STANDARD TERMS AND CONDITIONS

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

1. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

(k) “Lease” means any and all written arrangements or agreements whereby Lessee leases or rents Equipment from XTRA Lease, including, without limitation, long-term Equipment Lease Agreements, National Account Agreements, Short-term Rental Agreements and Equipment Rental Agreements. All Leases are subject to and are deemed to incorporate the Standard Terms and Conditions, as amended from time to time.

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

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

(n) “Lessee’s Agent” means the driver or other representative who picks up, inspects, takes possession of, or returns a unit of Equipment on behalf of Lessee to an XTRA Lease location or to a designated cartage vendor, and/or who executes a Lease on behalf of Lessee.

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

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

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

(r) “Software” means (i) the software code that is embedded within the Trailer Tracking Unit, (ii) any other software provided to Lessee relating to the Trailer Tracking Unit directly or through Internet access, (iii) any user documentation provided to Lessee, and (iv) any subsequent versions or upgrades of software which XTRA Lease elects to provide to Lessee.

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

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

(u) “Use Charges” means the required payments to be made by Lessee to XTRA Lease for every day (including Saturdays, Sundays, and Holidays) Equipment is on lease or rent to Lessee whether or not such Equipment is in the use, possession, control or operation of Lessee, including, without limitation, the rental rate set forth in the Lease plus any and all other charges, fees and amounts required to be paid by Lessee pursuant to the Lease.

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

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

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

2. EQUIPMENT COVERED, TERM AND OWNERSHIP.

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

3. AUTHORITY & ACCEPTANCE.

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

4. DELIVERY, RECEIPT & DROPFF.

(a) As a condition precedent to Lessee’s pick-up or return of Equipment at any XTRA Lease location, Lessee’s Agent must (i) provide proof of identification to XTRA Lease in the form of a valid commercial driver’s license, and (ii) sign XTRA Lease’s Equipment Rental Agreement. Lessee acknowledges that Lessee’s Agent has been authorized to pick-up from, return Equipment to, and/or accept delivery of Equipment from, XTRA Lease, and that the signature of Lessee’s Agent on XTRA Lease’s Equipment Rental Agreement shall bind Lessee to the terms of such Equipment Rental Agreement and the Standard Terms and Conditions, as amended from time
to time.

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

Lessee shall return the Equipment to XTRA Lease in the same condition noted in the Equipment Rental Agreement, normal wear excepted.

(c) If Lessee has requested XTRA Lease to arrange for a unit of Equipment to be delivered to or picked up from a location designated by Lessee, as a condition precedent to such delivery or pick-up, Lessee’s Agent must sign XTRA Lease’s Equipment Rental Agreement and/or other documentation provided by the cartage vendor. In the event of delivery of a unit of Equipment to Lessee, XTRA Lease’s only liability for the Equipment at XTRA Lease’s branch will be to deliver the Equipment to Lessee. XTRA Lease’s responsibility will not be conclusive evidence of the condition of the Equipment at the time of commencement of the Lease, and in the event of pick-up of Equipment from Lessee, XTRA Lease’s inspection of the Equipment following delivery of the Equipment to XTRA Lease’s branch location shall be conclusive evidence of the condition of the Equipment upon its return.

(d) Lessee shall redeliver a unit of Equipment at Lessee’s expense to the Return Location specified in the unit’s Equipment Rental Agreement, unless otherwise provided in the Lease. If Lessee returns a unit of Equipment to a branch other than its designated Return Location, Lessee shall pay XTRA Lease’s then current additional fee as compensation for the costs associated with the failure to return the unit to its Return Location.

