

**AMENDED & RESTATED SOURCEWELL – WASHINGTON PARTICIPATION AGREEMENT**

Sourcewell Agreement No.: 030122-ELE

Contract Category: Fleet Management Services

Awarded Contractor: Element Fleet Corporation

Washington Statewide Contract No.: 20522

This Amended & Restated Sourcewell-Washington Participation Agreement ("Participation Agreement") for the above referenced Sourcewell Cooperative Purchasing Agreement ("Sourcewell Agreement") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and Element Fleet Corporation, a Delaware Corporation, ("Contractor") and is dated and effective as of December 20th, 2024.

**RECITALS**

- A. The Washington State Legislature created Enterprise Services to function, in part, as Washington State's central procurement authority for goods and/or services and authorized Enterprise Services to enter into contracts on behalf of the State to provide goods and/or services for state agencies and other designated entities. See RCW 43.19.005 and 43.19.011; *see also*, RCW 39.26.050.
- B. The Washington State Legislature further authorized Enterprise Services, on behalf of the State of Washington, to participate in cooperative purchasing agreements with designated entities (e.g., other states engaged in public procurement for goods and/or services) to utilize their competitively solicited and awarded contracts to procure goods and/or services and to make such contracts available to Washington state agencies and designated eligible purchasers, to function as enterprise procurement solutions, consistent with terms and conditions set forth by Enterprise Services. See RCW 39.26.060.
- C. Sourcewell is a State of Minnesota local government unit and service cooperative created by the Minnesota legislature under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21). See Minn. Const. art. XII, sec. 3. Under its enabling statute, Sourcewell is authorized to provide cooperative purchasing services to eligible members. Minn. Stat. § 123A.21 Subd. 7(23). Sourcewell follows the competitive contracting law process to solicit, evaluate, and award cooperative purchasing contracts for goods and services (Sourcewell Agreements). Sourcewell Agreements are made available through the joint exercise of powers law to eligible agencies. Minn. Stat. § 471.59 (2019).
- D. Pursuant to an Interagency Joint Powers Agreement between Enterprise Services and Sourcewell, Enterprise Services may participate in and authorize participation in competitively procured Sourcewell Agreements.

- E. The above-referenced Sourcewell Agreement is the result of a competitive solicitation process undertaken by Sourcewell.
- F. Enterprise Services timely provided public notice, through Washington's Electronic Business Solutions (WEBS) system, of the competitive solicitation process conducted by Sourcewell.
- G. Sourcewell, as part of its competitive solicitation process, evaluated all responses to its procurement and identified Contractor as an apparent successful bidder and awarded the above-referenced Sourcewell Agreement to Contractor.
- H. Enterprise Services and Contractor entered into an Agreement dated as of August 1, 2022. Such Agreement did not include the Washington State Pay Equality Provision, The Nondiscrimination Provision, The Term Provision, or the Pricing Provision. Accordingly, as of September 20, 2024., Enterprise Services and Contractor desire to restate the Agreement and agree that this Restated Agreement supersedes and replaces, in full, the prior Agreement.
- I. Enterprise Services has determined that participating in this Sourcewell Agreement is in the best interest of the State of Washington.
- J. The purpose of this Participation Agreement is to enable eligible purchasers, as defined herein, to utilize the Sourcewell Agreement as conditioned by this Participation Agreement.

## AGREEMENT

**NOW THEREFORE**, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

- 1. TERM.** This Participating Agreement shall terminate upon: (a) expiration of the term set forth in the Sourcewell Agreement; (b) Contractor's breach of any representation and warranty set forth in this Participation Agreement; or (c) written notice of termination for convenience by Enterprise Services, whichever first occurs. Termination of this Participation Agreement, however, shall not relieve any Purchaser of its responsibility to pay for goods and/or services timely ordered by such Purchaser and provided to Purchaser by Contractor.
- 2. SCOPE.** This Participation Agreement covers the above-referenced contract category for the above-referenced Sourcewell Agreement with the above-referenced awarded Contractor.
- 3. PRICING.** Pricing shall be as specified in the above-referenced Sourcewell Agreement, excepting services and associated prices related to Vehicle Accident Management, as detailed in the Rate Schedule included in the Master Services Agreement attached hereto as Exhibit A.
- 4. PARTICIPATION.** Pursuant to this Participation Agreement and the Interagency Joint Powers Agreement between Enterprise Services and Sourcewell, and the Master Services Agreement attached hereto as Exhibit A, the above-referenced Sourcewell Agreement may be utilized by the following, each of which is an authorized eligible purchaser ("Purchaser"), pursuant to a signed Secondary Participation Agreement, attached hereto as Exhibit B, by the applicable Purchaser and Contractor.
  - 4.1. WASHINGTON STATE AGENCIES.** All Washington state agencies, departments, offices, divisions, boards, and commissions.

