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AL #26644

# **HVAC Service Agreement**

## ***for Chillers and Associated HVAC Equipment***

**Customer Name:**

**Customer Address:**

**Equipment Address:**

**Air Specialty Representative**

**Name:**

**Title:**

**Date:**

**Agreement Number:**

# ANNUAL PREVENTATIVE MAINTENANCE PROGRAM

Air Specialty Inc will provide a complete program of preventative maintenance on the equipment listed in "Schedule A." To maintain the equipment in good working order, our technicians will perform all preventative maintenance tasks in accordance with the guidelines issued by the manufacturers.

This preventative maintenance program meets the manufacturer's requirements to properly maintain and service your equipment. All work will be performed during normal Air Specialty Inc working hours unless otherwise indicated in the supplemental service section of this agreement.

The annual preventative maintenance program includes a minimum of operating inspections, plus annual shut-down preventative maintenance to evaluate equipment status and brush clean condenser tubes, preparing the unit for the next cooling season. Also, we will provide a written report of findings, corrective actions, and recommendations following each visit.

## SUPPLEMENTAL SERVICES

	<b>Included</b>	<b>Not Included</b>
<p><b>A. Preventative Maintenance for Associated Equipment –</b>                      provides complete inspection and preventative maintenance for associated cooling and heating equipment to ensure reliable and efficient operation. See "Schedule A" for a listing of items included in this Supplemental Agreement.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>B. Total Service Coverage –</b> provides all repair labor and Materials required to keep the equipment listed in "Schedule A" In proper operating condition. This level of service offers the Maximum protection against unpredictable repair expenditures, As well as ensures reliability and efficiency.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Around-the-Clock Emergency Service, 7 Days/Week -</b>                      Our technicians will respond 24 hours/day, 7 days/week, including Holidays, to ensure proper and reliable operation of all items listed In "Schedule A."</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>C. Additional Inspections -</b> In addition to the preventative Maintenance program described above, we will perform _____ more P.M. inspections/year on the equipment Covered by this Agreement.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>D. Monitoring Service –</b> provides 24 hours remote monitoring of your equipment. Both anticipatory and shut-down alarms will be received and reviewed by qualified personnel. Based on alarm conditions and customer requirements, we will respond in the most appropriate manner. We will also poll the equipment for status information twice each week. Reports summarizing alarms and poling information will be issued each month.</p>	<input type="checkbox"/>	<input type="checkbox"/>

## PRICING AND PAYMENT

The annual price of this agreement shall be \$ \_\_\_\_\_ and is payable \_\_\_\_\_ upon receipt of the invoice. If the equipment is under a standard and/or extended warranty plan, the monthly price shall be \$ \_\_\_\_\_ until the warranty expires.

## TERMS OF THIS AGREEMENT

The term of this Agreement shall be \_\_\_\_\_ year(s) commencing on \_\_\_\_\_. It shall then renew annually beginning on \_\_\_\_\_ which shall be the anniversary date of this Agreement.

After the first 12 months, the price is subject to an annual escalation based on (1) cost changes in overhead and union-based rates; and (2) the wholesale price index for metal and metal products.

## TERMS AND CONDITIONS

This Agreement is subject to the terms and conditions on the following page.

Customer Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Customer Signature

**Accepted by:**

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

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

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

\_\_\_\_\_

ASI Representative Signature

**Offered by Air Specialty Inc Representative:**

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

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

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

## TERMS AND CONDITIONS MAINTENANCE CONTRACTS

### PROPRIETARY INFORMATION AND EQUIPMENT

Where monitoring Service is provided, all hardware and/or software provided as monitoring service shall be and remain the proprietary property of Air Specialty Inc ("Company"). Customer agrees not to copy or disclose Company's proprietary information to others and also agrees to provide free access for removal of such hardware and software within thirty (30) days after termination of this agreement.

### EXCLUSIONS

It is understood that the following are not the responsibility of the Company under this Agreement:

- a. Operation of the equipment
- b. Services, repairs, or replacement necessitated by misuse, improper operation, continued operation of covered equipment against Company recommendations, or negligence of customer, customer's employees, agents, contractors or invitees.
- c. Correction or replacement of equipment or components damaged due to corrosion, lack of proper water treatment, vibration, electrolytic action, or other causes beyond the control of the Company.
- d. Inspections, alterations or replacements required by insurance companies, municipal or governmental authorities.
- e. Replacement of major components which cannot be repaired due to age or unavailability of replacement parts.
- f. Replacement of servicing of equipment or components such as pneumatic piping, fuses, starters, circuit breakers, disconnect switches, electrical and control wiring, plumbing, non-moving parts such as pressure vessels, tubes, panels, ductwork, structural supports, and decorative casings unless specifically included in this Agreement.
- g. In the event that repairs or replacements performed by Company are a recoverable cost or an allowable claim under any policy of insurance under which Customer is an insured party (Primary, additional, or otherwise) or a loss payee, Customer agrees to present such claim to the insurer and to diligently pursue such claim, and Customer further agrees that company shall be entitled to payment for such repairs or replacements to the extent Customer receives payment from the insurer. Upon request by Company, Customer shall assign its rights under and for such claim to company.
- h. The work shall not include the detection, abatement, encapsulation, or removal of asbestos or products, materials, or equipment containing asbestos. Customer shall notify Company in writing if any hazardous materials, including without limitation, asbestos, are present at the jobsite. Customer shall take adequate precautions to protect Company, its employees, agents and subcontractors from such hazardous materials and will arrange for others to remove or encapsulate such hazardous materials if necessary for the performance of the work. Customer agrees to indemnify and save Company, its employees, agents and subcontractors harmless from and against any loss, injury (including death) or liability of any nature arising out of or resulting from exposure of any person or property to hazardous materials at the jobsite.

