

# ***Intelligent Services***

## **Service Agreement**

**Henderson County Schools**  
Henderson, KY

February 19, 2018

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## Service Coverage

Facilities and Service Matrix	Intelligent Services						
	Energy Performance	Building Performance	Technical Support "Helpdesk"	Critical Alarm Management	Consultation	Mechanical Services	Water Treatment Services
Henderson County High School	✓	✓	✓	✓	✓		
Henderson County North Middle School	✓	✓	✓	✓	✓		
Henderson County South Middle School	✓	✓	✓	✓	✓		
AB Chandler Elementary	✓				✓		
Bend Gate Elementary						✓	
Cairo Elementary	✓				✓		
Niagara Elementary	✓				✓		
South Heights Elementary							
Bus Garage / Maintenance Building							
Board Office							

## SCHEDULE OF SERVICES

THE SERVICE COMPANY agrees to furnish services in accordance with the enclosed "Terms and Conditions". This AGREEMENT shall become valid only upon acceptance by CUSTOMER and by the SERVICE COMPANY. The effective date will be set by the Service Company and as described in the enclosed "Supplemental Terms and Conditions".

### SCHEDULE OF SERVICES

Services	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter
Intelligent Services Consultations	CSL	CSL	CSL	CSL
Mechanical Services	PM	CPM	CS, CC, CPM	CPM

SERVICE LEGEND:	CSL	=	CONSULTATION	PM	=	ONSITE OPERATIONAL INSPECTION
	CPM	=	CONNECTED OPERATIONAL INSPECTION	CS	=	CALIBRATION SERVICE
	CC	=	CONDENSER CLEANING			

### ADDITIONS AND EXCEPTIONS

- (1) When utilizing pulse outputs for live energy monitoring, this pricing assumes that the client's utility provider will provide a pulse contact output for each meter to be monitored at no additional cost.
- (2) Control monitoring services are limited to the existing data points available to Harshaw Trane via the client's building automation system. Unless specifically noted as included, this service program does not include the addition to or replacement of the existing control system.
- (3) For services of non-Trane controls systems, Harshaw Trane's ability to access the data within the existing controls system may be limited due to proprietary access, licensing and availability of software servicing tools specific to the controls system.
- (4) This service agreement assumes that the Client will provide to Harshaw Trane the following:
  - Access to facilities for system setup and analysis as necessary
  - Remote connection to the site data (preferably a site-to-site VPN connection). Remote connectivity requires service through a third party Internet Service Provider (ISP). Client is solely responsible for entering into and maintaining any contract for service with an ISP. The ISP is not a party to this agreement.
  - Network drops and IP addresses for Harshaw Trane's provided hardware
  - Timely access to utility bills
- (5) This offering is subject to the attached Harshaw Trane terms and conditions and assumes the client agrees to the electronic terms of Connectivity.
- (6) Cancellation Policy - This Agreement may be cancelled upon the written notice of either party to the other (for any reason or no reason) no later than thirty (30) days prior to the scheduled expiration date; provided, however, that, in the event of a cancellation by the Client, the Client shall pay to Harshaw Trane the balance of the Service Agreement Fee applicable to the then current 12 month period of the Term. For Intelligent Services agreements, the balance is calculated by dividing the annual fee by 12 and multiplying by the number of months that the agreement is active in that given 12 month period. For agreements set up to invoice start up costs in partial via monthly payments or multiple years, the Client shall be required to pay Harshaw Trane the outstanding set up costs, in full, at the time of the service agreement termination.



### PRICING & ACCEPTANCE

The service agreement term is three years.

Pricing Acceptance	Annual Pricing Paid In Advance
Year 1	\$18,107
Year 2	\$18,652
Year 3	\$19,212

**CUSTOMER ACCEPTANCE:**

Signature \_\_\_\_\_

Title \_\_\_\_\_

Acceptance Date \_\_\_\_\_

P.O. #: \_\_\_\_\_

Effective Date \_\_\_\_\_

**SERVICE COMPANY ACCEPTANCE:**

Signature \_\_\_\_\_

Title \_\_\_\_\_

Acceptance Date \_\_\_\_\_

(Established by the Service Company)

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# Description of Services

**INTELLIGENT SERVICES – DESCRIPTION OF SERVICE OFFERINGS**

Intelligent Services is an internet powered consulting, diagnostic, and support service. Included services are noted on page 2 of this agreement.

