

## INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement is made between KLM Express, (hereinafter referred to as "Carrier") and \_\_\_\_\_, (hereinafter referred to as "Contractor").

WHEREAS, Carrier is for-hire motor carrier operating in interstate commerce and is subject to the rules and regulations of the Federal Motor Carrier Safety Administration under docket number MC-886925 DOT number \_\_\_\_\_, the U.S. Department of Transportation and other federal and state agencies; and

WHEREAS, Contract is a (check where applicable): (1) A Sole Proprietorship \_\_\_; (2) Limited Liability Corporation or Partnership \_\_\_; or (3) A Corporation \_\_\_ which owns or leases the equipment identified in Appendix A attached hereto; and

WHEREAS, the parties desire to enter an independent contractor relationship in accordance with applicable law;

NOW, THEREFORE, the parties agree as follows:

This Agreement shall govern the lease of equipment identified on Appendix A with driver by Contractor to Carrier for continuing performance of a series of separate transportation contracts, the payment for which shall be determined in accordance with the agreed compensation set for in Appendix B.

Accordingly, the parties agree as follows:

- A. Carrier shall exercise that level of dominion and control over the leased equipment required by Federal Motor Carrier Safety Regulations including the execution of an original and 2 copies of the Lease by the parties with a copy of notice of this Lease to be kept on the equipment during its term in accordance with § 376.11(a) and § 376.12 (1).
- B. Receipts specifying the identity of the equipment and stating the date and time possession is transferred shall be issued in the form set forth in Appendix C in the time and manner as required by §376.11 (b). - This is the correct appendix.
- C. During the period of the Lease, Carrier shall identify the equipment in the accordance with FMCSA requirements found at 49 C.F.R. § 390.21 and Contractor warrants that it will immediately execute a receipt for return of the equipment as provided for in Appendix C, and remove or submit for removal all identification that the equipment is operated subject to the safety duties and obligations of Carrier.

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- D. **Records of Equipment.** Carrier shall keep records covering each separate job or trip for which Contractor's services are retained in accordance with § 376.11 (d). Contractor warrants that it will instruct its driver to issue, obtain and carry while in transit bills of lading covering each trip which identify the lading and indicating the point of origin, the time and date of departure, the point of final destination, and confirm that the transportation is provided under the responsibility of Carrier.
- E. Contractor warrants that it is the title holder or has equitable ownership of the leased equipment in accordance with §376.12(a).
- F. The Lease shall commence with the time of the giving of the receipt for possession and shall continue from month to month until terminated by either party in accordance with the termination provisions herein.
- G. To fulfill the exclusive possession and responsibilities of the regulations, the authorized carrier shall have exclusive possession, control and use of the equipment for the duration of the lease and the concomitant safety duties imposed by the Federal Motor Carrier Safety Administration's regulations. See 49 C.F.R. §376.12(c). and the safety regulations found at §390-399.
- H. Contractor recognizes Carrier's regulatory duty to inter alia maintain driver qualification files, monitor driver's hours of service, conduct pre-employment and random drug and alcohol screening, verify equipment maintenance and repair, ensure proper securement, transport of freight in accordance with reasonable dispatch and highway restrictions governing the transportation of hazardous and overweight and over-dimensional loads. Contractor certifies that it is familiar with these regulatory requirements, will so instruct its driver personnel in proper compliance and will indemnify and hold Carrier harmless from any breach by it or its employees of this duty or failure to offer reasonable cooperation.
- I. **Calculation of Compensation.** Compensation set forth in Appendix B will be a per mile rate based upon an agreement reached with Carrier and Contractor and memorialized in a rate agreement before the tender of each shipment. The per mile rate shall exclude charges paid to interline carriers, pickup and delivery fees for services not performed by Contractor shall receive 100% of any fuel surcharge, if any, collectible by Carrier as reflected on its rated freight bill.

