

FULL SERVICE MAINTENANCE AGREEMENT

THIS FULL SERVICE MAINTENANCE AGREEMENT (the "Agreement") is entered into this ____TH day of _____, 20__ (the "Effective Date") by and between POWER SYSTEMS & CONTROLS, INC., a Virginia corporation ("PS&C") and _____, a _____ ("Company").

RECITALS

WHEREAS, PS&C and Company desire to enter into this Agreement to set forth certain arrangements between the parties concerning PS&C's provision of maintenance services to Company on the terms and conditions set forth herein;

AGREEMENT

NOW THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** For the purposes of this Agreement, the following terms shall have the meanings set forth herein:

"Equipment" means any equipment utilized in the Company's UPS system ("System") that is supplied by PS&C as set forth and described on Schedule A attached hereto.

"Service Work" means the following:

- (a) Emergency – Any situation where power is not available to the **[critical load]** from the Equipment or the **[bypass]**.
- (b) Repair – Any situation where a **[unit]** bypasses with the system non-functional.
- (c) Remedial – Any situation where a unit is operational, but certain items including lights, meters, etc., are non-functional.
- (d) Preventive Maintenance - Regularly scheduled adjustments and replenishment to the **[system]**.

2. **Performance of Service Work.** Subject to the conditions and limitations set forth herein, PS&C agrees that it shall provide all Service Work set forth and described on Schedule B attached hereto necessary to maintain or repair the Equipment.
- (a) Service Work shall be provided to Company as follows:
- (i) Service Work defined as Emergency shall be provided by PS&C twenty-four (24) hours a day, seven (7) days a week. Furthermore, PS&C agrees to dispatch a service technician within four (4) hours after Company's call for such Emergency Service Work is received by PS&C, unless other arrangements are mutually agreed upon by the parties.
 - (ii) Service Work defined as Repair shall be provided by PS&C twenty-four (24) hours a day, seven (7) days a week. Furthermore, PS&C agrees to dispatch a service technician within four (4) hours after Company's call for such Repair Service Work is received by PS&C, unless other arrangements are mutually agreed upon by the parties.
 - (iii) Service Work defined as Remedial or Preventive Maintenance shall be scheduled during normal working hours (between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding PS&C holidays) within one (1) month in advance of the date such Service Work is required to be performed pursuant to the terms of this Agreement.
- (b) With respect to any Service Work defined as Emergency, Company shall have priority over PS&C customers that are not covered by a Full Service Maintenance Agreements.
- (c) Company agrees to purchase and maintain a complete spare parts kit (the "Kit") **[as set forth and described in Schedule D attached hereto]**. Payment shall be made upon Company's receipt of the Kit. Thereafter, if PS&C utilizes any parts from the Kit during the performance of any Service Work hereunder, PS&C will replace such parts at no charge to Company.
- (c) During the performance of any Service Work, Company shall provide PS&C with complete access to the Equipment. If Company refuses to permit PS&C to perform the Service Work, or if Company alters or removes any **[changes]** deemed necessary by PS&C, PS&C may discontinue any or all Service Work hereunder (in
- (d) addition to the exercise of any other remedies) until Company permits PS&C to perform the Service Work or restores the changes deemed necessary by PS&C.

- (e) If any Service Work is required as a result of (i) the negligent wrongful acts or omissions of Company, its agents or employees, (ii) improper use of the Equipment, (iii) any failure by Company to comply with its obligations hereunder, (iv) Company's operation of the Equipment outside of any design limits as set forth in the Installation, Operation and Maintenance Manual (the "Manual") or (v) vandalism or burglary, such Service Work will be performed at Company's expense at PS&C's prevailing rates including any overtime charges.

3. Operation of Equipment.

- (a) Company agrees to designate at least one (1) representative in its employ to receive instructions from PS&C in the operation of the Equipment. Company agrees that the representative shall have the authority to carry out recommendations received from PS&C regarding the normal operation of the Equipment.
- (b) Company acknowledges that it has received a copy of the Manual and agrees to operate the Equipment in accordance with PS&C's instructions and specifications as set forth therein. Company shall notify PS&C promptly in writing of any change in the **[normal operating conditions.]**
- (c) Company agrees that the Equipment shall be operated in an environment with adequate ventilation and free from dust, dampness and vibration. Furthermore, Company agrees not to operate the Equipment beyond its rated capacity as set forth on the Equipment serial tag and in the Manual.
- (d) Company agrees to employ only PS&C or persons authorized by PS&C to perform all work on the Equipment. Company's personnel may be authorized to service, operate and maintain the Equipment, subject to review of their qualifications, training and approval by PS&C.
- (e) Company agrees that any additional equipment recommended or required by insurance companies, or by federal, state, or municipal authorities shall be obtained and installed at Company's expense and shall not be covered by this Agreement. In addition, labor costs from any source other than PS&C shall not be covered pursuant to this Agreement.

