

BLUMENTHAL, NORDREHAUG & BHOWMIK LLP

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
Nicholas J. De Blouw (State Bar #280922)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858) 551-1223
Facsimile: (858) 551-1232
Website: www.bamlawca.com

BUTTERFIELD SCHECHTER LLP

Marc S. Schechter (State Bar #116190)
Corey F. Schechter (State Bar #279964)
10021 Willow Creek Road Suite 200
San Diego, CA 92131
Telephone: (858) 444-2300
Facsimile: (858) 444-2345
Website: www.bsllp.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

RONNIE STEVENSON, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiff,

vs.

KNIGHT TRANSPORTATION, INC., a Corporation; KNIGHT TRANSPORTATION, INC. 401(K) PLAN; ADMINISTRATIVE COMMITTEE OF THE KNIGHT TRANSPORTATION, INC. 401(K) PLAN; KNIGHT TRANSPORTATION, INC. CAFETERIA PLAN; ADMINISTRATIVE COMMITTEE OF THE KNIGHT TRANSPORTATION, INC. CAFETERIA PLAN; and DOES 1 through 100, inclusive,

Defendants.

Case No. 5:17-CV-02337

CLASS ACTION COMPLAINT FOR:

1. DECLARATORY RELIEF UNDER ERISA;
2. INJUNCTIVE RELIEF;
3. CLAIM FOR BENEFITS UNDER ERISA §502(a)(1)(B);
4. BREACH OF FIDUCIARY DUTY UNDER ERISA §§ 409, 502(a)(2) and (3), 404, and 405; and
5. CLAIM TO ENJOIN ACTS OR PRACTICES IN VIOLATION OF ERISA AND FOR OTHER APPROPRIATE RELIEF UNDER ERISA §502(a)(3).

1 Plaintiff Ronnie Stevenson (“Plaintiff”), an individual, on behalf of himself and
2 all others similarly situated, alleges on information and belief, except for his own acts
3 and knowledge which are based on personal knowledge, the following:
4

5 **SUMMARY OF THE ACTION**

6 1. Congress enacted the Employee Retirement Income Security Act
7 (“ERISA”) to provide basic protections for employees with respect to employee benefits
8 plans offered by their employers. See 29 U.S.C. §1001(a). Congress explicitly found
9 that the protections in ERISA were necessary because many employees, despite years
10 of employment, were losing their anticipated retirement benefits because their
11 employers’ plans lacked vesting provisions. *Id.*

12 2. The Defendants in this case (collectively referred to as “Defendants”)
13 engaged in a scheme to undermine ERISA’s protections, including its vesting
14 requirements, and deny or otherwise limit benefits the law requires. Plaintiff brings this
15 class action complaint, on behalf of himself and all others similarly situated, to end
16 Defendants’ illegal and abusive practices.

17 3. Plaintiff brings this action as a class action pursuant to Fed. R. Civ. Proc.
18 23(b)(2) and/or (3), defined as all individuals who worked for Defendant Knight
19 Transportation, Inc. (“Knight” or “KTI”) in the United States as truck drivers and who
20 were classified by KTI as independent contractors (“Truck Drivers” or the “Class”)
21 beginning on the date established by the Court’s determination of any applicable statute
22 of limitations, after consideration of any tolling and accrual issues, and ending on a date
23 determined by the Court (the “Class Period”).

24 4. Knight has employed thousands of Truck Drivers across the country to
25 provide transportation services on behalf of Knight.

26 5. Knight promises its Truck Drivers that it will treat them as
27 “independent contractors,” extolling the virtues of, and the rewards that come with,
28

1 business ownership.

2 6. But Knight never honors its promise of independence because
3 it retains a right to exercise control over the manner and means by which the Truck
4 Drivers conduct every material aspect of their business.

5 7. For example, Knight requires that its Truck Drivers exclusively
6 transport goods for Knight only and exclusively controls pick-up and delivery locations.
7 Knight also controls compensation and the routes the Truck Drivers must take when
8 delivering goods for Knight.

9 8. Regardless of how Knight characterizes its relationship with its
10 Truck Drivers, it hires them as at-will employees for an unlimited duration, giving both
11 Knight and its Truck Drivers the ability to terminate the employment relationship at any
12 time.

13 9. As a result of misclassification and improper characterization of its Truck
14 Drivers as “independent contractors,” the company fails to provide its Truck Drivers the
15 same retirement, health, and other benefits it provides to all its other employees pursuant
16 to several employee pension and welfare benefit plans—specifically, the Knight
17 Transportation, Inc. 401(k) Plan and the Knight Transportation, Inc. Cafeteria Plan—
18 established under and governed by ERISA (collectively, the “Knight Plans”).

19 10. By misclassifying its Truck Drivers as “independent contractors” rather
20 than employees, Knight has not only unjustly enriched itself (by avoiding the business
21 costs of extending ERISA-protected benefits to its Truck Drivers), but has also evaded
22 and continues to evade compliance with state and federal laws (including ERISA)
23 governing employee benefit plans.

24 11. This lawsuit seeks:

25 (A) A declaration that Plaintiff and Class Members are legal “employees” for
26 all purposes, including, but not limited to ERISA;

27 (B) A declaration that because Defendants excluded Plaintiff and the Class
28

1 from participating in the Knight Plans, the Knight Plans are not in
2 compliance with ERISA and 26 U.S.C. §410(b), including the minimum
3 coverage requirements;

4 (C) Payment to Plaintiff and the Class of all amounts due under the Knight
5 Plans as if they had complied with ERISA;

6 (D) An order reforming the Knight Plans to include Plaintiff and the Class and
7 to comply with ERISA and 26 U.S.C. §410(b), including the minimum
8 coverage requirements, and requiring Knight to pay restitution in the form
9 of a surcharge or otherwise credit Plaintiff and Class Members for all
10 ERISA benefits to which they are retroactively entitled under the Knight
11 Plans in order to be made whole and to prevent Knight's unjust enrichment;

12 (E) An injunction barring Knight from continuing to misclassify the Class as
13 "independent contractors" rather than "employees";

14 (F) Removal of all fiduciaries of the Knight Plans found to have breached their
15 fiduciary duties under ERISA, and for the appointment of successor
16 fiduciaries pursuant to Plaintiff's selection and the court's approval; and

17 (G) A permanent injunction enjoining the ERISA fiduciary-Defendants from
18 serving as ERISA fiduciaries in the future.

19
20 **JURISDICTION AND VENUE**

21 12. This Court has subject matter jurisdiction over the ERISA claims under 29
22 U.S.C. §1132(e)(1) and over all other non-ERISA claims asserted in this action under
23 28 U.S.C. §1367. This Court also has subject matter jurisdiction pursuant to 28 U.S.C.
24 §1332(d)(2) as the amount in controversy exceeds \$5,000,000, exclusive of interest and
25 costs, and at least one member of the class is a citizen of a state different from
26 Defendant.

27 13. This Court is a proper venue under 28 U.S.C. §1391(b)(2) because a
28

1 substantial part of the events or omissions giving rise to the claims asserted in this
2 complaint occurred in the judicial district; to wit, the benefits owed under ERISA were
3 earned, due and owing to Plaintiff in this judicial district, which is where the Plaintiff
4 was employed. This Court is also a proper venue under 29 U.S.C. §1332(e)(2) because
5 the breaches of the Plan took place in this judicial district; to wit, Defendant failed to
6 properly classify Plaintiff in this district as an “employee” and refused to extend to him
7 ERISA benefits despite Plaintiff’s employment in this district.

8
9 **PARTIES**

10 14. Plaintiff Ronnie Stevenson was, during the relevant period, a Truck Driver
11 for Knight who resides in Adelanto, California. From September of 2016 to the present,
12 Plaintiff worked for Knight as a Truck Driver and was classified as an independent
13 contractor and was not entitled to benefits under the Knight Plans.

14 15. Defendant Knight Transportation, Inc. (“Knight” or “KTI”) is an Arizona
15 corporation with its principal place of business located at 20002 N. 19th Ave., Phoenix,
16 AZ 85024. For purposes of the Knight Plans, KTI is the employer (as defined in ERISA
17 §3(5), 29 U.S.C. §1002(5)), the plan sponsor (as defined in ERISA 3(16)(B), 29 U.S.C.
18 §3(16)(B)), and the administrator (as defined in ERISA §3(16)(A), 29 U.S.C.
19 §1002(16)(A)). As such, KTI is a fiduciary to the Knight Plans under ERISA with the
20 authority and duty to administer each of the Knight Plans in accordance with their
21 respective terms, the Internal Revenue Code (“IRC”) and ERISA.

22 16. Defendant Knight Transportation, Inc. 401(k) Plan is an employee benefit
23 plan as defined in 29 U.S.C. §1002(3) that is both sponsored and administered by KTI.

24 17. Defendant Administrative Committee of the Knight Transportation, Inc.
25 401(k) Plan is an additional administrative body, appointed by KTI in its capacity as
26 employer, plan sponsor and/or administrator of the Knight Transportation, Inc. 401(k)
27 Plan, with the authority and duty to administer the Knight Transportation, Inc. 401(k)
28

1 Plan in accordance with its terms, the IRC and ERISA. It is a fiduciary to the Knight
2 Transportation, Inc. 401(k) Plan under ERISA.

3 18. Defendant Knight Transportation, Inc. Cafeteria Plan is an employee benefit
4 plan as defined in 29 U.S.C. §1002(3) that is sponsored and administered by KTI.

5 19. Defendant Administrative Committee of the Knight Transportation, Inc.
6 Cafeteria Plan is an additional administrative body, appointed by KTI in its capacity as
7 employer, plan sponsor and/or administrator of the Knight Transportation, Inc. Cafeteria
8 Plan, with the authority and duty to administer the Knight Transportation, Inc. Cafeteria
9 Plan in accordance with its terms, the IRC and ERISA. It is a fiduciary to the Knight
10 Transportation, Inc. Cafeteria Plan under ERISA.

11 20. Defendants Knight Transportation, Inc. 401(k) Plan and Knight
12 Transportation, Inc. Cafeteria Plan are referred to collectively as “Knight Benefit Plan
13 Defendants” throughout this complaint, unless specifically referred to by name.

14 21. At all relevant times, Knight was engaged in transportation services in the
15 United States, including the State of California.

16
17 **FACTS**

18 **Knight Treats Its Trucks Drivers as “Employees”**
19 **and Not “Independent Contractors”**

20 22. Knight employs thousands of Truck Drivers to exclusively transport goods
21 on Knight’s behalf. Defendant also employs Truck Drivers that Defendant correctly
22 classifies as employees who are entitled to benefits under the Knight Plans. There are
23 no material differences between the manner and method in which Knight controls the
24 persons they employ as employee Truck Drivers and the persons they employ as
25 independent contractor Truck Drivers except that Knight deprives the independent
26 contractor Truck Drivers of receiving their benefits under the Knight Plans.

27 23. Each Knight Truck Driver working as an independent contractor
28

1 must sign the Knight Independent Contractor Agreement (the “Agreement”) as a
2 mandatory condition of employment. A true and correct copy of the Agreement for
3 Plaintiff is attached hereto as Exhibit A.¹ The Agreements for all other class members
4 are the same in all material respects to Exhibit A.

5 24. The terms of the Agreement between each member of the Class and Knight
6 are the same in all material respects, and the Agreement for Plaintiff is representative of
7 the Agreements between Knight and each member of the Class. Each Agreement
8 contains statements purporting to classify Plaintiff and Class Members as independent
9 contractors.

10 25. The Agreement is, and at all relevant times has been, a contract of
11 adhesion, drafted exclusively by Knight, who gives Plaintiff and other Class Members
12 no opportunity to negotiate or change any terms and who requires Plaintiff and other
13 Class Members to sign the Agreement as presented by Knight as a condition of
14 employment.

15 26. Not only is the Agreement a contract of adhesion, but Knight refuses to
16 honor the Agreement to treat Plaintiff and other Class Members as “independent
17 contractors.”

18 27. When Plaintiff and Class Members do not follow a Knight policy or
19 procedure, whether disclosed or undisclosed, known or unknown, Plaintiff and Class
20 Members were subject to discipline by Knight, including termination of the
21 Agreement/employment.

22 28. At all times relevant, Knight asserted control over virtually all aspects of
23 Plaintiff’s and Class Members’ work.

24 29. To perform their job duties, Plaintiff and the other Class Members
25 performed work subject to the control of KTI in that KTI had the authority to exercise

26
27 ¹ Pages 3-4 of Plaintiff Stevenson’s “Independent Contractor Operating Agreement”
28 (Exhibit A) are not included. These pages were not attached to the copy provided to Plaintiff Stevenson.

