



## ***Hardware Service Contract - Terms and Conditions***

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BY ACCEPTING THE SERVICE CONTRACT CHARGES DESCRIBED ON YOUR INVOICE, YOU AGREE TO BE BOUND BY AND ACCEPT THE TERMS AND CONDITIONS HEREIN. THIS AGREEMENT IS BETWEEN YOU ("CUSTOMER") AND VENTEC, INC ("BDS", "WE").

1. **Equipment Covered ("Covered Equipment")**: When we refer to "Equipment" in this Agreement, we mean the covered hardware items to be maintained by BDS as shown on your "Equipment List". Items can be added to your Equipment List at any time by verbal agreement between you and BDS. Removing items from the Equipment List requires thirty (30) days prior notice. We will provide you with a copy of your Equipment List at your request.
  
2. **Scope of Services**:
  - a. It is the intent of this Agreement that BDS will maintain the Covered Equipment and be responsive to your service needs. The Principle Period of Maintenance ("PPM") is Monday through Friday 8:30 a.m. to 5:00 p.m., excluding regularly observed holidays. PPM means the principal hours during which services are rendered under this Agreement. In most cases, a BDS technician will respond to a service call within two (2) hours of receiving your call (during the PPM).
  
  - b. **Limits of Services**. This Agreement extends only to uses for which the Equipment was designed. The services BDS agrees to provide under this Agreement are repair services that are necessary because of any existing defect or because a defect occurs in materials or workmanship in the Covered Equipment. Preventive maintenance is not included. **Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than BDS are not included.** BDS is not obligated to repair any Equipment which has been damaged as a result of: (i) accident, misuse, or abuse of the Equipment (such as, but not limited to, use of incorrect line voltages, use of incorrect fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions), (ii) an act of God such as, but not limited to, lightning, flooding, tornado, earthquakes, fire, hurricanes, or (iii) the moving of the Equipment from one location to another.

**LIMITATION OF LIABILITY**. BDS (INCLUDING BDS' PARENTS, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS) DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING ANY LIABILITY FOR EQUIPMENT NOT BEING AVAILABLE FOR USE, LOST OR CORRUPTED DATA OR SOFTWARE. BDS WILL NOT HAVE ANY LIABILITY FOR ANY DAMAGES ARISING FROM THE USE OF THE EQUIPMENT IN ANY HIGH RISK ACTIVITY, INCLUDING, BUT NOT LIMITED TO, THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, MEDICAL SYSTEMS, LIFE SUPPORT OR WEAPONS SYSTEMS. BDS WILL NOT BE LIABLE FOR LOST PROFITS, LOSS OF BUSINESS, OR OTHER INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF

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ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN.

CUSTOMER AGREES THAT FOR ANY LIABILITY RELATED TO THE PURCHASE OF PRODUCTS OR SERVICES, BDS IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AGGREGATE DOLLAR AMOUNT PAID BY CUSTOMER FOR THE PURCHASE OF PRODUCTS AND/OR SERVICES UNDER THIS AGREEMENT.

THE FOREGOING LIMITATIONS APPLY REGARDLESS OF THE CAUSE OR CIRCUMSTANCES GIVING RISE TO SUCH LOSS, DAMAGE OR LIABILITY, EVEN IF SUCH LOSS, DAMAGE OR LIABILITY IS BASED ON NEGLIGENCE OR OTHER TORTS OR BREACH OF CONTRACT (INCLUDING FUNDAMENTAL BREACH OR BREACH OF A FUNDAMENTAL TERM).

With regard to any services that are not within the coverage of this Agreement, it will be within BDS' discretion whether to perform the services, and, if BDS elects to perform the services, the services will be subject to an additional charge to be paid by you.

### 3. **Your Responsibilities.**

To receive service, you are responsible for complying with the following:

- a. **Valid Service Contract.** BDS must have received payment for the Service Contract within thirty (30) days of the date of invoice. Customer shall pay an additional interest fee of 1.5% per month (19.56% per year) for invoices not paid within such thirty (30) day period.
- b. **Report the Problem.** For service call toll free 800-567-5507 or in Florence 843-665-8886. These phone lines are answered twenty-four (24) hours a day, seven days a week, including regularly observed holidays. You will help the technician serve you better if you have the Equipment's serial number or service tag number as well as its manufacturer and model number ready when you call. You can also report a problem by visiting the BDS web site at [www.bdssc.com](http://www.bdssc.com) and clicking the "Support" link.
- c. **Cooperate with the Technician.** Many problems and errors can be corrected over the phone as a result of close cooperation between the user and the technician. If a technician is required to come on site, he must have access to the Equipment and any machines, attachments, accessories, or software necessary to perform the required service.
- d. **Software/Data Backup.** You understand and agree that BDS is not responsible for any lost or corrupted software or data. **BDS strongly recommends that you maintain a complete data backup and disaster recovery plan.** Any attempted data recovery and/or installation and configuration of application software we perform will be subject to an additional charge to be paid by you.

Unless otherwise stated, the hours of service shall not include regular holidays, including New Year's Day, Good Friday, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving day (and the day following), Christmas Eve, Christmas Day.

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#### 4. **General Terms:**

- a. **Term and Renewal:** This Agreement becomes effective upon payment of your initial BDS Service Contract invoice and it remains in effect indefinitely. The anniversary date of the agreement is the first day of the month during which the initial invoice is dated.
  - b. **Cancellation:** The Agreement may be terminated by either party by providing at least thirty (30) days written notice. BDS will issue a refund to you for any unused portion of the service term for which you have paid.
  - c. **Charges:** Monthly Service Contract charges are paid in advance and are calculated as the sum of the charges of all the items listed on the current Equipment List. You may choose to be billed monthly or annually. Customers who choose to be billed annually receive a ten percent (10%) discount.
  - d. **Entire Agreement:** This Agreement is the entire agreement between you and BDS with respect to its subject matter and none of BDS' employees or agents may orally vary the terms and conditions of this Agreement.
  - e. **Warranty Exclusion:** BDS makes no warranties or conditions, either express or implied, including, but not limited to, any implied warranties or conditions of merchantability and fitness for a particular purpose. BDS expressly disclaims all warranties and conditions.
  - f. **Parts Ownership.** All parts removed from your Equipment become the property of BDS. You will be obligated to pay the current retail price(s) for any parts removed from your Equipment and retained by you. BDS uses new and reconditioned parts made by various manufacturers in performing repairs.
  - g. **Miscellaneous.** If any provision of this Agreement is void or unenforceable, the parties agree to delete it and agree that the remainder of the Agreement will continue to be in effect. BDS is not liable for failure or delay in performance due to any cause beyond its control. Neither BDS nor you may institute any action in any form arising out of this Agreement more than eighteen (18) months after the cause of action has arisen, or in the case of nonpayment, more than eighteen (18) months from the date of last payment. This agreement will be governed by the laws of the state of South Carolina.
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