



STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions apply to all transactions with XTRA, including, all leases or rentals of XTRA Equipment, whether pursuant to a long-term Equipment Lease Agreement, National Account Agreement, Short-term Rental Agreement, Equipment Rental Agreement or any other agreement. THE STANDARD TERMS AND CONDITIONS CONTAIN A JURY TRIAL WAIVER WHICH MAY BE ENFORCED IN THE EVENT OF A DISPUTE BETWEEN XTRA AND LESSEE.

1. DEFINITIONS.

(a) **"Applicable Law"** means any federal, state, local or foreign law, statute, rule, regulation, order, judgment, opinion or ordinance applicable to the lease, use, possession, operation, maintenance or control of the Equipment, including the HDV Regulations and the TRU Regulations (both defined in Section 17), the Federal Refrigerant Regulations, and the Federal Motor Carrier Safety Regulations (49 C.F.R. Parts 390-399).

(b) **"Casualty Loss Value"** shall equal the current value of a Unit, as determined by XTRA in its sole discretion, on the first day of the month during which the loss or destruction occurs.

(c) **"Communication Device"** means the products provided by XTRA or XTRA's third-party licensor, which provide mobile communication, tracking, refrigeration unit control, cargo monitoring and/or other Equipment diagnostic and reporting services.

(d) **"Communication Services"** means the two-way wireless tracking, telematics and/or mobile information services provided to Lessee by or through XTRA or its third-party providers, including satellite systems services, start, stop and idle time services, tracking services, ignition disable and enable services, and all other electronic, internet or software services and any hardware related thereto.

(e) **"Covered Event"** means damage to or loss of Equipment that is reported to XTRA within 72 hours of the applicable loss or damage and arises from the accidental burning of Equipment by fire, the theft of Equipment from Lessee's possession or control by a third party, or a collision caused by a vehicular accident on a public roadway.

(f) **"Default"** has the meaning defined in Section 21.

(g) **"Equipment"** means the XTRA semi-trailer, chassis, refrigerated trailer, or other over-the-road, flatbed, storage, or other equipment together with the attached Communication Device and related sensors, if applicable. An individual unit of Equipment may be referred to as a **"Unit"**.

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

(i) **"Equipment Rental Agreement"** means the agreement provided to Lessee by XTRA, in electronic or other format, upon commencement of any rental or lease of a Unit.

(j) **"Hazardous Materials"** means any individual substances, combination of substances, or products containing substances, that could have a detrimental effect on human health, the environment, or the Equipment (including its components) or cargo placed in the Equipment, including, hazardous substances regulated under Applicable Law, medical, biological or other solid or liquid waste, acids, corrosives, caustics, brighteners, and chlorides.

(k) **"Lease"** means written agreements whereby Lessee leases or rents Equipment from XTRA, including, long-term Equipment Lease Agreements, National Account Agreements, Short-term Rental Agreements and Equipment Rental Agreements. All Leases are subject to and are deemed to incorporate these Standard Terms and Conditions.

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

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

(n) **"Lessee's Agent"** means a person acting on behalf of Lessee who picks up, inspects, takes possession of, or returns a Unit at an XTRA location or to a designated delivery vendor, and/or who executes a Lease or other document or acknowledges or confirms Lessee's agreement to terms and conditions on behalf of Lessee.

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

(p) **"Repair Standards"** means XTRA's current repair standards and guides which provide the requirements for repairs to Equipment posted on the XTRA

Website or otherwise available upon request.

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

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

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

(t) **"Use Charges"** means the required payments to be made by Lessee to XTRA for every day (including Saturdays, Sundays, and Holidays) Equipment is on lease or rent to Lessee, including, the rental rate set forth in the Lease plus any and all other charges, fees and amounts required to be paid by Lessee pursuant to the Lease.

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

(v) **"XTRA"** or **"XTRA Lease"** means XTRA Lease LLC, a Delaware limited liability company, XTRA LLC, a Maine limited liability company, and GTR Rental LLC, a Delaware limited liability company, as applicable, depending upon which entity holds title to the rented or leased Equipment.

(w) **"XTRA Website(s)"** mean the website(s) located at www.xtralease.com, secure.xtralease.com, secure.xtra.com, www.xtra.com, intelligence.xtra.com, trailertracking.xtra.com, and www.xtraleasecareers.com, together with any other website, portal, application, platform, or subdomain owned, operated, or made available by XTRA from time to time, including all content, features, functionality, tools, and services offered through such websites, portals, applications, platforms, or subdomains.

2. EQUIPMENT COVERED. The specific Equipment covered by the Lease and the Lease Term shall be as set forth in the Lease. Should Lessee maintain possession of Equipment upon expiration of the Lease Term, XTRA, in its sole discretion, may (a) amend the Use Charges or other terms of the Lease on prior written notice, or (b) demand Lessee's immediate return of the Equipment.

3. AUTHORITY & ACCEPTANCE. By submitting an XTRA customer application, entering into a Lease with XTRA, taking possession of Equipment from XTRA, executing an Equipment Rental Agreement or other document acknowledging Lessee's agreement to the Equipment Rental Agreement, making payment of any invoices to XTRA or completing any other transaction with XTRA, Lessee and Lessee's Agents represent and warrant that they are authorized on behalf of Lessee to enter such agreements and transactions with XTRA and expressly acknowledge receipt and acceptance of the Standard Terms and Conditions.

4. DELIVERY, RECEIPT & DROPOFF.

(a) Upon commencement of any rental or lease of a Unit by Lessee, XTRA will provide to Lessee an Equipment Rental Agreement detailing the terms of the Lease, including the identity of the Unit, the Use Charges and Lease Term, the condition of the Unit, and the mileage, tire tread and brake lining depth. By taking possession of the Unit, continuing to possess, rent, or lease the Unit, or making payment of any invoices to XTRA relating to the Unit, Lessee shall be deemed to have agreed to the terms of the Lease, including the Standard Terms and Conditions. Lessee acknowledges that Lessee's Agent has been authorized to pick-up from, return Equipment to, and/or accept delivery of Equipment from, XTRA, and that the aforesaid action, as well as the signature of Lessee's Agent on XTRA's Equipment Rental Agreement, or other document acknowledging Lessee's agreement to the Equipment Rental Agreement shall bind Lessee to the terms of such Equipment Rental Agreement and the Standard Terms and Conditions. Upon the return of the Unit to XTRA, XTRA will inspect the condition of the Unit, and provide to Lessee the Unit's completed Equipment Rental Agreement, recording the mileage, tire tread depth and brake lining depth as of the time of the return of the Unit.

