

# UPS Service Requirements

**Major maintenance requires transferring of the UPS to bypass (the critical load will be unprotected and powered by utility). Maintenance bypass (external wrap) will be used if available. The UPS is designed to make these transitions without a loss of power to the critical load but, we cannot predict component or utility power failures.**

**PWRSS is not responsible for resetting manufacturer's battery timers when proprietary software resides.**

**PWRSS is not responsible for battery information provided by manufacturers – we recommend verifying battery part numbers by visual confirmation.**

**UPS UNIT SALES: Be advised that some equipment contains proprietary elements, specifically, but not limited to – Padlock Software. Your post-warranty service options may be limited.**

**Contract coverage does not include cap banks or transformers.**

POWER STORAGE SOLUTIONS will provide scheduled or remedial services (hereinafter referred to as service) in accordance with the manufacturer's specifications, as further defined in POWER STORAGE SOLUTIONS'S Proposal (Proposal) attached hereto. This Service Agreement is made and entered into by POWER STORAGE SOLUTIONS and Customer expressly subject to the standard commercial Terms and Conditions of POWER STORAGE SOLUTIONS all of which are incorporated by reference herein as if fully copied and set forth at length.

## A. SCHEDULED MAINTENANCE:

1. The Preventive Maintenance (PM) inspection requirements will be scheduled during the Agreement period. Unless otherwise agreed in applicable Proposal:
  - a. Minor inspection(s) (if applicable) will be scheduled at the convenience of POWER STORAGE SOLUTIONS and normally will not require a system shutdown.
  - b. The Major inspection will be scheduled at the convenience of the Customer and may require a full system shutdown.
2. If a PM cannot be scheduled within any annual term due to Customer delay, such PM will be forfeited no prorated PM value will be refunded.

## B. EMERGENCY MAINTENANCE:

1. POWER STORAGE SOLUTIONS will provide an emergency telephone number for notification by Customer of the need for emergency maintenance. For equipment covered by Remedial maintenance, POWER STORAGE SOLUTIONS will determine the extent of the emergency and will take the necessary corrective action. If repairs are to be charged at Time & Materials (T&M) rates (attached), such service must be approved by Customer prior to dispatch (Refer to Section D). Emergency maintenance is defined, for purposes of this Agreement, as the maintenance required to restore the equipment listed in attached quote to manufacturer's agreed specifications following an unexpected interruption in service of said equipment.
2. POWER STORAGE SOLUTIONS will make every reasonable effort to provide emergency maintenance as soon as possible and according to the response time schedule specified in the Proposal, subject to Customer acceptance and approval in case of T&M coverage. \*RESPONSE TIME IS DEFINED, FOR PURPOSES OF THIS AGREEMENT, AS THE TIME FROM RECEIPT OF AN EMERGENCY CALL BY POWER STORAGE SOLUTIONS, TO THE ARRIVAL OF AN ENGINEER ON SITE AT THE EQUIPMENT LOCATION.
3. POWER STORAGE SOLUTIONS will provide remedial maintenance for problems not immediately affecting system reliability on a 0700 to 1800 hours Monday through Friday basis.

## C. PARTS REPLACEMENT:

1. If Parts coverage is specified for equipment specified in the Proposal, REPLACEMENT OF CUSTOMER PARTS USED IN REPAIR OF SAID EQUIPMENT IS INCLUDED, with exception of Batteries (unless specifically included in the Proposal), major magnetics, and full AC or DC capacitor replacement. If any equipment covered by a Full Service program is no longer supported by its original equipment manufacturer, it is agreed that parts replacement for said equipment will be provided on a best-effort basis, and if parts are unavailable from any known source then the coverage for the equipment will revert to PM-Only and the contract value adjusted accordingly.
2. Any parts replaced under this Agreement will become the property of POWER STORAGE SOLUTIONS.

## D. ITEMS NOT COVERED BY THIS AGREEMENT:

1. Equipment modification or any additional testing beyond the scope described herein and attached and testing of equipment modifications made by Customer are not covered by this Agreement.
2. Work not covered by this Agreement will be evaluated by POWER STORAGE SOLUTIONS and, if agreed to by both parties, will be performed on a time and material basis as set forth in current T&M rates.

