

TMP EQUIPMENT AGREEMENT

This TMP Equipment Agreement (as amended from time to time as provided below, this "Agreement") sets forth the terms and conditions governing the use of the intermodal equipment owned or operated by Transport International Pool, Inc. ("TIP") identified on Schedule 1 (the "Equipment"). Any party who accepts (whether directly or by act of its contractors or agents) delivery or interchange of any such equipment (a "User"), whether by execution of an Interchange Receipt or otherwise, shall by virtue of such use of the Equipment accept the rights, obligations and liabilities set forth on the part of the User herein.

- LEASE OF EQUIPMENT.** Each Interchange Receipt acknowledging acceptance of units of Equipment entered into from time to time by a User (whether directly or by act of its agent or contractor) shall constitute a separate lease of those units of Equipment identified in the Interchange Receipt by such User with TIP as lessor and such User as lessee. Each such Interchange Receipt shall be issued pursuant to this Agreement and shall be deemed to incorporate all of the terms and conditions of this Agreement, as though fully set forth therein. This Agreement shall supersede any inconsistent terms set forth on any Interchange Receipt.
- RESERVATIONS.** In order to obtain Equipment hereunder, a User shall either (a) obtain a reservation number through the equipment reservation system maintained with respect to the TMP Equipment (the "TMP Equipment Reservation System") by REZ-1, Inc. or any successor administrator selected by TIP (the "System Administrator") or (b) arrange a third party transfer through the TMP Equipment Reservation System (a "Permitted Street Interchange"). The party who obtains the reservation number with respect to a unit of Equipment shall be deemed the User for the purposes of this Agreement, absent convincing evidence to the contrary, and any other party who provides such reservation number in order to obtain such unit of Equipment shall be deemed for all purposes hereunder to be an agent or contractor of such User with all required authority to accept such unit of Equipment on behalf of such User and to obligate such User contractually hereunder. Equipment reserved by a User through the TMP Equipment Reservation System will be held for pickup for no more than forty-eight (48) hours. Equipment reserved for pickup the same day will be held until midnight (or close of business, if earlier) of the day the reservation was made, and Equipment reserved for pickup on the following day will be held until midnight (or close of business, if earlier) of the day after the day the reservation was made.
- TERM.** The lease term with respect to each unit of Equipment (the "Unit Term") will commence upon either (a) execution of an Interchange Receipt executed pursuant to this Agreement as provided in the Section 1 or (b) acceptance by such User of a unit of Equipment in a Permitted Street Interchange and will terminate upon either (x) acceptance of such unit of Equipment empty by a railroad listed on Schedule 2 (a "Participating Railroad") at a location such railroad has agreed to accept the Equipment as specified on Schedule 3 ("Permitted Return Location") (for the avoidance of doubt, acceptance of such unit of Equipment loaded by a Participating Railroad shall not terminate the Unit Term with respect to such unit of Equipment) or (y) acceptance of such unit of Equipment by a third party in a Permitted Street Interchange, transfer to whom has been approved through TMP Equipment Reservation System. For the purposes of this Agreement, the User shall be deemed in possession and control of a unit of Equipment during the Unit Term with respect to such unit of Equipment.
- TITLE AND ENCUMBRANCES.** This Agreement is a lease agreement and not a sale, conditional or otherwise. A User will not acquire by this Agreement, or by payment of User Charges, any right to, or interest in, the Equipment, except the right to possess and use the Equipment, in accordance with the provisions of this Agreement, as long as such User is not in default under this Agreement. User agrees to keep the Equipment free from all liens, charges and encumbrances arising in connection with User's use, operation or possession of the Equipment. The User also agrees to execute and furnish to TIP all instruments, documents, and assurances reasonably requested from time to time by TIP to protect TIP's interest in the Equipment.
- PAYMENT OF USER CHARGES; OTHER CHARGES.** (a) For each unit of Equipment accepted by a User (whether directly or by act of its contractors or agents), such User agrees to pay User Charges at the rates specified on Schedule 4 without set-off. Except as otherwise may be provided in this Agreement, User Charges shall accrue during the Unit Term for such unit of Equipment except for the period from (i) the time when the unit of Equipment is accepted loaded by Participating Railroad at a Permitted Return Location until (ii) the User is notified that such unit of Equipment is available for pickup. If a User delivers a unit of Equipment in damaged condition beyond normal wear to a Permitted Return Location, User Charges shall continue to accrue without abatement through and including the day

