, 2012 WL 1953146 at *9 (N.D. Ill. May 30, 2012), or a “pattern of ... activity” that may violate the law, *In re: EpiPen (Epinephrine Injecting, USP) Marketing, Sales Prac. & Antitrust Litig.*, 336 F. Supp. 3d 1256, 1319 (D. Kan. 2018), is often sufficient to show commonality.

i. The Florida Class satisfies commonality.

The Florida Class presents several common issues of law and fact, such as (*inter alia*) whether TransAm and Jacobson qualify as joint employers for purposes of orientation pay liability; whether TransAm accurately tracked all time spent in orientation as “compensable”; and whether the amounts paid to the Florida Class members for orientation, divided by their total compensable time spent in orientation, equals at least the Florida minimum wage.⁵ “These are about the most perfect questions for class treatment.” *Iglesias-Mendoza v. La Belle Farm, Inc.*, 239 F.R.D. 363, 373 (S.D.N.Y. 2007). Simply put, TransAm either properly treated all time

⁵ Florida law requires that all “working Floridians” receive a minimum wage for their compensable work time. Fl. Const. Art. 10, § 24(a). Florida’s minimum wage is higher than the FLSA’s. During the relevant period, it has ranged from \$8.05 to \$11.00 per hour, typically increasing each year. *Id.*; *see* Florida Dept. of Economic Opportunity, “Florida Minimum Wage History,” Oct. 2019, *available at* <https://www.floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notice/2020-minimum-wage/florida-minimum-wage-history-2000-2020.pdf>.

spent by the Florida Class members in orientation as compensable for purposes of the Florida minimum wage, or it did not. Likewise, the sums paid to the Florida Class members for orientation, divided by their total compensable time in orientation, either equaled or exceeded the Florida minimum wage, or they did not. Those common questions will yield common answers as to TransAm’s liability.⁶ They amply satisfy Rule 23’s commonality requirement.⁷

ii. The KCPA Class satisfies commonality.

The KCPA Class consists of two subclasses. Subclass A covers all individuals who attended TransAm’s company driver orientation program in Tampa or Rockwall but who did not emerge from that program as company drivers – i.e., they either did not take a driver position with TransAm in any capacity or they finished orientation as lease drivers. Subclass B covers all individuals who have personally driven for TransAm while subject to an equipment lease agreement with ONE Leasing and whom TransAm has classified as independent contractors.

⁶ While these questions may result in individual class members receiving different damages awards, the prospect that class liability may require individuated damages analysis does not preclude class treatment, especially where such analysis may be “accomplished using computer records, clerical assistance, and objective criteria,” as is the case here. *Sibley*, 315 F.R.D. at 662, *quoting Smilow v. Southwestern Bell Mobile Sys., Inc.*, 323 F.3d 32, 40 (1st Cir. 2003); *see also In re Urethane Antitrust Litig.*, 768 F.3d 1245, 1255 (10th Cir. 2014) (“The presence of individualized damages issues would not change this result. Class-wide proof is not required for all issues. Instead, Rule 23(b)(3) simply requires a showing that the questions common to the class predominate over individualized questions.”).

⁷ *See, e.g., Garcia v. Tyson Foods, Inc.*, 890 F. Supp. 2d 1273, 1281-83 (D. Kan. 2012) (same, on claim for unpaid “donning and doffing” time despite “factual differences among the plaintiffs” because class members were all paid in the same manner which was allegedly “insufficient to cover donning and doffing [time].”); *Smith v. MCI Telecomms. Corp.*, 124 F.R.D. 665, 675 (D. Kan. 1989) (same, where all class members worked in the same sales position at the same location and claimed that defendant systematically refused to properly pay commissions); *Rosario-Guerrero v. Orange Blossom Harvesting*, 265 F.R.D. 619, 626 (M.D. Fla. 2010) (same, where “Plaintiffs allege that the [proposed class members] were paid at a piece-rate for their work and did not receive wages for all of the hours worked,” “were not compensated for watching training videos,” and “were not reimbursed for pre-employment expenses.”); *Martinez v. Mecca Farm, Inc.*, 213 F.R.D. 601, 605 (S.D. Fla. 2002) (same, where common questions included, *inter alia*, whether farm workers qualified as “employees” entitled to minimum wage compensation, whether defendant’s “belt time” pay system violated agricultural worker pay statute, and whether workers were owed pay for time they spent waiting to clock in at the start of the shift).

Both subclasses cohere around numerous issues “capable of classwide resolution.” *Dukes*, 564 U.S. at 350.

As to Subclass A, Plaintiffs claim that Defendants have violated the KCPA by causing individuals who attend TransAm’s orientation intent on becoming company (i.e., employee) drivers to convert to lease driver status through a common course of deceptive and unconscionable representations and omissions. As to Subclass B, Plaintiffs claim that Defendants have misrepresented – and failed to disclose – material facts about the nature of their lease driver program, including the drawbacks of that program and the risks drivers incur signing up for it, and have engaged in misrepresentations about specific aspects of the program, specifically fuel discounts, fuel surcharges, and physical damage insurance.

These claims raise a host of common questions. Among them: are the individuals who attend company driver orientation “consumers,” and are Defendants “suppliers,” within the meaning of the KCPA? Do Defendants have a duty to disclose⁸ the risks of lease driving, or the “failure rate” of lease drivers? If so, have they not made those disclosures? Are the statements made before and during company driver orientation by Defendants’ recruiters, orientation managers, and driving trainers false, misleading, or inaccurate? Do those individuals omit material information about lease driving from their presentations at orientation? Similarly, are Defendants’ statements in their driver contracts and other materials false, misleading, or

⁸ The KCPA defines “deceptive acts and practices” to include “willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact.” K.S.A. § 50-626(b)(3). In order to trigger this definition, “plaintiffs must first show that defendants had a duty to disclose the material fact.” *In re Motor Fuel*, 867 F. Supp. 2d at 1138-39. Such a duty may be found where the parties have “unequal bargaining power,” *Louisburg Bldg. & Dev. Co. L.L.C. v. Albright*, 252 P.3d 597, 616 (Kan. App. 2011), *quoting State ex rel. Stovall v. ConfiMed.com, L.L.C.*, 38 P.3d 707, 713 (Kan. 2002), and where a seller fails to disclose a material fact but “knows that the consumer is entering a transaction under a mistake as to the facts and because of the relationship between consumer and seller, the customs in trade or other objective circumstances, the consumer would reasonably expect disclosure of such facts,” *In re Motor Fuel*, 867 F. Supp. 2d at 1139-40.

inaccurate – e.g., is it deceptive, in the context of the KCPA, to tell drivers that they “will be paid a Fuel Surcharge” when, in fact, that program often resulted in drivers having money *deducted* from their pay? (*See* Fact Stmt. ¶¶ 90-93). Were the disclosures Defendants *did* make – such as Defendants’ statement in the lease drivers’ contracts that their physical damage insurance premiums include an undefined, fluctuating “administrative fee” – adequate? (*Id.* ¶¶ 99-100). Are Defendants’ misrepresentations to the company drivers about their lease program made willfully? Were the circumstances of the drivers’ contract formation with TransAm or ONE Leasing, or the contract themselves, unconscionable because (for example) the parties are in unequal bargaining positions?⁹

These questions can be answered on a class basis using common evidence such as the scripts, prompts, and guidelines Defendants’ recruiters use; the content provided by Defendants’ agents and representatives during orientation concerning the lease program and the purported “benefits” of independent contractor status; the language of Defendants’ standard-form contracts and advertising and orientation materials; driver earnings statements showing that they, for example, lost money through TransAm’s fuel surcharge program and paid more money for physical damage insurance than TransAm itself paid; evidence establishing that Defendants incentivize their managers to convert individuals from employee to independent contractor status; and Defendants’ records concerning company driver conversion rates to lease driver status and the turnover rate among lease drivers generally. Thus, the common questions raised by

⁹ *See Via Christi Regional Medical Center, Inc. v. Reed*, 314 P.3d 852, 867 (Kan. 2013) (“An unconscionable act or practice requires both supplier deception and unequal bargaining power.”).

Plaintiffs' KCPA claim present common issues that may be resolved on behalf of all the proposed KCPA Class members.¹⁰

iii. The KWPA Class satisfies commonality.

Plaintiffs' claim on behalf of the KWPA Class is that TransAm has subjected its lease drivers to a policy of deductions that either are not permitted by the KWPA, or which reduced the lease drivers' wage rate below the minimum wage. The KWPA states that an employer may not "withhold, deduct or divert any portion of an employee's wages unless ... the employer has a signed authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee," K.S.A. § 44-319(a)(3), provided that any "[a]mounts withheld under this section shall not reduce wages paid to below the minimum wage required" by the FLSA or Kansas law, K.S.A. § 44-319(e). The KWPA's "regulations specify certain deductions that do not '[accrue] to the benefit of the employee' and cannot be made under any circumstances, even with the written consent of the employee."¹¹ *Core Cashless, LLC v. Kansas Dept. of Labor*, 421 P.3d 778, 2018 WL 3321173, at *9 (Kan. App. 2018), *quoting* K.S. Admin. Code § 49-20-1(a)(2)(A).

¹⁰ Courts have found commonality satisfied in cases pressing similar KCPA claims. *See, e.g., Nieberding*, 302 F.R.D. at 609 (commonality satisfied where plaintiffs alleged defendant failed to disclose specific product defect; common questions included whether the product was defective and whether defendant willfully omitted that fact from its sales pitches); *In re Motor Fuel Temperature Sales Pracs. Litig.*, 279 F.R.D. 598, 600 (D. Kan. 2012) (denying motion to decertify class on claim that defendant violated KCPA by "sell[ing] motor fuel for a specified price per gallon without disclosing or adjusting for temperature expansion" where "common questions include whether defendants' efforts to maintain their practice of selling motor fuel at retail without disclosing or adjusting for temperature ... constitutes a deceptive or unconscionable act or practice under the KCPA."); *Blessing v. Sirius XM Radio Inc.*, Case No. 09-10035, 2011 WL 1194707, at *3 (S.D.N.Y. Mar. 29, 2011) (certifying class asserting numerous state consumer protection violations, including under the KCPA, where "issue of whether Defendant's actions constitute false and deceptive information is a common question, not particular to any individual plaintiff.").

¹¹ These include deductions for employer losses resulting from "alleged negligent acts," for uniforms or equipment "not necessary to the performance of the assigned duties and which are customarily supplied by the employer," and for "any other deduction not set out in K.S.A 44-313 *et seq.* or permitted by these rules and regulations." *Id.*

Whether and to what extent the deductions taken by TransAm satisfy these conditions is a common foundation upon which all the KWPA Class members' claims rest. Determining whether the proposed class members "signed authorization[s] ... for deductions for a lawful purpose accruing to [their] benefit," for example, is an issue common to each class member because TransAm requires all lease drivers to sign the same agreements and authorization forms. Thus, the question of whether those "signed authorizations" are legally valid given that the drivers signed them under the pretense that they were not TransAm's employees, but were instead independent contractors, is one applicable to the entire KWPA Class.¹²

Whether TransAm's deductions resulted in drivers receiving less than the minimum wage in violation of K.S.A. § 44-319(e) will also depend upon common proof and will yield common answers.¹³ That is because *any* deductions that result in employees receiving "wages ... below the minimum wage" are axiomatically unlawful under the KWPA. *Id.* Applying this analysis to

¹² See, e.g., *Knight v. Mill-Tel, Inc.*, Case No. 11-1143, 2013 WL 3895341, at *5-*6 (D. Kan. July 29, 2013) (commonality satisfied where plaintiffs challenged legality of defendant's wage deduction policy; "it is uncontroverted that Defendant's policy allowed deductions for a wide range of reasons, including tool purchases, customer complaints, and quality control problems. While different class members may have suffered pay deductions for different reasons under the policy, all of the class members share a common legal theory that Defendant's deduction policy violates the KWPA."); *Phelps v. 3PD, Inc.*, 261 F.R.D. 548, 561 (D. Or. 2009) ("whether someone who has been determined to be an employee can ever authorize deductions of the employer's business expenses ... pursuant to an agreement in which the worker is labeled an independent contractor" satisfied commonality and predominance notwithstanding defendant's argument that Oregon law permits employers to take deductions based on employees' signed authorization); *In re FedEx Ground Package Sys., Inc., Employment Pracs. Litig.*, 273 F.R.D. 424, 447-48 (N.D. Ind. 2008) (rejecting defendant's argument that "plaintiffs' claims under Kentucky's wage deduction statute will require proof that each plaintiff did not agree to each deduction" because "[t]his claim will require FedEx Ground to either point to a statute allowing the deduction in question or produce a written agreement between itself and the driver allowing the deduction that falls into one of the statute's stated exceptions. The court doesn't read this statute to require each driver to testify as to what he or she agreed to in terms of deductions."); *Awuah v. Coverall North America, Inc.*, 952 N.E.2d 890, 900 n.22 (Mass. 2011) (in case alleging janitorial workers were misclassified by defendant as independent franchise owners, "[a]n agreement between an employer and an employee that the employee will obtain insurance for the benefit of the employer also violates the Wage Act because it is a 'special contract' that has the effect of exempting the employer from the obligations to pay earned wages in full.").

¹³ Such common proof would include, *inter alia*, the drivers' settlement statements, which reflect their weekly compensation and deductions; the agreements and policy statements the drivers were required to sign concerning their compensation and the deductions to which they were subject; and the drivers' time logs and duty hour records.

the KWPA Class members will therefore “generate common answers apt to drive the resolution of the litigation” because it will be the same analysis for everyone.¹⁴ *Dukes*, 564 U.S. at 350, quoting Nagareda, “Class Certification in the Age of Aggregate Proof,” 84 N.Y.U.L. Rev. at 132.

The issue of whether TransAm and Jacobson have misclassified the KWPA Class members as independent contractors is also a common one. To determine whether an employer/employee relationship exists under the KWPA, courts in Kansas apply a multi-factor test that “includes economic reality considerations, while maintaining the primary focus on an employer’s right to control.” *Craig*, 335 P.3d at 76. This test may be applied to all the KWPA Class members because the “existence of the right to control” looks primarily at *TransAm*’s standardized course of conduct – that is, the rights it maintained vis-à-vis the drivers – rather than the drivers’ individual experiences.¹⁵ See *In re FedEx Ground Package Sys., Inc.*

¹⁴ For example, as reflected in his settlement statement dated January 31, 2020, Terrence Colvin-Williams received no compensation for the work he performed the prior week. Indeed, he ostensibly owed TransAm \$226.31 because his deductions and chargebacks exceeded his earned “revenue.” (See Fact Stmt., Colvin-Williams Sample Settlement Statements [**Ex. 54**] at p. 4). This is an obvious KWPA violation because, regardless of whether TransAm’s deductions and chargebacks complied with the law, the end result was a pay period in which Colvin-Williams performed work but received no compensation. Using the same documents, the same analysis may be conducted with respect to the proposed class writ large.

¹⁵ Numerous courts have reached the same conclusion on claims for independent contractor misclassification under other states’ laws. See, e.g., *Roman v. Jan-Pro Franchising Int’l, Inc.*, Case No. 16-05961, 2022 WL 3046758, at *4 (N.D. Cal. Aug. 2, 2022) (“the common misclassification contention is necessarily central to the labor code claims because no class member can recover if defendant’s classification of unit franchisees as independent contractors was proper.”); *Alfred v. Pepperidge Farm, Inc.*, 322 F.R.D. 519, 539 (C.D. Cal. 2017) (question of whether delivery drivers were “independent contractors of employees of Defendant” satisfied commonality; “[t]he relevant legal standard is whether Defendant had the right to exercise control in a manner comparable to what an employer does. ... Defendant has interacted with all putative Class Members under the common Agreements. Therefore, the issues relevant to control are common as to all putative Class Members.”); *Venegas v. Global Aircraft Serv., Inc.*, 159 F. Supp. 3d 93, 98-99 (D. Me. 2016) (same, where “each worker ... signed the same agreement with [defendant] that classified him or her as an independent contractor” and where “[l]iability will be driven by a common question: were the class members misclassified?”); *Hart v. Rick’s Cabaret Intern., Inc.*, 60 F. Supp. 3d 447, 470-71 (S.D.N.Y. 2014) (commonality where plaintiffs alleged, and evidence showed, that defendant strip club “systematically implemented a series of across-the-board policies with regard to dancer pay: to classify all dancers as independent contractors; to not pay dancers a minimum (or any) wage; to leave the dancers’ compensation instead to customers; to allow dancers to retain only \$18 (rather than \$20) where customers paid for performances by means of Dance Dollars; and to charge dancers fines and fees for breaching Club rules.”); *Scovil v. FedEx Ground Package Sys., Inc.*, 886 F. Supp. 2d 45, 53

Employment Pracs. Litig., Case No. 3:05-MD-527, 2007 WL 3027405, at *17 (N.D. Ill. Oct. 15, 2007) (applying Kansas law; “[w]hile courts should look to the actual employment relationship as opposed to an employer’s unilateral determination, the nature of the employment relationship is determined by the existence of the right to exercise control, not the actual control ... exercised over some employees.”). Those rights may be discerned on a class basis from common evidence including TransAm’s independent contractor agreements, driver handbooks, and testimony from TransAm’s representatives. Commonality as to the KWPA Class is therefore satisfied.

iv. The TIL Class satisfies commonality.

The TIL regulations impose several obligations on motor carriers like TransAm concerning the written lease agreements they enter into with truck drivers.¹⁶ *See Fox v. TransAm Leasing, Inc.*, 839 F.3d 1209, 1214-18 (10th Cir. 2016); *Crown Transp., Inc. v. Smith Systems Transp., Inc.*, Case No. 06-cv-590, 2008 WL 1766736, at *1, *7-*8 (N.D. Okla. Apr. 11, 2008). These include obligations to clearly identify and disclose all “chargebacks” that motor carriers intend to take from drivers’ compensation as well as rules governing the management of driver escrow funds. *See Crown Transp.*, 2008 WL 1766736, at *1, *7. Plaintiffs contend that TransAm has failed to satisfy these obligations. (TAC ¶¶ 155-223). This claim rises and falls on common

(D. Me. 2012) (“FXG takes the position that all the drivers are independent contractors. That is how the FXG Operating Agreement characterizes them and how FXG maintains that they were treated. Until the lawsuit, FXG did not maintain that some drivers were independent contractors while others were not. Thus, the status question initially should be subject to determination on common evidence.”).

¹⁶ “Congress authorized the truth-in-leasing regulations after a series of hearings in the 1970s ‘uncovered numerous problems and abuses suffered by the independent truckers.’” *Fox*, 839 F.3d at 1215, *quoting In re Arctic Express, Inc.*, 636 F.3d 781, 795 (6th Cir. 2011). The purpose of those regulations was to protect truckers, *see id.*, to “remedy disparities in bargaining positions between independent owner operators and motor carriers,” *Owner-Operator Indep. Drivers Ass’n, Inc. v. New Prime*, 398 F.3d 1067, 1070 (8th Cir. 2005), to address the “inequities in the lessor/lessee relationship” between carriers and truckers, Lease and Interchange of Vehicles, 42 Fed. Reg. 59,984 (Nov. 23, 1977), and to “eliminate or reduce opportunities for ... illegal or inequitable practices by motor carriers,” *In re Arctic Express*, 636 F.3d at 796 (quotation omitted).

questions of fact (specifically, the terms of the parties’ written agreements) and law (such as the question of whether ONE Leasing’s equipment lease agreements are subject to the TIL regulations).¹⁷ See *Roberts v. TransAm Trucking, Inc.*, Case No. 2:21-cv-02073, 2022 WL 2046195, at *4 (D. Kan. June 7, 2022) (“If the Court views the factual allegations in the light most favorable to the Plaintiffs, the Defendants could be so affiliated to impute the [equipment lease agreements] from one company to another, or, in the alternative, the owner/operator agreement of Defendant TransAm Trucking, Inc., incorporates the terms of the [equipment lease agreements], which could suggest exposure to the TIL regulations.”). Indeed, no substantive variance on this claim is possible, aside potentially on the question of damages,¹⁸ because Defendants use the same standard-form agreements with all their lease drivers. (Fact Stmt. ¶¶ 73, 80-81). Thus, the TIL Class satisfies commonality.

e. The named plaintiffs are typical.

Rule 23(a)(3) requires that the claims of the representative plaintiffs be typical of the claims of the class, meaning they possess the same interests and suffer the same injuries as the

¹⁷ Based on similar reasoning, many courts have certified Rule 23 classes involving TIL claims comparable to those here. See, e.g., *Davis v. Colonial Freight Sys., Inc.*, Case No. 3:16-cv-674, 2018 WL 11225871, at *9 (E.D. Tenn. Mar. 2, 2018) (commonality in TIL case satisfied where “liability can be determined on a class-wide basis – by determining whether the [defendant’s lease agreements] violate the TIL regulations,” even though “damages may have to be established individually”); *Luxama v. Ironbound Exp., Inc.*, Case No. 11-2224, 2018 WL 6819341, at *12 (D.N.J. Dec. 27, 2018) (same, where “Defendant’s leasing policy and leasing forms are derived from a central source. Moreover, Plaintiffs’ common claims – whether the Lease was breached and/or violated the Truth-in-Leasing regulations – are subject to common answers.”); *Foster v. CEVA Freight, LLC*, 272 F.R.D. 171, 174 (W.D.N.C. 2011) (same, where “Plaintiffs’ claims arise from the same course of conduct (CEVA’s alleged inclusion of conflicting provisions and failure to include other provisions in its standard operating agreement), and are based on the same legal theory (that through this conduct, CEVA failed to comply with TILA and the Leasing Regulations, and is therefore liable.”); *Owner-Operator Independent Drivers Ass’n, Inc. v. C.R. England, Inc.*, Case No. 2:02-cv-950, 2005 WL 2098919, at *2-*3 (D. Utah Aug. 29, 2005) (same, where defendant’s lease agreements contained “substantively identical terms” and where plaintiffs’ “causes of action arise from such leases and from [defendant’s] allegedly systematic actions.”).

¹⁸ As previously discussed in footnote 6, *supra*, individual damages analyses, to the extent they are necessary, do not preclude class treatment.

proposed class members. *Sibley*, 254 F.R.D. at 674. “Claims do not have to be identical to be typical,” however. *Zapata v. IBP, Inc.*, 167 F.R.D. 147, 160 (D. Kan. 1996). “A plaintiff’s claim may differ factually and still be typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory.” *Id.*

Plaintiffs are typical. David Coleman and Terrence Colvin-Williams attended TransAm’s company driver orientation in Tampa, Florida. (Fact Stmt. ¶¶ 14-15). Carl McRoberts and Kirk Roberts attended TransAm’s company orientation in Rockwall, Texas. (*Id.* ¶¶ 17-18). Colvin-Williams, McRoberts, and Roberts emerged from company driver orientation as lease drivers. (*Id.* ¶¶ 15, 17-18). Coleman and Colvin-Williams are therefore typical of the Florida Class, while Colvin-Williams, McRoberts, and Roberts are typical of the KCPA Subclasses, in that all five were subject to the same practices and are pursuing the same claims for themselves, based on the same legal theories, as they are for the rest of the individuals in their proposed classes.

The same is true with respect to Plaintiffs’ claims on behalf of the proposed KWPA Class and TIL Class. Named plaintiffs Roberts, Colvin-Williams, Bradley, and McRoberts worked for TransAm as lease drivers. (*Id.* ¶¶ 12-18). In that capacity, they had deductions taken from their compensation and signed lease agreements with TransAm and ONE Leasing. (*Id.* ¶¶ 57, 73, 76, 79, 80, 83, 89, 103). Thus, Plaintiffs’ claims that TransAm has violated the KWPA by misclassifying them as independent contractors, by taking improper deductions from their pay, and by failing to comply with the TIL regulations are no different from those of the proposed class members. Typicality is satisfied.¹⁹

¹⁹ Compare, e.g., *Sibley*, 254 F.R.D. at 674 (typicality satisfied where “the representatives and class members entered into form contracts with defendants,” “plaintiffs all assert the same legal theories” as the class, and the “representative plaintiffs and class members suffered the same type of harm.”); *Luxama*, 2018 WL 6819341, at *13 (“The claims of the named Plaintiffs are typical of the claims of all potential class members. Plaintiffs seek to remedy (1) violations

f. The named plaintiffs and their counsel are adequate class representatives.

Rule 23(a)(4) requires that the representative plaintiffs fairly and adequately protect the interests of the class. “To meet this requirement, the named plaintiffs must be members of the class they seek to represent.” *Sibley*, 254 F.R.D. at 674. “Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187-88 (10th Cir. 2002). “Minor conflicts among class members do not defeat class certification; to defeat class certification, a conflict must be ‘fundamental’ and go to specific issues in controversy.” *In re Motor Fuel*, 292 F.R.D. at 671, quoting *Eatinger v. BP Am. Prod. Co.*, 271 F.R.D. 253, 260 (D. Kan. 2010).

Neither the named plaintiffs nor their counsel have any conflicts with the proposed classes. Far from it: as discussed with typicality, the named plaintiffs are all members of the classes they seek to represent and are pressing the same claims, based on the same legal theories, for the proposed class members as they are for themselves. Thus, any beneficial rulings or recovery they obtain will benefit the proposed classes.²⁰ Plaintiffs and their counsel have,

of Truth-in-Leasing regulations, and (2) breaches of the Lease. Even if there are factual differences about the damage that the improper Lease provisions or breaches of contract may have caused different Plaintiffs, such factual differences do not defeat typicality.”); *CEVA Freight*, 272 F.R.D. at 174-75 (“While this Court makes no determinations on the merits of those claims, the Court finds, based on Plaintiffs having signed substantially the same operating agreement as all other CEVA contractors during the class period, that Plaintiffs’ allegations of Leasing Regulations violations and breach of contract in the Amended Complaint are typical of those of other potential class members.”); *In re FedEx*, 2007 WL 3027405, at *23 (“The plaintiffs’ statutory wage and rescission claims are also typical of the putative class members’ claims because they arise from the same event – the drivers’ classification as independent contractors – and rest on the same theory – that the drivers have wrongfully been denied wages and have paid unjust enrichment to FedEx as a result of their improper classification under the operating agreement. The plaintiffs and proposed class members all signed a standard-form operating agreement, so the claims of the plaintiffs have the same essential characteristics as the claims of the class at large.”).

²⁰ Compare, e.g., *Rutter & Wilbanks*, 314 F.3d at 669 (adequacy satisfied; “[t]his is not a case where the class representatives are pursuing relatively insignificant claims while jeopardizing the ability of class members to pursue

meanwhile, vigorously litigated this case from the start. Each named plaintiff has responded to discovery, produced documents, and sat for depositions. Lead counsel in this matter are highly experienced class action litigators who are amply qualified to pursue this lawsuit²¹ and have done so rigorously for the past 18 months. They have conducted extensive phase one discovery, including taking 19 depositions, and have amended the complaint three times to assert new claims against Defendants based on evidence obtained during discovery. Additionally, several courts have concluded that the undersigned lead counsel are adequate and qualified to serve as class counsel in other cases brought under Rule 23.²² Simply put, adequacy is satisfied.

g. Common issues of law and fact predominate over individual questions and concerns.

Rule 23(b)(3) permits class certification where the “questions of law or fact common to the members of the class predominate over any questions affecting only individual members[.]”

This requirement is “related to, albeit ‘more demanding than,’ Rule 23(a)(2)’s commonality

far more substantial, meaningful claims.”); *Tripp v. Berman & Rabin, P.A.*, 310 F.R.D. 499, 506 (D. Kan. 2015) (same; “if [plaintiff] prevails, both she and the classes will recover statutory damages[.]”); *In re Urethane Antitrust Litig.*, 251 F.R.D. 629, 644 (D. Kan. 2009) (plaintiffs “have the same interests as the other class members in proving that they were all damaged by defendants’ alleged price-fixing conspiracy with respect to the polyether polyol products.”).

²¹ Counsel *pro hac vice*’s professional background and credentials are set forth in their affidavits, included with this Motion as **Exhibit A** (Hillary Schwab); **Exhibit B** (Brant Casavant); and **Exhibit C** (Rachel Smit).

²² See, e.g., *Gonzalez v. XPO Last Mile, Inc.*, 579 F. Supp. 3d 252 (D. Mass. Jan. 10, 2022) (independent contractor misclassification case brought on behalf of delivery drivers; attorneys Hillary Schwab and Rachel Smith were “well-qualified to prosecute the case.”); *Levi v. Gulliver’s Tavern, Inc.*, Case No. 15-216, 2018 WL 10149710, at *8-*9 (D.R.I. Apr. 23, 2018) (adequacy satisfied in case alleging strip club misclassified adult entertainers as independent contractors; attorney Brant Casavant “has experience with numerous class action cases based on similar claims, and there is no conflict of interest apparent from the record”); *Chebotnikov v. LimoLink, Inc.*, Case No. 14-13475, 2017 WL 2909808, at *2 (D. Mass. July 6, 2017) (attorney Schwab’s “experience ... in the areas of employment law and class action litigation” made her adequate class counsel); *Dvornikov v. Landry’s Inc.*, Case No. 15-cv-13286, 2017 WL 1217110, at *11 (D. Mass. Mar. 31, 2017) (adequacy “easily met” because the undersigned counsel were “clearly qualified, experienced, and able to undertake this litigation”); *Sutton v. Jordan’s Furniture, Inc.*, Case No. 1981CV01763, 2020 WL 13042078, at *2 (Mass. Super. Dec. 21, 2020) (attorney Casavant will “fairly and adequately represent the interests of the class” in class action alleging failure to pay wages); *Goldberg v. EF Education First, Inc.*, Case No. MICV-2015-1164, 2017 WL 4400028, at *9 n.3 (attorneys Schwab and Casavant “are well-versed in class litigation and are adequate to serve as class counsel.”).

requirement.” *Naylor Farms, Inc. v. Chaparral Energy, LLC*, 923 F.3d 779, 789 (10th Cir. 2019). It “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 622-23 (1997). However, predominance does not require “that all of the elements of the claim entail questions of fact and law that are common to the class, nor that the answers to those common questions be dispositive.” *CGC Holding Co., LLC v. Broad & Cassel*, 773 F.3d 1076, 1087 (10th Cir. 2014). Rather, the predominance inquiry is “pragmatic,” *Ruiz v. U.S. Bank National Ass’n*, Case No. 18-cv-03200, 2020 WL 5517113, at *3 (D. Colo. July 24, 2020), and “asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.” *CGC Holding Co.*, 773 F.3d at 1087, *quoting* 2 William B. Rubenstein, *et al.*, *Newberg on Class Actions* § 4:49, at 195-96 (5th ed. 2012).

i. Common issues predominate with respect to the Florida Class.

It is difficult to conceive of individual issues that would be relevant to the Florida Class members’ claims for unpaid minimum wages under Florida law. Even if such issues existed, they could not predominate. Evaluating the Florida Class members’ claim will turn on common evidence bearing on the contents of TransAm’s orientation program, its orientation compensation policy, its determination about what portion of orientation is deemed “compensable,” and the amount of time the drivers spend in orientation. Significantly, these facts may be discerned on a class basis using TransAm’s pay records, orientation materials, and representative testimony, and will be applicable to every proposed Florida Class member because TransAm trains new drivers in “batches” and administers its orientation program in a regimented fashion using a handful of employees. (Fact Stmt. ¶¶ 32-33, 39, 40-44, 46-49).

Deciding liability would likewise be the same exercise for every Florida Class member. If the Court were to determine that time spent in TransAm’s orientation program entitled the Florida Class members to compensation, and also found that the compensation they received divided by their compensable time spent in orientation did not equal or exceed the Florida minimum wage, then liability will be established. Whether that analysis is applied to one person or 3,000 people, it is the same analysis throughout. An example demonstrates how that is true. Terrence Colvin-Williams attended TransAm’s orientation in Tampa in January 2020. (*Id.* ¶ 15). The minimum wage at that time in Florida was \$8.56 per hour.²³ TransAm paid him \$50 per day for three days with a “minimum wage adjustment” of \$8 for one day. (*See* Fact Stmt., Sample Payroll Records [**Ex. 25**] at pp. 3-5). Each orientation day lasts between 7 and 7.5 hours. (*Id.* ¶ 39). Dividing Mr. Colvin-Williams’ orientation pay by the lesser of those two durations (7 hours) yields the following results:

Terrence Colvin-Williams						
<i>Orientation</i>	<i>Daily Pay</i>	<i>Min. Wage Adjust.</i>	<i>Total Pay</i>	<i>Hours</i>	<i>Pay/Hour</i>	<i>Fla. Min. Wage</i>
Day 1	\$50.00	\$8.00	\$58.00	7.00	\$8.29	\$8.56
Day 2	\$50.00	\$0.00	\$50.00	7.00	\$7.14	\$8.56
Day 3	\$50.00	\$0.00	\$50.00	7.00	\$7.14	\$8.56

In other words, as this chart shows, Colvin-Williams did not receive the Florida minimum wage for *any* day of orientation. Furthermore, reaching that conclusion required only an analysis of Colvin-Williams’ pay statements and TransAm’s own testimony – evidence that would be common to every Florida Class member.

²³ See Florida Dept. of Economic Opportunity, “Florida Minimum Wage History,” Oct. 2019, *available at* <https://www.floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notice/2020-minimum-wage/florida-minimum-wage-history-2000-2020.pdf>.

Courts in Florida have employed similar reasoning in certifying Rule 23 classes involving state minimum wage claims.²⁴ One such case, *Griffith v. Landry's, Inc.*, 2017 WL 11002193, *1 (M.D. Fla. Jan. 30, 2017), is instructive. There, the plaintiffs were restaurant servers who claimed (*inter alia*) that the defendant had reduced their wage rate below the Florida minimum wage by deducting a “participation fee” for an employee discount program (or “EDP”) from their weekly pay. *See id.* at *2-*3. The court found predominance satisfied notwithstanding the defendant’s argument that the plaintiffs’ claim required “fact-intensive, individualized inquiries” to determine each server’s “hours worked, the hourly wage paid, ... method of collection of the EDP participation fee, whether the EDP deduction resulted in a sub-minimum hourly wage rate below the amount required under Florida law for tipped employees, and whether the EDP fees collected exceeded Defendants’ ‘reasonable cost’ of the program.” *Id.* at *7. As the court explained:

although there may be some individualized factual inquiry to determine the pay periods during which tip credit violations occurred and the precise damages due to each class member, the inquiry is not one that will “break down into an unmanageable variety of individual legal and factual issues.” These questions are identical to the questions that will need to be resolved as to damages for each of the affected employees, such as how often the tip credit violations occurred, to which employees, and to what financial impact. As is the typical case, they can be

²⁴ *See, e.g., Nawaz v. Dade Medical College*, Case No. 1:15-cv-24129, 2016 WL 11600723, at *4 (S.D. Fla. Mar. 1, 2016) (predominance satisfied on claim for failure to pay wages; “there should be no difficulty managing this class action – because all Plaintiffs are stating similar state law wage claims. During the liability phases, the Court will not need to make individualized factual findings and legal conclusions as to each plaintiff. Rather, the Court, or more precisely the finder of fact, will only need to determine: (1) whether wages were owed, and (2) if so, were wages paid. While the trier of fact may, during the damages phase, have to determine the amount of pay each employee is owed, this alone is insufficient reason to deny certification of the class.”); *Garcia-Celestino v. Ruiz Harvesting, Inc.*, 280 F.R.D. 640 (M.D. Fla. 2012) (same, for agricultural workers alleging minimum wage violations under FLSA and Florida law; “[s]imply put, Plaintiffs do not have to prove a variety of individual circumstances supporting the alleged breaches because Defendants’ behavior was uniformly directed to all members of the putative class.”); *Mesa v. Ag-Mart Produce, Inc.*, Case No. 2:07-cv-47, 2008 WL 2790224, at *7-*10 (M.D. Fla. July 18, 2008) (same: “[w]hether these migrant agricultural workers worked in different locations, different hours, or for different crew leaders does not change the common issue of fact regarding compensation, wage statements, and appropriate record-keeping.”).

answered by extracting information from payroll documents and performing calculations according to a mechanical formula.

Id. The same reasoning applies here because the question posed by Plaintiffs “can be answered by extracting information from payroll documents and performing calculations according to a mechanical formula,” *id.*, following categorical determinations on the compensability of the drivers’ orientation time. Accordingly, predominance is satisfied.

ii. Common issues predominate with respect to the KCPA Class.

The KCPA is a remedial statute that courts “liberally construe[] in favor of the consumer.” *State ex rel. Stephan v. Brotherhood Bank & Trust Co.*, 649 P.2d 419, 422 (Kan. App. 1982). It is also a statute that lends itself to class adjudication. As one court put it: the “Kansas legislature clearly intended to allow litigants to pursue class actions for violations” of the KCPA, *Nieberding*, 302 F.R.D. at 615, by expressly allowing any “consumer who suffers a loss as a result of the violation of this act [to] bring a class action for damages,” K.S.A. § 50-634(d).

The KCPA prohibits acts and practices that are either deceptive or unconscionable. These are separate inquiries. As to the former, the KCPA provides a nonexclusive list of acts and omissions that constitute *per se* unlawful deceptions, such as “representations made knowingly or with reason to know that ... [p]roperty or services have ... characteristics ... benefits or qualities that they do not have”; the “willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact”; the “willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact”; and making “false or misleading representations, knowingly or with reason to know, of fact concerning the reason for, existence of or amounts of price reductions[.]” K.S.A. § 50-626(1)-(3), (7). As to the latter, the KCPA prohibits unconscionable acts and practices that “occur[]

before, during or after the transaction.” *Id.*, § 627(a). Whether an act or practice is unconscionable is a “question for the court” based on an evaluation of seven factors, *id.*, § 627(b), that, “[w]hile still relevant ... have been condensed over the years,” Amy Fellows, “The Untapped Potential of the Kansas Consumer Protection Act,” 784-APR J. Kan. B.A. 24, 36 (April, 2005). Now, courts generally require only “some element of deceptive bargaining conduct ... as well as unequal bargaining power” before deciding whether an act or practice (or contract) is unconscionable under the KCPA. *Louisburg Bldg.*, 252 P.3d at 616, *quoting State ex rel. Stovall v. ConfiMed.com, L.L.C.*, 38 P.3d 707, 713 (Kan. 2002).

Plaintiffs contend that TransAm has engaged in deceptive conduct under section 50-626 by shepherding prospective company drivers into lease driver arrangements while misrepresenting and failing to disclose facts about the disadvantages of working as a lease driver for TransAm. Plaintiffs also contend TransAm has deceptively marketed and misrepresented various aspects of the lease driver arrangement – namely, fuel discounts, the fuel surcharge program, and the cost of physical damage insurance – and that the drivers’ agreements with TransAm and ONE Leasing are unconscionable under section 50-627, both in their formation and in their terms.²⁵ These claims implicate numerous “common, aggregation-enabling, issues.” *CGC Holding Co.*, 773 F.3d at 1087.

A. Common issues predominate as to whether TransAm’s conduct is deceptive.

“To prevail on a KCPA claim, a plaintiff must prove: ‘(1) plaintiffs were consumers under the KCPA, (2) defendants were suppliers under the KCPA, (3) defendants engaged in a

²⁵ As but one example, TransAm’s lease agreements may be unconscionable under the KCPA because they are “boilerplate contracts drawn skillfully by the party in the strongest economic position [TransAm], which establish industry wide standards offered on a take it or leave it basis to the party in a weaker economic position.” K.S.A. § 50-627(b)(1). Such an argument is, on its face, a class argument.

deceptive or unconscionable act or practice in violation of K.S.A. § 50-626 ... or K.S.A. § 50-627, and (4) plaintiffs were “aggrieved” by such act.” *Hernandez v. Pistotnik*, 472 P.3d 110, 116 (Kan. App. 2020), *quoting In re Motor Fuel*, 279 F.R.D. at 604-05. A “consumer” is an individual who seeks or acquires property or services for personal or business purposes. *Id.* § 50-624(b). A “supplier” is a “dealer, seller, lessor ... or other person who, in the ordinary course of business, solicits [or] engages in ... consumer transactions, whether or not dealing directly with the consumer.” *Id.* § 50-624(l).

A supplier violates the KCPA “whether or not any consumer has in fact been misled.” *Id.* § 50–626(b). Put differently, “reliance upon the deceptive act or practice is not required” by the KCPA. *Cole v. Hewlett Packard Co.*, 84 P.3d 1047 (Kan. App. 2004).²⁶ Rather, any consumer who is “aggrieved” by a supplier’s violation of the KCPA may bring suit. *Schneider v. Liberty Asset Mgmt.*, 251 P.3d 666, 671 (Kan. App. 2011). “To be aggrieved under the statute, the consumer must prove that the seller’s act has adversely affected the consumer’s legal rights.” *Id.* “Additionally, the consumer must show that there was a causal connection between the deceptive act and the claimed injury.” *Id.*

Common issues and evidence predominate throughout this analysis. To start, the lease drivers are either “consumers” who have engaged in a “consumer transaction” as defined by KCPA, or they are not. Defendants, too, are either “suppliers” or they are not.²⁷ The answers to these questions will be common to the class because it cannot be the case that only *some* drivers

²⁶ See also *Midland Pizza, LLC v. Sw. Bell Tel. Co.*, Case No. 10-2219, 2010 WL 4622191, at *3 (D. Kan. Nov. 5, 2010) (“Kan. Stat. Ann. § 50-627 does not require that any consumer actually be misled. A supplier violates the deceptive acts and practices provision of the KCPA simply by engaging in the deceptive act or practice.”); *Dunn v. A.G. Edwards & Sons, Inc.*, 167 P.3d 387 (Kan. App. 2007) (“In drafting the KCPA ... , the legislature omitted the elements requiring a consumer to prove justifiable reliance and damages.”).

²⁷ The KCPA defines “supplier” as a “dealer, seller, lessor ... or other person who, in the ordinary course of business, solicit [or] engages in ... consumer transactions, whether or not dealing directly with the consumer.” *Id.* § 50-624(l).

qualify as “consumers” who engaged in a “consumer transaction” with Defendants. Likewise, Defendants cannot qualify as “suppliers” only with respect to *some* drivers, but not all of them. Thus, “whether plaintiff and the class members are consumers [and] whether defendants are suppliers” is a question that does not require individualized inquiries. *Nieberding*, 302 F.R.D. at 614.

The deceptive nature of Defendants’ scheme is also a common inquiry that “can be adduced through common evidence.” *CGC Holding Co.*, 773 F.3d at 1088. The misrepresentations Plaintiffs challenge include, *inter alia*, TransAm’s statements about drivers’ freedom to operate as an “independent business,” to “control [their] pay,” and to earn a certain amount of money per mile driven. (Fact Stmt. ¶¶ 20-23, 53-56). They also challenge Defendants’ statements concerning TransAm’s fuel surcharge program (which Defendants describe as an “exceptional benefit” that is “paid” to lease drivers), fuel discount program (which Defendants tell drivers will result in TransAm passing along “100%” of fuel discounts to drivers), and ONE Leasing’s performance escrow fund (which they advertise as a “wise business decision”). (*Id.* ¶¶ 20-23, 55-56, 87, 91). These representations all come from common sources – Defendants’ marketing and recruitment materials and contracts – and are presented by Defendants’ employees, who have financial incentive to encourage drivers to convert to lease status and to lease their vehicles from ONE Leasing. (*Id.* ¶¶ 26-28, 48, 50). Such representations are either material or immaterial, true or false. If false, Defendants either made them knowingly or with reason to know, or they did not. Whatever the answers to those questions may be, they are applicable to every KCPA Class member.²⁸

²⁸ See, e.g., *Murphy v. Gospel for Asia, Inc.*, 327 F.R.D. 227, 240 (W.D. Ark. 2018) (predominance satisfied in consumer protection and fraud case where defendant “made substantially uniform representations throughout the class period that 100% of what donors gave for sponsorship in the field would in fact be sent to the mission field. These representations were consistently made regardless of the medium in which the solicitations were made (i.e. GFA

Equally predominant are the common issues and evidence arising from Plaintiffs' claim that Defendants have failed to disclose material facts about the nature of the lease driver arrangement.²⁹ A classwide common inquiry on that claim is whether Defendants "owed a duty to the putative class members to disclose" that lease driver status is not all it is cracked up to be – e.g., the turnover rates among lease drivers; that the majority of lease drivers never ultimately own the vehicles they obtain from ONE Leasing; that the fuel surcharge program can and does result in compensation deductions (Fact Stmt. ¶¶ 59, 77, 92) – and that Defendants profit from that scheme – e.g., by making more money off lease drivers than company drivers; charging lease drivers more for physical damage insurance than Defendants actually pay; by not passing along "100%" of fuel discounts received (*id.* ¶¶ 22, 60, 99-100) – that finding will be applicable to each KCPA Class member; the inverse is also true.

Whether Defendants breached any disclosure obligations under the KCPA, and whether those omissions were material, are also issues common to the class. The materiality of an omission is judged against an objective standard, i.e., one "to which a reasonable person would attach importance in determining his or her choice of action in the transaction involved." *Tufts v.*

website, radio advertisement, catalogue)[.]"); *Rodriguez v. It's Just Lunch, Int'l*, 300 F.R.D. 125, 136, 138-39 (S.D.N.Y. 2014) (same; common issues apt to drive the litigation "particularly with regard to whether [defendant] made misrepresentations, and whether those misrepresentations were material," where defendant "made substantially uniform representations to all members of the proposed national class."); *Peterson v. H&R Block Tax Servs., Inc.*, 174 F.R.D. 78, 83 (N.D. Ill. 1997) (same; "the claims in this case are premised on written misrepresentations contained in standard documents furnished to every class member – a situation that presents a 'classic case for treatment as a class action.'"), *quoting Haroco, Inc. v. American Nat. Bank & Trust Co. of Chicago*, 121 F.R.D. 664, 669 (N.D. Ill. 1988); *Arenson v. Whitehall Convalescent & Nursing Home, Inc.*, 164 F.R.D. 669, 665 (N.D. Ill. 1996) (same, where plaintiff "contends that Whitehall's fraudulent statements were made in standard written documents given to every member of the class. [...] The oral representations [plaintiff] received personally may have supplemented the written documents he received, but they do not replace those written statements as the focus of the fraud alleged.").

²⁹ Under the KCPA, a "willful omission" claim requires proof that the "(1) plaintiff and the class members were consumers under the KCPA, (2) defendants were suppliers under the KCPA, (3) defendants willfully omitted a fact about a purchase or sale, and (4) the fact stated or concealed was material." *Nieberding*, 302 F.R.D. at 613; *see also* K.S.A. §§ 50-624(a), (b), (l), 50-626(b)(3).

