

## REPAIR AND 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 (Operational Details)

**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)

**Excess Ancillary Equipment Charge :** referred to in the Schedule as Excess PPK/Hr, meaning the excess pence per hour

**Excess Distance Charge:** referred to in the Schedule as Excess PPK/Hr, meaning the excess pence per kilometre

**Excluded Items:**

- (i) Tyres, paintwork and glassware unless specified in the Schedule;
- (ii) Fuel;
- (iii) Antifreeze, coolant inhibitor, oils and lubricants (top-ups) used between services;
- (iv) Fitted plant and accessories such as refrigeration units, tail lifts, power take-off units or any other ancillary equipment unless specified in the Schedule;
- (v) Maintenance and repair of bodywork unless specified in the Schedule;
- (vi) Repair of damage caused by an accident or by acts or omissions of any third party or of the Operator, or any repair required as a result of any pre-existing condition known to but not disclosed by the Operator or of any unauthorised modification;
- (vii) Repair of damage resulting from faults in, or incorrect fitting of, the body or any other ancillary or additional equipment;
- (viii) The fitment, service or repair of any equipment that becomes a requirement under government legislation enacted after the date of the Agreement;
- (ix) Maintenance and repairs caused by or arising out of a breach of any of the Operators obligations under this Agreement;
- (x) Structural repairs or repairs to the chassis necessary as a result of misuse, overloading, chemical contamination or off-road use unless specified in the Schedule;
- (xi) Any alterations, adjustments, rectification or repairs necessary to obtain a Reduced Pollution Certificate, and transportation to the test centre for the test itself;
- (xii) Any damage or loss of performance caused as a result of tampering with electronic control devices or speed limiters;
- (xiii) Any other maintenance required by legislation enacted after the date of the Agreement.
- (xiv) Roadside breakdowns or call outs due to early blocking of the Diesel Particulate Filter (classified as driver or operational issues, e.g. ignored regeneration warnings and misuse).

**Monthly Charge :** the amount referred to in the Schedule as the "Amount of Each Subsequent Payment"

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

**Repairs:** All work and parts (not being Routine Maintenance or adjustment work) necessary to remedy any defects to the Vehicle to include, if necessary (in the sole discretion of the Company), attending the Vehicle at the site of any breakdown and towing it to an authorised repair centre.

**Routine Maintenance:** All work or adjustments (not being Repairs and not being Excluded Items) required to maintain or put the Vehicle in a sound and roadworthy condition including where appropriate the replacement of any parts to the Vehicle deemed by the Company in its absolute discretion to be reasonably necessary whether the same be defective or not. All Routine Maintenance must be carried out in the UK unless otherwise agreed between the parties in writing.

**Services:** Referring only to S, M or L (Small, Medium or Large as recommended by the manufacturer servicing guidelines) visits to a Company Workshop or a workshop authorised by the Company and excluding individual Ministry Inspections.

**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:** Collectively being Routine Maintenance, adjustments, Repairs, inspections and test inspections to the Vehicle.

### 2 OBLIGATIONS OF THE COMPANY

- 2.1 The Company shall:
  - 2.1.1 carry out Routine Maintenance and inspections 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;
  - 2.1.3 have carried out Repairs to the Vehicle where the requirement for same has been notified to the Company or which has been identified by the Company during the course of Routine Maintenance;
  - 2.1.4 use the Company's authorised parts when carrying out Repairs or Routine Maintenance. The Company reserves the right to use alternatives.
  - 2.1.5 for Euro VI vehicles, carry out scheduled Diesel Particulate Filter changes, and routine maintenance of Scania Euro VI filter and associated components.

### 3 OBLIGATIONS OF THE OPERATOR

- 3.1 **Scheduling Routine Maintenance**

The Operator shall be responsible for the scheduling of Routine Maintenance and inspections on the Vehicle at the intervals and in the manner prescribed by the Company or its Agent or at such intervals as may be required by regulations made under any Act of Parliament existing at the date hereof or which come into effect. In addition 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 consequential costs. The Operator shall ensure that Routine Maintenance and inspections are arranged with and carried out by the Agent. Failure to present the vehicle for Routine Maintenance could result in termination of the Agreement.
- 3.2 **Availability of the Vehicle for Repairs**

The Operator shall make the Vehicle available to the Agent immediately once the need for Repairs or adjustments has been identified during daily checks, inspections or Routine Maintenance, or whilst the Vehicle is being used, or after a defect has been reported.
- 3.3 **Operator Delay**

Should any Repairs be necessary to rectify a defect which may, if not rectified, cause consequential damage to the Vehicle or its Ancillary Equipment, the Vehicle must not be used until those Repairs are completed. If the Vehicle or its Ancillary Equipment are used when Repairs are necessary and consequential damage caused which necessitates further Repairs, the cost of repairing that consequential damage will be the responsibility of the Operator.
- 3.4 **Work Authority**

The Operator shall ensure that any Work is effected only by the Agent unless the Company shall have previously otherwise agreed in writing.
- 3.5 **Defect Reporting**

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 **Daily Checks**

The Operator shall carry out all manufacturer-required daily Operator/driver checks, lubrication and adjustments to the Vehicle and any fitted Ancillary Equipment.
- 3.7 **Use and Change of Use**
  - 3.7.1 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.
  - 3.7.2 The Operator shall use the Vehicle 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.
- 3.8 **Operators**

The Operator shall ensure that the Vehicle is operated only by authorised, qualified and competent personnel.
- 3.9 **Tachographs**

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.

