



Terms and Conditions

- 1. Vehicle Rental.** Customer shall, rent/lease Equipment from Mckinney pursuant to the terms and conditions of this Agreement and any appended Schedules.
- 2. Schedule.** Mckinney and Customer may execute one or more Schedules to address issues unique to Customer which shall be attached to and made part of this Agreement. Where any term of any Schedule conflicts with any term of this Agreement, the Schedule will govern.
- 3. Term.** This Agreement shall be effective on the Commencement Date and any leased Equipment shall remain on lease until the later of the date: 1) Customer has returned all Equipment to Mckinney; or 2) the end of any Term listed above or on a Schedule and Customer has complied with all of the requirements and conditions in Sections 9, 12, 15 and 18 of this Agreement. Customer shall be obligated, without exception, to pay all lease and other applicable charges to Mckinney due under this Agreement in full without any offset or deduction. The "Commencement Date" as used in this Agreement shall be the date that Customer takes possession of the Equipment or such earlier date the parties have agreed to above.
- 4. Rates.** The periodic or monthly rental/lease rates (hereinafter "Rental Rate"), Mileage, and other charges payable to Mckinney by Customer for the leased Equipment under this Agreement (all collectively hereinafter "Rates") are set forth above or on a Schedule. Such amounts shall begin accruing on the Commencement Date. Mckinney may make changes to the Rates and other charges set out above or in a Schedule at any time by giving 30 days written notice to Customer of such changes.
- 5. Payment.** Mckinney will invoice Customer for monies due under this Agreement, and Customer shall pay all invoices within thirty (30) days from the date of the invoice. Any payment not received within thirty (30) days from the date of the invoice shall be subject to a late charge of the lesser of one and one-half percent (1½%) per month of the amount due, or the maximum rate allowed by law, from the date of invoice until paid in full. Payments received by Mckinney after the due date shall be applied first to the oldest outstanding invoice(s) issued to Customer. Mckinney reserves the right to offset any amount owed to Customer by any amount due to Mckinney under this Agreement. Customer shall pay to Mckinney an administrative fee of \$100 for each check returned to Mckinney due to non-sufficient funds. Customer's obligation to make all payments and fulfill all other obligations under this Agreement are absolute and unconditional and shall not be affected by any right of setoff, counterclaim, recoupment, deduction, defense or any other right which Customer may have against Mckinney for any reason whatsoever.
- 6. Inspection Summary.** At the time that Customer takes possession of each piece of Equipment, the individual taking possession of the Equipment on Customer's behalf (be it Customer's employee, agent, representative, independent contractor or some other party) will inspect the Equipment and complete and sign a Delivery and Inspection Report (collectively hereinafter "Customer's Inspection Agent") describing the condition of each item of Equipment that Customer's Inspection Agent is taking possession of. Customer's Inspection Agent shall inspect the Equipment and review the Delivery and Inspection Report and note any damage to the Equipment on the Delivery and Inspection Report prior to taking possession of each piece of Equipment. Customer shall be solely responsible for any damage to the Equipment not reflected on the Delivery and Inspection Report. Customer represents and warrants that every Customer's Inspection Agent has full authority to complete and sign a Delivery and Inspection Report for each item of Equipment that the Customer's Inspection Agent is taking possession of. In the event that a Delivery and Inspection Report is not completed and signed by Customer's Inspection Agent for one or more items of Equipment, it shall be conclusively presumed that the Equipment was received by Customer in good and acceptable working order and free of all defects and damages.
- 7. Security Deposit.** Mckinney may charge Customer a security deposit for the Equipment. Customer must remit this security deposit in full prior to or at the time of Equipment pick-up. Any unused portion of the security deposit will be refunded to Customer, after Customer has returned the Equipment, minus any applicable deductions for repair, replacement, and other charges provided for in this Agreement.
- 8. Default.** Customer shall be in default under this Agreement if: (a) Customer fails to perform any obligation provided for in this Agreement, including timely submission of the Lease Rate payments, and all other Rates or charges due Mckinney under this Agreement; (b) Customer or any guarantor of Customer (i) becomes insolvent, (ii) commits an act of bankruptcy, (iii) becomes subject to any involuntary bankruptcy proceedings, (iv) makes an assignment for the benefit of creditors, (v) appoints or submits to the appointment of a receiver for all or any of its assets, (vi) admits in writing its inability to pay its debt as they become due, or (vii) enters into any type of voluntary or involuntary liquidation; (c) any letter of credit, guaranty or other security given to secure the performance of this Agreement shall expire, terminate or become worthless in the opinion of Mckinney; (d) Customer makes or permits any unauthorized lien against, or assignment or transfer of, this Agreement, any Equipment, or any interest therein; or (e) Customer terminates or changes its corporate existence, consolidates with, merges into, or conveys or leases substantially all of its assets to any entity or person. Upon Customer's default, Mckinney may, without notice or demand: 1) declare all Rental Rate payments to come due during the remainder of the Term(s) as well as all other Rates and charges provided for in this Agreement immediately due and payable; 2) enter onto Customer's premises and repossess the Equipment without incurring any liability or further obligation to Customer and without relieving Customer from any of its obligations under this Agreement; 3) declare the Agreement and/or Customer's right to possess and use the Equipment immediately terminated and without relieving Customer from any of its obligations under this Agreement; and 4) utilize any legal process to recover moneys owed to it under the Agreement and/or to secure return of the Equipment. Such remedies shall be cumulative and Mckinney's election to pursue any particular remedy shall not be a waiver of any other remedy to which it may be entitled.
- 9. Repossessed Equipment.** If Mckinney repossesses the Equipment and such Equipment contains property belonging to Customer or any third person, **Customer agrees Mckinney may remove, store, sell or dispose of such property, and that Customer will reimburse Mckinney for all such expense including expenses related to sale of the property, storage of the property and care of the property.** Customer acknowledges Mckinney is under no obligation to determine whether such found property belongs to Customer or to any third party and agrees to defend, indemnify and hold Mckinney harmless from any claim, demand or cause of action arising from or relating to Mckinney's taking possession of and/or storing, selling or disposing of such property, including reimbursing Mckinney for all of its attorney's fees and costs in any such matter. Customer further agrees to reimburse defend, indemnify and hold Mckinney harmless from all costs, damages, expenses, liability, claims, suits actions, causes of action that Mckinney incurs related to or in connection with any repossession of the Equipment. Customer further agrees to reimburse Mckinney for all expenses it incurs to repossess any Equipment, including without limitation, all transportation costs, storage costs, locator fees, filings fees and other costs and fees. If Mckinney transports the Equipment in connection with the repossession, Customer agrees

