

TRAILER LEASE AGREEMENT

THIS TRAILER LEASE AGREEMENT (“Agreement”) is made as of this ___ day of _____, 20___ by and between _____ (“Lessee”), and Denver Intermodal Express, Inc. (“Lessor”).

WHEREAS, Lessee desires to lease certain trailer equipment owned by Lessor (“Equipment”); and

WHEREAS, the Equipment shall be leased upon the terms and conditions herein.

NOW THEREFORE, in consideration of these promises and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Equipment Leased.** Lessor agrees to provide Equipment, as set forth in **Exhibit A** attached hereto.

2. **Representation and Warranty by Lessee.** Lessee hereby warrants that Lessee is qualified and experienced to operate and use Equipment and has the proper licenses to operate such Equipment. Lessor is relying on this representation and warranty in leasing the Equipment.

3. **Term of Lease.** The term of the lease shall be for a period of **X days**, commencing on pick-up of equipment on [date] and terminating at 5 p.m. on [date]. If the equipment is not returned on or before [date], Lessee agrees to pay the following late fee for each day the Equipment is not returned: \$xxxx.00 per day.

4. **Leasing Charges.** Lessee agrees to pay the leasing charges identified in **Exhibit B** upon the commencement of the lease term and before utilizing Equipment. If the lease term is greater than thirty (30) days, Lessor will issue a monthly invoice and such invoice shall be paid within 30 days. Any payment not received within 30 days from the date of the invoice shall be subject to a late charge of 1.5% per month of the amount past due.

5. **Security Deposit.** Lessee shall remit the amount of \$xxxx.00 as a security deposit prior to taking possession of Equipment. Upon return of Equipment, the security deposit shall be refunded less any deductions for repair or amounts due.

6. **Insurance.** Lessee hereby warrants that Lessee possesses comprehensive automobile liability insuring against liability for bodily injury and property damage with minimum limits of \$1,000,000 single limit per occurrence and \$250,000 for property damage per occurrence, naming Denver Intermodal Express, Inc. as an additional insured. Lessee shall provide the certificate of insurance to Lessor within seven (3) days of execution of this Agreement.

7. **Delivery of Possession; Outbound Inspection.** Prior to taking possession of Equipment, Lessor and Lessee shall inspect Equipment and fill out an Outbound Inspection form. By taking possession of the Equipment, Lessee acknowledges and agrees that such Equipment is in the condition report in the Outbound Inspection form. If no Outbound Inspection form is prepared, Equipment shall be deemed to have been received in good and acceptable working order and free from all defects and damage. Lessee acknowledges that delays in delivery of Equipment may be beyond control of Lessor and waives any claims against Lessor for delays in delivery of Equipment.

8. **Maintenance, Repair, and Use of Equipment.** After taking possession of the Equipment, Lessee shall maintain the Equipment in good operating order and in the same condition and appearance as noted on the Outbound Inspection form. Lessee shall be solely responsible for all maintenance, and when

necessary, replacement of all parts, accessories, and tires. Lessee shall timely notify Lessor of any potential warranty issues with the Equipment. Lessor shall be responsible for all preventive and regular maintenance prior to delivery of the Equipment. Lessee shall notify Lessor of any mechanical failures or problems with the Equipment. Lessee shall conduct regular safety inspections of Equipment and ensure that Equipment receives regular maintenance.

9. **Markings/Alterations.** Lessee shall not remove or damage any marks of identification on the Equipment.

10. **Indemnity.** Lessee shall defend, indemnify and hold Lessor harmless from any and all claims from a third party relating to Lessee's use of Equipment.

11. **Toll Charges; Tickets; Etc.** Lessee shall be responsible for all traffic or parking fees, tickets or citations relating to Lessee's use of the Equipment.

12. **Use and Operation.** Lessee agrees to abide by all laws and regulations while using Equipment. Lessee shall be responsible any costs for any violation of any laws or regulations while using Equipment. Lessee agrees not to allow any person or entity to operate Equipment other than those employees of Lessee. Lessee shall not use Equipment for the transportation or storage of radioactive materials, waste or materials, medical waste, corrosive substances, explosives, gases, or bulk liquids. Lessee shall be responsible for any damage or loss of value to Equipment as a result of Lessee's violation of this provision.

13. **Damage to Equipment.** Lessee shall be responsible for all damage to the Equipment other than normal wear.

