

# ***Harshaw Trane***

## **Service Agreement**

### **BREATHITT COUNTY SCHOOLS**

420 Court Street, PO Box 750  
Jackson, Ky 41339

### **Intelligent Services Agreement**

May 20, 2019

Submitted by:  
Reed Wunderlich

### ***Facilities and Systems included within Service Agreement***

FACILITY LOCATION(S)	SYSTEM(S)
BREATHITT CO HIGH SCHOOL SEBASTIAN MIDDLE SCHOOL	TRANE BUILDING AUTOMATION SYSTEM:  TRACER ENSEMBLE TRACER SC

### **INTELLIGENT SERVICES SCHEDULE OF SERVICES**

Services	Frequency
Energy and Building Performance Analytics	QUARTERLY
Energy / Performance Consultation Report and/or Site Walk-thru	QUARTERLY
Technical Support Help Desk	ON-DEMAND (MONDAY-FRIDAY, 8AM TO 5PM)
Critical Alarm Management	ON-GOING ASSISTANCE
Trane Controls Software Maintenance Plan	SEMIANNUAL
Optimization Implementation Block of Hours	8 HOUR BLOCK ANNUALLY

### **CLIENT REQUIREMENTS**

- Maintain information technology network, hardware, and software required for the proposed automated services to be performed
- Provide network connections, IP addresses, and remote always-on site-to-site VPN connection to Harshaw Trane

## **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 3rd 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
  - A full year of prior year utility bills, or a release letter for Harshaw Trane to acquire this data directly from the utility provider.
- (5) Intelligent Services is a program of data collection, analysis and recommended actions aimed at driving continuous improvement, risk mitigation, code compliance and optimization. Due to the complexity and sheer volume of managed data, there could be instances where not every performance issue is flagged and/or addressed by either Harshaw Trane or the client. Harshaw Trane is not responsible for damages or associated costs of system issues that may occur for any reason including, but not limited to, negligence of the client or Harshaw Trane to identify an issue, failures of hardware or software, 3<sup>rd</sup> party alarming notification services, network issues, or any other nature.
- (6) This offering is subject to the attached Harshaw Trane terms and conditions and assumes the client agrees to the written and/or electronic terms of Connectivity. Harshaw Trane assumes the client complies with industry standard best practices for cyber security, including network segmentation, placing the building automation system behind firewalls, limiting network access to only appropriate personnel and implementing policies for secure password management.
- (7) 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.

Agreement Term and Acceptance			
Agreement Term	Date	Annual Investment	Quarterly Payment
Multiyear	6/1/2019 – 05/31/2019	\$18,956	\$4,739
	6/1/2020 – 05/31/2020	\$19,524	\$4,881
	6/1/2021 – 05/31/2021	\$20,11	\$5,028

Notes:

1. The Service Agreement Fee is based on performance during regular business hours.
2. Cancellation Policy – The customer may cancel this contract for any reason, at any time, with a 30-day written notice and only be liable for payment of services rendered.

BREATHITT CO SCHOOLS ACCEPTANCE:	HARSHAW TRANE ACCEPTANCE:
Signature _____	Signature _____
Title _____	Title _____
Acceptance Date _____	Acceptance Date _____
P.O. #: _____	
Effective Date _____	(Established by the Harshaw Trane)

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# **Description Of Services**

## **Intelligent Services**

Intelligent Services is a sustainability program that enables Healthcare facilities to identify performance issues and develop action items to drive continuous drive improvement.

### **1. Building Performance Analytics**

Data driven service that guides the client's team, allowing them to focus on prominent, mission-driven issues. Harshaw Trane leverages a web-based application that integrates with the Building Automation System to provide optics on real-time performance of the system. System deficiencies are consistently identified with corrective action plans.

### **2. Energy Performance Analytics**

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.

### **4. Remote Helpdesk**

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.

### **6. Critical Alarm Management**

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.

