

1. **Agreement.** Except where an existing fully executed MSA exists, this Agreement contains the entire Agreement between ThermFlo and Customer and supersedes all prior and contemporaneous understandings or agreements between them with respect to the subject matter hereof. This Agreement may be supplemented, amended or modified by the mutual agreement of the Parties only if in writing and signed by both Parties.
2. **Term.** This Agreement shall commence on the beginning term date listed on page 1 and shall remain effective for a period of one (1) year ("Term"). Thereafter, this Agreement shall automatically renew for successive one (1) year terms (each a "Renewal Term") at each annual anniversary unless written intent not to renew is given by one Party to the other at least thirty (30) days prior to the end of the initial or any renewal Term, or unless Customer requires a PO or other written form of approval.
3. **Termination for Convenience.** This Agreement may be terminated by either Party at any time upon thirty (30) days prior written notice to the other Party.
4. **Termination for Default.** Either Party may terminate this Agreement for cause upon a material default by the other Party, which default either remains uncured five (5) business days after written notice thereof is given to the defaulting Party or is incapable of being cured, in which case the Agreement shall terminate upon the date of the default notice. If either Party becomes or is declared insolvent or bankrupt, admits in writing of its inability to pay debts generally as they become due, is the subject of any proceedings relating to its liquidation or insolvency, or makes an assignment for the benefit of all or substantially all of its creditors, then the other Party may, by giving written notice thereof to such Party, terminate this Agreement as of a date specified in such notice of termination. If others make additions, alterations, or repairs to the equipment covered within this Agreement during the Term of this Agreement, this Agreement is terminable at ThermFlo's option, upon five (5) business days written notice.
5. **Obligations upon Termination.** Upon termination or expiration of this Agreement, ThermFlo will terminate or wind-down all Services in process in an orderly manner as soon as practicable. Customer shall pay ThermFlo any monies due and owing for Services actually performed Net 30 days from date of termination. If Customer has paid ThermFlo for Services not performed as of the date of termination, ThermFlo will refund any such amounts to Customer Net 30 days from date of termination.
6. **Access to Equipment.** It is agreed that Customer will provide reasonable means of access to the equipment, including any removal, replacement, or refinishing of the building structure required. If ThermFlo is unable to get access to the site to perform Preventative Maintenance within the month of the scheduled maintenance due to Customer scheduling issues or request, ThermFlo shall no longer be liable for performing that service visit but shall be due payment for it.
7. **Delays.** ThermFlo shall not be liable for injury to persons, damage to property, or loss or damage to equipment resulting from its failure to perform the services described herein when such delays are caused by conditions which are beyond the reasonable control of ThermFlo, including but not limited to: Acts of God, fire, floods, riots, strikes, labor troubles, material shortages, public utility or electrical failure, and terrorism.
8. **Payment.** Payments are due Net 30 days from Customer's receipt of invoice. ThermFlo reserves the right to discontinue Services at any time, upon ten (10) days prior written notice, until undisputed payments due have been made as agreed. Lien waivers and affidavits from ThermFlo, for the Work, shall not be required by Customer as a prerequisite for payment.
9. **Pricing.** The Agreement price is subject to adjustment on the first day of each Renewal Term for changes in labor cost, parts and material costs and changes in applicable tax. ThermFlo will provide Customer thirty (30) days prior written notice of any changes.
10. **Insurance.** ThermFlo shall procure and maintain in effect insurance with the following minimum limits: General Liability insurance one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate, Automobile Liability one million dollars (\$1,000,000) per occurrence and in the aggregate, Contractors Errors & Omissions Insurance two million dollars (\$2,000,000) per occurrence and in the aggregate, and Umbrella Insurance five million dollars (\$5,000,000) per occurrence and in the aggregate.
11. **Indemnification.** The Parties mutually agree to indemnify and hold each other (including their officers, agents, and employees) harmless against any and all claims, demands, damages, liabilities, and costs incurred by the other Party, including reasonable attorneys' fees, to the extent arising out of their negligence, willful misconduct, or omissions.
12. **Waiver of Consequential Damages.** The Parties mutually agree to waive any right to recover consequential, incidental, special, punitive or exemplary damages of any kind from the other Party for any reason, including without limitation, loss of profits or revenues, loss of use, cost of capital or financing, rental costs, etc..
13. **Confidentiality.** During the term of this Agreement, and any time thereafter, the Parties agree to protect all Confidential Information of the other Party with the same degree of care as it uses to avoid unauthorized use, disclosure, publication or dissemination of its own confidential information. "Confidential Information" shall mean any and all information relating to a Party's protocols, projects or products, Intellectual Property Rights, technology, and financial or business information with the exception of any information that is publicly known (other than through unauthorized disclosure by that Party) or received by that Party by a third party without the obligation of confidentiality.
14. **Independent Contractor.** It is mutually understood and agreed that the Parties hereto are at all times acting and performing hereunder as independent contractors and that no employer/employee, agency, joint venture, or partnership relationship is created between the Parties during the term of this Agreement. ThermFlo shall not represent to third parties that it is an employee or agent of Customer in the provision of services under this Agreement.
15. **Notices.** All notices that may be given under this Agreement shall be in writing, addressed to the receiving Party's address set forth on the proposal unless otherwise noted below, and shall be delivered by (i) traceable courier service (such as Federal Express), (ii) sent by certified or registered mail, return receipt requested, and shall be deemed delivered upon personal service or within three (3) days from deposit in the United States Postal Service in the manner described herein, or (iii) email to the address listed below.