(b) By taking possession of the Equipment, Lessee acknowledges accepting the Equipment in good repair and working order, in the condition noted in the Equipment Rental Agreement. Lessee shall have exclusive possession,

control and use of, and assumes complete responsibility for the condition, operation, inspection and maintenance of, the Equipment during the Lease. **Lessee** shall return the Equipment to **XTRA** in the same condition as noted in the Equipment Rental Agreement, normal wear excepted (as defined in the Repair Standards). **Lessee** acknowledges that **XTRA's** inspection of the Unit upon the return of the Unit shall be conclusive evidence of the condition of the Unit at the time of **Lessee's** return of the Unit.

(c) If **Lessee** requests **XTRA** to arrange for a Unit to be delivered to or picked up from a location designated by **Lessee**, **Lessee** shall pay **XTRA's** delivery and pick-up charges for arranging the delivery or pick-up. Possession of, risk of loss and responsibility under the Lease for a delivered Unit shall transfer to **Lessee** FOB **XTRA** branch or other origin, and for a Unit picked up for **Lessee** shall transfer to **XTRA** upon the return to the **XTRA** branch. **XTRA's** inspection of the Unit at **XTRA's** branch location prior to delivery shall be conclusive evidence of the condition of the Unit at the time of commencement of the Lease, and in the event of pick-up of a Unit, **XTRA's** inspection of the Unit upon the return of the Unit to **XTRA's** branch location shall be conclusive evidence of the condition of the Unit upon its return.

(d) **Lessee** shall return each Unit at **Lessee's** expense to the return location specified in the Unit's Equipment Rental Agreement (the "Return Location"). If **Lessee** returns a Unit to a branch other than its designated Return Location, subject to any provisions in the Lease, **Lessee** shall pay **XTRA** a return fee as provided in the Lease or as otherwise set forth by **XTRA** from time to time and posted on **XTRA** Website. **XTRA** reserves the right to alter its drop policy, and/or to refuse the return of any Unit to a branch that is not its designated Return Location, including as a result of **Lessee's** repeated failure to comply with the terms of this Section 4(d).

5. COMMUNICATION SERVICES.

(a) If a Communication Device is installed on Equipment rented or leased by **Lessee** and **Lessee** is to receive Communication Services, **XTRA** hereby grants to **Lessee** a non-exclusive, non-transferable and limited sub-license to use the Software subject to the conditions and restrictions of the Lease and solely for the purpose of utilizing the Communication Device and Communication Services for which the Communication Device was designed to provide. **Lessee** shall not (i) copy the Software or provide the Software or access to the Software to any third-party, or (ii) reverse engineer, decompile, or disassemble the Communication Device, Software or Communication Services. **XTRA** grants to **Lessee** a non-exclusive, non-transferable, limited sub-license to access the Communication Services for use with the Communication Device. **XTRA DOES NOT GUARANTEE, REPRESENT OR WARRANT THAT LESSEE'S USE OF THE COMMUNICATION DEVICE OR COMMUNICATION SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE. THE COMMUNICATION SERVICES SHOULD NOT BE USED FOR EMERGENCY SERVICES.**

(b) The Communication Device may have the capability of sending information regarding the Equipment's use and operation, including but not limited to, diagnostic information and location information to **XTRA** without notice to **Lessee**. **Lessee** agrees that **XTRA** may use the information in furtherance of this agreement, to locate or recover Equipment or for other lawful purposes. Third parties providing the Communication Devices or related services may also have such information. Any information, alerts, notifications, reports, telematics data, or other data made available through the Communication Services (or otherwise by **XTRA**) is provided solely for **Lessee's** informational purposes. **Lessee** acknowledges that **XTRA** does not undertake, and shall have no obligation, to review, monitor, analyze, verify, interpret, or act upon such information, nor shall the provision of such information create any duty on the part of **XTRA** to identify, communicate, or remediate any safety or operational issue or maintenance requirement. **Lessee** is solely responsible for monitoring the operation and condition of the Equipment, evaluating all information made available through the Communication Services, determining whether any safety, maintenance, or operational issue exists, and taking any actions **Lessee** deems necessary or appropriate.

(c) **XTRA** reserves the right to terminate the Communication Services, and the sub-licenses granted pursuant to this Section 5, at any time on thirty (30) days notice to **Lessee**. **Lessee** acknowledges that disruption of Communication Services may occur from time to time for maintenance and other reasons beyond the control of **XTRA**. **Lessee** hereby releases and forever discharges **XTRA**, its affiliates, licensors, service providers, and the underlying wireless carriers from any and all claims, liabilities, damages, losses, costs, and expenses arising out of or relating to any such interruption, delay, inaccuracy, omission, or failure. **XTRA** will not be responsible or liable for any damage to the Equipment or Communication Device, or loss of data of **Lessee** or any other user, as a result of any download or information otherwise derived from **XTRA** Websites, Software, Communication Services, and associated content.

(d) **Lessee** agrees not to tamper with or disable the Communication Device. **Lessee** is prohibited from using the Communication Services for any unlawful purpose; including the following: (i) to upload or transmit viruses or any other

type of malicious code; (ii) to collect or track the personal information of others; or (iii) to interfere with or circumvent the security features of the Communication Device or the Communication Services or any related website. **XTRA** reserves the right to terminate the Communication Services, and the sub-licenses granted herein, for any violation of these terms.

(e) **Lessee** and **Lessee's Agent** represent and warrant that (i) **Lessee** has the consent and authority to provide the information given to **XTRA** whether to an employee or agent of **XTRA**, or through the **XTRA** account portal or otherwise on **XTRA** Websites, and (ii) the use of such information and disclosure does not violate any provision herein and will not cause injury to any person or entity. **XTRA** may rely on this representation that all required consents have been obtained and has no independent obligation to verify the existence or validity of such consent. **Lessee** shall have the sole responsibility to ensure that all drivers or other applicable parties understand the use, collection and dissemination of such information subject to **XTRA's** privacy policies at xtralease.com.

