

**BOXWHEEL TRAILER LEASING, LLC  
STANDARD TERMS AND CONDITIONS**

**These Standard Terms and Conditions apply to all transactions with Boxwheel, including, without limitation, all leases or rentals of Boxwheel Equipment, whether pursuant to a long-term Equipment Lease Agreement, Short-term 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 BOXWHEEL 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 16).

(b) **"Boxwheel"** as used herein shall mean Boxwheel Trailer Leasing, LLC, a Delaware limited liability company.

(c) **"Boxwheel Web Sites"** has the meaning defined in Section 23.

(d) **"Casualty Loss Value"** shall be equal to the value of a unit of Equipment as determined by Boxwheel in its sole discretion.

(e) **"Communication Services"** means the two-way wireless tracking and mobile information management services provided to Lessee by or through Boxwheel that utilize the communications network provided by third-party licensors of Boxwheel.

(f) **"Default"** has the meaning defined in Section 20.

(g) **"Equipment"** means the applicable Boxwheel semi-trailer, chassis, refrigerated trailer, or other over-the-road, cartage or storage equipment, together with any attached Trailer Tracking Unit and related sensors, if applicable.

(h) **"Equipment Lease Agreement"** means a true lease agreement between Lessee and Boxwheel for the leasing of Equipment by Lessee for a specified Lease Term and at specified Use Charges.

(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 Boxwheel, including, without limitation, long-term Equipment Lease Agreements and Short-term 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 term of each Lease, as set forth therein.

(m) **"Lessee"** means the person or entity that enters into a Lease with Boxwheel. 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 a Boxwheel location or to a designated cartage vendor, and/or who executes a Lease or other document on behalf of Lessee.

(o) **"Repair Standards"** means any repair standards approved by Boxwheel from time to time in its discretion.

(p) **"Short-term Rental Agreement"** means an agreement between Lessee and Boxwheel for the renting of Equipment by Lessee for a specified Lease Term and at specified Use Charges.

(q) **"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 Boxwheel elects to provide to Lessee.

(r) **"Standard Terms and Conditions"** means the Standard Terms and Conditions contained in this document, as amended by Boxwheel from time to time.

(s) **"Trailer Tracking Unit"** means the product created by Boxwheel's third-party licensor, which

provides mobile communication, tracking and other Equipment management services.

(t) **"Use Charges"** means the required payments to be made by Lessee to Boxwheel 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.

(u) **"written"** or **"in writing"** shall mean in print copy format or in electronic format.

**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, Boxwheel, 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 Boxwheel. 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 Boxwheel.

**3. AUTHORITY & ACCEPTANCE.** By entering into a Lease with Boxwheel, taking possession of Equipment from Boxwheel, executing any document in connection with a Lease, completing payment of any invoices to Boxwheel or completing any other transaction with Boxwheel, Lessee and Lessee's Agents represent and

warrant that they are authorized on behalf of Lessee to enter such agreements and transactions with Boxwheel and expressly acknowledge receipt and on-going acceptance of Boxwheel's Standard Terms and Conditions, as such Standard Terms and Conditions may be amended from time to time.

**4. DELIVERY, RECEIPT & DROPOFF.**

(a) As a condition precedent to Lessee's pick-up or return of Equipment at any Boxwheel location, Lessee's Agent must (i) in the case of a pick-up of Equipment, (1) provide proof of identification to Boxwheel in the form of a valid commercial driver's license and (2) execute the appropriate Lease covering such Equipment (which execution shall evidence Lessee's agreement to be bound by the terms set forth in such Lease and Lessee's confirmation of any information set forth in the "outbound inspection" section of such Lease, if applicable), and (ii) in the case of a return of Equipment, sign where indicated on the Lease or any reproduction thereof to evidence Lessee's confirmation of any information set forth in the "inbound inspection" section of such Lease, if applicable. Lessee acknowledges that Lessee's Agent has been authorized to pick-up from, return Equipment to, and/or accept delivery of Equipment from, Boxwheel, and that the signature of Lessee's Agent on any applicable Lease or other document shall bind Lessee to the terms of such Lease (or other document) 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 Lease. 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 Boxwheel in the same condition noted in the Lease, normal wear excepted.

