



Bullitt County Public Schools

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MEMO

TO: Keith Davis

FROM: Mark Mitchell 

DATE: May 14, 2018

RE: Board Agenda Item – Approval of Service Agreement with Harshaw Trane for the Intelligent Services and Software Maintenance - GESC

The Department of Facilities is requesting Board approval for the intelligent services and software maintenance agreement relating to the Guaranteed Energy Saving Contract.

The agreement covers the intelligent services related to the improvements made as a result of the GESC. Specifically, it will cover the new controls at Bullitt East and North Bullitt Highs' freshman wings, Eastside Middle and Old Mill Elementary. Additionally, Trane will provide software maintenance for all Trace SC+/ES/Ensemble controls throughout the district. The cost for the intelligent services and software maintenance is \$9,516.00. Funding for these services is found in the FY18 budget in 0352 – Other Technical Services. Eric Farris has reviewed the agreement as to form and legality.

I recommend the Board approve the request for intelligent services and software maintenance agreement relating to the Guaranteed Energy Saving Contract.

Attachment: Harshaw Trane Service Agreement




Intelligent Services

Service Agreement

Bullitt County Schools
Shepherdsville, KY

May 21, 2018

The information contained within this proposal is proprietary and confidential. Reproduction and distribution is not permissible without prior and written approval of the Operations Manager.

Service Coverage

Facilities and Service Matrix	Intelligent Services Energy Performance	Intelligent Services Building Performance	Technical Support "Helpdesk"	Critical Alarm Management	Intelligent Services Consultation	Tracer SC+ / ES / Ensemble Software Maintenance Plan*	Mechanical Services	Water Treatment Services
Old Mill Elementary	✓	✓	✓	✓	✓	✓		
Eastside Middle School	✓	✓	✓	✓	✓	✓		
North Bullitt HS	✓	✓	✓	✓	✓	✓		
Bullitt East HS	✓	✓	✓	✓	✓	✓		
Bullitt County Schools- reference page 8 for list	✓	✓				✓		

*Note: Software Maintenance Plan is an optional add

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 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
Intelligent Services Consultations	CSL, CAM	CSL, CAM	CSL, CAM	CSL, CAM
Software Maintenance Plan*		SSU		SSU

SERVICE LEGEND:

CSL = CONSULTATION

SSU = SOFTWARE SUBSCRIPTION UPDATE

CAM = CRITICAL ALARM MANAGEMENT

*Note: Software Maintenance Plan is an optional add

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 1 year.

Intelligent Services (annual price): \$6,496

OPTIONAL ADD:

Software Maintenance Plan (annual price): \$3,020

CUSTOMER ACCEPTANCE:☐

Intelligent Services

☐

Optional Add

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.

Note: Subscription services have been included for all facilities connected to Intelligent Services.

In addition to the schools called out on the Service Matrix (page 2), the following schools are included in the Subscription services:

BROOKS ELEMENTARY SCHOOL
BULLITT CENTRAL HIGH SCHOOL
BULLITT CO. CENTRAL OFFICE
BULLITT EAST HIGH SCHOOL
BULLITT LICK MIDDLE SCHOOL
CEDAR GROVE ELEMENTARY
CROSSROADS ELEMENTARY
FREEDOM ELEMENTARY
HEBRON MIDDLE SCHOOL
LEBANON JUNCTION ELEM.
MARYVILLE ELEMENTARY

MT. WASHINGTON ELEMENTARY
MT. WASHINGTON MIDDLE SCHOOL
NICHOLS ELEMENTARY
NORTH BULLITT HIGH SCHOOL
OVERDALE ELEMENTARY
PLEASANT GROVE ELEMENTARY
RIVERVIEW H.S./DAY TREATMENT
ROBY ELEMENTARY
SHEPHERDSVILLE ELEMENTARY
ZONETON MIDDLE SCHOOL

(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.

Note: Subscription services have been included for all facilities connected to Intelligent Services.

(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).

OPTIONAL ADD

Tracer SC+/ES/Ensemble Software Maintenance Plan**TRACER SC+/ES/ENSEMBLE SOFTWARE UPGRADES**

Tracer SC+/ES/Ensemble® Software Maintenance Plan customers will receive up to two software version upgrades per year as they are released by the Trane Building Automation Services Division. This service allows the owner/operator to maintain the Tracer SC+/ES/Ensemble® system, utilizing current up-to-date software operations and continue to enhance and optimize system performance.

- As Tracer SC+/ES/Ensemble® software revisions (i.e. service packs, image files) are released, SC+ and/or workstations will be upgraded via remote access, or during the next scheduled service visit.
- Assigned service technician and account manager will be responsible to make sure that subscription service sites are maintained and upgraded on an annual basis. This subscription service is based on one SC+ system and/or workstation only.

Additional Considerations

- For ES/Ensemble sites, it is assumed that the owner will maintain the ES/Ensemble server to comply with Trane's minimum requirements, including SQL operating system versions and capacity. Prior to performing an ES/Ensemble upgrade, Harshaw Trane will verify that the client's server meets the minimum requirements and, if out of spec, will advise the owner for corrective action outside of this agreement's scope of coverage.
- For Maintenance Plans that are established with updates via remote access, the owner is expected to allow access to Harshaw Trane via a remote connection to the site (preferably a site-to-site VPN connection). Any connectivity or owner's computer system issues that result in a site visit to perform the upgrade will be billed to the Customer as an additional service charge at the current service agreement holder rate.
- Remote access 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.
- Software installation does not cover issues related to computer system capacity or configuration issues.
- Software upgrades **do not include upgrades to higher platforms.**

Note: Maximum labor allowed is no more than the scheduled time per visit

In addition to the schools called out on the Service Matrix (page 2), the following schools are included in the Software Maintenance Plan:

BROOKS ELEMENTARY SCHOOL
BULLITT CENTRAL HIGH SCHOOL
BULLITT CO. CENTRAL OFFICE
BULLITT EAST HIGH SCHOOL
BULLITT LICK MIDDLE SCHOOL
CEDAR GROVE ELEMENTARY
CROSSROADS ELEMENTARY
FREEDOM ELEMENTARY
PLEASANT GROVE ELEMENTARY
RIVERVIEW H.S./DAY TREATMENT
ROBY ELEMENTARY
SHEPHERDSVILLE ELEMENTARY
ZONETON MIDDLE SCHOOL

HEBRON MIDDLE SCHOOL
LEBANON JUNCTION ELEM.
MARYVILLE ELEMENTARY
MT. WASHINGTON ELEMENTARY
MT. WASHINGTON MIDDLE SCHOOL
NICHOLS ELEMENTARY
NORTH BULLITT HIGH SCHOOL
OVERDALE ELEMENTARY



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.



OPTIMIZING FACILITIES FOR LIFE

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 #:	_____