6. ROADWATCH® SERVICE. Unless otherwise specified in the Lease, **Lessee** may call **XTRA's** RoadWatch® service to coordinate repairs for Equipment subject to the Lease. Upon receiving a call from **Lessee**, **XTRA**, on behalf of **Lessee**, will (i) contact a third-party repair vendor to provide repair services to **Lessee**, and (ii) coordinate payment for any services provided by that third-party repair vendor to **Lessee**. Unless otherwise provided in the Lease, **XTRA** will invoice **Lessee** for any repair services coordinated through the RoadWatch® service, along with a service fee. No warranty, express or implied, is made by **XTRA** with respect to any services provided by a repair vendor coordinated through the RoadWatch® service, and **Lessee** hereby releases **XTRA** from all liability in any way relating to use of the RoadWatch® service, including, any repairs provided by any repair vendor coordinated through the RoadWatch® service.

7. PAYMENT.

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

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

(ii) **Mileage Charges.** **Lessee** shall pay **XTRA** mileage charges for actual miles traveled by a Unit as specified in the Lease, which may be measured by a hubodometer attached to each Unit, a GPS tracking device, or other method as reasonably determined by **XTRA**. In the event the hubodometer fails to function properly and/or tracking data is otherwise not available, **Lessee** shall pay **XTRA** a mileage charge based on the average miles traveled by similar Units leased or rented by **Lessee** from **XTRA** or the average miles traveled by similar Units of Equipment leased or rented from **XTRA** generally, as determined by **XTRA** in its sole discretion. Unless otherwise specified in the Lease, **Lessee** shall pay **XTRA's** card rate mileage charge for actual miles traveled by a Unit rented or leased under a Net/Net Lease (a Lease in which **Lessee** is not charged mileage) if the Unit travels less than 10,000 miles during the Lease.

(iii) **Refrigeration Unit Charges.** **Lessee** shall pay **XTRA** a refrigeration charge for engine hours used on any refrigerated Unit as specified in the Lease. A reading/measurement will be taken by **XTRA** at the time of delivery to or pick-up of a Unit by **Lessee**, and a similar reading/measurement will be taken by **XTRA** upon return of the Unit to **XTRA**. In the event a Unit fails to properly record engine hours and **XTRA** is unable to determine engine hours through diagnostic information, **Lessee** shall pay **XTRA** a refrigeration charge for engine hours based on the average engine hours historically used on similar Units of Equipment leased or rented from **XTRA**, as determined by **XTRA** in its sole discretion.

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

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

(vi) **Maintenance.** For each billing cycle, **Lessee** shall pay **XTRA** an amount for estimated damages and maintenance to the Equipment as specified in the Lease (if applicable).

(b) Unless otherwise specified in the Lease, Use Charges that are determined and payable at the end of the Lease shall be paid by **Lessee** in periodic estimated payments during the Lease (referred to as "Estimated Charges"). **XTRA** may begin charging Estimated Charges under any Lease, or from time to time, increase or decrease Estimated Charges stated in a Lease, to reflect **Lessee's** actual use of Equipment during the Lease. Adjustments to

Estimated Charges shall be reflected on the invoice for the billing period during which the Estimated Charges were initiated or adjusted. **Lessee** shall pay **XTRA** the amount the actual Use Charges determined upon return of the Equipment exceed the Estimated Charges paid during the Lease, and **XTRA** shall credit **Lessee** for any overpayment of Estimated Charges during the Lease.

(c) Unless otherwise specified in the Lease, **Lessee** shall pay Use Charges starting on the day Equipment is picked-up by or delivered to **Lessee**. Use Charges shall continue through the day Equipment is returned to **XTRA** at the Return Location set forth in the Lease. In the event of a total casualty, Use Charges shall continue until **Lessee** pays the Unit's Casualty Loss Value.

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

(e) **XTRA** shall periodically invoice **Lessee** for all Use Charges incurred pursuant to the Lease. Each invoice shall be paid by **Lessee** within ten (10) days from the date of the invoice, after which time the invoice shall be overdue.

(f) **Lessee** shall make all payments in U.S. currency (i) to the lockbox address provided by **XTRA**, (ii) to **XTRA's** designated payment account via electronic funds transfer, or (iii) via pre-authorized payment collected by **XTRA** from **Lessee's** designated account. **Lessee** shall not deliver any payments to any **XTRA** location. If any form of payment is returned due to insufficient funds or is declined, **Lessee** shall pay **XTRA** a processing fee as set forth by **XTRA** from time to time and posted on **XTRA** Website.

8. MAINTENANCE AND USE OF EQUIPMENT.

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

(b) During the Lease, **Lessee** (i) is responsible for the condition, operation, inspection and maintenance of the Equipment, (ii) shall operate the Equipment (and use the Communication Services) in conformance with Applicable Law, (iii) shall maintain the Equipment at **Lessee's** own expense in accordance with Applicable Law and the Repair Standards, in good condition, free from defects and fit for its designated purpose, (iv) shall promptly notify **XTRA** regarding any mechanical failure or problem, and (v) is responsible for all damage to the Equipment. **Lessee** shall return all Equipment to **XTRA** in the same condition as when received, normal wear excepted. **Lessee** shall not permit any Equipment to be transported outside Canada, Mexico, or the continental United States.

(c) **Lessee** shall not (i) use the Equipment for the transportation or storage of any human or animal remains or medical or biological waste, (ii) use the Equipment for the transportation or storage of any unprotected Hazardous Materials, or (iii) permit the Equipment to be contaminated by any Hazardous Materials. **Lessee** shall promptly notify **XTRA** if it becomes aware of the use of the Equipment for such purposes. **Lessee** shall obtain the consent of **XTRA** before decontaminating or cleaning Hazardous Materials from the Equipment. If unprotected Hazardous Materials were placed in, or Hazardous Materials have contaminated or damaged the Equipment, **XTRA** may, in its sole discretion, (i) require **Lessee** to immediately pay **XTRA** the Casualty Loss Value of the Equipment; (ii) require **Lessee**, at **Lessee's** sole expense, to repair, restore and/or decontaminate the Equipment and provide proof of such repair, restoration and/or decontamination, including, methodology and pre and post decontamination sampling results and any other inspection or testing **XTRA** deems necessary to perform; or (iii) repair, restore and/or decontaminate the Equipment, in which case **Lessee** shall be liable to **XTRA** for the total estimated or actual cost to repair, restore and/or decontaminate the Equipment, as determined by **XTRA** in its sole discretion.

