

# AIM Chassis Interchange Agreement

THIS AGREEMENT (this "Agreement"), dated the day of \_\_\_\_\_, \_\_\_\_\_ by and between American Intermodal Management, LLC ("AIM") and \_\_\_\_\_ ("MOTOR CARRIER").

## 1. Scope of Agreement

AIM and its affiliate (with such term whenever used in this Agreement to mean AIM Chassis LLC, an entity under common control of AIM) hereby agrees to provide to MOTOR CARRIER and MOTOR CARRIER hereby accepts from AIM intermodal chassis as contemplated hereby (collectively, the "Intermodal Chassis"). Except as set forth in this Agreement, in no event shall MOTOR CARRIER have any right to any quantity or volume of Intermodal Chassis. MOTOR CARRIER shall not be deemed to have any exclusive rights under this Agreement.

## 2. Implementation of Agreement

At the time of interchange of any Intermodal Chassis hereunder, an authorized representative of MOTOR CARRIER shall conduct a pre-trip inspection of the condition of the Intermodal Chassis at the time of MOTOR CARRIER's receipt. Acceptance of the Intermodal Chassis by MOTOR CARRIER shall constitute MOTOR CARRIER's acknowledgement that the Intermodal Chassis is satisfactory and acceptable to MOTOR CARRIER and that the Intermodal Chassis is free from defects other than exceptions documented in writing by MOTOR CARRIER in an inspection report/equipment interchange receipt delivered by MOTOR CARRIER at the time of interchange. AIM and MOTOR CARRIER shall thereafter be bound by such notations.

MOTOR CARRIER's acceptance of any Intermodal Chassis so tendered by AIM shall constitute conclusive evidence of receipt by MOTOR CARRIER of such Intermodal Chassis for all purposes of this Agreement, and be deemed an acknowledgement that such Intermodal Chassis is in roadable and good operating condition and complies with applicable laws, rules, regulations and standards. Upon MOTOR CARRIER's (or its representative's) acceptance of an Intermodal Chassis, all terms and conditions of this Agreement shall apply to such Intermodal Chassis.

## 3. Ownership

Each Intermodal Chassis interchanged hereunder shall at all times remain the sole and exclusive property of AIM and MOTOR CARRIER shall acquire no ownership rights of any nature by virtue of paying daily usage charges, cost of repairs or cost of transporting said Intermodal Chassis or otherwise. Each Intermodal Chassis shall, where appropriate, have AIM's serial numbers and other identifying marks affixed thereto, which shall not be obliterated or altered by MOTOR CARRIER. AIM shall pay registration and licensing fees for Intermodal Chassis.

## 4. Use by MOTOR CARRIER

MOTOR CARRIER shall have complete responsibility for possession and use of each Intermodal Chassis interchanged during the term of this Agreement. In no event will MOTOR CARRIER allow any third-party not operating pursuant to the for-hire MOTOR CARRIER operating authority of MOTOR CARRIER to operate or transport any Intermodal Chassis interchanged to MOTOR CARRIER hereunder. MOTOR CARRIER shall have exclusive right to supervise, direct and control the activities of all persons who are employed by or through MOTOR CARRIER or who otherwise operate or use the Intermodal Chassis during the interchange period, and MOTOR CARRIER shall have sole responsibility with respect to them. No person operating, in possession of, or using any Intermodal Chassis from the time a power unit operated by MOTOR CARRIER is first coupled to the Intermodal Chassis and until the Intermodal Chassis is decoupled from MOTOR CARRIER's power unit at the location designated by AIM or its representative for the return of the Intermodal Chassis shall be considered the agent or employee of AIM

for any purpose whatsoever. If MOTOR CARRIER utilizes Intermodal Chassis to transport any loaded tank container(s), MOTOR CARRIER shall be strictly liable for any resulting personal injuries and/or property damage, including, but not limited to damage to any Intermodal Chassis so improperly used. In the event any Intermodal Chassis is sub-let by the MOTOR CARRIER, with or without the consent of the AIM, or otherwise comes into the possession of a party other than MOTOR CARRIER, MOTOR CARRIER shall remain fully liable and solely responsible to AIM for the performance of all terms and conditions of this Agreement. MOTOR CARRIER shall be solely responsible to ensure that any personnel used by MOTOR CARRIER to pick-up or return any Intermodal Chassis: (i) are fully authorized to access any facilities at which Intermodal Chassis are made available, including any facility-specific criteria; and (ii) comply with any facility-specific instructions either posted at any such facility or otherwise provided to MOTOR CARRIER or its personnel. AIM shall have no responsibility nor liability arising from or related to refusal to allow access, or removal, of any MOTOR CARRIER personnel at or from any such facility.

