

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of)
)
) **Case No. xx-xxx-UNFIT**
) **(Southern Service Center)**
)
) **USDOT No.**
)

AGREEMENT FOR CONDITIONAL UPGRADE OF SAFETY RATING

I. PARTIES.

The parties to this Agreement and Stipulated Order on Consent for Conditional Upgrade of Safety Rating (hereinafter “Agreement and Order”) are:

COMPANY
and

The **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION** of the Department of Transportation (hereinafter “**FMCSA**”).

The Parties agree and stipulate as follows:

II. BASIS FOR AGREEMENT AND ORDER.

A. Jurisdiction.

1. **COMPANY** is a motor carrier of **passengers** and conducts or has conducted operations in interstate commerce pursuant to operating authority registration issued by FMCSA under 49 U.S.C. § 13902. **COMPANY** transports passengers for compensation “between a place in ... a State and a place in another State” and is subject to FMCSA’s jurisdiction at 49 U.S.C. § 13501(1)(A).
2. **COMPANY** is subject to the Federal Motor Carrier Safety Regulations (“FMCSRs”) (49 C.F.R. Parts 350-399) and/or the Hazardous Materials Regulations (“HMRs”) (49

C.F.R. Parts 171-173, 177-180), as well as the Orders/Agreements of FMCSA (49 U.S.C. §§ 506, 507, 31133, 31162, 13501).

3. **COMPANY** is required to comply with, and to ensure its drivers comply with, the FMCSRs and/or the HMRs. This Agreement and Order has the same force and effect as any other valid Order issued by FMCSA and is binding upon any and all successor(s) and/or assigns of **COMPANY**.

B. Unsatisfactory Safety Rating.

1. On or about **DATE**, FMCSA conducted a compliance investigation of the motor carrier operation of **COMPANY**. During the compliance investigation, serious violations of the Federal Motor Carrier Safety Regulations (FMCSRs) were discovered. Using the safety rating methodology set forth in 49 C.F.R. Part 385, Appendix B, the compliance investigation resulted in a proposed Unsatisfactory safety rating. FMCSA issued written notice of the proposed rating to **COMPANY** on **DATE**. The written notice of the proposed rating informed **COMPANY** that it must take immediate actions to correct any deficiencies or violations discovered during the compliance review.
2. Pursuant to 49 U.S.C. § 31144 and 49 C.F.R. § 385.13, a motor carrier of passengers that receives a final safety rating of Unsatisfactory is prohibited from operating any commercial motor vehicle in interstate or intrastate commerce beginning on the 46th day after the date FMCSA has notified the motor carrier of the proposed Unsatisfactory fitness determination. In accordance with 49 U.S.C. § 31144(c)(5) and 49 C.F.R. § 385.13(d), if a proposed Unsatisfactory safety rating becomes final, FMCSA will issue an Order placing out of service the motor carrier's operations in commerce. The out-of-service order applies to both to the motor carrier's operations in interstate commerce and to its operations affecting interstate commerce. Pursuant to 49 U.S.C. § 13905(f)(1)(B), the operating authority/registration of a motor carrier that has been prohibited from operating in interstate and intrastate commerce for failure to comply with the safety fitness requirement shall be revoked.
3. **COMPANY** did not request an administrative review of the assignment of its Unsatisfactory safety rating under 49 C.F.R. § 385.15. **COMPANY** waives any right it may have, or have had, to request administrative review under 49 C.F.R. § 385.15 of the assignment of its proposed and final Unsatisfactory safety rating, including review of compliance investigation completed on or about **DATE** and the violations cited during the compliance investigation.

C. Request for Change in Safety Rating Pursuant to 49 C.F.R. § 385.17.

1. In accordance with 49 C.F.R. § 385.17 FMCSA may grant a request for a change in safety rating when a motor carrier has taken action to correct the deficiencies cited during the compliance investigation. The change in rating must be based upon evidence that the motor carrier has taken corrective actions and that its operations meet the safety standard and factors specified in 49 C.F.R. §§ 385.5 and 385.7.

