

XTRA LLC CARRYING ON BUSINESS AS

XTRA CANADA

STANDARD TERMS AND CONDITIONS

The following Standard Terms and Conditions apply to all transactions and dealings with XTRA Canada (as defined herein), including, but not limited to, all leases or rentals of XTRA Canada Equipment, whether pursuant to a long-term Equipment Lease Agreement, National Account Agreement, Short-term Rental Agreement, Equipment Rental Agreement or any other agreement.

1. DEFINITIONS.

- (a) **“Applicable Law”** means any federal, provincial, territorial, municipal, local or foreign law, statute, rule, regulation, order, judgment, opinion or ordinance applicable to the use, possession, operation or control of the Equipment, including, without limitation, the HDV Regulations and the TRU Regulations (both as defined in Section 17).
- (b) **“Casualty Loss Value”** shall be equal to either the fair market value, as determined by XTRA Canada, or XTRA Canada’s book value of a unit of Equipment, **whichever is greater**, and shall be determined on the first day of the month during which the loss or destruction of such unit of Equipment occurs.
- (c) **“Communication Services”** means the two-way wireless tracking and mobile information management services provided to Lessee by or through XTRA Canada that utilize the communications network provided by third-party licensors of XTRA Canada.
- (d) **“Default”** has the meaning as set out in Section 21.
- (e) **“Equipment”** means the XTRA Canada semi-trailer, chassis, refrigerated trailer, or other over-the-road or storage equipment together with the attached Trailer Tracking Unit and related sensors, if applicable.
- (f) **“Equipment Damage Notification”** means the document provided to Lessee by XTRA Canada, in electronic or other format, that specifies damages noted whenever Lessee returns a unit of Equipment to an XTRA Canada location.
- (g) **“Equipment Lease Agreement”** means a true lease agreement between Lessee and XTRA Canada for the leasing of XTRA Canada Equipment by the Lessee for a specified Lease Term and at specified Use Charges.
- (h) **“Equipment Rental Agreement”** means the agreement provided to Lessee by XTRA Canada, in electronic or other format, whenever a unit of Equipment is

picked-up from or returned to an **XTRA Canada** location by **Lessee** or **Lessee's Agent**.

- (i) **“Estimated Charges”** mean amounts payable by **Lessee** as estimated payments of Use Charges which would otherwise be payable at the end of the Lease.
- (j) **“Hazardous Materials”** has the meaning as set out in Section 8.
- (k) **“Intellectual Property”** has the meaning as set out in Section 23.
- (l) **“Lease”** means any and all arrangements or agreements whereby **Lessee** leases or rents Equipment from **XTRA Canada**, including, but not limited to, long-term Equipment Lease Agreements, National Account Agreements, Short-term Rental Agreements and Equipment Rental Agreements. All Leases are subject to and are deemed to incorporate these Standard Terms and Conditions, as amended from time to time.
- (m) **“Lease Term”** means the agreed upon term of the Lease contained in an Equipment Lease Agreement or the agreed upon minimum rental term of a Short-term Rental Agreement as listed on the Equipment Rental Agreement.
- (n) **“Lessee”** means the individual or entity that enters into a Lease with **XTRA Canada**. Where appropriate the term **Lessee** shall be deemed to include the term **Lessee's Agent**.
- (o) **“Lessee's Agent”** means the driver or other representative who picks-up, inspects, takes possession of, or returns a unit of Equipment on behalf of the **Lessee** to an **XTRA Canada** location or to **XTRA Canada's** designated cartage vendor, and/or who executes a Lease document on behalf of **Lessee**.
- (p) **“Liens”** has the meaning as set out in Section 20.
- (q) **“Location of the Lessee”** means the debtor's place of business, the debtor's chief executive office if there is more than one place of business, and otherwise the debtor's principal place of residence.
- (r) **“National Account Agreement”** means a rate agreement between **Lessee** and **XTRA Canada** for the renting of Equipment by the **Lessee** at specified Use Charges.
- (s) **“Repair Standards”** – means **XTRA Canada's** current repair standards which list the minimum condition in which the **Lessee** shall maintain the Equipment and the minimum condition in which the Equipment must be when returned by **Lessee** to **XTRA Canada**, a copy of which can be obtained at <http://www.xtralease.com>.
- (t) **“Short-term Rental Agreement”** means an agreement between **Lessee** and **XTRA Canada** for the renting of Equipment by **Lessee** at a specified rate for Use

Charges, for a specified Lease Term, but whereby **XTRA Canada** does not commit to guarantee the current specified rate for Use Charges.

- (u) **“Software”** means (i) the software code that is embedded within the Trailer Tracking Unit, (ii) any other software provided to **Lessee** relating to the Trailer Tracking Unit directly or through Internet access, (iii) any user documentation provided to **Lessee**, and (iv) any subsequent versions or upgrades of software which **XTRA Canada** elects to provide to **Lessee**.
- (v) **“Standard Terms and Conditions”** means the **XTRA Canada** Standard Terms and Conditions contained in this document and as may be amended by **XTRA Canada** from time to time.
- (w) **“Trailer Tracking Unit”** means the product created by **XTRA Canada’s** third-party licensor, which provides mobile communication, tracking, and other Equipment management services.
- (x) **“Use Charges”** means the required payments to be made by **Lessee** to **XTRA Canada** for every day (including Saturdays, Sundays, and holidays) Equipment is on lease or rent to **Lessee** whether or not such Equipment is in the use, possession, control or operation of **Lessee**. Use Charges shall include the rental rate set forth in the Lease plus any and all other charges required to be paid by **Lessee** therein, including, but not limited to, fees for use of the Software and Communication Services and RoadWatch[®] assistant calls.
- (y) **“written”** or **“in writing”** shall mean in print copy format or in electronic format.
- (z) **“XTRA XPRESS”** means the process whereby **XTRA Canada** will electronically format and deliver to **Lessee**, by e-mail or other automated process, Equipment Rental Agreements, Equipment Damage Notifications, invoices and other notices.
- (aa) **“XTRA Canada”** as used herein shall mean XTRA LLC, a Maine limited liability company (formerly known as XTRA, Inc.)
- (bb) **“XTRA Web Site”** has the meaning as set out in Section 24.

2. **EQUIPMENT COVERED, TERM AND OWNERSHIP.**

The specific Equipment covered by the Lease, as well as the delivery or pick-up date and the termination date of the Lease for such Equipment, shall be as set forth in the Lease and may be included on **XTRA Canada’s** monthly invoices, which invoices are incorporated herein by reference. Upon the termination date the Lease shall terminate except with respect to provisions contained herein intended to survive the termination date, such as those providing for, without limitation, limitations of liability, indemnity, confidentiality, payment and billing, which shall survive the termination date. Notwithstanding the termination of the Lease, if **Lessee** maintains possession of the Equipment, **XTRA Canada**, in its sole discretion, may (a) upon 10 days written notice to the **Lessee** change the Use Charges, as specified in such notice, or (b) demand

the **Lessee's** immediate return of the Equipment. In the event that **XTRA Canada** does not elect either (a) or (b) above the **Lessee's** responsibilities under the Lease, including the payment of Use Charges shall continue until all of the Equipment is returned to **XTRA Canada**. Notwithstanding any other language contained herein or therein, neither the Lease nor any agreement that results therefrom conveys any ownership rights to the **Lessee** and all right, title and ownership of the Equipment, Software, Communication Services, or XTRA Web Sites, including any and all Intellectual Property in connection therewith is and shall remain with **XTRA Canada**.

3. **AUTHORIZATION TO ENTER INTO LEASE & ACCEPTANCE OF STANDARD TERMS AND CONDITIONS.**

By submitting or completing an **XTRA Canada** customer application, entering into a Lease with **XTRA Canada**, taking possession of Equipment from **XTRA Canada**, executing an Equipment Rental Agreement, completing payment of any invoices to **XTRA Canada** or completing any other transaction with **XTRA Canada**, **Lessee** and **Lessee's Agents** represent and warrant that they are authorized on behalf of **Lessee** and, if applicable, on behalf of those companies identified in a National Account Agreement as "Companies Authorized to Rent Equipment", to enter such agreements and transactions with **XTRA Canada** and expressly acknowledge receipt and on-going acceptance of **XTRA Canada's** Standard Terms & Conditions, as such Standard Terms and Conditions may be amended from time to time and posted on the XTRA Web Site.

