

## GENERAL TERMS AND CONDITIONS

### DOT COMPLIANCE SERVICES AGREEMENT

**DOT COMPLIANCE MANAGEMENT PROGRAM.** Simplex will assist the Client in the management of their compliance with specific federal and state Department of Transportation laws and regulations (“FMCSA agency regulations”) by providing the Services in accordance with the terms of the parties DOT Compliance Services Agreement (“Services”) and as outlined below following the receipt of payment of the applicable fees set forth on the Invoice.

Simplex Group will assign a Client Service Representative (“CSR”) to consult with and assist Client with DOT compliance matters (subject to per driver and/or applicable Additional Service fee) including:

- Driver Qualification Services;
- Substance Abuse Program;
- Training and Manuals (provided through Simplex Group online training portal);
- Compliance Paperwork;
- Driver Hours of Service – ELOG Management;
- DOT Compliance Management;
- 24/7 Access to Simplex Compliance Portal

The CSR will serve as the Client’s contact for compliance services and will be available to Client via telephone and/or videoconferencing at times mutually agreed upon by the parties during normal business hours to assist Client in their management of DOT Compliance matters. The Simplex Group CSR is supported by experts in a variety of compliance areas including: substance testing, hours of service specialists and a bilingual call center. Simplex will utilize its own proprietary software compliance system (“SCRM”) specifically developed to assist Simplex Group Clients with their DOT compliance management, many services and resources being provided through the Simplex Group’s Compliance Portal. Simplex Group uses only national certified labs for drug testing with electronic data encryption for security and privacy. One Time Implementation Fee does not include per driver fee for the first month of service or any Additional Service service fees. Simplex Group will compile and store the Client’s DOT Compliance Management Program materials on Simplex Group’s Compliance Portal which will be accessible to Client seven days a week, twenty four hours a day.

#### **A. FMCSA Substance Abuse Policy**

Simplex will assist the Client in preparing a Substance Abuse Policy Manual in compliance with the requirements of 49 CFR 382.601 and which will include the Client’s alcohol and controlled substances policies and which will contain a description of the consequences and options for any driver who receives a positive alcohol or controlled substances test result. Client shall be solely responsible for obtaining a written Acknowledgement from its Owner Operators and/or drivers documenting the provision of the Substance Abuse Policy Manual to the respective Owner/Operator and shall retain the Acknowledgement for each Owner Operator/driver in its records. Simplex is not responsible for providing any further services concerning this category of services beyond those services set forth herein.

#### **B. Alcohol and Controlled Substance Testing**

Simplex will act as a Third-Party Administrator (“C/TPA”) in accordance with 49 CFR 40 et seq. and will provide/coordinate alcohol and controlled substance testing services as required by applicable FMCSA regulations for applicable employees of Client pursuant to Client’s request. These services will include: pre-employment testing, random testing, selection, reasonable suspicion testing, post-accident testing and return-to-duty and follow-up testing. All alcohol and controlled substance testing is billed separately to Client on a per test basis for those drivers which the monthly DOT driver fee is paid..

For all testing procedures, Simplex may act as a collection agent and/or establish a convenient collection site where Client’s employees, and Owner Operators/drivers will be tested for drugs and alcohol as required by Client’s Substance Abuse Policy and DOT agency regulations. In the event Simplex does not act as a collection site, Simplex will designate a collection site to obtain the subject test sample. Simplex (or the designated collection site) will forward test samples to a certified laboratory of Simplex’s choice that complies with the requirements of 49 CFR 40.81. Simplex will forward test result to the designated Designated Employer Representative (“DER”) for the client. Client hereby acknowledges that Simplex shall not be responsible for the accuracy in the results provided by the laboratory.

Simplex will also maintain an Alcohol and Controlled Substances Abuse File for each Owner Operator/driver designated in writing by Client and for which the monthly DOT driver service fee is paid. Simplex will also assist the Client in engaging the services of a Medical Review Officer (“MRO”) to review results of testing and to act as an independent and impartial advocate for the accuracy and integrity of the controlled substances testing process and to perform the responsibilities set forth in 49 CFR 40.123.

