

## AIRPHX EXTENDED SERVICE PLAN

1. **The Plan.** These terms and conditions of this service contract ("**Terms and Conditions**") govern and describe the services (the "**Services**") we will provide you under the AIRPHX Extended Service Plan (the "**Plan**"). References to "you" and "your" are references to the person who is authorized to receive Service per Section 7 below. References to "we", "our" and "us" are referring to PhoenixAIRE, LLC, d/b/a AIRPHX and its employees, contractors or third party service providers, as the case may be.
2. **When Your Plan Begins and Ends**
  - a. So long as the unit(s) to be covered by the Plan are still under warranty or covered by a prior Plan, your Plan begins on the date you purchase this Plan for each unit to be covered by the Plan and shall end on the one year anniversary thereof. If the unit(s) to be covered by the Plan are not under warranty or covered by a prior Plan, your Plan will commence on the 31<sup>st</sup> day after the date you purchase the Plan for each unit to be covered by the Plan and shall expire on the one year anniversary thereof.
  - b. **Cancellations/Renewals.** For more information on how your Plan may be cancelled or renewed, please refer to Section 8 below.
3. **What is Covered?**
  - a. This Plan provides Service for the number and model of AIRPHX units you elect to have covered. The units (identified by serial number) you want covered when you request Service under this Plan are referred to as the "**Covered Units**".
  - b. During the Service Period, we will provide you with access to telephone and/or web-based technical support resources. Service may include assistance with operation and troubleshooting; interpreting system error messages; and determining when Service is required.
  - c. All matters covered by the AIRPHX warranty are located in the User Guide for your Covered Unit on the AIRPHX website at [www.airphx.com/products](http://www.airphx.com/products).
  - d. You will be shipped one replacement plasma chamber at the commencement of the Plan. Plasma chambers are warranted for six months from the date of the commencement of the Plan, which warranty may be satisfied by a pro rata reduced purchase price on a replacement for such plasma chamber.
  - e. Your benefits include a 15% discount off the then price of a replacement plasma chamber for each Covered Unit plus free shipping should an additional plasma chamber be needed during the term of the Plan for a Covered Unit. To receive this discount, you will need to order at [info@airphx.com](mailto:info@airphx.com) and not through [www.airphx.com/shopping](http://www.airphx.com/shopping).
  - f. To the extent required, third party shipping costs associated with repairs for any Covered Unit located in the continental United States. Additional shipping charges for any Covered Unit located outside the continental United States will be your responsibility.
4. **What's Not Covered?**
  - a. Damage caused by operation of the Covered Unit other than in strict compliance with the applicable User Guide.
  - b. Any replacement plasma chambers (other than the plasma chamber provided at the commencement of the Plan) and/or filters, which may be purchased at [www.airphx.com/store](http://www.airphx.com/store).
  - c. Consequential, incidental, special or indirect damages or losses, including but not limited to loss of use, loss of business, loss of profits, loss of data, down-time and charges for time and effort.
  - d. Pre-existing conditions at the time of your enrollment in the Plan.
  - e. Cosmetic defects, damage to or failures of non-operational components that do not inhibit the proper operation and performance of a Covered Unit, including but not limited to appearance parts, decorative finishing, finish defects, nonfunctional plastic, trim, attachments and accessories (except as otherwise stated herein).
  - f. Breakdown resulting from improper installation or setup, use not approved in the applicable User Guide, unauthorized modifications, alterations, repairs or repair personnel.
  - g. Breakdown caused by acts of God or other disaster (whether natural, man-made, local or catastrophic), abuse, acts of war, civil disorders, corrosion, dirt, mold, dust, earthquake, fire, hail, insects or other animals, liquid immersion, malicious mischief, misuse, negligence, nuclear accident, riot, rust, sand, smoke, storm, terrorist attack, vandalism or wind.
  - h. Costs associated with installation, uninstallation or reinstallation of any Covered Unit.
  - i. Breakdown that occurs either while the Covered Unit is in storage or in the course of transit, delivery or redelivery.
  - j. Normal periodic or preventative maintenance, inspections, cleaning, minor adjustments and settings outlined in the applicable User Guide that the user can perform.
  - k. Covered Units whose serial number has been altered or removed.
  - l. Theft or loss of any Covered Units.
  - m. Liability or damage to property, or injury or death to any person arising out of the operation, maintenance or use of the product.