4. **DELIVERY, RECEIPT AND DROPOFF OF XTRA CANADA EQUIPMENT.**

- (a) As a condition precedent to **Lessee's** pick-up or return of Equipment at any **XTRA Canada** location, **Lessee's Agent** must (i) provide proof of identification to **XTRA Canada** in the form of a valid commercial driver's license, and (ii) sign **XTRA Canada's** hard copy or electronic Equipment Rental Agreement. **Lessee** acknowledges that **Lessee's Agent** has been authorized to pick-up from, return Equipment to, and/or accept delivery of Equipment from, **XTRA Canada**, and that the signature of **Lessee's Agent** on **XTRA Canada's** hard copy or electronic Equipment Rental Agreement shall bind **Lessee** to the terms of such Equipment Rental Agreement and these Standard Terms and Conditions, as amended from time to time.
- (b) By taking possession of the Equipment, **Lessee** accepts the Equipment in the condition noted in the Equipment Rental Agreement and acknowledges receipt of the Equipment in good repair and working condition.
- (c) **Lessee** shall return the Equipment to **XTRA Canada** in the same condition noted in the Equipment Rental Agreement, normal wear excepted. **Lessee** shall redeliver the Equipment, at **Lessee's** expense and subject to applicable restrictions and dropoff charges, if any, to the **XTRA Canada** location from which **Lessee** picked-up the Equipment, unless otherwise provided in the Lease.
- (d) If **Lessee** has requested **XTRA Canada** to arrange for a unit of Equipment to be delivered to or picked up from a location designated by **Lessee**, as a condition

precedent to such delivery or pick-up, **Lessee's Agent** must sign **XTRA Canada's** hard copy Equipment Rental Agreement and/or other documentation provided by **XTRA Canada's** designated cartage vendor. In the event of delivery of a unit of Equipment to **Lessee**, **XTRA Canada's** inspection of the Equipment at **XTRA Canada's** branch location prior to delivery of the Equipment to **Lessee** shall be deemed to state the condition of the Equipment at the time of commencement of the Lease, and in the event of pick-up of Equipment from **Lessee**, **XTRA Canada's** inspection of the Equipment following delivery of the Equipment to **XTRA Canada's** branch location shall be deemed to state the condition of the Equipment upon redelivery.

5. **SUBLICENSE OF SOFTWARE AND COMMUNICATION SERVICES.**

(a) If a Trailer Tracking Unit is installed on a unit of Equipment rented or leased by **Lessee** from **XTRA Canada**, **XTRA Canada** hereby grants to **Lessee** a non-exclusive, non-transferable and limited sub-license to use the Software subject to the conditions and restrictions of the Lease and these Standard Terms and Conditions solely for the purpose of utilizing the Trailer Tracking Unit and related Communication Services to monitor Equipment leased from **XTRA Canada**. **Lessee** shall make no other use of the Software or Communications Services and shall not copy the Software or provide the Software or access to the Software to any third party. The Software will be in object code form only, and will not include any source code or the right to use any source code. **Lessee** agrees that it will not reverse engineer, decompile, or disassemble the Trailer Tracking Unit or Software. **Lessee** agrees to use the Software only in connection with **Lessee's** use of the Communication Services. **Lessee** acknowledges that disruption of the Software may occur from time to time due to internet capabilities and/or for routine and emergency maintenance and other reasons beyond the control of **XTRA Canada**.

(b) If a Trailer Tracking Unit is installed on a unit of Equipment rented or leased by **Lessee** from **XTRA Canada**, **XTRA Canada** hereby grants to **Lessee** a non-exclusive, non-transferable, limited sub-license to access the Communication Services for use with the Trailer Tracking Unit in the United States, Mexico, and Canada. **Lessee** acknowledges and understands that (1) it shall use all information provided via the Communication Services at **Lessee's** own risk, and (2) **Lessee** shall acquire no proprietary interest in any telephone number that may be assigned to **Lessee** for use with the Communication Services. **Lessee** acknowledges that disruption of Communication Services may occur from time to time for routine and emergency maintenance and other reasons beyond the control of **XTRA Canada**. **Lessee** shall have no remedy against **XTRA Canada**, any third party licensor of **XTRA Canada**, or the underlying wireless services carrier, and **Lessee** hereby releases **XTRA Canada** and all of its licensors, and the underlying wireless services carrier from all liability relating to such disruption. If, and only if, Use Charges relating to the Communication Services are billed separately to **Lessee** as part of the total Use Charges for the Equipment, **Lessee's** sole remedy for any disruption or failure of the Communication Services shall be that portion of the Use Charges paid by **Lessee** for Communication Services relating to the period of service during which such failure or disruption occurred, provided that such disruption or failure is not corrected by **XTRA Canada** within thirty (30) days after receiving written notice from **Lessee** of such failure or disruption. **Lessee** waives the provisions of any Applicable Law limiting or prohibiting a general release.

6. **ROADWATCH® SERVICE.**

Unless otherwise specified in the Lease, **XTRA Canada** will provide its RoadWatch® service to **Lessee** to coordinate emergency repairs for the units of Equipment subject to the Lease. This service entitles **Lessee** or **Lessee's** Agents to call **XTRA Canada's** RoadWatch® 800 number to report an emergency break down with any of the units of Equipment. Upon receipt of **Lessee's** call, **XTRA Canada** will promptly coordinate with a third-party repair vendor to provide repair services to **Lessee**. **XTRA Canada**, on behalf of **Lessee**, will coordinate payment of the cost of any services provided to any repair vendor dispatched as part of an incident reported to RoadWatch®. **XTRA Canada** will invoice **Lessee** for expenses for any repair services relating to replacement tires, brakes, lights, lubricants and any other parts which are broken, inoperable or worn for reasons other than normal wear, including but not limited to the action or inaction of the **Lessee**, as determined by **XTRA Canada**. **Lessee** shall pay any invoice for repair services in accordance with the payment terms of the Lease. **XTRA Canada's** obligation with respect to the RoadWatch® service is limited to contacting a third-party repair vendor upon **Lessee's** request in the event a unit of Equipment is in need of emergency repair. No warranty, express or implied, is made by **XTRA Canada** with respect to any services provided by a repair vendor coordinated through **XTRA Canada's** RoadWatch® service, and **Lessee** waives any and all claims against **XTRA Canada** for any loss or liability resulting from any defects or failures in any repairs provided by any repair vendor coordinated through **XTRA Canada's** RoadWatch® service.

7. **PAYMENT.**

- (a) **Lessee** agrees to pay all Use Charges for Equipment **Lessee** rents or leases from **XTRA Canada**. These Use Charges may include, but are not limited to:
 - (i) Rental Charges. **Lessee** shall pay **XTRA Canada** the rental charges for the rent or lease of a unit of Equipment, as specified in the Lease.
 - (ii) Mileage Charges. **Lessee** shall pay **XTRA Canada** any mileage charges for actual miles traveled by a unit of Equipment as specified in the Lease. Miles traveled will be measured by a hubodometer attached to each unit of Equipment. A reading of the hubodometer will be taken by **XTRA Canada** at the time of delivery to or pick-up of a unit of Equipment by **Lessee**, and a similar reading will be taken by **XTRA Canada** upon redelivery of the unit of Equipment to **XTRA Canada**. In the event the hubodometer on a unit of Equipment is missing or fails to function properly, **Lessee** shall pay **XTRA Canada** a mileage charge based on the average miles historically traveled by similar units of Equipment leased or rented from **XTRA Canada**, as determined by **XTRA Canada**.
 - (iii) Refrigeration Unit Charges. **Lessee** shall pay **XTRA Canada** a refrigeration charge for engine hours used on any refrigerated unit of Equipment as specified in the Lease. Engine hours will be measured by an hour meter attached to each refrigerated unit of Equipment. A reading of the hour meter will be taken by **XTRA Canada** at the time of delivery to

or pick-up of a unit of Equipment by **Lessee**, and a similar reading will be taken by **XTRA Canada** upon redelivery of the unit of Equipment to **XTRA Canada**. In the event the hour meter for a unit of Equipment is missing or fails to function properly, **Lessee** shall pay **XTRA Canada** a refrigeration charge for engine hours based on the average engine hours historically used on similar units of Equipment leased or rented from **XTRA Canada**, as determined by **XTRA Canada**.