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**J. Non-Reimbursable Expenses:** For the consideration specified above, Contractor agrees to be solely responsible for the following additional expenses:

- (1) Identification Devices. (At its expense upon termination of lease, Contractor removing identification devices, offering suitable evidence to Carrier that such devices have been removed, or submit the equipment to Carrier for its removal.)
- (2) Cost of Fuel
- (3) Fuel Taxes
- (4) Permits of all types
- (5) Tolls, ferries, accessorial services, base plate and licenses
- (6) The hiring and settling of wages for its drivers and payment of all employment taxes, worker's compensation insurance.
- (7) The maintenance of all equipment in accordance with DOT standards.
- (8) The payment of all operating expenses including Federal Highway Use Taxes, personal property taxes, fines incurred by it.
- (9) Furnishing all tools, including tie-downs and load securement equipment, and safety equipment required by the DOT and/or FMCSA.
- (10) Cost pertaining to the proper training and instruction of Contractor and its employees.
- (11) **Property Damage to Carrier's Trailer.** Contractor shall be responsible for any property damage to Carrier's trailer equipment or other equipment beyond ordinary wear and tear.
- (12) **Fines for Oversize and Overweight Shipments.** Unless trailers are preloaded and sealed or containerized, Contractor or its employees shall be responsible for confirming that all lading is suitable for transportation in accordance with applicable weight and dimensional limitations imposed by in-transit states or authorized by special permits obtained for transportation of the shipment. Contractor shall be responsible for all fines, penalties and claims resulting from failure to comply with this obligation.
- (13) With respect to fuel purchases set forth in Subparagraph 3 above, Contract recognizes that Carrier is required by IFTA to file taxes governing fuel taxes for its services and accordingly agrees to purchase sufficient fuel within each state in which its equipment operates to assure payment of fuel taxes. Contractor agrees to provide carrier with satisfactory proof of such purchases and to pay any applicable deficiency.
- (14) With respect to base plates, if purchased in the name of the Carrier upon termination of the lease Carrier will transfer the plates to another unit if possible, crediting Contractor with any refund to another unit, then no refund or credit will be due to Contractor.

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- K. **Payment.** In accordance with 49 C.F.R. §376.12 (f) Carrier agrees to pay Contractor within 15 days after submission of necessary delivery documents to secure payment from shipper and driver log books required by the U.S. DOT. Because the parties recognize that the U.S. DOT regulations now require the carrier to maintain supporting documents including but not limited to trip reports, weight tickets, evidence of toll receipts and fees, as well as other documents, Contract agrees submit these additional documents with its settlement and agrees to a settlement deduction of \$50 per occurrence if such documentation is not provided within 5 working days for request.
- L. **Chargeback Options:** Carrier shall be entitled to chargeback to Contractor and deduct from settlement the following: (1) all payments paid by Carrier for authorized advances and costs incurred by Carrier on behalf of Contractor as of Contractor's obligations enumerated in J above. In addition, any advance specifically confirmed in writing, the purchase of any goods or services from Carrier by Contractor as specifically authorized in this Agreement or otherwise and specifically enumerated fine or penalty may be deducted for the specific amount provided for herein or at Carrier's cost without markup. Contractor will be afforded copies of documents necessary to determine the validity of any charge.
- M. **Products, Equipment or Services from Carrier.** Contractor is not required to purchase or rent any products, equipment or services from Carrier as condition of entering this Lease.
- N. **Insurance.**

I certify that all independent contractors will operate pursuant to the truth-in-leasing compliant lease (see 49 C.F.R. 376) and that the lease will contain the following language (check where applicable):

- A.  Carrier has legal obligation under federal statute to provide bodily injury and property damage insurance to the public for the use of the leased equipment pursuant to 49 U.S.C. 13906 during the term of this Lease. Contract agrees to carry Non-Trucking Liability (so-called "deadhead and bobtail") insurance with a combined single limit of no less than \$1,000,000 and will provide proof of such coverage to Carrier during the term of this Agreement. Contractor further agrees that it is its sole duty to require by the provision of any applicable employer's compensation insurance of other insurance required by the provision of any applicable employer's liability law on all drivers and any other employees required by Contractor or hired by Contractor to perform the services under this Agreement. A certificate of worker's compensation will be furnished upon. If Contractor elects to obtain and if Contractor maintain that worker's compensation is not required due to statutory exemption, it will provide evidence of comparable occupational accident insurance and otherwise warrants that will indemnify and hold harmless Carrier against any allegation of cut-through liability.

