

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , ¹)	
)	Case No. 23–90054 (CML)
Debtors.)	
)	Jointly Administered
)	
)	Related to Docket No. 465

**LIMITED OBJECTION OF ELEMENT FLEET TO CONFIRMATION OF THE
JOINT PLAN OF LIQUIDATION OF IEH AUTO PARTS HOLDING LLC AND ITS
DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

Element Fleet Corporation (as successor in interest to Element Vehicle Management Services, LLC), on its own behalf and as servicer to D.L. Peterson Trust, lessor (collectively, “**Element Fleet**”) objects, as set forth herein, to confirmation of the Debtors’ proposed plan of reorganization [Docket No. 465] (the “**Plan**”). In support, Element Fleet respectfully represents as follows:

I. BACKGROUND

1. On January 31, 2023 (the “**Petition Date**”), the above-captioned Debtors commenced the captioned cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

The Element Fleet Contracts with IEH

2. Element Fleet is one of the largest fleet vehicle lessors and fleet service providers in the world. Element Fleet leases vehicles to Debtor IEH Auto Parts LLC (“**IEH**”) and provides

¹ The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors’ service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.



services to IEH in respect of such leased vehicles and also in respect of vehicles owned by IEH or leased to IEH by other lessors.

3. IEH and Element Fleet are parties to: (i) the Letter of Intent for Lease dated July 16, 2015 and the attached Motor Vehicle Fleet Open-End Lease Agreement Lease No(s). 3585, a true copy of which is attached as **Exhibit 1** (together with any and all amendments, the “**Vehicle Lease**”), and (ii) the Master Services Agreement dated as of October 28, 2020, a true copy of which is attached as **Exhibit 2** (together with any and all amendments, the “**MSA**” and together with the Vehicle Lease, the “**Element Fleet Contracts**”). As of the Petition Date, the number of vehicles being leased by Element Fleet to IEH was approximately 556 (collectively, the “**Leased Vehicles**”).²

4. Among the services provided by Element Fleet to IEH under the MSA is the issuance of credit cards to IEH employees which enable them to make credit purchases for fuel, parts and other supplies for the Leased Vehicles (and for other vehicles in IEH’s fleet) with the initial charges paid by Element and then billed through to IEH. Element Fleet also provides credit to IEH in connection with repair and maintenance of the Leased Vehicles; Element Fleet will both manage the maintenance and repair process and then pay the third-party providers for parts and labor, which amounts Element Fleet then bills to IEH. Also, as the owner of the Leased Vehicles, Element will receive invoices for taxes, traffic or parking tickets and other fines, costs and

² After the Petition Date, Element Fleet and IEH entered into an agreement (the “**Trade Agreement**”) pursuant to the authority provided to the Debtors by this Court’s *Order (I) Authorizing the Debtors to Pay Certain Prepetition Trade Claims, (II) Confirming Administrative Expense Priority of Outstanding Purchase Orders, and (III) Granting Related Relief* entered on February 1, 2023 [Docket No. 42] (the “**Vendor Order**”). Debtors paid Element Fleet \$518,354.40 on account of pre-Petition Date amounts due under the Element Fleet Contracts pursuant to the Trade Agreement. The Trade Agreement was included along with the Element Contracts on Debtors’ supplemental notice of leases and contracts to be assumed and assigned filed on May 2023 [Docket No. 475]. As set forth in the Cure Objection and Assignment Objection (each as defined below), Element Fleet submits that the Trade Agreement is not an executory contract subject to assumption and assignment.

expenses incurred in connection with IEH's operation of the Leased Vehicles which also are billed through to IEH.

The Plan and Sale Processes

5. On February 10, 2023, the Debtors filed a motion [Docket No. 96] (the "**Sale Motion**") seeking entry of orders, among other things, authorizing and approving (i) the sale of assets, and (ii) assumption and assignment of leases and executory contracts.

6. On March 10, 2023, the Court entered an order [Docket No. 208] (the "**Bid Procedures Order**") approving, among other things, the assumption and assignment procedures, and the process by which executory contracts could be proposed for assumption and assignment to a Winning Bidder or a Backup Bidder, as applicable (as the terms "Winning Bidder" and "Backup Bidder" are defined in the Bid Procedures Order).

7. Debtors filed their Plan on April 28, 2023. With respect to executory contracts and unexpired leases, the Plan, with certain exceptions, provides for the deemed rejection of all such leases and contracts, as follows:

On the Effective Date, each of the Debtors' Executory Contracts or Unexpired Leases shall be deemed automatically rejected in accordance with the provisions of sections 365 and 1123 of the Bankruptcy Code as of the Effective Date unless any such Executory or Unexpired Lease: (1) has previously been assumed by the Debtors by Final Order of the Bankruptcy Court; (2) is listed on the schedule of Retained Contracts included in the Plan Supplement; or (3) is the subject of a motion to assume or reject pending as of the Effective Date.

See Plan at Art. V. A., page 26. As of the date of this Limited Objection, the Element Fleet Contracts are not the "subject of a motion to assume or reject" and Debtors have not yet filed either a Plan Supplement or a "schedule of Retained Contracts."³

³ Pursuant to the Court's *Corrected Order (I) Conditionally Approving the Disclosure Statement; (II) Approving the Solicitation and Notice Procedures; (III) Approving the Forms of Ballots and Notices in Connection Therewith; (IV) Approving the Combined Hearing Timeline; and (V) Granting Related Relief*

8. On May 19, 2023, and May 24, 2023, the Court entered orders approving asset sales including proposed assumption and assignment of executory contracts and unexpired leases [*see* Docket Nos. 585, 586 and 604] (the “**Sale Orders**”).⁴ The Element Fleet Contracts have not been proposed to be assumed and assigned in connection with and are not subject to any of the sales approved by the Sale Orders.

II. OBJECTIONS

The Element Fleet Contracts Are Not Assignable Pursuant to the Plan or Otherwise.

9. The MSA is an Unassignable Financial Accommodation. Section 365(c)(2) of the Bankruptcy Code provides that:

The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

* * *

(2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor;

10. As noted above, Element Fleet provides credit through, inter alia, issuance of credit cards to IEH employees for the purchase of fuel and other expenses attendant to the use of vehicles as well as credit in connection with other services provided under the MSA. As such, the MSA is

[Docket No. 474] (the “**Disclosure Statement Order**”), Debtors were to have filed a Plan Supplement on May 24, 2023. On May 24, 2023, Debtors filed an emergency motion [Docket No. 607] (the “**Emergency Motion**”), seeking to extend certain dates, including Debtors’ deadline to file the Plan Supplement (to June 9, 2023). The Emergency Motion did not seek to extend the objection deadline for the Plan. The Court granted the Emergency Motion by its order of May 25, 2023 [Docket No. 615].

⁴ On May 8, 2023, Element Fleet filed its protective cure objection [Docket No. 491] (the “**Cure Objection**”) in advance of the May 10, 2023, auction authorized by the Bid Procedures Order to advise the Debtors and all bidders of its positions with respect to the Element Fleet Contracts and related cure issues. On May 18, 2023, Element Fleet objected to the assumption and assignment of the Element Fleet Contracts [Docket No. 491] (the “**Assignment Objection**”).

a financial accommodation contract within the meaning of section 365(c)(2) (and section 365(e)(2)(B), which excepts financial accommodation contracts from the operation of the “ipso facto” clauses of section 365(e)(1)). A contract is a “financial accommodation” if it provides for the not merely incidental extension of money or credit to accommodate a debtor directly or secondarily liable for the debt incurred. *In re Sportsman's Warehouse, Inc.*, 457 B.R. 372, 392–93 (Bankr. D. Del. 2011) (internal citations omitted); *In re Boscov's, Inc.*, No. 08-11637 (KG), 2008 WL 4975882, at *2 (Bankr. D. Del. Nov. 21, 2008) (internal citations omitted); *In re Teligent, Inc.*, 268 B.R. 723, 737–38 (Bankr. S.D.N.Y. 2001).

11. Although Element Fleet after the Petition Date has agreed to continue to extend credit to IEH under the MSA, pursuant to the Trade Agreement, it cannot be forced to do so to a proposed assignee. *See In re Metro Affiliates, Inc.*, No. 02-42560 (PCB), 2008 WL 656788, at *6 (Bankr. S.D.N.Y. Mar. 6, 2008) (Code § 365(c)(2) is intended to prevent a debtor in possession from assuming or assigning contracts that would require loans or financial accommodations to be made in the future”). *See also Transamerica Comm'l Fin. Corp. v. Citibank, N.A. (In re Sun Runner Marine, Inc.)*, 945 F.2d 1089, 1092 (9th Cir. 1991) (holding a financial accommodation contract could not be assumed even with the consent of the lender).

12. Neither the MSA nor the Vehicle Lease are Assignable by their Terms. The MSA and the Vehicle Lease each also affirmatively restricts assignment. The MSA provides at its Section 9.2 that any assignment of must be with Element Fleet’s consent:

Client will not assign any interest in this Agreement to any party without Element's prior written consent. Any such consent will not relieve Client of its obligations to Element. Any purported assignment in violation of this restriction will be null and void.”

The Vehicle Lease provides similarly at its Section 4 that “THE LESSEE SHALL NOT ASSIGN ITS INTEREST IN THIS LEASE, EXCEPT WITH THE PRIOR WRITTEN CONSENT OF THE LESSOR.”

The Plan Violates Sections 1129(a)(1), 1123(b)(2) and 365(d)(2) of the Bankruptcy Code.

13. Section 1123(b)(2) of the Bankruptcy Code provides that a plan may, “subject to section 365,” provide for the assumption or rejection of contracts and leases. Section 365(d)(2) of the Bankruptcy Code requires a debtor assume or reject “at any time before the confirmation of a plan.” Caselaw applies these provisions as drafted. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 529 (1984) (“In a Chapter 11 reorganization, a debtor-in- possession has until a reorganization plan is confirmed to decide whether to accept or reject an executory contract.”); *Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 46 (2008) (“We agree with Bildisco’s commonsense observation that the decision whether to reject a contract or lease must be made before confirmation.”); *University Medical Center v. Sullivan*, 125 B.R. 121, 124 (E.D. Pa. 1991) (“A debtor under Chapter 11 must elect to assume or reject any executory contract by the time a reorganization plan is confirmed . . .”).

14. Contrary to the requirements of sections 365 and 1123, the Plan does not require Debtors to decide whether to assume or reject prior to confirmation.. Under the Plan leases and contracts are deemed rejected by entry of a confirmation order but rejection is stated to be effective only as of the Effective Date of the Plan and also only if a lease or contract is not the day prior to the Effective Date subject to a pending motion to assume (and presumably to assign) or included on the schedule of Retained Contracts which may be amended to the Effective Date of the Plan.

15. Accordingly, Element Fleet objects to confirmation of the Plan (i) to the extent it allows IEH to defer its decision on assumption or rejection of the Element Contracts and/or to change its mind about assumption and rejection decisions made, explicitly or implicitly, as of

confirmation, and (ii) to the extent, if any, that entry of a confirmation order will be deemed to have approved any post-confirmation proposed assignment of the Element Contracts (or the Trade Agreement).

Set Off and Lien Rights Must be Preserved

16. Element Fleet is the owner and lessor of the Leased Vehicles and upon surrender or repossession of the Leased Vehicles will dispose of them in accordance with the terms of the Vehicle Lease. Prior to a default disposition proceeds may be credited to the lessee's account or payable to lessee at Element Fleet's discretion. However, after default Element Fleet is entitled to apply the disposition proceeds to all amounts due under the Vehicle Lease and under the MSA. Such rights are in the nature of lien and/or setoff that must be preserved notwithstanding confirmation of the Plan.

17. Accordingly, Element Fleet objects to the Plan, including, without limitation, to Article IV. E. of the Plan, to the extent such impairs Element Fleet's rights to obtain possession of the Leased Vehicles either through surrender by the Debtors or repossession, to dispose of the Leased Vehicles after surrender or repossession and to apply the proceeds of disposition of the Leased Vehicles to any and all amounts due and owing under and in accordance with the Element Fleet Contracts. Element Fleet submits that appropriate language protecting its rights and remedies can and should be included in the order confirming the Plan to make clear that it retains its set off and lien rights in accordance with the Element Fleet Contracts.

The Release and Exculpation Provisions are Inappropriate as Applied to Element Fleet

18. The release and exculpation provisions of the Plan are broadly drafted, and Element Fleet submits, arguably would impair their rights under the Element Contracts in the event they are rejected including, without limitation, to obtain possession of the Leased Vehicles through surrender or repossession, to dispose of the Leased Vehicles and to apply the proceeds of

disposition of the Leased Vehicles to amounts due and owing under the Element Fleet Contracts.

With respect to the release, Article VIII. provides:

In exchange for good and valuable consideration, the adequacy of which is hereby confirmed, on (i) the Settlement Effective Date and (ii) the Plan Effective Date, each Released Party is deemed to be hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each of the Releasing Parties (including any successor trustee or other representative in the Chapter 11 Cases and any successor cases), in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Entities who may purport to assert any Cause of Action owned by the Releasing Parties, directly or derivatively, by, through, for, or because of the foregoing Entities on behalf of the Releasing Parties, from any and all direct or derivative Claims and Causes of Action asserted on behalf of the Releasing Parties, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Releasing Parties would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Releasing Party or other Entity, or that any Holder of any Claim against, or Interest in, a Releasing Party or other Entity could have asserted on behalf of the Releasing Party, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), the assertion or enforcement of rights and remedies against the Debtors,

With respect to exculpation, Article VIII. F. 5 of the Plan at page 37 provides:

Except as expressly provided herein or in the Confirmation Order, no Exculpated Party shall have or incur liability for, and each Exculpated Party shall be released and exculpated from any and all Claims, Interests, obligations, rights, suits, damages, Cause of Action for any claim arising on or after the Petition Date through the Effective Date related to any act or omission in connection with, relating to, or arising out of the Chapter 11 Cases

19. The number of Leased Vehicles is in excess of 500. In the event of a rejection of the Vehicle Lease, which is likely under the circumstances here, obtaining possession of the vehicles (either cooperatively with the Debtors by surrender, as the Vehicle Lease requires or by repossession), and to dispose of the vehicles and apply the disposition proceeds under and in

accordance with the Vehicle Lease will take considerable time. It is extremely likely such would extend beyond the Effective Date of the Plan.

20. Read literally, the release and exculpation provisions of the Plan arguably would prevent Element Fleet from exercising its basic rights and remedies with respect to the Leased Vehicles. Although Element Fleet is not suggesting that such is the design of the release and exculpation provisions of the Plan it nevertheless is concerned that such might be the effect of them.

21. Accordingly, Element Fleet objects to the release and exculpation provisions of the Plan to the extent that such would prevent or otherwise interfere with the exercise of Element Fleet's rights and remedies under the Element Fleet Contracts after assumption or rejection including, without limitation, to obtain possession of the Leased Vehicles either through surrender by the Debtors or repossession, to dispose of the Leased Vehicles and to apply the proceeds of disposition of the Leased Vehicles to amounts due and owing under the Element Fleet Contracts. Element Fleet submits that appropriate language protecting its rights and remedies in the event of rejection can and should be included in the order confirming the Plan to make clear that the release and exculpation provisions of the Plan will not have what Element Fleet assumes is the unintended consequences noted herein.