**(1) ENERGY PERFORMANCE (Per Facilities and Service Matrix)**

Intelligent Services includes the monitoring, trending and analysis of utility usage and electrical demand. The utility data is then processed by a software program that normalizes it for weather conditions, compares it against historical records and industry benchmarks to illustrate any changes in utility usage over similar time periods. Harshaw Trane will perform routine utility rate analysis to identify if the client is on the most advantageous, available rate structure(s). Harshaw Trane will report findings and recommend energy conservation measures during consultation sessions with the client.

**(2) BUILDING PERFORMANCE (Per Facilities and Service Matrix)**

Intelligent Services will collect the available data from the Building Automation System to generate performance exception reports which are analyzed to identify poor performance, areas of risk and recommended solutions. Samples of monitored data may include, but are not limited to: pressures, temperatures, ventilation and system overrides.

**(3) AIR FILTRATION MONITORING (Not Included)**

Intelligent Services provides real time performance monitoring of the filtration media in the HVAC system. Each filter type has a manufacturer assigned, pre-engineered pressure drop parameter that is used to indicate the optimal time to change the filter. Intelligent Services will collect air flow data from a selected sample of equipment on site to determine optimal filter change frequencies. The client will be notified by Trane when filter changes are needed. This program provides monitoring, trending and reporting when the filters need to be changed.

**(4) TECHNICAL SUPPORT “HELPDESK” (Per Facilities and Service Matrix)**

Clients may contact the Intelligent Services Helpdesk by phone or email to ask for guidance and/or triage system issues during the Helpdesk’s regular operating hours (8:00 a.m. to 5:00 p.m. Eastern Standard Time, Monday through Friday, except Holidays). Helpdesk services include remote assistance to clients to answer technical questions, triage call in system performance issues, and/or make minor adjustments to the client’s control system. Minor adjustments include scheduling changes, override management, quick fixes to system issues and optimization that can be performed in 30 minutes or less over the phone.

Helpdesk Clarifications/Options:

- For afterhours support, clients may call 502-499-7000 to contact Harshaw Trane’s afterhours, on call technician support. Afterhours support is considered billable outside the scope of the Helpdesk services.
- If a Helpdesk call exceeds the 30 minute time allotment, the call may continue at the client’s discretion on a time and material basis. For clients that have purchased additional Optimization Implementation, ICS or additional “flex time” services from Harshaw Trane, the client may request that the Helpdesk technician charge time above and beyond the 30 minutes against the time allotment for these services.

**(5) CRITICAL ALARM MANAGEMENT (Per Facilities and Service Matrix)**

Intelligent Services will work with the client to develop a set of critical alarms, alarm parameters and alarm responses that generate from the client's existing building automation system. Harshaw Trane will consult with and assist the client with desired critical alarming adjustments as the client wishes going forward. The client may contact the Harshaw Trane Technical Support "Helpdesk" during Harshaw Trane's regular working hours to seek assistance with alarm response and/or modification of the current alarming and procedures.

**(6) CONSULTATION (Per Facilities and Service Matrix)**

Consultations are regular scheduled meetings between the client and Harshaw Trane to review the performance of the facility. Consultations may include, but are not limited to: summary performance reports, dollarization of performance, identified areas of inefficiency and/or risk, asset management planning, general facility management education and recommendations for continuous improvement and/or risk mitigation.

**(7) OPTIMIZATION IMPLEMENTATION (Not Included)**

A mutually determined allotment of hours will be included to implement low cost optimization measures identified through the Intelligent Services analytics and consultation process. This option does not include any parts or material necessary to implement optimization measures and assumes work can and will be performed via remote connectivity during regular working hours, 8am-5pm EST, Monday-Friday (excluding holidays).