- (iv) **Tire Wear.** **Lessee** shall pay **XTRA Canada** a charge for tire wear as specified in the Lease. The tire depth of each tire will be measured by **XTRA Canada** in thirty-two seconds (1/32nds) of an inch increments at the time of delivery to or pick-up by **Lessee**. A similar measurement will be made by **XTRA Canada** upon redelivery of the unit of Equipment to **XTRA Canada**. Tire depth shall be measured at the lowest point of remaining tire tread.
 - (v) **Brake Wear.** **Lessee** shall pay **XTRA Canada** a charge for brake lining wear as specified in the Lease. The brake lining for each wheel end will be measured by **XTRA Canada** in one-eighth (1/8th) of an inch increments at the time of delivery to or pick-up by **Lessee**. A similar measurement will be made by **XTRA Canada** upon redelivery of the unit of Equipment to **XTRA Canada**.
- (b) **Lessee** shall pay Estimated Charges to **XTRA Canada** as specified in the Lease. **XTRA Canada** shall have the right at any time to commence charging **Lessee** Estimated Charges payable under any Lease that does not specify an obligation of **Lessee** to pay Estimated Charges, or from time to time to increase Estimated Charges payable under a Lease, if **XTRA Canada** deems it necessary, in its sole discretion, in order to ensure **Lessee's** full performance of its obligation to pay any Use Charges pursuant to the terms of the Lease. **XTRA Canada** shall provide **Lessee** with written notice of its intent to initiate charging or increase Estimated Charges, and **Lessee** shall be required to pay the Estimated Charges as specified in such notice from the start of the then current billing cycle in which said notice was provided. **Lessee** shall pay **XTRA Canada** the amount of any shortfall, or **XTRA Canada** shall pay **Lessee** the amount of any overpayment, between the total Estimated Charges for Use Charges paid by **Lessee** during the Lease and the final amount of the Use Charges as determined upon redelivery of the unit of Equipment.
- (c) Use Charges shall commence on the date the Equipment is available for delivery to or pick-up by **Lessee**. Notwithstanding any other language contained in these Standard Terms and Conditions, Use Charges shall continue until such Equipment is returned to **XTRA Canada** at the **XTRA Canada** location set forth in the Lease, in the same condition as when received, normal wear excepted, or until payment is made of the Casualty Loss Value as provided herein. **Lessee** shall pay all invoices within ten (10) days from date of invoice.

- (d) Use Charges are based on a twenty-eight (28) day billing period unless otherwise specified. Unless otherwise stated in the Lease, in the event of return of the Equipment to **XTRA Canada** prior to the expiration of the billing period in effect at the time of return, Use Charges for the final partial billing period shall be adjusted to the appropriate weekly and daily rate, as applicable.
- (e) **Lessee** shall make all payments in Canadian currency to the lockbox address provided by **XTRA Canada** and **Lessee** shall not deliver payments directly to any **XTRA Canada** location. Overdue payments may be assessed interest equal to the lesser of 18% per annum or the maximum rate permitted by law. If **Lessee** provides **XTRA Canada** with a check, or authorizes **XTRA Canada** to collect payments through a pre-authorized payment, electronic payment, or any other form of payment that is returned due to insufficient funds, or payment is otherwise declined, the **Lessee** shall be subject to and agrees to pay **XTRA Canada** an additional processing fee of One Hundred Dollars (\$100.00) for each such occurrence.

8. **MAINTENANCE AND USE OF EQUIPMENT.**

- (a) **Lessee** is responsible for determining whether the Equipment it rents or leases from **XTRA Canada** is fit and sufficient for the designated purpose for which **Lessee** intends to utilize such Equipment.
- (b) **Lessee** shall maintain, at **Lessee's** own expense and in accordance with the Repair Standards, the Equipment in good condition, free from defects and fit for its designated purpose and **Lessee** shall return all Equipment to **XTRA Canada** in the same condition as when received, normal wear excepted. **Lessee** or **Lessee's Agent** is responsible for performing all daily pre-trip inspections and safety inspections required by any Canadian federal and/or provincial or territorial transportation regulations or any other Applicable Law.
- (c) **Lessee** shall not use the Equipment for the transportation or storage of unprotected corrosive substances, trash, medical and/or solid waste and/or hazardous materials ("**Hazardous Materials**"). In addition, **Lessee** shall not use the Equipment in advancement of any war, act of terrorism, insurrection or civil or public disturbance. **Lessee's** use of the Equipment for such purposes or the violation of **any** Applicable Law, including, without limitation, any Applicable Law regarding the transportation of Hazardous Materials, shall be considered a Default of the Lease. **Lessee** shall promptly notify **XTRA Canada** of any such Default. With respect to the transportation of Hazardous Materials, if **Lessee** notifies **XTRA Canada** or **XTRA Canada** determines that Hazardous Materials were placed in the Equipment, **XTRA Canada** may, in its sole discretion, (a) require the **Lessee** to immediately pay **XTRA Canada** the Casualty Loss Value of the Equipment; or (b) require **Lessee**, at **Lessee's** sole expense to restore and decontaminate the Equipment and provide proof of such decontamination, including without limitation, methodology and pre and post decontamination

sampling results and any other inspection or testing **XTRA Canada** deems necessary to perform.

- (d) **Lessee** shall not remove, obscure, obliterate or otherwise alter any marks of identification on the Equipment. Prior to **Lessee's** return of the Equipment to **XTRA Canada**, all marks of identification or logos applied to the Equipment by or for **Lessee** shall be removed and the surface restored at **Lessee's** expense. Subject only to the provisions of Section 17(c) of these Standard Terms and Conditions, **Lessee** shall not make any structural alterations to the Equipment.
- (e) Unless the terms of the Lease state otherwise, and except as provided below, upon **Lessee** making the Equipment available at an **XTRA Canada** location at six (6) month intervals or twenty five thousand (25,000) miles, whichever comes first, **XTRA Canada** agrees to conduct inspections of the Equipment including any Canadian federal and/or provincial or territorial transportation regulatory inspections and provide, at its expense, replacement tires, brakes, lights, lubricants and any other parts worn due to normal wear as needed; provided however, **Lessee** shall be responsible for all expenses relating to replacement tires, brakes, lights, lubricants and any other parts which are broken, inoperable or worn for reasons other than normal wear, including but not limited to the action or inaction of the **Lessee**. The foregoing shall not apply, and **XTRA Canada** shall have no obligation to inspect, provide any replacement parts, or otherwise perform preventative maintenance on any units of Equipment designated as storage trailers, units of Equipment which **Lessee** has not made available at an **XTRA Canada** location, and units of Equipment for which **Lessee** has assumed responsibility for performing preventative maintenance.
- (f) Any tires replaced at locations other than **XTRA Canada** facilities must be returned to **XTRA Canada** within thirty (30) days of such replacement. Upon failure to do so, **XTRA Canada** will invoice **Lessee** for the full cost of such tires, including all labor costs and any drayage and road service charges, and **Lessee** shall be responsible therefore. If Equipment is equipped with radial tires, **Lessee** shall return the Equipment with radial tires of equal quality, as determined by **XTRA Canada**, in its sole discretion. Upon failure to do so, **XTRA Canada** will install new radial tires on such Equipment, and **Lessee** shall be responsible for the full cost of such replacement, including all labor costs and road service charges, if any.
- (g) **Lessee** is responsible for all damage to the Equipment and must notify **XTRA Canada** promptly of any potential mechanical failure or problem.
- (h) If the Equipment provided to **Lessee** is designated to be utilized as a storage trailer, such Equipment is intended for storage use only and should not be used to transport merchandise and/or freight over-the-road. If **Lessee**, following initial delivery of such storage trailer, operates Equipment over-the-road in violation of the preceding sentence, **Lessee** shall be responsible for all drayage and road

service charges and **Lessee** shall pay **XTRA Canada** a mileage charge of \$.10 per mile traveled by such storage trailer following initial delivery to **Lessee**.

- (i) Upon **XTRA Canada's** request, **Lessee** shall promptly provide **XTRA Canada** with the current location of each unit of Equipment **Lessee** rents or leases from **XTRA Canada**, and shall update such location information as requested by **XTRA Canada**. Upon reasonable notice from **XTRA Canada**, **Lessee** shall make the units of Equipment **Lessee** rents or leases from **XTRA Canada** available for inspection by **XTRA Canada** at a mutually acceptable location during **Lessee's** normal business hours.