- 4.2. WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION. Any the following specific institutions of higher education (colleges) in Washington:
- State universities – i.e., University of Washington & Washington State University;
  - Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University
  - Evergreen State College;
  - Community colleges; and
  - Technical colleges.
- 4.3. CONTRACT USAGE AGREEMENT PARTIES. The Sourcewell Agreement also may be utilized by any of the following types of entities that have executed a Contract Usage Agreement with Enterprise Services and the Secondary Participation Agreement:
- Political subdivisions (e.g., counties, cities, school districts, public utility districts, ports) in the State of Washington;
  - Federal governmental agencies or entities;
  - Public-benefit nonprofit corporations (i.e., public benefit nonprofit corporations as defined in RCW 24.03A.245) who also receive federal, state, or local funding); and
  - Federally recognized Indian Tribes located in the State of Washington.

By placing an order under this Participation Agreement, each Purchaser agrees to be bound by the terms and conditions of this Participation Agreement, including the Sourcewell Agreement. Each Purchaser is responsible for its compliance with such terms and conditions. Contractor shall have the right to review any potential Purchaser, including, without limitation, any Purchase Order submitted by a Purchaser, when determining, in its sole discretion, to provide Services to any such Purchaser.

## 5. STATE OF WASHINGTON MODIFICATIONS OR ADDITIONS TO THE SOURCEWELL AGREEMENT.

- 5.1. WASHINGTON'S ELECTRONIC BUSINESS SOLUTIONS (WEBS) SYSTEM. Within seven (7) days of execution of this Participation Agreement, Contractor shall register in the Washington State Department of Enterprise Services' Electronic Business Solutions (WEBS) System at [WEBS](#). Contractor shall ensure that all of its information therein is current and accurate and that, throughout the term of the Sourcewell Agreement, Contractor shall maintain an accurate profile in WEBS.
- 5.2. WASHINGTON'S STATEWIDE PAYEE DESK. To be paid for contract sales, Contractor must register with Washington's Statewide Payee Desk. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: [Receiving Payment from the State](#).
- 5.3. CONTRACT SALES REPORTING. Contractor shall report total contract sales quarterly to Enterprise Services, as set forth below.
- (a) REPORTING. Contractor shall report quarterly Contract sales in Enterprise Services' [Contract Sales Reporting System](#). Enterprise Services will provide Contractor with a login password and a vendor

number.

- (b) **DATA.** Each sales report must identify every authorized Purchaser by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The “Miscellaneous” option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasers specified herein during the term of this Participation Agreement, which term shall run from the effective date of this Participation Agreement until the end of the Sourcwell Agreement. Refer sales reporting questions to the Primary Contact set forth below. If there are no contract sales during the reporting period, Contractor must report zero sales.
- (c) **DUE DATES FOR CONTRACT SALES REPORTING.** Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

QUARTER	FOR SALES MADE IN CALENDAR QUARTER	CONTRACT SALES REPORT	
		DUE BY	PAST DUE
1	January 1 – March 31	April 30	May 1
2	April 1 – June 30	July 31	August 1
3	July 1 – September 30	October 31	November 1
4	October 1 – December 31	January 31	February 1

- 5.4. **VENDOR MANAGEMENT FEE.** Contractor shall pay to Enterprise Services a vendor management fee (“VMF”) of 1.25 percent the revenue accruing to Contractor from both the Collision Management services (including First Notice of Loss, Subrogation and Driver Care Safety) and Maintenance Management services provide by Contractor (as listed in *Exhibit A – Master Services Agreement*) and authorized by this Participation Agreement.

- (a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

Amount owed to Enterprise Services = Total contract sales invoiced (not including sales tax) x .01250.

- (b) The VMF must be rolled into Contractor’s current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
- (c) Enterprise Services will invoice Contractor quarterly based on contract sales reported by Contractor. Contractor shall not remit payment until it receives an invoice from Enterprise Services. Payment must be received within thirty (30) calendar days of the invoice issue date from Enterprise Services. Contractor’s VMF payment to Enterprise Services must reference the invoice number.
- (d) Contractor’s failure accurately and timely to report total net sales, to submit timely usage reports, or to remit timely payment of the VMF

to Enterprise Services, may be cause for Enterprise Services to suspend or terminate this Participation Agreement or exercise any other remedies as provided by law.

- (e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases.
- (f) For purposes of the VMF, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.

#### 5.5. NONDISCRIMINATION.

- (a) NONDISCRIMINATION REQUIREMENT. During the term of this Participation Agreement, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
- (b) OBLIGATION TO COOPERATE. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Participation Agreement pursuant to RCW 49.60.530(3).
- (c) DEFAULT. Notwithstanding any provision to the contrary, Enterprise Services may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Participation Agreement, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Enterprise Services receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), Enterprise Services may terminate this Participation Agreement in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.
- (d) REMEDIES FOR BREACH. Notwithstanding any provision to the contrary, in the event of termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for damages as authorized by law. Enterprise Services and/or Purchasers shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Enterprise Services

and/or Purchasers for default under this provision.