**MECHANICAL SERVICES – DESCRIPTION OF SERVICES**

**APPLICABLE EQUIPMENT:** CGAM130F2

- (1) **ANNUAL CALIBRATION SERVICE** - Once a year, a thorough Preventative Maintenance schedule will be performed including the following:
  - Inspect condenser for dirt and obstructions to air flow
  - Leak test the chiller with electronic leak detector
  - Test relief valves for presence of refrigerant to detect improperly sealed relief valves
  - Verify operation and calibrate the high and low pressure controls
  - Verify panel settings and adjust as necessary
  - Adjust dip switches as applicable and review operation with owner
  - Check and verify proper operation of chilled water interlock. (Flow switches and auxiliary contacts.)
  - Set up and instruct owner on proper logging procedures
  - Check oil level
  - Inspect condenser fan motors and blade for bearing wear, fatigue cracks, and balance
  - Verify operation of expansion valves
  - Review event log through panel and interpret results
  - Measure the compressor motor winding resistance to ground
  - Inspect the compressor and fan motor contactors for excessive wear and pitting
  - Check and tighten all electrical connections
  - Verify proper operation of phase failure/phase reversal circuit
  - Inspect mechanical interlocks between start and run contactors
- (2) **OPERATIONAL INSPECTION** - One (1) inspection during the operating season will be made and include:
  - Measure and record unit line voltages
  - Measure and record amperage draw at the motor leads
  - Measure and record all unit pressures and temperatures
  - Verify and record all water temperatures and pressures
  - Verify and record refrigerant temperatures and pressures
  - Verify micropanel settings and adjust accordingly
  - Review owner's log and discuss operation of unit with operator
  - Report any uncorrected deficiencies noted to operator
  - Verify proper operation of lubrication system
- (3) **CONDENSER SERVICE** - The condenser coils will be chemically cleaned on an annual basis. Thorough rinsing of the coils will be required. Water accessibility to be provided by the owner within 50 feet of the equipment.
- (4) **CPM – CONNECTED PM/OPERATIONAL INSPECTION SERVICE** - Harshaw Trane will access the client's site from remote and perform an operational inspection via the available controls data. A standardized Harshaw Trane performance checklist will be filled out and submitted electronically to the client with pertinent notations explaining the results of the inspection. Harshaw Trane will contact the client's designated contact person via phone to review the results of the inspection.





### Harshaw Trane Terms and Conditions (Service)

The following "Terms and Conditions" are attached to and made a part of the Service Agreement ("Agreement") between the named Customer and Harshaw Trane.

Harshaw Trane's Services are furnished pursuant to and subject to the following terms and conditions, except for any Services that are the subject of a pre-existing valid written agreement currently in effect between Harshaw Trane and Customer, in which case such written agreement shall apply.

**1. Acceptance.** A Proposal or Agreement made upon these terms is subject to Customer acceptance in writing delivered to Harshaw Trane within thirty (30) days from the date hereof. If your order is an acceptance of a written Proposal on a form provided by Harshaw Trane, without the addition of any other terms and conditions of sale or any other modification, this document shall be treated solely as an acknowledgment of such order, subject to credit approval. If your order is not such an acceptance, then this document is Harshaw Trane's offer, subject to credit approval, to provide the services solely in accordance with the following terms and conditions of sale. If we do not hear from you within two weeks from the date hereof, Harshaw Trane shall rely upon your silence as an acceptance of these terms and conditions and any performance will be pursuant hereto. Customer's acceptance of services by Harshaw Trane will in any event constitute an acceptance by Customer of these terms and conditions.

**2. Term, Renewal, and Cancellation.** The Initial Term of this Agreement shall be as stated in the "Pricing & Acceptance" section hereof. Thereafter, unless earlier terminated, this Agreement shall be automatically renewed for succeeding 12 month terms (each a "Renewal Term"), subject to the Renewal Pricing Adjustment, upon Harshaw Trane's delivery to Customer of a service renewal letter at least forty-five (45) days in advance of the scheduled expiration date and Customer's failure to notify Harshaw Trane in writing no later than thirty (30) days prior to the scheduled expiration date that the Agreement shall not be renewed. This Agreement may be cancelled upon the written notice of either party to the other (for any reason or no reason) no later than thirty (30) days prior to the scheduled expiration date; provided, however, that, in the event of a cancellation by Customer, Customer shall pay to Harshaw Trane the balance of the Service Agreement Fee applicable to the then current 12 month period of the Term. The Service Agreement Fee is based on performance during regular business hours. (See "Pricing and Acceptance" section for additional details specific to Intelligent Services contracts.)

