

HVAC SERVICE AGREEMENT FOR LEASED EQUIPMENT

GENERAL TERMS AND CONDITIONS

(05-10-14)

1. **Applicability/Right Of Inspection:** This HVAC SERVICE AGREEMENT APPLIES ONLY TO LESSEE AND THE EQUIPMENT IDENTIFIED IN THE LEASE AGREEMENT. LESSOR IS NOT OBLIGATED TO PERFORM SERVICES RELATING TO ANY EQUIPMENT OBTAINED FROM ANY OTHER SOURCE. If LESSEE's execution of this Agreement occurs more than thirty (30) calendar days from the date of initial delivery of the Equipment by LESSOR or its designee, LESSOR shall have the right to inspect the Equipment and determine whether, in LESSOR's sole discretion, the Equipment requires repairs. If LESSOR determines that the Equipment requires repairs at the time of LESSOR's inspection, it shall so notify LESSEE in writing as to all necessary repairs; whereupon LESSEE's complete performance of all necessary repairs, at LESSEE's sole expense, shall be a condition precedent to LESSOR's performance under the HVAC Service Agreement.

2. **Description of Work:** The Covered Work shall consist of the following on a monthly basis. LESSEE agrees that the Covered Work comprises the following exclusive list of services to be performed by LESSOR under the HVAC Service Agreement:

- Inspection of the HVAC System
- Inspection of thermostat
- Inspection of power supply to Equipment
- Evaporator coil cleaning (when required)
- Condensing coil cleaning (when required)
- Refrigerant check and fill (when required)
- HVAC air filter replacement
- Summary Inspection & Services Provided Report

Any replacement parts may be new, remanufactured, or of like kind and quality at LESSOR's sole discretion.

3. **Exclusions:**

a) The Covered Work specifically excludes the following items with respect to LESSOR-owned Equipment on lease to LESSEE:

- Replacement of all HVAC parts (other than filters)
- Replacement of HVAC filters more frequently than once per month
- Repair/replacement of thermostats
- Repair/replacement of power supplies
- Repair/replacement of fuses/breakers
- Repair/replacement of any items covered by a separate warranty
- Refrigerant check and fill more frequently than once per month
- Cleaning of grills, ducts or other items not specifically covered by the HVAC Service Agreement
- Replacement or repair of items that fail due to excessive use, LESSEE's and/or any other third party's service, modifications, or repairs, Force Majeure events as described by paragraph 16 herein, vandalism, misuse or abuse.

b) The Covered Work specifically excludes the following items with respect to LESSEE-owned Equipment:

- In addition to the exclusions specified herein with respect to LESSOR-owned Equipment on lease to LESSEE, any repair/replacement or inspection or cleaning or other service not specifically listed in the **Description of Work** Section #3 is also excluded.

4. **Payment Terms:** Time is of the essence with respect to this HVAC Service Agreement. LESSEE shall pay LESSOR, in advance, the monthly payment for this HVAC Service Agreement on the due date at the Rate Per Month stated in the Lease Agreement during the Term, and at the Rate Per Month established by LESSOR during the Extension Period. 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 lower.

5. **Period of Performance; Access:** For routine service, LESSOR shall contact LESSEE to arrange a service schedule. For items requiring replacements, LESSOR shall perform the agreed upon replacements no later than ten business days after LESSOR receives notice from the LESSEE of the item requiring replacement, or such

longer time as may reasonably be required in order to obtain any necessary parts. LESSEE will cooperate with LESSOR as necessary to allow access to the Equipment in order that LESSOR may perform the service. LESSEE shall be responsible for preparation and maintenance of the site for any Covered Work, including, but not limited to, providing necessary electrical power and communication lines and proper air conditioning and humidity control.

6. **Defaults; Remedies.** LESSEE's failure to make payment or to comply with any term or condition herein will constitute a default. Upon LESSEE's default, which remains uncured after seven (7) days' notice from LESSOR, LESSOR, at its option, may terminate this HVAC Service Agreement without further notice to LESSEE, charge applicable interest as further provided in paragraph 4, and pursue any or all judicial remedies, including without limitation exercise of lien rights available pursuant to applicable law. LESSOR may exercise any other right or remedy available to Lessor at law or in equity. Lessor's waiver of any default shall not constitute a waiver of any other default or a waiver of any term or condition of this HVAC Service Agreement or the Lease Agreement.

7. **Service Agreement.** LESSEE acknowledges and agrees that the writings that comprise the HVAC Service Agreement are intended to be a service agreement and not an express warranty. Purchase of this HVAC Service Agreement is not required in order to purchase or lease equipment from LESSOR. LESSEE acknowledges and agrees that this Service Agreement is supported by consideration in the form of a monetary payment separate from the purchase price or lease price of the Equipment, and that this HVAC Service Agreement is not part of the basis of the bargain for the purchase or lease of the Equipment. LESSEE further acknowledges and agrees that the HVAC Service Agreement is not to be construed as a contract for insurance.

8. **Expenses; Taxes.** Any additional costs or expenses incurred by LESSOR in gaining entry to LESSEE's site, including but not limited to, LESSOR's compliance with LESSEE's site security, site safety requirements, drug & alcohol policy and/or site labor requirements shall be at LESSEE's expense. LESSEE shall also pay any sales, use, value-added, or other tax or charge imposed by any governmental entity upon the sale, use or receipt of the Services.