## **5. Usage Charges**

MOTOR CARRIER shall pay AIM, as a daily usage charge, an amount per calendar day, or any part thereof, for each Intermodal Chassis, together with all additional charges herein, for as long as MOTOR CARRIER retains possession of the Intermodal Chassis. The foregoing notwithstanding, if MOTOR CARRIER obtains chassis pursuant to a usage agreement whereby a third-party (such as a Beneficial Cargo Owner, forwarder, steamship line, etc., collectively, "Users") has agreed to pay such daily usage charge, MOTOR CARRIER shall not be charged the daily usage charge for any Intermodal Chassis usage which usage is paid for by the Users pursuant to such usage agreement. Rather, MOTOR CARRIER's responsibility for such daily usage charges shall be contingent, meaning if not paid by the Users when due, then MOTOR CARRIER shall be jointly liable for the daily usage charge. The daily usage charge shall be set forth per Exhibit A and can be changed by AIM on thirty (30) days' notice, in which case, such revised charges shall apply to any interchange of Intermodal Chassis commencing on or after the effective date of such revised charges. The daily usage charge shall exclude those holidays set forth on AIM's website. MOTOR CARRIER shall pay or reimburse AIM for any and all sales, use, rental, excise, property, gross income, gross receipts, stamp or other taxes, levies, import duties, charges or withholdings of any nature (together with any penalties, fines, or interest thereon, "TAXES") imposed against AIM, MOTOR CARRIER, this Agreement or the Intermodal Chassis by any governmental or taxing authority upon or with respect to the interchange, leasing, rental delivery possession, use, operation redelivery or other disposition of a chassis hereunder, or upon the rentals, receipts or earnings arising therefrom, excluding however, any such taxes that are imposed or accrued with respect to AIM's net income. MOTOR CARRIER shall not withhold any Intermodal Chassis on account of any dispute as to rates and/or alleged failures by AIM to comply with the terms of this Agreement. MOTOR CARRIER is relying on the general credit of AIM and hereby waives and releases and shall not permit any Intermodal Chassis provided to it to become subjected to any liens, encumbrances or charges which might otherwise apply to any Intermodal Chassis. AIM will invoice MOTOR CARRIER bi-weekly. Payment shall be due to AIM twenty-one (21) days after the relevant invoice date. MOTOR CARRIER shall be required to pay a late payment fee at the rate of one and one-half percent (1.5%) per month for all payments received more than thirty (30) days after date of invoice.

## **6. Redelivery**

MOTOR CARRIER shall at its sole cost and expense return Intermodal Chassis only to (i) the Start/Stop location where MOTOR CARRIER received the Intermodal Chassis, or (ii) one of the Start/Stop locations specified by AIM on AIM's website. From time to time, however, AIM may restrict MOTOR CARRIER'S right to return Intermodal Chassis to any of AIM's Start/Stop locations. When Start/Stop locations are restricted pursuant to this Section, AIM will post the restriction on its website and notify the MOTOR CARRIER by e-mail not later than 4:00 p.m. local time the business day prior to the effective date of the restrictions on the Start/Stop location(s). If MOTOR CARRIER redelivers Intermodal Chassis to AIM at a location other than a permitted location without prior written approval from AIM, then MOTOR CARRIER shall pay AIM its costs to dray the Intermodal Chassis to a permitted location.

Each and every Intermodal Chassis shall be returned with its original tires, except for tires which may be replaced as a result of in-service failures, which shall be replaced with tires of like kind and quality in accordance with the provisions of this Agreement. Each Intermodal Chassis will be inspected for damage by a representative of AIM upon return by MOTOR CARRIER.

## **7. Electronic Toll Collection**

MOTOR CARRIER acknowledges and agrees that one of its contractual obligations hereunder is to ensure that all toll payments and/or violations incurred during its use of Intermodal Chassis are satisfied. As a service to the MOTOR CARRIER, and in order to streamline the process of ultimately billing the responsible party for Electronic Toll Collection Systems (such as EZ Pass) charges and/or violations, AIM may retain the services of a third-party vendor, where available, to process payment of electronic toll charges and/or violations. MOTOR CARRIER hereby authorizes AIM to use a third-party vendor to pay all electronic toll charges and/or violations for any chassis incurred during its use of chassis hereunder. MOTOR CARRIER further authorizes AIM to instruct the third-party vendor to bill the MOTOR CARRIER directly, including an additional, \$25.00 service charge.

## **8. MANAGEMENT SERVICE.**

MOTOR CARRIER understands that AIM will utilize online management applications (the "Service") to bill for Use Fees and to manage events arising under this Agreement. The Service provider will be [3rd Party Provider] ("[3RD PARTY PROVIDER]"), and MOTOR CARRIER acknowledges and agrees that [3RD PARTY PROVIDER] is a third-party beneficiary of this Agreement. MOTOR CARRIER agrees to the following terms and conditions relating to the Service:

- a. MOTOR CARRIER agrees not to: (i) use any device, software or technique to interfere with or attempt to interfere with the Service, or interfere with any other party's use and enjoyment of the Service's website; (ii) attempt by any means to gain unauthorized access to the Service, including, but not limited to, access through other accounts not legally registered to MOTOR CARRIER; (iii) pass User IDs or passwords to any third party without written consent from AIM and [3RD PARTY PROVIDER]; (iv) use any robot, spider or other automatic device, process or means to access the Service, or use any manual process to monitor or copy content from the Service website for any other unauthorized purpose without [3RD PARTY PROVIDER]'s prior express written permission; or (v) engage in any activity that could be construed to constitute unsolicited or unauthorized advertising or promotional materials.
- b. MOTOR CARRIER agrees not to post, upload or otherwise transmit: (i) any Data that is unlawful, harmful or otherwise objectionable or violates any governmental agency, local, state, national or foreign laws; (ii) any data that MOTOR CARRIER does not have a right to transmit under any law or under contractual or fiduciary relationships; (iii) any data that infringes any patent, trademark, trade secret, copyright or other proprietary, publicity or privacy rights of any party; (iv) any data that contains viruses, bugs, Trojan horses, or any other harmful or deleterious programs; (v) any data which is defamatory in any way or of an obscene nature.
- c. MOTOR CARRIER shall not: (i) disassemble, reverse engineer, decompile or otherwise attempt to derive source code from the Service; (ii) modify, adapt, create derivative works based upon, or translate the Service or any part thereof; (iii) copy, install or use any components of the Service on any of its computer systems, servers or networks; (iv) transfer, lease, loan, resell for profit, distribute or otherwise grant any rights in or access the Service in any form to any other party. MOTOR CARRIER shall indemnify and hold AIM harmless from any loss, damage, claim, fine, penalty or cost (including reasonable attorney fees) arising from or related to any act or omission of MOTOR CARRIER or anyone accessing the Service on MOTOR CARRIER's behalf in any way related to the Service. MOTOR CARRIER waives all of those defenses that MOTOR CARRIER may have as to why MOTOR CARRIER should

not be liable for the acts or omissions of anyone accessing the Service on MOTOR CARRIER's behalf.

