



350 Ivyland Rd. Suite 100 – WARMINSTER, PA 18974

Agreement #:

## FULL MAINTENANCE AGREEMENT

MADE AS OF \_\_\_\_\_ BETWEEN \_\_\_\_\_  
OF ("USER") AND OMNILIFT, OF 350 Ivyland Rd, Suite 100 WARMINSTER, PA, 18974.

IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN CONTAINED AND FOR OTHER VALUABLE  
CONSIDERATION, USER AND OMNILIFT AGREE AS FOLLOWS:

1. **MAINTENANCE OF EQUIPMENT** During the term of the agreement, OMNILIFT will perform the maintenance, as described in section 5 ("maintenance responsibilities"), on material handling equipment located as noted in Exhibit A, which is attached and made a part of this agreement (referred to collectively as "equipment" or separately as "unit" or "units").

2. **TERM** Unless sooner terminated in accordance with the terms herein, the term of this agreement as to each units start-date, finish-date, monthly base hours of usage, overuse charge, and location shall be set forth in each unit's schedule of equipment (Exhibit-A). Hours of usage will be determined by the hour meter, if available, installed on each unit. The hour meter readings for each unit as of the date of delivery are set forth in Exhibit-A. This agreement will renew automatically at the conclusion of the original term on a month-to-month basis and may thereafter be terminated in accordance with the terms herein.

### 3. PRICE - PAYMENT

(A) User shall pay OMNILIFT for the work to be performed hereunder a monthly service charge for each unit, as set forth in Exhibit A. In addition, user shall pay OMNILIFT an hourly overuse charge for each unit for all hours in excess of the designated number of hours per month set forth in Exhibit A ("base hours"). For hours of usage beyond the base hours, the hourly overuse charge per unit is set forth in Exhibit A.

(B) Invoices covering the hourly overuse charges shall be billed yearly to user. Invoices covering the monthly service charges shall be billed monthly to user. User agrees to pay such charges within thirty (30) days from the receipt of OMNILIFT invoices.

(C) The monthly service charges and hourly overuse charges have been calculated on the basis of information supplied by user and data developed by OMNILIFT as set forth in the application survey(s) dated ("Application Survey"). A copy of Application Survey is attached and made a part of the agreement, and which is hereby accepted by user.

(D) Payment shall be net ten (10) days from the date of invoice. Any delay in payment beyond such time, for any reason, shall accrue an additional charge of 7% per month. Omnilift reserves the right at any time to modify or withdraw credit terms without notice and to require guarantees, security, or payment in advance of the amount of the credit involved. If Omnilift at any time doubts Customer's financial responsibility, Omnilift may decline to provide service to Customer except upon cash payment in advance or receipt of security or other proof of responsibility satisfactory to Omnilift.



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#### **4. USER'S MAINTENANCE RESPONSIBILITIES**

(A) User shall be responsible for the normal needs of the equipment in its daily operation, including:

- (i) The making of a routine check of each unit at the beginning of each shift in accordance with OSHA's standard operator's daily checklist, copies of which shall be kept as records and made available to OMNILIFT upon request;
- (ii) Supplying all necessary fuel (electric current) and water;
- (iii) Total costs for repairs made necessary as a result of user negligence, accidents, abuse, misuse of equipment or failure to maintain;
- (iv) Maintenance, repairs, or replacement of batteries, chargers, attachments (other than factory installed side-shifters), or any added accessories;
- (v) Maintenance, repair or replacement of equipment lights, fuses, seats, or any added accessories.
- (vi) Replacement of wheels & tires

(B) User shall be responsible for all repairs, maintenance and servicing not expressly made the responsibility of OMNILIFT by section 5, including, but not limited to:

- (i) Use of equipment under operating conditions other than as described in the Application Survey;
- (ii) Resulting from user's failure to perform, or the improper performance of, user's maintenance responsibilities as called out in the manufacturer's recommended maintenance manual; or
- (iii) Necessitated or occasioned by improper repairs or servicing undertaken by any party, including user, other than OMNILIFT.

(C) User shall immediately notify OMNILIFT of any malfunction of the hour meter on any unit, and OMNILIFT shall repair or replace the same. If any hour meter is damaged as a result of user negligence, accidents, abuse or misuse of the unit, or use of the unit under operating conditions other than as described in the Application Survey, the cost of such replacement or repair shall be the users.

