IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION

GALE CARTER, *et al.* Plaintiffs, v. PASCHALL TRUCK LINES, INC., *et al.* Defendants.	PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS No. 18-0041

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Named Plaintiffs Gale Carter and Forbes Hayes (hereinafter collectively "Plaintiffs") submit this Memorandum of Law in opposition to Defendants' Motion for Summary judgment.

I. INTRODUCTION

Defendants Element Financial, LLC (hereinafter "Defendant Element Financial") and Element Transportation, LLC (hereinafter "Defendant Element Transportation") (hereinafter Defendant Element Financial and Defendant Element Transportation are collectively referred to as "Defendant Element") ask that this Court dismiss Plaintiffs' claims – not because the allegations in the Amended Complaint are insufficient to plausibly state a claim – but because the allegations, so Defendant Element asserts, are insufficient to *prove* Defendant Element's liability. But this is not the standard on a 12(b)(6) Motion to Dismiss, and accordingly, this Court should deny Defendants' motion as premature given that discovery has yet to even commence.

Plaintiffs filed this matter with the District Court for the Eastern District of Pennsylvania on October 11, 2017, alleging violations of the Fair Labor Standards Act ("FLSA"), the Truth in

Leasing Act ("TILA"), and the Federal Forced Labor Statute ("FFLS"), and under the common law for Unjust Enrichment. ECF Doc No. 1. The operative complaint in this matter, the First Amended Complaint, was filed on December 19, 2017, once again alleging violations of the FLSA, TILA, the FFLS, and the common law for unjust enrichment. ECF Doc. No. 19. This matter was transferred to this Court on February 15, 2018. ECF Doc. No. 33.

Defendant Paschall Truck Lines, Inc. ("PTL") is a truckload carrier that provides transportation of cargo for hire. ECF Doc No. 19, at ¶ 13. Defendant Element is a financial services company that provides vehicle fleeting leasing services to Defendant PTL whereby it leases vehicles to commercial truck drivers hired by Defendant PTL. *Id.* at ¶ 15-17. Named Plaintiff Gale Carter worked as a commercial truck driver for Defendants from approximately October of 2015 to December of 2015. *Id.* at ¶ 50. Named Plaintiff Forbes Hayes worked for Defendants from approximately March of 2016 to June of 2016. *Id.* at ¶ 51.

Upon their hiring, Defendants required Plaintiffs to attend an orientation which lasted several days. *Id.* at ¶ 69. During the orientation, Plaintiffs were required to learn the policies, practices, and procedures of Defendants by watching numerous training videos, take a drug test, undergo a medical physical, and take a road test. *Id.* at ¶ 70. After the orientation, Defendants required Plaintiffs to sign "Lease Agreements" as a condition of their employment for Defendants. *Id*, at ¶ 18. Under the Lease Agreements, Plaintiffs agreed to lease tractor trailers from Defendant Element for their work for Defendant PTL. *Id.* at ¶ 71. As a condition of entering into the Lease Agreements, Defendants further required Plaintiffs to sign Independent Contractor Service Agreements ("ICS Agreements"), which purported to classify them as "independent contractors" while they worked for Defendants. *Id.* at ¶ 20, 71. Under the ICS Agreements, Plaintiffs subleased the tractors and their driving services to Defendant PTL. *Id.* at ¶ 20.

Pursuant to the Lease Agreements, Plaintiffs Carter and Hayes were required to pay approximately $650 and $500 respectively per week for the use of a commercial vehicle that would remain the property of Defendants during the leasing period. *Id.* at ¶ 21; *see also* ECF Doc No. 32-2 at 5, 8, 13, 25. As a condition of entering into the Lease Agreements with Defendant Element, Defendant Element required Plaintiffs to allow Defendant PTL to deduct from Plaintiffs' compensation every week to pay Plaintiffs' lease payments, or any other costs accrued by Plaintiffs, including costs associated with Defendants PTL's "Lease-Purchase" program. *Id.* at ¶ 21; *see also* ECF Doc No. 32-2 at pp. 5-6, 17-8.

If Plaintiffs stopped working for Defendant PTL, they would default on their Lease Agreements with Defendant Element, subjecting Plaintiffs to an acceleration clause therein whereby Plaintiffs would purportedly be subjected to more than $100,000 in liability. ECF Doc No. 19 at ¶ 62-3; *see also* ECF Doc No. 32-2 at 6, 18. Other events causing default on the Lease Agreements and triggering the acceleration clause included: failure to pay any lease payments or any other payments due Defendants. *Id.* Additionally, under the ICS Agreements, if Plaintiffs did not "provide[] services when required by PTL on a continuing basis," for at least 9 months, Plaintiffs would default on both agreements and would be obligated to pay an "early termination fee" of $5,000. *Id.*; *see also* ECF Doc No. 19 at ¶ 64.

The Lease Agreements, which also designate Named Plaintiffs as "independent contractors," required Plaintiffs to "use the Vehicle(s) only for providing transportation services for [Defendant PTL]." ECF Doc No. 19 at ¶ 73; ECF Doc No. 32-2 at pp. 3, 15. Plaintiffs were not permitted to accept jobs that were assigned to them by anyone other than Defendants, and were informed at orientation that their employment and lease agreements would be terminated if they accepted work from any carrier other than Defendant PTL. ECF Doc. No. 19 at ¶¶ 74-5.

Throughout their employment with Defendants, Plaintiffs were not permitted to choose which loads were assigned to them by Defendants. *Id.* at ¶ 76. As a consequence of being permitted to accept only loads assigned to them by Defendants, Plaintiffs had no meaningful opportunity to increase their revenue by recruiting new customers. *Id.* at ¶ 78.

With regard to compensation, the ICS Agreements provided that Plaintiffs would be paid a percentage of received line haul revenue and fuel surcharge revenue on the individual loads that were assigned to them. *Id.* at ¶ 79. Plaintiffs were not permitted to negotiate the rates that were paid to them on loads that were assigned to them by Defendants. *Id.* at ¶ 80. Therefore, Plaintiffs could do little to increase their profitability other than attempt to improve their fuel efficiency. *Id.* at ¶ 83. Defendants controlled and directed Plaintiffs in the performance of their work, assigning them "driver leader[s]/manager[s]" who acted as Plaintiffs' supervisors throughout their employment. *Id.* at ¶ 72, 85.

Throughout their employment with Defendants, Plaintiffs were required to pay for all expenses incurred while over-the-road, including but not limited to insurance, fuel, and maintenance costs (in addition to the cost of the lease). Plaintiffs' ICS Agreements, *attached to Martindale Cert.* as Ex. A. Plaintiffs were required to pay for various fixed charges on a weekly basis, including a Global Positioning Satellite System, and were forced to purchase equipment, legal services, and maintenance services from Defendants. ECF Doc. No. 19 at ¶ 108. The ICS Agreements that Plaintiffs signed did not clearly specify all the items that Defendants deducted from their compensation. *Id.* at ¶ 106(d). Rather, the ICS Agreements authorized Defendants to deduct "any other amount due" to Defendants. *Id.* at ¶ 106(d).

As a result of the restrictive and one-sided nature of the agreements between Plaintiffs and Defendants, and Defendants various violations of law arising out of the employment relationship

that existed between Defendants and Plaintiffs, Plaintiffs suffered substantial harm. For example, after Defendants deducted various expenses from Named Plaintiff Hayes' compensation for the week of April 20, 2016, Named Plaintiff Hayes *owed* Defendants money and, therefore, did not receive any compensation for that pay period despite completing 3 trips for Defendants. *Id.* at ¶ 94. Similar events happened the following workweek, and despite performing significant work for Defendants during that workweek, Named Plaintiff Hayes was again informed that he owed Defendants money and was again paid nothing for his work. *Id.* at ¶ 95.

Contrary to Defendants' assertions, Plaintiffs *have* sufficiently stated each of their claims; moreover, and ironic as it may be, Defendant Element, through its own public filings, proves several of Plaintiffs' claims.

Defendant Element's claim that Defendant Element Financial, LLC is not a successor in interest to Element Financial Corp. is completely contradicted by Defendant's corporate and court filings. Defendant Element Financial LLC – for all intents and purposes – *is* Element Financial Corp., as Defendant Element made clear in its filings with the State of Delaware. Since changing its name, Defendant Element Financial, LLC has brought multiple lawsuits under the very contracts Plaintiffs allege are illegal, explicitly claiming that Defendant Element Financial, LLC *is* a successor in interest to Element Financial Corp., while alleging tens or hundreds of thousands of dollars in damages against the very individuals that Plaintiffs allege were victims of Defendants' illegal forced employment scheme. This Court may consider such admissions and filings as part of Plaintiffs' Opposition to Defendants' Motion to Dismiss. *Orkies v. Midland Funding, LLC, et al.*, 2015 WL 796360, at *1 (W.D. Ky. Feb. 25, 2015) (citing 5B Charles Alan Wright & Aurthur R. Miller, *Federal Practice and Procedure* § 1357 (3d. ed. 2004 & Supp.2014).

Second, Defendants' claim that they are entitled to judgment as a matter of law because (so Defendants' claim) they did not misclassify Plaintiffs as independent contractors and accordingly could not have violated the Fair Labor Standards Act ("FLSA"), is substantively wrong. Defendants fail to apply binding Sixth Circuit case law which, in a similar case, denied summary judgment to an employer on a claim of misclassification under the FLSA. There, the inquiry was deemed premature because misclassification claims under FLSA require the court to weigh a full evidentiary record and determine – or send to a fact-finder – multiple factual issues in order to determine the "economic reality" and "economic dependence" of the work Plaintiffs and those similarly situated did for Defendants.

Third, Defendants' argument that Plaintiffs' Truth-In-Leasing Act ("TILA") claims should be dismissed should also be denied, because TILA applies not only to motor carriers, but to their affiliates. There can be no dispute that Defendant Element was an affiliate of Defendant PTL, given the direct relationship between those parties as evidenced by the direct references in the Lease Agreements to the Independent Contractor Operating Agreements, and vice versa.

Finally, the Court should reject Defendants' request to dismiss Plaintiffs' claim under the Federal Forced Labor Statute ("FFLS") because Defendant Element's own publicly available court filings clearly show that Defendant Element not only threatened, but made vigorous attempts to financially ruin, individuals who did not work exclusively for Defendant Element. Defendant Element routinely files lawsuits against individuals who sign lease agreements, attempting to seek over $90,000 in damages and attorneys' fees and costs under an acceleration clause that is common to the Lease Agreements signed by Plaintiffs, putative Plaintiffs, and a number of other individuals who contracted to lease vehicles from Defendant Element while driving for carriers other than

Defendant PTL. And again, this Court may consider such admissions and filings as part of Plaintiffs' Opposition to Defendants' Motion to Dismiss. *Id.*

Accordingly, the Court should deny in its entirety Defendants' motion for judgment on the pleadings, as all of Defendants' arguments involve issues of fact which require discovery and a full evidentiary record to resolve, because Defendants' arguments are disproven (and Plaintiff's claims are proven) by Defendants' own court filings in other cases, and because Defendants have failed to show that any of Plaintiffs' legal theories or the allegations those theories are based upon are deficient as a matter of law.

II. STANDARD OF REVIEW

Per Rule 8 of the Federal Rules of Civil Procedure, a plaintiff's complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Though the statement need not contain detailed factual allegations, it must contain "factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

A Defendant who moves for dismissal for failure to state a claim under Rule 12(b)(6) bears the burden of proving that the plaintiff's claim fails as a matter of law. *Bennett v. MIS Corp.*, 607 F.3d 1076, 1091 (6th Cir. 2010). Under Rule 12(b)(6) the Court considers not whether Plaintiffs will ultimately prevail, but whether the facts permit the court to infer "more than the mere possibility of misconduct." Fed. R. Civ. P. 12(b)(6). "For purposes of a motion for judgment on the pleadings, all well-pleaded material allegations of the pleadings of the opposing party must be taken as true, and the motion may be granted only if the moving praty is nevertheless clearly entitled to judgment." *JPMorgan Chase Bank, N.A. v. Winget*, 510 F.3d 577, 581 (6th Cir. 2007) (internal citations and quotations omitted).

A motion to dismiss for failure to state a claim is disfavored. *Nuchols v. Berrong*, 141 F. App'x 451, 453 (6th Cir. 2004) (unpublished); *see Westlake v. Lucas*, 537 F.2d 857, 858 (6th Cir. 1976). When reviewing a motion to dismiss for failure to state a claim, the court must accept all well-pleaded factual allegations as true and construe the complaint in the light most favorable to the plaintiffs. *Saumer v. Cliffs Natural Res., Inc.*, 853 F.3d 855, 858 (6th Cir. 2017).

III. ARGUMENT

For the reasons set forth below, the Court should deny Defendants' Motion to Dismiss in its entirety.

A. Plaintiffs have Stated a Claim that Defendants Element Transportation and Element Financial are Successors in Interest

Defendant Element admits in the declaration of Defense Counsel Richard L. Etter that, in September of 2016, Defendant Element Transportation purchased leasehold assets that included the vehicles that were previously leased to Named Plaintiffs. Declaration of Richard L. Etter, ECF Doc. No. 32-2 at 1. As outlined in detail below, Defendants Element Transportation and Element Financial, LLC have, on many occasions, claimed to be successors in interest to Element Financial Corp. These admissions not only support, but conclusively prove the allegations in Plaintiffs' Complaint that Defendant Element Transportation and Element Financial are liable as successors in interest.

Nonetheless, Defendant Element asks that this Court dismiss Plaintiffs' claims against Defendants Element Transportation and Element Financial, LLC because, so Defendants assert, Defendant Element Transportation is not a successor in interest to Defendant Element Financial, LLC, which is in turn not a successor in interest to Element Financial, Corp. Defendants' Memorandum of Law In Support of Their Motion to Dismiss, ECF Doc. No. 32-1.

This argument is, at this point in the litigation, procedurally improper, as the successor liability analysis requires the Court to review in depth the *facts* of the matter, facts that have not been borne out due to the early stage of the litigation, given that discovery has not yet begun. The caselaw concerning successorship liability and the factors considered by courts in determining successorship liability make clear that a proper analysis cannot be conducted until Plaintiffs have been given the opportunity to request from Defendants the documents and information that will allow the Court to properly analyze this issue.

Further, it is apparent upon even the most cursory review of Defendants' public filings – including several made in this court – that Defendant Element Transportation *is* a successor in interest to Defendant Element Financial, LLC, and that Defendant Element Financial, LLC *is* a successor in interest to Element Financial, Corp. Yet despite Defendants' public affirmations that they are successors in interest – some, ironically, made in response to motions to dismiss that claimed they were not – Defendants seek to deceive the Court and escape liability for their actions by asserting in this Court that they are not successors in interest.

Plaintiffs request that Defendant Elements' Motion to Dismiss be denied as to this successor issue, or, in the alternative, that Plaintiffs be permitted leave to file a Second Amended Complaint to more completely lay out the basis for Plaintiffs' allegation that Defendant Element Transportation is a successor to Defendant Element Financial, LLC, and that Defendant Element Financial, LLC is a successor to Element Financial Corp.

i. A Successorship Liability Analysis is Procedurally Improper at this Point in the Litigation as Discovery Has Yet to Commence

Defendant Element claims that "This Court should dismiss all of Plaintiffs' claims against Element Transportation because Plaintiffs do not – **and, more importantly, cannot** – **allege facts**

that could plausibly establish that Element Transportation is liable as a successor to [Element Financial, LLC], or that [Element Financial, LLC] is liable as a successor to [Element Financial Corp.].” Defendants’ Brief in Support of Motion to Dismiss, Doc No. 32-1 at 4 (emphasis added). Defendants’ argument is essentially that Plaintiff cannot survive a motion to dismiss because Plaintiff cannot at this point prove every element of successorship liability. This improper application of the Rule 12(b)(6) standard is unsurprising upon review of the cases concerning successorship liability, including those cited by Defendant Element, none of which reached the successorship liability issue at the motion to dismiss stage. Defendant Element’s Motion to Dismiss should be denied as to this part, and Plaintiffs should be permitted to conduct discovery.

In arguing that Plaintiffs’ claims should be dismissed, Defendants cite to nine factors that have been utilized in the Sixth Circuit for determining successorship interest in Family and Medical Leave Act, National Labor Relations Act, and Title VII cases:

> “(1) whether the successor company has notice of the charge; (2) the ability of the predecessor to provide relief; (3) whether the new employer uses the same plant; (4) whether there has been substantial continuity of business operations; (5) whether the new employer uses the same or substantially same workforce; (6) whether the new employer uses the same or substantially same supervisory personnel; (7) whether the same jobs exist under substantially the same working conditions; (8) whether [the defendant] produces the same product.”

Cobb v. Contract Transp. Inc., 452 F.3d 543, 554 (6th Cir. 2006) (citing *E.E.O.C. v. MacMillian Bloedel Containers, Inc.*, 503 F.2d 1086, 1094 (6th Cir. 1974)). The factors listed in *MacMillian* were not meant to be a *test* for successor liability, rather, they are merely factors courts use when considering successorship liability under a three-pronged, balancing approach, requiring courts to balance:

> "1) the interests of the defendant-employer, 2) the interests of the plaintiff-employee, and 3) the goals of federal policy, in light of the particular facts of a case and the particular legal obligation at issue."

Cobb v. Contract Transp., Inc., 452 F.3d at 554 (citing *E.E.O.C. v MacMillian Bloedel Containers, Inc.*, 503 F.2d at 1091).

The Sixth Circuit emphasized in *MacMillian* that "*there is, and can be, no single definition of 'successor' which is applicable in every legal context*." *MacMillian*, 452 F.2d at 1091 (emphasis added). Rather, "[s]uccessor liability questions must be answered on a case by case basis." *Cobb*, 452 F.3d at 554 (emphasis added).

Where the potential liability of a successor is based on violation of a federal statute relating to labor relations or employment, "a federal common law standard of successor liability is applied that is more favorable to plaintiffs than most state-law standards to which the court might otherwise look." *Teed et al. v. Thomas & Betts Power Solutions, LLC*, 711 F.3d 763, 767-8 (7th Cir. 2014) (Posner J.) (applying the *MacMillian* factors to a successorship liability standard under the FLSA) (citing *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 548-49 (1964) (Labor Management Relations Act); *Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 184-85 (1973) (National Labor Relations Act); *Wheeler v. Snyder Buick, Inc.*, 794 F.2d 1228, 1236 (7th Cir. 1986) (Title VII); *Upholsterer's Int'l Union Pension Fund v. Artistic Furniture,* 920 F.2d 1323, 1327 (7th Cir. 1990) (ERISA); *EEOC v. G-K-G, Inc.*, 39 F.3d 740, 747-48 (7th Cir. 1994) (Age Discrimination in Employment Act); *Sullivan v. Dollar Tree Stores, Inc.*, 623 F.3d 770, 781 (9th Cir. 2010) (Family and Medical Leave Act); *Musikiwamba v. ESSI, Inc.*, 760 F.2d 740, 746 (7th Cir. 1985) (42 U.S.C. § 1981).

This departure from a strict corporate law definition of a successor in interest is due to "the fact that, so long as there is a continuity in the employing industry, the public policies underlying

the doctrine will be served by its broad application." *Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 182 (1973). As of yet, no court has applied the *MacMillian* factors or *MacMillian* balancing test to cases under the FFLS or TILA, though the strong remedial nature of both laws suggest that the successorship liability analysis under each warrants similar treatment that the analysis receives under other labor laws. *See id.*

Thus, though the *MacMillian* factors may be helpful in determining successor liability under the FLSA, TILA Regulations, and FFLS, they do not serve as a true test of whether Defendants Element Transportation and Element Financial are successors in interest. This is especially so at the motion to dismiss stage, where it is clear upon review of the relevant caselaw that discovery is required to complete a proper analysis. *See Cobb v. Contract Transp. Inc.*, 452 F.3d 543 (applying the *MacMillian* factors in reversing a motion for summary judgment); *E.E.O.C. v. MacMillian Bloedel Containers, Inc.*, 503 F.2d 1086, 1094 (6th Cir. 1974) (reversing a motion for summary judgment); *Teed et al. v. Thomas & Betts Power Solutions, LLC*, 711 F.3d 763 (applying the federal common law standard of successor liability on appeal from a judgment pursuant to a settlement agreement); *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543 (on appeal from a motion to compel arbitration); *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (on appeal from an order of the National Labor Relations Board after an investigation was completed by same); *Wheeler v. Snyder Buick, Inc.*, 794 F.2d 1228 (on appeal from a bench trial); *Upholsterer's Int'l Union Pension Fund v. Artistic Furniture,* 920 F.2d 1323 (on appeal of a summary judgment ruling); *EEOC v. G-K-G, Inc.*, 39 F.3d 740 (on appeal of a jury trial); *Sullivan v. Dollar Tree Stores, Inc.*, 623 F.3d 770 (on appeal of a summary judgment ruling); *Musikiwamba v. ESSI, Inc.*, 760 F.2d 740, 743 (on appeal following "substantial discovery").

As Plaintiffs need not *prove* successorship liability at this pre-discovery stage, it is clear from the allegations in the Amended Complaint that Plaintiffs have sufficiently stated a claim against Defendant Element.

Accordingly, Plaintiffs request that Defendants' Motion to Dismiss be denied in its entirety, or, in the alternative, that Plaintiffs be permitted leave to amend their complaint.

ii. *A Brief Review of Defendant Element's Public Filings Supports Plaintiffs' Claim that Defendant Element Transportation is a Successor in Interest to Defendant Element Financial, LLC, Which is a Successor In Interest to Element Financial Corp.*

Defendant Element's claim that Defendants Element Financial, LLC and Element Transportation are not successors in interest is in direct contradiction to Defendant Element's public filings, including some in this very Court.

On January 26, 2018, Defense Counsel filed an entry of appearance on behalf of Defendants Element Financial and Element Transportation:

> "Kindly enter the appearance of Richard L. Etter, of Frost Brown Todd LLC, as counsel for **Defendant ECN Financial, LLC, successor to Element Financial Corp., and Defendant Element Transportation, LLC, successor to ECN Financial, LLC**, in the above-captioned case.

Etter Entry of Appearance, Doc No. 25. Three days later Defense Counsel, seemingly unsure of which entity to represent, withdrew his appearance on behalf of Defendant Element Financial:

> "AND NOW, comes Richard L. Etter, Esquire, of Frost Brown Todd LLC, and hereby moves this Honorable Court **for withdrawal of his appearance of Defendant ECN Financial, LLC, successor to Element Financial Corp**., averring as follows:
>
> Richard L. Etter … **erroneously filed an Entry of Appearance and Jury Demand on behalf of Defendant ECN Financial, LLC, successor to Element Financial Corp.** …
>
> WHEREFOR, Richard L. Etter, Esquire … respectfully **requests that the Court withdraw his appearance as counsel for Defendant ECN Financial, LLC, successor to Element Financial Corp.** in this action."