- d. [3RD PARTY PROVIDER], AIM, AND THEIR AFFILIATES, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND/OR AGENTS (THE "[3RD PARTY PROVIDER] PARTIES") SHALL NOT BE LIABLE FOR CORRUPTION, UNAUTHORIZED DISCLOSURE OR ERASURE OF DATA TRANSMITTED OR RECEIVED OR STORED ON THE [3RD PARTY PROVIDER] SYSTEM. THE [3RD PARTY PROVIDER] PARTIES WILL NOT BE LIABLE TO MOTOR CARRIER FOR ANY CLAIMS OR DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSSES OR DAMAGES RESULTING FROM THE LOSS OF DATA, INABILITY TO ACCESS THE SERVICE, OR INABILITY TO TRANSMIT OR RECEIVE DATA, CAUSED BY OR RESULTING FROM DELAYS, NON-DELIVERY, OR SERVICE INTERRUPTIONS DUE TO CIRCUMSTANCES NOT IN THE DIRECT CONTROL OF THE [3RD PARTY PROVIDER] PARTIES SUCH AS, BUT NOT LIMITED TO, SUPPLIER PROBLEMS, MOTOR CARRIER'S EQUIPMENT CAPABILITIES, TELECOMMUNICATIONS FAILURES, OR INTERNET SERVICE LIMITATIONS.
- e. NEITHER [3RD PARTY PROVIDER] NOR AIM SHALL BE LIABLE TO MOTOR CARRIER, OR TO ANY THIRD PARTY, FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR RELATING TO THIS AGREEMENT.
- f. UNDER NO CIRCUMSTANCES SHALL [3RD PARTY PROVIDER]'S LIABILITY TO THE MOTOR CARRIER OR TO ANY THIRD PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT, EXCEED \$20,000.

#### **9. Damage, Lost, Stolen or Destroyed Equipment**

- a. MOTOR CARRIER shall be responsible for the cost to repair damage to each Intermodal Chassis (including tires) that occurs while the Intermodal Chassis is in MOTOR CARRIER's possession and control, ordinary wear and tear excepted. In the event damage is discovered upon return of the Intermodal Chassis, AIM will arrange for repairs and assess any repair costs to MOTOR CARRIER in accordance with AIM damage inspection criteria annexed hereto as Exhibit B. In the event repairs are required while the Intermodal Chassis is in the possession of MOTOR CARRIER, MOTOR CARRIER shall effect repairs using AIM's over-the-road repair procedures published at Road Service Policy located as specified in Exhibit C. If MOTOR CARRIER makes any repairs on any Intermodal Chassis, MOTOR CARRIER shall be responsible for the cost of such repairs in addition to AIM's reasonable cost to repair or replace Intermodal Chassis necessitated by improper repairs made by MOTOR CARRIER.
- b. MOTOR CARRIER shall be solely liable for any Intermodal Chassis during the period in which such Intermodal Chassis has been interchanged to MOTOR CARRIER. MOTOR CARRIER shall promptly notify AIM in writing when an Intermodal Chassis is lost, stolen or destroyed while in its possession in accordance with the provisions of Section 22 of this Agreement, either by mail, facsimile or email, and follow the additional reporting requirements for lost, stolen or destroyed Intermodal Chassis published on AIM's website. Once notice is received, AIM shall furnish to MOTOR CARRIER the Depreciated Replacement Value of the Intermodal Chassis, which amount will be calculated in accordance with Exhibit D. MOTOR CARRIER shall pay the specified amount within thirty (30) days, after which the late payment provision in Section 5 shall apply. The daily usage charge shall continue to accrue until such time as written notice is received by AIM and AIM confirms receipt back in writing to MOTOR CARRIER. MOTOR CARRIER shall pay the specified amount within thirty (30) days, after which the late payment provision in Section 5 shall apply.

## 10. Miscellaneous Obligations

- a. AIM shall equip each Intermodal Chassis with tires and tubes of proper size at the time of interchange. Thereafter, until each Intermodal Chassis is returned to AIM, repairs to tires and tubes shall be made at the expense of MOTOR CARRIER. In the event of blowout or total failure of a tire or tube, MOTOR CARRIER shall furnish replacement tires and tubes to return each Intermodal Chassis to AIM (but shall retain title to such replacement tires and tubes upon delivery of the Intermodal Chassis to AIM) and shall return with the Intermodal Chassis the blowout or unserviceable tire and tube, together with a rim of the same make and type as was on the Intermodal Chassis when the blowout occurred. In the event of failure to so return, MOTOR CARRIER shall pay AIM an amount equal to value thereof at the time of original interchange, which in the absence of specific information to the contrary shall be \$250.00 or a new tire and tube of like size and quality. If tires are ruined as a result of being run flat, it will be the responsibility of MOTOR CARRIER to replace or pay for the tire so ruined.
- b. AIM reserves the right to install GPS vehicle tracking devices in any or all of its Intermodal Chassis. These devices allow AIM to monitor the location, speed, direction and other information about its Intermodal Chassis. AIM deems the GPS data from these devices to be reliable and may use the data to make certain management decisions regarding the use of its Intermodal Chassis. MOTOR CARRIER is solely responsible for providing its personnel with any notice required by applicable law regarding the use of GPS devices with respect to vehicles operated by such personnel.