Newmar Corp., 53 F. Supp. 2d 1171, 1178 (D. Kan. 1999), *quoting York v. InTrust Bank, N.A.*, 962 P.2d 405, 420 (Kan. 1998). “Because materiality is judged according to an objective standard, the materiality of [defendants’] alleged misrepresentations and omissions is a question common to all members of the class[.]” *Amgen Inc. v. Connecticut Retirement Plans & Trust Funds*, 568 U.S. 455, 459-60 (2013)). Moreover, this determination may be made from common evidence, i.e., Defendants’ advertising materials, scripts and guides, and testimony from Defendants’ representatives, recruiters, and trainers concerning the information they present to drivers about the lease program.³⁰

Causation, too, is an element susceptible to generalized proof. As a preliminary matter, it is important to distinguish between causation and reliance. As previously noted, the KCPA does not require proof of reliance – a supplier “violates the deceptive acts and practices provision of the KCPA simply by engaging in the deceptive act or practice,” *Midland Pizza*, 2010 WL 4622191, at *3, “whether or not any consumer has in fact been misled,” K.S.A. § 50-626(b). Thus, there is no risk that a class proceeding will devolve into individualized reliance inquiries because the KCPA does not require a showing of reliance. By contrast, the Tenth Circuit has endorsed the view that plaintiffs may establish classwide causation based on inferences derived from common circumstantial evidence. In *CGC Holding Co.*, the plaintiffs alleged that the defendants had fraudulently caused them to pay fees for loans that the defendants never had the ability to fund. *Id.* 1082-83. The Court determined that “the fact that a class member paid [a]

³⁰ TransAm is likely to argue that Plaintiffs cannot establish predominance using this evidence because they will need to show that TransAm failed to make certain disclosures to each proposed KCPA Class member, or because Plaintiffs must show that each proposed KCPA Class member personally received a misrepresentation concerning their contractor status. There is no “talismanic rule that a class action may not be maintained where a fraud is consummated principally through oral misrepresentations, unless those representations are all but identical,” however. *In re American Continental Corp./Lincoln Savings & Loan Sec. Litig.*, 140 F.R.D. 425, 430 (D. Ariz. 1992). Rather, “[i]t is the underlying scheme which demands attention.” *Id.* at 431.

nonrefundable up-front fee in exchange for the loan commitment constitutes circumstantial proof of reliance on the misrepresentations and omissions regarding ... the defendant entities' ability or intent to actually fund the promised loan." *Id.* at 1091-92. Why? Because it is "sensible to assume" in the context of "transactional situations – almost always financial transactions" – that "rational economic actors would not make a payment unless they assumed that they were receiving some form of a promised benefit in return." *Id.* at 1092, n.9. And since it would normally allow an *individual* plaintiff to establish causation using this type of circumstantial evidence, the Court saw "no reason why a putative class containing plaintiffs ... should not be entitled to posit the same inference to a factfinder on a classwide basis." *Id.* at 1092.

The Tenth Circuit affirmed this view in *Menocal v. GEO Group, Inc.*, 882 F.3d 905 (10th Cir. 2018). There, the plaintiffs – immigration detainees – alleged that the defendant had violated the Trafficking Victims Protection Act ("TVPA") by forcing them to clean their housing facility for no pay and under threat of solitary confinement. *Id.* at 911. Citing *CGC Holding Co.*, the Court held that, "when a class member could individually establish causation based on circumstantial evidence, a court may likewise allow a class to rely on circumstantial evidence that the class shares to establish causation on a class-wide basis." *Id.* at 919. Because any "TVPA class member could individually establish causation based on circumstantial evidence" that the class member received notice of the defendant's cleaning policy and then performed the cleaning work, the Court explained that it "[saw] no reason why a putative class containing plaintiffs, who all [performed housing unit cleaning work under the uniform Sanitation Policy], should not be entitled to posit the same inference to a factfinder on a classwide basis." *Id.* at 919-20, *quoting CGC Holding Co.*, 773 F.3d at 1092.

The Tenth Circuit’s reasoning in *CGC Holding Co.* and *Menocal* applies with full force here. Subclass A consists of individuals who attended TransAm’s orientation to become company drivers but who emerged from that program as lease drivers. On either an individual or a class basis, it is reasonable to assume that the individuals who attended company driver orientation did so with the intent to become company drivers. So, what occurred during orientation that would prompt someone went in on wanting to be an employee to become an independent contractor with a multi-thousand-dollar lease arrangement with Defendants? A factfinder could conclude that what happened was Defendants’ misrepresentations and omissions. At the same time, identifying those individuals will be a straightforward task since the company-to-lease driver metric is one that TransAm itself tracks.³¹ (Fact Stmt. ¶¶ 34-35, 119).

The case law bears this out. In *Roberts v. C.R. England, Inc.*, 318 F.R.D. 457 (D. Utah 2017), the district court certified a class of truck drivers alleging claims similar to those here. Addressing commonality, the court found that the plaintiffs had identified a “series of questions [that] will resolve issues central to the validity of the class’s claim,” including whether the parties had engaged in a “consumer opportunity” within the meaning of Utah’s Consumer Sales Practices Act; whether “use of inaccurate or incomplete recruiting materials ... constituted a deceptive act or practice; whether C.R. England “concealed the likelihood of success for an independent contractor;” and whether C.R. England “concealed accurate pay information and/or turnover rates.” *Id.* at 507-8. With respect to predominance, the court concluded that the plaintiffs’ claims could be resolved with classwide proof, explaining:

Individuals relied on promises of economic opportunity when they enrolled in and paid tuition to attend England’s driving schools. More importantly, the putative class agreed to become independent contractors, operating under the assumption

³¹ In fact, discovery has revealed that approximately 30 percent of all individuals who attend company driver orientation do not “graduate” as company drivers, but instead as lease drivers. (*Id.* ¶ 119).

that the Driving Opportunity offered a feasible career choice. As the court already discussed, members of the class had been exposed, through a variety of mediums, to generally uniform representations that may have been inaccurate. And the record before the court is sufficient to support the conclusion that these representations were part of a concerted effort to recruit individuals to England's independent contractor program and convince drivers to lease from Horizon. At least for the proposed class, common sense dictates that each class member's reason for attending driving school and joining the independent contractor program was the belief that Defendants offered an income and mileage opportunity that would support a career.

Id. at 514.

In *Nieberding*, the district court found predominance satisfied in a case where plaintiff alleged that Home Depot had failed to disclose the existence of a material defect in a bracket purchased by the putative class members. 302 F.R.D. at 614. Home Depot argued that the plaintiff could not “prove with common evidence that [it] omitted a material fact because each purchaser’s interaction with Home Depot was unique.” *Id.* The court rejected this argument:

Home Depot misunderstands plaintiff’s claim. Plaintiff asserts that defendants owed a duty to the putative class members to disclose that the brackets were defective. Defendants essentially have conceded that they did not disclose that the brackets were defective – indeed, defendants continue to deny that a defect exists. Thus, the Court need not delve into individual interactions between Home Depot and the class members. Common proof can establish the remaining elements of a willful omission claim – whether plaintiff and the class members are consumers, whether defendants are suppliers, and whether defendants knew the brackets were defective and had a duty to disclose the defect.

Id.

In *Delcavo v. Tour Resources Consultants, L.L.C.*, Case No. 21-2137, 2022 WL 1062269 (D. Kan. Apr. 8, 2022), the district court held predominance satisfied where a travel company had cancelled several group trips due to COVID-19 without refunding its customers’ deposits. *Id.* at *1. The plaintiff alleged a KCPA violation. *Id.* Addressing predominance, the court

concluded that plaintiff's "claim under the KCPA based on alleged omissions ... may be proved on a class-wide basis." *Id.* at *9. The court explained:

Plaintiff's theory ... appears to be that, assuming defendant was permitted to charge the cancellation fee in this case, defendant failed adequately to disclose its ability to charge that fee prior to plaintiff's decision to book the trip and pay the deposit. That claim will depend on defendant's communications to the group, which will be the same for each class member, as defendant conceded in its deposition that it rarely had communications with individual tour participants prior to a cancellation. The Court concludes that in this case, as in *Nieberding*, for such a claim, which turns on the materiality of the omission, causation may be proved on a class-wide basis.

Id.

Finally, in *In re First Alliance Mortg. Co.*, 471 F.3d 977 (9th Cir. 2006), the Ninth Circuit affirmed liability in a class fraud case based on evidence that the defendant engaged in a "centrally-orchestrated scheme to mislead borrowers through a standardized protocol the sales agents were carefully trained to perform, which resulted in a large class of borrowers entering into loan agreements they would not have entered had they known the true terms." *Id.* 991. "That First Alliance's fraudulent system of inducing borrowers to agree to unconscionable loan terms did not consist of a specifically-worded false statement repeated to each and every borrower of the plaintiff class, traceable to a specific directive ... does not make First Alliance immune to class-wide accountability. The class action mechanism would be impotent if a defendant could escape much of his potential liability for fraud by simply altering the wording or format of his misrepresentations across the class of victims." *Id.* at 992. The very same can be said here.

B. Common issues predominate as to whether TransAm's conduct has been unconscionable.

Plaintiffs' claim under section 50-627, alleging that TransAm's conduct is unconscionable, rises and falls on common questions and evidence, including (*inter alia*) the

relative bargaining power of the parties; the circumstances leading to the KCPA Class members signing lease agreements with TransAm; and the terms of the lease agreements themselves. None of these inquiries implicate substantive individualized issues. How could they? The KCPA itself contemplates that unconscionability may be resolved by the court based on review of the “circumstances of which the *supplier* knew or had reason to know” facts that are common to every proposed class member. K.S.A. § 50-627(b) (emphasis added).³² Put differently, unconscionability does not depend upon TransAm’s interactions with each KCPA Class member because the KCPA’s unconscionability inquiry *itself* depends upon *Defendants’ knowledge* about the veracity of the representations they were making and any material facts *they* withheld from the parties’ dealings. Evidence bearing on those inquiries can only be common to the KCPA Class given that TransAm is in a better bargaining position than any individual lease driver who could possibly sign on with the company;³³ uses boilerplate agreements; and either commonly disclosed certain facts about lease driving and the Defendants’ various lease driving programs or did not.

Other courts have not hesitated to certify classes alleging unconscionable conduct by a defendant when faced with analogous claims. In *Pinkett v. Moolah Loan Co.*, Case No. 99-2700, 1999 WL 1080596 (N.D. Ill. Nov. 2, 1999), plaintiffs challenged a defendant’s payday loan practices as a violation of common law unconscionability and the Illinois Consumer Fraud Act,

³² These include “when the transaction was entered into, the price grossly exceeded the price at which similar property or services were readily obtainable in similar transactions by similar consumers,” and whether the supplier “took advantage of the inability of the consumer reasonably to protect the consumer’s interests”; “there was no reasonable probability of payment of the obligation in full by the consumer; the “supplier made a misleading statement of opinion on which the consumer was likely to rely to the consumer’s detriment”; and whether the parties’ possessed “unequal bargaining power.” K.S.A. § 50-627(b); *see also* *Louisburg Bldg.*, 252 P.3d at 616.

³³ TransAm touts itself as one of the “one of the largest freight factors in the United States,” with over “1,600 employees and contractors.” TransAm Trucking’s History – A Look at the Past 30 Years, *available at* <https://www.transamtruck.com/30-year-history> (last visited: Oct 27, 2022).

815 ILCS 505/2. *Id.* at *1-*2. The district court granted class certification, finding commonality and predominance satisfied based on “[t]he fact that the defendants engaged in standardized conduct by distributing allegedly illegal form contracts or documents.” *Id.* at *2. Whether that standardized conduct “violated ... notions of unconscionability,” the court concluded, “predominates over all other issues.” *Id.* at *7.

In *Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70 (2d Cir. 2015), the Second Circuit affirmed class certification where the defendants had engaged in a “uniform, widespread practice of filing automatically-generated, form affidavits ... to obtain default judgments against debtors in state court.” *Id.* at 87, *quoting Sykes v. Mel S. Harris & Assocs., LLC*, 285 F.R.D. 279, 293 (S.D.N.Y. 2012). Faced with the defendant’s appeal, the Second Circuit noted that the question of whether the defendant’s affidavits were true or false was a question that “can fairly be said to turn on the falsity of [defendants’] representation of personal knowledge” in the affidavits and from using defendant’s records, since “the amount of any money extracted from plaintiffs [was] stored by defendants themselves.” *Id.* at 85, 88. So too, here: evidence of unconscionability will depend on *Defendants’* knowledge and actions, which can *only* be common to the class. Common issues therefore predominate on Plaintiffs’ section 50-627 unconscionability claim.

iii. Common issues predominate with respect to the KWPA Class.

Plaintiffs’ claim that TransAm has taken unlawful deductions from the lease drivers’ compensation, which at times reduced those drivers’ pay below the minimum wage, in violation of the KWPA. That claim is aptly suited for class treatment because it turns on classwide questions such as: whether the proposed KWPA Class members are properly classified as independent contractors; whether the deductions TransAm takes from their compensation are permissible under state law; and whether those same deductions result in the drivers’ receiving

less than the minimum wage. Those questions implicate issues applicable to every class member. For example, determining the question of the drivers' contractor status is not one that hinges on any particular driver's relationship with TransAm. Rather, the test for independent contractor status under Kansas law is one of "economic reality" that focuses primarily "on an employer's *right to control*." *Craig*, 335 P.3d at 76. Given that TransAm uniformly classifies all its lease drivers as independent contractors and requires all lease drivers to sign the same standard contracts and policy documents, it simply cannot be that TransAm's *right to control* varies materially from driver to driver. TransAm either has the same right to control the so-called lease drivers or it does not – it cannot logically classify them all as independent contractors, subject to the same contracts and policies, while retaining varying rights of control over their work.³⁴

Villalpando v. Exel Direct, Inc., 303 F.R.D. 588 (N.D. Cal. 2014), best addresses this point. As here, the plaintiffs in that case were truck drivers whom the defendant, Exel, classified as independent contractors. *Id.* at 591-592. The court found predominance satisfied with respect to the drivers' alleged status as independent contractors. *Id.* at 608. The court noted that Exel required all drivers to sign the same agreements and that "[s]uch uniform contracts are a significant focus of the 'right to control' inquiry." *Id.* "Moreover," the court held, "to the extent *all* drivers are required to sign the same contracts, 'the degree of control [the contracts] spell[]

³⁴ See, e.g., *Alfred*, 322 F.R.D. at 539 (predominance satisfied where workers all signed the same agreements and rejecting argument that individual evidence of actual control precluded class treatment; "[defendant] argues the actual degree of control exercised by [defendant] may vary among Distributors. Although such variations may reflect the right to control, this evidence is more relevant to the exercise of control. It is the former that is material."); *Venegas*, 159 F. Supp. 3d at 98-99 (same, where "the right to control, the nature of the work, and its importance to [the employer's] business are the most critical factors when analyzing a claim under a statute designed to protect workers."), quoting *Scovil*, 886 F. Supp. 2d at 52-53 (internal quotation marks omitted); *Scovil v. FedEx Ground Package Sys., Inc.*, 896 F. Supp. 2d 45, 53 (D. Me. 2012) ("FXG takes the position that all the drivers are independent contractors. That is how the FXG Operating Agreement characterizes them and how FXG maintains that they were treated. Until the lawsuit, FXG did not maintain that some drivers were independent contractors while others were not. Thus, the status question initially should be subject to determination on common evidence.").

out is uniform across the class.” *Id.*, quoting *Ayala v. Antelope Valley Newspapers, Inc.*, 327 P.3d 165, 173 (Cal. 2014). Further bolstering this conclusion was the fact that Exel did not “dispute that [its] policies are the same for all class members” and that all the drivers are “subject to the *same* rules and requirements with respect to the hiring of second drivers and helpers. Consequently,” the court concluded, “even the implications of Exel’s policies ... is suitable for treatment on a classwide basis.” *Id.* (emphasis original).

Plaintiffs’ claim with respect to TransAm’s deduction policies is likewise one that presents overwhelmingly common questions. Whether any particular deduction taken by TransAm is proper under the KWPA is not a question that requires individual analysis; the deductions either comply with the KWPA or they do not. As the court in *Knight* found:

common questions of law and fact predominate when class members would necessarily rely upon the same evidence to prove that an employer’s compensation system violated the KWPA. Here, all class members will point to deductions under a single compensation and deduction policy. Although each Plaintiff may have suffered deductions for different reasons leading to differing amounts, individual damage questions do not defeat predominance as long as the issue of liability remains common to the whole class.

2013 WL 3895341, at *7. Likewise, here, the proposed class members’ KWPA claim concerns deductions – the existence of which are not in dispute – “under a single compensation and deduction policy” to which they were all uniformly subject. *Id.*

TransAm’s likely response will be to cite *Blair v. TransAm Trucking, Inc.*, 309 F. Supp. 3d 977 (D. Kan. 2018), where the court denied class certification of a KWPA claim relating to TransAm’s deduction of certain transaction fees from drivers’ compensation. *Blair* does not dictate the same outcome here. In *Blair*, the court held that “an individual inquiry must be made as to whether the class members who were assessed transaction fees expressly authorized the fees, and then whether each individual fee was to the employee’s benefit.” *Id.* at 1015-16. By

contrast, Plaintiffs here challenge TransAm’s deduction policy only to the extent that the deductions (a) are unlawful because the drivers’ authorizations are invalid based on their misclassification as independent contractors; (b) fall within the scope of deductions which employees cannot validly authorize under the KWPA’s regulations; or (c) drive the KWPA Class members’ wages below the minimum wage rate. The first of those questions is subject to classwide proof because “whether someone who has been determined to be an employee can ever authorize deductions of the employer’s business expenses ... pursuant to an agreement in which the worker is labeled an independent contractor” is a legal issue common to the class writ large.³⁵ *Phelps*, 261 F.R.D. at 561. The remaining questions require only a comparison between the deductions TransAm takes, the language and policy considerations of the KWPA and its regulations, and the compensation the drivers’ received. Predominance as to the KWPA Class is therefore satisfied.

iv. Common issues predominate with respect to the TIL Class.

There can be no real dispute that predominance is satisfied with respect to Plaintiffs’ claims on behalf of the proposed TIL Class. Under federal law, motor carriers such as TransAm may only transport property in trucks that they themselves do not own if the equipment is subject

³⁵ Even if this were not true, *Blair* would not compel denial of class certification because the existence of a signed authorization concerning any given deduction under the KWPA is an affirmative defense, not an element to Plaintiffs’ claim. As numerous courts have concluded, the existence of affirmative defenses does not preclude class treatment to the extent that those defenses would be the same for all or nearly all class members. *See, e.g., Brown v. Electrolux Home Prods., Inc.*, 817 F.3d 1225, 1240 (11th Cir. 2016) (“individual affirmative defenses generally do not defeat predominance”); *Smilow v. Southwestern Bell Mobile Sys., Inc.*, 323 F.3d 32, 39 (1st Cir. 2003) (“Courts have traditionally been reluctant to deny class action status under Rule 23(b)(3) simply because affirmative defenses may be available against individual members.”); *Sibley*, 315 F.R.D. at 659 (citing *Brown* and *Smilow*, holding that “the contract defense Sprint interposes does not destroy commonality nor mandate decertification.”); *Earl v. Boeing Co.*, 339 F.R.D. 391, 441 (E.D. Tex. 2021) (“Assuming without deciding that class-action waiver has been properly raised as an affirmative defense, determining the waiver’s effect and enforceability is a question common to many in the class and would be resolved with class-wide evidence.”). Here, TransAm would have the *same* affirmative defense against *every* driver who signed a deduction authorization form.

to a written lease agreement that meets the Department of Transportation’s regulatory requirements, that is, the TIL regulations, 49 C.F.R. § 376, *et seq.* The question presented by Plaintiffs’ TIL claims is whether TransAm’s written lease agreements actually meet the TIL’s requirements. That question is a class question because TransAm’s lease agreements do not vary from driver to driver.

For example, the TIL regulations require all lease agreements to specify (*inter alia*): “(1) The amount of any escrow fund or performance bond required to be paid by the lessor to the authorized carrier or to a third party”; “(2) The specific items to which the escrow fund can be applied”; and “(6) The conditions the lessor must fulfill in order to have the escrow fund returned.” 49 C.F.R. §§ 376.12(l), 376.12(k). TransAm’s and ONE Leasing’s lease agreements are standard form contracts that TransAm unilaterally generates. (Fact Stmt. ¶¶ 73, 80). Those agreements either complied with the above requirements or they did not. If that did not, that finding will similarly impact every driver who signed one. No individualized issues could influence that inquiry.

Similarly, the TIL regulations require the motor carrier lease agreements clearly disclose information about each party’s obligations with respect to fuel costs and pay deductions (called “chargebacks”). *See* 49 C.F.R. § 376.12(h), (j). Once again, this is a binary question that is applicable to every driver because TransAm’s lease agreements either contained adequate disclosures concerning fuel costs, chargebacks, etc., or they did not. A finding on that question requires no individualized inquiries – certainly no inquiries *so* individualized as to overwhelm the common question of whether the lease agreements comply with the TIL regulations.

Numerous courts have recognized that TIL violations like those asserted here by Plaintiffs are well suited for class treatment.³⁶ Indeed, in one such case – *Fox v. TransAm Leasing, Inc.*, another class action brought by truck drivers against TransAm – the district court certified a class on the plaintiffs’ claim that TransAm had improperly deducted a \$15 satellite communication fee from their pay in violation of the TIL regulation’s mandate that all lease agreements “specify that the lessor [i.e., the driver] is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease agreement.” *Fox v. TransAm Leasing, Inc.*, Case No. 12-2706, 2014 WL 2604035, at *8 (D. Kan. June 11, 2014),³⁷ quoting 49 C.F.R. § 376.12(i). Finding predominance satisfied, the court held:

³⁶ See, e.g., *Owner-Operator Independent Drivers Ass’n, Inc. v. C.R. England, Inc.*, Case No. 2:02-cv-950, 2005 WL 2098919, at *7 (D. Utah Aug. 29, 2005) (predominance satisfied in TIL case; “information regarding which of the putative class members have been affected by Defendant’s leases and other conduct can be determined by looking at Defendant’s records. There is no difficulty in determining causation, if and when injury is established. [...] Putative class members would, therefore, experience no material advantage by controlling any aspect of the case, including whether and when to settle.”); *Owner-Operator Independent Drivers Ass’n, Inc. v. Allied Van Lines, Inc.*, 231 F.R.D. 280, 285 (N.D. Ill. 2005) (“In this case a common threshold factual issue – whether [defendant’s] standard lease provisions violate the applicable [TIL] regulations – will determine the ability of any class members to recover. That satisfies the ‘predominance’ inquiry for Rule 23(b)(3) purposes.”); *Owner-Operator Independent Drivers Ass’n v. Mayflower Transit, Inc.*, 204 F.R.D. 138, 148-49 (S.D. Ind. 2001) (predominance satisfied where “the situation ... permits us to conclude that common issues of law and fact predominate over individual issues. All of the issues in both cases arise from a common nucleus of operative facts: Mayflower’s alleged course of conduct in failing to return moneys which, plaintiffs allege, it had a legal obligation to repay to the owner-operators: in Case No. 0457, moneys held in cash accounts and fuel-tax credit accounts; in Case No. 0458, moneys deducted but not expended for insurance premiums.”), *class definition modified on other grounds*, 2005 WL 6957703, at *6 (S.D. Ind. Sept. 27, 2005); *Sheinhart v. Saturn Transp. Sys., Inc.*, Case No. 00-2489PAM/JGL, 2002 WL 575636, at *8 (D. Minn. Mar. 26, 2002) (“The dispositive and predominate legal and factual issues in this case are whether ... (2) Plaintiffs’ leases complied with federal regulations by clearly stating the amount to be paid to the owner-operators by Defendants; (3) Defendants provided Plaintiffs with copies of the correct invoices; (4) Defendants timely paid Plaintiffs’ the appropriate amount for their services; and (5) Plaintiffs’ leases appropriately stated that Defendants were charging more for certain insurance than the premiums paid by Defendants.”).

³⁷ Defendants will likely point out that the Tenth Circuit later reversed the district court’s decision in *Fox* denying summary judgment in their favor on the plaintiffs’ claim that TransAm’s \$15 satellite communication fee violated the TIL regulations. See *Fox v. TransAm Leasing, Inc.*, 839 F.3d 1209 (10th Cir. 2016). That decision does not dictate the same outcome here for a couple of reasons. First, the standard for class certification is materially different than the standard for class certification; “Rule 23 grants courts no license to engage in free-ranging merits inquiries at the

The satellite fee provision at issue is contained in the [agreement] that every independent contractor signs with TransAm Trucking, and the fifteen-dollar fee amount does not vary from contractor to contractor. As such, there is no individualized inquiry required to determine whether TransAm Trucking is liable under 49 C.F.R. § 376.12(i) for charging this weekly fee. Either the fee is legal, or it is not. The circumstances are the same for all putative class members – each was charged the satellite communications fee pursuant to the terms of the form ICE, and a determination of whether the fee in fact violates truth-in-leasing regulations does not require individual inquiries.

Id. The same finding is entirely justified in this case.

h. Certifying the proposed classes is superior to the alternatives.

Rule 23(b)(3) requires that a class action be superior to other available methods for adjudicating the controversy, taking into consideration “(A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.” Fed. R. Civ. P. 23(b)(3). “It is enough that class treatment is superior because it will ‘achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.’” *CGC Holding Co.*, 773 F.3d at 1096, *quoting Amchem*, 521 U.S. at 615. Here, the alternative to a class action would be to require thousands of individuals to either forego recovery, file their own lawsuits, or join this

certification stage.” *In re EpiPen*, 2020 WL 1873989, at *6, *quoting Amgen Inc. v. Connecticut Retirement Plans & Trust Funds*, 568 U.S. 455, 466 (2013). Second, the basis for the Tenth Circuit’s reversal in *Fox* was that the plaintiffs had failed to proffer evidence of damages in response to TransAm’s own motion for summary judgment, which the Court deemed a necessary element of their burden of proof. *See Fox*, 839 F.3d at 1218-19. Plaintiffs here are not in a comparable position. Moreover, on remand, the plaintiffs in *Fox* successfully sought declaratory judgment that TransAm’s \$15 satellite communication fee violated the TIL regulations. *See Fox v. TransAm Leasing, Inc.*, Case No. 2:12-cv-02706, 2017 WL 2080588, at *1 (D. Kan. May 15, 2017).

case as party-plaintiffs. Such outcomes are not superior to a class proceeding. There are several reasons why that is true.

First, the overwhelming majority of individuals who will be impacted by this litigation are unlikely to bring claims individually due to the hurdles they would encounter – and this is true irrespective of their potential recovery. “[W]hile the potential for higher individual recoveries exists, realizing that potential requires assuming that each putative class member is aware of her rights, willing to subject herself to all the burdens of suing and able to find an attorney willing to take her case. Those transaction costs are not insubstantial and have prompted other courts ... to conclude that litigating as a class is superior.” *Kalish v. Karp & Kalamotousakis, LLP*, 246 F.R.D. 461, 464 (S.D.N.Y. 2007).

Second, the proposed class members are individuals are unlikely to possess substantive experience navigating the judicial system. None of the six named plaintiffs, for example, have a college degree. (Fact Stmt. ¶ 130). Nor is it plausible to believe that many of the proposed class members even know that they *have* claims to pursue. *Nieberding*, 302 F.R.D. at 619 (“The Court finds it unrealistic to require the class members to pursue the warranty option when they may not even know that the product is defective.”). Thus, “[t]here is no evidence in the record that suggests that individual plaintiffs would be able to bring these claims on their own.” *Rodriquez v. Hermes Landscaping, Inc.*, Case No. 17-2142, 2018 WL 4257712, at *6 (D. Kan. Sept. 5, 2018).

Third, the “court must keep in mind a powerful fact that counsels strongly in favor of finding superiority: (b)(3) class actions give all proposed class members the opportunity to opt out of inclusion in the class. [...] The individual actions that rule 23(b)(B) directs the court to consider would [therefore] not be swept under the class action’s umbrella, nor would

certification interfere with the litigation autonomy of a proposed class member who plans to file an individual claim but has yet to do so.” *Zuniga v. Bernalillo County*, 319 F.R.D. 640, 681 (D.N.M. 2016) (internal citation omitted). Put differently, class certification is superior precisely *because* it will enable those class members who *are* interested in filing suit individually – but who might not know that they have rights worth pursuing – to do so. Their “receipt of the class notice will spur them into action, and they will opt out of the class.” *Id.*

Fourth, this is the only case of which counsel is aware that is pending against TransAm in the United States that involves these claims. Class certification will therefore not impact any other related litigation. Even if that were not the case, the extent of the litigation already conducted in this matter is substantial. Allowing the proposed class members to benefit from that work is superior to the alternative, which would require individual class members to find their own counsel, file their own claims, and then “reinvent the wheel,” as it were.

Fifth, “[c]losely related to Rule 23’s objective of providing a forum for small claimants is the fact that class actions are the primary vehicle in modern jurisprudence for the effective enforcement of ... key bodies of law” which “rely in large part on private enforcement.” Newberg on Class Actions § 4:66. Here, Plaintiffs are pursuing claims under several remedial statutes, the aims of which are advanced by class litigation.³⁸ In particular, one of those statutes – the KCPA – provides consumers with a right to bring a class proceeding “in the hope that they

³⁸ See *Craig*, 335 P.3d at 73 (“The KWPA is an expansive and comprehensive legislative scheme that is broad in its scope and the rights created for Kansas workers to secure unpaid wages earned from their labors.”); *Ryder Truck Rental, Inc. v. Logistics Res Sols., Inc.*, Case No. 21-21573, 2021 WL 9037641, at *12 (S.D. Fla. Nov. 23, 2021) (“*Ryder Truck Rental, Inc. v. Logistics Res Sols., Inc.*, No. 21-21573-CIV, 2021 WL 9037641, at *12 (S.D. Fla. Nov. 23, 2021) (“The language of the relevant statutes and regulations underscores the notion that [the TIL regulations] are indeed intended to protect independent truckers ... from any underhanded practices in leasing trucks or equipment.”); *Ramirez v. Martinez*, Case No. 08-21863, 2009 WL 199786, at *4 (S.D. Fla. Jan. 23, 2009) (discussing Florida’s “constitutional mandate of guaranteeing Florida workers a minimum wage. After all, the constitutional provision in question is a substantive right[.]”).

will enforce the KCPA as ‘private attorneys general.’” *Alexander v. Certified Master Builders Corp.*, 1 P.3d 899, 907 (Kan. 2000). Thus, to the extent that TransAm is liable for any of the practices challenged here, a class proceeding is the superior method of advancing the legislative goals behind Plaintiffs’ claims.

Sixth, class treatment is more economical and efficient than individual proceedings. As discussed with respect to commonality and predominance, the claims in this case cohere around a sizable body of common, classwide evidence. Any individual driver pursuing these claims would necessarily be required to rely on that same body of evidence. It is, therefore, a better use of the Court’s and the parties’ resources to resolve as many of the common legal issues arising from that evidence on a class basis than it is to require numerous individuals to do the same in repetitive, duplicative fashion. *See Nieberding*, 254 F.R.D. at 676 (“[T]he obvious alternative to a class action would be for plaintiffs to bring individual suits. This would be inefficient, costly and time consuming and parties, witnesses and courts would be forced to endure unnecessarily duplicative litigation.”).

Seventh, the inherently coercive nature of the relationship between TransAm and the drivers amplifies the superiority of class treatment. The fact of the matter is that the proposed class members are all individual truck drivers working in an industry that is rife with unsafe work conditions, wage violations, and abuse.³⁹ Further, regardless of their status as employees or independent contractors, a sizable portion of the proposed classes work for TransAm and are therefore dependent on the company for their livelihood. As other courts have observed, “class

³⁹ See, e.g., Brett Murphy, “Rigged: Forced into Debt. Worked past Exhaustion. Left with Nothing,” *USA Today* (June 16, 2017), available at <https://www.usatoday.com/pages/interactives/news/rigged-forced-into-debt-worked-past-exhaustion-left-with-nothing/>; Steve Viscelli, “Truck Stop: How One of America’s Steadiest Jobs Turned into One of Its Most Grueling,” *The Atlantic* (May 10, 2016), available at <https://www.theatlantic.com/business/archive/2016/05/truck-stop/481926/>.

actions are preferred in wage-and-hour actions when individual employees may forego pursuing their claims due to fear of retaliation.” *Uschold v. NSMG Shared Servs., LLC*, 333 F.R.D. 157, 169 (N.D. Cal. 2019); *see also DaSilva v. Border Transfer of MA, Inc.*, 296 F. Supp. 3d 389, 406 (D. Mass. 2017) (in independent contractor misclassification case, finding superiority satisfied because “fear of employer retaliation may have a chilling effect on employees bringing claims on an individual basis.”). In short, the inherently chilling quality of the relationship between Defendants and the drivers – and the need to ensure that drivers are being protected so that they can safely do their jobs, which are vital to the American economy – justifies a finding of superiority.

V. CONCLUSION.

For the reasons set forth herein, Plaintiffs respectfully request that the Court grant their Motion for Class Certification Pursuant to Federal Rule of Civil Procedure 23.

Respectfully submitted,

KIRK ROBERTS, FARAJI ARTURO COUNCIL,
TERRENCE COLVIN-WILLIAMS,
REGINALD BRADLEY, DAVID COLEMAN, and
CARL McROBERTS JR., on behalf of themselves
and all others similarly situated,

By their attorneys,

/s/ Brendan J. Donelon
Brendan J. Donelon, KS #17420
DONELON, P.C.
4600 Madison, Ste. 810
Kansas City, Missouri 64112
Tel: 816-221-7100
Fax: 816-709-1044
brendan@donelonpc.com

Hillary Schwab, BBO #666029*
Brant Casavant, BBO #672614*
Rachel Smit, BBO #688294*
FAIR WORK, P.C.
192 South Street, Suite 450
Boston, MA 02111
Tel: 617-607-3260
Fax: 617-488-2261
hillary@fairworklaw.com
brant@fairworklaw.com
rachel@fairworklaw.com

**Admitted pro hac vice*

Dated: October 31, 2022.

**UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

KIRK ROBERTS,)	
FARAJI ARTURO COUNCIL,)	
TERRENCE COLVIN-WILLIAMS,)	
REGINALD BRADLEY, DAVID COLEMAN,)	
and CARL McROBERTS, JR., on behalf of)	
themselves and all others similarly situated,)	
)	
Plaintiffs,)	Civil Action No.
)	2:21-cv-02073-JWB-GEB
v.)	
)	
TRANSAM TRUCKING, INC.,)	
OLATHE NOBLE EQUIPMENT LEASING, INC.,)	
and JACOBSON HOLDINGS, INC.,)	
)	
Defendants.)	

PLAINTIFFS' CONSOLIDATED STATEMENT OF FACTS

In support of their Motion for Conditional Certification Pursuant to 29 U.S.C. § 216(b) and Motion for Class Certification Pursuant to Fed. R. Civ. P. 26, Plaintiffs Kirk Roberts, Faraji Arturo Council, Terrence Colvin-Williams, Reginald Bradley, David Coleman, and Carl McRoberts, Jr. (collectively, "Plaintiffs") respectfully submit this Consolidated Statement of Facts in numbered paragraph form. Citations to this Consolidated Statement will be denoted as "Fact Stmt. ¶ [paragraph number]."

I. THE PARTIES.

a. The “TransAm Family.”¹

1. Defendant Jacobson Holdings, Inc. (“Jacobson”), is a corporation that wholly owns several companies, including Defendants TransAm Trucking, Inc. (“TransAm”) and Olathe Noble Equipment Leasing, Inc. (“ONE Leasing”) (collectively, “Defendants”).

Citations: 3d Amended Complaint [“Compl.”] at ¶¶ 28, 38; Jacobson Answer to 3d Amended Compl. [“Jacobson Ans.”] at ¶¶ 28, 38; Emily Eagan² Deposition, Nov. 17, 2021, Transcript [“Eagan Tr.”] at 28:3-29:24, attached as **Exhibit 1**; Murray Droescher³ Deposition, Nov. 17, 2021, Transcript [“Droescher Tr.”] at 6:9-19, attached as **Exhibit 2**.

2. Jacobson was formed on January 1, 2019, so that the TransAm family of businesses would have a “true holding company” that “appropriately reflected how our business operated.”

Citations: Droescher Tr. [**Ex. 2**] at 16:24-17:2; Murray Droescher Deposition, Nov. 23, 2021, Transcript [“Droescher Tr.”] at 39:4-40:6, attached as **Exhibit 3**.

3. Jacobson’s employees oversee and manage TransAm, ONE Leasing, and the organization’s other wholly owned subsidiaries pursuant to Management and Administrative Services Agreements with each subsidiary.

Citations: Droescher Tr. [**Ex. 2**] at 14:4-16, 15:4-17.

¹ Company Driver Information Handbook [DEF19128] at p. 1-1, attached as **Exhibit 30**.

² Ms. Eagan is employed by Jacobson Holdings as vice-president of human resources. Between May 2017 and January 2019, she held the same role at TransAm; prior to that, she was TransAm’s director of human resources. (Eagan Tr. [**Ex. 1**] at 10:2-12:18).

³ Mr. Droescher is the chief financial officer of Jacobson Holdings. Prior to January 2019, he held the same role with TransAm. (Droescher Tr. [**Ex. 2**] at 6:7-23, 16:10-17:18).

4. TransAm is a trucking company and motor carrier licensed by the Department of Transportation (“DOT”).

Citations: Compl. at ¶¶ 35, 37; TransAm Answer to 3d Amended Compl. [“TransAm Ans.”] at ¶¶ 35, 37.

5. ONE Leasing is a company that owns a large number of tractors and trailers that it leases out for profit. It previously went by the name “TransAm Leasing.”

Citations: Compl. at ¶ 39; ONE Leasing Answer to 3d Amended Compl. [“ONE Leasing Ans.”] at ¶ 39; Murray Droeschler Deposition, Apr. 4, 2022, Transcript [“Droeschler Tr.”] at 80:7-12, 126:7-127:3, attached as **Exhibit 41**.

6. Defendants are all headquartered at the same facility in Olathe, Kansas, and share a common executive team, nearly all of whom are employed by Jacobson.

Citations: Compl. at ¶¶ 42-43; Jacobson Ans. at ¶¶ 42-43; TransAm Ans. at ¶¶ 42-43; ONE Leasing Ans. at ¶¶ 42-43; Eagan Tr. [**Ex. 1**] at 10:2-12:11, 22:8-25:12; Droeschler Tr. [**Ex. 2**] at 14:2-16.

7. TransAm uses both employee drivers and independent contractor drivers to haul freight and transport goods for TransAm’s customers.

Citations: Droeschler Tr. [**Ex. 2**] at 10:20-22; Russell McElliott⁴ Deposition, Nov. 17, 2021, Transcript [“McElliott Tr.”] at 8:14-21, attached as **Exhibit 4**.

8. TransAm refers to its employee drivers as “company drivers” and pays them on a W-2 basis.

Citations: Compl. at ¶ 49; TransAm Ans. at ¶ 49.

⁴ Mr. McElliott is president of both Jacobson Holdings and TransAm. (McElliott Tr. [**Ex. 4**] at 5:12-24).

9. TransAm’s independent contractor drivers primarily consist of individuals who lease their trucks from ONE Leasing (“lease drivers”), but also include a small number of individuals who drive their own vehicles for TransAm (“owner-operators”).⁵

Citations: McElliott Tr. [**Ex. 4**] at 7:5-13, 8:11-9:10, 10:11-17, 13:1-6, 19:6-18.

10. Since February 1, 2018, TransAm has employed more than 5,700 company drivers and has “contracted” with nearly 4,500 lease drivers.

Citations: TransAm’s Answers to Plaintiffs’ First Set of Interrogatories [“TransAm Int. Ans.”] at Nos. 3 & 4, attached as **Exhibit 5**.

11. Drivers can and do “switch” between company driver and lease driver status at TransAm.

Citations: McElliott Tr. [**Ex. 4**] at 17:12-18; Rhonda McFarland⁶ Deposition, Nov. 17, 2021, Transcript [“McFarland Tr.”] at 23:2-9, attached as **Exhibit 6**; Expert Rebuttal Report of Robert W. Crandall, MBA [“Crandall Rebuttal”] at 9:13-14, attached as **Exhibit 7**.

b. Plaintiffs.

12. Plaintiffs all worked for TransAm as company drivers or lease drivers, with the exception of Faraji Arturo Council, who participated in TransAm’s orientation program but did not go on to drive for TransAm.

Citations: Compl. at ¶¶ 9, 11-14, 91; TransAm Ans. at ¶¶ 9, 11-14, 91.

⁵ Most of TransAm’s independent contractors are lease drivers, meaning they leased their trucks from ONE Leasing and perform driving services for TransAm. (McElliott Tr. [**Ex. 4**] at 15:16-17:2). Plaintiffs’ Motions are concerned only with lease drivers; they do not seek to represent any owner-operator drivers.

⁶ Ms. McFarland is Jacobson Holdings’ director of informational technology and quality assurance. She held the same role with TransAm for about 10 years prior to January 2019. (McFarland Tr. [**Ex. 6**] at 5:24-6:18).

13. Reginald Bradley participated in TransAm's lease driver orientation program in Olathe, Kansas, in December 2016. He went on to work for TransAm as a lease driver from December 2016 to January 2017.

Citations: Reginald Bradley Deposition Transcript ["Bradley Tr."] at 17:18-22, 26:10-14, 35:20-36:8, 50:14-19, 58:12-17, attached as **Exhibit 8**.

14. David Coleman participated in TransAm's company driver orientation in Tampa, Florida, in October 2019. After finishing orientation, he went on to work for TransAm as a company driver from late October 2019 to late January 2020.

Citations: David Coleman Deposition Transcript ["Coleman Tr."] at 33:1-13, 39:7-22, attached as **Exhibit 9**.

15. Terrence Colvin-Williams participated in TransAm's company driver orientation in Tampa, Florida, in January 2020. After finishing orientation, he went on to work for TransAm as a lease driver from January 2020 until April 2020.

Citations: Terrence Colvin-Williams Deposition Transcript ["Colvin-Williams Tr."] at 42:24-43:8, 48:11-18, 51:16-20, 59:5-60:12, 69:14-18, attached as **Exhibit 10**.

16. Faraji Arturo Council, who previously went by the name John Curtis, twice participated in TransAm's orientation program. He first attended TransAm's orientation for prospective independent contractor drivers in Olathe, Kansas, in April 2018. He attended TransAm's orientation for company drivers in Rockwall, Texas, in June 2019. He did not go on to work for TransAm after either orientation.

Citations: Faraji Arturo Council Deposition Transcript ["Council Tr."] at 22:13-22, 23:9-24:11, 29:5-13, 52:6-54:18, attached as **Exhibit 11**.

17. Carl McRoberts participated in TransAm's company driver orientation in Rockwall, Texas, in February 2020. After finishing orientation, he went on to work for TransAm as a lease driver from mid-February 2020 until April 2020.

Citations: Carl McRoberts Deposition Transcript ["McRoberts Tr."] at 36:8-13, 46:5-16, 51:9-21, 55:20-25, attached as **Exhibit 12**.

18. Kirk Roberts participated in TransAm's company driver orientation in Rockwall, Texas, in January 2020. After finishing orientation, he went on to work for TransAm as a lease driver from January 2020 to October 2020.

Citations: Kirk Roberts Deposition Transcript ["Roberts Tr."] at 52:21-53:5, 69:13-22, 79:25-80:7, 107:13-108:2, attached as **Exhibit 13**.

II. DEFENDANTS' MARKETING AND RECRUITMENT.

19. Jacobson and TransAm actively advertise for and recruit potential drivers.

Citations: Eagan Tr. [**Ex. 1**] at 56:3-58:7; McElliott Tr. [**Ex. 4**] at 9:7-20.

20. The headline of one TransAm driver advertisement states: "Achieve top earning potential with owner operator truck driving opportunities!" This same advertisement also states that the "advantages" of driving as an owner-operator for TransAm include receiving 84 cents per mile driven, "high miles," "fuel surcharge paid," and "tax advantages."

Citations: Job Posting [DEF45977], attached as **Exhibit 14**.

21. A brochure published by TransAm advertises "great pay," the "miles you need to achieve your earning potential," and a "high gross annual salary." It also states: "Be an independent business operator!" and that "new and used tractors" are available for lease through ONE Leasing, "a separate and distinct company from TransAm Trucking," at "competitive rates."

Citations: “TransAm: What Drives You?” [DEF46176, 46178], attached as **Exhibit 15**.

22. Another marketing brochure issued by TransAm states that “100% of all fuel discounts are passed on to owner-operators. Discounts can exceed \$.20 per gallon.”

Citations: Sample Marketing Materials [DEF180, DEF46171, DEF46212, DEF46374], attached as **Exhibit 16**.

23. Other marketing materials produced by TransAm include near-identical statements as those set forth in paragraph 21, *supra*, with the primary difference being the amount that TransAm pays drivers per mile.

Citations: Sample Marketing Materials [**Ex. 16**].

24. TransAm employs a six-person driver recruitment team, which is responsible for interviewing and vetting driver applicants.

Citations: Eagan Tr. [**Ex. 1**] at 21:11-24, 38:17-41:21, 42:7-15, 43:1-8.

25. TransAm’s recruiters are provided with a “reference guide” that contains standard answers to questions frequently asked by driver applicants and with scripts for addressing various topics related to TransAm.

Citations: Eagan Tr. [**Ex. 1**] at 42:3-18; *see* Reference Guide [DEF69893], attached as **Exhibit 17**.

26. TransAm’s recruiters receive “incentive pay” based on the number of drivers they schedule for orientation each week.

Citations: Driver Recruiter Incentive Program [DEF73345], attached as **Exhibit 18**.

27. TransAm’s recruiters receive between \$50 and \$90 in incentive pay per company driver and double those amounts (between \$100 and \$180) per lease driver.

Citations: Driver Recruiter Incentive Program [**Ex. 18**].

28. Getting new drivers into orientation is one of the recruiters' chief responsibilities; indeed, TransAm expects its recruiters to have no more than 13 percent of their recruits fail to attend orientation.

Citations: Eagan Tr. [**Ex. 1**] at 40:20-41:10; Driver Recruiter Job Description [DEF73313] at pp. 1-2, attached as **Exhibit 19**.

29. TransAm's recruiters are instructed to tell potential lease drivers that they will be paid a certain sum per mile "plus the fuel surcharge to start," and that, "[a]s an independent contractor, you control your pay. By making yourself available and accepting freight, you could GROSS \$135,000 to \$200,000 per year."

Citations: Reference Guide [**Ex. 17**] at p. 9.

III. TRANSAM'S ORIENTATION PROGRAM.

30. After recruitment, all new prospective drivers are sent to TransAm's mandatory orientation.

Citations: Eagan Tr. [**Ex. 1**] at 50:3-14; McFarland Tr. [**Ex. 6**] at 10:11-19; John Neyens⁷ Deposition, Nov. 23, 2021, Transcript Volume V ["Neyens Tr. Vol. V"] at 58:10-12, attached as **Exhibit 20**.

