

Hearing Date and Time: April 16, 2019 at 10:00 a.m. (Eastern Time)
Objection Deadline: April 1, 2019 by 4:00 p.m. (Eastern Time)

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:	
In re	:	Chapter 11
	:	
WINDSTREAM HOLDINGS, INC., <i>et al.</i> ,	:	Case No. 19-22312 (RDD)
	:	
Debtors.	:	Jointly Administered
	:	Related to D.I. 42 & 75
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**LIMITED OBJECTION OF ELEMENT FLEET CORPORATION TO:
DEBTORS’ AMENDED MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, AND 507
(I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR SECURED
SUPERPRIORITY POSTPETITION FINANCING, (II) GRANTING LIENS AND
SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING
USE OF CASH COLLATERAL, (IV) GRANTING ADEQUATE PROTECTION,
(V) MODIFYING THE AUTOMATIC STAY, (VI) SCHEDULING A FINAL
HEARING, AND (VII) GRANTING RELATED RELIEF**

Element Fleet Corporation (“**Element Fleet**”) objects, to the extent set forth herein, to
*Debtors’ Amended Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105,
361, 362, 363, 364, 503, and 507 (I) Authorizing the Debtors to Obtain Senior Secured
Superpriority Postpetition Financing, (II) Granting Liens and Superpriority Administrative
Expense Claims, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection,*



(V) *Modifying the Automatic Stay*, (VI) *Scheduling a Final Hearing*, and (VII) *Granting Related Relief* [D.I. 42] (the “**DIP Financing Motion**”).

In support, Element Fleet respectfully represents as follows:

I. BACKGROUND

1. On February 25, 2019 (the “Petition Date”), Debtor Windstream Communications, LLC, formerly Windstream Communications, Inc. (“**Windstream**”) and related companies (collectively, the “**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 Business Relationship Between Element Fleet and Debtor Windstream Communications, Inc.

2. Element Fleet is one of the largest fleet vehicle lessors and related fleet service providers in the world. Typically, Element Fleet both leases a fleet of vehicles to its customers and provides services for the fleet and for any other vehicles the customer may wish to include in the service program, as integrated components of the relationship. Included among the services is the provision of credit and financial accommodations.

3. Element Fleet’s relationship with Windstream is as described above, including the provision of services for vehicles owned by Windstream or leased by Windstream from other lessors.

The Element Fleet – Windstream Services Agreement

4. On or about October 25, 2010, Element Fleet’s predecessor-in-interest, PHH Vehicle Management Services, LLC, and Windstream entered into the *Master Services Agreement* (together with related documents and amendments, the “**Services Agreement**”), a true and correct copy of which is attached as **Exhibit A**.

5. Among the services provided by Element Fleet to Windstream under the Services Agreement is the issuance of credit cards to Windstream employees which enable them to purchase fuel, parts and other supplies for the Leased Vehicles and other vehicles in Windstream's fleet. Element Fleet also provides credit to Windstream in connection with necessary repairs to the Leased Vehicles; Element Fleet will both manage the repair process and pay the third-party providers of parts and labor, which amounts Element Fleet then bills to Windstream.

6. Element Fleet bills for the services, credit and financial accommodations provided under the Services Agreement as such are incurred, monthly, in arrears.

The Element Fleet – Windstream Vehicle Lease

7. On or about January 29, 2014, Element Fleet's affiliate, the D.L. Peterson Trust (the "**Trust**"), and Windstream entered into the *Motor Vehicle Fleet Open-End Lease Agreement* (together with related documents and amendments, the "**Vehicle Lease**"), a true and correct copy of which is attached as **Exhibit B**, pursuant to which Windstream leases motor vehicles (the "**Leased Vehicles**").¹

8. The current number of Leased Vehicles under the Vehicle Lease is approximately 2140. On information and belief, Windstream has used since the Petition Date and continues using the Leased Vehicles in the ordinary course of business operations.

¹ Pursuant to agreement between Element Fleet and the Trust, Element Fleet on behalf of the Trust is the obligee of all the lessor's obligations under the Vehicle Lease and handles all billing and collection of all rental and other amounts due under the Vehicle Lease with respect to the Leased Vehicles. The Trust is a "titling trust" the only function of which is to passively hold title to the Leased Vehicles. Paragraph 24 of the Vehicle Lease provides "[i]t is understood and agreed that Servicer will administer this Agreement and will perform the service functions herein provided to be performed by the Lessor." Element Fleet's predecessor, PHH Fleet, "together with its successors and assigns" is identified in the Vehicle Lease as the "Servicer." Vehicle Lease at ¶ 10.

9. Rent due under the Vehicle Lease is billed by Element Fleet monthly in advance, and the Vehicle Lease requires that rent be paid by the lessee prior to the first day of such month.

Vehicle Lease at ¶ 6(a).

10. The Vehicle Lease contemplates that the number of vehicles subject thereto may change from month to month as Windstream may (i) request and, subject to approval by Element Fleet, obtain additional vehicles thereunder, and (ii) subject to the terms of the Vehicle Lease, return vehicles to Element Fleet that it no longer wishes to lease.

11. Pursuant to the terms of the Vehicle Lease, returned vehicles are disposed of by Element Fleet, possibly by private sale or by auction or as otherwise allowed by the Vehicle Lease. If the amount obtained from the disposition of such vehicles is in excess of remaining “book value” and disposition costs (“**Disposition Funds**”) then at Element Fleet’s option it may credit its lessee’s account for such excess or remit Disposition Funds to the lessee. Vehicle Lease at ¶ 8(b).² Conversely, if there is a deficiency between the amount obtained from disposition and remaining book value then lessee is obligated to remit the deficiency amount to Element Fleet.

12. In addition, under the Vehicle Lease Element Fleet is entitled to:

[R]etain all rents, payments, and resale proceeds received, including any refunds or other sums, if any, otherwise payable to the Lessee under this Agreement to the extent necessary to pay 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 attorney’s fees, incurred by Lessor

Vehicle Lease at ¶ 12(b) (emphasis supplied).

² The Vehicle Lease similarly provides that upon a default or termination all the Leased Vehicles are to be returned to and/or may be repossessed by Element Fleet and upon their return the fleet is to be disposed of by Element Fleet.

13. It is a default under the Vehicle Lease if Windstream defaults in the payment of any indebtedness or performance of any obligation owed to either “the Lessor or Servicer under any other agreement or instrument . . .” Vehicle Lease at ¶ 12(a).

Amounts Due To Element Fleet Under the Vehicle Lease and the Services Agreement

14. As of the Petition Date, invoices had been issued by Element Fleet under the Vehicle Lease and the Services Agreement in the aggregate amount of approximately \$4,850,000 which remained unpaid. See **Exhibit C** attached hereto. In sum, Debtors had failed to pay obligations under the Vehicle Lease and the Services Agreement for the months December 2018 through February 2019 as of the commencement of the bankruptcy cases.

II. THE DIP FINANCING MOTION

15. Debtors seek authority to borrow \$1,000,000,000 from the DIP Lenders³ and to grant liens on the DIP Collateral. Among the assets included in the DIP Collateral, many of which are not specifically defined in the *Superpriority Secured Debtor-in-Possession Credit Agreement* filed on March 18, 2019 [D.I. 152] (the “DIP Credit Agreement”),⁴ are:

- * Accounts (*not defined in the credit agreement*);
- * Chattel Paper (*not defined in the credit agreement*);
- * Documents (*not defined in the credit agreement*);
- * Equipment(*not defined in the credit agreement*);
- * General Intangibles (*not defined in the credit agreement*);
- * Instruments (*not defined in the credit agreement*);
- * Money (*not defined in the credit agreement*);
- * Vehicles (*not defined in the credit agreement*);

³ Capitalized terms not defined herein have the meanings given to them in the DIP Financing Motion.

⁴ Section 1.04 of the DIP Credit Agreement provides “[e]xcept as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time.”

- * Cash Collateral (as defined in the Interim Order or Final Order, as applicable);
- * all books and records (including customer lists, credit files, computer programs, printouts and other computer materials and records) pertaining to any DIP Collateral; and
- * to the extent not otherwise included, all Proceeds of the DIP Collateral.

16. The DIP Credit Agreement describes, by general identification only and without specific description certain assets (the “**Excluded Assets**”) that are excluded from the DIP Collateral, including:

- * motor vehicles (the perfection of a security interest in which is excluded from the Uniform Commercial Code in the relevant jurisdiction);
- * Equipment leased by any Lien Grantor under a lease that prohibits the granting of a Lien on such Equipment or Goods, in each such case if (but only to the extent that) the grant of a security interest therein would constitute or result in (x) the abandonment, invalidation or unenforceability of any right, title or interest of such Lien Grantor therein (in each case, except insofar as such provision causing forfeiture is overridden by the Bankruptcy Code or other applicable law), (y) a violation of a valid and effective restriction in favor of a third party or under any law, regulation, permit, order or decree of any Governmental Authority, unless and until all required consents shall have been obtained or (z) the termination of (or any party thereto having a right to terminate) such contract, lease, health care insurance receivable, General Intangible, instrument, license or other document (other than to the extent that any restriction on such assignment would be rendered ineffective pursuant to any applicable law, including the Bankruptcy Code); and
- * proceeds of any of the foregoing, but only to the extent such proceeds would otherwise independently constitute “Excluded Assets.”

17. Element Fleet has requested clarification from the Debtors that the Liens to be granted on the DIP Collateral do not include the Leased Vehicles, the Vehicle Lease, the Services Agreement, or any rights of the Debtors under such agreements, but no response had been received as of the date of this limited objection.

III. LIMITED OBJECTION

18. Element Fleet submits that the DIP Credit Agreement is sufficiently unclear with respect to the DIP Collateral and the Excluded Assets that it is not certain parties will not take the position that the ordinary and/or GAAP meanings of the operative words provide for inclusion of Element Fleet's interests in the Leased Vehicles, the Vehicle Lease, and the Services Agreement in the DIP Collateral.

19. Element Fleet submits, to the extent the Leased Vehicles, the Vehicle Lease, the Services Agreement, or any combination thereof are intended to be, or otherwise are included in the DIP Collateral, that such would be contrary to bankruptcy law and also may constitute defaults under the Vehicle Lease and/or the Services Agreement. The Services Agreement is a financial accommodation contract under § 365 which cannot be assumed or assigned over the objection of Element Fleet. Windstream Communications also has no right under the Vehicle Lease to assign it or its rights thereunder.⁵ In addition, the granting of liens thereon may cause events of default under Element Fleet's own financing arrangements.

20. Similarly, the approval of DIP financing should not impair any of Element Fleet's rights under the Vehicle Lease or the Services Agreement including, without limitation, Element Fleet's right to use the Disposition Funds as provided under the Vehicle Lease including, without limitation, as offsets against amounts owed to Element Fleet under the Vehicle Lease and the Services Agreement.

21. Element Fleet's limited objection to the DIP Financing Motion can be resolved with language clarifying that the DIP Collateral will not include any of the Leased Vehicles, the Vehicle Lease, or the Services Agreement, and that the relief granted pursuant to the DIP

⁵ In addition, it is a default of the Vehicle Lease for Windstream to make any assignment for the benefit of creditors.

Financing Motion will not impair any of Element Fleet's rights under the foregoing agreements including, without limitation, the right to use the Disposition Funds as an offset to or as a recoupment of any amounts owed by the Debtors to Element Fleet.

22. Accordingly, Element Fleet would be agreeable to inclusion of the following in the final order on the DIP Financing Motion:

Notwithstanding anything to the contrary in the DIP Financing Motion, the DIP Documents or this Final Order, in no event shall the DIP Collateral include, or the DIP Liens or Adequate Protection Liens attach to, the Element Fleet Assets (as defined below).

As used herein, "Element Fleet Assets" shall mean: (i) the *Master Services Agreement* executed by Windstream Communications, LLC f/k/a Windstream Communications, Inc. ("Windstream") and dated as of October 25, 2010 (together with related documents and amendments, the "Services Agreement"); (ii) the *Motor Vehicle Fleet Open-End Lease Agreement* executed by Windstream and dated as of January 29, 2014 (together with related documents and amendments, the "Vehicle Lease"), (iii) any vehicles leased by Windstream under the Vehicle Lease (the "Leased Vehicles"), (iv) the Debtors' rights under either or both of the Vehicle Lease and Services Agreement, and (v) any proceeds of or from any or all of the Services Agreement, the Vehicle Lease, the Leased Vehicles or the disposition of the Leased Vehicles.

WHEREFORE, Element Fleet respectfully objects to the DIP Financing Motion as set forth herein; and requests that the Court grant all other relief to which it is or may be entitled.

Dated: March 29, 2019

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EXHIBIT A

Services Agreement

Master Services AgreementContract Number: 101019N2 0113

This Master Services Agreement ("Agreement"), effective 10/25/2010 (the "Effective Date"), made and entered into by and between Windstream Communications, Inc., a Delaware corporation having its principal place of business at 4001 Rodney Parham Road, Little Rock, Arkansas 72212, on behalf of itself and its Affiliates ("Windstream"), and PHH Vehicle Management Services, LLC, a Delaware limited liability company, having an address of 940 Ridgebrook Road, Sparks, Maryland 21152-9390 ("Contractor"), sets forth the agreement whereby Contractor agrees to provide Services to Windstream according to the terms and conditions hereinafter provided. Each service provided under this Agreement will be defined as set forth on the attached Exhibit A ("SOW"). The SOW is to be separately executed and when so executed shall become a part of this Agreement. Terms and conditions in said SOW(s) shall supersede any conflicting terms and conditions in this Agreement. All SOW(s), together with the terms and conditions of this Agreement, shall constitute and be construed as the Agreement.