(d) **Lessee** shall not remove, obscure or alter any identification marks on the Equipment. Prior to **Lessee's** return of the Equipment to **XTRA**, all identification marks or logos applied to the Equipment by or for **Lessee** shall be removed and the surface restored at **Lessee's** expense. **Lessee** shall not make any structural alterations to the Equipment.

(e) Unless the terms of the Lease state otherwise, upon **Lessee** making the Equipment available at an **XTRA** location, **XTRA** shall annually perform a periodic inspection in conformance with the requirements of 49 C.F.R. Part 396.17 and provide, at its expense, replacement tires, brakes, lights, lubricants and other parts worn due to normal wear as needed; provided however, **Lessee** shall be responsible for all expenses relating to replacement tires, brakes, lights, lubricants and other parts which are broken, inoperable or worn for reasons other than normal wear. **XTRA** shall have no obligation to perform an annual periodic inspection or provide any replacement parts on Equipment (i) rented or leased on a Net/Net Lease (a Lease that does not charge mileage), (ii) which **Lessee** has not made available to **XTRA** for inspection, or (iii) which are designated as storage trailers. **XTRA** shall have no obligation to reimburse

Lessee for any periodic inspection, replacement parts, or maintenance services provided by **Lessee**.

(f) **Lessee** shall return each Unit with tires of equivalent brand, size, and quality as those installed at Lease commencement, and from a manufacturer on **XTRA's** approved list (included in the Repair Standards). **Lessee** shall pay **XTRA** a charge for the pro-rated value, on a replacement cost basis, of the lost remaining life, including a casing charge, for any tire returned (i) that is not on the approved manufacturers list or of similar size and quality to the tires on the Unit at the start of the Lease, (ii) with tire tread depth of less than 3/32^{nds} of an inch, (iii) that is excessively worn, or (iv) in a damaged condition. Tire damage includes flat spotting, skid damage, abnormal wear due to equipment defect or improper maintenance or any other condition that reduces the remaining useful life of the tire or its casing. A tire is excessively worn if its tread wear exceeds 1/32^{nds} of an inch per ten thousand (10,000) miles traveled.

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

9. DAMAGE AND REPAIRS TO EQUIPMENT.

(a) In the case of total loss of a Unit beyond economic repair for any reason, including theft, collision, confiscation, fire, corrosion, destruction, natural disaster or any other total casualty, regardless of where it may have occurred and notwithstanding any amounts which may be paid or disputed by **Lessee's** insurance company, **Lessee** is responsible for and shall promptly pay **XTRA** the Unit's Casualty Loss Value. **XTRA** reserves the right to determine, in its sole discretion, whether a Unit has in fact suffered an event of total loss or damage beyond economic repair. **Lessee's** request for a Casualty Loss Value quote shall not constitute notice that **Lessee** has suffered a total loss of a Unit.

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

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

10. LIMITED WARRANTIES. BY TAKING POSSESSION OF THE EQUIPMENT, LESSEE ACKNOWLEDGES RECEIPT OF THE EQUIPMENT IN GOOD REPAIR AND WORKING CONDITION, AND THAT THE EQUIPMENT IS FIT AND SUFFICIENT FOR LESSEE'S INTENDED USE. XTRA IS NOT A SUPPLIER OR MANUFACTURER (AS SUCH TERMS ARE DEFINED OR USED IN THE UNIFORM COMMERCIAL CODE). NO WARRANTY, EXPRESS OR IMPLIED, IS MADE BY XTRA OF THE QUALITY OF DESIGN, MANUFACTURE, CONDITION OR FITNESS FOR ANY PARTICULAR USE OF THE EQUIPMENT, SOFTWARE, COMMUNICATION DEVICES, COMMUNICATION SERVICES, OR XTRA WEBSITES. LESSEE WAIVES AND RELEASES ANY AND ALL CLAIMS AGAINST XTRA FOR ANY AND ALL LOSS OR LIABILITY (INCLUDING CARGO LOSS) RESULTING FROM ANY DEFECTS OR FAILURES OF DESIGN, MATERIALS, CONDITION OR FITNESS FOR ANY PARTICULAR USE OF THE EQUIPMENT, COMMUNICATION DEVICES, SOFTWARE, COMMUNICATION SERVICES, OR XTRA WEBSITES, EITHER LATENT OR PATENT. LESSEE WAIVES THE PROVISIONS OF ANY APPLICABLE LAW LIMITING OR PROHIBITING A GENERAL RELEASE WITH RESPECT TO ANY RELEASE OR WAIVER IN THE LEASE OR THE STANDARD TERMS AND CONDITIONS. XTRA AGREES TO EXTEND TO LESSEE ALL WARRANTIES, IF ANY, OFFERED BY THE MANUFACTURERS OF THE EQUIPMENT, OR THE PROVIDERS OF THE SOFTWARE AND

COMMUNICATION SERVICES.

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

11. LESSEE'S INDEMNIFICATION OBLIGATIONS.

(A) LESSEE SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS XTRA, ITS AFFILIATES AND ITS AND THEIR SUCCESSORS, ASSIGNS, EMPLOYEES, OFFICERS, DIRECTORS, LICENSORS AND AGENTS (THE "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, LIABILITIES, OBLIGATIONS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) (COLLECTIVELY "CLAIMS"), IN ANY WAY ARISING OUT OF OR INCIDENT TO THE LEASE, THE COMMUNICATION SERVICES, OR THE USE, POSSESSION, MAINTENANCE, CONTROL OR CONDITION OF ANY EQUIPMENT DURING THE TERM OF OR OTHERWISE IN CONNECTION WITH ANY LEASE, REGARDLESS OF WHETHER SUCH CLAIMS WERE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY OF THE INDEMNIFIED PARTIES, AND INCLUDING ANY AND ALL CLAIMS ARISING FROM OR INCIDENT TO: (I) THE ACTS OR OMISSIONS OF LESSEE, ITS AGENTS, SUBLESSEES OR ASSIGNEES; (II) THE PERFORMANCE, BREACH, OR DEFAULT OF THE LEASE BY LESSEE, OR THE ENFORCEMENT OF ANY OF THE TERMS OF THE LEASE BY XTRA (INCLUDING IN CONNECTION WITH ANY AMOUNTS OWED); (III) DEATH OR INJURY TO ANY PERSON; (IV) DAMAGE TO ANY PROPERTY; (V) DAMAGE TO, OR ANY DAMAGE OR INJURY RESULTING FROM, OR ANY CLAIMS ASSOCIATED WITH ANY CARGO PLACED ON OR CONTAINED IN THE EQUIPMENT; (VI) THE VIOLATION OR ALLEGED VIOLATION OF ANY APPLICABLE LAW; (VII) THE USE OF THE SOFTWARE, COMMUNICATION DEVICES, COMMUNICATION SERVICES OR XTRA WEBSITES; AND (VIII) THE USE, FAILURE TO USE OR INABILITY TO USE ANY COMMUNICATION DEVICE OR COMMUNICATION SERVICE.

