

INDEPENDENT CONTRACTOR AND EQUIPMENT LEASE AGREEMENT
between
TMX Intermodal VA Inc.,
and

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Parties

THIS INDEPENDENT CONTRACTOR AND EQUIPMENT LEASE AGREEMENT (hereinafter called "Agreement") is made and entered into this _____ by and between **TMX Intermodal VA Inc.,** (hereinafter called "TMX" or "Company") and _____ (hereinafter called "Independent Contractor"). TMX and Independent Contractor are collectively referred to as Parties.

Recitals

WHEREAS, Independent Contractor provides services as an operator of commercial motor vehicles and maintains special training, licensing, and qualified contacts and knowhow necessary to provide those services.

WHEREAS, Independent Contractor is a company that owns and operates the commercial motor vehicles identified in Appendix A (hereinafter "Leased Equipment").

WHEREAS, Independent Contractor and all those who provide services on its behalf are members in good standing of the DCN Cooperative, a third-party drivers' cooperative and administrator providing services to and for the benefit of Independent Contractor (hereinafter called "DCN"), and is subject to a valid Vendor Services Agreement between itself and DCN, a list of proposed Independent Contractor authorized personnel is identified in Appendix B (hereinafter proposed operators)

WHEREAS, Company has relationships with customers that require movement of goods and property.

WHEREAS, Company provides services to its customers that consist of providing logistical solutions associated with transporting customer goods and property; the services of Company include, but are not limited to coordinating the logistics of transporting goods and property, load tracking services as required by customers, dispatching, and maintaining authorities and insurance necessary to provide the services.

WHEREAS, the Parties desire and intend to form an arms-length independent contractor relationship wherein Independent Contractor will supply the Leased Equipment and labor necessary for its operation to cause the Leased Equipment to deliver goods to TMX's customers at a pre-specified time and place ("Contracted Services") in exchange for compensation agreed upon by the Parties in advance and considered appendices to this Agreement, in compliance with United States Department of Transportation ("US DOT"), Federal Motor Carrier Safety Administration ("FMCSA"), Federal Motor Carriers Safety Regulations ("FMCSRs"), and applicable state law regulations.

NOW THEREFORE, in consideration of the Recitals above, which are a material part of this Agreement, and the mutual obligations, covenants, and stipulations contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound thereby, the Parties agree as follows:

Terms & Renewals

_____ (initial)

This Agreement supersedes, and takes the place of, any previous transportation service agreement, lease agreement, independent contractor agreement, or similar agreement, between the Parties. The validity of this Agreement shall extend for a period of twelve (12) months from the date stated above and will renew automatically for another twelve (12) month period, unless terminated by either party on 30 (thirty) days prior written notice to the other. The parties may expressly extend this agreement further upon written agreement. Nothing herein shall be read to imply that the working relationship between the Parties is permanent in any manner.

Independent Contractor understands that the FMCSRs require that TMX shall have exclusive possession, control and use of the said equipment when operated in its service and under lease and that any violation of the terms of this Agreement shall be grounds for cancellation of this Agreement. Independent Contractor, as an independent contractor, has and shall at all times, retain the management of the Leased Equipment under this Agreement and shall have the exclusive right to control, use and direct the methods and means in performing the Contracted Services. Notwithstanding the foregoing, the Parties expressly acknowledge that this Agreement is not intended to be exclusive or restrict Independent Contractor's ability or right to enter into other agreements with other parties regarding the Leased Equipment during any period of validity, except as required pursuant to 49 CFR § 376.12(c) when the Leased Equipment is being actively used for the purpose of providing Contracted Services under TMX's motor carrier authority. The circumstances wherein this Agreement is in effect are only those periods of time during which Independent Contractor is performing Contracted Services, as reflected in the addenda hereto, under TMX's motor carrier authority. Nothing herein shall prohibit Independent Contractor from acquiring other equipment or entering into relationships with other parties, provided Independent Contractor complies with applicable US DOT and FMCSA requirements and regulations and meets insurance standards. TMX shall not inhibit in any manner Independent Contractor's opportunity for profit in the operation of Independent Contractor's business. Independent Contractor is not restricted from owning, pursuing, or engaging in active business interests in other business entities or providing service to other entities.