(c) If Lessee has requested Boxwheel 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 the applicable Lease and/or other documentation provided by the cartage vendor. In the event of delivery of a unit of

Equipment to Lessee, Boxwheel's inspection of the Equipment at Boxwheel's branch location prior to delivery of the Equipment to Lessee shall 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, Boxwheel's inspection of the Equipment following delivery of the Equipment to Boxwheel'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 Lease. If Lessee returns a unit of Equipment to a branch other than its designated Return Location, Lessee shall pay Boxwheel's then applicable drop 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 Boxwheel, Boxwheel 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 Boxwheel. 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, Boxwheel grants to Lessee a non-exclusive, non-transferable, limited sub-license to access the Communication Services for use with the Trailer Tracking Unit. Boxwheel 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 Boxwheel. Lessee hereby releases Boxwheel 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 of the Communication Services shall be that 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 Boxwheel within thirty (30) days after receiving written notice from Lessee of such failure or disruption.

#### 6. **PAYMENT.**

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

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

(ii) Mileage Charges. Lessee shall pay Boxwheel 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 Boxwheel at the time of a unit's delivery or pick-up, and a similar reading will be taken by Boxwheel upon return of the unit to Boxwheel. In the event the hubodometer on a unit of Equipment is missing or fails to function properly, Lessee shall pay Boxwheel a mileage charge based on the average miles traveled by similar units leased or rented by Lessee from Boxwheel or the average miles traveled by similar units of Equipment leased or rented from Boxwheel generally, as determined by Boxwheel in its sole discretion.

(iii) Refrigeration Unit Charges. Lessee shall pay Boxwheel a refrigeration charge for engine hours used on any refrigerated unit of Equipment as specified in the Lease. Engine hours will be measured by an hour meter attached to each refrigerated unit of Equipment. A reading of the hour meter will be taken by Boxwheel at the time of delivery to or pick-up of a unit of Equipment by Lessee, and a similar reading will be taken by Boxwheel upon return of the unit of Equipment to Boxwheel. In the event the hour meter for a unit of Equipment is missing or fails to function properly, Lessee shall pay Boxwheel a refrigeration charge for engine hours based on the average engine hours historically used on similar units of Equipment leased or rented from Boxwheel, as determined by Boxwheel in its sole discretion.

(iv) Tire Wear. Lessee shall pay Boxwheel a charge for tire wear as specified in the Lease. The tread depth of each tire will be measured by Boxwheel in thirty-seconds (1/32nds) of an inch increments at the time of delivery to or pick-up by Lessee. A similar measurement will be made by Boxwheel upon return of the unit of Equipment to

Boxwheel. Tire depth will be measured at the lowest point of remaining tire tread.

(v) Brake Wear. Lessee shall pay Boxwheel a charge for brake lining wear as specified in the Lease. The brake lining for each wheel end will be measured by Boxwheel in one-eighth (1/8th) of an inch increments at the time of delivery to or pick-up by Lessee. A similar measurement will be made by Boxwheel upon return of the unit of Equipment to Boxwheel.

(b) 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 Boxwheel 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.

(c) Use Charges are based on a calendar month billing period unless otherwise specified. Unless otherwise stated in the Lease, in the event of return of the Equipment to Boxwheel 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.

(d) Boxwheel shall periodically invoice Lessee for all Use Charges incurred pursuant to the Lease. Boxwheel shall have the right, but no obligation, to provide all invoices electronically via the Boxwheel 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.

(e) Lessee shall make all payments in U.S. currency (i) to the lockbox address provided by Boxwheel, (ii) to Boxwheel's designated payment account via electronic funds transfer, or (iii) via pre-authorized payment collected by Boxwheel from Lessee's designated account. Lessee shall not deliver any payments to any Boxwheel 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 Boxwheel with a check, or authorizes Boxwheel 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 Boxwheel a processing fee of \$100.00 for each such occurrence.

#### 7. **EQUIPMENT MAINTENANCE AND USE.**

(a) Lessee is responsible for determining whether the Equipment it rents or leases from Boxwheel 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, inspection 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 Boxwheel regarding any mechanical failure or problem, and (v) is responsible for all damage to the Equipment. Lessee shall return all Equipment to Boxwheel 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 Hazardous Materials in violation of Applicable Law. Lessee shall promptly notify Boxwheel 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 Boxwheel or Boxwheel determines that unprotected Hazardous Materials were placed in, or Hazardous Materials have contaminated or damaged the Equipment, Boxwheel may, in its sole discretion, (i) require Lessee to immediately pay Boxwheel 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 Boxwheel deems necessary to perform; or (iii) repair, restore and/or decontaminate the Equipment, in which case Lessee shall be liable to Boxwheel for the total estimated or actual cost to repair, restore and/or decontaminate the Equipment, as determined by Boxwheel 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 Boxwheel, 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 16(c), 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 a Boxwheel location at six (6) month or twenty five thousand (25,000) mile intervals, whichever comes first, Boxwheel shall 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, that 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 action or inaction of Lessee. The foregoing shall not apply, and Boxwheel 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 a Boxwheel location, or (iii) which are designated as storage trailers. Boxwheel 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 Boxwheel in its sole discretion. Lessee shall pay Boxwheel 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 a Boxwheel location that is not returned to Boxwheel. 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 1/32nd 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 Boxwheel a mileage charge of \$0.10 per mile traveled.