2. On **DATE**, **COMPANY** submitted its request for upgrade of its Unsatisfactory safety rating pursuant to 49 C.F.R. § 385.17.
3. Conditioned on **COMPANY**'s compliance with all terms and conditions set forth in this Agreement and Order, FMCSA will conditionally grant the request for change in rating from Unsatisfactory to Conditional.
4. In consideration of FMCSA's conditional grant, in accordance with the terms and conditions of this Agreement and Order, of its request for change of safety rating pursuant to 49 C.F.R. § 385.17, **COMPANY** knowingly waives, and agrees to the extension of, the time period provided in 49 C.F.R. § 385.17(e) for FMCSA to review and issue a final determination on its request for change in rating. **COMPANY** stipulates its understanding that in accordance with the provisions of this Agreement and Order, FMCSA's granting of the request for change in safety rating will be conditioned on **COMPANY**'s compliance with all terms and conditions of this Agreement and Order.

D. Findings of Fact.

List of Motor Carrier Principals.

1. **COMPANY** avers and stipulates that it has provided to FMCSA a list of all principals of its motor carrier operation to include all owner(s), partner(s), corporate official(s) or member(s), manager(s), and employees responsible for safety compliance. The list of motor carrier principals is attached to this Agreement and Order as Attachment A, and incorporated as though fully set forth herein.

List of Commercial Motor Vehicles.

2. **COMPANY** avers and stipulates that it has provided to FMCSA a list of all commercial vehicles it uses or intends to use to transport passengers or property in commerce. The list of commercial motor vehicles will identify each vehicle, and include the Vehicle Identification Number (VIN), plate number and state or jurisdiction or registration, motor carrier identification number, and description of the vehicle to include the number of passengers (including) the driver the vehicle is designed to transport. The list of commercial motor vehicles is attached to this Agreement and Order as Attachment B, and incorporated as though fully set forth herein.

Safety Management Controls.

3. **COMPANY** has failed to have a safety management system in place and exercise safety management controls to ensure its motor carrier operation meets the safety factors and standards set forth in 49 C.F.R. §§ 385.5 and 385.7.
4. On or about **DATE** a compliance investigation was conducted on the motor carrier operations of **COMPANY**, which resulted in an Unsatisfactory safety rating. During the compliance investigation the following violations of the FMCSRs were

discovered, including violations of acute regulations and patterns of non-compliance with critical regulations:

- **49 C.F.R. § 382.305 – ACUTE – Failing to implement a random controlled substance and/or alcohol testing program.**
- **49 C.F.R. § 395.8(a) – CRITICAL – Failing to require driver to make a record of duty status.**
- **49 C.F.R. § 391.51(a) – CRITICAL – Failing to maintain driver qualification file on each driver employed.**
- **49 C.F.R. § 396.3(a)(1) – CRITICAL – Failing to inspect and maintain vehicle to ensure safe and proper operating condition.**

III. TERMS AND CONDITIONS OF AGREEMENT AND ORDER

1. **COMPANY** stipulates and agrees that through compliance with the terms and conditions of this Agreement and Order its motor carrier operation meets the safety standard and factors set forth in 49 C.F.R. §§ 385.5 and 385.7.
2. **COMPANY** stipulates and agrees that through compliance with the terms and conditions of this Agreement and Order its motor carrier operation is fit, and it is willing and able to comply with: 1) the statutory and regulatory registration requirements; 2) applicable safety regulations including the FMCSRs; 3) the commercial motor vehicle safety requirements of employers and employees set forth in 49 U.S.C. § 31135; 4) the safety fitness requirements set forth in 49 U.S.C. § 31144; and 5) minimum financial responsibility requirements established under 49 U.S.C. §§ 13906 and 31138.

