

Contractor Operating Agreement & Equipment Lease

Contractor assumes full responsibility for the payment of wages, benefits and expenses for its employees and for the reporting of same to the appropriate regulatory agency. Contractor shall have responsibility for paying all operating expenses, including but not limited to **all** expenses of *fuels, fuel taxes, oil and repairs to the Equipment, road taxes, mileage taxes, toll ferries, and accessories services, fines for parking, moving or weight violations, and any other levies or assessments based upon the operation of the vehicle, within the limits of the operating authority of the carrier.* Contractor agrees to obtain necessary signatures and other documentation necessary for all detention loading, unloading and spotted equipment. In signing this agreement Contractor certifies that the personnel and equipment supplied to the Carrier meet all industry and regulatory standards and qualifications. Contractor shall in its able discretion determine proper loading, legality of weight as loaded, selection of routing, periods of rest, periods of maintenance, maintenance of Logs, safety precautions and all such other activities involved in performing its duties hereunder. Carrier may refuse in its sole discretion for any reason to reject any equipment or driver supplied by the Contractor, as Carrier shall see fit. Neither party shall have the right to bind the other by contract in otherwise except as herein specifically provided. Contractor shall not trip lease under this contract.

3. Direct Costs: Contractor shall supply all cost of its personnel and equipment operations including but not limited to wages, taxes, benefits, equipment repair and maintenance, licensing, fuel and insurance coverage required by Carrier. Carrier will provide shipping documents perform billing and collecting, provide: Identity cards, plaques, delivery receipts and sales.
4. General Indemnity: Contractor is familiar with the conditions imposed upon the interchange of equipment between Carrier, railroads, steamship lines and other private equipment providers. Contractor recognizes its liability to Carrier for the proper performance of such interchange conditions. Contractor is specifically aware that its personnel must inspect the physical condition (both interior and exterior) of any equipment interchanged on behalf or at the direction of Carrier and must note any exceptions on the interchange receipt before executing same on behalf of Carrier. Likewise, Contractor understands its duty to obtain customers signatures upon delivery receipts for empty trailers delivered for loading, noting on the delivery receipt any exceptions which the customer noting that the seal is intact on any loads delivered or shipped. If asked to endorse a bill of lading on a load being tendered by customer, Contractor will note "Shippers load and count: or **"SLC"** on such document before signing. Contractor indemnifies Carrier for any losses arising from breach of the foregoing, including the uncollectability of any transportation billings by Carrier, which are rejected due to Contractor's breach. Contractor acknowledges that to obtain payment for any hand unloading, he must have prior approval of Carrier and must obtain all signed receipts or other documentation required by Carrier. Contractor acknowledged that it is responsible for its driver's compliance with the law and regulations. In the event such drivers receive citations in connection with contract activities on behalf of Contractor fines levied in connection therewith, if paid by Carrier, shall be repaid to Carrier by Contractor. Carrier and Contractor agree that the

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costs thereof shall be paid according to offset against settlements in such amounts and at such frequencies as the parties may agree. In that regard, Contractor authorizes Carrier to advance the same and deduct from Sub-contractor's settlements any sums advanced through such settlement period. Contractor's agrees to pay, upon demand, Carrier for any fines, which remain unsatisfied by way of settlement offset.

5. Insurance and Indemnity: While Carrier maintains insurance as necessary for its operation and as required by law (for cargo and general liability, only while Contractor is attached to trailer), such insurance is secondary to that to be borne hereunder by Contractor. Accordingly, Contractor shall procure and maintain current during the life of this contract insurance of the type and the amount as may be, from time to time, required by Carrier. As of the execution of this agreement, the Carrier requires the following insurance coverage:

PUBLIC LIABILITY INSURANCE:

(This insurance must insure both the power equipment being operated by Contractor and one unidentified trailer as long as it is connected to the power unit involved). Contractor is responsible up to any deductible in the event of loss.

CARGO INSURANCE:

Contractor is responsible up to any deductible in the event of loss.

- A. Carrier maintains Cargo Insurance in accordance with our customers.