## 11. LIMITATION ON LIABILITY

AIM shall not be liable to MOTOR CARRIER or any other person for any failure or delay in the performance of any obligation 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 shortages, 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 rules, regulations or priorities of any government or its branches or agencies. **UNDER NO CIRCUMSTANCES SHALL AIM BE LIABLE, AND MOTOR CARRIER HEREBY WAIVES ANY CLAIM AGAINST AIM, FOR ANY SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES TO CARGO, LOST PROFIT, OR BUSINESS INTERRUPTION, EVEN IF AIM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.**

## 12. INDEMNIFICATION

**MOTOR CARRIER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS AIM AND ITS SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES, INSURERS, OFFICERS, DIRECTORS, LICENSORS AND SUCCESSORS (COLLECTIVELY, THE "INDEMNIFIED PARTIES" AND EACH, AN "INDEMNIFIED PARTY"), WITHOUT REGARD TO WHETHER THE INDEMNIFIED PARTIES' LIABILITY IS VICARIOUS, IMPLIED IN LAW, OR AS A RESULT OF THE FAULT OR NEGLIGENCE OF THE INDEMNIFIED PARTIES, FROM AND SHALL PAY AND REIMBURSE ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGE OR LOSS (INCLUDING, WITHOUT LIMITATION, EXPENSES IN CONNECTION WITH ANY CLAIM OR SUIT, SUCH AS ATTORNEYS' FEES, COURT COSTS AND OTHER EXPENSES) (COLLECTIVELY "CLAIMS" AND INDIVIDUALLY A "CLAIM") ARISING DIRECTLY OR INDIRECTLY IN ANY MANNER OUT OF: (A) ANY FAILURE BY MOTOR CARRIER TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT OR ANY ATTEMPT BY ANY THIRD PARTY, TO IMPOSE UPON AN INDEMNIFIED PARTY OR PARTIES LIABILITY FOR MOTOR CARRIER'S ACTS OR OMISSIONS; (B) ANY CLAIM, WHETHER PRIVATE OR GOVERNMENTAL, FOR PERSONAL INJURY OR DEATH OR FOR LOSS OR DAMAGE TO PERSON OR PROPERTY, ARISING OUT OF OR INCIDENT TO THE SELECTION, ACCEPTANCE, POSSESSION, INTERCHANGE, LEASING, RENTAL, OPERATION, CONTROL, USE, STORAGE, LOADING, UNLOADING, MOVING, MAINTENANCE, REPAIR, DELIVERY, REDELIVERY OR RETURN OF ANY INTERMODAL CHASSIS FROM THE TIME POSSESSION OF SUCH INTERMODAL CHASSIS HAS BEEN TENDERED TO MOTOR CARRIER UNTIL SUCH TIME AS THE INTERMODAL CHASSIS**

HAS BEEN RETURNED BY MOTOR CARRIER IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT; (C) ANY FORFEITURE, SEIZURE OR IMPOUNDING OF, OR CHARGE OR LIEN IMPOSED OR ASSERTED AGAINST ANY INTERMODAL CHASSIS; AND (D) ANY CLAIM BY A THIRD-PARTY AGAINST AIM FOR ENTRUSTMENT OF A CHASSIS TO MOTOR CARRIER, NEGLIGENT SELECTION OF MOTOR CARRIER, OR SIMILAR CLAIM. MOTOR CARRIER'S OBLIGATIONS UNDER THIS SECTION SHALL NOT APPLY TO THE EXTENT ANY CLAIM IS FOUND TO HAVE BEEN CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE INDEMNIFIED PARTY. IF APPLICABLE STATE LAW DOES NOT ALLOW ENFORCEMENT OF INDEMNITY OBLIGATIONS TO THE EXTENT CONTAINED IN THIS PROVISION, THE PARTIES EXPRESSLY AGREE THAT MOTOR CARRIER WILL BE OBLIGATED TO INDEMNIFY THE INDEMNIFIED PARTIES TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW. THIS SECTION 12 SHALL SURVIVE THE TERMINATION, CANCELLATION OR EXPIRATION OF THIS AGREEMENT.

### **13. Insurance**

MOTOR CARRIER shall procure and maintain, at its sole cost and expense, throughout the term hereof, the following insurance coverages: (i) commercial automobile insurance policy with a combined single limit of no less than \$1,000,000 or such greater amount as required by applicable law, insuring all Intermodal Chassis provided to MOTOR CARRIER hereunder; (ii) commercial general liability insurance with a combined single limit of no less than \$1,000,000 per occurrence; and (iii) trailer interchange insurance, including collision, with a limit not less than an amount equal to the value of all interchanged equipment hereunder but in all circumstances not less than \$25,000 per Intermodal Chassis. The insurance set forth in subsections (i), (ii) and (iii) above shall name AIM as an additional insured, shall provide coverage for MOTOR CARRIER'S indemnity and defense obligations under this Agreement, and shall be primary to any and all other applicable insurance. Prior to taking possession of any Intermodal Chassis, MOTOR CARRIER shall furnish to AIM written certificates obtained from the insurance carrier showing that such insurance has been procured, is being properly maintained, the expiration date and specifying that written notice of cancellation or modification or material alteration (e.g., coverage reduced, limits decreased or additional insured removed) of the policies shall be given to AIM at least thirty (30) days prior to cancellation or modification or material alteration, by certified mail. Upon request, MOTOR CARRIER shall provide AIM with copies of the applicable insurance policies. If MOTOR CARRIER fails to provide such proof, AIM may, at its option, obtain separate insurance on behalf of MOTOR CARRIER and charge the amount of any cost to MOTOR CARRIER as additional usage charges.

