



## Maintenance Agreement

### 1. Definitions

For the purpose of this Agreement the following words and phrases shall have the meanings detailed below:

**Agent:** The authorised repairing Scania dealer or other approved repair and maintenance and service provider as appointed by the Company.

**Ancillary Equipment:** The equipment listed on the Schedule.

**Annual Ancillary Equipment Hours:** the annual figure listed in the Schedule (Contract Inclusions) as "Hours PA"

**Annual Distance:** the figure inserted in kilometres in the Schedule.

**Commencement Date:** The date stated in the Schedule and on which this Agreement will commence.

**Company:** Scania (Great Britain) Limited whose registered office is at Delaware Drive, Tongwell, Milton Keynes, Bucks MK15 8HB (Registered in England No. 831017)

**Equipment Charge:** Excess ancillary equipment charge in pence per hour

**Excess Kilometre Charge:** the excess pence per kilometre

#### Excluded Items:

<b>Repairs</b>	Repairs of the Vehicle are excluded. Maintenance and Repair contracts can be purchased separately.
<b>Consumables</b>	Fuel; Tyres; Antifreeze, coolant inhibitor, oils and lubricants (top-ups) used between services; Paintwork; Glassware (unless included in the Schedule).
<b>Diesel Particulate Filters</b>	Diesel Particulate Filter changes, and Routine Maintenance of filters and associated components ( <b>unless included in the Schedule</b> ).
<b>Bodywork and Ancillary Equipment</b>	Fitted plant and accessories such as refrigeration units, tail lifts, power take-off units or any other ancillary equipment unless included in the Schedule; Maintenance and Repair of bodywork unless included in the Schedule.
<b>Repair of Damage</b>	Repair of damage caused by an accident or by acts or omissions of any third party or of the Operator; Any repair required as a result of any pre-existing condition known to but not disclosed by the Operator or of any unauthorised modification; Repair of damage resulting from faults in, or incorrect fitting of, the body or any other ancillary or additional equipment.
<b>Misuse</b>	Maintenance and repairs caused by or arising out of a breach of any of the Operator's obligations under this Agreement; Structural repairs or repairs to the chassis necessary as a result of misuse, overloading, chemical contamination or off-road use; Any damage or loss of performance caused as a result of tampering with electronic control devices or speed limiters; Roadside breakdowns, call outs, repairs and maintenance due to driver or operational issues, e.g. ignored regeneration warnings and misuse (including early blocking of the Diesel Particulate Filter).
<b>Legislation</b>	The fitment, service or repair of any equipment that becomes a requirement under government legislation enacted after the date of the Agreement; Any alterations, adjustments, rectification or repairs necessary to obtain a Reduced Pollution Certificate, and transportation to the test centre for the test itself; Any other maintenance required by legislation enacted after the date of the Agreement, including increased service inspection frequency which must be agreed with the Company.
<b>Breakdowns</b>	Roadside breakdowns and callouts are excluded.

**Force Majeure:** any act or event beyond the reasonable control of the Company.

**Loss:** any loss, damages, costs or other compensation and expenses incurred by the Operator as a result of any act or omission of the Company.

**Monthly Charge:** the amount referred to in the Company Schedule as the Monthly Cost.



**Operator:** The Operator named in the Schedule. A reference to the Operator includes a reference to its drivers, employees and agents.

**PCN:** Any charge, fee or cost and subsequent administration relating to parking, traffic offences, wheel clamping, congestion charges, bridge ferry or toll charges, low emission zone charges, weight or noise restrictions, customs and other regulations etc. relating to the operation of the Vehicle.

**Repairs:** All work and parts (not being Routine Maintenance) necessary to remedy any defects to the Vehicle.

**Routine Maintenance:** All services, inspections or adjustments (excluding Repairs and Excluded Items) reasonably required (at the Company's determination) to maintain or put the Vehicle in a sound and roadworthy condition (including where appropriate the replacement of any parts to the Vehicle whether the same be defective or not).

**Schedule:** the accompanying document listing the Vehicles, Ancillary Equipment, inclusions and exclusions provided by the Company to the Operator at the Commencement Date.

**Total Contract Distance:** the annual amount in kilometres set out in the Schedule (Operational Details)

**VED:** Vehicle excise duty as may be levied on Vehicles at such rate as may apply from time to time

**Vehicle:** The truck, trailer, bus or coach or any other item of equipment, full details of which are set out in the Schedule.

