

MAINTENANCE SERVICE AGREEMENT

S&H Systems standard terms and conditions

THIS AGREEMENT is BETWEEN:-

1. **S&H Systems & Technologies Limited whose registered office is at 6 Great Innings South, Watton at Stone, Herts, SG14 3TE (“S&H Systems”); and**
2. **The user set out on the attached Customer Maintenance Schedule under Customer name(“the User”)**

NOW IT IS HEREBY AGREED AND DECLARED as follows:-

1. DEFINITIONS

In this Agreement and Schedules hereto except when the context otherwise requires, the following meanings:-

“Acceptance Date”	means the date that the parties agree to commence the Maintenance Agreement;
“Additional Charges”	means the charges specified in Schedule B paragraph 2;
“Agreement”	means and includes this Agreement and the schedules hereto (as from time to time altered in accordance with the provisions hereof) and shall include any agreement executed in accordance with the provisions hereof as from time to time altered and expressed to be supplemental hereto;
“Annual Charge”	means the charge specified in Schedule B paragraph 11;
“Equipment”	means and includes the items details of which are set out in the attached Customer Maintenance Schedule;
“Equipment Location”	means the location specified as such in The attached Customer Maintenance Schedule hereto or any other location agreed in writing with S&H Systems;
“Magnetic Media”	means and includes the User changeable cartridges routinely used during the data input output process;
“Manufacturer”	means the manufacturer of the equipment specified in this Agreement ;
“Maintenance Charges”	means the Annual Charge and the Additional Charges specified on Schedule B;
“Month”	means a calendar month;
“Normal Working Day”	means 09.00 to 17.30 each day Monday to Friday inclusive, excluding public, statutory and national holidays;
“Remedial Fault”	means any malfunction of the Equipment which has been caused by either (i) fair wear and tear or (ii) the negligence of S&H Systems, its servants and agents; and
“Remedial Maintenance”	means the maintenance services specified in Clause 4 hereof;

References to Schedules, Clauses and sub-clauses shall be construed as references to the Schedules of this Agreement and the clauses and sub-clauses of this Agreement.

2. MAINTENANCE SERVICE

In consideration of the payment to S&H Systems by the User of the Maintenance Charges, S&H Systems agrees to maintain and repair the User's Equipment, upon and subject to the terms and conditions in this Agreement.

3. TERM

This Agreement shall commence with effect from the date hereof and shall continue in force for a minimum period of 12 months from the date hereof then, subject to the provision of Clause 12, this Agreement shall continue in force until terminated by three months written notice by either party.

4. BASIC MAINTENANCE SERVICE

S&H Systems will provide the following maintenance services during the Normal Working Day on the Equipment:-

- (i) At regular intervals at the Equipment Location carry out any preventative maintenance that is necessary to keep the Equipment in operating condition, by making appropriate adjustments and, as necessary, supplying and fitting replacement parts. The number of preventative maintenance visits per annum which will be made by S&H Systems at the Equipment Location is specified in Schedule B paragraph 1; and
- (ii) Provide upon receiving an authorised request, an engineer to carry out maintenance to correct a remedial fault at the Equipment Location.

Except where this Agreement provides to the contrary, the cost of such service is included in the Annual Charge.

5. ADDITIONAL MAINTENANCE SERVICE

- (a) If so requested by telephone, S&H Systems will provide maintenance to correct a Remedial Fault outside the Normal Working Day. Such maintenance shall be charged at the overtime rate specified in Schedule B paragraph 2(a).
- (b) On receipt of not less than three Normal Working Days notice in writing or by facsimile, the services of an engineer may be provided subject to availability, on telephone stand-by to effect maintenance to correct a Remedial Fault as soon as reasonably possible. The stand-by service will be charged in accordance with the rates specified in Schedule B paragraph 2(b) and (c).