1 complete control over the work performed and the manner and means in which the work
2 was performed. KTI provided the loads that were transported by Plaintiff and other
3 Class Members, and KTI provided the routes to be driven and the destination for the
4 loads assigned to Plaintiff and other Class Members. KTI controlled both the work
5 performed and the manner and means in which Plaintiff and the other Class Members
6 performed their work in that:

7 (a) Plaintiff and other Class Members were not involved in a distinct
8 business, but instead were provided with instructions as to how to perform their work
9 and the manner and means in which the work was to be performed by means of KTI's
10 manuals and written instructions;

11 (b) Plaintiff and other Class Members were continuously provided with
12 training and supervision, and received training from KTI as to how and in what way to
13 transport loads assigned to them by KTI in that no prior advanced skill or training other
14 than training by KTI was required to obtain this job;

15 (c) KTI set the requirements as to what final results were expected in
16 regards to the transportation services performed by Plaintiff and other Class Members
17 and KTI implemented methods for Plaintiff and other Class Members to follow in order
18 to obtain KTI's desired results;

19 (d) Plaintiff and other Class Members had no opportunity for profit or
20 loss because KTI only paid these employees based on the amount of miles they drove for
21 KTI and KTI controlled the particular load assignments Plaintiff and other Class
22 Members conducted on KTI's behalf. Importantly, KTI did not allow Plaintiff and other
23 Class Members to use their trucks for any personal reasons and KTI also prohibited
24 Plaintiff and other Class Members from using these trucks to transport loads for any
25 other company besides KTI.

26 (e) Plaintiff and other Class Members performed transportation services
27 which is part of KTI's principal business and is closely integrated with and essential to
28 the employer's business of providing transportation services to their customers;

1 (f) Plaintiff and other Class Members performed their work in a
2 particular order and sequence in accordance with KTI's company policy;

3 (g) KTI had the "right" to control every critical aspect of KTI's daily
4 transportation operations in that KTI provided the customer, the haul, the route, and
5 instructions to Plaintiff and other Class Members as to where to deliver the haul and
6 deadlines for delivery. Plaintiff and other Class Members delivered loads only to KTI's
7 customers, which KTI controlled; and

8 (h) Plaintiff and other Class Members were required by Defendant to
9 place the company's logo on both the truck and the trailer while Plaintiff and other Class
10 members were employed by KTI.

11 30. As a result, stripped of all the legal fictions and artificial barriers to an
12 honest classification of the relationship between Plaintiff and all the other Class
13 Members on the one hand, and KTI on the other hand, Plaintiff and all the other Class
14 Members are and were employees of KTI and not independent contractors of KTI and
15 should therefore be properly classified as employees.

16
17 **Truck Drivers Are Improperly Excluded From Participation**
18 **In the Knight Plans**

19 31. At all times relevant, Knight and its independent contractor Truck
20 Drivers enjoyed a continuing employment relationship unlimited in time period where
21 both Knight and its independent contractor Truck Drivers had the right to terminate the
22 employment relationship.

23 32. As a result of Defendants' misclassification of these workers as
24 independent contractors, Plaintiff and the Class Members were deprived of the rights and
25 protections guaranteed by state and federal law to employees, including their rights under
26 ERISA.

27 33. Knight provides benefits to current employees through the Knight Plans.
28 Specifically, Knight provides to current employees the Knight Transportation, Inc. 401(k)

1 Plan and the Knight Transportation, Inc. Cafeteria Plan, both of which are employee
2 benefit plans subject to and governed by ERISA.

3 34. All of KTI's employees are eligible to participate in the Knight Plans so
4 long as they satisfy any applicable age and length-of-service requirements.

5 35. Plaintiff and the Class members, had they been properly recognized as
6 employees during their terms of service, would or could have been Participants and
7 therefore have claims for vested benefits under ERISA.

8 36. By their mischaracterization of Plaintiff and Class Members as
9 "independent contractors," however, Knight, the Knight Employee Benefit Plan
10 Defendants, the Administrative Committee of the Knight Transportation, Inc. 401(k)
11 Plan, and the Administrative Committee of the Knight Transportation, Inc. Cafeteria Plan
12 have systematically excluded Plaintiff and Class Members from the definition of an
13 "employee" covered by the Knight Plans and eligibility to participate in the Knight
14 Plans, thereby denying Plaintiff and Class Members benefits they are entitled to receive.

15 37. Defendants' conduct is exactly the type of conduct Congress intended
16 to remedy by enacting ERISA and Plaintiff and Class Members are individuals entitled
17 to ERISA's protections.

18
19 **It Is Futile For Plaintiff And The Class To Exhaust**
20 **Administrative Remedies, If Any**
21

22 38. Knight has in the past maintained that its Truck Drivers, Plaintiff and the
23 Class, were independent contractors even when Truck Drivers challenged that
24 designation.

25 39. Indeed, Knight has taken the position in previous litigation
26 against former independent contractor Truck Drivers that certain Labor Code provisions
27 are inapplicable to current and former Truck Drivers such as Plaintiff and the Class
28 because no employment relationship existed and they were independent contractors.

1 by job title each of Defendant's employees who as Class Members have been
2 systematically, intentionally and uniformly misclassified as independent contractors as
3 a matter of KTI's corporate policy, practices and procedures. Plaintiff will seek leave
4 to amend the complaint to include these additional job titles when they have been
5 identified.

6 46. The Class is so numerous that joinder of all Class Members is impracticable.

7 47. Knight, as a matter of corporate policy, practice and procedure,
8 erroneously classified all Truck Drivers as independent contractors. All Truck Drivers,
9 including Plaintiff, performed the same finite set of tasks and were paid by KTI
10 according to uniform and systematic company procedures. This business practice was
11 uniformly applied to each and every member of the Class, and therefore, the propriety
12 of this conduct can be adjudicated on a class-wide basis.

13 48. Common questions of law and fact exist as to all Class Members and
14 predominate over any questions affecting only individual Class members. These
15 common legal and factual questions, each of which yield a common answer, include, but
16 are not limited to, the following:

- 17 (a) Whether Plaintiff and Class Members have the requisite
18 independence and discretion of independent contractors;
- 19 (b) Whether, based on the conduct of KTI, Plaintiff and the Class
20 Members are, as a matter of law, employees;
- 21 (c) Whether Plaintiff and the Class members are entitled to participate
22 in Knight's benefit plans because they are, in fact, employees;
- 23 (d) Whether Plaintiff and Class members are entitled to benefits under
24 the various benefit plans Knight extends to all other employees;
- 25 (e) Whether, if Plaintiff and the Class members are "employees," that
26 these employees represent a significant percentage of the total
27 workforce such that KTI would be required to include them within
28

- 1 any employee benefit plan subject to ERISA and offered to all other
2 employees;
- 3 (f) Whether the actions of Defendants are applicable to the Class
4 Members as a whole, entitling Class Members to injunctive relief;
- 5 (g) Whether Plaintiff and the Class Members are entitled to
6 reimbursement for benefits they should have been receiving as
7 employees during their terms of employment, but which they were
8 improperly denied based on Defendants' misclassification of the
9 Class as independent contractors and not employees;
- 10 (h) Whether Plaintiff and Class Members are entitled to reformation of
11 Knight's various benefit plans under ERISA Section 502(a)(3) and
12 corresponding recalculation of benefits improperly withheld by
13 Defendants, in order to comply with ERISA's requirements;
- 14 (i) Whether Plaintiff and Class members are entitled to an accounting
15 of the Knight Benefit Plans surcharging Knight, the Administrative
16 Committee of the Knight Transportation, Inc. 401(k) Plan, and the
17 Administrative Committee of the Knight Transportation, Inc.
18 Cafeteria Plan for their failure to comply with the respective terms
19 of each of the Knight Plans, the IRC and ERISA, thus preventing
20 their unjust enrichment.

21 49. This Class Action meets the statutory prerequisites for the maintenance of
22 a Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- 23 (a) The persons who comprise the Class are so numerous that the joinder
24 of all Class Members is impracticable and the disposition of their
25 claims as a class will benefit the parties and the Court;
- 26 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
27 issues that are raised in this Complaint are common to the Class and
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

will apply uniformly to every Class Member;

(c) The claims of the representative Plaintiff are typical of the claims of each Class Member. Plaintiff, like all other Class Members was improperly classified as an independent contractor and was thus denied ERISA benefits. Plaintiff and all other Class Members sustained economic injuries arising from Defendants' violations of the law; and

(d) The representative Plaintiff will fairly and adequately represent and protect the interest of the Class Members, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative Plaintiff and the members of the Class that would make class certification inappropriate.

50. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual Class Members will create the risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the parties opposing the Class; or
- 2) Adjudication with respect to individual members of the Class which would as a practical matter be dispositive of interests of the other members not party to the adjudication or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

substantially impair or impede their ability to protect their interests.

(b) Common questions of law and fact predominate as to the Class Members with respect to the practices and violations of law as listed above, and predominate over any question affecting only individual Class Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the Class Members in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual Class Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual Class Members, which would establish incompatible standards of conduct for the Defendants; and/or
 - B. Adjudications with respect to individual Class Members would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) The likelihood that a substantial number of individual Class

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Members will avoid asserting their legal rights out of fear of retaliation by Defendants, which may adversely affect an individual's job with KTI or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and

- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3).

51. This Court should permit this action to be maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3) because:

- (a) The questions of law and fact common to the Class Members predominate over any question affecting only individual Class Members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class because in the context of employment litigation a substantial number of individual Class Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The Class Members are so numerous that it is impractical to bring all Class Members before the Court;
- (d) Plaintiff, and the other Class Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

- 1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the acts of unfair competition, statutory violations
3 and other improprieties, and in obtaining adequate compensation for
4 the damages and injuries which Defendants' actions have inflicted
5 upon Class Members;
- 6 (f) There is a community of interest in ensuring that the combined assets
7 of Defendants are sufficient to adequately compensate Class
8 Members for the injuries sustained;
- 9 (g) Defendants have acted or refused to act on grounds generally
10 applicable to the Class Members, thereby making final class-wide
11 relief appropriate with respect to the Class Members as a whole;
- 12 (h) The Class Members are readily ascertainable from the business records
13 of KTI; and,
- 14 (i) Class treatment provides manageable judicial treatment calculated to
15 bring an efficient and rapid conclusion to all litigation of all ERISA-
16 related claims out of the conduct of Defendants.

17

18 **FIRST CAUSE OF ACTION**

19 **DECLARATORY RELIEF UNDER ERISA**

20 **Against all Defendants**

21 52. Plaintiff, and the other members of the Class, reallege and incorporate by
22 this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

23 53. Plaintiff, for himself and on behalf of all Class members, seeks a
24 declaration pursuant to ERISA §502(a)(3), 29 U.S.C. §1132(a)(3), and 28 U.S.C. §2201
25 and 2202, of their rights under federal law and KTI's Agreements and plans and the
26 rights and liabilities of the parties herein. Specifically, Plaintiff, for himself and on
27 behalf of all Class members, seeks a declaration:

28

- 1 (A) That they are “employees”;
- 2 (B) That Plaintiff and the Class Members are “employees” eligible for benefits
- 3 under the employee benefit plans KTI offers to other employees;
- 4 (C) That certain provisions of the Knight Plans violate ERISA;
- 5 (D) That Plaintiff and the Class are entitled to reformation of the contracts and
- 6 restitution and/or surcharge of benefits improperly withheld by Defendants
- 7 in order to comply with ERISA’s requirements;
- 8 (E) As to which of the Defendants are fiduciaries or co-fiduciaries of the
- 9 Knight Plans within the meaning of ERISA;
- 10 (F) That with respect to any Defendants who are not expressly designated as
- 11 fiduciaries under the operative documents of the Knight Plans, a
- 12 determination as to their fiduciary status, having acted in a fiduciary
- 13 capacity under ERISA §3(21)(A), 29 U.S.C. §1002(21)(A), and in so doing
- 14 are required to comply with ERISA’s fiduciary standards;
- 15 (G) That Defendants who are fiduciaries or co-fiduciaries of the Knight Plans
- 16 within the meaning of ERISA have breached their fiduciary duties and
- 17 violated federal law under the requirements of ERISA, thereby giving rise
- 18 to direct personal liability; and
- 19 (H) That Defendants who have breached their fiduciary duties under ERISA
- 20 have created individual corporate or personal liabilities.

21 54. As a result of the actions and failings of Defendants, Plaintiff and the Class

22 members know they have suffered injury and have therefore retained the services of legal

23 counsel and have necessarily incurred attorneys’ fees and costs in prosecuting this action.

24 Furthermore, Plaintiff anticipates incurring additional attorneys’ fees and costs in

25 prosecuting this action, all in an amount which is currently unknown. Plaintiff therefore

26 requests an award of attorneys’ fees and costs in an amount to be determined pursuant

27 to 29 U.S.C. § 1132(g)(1).

28

1 requests an award of attorneys' fees and costs in an amount to be determined pursuant
2 to 29 U.S.C. § 1132(g)(1).

3
4 **THIRD CAUSE OF ACTION**

5 **CLAIM FOR BENEFITS UNDER ERISA §502(a)(1)(B)**

6 **Against all Defendants**

7 62. Plaintiff, and the other members of the Class, reallege and incorporate by
8 this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

9 63. ERISA §502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B), authorizes a
10 participant or beneficiary of a plan to bring a civil action to recover benefits due under
11 the terms of the plan, to enforce his rights under the terms of the plan, and to clarify his
12 rights to future benefits under the plan.