to reimburse Mckinney at \$2 per mile (with a minimum fee of \$200) for the mileage between the location of the repossession and the Mckinney branch where the Equipment was rented.

10. Transaction. This transaction is a leasing transaction and not a sale. Customer acknowledges it does not acquire any right, title or interest in or to any Equipment by executing or making any payments pursuant to this Agreement. This Agreement only gives Customer the right to possess and use the Equipment so long, and only so long, as Customer is not in default under this Agreement. If Mckinney is not the legal owner of the Equipment, this Agreement shall be subject to and subordinate to the provisions of any written agreement between Mckinney and the legal owner, including the owner's legal right to repossess the Equipment. The Equipment may be subject to a security interest held by a third party lender. The rights and obligations of Customer hereunder are therefore expressly subject and subordinate to the rights of any such lender.

11. Use and Operation. Customer makes each of the following agreements, representations and warranties on the date hereof: (a) Customer has the authority and capacity to enter into and perform under this Agreement; (b) the Equipment rented to Customer under this Agreement shall be used only for commercial purposes in the Continental United States and Canada; (c) the Equipment shall not be operated by any person other than agents or employees of Customer; (d) Customer's agents or employees shall be experienced and trained operators with a current and valid license to operate the Equipment and any equipment used therewith; (e) Customer shall take all necessary precautions to ensure that any operator of the Equipment has not ingested alcohol or drugs prior to or during the operation of the Equipment; (f) Customer shall use each trailer designated as a "Storage Only" trailer only for storage purposes-such trailers may not transport cargo over the road; (g) Customer is duly qualified to do business wherever necessary to carry on its present business and operations and Customer shall comply with all current and future statutes, regulations, rules, ordinances and orders of any governmental or quasi-governmental entity affecting the use, operation or maintenance of the Equipment; (h) Equipment will be supplied with a valid license plate, but Customer shall be responsible for and pay for any other licenses or permits that are required by law for Customer's use or operation of the Equipment, and Customer agrees that such licenses or permits shall reflect Mckinney's (or any other legal owner's) interest therein; (i) Customer agrees to pay any use or personal property taxes levied against or upon the Equipment during the Terms; (j) Customer shall be solely responsible for payment of all traffic and parking tickets or citations, for parking violations, moving violations, photograph or radar tickets, highway weight stations citations/tickets, automated toll violations, toll fees and fines, and all similar tickets and/or citations, and Customer shall promptly within ten (10) days reimburse Mckinney for all such tickets, tolls, fines, penalties and/or citations that Mckinney pays relating to the Equipment and further pay Mckinney a \$25.00 processing fee for each such item paid by Mckinney; (k) Customer shall be exclusively responsible to assure that the Equipment is suitable and appropriate for Customer's intended use and Customer shall be exclusively responsible to be aware of and in compliance with the Equipment's manufacturer's load weight, load distribution and other loading limitations and shall load Equipment only in accordance with those limitations; (l) Customer's execution of this Agreement will not result in the creation of any lien, charge, security interest or other encumbrance upon any Equipment pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Customer is a party; (m) upon reasonable request, Customer shall make all Equipment available to Mckinney for inspection; and (n) if Customer has filed a stolen vehicle report for any Equipment and the Equipment is later located, Customer shall be responsible to notify the authorities that the Equipment was located and Customer shall be liable for any damages to Mckinney or any other Mckinney customer caused by its failure to do so.

