

TERMS AND CONDITIONS FOR BLUE MOON LIFECYCLE AND CUSTOMER SATISFACTION SERVICE AGREEMENTS

1. Activation. This Service Agreement will become effective only when first signed by the Customer and then accepted and countersigned by a duly authorized corporate officer of KMHA. KMHA agrees to furnish and Customer agrees to accept and pay for maintenance services on the hardware and software listed in this Service Agreement (collectively, the “System”).

2. Invoices, Payment and Taxes. KMHA shall render an invoice to Customer for the specific service plan purchased by Customer. Typographical errors are subject to correction by KMHA. Unless credit terms are agreed upon in writing by KMHA, payment for the Service Agreement is due upon activation. Payments by approved credit customers shall be due in full within thirty (30) days of the relevant invoice. Past due balances shall be subject to a 1.5% per month (18% per year) service charge, or the highest rate permitted by applicable law, if less. If Customer breaches the terms of this Service Agreement, KMHA shall be entitled to the reasonable costs (including attorney’s fees) incurred in enforcing the agreement. All payments shall be exclusive of all taxes and duties, including without limitation sales, use, value and other taxes, duties or levies on transactions made pursuant to this Service Agreement. Customer shall pay KMHA an amount equal to any tax or duty KMHA is required to collect or pay upon the delivery of services to Customer, exclusive of KMHA’s income taxes. If a certificate of exemption or similar document is required to exempt Customer from sales or use tax liability, Customer shall obtain and furnish to KMHA evidence of such exemption prior to activation in a form reasonably satisfactory to KMHA.

3. Service Continuity. If the warranty on any component of the System has not been under a Service Agreement continuously since the expiration of the warranty, it may be necessary to inspect and refurbish the System as and to the extent necessary prior to implementing this Service Agreement. Such inspection and refurbishing will be billed to Customer by KMHA at KMHA prices then in effect.

4. Full Maintenance & Repair Service. During the term of the Service Agreement, KMHA agrees to provide to Customer, subject to the specific service plan purchased by Customer, the following:

a. Remedial maintenance during coverage hours when KMHA is notified that the System is not functional. KMHA shall, at its option, either replace or repair the affected component(s). If deemed necessary by KMHA, and in its sole discretion, the affected component(s) will be forwarded to an authorized KMHA repair facility for repair. Normal shipping charges will be included in the cost of the service plan; premium shipping charges, if requested by the customer, will be billed to Customer. KMHA agrees to use only manufacturer-authorized replacement components.

b. Programmed maintenance based upon the specific needs of individual components of the System, as determined by KMHA.

c. All labor, service parts and equipment modifications that KMHA deems necessary to maintain the System in good working order.

d. Installation of engineering changes or retrofits determined applicable by KMHA with regard to product performance and safety.

e. Subject to the specific service plan purchased by Customer, among those services NOT INCLUDED in this Service Agreement are:

- (1) Services required for instructing Customer in the operation of the System;
- (2) Adding or removing accessories, attachments or other components to or from the System;
- (3) Services relating to moving or relocating any component of the System;
- (4) Problems caused by improper operation, accident, vandalism, negligence, abuse or misuse of any System component, electrical failure, network failure or any other external source;

- (5) Any increase in service time resulting from operator neglect or failure to follow operating instructions;
- (6) Repair or damage from any cause other than ordinary use of the System;
- (7) Replacement of consumable items or normal wear items; and
- (8) Engineering changes/product upgrades which provide additional or enhanced capabilities to the System not covered by this Service Agreement.

Subject to the specific service plan purchased by Customer, any services provided by KMHA that are not covered by this Service Agreement will be charged to Customer in accordance with KMHA prices then in effect. The on-site services set forth in this Service Agreement will apply only to Customer's commercial facilities and not to home offices or other non-commercial locations.

5.Replacements. KMHA will use ordinary care in performing its obligations under this Service Agreement, but in no event will KMHA be liable for any failure to discover any conditions necessitating repair or replacements, nor will any inspection made by KMHA be construed as an approval or guarantee of the condition of the System, nor should the maintenance contemplated by this Service Agreement be regarded as a guarantee against obsolescence or ordinary wear and tear.

