

# FAIRCHILD

WWW.FAIRCHILDFREIGHT.COM

866-942-1949

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23910 N. 19<sup>th</sup> Ave Bldg 1, Ste 2 | Phoenix, AZ 85085 | Phone: 602-942-1949 | Fax: 602-942-3095

## OWNER OPERATOR CHECK LIST

- Completed Questionnaire
- Owner Operator Lease Agreement
- Driver Application
- Copy of Current Commercial License and Medical Card
- Completed Drug Test
- Copy of W-9
- Copy of Bill of Sale
- Copy of a Current 2290

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## Owner-Operator Accounting Setup Form:

Remittance Address: Where you want settlements sent to.

Name: \_\_\_\_\_

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

Federal Tax ID: \_\_\_\_\_

Payment Method (choose one):

- ☐ Paper Check. Checks will be mailed to the address listed above.
- ☐ Direct Deposit. Please complete the DIRECT DEPOSIT AUTHORIZATION FORM.

Internal use only

Licensing Cost: \_\_\_\_\_

Fuel Card Numbers: \_\_\_\_\_

Trailer Rent Start Date: \_\_\_\_\_

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## DIRECT DEPOSIT AUTHORIZATION FORM

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

Bank \_\_\_\_\_ Phone \_\_\_\_\_

City/State/Zip Code \_\_\_\_\_

Routing Number \_\_\_\_\_ Account Number \_\_\_\_\_

Checking Account ☐ Savings Account ☐

Signature \_\_\_\_\_ Date \_\_\_\_\_

### PLEASE READ CAREFULLY:

- ☐ For enrollment/change of checking account, you **must** attach a voided check that includes your bank account and nine digit transit/routing number.
- ☐ For enrollment/change of savings account, you **must** attach a form from your bank showing your savings number and nine digit transit/routing number.
- ☐ Designated amounts will usually post to your account within 48 hours of transmission depending on your banks posting procedures.
- ☐ Fairchild Freight LLC cannot be responsible for overdrafts incurred before funds are deposited.
- ☐ Changes to direct deposit may not necessarily take effect on your next settlement.

PLEASE ATTACHED A VOIDED CHECK HERE

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Fairchild Freight LLC  
dba Fairchild Freight Systems  
“LEASE AND SUBHAUL CONTRACT  
WITH INDEPENDENT CONTRACTOR”

This Agreement entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
between Fairchild Freight LLC, an Arizona L.L.C, hereinafter called “Carrier”, and (“Lessee”)  
between \_\_\_\_\_ having an address of  
\_\_\_\_\_ (“Lessor”). Lessor’s social security number or  
federal tax identification number is \_\_\_\_\_.

WHEREAS, Contractor is the owner or lessee of certain motor vehicle equipment suitable  
for the transportation of property, and which equipment is more particularly described in Recitals to  
follow.

## RECITALS

- A. Lessee is a motor Carrier operating under authority issued by the federal Highway  
administration transporting general commodities.
- B. Lessor is the owner of the following described vehicle, which is suitable for the  
transportation of property in Lessee’s business.

<i>Tractor</i>	<i>Year</i>	<i>Vin</i>
<i>Tractor</i>	<i>Year</i>	<i>Vin</i>
<i>Tractor</i>	<i>Year</i>	<i>Vin</i>
<i>Tractor</i>	<i>Year</i>	<i>Vin</i>
<i>Trailer</i>	<i>Year</i>	<i>Vin</i>
<i>Trailer</i>	<i>Year</i>	<i>Vin</i>
<i>Trailer</i>	<i>Year</i>	<i>Vin</i>
<i>Trailer</i>	<i>Year</i>	<i>Vin</i>

WHEREAS, Carrier is now engaged in the transportation of property in interstate  
commerce; and

WHEREAS, Carrier desires to enter into an agreement with Contractor for the transportation  
of certain commodities as may be provided by Carrier, and Contractor desires to contract with  
Carrier to transport such commodities for a period of more than thirty (30) days;

NOW, THEREFORE, Carrier and Contractor, for and in consideration of the mutual covenants and agreements hereincontained, and for other good and valuable considerations had and received,

AGREE THAT:

## **1. Independent Contractor**

(A) It is the express intention of the parties hereto that Contractor is an independent contractor and not an employee, agent, joint venturer, or partner of Carrier for any purpose whatsoever. Contractor shall neither be, nor represent himself/herself to be, an employee, agent, joint venturer, or partner of Carrier for any purpose whatsoever. Contractor shall have no authority to obligate the Carrier in any manner whatsoever and shall not make any representation or statement for or about the Carrier or any of the Carrier's services, nor shall Contractor hold himself/herself out as having authority to obligate or make representations for the Carrier.

(B) Carrier shall have no right to, and shall not, control the manner or prescribe the method of accomplishing those services which shall be contracted to and performed by Contractor pursuant to this Agreement, and the general public and all governmental agencies regulating such activities shall be so informed; provided, however, that, to the extent required by 49 Code of Federal Regulations ("C.F.R."), Section 376.12 ( c ), as amended, Carrier "shall have exclusive possession, control, and use of the equipment for the duration of the lease 'and' ...shall assume complete responsibility for the operation of the equipment for the duration of the lease."