The Trade Agreement.

22. In its Cure Objection and the Assignment Objection Element Fleet objected to assignment of the Trade Agreement and fully adopts and incorporates such objections herein.

WHEREFORE, Element Fleet respectfully objects to confirmation of the Plan; and requests that the Court grant all other relief to which it is or may be entitled.

Dated: May 26, 2023

SAUL EWING LLP

/s/ John D. Demmy

John D. Demmy (DE Bar No. 2802)

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P.O. Box 1266

Wilmington, DE 19899

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Attorneys for Element Fleet Corporation

EXHIBIT 1

Vehicle Lease

**Element Vehicle Management Services, LLC**Paul Danielson
Senior Vice President
and General Counsel940 Ridgebrook Road Tel 410-771-2024
Sparks, Maryland 21152 Fax 410-771-2530
paul.danielson@elementcorp.com

July 16, 2015

IEH Auto Parts LLC
20 Hazelwood Drive
Amherst, NY 14228Re: **Letter of Intent for Lease**

Dear Sir:

D. L. Peterson Trust and DLPT/Element Vehicle Management Services, LLC (collectively "DLPT/Element") and IEH Auto Parts LLC ("IEH") are currently in the process of negotiating a Motor Vehicle Fleet Open-End Lease Agreement (the "Lease"), and Libor Flex Program Supplements (collectively, the "Agreements"), copies of which are attached hereto and incorporated herein by reference, pursuant to which DLPT/Element will lease motor vehicles to IEH. It is IEH's intention to complete the negotiation of and execute the Agreements by September 16, 2015.

At IEH's request, and on the basis of the foregoing statement of intent, DLPT/Element may, at IEH's request and in DLPT/Element's discretion, order vehicles (the "Vehicles") and have them delivered to IEH prior to the execution of the Lease, prior to the execution of the Agreements. It is the intention of DLPT/Element and IEH that the Vehicles be leased pursuant to the terms, conditions and procedures set forth in the attached Lease and that the services be performed pursuant to the terms, conditions and procedures set forth in the attached Agreements, all of which form a part of this letter of intent. This letter of intent will govern our relationship until such time as the Agreements are fully negotiated and executed. At such time, any Vehicles that DLPT/Element orders and/or delivered and any services rendered under this letter of intent will, retroactively, be covered by the Agreements ultimately signed by DLPT/Element and IEH.

If for any reason the Lease and Agreements are not executed by September 16, 2015, or such other date mutually agreed upon in writing by DLPT/Element and IEH, IEH agrees to be bound by the terms and conditions of the Lease and Agreements in the form attached hereto. With respect to Vehicles under the Lease, at DLPT/Element's request IEH will promptly purchase the Vehicles from DLPT/Element for a price equal to DLPT/Element's original cost, plus DLPT/Element's reasonable related expenses. In addition, IEH agrees to indemnify DLPT/Element for all claims and liabilities of whatsoever kind or nature, and all costs and expenses, including reasonable attorneys' fees incurred in connection therewith, relating to or arising out of the possession, use or operation of the Vehicles pursuant to the Lease or the performance by DLPT/Element of the services provided pursuant to the Agreements from the time that the Vehicles come into the possession of IEH's employees or agents in accordance with the Lease and until such time that the Agreements are executed.

Please indicate IEH's acceptance of and agreement to the terms and conditions stated in this letter by having an authorized officer of IEH countersign on the line provided below and returning the letter to me.

Thank you for your assistance in this matter.

Very truly yours,
D.L. PETERSON TRUST
ELEMENT VEHICLE MANAGEMENT
SERVICES, LLC

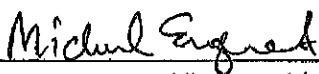
By: 

Paul Danielson

AKN PM

ACCEPTED AND AGREED:

IEH AUTO PARTS LLC

By: 
Vice President

Name: Mike England

Date: CFO + Secretary

Enclosures
Cac 7.16.15


BUSINESS USE CERTIFICATION

To comply with the requirements of Section 7701(h)(2)(C) of the Internal Revenue Code of 1986, as amended from time to time, the Lessee makes the following certification and acknowledgement as a part of the Lease.

1. The Lessee hereby certifies, under penalty of perjury, that the Lessee intends that more than 50 percent of the use of the Vehicles under the Lease is to be in a trade or business of the Lessee;
2. The Lessee hereby acknowledges that in accordance with Section 1(e) of the Lease it has been advised that it will not be treated as the owner of the Vehicles under the Lease for federal income tax purposes.

IN WITNESS WHEREOF, the Lessee has caused this certification to be executed as of the date first above written.

IEH AUTO PARTS LLC

By: 
~~Vice President~~
CFO + Secretary



**MOTOR VEHICLE FLEET OPEN-END
LEASE AGREEMENT**

LEASE NO(S). 3585

THIS MOTOR VEHICLE FLEET OPEN-END LEASE AGREEMENT, dated as of July 16th, 2015 ("this Agreement"), is entered into by and between D.L. Peterson Trust, a Delaware Business Trust ("Lessor"), and **IEH AUTO PARTS LLC**, with offices at **20 Hazelwood Drive, Amherst, NY 14228** ("the Lessee").

IN CONSIDERATION of the premises and the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and the Lessee, each intending to be legally bound hereby, agree as follows:

1. Lease of Motor Vehicles.

(a) Subject to the terms and conditions of this Agreement, Lessor agrees to lease to the Lessee, and the Lessee agrees to lease from Lessor, all of the cars, trucks, truck chassis, truck bodies, truck tractors, truck trailers, and other motor vehicles (each, "a Vehicle" or "the Vehicle," and collectively, "the Vehicles") that the Lessee from time to time requisitions from Lessor and that Lessor from time to time agrees to lease to the Lessee under this Agreement. Lessor shall be responsible for obtaining and making available to designated representatives of the Lessee the Vehicles from time to time agreed to be leased as provided in this Section 1. Lessor shall not be liable to the Lessee in the event of Lessor's inability to obtain any of the Vehicles with the exercise of reasonable diligence. Neither Lessor nor the Lessee shall be obligated to lease any minimum number of Vehicles; however, once a Vehicle is requisitioned from Lessor by the Lessee, the Lessee shall be obligated to lease the Vehicle under this Agreement. Lessor may choose to cancel any Vehicle requisition submitted pursuant to this Agreement at any time prior to delivery of the Vehicle to the Lessee or the Lessee's representative.

(b) Lessor shall be the sole legal and equitable owner of the Vehicles. The Lessee shall have no legal or equitable interest in the Vehicles or the proceeds of sale of the Vehicles except its interest as Lessee of the Vehicles as specifically set forth in this Agreement.

(c) The Vehicles shall be titled in the name of Lessor or such other name as Lessor or the trustee of Lessor may designate from time to time. The certificates of title for the Vehicles may note as lienholder Lessor, Raven Funding LLC, Chesapeake Funding LLC or such other party as Lessor or the trustee of Lessor may designate from time to time.

(d) From time to time, the Lessee may request in writing that Lessor issue additional Lease Numbers in order to facilitate Lessee's identification and administration of this Agreement. In such event, any Vehicles ordered or leased by Lessor to or for the Lessee and identified by such additional Lease Numbers shall be governed by and subject to the terms and conditions of this Agreement the same as if these Vehicles had been identified by the original Lease Number.

(e) Lessor and the Lessee characterize this Agreement as a lease for federal and state income tax purposes. Lessor and the Lessee agree that Lessor is the only party entitled to claim income tax deductions for asset cost recovery, or depreciation, and investment tax credits, if any, with respect to the Vehicles, under the Internal Revenue Code of 1986 and applicable state laws, as amended from time to time.

(f) Lessee acknowledges that it is responsible for its own determination of the proper lease term period for purposes of its SFAS 13 or similar analysis.

2. Lease Term and Depreciation Term.

(a) The lease term for a Vehicle shall commence on the date that the Lessee or its representative takes possession of the Vehicle ("Acceptance") and shall continue thereafter, except in the event of the loss, or damage beyond repair, of the Vehicle (a "Casualty Vehicle"), for a minimum term of 367 days. After the minimum term, the lease term may be continued at the Lessee's election for successive monthly renewal periods until the end of the maximum lease term (the "Maximum Lease Term") reflected in the Vehicle's New Unit Notice ("NUN") and made part of this Agreement, and the Vehicle is returned to Lessor or its representative pursuant to Section 8 of this Agreement. For purposes of this Agreement, including the Vehicle's NUN, the Maximum Lease Term may also be referred to as the Lease Term or Depreciation Term.

(b) The Lessee shall designate each of the Vehicles to be at least a 12-month Vehicle, or any month in between, up to and including a 72-month Vehicle. Such designation (i) shall be known as the Depreciation Term for a Vehicle, (ii) shall be made by the Lessee on a requisition form or by an alternative method acceptable to Lessor in advance of the Acceptance of the Vehicle, and (iii) once made as to the Vehicle, may not be changed without the prior written consent of Lessor.

3. Use of Vehicles.

(a) The Lessee shall maintain the Vehicles in good condition and repair, ordinary wear and tear excepted. The Lessee shall use or permit the use of the Vehicles in its trade or business and only for lawful purposes within the United States and for occasional trips to Canada and Mexico, but in no event shall a Vehicle be used for the transportation for hire of goods or passengers, for towing any property other than in accordance with the Vehicle manufacturer's specifications, or for transporting explosive, radioactive, flammable, or

hazardous materials. The Lessee shall comply, and cause all persons operating the Vehicles to comply, with (i) all applicable requirements of law relating to the registration, leasing, insurance, use, and operation of the Vehicles, including operators' licensing requirements, and (ii) all conditions of the policies of insurance on the Vehicles. At all times, the Lessee shall supply Lessor with the name and address of representatives to whom the Vehicles are assigned.

(b) Notwithstanding the above, Lessor reserves the right to inspect the Vehicles at anytime during normal daylight business hours upon reasonable notice of its intent to do so. The Lessee shall furnish information to Lessor as to where the Vehicles may be inspected.

4. Sublease or Assignment. **THE LESSEE SHALL NOT SUBLEASE ANY OF THE VEHICLES. THE LESSEE SHALL NOT ASSIGN ITS INTEREST IN THIS LEASE, EXCEPT WITH THE PRIOR WRITTEN CONSENT OF THE LESSOR.** The Lessee may have any of the Vehicles delivered to a subsidiary company of the Lessee, but such arrangement shall in no way alter the Lessee's responsibilities under this Agreement with respect to the Vehicles.

5. Upfitting, Carrying Cost, and Disclaimer of Warranties.

(a) Upfitting

(i) Lessee may request that Lessor have a Vehicle upfitted with equipment or other tangible property prior to or after Acceptance. At the request of Lessee, Lessor may arrange for the Vehicle to be delivered to an upfit vendor chosen by Lessee. Lessor shall pay when due all upfit vendor invoices for such Vehicle as soon as practicable after receipt by Lessor and in accordance with its payment terms. All such equipment or other tangible property shall become a part of the Vehicle leased hereunder.

(ii) In addition, for any upfitting, the Lessee and any other Debtor (defined for the purposes herein as a permissive user as set forth in Section 4 herein) hereby appoints Lessor as its duly authorized agent and attorney in fact for and on behalf of Lessee in all matters relating to the preparation, execution and filing of such UCC financing and termination statements to evidence the ownership by Lessor of all upfitting leased hereunder. This power granted includes the power for Lessor to appoint additional attorneys in fact on behalf of Lessee for the limited purposes herein specified and for the revocation of such appointments. Lessee agrees to reimburse Lessor for the expenses including overnight courier expenses incurred in filing any UCC Financing Statements, obtaining Certificates of Good Standing, Articles of Incorporation or Organization and other filings related to the Lessee's legal creation and conducting lien searches and pay any applicable administration fees. Lessee agrees to execute any additional documents, instruments and assurances and take such further action as Lessor may from time to time reasonably request in order to more effectively carry out the purpose of this section and to protect the rights and remedies of Lessor hereunder.

(b) Carrying Costs. Lessee is responsible for interim interest on Vehicle Costs (as defined below) for each invoice paid from the date of payment by Lessor ("Invoice Payment Date") through the date of Acceptance of the Vehicle by the Lessee or its representative ("Carrying Costs").

(i) Capitalized Costs. Lessor shall pay the total of all amounts required to be paid to manufacturers, dealers, and vendors in connection with the purchase, upfitting, storage and delivery of the Vehicle and for all expenses, fees and taxes including those related to the titling, licensing, and registration of the Vehicle ("Vehicle Costs"). The total of all such amounts paid, plus Carrying Costs, shall be used as the basis for determining the rental payable for the Vehicle and shall be referred to as the "Capitalized Cost."

(ii) Upfitted Vehicles. Carrying Costs will be assessed for all upfitting invoice amounts paid by Element as part of the Vehicle Costs from the relevant Invoice Payment Date for the upfitting until Acceptance.

(iii) Computation of Carrying Costs. Carrying Costs for each Vehicle shall be calculated on a per diem basis (365-day-year) at the rate of 100% of the Prime Interest Rate defined as the Federal Reserve H.15 Statistical Release prime interest rate (the "Prime Interest Rate") in effect as of the last business day of the month preceding the month of the Invoice Payment Date. The Prime Interest Rate shall be adjusted upward or downward on the last day of each subsequent month as the Prime Interest Rate changes. Carrying Costs for each Vehicle leased pursuant to this Agreement shall be included in the Capitalized Cost for such Vehicle.

(iv) Lessor shall not charge Lessee Carrying Costs on any invoice if the period from Invoice Payment Date to Acceptance for that invoice is less than sixteen (16) days.

(c) Disclaimer of Warranty. Lessor hereby assigns, and will otherwise make available to the Lessee, all of Lessor's rights under the manufacturers' warranties of the Vehicles. Acceptance of delivery of a Vehicle by the Lessee's representative shall constitute the Lessee's acknowledgment that (i) the Vehicle is the make and model, and is equipped, as specified by the Lessee, (ii) the Vehicle is an authorized addition under this Agreement, and (iii) LESSOR HAS MADE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE VEHICLE, AND THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL LESSOR BE LIABLE FOR CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES.