Relationship of Parties

By this Agreement, the Parties intend to create an arm's-length business relationship which is one of company and independent contractor. Independent Contractor and those performing Contracted Services on its behalf have unique skills, certifications, and contacts to perform the Contracted Services it may from time to time provide to TMX during the Term of this Agreement. The Parties agree and acknowledge that the relationship of TMX and Independent Contractor hereunder is that of company and independent contractor and that all Contracted Services provided by Independent Contractor to TMX hereunder shall be provided in such capacity. Neither Independent Contractor nor its owners, agents, servants, or employees, contractors, or subcontractors (hereinafter "Independent Contractor Personnel") are to be considered employees of TMX at any time, under any circumstances, or for any purpose. Neither Party hereto is the agent of the other and neither party shall have the right to bind the other by contract or otherwise except as specifically provided herein.

The Parties expressly acknowledge that the Contracted Services are for the provision of the Leased Equipment and that the only intended parties and beneficiaries to this Agreement are TMX and

_____ (initial)

Independent Contractor. The Parties further expressly acknowledge this Agreement does not include, provide rights to, or impose obligations upon any specific Independent Contractor Personnel. No Independent Contractor Personnel shall be deemed a third-party beneficiary to this Agreement or bound by it in any way.

As more fully described herein, Independent Contractor and TMX acknowledge and agree that TMX shall have no right to direct or control the manner, means, details, or methods by which Independent Contractor provides its services hereunder. Except as required pursuant to 49 CFR § 376.12(c), Independent Contractor shall be solely responsible for the day-to-day direction, supervision, and control over the Leased Equipment and the manner in which the Leased Equipment is operated, used, repaired, maintained, or managed. Independent Contractor shall be solely responsible for the day-to-day direction, supervision, and control over Independent Contractor Personnel it may provide to operate, use, repair, or maintain the Leased Equipment. TMX may take all actions deemed reasonably necessary to ensure Independent Contractor is fulfilling its obligations under this Agreement, but Independent Contractor shall have exclusive authority over the day-to-day conduct of Independent Contractor Personnel.

With respect to Independent Contractor Personnel who Independent Contractor may authorize to operate the Leased Equipment, Independent Contractor agrees:

- (a) to ensure that Independent Contractor Personnel are qualified and conform with the requirements of Parts 382, 383 and 391 of the Federal Motor Carrier Safety Regulations;
- (b) with respect to Independent Contractor Personnel, to comply in all material respects with (i) all applicable worker's compensation laws, (ii) applicable benefit continuation coverage requirements of the Consolidated Budget Reconciliation Act of 1986, as amended, and (iii) the Fair Labor Standards Act;
- (c) to be responsible for payment of all compensation and reimbursements due to Independent Contractor Personnel that Independent Contractor assigns to participate in any respect in the performance of the Contracted Services;
- (d) to implement and enforce, on its own behalf or through agents, a controlled substances and alcohol use and testing program, to include a pre-employment test for controlled substances and other testing as required by 49 C.F.R. Parts 40 and 382 and to maintain and make available records and provide notifications to TMX regarding the compliance status of Independent Contractor Personnel assigned by Independent Contractor to provide in any part the Contracted Services;
- (e) to direct and control Independent Contractor Personnel in qualification, hiring, termination, and discipline and shall establish wages, salaries, bonuses, and advancement for Independent Contractor Personnel; and
- (f) in the qualification and hiring process, to abide by all federal, state, and local labor laws, acts, and regulations.

Independent Contractor is not required to purchase or rent any products, equipment or services from TMX as a condition of entering into this Agreement.

_____ (initial)

The Parties further intend that the relationship created by this Agreement shall comply in all respects with the US DOT regulations, specifically including those governing the Lease and Interchange of Vehicles, as set forth in 49 C.F.R. § 376, et seq.

Independent Contractor's Warranty and Representation.

Independent Contractor warrants and represents that it (a) is the solely responsible party for the Leased Equipment; (b) has full rights of control over the Leased Equipment; and (c) is either the owner or a controller of every unit of Leased Equipment, and shall provide proof of the same to TMX. Nothing herein shall prohibit Independent Contractor from obtaining financing or any other arrangements to own, acquire, control or operate its Leased Equipment or other equipment.

