



AIRCALL MAINTENANCE PLAN SERVICE AGREEMENT

This Maintenance Plan Service Agreement (“agreement”) is entered into by and between the customer executing this agreement below whom is either the owner of the real property or whom is authorized as an agent of the owner where the HVAC equipment is located (hereinafter “you” or “your”) and AirCall, LLC a California Limited Liability Company (hereinafter “AirCall” or “we” or “us”). Where you and we are referred to jointly then “our” or the “parties.

AirCall is a licensed contractor in the State of California, Lic. #1010942, and maintains liability insurance. This agreement is effective the date this agreement is signed by you (“Effective Date”) This agreement covers each HVAC unit (“unit”) entered in the AirCall service application (“AirCall App”), or as listed on the AirCall invoice including any additional units that you want included and for which you pay us an additional fee.

1. Maintenance Plan Description. This agreement covers each unit covered by the Plan Services. We will provide scheduled service of your unit(s) seventy-five (2) times per year (once every six months) for three years during the term of this agreement. We agree to provide the following equipment and services to you, as necessary and as required to maintain your covered unit(s), during the term of this agreement (“Plan Services”):

a. **Operational Analysis.** We will test and inspect the existing operation and performance characteristics of customer owned HVAC equipment. Inspections will include non-destructive testing, vibration and noise monitoring, chemical analysis, and routine visual inspections. These services are performed to ensure that the system(s) are in proper operating condition and to identify any potential system issues or failures. The following services are provided as part of the operational analysis:

Visually inspect the following:

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| 1. Fan assemblies | 14. Heating sections |
| 2. Belts and sheaves | 15. Humidifiers & strainers |
| 3. Motor mounts & vibration pad | 16. Seals & packaging |
| 4. Electrical connections & contactors | 17. Condensate drains & pans |
| 5. Heating and cooling coils | 18. Flame composition |
| 6. Filter media and racks | 19. Flue stack assembly |
| 7. Sight glass condition | 20. Lubrication requirements |
| 8. Bearings | 21. Oil sump, heaters & temperatures |
| 9. Spray nozzles & pans | 22. Starter operation |
| 10. Ignitor & flame assembly | 23. Water flows |
| 11. Heat exchangers | 24. Motor operating conditions |
| 12. Compressor sections | 25. Suction & discharge pressures |
| 13. Condensing sections | 26. Flow switch operation |
| | 27. Control interlocks |
| | 28. Damper operation |

- 29. External interlocks
- 30. Motor voltage & amperages
- 31. Refrigerant charges
- 32. System(s) leaks
- 33. Oil & fluid levels

- 34. Pressure & temperatures
- 35. Outside air intakes
- 36. Refrigerant pump down
- 37. Crankcase heater

b. Preventive Maintenance. Preventive maintenance will be performed by us to detect early signs of deteriorating performance and to identify any potential mechanical failures. These services diagnose and solve equipment problems before they occur. Preventive maintenance is performed on an ongoing basis and is scheduled with little or no equipment downtime with its primary objective aimed at system durability, reliability, efficiency, and safety. These inspections will extend the life of your HVAC system. The following services will be provided to you for your Unit and as required:

Calibration:

- 38. Temperature controls
- 39. Operating & safety controls
- 40. Humidity & pressure controls
- 41. Transmitter & receiver gauges
- 42. Economizer controls

Adjustment:

- 43. Refrigerant charge
- 44. Purge system(s)
- 45. Superheat
- 46. Damper & valve linkages
- 47. unloaders
- 48. Belt tensions; replace annually
- 49. Fan rpm's
- 50. Chemical feed equipment
- 51. Gas pressure regulators
- 52. Combustion air ratios
- 53. Set points
- 54. Ignitor & flame rod assembly
- 55. Sump floats

Alignment:

- 56. Belt sheaves
- 57. Pulleys
- 58. Coil fins
- 59. Belt drives

Vibration:

- 60. Damper linkages
- 61. Fan bearings
- 62. Axial vane drives
- 63. Pumps
- 64. Motors

Secure and tighten:

- 65. Motor terminals
- 66. Control terminals
- 67. Piping clamps
- 68. Line fittings
- 69. Mounting hardware
- 70. Electrical connections
- 71. Equipment panels
- 72. Motor mounts
- 73. Vibration pad nuts & bolts
- 74. Damper sections

Cleaning:

- 75. Control devices
- 76. Electrical contactors
- 77. Condenser coils (with water)
- 78. Evaporator coils (as required)
- 79. Fan blades & impellers
- 80. Pilot & burner orifices
- 81. Ignitors
- 82. Condensate pans
- 83. Tower basins
- 84. Sumps & floats
- 85. Baffles & fill
- 86. Nozzles & passages
- 87. Equipment areas
- 88. Burner orifices

Filters:

- 89. Replace all filters.