the repairs are authorized by the User on a form mutually agreed to by the parties and completed in accordance with the provisions of Section 9 below. (b) A User shall pay to TIP such other charges as are outlined on Schedule 5 subject to the terms and limitations specified for such charge on Schedule 5. The User acknowledges and agrees that such charges shall be in addition to, and not to the exclusion of, such other remedies as TIP may have at law or in equity. (c) The User agrees to pay all charges described in this Section 5 (including those described on Schedules 4 and 5) to REZ-1, Inc. (or any successor administrator selected by TIP) (the "Administrator") via electronic funds transfer within fifteen (15) days of receipt of invoice. Billing for such charges will be bimonthly. The User also agrees to pay an additional one and one-half percent (1.5%) per month on any charges not paid within thirty (30) calendar days of User's receipt of an invoice for such charges. TIP, directly or through the Administrator, may notify a User that its ability to accept and use Equipment shall be suspended or terminated if User fails to pay any charges within sixty (60) days of the original invoice therefor. The User recognizes and acknowledges that nothing in this Agreement relieves the User of the requirement to pay directly to any railroad in whose terminal any Equipment remains, in accordance with the appropriate Intermodal Rules Circular, terminal detention or storage charges on the Equipment.

6. **INTERCHANGE.** A User may only interchange Equipment to a Participating Railroad or to a third party pursuant to Permitted Street Interchange; in either case, the party accepting the Equipment shall be responsible to TIP for such Equipment in accordance with such party's agreement with TIP. If a User transfers possession or control of any Equipment to a party other than as provided in the previous sentence, (a) such User shall remain responsible to TIP for the Equipment and for the obligations assumed through possession and control of the Equipment under this Agreement, including User Charges and any loss of or damage to such Equipment, until such Equipment is accepted by a Participating Railroad and (b) at its sole discretion, TIP may restrict or suspend such User's ability to obtain Equipment. Upon acceptance of Equipment from or by a Participating Railroad (if applicable), the User shall complete and execute an Interchange Receipt reflecting the condition of such Equipment. If a User accepts a unit of Equipment pursuant to a Permitted Street Interchange, (x) such User agrees to be responsible for all User-responsibility damage to such unit of Equipment reflected on the Interchange Receipt for such unit of Equipment and (y) such User agrees to pursue any claims it may have with respect to such damage, whether against the party which interchanged such unit of Equipment to such User or otherwise, independently without making a claim against, offsetting or limiting performance of any obligation to or otherwise involving TIP.

7. **USE OF EQUIPMENT.** A User will not permit any Equipment to be used, operated, maintained or stored in an improper or careless manner, or in any manner that would result in damage to the Equipment, or in violation of this Agreement, or in a manner other than for the uses contemplated by the manufacturer. No User will permit any unlawful use or handling of the Equipment and will, at its expense, comply with all laws of all governments or governmental agencies that in any way affect or are applicable to the use, operation, storage or possession of the pertinent Equipment, including without limitation maintenance of records and reporting to authorities. The User shall use the Equipment only in connection with the intermodal (rail-motor carrier) transportation of goods on Participating Railroads between the locations specified on Schedule 3 hereto. Equipment shall be used primarily within the contiguous forty-eight states, shall not be routed to or from origins or destinations outside the United States, and shall not move by water. If the User uses any Equipment outside the United States of America, such User shall reimburse TIP for any customs duties, taxes and other charges to the extent attributable to such use, including without limitation all fines, penalties and other costs incurred by TIP, its agents or contractors that may arise from the use of the Equipment outside the United States or from the violation or infringement of any foreign laws, rules or regulations.