(C) Those provisions of this Agreement which reserve ultimate authority in Carrier have been inserted solely to achieve compliance with federal and state laws, rules, regulations, and interpretations thereof. None of such provisions and no other provisions of this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Carrier and Contractor or any driver, agent, servant, or other employee of Contractor, Pursuant thereto, the parties are mindful of the provisions of 49 C.F.R. 376.12 (c)(4), as amended, which provides that: "Nothing in the provisions required by paragraph (C)(1) [as they relate to the exclusive possession and responsibilities] is intended to affect whether the lessor or driver provided by the lessor is an independent contractor or an employee of the authorized Carrier lessee."

## **2. Equipment and Hauling.**

(A) Contractor agrees to furnish to Carrier the equipment, more specifically described in Recital section along with all necessary labor, to transport, load, and unload on behalf of Carrier (or on behalf of such other certificated carriers as Carrier may enter into "trip lease" or interchange agreement with) such commodities as the Carrier may make available to Contractor from time to time. This is not to be construed as an agreement by the Carrier to furnish any specific amount of goods or materials for transportation by the Contractor at any particular time or particular place, nor any guarantee of minimum compensation for the use of the equipment during the term of this Agreement. Contractor further warrants that all of the leased equipment covered by this lease is free and clear from any encumbrances or liens of any nature that will or would limit in any way the ability of Contractor to lease to Carrier or will or would limit the gainful utilization of equipment so leased by Carrier from Contractor. Contractor further warrants that all of leased equipment covered

by this Agreement is in good operating condition and in compliance with all applicable Federal, State and other laws and regulations.

(B) Contractor is not required to purchase or rent any products, equipment, or services from Carrier as a condition of entering into the Agreement.

### **3. Compensation.**

(A) For the full and proper performance of each completed trip made of Contractor under the terms of this Agreement, Carrier agrees to pay Contractor the compensation set forth in Exhibit "A" as those may apply, attached hereto and by this reference made a part hereof.

(B) Where it is necessary for the complete performance of transportation services required by this Agreement, Contractor or his agents or employees, if any, shall load and/or unload freight onto and/or from the motor vehicle.

(C) Compensation for loading and unloading services described above shall be included within the total amount of compensation paid by Carrier to Contractor, as set forth exclusively in Exhibit "A" to this Agreement.

(D) Contractor agrees to meet Carrier's scheduled pickup and delivery appointment times while allowing time for the proper rest and compliance with all governmental regulations. In the event that due to Contractor negligence said pickup and/or delivery times are not met, the Carrier reserves the right to penalize the Contractor assessment fines of \$250 per day.

(E) Payment shall be made bimonthly after submission to Carrier of all the following: necessary delivery receipts, trip manifests, trip lease or interchange agreements (where applicable), fuel receipts, driver's logs, and detention forms properly endorsed by the shipper, consignee, and driver. Any exceptions so noted on the delivery receipt by the consignee at the time of delivery shall be cause to withhold payment to the Contractor by the Carrier pending investigation and resolution of noted exception.

(F) Carrier, at its option, may deduct from any payment otherwise due the Contractor hereunder all or any part of any amount for which Contractor is then indebted to Carrier or any of its affiliate companies.

### **4. Contractor's Employees.**

(A) Contractor shall furnish, at Contractor's own discretion, selection, and expense, any labor required incidental to the operation of the equipment and the pickup, packing, loading, unloading, assembling, disassembling, and delivery of shipments in the performance of this Agreement.

(B) Contractor shall be solely responsible for the direction and control of the employees, agents, and servants of the Contractor, if any, performing labor pursuant to subparagraph A hereinabove, including their selection, hiring, firing, supervision, assignment, and direction, the setting of wages, hours, and working conditions, and the adjustment of their grievances. At no time

will employees, agents, and servants of the Contractor operating leased equipment become the employees of Carrier or be directed by Carrier in the method, means, and manner of the performance of the work of Contractor's employees, agents and servants, if any, and their performance of this Agreement.

(C) Contractor assumes full and sole responsibility for the payment of all wages, benefits, and expenses of Contractor's employees, if any, and for all state and federal income tax withholdings, unemployment insurance, and Social Security taxes as to all persons employed by Contractor in the performance of services under this Agreement, and Contractor shall be responsible for meeting and fulfilling the requirements of all regulations, how or hereafter prescribed by legally constituted authority with respect thereto. Carrier shall not be responsible for the wages, benefits, or expenses, due Contractor's employees, agents, or servants nor for income tax withholding, Social Security, unemployment, or other payroll taxes of the Contractor's employees, agents, or servants. Contractor shall indemnify, save, and hold harmless Carrier from any and all liability Carrier may incur by Contractor's failure to comply with this subparagraph C.

(D) Contractor shall provide worker's compensation insurance for all its employees as required by state law. Furthermore, Contractor agrees to indemnify and hold harmless the Carrier against any loss, including costs and attorney's fees incurred in defending any action or establishing any right to indemnification from any and every claim or demand made by Contractor's employees or agents by reason of work performed by Contractor's employees or agents in the performance of this Agreement. It is the intent of Carrier and Contractor that this indemnity and duty to defend is to be construed as broadly as possible.

