

Star Service Program Terms and Conditions

Commencing on the effective date designated on the front of this agreement (this "**Agreement**") BK Medical Holding Company, Inc. ("BK Medical") agrees to provide extended service to the customer (the "**Customer**") indicated on the face hereof based upon the class of service indicated on the face hereof (the "**Class of Service**") for the period of years indicated on the face hereof (the "**Term**") respecting those items of BK Medical equipment designated on the face hereof (the "**Equipment**"), subject to the terms and conditions set forth below:

1. **Class of Service:** The Customer may elect either of the two classes of Star Service designated 4 Star Gold or 5 Star Platinum. A description of each Class of Service is explained in the attached flyer. By signing this Agreement, the Customer acknowledges that it has read, understood and hereby agrees to the specifics of the Class of Service that it has elected.
2. **Maintenance and/or Repairs:** If the Customer has contracted for a Class of Service which obligates BK Medical to provide maintenance and/or repairs to the Equipment, all such maintenance and/or repairs will be performed by BK Medical personnel during normal working hours, Monday through Friday, 8:00AM - 5:00 PM, excluding BK Medical holidays. Maintenance and/or repairs requested by Customer at any other time will be subject to the imposition of fees at BK Medical's normal rates in force at the time of such work.
3. **Replacement Parts:** If BK Medical is obligated under the selected Class of Service to provide replacement parts at BK Medical's cost, replaced parts will become the property of BK Medical.
4. **Place of Service:** If Customer is entitled to on-site service under the Class of Service elected, Customer will be responsible for providing access to the Equipment in a location where BK Medical personnel can provide service without interruption. If such access is not provided at a scheduled service visit, Customer will be responsible for waiting time charges for BK Medical's personnel until such access is provided. Before any Equipment is serviced or repaired, Customer is responsible for backing up, removing and protecting, as applicable, all programs, data, and removable storage media contained in the Equipment, and Customer is responsible for restoring same after the service or repair is completed.
5. **Payment:** Customer agrees to pay within thirty (30) days of invoice the total amount due to BK Medical indicated on the face of this Agreement, including all applicable Federal, State and local taxes. In addition, Customer agrees to pay within thirty (30) days of invoice all BK Medical charges for service, maintenance and/or repair service and/or replacement parts due from Customer.
6. **Exclusions:** BK Medical will have no obligation to provide maintenance or repair service or replacement parts for any Equipment where the need for such service, repair and/or parts arises from: (i) any intentional acts or negligence of Customer, its employees, agents, servants or invitees, or (ii) any attempt to repair or service the Equipment by anyone not authorized by BK to render such service or repair, or (iii) any use of attachments or devices in connection with the Equipment not approved by BK Medical, or (iv) any misuse of the Equipment including, without limitation, use of the Equipment for any application or function for which it was not designed, or (v) any electric current surge or other electrical problem external to the Equipment, or (vi) any relocation or transportation of the Equipment not carried out by BK Medical personnel, or (vii) any damage to the Equipment caused by accident, or (viii) any Excusing Event (as defined in paragraph 7 of these Terms and Conditions).
7. **Excused Performance:** BK Medical will not be liable for any failure to perform or delay in performing any of its obligations under this Agreement if such performance is prevented, hindered or delayed by reason of any cause(s) beyond the reasonable control of BK Medical ("Excusing Event"), including, without limitation, labor disputes, strikes or other industrial disturbances, acts of God, floods, shortage of materials, act of war, riot, insurrection, embargo, or the actions, restrictions, regulations or orders of any governmental authority.
8. **Additional Equipment:** This Agreement covers only the Equipment specified on the face hereof. Other BK Medical equipment may be covered by an extended service plan by separate agreement in writing executed by both parties.
9. **LIMITED WARRANTY AND DISCLAIMERS:** BK Medical warrants that it will provide the Service (and replacement parts, if applicable) for the class of service designated on the face of this Agreement, free from defects in material and workmanship at the time of service and/or replacement, as applicable. BK MEDICAL MAKES NO OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE WITH RESPECT TO ANY SERVICES OR PARTS PROVIDED PURSUANT TO THIS AGREEMENT.