The Client will be responsible for designating an employee to serve as a Designated Employer Representative (“DER”) who will receive communications and test results from Simplex and who will be authorized to make necessary decisions in the testing and evaluation process and take immediate action to remove Owner Operator/driver from safety-sensitive functions or duties where

appropriate. Pursuant to DOT agency regulations, Simplex is prohibited from serving as Client's DER. The Client is also responsible for ensuring that no Owner Operator/driver performs any safety-sensitive function or duty for the Client if the Owner Operator/driver: (a) refuses to take a required alcohol or controlled substances test(s); (b) adulterates the results of any tests; or, (c) obtains a positive test result. Simplex will assist Client in providing Owner Operator/driver(s) with any information required by DOT agency regulations or requested by the Owner Operator/driver, including test results.

The Client is also responsible for compliance with all applicable requirements of DOT and/or FMCSA drug and alcohol testing laws and regulations. The Client can be subject to sanctions for any violation of any FMCSA drug and alcohol testing regulations or laws, the FMCSA can subject Client to sanctions.

**i. Pre-Employment Testing**

Simplex will coordinate controlled substance testing (and alcohol testing when required by Client's company policy or DOT requirements) for all prospective Owner Operator/drivers referred to Simplex in accordance with 49 CFR 382.301. The Client shall be responsible for ensuring that no Owner Operator/driver performs any driving or other safety-sensitive functions or duties for the Client prior to Client's receipt of verified negative test results for the driver. Client is responsible for ensuring that all Owner Operator/driver(s) complete controlled substance testing (and alcohol testing when required by Client's company policy or DOT requirements) prior to performing any safety sensitive function.

**ii. Random Testing**

Simplex will assist Client in establishing and implementing a random alcohol and controlled substance testing program in compliance with 40 CFR 382.305. Simplex will advise the Client when random testing is required pursuant to FMCSA regulations and will assist the Client in designating which Owner Operator/driver(s) are required to be tested. The Client shall be responsible for providing notice to the Owner Operator/driver(s) of the necessity to undergo random testing and confirming that the Owner Operator/driver proceeds to the test site immediately. In the event that the Owner Operator/driver is performing a safety sensitive function at the time of notification, the Client shall ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible. Simplex is not responsible for providing any services concerning this category of services beyond those services specifically set forth in this subsection. Client is responsible for maintaining an accurate list of active drivers and providing same to Simplex.

**iii. Reasonable Suspicion Testing**

Upon Client's request, Simplex will coordinate reasonable suspicion testing for applicable employees and Owner Operator/driver(s). The Client, through a supervisor or company official who has received training in accordance with 40 CFR 382.603, shall be responsible for designating Owner Operator/driver(s) to submit to an alcohol or controlled substances test based upon specific, contemporaneous, articulable observations concerning the appearance (including chronic and withdrawal effects of controlled substances), behavior, speech or body odors of the Operator/driver. Simplex will train when necessary Client's supervisors and/or company representatives on policies and procedures for testing and reasonable suspicion identification with additional information being available through Simplex Group's Compliance Portal. All trained supervisors and officials will receive a certification from Simplex after the completion of the training. Upon receipt of a written request from Client, Simplex will assist Client in coordinating the appropriate tests. The Client shall be responsible for providing notice to the Owner Operator/driver of their obligation to submit to "reasonable suspicion" testing and precluding them from driving and/or performing any other safety-sensitive function or duty for the Client until they have been tested for any alcohol misuse or controlled substance use by Simplex and the Client has received a verified negative test result from Simplex. In addition, Client shall be responsible for ensuring that no driver is sent for a reasonable suspicion test by an individual that has not received the required training. Simplex is not responsible for providing any services concerning this category of services beyond those services specifically set forth in this subsection.

**iv. Post-Accident Testing**

Upon receipt of written notice from Client of a traffic accident involving an Owner Operator/driver, Simplex will assist Client in coordinating applicable alcohol and controlled substances testing procedures for the employee who was involved in the accident pursuant to 49 CFR 382.303. The Client is responsible for informing Simplex promptly of any accidents involving its Owner Operator/drivers. The Client is also responsible for assisting Simplex in coordinating the completion of the requisite testing procedures within the limited time parameters required by 49 CFR 382.303, informing the subject Owner Operator/driver of the necessity to undergo testing and for ensuring that the Owner Operator/driver proceeds to the test site immediately. In the event that the Owner Operator/driver is performing a safety sensitive function at the time of notification, the Client shall ensure that the Owner Operator/driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible. Simplex will assist Client at Client's request as to when to test for drug and alcohol use after an accident. Simplex is not responsible for providing any services concerning this category of services beyond those services specifically set forth in this subsection.