A. Safety Management Improvement through Implementation of Safety Management Plan.

1. On **DATE**, **COMPANY** submitted requests for change of its Unsatisfactory safety rating pursuant to 49 C.F.R. § 385.17. In its request for change in safety rating, **COMPANY** detailed the corrective actions it has taken and the procedures and steps it will implement to ensure ongoing compliance. The request for safety rating change submittals, including all supporting documentation, are hereinafter collectively referred to as **COMPANY**'s "Safety Management Plan" and are attached to this Agreement and Order as Attachment C and incorporated as though fully set forth herein.

<NOTE: ADD OR DELETE CORRECTIVE ACTIONS AS NECESSARY>

2. **COMPANY** stipulates that it has taken action to correct the deficiencies in its safety management system, and has taken and will implement the corrective actions as set forth in its Safety Management Plan. Failure by **COMPANY** to implement and/or continue the corrective actions in its Safety Management Plan will be considered a failure to comply with the terms and conditions of this Agreement and Order.

3. **COMPANY** stipulates that it is conducting random alcohol and controlled substances testing at the required rate, and has received written negative test results, for each driver tested. **COMPANY** will ensure that it does not use any driver to perform a safety sensitive function, including without limitation the operation of a commercial motor vehicle, prior to receiving a written negative pre-employment controlled substances test result verified by a Medical Review Officer. Use of any driver prior to **COMPANY** receiving a written negative pre-employment controlled substances test result will be considered a failure to comply with the terms and conditions of this Agreement and Order.
4. **COMPANY** will implement an alcohol and controlled substances written policy and provide that policy to all drivers and to FMCSA on or before **DATE**. Failure by **COMPANY** to provide the written policy will be considered a failure to comply with the terms and conditions of this Agreement and Order.
5. **COMPANY** stipulates that it is requiring its drivers to make and submit records of duty status, and is maintaining copies of driver records of duty status and supporting documents as required by 49 C.F.R. § 395.8. Failure by **COMPANY** to require each of its drivers to make and submit records of duty status as required and/or failure to maintain records of duty status and supporting documents as required will be considered a failure to comply with the terms and conditions of this Agreement and Order.
6. **COMPANY** stipulates that it has conducted and maintains all required vehicle inspections in accordance with 49 C.F.R. § 396.3(a)(2), 49 C.F.R. § 396.3(b), 49 C.F.R. § 396.9(d)(3) and 49 C.F.R. § 396.17(a). **COMPANY** will review 100% of its vehicle maintenance records each month and conduct all required inspections in a timely manner. **COMPANY** will keep a record of the person who did the review, date of review, and what date each inspection was due and the date the inspection was conducted. Failure by **COMPANY** to ensure each inspection is current or to record the information will be considered a failure to comply with the terms and conditions of this Agreement and Order.
7. **COMPANY** stipulates that it has implemented a maintenance and repair program that meets the needs of the vehicle fleet it utilizes. **COMPANY** will continuously review the effectiveness of the maintenance and repair program and ensure no vehicle under its control poses an unsafe condition likely to cause an accident or a breakdown as per 49 C.F.R. § 396.7. Failure by **COMPANY** to ensure each inspection is current or to record the information will be considered a failure to comply with the terms and conditions of this Agreement and Order.

B. Safety Management Improvement through Additional Safety Management Controls.

1. On or before **DATE**, **COMPANY** will obtain a motor carrier PIN number to access FMCSA's Safety Measurement System (SMS) online.