6. Rental and Rental Term.

(a) Rental and other charges related to the Vehicles shall be billed by Lessor monthly in advance of the month for which they are due and paid by the Lessee to Lessor by the first calendar day of such month. The foregoing payments by the Lessee shall be made by check or electronic funds transfer to an account designated by Lessor. Lessee's obligation to

pay rental and other charges shall be absolute and unconditional and shall not be subject to any claim, defense, or setoff whatsoever. Rental charges shall include Depreciation Rent (as defined below), to be determined by reference to the rates in effect at the time of the Lessee's Acceptance of a Vehicle, reflected in the Vehicle's NUN and made part of this Agreement, which rates are expressed as a percentage of the Capitalized Cost of the Vehicle, plus interest and management fees as set forth in the NUN. Such rental rates shall include a percentage factor, known as the Depreciation Rent Factor. That portion of the Lessee's monthly rental comprising the applicable Depreciation Rent Factor times the Capitalized Cost of the Vehicles shall be known as Depreciation Rent. The aggregate amount of all Depreciation Rent paid during the rental term of a Vehicle shall be known as the Accumulated Depreciation Rent. The foregoing provisions and applicable NUNs notwithstanding, in the event Lessee ceases doing business (or substantially reduces its volume of business) with Lessor with respect to leasing additional Vehicles, or with Element Vehicle Management Services, LLC with respect to utilization of fleet management services, Lessor will have the right in its sole discretion to adjust the interest rate for (i) Vehicles then under lease, (ii) subsequently-ordered Vehicles, and (iii) Vehicles that have been ordered but not yet accepted by the Lessee (collectively, "Included Vehicles"), by increasing the spread over the applicable billing index, whether floating or fixed, and including, without limitation, the Element LIBOR Rate, the Element Interest Rate Swap, the Element Cost of Funds, and the Element Fixed Rate Cost of Funds (each as defined in the applicable funding supplement), by adding an additional 110 basis points to the existing spread for each Included Vehicle. In such event Lessor will also have the right, in its sole discretion, to increase the management and thereafter fees for all Included Vehicles. All such increases will be effective on a going-forward basis for Included Vehicles as of the date such increases are imposed by Lessor.

(b) Rental and the other charges related to the Vehicles shall be subject to a late-payment charge to be paid by the Lessee to Lessor in the amount of one and one-half percent (1-1/2%) per month, or fraction of a month, for any amount not received by Lessor by the fifteenth (15th) calendar day of the month for which such amount is due. This reference to a late-payment charge does not alter the Lessee's obligation to pay all rental and other charges related to the Vehicles by the first calendar day of the month for which they are due.

(c) The rental term for a Vehicle shall commence on the first (1st) calendar day of the month after the Vehicle is accepted by the Lessee's representative. Lessee agrees that from the date the Vehicle is accepted by the Lessee's representative until the beginning of the rental term, Lessee shall pay a fee equal to the monthly rental charge for such Vehicle pro-rated on a daily basis based on the actual number of days in the month. The rental term for a Vehicle shall end on the last calendar day of the month preceding the month in which the Vehicle is sold and final settlement for the Vehicle is made pursuant to Section 8 if such sale and settlement occur on or before the fifteenth (15th) calendar day of the month, or on the last calendar day of the month in which the sale and settlement occur if such sale and settlement occur after the fifteenth (15th) calendar day of the month.

(d) The Lessee shall not prepay any rental for more than one (1) month in advance of its due date.

7. Expenses, Fees, and Taxes.

The Lessee shall pay all costs, expenses, fees, and charges incurred in connection with the titling, registration and upfitting (if applicable) of the Vehicles and the use and operation of the Vehicles during their lease terms, including, but not limited to, fuel, lubricants, replacement parts and accessories, repairs, maintenance, storage, parking, tolls, fines, registration fees, license fees, tags, and all taxes whatsoever by whomsoever payable (except any tax measured by the net income of Lessor) on or relating to the Vehicles and their purchase, sale, rental, use, or operation. The Lessee shall reimburse Lessor the amount of any such costs, expenses, fees, charges, and taxes paid by Lessor, and pay the administration fees assessed by Lessor from time to time. It is the intent of this Agreement that Lessor shall receive the rental hereunder as a net return on the Vehicles.

8. Sale of Vehicles.

(a) At anytime after the first 367 days of the rental term of a Vehicle that the Lessee (i) no longer intends to use or (ii) intends to purchase in accordance with the provisions of Section 8 (e), of this Agreement, the Lessee may (and at the end of the Maximum Lease Term, the Lessee shall) terminate the lease of the Vehicle. In such case, the Lessee shall notify Lessor and shall, at the Lessee's expense, surrender the Vehicle at a place that is mutually agreeable to the Lessee and Lessor. Any Vehicle, except a Casualty Vehicle, as defined in Section 2, that is not kept under lease for the minimum term of 367 days shall be subject to a penalty of an amount equal to the monthly rent for such Vehicle less the Depreciation Rent portion of such monthly rent for each month that the Vehicle is kept under lease less than 367 days. As soon as practicable, Lessor shall sell the Vehicle, subject to any applicable sale fees, to a purchaser selected by, or approved by, Lessor. The rental term for the Vehicle shall end as provided in Section 6. If rental charges are averaged over the rental term or another agreed period, and Lessee terminates the lease of a Vehicle prior to the expiration of such averaged period, Lessee agrees to pay Lessor the difference between the actual interest billed and simple interest.

(b) Should the net resale proceeds exceed the difference between the Capitalized Cost and the Accumulated Depreciation Rent paid by the Lessee, Lessor shall credit the Lessee's account for such excess, or, at the Lessor's option, pay such excess to the Lessee.

(c) Should the net resale proceeds be less than the difference between the Capitalized Cost and the Accumulated Depreciation Rent paid by the Lessee, the Lessee shall pay such deficiency to Lessor; provided, however, that the Lessee shall not be liable to pay Lessor for that portion of any such deficiency caused by the net resale proceeds being less than sixteen percent (16%) of the fair market value of the Vehicle at the time of sale subject, however, to the operation of Section 8(d). For purposes of this Section 8(c), the "fair market value" of a Vehicle shall be its Capitalized Cost if the Vehicle is sold during the period from the beginning of the thirteenth (13th) through the end of the twenty-fourth (24th) month of its rental term. If the Vehicle is sold at anytime after the twenty-fourth (24th) month of its rental term, the "fair

market value" shall be the fair market value of the Vehicle at the beginning of the monthly renewal period immediately preceding the date of sale.

(d) In the event that the net resale proceeds are less than the difference between the Capitalized Cost and the Accumulated Depreciation Rent paid by the Lessee because of damage or wear and tear to the Vehicle in excess of that which is ordinary, the Lessee shall pay Lessor the entire amount of such deficiency, and the limitation on the Lessee's obligation to pay the deficiency as set forth in Section 8(c) shall not apply.

(e) Subject to Lessor's right to approve Vehicle purchasers as set forth in Section 8(a) of this Agreement and provided that Lessee is not then in default under this Agreement, the Lessee shall have the option to purchase, or designate a purchaser for, a Vehicle leased pursuant to this Agreement at anytime after the first 367 days of the rental term of the Vehicle, upon payment to Lessor of an amount equal to the fair market value of the Vehicle, as determined by Lessor. This amount shall be deemed to be the net resale proceeds for the Vehicle. Notwithstanding any provision in this Agreement to the contrary, the rental term for a Vehicle sold in this manner shall continue until such payment is received by Lessor, and, further, the limitation on the Lessee's obligation to pay Lessor for any deficiency between the net resale proceeds and the difference between the Capitalized Cost and the Depreciation Rent paid by the Lessee as set forth in Section 8(c) shall not apply.

(f) Any adjustments between Lessor and the Lessee relating to the disposition of the Vehicles shall be reflected in a statement of final settlement to be rendered by Lessor to the Lessee.

9. Loss of or Damage to Vehicles. All risk of loss or damage to a Vehicle from whatever cause shall be assumed by the Lessee from the time of Acceptance of the Vehicle by the Lessee or the Lessee's representative until the time the Vehicle is surrendered to Lessor or Lessor's representative.

10. Insurance. The Lessee shall provide insurance for the use, operation, and possession of each of the Vehicles covering liability for bodily injury and property damage during the period from Acceptance of the Vehicle by the Lessee or its representative until the Vehicle is surrendered to Lessor or its representative. Such insurance policy, which shall be with a responsible insurance company acceptable to Lessor, shall name Lessor and Element Vehicle Management Services, LLC, a Delaware limited liability company, the servicer of this Agreement as provided herein (together with its successors or assigns as servicer on behalf of the Lessor, the "Servicer") (or such other entity as directed by Lessor from time to time) as additional insureds and loss payees, shall name Raven Funding LLC and Chesapeake Funding LLC as additional insureds and shall provide minimum coverages, acknowledged by such insurance company to be the primary coverage, of \$1,000,000 in combined single limits for bodily injury and property damage. The Lessee shall also provide collision and comprehensive insurance in accordance with this Section 10 covering loss or damage to the Vehicles in an amount not less than the actual cash value of each of the Vehicles, with a deductible not to exceed \$1,000.

With Lessor's consent, the Lessee may self-insure for collision and comprehensive insurance coverage. The Lessee shall furnish Lessor with a certificate of insurance or other satisfactory evidence of the required insurance coverage. Lessor shall be under no duty to examine such certificate of insurance or other evidence or to advise the Lessee in the event its insurance is not in compliance with this Agreement.

11. Indemnification. Regardless of any insurance provided pursuant to Section 10, the Lessee shall at all times be liable to defend, indemnify, and save harmless Lessor, Servicer, Chesapeake Funding LLC, and Raven Funding LLC (and any other entity designated by Lessor from time to time) against all claims, losses and liabilities (including, without limitation, tort and strict products liability), damages, judgments, and all other legal proceedings of whatsoever kind or nature and all costs and expenses, including attorneys' fees, incurred in connection with, relating to, or arising out of the manufacturing, purchase, ownership, delivery, possession, use, operation, maintenance, repair or return of each of the Vehicles during the period from Acceptance of the Vehicle by the Lessee or its representative until the Vehicle is surrendered to Lessor or its representative including, without limitation: (a) claims for injury to or death of persons and for damage to property, and (b) claims relating to latent or other defects in the Vehicle. This indemnification obligation shall survive the surrender of the Vehicle and the termination of this Agreement.

12. Default.

(a) In the event (i) the Lessee defaults in the payment of any rental or other amounts payable under this Agreement, or defaults in the performance of the covenants or obligations of the Lessee hereunder (other than a breach of the Watch List Section, wherein Lessor may terminate the lease immediately upon written notice), and should such default continue for a period of fifteen (15) days following receipt by the Lessee of written notice of default under this Agreement, (ii) there shall be filed by or against the Lessee any action under any provision of any state or federal law relating to insolvency or bankruptcy, and such action is not dismissed within sixty (60) days of the filing, (iii) a receiver or trustee shall be appointed for the Lessee's property, and such appointment is not withdrawn within sixty (60) days of the date of appointment, (iv) the Lessee makes an assignment for the benefit of creditors, (v) the Lessee shall be in default in the payment or performance of any other indebtedness or obligation owed by the Lessee to Lessor or Servicer under any other agreement or instrument, or (vi) the financial condition of the Lessee's affairs shall change in the reasonable opinion of Lessor so as to substantially impair Lessor's title to the Vehicles or substantially increase Lessor's credit risk, then Lessor may terminate this Agreement, and thereupon, all of the rights of the Lessee under this Agreement and with respect to the Vehicles shall immediately terminate.

(b) In the event of such default and termination, the Vehicles shall be immediately surrendered to Lessor, and, if they are not, Lessor may repossess the Vehicles. Lessor may, but shall not be obligated to, sell any of the Vehicles at public or private sale or sales without notice to the Lessee at such price and upon such terms as it deems commercially reasonable. The rental term for each of the Vehicles so surrendered or repossessed shall terminate in

accordance with the other provisions of this Agreement. Lessor may retain all rents, payments, and resale proceeds received, including any refunds and other sums, if any, otherwise payable to the Lessee under this Agreement to the extent necessary to pay Lessor all rentals and other amounts owed to Lessor under any of the provisions of this Agreement or any other agreement between the Lessee and Lessor or Servicer, together with costs and expenses, including attorneys' fees, incurred by Lessor in the enforcement of its rights and remedies under this or any other provision of this Agreement. In addition to all other rights or remedies hereunder, Lessor shall be entitled to recover from the Lessee all rentals and other amounts owed by the Lessee under this Agreement, whether arising before or after such default and termination.

13. Assignment by Lessor.

Lessor may from time to time assign and/or grant a security interest in all or any part of its right, title, and interest in this Agreement, including all monies and claims for monies due and to become due to Lessor hereunder. The Lessee's obligation to pay such monies to the assignee and/or secured party, upon prior written notice to the Lessee by the assignee and/or secured party, shall be absolute and unconditional and shall not be subject to any claim, defense, or setoff whatsoever. The Lessee hereby agrees that it will not assert against any such assignee and/or secured party any claim, defense, or setoff it may have against Lessor or any other party, whether such claim, defense, or setoff shall have accrued or arisen before or after the Lessee shall have received such notice. This Agreement and any right, title, or interest of the Lessee created in the Vehicles shall be subject, and subordinate in all respects, to any and all security interests in the Vehicles heretofore or hereafter granted by Lessor to an assignee and/or secured party subject, however, to the Lessee's right of quiet enjoyment as set forth in Section 14 of this Agreement.

14. Quiet Enjoyment. Notwithstanding any other provisions of this Agreement, the Lessee may retain possession and quiet enjoyment of each of the Vehicles until the expiration of the lease term of the Vehicle as long as the Lessee (i) makes due and timely payment of all rentals and other amounts due under this Agreement to Lessor or to any party to whom Lessor may assign or grant a security interest in this Agreement or the Vehicles, and (ii) performs all of its other covenants and obligations under this Agreement.

15. Financials. Within one hundred twenty (120) days after the last day of Lessee's fiscal year, the Lessee shall provide Lessor with a copy of the Lessee's audited financial statements. The Lessee shall also provide Lessor with copies of such quarterly interim financial statements of the Lessee as Lessor may request.

16. Regulations Affecting Leased Vehicles.

(a) Mileage/Odometer Disclosure - Federal law (and state law, if applicable) requires that the Lessee of a leased motor vehicle disclose the mileage of the Vehicle to Lessor in connection with the transfer of ownership of the Vehicle by Lessor. Failure to complete such

disclosure or making a false statement in the disclosure may result in fines and/or imprisonment.

(b) **Greenhouse Gas Regulations:** Certain states, such as California, may have additional requirements for the operation of certain types of vehicles or equipment in their state. The California Tractor-Trailer Greenhouse Gas Regulation requires (1) heavy-duty tractors that pull a 53-foot or longer box type trailer and (2) a 53-foot or longer box type trailers must be compliant with Sections 95300-95311, Title 17, of the California Code of Regulations, requiring low rolling resistance tires and aerodynamic technologies that are U.S. Environmental Protection Agency Verified SmartWay Technologies prior to current or future use in California. Lessee acknowledges and agrees that it is its responsibility to ensure compliance with the forgoing in the State of California, as well compliance with any similar law or regulation in each jurisdiction where required.

17. **Pricing Assumptions/Variance.** Lessee acknowledges and agrees that the fees and pricing structure agreed to between Lessor and Lessee (for vehicle leasing and other services) are based upon the assumptions set forth in the Pricing Assumptions Schedule attached hereto and made a part of this Agreement.

