

## APPENDIX A

### TERMS AND CONDITIONS

#### **1. Definitions**

The below terms are defined as follows:

"Chassis" means intermodal chassis interchanged under the terms and conditions of the operative Pool agreement.

"Pool" means the intermodal chassis pool identified on the rate agreement.

"Pool Manager" means the entity retained to manage the relevant chassis pool.

"Pool Location" means a facility at which Chassis may be on-hired or off-hired.

#### **2. Participation**

CUSTOMER becomes eligible to participate in the Pool after CUSTOMER meets the following criteria: i. CUSTOMER executes the Rate Agreement with applicable addenda; and ii. CUSTOMER is approved for credit by FVLI; and iii. CUSTOMER provides proof of liability insurance in accordance with the requirements found in Paragraph 19 herein. CUSTOMER's participation in the Pool(s) is subject to the rules and procedures determined by the Pool. Changes to such rules and procedures promulgated by the Pool may result in operating or rate adjustments affecting CUSTOMER. CUSTOMER agrees that by signing this agreement and fulfilling the requirements of this Paragraph 2, they are declaring that they are a CUSTOMER of Flexi-Van Leasing, Inc. as it relates to the use of Chassis. CUSTOMER may be denied access to the Pool if it has defaulted under any of its obligations under this AGREEMENT including, but not limited to, the obligation to pay usage fees and other charges in a timely manner, to furnish FVLI with proof of continuing insurance or to prevent abuse or misuse of chassis.

#### **3. Customer Charges**

CUSTOMER shall pay FVLI the daily usage charge as specified in the Rate Agreement, for the quantity of chassis specified in the Rate Agreement or the relevant Chassis Interchange Receipt ("EIR"), together with all additional charges herein, for as long as CUSTOMER retains possession of the Intermodal Chassis. FVLI reserves the right to change the daily usage charge by supplying CUSTOMER with an amended Rate Agreement. Specific general operations costs assigned to the CUSTOMER by the Pool may be billed on a pass-through basis. Usage days are measured from gate-out of a Pool Location to gate-in at Pool Location.

#### **4. Repositioning**

CUSTOMER agrees to return the chassis to the on-hire location or another Pool Location designated by the Pool Manager. Failure to comply with this rule may result in CUSTOMER being billed a repositioning fee.

#### **5. Payment Terms**

All CUSTOMER estimated usage or actual usage invoices must be paid within thirty (30) days after receipt of invoices. CUSTOMER further agrees to pay all invoices in full when due, without any off sets or deductions whatsoever. Invoice discrepancies will be handled separately, if and when they occur. However, all invoice disputes must be tendered to FVLI in writing within thirty (30) days of the date of the disputed invoice. No disputes received by FVLI more than thirty (30) days after the date of the disputed invoice will be considered. In the event that CUSTOMER does not make payment when due, CUSTOMER shall pay interest at the rate of fifteen percent (15%) per annum, or the maximum amount permissible under law, on the unpaid amount. CUSTOMER shall also pay any applicable tax, charge, fee, assessment or levy whatsoever together with any penalties, fines or interest thereon (herein

collectively called the 'Assessments') which may be charged against FVLI with respect to the use, transportation, operation and possession of the Chassis, except Federal, State and other similar income taxes (other than any income taxes which may be based upon mileage or highway usage) payable by FVLI. In the event the Assessments are not paid by CUSTOMER when due, in addition to all other remedies reserved to FVLI hereunder at law and in equity FVLI may, but is not obligated to, pay the Assessments and collect the same, plus interest at fifteen percent (15%) per annum or the maximum permitted under law from CUSTOMER. If CUSTOMER becomes delinquent in its payments under this Agreement, FVLI may contact CUSTOMER's customers and/or creditors, including but not limited to ocean carriers and banks, to inform them that CUSTOMER has become delinquent in its payments to FVLI, and may ask for assistance from said customers to bring CUSTOMER's account up-to-date. FVLI will also inform ocean carriers, ocean terminals, rail terminals and/or equipment provider facilities that CUSTOMER is no longer authorized to utilize FVLI Equipment.