Etter Withdrawal of Appearance, Doc No. 26.

Despite Defense Counsel's apparent confusion at the interrelationship of his clients, and the explicit withdrawal of his appearance as a representative for Defendant Element Financial, Defendant Element Transportation – ostensibly out of pure benevolence – now files a Motion to Dismiss, petitioning this Court to dismiss itself as well as Defendant Element Financial, which it claims to be an unrelated entity.

Defendant Element Financial LLC, which is still an unrepresented party, is in every respect a successor in interest to Element Financial Corp., because Defendant Element Financial, LLC *is* Element Financial Corp.:

> "*I, **JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY** THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF A DELAWARE CORPORATION UNDER THE NAME OF "ELEMENT FINANCIAL CORP." TO A DELAWARE LIMITED LIABILITY COMPANY, **CHANGING ITS NAME FROM "ELEMENT FINANCIAL CORP." TO "ELEMENT FINANCIAL LLC"**, FILED IN THIS OFFICE IN THE THIRTIETH DAY OF JUNE, A.D. 2016, AT 1:47 O' CLOCK P.M."*

Certification of Jeffrey W. Bullock, Secretary of State of The State of Delaware, *attached to Martindale Cert. as* Ex. B; *see also* Certificate of Conversion to Limited Liability Company, *attached to Martindale Cert.* as Ex. C (converting Element Financial Corp. to Element Financial LLC on June 30, 2016).

Moreover, since changing its name from Element Financial Corp. to Element Financial, LLC, Defendant Element Financial has had no qualms bringing claims as a successor in interest to Element Financial, Corp. against the very drivers that have been subjected to the very scheme being challenged by Plaintiffs in this litigation:

> "This is a breach of contract case. On November 30, 2015 the Defendant entered into a Loan and Security Agreement with Element Financial Corp. to finance the purchase of a 2012 Peterbilt truck, but defaulted less than a year later by failing to make the required payments. Thereafter, **ECN Financial, LLC, the successor-in-interest to ECN Financial, LLC, filed a Complaint in the Court of Common Pleas of Montgomery County, Pennsylvania**. The Complaint **seeks Judgment in the amount of the accelerated net balance - *$94,730.29* – plus costs, interest, and attorneys' fees as provided by the Agreement**."

ECN Financial LLC, successor to ECN Financial Corp. v. Eric Chapman, Plaintiff ECN Financial LLC's Brief in Response to Defendant's Motion to Dismiss Complaint, *attached to Martindale Cert.* as Ex. D, at 2.

Unsurprisingly, Defendant Element Financial has a very different take on its role as a successor, as well as the standard for properly alleging successorship, when bringing claims requesting over $94,000 in damages against the drivers it has defrauded:

> "The Defendant first argues that the Plaintiff lacks standing, because its name is different from the lender's name as set forth on the Loan and Security Agreement. That argument is without merit. **The Complaint clearly alleges that Plaintiff ECN Financial, LLC is the successor to Element Financial Corp.** (see Exhibit A, paragraph 1), and **the Court is bound to accept the truth of the allegation when considering the Defendant's 12(b)(6) motion**. Moreover, **the legal conversion of Element Financial Corp. to ECN Financial, LLC is a matter of public record which the Court is independently entitled to review**. **Accordingly, the Defendant's argument must be rejected**."

Id. at 3-4.

Likewise, Defendant Element Transportation has confirmed via the Declaration of Defense Counsel Richard L. Etter that Defendant Element Transportation *did* in fact purchase the leasehold assets that included the vehicles that were leased to Plaintiffs Gale Carter and Forbes Hayes, permitting Defendant Element to profit from those assets but imposing on Defendant Element the liabilities associated with same. Declaration of Richard L. Etter, ECF Doc No. 32-2 at 1; *see also Teed*, 711 F.3d at 768 ("[T]o allow [defendants] to acquire assets without their associated

liabilities, thus stifling workers who have valid claims under the Fair Labor Standards Act, is equally a 'windfall'.").

Attached to Defense Counsel's Declaration is a copy of each lease agreement signed by the Named Plaintiffs, which Defendants apparently had in their possession as a result of the purchase of those assets. *Id.* As is clear from the leases that are attached to Defense Counsel Richard Etter's declaration, the leasehold assets that were purchased by Defendant Element Transportation were originally held by Element Financial Corp. ECF Doc. No. 32-2 at pp. 12-13, 24-25. Defendant Element Transportation has now confirmed that it purchased those very assets, either directly or indirectly, and are now entitled to those assets and responsible for any associated liabilities. *See Teed*, 711 F.3d at 768.

Coincidentally, Defendant Element Transportation also has no qualms with asserting that it is a successor in interest to Element Financial Corp. when it so fits their needs:

> **"[A]dmit that Element Transportation LLC is the successor in interest in connection with the Specification Agreement to Element Financial Corp.** (Delaware), party to the Specification Agreement."

Defendant Element Transportation LLC's Answer to Plaintiff's Complaint, *Keybank Nat'l Assoc. v. Element Transportation LLC, f/k/a Element Financial Corp. and Element Fleet Management Corp., f/k/a Element Financial Corp.*, No. 16-cv-08958-JFK (S.D.N.Y. Jan. 13, 2017), *attached to Martindale Cert. as* Ex. E at 2.

In short, it is incredible that Defendants appear to be at ease in arguing that they are not successors in interest, when Defendants have repeatedly made contradictory arguments in numerous public filings, including filings in this Court. Defendants' motion to dismiss should be denied in its entirety, or, in the alternative, Plaintiffs request leave to amend their complaint.

B. Plaintiffs Have Plausibly Alleged that They Were Employees Under the FLSA

The Court should deny Defendants' motion to dismiss Plaintiffs' misclassification claims because Plaintiffs have adequately plead that they were employees under the "economic realities" and "economic dependence" test the Sixth Circuit uses to resolve misclassification cases under FLSA. *See Keller v. Miri Microsystems LLC*, 781 F.3d 799, 807 (6th Cir. 2015).

Courts within the Sixth Circuit determine whether an individual was misclassified as an independent contractor by determining whether a company has "put … an independent contractor label on a worker whose duties follow the usual path of an employee." *Keller*, 781 F.3d at 807 (*citing Rutherford Food Corp. v. McComb*, 331 U.S. 772, 730 (1947)). The FLSA was enacted to "correct labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers." *Id.* at 806. In interpreting the FLSA's provisions and protections, courts must consider the Act's remedial purpose. *Id.* The Sixth Circuit determines if a business has misclassified an employee as an independent contractor by applying a standard in which employees "are those who as a matter of economic reality are dependent upon the business to which they render service." *Id.* at 807; *see also Donovan v. Brandel*, 736 F.2d 1114, 1116 (6th Cir. 1984); *Dunlop v. Dr. Pepper-Pepsi Cola Bottling Co.*, 529 F.2d 298, 300 (6th Cir. 1976).

In applying the "economic realities" test, the Sixth Circuit considers a non-exhaustive list of factors, including:

> 1) the permanency of the relationship between the parties;
> 2) the degree of skill required for the rendering of the services;
> 3) the worker's investment in equipment or materials for the task;
> 4) the worker's opportunity for profit or loss, depending upon his skill;
> 5) the degree of the alleged employer's right to control the manner in which the work is performed;

> 6) whether the service rendered is an integral part of the alleged employer's business.

Keller, 781 F.3d at 807. Other factors may also be relevant, and "no one factor is determinative; a central question is the worker's economic dependence upon the business for which he is laboring." *Id.* Throughout this process, Defendants retain the burden of proving it is entitled to judgment as a matter of law. *Bennett v. MIS Corp.*, 607 F.3d 1076, 1091 (6th Cir. 2010).

Defendants claim that "courts have recently applied the economic realities test to agreements with similar terms" but cite to only two cases, both out-of-circuit non-precedential cases, *Derolf v. Risinger*, 259 F. Supp. 3d 876 (C.D. Ill. 2017) and *Luxama v. Ironbound Exp., Inc.*, 2013 WL 3286081 (D.N.J. June 27, 2013), which were wrongly decided. Defendants cite to *Derolf* and *Luxama* for the proposition that independent contractor status should be determined purely on the four corners of the agreements signed by the alleged contractors. Such is irrelevant because a review of *Derolf* and *Luxama* make clear that they are diametrically opposed to *Keller*, and would not have sustained appellate review in the Sixth Circuit based on the binding precedent set forth in *Keller*. Such is made clear in a recent Sixth Circuit case wherein the plaintiffs survived a motion to dismiss under nearly identical facts:

> "Defendants rely heavily on *Derolf v. Risinger Bros. Transfer, Inc.*, 2017 WL 1433307 (C.D. Ill. Apr. 21, 2017), where the Central District of Illinois held that the truck-driver plaintiffs were not employees for purposes of the FLSA and granted the defendant's motion to dismiss *Id.* at *2-6. The *Derolf* opinion was never appealed to the United States Court of Appeals for the Seven Circuit. Though the factual allegations in *Derolf* were very similar to the allegations herein, *Derolf* does not constitute controlling authority. Moreover, *Derolf* has relied heavily on the language of the operating agreement at issue, and the Sixth Circuit has explicitly advised that "the employment determination 'is not fixed by labels that parties may attach to their relationship.'"

Davis v. Colonial Freight Systems, Inc., No. 3:16-cv-674 at p. 7 n.4 (E.D. Tenn. Nov. 22, 2017) Order Denying Defendant's Motion to Dismiss *attached to Martindale Cert as* Ex. F (citing

Ellington v. City of East Cleveland, 689 F.3d 549 at 555 (6th Cir. 2012); *Powell v. U.S. Cartridge Co.*, 339 U.S. 497 at 528 (1950).

Opposed to these cases, Plaintiffs could cite any number of cases in which truck drivers who were subject to similar sham misclassifications were found to be employees under the FLSA or analogous state wage and hour laws. *See, e.g., Craig v. FedEx Ground Package Sys., Inc.*, 792 F.3d 818 (7th Cir. 2015) (finding that truck drivers were misclassified as ICs under Kansas Wage Payment law); *Doe v. Swift Transp. Co.*, 2017 WL 67521 (D. Ariz. Jan. 6, 2017) (finding that, even reviewing the allegations strictly under the four corners of the agreements, that truck drivers misclassified as ICs); *Ramirez v. Pacer Cartage, Inc.*, No. CV15-03830-WDK-AGR, 2017 U.S. Dist. LEXIS 75277, at *3 (C.D. Cal. May 16, 2017). In other cases, courts denied summary judgment and submitted the issue to a fact-finder for resolution based on a weighing of the factors listed in *Keller*. *See, e.g. Roeder v. DIRECTV, Inc.*, No. C14-4091-LTS, 2017 U.S. Dist. LEXIS 5134, at *69 (N.D. Iowa Jan. 13, 2017).

Defendants further overlook that the Supreme Court, in *Rutherford*, determined that the inquiry of whether an individual is an employee or independent contractor turns on the "circumstances of the whole activity," a sentiment that has been followed in the Sixth Circuit in *Keller*, *Donovan*, and *Dunlop*, which clearly explain that an independent contractor misclassification case must be decided by determining whether – as a matter of economic reality – the individual is dependent on the business to whom he or she renders service.

Nonetheless, Plaintiffs *have* alleged sufficient facts to state a claim that they were employees (rather than independent contractors) under the economic realities test. Though Defendants claim that they are absolved by the declaration in their contracts that Plaintiffs were "independent contractors," Plaintiffs allege that in order to receive a truck to drive for Defendants,

Defendants required them to sign truck leasing agreements with Defendant Element. *See* Amended Complaint, ECF Doc No. 19 at ¶ 18. Plaintiffs allege that in order to keep the truck leased to them by Defendant Element, they had to continue to drive for Defendant PTL, or default on the Lease Agreements. *Id.* at ¶ 62-3. Defaulting on Plaintiffs' Lease Agreements would trigger an acceleration clause in found therein, causing Plaintiffs to immediately owe Defendant Element the full value each remaining lead payment, which could total more than $100,000. *Id.* at 62-3.

Moreover, Plaintiffs allege that while they drove for Defendants, they had to follow the directives of an employee of Defendant PTL, and were required to follow the directives of employees of Defendants called "driver managers," who served as Plaintiffs' direct supervisor while they worked for Defendants. *Id.* at ¶ 72, 85. Plaintiffs allege that through these supervisors, Defendants controlled and directed the manner and performance of Plaintiffs' work. *Id*. Plaintiffs further allege that they were required to attend a multi-day orientation in which they were taught the policies, practices, and procedures of working for Defendants. *Id.* at 69-70.

Plaintiffs made further allegations about the nature of their work for Defendants that demonstrate that Plaintiffs were actually employees of Defendants, and not "independent contractors." For instance, Plaintiffs alleged that they could only accept the jobs that were assigned to them by Defendants. *Id.* at ¶ 75-5. They alleged that they were not permitted to use the vehicles assigned to them for any loads other than those assigned by Defendants. *Id.* at ¶ 73. They alleged that they had no opportunity to and could not recruit new customers because they could only accept the loads assigned to them from Defendants. *Id.* at ¶ 78. Plaintiffs alleged further that they could do nothing to increase their profitability other than attempt to improve their fuel efficiency. *Id.* at ¶ 83. They alleged that they were required to always report their status to Defendants via the on-board Qualcomm computer in the truck. *Id.* at ¶ 88. They alleged that while working for

Defendants and driving over-the-road, they were confined to the general vicinity of their assigned trucks for 24 hours a day. *Id.* at ¶ 90.

As described below, these facts are more than enough to plead (especially at this pre-discovery, motion to dismiss stage) that Defendants misclassified Plaintiffs under *Keller*, which dealt with similar facts and found that they raised sufficient issues warranting denial of the business' motion for summary judgment as to misclassification.

i. Permanency of the relationship

Plaintiffs have also plead sufficient facts related to the permanency of the relationship that suggest they were employees, not independent contractors. In *Keller*, the Sixth Circuit addressed the first factor of the economic realities test, permanency of the relationship, by noting that generally, independent contractors have variable or impermanent relationships subject to fixed employment periods, while employees usually work for one employer and such relationship is continuous and indefinite in duration. 781 F.3d at 807.

Though Plaintiffs Carter and Hayes worked for Defendants for three months and four months respectively, the Lease Agreements between Plaintiff and Defendant Element provided for a ***five*** and ***seven-year terms*** of employment for Named Plaintiffs Carter and Hayes, respectively. ECF Doc. No. 32-2 at 13, 25. Plaintiffs also allege that they were not functionally permitted to work for any other motor carrier or independently accept loads from customers, thereby alleging that their work with Defendants was not only continuous and indefinite, but exclusive. *See* Complaint, ECF Doc No. 19 at ¶ 73-5. In *Keller*, the Sixth Circuit noted that a *de facto* exclusive working relationship weighed in favor of employment versus independent contractor status, and a dispute of fact as to that issue would warrant denying summary judgment as to employment status. *See* 781 F.3d at 808.

While Defendants may deny that the working relationship was actually exclusive, this factual dispute alone makes clear that judgment as a matter of law would be inappropriate.

ii. The degree of skill required

The second "economic realities" factor looks at the skill of the worker. However, as the Sixth Circuit noted in *Keller*, "skills are not the monopoly of independent contractors … more important to our inquiry is whether Keller's profits increased because of his initiative, judgment, or foresight of the typical independent contractor, or whether his work was more like piecework." *Id.* at 808. In *Keller*, the Sixth Circuit noted that the plaintiffs, satellite-dish-installment technicians were skilled workers, requiring basic computer skills, ability to use hand and power tools, know National Electrical Code provisions, be able to identify whether the satellite was picking up a signal, and obtain a specialized certification. *Id.* The Sixth Circuit noted that the method of acquiring skills was relevant to the independent contractor analysis, where an individual who "learns his craft through formal education, apprenticeship, or years of experience, his compensation will likely vary with his unique skill and talent" and this will weigh in favor of independent contractor status, whereas, where a "worker's training period is short, or the company provides all workers with the skills necessary to perform the job, that weighs in favor of finding that the worker is indistinguishable from an employee." *Id.* In *Keller*, the Sixth Circuit noted that the business provided technicians with a significant portion of the training required to achieve the special HughesNet certification. *Id.* Finally, *Keller*, noted that while "skill may affect efficiency," the technician position "is not the type of profession where success rises or falls on the worker's special skill," that, unlike, for example, a carpenter, "who have unique skill, craftsmanship, and artistic flourish, technicians' success does not depend on unique skills," and there was no evidence that the business selected technicians on the basis of anything other than "availability and

location." *Id.* The Sixth Circuit found that all these facts raised a material issue of fact as to the issue of skillfulness's impact on the plaintiff's status as either an employee or an independent contractor.

Here, while it takes skill to drive a tractor trailer, discovery will show that securing a Class A CLD is typically the only prerequisite to employment as a commercial over-the-road truck driver, driving school is typically short, Defendant PTL provides a significant portion of the training required of individuals who work for Defendants, *see* Amended Complaint at ¶ 69, commercial driving does not involve **unique** skill, craftsmanship, or artistic flourish the way a carpenter or other craftsman job does. Success does not rise or fall based on the driver's special skill, and discovery will demonstrate that drivers were selected based only on their availability, location, and safe driving record. Accordingly, the facts alleged here – and which Plaintiffs fully expect will be bolstered by an opportunity to take full discovery – demonstrate that at a minimum, the skills involved in being a commercial truck driver, like skills for satellite-installation-technicians, are such that at a minimum, there would be a dispute of fact on this factor with regards to employment status, such that summary judgment in Defendants' favor on employment status would be inappropriate, let alone judgment on the pleadings at this pre-discovery stage. *Keller*, 781 f.3d at 810.

iii. Relative capital investment of Plaintiff versus Defendants

The third factor weighed is whether the worker has made a significant capital investment. The Sixth circuit describes this factor as being most significant where it reveals that "the worker performs a specialized service that requires a tool or application which he has mastered or that the worker is simply using implements of the company to accomplish the task." *Id.* at 810. In addressing this factor, courts must compare the worker's investment in the equipment to perform

his job with the company's total investment, including office rental space, advertising, software, phone systems, or insurance. *Id.* The entire factor must, however, be examined under the question of whether the worker's investment evidences economic independence. *Id. at 810.*

Here, discovery is clearly needed to determine what amounts Defendants invested in office rental space, terminals, their sales force, advertising, software, phone systems, insurance, trucks and other expenses in order to compare it to the "investment" Defendants **required** Plaintiff to "make" in leasing a truck from Defendants. Plaintiffs have pleaded, however, that the trucks they were "leasing" from Defendants remained the property of Defendant Element throughout the lease. The lease, which Defendants refer to in their motion, contains several provisions which make clear that Plaintiffs are simply paying "rent" for the privilege of using a truck owned by Defendants, that Defendants could terminate the vehicle lease if Plaintiffs failed to make rental payments or were terminated by Defendant PTL, *see* Named Plaintiffs' Lease Agreements, ECF Doc. No. 32-2 at pp. 6, 18, that if Plaintiffs chose, they could cancel the lease at any time as long as they were paid up.

Keller, however, noted that where the purchase of equipment is made through payroll withholdings, as was done here, "there seems to be little need for significant independent capital and very little difference from an employee's wages being increased in order to pay for tools and equipment." 781 F.3d at 810-811. Here, Plaintiffs were not required to invest any of their independent capital in the business; the payments that they made for the equipment they rented came exclusively through payroll withholdings, and were, accordingly, not Plaintiffs' investments of capital, but rather, Defendants' withholdings and artificial lowering of wages that allowed Defendants to offset their owned fixed equipment capital costs by unlawfully withholding or kicking-back to themselves Plaintiffs' wages. In *Keller*, the Sixth Circuit found that where the

worker supplied his own vehicle and was made to pay for tools from the company through payroll withholdings, that factor warranted denying the company summary judgment on the issue of misclassification. The same analysis applies here, and accordingly, Defendants' motion for judgment on the pleadings on misclassification should be denied based on this factor as well.

iv. *Opportunity for profit and loss*

The next factor to consider is whether Plaintiffs had an opportunity for greater profits based on their management and technical skills. In *Keller*, the Sixth Circuit noted that even where the worker (1) determined the geographical region in which he worked; (2) had control over how many jobs he took each day; (3) could have hired other technicians to work for him; (4) earned some additional money by selling routers, *Id.* at 812, those factors at a minimum cut both ways, and necessitate denying Defendants' motion for summary judgment as to independent contractor misclassification. *Id.* at 812. Here, Plaintiffs have alleged that Defendants controlled their work and controlled the number of jobs they were offered. *See* Amended Complaint at ¶ 72-5. Whether Plaintiffs even had the economic ability to reject loads is a question of fact because, without access to a job board, and without any knowledge as to how or when they would be assigned loads, and with a weekly truck payment to make under the lease agreements, discovery will show that as a "functional" matter of economic reality, Plaintiffs did not even have the freedom to reject loads. Plaintiffs could not recruit their own customers, and could not negotiate the amount of revenue they and Defendants would receive from Defendants' customers. *See* Amended Complaint at ¶ 78-80. While discovery is obviously needed as to the issue of profit and loss, this factor, analyzed under the standard set forth in *Keller*, requires a denial of Defendants' motion to dismiss.

v. *Business' control over the manner of work performed*

Plaintiffs have also alleged that Defendants controlled the manner in which they performed Defendants' work. While Defendants argue that certain aspects of supervising Plaintiffs are required by DOT law and accordingly should not weigh against a finding of independent contractor status, Plaintiffs have not pleaded that Defendants' control was limited to the control required by Defendants as regulated interstate commercial motor carrier. Rather, Plaintiffs have plead that Defendants assigned them supervisors called "Driver Managers," Amended Complaint at ¶ 72, that Defendants controlled which loads Plaintiffs received, Amended Complaint at ¶ 72-5, that Defendants controlled and directed Plaintiffs in the performance of their work, Amended Complaint at ¶ 68, and that Plaintiffs stayed in regular contact with Defendants through the use of Defendants' on-board Qualcomm computer system. Amended Complaint at ¶ 88.