5.6. CONTRACTOR REPRESENTATIONS AND WARRANTIES. Contractor makes each of the following representations and warranties as of the effective date of this Participation Agreement and at the time any order is placed pursuant to the above-referenced Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

- (a) WAGE VIOLATIONS. Contractor represents and warrants that, during the term of this Participation Agreement and the three (3) year period immediately preceding this Participation Agreement, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52 as it specifically relates to Contractor and the services performed directly and solely by Contractor.
- (b) CIVIL RIGHTS. Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (c) EXECUTIVE ORDER 18-03 – WORKERS’ RIGHTS (MANDATORY INDIVIDUAL ARBITRATION). Contractor represents and warrants, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Participation Agreement, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.
- (d) WASHINGTON STATE PAY EQUALITY FOR ‘SIMILARLY EMPLOYED’ INDIVIDUALS. Contractor represents and warrants that, as required by Washington state law ([LAWS OF 2023, ch. 475](#), § 919), during the term of the Participation Agreement, among Contractor’s employees, ‘similarly employed’ individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality



of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but is not limited to, education, training, or experience that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Participation Agreement and any Purchaser hereunder similarly may suspend or terminate its use of the Sourcewell Agreement and/or any agreement entered into pursuant to this Participation Agreement.

5.7. COMPLIANCE WITH LAW; TAXES, LICENSES, & REGISTRATION. Contractor shall comply with applicable law. Prior to making any sales hereunder, if Contractor is not already registered, Contractor shall register to conduct business in the State of Washington and promptly acquire and maintain all necessary licenses and registrations and pay all applicable taxes and fees. In addition, for all sales to Purchasers in the State of Washington, if Contractor does not currently do so, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.

5.8. CONTRACTOR'S SALES AUTHORITY; PURCHASE ORDERS; & INVOICES:

(a) CONTRACTOR'S SALES AUTHORITY. Pursuant to this Participation Agreement, Contractor is authorized to provide only those goods and/or services set forth in the above-referenced contract category for the above-referenced Sourcewell Agreement as conditioned by this Participation Agreement. Contractor shall not represent to any Purchaser hereunder that it has any authority to sell any other goods and/or services.

(b) PURCHASE ORDERS. To utilize the Sourcewell Agreement, each Purchase Order must include the following information and be submitted to Contractor or its authorized dealer:

1. Each of following contract identification numbers, which are set forth on the first page of this Participation Agreement:
  - Washington Statewide Contract Number; and
  - Sourcewell Agreement Number;
2. Purchase Order amount; and
3. Purchaser's contact information (i.e., name, address, telephone number, email).
4. Secondary Participation Agreement (as attached in Exhibit B)

The terms of the applicable Participation Agreement shall apply to any Purchase Order and, in the event of a conflict, the terms of the applicable Participation Agreement shall prevail.

(c) **INVOICES.** Contractor must provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address indicated in the Purchase Order. Each invoice must include the following:

1. Each of following contract identification numbers, which are set forth on the first page of this Participation Agreement:
  - Washington Statewide Contract Number; and
  - Sourcwell Agreement Number;
2. Contractor's statewide vendor registration number assigned by the Washington State Office of Financial Management (OFM);
3. Applicable Purchaser's Purchase Order number; and
4. Invoices must be prominently annotated by the Contractor with all applicable volume discount(s).

**6. PRIMARY CONTACTS.** The primary contacts for this Participation Agreement are as follows (or their named successors):

**State of Washington**

Attn: Alec La Brayere  
Washington Dept. of Enterprise Services  
PO Box 41411  
Olympia, WA 98504-1411  
Tel: (360) 407-9366  
Email:  
DESContractsTeamMaple@des.wa.gov

**Element Fleet Corporation**

Attn: William Collins  
940 Ridgebrook Road  
Sparks, MD 21152  
Tel: (347) 574-0838  
Email: WCollins@elementcorp.com

**7. SUBCONTRACTORS AND DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Contractor is authorized, without additional consent, to utilize its Designated Subcontractors, Dealers, Distributors, and/or Resellers ("Subcontractors") to provide sales and service support to Purchasers hereunder; provided, however, that such participation shall be in accordance with the terms and conditions set forth in the Sourcwell Agreement and this Participation Agreement. Subcontractors does not include Providers, as defined in the Master Agreement. Contractor shall maintain a list of such Designated Subcontractors utilized for this Participation Agreement, and, upon request, promptly provide Enterprise Services with such list and any updates.

**7.1. CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS.** Contractor shall be responsible to ensure that all requirements of the Sourcwell Agreement (including, but not limited to, insurance requirements, indemnification, Washington State business registration, etc.) flow down to any and all Subcontractors. In no event shall the existence of a subcontract between Contractor and its Subcontractor operate to release or reduce Contractor's liability to Enterprise Services or any Purchaser for any breach of the Sourcwell Agreement or this Participation Agreement. As to Enterprise Services and Purchasers hereunder, Contractor shall have full and



complete responsibility and liability for any act or omission by Contractor's Subcontractors.

