# Hardware and Software Support Agreement

**Customer: Dealer:**

## Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Address\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**City/State/Zip\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Accepted by: Accepted by:**

**Print Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Title\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ President**

##### Signature\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

#### Terms and Conditions Applicable to \_\_\_\_\_\_\_\_\_\_\_\_\_ Hardware and Software Support Agreement

I. **Description of Maintenance** - Hardware

A. During the contract period of maintenance, Dealer will maintain in good working order all equipment covered in Attachment A by this Agreement, in accordance with Dealer's service policies. Maintenance will include:

1. Unscheduled repairs requested by Customer during Dealer normal working hours. Depending on the level of maintenance purchased, Dealer will respond to unscheduled service calls within four (4), eight (8), or twenty-four (24) hours, Maintenance Agreements shall receive preference over time and material calls.

2. Ongoing maintenance as defined by current Dealer service policies applicable to the respective products which include: LUBRICATION, CLEANING, ADJUSTMENTS, AND THE REPLACEMENT OF PARTS WHICH ARE UNSERVICEABLE. **"Replacement parts provided by (Dealer) may be new or (used) (remanufactured). All (used) (remanufactured) parts shall meet or exceed manufacturer specifications." All parts will be provided on an exchange basis. All parts removed become property of Dealer.**

3. The unserviceableness of parts will solely be determined by Dealer, and replaced on an exchange basis. Replaced parts will become the property of Dealer.

4. Consumables ( paper, staples, etc.) are not included in this Maintenance Agreement.

B. Dealer will provide after hours service on an "if available" basis, at an incremental rate equal to the charges for after hours service in effect at the time this service is performed.

C. Dealer will install on-site engineering improvements (retrofits) as deemed mandatory by the manufacturer. Only such retrofits as are introduced by the manufacturer during the term of this agreement will be installed.

D. Any Dealer accessory for which no full service maintenance pricing is available, and which is attached by Dealer to the piece of equipment this maintenance agreement covers, will be serviced by this Agreement as part of the normal service of the equipment.

II. **Acceptance by Dealer of Equipment or Hardware for Maintenance**

A. A Maintenance Agreement is only available for equipment having a valid manufacturer serial number and UL certification.

B. Equipment purchased from Dealer and/or serviced on other than a maintenance agreement basis for less than one year from the expiration date is eligible for conversion to maintenance, subject to inspection and acceptance of the equipment by Dealer. Any service required shall be performed on a time and material basis prior to placing the equipment or hardware on a Maintenance Agreement.

C. Equipment purchased from Dealer and serviced on other than on a maintenance agreement basis for more than one year, is eligible for conversion to a maintenance agreement, subject to inspection by Dealer and completion of refurbishing. A refurbishing charge will be incurred by the customer

III. **Services not included in full service maintenance will be charged in accordance with Dealer labor and material rates then in effect. Those services not included are not limited to, but include the following:**

1. Optional Retrofits.

2. Service connected with relocation of equipment.

3. Relocation of the equipment

 4. Installation of accessories, attachments or other devices.

5. Exterior refinishing or painting of equipment.

6. Performance of normal operator functions as described in the manufacturer's operator manuals.

7. Repair of damage from any cause from other than ordinary use (fire, water, heat, cold, climatic conditions), except damage caused by the sole negligence of Dealer.

8. Increase in service time resulting from neglect or unique applications.

9. Consumables

IV. **Relocation of Equipment**

Customer will be liable for all costs associated with any equipment relocation requested by the Customer. These costs will include all applicable installation and removal charges, special rigging charges, and technical representative and labor. Dealer shall be under no obligation to provide maintenance service for any equipment which is relocated without Dealers express consent. In the event equipment is relocated outside Dealer’s service area Dealer will assist the Customer in obtaining service from other qualified dealers outside of this area.

V. **Description of Software Support**

A. Software Support

Subject to the terms and conditions set forth below, Dealer agrees to provide and the Customer agrees to purchase Software support, with respect to the licensed computer programs (the "Licensed Programs") set forth in Attachment B. In providing Software Support to the Customer, Dealer agrees to perform the following services:

1. Correct any defects or replace any of the Licensed Programs found to be in substantial non-conformance with the program specifications;

2. Provide the Customer with enhancements, as they become available, to the Licensed Programs. Dealer reserves the right to determine what constitutes an enhancement; enhancements billable to Dealer are billable to Customer.

3. Provide reasonable remote technical assistance and consultation to the Customer with respect to use of the Licensed Programs;

4. Provide updates to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ operating system.

Any assistance required to fulfill Dealer's obligations under this Agreement, will be provided at no additional charge unless such assistance is found to be the result of hardware failure, user error, neglect or negligence. Assistance required as a result of such failure, user error, neglect or negligence will be compensated by the Customer at Dealer's standard hourly rate then in effect, plus reasonable expenses for transportation, meals and lodging.

B. Excluded Service

Dealer is not obligated to provide service under the Agreement to provide service necessitated by vandalism, theft, misuse, hardware malfunction, neglect, acts of third parties, fire, water, casualty, act of God, mob violence, labor disputes, malfunction of affiliated equipment, unauthorized modification of the software, electrical failure, accidents, climatic conditions, or from other causes unrelated to the ordinary operation of the software. This Agreement is void if service is performed on the software by unauthorized individuals, or if attempts are made to modify the software or use the software in a manner not set out in the instruction manual or license agreement. Should it be necessary to perform services outlined in this agreement at the Customer's site, Customer shall be responsible for actual out-of-pocket expenses incurred in travel.

C. Response Time

There is no guaranty regarding the response time to a service call from the Customer. Dealer will respond to software service calls in the order received and will make every effort to respond within the same work day. Dealer, however, has established a priority coding system for each problem reported.