Moreover, Plaintiffs intend to provide significantly more evidence as to how, when, and to what extent, Defendants controlled Plaintiffs' work, not because of DOT regulations, but because Defendants wanted to provide its customers with good, reliable, and trackable service, i.e., so that when a customer called Defendants, Defendants could update them immediately on the status of the load. Discovery will show that any freedoms Plaintiffs allegedly had with respect to how they performed the deliveries was minimal, illusory, or both. But what is beyond doubt is that this question – the degree of control over performance – is not amenable to resolution on the pleadings at this pre-discovery stage. In *Keller*, the Sixth Circuit noted that the central question was whether the defendant's forms of remote control supported a finding that the business had the power to control its technicians, and whether the employee's whims and choices affected their profitability, or whether the demands of the business controlled the plaintiff's work. 781 F.3d at 815. Likewise here, because Plaintiffs seek discovery as to this factor concerning Defendants' policies,

procedures, and practices that Defendants imposed on their drivers in controlling their work, the Court should deny Defendants' motion based on this factor as well. *See id.*

vi. Whether Plaintiff's work was an integral party of Defendants' business

The final factor the Sixth Circuit looks to in determining whether an employer-employee relationship exists is whether the worker rendered services that are an integral part of the business' services. *Id.* at 815. "The more integral the worker's services are to the business, then the more likely it is that the parties have an employer-employee relationship." *Id.* In *Keller*, the Sixth Circuit noted that the worker installed satellites, and the business's only services provided to customers was the installation of satellites. Here, Defendants have conceded this element, thus it weighs in favor of Plaintiffs being employees. Defendants' Memorandum of Law, ECF Doc. No. 32-1 at 15.

vii. A review of these factors demonstrate that under Keller, Defendants will not even be entitled to summary judgment on Plaintiffs' misclassification claims, let alone dismissal on the pleadings.

The facts as pleaded here are wholly analogous to those in *Keller*, in which the Sixth Circuit reversed a district court's grant of summary judgment to the business, and held that the plaintiff had raised disputed issues of fact related to his employer status. As the foregoing demonstrates, Plaintiffs have set forth similar or stronger allegations than those set forth in *Keller*, and assuming Plaintiffs' evidence will comport with their pleadings (which the Court must accept as true at this motion for judgment on the pleadings stage), Defendants will not even be entitled to summary judgment based on a full evidentiary record. In the meantime, this Court should deny in its entirety Defendants' pending motion to dismiss.

Accordingly, the Court should deny Defendants' motion for judgment on the pleadings because the alleged facts in Plaintiff's complaint clearly demonstrate either that they should have

been classified as employees, or that a fact-finder will have to resolve the issue based on the above factors at trial. *See Keller*, 781 F.3d at 816.

C. Plaintiffs Have Sufficiently Stated a Claim Under TILA

Defendants next claim that Plaintiffs claims under TILA should be dismissed because Defendant Element is not a motor carrier, and because Plaintiffs have not alleged actual damages under the act. These arguments are without merit, as Defendant Element is liable as an affiliate of a motor carrier under TILA, and because Plaintiffs have – though they need not have - plead actual damages at this stage of the litigation.

i. Plaintiffs are Not Required to Allege Actual Damages at this Stage of the Litigation

Defendants claim that Plaintiffs allegations under TILA are deficient, as Plaintiffs have not sufficiently pled damages under TILA. This argument ignores the central purpose for which TILA was enacted and accordingly should be rejected.

The federal Truth-in-Leasing regulations, 49 C.F.R. § 376, were developed by the Interstate Commerce Commission out of "the Commission's deep concern for the problems faced by the owner-operator in making a decent living in his chosen profession." 42 Fed. Reg. 59,984 (Nov. 23, 1977). The regulations were enacted to create ***transparency*** in the terms of the equipment and driver services leases to help combat illegal practices by motor carriers such as skimming from owner-operator compensation. In furtherance of this goal, and with the express intent of alleviating the burden placed on owner-operators by the significant disparity in bargaining power that largely defines their relationship with motor carriers, TILA was enacted to provide standards of conduct to be incorporated in written leases that govern the contractual relationship between the owner-operator and the motor carrier.

Such is evident from the plain language of 376.12(d) and its related provisions:

> (d) Compensation to be specified – The amount to be paid by the authorized carrier for equipment and driver's services shall be clearly stated on the face of the lease or in an addendum which is attached to the lease.
>
> (f) Payment period. The lease shall specify that payment to the lessor shall be made within 15 days after submission of the necessary delivery documents and other paperwork concerning a trip in the service of the authorized carrier.

49 C.F.R. 376.12(d)

These and other provisions within TILA were clearly drafted to effectuate the legislature's goal of creating transparency within the agreements between lease drivers and the carriers with whom they purportedly contract, so as to protect the lease drivers, not the carriers for whom they work.

This is further evidenced by the case law stemming from the legislation. In *Owner-Operator Indep. Drivers Ass'n v. Ledar Transp.,* the court found a number of the provisions in the plaintiffs' owner operator agreements to violate TILA. *See e.g. Owner-Operator Indep. Drivers Ass'n v. Ledar Transp.*, 2000 U.S. Dist. LEXIS 16271 (WD Mo Nov. 3, 2000). In granting preliminary injunction to the Plaintiffs, the *Ledar* court did not require a showing of actual damages, finding many contract terms to be illegal as a result of their failure to allow the plaintiffs to properly calculate their compensation. *Id.; see also Owner-Operator Indep. Drivers Ass'n v. Landstar Sys.*, 622 F.3d 1307, 2010 U.S. App. LEXIS 20434 (11th Cir. Oct. 4, 2010) (finding that it was error to rule that truck drivers' lease with a motor carrier satisfied 49 C.F.R. § 376.12(d), as the carrier failed to disclose that the fees for an electronic billing and payment system required for military loads would be deducted from their compensation).

Plaintiffs have alleged that Defendants "underpaid him, and failed to provide him with documentation that would have affirmed the underpayments." *Davis v. Colonial Freight Systems,*

Inc., No. 3:16-cv-674 at 14 (E.D. Tenn. Nov. 22, 2017) Order Denying Defendant's Motion to Dismiss *attached to Martindale Cert as* Ex. F; *see also* ECF Doc No. 19 at ¶¶ 105-106. "Such an allegation is sufficient to plead TIL damages." *Id.* (citing *Mervyn v. Nelson Westerberg, Inc.*, 2012 WL 6568338, at *3 (N.D. Ill. Dec. 17, 2012). Plaintiffs further alleged that they were required to "purchase insurance, satellite communication equipment and legal and maintenance services form Defendants, in violation of 49 C.F.R. § 376.12(f)." ECF Doc. No. 19 at ¶ 107; *Colonial Freight* Order on Motion to Dismiss, Ex. F at 14.

Defendants do not cite to ***any*** Sixth Circuit case law that stands for the proposition that a plaintiff must allege damages to state a claim under TILA. In *Landstar*, the 11th Circuit dealt not with motion to dismiss, but an appeal of a District Court ruling that the plaintiffs had not proven actual damages **at trial**. *Owner-Operator Indep. Drivers Ass'n v. Landstar Sys.*,622 F.3d 1307, 1325-25 (11th Cir. 2010). In deciding that the owner-operators had to prove actual damages at trial, the 11th Circuit remanded the case to the District Court level for an evidentiary hearing permitting the drivers to produce evidence of any actual damages sustained as a result of the defendants' conduct. *Id.* Likewise, the *Cunningham* court dealt not with a motion to dismiss, but a motion for summary judgment when in denying the plaintiffs' and defendants' cross-motions for summary judgment. *Cunningham v. Lund Trucking Co.*, 662 F. Supp. 2d 1262, 1272 (D. Or. 2009).

Defendants further rely on *Derolf v. Risinger Bros.* in their arguments that Plaintiffs' TILA claims should be dismissed. 2017 U.S. Dist. LEXIS 60827 (C.D. Ill. April 21, 2017). Relying on *Landstar*, the *Risinger* court interpreted 49 U.S.C. § 14704(a)(2) to confer upon TILA plaintiffs a pleading requirement to allege that they were financially harmed by a defendant's failure to adhere to TILA. *Id.* at 23 (*citing Landstar*, 622 F.3d 1307, 1325 (11th Cir. 2010). Though *Landstar* does

stand for the proposition that a plaintiff must prove actual damages to prevail on a TILA claim **at trial**, it does not discuss the proper pleading standards concerning damages for a TILA claim. *Landstar Sys.*, 622 F.3d 1325-26; *see also Fox v. TransAm Leasing, Inc.*, 2015 U.S. Dist. LEXIS 90212, at *10 (D. Kan., July 13, 2015) (a showing of damages under TILA is not necessary at the summary judgment stage) (citing *Owner-Operator Independent Drivers Association v. Allied Van Lines, Inc.*, 231 F.R.D. 280, 284 n.10 (N.D. Ill. 2005); *Owner-Operator Independent Drivers Association v. C.R. England, Inc.*, 508 F. Supp. 2d 972, 981 (D. Utah 2007)). This ruling was rejected outright by the *Colonial* court, which maintains precedential value as an in-circuit case. *Colonial Freight* Order on Motion to Dismiss, Ex. F at 14.

Nonetheless, Plaintiffs' pleadings provide the necessary averments to demonstrate that they will prove their damages at trial.

Plaintiffs have alleged that, due to the lack of transparency in Plaintiffs' compensation schedule, Defendants were able to conceal and unilaterally change the actual amounts that would be deducted from Plaintiffs' pay once the relationship began. This prevented Plaintiffs from reasonably ascertaining what their costs would be, resulting in the very harms that TILA was enacted to prevent. By way of example only, Named Plaintiff Hayes received multiple settlement sheets stating that his net pay was *negative* for the workweeks at issue, meaning *he owed Defendants money (and thus received no compensation from Defendants) for the workweeks at issue, despite completing significant compensable work* during each of the workweeks at issue. ECF Doc. No. 19 at ¶¶ 94-95.

Had the costs that Defendants would charge back against Plaintiffs' compensation been clearly stated on the face of the lease, as is required by TILA, Plaintiffs and prospective Class Plaintiffs, as reasonable people, would not have engaged in such one-sided arrangements and

would not have accrued these losses. These losses were accrued as a direct result of Defendants' violation of 49 C.F.R. § 376.12(d) and (h), requiring Defendants to clearly specify the compensation to be paid and any items that may be charged back against compensation. Plaintiffs have thus pled that Defendants' violations of TILA resulted in concrete damages. *See Owner-Operator Indep. Drivers Assoc., Inc. v. C.R. England, Inc.*, 508 F. Supp. 2d 972 (D. Utah 2007) (finding that the defendants' contract violated 376.12(h)); *Tayssoun Transp. v. Universal Am-Can, Ltd.*, 2005 U.S. Dist. LEXIS 41093, 2005 WL 1185811 (S.D. Tex. Apr. 20, 2005) (same).

This is no mistake, nor an isolated incident, as the contracts drafted by Defendants are full of provisions which make it impossible for drivers to truly understand their compensation. Forcing Plaintiffs to plead their damages with any greater specificity is unnecessary and premature at this pre-discovery, pleadings stage; it would be highly improper to require TILA plaintiffs to provide a complete accounting of all damages prior to an opportunity to take discovery.

As such, the statutory violations that Plaintiffs have pled do sufficiently allege that Defendants have violated TILA by making it impossible for Plaintiffs to determine what they should be compensated under the contracts.

ii. Defendant Element is Liable Under TILA as an Affiliate of a Motor Carrier

Defendant Element argues that it is not liable under TILA because it is a not a motor carrier. This is in direct contradiction to the weight of the caselaw, including Defendants' cited cases which support Plaintiffs' theory that Defendants are in fact liable under TILA as an affiliate of a motor carrier.

Courts have routinely held that TILA applies to not only registered motor carriers, but to their affiliates, especially the leasing companies that lease vehicles to drivers for use in their work

for motor carriers. *See Owner-Operator Indep. Drivers' Ass'n, Inc. v. Arctic Exp., Inc.,* 87 F. Supp. 2d 820, 826 (S.D. Ohio 2000) (denying defendant leasing company summary under TILA because it is was affiliated with defendant motor carrier); *Dart Transit Company – Petition for Declaratory Order*, 9 I.C.C.2d 701 (June 28, 1993)(holding that the affiliated leasing companies can be held liable under TILA as affiliates); *Owner-Operator Indep. Drivers' Ass'n v. Mayflower Tarnsit, Inc.*, 161 F. Supp. 2d 948, 959 (S.D. Ind. 2001) (recognizing motor carriers are obligated under TILA to protect the rights of drivers as to leases entered into between drivers and the carrier's authorized agents, even if the motor carrier is not directly a party to such leases); *Owner-Operator Indep. Drivers' Ass'n, Inc. v. Ledar Transport*, 2004 WL 5376211 (W.D. Mo. 2004) (granting summary judgment to drivers and finding that the defendant leasing company liable as an affiliate of defendant motor carrier); *Owner-Operator Indep. Drivers' Ass'n v. Swift Transp. Co.*, 2004 WL 5376210, at *2 (D. Ariz. July 28, 2004) (denying defendant leasing company's motion to dismiss on the basis of affiliate liability).

The cases that Defendants cite ***do not*** remotely stand for the proposition that an affiliate of a carrier cannot be found liable under TILA. The *4 Points Logistics* court was not tasked with deciding whether an affiliate of a motor carrier was liable under TILA, but was instead responding to an argument by a motor carrier that it was entitled to attorneys' fees under TILA. *Owner-Operators Indp. Drivers' Ass'n, Inc. v. 4 Points Logistics, LLC*, 2007 WL 2071389, at *4 (M.D. Fla. July 13, 2007). In deciding that TILA contained no fee-shifting position that benefited the defendants, the *4 Points Logistics* merely noted that TILA was enacted to protect drivers. *Id.*

Likewise, the *Comerica* court was not tasked with deciding whether an affiliate is liable under TILA in its decision finding that the affiliate bank was nonetheless liable due to statutory trust laws. *Owner-Operators Indep. Drivers' Ass'n, Inc. v. Comerica, Inc.*, 2006 WL 1339427, at

*4 (S.D. Ohio May 1, 2006). Though the *Comerica* court noted in dicta that 49 U.S.C. § 14704(a)(2) does not *explicitly* authorize suit against non-carriers, the court held that the defendant bank was nonetheless liable due to the statutory trust created by the escrow accounts in question. *Id.* No mention was made by the *Comerica* court of binding district caselaw stating that affiliates of motor carriers *are* liable under the act. *Id.*

Contrary to Defendants' claims, several of Defendants' cited cases actually stand for the proposition that affiliates of motor carriers ***can*** be found liable under TILA. The *Port Drivers* and *United Van Lines* courts noted that affiliates of motor carriers can be found liable under TILA, but chose to dismiss those defendants because the plaintiffs did not allege that the defendants were party to the independent contractor agreements at issue. *Port Drivers Federation 18, Inc. v. All Saints Express, Inc.*, 757 F. Supp. 2d 443, 458-59 (D.N.J. 2010); *Owner-Operators Indep. Drivers' Ass'n, Inc. v. United Van Lines, LLC*, 2006 WL 1877081, at *5-6 (E.D. Mo. July 6, 2006). Plaintiffs here have specifically alleged that the ICS Agreements and Lease Agreements, as well as the business dealings of Defendants PTL and Element, were so intertwined that they constituted one agreement for purposes of this lawsuit. ECF Doc. No. 19 at ¶ 16-8, 20-2, 24.

Finally, in *Franklin*, the claims against the individuals that were dismissed ***did not*** include claims under TILA. *Franklin v. M.S. Carriers*, 2002 WL 1397273 (W.D. Tenn. May 16, 2002). Rather, the *Franklin* court dismissed claims the breach of contract and defamation claims that were brought against those individuals. *Id.*

Accordingly, Plaintiffs request that the Court deny Defendant Element's motion to dismiss in its entirety.

D. Plaintiffs have Stated a Claim that Defendant Element is Liable Under the Federal Forced Labor Statute

Defendant Element next argues that Plaintiffs cannot state a claim under the FFLS because they have failed to allege facts sufficient to establish that they were forced to perform work exclusively for Defendants and have failed to allege that Defendant Element operated or managed a venture that obtained such exclusive work by threat of serious financial harm. Defendants, for lack of a better explanation, appear to have failed to read Plaintiffs' Amended Complaint, as this is *exactly* what Plaintiffs have alleged.

The Thirteenth Amendment to the United States Constitution decrees that "Neither slavery **nor involuntary servitude**, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." USCA Const. Amend. XIII, § 1. Section 2 to the Thirteenth Amendment gives Congress the power to enforce this article by legislation. *Id.* at § 2.

Congress enacted 18 U.S.C.A. § 1589 for this very purpose, which reads in relevant part:

> "(a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means –
>
> …
>
> (2) by means of serious harm or threats of serious harm to that person or another person;
>
> …
>
> (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.
>
> (b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d)."

18 U.S.C.A. § 1589(a), (b). "Section 1589 is intended to address the increasingly subtle methods of traffickers who place their victims in modern-day slavery, such as where traffickers threaten to

harm third persons, restrain their victims without physical violence or injury, or threaten dire consequences by means other than overt violence." H.R. Conf. Rep. 106-939, at 101. The threats of harm prohibited by include threats of nonphysical, financial, or reputational harm. *Frankenfield v. Strong*, 2014 WL 1234709, at *5 (E.D. Tenn. Mar. 25, 2014).

Plaintiffs, in their Amended Complaint, alleged that, as a condition of working for Defendant PTL, Plaintiffs were required to sign Lease Agreements with Defendant Element. ECF Doc. No. 19 at 18. As a condition of entering into the Lease Agreements with Defendant Element, Defendants *required* Plaintiffs to sign ICS Agreements agreeing to work for Defendant PTL. *Id.* at ¶ 20, 71.

The Lease Agreements that Plaintiffs signed contained several threats of serious financial harm that were in violation of the FFLS. The Lease Agreements between Defendant Element and Plaintiffs specifically stated that, **if Plaintiffs stopped working for Defendant PTL**, Plaintiffs would be subject to an acceleration clause whereby **Plaintiffs would be subjected to more than $100,000 in liability**. ECF Doc No. 19 at ¶ 62-3; *see also* ECF Doc No. 32-2 at 6, 18. Additionally, under the ICS Agreements, if Plaintiffs did not "provide[] services when required by PTL on a continuing basis," for at least 9 months, Plaintiffs would default on both agreements and would be obligated to pay an "early termination fee" of $5,000. *Id.*; *see also* ECF Doc No. 19 at ¶ 64. Plaintiffs further alleged that Defendants' ability to put Plaintiffs in default of the Lease Agreements at any time provided Defendants with further means to maintain exclusive control over Plaintiffs' work, and forced Plaintiffs and other individuals to accept work at sub-minimum wage levels. *Id.* at ¶ 117.

These clauses in Plaintiffs' Lease Agreements were not mere hypothetical threats of serious financial harm. A review of Defendant Element's public filings definitively shows that **Defendant**

Element *actually* sues individual drivers. *ECN Financial LLC v. Chapman*, Plaintiff ECN Financial LLC's Brief in Response to Defendant's Motion to Dismiss Complaint, Ex. D at 2 (**seeking $94,730.29 plus costs, interest and attorneys' fees against an individual driver**). Where Defendants are unable to collect directly from the drivers, ***Defendants have, quite sadly and reprehensibly, gone as far as to force these individuals into bankruptcy***. *In Re Rodney Dale Lackey* – Official Form 410 Proof of Claim, Case 17-40515 (E.D. Tex. June 7, 2017), *attached to Martindale Cert. as* Ex. G.

Defendant Element was at all times not only complicit in this illicit scheme, but affirmatively engaged in conduct that furthered this scheme. Plaintiffs allege that Defendant Element was not only aware of the pernicious nature of this scheme, but entered into a joint venture with Defendant PTL to perpetrate it. ECF Doc. No. 19 at ¶ 65. Plaintiffs further alleged that the Lease Agreements and ICS Agreements, which referred to one another, were so interrelated that Defendants Element and PTL were Plaintiffs' joint employers. *Id.* at ¶ 24. Defendant Element further required Plaintiffs to sign settlement deduction agreements permitting Defendant PTL to deduct compensation from Plaintiffs' pay on Defendant Element's behalf so that Defendant Element could ***directly profit*** from this scheme. *Id.* at ¶ 21; *see also* ECF Doc. No. 32-2 at pp. 5-6, 17-8.

Defendants' motion to dismiss should be denied as to this claim. In the alternative, Plaintiffs request leave to file an Amended Complaint.

E. Plaintiffs Unjust Enrichment Claims Have Been Sufficiently Pled

Defendant Element claims that Plaintiffs' Unjust Enrichment claims are barred because they arise out of the contract between Plaintiffs and Defendants. This argument fails as Plaintiffs'

unjust enrichment claim is based not on one aspect of Defendants' conduct, but on many aspects of Defendants' conduct.

Plaintiffs' complaint specifically incorporates by reference each of the previous paragraphs contained therein. ECF Doc. No. 19 at ¶ 136. The Amended Complaint contains numerous allegations that do not arise out of the contract, including, but not limited to, the various violations of law that resulted from Defendants' *failure* to include contract terms required by TILA. *Id.* at ¶ 106.

Accordingly, Defendants' motion to dismiss should be denied as to this claim as well. In the alternative, Plaintiffs request leave to file an Amended Complaint.

IV. CONCLUSION

For the aforementioned reasons, Plaintiffs respectfully request that the Court deny Defendant Element's motion in its entirety and with prejudice. In the alternative, Plaintiffs request leave to file an amended complaint.

/s/ Travis B. Martindale-Jarvis, Esq.
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Attorneys for Plaintiffs

Dated: April 10, 2018

PASCHALL TRUCK LINES, INC.
INDEPENDENT CONTRACTOR
SERVICE AGREEMENT

THIS IS AN IMPORTANT DOCUMENT THAT CREATES RIGHTS AND OBLIGATIONS FOR BOTH PASCHALL TRUCK LINES AND YOU. PLEASE MAKE SURE YOU UNDERSTAND THE TERMS, CONDITIONS AND OBLIGATIONS OF THIS AGREEMENT BEFORE YOU ENTER INTO IT.

This Independent Contractor Service Agreement ("Agreement") is entered into in Calloway County, Kentucky by and between Forbes Hays ("Contractor") and Paschall Truck Lines, Inc., a corporation having an office in Murray, Kentucky ("PTL"), and is effective as of March 16th, 2016 ("Effective Date").

Intending to be legally bound by the terms of this Agreement, Contractor and Company mutually agree as follows:

I. RELATIONSHIP AND INTENTION OF PARTIES

The intention of the parties is to (1) create a contract to facilitate PTL's compliance with federal law as a federally licensed motor carrier and (2) create a vendor/vendee relationship between Contractor and PTL through which Contractor, as an independent business person, has the potential and expectation to realize a profit or loss by:

- providing a tractor power unit to PTL;
- rendering certain transportation services as required by PTL customers; and
- conducting and considering himself as either (i) a self-employed individual vendor for all purposes, or (ii) the authorized representative of a business entity that is an unrelated vendor to PTL.

This Agreement sets forth the mutual business objectives of the two parties intended to be served by this Agreement; the obligations of each party; and the results Contractor agrees to accomplish. The manner and means of reaching such results, however, are within the sole discretion of the Contractor, and no officer or employee of PTL shall have the authority to impose any term or condition on Contractor or on Contractor's continued operation that is contrary to this understanding. Contractor shall exercise independent discretion and business judgment to fulfill its contractual obligations under this Agreement. PTL may, however, issue reasonable and lawful directives regarding the results to be accomplished by Contractor, and failure to accomplish such results shall be a breach of this Agreement by Contractor.