Independent Contractor warrants that every unit of Leased Equipment shall be in safe mechanical and operating condition, free of defects, latent or otherwise, properly licensed and registered, and in full compliance with the FMCSRs and all other applicable laws, regulations, and ordinances implemented by federal, state, or municipal authorities having jurisdiction. Independent Contractor's warranty shall extend from the date of this Agreement and for all times this Agreement remains in effect.

As part of Independent Contractor's representation and warranty to ensure the Leased Equipment complies with the FMCSRs and all other applicable laws, regulations, and ordinances, Independent Contractor further warrants and represents that it will cause any Independent Contractor Personnel authorized to operate the Leased Equipment to inspect the Leased Equipment and all equipment necessary for the lawful and safe use of Leased Equipment before commencement of the Contracted Services to ensure the Leased Equipment is suitable and compliant in all respects. Independent Contractor further warrants and represents that it will cause Independent Contractor Personnel to immediately report and take corrective action to address all exceptions. Independent Contractor agrees to notify TMX of any exceptions before the Leased Equipment is used to perform any Contracted Services.

Independent Contractor warrants that it will cause all Independent Contractor Personnel to complete all markings and provide all documents in a form and on a timeline as required by TMX's customers to TMX for use by TMX's Trucking Management System that facilitates the delivery, monitoring, and billing of cargo and equipment during all phases of the Contracted Services.

Independent Contractor expressly warrants and represents that it will timely, fully, properly, and completely cause all its Independent Contractor Personnel who perform any aspect of the Contracted Services to be compensated in compliance with all state and federal law and any agreement Independent Contractor may have with its Independent Contractor Personnel. Independent Contractor expressly acknowledges that it has exclusive obligation to withhold all federal and state taxes and ensure all its Independent Contractor Personnel are properly compensated for the Contracted Services that Independent Contractor agrees to perform for TMX. Accordingly, Independent Contractor expressly warrants and agrees that it will indemnify TMX from any claims brought arising from working conditions, compensation, and any other insurance or legal requirement arising from the Contracted Services.

Independent Contractor warrants and represents it will promptly, fully, and completely pay all fuel, tolls, fees for roads and bridges, and taxes incurred while performing Contracted Services and that _____ (initial)

it considered these overhead expenses when accepting to perform the Contracted Services. Accordingly, Independent Contractor expressly agrees to hold TMX harmless from any claims for damages or missed tolls, taxes, and fees imposed in connection with the Contracted Services.

Independent Contractor warrants that it has all DOT certifications and adequate insurance coverage and required certificates to perform the Contracted Services.

If at any time, during the term of this Agreement, any unit of Leased Equipment or Independent Contractor Personnel designated or authorized to perform or fulfill any warranty, representation, or obligation imposed upon Independent Contractor under this Agreement shall cease to conform to the foregoing warranties and representations, Independent Contractor warrants, represents, and promises that it shall immediately notify TMX of such occurrence and shall immediately withdraw such unit of Leased Equipment or Independent Contractor Personnel from performing Contracted Services until such time as the deficiencies have been corrected.

Insurance and Bonds

The Parties agree as follows regarding the purchase and management of insurance:

- (a) Liability Insurance: TMX agrees to procure and maintain in full force and effect and at no expense to Independent Contractor public liability insurance for bodily injury and property damage as required by the FMCSRs.
- (b) Cargo Insurance: TMX agrees to provide cargo insurance covering the operation of the Leased Equipment when being used to perform the Contracted Services and covering cargo loss or damage resulting from any incident resulting in cargo damage. Such cargo insurance shall provide, at a minimum, coverage in the amount that is customary and adequate in this business for loss of or damage to property carried on any one unit of Leased Equipment and in the amount that is customary and adequate in this business for aggregate loss of or damage to property occurring in any one incident, subject to the Carmack Amendment and applicable FMCSA requirements. TMX may consult with Independent Contractor on resolving or settling any insurance claims and settlements.

