

## **MAINTENANCE AGREEMENT** **(FULL)**

This Maintenance Agreement (Full) (this “**Agreement**”) is made by and between Commercial Vehicle Leasing, L.L.C. d/b/a D&M Leasing Commercial (“**D&M**”) and \_\_\_\_\_ (“**Client**”), and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“**Effective Date**”).

### **RECITALS**

A. D&M provides certain fleet management services, including motor vehicle maintenance programs. Client desires to utilize the motor vehicle maintenance program described in this Agreement.

Now, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, D&M and Client enter into this Agreement to set forth the terms and conditions for the maintenance and repair of certain motor vehicles.

### **TERMS**

1. **Definitions.** The following terms shall have the definitions ascribed below for purposes of this Agreement:

- a. “**Agreement**” has the meaning set forth in the first paragraph of this Agreement.
- b. “**Authorized Vendor**” means a third party motor vehicle maintenance, service or repair facility, garage or shop that is approved by Service Provider.
- c. “**Client**” has the meaning set forth in the first paragraph of this Agreement.
- d. “**Covered Vehicle**” means an Eligible Vehicle that is enrolled in the Program.
- e. “**D&M**” has the meaning set forth in the first paragraph of this Agreement.
- f. “**Effective Date**” has the meaning set forth in the first paragraph of this Agreement.
- g. “**Eligible Vehicle**” means a new motor vehicle that Client leased from, by or through D&M and that has less than 100,000 miles on its odometer.
- h. “**Exclusions**” means those items of vehicle maintenance, service or repair that are not covered by the Program, including but not necessarily limited to those items described and/or outlined in Section 3 below.
- i. “**Exclusion Charges**” means charges incurred by Client for maintenance, services and/or repairs of and/or for Exclusions.
- j. “**Lease Agreement**” means a motor vehicle lease agreement, and any and all schedules, addenda, and/or amendments thereto, entered into by Client, as lessee, to lease one or more motor vehicles from a motor vehicle lessor.
- k. “**Maintenance Fees**” means the monthly fee charged per Covered Vehicle for enrollment in the Program to cover the maintenance, repair and/or service of a Covered Vehicle.
- l. “**Management Fee**” means the monthly fee charged by D&M, per Covered Vehicle, for its management and administrative services.
- m. “**Program**” means the motor vehicle maintenance management program described herein that is available only for Covered Vehicles up to and not to exceed 100,000 miles.
- n. “**Program Fees**” means any and all fees, costs and charges owed by Client to D&M under this Agreement, including but not limited to Maintenance Fees, Management Fees, Exclusion Charges, per Covered Vehicle, and any additional fees for ancillary or additional services added by Client.
- o. “**Service Provider**” means a third party who provides motor vehicle and/or fleet maintenance management services, including the maintaining of a network of Authorized Vendors.

- p. **“Term”** has the meaning set forth in Section 2 below.

2. **Term and Termination.** The term of this Agreement shall begin on the Effective Date and shall continue until terminated in accordance with this Agreement (**“Term”**).

- a. **Termination for Convenience:** Either party may terminate this Agreement upon providing sixty (60) days advance written notice to the other party. A termination pursuant to this Subsection shall become effective on the last day of the calendar month following the expiration of the 60-days’ notice.
- b. **Termination for Cause:** This Agreement may be terminated for cause immediately upon written notice to the other Party for the following: (i) any failure to timely pay any amounts due and owing under this Agreement, including but not limited to a breach or violation of Section 4; (ii) in the event the other Party engages in conduct or activities that can reasonably be considered materially or potentially damaging to the business, reputation or goodwill of the Party; (iii) in the event the other Party becomes insolvent, declares bankruptcy (whether voluntarily or involuntarily), makes an assignment for the benefit of or to the detriment of creditors, or otherwise seeks protection or relief from creditors. Either Party may terminate this Agreement for any other breach of this Agreement by providing thirty (30) calendar days written notice to the other Party describing the breach and the other Party fails to cure such breach within ten (10) calendar days of receipt of notice.
- c. **Termination concurrent with Lease Agreement termination:** Enrollment in the Program is only available for an Eligible Vehicle. Accordingly, when the corresponding Lease Agreement for a Covered Vehicle expires or terminates, then the Covered Vehicle’s eligibility for the Program shall cease, and this Agreement, with respect to such Covered Vehicle, shall terminate, subject to Section 2.d. below.
- d. **Termination Date:** Upon the occurrence of any grounds for termination set forth herein, D&M will take measures with Service Provider to unenroll a Covered Vehicle from the Program. The date that a Covered Vehicle is no longer enrolled in the Program with Service Provider shall be the termination date with respect to a Covered Vehicle. Client shall be responsible to D&M for any Program Fees incurred or charged prior to the date a Covered Vehicle is removed from the Program.
- e. **Effect of Termination:** The termination of this Agreement with respect to any or all Covered Vehicles or a Covered Vehicle’s enrollment or participation in the Program shall not affect any rights or obligations under this Agreement which shall have previously accrued, been incurred or shall arise prior to the termination date. Upon termination, Client shall owe and agrees to pay to D&M any and all Program Fees and other amounts accrued hereunder, along with interest, if any, and Client agrees to pay such amounts within thirty (30) days of the expiration or termination of this Agreement.