As provided above, the Equipment may only be used in the Continental United States and Canada. Equipment is specifically prohibited from being used in Mexico. **WARNING:** Please be advised that most, if not all, insurance companies will not provide insurance coverage for accidents or occurrences in Mexico. Notably, regardless of whether Customer's insurance coverage applies or not, if an accident or loss occurs, Customer remains fully responsible under the indemnity sections of this Agreement to indemnify, defend and hold Mckinney harmless.

12. Hazardous Materials. Customer shall not transport, load or store in or on any Equipment any medical wastes, environmentally polluted substances, hazardous wastes, infectious materials, poison gases, radioactive materials, explosives or any materials or substances designated by any government entity as toxic or hazardous (collectively "Ultra hazardous Materials"). If any Equipment is damaged, contaminated, stained, soiled or tainted as a result of transporting, loading or storing Ultra hazardous Materials or any other substances, Customer shall promptly decontaminate and restore such Equipment to its original condition before re-delivery to Mckinney and, provide proof of such decontamination including, without limitation, methodology and pre and post decontamination sampling results. Mckinney, in its sole discretion and at Customer's sole cost, may have any Equipment inspected and tested at any time for any Ultra hazardous Materials. If Customer fails to decontaminate and restore (and provide written proof thereof) any damaged, contaminated, stained, soiled or tainted Equipment within ten days of Mckinney's demand, Mckinney may, at its sole discretion and in addition to the other default options provided for in this Agreement, (i) require Customer to purchase the Equipment at the greater of book value or the uncontaminated fair market value of the Equipment (as reasonably determined by Mckinney), or (ii) restore such Equipment and invoice Customer for the incurred costs.

13. Condition and Repair. Customer agrees to keep Equipment in good repair and operating condition during the term of this Agreement. Customer shall be responsible for and pay all expenses (including labor and parts) for any repairs of damage to Equipment and/or any unreasonable or excessive wear and tear on Equipment. Customer will replace with new parts any and all unreasonably worn or broken parts, including, but not limited to, tires, and brakes. Any damage found to the Equipment upon its return that is not listed in the Inspection Report discussed below shall be repaired at Customer's sole expense. Customer shall conduct safety inspections for each vehicle, including the maintaining of proper oil or grease levels on axles, proper inflation of tires, and operable lighting, including replacement of lenses and bulbs, if required, on each trailer and with refrigerated trailers also maintaining proper fuel, oil and coolant levels. When Customer brings the Equipment to a Mckinney branch location for maintenance, Mckinney will provide regular maintenance and lubrication for the Equipment at its facilities (such activities will be at Customer's sole expense if the Agreement is identified above as a Net Maintenance lease/rental). In all cases, and regardless of whether or not this Agreement is identified as a Net Maintenance lease, Customer is responsible for: a) monitoring the Equipment and to return the Equipment to Mckinney for regular maintenance and lubrication; b) making certain that the Equipment is not operated if in need of repairs or maintenance; and c) making certain the Equipment is in compliance with all applicable safety laws, rules or regulations. Customer shall also in all cases make certain that all safety equipment is well maintained and operating at peak performance including, but not limited to, the following: a) tires, b) brakes, c) lights, d) all air pressure and fluid levels and e) coupling devices. Any and all repairs and/or maintenance conducted by Customer or on its behalf shall be completed in accordance with both Mckinney's and industry standard repair and maintenance standards.

14. Inspections. Customer is solely responsible for compliance with all governmental inspection laws, rules and regulations, including those promulgated by, among others, the Department of Transportation, the Federal Motor Carrier Safety Administration ("FMCSA"), the California Highway Patrol and any other federal or state governmental body or agencies. Customer

specifically acknowledges it is aware of and responsible for all inspections required by the California Commercial Motor Vehicle Safety Act of 1988, as amended, commonly referred to as the Biennial Inspection of Terminals ("BIT"). Customer shall, within the period provided by law, conduct the BIT (or FMCSA as applicable) inspections through the use of qualified and trained personnel, or return the Equipment to Mckinney who will conduct the inspections. In any event, Customer shall remit to Mckinney all documents relating to inspections. Further, Customer acknowledges that it is responsible for any liability, fees, fines, penalties, or other charges based on its failure to have the Equipment inspected as provided by law and Customer will defend, indemnify and hold Mckinney harmless for any such liability, fees, fines, penalties or charges.