Unless mandated by law, the specific limits of coverage and the placement of the Liability and Cargo insurance shall be left to the sole discretion of TMX, and TMX shall be named as the sole insured(s) and TMX's customers shall be named as a loss payee.

Equipment & Services Furnished

Independent Contractor hereby rents, leases, and delivers to TMX the Leased Equipment for use in the conduct of TMX's business and separately agrees to furnish all labor and other services for the safe and proper operation of the Leased Equipment, subject to the provisions in this Agreement.

Notwithstanding Independent Contractor's sole responsibility to furnish a qualified and authorized Independent Contractor Personnel to operate the Leased Equipment, TMX may, at its discretion, exclude a specific Independent Contractor Personnel from performing any aspect of the Contracted Services. In the event of such an exclusion, Independent Contractor may furnish alternative qualified and authorized Independent Contractor Personnel to operate the Leased Equipment to perform Contracted Services.

_____ (initial)

Except as otherwise provided herein and as required by the FMCSRs, TMX does not assume any expense of operating the Leased Equipment. All expenses, including but not limited to, repair and maintenance of the Lease Equipment; fuel, oil, tires, and other similar items; costs of securing labor to operate the Leased Equipment, including that associated with the retaining of drivers, helpers or other employees of Independent Contractor; all registration (base plate) fees, and any other taxes of any kind shall be solely the responsibility of the Independent Contractor.

Operation of the Leased Equipment and Personnel.

Except as required pursuant to 49 CFR § 376.12(c), Independent Contractor shall control and supervise the day-to-day control and operation of the Leased Equipment while performing Contracted Services within the origin and destination points and pickup and delivery times agreed to by TMX and Independent Contractor to conform with the requirements of TMX's customers. Specifically, Independent Contractor, directly or through its authorized Independent Contractor Personnel, shall determine:

- (a) selection of routes,
- (b) selection of rest stops,
- (c) selection of fuel and oil stops,
- (d) where the Leased Equipment is to be repaired,
- (e) how the Leased Equipment is to be financed,
- (f) working hours Independent Contractor Personnel shall observe, subject to FMCSA hours of service regulations,
- (g) other than public liability insurance mandated by FMCSA and cargo insurance, the types of insurance and limits of insurance coverage for Independent Contractor's business,
- (h) where the Leased Equipment is parked, while not in use,
- (i) clothing to be worn by Independent Contractor Personnel, and
- (j) benefits and compensation available to Independent Contractor Personnel.

Subleasing

During the term of this Agreement, Independent Contractor shall have the right to sublease the Leased Equipment to other carriers in accordance with applicable FMCSRs and subject to the terms of this Agreement. During the term of this Agreement, TMX shall have no right or authority to sublease the Leased Equipment or cause it to be operated by anyone other than Independent Contractor Personnel. Independent Contractor is the owner of the Leased Equipment.

Working Environment

TMX operates alcohol, tobacco, drug, weapons and harassment free work environment. Independent Contractor agrees that all Independent Contractor Personnel it provides will maintain TMX's work environment while performing Contracted Services on behalf of Independent

_____ (initial)

Contractor. Independent Contractor shall provide all Independent Contractor Personnel performing Contracted Services with TMX's policies and procedures for workplace conduct, training and behavior, and US DOT and FMCSA inspections and regulations. Independent Contractor acknowledges that violations of these policies or procedures may negatively impact TMX's business operations and provide a basis for TMX to exclude an Independent Driver Personnel from its premises or from performing Contracted Services.

Minimum Contracted Services.

The Parties understand and agree that Independent Contractor is not required to be available for service at the option of and upon the demand of TMX. Independent Contractor is free to accept or reject any proposed Contracted Services that may be offered from time to time by TMX for any reason prior to accepting the Contracted Services. Independent Contractor has the exclusive right to determine how frequently it will perform Contracted Services under this Agreement, subject to US DOT regulations. In turn, TMX does not guarantee Independent Contractor any minimum amount of work or Contracted Services offered. Independent Contractor understands that, in the event of Independent Contractor's failure to complete a Contracted Service, TMX may, to mitigate its damage, take any and all steps necessary to have the Contracted Service completed, including but not limited to engaging another entity to perform any portion of or complete the Contracted Service. In event of such mitigation, Independent Contractor agrees to assume any difference in cost of mitigation.