### **14. No Permissive Users**

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

### **15. Warranty Disclaimer and Remedy Limitation**

EXCEPT AS EXPRESSLY CONTAINED IN THIS AGREEMENT, AIM MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF ANY INTERMODAL CHASSIS, EXCEPT THAT AIM REPRESENTS THAT, AT THE TIME OF ANY DELIVERY TO MOTOR CARRIER HEREUNDER, AIM HAS TITLE OR RIGHT OF POSSESSION AND USE OF THE RELEVANT INTERMODAL CHASSIS. MOTOR CARRIER ACCEPTS EACH INTERMODAL CHASSIS "AS IS" AND EXPRESSLY DISCLAIMS ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY AIM OR ANY PERSONS ON AIM'S BEHALF.

### **16. USE; UNLAWFUL USE; HAZARDOUS SUBSTANCES**

Except as otherwise provided herein and so long as no default hereunder has occurred and is continuing, MOTOR CARRIER shall use the Intermodal Chassis only in the United States. MOTOR CARRIER shall not make, suffer or permit any unlawful use of the Intermodal Chassis. MOTOR CARRIER shall not use Intermodal Chassis for storage or transportation of hazardous wastes, unprotected corrosive substances, high density, poorly secured materials, or bulk commodities which may corrode, oxidize, severely dent, puncture, contaminate, stain or damage the Intermodal Chassis or make any other use of the Intermodal Chassis which would result in damage thereto.

#### **17. Compliance with Law**

The parties shall obey and comply with all applicable federal, state and local laws, rules, regulations and ordinances (collectively, "Applicable Law") including, but not limited to, Applicable Law pertaining to the operation of intermodal equipment. MOTOR CARRIER shall comply with all loading limitations, if any, prescribed by the manufacturers of the Intermodal Chassis, and shall prevent excessive impact of unbalanced or concentrated loads and pay all fines, expenses, charges or assessments of whatsoever nature which may arise out of the MOTOR CARRIER's failure to comply with loading limitations or failure to prevent excessive impact or unbalanced or concentrated loads. MOTOR CARRIER represents and warrants that it does not have an unsatisfactory or unfit safety rating issued by any regulatory authority with jurisdiction over MOTOR CARRIER's operations including, without limitation, the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation. MOTOR CARRIER shall ensure that during the term of this Agreement, it and the Intermodal Chassis are in compliance with Applicable Law and shall promptly notify AIM of any damage or other condition of Intermodal Chassis which fails to comply with Applicable Law. MOTOR CARRIER shall be responsible for, and shall pay, any and all fines, penalties, citations or other amounts assessed against it or AIM by local, state, provincial or federal governmental authorities for the condition or use of any Intermodal Chassis while in MOTOR CARRIER's possession and control. MOTOR CARRIER shall promptly notify AIM of any citation related to any Intermodal Chassis issued to MOTOR CARRIER during the term of this Agreement and provide proof of payment thereof by MOTOR CARRIER. In the event the Intermodal Chassis is in any way involved in an accident, regardless of whether a citation is issued, MOTOR CARRIER shall immediately notify AIM.

#### **18. Credit Information**

MOTOR CARRIER agrees to furnish AIM with updated credit information, as may be requested by AIM from time to time.

#### **19. Remedies of AIM**

Any of the following shall be deemed an Event of Default:

- (a) any breach or failure of MOTOR CARRIER to observe or perform any of its obligations under this Agreement;
- (b) dissolution, liquidation, or termination of the business of MOTOR CARRIER, insolvency or failure of MOTOR CARRIER to pay its debts as they mature in the ordinary course of business; the making of an assignment for the benefit of the creditors of MOTOR CARRIER; or the filing of a voluntary petition in bankruptcy by MOTOR CARRIER; or other actions of a similar nature;
- (c) the taking by any party of any Intermodal Chassis, or any part thereof, upon foreclosure, levy, execution, attachment or other process of law or equity enforced against MOTOR CARRIER; or
- (d) if, in AIM's reasonable opinion, MOTOR CARRIER has neglected, abused or misused any Intermodal Chassis in any way.

Waiver of any default shall not be a waiver of any other or subsequent default or other condition or term of this Agreement. Upon the occurrence of an Event of Default, AIM may, at its sole discretion, and in addition to any other remedy or right it has hereunder or by law:

- (a) immediately terminate this Agreement by providing notice to MOTOR CARRIER;
- (b) require MOTOR CARRIER to make available or deliver any Intermodal Chassis to AIM at such location as AIM may designate;

- (c) enter upon any premises where any Intermodal Chassis is located, and without notice or demand, remove such Intermodal Chassis, whether with or without process of law; and/or
- (d) render all or any part of the Intermodal Chassis unusable.

Upon the occurrence of an Event of Default, MOTOR CARRIER shall immediately pay to AIM without further demand all unpaid daily usage charges and other sums due under this Agreement. Daily usage charges shall continue to accrue on Intermodal Chassis in MOTOR CARRIER's possession until such time as those Intermodal Chassis have been returned to and accepted by AIM. MOTOR CARRIER shall also pay AIM's actual costs and expenses incurred in connection with taking possession of any Intermodal Chassis and/or the collection of daily usage charges, enforcement, assertion, defense or preservation of AIM's rights and remedies under this Agreement. In addition to all collection costs, including reasonable attorney fees, late payment fees, as provided for in Section 5, shall apply. AIM shall have the right to offset any amounts due from MOTOR CARRIER against other funds or property of MOTOR CARRIER held by AIM. The foregoing remedies are cumulative, and any or all thereof may be exercised instead of or in addition to each other or any remedies at law, in equity, or under statute.