Items 90 thru 131 apply to Platinum Contract only

c. **Troubleshoot and Repair – 100% coverage.** We will troubleshoot and repair your existing Unit. The following list covers the full labor and repair services covered by this package and which we will provide as necessary for the repair of up to 5ton HVAC equipment which is ten (10) years old or less (date is measured from manufacturers date of manufacture):

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|----------------------------------|--|
| 90. TXV valve | 105. Low 410A Refrigerant charge |
| 91. Capacitors | 106. Low R-22 Refrigerant charge caused by leak |
| 92. Fuses | 107. Low 410A Refrigerant charge caused by leak |
| 93. Contactor | 108. R-22 refrigerant restriction in copper line |
| 94. Transformer | 109. 410A refrigerant restriction in copper line |
| 95. Breaker at main panel | 110. Compressor replacement |
| 96. Sensors | 111. Condensing fan motor replacement |
| 97. Limit switches | 112. Blower motor replacement |
| 98. Low voltage wire | 113. Thermostat replacement |
| 99. Drain line | 114. Control Board replacement |
| 100. Condensate pump | 115. Coil drain pan replacement |
| 101. Dirt and debris in coil | 116. Induce draft motor replacement |
| 102. Gas valve | 117. Gas valve replacement |
| 103. Ignitor | |
| 104. Low R-22 Refrigerant charge | |

d. Troubleshoot and Repair – Per Repair Coverage For Units Older Than 10 years.

We will troubleshoot and repair units older than 10 years (date is measured from manufacturers date of manufacture), but these repairs are not fully covered by your monthly Plan Services fee. AirCall will always provide the labor as part of the covered services but Customer will be responsible for the cost of all parts and materials. AirCall cannot guarantee that parts will be available for your Unit(s). The following list identifies items that are only partially covered by the Plan Services:

**Partial coverage under HVAC
fixed cost services:**

- 118. Low R-22 Refrigerant charge
- 119. Low 410A Refrigerant charge
- 120. Low R-22 Refrigerant
- 121. Low 410A Refrigerant charge caused by leak
- 122. R-22 refrigerant restriction in copper line
- 123. 410A refrigerant restriction in copper line
- 124. Compressor replacement

- 125. Condensing fan motor replacement
- 126. Blower motor replacement
- 127. Thermostat replacement
- 128. Control Board replacement
- 129. Coil drain pan replacement
- 130. Induce draft motor replacement
- 131. Gas valve replacement

2. Services Not Included in Your Maintenance Plan. While we would like to respond and provide coverage for all potential problems with your unit(s) (and we do try to cover almost every possible type of repair to your unit(s)) there are certain events and services **not** included in the Plan Services:

(a) We **do not** provide painting and/or surface preparation of your unit. For an additional charge, as required and agreed to by you and us prior to performing this work we will perform this service to help prevent corrosion and deterioration of exterior equipment surfaces.

(b) We **do not** repair as part of the Plan Services existing HVAC system design issues. For example, poor air flow design, undersized refrigerant lines, code violations and safety issues are not covered repairs. We will, free of additional charge, identify for you existing system design issues and propose corrective actions for the proper operation of your system. We can perform these repairs for you at your request as part of a separate agreement, in writing, between us.

(c) This agreement does not cover parts or labor where:

(i) The service call is unnecessary or unrelated to the actual operation of the unit. For example, if your unit fails because thermostats are set too low or in the off position, emergency switches or disconnects are turned off, clogged air filters, circuit breakers tripping and blown fuses due to power outages, etc. In such instances we reserve the right to charge you our prevailing rates for service calls.

(ii) There is loss or damage resulting from fire, water, windstorm, hail, lightning, earthquake, theft, riot, misuse or abuse, or repairs of items that fail due to excessive use, or any other circumstance beyond our control.

(iii) The service requested relates to equipment used in conjunction with the operation of the system, such as humidifiers, air cleaners, electronic thermostats, etc.

(iv) You schedule a service and then you are not available or present at the scheduled service time for your unit. In such instances we reserve the right to charge you our prevailing rates for the missed service call.