## **6. Suspension of Use Privileges**

CUSTOMER will be suspended from the "Approved List" of Pool users for: i. Non-payment of chassis usages or other charges owed to FVLI (suspension with 10 days' notice); or ii. Loss or lapse of insurance coverage (immediate suspension); or iii. Abuse or misuse of Chassis as determined by FVLI or the Pool Manager (suspension with 10 days' notice).

## **7. Recovery**

FVLI and/or the Pool Manager reserves the right to recover and arrange drayage for any chassis which FVLI or the Pool Manager deems abandoned, impounded or otherwise in an insecure situation, if after reasonable notice, the CUSTOMER fails to recover or reposition the chassis to the Pool. Any expenses incurred in connection with such recovery or drayage will be for the account of the CUSTOMER.

## **8. Damage**

All damage documented at redelivery to the Pool will be billed to CUSTOMER. The chassis inspection standard is FMCSA, and UIIA guidelines will be followed as they relate to any billing of damages. The failure of CUSTOMER to pay such billing will result in the suspension of the CUSTOMER's Pool privileges.

## **9. Total Loss**

In the event of destruction, loss or theft of any Chassis, the obligation to pay rent for such chassis will be abated provided: i. CUSTOMER furnishes FVLI with a statement that the chassis has been destroyed, lost or stolen, and such evidence of such destruction, loss or theft as FVLI may reasonably request; and ii. CUSTOMER tenders to FVLI or the Pool, as appropriate, an amount equal to the Casualty Value (as calculated in accordance with Exhibit A or any applicable cross-pool chassis use agreement or market pool agreement, as determined by FVLI); and iii. CUSTOMER pays to FVLI an amount equal to the accrued rent for such chassis owing through the date of receipt of the Casualty Value payment by FVLI or the Pool. Payment of the Casualty Value by the CUSTOMER shall not be construed to be a sale of the destroyed, lost or stolen unit of Chassis nor shall title, interest or ownership of said unit of Chassis be passed to CUSTOMER upon receipt of such payment. Payment of Casualty Value will discharge CUSTOMER of its obligation to pay future rental payments for the subject Chassis under this Agreement, but will not release CUSTOMER from its other obligations under this Agreement. In the event a Chassis which was declared lost, stolen or missing by the Customer is recovered by FVLI or the Customer, FVLI may, at its option, assess an administrative fee of \$175.00 to the Customer.

## **10. Liens and Encumbrances**

CUSTOMER agrees that it and its parent, subsidiaries, divisions, affiliates, successor or any interlocking or controlled companies, agents, employees, officers and assignees shall not assert or claim any statutory or common law warehouseman, garageman, artisan, materialman or other lien, encumbrance, mortgage, claim or charge against any Chassis or related equipment, or any other property of FVLI, provided that such lien, encumbrance, charge or claim, including but not limited to towing and storage charges, is incurred due to CUSTOMER's actions or inaction during the time the

chassis is in CUSTOMER's possession and control. CUSTOMER further agrees to keep chassis free and clear of any and all liens, encumbrances, charges or claims of whatever nature. CUSTOMER shall notify all third parties whom it permits to use, possess, transport, store, maintain or repair the Chassis, that they cannot assert any lien, mortgage, claim or any security interest against the Chassis or against FVLI, the Pool or the titled owner relating to such Chassis. CUSTOMER shall promptly, at its sole expense, take all actions necessary to discharge any lien, charge, or other encumbrance asserted by any party against the Chassis arising during the possession of the chassis by CUSTOMER. CUSTOMER expressly agrees to bear all out of pocket costs, including reasonable attorney's fees, incurred by FVLI or the Pool as a result of CUSTOMER's breach of this Paragraph.

## **11. Electronic Toll Collection Systems**

CUSTOMER acknowledges and agrees that part of its contractual obligation hereunder is to ensure that all toll payments and/or violations incurred during its possession of the Chassis are satisfied. As a service to CUSTOMER, and in order to streamline the process of ultimately billing the responsible trucker for Electronic Toll Collection Systems (such as EZ Pass) charges and/or violations (hereinafter "Charges"), FVLI has retained the services of a third-party vendor (hereinafter "Vendor"), where available, to process payment of the Charges. CUSTOMER hereby authorizes FVLI to use Vendor to pay all Charges for any chassis incurred during a CUSTOMER's possession of the Equipment. CUSTOMER further authorizes FVLI to instruct Vendor to bill the appropriate trucker directly on the CUSTOMER's behalf, based on box rules, including an additional, \$20.00 service charge. CUSTOMER further agrees that if Vendor cannot collect from the trucker within ninety (90) days, Vendor will re-bill CUSTOMER directly, plus a \$20.00 service charge.