ARTICLE I – CERTAIN DEFINITIONS

Defined terms contained in the SOW shall the specified meaning set forth in the SOW. To the extent any such definitions conflict with the Agreement, the terms set forth in the SOW shall supersede and control.

"Affiliates" shall mean, with respect to any person, entity, or enterprise, any other person, entity, or enterprise that, directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such person, entity, or enterprise. "Control" (including the correlative terms "Controls", "Controlled by", and "under common Control with") shall mean, with respect to any person, entity, or enterprise, the power, directly or indirectly, either to (i) vote a majority of the voting shares or other voting interests in such person, entity or enterprise for the election of directors or other governing body of such person, entity or enterprise or (ii) direct or cause the direction of the management and policies of such person, entity or enterprise, whether through the ownership of voting securities, by contract, or otherwise.

"Confidential Information" shall have the same meaning as set forth in the Mutual Non-Disclosure Agreement.

"Fixed Price Project Assignment" shall mean that Contractor will assume full responsibility for the completion of the project for the fixed amount and by the date specified. As part of this responsibility, Contractor shall take any steps necessary to ensure that it meets the project objectives by the date specified. Should Contractor anticipate that the resources currently assigned to the project are not sufficient to ensure its timely completion, Contractor will supplement them as necessary at no additional cost to Windstream.

"Hours Worked" shall mean hours spent at Windstream's offices or elsewhere performing Services for Windstream. Commuting and/or travel time is expressly disallowed as "Hours Worked."

"Hourly Services Project Assignment" shall mean that Windstream will retain project management responsibilities, and Contractor will assist Windstream with specific tasks, which shall be identified on the SOW(s) if this method of Services is agreed upon by the parties. For an Hourly Services Project Assignment, Contractor will provide Windstream with an hourly rate, consistent with Contractor's current discounted rate for hourly work.

"Loss" or "Losses" shall mean all losses, liabilities, damages, and claims, and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest, and penalties).

"Mutual Non-Disclosure Agreement" shall mean that agreement, pertaining to the duties and obligations of the Parties with respect to Confidential Information, entered into by and between the Parties prior to or contemporaneously with the Agreement.

"Party" or "Parties" shall mean Windstream, Contractor, or both.

"Project Manager" shall mean the individual assigned by each of the Parties hereto to be the focal point for communications with the other Party on a particular project assignment as set forth in a SOW.

"Purchase Order" shall mean the form issued by Windstream pursuant to any SOW, as applicable in the attached SOW.

"Services" shall mean the work, services, projects, assignments, or tasks Contractor shall provide pursuant to this Agreement but specifically set forth in the SOW(s).

"Software" shall mean the software owned or licensed to Contractor and used by Contractor in the performance of Contractor's duties and obligations under this Agreement.

"Term" shall mean the duration of performance under this Agreement as may be set forth herein or in any SOW, Purchase Order, or similar part of this Agreement.

"Time and Materials Project Assignment" shall mean that Contractor will assume responsibility for project management and will estimate the number of hours required to complete the Contractor's tasks identified in a SOW. Contractor will invoice Windstream for hours actually worked. If fewer than the estimated person hours of effort are required, then Windstream's cost will be less than the estimated charges. If more than the estimated person hours are required, Contractor will notify Windstream as soon as Contractor becomes aware of the need, and at that time, Windstream may (a) terminate this Agreement as it pertains to the SOW in question by paying for the hours expended to date, (b) continue with the work up to the estimated person hours of work contracted, or (c) exercise the formal change control process to amend this Agreement as it pertains to the SOW in question to authorize additional work.

ARTICLE II - SCOPE OF WORK

2.1 Scope of Work. The SOW attached hereto, together with its exhibits and Purchase Orders, if any and as applicable, will define the scope of work for a particular project assignment under this Agreement. As applicable and when necessary, the SOW will specify the Project Managers, if any, type of work, hourly rates that apply, if any. Additional written and detailed technical specifications for the Services may be attached to this Agreement at a later date or incorporated herein as part of, or an amendment to, the SOW.

2.2 Work Space and Materials. Unless otherwise set forth in a SOW, Windstream agrees to provide reasonable workspace, general office supplies, and appropriate computer time for Contractor's personnel while working on Windstream's facilities. Any additional or unusual materials needed by Contractor's personnel in connection with the performance of Services hereunder shall be provided by Contractor or as otherwise specified in the corresponding SOW. Windstream and Contractor acknowledge and agree workspace and materials are not contemplated under, or applicable to, the Services provided pursuant to the attached SOW.

2.3 Highest Professional Standards. Contractor and Contractor's personnel (which shall not include third party services providers and vendors) shall provide the Services set forth in the SOW using only the highest professional standards and procedures agreed to by the Parties.

2.4 Change Control. During the course of the Services provided by Contractor's, Windstream may desire a change in the scope of the Services. Windstream's requests for changes shall be made in writing and delivered to the Contractor. The Parties will review the proposed change and determine the effect that the implementation of the change will have on price, schedule, and other terms and conditions of the SOW in question. Upon completion of the review, any changes in price, schedule, or other terms will be documented, as the Parties select, either by an amendment to or a sequentially numbered replacement of the SOW in question.

2.5 Acceptance. Acceptance will occur as set forth in the Effective Date of the SOW. As applicable, if the deliverables do not meet the acceptance criteria as set forth in the SOW when offered by Contractor for Windstream's acceptance, Windstream will give Contractor detailed written notification of the deficiency or non-conformance. Contractor then shall, within thirty (30) days of receipt of such written notification, either correct the deficiency or non-conformance or provide Windstream with a plan acceptable to Windstream for correcting the deficiency or non-conformance.

ARTICLE III - PERSONNEL

3.1 Subcontracting and Contractor's Employees. Contractor may subcontract specific project assignments hereunder or discrete portions of the Services only with Windstream's prior written permission. Personnel used or supplied by Contractor in the performance of any portion of the Services shall be employees or agents of Contractor and under no circumstances are such personnel to be considered employees or agents of Windstream. Contractor shall have the sole responsibility for the conduct of its employees and agents, and for payment of their entire compensation, including salary, withholding of income and social security taxes, worker's compensation, employee and disability benefits

and the like. Contractor shall be responsible for all employer obligations towards all of its employees and agents under all applicable laws.

The Parties acknowledge and agree this provision does not apply to the services provided pursuant to the attached SOW however such provision may become applicable pursuant to a future amendment to the SOW.

3.2 Qualifications and Replacement. Windstream shall have the right to review and approve the qualifications of all personnel Contractor assigns to perform work under this Agreement. Windstream shall also have the right to designate that any such personnel be removed and replaced with or without cause. Contractor may also replace personnel when necessary and appropriate. Contractor agrees to maintain a consistently high skill level among all initial and replacement personnel regardless of whether the personnel were originally approved by Windstream or whether any replacement was instigated by Windstream or Contractor.

The Parties acknowledge and agree this provision does not apply to the services provided pursuant to the attached SOW however such provision may become applicable pursuant to a future amendment to the SOW.

3.3 Project Managers. Within ten (10) days after the execution of each SOW, each Party will designate in writing to the other the name, business address, and telephone number of a Project Manager who will be responsible for representing that Party in all technical matters under such SOW. All transfer of deliverables and communications regarding the scope of work under such SOW will be accomplished through the Project Managers. In addition, the Project Managers will arrange and chair progress review meetings and control all changes to a SOW. Contractor will submit all of its invoices for a particular SOW through the Project Manager for such SOW. Either Party may change the person designated to be its Project Manager for any SOW at any time upon written notice to the other Party.

The Parties acknowledge and agree this provision does not apply to the services provided pursuant to the attached SOW however such provision may become applicable pursuant to a future amendment to the SOW.

3.4 Hiring. Each Party agrees not to hire any employee of the other with whom such Party has contact without the prior written permission of the other Party, both during such time as the performance of Services under a SOW is pending and thereafter continuing for a period of six (6) months. This provision shall not apply to (i) Contractor's employees who have been continuously assigned to full-time Windstream servicing activities in excess of twelve (12) consecutive months, (ii) Contractor's employees designated on a SOW as available for hire, (iii) employees of either Party responding to advertisements made at job fairs, through Windstream internal communications, or in media circulated to the general public at large, or (iv) former employees, agents, or subcontractors of Contractor.

ARTICLE IV - FEES, INVOICES, PAYMENT, TERMINATION

4.1 Fees/Compensation. If the applicable SOW specifies that Contractor is to be compensated for work performed on an hourly basis (Time and Materials Project Assignment or Hourly Services Project Assignment), the hourly billing rates for each person engaged in providing the Services shall be as specified in the applicable SOW. For all such hourly project assignments, both the regular daily eight (8) hours and any overtime hours will be billed at the same rate for any person furnished by Contractor. If the applicable SOW specifies that Contractor is to be compensated for work performed by a fixed price (Fixed Price Project Assignment), the fixed price amount will be specified on the SOW.

4.2 Invoices/Payment. As applicable pursuant to the attached SOW, for all Fixed Price Project Assignments, Contractor shall invoice Windstream for all work performed according to the applicable SOW. For Time and Materials Project Assignments and Hourly Services Project Assignments, Contractor shall submit detailed monthly invoices for all work performed. Contractor shall invoice Windstream monthly for travel or other permitted expenses incurred, and shall include receipts and supporting data for such expenses. All invoices submitted by Contractor must set forth the following information: (i) the contract number of this Agreement and number(s) of the particular SOW(s) being billed; (ii) the name(s) of the Service(s) to which the SOW(s) relate; (iii) the location(s) specified for Services to be performed; (iv) a record of expenses and receipts by individual; and (v) the number of hours worked and description of work performed by day and by individual (if hourly fees apply). Windstream shall be entitled to return incomplete invoices and to return invoices containing errors.

4.3 Taxes. Contractor shall invoice Windstream and Windstream shall reimburse Contractor for any taxes actually paid by Contractor which are imposed upon Contractor by any governmental agency as a result of this Agreement with the exception of taxes based on Contractor's income, status (such as governmental licenses to perform the Services), and equity.

4.4 Billing Disputes. Billing disputes shall not be cause for Contractor's non-performance under this Agreement.

4.5 Termination and Default. 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; provided however, that in the event the Windstream (i) defaults in the payment of any amount due under the Agreement and such default continues for a period of fifteen (15) days following receipt by Windstream of written notice of such default or (ii) files or has filed against it any action under any provision of any state or federal law relating to insolvency or bankruptcy, or (iii) appoints or has appointed for it a receiver or trustee, (iv) makes an assignment for the benefit of creditors, or (v) defaults in the payment or performance obligations under any other agreement or instrument with Contractor or D.L. Peterson Trust, Contractor may terminate this Agreement or any program under this Agreement immediately upon notice to Windstream.

ARTICLE V - PROPRIETARY RIGHTS

5.1 Ownership of Work Product. For all work product created under this Agreement, Contractor and its employees and agents hereby assign, cede, and grant to Windstream all rights to possession of, and all right, title, and interest, including all patent rights and copyrights and the right to prepare and exploit derivative works, in the work products created under this Agreement, in whatever form or medium captured, and in and to all physical and electronic materials, papers, and documents (including drawings), hereinafter referred to as "Products", and copies, abstracts, and summaries thereof, which may come into their possession in any manner by reason of project assignment under this Agreement. Contractor shall promptly disclose to Windstream any Products known to it or its employees by reason of project assignment under this Agreement, and all such Products that are not modifications or enhancements to Contractor-owned software shall be deemed to be works made for hire exclusively for Windstream, with Windstream having sole ownership of such Products and the sole right to obtain and to hold in its own name patents, copyrights, or such other protection as Windstream may deem appropriate to the subject matter, and any extensions or renewals thereof. Contractor agrees to give Windstream or any person designated by Windstream, at Windstream's expense, all assistance reasonably required to perfect the rights hereinabove defined, including the procurement, at Windstream's request, of written assignments and title commitments in a form acceptable to Windstream from all employees and agents assigned hereunder. The provisions of this Section do not apply to any material previously belonging to Contractor or lawfully acquired by Contractor in a manner independent of this Agreement which are used by Contractor in the performance of Services hereunder.

The Parties acknowledge and agree this provision does not apply to the services provided pursuant to the attached SOW however such provision may become applicable pursuant to a future amendment to the SOW.

5.2 Enforcement. The provisions of this Article V and the Mutual Non-Disclosure Agreement may be enforced through any remedies available at law or in equity, including, without limitation, injunctive relief.