(v) You are in default of this agreement. For example, you have not paid your invoice for the **Plan Services** you have selected as set forth in this agreement, your credit card is declined, canceled, or charged back, or you cancel your **Plan Services** without the required notice. In such event of default, you agree to pay for all services provided by us to you at our then prevailing rates for comparable services.

(d) We will also not be responsible for any changes, additions or deletions to existing equipment or unit that may be necessitated by local codes, government authorities, insurance companies, or any other third party. We will perform these additional services only when authorized by you in a separate agreement and paid for separately by you.

(e) This agreement also does not cover repairs of high-voltage electrical work, blown fuses, disconnects, circuit breakers, plumbing or piping, or any other equipment beyond that listed in this Agreement. This includes repairs to the non-working parts of your unit, including diffusers, ductwork, blower housings, coils, unit cabinet, trim, pipes, supports, insulation, etc.

(f) We also are not liable for any injury or damage to persons or property or consequential damage resulting from defects in or the non-operation of equipment or its accessories, for flaws in

design criteria, air balancing, improper sizing, or design deficiencies beyond failure of equipment covered in the Plan Services.

(g) We are also not responsible for any loss or damage to your unit caused by the service or repair of your unit by another company or individual, nor are we responsible for any loss of power or situation not within the control of us.

3. Maintenance Plan Service Cost, Term and Renewal Terms. The fee for the Plan Services, including the six scheduled visits, is the amount confirmed by you in the AirCall app and as indicated on your service acknowledgment receipt. The fee shall be paid in monthly installments with each monthly installment due and payable in advance on the monthly anniversary date of your purchase of Plan Services until the end of the term or any renewal term. The term of this agreement is 36 months (“term”) which shall renew automatically on the same terms and conditions unless you receive notification of any change of terms within 60 days prior to the end of term or any renewal term from us at which time you shall have a right to cancel upon written notice to us within 30 days prior to the end of a term or renewal term. If this agreement is not canceled by you after receipt of the notification of changes to the Plan Services by us, the renewal term will be on the terms and conditions of this agreement as amended by the notification of changes to the Plan Services from us.

4. Additional Services. Should your unit require any of the Plan Services covered by this agreement during the Term, e.g. for breakdowns, covered repairs, or any other covered problems with your unit, schedule a requested service utilizing the AirCall mobile application and we will send a service technician to perform the covered Plan Services during regular business hours at no additional charge to you. However, if the services to be performed on your unit are required on an emergency basis that is, after regular hours or you require the services to be performed in less than 24 hours from your request, then there will be an additional charge of \$125.00 per service call.

5. When Do Your Services Start? Your Plan Services will start after the first payment is received and your enrollment in a selected package exceeds 30 days. Your Plan Services will continue thereafter so long as you make timely payments. Your payments prepay coverage under the selected package. Your Plan Services are suspended at the end of the prepaid period in cases of nonpayment. Your account must be in good standing (current) to receive the Plan Services. Late payments shall accrue interest at the rate of one and one-half percent (1.5%) per month, or the maximum rate allowed by applicable law, whichever is less.

6. Payment Terms. If you purchase a Plan Services, then these payment terms apply to your purchase and you agree to them.

a. Charges. If there is a charge associated with a portion of the Services, you agree to pay that charge. The price stated for the Services excludes all applicable taxes and currency exchange settlements, unless stated otherwise. You are solely responsible for paying such taxes or other charges. Taxes are calculated based on your location at the time your unit(s) was registered. We may suspend or cancel the Services if we do not receive an on time, full payment from you. Suspension or cancellation of the Services for non-payment could result in having to pay the full value of the selected Plan Services for the duration of the Term or renewal term.

b. Your Billing Account. To pay the charges for Plan Services, you will be asked to provide a payment method at the time you sign up for the Selected Plan Services. You can access and change your billing

information and payment method on the AirCall app, the AirCall website by signing into your account. Additionally, you agree to permit AirCall to use any updated account information regarding your selected payment method provided by your issuing bank or the applicable payment network. You agree to promptly update your account and other information, including your email address and payment method details, so we can complete your transactions and contact you as needed in connection with your transactions. Changes made to your billing account will not affect charges we submit to your billing account before we could reasonably act on your changes to your billing account.