**3. Renewal Pricing Adjustment.** The Service Agreement Fee for an impending Renewal Term shall be the Current Service Agreement Fee (defined as the Service Agreement Fee for the Initial or Renewal Term immediately preceding the impending Renewal Term) adjusted by the following: (a) increase and/or decrease for additions and/or deletions to Scope of Services; (b) 25% of the Current Service Agreement Fee shall be adjusted based upon the calendar year change in the (i) U.S. Bureau of Labor Statistics Producer Price Index for selected commodity groupings (Metals and Metal Products) for Services performed in the United States (c) 65% of the Current Service Agreement Fee shall be adjusted based upon the change to cost of labor; and (d) 10% of the Service Agreement Fee shall be adjusted based upon changes to Harshaw Trane services overhead costs, which include but are not limited to the cost of fuel, truck leasing, and office-related overhead factors. The Service Agreement Fee for an impending Renewal Term shall be set forth in the service renewal letter furnished to Customer.

**4. Payment and Taxes.** Payment is due upon receipt of Harshaw Trane's invoice. Except as may otherwise be provided in the "Service Agreement Fee" section, annual Service Agreement Fee amounts shall be paid in advance of performance of the Services. Harshaw Trane reserves the right to add to any account outstanding for more than 30 days a service charge equal to the lesser of the maximum allowable legal interest rate or 1.5% of the principal amount due at the end of each month. Without liability to Customer, Harshaw Trane may discontinue services whenever payment is overdue. In addition to the stated Service Agreement Fee, Customer shall pay all taxes not legally required to be paid by Harshaw Trane or, alternatively, shall provide Harshaw Trane with acceptable tax exemption certificates. Customer shall pay all costs (including attorneys' fees) incurred by Harshaw Trane in attempting to collect amounts due.

**5. Termination.** This Agreement may be terminated by either party upon a material breach by the other party of its obligations hereunder upon fourteen (14) calendar days prior written notice to the breaching party and the failure of the breaching party to cure the breach within such fourteen (14) day period. Notwithstanding any termination, Customer shall remain liable to Harshaw Trane for any amounts for services provided by Harshaw Trane and not then paid.

**6. Performance.** Harshaw Trane shall perform the services described in this Agreement with respect to the listed Equipment with reasonable promptness in a workmanlike manner in accordance with industry standards generally applicable in the area. Except as otherwise provided in writing in "Scope of Services," Services

shall be billed separately according to then prevailing overtime or emergency labor rates. Harshaw Trane's duty to perform under this Agreement and the Service Agreement Fee are subject to the approval of Harshaw Trane's credit department, are subject to Events of Force Majeure, and contingent upon the ability to procure materials from the usual sources of supply. Upon disapproval of the credit department or upon the occurrence of any such event as aforesaid, Harshaw Trane may delay or suspend performance or, at its option, renegotiate Service Agreement Fees, and/or terms and conditions with the Customer. If Harshaw Trane and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer's obligation to pay for services rendered by Harshaw Trane to the date of cancellation. This Agreement presupposes that all major pieces of equipment are in proper operating condition as of the date hereof. Services furnished are premised on the Equipment being in a maintainable condition. In no event shall Harshaw Trane have any obligation to replace Equipment that is no longer maintainable. During the first 30 days of this Agreement, and/or upon seasonal start-up (if included in the Services), an inspection by a Harshaw Trane technician of Covered Equipment indicates repairs or replacement is required, Harshaw Trane will provide a written quotation for such repairs or replacement. If Customer does not authorize such repairs or replacement, Harshaw Trane may remove the unacceptable Equipment from the "Equipment Coverage" or "Scope of Services" sections of this Agreement and adjust the Service Agreement Fee accordingly. During the Term, Harshaw Trane may elect to install/attach to Customer equipment or provide portable devices (hardware and/or software) for execution of control or diagnostic procedures. Such devices shall remain the personal proprietary property of Harshaw Trane and in no event shall become a fixture of customer locations. Customer shall not acquire any interest, title or equity in any hardware, software, processes, and other intellectual or proprietary rights to devices used in connection with providing service on Customer equipment. Harshaw Trane reserves the right to remove such items at its discretion. Harshaw Trane may refuse to perform any services or work where working conditions could endanger or put at risk the safety of Harshaw Trane employees or subcontractors.

