

ServicePLUS

HEAT PUMP EQUIPMENT MAINTENANCE AND WARRANTY AGREEMENT

Date:

PARTIES

ONEAIR LIMITED (ONEAIR)	
Address	2/57 Walls Road, Penrose, Auckland
Phone numbers	0800 ONEAIR (663247)
Email address	freerepairs@oneair.co.nz
[REDACTED] (CUSTOMER)	
Address	[REDACTED]
Phone numbers	[REDACTED] (Landline) [REDACTED] (Mobile)
Email address	[REDACTED]

BACKGROUND

The parties have agreed to enter into this Agreement to record the terms on which OneAir will provide the Services to the Customer.

SCHEDULE 1 – KEY TERMS

EQUIPMENT	
Make	[REDACTED]
Model	[REDACTED]
Serial Number ODU	[REDACTED]
Serial Number IDU	[REDACTED]
Date of Purchase	[REDACTED]
COVER	
Policy Number	[REDACTED]
Commencement Date	[REDACTED]
Expiry Date	[REDACTED]
Renewal Term	[REDACTED]

SERVICES	
Maintenance Services	OneAir will undertake such servicing of the Equipment as is required to maintain it in good working order and condition.
Repair Services	OneAir will undertake such repairs, and supply such parts, as are required to ensure that the Equipment is in good working order and condition.
Replacement Services (only if repairs are not possible or viable)	<p>If OneAir determines that repairs to the Equipment are not possible or viable, OneAir will supply and install a replacement heat pump or air conditioning unit (as applicable) which is:</p> <ul style="list-style-type: none"> • (at OneAir's discretion) new or of similar age to the Equipment; and • of similar size and performance characteristics to the Equipment.
Excluded Services	<ul style="list-style-type: none"> • Repairs to, or replacement of, remote controls (infra red / wireless and wired) • Corrosion treatment, building, landscaping, plumbing and painting. • Hireage of cranes, scissor lifts, scaffolding to gain access to the heatpump units or its connections (if required). • Supply of batteries for remote controls and other wear and tear items. • Supply of R22 refrigerant gas, cleaning services or repairers' sundries.
Claim Limit	<p>The Claim Limit applicable to the provision of the Repair Services each Year is equal to the lower of:</p> <ul style="list-style-type: none"> • \$500; and • the purchase price paid by the Customer for the Equipment (including GST). <p>The Claim Limit applicable to the provision of the Replacement Services each Year is equal to the lower of:</p> <ul style="list-style-type: none"> • \$500; and • the purchase price paid by the Customer for the Equipment (including GST).
Fees	<ul style="list-style-type: none"> • Administration fee of \$19 in respect of the first Year (Administration Fee). • Annual service fee of \$169 for each Year (including GST) (Services Fee). • A callout fee of \$150 (including GST) if OneAir determines that the Equipment is Excluded Equipment or has suffered Excluded Damage (Callout Fee). • A surcharge of \$100 (including GST) applies to the provision of Services in respect of Mitsubishi Electric branded Equipment (Mitsubishi Surcharge).

CUSTOMER ACKNOWLEDGEMENT

By entering into this Agreement, the Customer:

- agrees to accept OneAir's provision of the Services on the terms of this Agreement (including any applicable exclusions); and
- warrants that all information they provided to OneAir (whether prior to or following the date of this Agreement) is true, accurate and complete.

EXECUTION

Signed by **OneAir**:

Director / Authorised signatory

Signed by **Customer**:

GENERAL TERMS

1 Interpretation

1.1 Definitions - In this Agreement:

Agreement means this equipment maintenance and warranty agreement between OneAir and the Customer.

CGA means the Consumer Guarantees Act 1993.

CPI means the Consumer Price Index (All Groups) as published by Statistics New Zealand (or any successor organisation) on a quarterly basis (or such replacement index as is reasonably nominated by OneAir if the Consumers Price Index (All Groups) ceases to exist).

Dispute means any dispute arising out of, or in connection with, this Agreement.

Excluded Damage means any damage specified in section 1 of Schedule 2.

Excluded Equipment means any equipment specified in section 2 of Schedule 2.

Fees Review Date means each anniversary of the Commencement Date.

Force Majeure Event means any event or circumstance beyond OneAir's reasonable control, including any earthquake, flood, fire, lightning, storm and adverse weather conditions; any civil disturbance; any legislative, governmental or other prohibitions or restrictions or any strike or lockout.

GST means goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.

Services means the Maintenance Services, the Repair Services and/or the Replacement Services (as the context permits), and includes any additional services agreed in writing by the parties in accordance with clause 2.4 but excludes the Excluded Services.