5. COMMUNICATION SERVICES. If a Trailer Tracking Unit is installed on a unit of Equipment rented or leased by Lessee from XTRA Lease, XTRA Lease hereby grants to Lessee a non-exclusive, non-transferable and limited sub-license to use the Software subject to the conditions and restrictions of the Lease and the Standard Terms and Conditions solely for the purpose of utilizing the Trailer Tracking Unit and related Communication Services to monitor Equipment leased from XTRA Lease. Lessee agrees to use the Software only in connection with Lessee’s use of the Communication Services, and shall not copy the Software or provide the Software or access to the Software to any third-party. Lessee agrees that it will not reverse engineer, decompile, or disassemble the Trailer Tracking Unit or Software. In addition, XTRA Lease grants to Lessee a non-exclusive, non-transferable, limited sub-license to access the Communication Services for use with the Trailer Tracking Unit in the United States, Mexico, and Canada. XTRA Lease reserves the right to terminate the Communication Services, and the sub-licenses granted pursuant to this Section 5, at any time on thirty (30) days advance notice to Lessee. Lessee acknowledges that disruption of Communication Services may occur from time to time for maintenance and other reasons beyond the control of XTRA Lease. Lessee hereby releases XTRA Lease and all of its licensors, and the underlying wireless services carrier from all liability relating to such disruption. If, and only if, Use Charges relating to the Communication Services are billed separately to Lessee as part of the total Use Charges for the Equipment, Lessee’s sole remedy for any disruption or failure will be for Lessee to notify XTRA Lease of the portion of the Use Charges paid by Lessee for Communication Services relating to the period of service during which such failure or disruption occurred, provided that such disruption or failure is not corrected by XTRA Lease within thirty (30) days after receiving written notice from Lessee of such failure or disruption.

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

7. PAYMENT.

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

(i) Rental Charges. Lessee shall pay XTRA Lease the rental charges for the rent or lease of a unit of Equipment, as specified in the Lease.

(ii) Mileage Charges. Lessee shall pay XTRA Lease mileage charges for actual miles traveled by a unit of Equipment as specified in the Lease. Miles traveled will be measured by a hubodometer attached to each unit of Equipment. A reading of the hubodometer will be taken by XTRA Lease at the time of a unit’s delivery or pick-up, and a similar reading will be taken by XTRA Lease upon return of the unit to XTRA Lease. In the event the hubodometer on a unit of Equipment is missing or fails to function properly, Lessee shall pay XTRA Lease a mileage charge based on the average miles traveled by similar units leased or rented by Lessee from XTRA Lease or the equipment type. Use Charges are based on a twenty (28) day billing period.

(b) Lessee shall pay Estimated Charges to XTRA Lease as specified in the Lease. XTRA Lease shall have the right to commence charging Estimated Charges under any Lease that does not specify an obligation of Lessee to pay Estimated Charges, or from time to time to increase Estimated Charges payable under a Lease, if XTRA Lease deems it necessary, in its sole discretion, in order to ensure full payment of all Use Charges. XTRA Lease shall provide Lessee with written notice of its intent to initiate or increase Estimated Charges, and Lessee shall pay Estimated Charges as specified in such notice, from the start of the billing period in which the notice was provided. Lessee shall pay XTRA Lease the amount of any shortfall, or XTRA Lease shall pay Lessee the amount of any overpayment, between the total Estimated Charges paid by Lessee and the amount of Use Charges determined upon return of the Equipment.

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

(d) Use Charges are based on a twenty-eight (28) day billing period unless otherwise specified. Unless otherwise stated in the Lease, in the event of return of the Equipment to XTRA Lease prior to the expiration of the billing period in effect at the time of return, Use Charges for the final partial billing period shall be adjusted to the appropriate weekly and daily rate, as applicable.

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

(f) Lessee shall make all payments in U.S. currency (i) to the lockbox address provided by XTRA Lease, (ii) to XTRA Lease’s designated payment account via electronic funds transfer, or (iii) via pre-authorized payment collected by XTRA Lease from Lessee’s designated account. Lessee shall not deliver any payments to any XTRA Lease location. Interest equal to the lesser of 18% per annum or the maximum rate permitted by law shall be added to all overdue invoices. If Lessee provides XTRA Lease with a check, or authorizes XTRA Lease to collect payments through a pre-authorized payment, electronic payment, or any other form of payment that is returned due to insufficient funds or declines, Lessee shall pay XTRA Lease a processing fee of $100.00 for each such occurrence.

8. MAINTENANCE AND USE OF EQUIPMENT.

(a) Lessee is responsible for determining whether the Equipment it rents or
leases from XTRA Lease is fit and sufficient for the designated purpose for which Lessee intends to utilize such Equipment.