**7. Customer Obligations.** Customer shall:

- (a) Provide Harshaw Trane reasonable and safe access to all Equipment;
- (b) Follow manufacturer recommendations concerning teardown and internal inspection, major overhaul, restoration or refurbishing of the Equipment; unless expressly stated in the Scope of Services statement, Harshaw Trane is not performing any manufacturer recommended teardown and internal inspection, major overhaul, restoration or refurbishing of the equipment; Harshaw Trane shall not be responsible to perform any subsequent repairs to the Equipment necessitated by Customer's failure to follow such manufacturer recommendations;
- (c) Units (5) years of age or greater which have not had a tube analysis within the previous (12) months will require an analysis within the first year;
- (d) Units (7) years of age or greater which have not had a bearing inspection, will require one prior to contract acceptance. After inspection and restoration of equipment to its original operating conditions, coverage will become effective in accordance with the terms of this agreement;
- (e) Reimburse Harshaw Trane for services, repairs, and/or replacements performed by Harshaw Trane beyond the "Scope of Services" or otherwise excluded hereunder. Such reimbursement shall be at the then prevailing regular, overtime and holiday rates for labor, vehicle charges and prices for materials, and may at Harshaw Trane's option be subject to a separate written agreement prior to its undertaking such work. Prevailing rates subject to change with 30 day written notice;
- (f) Unless water treatment is expressly included in Harshaw Trane's Scope of Services, provide professional cooling tower water treatment in accordance with any reasonable recommendations provided by Harshaw Trane.

**8. Exclusions.** Unless expressly included in "Scope of Services" or "Equipment Coverage," the services to be provided by Harshaw Trane do not include, and Harshaw Trane shall not be liable for, any of the following:

- (a) Any guarantee of room conditions or system performance;
- (b) Inspection, maintenance, repair, replacement of or services for: chilled water and condenser water pumps and piping; electrical disconnect switches or circuit breakers; motor starting equipment that is not factory mounted and interconnecting power wiring; high voltage starters (over 600 volts); recording or portable instruments, gauges or thermometers; non-moving parts or non-maintainable parts of the system, including, but not limited to, storage tanks; pressure vessels, shells, coils, tubes, housings, castings, casings, drain pans, panels, duct work; piping; hydraulic, hydronic, pneumatic, gas, or refrigerant; insulation; pipe covering; refractory material; fuses, unit cabinets; electrical wiring; ductwork or conduit; electrical distribution system; hydronic structural supports and similar items; the appearance of decorative casing or cabinets; damage sustained by other equipment or systems; and/or any failure, misadjustment or design deficiencies in other equipment or systems;
- (c) Repairs or replacement of parts made necessary as a result of electrical power failure, low voltage, burned out main or branch fuses, low water pressure, vandalism, misuse or abuse, improper operation, unauthorized alteration of Equipment, accident, negligence of Customer or others, damage due to freezing weather, calamity or malicious act;





will be performed during Harshaw Trane's normal business hours and any after-hours

(d) Any damage or malfunction resulting from vibration, electrolytic action, freezing, contamination, corrosion, erosion, or caused by scale or sludge on internal tubes except where water treatment protection services are provided by Harshaw Trane as part of this Agreement;

(e) Furnishing any items of equipment, material, or labor, or performing special tests recommended or required by insurance companies or federal, state, or local governments;

(f) Failure or inadequacy of any structure or foundation supporting or surrounding the Equipment or any portion thereof;

(g) Building access or alterations that might be necessary to repair or replace Customer's existing equipment;

(h) The normal function of starting and stopping the Equipment or the opening and closing of valves, dampers or regulators normally installed to protect the Equipment against damage;

(i) Valves that are not factory mounted: balance, stop, control, and other valves external to the device unless specifically included in the Agreement;

(j) Any responsibility for design or redesign of the system or the Equipment, obsolescence, safety tests, or removal or reinstallation of valve bodies and dampers;

(k) Any services, claims, or damages arising out of Customer's failure to comply with its obligations under this Agreement;

(l) Failure of Customer to follow manufacturer recommendations concerning overhaul and refurbishing of the Equipment;

(m) Any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the premises before the effective date of this Agreement ("Pre-Existing Conditions"), including, without limitation, damages, losses, or expenses involving pre-existing building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould and/or fungi;

(n) Replacement of refrigerant is excluded, unless replacement of refrigerant is expressly stated as included within the scope of Harshaw Trane's Services, in which case replacement shall in no event exceed the stated percentage of rated system charge per year expressly stated in the scope of Services. Customer shall be responsible for the cost of any additional replacement refrigerant;

(o) Operation of the equipment;

(p) Any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Harshaw Trane.