Neither Contractor nor any employee or agent of Contractor shall be considered to be an employee of PTL or any of PTL's customers at any time, under any circumstances, for any purpose whatsoever, and nothing in this Agreement shall be construed as inconsistent with that relationship. It is further expressly understood that Contractor, as a vendor, will not receive and has no claim to any benefits or compensation currently paid by, or made available through, PTL to its employees or hereafter declared by PTL for the benefit of its employees. Contractor's compensation is defined solely and specifically in this Agreement and shall consist, in its entirety, of the payments to which he is entitled to as a vendor as referenced in Article IV below and set forth in Section I of the attached Appendix A, which is part of this Agreement.

IF AT ANY TIME DURING THE TERM OF THIS AGREEMENT CONTRACTOR IS OF THE OPINION THAT ANYTHING OTHER THAN AN INDEPENDENT CONTRACTOR OR VENDOR/VENDEE RELATIONSHIP EXISTS BETWEEN CONTRACTOR AND PTL, CONTRACTOR SHALL IMMEDIATELY NOTIFY THE VICE PRESIDENT OF FINANCE OF PTL.

The term "Contractor" as used in this Agreement shall mean Contractor individually as the signatory to this Agreement or, depending on the context in which the term is used, Contractor, collectively with his employees or agents, if any.

RU
Initials for PTL Representative

Forbes Ken Hays
Initials for Contractor

Contractor acknowledges that PTL has no obligation to furnish any specific number of loads to Contractor on a regular basis during the term of this Agreement but to the extent it is reasonably possible for PTL to do so, it will utilize Contractor's services. Contractor retains the right (subject to the terms of Section 2.13 below) to provide services for other motor carriers or for himself and PTL likewise retains the right to engage other parties of its own choosing for any part or all of its work.

II. EQUIPMENT REGULATORY, MAINTENANCE, OPERATING AND SAFETY PROVISIONS

2.01 Contractor's Equipment. Contractor agrees to provide the tractor power unit(s)to PTL, in good and safe operating condition, (the "Equipment") described as follows:

TYPE	YEAR	MAKE/MODEL	VIN

Contractor represents (i) that he has the legal right to exercise full control over the Equipment; (ii) that the Equipment is fully roadworthy and (iii) meets all the requirements of all applicable federal, state, and municipal laws and regulations applicable to the operations of for-hire motor carriers (collectively "Legal Requirements").

2.02 Trailers. Contractor acknowledges that it will, from time to time, utilize trailers, including intermodal containers and their corresponding chassis, that are the property of, interchanged to, or furnished by PTL (collectively "Trailers"). Contractor shall be responsible for the condition of all such Trailers provided to Contractor from the time of pick-up until delivery is completed and the Trailer is returned as required by PTL.

Contractor shall be responsible for the first $25,000.00 of the losses or costs incurred by PTL for damage to a Trailer which is owned or leased by PTL and furnished directly to Contractor ("PTL Trailer") determined to have been caused by the negligent acts or omissions of Contractor. In the event of a "topped" PTL Trailer (trailer damage resulting from an attempt to drive under a structure or object with inadequate clearance), or in the event any other damage was caused, in whole or in part, by the willful or intentional acts or omissions of Contractor, Contractor shall be responsible for 100% of the cost of the damage. Additionally, in the event Contractor changes or substitutes any parts or accessories of said Trailer including, but not limited to, the tires, without written authorization of PTL, Contractor shall reimburse PTL the full amount of such unauthorized changes or substitution.

2.03 Security. Contractor represents and warrants that any Trailer provide for use by PTL (either directly or indirectly) shall be used by Contractor to transport shipments tendered to Contractor by PTL and Contractor shall use his best efforts to prevent the unauthorized use or control of the Trailers for any purpose. Contractor shall inform PTL dispatch regarding the whereabouts of any Trailer. When parking a Trailer (whether untethered or otherwise), Contractor shall confirm such action with PTL dispatch and, if untethered, shall ensure that the Trailer's king pin is locked and the Trailer's doors are padlocked.

Contractor agrees to ensure that (i) any Trailer that Contractor uses under this Agreement is properly sealed or locked at the time of pick-up; (ii) the seal or lock number is indicated on the shipping documents at origin; (iii) the seal or lock integrity remains intact while the Trailer is in-transit and until proper delivery is made; and (iv) the seal or lock number indicated on the shipping documents at origin is identical to the seal or lock number on the Trailer at destination. Any breach in seal or lock integrity must be immediately communicated to PTL.

2.04 Operation of the Equipment. Contractor shall direct the operation of the Equipment at all times in a safe and prudent manner and determine the method, manner, and means of performing the contractual obligations under this Agreement in all respects including, but not limited to, such matters as: (i) the acceptance or rejection of dispatches offered by PTL; (ii) the days and time Contractor will operate the Equipment; (iii) the loading and securement of the cargo; (iv) the routes traveled; (v) parking sites/rest areas; (vi) decisions regarding unloading; (vii) the selection of insurance providers; and (viii) the repair and fueling of the Equipment, provided that Contractor shall fully and efficiently perform its obligations under this Agreement.

Contractor is not obligated to accept every or any shipment offered by PTL to Contractor and may decline PTL's request to furnish the Equipment and labor and to perform such work on any particular occasion without penalty. When a shipment is offered by PTL to Contractor and is accepted by Contractor however, Contractor shall promptly complete the shipment with reasonable dispatch. It is Contractor's responsibility to complete the trip within the agreed upon transit time once the dispatch is accepted and comply with any special instructions related thereto.

Contractor shall have the duty to determine that all trailer loads are in compliance with the weight laws of the state in which or through the Equipment will travel and to notify PTL if the Equipment is overweight. Except when violations result from acts or omissions of Contractor, PTL shall assume the risk and cost of fines for overweight loads when such loads are preloaded and sealed, containerized, or where the trailer or lading is otherwise outside of Contractor's control. However, Contractor shall pay or reimburse PTL for any cost or penalties due to Contractor's failure to weigh any load or to notify PTL that the Equipment is overweight.

Contractor shall be solely responsible for all cargo loss or damage claims when Contractor has signed a bill of lading, manifest or other shipping document acknowledging that the cargo was loaded in good condition and all pieces are accounted for. Contractor shall immediately report all cargo shortages, overages or other exceptions to PTL. It is Contractor's responsibility to note exceptions on the bill of lading, manifest, or other shipping document prior to being dispatched and/or signing the required documents.

No passenger, other than an authorized and U.S. Department of Transportation ("U.S. DOT") qualified co-driver shall be permitted in the Equipment while the Equipment is under dispatch, operating under the PTL's authority and/or displaying the PTL's logo or placard unless specifically authorized in advance in writing by PTL. Any such authorization will be in the sole discretion of PTL, and subject to such requirements and procedures as it may prescribe.

Unless required by law to be held by PTL, Contractor shall hold all authorizations, permits, licenses, orders and approvals required by governmental entities which are material to the business of Contractor and to the transactions contemplated by this Agreement. Contractor is not required to purchase or rent any products, equipment or services from PTL as a condition of entering into this Agreement, or of continuing this Agreement in effect.

Contractor shall, at all times, keep a copy of this Agreement on board the truck tractor power unit.

2.05 Responsibility for Operating Costs and Expenses. Contractor will be responsible for all:

(a) costs, and expenses associated with the operation of the Equipment, such as fuel, tires, tire chains (if necessary), load locks, empty mileage, permits of all types, tolls, fines, detention, and accessorial services; and

(b) all taxes, premiums, assessments, and fees associated with the operation of the Equipment, including fuel taxes, property taxes, sales, and use taxes, highway use taxes, payroll taxes, unemployment taxes, and income taxes.

2.06 Tractor Identification. PTL shall furnish door placards to be affixed to the tractor power unit as required by federal regulations. In the event Contractor chooses to satisfy the Legal Requirements for equipment identification in a manner other than with the signage provided by PTL, Contractor may do so at his sole expense. In all events however, Contractor agrees to remove or temporarily cover all PTL identification signs on any occasion when the tractor power unit is used in the service of anyone other than PTL, including when the tractor power unit is being used for personal use.

In addition, Contractor shall not display any sign or plate which contains words which, in the sole discretion of PTL, contain sexual, discriminatory, or offensive content and, if so determined by PTL, Contractor agrees to remove such sign or plate immediately upon oral or written notification by PTL.

2.07 Maintenance and Inspection. Contractor, at Contractor's expense, shall equip and continuously maintain the Equipment in good and safe operating condition to meet all requirements imposed by any Legal Requirements. In the event the Equipment is found to be deficient under any Legal Requirements, Contractor shall remove the Equipment from service until it is, at Contractor's expense, brought into compliance. Contractor agrees to (i) conduct maintenance inspections of the Equipment no less frequently than every sixty (60) days; and (ii) maintain the appropriate records of such inspections and any resultant findings and (iii) provide PTL with said records as may be requested by PTL or as PTL is required to maintain by the Legal Requirements or by its insurance provider's requirements. In addition, the Equipment shall be maintained in a clean and presentable fashion free from body damage and subjective markings, in accordance with standards of the industry with the exhaust stacks on the tractor unit, if forward of the sleeper, turned out 45 degrees; and if behind the sleeper, turned out 60 degrees.

2.08 Driver and Safety Compliance. Contractor shall furnish, at Contractor's expense, drivers (including himself, as the case may be) for the Equipment who meet (i) all driving requirements imposed by the Legal Requirements and (ii) all driving requirements and qualification standards as may be established by PTL's insurer(s). Contractor shall promptly furnish to PTL for each of Contractor's drivers (including himself, if applicable) evidence and documents that PTL is required to maintain by its insurance provider or by the Legal Requirements. Any driver, including Contractor, who is not in compliance with PTL's safety policies and procedures shall be prohibited from operating any vehicle (the Equipment or otherwise) in the service of PTL.

PTL is committed to a policy of ensuring a drug and alcohol-free transportation environment and to reduce accidents, injuries and fatalities. **Accordingly, Contractor agrees that any violation of PTL's Policy on Drug and Alcohol Abuse or corresponding applicable U.S. DOT regulations shall result in immediate termination of this Agreement.**

2.09 Employment of Qualified Persons. Except where the duty of qualification is imposed by any Legal Requirements, Contractor may, in his sole discretion, employ individuals other than himself to perform or assist Contractor in performing his contractual obligations under this Agreement. The term "employee" includes drivers, helpers, or any other employee required by Contractor to perform services covered by this Agreement. In the event Contractor employs such individuals, Contractor (i) affirmatively acknowledges that all such persons shall be Contractor's employees or agents exclusively, and shall be subject solely to Contractor's direction and control, including the selection, hiring, firing, supervising, instructing, training, and setting of wages, hours and working conditions; (ii) assumes full responsibility for payment of all wages and benefits; the maintenance of payroll and employment records as required by law; and (iii) shall require that any such Equipment operator shall cooperate with PTL regarding compliance with all Legal Requirements and other conditions under this Agreement.

Contractor shall obtain and maintain, at his expense, workers' compensation insurance on all employees and other insurance required by any applicable employer liability related laws as will fully protect Contractor and PTL from any and all claims under such laws. Contractor affirms that PTL shall have no responsibility or authority to: (i) make any payment to Contractor's employees or agents; (ii) make any deductions for, or pay, social security taxes, withholding taxes, or similar charges with respect to Contractor or Contractor's employees or agents; or (iii) provide workers' compensation or unemployment compensation coverage to Contractor or Contractor's employees or agents.

2.10 Logs and Reports. To the extent required by law, Contractor shall prepare and file with PTL such logs, mileage reports, fuel receipts and other documents in such manner and at such times as will enable Contractor and PTL to comply with all Legal Requirements.

Contractor agrees that the submission of a falsified driver qualification application, logs, mileage reports, maintenance reports, or fuel receipts shall result in immediate termination of this Agreement.

2.11 License Plates. Unless otherwise agreed to between Contractor and PTL, in writing, PTL shall obtain and provide a base plate for the Equipment under the PTL's IRP permit for use by Contractor. The license plate shall remain the property of PTL. Contractor shall remove and return such plate to PTL at the termination of this Agreement and, in the event Contractor fails or refuses to do so, PTL shall, and is hereby authorized to deduct the full cost of the plate from Contractor's final settlement.

2.12 Fuel Tax. Fuel tax is an operating expense of Contractor and the liability for payment also remains with Contractor. In the event Contractor elects not to use the PTL provided fuel card, then Contractor shall be responsible for providing PTL with an accurate accounting of all fuel purchases and miles traveled for the purpose of computing state fuel tax liability and Contractor shall provide PTL with all fuel receipts. PTL shall compute the fuel tax liability at the end of each month on a per tractor basis, remit payment, and charge (or credit) the Contractor, accordingly.

2.13 Non-PTL Use. Contractor may use the Equipment for other purposes when it is not in the service to PTL. However, in order for PTL to provide the level of service required by shippers, PTL must know when Contractor uses the Equipment for any non-PTL use. Accordingly, in the event Contractor intends to use the Equipment for any non-PTL use, Contractor agrees that at least 24 hours prior to such use, he shall (i) notify PTL of such intended use, (ii) remove or temporarily cover all PTL identification and permit markings bearing PTL's name or logo and U.S DOT number, and (iii) confirm that appropriate insurance coverage is in place and in effect. Contractor specifically agrees that Contractor shall relinquish control over any of PTL's property in Contractor's possession and temporarily return all such property to PTL (including, but not limited to the base plate, if owned by PTL; the permit pouch; and the PTL fuel card, if applicable) prior to any non-PTL use of the Equipment.

2.14 U.S. DOT Leasing Regulations. To the extent required by the Federal Motor Carrier Safety Regulations, as promulgated by the Federal Motor Carrier Safety Administration of the U.S. DOT (the "Leasing Regulations"), Contractor agrees to relinquish to PTL exclusive possession, control, and use of the Equipment while it is in service to PTL under this Agreement and PTL agrees to assume responsibility for same. Both PTL and Contractor specifically acknowledge and agree with the statements contained in the Leasing Regulations to the extent that nothing contained in the Leasing Regulations is intended to affect whether the Contractor, or any driver provided by the Contractor, is an independent contractor or an employee of PTL. It is the intention of the parties that an independent contractor relationship exists when PTL, as a carrier lessee, complies with 49 U.S.C. Section 14102 and related administrative requirements.

III. RATES, CHARGES AND PAYMENT.

3.01 Rates and Charges. The rates and charges payable to Contractor for services rendered under this Agreement are set forth in the attached Section I of Appendix A, subject to the deductions authorized in this Agreement, Section II of Appendix A and/or Appendix B. If there are any additional charges related to a load for which Contractor seeks payment, it is Contractor's responsibility to (i) inform PTL of such charges; (ii) obtain from PTL written verification of an agreement with such charges; and (iii) only thereafter, include the charge on an invoice to PTL.

In the event Contractor is not operating his business under a Federal Employer Identification Number ("EIN") and through a business entity as of the Effective Date of this Agreement, Contractor agrees to obtain such EIN and form a business entity within ninety (90) days of the Effective Date.

3.02 Advances. PTL will, on request of Contractor, advance Contractor 25% of Contractor's Current Net Settlement. For purposes of this Agreement, the phrase "Current Net Settlement" shall mean the unpaid per mile rate less previous advances, less any deductions such as, but not limited to, fuel purchases charged to PTL. PTL shall deduct all advances (even if they should exceed 25%) at the time of next available settlement.

3.03 Time and Manner of Payment. Contractor will be paid within fifteen (15) calendar days after Contractor has submitted in proper form all those documents necessary for PTL to secure payment from shipper (including, but not necessarily limited to, trip reports, bills of lading, delivery receipts or other proof of delivery, original fuel receipts and properly completed drivers logs).

3.04 Contractor's Right to Review Compensation-Related Documents. The Contractor shall have the right to examine copies of any documents which are necessary to determine the accuracy of the calculation of the compensation and/or validity of any deductions from Contractor's settlement.

3.05 Final Determination of Settlements. Contractor acknowledges that it is his or her responsibility to timely review and verify the accuracy of all settlements. Further, Contractor agrees that all settlements shall be final, and that Contractor will not make any claim or bring any action against PTL for additional settlement monies unless Contractor notifies PTL in writing of any discrepancies or additional claims within ninety (90) days of PTL issuing said settlement payment.

3.06 Non-Compensable Items. PTL shall not pay any amount to Contractor other than the amount of compensation specified in Section I of Appendix A of this Agreement. Specifically, PTL shall not pay any mileage or empty mileage fees, any costs of operating the Equipment, any personnel costs of Contractor, or any other costs incurred by Contractor, except as specifically provided in this Agreement.

3.07 Filing and Reporting Responsibilities. PTL shall report payments made to Contractor pursuant to this Agreement as required by law, but shall not withhold any amounts for taxes on behalf of Contractor except as otherwise required by law. **Contractor shall be solely responsible for the payment of any federal, state, provincial, or local income taxes, payroll taxes, employment taxes, self-employment taxes, or other charges occasioned by Contractor's status of an independent contractor, and the filing of any federal, state, provincial, or local returns with respect to such taxes. PTL shall not be responsible for the payment of any local, state, provincial, or federal employment, or income taxes with respect to Contractor or Contractor's employees.**

IV. GENERAL INSURANCE COVERAGES AND INDEMNIFICATION

4.01 PTL's Insurance Responsibilities. PTL shall provide, at its expense insurance coverage for the protection of the public as required by law.

4.02 Accident Reporting Responsibilities. Contractor shall notify PTL immediately in case of any vehicular accident or the discovery of loss, damage or malfunction of equipment or property of PTL or others, and comply with PTL's accident/loss protocol as it pertains to photographs, reports, exchange of insurance information, etc

4.03 Contractor's Insurance Responsibilities. Notwithstanding the provisions set forth in Section 4.01 above, during the term of this Agreement, Contractor agrees to obtain and keep in force at all times, the following insurance coverages:

(a) Non-Trucking (Bobtail/Deadhead) Liability Insurance: Contractor shall obtain and maintain automobile/truckers personal injury and property damage insurance coverage for a combined single limit of not less than $1,000,000.00 with no deductible to cover any bodily injury or property damage claim that may arise from operation of the Equipment at all times while it is not in operation on PTL business, including unauthorized bobtail and deadhead.

(b) Workers' Compensation Insurance: To the extent that statutory workers' compensation insurance coverage is available to Contractor under the laws of Contractor's place of domicile, Contractor agrees to obtain such coverage, at Contractor's sole expense, to cover Contractor and all employees of Contractor who operate the Equipment under this Agreement. If such coverage is obtained through a private insurer, the policy shall contain a waiver of subrogation endorsement, waiving any right of subrogation against PTL.

Workers' Compensation Insurance Coverage is not available from or through PTL. Accordingly, PTL hereby advises Contractor that the laws of certain states may require Contractor to acquire and maintain workers' compensation insurance. Contractor understands and acknowledges that it is the sole responsibility of Contractor to review and comply, at Contractor's expense, with each state's laws pertaining to workers' compensation insurance.

(c) Occupational Accident Insurance: In the event Subsection 4.03(b) is not applicable to Contractor and to the extent not prohibited by law, Contractor shall obtain and maintain occupational accident insurance within his place of domicile which coverage shall include an alternative employer endorsement, indemnity of PTL or similar provisions acceptable to PTL. Occupational accident insurance is intended to cover Contractor and any persons not included in the coverage described in the immediate preceding subsection but otherwise utilized by Contractor in the performance of services under this Agreement.

(d) Bailee Trailer Insurance: Contractor shall obtain and maintain Bailee Trailer Insurance coverage in the amount of $25,000.00 per occurrence with a deductible of not more than $2,500.00 per occurrence to provide coverage when a Trailer is damaged as a result of the actions or inactions of Contractor.

The Non-Trucking Insurance; Occupational Accident Insurance; and the Bailee Trailer Insurance coverages described above in Subsections 4.03 (a), (c), and (d) are available for purchase from or through PTL. Contractor may elect to obtain all or some of these insurances from or through PTL by making such selection on Appendix B. Alternatively, Contractor may obtain the required insurance coverages from an unrelated third party vendor directly.

In the event the Contractor purchases coverages required by Subsection 4.03(a) (Non-Trucking) or Subsection 4.03(d) (Bailee Trailer Insurance) from an unrelated third party vendor, the Contractor will provide PTL certificates of insurance evidencing each of the coverages referenced above; naming PTL as an additional insured; and providing PTL thirty (30) days' prior written notice of cancellation or material change to any insurance policy(ies). All coverages obtained by the Contractor from a source other than PTL under Subsections 4.03(a), (c), and/or (d) must be issued by an insurance company qualified to write such coverage in the states(s) where the Equipment is operated, and rated B+ or better by A.M. Best, Co.

Neither the Contractor nor its drivers, agents or employees will be permitted to perform any services under this Agreement until the Contractor complies with the provisions of this Section 4.03. In the event Contractor fails to obtain any of the insurance coverages set forth above, PTL may obtain such coverages on such Contractor's behalf and charge back Contractor the total costs thereof.

4.04 Indemnification. During the Term of this Agreement, and thereafter, Contractor agrees if any claim is made against PTL or Contractor with respect to the provision by Contractor of any services reflected in this Agreement, Contractor shall be solely responsible for satisfying such claims and PTL, at its option, may satisfy such claims, or any portions thereof, by deducting the amount of the claim from any compensation due Contractor from PTL. PTL will provide written notification of such claim to Contractor once PTL has knowledge of such claim prior to any deduction being made and will allow Contractor the opportunity to investigate, challenge, or present any facts Contractor may have prior to the commencement of any deductions for claims liability. If after such investigation and/or challenge the matter is not resolved, Contractor agrees to indemnify and save PTL harmless from and against liabilities on a "first dollar coverage" basis for the items or occurrences listed below.

(a) *Personal Injury and Property Damage While Under Dispatch (other than for cargo loss or damage or Trailers):* The first $2,500.00 for any loss relating to any personal injury to a third party or damage to property (other than cargo) resulting from any act or omission of the Contractor while under dispatch or transporting cargo under PTL's U.S. DOT operating authority, provided the occurrence was reported in accordance with Section 4.02. In the event Contractor failed to report an occurrence in accordance with Section 4.02 or the Equipment was being operated with an unauthorized person present in the Equipment, the $2,500.00 limitation of liability will not apply and Contractor shall be liable to PTL for the full amount of any and all damages resulting from the occurrence.

(b) *Other Personal Injury and Property Damage (other than for cargo loss or damage or Trailers):* Any loss or damage, without limitation, (including reasonable attorneys' fees) arising from the operation of the Equipment at any time while it is not in operation on PTL business, including unauthorized bobtail and deadhead.

