

Client Billing Agreement AGREEMENT

This Client Use Agreement ("Agreement") is made as of this ___ day of _____, 20___, between **HRCP II, L.L.C.** ("HRCP II") and _____, a _____ ("Option 2 User"), as follows.

Recitals

R-1 HRCP II operates a chassis pool (the "Chassis Pool") service the ocean marine terminals operated by Virginia International Terminals, LLC in Virginia. HRCP II is providing an option (known as "Option 2") to Option 2 User under which HRCP II interchanges Chassis in the Chassis Pool directly to motor carriers engaged by Option 2 User. HRCP II will then bill the motor carrier or Option 2 User, per the instructions of Option 2 User and the motor carrier.

R-2 Option 2 User desires to participate in Option 2 pursuant to the terms stated herein.

R-3 The following terms shall have the following meanings in this Agreement:

"Chassis" shall mean Chassis which have been contributed to, or leased by, the Chassis Pool for use in over-the-road transportation of intermodal freight containers.

"CES" shall mean the actual owner of the Chassis used by Option 2 User.

"Terminals" shall mean Norfolk International Terminal, Virginia International Gateway in Portsmouth, Virginia, Portsmouth Marine Terminal, Richmond Marine Terminal, and Newport News Marine Terminal, and other chassis and container yards/depos operated by or on behalf of HRCP II.

"Use Period" shall mean the period beginning upon Option 2 User's receipt of the Chassis (including receipt by its customer, agent or contractor), or the placement of Option 2 User's container on the Chassis, and ending on the date the Chassis is interchanged to a motor carrier at one of the Terminals.

In consideration of the foregoing, the mutual promises stated below, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HRCP II and Option 2 User agree as follows:

ARTICLE 1: PAYMENT.

1.1 Payments for use of a Chassis shall apply to each full and partial day of a Use Period.

1.2 Payments for Option 2 User's use of Chassis shall be sent to HRCP II at the address for notices provided in this Agreement on or before the fifteenth (15th) day after HRCP II submits the invoice for payment by Option 2 User. Invoices shall be issued monthly.

1.3 HRCP II will, at the direction of Option 2 User, bill the motor carrier for the use of a Chassis in the Chassis Pool used to transport one of Option 2 User's containers. Option 2 User agrees to follow HRCP II's reasonable rules and protocols for this billing process. HRCP II sets the rate for use of Chassis interchanged to motor carriers under Option 2 from time to time. The terms and conditions and other charges relating to use of Chassis under Option 2 are stated in the Chassis Interchange

Agreement, as it may be amended from time to time (the "Interchange Agreement"), posted at <http://www.portofvirginia.com/tools/trucker-resources/hampton-roads-chassis-pool>. Option 2 User agrees to these terms.

1.4 HRCP II will offer Option 2 User the option of having the bill for use of chassis under Option 2 sent to Option 2 User rather than the motor carrier when so directed by Option 2 User. The current rate for bills sent to steamship lines under Option 2 is \$00.00 per day.

ARTICLE 2: TERMINATION.

2.1 Either Option 2 User or HRCP II may terminate this Agreement without cause by giving written notice to the other party of the intent to terminate this Agreement, and this Agreement shall terminate three (3) months after such notice.

2.2 HRCP II may terminate this Agreement for cause if: (i) Option 2 User commits a material breach of its obligations under this Agreement or fails to comply with a material requirement or duty hereunder, and fails to cure same within thirty (30) days written notice of such breach; (ii) Option 2 User fails to pay undisputed amounts billed to it for sums due hereunder and fails to cure same within ten (10) days written notice of such failure; and/or (iii) Option 2 User enters or is placed in bankruptcy, trusteeship, liquidation, or similar proceeding, voluntarily or involuntarily.

ARTICLE 3: CONDITIONS ON USE OF CHASSIS.

3.1 Option 2 User may from time to time use a Chassis from the Chassis Pool for on-terminal use. Unless and until the Chassis is interchanged to a motor carrier, Option 2 User shall be responsible for the Chassis and charges for its use pursuant to this Agreement. The current rate for on-terminal use for Option 2 participants is \$0.00 per day, subject to change upon thirty (30) days written notice from HRCP II.