## **20. Term**

This Agreement shall begin on the date of execution hereof and continue for an indefinite period. Either party to this Agreement may, however, terminate this Agreement upon ten (10) days prior written notice. In the event of termination by the MOTOR CARRIER, the terms of this Agreement shall remain in effect with respect to all unreturned Intermodal Chassis. Any termination of this Agreement shall be without prejudice to all rights accrued between the parties prior to the date of termination. AIM may suspend MOTOR CARRIER's privileges under this Agreement for any breach of any provision of this Agreement or any failure of MOTOR CARRIER to promptly pay amounts owed to AIM pursuant to this Agreement. Five (5) days notice of suspension is required to be given to MOTOR CARRIER prior to such suspension or "shut out" and such suspension or "shut out" will remain in effect, at AIM's discretion, until such time as any breach is cured and/or any amounts outstanding are paid.

## **21. ASSIGNMENT; SUBLEASING; LIENS**

MOTOR CARRIER shall not, without AIM's prior written consent, assign any right or interest in or to this Agreement or any Intermodal Chassis, or interchange, sublet or otherwise relinquish possession of any Intermodal Chassis. Should MOTOR CARRIER interchange, sublet or otherwise relinquish possession of any Intermodal Chassis without AIM's consent, MOTOR CARRIER shall remain primarily liable hereunder notwithstanding any such interchange, sublease or relinquishment. MOTOR CARRIER shall promptly at its own expense take all actions necessary to discharge any lien, charge, security interest or other encumbrance asserted by any party against any Intermodal Chassis in connection with the interchange, lease, rental, possession, control or use of such Intermodal Chassis by MOTOR CARRIER. AIM may assign this Agreement in whole or in part without MOTOR CARRIER's consent. Some of the Intermodal Chassis may be financed by a lender to AIM or leased by AIM from another chassis lessor. This Agreement shall be subject and subordinate to any such financings or leases.

## **22. Notice**

All notices or other communications required or permitted by this Agreement shall be effective upon receipt; shall be in writing; and shall be personally delivered, or mailed by registered or certified mail, return receipt requested, or sent by an overnight delivery service which provides proof of delivery, or sent by telecopy with a duplicate copy sent by first class mail, postage prepaid, as follows:

If to AIM:	American Intermodal Management, LLC 13951 N. Scottsdale Rd., Ste 220 Scottsdale, AZ 85254 Attn: Customer Service Manager
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If to MOTOR CARRIER:

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The foregoing notwithstanding, interchange specific documents including, but not limited to any inspection reports, interchange receipts, messages regarding limitations on return locations, notifications regarding incidents of loss or damage, and other notifications contemplated by this Agreement as part of the day-to-day operations of the parties may be sent or received via fax or email.

**23. Applicable Law**

This Agreement is to be governed by the laws of the State of Maryland, without regard to conflicts of law principles. AIM and MOTOR CARRIER hereby agree that any claim or controversy, directly or indirectly arising out of or relating to this Agreement, must be brought in a jurisdiction as follows:

- a. As to questions of interpretation or enforcement of this Agreement, at any federal or state court sitting in Maricopa County, Arizona, the principal place of business of AIM;
- b. As to questions of indemnification under this Agreement, at the situs of the transaction giving rise to the requested indemnification, or if litigation regarding the transaction has been commenced by a third-party, the situs of that litigation;
- c. As to monetary obligations between AIM and MOTOR CARRIER by reason of Chassis usage charges, at any federal or state court sitting in Maricopa County, Arizona, or at the situs of the transaction giving rise to the requested damages; and
- d. As to monetary damages between AIM and MOTOR CARRIER arising out of physical damage to or loss of a Chassis, at any federal or state court sitting in Maricopa County, Arizona, or at the situs at which the Chassis was last interchanged prior to such loss or damage.

**24. Special Dispute Resolution Process for Invoices.** Notwithstanding anything to the contrary herein contained, and unless otherwise agreed in writing by AIM and MOTOR CARRIER, the following dispute resolution process is applicable to all disputes with respect to invoices for Chassis usage charges and repairs (“U&R”):

- a. MOTOR CARRIER shall advise AIM in writing of any disputed U&R items on invoices within 30 days of its receipt of such invoice(s). AIM will respond in writing to such disputed items within 30 days of receipt of MOTOR CARRIER’s notice. MOTOR CARRIER will have 15 days from the date of the AIM’s response to either pay the claim(s) or seek arbitration. Should no resolution be reached between AIM and MOTOR CARRIER for charges disputed within the applicable dispute time frames set forth above, then AIM and MOTOR CARRIER will have the ability to submit the disputed U&R charges for binding arbitration in accordance with Exhibit E of this Agreement. Such disputes do not constitute valid grounds for withholding or delaying payments of undisputed charges as required by the terms of this Agreement.
- b. The arbiter in such process will determine the party responsible for payment or non-payment of applicable U&R charges based on the terms and conditions of the Agreement along with the supporting documentation presented by AIM and MOTOR CARRIER.
- c. Should MOTOR CARRIER fail to dispute an invoice relating U&R charges within 30 days after its receipt of the invoice for such charges, MOTOR CARRIER will lose any further right to dispute the invoice under the AIM’s initial dispute process. Further, the MOTOR CARRIER, upon failing to dispute the invoice or seek arbitration within the prescribed timeframe, will be deemed to have

waived its right to dispute such invoice and be responsible for payment thereof to the AIM and will lose its right to pursue binding arbitration under Exhibit E of the Agreement or assert any other defense against the subject invoice.