31. Prior to 2018, all new company and lease drivers attended the same orientation program.

Citations: McFarland Tr. [**Ex. 6**] at 9:4-10:6.

32. In 2018, TransAm established separate orientation programs for company drivers and lease drivers. Since 2018, company drivers have attended orientation in either Rockwall, Texas, or Tampa, Florida, while lease drivers have attended orientation in Olathe, Kansas.

⁷ Attorney Neyens is outside counsel for all three Defendants. (Neyens Tr. Vol. V [**Ex. 20**] at 7:4-19).

Citations: Eagan Tr. [**Ex. 1**] at 46:22-48:8; 67:12-19; McFarland Tr. [**Ex. 6**] at 8:23-9:1.

33. TransAm “always know[s]” before a driver attends orientation whether that driver is interested in becoming a company driver or a lease driver.

Citations: Eagan Tr. [**Ex. 1**] at 65:14-18.

34. TransAm puts between 30 and 40 new drivers – both company drivers and lease drivers – through orientation each week.

Citations: McFarland Tr. [**Ex. 6**] at 16:2-8.

35. Between mid-February 2018 and January 2022, the following numbers of individuals have completed TransAm’s orientation program at one of its three facilities:

Location	Lease drivers	Company Drivers	Total (All Drivers)
Olathe, Kansas	323	222	679
Rockwall, Texas	1,340	3,239	5,796
Tampa, Florida	549	1,756	2,906

Citations: Orientation Attendance Records, attached as **Exhibit 21**.

36. The numbers identified in paragraph 35, *supra*, do not include individuals who attended but did not complete TransAm’s orientation; such “dismissals” number in the thousands.

Citations: Orientation Attendance Records [**Ex. 21**].

37. TransAm uniformly classifies all prospective company drivers who participate in orientation at Rockwall or Tampa as employees and pays them on a W-2 basis.

Citations: McFarland Tr. [**Ex. 6**] at 19:6-10.

38. Inexperienced company drivers (called “recent graduate” or “graduate” drivers) must complete a seven-day orientation; more seasoned company drivers (called “experienced” drivers) participate in a three-day orientation.

Citations: McFarland Tr. [**Ex. 6**] at 10:22-11:7; Garland Tucker⁸ Deposition Transcript [“Tucker Tr.”] at 131:1-7, attached as **Exhibit 22**.

39. Each day of orientation lasts between 7 and 7.5 hours, not including travel time from the hotel to the orientation facility and back.

Citations: McFarland Tr. [**Ex. 6**] at 11:12-18, 12:8-10, 39:14-24, 47:8-13; Tucker Tr. [**Ex. 22**] at 167:7-24; Cornell Collins⁹ Deposition Transcript [“Collins Tr.”] at 41:15-19, 42:9-17, 43:17-19, attached as **Exhibit 23**; Rhonda McFarland Deposition, Sep. 13, 2022, Transcript [“McFarland Tr.”] at 58:23-59:5, attached as **Exhibit 24**.

40. TransAm pays drivers a flat daily rate during orientation. Until October 2020, that daily rate was \$50, at which point TransAm raised it to \$55. In February or March 2021, TransAm again raised the daily rate from \$55 to \$70. In late 2021, TransAm raised the daily pay rate from \$70 to \$80.

Citations: Collins Tr. [**Ex. 23**] at 41:13-17, 42:9-17; McFarland Tr. [**Ex. 24**] at 45:4-46:4.

41. TransAm takes deductions from the drivers’ orientation pay. For example, TransAm deducted \$25 from David Coleman’s orientation pay for “Express Pay.” It likewise deducted \$165 for “Express Pay” from Faraji Arturo Council’s orientation pay, plus an additional \$200 for “Advance.”

Citations: Sample Payroll Records [DEF473, DEF820], attached as **Exhibit 25**.

⁸ Mr. Tucker is TransAm’s orientation manager at Tampa. (Tucker Tr. [**Ex. 22**] at 39:11-13).

⁹ Mr. Collins is TransAm’s training and development manager. Prior to that, he was one of TransAm’s orientation managers at Rockwall. (Collins Tr. [**Ex. 23**] at 8:1-23).

42. Drivers record their time in orientation using a software platform that can, *inter alia*, track their “on duty” and “off duty” hours.¹⁰

Citations: McFarland Tr. [**Ex. 6**] at 31:3-11, 47:18-24, 54:5-11, 57:3-13; *see* Sample Daily Log [DEF82137-82142], attached as **Exhibit 26**.

43. TransAm’s orientation program follows a regimented weekly schedule and is divided between a classroom component and an “outdoor” driving and vehicle training component.

Citations: Tucker Tr. [**Ex. 22**] at 43:8-45:23; Collins Tr. [**Ex. 23**] at 27:10-28:6; “TransAm Training Program Schedule” [DEF92214], attached as **Exhibit 27**.

44. TransAm requires all company drivers to participate in the classroom component of orientation, which lasts two days.

Citations: McFarland Tr. [**Ex. 6**] at 12:3-19; Tucker Tr. [**Ex. 22**] at 65:20-66:20, 81:20-84:12, 101:16-104:7, 105:22-106:14; Collins Tr. [**Ex. 23**] at 36:2-9, 41:20-23, 46:4-9, 51:8-12, 64:13-16, 66:5-8.

45. Once the classroom component is finished, inexperienced drivers undergo five days of driving training while experienced drivers are given a one-day driving evaluation.

Citations: Tucker Tr. [**Ex. 22**] at 110:1-4; Collins Tr. [**Ex. 23**] at 35:14-36:1, 41:20-23, 51:13-24, 64:13-21, 65:1-19, 68:2-21.

46. The classroom component is the same for inexperienced and experienced drivers and includes urinalysis drug testing, filling out paperwork, and learning about the “policies and procedures of the company.”

¹⁰ This software is created and maintained by a company called Orbcomm; the devices that the drivers use, and which are loaded with the Orbcomm software, are manufactured by a company called Garmin. For that reason, they are sometimes referred to as “Garmin devices.” (McFarland Tr. [**Ex. 6**] at 47:20-24, 54:5-11, 57:6-7).

Citations: Tucker Tr. [**Ex. 22**] at 81:20-84:12, 101:16-105:6; Collins Tr. [**Ex. 23**] at 14:8-13, 27:16-21, 52:5-16, 44:12-19, 55:23-56:23, 59:7-24, 66:19-23, 86:21-87:19.

47. Classroom orientation is administered by “orientation managers” who are supervised by TransAm’s Director of Training and Development. The orientation managers are few in number; for example, in Rockwall, TransAm employs only one orientation manager and one driver trainer.

Citations: Tucker Tr. [**Ex. 22**] at 151:10-16; Collins Tr. [**Ex. 23**] at 14:8-15:2, 16:6-15, 22:23-23:21, 27:10-28:6;

48. The two orientation managers in Tampa and Rockwall, as well as TransAm’s Director of Training and Development, receive monetary incentives for each driver “referral who leases a truck from ONE Leasing.”

Citations: ONE Leasing Referrals [“Referral Incentive Memos”] [DEF73524, DEF73522, DEF73639], attached as **Exhibit 28**; *see also* Tucker Tr. [**Ex. 22**] at 37:23-38:24, 144:22-24; Collins Tr. [**Ex. 23**] at 75:21-76:24.

49. TransAm’s orientation managers have a “responsibility to promote ONE Leasing and our Independent Contractor Program to our drivers during orientation.”

Citations: Referral Incentive Memos [**Ex. 28**].

50. TransAm’s driver managers – who are the company drivers’ “primary contact” with TransAm – also receive financial incentives for “help[ing] company drivers become independent contractors[.]”

Citations: Christopher Duffie Deposition Transcript¹¹ [“Duffie Tr.”] at 28:10-29:12, attached as **Exhibit 29**; Company Driver Information Handbook at p. 1-3, attached as **Exhibit 30**.

51. Despite signing up for company driver orientation, company drivers are presented with information about TransAm’s independent contractor program and ONE Leasing’s truck leasing program during the classroom portion of orientation in Tampa and Rockwall.

Citations: Collins Tr. [**Ex. 23**] at 46:8-47:7; Heather Sybesma Deposition Transcript [“Sybesma Tr.”] at 84:11-20, attached as **Exhibit 31**.

52. Specifically, during orientation, a TransAm employee named Jesse Miller makes a presentation by telephone to company drivers at Rockwall and Tampa about TransAm’s independent contractor program.

Citations: Tucker Tr. [**Ex. 22**] at 66:21-70:15; Jesse Miller Deposition Transcript [“Miller Tr.”] at 12:12-13:13, attached as **Exhibit 32**.

53. Following that presentation, a ONE Leasing employee named Christina Pope makes a presentation to company drivers about ONE Leasing’s truck leasing program. This presentation occurs in person at Tampa, and by conference call at Rockwall.

Citations: Tucker Tr. [**Ex. 22**] at 66:21-69:19; Christina Pope Deposition Transcript [“Pope Tr.”] at 50:12-51:10, 52:18-54:14, attached as **Exhibit 33**.

54. In making their presentations, Mr. Miler and Ms. Pope use scripts or “guides” that were prepared and approved by Heather Sybesma, who is employed by Jacobson and serves as President of ONE Leasing and Director of Driver Operations for TransAm.

¹¹ Mr. Duffie was a TransAm driver manager until July 2021. Duffie Tr. [**Ex. 29**] at 26:9-16, 27:21-22, 28:1-4.

Citations: Sybesma Tr. [**Ex. 31**] at 9:9-15; 82:10-16; 103:6-22; 104:18-105:9; Miller Tr. [**Ex. 32**] at 48:7-49:2; Sample Scripts, attached as **Exhibit 34**.

55. The script used by Mr. Miller for his presentation about TransAm’s independent contractor program states that drivers “are paid” a certain amount per mile, “loaded and empty, plus the fuel surcharge.”

Citations: Sample Scripts [**Ex. 34**] at p.1.

56. The script used by Ms. Pope for her presentation about ONE Leasing’s truck leasing program states that ONE Leasing “will set up a maintenance account for you. If you chose, you can use this account to help pay for repairs that are not covered under warranty, preventative maintenance and tires,” and that ONE Leasing “will set up an escrow for you. This is basically a back-up savings account.”

Citations: Sample Scripts [**Ex. 34**] at p. 2.

57. Company drivers who express interest in the independent contractor program during orientation are directed to meet with a representative of ONE Leasing about leasing a truck before signing an independent contractor agreement with TransAm.

Citations: Sybesma Tr. [**Ex. 31**] at 92:19-94:16; 98:7-19; 99:18-100:11; 102:5-20.

58. TransAm and ONE Leasing’s representatives do not affirmatively disclose to individuals recruited from company driver orientation the mileage on the trucks available for lease, the trucks’ lease history, or the trucks’ history of repairs and maintenance.

Citations: Pope Tr. [**Ex. 33**] at 39:1-40:23, 41:3-42:5, 43:3-7; Marie McCue Deposition Transcript [“McCue Tr.”] at 100:20-103:11, attached as **Exhibit 35**; Repair Order History, attached as **Exhibit 59**.

59. TransAm and ONE Leasing’s representatives do not disclose the turnover rates for lease drivers to individuals participating in company orientation.

Citations: Pope Tr. [**Ex. 33**] at 99:9-14; Sample Scripts [**Ex. 34**].

60. TransAm’s representatives also do not disclose that Defendants generate more money from individuals who work for TransAm as lease drivers than individuals whom TransAm directly employs as company drivers.

Citations: Expert Report of Dr. Steve Viscelli [“Viscelli Report”] at pp. 29-31, attached as **Exhibit 36**; Russ McElliott Deposition, Sep. 19, 2022, Transcript [“McElliott Tr.”] at 100:9-102:10, attached as **Exhibit 37**; Sample Scripts [**Ex. 34**].

61. TransAm requires drivers recruited from company driver orientation to work as independent contractors to sign paperwork “resigning” from their company driver position, along with other paperwork, following these meetings.

Citations: McFarland Tr. [**Ex. 6**] at 23:14-24; Pope Tr. [**Ex. 33**] at 36:11-23.

62. Once orientation is complete, TransAm is supposed to assign the company drivers to their trucks.

Citations: McFarland Tr. [**Ex. 6**] at 12:23-13:10, 21:19-23; Collins Tr. [**Ex. 23**] at 69:20-23; Sybesma Tr. [**Ex. 31**] at 69:14-70:5.

63. TransAm’s executives maintain that the company always has trucks available for company drivers who have completed orientation.

Citations: McFarland Tr. [**Ex. 6**] at 23:6-13, 25:21-26:16; McElliott Tr. [**Ex. 4**] at 19:14-18.

64. TransAm’s internal driver reports reflect numerous instances in which TransAm has “negative” trucks available – meaning, fewer company trucks than drivers – at its facilities in Tampa and Rockwall, where company drivers are sent for orientation.

Citations: Sybesma Tr. [**Ex. 31**] at 32:11-33:20, 35:22-37:19; Sample Driver Reports, attached as **Exhibit 38**.

65. Similarly, TransAm’s orientation employees testified about occasions where company drivers’ assigned trucks were not ready for operation or were otherwise unavailable; those drivers were told to go back to their hotels and wait to be contacted by a driver manager or someone else at TransAm.

Citations: Tucker Tr. [**Ex. 22**] at 56:9-12, 195:1-200:16; Collins Tr. [**Ex. 23**] at 71:1-9.

66. Kirk Roberts and Carl McRoberts attended company driver orientation in Rockwall but were told that TransAm had no company trucks immediately available. The same occurred with opt-in plaintiffs Cecil Devon Brown and Timothy Jarman, who attended orientation in Rockwall and Tampa, respectively.

Citations: McRoberts Tr. [**Ex. 12**] at 46:5-9, 47:11-48:17; Robert Tr. [**Ex. 13**] at 79:25-80:7, 104:22-107:25; Cecil Devon Brown Deposition Transcript [“Brown Tr.”] at 21:24-23:2, 24:22-24, attached as **Exhibit 39**; Timothy Jarman Deposition Transcript [“Jarman Tr.”] at 11:7-12:24, attached as **Exhibit 40**.

67. Roberts, McRoberts, Brown, and Jarman were all given the option by their driver managers to convert to independent contractor status in order to obtain a truck – which they leased from ONE Leasing – and start earning money as lease drivers.

Citations: McRoberts Tr. [**Ex. 12**] at 47:11-48:17; Roberts Tr. [**Ex. 13**] at 104:22-107:25; Brown Tr. [**Ex. 39**] at 16:13-17:5, 21:24-23:2; Jarman Tr. [**Ex. 40**] at 11:7-12:24.

IV. LEASE DRIVING FOR TRANSAM.

a. The ONE Leasing fleet and leasing program.

68. As of November 2021, ONE Leasing owned about 750 trucks and 500 trailers.

Citations: Drolescher Tr. [**Ex. 3**] at 28:2-7.

69. ONE Leasing leases out trucks – including to TransAm’s lease drivers – for terms of up to 60 months, but purchases them with financing over a period of only 54 months. Thus, once ONE Leasing has made all its payments on a particular truck, it owns that truck outright for a period of about six months. At the end of that six-month period, it sells the truck on the open market.

Citations: Drolescher Tr. [**Ex. 3**] at 51:4-52:1, 52:2-8.

70. The cost of the trucks in TransAm’s fleet – whether driven by company drivers or leased to lease drivers – is enormous: the purchase price of each new truck is well in excess of \$100,000, and ONE Leasing makes payments toward that principal, plus interest, each week.

Citations: Drolescher Tr. [**Ex. 41**] at 186:21-189:9.

71. ONE Leasing structures the lease payments made by TransAm’s lease drivers to not just “cover” ONE Leasing’s own expenses in relation to each truck, but to generate a profit, by charging interest rates “based upon the amount of profit that we want to generate” over the life of the driver’s lease.

Citations: Drolescher Tr. [**Ex. 41**] at 186:3-187:21.

72. For example, if ONE Leasing wanted to generate \$55,000 in profit on a vehicle that cost \$136,000, it would charge the lease driver 13.6 percent interest, a rate that is 10.6 percent higher than the interest rate ONE Leasing pays on the loan it used to finance the vehicle

in the first place. This would result in the driver paying ONE Leasing a weekly combined principal and interest amount of \$660.

Citations: Droescher Tr. [Ex. 41] at 181:11-183:5, 185:6-9, 186:3-7, 188:19-189:9; “Lease Calculation Spreadsheet” [Droescher Ex. 11], attached as Exhibit 42.

73. Lease drivers who lease their trucks from ONE Leasing sign standard-form “Equipment Lease Agreements” generated by ONE Leasing.

Citations: John Neyens Deposition, Nov. 23, 2021, Transcript Volume III [“Neyens Tr. Vol. III”] at 32:19-24, 33:7-15, attached as Exhibit 43; Equipment Lease Agreement, attached as Exhibit 49.

74. The Equipment Lease Agreements establish, *inter alia*, the timing and amount of the lease drivers’ lease payments as well as various other fees, chargebacks, and penalties that they are liable to pay during the term of the lease.

Citations: Equipment Lease Agreement [Ex. 49] at Exhibit B.

75. For example, TransAm’s lease drivers must pay .04 cents per mile (up to \$10,000) into a “maintenance/tire replacement reserve” fund; a \$4,000 deposit in order to travel with a pet; and \$50 per week (up to \$700) into a “performance escrow fund.”

Citations: Equipment Lease Agreement [Ex. 49] at ¶¶ 7, 8, 9.

76. Lease drivers are required to have their lease payments automatically deducted from their weekly compensation.

Citations: Droescher Tr. [Ex. 41] at 103:16-104:18; Owner Operator’s Information Handbook at p. 2-6, attached as Exhibit 44.

77. The majority of TransAm’s lease drivers never wind up purchasing or owning the trucks they lease from ONE Leasing. Nor do they accrue any equity, security, or ownership interest in the trucks they lease from ONE Leasing during the term of their lease.

Citations: Duffie Tr. [**Ex. 29**] at 109:23-110:4; Neyens Tr. Vol. III [**Ex. 43**] at 63:22-65:6; Ray Dean Cochran Deposition Transcript [“Cochran Tr.”] at 100:1-101:13, attached as **Exhibit 45**; Teresa Henshaw Deposition Transcript [“Henshaw Tr.”] at 88:23-89:6, attached as **Exhibit 46**;

78. ONE Leasing does not permit TransAm’s lease drivers to leave TransAm and use their leased trucks to transport goods for other motor carriers unless the drivers are “current on their [lease] payments” to ONE Leasing.

Citations: Neyens Tr. Vol. III [**Ex. 43**] at 39:19-40:13.

79. TransAm requires lease drivers to pay for repairs, even minor ones, when they terminate their lease and “turn in” their trucks because “a new driver cannot have any issues.” TransAm deducts the costs of such repairs from terminating lease drivers’ escrow funds.

Citations: Thore Hammitt Deposition Transcript [“Hammitt Tr.”] at 55:13-20, 117:1-118:8, attached as **Exhibit 47**; Independent Contractor Owner-Operator Agreement [“ICA”] at ¶¶ 7, 14-15, attached as **Exhibit 48**.

b. Defendants’ driver contracts.

80. All lease drivers sign the same standard form independent contractor agreements with TransAm, which are styled as “Independent Contractor Owner-Operator Agreements.”

Citations: McElliott Tr. [**Ex. 4**] at 16:5-15; McFarland Tr. [**Ex. 6**] at 21:16-22:8; Sybesma Tr. [**Ex. 31**] at 147:14-148:4; *see also* ICA [**Ex. 48**].

81. The Independent Contractor Owner-Operator Agreements are adhesion contracts prepared by TransAm and are not subject to negotiation.

Citations: Sybesma Tr. [**Ex. 31**] at 147:14-148:19; Miller Tr. [**Ex. 32**] at 28:16-29:17.

82. The Independent Contractor Owner-Operator Agreements establish the rate that TransAm pays the lease drivers: 84 cents per mile from the start of the relevant period until late 2018, then \$1.04 per mile until March 2021, then \$1.07 per mile thereafter.

Citations: Reference Guide [**Ex. 17**] at p. 11; ICA [DEF72046, DEF72092] [**Ex. 48**].

83. The Independent Contractor Owner-Operator Agreements establish other terms and conditions of the lease drivers' work, including that the lease drivers:

- a. use trucks equipped with a mobile communications unit that is compatible with TransAm's system;
- b. return all items and equipment lent to them by TransAm within certain time periods upon termination of their agreements or else be charged a monetary penalty;
- c. obtain prior written approval from TransAm in order to have a passenger in their truck;
- d. obtain prior written approval from TransAm to use a different truck to haul freight for TransAm than the one specified in the agreement;
- e. maintain numerous types of insurance at amounts set by TransAm and pay up to \$2,000 if they get into an accident resulting in loss or damage; and
- f. authorize TransAm to deduct 1 cent per mile from their compensation to cover fuel and mileage taxes.

Citations: Owner Operator Handbook [**Ex. 44**] at 1-15; ICA [**Ex. 48**] at ¶¶ 1, 4, 7, 9, 15 & Exhibit B.

84. The Independent Contractor Owner-Operator Agreements provide that TransAm will furnish the lease drivers equipment and necessities such as trailers, locks, pallets, permit books, and fuel cards. The lease drivers are required to return all such items and equipment upon terminating the agreement; if they do not, they must pay various fees and replacement costs.

Citations: ICA [Ex. 48] at ¶ 1(b), (f), (i), (j) & Exhibit B.

85. Both the Independent Contractor Owner-Operator Agreements and Equipment Lease Agreements also contain several escrow provisions. These include TransAm's "performance escrow," ONE Leasing's "performance escrow," and a "maintenance/tire reserve."

Citations: ICA [Ex. 48] at ¶ 4; Equipment Lease Agreement ["ELA"] at ¶¶ 7-8, attached as Exhibit 49.

86. The Independent Contractor Owner-Operator Agreements and Equipment Lease Agreements authorize TransAm and ONE Leasing to withhold money from lease drivers' compensation to fund the escrow accounts, up to a maximum of \$500 per week for TransAm's performance escrow; \$700 per week for ONE Leasing's performance escrow; and \$10,000 for ONE Leasing's maintenance/tire reserve.

Citations: ICA [Ex. 48], ¶ 4; ELA [Ex. 49] at ¶¶ 7-8.

87. ONE Leasing advertises its escrow accounts as a "wise business decision" that will "help [drivers] maintain a positive cash flow" and "ensure that maintenance costs are a manageable part of your business."

Citations: Leasing Program Brochure, pp. 3-4, attached as Exhibit 50.

88. TransAm and ONE Leasing reserve the right to withdraw money from these escrow accounts for numerous defined and undefined items.

Citations: ICA [Ex. 48] at ¶ 4; ELA [Ex. 40] at ¶¶ 7-8.

89. For example, TransAm’s Independent Contractor Owner-Operator Agreements state that TransAm may “apply” lease drivers’ performance escrow funds against “any and all amounts owed to payable to by Contractor,” including “any amount which Carrier [TransAm] could deduct from the compensation otherwise payable to Contractor hereunder for Contractor’s payment obligations in accordance with paragraph 15 hereof.” That paragraph identifies nine categories of deductions TransAm may take, including a “catchall” category that includes “any and all other obligations or liabilities of Contractor specified in this Agreement.”

Citations: ICA [Ex. 48] at ¶ 4.

c. TransAm’s fuel surcharge program.

90. TransAm’s Independent Contractor Owner-Operator Agreements state that lease drivers “will be paid a Fuel Surcharge” in accordance with an exhibit appended to those agreements.

Citations: ICA [Ex. 48] at ¶ 8.

91. TransAm also markets the “fuel surcharge” as an “exceptional owner-operator benefit[]” that is “paid (loaded & empty)” to “help reduce the impact fluctuating fuel prices can have on your business.”

Citation: Sybesma Tr. [Ex. 31] at 106:1-15; Brochure, Apr. 14, 2021, p. 3, attached as

Exhibit 51; Brochure, Apr. 16, 2020, p. 3, attached as Exhibit 52.

92. Starting in early 2020, TransAm’s fuel surcharge program was revised such that when national fuel prices are low, the fuel surcharge is negative, which results in a *reduction* from lease drivers’ compensation, a fact that TransAm’s representatives do not disclose during orientation.

Citations: Sybesma Tr. [**Ex. 31**] at 106:24-107:2; Miller Tr. [**Ex. 32**] at 49:10-53:4, 54:20-55:1.

93. For example, the fuel surcharge program resulted in reductions in Kirk Roberts' compensation on numerous occasions between May and October 2020.

Citations: Roberts Settlement Statements, attached as **Exhibit 53**.

d. TransAm's physical damage insurance requirement.

94. TransAm requires lease drivers to maintain certain types of insurance, which are itemized in an addendum to their Independent Contractor Owner-Operator Agreements.

Citations: Miller Tr. [**Ex. 32**] at 35:18-41:14; Pope Tr. [**Ex. 33**] at 82:8-18; McElliott Tr. [**Ex. 37**] at 48:6-15; ICA [**Ex. 48**] at Addendum.

95. TransAm and ONE Leasing require lease drivers, as a condition of entering into the lease arrangement, to purchase "physical damage insurance" from Defendants.

Citations: Droescher Tr. [**Ex. 41**] at 138:23-139:6.

96. Pursuant to TransAm's Independent Contractor Owner-Operator Agreement, the sums that lease drivers owe for physical damage insurance are automatically deducted from their compensation.

Citations: ICA [**Ex. 48**] at Addendum.

97. TransAm and ONE Leasing charge lease drivers a higher rate than Defendants pay for that physical damage insurance policy.

Citations: Droescher Tr. [**Ex 41**] at 128:1-130:6, 141:13-146:18.

98. For example, TransAm deducted \$184.00 per week from Terrence Colvin-Williams' compensation for physical damage insurance, but Defendants paid at most \$113 per week for that policy.

Citations: Droescher Tr. [**Ex. 41**] at 128:1-23, 143:3-144:17; Terrence Colvin-Williams Sample Settlement Statements, attached as **Exhibit 54**.

99. TransAm does not specify the dollar amount that will be deducted from lease drivers' compensation for physical damage insurance in the Independent Contractor Owner-Operator Agreements. The addenda to those Agreements state only that physical damage insurance at the "stated value" will be "withheld from [their] contractor settlement[s]."

Citations: Miller Tr. [**Ex. 32**] at 107:23-109:21; ICA [**Ex. 48**] at Addendum; Terrence Colvin-Williams Addendum, attached as **Exhibit 55**.

100. Defendants do not disclose the amount of their physical damage insurance "markup" to drivers. Nor do they disclose that their markup is not fixed. The Equipment Lease Agreements state that drivers shall pay ONE Leasing a weekly specified sum "for its maintenance of such physical damage insurance, which amount represents [ONE Leasing's] cost for maintaining such insurance coverage plus an administrative fee."

Citations: Droescher Tr. [**Ex. 41**] at 129:3-11, ELA [**Ex. 49**] at ¶ 19; Terrence Colvin-Williams Equipment Lease Agreement ["Colvin-Williams ELA"] at ¶ 19, attached as **Exhibit 56**.

101. TransAm and ONE Leasing do not disclose the market value of the trucks that lease drivers obtain from ONE Leasing, upon which the lease drivers' physical insurance premium is calculated, or the fact that, as the trucks depreciate each month, the amount that Defendants pay for physical damage premiums goes down.

Citations: Miller Tr. [**Ex. 32**] at 108:13-23; ICA [**Ex. 48**] at Addendum; Colvin-Williams Addendum [**Ex. 55**], Droescher Tr. [**Ex. 41**] at 142:16-144:24.

102. TransAm and ONE Leasing do not reduce the amounts deducted from drivers' compensation for physical damage insurance as their actual costs for premiums go down, resulting in ever-increasing profits for Defendants over the five-year life cycle of the truck.

Citations: Droescher Tr. [**Ex. 41**] at 142:16-144:24.

103. The amounts that lease drivers must pay for physical damage insurance that are identified in their Equipment Lease Agreements do not always match the amounts that TransAm actually deducts for physical damage insurance. For example, the Equipment Lease Agreement signed by Terrence Colvin-Williams stated that his weekly premium for physical damage insurance would be \$181.00 but TransAm deducted \$184 per week from his compensation for physical damage insurance.

Citations: Sample Colvin-Williams Settlement Statements [**Ex. 54**]; Colvin-Williams ELA [**Ex. 56**] at ¶ 19.

V. DUTY TIME.

104. TransAm tracks the company drivers' and lease drivers' working and non-working time using their Garmin devices and Orbcomm system (*see* footnote 10, *infra*) and, if Orbcomm is malfunctioning, paper logs that the drivers must complete manually.

Citations: McFarland Tr. [**Ex. 24**] at 54:7-56:4, 62:14-24; Neyens Tr. Vol. III [**Ex. 43**] at 35:12-36:5; Company Driver Handbook [**Ex. 30**] at 7-1; Owner-Operator Driver Handbook [**Ex. 44**] at 7-1.

105. TransAm trains new drivers in how to use their Garmin devices and the Orbcomm system in the morning the first day of orientation so that they can log their time spent in orientation. Any time spent by the drivers in orientation prior to learning how to use their Garmin devices and the Orbcomm system may not be tracked.

Citations: McFarland Tr. [**Ex. 24**] at 54:11-55:24.

106. TransAm classifies all the time that drivers are “under load” with TransAm as either “on duty,” “off duty,” or “sleeper.”

Citations: McFarland Tr. [**Ex. 24**] at 53:22-54:6; Company Driver Handbook [**Ex. 30**] at 7-2; Owner-Operator Driver Handbook [**Ex. 44**] at 7-2.

107. TransAm divides “on duty” time into a number of sub-categories based on the task or activity being performed, including, *inter alia*, driving, loading, fueling, unloading, and time spent waiting for a Department of Transportation inspection.

Citations: Company Driver Handbook [**Ex. 30**] at 7-13 through 7-16; Owner-Operator Driver Handbook [**Ex. 44**] at 7-13 through 7-16.

108. TransAm considers “off duty” time to include time the drivers spend “waiting to load or unload,” time spent waiting for their trucks to be serviced, and any time that they “not performing work for the company” and TransAm has “relieve[d] [them] of all duties and responsibilities for the card [sic] and custody of the vehicle, its accessories and cargo.”

Citations: Company Driver Handbook [**Ex. 30**] at 7-2; Owner-Operator Driver Handbook [**Ex. 44**] at 7-2.

109. TransAm requires that drivers log all their time spent in their trucks’ sleeper berths as “sleeper” time. TransAm neither considers such time to be “on duty” nor does it allow the drivers to log sleeper berth time as “off duty.”

Citations: Company Driver Handbook [**Ex. 30**] at 7-2; Neyens Tr. Vol. V [**Ex. 20**] at 36:6-10; Owner Operator Handbook [**Ex. 44**] at 7-2; Sample Garmin Messages, attached as **Exhibit 60**.

110. TransAm does not consider any of the drivers’ “off duty” or “sleeper” time as compensable for purposes of determining whether they have received the minimum wage for all hours worked.

Citations: McFarland Tr. [**Ex. 24**] at 53:12-54:6.

111. TransAm actively monitors the company drivers’ logs and will contact them to “tell them that they need to edit their logs” if they are believed to be inaccurate.

Citations: McFarland Tr. [**Ex. 24**] at 52:5-53:10.

VI. COMPANY DRIVER COMPENSATION.

112. TransAm pays company drivers based on “practical miles,” which TransAm defines as “loaded miles ... based on the mileage software/version according to which the customer pays under contract” or “based on PC*Miler Shortest Routs [sic] mileage (the version thereof then currently being used by Carrier).”

Citations: McFarland Tr. [**Ex. 6**] at 32:14-21; Company Driver Handbook [**Ex. 30**] at p. 1-49; Sybesma Tr. [**Ex. 31**] at 150:2-151:12.

113. In other words, TransAm pays the company drivers “as the company gets paid ... from ZIP code to ZIP code,” not based on the drivers’ “straight miles,” meaning the miles driven “from Point A to Point B.”

Citations: Roberts Tr. [**Ex. 13**] at 163:11-164:25.

114. The difference between “practical miles” and actual miles can be significant where the ZIP code for a driver’s destination might cover hundreds of square miles; a driver might “arrive” at his “destination” – meaning, the ZIP code where his destination is located – but still drive a considerable distance before reaching the precise location where he will load or

unload his freight. Those “additional” miles driven within the destination’s ZIP code are not compensated because they do not qualify as “practical miles.”

Citations: Roberts Tr. [**Ex. 13**] at 163:11-164:25.

115. From the drivers’ per-mile amount, TransAm deducts 12 cents which it “pays back” to the company drivers in the same paycheck, with no tax withholdings, in the form of “per diem pay.”

Citations: McFarland Tr. [**Ex. 6**] at 38:18-39:3; Company Driver Handbook [**Ex. 30**] at 2-3; McElliott Tr. [**Ex. 37**] at 90:12-91:20.

116. Each pay period, TransAm’s IT department analyzes the company drivers’ compensation to determine if they are receiving at least the minimum wage for their “on-duty” hours.

Citations: McFarland Tr. [**Ex. 6**] at 33:6-34:16.

117. TransAm conducts this analysis by dividing the company drivers’ total compensation by their total “on-duty” hours to determine if the drivers’ “average” hourly pay rate meets or exceeds the applicable minimum wage.¹²

Citations: McFarland Tr. [**Ex. 6**] at 34:2-16.

118. If it does not, TransAm pays the company drivers an additional sum, called a “minimum wage adjustment.”¹³

Citations: McFarland Tr. [**Ex. 6**] at 34:20-35:7.

VII. LEASE DRIVER CLASSIFICATION.

¹² The applicable minimum wage for company drivers is the FLSA rate of \$7.25 per hour, with the exception of company drivers who are based out of TransAm’s facility in Tampa, Florida, where the minimum wage is higher. For those drivers, TransAm uses the Florida minimum wage rate. (McFarland Tr. [**Ex. 6**] at 34:9-12).

¹³ TransAm performs the same analysis and makes the same “minimum wage adjustments” for company drivers in orientation. (McFarland Tr. [**Ex. 6**] at 47:8-24).

119. When TransAm recruiters identify individuals early in the recruitment process as being interested in TransAm's independent contractor program, they are required to participate in orientation at TransAm's facility in Olathe, Kansas. That orientation lasts two days.

Citations: Eagan Tr. [**Ex. 1**] at 47:12-48:8; McFarland Tr. [**Ex. 6**] at 8:21-9:1, 11:23-12:10, 19:18-20:1.

120. Although TransAm purportedly trains new lease drivers solely at its facility in Olathe, approximately 30 percent of drivers who participate in TransAm's company driver orientation in Rockwall and Tampa emerge from that program as lease drivers.

Citations: Crandall Rebuttal [**Ex. 7**] at 9:11-12; Attendance Records [**Ex. 21**].

121. At the lease driver orientation, lease drivers are provided with copies of TransAm's Owner Operator's Information Handbook, which contains numerous rules, instructions, and policies. These include, *inter alia*:

- a. policies on how to complete TransAm's duty logs and trip sheets;
- b. where to park personal vehicles at TransAm's facilities;
- c. how to plan "off duty" hours;
- d. the circumstances in which drivers are permitted to have passengers in their trucks;
- e. how, where, and when paperwork must be submitted to TransAm; and
- f. instructions on safe driving techniques.

Citations: Owner Operator Handbook [**Ex. 44**] at 1-4, 1-12, 1-15, 2-1, 2-4, 2-18 through 2-23, 3-1, 3-7 through 3-16, 3-20 through 3-22, 7-8 through 7-19.

122. TransAm's lease drivers are required to sign a receipt acknowledging that they have received and reviewed a copy of the Owner Operator's Information Handbook. That receipt

states that the signatory lease drivers “agree to follow and abide by all of the policies and procedures set forth in the Handbook and understand that [their] failure to do so may result in termination of my Independent Contractor Agreement.”

Citations: Owner Operator’s Information Handbook Receipt [DEF50061], attached as **Exhibit 57**.

123. In addition to these requirements, TransAm also advertises that lease drivers are “[r]equired to take [their] tractor and trailer home during home time and must have [a] secure place to park the equipment at [their] home location.”

Citations: “Trucking is a Noble Profession” at p. 2, attached as **Exhibit 58**.

124. TransAm allows drivers to switch between employee and contractor status, all while continuing to work for the company and potentially even driving the same truck.

Citations: McElliott Tr. [**Ex. 4**] at 17:12-18:15; McFarland Tr. [**Ex. 6**] at 23:2-9.

125. TransAm pays company drivers and lease drivers in the same manner (per practical mile), on the same schedule (weekly), defines what constitutes a “payroll week,” and unilaterally sets the per-mile rate that they receive.

Citations: McFarland Tr. [**Ex. 6**] at 33:11-14, 37:16-38:17; Company Driver Handbook [**Ex. 30**] at 2-1 through 2-6; Owner Operator Handbook [**Ex. 44**] at 2-4, 2-9; ICA [**Ex. 48**] at ¶ 3 & Exhibit C.

126. TransAm offers many of the same monetary incentives to company drivers as it does to lease drivers. For example, both company drivers and lease drivers are eligible to receive incentive payments when they refer experienced drivers to TransAm or ONE Leasing. They are also eligible to receive monetary “stop pay” and “layover pay” bonuses, as well as “retention bonuses.”

Citations: Company Driver Handbook [Ex. 30] at 2-5 through 2-6; Owner-Operator Handbook [Ex. 44] at 2-10 through 2-11.

127. TransAm maintains pay records for lease drivers and instructs lease drivers that they must access their pay statements using TransAm's online payroll portal.

Citations: Owner-Operator Handbook [Ex. 44] at 2-1 through 2-2.

128. TransAm prohibits both company drivers and lease drivers from having certain items in their trucks, such as alcohol or firearms.

Citations: Company Driver Handbook [Ex. 30] at 1-7; Owner-Operator Handbook [Ex. 44] at 3-22; ICA [Ex. 48] at ¶ 22.

129. Certain of TransAm's driver managers are responsible for managing both company drivers and lease drivers.

Citations: McFarland Tr. [Ex. 6] at 27:8-12.

130. None of the six named plaintiffs have a college degree.

Citations: McRoberts Tr. [Ex. 12] at 19:1-4; Coleman Tr. [Ex. 9] at 9:25-10:5; Council Tr. [Ex. 11] at 11:6-17; Roberts Tr. [Ex. 13] at 11:21-22; Bradley Tr. [Ex. 8] at 11:25-12:1; Colvin-Williams Tr. [Ex. 10] at 11:25-13:8.

Respectfully submitted,

KIRK ROBERTS, FARAJI ARTURO COUNCIL,
TERRENCE COLVIN-WILLIAMS,
REGINALD BRADLEY, DAVID COLEMAN, and
CARL McROBERTS JR., on behalf of themselves
and all others similarly situated,

By their attorneys,

/s/ Brendan J. Donelon
Brendan J. Donelon, KS #17420
DONELON, P.C.
4600 Madison, Ste. 810
Kansas City, Missouri 64112
Tel: 816-221-7100
Fax: 816-709-1044
brendan@donelonpc.com

Hillary Schwab, BBO #666029*
Brant Casavant, BBO #672614*
Rachel Smit, BBO #688294*
FAIR WORK, P.C.
192 South Street, Suite 450
Boston, MA 02111
Tel: 617-607-3260
Fax: 617-488-2261
hillary@fairworklaw.com
brant@fairworklaw.com
rachel@fairworklaw.com

**Admitted pro hac vice*

Dated: October 31, 2022.

DocuSign Envelope ID: CEAECBE4-F58E-4584-85CF-2A2A17D9E8E8

EXHIBIT 16



EXHIBIT 16**Fuel Discount Program**

TransAm Trucking has an extensive fuel network offering discounts at over 1,000 fuel locations nationwide if you choose to purchase your fuel in the network. 100% of all fuel discounts are passed on to owner-operators. Discounts can exceed \$.20 per gallon.

Fuel Optimization Program

TransAm Trucking also offers an optional fuel optimization program that will recommend the best fuel prices along the routes that you run. You can purchase the optimization solutions and have them transmitted via the mobile communications system for \$3.00 per week. This program takes fuel taxes into consideration when making recommendations thus providing the ultimate lowest cost to the driver. Regardless of your decision to purchase the fuel optimization program, owner-operators receive 100% of all fuel discounts, if you elect to purchase your fuel in TransAm's discount fuel network.

Fuel Taxes

You are responsible for payment of \$.01 per mile for fuel taxes. TransAm Trucking will withhold and file all taxes. Individual fuel taxes will be reconciled quarterly.

Fuel Surcharge Program

TransAm Trucking offers its drivers a fuel surcharge program to help reduce the impact fluctuating fuel prices can have on your business. The surcharge is based on the Department of Energy national average on highway diesel prices as published by the U.S. Energy Information Administration. It is updated weekly.



Contact us today at **913.324.7110** or visit us online at **TransAmTruck.com**

TransAm**EXHIBIT 16****THE POWER OF PURPOSE**

Trucking is a noble profession and truck drivers are noble people. That's why TransAm is driven to treat you with respect by providing top-of-the-line equipment and more.



Hiring Owner Operators, Company Drivers and Recent Driving School Graduates!

Company Drivers enjoy the following benefits:

- Experienced - 32 cents per mile (incl. per diem)
- Recent CDL Graduates - 31 cents per mile (incl. per diem)
- \$2,500 sign-on bonus
- \$100 monthly retention bonus after one year
- Pay raises at specific intervals based on length of service
- \$50 layover pay
- \$20 per pickup/stop (after first)
- Paid tolls
- 100% lump sum reimbursement
- No hazmat
- Health, dental, life, and voluntary supplemental benefits
- 401(k) retirement plan with company match
- Paid vacation

Recent CDL Graduates find success at TransAm:

- Paid orientation
- Personalized classroom training
- Industry experienced instructors
- Tuition reimbursement program

Owner Operators are eligible for:

- \$1.04 per mile loaded & empty
- \$2,500 sign-on bonus
- \$125 monthly retention bonus after one year
- Fuel surcharge paid (loaded & empty)
- Discount fuel network
- Paid base plates & permits
- Bonus program
- 100% lump sum reimbursement
- \$40 stop pay (after first stop)
- Paid reefer fuel & tolls
- Tax advantages
- No hazmat
- Passenger plan

Top-of-the-line equipment:

- Kenworth T680 with automatic transmission
- Auxiliary power unit and inverter
- Refrigerator
- Satellite radio availability
- Onboard voice navigation system

NOBLE PEOPLE WITH A NOBLE PURPOSE.

913-324-7110 | www.transamtruck.com

All amounts stated herein represent gross pay and are subject to change, and may be subject to Federal, state, and local tax and other withholding requirements or driver-authorized deductions. Nothing contained herein is any warranty or guaranty of the amount that an individual will actually earn. There are many factors that can significantly affect the amount an individual will actually earn and the success of an individual.

DEF-00046171

TRANSAM TRUCKING OWNER OPERATOR DRIVING POSITION**EXHIBIT 16*****TransAm Trucking Owner Operator Truck Driver Jobs*****New drivers are now eligible for \$5,000 in sign-on incentives!**

TransAm Trucking, a leading refrigerated carrier, has owner operator truck driver opportunities available now for CDL-A drivers!

Apply today and enjoy life on the road with competitive pay and plenty of great driver rewards:

Owner Operator CDL-A Truck Drivers Enjoy:

- \$1.04/mile loaded & empty
 - Increased to \$1.09/mile loaded and empty after 6 months of continuous service
- \$5,000 sign-on bonus
- \$250/month retention bonus after the final month installment of the sign-on bonus
- Fuel surcharge paid (loaded and empty)
- Paid base plates & permits
- Optional discount fuel network
- Bonus program
- 100% lumper reimbursement
- No hazmat
- \$40 Stop Pay (after 1st stop)
- Paid reefer fuel & paid tolls
- Free Transflo remote paperwork processing
- Passenger plan
- Late-model leasing opportunities available

Owner Operator CDL-A Truck Driver Job Requirements:

- Valid CDL-A
- Minimum 21-years-old
- No DUI convictions in last 2 years
- No more than 1 preventable accident in the last 6-month period
- No more than 2 preventable accidents in the last 12-month period
- No more than 3 moving violations in 3-year period
- No reckless driving violations in the last 5 years
- DOT physical & drug screen required
- Required to take the tractor and trailer home during home time and must have secure place to park the equipment at home location

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EXHIBIT 16

TransAm Trucking

[View email in your browser.](#)

Trucking is a Noble Profession.

TransAm Trucking is seeking Owner Operators, Company Drivers, and recent CDL Graduates for long-haul career opportunities. TransAm drivers have access to everything they need to enjoy life on the road, including competitive pay and top-of-the-line equipment.

TransAm Trucking Equipment

We offer Kenworth T680 trucks equipped with PACCAR MX engines to save fuel and cut down on noise. All trucks are outfitted with features such as:

- Automatic Transmissions
- APUs
- Condo Cabs
- Dual Bunks
- Refrigerators
- CD Players
- Power Inverters
- Satellite Radio Availability
- Automatic 5th Wheel Release

Owner Operators are eligible for:

- \$1.07 per mile Loaded and Empty
- Increased to \$1.12/mile loaded and empty after 6 months of continuous service
- Fuel Surcharge Paid (Loaded and Empty)

Company Drivers enjoy the following benefits:

- Experienced - 32 cents per mile loaded and empty (includes per diem)
- \$200 Monthly Retention Bonus after 1 year of continuous service

8/18/2021

- \$250 Monthly Retention Bonus after 1 year of continuous service
- Optional Discount Fuel Network
- Bonus Programs
- 100% Lumper Reimbursement
- No Hazmat
- \$40 Stop Pay (after 1st stop)
- Paid Reefer Fuel & Paid Tolls
- Tax Advantages
- Free Transflo Remote Paperwork Processing
- Passenger Plan
- Required to take the tractor and trailer home during home time and must have secure place to park the equipment at home location
- \$50 Layover Pay
- \$20 Per Pickup/stop (after 1st Stop)
- 100% Lumper Reimbursement
- No Hazmat
- Medical, Dental, and Life Insurance Options
- 401(k) Retirement Plan
- Paid Time Off
- Required to take the tractor and trailer home during home time and must have secure place to park the equipment at home location

EXHIBIT 16

To learn more about driving opportunities, contact TransAm today at 913-324-7110!

[CLICK HERE TO APPLY NOW](#)

Other qualifications apply, ask recruiter for details.

*All amounts stated herein represent gross pay and are subject to change, and may be subject to Federal, state, and local tax and other withholding requirements or driver-authorized deductions. Nothing contained herein is any warranty or guaranty of the amount that an individual will actually earn. There are many factors that can significantly affect the amount an individual will actually earn and the success of an individual. TransAm Trucking is an Equal Opportunity Employer.