## **12. Compliance with Law**

CUSTOMER or its agents or representatives shall safely and properly operate and use the Chassis in accordance with all applicable federal, state and/or local laws, regulations and ordinances, including, without limitation, FHWA and USDOT regulations, including, but not limited to the requirement to complete Driver Vehicle Inspection Reports ("DVIR") pursuant to 40 CFR § 396.11(a) and transmit to the Pool Manager and/or the Intermodal Equipment Provider all Driver Vehicle Examination Reports ("DVER") in accordance with 40 CFR § 396.1 *et seq.*

## **13. Credit Information**

CUSTOMER agrees to furnish FVLI with updated credit information, as may be requested by FVLI from time to time.

## **14. Ownership of Chassis**

FVLI and CUSTOMER intend that this Agreement shall constitute an operating usage agreement for the Chassis subject hereto. The Chassis will at all times remain the property of the titled owner and neither the performance by CUSTOMER of its obligations contained herein nor the payment by CUSTOMER of rent, usage or other charges as provided herein nor the possession of the Chassis by CUSTOMER shall give CUSTOMER any ownership or other interest in the Chassis. CUSTOMER shall have no option to purchase or otherwise acquire title or ownership to the Chassis. CUSTOMER's only interest in the Chassis shall be the rights created hereunder, with said rights being fully subject to the terms and conditions found in the Rate Agreement and all appendices. CUSTOMER may not pledge, mortgage or create any security in the Chassis. Only the titled owner may sell the Chassis, grant a security interest in the Chassis, depreciate the Chassis for tax purposes or claim any tax credits or other tax benefits which may be applicable to the Chassis.

## **15. Good Repair and Working Order**

Receipt of Chassis in good repair and working condition is acknowledged by CUSTOMER upon acceptance of delivery and/or execution of the applicable equipment inspection/interchange receipt by CUSTOMER, its agent or representative. CUSTOMER, or its driver/agent is obligated to inspect each Chassis before its use pursuant to 40 CFR § 396.13. Furthermore, CUSTOMER, or its driver/agent must perform a post-trip inspection after each use in order to comply with 40 CFR § 396.11. In the

event any chassis has any defects, FVLI recommends that said chassis not be used by the CUSTOMER and Pool Manager must be notified of any such defects.

## **16. Maintenance and Repair**

CUSTOMER shall, at its sole cost and expense, keep and maintain the Chassis, and all additional attachments and accessories thereto in good, repair and operating condition during its possession of the Chassis. CUSTOMER shall, at its sole cost and expense replace any and all damaged parts with parts of like quality of those originally received with the Chassis. All replacement parts and repairs shall become the property of the relevant titled Chassis owner. Neither FVLI nor the Pool shall have any responsibility for the maintenance of any unit of the Chassis during the period in which it is in the possession of CUSTOMER.

## **17. Risk of Loss**

CUSTOMER, during its possession of the Chassis, bears all risk of loss, damage, theft or destruction (partial or total) of the Chassis and cargo from any cause and shall pay all costs of use, operation, maintenance, storage, repair and replacement including, but not limited to, taxes, charges incurred in ports, depots or storage areas, towing, tolls, fares, fines, penalties and the like.

## **18. Hold Harmless and Indemnification**

CUSTOMER at its sole cost and expense, assumes liability for, and hereby agrees to indemnify defend and keep harmless FVLI, its subsidiaries and/or affiliates, agents, officers, employees, successors and assigns from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses (including reasonable attorney's fees), of whatsoever kind and nature, including, without limitation, death, injury or damage to property or person, arising out of the use, condition (including but not limited to, latent and other defects and whether or not discoverable by CUSTOMER or FVLI), operation, ownership, selection, storage, maintenance, repair, transportation, delivery, or return of any unit of Chassis, regardless of where, how and by whom operated, or the negligence, whether alleged or actual, of FVLI or any failure on the part of CUSTOMER to perform or comply with any terms and conditions of this Agreement. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and affect notwithstanding the expiration or other termination of this Agreement. CUSTOMER is an independent contractor and nothing contained in this Agreement shall authorize CUSTOMER or any other person or entity to operate any Chassis so as to incur or impose any liability or obligation for or on behalf of FVLI.