c. Billing. By providing AirCall with a payment method, you (i) represent that you are authorized to use the payment method that you provided and that any payment information you provide is true and accurate; (ii) authorize AirCall to charge you for the Plan Services or available content using your payment method; and (iii) authorize AirCall to charge you for any paid feature of the Plan Services that you choose to sign up for or use while this agreement is in force. We may bill you (a) in advance; (b) at the time of purchase; (c) shortly after purchase; or (d) on a recurring basis for subscription Plan Services. Also, we may charge you up to the amount you have approved, and we will notify you in advance of any change in the amount to be charged for recurring subscription Plan Services. We may bill you at the same time for more than one of your prior billing periods for amounts that haven't previously been processed. All payments must be made in U.S. currency only and via AirCall authorized payment channels. AirCall authorized payment methods include: (i) mailing payment to the bill payment address listed on your monthly bill; (ii) automated electronic drafts from your checking account; (iii) delivering cash, a check or money order payable to AirCall, or paying by credit or debit card; (iv) delivering cash, a check or money order payable to AirCall, (v) providing a credit or debit card payment to an AirCall customer service representative or AirCall authorized automated payment system over the telephone; or (vi) paying by credit or debit card through the AirCall website. You agree not to make any notations or restrictions on your checks or on other forms for payment such as "paid in full" and you agree that any such restriction has no legal effect. If you use a credit or debit card to pay for any charges, taxes, fees or Surcharges, you acknowledge that use of the card is governed by the card issuer agreement, and you must refer to that agreement for your rights and liabilities as a cardholder. If AirCall does not receive payment from your credit card issuer or its agents, you agree to pay all amounts due upon demand. If you make payment by check, you authorize AirCall to process your check electronically.

d. Billing and Late Payments. Plan Service(s) are to be paid by you on a month-to-month, quarterly or annual basis as selected by you. Recurring charges and taxes are due in advance once Plan Service is initiated. Charges accrue through a full billing period. AirCall may prorate or adjust a bill if the billing period covers less than or more than a full month (for this purpose, each month is considered to have 30 days). We will determine the billing period and may change the billing period from time to time. AirCall will determine and may change the billing format from time to time. You may be billed for some Plan Service(s) individually after they have been provided to you, including without limitation one-time charges such as emergency service call charges. If you fail to make full payment by the payment due date set forth on your bill statement, AirCall reserves all rights it may have, subject to applicable law, to terminate Plan Services, collect the full amount due, including, without limitation, any applicable interest, costs of collection (including attorneys' fees and third party agent collection fees), late fees (subject to state law and regulations), door collection fees, bank fees and any other applicable fees, charges or payments. Any balance amount that remains delinquent may be referred to a third party for collections. Once the debt is referred to a third party for collection, you may be subject to and agree to

reimburse AirCall for additional fees, including reasonable attorneys' fees, and fees related to costs and expenses, which may be based on a percentage of up to 50% of the balance owed (subject to state law and regulations). For past due balances assigned to a field collector for payment, a fee of up to \$25.00, or up to the maximum amount allowed by law or regulation, will be charged to your AirCall account, regardless of how you make your payment. You may be required to pay a reactivation or reinstallation fee and/or a deposit in addition to all past due charges before Plan Services may be reconnected or restored.

e. Returned Payment. If your payment by check is returned, your payment via credit card is denied, or your electronic funds transfer is denied due to insufficient funds, or a closed account, you authorize AirCall to make a one-time electronic fund transfer from your account to collect the amount of the payment plus any applicable returned payment fees of up to \$25.00 or up to the maximum amount allowed by law or regulation. When payment is made by credit or bank card, the payment may also be subject to the terms and conditions required by the bank or credit card issuer.

f. Recurring Payments. When you purchase the Plan Services on a subscription basis (e.g., monthly, every 3 months or annually (as applicable)), you acknowledge and agree that you are authorizing recurring payment, and payments shall be made to AirCall by the method you have chosen at the recurring intervals chosen by you, until the subscription for that Service is terminated by you or by AirCall. By authorizing recurring payments, you are authorizing AirCall to process such payments as either electronic debits or fund transfers, or as electronic drafts from your designated account (in the case of Automated Clearing House or similar payments), or as charges to your designated account (in the case of credit card or similar payments) (collectively, "Electronic Payments"). Subscription fees are generally billed or charged in advance of the applicable subscription period. If any payment is returned unpaid or if any credit card or similar transaction is rejected or denied, AirCall or its service providers reserve the right to collect any applicable return item, rejection or insufficient funds fee and to process any such payment as an Electronic Payment.