3. **Program.**

- a. **Applicability and Enrollment:** The Program is only available for Eligible Vehicles. Any motor vehicle or equipment that is not an Eligible Vehicle, including but not limited to a used motor vehicle, is not permitted to enroll in the Program. To enroll an Eligible Vehicle in the Program, Client shall provide D&M with any information required by D&M and/or Service Provider needed to enroll an Eligible Vehicle in the Program with Service Provider,

which may include but not be limited to completing an enrollment form(s). The parties may modify or amend the Covered Vehicles as necessary during the Term (as defined below) of this Agreement, including but not limited to enrolling additional Eligible Vehicles or removing Covered Vehicles from the Program.

- b. **Process:** During the Term, D&M will manage payments owed to Service Provider for costs and expenses incurred in connection with the maintenance or repair of a Covered Vehicle (and only for a Covered Vehicle), subject to any Exclusions set forth herein. Client agrees to maintain and have performed any service or maintenance work on Covered Vehicle in accordance with the Covered Vehicle's manufacturer's specifications and recommendations. Whenever it is necessary to have a Covered Vehicle serviced, Client agrees to have the necessary work performed by an Authorized Vendor of such Covered Vehicle or by a service facility acceptable to Service Provider. D&M shall not be obligated to pay for any costs or expenses for any service or repair work that was not authorized by Service Provider. D&M will not have any obligation or responsibility to pay for services or repairs in excess of the services recommended by the Covered Vehicle's manufacturer, unless otherwise agreed upon in writing by D&M. For the avoidance of doubt, Client will be solely responsible for any service or repair work performed on a Covered Vehicle that is not authorized by Service Provider. Additionally, Client will be solely responsible for any service or repair work performed on a Covered Vehicle that is not with an Authorized Vendor. Notwithstanding any other provision of this Agreement to the contrary, all service performed within one hundred twenty (120) calendar days prior to the expiration and termination of a Lease Agreement, if any, for the applicable Covered Vehicle must be authorized by and have the prior consent and approval of Service Provider and any service not so authorized will be the responsibility of and be paid for by Client.
- c. **Exclusions:** This Agreement DOES NOT COVER, and Client will remain responsible for and pay for, at all times, the following: (i) fuel; (ii) oil and other fluids between manufacturer-recommended changes; (iii) tire repair and replacement (unless otherwise agreed to by D&M and specifically stipulated on a signed, executed quote form or schedule attached to or part of a Lease Agreement for the Covered Vehicle); (iv) brake adjustment or replacement (unless otherwise agreed to by D&M and specifically stipulated on a signed, executed quote form or schedule attached to or part of a Lease Agreement for the Covered Vehicle); (v) washing, cleaning and/or detailing; (vi) repair of damage due to and/or arising from the lack of maintenance by Client between scheduled services (including, without limitation, failure to maintain fluid levels); (vii) maintenance or repair of any alterations to a Covered Vehicle or of any after-market components (this Agreement covers maintenance and repair only of the Covered Vehicles themselves and any factory-installed components and does not cover maintenance or repair of chassis alterations, add-on bodies (including, without limitation, step vans) or other equipment (including, without limitation, lift gates and PTO controls) which are installed or modified by a dealer, body shop, upfitter or anyone else other than the manufacturer of the Covered Vehicle); (ix) any service and/or damage resulting from, related to or arising out of an accident, a collision, theft, fire, freezing, vandalism, riot, explosion, other Acts of God, an object striking the Covered Vehicle, improper use of the Covered Vehicle (including, without limitation, driving over curbs, overloading, off-roading, racing or other competition); (x) Client's failure to maintain the Covered Vehicle as required by the Lease Agreement; (xi) roadside assistance or towing for vehicle maintenance purposes; (xii) mobile services; (xiii) the cost of loaner or rental vehicles; (xiv) vehicle inspections (including emissions); (xv) registrations and