- n. Parts intended for periodic replacement including, but not limited to, filters and plasma chambers.
  - o. Covered products located outside the United States.
5. **How To Obtain Service.** You may obtain service by accessing our website, [www.airphx.com](http://www.airphx.com), or by calling us at 888-263-3882 24 hours per day, 7 days per week, and leaving a detailed message including customer name, model number, serial number and description of problem.
6. **Your Other Responsibilities.** To receive service or support under the Plan, you agree to comply with each of the terms listed below.
- a. You will provide information about the symptoms and causes of the issues with the Covered Unit.
  - b. You will respond to requests for information such as the Covered Unit serial number, model, any error messages displayed, the actions which were taken before the Covered Unit experienced the issue and the steps taken to resolve the issue.
  - c. You are responsible for delivering and picking up your Covered Unit for repairs requiring shipping of a Covered Unit to us, although third party ground shipping costs for any Covered Unit located in the continental United States will be our responsibility. Additional shipping charges for any Covered Unit located outside the continental United States will be your responsibility.
7. **Eligibility for Service; Transferring Your Plan.** We will provide Service in respect of the Covered Units to the original purchaser of this Plan or any person that is in lawful possession of a Covered Unit. At our discretion, we may ask questions and take steps to verify that the person seeking service is in lawful possession of it and, in some cases, whether the serial number of the device matches our records concerning a Covered Unit. If ownership of all the Covered Units have changed to the same person and/or the responsibility for the Plan has changed, we will, without charge, update our records to reflect the transfer of ownership and/or responsibility for the Plan as the case may be. The original purchase receipts and any service receipts should be transferred to the new owner. You may call 888-263-3882 to transfer your Plan.
8. **Cancellation; Renewal.**
- a. **Cancellation or Suspension of Service by Us.** We may cancel this Plan for convenience and discontinue providing service at any time upon written notice to you and issue you a pro-rata refund for any prepaid amounts. We may also cancel this Plan immediately or suspend service without notice, at our discretion, if you fail to make a payment when due or we are unable to process a credit or debit card charge or while any such charge is pending if your account is past due.
  - b. **Renewals.** At our discretion, we may offer you a renewal of your service contract. Any renewal or new service contract that we offer you may contain different pricing, coverage and benefits as compared to your original Plan. We are not responsible for giving you notice of the expiration of your Plan. Therefore, you may not receive any communication from us prior to your Plan expiring unless we offer you a renewal of this Plan or a new service contract.
9. **Privacy Policy.** It is our policy to respect the privacy of its customers. For information on our privacy practices, please call 888-263-3882 or review our privacy policy at [www.airphx.com](http://www.airphx.com).
10. **Limitations of Service.** We shall not be liable for any failure or delay in performance due to any cause beyond our control. We reserve the right to refrain from providing the Services and instead refund your payment, wholly or in part, if your technical needs or other requirements are unusual or extensive and beyond the scope of these Terms and Conditions, as determined by us.
11. **Disclaimer of Warranties.**

THE FOLLOWING DISCLAIMER SHALL APPLY TO YOU TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. YOU ACKNOWLEDGE AND AGREE THAT THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND THAT YOUR USE OF OR RELIANCE ON THE SERVICES IS AT YOUR SOLE RISK AND DISCRETION. WE HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES AND GUARANTIES REGARDING THE SERVICES, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FURTHERMORE, WE MAKE NO WARRANTY THAT (A) THE SERVICES WILL MEET YOUR REQUIREMENTS; (B) THE SERVICES WILL BE AVAILABLE, TIMELY, CURRENT, ACCURATE, RELIABLE, COMPLETE, SECURE OR ERROR-FREE; (C) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL ACCESSED OR OBTAINED BY YOU THROUGH THE SERVICES WILL BE AS REPRESENTED OR MEET YOUR EXPECTATIONS; OR (D) ANY ERRORS IN THE SERVICES WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THE SERVICES SHALL CREATE ANY REPRESENTATION, WARRANTY OR GUARANTY. FURTHERMORE, YOU ACKNOWLEDGE AND AGREE THAT WE HAVE NO OBLIGATION TO SUPPORT OR MAINTAIN THE SERVICES. YOU ACKNOWLEDGE AND AGREE THAT WE MIGHT NOT BE ABLE TO OFFER THE SERVICES AT ALL, IN THE ABSENCE OF THE FOREGOING DISCLAIMERS AND LIMITATIONS. IN THE EVENT OF ANY FAILURE OF THE SERVICES TO CONFORM TO ANY APPLICABLE WARRANTY, YOU MAY NOTIFY US AND WE WILL, AS YOUR SOLE AND EXCLUSIVE REMEDY, USE COMMERCIALY REASONABLE EFFORTS TO SATISFY THE WARRANTY. WE WILL HAVE NO OTHER WARRANTY OBLIGATION

WHATSOEVER WITH RESPECT TO THE SERVICES, AND ANY OTHER CLAIMS, LOSSES, LIABILITIES, DAMAGES, COSTS OR EXPENSES ATTRIBUTABLE TO ANY FAILURE TO CONFORM TO ANY WARRANTY WILL BE YOUR SOLE RESPONSIBILITY.