(b) During the Lease, Lessee (i) is responsible for the condition, operation, occupation and maintenance of the Equipment, (ii) shall operate the Equipment in conformance with Applicable Law, (iii) shall maintain the Equipment, at Lessee’s own expense in accordance with Applicable Law and the Repair Standards, in good condition, free from defects and fit for its designated purpose, (iv) shall promptly notify XTRA Lease regarding any mechanical failure or problem, and (v) is responsible for all damage to the Equipment. Lessee shall return all Equipment to XTRA Lease in the same condition as when received, normal wear excepted.

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

(d) Lessee shall not remove, obscure or alter any identification marks on the Equipment. Prior to Lessee’s return of the Equipment to XTRA Lease, all identification marks or logos applied to the Equipment by or for Lessee shall be removed and the surface restored at Lessee’s expense. Subject only to the provisions of Section 17(c) of the Standard Terms and Conditions, Lessee shall not make any structural alterations to the Equipment.

(e) Unless the terms of the Lease state otherwise, and except as provided below, upon Lessee making the Equipment available at an XTRA Lease location at location at six (6) month intervals or twenty five thousand (25,000) miles, whichever comes first, Lessee agrees to conduct a periodic inspection of the Equipment in conformance with the requirements of 49 C.F.R. Part 396.17 and provide, at its expense, replacement tires, brakes, lights, lubricants and any other parts worn due to normal wear as needed; provided however, Lessee shall be responsible for all expenses relating to replacement tires, brakes, lights, lubricants and any other parts which are broken, inoperable or worn for reasons other than normal wear, including, without limitation, the costs of labor to install, replace or repair the failing part. The foregoing shall not apply, and XTRA Lease shall have no obligation to perform periodic inspections, provide any replacement parts, or otherwise perform preventative maintenance on any Equipment (i) rented or leased under a Lease pursuant to which Lessee is charged for Tire Wear and Brake Wear or Lessee has assumed responsibility for performing all periodic inspections and preventative maintenance, (ii) which Lessee has not made available at an XTRA Lease location, or (iii) which are designated as storage trailers. XTRA Lease shall have no obligation to reimburse Lessee for any periodic inspection, replacement parts, or maintenance services provided directly or indirectly by Lessee.

(f) Lessee shall return each unit of Equipment with tires of equal quality to the tires on the unit at the commencement of the Lease, as determined by XTRA Lease in its sole discretion. Lessee shall pay XTRA Lease the pro-rated value, on a replacement cost basis, of the lost remaining life, including a casing charge, for any tire returned in a damaged condition or replaced at a location other than an XTRA Lease location that is not returned to XTRA Lease. For purposes of the Standard Terms and Conditions, tire damage includes, but is not limited to, excessive wear, flat spotting, skid damage, abnormal wear due to equipment defect or improper maintenance or other damage that reduces the remaining useful life of the tire or its casing. A tire is excessively worn if its tread wear exceeds 1/32nds of an inch per ten thousand (10,000) miles traveled.

(g) If the Equipment provided to Lessee is designated as a storage trailer, it is intended for storage use only and shall not be used to transport cargo, merchandise or freight. If Lessee, following initial delivery, operates Equipment designated as a storage trailer over-the-road, then in addition to any other obligations pursuant to the Lease, Lessee shall pay XTRA Lease a mileage charge of $.10 per mile traveled.

9. DAMAGE AND REPAIRS TO EQUIPMENT.

(a) In the case of total loss of a unit of Equipment beyond economic repair for any reason, including theft, collision, confiscation, fire, destruction, natural disaster, or the like, Lessee shall be liable for all costs of repair or replacement, including all expenses therein incurred, and notwithstanding any amounts which may be paid or disputed by Lessee’s insurance company, Lessee is responsible for and shall promptly pay XTRA Lease the Casualty Loss Value of such unit of Equipment. XTRA Lease reserves the right to determine, in its sole discretion, whether a unit of Equipment has in fact suffered an event of total loss or damage beyond economic repair. Lessee’s request for a Casualty Loss Value quote shall not constitute notice that Lessee has suffered a total loss of a unit of Equipment.