13 64. Defendant provides an employee pension benefit plan (i.e., the Knight
14 Transportation, Inc. 401(k) Plan) and an employee welfare benefit plan (i.e., the Knight
15 Transportation, Inc. Cafeteria Plan) to current employees, both of which are employee
16 benefit plans subject to and governed by ERISA.

17 65. The Knight Transportation, Inc. 401(k) Plan covers substantially all of
18 KTI's employees who have attained age 18 and completed one year of service.

19 66. All of KTI's employees are eligible to participate in the Knight
20 Transportation, Inc. Cafeteria Plan.

21 67. As employee benefit plans subject to ERISA, the Knight Plans
22 must comply with 26 U.S.C. §410(b) and §105(h), including the minimum coverage
23 requirements. See also 29 U.S.C. §1202(c) (explicitly incorporating Treasury regulations
24 promulgated under 26 U.S.C. §§410(a), 411 & 412).

25 68. A plan that fails to comply with the requirements of 26 U.S.C. §410(b)
26 and §105(h), including the minimum coverage requirements, must be brought into
27 retroactive compliance. *See e.g.* 26 C.F.R. § 1.410(b)-8(a)(1) ("A plan must satisfy
28

1 section 410(b) for a plan year...[A]mendments retroactively correcting a plan in
2 accordance with § 1.401(a)(4)-11(g) are taken into account as plan provisions in effect
3 as of the last day of the plan year.”).

4 69. Relying on their mischaracterization of Plaintiff and Class Members as
5 “independent contractors,” however, Defendants have systematically excluded Plaintiff
6 and Class Members from the definition of an “employee” covered by the Knight Plans
7 and eligibility to participate in the Knight Plans.

8 70. Plaintiff and Class Members are “employees” under ERISA and the
9 Class represents a significant percentage of KTI’s workforce that it had to cover under
10 the terms of the Knight Plans to comply with 26 U.S.C. §410(b) and §105(h), including
11 the minimum coverage requirements.

12 71. By excluding Plaintiff and Class members from the definition of an
13 “employee” covered by the Knight Plans, Defendants have, upon information and belief,
14 violated 26 U.S.C. §410(b) and §105(h), including the minimum coverage requirements.
15 Indeed, upon information and belief, the Class represents at least 25% of KTI’s
16 workforce.

17 72. Defendants’ refusal to implement Knight Plans in compliance
18 with ERISA and 26 U.S.C. §410(b) and §105(h), including the minimum coverage
19 requirements, was unlawful.

20 73. Defendants’ ERISA violations have damaged Plaintiff and the Class,
21 including but not limited to benefits due and owing had the Knight Plans offered to all
22 other current employees complied with ERISA.

23 74. Defendants’ conduct has caused actual harm to Plaintiff and Class
24 members in an amount to be proven at trial.

25 75. 29 U.S.C. § 1132(g)(1) [ERISA § 502(g)(1)] entitles plaintiffs who prevail
26 in obtaining any of the benefits for which the plaintiffs brought suit to an award of
27 reasonable attorneys’ fees and costs of action under the remedial purposes and policies
28

1 of ERISA. As a result of the actions and failings of Defendants, and each of them,
2 Plaintiff and the Class members know themselves and the Knight Plans to have suffered
3 harm and have therefore retained the services of legal counsel and have necessarily
4 incurred attorneys' fees and costs in prosecuting this action. Furthermore, Plaintiff and
5 the Class members anticipate incurring additional attorneys' fees and costs in
6 prosecuting this action, all in an amount which is currently unknown. Plaintiff and the
7 Class members therefore request an award of attorneys' fees and costs in an amount to
8 be determined pursuant to 29 U.S.C. § 1132(g)(1).

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY
UNDER ERISA §§ 409, 502(a)(2) and (3), 404, and 405
Against Knight, the Administrative Committee of the Knight Transportation,
Inc. 401(k) Plan, and the Administrative Committee of the Knight
Transportation, Inc. Cafeteria Plan

76. Plaintiff, and the other members of the Class, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

77. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires, *inter alia*, that a plan fiduciary discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims, and in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with Title I of ERISA.

78. ERISA § 409, 29 U.S.C. § 1109, provides, *inter alia*, that any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by Title I of ERISA shall be personally

1 liable to make good to the plan any losses to the plan resulting from each such breach,
2 and additionally is subject to such other equitable or remedial relief as the court may
3 deem appropriate, including removal of the fiduciary.

4 79. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), permits a participant to bring
5 an action for relief under ERISA § 409, 29 U.S.C. § 1109.

6 80. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a participant to bring
7 an action to obtain appropriate equitable relief to enforce the provisions of Title I of
8 ERISA or to enforce the terms of an employee benefit plan.

9 81. Defendants, and each of them as fiduciaries to the Plan, in one way or
10 another breached their fiduciary duties to the Plan under ERISA. These breaches of
11 fiduciary duties include, but are not limited to, misclassifying employees such as
12 Plaintiff and the Class Members as independent contractors and thereby depriving them
13 of rights and protections afforded them under ERISA, failing to follow the terms of the
14 Knight Plans, and failing to operate and administer the Knight Plans in accordance with
15 their respective terms, the IRC and ERISA.

16 82. Defendants' conduct has harmed the Knight Plans by, among other things,
17 jeopardizing their qualification under the IRC, and has further caused actual harm to
18 Plaintiff and Class members in an amount to be proven at trial.

19 83. 29 U.S.C. § 1132(g)(1) [ERISA § 502(g)(1)] entitles plaintiffs who prevail
20 in obtaining any of the benefits for which the plaintiffs brought suit to an award of
21 reasonable attorneys' fees and costs of action under the remedial purposes and policies
22 of ERISA. As a result of the actions and failings of Defendants, and each of them,
23 Plaintiff and the Class members know themselves and the Knight Plans to have suffered
24 harm and have therefore retained the services of legal counsel and have necessarily
25 incurred attorneys' fees and costs in prosecuting this action. Furthermore, Plaintiff and
26 the Class members anticipate incurring additional attorneys' fees and costs in
27 prosecuting this action, all in an amount which is currently unknown. Plaintiff and the
28 Class members therefore request an award of attorneys' fees and costs in an amount to

1 be determined pursuant to 29 U.S.C. § 1132(g)(1).
2

3 **FIFTH CAUSE OF ACTION**

4 **CLAIM TO ENJOIN ACTS OR PRACTICES IN VIOLATION OF ERISA**
5 **AND FOR OTHER APPROPRIATE RELIEF UNDER ERISA §502(a)(3)**

6 **Against Knight, the Administrative Committee of the Knight Transportation,**
7 **Inc. 401(k) Plan, and the Administrative Committee of the Knight**
8 **Transportation, Inc. Cafeteria Plan**

9 84. Plaintiff, and the other members of the Class, reallege and incorporate by
10 this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

11 85. ERISA Section 502(a)(3) empowers a plan participant or beneficiary to
12 bring a civil action “(A) to enjoin any act or practice which violates any provision of this
13 subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i)
14 to redress such violations or (ii) to enforce any provisions of this subchapter or the terms
15 of the plan.” 29 U.S.C. §1132(a)(3).

16 86. Relying on their mischaracterization of Plaintiff and Class members as
17 “independent contractors,” Defendants have systematically excluded Plaintiff and Class
18 members from the definition of an “employee” covered by the Knight Plans and
19 eligibility to participate in the Knight Plans.

20 87. Plaintiffs and Class Members are “employees” under ERISA and the
21 Class represents a significant percentage of KTI’s workforce that Defendants had to
22 cover under the terms of the Knight Plans to comply with 26 U.S.C. §410(b) and
23 §105(h), including the minimum coverage requirements.

24 88. By excluding Plaintiff and Class Members from the definition of an
25 “employee” covered by the Knight Plans, Defendants have, upon and information and
26 belief, violated 26 U.S.C. §410(b) and §105(h), including the minimum coverage
27 requirements. Indeed, upon information and belief, the Class represents at least 25% of
28 KTI’s workforce.

1 89. Defendants Knight, the Administrative Committee of the Knight
2 Transportation, Inc. 401(k) Plan, and the Administrative Committee of the Knight
3 Transportation, Inc. Cafeteria Plan misclassification of Truck Drivers as independent
4 contractors, as well as their refusal to implement the Knight Plans in compliance with
5 ERISA and 26 U.S.C. §410(b) and §105(h), including the minimum coverage
6 requirements, was unlawful and a breach of their fiduciary duties to administer the
7 Knight Plans in accordance with ERISA. *See* 29 U.S.C. §1104(a)(1)(D) (“a fiduciary
8 shall discharge his duties with respect to a plan solely in the interest of the participants
9 and beneficiaries and...in accordance with the documents and instruments governing the
10 plan insofar as such documents and instruments are consistent with the provisions of this
11 subchapter and subchapter III of this chapter.”).

12 90. Plaintiff and Class members are entitled to equitable relief under
13 ERISA §502(a)(3), including reforming the Knight Plans to include Plaintiff and the
14 Class and to comply with ERISA and 26 U.S.C. §410(b) and §105(h), including the
15 minimum coverage requirements, and requiring Defendants to pay restitution in the form
16 of a surcharge or otherwise credit Plaintiff and Class Members for all ERISA benefits
17 to which they are retroactively entitled under the Knight Plans in order to be made whole
18 and to prevent Defendants’ unjust enrichment.

19 91. Defendants’ conduct has harmed the Knight Plans by, among other things,
20 jeopardizing their qualification under the IRC, and has further caused actual harm to
21 Plaintiff and Class Members in an amount to be proven at trial.

22 92. 29 U.S.C. § 1132(g)(1) [ERISA § 502(g)(1)] entitles plaintiffs who prevail
23 in obtaining any of the benefits for which the plaintiffs brought suit to an award of
24 reasonable attorneys’ fees and costs of action under the remedial purposes and policies
25 of ERISA. As a result of the actions and failings of Defendants, and each of them,
26 Plaintiff and the Class members know themselves and the Knight Plans to have suffered
27 harm and have therefore retained the services of legal counsel and have necessarily
28 incurred attorneys’ fees and costs in prosecuting this action. Furthermore, Plaintiff and

1 the Class members anticipate incurring additional attorneys' fees and costs in
2 prosecuting this action, all in an amount which is currently unknown. Plaintiff and the
3 Class members therefore request an award of attorneys' fees and costs in an amount to
4 be determined pursuant to 29 U.S.C. § 1132(g)(1).

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff individually, and on behalf of all others similarly
8 situated, demands judgment against the Defendants and relief from this Court as
9 follows:

- 10 A. An order certifying the Class as described with the named Plaintiff as
11 Class Representative(s) and appointing undersigned counsel as Lead
12 Counsel for the Class;
- 13 B. A declaration that Plaintiff and Class members are legal "employees",
14 for all purposes, including, but not limited to, ERISA;
- 15 C. A declaration that because Defendants excluded Plaintiff and the Class
16 from participating in the Knight Plans, the Knight Plans are not in
17 compliance with ERISA and 26 U.S.C. §410(b) and §105(h), including
18 the minimum coverage requirements;
- 19 D. A declaration as to which of the Defendants are fiduciaries or co-
20 fiduciaries of the Knight Plans within the meaning of ERISA;
- 21 E. A declaration that with respect to any Defendants who are not expressly
22 designated as fiduciaries under the operative documents of the Knight
23 Plans, a determination as to their fiduciary status, having acted in a
24 fiduciary capacity under ERISA §3(21)(A), 29 U.S.C. §1002(21)(A),
25 and in so doing are required to comply with ERISA's fiduciary
26 standards;
- 27 F. A declaration that Defendants who are fiduciaries or co-fiduciaries of the
28 Knight Plans within the meaning of ERISA have breached their fiduciary

- 1 duties and violated federal law under the requirements of ERISA,
- 2 thereby giving rise to direct personal liability;
- 3 G. A declaration that Defendants who have breached their fiduciary duties
- 4 under ERISA have created individual corporate or personal liabilities;
- 5 H. Payment to Plaintiff and the Class of all amounts due under the Knight
- 6 Plans had the plans complied with ERISA;
- 7 I. An order reforming the Knight Plans to include Plaintiff and the Class
- 8 and to comply with ERISA and 26 U.S.C. §410 (b) and §105(h),
- 9 including the minimum coverage requirements, and requiring
- 10 Defendants to pay restitution in the form of a surcharge or otherwise
- 11 credit Plaintiff and Class members for all ERISA benefits to which they
- 12 are retroactively entitled under the Knight Plans in order to be made
- 13 whole and to prevent Defendants’ unjust enrichment;
- 14 J. An injunction barring Defendants from continuing to misclassify the
- 15 Class as “independent contractors” and to classify them as “employees”;
- 16 K. Removal of all fiduciaries of the Knight Plans found to have breached
- 17 their fiduciary duties under ERISA, and for the appointment of successor
- 18 fiduciaries pursuant to Plaintiff’s selection and the court’s approval;
- 19 L. A permanent injunction enjoining the ERISA fiduciary-Defendants from
- 20 serving as ERISA fiduciaries in the future;
- 21 M. An award of attorneys’ fees, plus the costs and expenses of this action;
- 22 N. Pre- and post-judgment interest, as afforded by law; and