9. **DAMAGE AND REPAIRS TO EQUIPMENT.**

- (a) In the case of total loss of a unit of Equipment beyond economic repair for any reason, including, but not limited to, theft, collision, confiscation, fire, destruction, natural disaster or any other total casualty, regardless of where it may have occurred, and notwithstanding any amounts which may be paid or disputed by **Lessee's** insurance company, **Lessee** is responsible for and shall promptly pay **XTRA Canada** the Casualty Loss Value of such unit of Equipment. **XTRA Canada** reserves the right to determine whether a unit of Equipment has in fact suffered an event of total loss or damage beyond economic repair. **Lessee's** requests for Casualty Loss Value quotes shall in no way constitute notice to **XTRA Canada** that **Lessee** has suffered a total loss of a unit of Equipment.
- (b) In case of partial loss or damage to any unit of Equipment regardless of where it may have occurred, (except the Trailer Tracking Unit), **Lessee** shall make all necessary repairs and/or replacements at **Lessee's** expense in accordance with the Repair Standards. **Lessee** shall not attempt to repair and shall return to **XTRA Canada** for repair all non-functioning or damaged Trailer Tracking Units. With respect to any Equipment (including the Trailer Tracking Unit) returned to **XTRA Canada** in a non-functioning or damaged condition or not repaired in compliance with the Repair Standards, **Lessee** shall be liable to **XTRA Canada** for the total estimated or actual cost of any such damage, as determined by **XTRA Canada**, including, without limitation, necessary drayage charges, whether or not the damaged Equipment is actually repaired.
- (c) **Lessee** shall maintain and upon written request, provide **XTRA Canada** with written descriptions of all maintenance work or repairs made to the Equipment. In accordance with the Repair Standards, **Lessee** shall use first class materials and parts in the repair and service of the Equipment. In addition to any other applicable warranty, **Lessee** agrees that it will, at its own expense, rectify, repair and replace any and all known defects or other conditions to the Equipment not in compliance with the Repair Standards, arising from defective or improper materials or workmanship furnished by it, its subcontractors or its or their employees and agents.

10. **LIMITED WARRANTIES.**

BY TAKING POSSESSION OF THE EQUIPMENT, LESSEE ACKNOWLEDGES RECEIPT OF THE EQUIPMENT IN GOOD REPAIR AND WORKING CONDITION, AND THAT THE EQUIPMENT IS FIT AND SUFFICIENT FOR LESSEE'S INTENDED USE. LESSEE WAIVES THE PROVISIONS OF ANY APPLICABLE LAW LIMITING OR PROHIBITING A GENERAL RELEASE. XTRA CANADA IS NOT A SUPPLIER OR MANUFACTURER. NO WARRANTY, EXPRESS OR IMPLIED, IS MADE BY XTRA CANADA OF THE QUALITY OF DESIGN, MANUFACTURE, CONDITION OR FITNESS FOR ANY PARTICULAR USE OF THE EQUIPMENT, SOFTWARE, COMMUNICATIONS SERVICES, OR XTRA WEB SITES. LESSEE WAIVES ANY AND ALL CLAIMS AGAINST XTRA CANADA FOR ANY AND ALL LOSS OR LIABILITY (INCLUDING CARGO LOSS) RESULTING FROM ANY DEFECTS OR FAILURES OF DESIGN, MATERIALS, CONDITION OR FITNESS FOR ANY PARTICULAR USE OF THE EQUIPMENT, TRAILER TRACKING UNIT, SOFTWARE, COMMUNICATIONS SERVICES, OR XTRA WEB SITES, EITHER LATENT OR PATENT. XTRA CANADA AGREES TO EXTEND TO LESSEE ALL WARRANTIES, IF ANY, OFFERED BY THE MANUFACTURERS OF THE EQUIPMENT, TRAILER TRACKING UNIT, AND SOFTWARE AND BY THE WIRELESS SERVICE CARRIERS UNDERLYING THE COMMUNICATION SERVICES.

XTRA CANADA EXPRESSLY DISCLAIMS, AND LESSEE EXPRESSLY WAIVES, ALL OTHER WARRANTIES WITH RESPECT TO THE EQUIPMENT, TRAILER TRACKING UNIT, SOFTWARE, COMMUNICATION SERVICES, AND XTRA WEB SITES, WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH ABOVE IN THIS SECTION 10, THE EQUIPMENT, TRAILER TRACKING UNIT, SOFTWARE, COMMUNICATION SERVICES AND XTRA WEB SITES ARE PROVIDED ON AN "AS IS" BASIS WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND.

11. **INDEMNIFICATION.**

- (a) LESSEE HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNIFIED PARTIES (AS DEFINED BELOW) FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, LIABILITIES, OBLIGATIONS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) (COLLECTIVELY "CLAIMS"), IN ANY WAY ARISING OUT OF OR INCIDENT TO THE LEASE, OR THE USE, POSSESSION, MAINTENANCE, CONTROL OR CONDITION OF THE EQUIPMENT DURING THE LEASE, REGARDLESS OF WHETHER SUCH CLAIMS WERE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY OF THE INDEMNIFIED PARTIES, AND INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS ARISING FROM OR INCIDENT TO: (1) THE ACTS OR OMISSIONS OF LESSEE, LESSEE'S AGENTS OR

LESSEE'S ASSIGNEES; (II) THE PERFORMANCE, BREACH, OR DEFAULT OF THE LEASE BY **LESSEE**, OR THE ENFORCEMENT OF ANY OF THE TERMS OF THE LEASE BY **XTRA CANADA**; (III) THE DEATH OR INJURY TO ANY PERSON; (IV) DAMAGE TO ANY PROPERTY; (V) DAMAGE TO, OR ANY DAMAGE OR INJURY RESULTING FROM, ANY CARGO PLACED ON OR CONTAINED IN THE EQUIPMENT; (VI) THE VIOLATION OR ALLEGED VIOLATION OF ANY APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, ANY FAILURE OR ALLEGED FAILURE TO USE, OPERATE, MAINTAIN OR CONTROL THE EQUIPMENT IN COMPLIANCE WITH APPLICABLE LAW; (VII) ANY TAXES AND ASSESSMENTS, INCLUDING WITHOUT LIMITATION ALL IMPORT AND CUSTOMS DUTIES AND ALL WITHHOLDING, PROPERTY, SALES AND/OR USE TAXES, AND ALL PENALTIES; (VIII) ANY FINES, TOLLS, USER FEES, TRAFFIC AND PARKING VIOLATIONS, TOWING AND STORAGE EXPENSES, AND ANY OTHER SIMILAR FINES, FEES OR CHARGES; (IX) THE USE OF THE SOFTWARE, COMMUNICATION SERVICES OR XTRA WEB SITES; AND (X) THE USE, FAILURE TO USE OR INABILITY TO USE THE TRAILER TRACKING UNIT, INCLUDING, THE INABILITY TO USE THE ACCESS TELEPHONE NUMBER FOR THE TRAILER TRACKING UNIT.

- (b) FOR PURPOSES OF THESE STANDARD TERMS AND CONDITIONS, THE TERM "INDEMNIFIED PARTIES" SHALL REFER TO (I) **XTRA CANADA**, ITS AFFILIATES AND ITS AND THEIR SUCCESSORS, ASSIGNS, EMPLOYEES, OFFICERS, DIRECTORS, LICENSORS AND AGENTS, AND (II) **XTRA CANADA'S** THIRD PARTY LICENSOR OF THE TRAILER TRACKING UNIT AND SOFTWARE AND THE UNDERLYING WIRELESS SERVICE CARRIER SUPPLYING SERVICES TO **XTRA CANADA'S** THIRD PARTY LICENSOR OF THE TRAILER TRACKING SOFTWARE, AND THEIR AFFILIATES, SUCCESSORS, ASSIGNS, EMPLOYEES, OFFICERS, DIRECTORS, AND AGENTS.
- (c) **LESSEE** SHALL NOT SETTLE OR COMPROMISE ANY CLAIM AGAINST THE INDEMNIFIED PARTIES, INCLUDING, WITHOUT LIMITATION, ANY CLAIM FOR WHICH **LESSEE** HAS ASSUMED THE DEFENSE OF THE INDEMNIFIED PARTIES, WITHOUT THE PRIOR WRITTEN CONSENT OF **XTRA CANADA**. **LESSEE** SHALL REIMBURSE THE INDEMNIFIED PARTIES FOR ANY EXPENSE INCURRED, INCLUDING ATTORNEYS' FEES, TO DEFEND ANY ACTION WHICH **LESSEE** IS REQUIRED TO DEFEND PURSUANT TO THESE STANDARD TERMS AND CONDITIONS. THE PROVISIONS OF THIS SECTION 11 SHALL SURVIVE THE TERMINATION OF THE LEASE.