- 7.2. PURCHASER PAYMENT REGARDING CONTRACTOR'S SUBCONTRACTORS. Notwithstanding any provision to the contrary, the parties understand and agree that for any contract sales or service provided pursuant to the Sourcewell Agreement and this Participation Agreement, Purchaser payment shall be made directly to Contractor as the awarded vendor pursuant to the competitive procurement.
- 7.3. CONTRACT SALES REPORTING. Notwithstanding any provision to the contrary, Contractor shall report to Enterprise Services total contract sales, delineated by purchaser, and also report total contract sales, delineated by purchaser, on a consolidated Contractor 'roll-up' basis. Contractor shall maintain records supporting such reports in accordance with the Sourcewell Agreement's records retention requirements.
8. **ORDERS.** Unless the parties to the Purchase Order agree in writing that another contract or agreement applies to such order, any Purchase Order placed by a Purchaser for any good and/or service in the above-referenced contract category for the above-referenced Sourcewell Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Sourcewell Agreement as conditioned by this Participation Agreement.
9. **GENERAL.**
- 9.1. INTEGRATED AGREEMENT; MODIFICATION. This Participation Agreement and Sourcewell Agreement, together with its exhibits, set forth the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. This Participation Agreement may not be modified except in writing signed by the Parties.
- 9.2. AUTHORITY. Each party to this Participation Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Participation Agreement and that its execution, delivery, and performance of this Participation Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 9.3. ELECTRONIC SIGNATURES. An electric signature or electronic record this Participation Agreement or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Participation Agreement or such other ancillary agreement for all purposes.
- 9.4. COUNTERPARTS. This Participation Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Participation Agreement at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Participation Agreement.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES

By: Elena McGrew  
Elena McGrew  
Its: Enterprise Procurement Manager

ELEMENT FLEET CORPORATION  
A DELAWARE CORPORATION

Signed by:  
By: Michael W. Hilliard  
Michael W. Hilliard  
Its: Assistant General Counsel

COPY VIEW

## EXHIBIT A

## SECONDARY PARTICIPATION AGREEMENT

This Secondary Participation Agreement ("Participation Agreement") to the [main agreement name] among Element Fleet Corporation ("Element" or "Gelco") and [State of Washington Enterprise Services] effective [date] (the "Primary Agreement"), is made by and among Element and [Insert name of Participant] ("Participant"). All capitalized terms used herein but undefined shall have the meanings set forth in the Primary Agreement.

1. Participant represents and warrants that it is an authorized Purchaser as set forth in the Primary Agreement, that it has received and reviewed the Primary Agreement, and that it agrees to be bound by the terms and conditions of the Primary Agreement, except to the extent modified herein. For purposes of this Participation Agreement, wherever the term "Client" appears in the Primary Agreement, it shall be understood that it refers to Participant.
2. The terms and conditions of the Primary Agreement are hereby incorporated by reference, except and to the extent specifically modified by this Participation Agreement or any exhibit or schedules attached hereto.
3. In the event of a conflict between this Participation Agreement and the Primary Agreement, the terms and conditions of this Participation Agreement shall prevail with respect to the subject matter herein.
4. Notices: Any notices pertaining to Participant shall be directed to:  
[insert]
5. Termination. It is understood that termination of this Participation Agreement by either party hereto shall not terminate the Primary Agreement.
6. Counterparts. This Participation Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument, and the parties hereto may execute this document by signing any such counterpart. Delivery of this executed document by telecopy or electronic signature delivery system (in either case in a form acceptable to Element) shall be effective as delivery of a manually executed signature page to this document. The parties hereby agree that the electronic copy of this document retained by Element shall be the original and the authorized copy of record and the electronic record on Element's system of each schedule or exhibit shall be the original chattel paper and authorized copy of record.
7. Effective Date. This Participation Agreement is made effective as of the date executed by the last Party to sign.

## PARTICIPANT NAME

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## ELEMENT FLEET CORPORATION

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

12.30.2022 MF/MH

INITIALS SFOP DATE



## MASTER SERVICES AGREEMENT

### PURCHASER NO(S).

### EFFECTIVE DATE:

The terms and conditions of this Master Services Agreement ("Agreement") are between Contractor (as defined in the Participation Agreement) and Enterprise Services (as defined in the Participation Agreement)(Purchaser and together with Contractor, both "Parties"). In consideration of the foregoing and other valuable consideration the Parties hereby agree as follows:

#### 1. General.

Contractor provides fleet management services described in the addenda to this Agreement (each, an "**Addendum**") and Purchaser desires to use such services (each, a "**Service**" or "**Program**") for Purchaser's vehicles and applicable assets (each a "**Vehicle**"). Each Addendum forms a part of this Agreement. Third-party or direct service providers (a) who provides direct fleet services (including but not limited to providers of maintenance services, repair services, auto parts, tow and transport services, fuel and fueling services) for Purchaser vehicles and (b) that are not under the control or supervision of Contractor may perform services and provide goods in relation to this Agreement (each, a "**Provider**"). Individuals assigned Vehicles by Purchaser will be referred to herein as "**Driver(s)**". Unless agreed in writing by the Parties, any Services provided to any present or future subsidiary, parent or affiliate of Purchaser will be subject to the terms and conditions herein, and Purchaser will remain directly liable for all payment and other obligations arising hereunder.

#### 2. Purchasing Instruments.

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

**2.2.** Purchaser is responsible for all purchases made by any bearer of an Instrument issued in the name of Purchaser or any of Purchaser's subsidiaries, parents, affiliates and their respective representatives, irrespective of whether the use of such Instrument was authorized or exceeds limits or conditions on such Instrument.