(h) Lessee agrees not to use or transport any of the Equipment, or permit any of the Equipment to be used or transported by any other person, outside of the continental United States or Canada without the prior written consent of Boxwheel.

#### **8. 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 any other total casualty, regardless of where it may have occurred and notwithstanding any amounts which may be paid or disputed by Lessee's insurance company, Lessee is responsible for and shall promptly pay Boxwheel the Casualty Loss Value of such unit of Equipment. Boxwheel 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 at Lessee's expense in accordance with the Repair Standards; provided, that Lessee shall not attempt to repair and shall return to Boxwheel for repair all non-functioning or damaged Trailer Tracking Units. Lessee shall be liable to Boxwheel for the total estimated or actual cost, as determined by Boxwheel in its sole discretion, to repair any Equipment returned to Boxwheel in a non-functioning or damaged condition or repaired in a manner that is not in compliance with the Repair Standards. Boxwheel reserves the right to not repair any non-functioning or damaged Equipment, and Lessee shall remain responsible for Boxwheel'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 Boxwheel 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.

**9. 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. BOXWHEEL 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 BOXWHEEL OF THE QUALITY OF DESIGN, MANUFACTURE, CONDITION OR FITNESS FOR ANY PARTICULAR USE OF THE EQUIPMENT, SOFTWARE, COMMUNICATIONS SERVICES, OR BOXWHEEL WEB SITES. LESSEE WAIVES ANY AND ALL CLAIMS AGAINST BOXWHEEL 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, TRAILER TRACKING UNIT, SOFTWARE, COMMUNICATIONS SERVICES, OR BOXWHEEL 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. BOXWHEEL 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.**

**BOXWHEEL DISCLAIMS, AND LESSEE WAIVES, ALL OTHER WARRANTIES WITH RESPECT TO THE EQUIPMENT, TRAILER TRACKING UNIT, SOFTWARE, COMMUNICATION SERVICES, AND BOXWHEEL 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 9, THE EQUIPMENT, TRAILER TRACKING UNIT, SOFTWARE,**

**COMMUNICATION SERVICES AND BOXWHEEL WEB SITES ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, FOR USE BY LESSEE AT ITS SOLE RISK.**

#### **10. 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 THE LEASE BY LESSEE, OR THE ENFORCEMENT OF ANY OF THE TERMS OF THE LEASE BY BOXWHEEL; (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 USE, OPERATE, MAINTAIN OR CONTROL 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 BOXWHEEL 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

**BOXWHEEL, ITS AFFILIATES AND ITS AND THEIR SUCCESSORS, ASSIGNS, EMPLOYEES, OFFICERS, DIRECTORS, MANAGERS, GENERAL PARTNERS, 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 BOXWHEEL. LESSEE SHALL REIMBURSE THE INDEMNIFIED PARTIES FOR ANY EXPENSE INCURRED, INCLUDING REASONABLE ATTORNEYS' FEES, TO DEFEND ANY ACTION WHICH LESSEE IS REQUIRED TO DEFEND PURSUANT TO THE STANDARD TERMS AND CONDITIONS. THE PROVISIONS OF THIS SECTION 10 SHALL SURVIVE THE TERMINATION OF THE LEASE.**

**11. LIMITATION OF LIABILITY.** Under no circumstances shall Boxwheel 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 Boxwheel, 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 Boxwheel'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.

**12. INSURANCE.**

(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. Boxwheel shall be named a loss payee;

(ii) Comprehensive Automobile Liability coverage protecting Boxwheel from and against all loss and damage it may sustain or suffer because of death or injury to 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 combined single limit or \$1 million bodily injury and \$250,000 property

damage. Boxwheel must be shown as an additional insured; and

(iii) Comprehensive General Liability coverage protecting Boxwheel 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. Boxwheel must be shown as an additional insured.

(b) Policies of insurance shall be valid and in force until the Equipment is returned to Boxwheel. Lessee shall provide Boxwheel 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 Boxwheel copies of Lessee's insurance policies for the required coverage promptly upon Boxwheel's request. Lessee shall provide Boxwheel 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 Boxwheel. If requested by Boxwheel, 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.