9. **No Warranties:** LESSEE ACKNOWLEDGES AND AGREES THAT LESSOR IS PROVIDING NO WARRANTIES AND MAKES NO REPRESENTATIONS WITH REGARD TO THE CONDITION OF THE SUBJECT EQUIPMENT BY VIRTUE OF EITHER ENTERING INTO THE HVAC SERVICE AGREEMENT WITH LESSEE, OR BY PERFORMING INSPECTIONS, REPAIRS, OR REPLACEMENTS OF PARTS PURSUANT TO THE HVAC SERVICE AGREEMENT. AS ACKNOWLEDGED AND AGREED BY THE UNDERSIGNED LESSEE, 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 HVAC SERVICE AGREEMENT.

10. **Insurance.** LESSOR shall provide its standard evidence and limits of insurance coverage to include liability coverage, worker's compensation and builder's risk, covering LESSOR's performance of Covered Work at LESSEE's site, subject to the terms, conditions and exclusions of the policy(ies). Any additional insurance required by LESSEE, in excess of LESSOR's standard coverage, in order that LESSOR may gain entry to and perform Covered Work on LESSEE's site shall be at LESSEE's expense.

HVAC SERVICE AGREEMENT FOR LEASED EQUIPMENT GENERAL TERMS AND CONDITIONS (05-10-14)

11. Limitation of Liability. IN NO EVENT SHALL LESSOR BE LIABLE TO LESSEE, 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 LESSOR HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. LESSOR'S LIABILITY TO LESSEE UNDER THE HVAC SERVICE AGREEMENT SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID BY LESSEE TO LESSOR PURSUANT TO SUCH HVAC SERVICE AGREEMENT FOR THE SERVICES DURING THE PRECEDING TWELVE (12) MONTHS.

12. Termination. The parties hereto may terminate the HVAC Service Agreement, and their respective obligations hereunder, as follows: (1) by mutual, written consent of the parties hereto; (2) by LESSOR, if LESSEE fails to pay to LESSOR any payments under the HVAC Service Agreement or under any other agreements with LESSOR when due; (3) by either party hereto upon (30) days written notice if the other party hereto materially breaches any term of the HVAC Service Agreement or otherwise fails to satisfy any promise or covenant made herein, and further provided that such party shall fail to cure said breach or failure within such period; or (4) by LESSOR, with or without cause, upon (30) days' written notice of intent to terminate to LESSEE.

13. Notices. All notices, demands and communications required or permitted in connection with the HVAC Service 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 set forth in the first paragraph of this HVAC Service Agreement (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.

14. Relationship of the Parties. The HVAC Service Agreement shall not create a partnership, joint venture, employer-employee, master-servant, principal-agent, or other relationship whatsoever between the parties hereto.

15. Successors and Assigns. The HVAC Service Agreement shall benefit and be binding upon the parties hereto and their respective successors and assigns.

16. Force Majeure. Neither party to this HVAC Service 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.

17. Disputes; Governing Law: The HVAC Service Agreement will be governed by and construed in accordance with the laws of the State of Maryland, without respect to conflicts of laws principles. All disputes and claims arising from or relating to this HVAC Service Agreement will be resolved only in a court of competent jurisdiction in and for Baltimore County, Maryland, and such court will constitute the sole and exclusive venue and jurisdiction. LESSEE hereby waives any and all rights to or claims of sovereign immunity. The parties understand and agree that in the event any party to this HVAC Service Agreement is required to take, or respond to, any action at law or in equity to enforce any portion of this HVAC Service 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. BUYER AND LESSOR HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION ARISING OUT OF OR RELATED TO THIS HVAC SERVICE AGREEMENT.

18. Assignability. LESSEE may not assign LESSEE's rights or obligations under this HVAC Service Agreement without the prior written approval of LESSOR, which approval LESSOR may in its sole discretion withhold, and any attempt to do so without such prior written approval shall be null and void and of no force or effect whatsoever. LESSOR may freely assign its rights hereunder, and LESSEE shall consent to such assignment and shall execute any documents reasonably required in connection with such assignment.

19. Severability. In the event that any provision of this HVAC Service 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 HVAC Service Agreement as modified enforceable to the fullest extent permitted under applicable laws.

20. Execution. The HVAC Service Agreement shall be deemed executed upon both parties' execution of the Lease Agreement for the related Equipment as further provided in paragraph 18 of the document entitled Williams Scotsman, Inc. General Terms & Conditions and upon LESSEE's execution of the section entitled "HVAC Service Agreement" located on page 3 of the Lease Agreement.

21. Risk of Loss. LESSEE acknowledges and agrees that nothing contained within this HVAC Service Agreement, and no performance by LESSOR of services hereunder, shall in any way modify, alter, or negate LESSOR's risk of loss or damage to the Equipment as provided in paragraph 11 of the document entitled Williams Scotsman, Inc. Lease Agreement General Terms & Conditions.

22. Entire Agreement; Modification. The terms and conditions governing the HVAC Service Agreement are provided exclusively in the documents entitled "Lease Agreement," "Williams Scotsman, Inc. Lease Agreement General Terms & Conditions" and this document entitled "HVAC Service Agreement General Terms & Conditions" [hereinafter collectively referred to as, "HVAC Service Agreement Documents"] The HVAC Service Agreement Documents exclusively contain the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements, documents, correspondence, understandings, and negotiations, whether oral or written, between the parties hereto with respect to such subject matter. Notwithstanding the foregoing, this HVAC Service Agreement General Terms & Conditions shall in no way replace, supercede or otherwise modify any Lease Agreement that may be in effect between the parties with respect to the unit(s) described in the Lease Agreement. The parties hereto may, by mutual agreement, modify any provision of the HVAC Service Agreement, and any party hereto may grant consent or waive any right to which it is entitled, provided that each such modification, consent, or waiver shall be in writing and signed by duly authorized representatives of both parties.

HVAC Service Agreement. Terms & Conditions Revision 05-10-14