



## ADDITIONAL TERMS AND PROVISIONS

- 1. MAINTENANCE SERVICES:** Comfort Pro agrees to provide preventive maintenance services ("Maintenance Services") for the Equipment described on the front page of this Agreement which Maintenance Services shall consist of the procedures, specifically identified on the front page of this Agreement. Comfort Pro shall also notify Customer of any needed repairs to the Equipment and upon the request of Customer shall perform such repairs at a preferred rate and on a preferred response basis. Replacement parts shall be paid for by Customer at Comfort Pro's then prevailing prices.
- 2. PREVENTIVE SERVICE:** Customer agrees to pay to Comfort Pro, its agents or assigns the total payment set forth on the front page of this WatchDog Maintenance Plan payable in advance for the Maintenance Services.
- 3. TERM AND RENEWAL:** Comfort Pro, Inc. may increase the price of the Watch Dog Maintenance Plan at the time of renewal on an annual basis.
- 4. RECEIPT OF COPY:** CUSTOMER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT.
- 5. COMFORT PRO'S LIABILITY/DISCLAIMER OF WARRANTIES:** THE CUSTOMER ACKNOWLEDGES AND AGREES: (i) COMFORT PRO HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, NOR HAS CUSTOMER RELIED ON ANY REPRESENTATIONS OR WARRANTIES; (ii) ANY AFFIRMATION OF FACT OR PROMISE SHALL NOT BE DEEMED TO CREATE AN EXPRESS WARRANTY, AND THAT THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE OF THE AGREEMENT HEREOF; (iii) CUSTOMER HAS READ AND UNDERSTANDS ALL OF THIS AGREEMENT; (iv) COMFORT PRO SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, CONSEQUENTIAL DAMAGES, AND NEGLIGENCE, BREACH OF CONTRACT OR ANY OTHER DAMAGES OF ANY NATURE BASED UPON EXPRESS OR IMPLIED WARRANTY OR OTHER LEGAL THEORY DUE TO THE NON-OPERATION OR MALFUNCTION OF THE EQUIPMENT INCLUDING DAMAGE TO PROPERTY OR PERSONAL INJURY CAUSED BY THE EQUIPMENT, UNLESS SAID MALFUNCTION OR NON-OPERATION OF SAID EQUIPMENT IS DUE SOLELY TO THE NEGLIGENCE OF COMFORT PRO IN PROVIDING THE MAINTENANCE SERVICES; (v) ANY WRITTEN EXPRESS WARRANTIES GIVEN BY COMFORT PRO ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE; (vi) WITHOUT LIMITATION, COMFORT PRO SHALL NOT BE LIABLE UPON ANY WARRANTY THEORY EXPRESS OR IMPLIED, REGARDING THE MANUFACTURE OR OPERATION OF ANY EQUIPMENT INSTALLED BY IT WITH THE EXCEPTION THAT COMFORT PRO SHALL CAUSE SAME TO BE REPAIRED OR REPLACED IN THE EVENT OF FAULTY OPERATION OR MALFUNCTION OF SAID EQUIPMENT AND SHALL BE LIABLE FOR NO OTHER DAMAGES EXCEPT AS SPECIFIED HEREIN; and (vii) COMFORT PRO DISCLAIMS ANY IMPLIED WARRANTY OF ANY NATURE WHATSOEVER.
- 6. CUSTOMER UNDERSTANDS AND AGREES THAT IF COMFORT PRO SHOULD BE FOUND LIABLE FOR LOSS OR DAMAGE DUE FROM:** (i) FAILURE OF COMFORT PRO TO PERFORM ANY OF THE OBLIGATIONS HEREIN, INCLUDING BUT NOT LIMITED TO INITIAL CONNECTION, INSPECTIONS, TEST, OR MAINTENANCE SERVICES; (ii) COMFORT PRO'S NEGLIGENCE; OR (iii) THE FAILURE OF THE SERVICES OR EQUIPMENT IN ANY RESPECT WHATSOEVER. COMFORT PRO'S LIABILITY SHALL BE LIMITED TO THE ANNUAL PREVENTIVE SERVICE FEE AND THIS LIABILITY SHALL BE EXCLUSIVE AND THAT THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY IF LOSS OR DAMAGE, IRRESPECTIVE OF CAUSE OR ORIGIN, RESULTS DIRECTLY OR INDIRECTLY TO PERSONS OR PROPERTY FROM PERFORMANCE OR NON-PERFORMANCE OF THE OBLIGATIONS IMPOSED BY THIS AGREEMENT, OR FROM NEGLIGENCE, ACTIVE OR OTHERWISE OF COMFORT PRO, ITS AGENTS, ASSIGNS OR EMPLOYEES.
- 7. EQUIPMENT INCLUDED:** This Agreement applies only to the Equipment as set forth on the front page hereof and not to fixtures in which they are contained, not to hardware, ducts, plumbing, electrical wiring, pans, defrost heaters, not to deterioration of housing, frames or other items due to corrosion. If repairs or adjustments require any alterations or additions to structure or property, the Customer will obtain written consent of the owner, if not the Customer, thereof prior to the performance of such work.
- 8. OBLIGATIONS OF CUSTOMER:** Customer agrees to promptly notify Comfort Pro of any unusual operation conditions of the Equipment and Customer further agrees to promptly notify Comfort Pro of any suspected malfunction or defect in the Equipment. In the event Customer moves or relocates Equipment from the location on the front page hereof without the prior written consent of Comfort Pro, Comfort Pro at its option may cancel this Agreement or refuse to service the Equipment so moved or relocated.
- 9. UNAUTHORIZED REPAIRS:** Any changes, adjustments or repairs made by others to the Equipment, unless authorized or approved by Comfort Pro in writing shall, at the option of Comfort Pro, terminate Comfort Pro's obligations hereunder.
- 10. WATER DAMAGE:** Comfort Pro assumes no liability for any damages caused by water or other substances due to overflow or obstruction of any drain or otherwise. Customer understands that if the Equipment requires the use of water, other re-circulated or otherwise, and the water thus used may be or may become contaminated or cause corrosion. As neither the extent nor nature of such contamination or corrosion can be predicted in advance, Comfort Pro hereby assumes no liabilities for either the quality or condition of the above used water or for any damage that it may cause to the Equipment.
- 11. STANDARDS OF WORKMANSHIP:** The standard of workmanship hereunder shall be that which is reasonable and customary in the Industry.
- 12. GOVERNMENT AND INSURANCE REQUIREMENTS:** If Comfort Pro furnishes, at the request of Customer, any items of equipment, labor or other services which are recommended or required by insurance companies or any governmental agency, including the conducting of any test required by any of the foregoing, not included in the Maintenance Services, Customer shall pay Comfort Pro's then prevailing price of such equipment, labor or other service.
- 13. DESIGN DEFECTS, MALFUNCTIONS, ETC.:** Comfort Pro shall not be liable for any damages whatsoever which are occasioned by defective design, defective materials, defective operation or malfunctions of the Equipment or for any Equipment which is specifically designed.
- 14. THIRD PARTY INDEMNIFICATION:** Customer agrees to and shall indemnify, defend and hold harmless Comfort Pro, its employees and agents for and against all claims brought by parties other than the parties to this Agreement. This provision shall apply to all claims regardless of cause, including Comfort Pro's performance or failure to perform and including defects in products, design, initial connection, inspections, tests, repair service, or non-operation of the equipment whether based upon active or passive negligence, indemnification, contribution warranty, or strict or product liability on the part of Comfort Pro, its employees or agents, but this provision shall not apply to claims for loss or damage solely and directly caused by an employee of Comfort Pro while on or about Customer's premises.