2. **COMPANY** will weekly log into FMCSA's SMS online (<http://ai.fmcsa.dot.gov/SMS/Default.aspx>) and will review, analyze and evaluate its safety performance data. **COMPANY** will review each roadside inspection where violation(s) were cited, systematically assess its safety management practices, determine what safety breakdowns resulted in the violation(s), and take action to correct or enhance its safety management processes and improve its safety performance. In accordance with the schedule set forth, herein, **COMPANY** will quarterly provide a report to FMCSA which includes:
 - a) a list of roadside inspections of its drivers and/or vehicles where a violation was cited;
 - b) an analysis of the safety management process breakdown(s) that resulted in the violation; and
 - c) a description of the action taken by **COMPANY** to improve its safety management processes, including but not limited to counseling of drivers cited for violations and discussions of FMCSR requirements; periodic safety meetings to discuss regulatory requirements and company policies; remedial education of drivers having multiple or repeated violations; identification of drivers exhibiting dangerous or negligent driving behavior; and positive safety improvement and violation prevention measures.

Failure by **COMPANY** to timely provide accurate quarterly reports containing all required information will be considered a failure to comply with the terms and conditions of this Agreement and Order.

3. In accordance with the schedule set forth herein, **COMPANY** will provide quarterly reports to FMCSA which include:
 - a) a list of drivers employed and/or used by **COMPANY** during the preceding three months who are subject to the controlled substances and alcohol testing requirement of parts 40 and 382;
 - b) the date of hire for each driver;
 - c) the list of drivers enrolled in **COMPANY**'s random testing program; and
 - d) the list of drivers selected for random controlled substances and/or alcohol testing during the preceding three months.

Failure by **COMPANY** to timely provide quarterly reports containing all required information will be considered a failure to comply with the terms and conditions of this Agreement and Order.

4. In accordance with the schedule set forth herein, **COMPANY** will provide quarterly reports to FMCSA which include copies of all test results for all controlled substances and alcohol testing conducted of **COMPANY** drivers during the preceding three months. Failure by **COMPANY** to timely provide quarterly reports containing all required information will be considered a failure to comply with the terms and conditions of this Agreement and Order.

5. **COMPANY** will notify FMCSA in writing within 10 calendar days if it changes consortiums and/or changes random testing pools. Failure by **COMPANY** to timely provide required written notices will be considered a failure to comply with the terms and conditions of this Agreement and Order.
6. **COMPANY** will submit to FMCSA in writing a copy of the complete driver qualification file for any new driver within 40 days of date of hire. The driver qualification file will include all information required by 49 C.F.R. § 391.51. Failure by **COMPANY** to timely provide a copy of each driver qualification file and/or failure to provide a complete driver qualification file containing all required information will be considered a failure to comply with the terms and conditions of this Agreement and Order.

C. Compliance with Federal Motor Carrier Safety Regulations.

1. **COMPANY** will ensure that it successfully complies with 49 CFR Parts 382, 383, 391, 395, and 396. Successful compliance with 49 C.F.R. Parts 382, 383, 391, 395, and 396 means that, at the conclusion of any investigation, including any review of documents and information submitted pursuant to this Agreement and Order, conducted within the next two (2) years from the date of execution of this Agreement and Order by the Field Administrator, no violation(s) of acute regulations or critical regulations at a violation rate equaling or exceeding 10% in 49 CFR Parts 382, 383, 391, 395, and/or 396 is/are discovered. A critical violation rate is determined by dividing the number of violations discovered by the number of documents examined. Acute and Critical violations are listed in 49 CFR Part 385, Appendix B, section VII.

Discovery of a violation of an acute regulation in 49 CFR Parts 382, 383, 391, 395, and 396 during any investigation, including but not limited to compliance investigation, roadside inspection and/or on or off-site investigation, will be considered a failure to comply with the terms and conditions of this Agreement and Order.

Discovery of a violation of a critical regulation in 49 CFR Parts 382, 383, 391, 395, and 396 at a critical violation rate during any investigation, including but not limited to compliance investigation, roadside inspection and/or on or off-site investigation, will be considered a failure to comply with the terms and conditions of this Agreement and Order. A violation rate that equals or exceeds 10% for critical regulations will constitute a critical violation rate.