(E) Carrier shall neither have nor exercise disciplinary authority or control over Contractor's employees, shall have no authority to supervise or direct Contractor's employees in the performance of their work for Contractor, and shall have no authority or right to select, approve, hire, fire or discipline any of Contractor's employees.

(F) Carrier is not authorized to withhold state or federal income taxes, Social Security taxes, unemployment insurance taxes, or any other local, state, or federal tax on behalf of Contractor or Contractor's employees.

(G) All pay, benefits, and working conditions of Contractor and/or Contractor's employees are a matter of agreement solely between Contractor and Contractor's employees.

(H) Carrier shall have no obligation or responsibility to Contractor or Contractor's employee, agents, or servants for any fine, cost, or expense incurred by Contractor or any of Contractor's employees by reason of Contractor's failure to have proper markings on his equipment, or by reason of a violation of Contractor or Contractor's employees of any laws, rules, ordinances, or regulations of any and all governmental authority or authorities in and through whose jurisdiction Contractor or Contractor's employees may be operating in the performance of this Agreement.

(I) Unless otherwise agreed in writing in advance by Carrier, the Contractor named hereto shall operate the equipment personally. At no times shall anyone else drive or operate the equipment except in extreme emergency situations, when a substitute driver may be permitted with the express prior consent of Carrier to complete an assignment interrupted by such emergency. It

shall by the sole right of Carrier to determine what constitutes an extreme emergency situation. In other than extreme emergency situations, a substitute driver may operate the equipment only after such driver has completed Carrier's indoctrination and training program and has been certified in writing by Carrier. The driver named in Exhibit "D" has been certified by Carrier. Contractor shall pay Carrier a fee of One Hundred Fifty and No/100 Dollars (\$150.00) for each additional driver certified by Carrier hereunder during the term of this Agreement. Contractor further agrees to maintain his driving record (or that of driver) in good condition. Should Carrier not be able to provide insurance covering Contractor or driver for any reason, including Contractor's or driver's driving record, this Agreement shall terminate immediately.

(J) Contractor agrees to comply and to cause driver to comply with the following rules and regulations of Carrier. Should any violation of these occur, Carrier may immediately terminate this Agreement.

- (1) Unauthorized Carrying of Passengers: Shall be grounds for immediate dismissal.
- (2) Operating Under the influence: Driver shall not operate the equipment under the influence of alcohol, amphetamines, any narcotic drug, any formulation of an amphetamine or any derivative of any narcotic drug.
- (3) Traffic Citations: Driver shall immediately notify Carrier's safety director of any and all traffic citations for moving violations.
- (4) Theft: Driver shall not commit theft or dishonesty of any kind.
- (5) Damage: Driver shall not willfully damage Carrier's equipment and shall report any damage of the equipment to Carrier.
- (6) Notice: Driver shall notify Carrier on a daily basis of his location. Driver shall always call in upon completion of loading or unloading. Contractor shall pay Carrier Twenty-five and No/100 Dollars (\$50.00) for each violation of these requirements.

(K) Contractor agrees to comply and to cause Driver to comply with the following rules and regulations of Carrier. Repeated failure to comply with these rules and regulations will result in termination of this Agreement.

- (1) Understand and carefully follow all dispatch instructions.
- (2) Meet scheduled deliveries and pick-ups at the appropriate time.
- (3) Do not have damages or shortages.
- (4) Maintain professional customer relations at all times.
- (5) Have equipment inspected according to the requirements of state, local, and federal agencies.



(6) Maintain proper brake adjustment of all vehicles at all times.

(L) If for any reason Carrier shall become liable or obligated to pay the wages of Contractor's employees, or pay Federal Income Tax Withholding, Social Security Tax, Unemployment Compensation Tax, or any other levies or assessments of a similar character, by reason of Contractor's employment of employees, or to make Worker's Compensation or employer's liability payments of other similar payments arising out of injury to or death of Contractor's employees, Contractor will not only reimburse Carrier but will also indemnify Carrier for any amounts paid or incurred by Carrier including all costs and expenses. Contractor hereby agrees that Carrier has by action of this paragraph a lien against the equipment herein leased to Carrier in order to provide security for payment of any of Contractor's obligations under this paragraph.

## **5. Operation of Equipment**

(A) As Carrier is ultimately responsible for conducting operations in accordance with applicable D.O.T., P.U.C., and Surface Transportation Board, formerly I.C.C., requirements. Contractor and Contractor's employees are responsible for complying with all applicable laws, rules, ordinances, and other requirements imposed by federal, state, county, or municipal government authority relating to and concerning equipment and the ownership, maintenance, and operation of the equipment, including filing of logs, fuel receipts, and other documents, as well as immediate notification of accidents. Contractor shall indemnify and hold harmless Carrier against any and all liability, including attorneys' fees and other legal expenses, imposed or claimed to be imposed upon Carrier arising directly or indirectly from the failure of Contractor or Contractor's employees, agents, servants, or representatives to comply with the provisions of this Agreement. Upon failure of Contractor to fulfill the requirements imposed by law, Carrier may either reduce Contractor's compensation in any reasonable amount necessary to offset Carrier's losses and expense, if any, arising out of such default, or may terminate this Agreement forthwith, or both.