Equipment Identification

TMX will provide Independent Contractor with all identification required by all governmental bodies, which identification shall be affixed to each unit of Leased Equipment while such equipment is performing Contracted Services pursuant to this Agreement. Signs, placards, and other identifications are to be displayed only during times that the Leased Equipment is being used to perform Contracted Services under this Agreement. Independent Contractor must remove or conceal any signs, placards, and other identifications from view at all times that the Leased Equipment is being used to for a commercial reason other than in connection with the Contracted Services. Independent Contractor expressly agrees to indemnify TMX for and defend TMX from any claim or damages resulting, in whole in part, from Independent Contractor's failure to comply with this obligation.

Documentation

The Parties acknowledge that TMX is obligated by law to retain certain documentation for work performed on its behalf, regardless of whether the work is performed by TMX directly or through an independent contractor, in a form that is compliant with the FMCSA, 49 CFR § 376.11(d). The Parties further acknowledge that certain documentation may be helpful to the Parties in determining whether to continue this Agreement into the future. Accordingly, Independent Contractor agrees that, upon completion of and during its performance of any aspect of Contracted Services pursuant to this Agreement, it shall cause its Independent Contractor Personnel operating the Leased Equipment to provide to TMX all information available by electronic devices including but not limited to cell phone, tablets, and GPS, that will enable TMX to confirm proper delivery of cargo and movement of the Leased Equipment, including:

_____ (initial)

- (a) Operator's daily pre-trip and post-trip equipment inspection reports;
- (b) Operator's daily sheet identifying movement of cargo and equipment;
- (c) A delivery receipt or Bill of Lading or POD (Proof Of Delivery) properly dated and signed by the consignee or shipper or other authorized person and all supporting shipping documents; and
- (d) A trailer interchange receipt (TIR) or gate pass for all equipment moved in or out of a port facility or container yard.

Compensation

Payment for the performance of Contracted Services shall be made by TMX for the benefit of Independent Contractor and in a manner designated by Independent Contractor in an amount agreed upon by the Parties in advance of the commencement of the Contracted Services, as reflected in the addenda hereto, less reimbursements owed to TMX for monies advanced by TMX on behalf of Independent Contractor (hereinafter "Compensation"). Except as provided immediately below, TMX shall cause payment to be made within fifteen (15) days after the Contracted Services have been completed and Independent Contractor provides all documentation as required by this Agreement, whichever is later.

Upon termination of this Agreement by either Party, TMX may, at its sole discretion, defer any Compensation owed to Independent Contractor for a period of sixty (60) days from the date it would otherwise become due or from the date all provided equipment, latent charges for tolls, taxes, damages, and fees has been received by TMX, whichever is later. During this sixty (60) day period, Independent Contractor agrees that it shall not take any action, including but not limited to bringing any action in law or equity, against TMX by reason of any claims or disputes arising out of this Agreement, the performance of any Contracted Services, or Compensation due and owing.

Operating and Maintenance Expenses.

The amount of compensation paid by TMX in exchange for each Contracted Services will be agreed to in advance by TMX and Independent Contractor and considered an addendum attached to this Lease, whether in paper or electronic form. The Parties agree that the compensation agreed to will be a flat fee per Contracted Service. Independent Contractor has sole discretion whether to accept such fee but acknowledges that it is solely responsible for the entire costs of operating and maintaining the Leased Equipment, including the purchase of any necessary equipment or materials or retention of Independent Contractor Personnel to operate the Leased Equipment, to provide the Contracted Services except as otherwise provided herein. Whenever a shipper or receiver of property requests the Independent Contractor or Independent Contractor Personnel to assist in, or perform additional services, the shipper or receiver shall be solely responsible for this undertaking and compensation for the same, provided that Independent Contractor must comply with all provisions of Equipment Identification, above, and Authorized Transportation, below, including the removal of all signs, placards, and other identifications.