(c) *Cargo Damage or Loss:* The first $2,500.00 per occurrence for any and all claims brought against PTL or losses suffered by PTL or liabilities incurred by PTL, arising from or on account of any loss or damage to cargo tendered for shipment or handling hereunder while such cargo is being transported and/or while in the possession of Contractor when such shortage, damage, or loss is caused directly or indirectly by any negligent act or omission by Contractor. The term "possession" extends to an unattended trailer or the unauthorized dropping of a loaded trailer.

(d) *Damage to Trailers:* Any loss or damage, without limitation, arising from Contractor's use of a Trailer (other than a PTL Trailer which is governed by Section 2.02 above) during the term of this Agreement.

(e) *Relationships with Workers:* Any and all claims brought against PTL, or losses suffered by PTL, and liabilities incurred by PTL, arising from the Contractor's relationship with Contractor's employees or agents, whether under industrial accident laws, workers' compensation laws, unemployment compensation laws, or any other foreign, federal, state, or municipal laws, rules, regulations and orders applicable to the relationship between employers and employees.

(f) *Compliance with Law:* Any and all claims brought against PTL, or losses suffered by PTL, or liabilities incurred by PTL, for or on account of Contractor's failure or failure of Contractor's employees or agents to comply with any duties under common law or other laws, rules, regulations or orders applicable to Contractor's business.

(g) *Other:* Any and all claims brought against PTL, or losses suffered by PTL, or liabilities incurred by PTL, arising from the operation of the Equipment in the service of others.

The indemnification obligations of Contractor set forth in this Section 4.04 shall survive the expiration or termination of this Agreement.

V. <u>CUSTOMER SERVICE AND COMMUNICATION</u>

5.01 Customer Service. Contractor acknowledges that PTL is in the business of transporting cargo on the days and times requested by customers. This requires not only prompt and dependable transit times, but also regular and accurate two-way communication between PTL and Contractor regarding the transport of the customer's cargo. Contractor shall diligently conduct his operations under this Agreement to ensure continued customer satisfaction with PTL's and Contractor's businesses but without compromising a commitment to safety at all times. Such efforts shall include gathering and reporting shipment related data in accordance with PTL's customer's requirements; on-time loading; safe and prompt transport; on-time delivery of the freight in a clean condition without transportation related

damage or defect; executing documents; submitting all related shipping documents to PTL immediately upon delivery; and conducting oneself professionally at loading, during transport, and at unloading locations.

Unless otherwise excused by the terms of Section 8.06 (Force Majeure), if Contractor has accepted a dispatch and is legally able to fully perform under this Agreement after such dispatch but fails to deliver the shipment at the scheduled appointment time, a service failure charge in the amount of $300.00 per load will be assessed against Contractor. Likewise, in the event Contractor fails to deliver to the final destination and the load must be recovered and delivered by alternate means, a recovery charge of $500.00 for each load shall be assessed against Contractor.

5.02 Necessary Communications Equipment. Contractor agrees to make all necessary arrangements to obtain and install a communication system or satellite tracking device for each tractor power unit which Contractor provides to PTL under this Agreement. Such communication device will be compatible with the communication/satellite tracking system utilized by PTL.

5.03 Obtaining the Communications Equipment. Contractor may elect, by initialing Option B below, to have PTL arrange for, and have installed as necessary, at Contractor's expense, a device which meets the requirements of Section 5.02 above (a "Qualcomm Unit"). Contractor will have the Qualcomm Unit installed at PTL's Murray Kentucky terminal or other designated location and agrees to pay the installation fee as specified in Section II of Appendix A. If Contractor is still under contract with PTL six months after the Effective Date of this Agreement, PTL shall reimburse Contractor an amount equal to the installation fee. PTL will be responsible for all costs of messaging and other communication costs charged by Qualcomm during the Term of this Agreement in excess of the fee set forth in Section II of Appendix A.

CONTRACTOR SHOULD INITIAL ONE OF THESE TWO OPTIONS:

_____ Option A: Contractor shall furnish and install his/her own communication/satellite tracking device which meets the requirements of Section 5.02 above.

_____ Option B: PTL shall arrange, at Contractor's expense, to furnish and, as necessary, install, a Qualcomm Unit, and Contractor authorizes PTL to deduct from Contractor's compensation the amounts to be paid by Contractor as specified in Section II of Appendix A and Section 5.04 below.

5.04 Additional Provisions Related to Option B.

(a) Removal of Communication Equipment Unit Without Consent. Contractor shall be prohibited from disconnecting or removing the Qualcomm Unit from the Equipment without PTL's prior written consent.

(b) Re Installation Expense. In the event Contractor replaces the Equipment, Contractor shall bear the expense of removal and re installation of the Qualcomm Unit(s) in Contractor's replacement vehicle and hereby authorizes PTL to deduct all such expense from Contractor's compensation.

(c) Loss or Damage. Contractor shall be responsible for the return of each Qualcomm Unit to PTL immediately upon any request from PTL or the termination of this Agreement. A qualified technician selected by PTL shall remove the Qualcomm Unit. Contractor shall pay normal de- installation expense and hereby authorizes PTL to deduct all such expense from Contractor's compensation. If the Qualcomm Unit is lost, damaged as a result of Contractor's negligence, or not returned upon request or upon termination of the Agreement, Contractor hereby authorizes PTL to deduct from Contractor's compensation or, if necessary, to collect additional payments from Contractor for, the entire expense incurred by PTL in repairing or replacing the Qualcomm Unit, together with all collection costs, including reasonable attorneys' fees. PTL shall not be responsible for any loss or damage to the Equipment arising or resulting from the installation, use, or removal of the Qualcomm Unit.

VI. TERM/TERMINATION

6.01 Term. This Agreement will continue in full force and effect for an initial term for one (1) year from the Effective Date. This Agreement shall automatically renew for successive terms of one (1) year after expiration of the initial term unless Contractor or PTL provides the other party with written notice of termination at least thirty (30) days' prior to the expiration of the then current term.

6.02 Termination. This Agreement may be terminated during the term as follows:

(a) At any time, by mutual agreement of Contractor and PTL;

(b) Immediately, upon the death of Contractor, in the event he is a sole proprietor;

(c) Immediately, in the event Contractor is a qualified driver under this Agreement (i) is prohibited by operation of law to perform safety-sensitive functions or (ii) ceases to meet PTL's safety clearance criteria and is unable to provide a substitute qualified driver within ten (10) days;

(d) Immediately, in the event the Equipment is substantially damaged or otherwise inoperable;

(e) Immediately, by either party, by giving written notice to the other party of an event of the breach of this Agreement by the other party;

(f) Immediately, in the event Contractor participates in (i) any discriminatory, harassing, or violent conduct that violates an individual's rights under federal, state or common law or (ii) aggressive, threatening or forcefully rude and argumentative conduct with either a customer or anyone working for the PTL; (iii) any dishonest or bad act including, but not limited to, fraud, theft, impeding an ongoing investigation or making false statements to PTL personnel or any third party; or (iv) any similar conduct which would reflect unfavorably on PTL or taint the reputation of PTL from its customer's perspective; or

(g) Immediately, in the event a termination in transit event occurs as described in Section 6.03 below.

Unless otherwise agreed to by Contractor and PTL, the place of termination of this Agreement shall be at 3443 Highway 641 South, Murray, Kentucky.

Upon termination, PTL shall have no further obligation to Contractor under this Agreement or otherwise, other than to pay to Contractor any amounts that may be due to Contractor subject to the terms hereof respecting deduction or setoff.

6.03 Termination in Transit. Unless otherwise excused by the terms of Section 8.06 (Force Majeure), if Contractor has accepted a dispatch and is legally able to fully perform under this Agreement after dispatch but abandons the shipment in transit, Contractor shall receive no compensation for the services performed on said activity; this Agreement shall be terminated immediately; and PTL shall have the right to (i) temporarily take physical possession of the Equipment and complete the transport of the cargo to destination or (ii) substitute the Equipment with other equipment to complete delivery of the shipment or any part thereof. Any expenses incurred by PTL related to such substitution or related to actions taken by PTL to complete the required services (including costs associated with cargo transfers) that exceed the expenses PTL would otherwise incur in paying Contractor to perform such services are agreed to be expenses chargeable to and deductible from amounts that would otherwise be due Contractor. In the event PTL takes possession of the Equipment, it will be returned to the possession of Contractor at a PTL facility.

6.04 Contractor's Obligations upon Termination.

(a) The Contractor will, within forty-eight hours from the time this Agreement is terminated, return all of PTL's property to PTL's Murray Kentucky Terminal, including the motor carrier identification placards, the Qualcomm Unit, all permits, signed off lease, cab cards, license plates, Trailers, spare tire and tire caddy, and logs current to the date of termination. PTL may withhold the final payment of any compensation to Contractor until such time as Contractor has returned all PTL property to PTL.

(b) In the event Contractor, for any reason fails to comply with Subsection 6.04(a) above, Contractor agrees to reimburse PTL, and be liable for all reasonable expenses, and costs incurred by PTL in obtaining and returning its equipment and/or property. Contractor agrees that in the event it should be deemed necessary by PTL to enter upon private property and/or remove PTL property in order to obtain possession of, and return its equipment and/or property, Contractor does hereby irrevocably grant PTL, or its duly authorized agents, permission to do so, and further agrees to save, and hold harmless, PTL, or it is duly authorized agents, from any form of liability whatsoever in connection with such repossession.

(c) Additionally, if the Contractor fails to return PTL's property to PTL within forty-eight hours after the termination of this Agreement, Contractor agrees to pay PTL a flat fee of $2,500.00 for repositioning any Trailer.

(d) In the event Contractor ceases providing services when required by PTL on a continuing basis within nine (9) months after the Effective date, Contractor authorizes PTL to deduct "early termination fee" of $5000.00 from Contractor's compensation. Contractor agrees that the early termination fee constitutes reasonable liquidated damages associated with, among other things, Carrier's effort, expenses, and costs in recruiting and contracting with Contractor, recruiting and contracting with additional Contractors to replace unavailable units, and Carrier's loss of revenue.

VII. ADMINISTRATIVE MATTERS

7.01 Right to Set Off. PTL shall be entitled to set off against and deduct from any compensation payable to Contractor under this Agreement any amounts due from Contractor under this Agreement and the amount of any losses, damages or expenses (including all court costs, attorneys' fees or collection expenses incurred by PTL to enforce the terms of this Agreement) suffered or incurred by PTL as a result of Contractor's breach of any of the provisions of this Agreement or as a result of any negligent, fraudulent or illegal activities of Contractor or his employees or agents. The right of set-off shall survive the termination of this Contract. Contractor shall remain liable for any remaining indebtedness, which may exceed amounts which PTL may set-off against.

7.02 PTL Non-Liability for Equipment. Contractor agrees that PTL shall not be liable, financially or otherwise, to Contractor for any depreciation, loss or damage that may occur to the Equipment used in the performance of this Agreement. It is the sole responsibility, and right of Contractor to secure, and maintain any physical damage insurance for such Equipment. Contractor waives all rights against the PTL, and all other Contractors hauling commodities for PTL for loss, and damage to any equipment described in Appendix A.

7.03 Dispute Resolution. Except as provided for in Subsection 7.04(c) below, any claim, dispute or controversy including, but not limited to the interpretation of any federal statutory or regulatory provisions purported to be encompassed by this Agreement; or the enforcement of any statutory rights emanating or relating to this Agreement **shall be resolved on an individual basis (and not as a part of a class action) exclusively between Contractor and PTL by final and binding arbitration to be held in Calloway County, Kentucky** before the American Arbitration Association ("AAA"). The arbitration proceeding shall be governed by the following rules:

(a) A written demand for arbitration must be mailed to the other party and the AAA within one hundred twenty (120) days of the occurrence of the claimed breach or other event giving rise to the controversy or claim. **Failure to make such timely demand for arbitration shall constitute an absolute bar to the institution of any proceedings and a waiver of the claim.**

(b) The demand for arbitration shall identify the provision(s) of this Agreement alleged to have been breached and shall state the issue proposed to be submitted to arbitration and the remedy sought. The copy of the demand shall be sent to the American Arbitration Association; addressed to: 1750 Two Galleria Tower, 13455 Noel Road, Dallas, Texas 75240-6636 with a request that the demand be forwarded to the appropriate AAA Regional Office.

(c) This arbitration provision shall not be applicable to any controversy, dispute or claim arising out of or related to the collection of deficit balances in any Contractor's accounts with PTL in which case for which an action may be brought against Contractor by PTL in a court of law in Calloway County, Kentucky after the expiration of the 120 day period set forth in this Subsection 7.03(a) above.

(d) As to any dispute or controversy which under the terms of this Agreement is a proper subject of arbitration, no suit at law or in equity based on such dispute or controversy shall be instituted by either party other than a suit to conform, enforce, vacate, modify or correct the award of the arbitration(s) as provided by law; provided, however, that this clause shall not limit PTL's right to obtain any provisional remedy including, without limitation, injunctive relief, writ for recovery of possession or similar relief from any court of competent jurisdiction, as may be necessary in PTL's sole subjective judgment to protect its property rights.

(e) General pleading and discovery processes related to the arbitration proceeding shall comply with the Federal Rules of Civil Procedure.

(f) The arbitration proceeding shall be governed by the AAA's Commercial Arbitration Rules to the extent that such Rules are not inconsistent with any of the immediately preceding subsections of this Section 7.04: however, in all events, each party shall be responsible for its own attorneys' fees.

VIII. MISCELLANEOUS

8.01 Agency. Neither PTL nor Contractor is the agent of the other and neither shall have the right to bind the other contract or otherwise, except as specifically provided in this Agreement.

8.02 Merger of Understanding. This Agreement sets forth correctly the effect of all preliminary negotiations, understandings and agreements between the parties and supersedes any and all previous agreements whether written or verbal. This Agreement and appendices shall not be modified, altered, changed or amended in any respect unless in writing and signed by both parties.

8.03 Governing Law and Jurisdiction. This Agreement shall be governed by laws of Kentucky and applicable Federal law not only as to interpretation and performance but also as to encompassing any and all disputes between the parties. The parties agree that any legal proceedings between the parties arising under, arising out of, or relating to the relationship created by this Agreement, including both the judicial proceedings and the arbitration proceedings discussed herein, shall be filed and maintained within the applicable judicial district that includes Calloway County, Kentucky (or as otherwise agreed to pursuant to Section 7.04 above, and each of the parties consents to personal jurisdiction as required to this Section 8.03.

8.04 Severability. In the event that any provision of this Agreement shall be construed as or declared to be invalid, unenforceable or unconstitutional, then said provision shall be considered severed from this Agreement to the extent of such invalidation, unenforceability or unconstitutionality. All remaining provisions of this Agreement shall remain in full force and effect.

8.05 Waiver. If either party fails to enforce, or waives the breach of, any term or condition of this Agreement, such action or inaction shall not operate as a waiver of any other part of this Agreement, nor of any other rights, in law or equity, or of claims which each may have against the other arising out of, connected with or related to this Agreement.

8.06 Force Majeure. The performance of the obligations of this Agreement on the part of either Contractor or PTL shall be excused by reason of acts of God, natural disasters, civil commotion, government interference, regulations, or other similar contingencies beyond the control of the affected party.

8.07 Assignment. Neither this Agreement nor any rights, interest or obligations of either party may be assigned without prior written consent of the other party except that PTL may freely assign this Agreement to an affiliated entity.

8.08 Notices. Any notice or communication between the parties hereto shall be addressed as follows:

If to PTL:
Paschall Truck Lines
Attn: Director-Contractor Relations
3443 Highway 641 South
Murray, Kentucky 42071
Telephone: (270) 753-1717
Facsimile: (270) 753-1092

If to Contractor:
⊗ 705 HARWELL DR
BRUNSWICK, GA 31523
Telephone: ⊗ (912) 409-5309
Facsimile: _____

All notices and other communications to be given under this Agreement shall be in writing and shall be deemed to have been duly given if: (i) delivered personally; (ii) mailed by certified mail return receipt requested; (iii) sent by facsimile and confirmed by first class mail; (iv) made through Qualcomm; or (v) sent by commercial overnight courier and confirmed by proof of delivery.

8.09 Section Headings. All section headings in this Agreement are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

CONTRACTOR ACKNOWLEDGES AND REPRESENTS THAT CONTRACTOR HAS READ AND FULLY UNDERSTANDS THE PROVISIONS OF THIS AGREEMENT AND HAS HAD SUFFICIENT TIME AND OPPORTUNITY TO CONSULT WITH PERSONAL FINANCIAL, TAX AND LEGAL ADVISORS PRIOR TO EXECUTING THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto enter into and execute this Agreement as of the Effective Date set forth above.

PTL

By: Russ Usher

Name: Russ Usher

Title: Director of Permits

CONTRACTOR

⊗ Forbes Ken Hays
Signature

⊗ FORBES KEN HAYS
Contractor Name (Print)

⊗ 705 HARWELL DR
(Address)

⊗ BRUNSWICK, GA 31523
(City, State, Zip Code)

⊗ _____
(Fed. Tax ID No.)

The undersigned individual hereby represents that he/she personally guarantees (1) the performance by such obligations set forth in this Agreement and (2) the payment of any liabilities which CONTRACTOR may owe PTL.

⊗ Forbes Ken Hays
OWNER

⊗ 595-20-1323
SSN#

APPENDIX A
TO
PASCHALL TRUCK LINES, INC.
INDEPENDENT CONTRACTOR SERVICE AGREEMENT

RATES, CHARGES, AND AUTHORIZED DEDUCTIONS

I. RATES AND CHARGES

The following Rates and Charges shall be applicable for the services rendered by Contractor under this Agreement and PTL will pay Contractor accordingly for the services performed at PTL's request subject to any deductions set forth in the Agreement or authorized in Section II of this Appendix A or Appendix B.

1.01 Base Linehaul Rate. PTL shall pay Contractor a "percentage of received linehaul and fuel surcharge revenue" of 70% as base linehaul rate. For purposes of this Appendix A the term "percentage of received linehaul and fuel surcharge revenue" shall mean all revenue (including fuel surcharge) actually received from the shippers, brokers, forwarders, cosignees, or other carriers related to services performed by Contractor specific to the actual movement of freight hereunder from the point of origin to the destination reduced by: (a) the amount paid to any third party by PTL in relation to movement of the load, including without limitation, amounts paid to other carriers as a pro-rata payment for their participation in the movement of a load; or (b) any warehouse or storage charges.

1.02 Spot Market Pricing Arrangements. From time-to-time, Contractor and PTL may agree upon an alternate compensation arrangement relating to a particular shipment for which it is not practical to establish a specific compensation base because of the variability of time and expense associated to such assignments, which arrangement is commonly referred to as "spot market pricing". **In such event, the alternative compensation arrangement will be agreed upon prior to the performance of the services and will temporarily supersede and replace the parties' agreement in terms of compensation as is otherwise agreed to in this Agreement.** The different rate will only apply for the particular shipment for which such an alternative is offered and accepted. This different pricing arrangement will not, in any manner whatsoever, directly or indirectly, affect any future shipment or any other term or provision of this Agreement.

1.03 Accessorial and Other Charges/Credits. The amount payable to Contractor related to accessorial services will be paid as follows:

(a) Other Charges: All other charges for items such as multiple stop-offs; loading and unloading; lumper loading and unloading; detention/layover; reconsignment; redelivery; or authorized deadhead; etc. shall be paid to Contractor by PTL in the amounts which shall be communicated to Contractor, upon request.

Contractor must contact the dispatch agent the day that accessorial charges are incurred in order to properly document billing information. In addition, the customer must authorize the billing of the accessorial. Payment of accessorial charges is contingent upon Contractor presenting properly signed documentation issued by the customer. Charges not meeting this criteria will be reimbursed when and if paid by the customer.

(b) In the event Contractor pays a fine for which he is not liable pursuant to Section 3.04 of the Agreement, PTL will issue a credit to Contractor's settlement provided Contractor submits appropriate documentation to PTL verifying the occurrence and payment.

II. AUTHORIZED DEDUCTIONS

Contractor agrees to allow, and hereby authorizes, PTL from time to time, as necessary, to deduct the charges set forth in this Section II of Appendix A from amounts otherwise payable by PTL to Contractor pursuant to Article IV of the Agreement.

Contractor acknowledges that unless the amount of a charge is specifically itemized or otherwise described in the Agreement or in any appendices to the Agreement, the amount shall be (i) the retail price as established by the vendor of such goods or services, or (ii) the amount required by an underlying taxing/licensing authority, or (iii) the amount of the cost incurred by PTL related to such occurrence.

I. Any amounts which were incurred and paid for by PTL on Contractor's behalf for which Contractor is financially responsible pursuant to the following sections of this Agreement:

(a) Section 2.02 (Trailers);

(b) Section 2.03 (Security) in the amount set forth in the Security Kit Purchase Agreement, if elected by Contractor;

(c) Section 2.05 (Responsibility for Operating Costs and Expenses)

(d) Section 2.06 (Tractor Identification);

(e) Section 2.07 (Maintenance and Inspection);

(f) Section 2.08 (Driver and Safety Compliance) including such items as the initial drug test and the initial physical, if required;

(g) Section 2.12 (Fuel Tax);

(h) Section 3.02 (Advances);

(i) Section 4.03 (Contractor's Insurance Responsibilities);

(j) Section 4.04 (Indemnification);

(k) Article V (Customer Service and Communication) which, if Option B is elected, includes the Qualcomm installation fee of $_____ plus the contingent charges described in Section 5.03 and, in all events, the weekly usage fee of $19.50;

(l) Section 6.03 (Termination in Transit);

(m) Section 6.04 (Contractor's Obligations Upon Termination) which includes, in addition to any other rights, remedies or claims PTL may have, the charges set forth below (if applicable) related to the failure to return certain items as required by Section 6.04;

Qualcomm Unit	$3,000.00
License Plates	$ 500.00
Permits pouch and/or fuel card	$1,000.00
Spare Tire	$ 500.00
Tire Caddy	$ 250.00
PTL Identify Materials	$ 500.00
Trailer Relocation Fee	$2,500.00

2. Any fines, penalties, or violations resulting from any acts or omissions of Contractor, or Contractor's employees and/or agents, arising out of the operation of the Equipment regardless of whether such fines, penalties or other amounts are imposed or assessed upon Contractor or PTL.

3. Unauthorized charges and expenses incurred by Contractor in the PTL name, including, but not limited to, any unauthorized highway, bridge or ferry tolls, and any charges for communications, lodging, meals, fuel or repair of the Equipment or the Trailers.

4. Any other amount due to PTL by Contractor arising under this Agreement.

At Contractor's request, PTL will provide Contractor with copies of those documents necessary to determine the validity of the charge-backs above.

This Appendix A is executed and effective on this 1 day of March, 20 16, and supersedes any and all previous appendices or schedules related to Contractor's relationship with PTL.