(B) Notification of Accidents: Contractor will immediately notify Carrier after the occurrence of any accident, by telephone, giving full details; to enable Carrier to confirm to requirements of public authorities and Carrier's insurer, Contractor will notify Carrier within forty-eight (48) hours of the date of the accident in writing, giving the details of the accident involving any vehicle furnished by Contractor while in the operation of the business of the Carrier under this agreement, and of any situation or occurrence within the Contractor's knowledge which affects or is likely to effect the interest of Carrier, including any damage to, loss of, or knowledge which affects or is likely to effect the interest of Carrier, including any damage to, loss of, or delay in delivery of cargo in the custody or possession of Contractor. Contractor is obligated to procure as much documented evidence as possible (i.e.: names, addresses, etc. of witnesses and persons involved).

(C) Subject only to requirements imposed by law, Contractor shall direct in all respects the operation of the equipment used in the performance of this Agreement. Among other things, Contractor shall determine:

(1) Who is to load the equipment;

- (2) How the equipment is to be loaded, tie down, or otherwise secured and unloaded;
- (3) Selection of routes (within the scope of the operating authority granted Carrier by the Surface Transportation Board, formerly I.C.C.);
- (4) Rest stops;
- (5) Where the equipment is to be repaired or serviced;
- (6) If and when his own credit card should be used;
- (7) If Contractor or Contractor's employees should hire additional labor to load or unload the goods at pickup and destination points;
- (8) Contractor's own working hours;
- (9) Contractor's employees' working hours, compensation, and conditions of employment;
- (10) The method of financing Contractor's equipment or vehicles.

(D) To the extent required by pertinent regulations of the Surface Transportation Board, formerly I.C.C., and other governmental agencies having jurisdiction thereof; the equipment shall be furnished by Contractor for the exclusive possession, control and use of Carrier, and shall be properly identified as being in the service of Carrier in compliance with the rules and regulations of the Surface Transportation Board, formerly I.C.C., and any other applicable governmental authority. During the term, Contractor shall transport only freight which Carrier's authorities permit and shall haul for no one else unless directed to do so by Carrier. Contractor shall at his own expense place on the equipment such signs and insignia as Carrier may specify and keep the equipment clean and presentable at all times. Contractor shall keep a copy of this agreement or a statement concerning this agreement as supplied by Carrier in the equipment at all times.

(E) When the equipment is used to pull a semi-trailer and/or trailer (s) or any combination thereof owned by or in the custody of Carrier, Contractor shall be strictly liable to Carrier for any loss of or damage to said semi-trailer (s), including any loss of or damage to tires, tarps, chains, binders, and other vehicular equipment and accessories thereon, normal wear and tear except

## **6. Obligations to Perform Service**

(A) Contractor agrees to cooperate fully with all Carriers' dispatch personnel in performance of the Carrier's service obligations to Carrier's customers in performance of this Agreement. Contractor's failure to cooperate with Carrier's dispatch personnel shall be grounds for immediate termination of this Agreement.

(B) Because of the liability of Carrier to shippers, pursuant to certain provisions of the Surface Transportation Board, formerly I.C.C governing motor carriers, if in the opinion of the Carrier, Contractor violates this Agreement in such manner as to fail to complete transportation of

commodities in transit, abandons freight or equipment, or otherwise, and thereby subjects Carrier to potential liabilities or loss of revenues, Contractor expressly agrees that Carrier shall have the right to temporarily take physical possession of equipment described in Recitals hereto and complete the trip involved. Contractor hereby waives any recourse against Carrier for such action and agrees to reimburse Carrier for any costs and expenses, plus the mileage rate or hourly rate as referenced in Exhibit "B", for miles traveled to recover the freight or equipment, or damages for which Carrier may be liable to shipper, arising out of such violation of contract by Contractor. Upon completion of such trip, said equipment shall be returned to the possession of Contractor at the Carrier's Spokane terminal. Conduct by Contractor, which causes Carrier to violate its obligations under the Surface Transportation Board, formerly I.C.C., shall be cause for termination of this Agreement.

## **7. Cargo Shortages and Damages**

(A) Contractor shall be responsible for the count, proper and secure loading, and condition of all cargo. If the condition of cargo when received by Contractor is unacceptable, he shall notify Carrier's dispatch personnel immediately. Contractor shall be liable for all shortages of, loss of, pilferage of, spoilage of, or damage to commodities transported by Contractor in part or in whole. This shall include trailers dropped or picked up in route by Contractor.

(B) Overages, shortages, damages, and refused product must be called into Carrier's Representative before leaving delivery point. In the event that delivery is after office hours or on a weekend, said information shall be called in by noon the subsequent office working day. Failure to do so may result in automatic charge back to Contractor for said claim.