23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

O. All such other legal and equitable relief to which Plaintiff and the Class are entitled.

Dated: November 17, 2017

BLUMENTHAL, NORDREHAUG & BHOWMIK
LLP

By: /s/ Norman Blumenthal
Norman Blumenthal
Attorneys for Plaintiff

EXHIBIT A

**INDEPENDENT CONTRACTOR
OPERATING AGREEMENT**
(OTR)

*Contractor will receive two
copies of this contract once
signed. One copy should
always remain in the tractor.*

TABLE OF CONTENTS

| <u>Title</u> | <u>Page</u> |
|---|-------------|
| 1. Independent Contractor Status | 3 |
| 2. Services of Contractor | 3 |
| 3. Contractor Obligations Regarding Maintenance and Operation of Equipment | 5 |
| 4. Carrier Furnished Products, Equipment or Services | 6 |
| 5. Contractor's Obligations Regarding Contractor's Affiliates | 6 |
| 6. Compliance with Regulations | 7 |
| 7. Contractor's Obligation to Maintain Insurance | 7 |
| 8. Insurance Obligations of Carrier | 8 |
| 9. Claims Procedures and Charge-Backs to Contractor | 9 |
| 10. Contract Rate for Services | 9 |
| 11. Timing for Payment, Documentation Required for Payment and Charge-Backs | 9 |
| 12. Empty Miles and Bobtail Policy | 10 |
| 13. Performance Bond or Escrow Fund | 10 |
| 14. Maintenance Escrow | 10 |
| 15. Fuel and Mileage Tax | 11 |
| 16. Interest on Escrows | 11 |
| 17. Carrier Obligations | 12 |
| 18. Trailers | 12 |
| 19. Term and Termination | 13 |
| 20. Contractor Obligations Upon Termination | 13 |
| 21. Late or Abandon Shipments | 13 |
| 22. Advances and Charges | 14 |
| 23. Indemnification of Carrier by Contractor and Release | 14 |
| 24. Applicable Law | 14 |
| 25. Severability | 15 |
| 26. Entire Agreement; Beneficiary | 15 |
| 27. Execution of Agreement and Location of Copies | 15 |
| 28. Arbitration | 15 |
| 29. Limitation of Actions | 16 |
| 30. Collection Fees | 16 |
| 31. Obligations to Third Parties | 17 |
| 32. Order of Payment and Security Interest | 17 |
| 33. Attorney's Fees | 17 |
| 34. Choice of Forum | 17 |
| | |
| Addendum A Description of Equipment | Attached |
| Addendum B Description of Tracking and Safety Accessories | Attached |
| Addendum C Charge Back Deductions | Attached |
| Addendum D Contract Rate for Service | Attached |
| Schedule 1 Empty Mileage Variable Rate | Attached |
| Schedule 2 Fuel Cost Protection Program | Attached |

INDEPENDENT CONTRACTOR OPERATING AGREEMENT

2.3 Hauling for Other Carriers (a) The parties acknowledge that while Contractor is operating under Carrier's operating authority granted to Carrier by the DOT or its affiliated agencies, Contractor shall be required to display all information required by federal and state law, such as the Carrier name and operating authority on the Equipment. Carrier shall furnish Contractor with all necessary identification required by the DOT and any other applicable federal or state statutes, rules or regulations. All such identification shall be removed from the Equipment by Contractor if Contractor contracts with another party for services. Moreover, all such identification shall be removed from the Equipment by Contractor and returned to Carrier upon the termination of this Agreement. Carrier may, in its discretion, withhold payment until such identification is returned, unless the identification is lost or stolen, whereupon a letter certifying the removal of the identification will suffice. While operating under Carrier's operating authority, Contractor may not haul goods for any third party.

(b) Contractor may provide services to another carrier during the term of this Agreement, provided, however that at such times Contractor agrees that it will remove from the Equipment any and all identification devices, licenses and base plates pertaining to Carrier and will return them to the Carrier. Contractor agrees to indemnify, defend and hold Carrier harmless from any liability arising from contracting or providing services to another carrier or company. Contractor agrees that hauling for any other party will not be performed while using any of Carrier's resources, equipment, name or authorities.

3. Contractor Obligations Regarding Maintenance and Operation of Equipment

With regard to the Equipment, the Contractor shall, at Contractor's sole cost and expense,

(a) Maintain and operate the Equipment in accordance with the Regulations and this Agreement;

(b) While operating under Carrier's authority, furnish the Carrier the exclusive possession, use and control of the Equipment that the Carrier may require to fulfill requirements placed on it by the Regulations;

(c) Install and maintain on the Equipment a Qualcomm Communication System in accordance with Addendum "B" attached hereto and incorporated herewith by this reference;

(d) Insure that the Equipment is manually or electronically governed as not to exceed 70 miles per hour and 68 miles per hour on cruise control and abide by all speed limits established by Federal, state and local governments.

(e) Pay all Federal Highway Use Taxes on the Equipment and shall provide the Carrier with a stamped copy of "Form 2290, Schedule I" together with a copy of the check submitted with payment of such tax or other evidence of such payment by October 31st each year during the term of this Agreement;

(f) Prohibit any persons, other than Contractor or those Contractor's Affiliates, who are qualified under this Agreement to operate the Equipment from operating the Equipment and

(g) Prohibit any persons from riding in or occupying the Equipment unless the Contractor has made application to the Carrier under the Carrier's Passenger Procedures for permission to allow a person to ride in the Equipment and Carrier has approved such application.

4. Carrier Furnished Products, Equipment or Services

4.1 The Contractor is not required to purchase or rent any products, equipment or services from the Carrier. In the event that Contractor elects to purchase or rent products, equipment or services from the Carrier, Contractor agrees that the Carrier may deduct amounts due for such products, equipment or services from the compensation due the Contractor or from Contractor's Escrows. Contractor and Carrier agree such amounts will include the cost of such products, equipment or services to Carrier and may include amounts to cover Carrier's direct and indirect administrative costs of securing, offering and maintaining such products, equipment or services, plus an additional amount to provide a return to Carrier in exchange for undertaking the risk of securing, offering and maintaining such products, equipment or services. Upon request by Contractor, Carrier will afford copies of documents that are necessary to determine the validity of items charged to Contractor. Carrier may retain all or any portion of any vendor or supplier rebates or discounts on any items purchased through Carrier.

4.2 Charge-Back Deductions The Carrier shall be authorized under this Agreement to deduct or charge-back from payments due from Carrier to the Contractor those amounts, costs, expenses and charges described on Addendum "C" attached hereto for the products Contractor elects to purchase from or through Carrier.

5. Contractor's Obligations Regarding Contractor's Affiliates

Contractor, at Contractor's sole cost and expense, shall be responsible for:

- (a) The payment of all wages, expenses, Statutory Work Accident Insurance and withholding and employment taxes due to federal, state or local governments or agencies resulting from the services provided by Contractor or Contractor's Affiliates under this Agreement;
- (b) Maintaining in force at all times all required federal and state statutory Work Accident Insurance coverage ("Statutory Workers' Compensation") for the Contractor and Contractor's Affiliates providing services under this Agreement;
- (c) Hiring, setting the wages, hours and working conditions of, and adjusting the grievances of, supervising, training, disciplining and firing of all Contractor's Affiliates, which Contractor's Affiliates are and shall remain the employees of the Contractor.

6. Compliance with Regulations

6.1 Contractor represents and warrants that all services performed by the Contractor and Contractor's Affiliates under this Agreement will be in full compliance with all Regulations, including but not limited to, Regulations governing qualification of drivers; the operation of motor vehicles; parts and accessories necessary for safe operation; hours of service of drivers; inspection and maintenance; transportation of hazardous materials; and driving and parking rules. Contractor shall immediately report all accidents from the scene thereof, or at first opportunity, to Carrier, and shall file with Carrier all physical examinations, certificates, driver's record of duty status (logs), accident reports, and all other reports, documents and data required by Carrier from time to time.

6.2 Overweight Fines Any fines for items such as overweight and oversize trailers assessed against the Contractor, its employees or the Equipment resulting from the acts or omissions of Contractor or its employees shall be the sole responsibility of Contractor and the Carrier shall be permitted to charge Contractor for any such fines or penalties which it pays or deduct said amounts from any compensation due to Contractor hereunder. Contractor shall

be responsible for checking all loads, where the weight of the load is not specified, at the nearest weight station. Carrier shall be liable for fines for overweight and oversize trailers when the trailers are preloaded, sealed or the load is containerized, or when the trailer or lading is otherwise outside of the Contractor's control. Carrier shall reimburse Contractor for the reasonable cost of scaling a load if the shipper requires a scale ticket.

7. **Contractor's Obligation to Maintain Insurance**

7.1 Contractor's Insurance Obligations Contractor acknowledges that it shall be responsible for providing the Carrier with evidence of the following policies of insurance in form and content satisfactory and approved by Carrier: (a) Statutory Work Accident insurance covering the Contractor and the Contractor's Affiliates, (b) physical damage insurance on the Equipment in an amount equal to the full replacement value of the Equipment, (c) passenger or rider accidental death and dismemberment insurance, and (d) the bobtail insurance required under Section 7.2 hereof. The Carrier shall be named as an additional insured under such policy or policies. The Contractor shall provide the Carrier with evidence of such insurance and a certificate naming the Carrier as an additional insured prior to the effective date of this Agreement. Each policy of insurance shall provide that the Contractor's insurance company shall notify the Carrier of any material changes or cancellation of the Contractor's insurance policy at least fifteen (15) days prior to any material change or cancellation thereof.

7.2 Bobtail Insurance Contractor agrees to maintain a bobtail insurance policy with respect to public liability and property damage in limits to \$1,000,000 for single limit coverage in any accident involving any Equipment hereunder when used other than in the performance of services in delivering freight under this Agreement. Contractor agrees to furnish evidence of such coverage to Carrier and arrange for Carrier to be named as additional insured under such policy. The Carrier shall in no way be liable for any damage which may occur to the Equipment. The Contractor's policy of insurance shall name the Carrier as an additional insured and shall provide that the Contractor's insurance company shall notify the Carrier of any material changes or cancellation of the Contractor's insurance policy at least fifteen (15) days prior to any material change or cancellation thereof.

7.3 Purchase of Insurance Through Carrier Although Contractor is obligated under Section 7.1 to obtain its own Statutory Work Accident insurance, bobtail insurance, physical damage insurance, passenger or rider accidental death and dismemberment insurance, Contractor may elect to obtain some or all of the required insurance through Carrier at such cost, terms and conditions as Carrier may establish from time to time. The amounts currently charged for the insurance required under Section 7.1 are set forth on Addendum "C" attached hereto and by this reference incorporated herein. If Contractor elects to purchase any insurance through the Carrier, the Carrier will furnish a certificate of insurance for each policy purchased. Upon Contractor's request, Carrier will provide a copy of any policy purchased by Contractor through Carrier.

8. **Insurance Obligations of Carrier**

8.1 Liability Insurance In satisfaction of its obligations under the Regulations, the Carrier shall provide and pay for all premiums for liability insurance necessary for the operation of Equipment in accordance with this Agreement; provided, however, that the Carrier shall be entitled to charge-back to the Contractor for any claims resulting from the actions of Contractor as described in Section 9.

8.2 Cargo Insurance In satisfaction of its obligations under the Regulations, the Carrier shall obtain and pay for premiums for all cargo insurance, provided that damaged cargo shall be subject to a charge-back to the Contractor for any claims resulting from the action of Contractor as described in Section 9.

8.3 Indemnification Notwithstanding the foregoing, Contractor shall be fully responsible for and shall indemnify, defend and hold Carrier harmless from any such liability which arises during any period that Contractor is not under dispatch or which arises from Contractor's gross negligence or willful misconduct. Furthermore, Contractor, on behalf of himself, his marital community, his estate, heirs, personal representatives, successors and assigns, hereby releases Carrier from any and all liability for any injury suffered by Contractor in the course of the performance of services under this Agreement, including any claims of negligence against the Carrier

9. Claims Procedures and Charge-Backs to Contractor

9.1 Claim Procedures At such time as (a) a claim relating to damage caused by Contractor to freight or cargo, the Equipment, Trailers, other property of Carrier, or any liability arising from the operation of the Equipment in accordance with this Agreement (for purposes of this Section 9, the "Claim") has been timely filed and properly documented, in accordance with applicable Regulations, and (b) the Carrier determines that Contractor is liable for such Claim, subject to the provisions of Section 9.2 hereof, the Carrier may charge back the amount of such Claim from any amount due Contractor by Carrier. The Carrier shall provide the Contractor with a written explanation and itemization of any charge-back for any Claim made from any compensation or monies owed to the Contractor and the written explanation and itemization shall be delivered to the Contractor before such charge-back is made.