Notwithstanding the foregoing, Independent Contractor's obligations include, but are not limited to, the following expenses:

- (a) all wages and other payments due by reason of Independent Contractor's engagement of authorized Independent Contractor Personnel, including but not limited to drivers or other labor furnished to operate the Leased Equipment, and all costs of all required insurance not otherwise addressed herein and all taxes;
- (b) all expenses of maintaining the Leased Equipment in safe mechanical and operating condition and in full compliance with US DOT regulations and all other applicable laws, regulations or ordinances;
- (c) all expenses of fuel and lubrication and all expenses of maintenance and repair of the Leased Equipment not covered in subsection (b) above;
- (d) all fuel and highway use taxes, all highway, bridge, ferry and other tolls and all expenses of acquiring and maintaining current vehicle base plates and licenses on the Leased Equipment;
- (e) all fines for traffic violations and any other fees, penalties, fines or taxes that may be assessed against the Leased Equipment or the services provided by Independent Contractor hereunder, or against Independent Contractor or any of its Independent Contractor Personnel;
- (f) road use and fuel tax permits for each unit of Leased Equipment; and
- (g) all tolls incurred by connected and towed (chassis) by the Leased Equipment.

Independent Contractor warrants and represents that, prior to accepting a Contracted Service, which Independent Contractor has sole discretion to do, it has intelligently determined and calculated that the agreed upon flat rate is sufficient to cover the foregoing expenses and that accepting any instance of Contracted Services is in Independent Contractor's best interest. The Parties expressly agree that Independent Contractor's act of cashing a settlement payment shall constitute an acceptance of full payment details and adequacy of the agreed upon rate.

The Parties agree that Independent Contractor may implicitly or expressly request, and TMX may agree, that TMX outlay payment of some or all of the foregoing costs or expenses to facilitate Independent Contractor's performance of the Contracted Services. In the event of such outlay, TMX shall be entitled to reimbursement for such amounts, which may be in the form of reductions or deductions from any settlements owed or payable to Independent Contractor.

Notwithstanding the foregoing, TMX may compensate Independent Contractor for any detention period and/or accessorial services performed at a mutually agreed upon rate where such charges or services are chargeable to and collectible from shippers and/or consignees under applicable regulations and customs.

Equipment Inspection & Record Access

All electronic logging devices used in connection with the Contracted Services must be functioning according to the FMSCA and specifications of the supplier with all functions of tracking and logging available at all times for verification and inspection by US DOT.

To demonstrate Independent Contractor's compliance with its representations and warranties and further TMX's ability to fulfill obligations to governmental bodies and agencies, customers, and stakeholders, and to monitor and confirm the Leased Equipment operated under its motor carrier authority complies with all regulations:

- (a) Independent Contractor agrees to provide TMX with vehicle maintenance documents on each unit of Leased Equipment so that TMX may comply with FMCSRs. The reports shall specify all maintenance and repairs performed on each unit of Leased Equipment and shall be supported by maintenance reports. The reports shall be submitted by Independent Contractor on forms provided by TMX no later than the 10th day of each month during the Term of this Agreement for the preceding calendar month.
- (b) Independent Contractor agrees to permit TMX to inspect or to cause inspections of any unit of Leased Equipment at any time during the term of this Agreement. Such inspections shall be made by US DOT certified 3rd party, at TMX's expense. In the event unsafe conditions are identified during inspection or otherwise, TMX shall have the right to refuse any further services from Independent Contractor until such conditions are remedied.
- (c) Independent Contractor agrees to provide TMX with full, unimpeded access to all records related in any way to the Contracted Services.
- (d) All records will be maintained for as long as any audit investigation or claim is pending or being conducted.

Electronic Logging Device (ELD)

Independent Contractor will require all Independent Contractor Personnel operating a unit of Leased Equipment to perform Contracted Services to use an ELD, as mandated by US DOT, and to comply with the FMCSRs at all times while performing Contracted Services. The ELD must be compatible with TMX's operations and comply with the FMCSRs. Independent Contractor must maintain the equipment in good working order. So that TMX may remain in compliance with the FMCSRs, Independent Contractor agrees to provide TMX with full, unimpeded access to records and data generated by the ELD on the Leased Equipment for the periods the Leased Equipment is used to perform Contracted Services.

Authorized Transportation.