1. 'A' Priority - A software error renders the entire system inoperable. Resources assigned within one (1) hour. Resources continue to work on the problem during normal business hours (and then some) until the problem is resolved. Average resolution time less than 8 hours.

2. 'B' Priority - A software error is detected for a system module which seriously impairs systems operations, but does not render it "down." Resources are assigned within four (4) hours and remain assigned until completed, work continues during normal business hours.

3. 'C' Priority - Minor problem, but sufficient severity as to warrant correction before the next software release. Generally completed within 30 days.

4. 'D' Priority - "Would likes" and minor problems which will be incorporated in future software releases. Dealer reserves the right to determine "would like" relevance to the package and the scheduling of the development and release of such items.

D. Excused Performance

Vender shall not be liable for any failure to perform or delayed performance of any obligation under the Agreement if such performance is prevented, hindered or delayed for any cause beyond the reasonable control of Dealer, including, without limitation, the unavailability of any parts or supplies, any labor dispute, strike or other industrial disturbance, act of God, flood, shortage of materials, earthquakes, climatic conditions, casualty, war, act of public enemy, riot, insurrection, embargo law, blockage, action, restriction and regulation or order of any government, government agency or subdivision thereof.

VI.  **Breach or Default**

A. If customer does not pay the amounts due hereunder or breaches any terms of this agreement or any Agreement between Customer and Dealer, Dealer may terminate this agreement effective upon written notice to the Customer.

B. Customer agrees to pay to Dealer reasonable attorney's fees and legal expenses incurred in exercising any of its rights and remedies upon breach of this Agreement by the Customer.

VII.  **General**

A. Free access. Dealer shall have free access to the equipment and software to perform service thereon.

B. Customer agrees to pay all sales taxes where applicable for services rendered pursuant to this agreement.

C. Customer shall provide equipment key operators for instruction in use of the equipment.

D. Assignment - The Customer's rights and obligations created under this Agreement shall not be assignable by the Customer, in whole or in part, by operation of law or otherwise, without the prior written consent of the Dealer, which shall not be unreasonably withheld.

E. Construction - The execution of this Maintenance Agreement shall not effect, in any way, any of the terms and conditions of the Software License granted to the Customer pursuant to the Software License Agreement between the parties.

F. Binding Effect - The Customer agrees that this Agreement binds the named Customer and each of its employees, agents and representatives, as well as its successors, assigns and trustees.

G. Written Agreement - This Agreement supersedes any prior Agreement written or oral between the parties and contains the entire understanding between the parties relative to maintenance of the Licensed Programs and , except as provided herein, may be amended and/or altered only by execution of an instrument in writing.

H. Attorney's Fees and Collection Costs - If Dealer employs any attorney or a collection agency, or both, to collect an amount owed by the Customer or a breach under this Agreement, the Customer shall pay Dealer any such reasonable attorneys fees and/or collection fees and costs incurred in addition to any other relief to which Dealer may be entitled

VIII.  **Length of Plan - Automatic Renewal**

This Agreement is effective from the commencement date and shall continue for the initial period. Thereafter, this Agreement shall automatically be renewed at the then current rate for successive one (1) year periods unless terminated sooner by either party on no less than sixty (60) days' prior written notice to the other party. The prices, terms and conditions for such successive term(s) shall be those in effect at the time of renewal. All Agreements shall be billed for one year in advance.

IX.  **Charges**

The equipment software maintenance prices, shall be those in effect on the commencement date as set forth Attachment B of this Agreement. Prices may be adjusted as a result of increases in fuel, parts, or supplies.

X.  **Cancellation of Agreement**

The Customer may terminate this Maintenance Agreement upon any anniversary of the Commencement Date of this Agreement by giving written notice of such termination no less than sixty (60) days prior to such anniversary date. Dealer may terminate this Agreement any time if the Customer shall fail make to any required service payment pursuant to the payment terms set forth above.

XI. **Software Maintenance Service Hours**

For purposes of this Agreement, the period of maintenance service availability will be during normal business hours, 8:00 a.m. to 5:00 p.m. (EST), Monday through Friday. Remote/Telephone Maintenance Services provided during weekends, normal holidays, (which include: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Christmas Eve) and after normal business hours are restricted to “A Priority” and provided at “No Charge”. Any maintenance services performed during weekends, holidays and after hours other than listed above shall be at Dealer's standard hourly rate then in effect for the day or holiday, plus travel expenses.

XII. **Warranties**

Dealer’s obligations and warranties under this agreement are in lieu of (A) all other warranties, expressed or implied including implied warranties of merchantability and fitness for a particular purpose, which are specifically waived and (B) all other obligations or liabilities for damages including, but not limited to: 1) personal injury or property damage, or 2) loss of profit or other consequential damages arising out of or in connection with this agreement; or the maintenance service caused directly or indirectly by strikes, accidents, climatic conditions, or reason of similar nature beyond its control. Customer agrees that if dealer caused any injury or damage to customer or customer’s property, which said claim is not otherwise waived herein, customer agrees that the maximum amount that dealer shall have to pay customer for said injury or damage is an amount equal to the AMOUNT PAID FOR services rendered to the customer that caused said injury or damage.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

 CUSTOMER DEALER

# Attachment A

**Commencement Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Billing: Annual\_\_\_\_ Semi-Annual\_\_\_\_ Quarterly(ACH)\_\_\_\_**

### Quantity Part# Description Fee

# Attachment B

**Commencement Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Billing: Annual\_\_\_\_ Semi-Annual\_\_\_\_ Quarterly(ACH)\_\_\_\_**

### Quantity Order# Module Fee