9.2 Limitation on Charge-Backs for Claims The charge-back by the Carrier for Claims under Section 9.1 against the amounts due by the Carrier to the Contractor shall be subject to the following limitations per occurrence:

- Cargo Claims \$5,000 per occurrence
- Property Damage Claims \$5,000 per occurrence
- Property Damage to Carrier's Trailer \$5,000 per occurrence
- Liability Insurance Claim \$5,000 per occurrence
- Maximum Deductible (including damage to Trailer) \$5,000 per occurrence

Provided, however, that in the event that any Claims arise while the Contractor is not under dispatch, or if a Claim is the result of Contractor's gross negligence or willful misconduct, there shall be no limit on the amount of Contractor's liability for such Claim

10. Contract Rate for Services

The Carrier agrees to pay the Contractor for the services to be provided under this Agreement, the rates and amounts set forth in Addendum "D" attached hereto, which has been initialed by the Carrier and Contractor, and which is incorporated herein by this reference.

11. Timing for Payment, Documentation Required for Payment

The Carrier shall pay the Contractor for services provided under this Agreement pursuant to Addendum "D," within fifteen (15) days after submission by the Contractor to the Carrier of the necessary delivery documents and other paperwork concerning the delivery of freight on behalf of the Carrier. The documents shall include the driver's record of duty status (log book) pages, required by DOT, and those documents necessary for Carrier to secure payment from shipper.

12. Empty Miles and Bobtail Policy

12.1 Empty Miles The Carrier can and does incur empty or deadhead mileage in dispatching the Equipment from place to place in order to secure loads of freight under this Agreement. The rates and amounts shown on Addendum "D" have been calculated to fully consider Contractor's operating costs on both loaded and empty mileage. Contractor and Carrier agree that no additional amounts will be due and owing the Contractor as a result of empty or deadhead mileage unless specifically included on Addendum "D".

12.2 Bobtail Policy If the Contractor elects to bobtail the Equipment and not to transport an empty Trailer from the Contractor's last destination for freight delivery, the Contractor acknowledges that the Carrier may only have freight available at Contractor's last delivery destination and as a result Contractor may be required to return (at Contractor's sole cost and expense) to the Contractor's last destination for freight delivery in order to secure Contractor's next load of freight. The Contractor acknowledges that any election to transport an empty Trailer or bobtail is made by the Contractor in its sole discretion.

13. Performance Bond or Escrow Fund

The Contractor shall deposit with Carrier a bond in cash in the amount of \$1,400.00 or establish an escrow fund ("Fund") to guarantee performance under this Agreement. The Fund shall be in the amount of \$1,400.00 for each vehicle described on Addendum A and shall be established by the Contractor by either (i) depositing such amount with the Carrier concurrent with the execution of this Agreement, or (ii) authorizing the deduction of One Hundred and 00/100 Dollars (\$100.00) per week from all amounts due to the Contractor from the Carrier hereunder until the amount required in this Section 13 has been paid;

14. Maintenance Escrow

The Contractor agrees to maintain the Equipment in accordance with the Regulations until such time as this Agreement expires or is terminated. The Contractor authorizes the Carrier to establish a maintenance escrow account on behalf of the Contractor, pursuant to which the Carrier is authorized to charge-back to the Contractor in an amount equal to three cents (\$0.03) per Mile for each Mile the Equipment is operated by the Contractor, pursuant to this Agreement ("Maintenance Escrow"). For purposes of this Section 14, "Mile" shall be defined as Loaded Miles and Dispatched Empty Miles as set forth in Addendum D. The Contractor acknowledges and agrees that the Contractor shall maintain at all times a minimum balance of \$1,000.00 in the Maintenance Escrow. Notwithstanding the foregoing, the Contractor shall not be obligated to establish a Maintenance Escrow if the Contractor qualifies for and participates in the Maintenance and Repair Program offered by Quad-K LLC ("QUAD-K") pursuant to either the QUAD-K Tractor Lease Agreement and written evidence of the same is provided to the Carrier.

The funds contained in the Maintenance Escrow may be withdrawn by the Contractor from time to time and used by the Contractor solely for the following types of maintenance, service and repair expenses for the Equipment: (i) all preventive maintenance, replacement parts and repairs to keep

the Equipment in good repair and operating condition, (ii) oil and lubricants necessary for the efficient operation of the Equipment; and (iii) all necessary tires and tubes.

15. **Fuel and Mileage Tax Escrow**

(a) The Contractor authorizes the Carrier to establish a Fuel and Mileage Tax Escrow (the "Tax Escrow") that shall be funded by Contractor in accordance with this Agreement. The Carrier shall utilize the funds contained in the Tax Escrow for the payment of the fuel and mileage tax obligations of the Contractor, as calculated by Carrier based upon the fuel consumption reports provided to the Carrier by the Contractor.

(b) The Contractor and Carrier agree:

(i) The Tax Escrow shall be established by the Contractor from funds due Contractor from the Carrier. The Contractor hereby authorizes the charge-back of three cents (\$0.03) per Mile for each Mile the Equipment is operated by the Contractor from all amounts due to the Contractor from the Carrier. The Tax Escrow shall contain a minimum of \$300.00 at all times; and

(ii) If the Contractor fails to pay any amounts for which the Contractor is obligated under this Agreement, the Carrier, in its sole and absolute discretion, and without waiving any other rights under this Agreement, the Carrier shall be under no obligation to pay any of the mileage or fuel taxes owed by Contractor.

16. **Interest on Escrows**

(a) Carrier agrees to pay Contractor interest on the Fund, the Maintenance Escrow and the Tax Escrow and the Deposit required in Addendum B (the "Escrows") as follows:

(i) Interest shall accrue from the date the Carrier receives the Escrows at a rate equal to the average yield on 91-day, 13-week Treasury Bills as established in the weekly auction by the U.S. Treasury Department (the "Short-term Treasury Bill Yield") and such interest rate shall change on the first day of each calendar quarter according to the changes in the Short-term Treasury Bill Yield.

(ii) Interest shall be paid in arrears and all accrued interest shall be paid within 30 days after the end of each calendar quarter.

(iii) The principal amount on which interest shall be accrued shall be the amount of the Escrows.

(iv) Unless, otherwise specified in this Agreement, all interest paid to Contractor under this paragraph shall be paid into and maintained in the Escrows (even if each Escrow exceeds the maximum amount required by this Agreement).

(b) All or any portion of the Escrows may be applied by Carrier to satisfy any advance or other indebtedness of Contractor to Carrier, or incurred by the Contractor in connection with the performance of this Agreement, including those items identified in Sections 2, 3, 4, 6, 7, 9, 18, 19, 20, 21, 22, 23, 30, 31, Addendum B, and Addendum C. Carrier may require Contractor to replenish the Escrows so that the balance equals the amounts required under this Agreement for each tractor set forth in Addendum A at all times. Carrier will provide an accounting of all deductions and additions to the Escrows (1) on the weekly settlement statements provided to Contractor by Carrier or (2) by providing a separate accounting on a

monthly basis. Carrier will provide Contractor an accounting of the Escrows at any reasonable time requested by Contractor.

(c) Upon termination of this Agreement, Carrier will return the Escrows to Contractor after Contractor has met all its obligations under this Agreement. The Escrows, less any appropriate deductions including any deductions for advances or other indebtedness of Contractor to Carrier made under Sections 2, 3, 4, 6, 7, 9, 18, 19, 20, 21, 22, 23, 30, 31, Addendum B, and Addendum C shall be returned to the Contractor by Carrier within forty-five (45) days after termination of this Agreement.

17. **Carrier Obligations**

17.1 Availability of Freight. Carrier shall exercise reasonable efforts to make freight available from time to time for transportation by the Contractor. *Notwithstanding the foregoing, the Carrier makes no representations or warranties to the Contractor regarding the availability of freight or the specific number of loads or pounds of freight that may be available for transportation by the Contractor at any particular time or any particular place.*

17.2 Reimbursement of Contractor for Fines Associated with Trailer The Contractor will be reimbursed for fines incurred by Contractor that arise solely from the condition of a Trailer which was not detectable at the time of acceptance of the Trailer pursuant to a standard pre-trip inspection performed by the Contractor or the Contractor's Affiliates in accordance with the Regulations.

17.3 Tariffs. Carrier shall permit Contractor to examine Carrier's tariffs or other documents upon which rates and charges are computed upon reasonable request and during normal business hours.

17.4 Billing for Freight. All freight transported under this Agreement shall be billed by and through the Carrier.

18. **Trailers**

The Carrier shall provide the Contractor with access to trailers (the "Trailers") for the transportation of freight under the terms of this Agreement. In the event a Trailer is damaged while in the possession of Contractor, Contractor shall immediately notify the Carrier and provide the Carrier with information regarding the damage and cause thereof. Before replacing or repairing Carrier's trailers or any parts or accessories thereto, Contractor will obtain instructions and a purchase order authorization from the Carrier. In the event the Contractor obtains repairs or replacements without first obtaining a purchase authorization number from Carrier, the Contractor will be responsible for the costs of such repairs in excess of the amount the Carrier typically authorizes for such repairs or replacement, and any amount over the Carrier's cost will be charged back to Contractor.

18.1 Container Equipment Contractor agrees to thoroughly inspect any chassis or container not owned by Carrier ("Container Equipment") prior to taking possession and control of the Container Equipment. Thereafter, Contractor accepts exclusive responsibility for any defects or damage to the Container Equipment (including but not limited to tubes and tires) from any source or cause. All repairs or replacements of tires and tubes shall be made by, and at the expense of Contractor. All repairs or replacements of tires or tubes shall be done so as to place the tire(s) in the condition in which the tire(s) were received by Contractor. Contractor shall promptly notify Carrier of the repair or replacement of any tires.

18.2 Container Equipment Per Diem Contractor agrees to promptly and expeditiously complete the use of Container Equipment. Contractor shall be responsible for the payment of any per diem usage fees charged to Carrier for Contractor's failure to return the Container Equipment to the location designated by Carrier, promptly after cargo unloading occurs.

19. Term and Termination

19.1 Term. This Agreement shall continue in effect for a period of one (1) year from the Effective Date and shall be automatically renewed for a one (1) year term on each anniversary of the Effective Date unless earlier terminated by either party.

19.2 Termination Contractor may terminate this Agreement, without cause, by providing to Carrier a written notice of termination mailed by Certified Mail-Return Receipt Requested, addressed to Carrier at its address set forth on the last page hereof. Carrier may terminate this Agreement, without cause, by mailing to Contractor at Contractor's address contained herein, a written notice of termination by Certified Mail-Return Receipt Requested. This Agreement shall be terminated thirty (30) days after the date of postmark on the notice mailed by the terminating party; provided, however, that the Agreement shall remain in full force the said thirty (30) day period. In the event either party breaches any term of this Agreement, the other party shall have the right to immediately terminate this Agreement, provided that the Carrier may require the Contractor to complete delivery of any freight loaded prior to such termination. Should the Contractor fail to complete such delivery, the final payment to Contractor shall evidence partial performance and Carrier may charge-back any expense thereto to the Contractor.

20. Return of Plates Upon Termination

Upon termination of this Agreement by either party, the Contractor (a) shall immediately return to the Carrier, via either hand-delivery, first class certified mail, return-receipt requested, the Carrier's "logo," all removable base plates, permits, toll cards (PrePass), fuel cards and identification cards, and (b) shall not, under any circumstances, transport cargo utilizing Carrier's placards, authority, plates and/or documents. Carrier may, at its discretion, withhold final settlement from Contractor until all such items have been returned unless the identification is lost or stolen, where upon a letter certifying the loss of the identification will suffice.

21. Late or Abandon Shipments

Contractor acknowledges that Carrier may be liable to shippers, pursuant to certain provisions of the federal laws governing motor carriers. If Contractor fails to properly and timely deliver any shipment of freight, Contractor agrees that in the event Carrier determines, in its sole discretion, that Contractor has failed to deliver any goods consigned to Carrier for delivery by a shipper, Contractor agrees that Carrier shall have the right to temporarily take possession of the Equipment and complete the transportation of such freight and Contractor hereby waives any recourse against Carrier for such action and agrees to reimburse Carrier for any costs and expenses incurred by Carrier in order to complete the shipment. Contractor further agrees to indemnify, defend and hold Carrier harmless from any liability to a shipper, arising out of Contractor's failure to properly and timely deliver freight consigned to it for delivery by Carrier. In the event that Carrier is required to take possession of the Equipment in order to complete the delivery of a shipment, the Equipment shall be returned to Contractor upon completion of such shipment at one of Carrier's divisions. Carrier may charge back to Contractor the amounts due under this Section 21.

22. Advances and Charges

From time to time, Carrier, in its sole discretion, may pay expenses or obligations of Contractor such as those identified in Section 2, 3, 4, 6, 7, 9, 18, 21, 31 and Addendum C or any other expenses that Contractor requests Carrier to advance. Contractor and Carrier agree that Carrier, at its option, may deduct from any payment owed to Contractor any amounts which Contractor owes to Carrier as a result of such advance. Such deductions will be itemized on Contractor's settlements.