6. CORRECTIVE MAINTENANCE

In the event that S&H Systems determines that the fault notified by the User is not a Remedial Fault and has been caused by either:-

- (i) The negligence, misuse, or default of the User or any third party;
- (ii) An accident by either the User or a third party;
- (iii) The correction and/or alteration of any operator error;
- (iv) Any modification or additions to the Equipment not performed by S&H Systems;
- (v) The Equipment being removed from its Equipment Location; or
- (vi) The use of Magnetic Media not approved by the Manufacturer

Then:-

- (a) The User agrees, if required by S&H Systems to reimburse S&H Systems the cost estimated on a time and materials basis, at S&H Systems standard fee rates, of work performed by in investigating and correcting the fault; and
- (b) S&H Systems, on the request of the User, will advise the User whether S&H Systems can correct or assist in correcting such fault, and the terms under which S&H Systems will undertake the same, and on written acceptance by the User of such terms will correct or assist in correcting such fault in accordance with such terms.

7. SOFTWARE

S&H Systems does not undertake or guarantee as part of this agreement the maintenance or functioning of any software operating with the equipment.

8. CHARGES AND PAYMENTS

- (a) On signature of this Agreement an invoice will be rendered to cover the period from the Acceptance Date to the end of the Charging period. Thereafter the Maintenance Charges for service under this agreement are specified in Schedule B. The Annual charge is payable annually in advance.
- (b) All Additional Charges payable by the User to S&H Systems are due and payable in full within 30 days from the date of the invoice.
- (c) In the event that any charges remain unpaid, S&H Systems is entitled to withdraw service forthwith, without prejudice to any pre-existing rights. If subsequently a request to resume service of the Equipment is received, then S&H Systems may, as it option, require the Equipment to be overhauled at the User's Expense before recommencing service under this or any subsequent agreement.
- (d) S&H Systems reserve the right to alter the Maintenance Charges upon 30 days prior notice. Charges will remain fixed for 12 months.

9. RESPONSE TIME

- (a) S&H Systems will endeavour to respond to any request for maintenance to correct a Remedial Fault within 4 hours of receiving notification of the Remedial Fault. To the extent that any response time exceeds 4 hours such period of time will be treated as excess response time ("Excess Response Time"). The response time of S&H Systems will be calculated using the hours during the Normal Working Day and during any period of overtime agreed between the parties pursuant to Clause 5.
- (b) Overtime incurred at the User's request will be charged at the S&H Systems current overtime rate, as defined in schedule B. The overtime rate will be charged for maintenance undertaken after the Normal Working Day for the period of time when the Equipment is not operational less any Excess Response Time.

10. USER OBLIGATIONS

The user agrees:-

- (i) to use only Magnetic Media approved by the Manufacturer when operating the Equipment or carrying out normal operating routines;
- (ii) to ensure that any air conditioning or other environmental control equipment which is required for the correct functioning of the Equipment, is functioning properly;
- (iii) to ensure that an adequate and suitable supply of electricity is available for the correct operation of the Equipment and take reasonable care to ensure that this does not become affected by other equipment to the same circuit;
- (iv) to keep a log of operations including reference to faults, symptoms and the like, in a form approved by S&H Systems and make this log available to S&H Systems when required;
- (v) to promptly notify S&H Systems of any fault or abnormal functioning of the Equipment;
- (vi) not to move, modify or add in any way to the Equipment unless such modification or addition has been approved by S&H Systems in writing; and
- (vii) to operate, use and generally treat the Equipment in a prudent and proper manner and avoid any activity in the vicinity of the Equipment which could be prejudicial to the correct functioning of the Equipment, whilst ensuring that the Equipment area is kept clean and tidy.

11. ACCESS

All S&H Systems representatives shall have full and free access to the Equipment during the Normal Working Day and any agreed extra cover. S&H Systems representatives will adhere to all security procedures currently in use at the User's premises. All data information or documentation belonging to the User on the User's premises will remain confidential and the property of the User at all times.

12. TERMINATION

(a) The following provisions shall apply to the termination of this Agreement:-

- (i) if any sum due and payable by the User hereunder is not paid in full within 30 days of the same becoming due (whether demanded or not); or
- (ii) if the User shall be in breach of or fail to perform or observe any other undertakings, conditions, agreements or stipulations its part contained herein (save in respect of any payment to which sub-clause (i) applies) and, in the case of a breach capable of being remedied, fails to remedy the breach to the satisfaction of S&H Systems within 28 days after being required by S&H Systems in writing so to do; or
- (iii) if the User is unable to pay its debts within the meaning of section 223 of the Companies Act 1948; or
- (iv) an order shall be made or an effective resolution passed for the winding up of the User (except in the course of an amalgamation or reconstruction); or
- (v) if a Receiver is appointed over the whole or any part of the User's undertaking;

then and in any such event S&H Systems shall be entitled (without prejudice to any other right or remedy of S&H Systems and notwithstanding that some period in respect of which maintenance charges have already been paid in advance may not yet have expired) forthwith and without any notice to terminate this Agreement.