ARTICLE VI - WARRANTIES

6.1 Originality. Contractor represents, warrants, and covenants the originality of any work performed or Product delivered under this Agreement and that no portion of the Product completed on behalf of Windstream under this Agreement violates or is protected by patent, copyright, trade secret, or other intellectual property or other rights of Contractor or any third party. For purposes of this Section, Product shall not include materials or services supplied by Windstream. In addition to the indemnity described in Section 6.7 below, if an infringement claim threatens Windstream's or its Affiliates' continued use of any Products completed by Contractor on behalf of Windstream under this Agreement, Contractor shall, in the following order and at no cost to Windstream, (i) obtain the right for Windstream to continue use of such Products, (ii) repair or modify the Products so they are both non-infringing and functionally and operationally equivalent to the Products initially delivered, or (iii) provide replacement Products which are functionally and operationally equivalent to the Products. If none of the foregoing is possible, then Windstream shall have the right to terminate this Agreement immediately upon notice to Contractor and Contractor shall refund all fees paid by Windstream hereunder that relate to such Products. The Parties acknowledge and agree the Contractor shall be under no obligation to deliver any Product related to the services provided pursuant to the attached SOW.

6.2 Releases. Neither Contractor nor its permitted subcontractors, nor any of their respective employees, agents, or representatives, by entering into this Agreement and performing the Services, has or will violate any consulting, employment, non-competition, proprietary information, confidentiality, or other agreement, arrangement, understanding, or restriction between such party and a present or former employer, principal, client, or other individual or entity. Contractor shall assist Windstream in all reasonable respects to obtain releases or other necessary or desirable

information or documentation regarding any of the foregoing. The Parties acknowledge and agree that third party service providers are not subcontractors of the Contractor and shall not be subject to this provision.

6.3 Ethics. Contractor warrants that it has given no commissions, payments, kickbacks, lavish gifts, entertainment, or other things of value to any employee or agent of Windstream in connection with this Agreement and acknowledges that the giving of any such payments, gifts, entertainment, or other things of value is strictly in violation of Windstream's policy on conflicts of interest and may result in the cancellation of this Agreement and/or any or all SOW(s). Contractor must notify Windstream's Chief Financial Officer or Controller of any solicitation by any of Windstream's employees or agents for any payments, gifts, entertainment, or other things of value.

6.4 Necessary Contracts From Employees. Contractor represents, warrants, and covenants that it has or will obtain appropriate agreements with its employees and others, including any permitted subcontractors, whose services it may require, sufficient to enable full compliance with all the provisions of this Agreement and the Mutual Non-Disclosure Agreement.

6.5 Disclaimer. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY PROVIDES ANY WARRANTIES TO THE OTHER, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6.6 Waiver of Consequential Damages. Except for damages arising in connection with breach of obligations contained in the Mutual Non-Disclosure Agreement or claims subject to the Indemnity contained in Sections 6.1, 6.7 and 7.2, neither Party shall have liability to the other with respect to their obligations under this Agreement for special, consequential (including but not limited to lost profits, lost revenue or loss of any other economic benefit), exemplary, incidental, or punitive damages even if they had been advised of the possibility of such damages.

6.7 Indemnity. (a) Contractor hereby agrees to save, protect, defend, indemnify, and hold Windstream and its Affiliates and their respective officers, directors, employees, agents, successors and assigns (each an "Indemnitee" and, collectively, the "Indemnitees") harmless from and against any and all Losses and threatened Losses arising out of (i) the negligence or intentional misconduct of Contractor or its employees (ii) Contractor's misrepresentation of any facts to Windstream, (iii) Contractor's warranties, covenants, and agreements set forth in Articles III, IV, VI, and VII of this Agreement, and (v) any damage to property and injuries (including death) to any persons caused by Contractor or its employees.

(b) As conditions to Contractor's obligations under this Section, an Indemnitee shall (i) give Contractor prompt written notice of the claim, action or suit (provided that the failure by the Indemnitee to provide prompt written notice shall not relieve Contractor from any of its obligations hereunder, except to the extent Contractor is actually prejudiced thereby), (ii) reasonably cooperate with Contractor in the defense and settlement of such claim, action or suit, and (iii) give Contractor authority to control the defense of the claim, action or suit and any settlement negotiations, provided Contractor and any of its applicable insurance carriers have accepted the duty to indemnify the Indemnitee and have demonstrated to the Indemnitee's satisfaction (based upon commercially reasonable analysis) that Contractor and its applicable insurance carrier are financially capable of fully indemnifying the Indemnitee.

(c) The section shall be subject and subordinate to the indemnification provisions as set forth in the attached SOW. Windstream shall abide by, and cooperate fully with, the indemnification provisions as set forth in the attached SOW.

ARTICLE VII – INFORMATION TECHNOLOGY WARRANTIES AND INDEMNIFICATION

In the event Contractor uses or licenses to Windstream any Software in the performance of its duties and obligations under this Agreement, the provisions of this Article shall apply. The Parties acknowledge that the Services provided under the attached SOW do not require Windstream to license or use any Software and therefore the following provisions shall not apply to the SOW.

7.1 Contractor's Representations and Warranties. Contractor represents and warrants that (a) Contractor is either the owner of the Software or authorized to provide the Software in its performance of this Agreement, (b) Contractor has sufficient right, title, and interest in the Software to grant the license contemplated by this Agreement, (c) the medium containing the Software will be free from material defect, (d) the Software will perform substantially in accordance with its applicable documentation, operating instructions, and manuals, (e) Contractor shall perform its responsibilities under the Agreement in a manner that does not infringe, or constitute an infringement or violation of, third-party intellectual property rights, misappropriation of trade secret or violation of rights of privacy, attribution, or withdrawal, (f) the Software and Services shall be free from Viruses (In the event a Virus is found to have been introduced by Contractor, Contractor shall, at no additional charge to Windstream, assist Windstream in reducing the effects of the Virus and, if the Virus causes a loss of operational efficiency or loss of data, to assist Windstream to the

same extent to mitigate and restore such losses; "Virus" shall mean program code or programming instructions or set of instructions intentionally designed to disrupt, disable, harm, interfere with or otherwise adversely affect computer programs, data files or operations, or other code typically described as a virus or by similar terms, including Trojan horse, worm, backdoor, a time bomb, software lock, drop-dead device, malicious logic, bug, error, defect or trap door), (g) Contractor shall not insert into the Software any code that would have the effect of disabling or otherwise shutting down all or any portion of the Software or Services, and, with respect to any disabling code that may be part of the Software, Contractor shall not invoke such disabling code at any time, including upon expiration or termination of this Agreement for any reason, without Windstream's prior written consent, and (h) the Software is not, and does not contain, any module or component which is open source software.

Windstream and Contractor acknowledge and agree this provision is not contemplated under, or applicable to, the Services provided pursuant to the attached SOW.

7.2 Indemnification for Infringement. (a) Contractor agrees to indemnify, defend and hold harmless the Indemnitees from and against any and all Losses and threatened Losses arising from, in connection with, or based on third-party allegations whenever made of any claims of infringement or misappropriation of any patent, trade secret, copyright, or other intellectual property rights, or moral rights related thereto based upon the Software. This indemnity shall not extend to infringement to the extent determined by a court of competent jurisdiction that such Loss (i) would not have occurred but for: (A) Contractor's compliance with Windstream's designs, processes or formulas; or (B) a modification of the Software by Windstream or a third party at the request of Windstream; or (ii) results from items not provided or approved by Contractor that contribute to a claim based on combination of such items with Software.

(b) As conditions to Contractor's obligations under this Section 7.2, an Indemnitee shall (i) give Contractor prompt written notice of the claim, action or suit (provided that the failure by the Indemnitee to provide prompt written notice shall not relieve Contractor from any of its obligations hereunder, except to the extent Contractor is actually prejudiced thereby), (ii) reasonably cooperate with Contractor in the defense and settlement of such claim, action or suit, and (iii) give Contractor authority to control the defense of the claim, action or suit and any settlement negotiations, provided Contractor and any of its applicable insurance carriers have accepted the duty to indemnify the Indemnitee and have demonstrated to the Indemnitee's satisfaction (based upon commercially reasonable analysis) that Contractor and its applicable insurance carrier are financially capable of fully indemnifying the Indemnitee.

(c) Windstream and Contractor acknowledge and agree this provision is not contemplated under, or applicable to, the Services provided pursuant to the attached SOW.

ARTICLE VIII- INFORMATION SECURITY REQUIREMENTS

The provisions of this Article shall apply in the event Contractor shall connect to Windstream's networks or obtain, from any source, Windstream data in the performance of duties and obligations under this Agreement.

8.1 Information Security Management: General Guidance. Contractor shall have a security policy that (a) provides guidance to its personnel to ensure the confidentiality, integrity, and availability of information and systems maintained or processed by Contractor, and (b) provides express instructions regarding the steps to take in the event of a compromise or other anomalous event. The policies shall be approved by Contractor's senior management and shall provide for and contain penalties or sanctions for non-compliance. Contractor's security policy shall provide a framework for information security management within its overall organization. Contractor's policy shall address the following key points: delegation and assignment of responsibilities for security; management oversight for the policy and its deployment; means for managing security within the enterprise; policies and procedures for data confidentiality and privacy and data protection and access to, and handling of, Windstream data; and planning for incident response in the event of a breach of security or unauthorized disclosure of Windstream data.

8.2 Security and Processing Controls. Contractor shall maintain commercially reasonable standards and procedures to address the configuration, operation, and management of systems and networks (including Contractor's proprietary technology and third-party technology), services, and data owned by Windstream. Such standards and procedures shall include use of industry standards commercial or professional-grade (a) security controls, (b) identification and patching of security vulnerabilities on a commercially reasonable schedule, (c) anti-virus software and current virus definitions, (d) change control processes and procedures, (e) problem management, and (f) incident detection and management.

8.3 Notification Obligations. Commencing with the Effective Date, Contractor shall, by telephone and e-mail, notify Windstream of primary and backup contact personnel for information security issues arising under this Agreement.

8.4 Notice of Claims. Contractor shall notify Windstream of the following events without undue delay, as soon as practicable after the event:

(a) Significant changes that directly support Windstream data (notice to be provided telephonically);

(b) Suspected breaches or compromises of Windstream data or Contractor's systems or networks that directly support Windstream data (notice to be provided telephonically);

(c) Termination of any personnel for cause, where related to such personnel's potential or actual misuse or compromise of Windstream data or Contractor's systems or networks that directly support Windstream data (notice to be provided telephonically);

(d) Any law enforcement or administrative investigation or inquiry into suspected misuse or abuse of Contractor's systems or network if related to Services Contractor provides Windstream (notice to be provided telephonically);

(e) Contractor's non-compliance, for a period greater than one (1) week, with any requirement under the information security requirements of this Agreement; and

(f) Retention of a new third-party technology vendor that will have responsibility for Windstream data, any system, or network that directly support Windstream data.

8.5 Installation and Use of Particular Windstream Information Security Technology. Contractor shall not be required to install or adopt Windstream proprietary information security technology if such would result in a commercially unreasonable burden to Contractor.

8.6 Adherence to Information Security Standards/Protocols. Contractor shall adhere to general Windstream information security standards/protocols as may reasonably be specified by Windstream to Contractor in writing from time to time. In addition, Contractor shall adhere to any specific information security standards/protocols reasonably specified by Windstream pursuant to this Agreement (and changes to such standards/protocols subsequent to the Effective Date of this Agreement) if standards are in alignment with current Contractor security standards and practices and provide a significant risk reduction to Contractor and Windstream. A schedule containing any such specific information security standards/protocols shall be attached to each services agreement, statement of work, order, or similar part of this Agreement, as appropriate.

8.7 Information Security Policies and Procedures. Contractor shall ensure all personnel directly involved with Windstream data or Contractor's systems or networks that directly support Windstream data are made aware of, trained in, and are required to adhere to security policies and security practices pertaining to the handling of Windstream data. Upon Windstream's request, or where specified in this Agreement, Contractor shall provide Windstream data to and receive Windstream data from its subcontractors only via Windstream-approved security mechanisms, and shall employ and require its subcontractors to employ industry standard security mechanisms with respect to the Windstream data (to the extent security mechanisms are not specifically identified, such vendors shall comply with the security standards of the industry standards bodies and organizations).

8.8 Information Security Assessments of Contractor Resources; Remedial Action. Contractor shall permit information security assessments to be performed by Windstream, (or Windstream's representatives), on Contractor-owned, leased and/or operated resources, networks, services, software, data, information or equipment upon Contractor's consent in each instance. Such assessment may be done for the general purposes of this Agreement. Windstream shall rely on due diligence performed by Contractor for Contractor's service providers. Windstream may review a summary of the findings related to the due diligence efforts by Contractor and the Parties shall work together to resolve any issues. After each assessment, or in the event of the identification of any material security-related risk to Windstream, Contractor and/or its affected subcontractor, as applicable, shall take such remedial action as Windstream may reasonably request based on industry best practices and the results of such assessment, audit, or risk identification, at no additional cost or charge to Windstream. In the event that Contractor and/or its affected subcontractor, as applicable, fail to take such remedial action, Windstream shall have the right, at Windstream's sole option, to terminate this Agreement in accordance with the terms provided herein.

