

**EQUIPMENT AND HAULING AGREEMENT**

This Equipment and Transportation Services Agreement made and entered into in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Evans Delivery Company, Inc., Pottsville, PA, **US DOT # 038111**, hereinafter designated as "Carrier", and \_\_\_\_\_ of \_\_\_\_\_, hereinafter designated as "Contractor."  
(City/ State)

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YEAR    MAKE    COLOR    VEHICLE IDENTIFICATION NUMBER

WITNESSETH

WHEREAS, Contractor is the owner of certain vehicular equipment suitable for the transportation of property; and

WHEREAS, Carrier is now engaged in leasing equipment and drivers to entities engaged in the transportation of property in interstate commerce and in intrastate commerce in Illinois, Missouri, Ohio and Pennsylvania, and elsewhere as a common carrier, and

WHEREAS, Contractor desires to contract with Carrier for the use of such vehicular equipment with drivers; and

WHEREAS, Carrier desires to use and operate the same vehicular equipment with drivers for a period of thirty (30) days or more, and it is the intention of each party hereto to comply fully with the leasing rules of the various regulatory boards having jurisdiction.

NOW, THEREFORE, in consideration of the mutual covenants, it is agreed between the parties as follows:

1. USE AND DESCRIPTION

Contractor hereby furnishes to Carrier for the operation in its motor carrier service the vehicle(s) with a licensed driver, set forth in Exhibit "A" hereto attached, and by reference made a part hereof. All additions and/or deletions will be made in writing and require mutual consent. Notices for changes should be made by mail or facsimile to the following address:

Carrier: Evans Delivery Company, Inc., P.O. Box 268, Pottsville, PA 17901

Contractor: \_\_\_\_\_

## 2. TERM

This Agreement shall be effective as of the date first above written and shall continue thereafter for an initial period of two (2) years and shall automatically renew for subsequent two (2) year terms subject to cancellation by Carrier or Contractor upon thirty (30) days' notice in writing to the other party.

## 3. COMPENSATION

As compensation for the use of said equipment and the driving service to be rendered hereunder, Carrier agrees to pay to Contractor the amounts agreed upon and set forth in Exhibit "B" hereto attached and by this reference made a part hereof, or as may, from time to time, be supplemented by the parties hereto via supplement to Exhibit "B."

## 4. PAY PERIOD

Payment as provided herein shall be made by Carrier to Contractor within fifteen (15) days after submission by the Contractor to Carrier of the necessary delivery documents and other paperwork concerning a trip in the service of Carrier. The paperwork required to be submitted prior to payment shall include drivers logs required by the Federal Highway Administration of the U.S. Department of Transportation and those documents necessary for the Carrier to secure payment from the shipper. In addition, Contractor is also required, but not as a precondition of payment, to submit drivers' tickets, trip sheets, drivers' vehicle condition reports and copies of fuel invoices for all fuel purchased on the road. While submission of these is not a precondition to payment, failure to furnish Carrier with these documents will constitute a material breach of this contract. Carrier may require the submission of additional documents but not as a prerequisite to payment. All submissions to the Carrier should be sent to: Evans Delivery Company, Inc., P.O. Box 268, Pottsville, PA. 17901.

## 5. EXAMINATION OF TARIFF AND COPIES OF FREIGHT BILLS

Contractor shall have the right, upon reasonable notice, to examine copies of Carrier's tariff. Subject to the Carrier's right to delete all confidential information, including the names of shippers and consignees, Carrier shall, upon reasonable notice and request of Contractor, give to the Contractor whose revenue is based on a percentage of the revenue for a shipment, a copy of the rated freight bill, or equivalent document as may be permitted by law or regulation.

## 6. POSSESSION, CONTROL AND USE

Contractor acknowledges that the Federal Highway Administration of the U.S. Department of Transportation regulates Carrier. As required by Title 49, Code of Federal Regulations Part 1057.12 C (1), this Agreement recites, and the parties agree, that Carrier will have possession, use, and control of the equipment to the extent required by such regulations during the term of this Agreement.

It is the intention of the parties that Contractor not enter into any subleases on its own without the prior approval of Carrier; however, if any such subleases are entered into, they shall be handled in accordance with paragraph 10 (b) below.

#### 7. CONTRACTOR EQUIPMENT

Contractor shall furnish to Carrier the equipment described in Exhibit "A" together with driver personnel and all other necessary labor to perform the transportation, loading and unloading and unloading on behalf of Carrier, of such commodities as Carrier may from time to time make available to Contractor.

Nothing contained herein shall be construed as imposing any obligation on Carrier to furnish to Contractor any specific number of loads of freight for transportation by the Contractor.

Carrier acknowledges receipt of the equipment shown in Exhibit "A". \_\_\_\_\_ Carrier Initial

#### 8. CARRIER EQUIPMENT

PARAGRAPH 8 NOT APPLICABLE \_\_\_\_\_ Contractor Initial

#### 9. EXCLUSIVE USE

The Contractor will devote the equipment exclusively to the service of the Carrier. The Contractor shall not use the equipment to transport commodities in the name of or for the account of any party other than the Carrier, provided, Contractor may enter subleases as agent on Carrier's behalf, to the extent authorized in paragraph 10 of this Agreement.

#### 10. SUBLEASING

Carrier may sublease to other regulated carriers or others any equipment with driver which is the subject of this Agreement, in accordance with the leasing rules of the Federal or State regulatory boards and shall be considered the owner of the equipment for such purposes.