12. **LIMITATION OF LIABILITY.**

- (a) Under no circumstances shall **XTRA Canada** or its licensors be liable for any incidental, indirect, special, consequential, exemplary or punitive damages of any

kind, whether or not resulting from the negligence of **XTRA Canada** or its licensors, and including, without limitation, any lost profits, business failure or interruption damages, or any damages associated with lost or damaged cargo. In no event shall **XTRA Canada's** total liability to **Lessee** exceed the amount of Use Charges paid by **Lessee** during the three (3) months preceding the event that gave rise to the claim or action.

- (b) **Lessee** expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service carrier and that **Lessee** is not a third party beneficiary of any agreement with **XTRA Canada's** third-party Trailer Tracking licensor, and the underlying wireless service carrier. In addition, **Lessee** expressly understands and agrees that the underlying wireless service carrier shall have no legal, equitable or other liability of any kind to **Lessee**. In any event, regardless of the form of the action, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, **Lessee** hereby waives any and all claims against the underlying wireless service carrier from all such liability, provided, however, that if and only if, Use Charges relating to the Communication Services are billed separately to **Lessee** as part of the total Use Charges for the Equipment, then **Lessee's** exclusive remedy and the total liability of the underlying wireless service carrier arising in any way in connection with the Lease for any cause whatsoever including, without limitation, any failure or disruption of service provided hereunder, is limited to payment of damages in an amount equal to the portion of the Use Charges to **Lessee** for the services relating to the period of service during which said damages occur. **Lessee** acknowledges and understands that it uses all information provided via the Communication Services at **Lessee's** own risk.

13. **INSURANCE & CDW.**

- (a) Minimum levels of insurance covering the Equipment shall be maintained by **Lessee**, at **Lessee's** expense, with an insurance carrier, licensed to carry on business in the relevant jurisdiction with an A.M. Best rating of not less than B+ and shall include:
- (i) All risk insurance covering physical loss of or damage to the Equipment from any cause whatsoever. **XTRA Canada** shall be named a loss payee;
 - (ii) Motor Vehicle Liability Insurance protecting **XTRA Canada** from and against all liability, loss and damage it may sustain or suffer arising out of death of or injury to any person or loss of or damage to any property, as a result of the ownership, use, operation, possession, maintenance or control of the Equipment by **Lessee**. Coverage must include minimum limits of \$1 million combined single limit or \$1 million. **XTRA Canada** must be shown as an additional insured; and
 - (iii) **Commercial** General Liability coverage protecting **XTRA Canada** from and against all loss and damage it may sustain or suffer because of death

of or injury to any person, or damage to the property of any person, as a result of the use, possession, maintenance or control of the Equipment by **Lessee**. Coverage must include minimum limits of \$1 million general aggregate or \$1 million each occurrence and include contractual liability coverage and/or endorsement. **XTRA Canada** must be shown as an additional insured.

- (b) Policies of insurance shall be valid and in force until the Equipment is returned to **XTRA Canada**. **Lessee** shall provide **XTRA Canada** with certificate(s) of insurance evidencing the required coverage prior to delivery or acceptance of any Equipment, and thereafter with certified copies of the insurance policies as may be requested by **XTRA Canada**. Such certificates shall contain a requirement that **XTRA Canada** receive thirty (30) days prior written notice of cancellation, non-renewal or material change to **Lessee's** insurance policies. All policies of insurance must carry deductible limits acceptable to **XTRA Canada**. **Lessee** shall fully cooperate with **XTRA Canada** in order to assist **XTRA Canada** in obtaining the full benefit of **XTRA Canada's** status as an additional insured under **Lessee's** policies of insurance, which cooperation shall include, but not be limited to, **Lessee**, upon **XTRA Canada's** request, filing a claim with **Lessee's** insurance carrier for any lost or stolen units of Equipment. **Insolvency or failure by Lessee's insurance carrier to provide coverage for any and all loss, claim, liability or damage arising out of the Lease shall not relieve Lessee of any of its obligations set forth in the Lease. Nothing contained in these insurance requirements is to be construed as limiting the extent of Lessee's liability under the Lease. Lessee is responsible for ensuring that it maintains the minimum levels of financial responsibility required by Applicable Law.**
- (c) If **Lessee** fails to maintain liability insurance, or fails to furnish **XTRA Canada** the required evidence of insurance, **XTRA Canada**, without prejudice to any other remedy it may have, is authorized, but not obligated, to procure the insurance required by this Section 13 upon reasonable terms and conditions, and **Lessee** shall pay **XTRA Canada**, as additional payment, the amount of all premiums paid by **XTRA Canada**.
- (d) The insurance requirements of this Section 13(a)(i) and (iii) may be satisfied in whole or in part by a self-insurance program maintained by **Lessee** which is acceptable to **XTRA Canada**, provided however **XTRA Canada** shall be named as an additional loss payee and/or additional insured under such program including umbrella policies, if any, which may be a part thereof. **Lessee** shall provide to **XTRA Canada** evidence of such self-insurance and evidence of loss payee program upon **XTRA Canada's** request together with a copy of **Lessee's** most recent financial statements, which shall be satisfactory to **XTRA Canada**. The insurance requirements of this Section 13 may be satisfied in whole or in part by a self-insurance program maintained by **Lessee** which is acceptable to **XTRA Canada**, provided however **XTRA Canada** shall be named as an additional loss payee and/or additional insured under such program including umbrella policies, if any, which may be a part thereof.

- (e) **Lessee** can fulfill its obligation to provide the all risk insurance required in Section 13(a)(i) hereof, by purchasing the Collision Damage, Fire and Theft Waiver Options (“CDW”) offered by **XTRA Canada**. In the event **Lessee** has elected the CDW option, **Lessee** hereby acknowledges that CDW (i) is a damage waiver program, (ii) is not an all risk insurance program covering physical loss of or damage to the Equipment for the benefit of **Lessee**, and (ii) is intended solely (A) to reimburse **XTRA Canada** for any repairs required for any unit of Equipment returned to **XTRA Canada** in a damaged condition, subject to applicable deductible or (B) to pay **XTRA Canada** the Casualty Loss Value of any unit of Equipment which was to be returned to **XTRA Canada** upon termination of the Lease and such unit of Equipment is a total loss by theft, confiscation fire, destruction, damage beyond economic repair or any other total casualty. In addition to the terms set forth therein, the benefits of such coverage will not be available to **Lessee** unless each of the following conditions have been met: (v) **Lessee** is in compliance with all terms and conditions of the Lease, including current on all payments; (w) all casualty loss or damage to the unit of Equipment must have occurred in the United States or Canada; (x) such damage or loss was not the result of **Lessee’s** negligence and/or failure to maintain proper care and control of such unit of Equipment; (y) **Lessee** shall have promptly notified **XTRA Canada** in writing and obtained a police report of any casualty loss or damage to any unit of Equipment as soon as practicable, and in any case, not later than 72 hours after the occurrence of such casualty loss or damage, and shall have delivered promptly to **XTRA Canada** a copy of the applicable police report; and (z) **Lessee** shall have provided to **XTRA Canada** any additional documentation it may request relating to the casualty loss or damage and comply with any other requirements of **XTRA Canada**. **Lessee** shall be liable for the first \$2,500 for each occurrence of damage to or loss of any unit (or the first \$6,000 in the case of refrigerated or specialty Equipment). Oral requests for quotes on casualty loss or damaged Equipment shall not constitute the required notice under this Section 13(e)(iii). In addition, **Lessee** hereby agrees that Use Charges will continue to accrue with regard to such Equipment until **Lessee** has paid the required deductible. CDW shall terminate immediately upon any Default by **Lessee** under the Lease. **XTRA Canada**, in its sole discretion, may discontinue providing CDW to **Lessee** on ten (10) days prior written notice.