#### 3. Term and Termination.

Except as otherwise expressly provided in any Addendum, either Party may terminate this Agreement by giving written notice to the other Party at least 30 days prior to the effective date of termination. In the event Purchaser (i) defaults in the payment of any amount due under this Agreement; (ii) files or has filed against it any action under any provision of any state or federal law relating to insolvency or bankruptcy; (iii) appoints or has appointed for it a receiver or trustee; (iv) makes an assignment for the benefit of creditors; (v) defaults under any payment or performance obligation under any other agreement or instrument with Contractor, Gelco Fleet Trust, D.L. Peterson Trust or any parent, subsidiary or affiliate of Contractor (each, an "**Contractor Entity**"); (vi) undergoes a change in controlling ownership; or (vii) no longer meets Contractor's credit requirements, Contractor will have the right but not the obligation to terminate this Agreement or any Addendum immediately upon notice to Purchaser, provided, however, that, after receipt of notice from Contractor of any default, Purchaser does not cure the default within 30-days of such notice. Upon termination of this Agreement or any Addendum, Purchaser remains responsible to pay all expenses, costs, and other amounts incurred by Contractor on Purchaser's behalf, including any related transaction fees due to Contractor, whether incurred prior to or following the date of termination, including amounts

due for purchases made with Instruments. A default under this Agreement will constitute a default under any other agreement Purchaser has with a Contractor Entity.

#### 4. Costs, Fees and Payment Terms.

**4.1. Costs.** Contractor will advance third-party expenses incurred on Purchaser's behalf in connection with the Services, and will consolidate these charges on the invoice to Purchaser. Such costs and expenses will be reflective of the gross invoice cost from Providers, exclusive of any discount or rebate Contractor may negotiate with such Providers, unless expressly set forth in this Agreement. Purchaser will be responsible for the payment of all third-party and/or Provider expenses, fees, costs, taxes, and other charges incurred by Contractor on Purchaser's behalf, including expedited shipping charges. Contractor has the right to retain rebates, discounts, fees, and other compensation from manufacturers, suppliers or vendors with respect to goods and services purchased hereunder.

**4.2. Fees.** Fees for the Services (the "**Service Fees**") will be set forth in the "Services Rate Schedule" attached hereto. All charges are based on Contractor's standard operating routines, computer systems and existing business policy. Additional services or special handling required by Purchaser that are not expressly covered under the scope of the Services described in the relevant Addendum will be subject to separate fees.

**4.3. Payment Terms.** Purchaser will pay all invoices issued monthly by Contractor pursuant to this Agreement within 30 days of the invoice date in accordance with the Participation Agreement. If Purchaser identifies any billing error, Purchaser will advise Contractor promptly and Purchaser's sole remedy will be an adjustment to Purchaser's account. Late payments will be charged in the amount of 2% or the highest legal interest rate, whichever is less, per month or fraction thereof, and Purchaser will owe all costs of collection (including attorneys' fees and court costs). Purchaser's obligation to pay amounts due hereunder will not be subject to any claim, defense or setoff that Purchaser may have against Contractor or any other party, including amounts due or owed under any other agreement with Contractor.

**4.4.** Contractor will have the right to offset any amounts due to Purchaser against amounts due to Contractor or any Contractor Entity and all other rights and remedies available at law or in equity.

#### 5. Warranty Disclaimer and Purchaser Acknowledgements.

**5.1. Warranty Disclaimer; Waiver; Purchaser Representations and Warranty.** Purchaser agrees that Contractor: (i) is a rebiller for goods and services Purchaser purchases either directly or indirectly from any Providers pursuant to this Agreement; (ii) is not the designer, manufacturer, distributor or provider of goods and services; (iii) has not made and makes no representation or warranty, express or implied, with respect to any goods or services, including any warranty of merchantability or fitness for a particular purpose; and (iv) has no duty to warn Purchaser or any Provider about the condition, operation or use of any Vehicle or the appropriateness or practices of any Driver (except as otherwise expressly provided in any Addendum). Purchaser agrees to look solely to the manufacturer or distributor of such goods and services and hereby waives any and all claims, including product liability claims, against Contractor with respect thereto, and agrees that Contractor is an independent contractor and not a fiduciary of Purchaser.

**5.2. Purchaser Acknowledgements.** Purchaser acknowledges that (i) all Providers of goods or services under this Agreement are independent contractors and not agents or employees of Contractor; (ii) Contractor has no right or duty to inspect or review personnel qualifications, or otherwise screen Providers' facilities, personnel or work performed by Providers' personnel; (iii) information contained in some of the reports prepared in connection with the Services may be based upon statements and representations of Purchaser or its Drivers or their designees; (iv) in providing the Services, Contractor relies on the advice of and information from the Providers and other third parties as well as Purchaser's policies

and procedures as communicated to Contractor from time to time; and (v) Contractor does not and cannot guarantee the accuracy of information reported or provided by third parties and/or Purchaser (or its Drivers or designees).

6. This section is intentionally omitted.

**7. Limitation of Liability.**

Neither Party will be liable for indirect, special, punitive or consequential damages arising in connection with this Agreement, nor will Contractor incur any liability with respect to the performance or non-performance of any Provider (including, without limitation, with respect to any erroneous information provided by such third parties). The Parties' sole cause of action for any matters related directly or indirectly to this Agreement will be a contract action. **In no event will Contractor's aggregate liability exceed the amounts of the fee actually paid by Purchaser for the applicable service giving rise to liability in the 12 month period immediately preceding the event giving rise to such liability.**

**8. Vehicles; Compliance with Laws.**

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

**9. Assignment.**

**9.1. By Contractor.** Contractor may assign all or any part of its right, title, and interest in this Agreement, including all monies and claims for monies due and to become due to Contractor under this Agreement.