- (a) Contractor shall be authorized under this Agreement to enter certain subleases as agent for Carrier, subject, however, to strict compliance with the following provisions:
  - (l) Prior to entering any sublease, Contractor must first obtain by telephone; the formal approval of an officer of Carrier or other authorized representative. Contractor shall make a record of the time and date of the authorization and the name and title of the officer or representative who issued the authorization.

- (II) Contractor shall not be authorized to enter into any sublease, which includes as one of its terms any provision, which Carrier, as lessor, agrees to indemnify or hold harmless lessee for claims or liability arising out of the use by lessee of said equipment.
  - (III) In the event Contractor negotiates and enters into a sublease under these provisions, within 5 business days of the conclusion of the sublease, then Contractor shall deliver to Carrier all shipping documents and other related papers including logs, and shall also deliver to Carrier certification of credit reliability of the party responsible for payment of the freight charges due on the sublease movement.
  - (IV) Contractor will complete a "Trip Sublease Information Sheet" in the form designated by Carrier.
  - (V) The law requires that settlement checks for subleases be payable to Carrier. It is unlawful and a material breach of this Agreement for Contractor to endorse checks payable to Carrier or to deposit such checks in any bank account of Contractor.
  - (VI) Contractor will, upon execution of the sublease, remove or otherwise cover any and all identification devices identifying Carrier as being in control and possession of the equipment, and will during the course of the sublease only display on such equipment the identification devices of the sublease whether such sublease is an authorized interstate carrier licensed by the Federal Highway Administration of the U.S. Department of Transportation or not.
- (b) In the event Contractor negotiates and enters into a sublease of the equipment and driver leased to Carrier under this Agreement:
- (I) Except as provided in this Agreement, all revenues or compensation generated by such sublease as a result of transportation service performed by Contractor shall accrue to Contractor.
  - (II) There shall be deducted from compensation due Contractor the following:
    - (aa) Subleasing service fee of five dollars (\$5.00) per incident;
    - (bb) To partially offset insurance expense, ten percent (10%) of all sublease revenues unless Contractor submits to Carrier a certificate of public liability, property damage and cargo insurance coverage, with limits not less than those prescribed by the regulatory boards, issued by the sublease carrier or agent.
    - (cc) Trailer usage of 6 cents (6¢) per mile for van trailers and 8 cents (8¢) per mile for all other equipment, with a minimum charge of \$25.00 per sublease.

- (III) Carrier and Contractor recognize that there will be, from time to time, circumstances warranting Carrier to assist in transportation services related to a particular sublease, for example, unloading at piers. Compensation for these sublease operations will be negotiated on an individual basis.
  
- (IV) To the extent any sublease is negotiated and entered into by Contractor in complete accordance with this paragraph (10 – Subleasing) is a “trip-lease” as the term is defined by the Federal Highway Administration of the U.S. Department of Transportation at Title 49, Code of Federal Regulations, Part 1057.2(g), and invoices an interstate shipment, Carrier recognizes the Federal Highway Administration of the U.S. Department of Transportation requirements as to timely payment as specified in Paragraph 4 – Pay Period above, which requirements will control payment unless Carrier and Contractor intentionally negotiate some other lawful payment provision.
  
- (V) Failure by Contractor to obtain the required specific approval indicated above, or negotiation and entry by Contractor of a “sublease” with a party other than a carrier included in the authorized list, or any breach or violation of any provision of this paragraph, will be considered as outside the scope of the agency relationship between Contractor and Carrier, and a material breach of this Agreement. To the extent Carrier receives payment for such Contractor services, Carrier will remit to Contractor after receipt of such payment, those monies due Contractor for its transportation services, less deductions described above. In the event this paragraph is violated by Contractor in any way, a fine of one hundred dollars (\$100.00) for each such violation may be assessed by Carrier against Contractor, and deducted from any monies which may be due and owing to Contractor by Carrier. In the event such fine or penalty is assessed against Contractor, Contractor will be provided with all documentation regarding any incident resulting in imposition of such fine or penalty and prior to such time as the fine or penalty is collected.

#### 11. WARRANTY OF TITLE

Contractor warrants that it possesses the unrestricted rights to enter into this Contract and render full performance hereunder including the right to lease the equipment free of any liens or encumbrances that would, in any way, affect Carrier’s rights under this Agreement.

#### 12. ACCIDENT REPORTING

Contractor acknowledges that Carrier is regulated by the Federal Highway Administration of the U.S. Department of Transportation. As required by Title 49 Code of Federal Regulations, Part 382 in certain cases mandatory alcohol and drug testing within two hours of accident occurrence may be required. Contractor shall report immediately to the Carrier any and all accidents, including those involving property damage, bodily injury, and cargo damage or loss. If an accident is not reported immediately to the Carrier, the Contractor by his actions or not reporting the accident hereby agrees to reimburse the Carrier any and all claims paid in connections with such accident, and, in effect, shall hold Carrier harmless from any and all involved cost resulting from the accident.

#### 13. NO UNAUTHORIZED PASSENGERS

The Contractor specifically agrees and covenants with Carrier that no person shall ride as a passenger in any vehicle on lease to Carrier unless that person is a driver certified under the terms and conditions of this Agreement and the insurers of Carrier. This Agreement will be automatically terminated for breach of this paragraph.