D. Compliance with Orders of the Agency.

1. **COMPANY** will comply with all Orders of the Agency, including any and all Orders to Cease transportation. Operation of a commercial motor vehicle providing transportation of passengers or property by or for **COMPANY** during any period when **COMPANY** is subject to an FMCSA Order prohibiting such transportation will be considered a failure to comply with the terms and conditions of this Agreement and Order.

E. Compliance with Registration Requirements

1. **COMPANY** will comply with the operating authority/registration requirements of the Agency. Operation of a commercial motor vehicle providing transportation of passengers or property requiring operating authority/registration by or for **COMPANY** during any period when **COMPANY** does not have valid and active required authority, including any period during which **COMPANY**'s operating authority/registration is suspended or revoked for any reason, or beyond the scope of any operating authority/registration granted will be considered a failure to comply with the terms and conditions of this Agreement and Order.
2. **COMPANY** stipulates that none of its motor carrier principals, as set forth in Attachment A, currently has any position with, and/or any financial interest in, any other U.S. Department of Transportation regulated entity, and/or any other entity requiring authority from the U.S. Department of Transportation including motor carriers, brokers, and/or freight forwarders except as set forth in Paragraph III.F.2. of this Agreement and Order.
3. **COMPANY** stipulates that, except as set forth in Paragraph III.F.2. of this Agreement and Order, none of its principals, as set forth in Attachment A, will hold any position with, and/or have any financial interest in, any other U.S. Department of Transportation regulated entity, and/or any other entity requiring authority from the U.S. Department of Transportation including motor carriers, brokers, and/or freight forwarders for a minimum period of two (2) years from the date of execution of this Agreement and Order by the Field Administrator.
4. **COMPANY** will not apply to FMCSA for new operating authority registration in the name of any other individual or business entity.
5. **COMPANY**'s principals, as set forth in Attachment A of this Agreement and Order, will not apply to FMCSA for new and/or reinstated operating authority/registration, except as set forth in Paragraph III.F.2. of this Agreement and Order, in the name of any other individual or business entity, or under any other USDOT number, and shall not cause, request, or assist any other person or entity to make such application on his/her/their behalf.

F. Changes to motor carrier operations.

1. **COMPANY** will file with FMCSA an accurate updated Motor Carrier Identification Report, Form MCS-150, every 24 months in accordance with the schedule specified in 49 C.F.R. § 390.19. During the two (2) year period of this Agreement and Order, **COMPANY** will also file with FMCSA an accurate updated Motor Carrier Identification Report, Form MCS-150, within 30 days of any and each change to the information reported on the Form, including any change in contact information, physical and/or mailing address, telephone and/or fax number, or motor carrier operation information. Failure by **COMPANY** to file an accurate updated Motor Carrier Identification Report as required by § 390.19 or this Agreement and Order

will be considered a failure to comply with the terms and conditions of this Agreement and Order.

2. **COMPANY** will notify FMCSA of any change in its motor carrier principals and/or commercial motor vehicles from the lists submitted and incorporated herein within ten (10) calendar days of such change. With its written notification, **COMPANY** shall submit a new list of motor carrier principals and/or list of commercial motor vehicles.

Failure by **COMPANY** to timely submit written notice to FMCSA of any changes to the list of motor carrier principals and list of commercial motor vehicles and/or provide FMCSA with updated information will be considered a failure to comply with the terms and conditions of this Agreement and Order.

3. **COMPANY** will provide written notice to FMCSA if it sells and/or transfers ownership, possession and/or control of any commercial motor vehicle listed in Attachment B within 10 (ten) calendar days of such sale or transfer. The written notice shall include identifying information for the commercial motor vehicle and identify and provide accurate contact information, including address and telephone number, for the person or entity to which the commercial motor vehicle was sold or transferred. Failure by **COMPANY** to timely submit written notice to FMCSA of any sale or transfer of any commercial motor vehicle listed in Attachment B and provide accurate required information regarding the sale or transfer will be considered a failure to comply with the terms and conditions of this Agreement and Order.