- b) The termination of the Agreement from whatsoever cause shall be without prejudice to any rights S&H Systems may have in respect of any failure on the part of the User to observe and perform the terms of this Agreement and (without prejudice to the generality of the foregoing) the User shall in the event of the termination of the Agreement pay to S&H Systems all arrears of maintenance charges and other sums then due or in arrears pursuant to the terms of this Agreement at the date of such termination together with interest thereon.

13. EXCUSABLE DELAYS

Neither party shall be liable or deemed in default for any delays or failures on performance under this Agreement or interruption of service resulting directly or indirectly from acts beyond the control of that party, such acts to include but not be limited to, acts of God, acts of Government, war or national emergency, accidents, fires, riots, lockouts, labour disputes, epidemics, governmental regulations imposed after the fact, communication line failures, power failure, or damage or delays of Equipment en route.

14. ASSIGNMENT

This Agreement is personal to the User and, as such, may not be assigned by the User in any way whatsoever without the prior written consent of S&H Systems, which may withhold its consent without giving any reason therefore.

15. AMENDMENTS

No modification or variation of the Agreement and any document incorporated herein shall be binding on any party unless such modification is made in writing and signed by the duly authorised representatives of the parties hereto.

16. HEADINGS

The headings of this Agreement are for convenience only and shall not be construed as modifying, defining, limiting or describing the provisions of this Agreement.

17. NOTICES

Any demand notice or communication required to be given hereunder shall be sufficiently served if sent by facsimile or prepaid first class post to the address herein before set out of such party or such other address as such party may notify to the other for the purposes of this clause and if sent by post shall be deemed to have been received by the addressee forty eight hours after the time of posting the same and, if sent by facsimile, at the time of Despatch and in proving such service by post it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted by prepaid post.

18. LIABILITY

- (a) S&H Systems will indemnify the User against death or personal injury to any person to the extent caused by negligence, omission or wilful default of S&H Systems, its employees, agents or subcontractors but not otherwise.
- (b) S&H Systems will indemnify the User against and insure against direct damage to the property to the extent caused by negligence, omission or wilful default of S&H Systems, its employees, agents or subcontractors, provided that the total liability for damage to the customers property shall not exceed £1,000,000.
- (c) Neither party will be liable to the other for any consequential loss of profit of contracts.

19. FORCE MAJEURE

Neither party shall be liable to the other for any delays or failures attributable to any cause beyond reasonable control.

Both parties are, however, expected to anticipate, prevent or provide against such circumstances by the exercise of due diligence.

20. PROPER LAW

This Agreement shall in all respects be governed by and construed in accordance with the laws of England.

21. ENTIRE AGREEMENT

This Agreement sets forth the entire agreement between the User and S&H Systems in connection with the maintenance of the Equipment by S&H Systems to the User. This Agreement supersedes any prior proposals, agreements, commitments or representation of any kind, whether oral or written, with respect to the Equipment. The User hereby affirms that this Agreement is not entered into in reliance upon any representation save for any representation expressly set out or referred to in the Agreement.

SCHEDULE B

THE MAINTENANCE CHARGES

1. ANNUAL CHARGE

- (a) The basic Annual Charge for cover is set out on the attached Customer Maintenance Schedule.
- (b) The number of Preventative Maintenance visits will be Nil per annum

2. ADDITIONAL CHARGES

- (a) The charges for **overtime** will be:-
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|---|-----|----------|
| Monday to Friday (excluding Public and National Holidays) | £40 | per hour |
| Saturdays & Sundays | £40 | per hour |
| Public and National Holidays | £50 | per hour |
- (b) The charges **emergency call-out** will be:-
- | | | |
|---|-----|----------|
| Monday to Friday (excluding Public and National Holidays) | £40 | per hour |
| Saturdays & Sundays, Public and Bank Holidays | £40 | per hour |
| Public and National Holidays | £50 | per hour |