(B) LESSEE SHALL NOT SETTLE OR COMPROMISE ANY CLAIM AGAINST ANY INDEMNIFIED PARTY, INCLUDING ANY CLAIM FOR WHICH LESSEE HAS ASSUMED THE DEFENSE OF THE INDEMNIFIED PARTIES, WITHOUT THE PRIOR WRITTEN CONSENT OF XTRA. LESSEE SHALL REIMBURSE THE INDEMNIFIED PARTIES FOR ANY EXPENSE INCURRED, INCLUDING REASONABLE ATTORNEYS' FEES, TO DEFEND ANY ACTION WHICH LESSEE IS REQUIRED TO DEFEND PURSUANT TO THE STANDARD TERMS AND CONDITIONS.

12. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES SHALL XTRA BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND ARISING FROM OR IN CONNECTION WITH ANY LEASE, ANY EQUIPMENT, COMMUNICATION DEVICE, OR COMMUNICATION SERVICE, WHETHER OR NOT RESULTING FROM THE NEGLIGENCE OF XTRA, AND INCLUDING ANY LOST PROFITS, BUSINESS FAILURE OR INTERRUPTION DAMAGES, OR ANY DAMAGES ASSOCIATED WITH LOST OR DAMAGED CARGO. In no event shall XTRA's total liability to Lessee exceed the amount of rental charges paid by Lessee to XTRA during the three (3) months preceding the event that gave rise to the claim or action.

13. INSURANCE & COLLISION DAMAGE WAIVER.

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

(i) Insurance covering physical loss of or damage to the Equipment from any cause or peril whatsoever in an amount not less than the full replacement value of the Equipment. XTRA shall be named a loss payee;

(ii) Comprehensive Automobile Liability coverage protecting XTRA from and against all loss and damage it may sustain or suffer because of death or injury to any person, or damage to the property of any person, as a result of the use, possession, maintenance or control of the Equipment during the Lease. Coverage must be primary and non-contributory and include minimum limits of \$1 million combined single limit or \$1 million bodily injury and \$250,000 property damage. XTRA must be named as an additional insured; and

(iii) Comprehensive General Liability coverage protecting XTRA from and against all loss and damage it may sustain or suffer because of death or injury to any person, or damage to the property of any person, as a result of the use,

possession, maintenance or control of the Equipment during the Lease. Coverage must be primary and non-contributory and include minimum limits of \$1 million each occurrence and include contractual liability coverage. XTRA must be named as an additional insured.

XTRA reserves the right to determine, in its sole discretion, if a policy of insurance complies with the requirements of this Section 13. Without limiting this right in any way, a policy of insurance does not comply with the provisions of this Section 13 if its coverage is (i) contingent in any way upon the existence of coverage under a policy of insurance maintained by a third party, (ii) limited to providing coverage only when a Unit is attached to specific motor vehicles, (iii) limited to providing indemnity only after the insured's payment of a settlement or judgment, or (iv) does not provide a waiver of subrogation in favor of XTRA.

(b) Policies of insurance shall be valid and in force until the Equipment is returned to XTRA. Lessee shall provide XTRA with certificate(s) of insurance evidencing the required coverages prior to delivery or acceptance of any Equipment, promptly upon any amendment or renewal of the required coverage, and when requested by XTRA. Upon request, Lessee shall provide XTRA copies of Lessee's insurance policies, including any endorsements, for the required coverage; provided such review is for XTRA's benefit only and, under no circumstances, shall such review imply any duty or obligation of XTRA to advise Lessee regarding the scope or validity of the coverage. Lessee shall provide XTRA with thirty (30) days prior written notice of cancellation or material change to Lessee's insurance. All deductibles and self-insured retentions must be acceptable to XTRA. If requested by XTRA, Lessee shall file a claim with its insurance carrier for any lost, stolen or damaged Units of Equipment. Insolvency, refusal or failure by Lessee's insurance carrier to provide coverage for any and all losses, claims, liabilities or damages arising out of the Lease shall not relieve Lessee of any of its obligations set forth in the Lease. Nothing contained in these insurance requirements is to be construed as limiting the extent of Lessee's liability under the Lease.

(c) If acceptable to XTRA in its sole discretion, the insurance requirements of this Section 13 may be satisfied in whole or in part by Lessee's self-insurance arrangement. Upon request, Lessee shall provide XTRA evidence of self-insurance together with a copy of Lessee's most recent financial statements.

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

14. SECURITY DEPOSIT. As a condition precedent to XTRA entering into the Lease, and as security for the full performance by Lessee of its obligations, a security deposit in an amount determined by XTRA, may be required and, if required, shall be delivered to XTRA by Lessee prior to Lessee taking possession of any Equipment. Such security deposit may be used to offset any amounts due and owing by Lessee to XTRA. The security deposit, or any balance thereof, if any, shall be returned to Lessee after all of the Equipment has been returned to XTRA and after deduction of any amounts due and owing by Lessee to XTRA.

15. LETTER OF CREDIT. As a condition precedent to XTRA entering into the Lease, and as security for the full performance by Lessee of its obligations, Lessee may be required to obtain from a financial institution acceptable to XTRA an irrevocable letter of credit for the benefit of XTRA in an amount determined by XTRA. The letter of credit shall be issued in the form approved by XTRA. If required, Lessee agrees to maintain the letter of credit until all Equipment is returned to XTRA and Lessee shall have fully complied with all of its obligations, including the payment of all Use Charges due and owing to XTRA. Lessee shall renew or replace the letter of credit with one acceptable to XTRA at least thirty (30) days before expiration. Failure to do so constitutes a Default under Section 21 and authorizes XTRA to immediately draw down the full amount available under the letter of credit.