8.9 Audits of Contractor Information Security. If Contractor, at its own expense, retains an independent third-party auditor to perform audits or assessments of Contractor's information security procedures, systems and network, used directly or indirectly to process Windstream data, including testing of the system of controls (SAS 70 or

equivalent), appropriate systems implementation (SysTrust or equivalent), and vulnerability analysis and penetration testing, Contractor shall notify Windstream of the name of the third-party auditor and the date of the audit, and shall provide Windstream with a summary of any final reports or analyses provided to Contractor by any such third party. All such deliverables shall be deemed Confidential Information of both Contractor and Windstream. Contractor shall maintain a process for correcting control and other material deficiencies that have been identified in audits or assessments, including follow-up documentation providing evidence of such corrections. During the Term and for three (3) years after termination or expiration of this Agreement, Contractor shall implement and maintain backup processes sufficient to keep detailed, accurate and up-to-date accounts and records, including computer logs, of all information security activities carried out, and all costs and expenses incurred, in the performance of its information security obligations under this Agreement.

8.10 External Connections. If Contractor connects to Windstream's systems or network it shall comply with Windstream's "Third Party Network Connection Policy" (as published on Windstream's Intranet site and updated from time to time). Contractor shall only use the network connection ("Network Connection") for the specific lawful business purposes outlined in this Agreement. Contractor will allow only authorized employees, representatives or agents to access the Network Connection; Contractor shall be solely responsible for ensuring that such employees are not security risks. Contractor shall maintain commercially reasonable technology controls to protect the Network Connection, including firewalls, anti-virus software, security monitoring and alerting systems (i.e., intrusion detection systems), provide a business environment to be staffed and managed twenty-four (24) hours, seven (7) days a week, and supported by operations procedures, and implement and maintain remote access solutions for personnel that are designed and audited in conformity with industry best practices.

8.11 Regular Consultation. Upon mutual agreement of the Parties Contractor's information security contact personnel shall meet with Windstream information security staff to discuss issues related to the obligations in this Article and information security best practices as they evolve.

8.12 Information Security-Related Termination Rights. In addition to any other termination rights under this Agreement, Windstream shall have the right to terminate this Agreement immediately on the occurrence of (a) compromise, disclosure or inappropriate use of Windstream data, (b) failure by Contractor to provide the notices of security issues required under this Agreement and (c) the determination by Windstream in its sole discretion, that any audit or assessment demonstrates Contractor's gross negligence or willful misconduct.

8.13 Statement of Compliance. Contractor shall provide Windstream an annual written statement certified by an officer of Contractor that it has complied with all of the security requirements of this Article.

ARTICLE IX - GENERAL PROVISIONS

9.1 Entire Agreement: Amendment. The making, execution, and delivery of this Agreement by the Parties have been induced by no representations, statements, warranties, or agreements other than those herein expressed. This Agreement, including the terms and conditions of the Mutual Non-Disclosure Agreement and including any attachment herein referenced, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Except as otherwise expressly set forth in this Agreement, this Agreement may not be modified or amended except in writing signed by the Parties.

9.2 Notices. All notices, requests, demands, or other formal communications hereunder, including notices of change of address, shall be in writing, and either personally delivered, sent by certified mail or overnight mail by a nationally recognized courier, or facsimile if to Windstream, to the Windstream Procurement Department with a copy to the Windstream Legal Department at the addresses and facsimile numbers following this paragraph, and if to Contractor then to the applicable physical address or facsimile number first set forth above to the attention of the department, group, or section with which Windstream is then currently dealing. Notices will be deemed effective upon personal delivery or transmission by facsimile (with a transmission report confirmation), three (3) business days after mailing if sent by certified mail, or the next business day if sent overnight mail by a nationally recognized courier.

Send notices to: Windstream Procurement Department
4001 Rodney Parham Road
Mail Stop: 1170-B3F01-87C
Little Rock, AR 72212
Facsimile No. 501-748-5676

With copy to: Windstream Legal Department
4001 Rodney Parham Road

Mail Stop: 1170-B1F03-71A
Little Rock, AR 72212
Facsimile No. 501-748-5172

9.3 Third-party Beneficiaries. This Agreement is entered into by and between, and may be enforced only by, the Parties, and this Agreement shall not be deemed to create any rights in third parties (other than the Parties' permitted successors and assigns and any persons entitled to indemnity hereunder), including suppliers and customers of a Party, or to create any obligations of a Party to any such third parties.

9.4 Force Majeure. No Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is from causes outside the reasonable control of a Party. Such causes may include fire, flood, earthquake, natural disasters or acts of God, terrorist acts, riots, civil disorders, freight embargoes, government action, or the like, provided the non-performing Party is without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and could not reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means (including disaster recovery services, if any). However, the non-performing Party shall not be excused from its obligations to protect the other Party's Confidential Information or to provide disaster recovery and business continuity services, as may be required under this Agreement. In such event the non-performing Party shall be excused from further performance or observance of the obligations so affected for as long as such circumstances prevail and such Party continues to use commercially reasonable efforts to recommence performance or observance without delay. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due by telephone (to be confirmed in writing within twenty-four (24) hours of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay. Should any event delay the performance by a Party for thirty (30) days or more, the other Party may terminate this Agreement upon written notice to the delayed Party.

9.5 Assignment. Neither Party may assign the Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld or conditioned; unless the assignment is solely related to financing purposes, consent may be conditioned upon the assigning Party's reasonable assurance that the assignee can adequately perform the assigning Party's duties and obligations in the same manner and on the same terms and conditions as the assigning Party. Notwithstanding the foregoing or anything herein to the contrary, in the event Windstream leases vehicles and/or equipment from Contractor or Contractor's leasing affiliate, including D.L. Peterson Trust, Contractor shall have the right to assign all or any part of its right title and interest in this Agreement or any SOW, including all monies and claims for monies due and to become due to Contractor under this Agreement or any SOW. Windstream's obligation to pay such monies to assignees, upon prior written notice to Windstream by Contractor, shall not be subject to any claim, defense or setoff that Windstream may have against Contractor or any other party whether such claim, defense or setoff shall have accrued or arisen before or after Windstream shall have received such notice.

9.6 Choice of Law and Jurisdiction. THIS AGREEMENT SHALL BE CONSTRUED AND THE LEGAL RELATIONS BETWEEN THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARKANSAS, USA, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULES WHICH MAY DIRECT THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

9.7 No Other Relationship/Obligations. Neither Party shall have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, expressed or implied, on behalf of the other Party, except as expressly provided herein. This Agreement is not intended to be nor shall it be construed as a joint venture, association, partnership, or other form of a business organization, agency relationship, or employment relationship.

9.8 Trademarks and Publicity. Neither Party shall have any right to use any marks, names, slogans, logos or designations of the other Party, unless otherwise agreed to in writing by such other Party. Nothing contained herein shall be deemed to grant either directly or by implication, estoppel, or otherwise, any license under any patents, copyrights, trademarks, service marks or other intellectual property rights of one Party to the other Party. In no event shall either Party issue a press release or make any public statement concerning the other without the prior written permission of the other.

9.9 Compliance with Laws; Federal Government Contracting Notice and as applicable to the Services provided pursuant to the attached SOW.

(a) **Compliance Clauses.** Each Party shall, at its own cost and expense, perform its obligations under this Agreement in compliance with all applicable laws to which a Party is subject. As a supplier to the U.S. Government, Windstream is required by U.S. Government Regulations to require that all Windstream vendors, suppliers, contractors, and licensors comply with the following additional clauses: 48 CFR 52.225-13 Restrictions on Certain Foreign Purchases (Feb. 2006); and 48 CFR 52.247-64 Preference for Privately Owned U.S.

Flag Commercial Vessels (Feb. 2006). For all vendor, supplier, contractor, and licensor contracts over \$10,000, the following general terms additionally apply: 48 CFR 52.222-21 Prohibition of Segregated Facilities (Feb. 1999); 48 CFR 52.222-26 Equal Opportunity (Mar. 2007); and 48 CFR 52.222-36 Affirmative-Action for Workers with Disabilities (June 1998). For all vendor, supplier, contractor, and licensor contracts over \$100,000, the following general terms additionally apply: 48 CFR 52.219-8 Utilization of Small Business Concerns (May 2004) (in all subcontracts allowing further subcontracting with third parties by the vendor, supplier, contractor or licensor); 48 CFR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept. 2006); 48 CFR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept. 2006); and 48 CFR 52.203-6 Restrictions on Subcontractor Sales to the Government (Sept. 2006). For contracts over \$500,000 (\$1,000,000 for construction) that allow the vendor, supplier, contractor, or licensor to further subcontract with third parties, 48 CFR 52.219-9 Small Business Subcontracting Plan (Nov. 2007) shall also apply.

(b) **Small Business Subcontracting Plan.** Pursuant to 48 CFR 52.219-9 Small Business Subcontracting Plan (Nov. 2007), if applicable, upon request by Windstream, a vendor, supplier, contractor or licensor whose contracts with Windstream (i) will total at least \$500,000 (\$1,000,000 for construction) and (ii) allow the vendor, supplier, contractor, or licensor to further subcontract with third parties, shall submit to Windstream a written Small Business Subcontracting Plan ("Subcontracting Plan") that complies with the requirements of 48 CFR 52.219-9 and addresses subcontracting with small business concerns, including small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses. The Subcontracting Plan shall become an exhibit attached to this Agreement and incorporated herein by this reference. If a Subcontracting Plan is required under this Section, Windstream shall have the right, in its sole discretion, to terminate this Agreement, on written notice, if Contractor fails to properly submit or follow a Subcontracting Plan. Additionally, Contractor agrees to indemnify Windstream for any damages, of whatever nature, Windstream is required to pay under 48 CFR Part 52 if those damages result from Contractor's failure to properly submit or follow a Subcontracting Plan.

(c) Executive Order 11246 prohibits federal contractors and subcontractors and federally assisted construction contractors and subcontractors that generally have contracts that exceed \$10,000, or that will (or can reasonably be expected to) aggregate to more than \$10,000 in any 12-month period, from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin; and it requires them to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. There are hereby incorporated the provisions of Executive Order 11246 as amended by the President of the United States on equal employment opportunity and the rules and regulations issues pursuant thereto, and 41 CFR 60-1.4(a), Rehabilitation Act of 1973 and 41 CFR-741.5(a)(6) and the Vietnam Era Veterans' Readjustment Assistance Act and CFR 60-250(a)(11) and CFR 60-300.5(a)(11). By acceptance of this contract, Contractor represents and warrants that it will comply with the foregoing Executive Order, rules and regulations and all amendments thereto, unless exempted.

9.10 Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Party against whom it is sought to be enforced. The delay or failure by either Party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that Party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

9.11 Construction; Severability. This Agreement has been negotiated by the Parties and their respective legal counsel and will be fairly interpreted in accordance with its terms and provisions and without any strict construction in favor of or against either Party. If any term or provision of this Agreement is found by a court of competent jurisdiction or by order of any regulatory agency to be invalid, illegal or otherwise unenforceable, the same shall not affect any of the other terms or provisions of this Agreement, but such term or provision shall be deemed modified to the extent necessary to render such term or provision enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and undertakings of the Parties set forth in the remainder of this Agreement. The headings used in this Agreement are for reference purposes only, and will not be deemed to limit, expand or in any way affect the interpretation of any term or provision of this Agreement.

9.12 Counterparts. This Agreement may be executed in one or more counterparts, and if in more than one counterpart, each, when taken together, shall constitute one and the same instrument. Signatures on this Agreement

which are exchanged by facsimile or other electronic means are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as original signatures.

9.13 Cumulative Remedies. Except as otherwise expressly provided herein, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law or in equity.

9.14 Survival. The provisions of this Agreement which by their nature are intended to survive the termination of this Agreement shall survive termination of this Agreement and any permitted assignment of this Agreement. Upon termination of this Agreement, the provisions of the Mutual Non-Disclosure Agreement shall continue in effect in accordance with its terms and conditions.

9.15 Audit. Windstream may, upon notice to Contractor, audit any and all work or expense records of Contractor relating to this Agreement. Contractor shall have the right to exclude from such inspection any of its confidential or proprietary information which was not otherwise provided to Windstream in performance of this Agreement. Contractor further agrees to maintain its books and records relating to material and/or services provided for a period of three (3) years from the date such work was completed, and to make such books and records available to Windstream, during normal business hours, at any time or times within the three year period. The Parties agree this provision shall be satisfied by Contractor through Windstream's access to PHH Interactive as set forth on in the SOW.

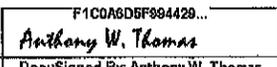
9.16 Insurance. Upon Windstream's execution of this Agreement, Contractor shall provide Windstream with a certificate of insurance in form and scope satisfactory to Windstream, which establishes that Contractor has the coverage listed therein and in which Windstream is named as an additional insured party under Contractor's insurance policies. The insurance policies to be listed in the certificate may include, in Windstream's discretion, automobile liability, commercial general liability, errors and omissions, umbrella liability and workers compensation. The certificate shall state that the listed insurance shall be primary and noncontributory, with the named insurer being required to respond before any other coverage available to Windstream; the insurer shall waive its rights, benefits, and entitlements under any "other insurance" provisions in any of the policies to be listed in the certificate. All insurance carriers shall be rated "A" or better by A.M. Best Co. and shall be reasonably acceptable to Windstream. All policies shall provide that the insurance listed in the certificate shall not be cancelled, terminated, or materially changed without the carrier's giving Windstream prior written notice of at least thirty (30) days; in the event of a change in the coverage set forth on the certificate which is not acceptable to Windstream, Windstream may terminate this Agreement. Contractor agrees to maintain any claims-made insurance coverage (as approved by Windstream) in force for a period of four (4) years following the termination of this Agreement.