**Work:** Routine Maintenance and Repairs to the Vehicle.

## 2. Obligations of the Company

- 2.1. The Company shall:
  - 2.1.1. carry out Routine Maintenance to the Vehicle at the intervals and in the manner prescribed by the manufacturer or at such intervals as may be required by regulations made under any Act of Parliament existing at the date hereof;
  - 2.1.2. have carried out any annual MOT test for which the Vehicle is required to be submitted including payment of the application fee and collection and delivery of the Vehicle to the testing station; and
  - 2.1.3. use the Company's authorised parts when carrying out Routine Maintenance. The Company reserves the right to use alternatives.

## 3. Obligations of the Operator

- 3.1. The Operator shall be responsible for the scheduling of the Vehicle's Routine Maintenance at the intervals and in the manner prescribed by the Company or as required by any Act of Parliament (whichever is the more frequent). Failure to present the vehicle for Routine Maintenance could result in termination of the Agreement.
- 3.2. The Operator will notify the Company of any changes in its inspection interval and should the number of inspections during the contract period increase, the Operator shall bear the resultant cost.
- 3.3. The Operator shall ensure that any Work is arranged with and carried out by an Agent (unless otherwise agreed in writing by the Company).
- 3.4. Should any Repairs be necessary to rectify a defect which may, if not rectified, cause damage to the Vehicle or its Ancillary Equipment, the Vehicle must not be used until those Repairs are completed.
- 3.5. The Operator shall comply with any reasonable defect-reporting procedure which may be introduced either by the Company or by any change in legislation or regulations.
- 3.6. The Operator shall carry out all manufacturer-required daily Operator/driver checks, lubrication and adjustments to the Vehicle and any fitted Ancillary Equipment. Failure to do so may invalidate this Agreement.
- 3.7. The Operator shall not make any alterations or modifications to the Vehicle and shall not use the Vehicle in any other way than that for which it was originally designed. The Operator shall take proper care of the Vehicle and shall use all reasonable endeavours to keep the Vehicle in good condition.
- 3.8. The Operator shall use the Vehicle only in accordance with the manufacturer's recommendations and as is specified in the Schedule. The Operator shall notify the Company of any change of operation such as off- road use, changes in operating weight or alterations to the Vehicle such as power take-off facilities, or any other change which could effect the Vehicle's normal working environment or Repair and Maintenance requirements. The Company reserves the right on receipt of such notification to amend the charges or terminate the Agreement, notice of which will be given to the Operator.
- 3.9. The Operator shall ensure that the Vehicle is operated only by authorised, qualified and competent personnel.
- 3.10. The Operator will inform the Company immediately of any changes made to the tachograph or associated equipment including the hub-odometers or hour metres, and will allow (if requested) periodic examinations of the equipment and data by the Company or its Agent.
- 3.11. Unless delivery and or collection is specifically included in the Schedule, the Operator shall ensure that it delivers the Vehicle to and collects it from the point of Work and shall make the appropriate arrangements with the Agent for such Work to be carried out.



- 3.12. The Operator shall inform the Company immediately of any changes to the Vehicle's resident location.
- 3.13. The Operator shall respond immediately to any vehicle recall and will ensure that such work is carried out as quickly as possible by an Agent.
- 3.14. The Operator shall ensure that the Vehicle complies with any statutory requirements in force from time to time including, but not limited to, ensuring that the Vehicle is properly taxed, is free from defects, has a current MOT certificate, and is fitted with the appropriate tyres within the legal limits.