**v. Return-to-Duty and Follow-Up Testing**

In the event an Owner Operator/EE test receives a drug or alcohol regulation violation in a Pre-Employment, Random, Reasonable Suspicion or Post-Accident Test, Simplex will provide notice to the Client identifying the Owner Operator/EE that has received a positive test result and that the Owner Operator/EE must cease all safety-sensitive functions and duties, including driving. Depending on the provisions of the Client's Substance Abuse Policy, the Client may either terminate the Owner Operator/EE immediately or allow them to undergo an evaluation by an independent Substance Abuse Professional who meets the qualifications of 49 CFR 40.281 ("SAP"). If the Client elects to permit the Owner Operator/EE to undergo

an evaluation by a SAP, Simplex will assist the Client in referring the Owner Operator/EE to a SAP by providing the names, addresses and telephone numbers of approved SAPs which are available to the Owner Operator/EE. The SAP shall be solely responsible for providing an evaluation, referral and education/treatment program pursuant to FMCSA agency regulations ("SAP Evaluation"). Upon the Owner Operator/EE's completion of the SAP's program and follow up evaluation by the SAP, Simplex will coordinate a Return-to-Duty alcohol and/or controlled substances test upon the request from the Client as well as follow up testing pursuant to the SAP's report. Client and Simplex will cooperate and work together in obtaining of a copy of a completed evaluation. The Client shall be solely responsible for precluding the Owner Operator/EE from driving or performing any safety-sensitive function or duty until they have completed all requirements of the SAP evaluation/report and received a verified negative result on their Return-to-Duty alcohol and/or controlled substances test. Responsibility for payment for SAP Evaluations and services is governed by existing employment agreements, management-labor agreements and health care benefits. Simplex is not responsible for providing any services concerning this category of services beyond those services specifically set forth in this subsection.

### **C. Driver Time Logs**

Simplex will provide Driver Time Log auditing reports for Owner Operator/driver(s) for which the Client provides Driver Time Logs to Simplex for those drivers for which the monthly DOT driver service fee is paid. Client shall be responsible for ensuring that Owner Operators/driver(s) complete the Driver Time Log Forms for each twenty four (24) hour period and submitting them to the Client along with all supporting documentation including fuel and toll receipts, within thirteen (13) days of the completion of the forms. Client is responsible for providing copies of the completed logs and supporting documentation to Simplex at least once a month for which Simplex will provide Client a (random or per driver, based upon Agreement) audit report which the Client will be responsible for providing a copy of the log auditing reports to the respective Owner Operator/driver. Client acknowledges that nothing contained herein shall imply that Simplex will or shall have any responsibility for taking any type of corrective action with or any responsibility for violations by the respective Owner Operator/driver.

The Client understands and acknowledges that it is necessary for Simplex to receive all of the information identified and requested in the Driver Time Logs to prepare the reports. Simplex shall not be responsible for any inaccuracies in the reports resulting from improper or inaccurate information provided on or the preparation of the Driver Time Logs by the Owner Operator/driver(s), including falsifications and/or hour violations. Simplex shall only be responsible for maintaining Driver Time Log auditing reports and all supporting documents for each driver as required by applicable law. Simplex is not responsible for providing any services concerning this category of services beyond those services specifically set forth in this subsection.