Term means the term of this Agreement specified in clause 9.1.

Year means each 12 month period commencing on the first day of the Term.

- 1.2 **Further definitions - Administration Fee, Claim Limit, Callout Fee, Commencement Date, Equipment, Expiry Date, Fees, Maintenance Services, Mitsubishi Surcharge, Renewal Term, Repair Services and Replacement Services** have the meanings given to those respective terms in Schedule 1.
- 2 **Services**
 - 2.1 **Appointment of OneAir** - The Customer appoints OneAir to provide the Services, and OneAir accepts such appointment, on the terms of this Agreement.
 - 2.2 **Service standards** - OneAir agrees to provide the Services to the Customer with a reasonable degree of care, skill and diligence and in a proper, timely and efficient manner.
 - 2.3 **Co-operation** - The Customer undertakes to:
 - 2.3.1 co-operate with OneAir to ensure that the Services are able to be performed in accordance with the terms of this Agreement;
 - 2.3.2 provide OneAir and its representatives access to the Equipment at all reasonable times for the purposes of providing the Services; and
 - 2.3.3 promptly notify OneAir in writing of any matter that may impact on its ability to provide the Services in accordance with the terms of this Agreement.
 - 2.4 **Additional services** - The parties may, from time to time, agree in writing to add additional services to the scope of this Agreement on a case-by-case basis. Any such services that are added to the scope of this Agreement in accordance with this clause will become "Services" for the purposes of this Agreement and (if applicable) be removed from the list of Excluded Services. The fees payable by the Customer to OneAir in relation to the provision of such services will be determined on the basis of OneAir's price list in effect prior to the commencement of the provision of the services.
- 3 **OneAir**
 - 3.1 **Services** - OneAir will:
 - 3.1.1 provide the Maintenance Services on request by the Customer prior to the expiry of each Year; and
 - 3.1.2 (at its discretion) provide the Repair Services or the Replacement Services if it determines that the Equipment is faulty or defective at any time during the Term.
 - 3.2 **Exclusions** - OneAir is not required to provide the Services in respect of Equipment which it determines to be Excluded Equipment or have suffered Excluded Damage.
 - 3.3 **OneAir's discretion** - The decision of OneAir as to the following matters will be final and binding upon the Customer:
 - 3.3.1 whether the Equipment is faulty or defective;
 - 3.3.2 whether the Equipment is Excluded Equipment or has suffered Excluded Damage;
 - 3.3.3 whether the Repair Services or the Replacement Services will be provided by OneAir to remedy the faults or defects; and
 - 3.3.4 the extent of the Repair Services or Replacement Services to be provided by OneAir to remedy the faults or defects.
 - 3.4 **Replacement parts** - OneAir may (at its discretion) supply its own replacement parts in connection with its performance of the Services (provided that such parts have a similar capacity, and perform in a similar manner, to the parts being replaced).

3.5 **Equipment transfer** - OneAir may (at its discretion and cost) transfer the Equipment to any location it determines for the purposes of undertaking the Repair Services. OneAir will be liable for any loss of, or damage to, the Equipment caused during transit.

4 **Customer**

4.1 **Proof of purchase** - The Customer must provide OneAir promptly upon request a copy of the invoice relating to their purchase of the Equipment or any other evidence of the date of their purchase of the Equipment acceptable to OneAir. OneAir is not required to provide the Services without receiving such documentation.

4.2 **Parts availability** - The Customer acknowledges that the scheduling of the Services is subject to OneAir's ability to obtain parts from its suppliers.

4.3 **Servicing** - The Customer must, during the Term:

4.3.1 ensure that the Equipment is serviced by OneAir on an annual basis and otherwise in accordance with OneAir's requirements;

4.3.2 retain copies of any servicing invoices issued by OneAir; and

4.3.3 not permit any other person to service the Equipment.

4.4 **Parking access** - The Customer must ensure that free parking is available for up to two of OneAir's service vans within 50 metres of the Equipment for such period of time as OneAir notifies the Customer it requires to provide the Services. The Customer will be responsible for any parking fees and penalties incurred by OneAir if it does not obtain parking access for OneAir in accordance with this clause.

5 **Claim Limit**

5.1 **Claim Limit** - The aggregate value of each of the Repair Services and the Replacement Services (including any parts supplied by OneAir in connection with the provision of such Services) supplied by OneAir in any Year during the Term must not exceed the Claim Limit applicable to the relevant Services unless OneAir agrees otherwise in writing (at its absolute discretion).