g. Automatic Renewal. Provided that automatic renewals are allowed in your state, you may choose for Plan Services to automatically renew at the end of a fixed service period. We will remind you by email before any Services renew for a new term and notify you of any price changes. Once we have reminded you that you elected to automatically renew the Plan Services, we may automatically renew your Plan Services at the end of the current service period and charge you the then current price for the renewal term, unless you have chosen to cancel the Plan Services as described below. We will also remind you that we will bill your chosen payment method for the Plan Services renewal, whether it was on file on the renewal date or provided later. We will also provide you with instructions on how you may cancel the Plan Services. You must cancel the Plan Services before the renewal date to avoid being billed for the renewal.

h. Online Statement and Errors. AirCall will provide you with an online billing statement on the AirCall website, where you can view and print your statement. This is the only billing statement that we provide unless you specifically request a mailed invoice. If we mail you an invoice we will charge you for the additional cost of providing the printed invoice to you. If we make an error on your bill, you must tell us within 90 days after the error first appears on your bill. We will then promptly investigate the charge. If you do not tell us within that time, you release us from all liability and claims of loss resulting from the

error and we won't be required to correct the error or provide a refund. If AirCall has identified a billing error, we will correct that error within 90 days.

i. Refund Policy. Unless otherwise provided by law or by a particular Plan Service offer, all purchases are final and non-refundable. If you believe that AirCall has charged you in error, you must contact us within 90 days of such charge. No refunds will be given for any charges more than 90 days old. We reserve the right to issue refunds or credits at our sole discretion. If we issue a refund or credit, we are under no obligation to issue the same or similar refund in the future. This refund policy does not affect any statutory rights that may apply.

j. Trial-Period Offers. If you are taking part in any trial-period offer, you must cancel the trial Plan Service(s) by the end of the trial period to avoid incurring new charges, unless we notify you otherwise. If you do not cancel the trial Plan Service(s) by the end of the trial period, we may charge you for the Service(s).

k. Promotional Offers. From time to time, AirCall may offer Services for a trial period during which AirCall will not charge you for the Services. AirCall reserves the right to charge you for such Services (at the normal rate) in the event that AirCall determines (in its reasonable discretion) that you are breaching the terms and conditions of the offer.

l. Price Changes. We may change the price of the Plan Services at any time and if you have a recurring purchase, we will notify you by email at least 15 days before the price change. If you do not agree to the price change, you must cancel and stop using the Plan Services before the price change takes effect. If there is a fixed term and price for your Service offer, that price will remain in force for the fixed term.

m. Payments to You. If we owe you a payment, then you agree to timely and accurately provide us with any information we need to get that payment to you. You are responsible for any taxes and charges you may incur as a result of this payment to you. You must also comply with any other conditions we place on your right to any payment. If you receive a payment in error, we may reverse or require return of the payment. You agree to cooperate with us in our efforts to do this. We may also reduce the payment to you without notice to adjust for any previous overpayment.

n. Credit Checks/Deposits.

i. Credit Checks. In accordance with applicable law, AirCall will rely on credit bureau reports, other data available from commercial credit reference services, any credit information you furnish, or internal credit information to determine whether or not to provide Services to you, to continue to provide Services to you or whether or not a deposit is required. You expressly authorize AirCall to make inquiries and to receive information about your credit experience from others, to enter this information in your file, and to disclose this information concerning you to appropriate third parties for reasonable business purposes.

ii. Deposits. As permitted by applicable law, based on the information we received from the credit reporting agency, credit information you furnish, or internal credit information, and our assessment of the risk associated with that information, AirCall may require a deposit from you before providing services or an increase in any deposit for any Plan Service already provided to you. The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories and the amount of deposit will vary. The deposit will remain on your account for up to 12

months or longer, depending upon your payment performance and applicable law. The deposit may be refunded to you or applied as a credit to your bill in accordance with applicable law. Upon termination of Plan Services, the deposit will be posted to your account and applied to any unpaid balance for any Plan Service. If there is no balance, you will be refunded the amount of the deposit. Except if required by law, regulation, franchising authority or any applicable tariff, no interest will be paid on deposits.

7. Default by You. We reserve the right to terminate this agreement and the Plan Services without notice or refund if any of the following occur:

(a) You permit any person other than an employee or authorized representative of Air Call to perform service on your unit (s); or

(b) You fail to keep your account current.