#### 14. OBLIGATION UPON TERMINATION

Within five (5) business days of the termination of this Agreement, regardless of how such termination occurs, Contractor will deliver to Carrier any and all bills of lading and other forms, advertising materials, and literature obtained by Contractor through or furnished by Carrier, stamps, permits, cards, licenses, registration plates or papers obtained by or on behalf of Carrier in furtherance of the operation of Contractor's vehicles in the business of Carrier. Contractor is responsible, upon termination of this Agreement, for the return to Carrier of any and all identification devices, placards, or other means by which Contractor's equipment has been identified as being operated in the service of Carrier. In the event Carrier's identification has been permanently affixed to Contractor's equipment, proof that such identification has been obliterated is required. In the event any identification devices furnished to Contractor by Carrier have been lost or stolen, an affidavit, signed and notarized to that effect, and identifying the circumstances of the loss or theft shall be provided Carrier by Contractor. Carrier may withhold any and all amounts, which may be due and owing Contractor upon termination until Contractor has complied with each and all of the provisions of this paragraph. All warranties, indemnifications and hold harmless provisions of this Agreement by Contractor in favor of Carrier shall survive termination of this Agreement, and shall remain in full force and effect until such time as all documents, placards, identification devices, licenses and all other items identified in this paragraph are returned to, and are in the possession of Carrier, and until all terms, conditions and obligations of the Contractor as included in this paragraph are satisfied.

If reasonable evidence shows that the Contractor has violated this Agreement, Carrier may take possession of the commodities being transported by Contractor and complete such transportation. Contractor shall reimburse Carrier for any and all costs, expenses or damages incurred by the Carrier as a result of Carrier's taking possession of the commodities and completing the transportation and/or receiving abandoned trailer and/or cargo.

#### 15. ATTORNEY'S FEES

In the event it becomes necessary for Carrier to place this Agreement with an attorney for the enforcement of any provisions hereof, Contractor shall pay to Carrier all reasonable attorneys' fees that it may incur.

#### 16. EQUIPMENT COLLISION / COMPREHENSIVE INSURANCE

Carrier shall not be liable in any way for damage that may occur to Contractor supplied equipment. Contractor shall, at all times during the term of this Agreement, carry at its own expense, collision insurance covering all vehicles listed in Exhibit "A," hereto attached.

#### 17. INDEMNITY AND HOLD HARMLESS

Contractor agrees to indemnify and hold harmless Carrier from and against all claims, damages, losses and expenses, to the extent of one thousand dollars (\$1,000.00), including reasonable attorney's fees, which might arise out of the performance of any work to be performed hereunder by Contractor, caused in whole or in part by Contractor's negligent act or omission, or that of anyone employed by Contractor or for whose acts Contractor may be liable. If Contractor operates outside the scope of this Agreement without the authority or waiver on the part of the Carrier, he shall be liable for any claims resulting there from.

#### 18. WORKERS' COMPENSATION / UNEMPLOYMENT INSURANCE / SOCIAL SECURITY

Contractor recognizes that he does not have Unemployment Benefits, Workers' Compensation Benefits or Social Security from the Carrier under this Agreement, and must withhold his own Income Taxes as a self-employed individual. **As the Owner-Driver of Contractor's equipment, Contractor is required to:**

- A. **Obtain Workers Compensation Insurance on himself, or;**
- B. **Obtain a substitute Truckers Occupational Accident Insurance policy (hereinafter designated as the "substitute policy") that stipulates if any Governing Body, State or Federal, deems Contractor is entitled to Workers Compensation, the substitute policy will provide Workers Compensation coverage. Carrier offers a substitute policy. If Contractor obtains a substitute policy not through Carrier, the terms and limits of Contractor's substitute policy must be equal to or greater than the substitute policy offered by Carrier, and;**
- C. **Contractor will furnish to the Carrier an appropriate Certificate of Insurance showing insurance coverage to comply with paragraphs 18.A. or 18.B., above. The Carrier shall be named an additional named insured on any substitute policy obtained by Contractor and shall be given 30-days notice from Contractor's Insurance Provider prior to any changes or cancellations.**

To the extent that Contractor elects to employ an individual to drive a motor vehicle(s) subject to this Agreement, Contractor shall be deemed to be the sole and exclusive employer of that driver and shall be responsible for and carry at his own expense all Unemployment Benefits, Workers' Compensation and Social Security Benefits for that individual. When the Contractor employs an individual to drive the motor vehicle(s) subject to this agreement, he will furnish to the Carrier an appropriate Certificate of Insurance showing that Workers' Compensation is in effect for the employee(s) that have been hired. The essence of this Independent Contractor status has been acknowledged between the parties, and is one of the key ingredients that underlie the relationship between Contractor and Carrier. In furtherance of this Agreement, Contractor agrees that he, his heirs, assigns and representatives shall at no time take a position contrary to the Agreement which the parties have hereby acknowledged wherein Contractor is declared to be a bona fide Independent Contractor, and should Contractor ever take a position contrary to this, through his heirs, assigns or representatives, he shall fully Indemnify and Hold Harmless the Carrier for any additional expenses that might incur, including pertinent Attorney Fees

#### 19. PUBLIC LIABILITY, DAMAGE, AND CARGO INSURANCE

Carrier shall, at its own expense, maintain insurance coverage in its own name at or above those levels specified as applicable in Title 49, Code of Federal Regulations, Part 87, and for the benefit of the public. Contractor shall also purchase and maintain "bobtail" insurance in a form and in such amount, which shall be in compliance with Title 49, Code of Federal Regulations, Part 397, and Contractor will cause Carrier to be named thereon as additional insured. "Bobtail" insurance is defined as that which will apply to miles operated by Contractor during the term of this lease but not in actual service for Carrier.