registration renewals; (xvi) glass (windshield, windows, etc.) and/or (xvii) if the Covered Vehicle is a truck: (a) manual transmission clutch adjustment or replacement; or (b) front axle alignment. Certain Exclusions listed herein may be available for coverage under the Program for an additional fee or charge.

- d. **Exclusion - Mileage Limitation:** D&M is not required to provide or pay for any service to any Covered Vehicle after a Covered Vehicle's odometer registers 100,000 miles. Any services obtained through the Program after a Covered Vehicle registers 100,000 or more miles on the odometer shall be the sole responsibility of Client, and D&M shall not have or owe any obligations to Client, unless otherwise explicitly agreed upon in writing signed by Client.

4. **Fees & Payment.** In exchange for the services provided herein, Client agrees to pay the following amounts to D&M:

- a. **Program Fees:** Client agrees to pay Program Fees for each Covered Vehicle enrolled in the Program. D&M may from time to time publish a Maintenance Program Price Sheet that details or lists the Maintenance Fees. Program Fees cover costs and expenses for the maintenance, service or repair of a Covered Vehicle. If Client has entered into a Lease Agreement for a Covered Vehicle directly with D&M, then the Maintenance Fee and/or Management Fee may be included in the monthly payment for such Covered Vehicle. Exclusion Charges are not covered by any Maintenance or Management Fees, and Client shall pay D&M for any and all Exclusion Charges incurred. Client understands, acknowledges and agrees that Program Fees are subject to change, with or without notice, and D&M reserves the right to adjust or modify Program Fees, Maintenance Fees and/or the Maintenance Program Price Sheet in its discretion. Any change in Program Fees will be reflected on the monthly invoice.
- b. **Payment:** Program Fees are due and payable by Client to D&M in advance of the first (1<sup>st</sup>) day of each month during the Term. If the first day of the Term is any day other than the first day of a calendar month, Client will pay D&M a prorated Program Fees for the first month for the number of days remaining in the first calendar month of the Term.
- c. **Interest on Unpaid Amounts:** In the event that Client fails to pay Program Fees or any other amounts owed under this Agreement on or before the due date, and such amount is not paid within fifteen (15) days of such due date, then Client shall pay interest on all past due amounts, from the date the payment was due, at a rate, per annum, equal to the lesser of: (i) eighteen percent (18%); or (ii) the highest rate allowed by applicable law. If Client is a governmental entity, then Client shall pay interest at the rate and in accordance with applicable law, including the Texas Government Code chapter 2251.

5. **Suspension of Performance.** In addition to any and all rights and remedies available at law or equity and/or as provided in this Agreement, D&M may suspend performance required under this Agreement if Client fails to pay any amounts owed to D&M under this Agreement on or before the due date and D&M provides Client with written notice informing Client that: (i) payment of amounts due and owing have not been received; and (ii) D&M intends to suspend performance for nonpayment. Such suspension of performance shall take effect on the tenth (10<sup>th</sup>) day after the date that D&M gives its written notice to Client, and shall continue in effect until Client cures its nonpayment and/or this Agreement is terminated.