14. **Default; Remedies**

(a) **Events of Default.** Lessee shall be in "Default" hereunder if: (i) Lessee fails to pay within 30 days of when due any amount due hereunder; (ii) Lessee or any guarantor of Lessee (A) becomes insolvent, (B) voluntarily files, or has filed against it involuntarily, a petition for liquidation, reorganization, adjustment of debt, or similar relief under any present or future applicable law, (C) makes an assignment for the benefit of creditors, (D) appoints or submits to the appointment of a trustee, receiver, or liquidator with respect to any of its assets, (E) admits in writing its inability to pay its debts as they become due, or (F) ceases doing business as a going concern; (iii) any letter of credit, guaranty or other security given to secure the performance of a Lease shall expire, terminate or become worthless in the opinion of Lessor; (iv) Lessee makes or permits any unauthorized lien against, or assignment or transfer of, a Lease, any Equipment, or any interest therein; (v) Lessee fails to comply with its obligations under Sections 8, 9, 11, or 12; (vi) Lessee consolidates with or merges into another entity without Lessor's prior written consent; (vii) Lessee breaches any representation or warranty set forth herein; (viii) Lessee fails to return any Equipment at the end of the applicable Term; or (ix) Lessee fails to perform any of its other obligations under any Lease, and such failure continues for at least 30 days after Lessor has requested performance, correction, or remediation thereof.

(b) **Remedies.** In the event of a Default, Lessor may exercise any one or more of the following remedies (which remedies are cumulative and may be exercised simultaneously, in each case to the extent permitted by applicable law): (i) cancel or terminate any or all Leases between Lessee and Lessor; (ii) declare the entire balance of the remaining payments under any or all Leases immediately due and payable by acceleration and recover such amount as liquidated damages, the reasonableness of such damages being acknowledged and agreed to by Lessee; (iii) enter onto Lessee's premises and repossess the Equipment without incurring any liability or further obligation to Lessee and without

relieving Lessee from any of its obligations hereunder; (iv) 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; (v) calculate and recover from Lessee any costs to transport and store the Equipment throughout the remainder of the lease term; and (vi) exercise any other right or remedy that may be available under applicable law.

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

15. **Severability.** The terms and conditions of this Agreement shall be severable, and the illegality or unenforceability of any provision and/or term contained herein shall have no effect upon and shall not impair the enforceability of any other provision of this Agreement.

16. **DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY.** LESSEE AGREES THAT EQUIPMENT IS SUITABLE FOR LESSEE'S PURPOSES AND LESSOR HAS NOT MADE REPRESENTATIONS OR WARRANTIES REGARDING SUITABILITY FOR LESSEE'S USE OF EQUIPMENT. LESSEE SHALL NOT BE ENTITLED TO RECOVER FOR ANY LOSS OF USE, REVENUE, ANTICIPATED PROFITS OR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE LEASE OR USE OF EQUIPMENT FROM LESSOR. IN NO EVENT WILL LESSOR'S TOTAL LIABILITY TO LESSEE EXCEED THREE (3) MONTHS OF LEASING CHARGES PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

17. **Assignment.** Lessee shall not be permitted to assign this Agreement or sublet or rent any portion of the Equipment without the consent of Lessor.

18. **Counterparts and Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed effective as an original. For purposes of this Agreement, a signature transmitted via facsimile or electronic mail shall be deemed effective as an original.

19. **Modifications and Amendments.** This Agreement may not be modified or amended except by a writing, duly executed by the Parties or their authorized representatives or agents. This Agreement may not be modified or amended by the oral representation or statement of any Party.

20. **Headings.** The headings of paragraphs and subparagraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the terms or provisions of this Agreement.

21. **Entire Agreement.** This Agreement represents the entire agreement of the Parties, and supersedes all prior agreements or negotiations pertaining to the subject matter of this Agreement.

22. **Disputes.** Any claim or cause of action, whether legal or equitable, arising out of or based upon this Agreement or related documents shall be commenced in Colorado state court and Colorado law shall govern.

23. ***Attorneys' Fees and Costs of Collection.*** The Parties agrees that, in the event of any dispute arising out of or connected to the performance of this Agreement, the prevailing party in any such dispute shall be entitled to an award of its attorneys' fees and costs in any such dispute. If Lessor retains the services of attorneys to collect any amounts owed, Lessee shall be responsible for all attorney's fees and costs incurred collection.

IN WITNESS WHEREOF, the parties have caused this **TRAILER LEASE AGREEMENT** to be executed as of the date first set forth above.

[NAME]

By: _____

Name: _____

Title: _____

Denver Intermodal Express, Inc.

By: _____

Name: _____

Title: _____

SCHEDULE A
EQUIPMENT LEASED

EXHIBIT B
LEASING CHARGES