## 20. LICENSE: TAXES: FINES

Except as specifically provided in paragraph 24 below, Contractor agrees to furnish, at its own expense, all license plates, tags and stickers, including both those issued by the United States and state regulatory commissions and municipal governments; Contractor shall be solely liable for all other charges including charges for tolls and ferries and fines or penalties for violation of any federal, state, or municipal laws, ordinances, rules, or regulations resulting from the acts of omissions of Contractor or its employees. Carrier agrees to assume only the costs of fines for overweight and oversize trailers when the trailers are preloaded, sealed, or the load is containerized, or when the trailer or loading is otherwise outside the Contractor's control and agrees to reimburse Contractor only for the costs of such fines, provided however, when Contractor is directed by Carrier to ascertain whether the vehicle does not exceed weight or size limitations and Contractor neglects to follow instructions, Carrier shall not reimburse Contractor for such fines.

## 21. OTHER EXPENSES

Contractor agrees to bear all expenses not otherwise provided for in this Agreement, including, but not limited to, cost of fuel, fuel taxes, empty mileage, permits of all types, base plates and licenses and any unused portions of such items, except that in the event Carrier is authorized to receive a refund or a credit, wholly or partially, for base plates purchased by the Contractor and issued in the name of Carrier, or in the event that base plates are authorized to be sold by the Carrier to another Contractor. Carrier shall refund to the initial Contractor, on whose behalf the base plate was first obtained, the amount received as a refund or credit.

## 22. CONTRACTOR NOT REQUIRED TO PURCHASE PRODUCTS, EQUIPMENT, OR SERVICES FROM CARRIER

Carrier shall not require Contractor to purchase or rent any products, equipment or services from Carrier.

## 23. DEDUCTIONS

When Contractor has secured an advance of any kind from Carrier, Carrier shall be authorized to deduct the amount of such advance in settling with Contractor under the terms of this Agreement. In addition, paragraphs 8, 10, 12, 14, 15, 17, 18, 20, 22, 26, 27, 28, 31, 36, 38 of this Agreement can result in amounts being due and owing by Contractor to Carrier. In such event, Carrier shall be authorized to deduct the amount due and owing in settling with Contractor under the terms of this Agreement. In the event deductions from settlements pursuant to this paragraph require such deductions over a period in excess of 30 days from the date the amount became due and owing to Carrier, Carrier will assess an interest charge of 1 ½ % per month of the balance due and owing as of the 30<sup>th</sup> day. Carrier shall have a period of 30 days after termination of this Agreement to verify the account of Contractor and to make appropriate deductions prior to final settlement. When any such deductions are made, Carrier shall furnish Contractor with a detailed breakdown of the items involved, including an explanation of the computation methods used by Carrier in arriving at such deductions and, when applicable, shall furnish documents



necessary to determine the validity of each such deduction. No deduction made by Carrier from any settlement due Contractor where such deduction is not sufficient to satisfy all of the amount due and owing Carrier by Contractor, shall be viewed as a compromise, settlement, discharge, or full satisfaction of the amount due and owing.

#### 24. CONTRACTOR NOT EMPLOYEE OF CARRIER

Contractor, and all agents, employees, and servants of Contractor, shall be deemed for all purposes to be Independent Contractors and not employees of Carrier, including for purposes of withholding Federal Income Taxes, and Social Security Taxes under the Internal Revenue Code and under all similar state statutes.

#### 25. DRIVER: SAFETY REGULATIONS

Contractor warrants that any person or persons operating the vehicular equipment described in Exhibit "A" shall be fully qualified and in compliance with the provisions of Title 49 Code of Federal Regulations, Part 382, 383, 391 and 392. Because Carrier as well as Contractor is responsible for assuring compliance with the cited regulations, Contractor agrees that no person will operate the vehicular equipment described in Exhibit "A" without evidence of that individual's qualifications to do so being submitted to and maintained on file with Carrier. Training and instruction as required by such regulation will be accomplished to the extent that Carrier is required to provide it. The sole right to hire, discipline and discharge drivers chosen by Contractor shall be vested in Contractor, except that persons not qualified to operate the equipment as specified in the regulations cited herein are to be barred by Contractor from operating equipment used to perform transportation services under this Agreement. Contractor shall be liable for fines or any other expenses incurred by reason of any violations of such driver(s) of any rule, order or regulation of regulatory bodies.

#### 26. EQUIPMENT AND MAINTENANCE THEREOF

Contractor represents that the vehicular equipment provided under this Agreement is in good mechanical condition, and safe for operation over the highways, and agrees to keep and maintain the above described equipment in good and safe operating condition and in good running order at his own expense, whether such repairs are necessitated by ordinary wear and tear or by damage during the term of this Agreement. At any time during the course of this Agreement, when Carrier deems it necessary to ensure safe operation of the equipment leased hereunder, it may require Contractor to repair or replace any parts, accessories, or equipment normally utilized in connection with that equipment and, should Contractor fail or refuse to make such repair or replacement upon being so notified, Carrier may, at its option, have the right to take such action itself, without further notice to Contractor and, therefore, deduct the cost of such repairs or replacements from monies due Contractor, which action Contractor does hereby authorize. Carrier also shall inspect said equipment in the same manner as its regular equipment is inspected, and shall take such action as it deems necessary to insure that proper preventative maintenance is taken on the leased vehicle.

