

EKOS - SUPPORT AGREEMENT

CUSTOMER INTAKE INFORMATION

Customer Name (full legal name) _____

Customer DBA _____

Address _____

City / State / Zip _____

AUTHORIZED OFFICER

Full Name / Title _____

Email Address _____

Phone number _____


Sales Tax Exempt Status _____

Please indicate if you are exempt from sales tax. (Yes/No)

Accounts Payable Contact and Phone _____

Accounts Payable Email Address *receives EKOS invoices _____

Please select your EKOS Products and Services

	EKOS Support MENU	Quantity	Per Month Prices	Setup Fees (One-time)
SECTION A: Support Services				
<input type="checkbox"/>	EKOS/GSS Help Desk Support ❖ Includes Help Desk Support. ❖ Includes EKOS Service & Repair Support.		\$140 per site/controller	
	Total Monthly Amount		\$	
	Total Contract Amount <small>(Minimum Amount Billed Over Term)</small>	1 year	\$	

Customer Acknowledgement _____

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1. Support Agreement

1.1. This Support Agreement (the "Agreement") is entered into by and between EKOS, Inc., a corporation organized and existing under the laws of the State of North Carolina, and having its principal office and place of business at 1410 Commonwealth Drive, Suite 205, Wilmington, NC 28403 ("EKOS") and Customer listed on Page 1 and 2 of the Agreement. EKOS and Customer are referred to herein individually as "Party" or collectively as the "Parties".

2. Fees, Charges

2.1. **Support Fee.** Customer shall pay EKOS based on the Services selected on page 1 of the Agreement, at the listed price per month. Should Customer elect to access new Services offer by EKOS, Parties will agree on amended pricing.

3. Term and Termination

4.1 **Term.** This Support Agreement shall commence on the Effective Date of this Agreement. The Agreement shall be automatically renewed for additional terms of one (1) year each, unless either party gives written notice of termination to the other party thirty (30) days before the end of the current term.

4.2 **Termination.** This agreement will terminate automatically when Gasboy ends support for Fuel Head Office (FHO), This Agreement shall also terminate automatically without notice, in the event that either Party:

- a. fails to comply with the terms of this Agreement and such failure is not remedied within thirty (30) days of receipt of written notice from the other party;
- b. becomes insolvent;
- c. initiates any proceedings under bankruptcy, insolvency, reorganization or receivership law, or proceedings for liquidation;
- d. is made a defendant in any such bankruptcy, insolvency, reorganization, liquidation or receivership proceedings or is placed in liquidation or receivership and such liquidation, proceedings or receivership is continued for sixty (60) days;
- e. has any lien, petition or execution levied against the property and assets of that Party and such lien, petition or execution is not discharged within thirty (30) days;
- f. makes a general assignment of its assets for the benefit of creditors or is unable to meet its debts in the ordinary course of business;

Upon the occurrence of any event specified in subsections (a) through (f) of this Section, the first Party to have notice of the occurrence shall immediately, in writing, notify the other Party and shall identify both the type of occurrence and the date of occurrence.

4. Equipment, Service and Warranty

5.1 EKOS shall not be responsible for any replacement parts, fueling equipment or software products that are damaged due to Acts of God, Customer negligence or repairs and/or service provided by non-certified technicians.

5.2 **EKOS Service & Repair Support.** EKOS Service & Repair Support shall be effective as of the Effective Date as noted in the signature block below and shall continue for a period of this agreement as listed in section 4.1 of this agreement, including any automatic renewal terms as allowed in section 4.1 of this agreement, unless earlier terminated as provided in this Agreement. Termination may result from the failure of the Customer to comply with any of the conditions of this Agreement, or by mutual agreement of both parties.

During the Term of the Agreement, EKOS will provide the following services (the "Services") to Customer for EKOS Software and Gasboy-branded products ("Products") that Customer owns or has Support to:

Telephone Support for Product and Services - will be provided Monday through Friday 8AM to 8PM ET. All other times not stated are considered emergency after hours support only including but not limited to weekends and holidays. EKOS Helpdesk toll-free service number is (currently 800-444-5529). This toll-free number can be changed at EKOS's discretion.

