

**SERVICE AGREEMENT**

**THIS AGREEMENT** made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_,

BETWEEN

**[Resident's Name]**

**[Resident's address]**

Niagara On The Lake, ON [postal code]

**(“Resident”)**

- and -

**KIMBEL DONAYRE PLUMBING**

7793 Donlee Drive

Niagara Falls, ON L2H 2N4

**(“Service Provider”)**

**(Resident and Service Provider together “the Parties”)**

**WHEREAS** the Service Provider offers a Residential Grinder Pump Service Plan (the “Service Plan”) in which it services residential grinder pumps as more specifically outlined in Schedule “A” (the “Services”);

**AND WHEREAS** the Resident wishes to retain those Services by enrolling in the Service Provider’s Residential Grinder Pump Service Plan;

**NOW THEREFORE** the Parties agree as follows:

**1 TERM**

- 1.1. The Agreement will commence upon the execution of this Service Agreement by both Parties, and continue until terminated in accordance with Section 4 herein (the “Term”).

**2 COVENANTS OF THE SERVICE PROVIDER**

- 2.1 The Service Provider will provide to the Resident the services set out in Schedule “A” hereto (the “Services”), in accordance with the terms and subject to the conditions contained herein.

- 2.2 The Service Provider will perform the Services in a timely, workmanlike and professional manner in accordance with industry standards for such Services.

### **3 FEE FOR SERVICES**

- 3.1 Upon enrolling in the Service Plan, the Resident will pay the following fees for the Services provided by the Service Provider:
- a. The sum of forty-five dollars (\$45.00) plus Harmonized Sales Tax (“HST”) thereon, per month, commencing on [insert date], for enrollment in the Service Plan for [Resident’s address] (the “Monthly Service Fee”);
  - b. The cost of any additional part or repair costs, plus HST thereon, required to provide Services for a residential grinder pump requiring Services due to improper installation by a third party, improper service by a third party, or operation under abnormal conditions and/or not in accordance with the manufacturer’s directions (“Additional Fees”), as contemplated by Schedule “A” hereto; and
  - c. The sum of one hundred dollars (\$100.00), plus HST thereon, per service call for Services provided outside the hours of 8:00 am to 5:00 pm Monday to Friday (“Regular Business Hours”) in accordance with the Resident’s request (“After-Hours Service Fee”).
- 3.2 The Service Provider will provide the Resident with an invoice for Monthly Service Fees, and any Additional Fees or After-Hours Service Fees owing for the prior month and provide said invoice to the Resident on the first (1<sup>st</sup>) day of each month within the Term
- 3.3 The Resident will pay the Service Provider for all invoiced amounts within thirty (30) days of the Service Provider issuing an invoice via [set out methods of payment].

### **4 TERMINATION OF CONTRACT**

- 4.1 The Resident may terminate this Agreement upon providing the Service Provider with thirty (30) days’ written notice or compensation in lieu thereof.

4.2 The Service Provider may terminate this agreement upon providing the Resident with thirty (30) days' written notice.

4.3 Upon termination of this Agreement by either party, the Resident shall pay any and all amounts due to the Service Provider in full prior to the effective date of termination.

## **5 ENTIRE AGREEMENT**

5.1 This Agreement constitutes the entire agreement between the parties with respect to the Services to be provided by the Service Provider under the Service Plan. There are no representations, warranties, forms, conditions, undertakings or collateral agreements, express, implied or statutory between the parties other than as expressly set forth in this Agreement.

## **6 AMENDMENT AND WAIVER**

6.1 No amendment to this Agreement will be valid or binding unless set out in writing and executed by the Parties.

## **7 ASSIGNABILITY**

7.1 The Parties cannot assign their rights or obligations under this Agreement without the prior written consent of the other Party hereto.

## **8 SEVERABILITY**

8.1 If any provision of this Agreement is determined invalid or unenforceable, in whole or in part, the remaining provisions or part of said provision will continue in full force and effect.

## **9 FORCE MAJEURE**

9.1 The Service Provider will not be liable or responsible to the Resident, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent that such failure or delay is caused by or results from acts beyond the impacted party's control, including, without limitation, the following force majeure events:

- a. acts of God;

- b. flood, fire, earthquake, tsunami, epidemics, pandemics, or explosion;
- c. war, invasion, hostilities, terrorist threats or acts, riot, or other civil unrest;
- d. government order or law;
- e. actions, embargoes, or blockades in effect on or after the date of this Agreement;
- f. action by any governmental authority;
- g. national or regional emergency;
- h. strikes, labour stoppages or slowdowns, or other industrial disturbances;
- i. telecommunication breakdowns, power outages or shortages, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable material; and
- j. other similar events.