- d. Should AIM fail to respond to the MOTOR CARRIER's dispute of an invoice relating to U&R charges within the aforementioned timeframe, AIM will be deemed to have waived its right to collect such charges and its ability to pursue binding arbitration under Exhibit E of the Agreement.
- e. If any dispute of an invoice relating to U&R charges between MOTOR CARRIER and AIM has not been submitted to binding arbitration as described in this section, and in the event that charges have been verified by AIM and are again rejected and disputed by MOTOR CARRIER for whatever reasons, AIM and MOTOR CARRIER reserve their rights and remedies under the law regarding the payment of such charges. Further, the parties may pursue any rights and remedies they may have under the law to enforce an award of the arbiter made under this Agreement and Exhibit E.

#### **25. Entire Agreement; Amendment; Waiver; Severability; and Confidentiality**

This Agreement contains the entire agreement between the parties and supersedes all previous agreements, including the Uniform Intermodal Interchange and Facilities Access Agreement, with respect to the subject matter hereof. Regardless of whether they are required by law, any provision of MOTOR CARRIER's tariff, terms and conditions, service guide, bill of lading or any other document are inapplicable to the parties to this Agreement with respect to the subject matter hereof. This Agreement may not be amended or modified orally. No amendment, modification or release from any provisions hereof shall be effective unless in writing and signed by both parties specifically stating it is an amendment to this Agreement. The failure of either party to require the performance of any provision of the Agreement or the waiver by either party of any breach under this Agreement shall not prevent a subsequent enforcement of such term, nor be deemed a waiver of any subsequent breach. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. MOTOR CARRIER hereby acknowledges and agrees that this Agreement and the terms and conditions hereof are confidential and proprietary information of AIM and MOTOR CARRIER shall not disclose the existence of this Agreement or the terms and conditions hereof to any third person or entity without the express written consent of AIM, which may be granted or withheld in AIM's sole and absolute discretion. AIM's contact for billing inquiries is set forth on AIM's website.

[ACCEPTANCES AND SIGNATURES APPEAR ON THE FOLLOWING PAGE]

# Information and SIGNATURE PAGE

**American Intermodal Management, LLC  
Interchange Agreement Signature Page  
(version 170331.1)**

Motor Carrier Contact Information:

*(Please Type or Print Clearly)*

Company Name	
Company SCAC	
Name of Primary Contact Person	
Contact Person email address	
Company Address Street address City, State, Zip	
Phone	
Fax	
Name of Person to whom invoices should be sent	

Signatures:

IN WITNESS WHEREOF, each of the parties hereto intending to be legally bound hereby has caused its duly authorized representative to execute this Agreement as of the day and year first above written, either by checking the Accept Checkbox and clicking Save (if available) or by signing this Agreement in the space provided below.

**MOTOR CARRIER**

**AIM**

Signed \_\_\_\_\_

Signed \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

**Exhibit A**  
**Daily Use Charges**

<b>Location</b>	<b>Effective Date</b>	<b>Daily Rate</b>
Southern California	June 6, 2016	\$23.75
Northern California	June 6, 2016	\$23.75
Pacific Northwest	June 6, 2016	\$23.75
Houston, TX	March 12, 2018	\$21.00
Memphis, TN	March 12, 2018	\$21.50

Excludes tax, where applicable.

## Exhibit B

### Damage Inspection Criteria

**All Intermodal Chassis meet FMCSA standards.**

Billable Damages:

- Blatant and intentional damage, such as missing parts (stripped tail lights, etc.) is the MOTOR CARRIER's responsibility.
- Obvious impact damage will be billed to the MOTOR CARRIER.
- Tire damage is the MOTOR CARRIER's responsibility, including but not limited to the following damages: blown out, curbing, cut, flat/punctured, flat spotted, mismatched, and missing.
- Dragged tires that are flat-spotted and show signs of abuse are billable to the MOTOR CARRIER.
- Intermodal Chassis leased with O.E.M. bias-ply tires must be returned with O.E.M. bias-ply tires. Intermodal Chassis leased with O.E.M. radial tires must be returned with O.E.M. radial tires.  
**Mismatching of bias-ply and radial tires is not allowed.**
- Weather checked, worn or dry tires are not the MOTOR CARRIER's responsibility.

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 MOTOR CARRIER will be billed for the cost of a new OEM replacement tire.

**Exhibit C**

**Over the Road Repair & Maintenance**

MOTOR CARRIER may contact one of the following over-the-road (“OTR”) service provider(s) for any OTR failures to include mechanical or tires that are not related to damage caused by the MOTOR CARRIER.

<b>Market</b>	<b><u>OTR Provider Contact Info</u></b>
Southern California, Northern California, Pacific Northwest	<b>Mobile Trailer Works (MTW)</b> Email: <a href="mailto:service@mtwusa.com">service@mtwusa.com</a> (714) 936-6060 <a href="http://www.mtwusa.com">www.mtwusa.com</a>
Nationwide	<b>CIMC Intermodal Road Service</b> Call (888) 551-9189

We encourage you to use one of these services for your OTR needs. AIM cannot accept any invoices or claims from any other service provider.

We encourage you to establish an account with one of these authorized OTR vendors to expedite your road call in the event of a failure.