TRANSAM

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Our mailing address is:

{{{Organization.Address}}}

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6/8/2021

Web'nTransit - Settlement History

EXHIBIT 25**TRANSAM**

Settlement Sheet for 10/31/2019 @ 17:04

DATE: 10/31/19

TIME: 17:04:16 HUBH

TRANSAM TRUCKING, INC.
DRIVERS PAYROLL RECAP
PAYROLL ENDING 11/01/19PYRP33
PAGE 132

EMPLOYEE: COLD16 DAVID COLEMAN

REDACTED

REDACTED

REDACTED

EARNINGS:

ORDER NUMBER	DATE	TYPE OF PAY	EMPTY MILES	LOADED MILES	PAY QTY	RATE	TAXABLE EARNINGS	NON TAXABLE EARNINGS
		ORIENTATION PAY			2.00	50.00000	100.00	.00
		MIN WAGE ADJUST			1.00	3.07000	3.07	.00
							103.07	.00
TOTAL GROSS PAY:								103.07

TAXES:

FEDERAL:	.00	
FICA:	7.88	
STATE:	.60	
LOCAL:	.00	
TOTAL:	8.48	TOTAL TAXES: 8.48-

REIMBURSEMENTS:

PART 02	10/28/19	MISCELLANEOUS	FOOD CV	25.00	
				25.00	TOTAL REIMBURSEMENTS: 25.00

DEDUCTIONS:

ADV 52	10/28/19	EXPRESS PAY RE	PER CV	25.00	
				25.00	TOTAL CHARGES: 25.00-

NET EARNED: 94.59
AMOUNT WIRED: 94.59

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Logout



6/8/2021

Web'nTransit - Settlement History

EXHIBIT 25**TRANSAM**

Settlement Sheet for 06/27/2019 @ 15:43

DATE: 6/27/19

TIME: 15:43:24

MENTEE

TRANSAM TRUCKING, INC.

DRIVERS PAYROLL RECAP

PAYROLL ENDING 6/28/19

PYRP33

PAGE 134

EMPLOYEE: CURJOH JOHN CURTIS

REDACTED

REDACTED

REDACTED

EARNINGS:

ORDER NUMBER	DATE	TYPE OF PAY	EMPTY MILES	LOADED MILES	PAY QTY	RATE	TAXABLE EARNINGS	NON TAXABLE EARNINGS
		FLAT PAY			5.00	50.00000	250.00	.00
							250.00	.00
							TOTAL GROSS PAY:	250.00

TAXES:

FEDERAL: .00

FICA: 19.13

STATE: 1.00

LOCAL: .00

TOTAL: 20.13

TOTAL TAXES: 20.13-

REIMBURSEMENTS:

ADV 01	27518	DHR3182	6/18/19	ADVANCE	VD CHCK	100.00		
ADV 99			6/28/19	AUTO ADVANCE		35.13		
						135.13	TOTAL REIMBURSEMENTS:	135.13

DEDUCTIONS:

ADV 52			6/16/19	EXPRESS PAY RE	PER NM	165.00		
ADV 01	27518	DHR3182	6/18/19	ADVANCE	0000000 19061831885990	100.00		
ADV 01	27518	DHR3182	6/18/19	ADVANCE	0000000 19061841861700	100.00		
						365.00	TOTAL CHARGES:	365.00-

NET EARNED: .00

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EXHIBIT 25

6/8/2021

Web'nTransit - Settlement History



Settlement Sheet for 01/09/2020 @ 15:32

DATE: 1/09/20
TIME: 15:32:53

TADRVR

TRANSM TRUCKING, INC.
DRIVERS PAYROLL RECAP
PAYROLL ENDING 1/10/20PYRP33
PAGE 124

EMPLOYEE: COLTE TERRENCE COLVIN

REDACTED

REDACTED

EARNINGS:

ORDER
NUMBER

DATE

TYPE OF PAY

EMPTY LOADED
MILES MILESPAY
QTY

RATE

TAXABLE
EARNINGSNON
TAXABLE
EARNINGSMIN WAGE ADJUST
ORIENTATION PAY

1.00

8.00000

8.00

.00

1.00

50.00000

50.00

.00

58.00

.00

TOTAL GROSS PAY:

58.00

TAXES:

FEDERAL:

.00

FICA:

4.44

STATE:

.00

LOCAL:

.00

TOTAL:

4.44

TOTAL TAXES:

4.44-

NET EARNED:

53.56

AMOUNT WIRED:

53.56

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EXHIBIT 25

6/8/2021

Web'nTransit - Settlement History



Settlement Sheet for 01/16/2020 @ 16:42

DATE: 1/16/20

TIME: 16:42:49

TADRV

 TRANSAM TRUCKING, INC.
 DRIVERS PAYROLL RECAP
 PAYROLL ENDING 1/17/20

PYRP33

PAGE 138

EMPLOYEE: COLTE TERRENCE COLVIN

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

EARNINGS:

ORDER
NUMBER

DATE

TYPE OF PAY

EMPTY LOADED
MILES MILESPAY
QTY

RATE

TAXABLE
EARNINGSNON
TAXABLE
EARNINGS

ORIENTATION PAY

2.00

50.00000

100.00

.00

100.00

.00

TOTAL GROSS PAY:

100.00

TAXES:

FEDERAL: .00

FICA: 7.65

STATE: .00

LOCAL: .00

TOTAL: 7.65

TOTAL TAXES:

7.65-

 NET EARNED: 92.35
 AMOUNT WIRED: 92.35

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EXHIBIT 25

6/8/2021

Web'nTransit - Settlement History



Settlement Sheet for 03/16/2021 @ 15:29

DATE: 3/16/21
TIME: 15:29:16

HENT

TRANSAM TRUCKING, INC:
DRIVERS PAYROLL RECAP
PAYROLL ENDING 3/16/21PYRP33
PAGE 95

EMPLOYEE: COLTE TERRENCE COLVIN

REDACTED

REDACTED

EARNINGS:

ORDER NUMBER	DATE	TYPE OF PAY	EMPTY MILES	LOADED MILES	PAY QTY	RATE	TAXABLE EARNINGS	NON TAXABLE EARNINGS
		MIN WAGE ADJUST			1.00	25.33000	25.33	.00
							25.33	.00
							TOTAL GROSS PAY:	25.33

TAXES:

FEDERAL:	.00
FICA:	1.94
STATE:	.00
LOCAL:	.00
TOTAL:	1.94

TOTAL TAXES: 1.94-

NET EARNED: 23.39

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Shipping Details

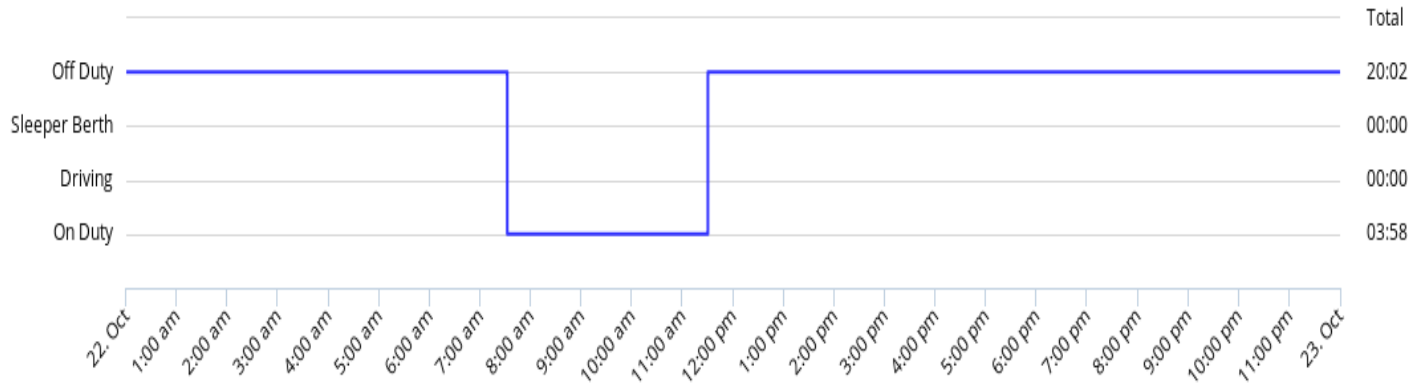
Driver	Co Driver	Vehicle	Trailer	Shipping Doc. No.	Carrier	Carrier Details	Regulations
DENNIS HUBBARD - HUBDEN		22017			TransAm Trucking, Inc.	15910 S. Hwy 169 Olathe, KS 66062 (DOT: 315503)	US - FMCSA 395 (8 / 70)
DENNIS HUBBARD - HUBDEN		9011			TransAm Trucking, Inc.	15910 S. Hwy 169 Olathe, KS 66062 (DOT: 315503)	US - FMCSA 395 (8 / 70)
DENNIS HUBBARD - HUBDEN		9056			TransAm Trucking, Inc.	15910 S. Hwy 169 Olathe, KS 66062 (DOT: 315503)	US - FMCSA 395 (8 / 70)
DENNIS HUBBARD - HUBDEN		9056	102416	2491085	TransAm Trucking, Inc.	15910 S. Hwy 169 Olathe, KS 66062 (DOT: 315503)	US - FMCSA 395 (8 / 70)

Daily Duty Summary

SORTED BY: Start , latest first

Start	Distance	Start Odometer	End Odometer	Driving	On-Duty	Sleeper	Off Duty	Signed
10/22/2021	0.0	0.0	457,318.8	00:00	03:58	00:00	20:02	Yes

Oct 22, 2021 12:00 AM - Oct 23, 2021 12:00 AM



Duty State Changes

Time	Duty State	Duration	Location	Remarks
12:00 AM	Off Duty	07:32	1.3 mi SSW Rockwall, TX	
07:32 AM	On Duty	03:58	1.3 mi SSW Rockwall, TX	edit
11:30 AM	Off Duty	07:13	1.3 mi SSW Rockwall, TX	edit
03:56 PM	Off Duty		1.3 mi SSW Rockwall, TX	
06:43 PM	Personal Conveyance	02:43	2.1 mi N Jacinto City, TX	home
09:26 PM	Off Duty	02:34	1.9 mi SE Kirbyville, TX	home

Shipping Details

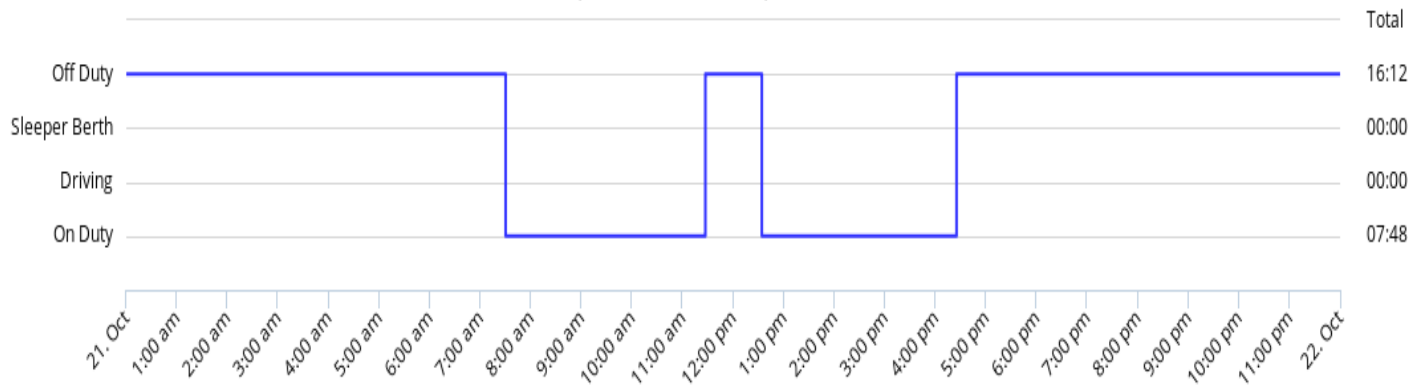
Driver	Co Driver	Vehicle	Trailer	Shipping Doc. No.	Carrier	Carrier Details	Regulations
DENNIS HUBBARD - HUBDEN		9011			TransAm Trucking, Inc.	15910 S. Hwy 169 Olathe, KS 66062 (DOT: 315503)	US - FMCSA 395 (8 / 70)
DENNIS HUBBARD - HUBDEN		9011	100919	100919	TransAm Trucking, Inc.	15910 S. Hwy 169 Olathe, KS 66062 (DOT: 315503)	US - FMCSA 395 (8 / 70)
DENNIS HUBBARD - HUBDEN		9013			TransAm Trucking, Inc.	15910 S. Hwy 169 Olathe, KS 66062 (DOT: 315503)	US - FMCSA 395 (8 / 70)

Daily Duty Summary

SORTED BY: Start , latest first

Start	Distance	Start Odometer	End Odometer	Driving	On-Duty	Sleeper	Off Duty	Signed
10/21/2021	0.0	0.0	0.0	00:00	07:48	00:00	16:12	Yes

Oct 21, 2021 12:00 AM - Oct 22, 2021 12:00 AM



Duty State Changes

Time	Duty State	Duration	Location	Remarks
12:00 AM	Off Duty	07:30	1.3 mi SSW Rockwall, TX	

Duty State Changes

Time	Duty State	Duration	Location	Remarks
07:30 AM	On Duty	03:57	1.3 mi SSW Rockwall, TX	
11:27 AM	Off Duty	01:07	1.3 mi SSW Rockwall, TX	
12:34 PM	On Duty	03:51	1.3 mi SSW Rockwall, TX	
04:25 PM	Off Duty	07:35	1.3 mi SSW Rockwall, TX	

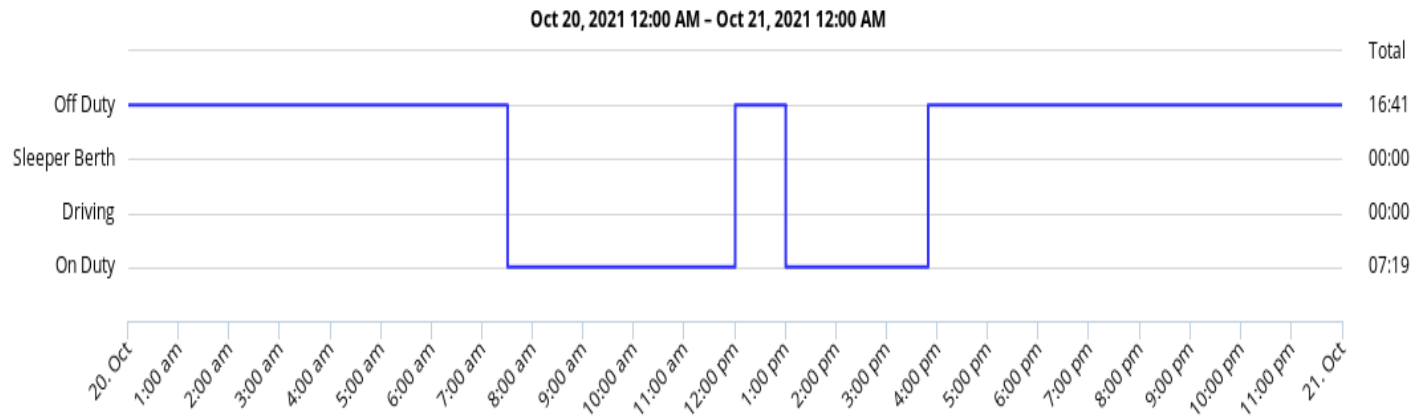
Shipping Details

Driver	Co Driver	Vehicle	Trailer	Shipping Doc. No.	Carrier	Carrier Details	Regulations
DENNIS HUBBARD - HUBDEN		9013			Unknown		US - FMCSA 395 (8 / 70)
DENNIS HUBBARD - HUBDEN		9013	100919		Unknown		US - FMCSA 395 (8 / 70)
DENNIS HUBBARD - HUBDEN		9013			Unknown		US - FMCSA 395 (8 / 70)
DENNIS HUBBARD - HUBDEN		9013			TransAm Trucking, Inc.	15910 S. Hwy 169 Olathe, KS 66062 (DOT: 315503)	US - FMCSA 395 (8 / 70)

Daily Duty Summary

SORTED BY: Start , latest first

Start	Distance	Start Odometer	End Odometer	Driving	On-Duty	Sleeper	Off Duty	Signed
10/20/2021	0.0	0.0	0.0	00:00	07:19	00:00	16:41	Yes



Duty State Changes

Time	Duty State	Duration	Location	Remarks
12:00 AM	Off Duty	07:30	ROCKWALL, TX	class
07:30 AM	On Duty	04:30	rockwall tx	class
12:00 PM	Off Duty	01:00	rockwall tx	class
01:00 PM	On Duty	02:49	rockwall tx	
03:49 PM	Off Duty	08:11	1.3 mi SSW Rockwall, TX	

TransAm

EXHIBIT 27

TransAm Training Program Schedule

2-Day Orientation

- ❖ Drug Test
- ❖ TransAm Policies and Procedures
- ❖ Payroll/Settlements
- ❖ Safety videos
- ❖ Mobile Communications
- ❖ Accident Prevention
- ❖ Time Management
- ❖ ELDs
- ❖ Driver Safety
- ❖ Trip Paperwork

Training

- ❖ Classroom Instruction
- ❖ General Driving Skills
- ❖ Backing Maneuvers
- ❖ Coupling and Un-coupling
- ❖ Refrigeration Operation (Reefer Trailers)
- ❖ Sliding Tandems
- ❖ APU Operation and Inspection
- ❖ Truck and Trailer Inspections
- ❖ In-Cab Operations
- ❖ Mirror Check Station
- ❖ Load Securement (Locks)
- ✓ Travel and motel provided
- ✓ Breakfast provided at the motel during orientation
- ✓ Lunch provided at the terminal during orientation and training
- ✓ Breakfast provided at the motel during training
- ✓ Graduates are paid weekly every Friday

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Arrive at Motel	Orientation	Orientation	Training	Training	Training	Training
Training Completed	Fill Trucks					



EXHIBIT 44

Owner Operator's Information Handbook



TransAm Trucking, Inc.

June 2021 / Version 16.0



EXHIBIT 44

Introduction

Chapter 1 - Introduction

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Rockwall	4
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Driver's Personal Belongings	5
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Unloading.....	14
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Fuel Optimizer	16
Reefer Fuel.....	16
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State Abbreviations	20



EXHIBIT 44

Introduction

Welcome

WELCOME TO THE TRANSAM FAMILY

When Johnny and Trudy Jacobson started TransAm in the fall of 1987, they envisioned a place where each person had the opportunity to be successful...to be respected...and to be appreciated. This is the same philosophy we believe in today.

Our formula for success has been simple.

- Treat people fairly
- Keep the lines of communication open
- Be consistent in how we handle every situation from dispatching loads to meeting personal needs

It is our goal to have the safest operation possible with your safety and the public's safety as our main values. At the same time we will strive to meet our customers' expectations by picking up and delivering their loads on time – damage free! Our drivers have worked extremely hard in making TransAm one of the safest fleets with one of the highest percentages of on-time deliveries. We hope you will share in their tremendous sense of personal pride and Esprit-de-corps.

Because of the dedicated people in our organization – both drivers and support staff, I am very confident of a great future ahead, and we will continue to live by our three most important rules:

- Do what's right
- Treat people like we want to be treated, and
- Do the best that we can

WELCOME TO OUR FAMILY!

Sincerely,

Russ McElliott
President



EXHIBIT 44

Introduction

Your Driver Manager

Your Driver Manager is your primary contact at TransAm and is here to help you. Any questions that you have and all issues that affect your success should be discussed with your Driver Manager.

You can contact your Driver Manager directly via mobile communication during his/her assigned work shift. Just send a text message on your Garmin device and the message will be routed to your Driver Manager. When your Driver Manager is away from his/her desk during the day, your mobile communications messages are routed to another Driver Manager so that you are provided with continuous coverage. After your Driver Manager leaves for the day and during the weekend, your mobile communication messages are routed to Night/Weekend Dispatch personnel.

You can also contact dispatch by phone at 913-324-7070. Your call will be routed to the first available Driver Manager so you are provided with prompt service. If all Driver Managers are busy helping other drivers, you will be presented with a call-back option and you will be called back by the first available Driver Manager without having to wait on hold.

Your Driver Manager has the skills and resources to help you be successful. Communicate your needs and let your Driver Manager go to work for you. Your Driver Manager's success is measured by your success.



EXHIBIT 44

Introduction

Contact and Phone List

<u>Department</u>	<u>Phone Number</u>	<u>Fax Number</u>
Main	913-782-5300	
Fleet Management.....	913-324-7070	
ONE Leasing.....	913-324-7122	
Settlements.....	913-324-7026	
Permits	913-324-7056	
Risk Management	913-324-7155	
Road Assist	913-324-7159	913-324-7194
Safety/Logs	913-324-7060	
Training/Development (KS)	913-324-7127	
Training/Development (TX)	972-961-9075	

**EXHIBIT 44***Introduction***Personal Vehicle Parking****Olathe**

- Park in the designated parking lot located at the northwest corner of the terminal parking.
- Drivers loading and unloading personal gear can park in the parking lot near the covered loading and unloading area.
- Vehicles must be drivable with a valid registration.
- Vehicles must have a TransAm parking decal. The decal is to be placed on the driver's side back window. Vehicles without the proper decal will be towed away at the owner's expense.
- Personal vehicles are not allowed inside the fenced area of the terminal.
- Tractors are not allowed in the personal or office parking area.
- All vehicles must be headed into the parking space. No vehicle is to be backed into the space. Any vehicle found backed in will be towed away at the owner's expense.
- Vehicles found on the property once an independent contractor agreement is terminated will be removed immediately.

Rockwall

- Park in the designated parking lot behind the main building.
- Vehicles must be drivable with a valid registration.
- Tractors are not allowed in the personal or office parking area.
- Vehicles must have a TransAm parking decal. The decal is to be placed on the driver's side back window. Vehicles without the proper decal will be towed away at the owner's expense.
- Vehicles found on the property once an independent contractor agreement is terminated will be removed immediately.

Tampa

- Due to limited space, driver personal vehicles are not permitted to park at the terminal.
- Tractors are not allowed in the personal or office parking area.
- Unauthorized vehicles found on the property will be removed immediately.



EXHIBIT 44

Introduction

Your Off-Duty Time – How you spend your off-duty time can play a part in fatigue management. We all have things we enjoy doing, plus responsibilities we need to take care of, but it is important to plan enough time for sleeping when off duty.

Instead of doing things that will wear you out right before a trip (like rushing to get yard work or housework done), plan relaxing activities so you aren't stressed out at the end of your rest time.

Stress – Fatigue is commonly considered a physical problem, but stress can be a big contributor too. You may not feel physically tired, but stress can tire you out mentally and emotionally, making you feel drained. As stress builds up, you become distracted. Keeping things bottled up only makes the problem worse, and soon you lose concentration, alertness and stamina.

Sometimes stress can bring out the best in a driver, for example, when driving in adverse weather conditions (snow/ice storm, fog, driving rain, etc.) or heavy traffic. Once the need to be on a heightened level or alertness passes, you may experience stress-induced fatigue – a condition that can lead to mistakes. A driver might travel for hours through a blinding snowstorm, and then end up in a ditch just a few miles from home.

Letting down your guard too soon is an easy mistake that should be avoided. Driving under the influence of fatigue can be deadly, both for you and others on the road.

The following are four signs that it's time to pull over immediately:

- Your eyes occasionally lose focus.
- You yawn frequently or repeatedly.
- You make stupid mistakes, like missing your exit.
- You experience highway hypnosis.

The following are some signs that you are fatigued and shouldn't be on the road at all:

- You find yourself weaving and drifting across lanes;
- Your eyes start to play tricks on you – an exit ramp might look like your lane, or a road sign may look like a person;
- You see “phantom” vehicles and jerk to attention, wondering what just happened;
- You can't concentrate for more than a few seconds;
- Your eyelids feel unbearably heavy, occasionally even closing by themselves; or
- Your head falls toward your chest, and you may actually doze off.

If you wait for these symptoms of fatigue before pulling off, you're putting your life in jeopardy. Also keep in mind that you're not the only one who gets tired on the road. Pay attention to other drivers.

**EXHIBIT 44***Introduction***Passenger Policy**

TransAm Trucking believes that a controlled passenger program is a worthwhile reward for our valued drivers who have demonstrated trust, reliability, a consciousness of safety as an attitude, and a daily appreciation of these qualities to the general public, our customers and the family of TransAm.

1. Authorization will not be granted for more than one person at a time.
1. Authorization will be limited to persons 10 years of age or older. Passengers will be restricted to the cab area of the equipment as no trespassing in the trailer equipment is permitted. While in the passenger seat, the seat belt must be strapped securely across the passenger's lap and/or shoulder. While in the sleeper berth, the passenger must remain seated in a reclined position.
2. Passenger authorization must be obtained from the Driver Payroll department prior to transporting the passenger. Minors must have permission of either their parent or legal guardian. As required by TransAm's insurance carrier, the driver must remit a fee of \$19 per calendar month when a passenger is on their truck. This fee covers any passenger during that month. When authorization is requested for multiple months, the total fee for all months is taken at one time. The authorization expires six months from the date documented on the passenger authorization form.
3. No blank rider pass will be issued.
4. All office employees must have authorization from the President before a rider pass will be issued.
5. This policy is applicable at all times when the driver is operating the vehicle, including home time.

It is understood, and mutually agreed, that unauthorized passengers are in direct violation of company and Federal Regulations (49 CFR 392.60).

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Settlements/Paperwork & Benefits

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EXHIBIT 44

Settlements/Paperwork & Benefits

Settlements Guidelines

Settlement Options

- EFS Card – Your payment for services is transmitted to your EFS card each Friday at noon.
- Direct Deposit – Your payment for services is transferred every Friday, with most banks posting it to your account by late Monday afternoon. There is no fee for this service.
- EFS card - Direct Deposit Yourself – Your payment for services is transmitted your EFS card each Friday at noon. You can then transfer a specified amount to your bank from your card.

Compensation

See Exhibit C (Compensation) in the Independent Contractor Owner-Operator Agreement.

Trip Paperwork

Please scan all trip paperwork as soon as possible after you are empty. In order to be paid, all trip documents must be turned into TransAm.



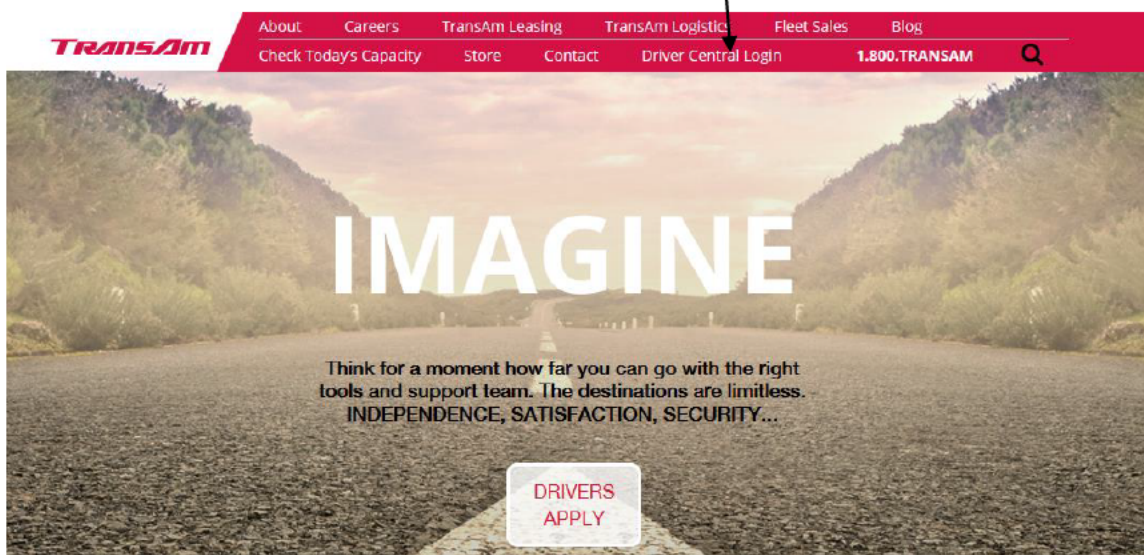
EXHIBIT 44

Settlements/Paperwork & Benefits

Accessing Your Settlement Information

Settlement information is available on the web at www.transamtruck.com. You will not receive settlement information in the mail nor can you receive it by calling the Settlements department.

Log into www.transamtruck.com and click on Driver Central Login.



Log into the Web'nTransit Login page by entering your Login ID (driver code) and Password (driver code followed by the last four digits of your social security number).



Web'nTransit Login

Login ID

Password



Then click on the Settlement History link on the left-hand side of the page.

To change your password, scroll to the bottom of your pay information and select Return to Menu. Then click on Change Password. If you forget your password, contact Driver Payroll at 913-324-7121.



EXHIBIT 44

Settlements/Paperwork & Benefits

Settlements FAQs, Description and Sample

FAQs

1) How do I view my settlement information?

Settlements are paperless. You can view them online at www.transamtruck.com. As long as you have a current settlement, you will have access to your settlements online.

- On our website homepage, log into Driver Central with your username and password. Your login is your driver code and your password is initially set up as your driver code followed by the last four digits of your social security number. You can change your password at any time.
- Click on Pay & Settlement Information on the left-hand side of the screen.

NOTE: There are computers in the Driver Center at both terminals that can be used to access your settlements via the internet.

2) What do I use for my taxes at the end of the year?

Please take the time to print your settlements off of the website; you will need them for tax purposes. We will also provide a Form 1099 by January 31st of the subsequent year.

3) When are settlements processed and can I view them through the satellite system?

After 8:00 am on Friday, you can request your current settlement amount and the trips that were paid by sending a 041 message via your mobile communications system. There will be a message sent out during holiday weeks if there are any changes in the timeframe.

4) How do I change my mailing address?

Send in a 039 message via your mobile communications system.

5) What do I have to do if I want someone else to have access to my settlement information?

If you want someone to have access to your information online, you must provide your username and password to that person.

If you want someone to be able to discuss your settlement with Settlements or ONE Leasing over the phone, you must send in a 039 message via your mobile communications system giving your permission. You must provide the person's name in your message.

6) How do I get copies of the work performed at the TransAm shop?

When having work done at the TransAm shop, obtain a copy of your "cost sheet" from the Service Writer for your records.



EXHIBIT 44

Settlements/Paperwork & Benefits

7) If I am a returning driver, do I need to complete the direct deposit information?

Yes. You must provide the direct deposit information (even if it has not changed).

8) What do I need to do to change the way my settlements are paid?

Contact the Independent Contractor Relations Manager and fill out a new Settlement Designation Authorization Form.

9) What is the cutoff for the settlement week?

All miles completed by Thursday at midnight and for which the trip paperwork is scanned at your next stop will be paid the following Friday.

10) What is the phone number for the Settlements Department?

913-324-7026

11) How do I make sure I get reimbursed for expenses such as lumpers and washouts?

Write your PO number on your receipt. On the Trip Sheet, fill in the bubble next to P.O.'s Yes. Then list your expenses (PO # and Amount) on the Trip Sheet. Then scan the receipt along with the Trip Sheet.

12) How do I make sure my scanning has gone through?

You will receive a receipt after you scan your document. Verify that the number of pages listed on the receipt matches the number of pages you scanned including the Trip Sheet.

13) What do I do if I registered a EFS check and then did not need it?

Send the original check to Settlements via U.S. mail or give it to Settlements personnel in person. Once Settlements has the original check, the amount can be moved from the EFS check to another one.

NOTE: As soon as the check is registered, it is sent to Settlements to be charged on your settlement. DO NOT destroy the check as it will delay us 30 days in getting your money back to you.

Description of fields on Settlement Sheet

#1 Order # – The trip number.

#2 Miles Loaded – The number of loaded miles for the trip.

#3 Miles Empty – The number of empty miles for the trip.

#4 Rate – The rate for loaded miles. It is the same rate for empty miles.



EXHIBIT 44

Settlements/Paperwork & Benefits

- #5 Add Pay – Other revenue amounts such as fuel surcharges, extra stops/pickups, lost utilization and bonuses.
- #6 Amount Due – The amount due to the owner/operator for each trip or for other revenue.
- #7 Indicates the total number of loaded miles being paid for the settlement.
NOTE: You must add the loaded and empty miles together for the total miles to be paid.
- #8 Indicates the total number of empty miles being paid for the settlement.
NOTE: You must add the loaded and empty miles together for the total miles to be paid.
- #9 Indicates the total amount of other revenue amounts for the settlement such as fuel surcharges, extra stops/pickups, lost utilization and bonuses.
- #10 Indicates the total amount of revenue earned on this settlement. This is NOT the amount that the owner/operator will receive. Reimbursements must still be added and charges deducted.

REIMBURSEMENTS SECTION

- #11 Description – A listing of reimbursements owed to the owner/operator. This may include:
- Trailer and Reefer Repairs
 - Lumpers
 - Trailer Washouts
 - Tolls
 - Faxes
 - Pallets
 - Gate Fees
 - Maintenance Escrow Offsets
- #12 Amount Reimbursed – The amount of each reimbursement.
- #13 Total Reimbursements – The total of all reimbursements. This amount will be added to the revenue.

CHARGES SECTION

- #14 Description – A description of all charges to be deducted from your Settlement. These may include:
- Lease Payment: This is your weekly truck payment. Check your Equipment Lease Agreement for the amount.
 - Lease Payment Miles: This is the weekly variable truck payment based on the miles driven and reconciled to the odometer reading on a periodic basis or at the end of the lease. Check your Equipment Lease Agreement for the cent per mile amount.
 - Physical Damage Insurance: This is the weekly physical damage insurance amount.
 - Occupational Accident: This is the weekly occupational accident insurance amount.
 - Bobtail/Deadhead Insurance: This is the weekly bobtail insurance amount.
 - Generator: This is the weekly payment for the generator (Auxiliary Power Unit or APU).



EXHIBIT 44

Settlements/Paperwork & Benefits

- Buy Down Insurance: This is the weekly payment for insurance that will lower your deductible in the event of an accident.
 - Fuel Optimizer: This is the weekly amount to subscribe to TransAm's fuel solution program. Federal Highway Use Tax: This is the weekly amount of the federal highway use tax for heavy highway vehicles.
 - Prepass: This is the weekly amount for the weigh station bypass system.
 - Owner Operator Fuel Tax: Owner/operators are responsible \$.01 per mile for fuel taxes.
 - TA PERFORMANCE ESCROW: This is an escrow account funded by the owner/operator. This is an interest-bearing account and the amount in the fund will be refunded upon completion or termination of the lease if all of the owner/operator's obligations have been satisfied.
 - ONE LEASING PERF: This is an escrow account funded by the lease/operator. This is an interest-bearing account and the amount in the fund will be refunded upon completion or termination of the lease if all of the owner/operator's obligations have been satisfied.
 - ONEL MAIN ESCROW – This is a maintenance escrow account funded by the owner/operator. This is an interest-bearing account and the amount in the fund will be refunded upon completion or termination of the lease if all of the owner/operator's obligations have been satisfied.
 - TA OPTIONAL MAINTENANCE – This is an optional maintenance savings account funded by the owner/operator. This is a non interest-bearing account and the amount in the fund will be refunded upon completion or termination of the lease if all of the owner/operator's obligations have been satisfied.
- #15 **AMOUNT** – The amount of each charge to be deducted from your settlement.
- Other charges:
- #16 **EFS check or cash advances** are listed with a 14-digit number. This *may* be followed by a duplicate 14-digit number that designates the fee that EFS charges.
- #17 **Fuel purchases** are listed by abbreviation of the city and state where the fuel is purchased. After the city and state, the TRAC will be listed followed by an eight-digit number.
- #18 **Total Charges** - The total of all charges to be deducted. This amount will be subtracted from the sum of the revenue and reimbursements.
- #19 **Total Amount Due Owner** – The final amount due to the owner/operator.
- #20 The balance of the owner/operator's escrow accounts.



EXHIBIT 44

Settlements/Paperwork & Benefits

Rate for Services and Rate Increases

Rate for Services

Payment of services to owner operators is \$1.07 cpm loaded and empty.

Rate Increase Eligibility – Safety Classes

As an independent contractor, you are not required to attend safety classes.

After the first six months of uninterrupted service, the rate per mile will be increased by \$.05 provided that the owner-operator has attended two of the quarterly safety classes during such six-month period.

At each anniversary date of the driver's contract, the rate per mile is increased by \$.01 up to a maximum of \$1.18 cpm. In order to receive the rate increase, owner operators must take all four quarterly safety classes during their contract year in addition to the Ethics and Technique class (E&T).

The quarterly and E&T classes can be taken online at <http://transamtruck.infinet-i.net/>

If you would like to take your online class using the PC located at the terminal, please see a member of the Training & Development department with assistance logging in. You can take your online class at the terminal Monday – Friday from 7 AM until 3:30 PM.



EXHIBIT 44

Settlements/Paperwork & Benefits

Other Payment Opportunities

\$40 Stop Pay

You are eligible for \$40 stop pay for each additional stop between the shipper and final delivery.

Driver Referral Program

If you are leasing a truck through ONE Leasing, Inc. and you refer an experienced driver to TransAm who signs a lease with ONE Leasing, Inc. during orientation, ONE Leasing, Inc. will waive one solo lease payment on your behalf once the referred driver completes 30 days of his/her lease.

If you refer an experienced driver to TransAm who brings his/her own truck to TransAm, you will receive \$300 after the referred driver has been contracted with TransAm for 30 days.

For every experienced, first-seat long haul employee driver you refer to TransAm, you will receive \$300 after the referred driver completed 30 days.

For every student graduate you refer to TransAm, you will receive \$75 after the driver is assigned to his/her own truck.

To qualify for the bonus, the driver you are referring must write your name and truck number on his/her application. You must be a TransAm owner operator at the time of payment to receive the bonus.

Independent Contractor Owner-Operator Extended Equipment Availability Pay – First 30 Days Under Contract Program (EEAP30)

In an effort to support you in getting your business off to a great start, we are offering an Extended Equipment Availability Pay – First 30 Days Under Contract program (“EEAP30”). Under this program, if you voluntarily elect to make your tractor(s) (driven by you or your employee) available for dispatch every day for the first 30 days following the inception of your Independent Contractor Owner-Operator Agreement (“ICA”), we will pay you \$500.00 (loaded on your EFS card). For all details, contact Independent Contractor Relations at 913-815-8848.

Independent Contractor Owner-Operator Extended Equipment Availability Pay – Calendar Month Program (EEAPCAL)

To give you an incentive to make your equipment available for extended periods of time, we are offering an Extended Equipment Availability Pay – Calendar Month program (“EEAPCAL”). Under this program, if you voluntarily elect to make your tractor(s) (driven by you or your employee) available for dispatch every day for any calendar month, we will pay you \$500.00 (loaded on your EFS card). For all details, contact Independent Contractor Relations at 913-815-8848.

**EXHIBIT 44***Settlements/Paperwork & Benefits*

Sign On Bonus

New drivers contracted with TransAm for less than one year and complete 30, 60, 90 and 120 days of service will receive \$1250 effective with their date of service. This bonus pays out two settlement pay dates after the driver's eligibility date. Rehired drivers are not eligible for this bonus and the driver must be contracted with TransAm at the time of payout to receive this bonus.

Retention Bonus

After your final month installment of your Sign-On bonus, you will receive a \$250 bonus every month you are contracted with TransAm. The eligibility date for Retention Bonuses start on the first of each month and you must be contracted with TransAm for the full calendar month to qualify for the retention bonus. This bonus will be paid on the 2nd settlement of the month. You must be contracted by TransAm at the time of payout to receive this bonus. Rehired drivers are not eligible for the Sign-On Bonus but will be eligible for the Retention Bonus immediately upon contracting with TransAm again.



EXHIBIT 44

Settlements/Paperwork & Benefits

Trip Sheet

A Trip Sheet must be completed for each trip. Complete one Trip Sheet per trip and scan all documents for each trip with its own Trip Sheet. Do not include multiple trips on one Trip Sheet. The Trip Sheet is the navigation for all the paperwork for a single trip. The documents scanned behind the Trip Sheet belong with the trip information listed on the Trip Sheet.

Please scan all trip paperwork as soon as possible after you are empty.

IMPORTANT: DO NOT mail the Trip Sheet in a TripPak box. After scanning, you may keep the Trip Sheet and original trip documents.

1. Print the following information on the Trip Sheet:
 - Driver Name
 - Driver Code
 - Trip Number
 - Tractor Number
2. Under the Trip Number and Tractor Number, completely fill in the bubble that corresponds to the number printed in each box.
3. **IMPORTANT:** If you have receipts, fill in the bubble next to P.O.'s Yes. If you do not have receipts, fill in the bubble next to P.O.'s No. Do not leave blank.
4. Next to the appropriate reimbursable expense under the PO # column, write the PO number issued to you.
5. Next to the appropriate reimbursable expense under the AMOUNT column, write the amount of the expense.
6. Ensure you have the following paperwork for the trip:
 - Bill of Lading
 - All original receipts for which you need to be reimbursed
7. Ensure your trip number is documented on your Trip Sheet, Bill of Lading, and all receipts.

NOTE: Do NOT include receipts for fuel and tolls (unless you paid cash) and equipment repairs (these are faxed to the Road Assist department.)

**EXHIBIT 44***Settlements/Paperwork & Benefits***Trip Sheet Sample**

ONLINTAMI

TRANSAMDriver Name: John DoeDriver Code: DOEJO**MUST BUBBLE IN YES OR NO**P.O.'s : ☒ Yes☐ No

Trip Number		Tractor Number	
1	1583093	1	93110
2	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>	2	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>
3	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>	3	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>
4	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>	4	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>
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6	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>	6	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>
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-NOTE-

If Yes, anything you want to be reimbursed must be listed on this form and receipts included.

DESCRIPTION OF ITEMS	PO #	AMOUNT
Lumper	551175	50.00
Scale (Company Drivers only)		
Trailer Washout	549684	31.00
Student Motel		
Motel (Company Drivers only)		
Load Locks (Company Drivers only)		
Tolls (if toll card not used)		
Pallets		
Fax		
Gate Fee		





EXHIBIT 44

Settlements/Paperwork & Benefits

Submitting Your Trip Documents

Trip documents **MUST** be scanned at one of the TransAm terminals, at TransFlo or TripPak scanning locations or from your personal laptop. They may also be sent from your Smart phone. Do **NOT** mail your trip documents in a TripPak box. After scanning, or sending by Smart phone you may keep the Trip Sheet and original trip documents.

IMPORTANT: You can scan legal-sized paper (8.5" x 14") at TransFlo scanning locations. This includes the TransAm terminals. Do not scan legal-sized paper at TripPak scanning locations. Their stations are configured to handle letter-sized (8.5" x 11") paper only.

TransFlo scanning locations can be found at www.transfloextap.com. You can search by zip code, city or state and see all of the TransFlo Extap truck stops in the region.

TransFlo scanning locations can also be found through Truck Stop Coupons, a free iPhone application available in the iTunes App Store. This application allows you to locate truck stops across the United States and which ones offer TransFlo scanning.

1. If you want to scan **your trip documents at one of the TransAm terminals**:
 - a. Remove all staples, paper clips, etc. from your documents.
 - b. Place your trip documents (Bill of Lading, and original receipts) behind the Trip Sheet. Make sure your trip documents are not folded over, dog-eared or otherwise illegible.
 - c. Place all documents face up in the scanner with the Trip Sheet on top.
 - d. Tap <F1> to indicate that you want to scan your documents.
 - e. When you are ready to scan, tap <F1> again. The system will scan your documents.
 - f. To view each of the scanned documents, tap <Page Down> to view each document.
 - g. If you need to re-scan all documents, tap <F5> and repeat steps 2-6.
 - h. If you need to re-scan specific documents or add additional documents, tap <F8> and repeat steps 2-6.
 - i. To obtain your receipt, tap <F1>.
 - j. To complete the transaction, tap <F1> again.
 - k. Retain the Trip Sheet and trip documents for your records.



EXHIBIT 44

Settlements/Paperwork & Benefits

2. If you want to **scan your trip documents at a truck stop**, place your trip documents (Bill of Lading, and original receipts) behind the Trip Sheet. Make sure your trip documents are not folded over, dog-eared or otherwise illegible. At some locations, you scan the documents yourself while at other locations the attendant at the fuel desk will scan them for you. In both instances, you will receive a receipt with a confirmation number once the documents have been scanned. There is no cost to the driver for scanning. After your trip documents have been scanned, retain the Trip Sheet and trip documents for your records.

If you notice that any of the documents were scanned improperly or that pages were not scanned, do **one** of the following:

- a. Re-scan **ONLY** the improperly scanned or missing pages.
- b. Cancel or void the incorrectly scanned job and then re-scan all documents.

Do not scan your trip documents multiple times. If you do so, this results in unnecessary cost and may cause confusion during settlement processing.

If you scan at a TransFlo location, you can view the scanned images for 14 days on the internet at www.transfloextap.com. Click on the link at the top that says "View Documents." Type in the confirmation number click the Submit button. When the screen appears, you should see "DELIVERED" beside it. You can also view the documents from this screen.

If you scan at a TripPak location, you can view the scanned images for 14 days on the internet at <https://www.trippak.com/DriverView/>. Type in the confirmation number in the Access Code area and click the Submit button

3. If you want to **scan your trip documents using your personal laptop**, you must have the following:
 - a. a laptop running Windows XP, Windows Vista or Window 7
 - b. a TWAIN-compliant scanner
 - c. internet connectivity via Wi-Fi or a broadband carrier (Verizon, AT&T, Sprint, etc.)
 TransAm does not supply any of the above.

Then contact the Fuel Manager at 913-393-6028 and you will be provided with instructions on setting up your scanner. Once you have scanned your documents, you can see your confirmation number under the Tools menu. Then select History. If you want to verify your scanning, send an e-mail to the Fuel Manager with the confirmation number. There is no cost to the driver for scanning. After your trip documents have been scanned, retain the Trip Sheet and trip documents for your records.

4. To **send in your trip documents using your Smart phone** follow these steps:



EXHIBIT 44

Settlements/Paperwork & Benefits

1. Download the TRANSFLO Now! app for your iPhone or Android phone at <http://www.pegasustranstech.com/products/transflo-now-mobile>. This app is free!
2. Register your e-mail address, name, driver code and fleet code. TransAm's fleet code is TAMM. A confirmation e-mail will be sent to you with a link. Click on this link to confirm the registration process.
3. When you are ready to send in your documents, complete the following steps:
 - Access the app.
 - Click on the Start Scan button. You can take a new photo of each document or import existing photos of the documents from your photo library. When taking a photo, place the document in a flat, dark, non-glare surface in a well-lit environment. Take a photo of the entire document with some background showing for edge detection. If necessary, rotate the image and adjust the border. When you are satisfied with the image, tap the Accept button. Repeat this process for each document. **IMPORTANT: You must scan the completed Trip Sheet!**
4. Once you have "scanned" all your documents, tap Continue and enter your trip number and tractor number. Then tap Next.
5. You will now see the document image and you must identify the document type by tapping "Tap here to select document type" and selecting the correct option. Options include the coversheet (aka Trip Sheet), BOL, Pallet Receipt, Fax Receipt, Unloading Receipt, Scale Ticket, Washout Receipt, Load Lock Receipt, Toll Receipt, etc. (You will need to scroll down to see all the options). Then tap Continue. Repeat for each document.
6. Once you have identified all documents, tap Send All Pages. You will be provided with a confirmation number on your phone. An e-mail will also be sent to you with a link to view your documents on the TransFlo Extap website. Your documents will be available for viewing on this site for 14 days.