18. **Notices.** Any notice to be given hereunder by a party shall be in writing and delivered personally or by first class mail, postage prepaid, addressed as follows: in the case of Lessee, to the address as set forth in the first paragraph of this Agreement, in the case of Lessor, c/o Element Vehicle Management Services, LLC, as Servicer, Regional Processing Center, 940 Ridgebrook Road, Sparks, Maryland 21152-9390, Attn: Legal Department, or to such other persons or addresses as may be designated in writing by the party to receive such notice.

19. **Entire Agreement.** This Agreement and the Schedules made a part of this Agreement contain the entire agreement and understanding of the parties with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings related thereto.

20. **Waivers, Modifications, Severability**

- (a) **No waiver, change, amendment, or modification of any of the provisions of this Agreement shall be binding unless made in writing and signed by the parties hereto.**
- (b) Failure of either party at any time to require performance of any provision of this Agreement shall not affect the right at a later time to enforce the provision. In the event that any provision of this Agreement shall be held invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement.

21. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.

22. Headings. The headings of the Sections of this Agreement are inserted for the convenience of reference only and shall not be deemed to constitute a part hereof.

23. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Maryland.

24. Administration. It is understood and agreed that Servicer will administer this Agreement and will perform the service functions herein provided to be performed by the Lessor.

25. Nature of Agreement. THE PARTIES INTEND THE LEASE OF VEHICLES HEREUNDER TO BE A TRUE LEASE PURSUANT TO MD. CODE ANN., TRANSP. LAW §13-211. Without prejudice to the intention of the parties that this Agreement be a lease, Lessee hereby grants Lessor a security interest in the Vehicles and all proceeds, accessions, documents, instruments, accounts, chattel paper, equipment and general intangibles related thereto to secure all obligations of Lessee to Lessor or Lessor's affiliates under this or any other agreement. A photocopy or other reproduction of this Agreement shall be sufficient as a financing statement.

26. Watch Lists. Lessee agrees that it is not now and will not in the future be listed on any watch list maintained by the U.S. Treasury Department and shall comply with the Patriot Act, international trade control and money laundering laws, as applicable.

27. Data. Lessor/Servicer shall have the right to use and market de-personalized statistical data collected in the provision of services to the Lessee with respect to the Vehicles.

IN WITNESS WHEREOF, Lessor and the Lessee have caused this Agreement to be executed and delivered by their respective duly authorized officers as of the date first above written.

D.L. PETERSON TRUST

IEH AUTO PARTS LLC

By: _____
Attorney-in-Fact

By: _____
Senior Vice President

Print Name: _____

Element Vehicle Management Services, LLC, a Delaware limited liability company, hereby accepts the foregoing Agreement, as may be amended and/or supplemented from time to time, and agrees to perform the service functions therein as provided in Section 24.

SERVICER:

ELEMENT VEHICLE MANAGEMENT SERVICES, LLC

By: _____
Senior Vice President

BUSINESS USE CERTIFICATION

To comply with the requirements of Section 7701(h)(2)(C) of the Internal Revenue Code of 1986, as amended from time to time, the Lessee makes the following certification and acknowledgement as a part of the foregoing Agreement.

1. The Lessee hereby certifies, under penalty of perjury, that the Lessee intends that more than 50 percent of the use of the Vehicles under the Agreement is to be in a trade or business of the Lessee;
2. The Lessee hereby acknowledges that in accordance with Section 1(e) of the Agreement it has been advised that it will not be treated as the owner of the Vehicles under the Agreement for federal income tax purposes.

IN WITNESS WHEREOF, the Lessee has caused this certification to be executed as of the date first above written.

IEH AUTO PARTS LLC

By: _____
Vice President

Dmg 3485253 6/11/15
MVFL-OP, no beir interim rent, carrying costs
Rev3.31.15

**element**

LIBOR FLEX PROGRAM SUPPLEMENT
LEASE NO(S). 3585
MEDIUM AND HEAVY DUTY TRUCKS ONLY

THIS LIBOR FLEX PROGRAM SUPPLEMENT, dated as of 7-16-15, 2015 ("this Supplement"), to Motor Vehicle Fleet Open-End Lease Agreement No. ~~3585~~ dated as of 7-16-15, 2015 (the "Agreement"), is by and between D.L. PETERSON TRUST ("Lessor") and **IEH AUTO PARTS LLC** ("the Lessee"). Unless the context requires otherwise, all capitalized terms used in this Supplement without definition shall have the respective meanings assigned to them in the Agreement.

The parties hereto agree as follows:

1. Rental charges for all Vehicles that have a date of Acceptance pursuant to the Agreement on or after the date of this Supplement, shall be determined by the use of rental rates based on an interest rate that is **1.65%** above the Element LIBOR Rate for factory-ordered Vehicles or **1.65%** above the Element LIBOR Rate for Vehicles ordered "out of dealer stock." The "Element LIBOR Rate" shall be the thirty (30) day London Interbank Offered Rate ("LIBOR") as quoted in the Wall Street Journal, Money Rates section shown as the London Interbank Offered Rates (Libor), using the "one month" rate on Lessor's monthly billing cutoff date, as such date may be changed from time to time by Lessor, adjusted to a 365-day-year basis, rounded up to the nearest one-eighth of one percent, further adjusted to include Lessor's issuance costs and other finance administration costs.

2. Lessor reserves the right to provide written notice to Lessee at any time and from time to time after the date of this Supplement to the effect that a new spread over the Element LIBOR Rate will apply and be charged as part of the rental rates for Vehicle orders accepted by Lessee as of the date of such notice and thereafter. In addition, and without limitation, in the event Lessee ceases doing business (or substantially reduces its volume of business) with Lessor with respect to leasing additional Vehicles, or with Element Vehicle Management Services, LLC with respect to utilization of fleet management services, Lessor will have the right in its sole discretion to adjust the interest rate for (i) Vehicles then under lease, (ii) subsequently-ordered Vehicles, and (iii) Vehicles that have been ordered but not yet accepted by the Lessee (collectively, "Included Vehicles"), by increasing the spread over the applicable billing index, whether floating or fixed, and including, without limitation, the Element LIBOR Rate, the Element Interest Rate Swap, the Element Cost of Funds, and the Element Fixed Rate Cost of Funds (each as defined in the applicable funding supplement), by adding an additional **110** basis points to the existing spread for each Included Vehicle. In such event Lessor will also have the right, in its sole discretion, to increase the management fee for all Included Vehicles. All such increases will be effective on a going-forward basis for all Included Vehicles as of the date such increases are imposed by Lessor.

3. With respect to all Vehicles placed under the Agreement on or after the date of execution of this Supplement, the terms and conditions of this Supplement shall control over any inconsistent terms and conditions contained in the Agreement. Except as herein amended or supplemented, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Supplement to be duly executed as of the date first above written.

D.L. PETERSON TRUST

IEH AUTO PARTS LLC

By: _____
Attorney-in-Fact

By: _____
Vice President

Print Name: _____



LIBOR FLEX PROGRAM SUPPLEMENT
LEASE NO(S). 3585
CARS AND LIGHT DUTY TRUCKS ONLY

THIS LIBOR FLEX PROGRAM SUPPLEMENT, dated as of 7-16-15, 2015 ("this Supplement"), to Motor Vehicle Fleet Open-End Lease Agreement No. 3585 dated as of 7-16-15, 2015 (the "Agreement"), is by and between D.L. PETERSON TRUST ("Lessor") and **IEH AUTO PARTS LLC** ("the Lessee"). Unless the context requires otherwise, all capitalized terms used in this Supplement without definition shall have the respective meanings assigned to them in the Agreement.

The parties hereto agree as follows:

1. Rental charges for all Vehicles that have a date of Acceptance pursuant to the Agreement on or after the date of this Supplement, shall be determined by the use of rental rates based on an interest rate that is **1.65%** above the Element LIBOR Rate for factory-ordered Vehicles or **1.65%** above the Element LIBOR Rate for Vehicles ordered "out of dealer stock." The "Element LIBOR Rate" shall be the thirty (30) day London Interbank Offered Rate ("LIBOR") as quoted in the Wall Street Journal, Money Rates section shown as the London Interbank Offered Rates (Libor), using the "one month" rate on Lessor's monthly billing cutoff date, as such date may be changed from time to time by Lessor, adjusted to a 365-day-year basis, rounded up to the nearest one-eighth of one percent, further adjusted to include Lessor's issuance costs and other finance administration costs.

2. Lessor reserves the right to provide written notice to Lessee at any time and from time to time after the date of this Supplement to the effect that a new spread over the Element LIBOR Rate will apply and be charged as part of the rental rates for Vehicle orders accepted by Lessee as of the date of such notice and thereafter. In addition, and without limitation, in the event Lessee ceases doing business (or substantially reduces its volume of business) with Lessor with respect to leasing additional Vehicles, or with Element Vehicle Management Services, LLC with respect to utilization of fleet management services, Lessor will have the right in its sole discretion to adjust the interest rate for (i) Vehicles then under lease, (ii) subsequently-ordered Vehicles, and (iii) Vehicles that have been ordered but not yet accepted by the Lessee (collectively, "Included Vehicles"), by increasing the spread over the applicable billing index, whether floating or fixed, and including, without limitation, the Element LIBOR Rate, the Element Interest Rate Swap, the Element Cost of Funds, and the Element Fixed Rate Cost of Funds (each as defined in the applicable funding supplement), by adding an additional **110** basis points to the existing spread for each Included Vehicle. In such event Lessor will also have the right, in its sole discretion, to increase the management fee for all Included Vehicles. All such increases will be effective on a going-forward basis for all Included Vehicles as of the date such increases are imposed by Lessor.

3. With respect to all Vehicles placed under the Agreement on or after the date of execution of this Supplement, the terms and conditions of this Supplement shall control over any inconsistent terms and conditions contained in the Agreement. Except as herein amended or supplemented, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Supplement to be duly executed as of the date first above written.

D.L. PETERSON TRUST

IEH AUTO PARTS LLC

By: _____
Attorney-in-Fact

By: _____
Vice President

Print Name: _____

EXHIBIT 2

Master Services Agreement



NEGOTIATED MASTER SERVICES AGREEMENT

CLIENT NO(S). 3585

THIS NEGOTIATED MASTER SERVICES AGREEMENT (the "Agreement"), dated as of October 28, 2020 (the "Effective Date"), is entered into by and between ELEMENT FLEET CORPORATION, a Delaware corporation with offices at 940 Ridgebrook Road, Sparks, MD 21152-93903 ("Element") and IEH AUTO PARTS LLC, with offices at 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144 ("Client"). Element and Client are referred to in this Agreement, individually as a "Party," and collectively as the "Parties."

WHEREAS, Element provides fleet management services to businesses operating in the United States; and

WHEREAS, Client desires to use those Element services described in the respective addenda to this Agreement (each a "Service" or "Program" and collectively, the "Services" or "Programs"); and

WHEREAS, Element is willing to provide the Services for vehicles (and other mutually agreed upon assets and asset types) in Client's and Client's subsidiaries', parent's, and/or affiliates' vehicle fleets as designated by Client (each a "Vehicle" and collectively, the "Vehicles") subject to the terms and conditions of this Agreement; and

WHEREAS, individuals who are assigned Vehicles by Client shall be referred to in their respective Addenda as "Driver(s)"; and

WHEREAS, for a majority of the Services, Element will coordinate with Client and third party service providers (each, "Provider", or "Providers") for the provision of those services.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration the Parties hereby acknowledge and agree as follows:

1. **Service Addenda & Affiliate.** Element will provide the Services described in each "Service Addendum" which are hereby incorporated by reference and made a part of this Agreement (individually, an "Addendum" and, collectively, "Addenda"). Unless otherwise agreed in writing by the Parties, any Services provided to any present or future subsidiary, parent or Affiliate (as defined below) of Client will be subject to the terms and conditions of this Agreement, and Client will remain directly liable for all payment and other obligations arising hereunder. Upon execution, each Addendum will become part of this Agreement. For greater certainty, Element has no obligation to vet, screen, assess or otherwise review any Affiliate or any Affiliates relation to the Client.

As used in this Agreement, "Affiliate" of Client means any other entity that directly or indirectly, through one or more intermediaries, controls, or is controlled by, Client to the extent such entity is primarily engaged in the sale of automotive parts. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of Client, whether through the ownership of voting securities, by contract or otherwise. For the avoidance of doubt, Affiliates of Client include all direct and indirect subsidiaries of IEH Auto Parts LLC. Client's Affiliates shall be entitled to receive Services under this Agreement.

2. **Purchasing Instruments.**

- 2.1. **Issuance and Use.** Some Services may include the use of a purchasing instrument ("Instrument(s)") for the procurement of goods and services from Providers, as provided in the relevant Addendum. Upon Client's request, Element will issue such Instruments to Client, Client's subsidiaries, parents and affiliates and their respective representatives for use only in connection with those Services. Client will be liable for non-compliance with this Agreement with respect to all Instruments issued at Client's request. All Instruments will remain Element's property, and Client will cause all Instruments to be used in accordance with this Agreement, the relevant Addendum and Element's reasonable instructions. Element is directed and empowered to issue work authorizations on Client's behalf in accordance with the applicable Addendum.

Client assumes full responsibility for all purchases made by any bearer of an Instrument issued in the name of Client or any of Client's subsidiaries, parents or affiliates and their respective representatives irrespective of whether the use of such Instrument was authorized or unauthorized or exceeds any limits or conditions on such Instrument.

3. **Term and Termination.** Except as otherwise expressly provided in any Addendum, either Party may terminate this Agreement by giving written notice of termination to the other Party at least thirty (30) days prior to the effective date of termination. In addition,

in the event Client (i) defaults in the payment of any amount due under this Agreement and such default continues for a period of fifteen (15) days following Client's receipt of written notice of such default; (ii) files or has filed against it any action under any provision of any state or federal law relating to insolvency or bankruptcy; (iii) appoints or has appointed for it a receiver or trustee; (iv) makes an assignment for the benefit of creditors; (v) defaults under any payment or performance obligation under any other agreement or instrument with Element or any of its affiliated entities; (vi) undergoes a change in controlling ownership; (vii) is listed on any watch list maintained by the U.S. Treasury Department or is not in compliance with the Patriot Act, international trade control and money laundering laws, as applicable or, (viii) no longer meets Element's credit requirements, Element may terminate this Agreement or any Addendum immediately upon notice to Client. Upon termination of this Agreement or any Addendum, Client remains responsible to pay all expenses, costs, and other amounts incurred by Element on Client's behalf, including any related transaction fees due to Element, whether incurred prior to or following the date of termination, including any amounts due for purchases made with Instruments.