(C) Contractor shall be responsible for all claims arising from or out of damage to cargo and/or trailers, dollies, or other equipment, tools or materials of any kind, and including consequential damages arising there from, and shall defend, indemnify, and hold Carrier harmless.

## **8. Insurance**

(A) Carrier shall maintain liability insurance coverage for the protection of the public pursuant to Surface Transportation Board, formerly I.C.C., regulations under U.S.C., Title 49, as amended. Carrier will also furnish to Contractor for the duration of this Agreement fire, theft, and collision insurance covering the Contractor only while in performance of this Agreement with Carrier. The Carrier will provide the Contractor with a certificate of insurance for each such policy setting forth the name of the insurer, the policy number, the effective dates of the policy and the amount and types of coverage. The Contractor will be responsible for all accident and insurance deductibles, including up to the first one thousand dollars (\$1,000.00). This deductible will be applied to the full amount of the claim.

(B) This includes cargo damage due to improper loading, driving, and/or failure to secure, cover, or break down the load properly. Carrier will assist Contractor in recovering insurance deductibles forfeited because of a claim not arising out of the fault of the Contractor; but Carrier will not reimburse Contractor for any deductible paid until Carrier has first been reimbursed from the third party. Under no circumstances shall Carrier be liable for any loss or damage or claim

against said equipment, which may occur in connection with the performance of this Agreement. The total insured value of collision liability of Carrier for insurance responsibilities of equipment contracted shall not exceed the actual cash value for the tractor, provided that all terms and conditions of this Agreement have been met. Should Carrier not be able to provide insurance covering Contractor, regardless of reason, this Agreement shall terminate immediately and if gross negligence is proven by Carrier, Contractor can be held liable for entire amount of claim. Cancellation of this Agreement by either party automatically cancels all insurance provided under this Agreement by Contractor

## **9. Deductions for Cargo, Third Party, and Property Damage Claims**

(A) Deductions may be made by Carrier from settlements paid to Contractor, provided that the actual amount of damage and Contractor's responsibility therefore have been determined by Carrier with reasonable certainty. Carrier shall, prior to making any deductions from Contractor's settlements provided in this Paragraph, furnish and deliver to Contractor a written explanation and itemization of any deductions made for cargo, third party, or property damage claims, or any amounts held in reserve pending settlement of such claims. Carrier shall have the right to determine and settle any such claims in Carrier's sole discretion.

## **10. Responsibility for Expenses**

(A) Contractor shall pay or be liable for complete cost of any and all maintenance to said equipment, including, but not limited to, the cost of all oil, tries, repairs, parts, vehicle equipment, and accessories necessary for the proper operation of said equipment while in performance of this Agreement. The cost of any unauthorized charges or costs such as traffic fines, size, and weight fines, and other fees, taxes, or penalties which may be assessed against said equipment while in performance of this Agreement shall also be paid or borne by Contractor. Contractor shall be responsible for the fuel used.

(B) Contractors shall maintain and submit to Carrier by the 15<sup>th</sup> day of the following month, such inspection and maintenance records as requested by Carrier to evidence compliance with the terms of this Agreement.

(C) The parties shall comply with the additional requirements which are set forth in the attached Exhibit "C".

(D) Licensing and IFTA reports costs. All licensing and IFTA expenses will be filed and paid for by the Carrier including the base plate, permits, fuel permits and other such equipment in any state of Carrier's authority to operate. All licensing and permit costs must be paid for prior to receiving the first dispatch. Any and all costs associated with the Contractors equipment paid by the Carrier will be deducted from the Contractors first settlement. If for any reason this lease is terminated prior to the expiration date hereon, the rebates from licensing or permit costs shall be held by Carrier until final settlements are made after which the pro-rata share due to the Contractor

will be refunded. Contractor shall, in addition, be responsible for and pay any and all taxes accruing from or out of any hauling done pursuant to this agreement, including but not limited to public utility, excise, sales, business and occupation, whether Federal, State, County, City or Local.

(E) Tolls and Permits. All bridge and highway tolls incurred while in service under this lease will be paid for the Contractor. All over-dimension permits will be paid for by the Carrier. On mileage leases, Carrier will be responsible for these fees.

(F) Before settlement with Contractor for the payments due Contractor for use of leased equipment hereunder, Carrier shall first deduct all costs and expenses of Contractor advanced by Carrier,

- (1) Costs paid by Carrier but properly attributed by this contract to the Contractor;
- (2) Labor performed by Carrier but properly performed by the terms of this agreement by Contractor
- (3) Insurance premiums properly chargeable to Contractor;
- (4) Damage or shortage claims;
- (5) Repairs and maintenance by Carrier to Contractor's equipment;
- (6) Advances and other charges incurred by Carrier, but properly chargeable to Contractor under the terms of this agreement; and
- (7) Any other amounts due Carrier by Contractor hereunder;

(G) Contractor shall be liable to Carrier for any fines, penalties or assessments incurred by Contractor or its employees, or other monetary outlay that was created, or caused by the Contractor, and required to be paid by Carrier. Said amounts shall be deducted from monies due Contractor.