#### **4. General**

- 4.1. This Agreement shall be for the term specified in the Schedule, commencing on the Commencement Date.
- 4.2. The Company's obligations under this Agreement shall only extend to Vehicles used wholly within the United Kingdom and applicable the countries specified in the Schedule. All Routine Maintenance must be carried out in the UK unless otherwise agreed in advance between the parties in writing. Routine Maintenance not carried out in the UK will be at the Company's sole discretion whether to pay such costs.
- 4.3. All Work to the Vehicle shall be carried out at such place as shall be specified by the Company or its Agent.
- 4.4. It is at the discretion of the Company whether or not to arrange to have any Routine Maintenance carried out to the Vehicle. If the Company considers that any Routine Maintenance is necessary then it shall carry out such Work whether or not the same causes delay to the Operator.
- 4.5. In the sole opinion of the Company, if any Work has been necessitated or contributed to by any act or default of the Operator or is in respect of an Excluded Item then the Company may in its discretion refuse to carry out all or any part of such Work. If the Company does arrange for all or part of such Work to be carried out it may charge the Operator for that Work.
- 4.6. All Work will be carried out during the Agent's normal working hours unless otherwise specified in the Schedule. No priority is given to the Operator in respect of Work. Any costs incurred as a result of the Operator's failure to keep to an appointment in respect of Work, or to deliver the Vehicle to the point of Work, or as a result of a request that the Work be done urgently, are not covered by the Agreement and shall be a direct charge by the Agent to the Operator. In the event that the Company should pay those costs, the Operator shall reimburse the Company immediately.

#### **5. Duties, Fees, Fines, Claims, O-Licence etc**

- 5.1. The Operator shall indemnify the Company against all claims, damages and liabilities arising from any failure by the Operator to instruct an Agent to carry out any Work (whether or not the same falls within the terms of the Agreement) recommended by the Company.
- 5.2. The Operator shall be responsible for and shall indemnify the Company against any fine, penalty or cost, including legal costs, which the Company may incur as a result of any failure by the Operator to comply with civil or criminal legislation or the terms of this Agreement.

#### **6. Payment Scheme**

- 6.1. The Operator will pay to the Company by Direct Debit on the same day in the payment period set out in the Schedule, the Monthly Charge, VED or other service charges or fees due from time to time as specified in the Schedule. The first payment is to be paid on the signing of the Agreement.
- 6.2. In the event that the Operator's Direct Debit payment fails, the Company reserves the right to charge an administration fee of £25.00 for every occasion on which the Company is unsuccessful in a reasonable attempt to collect payment from the Operator.
- 6.3. In the event that the Operator requests a change to the Agreement, for example with regard to distance, operation, use, additions, uprates, downrates or any other change, the Company reserves the right to charge an administration fee of £25.00 for dealing with each such request.
- 6.4. Interest will be charged on any amount outstanding from 7 days after the date the same becomes due until payment at the rate of 4% per annum above Barclays Bank Plc's lending rate and such interest shall be due and recoverable from the Operator.

#### **7. Excess Distance and Hours**

- 7.1. On the Commencement Date the Operator shall provide to the Company the Vehicle's odometer reading as at that date, which reading shall be recorded as the start distance for the purposes of this Agreement.
- 7.2. If in any consecutive 12-month period the Vehicle exceeds the Annual Distance, the Company will notify the Operator forthwith and the Operator shall pay to the Company on demand the Excess Kilometre Charge at the rate specified in the Schedule according to the number of miles or kilometres travelled in excess of the Annual Distance.
- 7.3. If at any time the Vehicle exceeds the Annual Distance by more than 10% then the Company, in addition to its right to raise an Excess Kilometre Charge, may in its absolute discretion either a) terminate the Agreement or b) amend its charges, the Annual Distance and the Total Contract Distance.
- 7.4. In the event of the Vehicle's tachograph or odometer failing to function, the Operator shall immediately inform the Company in writing specifying the date of such failure and the recorded distance for the period elapsed since the Commencement Date. If a new tachograph or odometer is fitted as a consequence of failure it is the responsibility of the Operator to instruct the repairer to wind on the reading of the new component to the last recorded reading in the



failed component. If the Operator fails to do so then the Company may for the purposes of this clause estimate the distance covered by the Vehicle.

- 7.5. If in any consecutive 12-month period the Ancillary Equipment exceeds the Annual Ancillary Equipment Hours, the Company will notify the Operator forthwith and the Operator shall pay to the Company on demand the Equipment Charge according to the number of hours in excess of the Annual Ancillary Equipment Hours it is.
- 7.6. If at any time the Vehicle exceeds the Annual Ancillary Equipment Hours by more than 10% then the Company, in addition to its right to raise an Equipment Charge, may in its absolute discretion either a) terminate the Agreement or b) amend its charges and the Annual Ancillary Equipment Hours.