4. Costs, Fees and Payment Terms.

- 4.1. Costs.** Element will advance all third-party expenses incurred on Client's behalf in connection with the Services, and will consolidate these charges on Element's invoice. Client will be responsible for the payment of all third-party expenses, fees, costs, taxes, and other charges incurred by Element on Client's behalf. Element has the right to receive and retain rebates, discounts, rebillers fees, and other compensation directly or indirectly from manufacturers, suppliers or vendors with respect to good and services purchased hereunder.
- 4.2. Fees.** Fees for the Services (the "Service Fees") will be set forth in the pricing schedule attached hereto, entitled "Services Program Pricing," subject to adjustment as follows: Element reserves the right to modify Service Fees upon thirty (30) days' prior written notice to Client. All charges are based on Element's standard operating routines, computer systems and existing business policy. Additional services or special handling required by Client that are not expressly covered under the scope of the Services described in the relevant Addendum will be subject to separate fees. In addition, all Service Fees are subject to upward adjustment on January 1 (the "Adjustment Date") of each calendar year during the term of this Agreement. The Service Fees in effect immediately prior to the Adjustment Date will be increased in proportion to 75% of the increase in the Consumer Price Index during the one (1) year period ending on September 30 of the calendar year preceding the Adjustment Date. For purposes of this Agreement, "Consumer Price Index" means the U.S. City Average Consumer Price Index for Urban Wage-Earners and Clerical Workers as published by the Bureau of Labor Statistics of the United State Department of Labor. If such index is discontinued or revised, Element will substitute the most comparable measure of inflation published by the U.S. government to make the adjustment. Service Fees for Instruments will begin on the first day of the month in which the Instrument is mailed (or otherwise sent) to the Client for all Instruments mailed on or before the fifteenth (15th) calendar day of a month, and on the first day of the succeeding month if the Instrument is mailed (or otherwise sent) to the Client after the fifteen (15th) calendar day of a month. Service Fees for Instruments will end on the last day of the month in which Client returns each Instrument to Element.
- 4.3. Payment Terms.** Client will pay all invoices issued monthly by Element pursuant to this Agreement within fifteen (15) days of the invoice date by check or electronic funds transfer. It is the intent of Element that it not receive directly or indirectly any amount in excess of that amount which may be legally paid. Any excess charges will be credited to Client's account. If Client identifies any billing error, Client will advise Element promptly and Client's sole remedy will be an adjustment (i.e., a credit for the excess amount or a charge for the underbilled amount) to Client's account. A late payment charge of one and one half percent (1-1/2%), or such other amount as allowed by law, will be applied for each month or fraction of a month that any amount is not paid by the due date, plus any and all costs of collection (including attorneys' fees and court costs). Client's obligations to pay will not be subject to any claim, defense or setoff that Client may have against Element or any other party.
- 4.4.** Element will have the right to offset any amounts due to Client against amounts due to Element and all other rights and remedies available at law or in equity, such rights and remedies to be cumulative and not exclusive.

5. Warranty Disclaimer, Waiver and Client Acknowledgements.

- 5.1. Warranty Disclaimer; Waiver.** Client agrees that Element: (i) is a rebiller for goods and services Client purchases either directly or indirectly from Provider pursuant to this Agreement; (ii) is not the designer, manufacturer, distributor or provider of such goods and services; (iii) has not made and makes no representation or warranty, express or implied, with respect to any such goods or services, including any warranty of merchantability or fitness for a particular purpose and (iv) has no duty to warn Client or any Provider about the condition, operation or use of any Vehicle or the appropriateness or practices of any Driver

(except as otherwise expressly provided in any Addendum); provided, however, that the foregoing will not be construed to affect Element's obligations to provide reports or alerts to Client, which are expressly required under any Addendum in which such Vehicle or Driver is enrolled. Client agrees to look solely to the manufacturer or distributor of such goods and services and hereby waives any and all claims, including product liability claims, against Element with respect to such products and services, and acknowledges and agrees that Element is an independent contractor and does not act in the capacity of a fiduciary of Client. Only in respect of those services provided directly and exclusively by Element, Element warrants that such services provided by Element shall be done in a good and professional manner.

5.2. Client Acknowledgements – Third-Party Providers. Client acknowledges that (i) all Providers that provide goods or services in connection with this Agreement are independent contractors and not agents or employees of Element; and (ii) Element has no right or duty to inspect, review personnel qualifications, or otherwise screen Providers' facilities, personnel or work performed by Providers' personnel.

5.3. Client Acknowledgements – Reports and Information. Client acknowledges that (i) information contained in some of the reports prepared in connection with the Services may be based upon statements and representations of Client or its Drivers or their designees; (ii) in providing the Services, Element relies on the advice of and information from the Providers and other third parties as well as Client's policies and procedures as communicated to Element from time to time; and (iii) Element does not and cannot guarantee the accuracy of information reported or provided by third parties and/or Client (or its Drivers or designees).

6. Indemnity.

a. Except to the extent of any proportionate liability caused by active negligence of Element, Client will indemnify, defend and hold harmless Element and its related entities from and against any and all claims, losses, damages and liabilities of whatsoever kind or nature, including reasonable attorneys' fees, arising out of or relating to (i) Element's performance of its obligations under this Agreement consistent with Client's instructions or policy; (ii) the services provided for Client by Providers or their employees, agents, and other representatives; (iii) goods purchased from Providers; (iv) any fraud control or purchase restrictions implemented on the Instruments from time to time; (v) Client's reliance on Instrument authorization controls or functionality; or (vi) Client's failure to comply with its obligations under this Agreement. Client's indemnity obligations are absolute and unconditional, include claims of negligence, strict liability and breach of warranty, and will survive termination of this Agreement.

b. Except to the extent of any proportionate liability caused by active negligence of Client, Element will indemnify, defend and hold harmless Client and its related entities from and against any and all claims, losses, damages and liabilities of whatsoever kind or nature, including reasonable attorneys' fees, arising out of or relating to (i) property damage caused by the gross negligence of Element; (iii) Element's breach of any warranties provided under this Agreement; and (iv) Element's violation of any applicable laws. Notwithstanding foregoing, the indemnity in this Section 6(b) shall not apply to Element's performance of its obligations in respect of the Services specifically instructed by Client or pursuant to Client policies.

c. Each party's indemnity obligations are absolute and unconditional, include claims of negligence, strict liability and breach of warranty, and will survive termination of this Agreement.

7. Limitation of Liability. Except with respect to a party's gross negligence, willful misconduct and a party's indemnification obligations, neither party will be liable for indirect, special, punitive or consequential damages arising in connection with this Agreement, nor will Element incur any liability with respect to the performance or non-performance of any Provider (including, without limitation, with respect to any erroneous information provided by such third parties). Except with respect to a Party's indemnification obligations, the Parties' sole and exclusive causes of action for any matters related directly or indirectly to this Agreement will be a contract action.

8. Vehicles; Compliance with Laws. With respect to all Vehicles in connection with which Element provides any Services, Client will (i) cause such Vehicles to be operated in safe and lawful manner in compliance with all applicable laws at all times; (ii) maintain the minimum liability insurance required by law; and (iii) be responsible for all legally required inspections and maintenance.

9. Assignment.

- 9.1. By Element.** Element may from time to time assign all or any part of its right, title, and interest in this Agreement, including all monies and claims for monies due and to become due to Element under this Agreement. Client's obligation to pay such monies to assignees, upon written notice from Element, will not be subject to any claim, defense or setoff that Client may have against Element or any other party whether such claim, defense or setoff shall have accrued or arisen before or after Client has received such notice.
- 9.2. By Client.** Client will not assign any interest in this Agreement to any party without Element's prior written consent. Any such consent will not relieve Client of its obligations to Element. Any purported assignment in violation of this restriction will be null and void.
- 10. Financial Information.** Client's creditworthiness is a material condition to this Agreement. Accordingly, Client will provide Element with complete and accurate financial information upon request each year this Agreement is in effect. The foregoing obligation shall not apply if the financial information required by Element is publicly available for Element's review.
- 11. Integration; Modifications; Signatures; Survival.** This Agreement, as amended from time to time, contains the entire understanding of the Parties and merges all oral understandings. For purposes of clarification, this Agreement supersedes and terminates the Vehicle Maintenance Assistance Agreement, Agreement No(s). 1686 dated February 2, 2012, as amended, **Fleet Administration Services Agreement, Agreement No.(s) 1686, dated November 28, 2011, Used Vehicle Sales Agreement, Agreement No.(s) 1686, dated October 24, 2011, Reregistration Program Agreement, Agreement No.(s) 1686, dated October 24, 2011, Automotive Services Agreement, Agreement No.(s) 1686, dated February 2, 2012, Preventive Maintenance Agreement, Agreement No(s) 1686, dated February 7, 2013** and amendments thereto and the Memorandum of Understanding dated June 1, 2015 between the parties. In the event of any inconsistency between this Negotiated Master Services Agreement and any Addendum, the terms of the Addendum shall prevail. In the event that any provision of this Agreement is held invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provisions of the Agreement. Client may issue purchase orders related to the Services for administrative convenience, but such purchase orders will not supplement, amend or supersede this Agreement. Any supplements or amendments to this Agreement may be made only in writing signed by Element and Client, and failure of either Party to enforce any right shall not be deemed a waiver of such right. Execution of this Agreement and any Addendum, respectively, by electronic signature (in a form acceptable to Element) will be as effective as manual execution. All provisions of this Agreement which, expressly or by their nature, are intended to survive the termination of this Agreement will so survive.
- 12. Watch Lists.** Each party represents and warrants that it is not now listed on any watch list maintained by the U.S. Treasury Department and shall comply with the Patriot Act, international trade control and money laundering laws, as applicable.
- 13. Binding Effect.** This Agreement will be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.
- 14. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without regard to choice of law principles thereof.
- 15. Jury Trial Waiver.** Both Parties waive any and all right to trial by jury in any action or proceeding arising directly or indirectly under this Agreement.
- 16. Notices.** Any notice required to be given pursuant to this Agreement will be in writing and delivered personally or sent by a nationally recognized overnight courier service or by registered or certified mail, postage prepaid, return receipt requested, addressed to the recipient party's address in the first paragraph of this Agreement, Attn: Legal Department.
- 17. EXHIBITS.** The exhibits listed below are incorporated herein by reference. The parties agree that all of the exhibits listed below will be deemed accepted by each party upon such party's execution of this Agreement. Unless otherwise expressly stated in any exhibit listed below, the Effective Date of such exhibit shall be the same date as the Effective Date of this Agreement, which is set forth above. Any capitalized terms used in any exhibit to this Agreement, which are not defined in such exhibit, shall have the meanings assigned to them in this Agreement.

Service Addendum for Accident Services
Service Addendum for Title Management
Service Addendum for Maintenance Services
Service Addendum for Fuel Services

Service Addendum for Registration Renewal
Service Addendum for Fleet Partnership Solutions
Service Addendum for Vehicle Remarketing

18. DELIVERY. Delivery of this executed document by telecopy or electronic signature delivery system (in either case in a form acceptable to Element) shall be as effective as delivery of a manually executed signature page to this document.

IN WITNESS WHEREOF, Element and Client have caused this Agreement to be executed and delivered by their duly-authorized officers or other representatives as of the Effective Date.

ELEMENT FLEET CORPORATION

DocuSigned by:

By: Lynn Schaefer
Authorized Signatory

IEH AUTO PARTS LLC

By: Scott Sangrey

Title: Vice President - Supply Chain

Print Name: Scott Sangrey

MSA.complete.2.25.19

LS 4.1.19 SFOP9000040590 & SFOP9000046078 SB 8.25.20

COPY VIEW

Services Program Pricing*

***Does not include actual pass-through charges (including re-billed charges for goods and services purchased from third parties and/or Providers) as provided in the respective Addenda and/or the Agreement.**

Capitalized terms used herein and not otherwise defined herein shall have the same meanings assigned to them in the respective Addenda (which may be Exhibits) to the Agreement.

Services Programs	Rates/Fees Charged
Accident Management	
First Notice of Loss (new claims)	\$30.00 per incident
Subrogation recovery	18% of recovery per incident
Independent appraisal	\$40.00 per incident plus cost of appraisal
Out of Network Fee for transactions outside of the Element Auto Body Repair Network	\$100.00 per transaction
Title Management	
Title Retention	\$1.01 per Vehicle per month
Title imaging	\$1.00 per image
Maintenance Services	
Managed Maintenance Program Fee Basic - standard preventive maintenance and/or on-site maintenance included (*applies only to cars and light trucks)	\$3.95 per cars and light trucks per month \$9.50 per medium duty trucks per month
Managed Maintenance Fee - Out of Network Fee for transactions outside of the Element Maintenance Network	5% of total spend, up to a maximum fee of \$25
Managed Maintenance Roadside Service Assistance Services Fee	\$35.00 per incident
Managed Maintenance Post-Warranty Recovery Fee	\$75.00 per post-warranty claim recovery
Purchasing instrument (reissuance fee)	\$0.00 per replacement
Rebate	Element will pay Client a National Account rebate of 200 basis points on maintenance, tires, and glass purchases, excluding taxes, from certain Element national account providers using the Instrument. Any established pricing that the Client may have directly with a National Account supplier is excluded. The National Account rebate will be paid quarterly, effective with the transactions billed to the Client beginning the first full month after the effective date of this Agreement. Payment will be in the form of a credit shown on the monthly invoice. Element reserves the right to review the rebate process and payment on an annual basis.
Fuel Services	
Fuel services – Instrument fee	\$0.00 per Instrument per month
Rebate	Element will pay Client a Fuel rebate of 125 basis points on fuel purchases made using the Instrument. A Fuel rebate based upon total fuel purchases, excluding charges other than fuel, will be paid quarterly and effective with the

	transactions billed to the client beginning the first full month after the effective date of this Agreement. Payment of the Fuel rebate will be in the form of a credit shown on the monthly invoice. Element reserves the right to review the rebate process and payment on an annual basis.
Service Instrument (reissuance fee)	\$0.00 per incident
Registration Renewal	
Registration renewal – Element leased vehicles	\$2.02 per Vehicle per month
Registration renewal – Non-Element Leased vehicles (one-time set-up)	\$10.00 per Vehicle
Registration renewal – Non-Element Leased vehicles	\$2.02 per Vehicle per month
Power of Attorney Fee	\$30.00 per incident
Duplicate Registration Fee	\$30.00 per incident
Registration Correction Fee	\$30.00 per incident
Virginia Decal Fee	\$25.00 per incident
Fleet Partnership Solutions	
Fleet Partnership Solutions	\$3.56 per Vehicle per month (Advanced)
Vehicle Remarketing	
Element Remarketing Sale Fee	Cars and Light Duty Trucks: \$100.00 per incident Medium Duty Trucks: \$125.00 per incident Heavy Duty Trucks: \$125.00 per incident
Buyer Administration Document Fee (Client Arranged Sale)	\$95.00 per incident, in addition to the Element Remarketing Sale Fee above
Retail Consignment	\$100.00 per incident



SERVICE ADDENDUM FOR ACCIDENT SERVICES

CLIENT NO(S). 3585

THIS SERVICE ADDENDUM FOR ACCIDENT SERVICES (the "Addendum"), is intended to be part of the Negotiated Master Services Agreement between Element and the Client. (the "Agreement"). Capitalized terms used but not defined in this Addendum will have the definitions ascribed to them in the Agreement.