## **11. Term of Agreement.**

(A) The term of this Agreement shall be until the March 6, 2005 upon which time it will automatically renew for one (1) year from the date hereof and thereafter continuously unless canceled as specified in Section 13, Termination for Agreement.

## **12. Lawful Charges; Credit; C.O.D.**

(A) Contractor agrees that neither Contractor nor any employee employed in the performance of this Agreement has any authority to accept less than the lawful freight charges due Carrier from the consignee, nor to accept less than the prescribed C.O.D. charges due the shipper.

(B) 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 in payment of the same, shall be at the sole risk of Contractor.

(C) The parties further agree that all monies received by Contractor, or any person employed in the performance of this Agreement, for C.O.D. charges or freight charges are the property of Carrier, and that Contractor and other persons employed in the performance of this Agreement shall hold such monies as trustee for Carrier and shall remit the same immediately upon receipt hereof.

(D) Contractor further agrees that neither Contractor, nor any person employed in the performance of this Agreement, has any authority to execute or endorse any negotiable instrument for or on behalf of Carrier.

### **13. Termination of Agreement.**

(A) This Agreement shall become effective on execution and shall remain in force until terminated by either party as provided herein. The Agreement may be terminated by either party's giving 30 days' written notice to the other. Said notice is to be served by registered or certified mail, return receipt requested, addressed to the other party at the address set for the in the first paragraph of this Agreement, with the time of mailing commencing the 30-day period.

(B) The following breaches of this Agreement are reasons for cancellation by lessee immediately;

- (1) At any time upon the mutual written consent of the parties hereto;
- (2) By Carrier, if Contractor has materially breached the Agreement as determined by Carrier, upon twenty-four (24) hours' prior written notice by certified mail to the breaching party, but such notice shall specify the breach relied upon;
- (3) Unsatisfactory driving reports from insurance company or Lessee's safety inspector,
- (4) Furnishing of false or incorrect information by Lessor regarding Lessor's driving record or driver qualifications;
- (5) Carrying of unauthorized passengers;
- (6) Operating a motor vehicle under the influence of alcohol, illegal drugs, or any controlled substance or prescription drugs not authorized by a licensed physician for use while driving or not used in accordance with a physician's instructions;
- (7) Failure to immediately notify Lessee of any and all citations or violations;

- (8) Theft or dishonestly of any kind;
- (9) Failure to report to Lessee damage to cargo or equipment;
- (10) Unsafe operation of the vehicle at any time; or
- (11) Failure to immediately correct any noncompliance by Lessor's employees or others engaged by Lessor.
- (12) In addition to any other rights which Carrier has under this Agreement, Carrier shall have the right to deduct from any amount owed Contractor hereunder any loss, damage, costs, or expenses incurred as a result of damage to freight while in the possession of Contractor and/or Contractor's driver or as provided for in this Agreement and have the right to withhold from the final settlement due to Contractor for a period of one hundred and twenty (120) days after receipt of the documents specified in section title Compensation to cover any deductions specified in this Agreement.
- (13) Provided, however, that upon such termination the following conditions should apply.
  - (a) Contractor shall complete delivery of any shipment which Contractor may at the time be engaged in hauling; and turn in all paperwork and documents.
  - (b) That pending any final settlement, Carrier is authorized to withhold such sums as deemed necessary by Carrier to cover Contractor's liability to Carrier.
- (14) In the event of the early termination of this Agreement or, upon expiration of this Agreement, Contractor shall reimburse Carrier for the remaining portion of all taxes and licenses and regulatory fees that are not usable by Carrier.
- (15) At the end of the term, Contractor shall immediately remove from the equipment all signs or other identification referring to Carrier and shall supply Carrier with photographic or affidavit proof of such removal. Contractor shall also immediately surrender to Carrier all shipping documents, credit cards, keys, licenses, plates, permits, stickers, operating authorities, and equipment, and any and all other materials and other things furnished by Carrier or issued in Carrier's name.
- (16) Upon termination of this Agreement, if Contractor fails to immediately comply and redeliver documentation or obliterate identification marks relating to Carrier, Carrier shall have the right to enter upon said vehicle and retake possession of its documentation and obliterate its identification number and shall be entitled to receive the sum of One Hundred and No/100 Dollars (\$100.00) for each day of non-performance by Contractor, which amount shall constitute liquidated damages for any damages suffered by Carrier over and above the itemized charges, penalties and/or expenses incurred by Carrier. If the Contractor fails to comply and Carrier is subject to penalties therefore, or is required to bring legal action in order to enforce this agreement, Contractor shall hold Carrier harmless from all loss, costs, expenses and attorney's fees arising from such action.

#### **14. Waiver.**

(A) The failure of Carrier to enforce at any time any of the provisions of this Agreement or to exercise any option herein provided or to require at any time performance by Contractor of any of the provisions hereof shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Agreement or any part thereof or the right to the Carrier to thereafter enforce each and every such provision.

#### **15. Other Services**

(A) Nothing in this Agreement shall prevent or preclude carrier from entering into similar contracts with others for the same or similar service or work to prevent or preclude Contractor from performing other contracts for same or similar work on behalf of others.