(b) In case of partial loss or damage to any unit of Equipment regardless of where it may have occurred, Lessee shall make all repairs and/or replacements to the Equipment in accordance with the Repair Standards; provided, that Lessee shall be liable to XTRA Lease for repair all non-functioning or damaged Trailer Tracking Units. Lessee shall be liable to XTRA Lease for the total estimated or actual cost, as determined by XTRA Lease in its sole discretion, to repair any Equipment returned to XTRA Lease in a non-functioning or damaged condition or repaired in a manner that is not in compliance with the Repair Standards. XTRA Lease reserves the right to not repair any non-functioning or damaged Equipment, and Lessee shall remain responsible for XTRA Lease’s estimated cost of repairs, regardless of whether the damaged Equipment is actually repaired. Lessee shall not be entitled to any refund of any estimated cost of repair paid by Lessee should the actual cost of repair in fact be less.

(c) Lessee shall maintain and upon written request provide XTRA Lease with written descriptions of all maintenance work or repairs made to the Equipment. Lessee shall repair and service the Equipment in accordance with the Repair Standards, using first class materials and parts. In addition to any other applicable warranty, Lessee agrees that it will, at its own expense, rectify, repair and replace any and all known defects or other conditions to the Equipment arising from defective or improper materials or workmanship furnished by it or its subcontractors and for any repair not conforming to the Repair Standards.

10. LIMITED WARRANTIES, BY TAKING POSSESSION OF THE EQUIPMENT, LESSEE ACKNOWLEDGES RECEIPT OF THE EQUIPMENT IN GOOD REPAIR AND WORKING CONDITION, AND THAT THE EQUIPMENT IS FIT AND SUFFICIENT FOR LESSEE’S INTENDED USE. XTRA LEASE IS NOT A SUPPLIER OR MANUFACTURER (AS SUCH TERMS ARE DEFINED OR USED IN THE UNIFORM COMMERCIAL CODE). NO WARRANTY, EXPRESS OR IMPLIED, IS MADE BY XTRA LEASE OR ITS MANUFACTURERS OR MANUFACTURER’S REPRESENTATIVES FOR THE QUALITY OF DESIGN, MANUFACTURE, CONDITION OR WARRANTY OF ANY KIND (COLLECTIVELY “CLAIMS”), IN AN AMOUNT EXCESSIVE OF THE LOSS VALUE OF THE EQUIPMENT; PROVIDED, HOWEVER, THAT LEGAL OR OTHER PROFESSIONAL ADVICE OR SERVICES OR THE SOFTWARE, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR USE OF THE EQUIPMENT, SOFTWARE, COMMUNICATION SERVICES, OR XTRA WEB SITES. LESSEE WAIVES ANY AND ALL CLAIMS AGAINST XTRA LEASE FOR ANY AND ALL LOSS OR LIABILITY (INCLUDING CARGO LOSS RESULTING FROM ANY DEFECTS OR FAILURES OF DESIGN, MATERIALS, CONDITION OR FITNESS FOR ANY PARTICULAR USE OF THE EQUIPMENT, SOFTWARE, COMMUNICATION SERVICES, OR XTRA WEB SITES, EITHER LATENT OR PATENT. LESSEE WAIVES THE PROVISIONS OF ANY APPLICABLE LAW LIMITING OR PROHIBITING A GENERAL RELEASE WITH RESPECT TO ANY RELEASE OR WAIVER IN THE LEASE OR THE STANDARD TERMS AND CONDITIONS. XTRA LEASE AGREES TO EXTEND TO LESSEE ALL WARRANTIES, IF ANY, OFFERED BY THE MANUFACTURERS OF THE EQUIPMENT, TRAILER TRACKING UNIT, AND SOFTWARE AND BY THE WIRELESS SERVICE CARRIERS UNDERLYING THE COMMUNICATION SERVICES.