## E. EQUIPMENT LOCATION:

1. Maintenance of equipment covered under Remedial service is to be provided at the location specified in the Proposal only.
2. Customer will provide adequate working space and facilities for use by POWER STORAGE SOLUTIONS and proper storage of spare parts. Customer will allow POWER STORAGE SOLUTIONS ready access to Customer site and equipment, subject to Customers reasonable internal security and safety rules.

## F. BATTERIES:

1. Battery maintenance is the sole responsibility of the Customer unless battery coverage is specified in the Proposal. In the event that battery maintenance is provided by POWER STORAGE SOLUTIONS, it will be performed in accordance with general manufacturer's recommendations and standard industry practice. POWER STORAGE SOLUTIONS assumes no responsibility for the proper dissemination or accuracy of recommendations of individual manufacturers.

## G. TERM and TERMINATION:

1. This Agreement shall automatically be renewed for successive twelve (12) month periods at prices in effect at the time of each renewal. Customer will be provided written notice of renewal of the Agreement approximately 60 days prior to its expiration stating the prices for the applicable renewal term. In the event Customer elects not to renew this Agreement, Customer shall provide thirty (30) days written notice prior to its expiration.
2. Notwithstanding the foregoing, Customer or POWER STORAGE SOLUTIONS may terminate this Agreement at any time upon thirty (30) days written notice to the other, in which case I) Customer will be liable for any service rendered to the reasonable satisfaction of Customer prior to the effective date of termination; and II) POWER STORAGE SOLUTIONS, at its discretion, shall provide a credit against any advance payments received as follows: a) a prorated amount based on the terminated portion of the fixed-price fee due POWER STORAGE SOLUTIONS; or b) an amount based on the difference between the amount paid by Customer prior to the effective date of early termination and the actual cost of service provided (including emergency repair calls) by Power Storage Solutions prior to the effective date of early termination.

#### H. EXCLUSIONS:

1. If included under Remedial coverage, equipment that has not been serviced by POWER STORAGE SOLUTIONS is subject to inspection by POWER STORAGE SOLUTIONS to determine if it is in acceptable working condition prior to acceptance of this Agreement by POWER STORAGE SOLUTIONS. As determined by results of the first preventive maintenance inspection under this Agreement, any remedial action required to bring covered equipment into compliance with manufacturer's specifications will be at Customer's sole expense under the time and material charges at the current T&M rates. If Customer declines to approve such remedial action, the Agreement will be voided and any payments already received by POWER STORAGE SOLUTIONS will be refunded, less any charges (at aforementioned T&M rates) for services already expended under the Agreement.
2. Labor will be charged to and paid by Customer at current T&M rates, for the repair or service of the equipment covered as Remedial Service under this Agreement, in the event any of the following conditions occur during the term of this Agreement:
  - a. Persons other than POWER STORAGE SOLUTIONS attempt to repair or maintain the equipment covered by this Agreement;
  - b. Damage to the equipment covered by this Agreement results from acts of God or any and all external causes including, but not limited to, any and all insurable risks. This limitation specifically excludes acts by POWER STORAGE SOLUTIONS, its agents, or employees;
  - c. Damage to equipment covered by this Agreement results from failure to maintain a reasonable temperature or state of cleanliness at the covered equipment location;
  - d. Reasonable access to the covered equipment is denied to POWER STORAGE SOLUTIONS;
  - e. Service calls are requested by Customer which are unrelated to the equipment covered under this Agreement;
  - f. Service is required due to misuse or improper operation of the covered equipment beyond the manufacturers' specifications for the equipment covered under this Agreement;
  - g. POWER STORAGE SOLUTIONS is required to stay at Customer's site more than one hour after repairs are completed because Customer has elected not to place equipment back in service upon completion of repairs; and,
  - h. POWER STORAGE SOLUTIONS is required to use outside personnel to provide services under this Agreement. The cost of any such outside personnel shall be Customer's sole responsibility.

#### I. SAFETY REPRESENTATIVE:

1. Customer agrees to provide a safety representative and that representative will be available at the equipment location whenever POWER STORAGE SOLUTIONS is performing services under this Agreement on equipment under line power. Customer will further ensure that the safety representative understands where and how to disconnect power and has sufficient physical capabilities to accomplish same.