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- B.  Special BI/PD and Cargo insurance requirements: Contract will obtain Commercial Auto Liability Insurance and Motor Truck Cargo insurance coverage. Such Auto Liability insurance shall be in an amount of no less than \$1,000,000 per occurrence with no deductible. The policy must include endorsements of "Primary and Noncontributory or Equivalent", must include services to all points in the U.S. and Canada and contain no radius limitations and must be classified as "trucking for hire" coverage.

Cargo policy must in the amount of not less than \$100,000 per occurrence and, unless otherwise agreed in writing, must have no exclusion which would limit coverage for cargo loss and damage pursuant to federal statute or Care, Custody and Control. the maximum cargo deductible must be not more than \$1,000.

- C.  Special BI/PD and Cargo insurance requirements: Contractor will obtain Commercial Auto Liability. Such Auto Liability insurance shall be in an amount of no less than \$1,000,000 per occurrence with no deductible. The policy must include endorsements of "Primary and Noncontributory or equivalent", must include services to all points in the U.S. and Canada and be classified as "trucking for hire" coverage with an "Unlimited Radius".

**All** Independent Contractor (Owner Operator) Auto Liability and/or Cargo policies must name Carrier as Additional Insured as their interest may appear. As a precondition for accepting any load, Contractor warrants the accuracy and the authenticity of attached insurance certification and endorsements and agrees to require its agent to participate in the TEANA VOI agent monitoring service program.

- O. **Cargo and Accident Deductible.** Notwithstanding any public liability insurance or cargo insurance maintained by Carrier, Contractor agrees to pay to Carrier as penalty an amount equal to the first \$1500 of the expense incurred by Carrier and paid to it any cargo claimant or accident victim as a result of the negligence of Contractor or its employees in the performance of this contract.
- P. **Notification Requirement.** Contractor further agrees to immediately notify Carrier of any potential cargo claim, accident, fine, citation or out-of-service, order incurred by Contractor or its employees in order to ensure Carrier's compliance with its customer and safety obligations.

## 2. **Contractor Independence/Control of Operations:**

- A. **Federal and State Laws.** At all times, Independent Contractor shall remain solely responsible for payment of all federal and state taxes accruing as a result of its maintenance and use of the leased vehicle, retention and payment of driver personnel to perform services under this agreement. Contract warrants that it is familiar with and

shall comply with all applicable employment laws including and not limited to federal and state income tax, state worker's compensation, unemployment compensation taxes, and overtime requirements which may be applicable. Contractor shall indemnify and hold carrier harmless from these obligations.

To the extent not inconsistent with federal, state and safety regulations, including but not limited to hours of services requirements, highway speed limits and other restrictions, Contractor shall be free to set the method and time of performance for all delivery of loads accepted by it. The parties agree and understand that federal and state laws and regulations impose duties on carriers including the maintaining of records Contractor operations, equipment maintenance, hours of service, reporting for state tax purposes all miles run by the vehicle as well as additional obligations imposed by carrier's insurer whose federal filings are prerequisite of operations. Contractor agrees to comply with these federal duties and statues with respect to the equipment leased to carrier and will provide all necessary supporting documents as required by law. Contractor warrants that it will only permit driver personnel to perform service under this Contract who have been credentialed and approved by Carrier in accordance to US DOT requirements.