COLLISION AND COMPREHENSIVE:

Contractor shall carry such collision and comprehensive insurance, as it feels appropriate for the power equipment, which it operates. Carrier carries no insurance on the power equipment operated by Contractor. Contractor shall pay any cargo or trailing body (Trailer, chassis container, etc.).

WORKERS COMPENSATION:

Required as provided by law for all personnel to operated or ride with operator of equipment provided to Carrier under this Agreement.

Contractor shall evidence such insurance coverage by delivering to Carrier, before its equipment is allowed to commerce working, certificates of insurance and additional endorsements made out in forms suitable to Carrier and naming Carrier as additional insured on all classes of insurance required.

Notwithstanding the fact that Carrier does not **require/or** Contractor fails to maintain certain classes or types of insurance, same is not to be construed as a waiver of the right to indemnification for acts of contractor or its employees or equipment which cause loss to Carrier for any and all losses including attorneys

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fees and costs incurred in defending, settling or otherwise handling claims predicted upon acts of Contractor alleging either intentional or negligent conduct on Contractor's behalf.

6. **Photographs:** Contractor acknowledges the importance of securing the scene of any incident that may result in a claim against the Carrier and or Contractor. Contractor further acknowledges the importance of obtaining photographs of any such scene. The importance of photographs being acknowledged, Contractor shall supply and keep in his power unit at all times, a suitable and operable camera for the purpose of photographing any scene of potential claim. Contractor shall be liable for up to an additional ten thousand dollars (\$10,000.00) in damages should Contractor fail to take the appropriate photographs.

Company policy prohibits passengers without written consent from the Safety Director. Dismissal and fines up to \$1,500.00.

Compensation: Contractor shall receive settlement for its service provided according to this Agreement within twenty-one (21) days after submission by Contractor by mail or in person of his completed log and those documents necessary for Carrier to secure payment from shipper. Compensation schedule as it may be amended. Contractors acknowledged that all movements are on a "stay with" basis unless otherwise advised, by Carrier, A condition precedent for such freight movements is that all paperwork necessary for freight billing to be tendered to Carrier by not later than twenty-four (24) hours following completion of **sub**-hauled movement. Failure to provide such documentation in a reasonably timely manner or to perform the freight services as outlined and instructed by Carrier's dispatcher shall result in delay of settlement or Contractor forfeiture of such compensation.

7. **Advances and Supplied Services:** On occasion, Carrier may elect as its sole discretion, to advance funds to Contractor prior to the date such funds are due to be paid. Likewise, Carrier may, at its sole discretion, make available to Contractor services, which are provided upon Carrier's credit. Such services may include fuel, pagers, tire repair and mechanical maintenance or repair. If such services or advances are provided, they are solely Carrier's discretion as to the terms and duration. If Carrier and Contractor agrees to such amounts, and Contractor agrees to such advances and or services, the cost thereof shall be paid according to offset against settlements in such amounts and at such frequencies as the parties may agree. In that regard, Sub-contractor authorizes Carrier to advance the same and to deduct from Sub-Contractor's settlements any sums advanced through such settlement period. Contractor agrees to pay Carrier for any advances, which remain unsatisfied by way of settlement offset.

8. **Term of Lease/Termination:** This Agreement is for a period commencing with the date of this Agreement and the time this equipment is received by the Carrier through December 31 of the year of execution of this Agreement. Thereafter this Agreement will continue on a year-to-year basis unless cancelled by either party at the close of any year period and upon giving proper notice. Notice of termination

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by either party shall be given thirty (30) days in advance in writing by certified mail or by hand delivery or immediately, upon breach of this Agreement by either party upon written notice thereof by the affected party. Upon such termination, and prior to its final settlement, Contractor shall return to Carrier all identity cards, plaques, mobile radios, delivery receipts, seals, trip permits, and other materials, equipment and supplies belonging to or provided by Carrier. Likewise, at such time, the Contractor shall pay Carrier any unpaid advances or services provided by Carrier for Contractor's benefit. Carrier is given a lien upon any undistributed settlement proceeds from which to satisfy these obligations. It is understood that as a condition precedent to final payment upon termination of this contract, the Contractor shall remove all identification devices of the Carrier in accordance with this Agreement hereof. Until this requirement is fulfilled, Carrier may withhold final payment in accordance with 49 CFR **1057.12(F)**.