14. **SECURITY DEPOSIT.**

As a condition precedent to **XTRA Canada** entering into the Lease and to **XTRA Canada** making the Equipment available to **Lessee**, and as security for the full performance by **Lessee** of its obligations hereunder, a security deposit in amount determined by **XTRA Canada**, may be required and, if required, shall be delivered to **XTRA Canada** by **Lessee** prior to **Lessee** taking possession of any Equipment. Such security deposit may be used to offset any amounts due and owing by **Lessee** to **XTRA Canada** pursuant to the Lease. The security deposit, or any balance thereof, if any, shall be returned to **Lessee** after all of the Equipment leased hereunder has been returned to **XTRA Canada** and after deduction of any amounts due and owing by **Lessee** to **XTRA Canada**, including but not limited to, all unpaid Use Charges and any repair or replacement expenses.

15. **LETTER OF CREDIT.**

As a condition precedent to **XTRA Canada** entering into the Lease and to **XTRA Canada** making the Equipment available to **Lessee**, and as security for the full performance by **Lessee** of its obligations hereunder, **Lessee** may be required to obtain from a financial institution acceptable to **XTRA Canada** an irrevocable letter of credit for the benefit of **XTRA Canada** in an amount determined by **XTRA Canada**. If required, **Lessee** agrees to maintain such letter of credit in place until all of the Equipment leased hereunder shall have been returned to **XTRA Canada** and **Lessee** shall have fully complied with all of its obligations hereunder, including the payment of all Use Charges, repair or replacement expenses and any other amount due and owing to **XTRA Canada** hereunder. In addition, the failure by **Lessee** to extend the letter of credit or to provide a substitute letter of credit acceptable to **XTRA Canada** at least thirty (30) days prior to the expiration date of the letter of credit shall constitute an event of Default under the Lease and shall entitle **XTRA Canada** to immediately draw down the full amount available under the letter of credit. The letter of credit shall be issued in the form approved by **XTRA Canada**.

16. **ADEQUATE ASSURANCES.**

During the term of any Lease, **XTRA Canada**, in its sole discretion, may require that **Lessee** immediately enter into reasonable security arrangements with **XTRA Canada**. Such security arrangements may include, but are not limited to, providing a security deposit or letter of credit, or the payment of Estimated Charges sufficient to protect **XTRA Canada** from all risk of loss. Failure by **Lessee** to comply with any of the terms of this provision shall constitute a Default of the Lease and **XTRA Canada** shall be entitled to all rights and remedies provided by Section 21 herein.

17. **LAWS, RULES AND REGULATIONS.**

- (a) **XTRA Canada** will provide for each unit of Equipment, at its expense, a motor vehicle registration and license plate for registration in a jurisdiction of **XTRA Canada's** choosing, together with any required renewals. **Lessee** shall be solely responsible for all other registrations, licenses, license plates, and operating permits that may be required for **Lessee** to use, possess, operate or control the Equipment during the Lease.
- (b) **Lessee** shall be solely responsible for (i) complying with, at **Lessee's** expense, all Applicable Law, including, without limitation, all federal, provincial and foreign transportation compliance requirements, safety requirements, anti-pollution and environmental requirements, daily pre-trip inspections and safety inspections; (ii) the cost of any modification required to be made to the Equipment to comply with Applicable Law; and (iii) any fines, tolls, user fees, traffic and parking violations, towing and storage expenses and other similar fines, fees or charges relating to the Equipment during the Lease. **Lessee** shall be liable for any and all costs, penalties, and fees, including all legal fees on a full indemnity basis, incurred by **XTRA Canada** as a result of the operation of the Equipment in violation of Applicable Law during the Lease.

- (c) Sections 95300-95311 of Title 17 of the California Code of Regulations governs the operation of 53-foot or longer box-type trailers in the State of California (the “HDV Regulations”). **Lessee** is solely responsible for complying with the HDV Regulations, as they may be amended from time to time, in conducting operations in the State of California, including, without limitation, (i) the cost of any modification required to be made to the Equipment to comply with the HDV Regulations; (ii) complying with any reporting obligations under the HDV Regulations associated with the operation of the Equipment in the State of California; and (iii) verifying that any Equipment that **Lessee** has rented or leased from **XTRA Canada** comply with the HDV Regulations prior to operation in the State of California. **Lessee** shall not permit Equipment that does not comply with the HDV Regulations to be operated in the State of California. **Lessee** shall not permit any unit of Equipment to be transported into the State of California unless and until **Lessee** has confirmed that such unit of Equipment complies with the HDV Regulations. **Lessee** shall have the right to make modifications to the Equipment to comply with the requirements of the HDV Regulations; provided, however, that (i) any modifications made to install aerodynamic devices on the Equipment are made in accordance with the recommendations and standards set by the manufacturer of the aerodynamic device, and (ii) unless otherwise agreed to by **XTRA Canada**, **Lessee** shall be responsible for removing any modifications **Lessee** makes to the Equipment prior to **Lessee’s** return of the Equipment to **XTRA Canada**. **Lessee** shall be solely responsible for, and shall indemnify, defend and hold **XTRA Canada** harmless from and against, any and all Claims resulting from the breach of this Section 17(c) or the operation of any Equipment by **Lessee** in the State of California in violation of the HDV Regulations, as they may be amended from time to time.

THE LESSEE OF THIS BOX-TYPE TRAILER UNDERSTANDS THAT WHEN USING A HEAVY-DUTY TRACTOR TO PULL A 53-FOOT OR LONGER BOX-TYPE TRAILER ON A HIGHWAY WITHIN CALIFORNIA, THE BOX-TYPE TRAILER MUST BE COMPLIANT WITH SECTIONS 95300-95311, TITLE 17, CALIFORNIA CODE OF REGULATIONS, AND THAT IT IS THE RESPONSIBILITY OF THE LESSEE TO ENSURE THIS BOX-TYPE TRAILER IS COMPLIANT. THE REGULATIONS MAY REQUIRE THIS TRAILER TO HAVE LOW ROLLING RESISTANCE TIRES AND AERODYNAMIC TECHNOLOGIES THAT ARE U.S. ENVIRONMENTAL PROTECTION AGENCY VERIFIED SMARTWAY TECHNOLOGIES PRIOR TO CURRENT OR FUTURE USE IN CALIFORNIA.

- (d) Section 2477 of Title 13 of the California Code of Regulations governs the operation of refrigerated units of Equipment in the State of California (the “TRU Regulations”). It is a violation of the TRU Regulations to operate any refrigerated unit of Equipment in the State of California that does not comply with the TRU Regulations, as they may be amended from time to time. **Lessee** shall be solely responsible for complying with the TRU Regulations in conducting operations in the State of California, including, without limitation, (i) the cost of any

modification required to be made to the Equipment to comply with the TRU Regulations; provided, that **Lessee** shall obtain **XTRA Canada's** approval prior to modifying any Equipment to comply with the TRU Regulations; (ii) complying with any reporting obligations under the TRU Regulations associated with **Lessee's** operation of refrigerated units of Equipment in the State of California; and (iii) verifying that any refrigerated unit of Equipment that **Lessee** has rented or leased from **XTRA Canada** complies with the TRU Regulations prior to operation in the State of California. **Lessee** shall not permit a refrigerated unit of Equipment that does not comply with the TRU Regulations to be operated in the State of California. **Lessee** shall not permit a refrigerated unit of Equipment to be transported into the State of California unless and until **Lessee** has confirmed that such unit of Equipment complies with the TRU Regulations. **Lessee** shall be solely responsible for, and shall indemnify, defend and hold **XTRA Canada** harmless from and against, any and all Claims resulting from the breach of this Section 17(d) or the operation of any refrigerated unit of Equipment by **Lessee** in the State of California in violation of the TRU Regulations, as they may be amended from time to time.

18. **TAXES.**

Lessee shall pay all taxes, duties, fees, premiums, assessments, imposts, levies, rates, withholdings, dues, government contributions and other charges of any kind whatsoever imposed by any local, provincial, territorial, state, aboriginal or federal government, domestic or foreign, together with all penalties, fines and interest, including without limitation all consumption, use, sales, retail sales, social services, provincial sales, goods and services, harmonized sales, Quebec sales, property or other similar taxes, arising out of or incident to the use, possession or control of the Equipment to **XTRA Canada** ("**Taxes**"). **Lessee** must provide to **XTRA Canada** a duly authorized exemption certificate issued by or acceptable to the relevant taxing authority in order to avoid the obligation to pay any Taxes to **XTRA Canada**. **Lessee** shall be responsible for its own income taxes and any import, export, customs duties or similar charges incurred in respect of the Equipment.