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

11. LESSEE’S INDEMNIFICATION OBLIGATIONS.

(A) LESSEE HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNIFIED PARTIES (AS DEFINED BELOW) FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, LIABILITIES, OBLIGATIONS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS’ FEES) (COLLECTIVELY “CLAIMS”), IN ANY WAY ARISING OUT OF OR INCIDENT TO THE LEASE, OR THE USE,
POSSESSION, MAINTENANCE, CONTROL OR CONDITION OF THE EQUIPMENT DURING THE LEASE, REGARDLESS OF WHETHER SUCH CLAIMS WERE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY OF THE INDEMNIFIED PARTIES, AND INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS ARISING FROM OR INCIDENT TO: (I) THE ACTS OR OMISSIONS OF LESSEE, LESSEE’S AGENTS OR LESSEE’S ASSIGNEES; (II) THE PERFORMANCE, BREACH, OR DEFAULT OF THIS LEASE BY LESSEE OR ANY PERSON IN CONNECTION WITH THE ANY OF THE TERMS OF THE LEASE BY XTRA LEASE; (III) DEATH OR INJURY TO ANY PERSON; (IV) DAMAGE TO ANY PROPERTY; (V) DAMAGE TO, OR ANY DAMAGE OR INJURY RESULTING FROM, ANY CARGO PLACED ON OR CONTAINED IN THE EQUIPMENT; (VI) THE VIOLATION OR ALLEGED VIOLATION OF ANY APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, ANY FAILURE OR ALLEGED FAILURE TO COMPLY WITH ANY REQUIREMENT OF THIS LEASE RELATING TO THE EQUIPMENT IN COMPLIANCE WITH APPLICABLE LAW; (VII) ANY TAXES AND ASSESSMENTS, INCLUDING WITHOUT LIMITATION ALL IMPORT AND CUSTOMS DUTIES AND ALL WITHHOLDING, PROPERTY, SALES AND/OR USE TAXES, AND ALL PENALTIES; (VIII) ANY FINES, TOLLS, USER FEES, TRAFFIC AND PARKING VIOLATIONS, TOWING AND STORAGE EXPENSES, AND ANY OTHER SIMILAR FINES, FEES OR CHARGES; (IX) THE USE OF THE SOFTWARE, COMMUNICATION SERVICES OR XTRA WEB SITES; AND (X) THE USE, FAILURE TO USE OR INABILITY TO USE THE TRAILER TRACKING UNIT.

(B) FOR PURPOSES OF THE STANDARD TERMS AND CONDITIONS, THE TERM “INDEMNIFIED PARTIES” SHALL REFER TO XTRA LEASE, ITS AFFILIATES AND ITS AND THEIR SUCCESSORS, ASSIGNS, EMPLOYEES, OFFICERS, DIRECTORS, LICENSORS AND AGENTS.

(C) LESSEE SHALL NOT SETTLE OR COMPROMISE ANY CLAIM AGAINST THE INDEMNIFIED PARTIES, INCLUDING, WITHOUT LIMITATION, ANY CLAIM FOR WHICH LESSEE HAS ASSUMED THE DEFENSE OF THE INDEMNIFIED PARTIES, WITHOUT THE PRIOR WRITTEN CONSENT OF XTRA LEASE. LESSEE SHALL REIMBURSE THE INDEMNIFIED PARTIES FOR ANY EXPENSE INCURRED, INCLUDING REASONABLE ATTORNEYS’ FEES, TO DEFEND ANY ACTION AGAINST THE INDEMNIFIED PARTIES RAISED TO THE STANDARD TERMS AND CONDITIONS. THE PROVISIONS OF THIS SECTION 11 SHALL SURVIVE THE TERMINATION OF THE LEASE.

12. LIMITATION OF LIABILITY. Under no circumstances shall XTRA Lease be liable for any incidental, indirect, special, consequential, exemplary or punitive damages of any kind arising from or in connection with the Lease, whether or not resulting from the negligence of XTRA Lease, and including, without limitation, any lost profits, business failure or interruption damages, or any damages associated with lost or damaged cargo. In no event shall XTRA Lease’s total liability to Lessee exceed the amount of rental charges paid by Lessee during the three (3) months preceding the event that gave rise to the claim or action.