3.2 Use of Chassis for on-terminal use shall be in accordance with, and may be limited by, HRCP II's policies and procedures as amended from time to time and made available to Option 2 User. Those policies and procedures may provide that HRCP II or Virginia International Terminals, LLC ("VIT") may remove/ground Option 2 User's container(s) placed on a Chassis for on-terminal use under certain circumstances, including without limitation Option 2 User's use of Chassis in excess of limits stated in the policies and procedures. If a container belonging to Option 2 User is so grounded, Option 2 User shall pay the charge for the grounding to VIT according to VIT's Schedule of Rates.

3.3 If HRCP II notifies Option 2 User in writing that a motor carrier is an Unauthorized Motor Carrier (defined below), then Option 2 User shall take prompt measures to prohibit the Unauthorized Motor Carrier from transporting Option 2 User's containers on chassis in the Chassis Pool. An "Unauthorized Motor Carrier" is a Motor Carrier that HRCP II has not approved, or no longer approves to use Chassis in the Chassis Pool. HRCP II shall not arbitrarily designate a motor carrier as an "Unauthorized Motor Carrier".

ARTICLE 4: REPRESENTATIONS, WARRANTIES, AND COVENANTS.

4.1 EXCEPT AS EXPRESSLY CONTAINED IN THIS AGREEMENT, HRCP II DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY OTHER COVENANT, REPRESENTATION OR WARRANTY

AS TO THE FITNESS, INCLUDING WITHOUT LIMITATION FITNESS FOR USE OR A PARTICULAR PURPOSE, MERCHANTABILITY OR CONDITION OF THE CHASSIS (INCLUDING WITHOUT LIMITATION TIRES AND TUBES) PROVIDED TO OPTION 2 USER OR ITS MOTOR CARRIER.

4.2 Option 2 User represents, warrants, and covenants to HRCP II that (i) the Chassis will be used only for the over-the-road transport or repositioning of freight containers, or repositioning of the Chassis, (ii) only motor carriers having in effect the Uniform Intermodal Interchange Agreement ("UIIA") or comparable interchange agreement (including comparable insurance and indemnification requirements at least meeting the minimum criteria set forth in the UIIA) will be used to haul the Chassis, and (iii) Option 2 User will notify HRCP II immediately of (a) any claim, suit, or notice of any claim or suit arising from an incident involving Option 2 User's use of a Chassis, and (b) any incident which could give rise to such a suit or claim.

ARTICLE 5: INSURANCE AND INDEMNIFICATION.

5.1 Option 2 User at its sole cost and expense shall procure and maintain in force at all times during the term of this Agreement the insurance described in **Appendix A** to this Agreement. All policies of insurance must be provided to HRCP II for review and be acceptable to HRCP II in form and substance.

5.2 Option 2 User shall indemnify, defend and hold harmless HRCP II, its manager, the CES, their successors and assigns, and their respective members, officers, employees, and agents from and against any and all claims, liabilities, suits, demands, causes of action, damages adjudged due or claims reasonably settled, penalties, fines, costs and expenses (including reasonable attorneys' fees) (collectively "Claims") arising from or in connection with:

- (i) The use of the Chassis during a Use Period, provided that the foregoing indemnification and hold harmless obligation shall not apply with respect to HRCP II and its Manager for Claims caused by breach of this Agreement or negligence by HRCP II, Manager, or other indemnitee; and
- (ii) The breach of this Agreement by Option 2 User, including without limitation breach of any warranty, representation, or covenant.

ARTICLE 6: GENERAL PROVISIONS.

6.1 Applicable Law and Forum Selection. This Agreement and all provisions hereof shall be governed by the laws of the Commonwealth of Virginia, and this Agreement shall be deemed made in Virginia regardless of which party is the last to sign. Option 2 User and HRCP II agree that the sole venue for all disputes, litigation, and claims between the parties based on or arising out of this Agreement shall be the Circuit Court for the City of Norfolk, Virginia or the United States District Court for the Eastern District of Virginia (Norfolk Division).

6.2 Successors and Assigns. This Agreement and the rights and obligations set forth herein shall bind and inure to the benefit of Option 2 User and HRCP II's respective successors and assigns.

6.3 HRCP II's Agents and Designees. In performing its obligations under this Agreement, HRCP II may engage or appoint such agents or designees as HRCP II sees fit in its sole discretion, provided that HRCP II notifies Option 2 User in writing of such engagement or appointment.

