



## STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions apply to all transactions with XTRA Lease, including, without limitation, all leases or rentals of XTRA Lease Equipment, whether pursuant to a long-term Equipment Lease Agreement, National Account Agreement, Short-term Rental Agreement, Equipment Rental Agreement or any other agreement. THE STANDARD TERMS AND CONDITIONS CONTAIN A JURY TRIAL WAIVER WHICH MAY BE ENFORCED IN THE EVENT OF A DISPUTE BETWEEN XTRA LEASE AND LESSEE.

### 1. DEFINITIONS.

(a) “**Applicable Law**” means any federal, state, local or foreign law, statute, rule, regulation, order, judgment, opinion or ordinance applicable to the lease, use, possession, operation, maintenance or control of the Equipment, including, without limitation, the HDV Regulations and the TRU Regulations (both defined in Section 17).

(b) “**Casualty Loss Value**” shall be equal to the value of a unit of Equipment as determined by XTRA Lease in its sole discretion on the first day of the month during which the loss or destruction occurs.

(c) “**Communication Services**” means the two-way wireless tracking and mobile information management services provided to Lessee by or through XTRA Lease that utilize the communications network provided by third-party licensors of XTRA Lease.

(d) “**Covered Event**” means damage to or loss of Equipment that is reported to XTRA Lease within 72 hours and arises from the accidental burning of Equipment by fire, the theft of Equipment from Lessee’s possession or control by a third party, or a collision caused by a vehicular accident on a public roadway with a third party.

(e) “**Default**” has the meaning defined in Section 21.

(f) “**Equipment**” means the XTRA Lease semi-trailer, chassis, refrigerated trailer, or other over-the-road, cartage, or storage equipment together with the attached Trailer Tracking Unit and related sensors, if applicable.

(g) “**Equipment Lease Agreement**” means a true lease agreement between Lessee and XTRA Lease for the leasing of XTRA Lease Equipment by Lessee for a specified Lease Term and at specified Use Charges.

(h) “**Equipment Rental Agreement**” means the agreement provided to Lessee by XTRA Lease, in electronic or other format, whenever a unit of Equipment is picked up from or returned to an XTRA Lease location by Lessee or Lessee’s Agent.

(i) “**Estimated Charges**” means periodic estimated payments of Use Charges which are determined and payable at the end of the Lease.

(j) “**Hazardous Materials**” means any individual substances, combination of substances, or products containing substances, that could have a detrimental effect on human health, the environment, or the Equipment (including its components) or cargo placed in the Equipment. Hazardous Materials include, but are not limited to, hazardous substances regulated under Applicable Law, medical, biological or other solid or liquid waste, acids, corrosives, caustics, brighteners, and chlorides.

(k) “**Lease**” means written agreements whereby Lessee leases or rents Equipment from XTRA Lease, including, 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 the Standard Terms and Conditions, as amended from time to time.

(l) “**Lease Term**” means the “Original Term” contained in an Equipment Lease Agreement or the “Minimum Term” of a Short-term Rental Agreement as listed on the Equipment Rental Agreement.

(m) “**Lessee**” means the business entity that enters into a Lease with XTRA Lease. Where appropriate the term Lessee shall be deemed to include the term Lessee’s Agent.

(n) “**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 Lessee to an XTRA Lease location or to a designated delivery vendor, and/or who executes a Lease on behalf of Lessee.

(o) “**National Account Agreement**” means a rate agreement between Lessee and XTRA Lease for the renting of Equipment by Lessee at specified Use Charges.

(p) “**Repair Standards**” means XTRA Lease’s current repair standards which provide the requirements for repairs to Equipment, a copy of which can be obtained at <http://www.xtralease.com>.

(q) “**Short-term Rental Agreement**” means an agreement between Lessee and XTRA Lease for the renting of Equipment by Lessee at a specified rate

and Lease Term as listed on the Equipment Rental Agreement.

(r) “**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 Lease elects to provide to Lessee.

(s) “**Standard Terms and Conditions**” means the Standard Terms and Conditions contained in this document, as amended by XTRA Lease from time to time.

(t) “**Trailer Tracking Unit**” means the product created by XTRA Lease’s third-party licensor, which provides mobile communication, tracking, and other Equipment management services.

(u) “**Use Charges**” means the required payments to be made by Lessee to XTRA Lease 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, including, without limitation, the rental rate set forth in the Lease plus any and all other charges, fees and amounts required to be paid by Lessee pursuant to the Lease.

(v) “**written**” or “**in writing**” shall mean in print copy format or in electronic format.

(w) “**XTRA Lease**” as used herein shall mean XTRA Lease LLC, a Delaware limited liability company, and XTRA LLC, a Maine limited liability company, GTR Rental LLC, a Delaware limited liability company, AJF Warehouse Distributors, Inc., an Illinois corporation, or Rentco Trailer Corporation, a Delaware corporation, as applicable, depending upon which entity holds title to the Equipment leased hereunder.

(x) “**XTRA Web Sites**” has the meaning defined in Section 24.