## **19. Insurance**

CUSTOMER shall, at its sole expense, obtain and maintain both Automobile Liability and Comprehensive General Liability insurance in a minimum amount of US One Million Dollars (\$1,000,000), per occurrence, for both bodily injury and property damage. CUSTOMER shall, in addition and at its sole expense, obtain and maintain 'All Risk' Physical Damage insurance in such amount as is equal to the Chassis's replacement value as determined by FVLI. Furthermore, CUSTOMER shall, at its sole expense, obtain and maintain Worker's Compensation insurance in amount and form necessary to satisfy statutory requirements. Such policies of insurance shall provide that: (i) such coverage as provided will be considered primary and all other coverages enforced secondary; and (ii) the interest of FVLI will be insured regardless of any breach or violation of any warranties, declarations or conditions of payment in such policies; and (iii) if such policy shall be cancelled or materially changed, such cancellation or change will not be effectuated without thirty (30) days prior written notice to FVLI. CUSTOMER shall furnish FVLI with a certificate of such insurance immediately upon issuance thereof and all such certificates shall name FVLI as an additional insured and loss payee as applicable and shall require notice to FVLI of any cancellation or material changes thirty (30) days in advance thereof. The maintenance of insurance by CUSTOMER hereunder shall not be deemed or construed to limit or modify CUSTOMER's obligations under this Agreement. If CUSTOMER fails to obtain such insurance or fails to pay the premium when due, FVLI may do so and may charge

CUSTOMER the amount of such premiums plus interest at the rate of fifteen percent (15%) per annum or the maximum amount permissible under law.

## **20. No Permissive Users**

CUSTOMER acknowledges that neither itself nor its agents, employees, assigns and successors shall be considered a permissive user of the Chassis for the purposes of any policy of insurance maintained by FVLI.

## **21. Return of Chassis**

Upon the termination of this Agreement, CUSTOMER shall return each unit of Chassis, at CUSTOMER's sole expense, to the Pool Location from which it was originally picked up or to such locations and in such quantity as agreed to in writing by FVLI or the Pool Manager. Each unit shall be redelivered in the same condition as when received by CUSTOMER, normal wear and tear excluded. Chassis will be inspected at the CUSTOMER's expense and if such Chassis is returned in a damaged condition, FVLI or Pool Manager shall, in its discretion, have the right to authorize the repair of the Chassis or to refrain from repairing the Chassis and invoice CUSTOMER for the amount of damage for which it is liable hereunder. In the event CUSTOMER redelivers any Chassis with estimated damages exceeding the Casualty Value such unit will be considered 'destroyed' and Casualty Value settlement shall apply in lieu of billing for damages. The inspection and repair standard will be the applicable Pool standard.

## **22. Tires**

CUSTOMER shall return such Chassis with tires equal in value and condition of those originally delivered with the units.

## **23. Amendments**

FVLI reserves the right to amend this Agreement at any time by posting the amended terms on its [www.flexiday.com](http://www.flexiday.com) Internet site. All amended terms will automatically be effective 30 days after they are initially posted. Additionally, FVLI may notify CUSTOMER of amended terms and conditions via email. This Agreement may not be otherwise amended except in a writing hand signed by both parties. For purposes of this provision, a "writing" does not include an email message and a "signature" does not include an electronic signature.

## **24. Breach**

Upon breach of any term of this Agreement by CUSTOMER, FVLI reserves the right to change, upon ten (10) days prior written notice, any term or condition hereof, including without limitation the usage fees to be paid hereunder.