- 15. HAZARDOUS SUBSTANCES:** If Comfort Pro encounters a hazardous substance, such as asbestos or any other substance which Comfort Pro in its sole and reasonable discretion determines to be hazardous, while performing the Maintenance Services hereunder, Comfort Pro may refuse to perform such Maintenance Services until such time as Customer retains a licensed abatement contractor to remove or contain such hazardous substance and such hazardous substance is actually removed or contained. In the event Comfort Pro refused to perform the Maintenance Services or any portion thereof under this Paragraph, Comfort Pro shall refund a pro rate portion of the Preventive Service Fee.
- 16. FORCE MAJEURE:** Comfort Pro assumes no liability for any delay or failure to render the Maintenance Services hereunder caused by Federal, State or Municipal actions or regulations, strikes or other labor disputes, fires, embargoes, earthquakes, storms, accidents, power failures, negligence, acts of God, acts of Customer or any third parties, or any other causes contingent to or circumstances beyond the control of Comfort Pro and/or which make the fulfillment of this Agreement impractical, or for any consequential damage whatsoever. On removal of the cause of such failure or interruption, performance shall be resumed pursuant to the terms as set forth herein.
- 17. DESTRUCTION OF EQUIPMENT:** This Agreement may be suspended or cancelled, without notice at the option of Comfort Pro, if the Equipment is destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue Maintenance Services or in the event Comfort Pro is unable to render Maintenance Services as a result of any action by any governmental authority.
- 18. DEFAULT BY CUSTOMER:** If Customer fails to pay any amount herein provided within ten (10) days after the same is due and payable, or if Customer fails to perform any other provisions within ten (10) days after Comfort Pro shall have requested in writing performance thereof, or if any proceeding in bankruptcy, receivership or insolvency shall be commenced by or against Customer or his property, or if Customer makes any assignment for the benefit of creditors, Comfort Pro shall have the right to discontinue Maintenance Services and recover from Customer all sums Comfort Pro may be entitled to under law or equity.
- 19. ASSIGNEES OF COMFORT PRO:** Comfort Pro shall have the right to assign this Agreement to any other person, firm or corporation without notice to Customer provided such person, firm or corporation assumes and agreed to perform the obligations of Comfort Pro.
- 20. SUBCONTRACTORS:** Comfort Pro shall have the right to subcontract with other persons, firms or corporations any of the Maintenance Services.
- 21. BENEFIT OF AGREEMENT:** Customer acknowledges that this Agreement and particularly those paragraphs relating to Comfort Pro's limited liability, disclaimer of warranties, and third party indemnification, inure to the benefit of and are applicable to any assignees, and/or subcontractor, and that they bind Customer with respect to said assignees, and/or subcontractors with the same force and effect as they bind Customer to Comfort Pro.
- 22. LIMITATIONS OF ACTIONS:** BOTH PARTIES HEREBY AGREE THAT NO SUIT OR ACTION THAT RELATES IN ANY WAY TO THIS AGREEMENT (WHETHER BASED UPON CONTRACT, NEGLIGENCE OR OTHERWISE) SHALL BE BROUGHT AGAINST THE OTHER MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF THE CAUSE OF ACTION THEREFORE, IN ADDITION, BOTH PARTIES HEREBY WAIVE ANY RIGHTS TO A JURY TRIAL IN ANY JUDICIAL ACTION BROUGHT BY EITHER PARTY WHICH RELATES IN ANY WAY TO THIS AGREEMENT (WHETHER BASED UPON CONTRACT, NEGLIGENCE OR OTHERWISE).
- 23. CONFLICTING DOCUMENTS:** It is understood and agreed by and between the parties hereto, that if there is any conflict between this Agreement and any other document or agreement between Customer and Comfort Pro with respect to the matters described herein, this Agreement shall govern and control, regardless of whether such other document or agreement is prior or subsequent to this Agreement.
- 24. INVALID PROVISIONS:** In the event any of the terms or provisions of this Agreement shall be declared to be invalid or inoperative, all of the remaining terms and provisions shall remain in full force and effect.
- 25. REMEDIES:** Nothing contained herein is intended to or shall be construed so as to limit the remedies which Comfort Pro may have against Customer in the event of a breach by Customer of any representation, warranty, covenant or agreement made under or pursuant to this Agreement, it being intended that such remedies shall be cumulative and not exclusive.
- 26. APPLICABLE LAW:** This Agreement is made pursuant to, and shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to otherwise applicable principles of conflicts of law. Any action or counterclaim hereon shall be commenced or asserted, as the case may be, only in the Court of Common Pleas of Berks County, Pennsylvania or the United States District Court of Pennsylvania. All parties hereto consent to the jurisdiction of such courts and waive any objection based on forum non conveniens.
- 27. ATTORNEYS' FEES AND COSTS:** In the event any action or arbitration is instituted by a party hereto to enforce any of the terms or provisions hereof, the prevailing party in such action or arbitration shall be entitled to such reasonable attorneys fees, costs and expenses (including the costs of the arbitrator) as may be fixed by the Court or arbitrator.
- 28. CAPTIONS:** All paragraph headings are inserted for convenience only and shall not be used in any way to modify, limit or construe or otherwise affect this Agreement.
- 29. TAXES:** The Customer shall be responsible for any and all sales or similar taxes now or hereafter imposed with respect to this Agreement.
- 30. ENTIRE INTEGRATED AGREEMENT; MODIFICATION AND/OR ALTERNATIONS; WAIVER:** This Agreement is intended by the parties as a final expression of their agreement and as complete and exclusive statement of the terms thereof. This Agreement supersedes all prior representations, understandings or agreements of the parties; and the parties rely only upon the content of this Agreement in executing it. This Agreement can only be modified by a writing signed by all of the parties hereto or their duly authorized agent. No waiver of a breach of any term or condition of this Agreement shall be construed to be a waiver of any succeeding breach.