13. INSURANCE & COLLISION DAMAGE WAIVER.

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

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

(ii) Comprehensive Automobile Liability coverage protecting XTRA Lease and against all loss and damage it may sustain or suffer because of death or injury to any person, or damage to the property of any person, as a result of the use, possession, maintenance or control of the Equipment during the Lease. Coverage must be primary and non-contributory and include minimum limits of $1 million general aggregate or $1 million each occurrence, and include contractual liability coverage and/or endorsement. XTRA Lease must be shown as an additional insured; and

(iii) Comprehensive General Liability coverage protecting XTRA Lease from and against all loss and damage it may sustain or suffer because of death or injury to any person, or damage to the property of any person, as a result of the use, possession, maintenance or control of the Equipment during the Lease. Coverage must be primary and non-contributory and include minimum limits of $1 million general aggregate or $1 million each occurrence and include contractual liability coverage and/or endorsement. XTRA Lease must be shown as an additional insured.

(b) Policies of insurance shall be valid and in force until the Equipment is returned to XTRA Lease. Lessee shall provide XTRA Lease with certificate(s) of insurance evidencing the required coverages prior to delivery or acceptance of any Equipment and thereafter promptly upon any amendment or renewal of the required coverage. Lessee shall provide XTRA Lease copies of Lessee’s insurance policies for the required coverage promptly upon XTRA Lease’s request. Lessee shall provide XTRA Lease with thirty (30) days prior written notice of cancellation or material change to Lessee’s insurance policies. All deductible limits and self-insured retentions must be acceptable to XTRA Lease. If requested by XTRA Lease, Lessee shall file a claim with its insurance carrier for any lost, stolen or damaged units of Equipment. Insolvency or failure by Lessee’s insurance carrier to provide coverage for any and all loss, claim, liability or damage arising out of the Lease shall not relieve Lessee of any of its obligations set forth in the Lease. Nothing contained in these insurance requirements is to be construed as limiting the extent of Lessee’s liability under the Lease.

(c) The insurance requirements of this Section 13 may be satisfied in whole or in part by a self-insurance program maintained by Lessee which is acceptable to XTRA Lease, provided however XTRA Lease shall be named as an additional loss payee and/or additional insured under such program, including umbrella policies, if any, which may be a part thereof. Lessee shall provide to XTRA Lease evidence of such self-insurance program upon XTRA Lease’s request together with a copy of Lessee’s most recent financial statements, which shall be satisfactory to XTRA Lease.

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

14. SECURITY DEPOSIT. As a condition precedent to XTRA Lease entering into the Lease, and as security for the full performance by Lessee of its obligations hereunder, a security deposit in an amount determined by XTRA Lease, may be required and, if required, shall be delivered to XTRA Lease by Lessee prior to Lessee taking possession of any Equipment. Such security deposit may be used to offset any amounts due and owing by Lessee to XTRA Lease pursuant to the Lease. The security deposit, or any balance thereof, if any, shall be returned to Lessee after all of the Equipment leased hereunder has been returned to XTRA Lease and after deduction of any amounts due and owing by Lessee to XTRA Lease, including, without limitation, all unpaid Use Charges and any repair or replacement expenses.

15. LETTER OF CREDIT. As a condition precedent to XTRA Lease entering into the Lease, and as security for the full performance by Lessee of its obligations hereunder, a letter of credit in an amount determined by XTRA Lease, may be required and, if required, shall be delivered to XTRA Lease by Lessee prior to Lessee taking possession of any Equipment. Such letter of credit is required to be irrevocable, to be acceptable to XTRA Lease in an irrevocable letter of credit for the benefit of XTRA Lease in an amount determined by XTRA Lease. The letter of credit shall be issued in the form approved by XTRA Lease. If required, Lessee agrees to maintain such letter of credit in place until all of the Equipment leased hereunder shall have been returned to XTRA Lease and Lessee shall have fully complied with all of its obligations hereunder, including, but not limited to, payment of all Use Charges, repair or replacement expenses and any other amount due and owing to XTRA Lease hereunder. In addition, Lessee shall extend the letter of credit or provide a substitute letter of credit acceptable to XTRA Lease at least thirty (30) days prior to the expiration date of the letter of credit, and failure to do so shall entitle XTRA Lease to immediately draw down the full amount available under the letter of credit.