**EXHIBIT 44***Settlements/Paperwork & Benefits***Trip Logging Form**

The Trip Logging Form is an example of a form to help you keep your trip information organized. It is not a requirement that you use this form or any similar form.

Trip Logging Form

Trip # _____	Loaded Miles _____	PU Date _____
Pay Date _____	Empty Date _____	Deadhead _____

Advances

Fuel

_____	_____
_____	_____
_____	_____

Expenses

Maintenance Expenses

_____	_____
_____	_____
_____	_____
_____	_____

Reimbursements

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____



EXHIBIT 44

Risk Management

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**EXHIBIT 44***Risk Management***G.O.A.L.****Get Out And Look**

The most frequent type of accident in trucking involves slow maneuvers such as backing or pulling into or out of parking spaces in confined areas such as parking lots. Backing accidents cause 500 deaths and 15,000 injuries every year, and the cost of a property damage crash is presently estimated at an average of \$7,400 per event.

There are many tips for preventing slow maneuver accidents but the most effective one is to **G.O.A.L. Get Out and Look**.

- Check completely around your truck and trailer for pedestrians, signs, poles, fences, or any other object that may be a hazard.
- Take your time and go slow. Do not be pressured by others who want you to rush.
- Use your mirrors effectively.
- Roll down your windows so you can hear and able to physically lean out to look for hazards.
- Use a spotter but do not rely on that spotter. You, as the driver, are 100% responsible for safely maneuvering your vehicle.
- You may need to **G.O.A.L.** more than once during a single maneuver. **G.O.A.L.** as many times as necessary to safely complete the maneuver. It is always worth the effort.

G.O.A.L.



EXHIBIT 44

Risk Management

Driver Safety

Three-Point Stance

The most frequent cause of driver injury at TransAm is falling out of or near the truck. In fact, approximately 60% of injuries to our drivers are the result of slips and falls around the truck. Most of these accidents are preventable using the 3-point stance when entering and exiting your truck. Please avoid wearing leather sole shoes or boots during snowy, icy, or rainy weather. Place any "carry on" items onto the truck seat before you attempt to enter the truck. In addition to using the 3-point stance, take short, deliberate steps while walking on ice or wet parking lots, and use your flashlight in dark parking lots.

An example of the 3-point stance is shown below.



Seatbelts

TransAm requires all drivers and occupants of the truck to engage their seatbelts while the truck is moving. Approximately 5,000 people are killed annually in crashes involving large trucks. About 20% of the fatalities in these crashes are occupants of the truck. Many truck occupants die because they fail to wear a seat belt.

G.O.A.L.



EXHIBIT 44

Risk Management

Lifting, Pushing and Pulling

Before any activity that requires physical exertion, warm up muscles and joints by stretching and bending. Cold weather requires even more stretching and warming up.

Lifting

1. Get a firm footing.
2. Bend your knees.
3. Tighten your stomach muscles.
4. Lift with your legs.
5. Keep your load close.
6. Keep your back upright.

Pushing and Pulling

1. Get a firm footing.
2. Use both hands if possible.
3. Gradually push or pull.

G.O.A.L.



EXHIBIT 44

Risk Management

Accident Prevention

- Before starting your trip, make sure that your mirrors are clean and adjusted properly. Use TransAm's mirror check stations located at the Olathe, Rockwall and Tampa terminals.
- While backing your truck, **G.O.A.L.** and assess the situation. Do not make the decision to "take a little chance."
- While changing lanes, make certain that you have cleared all traffic and make sure that it is really necessary to change lanes.
- While turning right, position your trailer to discourage traffic from passing on your right.
- When following others in traffic, allow enough distance to safely stop in the event of an emergency.
- Ensure that the posted speed limit is a safe speed for you to travel.

Mirrors

To operate a vehicle safely, drivers must make good decisions based upon what they can see. The view through the windshield lets the driver know what is ahead, but the rear view is limited to information provided largely by mirrors.

Ensure your mirrors are cleaned as needed.

Use your mirrors effectively and **G.O.A.L.** as many times as necessary to prevent slow maneuver accidents.

Adjusting Mirrors Without a Mirror Check Station

1. Park the tractor and trailer in a straight line.
2. Adjust your mirrors to show the area alongside the unit. Mirrors are properly adjusted when the rear corners of the body are just visible in the inside lower corners of the mirrors, either when sitting in a normal position behind the steering wheel or by inclining the head slightly.
3. After adjusting your mirrors, make sure you **G.O.A.L.** to ensure there are no obstacles you need to avoid.

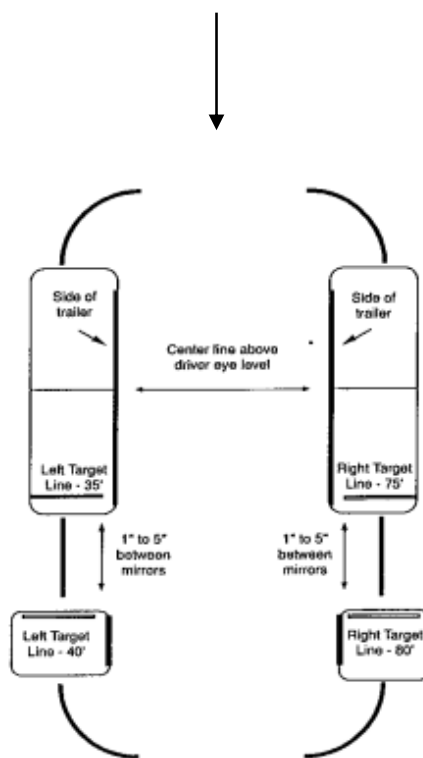
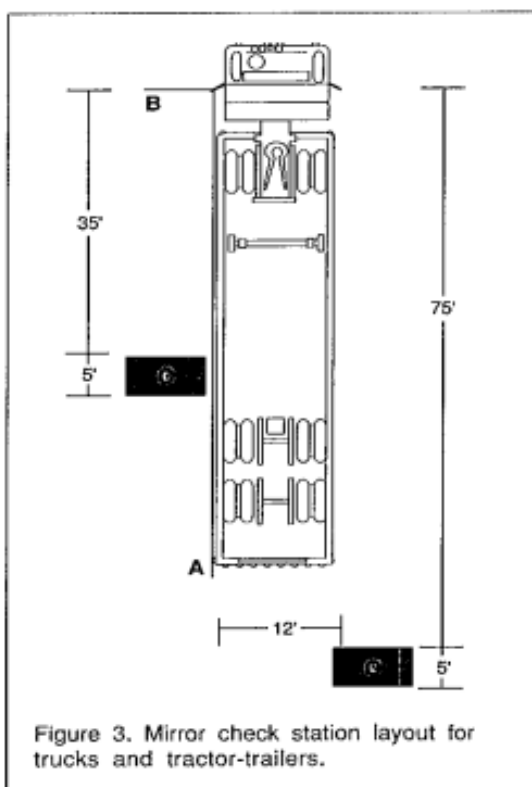
G.O.A.L.

Adjusting Mirrors at a Mirror Check Station

There are mirror check stations at the Olathe, Rockwall and Tampa terminals.

1. Position truck or trailer parallel to, and as close to, Line A as possible.
2. Stop truck with mirror over Line B.
3. Rotate each flat mirror horizontally until the inside edge picks up the left and right sides of the truck body or trailer.
4. Tilt each flat mirror vertically until the appropriate Target C (left or right) is visible in the bottom edge of the mirror.
5. Rotate each convex mirror horizontally until the inside edge picks up the left and right sides of the truck body or trailer.
6. Tilt each convex mirror vertically until Target C is visible in the top edge of the mirror.
7. Adjust the fender-mounted convex mirror so that the inside edge of the mirror shows the side of the tractor. The tires of the tractor (leading axle on tandem tractors) should be visible inside the upper portion of the mirror.

The driver's view in properly adjusted mirrors.



G.O.A.L.



EXHIBIT 44

Risk Management

Awareness is Key

Awareness is the key to accident prevention. By making yourself aware of traffic and road conditions, you significantly reduce your chances of being involved in an accident. Making sure you **G.O.A.L.** is an important component of your awareness.

Mobile/Cellular Phone Usage

While operating a commercial motor vehicle, drivers are strictly prohibited from making or receiving phone calls using a hand-held mobile/cellular phone. This includes while the driver is temporarily stationary because of traffic, a traffic control device or other momentary delays. In the event a driver must make, answer or return a call using a hand-held mobile/cellular phone, the driver must park the vehicle where it can safely remain stationary (e.g., rest stop, parking area, customer location, etc.). If you must park the vehicle to make, answer or return a call using a hand-held mobile/cellular phone, remember to **G.O.A.L.** before your start to drive again. Use of a hand-held mobile/cellular phone means: 1) using at least one hand to hold a mobile/cellular phone to conduct a voice communication; 2) dialing or answering a mobile/cellular phone by tapping more than a single button; or 3) reaching for a mobile/cellular phone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position and restrained by a seat belt. Drivers who violate the restriction will face federal civil penalties of up to \$2,750 for each offense and disqualification from operating a commercial motor vehicle for multiple offenses.

Where permitted by applicable law, drivers may use a hands-free device to make or receive phone calls. In this circumstance, the following safety guidelines must be followed:

- Calls must be placed and received by tapping a single button.
- Never use the phone in heavy traffic or bad weather.
- Never look up phone numbers while driving.
- Avoid stressful conversations while driving.
- Always keep your eyes on the road while on the phone.
- Keep conversations brief.
- Avoid unnecessary calls.
- Do not take notes or look up numbers while driving.
- Understand the mobile/cellular phone calls can be intercepted by third parties.

Failure to follow applicable law regarding mobile/cellular phone usage while driving and/or failure to follow the safety guidelines set forth above, as applicable, may result in termination of a contractor's Independent Contactor Agreement with TransAm Trucking, Inc.

Texting

Operating a motor vehicle while using a mobile/cellular phone or other wireless communication device to compose, read or send text messages, emails or other automatic messages is strictly prohibited under all circumstances and may result in termination of a contractor's Independent Contractor Agreement with TransAm Trucking, Inc.

G.O.A.L.



EXHIBIT 44

Risk Management

Defensive Driving Guidelines

- Expand your look ahead capacity.
- Size up the whole scene.
- Signal your intentions early.
- Take decisive action.

Rollover Prevention

- Reduce your speed for exit ramps to ½ of the posted speed limit.
- Reduce your speed 5 – 10 mph for curves.
- Do not brake in a curve. Slow down to a safe speed PRIOR to the exit ramp or curve.
- Do not brake while making lane changes.
- Do not swerve to miss an object or animal in the roadway. Brake while maintaining control by staying in your lane.
- Know your personal warning signs of driver fatigue. If you become tired, pull over, stop, and get some sleep.
- Do not use cruise control when driving in curves.
- Avoid in-truck distractions.
- If you leave the roadway, do not immediately return to the road but steer for the most flat, safest place. Apply power to straighten the trailer if necessary. Use controlled braking to come to a complete stop.
- Do not drive in extreme high winds. Driving in these types of wind conditions will make it difficult to control the truck. Check the weather report for high wind conditions especially when operating in Wyoming, Colorado, and western Kansas. Also check weather and wind conditions whenever you empty out

Following

By traveling at a safe distance, you give yourself time to notice and react when the driver ahead is about to stop, turn, or slow down. Always maintain at least a seven second following distance on the open road during normal highway conditions. In inclement weather conditions, you need to increase your following distance.

Be aware that the posted speed limits are not always safe speed limits.

G.O.A.L.



EXHIBIT 44

Risk Management

Backing

- If possible, plan ahead to avoid the need for backing.
- Before getting in your truck, **G.O.A.L.** Walk around the vehicle, checking for people or obstacles to avoid.
- Always set your flashers and roll down your window when backing. Use your horn if necessary.
- If you are unsure of your surroundings as you are backing, **G.O.A.L.** – more than once if necessary.
- Always G.O.A. L. before you back your equipment after your rest period. Someone may have pulled in behind you while you were resting and cannot be seen in your mirrors.
- Do not blind side back unless absolutely necessary. If possible, go to the end of the lot and turn around so you will be able to site side back your equipment.
- Never rely on a guide.
- If you miss your turn, do not back into traffic. Go to the nearest safe place to turn around. If there is no safe place to turn around call Risk Management.

Passing

Two elements are necessary to pass safely: time and space. Before passing other vehicles, ask yourself the following questions:

1. Is there a long-term advantage for me in passing?
2. Do I have enough time and space to pass and return to my own lane safely?

If you determine that it is safe to pass, follow these guidelines:

- Make sure there is adequate, clear and visible space ahead of you.
- Check to the rear for other vehicles.
- Use your signal to alert other drivers that you intend to pass.
- Pass only one vehicle at a time except on multi-lane divided highways.

Right Turn Hazards

- Prepare the turn by sizing up the whole scene in and around the intersection as you approach from a distance.
- Signal and move into the right-hand lane well in advance.
- Check the traffic in the intersection, being alert for pedestrians and cyclists.
- Check your mirrors frequently, both before and during the turn.
- Do not leave your lane before you start turning right.

G.O.A.L.



EXHIBIT 44

Risk Management

Bridge Underpasses

- Our trailers are 13 feet, 4 inches high.
- The posted bridge height must be at least 13 feet, 6 inches high to clear the underpass.
- Prior to proceeding under a bridge, observe the bridge height posting and look at the bridge to ensure there is enough clearance. If you are unsure, approach the bridge slowly while putting on your hazard warning lights. Stop just prior to making contact with the bridge and set the brakes. Make a visual inspection to ensure you have ample clearance. Proceed slowing and cautiously. Look at the ground and keep an eye on the tractor/trailer near a tight clearance. Proceed slowly if the pavement is wavy or has potholes. Bouncing of the truck may cause contact with the overpass. If you need assistance, contact Risk Management.

Bridge Weight Limits

- Observe the bridge weight posting prior to proceeding across the bridge. Your equipment loaded to capacity can legally gross 80,000 pounds (40 tons). Do not attempt to cross any structure including bridges that cannot accommodate this weight.

Lost

- If you are lost or have taken a wrong turn, do not leave paved roads. Call TransAm for assistance. If you are lost and need to stop, always **G.O.A.L.**, and walk around your vehicle to look for hazards before resuming your trip.

Parking Equipment

- Be cautious if it is necessary to park on the shoulder of the road. In some cases, the ground may be soft, which may result in the equipment becoming stuck or causing a rollover.

G.O.A.L.



EXHIBIT 44

Risk Management

Emergency Warning Triangle

Follow the set up and placement directions on the inside of the lid of the triangle case.

- Raise arms and snap pin into slot.
- Turn base ¼ turn to stop position.
- Place the flare facing traffic.

On a straight highway (2 lane)

- Place the first triangle 100 feet or 40 paces from the front of the truck and face flare towards oncoming traffic.
- Place the second flare behind the trailer and face flare towards oncoming traffic.
- Place the third flare 100 feet or 40 paces from the rear of the trailer and face flare towards oncoming traffic.

On a divided highway

- Place the first triangle behind the trailer and face flare towards oncoming traffic.
- Place the second triangle 100 feet or 40 paces from the rear of the trailer and face flare towards oncoming traffic.
- Place the third triangle an additional 100 feet or 40 paces from the second triangle and face flare towards oncoming traffic.

G.O.A.L.

**EXHIBIT 44***Risk Management*

Accident Reporting Procedures

Follow the procedures below when involved in an accident:

1. Ask if anyone is injured and needs assistance.
2. Be professional. Regardless of fault, remain courteous.
3. Never sign anything or give a written or oral accounting of the accident to anyone other than the attending police officer.
4. Send form 011 to report the accident and contact Risk Management by phone immediately. When reporting the accident to Risk Management, be as accurate as possible.
5. Take pictures.
 - Take close-up pictures to help identify pre-existing damage, such as metal where the paint or chrome is chipped and rust is apparent.
 - Take medium-distance pictures (8 to 10 yards) from the accident. This helps identify lane position.
 - Take medium to distant pictures (25 to 80 yards) to identify skid marks, lane position, and intersections.
6. Obtain the names, addresses and phone number of all witnesses. If a witness will not cooperate, write down their license plate number.
7. Obtain the names, addresses and telephone numbers of all occupants of the other vehicle(s) involved in the accident. Ask for their insurance information regardless of fault. Get the name of the their insurance company, policy number and claims telephone number(s).
8. Protect the scene. Do not move the vehicles until pictures are taken and the police have reviewed and sketched the accident scene. Set your reflectors and, if necessary, ask another motorist to direct traffic around the disabled vehicles.

G.O.A.L.



EXHIBIT 44

Risk Management

CSA Compliance Program

TransAm Trucking, Inc. has developed the following compliance program to ensure the safety of the public and our driver's safety.

Unsafe Driving

Infractions are counted if they are written up on a Driver/Vehicle Examination Report (DOT inspection). These behaviors create more accidents; therefore TransAm takes a serious stance regarding these infractions to ensure the public and driver's safety.

- Speeding 6 or more miles over the speed limit – One on one consultation with Training Department
- Speeding in a construction zone – One on one consultation with Training Department
- Following too close – One on one consultation with Training Department/ May result in Termination of your Independent Contractor Agreement (ICA) on 1st Offense
- Improper lane change – One on one consultation with Training Department/ May result in Termination of your ICA on 1st Offense
- Improper passing – Termination of your ICA 1st Offense
- Reckless driving – Termination of your ICA 1st Offense
- Improper turns – One on one consultation with Training Department
- Failure to yield the right of way – Termination of your ICA 1st Offense
- Unauthorized passenger – Termination of your ICA 1st Offense
- Use of a radar detector – Termination of your ICA 1st Offense
- Use of a hand-held mobile/cellular phone while driving – Termination of your ICA 1st Offense
- Failure to use a seat belt – Over the phone consultation with Training Department
- Failure to use hazard warning flashers - Over the phone consultation with Training Department
- Failure to obey a traffic control device – One on one consultation with Training Department
- Failure to dim headlights when required - Over the phone consultation with Training Department
- Lane restriction - Over the phone consultation with Training Department
- Unlawful parking or leaving a vehicle in the roadway – One on one consultation with Training Department
- Other violations of state and local ordinances or regulations - Over the phone consultation with Training Department

Two unsafe violations in a two - year period may result in a three day suspension up to termination of your Independent Contractor Agreement. Three unsafe violations in a two - year period may result in termination of your Independent Contractor Agreement.

NOTE: As stated in the Driver's Information Handbook, more than three moving violation convictions during a three-year period (not equipment related) may result in termination of your Independent Contractor Agreement. This policy remains in effect.

G.O.A.L.



EXHIBIT 44

Risk Management

Hours of Service

Fatigued driving is addressed in the Logs and Risk Management chapters of the Driver's Information Handbook and Owner Operator's Information Handbook. The following violations are specifically addressed in the noted chapter and section:

- State/Local Hours of Service (HOS) – Logs chapter, Department of Transportation Inspection Violations section, Inspection Violation Policy section, and TransAm Log Violation Policy section.
- Operating a CMV while ill/fatigued – Violations received for driving while ill or fatigued will result in a five-day suspension, and a written warning for the first offense. The second offense constitutes serious misconduct and may result in immediate termination of your Independent Contractor Agreement. Infractions are counted if they are written up on a Driver/Vehicle Examination Report (DOT inspection).
- Requiring or permitting driver to drive more than 11 hours - Logs chapter, Department of Transportation Inspection Violations section, Inspection Violation Policy section, and TransAm Log Violation Policy section.
- Requiring or permitting driver to drive after 14 hours on duty - Logs chapter, Department of Transportation Inspection Violations section, Inspection Violation Policy section, and TransAm Log Violation Policy section.
- 70-hour violation - Logs chapter, Department of Transportation Inspection Violations section, Inspection Violation Policy section, and TransAm Log Violation Policy section.

Driver Fitness

If a driver is aware that they are in jeopardy of suspension or loss of his/her CDL, he/she must immediately notify TransAm. Failure to do so is considered serious misconduct and may result in termination of employment. Drivers must also report all tickets (written to the driver) to TransAm and pay the ticket before its due date or the date of conviction. Failure to do so is considered serious misconduct and may result in termination of your Independent Contractor Agreement.

The following violations will result in a written warning for the first offense. The second offense is considered serious misconduct and may result in the termination of your Independent Contractor Agreement.

- No medical certificate in driver's possession
- Expired medical examiner's certificate
- No doctor's certificate in possession

G.O.A.L.



EXHIBIT 44

Risk Management

Controlled Substances/Alcohol

Possession and use of controlled substances and alcohol are addressed in the Substance Abuse chapter of the Driver's Information Handbook and Owner Operator's Information Handbook. Possession and use of drugs or alcohol are also addressed in the Introduction chapter, Reasons for Termination section of the Driver's Information Handbook. Drivers cannot carry alcohol on their truck or have open containers of alcohol on their truck pursuant to state and/or local laws.

Vehicle Maintenance

Prior to any driving on a calendar day, the driver must be satisfied that the motor vehicle is in safe operating condition, review the last Daily Vehicle Inspection Report and certify that the vehicle is satisfactory and safe to drive. At the completion of each day's work on each vehicle operated, the driver must prepare a Daily Vehicle Inspection Report (DVIR). See the FMCSA Regulations, Part 396.11 and 396.13

Vehicle Maintenance also includes load securement. Within a two - year period, a ticket or warning for load securement for the 1st Offense will result in a verbal consultation with Training Department. The 2nd Offense will result in a one on one consultation with the Training Department. A 3rd Offense will result in a three day suspension. A 4th Offense may result in termination of your Independent Contractor Agreement.

Crash Indicator

As stated in the Driver's Information Handbook, Introduction chapter, a driver's Independent Contractor Agreement may be terminated if he/she has more than two preventable accidents in a three-year period or a single major accident involving driver negligence.

G.O.A.L.



EXHIBIT 44

Logs

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EXHIBIT 44

Logs

Driver's Daily Logs

TransAm utilizes the Orbcomm ELD system to record the driver's hours of service records in accordance with **FMCSR regulations 395, Subpart B.**

70-Hour on-duty time FMCSR 395.3b(2)

A driver is able to accumulate on-duty driving and on-duty not driving time combined up to and not exceeding 70 hours within 8 consecutive days.

10-Hour Break Period FMCSR 395.3a

One off-duty period (whether in or out of the sleeper berth) is at least 2 hours long, and the other involves at least 7 consecutive hours in the sleeper berth. Both periods together must equal at least 10 hours. When paired, neither time counts against the 14-hour window.

Consecutive 14 hours on-duty time FMCSR 395.3a(2)

After a completion of a 10 or more hour break period, a driver is able to accumulate not more than a combined total of 14 hours of line 1 *off-duty*, 2 *sleeper*, 3 *on-duty driving* and 4 *on-duty not driving* before he/she is required to take a 10-hour break period. A driver cannot drive over his/her consecutive 14 hours but can **work** over the 14th hour. As an example, sending a loaded call can be logged on-duty, not driving after the 14th hour.

11-Hour Driving Time FMCSR 395.3a(1)

After a completion of a 10 or more hour break period (not a calendar day), a driver can drive up to and not exceed 11 hours of driving before he/she is required to take a 10-hour break period.

34-Hour off duty 70-Hour Restart FMCSR 395.3c(2)

A 34 consecutive hour off-duty break can be achieved by using line 1 *off-duty* for 34 hours, line 2 *sleeper* for 34 hours, or combining *off-duty* and *sleeper* for a consecutive 34 hours, with no breaks between the two lines. Once the 34 consecutive off-duty hours have been achieved, the driver's 70 hours in 8 consecutive days is refreshed.

8-Hours of Work (30 Minute Rest Break)

After 8 hours of driving without at least a 30 minute break, a driver is required to take a minimum of 30 minutes of rest time (off duty, sleeper, or on duty) before driving again. The 30 minutes must be consecutive but can be satisfied by any combination of these activities.

Adverse Driving Conditions

The adverse driving conditions rule allows for a 2-hour extension of both the driving limit and on duty limit. Adverse driving conditions means snow, ice, sleet, fog, or other adverse driving conditions or unusual road or traffic conditions that were not known, or could be reasonably known to:

- a driver immediately prior to the beginning of the duty day or immediately before beginning driving after a qualifying rest break or sleeper period, or
- a motor carrier immediately prior to dispatching the driver

**EXHIBIT 44***Logs***Off Duty Authorization**

TransAm relieves its drivers of all duties and responsibilities for the care and custody of the vehicle, its accessories and any cargo it may be carrying when not performing company duties. You must be On Duty when performing work for the company. When you walk into the building to give the customer your paperwork or receive paperwork, or you are on the dock watching or loading/unloading your load, you must be On Duty. If you are broken down over the road and you are waiting for a service vehicle, you must be On Duty until you are relieved of all duties for the care and custody of the vehicle, its accessories and cargo. Anytime you are not performing work for the company, TransAm relieves you of all duties and responsibilities for the care and custody of the vehicle, its accessories and cargo. You are free to pursue any activity of your choosing. When you are waiting to load or unload your load, you are required to put yourself Off Duty or in the Sleeper if you are not required to be on the dock. The same applies when your tractor is being serviced. Other examples include traveling to and from home, etc. If driving, you should select the Personal Conveyance duty status on your ELD. If not driving, you select the Off Duty or Sleeper status on your ELD. (DOT Interpretation 395.2)



EXHIBIT 44

Logs

Updating Your Duty Status

Driving

The ELD logs you as Driving whenever your truck is moving. Exceptions include:

- Personal Conveyance - This is an OFF DUTY status.

PC cannot be used when you are performing company business. Examples include:

- Driving to pick up or deliver a load
- Taking the equipment to a repair facility
- Driving either loaded or unloaded in which the movement of the truck enhances the load assignment (moves the truck towards a pickup or delivery point)

PC can be used when you are not performing company business. Examples include:

- Driving home empty as long as the movement does not enhance the load assignment (moves the truck towards a known pickup or delivery point)
- Driving either empty or loaded for personal reasons as long as the movement does not enhance the load assignment (moves the truck towards a pickup or delivery point)
Examples include going to a restaurant, store or a truck stop to take a shower.
- Driving on a customer's property, or in the parking lot of a truck stop as long as no company business is being performed.

Please be aware that the availability of the Personal Conveyance duty status is the Company's choice. Therefore, if a driver uses it when performing company business, the Company may choose to remove the Personal Conveyance option from that individual driver.

- Maintenance – When your truck is being worked on and will be moved by maintenance personnel (either at a TransAm terminal or over the road), you will need to log off the unit so any movement by maintenance personnel will not affect your hours of service. TransAm personnel will also place your truck in Maintenance status to suspend the alert sent to your Driver Manager and Safety & Compliance when you log off. You will be notified with a message when your truck has been placed in Maintenance status. You should not drive the truck when it is in Maintenance status. More information on this procedure is located in the MAINTENANCE section.
- Yard Movement – This is an ON DUTY status to allow you to move a vehicle within the confines of a facility. This movement will count towards your 14 hours of on-duty time but will not affect your 11-hour driving time.

When the truck is stationary for five minutes or more, the system defaults to On Duty Not Driving. You must enter the correct duty status.



EXHIBIT 44

Logs

Time Management

Time management is the process of increasing productivity by planning and exercising control over the amount of time spent on specific activities. Time management includes:

- Setting priorities – Your priority is to pick up and deliver freight safely and on time.
- Carrying out activities related to these priorities – You must focus on performing activities that contribute to your success. TransAm’s automatic log system is a great tool to assist you in performing these activities. This system allows you to easily see how much time you can drive based on the 8 & 11-hour driving rule and how many hours you can work based on the 14 and 70-hour rules. Since the system logs you in real-time, you must always be aware of how much time you spend doing productive vs. non-productivity activities. Focusing on productive activities will result in more miles and more pay.
- Reducing the time spent on non-priority activities - Once your 14 and 70 hour “clocks” are running, it is critical to manage your time efficiently. If you use your driving and work time to stop for activities that do not relate to your priority (picking up and delivering freight safely and on time), your miles and pay will be negatively affected.

OTHER FACTORS TO CONSIDER

- Make sure you consider any time zone changes.
- Verify that you have set your alarm clock properly so you don’t oversleep on your breaks.
- Communicate with your Business/Driver Manager as soon as possible regarding any delays or irregularities that could affect the load.

KEEP THE LEFT DOOR SHUT

When you start your clock for the day, drive out your hours. Don’t stop (keep your left door shut). If you have 8 hours available, drive 8 straight hours and take your ½ hour break. When you come off your break, drive out your remaining hours before stopping (keep your left door shut).

Once your 10-hour break is over, know when to start your next 14-hour work period. Although you want to leave some extra time for unforeseeable events, you also do not want to start your 14-hour clock too early and run out of time before you can make your delivery (or deliveries).

If there is overnight parking at the customer and you have enough time to make it there, then do so. If you don’t have enough time to make it to the customer, then you may need to extend your break longer than 10 hours so you don’t start your clock sooner than you need to. This way you have enough time on your clock to make the delivery (or deliveries) without running out of time.



EXHIBIT 44

Logs

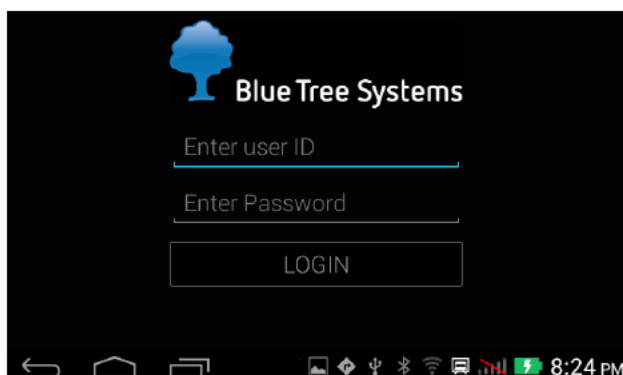
Garmin Device

NOTE: The time displayed on the home screen of the Garmin device changes with the time zones. The time displayed when you access the Hours of Service widget is always Central time.

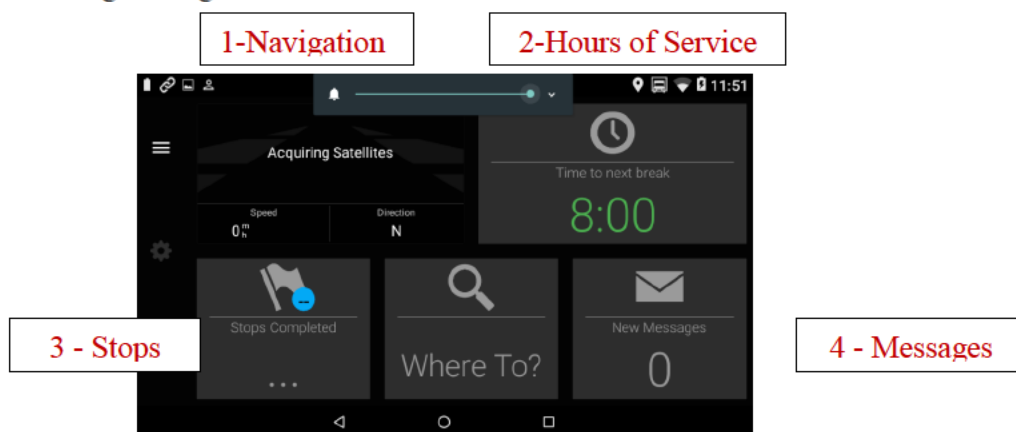
Logging into the Unit

You will be assigned a PIN to log into the unit. Both the driver and co-driver (if there is a co-driver) must log in before the truck moves. If the driver(s) does not log in before the truck moves, your Driver Manager and the Safety/Compliance department will be alerted.

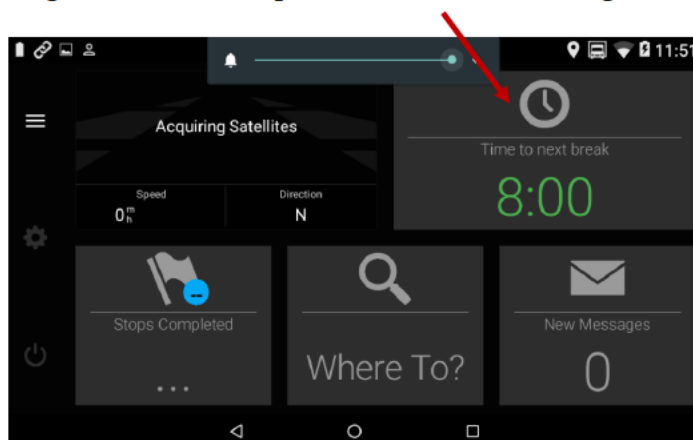
1. At the “Enter user ID” prompt, enter your driver code.
2. At the “Enter Password” prompt, enter your PIN.
3. Tap LOGIN.



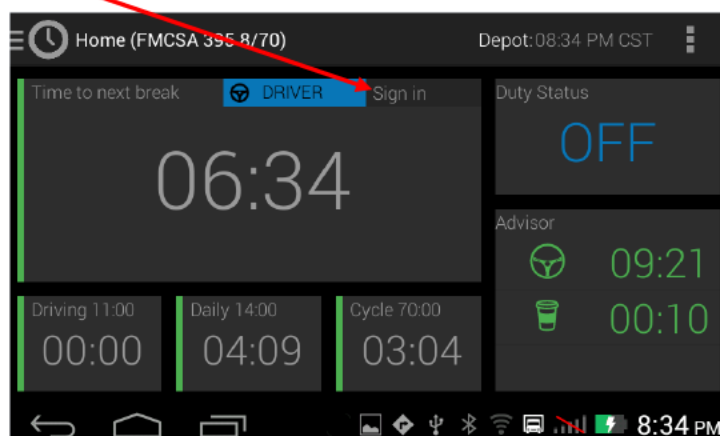
4. The first screen available is the home screen which display 4 major widgets:
 1. Navigation widget
 2. Hours of Service widget
 3. Stops widget
 4. Messages widget



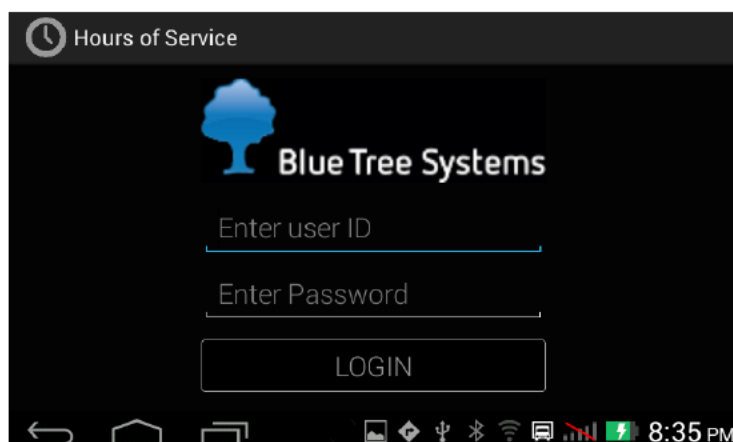
5. If you need to log in a co-driver, tap the hours of service widget.



6. Tap Sign In.

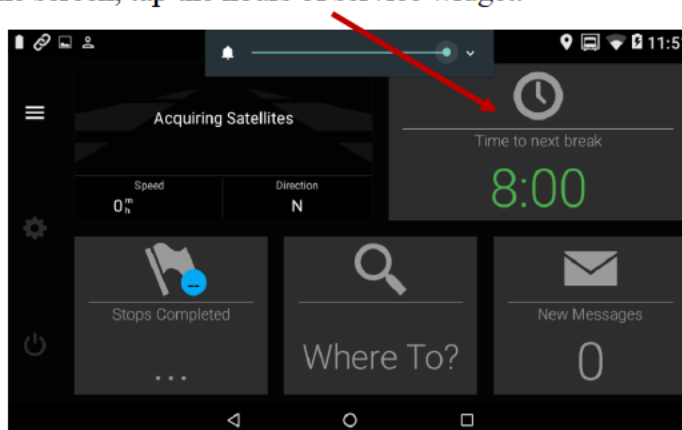


7. Enter the driver code and PIN and tap LOGIN.



Hours of Service Screens and Alerts

1. From the home screen, tap the hours of service widget.



2. In the hours of service screen, you will see the following widgets:
 - a. Time until the next break
 - b. Duty status
 - c. Amount 11-hour driving time used
 - d. Amount 14-hour driving time used
 - e. Amount of 70-hour time used
 - f. Hours of service advisor

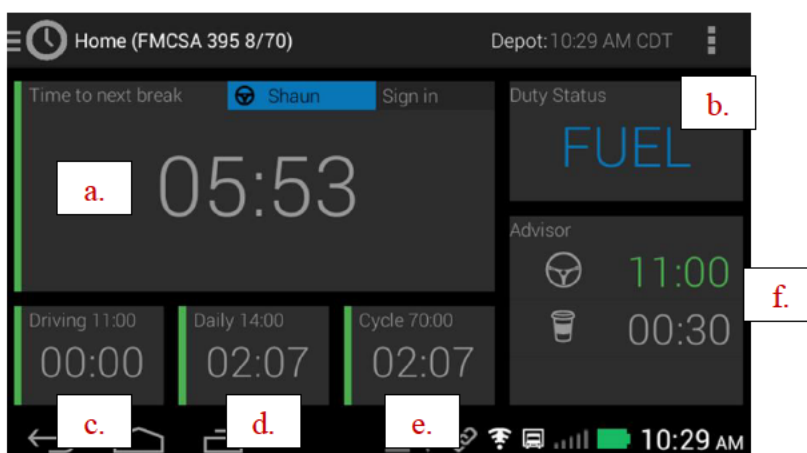




EXHIBIT 44

Logs

Alert When Less Than One Hour of Driving or Work Time Remains

You will receive an audio and visual alert when there is less than one hour driving time remaining on your 11-hour rule. When one hour remains, the vertical bar on the left side of the Driving 11:00 widget turns yellow.

You will receive an audio and visual alert where there is less than one hour of work time remaining on your 14-hour and 70-hour rules or when you are within one hour of needing to take a minimum 30-minute break before driving again. When one hour remains, the vertical bar on the left side of the Daily 14:00 or Cycle 70:00 widget turns yellow.

Alert When No Driving or Work Time Remains

You will receive an audio and visual alert when there is no driving or work time remaining. When no time remains, the vertical bar on the left side of the Driving 11:00, Daily 14:00 or Cycle 70:00 turns red.

Co-Drivers

To see the driver(s), tap the hours of service widget. The driver is indicated by a steering wheel next to their name.

- To log in a co-driver for the first time, tap Sign In. The co-driver will be prompted for their User ID (driver code) and Password (PIN).
- To switch drivers, tap the menu at the upper, right-hand corner of the screen (looks like 3 dots in a vertical row) and select Switch Drivers.

Off Duty

1. To log Off Duty in situations where you will not be driving, do the following:
 - a. Tap the hours of service widget.
 - b. Tap the Duty Status widget.
 - c. Tap Off Duty.
 - d. Tap Next.
 - e. Tap OFF.

Off Duty - Personal Conveyance

NOTE: When you select Personal Conveyance and begin driving, the system will stay in this status as long as you do not stop driving longer than five minutes. After five minutes, the system will place you back into Off Duty status.

1. To log Off Duty – Personal Conveyance, do the following:
 - a. Tap the hours of service widget.
 - b. Tap the Duty Status widget.
 - c. Tap Off Duty.
 - d. Tap Next.
 - e. Tap PC.



EXHIBIT 44

Logs

Maintenance

When you arrive at a maintenance facility or will no longer be driving the truck because the truck will be towed to a maintenance facility, you must do the following to ensure the truck movement made by maintenance personnel will not affect your hours of service:

1. Send mobile communications form 029 – Arrived at Maintenance Facility.
2. Log off the unit.

TransAm personnel will then perform a Maintenance “M” call on your unit. You will remain in your current duty status until the M call is removed by TransAm personnel and you log back in. Once your truck is repaired, you must do the following:

1. Log into the unit.
2. Send mobile communications form 035 – Leaving Maintenance Facility.

IMPORTANT:

- If you do not log out while maintenance is being performed, any movement will affect your hours of service.
 - If you do not log back in after maintenance is complete and TransAm personnel have removed the Maintenance call, your Driver Manager and Safety & Compliance will be alerted.
 - Ensure you are in the duty status you want to log until maintenance is complete.
1. To log out, tap the Logout icon from the home screen. Then tap Logout.
 2. Send mobile communications form 029 – Arrived at Maintenance.
 3. When your truck is repaired, log back in by entering your driver code and PIN at the login screen.
 4. Send mobile communications form 035 – Leaving Maintenance Facility.

Sleeper

1. To log sleeper, tap the hours of service widget.
2. Tap the Duty Status widget.
3. Tap Sleeper Berth.
4. Tap OK.



EXHIBIT 44

Logs

On Duty – Pre-Trip

When logging your pre-trip, the system will display the last post-trip you entered. You must review the information on the post-trip and confirm that you are satisfied that the vehicle is in safe operating condition.

IMPORTANT: A pre-trip must be logged prior to the start of any calendar day. If you drive past midnight and then stop, you must log a pre-trip prior to any subsequent driving time. If you do not log your pre-trip inspection or log it at the wrong time, you will receive an alert message. This alert indicates that you have falsified your log and it needs to be corrected. You must take these alerts very seriously and correct your log immediately. Your Driver Manager will be alerted if you do not correct your log and will be contact with you about the situation.

1. To log your pre-trip, tap the hours of service widget.
2. Tap the Duty Status widget.
3. Tap On Duty.
4. Tap Next.
5. Tap Pre.
6. Tap the Truck icon. The truck number will be displayed.
7. Tap Next.
8. The system displays a list of items to be inspected. Review the items.
9. If any item is in defect, tap the box to the left of the green check mark. The system will display an area for you to type a comment about the defect. When finished typing the comment, tap Done.
10. When you have finished reviewing all of the items, scroll to the bottom of the page and tap Next.
11. The system displays the following: I (name) confirm that the vehicle is (Safe) or (Unsafe) to drive. If the vehicle is unsafe to drive, you must select Unsafe from the drop-down list.
12. Tap Send Report.

On Duty - Loading

IMPORTANT: The date and time of your loading is matched against the time you logged On Duty. The correct procedure is to log On Duty to take care of the necessary work (being on the dock, taking care of paperwork, etc.). Once you are loaded, send mobile communications form 003 (Loaded and Leaving) or 005 (Loaded and Leaving Pickup). If you do not log your loading or log it at the wrong time, you will receive an alert message. This alert indicates that you have falsified your log and it needs to be corrected. You must take these alerts very seriously and correct log immediately. Your Driver Manager will be alerted if you do not correct your log and will be in contact with you about the situation.

1. To log your loading, tap the hours of service widget.
2. Tap the Duty Status widget.
3. Tap On Duty.
4. Tap OK.



EXHIBIT 44

Logs

On Duty - Unloading

IMPORTANT: The date and time of your unloading is matched against the time you logged On Duty. The correct procedure is to log On Duty to take care of the necessary work (being on the dock, taking care of paperwork, etc.). Once you are unloaded, send mobile communications form 007 (Leaving Stop) or 009 (Empty). If you do not log your unloading or log it at the wrong time, you will receive an alert message. This alert indicates that you have falsified your log and it needs to be corrected. You must take these alerts very seriously and correct log immediately. Your Driver Manager will be alerted if you do not correct your log and will be in contact with you about the situation.

1. To log your unloading, tap the hours of service widget.
2. Tap the Duty Status widget.
3. Tap On Duty.
4. Tap OK.

On Duty - Fuel

IMPORTANT: The date and time of your fuel transactions (when you swipe your card) is matched against the time you logged On Duty - Fuel. The correct procedure is to log On Duty – Fuel, exit the truck, swipe your fuel card and begin the fueling process. You should stay on fueling status for the duration of the fueling process. take care of the necessary work (being on the dock, taking care of paperwork, etc.). If you do not log your fueling or log it at the wrong time, you will receive an alert message. This alert indicates that you have falsified your log and it needs to be corrected. You must take these alerts very seriously and correct log immediately. Your Driver Manager will be alerted if you do not correct your log and will be in contact with you about the situation.

1. To log your fueling, tap the hours of service widget.
2. Tap the Duty Status widget.
3. Tap On Duty.
4. Tap Next.
5. Tap Fuel.

On Duty – Accident

IMPORTANT: If you are involved in an accident, you must log On Duty for the time you were required to be at the scene of the accident. Manager will be alerted if you do not correct your log and will be in contact with you about the situation.

1. To log an accident, tap the hours of service widget.
2. Tap the Duty Status widget.
3. Tap On Duty.
4. Tap OK.



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Logs

On-Duty – DOT Inspection

IMPORTANT: If you are involved in a DOT inspection, you must log On Duty for the time required to complete the inspection.

1. To log an accident, tap the hours of service widget.
2. Tap the Duty Status widget.
3. Tap On Duty.
4. Tap OK.

On-Duty – Drug Screen

IMPORTANT: If you are required to take a drug/alcohol test, you must log On Duty for the time it took to complete the test.

1. To log an accident, tap the hours of service widget.
2. Tap the Duty Status widget.
3. Tap On Duty.
4. Tap OK.

On-Duty – No Driving

On Duty – Not Driving can be used to log other on duty activities other than the pre-trip, post-trip, or fuel.

1. To log On Duty – Not Driving, tap the hours of service widget.
2. Tap the Duty Status widget.
3. Tap On Duty.
4. Tap OK.

On-Duty – Safe Haven

On Duty – Safe Haven can be used only when mandated to leave a property or in instances of an accident delay.

If you are under your 11-hour driving time and select one of the Safe Haven options, your Driver Manager will be alerted.

If you are driving and therefore not able to change your duty status to On Duty – Safe Haven, you must contact the Safety & Compliance department immediately after stopping.

1. To log On Duty – Safe Haven, tap the hours of service widget.
2. Tap the Duty Status widget.
3. Tap On Duty.
4. Tap Next.
5. Tap the appropriate Safe Haven option:
 - a. MAND – Mandated to Leave Property
 - b. ACDT – Accident Delay



EXHIBIT 44

Logs

On-Duty – Post-Trip

When logging your post-trip, the system will display a list of items to be inspected and reported on. Deficiencies are reported to TransAm's Road Assist department for resolution.

IMPORTANT: A post-trip must be logged prior to the completion of the day's work. If you drive past midnight and then stop, you must log a post-trip when you stop. If you do not log your post-trip inspection or log it at the wrong time, you will receive an alert message. This alert

indicates that you have falsified your log and it needs to be corrected. You must take these alerts very seriously and correct your log immediately. Your Driver Manager will be alerted if you do not correct your log and will be contact with you about the situation.