PTL

By: Russ Usher

Name: Russ Usher

Title: Director of Permits

CONTRACTOR

(X) Forbes Ken Hays
Signature

(X) FORBES KEN HAYS
Contractor Name (Print)

APPENDIX B
TO
PASCHALL TRUCK LINES, INC.
INDEPENDENT CONTRACTOR SERVICE AGREEMENT

OPTIONAL INSURANCE COVERAGES AND RELATED SERVICES

★ ★ ★ THIS IS AN ELECTIVE FORM ★ ★ ★
CONTRACTOR MAY ACCEPT OR DECLINE
★ ★ ANY OR ALL OPTIONS PRESENTED ★ ★

To the extent that Contractor makes one or more elections under this Appendix B, Contractor agrees to allow and hereby authorizes PTL, from time to time as is necessary, to deduct from the compensation otherwise payable by PTL to Contractor pursuant to Article III of this Agreement amounts set forth with respect to the elections made.

NON-TRUCKING LIABILITY INSURANCE

Contractor may elect to obtain from or through Great West Casualty Company (or such other broker or insurer approved by PTL) non-trucking (bobtail/deadhead) liability insurance as required in Subsection 4.03(a) of the Agreement. If Contractor elects this non-trucking liability coverage Contractor understands and agrees that such insurance shall have combined single limit coverage of not less than $1,000,000.00 per incident to cover losses incurred by third parties arising from the operation of the Equipment while it is not in operation on PTL business;

(1) The current charge-per-week for non-trucking liability insurance payable to such insurer or broker is $8.00 for each power unit. The cost for such insurance may change from time-to-time as a result of premium rate changes by the insurance company. PTL will notify the Contractor of any rate changes as the same becomes known to PTL.

(2) PTL may, but shall not be obligated to, assist Contractor in completing the application and related forms.

(3) In the event Contractor elects to obtain non-trucking liability insurance from or through PTL as set forth herein, PTL shall provide Contractor with a certificate of insurance. Upon the written request of Contractor, PTL shall provide Contractor with a copy of the underlying insurance policy.

_____ I elect the foregoing Non-Trucking Liability Insurance.

_____ I DECLINE the foregoing Non-Trucking Liability Insurance.

OCCUPATIONAL ACCIDENT INSURANCE

Contractor may elect to obtain occupational accident insurance from or through Zurich American Insurance Company (or such other source approved by PTL) covering the Contractor and any persons not included under the Contractor's workers' compensation coverage, but otherwise utilized by the Contractor in providing services to PTL. A complete explanation of benefits will be provided to Contractor prior to executing this election form.

Occupational accident insurance is not workers' compensation insurance, does not legally qualify as workers' compensation insurance, and does not provide the same coverage as workers' compensation insurance.

(1) The current charge-per-week (per participant) for the occupational accident insurance is $24.00. The cost for such insurance may change from time-to-time as a result of premium rate changes by the insurance company. PTL will notify the Contractor of any rate changes as the same becomes known to PTL.

(2) PTL may, but shall not be obligated to, assist Contractor in completing the application and related forms.

(3) In the event Contractor elects occupational accident insurance from or through PTL as set forth herein, PTL shall provide Contractor with a certificate of insurance. Upon the written request by Contractor, PTL shall provide the Contractor with a copy of the underlying insurance policy.

_____ I elect the foregoing Occupational Accident Insurance.

_____ I DECLINE the foregoing Occupational Accident Insurance.

BAILEE TRAILER INSURANCE

Contractor may elect to obtain from or through Great West Casualty Company (or such other broker or insurer approved by PTL) bailee trailer insurance as required in Subsection 4.03(d) of the Agreement. If Contractor elects this bailee trailer insurance coverage, Contractor understands and agrees that the amount of coverage shall be $25,000.00 per occurrence with a deductible of $1,000.00 per occurrence and the policy shall provide coverage when a Trailer is damaged as a result of the acts or inactions of Contractor.

(1) The current charge-per-week for the bailee trailer insurance is $14.00. The cost for such insurance may change from time-to-time as a result of premium rate changes by the insurance company. PTL will notify the Contractor of any rate changes as the same becomes known to PTL.

(2) PTL may, but shall not be obligated to, assist Contractor in completing the application and related forms.

(3) In the event Contractor elects bailee trailer insurance from or through PTL as set forth herein, PTL shall provide Contractor with a certificate of insurance. Upon the written request by Contractor, PTL shall provide the Contractor with a copy of the underlying insurance policy.

_____ I elect the foregoing Bailee Trailer Insurance.

_____ I DECLINE the foregoing Bailee Trailer Insurance.

PHYSICAL DAMAGE INSURANCE

Contractor may elect to obtain from or through Great West Casualty Company (or such other broker or insurer approved by PTL) physical damage insurance on the Equipment. If the Contractor elects physical damage coverage:

(1) The current charge per year payable to such insurer or broker for physical damage insurance is .07664% of the stated value of the Equipment declared by the Contractor on the application for such insurance, payable in weekly installments after the payment in advance of two (2) months premiums. The coverage will insure the Equipment for damage up to its actual stated value arising from collision or upset.

(2) PTL may, but shall not be obligated to, assist Contractor in completing the application and related forms;

(3) In the event Contractor elects to obtain physical damage insurance from or through PTL as set forth herein, PTL shall provide Contractor with a certificate of insurance. Upon the written request by Contractor, PTL shall provide the Contractor with a copy of the underlying insurance policy.

(4) If Contractor elects to obtain the foregoing physical damage insurance Contractor shall automatically appoint PTL as Contractor's attorney-in-fact, to adjust any losses and to receive, execute and/or endorse any checks or drafts and other related documents in the event Contractor is unavailable or otherwise unwilling to do so. All expenses incurred by PTL in conjunction with adjusting such loss shall be assessed to Contractor. PTL shall apply all proceeds from insurance at its sole discretion.

_____ I elect the foregoing Physical Damage Insurance.

_____ I DECLINE the foregoing Physical Damage Insurance.

PREPAID LEGAL SERVICES

Contractor may elect to obtain prepaid legal services through Drivers Legal Plan to represent Contractor in the event Contractor receives a driving related citation. A complete explanation of benefits will be provided to Contractor prior to executing this election form.

(1) The current charge-per-week for prepaid legal services is $_____. PTL will notify the Contractor of any rate changes as the same becomes known to PTL.

(2) PTL may, but shall not be obligated to, assist Contractor in completing the application form.

_____ I elect the foregoing Prepaid Legal Services.

_____ I DECLINE the foregoing Prepaid Legal Services.

GENERAL

NOTHING IN THIS APPENDIX B RELIEVES THE CONTRACTOR FROM PROVIDING THE INSURANCE SPECIFIED IN SECTION 4.03 OF THE AGREEMENT.

CONTRACTOR ACKNOWLEDGES AND AGREES PTL IS NOT THE INSURER UNDER THE INSURANCE REFERRED TO IN THIS APPENDIX B AND PTL MAKES NO REPRESENTATION OR WARRANTY AS TO THE TERMS, CONDITIONS, LIMITATIONS OR EXCLUSIONS UNDER THE APPLICABLE POLICIES OF INSURANCE. THE CONTRACTOR IS SOLELY RESPONSIBLE TO SATISFY HIMSELF AS TO THE EXTENT AND ADEQUACY OF SUCH INSURANCE AND AS TO THE TERMS, CONDITIONS, LIMITATIONS AND EXCLUSIONS CONTAINED IN THE POLICIES FOR SUCH INSURANCE.

ALL INSURANCE COVERAGES SHALL BECOME EFFECTIVE AS OF THE DATE DETERMINED BY THE INSURER.

TO THE EXTENT I HAVE ELECTED TO OBTAIN INSURANCE UNDER THIS APPENDIX B, I HEREBY AUTHORIZE PTL TO (1) DEDUCT THE AMOUNT INDICATED FROM SETTLEMENT PAYMENTS OTHERWISE PAYABLE TO ME AND (2) REMIT SUCH AMOUNTS TO THE APPROPRIATE SERVICE PROVIDER.

This Appendix B is executed as of the 11th day of March, 20 16 and supersedes any and all previous appendices or schedules related to elective deductions under this Agreement.

PTL

By: Russ Usher

Name: Russ Usher

Title: Director of Permits

CONTRACTOR

Forbes Kerr-Hays
Signature

FORBES KERR-HAYS
Contractor Name (Print)

PASCHALL TRUCK LINES, INC.
INDEPENDENT CONTRACTOR
SERVICE AGREEMENT

THIS IS AN IMPORTANT DOCUMENT THAT CREATES RIGHTS AND OBLIGATIONS FOR BOTH PASCHALL TRUCK LINES AND YOU. PLEASE MAKE SURE YOU UNDERSTAND THE TERMS, CONDITIONS AND OBLIGATIONS OF THIS AGREEMENT BEFORE YOU ENTER INTO IT.

This Independent Contractor Service Agreement ("Agreement") is entered into in Calloway County, Kentucky by and between @Gale Carter ("Contractor"), and Paschall Truck Lines, Inc., a corporation having an office in Murray, Kentucky ("PTL"), and is effective as of Oct 15th, 2015 ("Effective Date").

Intending to be legally bound by the terms of this Agreement, Contractor and Company mutually agree as follows:

I.- RELATIONSHIP AND INTENTION OF PARTIES

The intention of the parties is to (1) create a contract to facilitate PTL's compliance with federal law as a federally licensed motor carrier and (2) create a vendor/vendee relationship between Contractor and PTL through which Contractor, as an independent business person, has the potential and expectation to realize a profit or loss by:

- providing a tractor power unit to PTL;
- rendering certain transportation services as required by PTL customers; and
- conducting and considering himself as either (i) a self-employed individual vendor for all purposes, or (ii) the authorized representative of a business entity that is an unrelated vendor to PTL.

This Agreement sets forth the mutual business objectives of the two parties intended to be served by this Agreement; the obligations of each party; and the results Contractor agrees to accomplish. The manner and means of reaching such results, however, are within the sole discretion of the Contractor, and no officer or employee of PTL shall have the authority to impose any term or condition on Contractor or on Contractor's continued operation that is contrary to this understanding. Contractor shall exercise independent discretion and business judgment to fulfill its contractual obligations under this Agreement. PTL may, however, issue reasonable and lawful directives regarding the results to be accomplished by Contractor, and failure to accomplish such results shall be a breach of this Agreement by Contractor.

Neither Contractor nor any employee or agent of Contractor shall be considered to be an employee of PTL or any of PTL's customers at any time, under any circumstances, for any purpose whatsoever, and nothing in this Agreement shall be construed as inconsistent with that relationship. It is further expressly understood that Contractor, as a vendor, will not receive and has no claim to any benefits or compensation currently paid by, or made available through, PTL to its employees or hereafter declared by PTL for the benefit of its employees. Contractor's compensation is defined solely and specifically in this Agreement and shall consist, in its entirety, of the payments to which he is entitled to as a vendor as referenced in Article IV below and set forth in Section I of the attached Appendix A, which is part of this Agreement.

IF AT ANY TIME DURING THE TERM OF THIS AGREEMENT CONTRACTOR IS OF THE OPINION THAT ANYTHING OTHER THAN AN INDEPENDENT CONTRACTOR OR VENDOR/VENDEE RELATIONSHIP EXISTS BETWEEN CONTRACTOR AND PTL, CONTRACTOR SHALL IMMEDIATELY NOTIFY THE VICE PRESIDENT OF FINANCE OF PTL.

The term "Contractor" as used in this Agreement shall mean Contractor individually as the signatory to this Agreement or, depending on the context in which the term is used, Contractor, collectively with his employees or agents, if any.

RH
Initials for PTL Representative

G.S.C
Initials for Contractor

Contractor acknowledges that PTL has no obligation to furnish any specific number of loads to Contractor on a regular basis during the term of this Agreement but to the extent it is reasonably possible for PTL to do so, it will utilize Contractor's services. Contractor retains the right (subject to the terms of Section 2.13 below) to provide services for other motor carriers or for himself and PTL likewise retains the right to engage other parties of its own choosing for any part or all of its work.

II. EQUIPMENT REGULATORY, MAINTENANCE, OPERATING AND SAFETY PROVISIONS

2.01 Contractor's Equipment. Contractor agrees to provide the tractor power unit(s)to PTL, in good and safe operating condition, (the "Equipment") described as follows:

TYPE	YEAR	MAKE/MODEL	VIN
_____	_____	_____	_____

Contractor represents (i) that he has the legal right to exercise full control over the Equipment; (ii) that the Equipment is fully roadworthy and (iii) meets all the requirements of all applicable federal, state, and municipal laws and regulations applicable to the operations of for-hire motor carriers (collectively "Legal Requirements").

2.02 Trailers. Contractor acknowledges that it will, from time to time, utilize trailers, including intermodal containers and their corresponding chassis, that are the property of, interchanged to, or furnished by PTL (collectively "Trailers"). Contractor shall be responsible for the condition of all such Trailers provided to Contractor from the time of pick-up until delivery is completed and the Trailer is returned as required by PTL.

Contractor shall be responsible for the first $25,000.00 of the losses or costs incurred by PTL for damage to a Trailer which is owned or leased by PTL and furnished directly to Contractor ("PTL Trailer") determined to have been caused by the negligent acts or omissions of Contractor. In the event of a "topped" PTL Trailer (trailer damage resulting from an attempt to drive under a structure or object with inadequate clearance), or in the event any other damage was caused, in whole or in part, by the willful or intentional acts or omissions of Contractor, Contractor shall be responsible for 100% of the cost of the damage. Additionally, in the event Contractor changes or substitutes any parts or accessories of said Trailer including, but not limited to, the tires, without written authorization of PTL, Contractor shall reimburse PTL the full amount of such unauthorized changes or substitution.

2.03 Security. Contractor represents and warrants that any Trailer provide for use by PTL (either directly or indirectly) shall be used by Contractor to transport shipments tendered to Contractor by PTL and Contractor shall use his best efforts to prevent the unauthorized use or control of the Trailers for any purpose. Contractor shall inform PTL dispatch regarding the whereabouts of any Trailer. When parking a Trailer (whether untethered or otherwise), Contractor shall confirm such action with PTL dispatch and, if untethered, shall ensure that the Trailer's king pin is locked and the Trailer's doors are padlocked.

Contractor agrees to ensure that (i) any Trailer that Contractor uses under this Agreement is properly sealed or locked at the time of pick-up; (ii) the seal or lock number is indicated on the shipping documents at origin; (iii) the seal or lock integrity remains intact while the Trailer is in-transit and until proper delivery is made; and (iv) the seal or lock number indicated on the shipping documents at origin is identical to the seal or lock number on the Trailer at destination. Any breach in seal or lock integrity must be immediately communicated to PTL.

2.04 Operation of the Equipment. Contractor shall direct the operation of the Equipment at all times in a safe and prudent manner and determine the method, manner, and means of performing the contractual obligations under this Agreement in all respects including, but not limited to, such matters as: (i) the acceptance or rejection of dispatches offered by PTL; (ii) the days and time Contractor will operate the Equipment; (iii) the loading and securement of the cargo; (iv) the routes traveled; (v) parking sites/rest areas; (vi) decisions regarding unloading; (vii) the selection of insurance providers; and (viii) the repair and fueling of the Equipment, provided that Contractor shall fully and efficiently perform its obligations under this Agreement.

Contractor is not obligated to accept every or any shipment offered by PTL to Contractor and may decline PTL's request to furnish the Equipment and labor and to perform such work on any particular occasion without penalty. When a shipment is offered by PTL to Contractor and is accepted by Contractor however, Contractor shall promptly complete the shipment with reasonable dispatch. It is Contractor's responsibility to complete the trip within the agreed upon transit time once the dispatch is accepted and comply with any special instructions related thereto.

Contractor shall have the duty to determine that all trailer loads are in compliance with the weight laws of the state in which or through the Equipment will travel and to notify PTL if the Equipment is overweight. Except when violations result from acts or omissions of Contractor, PTL shall assume the risk and cost of fines for overweight loads when such loads are preloaded and sealed, containerized, or where the trailer or lading is otherwise outside of Contractor's control. However, Contractor shall pay or reimburse PTL for any cost or penalties due to Contractor's failure to weigh any load or to notify PTL that the Equipment is overweight.

Contractor shall be solely responsible for all cargo loss or damage claims when Contractor has signed a bill of lading, manifest or other shipping document acknowledging that the cargo was loaded in good condition and all pieces are accounted for. Contractor shall immediately report all cargo shortages, overages or other exceptions to PTL. It is Contractor's responsibility to note exceptions on the bill of lading, manifest, or other shipping document prior to being dispatched and/or signing the required documents.

No passenger, other than an authorized and U.S. Department of Transportation ("U.S. DOT") qualified co-driver shall be permitted in the Equipment while the Equipment is under dispatch, operating under the PTL's authority and/or displaying the PTL's logo or placard unless specifically authorized in advance in writing by PTL. Any such authorization will be in the sole discretion of PTL, and subject to such requirements and procedures as it may prescribe.

Unless required by law to be held by PTL, Contractor shall hold all authorizations, permits, licenses, orders and approvals required by governmental entities which are material to the business of Contractor and to the transactions contemplated by this Agreement. Contractor is not required to purchase or rent any products, equipment or services from PTL as a condition of entering into this Agreement, or of continuing this Agreement in effect.

Contractor shall, at all times, keep a copy of this Agreement on board the truck tractor power unit.

2.05 Responsibility for Operating Costs and Expenses. Contractor will be responsible for all:

(a) costs, and expenses associated with the operation of the Equipment, such as fuel, tires, tire chains (if necessary), load locks, empty mileage, permits of all types, tolls, fines, detention, and accessorial services; and

(b) all taxes, premiums, assessments, and fees associated with the operation of the Equipment, including fuel taxes, property taxes, sales, and use taxes, highway use taxes, payroll taxes, unemployment taxes, and income taxes.

2.06 Tractor Identification. PTL shall furnish door placards to be affixed to the tractor power unit as required by federal regulations. In the event Contractor chooses to satisfy the Legal Requirements for equipment identification in a manner other than with the signage provided by PTL, Contractor may do so at his sole expense. In all events however, Contractor agrees to remove or temporarily cover all PTL identification signs on any occasion when the tractor power unit is used in the service of anyone other than PTL, including when the tractor power unit is being used for personal use.

In addition, Contractor shall not display any sign or plate which contains words which, in the sole discretion of PTL, contain sexual, discriminatory, or offensive content and, if so determined by PTL, Contractor agrees to remove such sign or plate immediately upon oral or written notification by PTL.

2.07 Maintenance and Inspection. Contractor, at Contractor's expense, shall equip and continuously maintain the Equipment in good and safe operating condition to meet all requirements imposed by any Legal Requirements. In the event the Equipment is found to be deficient under any Legal Requirements, Contractor shall remove the Equipment from service until it is, at Contractor's expense, brought into compliance. Contractor agrees to (i) conduct maintenance inspections of the Equipment no less frequently than every sixty (60) days; and (ii) maintain the appropriate records of such inspections and any resultant findings and (iii) provide PTL with said records as may be requested by PTL or as PTL is required to maintain by the Legal Requirements or by its insurance provider's requirements. In addition, the Equipment shall be maintained in a clean and presentable fashion free from body damage and subjective markings, in accordance with standards of the industry with the exhaust stacks on the tractor unit, if forward of the sleeper, turned out 45 degrees; and if behind the sleeper, turned out 60 degrees.

2.08 Driver and Safety Compliance. Contractor shall furnish, at Contractor's expense, drivers (including himself, as the case may be) for the Equipment who meet (i) all driving requirements imposed by the Legal Requirements and (ii) all driving requirements and qualification standards as may be established by PTL's insurer(s). Contractor shall promptly furnish to PTL for each of Contractor's drivers (including himself, if applicable) evidence and documents that PTL is required to maintain by its insurance provider or by the Legal Requirements. Any driver, including Contractor, who is not in compliance with PTL's safety policies and procedures shall be prohibited from operating any vehicle (the Equipment or otherwise) in the service of PTL.

PTL is committed to a policy of ensuring a drug and alcohol-free transportation environment and to reduce accidents, injuries and fatalities. **Accordingly, Contractor agrees that any violation of PTL's Policy on Drug and Alcohol Abuse or corresponding applicable U.S. DOT regulations shall result in immediate termination of this Agreement.**

2.09 Employment of Qualified Persons. Except where the duty of qualification is imposed by any Legal Requirements, Contractor may, in his sole discretion, employ individuals other than himself to perform or assist Contractor in performing his contractual obligations under this Agreement. The term "employee" includes drivers, helpers, or any other employee required by Contractor to perform services covered by this Agreement. In the event Contractor employs such individuals, Contractor (i) affirmatively acknowledges that all such persons shall be Contractor's employees or agents exclusively, and shall be subject solely to Contractor's direction and control, including the selection, hiring, firing, supervising, instructing, training, and setting of wages, hours and working conditions; (ii) assumes full responsibility for payment of all wages and benefits; the maintenance of payroll and employment records as required by law; and (iii) shall require that any such Equipment operator shall cooperate with PTL regarding compliance with all Legal Requirements and other conditions under this Agreement.

Contractor shall obtain and maintain, at his expense, workers' compensation insurance on all employees and other insurance required by any applicable employer liability related laws as will fully protect Contractor and PTL from any and all claims under such laws. Contractor affirms that PTL shall have no responsibility or authority to: (i) make any payment to Contractor's employees or agents; (ii) make any deductions for, or pay, social security taxes, withholding taxes, or similar charges with respect to Contractor or Contractor's employees or agents; or (iii) provide workers' compensation or unemployment compensation coverage to Contractor or Contractor's employees or agents.

2.10 Logs and Reports. To the extent required by law, Contractor shall prepare and file with PTL such logs, mileage reports, fuel receipts and other documents in such manner and at such times as will enable Contractor and PTL to comply with all Legal Requirements.

Contractor agrees that the submission of a falsified driver qualification application, logs, mileage reports, maintenance reports, or fuel receipts shall result in immediate termination of this Agreement.

2.11 License Plates. Unless otherwise agreed to between Contractor and PTL, in writing, PTL shall obtain and provide a base plate for the Equipment under the PTL's IRP permit for use by Contractor. The license plate shall remain the property of PTL. Contractor shall remove and return such plate to PTL at the termination of this Agreement and, in the event Contractor fails or refuses to do so, PTL shall, and is hereby authorized to deduct the full cost of the plate from Contractor's final settlement.

2.12 Fuel Tax. Fuel tax is an operating expense of Contractor and the liability for payment also remains with Contractor. In the event Contractor elects not to use the PTL provided fuel card, then Contractor shall be responsible for providing PTL with an accurate accounting of all fuel purchases and miles traveled for the purpose of computing state fuel tax liability and Contractor shall provide PTL with all fuel receipts. PTL shall compute the fuel tax liability at the end of each month on a per tractor basis, remit payment, and charge (or credit) the Contractor, accordingly.