## **25. No Warranties**

CUSTOMER ACKNOWLEDGES THAT FVLI HAS MADE NO WARRANTIES EXPRESS OR IMPLIED (INCLUDING BUT NOT LIMITED TO A WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), OF ANY KIND OR NATURE WHATSOEVER RELATING TO OR EFFECTING THE USE AND/OR OPERATION OF THE CHASSIS.

## **26. Consequential Damages**

CUSTOMER acknowledges that it has inspected and accepted the Chassis and agrees that in no event shall FVLI be liable to it for any damage or injury to persons or property or for any loss of profits or consequential damages arising out of the use of the Chassis by CUSTOMER or by any other person or persons permitted or authorized by the terms and conditions of this Agreement to use or operate the Chassis during the term of this Agreement or any extension hereof.

## **27. Domestic Use**

CUSTOMER represents that the Chassis use hereunder will be in the United States and will be used in CUSTOMER's transportation system. CUSTOMER hereby agrees that, if requested by FVLI or Pool Manager, CUSTOMER shall immediately report the exact location of the Chassis to FVLI or Pool Manager.

## **28. No Assignments**

CUSTOMER shall not assign, mortgage or encumber this Agreement or sublet, rent or otherwise relinquish possession of any of the Chassis without the prior express written consent of FVLI. Notwithstanding the foregoing, CUSTOMER shall be permitted to interchange Chassis in the normal course of its business to a connecting carrier.

## **29. Force Majeure**

FVLI shall not be liable to CUSTOMER or any other person for any failure or delay in the performance of any obligations due to events beyond its reasonable control, including but not limited to fire, storm, flood, earthquake, explosion, accidents, acts of the public enemy, sabotage, riots, civil disorder, strikes, lockouts, labor disputes, labor shortage, work stoppages, transportation embargoes or delays, failure or shortage of materials, supplies or equipment, failure of suppliers to deliver as requested, failure of repair facilities to finish repairs, acts of God, and acts of regulating or priorities of any governments or its branches or agencies.

## **30. Default**

Upon default by CUSTOMER of any of the terms and conditions of this Agreement, upon cancellation of any guarantee of CUSTOMER's obligations hereunder, upon breach by CUSTOMER of any term or condition of any other agreement with FVLI, or upon the bankruptcy or insolvency of CUSTOMER (including acquiescence in the appointment of a trustee or receiver, or commencement of any dissolution or liquidation proceeding), FVLI may, without prior notice to CUSTOMER, without relieving CUSTOMER of its obligations hereunder and without prejudice to any other rights or remedies FVLI may have at law or in equity, terminate this Agreement. Upon termination of this Agreement by FVLI, FVLI may demand the immediate return of the Chassis and/or immediately repossess the Chassis wherever located free of any claims and rights of CUSTOMER, declare the balance of the rentals to be due and payable, and assert maritime or other liens against CUSTOMER's property wherever it may be found. In addition, CUSTOMER shall immediately pay all repair charges, casualty values, all costs and expenses, including attorneys' fees, associated with enforcement of the terms and conditions hereunder, the collection of any rent or other sums due or to become due and the recovery of the Chassis, and other damages, provided, however, that nothing contained herein shall limit CUSTOMER's obligation to return the Chassis to FVLI. Any and all rentals and Assessments due under any subcontracts shall be assigned to FVLI but FVLI shall not assume any liability of such subcontracts. CUSTOMER shall assist FVLI in any repossession effort, and without in any way limiting the obligations of CUSTOMER under this Agreement, CUSTOMER hereby irrevocably appoints FVLI as its agent and attorney-in-fact, with full power and authority, to demand and take immediate possession of such Chassis in the name of and on behalf of CUSTOMER from whomsoever shall be in possession of such Chassis.

## **31. No Third Party Beneficiaries**

Except as expressly provided herein, nothing in this Agreement shall entitle any person other than the Parties or their respective successors and mutually accepted assigns to any claim, cause of action, remedy or right of any kind.

## **32. Relationship Amongst Parties**

The relationship between FVLI and CUSTOMER shall always and only be an arms-length business relationship. CUSTOMER shall never at any time during the duration of this Agreement for any purpose whatsoever be or become the agent of FVLI, and FVLI shall not be responsible for the acts or omissions of CUSTOMER, or its agents.