**9.2. By Purchaser.** Purchaser will not assign any interest in this Agreement to any party without Contractor's prior written consent. Any such consent will not relieve Purchaser of its obligations to Contractor.

**10. Financial Information.**

Purchaser's creditworthiness is a material condition to this Agreement. Purchaser will provide Contractor with complete and accurate financial information within 90 days of a request.

**11. Integration; Modifications; Signatures; Survival.**

In the event of any inconsistency between this Agreement, the Sourcewell Agreement, the Participation Agreement and any Addendum, the terms of the Addendum will prevail. In the event that any provision of this Agreement is held invalid, illegal, or unenforceable, other provisions of this Agreement will not be affected. Purchaser may issue purchase orders related to the Services for administrative convenience, but such purchase orders will not amend or supersede this Agreement. Any supplements or amendments to this Agreement may be made only in writing signed by Contractor and Purchaser, and failure of either Party to enforce any right will not be deemed a waiver of such right. All provisions of this Agreement which, expressly or by their nature, are intended to survive the termination of this Agreement will so survive.

**12. Watch Lists.**

Purchaser represents and warrants 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 will comply with the Patriot Act, international trade control and money laundering laws, as applicable, and provide the necessary information to identify such compliance with the forgoing upon request.

**13. Use of Data.**

**13.1. Data Rights and Use.** Purchaser represents and warrants that it has obtained all required consents to provide information, including Driver information, to Contractor. Contractor and any Provider will only retain, use or disclose personal information received from Purchaser or Drivers to the extent necessary to perform the services for which the information was collected or provided. Contractor may collect, use, copy, and distribute all such information and any data created in connection with this Agreement to: (i) provide Services under this Agreement and/or any other agreement between Purchaser and Contractor or its affiliates; (ii) enhance or improve the services Contractor or an affiliate provides to Purchaser; and (iii) assist third party service providers in providing services to Purchaser, or (iv)

when reasonably necessary, in Contractor's sole discretion, to protect the rights, property, and safety of Contractor, Purchaser, Drivers, or others.

**13.2. Use of Anonymized Data.** Contractor may compile, store, use, exploit, modify, and/or disclose data and vehicle information for any purpose, provided (i) the data and information will not be identifiable to Purchaser or Drivers, or (ii) the data and information will be aggregated with that of other fleet Purchasers. Purchaser hereby grants to Contractor a worldwide license to use anonymized data as specified in this section, irrevocably and in perpetuity. Contractor will not attempt to disaggregate the data or re-associate it with a device without Purchaser's consent, or unless legally compelled to do so.

**14. Binding Effect.**

This Agreement is binding upon and inures to the benefit of the Parties and permitted successors and assigns.

**15. Jury Trial Waiver**

**Both Parties waive any and all right to trial by jury in any action or proceeding arising directly or indirectly under this Agreement.**

**16. Notices.**

Notice to Purchaser will be sent by email or to the address set forth above. Notice to Contractor will be sent to the address set forth above Attn: Legal Department or to such other address designated by Contractor. The Parties agree that if Contractor receives notice of a motor vehicle recall on a Vehicle enrolled in any service under this Agreement, Contractor may forward the notice to Purchaser, the assigned Driver, or the garaging address of the Vehicle in Contractor's records, as further specified in the Services Rate Schedule

**17. Exhibits.**

The exhibits listed below are incorporated into this Agreement as if fully set forth herein. The Parties agree that each of the exhibits listed below will be deemed accepted by each Party upon such Party's execution of this Agreement. Unless otherwise expressly stated in an exhibit, the effective date of each exhibit listed below shall be the same date as the Effective Date of this Agreement.

**ONLY THE APPLICABLE SERVICES WILL BE LISTED**

Service Addendum for Collision Management  
Service Addendum for Maintenance

**Rate Schedule**

<b>A) Collision Management &amp; Safety</b>	<b>Measure</b>	<b>Price</b>	<b>Comments</b>
Collision Management Services	\$ per occurrence	\$20.00	First Notice of Loss
Subrogation Fee	% of successful claim	15%	
DriverCare Safety	\$ per unit per month	\$10.00	
<b>B) Maintenance Management</b>	<b>Measure</b>	<b>Price</b>	<b>Comments</b>
Maintenance Management	\$ per unit per month	\$5.00	
Preventative Maintenance Scheduling	\$ per unit per month	\$0	Included in Managed Maintenance program.
Post- Warranty Screening & Recovery	\$ per occurrence	\$75.00	Upon successful claim recovery
Maintenance Rebate	% of spend	1%	Limited to National Accounts only
Out of Network Maintenance Transactions	% per transaction	5%	Minimum of \$25 and maximum of \$75 per transaction
Emergency Roadside Assistance	\$ per occurrence	\$35.00	
Client Garage Management	Varies	10-20%	Sourcewell members are eligible for discounts of 10 to 15% for Cars & Light Truck and 20% for MD & HD units enrolled in Client Garage Management.