**9. Warranties.** (a) Trane manufactured material supplied and installed by Harshaw Trane is warranted to be free from defect in material and manufacture for a period of twelve months from the earlier of the date of start-up or replacement and Harshaw Trane's obligation under this warranty is limited to repairing or replacing the defective part at its option; (b) labor is warranted (to have been properly performed) for a period of 90 days from completion and Harshaw Trane's obligation under this warranty is limited to correcting any improperly performed labor; and (c) non-Harshaw Trane equipment and/or parts are not warranted by Harshaw Trane and shall have such warranties as are extended to Harshaw Trane by the respective manufacturer. Labor to install parts supplied by Customer is not warranted by Harshaw Trane. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. **THE WARRANTY AND LIABILITY SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL HARSHAW TRANE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOST REVENUE OR PROFITS), OR PUNITIVE DAMAGES. NO REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS OF PURPOSE IS MADE REGARDING PREVENTION BY THE SCOPE OF SERVICES, OR ANY COMPONENT THEREOF, OF MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES. HARSHAW TRANE SPECIFICALLY DISCLAIMS ANY LIABILITY IF THE SCOPE OF SERVICES OR ANY COMPONENT THEREOF IS USED TO PREVENT OR INHIBIT THE GROWTH OF SUCH MATERIALS.**

**10. Indemnity.** Harshaw Trane and Customer shall indemnify, defend and hold each other harmless from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or personal property, to the extent caused by the negligence or misconduct of the indemnifying party, and/or its respective employees or agents. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.

**11. Limitation of Liability.** NOTWITHSTANDING ANY CONTRARY PROVISION, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE (INCLUDING WITHOUT LIMITATION LOST REVENUE OR PROFITS), WHETHER CLAIMED UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY OR FACTS, OR PUNITIVE DAMAGES.

**12. Asbestos and Hazardous Materials.** Harshaw Trane's services expressly exclude any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos or other hazardous materials (collectively, "Hazardous Materials"). Should Harshaw Trane become aware of or suspect the presence of Hazardous Materials, Harshaw Trane may immediately stop work in the affected area and shall notify Customer. Customer will be responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for and shall indemnify and hold harmless Harshaw Trane (including its employees, agents and subcontractors) from and against any loss, claim, liability, fees, penalties, injury (including death) or liability of any nature, and the payment thereof, arising out of or relating to any Hazardous Materials on or about the premises, not brought onto the premises by Harshaw Trane. Harshaw Trane shall be required to resume performance of the services only when the affected area has been rendered harmless.

**13. Insurance.** Harshaw Trane agrees to maintain insurance in the following minimum amounts during the Term: Commercial General Liability -- \$1,000,000 per occurrence; Automobile Liability -- \$1,000,000 CSL; Workers Compensation -- Statutory Limits. If Customer has requested to be named as an additional insured under Harshaw Trane's insurance policy, Harshaw Trane will do so but only to the extent of Harshaw Trane's indemnity assumed under the indemnity provision contained herein. Harshaw Trane does not waive any rights of subrogation.

**14. Force Majeure.** If Harshaw Trane shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Harshaw Trane's election (i) remain in effect but Harshaw Trane's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon ten (10) days notice to Customer, in which event Customer shall pay Harshaw Trane for all parts of the Work furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Harshaw Trane. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; tornado; storm; fire; civil disobedience; pandemic; insurrections; riots; labor disputes; labor or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Harshaw Trane.

**15. Services Other Than Solely Scheduled Service.** If Harshaw Trane's services hereunder are not limited solely to Scheduled Service, the following provisions shall also apply: (a) Required restoration shall be performed by Customer at its cost prior to Harshaw Trane being obligated to perform hereunder; (b) any changes, adjustments, service or repairs made to the Equipment by any party other than Harshaw Trane, unless approved by Harshaw Trane in writing, may, at Harshaw Trane's option, terminate Harshaw Trane's obligation to render further service to the Equipment so affected; in such case no refund of any portion of the Service Agreement Fee shall be made; and (c) Customer shall (i) promptly notify Harshaw Trane of any unusual performance of Equipment; (ii) permit only Harshaw Trane personnel to repair or adjust Equipment and/or controls during the Term; and (iii) utilize qualified personnel to properly operate the Equipment in accordance with the applicable operating manuals and recommended procedures.