4. Term and Termination. The term of this Agreement shall be for a period of one (1) year from the Effective Date. PS&C may, however, terminate this Agreement at any time without cause upon at least thirty (30) days prior written notice to Company. In the event the Agreement is terminated by PS&C, any Service Fee shall be returned to Company on a pro rata basis. At the option of the parties, this Agreement may be renewed for additional one (1) year terms pursuant to the same terms and conditions hereof. The rates as set forth on Schedule C attached hereto may be modified during any term of the Agreement in order to reflect increased

labor, transportation, and material costs, however the Service Fee set forth in the Agreement may only be modified upon the renewal of the Agreement.

5. Compensation for Services; Payment.

- (a) In consideration for the Service Work to be provided hereunder, Company agrees to pay PS&C a fee of _____ dollars (\$_____) per year (the "Service Fee"). Any applicable sales tax shall not be included and shall be in addition to the Service Fee.
- (b) Company may make payment of the Service Fee as follows:
 - (i) Full payment within twenty (20) days from the Effective Date; or
 - (ii) Company may pay in quarterly installments. Each such installment shall be due in advance before the tenth (10th) day of the month of each new quarter beginning in the first quarter following the Effective Date.

6. Warranties. Except as expressly provided herein, PS&C provides no warranty, express or implied, as to description, quality, merchantability, fitness for a particular purpose, or any other matter, of the Service Work which PS&C shall supply.

7. Non-compete. During the term of this Agreement and until one (1) year after termination or expiration of this Agreement, neither party shall, directly or indirectly, except with the written consent of the other party, induce, or attempt to induce, any person who is a employee of the other at the time of such inducement to accept employment with such party or any affiliate of such party. Nothing herein shall prevent either party from inducing or attempting to induce any person who was formerly an employee of the other at the time of such inducement to accept employment with such party or an affiliate of such party; provided, however, that neither party shall induce or attempt to induce any such former employee to breach any duty owed to the other party.

8. Status as Independent Contractor. The parties intend that PS&C is an independent contractor and shall have control of its employees in the performance of the Service Work. Nothing in this Agreement shall be construed as creating any type of agency relationship including, without limitation, that of employer and employee between Company and PS&C or any employee of PS&C.

9. Indemnification; Damages.

- (a) PS&C hereby covenants and agrees to indemnify Company, its shareholders, directors, officers, agents and employees (collectively, "Company Indemnified Parties"), and to hold each of them harmless from

and against any and all claims, losses, damages, penalties, fines, costs and expenses (including, without limitation, reasonable attorneys' fees) made or assessed against, or incurred by, Company Indemnified Parties, which relate to or arise out of (i) any breach by PS&C of any of its covenants or agreements hereunder; and (ii) any event or occurrence arising out of the conduct of, or the performance hereunder by, PS&C's employees in rendering any Service Work hereunder; provided that PS&C shall not be obligated to indemnify any Company Indemnified Party to the extent that such claim, loss, damage, penalty, fine, cost or expense is caused by, or arises out of, the negligence or intentional misconduct of any Company Indemnified Party.

- (b) Company hereby covenants and agrees to indemnify PS&C, its shareholders, directors, officers, agents and employees (collectively, the "PS&C Indemnified Parties"), and to hold each of them harmless from and against any and all claims, losses, damages, penalties, fines, costs and expenses (including, without limitation, reasonable attorneys' fees) made or assessed against, or incurred by, PS&C Indemnified Parties, which relate to or arise out of (i) any breach by Company of any of its covenants or agreements hereunder; and (ii) any event or occurrence arising out the relationship created hereby; provided that Company shall not be obligated to indemnify any PS&C Indemnified Party to the extent that such claim, loss, damage, penalty, fine, cost or expense is caused by, or arises out of, the negligence or intentional misconduct of any PS&C Indemnified Party.
- (c) In no event shall either party be liable to the other for any indirect, special or consequential damages. Such indirect, special or consequential damages shall include, but not be limited to, loss of profits, loss of use of Equipment, or any investment costs of substitute facilities.
- (d) Unless agreed to in writing by the parties, any expenses owed by PS&C resulting from Equipment failure shall not exceed the amount of one year's Service Fee due under this Agreement.