Except where Independent Contractor uses Leased Equipment for the benefit of a motor carrier other than TMX, all freight transported by Independent Contractor with the Leased Equipment shall be carried under freight bills, bills of lading, and any other required documentation made by or in the name of TMX or its customers. Whenever Independent Contractor uses the Leased Equipment for a purpose other than performing Contracted Services for TMX, the hours of service for Independent Contractor Personnel must be reported to TMX for compliance with FMCSA

_____ (initial)

hours of service regulations, and TMX signs and placards must be removed or covered with signs and placards of the other motor carrier. For insurance purposes, Independent Contractor shall not permit persons other than Independent Contractor Personnel to occupy the Leased Equipment in the course of performing Contracted Services in the absence of written agreement signed by the Parties.

Accident Reports and 3rd party Litigation. Cooperation.

Independent Contractor agrees that it will report or cause to be reported to TMX the occurrence of any accidents, injuries, property damage of any nature and cargo losses, damages or shortages experienced while using the Leased Equipment for any Contracted Services. Such reports must be made immediately by telephone and followed by a full written report regarding the occurrence in the form and manner required by applicable regulations as soon as practicable thereafter. Independent Contractor agrees to fully cooperate with TMX or anyone acting on its behalf in connection with the occurrence and to assist TMX in the defense of any claim or suit arising from such occurrence. Independent Contractor further agrees that in all cases where a controversy arises with a shipper or consignee, or other receiver of freight concerning the responsibility for or amount of freight loss or damage, Independent Contractor will accept any and all decisions and settlements made by TMX. TMX agrees to exercise due diligence in making such decisions and settlements. Independent Contractor further agrees that it will cooperate with any FMCSA audit and provide any documents required or requested during such an audit.

Other Terms

Indemnification & Hold Harmless.

Independent Contractor agrees that TMX shall not be held responsible for any damage to or loss or destruction of the Leased Equipment occasioned by any means whatsoever because only Independent Contractor Personnel who Independent Contractor authorizes, and controls may operate the Leased Equipment. The Parties expressly understand and agree that Independent Contractor specifically releases TMX from any liability for any such damage to or loss of destruction of the Leased Equipment, and Independent Contractor expressly agrees to hold TMX harmless from any claims by any other parties who may have or assert any interest, equitable or otherwise, in the Leased Equipment or use of any other services performed by Independent Contractor. Independent Contractor expressly agrees to indemnify and hold harmless TMX against any claims by Independent Contractor Personnel, including those authorized to operate or drive the Leased Equipment, for any claims related to labor and compensations disputes.

Independent Contractor agrees to pay for any damage to TMX's property caused by the tortious conduct of Independent Contractor or any of its Independent Contractor Personnel. Independent Contractor further agrees to indemnify and save harmless TMX against all claims for damages, including without limitation all judgments, costs, expenses, and attorney's fees, to persons or property caused by or associated with the use of the Leased Equipment or services provided in connection therewith or that otherwise may arise from the acts or omission of Independent Contractor or any of its Independent Contractor Personnel.

_____ (initial)

Independent Contractor agrees to defend, indemnify and hold harmless TMX from any and all losses, damages, claims, liabilities, obligations, and expenses (including costs of litigation and reasonable attorney's fees):

- (a) for worker's compensation benefits or awards due or claimed to be due to any Independent Contractor Personnel or the Independent Contractor Personnel's representative(s),
- (b) that arises from negligent qualification or negligent hiring of Independent Contractor Personnel, or
- (c) any breach by Independent Contractor of the terms, representations, warranties, covenants, or duties of Independent Contractor under this Agreement.

Independent Contractor acknowledges that any occupational injuries to Independent Contractor Personnel while performing Contracted Services shall be resolved through the applicable state's injury insurance regulation or occupational hazards insurance and shall be the sole remedy available to Independent Contractor and Independent Contractor Personnel.

Headings

The headings set forth herein have been inserted for convenience only and are not to be considered when construing the provisions of this Agreement.

Waiver

TMX's failure at any time to enforce any provision of this Agreement, or to exercise any option provided, or to require performance of any provision, shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement, nor to affect TMX's right thereafter to ensure each and every provision of this Agreement.