### INITIAL INSPECTION

During the first 30 days of this Agreement or upon seasonal start-up, if Company should find any equipment covered under this Agreement to be in need of repair and replacement, Company will inform the Customer in writing of the equipment condition and the proposed corrective action. When the Company so notifies the Customer, it is understood that Company will not be responsible for the present of future repair or replacement, or operability of the equipment, until such a time the equipment is restored to a condition acceptable to Company.

### CUSTOMER RESPONSIBILITIES

In order to permit Company to properly perform the services included in this agreement, Customer agrees:

- a. To provide reasonable and timely access to all equipment covered in this Agreement.
- b. To allow Company to start and stop equipment, as necessary.
- c. Where monitoring service is applicable, to furnish continuous uninterrupted telephone line service.
- d. Unless otherwise included in this Agreement, to provide water treatment, as appropriate, for the proper functioning of the equipment covered in this Agreement.
- e. To provide proper disposition of used oil and contaminated refrigerant in accordance with applicable laws and regulations.
- f. That the Company's responsibility for replacement refrigerant under the Agreement shall not exceed ten percent (10%) of the rated system charge per year. Customer shall be responsible for the cost of any additional replacement refrigerant.

### LIMITATIONS OF LIABILITY

Company shall not be liable for personal injuries or property damage arising from causes beyond its reasonable control or without its fault or negligence. Nor shall Company be liable for any delay or default in performing hereunder if such delay or default is caused by any condition or circumstance beyond Company's reasonable control, such as, but not limited to, governmental restrictions, strikes or other labor troubles, acts of God, interruption or irregularities in electrical power or telephone services, embargoes, or unavailability of materials or parts.

It is understood that Monitoring Service while preventative in nature, does not insure against equipment failure, and that Company shall not be liable for damages for failure to detect or respond to potential adverse conditions.

In no event shall Company liability for direct or compensatory damages exceed the payments received by Company from Customer under this contract, nor shall Company be liable for any special, indirect, consequential or incidental damages of any nature. The foregoing limitations on damages shall apply under all theories of liability or causes of action, including but not limited to contract, warranty, tort (including negligence) and strict liability and shall inure to the benefit of Company's suppliers and subcontractors.

### WARRANTY

Company warrants that the work performed hereunder shall be done in a workmanlike manner and that all Company purchased parts and components shall be free from defects in workmanship and materials. This warranty shall be effective for a period of ninety (90) days from the date the work is done or the part or component is installed or until the date on which this Agreement terminates, whichever first occurs. The Customer's remedy, should any breach of the warranty occur, shall be for the Company to re-perform defective work or to repair or replace, at Company's option, any parts or components which are shown, to Company's satisfaction, to be defective, provided that Customer gives Company notice promptly upon discovery of the defect.

THE WARRANTY AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTIES CONTAINED HEREIN SET FORTH CUSTOMERS SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF A DEFECT IN WORKMANSHIP OR MATERIALS.

### TERMINATION

Company may terminate this Agreement upon written notice to Customer in the event that (1) any sums or monies due and payable under this Agreement are not paid when due; or (2) alterations, additions, or repairs are made to covered equipment by others. Either party may terminate this Agreement upon the anniversary date of this Agreement provided that written notice of such termination is received by the other party at least thirty (3) days prior to the anniversary date. Neither party shall be liable to the other party for any reason because of such termination at the anniversary date.

### DISPUTES, CHOICE OF LAW AND COSTS

This contract shall be deemed to have been entered into and shall be governed by the laws of the State of Alabama. All claims, disputes and controversies arising out of or relating to this contract, or the breach thereof, shall, in lieu of court action, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and any judgment upon the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. The site of the arbitration shall be in Mobile, Alabama, unless another site is mutually agreed between the parties. The parties agree that in any arbitration each shall be entitled to discovery of the other party as provided by the Federal Rules of Civil Procedure; provided, however, that any such discovery shall be completed within four (4) months from the date the Demand for Arbitration is filed with the American Arbitration Association. In the event it becomes necessary for Company to incur any costs or expenses in the collection of monies due from Customer, or to enforce any rights or privileges hereunder, customer shall, upon demand, reimburse Company for all such costs and expenses (including, but not limited to, reasonable attorney's fees). Actions by Company to collect monies due under this contract may be brought in any court of competent jurisdiction in lieu of arbitration.

All claims arising out of or relating to the performance or non-performance of this contract must be commenced within one (1) year from the date the claim arose. Failure of either party to comply with this limitation shall constitute a voluntary and knowing waiver of such claims.

### ENTIRE AGREEMENT

When executed by the parties and approved by Company's authorized representative, this Agreement contains the entire agreement between the parties with respect to the services covered herein. No other representations, warranties, or statements (whether expressed in customer's purchase order or otherwise), shall be binding upon Company unless expressly agreed to in writing by Company's authorized representative.