**2. EQUIPMENT COVERED, TERM AND OWNERSHIP.** The specific Equipment covered by the Lease and the Lease Term shall be as set forth in the Lease. Should Lessee maintain possession of Equipment upon expiration of the Lease Term, XTRA Lease, in its sole discretion, may (a) upon thirty (30) days written notice to Lessee change any term or provision of the Lease, including, without limitation, the Standard Terms and Conditions and the Use Charges to be paid under the Lease, as specified in such notice, or (b) demand Lessee’s immediate return of the Equipment. Lessee’s obligations under the Lease, including, without limitation, the payment of Use Charges, shall continue until the Equipment is returned to XTRA Lease. The Lease shall terminate upon the return of all Equipment subject to the Lease, except with respect to provisions contained in the Lease or the Standard Terms and Conditions intended to survive the termination of the Lease, including, without limitation, limitations of liability, indemnity, confidentiality, payment and billing, damage and repairs to Equipment, choice of law, venue, and jury trial waiver. Notwithstanding any other language contained herein or therein, nothing in the Lease conveys any ownership rights to Lessee and all right, title and interest in and to the Equipment shall remain with XTRA Lease.

**3. AUTHORITY & ACCEPTANCE.** By submitting an XTRA Lease customer application, entering into a Lease with XTRA Lease, taking possession of Equipment from XTRA Lease, executing an Equipment Rental Agreement, completing payment of any invoices to XTRA Lease or completing any other transaction with XTRA Lease, 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 “Lessee’s Affiliates Authorized to Rent Equipment”, to enter such agreements and transactions with XTRA Lease and expressly acknowledge receipt and on-going acceptance of XTRA Lease’s Standard Terms and Conditions as such Standard Terms and Conditions may be amended from time-to-time.

### 4. DELIVERY, RECEIPT & DROPOFF.

(a) As a condition precedent to Lessee’s pick-up or return of Equipment at any XTRA Lease location, Lessee’s Agent must (i) provide proof of identification to XTRA Lease in the form of a valid commercial driver’s license, and (ii) sign XTRA Lease’s 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 Lease, and that the signature of Lessee’s Agent on XTRA Lease’s Equipment Rental Agreement shall bind Lessee to the terms of such Equipment Rental Agreement and the Standard

Terms and Conditions, as amended from time to time.

(b) By taking possession of the Equipment, **Lessee** acknowledges accepting the Equipment in good repair and working order, in the condition noted in the Equipment Rental Agreement. **Lessee** shall have exclusive possession, control and use, and assumes complete responsibility for the condition, operation, inspection and maintenance of the Equipment during the Lease. **Lessee** shall return the Equipment to **XTRA Lease** in the same condition noted in the Equipment Rental Agreement, normal wear excepted.

(c) If **Lessee** requests **XTRA Lease** to arrange for a unit of Equipment to be delivered to or picked up from a location designated by **Lessee**, **Lessee** shall pay **XTRA Lease** delivery and pick-up charges for arranging and providing the delivery or pick-up. **Lessee's Agent** shall sign **XTRA Lease's** Equipment Rental Agreement and/or other documentation provided by the delivery vendor at the time of pick-up or delivery. If a unit is delivered, **XTRA Lease's** inspection of the unit at **XTRA Lease's** branch location prior to delivery shall be conclusive evidence of the condition of the unit at the time of commencement of the Lease, and in the event of pick-up of a unit, **XTRA Lease's** inspection of the unit upon the return of the unit to **XTRA Lease's** branch location shall be conclusive evidence of the condition of the unit upon its return.

(d) **Lessee** shall return a unit of Equipment at **Lessee's** expense to the Return Location specified in the unit's Equipment Rental Agreement, unless otherwise provided in the Lease. **Lessee** shall pay **XTRA Lease** a drop fee, as determined by **XTRA Lease** in its sole discretion, if **Lessee** returns a unit of Equipment to a branch other than its designated Return Location.

**5. COMMUNICATION SERVICES.** If a Trailer Tracking Unit is installed on a unit of Equipment rented or leased by **Lessee** from **XTRA Lease**, **XTRA Lease** hereby grants to **Lessee** a non-exclusive, non-transferable and limited sublicense to use the Software subject to the conditions and restrictions of the Lease and the Standard Terms and Conditions solely for the purpose of utilizing the Trailer Tracking Unit and related Communication Services to monitor Equipment leased from **XTRA Lease**. **Lessee** agrees to use the Software only in connection with **Lessee's** use of the Communication Services, and shall not copy the Software or provide the Software or access to the Software to any third-party. **Lessee** agrees that it will not reverse engineer, decompile, or disassemble the Trailer Tracking Unit or Software. In addition, **XTRA Lease** grants to **Lessee** a non-exclusive, non-transferable, limited sublicense to access the Communication Services for use with the Trailer Tracking Unit in the United States, Mexico, and Canada. **XTRA Lease** reserves the right to terminate the Communication Services, and the sub-licenses granted pursuant to this Section 5, at any time on thirty (30) days advance notice to **Lessee**. **Lessee** acknowledges that disruption of Communication Services may occur from time to time for maintenance and other reasons beyond the control of **XTRA Lease**. **Lessee** hereby releases **XTRA Lease** 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 Lease** within thirty (30) days after receiving written notice from **Lessee** of such failure or disruption.

**6. ROADWATCH® SERVICE.** Unless otherwise specified in the Lease, **Lessee** may call **XTRA Lease's** RoadWatch® service to coordinate repairs for Equipment subject to the Lease. Upon receiving a call from **Lessee** or **Lessee's Agent**, **XTRA Lease**, on behalf of **Lessee**, will (i) contact a third-party repair vendor to provide repair services to **Lessee**, and (ii) coordinate payment for any services provided by that third-party repair vendor to **Lessee**. Unless otherwise provided in the Lease, **XTRA Lease** will invoice **Lessee** for any repair services coordinated through the RoadWatch® service, along with a service fee. No warranty, express or implied, is made by **XTRA Lease** with respect to any services provided by a repair vendor coordinated through the RoadWatch® service, and **Lessee** hereby releases **XTRA Lease** from all liability in any way relating to use of the RoadWatch® service, including, without limitation, any repairs provided by any repair vendor coordinated through the RoadWatch® service.

## **7. PAYMENT.**

(a) **Lessee** agrees to pay all Use Charges for Equipment **Lessee** rents or leases from **XTRA Lease**. These Use Charges may include, but are not limited to:

(i) Rental Charges. **Lessee** shall pay **XTRA Lease** 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 Lease** 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. A reading

of the hubodometer will be taken by **XTRA Lease** at the time of a unit's delivery or pick-up, and a similar reading will be taken by **XTRA Lease** upon return of the unit to **XTRA Lease**. In the event the hubodometer on a unit is missing or fails to function properly, **Lessee** shall pay **XTRA Lease** a mileage charge based on the average miles traveled by similar units leased or rented by **Lessee** from **XTRA Lease** or the average miles traveled by similar units of Equipment leased or rented from **XTRA Lease** generally, as determined by **XTRA Lease** in its sole discretion.

(iii) Refrigeration Unit Charges. **Lessee** shall pay **XTRA Lease** 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. A reading of the hour meter will be taken by **XTRA Lease** at the time of delivery to or pick-up of a unit by **Lessee**, and a similar reading will be taken by **XTRA Lease** upon return of the unit to **XTRA Lease**. In the event the hour meter for a unit is missing or fails to function properly, **Lessee** shall pay **XTRA Lease** a refrigeration charge for engine hours based on the average engine hours historically used on similar units of Equipment leased or rented from **XTRA Lease**, as determined by **XTRA Lease** in its sole discretion.

(iv) Tire Wear. **Lessee** shall pay **XTRA Lease** a charge for tire wear as specified in the Lease. The tread depth of each tire will be measured by **XTRA Lease** 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 Lease** upon return of the unit to **XTRA Lease**. Tire depth will be measured at the lowest point of remaining tire tread.

(v) Brake Wear. **Lessee** shall pay **XTRA Lease** a charge for brake lining wear as specified in the Lease. The brake lining for each wheel end will be measured by **XTRA Lease** in one-eighth (1/8<sup>th</sup>) of an inch increments at the time of delivery to or pick-up by **Lessee**. A similar measurement will be made by **XTRA Lease** upon return of the unit to **XTRA Lease**.

(b) **Lessee** shall pay Estimated Charges to **XTRA Lease** as specified in the Lease. **XTRA Lease** shall have the right to commence charging Estimated Charges 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 Lease** deems it necessary, in its sole discretion, in order to ensure full payment of all Use Charges. **XTRA Lease** shall provide **Lessee** with written notice of its intent to initiate or increase Estimated Charges, and **Lessee** shall pay Estimated Charges as specified in such notice, from the start of the billing period in which the notice was provided. **Lessee** shall pay **XTRA Lease** the amount of any shortfall, or **XTRA Lease** shall pay **Lessee** the amount of any overpayment, between the total Estimated Charges paid by **Lessee** and the amount of Use Charges determined upon return of the Equipment.

(c) Unless otherwise specified in the Lease, Use Charges shall commence on the date Equipment is picked-up or delivered to **Lessee**. Use Charges shall continue until the Equipment is returned to **XTRA Lease** at the Return Location set forth in the Lease, in the same condition as when received, normal wear excepted, or in the event of a total casualty, until payment of the Casualty Loss Value.

(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 Lease** 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) **XTRA Lease** shall periodically invoice **Lessee** for all Use Charges incurred pursuant to the Lease. **XTRA Lease** shall have the right to provide all invoices electronically via the XTRA Web Sites. Each invoice shall be paid by **Lessee** within ten (10) days from the date of such invoice, after which time such invoice shall be overdue.

(f) **Lessee** shall make all payments in U.S. currency (i) to the lockbox address provided by **XTRA Lease**, (ii) to **XTRA Lease's** designated payment account via electronic funds transfer, or (iii) via pre-authorized payment collected by **XTRA Lease** from **Lessee's** designated account. **Lessee** shall not deliver any payments to any **XTRA Lease** location. Interest equal to the lesser of 18% per annum or the maximum rate permitted by law shall be added to all overdue invoices. If **Lessee** provides **XTRA Lease** with a check, or authorizes **XTRA Lease** to collect payments through a pre-authorized payment, electronic payment, or any other form of payment that is returned due to insufficient funds or declines, **Lessee** shall pay **XTRA Lease** a processing fee of \$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 Lease** is fit and sufficient for the designated purpose for which **Lessee** intends to utilize such Equipment.

(b) During the Lease, **Lessee** (i) is responsible for the condition, operation,

inspection and maintenance of the Equipment, (ii) shall operate the Equipment in conformance with Applicable Law, (iii) shall maintain the Equipment, at Lessee's own expense in accordance with Applicable Law and the Repair Standards, in good condition, free from defects and fit for its designated purpose, (iv) shall promptly notify XTRA Lease regarding any mechanical failure or problem, and (v) is responsible for all damage to the Equipment. Lessee shall return all Equipment to XTRA Lease in the same condition as when received, normal wear excepted. Lessee shall not permit any Equipment to be transported outside Canada, Mexico, or the continental United States.

(c) Lessee shall not (i) use the Equipment for the transportation or storage of any unprotected Hazardous Materials, (ii) permit the Equipment to be contaminated by any Hazardous Materials, or (iii) permit the Equipment to be used to transport Hazardous Materials in violation of Applicable Law. Lessee shall promptly notify XTRA Lease if it becomes aware of the use of the Equipment for such purposes, the contamination of the Equipment by any Hazardous Materials, or the violation of any Applicable Law regarding the transportation of any Hazardous Materials in the Equipment. If Lessee notifies XTRA Lease or XTRA Lease determines that unprotected Hazardous Materials were placed in, or Hazardous Materials have contaminated or damaged the Equipment, XTRA Lease may, in its sole discretion, (i) require Lessee to immediately pay XTRA Lease the Casualty Loss Value of the Equipment; (ii) require Lessee, at Lessee's sole expense, to repair, restore and/or decontaminate the Equipment and provide proof of such repair, restoration and/or decontamination, including, without limitation, methodology and pre and post decontamination sampling results and any other inspection or testing XTRA Lease deems necessary to perform; or (iii) repair, restore and/or decontaminate the Equipment, in which case Lessee shall be liable to XTRA Lease for the total estimated or actual cost to repair, restore and/or decontaminate the Equipment, as determined by XTRA Lease in its sole discretion.

(d) Lessee shall not remove, obscure or alter any identification marks on the Equipment. Prior to Lessee's return of the Equipment to XTRA Lease, all identification marks or logos applied to the Equipment by or for Lessee shall be removed and the surface restored at Lessee's expense. Unless otherwise permitted by the Lease, 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 Lease location at six (6) month intervals or twenty five thousand (25,000) miles, whichever comes first, XTRA Lease shall conduct a periodic inspection of the Equipment in conformance with the requirements of 49 C.F.R. Part 396.17 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, without limitation, the action or inaction of Lessee. The foregoing shall not apply, and XTRA Lease shall have no obligation to perform periodic inspections, provide any replacement parts, or perform preventative maintenance on any Equipment (i) rented or leased under a Lease pursuant to which Lessee is charged for Tire Wear and/or Brake Wear or Lessee has assumed responsibility for performing all periodic inspections and preventative maintenance, (ii) which Lessee has not made available at an XTRA Lease location, or (iii) which are designated as storage trailers. XTRA Lease shall have no obligation to reimburse Lessee for any periodic inspection, replacement parts, or maintenance services provided directly or indirectly by Lessee.

(f) Lessee shall return each unit of Equipment with tires of an equivalent brand and similar quality to the tires on the unit at the commencement of the Lease. Lessee shall pay XTRA Lease a charge, as determined by XTRA Lease in its sole discretion, including, without limitation, a casing charge, for any tire returned (i) that is not an equivalent brand and of similar quality to the tires on the unit at the start of the Lease, (ii) with tire tread depth of less than 3/32<sup>nds</sup> of an inch, (iii) that is excessively worn, or (iv) in a damaged condition. Tire damage includes flat spotting, skid damage, abnormal wear due to equipment defect or improper maintenance or any other condition that reduces the remaining useful life of the tire or its casing. A tire is excessively worn if its tread wear exceeds 1/32nds of an inch per ten thousand (10,000) miles traveled.

(g) If the Equipment provided to Lessee is designated as a storage trailer, it is intended for storage use only and shall not be used to transport cargo, merchandise or freight. If Lessee, following initial delivery, operates Equipment designated as a storage trailer over-the-road, then in addition to any other obligations pursuant to the Lease, Lessee shall pay XTRA Lease a mileage charge of \$.25 per mile traveled.

#### **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 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 Lease the Casualty Loss Value of such unit of Equipment. XTRA Lease reserves the right to determine, in its sole discretion, whether a unit of Equipment has in fact suffered an event of total loss or damage beyond economic repair. Lessee's request for a Casualty Loss Value quote shall not constitute notice 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, Lessee shall make all repairs and/or replacements at Lessee's expense in accordance with the Repair Standards; provided, that Lessee shall not attempt to repair and shall return to XTRA Lease for repair all non-functioning or damaged Trailer Tracking Units. Lessee shall be liable to XTRA Lease for the total estimated or actual cost, as determined by XTRA Lease in its sole discretion, to repair any Equipment returned to XTRA Lease in a non-functioning or damaged condition or repaired in a manner that is not in compliance with the Repair Standards. XTRA Lease reserves the right to not repair any non-functioning or damaged Equipment, and Lessee shall remain responsible for XTRA Lease's estimated cost of repairs, regardless of whether the damaged Equipment is actually repaired. Lessee shall not be entitled to any refund of any estimated cost of repair paid by Lessee should the actual cost of repair in fact be less.

(c) Lessee shall maintain and upon written request provide XTRA Lease with written descriptions of all maintenance work or repairs made to the Equipment. Lessee shall repair and service the Equipment in accordance with the Repair Standards, using first class materials and parts. 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 arising from defective or improper materials or workmanship furnished by it or its subcontractors and for any repair not conforming to the Repair Standards.

**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. XTRA LEASE IS NOT A SUPPLIER OR MANUFACTURER (AS SUCH TERMS ARE DEFINED OR USED IN THE UNIFORM COMMERCIAL CODE). NO WARRANTY, EXPRESS OR IMPLIED, IS MADE BY XTRA LEASE 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 LEASE 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. LESSEE WAIVES THE PROVISIONS OF ANY APPLICABLE LAW LIMITING OR PROHIBITING A GENERAL RELEASE WITH RESPECT TO ANY RELEASE OR WAIVER IN THE LEASE OR THE STANDARD TERMS AND CONDITIONS. XTRA LEASE AGREES TO EXTEND TO LESSEE ALL WARRANTIES, IF ANY, OFFERED BY THE MANUFACTURERS OF THE EQUIPMENT, OR THE PROVIDERS OF THE SOFTWARE AND COMMUNICATION SERVICES.**

**XTRA LEASE DISCLAIMS, AND LESSEE 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, FOR USE BY LESSEE AT ITS SOLE RISK.**

#### **11. LESSEE'S INDEMNIFICATION OBLIGATIONS.**

**(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: (I) THE ACTS OR**

**OMISSIONS OF LESSEE, LESSEE'S AGENTS, SUBLESSEES OR 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 LEASE; (III) 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.**

**(B) FOR PURPOSES OF THE STANDARD TERMS AND CONDITIONS, THE TERM "INDEMNIFIED PARTIES" SHALL REFER TO XTRA LEASE, ITS AFFILIATES AND ITS AND THEIR SUCCESSORS, ASSIGNS, EMPLOYEES, OFFICERS, DIRECTORS, LICENSORS 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 LEASE. LESSEE SHALL REIMBURSE THE INDEMNIFIED PARTIES FOR ANY EXPENSE INCURRED, INCLUDING REASONABLE ATTORNEYS' FEES, TO DEFEND ANY ACTION WHICH LESSEE IS REQUIRED TO DEFEND PURSUANT TO THE STANDARD TERMS AND CONDITIONS. THE PROVISIONS OF THIS SECTION 11 SHALL SURVIVE THE TERMINATION OF THE LEASE.**

**12. LIMITATION OF LIABILITY.** Under no circumstances shall XTRA Lease be liable for any incidental, indirect, special, consequential, exemplary or punitive damages of any kind arising from or in connection with the Lease, whether or not resulting from the negligence of XTRA Lease, 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 Lease's total liability to Lessee exceed the amount of rental charges paid by Lessee during the three (3) months preceding the event that gave rise to the claim or action.

**13. INSURANCE & COLLISION DAMAGE WAIVER.**

(a) Minimum levels of insurance covering the Equipment shall be maintained by Lessee, at Lessee's expense, with a licensed insurance carrier with an A.M. Best rating of not less than B+ and shall include:

(i) Insurance covering physical loss of or damage to the Equipment from any cause or peril whatsoever. XTRA Lease shall be named a loss payee;

(ii) Comprehensive Automobile Liability coverage protecting XTRA Lease from and against all loss and damage it may sustain or suffer because of death 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 during the Lease. Coverage must be primary and non-contributory and include minimum limits of \$1 million combined single limit or \$1 million bodily injury and \$250,000 property damage. XTRA Lease must be shown as an additional insured; and

(iii) Comprehensive General Liability coverage protecting XTRA Lease from and against all loss and damage it may sustain or suffer because of death 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 during the Lease. Coverage must be primary and non-contributory and include minimum limits of \$1 million general aggregate or \$1 million each occurrence and include contractual liability coverage and/or endorsement. XTRA Lease must be shown as an additional insured.

XTRA Lease reserves the right to determine, in its sole discretion, if a policy of insurance complies with the requirements of this Section 13. Without limiting this right in any way, a policy of insurance does not comply with the provisions of this Section 13 if its coverage is (i) contingent in any way upon the existence of coverage under a policy of insurance maintained by a third party, (ii) limited to providing coverage only when a unit of Equipment is attached to specific motor vehicles, or (iii) limited to providing indemnity only after the insured's payment of a settlement or judgment.

(b) Policies of insurance shall be valid and in force until the Equipment is returned to XTRA Lease. Lessee shall provide XTRA Lease with certificate(s) of insurance evidencing the required coverages prior to delivery or acceptance of any Equipment, promptly upon any amendment or renewal of the required

coverage, and when requested by XTRA Lease. Upon request, Lessee shall provide XTRA Lease copies of Lessee's insurance policies, including any endorsements, for the required coverage. Lessee shall provide XTRA Lease with thirty (30) days prior written notice of cancellation or material change to Lessee's insurance. All deductibles and self-insured retentions must be acceptable to XTRA Lease. If requested by XTRA Lease, Lessee shall file a claim with its insurance carrier for any lost, stolen or damaged units of Equipment. Insolvency, refusal 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.

(c) If acceptable to XTRA Lease in its sole discretion, the insurance requirements of this Section 13 may be satisfied in whole or in part by Lessee's self-insurance arrangement. Upon request, Lessee shall provide XTRA Lease evidence of self-insurance together with a copy of Lessee's most recent financial statements.

(d) Lessee can fulfill its obligation to provide the insurance required in Section 13(a)(i) by purchasing XTRA Lease's Collision Damage Waiver. If Lessee has selected and paid the Collision Damage Waiver for a unit of Equipment, and otherwise is in compliance with the terms of the Lease, Lessee will be responsible for the first \$1,500 (\$5,000 in the case of refrigerated or specialty equipment) of damage to or loss of the unit of Equipment arising from a Covered Event. Lessee agrees that the Collision Damage Waiver is not insurance, and is only a waiver of Equipment damage or loss arising from a Covered Event. The Collision Damage Waiver does not apply to damage or loss resulting from contamination by Hazardous Materials, Covered Events occurring outside the continental United States or Canada, the improper use, care, maintenance, loading or control of Equipment, tire damage (unless damage is caused by a Covered Event), or the theft of tires or components (unless the entire unit is stolen). In order for the Collision Damage Waiver to apply to a Covered Event, Lessee must provide notice to XTRA Lease describing the Covered Event within 72 hours of its occurrence, obtain and provide XTRA Lease a police report describing the Covered Event, and otherwise promptly comply with XTRA Lease's reasonable requests. Use Charges shall continue to accrue with regard to Equipment until Lessee has provided XTRA Lease notice of the occurrence of a Covered Event; provided, Lessee shall remain obligated to lease and pay all Use Charges for Equipment damaged in a Covered Event for the remaining Lease Term, and if a leased unit is a total loss, to lease and pay all Use Charges for a replacement unit for the totaled unit's remaining Lease Term. In addition to any other remedies available to XTRA Lease, if Lessee fails to pay the required deductible within thirty (30) days of the date of invoice, XTRA Lease shall have the right to charge, and Lessee shall be obligated to pay, Use Charges for the Equipment retroactively from the date of Lessee's notice until the deductible is paid. The Collision Damage Waiver shall immediately terminate upon any Default by Lessee, or upon XTRA Lease providing Lessee ten (10) days prior notice of termination. Upon such termination, Lessee shall provide the insurance required by Section 13(a)(i) above.

**14. SECURITY DEPOSIT.** As a condition precedent to XTRA Lease entering into the Lease, and as security for the full performance by Lessee of its obligations hereunder, a security deposit in an amount determined by XTRA Lease, may be required and, if required, shall be delivered to XTRA Lease 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 Lease 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 Lease and after deduction of any amounts due and owing by Lessee to XTRA Lease, including, without limitation, all unpaid Use Charges and any repair or replacement expenses.

**15. LETTER OF CREDIT.** As a condition precedent to XTRA Lease entering into the Lease, 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 Lease an irrevocable letter of credit for the benefit of XTRA Lease in an amount determined by XTRA Lease. The letter of credit shall be issued in the form approved by XTRA Lease. 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 Lease 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 Lease hereunder. In addition, Lessee shall extend the letter of credit or provide a substitute letter of credit acceptable to XTRA Lease at least thirty (30) days prior to the expiration date of the letter of credit, and failure to do so shall entitle XTRA Lease to immediately draw down the full amount available under the letter of credit.

**16. ADEQUATE ASSURANCES.** During the term of any Lease, XTRA Lease may require that Lessee enter into reasonable security arrangements with

**XTRA Lease.** Such security arrangements may include, but are not limited to, providing a security deposit, letter of credit, or the payment of Estimated Charges sufficient to protect **XTRA Lease** from all risk of loss.

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

(a) For each unit of Equipment, **XTRA Lease** will provide a motor vehicle registration and license plate for registration in a jurisdiction of **XTRA Lease'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 Applicable Law, including, without limitation, all federal and state anti-pollution and environmental, transportation compliance, safety, and inspection requirements; (ii) 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. **XTRA Lease** shall charge **Lessee**, and **Lessee** agrees to pay **XTRA Lease**, for any fines, tolls, user fees, traffic or parking violations, towing and storage expenses and other fines, fees, penalties, or charges relating to the Equipment during the Lease, plus an administrative fee.

(c) Sections 95300-95312 of Title 17 of the California Code of Regulations governs the operation of a box type trailer that is greater than 50 feet in length 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 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 California; and (iii) verifying that any Equipment that **Lessee** has rented or leased from **XTRA Lease** complies with the HDV Regulations prior to the operation of that unit of Equipment in California. **Lessee** shall not permit Equipment that does not comply with the HDV Regulations to be operated in California. **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 to install components or devices on Equipment are made in accordance with the recommendations and standards set by the manufacturer of the components or devices, and (ii) unless otherwise agreed to by **XTRA Lease**, **Lessee** shall remove any modifications **Lessee** makes to the Equipment prior to **Lessee's** return of the Equipment to **XTRA Lease**.

**THE LESSEE OF THIS BOX-TYPE TRAILER UNDERSTANDS THAT WHEN USING A HEAVY-DUTY TRACTOR TO PULL A LONG BOX-TYPE TRAILER ON A HIGHWAY WITHIN CALIFORNIA, THE BOX-TYPE TRAILER MUST BE COMPLIANT WITH SECTIONS 95300-95312, 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 SMARTWAY VERIFIED 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 California that does not comply with the TRU Regulations. **Lessee** is solely responsible for complying with the TRU Regulations in conducting operations in 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 Lease'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 the operation of refrigerated units of Equipment in California; and (iii) verifying that any refrigerated unit of Equipment that **Lessee** has rented or leased from **XTRA Lease** complies with the TRU Regulations prior to the operation of that unit of Equipment in California. **Lessee** shall not permit a refrigerated unit of Equipment that does not comply with the TRU Regulations to be operated in California.

**18. TAXES.** All taxes and assessments, including without limitation all import and customs duties and all withholding, property, sales and/or use taxes, and all penalties or other charges or fees arising out of or incident to the use, possession or control of the Equipment during the Lease, shall be the responsibility of **Lessee**. In order to avoid the obligation to remit any applicable withholding, property, sales and/or use tax to **XTRA Lease**, **Lessee** must provide a duly authorized exemption certificate issued by or acceptable to the relevant taxing authority.

**19. ASSIGNMENT & SUCCESSORS.** **Lessee** shall not assign or sublease any right or interest in the Equipment or the Lease without the prior written

consent of **XTRA Lease**. **XTRA Lease** shall have the right to assign any of its rights or interests in the Equipment or any Lease without obtaining **Lessee's** consent. An assignment shall be deemed to have occurred if there has been a change in the control of **Lessee** or **Lessee's** business, including, without limitation, a change of control resulting from a merger, consolidation or reorganization of **Lessee's** business, 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 the Standard Terms and Conditions shall inure to the benefit and be binding upon the parties, their heirs, successors, administrators, executors, sublessees and assigns.

#### **20. LIENS.**

(a) **Lessee** shall keep the Equipment free from any liens, including, without limitation, mechanics' liens, storage, warehouse or other possessory liens, claims or encumbrances, attachments, rights of others and legal processes ("Liens") of creditors of **Lessee** or any other persons. **Lessee** shall promptly notify **XTRA Lease** upon receipt of notice of any such Liens affecting the Equipment and **Lessee** shall promptly defend at its own expense **XTRA Lease's** title to the Equipment from such Liens.

(b) Notwithstanding the parties' intention and express agreement that the Lease constitutes a valid lease of the Equipment, and solely to protect the rights of **XTRA Lease** in the Equipment in the event the Lease is determined by a court of competent jurisdiction to be a conditional sale of and/or financing arrangement as to the Equipment, **Lessee** hereby pledges, assigns and grants to **XTRA Lease** a continuing first priority security interest in and lien upon the Equipment and all proceeds (including proceeds of all insurance policies), which interest and lien 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 agrees that **XTRA Lease** shall have all rights and remedies of a "secured party" under the Uniform Commercial Code and authorizes **XTRA Lease** to cause this Lease and/or any statements or other instruments in respect of this Lease showing the interest of **XTRA Lease** in the Equipment (including certificates of title or Uniform Commercial Code financing statements) to be filed or recorded, and grants **XTRA Lease** and its agents the right to execute **Lessee's** name thereto. **Lessee** also agrees to execute or cause the execution of such additional documents and do such other acts and things, including execution of applications and certificates of title naming **XTRA Lease** as a secured party and delivery of same to **XTRA Lease**, as **XTRA Lease** from time to time requests or deems necessary to establish and maintain a valid and perfected security interest in and lien upon the Equipment. To further secure payment to **XTRA Lease** 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 or is in breach of any of the terms or conditions of the Lease, including, without limitation, the retention of the Equipment for the entire Lease Term or the timely payment of all invoices; (ii) if any third-party credit support, including any guarantor or issuer of a 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 Lease**; (iv) if **Lessee** fails to maintain or fails to provide **XTRA Lease** with proper evidence of the insurance required by this Lease, or **Lessee's** insurance is canceled, reduced or lapses; or (v) if **Lessee** becomes insolvent, or subject to any voluntary or involuntary bankruptcy or insolvency proceeding (including acquiescence in the appointment of a trustee or receiver, or commencement of any dissolution or liquidation proceeding; 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 Lease** 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 entire balance of remaining payments under the Lease immediately due and payable by acceleration; (iii) take immediate possession of all outstanding Equipment; (iv) immediately terminate **Lessee's** access to the Communication Services; (v) terminate the Lease (whereupon the Standard Terms and Conditions shall continue to apply to the Equipment until its return); (vi) calculate and require **Lessee** to pay any attorneys' fees and collection costs incurred in recovery of any sums due or repossession of any Equipment; (vii) calculate and recover from **Lessee** any lost profits and

damages as a "Lost Volume Seller" and/or "Lost Volume Lessor" that **XTRA Lease** would have generated had the Lease not been prematurely cancelled; (viii) calculate and recover from **Lessee** any costs to transport and store the Equipment throughout the remainder of the Lease Term; and (ix) set-off and apply any amounts owing by **XTRA Lease** to or for the account of **Lessee** against any amounts owing by **Lessee** to or for the account of **XTRA Lease**, including, without limitation, any deposits, accruals, prepayments, overpayments, Estimated Charges, fees or otherwise. **Lessee** acknowledges and agrees that **XTRA Lease** is under no duty to mitigate damages resulting from **Lessee's** Default. **IN THE EVENT OF LESSEE'S DEFAULT, LESSEE IS RESPONSIBLE TO REIMBURSE XTRA LEASE FOR ALL ATTORNEYS' FEES AND COLLECTION COSTS INCURRED BY XTRA LEASE TO ENFORCE THE TERMS OF THE LEASE, EVEN IF THE AMOUNT OF FEES AND COSTS EXCEED THE AMOUNTS OTHERWISE OWED XTRA LEASE BY LESSEE PER THE TERMS OF THE LEASE.**

## **22. REPOSSESSION.**

(a) In the event of **Lessee's** Default, and upon demand of **XTRA Lease**, **Lessee** shall immediately return all Equipment to **XTRA Lease**. If **Lessee** fails or refuses to immediately return all Equipment after demand by **XTRA Lease**, **XTRA Lease** 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. If **XTRA Lease** takes possession of the Equipment with property contained in, upon or attached to the Equipment, **XTRA Lease** may take possession of such property and hold it in storage for the account at the expense of **Lessee** and, 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 any Applicable Law, now or hereafter enacted, exempting any leased property from replevin, distraint, levy or sale in any legal proceeding taken by **XTRA Lease** to enforce any right under the Lease.

(b) **Lessee** acknowledges and agrees that in the event of **Lessee's** Default, (i) **XTRA Lease** will be in danger of losing its Equipment unless immediate possession of the Equipment is obtained because **XTRA Lease's** Equipment is movable and readily marketable; and (ii) **XTRA Lease** will not have an adequate remedy at law to protect its rights in its unreturned Equipment. Therefore, **Lessee** agrees that in the event of **Lessee's** Default, **XTRA Lease** shall have the right, without prejudice to any other rights and remedies otherwise available to **XTRA Lease** at law or in equity, to obtain injunctive relief in order to prevent the continued use of the Equipment by **Lessee** and to require **Lessee** to immediately deliver possession of the Equipment to **XTRA Lease**.