#### **16. Whole Agreement**

(A) This Agreement constitutes the entire agreement and understanding between the parties and shall not be modified, altered, changed, or amended in any respect unless in writing and signed by both parties.

#### **17. Assignment of Agreement.**

(A) Neither party shall assign or otherwise transfer this Agreement or any interest herein without prior written consent of the other party and in the case of bankruptcy by Contractor or appointment of a receiver for Contractor or assignment by Contractor for the benefit of creditors or if possession of the equipment shall be taken by virtue of any attachment or execution against Contractor, then in such event, Carrier, at its election, may, without notice, terminate this Agreement; provided, however, that the restriction against or other use by third person(s), all as herein provided, shall not apply to such appropriate Interchange Agreements as may be entered into by and between Carrier and other common or contract carriers in the discharge by Carrier of its obligations as a highway common carrier. This does not preclude Carrier from utilizing Contractor's equipment in connection with "trip lease: or interline operations engaged in with another certificated carrier. This Agreement shall be binding on the heirs, successors, and assigns of the parties hereto.

#### **18. Replacement of Equipment**

(A) If the equipment herein furnished by Contractor to Carrier shall be rendered inoperable or otherwise mechanically unfit for use in Carrier's service, Contractor shall immediately replace the equipment with equipment of like type and design, and the identification and description of said replacement equipment shall be annexed to this Agreement by appropriate supplement to Exhibit "A," and said replacement equipment shall be subject to all the terms and conditions herein



contained, in lieu of the equipment withdrawn from service. All equipment replacements shall be made at the Spokane facility.

(B) In the event any equipment is replaced or sold, even without full cancellation of the Agreement, all equipment markings and decals must be removed prior to sale and discontinuance of that equipment which was under lease.

## **19. Indemnity and Hold Harmless by Contractor.**

(A) In addition to other rights and remedies to which Carrier is entitled under this Agreement, Contractor shall be liable for and will defend, indemnify and hold Carrier harmless from any loss, damages, or expenses whatsoever which Carrier may sustain or become liable for as a result of any act, or acts or failure to act as provided in this Agreement by Contractor.

## **20. Time is of the Essence**

(A) Time is of the essence in this Agreement, both as to the terms and services to be rendered hereunder.

## **21. Governing Law.**

(A) This Agreement shall be governed by the laws of the state of Arizona as to interpretation and performance. This Agreement is intended by the parties to create the relationship of Carrier and Contractor and not to be considered employees of Carrier at any time under any circumstances or for any purpose. Neither party is the agent of the other, nor shall neither party have the right to bind the other by contract or otherwise, except as herein specifically provided.

(B) In the event Carrier shall be required to retain an attorney to enforce the terms of this Agreement, or to institute or defend any action at law or in equity against or by Contractor and arising out of this Agreement, Contractor agrees to pay all attorneys fees and costs incurred by Carrier.

## **22. Invalidity**

(A) Should any portion of this Agreement be held invalid or should an interpretation of any provision herein contained be imposed upon Carrier by any regulatory agency or any other organization which is contrary to the understanding and practice of the parties, such provisions shall thereafter have no effect and the agreement shall in all other respects remain in force unless such interpretation would make performance impossible or inequitable to Carrier. If any provision of this Agreement is determined to be contrary to or inconsistent with any regulations governing the lease of the equipment between the Contractor and Carrier, such regulations shall take precedence over such contrary or inconsistent provision, and this agreement shall in all other respects remain in force unless such interpretation would make performance impossible or inequitable to Carrier.

## **23. Integration**

(A) It is expressly agreed by the Contractor, as a material consideration for the execution of this Agreement, that there are, and were, no verbal representation, understandings, stipulations, agreements or promises pertaining thereto not incorporated in writing herein, and it is likewise agreed that this Agreement shall not be altered, waived, amended, or extended otherwise than as provided herein, except, as same may be done in writing by proper authority.

## TERMS OF AGREEMENT

I/We, the undersigned Lessor, have read the foregoing Agreement and fully understand all terms and conditions contained therein and do hereby acknowledge receipt of a copy of said Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement this day of \_\_\_\_\_, 20\_\_.

Signed and sworn before me on this 6<sup>th</sup> day of March 2004.

Lessee's Signature (Fairchild Freight LLC)    Date

Lessor's Signature

Date

# FAIRCHILD

WWW.FAIRCHILDFREIGHT.COM

866-942-1949

23910 N. 19<sup>th</sup> Ave Bldg 1, Ste 2 | Phoenix, AZ 85085 | Phone: 602-942-1949 | Fax: 602-942-3095

**The following information will be used to qualify the contractor and contractor employees for insurance coverage and registration into the random drug/alcohol testing program. The Contractor and contractor employee must individually fill out the following forms and return the completed forms with the contract.**

**Name of Contractor/contractor employee:** \_\_\_\_\_  
Last name First Middle

**Driver License #:** \_\_\_\_\_ **Applicants SS#** \_\_\_\_\_

## APPLICANT MUST READ AND SIGN

I certify that I have read and understand all of this employment application. It is agreed and understood that the employer or his agents may investigate the applicant's background to ascertain any and all information of concern to applicant's record, whether same is of record or not, and applicant releases employers and other persons named herein from all liability for any damages on account of his furnishing such information. I understand that, as an applicant for a position with this company, I may be asked to demonstrate that I am capable of performing tasks that are pertinent to the job.