- B. **Customer-Specific Requirements.** The parties agree that in the performance of this contract, carrier in its sole discretion will tender Contractor individual loads, subject to its equipment availability on a load-by-load basis. It is agreed that any load may have customer-imposed service requirements which will be conveyed to the Contractor at time of tender. Contractor agrees to accept or reject the load tender and is not subject to forced dispatch. In accepting the load, Contractor agrees to perform in accordance with any special ground rules imposed by the customer and further warrants that the expected service can be provided in a safe and non-negligent fashion in accordance with its drivers' available hours of service.
- C. **Routes and Methods.** The parties agree that federal regulation requires a carrier to be responsible for accounting for all miles run by the involved commercial vehicle while under lease and for the hours of services of the driver operating in leased vehicle, regardless or whether the truck is under dispatch. Notwithstanding these requirements, Contractor is free to select the routing for performing any dispatch consistent with state and federal highway speed limits, weight and other restrictions. Carrier will assist Contractor by providing practical routing information for its use. Contract agrees to indemnify and hold harmless Carrier from any claim, fine, loss or damage which arises from the "deadhead or bobtail" use by it of the equipment.

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Contractor agrees to indemnify and hold harmless Carrier from any claim, fine or assessment arising out of its failure to comply with the warranties and representations contained in this paragraph.

D. **Independent Contractor Status.** It is the intent of the parties for Contractor to retain the status of an independent of contractor in business for federal and state law purposes. Carrier's control over Contractor shall be limited to that control required by federal and state statutes and regulations governing the conduct of motor carriers. Contractor shall train all of its driver personnel in accordance with US DOT requirements and shall submit all driver personnel to carrier for qualification, safety, and training to the extent required by federal regulations. Neither Contractor nor its driver employees shall be required to attend other employment training meetings held by the company nor shall they be subject to the company employment manual. Contractor shall have the right to substitute other qualified drivers to perform the services subject to carrier's confirmation that Contractor's driver meets the driver qualifications established by the US DOT and its insurers.

Contract warrants that no driver will be used until the driver has been qualified by carrier in accordance with federal safety requirements. At all times, Contractor shall remain responsible for hiring and supervising his employees and for paying their salaries and all relevant taxes. Contractor warrants compliance with all federal and state employment laws and shall indemnify and hold carrier harmless from its failure to discharge such obligations.

Contractor shall at all times be free to set its hours of operations consistent with the federally imposed hours of service requirements and the scope of the work accepted and the customer's service expectations. Contractor is free to work when and where it chooses and shall scope of work assignments on a load by load basis. Contractor agrees to comply with any scope of work requirement imposed by the customer service conditions when accepting a job assignment but is otherwise free to schedule the order of its work.

Where shipper requires same and to facilitate efficient dispatch, Contractor agrees to provide electronic notification of its operating status including when equipment is loaded, unloaded or otherwise available to dispatch. Otherwise no oral or written report other than the supporting documents and logs required by the DOT, bills of lading and shipping documents required by the customer for payments and fuel taxes as required by IFTA shall be required.

Contractor shall be solely responsible for furnishing the power equipment used to provide service and shall keep same in good repair in accordance with federal regulation and inspection requirements. Contract shall be solely responsible for the payments on the leased equipment on the subject equipment and shall have the right to make all crucial decision with respect to the maintenance and operation of such equipment.

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Consistent with the leasing regulations which require carrier to have exclusive possession and control of the equipment, Contractor shall be free with notice to work for other carriers of customers. Contractor shall have the right to discharge any driver it employs at any time. Contractor agrees that it shall reassign any driver which Carrier in its sole discretion determines is unqualified to comply with Carrier's federal imposed safety duties.

Carrier shall assume no responsibility with respect to equipment subject to this Agreement while the same is being operated in the Contractor's own service or the service of third parties, and Contractor shall indemnify and hold harmless Carrier from and against any and all claims, costs, damages, liabilities and expenses, including without limitation, attorney's fees, and costs, that may arise or be asserted against Carrier by virtue of any use of the equipment otherwise than under the terms of this Agreement or while the equipment is not being operated in the service of Carrier.

Contractor warrants as a condition of this contract that all equipment will be continually operated in accordance with US DOT safety regulations in a non-negligent fashion.

Contract shall accept work assignments on a job by job or load by load basis and agrees to comply with any ground rules or scope of work requirements established by the shipper as a service condition imposed on the work provided. Carrier does not guarantee Contractor profit or limit its profit margin for contracts performed.