1. To log your post-trip, tap the hours of service widget.
2. Tap the Duty Status widget.
3. Tap On Duty.
4. Tap Next.
5. Tap post.
6. Tap the Truck icon. The truck number will be displayed
7. Tap Next.
8. The system displays a list of items to be inspected. Review the items.
9. If any item is in defect, tap the box to the left of the green check mark. The system will display an area for you to type a comment about the defect. When finished typing the comment, tap Done.
10. When you have finished reviewing all of the items, scroll to the bottom of the page and tap Next.
11. The system displays the following: I (name) confirm that the vehicle is (Safe) or (Unsafe) to drive. If the vehicle is unsafe to drive, you must select Unsafe from the drop-down list.
12. Tap Send Report.

Signing Your Logs

You must sign your previous day's logs before 0900 the following day. If you do not sign your logs by 0900, your Driver Manager will be alerted. After a log has been signed, you can edit the log but you must sign the log again after making the change.

1. To sign the previous day's log, tap the hours of service widget.
2. Tap the hamburger menu located at the top, left-hand side of the screen.
3. Tap Daily Summary.
4. Verify that the information is accurate and check the box on the right-hand side of the screen next to the hours.



EXHIBIT 44

Logs

Editing Non-Driving Entries and Reviewing Changes

You can edit only non-driving entries to correct your hours of service.

IMPORTANT: If you have already signed your log for the day and you edit it, you must re-sign it.

UPDATING A DUTY STATUS FROM ONE STATUS TO ANOTHER

Example: You stopped driving at 0900. After the truck was stationary for five minutes, the unit defaulted your duty status to On Duty Not Driving. You want to change your Duty Status to Off Duty. You can edit the status since it is a non-driving entry.

1. To update your duty status from one status to another, tap the hours of service widget.
2. Tap the hamburger menu located at the top, left-hand side of the screen.
3. Tap Duty Logs – Table.
4. Click on the duty status you want to change.
5. Select the correct duty status and tap OK.
6. Enter your remarks. This is required. When finished, tap OK.
7. Tap the Save button.

ADDING A DUTY STATUS

Example: You forgot to log your pre-trip inspection. You can add the status since it is a non-driving entry.

1. To add a duty status, tap the hours of service widget.
2. Tap the hamburger menu located at the top, left-hand side of the screen.
3. Tap Duty Logs – Table.
4. Tap Add.
5. Select the start date and tap Next.
6. Select the start time of the duty status and tap Next.
7. Select the duty status and tap OK.
8. Select the end date and tap Next.
9. Select the end time of the duty status and tap Next.
10. Enter your remarks. This is required. When finished, tap OK.
11. Tap the Save button.

Using the Hours of Service Advisor

The unit's hours of service button can be used to provide you with guidance with staying in compliance with the hours of service rules based on your current hours of service used and available.

1. Tap the hours of service widget.
2. Tap the Advisor widget. The system displays a narrative of your Driving Time Remaining, Break Provision, Daily Reset (14-hour rule) and Cycle Reset (70-hour rule).



EXHIBIT 44

Logs

Managing Motor Carrier Edits

To help you stay in compliance with the Hours of Service Regulations, TransAm's Safety & Compliance personnel can suggest edits to your logs. To review and accept these edits, go to the hours of service widget and tap the navigation menu in the upper, left-hand side of the screen. Then scroll down on the menu and tap Motor Carrier Edits. Any pending edits from TransAm will be shown.

Suggested On	Suggested By	Remarks
Mon, Jul 27	llynch	Did not change to On-duty after sleeper >
Thur, Jul 23	bburke	Did not change to Off-duty at end of day >
Fri, Jul 18	mwhitney	Forgot to enter Pre-trip >
Thur, Jul 17	mwhitney	Forgot to change to PC when finished shift >

To review the details of the edits, tap on the row you want to view. The affected records are highlighted. Records highlighted in green are TransAm's suggested edits. Records highlighted in red are the original record.

Tap Accept to approve TransAm's edit. Alternatively, tap Reject.

Start	Duty	Duration	Location	Remark
12:00	D	4h 04m	12 mi NNE Dallas, TX	
11:55	PRE	0h 05m	12 mi NNE Dallas, TX	Forgot to enter Pre-trip
11:55	ON	0h 05m	12 mi NNE Dallas, TX	Pick up @ depot
01:20	OFF	10h 35m	12 mi NNE Dallas, TX	

Reject Accept

TransAm's Safety & Compliance department personnel are able to view the status of their suggested edits. If you have questions about any of the edits, please reach out to Safety & Compliance for clarification.



EXHIBIT 44

Logs

Unassigned Drive Time

According to the Federal Motor Carrier Safety administration regulations, all ELD solutions must detect and log all vehicle movement. This means that anytime the wheels are turning and a user is not logged into the ELD, it is classified as unidentified driving time.

You are notified upon log in if your ELD has unidentified driving events.

To view unidentified driving time, go to the hours of service widget and tap the navigation in the upper, left-hand side of the screen. Then scroll down on the menu and tap Unidentified Driving.. The screen shows the unidentified driving time that must be claimed or rejected.

Start Time	Location	Distance	Duration	
Aug 23 04:08 AM	12 miles NNE Dallas, TX	79mi	1h 04m	...
Aug 22 04:04 AM	25 miles NW Austin, TX	28mi	0h 31m	...
Aug 20 07:53 AM	32 miles NW Austin TX	231mi	4h 09m	...

It is very important to correctly claim or reject unidentified driving time! If you are unsure, please contact Safety & Compliance immediately for guidance. If you accept unassigned drive time that does not belong to you, your hours of service will be impacted and may put you in violation!

To accept unidentified driving time, tap the unidentified driving time you want to claim and then tap the Accept option to add the driving time to your logs. Alternatively, tap the Reject option.

TransAm Safety & Compliance personnel are able to review all unidentified driving time and will contact you in the event that the unidentified driving time is not claimed. They will also review all rejected driving time and determine who the driving time belongs to.

EXHIBIT 48**INDEPENDENT CONTRACTOR OWNER-OPERATOR AGREEMENT**

THIS INDEPENDENT CONTRACTOR OWNER-OPERATOR AGREEMENT (this "Agreement") is made and entered into effective as of the _____, by and between **TRANSAM TRUCKING, INC.**, a Missouri corporation ("Carrier"), and _____ ("Contractor"), in accordance with 49 CFR Part 376.

WHEREAS, Carrier is an interstate and intrastate for-hire motor carrier, US DOT No. 315503, Docket No. MC-197897, which leases motor vehicle equipment from independent contractors;

WHEREAS, Contractor is an independent contractor owner-operator who/which owns (and/or leases) motor vehicle equipment and is engaged in the business of transporting freight by motor vehicle pursuant to long term arrangements with for-hire motor carriers; and

WHEREAS, subject to the terms and conditions herein contained, Carrier desires to lease Contractor's motor vehicle equipment and to obtain certain personnel services from Contractor from time to time, and Contractor desires to lease such motor vehicle equipment to Carrier and to make available such personnel services from time to time.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is hereby agreed as follows:

1. **LEASE OF EQUIPMENT/OTHER PROPERTY.**

(a) **Equipment Lease.** During the term hereof, Contractor will furnish to Carrier the motor vehicle equipment (the "Equipment") described on **EXHIBIT A** attached hereto and incorporated herein for the purpose of hauling freight from time to time pursuant to the terms and conditions of this Agreement. Such Equipment shall be furnished to Carrier on a schedule to be determined by Contractor. Contractor represents and warrants that Contractor holds full legal title to the Equipment or has the legal right to lease the Equipment to Carrier for the purpose of hauling freight. The Contractor may substitute other motor vehicle equipment for the Equipment only upon prior approval of Carrier and written amendment to this Agreement. When possession of the Equipment is taken by Carrier hereunder, Carrier will give Contractor a copy of **EXHIBIT A**, by mail, telegraph, facsimile, or similar means of communication.

(b) **Compatible Mobile Communications Unit.** The Equipment must contain a mobile communications unit which is compatible with Carrier's mobile communications system. If the Equipment does not have a compatible mobile communications unit, then Contractor may borrow a compatible unit from Carrier during the term hereof. Upon termination of this Agreement, Contractor shall immediately have Carrier's

unit removed from the Equipment at Contractor's expense, and shall return the unit to Carrier within seven (7) days following such termination of this Agreement. If Contractor fails to return the borrowed unit to Carrier in the same condition as when received by Contractor within such seven (7)-day period, then Contractor shall be held financially responsible for the full replacement cost thereof, which charge shall be set forth on **EXHIBIT B** attached hereto and incorporated herein. Carrier may deduct such charge from the compensation otherwise payable to Contractor hereunder.

(c) **Inspection of Equipment; DOT Compliance.** Contractor warrants that as of the date of execution of this Agreement, the Equipment has been inspected and found to be in compliance with the U.S. Department of Transportation ("DOT") Federal Motor Carrier Safety Regulations. Contractor acknowledges and agrees that during the term hereof, the Equipment shall be subject to the inspection and approval of Carrier so as to be in compliance with the requirements of the federal government and the appropriate states. Contractor further agrees to maintain the Equipment in proper operating condition so as to satisfy any federal, state or Carrier safety inspection at any time, to have the Equipment inspected as required by applicable law at any authorized inspection stations, and to promptly make such repairs as may be found necessary.

EXHIBIT 48

(d) **Expense of Operation and Maintenance.** Carrier shall have no responsibility for operating and maintenance expenses in connection with the Equipment. Contractor shall be responsible for all costs and expenses in connection with the operation and maintenance of the Equipment, including, but not limited to, fuel, oil, lubrication, routine tractor maintenance and repairs, and tractor washes. **CONTRACTOR HAS NO OBLIGATION TO USE ANY FACILITIES OR SERVICES OF CARRIER FOR ANY SUCH MAINTENANCE.**

(e) **Voluntary Maintenance Savings Account.** At Contractor's discretion and option, Contractor may fund into a voluntary Maintenance Savings Account to cover costs and expenses related to maintenance and repair of the Equipment, based on either a fixed dollar amount per week or a specific amount of cents per mile, not to exceed an aggregate amount of \$15,000.00. Interest will not accrue on any Maintenance Savings Account funds. If Contractor incurs a large repair expense which exceeds the balance of the Maintenance Savings Account, then, at Contractor's option, Carrier may provide Contractor with a matching loan of up to \$3,000.00 to help cover such expense (not to exceed the then current balance of the Maintenance Savings Account). This loan will be evidenced by a separate written agreement, which shall be incorporated herein by reference. Contractor shall be required to repay such loan to Carrier on a weekly basis, with minimum weekly payments of principal and interest in the amount of \$250.00 until paid in full. Interest shall accrue on such loan at a rate equal to the average yield or equivalent coupon issue yield on Ninety-One (91)-Day, Thirteen (13)-Week Treasury Bills as established in the weekly auction by the Department of Treasury. **For purposes of this Agreement, such interest rate shall be referred to hereinafter as the "Applicable Rate".** Carrier may deduct such loan payments from the compensation otherwise payable to Contractor pursuant to paragraph 3 below. Within fifteen (15) days following termination of this Agreement, Carrier shall remit to Contractor the balance of Contractor's Maintenance Savings Account, if any, less any outstanding loan balance owed to Carrier pursuant to this subparagraph 1(e).

PLEASE NOTE THE MAINTENANCE SAVINGS ACCOUNT IS A COMPLETELY VOLUNTARY OPTION FOR CONTRACTOR. IT IS NOT A MANDATORY MAINTENANCE ESCROW.

(f) **EFS Card and Fuel Discounts.** Contractor is not required to use the EFS card to purchase fuel. Contractor may, however, take advantage of Carrier's fuel network and receive the benefit of any at-pump discounts by using the EFS card. Contractor will not receive the benefit of any other discounts or rebates Carrier receives on fuel purchases made through Carrier's fuel network using the EFS card. Any

additional fuel discounts or rebates shall accrue solely to the benefit of Carrier. Upon Contractor's request, Carrier shall provide to Contractor documentation of the difference between the discounted fuel price paid by Contractor using the EFS card and the discounted price paid by Carrier for the fuel, if any. Such documentation shall be incorporated herein by reference.

(g) **Identification.** Contractor shall affix to the Equipment the identification provided by Carrier as required by federal and state agencies. Upon termination of this Agreement, Contractor shall immediately remove all such identification from the Equipment at Contractor's expense. Contractor shall return all such identification (other than identification painted directly on the Equipment, if any) to the Carrier within seven (7) days following termination of this Agreement, either in person, by mail or via delivery service at Contractor's expense. If a particular identification device has been lost or stolen, a letter from Contractor certifying its removal will satisfy this requirement if received by Carrier within such seven (7)-day period.

(h) **Compliance with DOT/FMCSA Regulations.** In accordance with and only to the extent required by the ICC Termination Act of 1995 and corresponding DOT/FMCSA regulations (49 CFR §376.12(c)(1)), 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 lease created by this Agreement, subject to the provisions of this Agreement. Further, Carrier may be considered the owner of the Equipment for the purpose of subleasing it under the applicable DOT regulations to other authorized carriers during the term hereof.

(i) **Trailers Owned by Carrier.** Carrier will furnish Contractor with the use of trailers for the purpose of hauling freight for Carrier pursuant to this Agreement. Contractor shall make a visual inspection of each such trailer prior to taking possession thereof and shall immediately report to Carrier in writing any and all existing damage or defects. Unless Contractor has given written notice to Carrier specifying any damage or defects to a trailer prior to taking possession, it shall be conclusively presumed as between Contractor and Carrier that Contractor has fully inspected the trailer and that it was free from damage and defects at the time Contractor took possession.

Contractor shall be responsible for ensuring that each such trailer is washed out prior to dropping the trailer at a shipper's yard or going into a shipper's yard to be loaded. In the event that any such trailer is rejected or deemed unacceptable for use by the shipper due to uncleanness and/or the presence of unacceptable debris, material, substances or liquids in the trailer, Contractor shall be financially responsible for and shall

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pay to Carrier the cost of the trailer washout. Such amounts may be deducted from the compensation payable to Contractor pursuant to paragraph 3 below.

In addition, Contractor shall promptly report to Carrier any damage to such trailers that occurs while the trailers are under Contractor's control. Contractor agrees to immediately return all such trailers to Carrier at Carrier's home terminal in Olathe, Kansas, or to such other location as authorized and directed by Carrier, when not using them on Carrier's behalf or under contract with Carrier. Contractor agrees that for each day Contractor fails to return a trailer to Carrier as required herein, Contractor shall pay to Carrier the sum of five hundred dollars (\$500.00), regardless of whether the trailer is used by Contractor for other business. Such amounts may be deducted from the compensation payable to Contractor pursuant to paragraph 3 below.

Contractor agrees that it will not place any claim or cause of action against any trailer furnished by Carrier. Contractor further agrees to pay for all trailer tire repairs or replacements resulting from abuse or negligence by Contractor or its drivers when Contractor is pulling a trailer furnished by Carrier. If Contractor fails to return any such trailer to Carrier within seven (7) days following termination of this Agreement, then Contractor shall be held financially responsible for the trailer, and shall be responsible for all expenses incurred by Carrier in securing the proper return of said trailer, including attorneys' fees and any related costs, as well as mileage and personnel costs incurred in recovering the trailer, in addition to payment of the amounts described above.

(j) **Other Property Furnished by Carrier.** Carrier may furnish Contractor with certain other property needed for performing services hereunder, including, but not limited to, padlocks, load locks, king pin locks, pallets and permit book. If Contractor fails to return any such property to Carrier within seven (7) days following termination of this Agreement, then Contractor shall be held financially responsible for such property, the charges for which shall be specified on **EXHIBIT B** and incorporated herein. Carrier may deduct the applicable amounts from the compensation otherwise payable to Contractor hereunder.

(k) **Detention and Accessorial Services.** Carrier shall not be responsible for, or compensate or reimburse Contractor for, any detention or accessorial services, except as specifically provided herein.

2. **PERSONNEL SERVICES.**

(a) **Drivers; Loading and Unloading.** During the term hereof, Contractor agrees to make available and furnish to Carrier the services of qualified drivers for the Equipment and all other necessary manpower to load, transport and unload such freight using the Equipment as Carrier provides for in its tariffs, schedules and contracts; provided, however, that **CONTRACTOR MAY REFUSE TO HAUL ANY LOAD OFFERED TO CONTRACTOR BY CARRIER, FOR ANY REASON, WITH NO PENALTY FOR REFUSAL.** Carrier will reimburse Contractor for the reasonable cost of loading and unloading services (lumper) upon presentment of valid receipts – subject to the prior approval of Carrier.

(b) **Driver Qualifications.** All driver personnel made available and furnished by Contractor to perform services hereunder must meet and satisfy the driver qualifications of Carrier, the DOT and the appropriate states, and only such duly qualified drivers may operate the Equipment during the term hereof. It is expressly understood that drivers of the Equipment must at all times be in compliance with all applicable federal, state and local laws, statutes, ordinances, regulations and orders as presently in force or enacted in the future, and that drivers will perform all services hereunder and operate the Equipment in compliance with all applicable federal, state and local laws, statutes, ordinances, regulations and orders and the provisions of this Agreement.

(c) **Employment of Contractor's Personnel.** All personnel furnished or used by Contractor to perform the personnel services hereunder, including drivers, driver's helpers and laborers, are and shall be at all times the employees or agents of Contractor and not the employees or agents of Carrier. Accordingly, Contractor shall be solely and totally responsible for payment of their wages, employment benefits, including, but not limited to workers compensation benefits, and all other amounts required by government agencies to be paid by employers on behalf of or to employees.

Contractor understands and agrees that Carrier will not be responsible for withholding or paying on behalf of Contractor, or any personnel furnished or used by Contractor to perform the personnel services hereunder, any sums for income tax, unemployment insurance, social security, workers compensation insurance, or any other withholding or payment pursuant to any law or requirement of any governmental body relating to the Contractor or such personnel, all such obligations being the sole responsibility of Contractor. Carrier shall neither have nor exercise control, direction or supervision over the personnel furnished or used by Contractor to perform the personnel services hereunder. Specifically, the Contractor shall be solely and totally responsible for selecting, hiring, firing,

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supervising, directing, training, and setting wages, hours and working conditions for its employees.

THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INDIVIDUAL SIGNING THIS AGREEMENT ON BEHALF OF CONTRACTOR IS NOT OBLIGATED TO PERSONALLY OPERATE THE EQUIPMENT OR TO PERFORM ANY OTHER PERSONNEL SERVICES REQUIRED HEREUNDER.

(d) **Indemnification for Personnel Obligations.** To the fullest extent permitted by law, Contractor shall assume responsibility for, and shall indemnify, defend and hold harmless Carrier and its agents, employees, officers, directors, successors and assigns from and against any and all claims for wages, salaries, benefits, taxes and all other withholdings and charges payable to, or with respect to, the personnel furnished or used by Contractor to perform the personnel services hereunder, and any and all damages, penalties and civil fines (unless expressly prohibited by law), losses and expenses, including, but not limited to attorneys' fees, arising or resulting from any such claims.

Additionally, Contractor shall assume responsibility for, and shall indemnify, defend and hold harmless Carrier and its agents, employees, officers, directors, successors and assigns from and against any and all liability and claims arising or resulting from Contractor's relationship with the personnel furnished or used by Contractor to perform the personnel services hereunder, whether under industrial accident laws, workers compensation laws, or any other state, federal or common law or precedent applicable to the relationship between employers and employees. Contractor's obligations under this subparagraph 2(d) shall survive termination of this Agreement, and are in addition to and shall not be construed to negate, abridge, or reduce other rights to indemnity that Carrier may possess.

If Carrier demands performance by Contractor of obligations under this subparagraph 2(d) and if Contractor refuses to assume or perform, or delays in assuming or performing Contractor's obligations, then Contractor shall pay Carrier its attorneys' fees, costs and other expenses related thereto and incurred in enforcing the provisions of this subparagraph 2(d). The obligations of defense and indemnity required herein shall, however, be a binding obligation upon Contractor whether or not Carrier has made such demand. Even if a defense is successful to a claim or demand for which Contractor is obligated to defend and indemnify Carrier from under this subparagraph 2(d), Contractor shall remain liable for all costs of defense. In claims against Carrier by an employee or statutory employee of Contractor, Contractor's indemnification obligations under this subparagraph 2(d) shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for Contractor under workers

compensation acts, disability acts or any other employee benefit laws.

(e) **No Unapproved Passengers in Equipment.** No passengers shall be permitted in Equipment without the prior written approval of Carrier for each such passenger.

(f) **Discrimination Prohibited.** Neither party (or their respective employees or agents) shall unlawfully discriminate against any person based on factors such as sex, race, religion, creed, color, national origin, ancestry, age, veteran status, disability, or any other status, condition or characteristic protected by applicable law, to the extent the status, condition or characteristic is protected by applicable law.

(g) **No Guaranteed Minimum Loads or Miles.** There is no guarantee by Contractor to Carrier that the Equipment and personnel furnished by Contractor hereunder will be available to haul any minimum number of loads pursuant to this Agreement. Likewise, there is no guarantee by Carrier to Contractor of a minimum number of loads or miles available pursuant to this Agreement.

3. **COMPENSATION.**

In consideration for furnishing the Equipment and the provision of the personnel services as specified herein, Carrier shall pay to Contractor the compensation described in **EXHIBIT C** attached hereto and incorporated herein by reference. Such compensation shall be due and payable to Contractor within fifteen (15) days after Contractor submits to Carrier properly completed DOT logs and all documents necessary for Carrier to secure payment from the shippers of loads hauled by Contractor using the Equipment, including, but not limited to, delivery receipts or bills of lading, detention reports and loading/unloading certificates, all of which must be signed by the appropriate representatives of the consignor and consignee. All such payments to Contractor and any applicable deductions shall be reflected in an operator's settlement which Carrier shall produce both on a weekly basis and as a final statement following termination of this Agreement ("Settlement").

Carrier may, in its discretion, advance to Contractor the compensation payable hereunder on a weekly basis, before it is due and payable as described above, based on miles ran (PC*MILER Shortest Routes mileage/Carrier's version) from Friday (from 12:00 a.m. Central time) through the following Thursday (i.e., through 11:59 p.m. Central time on Thursday), regardless of whether the trip is complete by the end of Thursday night. In such event, all miles ran and expenses incurred (e.g., fuel, etc.) through 11:59 p.m. on Thursday will be processed on the Settlement on Friday of the subsequent week. The remaining revenue

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and expenses associated with incomplete trips (as of the end of Thursday night) will be processed on the Settlement on Friday of the next subsequent week. Contractor may, at any reasonable time, examine copies of Carrier's tariff, schedule or other documents from which rates and charges are computed, subject to the limitations described in 49 CFR §376.12. Carrier shall furnish Contractor and the Internal Revenue Service with an annual report indicating the total amount of compensation paid to Contractor by Carrier during the year.

Notwithstanding anything herein to the contrary, upon termination of this Agreement, as a condition precedent to final payment pursuant to this paragraph 3, Contractor must comply with the requirements regarding removal and return of Carrier identification as set forth in subparagraph 1(g) above.

4. PERFORMANCE ESCROW FUND.

Carrier will establish a performance escrow fund to be paid by Contractor to Carrier in the aggregate amount of five hundred dollars (\$500.00).

Carrier shall escrow and deduct such funds from Contractor's compensation hereunder at a rate of fifty dollars (\$50.00) per Settlement for the first ten (10) Settlements; provided, however, that Contractor must pay, and Carrier may deduct, the aggregate escrow amount of \$500.00 within the first ninety (90) days of the term hereof, regardless of the total number of Settlements hereunder or the amounts thereof. The specific items to which the performance escrow fund can be applied by Carrier are any and all amounts owed or payable by Contractor pursuant to subparagraphs 1(b), 1(e), 1(i), 1(j) or 2(d) hereof, paragraphs 5 through 13 or paragraph 17 hereof, or any amounts which Carrier could deduct from the compensation otherwise payable to Contractor hereunder for Contractor's payment obligations in accordance with paragraph 15 hereof. Carrier shall not apply the performance escrow fund to any items not specified in this Agreement.

Carrier will provide an accounting to Contractor of any transactions involving the performance escrow fund while the fund is under the control of the Carrier in one of the following ways: (a) by indicating in the individual Settlement sheets the amount and description of any deduction or addition made to the performance escrow fund; or (b) by providing a separate accounting to Contractor of any transactions involving the performance escrow fund on a monthly basis. Notwithstanding the foregoing, Contractor has the right to demand to have an accounting for transactions involving the performance escrow fund at any time.

Carrier will pay interest on the performance escrow fund on at least a quarterly basis. For purposes of calculating the balance of the escrow fund on which interest must

be paid, Carrier may deduct a sum equal to the average advance made to Contractor during the period of time for which interest is paid. The interest rate shall be established on the date the interest period begins and shall be equal to the Applicable Rate.

Contractor must satisfy all of Contractor's obligations specified under this Agreement in order to have the performance escrow fund returned following termination of this Agreement. At the time of the return of the performance escrow fund, Carrier may deduct monies for those obligations incurred by Contractor as specified herein, and shall provide a final accounting to Contractor of all such final deductions made to the performance escrow fund. Subject to the foregoing, in no event shall the performance escrow fund be returned later than forty-five (45) days from the date of termination of this Agreement.

5. TERM AND TERMINATION OF AGREEMENT.

Subject to the provisions for early termination set forth herein, the term of this Agreement shall commence as of the day and year first above written and continue for a period of one (1) year, and thereafter shall automatically renew for additional consecutive one (1)-year terms. Either party may terminate this Agreement without cause by giving the other party at least fourteen (14) days' prior written notice thereof. In the event either party breaches its obligations pursuant to this Agreement, the other party shall have the right to immediately terminate or indefinitely suspend this Agreement by giving at least five (5) days' prior written notice thereof to the breaching party. Termination of this Agreement following proper notice thereof shall become effective whether or not Contractor has removed all signs, placards, licenses and permits relating to Carrier.

Contractor shall defend, indemnify and hold harmless Carrier and its directors, shareholders, officers, employees and agents from and against any and all claims, damages, costs, liabilities, judgments and expenses (including attorneys' fees) which may arise from Contractor's actions and operations following termination of this Agreement. Contractor expressly acknowledges and agrees that operation of the Equipment beyond the scope and authority of this Agreement or in violation of the law and without both the knowledge and authority of Carrier automatically voids this Agreement with respect thereto and constitutes operations solely of Contractor, and Contractor shall defend, indemnify and hold harmless Carrier and its directors, shareholders, officers, employees and agents from and against any and all claims, damages, costs, liabilities, judgments and expenses (including attorneys' fees) which may arise from such unauthorized actions and operations.

Carrier's possession, control and use of and responsibility for the Equipment as described in

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subparagraph 1(n) above shall not exist when Contractor operates contrary to and in violation of the law and/or any provision(s) of this Agreement, as Carrier requires absolute compliance therewith and failure to adhere thereto evidences that Carrier no longer has such possession, control, use and responsibility.

6. BASE PLATES, LICENSES AND PERMITS.

Carrier shall pay all fees relating to the use of Carrier's base plates, vehicle licenses and permits of all types required for Contractor to haul freight for Carrier utilizing the Equipment pursuant to this Agreement.

7. TAXES AND LEVIES.

It is agreed and understood that Contractor shall be solely responsible for all fuel taxes, mileage taxes, highway use taxes, road taxes, and all other levies or similar assessments based upon the operation of the Equipment hereunder. Carrier will report and pay all fuel and mileage taxes to the various states. Contractor shall pay \$0.01 per mile to cover all such fuel and mileage taxes. Carrier may deduct such charges from Contractor's compensation hereunder. The amounts deducted shall be based upon the individual trips of Contractor as accrued upon the operation of the Equipment. Carrier reserves the right to pay such sums to any government agencies in consolidated reporting and payment, and need not report separately for Contractor. The actual amount of fuel and mileage taxes attributable to Contractor will be reconciled by Carrier on a quarterly basis during the term hereof, and upon termination of this Agreement. In the event the allocated amount actually paid by Contractor hereunder for such taxes is less than the amount payable to the applicable taxing authorities which is attributable to Contractor, then Carrier shall deduct the deficiency from Contractor's compensation hereunder.

In the event the allocated amount actually paid by Contractor hereunder for such taxes exceeds the amount payable to the applicable taxing authorities which is attributable to Contractor, then Carrier shall pay such excess to Contractor, together with interest accrued thereon at the Applicable Rate. Contractor will be responsible for reporting and paying all highway use taxes (Form 2290) based upon the operation of the Equipment hereunder, and must provide Carrier with evidence of payment thereof. Contractor may, at its option, elect to have Carrier report and pay such highway use taxes on Contractor's behalf, in which event Carrier will withhold from Contractor's compensation the amount payable for such taxes in equal installments prior to the due date to lessen the financial impact thereof on Contractor when such payment becomes due.

PLEASE NOTE THAT ANY SUCH WITHHOLDINGS FOR HIGHWAY USE TAXES ARE COMPLETELY

VOLUNTARY. ANY SUCH FUNDS WITHHELD ARE NOT CONSIDERED TO BE ESCROW FUNDS UNDER FEDERAL REGULATIONS AND WILL NOT ACCRUE INTEREST.

8. FUEL SURCHARGE PROGRAM.

In an effort to minimize the impact of fluctuations in the price of diesel fuel, Contractor will be paid a Fuel Surcharge in accordance with **EXHIBIT E** attached hereto and incorporated herein. The Fuel Surcharge will be paid on dispatched miles (loaded and empty). Contractor shall not be paid for any miles driven when not performing services for Carrier hereunder. Empty miles under dispatch will be paid from the point of Contractor's last delivery hereunder to point where next reload occurs (excepting empty miles under unauthorized dispatch, such as out-of-service miles, home time travel, unladen miles, etc.). Mileage for loaded miles is based on the mileage software/version according to which the customer pays Carrier under contract ("practical miles"), excepting loads from brokers and loads that are split (t-called). Mileage for unloaded/empty miles, loads from brokers and loads that are split (t-called) is based on PC*MILER Shortest Routes mileage (the version thereof then currently being used by Carrier). The amount of Fuel Surcharge per mile will be based on the Department of Energy's (DOE) Weekly National Average Price of Diesel Fuel and will be adjusted every Tuesday. The Fuel Surcharge applicable to a given load will be based on the date that the load is picked up by Contractor. The Fuel Surcharge for any dispatched empty miles will be based on the date that the driver is dispatched on the empty move. For example: If the DOE Weekly National Average is \$3.00, drivers will be paid \$.085 per dispatched loaded and empty mile traveled on loads picked up or empty moves dispatched between Tuesday and the following Monday. Contractor will be notified of the amount of the Fuel Surcharge each Tuesday. Carrier may, in its discretion, advance to Contractor the Fuel Surcharge payable hereunder on a weekly basis, before it is due and payable as described in paragraph 3 above, based on miles ran (PC*Miler Shortest Routes/Carrier's version) from Friday through the following Thursday, regardless of whether the trip is complete by Thursday night (in accordance with paragraph 3 above).

EXHIBIT 48**9. INSURANCE COVERAGE OBLIGATIONS.**

Pursuant to FMCSA regulations under 49 U.S.C. 13906, Carrier shall maintain, at its own expense, public liability and property damage insurance coverage or self-insurance for the protection of the public. Contractor acknowledges and agrees that if Contractor (or any agent or employee of Contractor) is responsible for an accident resulting in loss or damage to third parties and/or their property (i.e., public liability) while operating the Equipment under this Agreement, then Contractor shall pay up to and including the sum of Two Thousand Dollars (\$2,000) for such public liability, including property damage, bodily injury and/or environmental restoration. Contractor further agrees to maintain, or cause to be maintained on Contractor's behalf, the following types of insurance coverage at all times during the term hereof:

(a) **Bobtail & deadhead (Non-Trucking Liability) insurance coverage** with respect to public liability and property damage arising out of operation of the Equipment when not in use hereunder, with minimum aggregate coverage of \$1,000,000 per occurrence, and a maximum deductible of \$1,000. Carrier shall be endorsed as an additional insured under such policy, and Contractor will cause the insurer to agree (either by endorsement upon such policy or by letter addressed to Carrier) to give Carrier at least ten (10) days' prior written notice of any alteration in the terms of such policy or of the cancellation thereof in whole or in part. Contractor shall provide Carrier with copies of all such policies or certificates with respect to such policies or with other evidence satisfactory to Carrier of compliance by Contractor with the requirements of this subparagraph 9(a). In the event Contractor fails to maintain the insurance as required by this subparagraph 9(a), Carrier shall have the right, but not the obligation, to procure such insurance and, in such event, Contractor shall, upon demand, reimburse Carrier for the expense thereof.

(b) **Collision, fire and theft insurance (physical damage) coverage** for the Equipment. Contractor expressly understands that Carrier shall not be responsible for providing such coverage.

(c) **Occupational accident and/or workers' compensation insurance coverage** which shall protect Contractor from all claims for injury, sickness, disease or death of Contractor's employees or statutory employees, to the extent required by and in compliance with applicable law. Upon request, Contractor shall furnish to Carrier proper evidence of such insurance coverage.

Contractor shall have the option of either independently contracting for the insurance required under this paragraph 9, or requesting Carrier to obtain such coverage in Contractor's name and charge such costs

to Contractor. In the event Contractor chooses the latter option, Carrier will provide Contractor with a certificate of insurance for each such policy, as required by 49 CFR §376.12. Carrier will also provide Contractor with a copy of each such policy upon request of Contractor. If applicable, the specific amount to be charged for such insurance coverage will be specified in an exhibit or addendum attached hereto and incorporated herein by reference, and Carrier may deduct such amounts from the compensation otherwise payable to Contractor hereunder.

10. FINES AND PENALTIES; RESPONSIBILITY.

Contractor shall be financially responsible for all fines and penalties arising from operation of the Equipment. Contractor shall be responsible for ensuring that each load is legal from a weight and size standpoint before commencing each trip and during the conduct thereof, and will pay for all scales. If Contractor fails to do so, or transports a load which exceeds state weight or size limitations without the express approval of Carrier, then Contractor shall be responsible for any resulting fines. Except when the violation results from the acts or omissions of the Contractor, the Carrier shall assume the risks and costs of fines for overweight and oversize trailers when the trailers are pre-loaded, sealed, or the load is containerized, or when the trailer or lading is otherwise outside of Contractor's control, and for improperly permitted over-dimension and overweight loads, and shall reimburse Contractor for any fines paid by Contractor which are the obligation of Carrier under this paragraph 10.

11. LOSS AND DAMAGES; CLAIMS.

(a) **Cargo.** Contractor shall be responsible and liable for the entire amount of any claim for pilferage, theft, spoilage, shortage or other loss or damage to cargo transported by Contractor, except as provided below: In the event any loss or damage to cargo transported by Contractor was not caused by, or contributed to by, Contractor or Contractor's agents or employees or the Equipment, Contractor will not be responsible and liable for any amount of any such claim. If, however, such loss or damage was caused by, or contributed to by, Contractor or Contractor's agents or employees or the Equipment, then Contractor shall pay up to and including the sum of Two Thousand Dollars (\$2,000) of any such loss or damage. Contractor shall bear the burden of proving that Contractor or Contractor's agents or employees or the Equipment did not cause or contribute to such loss.

(b) **Trailers.** Contractor shall be responsible and liable for the entire amount of any loss or damage to trailers or equipment furnished to Contractor by Carrier hereunder, except as provided below: In the event any loss or damage to trailers or equipment furnished to Contractor by Carrier hereunder was not caused by, or

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contributed to by, Contractor or Contractor's agents or employees or the Equipment, Contractor will not be responsible and liable for any amount of any such loss or damage. If, however, such loss or damage was caused by, or contributed to by, Contractor or Contractor's agents or employees or the Equipment, then Contractor shall pay up to and including the sum of Two Thousand Dollars (\$2,000) of any such loss or damage. Contractor shall bear the burden of proving that Contractor or Contractor's agents or employees or the Equipment did not cause or contribute to such loss.

(c) **Equipment.** Carrier shall in no way be responsible or liable for any damages that may occur to the Equipment.

12. TRIP INTERRUPTION.

In the event Contractor violates this Agreement in such a manner as to fail to complete transportation of cargo in transit, abandons a shipment, has a breakdown, or otherwise interferes with the expeditious and safe delivery of cargo and thereby subjects Carrier to potential liability to shippers, Contractor expressly acknowledges and agrees that Carrier shall have the right to complete the trip in any manner Carrier deems appropriate. Contractor hereby waives any recourse against Carrier for such action and agrees to reimburse Carrier for any costs and expenses arising out of such trip completion. Contractor expressly acknowledges and agrees that any such amounts may be deducted from the compensation otherwise payable to Contractor by Carrier hereunder. In addition, Contractor shall assume responsibility for any damages to a shipper arising out of a violation of this Agreement by Contractor, and shall defend, indemnify and hold harmless Carrier and its agents, employees, officers, directors successors and assigns from and against any and all liability and claims arising from any such violation, in accordance with the provisions of paragraph 13 below.

13. RISK OF LOSS; GENERAL INDEMNIFICATION.

As between Contractor and Carrier, unless otherwise expressly provided for herein, Contractor assumes all risks and liability, whether or not covered by insurance, for any and all loss or damage to the Equipment, to cargo hauled by Contractor and to trailers or other equipment or property furnished by Carrier to Contractor, and for injuries or deaths of persons and damage to property, howsoever arising from or incident to the use, operation, or storage of the Equipment, whether such persons are agents or employees of Contractor or third parties, and whether such damaged property is owned by Contractor or third parties. Further, to the fullest extent permitted by law, Contractor shall assume responsibility for, and shall defend, indemnify and hold harmless Carrier and Carrier's agents, employees, officers, shareholders, directors, successors and assigns from and against any and all

claims, damages, penalties and civil fines (unless expressly prohibited by law), losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from: (i) Contractor's acts or omissions and/or acts or omissions of Contractor's agents or employees; (ii) use or operation of the Equipment, regardless of where, how, and by whom used or operated; and/or (iii) failure on the part of Contractor to perform or comply with any terms or conditions of this Agreement. Contractor's obligations under this paragraph 13 shall survive termination of this Agreement, and are in addition to and shall not be construed to negate, abridge, or reduce other rights to indemnity that Carrier may possess. If Carrier demands performance by Contractor of obligations under this paragraph 13 and if Contractor refuses to assume or perform, or delays in assuming or performing Contractor's obligations, then Contractor shall pay Carrier its attorneys' fees, costs and other expenses related thereto and incurred in enforcing the provisions of this paragraph 13. The obligations of defense and indemnity required herein shall, however, be a binding obligation upon Contractor whether or not Carrier has made such demand. Even if a defense is successful to a claim or demand for which Contractor is obligated to defend and indemnify Carrier from under this paragraph 13, Contractor shall remain liable for all costs of defense. In claims against Carrier by an employee or statutory employee of Contractor, Contractor's indemnification obligations under this paragraph 13 shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for Contractor under workers compensation acts, disability acts or any other employee benefit acts.

14. ADVANCES FOR BUSINESS EXPENSES.

Carrier will make advances to Contractor each week Contractor hauls freight for Carrier utilizing the Equipment pursuant to this Agreement to cover certain reimbursable business expenses incurred by Contractor in connection therewith. Such expenses include tolls, loading and unloading (lumper) services, ferry costs, trailer washouts and trailer shags, DOT-mandated driver physical examination and test costs, and any other reimbursable business expenses or costs specified in this Agreement. Advances may be made to Contractor's driver(s) by Carrier, unless Contractor, by signed addendum to this Agreement, directs that there shall be no advances made to its driver(s). Contractor expressly authorizes Carrier to deduct from Contractor's compensation any and all amounts advanced pursuant to this paragraph 14 which are not reimbursable expenses evidenced by valid receipts provided to Carrier or are otherwise not reimbursable by Carrier under the terms of this Agreement.

EXHIBIT 48**15. DEDUCTIONS FROM COMPENSATION.**

Contractor expressly acknowledges and agrees that Carrier may deduct from the compensation otherwise payable to Contractor pursuant to paragraph 3 hereof amounts sufficient to cover Contractor's payment obligations as specified in this Agreement, as well as any other amounts specifically directed and authorized by Contractor. Carrier will not make any deductions from Contractor's compensation hereunder for any charge-back item unless the item is clearly specified in this Agreement (including addenda hereto and/or separate documents which are incorporated herein by reference). Contractor specifically authorizes Carrier to make deductions for the following items:

- (a) any and all EFS card charges and transaction fees attributable to Contractor;
- (b) any and all charges related to Carrier's mobile communications unit described in subparagraph 1(b), if applicable;
- (c) any and all charges related to Carrier's trailers or other property pursuant to subparagraphs 1(i) and 1(j);
- (d) the Performance Escrow Fund described in paragraph 4;
- (e) tax obligations and charges under paragraph 7;
- (f) applicable amounts of any claims for loss or damage to cargo transported by Contractor as set forth in subparagraph 11(a), any liability of Contractor under subparagraph 11(b) for damage to trailers or equipment furnished by Carrier, or any charges for trailer tire repairs or replacements resulting from abuse or negligence by Contractor or its drivers;
- (g) reimbursement to Carrier for any costs and expenses arising out of trip interruptions pursuant to paragraph 12 above, and any damages to shippers arising out of violations of this Agreement by Contractor;
- (h) any amounts advanced by Carrier pursuant to paragraph 14 for expenses which are not reimbursable under the terms hereof;
- (i) interest charges on any negative Settlement balances per paragraph 17;
- (j) Contractor's obligations for purchase or rental payments, related expenses or charges and/or escrow fund obligations to a third party lender or lessor pursuant to an equipment purchase or rental contract concerning the Equipment, in accordance with the provisions of paragraph 19 below;

- (k) any fines, penalties, interest, taxes, fees and/or assessments levied against Carrier as a result of Contractor's operations for which Contractor is responsible or liable hereunder; and
- (l) any and all other payment obligations or liabilities of Contractor specified in this Agreement, or any other amounts as specifically directed and authorized by Contractor in accordance herewith, including, without limitation, any funds for the voluntary Maintenance Savings Account described in subparagraph 1(e), if applicable, including any loan repayment thereunder, and any charges for insurance pursuant to paragraph 9.

For any and all items that may initially be paid for by Carrier but ultimately deducted from Contractor's compensation hereunder, unless already specified herein, Carrier shall provide Contractor with a written recitation as to how the amount of each item is computed, and such statement shall be incorporated herein by reference. Carrier shall provide to Contractor, upon Contractor's request, copies of those documents which are necessary to determine the validity all such charges. Carrier will also provide Contractor with a written explanation and itemization of any deductions for cargo or property damage claims prior to making any such deductions. If Contractor does not object in writing to any deductions made hereunder within fifteen (15) days from the date of the applicable Settlement, all such deductions shall be deemed ratified by Contractor.

16. SETTLEMENT DISPUTES AND OBJECTIONS.

Contractor acknowledges and agrees that if Contractor does not object in writing to a Settlement within fifteen (15) days from the date Carrier produces the Settlement, the Settlement shall be final and Contractor shall not make any claim or bring any cause of action against Carrier relating to the payments and/or deductions reflected therein.

17. NEGATIVE SETTLEMENT BALANCE.

In the event Contractor has a negative Settlement balance after calculation of all payments due Contractor pursuant to paragraph 3 above, less all deductions authorized in paragraph 15 above, Contractor agrees to pay to Carrier interest on such negative balance at the Applicable Rate. Interest shall be paid on the average weekly amount of Contractor's negative balance, and may be deducted from future compensation otherwise payable to Contractor pursuant to paragraph 3 above.

EXHIBIT 48**18. PRODUCTS, EQUIPMENT AND SERVICES OF CARRIER; NO OBLIGATIONS.**

Contractor is not required to purchase or rent any products, equipment or services from Carrier or Carrier's affiliates as a condition of this Agreement. All requests by Contractor or its drivers for Carrier to furnish products, equipment or services will be complied with at the sole discretion of Carrier, and Contractor acknowledges and agrees that Contractor will not assume any such products, equipment or services have been furnished by Carrier until Carrier provides Contractor with written confirmation thereof.

19. CONTRACTS FOR PURCHASE OR RENTAL OF EQUIPMENT; REMITTANCE.

If Contractor is purchasing or leasing the Equipment from a third party lender or lessor, and Contractor desires Carrier to make deductions from Contractor's compensation hereunder and to remit such deducted sums to the lender or lessor on Contractor's behalf for purchase or rental payments, related expenses or charges and/or escrow fund obligations, then Contractor must complete and execute the request form attached hereto as **EXHIBIT D** and must provide Carrier with a copy of the applicable equipment purchase or rental contract. If such purchase or rental contract complies with applicable DOT regulations and other applicable laws, then Carrier will comply with Contractor's request and the terms thereof shall be incorporated herein by reference.

20. RELATIONSHIP OF PARTIES.

The parties intend to create by this Agreement an independent contractor relationship and not an employment or master/servant relationship between Carrier and Contractor. Neither Contractor nor any personnel furnished by Contractor to perform services hereunder shall be considered employees of Carrier at any time, under any circumstances or for any purpose. Contractor shall determine the method, means and the manner of performing Contractor's obligations pursuant to this Agreement and shall be responsible to Carrier for the performance of this Agreement in accordance with the rules and regulations of appropriate regulatory agencies. **Contractor shall have the right to accept or reject any load assignment or freight tendered by Carrier for transportation, and further has the right to choose the route of travel of the Equipment and at what points Contractor's drivers shall take rest stops and refuel the Equipment, all of which shall be the sole obligation and responsibility of Contractor.** The parties hereto are not the agent of the other and neither party shall have the right to bind the other by contract or otherwise except as specifically provided herein. The parties acknowledge that the provisions contained in subparagraph 1(h) above regarding Carrier's exclusive possession, control and use of and

responsibility for the operation Equipment are required by DOT regulations and, in accordance with 49 CFR § 376.12(c)(4), are not intended to affect whether Contractor or any driver provided by Contractor is an independent contractor or an employee of Carrier. Carrier shall neither have nor exercise any control or direction over the specific methods by which the Contractor (or Contractor's employees or agents) shall perform services hereunder. Contractor understands and agrees that Carrier shall not withhold on behalf of Contractor (or Contractor's employees or agents) pursuant to this Agreement any sums for income tax, unemployment insurance, Social Security or any other withholding pursuant to any law or requirement of any governmental body relating to them, or make available to Contractor (or Contractor's employees or agents) any of the benefits afforded to employees of Carrier. Contractor is not and shall not be subject to the policies and procedures applicable only to employees of Carrier. Neither Contractor nor any of Contractor's employees or agents shall have any claim under this Agreement or otherwise against Carrier for workers compensation, unemployment compensation, vacation pay, sick leave, retirement benefits, Social Security benefits, disability insurance benefits, or any other employee benefits, all of which shall be the sole responsibility of Contractor.