## 8. Adjustment of Charges

- 8.1. Unless specified in the Schedule as being at a fixed rate, the Monthly Charge shall be adjusted annually in line with latest issued CPI figures on the anniversary of the Commencement Date. For each rise of one full point or part thereof in the CPI, the cost per month will be increased accordingly to take account of the additional costs of complying with the Agreement. Notwithstanding the charges in the Schedule being referred to as a fixed rate, where there is an increase of more than 5% in the CPI in any one contract year, the Monthly Charge shall be increased in line with the CPI.
- 8.2. The Company will notify the Operator of the amount of the adjustment and the date on which such adjustment is to take effect and the Operator shall pay the adjusted rate from such date.
- 8.3. The Operator may change the Monthly Charge, or other contractual rates at any time to account for increased costs resulting from changes to legislation, taxation, import duties, customs charges or any increase of the costs in delivering the services outside of the Company's reasonable control.

## 9. Termination

- 9.1. If the Vehicle becomes a total loss either through failure, damage or theft; or the Operator has a petition presented against it for its winding-up, administration or bankruptcy, proposes a voluntary arrangement, enters into a Deed of Arrangement, has a Receiver or Administrative Receiver appointed, passes a resolution for voluntary winding-up, or convenes a meeting of or comes to any arrangement with its creditors; then this Agreement shall forthwith and without any notice terminate.
- 9.2. If the Operator:
- 9.2.1. fails punctually to make payment of any sum which may from time to time become due under this Agreement, whether legally demanded or not; or
  - 9.2.2. exceeds the Annual Distance or Annual Ancillary Equipment Hours by more than 10%; or
  - 9.2.3. fails to comply with any other term or condition of this Agreement and then fails to remedy such failure within 7 days notice of such breach;
- such failure shall be a repudiatory breach of contract and the Company may forthwith terminate this Agreement by giving notice in writing to the Operator.
- 9.3. Any termination under 9.1 or 9.2 shall be without prejudice to any claim which the Company may have against the Operator for sums payable under or damages for breach of this Agreement, including any claim for interest.
- 9.4. Either party may terminate this Agreement for convenience by giving 90 days' notice in writing.
- 9.5. If the Company's obligations under this Agreement become impractical to perform owing to an event of Force Majeure which continues for a period in excess of 90 days then either party may terminate the Agreement without liability by giving written notice to the other.
- 9.6. On termination of this Agreement howsoever arising the Operator shall pay to the Company:
- 9.6.1. all arrears of Monthly Charges and any other sum due and arising under this Agreement including interest in respect of such arrears;
  - 9.6.2. an apportioned Monthly Charge for any broken monthly period, such apportionment to be computed on a monthly basis up to the date of termination;
  - 9.6.3. a sum representing any remaining unused part month of VED on the Vehicle (where applicable). The Operator shall allow the Company to collect any unused whole months of VED and shall be responsible for the Company's administration fee of £25.00 for so doing;
  - 9.6.4. such other sums as may be due and unpaid under this Agreement together with interest; and
  - 9.6.5. a sum by way of agreed compensation for early termination being either:
    - a) the difference between the amount expended by the Company on Work to the Vehicle to the date of termination and the total amount received from the Operator in Monthly Charges; or
    - b) the balance of the Monthly Charges remaining to the original expiry date of the Agreement; whichever is the lesser, provided always that this shall not result in there being a balance due to the Operator.

## 10. Vehicle Excise Duty

- 10.1. If specified in the Schedule, the Company shall obtain the VED for the Vehicle and effect all necessary renewals. The Company will make an administration charge calculated as a percentage of the cost of VED for this service. This percentage will be as denoted on the Schedule.



10.2. In the event of an increase in VED the Operator shall be responsible for paying for that increase and the Company shall make an administration charge equal to 6.5% of the said increase.

10.3. Where:

10.3.1. the Company arranges VED for extra weeks over and above a 12-month VED period; or

10.3.2. a change in VED occurs due to any regulatory or legislative changes; or

10.3.3. the Vehicle's registration number or plated weight changes at the request of the Operator; the Operator shall be responsible for any costs incurred by the Company as a result.

#### 11. Penalty Charge Notices

11.1. The Company is authorised to disclose the Operator's name & address in respect of any PCN.

11.2. The Operator is liable for all costs and charges incidental to the use of the Vehicle, including PCNs notwithstanding that the Vehicle may be registered in the Company's name for VED purposes.