3. **Contractors, Warranties, and Indemnification.** As consideration for entering into this agreement, Contractor warrants as follows:
  - a. that it is properly licensed and authorized to conduct its independent trade or business in accordance with local and state laws.
  - b. that will comply with all federal, state, and local taxing authorities that are applicable to its trade or business and will pay all applicable withholding and employment taxes and insurance payments as they come due by reason of its retention of personnel to provide the contracted service.
  - c. that it will not accept or incur any payment obligation on behalf of Carrier without its express written approval.
  - d. that it will promptly notify Carrier of any acts that result in any type of loss, shortage, citation, fine, or out of service order incurred in the course of its use or maintenance of the lease equipment during the period of this lease.
4. Contractor agrees to indemnify and hold Carrier harmless from any breach of the above warranties or if other claim laws or damage arising out of the negligent or willful acts or omission of it, its officers, directors, employees, or agent.

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5. **Integrated Claim.** The Parties agree that this contract sets forth the full understanding of the Parties and shall not be modified or changed in any way except by express written addendum.
6. **Termination.** This Contract may be terminated by either party on fifteen (15) days written notice.
7. **Claims Notification.** The Parties recognize in accordance with federal statute, Carrier has 6 months from the issuance of any freight invoice to file and undercharged claim with its Shipper. Accordingly, the Parties agree that Contractor will review its settlements and notify Carrier not later than 165 days after issuance of its disputed amount or thereafter will be barred.
8. **Arbitration.** Parties agree that in the event of any disputes at the request of either party the issue may be submitted to binding arbitration under the rules of the American Arbitration Association sitting Gainesville, Georgia the decision of the arbiter shall be final.
9. **Venue and Jurisdiction.** This agreement is made pursuant to the requirements of federal law and otherwise subject to the laws of the state of Georgia. The parties agree that Venue and Jurisdiction over all disputes shall be Hall County, Georgia.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

KLM EXPRESS

CONTRACTOR

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Phone

Initial Here: \_\_\_\_\_

\_\_\_\_\_  
FEIN Number

APPENDIX A

**IDENTIFICATION OF EQUIPMENT**

Make	Year	Serial No.
Tractor _____	_____	_____
Trailer _____	_____	_____
Trailer _____	_____	_____
Trailer _____	_____	_____
Trailer _____	_____	_____

Name of Contractor \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_

FID No. \_\_\_\_\_ or SSN: \_\_\_\_\_

I certify that the above named Contractor is the title holder or beneficial owner of the identified equipment authorized to receive payments for the use of this equipment pursuant to the terms of this Agreement

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

APPENDIX B

**COMPENSATION**

For use of Contractors:	Tractor:	Variable mileage rate defined by mutual agreement with Carrier and Contractor as memorialized in the rate tendered by Carrier for each shipment.
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APPENDIX C

**RECEIPT FOR EQUIPMENT**

This Receipt is issued by Carrier to the beneficial owner \_\_\_\_\_  
for VIN No. \_\_\_\_\_ this date for possession of the  
equipment pursuant to an Independent Contractor Agreement. This Receipt shall serve as  
compliance with 49 C.F.R. §376.11 as evidence of continuing 30 day lease for Carrier to  
transport general commodities without exception. A copy of the original Lease is kept by  
Carrier at \_\_\_\_\_ [address]

Received this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ AM/PM

By: \_\_\_\_\_ (Authorized Agent of Carrier)

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**RELEASE OF EQUIPMENT** (To be completed upon termination of agreement)

Independent Contractor hereby acknowledges receipt of Equipment described in this  
Agreement.

Hour \_\_\_\_\_ AM/PM Date \_\_\_\_\_ Place \_\_\_\_\_

Independent Contractor Signature \_\_\_\_\_

## Driver/Vehicle Information Sheet

### Driver Info

Name: Drivers License #/State:

Cell Phone: Social Security#:

Email Address: Birth Date:

Emergency Contact:

### Unit Info

Make:

Model:

Year:

Color:

VIN:

Type:

Odometer:

Plate Number:

Plate State:

\*Box Length:

\*Box Width:

\*Box Height:

\*Weight Capacity:

\*GVW