16. REPRESENTATION & WARRANTY; ADEQUATE ASSURANCES. Lessee represents and warrants that there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect Lessee's financial condition or operations, and all credit, financial and other information provided by Lessee or at Lessee's direction and all such information hereafter furnished during the Lease will be true, accurate and complete in all material respects. During the term of any Lease, XTRA may require that Lessee enter into reasonable security arrangements with XTRA which may include, but are not limited to, providing a security deposit, letter of credit, or the payment of Estimated Charges sufficient to protect XTRA from all risk of loss.

17. LAWS, RULES AND REGULATIONS.

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

(b) Lessee shall be solely responsible for (i) complying with Applicable Law, including, all anti-pollution and environmental, transportation compliance, safety, and inspection requirements; (ii) any modification required to be made to the Equipment or related maintenance practices to comply with Applicable Law, including in connection with any new regulations or modifications to existing regulations; and (iii) any fines, tolls, user fees, traffic, parking, idling violations, towing and storage expenses and other similar fines, fees or charges relating to the Equipment during the Lease. XTRA shall charge Lessee, and Lessee agrees to pay XTRA, any fines, tolls, user fees, traffic or parking violations, towing and storage expenses and other fines, fees, penalties, or charges relating to the Equipment during the Lease, plus an administrative fee. Lessee's obligation to be solely responsible for compliance with all Applicable Law applies regardless of any allocation of compliance responsibility set forth in any applicable federal, state, local, or other regulation. Lessee's obligations include compliance with the following California regulations; provided Lessee acknowledges and agrees the following does not cover all Applicable Laws relating to the Equipment:

Sections 95300-95312 of Title 17 of the California Code of Regulations govern the operation of a box type trailer that is greater than 50 feet in length in the State of California (the "HDV Regulations"). Lessee is solely responsible for complying with the HDV Regulations and any successor or related regulations, in each case as they may be amended or replaced from time to time, in conducting operations in California, including (i) the cost of any modification required to be made to the Equipment to comply with the HDV Regulations; (ii) complying with any reporting obligations under the HDV Regulations associated with the operation of the Equipment in California; and (iii) verifying that any Equipment that Lessee has rented or leased from XTRA complies with the HDV Regulations prior to its operation in California. Lessee shall not permit Equipment that does not comply with the HDV Regulations to be operated in California. Lessee shall have the right to make modifications to the Equipment to comply with the requirements of the HDV Regulations; provided, that (i) any modifications to install components or devices on Equipment are made in accordance with the recommendations and standards set by the manufacturer of the components or devices, and (ii) unless otherwise agreed to by XTRA, Lessee shall remove any modifications Lessee makes to the Equipment prior to Lessee's return of the Equipment to XTRA.

THE LESSEE OF THIS BOX-TYPE TRAILER UNDERSTANDS THAT WHEN USING A HEAVY-DUTY TRACTOR TO PULL A LONG BOX-TYPE TRAILER ON A HIGHWAY WITHIN CALIFORNIA, THE BOX-TYPE TRAILER MUST BE COMPLIANT WITH SECTIONS 95300-95312, TITLE 17, CALIFORNIA CODE OF REGULATIONS (AND ANY SUCCESSOR PROVISIONS), AND THAT IT IS THE RESPONSIBILITY OF THE LESSEE TO ENSURE THIS BOX-TYPE TRAILER IS COMPLIANT. THE REGULATIONS MAY REQUIRE THIS TRAILER TO HAVE LOW ROLLING RESISTANCE TIRES AND AERODYNAMIC TECHNOLOGIES THAT ARE U.S.

ENVIRONMENTAL PROTECTION AGENCY SMARTWAY VERIFIED TECHNOLOGIES PRIOR TO CURRENT OR FUTURE USE IN CALIFORNIA.

Sections 2477 through 2477.24 of Title 13 of the California Code of Regulations (and any successor provisions) govern the operation of refrigerated Equipment in the State of California (as they may be amended from time to time, the "TRU Regulations"). It is a violation of the TRU Regulations to operate any refrigerated Unit in California that does not comply with the TRU Regulations. Lessee is solely responsible for complying with the TRU Regulations in conducting operations in California, including (i) the cost of any modification required to be made to the Equipment to comply with the TRU Regulations; provided, that Lessee shall obtain XTRA's approval prior to modifying any Equipment to comply with the TRU Regulations; (ii) complying with any fee, registration, labeling, record-keeping, or reporting obligations under the TRU Regulations associated with the operation of refrigerated Equipment in California; and (iii) verifying that any refrigerated Unit that Lessee has rented or leased from XTRA complies with the TRU Regulations prior to the operation of that Unit in California. Lessee shall not permit a refrigerated Unit that does not comply with the TRU Regulations to be operated in California.

18. TAXES. All taxes and assessments, including all import and customs duties and all withholding, property, sales and/or use taxes, and all penalties or other fees arising out of or incident to the use, possession or control of the Equipment during the Lease, shall be the responsibility of Lessee. In order to avoid the obligation to remit any applicable withholding, property, sales and/or use tax to XTRA, Lessee must provide a duly authorized exemption certificate issued by or acceptable to the relevant taxing authority.

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

20. LOCATION OF EQUIPMENT; OWNERSHIP; LIENS.

(a) Nothing in the Lease conveys any ownership rights to Lessee in and to the Equipment, and all right, title and interest in and to the Equipment shall remain with XTRA. Lessee shall provide XTRA with prior written notice if Lessee intends to store or regularly locate any Equipment outside the United States. Such notice shall include the address/jurisdiction in which the Equipment will be located and the anticipated duration.

(b) Lessee shall keep the Equipment free from any liens, including, mechanics' liens, storage, warehouse or other possessory liens, claims or encumbrances, attachments, rights of others and legal processes ("Liens") of creditors of Lessee or any other persons. Lessee shall promptly notify XTRA upon receipt of notice of any such Liens affecting the Equipment and Lessee shall promptly defend at its own expense XTRA's title to the Equipment from such Liens.