**16. General.** To the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which work is performed. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the subject matter hereof. If any part of this Agreement is deemed to be unlawful, invalid, void or otherwise unenforceable, the rights and obligations of the parties shall be reduced only to the extent required to remove the invalidity or unenforceability. Customer may not assign, transfer, or convey this Agreement, or any part hereof, without the written consent of Harshaw Trane. Subject to the foregoing, this Agreement benefit of the parties hereto and their permitted successors and assigns. Except as provided for Service Agreement Fee adjustments, no modifications, additions or changes may be made to this Agreement except in a writing signed by both parties. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original. Harshaw Trane reserves the right to change the terms and conditions herein at any time upon written notice to Customer provided at least thirty days prior to the effective date of such changes.



## Data Usage - Supplemental Terms and Conditions

The use of the term "you," "your," and the like means the entity identified as the customer in the agreement to which these Supplemental Terms and Conditions pertain, including its employees, shareholders, officers, and directors. References to "us," "we," "our," and the like means the entity identified as the Company, Trane/Harshaw Trane, in its Terms and Conditions of sale. *"Data Terms Clarification Statement" - It should be noted that Harshaw Trane will collect only building and HVAC system, operational, energy/runtime, building name, company name and location data. Unless specifically requested by you, Harshaw Trane will not collect or access any of your data outside of this criteria. This data will be used for system analytics and reporting by Harshaw Trane for you. The other uses of this data will be for analytical application development by Trane U.S. Inc. and/or general statistics and market research which will be used generically without your company's identification as the source of the data. All supplemental terms within this document are stated in accordance to these basic principles and limitations.*

1. **Terms Supplemental.** These Supplemental Terms and Conditions are supplemental to the Company's Terms and Conditions of sale applicable to your purchase of product and/or services from Company ("Terms and Conditions") and are an integral part of our offer and agreement to sell. The Terms and Conditions and these Supplemental Terms and Conditions are intended to be complementary and construed as a whole. However, in the event of an irreconcilable conflict, these Supplemental Terms and Conditions shall control.
2. **Electronic Monitoring.** Any electronic monitoring we perform is undertaken solely to enable us to collect the data and perform any analysis included in our services. You agree that we are not liable for losses that may occur in cases of malfunction or nonfunctioning of equipment, the energy management system, failure to identify equipment or system performance issues, failure to recommend corrective action, or otherwise related to the monitoring of your equipment and building systems.
3. **Ownership of Data.** All data relating to the performance and condition of your building systems that we collect in connection with our performance hereunder shall be owned by you, provided that you are granting to us the irrevocable, perpetual, nonexclusive, worldwide, royalty-free right and license to use, reproduce, display, distribute internally or externally and prepare derivative works based upon any such data we collect from you. We shall not use or publish such data in any way that identifies you as the source of that data without your prior written consent except to the extent required by law. The data you make available to us will not include any "personal information" defined as such by applicable law.
4. **Data Privacy and Security.** We have implemented various security measures for the purpose of protecting your data against accidental or unlawful access, unauthorized disclosure, loss, destruction, and alteration. You are responsible for maintaining the confidentiality of your user name(s) and password(s). You are responsible for all uses of your password(s), whether or not authorized by you. You must inform us immediately of any unauthorized use of your user name(s) or password(s). Transmission of data over the Internet by its nature entails the use of systems under the control of third parties, and as a result we cannot ensure total control of the security of such systems. We will take commercially reasonable efforts to ensure that data and other configuration parameters are not visible or accessed by other customers. You acknowledge that the very nature of communication via the Internet restricts us from offering any guarantee of the privacy or confidentiality of information relating to you or to any personally identifiable information that may reside in your systems or data when communicated or transmitted by or through the Internet or any electronic device. In gaining access via the Internet, you also acknowledge and accept that electronic communication may not be free from interference by unauthorized persons and may not remain confidential. You therefore accept that access to and storage of data by us and persons under our direction and control, or on equipment provided or used thereby, is at your own risk. We will notify you of any breach in security of which we become aware. Any breach in privacy of which you become aware should be reported by you to us immediately. We do not disclose your information to third parties for their marketing purposes, but we do use third party software and services to assist us with collecting and analyzing information. We may also disclose your information if required to do so by law, regulation or as required by any governmental body with jurisdiction over it, in which case, we would inform you of such disclosure to the extent legally permissible.
5. **Data Retention.** Upon your written request, we will endeavor to provide an electronic copy of data collected from you, subject to availability. We will use commercially reasonable efforts to store your data for up to 18 months. We cannot guarantee the availability of the data.
6. **Ownership of Intellectual Property.** Notwithstanding any provision to the contrary, as between you and us, we own and retain all title and ownership of all intellectual property rights in the software, firmware, analytics, and service processes used to provide services, and consequently both you and us agree that these Supplemental Terms and Conditions do not constitute and may under no circumstances be construed as the granting of any license to such intellectual property rights.
7. **Disclaimer of Warranty; Limitation of Liability.** The services provided, including any reports we provide, are intended to provide operational assessments and recommendations only and are intended to supplement, but not replace, manual inspections of your equipment and building systems. THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, WE ARE NOT LIABLE FOR GAPS IN DATA COLLECTED.  
  