Severability

If any provision of this Agreement shall be deemed to be invalid, illegal, or unenforceable, it shall to the greatest extent possible be modified in such a manner as to be valid, legal, and enforceable while retaining the intent of the Parties. If such modification is not possible, such provision shall be severed from this Agreement and the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

Entire Agreement

It is understood and agreed between the parties hereto that this Agreement cancels and supersedes all pre-existing lease agreements between the Parties regarding the Leased Equipment. The Parties further understand and agree that this Agreement constitutes the entire agreement between them regarding the Leased Equipment, subject to addenda that may hereinafter be affixed in writing or electronically. The Parties agree that this Agreement may be modified by a writing executed by both Parties.

Access to Agreement

An original and two copies of this Agreement shall be signed by the Parties. One copy of this Agreement shall be placed on the Leased Equipment during the term of this Agreement and while _____ (initial)

the Leased Equipment is being used to perform Contracted Services unless a statement as provided for in Section 376.11(c)(2) is carried on the equipment instead. Independent Contractor shall keep the other copy of the Agreement.

Successors and assigns

TMX may assign this Agreement, without written confirmation from Independent Contractor to any corporation that controls TMX, is controlled by or under control of TMX, or to any corporation resulting from the merger of or consolidation with TMX or to any corporation or other company or entity that agrees to assume all of TMX's obligations of this Agreement.

No other assignment of this Agreement or transfer of the rights and duties of either Party hereto may be affected without the prior written consent of the parties.

Construction.

In the event of any ambiguity in any of the terms of this Agreement, including any exhibits, schedules, addenda, or attachments hereto, such ambiguity shall not be construed for or against any one Party on the basis that the Party did or did not author this document. Each Party acknowledges and agrees that they (a) have had an adequate opportunity to review the terms and conditions and to reflect upon and consider the terms and conditions of this agreement; (b) have had the opportunity to consult with legal counsel regarding all terms of this Agreement and have sought the assistance of counsel or made a deliberate decision not to seek the assistance of counsel; and (c) fully understand the terms of this Agreement and have voluntarily signed this Agreement.

Governing Law and Waiver of Jury Trial.

The laws of the state of **Virginia** shall apply to this Agreement, regardless where it was signed and without regard to conflicts of laws principles thereof, including its laws related to construction and interpretation, the rights and remedies of the Parties hereunder, and all claims, controversies, or disputes (whether arising in contract or tort) between the Parties. The Parties voluntarily agree to waive any right to a trial by jury in any suit filed hereunder.

IN WITNESS WHEREOF, **TMX Intermodal VA Inc.**, and _____ have caused this Agreement to be subscribed by their duly authorized representatives.

TMX Intermodal VA Inc.,

_____ EIN _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Address:
606 Chautauqua Ave
Portsmouth, VA 23707

Address: _____

_____ (initial)

RECEIPT OF LEASED EQUIPMENT

(Appendix A)

TMX hereby acknowledges the receipt from Independent Contractor of the following unit of lease equipment at the dates and times hereinafter identified in this addendum, as required in 49 CFR § 376.11(c).

All markings identified by legible contrast and clearly visible from no less than 50 feet by a number preceded by "USDOT."

YEAR	MAKE	MODEL	TYPE OF EQ.	VIN #	PLATE #	REC'D

TMX Intermodal VA Inc.,

By: _____
Name: _____
Title: _____

Address:
606 Chautauqua Ave
Portsmouth, VA 23707

By: _____
Name: _____
Title: _____

Address: _____

_____ (initial)

LIST OF PROPOSED OPERATING PERSONNEL

(Appendix B)

TMX hereby acknowledges the receipt from Independent Contractor of the following list of proposed operating personnel hereinafter identified in this addendum, as required in 49 CFR § of Parts 382, 383 and 391

DOB	Name	CDL #	Address	CDL TYPE	State	TWIC #	TWIC Date

TMX Intermodal VA Inc.,

By: _____
Name: _____
Title: _____

Address:
606 Chautauqua Ave
Portsmouth, VA 23707

By: _____
Name: _____
Title: _____

Address: _____

_____ (initial)