6.Obsolete Components. If any component of the System should become obsolete, become not repairable in the ordinary course, or require replacement parts that are no longer obtainable through normal commercial channels, then KMHA will so advise Customer. At that time and at the request of the customer, the customer may choose to cancel any remaining term on their service agreement without penalty. If KMHA agrees to remove, dispose of, or replace that portion of the System, KMHA may bill Customer on a separate invoice on a time and materials basis, at KMHA's then prevailing rates. Unless Customer removes or replaces obsolete or irreparable systems or parts, KMHA will not have any obligation to provide maintenance services for those components under this Service Agreement.

7. Service Hours. Other than technical phone support, which is available 24 hours per day 7 days per week, and subject to the specific Blue Moon service plan purchased by Customer, normal service hours will be 8:30 a.m. to 5:00 p.m. (local time), Monday through Friday, excluding holidays.

8.Response Times. During the term of this Service Agreement, KMHA shall use commercially reasonable efforts to respond by telephone to requests for maintenance services under this Service Agreement within one (1) normal service hour of the time each such request is received by KMHA.

9.Performance. KMHA shall not be liable in any way for delays due to acts of God, labor disputes, failures of materials or facilities, curtailment of or failure to obtain sufficient electrical or other energy supply, compliance with any laws, regulations, or orders, whether valid or invalid, from any governmental body or instrumentality, or any other circumstance or causes beyond KMHA's reasonable control.

10. Customer's Terms and Conditions. Services furnished by KMHA are sold based upon the terms and conditions set forth herein as well as the specific service plan purchased by Customer, notwithstanding any terms and conditions that may be set forth in or contained on Customer's purchase order, invoice or any other document provided or issued by Customer.

11. Damages and Liability. KMHA'S AGGREGATE LIABILITY TO CUSTOMER IN DAMAGES OR OTHERWISE SHALL NOT EXCEED THE TOTAL OF ALL PAYMENTS, IF ANY, RECEIVED BY KMHA FOR THE SERVICE(S) FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, WHICH IS THE SUBJECT OF THE CLAIM OR DISPUTE. IN NO EVENT SHALL KMHA BE LIABLE FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR SPECIAL LOSSES OR DAMAGES OF ANY KIND WHATSOEVER, HOWSOEVER CAUSED. No action, regardless of form, arising out of, or in any way connected with the services furnished by KMHA may be brought by Customer more than one (1) year after the date on which the cause of action accrued.

12. Confidentiality. Each of Customer and KMHA agree not to disclose to any third party any proprietary information disclosed to it by the other party without the prior consent of the party whose information is being disclosed. Customer shall limit access to the proprietary information of KMHA to those persons having a need to know such information in order to exercise Customer's rights under this Service Agreement. A party's proprietary information shall not include information that (1) is or becomes publicly available through no act or omission of the other party; (2) was in the other party's lawful possession prior to the disclosure; (3) is lawfully and rightfully disclosed to the other party by a third party without restriction on use or disclosure; or (4) is independently developed by the other party.

13. HIPAA

KMHA and Customer shall enter into a separate Business Associate Agreement which shall govern their relationship as it pertains to compliance with HIPAA and its implementing regulations.

14. Termination. Customer may terminate this Service Agreement without cause upon sixty (60) days written notice to KMHA. However, should Customer terminate without cause (for convenience), any discounts provided and accepted by Customer prior to the date of termination shall be rendered null and void and the difference between the discounted prices/costs and the prices/costs normally charged for such services or replacement products/parts by KMHA shall be due and payable by Customer to KMHA within ten (10) business days of Customer's receipt of the KMHA invoice detailing the same. This additional fee is to compensate KMHA for the revenue it has failed to fully realize to offset the discounts and other inducements provided to Customer to perform this Agreement for its full Term. If Customer has prepaid, this fee will be deducted from any unused fees, and any balance (with an accounting) refunded to Customer by KMHA.

15. Warranty and Limitations of Warranty. Customer's EXCLUSIVE REMEDY and KMHA's SOLE OBLIGATION with respect to Services is to perform the Services again. KMHA warrants that all Services provided hereunder shall be performed in a professional manner. KMHA's sole obligation under this provision shall be limited to using commercially reasonable efforts to perform such Services correctly.