23. Indemnification of Carrier by Contractor and Release

Contractor agrees that it shall indemnify, defend and hold Carrier, its officers, employees, agents or Contractors harmless for, from and against any and all damages, losses, claims or expenses (including, without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs) arising from any liability and claims by others or governments arising from the Contractor's relationship with its employees, whether under the industrial accident laws, Workers' Compensation laws or any other local, state or federal laws applicable to the relationship between employers and employees. Contractor further agrees that it shall indemnify, defend and hold Carrier its officers, employees, agents or Contractors harmless for, from and against any and all damages, losses, claims or expenses (including, without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments on account of cargo loss, cargo damages, injury to all persons, loss of life, or damage to property (whether or not owned by Carrier), including, but not limited to, the personal injuries or damages suffered by the Contractor, Contractor's Affiliates, or persons operating or riding in the Equipment, that are caused by the acts or omissions of the Contractor or Contractor's Affiliates including but not limited to any such property damage, personal injury, death or other loss caused by any act or omission, negligent, willful or otherwise, of Carrier, its officers, employees, agents or Contractors, including, but not limited to, Carrier drivers accompanying Contractor as a team driver. Contractor further agrees that the indemnification obligations and liability of the Contractor under this Section 23 shall not be limited by the insurance maintained by the Contractor under this Agreement. The indemnity provisions and the obligations of the Contractor under this Section 23 shall survive the termination or expiration of this Agreement.

24. Applicable Law

This agreement shall be governed by the laws of the United States and the State of Arizona, both as to interpretation and performance.

25. Severability

In the event any clause, sentence, paragraph or section of this Agreement is held void or unenforceable, such holding shall not affect the enforceability of any other provision of this Agreement.

26. Entire Agreement; Beneficiary

26.1 Prior Agreements. This Agreement shall supersede all previous Agreements or understandings between the parties regarding the subject matter thereto. This Agreement shall be effective upon the Effective Date. This Agreement and the Addenda and Schedules hereto constitute the entire agreement and understanding between the parties and shall not be modified, altered, changed or amended in any respect unless in writing and signed by both parties, except that the Carrier may change the Addendum information contained in Addendums "A," "B," "C," or "D" or Schedules 1 and 2 by sending to Contractor a written notice of the change at least thirty (30) days in advance to the Contractor's address contained herein.

26.2 Construction; Third Party Beneficiary. If Contractor has contemporaneously entered into a Loan & Security Agreement or Tractor Lease Agreement, Contractor understands and agrees that this Agreement and the Loan & Security Agreement or Tractor Lease Agreement (the "Agreements") constitute a single economic arrangement for the benefit of the Contractor, and the Agreements (i) shall be construed as a single agreement between and among Contractor, Carrier and QUAD-K, and (ii) QUAD-K shall be a third party beneficiary of this Agreement.

27. Execution of Agreement and Location of Copies

Contractor and Carrier agree that an original and two (2) counterpart originals of this Agreement shall be executed; the original Agreement to be kept by the Carrier at its terminal or principal office and the counterpart original shall be maintained in the Equipment during the period of this Agreement and a copy shall be given to the Contractor.

28. Arbitration Agreement

The parties agree that this Agreement is subject to the Federal Arbitration Act (9 U.S.C. § 1, et seq. and/or the Arizona Arbitration Act (the "Act")) for purposes of determining the validity and enforceability of this arbitration provision and the Act's preemption of any contrary provision of state law which might otherwise render the agreement to arbitrate unenforceable. The parties agree that the Act shall be applicable, without limitation, and expressly intend that all disputes or other matters arising under this Agreement including any claims or disputes arising under or relating to any state or federal laws, statutes or regulations including specifically: disputes regarding the employment relationship; any city, county, state or federal wage and hour law; compensation; breaks and rest periods; training; termination; discrimination; harassment; 49 C.F.R. Part 376; the Civil Rights Act of 1964; the Fair Labor Standards Act; the American With Disabilities Act; the Family Medical Leave Act; the Employee Retirement Income Security Act; any state statutes, if any, addressing the same or similar subject matters; and all other similar federal and state statutory and common law claims shall be subject to arbitration, under the Act, without regard to any contrary law. Subject to the right of a party to seek injunctive relief, as provided below (which right shall not be subject to arbitration), if a dispute arises out of or related to this Agreement or the breach of this Agreement, the dispute shall be referred to arbitration in accordance with the National Rules for Resolution of Commercial Disputes (including Mediation and Arbitration Rules) of the American Arbitration Association ("AAA") (the "Commercial Dispute Rules"). Arbitration shall occur in Phoenix, Arizona unless the parties mutually agree to an alternative location. A dispute subject to the provisions of this Section 27 will exist if either party notifies the other party in writing that a dispute subject to arbitration exists and states, with reasonable specificity, the issue subject to arbitration (the "Arbitration Notice"). If the dispute is not resolved by the date set for arbitration, then any controversy or claim arising out of this Agreement or the breach hereof shall be resolved by binding arbitration and judgment upon any award rendered by arbitrator(s) may be entered in a court having jurisdiction. If only one person is serving as mediator or arbitrator under this Agreement, he shall be an attorney who has at least ten (10) years' experience in commercial law (or if a panel of three arbitrators is selected, at least two of the three arbitrators shall be attorneys who have at least ten (10) years' experience in commercial law), unless the parties agree otherwise. Arbitrators shall be selected in accordance with the selection procedures of the AAA. The parties agree that the arbitration fees shall be split between the parties unless Contractor shows that the arbitration fees will impose a substantial hardship to Contractor as determined by the Arbitrator, in which event, Carrier will pay the arbitration fees. If any claim or dispute involves an amount in

excess of Three Hundred Thousand Dollars (\$300,000.00), either party may require that the matter be heard by a panel of three (3) arbitrators; otherwise, all matters subject to arbitration shall be heard and resolved by a single arbitrator. The arbitrator shall have the same power to compel the attendance of witnesses and to order the production of documents or other materials and to enforce discovery as could be exercised by a judge of the Superior Court of the State of Arizona under the Arizona Rules of Civil Procedure; provided that such discovery shall be concluded within one hundred twenty (120) days after the date the arbitration proceedings commence (excluding any period the parties are in mediation). **In consideration for entering into this Agreement, the parties voluntarily and knowingly waive any right to object to arbitration under this Agreement, trial by jury, and any right to bring or participate in a class or group action involving any matter that is subject to this Agreement, it being the express desire of the parties to resolve any disputes through an alternative dispute resolution rather than litigation.** Any arbitrator shall, except for application of the Act, which the parties agree shall be applicable for the sole purpose of determining the validity and enforceability of this agreement to arbitrate, apply the substantive law of the State of Arizona and any applicable federal law. The arbitrator shall have the same power to grant any relief or remedy as a judge of the Superior Court of Arizona could grant. The arbitrator, and not any federal, state or local court or agency shall have the exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement including, but not limited to any claim that all or part of this Agreement is void or voidable. The arbitrator shall have no authority to change or modify any provision of this Agreement. Any provision of this Agreement to the contrary notwithstanding, arbitration shall not be required of any party who seeks a temporary restraining order, preliminary injunction or other equitable relief in order to preserve the *status quo* or prevent irreparable harm from occurring. The parties agree that arbitration is a material provision of this Agreement and is agreed to in consideration of the benefits provided herein. The parties agree that no award may be made under this Agreement based on any claim for punitive, exemplary or consequential damages.

Initials X RS

29. Limitation of Actions

Contractor and Carrier agree that any and all disputes or claims relating to or arising from the relationship created by this Agreement that are based upon federal law or federal regulation must be brought or filed no later than one (1) year after the claim accrues.

30. Collection Fees

If the Contractor breaches any of the terms of this Agreement or fails to reimburse Carrier for advances made under Section 22 or for other amounts owing to Carrier, Contractor shall pay to Carrier all of the costs and expenses, including reasonable legal fees and collection fees, incurred by the Carrier in enforcing the terms of this Agreement or collecting any amounts due under this Agreement. Contractor agrees that such costs and expenses, including reasonable legal fees and collection fees, may be deducted from any amounts owing to Contractor and from the Escrows identified in Section 13, 14 or 15 and Addendum B.

31. Obligations to Third Parties

Carrier and Contractor acknowledge that Contractor may have indebtedness or obligations to third parties whereby Contractor, with the consent of Carrier, has agreed to have sums deducted from

Contractor's compensation to satisfy such indebtedness or obligations. Contractor hereby authorizes Carrier to deduct any such indebtedness or obligations from Contractor's compensation.

32. Order of Payment and Security Interest

Carrier and Contractor agree that Carrier shall have priority in payment for amounts owed to Carrier, as identified in Sections 3, 4, 7, 9, 18, 19, 20, 21, 22, 23, Addendum B, and Addendum C, over amounts due to Contractor and any third parties. Contractor assigns to Carrier its right in all amounts earned by Contractor under Section 10 to secure and provide the payment of any and all obligations now or which may hereafter be or become due and owing to Carrier under Sections 3, 4, 7, 9, 18, 19, 20, 21, 22, 23, Addendum B, and Addendum C.

33. Attorneys' Fees

In the event either party hereto brings an action to enforce any provisions hereof, to secure specific performance hereof, or to collect damages of any kind for any claim that arises out of or relates to the relationship created by this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.

34. Choice of Forum

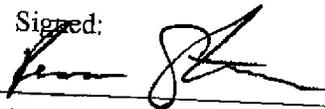
The parties agree that any legal proceedings between the parties arising under, arising out of, or relating to the relationship created by this Agreement, including arbitration proceedings discussed above, shall be filed and/or maintained in Phoenix, Arizona or the nearest location in Arizona where such proceedings can be maintained.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and attached Addendums A, B, C, and D as of the date set forth on the first page hereof.

CONTRACTOR:

CARRIER:

Signed:



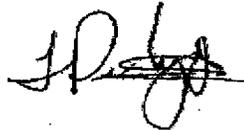
By: Ronnie Stevenson

Its: OWNER

Date: September 22, 2016

9177 W Desert Inn Rd 135
Las Vegas NV 89117
(760) 488-3097

Signed:



By: T.J. Pressley

Its: Corporate Director

Date: September 22, 2016

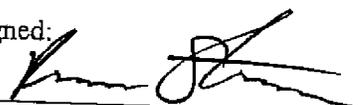
5601 W. Buckeye Rd. Phoenix, AZ 85043

ADDENDUM "A" - EQUIPMENT

| Assigned Unit Number | Year | Make | Model | Serial Number |
|----------------------|------|-------|-------|-------------------|
| 147447 | 2012 | Volvo | 670 | 4V4NC9EH3CN543886 |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

(Note: Use Reverse for Additional Leased Equipment)

CONTRACTOR:

Signed: 

By: Ronnie Stevenson

Its: OWNER

Date: September 22, 2016

CARRIER:

Signed: 

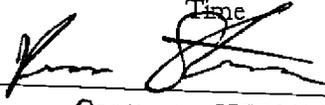
By: T.J. Pressley

Its: Corporate Director

Date: September 22, 2016

Carrier's RECEIPT

Contractor will enter Carrier's Services on September 22, 2016 at _____ (time).


 Contractor SIGNATURE

Contractor's RECEIPT

Contractor acknowledges termination of CONTRACT with Carrier and receipt of equipment back into Contractor's exclusive service on _____ at _____ (time).

DATE _____

Contractor's
SIGNATURE _____

ADDENDUM "B - TRACKING & SAFETY ACCESS

Carrier requires installation and maintenance of a Qualcomm Omni Tracs in-cab Communication System on the Equipment. The Qualcomm Omni Tracs in-cab Communication System (the "System") can be obtained as follows:

1. If Contractor elects Carrier will install the unit free of charge, and will charge a weekly \$19.95 usage fee. A \$300.00 deposit (the "Deposit") will be required, payable in full, or in a single deduction of \$300.00 in the first settlement under this agreement. All components of the Qualcomm Communication System are, and remain property of Carrier. Upon termination of the Contractor Operating Agreement to which this addendum is attached, the Contractor must return all components of the Qualcomm Communication System in good working order to Carrier. Carrier shall pay interest on the Deposit and provide an accounting of the transactions involving the Deposit pursuant to Section 16 of the Agreement.
2. Used Qualcomm Omni Tracs in-cab Communication Systems may be purchased from a variety of resellers. If a used System is purchased, the Contractor acknowledges that the used Qualcomm System must (a) be compatible with the in-cab communication systems of Carrier, (b) contain the same specifications and capabilities as the System (c) be a two-piece unit with IGPS, and (d) in order to obtain activation of the used system, the Contractor must obtain a letter to Qualcomm Communications Systems signed by both the Contractor and the seller of the used system certifying to Qualcomm Communications Systems that the seller of the used system is the owner of the system. If a used Qualcomm system is purchased the Contractor is also responsible for the activation of the used system. Also, Carrier is not responsible for any warranty issues on used equipment.
3. If the Contractor has a Qualcomm Omni Tracs in-cab Communication System currently installed in the Equipment or the Contractor purchases a system from a reseller that satisfies, the criteria described in Section 2 above, the communication cost charged to the Contractor shall be \$17.00 weekly, no deposit required.