## 12. Limitation of Liability

THE FOLLOWING LIMITATIONS SHALL APPLY TO YOU TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. UNDER NO CIRCUMSTANCES SHALL WE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH YOUR ACCESS OR USE OF OR INABILITY TO ACCESS OR USE THE SERVICES, WHETHER OR NOT THE DAMAGES WERE FORESEEABLE AND WHETHER OR NOT WE WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR REVENUES, BUSINESS INTERRUPTION OR ANY OTHER PECUNIARY LOSS WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE SERVICES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OUR AGGREGATE LIABILITY TO YOU (WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, STATUTE OR OTHER THEORY OF LIABILITY) SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID BY YOU FOR THE SERVICES. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## 13. Laws

These Terms and Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, excluding its conflict of law provisions. If any provision(s) of these Terms and Conditions is/are held by a court of competent jurisdiction to be contrary to law, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect.

## 14. Arbitration Agreement.

Most of your concerns about the Services can be addressed by contacting us at [service@airphx.com](mailto:service@airphx.com). For any dispute with us, you agree to first contact us and attempt to resolve the dispute with us informally.

- a. YOU AND WE AGREE TO RESOLVE ANY DISPUTES THROUGH BINDING ARBITRATION OR SMALL CLAIMS COURT INSTEAD OF THROUGH COURTS OF GENERAL JURISDICTION. YOU AND WE AGREE THAT ANY ARBITRATION WILL TAKE PLACE ON AN INDIVIDUAL BASIS ONLY. YOU AND WE AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL AND TO PARTICIPATE IN CLASS ACTIONS OR OTHER REPRESENTATIVE PROCEEDINGS. This Arbitration Agreement ("ARB") shall survive the termination of the Plan and is governed by the Federal Arbitration Act. This ARB shall be interpreted broadly, and it includes any dispute you have with us that arises out of or relates in any way to your relationship with us or the Services, whether based in contract, tort, statute, fraud, misrepresentation or otherwise. However, this ARB does not preclude you from bringing an individual action against us in small claims court or from informing any federal, state or local agencies of your dispute. Such agencies may be able to seek relief on your behalf.
- b. To initiate arbitration, send a written Notice of Claim by certified mail to: Legal Department, 1311-A Dolley Madison Blvd., Suite 2A, McLean, VA 22101. The Notice must describe the dispute and the relief sought. If we do not resolve the dispute within 60 days of receipt of the Notice, you may start an arbitration with the American Arbitration Association ("AAA"). You may contact the AAA and obtain a free copy of the rules and forms necessary to start an arbitration proceeding at [www.adr.org](http://www.adr.org) or 1-800-778-7879.
- c. The arbitration shall be administered by the AAA in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes ("Rules") in effect at the time the arbitration is started and as modified by this ARB. The arbitrator is bound by the terms of this ARB and shall decide all issues, with the exception that issues relating to the enforceability of this ARB may be decided by a court. If your dispute is for \$10,000 or less, you may conduct the arbitration by submitting documents to the arbitrator or by telephone. If your dispute is for more than \$10,000, your right to hearings will be determined by the Rules. Unless otherwise agreed, any hearings will take place in Fairfax County, Virginia. We will each be responsible for one-half of all filing, administration and arbitrator fees for any arbitration, unless your dispute is found by the arbitrator to have been frivolous or brought for an improper purpose under Federal Rule of Civil Procedure 11(b). In that case, the Rules govern payment of such fees.
- d. If you seek declaratory or injunctive relief, that relief can be awarded only to the extent necessary to provide you relief. YOU AND WE AGREE THAT EACH PARTY MAY BRING CLAIMS AGAINST EACH OTHER ONLY IN AN INDIVIDUAL CAPACITY AND NOT IN A PURPORTED CLASS ACTION, CLASS ARBITRATION OR OTHER REPRESENTATIVE PROCEEDING. Unless you and we agree otherwise, the arbitrator may not consolidate your dispute with the dispute of any other person and may not preside over any form of representative or class proceeding. If this specific provision of this ARB is found to be unenforceable, then the entirety of this ARB is null and void.

## 15. Entire Agreement

These Terms and Conditions and your purchase receipt constitute the entire agreement between you and us with respect to the services and benefits provided to you under your Plan and will prevail over any conflicting, additional, or other terms of any marketing collateral or other document or expression. Employees and agents of AIRPHX have NO AUTHORITY (apparent, express, implied, or otherwise) to alter or modify the terms and conditions of this Plan - either orally or in writing.