SERVICE AGREEMENT

Customer

[Redacted Customer Information]

ThermFlo

ThermFlo, Inc.
875 Busch Parkway
Buffalo Grove, IL 60089
Attn: Legal Department
legal@thermflo.com

- 16. **Dispute Resolution.** The Parties shall meet and confer in good faith to resolve any disputes, claims, questions, or disagreements arising out of this Agreement. Either Party may initiate negotiations by providing written notice to the other Party, setting forth the subject of the dispute and the relief requested.
- 17. **Governing Law and Venue.** This Agreement, and the rights and obligations of the Parties hereunder, shall be governed by, interpreted and construed in accordance with the laws of Illinois. All disputes arising out of this Agreement shall be exclusively resolved in a court of competent jurisdiction in the State of Illinois, with claims filed within two (2) years of the date of discovery, but not later than four (4) years from the date of the incident or occurrence. Each Party expressly consents to the jurisdiction and waives any objections or right as to *forum non conveniens*, lack of personal jurisdiction or similar grounds.
- 18. **Miscellaneous HVAC.** This Agreement does not include water treatment, air balancing, duct work or duct cleaning, emergency service due to loss of electrical power or water interruptions beyond ThermFlo’s control, electrical power wiring, disconnect switches, main fuses or breakers that are not internal of unit cabinet, water piping, steam lines, building drains, damage due to freezing weather, equipment cabinets, deterioration of equipment cabinet or coils. This Agreement does not include any items of equipment as are recommended or required by insurance companies, government, state, municipal or other authorities. During the first year of Platinum Coverage, ThermFlo will require Customer’s authorization and payment for any repairs found to be needed during the first inspection. Platinum Coverage does not include any refrigerant conversion required by insurance companies, government, state, municipalities, EPA or any other governing authorities.
- 19. **Miscellaneous Generator.** This Agreement does not include fuel tanks, engine replacement or internal engine component repairs, gear box assembly, any part of the main alternator assembly or entirety, duct work or duct cleaning, emergency service due to loss of electrical power, electrical power wiring, disconnect switches, main fuses or breakers that are not internal of unit cabinet, damage due to freezing weather or rodent infestation, clean-up of rodent infestation, and deterioration of equipment cabinet or coils. This Agreement does not include any items of equipment as are recommended or required by insurance companies, government, state, municipal or other authorities. ThermFlo will require Customer’s authorization and payment for any repairs found to be needed during the first inspection under Platinum Coverage. If parts are obsolete, best efforts will be made to repair unit, however, additional costs may apply due to a need for remanufactured components. Coverage is generally limited within the footprint of the Generator Enclosure and ATS Enclosure. Anything outside the enclosure is considered quoted work.