## 27. CHARGES: CREDIT: C.O.D.

Contractor agrees that neither he, nor any person engaged by Contractor in the performance of this Agreement, has any authority to accept less than the lawful freight charges due Carrier from the consignee, not to accept less than the prescribed C.O.D. charges due to shipper. In the event that this paragraph shall be violated, Contractor shall on demand immediately pay Carrier all lawful freight charges due Carrier or the total amount of the prescribed C.O.D. charges due the shipper. Unless Carrier shall expressly authorize Contractor to the contrary, the extension of credit to the consignee for freight charges or C.O.D. charges, or the acceptance of personal or firm checks from the consignee is payment of same, shall be at the sole risk of Contractor. The parties further agree that all monies received by Contractor or any person engaged by Contractor in the performance of this Agreement for C.O.D. charges or freight charges are the monies as trustee for Carrier and shall remit the same immediately upon receipt thereof. Contractor further agrees that neither he, nor any person engaged by Contractor in the performance of this Agreement, has any authority to execute or endorse any negotiable instrument for or on behalf of Carrier.

## 28. PRIOR AGREEMENTS – AMENDMENTS

Contractor and Carrier agree that this Agreement cancels all prior Agreements, that no oral agreement or understanding of any kind or character has been, or is entered into, other than as set forth herein, that all representations, agreements, and understandings between the parties hereto are incorporated into this Agreement, and that no operating plan, method or custom shall in any way or manner vary or change the terms hereof. Any modification or amendment to this Agreement shall be effected only by way of instrument in writing signed by the parties hereto.

## 29. TAKING POSSESSION AND CONTROL OF VEHICLES

At the time when possession of the vehicle is taken by Carrier, it shall give Contractor a receipt (as provided in Exhibit "A" hereto attached), for said vehicle(s), specifically identifying the equipment and setting forth the date and time of day custody, control and possession thereof is taken. At such time as this Agreement is terminated in accordance with the terms and conditions of Paragraph 31, Contractor shall be deemed to have retaken possession of said equipment coincidentally with termination of the Agreement. During the intervening period, possession, custody and control shall remain with Carrier, except when Contractor removes the vehicle(s) for any purpose including servicing or repairing said vehicle(s), or when subleasing the equipment in accordance with the terms and conditions of Paragraph 10, and when so doing, identification placards or other devices as required by this Agreement shall be removed or otherwise covered and replaced upon the equipment or uncovered upon the return of the equipment to the control of Carrier.

## 30. INSPECTION OF EQUIPMENT

Prior to the issuance of a receipt for said equipment and assumption of custody, control and possession thereof as hereinabove provided, Carrier shall inspect said equipment or cause to have the same inspected. Such inspection shall be for the purpose of determining whether said equipment complies with any and all applicable safety and

maintenance standards which may be prescribed by government law or regulation. In the event such equipment passes inspection, the transfer of control thereof from Contractor to Carrier shall thereupon be consummated. In the event such vehicle(s) does not pass inspection, defects shall first be repaired at the expense of Contractor, following which said transfer shall take place.

### 31. TERMINATION

This Agreement shall be terminated by the notice specified in Paragraph 2 above, or by default by either party of any of the obligations to be performed hereunder. Notice of termination shall be deemed given, upon Carrier's receipt of the termination notice, if Contractor terminates, or, upon mailing of the termination notice to Contractor at the address provided herein for Contractor, if Carrier terminates. Further, if the vehicle(s) herein provided to Carrier from Contractor shall be rendered inoperable or Contractor fails to maintain or repair such equipment which in the Carrier's opinion makes it mechanically unfit for use in Carrier's service, to an extent which, in Carrier's sole judgment, would not meet Carrier's requirements, and Contractor finds it impractical or is unwilling to repair said vehicle and put in proper operating condition, then in such event, this Agreement shall terminate. At termination of this Agreement, and not after, Contractor shall remove from the equipment any and all devices showing that the equipment is being operated under the control of Carrier or to obliterate such identification if that identification is permanently affixed to the equipment.

### 32. IDENTIFICATION OF EQUIPMENT

With respect to operations conducted pursuant to this Agreement, Carrier and Contractor shall properly and correctly identify vehicle(s) herein provided during the period of this Agreement in accordance with the appropriate requirements of the various regulatory boards. There shall be displayed on both sides of each tractor, the Carrier's name and its Federal and State Identification numbers.

### 33. ASSIGNMENT, SUBLEASE OR USE BY THIRD PARTY

Carrier shall not assign, sublet or otherwise surrender control or use of the vehicles to any person, firm or organization without first receiving the prior consent of Contractor, except as provided under Paragraph 10 hereof. The interest of Contractor under this Agreement shall not, except at Carrier's option, and with Carrier's written consent, be assignable by operation of law or otherwise. In the case of bankruptcy of Contractor, or appointment of a receiver for Contractor, or assignment by Contractor for benefit of creditors, or if possession of the vehicle(s) shall be taken by virtue of any attachment or execution, Carrier may, without notice, terminate this Agreement; provided however, that the restriction against use by third persons shall not apply to interchange or joint route assignments which may be entered into between Carrier and other motor carriers.

#### 34. ADDITIONAL INSTRUCTIONS FOR DRIVERS

When Contractor or its driver(s) picks up shipments on other than flatbed equipment, seals must be affixed onto trailer doors. Seal numbers must be recorded on all shipping documents, including the shipper's copy of the bill of lading. When signing as receiving lading, drivers must make certain the shipment is complete, and there are no shortages. Drivers should sign only for what they can visually observe as receiving. They should not sign for the number of pieces listed on the bill of lading, when they are unable to make a precise count because the pieces are in boxes, palletized, strapped, or otherwise bound. In the latter case, they should only sign for the number of boxes, pallets, or bundles.