8. **HAZARDOUS MATERIALS.** (a) No User shall (or shall permit any of its agents, contractors or customers to) transport, load or store in or on any unit of Equipment any hazardous materials, medical wastes, hazardous wastes, radioactive materials, or explosives (collectively "HazMat"). If TIP (or any of its agents or contractors) determines that a User has used any unit of Equipment for such purposes, in addition to TIP's rights and remedies pursuant to Section 17, such User shall, at TIP's sole discretion, restore such unit of Equipment in accordance with Section 8(b) or purchase such unit of Equipment at its stipulated loss value calculated as provided on Schedule 6 hereto (the "Loss Value"). (b) TIP, in its sole discretion and at such User's sole cost, may have any unit of Equipment inspected and tested for any hazardous substance or material by any independent third-party qualified inspector of TIP's choosing. If any unit of Equipment is damaged, contaminated, stained, soiled or tainted as a result of transporting, loading or storing HazMat or any other substances, in addition to TIP's rights and remedies pursuant to Section 17, the User shall, at TIP's sole discretion, purchase such unit of Equipment at its Loss Value or promptly restore such unit of Equipment at such User's sole expense to its condition on the date such unit of Equipment was most recently accepted by a User from a Participating Railroad and, if decontaminated, provide proof of such decontamination including, without limitation, methodology and pre- and post-decontamination sampling results. The User shall owe User Charges for the time the User takes for any restoration and decontamination. If such User fails to restore any damaged, contaminated,

stained, soiled or tainted unit of Equipment within twenty (20) business days of TIP's demand therefor, TIP may at its sole discretion require such User to purchase such unit of Equipment at its Loss Value or restore such unit of Equipment at such User's sole cost.

9. **MAINTENANCE AND REPAIR; INSPECTION.** (a) The User is responsible for any damage to any unit of Equipment to the extent provided below during the Unit Term for such unit of Equipment, except for the period from (i) the time shown on the Interchange Receipt when the unit of Equipment is accepted loaded by Participating Railroad at a Permitted Return Location until (ii) the time shown on the Interchange Receipt when the unit of Equipment is accepted loaded by the User from the Participating Railroad (the Unit Term as so modified is the "Maintenance Term" for such unit of Equipment). While TIP is responsible for arranging repairs and maintenance on Equipment, the responsibility for payment for repairs and maintenance on any unit of Equipment during the Maintenance Term for such unit of Equipment shall be in accordance with the terms hereof and, to the extent not specified herein, the TOFC/COFC Interchange Rules of the Association of American Railroads (as amended from time to time, the "Interchange Rules"). Repairs and maintenance shall, to the maximum extent possible, be performed while Equipment is empty. The User shall be responsible for any cost or expense incurred by TIP for any repair performed by or at the direction of the User which is not performed in accordance with the Interchange Rules. TIP shall have the right to inspect all maintenance or repairs performed by or at the direction of the User and to correct, at such User's expense, all defects in materials or workmanship that, in TIP's reasonable judgment, result from the performance of such maintenance or repairs to an improper manner, or in a manner inconsistent with the standards set forth above. Upon 48 hours prior written notice, TIP, its agents, contractors and representatives have the right during normal business hours to enter the User's premises or, if User has secured appropriate consent, some other location where the Equipment is located in order to inspect, maintain or repair Equipment or to observe its operation and use. The User shall not be liable for the costs of such inspection. (b) Notwithstanding the foregoing, if TIP's records reflect that a unit of Equipment, when subject to damage, was in the possession or control of the User's agent or contractor (and not in the direct possession or control of the User or its employees), TIP shall first make a claim against such agent or contractor for any cost, expense, loss or liability with respect to such damage (a "Damage Claim") to the extent permitted under contractual arrangements between TIP and such agent or contractor, including without limitation the Uniform Intermodal Interchange Agreement in effect at such time (with any addenda, amendments, riders or schedules thereto). TIP shall provide the User with a copy of the claim it makes upon the User's agent or contractor. TIP shall use commercially reasonable efforts to collect on such claims from the User's agent or contractor until the earliest of (1) sixty (60) days after such agent or contractor receives such claim, (2) such agent or contractor refuses in writing to pay such claim or (3) such agent or contractor becomes insolvent or is subject to any proceeding in bankruptcy. If TIP does not collect all amounts owing by the User hereunder with respect to damage to a unit of Equipment during the Maintenance Term, then the User shall pay to TIP the difference between (x) the amounts owing by the User hereunder with respect to damage to a unit of Equipment during the Maintenance Term and (y) the amounts collected by TIP with respect to such damage, net of any reasonable out-of-pocket costs incurred by TIP in collecting such amounts. (c) All replacement parts and accessories shall become the property of TIP upon their attachment to any unit of Equipment. TIP reserves the right to dispute any such emergency repairs. TIP, a Participating Railroad or either of their respective agents or contractors may hold Equipment for a reasonable period to effect such repairs and maintenance, and if the Interchange Receipt or other evidence reasonably dispositive as to the condition of the Equipment places responsibility for repairs on the User (or User's agent or contractor), such User agrees to pay User Charges during such time.