21. CONTRACTOR'S RIGHT TO ADVERTISE.

During the term hereof, Contractor has the right to advertise Contractor's independent transportation services to the general public, including, but not limited to, advertising via television, radio, print media, social media, and/or internet/websites. Names, telephone numbers or any other desired advertising may be placed on the Equipment, as Contractor deems appropriate, provided that any such advertising does not interfere with the identification required by Carrier pursuant to subparagraph 1(g) above.

22. NO UNAUTHORIZED MATERIAL.

Contractor agrees and warrants that Contractor and Contractor's drivers, personnel and agents will not place in or on, or carry onto any equipment owned by or under lease to Carrier, including the Equipment, any alcoholic beverages, controlled substances, illegal drugs, explosives or firearms. Any violation of this provision will permit Carrier to terminate this Agreement immediately, without prior notice to Contractor. If a violation of this provision subjects Carrier to any expenditures, Contractor agrees to reimburse Carrier for same.

EXHIBIT 48**23. SUBCONTRACTING/TRIP-LEASING.**

The parties acknowledge and agree that Contractor is not prohibited from the pickup, transportation or delivery of property for more than one carrier or any other person or entity, provided that Contractor complies with the requirements of 49 CFR Part 376 and the terms of this Agreement. Contractor and/or Contractor's drivers/personnel may provide driving services to other motor carriers at any time using vehicles/equipment not covered by this Agreement. Contractor may trip-lease (subcontract) the Equipment to a third party other than an affiliate of Carrier only upon receiving prior written authorization from Carrier and only as allowed under the Federal leasing regulations (49 CFR Part 376). Carrier assumes no responsibility for the collection of freight charges or payments to Contractor for any trip-lease. During the term of any trip-lease, Contractor will remove or cover up all of Carrier's identification on the Equipment and display instead the trip-lease carrier's identification, and, as between Contractor and Carrier, Carrier shall have no responsibility for, and Contractor shall fully indemnify and hold harmless Carrier with respect to, the operation of the Equipment in connection therewith.

24. WAIVER OF OBLIGATIONS.

No action or failure to act by Carrier shall constitute a waiver of a right or duty afforded to Carrier under this Agreement, nor will such action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed to in writing. Any waiver by Carrier of any provision of this Agreement does not constitute a permanent waiver of the provision, nor does the forgiveness by Carrier of a violation or breach of any provision of this Agreement constitute a forgiveness of any subsequent violation or breach.

25. LIMITATIONS ON ASSIGNMENT.

Contractor may not assign Contractor's rights or delegate Contractor's duties and obligations under this Agreement without the prior written consent of Carrier. Carrier may assign this Agreement without the consent of Contractor.

26. GOVERNING LAW.

This Agreement shall be interpreted, construed, enforced and regulated under and by the laws of the State of Kansas. Whenever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable federal, state or local laws, statutes, ordinances, regulations or orders ("Laws"). If, however, any provision of this Agreement, or a portion thereof, is prohibited by or found invalid under any Laws, only such provision or portion thereof shall be ineffective, without invalidating or affecting the

remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable. Contractor and Carrier further agree that in the event any provision of this Agreement, or a portion thereof, is prohibited by Laws or found invalid under any Laws, this Agreement shall be reformed to replace such prohibited or invalid provision or portion thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the prohibited or invalid provision.

27. PARAGRAPH HEADINGS AND CAPTIONS.

All headings, titles and paragraph captions are inserted in this Agreement for convenience of reference only, are descriptive only and shall not be deemed or construed to add to, detract from or otherwise modify the meaning of the paragraphs.

28. NO LIMITATION OF RIGHTS AND DUTIES.

Duties and obligations imposed by this Agreement and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

29. PERFORMANCE.

Contractor acknowledges and agrees that time and exact performance are of the essence of this Agreement.

30. FURTHER ACTS; WRITTEN NOTICES.

Contractor and Carrier agree to do all acts and things, and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement. Contractor acknowledges and agrees that all notices by or from Carrier required to be given in writing under this Agreement may be given by any of the following methods: (a) hand delivery; (b) DocuSign email; (c) UPS, FedEx, or other commercial delivery service; (d) regular or certified U.S. mail; and/or (e) electronically via mobile communications unit.

31. THIRD PARTIES.

Nothing contained in this Agreement shall create any contractual relationship with a third party nor create any cause of action in favor of a third party against Carrier.

EXHIBIT 48**32. BINDING ARBITRATION AGREEMENT.**

In material consideration for this Agreement, Carrier and Contractor each hereby agree that any claims or legal disputes that arise between Carrier and Contractor and which Carrier and Contractor have or may have against each other shall be resolved exclusively through final and binding arbitration, rather than through litigation in a court of law. This agreement to arbitrate claims shall include, but shall not be limited to, any and all claims, complaints, disputes, demands, causes of action or suits alleging breach of this Agreement by either party or arising under 49 CFR Part 376, commonly known as the truth-in-leasing regulations. Final and binding arbitration of claims covered by this arbitration agreement shall be initiated by filing a claim with the American Arbitration Association ("AAA") and will be administered by the AAA under its Commercial Arbitration Rules.

A demand for arbitration shall be filed promptly and within a reasonable time after a claim or legal dispute has arisen. The party filing a demand for arbitration must assert a demand for all claims known to the party on which arbitration may be demanded. In no event may the demand for arbitration be made if institution of legal or equitable proceedings arising out of such claim would be barred by the applicable statute of limitations. The number of arbitrators shall be one (1), and judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall have no authority to award any punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute.

Arbitration shall be conducted in the Kansas City, Missouri metropolitan area. The parties agree to keep the arbitrator's award confidential, except as may be necessary to enforce the award by entering it in a court of competent jurisdiction. Carrier and Contractor shall each be responsible for paying one-half (½) of the applicable AAA and arbitrator fees. Arbitration of claims covered by this arbitration agreement shall proceed solely on an individual basis without the right for any claims to be arbitrated on a class action or collective action basis or brought in a purported representative capacity on behalf of others.

The right to arbitrate claims covered by this arbitration agreement as, or on behalf of, a class is hereby expressly waived. Contractor acknowledges that Contractor has been given the opportunity to consult with and receive independent legal advice from an attorney regarding the terms and conditions of this arbitration agreement, and understands that by signing this Agreement, Contractor is giving up the right to have matters subject to this arbitration agreement resolved in a court of law. Carrier is also giving up this right. The arbitrator shall have the exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement. In the event a court of competent jurisdiction determines that this arbitration agreement is not enforceable, Contractor and Carrier agree that, by signing this Agreement, they each are hereby waiving any right to trial by jury on any legal claims they may have against each other.

33. ENTIRE AGREEMENT.

This Agreement, including any exhibits attached hereto and documents incorporated herein by reference, any subsequent addendums or amendments hereto signed by both parties, and any trip records used pursuant to this Agreement, constitutes the entire agreement and understanding between the parties and shall not be modified, altered, changed or amended in any respect unless in writing and signed by both of the parties hereto. Notwithstanding the foregoing, the parties acknowledge and agree that if, following execution hereof, Carrier discovers that this Agreement contains any errors or omissions in the non-financial terms hereof (e.g., typos, misspellings, incorrect or missing entries of tractor unit number or VIN, etc.), then Carrier may correct such mistake and send Contractor a written rectification amendment hereto containing the proper and correct terms. Unless Contractor notifies Carrier in writing within ten (10) days following receipt of such rectification amendment that Contractor objects to or disagrees with the changed/new terms as set forth therein, then Contractor shall be deemed to have expressly consented and agreed to such changed/new terms, Contractor shall waive any objection thereto, and the terms thereof shall constitute the actual and definitive agreement of the parties with respect thereto.

ACKNOWLEDGMENTS AND SIGNATURES ON FOLLOWING PAGE

EXHIBIT 48

CONTRACTOR EXPRESSLY ACKNOWLEDGES ALL OF THE FOLLOWING:

- CARRIER HAS GIVEN CONTRACTOR A SUFFICIENT OPPORTUNITY TO CAREFULLY REVIEW AND CONSIDER THIS AGREEMENT BEFORE SIGNING IT. CONTRACTOR MAY TAKE A COPY OF THIS AGREEMENT OFF OF CARRIER'S PREMISES TO REVIEW AND CONSIDER IT BEFORE SIGNING IT (FOR HOWEVER LONG CONTRACTOR DESIRES), AND CONTRACTOR HAS THE RIGHT AND OPPORTUNITY TO CONSULT WITH AND RECEIVE INDEPENDENT LEGAL ADVICE FROM CONTRACTOR'S ATTORNEY REGARDING THIS AGREEMENT BEFORE SIGNING IT.

Contractor understands and acknowledges the foregoing opportunity.

Initials

- THE INDIVIDUAL SIGNING THIS AGREEMENT ON BEHALF OF CONTRACTOR IS NOT OBLIGATED TO PERSONALLY OPERATE THE EQUIPMENT OR TO PERFORM ANY OTHER PERSONNEL SERVICES REQUIRED HEREUNDER.

Contractor understands and acknowledges the foregoing.

Initials

- CONTRACTOR MAY REFUSE TO HAUL ANY LOAD OFFERED TO CONTRACTOR BY CARRIER, FOR ANY REASON, WITH NO PENALTY FOR REFUSAL.

Contractor understands and acknowledges the foregoing.

Initials

- CONTRACTOR HAS CAREFULLY READ AND CONSIDERED THIS AGREEMENT, KNOWS AND UNDERSTANDS THE CONTENTS HEREOF, AND EXECUTES THE SAME AS CONTRACTOR'S FULLY-INFORMED FREE ACT AND DEED.

Contractor understands and acknowledges the foregoing.

Initials

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed one (1) original and two (2) copies of this Agreement. Carrier shall retain the original of this Agreement, one copy shall remain in the Equipment during the term of this Agreement, and the other copy shall be retained by Contractor.

"Contractor":

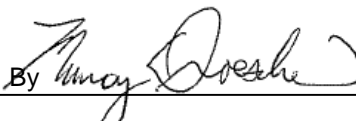
"Carrier":

TRANSAM TRUCKING, INC.

By _____

Name _____

Title Independent Contractor

By 

Name Murray Droscher

Title Chief Financial Officer

EXHIBIT 48

EXHIBIT A

Description of Equipment

Make: _____ Model: _____

Year: _____ VIN: _____

Base License: _____

Unit Number: _____

RECEIPT

Date and time of day possession is transferred, per 49 CFR §376.11(b):

Date: _____

Contractor's contact information:

Applicant Address

A copy of this receipt form shall be given to Contractor upon commencement of services under this Agreement, by mail, telegraph, facsimile, or similar means of communication.

EXHIBIT 48**EXHIBIT B****Charges/Deductions**

A. Mobile Communications Equipment	\$1,774.00*
B. Padlock	\$ 64.00*
C. Padlock Key	\$ 6.40*
D. Permit Book Recovered	\$ 12.00*
E. Permit Book Unrecoverable	\$ 270.95*
F. Load Lock (2)	\$ 18.17*
G. Seal Stamp	\$ 17.49*
H. Pallets	Units multiplied by fair market value
I. Other Property Assigned to Contractor by Carrier	Current cost
J. Bobtail and Deadhead Insurance	\$ 12.46/Week**
K. Occupational Accident / Workers' Compensation Insurance	\$18.46/Week**
L. Tuition Reimbursement	Terms defined in <i>Tuition Repayment Income Withholding Authorization</i>

*Or current cost to replace unreturned item.

Weekly premium subject to change at annual renewal. **Purchase of this coverage through Carrier is optional.

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EXHIBIT 48**EXHIBIT C****Compensation**

Rate per mile: \$ **per mile** (dispatched – loaded and empty)*. Contractor shall not be paid for any miles driven when not performing services for Carrier hereunder. Empty miles under dispatch will be paid from the point of Contractor's last delivery hereunder to point where next reload occurs (excepting empty miles under unauthorized dispatch, such as out-of-service miles, home time travel, unladen miles, etc.). After the first six (6) months of uninterrupted service under this Agreement, the rate per mile will be increased by \$0.05; provided that Contractor has attended two of Carrier's quarterly safety classes during such six-month period. Further, at each annual anniversary date of this Agreement, or any prior Agreement with no break in service leading up to this Agreement, the rate per mile will be increased by \$0.01, up to a maximum of \$1.21 per mile, subject to Contractor's attendance at Carrier's Ethics and Technique class each calendar year and all four quarterly safety classes, per Contractor's Owner-Operator's Information Handbook.

*Mileage pay for loaded miles is based on the mileage software/version according to which the customer pays Carrier under contract ("practical miles"), excepting loads from brokers and loads that are split (t-called). Mileage pay for unloaded/empty miles, loads from brokers and loads that are split (t-called) is based on PC*MILER Shortest Routes mileage (the version thereof then currently being used by Carrier).

Stop Pay: **\$40.00** for each scheduled stop other than the original pickup and final delivery stops.

Fuel Surcharge Program: Contractor will be paid a Fuel Surcharge in accordance with paragraph 8.

Loading/Unloading: TransAm will reimburse Contractor for the reasonable cost of loading and unloading services (lumper) upon presentment of valid receipts – subject to prior approval.

Trailers: TransAm will pay for trailer washouts, trailer shags and trailer spotting charges.

Tolls: TransAm will reimburse Contractor for tolls (and ferry charges, if applicable) upon presentment of valid receipts.

Fuel Discounts: Contractor may take advantage of TransAm's fuel network and receive the benefit of any **at-pump discounts** through use of the EFS card – per subparagraph 1(f).

Reefer Fuel: TransAm pays for all reefer fuel when purchased with EFS cards or reimbursed when purchased with cash, upon presentment of valid receipts.

Base Plates and Permits: Paid by TransAm for term of Agreement – per paragraph 6.

Transflo Express: TransAm offers free Transflo Express services.

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EXHIBIT 48**EXHIBIT D****CONTRACTOR SETTLEMENT DEDUCTION AND REMITTANCE REQUEST FORM**

The undersigned ("Contractor") is party to that certain equipment purchase/financing or rental/lease contract ("Contract") with **Olathe Noble Equipment Leasing, Inc.** ("Lender/Lessor") dated as of the _____ . Pursuant to the terms of the Contract, Contractor is required to make certain purchase or rental payments to Lender/Lessor, and is also responsible for other expenses related to the Equipment. Accordingly, Contractor hereby authorizes and requests **TRANSAM TRUCKING, INC.** ("Carrier") to make deductions from Contractor's compensation pursuant to the foregoing Agreement in the following amounts:

Purchase/Rental Payment: See attached agreement

Additional Deductions for Expenses: See attached agreement

Contractor further authorizes and requests Carrier to remit such deducted amounts to Lender/Lessor on behalf of Contractor on a weekly basis. Remittance shall be sent to the following address:

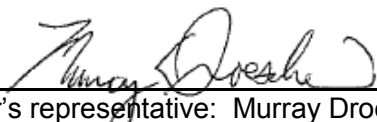
Olathe Noble Equipment Leasing, Inc.

15910 S 169 Hwy

Olathe, KS 66062

Contractor:

Request approved by:


Carrier's representative: Murray Droscher

Date

Date

1713483v1

EXHIBIT 48**Fuel Surcharge Program**

The fuel surcharge applicable to a load is determined based on the date the load is picked up – for dispatched empty miles the date of dispatch is used. The DOE fuel price will be updated every Tuesday. The fuel surcharge is paid on all dispatched (loaded and empty) miles and runs from Tuesday through Monday.

DOE Fuel Price	FSC Per Mile	DOE Fuel Price	FSC Per Mile	DOE Fuel Price	FSC Per Mile	DOE Fuel Price	FSC Per Mile
1.200	(0.199)	3.723	0.202	6.190	0.600	8.658	0.992
1.255	(0.190)	3.775	0.210	6.243	0.609	8.71	1.001
1.310	(0.182)	3.828	0.219	6.295	0.617	8.763	1.009
1.365	(0.173)	3.88	0.227	6.348	0.625	8.815	1.018
1.420	(0.165)	3.933	0.235	6.400	0.634	8.868	1.026
1.475	(0.157)	3.985	0.244	6.453	0.642	8.92	1.034
1.530	(0.148)	4.038	0.252	6.505	0.650	8.973	1.043
1.585	(0.140)	4.09	0.260	6.558	0.659	9.025	1.051
1.640	(0.132)	4.413	0.269	6.610	0.667	9.078	1.059
1.695	(0.123)	4.195	0.277	6.663	0.675	9.13	1.068
1.750	(0.115)	4.248	0.286	6.715	0.684	9.183	1.076
1.805	(0.107)	4.300	0.294	6.768	0.692	9.235	1.084
1.860	(0.098)	4.353	0.302	6.820	0.700	9.288	1.093
1.915	(0.090)	4.405	0.311	6.873	0.709	9.340	1.101
1.970	(0.082)	4.458	0.319	6.925	0.717	9.393	1.109
2.025	(0.073)	4.510	0.327	6.978	0.725	9.445	1.118
2.080	(0.065)	4.563	0.336	7.030	0.734	9.498	1.126
2.135	(0.057)	4.615	0.344	7.083	0.742	9.550	1.134
2.190	(0.048)	4.668	0.352	7.135	0.750	9.603	1.143
2.245	(0.040)	4.720	0.361	7.188	0.759	9.655	1.151
2.300	(0.032)	4.773	0.369	7.240	0.767	9.708	1.159
2.355	(0.023)	4.825	0.377	7.293	0.776	9.760	1.168
2.410	(0.015)	4.878	0.386	7.345	0.784	9.813	1.176
2.463	(0.007)	4.930	0.394	7.398	0.792	9.865	1.184
2.515	0.010	4.983	0.402	7.450	0.800	9.918	1.193
2.568	0.018	5.035	0.411	7.503	0.809	9.970	1.201
2.620	0.027	5.088	0.416	7.555	0.817	10.023	1.209
2.673	0.035	5.140	0.427	7.608	0.826		
2.725	0.044	5.193	0.436	7.660	0.834		
2.778	0.052	5.245	0.444	7.713	0.842		
2.830	0.060	5.298	0.452	7.765	0.851		
2.883	0.069	5.350	0.461	7.818	0.859		
2.935	0.077	5.403	0.470	7.870	0.867		
2.988	0.085	5.455	0.479	7.923	0.876		
3.040	0.094	5.508	0.489	7.975	0.884		
3.093	0.102	5.560	0.498	8.028	0.892		
3.145	0.110	5.613	0.507	8.080	0.901		
3.198	0.119	5.665	0.516	8.133	0.909		
3.250	0.127	5.718	0.525	8.185	0.917		
3.303	0.135	5.770	0.534	8.238	0.926		
3.355	0.144	5.823	0.542	8.290	0.934		
3.408	0.152	5.875	0.550	8.343	0.942		
3.460	0.160	5.928	0.559	8.395	0.951		
3.513	0.169	5.980	0.567	8.448	0.959		
3.565	0.177	6.033	0.575	8.500	0.967		
3.618	0.185	6.085	0.584	8.553	0.976		
3.670	0.194	6.138	0.592	8.605	0.984		

If fuel prices rise higher than \$10.075, a revised fuel surcharge schedule will be supplied.

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**CONFIDENTIAL – Subject to
Protective Order**

DEF-00050123

EXHIBIT 48**ADDENDUM TO INDEPENDENT CONTRACTOR OWNER-OPERATOR AGREEMENT**

It is my wish to purchase certain insurance coverage made available by TransAm Trucking, Inc. with respect to the following described equipment:

Unit#	Year/Make	VIN	Stated Value W/APU	Stated Value W/O APU
-------	-----------	-----	-----------------------	-------------------------

I understand and acknowledge that I am not required to purchase this, or any other item, product or service from TransAm Trucking, Inc.

I hereby authorize the premium costs of the coverage selected (below) to be withheld from my contractor settlement.

Non-Trucking (Deadhead/Bobtail)*
(\$12.46/week)

(initialed)

Physical Damage @ Stated Value*

(initialed)

Occupational Accident*
(\$18.46/week)

(initialed)

Deductible Buy Down*
(\$50.07)

(initialed)

Contractor (Signature)

Date

Contractor (Print Name)

Witness

Lender/Lessor Information:

OLATHE NOBLE EQUIPMENT LEASING, INC.

15910 S 169 HWY

OLATHE, KS 66062

EXHIBIT 48



ADDENDUM TO INDEPENDENT CONTRACTOR OWNER-OPERATOR AGREEMENT

PrePass Authorization

I, the undersigned Contractor, understand that I have the option to purchase the service listed below:

- PrePass Plus - Scale bypass transponder services
- Applicable fee for this service is \$3.02 per week

I understand that I am not required to purchase this service from TransAm Trucking, Inc.

Check one of the following boxes and sign below:

I hereby elect to purchase this service and authorize TransAm Trucking, Inc. to make deductions from my operator settlement for the applicable fees.

I DO NOT elect to purchase this service.

Contractor Information:

Name (Print): _____

Driver Code: _____

Truck #: _____

Contractor (Signature)

Date

EXHIBIT 48



ADDENDUM TO INDEPENDENT CONTRACTOR OWNER-OPERATOR AGREEMENT

Fuel Optimizer Authorization

I, the undersigned Contractor, understand that I have the option to purchase the service listed below:

- Fuel optimization services
- Applicable fee for this service is \$3.00 per week

I understand that I am not required to purchase this service from TransAm Trucking, Inc.

I further understand that if I do elect to purchase this service, the driver is not required to follow the suggested routes or to make the recommended fuel stops, and there is no penalty if the driver chooses not to do so.

Check one of the following boxes and sign below:

I hereby elect to purchase this service and authorize TransAm Trucking, Inc. to make deductions from my operator settlement for the applicable fees.

I DO NOT elect to purchase this service.

Contractor Information:

Name (Print): _____

Driver Code: _____

Truck #: _____

Contractor (Signature)

Date

EXHIBIT 49**OLATHE NOBLE EQUIPMENT LEASING, INC.****EQUIPMENT LEASE AGREEMENT**

THIS EQUIPMENT LEASE AGREEMENT (this "Agreement") is made and entered into as of set forth on **EXHIBIT A** attached hereto, by and between **OLATHE NOBLE EQUIPMENT LEASING, INC.**, a Kansas corporation ("Lessor"), and the lessee named on **EXHIBIT A** attached hereto ("Lessee").

WITNESSETH:

WHEREAS, Lessor is a Kansas corporation which is principally engaged in the business of leasing motor vehicle equipment used by for-hire motor carriers for the interstate and intrastate transport of freight; and

WHEREAS, Lessee is engaged in the business of transporting freight by motor vehicle pursuant to agreements with for-hire motor carriers; and

WHEREAS, subject to the terms and conditions herein contained, Lessee desires to rent from Lessor and Lessor desires to lease to Lessee certain motor vehicle equipment for use in Lessee's freight transportation business.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is hereby agreed as follows:

1. **Leased Equipment.** During the term hereof, Lessor shall lease to Lessee and Lessee shall rent from Lessor the motor vehicle equipment described on **EXHIBIT A** attached hereto (the "Equipment"). Lessee shall inspect the Equipment prior to taking possession thereof and shall immediately report to Lessor in writing any and all existing damage or defects thereto. Unless Lessee has given written notice to Lessor specifying any damage or defects to the Equipment prior to taking possession, it shall be conclusively presumed as between Lessee and Lessor that Lessee has fully inspected the Equipment and that it was free from damage and defects at the time Lessee took possession. In addition, Lessee shall promptly report to Lessor any damage to the Equipment that occurs while the Equipment is under Lessee's control. Lessee shall also provide a current Equipment odometer reading to Lessor on a weekly basis during the term hereof.

2. **Term of Lease.** This Agreement shall be in effect during the term set forth on **EXHIBIT A** attached hereto, subject to the provisions for early termination set forth herein. The term may be extended beyond the stated expiration date only upon mutual written consent of Lessor and Lessee.

3. **Lease Payments.** During the term hereof, Lessee shall pay to Lessor the lease payments set forth on **EXHIBIT B** attached hereto and incorporated herein by reference. Such lease payments shall be due and payable to Lessor by Lessee on a weekly basis, regardless of whether the Equipment is being repaired or is otherwise not in service during all or part of any week. Any amounts past due in excess of fifteen (15) days shall bear interest until paid in full at a rate equal to the average yield or equivalent coupon issue yield on Ninety-One (91)-Day, Thirteen (13)-Week Treasury Bills as established in the weekly auction by the Department of Treasury. For purposes of this Agreement, such interest rate shall be referred to hereinafter as the "Applicable Rate".

4. **Lease Completion Bonus.** If this Agreement remains in full force and effect for the entire term hereof, Lessor shall pay to Lessee a bonus ("Lease Completion Bonus") in an amount equal to three cents (\$0.03) per mile traveled by the Equipment during the term hereof (based on odometer reading).

5. **Lease to Carrier.** The parties acknowledge that, for purposes of conducting Lessee's freight transportation business, during the term hereof Lessee intends to lease the Equipment to at least one for-hire motor carrier. Lessee agrees to notify Lessor in writing of the name of any motor carrier to which Lessee intends to lease the Equipment, and the name and address of such carrier shall be set forth on **EXHIBIT A** attached hereto. Such lease shall be subject



EXHIBIT 49

to the prior approval of the Lessor, which approval shall not be unreasonably withheld. Lessor may, in its discretion, condition such approval on obtaining a guaranty of Lessee's payment obligations hereunder from any such carrier. In contracting to lease the Equipment to a motor carrier, Lessee shall comply with all government regulations, including obtaining the appropriate insurance. In addition, the Lessee shall authorize and require each such motor carrier to deduct from the compensation owed by the motor carrier to Lessee, on a weekly basis, an amount equal to Lessee's weekly lease payment obligation hereunder and to deliver such amount to Lessor. Lessee may not move the Equipment from one motor carrier to another unless and until Lessee is current on all of Lessee's payment obligations under this Agreement.

6. **Use of Equipment.** Lessee may possess and use the Equipment in accordance with the terms and conditions of this Agreement, provided that any such use is in conformity with all applicable federal, state and local laws, statutes, ordinances, regulations and orders relating to the possession, use or maintenance of the Equipment, any applicable insurance policies and the warranties of the manufacturer with respect to the Equipment. Lessee shall operate the Equipment leased hereunder using only safe and duly licensed drivers who will operate the Equipment with reasonable care, in accordance with all federal, state and local laws, statutes, ordinances, regulations and orders (specifically including, without limitation, all applicable rules of the Federal Motor Carrier Safety Administration), and will use every reasonable precaution to prevent loss or damage to the Equipment, whether by reason of fire, theft, collision or otherwise, and to prevent injury to third persons or property of third persons. At no time may the Equipment be loaded beyond the gross weights recommended by the manufacturer.

7. **Maintenance/Tire Replacement Reserve.** During the term hereof, Lessee agrees to pay into a maintenance/tire replacement reserve maintained by Lessor the amount of four cents (\$0.04) per mile that the Equipment travels, not to exceed a maximum of \$10,000 unless authorized by Lessee. Such mileage shall be based on the Equipment's odometer reading, and may be reconciled on a periodic basis. The reserve shall be used to purchase tires for the Equipment and to maintain and repair the Equipment (i.e., routine maintenance/repairs as necessitated by ordinary wear and tear) while this Agreement is in effect. The reserve shall not be used by Lessee to repair any damage to the Equipment resulting from driver negligence or willful misconduct unless otherwise approved by Lessor in advance. Lessee shall authorize and require the applicable reserve amount to be deducted from Lessee's weekly settlement by any motor carrier to which Lessee leases the Equipment, and shall cause such amount to be delivered to the reserve. Lessor shall provide Lessee with an accounting of any and all transactions involving the reserve on at least a monthly basis during the term hereof (which may be reflected on the settlement documentation provided by the motor carrier to which Lessee leases the Equipment); provided, however, that Lessee may receive an accounting of transactions involving the reserve at any time upon request. If the funds held in the reserve are not sufficient to pay for any costs/expenses for which the reserve may be used, then upon Lessee's request, Lessor may, in its discretion, advance to Lessee all or part of the funds necessary to pay for such costs and expenses and the reserve shall be deemed to have a negative balance to the extent of such advanced funds. In the event the reserve has a negative balance, then Lessee agrees to pay into the reserve the amount of ten cents (\$0.10) per mile that the Equipment travels until such time as the reserve no longer has a negative balance. The amount of any negative balance remaining upon termination of this Agreement shall be immediately due and payable from Lessee to Lessor. Lessor shall pay to Lessee interest on the funds held in the reserve on at least a quarterly basis. The interest rate shall be established on the date funds are first deposited into the reserve and shall be equal to the Applicable Rate. Lessee acknowledges and agrees that Lessor may credit such interest payments against the amounts otherwise payable by Lessee hereunder. Upon termination or expiration of this Agreement (unless Lessee purchases the Equipment pursuant to paragraph 11 below), Lessor shall retain out of the reserve an amount necessary to perform preventative maintenance services and to make any required repairs to the Equipment, and an amount equal to the cost attributable to the amount of wear on the tires which occurred during the time this Agreement was in effect. The specific items and amounts for which Lessee shall be responsible with respect to such maintenance and repairs are set forth on **EXHIBIT C** attached hereto. The balance of the reserve, if any, less any amounts set off as provided in paragraph 26 of this Agreement, shall be paid to Lessee no later than forty-five (45) days from the date of termination, together with a final accounting of all such final deductions. In the event Lessee completes the full term of this Agreement or exercises the option to purchase the Equipment pursuant to paragraph 11 of this Agreement, all amounts accumulated in the reserve, less any amounts set off as provided in paragraph 26, shall be paid to Lessee no later than forty-five (45) days from the date of termination, together with a final accounting.

8. **Performance Escrow Fund.** Lessor will establish a performance escrow fund to be paid by Lessee to Lessor in the aggregate amount of seven hundred dollars (\$700.00). Lessee shall pay and Lessor will escrow such funds at a rate of fifty dollars (\$50.00) per week. The specific items to which the performance escrow fund can be applied by Lessor are any and all amounts owed or payable by Lessee pursuant to this Agreement. Lessor shall not apply the performance escrow fund to any items not specified in this Agreement. Lessor will provide an accounting to Lessee of any transactions involving the performance escrow fund while the fund is under the control of the Lessor by providing a separate accounting to Lessee of any transactions involving the performance escrow fund on a monthly basis during the

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term hereof; provided, however, that Lessee may receive an accounting of transactions involving the performance escrow fund at any time upon request. Lessor will pay interest on the performance escrow fund on at least a quarterly basis. The interest rate shall be established on the date funds are first deposited into the escrow account and shall be equal to the Applicable Rate. Lessee acknowledges and agrees that Lessor may credit such interest payments against the amounts otherwise payable by Lessee hereunder. Further, Lessee must satisfy all of Lessee's obligations specified under this Agreement in order to have the performance escrow fund returned following termination of this Agreement. At the time of the return of the performance escrow fund, Lessor may deduct monies for those obligations incurred by Lessee as specified in this Agreement, and shall provide a final accounting to Lessee of all such final deductions made to the performance escrow fund. Subject to the foregoing, the balance of the performance escrow fund shall be returned to Lessee within forty-five (45) days from the date of termination of this Agreement.

9. **Pet Deposit.** No pets or animals of any kind shall be permitted in the Equipment unless Lessee first pays to Lessor a pet deposit in the amount of \$4,000.00. If Lessee exercises the option to purchase the Equipment pursuant to paragraph 11 of this Agreement, then the pet deposit shall be refunded to Lessee, less any amounts payable by Lessee under this Agreement.

10. **Unconditional Payment Obligations.** Lessee shall pay to Lessor all lease payments and any other amounts owing hereunder on the due date thereof, and Lessee hereby agrees that its obligation to pay such amounts shall be absolute and unconditional under all circumstances, including, without limitation, the following: (i) any setoff, counterclaim, recoupment, defense, or other right which Lessee may have against Lessor or any vendor or manufacturer of any Equipment, or anyone else for any reason whatsoever; (ii) the existence of any liens, encumbrances, or rights of others whatsoever with respect to such Equipment, whether or not resulting from claims against Lessor not related to the ownership of such Equipment; (iii) any damage to or loss or destruction of the Equipment or any interruption or cessation in the use or possession thereof by Lessee for any reason whatsoever; (iv) any insolvency, bankruptcy, reorganization, or similar proceedings by or against Lessor; or (v) any other event or circumstances whatsoever, whether or not similar to any of the foregoing.

11. **Option to Purchase.** If Lessee is current on all of Lessee's obligations hereunder and this Agreement is in full force and effect, then Lessee will have the option to purchase the Equipment on the date and for the amount set forth on **EXHIBIT D** attached hereto. This option is personal to Lessee, and is not transferable or assignable by Lessee under any circumstances. **Lessee must give Lessor written notice of Lessee's intent to exercise such option to purchase no later than September 30th of the calendar year prior to the calendar year in which the term hereof will expire. Such notice must be sent to Lessor via certified mail. If Lessee fails to provide Lessor with such notice via certified mail on or before such date, then Lessee shall forfeit the option to purchase hereunder. If Lessee exercises the option by timely providing Lessor with the required notice, and this Agreement remains in full force and effect for the entire term hereof, but Lessee fails to purchase the Equipment on the Option Date set forth on EXHIBIT D attached hereto, then the Lease Completion Bonus under paragraph 4 above shall be equal to only \$0.015 per mile traveled by the Equipment during the term hereof (rather than \$0.03 per mile). LESSOR SHALL MAKE NO WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, WITH RESPECT TO THE EQUIPMENT OR LESSEE'S INTENDED USE OF THE EQUIPMENT. IF LESSEE DOES PURCHASE THE EQUIPMENT, THEN IT WILL BE SOLD ON AN "AS-IS" BASIS.** Lessor will transfer, or cause to be transferred, to Lessee any manufacturer's warranties on the Equipment that are then in force and effect and which are properly transferable and assignable to Lessee; provided, however, that Lessee shall be solely responsible for the payment of any charges, fees or costs relating to such transfer.

12. **Title to Equipment.** **LESSEE EXPRESSLY ACKNOWLEDGES THAT LESSEE IS NOT BUYING THE EQUIPMENT DURING THE TERM OF THIS AGREEMENT AND WILL NOT HAVE ANY SECURITY, PROPERTY OR OWNERSHIP INTEREST IN THE EQUIPMENT DURING THE TERM OF THIS AGREEMENT, EXCEPT THE RIGHT TO USE THE SAME IN ACCORDANCE WITH AND SUBJECT TO THE TERMS, CONDITIONS AND PROVISIONS OF THIS AGREEMENT.** This Agreement constitutes a lease and not a security agreement, under which Lessee only has use of the Equipment and the contingent right to exercise the option to purchase the Equipment in accordance with the conditions contained herein. A financial institution providing financing to Lessor pursuant to a financing agreement may own title to the Equipment or possess a first priority security interest in the Equipment that is the subject of this lease ("Secured Financier"). Lessee expressly acknowledges that all of Lessee's rights, title and interests in the Equipment arising by virtue of this lease are subordinate to the rights of a Secured Financier. In the case of a material default by Lessor resulting in acceleration of the obligations of Lessor pursuant to a financing agreement with a Secured Financier: (a) Lessee hereby agrees that it shall cooperate fully with the Secured Financier in all lawful actions taken by the Secured Financier pursuant to the applicable financing agreement to remedy such default, including repossession of the Equipment; and (b) Lessee expressly acknowledges that this Lease

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provides Lessee with no defense, recourse or claim, whether legal or equitable, against the Secured Financier arising from Secured Financier's exercise of its rights in the Equipment.

13. **Alteration of Equipment.** Lessee shall not add, change or remove any items which are affixed to the Equipment (including any speed controls, satellite communications units, and any painting or ornamentation) without Lessor's prior written consent. Upon Lessee's return of the Equipment to Lessor, any item Lessee affixed to the Equipment with the approval of Lessor may be removed only if removal will not damage or lessen the value of the Equipment, and Lessee shall pay for such removal. Any alteration to the Equipment which is not approved in writing by the Lessor shall, at Lessor's option, be removed, replaced or repaired at Lessee's expense.

14. **Equipment Inspection.** During the term hereof, Lessor has the right to inspect the Equipment at any reasonable time or place. Upon Lessor's request, Lessee agrees to return the Equipment to Lessor's facilities in Olathe, Kansas, or to such other place specified by Lessor for its inspection.

15. **Operation, Maintenance and Repair Costs.** Lessee, at its own expense, shall keep the Equipment in good repair, mechanical condition and running order. Lessee shall pay all expenses associated with the operation, maintenance and repair of the Equipment, including but not limited to: (i) periodically washing and polishing the Equipment and keeping the interior and exterior of the Equipment clean; (ii) supplying the necessary fuel for the operation thereof; (iii) supplying the necessary oil, lubricants, anti-freeze and other fluids necessary for the operation thereof; (iv) making repairs and replacing worn parts and components, including, but not limited to, brakes, tires, filters, belts and drive line components (i.e. – engine, transmission, differentials and engine cooling system); and (v) maintaining the Equipment in accordance with the manufacturer's requirements in order to maintain any manufacturer's warranty. Notwithstanding the foregoing, Lessee shall not be financially responsible for any repair or replacement to the extent the costs and expenses thereof are covered by a manufacturer's warranty. (See **EXHIBIT E**, as applicable for units ending in 13, 14, 15, & 16 and for units ending in 17.) Lessee agrees to comply with the maintenance procedures established by Lessor. As proof of compliance, Lessee shall supply Lessor with all requested invoices, purchase orders and similar documents evidencing compliance with the maintenance procedures. In the event Lessee fails to maintain or repair the Equipment as required by Lessor, Lessor may take possession of the Equipment, perform the maintenance or repair, and charge the cost thereof to Lessee.

16. **Licenses, Permits, Taxes and Other Charges.** Lessee shall be responsible for paying or causing to be paid all applicable assessments, charges, fees, taxes, including sales, use, excise, personal property, ad valorem, stamp and other taxes, fines or penalties whatsoever, now or hereafter imposed by any federal, state or local authority, whether payable by Lessor or Lessee, on or relating to the Equipment or the use, registration, rental, delivery, ownership or operation thereof, or based upon the amount of rent paid or assessed in connection with this Agreement. Nothing contained herein shall require Lessee to pay any taxes on or measured by the net income of Lessor determined substantially in the same manner as net income is presently determined under the Federal Internal Revenue Code. In case any report or return is required to be made with respect to any obligation of Lessee under this paragraph 16 or arising out of this paragraph 16, Lessee shall either make such report or return in such manner as will show Lessor's interest in the Equipment or notify Lessor of such requirement and make such report in such manner as shall be reasonably satisfactory to Lessor. Lessee's obligations under this paragraph 16 shall survive the termination of this Agreement. Lessee shall procure and maintain, at its expense, all licenses, permits, registrations, consents and certificates as may be required for the lawful operation of the Equipment. All certificates of title or registrations applicable to the Equipment shall be applied for, issued, and maintained in the name of the owner, and the Lessee shall pay all costs in relation thereto. If Lessor shall, under any applicable law, be required to directly apply for any such licenses, permits, registrations, consents or certificates, Lessor shall, upon Lessee's request therefor, accompanied by a properly completed application and Lessee's payment in full of the cost thereof, apply for the same; but nothing contained herein shall affect or diminish Lessee's responsibilities under this Agreement. Lessee shall be responsible for all fines due to overload, overlength, overweight, lack of plates or permits, violations of any federal, state or local laws, statutes, ordinances, regulations or orders relating to the operation of the Equipment and similar charges that may be duly and lawfully imposed or assessed by reason of Lessee's failure to comply with any laws, statutes, ordinances, regulations or orders of any governmental bodies having jurisdiction. If the taxes, licensing, registration, or permit fees, fines, or other charges that the Lessee is responsible for under this paragraph 16 are levied, assessed, charged, or imposed against the Lessor, it shall notify the Lessee in writing of such fact. The Lessor may, at its option, pay any such tax, licensing, registration, or permit fee, fine or other charge, whether levied, assessed, charged, or imposed against the Lessor or the Lessee. If such payment is made by the Lessor, the Lessee shall reimburse the Lessor within seven (7) days after receipt of an invoice therefor.

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17. **Disclaimer of Warranties.** LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO: MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS, QUALITY, DURABILITY OR SUITABILITY FOR LESSEE'S PURPOSES, THE DESIGN OR CONDITION OF THE EQUIPMENT; THE QUALITY OF THE EQUIPMENT; THE WORKMANSHIP IN THE EQUIPMENT; COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION, OR CONTRACT PERTAINING THERETO; PATENT INFRINGEMENT; OR LATENT DEFECTS, LESSEE DISCLAIMING ANY AND ALL LIABILITY OF LESSOR WITH RESPECT THERETO. LESSOR SHALL NOT BE LIABLE TO LESSEE OR TO ANY OTHER PERSON OR ENTITY FOR LOSS OF USE OF THE EQUIPMENT, LOSS OF TIME, INCONVENIENCE OR OTHER CONSEQUENTIAL DAMAGES RESULTING FROM THE CONDITION OF THE EQUIPMENT. THE EQUIPMENT IS BEING LEASED TO LESSEE "AS IS". Lessor shall not be liable or responsible to Lessee for any damage, defects, failure to meet specifications, late delivery, or failure to deliver with respect to Equipment. Lessee shall make claim on account thereof only against the manufacturer or supplier and shall nevertheless pay Lessor all lease payments under this Agreement. Lessor, to the extent assignable, hereby assigns to Lessee solely for the purpose of making and prosecuting any such claim against the manufacturer or supplier all of the rights which Lessor has against the manufacturer or supplier for breach of warranty or other representation respecting the Equipment. Lessor shall not be liable or responsible to Lessee for any claim, loss, damage, liability, or expense of any kind or nature including, but not limited to, direct, actual, indirect, special or consequential damages, caused directly or indirectly, by the Equipment or any part thereof, or the inadequacy thereof, for any purpose, or any defect or deficiency therein, or the use, operation, or storage thereof, or the interruption or loss of service or use thereof, or arising from any other reason or cause whatsoever relating to or concerning the Equipment, or any part thereof. All proceeds of any such warranty recovery from the manufacturer or supplier of the Equipment shall first be used to repair the Equipment.

18. **Risk of Loss.** As between Lessor and Lessee, Lessee assumes all risks and liability, whether or not covered by insurance, for loss or damage to the Equipment and for injuries or deaths of persons and damage to property, howsoever arising from or incident to the use, operation, or storage of the Equipment leased hereunder, whether such injury or death to persons be agents or employees of the Lessee or third parties, and whether such damage to property be of Lessee or others. If the Equipment is damaged but is capable of repair, Lessee shall repair the same at Lessee's expense as quickly as the circumstances permit. In such event, if Lessor is indemnified for such damage pursuant to any insurance policy covering such repair, Lessor upon adequate assurances that the applicable Equipment is repaired or will be repaired, will pay the insurance proceeds to the Lessee or the repair vendor, in Lessor's discretion, to assist Lessee in defraying the cost of repair. Lessee shall continue to pay the lease payments due hereunder regardless of whether the Equipment is damaged and/or is undergoing repair or overhaul. If the Equipment is lost, stolen, destroyed or damaged beyond repair by any cause whatsoever, then Lessee shall pay Lessor the fair market value of the Equipment less the amount of the indemnification, if any, received by Lessor pursuant to any insurance policy covering such loss. The Lessee's payment of the aforesaid amount shall be made to Lessor within five (5) days after Lessor's receipt of indemnification, or a notice of denial of liability, if any, from an insurance carrier or within twenty (20) days from the date of loss, theft, destruction, or damage of the Equipment, whichever date shall first occur. Should Lessee pay Lessor the aforesaid amount prior to receipt from Lessor's insurance carrier of any indemnification under an applicable policy, Lessor shall subrogate Lessee in writing to all Lessor's rights under such policy as they relate to the lost, stolen, destroyed, or damaged Equipment. Lessee also acknowledges and agrees that Lessor does not assume any liability for loss or damage to any contents or personal property contained in the Equipment regardless of the circumstances under which said loss or damage may occur and whether or not the Equipment is in the possession or under the control of Lessor.

19. **Insurance.** Lessee shall obtain and maintain, or cause to be obtained and maintained through an authorized motor carrier, insurance coverage for the protection of the public in connection with operation of the Equipment (i.e., auto liability coverage), as required by applicable law. In addition, Lessee shall carry non-trucking liability ("NTL" or "bobtail/deadhead") insurance coverage with respect to public liability and property damage arising out of operation of the Equipment, with minimum aggregate coverage of \$1,000,000 per occurrence, and a maximum deductible of \$1,000. In all instances, Lessor shall be named as an additional insured, certificate holder and loss payee. Lessee shall give Lessor at least thirty (30) days' prior written notice of alteration or cancellation of such insurance, in whole or in part, and shall cause the insurer to do the same. Lessee shall furnish to Lessor copies of policies or certificates of insurance evidencing compliance with this insurance requirement, as requested by Lessor. Lessor shall maintain collision, fire and theft (physical damage) insurance coverage on the Equipment, subject to exclusions typically contained in such policies. Such insurance coverage shall be for the actual cash value of the Equipment. If there are any deductibles applicable to such physical damage insurance, then Lessee shall pay up to and including the sum of \$1,000 of any loss for which Lessor is not indemnified by the insurer because of the operation of such deductibles. Lessee shall pay to Lessor the sum of \$219.00 per week for its maintenance of such physical damage insurance, which amount represents

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Lessor's cost for maintaining such insurance coverage plus an administrative fee. The parties acknowledge and agree that such weekly charge may be increased or decreased by Lessor from time to time upon notice thereof to Lessee.

20. **Cooperation.** Lessee agrees to keep Lessor informed of any major problems, attachments, liens or encumbrances which arise in connection with the operation of the Equipment and to promptly report information relating to any accident or lawsuit which occurs. Lessee shall cooperate with Lessor and with the insurers in the investigation, prosecution and defense of any claims or suits arising from the operation of the Equipment.

21. **Indemnification.** Lessee shall assume liability for, and shall defend, indemnify, and hold harmless Lessor, its agents, employees, officers, directors, successors and assigns from and against, any and all liabilities, obligations, losses, damages, injuries, claims, demands, fines, penalties, punitive damages, actions, costs, and expenses, including reasonable attorneys' fees, of whatsoever kind and nature, arising out of the use, condition (including, but not limited to, latent and other defects and whether or not discoverable by Lessee or Lessor), operation, ownership, selection, delivery, leasing or return of the Equipment, regardless of where, how, and by whom operated, and/or any acts or omissions of Lessee, its agents, employees, officers, directors, successors and assigns, and/or any failure on the part of Lessee to perform or comply with any terms or conditions of this Agreement. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the expiration or other termination of this Agreement. Nothing contained in this Agreement shall authorize Lessee or any other person to operate the Equipment so as to incur or impose any liability or obligation for or on behalf of Lessor. Lessee's obligations hereunder are in addition to and shall not be construed to negate, abridge, or reduce other rights to indemnity that Lessor may possess. If Lessor demands performance by Lessee of obligations under this paragraph 21 or other provisions of this Agreement and if Lessee refuses to assume or perform, or delays in assuming or performing Lessee's obligations, then Lessee shall pay Lessor its attorneys' fees, costs and other expenses incurred in enforcing the provisions of this paragraph 21. The obligations of defense and indemnity required herein shall, however, be a binding obligation upon Lessee whether or not Lessor has made such demand. In claims against Lessor by an employee or statutory employee of Lessee, the indemnification obligations under this paragraph 21 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Lessee under workers' or workmen's compensation acts, disability acts or other employee benefits laws.