16. ADEQUATE ASSURANCES. During the term of any Lease, XTRA Lease may require that Lessee enter into reasonable security arrangements
with XTRA Lease. Such security arrangements may include, but are not limited to, providing a security deposit, letter of credit, or the payment of Estimated Charges sufficient to protect XTRA Lease from all risk of loss.

17. LAWS, RULES AND REGULATIONS. (a) For each unit of Equipment, XTRA Lease will provide a motor vehicle registration and license plate for registration in a jurisdiction of XTRA Lease's choosing, together with any required renewals. Lessee shall be solely responsible for all other registrations, licenses, license plates, and operating permits that may be required for Lessee to use, possess, operate or control the Equipment during the Lease.

(b) Lessee shall be solely responsible for (i) complying with Applicable Law, including, without limitation, all federal and state anti-pollution and environmental, transportation compliance, safety, and inspection requirements; (ii) any modification required to be made to the Equipment to comply with Applicable Law; and (iii) any fines, tolls, user fees, traffic and parking violations, towing and storage expenses and other similar fines, fees or charges relating to the Equipment during the Lease. XTRA Lease shall charge Lessee, and Lessee agrees to pay XTRA Lease, for any fines, tolls, user fees, traffic or parking violations, towing and storage expenses and other fines, fees, penalties, or charges relating to the Equipment during the Lease, plus an administrative fee.

(c) Sections 95300-95311 of Title 17 of the California Code of Regulations governs the operation of 53-foot or longer box-type trailers in the State of California (the “HDV Regulations”). Lessee is solely responsible for complying with Applicable Law, including, without limitation, all federal and state anti-pollution and environmental, transportation compliance, safety, and inspection requirements; (i) any modification required to be made to the Equipment to comply with the HDV Regulations; (ii) complying with any reporting obligations under the HDV Regulations associated with the operation of the Equipment in the State of California; and (iii) verifying that any Equipment that Lessee has rented or leased from XTRA Lease complies with the HDV Regulations prior to the operation of that unit of Equipment in the State of California. Lessee shall not permit Equipment that does not comply with the HDV Regulations to be operated in the State of California.

Lessee shall have the right to make modifications to the Equipment to comply with the requirements of the HDV Regulations; provided, however, that (i) any modifications made to install aerodynamic devices on Equipment are made in accordance with the recommendations and standards set by the manufacturers, (ii) the Equipment is not used for any purpose that may be prohibited by XTRA Lease, Lessee shall be responsible for removing any modifications made by XTRA Lease to make the Equipment prior to Lessee's return of the Equipment to XTRA Lease.

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

(d) Section 2477 of Title 13 of the California Code of Regulations governs the operation of refrigerated units of Equipment in the State of California (the "TRU Regulations"). It is a violation of the TRU Regulations to operate any refrigerated unit of Equipment in the State of California that does not comply with the TRU Regulations, as they may be amended from time to time. Lessee shall not permit or be responsible for compliance with the TRU Regulations in conducting operations in the State of California, including, without limitation, (i) the cost of any modification required to be made to the Equipment to comply with the TRU Regulations; provided, that Lessee shall obtain XTRA Lease's approval prior to modifying any Equipment to comply with the TRU Regulations; (ii) complying with any reporting obligations under the TRU Regulations associated with the operation of refrigerated units of Equipment in the State of California; and (iii) verifying that any refrigerated unit of Equipment that Lessee has rented or leased from XTRA Lease complies with the TRU Regulations prior to the operation of that unit of Equipment in the State of California. Lessee shall not permit a refrigerated unit of Equipment that does not comply with the TRU Regulations to be operated in the State of California.