#### J. CUSTOMER RESPONSIBILITIES:

1. Notwithstanding any other provision of this Agreement, Customer shall provide proper and reasonable maintenance and access to all equipment covered by this Agreement. Customer shall also provide the following:
  - a. A Safety Representative, as provided for in Paragraph I;
  - b. Inspection and replacement of air filters on a routine basis;
  - c. All applicable equipment areas kept clean and free of loose debris.
  - d. A temperature in all applicable equipment areas at or below 84 degrees Fahrenheit at all times;
  - e. Humidity control in all applicable equipment areas to prevent condensation;
  - f. Covered equipment areas free of corrosive elements that affect the operating life of equipment.

#### K. ASSIGNMENT/SUBCONTRACTING:

Neither party to this Agreement shall have the right to assign its rights or delegate its duties under this Agreement without the prior written consent of the other party which shall not be unreasonably withheld. This provision shall not act to prevent and/or restrict either party from an assignment to accomplish a change and/or modification of corporate structure provided that such changes and/or modifications do not materially and adversely affect the other party to this Agreement. In addition, POWER STORAGE SOLUTIONS shall have the right to subcontract any of the work that is the subject of this Agreement.

#### L. When Parts are sold/installed:

**Warranty and Seller's Limitation of Liability.** Sellers sole warranty pursuant to these Terms and Conditions shall be that all Services performed shall be performed in a competent manner, and that any Products provided hereunder and any incidental materials and consumables utilized in the performance of the proposed Services will be new or like new and free from defects in workmanship and will conform to the applicable drawings and specifications. If Customer identifies any failure of Seller to meet the above stated warranty within thirty (30) days from the date such Service or installation of such Products, Customer must immediately notify Seller in writing. Any claims of Customer shall not be cause for the cancellation of the Proposal or these Terms and Conditions.

**NO WARRANTY, EXPRESS OR IMPLIED INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS, ARE EXTENDED BY SELLER, OR MAY BE EXTENDED BY CUSTOMER, TO ANY THIRD PERSON. NOTWITHSTANDING ANYTHING IN THIS CONTRACT OR OTHERWISE TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, DIRECTLY OR INDIRECTLY, ARISING FROM THE PERFORMANCE OF SERVICES OR DELIVERY OF A PRODUCT, OR FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, LOST SALES, GOODWILL, INJURY TO PERSON OR PROPERTY, OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING OUT OF: (I) WARRANTY, CONTRACT, NEGLIGENCE OR OTHERWISE RELATED TO A PRODUCT OR (II) THE PERFORMANCE OF ANY SERVICE WHETHER A CLAIM FOR SUCH DAMAGE IS BASED UPON WARRANTY, CONTRACT, NEGLIGENCE OR OTHERWISE, WHETHER OR NOT THE POSSIBILITY OF DAMAGE WAS DISCLOSED TO SELLER OR COULD HAVE BEEN REASONABLY FORESEEN BY SELLER. ANY ACTION OR REMEDY BY CUSTOMER ARISING OUT OF THIS CONTRACT OR ANY BREACH THEREOF MUST BE COMMENCED BY CUSTOMER WITHIN SIX (6) MONTHS AFTER SUCH CAUSE OF ACTION SHALL**

HAVE ACCRUED. CUSTOMER SHALL INDEMNIFY SELLER FROM ANY SUCH CLAIMS, INCLUDING REASONABLE ATTORNEY FEES, EXPERT FEES AND COURT COST. SELLER ASSUMES NO RESPONSIBILITY FOR ANY DAMAGE OR INJURY TO ANY PERSONS OR PROPERTY, WITH RESPECT TO ANY SERVICES PROVIDED BY SELLER WITH RESPECT TO THIS CONTRACT (WHICH MAY INCLUDE INSTALLATION AND FURTHER RELATED SERVICES), EXCEPT AS SUCH DAMAGES OR INJURY MAY BE HELD TO BE THE SOLE AND DIRECT RESULT FROM OR OUT OF (A) ANY GROSSLY NEGLIGENT PERFORMANCE BY SELLER OF ITS OBLIGATIONS UNDER THE TERMS OF THIS CONTRACT, OR (B) ANY WILLFUL MISCONDUCT ON THE PART OF THE SELLER, ITS AGENTS OR EMPLOYEES. No person has any authority to bind Seller to any affirmation, representation or warranty concerning the Services, except an authorized agent of Seller who agrees to the same in writing. In no event shall any different and/or additional affirmation, representation or warranty relating to the Services.