#### **5. OMNILIFT MAINTENANCE RESPONSIBILITIES**

(A) OMNILIFT shall be responsible for the following, subject to limitations set forth in section 5 (C):

- (i) Planned maintenance service (per lubrication chart and instructions in manufacturer's manual supplied with equipment) every ninety (90) days. Customer will contact Omnilift if unit meter hour usage for equipment as recommended by the manufacturer is achieved before the ninety (90) day maintenance interval;
- (ii) Routine and emergency breakdown repairs as required upon notice to Omnilift;
- (iii) Major shop repairs and overhauls as required upon notice to Omnilift;
- (iv) Routine work required to keep equipment in satisfactory operating condition, upon notice to Omnilift.

(B) All OMNILIFT maintenance services shall be performed during regular working hours (8:00 a.m. to 4:30 p.m. Monday thru Friday). Should user request OMNILIFT to perform maintenance services or other services at times other than regular working hours or on the following 'observed' holidays:

NEW YEAR'S DAY  
MEMORIAL DAY  
INDEPENDENCE DAY  
LABOR DAY

THANKSGIVING DAY  
DAY AFTER THANKSGIVING  
CHRISTMAS EVE  
CHRISTMAS DAY

User shall pay to OMNILIFT, in addition to the monthly service charge, an 'after-hours' premium of 50% of the current hourly rate per hour of work by personnel other than during regular working hours. In order to facilitate 'after-hours'

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service a special telephone number will be provided for the user. This number will be monitored by OMNILIFT's answering service. User should be prepared to leave a contact name and telephone number for a return call. After being contacted by the answering service an OMNILIFT technician will call the user's contact at the telephone number given to confirm the request and also to inquire about the nature of the breakdown. There will be a minimum billing of four hours labor when an OMNILIFT technician is called out for 'after-hours' service.

(C) OMNILIFT shall not be responsible for repairs, maintenance and servicing arising from use of equipment or operating conditions other than as described in the Application Survey. The cost of out-of-contract repairs will be at the expense of the user and such charges shall be billed at OMNILIFT's then prevailing rates. Such repairs shall be invoiced separately to user and user agrees to pay such charges in thirty (30) days from the date of receipt of OMNILIFT's invoices and subject to the delay charges outlined in Section 3(D).

(D) In the case of equipment failure that affects production, OMNILIFT will make every reasonable effort to have a technician on site if available.

6. **AVAILABILITY OF EQUIPMENT** After making a request for service or repair work user shall make all affected units available to OMNILIFT's technician upon technician's arrival on site. User shall also make available all equipment as necessary upon all dates and times as provided in OMNILIFT's regular planned maintenance schedule. The dates and times for planned maintenance will be discussed, scheduled, and coordinated with user and OMNILIFT. Planned maintenance scheduling will not exceed the manufacturer's suggested interval unless requested by Customer and subject to additional Customer expense.

7. **CONTINGENCIES** OMNILIFT shall not incur any liability to user, nor shall this agreement be cancelable for OMNILIFT's failure to perform its obligation hereunder, if prevented by wars, fires, accident, Acts of God, governmental regulations or interference, delays in transportation, or other causes beyond OMNILIFT's control.

8. **CARE OF EQUIPMENT** User agrees to take full care of the units covered hereunder in the operation and storage thereof, and without limiting the foregoing, to operate same within their rated capacity and under the same conditions as set forth in the Application Survey; to restrict the operation thereof to safe, careful, competent and trained personnel selected, employed and controlled by user; and to prohibit anyone other than personnel duly authorized by OMNILIFT from making any repairs or adjustment to the units. User shall be liable for any and all loss or damage to any unit due to its failure to observe any of the foregoing.

9. **INDEMNIFICATION**. Customer hereby agrees that OMNILIFT shall not be liable for any defect or deficiency in any equipment serviced under this agreement. Customer shall, to the fullest extent permitted by law, indemnify, hold harmless and defend OMNILIFT, its officers, agents and employees from and against any and all liabilities, damages, losses, causes of action, suits, claims, judgments, costs, and expenses, including attorneys' fees, arising out of or in connection with OMNILIFT's work under this agreement, including but not limited to, claims for personal injury to any person(s), including Customer's employees, and property damage to the serviced/maintained equipment or other property, including but not limited to, loss of use arising directly or indirectly out of or in connection with the use or operation of the equipment, whether such loss is caused, in whole or in part, by the negligent acts of OMNILIFT, Customer or anyone directly or indirectly employed by them or anyone for whose acts such person(s) may be liable, and whether OMNILIFT's liability shall be attributable to its status as a seller, lessor, distributor or servicer of such equipment.