1. Service Description(s).

- 1.1.** It is the intention of the parties that this Addendum include provisions for vehicle claims administration, appraisal services, a repair facilities network, subrogation services, assistance in obtaining temporary rental cars, and salvage disposal, with respect to vehicular loss arising from collision, fire, theft or otherwise to vehicles designated by Client. Element's program is intended to minimize Client's repair costs for damaged vehicles, driver downtime and administrative costs associated with the payment of multiple suppliers.
- 1.2.** Element may in its discretion cause certain of the services hereunder to be performed by one or more Provider(s) and Element may change any Provider in its discretion. Client's use of vendors designated by Element or any Provider is a key component of cost reduction and quality.
- 1.3.** As used herein, (1) the term "In Network" vendor means a vendor designated by Element or any Provider, (2) the term "Out of Network" vendor means a vendor not designated by Element or any Provider and (3) the term "Out of Network" fee(s) means Element's administrative fee(s) for a service from, or a review provided in connection with, an Out of Network vendor.

2. Element's Obligations. Element will:

- 2.1.** Provide an accident services driver packet for each Vehicle included in this program.
- 2.2.** Provide work authorization for the appraisal, repair, service, and temporary rentals described herein.
- 2.3.** Establish and maintain individual claim files by claim number.
- 2.4.** Prepare a report for each accident involving a Vehicle for which Element is contacted.
- 2.5.** Assist Client in obtaining temporary rental vehicles as replacement transportation while repairs are being performed on Client's damaged Vehicles. Each rental will be in Client's name with billing to Element.
- 2.6.** Render to Client a single monthly invoice for all purchases, repairs, rentals, appraisals, fees, court costs, and other fees or expenses incurred by Element on behalf of Client for the services provided.
- 2.7.** Use its best efforts to notify Client's insurance carrier of accidents reported to Element; provided, however, that the failure to provide such notice shall not result in any liability to Element and Client's remedy for such failure shall be limited to termination of this Addendum.
- 2.8.** Assist Client in obtaining recoveries from third parties up to, but not including, litigation due to damage to a Vehicle. If (i) any claim (excluding litigation) for damage to a Vehicle is denied by a third party's insurer and (ii) Element or a Provider in its discretion determines that the claim is a candidate for arbitration, Element or a Provider may assist Client in arranging for arbitration of such claim. Any amounts so recovered (through arbitration or otherwise), reduced by the subrogation fee, shall be put into a holding account and paid to Client monthly. Such holding account may be commingled with any funds of Element or any Provider, and shall be held without interest payable to Client. Element shall notify Client if its Driver has been reimbursed directly and bill Client for such recovery. **ELEMENT DISCLAIMS ANY LIABILITY FOR, AND MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY ARBITRATION SERVICE OR ANY ARBITRATOR(S).**

Client's Obligations. Client will:

- 2.9.** Designate the Vehicles to be enrolled in this program. Client shall designate Trailers separately from any Light Duty Truck and any Medium or Heavy Duty Truck, and Client agrees that each Trailer will be assigned its own unit number.
 - 2.10.** Provide Element with any authorities or powers of attorney required by Element in the performance of its obligations hereunder and to permit requested arbitration services.
 - 2.11.** Provide Element with any information, documentation or materials it may reasonably request related to any accident and estimate of damage.
 - 2.12.** Direct its employees to comply with all instructions issued by Element under this program.
 - 2.13.** Pay Element according to the terms of the Agreement for an amount equal to the aggregate of all invoices for temporary rental vehicles, Vehicle repairs, towing, storage, appraisals, salvage, police reports, skip trace fees, certified postage charges, as well as related Vehicle expenses and any other out-of-pocket costs incurred in providing the services herein.
 - 2.14.** In the event of arbitration, pay Element the then current third party arbitration service's claim filing fee per claim. Client acknowledges and agrees that such arbitration will not be available unless and until Client executes the written agreement required by the third party arbitration service.
 - 2.15.** If a vendor is an Out of Network vendor, pay the then-current Out of Network fee per transaction.
 - 2.16.** bear all risk of loss, theft or damage to any temporary rental vehicle.
- 3. Service Fees.** Client shall pay Element a fee per reported accident as listed on the Services Program Pricing schedule attached to the Agreement.
- 4. Client Acknowledgement.**
- 4.1. Rental Vehicles.** With respect to vehicles (including trailers and equipment) rented in connection with the referrals provided to Client or Drivers by Element pursuant to this Addendum, Client may, at its option, either insure such vehicles or have the vehicle rental provider provide the required insurance. In the event that Client elects to provide the required insurance, the policy for such insurance must name the vehicle rental provider and its designee(s) as an additional insured and Client must provide the vehicle rental provider with a certificate or other satisfactory evidence of insurance. Client's and Drivers' use of rental vehicles will be subject to the terms of the vehicle rental provider's rental agreements. Notwithstanding any agreement between Client and the vehicle rental provider, between Element and Client, Client will bear all risk of late return, loss, theft, and damage to rental vehicles. Any terms and conditions in this Addendum with respect to vehicles rented in connection with referrals provided to Client or Drivers by Element or vehicles rented with Client's use of any purchasing instrument issued hereunder will also apply to any trailers or equipment rented by Client in connection with such referrals or with Client's use of any such purchasing instrument.
 - 4.2.** Client acknowledges that the services provided under this Addendum are limited and are not intended to be a comprehensive accident management program. Client is responsible for determining for itself the specific safety, compliance and regulatory requirements applicable to the operation of its Vehicles and any accidents involving the Vehicles. The services provided under this Addendum are intended to lend administrative support to reduce Client's costs and driver downtime. Any recommendations made by Element is offered in strictly an advisory capacity and is not to be construed as legal advice. Element does not assume the role of Client's Safety Department, Risk Management Department or Personnel Department.

**SERVICE ADDENDUM FOR TITLE MANAGEMENT****CLIENT NO(S). 3585**

THIS SERVICE ADDENDUM FOR TITLE MANAGEMENT (the "Addendum"), is intended to be part of the Negotiated Master Services Agreement between Element and the Client (the "Agreement"). Capitalized terms used but not defined in this Addendum will have the definitions ascribed to them in the Agreement.

1. Service Description. Element has developed a program to manage the titling, tracking, transferring and storage of titles ("Title Management") of Client-owned vehicles ("Client Vehicles").

2. Element shall:

- 2.1 Manage the titling of Client Vehicles by preparing and filing all necessary initial forms and documents at the time of purchase with the applicable state motor vehicle administrations and any other administrative functions required for the titling of Client Vehicles.
- 2.2 Store in a fire-protected vault the titles for those Client Vehicles enrolled in this program. If requested by Client, Element will also barcode such titles for tracking purposes.
- 2.3 If requested by Client, prepare and file all necessary forms and documents with applicable state motor vehicle administration(s) to effect state to state transfers, transfer of title ownership and any other types of sale and/or transfer of Client Vehicles upon Element's receipt of all required pre-requisites. If all pre-requisites are not received by Element within 45 days of Element's initial request to Client, (a) Element's duties to pursue such title transfers will end, (b) all title transfer-related documents in Element's possession with respect to the relevant Client Vehicles will be returned to Client, (c) the return of such documents will be noted in Element's system for tracking purposes and (d) Client will be charged a processing fee equal to Element's transfer fee.
- 2.4 Pay all third-party expenses, including but not limited to vehicle registration fees, taxes, and tag agency fees incurred by Element on Client's behalf, and consolidate such charges on Element's monthly invoice to Client.

3. Client shall:

- 3.1 Designate the Client Vehicles for which Client desires Element to hold the certificates of title ("Titles") subject to this Addendum.
- 3.2 Deliver or arrange for delivery of Titles to Element and with such delivery provide Element with a written list of Titles delivered including description of Vehicle, VIN, and state of issuance.
- 3.3 Client will provide a written odometer disclosure statement relative to each Client Vehicle for which it has requested Element to make application for a duplicate title or state transfer and Element shall be entitled to rely on the information so provided. Client hereby appoints Element and its employees as its true and lawful attorney and agent with full power of substitution, with authority and power to, in its name on its behalf, certify as mileage and complete the odometer disclosure statements on certificates of titles with the information provided by Client in the related odometer disclosure statements and execute certificates of title on behalf of and in Client's name as may be required to apply for a duplicate titles or state transfers.
- 3.4 Client hereby authorizes Element, by any employee or agent of Element's designation, to act on Client's behalf as Client's agent, and to sign, execute, file or deliver in the name of the Client any titles, applications, registrations, licenses, powers of attorney, or other documents or materials reasonably necessary to effectuate the terms of this Agreement. A photocopy or other printed copy of this Power of Attorney shall be an acceptable substitute for the original of this document.
- 3.5 Pay Element for all third-party expenses incurred in providing the services specified herein, and pay Element a fee for services rendered as set forth in the Services Program Pricing schedule of the Agreement.

4. General Provisions

- 4.1 So long as Client provides the items described in Section 3 of this Addendum to Element, Element shall use its best efforts to provide the services described herein. If Client fails to comply with the conditions or schedule, or if there is delay or error on the part of the state processing a title or title transfer, Element makes, and Client receives, no warranty, express or implied.
- 4.2 If a Title delivered to Element shall be lost or destroyed by Element's negligence (a "Loss"), at no cost to Client, Element shall apply for a duplicate title and shall have no further obligation or liability to Client for a Loss. In addition to any indemnity obligations of Client set forth in the Agreement, **CLIENT AGREES TO INDEMNIFY AND DEFEND ELEMENT AND ITS RELATED ENTITIES AGAINST ANY AND ALL LIABILITY OR CLAIM ARISING FROM THE EXECUTION OF ODOMETER DISCLOSURE STATEMENTS ON BEHALF OF CLIENT IN RELIANCE UPON THE INFORMATION PROVIDED BY CLIENT. THE FOREGOING PROVISION DOES NOT INCLUDE THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ELEMENT, BUT IS OTHERWISE ABSOLUTE AND UNCONDITIONAL AND SHALL CONTINUE IN FULL FORCE AND EFFECT NOTWITHSTANDING THE TERMINATION OF THE AGREEMENT OR THIS ADDENDUM.**



SERVICE ADDENDUM FOR MAINTENANCE SERVICES

CLIENT NO(S). 3585

THIS SERVICE ADDENDUM FOR MAINTENANCE SERVICES (the "Addendum"), is intended to be part of the Negotiated Master Service Agreement between Element and the Client (the "Agreement"). Element and Client are sometimes referred to herein as the "Parties." The Maintenance Services available hereunder are sometimes referred to as the "Services." Capitalized terms used but not defined in this Addendum will have the definitions ascribed to them in the Agreement.

Unless otherwise expressly provided herein specific to this Service, the term "Vehicles" includes any other mutually agreed upon assets, including but not limited to trailers and equipment ("Other Assets"). The Parties agree that Other Assets may be enrolled hereunder only to the extent that the Services are provided by a participating repair facility at such facility's location (or in the case of roadside service assistance, provided by a participating repair facility at the roadside and/or at such facility's location).

1. Service Description(s).

- 1.1. **Managed Maintenance.** Element will provide Client with access to a network of national account, dealer and independent repair and maintenance providers, and provide other services related to the management of repair and maintenance transactions for Vehicles ("Managed Maintenance Services"). Element (A) will provide purchase order control for all proposed maintenance and repair transactions that exceed \$100.00 with respect to cars and light duty trucks and \$200.00 with respect to medium duty trucks and heavy duty trucks, respectively, and (B) will provide Client the ability to electronically approve maintenance and repair transactions that exceed \$1,000.00 for cars and light duty trucks and \$1,500.00 for medium duty trucks, heavy duty trucks and Other Assets, respectively. These limits may be subject to revision based on Client and Element policies. The Managed Maintenance Services fees include base preventive maintenance Services solely for enrolled cars and light duty trucks, utilizing Element's standard preventive maintenance schedules, which may change over time. Any preventative maintenance Services for medium duty trucks, heavy duty trucks and Other Assets are available only if those medium duty trucks, heavy duty trucks and Other Assets are enrolled in Enhanced Preventive Maintenance Services under Managed Maintenance Services. Element will use commercially-reasonable efforts to refer Client or Drivers, in accordance with Client's parameters established with Element, to select vehicle rental providers in order for Drivers to obtain rental vehicles when their Vehicles are being maintained or repaired. Element will also provide roadside service assistance to Client and Drivers during emergency breakdowns.

Available Enhancements to Managed Maintenance:

Managed Maintenance Enhancement: Enhanced Preventive Maintenance. Element will prepare and use preventive maintenance schedules customized to Client's requirements, as modified from time to time by mutual agreement of the Parties. Customized schedules can apply to all Vehicle classes, including but not limited to cars, light duty trucks, medium duty trucks, heavy duty trucks and Other Assets ("Enhanced Preventive Maintenance Services").

Managed Maintenance Enhancement: Managed Rental. In addition to referring Client or Drivers to select vehicle rental providers, Element or the vehicle rental provider will coordinate and monitor, in accordance with Client's parameters established with Element, such vehicle rentals from select vehicle rental provider(s) in terms of the Vehicle repairs being made through the Managed Maintenance Services ("Managed Rental Services"). Element will track the timely return of such rental vehicles to such vehicle rental provider(s) by Drivers.

Managed Maintenance Enhancement: Managed Maintenance Premium. Element will provide certain maintenance and repair management Services for those Vehicles designated by Client, including but not limited to medium duty trucks, heavy duty trucks and Other Assets ("Managed Maintenance Premium Services"). Such Services include an assigned, dedicated representative to oversee Vehicle repair and maintenance activity. Managed Maintenance Premium Services can apply to all vehicle classes.

Managed Maintenance Enhancement: Downtime Tracking. Element will track vehicle repairs through to reported completion, with an escalation process, as necessary, to minimize Vehicle downtime for repairs. Such tracking will commence upon the vendor's obtaining approval to begin repairs and will end upon completion of the repair.

Managed Maintenance Enhancement: Maintenance Data Capture. Element will provide Client with access to a web-based data capture and reporting tool (the "MDC Web Portal") to assist Client with its inputting of, and the aggregating of, Client's maintenance and repair expenditures incurred outside of the other Services described in this Addendum ("Maintenance Data Capture Services").

1.2. Stand-Alone Maintenance Services

Maintenance Purchasing. Element will maintain the Element Maintenance Network (including the National Account Network, as defined below) purchasing program for purchases related to the repair and maintenance of Vehicles ("Maintenance Purchasing Services"). With respect to the Maintenance Purchasing Services, Element is not involved in the repair transaction, authorization, data capture, or auditing of invoices. Element will provide Roadside Service Assistance Services, as more fully described below, to Client and Drivers during emergency breakdowns.

- **Enhancements to Maintenance Purchasing Services**

Maintenance Purchasing Enhancement: Maintenance Data Capture. Element will provide Client this service as more fully described herein.

Roadside Service Assistance. Element will provide Roadside Service Assistance Services, as more fully described below to Client and Drivers during emergency breakdowns as a stand-alone service.

Maintenance Data Capture. Element will provide Client this service as more fully described herein as a stand-alone service.