### **33. Rights and Remedies**

FVLI's rights and remedies with respect to any of the terms and conditions of this Agreement shall be cumulative and not exclusive, and shall be in addition to all other rights and remedies provided by law or in equity.

### **34. Severability**

Any provisions of this Agreement prohibited by the law of any jurisdiction shall as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining provisions of this Agreement.

### **35. Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and shall inure to the benefit of and bind the successors, heirs and legal representatives and, where assignment is permitted hereunder, assigns of the parties hereof. Except as stated in Paragraph 23 hereof, any change or modification to this Agreement must be in writing and signed by the parties hereto.

### **36. Choice of Law, Jurisdiction and Venue**

This Agreement shall be interpreted under and governed by the laws of the State of New Jersey, and regardless of the order in which the signatures of the parties are affixed, it shall be deemed executed at FVLI's place of business designated herein and in the County thereof, in the State of New Jersey. CUSTOMER hereby agrees that any claim, controversy, action or proceeding arising, directly or indirectly, from this Agreement may, at the option of FVLI, be litigated in state or federal courts located within the State of New Jersey and consents to submit to the jurisdiction of such courts having such situs. CUSTOMER hereby waives personal service of any legal process upon them arising, directly or indirectly, from this Agreement, and consents that service of process may be made by certified or registered mail, return receipt requested, directed to CUSTOMER, at the address set forth in this Agreement, or as may otherwise be designated by them in writing, and service shall be complete two (2) calendar days after posting, as aforesaid in any claim or controversy, action or proceeding arising, directly or indirectly from this Agreement.

### **37. Notices**

Notice and other communications required hereunder shall be given in writing by registered or certified mail, facsimile or telex at the addresses found on the Rate Agreement or at such other address as may hereafter be given in writing by either party.

### **38. Waiver**

No waiver by FVLI of any breach or default hereunder, of omission or delay by FVLI in exercising any of its rights hereunder, or course of dealing between FVLI and CUSTOMER shall operate as a waiver by FVLI to subsequently require full compliance with this Agreement or as a waiver of any of FVLI's rights or remedies hereunder, nor shall any single or partial exercise by FVLI of its rights hereunder preclude any other or further exercise of any other right.

### **39. Headings**

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

## EXHIBIT A

### REPLACEMENT VALUE LIST

#### Chassis:

<u>Equipment Type</u>	<u>Replacement Value (US\$)</u>
23'6" SLIDER	12,000
23'6" FIXED	9,600
40' FLAT	8,200
40' GOOSENECK	12,500
FLEXIDAY® PLUS CHASSIS	13,250
40' GOOSENECK EXTENDABLE (40'/45'/48')	13,100
40' GOOSENECK EXTENDABLE (40'/45')	11,250
43' DROP FRAME TANK	21,000
48' LIGHTWEIGHT FIXED	10,950
45' EXTENDABLE (45'/53')	12,400
45' EXTENDABLE (45'/48'/53')	13,600
45' FIXED	11,100
53' GOOSENECK	12,500
MAX ATLAS 20X40X45' EXTENDABLE TRIAXLE	19,000
20/40' GOOSENECK COMBO TRIDEM CHASSIS	21,000
TRIAXLE	20,000
43' DROP FRAME TANK	21,000

#### Generator Sets:

GEN SET-CLIP ON DIESEL	17,000
GEN SET-CHASSIS MOUNT DIESEL	15,550

- The Casualty Value for any unit shall be calculated by taking the replacement cost for that type unit and depreciating it by three and 15/100 percent (3.15%) per year for each full year (there shall be no depreciation for partial years) that the unit has been in service, provided that on no account shall a unit be depreciated below seventy-five percent (75%) of the replacement cost.

REPLACEMENT COSTS MAY CHANGE AS MANUFACTURING COSTS VARY.



## **EXHIBIT B**

Pool Damage Inspection Criteria:

Please refer to the operative pool rules.

However, all switched tires are subject to close inspection. If switched tire(s) are not equivalent to the original tire(s) in type, size, and quality, the customer will be billed for the cost of a replacement tire.



## EXHIBIT C

Over The Road Repair Policy:  
Please refer to the OTR policy issued by the operative pool.