6. **Disclaimer of Reliance and Warranties.** Client acknowledges that D&M does not perform maintenance or repair services on the Covered Vehicles but rather Client is responsible for arranging for maintenance and/or repair services, including all manufacturer-recommended service, through and with an Authorized Vendor. **D&M MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCTS, REPAIRS OR SERVICES PROVIDED FOR UNDER THIS AGREEMENT BY THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMPLIANCE WITH SPECIFICATIONS, OPERATION, CONDITION, SUITABILITY, PERFORMANCE OR QUALITY. ANY DEFECT IN THE PERFORMANCE OF ANY PRODUCT, REPAIR OR SERVICE WILL NOT RELIEVE CLIENT OF ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING THE PAYMENT TO D&M OF THE MONTHLY MAINTENANCE FEES AND OTHER CHARGES DUE UNDER THIS AGREEMENT. ADDITIONALLY, CLIENT ACKNOWLEDGES THAT: (i) D&M IS NOT THE MANUFACTURER OF ANY VEHICLE; (ii) D&M IS NOT AN AGENT FOR THE MANUFACTURER OF ANY COVERED VEHICLE OR VEHICLE LEASED TO CLIENT; (iii) D&M HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY EXPRESS AGREEMENT, REPRESENTATION OR WARRANTY WITH RESPECT TO THE VEHICLES, INCLUDING COVERED VEHICLES, AND FURTHER SPECIFICALLY DISCLAIMS ANY AGREEMENT, REPRESENTATION OR WARRANTY IMPLIED BY LAW, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, WITH RESPECT THERETO, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY CLIENT**

7. **Assignment of Lease Agreement.** If D&M and Client are parties to a Lease Agreement, any obligations, rights and/or duties created under this Agreement are not affected by nor subject to any assignment of the Lease Agreement by D&M.

8. **Notices.** All notices and other communications pursuant to this Agreement must be in writing and will be deemed to have been duly delivered and received: (i) one (1) business day after being sent for next business day delivery, fees prepaid, via a reputable nationwide overnight courier service; (ii) three (3) days after being sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the Party at its respective address set forth below; (iii) immediately upon delivery by hand or by fax (with a written or electronic confirmation of delivery); and/or (iv) if sent by e-mail, by 5:00p.m. in the time zone of the Party receiving such notice on a business day when transmitted or earlier if the sender has received confirmation of receipt by the recipient. With respect to e-mail delivery, delivery may also be verified by other written documentation such as a delivery receipt, a read receipt or other acknowledgment or confirmation of delivery. Any Party may provide notice to the other Party of a change in its address or contact information by providing notice pursuant to this Section. The inability to deliver because of a changed address of which no notice is given will be deemed to be receipt of the notice as of the date of such inability to deliver.

9. **Entire Agreement.** This Agreement, together with any addenda, schedules, and exhibits attached hereto or referenced herein, contains the entire agreement between the parties regarding the matters set forth herein, and the parties understand, represent, warrant and agree that no promise, representation or agreement which is not herein expressed has been made, except those expressly provided herein. This Agreement supersedes any and all prior agreements and understandings of the parties, whether written or oral, that relate to the subject matter thereof.

10. **Amendments; Severability.** This Agreement may be amended only by an agreement in writing signed by D&M and Client. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall remain in full force and effect, as if this Agreement had been executed without any such invalid provision having been included.

11. **Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that Client may not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of D&M. Nothing herein prevents D&M from assigning all or part of this Agreement to an affiliate or subsidiary of D&M.

12. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. This Agreement is performable in whole or in part in Tarrant County, Texas, and the parties agree that venue is proper in Tarrant County, Texas.

13. **Electronic Signatures.** The parties hereto agree that this Agreement (and any attachments, exhibits or any other related or ancillary documents) may be signed by electronic means. Any electronic signature and any contract formation or record-keeping through electronic means shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by applicable law including the Electronic Signatures in Global and National Commerce Act and/or any State law based on the Uniform Electronic Transactions Act. Each party agrees that any electronic signatures may used by the parties in lieu of an original, manual signature page(s) for any and all purposes, and each party agrees that they shall be entitled to rely on any such electronic signature purportedly given by or on behalf of the executing party without further verification. Notwithstanding anything contained herein to the contrary, D&M is under no obligation to accept an electronic signature in any form or in any format unless expressly agreed to by D&M pursuant to procedures approved by it. Client agrees that, if requested by D&M, Lessee will provide an original manually executed counterpart.

**Signature Page Follows**

**IN WITNESS WHEREOF**, D&M and Client have executed this Maintenance Agreement to be effective as of the Effective Date written above.

**Client:**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

Notice Contact (if different from signatory):

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

Email: \_\_\_\_\_

**D&M:**

Commercial Vehicle Leasing, L.L.C. d/b/a  
D&M Leasing Commercial

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

1400 W. 7<sup>th</sup> Street, Suite 450  
Fort Worth, Texas 76102  
Email: \_\_\_\_\_

Notice Contact (if different from signatory):

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

Email: \_\_\_\_\_