### **D. Driver Qualification Files**

Simplex will assist Client in creating and maintaining Driver Qualification Files in accordance with 49 CFR 391.51 for every Owner Operator/driver covered by this Agreement for which Client provides Simplex written notice to create and maintain a Driver Qualification File for such Owner Operator/driver or if Client completes the new driver process for such Owner Operator/driver at Simplex's website and for which the monthly DOT driver service fee is paid. Simplex will assist Client in having their Owner Operators/drivers complete the required documentation pursuant to FMCSA regulations pertaining to the Driver Qualification File. Simplex will perform an investigation in accordance with 49 CFR 391.23 and prepare a record with respect to each past employer identified by the Owner/EE in writing on their respective application who was contacted by Simplex and a copy of the response by each State agency, if any. It is Client's and the Owner/driver's responsibility to provide accurate information concerning past employer information and Simplex shall not be responsible for performing any investigation into past employer information of the respective Owner Operator/driver beyond contacting in accordance with 49 CFR 391.51 those past employers identified on the forms provided by Simplex and completed by Client or its Owner Operator/driver. Simplex shall rely on information provided by the Client or Owner Operator/driver in performing the services outlined in this subsection and the Client expressly acknowledges and understands that Simplex's services are limited to FMCSA compliance services and that Simplex is not responsible for providing any services beyond those required by applicable FMCSA rules. In addition, Client acknowledges that Simplex does not have any decision making authority in relation to the Client's hiring, retaining, contracting or firing with the Owner Operator/driver in any way because Simplex does not provide any services concerning the management of the day to day operations of the Client's business. The Client further acknowledges that it does not and will not rely on Simplex's Services in hiring, retaining, contracting or firing any Owner Operator/driver.

Simplex will also assist Client in obtaining the Owner Operator/driver's drug and alcohol testing results from FMCSA regulated employers identified by the Owner/driver on their respective application in accordance with 49 CFR 40.25 who employed the Owner Operator/driver as required by applicable law. If a good faith effort to obtain this information has been made and documented and any previous employer has not responded to the request for the Owner Operator/driver's drug and alcohol testing results, then Client, at its sole discretion, shall preclude/prohibit Owner Operator/driver from performing safety sensitive functions or duties for 30 days (or applicable period required by law, whichever is shorter) from the date which the employee first performed safety-sensitive functions or duties pursuant to applicable regulations.

As required by 49 CFR 395.8, Simplex will assist Client in coordinating the obtaining from any new Owner Operator/driver a signed statement providing the total time on-duty during the immediately preceding seven (7) days (or applicable period required by law, whichever is shorter) and the date and time at which the Owner Operator/driver was last relieved from duty prior to beginning work for the Client.

Client is responsible for retaining Driver Qualification Files for each respective Owner Operator/driver for as long as the driver is employed by Client and as required by applicable law so long as Client remains a client of Simplex and/or is "paid in full" upon the termination of the underlying Agreement. If Client has a "balance due" to Simplex upon the termination of the Agreement, Simplex

has no obligation to retain Client files and will delete all of Client's records in Simplex's possession without notice to Client. Simplex is not responsible for providing any services concerning this category of services beyond those services specifically set forth in this subsection.

#### **E. CDL**

Simplex will assist Client in obtaining a Certification of Compliance with Commercial Driver License (CDL) Requirements for all Owner Operator/drivers the Client intends to hire. The Owner Operator/driver, as a commercial vehicle driver, must only possess one motor vehicle operator's license and he/she must notify the Client, as the employing or contracting motor carrier, and the state that issued his/her license of: (a) any revocation or suspension of his/her driver's license, and (b) any violation of a state or local traffic law (other than parking). Simplex will also provide the Client CDL verification and expiration alert services for each of its Owner Operator/drivers once a year, or as requested in writing by Client. Simplex is not responsible for providing any services concerning this category of services beyond those services specifically set forth in this subsection.

#### **F. Vehicle Inspection, Repair and Maintenance File**

Simplex will assist the Client in creating an "Equipment Inspection, Repair and Maintenance" ("EIRM") file for each of the Client's and Owner Operator's equipment specifically identified to Simplex and covered by this Agreement and Simplex will also assist the Client as needed in monitoring this process. Simplex will also assist the Client in developing a preventive equipment maintenance schedule, an annual vehicle inspection alert and a vehicle registration expiration alert for each of the Client's and Owner Operator/EE's identified equipment in accordance with 49 CFR 396.17. The Client understands and acknowledges that the only service Simplex will provide pursuant to this subsection will be to assist in creating the Client's EIRM file(s), developing a preventive maintenance schedule, an annual inspection alert and a vehicle registration alert and Client and Owner Operator/drivers will be responsible for the performance of the inspections, repairs and maintenance of its equipment as well as retaining its records as required by FMCSA agency regulations. Client is responsible for timely providing Simplex all applicable maintenance and repair documents. Simplex is not responsible for providing any services concerning this category of services beyond those services specifically set forth in this subsection.