Contractor shall contact Carrier by telephone upon delivery of each shipment to inform of the completion and to determine the availability of return traffic in the area. When instructed by Carrier, Contractor shall remain at the point of destination for up to twenty-four (24) hours to accept a return shipment and only if Carrier does not have a return shipment available within that twenty-four (24) hour period, may Contractor enter a Sublease as provided in Paragraph 10.

#### 35. ADDITIONAL LIABILITY OF CONTRACTOR

During the term of this Agreement, Contractor shall have and retain full discretion to accept or reject jobs made available to him by Carrier. However, multiple, repeated refusals by Contractor to accept assignments that adversely effect customer service may be grounds for termination of this Agreement.

If, for any reason, Contractor shall fail to complete the transportation of shipments in transit, or abandons such shipments, or otherwise subjects Carrier for liability to shippers, consignees or governmental agencies, on account of the acts or omissions of Contractor enroute, Contractor expressly agrees that Carrier shall have the right to complete performance of the transportation contract, using the equipment of Contractor or other equipment, and then hold Contractor liable for the cost thereof, and for any other damages. Contractor hereby waives any recourse against Carrier for such action, and agrees to reimburse Carrier for any expenses arising out of the completion of such a trip, and to pay to Carrier any damages for which Carrier may be liable to shipper or consignee arising out of such breach of contract by Contractor.

#### 36. PENALTY FOR FAILURE TO CONTACT CARRIER

Contractor shall call Carrier daily as directed by Carrier between 8:00a.m. and 5:00p.m. and report exact location of the vehicular equipment, expected time of arrival to a destination, and a load or unloaded status at a minimum. A penalty of \$25.00 per day shall be assessed by Carrier against Contractor for failure to call in.

#### 37. VALIDITY

If any of the provisions herein become invalid, or are declared invalid, such determination of invalidity as to those provisions shall not affect the other provisions of this Agreement.

38. EXECUTION

This Equipment and Hauling Agreement is executed in duplicate and each copy shall have the force and effect of an original. Contractor agrees that a copy of an executed certificate as required under Title 49, Code of Federal Regulations, Part 1057.11(C),(2) shall be carried in the leased tractor(s) at all times during the term hereof.

39. WAIVER

The waiver by Carrier of any breach of this Agreement by Contractor shall not constitute a waiver of any subsequent breach by Contractor.

40. ADDENDUM

Addendum attached hereto as Exhibit C (Escrow Fund), is an integral part of this Agreement.

41. APPLICATION OF LAW

This is a Pennsylvania contract and shall be construed in accordance with the laws of the State of Pennsylvania. The parties agree that any disputes arising under this contract shall be litigated in the State of Pennsylvania. For that purpose, both parties agree to submit to the venue and jurisdictional requirements of the Pennsylvania State or Federal Court.

IN WITNESS WHEREOF, the parties have executed this Equipment and Hauling Agreement the day and year first above written.

CONTRACTING OWNER

EVANS DELIVERY COMPANY, INC.

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

# EXHIBIT A

## AGENT PRE-LEASE TRACTOR INSPECTION REPORT

### Description of Tractor:

Year \_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_ Plate # \_\_\_\_\_ State \_\_\_\_\_

Owner's Name \_\_\_\_\_ VIN \_\_\_\_\_

Date of Last Federal Inspection: \_\_\_\_\_ (please attach a copy)

Indicate in the proper column the result of your inspection of each item listed on the above unit . Please explain any defects and/or any repairs.

<u>ITEM</u>	<u>OK</u>	<u>DEFECTIVE</u>	<u>REPAIRED</u>	<u>DESCRIPTION OF DEFECT/REPAIRS</u>
Body				_____
Brakes				_____
Cooling System				_____
Drive Line				_____
Emergency Equip				_____
Engine				_____
Exhaust				_____
Fuel System				_____
Glass				_____
Horn				_____
Leaks				_____
Lights (all)				_____
Mudflaps				_____
Reflectors				_____
Speedometer				_____
Springs				_____
Steerings				_____
Tires				_____
Wheels				_____
Windshield				_____
Wipers				_____

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I \_\_\_\_\_, as Agent, carefully inspected the equipment described above and that this is a correct report of such inspection.

\_\_\_\_\_  
Agent Signature

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

**EXHIBIT B**  
**COMPENSATION SCHEDULE**

Agent Code: \_\_\_\_\_

**Revenue Payable to Contractor:**

Type of Load	Description	Method of Compensation
Percentage Loads		%
Percentage Loads		%
Percentage Loads		%
Mileage Loads		\$ Per Mile
Mileage Loads		\$ Per Mile
Mileage Loads		\$ Per Mile
Scheduled Loads (Note 1)	Flat Rate or Trip Rate Loads	See Schedule
Accessorial Services (Note 2)	Detention	
Accessorial Services	Stop-Off	
Accessorial Services		
Accessorial Services		
Accessorial Services		

**Note 1: SCHEDULED LOADS:** It is understood and agreed that, from time-to-time, Contractor and Carrier will make an oral agreement for specific compensation for certain trips. These agreements will constitute “flat rates or “trip rates” and will be recorded on a schedule which will be maintained at the local terminal location.

**NOTE 2 - DETENTION:** That portion of revenue representing detention charges will be paid to the Contractor only after Carrier is paid by the Customer. No portion of detention charges will be paid to the Contractor where Contractor has failed to complete and return, to Carrier, a delivery receipt or proof of delivery document including all of the detention information called for in the delivery receipt form, including but not limited to a legible customer signature acknowledging the detention.