10. **Force Majeure**. Except as otherwise provided in this Agreement, each party shall be excused from failure or delay in performance and shall not be considered in breach of this Agreement or be liable for any loss or damage suffered by the other (including, without limitation, any damages for lost profits) due to any failure or delay in performance caused by any act of God, fire, flood, war, embargo, governmental action, strikes or other labor difficulties or any other cause of like or different kind beyond the reasonable control of such party (other than difficulties caused by such party's own employees) (each a "Force Majeure Event"). Nevertheless, such party shall use its commercially reasonable efforts to mitigate the effect and to perform in spite of a Force Majeure Event and shall resume performance as soon as the cessation of difficulties permits. Upon its reasonable determination that a Force Majeure Event will materially affect its

performance hereunder, the party claiming such excuse or delay for nonperformance shall give prompt written notice thereof to the other party of the cause and commencement of such contingency, and likewise when such contingency terminates.

11. **Binding Effect.** This Agreement shall be binding upon the parties, their legal representatives, successors, and assigns.
12. **Entire Agreement.** This Agreement supersedes all agreements previously made between the parties relating to its subject matter. This Agreement may not be amended except by an instrument in writing signed by each of the parties hereto.
13. **Notices.** All notices or other documents under this Agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at their last known addresses.
14. **Severability.** The unenforceability, invalidity or illegality of any of the provisions of this Agreement will not render the other provisions unenforceable, invalid or illegal.
15. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.
16. **Counterparts.** This Agreement may be executed in any number of counterpart copies, all of which constitute one and the same agreement and each of which shall constitute an original.
17. **Assignment.** The parties shall not assign any rights or delegate any duties under this Agreement without the prior written consent of the other party hereto. Any unauthorized attempted assignment shall be null and void and of no force or effect.

POWER SYSTEMS & CONTROLS:

Name: _____
Karen H. Richardson

Title: Business Manager - Service

Date: _____

COMPANY:

Name: _____
(Type:) _____

Title: _____

Date: _____

SCHEDULE A

Equipment

SCHEDULE B

Service Work

Service Work shall include (i) all parts, labor, and reasonable travel and living expenses necessary to maintain the Equipment in good working order and (ii) two (2) Preventive Maintenance calls to be scheduled within one (1) month of the due date or a mutually agreed period but shall not include batteries or switchgear equipment. However, during the Preventive Maintenance calls, PS&C will inspect the batteries and report their condition to the Company.

Furthermore, during any Service Work defined as Remedial and Preventive Maintenance the following shall not be covered: (i) freight and rigging, (ii) failures caused by neglect, misuse, or abuse, (iii) mis-operation of the equipment, (iii) unsuitable environment, or (iv) failures arising from Acts of God (i.e. fire, flood, etc.).

SCHEDULE C

Rates

SCHEDULE A-S

STANDARD FIELD SERVICE RATE SCHEDULE
 (CONTRACTUAL CUSTOMERS)
 CONTINENTAL USA

A. **FIELD ENGINEERING AND REPAIR SERVICES**

Hourly Labor Rate	\$ 90.00
Standard Day (0-8 hours).....	720.00
Standard Overtime Hourly Rate (over 8)	135.00
Standard Weekend/Day	1,200.00
Weekend Overtime Rate.....	175.00
Holiday & Holiday Weekend/Day	1,440.00
Holiday & Holiday Weekend Overtime.....	205.00
Per Diem	35.00

B. **TRAVEL EXPENSES**

1. The Service Engineer's travel time will be invoiced in full day increments at the labor rate as defined in "A" above.
2. All travel accommodations will be invoiced at actual cost.
3. Company Vehicle Travel..... \$ 0.65/mile

NOTES:

Travel for service performed will be invoiced from the time of Service Engineer's departure from home location until the return to that location. The customer will be invoiced for all travel and expenses during the service trip.

1. A minimum of one standard day will be invoiced for all customer authorized service trips. The customer shall be liable for the minimum charge as soon as the Service Engineer has been dispatched from their home location.
2. Work time in excess of twelve (12) consecutive hours will not be allowed without prior agreement from the VP of Engineering/Service.
3. Work time in excess of sixteen (16) consecutive hours will not be permitted under any condition.
4. In the event of a customer requested delay after the Service Engineer has arrived on site, the customer will be invoiced for the labor and expenses as defined in "A" and "B" above.
5. All work performed between the hours of 12:00 midnight and 6:00 a.m. will be invoiced at the hourly rate as defined in "A" above.

EFFECTIVE: 03/01/99

SCHEDULE D

Spare Parts