### **8. Intelligent Services Consultation**

Each quarter, the Harshaw Trane engineering and account management team will consult with the client to review the building's energy and performance analytics and discuss opportunities to sustain and/or improve. On occasion, the team may mutually agree to spend the consultation visit by performing a site walk-through, in lieu of performing a consultation, to assist in furthering the development of energy conservation opportunities.

### **7. Optimization Implementation**

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).

## 9. Trane Controls Software Maintenance Plan

Tracer 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 Ensemble® system, utilizing current up-to-date software operations and continue to enhance and optimize system performance.

- As Tracer Ensemble® software revisions (i.e. service packs, image files) are released, the enterprise server will be upgraded, via remote access.
- 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 maintaining one enterprise server.

### Additional Considerations

- For Ensemble sites, it is assumed that the owner will maintain the Ensemble server to comply with Trane's minimum requirements, including SQL operating system versions and capacity. Prior to performing an 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.**

## Harshaw Trane Terms and Conditions (Service)

The following "Terms and Conditions" are attached to and made a part of the Service Agreement ("Agreement") between Norton Healthcare, Inc. ("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. 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.

**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 may be renewed by mutual written agreement for succeeding 12 month terms (each a "Renewal Term"), subject to the Renewal Pricing Adjustment, at least sixty (60) days in advance of the scheduled expiration date, or as otherwise mutually agreed. If a mutual agreement has not been reached, prior to the current term's expiration, the "scope of services" of this agreement shall be suspended, until an agreement is reached, in order for both parties to avoid incurring applicable costs. This Agreement may be cancelled upon the written notice of Customer to Harshaw Trane (for any reason or no reason); provided, however, that, in the event of a cancellation by Customer without cause, Customer will be responsible for the payment of the percentage of the current contract annual term amount for Services that have been fulfilled by Harshaw Trane. This reconciliation cost will be calculated by dividing the current annual term cost by twelve and then multiplying by the number of months of Services fulfilled up to the cancellation notice. Except as otherwise provided in writing in "Scope of Services," the Service Agreement Fee is based on performance during regular business hours.

**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; and (b) a maximum increase of 3% over the previous Service Agreement Fee charged to Customer. 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 within thirty (30) days of receipt by Customer 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 undisputed principal amount due at the end of each month. Without liability to Customer, Harshaw Trane may discontinue services whenever an undisputed principal amount 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.

**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 by Harshaw Trane for an uncured breach by Customer, Customer shall remain liable to Harshaw Trane for any amounts for services provided by Harshaw Trane and not then paid. In the event Customer terminates this Agreement due to an uncured Harshaw Trane breach, Harshaw Trane shall promptly provide Customer with a refund for any advance Service Agreement Fees (or any other fees) paid for services not provided.

**6. Performance.** Harshaw Trane shall perform the services described in this Agreement with reasonable promptness in a workmanlike and professional manner in accordance with industry standards generally applicable in the area. Except as otherwise provided in writing in "Scope of Services," Services will be performed during Harshaw Trane's normal business hours and any after-hours 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 satisfactorily 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 the 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.**

(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) Equipment (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) Equipment (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) Provided the same has been approved in writing by Customer prior to the performance of any services, Customer shall 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 will be subject to a separate written agreement signed by both parties 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, Customer shall 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;
- (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.

**THE WARRANTY AND LIABILITY SET FORTH IN THIS AGREEMENT (INCLUDING ANY ATTACHMENTS HERETO) 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, EXCEPT FOR ANY BREACHES OF CONFIDENTIALITY, IN NO EVENT SHALL EITHER PARTY 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.** To the maximum extent permitted by law, Trane and Owner 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 (i) any breach of this Agreement or supplemental terms including any representation or warranty, or (ii) death or bodily injury or damage to real, personal or tangible physical property of the other, to the extent arising out of or resulting from the negligence or misconduct of the indemnifying party, and/or their respective employees, contractors or other authorized agents. However, neither party shall indemnify the other against actions, costs, expenses, damages and liabilities to the extent attributable to the acts or omissions of the other party. If the parties are both at fault hereunder, then any 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 of this Agreement, with respect to any claims based on facts or conditions which occurred prior to expiration or termination. The foregoing obligations are subject to the following: the indemnified party (a) notifies the indemnifying party promptly in writing of such claim (although any delayed notice that does not prejudice the indemnifying party's rights to defend any claim shall not limit its obligations hereunder); (b) grants the indemnifying party the sole control over the defense and settlement thereof but the indemnifying party agrees not to agree to any settlement involving the indemnified party without the indemnified party's prior written consent; and (c) the indemnified party reasonably cooperates at the indemnifying party's sole expense in response to any request for assistance and information.