G. Reports and Submittals.

1. All reports, notices, correspondence, and/or documentation required by, or related to, this Agreement and Order, must be directed to the Division Administrator for FMCSA's Tennessee Division with a copy to the Field Administrator, Southern Service Center at the following addresses:

Darrell L. Ruban
Field Administrator, Southern Service Center
Federal Motor Carrier Safety Administration
1800 Century Boulevard, Suite 1700
Atlanta, GA 30345

Jon Dierberger
Division Administrator, Tennessee Division
Federal Motor Carrier Safety Administration
640 Grassmere Park, Suite 111
Nashville, TN 37211

2. Quarterly reports must be submitted as follows:

- For the months of January, February and March – the report shall be submitted to and received by FMCSA **on or before April 10 each year**;
 - For the months of April, May and June – the report shall be submitted to and received by FMCSA **on or before July 10 each year**;
 - For the months of July, August and September – the report shall be submitted to and received by FMCSA **on or before October 10 each year**;
 - For the months of October, November and December – the report shall be submitted to and received by FMCSA **on or before January 10 each year**.
3. The first report after execution of this Agreement and Order will be due as set forth above, and include required information for all dates from the date of execution of the Agreement and Order by the Field Administrator through the last day of the reporting period.
 4. **COMPANY** must notify FMCSA within 30 days of any changes to the list of 1) drivers, 2) Equipment (CMVs), and/or 3) company's Principals.

H. Ongoing responsibility for compliance with FMCSRs.

1. **COMPANY** has ongoing responsibility for compliance with all applicable provisions of Federal statutes and regulations, including the Federal Motor Carrier Safety Regulations. The duties imposed by this Agreement and Order shall be in addition to the duties imposed by applicable statute and regulations. Nothing in this Agreement and Order shall be construed to waive or modify any Federal statutory or regulatory requirement and compliance with the terms and conditions of this Agreement and Order shall not excuse any failure by **COMPANY** to comply with any such requirement.
2. **COMPANY** understands and agrees that FMCSA may conduct an on-site investigation, off-site investigation, and/or a compliance investigation of **COMPANY** operations to verify any information or data in the quarterly reports or upon receipt of a complaint or other indications of a safety concern with **COMPANY** operations.

IV. FAILURE TO COMPLY WITH TERMS AND CONDITIONS OF AGREEMENT AND ORDER

A. Denial of request for change in safety rating pursuant to 49 C.F.R. § 385.17(i).

1. Failure by **COMPANY** to comply with the terms and conditions of this Agreement and Order may result in the Field Administrator making a final determination to deny **COMPANY**'s request for change in safety rating.
2. **COMPANY** stipulates that its failure to comply with the terms and conditions of this Agreement and Order establishes that **COMPANY**'s motor carrier operation does not currently meet the fitness standard and factors specified in 49 C.F.R. §§ 385.5 and

386.7. Accordingly, FMCSA may make a final determination to deny **COMPANY**'s request for change in safety rating.

3. **COMPANY** stipulates that failure to comply with the terms and conditions of this Agreement and Order establishes that it is not fit and/or not willing or able to comply with:
 - a) the statutory and regulatory registration requirements;
 - b) applicable safety regulations including the FMCSRs;
 - c) the commercial motor vehicle safety requirements of employers and employees set forth in 49 U.S.C. § 31135;
 - d) the safety fitness requirements set forth in 49 U.S.C. § 31144; and
 - e) minimum financial responsibility requirements established under 49 U.S.C. §§ 13906 and 31138.
4. If FMCSA issues a final written determination denying **COMPANY**'s request for change in safety rating, **COMPANY** must, within 48 hours of such written determination, comply with the Order to Cease interstate and intrastate transportation issued. The Unsatisfactory safety rating, Order to Cease, and revocation of registration will be effective 48 hours after the date FMCSA issues a written denial of the request for safety rating upgrade.