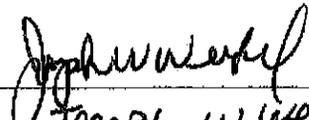
9.17 Confidential Agreement. This Agreement is a confidential agreement between Supplier and Windstream. Without the prior written consent of the other Party, this Agreement may not be shown to any third party other than government officials having appropriate jurisdiction and power to require disclosure of this Agreement, the Parties' legal counsel and accountants, and the Parties' authorized employees or agents. Notwithstanding the foregoing, this Agreement may be disclosed as necessary by reason of regulatory requirements beyond the reasonable control of Supplier or Windstream, as the case may be, in which event Supplier and Windstream agree to exercise diligence in limiting such disclosure to the minimum amount necessary under the particular circumstances.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective authorized representatives to be effective as of the Effective Date.

Windstream Communications, Inc.

PHH Vehicle Management Services, LLC

By: 
Name: Anthony W. Thomas
Title: CFO
Date: 10/25/2010

By: 
Name: JOSEPH W WEIKEL
Title: SVP & General Counsel
Date: 10/1/10

FRB

Exhibit A: Form of Statement of Work (SOW)

SOW Number _____

These Services are (check one):

- _____ a Fixed Price Project Assignment
- _____ an Hourly Services Project Assignment
- _____ a Time and Materials Project Assignment
- _____ Other (Services to be described):

This SOW is attached to and becomes, upon execution by both Parties below, a part of the Master Services Agreement between the parties dated _____ and sets forth the specific terms and conditions relating to the Services listed below:

I. Objective/scope of work to be performed:

II. Contractor's Tasks:

III. Windstream's Responsibilities:

IV. Deliverables and Due Date(s) or approximate duration of Services or time to complete:

V. Fee Basis (check one): _____ Hourly Services Rate: \$

_____ Fixed Price Total Fee Not to Exceed: \$

_____ Time and Materials Estimated Fee: \$

VI. Number of people needed: _____ Location(s): _____

VII. Skill and experience required:

VIII. Names of people assigned and hourly rates (if applicable):

IX. Work facilities to be provided by Windstream (if any): and price to Contractor (if any):

X. Names/telephone numbers of the Project Managers:

Windstream:

Contractor:

XI. Completion criteria (to Windstream's satisfaction if blank):

XII. Addresses and designees for notices:

XIII. Contractor's Travel: _____ If checked, Windstream shall reimburse Contractor for reasonable travel expenses incurred by Contractor's personnel for travel as approved by Windstream's Project Manager. In order to be eligible for reimbursement, all such expenses must be in compliance with Windstream's then current travel reimbursement policy. All other expenses incurred by Contractor must be approved in advance by Windstream's Project Manager.

XIV. Payments of any invoice by Windstream shall be made after Windstream Accounts Payable receipt of a complete and accurate invoice with payment terms of 2/15 net 45 (2% discount for payment within 15 days and net 45).

Invoices are to be submitted via First Class mail to:

Windstream Accounts Payable

Position # C 000XXXX

P.O. Box 18313

Little Rock, AR 72222

OR

The Preferred Method:

Invoices may be submitted electronically via email to Corp.Vendor.Invoices@windstream.com.

Note: Please ensure this above address, and position #'s are written on each invoice and statement submitted for payment.

XV. Additional terms and conditions, if any:

This SOW may be executed in one or more counterparts, and if in more than one counterpart, each, when taken together, shall constitute one and the same instrument. Signatures on this SOW which are exchanged by facsimile or other electronic means are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as original signatures.

IN WITNESS WHEREOF, the Parties hereto have caused this SOW to be executed by their respective authorized representatives effective as of the date last written below.

Windstream Communications, Inc.

Contractor's Name: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**Exhibit A
 Pricing**

1. Pricing - Per Vehicle	Pricing
1.1 Fuel Program	\$0
1.2 Replacement Fuel Cards	\$0
1.3 Maintenance Price - Per Vehicle	\$0
1.4 Light Duty Vehicles	\$3.25
1.5 Medium/ Heavy Duty Vehicles	\$7.50
1.6 Trailers	\$0
Other equipment	\$0
2. Registration Program	2.00
2.1 Registration per Occurrence	\$0
2.2 Initial Licensing	\$0
2.3 Fuel Rebate	1.00%
2.4 Intra-State Compliance RP Program (large trucks)	\$6.00 per vehicle per month
2.5 State Changes	\$40.00
3. Vehicle Remarketing	\$100.00
3.1 Roadside Assistance	\$15.00
3.2 Accident Management	
3.2.1 Report Only	\$10.00
3.2.2 Light Vehicle Repair	\$15
3.2.3 Medium Vehicle Repair	\$20
3.3 Subrogation Recovery	15%
National Vendor Discount	2.0% Rebate
Independent Vendor Charge	0%
Driveaway Service	\$0
3 Name changes on titles from acquisitions	\$40.00
4 Title Storage	
4.1 Implementation	\$0
4.2 Storage Fees	\$0

If Windstream acquires vehicles from an acquisition of another company, as long as Contractor receives a clean file with needed information and Contractor is given reasonable notice, not extra charges will apply.

**Exhibit B
Implementation Plan**

Exhibit C
VMA Policy (Developed during Implementation)

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Statement of Work #1

This Statement of Work ("SOW") effective _____ (the "Effective Date") is attached to and becomes, upon execution by PHH Vehicle Management Services, LLC ("Contractor") and Windstream Communications, Inc. ("Windstream"), a part of the Master Services Agreement ("Agreement") dated _____ and sets forth the obligations of Contractor in providing Services to Windstream. Capitalized terms in this SOW and not otherwise defined herein shall have the meanings ascribed to them in the Agreement

PHH Statement of Services

This SOW is for the purpose of establishing the guiding principles and performance expectations for the delivery of fleet services. Windstream acknowledges that Contractor is not the producer, manufacturer, designer, or provider of any of the goods or services purchased pursuant to this SOW or under the Agreement; (ii) Contractor does not inspect, review personnel qualifications of any service providers' facilities or work performed by service providers' personnel, and that Contractor relies on the advice of service providers and on policies and procedures established by Windstream as set forth in the SOW and the Agreement and Windstream's written policy in administering the programs described in this SOW and Agreement. PHH Arval Account Team will coordinate with Windstream representatives to establish fleet management objectives aligned with Windstream's objectives, and establish associated action plans and measures. Routine performance reviews will be scheduled quarterly to evaluate Contractor performance and identify opportunities for cost reduction and enhanced productivity.

1. PHH Vehicle Maintenance Assistance (VMA)

1.1 Service standards:

1.1.1 Consultation:

- Contractor will consult with Windstream to develop a comprehensive fleet maintenance policy during the implementation phase that will be developed and agreed upon by both parties. The Implementation Plan will be added to this SOW as Exhibit B once agreed upon. Contractor policy development is flexible enough to embrace Windstream's requirements and business rules as required.
- Windstream will be assigned an experienced ASE-certified Case Manager familiar with Windstream's individualized policy.
- Windstream's PHH Account Team, supported by the Strategic Consulting team, will provide specific consultation to integrate with Windstream's fleet management objectives.

1.1.2 Administration:

- Contractor will issue VMA Service Cards for identification and billing purposes.
- Contractor will maintain maintenance history records for each enrolled vehicle.
- Contractor Call Center will be available 24 hours a day, seven days a week.
- Contractor will provide toll-free telephone access for driver/managers/managers and will maintain an average speed of answer of 60 seconds.
- Contractor will diagnose and negotiate the repair directed toward avoiding overselling and duplication of repairs by the service provider.
- Appropriate repairs will be screened for warranty recovery.
- Contractor will perform audits on 100% of all repair invoices.

- In accordance with Windstream's policy, PHH will assist with coordination of a temporary replacement vehicle as required.
- Emergency roadside assistance will be available 24 hours a day, 365 days a year.
- Contractor will maintain a comprehensive network of suppliers that meet Contractor's high service standards.
- Windstream driver/managers/managers may locate convenient suppliers at any time via www.phharval.com. In addition, Windstream driver/managers/managers may contact a PHH Service Specialist via the web for repair or maintenance advice. This mailbox is monitored daily.
- PHH InterActive® will be available 24 hours a day, seven days a week to monitor fleet activities and for reporting.
- Contractor will track work covered under warranty and manage post-warranty claims.
- Contractor will manage all aspects of manufacturer recalls, including notification, tracking and monitoring
- Contractor will provide Windstream with a consolidated monthly invoice at accounting breakdown level.

1.1.3 Windstream objectives:

- Support and maintain driver/manager productivity
 - Recommend driver/manager self-authorization for repairs of at least \$100 (Note: This is fleet-specific - to be completed as part of consultation by using Compare Operating Costs)
 - Recommend Case Contractor's Call Center to approve vehicle repairs up to \$1,000 without Windstream consultation. Contractor's Case Manager to approve vehicle repairs up to \$2,000 without Windstream consultation. (Note: This is fleet-specific - to be completed as part of consultation by using Compare Operating Costs). Vehicle repairs from 2,000 to \$3,000 require approval from a Windstream Fleet Coordinator and anything over \$3,000 requires approval from Windstream's Fleet Supervisor. All routing approvals will be finalized during the implementation. After implementation, if any changes are made to the approval structure, they must be mutually agreed upon by Windstream's Fleet Supervisor and Contractor.
- Control the lifecycle maintenance costs of your fleet vehicles
 - Ensure driver/managers/managers call PHH prior to taking their vehicle to the repair facility for anticipated above driver/manager limit repairs
 - Driver/managers/managers will use Contractor's network of repair facilities
 - Eliminate driver/manager use of purchase methods other than the Contractor's Service Card
 - Replace vehicles as deemed necessary by Windstream.
- Support your objective of "Place of Choice" to work
 - Minimize driver/manager downtime and inconvenience

2. Responsibilities:

2.1. Contractor responsibilities:

- Contractor will comply with Windstream's' VMA Policy, this will be developed during implementation and added to this SOW as Exhibit C when approved by both parties and finalized.
- Contractor will maintain all necessary facilities to fully comply with the performance requirements outlined under "Service Standards"
- Contractor's Case Manager will contact Windstream representative to make recommendations for repairs costing over the authorization limit. Your case manager is available to make specific transactional recommendations and other advice to support Windstream policy
- Provide comprehensive reporting and policy consultation as required by Windstream
- Provide transaction information via PHH InterActive, near real-time recording of maintenance transactions, and online maintenance histories for fleet vehicles
- Dispatch roadside assistance as required

- Contractor will identify repairs for potential warranty consideration during the repair authorization process.
- Warranty Services managers will review warranty claims with our dedicated motor company and national account representatives.
- Upon approval, Contractor will add all the necessary coding and submit the claims for reimbursement.

2.2 Windstream responsibilities:

- Coordinate with Contractor to develop unique VMA policy
- Provide Contractor with current detailed inventory data as necessary
- Communicate with driver/managers/managers to ensure compliance to Windstream VMA Policy, i.e.:
 - Driver/manager to call Contractor prior to scheduling a repair beyond the driver/managers/managers authorization limit
 - Driver/manager to utilize the Contractor network as directed by Contractor
- Ensure driver/managers/managers use only the PHH Service Card for vehicle maintenance transactions
- Provide names and agreed-upon method of communication for maintenance authorizations
- Windstream will be responsible for all purchases made from the date of issuance of the VMA Service Card.

3. PHH Managed Fuel Program:

3.1 Service standards:

3.1.1. Consultation:

Contractor Account Team will work with Windstream to establish security and authorization controls that are consistent with Windstream's organizational needs, including purchase type, time of day, number of transactions per day and dollar threshold per day restrictions.

3.1.2 Administration:

- Windstream fuel transactions with the Contractor Service Card will be consolidated on the monthly invoice
- Contractor's fuel cards will offer access to over 150,000 locations throughout the U.S., including all major and regional brands
- Fuel cards will be mailed to a fleet contact in bulk, to an individual cardholder, or to an alternate address identified by Windstream.
- Level III information on each fuel card transaction will be easily accessible via PHH InterActive.

3.2 Responsibilities:

3.2.1. Contractor responsibilities:

- Fuel cards will be produced and mailed the next business day following the initial card request.

3.2.2. Windstream responsibilities:

- Windstream will promptly advise your PHH Account team when a fuel card is lost or stolen through a daily automated feed.
- Windstream will be responsible for all purchases made from the date of issuance of the Contractor Service Card

4. PHH Registration Renewal Program:

4.1. Service standards:

4.1.1 Consultation:

- Contractor will consult with Windstream to develop a comprehensive registration renewal policy. Contractor policy development is flexible enough to embrace Windstream's requirements and business rules as required while complying with all jurisdictional regulations.
- A dedicated call center will be available to answer driver/manager and management inquiries.
- Your PHH Account Team supported by the Title and Registration organization will provide specific consultation to integrate with your fleet management objectives.