I authorize Fairchild Freight ("Prospective Employer") to access the FMCA Pre-Employment Screening Program (PSP) system to seek information regarding commercial driving safety record and information regarding my safety inspection history. I understand that I am consenting to the release of safety performance information including crash data from the previous (5) years and inspection history from the previous (3) years. I understand and acknowledge that this release of information may assist the Prospective Employer to make a determination regarding my suitability as an employee.

It is also agreed and understood that under the Fair Credit Reporting Act, Public Law 91-508, I have been told that this investigation may include an investigative Consumer Report, including information regarding my character, personal reputation, personal characteristics and mode of living.

I agree to furnish such additional information and complete such examinations as may be required to complete my employment file.

I also understand that misrepresentation or omission of information or facts may result in my rejection or dismissal.

If hired, I agree to abide by all the rules and policies of the employer.

This certifies that I completed this application and that all entries on it and information in it are true and complete to the best of my knowledge.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant's Signature

### DRIVER EXPERIENCE AND QUALIFICATIONS

The Federal Motor Carrier Safety Regulations (49CFR391.21 (b) (2) requires that driver applicants state their date of birth and SS #.

Date of Birth \_\_\_\_\_ Social Security Number \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
month/day/year

### PHYSICAL HISTORY

The Federal Motor Carrier Safety Regulations (49CFR391 Subpart E) requires that all driver applicants pass certain physical tests before they are hired to drive a motor vehicle.

Date of last Department of Transportation prescribed examination \_\_\_\_\_ Can you provide a copy

Have you ever been granted a waiver under section 391.49 of the Federal Motor Carrier Safety Regulations pertaining to the

loss of foot, leg, hand or arm? Yes \_\_\_\_\_ No \_\_\_\_\_

### ALCOHOL AND CONTROLLED SUBSTANCE STATEMENT

The Federal Motor Carrier Safety Regulations 49CFR40.25(j) requires all persons with applying for a driving position requiring a commercial drivers license to answer the following questions:

1) Within the last two years, have you ever tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which you applied for, but did not obtain, safety-sensitive transportation work? \_\_\_\_\_ yes \_\_\_\_\_ no

2) Within the last two years, have you ever tested positive, or refused to test, on any type of drug or alcohol test administered by an employer for which you performed safety-sensitive transportation work? \_\_\_\_\_ yes \_\_\_\_\_ no

3) If you answered yes to either 1 or 2 above, can you provide and/or obtain proof that you have successfully completed the DOT return-to-duty requirements? \_\_\_\_\_ yes \_\_\_\_\_ no

Applicants

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

Witnessed By: \_\_\_\_\_ Date: \_\_\_\_\_

### DRIVER'S LICENSE INFORMATION

Driver	State	License Number	Type	Expiration Date
Licenses held	_____	_____	_____	_____
in past 3	_____	_____	_____	_____
years must	_____	_____	_____	_____
be shown	_____	_____	_____	_____

A. Have you ever been denied a license, permit or privilege to operate a motor vehicle? Yes \_\_\_\_\_ No \_\_\_\_\_

B. Has any license, permit or privilege ever been suspended or revoked? Yes \_\_\_\_\_ No \_\_\_\_\_

C. Have you ever been disqualified for violations of the Federal Motor Carrier Safety Regulations? Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered "Yes" to A, B, or C, attach a statement giving details.

### DRIVING EXPERIENCE

Class of Equipment	Type of Equipment (Van, Tank, Flat, etc.)	Dates From To	Approximate Total Miles
Straight Truck			
Tractor and Semi-Trailer			
Twin			
Other			

List states operated in during the last five years:

\_\_\_\_\_

List special courses or training that will help you as a driver:

\_\_\_\_\_:

### DRIVER EXPERIENCE AND QUALIFICATION (continued)

#### ACCIDENT HISTORY

Accident Review for the past 3 years (attach a separate sheet of paper if more space is needed).

Date	Nature of Accident (Head-On, Rear-End, Upset, etc)	# Fatalities	# Injuries	# Vehicles Towed	Citation Issued?
------	---	--------------	------------	------------------	---------------------

_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

### MOTOR VEHICLE DRIVING RECORD (MVR)

Traffic Convictions and Forfeitures for the past 3 years other than parking violations.

Date	Location	Charge	Penalty
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

### FOR OFFICE USE - DO NOT WRITE IN THIS SPACE PROCESS RECORD

Information sent to Insurance: \_\_\_\_\_ Information Received from Insurance: \_\_\_\_\_  
Month Day Year Month Day Year

Insurable: yes \_\_\_\_\_ no \_\_\_\_\_ If not explain: \_\_\_\_\_

Date applicant registered with Drug/Alcohol testing program: \_\_\_\_\_  
Month Day Year