15. Equipment Return. Upon termination of this Agreement, Customer shall return the Equipment to the Mckinney location where it was originally leased in the same condition as it was received, reasonable wear and tear excepted. Mckinney reserves the right to change the return location upon ten days prior written notice to Customer. If Customer returns the Equipment to a different location than where it was rented, Mckinney may in its absolute discretion charge Customer a relocation fee of \$2.00 per mile with a minimum charge of \$200 ("Relocation Fee"). Acceptance of the Equipment by a Mckinney branch shall not constitute a waiver of Customer's obligation to pay the Relocation Fee and only Mckinney's Operations manager may waive payment of a Relocation Fee and such waiver shall only be valid and binding if it is in writing. If Mckinney is required to pick up the Equipment from Customer or some third party, Customer will be required to pay Mckinney the Relocation Fee. If the Equipment is returned or retrieved with missing items, accessories or attachments, or if it requires repairs of any kind, the Equipment will remain leased and Customer will be required to continue to pay the Rental Rate until such replacements or repairs have been made.

Tires. Customer is responsible for all tire damage, including repairing or replacing flat tires, and excessive wear. All Equipment shall be returned to Mckinney with tires in good operating condition and having the same tread depth as when originally leased from Mckinney minus reasonable wear and tear (which shall be 1/32nd of an inch of tire wear for each 10,000 miles traveled). In the event any Equipment is returned to Mckinney with a lesser tread depth, Customer agrees to pay Mckinney's standard wear charge rate at the time that the Equipment is returned or the tires replaced for each tire. Replacement tires will be of like quality and acceptable tire makes will be Bridgestone, Double Coin, Hankook, Goodyear, Michelin, Toyo, Firestone, Yokohama, Dunlop, Continental, General, BF Goodrich, and Kelly Springfield ("Approved Manufacturer(s)") and if the Equipment is not returned with such tires, Customer will be responsible for the full cost of replacement tires. If the Equipment was rented with SmartWay-approved tires or SmartWay-approved tires were otherwise placed on the Equipment, then the replacement tires must also be SmartWay-approved tires provided by an Approved Manufacturer, and if the Equipment is not returned with such tires, Customer will be responsible for the full cost of replacement tires.

Brakes. All Equipment shall be returned to Mckinney with brakes in good operating condition and having the same thickness of brake lining as when originally leased from Mckinney minus reasonable wear and tear (which shall be 1/8th of an inch of brake wear for every 25,000 miles traveled). All replacement brake parts will be of like OEM quality to what the Equipment had at the outset of this Agreement and if the Equipment is not returned with such OEM quality brake parts, Customer will be responsible for the full cost of replacement OEM quality brake parts. In the event that any Equipment is returned to Mckinney with a lesser thickness of brake lining, Customer agrees to pay Mckinney's standard brake wear charge rate at the time that the Equipment is returned or the brake linings are replaced for each drum. Customer shall return Equipment designated by Mckinney as "Storage Only" without any wear and tear to the tires or brakes.

Hub-o-Meter. For any Equipment returned without a hub-o-meter or with a broken hub-o-meter preventing calculation of the Mileage Rate charges, the mileage shall be estimated assuming 10,000 miles are run for every 1/32nd of measurable tread wear.

Failure to Return. Customer acknowledges that failure to return Equipment to Mckinney within five days of the termination of this Agreement, or within ten business days of a written request by Mckinney that the Equipment be returned, shall be considered embezzlement or theft of the Equipment. Customer acknowledges embezzlement and theft amount to criminal offenses under applicable law, and that Mckinney may file a stolen vehicle report with the applicable authorities. For Rental Agreements entered in Arizona, the maximum penalty shall be the value of the Equipment, plus all outstanding rental charges (including repairs, repossession costs, interest and late fees). For purposes of any applicable state or federal theft law, Customer agrees and acknowledges the Equipment is valued at more than \$1,500. Customer further agrees and acknowledges notice provided to the Customer's address set forth herein is sufficient for purposes of complying with any and all applicable state and federal theft laws, and such notice shall be deemed effective if given within the timeframes set forth in such applicable state or federal theft laws.