19. **ASSIGNMENT AND SUCCESSORS.**

Lessee shall not assign or sublease any right or interest in the Equipment, any Lease or any agreement that results therefrom, without the prior written consent of **XTRA Canada**. **XTRA Canada** shall have the right to assign any of its rights or interests in the Equipment, any Lease or any agreement that results therefrom, without obtaining **Lessee's** consent. For purposes of this Section 19, an assignment shall be deemed to have occurred if there has been a change in the control of **Lessee** or **Lessee's** business, whether by merger, consolidation or reorganization, the sale of a majority of the ownership of **Lessee** or **Lessee's** ultimate parent, or a sale, assignment or other transfer of all or substantially all of **Lessee's** assets. **Lessee** may not sublicense, assign, rent, disclose or provide the Software or access to the Communications Services to any third party. Notwithstanding anything to the contrary contained herein, the Lease and these Standard Terms and Conditions shall inure to the benefit and be binding upon the parties, their heirs, successors, administrators, executors and assigns.

20. **LIENS.**

- (a) **Lessee** shall keep the Equipment free from any liens, including, but not limited to mechanics' liens, liens under the Repair and Storage Liens Act, levies, attachments, claims, charges or encumbrances, attachments, rights of others and legal processes ("**Liens**") of creditors of **Lessee** or any other persons including public authorities such as the Crown. **Lessee** shall promptly notify **XTRA Canada** upon receipt of notice of any such Liens affecting the Equipment and **Lessee** shall promptly defend at its own expense **XTRA Canada's** title to the Equipment from such Liens.
- (b) Notwithstanding the express agreement of the **Lessee** and **XTRA Canada** that this Lease is intended to be a true lease, solely to preserve the rights of **XTRA Canada** in the Equipment, in the event this Lease is determined by a court of competent jurisdiction to be financing lease, **Lessee** hereby grants to **XTRA Canada** a security interest in the Equipment and all proceeds (including proceeds of all insurance policies) subject to the Lease, which interest shall be cross-collateralized with each and every separate item of Equipment subject to the Lease and related schedules, in order to secure the prompt payment and performance, as and when due, of all of **Lessee's** obligations, both now existing and hereinafter arising under this Lease. **Lessee** hereby authorizes **XTRA Canada** to cause this Lease, or any statements or other instrument in respect of this Lease showing the interest of **XTRA Canada** in the Equipment, including applicable personal property security financing statements, to be filed or recorded, and grants **XTRA Canada** and its agents the right to execute **Lessee's** name thereto. To further secure payment to **XTRA Canada** of the obligations owed by **Lessee**, **Lessee** agrees that the Equipment subject to the Lease shall be cross-collateralized with the Equipment subject to any other Lease in which **Lessee** is a lessee.

21. **DEFAULT.**

- (a) **Lessee SHALL BE IN DEFAULT** of the Lease: (i) if **Lessee** fails to comply with any of the terms or conditions of the Lease, including, but not limited to the retention of the Equipment for the Lease Term or the timely payment of all amounts due and/or payable under the Lease whether or not **Lessee** is invoiced for same; (ii) if any third party credit support, including any guarantor or issuer of letter of credit, attempts to or does cancel the support or guaranty (or is otherwise in default under such support or guaranty); (iii) if **Lessee** is in default of any of the terms or conditions of any other agreement with **XTRA Canada**; (iv) if insurance as required under this agreement will be cancelled or be reduced or if such insurance lapses; (v) if **Lessee** fails to provide the adequate assurances under Section 16 herein; (vi) if **Lessee** becomes insolvent or commits an act of bankruptcy pursuant to the Bankruptcy and Insolvency Act (Canada) (the "**BIA**"), or if the **Lessee** or its property becomes subject to any voluntary or involuntary proceedings under the BIA, the Companies' Creditors Arrangement Act (Canada) (the "**CCAA**"), the Winding-Up and Restructuring Act (Canada) (the "**WURA**"),

or any similar legislation or law of any jurisdiction (including, without limitation, proposal proceedings under Part III of the BIA , restructuring proceedings under the CCAA or the WURA, the service of a notice of intention to enforce security under the BIA or pursuant to any provincial or territorial statute governing rights in personal property, any distraint, execution or similar process, the filing of an assignment in bankruptcy or a Petition for a Receiving Order, or the making of a Receiving Order or an order appointing a receiver, Interim Receiver, liquidator, provisional liquidator, custodian or monitor) (vii) if any representation, warranty or statement made by or on behalf of the **Lessee** to **XTRA Canada** is untrue or inaccurate in any material respect at the time when or as of which it was made; if the **Lessee** defaults in payment of any indebtedness to any person other than **XTRA Canada** or defaults in the performance of any term, provision or condition created in any agreement under which any such indebtedness was created or is governed where such default would allow such Person to cause such indebtedness to become due prior to its stated maturity, or any such indebtedness is declared to be due and payable other than by regularly scheduled payment; (viii) the **Lessee** ceases or threatens to cease to carry on in the normal course of the **Lessee's** business or any material part thereof; (ix) if the **Lessee** is a corporation, there is, in **XTRA Canada's** reasonable opinion, a change in effective control of the **Lessee**, or, if the **Lessee** is a partnership, there is a dissolution or a change in membership of the partnership; (x) if any court, government or governmental agency condemns, seizes or otherwise appropriates or takes custody or control of all or substantially all of the property of the **Lessee**; (xi) if the **Lessee** fails to pay, bond or otherwise discharge any judgment or order for the payment of money outstanding at any time which is not stayed by an appeal or otherwise being contested in good faith, within fifteen days of the judgment or order becoming effective; (xii) if any material contracts of the **Lessee** shall cease to be in force and affect or shall be amended in any material respect without the consent of **XTRA Canada**, or if any party thereto shall materially breach, repudiate or contest the obligations thereunder, provided that the **Lessee** may, in good faith, contest its obligations under any such material contract; or, (xiii) if **XTRA Canada**, acting in good faith and upon commercially reasonable grounds, believes that the prospect of payment or performance of any of the terms or conditions of the Lease is or is about to be impaired or that any part of the Equipment or Software is or is about to be placed in jeopardy (hereafter individually or collectively referred to as a "**Default**").

- (b) In addition to any rights or remedies available at law or in equity, upon a Default by **Lessee**, **XTRA Canada** shall have the right, at its option and without demand or notice to **Lessee** to do any one or more of the following: (i) pay all amounts required to be paid or perform or cause to be performed all obligations required to be performed by **Lessee** under the Lease and charge **Lessee** as additional rent the amount paid or the reasonable value of the services performed therefore together with interest thereon at the rate described in Section 7 hereof; (ii) declare the net present value of the entire balance of the remaining payments due under the Lease, immediately due and payable by acceleration and recover such amount as liquidated damages, the reasonableness of such damages being acknowledged and

agreed by **Lessee**; (iii) take immediate possession of all outstanding Equipment and Software, all of which is to be returned at **Lessee's** expense; (iv) immediately terminate **Lessee's** access to the Communication Services, (v) terminate the Lease (whereupon the terms and conditions shall continue to apply to the Equipment then in the possession or control of **Lessee** until its return); (vi) calculate and require **Lessee** to pay any collection costs incurred in recovery of any sums due or repossession of any Equipment including, without limitation, all legal fees on a full indemnity basis; (vii) calculate and recover from **Lessee** any lost profits and damages as a "Lost Volume Seller" and/or "Lost Volume Lessor" that **XTRA Canada** would have generated had the Lease not been prematurely cancelled; and (viii) calculate and recover from **Lessee** any costs to transport and store the Equipment throughout the remainder of the Lease Term. **Lessee** acknowledges that **XTRA Canada** is under no duty to mitigate damages resulting from **Lessee's** Default.

- (c) Upon a Default by **Lessee**, **XTRA Canada** shall have the right, without demand or notice, to set-off and apply any amounts owing by **XTRA Canada** to or for the account of **Lessee** against any amounts owing by **Lessee** to or for the account of **XTRA Canada**, including, without limitation, (i) any amount previously paid by **Lessee** to **XTRA Canada** as deposits, accruals, prepayments, overpayments, Estimated Charges, fees or otherwise, and (ii) any amount otherwise owed by **XTRA Canada** to **Lessee**. The rights of **XTRA Canada** under this subsection are in addition to other rights and/or remedies (including, without limitation, other rights of set-off, recoupment, counterclaim or similar rights) which **XTRA Canada** may have pursuant to these Standard Terms and Conditions, or at law or in equity.
- (d) Upon default, **Lessee** shall be liable to pay and/or reimburse **XTRA Canada** for all solicitor fees, expenses and disbursements on a total indemnity basis in the enforcement of any of its remedies pursuant to this Lease.