9. **Confidentially:** Carrier is required to disclose to Contractor and its employees and agents facts regarding Carrier's customers which are considered by Carrier to be confidential to Carrier and are otherwise not disclosed to those outside the Company. Contractor agrees to maintain such confidences and not utilize any information gained from Carrier in any manner against Carrier's interest. The parties agree that the remedy for violation of this breach of confidentiality is injunctive relief since damages are neither reasonably ascertainable nor certain in any manner.

10. Contractor's Responsibilities: The Contractor has and shall retain sole financial responsibility for all Worker's Compensation and withholding and employment taxes due to Federal, State or Local governments on account of drivers, driver's helpers, and other workers necessary for the performance of the Contractor's obligations under the terms of this Agreement. The Contractor agree to save and hold harmless the Carrier from any claim by drivers, driver's helpers and other workers used by the Contractor, or by Federal, State or Local government agency, on account of wage, industrial accident, or Worker's Compensation claims, withholding and employment taxes or any other actions arising from Contractor's relationship with its employees. To fulfill its obligations under this paragraph, Contractor agrees to:

- A. Maintain in force at all time proper Worker's Compensation insurance coverage covering all driver's helpers and laborers used by it in the performance of this Agreement.
- B. File all Federal, State and Local income, withholding, and employment and Federal Highway Use Tax forms and returns, which may be required by law to file on account of itself and all drivers, driver's helpers and laborers used by it in the performance of this Agreement at the time and place which may be specified in the applicable Federal, State and Local Laws and to pay when due all taxes and contributions reported in such forms and returns; and
- C. Furnish Carrier with such evidence of compliance with the foregoing, as Carrier shall reasonably require.

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D. Carrier will provide Occupational Accident Insurance to the contractor at \$217.00 per month.

11. **Bobtail Liability Insurance:** The Contractor agrees to carry Bobtail insurance coverage with respect to public liability and property damage in the limits of \$500,000 for any person, \$1,000,000 for any accident, \$1,000,000 property damage in any accident as occurs all Equipment hereunder when not used in performance of this Agreement and agrees to furnish evidence of such coverage to Carrier and arrange for Carrier to be named as additional insured under such policy. Pursuant to rules and regulations of the Interstate Commerce.

Commission or other regulatory agency, the Carrier shall maintain as its own expense public liability, property damage and cargo coverage as concerns the shippers and the general public. Carrier will provide Contractor a certificate of insurance for each type coverage it procures for Contractor that shall state the name of the insurer, policy number, and effective dates of coverage.

12. **Escrow:** It is agreed that an "escrow" fund is set up at the time of execution of this Agreement. Contractor authorizes Carrier to withhold fifty (50) dollars per week from any settlements and to retain it in said escrow fund to a maximum of \$ _____, or the then current deductible, which ever is greater. If for any reason Carrier does not withhold fifty dollars (\$50.00) in a given week, Contractor authorizes Carrier to withhold (in subsequent weeks) any additional funds necessary to make up for such deficiency in withholding. If Contractor does not keep his Equipment operating for the full period of this Agreement, the minimum fee paid any regulating agency to certify such equipment, **and/or driver(s)** may be deducted from sums held in escrow. All escrow funds may be held for a period of 180 days after termination of this Agreement, to ensure payment of Contractor's obligations, including but not limited to, fuel taxes, cargo claims, liability claims, advances, equipment check, or any other operation cost which are the sole responsibility of the Contractor. Should any claim of whatever type or nature not be resolved at end of said 180 days, the Carrier may in its discretion, retain the escrow funds until the claim is closed. If Carrier retains any remaining funds within ninety (90) days of the closing of the remaining claim or claims.

The Carrier shall provide the Contractor with an accounting of any transaction involving the escrow, or any deductions to the escrow account in separate ledger sheet, and upon request of the Contractor.