## SERVICE ADDENDUM FOR COLLISION MANAGEMENT

### PURCHASER NO(S).

### EFFECTIVE DATE:

This Service Addendum for Collision Management (the "Addendum"), dated as of the Effective Date stated above, is entered into between Contractor and Purchaser and is part of the Master Services Agreement between Contractor and Purchaser (the "Agreement"). Capitalized terms used herein but not defined have the definitions ascribed in the Agreement.

#### 1. Service Description.

Contractor will provide collision services (the "Services") for vehicles designated by Purchaser ("Vehicles"). The Services may include vehicle claims administration, appraisals, repair assistance, subrogation, rental car assistance and salvage disposal, with respect to damage arising from collision, fire, theft or otherwise, delivered by Contractor or a Provider.

Contractor will provide a collision management services driver packet for each Vehicle and prepare a report for each Vehicle collision for which it is notified. Contractor can assist Purchaser in obtaining temporary rental vehicles as replacement transportation while repairs are being performed on damaged Vehicles. Each rental will be in Purchaser's name with billing to Contractor. Contractor may notify Purchaser's insurance carrier of collisions reported to Contractor. Failure to provide such notice will not result in any liability to Contractor.

Contractor will assist Purchaser in obtaining recoveries from third parties due to damage to a Vehicle but will not assist in litigation. Any amounts recovered, reduced by the subrogation fee, will be held by Contractor and paid to Purchaser monthly. Such amounts may be commingled with any funds of Contractor or any Provider and will not accrue interest to Purchaser. If a claim for damage to a Vehicle is denied by a third party's insurer and Contractor determines that the claim is a candidate for arbitration, Contractor may assist Purchaser in arranging for arbitration of such claim. **Contractor and any Providers disclaim any liability for,**

**and makes no representation or warranty of any kind, whether express or implied, with respect to any arbitration service or any arbitrator(s).**

#### 2. Purchaser Obligations.

2.1. Purchaser will designate the Vehicles to be enrolled in this program. Purchaser will designate Trailers or other equipment separately from other Vehicles and Purchaser agrees that each Trailer will be assigned its own unit number.

2.2. Purchaser will provide Contractor with any authorities or powers of attorney required by Contractor in the performance of the Services.

2.3. Purchaser will provide Contractor with any information or materials it may reasonably request related to any collision and estimate of damage.

2.4. Purchaser will direct its employees to comply with all instructions issued by Contractor.

2.5. Purchaser will pay Contractor any applicable arbitration fees. Purchaser agrees that such arbitration will not be available until Purchaser executes the written agreement required by the third-party arbitrator.

2.6. For rental vehicles (including trailers and equipment), Purchaser may either insure such vehicles or have the vehicle rental provider provide the required insurance. If Purchaser provides the insurance, the policy for such insurance must name the vehicle rental provider and its designee(s) as an additional insured and use of rental vehicles will be subject to the terms of the vehicle rental provider's rental agreements. Purchaser will bear all risk of late return, loss, theft, and damage to rental vehicles.

#### 3. Purchaser Acknowledgements.

3.1. Purchaser acknowledges that the Services are not a comprehensive collision management program. Purchaser is responsible for determining the specific safety, compliance and regulatory requirements applicable to the operation of its Vehicles and any collisions. The Services are intended to lend administrative support to reduce Purchaser's costs and driver downtime. Any recommendations made by Contractor are offered in an advisory capacity and are not to be construed as legal advice.

*Collision Management add*

## **SERVICE ADDENDUM FOR MAINTENANCE**

**PURCHASER NO(S).**

**EFFECTIVE DATE:**

This Service Addendum for Maintenance (the "Addendum"), dated as of the Effective Date stated above, is entered into between Contractor and Purchaser and is part of the Master Services Agreement between Contractor and Purchaser (the "Agreement"). Capitalized terms used herein but not defined have the definitions ascribed in the Agreement.

### **1. Service Description.**

#### **Maintenance Program**

The services offered hereunder (the "Services") are standard preventative maintenance services for designated Vehicles using the manufacturer's recommended schedule.

Contractor will provide Purchaser with access to Contractor's network of national account vendors, dealers and independent repair facilities (the "Contractor Maintenance Network") and Drivers may use Instruments issued by Contractor to purchase goods and services for the repair and maintenance of Vehicles within the Contractor Maintenance Network.

Contractor will provide Purchaser with access to a network of towing and repair facilities available to provide roadside services 24 hours per day, 365 days per year and a toll-free number for Contractor's towing dispatch services. Contractor will also refer Purchasers to select vehicle rental providers if required.

Contractor will provide purchase order control for all proposed maintenance and repair transactions that exceed the amounts stated on the Services Rate Schedule (the "Specified Limit") and will provide Purchaser the ability to electronically approve maintenance and repair transactions. If maintenance and repair transactions exceed the Specified Limit Contractor will: (i) verify the need for maintenance work or repairs proposed by the repair facility, (ii) validate and negotiate pricing where appropriate and (iii) instruct the repair facility on the course of action. Contractor will review maintenance and repair invoices for proper authorization, subject to its standard operating procedures and systems capabilities to accommodate transactions that exceed the Specified Limit due to incidental charges. Contractor will also review repairs for standard warranty coverage and, when applicable, "post warranty" goodwill adjustment from Vehicle manufacturers.