Net Maintenance. If this Agreement is identified above as a Net Maintenance lease/rental, then, in addition to being responsible to fully maintain the Equipment during the Term of the Agreement, Customer shall also be responsible to return the Equipment to Mckinney at the end of the Term with tires and brakes in good operating condition and having not less than 100% of original outboard: a) tire tread depth thickness per tire, and b) brake lining thickness per brake drum. In the event that the Equipment is returned to Mckinney with a remaining tread depth and/or brake lining thickness of less than 100% of the outboard depth and thickness, Customer agrees to pay Mckinney both: a) Mckinney's standard tire wear charge rate per tire; and b) Mckinney's standard brake lining wear charge rate for each brake drum. The applicable wear rates due under the preceding paragraph shall be those in effect at the time the Equipment is returned. Replacement tires will be of like quality by an Approved Manufacturer and if the outboard tires were a Smart way approved tire, the Equipment must be returned with a Smart way approved tire provided by an Approved Manufacturer. All replacement brake parts will be of like quality to what the Equipment was rented with. Further, if, upon return of Equipment subject to "Net Maintenance" terms, such Equipment accrues less than 20,000 miles, Customer will be charged Mckinney's then standard mileage charge rates for the actual miles driven.

Tire Tread and Brake Lining Wear Charges: As provided above, Customer will be charged Mckinney's standard brake lining and tread wear charges for excess wear or, in the case of a Net Maintenance lease, for All wear. In that regard, Mckinney will set such standard charges in its absolute discretion but it will endeavor to cause the standard charges to be competitive with industry customs and with brake lining and tire costs. Notwithstanding the above, the brake lining and tire tread wear charges due hereunder will never be less than **\$36.00** per 1/32nd of an inch for tire wear per tire and **\$45.00** per 1/8 inch of brake lining wear, per drum.

16. California Air Resources Board Requirements. Pursuant to California Air Resources Board ("ARB") regulations, the trailers leased to Customer must be equipped with SmartWay certified tires and certain aerodynamic devices. Customer understands that when using a heavy-duty tractor to pull a 53-foot or longer box-type trailer on a highway within California ("CA"), the box-type trailer must be compliant with sections 95300 - 95311, title 17, CA Code of Regulations, and that it is the responsibility of Customer to ensure this box-type trailer is compliant. The regulations may require this Equipment to have low rolling resistance tires and aerodynamic technologies that are U.S. EPA Verified SmartWay Technologies prior to current or future use in CA and compliance with the same is solely Customer's responsibility. Customer is responsible to make certain that any refrigerated trailer Equipment that Customer rents from Mckinney is in compliance with the laws of any state or other governmental agency covering any area to which Customer transports the Equipment. Customer further is advised that if the refrigerated Equipment leased by Customer from Mckinney was not rented in CA, it may not comply with CA's ARB rules and

regulations and other laws regarding refrigerated Equipment. It shall be Customer's exclusive responsibility to assure that any refrigerated Equipment that Customer transports to CA complies with all of CA's laws, rules and regulations. Mckinney takes no responsibility for Customer's failure to abide by any requirements of the ARB and/or EPA and Customer will defend and indemnify Mckinney for any fines, penalties or damages because of or relating to any actual violation of or alleged violation of any ARB or EPA laws, rules, requirements or regulations.

17. Loss, Theft or Destruction. Customer shall be responsible for any loss, theft or damage or destruction of the Equipment. Customer shall notify Mckinney and Customer's insurance carrier of such event within seventy-two (72) hours, and shall replace any Equipment that is lost, stolen or destroyed. There shall be no abatement of the rates listed in this Agreement until the Equipment is replaced and returned to Mckinney, or until Customer has compensated Mckinney for the replacement value (which value shall be reasonably determined by Mckinney) of such Equipment. In addition, Customer is also responsible to pay Mckinney for any deficiency if the amount paid by any insurance carrier for such lost, stolen or damaged or destroyed Equipment is less than Mckinney's book value for the Equipment.

18. Alterations. Customer shall not make or allow any alterations, changes or improvements, or remove any parts, accessories or attachments, or place any decal, sign, painting or advertisement on the Equipment, without the prior written consent of Mckinney. If Mckinney grants its consent thereto, Customer (to the complete satisfaction of Mckinney) shall return the Equipment to its original state at the expiration of the Agreement. Mckinney reserves the right to paint, repair or restore the Equipment to its original state upon expiration of the Agreement and Customer agrees to pay Mckinney for any costs incurred thereby.

19. Insurance, Indemnity & Hold Harmless.

A. Insurance.

(1) *Insurance Requirements:* Prior to taking possession of the Equipment, Customer shall provide Mckinney with evidence of comprehensive insurance coverage with an insurance carrier satisfactory to Mckinney for all of the following (herein after collectively "Required Insurance"): a) comprehensive liability; b) trailer physical damage coverage for fire theft, and collision; c) commercial general liability coverage; d) contractual liability coverage generally and for hold harmless agreements. Evidence of coverage shall be in the form of a written Accord25 certificate of insurance showing the name, address and telephone number of both the carrier and the agent, as well as the policy number, coverage, deductibles, and policy limits. The Accord25 certificate of insurance when issued shall show Mckinney named as loss payee for trailer physical damage and additional insured for commercial auto liability, truckers' liability (when applicable), commercial general liability and contractual liability. The Accord25 certificate of insurance will also state Mckinney will receive notices of cancellation as required by this written agreement and in accordance to the policy provisions for all required coverage.