2. Service Subscription(s). Client hereby subscribes to the following Service(s):

☒ **Managed Maintenance Services**, plus the following selected enhancements:

Included: Element's base preventive maintenance Services (cars and light duty trucks only)

- ☐ Enhanced Preventive Maintenance Services
- ☐ Managed Rental Services
- ☐ Managed Maintenance Premium Services
- ☐ Downtime Tracking Services
- ☐ Maintenance Data Capture Services

☐ **Maintenance Purchasing Program** (as a stand-alone service) plus the following selected enhancement:

- ☐ Maintenance Data Capture Services

☐ **Roadside Service Assistance Services** (as a stand-alone service)

☐ **Maintenance Data Capture Services** (as a stand-alone service)

3. Element's Obligations.

3.1. Managed Maintenance Services. Element will:

3.1.1. Provide Client with access to Element's network of national account vendors (the "National Account Network") and Element's network of dealers and independent repair facilities (the National Account Network, together with Element's network of dealers and independent repair facilities, are herein referred to, collectively, as the "Element Maintenance Network"). Element may modify the Element Maintenance Network from time to time in its sole discretion. Drivers can use Instruments to purchase goods and services for the repair and maintenance of Vehicles within the Element Maintenance Network.

3.1.2. Issue Instruments to Client (and its related parties) for each Vehicle enrolled, when relevant to the Service hereunder.

3.1.3. Provide a toll-free telephone number which Drivers can call to communicate with Element's maintenance specialists regarding maintenance and repair transactions for Vehicles.

3.1.4. Consult with the Element Maintenance Network vendors and other participating repair facilities on maintenance and repair transactions that exceed the dollar limit specified on, or for, the Instrument (the "Specified Limit") in order to: (i) verify the need for maintenance work or repairs proposed by the repair facility, (ii) validate and negotiate pricing where appropriate and (iii) administer Client's maintenance parameters as mutually agreed to between Client and Element, and require all such facilities to obtain Element's approval in advance of performing any services that exceed the Specified Limits. Element will exercise its best judgment in Client's interest when authorizing maintenance and repairs for Vehicles.

3.1.5. Maintain an electronic repair and maintenance history for Vehicles, which Element will reference when interacting with, or otherwise authorizing, repair facilities regarding proposed maintenance and repairs.

- 3.1.6. Review maintenance and repair invoices for proper authorization. Client acknowledges that such review is subject to Element's standard operating routines and systems capabilities with respect to payment variance/tolerance percentages applicable to the Specified Limit, Element's approval limit, and other authorizations in order to accommodate incidental charges such as taxes, vendor supplies, tire disposal, etc.
- 3.1.7. Element will also review repairs for standard warranty coverage and, when applicable, "post warranty" goodwill adjustment from Vehicle manufacturers.
- 3.1.8. Utilize Element's standard schedule of preventive maintenance services and, where consistent with Client's parameters established with Element, notify Drivers in advance via email of suggested dates and mileage for preventive maintenance.
- 3.1.9. Use commercially-reasonable efforts to refer Client or Drivers, in accordance with Client's parameters established with Element, to select vehicle rental providers in order for Drivers to obtain rental vehicles when their Vehicles are being maintained or repaired.
- 3.1.10. Client and Drivers will be provided assistance during emergency breakdowns. Element will provide Client with access to a network of towing and repair facilities available to provide roadside services 24 hours per day, 365 days per year. Element will provide a toll-free telephone number which Drivers can call to access Element's towing dispatch services ("Roadside Service Assistance Services").

3.2. Managed Maintenance Premium Services. Element will:

- 3.2.1. Assign an Element representative who will work with Client's branch locations to:
 - a. provide support for Client's oversight of timely preventative maintenance (e.g., notify Client about due and overdue preventative maintenance),
 - b. conduct training with respect to utilization of a managed maintenance program and
 - c. assist Client with identifying root causes of Vehicle downtime and work towards increasing Client's overall Vehicle uptime.
- 3.2.2. At Client's expense, conduct on-site setup meetings with Client's or Drivers.

3.3 Maintenance Purchasing Services. Element will make the Element Maintenance Network available to Client so that Drivers can use Instruments to purchase tires, maintenance and glass for, and to obtain rental cars in connection with, the repair and maintenance of Vehicles from the Element Maintenance Network. Repairs that exceed the Specified Limit require the repair facility/vendor to directly obtain approval from Client, and Element does not validate or audit such approval.

3.4 Roadside Service Assistance Services. Element will:

- 3.4.1. Provide Client with access to a network of towing and repair facilities available to provide roadside services 24 hours per day, 365 days per year.
- 3.4.2. Provide a toll-free telephone number which Drivers can call to access Element's towing dispatch services.

3.5 Maintenance Data Capture Services. Element will:

- 3.5.1. Establish login credentials for the MDC Web Portal for Client's authorized users.
- 3.5.2. Provide basic instructions and application procedures for use of the MDC Web Portal.
- 3.5.3. Provide access to the MDC Web Portal for Client's authorized users to input Vehicle maintenance data.
- 3.5.4. Create a Client-specific data repository that stores Client-inputted Vehicle maintenance data and, where applicable, integrates such data with maintenance and repair data that Element collects in connection with the other Services, if any, provided to Client pursuant to this Addendum.
- 3.5.5. Provide Element's standard maintenance and repair reporting package through Element's online client portal.
- 3.5.6. Provide reporting to Client via Element's web portal, Xcelerate®.
- 3.5.7. Provide technical assistance to Client for use of the MDC Web Portal, subject to mutually-agreeable terms.

4. Client's Obligations. Client will:

- 4.1. Designate the Vehicles to be enrolled in each of the Services described in this Addendum and provide Element with all other information reasonably requested in connection with the Services.
- 4.2. Ensure that its employees comply with all instructions contained on Instruments and all instructions that Element may otherwise issue from time to time in connection with the Services described in this Addendum.
- 4.3. Submit all necessary forms in the format required by Element.
- 4.4. If Client subscribes to the Maintenance Data Capture Services, notify Element immediately in writing if any authorized user of the MDC Tool ceases to be employed by Client or no longer requires access to the MDC Tool.

- 4.5. Comply with the insurance requirements set forth below in this Addendum with respect to vehicles rented in connection with the referrals provided to Client or Drivers by Element pursuant to this Addendum.
- 4.6. If Client subscribes to the Maintenance Data Capture Services, Client acknowledges that Element disclaims any liability for, and makes no warranty, whether express or implied concerning, any data input on the MDC Web Portal or concerning the accuracy, timeliness, or completeness of such data. Client agrees to indemnify Element and hold Element harmless from any claims, liabilities, damages and losses arising out of the use by Client of the MDC Web Portal or reports derived from the MDC Web Portal, if any, or out of any allegation or claim that the data entered on the MDC Web Portal is untrue, incomplete or inaccurate or violates the rights of any third parties.
5. **Service Fees.** Client will pay Element monthly, in advance, for each Vehicle subject to this program, the monthly Service Fees set forth in the Services Program Pricing schedule attached to the Agreement as well the transactional (i.e. per incident) Service Fees set forth in such pricing schedule. Additional Service Fees, as set forth in such Services Program Pricing schedule, will apply for certain Services, including but not limited to the Service Fees for the Managed Maintenance Service, Services that are enhancements to the Managed Maintenance Services, the Stand-alone Maintenance Services, and Services that are enhancements to the Stand-alone Maintenance Services. Client will pay Element a Service Fee for transactions outside of the Element Maintenance Network, which Service Fee is set forth in the Services Program Pricing schedule. Service Fees are subject to adjustment as provided in the Agreement.
6. **Additional Terms and Conditions.**
- 6.1. **Rental Vehicles.** With respect to vehicles (including trailers and equipment) rented in connection with the referrals provided to Client or Drivers by Element pursuant to this Addendum, Client may, at its option, either insure such vehicles or have the vehicle rental provider provide the required insurance. In the event that Client elects to provide the required insurance, the policy for such insurance must name the vehicle rental provider and its designee(s) as an additional insured and Client must provide the vehicle rental provider with a certificate or other satisfactory evidence of insurance. Client's and Drivers' use of rental vehicles will be subject to the terms of the vehicle rental provider's rental agreements. Notwithstanding any agreement between Client and the vehicle rental provider, between Element and Client, Client will bear all risk of late return, loss, theft, and damage to rental vehicles. Any terms and conditions in this Addendum with respect to vehicles rented in connection with referrals provided to Client or Drivers by Element or vehicles rented with Client's use of any purchasing instrument issued hereunder will also apply to any trailers or equipment rented by Client in connection with such referrals or with Client's use of any such purchasing instrument.
- 6.2. **Roadside Service Assistance Pass-Through Charges.** With respect to any Roadside Service Assistance provided pursuant to this Addendum, the charges billed to Client in connection with such Services may include dispatch fees, tolls and other charges which may at times be calculated based on factors including, but not limited to: type of event, type of vehicle serviced, estimated or approximate mileage of service, estimated or approximate time and hours of event, hourly rate, and type of equipment required to provide the service.
- 6.3. **Client Acknowledgements.** Client acknowledges that manufacturers do not recommend the use of non-standard tires or rims on Vehicles due to (i) safety concerns described by vehicle manufacturers, and (ii) the potential impact on warranties and insurance. If Client directs the substitution of non-standard tires or rims, Client assumes the associated risks and acknowledges that Client's obligation to defend and indemnify Element under the Agreement will apply in the event of any claim or loss related directly or indirectly to such substitution.
- 6.4. **Third-Party Service Providers.** Element may, in its discretion, cause some or all of the Services described in this Addendum to be performed by one or more Providers. In such event, Element will provide such Provider(s) with all information necessary to perform such Services. Any such Provider(s) will be independent contractors and not subcontractors, partners, or agents of Element. Client acknowledges that: (i) with respect to any Services performed by Providers, Element's responsibilities are limited to acting in the capacity of a rebiller; and, (ii) Element has no obligation to directly provide, and has no liability with respect to, such Services. In the event that a Provider terminates Services contracted under this Addendum, Element will have no further responsibility or obligation hereunder with respect to such Services.



SERVICE ADDENDUM FOR FUEL SERVICES

CLIENT NO(S). 3585

THIS SERVICE ADDENDUM FOR FUEL SERVICES (the "Addendum"), is intended to be part of the Negotiated Master Service Agreement between Element and the Client (the "Agreement"). Capitalized terms used but not defined in this Addendum will have the definitions ascribed to them in the Agreement.

1. Services Description. Element has developed a program to facilitate the purchase by Client and Client's representatives of fuel for Client's Vehicles through agreements with Provider(s) pursuant to which the Providers have agreed to establish and issue Instruments for use by Element's clients (the "Fuel Program");

2. Element shall:

- 2.1** Issue to Client, upon written request and in such quantity as may be mutually agreed upon by and between Client and Element, Instruments to be used only by authorized employees or agents of Client or its affiliated entities as set forth below. Instruments issued to Client shall be limited to the purchase of selected products and services at the locations ("Fuel Merchants") where the Instrument is accepted. Instruments shall contain a numeric legend, along with Client's name and its representative's name, or, if requested by Client, a numeric legend only. All Instruments shall bear an expiration date, and Element shall provide replacement Instruments on a regular, periodic cycle.
- 2.2** After receiving statements from Provider, who processes transactions directly with the Fuel Merchants in its network, pay Provider the amount of all transactions incurred by Client. Element's sole payment obligation is to Provider and not to the Fuel Merchants.
- 2.3** Furnish Client with a monthly invoice identifying gross purchases per Instrument covering all purchases by Client during the month(s) preceding the date of the invoice and a transaction report listing all transactions.

3. Client shall:

- 3.1** Assure that the Instruments are used primarily for business purposes; each Instrument user is instructed in its proper use and 10 or more Instruments are issued throughout the term of this Addendum.
- 3.2** Designate the Vehicles subject to this Addendum (including those not leased by Element to Client), and provide all information reasonably requested by Element to provide the service specified herein.
- 3.3** Elect that Element issue a restricted and/or unrestricted Instrument. A restricted Instrument shall mean an Instrument that may be used only for fuel purchases at a fuel station. An unrestricted Instrument shall mean an Instrument that may be used to purchase any products or services offered for sale at a fuel station. All Instruments shall be subject to authorization controls based on Client policy and Provider Instrument capabilities.
- 3.4** Accept, hold and use Instruments subject to the terms and conditions expressed herein. Client acknowledges that all Instruments are and shall remain the property of Element, and the license to use the Instruments is subject to cancellation by Element at any time by written notice; and upon receipt of such notice, Client shall make no further charges thereon and shall immediately destroy or return such Instruments to Element. Instruments shall be assigned a personal identification number ("PIN") and shall prompt the driver for odometer and PIN. Client may request the Instrument be issued as a tax-exempt card (subject to appropriate documentation from Client).
- 3.5** Observe and comply with, and direct each Instrument user to observe and comply with, such instructions as Element may reasonably issue from time to time.
- 3.6** **ASSUME FULL RESPONSIBILITY FOR ALL PURCHASES MADE BY ANY BEARER OF AN INSTRUMENT ISSUED IN THE NAME OF CLIENT OR ANY AFFILIATED COMPANY IRRESPECTIVE OF WHETHER THE USE OF SUCH INSTRUMENT WAS AUTHORIZED OR UNAUTHORIZED OR EXCEEDS ANY LIMITS OR CONDITIONS ON THE INSTRUMENT.** Client shall be responsible for all purchases made with Instruments issued pursuant to this Agreement from the date of issuance until the Instrument is returned to Element for cancellation. If Client is unable to obtain an Instrument that it desires to cancel, Client shall notify Element in writing of its efforts to obtain the Instrument, and Element shall take such action reasonably available to it to preclude additional purchases from being made with the Instrument. Notwithstanding such action by Element, Client shall remain responsible for any subsequent purchases made with the Instrument. The provisions of this section are considered and accepted by Client as notification of Client's potential liability for purchases made with an Instrument or Instruments issued pursuant to this Addendum.
- 3.7** Pay Element for all purchases made (including any applicable taxes or other charges incurred through the use of the Instruments) by any bearer of an Instrument issued in the name of Client or its affiliated companies as well as the per month per Instrument fee, payable in advance, set forth in Service Program Pricing schedule attached to the Agreement.
- 3.8** Reimburse Element for a replacement charge for each lost, stolen or destroyed Instrument for which Client requests replacement at the rate set forth in the Services Program Pricing schedule attached to the Agreement.
- 3.9** Hereby agree that the disclaimer of warranties set forth in the Agreement with respect to all products and services purchased from third parties is, with respect to this Addendum, extended to Providers. Fuel0.add.12.27.17

**SERVICE ADDENDUM FOR REGISTRATION RENEWAL****CLIENT NO(S). 3585**

This Service Addendum for Registration Renewal (the "Addendum"), is intended to be part of the Negotiated Master Service Agreement between Element and the Client (the "Agreement"). Capitalized terms used but not defined in this Addendum will have the definitions ascribed to them in the Agreement.

1. Service Description.

Element will help manage Client's Vehicle registration renewal process (the "Registration Renewal Program"). Element will send written requests to Drivers approximately 90 calendar days prior to the renewal deadline which will include a list of required documents and information (e.g., current and accurate safety and pollution documents, VIN, inspections, odometer readings, etc.). Element may provide a second written request approximately 60 calendar days prior to the renewal deadline.