Liability of Expenses:

- AIM will assume responsibility for road service expenses incurred by the MOTOR CARRIER resulting from defective equipment or failure due to normal wear and tear. In the case of tire failure this will include peeled retreads holding air, casing and tread separations.
- MOTOR CARRIER will assume responsibility for expenses resulting from operational damage and neglect. In case of tire failure, this will include failure due to, but not limited to, impact breaks, cuts, curbing, dragging, run flat, skid flat, or tires that have been run on to a point where the original cause of failure can no longer be determined.
- Destroyed or disintegrated casing, melted tubes or tire tube stems sucked into the casing will be the MOTOR CARRIER’s responsibility.
- Replacement parts must be new parts and tires must be new OEM to replace damaged OEM tire or new recapped tire to replace damaged recap tire. Used replacement parts or tires will not be accepted.
- Continuing to drive after a tire has lost air and gone flat will often cause the failure of the adjacent tire due to overload, as that one tire cannot carry the load for both tires alone. In such cases, one tire (the 1st to fail) will usually appear run flat, or destroyed, while the other (2nd tire to fail) will appear as a casing failure, separation, peeled cap, or may even become destroyed as well. In these circumstances the MOTOR CARRIER will be held accountable for the second tire, and the

first tire to fail will only be accepted as an AIM responsibility if and only if the original cause of failure can be identified as an AIM responsibility as otherwise described in this Agreement, including this Exhibit C.

- The MOTOR CARRIER will be responsible for cost arising from OTR. If it is the opinion of the MOTOR CARRIER that the road service repairs were due to equipment failure and is AIM's responsibility, MOTOR CARRIER may pursue reimbursement by submitting a claim to the AIM location where the equipment was originally picked up from. The MOTOR CARRIER will be responsible for returning the failed parts/tires to the original pick up location at the time of submitting a claim. The parts/tires will be inspected to determine probable cause upon receipt by AIM location. MOTOR CARRIER must submit copies of all road service vendors' invoices and receipts to be submitted for reimbursement consideration. AIM will only accept responsibility for failures resulting from defective equipment and no other ancillary costs that may be associated with the OTR service.
- All repairs performed need to meet appropriate AIM standards. Should repairs be deemed as substandard and do not bring the equipment to its original condition as when the equipment was first picked up, reimbursement will be denied and the MOTOR CARRIER may be held liable to bring the equipment to a conforming standard.
- AIM requires that all OTR services be reported to the local AIM location within 72 hours of occurrence and any invoicing must be within 30 days of occurrence.

**Exhibit D**

**Depreciated Replacement Value of Chassis**

For Intermodal Chassis owned by AIM for which the MOTOR CARRIER is liable for the replacement cost in accordance with the Agreement, MOTOR CARRIER shall pay AIM an amount equal to the replacement value of such Intermodal Chassis listed in the table of Replacement Values, below (the "Replacement Value"), less 4% (four percent) per annum from the date of manufacture or remanufacture of the Intermodal Chassis (the "Depreciated Replacement Value"); provided, however, that in no event will the Depreciated Replacement Value be less than 52% of the Replacement Value of the Intermodal Chassis.

For the purpose set out herein, the Replacement Values of the AIM chassis are as follows:

<b>Equipment Type</b>	<b>Replacement Value</b>
20' Flushback	\$10,600
23'6" Fixed	\$12,600
40' Gooseneck	\$13,200
40' Gooseneck Extendable (40'/45')	\$14,600
20' Tridem	\$19,800
40' Tridem	\$18,200
20'/40' combo tandem	\$20,800
20'/40' combo tridem	\$22,500

For any AIM Intermodal Chassis that is not owned by AIM, the Depreciated Replacement Value shall be the replacement cost of such Intermodal Chassis, as invoiced to AIM by or on behalf of the owner thereof.

In the event a MOTOR CARRIER keeps an AIM Intermodal Chassis out-gated for more than ninety (90) consecutive days, AIM may notify such MOTOR CARRIER that the Intermodal Chassis must be returned. In the event the MOTOR CARRIER fails to return such Intermodal Chassis within thirty (30) days of any such notice, AIM reserves the right to declare such Intermodal Chassis a total loss and to bill MOTOR CARRIER for the Depreciated Replacement Value thereof in accordance with this section.

The Depreciated Replacement Value provisions described above are to be used solely to resolve isolated incidents of damage or loss, and nothing contained herein or in the Agreement or the Website shall be deemed to give the MOTOR CARRIER a general purchase option on the AIM Intermodal chassis. Title to the AIM Intermodal Chassis shall at all times remain with its owner, unless specifically waived in writing by such owner.



## Exhibit E

### Binding Arbitration Process Requirements

1. The process set forth herein is applicable for disputed transactions relating to U&R invoices between AIM and MOTOR CARRIER.
2. Disputes as to U&R invoices under the arbitration process will be mandatory and binding upon the parties. The arbitration process will be administered exclusively by the American Arbitration Association ("AAA"), according to the Commercial Arbitration Rules of the AAA.
3. A single arbiter will be appointed by the AAA. Each party shall pay its own AAA arbitration filing fees and an equal share of the fees and expenses of the arbiter. In all other respects, except to the extent otherwise determined by law, the parties shall be responsible for their own respective arbitration expenses, including attorneys' fees.
4. A demand for arbitration initiating the arbitration process must be filed with the AAA's office located in or closest to Scottsdale, Arizona, by the MOTOR CARRIER or AIM.
5. The number of disputed invoices that may be consolidated under a single arbitration claim is limited to provided that they involve the same or related charges or unlimited if they involve identical facts and argument based on this Agreement.
6. Any part of an invoice submitted for arbitration that is not disputed must be timely paid and cannot be withheld during the arbitration process.
7. The decision of the arbitration panel is final and no appeal is permitted. In response to the arbiter's decision, order of reimbursement, payment or cancellation of the invoice must occur within 15 days from the date of receipt of the arbiter's decision.