#### **Managed Rental Services**

Contractor or the vehicle rental provider will coordinate and monitor Purchaser's vehicle rentals, follow up with repair shops to track repair estimated time of completion and extend vehicle rentals as needed. Contractor will also track the timely return of such rental vehicles.

#### **Downtime Tracking**

Contractor will track certain vehicle repairs through to reported completion and provide notifications to Purchaser as applicable to minimize Vehicle downtime. Such tracking will commence upon the vendor's obtaining approval to begin repairs and will end upon completion of the repair.

#### **Purchaser Managed Maintenance Program**

Contractor will provide Purchaser with access to Contractor's network of national account vendors, dealers and independent repair facilities (the "Contractor Maintenance Network") so that Drivers can use Instruments to purchase tires, maintenance and glass for, and to obtain rental cars in connection with, the repair and maintenance of Vehicles from the Contractor Maintenance Network. Repairs that exceed the amounts specified in the Services Rate Schedule (the "Specified Limit") require the repair facility/vendor to directly obtain approval from Purchaser, and Contractor does not validate or audit such approval. Contractor is not involved in the repair transaction, authorization, data capture, or auditing of invoices.

Contractor will provide Purchaser with access to a network of towing and repair facilities available to provide roadside services 24 hours per day, 365 days per year and a toll-free number for Contractor's towing dispatch services. Contractor will also refer Purchasers to select vehicle rental providers if required.

#### **Purchaser Repair Data Capture (Web Portal)**

Contractor will establish login credentials for the Web Portal for Purchaser's authorized users. Contractor will provide basic instructions and application procedures for use of the Web Portal and provide access to the Web Portal for Purchaser's authorized users to input Vehicle maintenance data. Contractor will create a Purchaser-specific data repository that stores Purchaser-inputted Vehicle maintenance data and, where applicable, integrates such data with maintenance and repair data that Contractor collects in connection with the other Services, if any, provided to Purchaser pursuant to this Addendum. Contractor will also provide Contractor's standard maintenance and repair reporting package through Contractor's online Purchaser portal, provide reporting to Purchaser via Contractor's web portal, Xcelerate® and provide technical assistance to Purchaser for use of the Web Portal.

#### **Purchaser Repair Data Capture (Data API)**

Contractor will make available to Purchaser a Data exchange to automatically transmit completed maintenance repair data through direct calls to an Application Program Interface ("API") using JavaScript Object Notation ("JSON") or Comma-Separated Values ("CSV") to send data. Contractor will provide status and error details available to Purchaser in API tool. Contractor will also provide its standard maintenance and repair reporting package through Contractor's online Purchaser portal and will provide reporting to Purchaser via Contractor's web portal, Xcelerate®.

#### **Maintenance Document Imaging**

Contractor will provide Purchaser the ability to email certain documentation specifically related to the Department of Transportation, and subject to certain requirements, Contractor will make available such documents to Purchaser via Contractor's web portal, Xcelerate®. Purchaser may email up to a maximum 15 documents per month to Contractor for imaging and additional documents may be subject to additional fees. Purchaser acknowledges and agrees that it has all necessary rights, consents and permissions to transfer such documents to Contractor and Purchaser warrants that receiving, storing and maintaining such documents by Contractor will not infringe upon privacy, property (including but not limited to copyright, patent and trade secret), or proprietary rights of any third parties. Such documents may be accessed and utilized by Contractor to provide the services specified in this Addendum or other agreements Purchaser has with Contractor and Contractor's affiliates. Purchaser will indemnify Contractor and hold Contractor harmless from any claims, liabilities, damages, and losses arising out of the use by Purchaser of such documents, or out of any allegation or claim that the documents provided by Purchaser, is untrue, incomplete, inaccurate, or violates the rights of any third party.

### **2. Purchaser Obligations.**

**2.1** Purchaser will designate Vehicles to receive the Services and provide all documents and information requested in connection with the Services.

**2.2** Purchaser will ensure its employees comply with all Contractor instructions.

**2.3** For rental vehicles (including trailers), Purchaser may either insure such vehicles or have the vehicle rental provider provide the required insurance. If Purchaser provides the insurance, the policy for such insurance must name the vehicle rental provider and its designee(s) as an additional insured and use of rental vehicles will be subject to the terms of the vehicle rental provider's rental agreements. Purchaser will bear all risk of late return, loss, theft, and damage to rental vehicles.



**2.4** If Purchaser subscribes to the Purchaser Repair Data Capture Services, Purchaser will notify Contractor immediately in writing if any authorized user of the Web Portal ceases to be employed by Purchaser or no longer requires access.

**3. Purchaser Acknowledgements.**

**3.1** Purchaser acknowledges that manufacturers do not recommend the use of non-standard tires or rims on Vehicles due to safety concerns and the potential impact on warranties and insurance. If Purchaser directs the substitution of non-standard tires or rims, Purchaser assumes the associated risks and acknowledges that Purchaser's obligation to defend and indemnify Contractor under the Agreement will apply in the event of any claim or loss related directly or indirectly to such substitution.

*Managed maintenance add.*

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