16. Exclusions from Coverage. This Service Agreement does not cover service calls attributable to actions taken by or subject to the control of Customer or other operator, including, but not limited to, the following:

- a. Missing or damaged code seals;
- b. Modifications, changes or alterations to the System (including the installation of any software) by anyone other than KMHA, unless authorized by KMHA in writing;
- c. Failure to operate the then current version of the software included in the System;
- d. Installation of the computer hardware used in the operation of the System in an unsuitable operating environment;
- e. Failure of the computer hardware and hardware configuration used in the operation of the System to meet manufacturer's recommended specifications.

17. Back-up Data. Customer shall be required to maintain adequate back-ups of all data used in connection with the System in order to ensure continued data security and retention. IN NO EVENT SHALL KMHA BE OBLIGATED TO RECREATE OR RESTORE, OR BE LIABLE IN ANY WAY FOR, CUSTOMER DATA IN THE EVENT OF CUSTOMER'S FAILURE TO MAINTAIN ADEQUATE BACK-UP OF ALL DATA.

18. Additional Customer Responsibilities. Customer shall be responsible for all normal System administration duties, including but not limited to adding/removing users, changing/assigning passwords, and all matters relating to the security of the System and the information contained therein. Customer shall also be responsible for: cleaning and following operating instructions; making the System immediately available for service when requested or paying the standard rates for waiting time or canceled calls; providing consumables necessary for the service(s) performed; providing KMHA with full and safe access to the System; and implementing recommended engineering changes.

19. CUSTOMER UNDERSTANDS AND AGREES THAT KMHA IS NOT AN INSURER AND THAT THE MAINTENANCE SERVICES TO BE PROVIDED BY KMHA UNDER THIS AGREEMENT ARE DESIGNED TO REDUCE, BUT NOT ELIMINATE CERTAIN RISKS OF LOSS. IN NO EVENT WILL KMHA BE LIABLE FOR ANY LOSS OR DAMAGE WHICH MAY OCCUR AS A RESULT OF THE OPERATION OR NON-OPERATION OF THE SYSTEM, OR FROM ANY DELAY BY KMHA IN PROVIDING SERVICES UNDER THIS SERVICE AGREEMENT, OTHER THAN CLAIMS FOR LOSS OR DAMAGE CAUSED DIRECTLY AND SOLELY BY THE NEGLIGENCE OF AN EMPLOYEE, CONTRACTOR OR SUBCONTRACTOR OF KMHA WHILE ON CUSTOMER'S FACILITIES; PROVIDED, HOWEVER, THAT KMHA'S LIABILITY UNDER THIS EXCEPTION WILL BE LIMITED AS SET FORTH HEREIN.

20. Additional System Components. This Service Agreement applies to the System and all hardware and software components thereof (if any) existing at the time this Service Agreement is initiated. If additions or upgrades are made to the System, whether hardware or software, KMHA reserves the right to adjust the price payable hereunder accordingly.

21. Miscellaneous

a. **Severability.** If any part, provision, or clause of this Service Agreement, or the application thereof to any person or circumstance, is held invalid, void or unenforceable, such holding shall not affect and shall leave valid all other parts, provisions, clauses or applications of the terms and conditions remaining, and to this end the terms and conditions contained herein shall be treated as severable.

b. **Notices.** Legal notices and communications given by Customer and KMHA to one another regarding this Service Agreement shall be given in writing and delivered via return receipt mail or express delivery service to the parties' respective business addresses or to such other address as the parties may substitute by giving notice to one another in accordance with this provision.

c. **Amendments.** No modification or amendment to this Service Agreement or to these terms and conditions or any waiver thereof will be valid unless in writing and signed by Customer and an authorized representative of KMHA setting forth the modification or amendment hereto.

d. **Governing Law.** This Service Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey.

e. **Arbitration.** In the event the parties are unable to resolve any controversy, dispute or claim arising out of or relating to this Service Agreement, the parties agree to first discuss the dispute informally. In the event that such discussion is not successful in resolving the dispute, then either party shall submit such dispute to binding arbitration in Wayne, New Jersey, before a single arbitrator, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitrator shall be required to produce a written opinion setting forth the reasons for the decision or award made. There shall be no appeal therefrom other than for bias, fraud or misconduct. Judgment upon any decision or award may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, claims for equitable or injunctive relief, although subject to mediation as provided herein, shall not be subject to arbitration.