10. **INSURANCE**. Customer hereby agrees to assume all risk of loss of and damages to any equipment serviced under this agreement after the equipment is returned to the Customer for use. By signing this agreement Customer agrees that it will, at its own expense, maintain insurance on the equipment against all physical loss or damage thereto in an amount equal to the full insurable value of the equipment. Customer further agrees that it shall secure comprehensive general liability insurance, including contractual liability coverage, with liability limits of no less than \$1,000,000 per occurrence/ \$1,000,000 aggregate, which insurance shall name OMNILIFT as an additional insured on a primary, non-contributory basis and shall insure both OMNILIFT and the Customer, their agents, employees and

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assigns, for any and all claims, accidents, liability, damages, loss and expenses arising out of or in any way resulting from the work performed under this agreement that results in bodily injury, sickness, disease, death or injury to or destruction of property, including the loss of use resulting there from. Customer's liability insurance shall include coverage for Customer's indemnity obligations to Omnilift as set forth in paragraph 9, above. Customer's property damages and liability insurance shall include a waiver of subrogation clause in favor of Omnilift. The aforementioned coverage shall not be cancelled or modified at any time without at least thirty (30) days written notice to OMNILIFT. Customer shall provide satisfactory evidence of the existence of such insurance in the form of a Certificate of Insurance from an insurer licensed to conduct business in the Commonwealth of Pennsylvania at the time this agreement is accepted.

11. **TAXES** All work is subject to government laws, regulations, and orders applicable at the time of service. User shall be liable or shall pay or reimburse OMNILIFT for any state and/or federal taxes, fees, penalties, interest and collection, withholding costs or assessments, however designated or levied, based upon the invoices or upon this agreement for the work performed hereunder.

12. **CANCELLATION** This agreement may be canceled upon the occurrence of any of the following events.

(A) In the event that either party shall breach or fail to comply with any provision of this agreement and such breach or failure shall continue for a period of thirty days after the giving of notice thereof by the other party, the other party may cancel this agreement immediately upon the giving of notice thereof to the defaulting party. Notwithstanding the foregoing, if user shall have failed to make any payment due within ten days after having been so notified by OMNILIFT, OMNILIFT may cancel this agreement immediately after the expiration of the ten day period by giving notice of such cancellation to user.

(B) If either party becomes the subject of any state or federal insolvency, bankruptcy, receivership or similar proceeding, the other party shall have the right to cancel this agreement immediately upon notice to the subject party.

13. **GENERAL**

(A) Any notice required or permitted to be given under this agreement shall be in writing and shall be mailed registered or certified mail, return receipt requested, to the party for whom intended at its address as first set forth in this agreement or at such other address as such party shall designate for the purpose by written notice to the other party, and shall be deemed to have effectively given to the recipient party on the date of actual receipt.

(B) Except as otherwise expressly provided in this agreement, no failure on the part of either party to exercise, and no delay in exercising, any right, privilege, or power under this agreement shall operate as a waiver or relinquishment thereof; nor shall any single or partial exercise by either party of any right, privilege, or power under this agreement preclude any other or further exercise thereof, or the exercise of any other right, privilege or power waiver by any party of any breach of any provision of this agreement shall not constitute or be construed as a continuing waiver, or as a waiver of any other breach of any provision of this agreement.

(C) The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other terms or provisions and this Agreement shall be construed in all other respects as if the invalid or unenforceable term or provision were omitted.

(D) This agreement and all exhibits entered into pursuant to this agreement shall be construed and enforced in accordance with the laws of the state of Pennsylvania, as applicable to agreements wholly performed therein.

14. **ENTIRE AGREEMENT**. This agreement shall constitute the entire agreement between the parties hereto with regard to the subject matter hereof. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms set forth herein. No representations,

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understandings, or agreements have been made or relied upon in the making of this agreement other than those specifically set forth herein. This agreement may only be modified in a writing signed by the parties or their duly authorized agents.

15. **TIME FOR BRINGING ACTION**. Any action for the breach of this agreement must be commenced within one year after such cause of action has accrued.

16. **APPLICABLE LAW / FORUM**: This agreement shall be governed by the law of the Commonwealth of Pennsylvania regardless of any conflicts of law provision requiring reference to the rules of, decision in, and/or laws of another state or sovereign nation. The parties agree that any action to enforce the terms of this agreement, or any action arising from either party's performance hereunder, must be initiated in the Court of Common Pleas of Bucks County, Pennsylvania.

IN WITNESS WHEREOF, THE UNDERSIGNED HAVE EXECUTED THIS AGREEMENT AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

“USER” \_\_\_\_\_

Accepted: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

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