

# COMPANY NAME HERE EQUIPMENT MAINTENANCE AGREEMENT

**Agreement No.:**

This Agreement, effective this \_\_\_\_ of \_\_\_\_\_, 20XX, made and entered into by and between \_\_\_\_\_, hereinafter called "Maintenance Provider" and \_\_\_\_\_, hereinafter call "Customer".

**CUSTOMER:**

Address:

Phone:

Fax:

Contact:

WITNESSETH:

1. Customer, for the full, complete and faithful performance of this Agreement, agrees to pay Maintenance Provider in accordance with the rates and prices as stated herein.

2. Equipment Covered by this Agreement (the "Equipment"):

<u>Type</u>	<u>Description</u>	<u>Serial Number</u>	<u>Location</u>

3. Place of Servicing: The Equipment is to be serviced at the closest Maintenance Provider location or, if the Equipment is permanently installed, at Permanent Installation Location:

4. Term: This Agreement is in effect either:

\_\_\_\_\_ months or From \_\_\_\_\_ To: \_\_\_\_\_ (The "Term").

5. Type of Service:

- a. Basic Service. Customer will be entitled to servicing of the Equipment \_\_\_\_\_ times during the Term of this Agreement (the "Basic Service").
- b. Additional Service. Any services performed by Maintenance Provider in addition to the Basic Service, including travel time to a work site other than at a Maintenance Provider's location, shall be limited by Maintenance Provider's availability ("Additional Service"). Such additional service, if any, will be specified by separate schedule (Attachment A).

6. Rates for Maintenance:

- a. Basic Service. \$ \_\_\_\_\_, per hour plus any taxes ("Basic Rate").
- b. Rate of Additional Service \$ \_\_\_\_\_ per hour at Maintenance Provider's location or \$ \_\_\_\_\_ per hour at any Permanent Installation Location, plus any taxes ("Additional Rate").
- c. Rate for Service Due to Customer's Abuse, Mishandling or Improper Operation of the Equipment: Maintenance Provider's current regular hourly rate .

7. Price for Parts Supplied by Maintenance Provider:

Parts Supplied as a Result of Inspection Maintenance: Maintenance Provider's current list price, plus any freight, transportation and taxes, F.O. B. (location).  
Wire Rope: Maintenance Provider's current list price. Replaced as required or after \_\_\_\_ months' service, whichever occurs earlier.

8. Basic Service to be Performed by Maintenance Provider : Maintenance Provider agrees to provide the following inspection and maintenance services on the Equipment:

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(Maintenance Provider to insert description of work)

Service may be reasonably delayed for weather or other causes beyond Maintenance Provider's control. All cleaning of mechanical parts, adjustment and repair revealed by Maintenance Provider's inspection and maintenance will be performed at the time of the inspection or as soon thereafter as feasible. A CHARGE WILL BE MADE FOR ANY PARTS REPLACED. If requested by the Customer in writing, an estimate of the cost of parts to be replaced will be provided to the Customer prior to replacement. All labor for inspection, cleaning of mechanical parts, adjustment, or labor incurred in the replacement of parts due to normal use and wear is included in the Basic Rate. Labor involved in repairing damage due to abuse, mishandling, or improper operation of the Equipment will be charged at Maintenance Provider's regular current rates as provided in paragraph 6(c) of this Agreement.