#### **G. Traffic Accident File**

Simplex will assist Client in maintaining a record of all FMCSA recordable traffic accidents reported by Client to Simplex using Simplex forms so as to facilitate compliance with FMCSA regulations. Simplex is not responsible for providing any services concerning this category of services beyond those services specifically set forth in this subsection.

#### **H. Assistance with any Government Regulatory Agency or Third Party**

In the event of an inspection or audit by a federal, state or local agency involving the Client, Simplex is available to assist the Client with respect to Services provided by Simplex under this Agreement. Simplex reserves the right to charge the Client an additional fee for such Services if deemed appropriate by Simplex and approved by Client. Simplex will not provide any further services concerning this category of Services beyond those Services set forth in this subsection.

#### **I. Haz-Mat Transportation**

##### **i. Training/Records**

Client is responsible for notifying Simplex that it transports hazardous materials!!! Following notice and payment of applicable fee, Simplex will provide initial and recurring hazardous materials ("Hazmat") training through our Simplex Portal Training Library for applicable Owner Operator/drivers or, at Client's written request, Simplex will provide access to additional training courses for Client's Owner Operators/drivers. Simplex will keep a record of current training for each of the Client's Owner Operator/drivers for as long as the Owner Operator/driver is employed by the Client and as required by applicable law. It is the Client's responsibility to provide Simplex with the training documents from the driver if the training is not conducted at a Simplex office. Simplex is not responsible for providing any services concerning this category of services beyond those services specifically set forth in this subsection.

##### **ii. Security Plans**

Simplex will assist the Client in developing, implementing, revising and updating a plan to address security risks related to the transportation of hazardous materials in commerce that meets the requirements set forth in 49 CFR 172.800 and 49 CFR 172.802, including personnel security, unauthorized access and en-route security ("Security Plan"). Simplex may subcontract the provision of this Service to a third party, at Simplex's discretion. The Client will be responsible for providing the most recent version of the Security Plan to each Owner Operator/driver who is subject to the Security Plan. Client will be responsible for informing Simplex of any changes in its operations that could in any way affect the Security Plan and Client will be responsible for ensuring that all changes to the Security Plan, if any, and training are implemented in Client's business and Security Plan. Simplex is not responsible for providing any services concerning this category of services beyond those services specifically set forth in this subsection. Simplex is not responsible for providing any services concerning this category of services beyond those services specifically set forth in this subsection.

#### **J. FMCSA Services Only.**

Simplex shall not be designated as Client's designated agent for service of process under 49 CFR 107.608(e) without its prior written consent. Simplex services are strictly limited to FMCSA compliance. Client will not hold Simplex responsible or liable for any injuries or damages arising out of the wrongful conduct, actions, omissions and negligence of Client and/or its Owner Operator/EE. Client will defend, indemnify and hold Simplex and its affiliates and their present and former officers, directors, employees, attorneys, agents and representatives harmless from any demands, claims, judgments and other liabilities arising out of or related to the wrongful conduct, actions, omissions and negligence of Client and/or its Owner Operator/EEs.

#### **K. Background Checks.**

If the Client requests that Simplex facilitate and assist in obtaining background checks and/or background information for any employee of the Client or other persons, the Client acknowledges that the background checks and/or background information may be obtained by Simplex from third party sources. The Client acknowledges and agrees that the information obtained and/or provided by these third party sources might not be complete, accurate or up to date and that Simplex's role will be solely to facilitate and assist in obtaining the background checks and/or background information through the third party providers. The Client agrees to be responsible for and provide any notices to employees or other persons required under the Federal Credit Reporting Act. **SIMPLEX DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE COMPLETENESS, VALIDITY, ACCURACY, OR RELIABILITY OF, OR THE RESULTS OF THE USE OF THE BACKGROUND CHECKS AND/OR BACKGROUND INFORMATION. THE BACKGROUND CHECKS AND/OR BACKGROUND INFORMATION ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, SIMPLEX DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, IN CONNECTION WITH THE BACKGROUND CHECKS INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