Customer shall require its insurer(s) by way of its insurance agent(s) to provide Mckinney with all applicable loss payee, additional insured and notice of cancellation endorsements for commercial auto liability, truckers' liability (when applicable), trailer physical damage, commercial general liability, and contractual liability. All notices of cancellation are to be provided in accordance with the policy provisions as it relates to the rights to such notice as provided by the policies to the additional insured. Customer is further responsible to cause the Required Insurance to be in effect during the entire time that any Equipment is rented/leased to Customer without any gaps in coverage.

(2) *Required Insurance.* The Required Insurance shall include all of the following:

a) Commercial auto liability and truckers' liability (when applicable): to include coverage for 3rd party property damage, bodily injury and wrongful death in an amount no less than one million dollars (\$1,000,000) combined single limit per occurrence, with a deductible of no greater than \$2,500 per occurrence.

b) Trailer Physical Damage: to include coverage for fire, theft and collision with limits no less than the value of the Equipment being rented from Mckinney.

Option 1) hired auto physical damage to include the PD limit and loss payee clause.

Option 2) trailers must be scheduled on the policy to include all vehicle identification numbers, trailer values and loss payee clause.

c) Commercial General Liability: to include coverage for 3rd party bodily injury and property damage for losses associated with Equipment being rented from Mckinney, in an amount no less than one million dollars (\$1,000,000) per occurrence / two million dollars (\$2,000,000) general aggregate.

d) Contractual Liability for hold harmless agreements in an amount no less than one million dollars (\$1,000,000) per occurrence.

(3) *Notice to Customer(s), Insurance Agent(s), and Insurer(s):* Memorandums of insurance (MOI) are not governed by the new Accord25 rules or State Law(s) such as Texas Senate Bill 425, making it illegal for insurance agents and insurance providers to place false and misleading information on certificates of insurance as it relates to coverage. Therefore, Mckinney cannot accept a MOI as proof of insurance coverage.

The insurance coverage shall have a deductible of no greater than \$2,500 per occurrence and collision damage and liability (combined single limit for bodily injury, death to persons and property damage) of no less than one million dollars (\$1,000,000) per occurrence. Mckinney shall be named as an additional insured and loss payee in the insurance policy obtained by Customer.

(4) *Hazardous Materials/Coverage:* It is illegal to haul Ultra hazardous Materials without appropriate Ultra hazardous Materials insurance coverage. To the extent that Customer hauls or stores Hazardous Materials in or around the Equipment, Customer shall maintain in place a policy of insurance with Environmental Impairment Liability or Pollution Liability coverage with a minimum combined single limit of seven million (\$7,000,000) per occurrence and Mckinney shall be named as an additional insured on such polic(ies). It shall also be Customer's sole responsibility to comply with and obtain any and all necessary permits, licenses or other requirements related to its Ultra hazardous Materials activities in compliance with all local, state federal and/or any other law or ordinance. Nothing herein shall constitute permission to haul or store Ultra hazardous materials or as a limitation to the indemnity and hold harmless provision made by Customer in favor of Mckinney as set forth below in this Section 19.

B. Indemnity & Hold Harmless. Customer acknowledges that during the Terms of this Agreement, Customer directs and controls the use, possession, maintenance, condition, operation and safe handling of the Equipment. Customer agrees to release, indemnify and hold Mckinney harmless against any and all claims, demands, causes of action, liability, loss, damages, attorney's fees, costs or expenses, of any nature whatsoever relating to or arising out of or in the course of the use, lease, rental, possession, maintenance, condition or operation of the Equipment (hereinafter "Claim" or "Claims"). This release, indemnity and hold harmless agreement shall apply to all Claims regardless of whether they are brought by any of the following:

a) a third party; b) Customer, its employees or agents; c) a governmental entity or division; or d) any other party or person. This release, indemnity and hold harmless agreement shall apply regardless of whether the Claim is for negligence, strict liability, an infraction, a fine, a penalty, disgorgement or any other form of relief or damages but it shall not include indemnity for Mckinney's gross negligence or recklessness. Furthermore, Customer agrees to require its insurance provider to release, indemnify and hold Mckinney harmless against all Claims, subrogation rights, expenses, attorneys' fees and costs arising out of, regarding or in the course of the use, lease, rental, possession, maintenance, condition or operation of the Equipment. Further, Customer hereby waives and relinquishes any and all rights which it may have under any policy of insurance paid for by Mckinney in which Mckinney is the "named insured", concerning any of the Equipment.