Product Support – Issues not resolved by general help desk support will be escalated to Product Support specialists.

Software Corrections and Upgrades to the Products that Customer requires on an "as needed" basis.

Remote Diagnostics – EKOS Helpdesk can diagnose and resolve issues remotely in some cases.

EKOS Service & Repair Support – If a site visit is required, EKOS Service & Repair Support will provide ASC Contact Information at the Customer's request at no charge. Upon Customer's request, Dispatch services will be available on a time and material basis for each service call. Invoicing for Site repairs will be issued by EKOS to the customer at the time that the site dispatch related services are billed by the ASC to EKOS. Billings for Site repairs will include a mark-up added to the time and material invoice that is billed by the ASC to EKOS.

The Services do not include:

- On-site support.
- Any hardware, even if a software correction, software upgrade, or other enhancements or modifications require a hardware update.
- Support for questions not relating specifically to the Products, such as, but not limited to, non-Gasboy hardware, and PC operating systems.
- Software upgrade installation costs.

5. Entire Agreement; Modification

5.1. This Agreement sets forth the entire agreement and understanding between the parties as to the matters contained herein, and merges and supersedes all prior discussions, agreements and understandings of every kind between them as to the matters contained herein. No provision of this Agreement may be modified or amended unless such modification or amendment is agreed to in a writing signed by both of the parties hereto. Customer shall not assign its obligations hereunder without the prior written consent of EKOS.

6. Notices

6.1. Any notices required or permitted to be given under this Agreement shall be deemed sufficiently given if hand delivered or mailed by registered mail, postage prepaid, addressed to the party to be notified at its address shown at the beginning of this Agreement, or at such other address as may be furnished in writing to the notifying party.

7. Governing Law

7.1. This Agreement shall be interpreted in accordance with the laws of the State of North Carolina. For purposes of this Agreement, each party submits to the jurisdiction

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of the courts, both federal and state, in New Hanover County, North Carolina, and each party hereby agrees that all suits, actions and proceedings brought by any party hereunder may be brought in either federal or state court located in New Hanover County, North Carolina. Each party irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court, any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum and the right to object, with respect to any such suit, action, or proceeding brought in any such court, that such court does not have jurisdiction over such party or the other party.

8. Binding Effect; Authorized Signatory

- 8.1. This Agreement shall bind and inure to the benefit of the parties hereto and their successors and permitted assigns. The individual executing this Agreement on behalf of Customer is a duly authorized representative of Customer with full power and authority to execute and deliver this Agreement on behalf of Customer and to bind Customer to its obligations hereunder.

9. Amendment

- 9.1. A modification, amendment or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed by the parties to this Agreement.

10. Waiver

- 10.1. A modification, amendment or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed by the parties to this Agreement.

11. Severability

- 11.1. If, in the final judgment of a court of competent jurisdiction, any provision of this Agreement is held to be invalid, said provision shall be considered void to the extent of such invalidity only, without invalidating any of the remaining provisions of this Agreement.

12. Counterparts

- 12.1. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument. Any facsimile or emailed signature attached hereto will be deemed to be an original and will have the same force and effect as an original signature.

13. Disclaimer

- 13.1. Except for any warranty otherwise expressly provided for herein, EKOS provides their services, software, equipment and systems on an "AS IS" BASIS, WITHOUT ANY WARRANTY OF ANY KIND, WHETHER ORAL OR WRITTEN OR EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY EKOS AND EKOS. IN NO EVENT SHALL EKOS HAVE ANY LIABILITY TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, BUSINESS INTERRUPTION, OR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY. In addition, EKOS shall not be liable or held responsible for any delay or failure to perform or deliver all or any part of the services or products required to be performed or delivered hereunder as a direct or indirect result of any causes, contingencies or circumstances beyond EKOS's control or which make the fulfillment of this Agreement impracticable by EKOS.

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IN WITNESS HEREOF, the Parties have executed this Agreement under seal, or caused this Agreement to be executed by their duly authorized officers, effective as of the last date of signing below (the “Effective Date”).

Customer	EKOS, Inc.
By: <i>(Printed Name)</i>	By: <i>(Printed Name)</i>
Customer Signature:	Signature:
Title:	Title:
Date:	Date: