

## STANDARD TERMS AND CONDITIONS

Each Customer agrees that these Standard Terms and Conditions (“**T&Cs**”) will apply to all Lease transactions between the Customer and J. T. Mc Kinney Co., Inc., Mckinney Vehicle Services, Inc., and/or any of their respective successors or assigns (collectively, “**Mckinney**”). All Leases are subject to and deemed to incorporate these T&Cs as amended from time to time, unless otherwise noted in the Lease.

### 1. **Defined Terms.** As used herein, the following terms have the following meanings:

“**Applicable Law**” means any applicable federal, state, local, or foreign law, statute, code, rule, regulation, order, judgment, opinion, treaty, or legal requirement.

“**Brake Wear Charge**” means the brake wear charge specified in a Lease, which will apply for each 1/8<sup>th</sup> of an inch of brake wear for each drum. If not specified in a Lease, the Brake Wear Charge will be the greater of the following per drum: (i) \$45 for each 1/8<sup>th</sup> inch of wear; or (ii) Mckinney’s standard brake wear charge rate at the time the Equipment is returned.

“**CDW**” is defined in Section 10(b).

“**CDW Deductible**” means the CDW deductible specified in a Lease; provided, that if a Lease does not specify a CDW deductible, the CDW Deductible will be \$5,000 for each refrigerated unit or specialty unit and \$1,500 for each other unit of Equipment.

“**Claims**” means any and all claims, losses, damages, penalties, actions, suits, assessments, taxes, fines, tolls, and liabilities, together with all reasonable legal costs, fees, and expenses in connection therewith.

“**Customer**” means any individual or entity that signs or otherwise enters into a Lease.

“**Customer Agent**” means the driver or other representative who (i) picks up, inspects, takes possession of, or returns a unit of Equipment on behalf of Customer, and/or (ii) executes a Lease on behalf of Customer.

“**Equipment**” means any Mckinney semi-trailer, chassis, refrigerated trailer, or other over-the-road or storage equipment together with any attached Monitoring Devices.

“**Event of Loss**” will be deemed to occur if Equipment (or any component thereof) is lost, stolen, destroyed, damaged beyond repair, confiscated, seized, or requisitioned, as determined by Mckinney in its sole discretion, whether due to accident, fire, lightning, theft, explosion, flood, windstorm, mischief, vandalism, or otherwise.

“**Excess Brake Wear**” means brake pad wear in excess of 1/8<sup>th</sup> of an inch for every 25,000 miles traveled.

“**Excess Tire Wear**” means tire tread wear in excess of 1/32<sup>nd</sup> of an inch for every 10,000 miles traveled.

“**Inbound Inspection**” means the inspection report outlining the condition of Equipment at the time of delivery to or pick-up by Mckinney at Lease termination. Such inspection will take place at a Mckinney location following delivery to or pick-up by Mckinney, irrespective of whether such delivery or pick-up takes place at such Mckinney location.

“**Initial Pad Depth**” means the outgoing brake pad depth listed in the Outbound Inspection.

“**Initial Tread Depth**” means the outgoing tire tread depth listed in the Outbound Inspection.

“**Lease**” means any and all arrangements or agreements whereby a Customer leases, rents, or otherwise takes possession of Equipment, including, without limitation, any Trailer Rental Agreement, Long Term Trailer Lease Agreement, Master Rental/Lease Agreement, or any other agreement, together with any addenda, schedules, and exhibits related thereto.

“**Long-Term Lease**” means any Lease with a Term of 12 months or greater.

“**Loss Value**” means, unless otherwise provided in the Lease, the fair market value of Equipment (or applicable component thereof) as of the first day of the month during which an Event of Loss occurs, as determined by Mckinney.

“**Mckinney Parties**” means Mckinney, its affiliates, and their respective assigns, successors, lenders, licensors, employees, officers, and directors.

“**Monitoring Devices**” means all tracking devices, satellites, refrigeration hour meters, hubodometers, and related devices, as applicable.

“**Monitoring Services**” means any services related to the monitoring, tracking, or reporting of information about Equipment, whether conducted by Mckinney or a third party, through the use of Monitoring Devices or otherwise, including, without limitation, installation services, global positioning satellite systems services, start, stop, and idle time services, fuel consumption services, speed tracking services, ignition disable and enable services, door lock and unlock services, and all related electronic, internet, or software services and any hardware and harnesses related thereto.

“**Net Maintenance Lease**” means any Lease identified as a “Net Maintenance” Lease.

“**Normal Wear**” means and includes only those minor defects or other conditions expressly identified as “acceptable” in Mckinney’s *Turn in Condition and Repair Standards*, which are available in the “Customer Portal” of Mckinney’s website located at <http://www.mckinneytrailers.com>, as amended from time to time.

“**Outbound Inspection**” means the inspection report outlining the condition of each unit of Equipment at the time of delivery to or pick up by Customer. Such inspection will take place prior to delivery to or pick-up by Customer. Outbound Inspections are hereby incorporated into the applicable Lease by reference.

“**Replacement Tires**” means tires of equal quality to those located on Equipment as of the Outbound Inspection, as determined by Mckinney. For clarity, “Replacement Tires” for Equipment originally equipped with SmartWay-approved tires must be SmartWay-approved tires, and any non-recapped tires must be replaced with non-recapped tires.

“**Return Location**” means the return location(s) specified in a Lease; provided, however, that if a Lease does not specify a return location, the Return Location shall be the Mckinney branch from which the Equipment was rented/leased.

“**Service Location**” means the location or locations at which Mckinney will perform its maintenance and inspection obligations under a Standard Maintenance Lease, as identified in the Lease. If a Lease does not identify a Service Location, the Service Location will be any Mckinney branch location.

“**Standard Maintenance Lease**” means any Lease identified as a “Standard Maintenance” Lease or otherwise treated as a Standard Maintenance Lease per these T&Cs.

“**Storage Only Equipment**” means any Equipment identified in a Lease as “Storage Only.”

“**Term**” means the period identified as the “Lease Term” or “Contract Term” in a Lease, together with all renewals and extensions thereof.

“**Tire Wear Charge**” means the tire tread wear charge specified in a Lease, which shall apply for each 1/32<sup>nd</sup> of tread wear for each tire; provided, that if a Lease does not list a tread wear charge, then the Tire Wear Charge will be the greater of the following per tire: (i) \$36 for each 1/32<sup>nd</sup> of tire wear; or (ii) Mckinney’s standard tire wear charge rate at the time that the Equipment is returned.

“**Use Charges**” means the payments required to be made by Customer under a Lease for each day (including Saturdays, Sundays, and holidays) Equipment is on lease or rent to Customer, irrespective of whether such Equipment is in the use, possession, control, or operation of Customer. Use Charges include the rental rate set forth in the Lease plus any and all other charges required to be paid by Customer thereunder, including, without limitation, mileage charges, CDW charges, maintenance accrual charges, refrigeration charges, Tire Wear Charges, and Brake Wear Charges.

**2. Acceptance of T&Cs; Authorization to Enter into Lease.** Customer acknowledges that it will become bound by these T&Cs if Customer or any Customer Agent signs a Lease contract or otherwise takes possession of Equipment. Whenever Customer signs or otherwise enters into a Lease or amendment thereto, takes possession of Equipment, makes payment of any invoice, or completes any other transaction with Mckinney, Customer represents and warrants that Customer (and/or any Customer Agent acting on behalf of Customer) is authorized to enter such agreements and transactions with Mckinney and expressly acknowledges receipt and ongoing acceptance of these T&Cs. During the Term of each Lease, Customer shall have exclusive possession, control, and use of the applicable Equipment and assumes complete responsibility for the operation of such Equipment.

**3. Equipment Covered, Lease Term, and Ownership.** The Equipment covered by a Lease and the Term thereof will be specified in the Lease. The Term of any Long-Term Lease will commence (the “**Commencement Date**”) on the first day of the month subsequent to the earlier of (i) delivery of all Equipment covered by such Lease and (ii) 3 business days following written notice to Customer that all Equipment covered by the Lease is available for pick-up or delivery. Customer’s failure to return any Equipment to Mckinney in accordance with Section 8 below prior to the expiration of the applicable Term will constitute a material default under the Lease. Prior to delivering possession of any Equipment, Mckinney will provide a motor vehicle registration and license plate for the

Equipment. By executing a Lease, Mckinney does not convey any right, title, or interest in any Equipment to Customer other than the right to possess and use the Equipment in accordance with the Lease. In the event a court of competent jurisdiction determines that a Lease constitutes a conditional sale or financing arrangement, Customer grants Mckinney a continuing first priority security interest in the Equipment and all proceeds thereof to secure Customer's obligations under such Lease. Mckinney and Customer agree that Equipment will be considered personal property for all purposes, irrespective of whether such Equipment is affixed to realty. If Mckinney is not the legal owner of any Equipment, the Lease for such Equipment shall be subject to and subordinate to the provisions of any written agreement between Mckinney and the legal owner. Equipment may be subject to a security interest held by a third-party lender. The rights and obligations of Customer hereunder are therefore expressly subject and subordinate to the rights of any such lender.

#### **4. Use Charges; Payments.**

(a) Use Charges. Customer shall pay all Use Charges for Equipment leased or rented by Customer as provided in the applicable Lease. Use Charges applicable to Equipment will begin to accrue on the date such Equipment is available for delivery to or pick-up by Customer, as applicable. Subject to Section 9 below, Customer will remain responsible for all Use Charges due under a Lease until the latest to occur of (i) the expiration of the applicable Term, (ii) Customer's return of the Equipment in accordance with Section 8 below and payment of all sums due upon return of the Equipment, or (iii) Customer's payment of any Loss Value due hereunder. If Customer retains possession of any Equipment after the end of the applicable Term or rents or leases any Equipment on a daily, weekly, or month-to-month basis, Mckinney may, without limiting its remedies under Section 9 below, increase the Use Charges with respect to such Equipment by giving at least 30 days' notice to Customer. Use Charges may include, but are not limited to, the following:

(i) Rental/Lease Charges. Customer shall pay all rental/lease charges for each unit of Equipment as provided in the applicable Lease.

(ii) Mileage Charges. To the extent required under a Lease, Customer shall pay mileage charges for actual miles traveled by a unit of Equipment at the rate specified in the Lease. Miles traveled will be measured by a hubodometer attached to each unit of Equipment. Mckinney will take a reading of each unit's hubodometer at the time of the Outbound Inspection and Inbound Inspection. If any Equipment's hubodometer is missing or fails to function properly, Customer shall pay a mileage charge for such Equipment based on the average miles traveled by similar units leased or rented from Mckinney, as determined by Mckinney.

(iii) Refrigeration Charges. Customer shall pay all refrigeration charges specified in the Lease for engine hours used on any refrigerated unit of Equipment. Engine hours will be measured by an hour meter attached to the Equipment. Mckinney will take a reading of each refrigerated unit's hour meter at the time of the Outbound Inspection and Inbound Inspection. If the hour meter for a unit of Equipment is missing or fails to function properly, Customer shall pay a refrigeration charge for engine hours based on the average engine hours historically used on similar units of Equipment leased or rented from Mckinney, as determined by Mckinney.

(iv) Tire and Brake Wear Charges. Except as otherwise provided in a Lease, upon Customer's return of any Equipment, Customer shall pay all Brake Wear Charges, Tire Wear Charges, and other amounts due under Section 8 below. Mckinney will measure the tread depth of each tire at the time of the Outbound Inspection and Inbound Inspection, at the lowest point of remaining tire tread. Mckinney will measure the brake lining for each wheel end at the time of the Outbound Inspection and Inbound Inspection.

(v) Toll Charges, Tickets, Etc. Customer shall be solely responsible for payment of all traffic or parking fees, tickets, or citations relating to the Equipment (including, without limitation, parking violations, moving violations, photograph or radar tickets, highway weight stations citations/tickets, automated toll violations, toll fees and fines, and all similar tickets and/or citations) (collectively, "**Citations**"). Customer shall promptly reimburse Mckinney for all such Citations paid directly by Mckinney and further pay Mckinney its then-standard processing fee (not to exceed \$25) for each such Citation.

(vi) Maintenance Accrual Charges. Customer shall timely pay all maintenance accrual charges specified in the Lease. Maintenance accrual charges received by Mckinney will be applied towards any maintenance or repair charges or other amounts due to Mckinney upon Customer's return of the applicable Equipment to Mckinney pursuant to Section 8 below. Any unapplied maintenance accrual charges will be refunded to Customer after Customer has returned all leased/rented Equipment to Mckinney.

(b) Payment. Mckinney may invoice Customer monthly estimated charges pursuant to each Lease and these T&Cs. A true-up of any estimated charges will take place from time to time and/or at the end of the applicable Term at Mckinney's option,

whereupon Customer shall pay Mckinney for any shortfall and Mckinney will pay or credit Customer for any overpayment with respect to a difference between estimated charges paid by Customer and actual charges owed by Customer. Customer shall pay all invoices in immediately available funds (or ACH, if required under a Lease) within 30 days from the date of the invoice. Customer shall not pay any invoice via credit card without Mckinney's prior written approval. Any payment not received within 30 days from the date of the invoice shall be subject to a late charge of the lesser of (i) 1.5% per month of the amount past due or (ii) the maximum rate allowed by law, from the date of invoice until paid in full. Customer shall pay to Mckinney an administrative fee of \$25 for each check, electronic payment, or other form of payment that is returned due to insufficient funds or otherwise declined. Customer will not be entitled to any abatement of, reduction of, or setoff against any payments due under a Lease for any reason whatsoever. No amounts under a Lease may be prepaid except as set forth in the Lease.

(c) **Annual Adjustments to Use Charges.** Mckinney may, upon written notice to Customer, increase all or specified Use Charges under any Long-Term Lease on each anniversary of the Commencement Date of such Long-Term Lease (each is an "**Adjustment Date**"). At Mckinney's election, the Use Charges payable immediately prior to the applicable Adjustment Date shall be increased by an amount equal to the percentage that the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (all items in U.S. City Average on the basis of 1982-1984 equals 100), or any successor index designated by Mckinney (the "**Index**"), published for the date nearest preceding the applicable Adjustment Date has increased over the Index published for the date nearest preceding the first day of the Lease year from which the adjustment is being measured. Upon Mckinney's calculation of each increase, Mckinney shall notify Customer of the new Use Charges payable under the Lease. Within thirty (30) days of the date of Mckinney's notice, Customer shall pay to Mckinney the amount of any deficiency in Use Charges paid by Customer for the period following the subject Adjustment Date, and shall thereafter pay the increased Use Charges until receiving the next notice of increase from Mckinney.

**5. Delivery of Possession; Outbound Inspection.** Unless otherwise provided in a Lease, Customer shall take possession of the Equipment at the Mckinney branch location specified in the Lease. Prior to delivering possession of any Equipment, Mckinney will inspect the same and provide Customer an Outbound Inspection with respect thereto. By taking possession of Equipment, Customer acknowledges and agrees that such Equipment is in the condition reported in the Outbound Inspection. Customer shall be solely responsible for any damage to the Equipment not referenced in the Outbound Inspection. If Customer takes possession of any Equipment for which no Outbound Inspection is provided by Mckinney, such Equipment will be deemed to have been received by Customer in good and acceptable working order and free of all defects and damage. Customer acknowledges that delivery of Equipment may be subject to delays beyond Mckinney's control and agrees that Customer shall not have any claims whatsoever against Mckinney for damages as a result of any such delay.

**6. Security Deposit.** If a security deposit is required under a Lease, Customer must remit such security deposit in full prior to taking possession of the Equipment. Such security deposit may be used to offset any amounts due and owing by Customer to Mckinney pursuant to the Lease. Any unused portion of the security deposit will be refunded to Customer, after Customer has returned all Equipment to Mckinney, minus any applicable deductions for repair, replacement, and other charges provided for in a Lease or these T&Cs.

#### **7. Maintenance, Repair, and Use of Equipment.**

(a) **Maintenance Options.** Each Lease will be identified as either a Standard Maintenance Lease or a Net Maintenance Lease. Any Lease not expressly identified as a Standard Maintenance Lease or a Net Maintenance Lease will be deemed a Standard Maintenance Lease (subject to Section 7(c) below).

(i) **Net Maintenance.** Under a Net Maintenance Lease, Customer shall, at Customer's sole expense, maintain the Equipment in good operating order and in the same condition and appearance as noted on the Outbound Inspection (including, without limitation, preventive maintenance, emergency service and damage repairs and replacements), Normal Wear excepted. For clarity, Customer shall be solely responsible for all maintenance, and when necessary, replacement of all parts, accessories and tires. Customer shall cause all such repairs and maintenance to be completed in accordance with Mckinney's repair and maintenance standards and with all requirements necessary to enforce Mckinney's warranty rights related to the Equipment. In addition, Customer shall timely conduct all inspections of the Equipment required under Applicable Law (including, without limitation, all inspections required by the Department of Transportation or the California Commercial Motor Vehicle Safety Act of 1988, as amended (commonly referred to as the Basic Inspection of Terminals)) (collectively, "**Legally-Required Inspections**"). Except as otherwise provided in the Lease or any Schedule thereto, Mckinney shall be solely responsible for all preventive maintenance servicing and repairs to any refrigeration unit attached to any Equipment, regardless of whether the Lease is identified as a Standard Maintenance Lease or a Net Maintenance Lease. Customer shall make refrigerated Equipment available to Mckinney for preventive maintenance

servicing and repairs of the refrigeration unit promptly following Mckinney's request.

(ii) Standard Maintenance. Under a Standard Maintenance Lease, Mckinney shall perform all Legally-Required Inspections, all preventative maintenance, and all regular maintenance occasioned by normal wear and tear, including, without limitation, any replacements of tires, brakes, lights, lubricants and any other parts worn due solely to normal wear (collectively, "**Mckinney's Standard Maintenance Obligations**") whenever Customer returns the Equipment to a Service Location; provided, however, that as a condition to Mckinney's Standard Maintenance Obligations, Customer must return the Equipment to a Service Location for preventive maintenance servicing at least once during each 90-day interval during the Term or every 50,000 miles traveled, whichever occurs first. If Mckinney agrees to provide any maintenance or repair services at a location other than a Service Location, Customer shall pay Mckinney's then-current service fee promptly following Mckinney's request. Except for Mckinney's Standard Maintenance Obligations, Customer shall perform (at Customer's sole expense) all maintenance, repairs, and replacements as may be required to maintain the Equipment in good operating order, condition and appearance, including without limitation, all road calls, emergency service, and replacements of tires, brakes, lights, lubricants and any other parts which are broken, inoperable, or worn beyond Normal Wear.

(b) Damage to Equipment; Replacements; Events of Loss. In addition to Customer's specific maintenance and repair responsibilities set forth in Section 7(a) above, Customer is responsible for all damage to the Equipment other than Normal Wear. Upon Mckinney's request, Customer shall provide Mckinney with written descriptions of all repairs made to the Equipment. Customer shall promptly notify Mckinney of any potential mechanical failure or problem relating to the Equipment. Customer shall use trailer manufacturer grade materials and parts for all repairs and all parts, accessories, equipment, and devices used in Equipment repair will be of equal or better quality than the items repaired or replaced (as determined by Mckinney in its sole discretion). Mckinney will have the right upon 3 days' prior notice to inspect Equipment (wherever located) during normal business hours for the purpose of confirming the existence, condition, or proper maintenance thereof. Any repair that fails to meet the standards set forth in this Section 7(b), as determined by Mckinney in its sole discretion, will be corrected by Mckinney at Customer's expense, including, without limitation, all labor, drayage, road service, maintenance, mileage, or other charges.

Customer shall notify Mckinney and Customer's insurance carrier within 72 hours following any Event of Loss. Upon an Event of Loss, Customer shall pay to Mckinney the Loss Value of the Equipment (or component thereof), plus (a) all Use Charges relating to such Equipment due but unpaid through the date Customer pays the Loss Value, (b) all labor, drayage, mileage, maintenance, road service, storage, recovery charges, or other charges relating to such Equipment, and (c) the estimated or actual cost, at Mckinney's option, to replace any damaged Monitoring Devices relating to such Equipment. If Customer replaces any parts, accessories, or tires, such replacement item(s) shall become the property of Mckinney immediately upon attachment to the Equipment. For clarity, if Customer is required to replace any damaged or inoperable tires hereunder, Customer shall replace the same with Replacement Tires. If Customer files a stolen vehicle report with respect to any Equipment and such Equipment is subsequently located, Customer shall promptly notify the applicable authorities and be solely responsible for all costs, expenses, and fines resulting therefrom.

(c) Storage Trailers. The foregoing notwithstanding, Mckinney will not be required to perform maintenance or inspection services on Storage Only Equipment. Customer shall not use Storage Only Equipment to transport goods over-the-road.

(d) Markings; Alterations. Customer shall not remove or damage any marks of identification on the Equipment. Prior to Customer's return of any Equipment, Customer shall remove all marks of identification or logos applied to the Equipment by or for Customer and restore the surface at Customer's expense. Customer shall not make any alterations to the Equipment or remove any parts, accessories or attachments without Mckinney's prior written consent.

(e) Inspections. Customer shall: (i) conduct regular safety inspections of Equipment and ensure Equipment receives regular maintenance and lubrication (including, without limitation, ensuring refrigerated units maintain proper fuel, oil, and coolant levels); (ii) ensure Equipment is not operated if in need of repairs or maintenance; and (iii) ensure Equipment complies with all Applicable Laws. For Net Maintenance Leases, Customer shall conduct all Legally-Required Inspections through the use of qualified and trained personnel and shall promptly remit to Mckinney all documents relating thereto.

(f) Use and Operation. Customer shall: (i) use the Equipment only for commercial purposes; (ii) not allow any person to operate the Equipment other than duly licensed agents or employees of Customer; (iii) comply with and ensure all persons operating or using the Equipment comply with all Applicable Laws (routine traffic violations excepted) and manufacturer load weight, load distribution and other specifications relating to the use, operation or maintenance of the Equipment; and (iv) timely pay all taxes, fees and assessments, including, without limitation, all license and registration fees (except as otherwise provided in Section 3), sales, use, property, gross receipts, excise, transaction, ad valorem, privilege, intangible, stamp, tonnage, mileage, highway use, road use, fuel or

other taxes, duties, imposts, or charges, together with any fines, penalties, or interest thereon (unless such fines, penalties or interest arise solely from Mckinney's gross negligence or willful misconduct) now or hereafter imposed by any governmental body with respect to Equipment or the use, possession, ownership, leasing, operation, delivery, or return thereof (excluding, however, franchise taxes and any taxes based on Mckinney's net income). By executing a Lease, Customer represents and warrants to Mckinney that (a) the Equipment is suitable and appropriate for Customer's intended use; and (b) Customer's execution of such Lease will not result in the creation of any lien, charge, security interest or other encumbrance upon any Equipment pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Customer is a party.

(g) **Hazardous Materials.** Customer shall not use Equipment for the transportation or storage of radioactive materials, hazardous waste or materials, medical waste, corrosive substances, explosives, gases, or bulk liquids in violation of Applicable Law (each a "**Prohibited Substance**"). Customer shall promptly notify Mckinney of any use of the Equipment in violation of the immediately preceding sentence. If Mckinney determines that a Prohibited Substance has contaminated Equipment or been placed in any Equipment in violation of Applicable Law, Customer shall, at Mckinney's option, either (i) promptly pay to Mckinney the Loss Value of such Equipment, or (ii) restore and decontaminate the Equipment, at Customer's expense, and provide proof of such decontamination, including, without limitation, methodology and decontamination sampling results and any other inspection or testing Mckinney deems appropriate.

(h) **Monitoring Devices/Services.** If a Monitoring Device is installed on Equipment, Mckinney hereby grants to Customer a non-exclusive, non-transferable and limited sub-license to access any Monitoring Services associated with such Monitoring Device for the sole purpose of operating the Equipment in accordance with the Lease. Mckinney may terminate the Monitoring Services and the sub-licenses granted pursuant to this Section at any time upon notice to Customer. Customer's use of information derived from Monitoring Services will be at Customer's own risk. Customer acknowledges that disruption of Monitoring Services may occur from time to time for routine and emergency maintenance and other reasons beyond Mckinney's control.

**8. Equipment Return.** Upon Lease Term expiration, Customer shall return the applicable Equipment to the Return Location in good and efficient operating order and in substantially the same condition and appearance and as set forth in the Outbound Inspection, Normal Wear excepted. If Customer returns Equipment to a location other than the Return Location, Customer shall pay to Mckinney a relocation fee of \$2.00 per mile with a minimum charge of \$200. Upon Customer's return of Equipment, the following charges may apply:

(a) **Tire and Brake Charges for Standard Maintenance Leases.** If Customer returns any Equipment subject to a Standard Maintenance Lease with Excess Tire Wear on any tire, Customer shall pay the Tire Wear Charge for every 1/32<sup>nd</sup> inch of Excess Tire Wear for each such tire. If Customer returns any such Equipment with Excess Brake Wear, Customer shall pay the Brake Wear Charge per drum for every 1/8<sup>th</sup> inch of Excess Brake Wear. Customer must return Storage Only Equipment without any wear and tear to the tires or brakes.

(b) **Tire and Brake Charges for Net Maintenance Leases.** If Customer returns any Equipment subject to a Net Maintenance Lease with any tire having remaining tread depth of less than 100% of the Initial Tread Depth, Customer shall pay the Tire Wear Charge per tire for every 1/32<sup>nd</sup> of an inch that the tread depth has decreased from the Initial Tread Depth; provided, however, if any such Equipment accrues fewer than 25,000 miles during the applicable Term, then in lieu of such Tire Wear Charge Customer shall pay Mckinney's then standard mileage charge rates for the actual miles driven. If Customer returns Net Maintenance Lease Equipment with a remaining brake pad depth of less than 100% of the Initial Pad Depth, Customer agrees to pay Mckinney the Brake Wear Charge per drum for every 1/8<sup>th</sup> inch that the brake pad depth has decreased from the Initial Pad Depth.

## **9. Default; Remedies.**

(a) **Events of Default.** Customer shall be in "**Default**" hereunder if: (i) Customer fails to pay within 30 days of when due any amount due hereunder; (ii) Customer or any guarantor of Customer (A) becomes insolvent, (B) voluntarily files, or has filed against it involuntarily, a petition for liquidation, reorganization, adjustment of debt, or similar relief under any present or future Applicable Law, (C) makes an assignment for the benefit of creditors, (D) appoints or submits to the appointment of a trustee, receiver, or liquidator with respect to any of its assets, (E) admits in writing its inability to pay its debts as they become due, or (F) ceases doing business as a going concern; (iii) any letter of credit, guaranty or other security given to secure the performance of a Lease shall expire, terminate or become worthless in the opinion of Mckinney; (iv) Customer makes or permits any unauthorized lien against, or assignment or transfer of, a Lease, any Equipment, or any interest therein; (v) Customer fails to comply with its obligations under Section 7(g) or Section 10; (vi) Customer consolidates with or merges into another entity without Mckinney's prior written consent; (vii) Customer breaches any representation or warranty set forth herein; (viii) Customer fails to return any Equipment at the end of the applicable Term; or (ix) Customer fails to perform any of its other obligations under any Lease, and such failure continues for at least

30 days after Mckinney has requested performance, correction, or remediation thereof.

(b) **Remedies.** In the event of a Default, Mckinney may exercise any one or more of the following remedies (which remedies are cumulative and may be exercised simultaneously, in each case to the extent permitted by Applicable Law): (i) cancel or terminate any or all Leases between Customer and Mckinney (provided that these T&Cs will remain in effect until such time that all Equipment subject to the cancelled or terminated Leases is returned to Mckinney); (ii) declare the entire balance of the remaining payments under any or all Leases immediately due and payable by acceleration and recover such amount as liquidated damages, the reasonableness of such damages being acknowledged and agreed to by Customer; (iii) enter onto Customer's premises and repossess the Equipment without incurring any liability or further obligation to Customer and without relieving Customer from any of its obligations hereunder; (iv) calculate and require Customer to pay any collection costs incurred in recovery of any sums due or repossession of any Equipment including, without limitation, reasonable attorneys' fees; (v) calculate and recover from Customer any costs to transport and store the Equipment throughout the remainder of the applicable Term; (vi) set-off and apply any amounts owing by Mckinney to or for the account of Customer against any amounts owing by Customer to or for the account of Mckinney; and (vii) exercise any other right or remedy that may be available under Applicable Law. To the extent permitted by Applicable Law, Customer waives all rights it may have to limit or modify any of Mckinney's rights and remedies hereunder, including, without limitation, any right of Customer to require Mckinney to dispose of or marshal the Equipment or otherwise mitigate its damages hereunder.

(c) **Repossession.** If Mckinney repossesses Equipment following a Default and such Equipment contains property belonging to Customer or any third person, **Customer agrees Mckinney may after 10 days' notice to Customer's last known physical address remove, store, sell, or dispose of such property.** Customer acknowledges Mckinney is under no obligation to determine whether such property belongs to Customer or to any third party and agrees to defend, indemnify and hold Mckinney and the Mckinney Parties harmless from and against any and all Claims arising from or relating to Mckinney's taking possession of and/or storing, selling or disposing of such property.

#### **10. Insurance, CDW, and Indemnification.**

(a) **Insurance Requirements.** Customer shall, at Customer's expense, maintain the following insurance coverage with insurance companies acceptable to and approved by Mckinney: (i) comprehensive general liability insurance (including Contractual Liability) against claims for bodily injury and property damage with a minimum limits of \$1,000,000.00 combined single limit per occurrence / \$2,000,000 general aggregate, naming Mckinney as additional insured; (ii) comprehensive automobile liability insurance insuring against liability for bodily injury and property damage with minimum limits of (A) \$1,000,000.00 combined single limit per occurrence, naming Mckinney as additional insured or (B) \$1,000,000.00 for bodily injury per occurrence and \$250,000 for property damage per occurrence; and (iii) physical damage insurance ("**Physical Damage Insurance**") insuring against loss or damage to the Equipment in an amount not less than the full replacement value of the Equipment, with a deductible of no more than \$2,500.00 per occurrence, naming Mckinney as loss payee. Each such insurance policy must (a) be the primary insurance, up to and including the stated policy limits, and shall not be excess insurance over any other coverage; (b) contain a clause specifying that no action or misrepresentation by Customer will invalidate such policy; (c) include a clause requiring the insurer to give Mckinney at least 30 days' prior written notice of any cancellation, non-renewal, or material modification to such policy; and (d) contain no exclusion for punitive damages. Customer will provide Mckinney with a certificate of insurance (in form acceptable to Mckinney) evidencing the insurance required hereunder prior to taking possession of Equipment and shall ensure such insurance remains in force until Customer returns all Equipment to Mckinney. Customer shall take all necessary action to enforce Mckinney's status as an additional insured as described herein, including, without limitation, cooperating with Mckinney and filing insurance claims for lost or stolen Equipment upon Mckinney's request. Nothing in this Section 10 will limit Customer's liability under the Lease or Applicable Law. If Customer fails to maintain any insurance required hereunder, Mckinney may, at its option, procure the required insurance at Customer's expense.

(b) **CDW.** The foregoing notwithstanding, Customer may satisfy its obligation to maintain Physical Damage Insurance by participating in Mckinney's Collision Damage, Fire and Theft Waiver ("**CDW**") program. To participate in Mckinney's CDW program with respect to any Equipment, Customer must (i) expressly elect to participate in the CDW program in the applicable Lease; (ii) timely pay all CDW charges set forth in the Lease; and (iii) upon the occurrence of an Event of Loss, (A) report such occurrence to Mckinney in writing within 72 hours, (B) file a police report (if the Equipment is stolen) and provide a copy to Mckinney, together with any other documentation reasonably requested by Mckinney, (C) pay Mckinney the applicable CDW Deductible, and (D) otherwise reasonably cooperate with Mckinney with respect to such occurrence. If Customer satisfies all of the obligations set forth in the immediately preceding sentence, Customer will be relieved from all further liability for property damage arising from an Event of Loss unless such Event of Loss arises from or relates to (a) Customer's breach of any representation or warranty or failure to perform any obligation set forth in the Lease or these T&Cs (including, without limitation, Customer's failure to maintain the Equipment in

accordance herewith); (b) the negligence, willful misconduct, or violation of law by Customer or any of its employees, agents, contractors, or affiliates; (c) tire and/or wheel theft, unless the entire Equipment is stolen; (d) tire damage unless the tires are damaged during or as a result of a collision; (e) floor damage caused by, during or in connection with loading or unloading of the Equipment; (f) damage caused by or in connection with tractor/trailer coupling or lifting; or (g) any event occurring outside the continental United States or Canada. Customer acknowledges that, upon an Event of Loss with respect to any Equipment, Use Charges with respect thereto will continue to accrue until Customer has paid the required CDW Deductible. Customer further acknowledges and agrees that the CDW Deductible will be payable by Customer with respect to each incident or occurrence of an Event of Loss with respect to Equipment. Customer's CDW will terminate immediately upon any Default by Customer. CUSTOMER FURTHER AGREES AND ACKNOWLEDGES THAT CDW IS NOT INSURANCE COVERAGE, BUT RATHER, IS PART OF MCKINNEY'S CDW PROGRAM. Mckinney may terminate Customer's CDW upon at least 30 days' written notice. Mckinney may also increase the CDW charges under a Lease upon at least 30 days' notice to Customer ("**CDW Increase Notice**"), and Customer will be deemed to have agreed to such increase unless Customer provides written notice to Mckinney of Customer's election to terminate its CDW within 30 days following Customer's receipt of the CDW Increase Notice. In the event of any such CDW termination, Customer shall obtain, prior to the CDW termination date, Physical Damage Insurance covering the Equipment and naming Mckinney a loss payee in accordance with Section 10(a).

(c) **Indemnification.** To the fullest extent permitted by Applicable Law, and except to the extent arising from Mckinney's gross negligence or willful misconduct, Customer shall indemnify, defend, and hold Mckinney and the Mckinney Parties harmless from and against any and all Claims relating to or arising out of the use, lease, rental, possession, maintenance, repair, condition, or operation of the Equipment during the Term (or any other period during which such Equipment is leased or rented to Customer), **even if such Claims were caused or alleged to be caused in whole or in part by the negligence of Mckinney or any of the Mckinney Parties**, and including, without limitation, any and all Claims arising from or incident to: (i) the acts or omissions of Customer or Customer's agents, employees, contractors, or assignees; (ii) the performance, breach, or default of the Lease by Customer, or Mckinney's enforcement of any of the terms of the Lease; (iii) the death or injury of 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) any taxes and assessments, including without limitation all import and customs duties and all withholding, property, sales and/or use taxes, and all penalties; or (vii) the escape, seepage, leakage, spillage, discharge, use, emission, or release of any Prohibited Substances from or in the Equipment. The furnishing of insurance required hereunder shall not be deemed to limit Customer's obligations under this Section 10(c). If any action or proceeding is brought against Mckinney or any Mckinney Parties and such claim is a claim from which Customer is obligated to indemnify Mckinney or any Mckinney Parties pursuant to this Section 10(c), Customer, upon notice from Mckinney, shall resist and defend such action or proceeding with respect to that claim (by counsel reasonably satisfactory to Mckinney) at Customer's expense. Customer shall not settle or compromise any claim against Mckinney or any Mckinney Party, including, without limitation, any claim for which Customer has assumed the defense, without Mckinney's prior written consent.

(d) **Waiver of Subrogation.** Customer and Mckinney mutually release the other from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to property covered by the insurance policies as required to be carried by the parties hereunder or any other insurance actually carried by such party, and do hereby mutually waive all rights of subrogation in favor of any insurance carrier against the other arising out of any such loss or damage.

## 11. State-Specific Laws and Requirements.

(a) **HDV Regulations.** Sections 95300-95311 of Title 17 of the California Code of Regulations (as amended from time to time, the "**HDV Regulations**") govern the operation of 53 foot or longer box-type trailers in the State of California. Customer shall comply with all HDV Regulations when conducting operations in the State of California, including, without limitation, any applicable reporting requirements under the HDV Regulations. Customer may make modifications to the Equipment to the extent necessary to comply with the HDV Regulations; provided, that (i) Customer shall provide advance written notice of any such modifications to Mckinney; (ii) Customer shall be solely responsible for any costs associated with such modifications; (iii) Customer shall effect such modifications in accordance with recommendations and standards provided by all applicable manufacturers; and (iv) unless otherwise agreed, Customer will be responsible for removing any additional equipment or other modifications prior to returning the Equipment to Mckinney. Customer shall not permit Equipment that does not comply with the HDV Regulations to be operated in the State of California.