10. **TAXES; GOVERNMENT CHARGES.** (a) Upon delivery to User, each unit of Equipment requiring licensing and/or registration shall be licensed and registered, at Lessor's sole cost and expense, in a jurisdiction of Lessor's choosing. Lessor shall arrange and pay all fees associated with the annual FHWA for each unit of Equipment, each of which inspections shall be conducted within the time periods required by applicable law or regulation. Lessor will assure that all stickers evidencing such inspections are affixed to the unit of Equipment and that all required forms evidencing such inspections are duly filed with the appropriate authority. (b) Other than as provided in subsection (a), the User shall be responsible for, and will pay when due, all charges, taxes and other governmental charges, as are now or may hereafter be imposed, levied or assessed in connection with the use, operation or possession of the Equipment by such User or based upon User Charges payable under this Agreement; provided however that the User shall not be responsible for any taxes (i) which are measured by or in respect to TIP's net or gross income, net or gross receipts, minimum tax or items of tax preference, franchise or privilege of doing business, capital or net worth or value added to the extent such value added taxes are in lieu of a tax based on, or measured by, or imposed with respect to, net or gross income, net or gross receipts, minimum tax or items of tax preference, franchise or privilege of doing business or capital or net worth or (ii) provided that TIP has received an indemnity reasonably satisfactory to TIP for any liability, expense or loss arising out of or relating to a contest, which the User is

contesting in good faith and by appropriate legal or administrative proceedings. Other than as provided in subsection (a), the User shall also be responsible for all (x) additional licenses, titles, registrations, permits, inspections and other certificates as may be required by law for the User's lawful use and operation of the Equipment, together with all interest and penalty charges related to any of the foregoing and (y) penalties, fines, citations, fees, costs or other charges arising (1) during the Unit Term of any unit of Equipment or (2) from any failure of such User or such User's agents or contractors to comply with any applicable laws, rules, regulations, statutes, ordinances or other legal requirements. Upon request by TIP, the User shall provide TIP with evidence of payment of taxes and charges.