#### **L. Scope of Services/Limitation of Responsibility and Liability.**

It is expressly agreed and understood by the Client that Simplex will in no way provide any kind of legal, tax or accounting advice to the Client in the provision of the Services, including without limitation the with the assistance in filing and coordinating the payment of any IFTA and Highway Motor Vehicle taxes. Simplex's role in the provision of Services shall be limited to providing Client the Services that are designated on Client's Invoice. The Client understands and agrees that Simplex is responsible for providing the Client only the Services and designated on Appendix A to Client's DOT Compliance Services Agreement and that Simplex will not be responsible or liable in any way for Client's and/or Client's Owner Operators or Employees' failure to comply with applicable federal, state or local laws, regulations and ordinances, including regulations relating to driver conduct, record keeping, reporting requirements, drivers hours of service, daily time logs, payment of applicable taxes and other government fees. The Client is solely responsible for the final preparation and confirmation of the filing of all documents with the requisite authority as well as the payment of all applicable fees, taxes, and other government charges and for taking any follow-up or additional steps that should be taken to fully comply with applicable laws and regulations.

#### **M. Mutual duty to Cooperate; Sharing of Information.**

In recognition of the effort necessary to provide the Services under this Agreement, both parties agree to cooperate with each other. The parties acknowledge that the duty to cooperate is a material term of this Agreement. The Client agrees that it will provide accurate and truthful information and responses to reasonable questions and inquiries by Simplex related to the provision of Services under this Agreement. The failure of the Client to provide accurate and truthful information and responses to Simplex shall relieve Simplex of any liability arising therefrom and constitute a material breach of this Agreement.

#### **N. Client's Responsibilities.**

Client recognizes that Simplex' provision of Services does not relieve Client from the responsibility of timely complying with the applicable regulations and laws affecting its business, employees, drivers, commercial vehicles, equipment and operations. Furthermore, the Client acknowledges that it retains the following responsibilities under this Agreement: (1) direction and control over its drivers and employees, worksite, operations, products and services; (2) compliance with any applicable regulation, licensure or statutory requirement of Client; (3) compliance with applicable service policies, procedures and forms; (4) appointment of an employee to serve as the Designated Employer Representative (DER) pursuant to DOT Regulations, (5) respond to requests made by Simplex for data pertaining to compliance records and documentation, and/or grant reasonable access to this information and/or the Client's worksite to collect or examine compliance information; (5) take necessary steps to timely correct non-compliant or unsafe conditions, if any, as identified and communicated to Client by Simplex in the performance of Simplex Services.

#### **O. Client Information and Defend, Indemnify and Hold Harmless.**

Client acknowledges and agrees that Simplex will perform all Services under this Agreement relying on the accuracy and completeness of all information provided by Client or its drivers/employees. Client acknowledges that Simplex does not have any duty or obligation to conduct any investigation or otherwise confirm the accuracy or completeness of the information provided by Client and/or drivers/employees and that Client is responsible for the accuracy and completeness of information submitted to Simplex and others and/or governmental agencies pursuant to the terms of this contract. Simplex shall not be liable for the Client's failure to comply with any of its own policies or procedures, DOT regulations or other applicable state, federal, or local laws, rules or ordinances due to false, inaccurate or incomplete information provided by Client or drivers/employees to Simplex. Client hereby agrees to indemnify, defend and hold harmless Simplex, and Simplex's present and former agents, employees, directors, owners, trustees, invitees, related companies, contractors, successors, assigns and affiliates from and against any and all claims, actions, liabilities, losses, cost (costs, including, without limitation, reasonable attorneys' and paralegal fees and costs, at all proceedings, including at the trial level and at all appellate levels, including

appeals), damages of any kind, including punitive, litigation, demands, or proceedings by reason of, or in connection with, directly or indirectly, the performance, non-performance or negligent performance of any Service by Simplex, as well as any claim or action based on any information provided by Client or its drivers/employees. Such indemnification shall include the payment of all reasonable attorney's fees and other costs incurred by the indemnified party in defending any such claim. The indemnified Party shall promptly inform the indemnifying Party in writing of any such claim, demand or suit and shall fully cooperate in the defense thereof.