2.13 Non-PTL Use. Contractor may use the Equipment for other purposes when it is not in the service to PTL. However, in order for PTL to provide the level of service required by shippers, PTL must know when Contractor uses the Equipment for any non-PTL use. Accordingly, in the event Contractor intends to use the Equipment for any non-PTL use, Contractor agrees that at least 24 hours prior to such use, he shall (i) notify PTL of such intended use, (ii) remove or temporarily cover all PTL identification and permit markings bearing PTL's name or logo and U.S DOT number, and (iii) confirm that appropriate insurance coverage is in place and in effect. Contractor specifically agrees that Contractor shall relinquish control over any of PTL's property in Contractor's possession and temporarily return all such property to PTL (including, but not limited to the base plate, if owned by PTL; the permit pouch; and the PTL fuel card, if applicable) prior to any non-PTL use of the Equipment.

2.14 U.S. DOT Leasing Regulations. To the extent required by the Federal Motor Carrier Safety Regulations, as promulgated by the Federal Motor Carrier Safety Administration of the U.S. DOT (the "Leasing Regulations"), Contractor agrees to relinquish to PTL exclusive possession, control, and use of the Equipment while it is in service to PTL under this Agreement and PTL agrees to assume responsibility for same. Both PTL and Contractor specifically acknowledge and agree with the statements contained in the Leasing Regulations to the extent that nothing contained in the Leasing Regulations is intended to affect whether the Contractor, or any driver provided by the Contractor, is an independent contractor or an employee of PTL. It is the intention of the parties that an independent contractor relationship exists when PTL, as a carrier lessee, complies with 49 U.S.C. Section 14102 and related administrative requirements.

III. RATES, CHARGES AND PAYMENT.

3.01 Rates and Charges. The rates and charges payable to Contractor for services rendered under this Agreement are set forth in the attached Section I of Appendix A, subject to the deductions authorized in this Agreement, Section II of Appendix A and/or Appendix B. If there are any additional charges related to a load for which Contractor seeks payment, it is Contractor's responsibility to (i) inform PTL of such charges; (ii) obtain from PTL written verification of an agreement with such charges; and (iii) only thereafter, include the charge on an invoice to PTL.

In the event Contractor is not operating his business under a Federal Employer Identification Number ("EIN") and through a business entity as of the Effective Date of this Agreement, Contractor agrees to obtain such EIN and form a business entity within ninety (90) days of the Effective Date.

3.02 Advances. PTL will, on request of Contractor, advance Contractor 25% of Contractor's Current Net Settlement. For purposes of this Agreement, the phrase "Current Net Settlement" shall mean the unpaid per mile rate less previous advances, less any deductions such as, but not limited to, fuel purchases charged to PTL. PTL shall deduct all advances (even if they should exceed 25%) at the time of next available settlement.

3.03 Time and Manner of Payment. Contractor will be paid within fifteen (15) calendar days after Contractor has submitted in proper form all those documents necessary for PTL to secure payment from shipper (including, but not necessarily limited to, trip reports, bills of lading, delivery receipts or other proof of delivery, original fuel receipts and properly completed drivers logs).

3.04 Contractor's Right to Review Compensation-Related Documents. The Contractor shall have the right to examine copies of any documents which are necessary to determine the accuracy of the calculation of the compensation and/or validity of any deductions from Contractor's settlement.

3.05 Final Determination of Settlements. Contractor acknowledges that it is his or her responsibility to timely review and verify the accuracy of all settlements. Further, Contractor agrees that all settlements shall be final, and that Contractor will not make any claim or bring any action against PTL for additional settlement monies unless Contractor notifies PTL in writing of any discrepancies or additional claims within ninety (90) days of PTL issuing said settlement payment.

3.06 Non-Compensable Items. PTL shall not pay any amount to Contractor other than the amount of compensation specified in Section I of Appendix A of this Agreement. Specifically, PTL shall not pay any mileage or empty mileage fees, any costs of operating the Equipment, any personnel costs of Contractor, or any other costs incurred by Contractor, except as specifically provided in this Agreement.

3.07 Filing and Reporting Responsibilities. PTL shall report payments made to Contractor pursuant to this Agreement as required by law, but shall not withhold any amounts for taxes on behalf of Contractor except as otherwise required by law. **Contractor shall be solely responsible for the payment of any federal, state, provincial, or local income taxes, payroll taxes, employment taxes, self-employment taxes, or other charges occasioned by Contractor's status of an independent contractor, and the filing of any federal, state, provincial, or local returns with respect to such taxes. PTL shall not be responsible for the payment of any local, state, provincial, or federal employment, or income taxes with respect to Contractor or Contractor's employees.**

IV. GENERAL INSURANCE COVERAGES AND INDEMNIFICATION

4.01 PTL's Insurance Responsibilities. PTL shall provide, at its expense insurance coverage for the protection of the public as required by law.

4.02 Accident Reporting Responsibilities. Contractor shall notify PTL immediately in case of any vehicular accident or the discovery of loss, damage or malfunction of equipment or property of PTL or others, and comply with PTL's accident/loss protocol as it pertains to photographs, reports, exchange of insurance information, etc

4.03 Contractor's Insurance Responsibilities. Notwithstanding the provisions set forth in Section 4.01 above, during the term of this Agreement, Contractor agrees to obtain and keep in force at all times, the following insurance coverages:

(a) Non-Trucking (Bobtail/Deadhead) Liability Insurance: Contractor shall obtain and maintain automobile/truckers personal injury and property damage insurance coverage for a combined single limit of not less than $1,000,000.00 with no deductible to cover any bodily injury or property damage claim that may arise from operation of the Equipment at all times while it is not in operation on PTL business, including unauthorized bobtail and deadhead.

(b) Workers' Compensation Insurance: To the extent that statutory workers' compensation insurance coverage is available to Contractor under the laws of Contractor's place of domicile, Contractor agrees to obtain such coverage, at Contractor's sole expense, to cover Contractor and all employees of Contractor who operate the Equipment under this Agreement. If such coverage is obtained through a private insurer, the policy shall contain a waiver of subrogation endorsement, waiving any right of subrogation against PTL.

Workers' Compensation Insurance Coverage is not available from or through PTL. Accordingly, PTL hereby advises Contractor that the laws of certain states may require Contractor to acquire and maintain workers' compensation insurance. Contractor understands and acknowledges that it is the sole responsibility of Contractor to review and comply, at Contractor's expense, with each state's laws pertaining to workers' compensation insurance.

(c) Occupational Accident Insurance: In the event Subsection 4.03(b) is not applicable to Contractor and to the extent not prohibited by law, Contractor shall obtain and maintain occupational accident insurance within his place of domicile which coverage shall include an alternative employer endorsement, indemnity of PTL or similar provisions acceptable to PTL. Occupational accident insurance is intended to cover Contractor and any persons not included in the coverage described in the immediate preceding subsection but otherwise utilized by Contractor in the performance of services under this Agreement.

(d) Bailee Trailer Insurance: Contractor shall obtain and maintain Bailee Trailer Insurance coverage in the amount of $25,000.00 per occurrence with a deductible of not more than $2,500.00 per occurrence to provide coverage when a Trailer is damaged as a result of the actions or inactions of Contractor.

The Non-Trucking Insurance; Occupational Accident Insurance; and the Bailee Trailer Insurance coverages described above in Subsections 4.03 (a), (c), and (d) are available for purchase from or through PTL. Contractor may elect to obtain all or some of these insurances from or through PTL by making such selection on Appendix B. Alternatively, Contractor may obtain the required insurance coverages from an unrelated third party vendor directly.

In the event the Contractor purchases coverages required by Subsection 4.03(a) (Non-Trucking) or Subsection 4.03(d) (Bailee Trailer Insurance) from an unrelated third party vendor, the Contractor will provide PTL certificates of insurance evidencing each of the coverages referenced above; naming PTL as an additional insured; and providing PTL thirty (30) days' prior written notice of cancellation or material change to any insurance policy(ies). All coverages obtained by the Contractor from a source other than PTL under Subsections 4.03(a), (c), and/or (d) must be issued by an insurance company qualified to write such coverage in the states(s) where the Equipment is operated, and rated B+ or better by A.M. Best, Co.

Neither the Contractor nor its drivers, agents or employees will be permitted to perform any services under this Agreement until the Contractor complies with the provisions of this Section 4.03. In the event Contractor fails to obtain any of the insurance coverages set forth above, PTL may obtain such coverages on such Contractor's behalf and charge back Contractor the total costs thereof.

4.04 Indemnification. During the Term of this Agreement, and thereafter, Contractor agrees if any claim is made against PTL or Contractor with respect to the provision by Contractor of any services reflected in this Agreement, Contractor shall be solely responsible for satisfying such claims and PTL, at its option, may satisfy such claims, or any portions thereof, by deducting the amount of the claim from any compensation due Contractor from PTL. PTL will provide written notification of such claim to Contractor once PTL has knowledge of such claim prior to any deduction being made and will allow Contractor the opportunity to investigate, challenge, or present any facts Contractor may have prior to the commencement of any deductions for claims liability. If after such investigation and/or challenge the matter is not resolved, Contractor agrees to indemnify and save PTL harmless from and against liabilities on a "first dollar coverage" basis for the items or occurrences listed below.

(a) *Personal Injury and Property Damage While Under Dispatch (other than for cargo loss or damage or Trailers):* The first $2,500.00 for any loss relating to any personal injury to a third party or damage to property (other than cargo) resulting from any act or omission of the Contractor while under dispatch or transporting cargo under PTL's U.S. DOT operating authority, provided the occurrence was reported in accordance with Section 4.02. In the event Contractor failed to report an occurrence in accordance with Section 4.02 or the Equipment was being operated with an unauthorized person present in the Equipment, the $2,500.00 limitation of liability will not apply and Contractor shall be liable to PTL for the full amount of any and all damages resulting from the occurrence.

(b) *Other Personal Injury and Property Damage (other than for cargo loss or damage or Trailers):* Any loss or damage, without limitation, (including reasonable attorneys' fees) arising from the operation of the Equipment at any time while it is not in operation on PTL business, including unauthorized bobtail and deadhead.

(c) *Cargo Damage or Loss:* The first $2,500.00 per occurrence for any and all claims brought against PTL or losses suffered by PTL or liabilities incurred by PTL, arising from or on account of any loss or damage to cargo tendered for shipment or handling hereunder while such cargo is being transported and/or while in the possession of Contractor when such shortage, damage, or loss is caused directly or indirectly by any negligent act or omission by Contractor. The term "possession" extends to an unattended trailer or the unauthorized dropping of a loaded trailer.

(d) *Damage to Trailers:* Any loss or damage, without limitation, arising from Contractor's use of a Trailer (other than a PTL Trailer which is governed by Section 2.02 above) during the term of this Agreement.

(e) *Relationships with Workers*: Any and all claims brought against PTL, or losses suffered by PTL, and liabilities incurred by PTL, arising from the Contractor's relationship with Contractor's employees or agents, whether under industrial accident laws, workers' compensation laws, unemployment compensation laws, or any other foreign, federal, state, or municipal laws, rules, regulations and orders applicable to the relationship between employers and employees.

(f) *Compliance with Law*: Any and all claims brought against PTL, or losses suffered by PTL, or liabilities incurred by PTL, for or on account of Contractor's failure or failure of Contractor's employees or agents to comply with any duties under common law or other laws, rules, regulations or orders applicable to Contractor's business.

(g) *Other*: Any and all claims brought against PTL, or losses suffered by PTL, or liabilities incurred by PTL, arising from the operation of the Equipment in the service of others.

The indemnification obligations of Contractor set forth in this Section 4.04 shall survive the expiration or termination of this Agreement.

V. CUSTOMER SERVICE AND COMMUNICATION

5.01 Customer Service. Contractor acknowledges that PTL is in the business of transporting cargo on the days and times requested by customers. This requires not only prompt and dependable transit times, but also regular and accurate two-way communication between PTL and Contractor regarding the transport of the customer's cargo. Contractor shall diligently conduct his operations under this Agreement to ensure continued customer satisfaction with PTL's and Contractor's businesses but without compromising a commitment to safety at all times. Such efforts shall include gathering and reporting shipment related data in accordance with PTL's customer's requirements; on-time loading; safe and prompt transport; on-time delivery of the freight in a clean condition without transportation related

damage or defect; executing documents; submitting all related shipping documents to PTL immediately upon delivery; and conducting oneself professionally at loading, during transport, and at unloading locations.

Unless otherwise excused by the terms of Section 8.06 (Force Majeure), if Contractor has accepted a dispatch and is legally able to fully perform under this Agreement after such dispatch but fails to deliver the shipment at the scheduled appointment time, a service failure charge in the amount of $300.00 per load will be assessed against Contractor. Likewise, in the event Contractor fails to deliver to the final destination and the load must be recovered and delivered by alternate means, a recovery charge of $500.00 for each load shall be assessed against Contractor.

5.02 Necessary Communications Equipment. Contractor agrees to make all necessary arrangements to obtain and install a communication system or satellite tracking device for each tractor power unit which Contractor provides to PTL under this Agreement. Such communication device will be compatible with the communication/satellite tracking system utilized by PTL.

5.03 Obtaining the Communications Equipment. Contractor may elect, by initialing Option B below, to have PTL arrange for, and have installed as necessary, at Contractor's expense, a device which meets the requirements of Section 5.02 above (a "Qualcomm Unit"). Contractor will have the Qualcomm Unit installed at PTL's Murray Kentucky terminal or other designated location and agrees to pay the installation fee as specified in Section II of Appendix A. If Contractor is still under contract with PTL six months after the Effective Date of this Agreement, PTL shall reimburse Contractor an amount equal to the installation fee. PTL will be responsible for all costs of messaging and other communication costs charged by Qualcomm during the Term of this Agreement in excess of the fee set forth in Section II of Appendix A.

CONTRACTOR SHOULD INITIAL ONE OF THESE TWO OPTIONS:

_____ Option A: Contractor shall furnish and install his/her own communication/satellite tracking device which meets the requirements of Section 5.02 above.

_____ Option B: PTL shall arrange, at Contractor's expense, to furnish and, as necessary, install, a Qualcomm Unit, and Contractor authorizes PTL to deduct from Contractor's compensation the amounts to be paid by Contractor as specified in Section II of Appendix A and Section 5.04 below.

5.04 Additional Provisions Related to Option B.

(a) Removal of Communication Equipment Unit Without Consent. Contractor shall be prohibited from disconnecting or removing the Qualcomm Unit from the Equipment without PTL's prior written consent.

(b) Re Installation Expense. In the event Contractor replaces the Equipment, Contractor shall bear the expense of removal and re installation of the Qualcomm Unit(s) in Contractor's replacement vehicle and hereby authorizes PTL to deduct all such expense from Contractor's compensation.

(c) Loss or Damage. Contractor shall be responsible for the return of each Qualcomm Unit to PTL immediately upon any request from PTL or the termination of this Agreement. A qualified technician selected by PTL shall remove the Qualcomm Unit. Contractor shall pay normal de- installation expense and hereby authorizes PTL to deduct all such expense from Contractor's compensation. If the Qualcomm Unit is lost, damaged as a result of Contractor's negligence, or not returned upon request or upon termination of the Agreement, Contractor hereby authorizes PTL to deduct from Contractor's compensation or, if necessary, to collect additional payments from Contractor for, the entire expense incurred by PTL in repairing or replacing the Qualcomm Unit, together with all collection costs, including reasonable attorneys' fees. PTL shall not be responsible for any loss or damage to the Equipment arising or resulting from the installation, use, or removal of the Qualcomm Unit.

VI. TERM/TERMINATION

6.01 Term. This Agreement will continue in full force and effect for an initial term for one (1) year from the Effective Date. This Agreement shall automatically renew for successive terms of one (1) year after expiration of the initial term unless Contractor or PTL provides the other party with written notice of termination at least thirty (30) days' prior to the expiration of the then current term.

6.02 Termination. This Agreement may be terminated during the term as follows:

(a) At any time, by mutual agreement of Contractor and PTL;

(b) Immediately, upon the death of Contractor, in the event he is a sole proprietor;

(c) Immediately, in the event Contractor is a qualified driver under this Agreement (i) is prohibited by operation of law to perform safety-sensitive functions or (ii) ceases to meet PTL's safety clearance criteria and is unable to provide a substitute qualified driver within ten (10) days;

(d) Immediately, in the event the Equipment is substantially damaged or otherwise inoperable;

(e) Immediately, by either party, by giving written notice to the other party of an event of the breach of this Agreement by the other party;

(f) Immediately, in the event Contractor participates in (i) any discriminatory, harassing, or violent conduct that violates an individual's rights under federal, state or common law or (ii) aggressive, threatening or forcefully rude and argumentative conduct with either a customer or anyone working for the PTL; (iii) any dishonest or bad act including, but not limited to, fraud, theft, impeding an ongoing investigation or making false statements to PTL personnel or any third party; or (iv) any similar conduct which would reflect unfavorably on PTL or taint the reputation of PTL from its customer's perspective; or

(g) Immediately, in the event a termination in transit event occurs as described in Section 6.03 below.

Unless otherwise agreed to by Contractor and PTL, the place of termination of this Agreement shall be at 3443 Highway 641 South, Murray, Kentucky.

Upon termination, PTL shall have no further obligation to Contractor under this Agreement or otherwise, other than to pay to Contractor any amounts that may be due to Contractor subject to the terms hereof respecting deduction or setoff.

6.03 **Termination in Transit.** Unless otherwise excused by the terms of Section 8.06 (Force Majeure), if Contractor has accepted a dispatch and is legally able to fully perform under this Agreement after dispatch but abandons the shipment in transit, Contractor shall receive no compensation for the services performed on said activity; this Agreement shall be terminated immediately; and PTL shall have the right to (i) temporarily take physical possession of the Equipment and complete the transport of the cargo to destination or (ii) substitute the Equipment with other equipment to complete delivery of the shipment or any part thereof. Any expenses incurred by PTL related to such substitution or related to actions taken by PTL to complete the required services (including costs associated with cargo transfers) that exceed the expenses PTL would otherwise incur in paying Contractor to perform such services are agreed to be expenses chargeable to and deductible from amounts that would otherwise be due Contractor. In the event PTL takes possession of the Equipment, it will be returned to the possession of Contractor at a PTL facility.

6.04 **Contractor's Obligations upon Termination.**

(a) The Contractor will, within forty-eight hours from the time this Agreement is terminated, return all of PTL's property to PTL's Murray Kentucky Terminal, including the motor carrier identification placards, the Qualcomm Unit, all permits, signed off lease, cab cards, license plates, Trailers, spare tire and tire caddy, and logs current to the date of termination. PTL may withhold the final payment of any compensation to Contractor until such time as Contractor has returned all PTL property to PTL.

(b) In the event Contractor, for any reason fails to comply with Subsection 6.04(a) above, Contractor agrees to reimburse PTL, and be liable for all reasonable expenses, and costs incurred by PTL in obtaining and returning its equipment and/or property. Contractor agrees that in the event it should be deemed necessary by PTL to enter upon private property and/or remove PTL property in order to obtain possession of, and return its equipment and/or property, Contractor does hereby irrevocably grant PTL, or its duly authorized agents, permission to do so, and further agrees to save, and hold harmless, PTL, or it is duly authorized agents, from any form of liability whatsoever in connection with such repossession.

(c) Additionally, if the Contractor fails to return PTL's property to PTL within forty-eight hours after the termination of this Agreement, Contractor agrees to pay PTL a flat fee of $2,500.00 for repositioning any Trailer.

(d) In the event Contractor ceases providing services when required by PTL on a continuing basis within nine (9) months after the Effective date, Contractor authorizes PTL to deduct "early termination fee" of $5000.00 from Contractor's compensation. Contractor agrees that the early termination fee constitutes reasonable liquidated damages associated with, among other things, Carrier's effort, expenses, and costs in recruiting and contracting with Contractor, recruiting and contracting with additional Contractors to replace unavailable units, and Carrier's loss of revenue.

VII. ADMINISTRATIVE MATTERS

7.01 **Right to Set Off.** PTL shall be entitled to set off against and deduct from any compensation payable to Contractor under this Agreement any amounts due from Contractor under this Agreement and the amount of any losses, damages or expenses (including all court costs, attorneys' fees or collection expenses incurred by PTL to enforce the terms of this Agreement) suffered or incurred by PTL as a result of Contractor's breach of any of the provisions of this Agreement or as a result of any negligent, fraudulent or illegal activities of Contractor or his employees or agents. The right of set-off shall survive the termination of this Contract. Contractor shall remain liable for any remaining indebtedness, which may exceed amounts which PTL may set-off against.

7.02 **PTL Non-Liability for Equipment.** Contractor agrees that PTL shall not be liable, financially or otherwise, to Contractor for any depreciation, loss or damage that may occur to the Equipment used in the performance of this Agreement. It is the sole responsibility, and right of Contractor to secure, and maintain any physical damage insurance for such Equipment. Contractor waives all rights against the PTL, and all other Contractors hauling commodities for PTL for loss, and damage to any equipment described in Appendix A.

7.03 **Dispute Resolution.** Except as provided for in Subsection 7.04(c) below, any claim, dispute or controversy including, but not limited to the interpretation of any federal statutory or regulatory provisions purported to be encompassed by this Agreement; or the enforcement of any statutory rights emanating or relating to this Agreement **shall be resolved on an individual basis (and not as a part of a class action) exclusively between Contractor and PTL by final and binding arbitration to be held in Calloway County, Kentucky** before the American Arbitration Association ("AAA"). The arbitration proceeding shall be governed by the following rules:

(a) A written demand for arbitration must be mailed to the other party and the AAA within one hundred twenty (120) days of the occurrence of the claimed breach or other event giving rise to the controversy or claim. **Failure to make such timely demand for arbitration shall constitute an absolute bar to the institution of any proceedings and a waiver of the claim.**

(b) The demand for arbitration shall identify the provision(s) of this Agreement alleged to have been breached and shall state the issue proposed to be submitted to arbitration and the remedy sought. The copy of the demand shall be sent to the American Arbitration Association; addressed to: 1750 Two Galleria Tower, 13455 Noel Road, Dallas, Texas 75240-6636 with a request that the demand be forwarded to the appropriate AAA Regional Office.

(c) This arbitration provision shall not be applicable to any controversy, dispute or claim arising out of or related to the collection of deficit balances in any Contractor's accounts with PTL in which case for which an action may be brought against Contractor by PTL in a court of law in Calloway County, Kentucky after the expiration of the 120 day period set forth in this Subsection 7.03(a) above.

(d) As to any dispute or controversy which under the terms of this Agreement is a proper subject of arbitration, no suit at law or in equity based on such dispute or controversy shall be instituted by either party other than a suit to conform, enforce, vacate, modify or correct the award of the arbitration(s) as provided by law; provided, however, that this clause shall not limit PTL's right to obtain any provisional remedy including, without limitation, injunctive relief, writ for recovery of possession or similar relief from any court of competent jurisdiction, as may be necessary in PTL's sole subjective judgment to protect its property rights.