CONTRACTOR:

Signed:



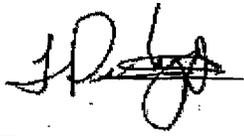
By: Ronnie Stevenson

Its: OWNER

Date: September 22, 2016

CARRIER:

Signed:



By: T.J. Pressley

Its: Corporate Director

Date: September 22, 2016

ADDENDUM "C" – CHARGEBACK DEDUCTIONS

The Carrier shall be authorized under this Agreement to deduct or charge back from payments due to Contractor for the following:

1. Purchase of Fuel Contractor is under no obligation to purchase fuel from Carrier or with a fuel card offered through Carrier. (A) *Carrier's Facilities*. Contractor may purchase fuel from Carrier at Carrier's facilities. Contractor shall be charged for fuel purchased at Carrier's facilities in an amount equal to the gallons delivered multiplied by the posted pump price. The posted pump price may include the cost of the fuel, taxes, other government fees and charges, delivery/freight costs and administrative expenses, plus an additional amount to provide a return to Carrier in exchange for undertaking the risk of securing, offering and maintaining this service. (B) *Fuel Card Purchases at Non Carrier Facilities*. Contractor may purchase fuel from third party vendors with a fuel card offered through Carrier. Contractor shall be charged an amount equal the gallons delivered multiplied by the posted pump price minus \$0.05 per gallon for all fuel purchased at non Carrier facilities with the fuel card offered through the Carrier. Carrier may retain all or a portion of any rebates or discounts Carrier receives from the fuel vendor from such fuel purchases (C) *Fuel Card Fees*. Not Applicable
2. If funds are advanced to the Contractor by the Carrier using the FDIS Trendar Fuel Card, Comchek (Comdata) network, TCH Check (TCH) network, and/or the TransCheck (BFS) network, the Contractor will be charged by the Carrier, an administrative fee of \$2.50* for amounts up to \$300.00, and an administrative fee of \$3.50* for amounts \$300.00 and above for each advance.
3. All service, parts, supplies (including but not limited to E-Trac straps, tire chains, fire extinguisher, triangles and spot mirrors) and/or repair invoices charged by Contractor to Carrier's name in any amount may be withheld from Contractor's settlements at invoice cost plus a fifteen percent (15%) service charge and any applicable tax. Contractor may pay Knight Truck and Trailer Sales, Inc directly for repairs or maintenance to Contractor's vehicle. Knight Truck and Trailer Sales, Inc may, in its sole discretion, accept or reject work, depending on available time and other factors, and will establish rates and charges for work performed. All parts, including tires, provided at a maintenance facility operated by the Carrier shall be charged to Contractor at Carrier's cost plus fifteen percent (15%). Labor at Carrier operated maintenance facilities shall be charged to Contractor the posted labor rate per hour (which is currently \$67.00 per hour) calculated in 15-minute increments. Labor at Carrier operated body shop facilities shall be charged to Contractor the posted labor rate per hour (which is currently at \$75.00 per hour) calculated in 15-minute increments. All shop bills are due immediately upon receipt unless previous arrangements have been made. Any repairs or maintenance charges will be withheld from Contractor's settlement.
4. If requested by Contractor to provide insurance, the Carrier may deduct from settlement amounts due to third parties or Carrier for such things as Bobtail Insurance, Physical Damage Insurance, Work Accident Insurance, Health Insurance, Dental Insurance, Insurance deductibles, Cargo Claim deductibles, Maintenance and Repair Program deductibles (if applicable), and Tractor Payments. Deductions may include a markup for administrative requirements. Contractor is under no obligation at any time to purchase insurance through or from the Carrier.

Current amounts deducted for optional insurance coverage are as follows:

| <u>TYPE OF DEDUCTION</u> | <u>DEDUCTION AMOUNT</u> |
|---------------------------------|--|
| Bobtail Insurance | \$10.35 * per week |
| Physical Damage Insurance | 4.40% * of Tractor Value per week |
| Occupational Accident insurance | \$37.00 * per week |
| Windshield / Animal Insurance | \$2.54 * per week |
| Deductible Buy-Back Program | \$9.00 * per week |
| Rider Insurance | \$20.00 * per month |
| Optional Insurances | *Vary by programs and Contractor (see Department for help) |

5. Escrows

- (a) \$100.00 per week for deposit into the Fund established under Section 13 of this Agreement up to a maximum of \$1400.00 for each tractor set forth on Addendum A;
- (b) \$.03 per Mile to fund the Maintenance Escrow under Section 14 of the Agreement if Contractor is required to fund a Maintenance Escrow.
- (c) \$.03 per Mile to fund the Fuel and Mileage Tax Escrow under Section 15 of this Agreement;

6. Qualcomm

- (a) \$19.95* per week usage fee if Contractor elects to have Carrier install a Qualcomm unit.
- (b) \$17.00* per week usage fee if Contractor owns a compatible Qualcomm unit.

7. Base Plate

A weekly deduction in an amount equal to the pro rata cost of the base plate. The current weekly deduction shall be (\$42.31 for Lease Purchase, \$28.50 for Outside Owners) based on an annual base plate cost of \$2200.00.

The charge to Contractor for the items marked above with an * include the cost of the item, plus any direct or indirect administrative costs associated with securing, offering and maintaining the item, plus an additional amount to provide a return to Carrier in exchange for undertaking the risk of securing, offering and maintaining such products, equipment or services

CONTRACTOR:

Signed: 

By: Ronnie Stevenson

Date: September 22, 2016

CARRIER:



Signed: T.J. Pressley

Date: September 22, 2016

Appendix "B"- Page 5

APPENDIX "C"

MAINTENANCE ESCROW ACCOUNT PROGRAM

The Lessor and Lessee agree that the following terms and conditions shall apply with respect to the service, maintenance and inspection of the Vehicle identified in the Tractor Lease Agreement (the "Lease") to which this Appendix "C" is attached:

1. Lessee agrees, at its sole cost and expense, to service, maintain and repair the Vehicle at a facility specifically approved by or designated by Lessor during the term of the Agreement. Lessee further agrees to maintain the Vehicle in accordance with the regulation of the U.S. Department of Transportation ("DOT") and the Vehicle manufacturer's specifications, and to cause the driver or operator thereof to check tire inflation, oil, coolant and other fluid levels each day. Lessee shall be responsible for all damage or additional maintenance to the Vehicle, which results from Lessee's failure to adequately service the Vehicle or to perform the daily inspection. Lessor shall not have any responsibility for the cost or expense involved in maintaining servicing or repairing the Vehicle except as set forth below.
2. In the event the Vehicle shall be disabled for any reason, Lessee and/or its driver shall immediately notify Lessor. Lessee agrees that it will not cause or permit any person other than Lessor or persons authorized by Lessor to make any repairs or adjustments to the Vehicle, and shall abide by Lessor's directions concerning emergency repairs.
3. Lessee is responsible, without limitation, for all loss or damage to the Vehicle caused by careless or abusive handling by Lessee or a driver employee of Lessee.
4. Lessee hereby authorizes Operating Carrier to establish a Maintenance Escrow Account to hold funds paid to Operating Carrier by Lessee in the amount of three cents (\$.03) per Mile. Additionally, the Lessee agrees to fund, the Maintenance Escrow Account with the lump sum of at least Three Thousand Dollars (\$3,000.00) upon execution of the Agreement. Such escrow account may be used, at the discretion of Lessee and upon prior approval of Lessor, to pay for the following types of maintenance, service and repair expenses for the Vehicle:
 - a. All preventative maintenance, replacement parts, and repairs to keep the Vehicle in good repair and operating condition;
 - b. Oil and lubricants necessary for the efficient operation of the Vehicle;
 - c. All necessary tires and tubes;
 - d. Road service due to mechanical and tire failure; and
 - e. DOT required annual inspections.

Appendix "C" - Page 1

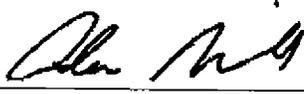
However, the escrow fund shall not be used for maintenance, service or repair costs of less than Two Hundred Fifty Dollars (\$250.00) except under extenuating circumstances and at the sole discretion of Lessor. If the cost of any repair or maintenance exceeds the amount in the fund, Lessor shall be authorized to retain the entire amount of the fund and may make demand upon Lessee for the balance owed for any maintenance or repairs, if any. Upon the expiration or earlier termination of the Agreement, Lessor may utilize the balance of the escrow fund to apply to any damages sustained or suffered by Lessor, to bring the Vehicle back to acceptable maintenance standards and/or specification, or to reimburse Lessor for any other expense that is owed by Lessee pursuant to this Agreement.

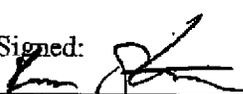
The following costs and expenses shall be charged to Lessee, or as authorized above, deducted from Lessee's Maintenance Escrow Account, for any maintenance, service or repair.

- a) All parts, including tires, provided at a maintenance facility operated by Lessor or any affiliated company of Lessor shall be charged to Lessee at cost and may include amounts to cover Lessor's direct and indirect administrative costs of securing, offering, and maintaining such parts plus an additional amount to provide a return to Lessor in exchange for undertaking the risk of securing, offering and maintaining such parts. All labor at a maintenance facility operated by Lessor or any affiliated company of Lessor shall be charged to Lessee at the posted labor rate per hour (which is currently \$67.00 per hour) multiplied by the amount of time required to perform the service. Such time shall be rounded to the nearest quarter hour increment.
- b) If the Lessee elects to (i) have the Vehicle repaired by a maintenance facility approved or designated by Lessor, but not affiliated with Lessor and (ii) have the cost of such parts and labor charged to Lessor, Lessee shall be charged the amount invoiced by the repair facility for parts and labor plus a fifteen percent (15%) administrative fee for each repair invoice.
- c) Lessor reserves the right to subcontract maintenance service and repair for the Vehicle at Lessor's sole discretion.
- d) Lessee is not required to purchase any repair services or parts from Lessor.

LESSOR:

LESSEE: Ronnie Stevenson

Signed: 
 By: Adam Miller
 Its: CFO
 Date: September 22, 2016

Signed: 
 By: Ronnie Stevenson
 Its: Owner
 Date: September 22, 2016

ADDENDUM "D" – CONTRACT RATE SCHEDULE

The following schedule sets forth the rates to be paid by Carrier for the services provided by Contractor pursuant to the Independent Contractor Operating Agreement. "Loaded Miles" shall be calculated on the basis of the Tariff Mileage distance set forth in the Carrier's most current version of the Rand McNally Household Goods Carriers Bureau Mileage Guide (the "Bureau Miles") from the point at which the shipment originates, via any intermediate points where required pickups or deliveries are made, to the point at which the shipment is delivered even if the miles traveled over the route actually selected by the Contractor are less or more than the Bureau Miles. Payments for "Dispatched Empty Miles" will be made on the basis of the Bureau Miles between the points at which the Contractor begins and ends an empty trip authorized and approved by the Carrier. Carrier shall make available for viewing and printing, particular Contractor requested point to point mileage calculations at any Carrier facility during normal business hours.

LOADED MILES

Carrier shall pay Contractor not less than the following "Base Rates" per Loaded Mile:

| TOTAL TRIP LOADED MILES* | BASE RATES PER MILE |
|--------------------------|---------------------|
| 0 - 275 | \$1.20 |
| 276 - 550..... | \$1.00 |
| 551 or more | \$.90 |

The Base Rates shall be increased or decreased, but not below the Base Rates set forth above, quarterly in an amount equal to the percentage change in the Carrier's Quarterly Average Revenue Per Loaded Mile ("RPLM"). For example if the RPLM increases from \$1.705 to \$1.748 the Base Rates will be increased by 2.5% [(1.748-1.705)/ 1.705] the ("Adjusted Base Rate".) Any increase or decrease in the Adjusted Base Rate shall become effective on the first day of the second month following the last day of the previous calendar quarter. For example any increase or decrease in the Adjusted Base Rates as a result of any increase or decrease in the RPLM for the quarter ending September 30 shall become effective on November 1st.

RPLM shall for purposes of this Agreement be defined as the total revenue per load of cargo, excluding any fuel surcharge or other payment related to the cost of fuel, for all "Dry Van" loads transported by all independent contractors operating under Carrier's DOT authority for a calendar quarter divided by the total Loaded Miles of all "Dry Van" loads transported by all independent contractors operating under Carrier's DOT authority for the same calendar quarter.

*Contractors operating on extended trips or circuit runs, including dedicated runs, will be paid on the basis of the total Loaded Miles operated over the entire trip or run.

CARRIER DISPATCHED EMPTY MILES

Carrier shall pay Contractor the Empty Mile Rate ("EMR"), as set forth on Schedule 1, for any Dispatched Empty Miles authorized by Carrier.