**13. SECURITY DEPOSIT.** As a condition precedent to Boxwheel 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 Boxwheel, may be required and, if required, shall be delivered to Boxwheel 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 Boxwheel 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 Boxwheel and after deduction of any amounts due and owing by Lessee to Boxwheel, including, without limitation, all unpaid Use Charges and any repair or replacement expenses.

**14. LETTER OF CREDIT.** As a condition precedent to Boxwheel entering into the Lease, and as security for the full performance by Lessee of its obligations hereunder, Lessee may be required to obtain from a financial institution acceptable to Boxwheel an irrevocable letter of credit for the benefit of Boxwheel in an amount determined by Boxwheel. The letter of credit shall be issued in the form approved by Boxwheel. If required, Lessee agrees to maintain such letter of credit in place until all of the Equipment leased hereunder shall have been returned to Boxwheel and Lessee shall have fully complied with all of its obligations hereunder, including the payment of all Use Charges, repair or replacement expenses and any other amount due and owing to Boxwheel hereunder. In addition, Lessee shall extend the letter of credit or provide a substitute letter of credit acceptable to Boxwheel at least thirty (30) days prior to the expiration date of the letter of credit, and failure to do so shall entitle Boxwheel to immediately draw down the full amount available under the letter of credit.

**15. ADEQUATE ASSURANCES.** During the term of any Lease, Boxwheel may require that Lessee enter into reasonable security arrangements with Boxwheel. 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 Boxwheel from all risk of loss.

**16. LAWS, RULES AND REGULATIONS.**

(a) For each unit of Equipment, Boxwheel will provide a motor vehicle registration and license plate for registration in a jurisdiction of Boxwheel'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. Boxwheel shall charge Lessee, and Lessee agrees to pay Boxwheel, 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 govern 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 the HDV Regulations, as they may be amended from time to time, 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 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 Boxwheel 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 manufacturer of the aerodynamic device, and (ii) unless otherwise agreed to by Boxwheel, Lessee shall be responsible for removing any modifications Lessee makes to the Equipment prior to Lessee's return of the Equipment to Boxwheel.

**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 be solely responsible for complying 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 Boxwheel'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 Boxwheel 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.

17. **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 Boxwheel, Lessee must provide a duly authorized exemption certificate issued by or acceptable to the relevant taxing authority.

18. **ASSIGNMENT & SUCCESSORS.** Lessee shall not assign or sublease any right or interest in the Equipment or the Lease without the prior written consent of Boxwheel. Boxwheel 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 other 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 permitted assigns.

19. **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 Boxwheel upon receipt of notice of any such Liens affecting the Equipment and Lessee shall promptly defend at its own expense Boxwheel'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 Boxwheel 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 Boxwheel 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, as and when due, of all of Lessee's obligations, both now existing and hereinafter arising under this Lease. Lessee hereby agrees that Boxwheel shall have all rights and remedies of a "secured party" under the Uniform Commercial Code and authorizes Boxwheel to cause this Lease and/or any statements or other instruments in respect of this Lease showing the interest of Boxwheel in the Equipment (including certificates of title or Uniform Commercial Code financing statements) to be filed or recorded, and grants Boxwheel and its agents the right to execute Lessee's name thereto. 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 Boxwheel as a secured party and delivery of same to Boxwheel, as Boxwheel 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 Boxwheel 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.

20. **DEFAULT.**

(a) Lessee shall be in default of the Lease (hereafter individually or collectively referred to as a "**Default**"): (i) if Lessee fails to comply with or is

in breach of any of the terms or conditions of any Lease, including, without limitation, the retention of the Equipment for the Lease Term or the timely payment of all invoices; (ii) if any third-party credit support, including any guarantor or issuer of a letter of credit, attempts to or does cancel the support or guaranty (or is otherwise in default under such support or guaranty); (iii) if Lessee is in default of any of the terms or conditions of any other agreement with Boxwheel; (iv) if Lessee fails to maintain or fails to provide Boxwheel with proper evidence of the insurance required by any Lease, or Lessee's insurance is canceled, reduced or lapses; and/or (v) if Lessee becomes insolvent or subject to any voluntary or involuntary bankruptcy or insolvency proceeding (including acquiescence in the appointment of a trustee or receiver, or commencement of any dissolution or liquidation proceeding).