(c) Notwithstanding the parties' intention and express agreement that the Lease constitutes a valid lease of the Equipment, and solely to protect the rights of XTRA in the Equipment in the event the Lease is determined by a court of competent jurisdiction to be a conditional sale of and/or financing arrangement as to the Equipment, Lessee hereby pledges, assigns and grants to XTRA a continuing first priority security interest in and lien upon the Equipment and all proceeds (including proceeds of all insurance policies), which interest and lien shall be cross-collateralized with each and every separate item of Equipment subject to the Lease and related schedules, in order to secure the prompt payment and performance of all of Lessee's obligations, both now existing and hereinafter arising under this Lease. Lessee hereby agrees that XTRA shall have all rights and remedies of a "secured party" under the Uniform Commercial Code ("UCC") (or other applicable law, such as the Personal Property Security Act of each province of Canada) and authorizes XTRA to cause this Lease and/or any statements or other instruments in respect of this Lease showing the interest of XTRA in the Equipment (including, for example, certificates of title, financing statements under the UCC, or personal property security financing statements under applicable Canadian law) to be filed or recorded showing the interest of XTRA in the Equipment, and grants XTRA and its agents the right to execute Lessee's name thereto in any jurisdiction XTRA deems necessary. Lessee

also agrees to execute or cause the execution of such additional documents and do such other acts and things, including execution of applications and certificates of title naming **XTRA** as a secured party and delivery of same to **XTRA**, as **XTRA** from time to time requests to establish and maintain a valid and perfected security interest in and lien upon the Equipment. To further secure payment to **XTRA** of the obligations owed by **Lessee**, **Lessee** agrees that the Equipment subject to the Lease shall be cross-collateralized with the Equipment subject to any other Lease in which **Lessee** is a lessee.

21. DEFAULT.

(a) **Lessee SHALL BE IN DEFAULT** of the Lease: (i) if **Lessee** fails to comply with or is in breach of any of the terms or conditions of the Lease, including the retention of the Equipment for the entire Lease Term, the timely payment of all invoices, or any breach of any covenant or representation herein; (ii) if any third-party credit support, including any guarantor or issuer of a letter of credit, attempts to or does cancel the support or guaranty (or is otherwise in default under such support or guaranty); (iii) if **Lessee** or a subsidiary or affiliate of **Lessee** is in default of any of the terms or conditions of any other agreement with **XTRA**; (iv) if **Lessee** fails to maintain or fails to provide **XTRA** with proper evidence of the insurance required by this Lease, or **Lessee's** insurance is canceled, reduced or lapses; or (v) if **Lessee** becomes insolvent, or subject to any voluntary or involuntary bankruptcy or insolvency proceeding (including acquiescence in the appointment of a trustee or receiver, or commencement of any dissolution or liquidation proceeding; hereafter individually or collectively referred to as a "Default").

(b) In addition to any rights or remedies available at law or in equity, upon a Default by **Lessee**, **XTRA** shall have the right, at its option and without demand or notice to **Lessee**, to do any one or more of the following: (i) pay all amounts required to be paid or perform or cause to be performed all obligations required to be performed by **Lessee** under the Lease and charge **Lessee** as additional rent the amount paid or the reasonable value of the services performed; (ii) declare the entire balance of remaining payments under the Lease immediately due and payable by acceleration; (iii) terminate **Lessee's** right to possession of and take immediate possession of all outstanding Equipment; (iv) terminate **Lessee's** access to the Communication Devices and/or Communication Services; (v) terminate the Lease (whereupon the Standard Terms and Conditions shall continue to apply to the Equipment until its return); (vi) calculate and require **Lessee** to pay any attorneys' fees and costs incurred in recovery of any sums due or repossession of any Equipment; (vii) calculate and require **Lessee** to pay interest equal to the lesser of 18% per annum or the maximum permitted by law on any amounts owed; (viii) calculate and recover from **Lessee** any lost profits and damages as a "Lost Volume Seller" and/or "Lost Volume Lessor" that **XTRA** would have generated had the Lease not been prematurely cancelled; (ix) calculate and recover from **Lessee** any costs to transport and store the Equipment throughout the remainder of the Lease Term; and (x) set-off and apply any amounts owing by **XTRA** to **Lessee** against any amounts owing by **Lessee** to **XTRA**, including, any deposits, accruals, prepayments, overpayments, Estimated Charges, fees or otherwise, and (xi) refer the account to a third party collection agency or attorney. **Lessee** acknowledges and agrees that **XTRA** is under no duty to mitigate damages resulting from **Lessee's** Default. **IN THE EVENT OF LESSEE'S DEFAULT, LESSEE IS RESPONSIBLE TO REIMBURSE XTRA FOR ALL ATTORNEYS' FEES AND COLLECTION COSTS INCURRED BY XTRA TO ENFORCE THE TERMS OF THE LEASE, BY SUIT OR OTHERWISE, EVEN IF THE AMOUNT OF FEES AND COSTS EXCEED THE AMOUNTS OTHERWISE OWED XTRA BY LESSEE PER THE TERMS OF THE LEASE, INCLUDING BUT NOT LIMITED TO, COLLECTION AGENCY FEES, COMMISSIONS, LEGAL FEES, AND COURT COSTS.**

22. REPOSSESSION.

(a) In the event of **Lessee's** Default, and upon demand of **XTRA**, **Lessee** shall immediately return all Equipment to **XTRA**. If **Lessee** fails or refuses to immediately return all Equipment after demand by **XTRA**, **XTRA** shall have the right to enter upon any premises where the Equipment is located and disable the Equipment or take immediate possession of, and at **Lessee's** expense remove, the Equipment. **Lessee** expressly waives the benefits of any Applicable Law, now or hereafter enacted, exempting any leased property from replevin, distraint, levy or sale in any legal proceeding taken by **XTRA** to enforce any right under the Lease.

(b) If **XTRA** takes possession of the Equipment with property contained in, upon or attached to the Equipment, **XTRA** is authorized by **Lessee** to unload and store any property or cargo. If **Lessee** fails to retrieve the property within 5 days after receiving notice from **XTRA**, then **XTRA** may, without further notice, sell, dispose of and/or donate the property at **XTRA's** discretion. **Lessee** agrees it will reimburse **XTRA** for all costs and expenses in connection with the unloading, sale, storage, and/or disposal of the property. **Lessee** agrees (i) **XTRA** is under no obligation to determine whether such property belongs to **Lessee** or another third party; (ii) **XTRA's** possession, handling, storage, or disposal of such property shall be solely for the purpose of

exercising **XTRA's** rights under this Lease; (iii) no bailment, custodial relationship, warehouseman relationship, or other duty of safekeeping is intended or created thereby; and (iv) **XTRA** has no duty to preserve, protect, or maintain such property and shall not be liable for any loss of or damage to such property.