**23. INTELLECTUAL PROPERTY.** **XTRA Lease** and/or its licensors reserve ownership of all Intellectual Property 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**. "Intellectual Property" shall mean all proprietary interests of any kind or nature, including, without limitation, patent rights, copyrights, trade secrets, design rights, source code, documentation, trade and service marks, and other similar rights throughout the world, however denominated and any amendments, additions or improvements made thereto.

## **24. BUSINESS CONDUCTED ELECTRONICALLY.**

(a) **Lessee** agrees to conduct business with **XTRA Lease** electronically, and that except as otherwise specifically provided herein, an electronic signature on any Lease, arrangements or agreements, or notice or other communication required or permitted to be given hereunder, or pursuant or relating to any Lease, shall have the same force and effect as the use of manual signatures.

(b) **Lessee** agrees that in the event **Lessee** uses any web site of **XTRA Lease**, including, without limitation, [xtralease.com](http://xtralease.com), [xtraxpressway.com](http://xtraxpressway.com) and [xtra.com](http://xtra.com) (collectively, "XTRA Web Sites"), as a condition of such use, **Lessee** stipulates that while on XTRA Web Sites and where applicable terms and conditions on XTRA Web Sites so indicate, when **Lessee** clicks a button labeled "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.

(c) In any dispute hereunder, related to the Lease, or 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 Lease** 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 Lease** of any Default hereunder, or omission or delay by **XTRA Lease** in exercising any of its rights hereunder, or course of dealing between **XTRA Lease** and **Lessee** shall operate as a waiver by **XTRA Lease** to subsequently require full compliance with the Lease, including, the Standard Terms and Conditions, or as a waiver of any of **XTRA Lease's** rights

or remedies thereunder.

**26. ILLEGAL PAYMENTS.** No bribes, illegal commissions, or other similar payments, whether direct or indirect, have been or will be made to any employee or agent of **XTRA Lease** or **Lessee**, or of their respective subsidiaries, in connection with the Lease.

**27. ENTIRE AGREEMENT; CONFLICTS.** The Lease supersedes all prior agreements, whether written or oral, between **XTRA Lease** 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 Lease** and **Lessee** with respect to the lease of the Equipment described therein. All Lease documents shall be read in a complimentary manner. Except as may be provided in the Lease, the Standard Terms and Conditions shall take precedence over all other Lease documents. Any additional or different terms or conditions proposed by **Lessee** or contained in any purchase order or other document by **Lessee** are rejected and shall be of no force and effect unless expressly agreed to in a writing signed by **XTRA Lease's** Vice President, Customer Financial Services, or his designee located in **XTRA Lease's** home office in St. Louis, Missouri.

**28. AMENDMENTS.** Unless otherwise provided in the Lease, **XTRA Lease** reserves the right to change, upon thirty (30) days prior written notice, any term or provision of the Lease, including, without limitation, the Use Charges to be paid under the Lease and the Standard Terms and Conditions. No change to the Lease shall be effective unless in writing, executed by **XTRA Lease's** Vice President, Customer Financial Services or his designee located in **XTRA Lease's** home office in St. Louis, Missouri.

**29. NOTICES.** All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed given and made (i) if by personal delivery, on the date of delivery, (ii) if by a nationally recognized overnight courier, on the next day following deposit, and (iii) if by mail, on the third business day following deposit in the mail. Any notice or communication to **Lessee** shall be sent to the address set forth in the Lease, or such other address as may be designated by **Lessee** by written notice to **XTRA Lease**. In the case of **XTRA Lease**, any notice or communication shall be sent to **XTRA Lease**, 7911 Forsyth Boulevard, Suite 600, St. Louis, Missouri 63105, Attention: Vice President, Customer Financial Services. Any change of address by either party shall be communicated to the other in writing. Notwithstanding the above, **XTRA Lease** may provide the Lease, the Standard Terms and Conditions, invoices, notices and other communications to **Lessee** in an electronic format through the XTRA Web Sites or other electronic means.

**30. CONFIDENTIALITY.** **Lessee** shall hold and maintain as strictly confidential, and protect from disclosure to any third-party, the terms of the Lease, including, without limitation, the Use Charges applicable thereunder.

**31. CHOICE OF LAW; VENUE; JURY TRIAL WAIVER.** The Lease and the Standard Terms and Conditions shall be governed by the internal substantive laws of the State of Missouri, without regard to conflicts of laws provisions. **Lessee** and **XTRA Lease** each hereby submit to the jurisdiction of the Circuit Court of St. Louis County, Missouri for purposes of adjudicating any action arising out of or related to the Lease, and hereby waive, to the fullest extent permitted by law, any objection to that venue for any action arising out of or related to the Lease. Any action arising out of the Lease may be properly filed in the Circuit Court of St. Louis County, Missouri; however, **XTRA Lease** reserves its right to bring suit in any other appropriate jurisdiction. **LESSEE AND XTRA LEASE EACH IRREVOCABLY WAIVE THEIR RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING FOR ANY CLAIM, DISPUTE OR CONTROVERSY THAT IN ANY WAY ARISES FROM OR RELATES TO THE LEASE AND IN WHICH LESSEE AND XTRA LEASE ARE ADVERSE PARTIES.**

**32. 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.