**FUEL SURCHARGE:** Carrier and Contractor acknowledge that the amount of fuel surcharge will vary from customer to customer and will fluctuate from time-to-time. Accordingly, Contractor agrees that the amount of fuel surcharge will be agreed upon at the time of dispatch.

**LOADING AND UNLOADING:** The compensation payable above shall include loading and unloading of cargo by or under the supervision of Contractor or his driver from or to the trailer tailgate. No service shall be provided by Contractor beyond that described above, except at the express prior direction of the Carrier. Contractor will be compensated by Carrier for services involving loading and unloading beyond the tailgate, only when that service is provided at the prior direction of Carrier. In that event, Contractor shall be paid by Carrier at the rate of 100% upon receipt of Carrier.

**EXHIBIT B**  
**COMPENSATION SCHEDULE**

Page 2 of 2

Agent Code: \_\_\_\_\_

**INSURANCE SURCHARGE:** Carrier and Contractor acknowledge that all Carrier's freight bills include an Insurance Surcharge.

**MILEAGE CALCULATION:** \_\_\_\_\_ will be used to determine miles between key point cities whenever required under this Agreement. In the case where the customer mandates the number of miles to be paid, the customer's miles will prevail.

**COMPENSATION DISPUTES AND CLAIMS:** All disputes with regard to compensation on specific loads must be submitted to the terminal within ninety (90) days of receipt of Contractor's weekly settlement.

CONTRACTOR SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_



**EXHIBIT C**  
**ESCROW FUND**

The Contractor is required to deposit as an Escrow Fund of the sum of \$1,500.00 per unit with a maximum of \$6,000.00 for any multi-truck owner. The Escrow Fund will be used to satisfy any regulatory penalties which may be incurred by Carrier as a result of Contractor's actions and in the event the vehicle is involved in an accident declared chargeable by the Carrier's Safety Director, to pay all costs of the accident up to and including the first \$1,000.00, or to pay all costs of any loss or damage claims up to and including the first \$1,000.00 which occur while the Carrier or its customers merchandise is under the owner-operator care, custody and control. \_\_\_\_\_

(Contractor's Initials)

The Carrier will deduct from all settlements \$50.00 per week until the full amount of the escrow has been accumulated and shall deduct such amounts whenever it withdraws from such Escrow Fund. The Carrier will clearly indicate on the individual settlement sheets the amount and description of the deduction. The Contractor will have the right to have an accounting for transactions involving the Escrow Fund at any time.

While the Escrow Fund is under the control of the Carrier, the Carrier shall pay interest on a quarterly basis. For purposes of calculating the balance in the Escrow Fund on which interest is paid, the Carrier will deduct a sum equal to the average advance made to the individual Contractor during the period of time for which the interest is paid. The interest rate shall be established on the date the interest period begins and shall be equal to the average yield on a 91-day, 13-week Treasury Bill as established in the weekly auction by the Department of Treasury.

The amounts remaining in the Escrow Fund including all interest will be paid to the Contractor forty-five (45) days after the termination of this Agreement provided that Contractor has completed all required paperwork such as trip sheets, Driver's Daily Logs, and Fuel and Mileage Reports and has returned, to Carrier all Carrier's property including, but not limited to Placards, door signs, IFTA decals and other identification markers, permits, insurance cards, licenses and registrations which may have, from time-to-time been issued to Contractor by Carrier. Failure, by Contractor, to return, to Carrier, any of Carrier's property as described above, will result in a charge of \$500.00 to Contractor. At the time of the return of any monies, the Carrier may make deductions for those obligations incurred by the Contractor previously specified in the lease and all lease exhibits. Carrier's property must be turned in to the local terminal and Contractor must obtain a receipt. Carrier shall provide a final accounting to the Contractor of all such final deductions.

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
CARRIER

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SETTLEMENT CLEARANCE FORM

Unit Number  Agent  Owner Name

Driver:

First Name  Middle Int  Last Name

**CONTRACT DEDUCTIONS:**

Physical Damage: YES NO

Comments:

\_\_\_\_\_

Monthly  Weekly  Trailers:

Bobtail Insurance: EVANS / OWN Monthly  Weekly

Disability Insurance: Monthly  Weekly

Escrow: Weekly - \$50.00 - up to \$1,500.00 Cargo Risk:  Fuel Management:

Permits:  Plate:  IFTA:

Settlements Payable to:

Name:

Address:

Phone:

**Comdata;** Comdata Card #

Direct Deposit (Please Attach Form)

FED ID/CDL of Owner:

Owner DOB:

FOR SAFETY:

IFTA Yes #

No

NY HUT Yes #

No

SeaLink Yes #

No

TX Reg Yes #

No

\_\_\_\_\_  
Drivers Signature

\_\_\_\_\_  
Payees Signature

**PHYSICAL DAMAGE INSURANCE PROGRAM - Evans Network of Companies**

Owner's information:      EFFECTIVE DATE: \_\_\_\_\_

NAME OF INSURED: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP CODE: \_\_\_\_\_

PHONE Cell #: \_\_\_\_\_

DOB: \_\_\_\_\_      SS or FID# \_\_\_\_\_

**Signature:** \_\_\_\_\_

I hereby apply for participation in the following group plans administered by the Evans Delivery Network of Companies through the MTG Ins. Co or any other insurance provider. I understand, that I am also preauthorizing MTG Ins Co or any other insurance provider to reimburse Evans' Network of Companies any expenses paid out by Evans' Network that may be covered under the physical damage policy on behalf of the tractor and/or trailer if involved in an accident/incident to mitigate losses.