11. **REDELIVERY.** (a) The User shall return all Equipment to a Permitted Return Location free of damage, normal wear and tear excepted, free and clear of all advertising or insignias placed thereon except for those placed by TIP and in a condition evidencing the standard of maintenance and repair required under Section 9 hereof. To the extent an Interchange Receipt executed when a Participating Railroad accepts a unit of Equipment from the User reflects damage that under Section 9 hereof is the User's responsibility, the User shall pay for the repairs necessary to remedy such damage. TIP shall, directly or through its agent or contractor, provide the User with an estimate of the cost of such repairs by facsimile or e-mail. If such User does not dispute the estimate in writing (specifying with particularity the basis for such User's disputes) by return facsimile or e-mail delivered to TIP no later than the end of the second business day following the day on which such User receives such estimate, such User shall be deemed to accept such estimate. Notwithstanding the foregoing, if such User has not provided TIP with facsimile or e-mail contact information, (i) TIP shall have no obligation to provide an estimate to such User unless such User provides written request therefor to TIP within three (3) business days of the date of the final Interchange Receipt with respect to such unit of Equipment and (ii) such User shall be deemed to accept TIP's estimate unless (A) TIP receives written request for an estimate pursuant to clause (i) and (B) such User disputes such estimate in writing delivered to TIP no later than the end of the business day following the day on which such User receives such estimate. The User shall pay any invoice with respect to such repairs within thirty (30) days of receipt, unless such User contests such charge as provided above. (b) If any Equipment is returned to a Participating Railroad other than in connection with a railroad move of such Equipment, and there shall at the time of such delivery be in, upon or attached to such unit any other things of reasonably evident value belonging to the User or in the custody or control of the User, TIP may take possession of such property and hold it in TIP's possession or in public storage for the account and at the expense of such User. If TIP so takes possession of such property and holds it, (i) TIP shall make such property available for claim by the User or the User's designee for at least thirty (30) days after notice to the User, and User or User's designee may repossess such property upon payment of TIP's actual expenses incurred in unloading and storing such property and (ii) after storage for the period provided in clause (i), TIP may reasonably dispose of such property without further liability.

12. **DISCLAIMER OF WARRANTIES.** NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE USER ACKNOWLEDGES AND AGREES THAT (A) ALL EQUIPMENT SUCH USER ACCEPTS (WHETHER DIRECTLY OR BY ACT OF ITS AGENT OR CONTRACTOR) ARE OF A SIZE, DESIGN, TYPE AND MANUFACTURE ACCEPTABLE TO SUCH USER, (B) THAT SUCH USER IS SATISFIED THAT THE SAME IS SUITABLE FOR ITS PURPOSES, (C) THAT TIP IS NOT THE MANUFACTURER THEREOF AND (D) THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE, TIP MAKES NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OF EQUIPMENT (EITHER UPON DELIVERY THEREOF TO SUCH USER OR OTHERWISE), INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, TIP SHALL NOT HAVE ANY LIABILITY TO THE USER FOR ANY CLAIM, LOSS OR DAMAGE CAUSED OR ALLEGED TO HAVE BEEN CAUSED DIRECTLY, INDIRECTLY, INCIDENTALY OR CONSEQUENTIALY BY ANY UNIT OF EQUIPMENT, OR BY ANY INCIDENT WHATSOEVER IN CONNECTION THEREWITH, WHETHER ARISING IN STRICT LIABILITY OR OTHERWISE, AND TIP SHALL HAVE NO LIABILITY DUE TO ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN. THE USER RESERVES ITS RIGHTS AGAINST ANY MANUFACTURER OF ANY UNIT OF EQUIPMENT OR ANY PARTS INSTALLED THEREIN, INCLUDING BUT NOT LIMITED TO THE RIGHT TO ENFORCE ALL WARRANTY CLAIMS AGAINST SUCH MANUFACTURER. TIP HEREBY GRANTS AND ASSIGNS TO THE USER ALL THE RIGHTS AND BENEFITS OF ANY WARRANTY APPLICABLE TO ANY UNIT OF EQUIPMENT, INCLUDING THE RIGHT TO MAKE CLAIMS THEREUNDER.

THE USER'S OBLIGATIONS UNDER THIS AGREEMENT ARE ABSOLUTE AND SHALL NOT BE AFFECTED BY ANY CIRCUMSTANCES OR EVENT BEYOND THE USER'S CONTROL OF WHATEVER NATURE.

13. **NOTIFICATION OF ACCIDENT OR LOSS.** The User shall, to the extent of its knowledge and at its expense and within forty eight (48) hours of receiving actual knowledge thereof, notify TIP of each accident and each occurrence of loss involving a unit of Equipment. The User's notice shall describe to the best knowledge of the responsible officer or employee of the User providing such notice the time, place and nature of the accident or loss, the extent of any

resulting Equipment damage, the names and addresses of all involved parties, and such other information as may be reasonably required by TIP. A User shall promptly advise TIP of all notices or documents received by such User in connection with any claim relating to any unit of Equipment.