B. Enforcement of Agreement and Order.

1. The Parties stipulate that this Agreement and Order will be considered an Order of the USDOT and the FMCSA which is enforceable by FMCSA.
2. In accordance with 49 U.S.C. §§ 507, 521, 14702, and 14704, FMCSA may request an action be brought to enforce an Order of the Agency and/or to penalize violations of an Order of the Agency.
3. In accordance with 49 U.S.C. § 13905(f)(a), FMCSA may suspend, amend, or revoke any part of the operating authority registration of a motor carrier after notice and an opportunity for a proceeding for willful failure to comply with the requirements of an Order of the Agency.

C. Non-waiver of Enforcement of Agreement and Order.

1. Any forbearance by FMCSA in exercising any right or remedy under this Agreement and Order or provided by law, shall not act as a waiver of or preclude the exercise of any right or remedy hereunder or otherwise available by law, nor shall it in any way affect the validity of this Agreement and Order or any part thereof. Forbearance by FMCSA in seeking enforcement of this Agreement and Order pursuant to its terms with respect to any instance or provision will not be construed as a waiver to such enforcement with regard to any other instance(s) or provision(s).

V. ADMINISTRATIVE REVIEW OF DENIAL OF REQUEST FOR CHANGE IN SAFETY RATING.

- A. Pursuant to 49 C.F.R. § 385.17(j), if FMCSA issues a denial of **COMPANY**'s request for change in safety rating, **COMPANY** may request administrative review of the denial by FMCSA's Chief Safety Officer in accordance with the procedures of 49 C.F.R. § 385.15 . Any request for administrative review must be made within 90 days of FMCSA's denial of the request.
- B. A request for administrative review of the denial of a request for change in safety rating does not stay the effectiveness of the final Unsatisfactory safety rating, prohibition on transportation, Order to Cease all interstate and intrastate transportation, or revocation of registration. The Unsatisfactory safety rating, Order to Cease, and revocation of operating authority/registration will remain in effect during any period of administrative review.

VI. BINDING EFFECT OF AGREEMENT AND ORDER.

- A. This Agreement and Order shall be binding upon, and enforceable against, **COMPANY**, its agents, employees and assigns.
- B. This Agreement and Order shall be binding upon any and all successors and/or assigns of **COMPANY** and its principals, including any subsequent purchasers, transferees, successor entities, and any entity established and/or used by **COMPANY** and/or its principals to conduct motor carrier operations in which any principal of **COMPANY** has a financial interest or management position.

VII. EFFECTIVE DATE AND DURATION OF AGREEMENT AND ORDER.

- A. This Agreement and Order is not in effect, or binding on any party, until executed by **COMPANY** and the Field Administrator for FMCSA's Southern Service Center.
- B. This Agreement and Order will become effective on the date it is executed by the Field Administrator, and will be in effect and binding on all parties for two (2) years from that date.
- C. **COMPANY** stipulates and agrees that it shall comply with, and be subject to, all terms and conditions of this Agreement and Order for a period of two (2) years from the date of execution of this Agreement and Order by the Field Administrator.
- D. If **COMPANY** fully complies with all terms and conditions of this Agreement and Order, and is not subject to any pending enforcement or safety improvement action at the end of the two (2) year period of this Agreement and Order, FMCSA's conditional grant of change in safety rating will be deemed a final determination under 49 C.F.R. § 385.17 to grant **COMPANY**'s request for safety rating change from Unsatisfactory to "Conditional".

VIII. RESCISSION OF AGREEMENT AND ORDER.

- A. **COMPANY** may request that this Agreement and Order be rescinded. In the event FMCSA agrees to rescind the Agreement and Order, FMCSA's conditional grant of change in safety rating will be withdrawn, and FMCSA will issue a final written determination denying **COMPANY** request for change in safety rating, **COMPANY** must, within 48 hours of such written determination, comply with the Order to Cease interstate and intrastate transportation issued. The Unsatisfactory safety rating, Order to Cease, and revocation of registration will be effective 48 hours after the date FMCSA issues a written denial of the request for safety rating upgrade.