Customer agrees that this waiver shall extend to and include, but is not limited to: (1) any person using the Equipment; (2) Customer and any employee, officer, director, shareholder or agent of Customer; and (3) any independent contractor or contract driver hired by or used by the Customer.

C. Claims Handling. Because a dispute may arise between the parties as to the legal cause of an occurrence, McKinney and Customer agree that the handling and disposition of Claims should not await the determination of legal cause as between Customer and McKinney; the parties, therefore, agree as follows:

(1) It shall be the primary obligation of Customer and its insurance carrier to fully investigate, defend, settle, or litigate Claims relating to or involving the Equipment (against McKinney, Customer or both) as the merits of the Claims indicate. All rights of McKinney, Customer and its insurance carrier against each other are preserved and are not to be considered waived by such action.

(2) Promptly after Customer learns of an occurrence which Customer believes that McKinney may be liable for under this Agreement, Customer shall notify McKinney of such occurrence to allow McKinney and its insurance carrier to investigate such occurrence. McKinney may then decide to take no action or join in the defense or settlement of the Claim arising out of such occurrence, as McKinney deems proper under the circumstances. No such action by McKinney shall be deemed an admission of liability for such occurrence, and all rights of McKinney against Customer are preserved and are not to be considered waived by McKinney taking any action pursuant to this subparagraph.

Notwithstanding the above and other provisions in this Agreement, to the extent that McKinney is in possession of the Equipment while the Lease is still ongoing (for instance to perform maintenance or repairs), McKinney, and not Customer, will be responsible for any damage that occurs to the Equipment while the Equipment is in McKinney's possession until the Equipment is re-delivered to Customer.

D. Transportation to Mexico Prohibited. As provided above, the Equipment may only be used in the Continental United States and Canada. Customer is specifically prohibited from being used in Mexico. **WARNING:** Please be advised that most, if not all, insurance companies will not provide insurance coverage for accidents or occurrences in Mexico. If an accident or loss occurs in Mexico, Customer will be responsible under the indemnity section of this Agreement to indemnify, defend and hold McKinney harmless regardless of whether Customer's insurance coverage applies.

20. Collision Damage, Fire and Theft Waiver. If Customer has elected above to pay for the "Collision Damage, Fire and Theft Waiver" ("CDW") and if Customer has remained current on all payments due under this Agreement including, without limitation, the monies due for the CDW, then if there is a covered traffic accident involving the Equipment, a covered fire, or a covered theft (collectively "Covered Incident"), Customer's obligation to compensate McKinney for the resulting damage to the Equipment, or replacement of the Equipment, shall be capped at \$1,500 per storage trailer and \$2,500 per road trailer. As a mandatory precondition to the benefits of the CDW, Customer must report the Covered Incident to McKinney within seventy-two (72) hours of it occurring and, also within seventy-two (72) hours after the Covered Incident, Customer must file an accurate and complete police report documenting the Covered Incident, damages, investigation, and any witnesses. Customer must immediately provide the police report to McKinney as well as any other documentation requested by McKinney regarding the Covered Incident, including without limitation, a McKinney Accident Claim Form. Further, the CDW does not apply to the following, and none of the following shall be a Covered Incident: (a) an accident, event or incident caused by Customers' negligence and/or failure to properly maintain the Equipment; (b) damage to the roof of the Equipment; (c) theft of the Equipment if the theft is by or with the assistance of Customer or any of its agents, independent contractors or employees; (d) tire and/or wheel theft, unless the entire Equipment is stolen; (e) tire damage unless the tires are damaged during or as a result of a Covered Incident; (f) a rollover or other type of collision with a road surface, ground or any part thereof; (g) the Equipment being upset, tipping or turning over due to a load shift, improper operation or a jackknife; (h) floor damage caused by, during or in connection with loading or unloading of the Equipment; (i) damage caused by or in connection with tractor/trailer coupling or lifting; (j) if the accident, theft or fire occurs in any location other than the continental United States or Canada (note that CDW does not apply to accidents, fires and/or thefts occurring in Mexico) and (k) damage caused by or in connection with the hauling of hazardous or Ultra hazardous Materials. Customer shall indemnify and hold McKinney harmless from and against all losses, damages and expenses not covered by CDW. The CDW only applies if it is listed as applying above and, further, only if Customer is current on all amounts due to McKinney as of the date of the Covered Incident. **THE COLLISION DAMAGE WAIVER PAYMENTS ARE NOT INSURANCE** but merely a payment by Customer to McKinney to protect Customer from liability over the specified limit to McKinney for damage to Equipment from a Covered Incident. The CDW does not change or in any way limit Customer's obligations to defend, indemnify and hold McKinney harmless for liability of any type or form under this Agreement including Section 19. The amount to be paid for the CDW will be billed to Customer at the same time and for the same period as the Lease Rate. Notwithstanding Customer's purchase of the CDW, Customer is still required to procure the liability insurance coverage required under this Agreement and Customer's failure to obtain liability insurance and to have McKinney named as an additional insured on the policy as set out in detail in the Insurance Section of this Agreement shall, without limitation, invalidate Customer's CDW. McKinney shall have the right to terminate the CDW with 10 days' written notice. Upon receipt of notice of termination of the CDW, Customer shall be responsible to secure within 10 days trailer physical damage coverage covering the Equipment and naming McKinney as a loss payee as provided for in detail in Section 19A.