5.2 **Price list** - For the purposes of clause 5.1, the Repair Services and the Replacement Services (including any parts supplied by OneAir in connection with the provision of the relevant Services) will be valued on the basis of OneAir's applicable price list on the date on which the relevant Services are provided.

6 **Assignment**

6.1 **OneAir approval** - The Customer may assign this Agreement to the purchaser of their property in which the Equipment is located with OneAir's prior written approval (at its absolute discretion). OneAir may give its approval under this clause on such terms as it determines.

7 **Fees**

7.1 **Fees** - In consideration for the performance by OneAir of the Services, the Customer agrees to pay the Fees to OneAir.

7.2 **All inclusive** - The Fees are inclusive of the cost of all equipment, materials, consumables, labour and intellectual property required for the performance of the Services.

7.3 **Adjustments** - The Fees will be adjusted with effect from each Fees Review Date in accordance with the following formula:

$$A \times (B / C)$$

where:

A = the Fees payable as at the Fees Review Date

B = the CPI for the quarter published immediately prior to the Fees Review Date

C = the CPI for the quarter published immediately prior to the previous Fees Review Date (or the Commencement Date if the Fees have not previously been adjusted in accordance with this clause)

7.4 **Invoicing** - OneAir will issue a GST invoice to the Customer within:

7.4.1 in respect of the Administration Fee, within one month of the date on which the Year commences;

7.4.2 in respect of the Callout Fee, within one month of OneAir notifying the Customer that the Equipment is Excluded Equipment or has suffered Excluded Damage; and

7.4.3 in respect of the Services Fee and the Mitsubishi Surcharge, within one month of the date on which the relevant Services are provided by OneAir.

7.5 **Payment** - The Customer will pay each invoice issued by OneAir within 14 days of the date of the invoice. The Customer may make payment by direct credit or direct debit to the bank account nominated by OneAir.

7.6 **OneAir's rights** - In the event that the Customer fails to pay any amount payable by them under this Agreement on the due date for payment, then (without prejudice to any other rights or remedies available to OneAir under this Agreement or at law) OneAir reserves the right to:

7.6.1 charge the Customer interest on that unpaid amount on a daily basis at a rate of 2% per month from its due date until it is paid to OneAir in full (and such interest shall accrue both before and after any judgment);

7.6.2 charge the Customer for all expenses, costs and disbursements incurred by OneAir in recovering the outstanding monies (including legal fees on a full indemnity basis and debt collection agency fees); and/or

7.6.3 suspend or terminate all or any part of the Services.

8 **Liability**

8.1 **Warranty** - OneAir warrants to the Customer that the Services and all parts supplied by it will, for a period of 12 months after the completion of the Services, be free from defects in materials and workmanship.

8.2 **Remedies** - In the event that any Services or parts supplied provided by OneAir fail to conform with the warranty specified in clause 8.1, then to the maximum extent permitted by law (including the CGA), OneAir's liability is limited to repairing or replacing the defective Services or parts (as applicable), and OneAir will have no liability for any other losses, damage, costs or expenses incurred by the Customer or any other person.

8.3 **Exclusion of warranties** - With the exception of the warranty specified in clause 8.1, to the maximum extent permitted by law (including the CGA), all representations, warranties or conditions (whether express or implied) in respect of the Services are expressly excluded.

8.4 **Contracting out** - If, and to the extent that, the Services are being supplied and acquired in trade, then the provisions of the CGA and sections 9, 12A and 13 of the Fair Trading Act 1986 do not apply to the provision of the Services and the parties agree that it is fair and reasonable for the parties to be bound by this clause.