4.1.2 Administration:

- Contractor will maintain a driver/manager call center that will be accessible weekdays 8:00 a.m.-8:00 p.m. eastern time (excluding holidays), and will maintain an average speed of answer of 30 seconds.
- Contractor will work directly with tag agents and/or state DMVs to obtain the license plates and registrations for new vehicles.
- The license plates are mailed directly to the driver or fleet contact, based on your company policy.
- Contractor will renew all vehicles enrolled in the program for which all required information has been provided.
- Contractor will coordinate with the driver/manager (or designated contact) to fulfill requirements of the jurisdiction in which the vehicle is registered.
- Contractor will establish history records for each enrolled vehicle for which an expiration date has been provided.
- PHH InterActive® will be available 24 hours a day, seven days a week to monitor fleet activities and for reporting.
- Contractor will provide Windstream with a consolidated monthly invoice at accounting breakdown level.
- Contractor will file and pay and personal property taxes in applicable states.
- In some states, personal property taxes are due at the time of registration. For those clients who are utilizing Contractor's Registration Renewal program, Contractor will pay those taxes along with the appropriate registration fee.
- Tax payments are shown as a separate line item on the monthly invoice.

4.1.3 Windstream objectives:

- Support and maintain driver/manager productivity
 - Avoid waiting in line at department of motor vehicles
 - Avoid inconvenience resulting from expired registration
- Control the lifecycle costs of your fleet vehicles
 - Avoid fines, penalties, and impoundments from improperly registered vehicles
- Support your objective of "Place of Choice" to work
 - Minimize driver/manager downtime and inconvenience

4.2 Responsibilities:

4.2.1. Contractor responsibilities:

- Contractor will comply with Windstream's Registration Renewal Policy in accordance to all governmental regulatory agencies.

- Contractor will maintain all necessary staff and facilities to fully comply with the performance requirements outlined under "Service Standards."
- Contractor will provide consultation on reporting needs and policy development as required by Windstream.
- Contractor will provide current status of renewals via PHH InterActive.

4.2.2 Windstream responsibilities:

- Windstream will coordinate with Contractor to develop Registration Renewal Policy.
- Windstream will provide Contractor with current inventory data to include expiration date, plate number, state, and vehicle garage address.
- Windstream will communicate with driver/managers/managers to ensure compliance to Windstream's Registration Renewal Policy and notify driver/managers to expect to receive registration information from Contractor prior to registration renewal.
- Windstream is responsible for notifying Contractor on all required policy changes.
- Windstream will provide names and contact information.

5. Intra-State Compliance Services:

5.1 Intra-State Licensing and Permitting Services:

Contractor shall invoice Windstream for all expenses and payments made on Windstream's behalf including licensing and fees when incurred by Contractor.

- File fuel & mileage intra-state tax reports
- Store documents for five (5) years
- File intra-state License Renewals & supplements
- File all Unified Carrier Registration ("UCR") renewals and supplements
- Work with Windstream to resolve all compliance problems related to state agencies, company errors and state errors.
- Secure and renew intra-state permits and any other state permits.

5.2 Responsibilities:

5.2.1 Contractor Responsibilities:

- Contractor will monitor the expiration date of all intra-state permits to verify that applications are received and submitted prior to expiration.

5.2.2. Windstream responsibilities

- Coordinate with Contractor to develop intra-state Compliance policy
- Provide Contractor with current detailed inventory data if necessary
- Communicate with driver/managers/managers to ensure compliance to Windstream Policy

6. PHH Vehicle Accident Services (VAS):

6.1 Service standards:**6.1.1. Consultation:**

- Contractor will consult with Windstream representatives to develop a comprehensive policy for Accident Management Services. Contractor policy development is flexible enough to embrace Windstream requirements and business rules.
- Windstream's PHH Account Team supported by the PHH Strategic Consulting team will provide specific consultation to integrate with Windstream's fleet management objectives specific to the sale of used vehicles.
- Windstream will be assigned a Vehicle Accident Services Consultant, an Automotive Services Excellence (ASE) and I-Car® certified experienced Certified Collision Specialist, and a Subrogation Claims Negotiator familiar with Windstream's unique policy.

6.1.2. Administration:

- Vehicle Accident Services will be available 24 hours a day, seven days a week.
- Contractor will provide prompt toll-free telephone access to a highly qualified Driver/manager Assistance Representative.
- Prepare first notice of loss (ACORD-style format) and communicate in accordance with Windstream's liability insurance policy.
- Make repair/replace recommendations
- Validate and negotiate repair prices
- Manage the entire repair process, including rentals. All rentals must be approved by Windstream's Fleet Supervisor.
- Manage total loss and salvage
- Pursue subrogation and uninsured recovery promptly and aggressively
- PHH InterActive® will be available 24 hours a day, seven days a week to monitor and report on accident activities
- Provide Windstream with a consolidated monthly invoice at your accounting breakdown level
- Utilize network of independent appraisers
- Utilize network of guaranteed repair facilities
- Integrate with other Contractor services such as Warranty Services to assist with parts expediting or with Used Vehicle Sales for marketing of a salvaged vehicle
- Audit invoices to compare with authorizations

6.1.3 Windstream objectives:

- Support and maintain driver/manager productivity
 - Minimize driver/manager and vehicle downtime
 - Coordinate alternative transportation
- Control the life cycle accident repair costs of your fleet vehicles
 - Negotiate and authorize each repair individually
 - Maximize subrogation recoveries
 - Ensure vehicle is repaired to pre-loss condition

- Support your objective of "Place of Choice" to work
 - Ensure your driver/managers/managers receive any necessary personal help, including emergency assistance, towing, and rental vehicles
 - Minimize driver/manager downtime and inconvenience
 - Streamline accident reporting

6.2. Responsibilities

6.2.1. Contractor responsibilities:

- Comply with Windstream's Vehicle Accident Policy
- Your PHH Arval Certified Collision Specialist will contact a Windstream representative to make recommendations for repairs exceeding the authorization limit. Your Damage Specialist is available to make specific transactional recommendations and other advice to support Windstream policy
- Provide comprehensive reporting and policy consultation as required by Windstream
- Provide transaction information via PHH InterActive, real-time recording of repair transactions, and online accident repair histories for every fleet vehicle. Also, provide on-line access to photos of damaged vehicles.

6.2.2. Windstream responsibilities:

- Coordinate with Contractor to develop comprehensive Vehicle Accident Services Policy
- Provide Contractor with current inventory data
- Communicate with driver/managers/managers to ensure compliance to Windstream's Vehicle Accident Services Policy, i.e.:
 - Rental car policy
 - Utilization of the PHH network as directed by PHH Damage Specialist

7. New Vehicle Acquisition:

7.1. Service standards:

7.1.1. New Vehicle Acquisition Consultant (NVAC):

- Windstream will be assigned a NVAC who will provide consultation regarding new or used vehicle acquisition including vehicle specifications, vehicle availability, lead times, vehicle comparisons, best value pricing, preferred ordering practices, policies and procedures. They will create, price and maintain custom vehicle profiles to ensure orders are placed accurately and expeditiously. They will consult and make recommendations on alternatives to order placement fall-out/delays from the time the order is received by Contractor through delivery to the driver/manager.
- Throughout the model year, the NVAC will monitor your vehicle profiles and consult on motor company specification changes that impact those custom vehicle selections. The NVAC will provide training on order placement via PHH FleetSelect. The NVAC will respond to Windstream calls/emails same day. The NVAC will initiate action steps to resolve issues/problems within 24 hours of receipt and provide updates every 48 hours until issues/problems have been resolved.
- The NVAC will consult and make recommendations on out of stock vehicle requests when the order is received by Contractor, negotiate pricing with the dealership and provide either an offer of a vehicle or status to Windstream within 48 hours of receiving the request.

- Contractor will manage initial title and registration without any involvement of the fleet contact or driver in states in which no prerequisites are required. In applicable states, Contractor coordinates with the driver/fleet contact to obtain prerequisites.

7.1.2. Technical Upfitting Consultant

- Windstream will be assigned a Technical Upfitting Consultant who will work directly with them on upfitting specifications, transportation, supplier selection, and pricing. This group of specialists will create upfitting templates to ensure orders are placed accurately and expeditiously.
- The Technical Upfitting Consultant will respond to Windstream calls/emails same day. The Technical Upfitting Consultant will initiate action steps to resolve issues/problems within 24 hours of receipt and follow up every 48 hours until issues/problems have been resolved.

Your PHH Account Team will provide specific consultation to guide your vehicle selections and to develop a comprehensive fleet vehicle policy which achieves your goals at the lowest total cost of ownership.

Your PHH Account Team will assist in the utilization of online tools, including:

- **Fleet Best Practices.** Includes best practices and other consultative information for implementing effective policies, selector planning, budgeting, and more.
- **Compare Operating Costs.** Provides projected operating costs and life cycle cost modeling.
- **Price and Spec Vehicles.** Enables you to spec and price most cars and light-duty trucks, view standard and optional equipment, review fleet incentive information, select vehicles based on specific criteria, compare up to four vehicles side-by-side, and more.
- **PHH FleetSelect.** North American ordering platform that offers centralized, online ordering functionality; effective integration of Windstream policies; increased visibility into status events; reduced cycle time and increased order accuracy.
- **PHH InterActive.** Enables Windstream to electronically approve and submit orders to Contractor. Provides proactive fleet notifications and robust reporting regarding order status
- **PHH InterActive for Drivers.** Enables your driver/manager to select from pre-approved vehicle profiles, submit orders to Contractor and check the status of vehicle orders 24/7.

Your PHH Account Team will also:

- Provide timely and accurate order placement with the motor company; all vehicle orders will be 100% in accordance with Windstream's requisition
- Transmit any pre-established and approved incentive codes along with your order to the motor company
- Maintain direct motor company contact
- Maintain up-to-date motor company product knowledge to assist in vehicle safety ratings, specifications, and pricing
- Streamline ordering processes, including online and driver/manager-level ordering
- Provide upfitting expertise
- Provide assistance as required with upfitting bids
- Provide convenient and timely delivery
- Provide the dealership with all appropriate state-mandated paperwork on a timely basis to handle the title and registration of new vehicles
- Apply for bid assistance with the motor company each model year on behalf of Windstream

7.2. Windstream objectives:

- Support and maintain driver/manager productivity
 - Select the appropriate vehicle for each job function.
 - Ensure accurate order placement for each vehicle
 - Ensure the convenient delivery of each vehicle
 - Ensure proper upfitting of each vehicle
- Optimize the lifecycle costs of your fleet vehicles
 - Determine optimal vehicle for each job function as well as the optimal time to purchase and replace the vehicle.
 - Assist with cross motor company vehicle comparisons to assess value.
- Support your objective of "Place of Choice" to work
 - Make the ordering and delivery of the vehicle a pleasant experience for the driver/manager.
 - Ensure the vehicle is properly equipped for driver/manager convenience, comfort, safety, and job performance.

7.3. Responsibilities:

7.3.1. Contractor's responsibilities:

- Establish and maintain convenient, professional dealer network.
- Transmit orders to manufacturers in a timely manner:
 - Two (2) days or less when requisition is received via an electronic profile.
 - Five (5) days or less when order is placed using any other method.
- Issue the purchase order to the upfitter at the same time that the chassis order is submitted to the motor company.
- Audit manufacturer acknowledgements against original order to ensure accuracy.
- Coordinate with Windstream to create custom ordering and upfitting templates.
- Coordinate title, registration, and insurance process necessary to comply with jurisdictional requirements. The Manufacturers Statement of Origin (MSO) as well as all necessary paperwork is mailed to the dealer as the vehicle is shipped to the dealer.
- Manage and report delays associated with the manufacturer and/or upfitter. The Status Team monitors vehicle orders from order received at Contractor through delivery to the dealer/upfitter. When the vehicle moves through the motor company/upfitter build cycle, specific follow up time criteria is applied through exception reporting.
- Provide accurate custom vehicle profiles and price and spec Vehicles for order placement.
- Notify Windstream of motor company specification changes that impact their custom profiles.
- Locate and offer out of dealer stock vehicles within 48 hours of request.
- Purchase out of stock vehicle within 24 hours of Windstream's acceptance.
- Provide temporary tags for out of stock vehicles within 24 hours of request.
- Activate out of stock billing within ten (10) business days of delivery date of vehicle to end destination.

7.3.2. Windstream responsibilities:

- Ensure all driver/manager information is current and accurate for prompt, error-free vehicle delivery.
- Allow Contractor to utilize the Contractor-established dealer network.
- Submit orders through Contractor electronic order methods or prescribed forms and/or formats with all required information.
- Prior to authorizing your vehicle profiles or placing orders, thoroughly review all vehicle and upfitting specifications, if applicable, to ensure the order being placed meets your business requirements.

- Immediately contact your NVAC if you require specification changes to your vehicle profiles.
- Prior to order placement, notify Contractor of your motor company incentive and/or bid assistance code requirements.
- Review order acknowledgments immediately upon receipt and notify Contractor of any issues/discrepancies.
- Complete motor company RFPs prior to requesting custom vehicle profile setup.
- Provide delivery time frame for out of stock vehicles.
- Provide timely decisions on out of stock vehicle offers.
- In the event a vehicle, or any upfitting, is requisitioned or ordered by the Contractor, Windstream shall be responsible to take delivery of the vehicle, or any upfitting, and pay the purchase price, any dealer fees, Title or Registration fees, any sales or use tax and any fee incurred by Contractor related to such order.