**11. Intentionally Omitted.**

**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 shall 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. Harshaw Trane shall be required to resume performance of the services only when the affected area has been rendered harmless.

**13. Insurance.** Notwithstanding and without limiting Harshaw Trane's indemnification obligations, Harshaw Trane shall at all times during the Term of this Agreement and at its sole expense maintain all appropriate insurance coverage, including, but not limited to, Commercial General Liability insurance in the amount of two million dollars (\$2,000,000) per occurrence and three million dollars (\$3,000,000) aggregate, workers compensation that satisfies applicable statutory limits, automobile liability in appropriate amounts but in no event less than one million dollars (\$1,000,000) per occurrence, and technology errors and omissions insurance that contains coverage for data breach and cyber liability, in the amount of five million dollars (\$5,000,000) per occurrence and five millions dollars (\$5,000,000) aggregate. All such insurance shall be written by carriers with an A.M. Best Rating of at least A- / VIII. Harshaw Trane shall use reasonable efforts to notify Customer of any cancellation or material decrease to any insurance within thirty (30) days. Harshaw Trane shall provide certificates of insurance upon Customer's request. The lack or insufficiency of insurance shall not alter or reduce Harshaw Trane's indemnification obligations.

**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 Customer'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 Harshaw Trane, 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 reasonable 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; 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. Neither party shall assign, transfer, or convey this Agreement, or any part hereof, without the written consent of the other party. 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 or email copy hereof or the several counterparts shall suffice as an original.

17. **Equal Employment Opportunity.** The Parties shall comply with all Federal equal employment opportunity obligations under 41 CFR 60-1.4(a), 60-300.5 (a), 60-741.5(a) and federal labor law obligations under 29 CFR part 471, appendix A to subpart A, if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

18. **Excluded Provider Warranty.** Harshaw Trane warrants that it is not now and at no time has been excluded from participation in any federally funded health care program, including Medicare and Medicaid, and hereby agrees to notify Customer of any threatened or actual exclusion. Harshaw Trane further warrants that none of its personnel or contractors are now excluded from participation in any such programs, and that if any employee, contractor or other personnel providing services in connection with this Agreement becomes so excluded, Harshaw Trane will notify Customer and such person shall be terminated from performing any services for or on behalf of Customer. In the event that Harshaw Trane is excluded from any such participation during the term of this Agreement, this Agreement shall, as of the effective date of such exclusion or breach, terminate at Customer's option.

19. **Access to Books and Records.** Until the expiration of four (4) years after the furnishing of any services provided under this Agreement, Harshaw Trane shall make available to the Secretary, United States Department of Health and Human Services, and the United States Comptroller General, and their representatives, a copy of this Agreement and such books, documents and records that are necessary to certify the nature and extent of any cost incurred under this Agreement. If Harshaw Trane carries out any duties of this Agreement through a subcontract worth \$10,000 or more over a 12-month period with a related organization, the subcontract shall contain a clause placing the same obligations on subcontractor as this clause places on Harshaw Trane. Harshaw Trane shall promptly notify Customer of its receipt of any such request for this Agreement and any other books, documents and records and shall provide it with copies of any such materials. In the event this Agreement is not subject to the provisions of 42 USC 1395x(v)(1)(I) and 42 CFR 420.300 et. seq. or relevant regulations, this section shall be null and void.