9. Customer's Duties: Customer acknowledges that it has had an opportunity to inspect the equipment and acknowledges that it is in good operating condition and agrees that, when received from Maintenance Provider, the equipment was in good order and repair, and was in all aspects adequate, sufficient, and proper for the use for which it was intended. Customer acknowledges that it is its responsibility at its own expense to keep the equipment in good, safe, and efficient working order, repair, condition, and in conformity with all federal, state and local laws and ordinances pertaining thereto. Customer shall not alter or modify the equipment in any way or permit anyone to damage, deface, or remove it or any part thereof. Should the equipment or any part thereof become other than as stated in the previous sentence, then it is Customer's responsibility to cease using the equipment and notify Maintenance Provider. **Maintenance Provider will be deemed to have no knowledge of such condition until notified by Customer in writing**, and will have no obligation to remedy such condition until Maintenance Provider agrees in writing to remedy such condition. **Maintenance Provider shall have no responsibility, direction, or control over the manner of erection, use, or operation of equipment by Customer, unless specifically retained in writing for such additional service(s).** Customer acknowledges that Maintenance Provider is an independent contractor, and not an agent of Customer under New York law.
10. Erection, Maintenance of Equipment, and Safety Equipment: The Customer agrees to erect, maintain, and use the equipment in a safe and proper manner in conformity with all federal, state and local laws and ordinances, pertaining thereto and in accordance with the SIA Code of State Practices and Maintenance Provider's Operator's Manual, copies of which Customer does hereby acknowledge receipt. Should the equipment or any part thereof become unsafe, in a state of disrepair, or not be in good operating condition, Customer shall immediately notify Maintenance Provider and shall cease all operation of the equipment or any part thereof until the same has been examined by Maintenance Provider or by someone appointed by Maintenance Provider. Maintenance Provider shall have the right of free access to the equipment which is in the possession of Customer for the purpose of inspection and examination of said equipment. **Maintenance Provider shall have no responsibility, direction, or control over the manner of erection, maintenance, use or operation of equipment by the Customer, unless specifically retained for such additional service(s).** Customer acknowledges that Maintenance Provider is not an agent of Customer for the purposes of any inspection, repair or maintenance. Customer acknowledges that proper use of safety equipment is required for safe operation of the equipment and warrants that use will only be by competent and duly trained employees of Customer.
11. Reports of Service: A copy of an inspection report shall be completed, signed and attached to the Equipment or submitted to the Customer after each inspection. Copies of this or other reports of service performed hereunder shall be furnished to any legal authority or other party deemed appropriate by Maintenance Provider.
12. Performance of Services: Service and inspection pursuant to this Agreement will be performed during normal working hours on days not designated for Maintenance Provider's employees as holidays. Services provided at other than those hours shall be double the hourly rate. All inspections and maintenance work shall be done by personnel qualified and supervised by Maintenance Provider.
13. Limitation of Services: Maintenance Provider will not be under any obligation to make any overhauls, alterations, renewals or repairs except those incidental to the normal use and proper operation of the Equipment as originally intended. Likewise, Maintenance Provider will not be required to either make safety tests or install new attachments or devices to the Equipment or alter the same, even if recommended or directed by insurance companies or by Federal, State, Municipal or other authorities, but Maintenance Provider agrees to do the foregoing when requested by the Customer upon terms and conditions to be agreed upon by the parties at that time. Maintenance Provider's obligations to make any recommendations or issue any warnings will not exceed the extent that Maintenance Provider has contracted to provide service.
14. Communication Systems: Proper maintenance and servicing of a communications system and its operating condition is not to be the responsibility of Maintenance Provider. Maintenance Provider will, however, check its operation during inspections and report any noted problem in operation coming to its attention to the Customer.