- 8.5 **Indemnity** - The Customer will indemnify OneAir against any losses, liabilities, damages and costs (including legal costs on a full indemnity basis) incurred by it and any claims, demands, action or proceedings brought against it directly or indirectly as a result of, or in connection with any breach by the Customer of any of their obligations under this Agreement.
- 8.6 **Limitation on liability** - If, for any reason, OneAir is liable to the Customer, then to the maximum extent permitted by law, the maximum potential liability of OneAir for any liability, loss, damage or cost shall not exceed an amount equal to the price paid by the Customer for the Services in relation to which the liability arises.
- 8.7 **Exclusion of losses** - To the maximum extent permitted by law (including the CGA), OneAir has no liability whatsoever to the Customer or any other person, whether in contract or tort (including negligence) or otherwise, for any indirect or consequential losses or any loss of profits or loss of revenue arising under or in connection with this Agreement.
- 8.8 **Force Majeure Event** - OneAir will not be liable to the Customer for any failure to perform any of its obligations under this Agreement where such failure is caused by a Force Majeure Event.
- 9 Term**
- 9.1 **Term** - This Agreement will commence on the Commencement Date and remain in full force and effect until the Expiry Date, unless it is renewed in accordance with clause 9.2 or terminated earlier in accordance with its terms.
- 9.2 **Renewal** - The Customer may apply in writing to OneAir for a renewal of this Agreement for successive periods of the Renewal Term following the expiry of the Term. Any renewal of this Agreement under this clause will be at OneAir's absolute discretion and on such terms as OneAir determines.
- 9.3 **Termination by Customer** - The Customer may terminate this Agreement for any reason at any time prior to the expiry of the Term by giving at least 14 days' written notice to OneAir.
- 9.4 **Termination by OneAir** - OneAir may terminate this Agreement immediately by giving written notice to the Customer if:
- 9.4.1 the Customer fails to pay any amount payable by them under this Agreement on the due date for payment;
 - 9.4.2 the Equipment is not serviced prior to the expiry of each Year;
 - 9.4.3 the Customer commits a breach of any of their other obligations under this Agreement and, if such breach is capable of being remedied, fails to remedy such breach within 7 days after receiving a written notice from OneAir specifying the breach;
 - 9.4.4 OneAir determines that the Equipment is Excluded Equipment or has suffered Excluded Damage;
 - 9.4.5 any representation or warranty made by the Customer, or any information provided by the Customer in connection with this Agreement, is untrue or misleading in any respect or is or proves to have been untrue or misleading in any respect when made or repeated; or
 - 9.4.6 the Customer is declared bankrupt, insolvent or is deemed to be unable to pay their debts within the meaning of section 287 of the Companies Act 1993, or is placed in receivership, administration or liquidation or is dissolved (or any analogous process occurs in respect of the other party) or ceases to carry on their business.
- 9.5 **Consequences of expiry or termination** - Upon the expiry or termination of this Agreement for any reason:

- 9.5.1 OneAir will immediately cease to provide the Services; and
- 9.5.2 each party will immediately return to the other party all items belonging to the other party and in their possession or under their control.
- 9.6 **Survival of provisions** - Upon the expiry or termination of this Agreement for any reason, clauses 8, 9.5 to 9.7, 10, 11 and 13 and any other clauses intended to survive expiry or termination will remain in full force and effect.
- 9.7 **Effect of expiry or termination** - Expiry or termination of this Agreement shall be without prejudice to the rights and remedies of either party arising out of or in connection with any breach of this Agreement occurring prior to the date of expiry or termination.
- 10 Confidentiality**
- 10.1 **Confidential information** - The Customer will always keep confidential and secure, and not directly or indirectly make or allow to be made any disclosure or use of, the terms of this Agreement without obtaining the prior written approval of OneAir.
- 10.2 **Injunction** - Irreparable damage may result to OneAir in the event of a breach by the Customer of clause 10.1. In such event, OneAir will be entitled, in addition to any other remedy available to it, to obtain an injunction to restrain any breach or reasonably anticipated breach by the Customer.
- 11 Privacy Act**
- 11.1 **Personal information** - OneAir may collect, store, use and disclose (as applicable) any personal information about the Customer:
- 11.1.1 to verify the Customer's identity for the purpose of providing the Services to the Customer;
- 11.1.2 to market OneAir's services and products to the Customer, including contacting the Customer electronically (e.g. by text or email for this purpose);
- 11.1.3 to improve the services and products that OneAir supplies the Customer;
- 11.1.4 to any credit reference agency to undertake credit checks on the Customer and to provide credit reporting services or to exercise any power of enforcement under this Agreement; and
- 11.1.5 to any business that supports OneAir's services and products (including any person that hosts or maintains any underlying IT system or data centre that OneAir uses to provide its website or other services and products).
- 11.2 **Privacy Act** - If the Customer is an individual, the authorities under clause 11.1 are authorities or consents for the purposes of the Privacy Act 2020.
- 11.3 **Customer's rights** - The Customer has the right to request OneAir:
- 11.3.1 for a copy of the information about the Customer retained by OneAir; and
- 11.3.2 to correct any incorrect information about the Customer held by OneAir.
- 12 Dispute resolution**
- 12.1 **Negotiations** - If a Dispute arises, then the parties shall endeavour to resolve the Dispute by agreement between them through good faith negotiations and discussions.