22. **Default.** Time is of the essence with respect to Lessee's obligations hereunder. Lessee shall be in default under this Agreement upon the happening of any of the following events or conditions ("Events of Default"): (a) if Lessee shall fail to pay, when due, the lease payments or any other payment required to be paid hereunder by Lessee; (b) if any driver of the Equipment during the term hereof engages in conduct prohibited by the Federal Motor Carrier Safety Administration rules, including, without limitation, the rules regarding controlled substances and alcohol use and testing; (c) if Lessee shall fail to perform any other obligation hereunder and such failure shall continue for a period of five (5) days after Lessor gives notice thereof to Lessee; (d) if Lessee shall become insolvent or make an assignment for the benefit of creditors; (e) if Lessee applies for or consents to the appointment of a receiver, trustee, or liquidator of Lessee, or for all or a substantial part of Lessee's property, or if such receiver, trustee, or liquidator is appointed without the application or consent of Lessee; (f) abandonment of the Equipment by Lessee (including, without limitation, attempting to abandon, quit, cancel, rescind, revoke or terminate Lessee's obligations hereunder and voluntarily returning possession of the Equipment to Lessor prior to expiration of the term hereof); or (g) impoundment, attachment or any other taking of possession of the Equipment through legal process resulting from any act or omission of Lessee or Lessee's agents or employees.

23. **Bankruptcy and Insolvency.** Neither this Agreement nor any interest herein is assignable by Lessee or transferable by operation of law. Notwithstanding anything in this Agreement to the contrary, if any proceeding under the United States Bankruptcy Code is commenced by or against Lessee, or if Lessee is adjudged insolvent, or makes any assignment for the benefit of creditors, or if a writ of attachment or execution is levied on the Equipment and may not be released or satisfied within five (5) days thereafter, or if a receiver is appointed in any proceeding or action to which Lessee is a party with authority to take possession or control of the Equipment, Lessor may exercise any one or more of the remedies set forth herein; and this Agreement shall, at the option of Lessor, immediately terminate without notice and shall not be an asset of Lessee after the exercise of said option.

24. **Remedies.** Upon the occurrence of any Event of Default, Lessor may in its discretion do one or more of the following: (a) terminate this Agreement upon written notice to the Lessee; (b) whether or not this Agreement is terminated, take possession of the Equipment, wherever situated and, for such purpose, enter upon any premises without liability for so doing; (c) sell, dispose of, hold, use, or lease the Equipment as Lessor in its sole discretion may decide, without any duty to account to Lessee with respect to such action or any proceeds thereof; and (d) pursue any other remedy at law or in equity. In addition, after default Lessee shall be liable to Lessor for all loss, costs, and expenses incurred by

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Lessor by reason of the default including, without limitation, reasonable attorneys' fees and expenses of repossession and sale, as well as a recovery charge in the amount of one dollar (\$1.00) per mile for the mileage between the recovery location and Lessor's facilities in Olathe, Kansas. Further, in the event Lessee abandons the Equipment, or attempts to abandon, quit, cancel, rescind, revoke or terminate Lessee's obligations hereunder and relinquishes possession of the Equipment prior to expiration of the term hereof, then, to compensate Lessor for such Event of Default, Lessee shall pay to Lessor a sum equal to the weekly Base Lease Payments set forth on **EXHIBIT B** attached hereto for a period of four (4) weeks. All such remedies set forth herein are cumulative and may be exercised concurrently or separately.

25. **Return of Equipment.** Upon termination of this Agreement, Lessee shall return the Equipment to the Lessor's facilities in Olathe, Kansas (or to a closer alternative location if Lessor so elects) at Lessee's expense, in good condition, inside and outside, and mechanically sound, reasonable wear and tear excepted. The Equipment shall be returned in at least the condition set forth in **EXHIBIT F** attached hereto. If the Equipment is not returned in such condition, Lessor may perform all repairs and work necessary to restore the Equipment to the required condition, and Lessee shall reimburse Lessor the cost thereof upon demand. In addition, Lessee shall pay to Lessor all costs incurred in securing possession of the Equipment, including reasonable attorneys' fees, in the event Lessee does not voluntarily return the Equipment to Lessor, as well as a recovery charge in the amount of one dollar (\$1.00) per mile for the mileage between the recovery location and Lessor's facilities in Olathe, Kansas. Lessor will assume no liability for loss or damage to personal property remaining in the Equipment at the time Lessor regains possession of the Equipment.

26. **Offset for Payment Deficiencies Upon Termination.** Upon termination of this Agreement, Lessee shall require any motor carrier to which Lessee leases the Equipment to offset against any amounts due Lessee from such carrier an amount sufficient to cure any deficiencies in Lessee's payment obligations hereunder, and to pay those amounts directly to Lessor. Further, upon termination hereof, Lessee grants to Lessor the right to offset against any amounts due Lessee from the Maintenance/Tire Replacement Reserve, the Performance Escrow Fund, the Lease Completion Bonus and/or the pet deposit described in paragraph 9 hereof, as may be applicable, any unpaid amounts due Lessor.

27. **Assignment.** Without Lessor's prior written consent, Lessee shall not: (i) assign Lessee's rights or delegate Lessee's duties and obligations under this Agreement; (ii) assign, transfer, pledge, hypothecate, grant a security interest in or otherwise dispose of the Equipment or any interest therein; or (iii) sublet or lend the Equipment or permit it to be used by anyone other than Lessee or Lessee's employees. Lessor may assign this Agreement and/or may mortgage or otherwise create a security interest in the Equipment, in whole or in part, without notice to Lessee, and its assignee, mortgagee, and/or secured party may assign this Agreement and/or mortgage or other security interest, without notice to Lessee. It is hereby agreed that the rights of Lessee in the Equipment are subject and subordinate to any such mortgage and/or security interest and the rights of any such assignee, mortgagee and/or secured party with respect to such Equipment. Each such assignee, mortgagee, and/or secured party shall have all of the rights but none of the obligations of Lessor under this Agreement. Lessee shall recognize each such assignment, mortgage and/or security interest and shall not assert against the assignee, mortgagee, and/or secured party any defense, counterclaim, or setoff that Lessee may have against Lessor. Subject to the foregoing, this Agreement inures to the benefit of and is binding upon the heirs, legatees, personal representatives, survivors, successors, and assigns of the parties hereto. If the Equipment is purchased by Lessee pursuant to paragraph 11 hereof, notice is hereby given that the rights under the sales contract to sell the Equipment will be assigned to TransAm Trucking Exchange LLC.

28. **Waiver.** No action or failure to act by Lessor shall constitute a waiver of a right or duty afforded to Lessor under this Agreement, nor will such action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed to in writing. Any waiver by Lessor of any provision of this Agreement does not constitute a permanent waiver of the provision, nor does the forgiveness by Lessor of a violation or breach of any provision of the Agreement constitute a forgiveness of any subsequent violation or breach.

29. **Performance.** If Lessee shall fail to perform any of its obligations hereunder, Lessor shall have the right, but not the obligation, to immediately or at any time thereafter, perform such obligation for Lessee's account without thereby waiving such default, and, in such event, Lessee shall, upon demand, reimburse Lessor for all its expenses incurred in connection with the performance of such obligation.

30. **Governing Law; Jurisdiction.** This Agreement shall be interpreted, construed, enforced and regulated under and by the laws of the State of Kansas. Whenever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable federal, state or local laws, statutes, ordinances, regulations or orders ("Laws"). If, however, any provision of this Agreement, or a portion thereof, is prohibited by or found invalid under any Laws, only such provision or portion thereof shall be ineffective, without invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable. Lessee and Lessor

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further agree that in the event any provision of this Agreement, or a portion thereof, is prohibited by Laws or found invalid under any Laws, this Agreement shall be reformed to replace such prohibited or invalid provision or portion thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the prohibited or invalid provision. Lessee and Lessor each agree that the District Court of Johnson County, Kansas or the United States District Court for the District of Kansas shall have jurisdiction to resolve all claims and any issues and disputes between Lessee and Lessor. Lessee agrees that it shall not file any petition, complaint, lawsuit or legal proceeding against Lessor in any other courts.

31. **Headings.** All headings, titles and paragraph captions are inserted in this Agreement for convenience of reference only, are descriptive only and shall not be deemed or construed to add to, detract from or otherwise modify the meaning of the paragraphs.

32. **No Limitation.** Duties and obligations imposed by this Agreement and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

33. **Further Acts.** Lessee and Lessor agree to do all acts and things, and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement.

34. **Survival.** The terms of any and all representations, indemnifications, warranties and guarantees provided in favor of Lessor made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, will survive termination of this Agreement, and shall remain in effect so long as Lessor is entitled to protection of its rights under applicable law.

35. **Third Parties.** Nothing contained in this Agreement shall create any contractual relationship with a third party nor create any cause of action in favor of a third party against Lessor.

36. **Written Notice from Lessor.** Lessee acknowledges and agrees that all notices by or from Lessor required to be given in writing under this Agreement may be given by any of the following methods: (a) hand delivery; (b) DocuSign email; (c) UPS, FedEx, or other commercial delivery service; and/or (d) regular or certified U.S. mail.

37. **Entire Agreement.** This Agreement, including any exhibits attached hereto, constitutes the exclusive statement of the agreement of the parties with respect to the subject matter hereof, and this Agreement supersedes and replaces all prior agreements, discussions and representations, whether written or oral, relating to the subject matter hereof. The terms and provisions of this Agreement can only be amended, altered, changed, modified, supplemented or waived pursuant to a writing signed by Lessor and Lessee. Notwithstanding the foregoing, the parties acknowledge and agree that if, following execution hereof, Lessor discovers that this Agreement contains any errors or omissions in the non-financial terms hereof (e.g., typos, misspellings, incorrect or missing entries of tractor unit number or serial number, etc.), then Lessor may correct such mistake and send Lessee a written rectification amendment hereto containing the proper and correct terms. Unless Lessee notifies Lessor in writing within ten (10) days following receipt of such rectification amendment that Lessee objects to or disagrees with the changed/new terms as set forth therein, then Lessee shall be deemed to have expressly consented and agreed to such changed/new terms, Lessee shall waive any objection thereto, and the terms thereof shall constitute the actual and definitive agreement of the parties with respect thereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]

[SIGNATURES OF THE PARTIES ON THE FOLLOWING PAGE.]

EXHIBIT 49

LESSEE EXPRESSLY ACKNOWLEDGES THAT LESSOR HAS GIVEN LESSEE A SUFFICIENT OPPORTUNITY TO CAREFULLY REVIEW AND CONSIDER THIS AGREEMENT BEFORE SIGNING IT. LESSEE MAY TAKE A COPY OF THIS AGREEMENT OFF OF LESSOR'S PREMISES TO REVIEW AND CONSIDER IT BEFORE SIGNING IT (FOR HOWEVER LONG LESSEE DESIRES), AND LESSEE HAS THE RIGHT AND OPPORTUNITY TO CONSULT WITH AND RECEIVE INDEPENDENT LEGAL ADVICE FROM LESSEE'S ATTORNEY REGARDING THIS AGREEMENT BEFORE SIGNING IT.

Lessee understands and acknowledges the foregoing opportunity.

Initials

THE UNDERSIGNED HEREBY ACKNOWLEDGES THAT LESSEE HAS CAREFULLY READ AND CONSIDERED THIS AGREEMENT, KNOWS AND UNDERSTANDS THE CONTENTS HEREOF, AND EXECUTES THE SAME AS LESSEE'S FULLY-INFORMED FREE ACT AND DEED.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first above written:

"Lessor":

"Lessee":

OLATHE NOBLE EQUIPMENT LEASING, INC.

By Heather Sybesma
Name Heather Sybesma
Title Director, Driver Operations

EXHIBIT 49

EXHIBIT A LEASED EQUIPMENT

NAME OF LESSEE _____
ADDRESS OF LESSEE _____
PHONE # OF LESSEE _____
TRACTOR UNIT # _____
MAKE _____
MODEL _____
YEAR _____
DESCRIPTION _____
SERIAL # _____

MOTOR CARRIER LEASED TO: TransAm Trucking, Inc.

Address: 15910 S. 169 Highway, Olathe, Kansas 66062

TERM OF LEASE

The term of this Agreement shall commence as of _____ (for a period of _____ weeks, expiring as of _____.

Lessor: 
Initialed

Lessee: _____
Initialed

Date: _____

Date: _____

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EXHIBIT 49**EXHIBIT B****LEASE PAYMENTS**

Base Lease Payments: (a) \$ _____ per week for _____ weeks (charged for any partial weeks at 1/7th per day);

plus

(b) _____ cents (\$0.0 _____) per mile (based on the Equipment's odometer reading – adjusted/reconciled on a periodic basis and/or at the end of the lease).

Lifestyle Lease Election:

The Lifestyle Lease Election provides Lessee the option of putting Lessee's weekly payment obligations pursuant to this Agreement on temporary hold for one (1) week (i.e., seven (7) days) once every three (3) months (*subject to the Limitations below). This election will increase Lessee's regular weekly payment obligations under the Agreement to the following:

- Base Lease Payment \$ _____ per week
- Physical Damage Insurance \$ _____ per week

Lessee must notify Lessor of Lessee's intent to exercise this option at least eight (8) days in advance. If Lessee does not exercise the option within any three month period(s), it will expire and the additional lease payment(s) collected will be credited to Lessee at the completion of the lease.

* Limitations: This election may not be exercised in the first 30 days after the lease start date (the date this Agreement is signed). The weeks in which the following holidays occur are not eligible for election: Christmas, New Years, Thanksgiving, Memorial Day, Labor Day and Independence Day.

Excess Mileage Charge: Six cents (\$0.06) per mile (based on odometer reading) if average miles exceed _____ miles per week. This excess mileage charge is based on the accumulated average weekly miles traveled by the Equipment, adjusted and paid on a monthly basis.

If Lessee exercises the option to purchase the Equipment pursuant to paragraph 11 of this Agreement, then the aggregate excess mileage charges paid by Lessee hereunder shall be refunded to Lessee, less any amounts payable by Lessee under this Agreement.

Lessor: _____

Initialed

Lessee: _____

Initialed

Date: _____

Date: _____

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EXHIBIT 49**EXHIBIT C****PREVENTATIVE MAINTENANCE / REPAIRS / TIRE WEAR**

CHARGEABLE ITEM		METHOD OF DEDUCTION
Tire wear		Prorated charge per 32 nd based on Beginning and ending 32 nd readings
Maintenance or repairs required but not performed/repared during lease		Cost of service or repair
Physical Damage to Equipment body or interior		Cost of repair and/or replacement
Mattress		Cost of new or rebuilt mattress at current price
Preventive Maintenance Schedules by Model		
Master PM Schedule Code - LMX6 (2016 - 2017 Models)		KENWORTH T680 2013 MX ENGINE
PM Code	Description	Interval
000001	B PM - Oil Change	60,000 Miles
000002	SA PM - Replace Air Filter	100,000 Miles
000004	OH PM - Overhead Valve Adj. #1	120,000 Miles
000005	O2 PM - Overhead Valve Adj. #2	300,000 Miles
000006	UJ PM - Truck U-joint # 1	300,000 Miles
000010	E PM - DOT Inspection	365 Days
000011	CF PM - Coolant	200,000 Miles
000013	D PM - Rear End/Trans Lube Change	500,000 Miles
000014	DE PM - DEF Filter Replacement	200,000 Miles
000017	DP PM - DPF Cleaning	300,000 Miles
000020	TU PM - Torque Suspension Bolts	365 Days
000021	UL PM - Belt Replacement	300,000 Miles
000024	AP PM - APU Change Oil & Filter	60,000 Miles
000025	GP PM - Replace Glow Pin	730 Days
000051	J2 PM - Truck U-joint Lube #2 (+)	100,000 Miles
Master PM Schedule Code - LMX7 (2018 & Newer)		KENWORTH T680 2017 MX ENGINE
PM Code	Description	Interval
000001	B PM - Oil Change	75,000 Miles
000002	SA PM - Replace Air Filter	150,000 Miles
000004	OH PM - Overhead Valve Adj. #1	150,000 Miles
000005	O2 PM - Overhead Valve Adj. #2	450,000 Miles
000008	AD PM - Air Dryer Filter Replacement (2019's Only)	365 Days
000010	E PM - DOT Inspection	365 Days
000011	CF PM - Coolant	300,000 Miles
000012	CV PM - Crankcase Ventilation (2019's Only)	225,000 Miles
000013	D PM - Rear End/Trans Lube Change	500,000 Miles
000014	DE PM - DEF Filter Replacement	300,000 Miles
000017	DP PM - DPF Cleaning	300,000 Miles
000021	UL PM - Belt Replacement	450,000 Miles
000024	AP PM - APU Change Oil & Filter	75,000 Miles
000025	GP PM - Replace Glow Pin	730 Days
000054	DB PM - Disk Brakes (2019's Only)	450,000 Miles
000055	RE PM - Read End Lube Change (2019's Only)	500,000 Miles

Lessor: _____

Lessee: _____

Date: _____

Date: _____

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EXHIBIT 49

EXHIBIT D

PURCHASE OPTION

Option Date: _____

Option Price: _____

Lessor: _____
Initialed

Lessee: _____
Initialed

Date: _____

Date: _____

SAMPLE

1712382v1

EXHIBIT 49**EXHIBIT E**
O. N. E. EXTENDED WARRANTY – T680
 For unit numbers ending in 17 & 18

Basic Vehicle Extended Warranty 4 Year or 575,000 Miles

Abs Sensors Air Cleaner System (excluding filter) Air system, including Dryer, compressor, purge valve, governor, tanks, drain valve, and brackets. Alternator Axle Housing Gaskets Batteries - PACCAR Brand, box assembly and hold downs Brakes - Disc assy (see below exclusions) brackets, camshafts, spiders Brake Chambers and Slack Adjusters Bumper Cab/Sleeper Components (and suspension) Cab Fasteners (excluding huck bolts) Cab Heater & Ducts Cab Side Extenders (Kenworth brand only) Cab Suspension (including shocks) Chassis Fairings Cab Water Leaks Charge Air Cooler, hoses and clamps Circuit Breakers Clutch and Clutch Linkage Control Cables Cooling module (radiator CAC/sensors/washer pump) Cruise Control Components Deck Plate, and lamp Def heated lines, heating elements, fittings, lamp & tank Door Latches, locks, and hinge	Door Pads and Soft Trim Drivelines, U-joint and Center Bearing Electrical Power Distribution box Electrical Printed Circuits and harness Engine Fan Engine Fan Clutch & Sending unit Engine Fan Shroud Engine Heater Engine Mounts, dipstick and tube Engine Shutdown System Exhaust piping, clamps and gaskets Exhaust Stanchion Fairing, excludes damage Frame Fasteners Frame siderails, crossmembers & gussets Freon Leaks Fuel Tanks (excluding finish) Fuel Tank Straps, Cap and Vent Fuel Water Sep. &/or Heater Fuel Gauges and Sending Units Heat Shields Hood Assist Springs, struts, and shocks Horn - Air or Electric Hoses and Fittings (includes leaks, loose fittings, and rubbed lines, excludes trans. hoses) Hub Assemblies and bearings (see right for wheel seal) Hub Caps Hubometer HVAC System Ignition Timer Instruments	Lamp Fixtures (excludes bulbs) Leveling Valves Mirrors/Chrome Mounting Brackets and Bolts for above item Mud Flap Brackets (excludes mud flaps) Muffler (diffuser) standpipe and Clamps O-rings Power Steering Box Assembly Power Steering Pump Power Steering Reservoir Quarter Fenders Radiator includes header gasket Seat Belts Seat Structure Sensors Shift Controls Sleeper Boot, Shelves and Cabinet Smartwheel Speakers Starter and Series Parallel Switch Steering Arm Steering Column, Shaft and U-joints Steering Draglink Steering Pitman Arm Steering Wheel Steering Gear & Mounting Brkts. Steps Supplemental Restraint System (SRS airbag) Suspension (See exclusions)	Switches and relays (excludes fuses) Throttle Linkage Pedal & Cable Tilt Mechanism (includes pump) Towing (Includes Split Towing as required by state law to the nearest authorized dealer) Trailer Hitch and Stinger Transmission Shift Controls Upholstery Valves & Relays Vent - Fresh Air Visor (outside and inside) Water Leak Weather Stripping Wheel Bearings Window Defrost Fan Window Lift and regulator Windshield Washer pump and reservoir Wiper Arms (excludes blades) Wiper Motor Wiper Control Valve Wiring Harness and Connectors (including loose connectors and damage from convoluted tubing)
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Kenworth Inclusions & Exclusions:

HVAC includes all components of HVAC system, except receiver-dryers as primary failure, also excludes other maintenance related like fresh air filters.
 Radiator/Charge Air Cooler excludes mounting brackets, bushings, and radiator cap.
 KW Suspension includes brackets, beams and air bags. Excludes bushings and alignment.
 Excludes belt tensioners, belts, and Trans Oil Cooler.
 Excludes brake drums, discs, linings, shoes, pads, and adjustments.

General Exclusions under Extended Warranty:

Paint Cab and Frame (standard warranty 1 YR/100,000) Suspension: Shock absorbers & Bushings (standard warranty 1 YR/ 100,000)
 Axle alignment (90 day/15,000)
 Hub Gaskets (including flange) and King Pin Bushings are excluded.
 Maintenance related items (filters) are also excluded.

Conmet Preser Plus Hub: 5YR/500,000
 (Covers OEM replacement only)
Lit S Hubs: 3YR/350,000
FAO(F) 16810S-EP3 Exton Trans (2017) and Paccar Trans (2018)
 5 YR/750,000 (seals 3YR/350,000)
Radio: 1YR/100,000 - standard warranty
 2-3 year TA files through Pana Pacific
Rear Differential: 5YR/750,000 (seals 3 YR/350,000)
Refrigerator (Domestic) 2 YR/200,000
Shock Absorbers: 1 YR/100,000

For Questions About Extended Warranty Contact O.N.E. Directly:
 Monday - Friday from 7 am - 5 pm: (913) 324-7122 | After Hours: (913) 324-7159

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EXHIBIT 49**O.N.E. Extended Engine & Aftertreatment Warranty '17 EPA**

PACCAR MX Engine & Aftertreatment Warranty 24 Month or 250,000 Miles or 6,250 Hours (Standard)
For unit numbers ending in 17 & 18

Extended Engine & Aftertreatment Warranty 5 Year or 675,000 Miles

Air Compressor	Fuel Filter Module/Housing	Sensor, Intake Temperature
Air Inlet Pipes (Mixer or Venturi) (before, after turbo)	Fuel Injectors (Cylinder Injectors)	Sensor, Intercooler Temperature
Bearings - Camshaft, Connecting Rod, and Main Caps	Fuel Lines (High Pressure)	Sensor, Turbocharger Speed
Camshaft	Fuel Lines (Low Pressure)	Sensor, Water Pump Speed
Camshaft Follower	Fuel Lines (Return)	Towing (Includes Split Towing as Required by state law to the nearest authorized dealer)
Connecting Rods, Caps and Bolts	Fuel Unit Injection Pumps	Thermostat (Coolant)
Crankshaft Ventilation Assembly	Gaskets, Seals, O Rings, Silicon Sealant	Thermostat Housing (Coolant)
Crankshaft (and seal ring)	Gears - All (Camshaft, Crankshaft, Idlers and Oil Pump)	Sensor, Pressure/Temperature/Humidity
Cylinder Block Casting, Main Bearing Caps and Bolts	Ladder Frame	Turbocharger Assembly
Cylinder Block Expansion Plugs	Oil Cooler Module (Replaceable Filter Not Covered)	Valves, Engine Exhaust and Intake
Cylinder Head Casting and Bolts	Oil Fill Tube and Cap	Valve Cover
Cylinder Head Expansion Plugs	Oil Pan	Valve Yokes (Bridge) and Pins
Cylinder Head Gasket	Oil Pump	Vibration Dampers and Bolts
EGR (Exhaust Gas Recirculation) Control Valve	Pistons, Rings and Liners	Water Pump Assembly (complete or incomplete)
EGR Cooler	Rocker Arm Assembly and Shafts	Water Pump Housing
Electrical Harness Supplied with Engine	Sensor, Ambient Air Temp	
Engine ECM (Electronic Control Modules) - PMCI Only	Sensor, Camshaft (Engine Position)	
Engine Brake System (PACCAR)	Sensor, Coolant Temperature	
Exhaust Manifold Casting - Front	Sensor, Crankcase Pressure	
Exhaust Manifold Casting - Middle	Sensor, Crankshaft Speed (Engine Timing)	
Exhaust Manifold Casting - Rear	Sensor, EGR Temperature	
Exhaust Manifold Joint Seals, Gaskets, Wraps or Rings	Sensor, EGR Differential Pressure	
Flywheel	Sensor, Engine Oil Pressure and Temperature	
Flywheel Housing	Sensor, Exhaust Manifold Pressure	
Front Cover	Sensor, Fuel Pressure and Temperature	
Fuel Common rail and Lift Pump	Sensor, Intake Boost Pressure	
Fuel control valve	(aka Intake Manifold & Temperature)	
Fuel Hand Primer Pump		



For Questions About Extended Warranty Contact O.N.E. Directly:

Monday - Friday from 7 am - 5 pm: (913) 324-7122 | After Hours: (913) 324-7159

SAMPLE

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EXHIBIT 49**O.N.E. Extended Engine & Aftertreatment Warranty '18 EPA**

PACCAR MX Engine & Aftertreatment Warranty 24 Month or 250,000 Miles or 6,250 Hours (Standard)

For unit numbers ending in 19

Extended Engine & Aftertreatment Warranty 5 Year or 675,000 Miles

Air Compressor	Fuel Filter Module/Housing	Sensor, Intake Temperature
Air Inlet Pipes (Mixer or Venturi) (before, after turbo)	Fuel Injectors (Cylinder Injectors)	Sensor, Intercooler Temperature
Bearings - Camshaft, Connecting Rod, and Main Caps	Fuel Lines (High Pressure)	Sensor, Turbocharger Speed
Camshaft	Fuel Lines (Low Pressure)	Sensor, Water Pump Speed
Camshaft Follower	Fuel Lines (Return)	Towing (Includes Split Towing as required by state law to the nearest authorized dealer)
Connecting Rods, Caps and Bolts	Fuel Unit Injection Pumps	Thermostat (Coolant)
Crankshaft Ventilation Assembly	Gaskets, Seals, O Rings, Silicon Sealant	Thermostat Housing (Coolant)
Crankshaft (and seal ring)	Gears - All (Camshaft, Crankshaft, Idlers and Oil Pump)	Sensor, Pressure/Temperature/Humidity
Cylinder Block Casting, Main Bearing Caps and Bolts	Ladder Frame	Turbocharger Assembly
Cylinder Block Expansion Plugs	Oil Cooler Module (Replaceable Filter Not Covered)	Valves, Engine Exhaust and Intake
Cylinder Head Casting and Bolts	Oil Fill Tube and Cap	Valve Cover
Cylinder Head Expansion Plugs	Oil Pan	Valve Yokes (Bridge) and Pins
Cylinder Head Gasket	Oil Pump	Vibration Dampers and Bolts
EGR (Exhaust Gas Recirculation) Control Valve	Pistons, Rings and Liners	Water Pump Assembly (complete or incomplete)
EGR Cooler	Rocker Arm Assembly and Shafts	Water Pump Housing
Electrical Harness Supplied with Engine	Sensor, Ambient Air Temp	Failures of belts and hoses supplied by PACCAR are covered during the first year from the date of delivery of the engine.
Engine ECM (Electronic Control Modules) - PMCI Only	Sensor, Camshaft (Engine Position)	
Engine Brake System (PACCAR)	Sensor, Coolant Temperature	
Exhaust Manifold Casting - Front	Sensor, Crankcase Pressure	
Exhaust Manifold Casting - Middle	Sensor, Crankshaft Speed (Engine Timing)	
Exhaust Manifold Casting - Rear	Sensor, EGR Temperature	
Exhaust Manifold Joint Seals, Gaskets, Wraps or Rings	Sensor, EGR Differential Pressure	
Flywheel	Sensor, Engine Oil Pressure and Temperature	
Flywheel Housing	Sensor, Exhaust Manifold Pressure	
Front Cover	Sensor, Fuel Pressure and Temperature	
Fuel Common rail and Lift Pump	Sensor, Intake Boost Pressure (aka Intake Manifold & Temperature)	
Fuel control valve		
Fuel Hand Primer Pump		



For Questions About Extended Warranty Contact O.N.E. Directly:
Monday - Friday from 7 am - 5 pm: (913) 324-7122 | After Hours: (913) 324-7159

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EXHIBIT 49**O.N.E. Extended Engine & Aftertreatment Warranty '18 EPA**

PACCAR MX Engine & Aftertreatment Warranty 24 Month or 250,000 Miles or 6,250 Hours (Standard)

For unit numbers ending in 20

Extended Engine & Aftertreatment Warranty 5 Year or 675,000 Miles

Air Compressor	Fuel Filter Module/Housing	Sensor, Intake Temperature
Air Inlet Pipes (Mixer or Venturi) (before, after turbo)	Fuel Injectors (Cylinder Injectors)	Sensor, Intercooler Temperature
Bearings - Camshaft, Connecting Rod, and Main Caps	Fuel Lines (High Pressure)	Sensor, Turbocharger Speed
Camshaft	Fuel Lines (Low Pressure)	Sensor, Water Pump Speed
Camshaft Follower	Fuel Lines (Return)	Towing (Includes Split Towing as required by state law to the nearest authorized dealer)
Connecting Rods, Caps and Bolts	Fuel Unit Injection Pumps	Thermostat (Coolant)
Crankshaft Ventilation Assembly	Gaskets, Seals, O Rings, Silicon Sealant	Thermostat Housing (Coolant)
Crankshaft (and seal ring)	Gears - All (Camshaft, Crankshaft, Idlers and Oil Pump)	Sensor, Pressure/Temperature/Humidity
Cylinder Block Casting, Main Bearing Caps and Bolts	Ladder Frame	Turbocharger Assembly
Cylinder Block Expansion Plugs	Oil Cooler Module (Replaceable Filter Not Covered)	Valves, Engine Exhaust and Intake
Cylinder Head Casting and Bolts	Oil Fill Tube and Cap	Valve Cover
Cylinder Head Expansion Plugs	Oil Pan	Valve Yokes (Bridge) and Pins
Cylinder Head Gasket	Oil Pump	Vibration Dampers and Bolts
EGR (Exhaust Gas Recirculation) Control Valve	Pistons, Rings and Liners	Water Pump Assembly (complete or incomplete)
EGR Cooler	Rocker Arm Assembly and Shafts	Water Pump Housing
Electrical Harness Supplied with Engine	Sensor, Ambient Air Temp	
Engine ECM (Electronic Control Modules) - PMCI Only	Sensor, Camshaft (Engine Position)	
Engine Brake System (PACCAR)	Sensor, Coolant Temperature	
Exhaust Manifold Casting - Front	Sensor, Crankcase Pressure	
Exhaust Manifold Casting - Middle	Sensor, Crankshaft Speed (Engine Timing)	
Exhaust Manifold Casting - Rear	Sensor, EGR Temperature	
Exhaust Manifold Joint Seals, Gaskets, Wraps or Rings	Sensor, EGR Differential Pressure	
Flywheel	Sensor, Engine Oil Pressure and Temperature	
Flywheel Housing	Sensor, Exhaust Manifold Pressure	
Front Cover	Sensor, Fuel Pressure and Temperature	
Fuel Common rail and Lift Pump	Sensor, Intake Boost Pressure (aka Intake Manifold & Temperature)	
Fuel control valve		
Fuel Hand Primer Pump		



For Questions About Extended Warranty Contact O.N.E. Directly:
 Monday - Friday from 7 am - 5 pm: (913) 324-7122 | After Hours: (913) 324-7153

1712382v1

EXHIBIT 49

O. N. E. EXTENDED WARRANTY – T680
For unit numbers ending in 20



Basic Vehicle Extended Warranty 5 Year or 675,000 Miles

ABS Sensors	DEF: heated lines, heating elements, fittings, lamp, & tank, sensors/sending unit	Instruments	Supplemental Restraint System(SRS airbag)
Air Cleaner System (excluding filter)	Door Latches, locks, and hinge	Light Fixtures - All Types (excludes bulbs)	Suspension (See exclusions)
Air system: including dryer, compressor, purge valve, governor, tanks, drain valve, and brackets	Driveshafts, U-joint and Center Bearing	Leveling Valves	Switches and relays (excludes fuses)
Alternator	Electrical Power Distribution box	Mirrors (Chrome Cap)	Throttle Pedal
Axle Housing Gaskets	Electrical Printed Circuits and harness	Mounting Brackets and Bolts for above item	Towing (Includes Split Towing as required by state law to the nearest authorized dealer)
Batteries - PACCAR Brand, box assembly and hold downs	Engine Fan	Mud Flap Brackets (excludes mud flaps)	Transmission Shift Controls
Bendix Fusion	Engine Fan Clutch & Sending unit	Muffler (Diffuser) standpipe and Clamps	Upholstery
Brakes - Disc assy. (see below exclusions) brackets, camshafts, spiders	Engine Fan Shroud	O-rings	Valves & Relays
Brake Chambers and Slack Adjusters	Engine Mounts, dipstick and tube	Power Steering Box Assembly	Vent - Fresh Air
Bumper	Exhaust piping, clamps and gaskets	Power Steering Pump	Visor (outside and inside)
Cab/Sleeper Components (and suspension) brackets, fasteners (excluding huck bolts)	Exhaust Hanger	Power Steering Reservoir	Water Leak
Cab Fasteners (excluding huck bolts)	Fairing, excludes damage	Quarter Fenders	Weather Stripping
Cab Heater & Ducts	Frame Fasteners	Radiator (includes header gasket, tie rod)	Window Defrost Fan
Cab Side Extenders (Kenworth brand only)	Frame siderails, crossmembers & gussets	Seat Belts	Window Lift and regulator
Cab Suspension (including shocks up to 1YR/100,000)	Fuel Leaks	Seat Structure	Windshield Washer pump and reservoir
Chassis Fairings	Fuel Tanks (excluding finish)	Sensors	Wiper Arms (excludes blades)
Cab Water Leaks	Fuel Tank Straps, Cap and Vent	Sleeper Bunk, Shelves and Cabinet	Wiper Motor
Charge Air Cooler, hoses and clamps	Fuel Water Sep &/or Heater	Smartwheel	Wiper/Turn Signal Control
Circuit Breakers	Fuel Gauges and Sending Units	Speakers	Wiring Harness and Connectors (including loose connectors and damage from convoluted tubing)
Clutch	Heat Shields	Starter and Series Parallel Switch	
Cooling module (radiator, GAC, sensors)	Hood Assist Springs, struts, and shocks	Steering Arm	
Deck Plate, and lamp	Horn - Air or Electric	Steering Column, Shaft and U-joints	
	Hoses and Fittings (includes leaks, loose fittings, and rubbed lines; excludes trans. hoses)	Steering Draglink	
	Hub Caps	Steering Pitman Arm	
	HVAC System	Steering Wheel	
		Steering Gear & Mounting Brkts.	
		Steps	
Kenworth Inclusions & Exclusions:			
HVAC includes all components of HVAC system, except receiver-driers as primary failure, also excludes other maintenance related like fresh air filters.			
Radiator/Charge Air Cooler excludes mounting brackets, bushings, and radiator cap.			
KW Suspension includes brackets, beams and air bags. Excludes bushings and alignment.			
Excludes belt tensioners, & belts.			
Excludes brake drums, discs, linings, shoes, pads, and adjustments.			
General Exclusions under Extended Warranty:			
Paint Cab and Frame (standard warranty 1 YR/100,000)			
Suspension: Shock absorbers & Bushings (standard warranty 1 YR/100,000)			
Axle alignment (90 day/15,000)			
Maintenance related items (filters) are also excluded.			
Hub Gaskets (including flange) and King Pin Bushings are excluded			
Conmet Preset Plus Hub, Bearings, & Wheel Seals: 5YR/500,000 (Covers OEM replacement only)			
Paccar Transmission: 5 YR/750,000			
Radio: 1YR/100,000 - standard warranty 2-3 year. TA files through PanaPacific			
Paccar Drive Axles: 5YR/750,000			
Refrigerator (Domestic): 2 YR or 200,000 (whichever occurs first)			
Shock Absorbers: 1 YR/100,000			

For Questions About Extended Warranty Contact O.N.E. Directly:
Monday - Friday from 7 am - 5 pm: (913) 324-7122 | After Hours: (913) 324-7159

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EXHIBIT 49

O.N.E. EXTENDED WARRANTY – T680
For unit numbers ending in 21



Basic Vehicle Extended Warranty 5 Year or 675,000 Miles

Abs Sensors
Air Cleaner System (excluding filter)
Air system: Including Dryer, compressor, purge valve, governor, tanks, drain valve, and brackets.
Alternator
Axle Housing Gaskets
Batteries - PACCAR Brand, box assembly and hold downs
Bendix Fusion
Brakes - Disc Assy. (see below exclusions) brackets, camshafts, spliers
Brake Chambers and Slack Adjusters
Bumper
Cab/Sleeper Components (and suspension)
Cab Fasteners (excluding huck bolts)
Cab Heater & Ducts
Cab Side Extenders (Kenworth brand only)
Cab Suspension (including shocks up to 1YR/100,000)
Chassis Fairings
Cab Water Leaks
Charge Air Cooler, hoses and clamps
Circuit Breakers
Clutch
Cooling module (radiator, CAC, sensors)
Deck Plate, and lamp

DEF: heated lines, heating elements, fittings, lamp, & tank, sensors/sending unit
Door Latches, locks, and hinge
Driveshafts, U-joint and Center Bearing
Electrical Power Distribution box
Electrical Printed Circuits and harness
Engine Fan
Engine Fan Clutch & Sending Unit
Engine Fan Shroud
Engine Mounts, dipstick and tube
Exhaust piping, clamps and gaskets
Exhaust Hanger
Fairing, excludes damage
Frame Fasteners
Frame siderails, crossmembers & gussets
Freon Leaks
Fuel Tanks (excluding finish)
Fuel Tank Straps, Cap and Vent
Fuel Water Sep./or Heater
Fuel Gauges and Sending Units
Heat Shields
Hood Assist Springs, struts, and shocks
Horn - Air or Electric
Hoses and Fittings (includes leaks, loose fittings, and rubbed lines, excludes trans. hoses)
Hub Caps
HVAC System

Instruments
Light Fixtures - All Types (excludes bulbs)
Leveling Valves
Mirrors (Chrome Cap)
Mounting Brackets and Bolts for above item
Mud Flap Brackets (excludes mud flaps)
Muffler (Diffuser) standpipe and Clamps
O-rings
Power Inverter - For VIN #'s below 462735-462774—Current production 130 153-130263—Next generation T680
Power Steering Box Assembly
Power Steering Pump
Power Steering Reservoir
Quarter Fenders
Radiator (includes header gasket, tie rod)
Seat Belts
Seat Structure
Sensors
Sleeper Boot, Shelves and Cabinet
Smartwheel
Speakers
Starter and Series Parallel Switch
Steering Arm
Steering Column, Shaft and U-joints
Steering Draglink
Steering Pitman Arm
Steering Wheel
Steering Gear & Mounting Brks.

Steps
Supplemental Restraint System(SRS airbag) Suspension (See exclusions)
Switches and relays (excludes fuses)
Throttle Pedal
Tire Pressure Monitor System
Towing (includes Split Towing as required by state law to the nearest authorized dealer)
Transmission Shift Controls
Upholstery
Valves & Relays
Vent - Fresh Air
Floor (outside and inside)
Water Leak
Weather Stripping
Window Defrost Fan
Window Lift and regulator
Windshield Washer pump and reservoir
Wiper Arms (excludes blades)
Wiper Motor
Wiper/Turn Stalk Control
Wiring Harness and Connectors (including loose connectors and damage from convoluted tubing)

Conner Proseal Plus Hub, Bearings, & Wheel Seals: 5YR/500,000 (covers OEM replacement only)

Paccar Transmission: 5 YR/750,000

Radio: 1YR/100,000 - standard warranty 2-3 year. TA files through PanaPacfo

Paccar Drive Axles: 5YR/750,000

Refrigerator (Domestic): 2 YR or 200,000 (whichever occurs first)

Shock Absorbers: 1 YR/100,000

Kenworth Inclusions & Exclusions:

HVAC includes all components of HVAC system, except receiver-dryers as primary failure, also excludes other maintenance related like fresh air filters.
Radiator/Charge Air Cooler excludes mounting brackets, bushings, and radiator cap.

KW Suspension includes brackets, beams and air bags. Excludes bushings and alignment.

Excludes belt tensioners, & belts.

Excludes brake drums, discs, linings, shoes, pads, and adjustments.

General Exclusions under Extended Warranty:

Paint Cab and Frame (standard warranty 1 YR/100,000)

Axle alignment (90 day/15,000)

Hub Gaskets (including flange) and King Pin Bushings are excluded

Suspension: Shock absorbers & Bushings (standard warranty 1 YR/100,000)

Maintenance related items (filters) are also excluded.

JOIST Air Operated Release Cylinder: 2 YR supplier warranty against manufacturer defects

For Questions About Extended Warranty Contact O.N.E. Directly:
Monday - Friday from 7 am - 5 pm: (913) 324-7122 | After Hours: (913) 324-7159

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EXHIBIT 49**O.N.E. Extended Engine & Aftertreatment Warranty '18 EPA**

PACCAR MX Engine & Aftertreatment Warranty 24 Month or 250,000 Miles or 6,250 Hours (Standard)

For unit numbers ending in 21

Extended Engine & Aftertreatment Warranty 5 Year or 675,000 Miles

Air Compressor
Air Inlet Pipes (Mixer or Venturi) (before, after turbo)
Bearings - Camshaft, Connecting Rod, and Main Caps
Camshaft
Camshaft Follower
Connecting Rods, Caps and Bolts
Crankshaft Ventilation Assembly
Crankshaft (and seal ring)
Cylinder Block Casting, Main Bearing Caps and Bolts
Cylinder Block Expansion Plugs
Cylinder Head Casting and Bolts
Cylinder Head Expansion Plugs
Cylinder Head Gasket
EGR (Exhaust Gas Recirculation) Control Valve
EGR Cooler
Electrical Harness Supplied with Engine
Engine ECM (Electronic Control Modules) - PMCI Only
Engine Brake System (PACCAR)
Exhaust Manifold Casting - Front
Exhaust Manifold Casting - Middle
Exhaust Manifold Casting - Rear
Exhaust Manifold Joint Seals, Gaskets, Wraps or Rings
Flywheel
Flywheel Housing
Front Cover
Fuel Common rail and Lift Pump
Fuel control valve
Fuel Hand Primer Pump

Fuel Filter Module/Housing
Fuel Injectors (Cylinder Injectors)
Fuel Lines (High Pressure)
Fuel Lines (Low Pressure)
Fuel Lines (Return)
Fuel Unit Injection Pumps
Gaskets, Seals, O Rings, Silicon Sealant
Gears - All (Camshaft, Crankshaft, Idlers and Oil Pump)
Ladder Frame
Oil Cooler Module (Replaceable Filter Not Covered)
Oil Fill Tube and Cap
Oil Pan
Oil Pump
Pistons, Rings and Liners
Rocker Arm Assembly and Shafts
Sensor, Ambient Air Temp
Sensor, Camshaft (Engine Position)
Sensor, Coolant Temperature
Sensor, Crankcase Pressure
Sensor, Crankshaft Speed (Engine Timing)
Sensor, EGR Temperature
Sensor, EGR Differential Pressure
Sensor, Engine Oil Pressure and Temperature
Sensor, Exhaust Manifold Pressure
Sensor, Fuel Pressure and Temperature
Sensor, Intake Boost Pressure (aka Intake Manifold & Temperature)

Sensor, Intake Temperature
Sensor, Intercooler Temperature
Sensor, Turbocharger Speed
Sensor, Water Pump Speed
Towing (Includes Split Towing as required by state law to the nearest authorized dealer)
Thermostat (Coolant)
Thermostat Housing (Coolant)
Sensor, Pressure/Temperature/Humidity
Turbocharger Assembly
Valves, Engine Exhaust and Intake
Valve Cover
Valve Yokes (Bridge) and Pins
Vibration Dampers and Bolts
Water Pump Assembly (complete or incomplete)
Water Pump Housing

Failures of belts and hoses supplied by PACCAR are covered during the first year from the date of delivery of the engine.



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EXHIBIT 49

EXHIBIT F

EQUIPMENT CONDITION PARAMETERS

1. **TIRES:** Shall be free of cuts and cracks, in alignment, of the same size, and have matched tread design.
2. **BODY:** Shall have no dented or punctured panels (including fuel tanks), minor scratches and scrapes permissible if total repairs will not exceed \$200.00.
3. **INTERIORS:** Shall be clean, have no tears, burns, damage to seats, seat backs, dashes, headliners, door panels or carpeting. Original radio and other original equipment to be in place and in working order. Gauges, etc., shall be in working order.
4. **ENGINES:** Shall be mechanically sound with no cracked heads or blocks. Shall perform to rated horsepower and pass dyno test per engine manufacturer specs, including no excessive engine crankcase blowby pressure or oil leaks.
5. **DRIVE TRAIN COMPONENTS:** Transmission and differentials shall be operable as originally provided and without excessive gear noise. Wheel seals shall not have excessive leakage.
6. **GLASS:** Windshield shall not be pitted, chipped or cracked and must pass DOT inspection requirements. Windows and mirrors shall not be broken or cracked and all window operating mechanisms will be operable.
7. **ELECTRICAL:** Batteries, starters, alternator, etc., shall be operable. Lights and wiring will be operable with no broken sealed beams, lenses, etc. Heaters and air conditioning systems shall be operable.
8. **FACTORY EQUIPMENT AND IN SERVICE EQUIPMENT:** Factory installed equipment and any equipment installed in unit prior to Lease shall be intact and operable, and free of damage. Includes fifth wheel, mudflaps, air fairings, safety equipment, chain boxes, etc.
9. **CHROME AND BRIGHT METAL TRIM:** Bumpers, grab handles, wheel hub caps, grills, etc. originally on unit at the time the lease commenced shall be free from damage and scrapes.
10. **BRAKES:** Shoes shall have a maximum of 50% wear. Wear beyond that point will be charged on a prorated basis.

Lessor:

Initialed

Lessee:

Initialed

Date:

Date:

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