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15. **Renewal:** Unless terminated by either party as set forth below, sixty (60) days prior to the end of each term, Maintenance Provider will forward to Customer the rates that will take effect in the new term.
16. **Termination:** Either party may terminate this Agreement at any time following ninety (90) days written notice. Maintenance Provider may, in addition, terminate this Agreement, following five (5) days' written notice in the event that any payment owed to Maintenance Provider by Customer under this Agreement shall not have been made.
17. **Indemnity and Hold Harmless:** **To the fullest extent permitted by law**, the Customer agrees to indemnify and hold Maintenance Provider harmless, against claims, losses, actions, suits, proceedings, costs, expenses, damages, and liabilities (including but not limited to negligence, tort and strict liability) and any and all costs and expenses in connection therewith, including attorneys' fees and costs, arising **out of, or connected with the maintenance, repair, inspection use, erection, and possession of the equipment by Customer. This obligation to defend, indemnify and hold harmless includes any liability Maintenance Provider may have due to any determination that it is an agent of Customer under \_\_\_\_\_ law. It is not intended to indemnify Maintenance Provider for its own negligence. Insofar as these indemnity claims are concerned, the parties specifically waive protection of any workmen's compensation act of any state of the United States or province of Canada for any claim by Maintenance Provider or Customer whether in common-law negligence, indemnification, contribution, contract or otherwise.** The parties agree to give each other prompt written notice of any and all such claims.
18. **Insurance:** As further provided herein, Customer agrees to be the absolute insurer of the equipment, without limitation for all casualty risks, fire, and theft. Customer shall maintain General Liability , or other similar insurance of not less than five million (\$5,000,000) dollars per occurrence, naming Maintenance Provider as an additional insured, so as to protect Maintenance Provider from claims which may arise out of or result from the operations, use, maintenance, ownership and/or rental of the equipment. Said coverage to include but not be limited to: (a) claims for damages because of bodily injury or death of any person; (b) claims for damages insured by personal injury liability coverage; (c) claims for damages because of injury to or destruction of property, including loss of use there from; and (d) **claims for damages due to Maintenance Provider's status as an agent of Customer. The insurance naming Maintenance Provider as an additional insured shall be endorsed so that it is primary insurance and that any other insurance providing coverage to Maintenance Provider is excess to the insurance provided by Customer.**
19. **Disclaimer of Warranty for Products Not Manufactured by Maintenance Provider:** BY EXECUTING THIS AGREEMENT, Maintenance Provider HAS NOT MADE AND DOES NOT MAKE, TO CUSTOMER OR OTHERS GENERALLY, ANY REPRESENTATION, WARRANTY OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, NOR WITH RESPECT TO THE EQUIPMENT'S MANUFACTURE, DESIGN, CONDITION, DURABILITY, SUITABILITY, FITNESS FOR USE, OR MERCHANTABILITY, AND Maintenance Provider SHALL NOT BE RESPONSIBLE FOR ANY PATENT OR LATENT DEFECTS THEREIN, OR ANY DAMAGES WHETHER ACTUAL, SPECIAL, CONSEQUENTIAL OR INCIDENTAL ARISING THEREFROM.
20. **Entire and Binding Agreement:** This Agreement shall constitute the entire agreement between the parties, and all prior representations whether written or verbal are merged herein. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto, provided that this Agreement shall not be assigned by either party without written consent of the other party.
21. **No Waiver:** No Employee or agent of the parties shall have authority to delete or waive any of the provisions of this Agreement.
22. **Payment Terms:** Payment of amounts invoiced by Maintenance Provider is due from Customer, without discounts, on receipt of the invoice. Unpaid invoiced amounts become delinquent the 31<sup>st</sup> day after invoice. A late charge to 1.5% per month determined daily from the date of the invoice, will be due Maintenance Provider on invoices not paid within thirty (30) days of the invoice date, and in the event of such a default all costs of collections, including reasonable attorneys' fee, will be paid to Maintenance Provider by Customer.
23. **Applicable Law / Dispute Resolution:** This Agreement shall be governed by and construed under the laws of the State of (location) or the State in which the equipment is maintained, which ever Maintenance Provider so chooses. Maintenance Provider may chose to apply the laws of a different State for different provisions or issues which may arise out of this Agreement. In the event a dispute arises from or relates to this Agreement and the

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Parties are unable to settle the dispute between them, the dispute shall be referred to a mutually agreeable mediator within twenty (20) days of a written request for mediation submitted by either Party. The Parties will share the costs of mediation equally and the mediation shall be held in (location).

24. Arbitration: In the event mediation is not successful, Customer and Maintenance Provider agree that all claims, disputes of other controversies arising out of this Agreement or related thereto, shall be settled by and subject to binding arbitration, with one (1) arbitrator, under the Arbitration Rules of the American Arbitration Association ("AAA"). Customer and Maintenance Provider agree that the location of any arbitration proceeding commenced shall be \_\_\_\_\_ AAA office. Customer and Maintenance Provider agree to be bound by the findings and award of such arbitrator finally and without recourse to any court of law other than for the enforcement of the arbitrator's decision or award. Any arbitrator's decision or award may be entered as a judgment in any Court in the United States. The prevailing party, as determined by the arbitrator, shall be entitled to any award of its costs, arbitration costs, and reasonable attorneys' fees.
25. Waiver of Subrogation: The Parties do hereby agree to waive any right of action against the other in contribution, indemnification or otherwise to the extent that the party seeking such right of action has been or can be reimbursed by Insurance. To the extent required, each party will insure that their respective insurance policies contain provisions permitting this waiver of subrogation.

Authorized Representative for  
**Maintenance Provider**

By: \_\_\_\_\_

Name (printed): \_\_\_\_\_

Title: \_\_\_\_\_

Authorized Representative for  
**Customer**

By: \_\_\_\_\_

Name (printed): \_\_\_\_\_

Title: \_\_\_\_\_

Sample Preview

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