In the event of a default or other breach of this agreement by you, you agree to pay us interest at a rate of 1.5% per month or the legal rate whichever is greater for any overdue amounts or non-payment and to pay our reasonable attorneys' fees and all costs and expenses for collection of any unpaid balances. Furthermore, failure to pay in full for any Plan Services shall allow us to cease work without any further responsibility or liability to you. In the event of non-payment, we may, without prior notice, discontinue all Plan Services and terminate our responsibilities to provide any Plan Services to you. No credit or offset by you shall be permitted when service or work is refused for non-payment. All work furnished, lost profit, and costs of handling shall be due immediately upon invoice by us without liability to replace any equipment for your unit(s). We shall have a security interest in the equipment, parts, and materials installed for you until payment in full is received by us and you acknowledge and agree to this security interest by accepting this agreement. This secured interest shall apply for all purposes, including any bankruptcy or against any person claiming any interest in or to the goods or equipment. In the event of non-payment, you also grant us an unhindered right of entry onto the premises at which the work is being performed to remove all materials or supplies placed by us.

8. Service Calls. All non-emergency or scheduled service calls will be performed during our regular working hours (8:00 am to 4:00 pm Monday through Friday). Our ability to provide emergency service within 24 hours is typically contingent upon weather conditions, customer call volume, road conditions and the non-occurrence of events beyond our control (a force majeure event). On rare occasions we will not be able to provide emergency service within the 24-hour period or a scheduled technician is unable to show for a previously scheduled appointment. We will prioritize your service request above other service requests to provide the required service as soon as possible utilizing commercially reasonable efforts. Force majeure events include, but are not limited to flood, fire, strike, acts of God, etc. In the event we determine, at our sole discretion, that there is an emergency situation requiring expedited service, we will make reasonable efforts to expedite service. We will determine, at our sole discretion, which repairs constitute an emergency and will give consideration to covered malfunctions that affect the habitability of the dwelling. **We will charge you a \$125 fee for each non-emergency service call performed outside of our regular working hours.** If you are not available for a scheduled service call, please call us or utilize the rescheduling feature in the app at least 24 hours in advance in order to reschedule your visit at no charge. However, if you do not give us at least 24 hours' notice of a service call cancellation or our technician arrives to perform a service call and you or a person over the age of 18 is not present to authorize the service then we will charge you \$49.99 for the missed service call appointment.

9. Our Service Number. In order to obtain Plan Services covered by this Agreement please schedule a service call in the AirCall app. For emergency service only call 818 946 8198.

10. Canceling the Services. You may cancel a Plan Service at any time within the first 30 days provided we have not provided you and covered Plan Services, with or without cause. To cancel a Service and request a refund, if you are entitled to one, visit the AirCall website and complete the Cancellation and Refund form. You should refer back to the offer describing the Services as (i) you may not receive a refund at the time of cancellation; (ii) you may be obligated to pay cancellation charges; (iii) you may be obligated to pay all charges made to your billing account for the Services before the date of cancellation; or (iv) you may be obligated to pay all charges for the Services after the date of cancellation until the end of the term or a renewal term. If you cancel, your access to the Plan Services ends at the end of your current Plan Service period or, if we bill your account on a periodic basis, at the end of the period in which you canceled.

If Plan Services are canceled or terminated by you within the first 12 months of this agreement and Plan Services have been rendered, you agree that we are entitled to demand payment for the greater of the cost of any service(s) already performed by us or the full value of the Plan Services for the term. We may cancel this agreement at any time with written notice prior to the end of the term for fraud, material misrepresentation, or non-payment by you, for violation of any of the terms and conditions of this agreement, or if required to do so by any regulatory authority.

11. No Warranties. YOU ACKNOWLEDGE AND AGREE THAT WE ARE PROVIDING NO WARRANTIES EXPRESS OR IMPLIED AND MAKES NO REPRESENTATIONS WITH REGARD TO THE CONDITION OF YOUR EQUIPMENT BY VIRTUE OF EITHER ENTERING INTO THE SALES CONFIRMATION OR BY PERFORMING INSPECTIONS, REPAIRS, OR REPLACEMENT OF PARTS PURSUANT TO THE SALES CONFIRMATION. YOU ACKNOWLEDGE AND AGREE THAT ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE ARE EXCLUDED FROM THE SALES CONFIRMATION AND THIS AGREEMENT.