**P. Right to Subcontract.**

The Client acknowledges and agrees that Simplex may subcontract some or all Services under this Agreement to any party acceptable to Simplex without the approval or consent of the Client.

**Q. Default.**

In the event the Client breaches this Agreement or is otherwise in default of this Agreement, including the failure to timely pay any amounts due to Simplex, and such breach or default remains uncured for five (5) days following Simplex's providing notice of the default via email or mail specifying the breach, Simplex shall have the following rights which may be exercised independently of any other remedies in this Agreement or in applicable law without waiving the others: a) terminate this Agreement and seek payment of all monies then due and payable to Simplex; b) collect and apply any Client deposits held by Simplex for its own account with no obligation to return any remaining portion to Client; and c) seek payment from Client in the amount of one half of the remaining Term for any fixed fee or minimum fee arrangement. The failure of Simplex to enforce any of such remedies upon Client default shall not act as a waiver of any of Simplex's other rights or remedies. Any illegal, wrongful or unauthorized conduct by the Client in connection with the Services shall be considered a material default of this Agreement. No suit or action shall be brought against Simplex more than one (1) year after the accrual of the cause of action therefore.

**R. Confidentiality and Proprietary Information.**

A. All information contained on the Simplex Portal, including the documents, forms, manuals, and videos, materials provided by Simplex which are not part of the public domain as well as the Simplex Groups' business methods, forms, procedures, compliance analysis, trade secrets, intellectual property, customer information, pricing methods, business and marketing strategies and/or methods and procedures for complying with DOT Agency Regulations in conducting or delivering Simplex Services as established from time to time, are, to the extent that these are created by Simplex, the property of Simplex (hereinafter referred to as "Simplex Confidential and Proprietary Information") and are provided to Client for its use pursuant to a license from Simplex to Client for Client's sole use during the term of this Agreement. Upon termination of this Agreement, the license granted to Client to use Simplex Confidential and Proprietary Information shall also terminate and Client shall thereafter have no right to use, possess or have access to any such information of Simplex.

B. The parties agree that in the course of its services under this agreement. Simplex may provide Client with Confidential and Proprietary Information (as hereafter defined) relating to Simplex' business and clients of Simplex and Client may provide Simplex with Confidential and Proprietary Information relating to Clients business, clients and employees. Both Simplex and Client agree not to disclose any Confidential and Proprietary Information to any other party except where required by applicable laws or judicial process and in such case: (a) the information disclosed shall be limited to the information required to be disclosed by such laws or process and (b) the party to whom the request for disclosure is made shall notify the other party promptly of the request so that such other party may seek judicial protection of its Confidential and Proprietary Information.

**S. Covenant of Non-Solicitation and/or Hiring.**

During the Term, and for a period of two years following the end of the Term, Client shall not (1) directly or indirectly solicit, employ or in any way hire any employee at Simplex or any employee, subcontractor or independent contractor of Simplex involved directly or indirectly in the provision of Services under this Agreement (collectively "Simplex Employee or Contractor"), or (2) otherwise encourage any Simplex Employee or Contractor to leave his or her employ or other business relationship with Simplex or to cease performing services for Simplex, or (3) hire or otherwise engage any Simplex Employee or Contractor in any capacity similar or related to such person's capacity at or on behalf of Simplex. In the event that Client breaches the provisions of the foregoing paragraph, the parties agree that, Client will be liable to Simplex to and will pay Simplex liquidated damages in an amount equal to two (2) times the amount paid to the Simplex Employee or Contractor for the prior twelve (12) month period. Client and Simplex agree that the liquidated damages remedy in favor of Simplex are compensatory for damages to be suffered by Simplex as a result of Client's breach, which damages could not be readily and definitely ascertained at the time of this Agreement. The parties agree that the liquidated damages remedy in favor of Simplex is not a penalty and its inclusion in this Agreement was a mutual intention of the parties.