7.3.3. Driver/manager responsibilities:

- Prior to taking delivery of a new vehicle, thoroughly inspect the vehicle by comparing the driver/manager acknowledgment to the actual vehicle features.
- Do not request that the dealer install additional equipment on your new vehicle without prior company approval.

8. Used Vehicle Sales:

8.1. Service standards:

8.1.1. Consultation:

- Contractor will consult with Windstream representative to develop comprehensive key fleet policies, including replacement timing and marketing strategies.
- Provide consulting and recommendations regarding the resale channels most appropriate for your vehicles.
- Your PHH Account Team supported by the PHH Business Intelligence Solutions organization will provide specific consultation to integrate with your fleet management objectives specific to the sale of used vehicles.

8.1.2. Administration:

- Proactively communicate market conditions and marketing recommendations.
- Manage and document used vehicle sales performance
- Select the most beneficial marketing channel based on all Windstream objectives

8.1.3. Windstream objectives:

- Support and maintain driver productivity:
 - Contractor will facilitate sale of used vehicle to employee with minimal driver involvement
 - Contractor will coordinate the pick-up of the used vehicle not sold to employee with minimal driver involvement.
- Control depreciation costs of Windstream's fleet vehicles:
 - Contractor will market your used vehicles for the highest possible price, in the shortest practical time, providing full and complete documentation of the process.

8.2. Responsibilities:

8.2.1. Contractor responsibilities:

- Contractor will comply with Windstream Used Vehicle Sales Policy
- Comply with federal and jurisdictional regulations governing sale of vehicles
- Contractor will maintain all necessary facilities to fully comply with the performance requirements outlined under "Service Standards"
- Your PHH Arval Team will contact a Windstream representative to make recommendations maximizing value of the used vehicle
- Provide comprehensive reporting and policy consultation as required by Windstream
- Provide transaction information via PHH InterActive®, near real-time recording of Used Vehicle Sales transactions.

8.2.2. Windstream responsibilities:

- Coordinate with Contractor to develop Used Vehicle Sales policy
- Provide Contractor with current inventory data if necessary
- Communicate with drivers to ensure compliance to Windstream Used Vehicle Sales Policy, i.e.:
 - Employee sales policy
 - Provide Contractor with titles for non-Contractor leased vehicles or company-owned
 - Provide insurance (or the risk of loss or liability will remain with Windstream, in the case of self-insurance) for each vehicle that Contractor is requested to manage the sale of under this SOW, or the Agreement, until the vehicle is surrendered to Contractor or Contractor's representative.

9. Title Management:

9.1. Service standards:

9.1.1. Consultation:

- Contractor will handle complete title services from time of delivery to sale of the vehicle.

9.1.2. Administration:

- Contractor's team of experts will reliably maintain and store vehicle titles. This provides timely turnaround for title changes, ensures correct titles for every vehicle on inventory, eliminates hassle at time of retitling or sale of the vehicle, and safeguards and organizes titles.
- Titles are secured in Contractor's fire proof vault.
- Titles will be imaged and available 7x24 through Contractor.
- There will be no fees associated with implementation or storage of the titles. If the contract between Windstream and Contractor terminates, Windstream will be responsible to pay PHH \$1.00 per title for each title retrieved and mailed back to Windstream.
- During the initial storing of all Windstream's titles if there are missing titles and Windstream requires Contractor to obtain a duplicate, Contractor will apply for the title on Windstream's behalf and a \$40.00 fee will apply.

- For titles Windstream orders through contractor if the title goes to an in-state Windstream address, Contractor will send a letter to that address and request that the title be sent to Contractor for storage. If there is no response from Windstream, Contractor will order a duplicate and a \$40.00 fee will apply. If Windstream responds that a title was never received the title Contractor will obtain at no cost to Windstream.
- If any of the titles are lost while in Contractor's possession and a duplicate title is requested there will be no cost to Windstream.

10. Service tracking and reporting:

PHH InterActive provides 130 standard reports in these categories: Accident Management, Billing, Expenses, Fleet Administration, FleetSense, Fuel, Inventory, Maintenance, Ordering and Delivery, PHH Onboard, Registration/License Renewal, Rental Management, Replacement Report, Service Card, Title and Registration, Used Vehicles, and Warranty. Reports can be generated at scheduled intervals and based on parameters you set.

PHH InterActive Dashboard will provide Windstream with access to summary information on key fleet operating components for tracking trends, preparing management reports, and monitoring fleet costs. Dashboard includes summary data on billing, inventory, fuel purchase, vehicle order and delivery, used vehicle sales, accidents, and maintenance.

Your PHH Account team will work with you to create a Fleet Information Plan to identify the specific reports that meet your needs.

If Windstream requests a customized report that would cause Windstream to incur charges, Contractor will need to quote that fee and have Windstream approval before the customization occurs. Fee will be based on contractor hours and will range between \$90 and \$110 per hour.

10.1. PHH InterActive reports:

Following is a list of reports currently available in the PHH InterActive Report Catalog:

Accident Management

Accident Data Download
 Cost Savings Report
 Accident Download with Detailed Accident Description
 Accident Details
 Claims Recovery – Pending
 Claims Recovery - Recoverable Files Closed Without Recovery
 Claims Recovery - Collected/Closed
 Driver/manager Details
 Monthly Summary
 Rate per Million Miles

Billing

Billing Summary
 Unit Billing History Report
 Traffic & Parking Violations
 Unit Detail Amounts by Charge Category/Charge Code Description
 Five Year Detailed Projection of Rental

Annual Lease Value Report
 Annual Lease Value Report - All Active Units During Year
 Rental Revenue by State
 Charge Summary by Charge Category/Charge Code Description
 Count of Leased Units by Invoice Date
 Traffic and Parking Violations Letter to Driver/manager
 New Units Added to Invoice Date(s)
 Prompt Pay Tire Discount Report
 One Year Projection of Rental
 Five Year Projection of Rental
 Inventory Purchase Order Summary

Expenses

Fleet Performance Report
 Fleet Performance Summary
 Mileage and Expense Record
 Odometer Exception Report

Overdue Driver/manager Reporting Exceptions
 VER Reported Business and Personal Miles
 Summary Depreciation Analysis by Sale Type

FleetGard Maintenance

FleetGard Driver/manager Participation Report
 FleetGard Preventive Maintenance Exception Report
 FleetGard Savings Report Card
 FleetGard Out of Network Fees
 FleetGard Driver/manager Zero Use Report

FleetSense

Summary Depreciation Analysis by Sale Type
 FleetSense Projected Odometer Report
 FleetSense Composites
 Fleet Cost Management Report and Fleet Cost Prior Year Comparison

Fuel

Detailed Fuel Charges
 Fuel MPG Report
 Fuel Driver/manager Zero Use Report
 Fuel/Non-Fuel Charges Over Amount and/or Gallons for One or All Units
 Current Fuel/Non-Fuel Charges Over Amount and/or Gallons for One or All Units
 Current 'Charge By' with Multiple Fuel Purchases in One Day
 High Octane Fuel Purchases
 Current High Octane Fuel Purchases
 Units with Multiple Fuel Purchases in One Day
 Current - Units with Multiple Fuel Purchases in One Day
 Fuel Type Analysis
 Summary of Fuel Charges by Unit
 Fuel Supplier Analysis
 Fuel Summary Analysis by Breakdown

Fuel-Onsite

Fuel/Non-Fuel Charges
 Over Amount and/or Gallons for One or All Units
 Current Fuel/Non-Fuel Charges Over Amount and/or Gallons for One or All Units
 Units with Multiple Fuel Purchases in One Day
 Current - Units with Multiple Fuel Purchases in One Day
 Current 'Charge By' with Multiple Fuel Purchases in One Day
 Fuel Type Analysis - Retail Only
 Summary of Fuel Charges By Unit
 Fuel Supplier Analysis - Retail Only
 Current High Octane Fuel Purchases - Retail Only

Inventory

Inventory Report by Status Codes
 Active Driver/managers/managers with No Units
 Unassigned Units for Status Codes
 Leased and Company-Owned Inventory Counts by Model
 Historical Active Unit Counts
 Active Driver/managers/managers with Assigned Unit Data

Breakdown Report
 Inventory Report by State for Status Codes - Summary/Detail
 Unit Breakdown Not Equal to Driver/manager Breakdown for Status Codes
 Active Leased Units with Rental Amounts

Ordering and Delivery

Order Status Report
 Order Acknowledgements
 Order Status Report with Upfitting Information by Date
 Model Year Order Status Report by Manufacturer
 New Unit Notice
 Vehicle Selector Trends/Factory Order vs. Non-Factory Order - Summary or Detail
 Order Status Report with Upfitting Information

PHH Onboard

Idle Exception Report
 Stop Detail Report
 Non-Reporting Report
 Speed Exception Report (Detail or Summary)
 Fuel Efficiency Report
 Hours Worked Report
 Stop Summary Report
 Unauthorized Use Report
 Landmark Visit Report
 Onboard Inventory Report
 Fuel Purchased Versus Consumed
 Location Detail Report
 Driver/manager Productivity Report
 Vehicle Utilization Report
 Begin and End of Day Violation Report
 Vehicle Operating Hours by Time of Day
 Onboard Alert Status
 Alert Status Report

Registration Renewal

Renewal Status
 Registrations Not Renewed by PHH
 Missing Expiration Date
 Renewal Forecast
 Second Request For Prerequisites Required For Renewal

Rental Management

Unmanaged Rental Report
 Managed Rental Report

Replacement Planning

Replacement Report

Service Card

Active and Ordered Inventory Report with Service Card and Driver/manager/Vehicle Information
 Active Service Cards Not Used Since/Never Used
 Active Units Without Active Service Cards
 Active Units with Multiple Active Service Cards

Title and Registration

Annual Insurance Report
 State Transfer Report

New/Sold Units for Insurance Cards
 Tag Expiration Report
 Titles in House
 Driver/manager State Not Equal To Title State
 Company Owned Inventory for Title Audit

Used Vehicles

Value Buy Quotes
 Depreciation Analysis (For All Contract Types)
 Depreciation Analysis
 Sold Unit Notices
 Sale Event Data for Units in Surplus & Traded Sale Status

Vehicle Maintenance

Maintenance Repairs Over Amount
 Savings Report Card By Repair Date
 VMA Lifetime History Summary for All Vehicles
 VMA History Summary for All Vehicles by Repair Date
 Maintenance Transactions by ATA Code
 Supplier and Maintenance Detail for Out of Network Fees

Maintenance by Mileage Band
 Glass Repairs
 Out of Network Fees
 VMA Preventive Maintenance Exceptions
 VMA Lifetime History Detail for All Vehicles
 VMA Driver/manager Participation Report
 VMA History Detail for All Vehicles by Repair Date
 VMA Driver/manager Zero Use Report
 VMA History Detail for One Unit
 Network Utilization for Maintenance Services
 Onsite VMA History Detail for All Vehicles by Repair Date
 In-Network VMA Suppliers
 Onsite VMA History Detail for All Vehicles
 Onsite Maintenance Transactions by ATA Code
 Vehicle Savings History

Warranty

Warranty Recovery – Closed Claims

10. Period of Performance**10.1 Term.**

The date of commencement of this SOW shall be the Effective Date and shall continue thereafter indefinitely until terminated by either Contractor or Windstream with prior sixty (60) day written notification of intent to terminate, and the following Transitional Service Obligation will apply or in the event of default by Windstream pursuant to terms of the Agreement. If modifications need to be made to the SOW, then an Amendment will be done and agreed upon by both parties.

10.2 Transitional Service Obligation.

In the event that this SOW is terminated in accordance with the Agreement or SOW, and Windstream notifies Contractor in writing that a successor has been selected or is in the process of being selected by Windstream, the Contractor will continue to provide all or any part of the Services provided under this SOW prior to the effective time of such termination and will provide assistance for the transition of such services to a new provider as provided in this SOW. Transitional services will be provided by the Contractor, as may be reasonably requested by Windstream, for up to ninety (90) days ("Transitional Service Period"), effective on the last day following the expiration of the notice period specified under Period of Performance of the SOW with no additional fees. Windstream may request in writing that the Contractor discontinue all or any part of the Transitional Services within the Transitional Services Period upon reasonable notice.

11. Review

Formal reviews of all Contractor services will be held on an annual basis at a time and location determined by Windstream and your PHH Arval Account Team. Periodic reviews may be scheduled as necessary.

Quarterly Reviews for Vehicle Accident Services will be conducted and may be changed at Windstream's discretion as necessary by Windstream's Risk Management Contact.

Your business review will be conducted by your Account Executive and will include a comprehensive update of your fleet program, progress toward current initiatives, and discussion of future objectives and opportunities aligned with your overall company goals. Performance metrics will be reviewed in the form of a scorecard.

12. Pricing

See Exhibit A for Pricing.

Windstream acknowledges that charges included in the pricing may include an amount that Contractor retains for rebillers' services rendered and volume discounts received from repair facilities and service providers.