6.4 Assignment; Subleasing. Option 2 User may not, in whole or in part, assign this Agreement or sublease Chassis received by it subject to this Agreement. Option 2 User shall not permit use of any Chassis by any party other than Option 2 User (including an authorized motor carrier(s) under an interchange agreement with Option 2 User, as per Article 4.2 hereof) without the prior written approval of HRCP II, which may be granted, withheld, or conditioned in HRCP II's sole discretion.

6.5 Severability. Should any terms, covenant, condition or provision in this Agreement be held invalid, illegal or unenforceable, the remainder of this Agreement shall not be affected thereby and each term, covenant, provision or condition of the Agreement shall be valid and enforceable to the extent permitted by law.

6.6 Amendment. No modification or amendment to this Agreement shall be made unless reduced to writing and executed by Option 2 User and HRCP II.

6.7 Notices.

6.7.1 Except where electronic notice is permitted under this Agreement, all notices permitted or required to be sent under this Agreement shall only be effective if in writing and if sent via one of the following methods to the addresses specified below: (i) personal delivery; (ii) certified mail, return receipt requested; or (iii) nationally recognized overnight delivery service, such as Federal Express. Notices may also be sent via email and shall be deemed effective upon successful transmission, provided that notice is also sent simultaneously via one of the other methods set forth above. Either party may change its notice address or facsimile number by providing written notice of such change in accordance with this paragraph.

If to Option 2 User:

Attn: _____

Telephone: _____

Email: _____

If to HRCP II:

Attn: Manager

1431 International Terminal Blvd.

Norfolk, VA 23322

Telephone: (757) 440-2892

aellermann@hrcp2.org

6.7.2 If electronic notice is permitted under this Agreement, such notice shall be effective if sent electronically to the addresses specified below. However, if the sending party receives a message or other notification indicating that an electronic transmission was unsuccessful, such as "delivery failure" or words to that effect, such electronic notice shall not be effective, and the sending party shall communicate such notice pursuant to Section 6.7.1 above. Either party may change its notice address for electronic notices by providing notice of such change in accordance with this paragraph.

6.8 Consequential Losses. In no event shall either party be liable to the other for loss of profits or incidental, consequential, or liquidated damages of any nature arising from or in connection with this Agreement.

6.9 No Joint Venture. This Agreement establishes a contract between HRCP II and Option 2 User and shall not be construed to create a partnership or joint venture between HRCP II and Option 2 User. Except to the extent they are CESs of specific Chassis, Option 2 User has no ownership rights or interest in the assets of the Chassis Pool or HRCP II.

6.10 Entire Agreement. This Agreement and the Appendix hereto constitute the entire agreement between HRCP II and Option 2 User and supersedes all prior agreements or understandings, oral or written, between HRCP II and Option 2 User with respect to the subject matter hereof.

Witness the following signatures and seals:

HRCP II, L.L.C.

By: _____ (SEAL)
Name: _____
Title: _____

By: _____ (SEAL)
Name: _____
Title: _____

APPENDIX A

REQUIRED INSURANCE

Option 2 User. Chassis Liability Insurance covering third party claims for property damage, bodily injury and death, claims for damages for physical loss and damage of equipment, and endorsed or written to cover contractual liability and indemnity obligations of Option 2 User under this Agreement. Additional requirements:

- 1.1 Limits of liability shall be not less than Ten Million US Dollars (\$10,000,000) for combined single limit.
- 1.2 May not be cancelled or modified without thirty (30) days prior written notice to User
- 1.3 Occurrence based.

If Option 2 User uses its own tractor to transport Chassis over the road, then Option 2 User must carry similar amounts of automobile insurance, subject to the same requirements.

The aforesaid policy(ies) will be endorsed to provide HRCP II with thirty (30) days' written notice prior to cancellation or reduction in coverage required by this Agreement. The insurance policies shall be issued by insurance companies with a Best's rating of at least B+ or equivalent, and shall be subject to HRCP II and its manager's approval, which shall not be unreasonably withheld. Option 2 User shall provide HRCP II with certificates of insurance prior to the supply of Chassis under this Agreement.

Certificates of Insurance should be sent to:

Attention: Manager
HRCP II, L.L.C.
1431 International Terminal Blvd.
Norfolk, VA 23505

Option 2 User and its insurer shall waive all subrogation rights against any CES and any other HRCP II chassis user and their insurers with respect to any liability or Claims arising from or in connection with the use of the Chassis by Option 2 User during a Use Period.