14. **INDEMNIFICATION.** The User shall save, defend and indemnify and hold harmless TIP, its officers, directors, agents, and employees, from and against, any and all losses (including, without limitation, each and every hazard to or loss of any unit of Equipment during the Unit Term for such unit of Equipment), claims, actions, costs, expenses, fees, damages, fines and liabilities (including reasonable attorneys' fees) (each a "Claim"), resulting directly or indirectly in any manner from the performance or nonperformance of this Agreement by the User or the lease, operation, use, storage or possession of any Equipment by the User, or any accident during the Unit Term involving any Equipment, or the shipment or storage or loss of the cargo therein during the Unit Term, or resulting from any product left, stored, loaded or transported in or upon any Equipment during the Unit Term, or the use, possession or operation of any Equipment by any third party during the Unit Term for such unit of Equipment, except to the extent that such Claim results from any gross negligence or willful misconduct in performance of TIP's maintenance and repair obligations under Section 9, whether by TIP or a third party retained by TIP for such purpose. The User shall notify TIP within 48 hours of receiving actual notice of any circumstances giving rise to any claim which may be made against TIP. All of the User's Indemnification obligations under this Agreement shall survive the termination of the Unit Term for any unit of Equipment or of this Agreement.

15. **RISK OF LOSS.** The User shall bear the risk of all direct, indirect and consequential loss, damage or deprivation of use of any unit of Equipment during the Maintenance Term for such unit of Equipment. If any unit of Equipment is lost, stolen, or otherwise disappears, or is damaged to such an extent that it cannot, in TIP's reasonable opinion, be economically restored to a good operating order and condition, the User will promptly notify TIP. The User shall continue to pay User Charges with respect to such unit of Equipment until the User pays to TIP the Loss Value determined as of the date when first reported to TIP as missing or damaged. Upon such payment, TIP shall pay to such User an amount equal to the total amount of User Charges paid by such User with respect to such unit of Equipment since the date of the User's notice of loss or damage to such unit of Equipment and such User's User Charge payment obligation under this Agreement will terminate with respect to such unit of Equipment. In the event that, after the User pays the Loss Value with respect to a unit of Equipment, the User reasonably determines that an event of loss did not occur with respect to such unit of Equipment and such unit of Equipment is returned to TIP in operational condition, then TIP will reimburse the amount received from the User, less any User Charges due from the date from which User Charges were terminated until the reinstatement date, plus an administrative fee of \$35, and, if title was transferred to the User, the User shall reconvey title to TIP.

16. **INSURANCE.** Each User shall at its sole cost and expense procure, and keep in full force and effect during the Unit Term with respect to each unit of Equipment such Users accepts hereunder, valid and pre-paid Commercial Auto Liability insurance and Commercial Auto Physical Damage or Trucker's Liability insurance and Trucker's physical damage policies satisfactory to TIP with coverage for: (a) hired autos (trailers) for bodily injury and property damage liability, with a minimum combined single limit of two million dollars (\$2,000,000) per occurrence or, if any unit of Equipment is used to haul or store hazardous materials, a minimum combined single limit of five million dollars (\$5,000,000) per occurrence with either an Environmental Impairment Liability or Pollution Liability endorsement equal to the combined single limit per occurrence or a separate policy for Environmental Impairment Liability or Pollution Liability with a minimum combined single limit of five million (\$5,000,000) per occurrence (provided that maintaining such coverage shall not void or restrict such User's obligations or TIP's rights under Section 8); (b) hired autos (trailers) for physical damage providing collision and comprehensive coverage with limits equal to the replacement value of the Equipment with TIP as loss payee; and (c) Commercial General Liability for contractual liability coverage for hold harmless agreements, with a minimum combined single limit of two million dollars (\$2,000,000) per occurrence. Each of the foregoing liability policies shall name TIP as loss payee or as additional insured, as applicable. All said insurance shall be in form (including all endorsements required by TIP) and amount with companies reasonably satisfactory to TIP. The User shall use all reasonable efforts to have all checks relating to such losses delivered promptly to TIP. The User shall provide TIP with prompt written notification of any accident or other event involving any unit of Equipment that may give rise to claims against TIP. Prior to accepting any Equipment, and from time to time upon reasonable request therefor by TIP, the User shall deliver to TIP a valid certificate of insurance, which shall become part of this Agreement, evidencing insurance coverage in compliance herewith. The User shall cause to be provided to TIP, prior to the scheduled expiration or lapse of such insurance coverage, evidence satisfactory to TIP of renewal or replacement coverage. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by independent instrument (including, without limitation, a certificate of insurance) furnished to TIP, that (x) it will endeavor to give TIP at least thirty (30) days' prior written notice of the effective date of any cancellation of such