(e) General pleading and discovery processes related to the arbitration proceeding shall comply with the Federal Rules of Civil Procedure.

(f) The arbitration proceeding shall be governed by the AAA's Commercial Arbitration Rules to the extent that such Rules are not inconsistent with any of the immediately preceding subsections of this Section 7.04: however, in all events, each party shall be responsible for its own attorneys' fees.

VIII. MISCELLANEOUS

8.01 **Agency.** Neither PTL nor Contractor is the agent of the other and neither shall have the right to bind the other contract or otherwise, except as specifically provided in this Agreement.

8.02 **Merger of Understanding.** This Agreement sets forth correctly the effect of all preliminary negotiations, understandings and agreements between the parties and supersedes any and all previous agreements whether written or verbal. This Agreement and appendices shall not be modified, altered, changed or amended in any respect unless in writing and signed by both parties.

8.03 **Governing Law and Jurisdiction.** This Agreement shall be governed by laws of Kentucky and applicable Federal law not only as to interpretation and performance but also as to encompassing any and all disputes between the parties. The parties agree that any legal proceedings between the parties arising under, arising out of, or relating to the relationship created by this Agreement, including both the judicial proceedings and the arbitration proceedings discussed herein, shall be filed and maintained within the applicable judicial district that includes Calloway County, Kentucky (or as otherwise agreed to pursuant to Section 7.04 above, and each of the parties consents to personal jurisdiction as required to this Section 8.03.

8.04 **Severability.** In the event that any provision of this Agreement shall be construed as or declared to be invalid, unenforceable or unconstitutional, then said provision shall be considered severed from this Agreement to the extent of such invalidation, unenforceability or unconstitutionality. All remaining provisions of this Agreement shall remain in full force and effect.

8.05 **Waiver.** If either party fails to enforce, or waives the breach of, any term or condition of this Agreement, such action or inaction shall not operate as a waiver of any other part of this Agreement, nor of any other rights, in law or equity, or of claims which each may have against the other arising out of, connected with or related to this Agreement.

8.06 Force Majeure. The performance of the obligations of this Agreement on the part of either Contractor or PTL shall be excused by reason of acts of God, natural disasters, civil commotion, government interference, regulations, or other similar contingencies beyond the control of the affected party.

8.07 Assignment. Neither this Agreement nor any rights, interest or obligations of either party may be assigned without prior written consent of the other party except that PTL may freely assign this Agreement to an affiliated entity.

8.08 Notices. Any notice or communication between the parties hereto shall be addressed as follows:

If to PTL:
Paschall Truck Lines
Attn: Director-Contractor Relations
3443 Highway 641 South
Murray, Kentucky 42071
Telephone: (270) 753-1717
Facsimile: (270) 753-1092

If to Contractor:
Ⓧ Gale S. Carter
3670 Buckingham CV. E
Horn Lake, MS. 38637
Telephone: Ⓧ (662) 202-5447
Facsimile: _____

All notices and other communications to be given under this Agreement shall be in writing and shall be deemed to have been duly given if: (i) delivered personally; (ii) mailed by certified mail return receipt requested; (iii) sent by facsimile and confirmed by first class mail; (iv) made through Qualcomm; or (v) sent by commercial overnight courier and confirmed by proof of delivery.

8.09 Section Headings. All section headings in this Agreement are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

CONTRACTOR ACKNOWLEDGES AND REPRESENTS THAT CONTRACTOR HAS READ AND FULLY UNDERSTANDS THE PROVISIONS OF THIS AGREEMENT AND HAS HAD SUFFICIENT TIME AND OPPORTUNITY TO CONSULT WITH PERSONAL FINANCIAL, TAX AND LEGAL ADVISORS PRIOR TO EXECUTING THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto enter into and execute this Agreement as of the Effective Date set forth above.

PTL

By: Russ Usher

Name: Russ Usher

Title: Director of Permits

CONTRACTOR

Ⓧ Gale S. Carter
Signature

Ⓧ Gale S. Carter
Contractor Name (Print)

3670 Buckingham CV. E
(Address)

Horn Lake, MS 38637
(City, State, Zip Code)

_____
(Fed. Tax ID No.)

The undersigned individual hereby represents that he/she personally guarantees (1) the performance by such obligations set forth in this Agreement and (2) the payment of any liabilities which CONTRACTOR may owe PTL.

Ⓧ Gale S. Carter
OWNER

Ⓧ 428-35-1373
SSN#

APPENDIX A
TO
PASCHALL TRUCK LINES, INC.
INDEPENDENT CONTRACTOR SERVICE AGREEMENT

RATES, CHARGES, AND AUTHORIZED DEDUCTIONS

I. RATES AND CHARGES

The following Rates and Charges shall be applicable for the services rendered by Contractor under this Agreement and PTL will pay Contractor accordingly for the services performed at PTL's request subject to any deductions set forth in the Agreement or authorized in Section II of this Appendix A or Appendix B.

1.01 Base Linehaul Rate. PTL shall pay Contractor a "percentage of received linehaul and fuel surcharge revenue" of 70% as base linehaul rate. For purposes of this Appendix A the term "percentage of received linehaul and fuel surcharge revenue" shall mean all revenue (including fuel surcharge) actually received from the shippers, brokers, forwarders, cosignees, or other carriers related to services performed by Contractor specific to the actual movement of freight hereunder from the point of origin to the destination reduced by: (a) the amount paid to any third party by PTL in relation to movement of the load, including without limitation, amounts paid to other carriers as a pro-rata payment for their participation in the movement of a load; or (b) any warehouse or storage charges.

1.02 Spot Market Pricing Arrangements. From time-to-time, Contractor and PTL may agree upon an alternate compensation arrangement relating to a particular shipment for which it is not practical to establish a specific compensation base because of the variability of time and expense associated to such assignments, which arrangement is commonly referred to as "spot market pricing". **In such event, the alternative compensation arrangement will be agreed upon prior to the performance of the services and will temporarily supersede and replace the parties' agreement in terms of compensation as is otherwise agreed to in this Agreement.** The different rate will only apply for the particular shipment for which such an alternative is offered and accepted. This different pricing arrangement will not, in any manner whatsoever, directly or indirectly, affect any future shipment or any other term or provision of this Agreement.

1.03 Accessorial and Other Charges/Credits. The amount payable to Contractor related to accessorial services will be paid as follows:

(a) Other Charges: All other charges for items such as multiple stop-offs; loading and unloading; lumper loading and unloading; detention/layover; reconsignment; redelivery; or authorized deadhead; etc. shall be paid to Contractor by PTL in the amounts which shall be communicated to Contractor, upon request.

Contractor must contact the dispatch agent the day that accessorial charges are incurred in order to properly document billing information. In addition, the customer must authorize the billing of the accessorial. Payment of accessorial charges is contingent upon Contractor presenting properly signed documentation issued by the customer. Charges not meeting this criteria will be reimbursed when and if paid by the customer.

(b) In the event Contractor pays a fine for which he is not liable pursuant to Section 3.04 of the Agreement, PTL will issue a credit to Contractor's settlement provided Contractor submits appropriate documentation to PTL verifying the occurrence and payment.

II. AUTHORIZED DEDUCTIONS

Contractor agrees to allow, and hereby authorizes, PTL from time to time, as necessary, to deduct the charges set forth in this Section II of Appendix A from amounts otherwise payable by PTL to Contractor pursuant to Article IV of the Agreement.

Contractor acknowledges that unless the amount of a charge is specifically itemized or otherwise described in the Agreement or in any appendices to the Agreement, the amount shall be (i) the retail price as established by the vendor of such goods or services, or (ii) the amount required by an underlying taxing/licensing authority, or (iii) the amount of the cost incurred by PTL related to such occurrence.

1. Any amounts which were incurred and paid for by PTL on Contractor's behalf for which Contractor is financially responsible pursuant to the following sections of this Agreement:

(a) Section 2.02 (Trailers);

(b) Section 2.03 (Security) in the amount set forth in the Security Kit Purchase Agreement, if elected by Contractor;

(c) Section 2.05 (Responsibility for Operating Costs and Expenses)

(d) Section 2.06 (Tractor Identification);

(e) Section 2.07 (Maintenance and Inspection);

(f) Section 2.08 (Driver and Safety Compliance) including such items as the initial drug test and the initial physical, if required;

(g) Section 2.12 (Fuel Tax);

(h) Section 3.02 (Advances);

(i) Section 4.03 (Contractor's Insurance Responsibilities);

(j) Section 4.04 (Indemnification);

(k) Article V (Customer Service and Communication) which, if Option B is elected, includes the Qualcomm installation fee of $_____ plus the contingent charges described in Section 5.03 and, in all events, the weekly usage fee of $19.50;

(l) Section 6.03 (Termination in Transit);

(m) Section 6.04 (Contractor's Obligations Upon Termination) which includes, in addition to any other rights, remedies or claims PTL may have, the charges set forth below (if applicable) related to the failure to return certain items as required by Section 6.04;

Qualcomm Unit	$3,000.00
License Plates	$ 500.00
Permits pouch and/or fuel card	$1,000.00
Spare Tire	$ 500.00
Tire Caddy	$ 250.00
PTL Identify Materials	$ 500.00
Trailer Relocation Fee	$2,500.00

2. Any fines, penalties, or violations resulting from any acts or omissions of Contractor, or Contractor's employees and/or agents, arising out of the operation of the Equipment regardless of whether such fines, penalties or other amounts are imposed or assessed upon Contractor or PTL.

3. Unauthorized charges and expenses incurred by Contractor in the PTL name, including, but not limited to, any unauthorized highway, bridge or ferry tolls, and any charges for communications, lodging, meals, fuel or repair of the Equipment or the Trailers.

4. Any other amount due to PTL by Contractor arising under this Agreement.

At Contractor's request, PTL will provide Contractor with copies of those documents necessary to determine the validity of the charge-backs above.

This Appendix A is executed and effective on this 15th day of OCT, 20 15, and supersedes any and all previous appendices or schedules related to Contractor's relationship with PTL.

PTL

By: Russ Usher

Name: Russ Usher

Title: Director of Permits

CONTRACTOR

(X) Gale S. Carter
Signature

(X) Gale S. Carter
Contractor Name (Print)

APPENDIX B
TO
PASCHALL TRUCK LINES, INC.
INDEPENDENT CONTRACTOR SERVICE AGREEMENT

OPTIONAL INSURANCE COVERAGES AND RELATED SERVICES

★ ★ ★ THIS IS AN ELECTIVE FORM ★ ★ ★
CONTRACTOR MAY ACCEPT OR DECLINE
★ ★ ANY OR ALL OPTIONS PRESENTED ★ ★

To the extent that Contractor makes one or more elections under this Appendix B, Contractor agrees to allow and hereby authorizes PTL, from time to time as is necessary, to deduct from the compensation otherwise payable by PTL to Contractor pursuant to Article III of this Agreement amounts set forth with respect to the elections made.

NON-TRUCKING LIABILITY INSURANCE

Contractor may elect to obtain from or through Great West Casualty Company (or such other broker or insurer approved by PTL) non-trucking (bobtail/deadhead) liability insurance as required in Subsection 4.03(a) of the Agreement. If Contractor elects this non-trucking liability coverage Contractor understands and agrees that such insurance shall have combined single limit coverage of not less than $1,000,000.00 per incident to cover losses incurred by third parties arising from the operation of the Equipment while it is not in operation on PTL business;

(1) The current charge-per-week for non-trucking liability insurance payable to such insurer or broker is $8.00 for each power unit. The cost for such insurance may change from time-to-time as a result of premium rate changes by the insurance company. PTL will notify the Contractor of any rate changes as the same becomes known to PTL.

(2) PTL may, but shall not be obligated to, assist Contractor in completing the application and related forms.

(3) In the event Contractor elects to obtain non-trucking liability insurance from or through PTL as set forth herein, PTL shall provide Contractor with a certificate of insurance. Upon the written request of Contractor, PTL shall provide Contractor with a copy of the underlying insurance policy.

_____ I elect the foregoing Non-Trucking Liability Insurance.

_____ I DECLINE the foregoing Non-Trucking Liability Insurance.

OCCUPATIONAL ACCIDENT INSURANCE

Contractor may elect to obtain occupational accident insurance from or through Zurich American Insurance Company (or such other source approved by PTL) covering the Contractor and any persons not included under the Contractor's workers' compensation coverage, but otherwise utilized by the Contractor in providing services to PTL. A complete explanation of benefits will be provided to Contractor prior to executing this election form.

Occupational accident insurance is not workers' compensation insurance, does not legally qualify as workers' compensation insurance, and does not provide the same coverage as workers' compensation insurance.

(1) The current charge-per-week (per participant) for the occupational accident insurance is $24.00. The cost for such insurance may change from time-to-time as a result of premium rate changes by the insurance company. PTL will notify the Contractor of any rate changes as the same becomes known to PTL.

(2) PTL may, but shall not be obligated to, assist Contractor in completing the application and related forms.

(3) In the event Contractor elects occupational accident insurance from or through PTL as set forth herein, PTL shall provide Contractor with a certificate of insurance. Upon the written request by Contractor, PTL shall provide the Contractor with a copy of the underlying insurance policy.

_____ I elect the foregoing Occupational Accident Insurance.

_____ I DECLINE the foregoing Occupational Accident Insurance.

BAILEE TRAILER INSURANCE

Contractor may elect to obtain from or through Great West Casualty Company (or such other broker or insurer approved by PTL) bailee trailer insurance as required in Subsection 4.03(d) of the Agreement. If Contractor elects this bailee trailer insurance coverage, Contractor understands and agrees that the amount of coverage shall be $25,000.00 per occurrence with a deductible of $1,000.00 per occurrence and the policy shall provide coverage when a Trailer is damaged as a result of the acts or inactions of Contractor.

(1) The current charge-per-week for the bailee trailer insurance is $14.00. The cost for such insurance may change from time-to-time as a result of premium rate changes by the insurance company. PTL will notify the Contractor of any rate changes as the same becomes known to PTL.

(2) PTL may, but shall not be obligated to, assist Contractor in completing the application and related forms.

(3) In the event Contractor elects bailee trailer insurance from or through PTL as set forth herein, PTL shall provide Contractor with a certificate of insurance. Upon the written request by Contractor, PTL shall provide the Contractor with a copy of the underlying insurance policy.

_____ I elect the foregoing Bailee Trailer Insurance.

_____ I DECLINE the foregoing Bailee Trailer Insurance.

PHYSICAL DAMAGE INSURANCE

Contractor may elect to obtain from or through Great West Casualty Company (or such other broker or insurer approved by PTL) physical damage insurance on the Equipment. If the Contractor elects physical damage coverage:

(1) The current charge per year payable to such insurer or broker for physical damage insurance is .07664% of the stated value of the Equipment declared by the Contractor on the application for such insurance, payable in weekly installments after the payment in advance of two (2) months premiums. The coverage will insure the Equipment for damage up to its actual stated value arising from collision or upset.

(2) PTL may, but shall not be obligated to, assist Contractor in completing the application and related forms;

(3) In the event Contractor elects to obtain physical damage insurance from or through PTL as set forth herein, PTL shall provide Contractor with a certificate of insurance. Upon the written request by Contractor, PTL shall provide the Contractor with a copy of the underlying insurance policy.

(4) If Contractor elects to obtain the foregoing physical damage insurance Contractor shall automatically appoint PTL as Contractor's attorney-in-fact, to adjust any losses and to receive, execute and/or endorse any checks or drafts and other related documents in the event Contractor is unavailable or otherwise unwilling to do so. All expenses incurred by PTL in conjunction with adjusting such loss shall be assessed to Contractor. PTL shall apply all proceeds from insurance at its sole discretion.

_____ I elect the foregoing Physical Damage Insurance.

_____ I DECLINE the foregoing Physical Damage Insurance.

PREPAID LEGAL SERVICES

Contractor may elect to obtain prepaid legal services through Drivers Legal Plan to represent Contractor in the event Contractor receives a driving related citation. A complete explanation of benefits will be provided to Contractor prior to executing this election form.

(1) The current charge-per-week for prepaid legal services is $_____. PTL will notify the Contractor of any rate changes as the same becomes known to PTL.

(2) PTL may, but shall not be obligated to, assist Contractor in completing the application form.

_____ I elect the foregoing Prepaid Legal Services.

BAILEE TRAILER INSURANCE

Contractor may elect to obtain from or through Great West Casualty Company (or such other broker or insurer approved by PTL) bailee trailer insurance as required in Subsection 4.03(d) of the Agreement. If Contractor elects this bailee trailer insurance coverage, Contractor understands and agrees that the amount of coverage shall be $25,000.00 per occurrence with a deductible of $1,000.00 per occurrence and the policy shall provide coverage when a Trailer is damaged as a result of the acts or inactions of Contractor.

(1) The current charge-per-week for the bailee trailer insurance is $14.00. The cost for such insurance may change from time-to-time as a result of premium rate changes by the insurance company. PTL will notify the Contractor of any rate changes as the same becomes known to PTL.

(2) PTL may, but shall not be obligated to, assist Contractor in completing the application and related forms.

(3) In the event Contractor elects bailee trailer insurance from or through PTL as set forth herein, PTL shall provide Contractor with a certificate of insurance. Upon the written request by Contractor, PTL shall provide the Contractor with a copy of the underlying insurance policy.

_____ I elect the foregoing Bailee Trailer Insurance.

_____ I DECLINE the foregoing Bailee Trailer Insurance.

PHYSICAL DAMAGE INSURANCE

Contractor may elect to obtain from or through Great West Casualty Company (or such other broker or insurer approved by PTL) physical damage insurance on the Equipment. If the Contractor elects physical damage coverage:

(1) The current charge per year payable to such insurer or broker for physical damage insurance is .07664% of the stated value of the Equipment declared by the Contractor on the application for such insurance, payable in weekly installments after the payment in advance of two (2) months premiums. The coverage will insure the Equipment for damage up to its actual stated value arising from collision or upset.

(2) PTL may, but shall not be obligated to, assist Contractor in completing the application and related forms;

(3) In the event Contractor elects to obtain physical damage insurance from or through PTL as set forth herein, PTL shall provide Contractor with a certificate of insurance. Upon the written request by Contractor, PTL shall provide the Contractor with a copy of the underlying insurance policy.

(4) If Contractor elects to obtain the foregoing physical damage insurance Contractor shall automatically appoint PTL as Contractor's attorney-in-fact, to adjust any losses and to receive, execute and/or endorse any checks or drafts and other related documents in the event Contractor is unavailable or otherwise unwilling to do so. All expenses incurred by PTL in conjunction with adjusting such loss shall be assessed to Contractor. PTL shall apply all proceeds from insurance at its sole discretion.

_____ I elect the foregoing Physical Damage Insurance.

_____ I DECLINE the foregoing Physical Damage Insurance.

PREPAID LEGAL SERVICES

Contractor may elect to obtain prepaid legal services through Drivers Legal Plan to represent Contractor in the event Contractor receives a driving related citation. A complete explanation of benefits will be provided to Contractor prior to executing this election form.

(1) The current charge-per-week for prepaid legal services is $_____. PTL will notify the Contractor of any rate changes as the same becomes known to PTL.

(2) PTL may, but shall not be obligated to, assist Contractor in completing the application form.

_____ I elect the foregoing Prepaid Legal Services.

_____ I DECLINE the foregoing Prepaid Legal Services.

GENERAL

NOTHING IN THIS APPENDIX B RELIEVES THE CONTRACTOR FROM PROVIDING THE INSURANCE SPECIFIED IN SECTION 4.03 OF THE AGREEMENT.

CONTRACTOR ACKNOWLEDGES AND AGREES PTL IS NOT THE INSURER UNDER THE INSURANCE REFERRED TO IN THIS APPENDIX B AND PTL MAKES NO REPRESENTATION OR WARRANTY AS TO THE TERMS, CONDITIONS, LIMITATIONS OR EXCLUSIONS UNDER THE APPLICABLE POLICIES OF INSURANCE. THE CONTRACTOR IS SOLELY RESPONSIBLE TO SATISFY HIMSELF AS TO THE EXTENT AND ADEQUACY OF SUCH INSURANCE AND AS TO THE TERMS, CONDITIONS, LIMITATIONS AND EXCLUSIONS CONTAINED IN THE POLICIES FOR SUCH INSURANCE.

ALL INSURANCE COVERAGES SHALL BECOME EFFECTIVE AS OF THE DATE DETERMINED BY THE INSURER.

TO THE EXTENT I HAVE ELECTED TO OBTAIN INSURANCE UNDER THIS APPENDIX B, I HEREBY AUTHORIZE PTL TO (1) DEDUCT THE AMOUNT INDICATED FROM SETTLEMENT PAYMENTS OTHERWISE PAYABLE TO ME AND (2) REMIT SUCH AMOUNTS TO THE APPROPRIATE SERVICE PROVIDER.

This Appendix B is executed as of the 5th day of OCT, 20 15 and supersedes any and all previous appendices or schedules related to elective deductions under this Agreement.

PTL

By: Russ Usher

Name: Russ Usher

Title: Director of Permits

CONTRACTOR

Signature

Gale S. Carter

Contractor Name (Print)

CERTIFICATE OF CONVERSION TO LIMITED LIABILITY COMPANY

CONVERTING

ELEMENT FINANCIAL CORP.
(A Delaware Corporation)

TO

ELEMENT FINANCIAL LLC
(A Delaware Limited Liability Company)

PURSUANT TO SECTION 266 OF THE DELAWARE GENERAL CORPORATION LAW AND SECTION 18-214 OF THE DELAWARE LIMITED LIABILITY ACT

This Certificate of Conversion to Limited Liability Company, dated June 30, 2016, of Element Financial Corp., a Delaware corporation (the "Converting Corporation"), to Element Financial LLC, a Delaware limited liability company (the "LLC"), has been duly executed and is being filed by the Converting Corporation to convert the Converting Corporation to the LLC pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. § 18-101, et seq.) and the Delaware General Corporation Law (8 Del. C. § 101, et seq.).

FIRST. The Converting Corporation was first incorporated on November 16, 2006 in the State of Delaware.

SECOND. The name and type of entity of the Converting Corporation immediately prior to the filing of this Certificate of Conversion to Limited Liability Company was Element Financial Corp., a Delaware corporation.

THIRD. The name of the Delaware limited liability company to which the Converting Corporation shall be converted as set forth in the Certificate of Formation of the LLC is Element Financial LLC.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Conversion to Limited Liability Company on the date first above written.

By: JNK
Name: Jim Nikopoulos
Title: Authorized Person

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:47 PM 06/30/2016
FILED 01:47 PM 06/30/2016
SR 20164728311 - File Number 4253341