22. **REPOSSESSION.**

In the event of **Lessee's** Default, and upon demand of **XTRA Canada**, **Lessee** shall immediately return all Equipment to **XTRA Canada**. If **Lessee** fails or refuses to immediately return all Equipment after demand by **XTRA Canada**, **XTRA Canada** shall have the right to enter upon any premises where the Equipment is located and take immediate possession of and at **Lessee's** expense remove the Equipment and **XTRA Canada** shall be deemed to be **Lessee's** agent for such purposes. If **XTRA Canada** takes possession of the Equipment with property contained in, upon or attached to the Equipment, **XTRA Canada** may take possession of such property and hold it in its own or public storage for the account and at the expense of **Lessee** or upon thirty (30) days advance written notice to **Lessee**, dispose of such property in a commercially reasonable manner with no further liability. **Lessee** expressly waives the benefits of all Applicable Law, now or hereafter enacted, exempting any leased property from replevin, distraint, levy or sale in any legal proceeding taken by **XTRA Canada** to enforce any right under the Lease.

23. **INTELLECTUAL PROPERTY.**

XTRA Canada and/or its licensors reserve ownership of all Intellectual Property (as defined below) in and to the Equipment, Trailer Tracking Unit, Software, Communication Services and the XTRA Web Sites, and the Lease does not create any right of ownership in or to such materials in **Lessee**. For the purposes of this Section 23, “**Intellectual Property**” shall mean all proprietary interests of any kind or nature, including, without limitation interests pertaining to patent rights, copyrights, trade secrets, mask work rights, circuit layout rights, design rights, prototypes, models, moral rights, source code, documentation, trade and service marks, and other similar rights throughout the world, however denominated, and any amendments or additions or improvements made thereto.

24. **XTRA WEB SITES.**

Lessee agrees that in the event **Lessee** uses any web site of **XTRA Canada**, including, but not limited to, xtracorp.com, xtralease.com, xtratrack.com, xtrainstall.com, xtra.com, and/or xtraintermodal.com (collectively, “**XTRA Web Sites**”), as a condition of such use, **Lessee** stipulates that:

- (a) While on XTRA Web Sites and where applicable terms and conditions on XTRA Web Sites so indicate, when **Lessee** clicks a button labelled “I Agree” or “I Accept”, or when **Lessee** types “I Agree” or “I Accept” in a space marked for such an input by **Lessee**, **Lessee** will be manifesting and authenticating **Lessee’s** assent to a binding contractual agreement incorporating the terms and provisions for which the button or input area is provided;
- (b) The above-mentioned electronic methods of manifesting and authenticating assent are commercially reasonable and acceptable to **Lessee**; and
- (c) In any dispute related to **Lessee’s** use of XTRA Web Sites, **Lessee** stipulates that it will have the burden of proving that, (i) any electronic manifestation of assent received by **XTRA Canada** is not attributable to **Lessee**; and (ii) **Lessee** did not have an opportunity to review any electronic terms and conditions posted on the XTRA Web Sites.

25. **WAIVER.**

No waiver by **XTRA Canada** of any breach or Default hereunder, or omission or delay by **XTRA Canada** in exercising any of its rights hereunder, or course of dealing between **XTRA Canada** and **Lessee** shall operate as a waiver by **XTRA Canada** to subsequently require full compliance with the Lease or these Standard Terms and Conditions or as a waiver of any of **XTRA Canada’s** rights or remedies hereunder.

26. **ILLEGAL PAYMENTS.**

No bribes, illegal commissions, or other similar payments, whether direct or indirect, to the best of **Lessee’s** knowledge, have been or will be made to any employee or agent of **XTRA Canada** or **Lessee**, or of their respective subsidiaries, in connection with this transaction.

27. **ENTIRE AGREEMENT; CONFLICTS BETWEEN LEASE DOCUMENTS.**

The Lease, including these Standard Terms and Conditions, any long-term Equipment Lease Agreement and Schedules thereto, National Account Agreement, Short-term Rental Agreement and Equipment Rental Agreement, supersedes all prior agreements, whether written or oral, between **XTRA Canada** and **Lessee** with respect to the rental or lease of the Equipment described therein, and constitutes a complete and exclusive statement of the terms of the agreement between **XTRA Canada** and **Lessee** with respect to the lease of the Equipment described therein. All Lease documents shall be read in a complementary manner. Except as may be provided in the Lease, these Standard Terms and Conditions shall take precedence over all other Lease documents.

27. **AMENDMENTS.**

XTRA Canada reserves the right to change, upon thirty (30) days prior written notice (or such shorter period of time as specified in the Lease or elsewhere in these Standard Terms and Conditions), any term or provision of the Lease, including, without limitation, the Use Charges to be paid under the Lease and these Standard Terms and Conditions. No change to the Lease shall be effective unless in writing, executed by **XTRA Canada's** Risk Services Manager or his designee who is located in **XTRA Canada's** home office in St. Louis, Missouri and delivered to **Lessee** pursuant to the notice provision hereto.

28. **NOTICES.**

All notices and other communications required or permitted to be given hereunder, including those required for billing purposes, shall be in writing and shall be deemed given and made (i) if by personal delivery, on the date of delivery, (ii) if by delivery by facsimile, on the date sent (as evidenced by confirmation by the transmitting equipment), (iii) if by a nationally recognized overnight courier, on the next day following deposit, and (iv) if by mail, on the third business day following deposit in the mail by **XTRA Canada**. Any notice or communication to **Lessee** shall be sent to the address or facsimile number set forth in the Lease, or such other address as may be designated by **Lessee** by written notice to **XTRA Canada**. In the case of **XTRA Canada**, any notice or communication shall be sent to **XTRA Canada**, 1801 Park 270 Drive, Suite 400, St. Louis, MO 63146, facsimile no. (314) 579-9138, Attention: Risk Services Manager. Any change of address by either party shall be communicated to the other by written notice given as provided herein. Notwithstanding the above, **XTRA Canada** may provide the Lease, these Standard Terms and Conditions, invoices, notices and other communications to **Lessee** in an electronic format through XTRA XPRESS or other means.

29. **CONFIDENTIALITY.**

The confidentiality of the Lease including without limitation the Use Charges applicable thereunder, shall be strictly maintained by **Lessee** and shall not be released or revealed to any third party. **Lessee** shall be responsible for any violation of this provision by **Lessee**, its employees, officers, directors, assigns, agents or **Lessee's Agents**.

30. **CHOICE OF LAW.**

This Agreement shall be governed by the laws of the Location of the **Lessee** and the laws of Canada applicable therein. The parties irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of that jurisdiction and all courts competent to hear appeals therefrom. However, **XTRA Canada** reserves its right to bring suit in any other appropriate jurisdiction.

31. **SEVERABILITY.**

If any term or provision hereof is declared to be illegal, invalid or unenforceable for any reason by a court of competent jurisdiction, such illegality, invalidity or unenforceability shall not affect the remaining terms and provisions hereof, which shall remain binding and enforceable.

32. **CURRENCY.**

Unless otherwise indicated, all dollar amounts referred to herein and the invoice are in lawful money of Canada.

33. **TRANSMISSION BY ELECTRONIC MEANS.**

Delivery of the Lease, the Standard Terms and Conditions and related documentation by e-mail or other electronic means shall constitute valid delivery.

34. **LANGUAGE.**

The Lease and the Standard Terms and Conditions are available in the French language. If, notwithstanding this, you choose to execute the English language version of these documents only, you will be deemed to have required that these documents be drafted in English. Should you, however, sign both the French and English versions of these documents, the French language version thereof shall prevail.

Le Bail et les Modalités et conditions standards sont disponibles en langue française. Si, nonobstant, vous choisissez de signer uniquement la version anglaise de ces documents, vous serez réputés avoir exigé que la documentation soit rédigée en langue anglaise. Si, toutefois, vous signez à la fois les versions anglaise et française de la documentation, la version française prévaudra.