11.3. The Company may at its sole discretion pay any PCN received on the Operator's behalf and the Operator shall repay the Company for such PCN, in addition the Company will charge a £65 administration fee. The Operator will provide a purchase order number for such charges within 48 hours of a request.

#### 12. Additional Options

12.1. If additional options are specified in the Schedule, the Company shall carry out Routine Maintenance of the said additional options in accordance with the Company's specified criteria. (Available on request).

#### 13. Replacement Vehicles

13.1. If specified in the Schedule, and always at the Company's sole discretion, if the Vehicle suffers mechanical breakdown as a result of negligent Routine Maintenance which renders it unusable for a period exceeding that specified in the Schedule, the Company may either (a) provide a replacement vehicle (which will not necessarily be of equivalent specification)(**Replacement Vehicle**) or (b) compensate the Operator up to a maximum of one hundred and fifty pounds (£150) per day. The Company shall never be obliged to provide a Replacement Vehicle or pay any equivalent sum.

13.2. The Operator shall be responsible for the return of the Replacement Vehicle to the location at which the Vehicle has been repaired. The Replacement Vehicle shall only be provided until the Vehicle is repaired. The Company reserves the right to charge any cost incurred after the Vehicle is repaired.

#### 14. Liability of the Company

14.1. The total liability of the Company for any Loss of the Operator arising in any year of this Agreement in respect of any one event or series of connected events shall not exceed the Monthly Charges payable for that year. The Company shall never be liable for any indirect, consequential loss or loss of profit howsoever incurred.

14.2. Clause 14.1 shall not apply to any loss, injury or damage resulting from death or personal injury caused by the Company's negligence, but in no circumstances will the Company be responsible for loss of profit or any other consequential loss.

14.3. If the Operator becomes aware of any default in performance of this Agreement by the Company it shall firstly notify the Company of the default and give the Company a reasonable opportunity to remedy the default. If the Company remedies the default, the Operator shall not have any claim against the Company for the consequences of the default.

#### 15. Notices

15.1. Any notice under this Agreement shall be in writing and shall be deemed to be duly given if sent or delivered to the party concerned at its registered office or such other address as that party may from time to time notify in writing.

15.2. Any demand, notice or communication shall be deemed to have been fully served:

15.2.1. if delivered by hand, when left at the proper address for service;

15.2.2. if made by prepaid first class post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays);

#### 16. Relationship of the Parties

16.1. Nothing in this Agreement shall be construed to imply that there is any relationship between the parties of partnership, or of principal and agent, or of employer and employee, nor are the parties hereby engaging in a joint venture and accordingly neither of the parties shall have any right or authority to act on behalf of the other nor to bind the other by contract or otherwise, unless expressly permitted by the terms of this Agreement.

#### 17. Reduced Pollution Certificates

17.1. Should the Operator fail to comply with the provisions of this Agreement and thereby cause the Vehicle to lose the benefit of a reduced pollution certificate, the Operator shall indemnify the Company for any loss including consequential loss the Company may suffer.



## 18. Agreement Formation

- 18.1. Any failure or delay by either party in exercising its rights under this Agreement shall not be construed as a waiver of such rights and the obligations of the other party shall continue.
- 18.2. If any provision of this Agreement or these terms shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement.
- 18.3. This Agreement shall supersede all previous agreements between the parties and represents the entire agreement between the parties.
- 18.4. The Operator and its employees, contractors, advisors and agents will not engage in any conduct which could contravene the Bribery Act 2010 and shall maintain adequate procedures to prevent any such conduct.
- 18.5. This Agreement and any information provided in relation to it are confidential. Neither party shall disclose any such information to an unauthorised third party.
- 18.6. No variation of any term of this Agreement shall be effective unless it is in writing and is duly executed by or on behalf of each party.
- 18.7. Except where specifically stated otherwise, all the costs and charges set out in this Agreement exclude VAT which will be charged at the applicable rate.
- 18.8. A person who is not a party to this Agreement has not rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 18.9. The Operator may not assign, subcontract, delegate or sub-licence this Agreement or any of its rights or obligations under this Agreement without the Company's prior consent in writing.
- 18.10. Irrespective of where the services are provided, the validity, construction and performance of the Agreement shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts.

These terms and conditions including any revisions are available on our website, [www.scania.co.uk/legal/business-with- Scania/](http://www.scania.co.uk/legal/business-with-Scania/)