13. **Completion of Services:** If for any reason Contractor shall fail to complete transportation of commodities in transit, or abandons a shipment or otherwise subjects Carrier to liabilities to shippers on account of the acts or omissions of Contractor in route, Contractor expressly agrees that Carrier shall have the right to complete performance using other equipment and hold Contractor liable for the cost thereof for any other damages. Should Contractor expose Carrier to fines or liabilities by governmental or other agencies on account of the acts or omissions of Contractor, the Contractor expressly agrees that Carrier shall have

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EQUIPMENT DESCRIPTION

MAKE	YEAR	MODEL	SERIAL NUMBER	LICENSE	STATE	OWNER

COMPANY ASSIGNED UNIT NUMBER _____

RECEIPT BY CARRIER

The undersigned Carrier hereby acknowledges the receipt of the equipment described from **Contractor/Owner** this _____ day of _____ 200_____, at _____

For Carrier

By:
Authorized Agent

RECEIPT BY OWNER AT CONTRACT TERMINATION

The undersigned **Contractor/Owner** hereby acknowledges the receipt of the equipment above described fro Carrier this _____ day of _____ 200_____, at _____

For Contractor

By
Authorized Agent

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EXHIBIT B

Payment Schedule Amendment 03/26/04

The Carrier agrees to pay Contractor for the use and operation of the equipment on the following basis:

- A. Paid mileage is based on _____ short miles rating
- B. Contractors will be paid for all **stop-off(s)**, excluding the final destination, at twenty dollars per stop or as determined by the contract with the shipper
- C. Chicago commercial zone stop-off is \$50.00.
- D. Layovers after a period of 24 hours from loading or unloading and away from a Contractor's home base for reason beyond Contractor's control = \$25.00 with dispatch approval.
- E. Contractor hand **loads/unloads** = \$60.00 *with proper signature and dispatch approval*. Driver Assisted loads/unloads - \$30.00
- F. Contractor will not be paid Bobtail or deadhead for pick-up within twenty (20) mile radius of delivery with the exception of Chicago, Illinois.
- G. Mileage rate will be computed on the following per mile rates:
 - a. In or out of the railheads in Greater Chicago, IL and Cincinnati, OH, .92 cents / mile loaded, .80 cents / mile empty, .50 cents / mile bobtail or relocation over 100 miles.
 - b. Louisville intermodal rate .92 cents/mile loaded, .80 cents/mile empty and .50 cents/mile bobtail or relocation over 100 miles.

Contractors will be compensated for moving trailers from the Rail Yards to a local yard. Contractor will be requested to move one (1) trailer per day with a destination in the protected area without compensation. Contractor will be compensated for all subsequent trailers going to his protected area and for all other trailers at a rate of Twenty Dollars (\$20.00) per trailer.

Date: _____

Signed: _____

Unit # _____

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- H. Contractor will be entitled to detention compensation, upon prior approval of Carrier's dispatch personnel after the expiration of the below listed free time period, said period commencing with the scheduled appointment time. The Contractor arrives on the premises of the shipper or consignee and the reason for delay is clearly logged on the "Detention Record" of and delivery receipt. Twenty (**\$20.00**) dollars per hour calculated every fifteen (**15**) minute period from appointment time. Detention must be signed by the **shipper/consignee**.
- a. Local California one (1) hour free time
 - b. Local Cincinnati and Chicago two (**2**) hours free time
 - c. Intermodal moves three (**2**) hours free time.
- I. The Carrier has no obligation to pay advances to Contractors. If Contractor receives advances, Carrier has the right to deduct service charges in the amount of seven dollars (**\$7.00**) per cash advance. Said deduction shall be reflected in Contractor's settlement statement. The Carrier reserves the right to deduct for such items purchased initially by the Carrier for use by the Contractor until they have been paid in full. These items include, but are not limited to, fuel taxes, cargo claims, physical damage claims, permits, or tire claim. Fuel purchases will have an additional charge of (**\$5.00**) per transaction.
- J. In the event of some error by which Contractor receives an overpayment in any settlement, Contractor agrees that such payment when discovered shall be withheld from any subsequent settlement.

Date: _____

Signed: _____

Unit #: _____

**Contractor Operating Agreement
& Equipment Lease**

Signature required as acceptance of entire contract.

Executed at _____, on _____ day of
_____, 200 _____

For Carrier

By:
Authorized Agent

For Contractor:

By
Authorized Agent