## ADDITIONAL TERMS AND PROVISIONS FOR MAINTENANCE PLAN

- Any material and/or work beyond that covered by the terms of this agreement will be furnished at the Equipment Owner's expense.
- CPI must perform two regularly scheduled WatchDog preventative maintenance checks each year. Failure to allow the preventative maintenance voids this agreement.
- The decision of whether to repair or replace a defective part and the selection of the replacement part rest exclusively with CPI. CPI is not responsible for obtaining obsolete or unavailable parts. Material and labor cost to alter existing equipment or piping to be adapted for replacement parts in the above circumstances will be borne by the customer.

## NOT COVERED UNDER THE WATCHDOG MAINTENANCE PLANS

- 1. CPI reserves the right to reject any equipment to be covered by this Agreement based on the overall condition of the equipment.**
- This agreement covers no more than two circulators and two standard thermostats per contract, piping to and from boilers including all valves, flow checks, drains, and auto water feeds are not covered by this plan. Nor does it cover work from faulty design or installation.
- All service and repairs NOT covered by this agreement are the responsibility of owner.
- CPI reserves the right to reject any application or cancel the contract and refund the agreement price paid if the covered equipment does not comply with the provisions of the agreement.
- Compressors, Heat Exchangers, Coils, drain lines, TXV's, refrigerant lines, ducts, hydronic pipes, oil tanks, electrical wiring external from the equipment etc. Other equipment not listed on the signed face of this agreement.