IX. PENALTIES FOR VIOLATIONS.

- A. Penalty provisions for violations of federal statutes and regulations are separate and distinct from the assignment of a safety rating. Nothing in this Agreement and Order may be interpreted to limit, in any way, the authority of FMCSA to assess penalties for violations discovered during any investigation, including the compliance review resulting from the compliance review underlying this Agreement and Order, and/or take any action authorized by law to enforce federal statutes and regulations.
- B. This Agreement and Order is in addition to, and does not supersede, amend, or modify, any other orders or notices in any other case or proceeding. FMCSA may assess penalties for violations of federal statutes and regulations, including the FMCSRs, as well as for violations of FMCSA Orders and prohibitions. Penalties may be assessed for violations previously discovered, discovered after this order and/or discovered during subsequent investigations.

X. GENERAL PROVISIONS.

- A. **COMPANY** hereby acknowledges, represents, and warrants that it has carefully read and understands this Agreement and Order, all of its terms and conditions, and its final and binding effect, and has been afforded sufficient time and opportunity to review this Agreement and Order with legal counsel, has had an opportunity to negotiate with regard to the terms of this Agreement and Order, is fully competent to enter into this Agreement and Order, and has signed this Agreement and Order knowingly, freely, and voluntarily. Each signatory acting on behalf of a partnership, corporation, limited liability company, or other entity represents and warrants that he or she is authorized to act on behalf of, and bind the entity in the signing of this Agreement and Order.
- B. This Agreement and Order may be executed in counterparts, all of which when taken together constitute a fully executed original. A facsimile signature on this Agreement and Order constitutes an original signature for purposes of execution.
- C. Should any provision of this Agreement and Order be held unenforceable, invalid or illegal, such unenforceability or illegality shall not invalidate the whole Agreement and Order, but, rather, the Agreement and Order shall be construed as if it did not

contain the unenforceable, invalid or illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

- D. **COMPANY** through this Agreement and Order, specifies the facsimile number by which it will accept service of documents by facsimile, and agrees and consents to service by facsimile by FMCSA of any and all documents, including but not limited to correspondence, responses, and orders, in, and related to the above-described safety rating process in 49 C.F.R. § 385.17. **COMPANY** agrees that service of any document in or related to the above-described matter by FMCSA to the facsimile number specified by **COMPANY** in this Agreement and Order shall constitute valid service. **COMPANY** further agrees that nothing in this Agreement and Order shall require FMCSA to use facsimile service. FMCSA, at its discretion, may serve any document by any method.

COMPANY
USDOT No.

By: _____ Date: _____
Gloria Wright, President
COMPANY

PLEASE FAX THE SIGNED AGREEMENT TO: (404) 327-7349

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
SOUTHERN SERVICE CENTER**

By: _____ Date: _____
DARRELL L. RUBAN
FIELD ADMINISTRATOR
SOUTHERN SERVICE CENTER

APPENDIX A

Accurate and complete list of all principals of its motor carrier operation to include all owner(s), partner(s), corporate official(s) or member(s), and manager(s) for **COMPANY**

Gloria Wright, President

Charles Wright –Vice President

APPENDIX B

UNIT#	TYPE OF VEHICLE	YR/MAKE/MODEL	LICENSE PLATE #	CAPACITY	VIN #
709	MOTORCOACH	1994 MCI	?	56	1M8PDMTA3RF046260
710	MOTORCOACH	1998 MCI	?	56	1M8PDMTA9WP050640
711	MOTORCOACH	2000 MCI	?	57	1M8TRMPA6YP061186

APPENDIX C

SAFETY MANAGEMENT PLAN