**DRIVER INFORMATION**

DRIVER'S FULL NAME: \_\_\_\_\_

D.O.B.: \_\_\_\_\_      SOCIAL SECURITY #: \_\_\_\_\_

STATE LICENSED IN: \_\_\_\_\_      DRIVER'S LICENSE #: \_\_\_\_\_

**VEHICLE DESCRIPTION**

UNIT#: \_\_\_\_\_ YEAR: \_\_\_\_\_ MAKE: \_\_\_\_\_ SERIAL# \_\_\_\_\_

IF UNIT IS A TRAILER:

Flat w/sides Alu \_\_\_\_\_ Steel \_\_\_\_\_ Flat no sides Alu \_\_\_\_\_ Steel \_\_\_\_\_ Reefer \_\_\_\_\_  
Step deck \_\_\_\_\_ Drop deck \_\_\_\_\_ Double Drop \_\_\_\_\_ Van \_\_\_\_\_ Other \_\_\_\_\_

LIENHOLDER: NAME AND ADDRESS \_\_\_\_\_

**COVERAGE INFORMATION**

PHYSICAL DAMAGE: \_\_\_\_\_ ADD \_\_\_\_\_ DROP \_\_\_\_\_

DECLARED MARKET VALUE: \$ \_\_\_\_\_ SLEEPER \_\_\_\_\_ Y \_\_\_\_\_ N \_\_\_\_\_

CHANGE: \_\_\_\_\_

Initials of Owner if declining coverage: \_\_\_\_\_

Evans' Agency Representative Witness Signature if declining coverage: \_\_\_\_\_

**Fax to Safety**

EXHIBIT D  
IFTA OPTIONS

Contractor has selected one of the two options listed below.

**OPTION 1**

\_\_\_\_\_  
(Contractor's Initials) Contractor will receive Carrier's IFTA license and tractor decal. Contractor agrees to submit, to Carrier, without fail, the required IFTA trip reports and fuel receipts. Contractor agrees that Carrier's *Trip Envelopes*, will be completed and submitted to Carrier in a legible, accurate and timely manner. Contractor further agrees that failure to submit the required IFTA Trip Reports/Envelopes will result in forfeiture of Carrier's IFTA license and decal. At Carrier's request, Contractor will return Carrier's IFTA license and decal to Carrier. Contractor acknowledges that the IFTA license and decal are the property of Carrier will be returned to Carrier promptly upon the termination of Contractor's lease with Carrier. Failure to return Carrier's property will result in withholding funds due to Contractor as outlined in Exhibit C.

\_\_\_\_\_  
(Decal Number)

\_\_\_\_\_  
(Date Received)

**OPTION 2**

\_\_\_\_\_  
(Contractor's Initials) Contractor has secured his/her own IFTA license and decal as listed below. Accordingly, Contractor acknowledges that he/she is solely responsible for recording and reporting all travel miles and fuel purchases to the proper jurisdictions. Contractor further acknowledges that he/she is solely responsible for payment of all resulting tax liability.

\_\_\_\_\_  
(Decal Number)

\_\_\_\_\_  
(State)

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

\_\_\_\_\_  
Date

# Bobtail Insurance Enrollment Form

## Evans Delivery Company

Yes, I want to purchase bobtail insurance via settlement deduction. For each tractor that I enroll in this program, I understand that \_\_\_\_\_ per month will be deducted from my settlement for each tractor enrolled in the program.

\_\_\_\_\_ Domicile \_\_\_\_\_ Truck Number

YEAR	MAKE	State	Serial Number	Owner's Name	Lien Holder

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

\_\_\_\_\_ Signature

\_\_\_\_\_ Date

A certificate of insurance will be issued to you listing you as the certificate holder. The current group policy is through National Interstate policy number EDC8160000-00. The group policy for NJ and MI is through National Interstate of Hawaii policy number is EHC8160000-00

# EVANS DELIVERY COMPANY

## DRIVER / OWNER EXIT REPORT AND PROPERTY RECEIPT

AGENT MUST COMPLETE THIS FORM AND FAX TO THE SAFETY DEPARTMENT AT (570) 385-5970 ON THE DAY OF TERMINATION.

AGENCY \_\_\_\_\_ DRIVER ONLY \_\_\_\_\_ UNIT #: \_\_\_\_\_  
 TRUCKONLY \_\_\_\_\_  
 BOTH \_\_\_\_\_

**DATE OF TERMINATION:** \_\_\_/\_\_\_/\_\_\_ **LAST DAY WORKED** \_\_\_/\_\_\_/\_\_\_

ITEMS RETURNED	YES	NO
PLACARDS		
I.F.T.A. DECALS		
SINGLE STATE REGISTRATION		
HAZ-MAT REGISTRATION CERTIFICATE		
SIGNED LEASE (EXHIBIT "A")		
HAZ-MAT BOOK		
F.M.C.S.R. BOOK		
EMERGENCY RESPONSE GUIDEBOOK		
BOBTAIL INSURANCE CANCELLED ?		
PHYSICAL DAMAGE CANCELLED ?		
NEW YORK HUT		
INSURANCE CARD		
DRUG KIT AND CAMERA		

REASON FOR LEAVING: \_\_\_\_\_

WOULD YOU REHIRE? \_\_\_ Yes \_\_\_ No If No, Why? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

**Please remind and advise the driver/owner that the provisions of Exhibit C of the Independent Contractor Lease with regard to the return of company property will apply.**

Carrier Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Contractor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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