If Element is provided with all required information at least 30 calendar days prior to the renewal deadline, Element will file all renewal forms and documents with the applicable state Motor Vehicle Administration, provided that a Driver's appearance is not required and such filing by Element is permitted by applicable law. Subject to the foregoing requirements, Element will also file any other required forms and documents with the applicable government agencies, including when Vehicles are permanently moved from one state to another. If Element is not provided with all required information at least 30 calendar days prior to the renewal deadline, Element will issue the Driver a power of attorney to complete the registration renewal at the local or state facility which will result in an additional fee being billed to the Client.

Element will use its best efforts to renew the applicable Vehicle registration and provide proof thereof to Client prior to the registration expiration. If Client fails to comply with any of the conditions herein, or if the Motor Vehicle Administration has a processing delay or error, then registration may not be completed prior to the registration expiration. Element will not be liable for any failure to complete a Vehicle registration prior to the registration expiration.

Element will pay all fees and expenses incurred on Client's behalf in connection with such filings, including but not limited to vehicle registration fees, shipping, taxes, and tag agency fees, and will consolidate charges for Client.

2. Client Obligations.

2.1 Client will designate Vehicles to be subject to this Addendum, including vehicles not leased from Element ("Non-Element Leased Vehicles"), and provide all information reasonably requested.

2.2 Client will provide Element with a list of Driver names and addresses and update the list promptly upon any changes.

2.3 Client hereby appoints Element as its true and lawful agent and attorney in fact, with full powers of substitution, to act with full power and authority in all matters relating to Non-Element Leased Vehicles regarding (i) applying for original or duplicate certificates of title, registration and/or license plates in the name of Client; (ii) transferring license plates to the Non-Element Leased Vehicles; and (iii) renewing the registration and/or license plates for the Non-Element Leased Vehicles. This Power of Attorney authorizes only the foregoing acts and does not authorize the selling, mortgaging, pledging or placing of any lien or encumbrance on any Non-Element Leased Vehicles. A photocopy or other printed copy of this Power of Attorney will be an acceptable substitute for the original of this document.

Important Notice - States may require a copy of Client's insurance policy. A delay in Element's receipt of the information may cause a delay in the services provided hereunder.

Registration Renewal add

**SERVICE ADDENDUM FOR FLEET PARTNERSHIP SOLUTIONS****CLIENT NO(S). 3585**

This Service Addendum for Fleet Partnership Solutions (this "Addendum") is intended to be part of the Negotiated Master Service Agreement between Element and the Client (the "Agreement"). Capitalized terms used but not defined in this Addendum will have the definitions ascribed to them in the Agreement.

1. Service Description

Client to select a service program ("Program") by checking the box:

☐ **Fleet Partnership Solutions ("FPS") Essential.**

Element will provide guidance and tools to support Vehicle acquisition, including creation of Vehicle specifications, replacement plans and administration, and will provide training and technical support to assist Client in accessing data and reports. Element will also assist Client with the resolution of fleet service issues and provide Drivers with access to Element's Customer Care team to assist with Vehicle related inquiries. Element will provide an FPS Partner as Client's primary day to day contact.

☒ **Fleet Partnership Solutions ("FPS") Advanced.**

In addition to the services above, Element will assist Client in the development and maintenance of their fleet management policy and collaborate with Client to actively identify and manage their fleet management needs. Element will support Client in maintaining accurate Vehicle inventory and Driver information and manage efficient utilization of Drivers and Vehicles. Element will provide an exception management dashboard to monitor driver compliance and will assist in the development and the execution of a strategic engagement plan to identify key fleet opportunities for cost savings and other initiatives. Element will also identify Client's fleet management reporting needs including key performance indicators and service utilization metrics, monitor the scheduling of those reports and provide recommendations based on trending analysis provided by strategic consulting

1. Client Obligations

- 2.1** Client will designate the Vehicles to be enrolled in the Program and provide all information including all accurate Vehicle and Driver inventory requested by Element to provide the services.
- 2.2** Client will direct Drivers to comply with Element instructions.
- 2.3** Client will designate the fleet manager or other decision maker who has authority over Client's fleet.
- 2.4** If Client requests training at its locations, Client agrees to reimburse Element for its reasonable out of pocket costs incurred in providing such training.

2. Client Acknowledgements

- 3.1** The services provided hereunder will be in accordance with Element's understanding of Client's policies and operating requirements as well as Element's standard processing routines and system capabilities. Client is responsible for determining its fleet policies and operational requirements. If the services are, at any time, not in conformity with Client's policies and operating requirements, Client agrees to notify Element in writing explaining any variation. Within 30 days of Element's receipt of any such notice, the parties may agree to modify the service delivery; amend this Addendum to provide for different services or terminate this Addendum. If the parties do not agree, then the Services will continue without modification.
- 3.2** Element reserves the right to charge additional fees for any non-standard activities/requests, including but not limited to; specialized Vehicle management where the Vehicles are not leased by Element; an exceptional need/request that significantly increases workload e.g. supporting major reduction in fleet; customized reporting requiring significant IT investment or resource time; additional Client requirements for strategic analytics and/or non-standard task execution.

FPS Addendum

**SERVICE ADDENDUM FOR VEHICLE REMARKETING****CLIENT NO(S). 3585**

This Service Addendum for Vehicle Remarketing (the "Addendum"), is intended to be part of the Negotiated Master Service Agreement between Element and the Client (the "Agreement"). Capitalized terms used but not defined in this Addendum will have the definitions ascribed to them in the Agreement.

1. Service Description.

Element will manage the sale of company-owned vehicles designated by Client ("Vehicles"). As soon as practicable after a Vehicle is surrendered to Element or its agent, Element shall cause the Vehicle to be sold in a commercially reasonable manner. In doing so, Element will act as the non-exclusive independent contractor for the Client, from time to time, in connection with the selling of Vehicles. On the next monthly invoice after sale, Element will remit to Client the proceeds from the sale of each Vehicle, less all expenses incurred in connection with its sale, including, but not limited to, auction fees, transportation costs, repair or reconditioning costs, detailing or decal removal costs, and Element's sale fee, as provided in the Services Rate Schedule.

2. Client Obligations.

2.1. Client will direct Element to manage the sale of each Vehicle by remitting a sales order to Element in a format acceptable to Element ("Sale Request").

2.2. Client will surrender and/or cause each Vehicle to be available for pickup on the day a Sale Request is submitted to Element, at a location that is acceptable to Element. Surrender of the Vehicle shall not be effective until the third-party seller has actual physical possession of the Vehicle and has received all license plates, registration certificates, documents of title, odometer and damage disclosures and other documentation necessary for the sale of the Vehicle.

2.3. Client will remove any personal property from Vehicles prior to surrender. Upon surrender, any remaining personal property shall be deemed abandoned and may be disposed of without liability.

2.4. Client shall be responsible for compliance with all legal requirements and ensure each Vehicle is free of any/all liens and encumbrances. Client will cause each Vehicle that Element is requested to manage the sale of under this Addendum to remain insured by the Client (or Client retains the risk of loss or liability if Client self-insures) until the Vehicle is sold and legal title passes to the purchaser.

2.5. Client hereby constitutes and appoints Element its true and lawful attorney and agent, with power and authority to do any and all acts and things which relate directly or indirectly to the Vehicles which are the subject matter of this Addendum, and which may reasonably be necessary to: (a) sell, transfer, assign and convey all right, title or interest of Client in and to the Vehicles; (b) deliver possession of the Vehicles to third parties on consignment, or for auction or resale; (c) sign the name of Client on registration statements, certificates of title and applications therefore, odometer statements, bills of sale and other documents filed or recorded as public record or necessary or appropriate to effect the sale, transfer, licensing or registration of Vehicles; (d) deliver additional powers of attorney on behalf of Client to automobile dealers or others who may lawfully receive the same for purposes of accomplishing the functions in this Section 2.5; and (e) do all things reasonably necessary to carry out the intent of this service in accordance with federal, state and local laws and regulations. Client hereby ratifies and confirms all that Element as such attorney and agent shall do or cause to be done by virtue hereof. Such ratification and confirmation and the power granted to Element herein shall not create any obligation or impose any liability on Element. Client hereby grants Element the full and unqualified authority to delegate any or all of the foregoing powers to any person or persons Element shall select. The power granted hereunder shall be deemed a power coupled with an interest and shall terminate upon the termination of this Addendum.

3. Client Acknowledgements.

3.1. Element's liability for any losses, damages, or expenses (each a "Loss") incurred by Client that result in whole or in part from Element's negligent performance of or failure to perform services under this Addendum will not exceed

the Service Fee charged for the transaction giving rise to the Loss. Element will not be responsible or liable for any delays or errors on the part of any state motor vehicle administration or other governmental agency or third party.

3.2. Client is not required to request the sale of, and Element is not required to accept the requests for the sale of, any minimum number of Vehicles during the term of this Addendum.

3.3. Additional Element fees may apply to Client-arranged Vehicle sales (for example, Vehicle sales to Client's employees), which fees will be imposed on the purchaser.

3.4. Element agrees to sell Vehicles in accordance with its normal business practices through wholesale auto auctions, consignment and/or motor vehicle dealers. Client acknowledges and agrees that these methods of sale are acceptable to Client.

3.5. In addition to any indemnity obligations of Client set forth in the Agreement, Client agrees to indemnify and defend Element and its Related Entities against any and all liabilities and claims related to the execution of Odometer Disclosure Statements on behalf of Client in reliance on information provided by Client.

Remarketing add.

AMENDMENT TO NEGOTIATED MASTER SERVICES AGREEMENT**CLIENT NO(S). 3585****EFFECTIVE DATE:** 9/16/2022

This amendment ("Amendment") is dated as of the Effective Date stated above, and amends the Negotiated Master Services Agreement, Client No.(s) 3585, dated October 28, 2020, as previously amended or supplemented (the "Agreement"), by and between **Element Fleet Corporation** ("Element") and **IEH Auto Parts LLC** ("Client"). Capitalized terms used in this Amendment and not otherwise defined shall have the meanings assigned to them in the Agreement. The Agreement shall remain in full force and effect except as modified herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Services Rate Schedule. The Services Rate Schedule to the Agreement is amended to include the pricing set forth in Exhibit 1 attached hereto.

2. Service Addenda. The Service Addendum set forth below and attached hereto is/ incorporated into the Agreement as if fully set forth therein:

Service Addendum for Toll Management Services

3. Counterparts. This Amendment may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument, and the parties hereto may execute this document by signing any such counterpart. Delivery of this executed document by telecopy or electronic signature delivery system (in either case in a form acceptable to Element) shall be effective as delivery of a manually executed signature page to this document. The parties hereby agree that the electronic copy of this document retained by Element shall be the original and the authorized copy of record and the electronic record on Element's system of each schedule or exhibit shall be the original chattel paper and authorized copy of record.

IN WITNESS WHEREOF, Element and Client have caused this Amendment to be executed and delivered by their respective duly authorized officers or representatives as of the date first above written.

ELEMENT FLEET CORPORATION (Element)

DocuSigned by:

By: _____

Kristina McLaughlin

Authorized Signatory

IEH AUTO PARTS LLC (Client)

By: _____

*Steve Shipman*Title: Vice President of OperationsPrint Name: Steve Shipman

MSA amend 08.25.21
SHR SFOP0000054632 05.16.2022

Exhibit 1**Services Rate Schedule**

Capitalized terms used and not defined herein will have the meanings assigned to them in the applicable Addendum.

Services Programs	Rates/Fees Charged
Toll Management Services	
Program Fee	15% of each toll charge paid by Element
Provider Setup Fees:	\$2.00 per Vehicle (video tolling set up fee) \$5.50 per Vehicle (transponder setup fee)
Toll Authority Transponder Fee (subject to change upon 30 days prior notice)	\$0.70 per Vehicle per month
Replacement transponder fee for any lost, stolen or unreturned transponder	\$37.00 per replaced transponder

**SERVICE ADDENDUM FOR TOLL MANAGEMENT SERVICES****CLIENT NO(S). 3585****EFFECTIVE DATE:**

This Service Addendum for Toll Management Services (the "Addendum"), dated as of the Effective Date stated above, is entered into by and between Element and Client and is a part of the Master Services Agreement between Element and Client dated as of October 28, 2020 (the "Agreement"). Capitalized terms used but not defined in this Addendum will have the definitions ascribed to them in the Agreement.

1. Service Description.

Element or a Provider will assist Client with toll payments and toll payment reporting in applicable jurisdictions and with applicable collection authorities.

Element or a Provider will provide the license plate number for each Vehicle to the appropriate toll collection authority for the specified jurisdiction participating in this program and will collect shipping information for all Vehicles. In order to pay tolls contingent upon Vehicle needs and geographic locations, Element will distribute transponders, video windshield decals, or other items to the identified garaging address of a Vehicle. Element will pay Vehicles' tolls as billed by eligible toll collection authorities and will provide summary and detailed usage reports for each Vehicle. Element will attempt to resolve any issues regarding issuance of incorrect violations for enrolled Vehicles directly with the appropriate toll authority or Provider.

2. Client Obligations.

2.1. Client will designate the Vehicles to be enrolled in the services hereunder based on geographic location and tolling coverage.

2.2. Client will be responsible for installation or removal of transponders, video windshield decals, or other items provided by Element or Provider.

Toll management services add.

2.3. Client will provide Element all information for each Vehicle reasonably requested by Element or Provider in order to provide the services hereunder (including but not limited to accurate license plate and garaging address shipping information).

2.4. At the time of a Vehicle's disenrollment in the services herein, Client will return each Vehicle's transponder using the return envelope provided by the Provider and/or effectively dispose of video windshield decals or other items as directed by Element.

3. Client Acknowledgements.

3.1. Neither Element nor any Provider will be liable for any tolls or toll violations related to Vehicles for which Client has failed to timely provide accurate license plate or other necessary Vehicle information to Element or Provider or for which incorrect license plate or other necessary information is provided to Element or Provider.

3.2. Some toll authorities charge tolls in advance and may not reimburse for unused tolls or charges.

3.3. Element and Provider will pay all tolls in accordance with the relevant toll authority's procedures, and Client is obligated to reimburse Element for all tolls paid without regard to the validity of such tolls or the purpose of the driver's travel when tolls are incurred.

3.4. For any Vehicle enrolled in the Services, Provider must be the exclusive provider of the Services until such time that such Vehicle is removed from enrollment in the Services.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> ,)	
)	Case No. 23-90054 (CML)
Debtors.)	
)	Jointly Administered
)	

CERTIFICATE OF SERVICE

I, John D. Demmy, hereby certify that on May 26, 2023, a copy of the *Limited Objection of Element Fleet to Confirmation of the Joint Plan of Liquidation of IEH Auto Parts Holding LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* was served through the Court's CM/ECF system upon all registered electronic filers appearing in this case and I caused a copy of the document to be served via Electronic Mail on the below parties.

Matthew D. Cavanaugh, Esquire
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Dated: May 26, 2023