12. Limitation of Liability. IN NO EVENT SHALL WE BE LIABLE TO YOU, FOR ANY LOSS OF PROFITS OR WAGES, LOSS OF BUSINESS, LOSS OF USE, INCONVENIENCE, COMMERCIAL LOSS, OR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS SERVICE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY THAT ANY OF THESE MIGHT OCCUR. OUR LIABILITY TO YOU UNDER THE SALES CONFIRMATION AND THIS AGREEMENT SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID BY YOU TO US PURSUANT TO THE THIS AGREEMENT FOR THE SERVICES DURING THE PRECEDING TWELVE (12) MONTHS.

13. Termination. You and us may terminate this agreement, and our respective obligations to each other, as follows: (1) by mutual, written consent of both you and us; (2) by us, if you fail to pay to us any payments under this agreement or under any other agreements you have with us when due; (3) by either you or us upon (30) days written notice if either you or us materially breaches any term of this this agreement or otherwise fails to satisfy any promise or covenant made in this agreement, and further provided that such party shall fail to cure said breach or failure within such (30) day period; or (4) by us, with or without cause, upon (30) days' written notice to you of our intent to terminate this agreement.

14. Notices. All notices, demands and communications required or permitted in connection with this agreement shall be in writing and shall be deemed effectively given in all respects upon personal delivery or, if mailed, by registered or certified mail, postage prepaid, return receipt requested, or by overnight courier, the receipt of which is confirmed, addressed to the party hereto at the address where the unit is located or the Plan Services are performed (or such other address for a party as shall hereafter be specified by like notice). Either party hereto may from time to time change its notification address by giving the other party hereto prior written notice of the new address and the effective date thereof. All notices to us shall be delivered to: ATTN: Legal Notices [Insert Address]

15. Relationship of the Parties. This agreement shall not create a partnership, joint venture, employer-employee, master- servant, principal-agent, or other relationship whatsoever between the parties hereto.

16. Successors and Assigns. This agreement shall benefit and be binding upon the parties hereto and their respective successors and assigns.

17. Force Majeure. Neither party to this agreement shall be liable to the other for delays or failure to perform caused directly or indirectly by circumstances beyond that party's control, including but not limited to, acts of God, inclement weather, fire, flood, war, sabotage, accident, labor dispute, shortage, governmental action including regulatory requirements, changed conditions, delays resulting from actions or inactions of third parties, site inaccessibility or inability of others to obtain material, labor, equipment, or transportation, provided, and only to the extent, such delays are not the result of the negligence of the party claiming the delay.

18. Disputes; Governing Law. This agreement will be governed by and construed in accordance with the laws of the State of California, without respect to conflicts of laws principles except that the Federal Arbitration Act governs all provisions relating to arbitration. You and we irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts arising from or relating to this agreement or the Plan Services will be resolved only in a court of competent jurisdiction in Los Angeles County, California, and such court (excluding arbitration and small claims court) will constitute the sole and exclusive venue and jurisdiction.

You hereby waive any and all rights to or claims of sovereign immunity. You and we understand and agree that in the event any party to this agreement is required to take, or respond to, any action at law or in equity to enforce any portion of this agreement, the prevailing party in any such proceeding shall be entitled to recover all costs, expenses, expert witness fees, and attorney's fees incurred in taking or responding to any such action, including attorney's fees incurred in litigating the entitlement to and amount of attorney's fees, in addition to any other legal or equitable relief that may be awarded by the Court. YOU AND WE HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT EITHER OF YOU OR US MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT.

19. Binding Arbitration and Class Action Waiver. We hope we never have a dispute, but if we do, you and we agree to try for 60 days to resolve it informally. If we can't, you and we agree to binding individual arbitration before the American Arbitration Association ("AAA") under the Federal Arbitration Act ("FAA"), and not to sue in court in front of a judge or jury. Instead, a neutral arbitrator will decide and the arbitrator's decision will be final except for a limited right of review under the FAA. Class action

lawsuits, class-wide arbitrations, private attorney-general actions, and any other proceeding where someone acts in a representative capacity aren't allowed. Nor is combining individual proceedings without the consent of all parties.

a. Disputes Covered—Everything Except IP. The term "dispute" is as broad as it can be. It includes any claim or controversy between you and us concerning the Plan Services, the software related to the Plan Services, the Plan Services' price, your AirCall account, the AirCall Terms and Disclosures under any legal theory including contract, warranty, tort, statute, or regulation, except disputes relating to the enforcement or validity of your, your licensors', our, or our licensors' intellectual property rights.