20. **Effect of Government Regulation.** Either party shall have the right to request an amendment to this Agreement, without liability, to comply with any legal order, ruling, opinion, procedure, policy, or other guidance issued by any federal or state agency or to comply with any provision of law, regulation, or requirement of accreditation, tax exemption, or participation in or licensure for a federally funded health-care program that (1) invalidates or is inconsistent with the provisions of this Agreement, (2) would cause either party to be in violation of the law, (3) jeopardizes the tax-exempt status of either party, (4) jeopardizes the tax-exempt status of any bonds issued for the benefit of either party; or (5) jeopardizes the good-standing status of licensure for, accreditation in, or participation in any federally funded health-care program, including Medicare and Medicaid, of either party. If either party deems it necessary to amend this Agreement as provided in this section, it shall furnish the other party with written notice thereof, along with a written opinion of its legal counsel supporting such determination. If the parties are unable to reach an agreement concerning the amendment of this Agreement within the forty-five (45) days after the date of the notice seeking amendment or the effective date of the change, then either party may immediately terminate this Agreement by written notice to the other party without penalty or liability to either party and Customer shall owe only for services completed up to the effective date of termination.

21. **Defamation.** The parties agree not to disparage, defame or otherwise seek to diminish the other party, its affiliates and their respective products, services, employees, officers, directors or board members in the marketplace.

22. **Confidentiality.** (a) By virtue of this Agreement, the parties may have access to information that is confidential or proprietary to one another ("**Confidential Information**"). Confidential Information shall mean any information that is directly or indirectly disclosed or made accessible by or on behalf of a party (the "**Disclosing Party**") that is marked as confidential or proprietary or which, given the nature of the information or circumstances surrounding its disclosure, should reasonably be understood to be confidential or proprietary of the Disclosing Party. (b) The Party receiving Confidential Information of the other (the "**Receiving Party**") agrees to use such Confidential Information solely to perform its respective obligations under this Agreement and will take reasonable measures to avoid unauthorized disclosure to any third party or unauthorized use, including, but not limited to, taking at least those measures it takes to protect its own similar Confidential Information. Each Receiving Party agrees not to disclose any Confidential Information of the Disclosing Party to the Receiving Party's employees and Representatives (defined below), except to those that have a need to know such information and who are already legally bound to maintain its confidentiality. (c) Confidential Information shall not, however, include any information which (i) is publicly known and is made generally available through no fault of the Receiving Party; (ii) is already in the possession of the Receiving Party without obligation of confidentiality at the time of disclosure by the Disclosing Party as shown by the Receiving Party's written records; (iii) is lawfully obtained by the Receiving Party from a third party without restriction and without a breach of such third party's obligations of confidentiality; or (iv) is independently developed by the Receiving Party without use of or reference to a Disclosing Party's Confidential Information, as shown by the Receiving Party's written records. (d) Upon written request by the Disclosing Party or upon termination of this Agreement, all Confidential Information of the Disclosing Party in whatever form shall, at the option of the Disclosing Party, be returned to the Disclosing Party or destroyed with destruction certified by the Receiving Party, without the Receiving Party retaining copies thereof. (e) Each party agrees that any other party's violation of the provisions of this Section 22 will cause immediate and irreparable harm to the other party for which money damages are not an adequate remedy at law. Therefore, the parties agree that, in the event either party breaches or threatens to breach said provision or covenant, the other party shall be entitled to an injunction to restrain said breach or threatened breach, without posting any bond or other security. Notwithstanding the foregoing, each Receiving Party may disclose Confidential Information of the Disclosing Party in order to comply with law, regulation or legal order and to its legal and other professional advisors in connection with their services to the Receiving Party.

## 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, 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. The data we will collect from you will not include any personal or individual information. *(Please refer to the above “Data Terms Clarification Statement”)*
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, including encryption of all collected data. 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 passing over the Internet. In gaining access via the Internet, you also acknowledge and accept that electronic communication may not be free from interference by unauthorized persons and, even though encrypted, may not remain confidential. You therefore accept that access and storage of data 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, in which case, we would inform you of such disclosure.
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. 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 refer to the above "Data Terms Clarification Statement".)*