(b) In addition to any rights or remedies available at law or in equity, upon a Default by Lessee, Boxwheel shall have the right, at its option and without demand or notice to Lessee, to do any one or more of the following: (i) pay 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 Lessee as additional rent the amount paid or the reasonable value of the services performed therefore together with interest thereon at the rate described in Section 6 hereof; (ii) declare the entire balance of the remaining payments under the Lease 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) 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 lost profits and damages as a "Lost Volume Seller" and/or "Lost Volume Lessor" (as those terms are defined and used in the Uniform Commercial Code) that Boxwheel would have generated had the Lease not been prematurely cancelled; (viii) 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 Boxwheel to or for the account of Lessee against any amounts owing by Lessee to or for the account of Boxwheel,

including, without limitation, any deposits, accruals, prepayments, overpayments, Estimated Charges, fees or otherwise. Lessee acknowledges and agrees that Boxwheel is under no duty to mitigate damages resulting from Lessee's Default.

21. **REPOSSESSION.**

(a) In the event of Lessee's Default, and upon demand of Boxwheel, Lessee shall immediately return all Equipment to Boxwheel. If Lessee fails or refuses to immediately return all Equipment after demand by Boxwheel, Boxwheel shall have the right to enter upon any premises where the Equipment is located and take immediate possession of, and at Lessee's expense remove, the Equipment. If Boxwheel takes possession of the Equipment with property contained in, upon or attached to the Equipment, Boxwheel 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 Boxwheel to enforce any right under the Lease.

(b) Lessee acknowledges and agrees that in the event of Lessee's Default, (i) Boxwheel will be in danger of losing its Equipment unless immediate possession of the Equipment is obtained because Boxwheel's Equipment is movable and readily marketable; and (ii) Boxwheel 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, Boxwheel shall have the right, without prejudice to any other rights and remedies otherwise available to Boxwheel 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 Boxwheel.

22. **INTELLECTUAL PROPERTY.** Boxwheel and/or its licensors reserve ownership of all Intellectual Property in and to the Equipment, Trailer Tracking Unit, Software, Communication Services and the Boxwheel Web Sites, and the Lease does not create any right of ownership in or to such materials in Lessee. "**Intellectual Property**" shall mean all proprietary interests of any kind or nature, including, without limitation patent rights, copyrights, trade secrets, design rights, source code, documentation, trade and service marks, and other similar rights throughout the world, however denominated and any

amendments, additions or improvements made thereto.

**23. ELECTRONIC CONDUCT OF BUSINESS.**

(a) Boxwheel and Lessee may conduct business electronically, and, 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 Boxwheel, including, without limitation, <http://www.boxwheel.com> (collectively, "**Boxwheel Web Sites**"), as a condition of such use, Lessee stipulates that while on Boxwheel Web Sites and where applicable terms and conditions on Boxwheel 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 Boxwheel Web Sites, Lessee stipulates that it will have the burden of proving that (i) any electronic manifestation of assent received by Boxwheel is not attributable to Lessee; and (ii) Lessee did not have an opportunity to review any electronic terms and conditions posted on the Boxwheel Web Sites.

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

**25. 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 Boxwheel or Lessee, or of their respective subsidiaries, in connection with the Lease.

**26. ENTIRE AGREEMENT; CONFLICTS.** The Lease, including the Standard Terms and Conditions and any schedules hereto or thereto,

supersedes all prior agreements, whether written or oral, between Boxwheel 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 Boxwheel 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 Boxwheel's authorized representative.

**27. AMENDMENTS.** Unless otherwise provided in the Lease, Boxwheel 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 Boxwheel's authorized representative.

**28. 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 Boxwheel. In the case of Boxwheel, any notice or communication shall be sent to Boxwheel Trailer Leasing, LLC, 4201 E. 52nd Avenue, Commerce City, CO. 80022, Attention: Mike Di Paolo and Mike Sindelar. Any change of address by either party shall be communicated to the other in writing. Notwithstanding the above, Boxwheel may provide the Lease, the Standard Terms and Conditions, invoices, notices and other communications to Lessee in an electronic format through the Boxwheel Web Sites or other electronic means.

**29. 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.

**30. 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 Colorado, without regard to conflicts of laws provisions. Lessee and Boxwheel each hereby submit to the jurisdiction of the state and federal courts located in the State of Colorado 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 state and federal courts located in the State of Colorado; provided, however, that Boxwheel reserves its right to bring suit in any other appropriate jurisdiction. LESSEE AND BOXWHEEL 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 BOXWHEEL ARE ADVERSE PARTIES.

**31. SEVERABILITY.** If any term or provision hereof or in any Lease 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 or thereof, which shall remain binding and enforceable.

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