10. **REMEDY: LIMITATION OF LIABILITY:** In the event of BK Medical's breach of any warranty or other obligation under this Agreement, BK Medical's sole obligation will be to promptly make all necessary adjustments, repairs and/or replacements necessary to cure such breach. BK Medical will have no liability for damages under this Agreement in connection with any nonfunction or malfunction of Equipment, except as otherwise set forth herein. BK Medical's maximum liability for damages will in no event exceed the annual fee received by BK under the Agreement relating to the specific Equipment that gives rise to the breach or damage. BK Medical will not be liable for any damages based on any third party claim. BK MEDICAL WILL IN NO EVENT BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF THE EQUIPMENT, LOSS OF DATA OR LOSS OF PROFITS. With respect to Five Star Extended Service only, should any item of Equipment fail to meet BK's 98% uptime guaranty, for each full percentage point below 98%, this Agreement will be extended for that item of Equipment for one full month (but in no event to exceed a total of 12 months) beyond the contract expiration date indicated on the face hereof. For purposes hereof, "Uptime" refers to total operating time of 24 hours per day, 365 days per year and "Downtime" refers to the period between the service call from Customer reporting that a piece of Equipment fails to meet factory specifications and the time that such Equipment is restored to factory specifications, applied to the following formula: $\% \text{ Up-Time} = (\text{Up-Time} - \text{Down-Time} \times 100\%) / \text{Up-Time}$
11. **Equipment Location; Resale:** Equipment will be maintained by Customer at its address indicated on the face of this Agreement, unless otherwise agreed in writing by BK Medical. Customer will notify BK Medical of any sale or other transfer of any item of Equipment, and BK Medical will then have the option, in its sole discretion, to cancel this Agreement with regard to the transferred Equipment.
12. **Termination:** This Agreement may be terminated: a) by mutual written consent of the parties; b) by either party in the event of a default by the other party which remains uncured for thirty (30) days after notice of default has been given to the defaulting party; c) by BK Medical giving ninety (90) days prior written notice to Customer; d) by Customer giving written notice to BK Medical at least ninety (90) days prior to any anniversary date of the Agreement requesting a termination of the Agreement effective upon such anniversary date. (In such event the service charges under the Agreement will be retroactively adjusted by BK Medical to reflect the shorter Term of the Agreement, and Customer will be obligated to pay the full adjusted balance on or before the anniversary date of the Agreement as a condition to early termination).
13. **Miscellaneous:**
 - 13.1 **Assignment:** Customer's rights and obligations under this Agreement shall not be assignable in whole or in part, by operation of law or otherwise, without the prior written consent of BK Medical. BK Medical may assign this Agreement to an affiliate or in connection with the sale of, or transaction involving, all or substantially all of the assets of the business to which this Agreement pertains without consent.
 - 13.2 **Waiver:** Any forbearance, failure or delay by BK Medical in exercising any right, power or remedy hereunder shall not preclude the further exercise thereof, and every right power and remedy of BK Medical hereunder shall continue in full force and effect unless and until such right, power or remedy is specifically waived by an instrument in writing executed by BK Medical.
 - 13.3 **Written Agreement:** This Agreement supersedes any prior agreements, written or oral, between the parties, contains the entire understanding between the parties related to the subject matter hereof, and may be amended or altered only by execution of an instrument in writing signed by both parties.
 - 13.4 **Governing Law:** This Agreement will be governed by, and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflict of laws.
 - 13.5 **Arbitration:** Any claim, dispute or controversy arising out of, or in connection with, or relating to this Agreement will be resolved by arbitration under the Commercial Rules of the American Arbitration Association. The arbitration will be held in Boston, MA unless the parties shall otherwise agree. The arbitration award may be entered in any court having jurisdiction.
 - 13.6 **Unenforceable Provisions:** If any portion of this Agreement is determined by an arbitrator or court having jurisdiction to be invalid or unenforceable, the remainder will be valid and enforceable to the maximum extent possible.
 - 13.7 **Notices:** All notices, requests, demands and other communications relating to this Agreement shall be in writing and delivered to the addressee at the address indicated on the face hereof by overnight courier service or by certified mail, return receipt requested. Either party may change its address for notice by giving notice thereof to the other party in accordance with the terms of this paragraph.