policy; and (y) insurance as to the interest of any named additional insured or loss payee other than the User shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of the User or any person other than TIP with respect to such policy or policies.

17. **DEFAULT; REMEDIES UPON DEFAULT.** (a) Time is of the essence in the performance of the User's obligations under this Agreement, and the occurrence of one or more of the following shall constitute a default: (i) the User fails to perform any obligation assumed by the User under this Agreement and such non-performance continues for a period of thirty (30) days after TIP has notified such User of its failure to perform the same; (ii) the User (A) becomes insolvent, (B) commits an act of bankruptcy, (C) becomes subject to any voluntary bankruptcy proceedings or involuntary bankruptcy proceedings, (D) makes an assignment for the benefit of creditors, (E) appoints or submits to the appointment of a receiver for all or any of its assets, (F) admits in writing of its inability to pay its debts as they become due or (G) enters into any type of voluntary or involuntary liquidation; (iii) the User or any affiliate thereof defaults under any other agreement with TIP or affiliate of TIP with respect to a payment owed and not disputed in good faith in an amount greater than \$50,000; (iv) any letter of credit, guaranty or other security ("Security") given by the User to secure the performance of this Agreement will expire or terminate, unless such Security is replaced on or before its expiration or termination by comparable Security of equal or greater value; or (v) any Security given by the User to secure the performance of this Agreement will in Owner's opinion become worthless. (b) In the event of any default by the User, TIP may, at its option and without demand or notice to such User, do one or more of the following: (1) pay all amounts, or perform or cause to be performed all obligations required to be paid or performed by such User under this Agreement, and recover from such User all amounts so paid or the reasonable value of all services so performed; (2) terminate such User's rights under this Agreement and require such User to immediately return any Equipment accepted by it or in its possession to TIP at such locations as TIP may designate or (3) upon prior written notice to such User, to enter upon any premises where any Equipment accepted by such User or in its possession is located and take immediate possession of and remove such Equipment and shall be deemed such User's agent for such purposes. If TIP takes possession of any Equipment under this Section 16 with other property of reasonably evident value contained in, upon or attached thereto, TIP may take possession of such property and hold it in TIP's possession or in public storage for the account and at the expense of such User. If TIP so takes possession of such property and holds it, (i) TIP shall make such property available for claim and repossession by the User or the User's designee upon payment of TIP's actual expenses incurred in unloading and storing such property for at least thirty (30) days after notice to the User and (ii) after storage for the period provided in clause (i), TIP may reasonably dispose of such property without further liability. No termination, repossession or other act by TIP after default will relieve a User from any of its obligations under this Agreement. The User shall pay to TIP on demand all fees, costs and expenses incurred by TIP in enforcing its rights under this Agreement including, without limitation, reasonable attorney's fees. The remedies provided in favor of TIP shall not be exclusive, but shall be cumulative and in addition to all other remedies provided TIP in this Agreement or existing at law or in equity, any one or more of which may be exercised simultaneously or successively.