21. Disclaimer of All Warranties. Customer acknowledges it has inspected the Equipment and agrees that the condition of the Equipment is as stated in the "Inspection Report" and is satisfactory to Customer for the intended use and purpose of the Equipment. **CUSTOMER AGREES AND ACKNOWLEDGES THAT IT IS LEASING THE EQUIPMENT ON AN "AS IS" BASIS AND ACKNOWLEDGES THAT MCKINNEY HAS MADE NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, REPAIRS OR MAINTENANCE OF THE EQUIPMENT AND MCKINNEY HEREBY AND EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES.**

22. Assignment. Customer shall not assign this Agreement, nor shall Customer sublet, rent or otherwise hire out or part with possession of the Equipment, without McKinney's prior written consent. McKinney shall have the right, without notice to Customer, to assign this Agreement and/or any payments due hereunder, in which case the assignee shall acquire all rights, obligations and remedies of McKinney.

23. Notice. Any notice under this Agreement shall be in writing, and sent: (a) by United States certified mail, postage prepaid, return receipt requested to the addresses set out below; (b) by fax; or (c) by hand delivery. Delivery shall be deemed effective two business days after mailing or one business day after fax or hand delivery. The parties may change such notice address upon 30 days prior written notice to the other. Nothing in this section shall affect the service of process and notice requirements in any litigation or action between the parties.

24. Entire Agreement. This Agreement, the Inspection and Delivery Report, and all Schedules contain the entire agreement between the parties pertaining to the subject matter herein, and they supersede any prior agreements or representations of the parties, whether oral or written. No agreement, representation or understanding not specifically contained herein shall be binding unless it is written and signed by McKinney.

25. Governing Law and Venue. This Agreement shall be governed by the laws of the state of California, regardless of its choice of law provisions. Any disputes arising out of or related in any way to this Agreement may, but are not required to, be litigated in Los Angeles County, California. The parties hereby waive any objections to jurisdiction and venue in Los Angeles County, California (including, without limitation, objections based on convenience), for any dispute arising out of or relating to this Agreement as well as any other dispute between them.

26. Attorneys' Fees, Costs, Collection and Repossession. In any action relating to this Agreement, the prevailing party shall be entitled to recover all of its reasonable attorney's fees and costs as well as all appellate and judgment collection attorney's fees and costs. If Mckinney enlists the services of a law firm or other company to collect any amounts due to Mckinney from Customer or to repossess any Equipment from Customer, Customer shall be responsible for and agrees to pay all such attorney's fees and costs.

27. Authorization. By signing this Agreement, Customer acknowledges it has read, understood and accepted all the terms and conditions contained in this Agreement, including all Schedules. Customer acknowledges that the person signing this Agreement on its behalf, and any documents at the time the Equipment is picked up from Mckinney, is fully authorized to do so and may bind Customer to all the terms and conditions contained herein and that such person is acting within the scope of his or her authority as an officer, director, or duly authorized independent contractor, agent or employee of Customer.

28. Severability. Any portion of this Agreement that is held invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or enforceability without affecting in any way the remaining portions or provisions hereof or, to the extent permitted by law, rendering that or any other portion or provisions hereof invalid, illegal or unenforceable.

29. Counterparts. This Agreement may be executed in counterparts, and the executed counterparts shall be deemed to have the same effect as the executed originals for all purposes. Faxed, pdf and non-original signatures on this Agreement shall be deemed to have the same effect as originals.

30. Time/Essence. Time is of the essence in this Agreement. However, Mckinney's failure to exercise any right or remedy or to insist on Customer's punctual performance or payment shall not constitute a waiver.

31. Reports. Customer shall supply Mckinney with quarterly interim financial statements and yearly audited or reviewed financial statements. Mckinney shall keep all such financial statements strictly confidential.

32. Changes and Modifications. This Agreement can only be amended or changed by the express written consent of both Parties.