13. Point of Contacts (POC)

Names/telephone numbers/email addresses of POCs:

Windstream:

1st POC Brock Vest
 (501) 748-5406
 Brock.Vest@windstream.com

2nd POC Charles Neal
 (501) 748-5016
 Charles.Neal@windstream.com

Risk Management POC
 Dan Wood
 (501) 748-7560 or cell (501) 590-2280
 Daniel.Wood@windstream.com

14. Notices

Addresses and designees for notices:

Windstream:

As per Section 9.2 of Agreement.

To Contractor:

Tina Orwick
940 Ridgebrook Rd
Sparks MD 21152-9390

15. Payments/Invoicing

Payments of any invoice by Windstream shall be made after Windstream Accounts Payable receipt of a complete and accurate invoice with payment terms of Net 30. Windstream will not be responsible for any invoices that are submitted for services rendered six month or older and then billed to Windstream. A separate monthly invoice will need to be made for Fuel, New Vehicle Tax and Registration, and another invoice with all other pass through cost and fees. During implementation, Windstream will outline all information required on invoices in order to process for payment. If a new vehicle is purchased through Contractor, a purchase order will be issued; a VIN number for the vehicle will be required for purchase order processing.

Windstream will be responsible for the payment of all third party expenses, fees, costs, taxes and charges incurred by Contractor on Windstream's behalf in providing services under this SOW or the Agreement.

A one-and-one-half (1-1/2%) late payment charge will be applied for each month or fraction of a month that any amount is not paid by the due date, plus reasonable attorneys' fees incurred by Contractor for amounts placed with an outside entity for collection provided that such amounts have been outstanding for one hundred twenty (120) days.

Invoices are to be submitted via First Class mail to:

Windstream Accounts Payable
Position # C00085574
P.O. Box 18313
Little Rock, AR 72222

OR

The Preferred Method:

Invoices may be submitted electronically via email to Corp.Vendor.Invoices@windstream.com.

Note: Please ensure this above address, and position #'s are written on each invoice and statement submitted for payment. Risk Management and Human Resources invoices shall be setup independently and shall not be combined on invoices.

16. Additional terms and conditions, if any:

This SOW may be executed in one or more counterparts, and if in more than one counterpart, each, when taken together, shall constitute one and the same instrument. Signatures on this SOW which are exchanged by facsimile or other electronic means are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as original signatures.

IN WITNESS WHEREOF, the Parties hereto have caused this SOW to be executed by their respective authorized representatives effective as of the date last written below.

Windstream Communications, Inc.

PHH VEHICLE MANAGEMENT SERVICES, LLC

By: _____

By: Joseph W. Weikel

Name: _____

Name: JOSEPH W. WEIKEL

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT B

Leased Vehicles

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

LEASE NO(S). 0113

THIS MOTOR VEHICLE FLEET OPEN-END LEASE AGREEMENT, dated as of 1/29, 2014 ("this Agreement"), is entered into by and between D.L. Peterson Trust, a Delaware Business Trust ("Lessor"), and WINDSTREAM COMMUNICATIONS, INC. , with offices at 4001 RODNEY PARHAM ROAD LITTLE ROCK AR 72212 ("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 a 24-month, 33-month, 36-month, 40-month, 45-month, 48-month, 50-month, 55-month, 60-month or 84-month Vehicle (or such other designations as the parties hereto may make by amendment of this Agreement). 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 Lessor 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 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. Such rental rates shall include a percentage factor, known as the Depreciation Rent Factor, of 4.17%, 3.04%, 2.78%, 2.50%, 2.25%, 2.09%, 2.00%, 1.82%, 1.67% or 1.20% in the case of 24, 33, 36, 40, 45, 48, 50, 55, 60 or 84 month Vehicles respectively. 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.

(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 thirtieth (30) 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. Except with regard to Vehicles for which there is no remaining Depreciation Rent due to the fact that such Vehicle's Capitalized Cost has been reduced to zero (for which a "thereafter fee" of \$25.00 per Vehicle per month will be charged pursuant to the terms set forth herein and as set forth on the applicable NUN), Lessee agrees that from the end of the rental term for each Vehicle until the date the Vehicle is sold and final settlement for the Vehicle is made pursuant to Section 8, Lessee shall pay a fee equal to the monthly rental charge based upon the previous rental month for such Vehicle, pro-rated on a daily basis based on the actual number of days in the month ("Back End Interim Rent"). The foregoing notwithstanding, for cars, vans, light-duty trucks and medium-duty trucks that do not have electronic titles, Back End Interim Rent will be charged for not more than thirty (30) days from the date that the Vehicle is in the possession of Lessor's selected remarketing supplier and the title is available for transfer. For cars, vans, light-duty trucks and medium-duty trucks that have electronic titles, Back End Interim Rent will be charged for not more than forty-five (45) days from the date that the Vehicle is in the possession of the Lessor's selected remarketing supplier and the title is available for transfer.

(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. In determining a Vehicle's "fair market value," Lessor will first take into consideration factors including mileage; location; interior, exterior, and mechanical condition; status of glass and tires; and, overall fitness of the vehicle for lawful operation on public roads. Lessor will then compare the Vehicle's overall condition with benchmark vehicle values based upon valuation data derived from third-party sources (currently including Black Book and actual auction results, though Lessor may in the future rely on alternate industry-standard resources in its sole discretion). The Vehicle's "fair market value" will be determined based upon this comparison.

(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 PHH Vehicle Management Services, LLC, a Delaware limited liability company, doing business as PHH Arval, 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 for financing purposes from time to time) against all third party 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, or (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, 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 upon request. The Lessee shall also provide Lessor with copies of such quarterly interim financial statements of the Lessee as Lessor may request. In lieu of such statements, for as long as the Lessee is required to file annual and quarterly financial reports on Forms 10K and 10Q with the United States Securities and Exchange Commission and Lessee's segmented financial information is disclosed in such reports, the reports as filed shall satisfy the financial statements provisions of this subsection for the entity so reporting.

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 PHH 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 New York.

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.

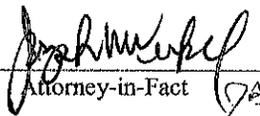
26. Watch Lists. Lessee agrees that it is not now and will not in the future be listed on any watch list maintained by the U.S. Treasury Department and shall comply with the Patriot Act, international trade control and money laundering laws, as applicable.

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

WINDSTREAM COMMUNICATIONS, INC.

By: 
Attorney-in-Fact *DM*

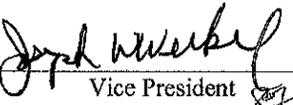
By: 
Vice President of Procurement

Print Name: Anthony W. Thomas

PHH Vehicle Management Services, LLC, a Delaware limited liability company, doing business as PHH Arval, 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:
PHH VEHICLE MANAGEMENT SERVICES, LLC

DS
85

By: 
Vice President *DM*

Client Name: Windstream / FTSwap
 Segment: Traditional
 Payment Terms: 30 Days

	<u>Inventory</u>	<u>Annual Buy</u>	<u>Mos In Svc</u>	<u>Lease Term</u>	<u>Avg Cap Cost</u>
Cars/Light Trucks	4,796	685	84	84	\$29,348
Medium/Heavy Duty Trucks	727	104	84	84	\$64,640
Equipment	-	-	-	-	\$0
TOTAL	5,523	789			

Motor Company Mix (Cars/Lights)

GM	18%
Ford	43%
Chrysler	37%
Other	2%
Total	100%

Factory Order % 100%

	<u>Cars/Lights</u>	<u>Medium / Heavy Trks</u>
VMA Units	5,876	625
Monthly Billing	\$184.00	
National Account %	14%	
Dealer/Independent % Network	78%	
Dealer/Independent % Non-Network	8%	
Client Limit	\$2,000.00	
Driver Limit	\$100.00	
# of Contacts	1	

FleetGard Units -
 Monthly Billing
 National Account %
 Dealer/Independent % Network
 Dealer/Independent % NonNetwork

Fuel Units 4,813
 Monthly Billing \$323.00
 Preferred Network % 1%

Automotive Services Units -
 Monthly Billing
 National Account %
 Dealer/Independent % Network
 Dealer/Independent % NonNetwork

Open Network Maintenance Units -
 Monthly Billing

VER Units -
 FleetSense Units -
 Personal Use Taxable Benefit (PUTB) Units -

VAS Units 5,868 625
 Completed Repair % 60%
 Network Utilization % 50%
 Will PHH handle Subrogation? Yes

Reregistration Units 5,212

FAS/Driver Response Units -

Driver Record Check Units -

Other Pricing Assumptions Schedule Information: -

EXHIBIT C

List of Open Invoices

Client Number	Contact #	Invoice Number	Original Amount	Amount Balance	Invoice Date	Date Due
0113	0001	DED-A11248189	21.09	21.09	12/3/2018	
0113	0001	OAC-A0011207903	(26.00)	(26.00)	5/22/2018	
0113	0001	OAC-A0011230808	(33,816.05)	(33,816.05)	9/13/2018	
0113	0001	OAC-A011255360	(20,000.00)	(20,000.00)	1/8/2019	
0113	0001	OAC-A11219942	(82,130.38)	(82,130.38)	7/23/2018	
0113	0001	OAC-A11236909	(389,226.31)	(389,226.31)	10/17/2018	
0113	0001	0007345706	1,624,624.13	1,624,624.13	1/1/2019	1/31/2019
0113	0001	0007345706LC	34,544.55	34,544.55	1/1/2019	1/31/2019
0113	0001	0007347079	581,908.36	581,908.36	1/1/2019	1/31/2019
0113	0001	0007347079LC	8,549.55	8,549.55	1/1/2019	1/31/2019
0113	0001	0007388858	1,517,178.71	1,517,178.71	2/1/2019	3/3/2019
0113	0001	0007388858LC	40,960.80	40,960.80	2/1/2019	3/3/2019
0113	0001	0007390121	597,660.68	597,660.68	2/1/2019	3/3/2019
0113	0001	0007390121LC	10,240.86	10,240.86	2/1/2019	3/3/2019
				3,890,489.99		
9915	0001	OAC-A0011253735	(390,944.73)	(390,944.73)	1/4/2019	
9915	0001	OAC-A11182086	(130,515.09)	(2,048.75)	1/25/2018	
9915	0001	OAC-A11212386	(18,282.24)	(18,282.24)	6/8/2018	
9915	0001	OAC-A11238396	(58.00)	(58.00)	10/26/2018	
9915	0001	0007263074	(8.00)	(8.00)	11/1/2018	12/1/2018
9915	0001	0007309629	264,213.50	264,213.50	12/1/2018	12/31/2018
9915	0001	0007309629LC	2,694.91	2,694.91	12/1/2018	12/31/2018
9915	0001	0007351820LC	0.06	0.06	1/1/2019	1/31/2019
9915	0001	0007351970	188,201.50	188,201.50	1/1/2019	1/31/2019
9915	0001	0007351970LC	3,731.15	3,731.15	1/1/2019	1/31/2019
9915	0001	0007353548	265,041.86	265,041.86	1/1/2019	1/31/2019
9915	0001	0007353548LC	3,705.45	3,705.45	1/1/2019	1/31/2019
9915	0001	0007394747	217,198.25	217,198.25	2/1/2019	3/3/2019
9915	0001	0007394747LC	4,369.19	4,369.19	2/1/2019	3/3/2019
9915	0001	0007396142	416,896.59	416,896.59	2/1/2019	3/3/2019
9915	0001	0007396142LC	4,581.17	4,581.17	2/1/2019	3/3/2019
				959,291.91		

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

<hr/>		X
	:	
In re	:	Chapter 11
	:	
WINDSTREAM HOLDINGS, INC., <i>et al.</i> ,	:	Case No. 19-22312 (RDD)
	:	
Debtors.	:	Jointly Administered
<hr/>		X

CERTIFICATE OF SERVICE

I, John D. Demmy, hereby certify that on March 29, 2019, I caused a copy of the foregoing **Limited Objection of Element Fleet Corporation to: Debtors’ Amended Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief** to be served electronically with the Court and served through the Court’s CM/ECF system upon all registered electronic filers appearing in this case who consented to electronic service and via Electronic Mail on the parties on the attached service list.

SAUL EWING ARNSTEIN & LEHR LLP

By: /s/ John D. Demmy
John D. Demmy (No. 2802)
1201 N. Market Street, Suite 2300
P. O. Box 1266
Wilmington, DE 19899
(302) 421-6848

Dated: March 29, 2019

Service List

Stephen E. Hessler, P.C.
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022

Ross M. Kwasteniet, P.C.
Brad Weiland, Esquire
John R. Luze, Esquire
Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, Illinois 60654

Windstream Holdings, Inc.
Attn.: Kristi M. Moody
4001 North Rodney Parham Road
Little Rock, Arkansas 72212

Paul K. Schwartzberg, Esquire
Serene Nakano, Esquire
The Office of the United States Trustee
U.S. Federal Office Building
201 Varick Street, Suite 1006
New York, New York 10014

Attn: Lorenzo Marinuzzi, Esquire
Brett H. Miller, Esquire
Todd M. Goren, Esquire
Jennifer L. Marines, Esquire
Erica J. Richards, Esquire
Morrison & Foerster LLP
250 West 55th Street
New York, New York 10019