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

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

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

(b) Notwithstanding the parties' intention and express agreement that the Lease constitutes a valid lease of the Equipment, and solely to protect the rights of XTRA Lease in the Equipment in the event the Lease is determined by a court of competent jurisdiction to be a conditional sale of and/or financing arrangement as to the Equipment, Lessee hereby pledges, assigns and grants to XTRA Lease a continuing first priority security interest in and lien upon the Equipment and all proceeds (including proceeds of all insurance policies), which interest and lien shall be cross-collateralized with each and every separate item of Equipment subject to the Lease and related schedules, in order to secure the prompt payment and performance, and as when due, of all of Lessee's obligations, both now existing and hereinafter arising under this Lease. Lessee hereby agrees that XTRA Lease shall have all rights and remedies of a “secured party” under the Uniform Commercial Code and authorizes XTRA Lease to cause this Lease and/or any statements or other instruments in respect of this Lease showing the interest of XTRA Lease in the Equipment (including certificates of title or Uniform Commercial Code financing statements) to be filed or recorded, and grants XTRA Lease and its agents the right to execute Lessee's name thereon. Lessee also agrees to execute or cause the execution of such additional documents and do such other acts and things, including execution of applications and certificates of title naming XTRA Lease as a secured party and delivery of same to XTRA Lease, as XTRA Lease from time to time requests or deems necessary to establish and maintain a valid and perfected security interest in and lien upon the Equipment. To further secure payment to XTRA Lease of the obligations owed by Lessee, Lessee agrees that the Equipment subject to the Lease shall be cross-collateralized with the Equipment subject to any other Lease in which Lessee is a lessee.

21. DEFAULT. (a) Lessee SHALL BE IN DEFAULT of the Lease: (i) if Lessee fails to comply with or is in breach of any of the terms or conditions of the Lease, including, without limitation, the payment of the Equipment or the Lease, or is in breach of the performance, as and when due, of any of the terms or conditions of the Lease; (ii) if Lessee fails to pay any amounts required to be paid or perform or cause to be performed all amounts required to be paid or perform or cause to be performed all obligations required to be performed by Lessee under the Lease and charge therefor, including, without limitation, any additional rent the amount paid or the reasonable value of the services performed therefore together with interest thereon at the rate described in Section 7 hereof; (ii) declare the entire balance of the remaining payments under the Lease immediately due and payable by acceleration and
recovery such amount as liquidated damages, the reasonableness of such damages being acknowledged and agreed to by Lessee; (iii) take immediate possession of all outstanding Equipment; (iv) immediately terminate Lessee’s access to the Communication Services; (v) terminate the Lease (whereupon the terms and conditions shall continue to apply to the Equipment then in the possession or control of Lessee until its return); (vi) calculate and require Lessee to pay any collection costs incurred in recovery of any sums due or repossession of any Equipment including, without limitation, reasonable attorneys’ fees; (vii) calculate and recover from Lessee any costs to transport and store the Equipment throughout the remainder of the Lease Term; and (ix) set-off and apply any amounts owing by XTRA Lease to or for the account of Lessee against any amounts owing by Lessee to or for the account of XTRA Lease, including, without limitation, any deposits, accruals, prepayments, overpayments, Estimated Charges, fees or otherwise. Lessee acknowledges and agrees that XTRA Lease is under no duty to mitigate damages resulting from Lessee’s Default.

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

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

23. INTELLECTUAL PROPERTY.
XTRA Lease and/or its licensors reserve ownership of all Intellectual Property in and to the Equipment, Trailer Tracking Unit, Software, Communication Services and the XTRA Web Sites, including, without limitation patent rights, copyrights, trade secrets, design codes, trade names and service marks, and other similar rights throughout the world, however denominated and any amendments, additions or improvements made thereto.

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

(b) Lessee agrees that in the event Lessee uses any web site of XTRA Lease, including, without limitation, xtralease.com, xtrapressway.com and /xtra.com (collectively, “XTRA Web Sites”), as a condition of such use, Lessee stipulates that while on XTRA Web Sites and where applicable terms and conditions on XTRA Web Sites so indicate, when Lessee clicks a button labeled “I Agree” or “I Accept”, or when Lessee types “I Agree” or “I Accept” in a space marked for such an input by Lessee, Lessee will be manifesting and authenticating Lessee’s assent to a binding contractual agreement incorporating the terms and provisions for which the button or input area is provided.

(c) In any dispute hereunder, related to the Lease, or related to Lessee’s use of XTRA Web Sites, Lessee stipulates that it will have the burden of proving that (i) any electronic manifestation of assent received by XTRA Lease is not attributable to Lessee; and (ii) Lessee did not have an opportunity to review any electronic terms and conditions posted on the XTRA Web Sites.

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

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

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

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

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

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

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

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