## **10 NOTICES**

- 10.1 Any demand, notice or other communication (hereinafter referred to as a “Communication”) to be given in connection with this Agreement will be given in writing and may only be given by electronic mail or regular mail addressed to the recipient at the addresses set out in the preamble to this agreement. Any Communication given by electronic mail will be deemed delivered on the day of actual delivery, and any Communication given by regular mail will be deemed delivered four (4) business days following its deposit into the mail.

## **11 GOVERNING LAW**

- 11.1 This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

## **12 COUNTERPARTS**

- 12.1 This Agreement may be executed in several counterparts, including PDF copies, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same instrument.

## **13 ELECTRONIC COMMERCE ACT**

- 13.1 The Parties hereby consent to the delivery and acceptance of the documents and information contemplated by this Agreement being prepared, executed and delivered in accordance with and subject to the provisions of the *Electronic Commerce Act, 2000*, SO 2000, c 17 (Ontario).

IN WITNESS WHEREOF the parties have executed this Agreement as of the Effective Date.

[Name of Resident]

\_\_\_\_\_  
Resident, [address]

KIMBEL DONAYRE PLUMBING

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Service Provider  
Name: Kimbel Donayre

## **SCHEDULE “A”**

### **Description of Services**

The Resident will have the option to register their residence (“Registered Residence”) to receive Services under the Service Plan from the Service Provider.

The Service Provider will provide service to the Resident’s residential grinder pump as described herein and for the fees set out herein, in accordance with the reasonable direction provided by the Resident.

#### **Services Covered by Monthly Service Fee**

The following service will be provided and covered by the Monthly Service Fees paid by the Resident for their Registered Residence, during the Service Provider’s Regular Business Hours:

- Repair of closed valve or blocked discharge (indoor units);
- Discharge valve replacement (indoor units);
- Repair of inlet pipe installed too far into wet well (indoor units);
- Replacing damaged tray cable up to 20ft in length;
- Replacing the grinder pump with a new or refurbished one;
- Replacing the alarm panel;
- Diagnosing and repairing improperly wired grinder pump panels;
- Disposal of a failed grinder pump;
- Power turned off accidentally causing station to flood;
- Replacing batteries in the Remote Sentry;
- Removing debris stuck at the bottom of the pump;
- Replacing the alarm bulb; and,
- Replacing EQB.

#### **Services Not Covered by Monthly Service Fee and Subject to Additional Fees**

Where a Registered Residence requires service to its residential grinder pump due to improper installation, servicing or repairs by a third party, or operation under abnormal conditions and/or not in accordance with the manufacturer's direction, the above Services will not be covered by the Monthly Service Fee.

In such instances, the cost for all labour and parts required to repair the residential grinder pump will be charged to the Resident as Additional Fees.

The following are examples of services not covered by the Monthly Service Fee, which would be subject to Additional Fees:

- Improper burial depth of the grinder pit;
- Improper venting practices according to the Ontario Building Code;
- Incorrect height modification (too low into frost level or improper modification in which the tank is not watertight to tank lid);
- Valve deflection or damaged tanks caused by improper backfill, inadequate ballasting and compacting, or not plumbed correctly;
- Damage because of a defective power supply or improper electrical protection;
- Infiltration/debris in tank;
- Failure of product if used for other than its intended purpose;
- Act of God, freezing, fire, electrical storms, floods, etc.;
- Inlet pipe installed too far into wet well (outdoor units);
- Field changes made to units not to E/One recommendations (altered without company consent);
- Failure because of introduction of foreign materials (i.e. abnormal amount of grease, strong chemicals, flammable material, etc.);
- Problems because the tray cable runs longer than 100 feet (run dry, voltage drop, etc.);
- Improperly installed discharge line or damaged discharge line;
- Discharge valve replacement (outdoor unit);
- Splices in power cable not per E/One-approved kits; and,

- Such further and other damage or issues due to improper installation, servicing or repairs by a third party, or operation under abnormal conditions and/or not in accordance with the manufacturer's direction.

### **After-Hours Service Fee**

The Service Provider will provide the above Services during Regular Business Hours.

Where a Resident requires Services outside of Regular Business Hours, the Resident may request the same, and the After-Hours Service Fee will be charged for any Services provided outside of Regular Business Hours.