(c) **Lessee** acknowledges and agrees that in the event of **Lessee's** Default, **XTRA** will be in danger of losing its Equipment unless immediate possession of the Equipment is obtained because **XTRA's** Equipment is movable and readily marketable, and **XTRA** will not have an adequate remedy at law to protect its rights in its unreturned Equipment. Therefore, **Lessee** agrees that in the event of **Lessee's** Default, **XTRA** shall have the right, without prejudice to any other rights and remedies otherwise available to **XTRA** at law or in equity, to obtain injunctive relief to prevent the continued use of the Equipment by **Lessee** and require **Lessee** to immediately deliver possession of the Equipment to **XTRA**. Further, **Lessee** grants **XTRA** a power of attorney to utilize all efforts and remedies to return the Equipment to **XTRA**.

23. INTELLECTUAL PROPERTY. **XTRA** and/or its licensors reserve ownership of all Intellectual Property in and to the Equipment, Communication Devices, Software, Communication Services and the **XTRA** Websites, and the Lease does not create any right of ownership in **Lessee**. "Intellectual Property" shall mean all proprietary interests of any kind or nature, including, patent rights, copyrights, trade secrets, design rights, source code, documentation, trade and service marks, and other similar rights throughout the world.

24. BUSINESS CONDUCTED ELECTRONICALLY.

(a) **Lessee** agrees to conduct business with **XTRA** electronically, including, receiving any notices or disclosures from **XTRA** electronically and accepting all materials that may be provided via electronic delivery, including on **XTRA** Websites. Any electronic signature on any Lease, agreement, transaction, notice or other communication, shall have the same force and effect as the use of a manual signature for the purposes of validity, enforceability and admissibility. No certification authority or other third-party verification is necessary to validate any electronic signature provided on behalf of **Lessee** and the lack of such certification or verification will not in any way affect the enforceability of an electronic signature.

(b) To enable secure account log ins for **Lessee** to access information or to otherwise support the administration of the Lease, **XTRA** may collect and store user names, emails or other identifying information of persons with online access to **Lessee's** account. This information may also be shared with third party providers to grant access to Communication Services or to otherwise support or administer the terms of the Lease. See **XTRA's** privacy policies at xtralease.com.

(c) **Lessee** agrees that by using **XTRA** Websites, as a condition of such use, **Lessee** stipulates that when **Lessee** clicks a button labeled "I Agree" or "I Accept," **Lessee** will be manifesting and authenticating **Lessee's** assent to a binding contractual agreement incorporating the terms and provisions for which the button or input area is provided. To the extent there is any dispute related to assent by **Lessee** on any **XTRA** Website, or other electronic signature, **Lessee** stipulates it has the burden of proving that any electronic manifestation or signature is not attributable to **Lessee**.

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

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

27. ENTIRE AGREEMENT: CONFLICTS: INTERPRETATION. The Lease supersedes all prior agreements, whether written or oral, between **XTRA** and **Lessee** with respect to the rental or lease of the Equipment described therein, and constitutes a complete and exclusive statement of the terms of the agreement between **XTRA** and **Lessee** with respect to the rental or lease of the Equipment described therein. All Lease documents shall be read in a complimentary manner. Except as may be provided in the Lease, the Standard Terms and Conditions shall take precedence over all other Lease documents. Any additional or different terms or conditions proposed by **Lessee** or contained in any purchase order or other document by **Lessee** are rejected and shall be of no force and effect unless expressly agreed to in a writing signed by **XTRA's** Director, Customer Financial Services, or his designee located in **XTRA's** home office in St. Louis, Missouri. Any references to the word "including" shall mean "including, without limitation." If any term or provision hereof is declared to be illegal, invalid or unenforceable for any reason by a court of competent jurisdiction, such illegality, invalidity or unenforceability shall not affect the remaining terms and provisions hereof, which shall remain binding and enforceable.

28. AMENDMENTS. The parties acknowledge that no oral statement, course

of dealing, or course of performance shall amend, modify, or waive any provision of this Agreement. **XTRA** shall have the right to amend these Standard Terms and Conditions on thirty (30) days prior written notice to **Lessee**. Only **XTRA's** Director, Customer Financial Services or their designee located in **XTRA's** home office in St. Louis, Missouri shall have the authority to amend or modify the Lease on behalf of **XTRA**.

29. NOTICES. All notices and other communications given to **Lessee** hereunder shall be in writing and shall be deemed given and made (i) if by personal delivery, on the date of delivery, (ii) if by a nationally recognized overnight courier, on the next day following deposit, (iii) if by mail, on the third business day following deposit in the mail, and (iv) if by electronic mail or other electronic communication on the date of delivery (regardless whether **Lessee** actually opens or reviews the communication). **XTRA** may provide the Lease, the Equipment Rental Agreements, the Standard Terms and Conditions, acknowledgements, invoices, notices and other communications to **Lessee** in an electronic format through the XTRA Websites or other electronic means. In the case of **XTRA**, any notice or communication shall be sent in writing to XTRA Lease, 7911 Forsyth Boulevard, Suite 600, St. Louis, Missouri 63105, Attention: Director, Customer Financial Services. Any change of contact or address by either party shall be communicated to the other in writing in accordance with the foregoing notice requirements.

30. ERRORS & OMISSIONS. No clerical, typographical, scrivener's, administrative, or similar error or omission in the Lease or any related document shall affect the validity, enforceability, or continuation of the Lease or **Lessee's** obligations with respect to the Lease. The parties agree that any such error or omission may be corrected by **XTRA** to conform the document to the terms agreed by the parties, and **Lessee** shall execute any reasonable documentation requested by **XTRA** to evidence such correction.

31. CONFIDENTIALITY. **Lessee** shall hold and maintain as strictly confidential, and protect from disclosure to any third-party, the terms of the Lease, including, the Use Charges applicable thereunder.

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

33. SURVIVAL. The provisions of the Lease and the Standard Terms and Conditions that by their nature extend beyond expiration or termination of the Lease, including indemnity, limitations of liability, confidentiality, payment and billing, damage and repairs to Equipment, choice of law, venue and jury trial waiver, shall survive expiration or termination of the Lease.