- 12.2 **Mediation** - If the Dispute is not resolved within ten Business Days of the date on which the parties in dispute commenced negotiations, then either party may, by written notice to the other party, refer the Dispute to mediation in accordance with the following provisions:
- 12.2.1 The mediation shall be conducted by a mediator agreed by the parties or, if they fail to agree on a mediator within five Business Days of the reference of the Dispute to mediation, the mediator will be appointed by the President for the time being of the New Zealand Law Society or his or her nominee.
- 12.2.2 The mediation shall be conducted in terms of the LEADR New Zealand Inc. Standard Mediation Agreement.
- 12.2.3 The costs of the mediator shall be borne equally by the parties.
- 12.3 **Other remedies** - A party to a dispute will only be entitled to pursue other remedies available to it at law or otherwise if the parties have failed to resolve the dispute within 20 Business Days after commencement of the mediation.
- 12.4 **Interlocutory relief** - Nothing in this clause 12 will prevent either party, at any time, from seeking any urgent interlocutory relief from a court of competent jurisdiction in relation to any matter that arises under this Agreement.
- 13 Notices**
- 13.1 **Notice requirements** - Any notice or other communication to be given under this Agreement must be in writing addressed to the recipient at the address or email address from time to time notified by that party in writing to each other party. Until a change is so notified, the addresses and email addresses of each party are set out on the front page of this Agreement.
- 14 General**
- 14.1 **Independent contractor** - OneAir agrees to perform the Services as an independent contractor and nothing in this Agreement will constitute any relationship of employer and employee, principal and agent, partnership or joint venture between the parties.
- 14.2 **Amendments** - Any amendments to this Agreement must be in writing and signed by the parties.
- 14.3 **Subcontracting** - OneAir may subcontract the performance of all or part of the Services to any other person without obtaining the Customer's prior written approval.
- 14.4 **Assignment** - OneAir may assign, transfer, sub-contract or otherwise dispose of any of its rights or interests in, or any of its obligations or liabilities under, or in connection with, this Agreement without obtaining the prior written approval of the Customer.
- 14.5 **Counterparts** - This Agreement may be executed in any number of counterparts (including PDF counterparts), each of which when so executed and delivered shall be deemed to be an original. All executed counterparts will be taken together to constitute one agreement.
- 14.6 **Entire agreement** - This Agreement constitutes the entire agreement between the parties relating to provision of the Services and replaces all earlier negotiations, representations, understandings and agreements between the parties relating to the provision of the Services.
- 14.7 **Governing law** - This Agreement is governed by and construed in accordance with New Zealand law. The parties submit to the exclusive jurisdiction of the courts of New Zealand in relation to all disputes arising out of or in connection with this Agreement.

SCHEDULE 2

Exclusions

Section 1 - Excluded Damage

- PVC feet, pair coil insulation, plastic trunking, isolators and refrigerant gas.
- Scratches and visual damage to chassis.
- Damage caused by poor installation procedures or poor quality parts.
- Corrosion damage in coastal or sulphur-exposed areas.
- Damage caused by impact or atmospheric conditions, rodents or insects.
- Perishable parts (including rubber and plastic).
- Damage caused by a power surge or lightning.
- Damage caused by ionising radiation, contamination by radioactivity or a Force Majeure Event.
- Consequential damage or loss sustained as a result of the failure of the Equipment.
- Damage caused by any negligent or deliberate acts or omissions of the Customer or any contractors or agents engaged by them.

Section 2 - Excluded Equipment

- Equipment which is older than ten years.
- Equipment in respect of which a third party warranty applies.
- Kelvinator, Rinnai, LG and other brands with limited or no spare parts availability in New Zealand.
- Equipment which OneAir determines to be too small or large for the size of the room in which the Equipment is located.
- Equipment which is not located in a residential home.
- Equipment which has been used by the Customer or any other person otherwise than in accordance with its operating instructions.
- Equipment which is installed in coastal or sulphur-exposed areas or areas with large amounts of airborne dust due to nearby earthworks.
- Equipment which is used for cool room or computer server applications.
- Equipment which is installed in inaccessible areas (such as sealed bulkheads) or areas with insufficient airflows.
- Equipment which was not installed in accordance with the Equipment's instructions.
- Equipment which does not have a current electrical certificate of compliance.
- Equipment which is used in connection with the provision of high turnover accommodation (including AirBnb).

- Equipment which has been damaged by water.
- Equipment with previous compressor damage/replacement or where gas top ups were required.
- Equipment which has been modified by any person other than OneAir (including through the use of Zone Control systems and cages around condensers which obstruct airflow).
- Equipment which has been repaired by any person other than OneAir.
- Equipment which has not been serviced prior to the expiry of each Year.