**T. Warranty.**

Simplex warrants that its Services will be performed in a professional manner that accords with industry standards. Simplex's sole obligation with respect to this warranty shall be to correct any failure on the part of Simplex to perform the Services in a competent manner in accord with industry standards within thirty (30) days after receipt by Simplex of written notice specifically identifying the Services which were purportedly not performed in accordance with industry standards. The existence of errors or defects in Simplex's Services shall not be a basis for finding that Simplex's Services have not been performed in the manner warranted above.

**U. Disclaimer of Warranty.**

THE ABOVE EXPRESS WARRANTY SET FORTH IN PARAGRAPH T IS IN LIEU OF ALL OTHER WARRANTIES, INCLUDING EXPRESS, IMPLIED OR STATUTORY WARRANTIES, REGARDING THE SERVICES, INCLUDING ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, SUITABILITY, TITLE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, QUIET ENJOYMENT, AND ACCURACY. SIMPLEX DOES NOT WARRANT THAT ANY SERVICE PROVIDED WILL PERMIT CLIENT TO OPERATE UNINTERRUPTED OR ERROR FREE. SIMPLEX DOES NOT WARRANT THAT THE SERVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, OR LOSS OF DATA OR INFORMATION. No representation or other affirmation of fact, including but not limited to, statements regarding capacity, suitability for use or performance of the Services described in this Agreement, whether made by Simplex's employees or otherwise, that is not contained in this Agreement, shall be deemed to be a warranty by Simplex for any purpose, or give rise to any liability of Simplex whatsoever.

**V. Relationship.**

It is the intent of the parties to this Agreement that Simplex is and shall remain at all times an independent contractor in the performance of this Agreement and nothing herein contained shall be construed as inconsistent with that status. Neither Simplex nor any of its employees, consultants, officers, directors or shareholders shall be considered an employee, agent or servant of the Client at any time, under any circumstances or for any purpose whatsoever. Nothing set forth herein shall be deemed to create a partnership or joint venture between Client and Simplex, and no fiduciary duty shall arise from the relationship created herein. The Parties agree not to act as the agent for the other party unless specifically authorized in writing.

**W. Electronic Communications.**

The Client hereby authorizes Simplex to send electronic communications, such as emails, sms, text messages or other electronic communications, relating to the Services to the cell phones, PDA (Personal Data Assistant) or other electronic communication equipment of the Client and the Owner Operators/EE's, including without limitation, alerts relating to expiration of DOT required documentation. The Client acknowledges that it is its responsibility to ensure that the Owner Operators/EE's do not use their the cell phones, PDA (Personal Data Assistant) or other electronic communications equipment while driving and that Simplex shall not be responsible nor liable for any loss, damage or liability resulting or related to the use while driving of cell phones, PDA (Personal Data Assistant) or other electronic communication equipment by the Client and/or the Owner Operators/EE's.

**X. Modification And Waiver.**

Any modification to this Agreement must be in writing and signed by the party against which enforcement is to be sought. Failure by either party to act when required to or to claim a breach of any provision of this Agreement will not be construed as a waiver of any subsequent breach. None of the terms of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing and signed by or on behalf of both parties.

**Y. Severability And Captions.**

Should any term, condition, or provision of this Agreement be held to be invalid or unenforceable, the balance of this Agreement shall remain in force as if the unenforceable part did not exist. The captions in this Agreement are provided for convenience only and are not part of the terms and conditions of this Agreement.

**Z. Survival**

No termination or expiration of this Agreement shall affect or impair the obligations, duties, indemnities, and liabilities of either party that, by their nature continue beyond termination, or the rights of Simplex relating to any unpaid obligations. These obligations, duties, indemnities, and liabilities shall not terminate or expire, but rather survive such termination or expiration and continue in full force and effect until the longer of: (a) such time as all the obligations have been paid in full; or, (b) such time as is expressly provided in this Agreement.

**AA. Force Majeure**

Except for the payment of Service Fees, neither party will be liable for its failure to perform under this Agreement due to: fire, war, acts of God, civil disturbances, terrorism, and acts of civil or military authorities, hurricanes, fuel or energy shortages or power failures which directly affect a party's ability to comply with their obligations under this agreement.