b. Mail a Notice of Dispute First. If you have a dispute and our customer service representatives can't resolve it, send a Notice of Dispute by U.S. Mail to **AirCall, ATTN: Demand for Arbitration – Legal Department [14712 Raymer Street, Van Nuys, CA 91405]**. We'll do the same if we have a dispute with you by emailing a notice to you and sending a notice to the address where your unit(s) are located or the last known billing address. After 60 days, you or we may start an arbitration if the dispute is unresolved.

c. Small Claims Court Option. Instead of mailing a Notice of Dispute, you may sue us in small claims court in your county of residence (or if a business your principal place of business) or Los Angeles County, California if you meet the court's requirements.

d. Arbitration Procedure. The AAA will conduct any arbitration under its Commercial Arbitration Rules (or if you are an individual and use the Services for personal or household use, or if the value of the dispute is \$75,000 or less whether or not you are an individual or how you use the Services, its Consumer Arbitration Rules). For more information, see www.adr.org or call 1-800-778-7879. To start an arbitration, submit the form available at www.adr.org to the AAA and mail a copy to us. In a dispute involving \$25,000 or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing instead. Any in-person hearing will take place in your county of residence (or if a business your principal place of business) or our principal place of business—Los Angeles County, California. You choose. The arbitrator may award the same damages to you individually as a court could. The arbitrator may award declaratory or injunctive relief only to you individually to satisfy your individual claim.

e. Arbitration Fees and Payments.

i. Disputes Involving \$75,000 or Less. We will promptly reimburse one-half your filing fees and pay one-half of the AAA's and arbitrator's fees and expenses. If you reject our last written settlement offer made before the arbitrator was appointed, your dispute goes all the way to an arbitrator's decision (called an "award"), and the arbitrator awards you more than this last written offer, we will: (i) pay the greater of the award or \$1,000; (ii) pay your reasonable attorney's fees, if any; and (iii) reimburse any expenses (including expert witness fees and costs) that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration.

ii. Disputes Involving More than \$75,000. The AAA rules will govern payment of filing fees and the AAA's and arbitrator's fees and expenses.

f. Conflict with AAA Rules. These Terms govern to the extent they conflict with the AAA's Commercial Arbitration Rules or Consumer Arbitration Rules.

g. **Must File Within One Year.** You and we must file in small claims court or arbitration any claim or dispute (except intellectual property disputes—see section 19(a)) within one year from when it first could be filed. Otherwise, it's permanently barred.

h. **Rejecting Future Arbitration Changes.** You may reject any change we make to section 19 (except address changes) by sending us notice within 30 days of the change by U.S. Mail to the address in section 19(b). If you do, the most recent version of section 19 before the change you rejected will apply.

i. **Severability.** If the class action waiver is found to be illegal or unenforceable as to all or some parts of a dispute, then those parts won't be arbitrated but will proceed in court, with the rest proceeding in arbitration. If any other provision of section 19 is found to be illegal or unenforceable, that provision will be severed but the rest of section 19 still applies.

20. **Assignability.** You may not assign your rights or obligations under this agreement without our prior written approval. Any attempt to do so without such prior written approval shall be null and void and of no force or effect whatsoever. We may freely assign our rights hereunder, and you shall consent to such assignment and shall execute any documents reasonably required in connection with such assignment. The individual executing this Agreement agrees to be personally liable for all monies payable to us under this agreement despite the existence of any corporate entity or other potential limitation and you agree that agrees that any affiliate now or hereafter existing shall be liable jointly and severally with you for amounts due under this agreement, including any interest, penalties, or attorneys' fees assessed for non-payment.

21. **Severability.** In the event that any provision of this agreement, or any word, phrase, clause, sentence or other provision thereof, should be held to be unenforceable or invalid for any reason, such provision or portion thereof shall be modified or deleted in such a manner so as to make this agreement as modified enforceable to the fullest extent permitted under applicable laws.

22. **Complete Terms.** No terms, conditions or warranties other than those identified in this Agreement and no agreement or understanding, oral or written, in any way purporting to modify this Agreement or impose new or amended terms and conditions shall be binding on us unless they are made in writing and signed by our authorized representative. In short, we are only agreeing to provide the Plan Services on the terms and conditions that were agreed to in writing by you and us at the time you signed this Agreement.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU ASSERT THAT YOU HAVE THE AUTHORITY TO BIND THE ENTITY TO THESE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO STATED ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS IN THIS AGREEMENT, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT RECEIVE THE SERVICES.

IT IS AGREED.