### 3.10 Delivery/Collection

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.

### 3.11 Location

The Operator shall inform the Company immediately of any changes to the Vehicle's resident location.

### 3.12 Vehicle Recalls

The Operator shall respond immediately to any vehicle recall and will ensure that such work is carried out as quickly as possible by the Agent.

### 3.13 Statutory Requirements

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 Term of Agreement

This Agreement shall be for the term specified in the Schedule, commencing on the Commencement Date.

### 4.2 Extent of Agreement and Repairs Overseas

The Company's obligations under this Agreement shall only extend to Vehicles used wholly within the United Kingdom and if applicable the countries specified in the Schedule. Where a Vehicle is taken overseas the Company will only accept the cost of repairs provided the Vehicle has European cover and then only for the chassis cab and tyres and not for any Ancillary Equipment.

### 4.3 Where Work to be Carried Out

All Work to the Vehicle shall be carried out at such place as shall be specified by the Company or its Agent.

### 4.4 Discretion of the Company

It is at the discretion of the Company whether or not to arrange to have any Work carried out to the Vehicle. If the Company considers that any Work is necessary then it shall carry out such Work whether or not the same causes delay to the Operator.

### 4.5 Carrying Out of Work and Default of Operator

If in the sole opinion of the Company 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 When Work is To be Done

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, OPERATORS 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 as a result of any defect caused by or resulting from accident damage, negligence of the Operator, any third party or any of the Excluded Items.

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.

7.2.1 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 Distance Charge at the rate specified in the Schedule according to the number of miles or kilometres travelled in excess of the Annual Distance.

7.2.2 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 Distance Charge, may in its absolute discretion either a) terminate the Agreement or b) amend its charges, the Annual Distance and the Total Contract Distance.

7.3 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.

7.4.1 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 Excess Ancillary Equipment Hours Charge according to the number of hours in excess of the Annual Ancillary Equipment Hours it is.

7.4.2 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 Excess Ancillary Equipment Hours 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, payment shall be adjusted annually in line with latest issued governments 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. Where the Operator specifies a fixed rate payment in the Schedule, any increase of more than 5% in the CPI in any one contract year, shall from the Commencement Date of the index be incorporated into and form part of the fees to be paid by the Operator under the terms of this Agreement.

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 Adjustment in contractual rates will also be made to reflect government legislation, including changes in taxation enacted after the Commencement Date.

## 9 TERMINATION

9.1 If:

9.1.1 the Vehicle becomes a total loss either through failure, damage or theft; or

9.1.2 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 The Operator may terminate this Agreement by giving to the Company 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 (and for the purposes of this clause "force majeure" means any act or event beyond the reasonable control of the Company) then either party may terminate the Agreement by giving written notice to the other without liability to the other.

9.6 On any termination of this Agreement the Operator shall pay to the Company:

9.6.1 all arrears of monthly payments, service charges, administration fees, Excess Distance Charges and Excess Ancillary Equipment Hours Charges, including interest in respect of such arrears;

9.6.2 an apportioned monthly payment 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. 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:

9.6.5.1 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

9.6.5.2 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; then the Operator shall be responsible for any costs incurred by the Company as a result.

## 11 ADDITIONAL OPTIONS

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

## 12 REPLACEMENT VEHICLE

12.1 If specified in the Schedule (Contract Inclusions) and at the Company's discretion, the Company shall either (a) provide a replacement vehicle (which will not necessarily be of equivalent specification) ("the **Replacement Vehicle**") or (b) compensate the Operator up to a maximum of one hundred and fifty pounds (£150) per day if the Vehicle suffers mechanical breakdown which renders it unusable for a period exceeding that specified in the Schedule. The Company shall not be obliged to provide or to pay for a Replacement Vehicle if the mechanical breakdown has arisen as a result of or been caused in whole or in part by any of the Excluded Items or by an accident or the negligence of the Operator or a third party.

12.2 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.

## 13 LIABILITY OF THE COMPANY

13.1 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. In this clause, "loss" includes any loss, damages, costs or other compensation and expenses incurred by the Operator as a result of any act or omission of the Company.

13.2 Clause 13.1 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.

13.3 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.

## 14 NOTICES

14.1 Any notice to be given or required or permitted to be given by either party 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.

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

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

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

## 15 RELATIONSHIP OF PARTIES

Each of the parties hereto is an independent contractor and 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.

**16 REDUCED POLLUTION CERTIFICATES**

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.

**17 GENERAL**

- 17.1** 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.
- 17.2** 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 or these terms as applicable.
- 17.3** This Agreement shall supersede all previous agreements between the parties and represents the entire agreement between the parties.
- 17.4** 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.
- 17.5** This Agreement and any information provided in relation to it are confidential. Neither party shall disclose any such information to an unauthorised third party.
- 17.6** No variation of any term of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by or on behalf of each party.
- 17.7** 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.
- 17.8** 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 or these terms but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 17.9** 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. The Company may assign, subcontract, delegate or sublicense part or the whole of this Agreement to any group company or member of the Company's dealer network.
- 17.10** 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/)

Dec-14