TO THE MAXIMUM EXTENT ALLOWED BY LAW, WE SHALL NOT BE LIABLE FOR ANY OF THE FOLLOWING: DAMAGES OR INJURY (OTHER THAN PERSONAL INJURY CAUSED BY OUR NEGLIGENCE) REGARDLESS OF THE CAUSE OR DURATION; FOR ANY ERRORS, INACCURACIES, OMISSIONS, OR OTHER DEFECTS IN THE INTELLIGENT SERVICES; FAILURE OF PERFORMANCE; INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION; YOUR NETWORK SECURITY; COMPUTER VIRUS; COMMUNICATION FAILURE; THEFT OR DESTRUCTION OF DATA; OR UNAUTHORIZED ACCESS TO YOUR DATA OR COMMUNICATIONS NETWORK.
8. **Communications – Analog Modem Facilities.** You authorize us to utilize your telephone line to provide the services and acknowledge that, unless an exclusive telephone line has been provided for performance of the services, the telephone line may be unavailable for your use for extended periods of time while data is being collected from your building systems and equipment. We are not responsible for any adverse impact to your communications infrastructure or daily operations. You understand that we will not be able to collect data when the telephone line or other transmission mode is not operating or has been cut, interfered with or is otherwise damaged or if we are unable to acquire, transmit or maintain a connection over your telephone service.
9. **Communications – Ethernet.** You authorize us to utilize your network infrastructure to provide the contracted services and acknowledge that we are not responsible for any adverse impact to your communications infrastructure. You understand that we will not be able to collect data when network issues do not allow for successfully communications between our data collection devices and the data sources. Interruption of external Internet communications of longer than 24 hours may result in loss of data and degradation of service levels. Interruption of communications can be classified as failure of transmitting or receiving packet transmissions, interfered with or is otherwise damaged or if we are unable to acquire, transmit or maintain a connection over network or the internet for any reason including network or ISP outage or other network/ISP problems such as congestion or downtime, routing problems, or instability of signal quality.
10. **Logging and Data Mining.** You grant us the unrestricted right, but not the obligation, to log web addresses and/or mine other information and/or data relating to services and information accessed or requested (a) to provide better support, services and/or products to users of our products and services, (b) to verify compliance with the terms of the Agreement and the Supplemental Terms and Conditions, (c) for use by us for statistical or other analysis of the collective characteristics and behavior of users, (d) to backup user and other data or information and/or provide remote support and/or restoration, (e) to provide or undertake: engineering analysis; failure analysis; warranty analysis; energy analysis; predictive analysis; service analysis; product usage analysis; and/or other desirable analysis, including histories or trending of any of the foregoing, and (f) to otherwise understand and respond to the needs of the users of our products and services.





Please complete and return with the enclosed Service Agreement.

- A. **Sold To** Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone #: \_\_\_\_\_  
Email Address: \_\_\_\_\_
- B. **Bill To** (if different from above) Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone #: \_\_\_\_\_
- C. Individual in charge of physical facilities:  
(Management or Supervisor Level) Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone #: \_\_\_\_\_
- D. Name of equipment operators \_\_\_\_\_  
\_\_\_\_\_
- E. Purchasing Agent Name: \_\_\_\_\_
- F. Safety Director Name: \_\_\_\_\_
- G. Who should the Service Representative report to  
when arriving at the facility? \_\_\_\_\_
- H. To whom should the Service Representative  
report the results of the visit? \_\_\_\_\_
- I. What individual should receive copies of Service  
Work Reports? \_\_\_\_\_
- J. Who can authorize the Service Representative to  
perform additional services or work overtime? \_\_\_\_\_
- K. Any other special instructions for us to consider in  
performing the services purchased: \_\_\_\_\_
- L. Tracer Summit Phone # (if applicable) Phone #: \_\_\_\_\_