**THE LESSEE OF A BOX-TYPE TRAILER UNDERSTANDS THAT WHEN USING A HEAVY-DUTY TRACTOR TO PULL A FIFTY-THREE (53) FOOT OR LONGER 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.**

(b) **TRU Regulations.** Section 2477 of Title 13 of the California Code of Regulations (as amended, the “**TRU Regulations**”) governs the operation of refrigerated units of Equipment in the State of California. Customer shall be solely responsible for complying with the TRU Regulations, including, without limitation, (i) complying with any registration or reporting requirements; and (ii) making any modifications to the Equipment required under the TRU Regulations. Customer is authorized to install any equipment or make modifications to the Equipment necessary to comply with TRU Regulations, provided that Customer obtains Mckinney’s prior written consent thereto. Customer shall not permit refrigerated Equipment that does not comply with the TRU Regulations to be operated in the State of California, and Customer shall remove any additional equipment installed to comply with TRU Regulations and repairing any associated damage prior to returning the Equipment to Mckinney.

**12. Disclaimer of Warranties; Limitation of Liability.** CUSTOMER AGREES THAT THE MONITORING SERVICES ARE LICENSED AND EQUIPMENT IS LEASED FROM MCKINNEY ON AN “AS IS” BASIS AND THAT THE SAME ARE SUITABLE FOR CUSTOMER’S PURPOSES, AND THAT EXCEPT AS MAY OTHERWISE BE SPECIFICALLY PROVIDED HEREIN OR IN THE LEASE, MCKINNEY HAS MADE NO REPRESENTATION OR WARRANTY AS TO ANY MATTER WHATSOEVER. MCKINNEY DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ALL WARRANTIES WITH RESPECT TO THE MONITORING SERVICES AND EQUIPMENT INCLUDING, WITHOUT LIMITATION, ALL EXPRESSED OR IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, QUALITY, CAPACITY, OR WORKMANSHIP, ALL EXPRESSED OR IMPLIED WARRANTIES AGAINST PATENT INFRINGEMENTS OR DEFECTS, WHETHER HIDDEN OR APPARENT, AND ALL EXPRESSED OR IMPLIED WARRANTIES WITH RESPECT TO COMPLIANCE OF THE MONITORING SERVICES OR EQUIPMENT WITH APPLICABLE LAW, SPECIFICATION, OR CONTRACT RELATIVE THERETO. MCKINNEY SHALL NOT BE LIABLE (INCLUDING, WITHOUT LIMITATION, UNDER ANY THEORY IN TORTS) FOR ANY LOSS OF USE, REVENUE, ANTICIPATED PROFITS OR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE LEASE OR THE USE, PERFORMANCE, OR MAINTENANCE OF THE EQUIPMENT OR MONITORING SERVICES, EVEN IF MCKINNEY HAD KNOWLEDGE THEREOF. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER WAIVES ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE (INCLUDING, WITHOUT LIMITATION, CUSTOMER’S RIGHTS, CLAIMS, AND DEFENSES UNDER ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE, SECTIONS 401, 402, 508-522) AND ANY RIGHTS NOW OR HEREAFTER CONFERRED BY STATUTE OR OTHERWISE THAT MAY LIMIT OR MODIFY MCKINNEY’S RIGHTS AS DESCRIBED IN THE LEASE. IN NO EVENT WILL MCKINNEY’S TOTAL LIABILITY TO CUSTOMER EXCEED THREE (3) MONTHS OF USE CHARGES PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**13. Assignment.** Customer shall not assign any Lease or sublet, rent or otherwise hire out or part with possession of Equipment without Mckinney’s prior written consent. Mckinney shall have the right, without notice to Customer, to assign any Lease and/or payments due thereunder.

**14. Relationship of Parties.** No terms or conditions of a Lease, or any act or omission of the parties shall be construed for any purpose to express or imply a joint venture, partnership, principal/agent, fiduciary, or employer/employee relationship between the parties.

**15. Entire Agreement.** Each Lease sets forth the entire understanding of the parties with respect to the subject matter thereof. No agreement, representation or understanding not specifically contained in a Lease shall be binding unless it is in writing and signed by Mckinney.

**16. Governing Law and Venue.** Each Lease and its interpretation and enforcement are governed by the laws of the State of California. Venue for any dispute arising out of or in connection with a Lease will be in Los Angeles County, California. Each Party waives any objections it may now or hereafter have regarding such venue.

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

**18. Severability.** If for any reason any provision of any Lease is determined by a tribunal of competent jurisdiction to be legally invalid or unenforceable, the validity of the remainder of the Lease will not be affected and such provision will be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision will then be enforceable and enforced.

**19. Time Is of the Essence; Survival.** Time is of the essence with respect to each Lease. Mckinney's failure to exercise any right or remedy or to insist on Customer's punctual performance or payment shall not constitute a waiver. The representations, warranties, obligations, and indemnities of Customer under each Lease and hereunder will survive the termination or cancellation of the Lease to the extent required for their full observance and performance.

**20. Reports.** During the Term of each Lease, unless Customer is a publicly-traded company, Customer shall supply Mckinney with quarterly interim financial statements and yearly audited or reviewed financial statements. Mckinney shall keep all such financial statements strictly confidential.