The EMR will be adjusted on a weekly basis and shall be based on the Weekly Retail On-Highway Diesel Price per Gallon -Average All Types of diesel fuel ("WRAPG") rounded down to the nearest \$0.10.

For example if the WRAPG rounded to the nearest \$0.10 is \$3.90 the EMR shall be \$0.72 per Dispatched Empty Mile. Any increase or decrease in the EMR shall become effective every Monday for trips submitted to Carrier before midnight (Phoenix time) the following Friday.

WRAPG shall for purposes of this Agreement shall be the U.S. Weekly Retail On Highway Diesel Price per gallon -Average All Types (Dollars per gallon, including all taxes) as set forth on the doe.gov website each Monday. For example if the WRAPG is \$3.288 on Monday the WRAPG would be rounded to \$3.30 and the EMR for the week would be \$0.63.

If the Contractor was late delivering the previous shipment as a result of causes within the reasonable control of Contractor, or failed to provide notification of the late delivery to Contractor's dispatcher, no Dispatched Empty Miles compensation will be paid to next loading point.

Contractor will not be compensated by Carrier for any unauthorized empty miles.

FUEL COST PROTECTION PROGRAM (FCPP)

Contractor shall be paid an additional amount per Loaded Mile (the "FCPP Increment") based on the WRAPG each Monday minus \$.05 per gallon rounded to the nearest \$0.035 as set forth on Schedule 2 attached hereto. The FCPP Increment shall adjusted weekly and be paid to Contractor if the WRAPG minus \$0.05 and rounded to the nearest \$0.035 exceeds \$1.233 per gallon. Any increase or decrease in the FCPP Increment shall become effective every Monday for trips submitted to Carrier before noon (Phoenix time) the following Friday. For example if the WARPG on a Monday is \$3.288 the FCPP Increment would be \$0.305 based on \$3.288 minus \$.05 = \$3.238 rounded to the nearest \$0.035 equals \$3.228.

Initial X RS

EXTRA SERVICES

Carrier will pay Contractor \$37.50 for each stop off after 1st pickup and 1st drop.

LOADING & UNLOADING

Although Contractor is responsible to provide all loading and unloading functions as provided for in Carrier's tariffs, settlements, agreements and contracts, Carrier will reimburse Contractor, pursuant to the terms of this Addendum, for loading and unloading that Contractor is required by shipper and receiver to perform, provided the loading and unloading has been approved by Carrier's Operations Department.

Unless otherwise agreed to between Carrier and Contractor, in all cases, with the exception of loads which have 3,000 pieces or more, loading and unloading compensation will be based on actual weight loaded or unloaded at the rate of \$.15 per hundred weight. The minimum payment for loading or unloading the full trailer shall be the sum of \$45.

On all loads which have 3,000 pieces or more; the compensation will be flat-rated at \$75 regardless of weight.

No compensation for loading or unloading will be made if the amount paid would be \$10 or less.

Carrier will bill and attempt to collect all loading and unloading from customers at the prevailing tariff, schedule or contract rate. Loading and unloading will be paid to Contractor independently of tariff provisions as outlined above and independent of the tariff, schedule or contract rate.

Contractor will be paid for loading or unloading only if the procedures outlined below are followed:

- At the time loading or unloading is performed, Contractor **must obtain the signature of the shipper/receiver** on the original copy of the "Loading & Unloading Verification" in order to verify the request to be compensated for loading/unloading services. This loading/unloading verification must be turned in with the paperwork for each trip. Contractor's attempt to complete or submit the "Loading & Unloading Verification" after the balance of the paperwork for a particular trip has been submitted to the Carrier will not be recognized and no loading or unloading compensation will be paid.
- If the shipper/receiver refuses to sign the "Loading & Unloading Verification", the Contractor should indicate such on the "Loading & Unloading Verification" form and immediately call Carrier's dispatcher for assistance. Only Carrier's Operations Department has the authority to authorize credit for loading and unloading in the absence of a signed verification and only if it is established that the service was performed within Carrier's guidelines.

IF THE ABOVE PROCEDURES ARE NOT FOLLOWED, THE CONTRACTOR WILL NOT BE PAID FOR LOADING AND UNLOADING.

As to what constitutes loading and unloading, the following guidelines apply:

LOADING OR UNLOADING IS:

- If driver physically loads or unloads an entire trailer when requested or required by customer.
- If driver physically loads or unloads a portion of the trailer when requested or required by customer. (We ask that drivers be reasonable and use common sense in making a claim for compensation in these cases. Example: If required to remove top layer from two pallets, no claim should be submitted. If driver must restack four layers from each pallet, a claim should be presented for the number of cases unloaded.)
- Tailgating a shipment, one case at a time if requested by customer, unless the product is furniture.
- When the driver is requested or required by the customer to break down and restack palletized freight. If only partial restacking is required, again, we ask the driver to be reasonable.

Initial X RS

• If Contractor's driver hires outside labor to perform the loading or unloading that is required by customer, the compensation paid by Carrier to Contractor will be same as if the driver performed the service and was paid pursuant to the terms of this Addendum "D".

IT IS NOT LOADING OR UNLOADING WHEN:

- A product has fallen off a pallet or has shifted within the trailer and needs to be repositioned or straightened.
- The driver straightens or lays down empty slip-sheets or pallets.
- The driver straightens or pick up empty slip-sheets or pallets after the product is loaded or unloaded.
- The driver blocks, braces or secures product in the trailer.
- The driver counts the freight on and/or off the trailer.
- The driver is required to use a pallet jack or other mechanical means.

Under no circumstances should a driver claim loading or unloading when he/she has "voluntarily" participated in loading or unloading. Driver may "voluntarily" help, but may not submit a claim for compensation for this labor.

DROP POLICY

If the Carrier pays (deadhead miles, fuel expense, or local driver hourly rate, etc.) to have the load moved (delivered) by a driver employed by the Carrier or by another independent contractor of Carrier, the Contractor shall be charged a delivery fee of \$60.00.

If the Contractor performs local work for the Carrier, the Carrier will pay the Contractor \$ 20.00 per hour.

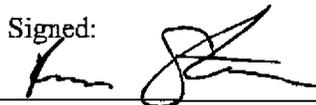
If the Contractor is detained at a shipper or consignee while picking up or delivering a load for the Carrier, the Carrier will pay the Contractor a rate of \$ 20.00 per hour after the first 2 hours provided that the applicable Qualcomm macros are transmitted in a timely manner. Detention pay shall not exceed \$200.00 per occurrence. Carrier shall not pay detention pay, if for any reason Contractor is late for the scheduled pickup or delivery appointment for such load.

DELIBERATE FALSIFICATION OF, OR FORGED SIGNATURES ON, "LOADING & UNLOADING VERIFICATION" MAY RESULT IN IMMEDIATE TERMINATION OF THE INDEPENDENT CONTRACTOR OPERATING AGREEMENT.

CONTRACTOR:

CARRIER:

Signed:

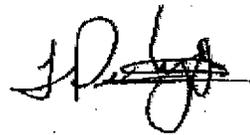


By: Ronnie Stevenson

Its: OWNER

Date: September 22, 2016

Signed:



By: T.J. Pressley

Its: Corporate Director

Date: September 22, 2016

**Schedule 1
Empty Mile Rate**

| WRAPG (rounded down to the nearest \$.10) | EMPTY MILE RATE |
|---|-----------------|
| \$4.50 | \$0.82 |
| \$4.40 | \$0.80 |
| \$4.30 | \$0.79 |
| \$4.20 | \$0.77 |
| \$4.10 | \$0.76 |
| \$4.00 | \$0.74 |
| \$3.90 | \$0.72 |
| \$3.80 | \$0.71 |
| \$3.70 | \$0.69 |
| \$3.60 | \$0.68 |
| \$3.50 | \$0.66 |
| \$3.40 | \$0.64 |
| \$3.30 | \$0.63 |
| \$3.20 | \$0.61 |
| \$3.10 | \$0.60 |
| \$3.00 | \$0.60 |
| \$2.90 | \$0.60 |
| \$2.80 | \$0.60 |
| \$2.70 | \$0.60 |
| \$2.60 | \$0.60 |
| \$2.50 | \$0.60 |
| \$2.40 | \$0.60 |
| \$2.30 | \$0.60 |
| \$2.20 | \$0.60 |
| \$2.10 | \$0.60 |
| \$2.00 | \$0.60 |
| \$1.90 | \$0.58 |
| \$1.80 | \$0.56 |
| \$1.70 | \$0.54 |
| \$1.60 | \$0.52 |
| \$1.50 | \$0.50 |
| \$1.40 | \$0.48 |
| \$1.30 | \$0.46 |
| \$1.20 | \$0.44 |
| \$1.10 | \$0.42 |
| \$1.00 | \$0.40 |

Schedule 2

FUEL COST PROTECTION PROGRAM

| WRAPG minus \$.05 (rounded to nearest \$.035) | FCPP Increment | WRAPG minus \$.05 (rounded to nearest \$.035) | FCPP Increment | WRAPG minus \$.05 (rounded to nearest \$.035) | FCPP Increment |
|--|---------------------------|--|---------------------------|--|---------------------------|
| \$1.233 | \$0.000 | \$2.703 | \$0.225 | \$4.173 | \$0.450 |
| \$1.268 | \$0.005 | \$2.738 | \$0.230 | \$4.208 | \$0.455 |
| \$1.303 | \$0.010 | \$2.773 | \$0.235 | \$4.243 | \$0.460 |
| \$1.338 | \$0.015 | \$2.808 | \$0.240 | \$4.278 | \$0.470 |
| \$1.373 | \$0.020 | \$2.843 | \$0.245 | \$4.313 | \$0.475 |
| \$1.408 | \$0.025 | \$2.878 | \$0.250 | \$4.348 | \$0.480 |
| \$1.443 | \$0.030 | \$2.913 | \$0.260 | \$4.383 | \$0.485 |
| \$1.478 | \$0.035 | \$2.948 | \$0.265 | \$4.418 | \$0.490 |
| \$1.513 | \$0.040 | \$2.983 | \$0.270 | \$4.453 | \$0.495 |
| \$1.548 | \$0.050 | \$3.018 | \$0.275 | \$4.488 | \$0.500 |
| \$1.583 | \$0.055 | \$3.053 | \$0.280 | \$4.523 | \$0.505 |
| \$1.618 | \$0.060 | \$3.088 | \$0.285 | \$4.558 | \$0.510 |
| \$1.653 | \$0.065 | \$3.123 | \$0.290 | \$4.593 | \$0.515 |
| \$1.688 | \$0.070 | \$3.158 | \$0.295 | \$4.628 | \$0.520 |
| \$1.723 | \$0.075 | \$3.193 | \$0.300 | \$4.663 | \$0.525 |
| \$1.758 | \$0.080 | \$3.228 | \$0.305 | \$4.698 | \$0.530 |
| \$1.793 | \$0.085 | \$3.263 | \$0.310 | \$4.733 | \$0.540 |
| \$1.828 | \$0.090 | \$3.298 | \$0.315 | \$4.768 | \$0.545 |
| \$1.863 | \$0.095 | \$3.333 | \$0.320 | | |
| \$1.898 | \$0.100 | \$3.368 | \$0.330 | | |
| \$1.933 | \$0.105 | \$3.403 | \$0.335 | | |
| \$1.968 | \$0.110 | \$3.438 | \$0.340 | | |
| \$2.003 | \$0.120 | \$3.473 | \$0.345 | | |
| \$2.038 | \$0.125 | \$3.508 | \$0.350 | | |
| \$2.073 | \$0.130 | \$3.543 | \$0.355 | | |
| \$2.108 | \$0.135 | \$3.578 | \$0.360 | | |
| \$2.143 | \$0.140 | \$3.613 | \$0.365 | | |
| \$2.178 | \$0.145 | \$3.648 | \$0.370 | | |
| \$2.213 | \$0.150 | \$3.683 | \$0.375 | | |
| \$2.248 | \$0.155 | \$3.718 | \$0.380 | | |
| \$2.283 | \$0.160 | \$3.753 | \$0.385 | | |
| \$2.318 | \$0.165 | \$3.788 | \$0.390 | | |
| \$2.353 | \$0.170 | \$3.823 | \$0.400 | | |
| \$2.388 | \$0.175 | \$3.858 | \$0.405 | | |
| \$2.423 | \$0.180 | \$3.893 | \$0.410 | | |
| \$2.458 | \$0.190 | \$3.928 | \$0.415 | | |
| \$2.493 | \$0.195 | \$3.963 | \$0.420 | | |
| \$2.528 | \$0.200 | \$3.998 | \$0.425 | | |
| \$2.563 | \$0.205 | \$4.033 | \$0.430 | | |
| \$2.598 | \$0.210 | \$4.068 | \$0.435 | | |
| \$2.633 | \$0.215 | \$4.103 | \$0.440 | | |
| \$2.668 | \$0.220 | \$4.138 | \$0.445 | | |

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Suit Claims Knight Transportation Denies Truck Drivers Employee Benefits](#)