18. **IDENTIFICATION OF TIP'S INTERESTS.** TIP reserves the right to affix to each unit of Equipment identifying marks, decals, signs or other forms of notice indicating TIP's ownership interest in such Equipment. No User shall purposefully remove, obscure, deface or obliterate any such identifying marks, decals, signs or other forms of notice, nor knowingly permit or suffer any other person to do so.

19. **ALTERATIONS.** The User shall not purposefully make nor knowingly permit any changes in, or improvements to, any Equipment, nor remove (except for purposes of repair or replacement permitted under Section 7 hereof) any part or accessory without first obtaining the written consent of TIP. Any changes in, or improvements to, any unit of Equipment shall become the property of TIP.

20. **ASSIGNMENT.** The User consents to any assignment of this Agreement by TIP, and the User agrees that the rights of any assignee will not be subject to any defense, setoff or counterclaim that such User may have against TIP, and that any such assignee will have all of the rights and obligations of TIP under this Agreement. Neither this Agreement nor any of a User's rights under it, shall be assignable by such User, either by its own act or by operation of law, without the prior written consent of TIP. Any such attempted assignment by a User shall be void.

21. **SUBORDINATION.** This Agreement is subject and subordinate to all of the terms, covenants and conditions of any chattel mortgage, pledge, security agreement, conditional sale contract, lease or like agreement by which TIP is bound and which applies to the Equipment.

22. **NON-WAIVER.** Any failure by TIP to require the strict performance of any obligation assumed by any User under this Agreement, or any failure of TIP to exercise any right or remedy to which it is entitled, shall not constitute a waiver nor cause a diminution of any User's obligations or TIP's rights provided under this Agreement. None of the provisions of this Agreement shall be deemed waived by any act or knowledge of TIP, but only by a written instrument executed by TIP to be bound thereby. Waiver by TIP of any default will not be a waiver of any other default.

23. **CONSTRUCTION; GOVERNING LAW.** If any provision of this Agreement, or its application, is held by a court having competent jurisdiction to be invalid or unenforceable under an applicable law, the remainder of this Agreement shall not be affected thereby, and to this end, the provisions of this Agreement are agreed and deemed to be severable. Titles to paragraphs have been inserted for convenience in locating the various provisions and shall not be considered in the interpretation of this Agreement. Subject to its provisions (including without limitation Section 19), this Agreement shall be binding upon and inure to the benefit of TIP and the User and their respective successors and assigns. The laws of the State of Illinois (without giving effect to its conflict of law rules) shall govern this Agreement and the rights and obligations of the parties.

24. **NOTICES.** Notices to TIP shall be delivered as follows: Transport International Pool, Inc., c/o General Electric Railcar Services Corporation, 161 N. Clark Street, Chicago, IL 60601, Attn: Intermodal Marketing, Facsimile number: (312) 577-0446, unless TIP hereafter provides notice of different notice information, in which case notices shall be delivered in accordance with the most recent of such notices. Notwithstanding anything else herein, TIP shall have no obligation to provide notices hereunder to any User unless (a) such User has specified in a writing delivered to TIP the address to which all notices should be directed or (b) otherwise provided in an agreement executed by both the User and TIP.

25. **INTEGRATED AGREEMENT.** The Agreement, the Interchange Receipts executed pursuant to this Agreement, the Exhibits to this Agreement and the Interchange Rules to the extent they are specifically incorporated and not superseded hereby, constitute the entire agreement between the parties pertaining to the Equipment and the related subject matter. No agreements (including, without limitation, the Uniform Intermodal Interchange Agreement), representations, or understandings not specifically contained herein will be binding upon the parties with respect to the subject matter hereof. Except as expressly provided in this Agreement, the terms, covenants, conditions, and other provisions of this Agreement may be changed, amended, or modified only by a written instrument that specifically purports to do so and is signed by both parties.

26. **AMENDMENTS.** Unless otherwise provided in an agreement executed by both the User and TIP, TIP may amend the terms hereof from time to time without notice to any User, each of which amendments shall be effective with respect to any Equipment accepted empty by any User on or after the date of such amendment.