

## SERVICE AGREEMENT TERMS AND CONDITIONS

- 1. Acceptance of Terms:** By submitting a purchase order or accepting a price quotation of ABB Power Protection LLC ("Seller") for the products and/or services described therein, Customer, hereinafter Purchaser, ("Purchaser") accepts and agrees to be bound by these standard terms and conditions. No additional or differing terms or conditions proposed or delivered by Purchaser shall operate to alter or supplement Seller's price quotation, service agreement or these terms and conditions in any way.
- 2. Maintenance Agreement:** Seller agrees to maintain the equipment listed on the Schedule of Equipment (the "Equipment"), according to the terms of this Service Agreement (referred to herein as the "Agreement").
- 3. Term of Agreement:** This Agreement shall commence (the "Commencement Date") on the later of: the "Agreement Effective Date" set forth above, or the date on which Seller receives a fully signed copy of this Agreement. For full service contracts, emergency coverage is not guaranteed until payment is received.
- 4. Payment Terms:** The service contract fee to be paid by Purchaser shall be the amount set forth on the Schedule of Equipment. Seller will invoice annually in advance for all Full Service (FS) Agreements, For Preventative Maintenance (PM) Only Agreements and any Time & Material (T&M) related services, Seller will invoice after each PM is completed or the T&M service is completed. For Battery Removal and Replacement (BRR) Projects, Seller shall invoice upon shipment of the Batteries. Payment terms are Net 30 days from date of Seller's invoice. For Schedules of Equipment with a combination of both FS and PM only Equipment, payment terms relating to FS plans shall apply. Unless otherwise agreed to in writing by both parties, all replacement parts, including batteries, shall be shipped FOB Origin, Freight Pre-paid by Seller and added to the invoice and Purchaser agrees to pay the shipping & handling charges, regardless if Purchaser has itemized the shipping and handling charges on any Purchaser issued purchase order. Additional charges apply for contracts billed with extended payment terms. Late payments shall be subject to a late payment charge of 1.5% per month (18% per year) on any outstanding and delinquent balance. Purchaser will pay any Municipal, County, State or Federal sales, excise or other taxes which may be levied upon the service or materials provided pursuant to this Agreement, and shall be responsible all additional costs associated with Purchaser required union labor or transportation. All payments due are payable to Seller in U.S. currency.
- 5. Maintenance:** During the term of this Agreement, Seller shall, in accordance with service levels purchased, furnish all necessary service, parts and materials to maintain the Equipment in good working condition and repair. All Seller supplied parts shall comply with the Equipment manufacturer's published standards and/or specifications, and shall be the same as or equivalent to parts presently used and/or recommended by the OEM. Seller reserves the right to use refurbished circuit boards and assemblies that are commonly used in the industry. The parties agree that this is a contract for services and is not subject to any Uniform Commercial Code. Purchaser hereby grants Seller reasonable access to the Service Location(s) at which the Equipment is located for the performance of these services. Seller shall not be responsible for damages to or errors in any Equipment for which Purchaser has authorized service, operation, and/or modification by a party other than Seller. In the event of such an occurrence, and upon Purchaser's request, Seller will inspect such Equipment and invoice separate of any Full Service related Agreement(s) for costs incurred to return such Equipment to industry standards, in accordance with Seller's then current time and materials rates.
- 6. Preventative Maintenance Visits:** Should the Purchaser cancel a confirmed PM visit with less than two (2) business days' notice prior to the scheduled service date, Purchaser shall be charged for any expenses incurred (including but not limited to, associated travel expenses and field engineer time). If Seller is unable to complete a PM visit due to Purchaser's failure or inability to schedule the PM visit within ninety (90) days of the original proposed scheduled service date, Seller's obligations with respect to that PM visit shall be considered to have been fulfilled and no refund for such visit shall be due. Purchaser shall be responsible for all expenses incurred by Seller due to any delay or stoppage of work caused by the Purchaser, and shall be responsible for all costs associated with Seller's use of union labor when required by Purchaser.
- 7. Additional Work:** During the term of this Agreement, Purchaser may request that Seller perform services or provide materials, which are not set forth in this Agreement or included in the prices stated herein ("Additional Work"). Seller hereby agrees to perform such Additional Work, provided that Purchaser has provided the scope or definition of such Additional Work and has authorized, in writing, the compensation payable to Seller for the performance of the Additional Work. The performance of any and all such Additional Work shall be subject to and governed solely by the terms of this Agreement.
- 8. Warranties:** *Seller warrants the Services as follows:*
  - Warranty - Full Service (FS) Agreements:** In the case of any Full Service Agreement plan, the Services are warranted to be free from defects in labor and parts during the term of the FS Agreement. Seller's liability under this warranty is limited to re-performance and replacement of any defective labor or parts. THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED.
  - Warranty - PM Only Agreements & T&M Services:** Services are warranted to be free from defects in labor for a period of thirty (30) days from the date of performance and defects in parts for a period of ninety (90) days from the date of installation. Liability under this warranty is limited to re-performance and replacement of any defective labor or parts. THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE ARE HEREBY DISCLAIMED.
- 9. Discontinuance of Parts:** With respect to Equipment no longer supported by the manufacturer, Equipment greater than 7 years of age and any Equipment for which parts are not available through customary sourcing channels, Seller will continue to source replacement parts to the best of its ability. Should replacement parts for such Equipment not be available, Seller will notify Purchaser of such unavailability; and, where applicable, provide Purchaser a pro-rata credit for the balance of the Agreement for any un-repaired Equipment for which parts coverage is included in this Agreement.

**10. Termination of Agreement:** Either party shall have the right to terminate this Agreement in whole or in part at any time and for any reason, upon thirty (30) days' prior written notice of the party's intent to terminate, which notice shall specify the date of termination. If Seller terminates this Agreement, Seller shall refund to the Purchaser a prorated amount of any prepaid Maintenance Charge, less any amounts which are owed to Seller by Purchaser. If Purchaser terminates this Agreement, Purchaser shall not be entitled to any refund of amounts previously paid.

**11. Pre-Existing Conditions:** If Seller determines that the Equipment has not been maintained in accordance with the manufacturer's recommendations and/or has a pre-existing condition for which additional maintenance will be required in order to bring the Equipment within normal operating standards, Seller will notify Purchaser of such determination and, upon Purchaser's authorization to proceed, Seller will perform the additional necessary maintenance and charge the costs thereof to Purchaser at Seller's then current time and materials rates.

**12. Force Majeure:** Seller shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), Acts of God, fire, strike, labor difficulties, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay plus a reasonable time to resume production.

**13. Limitation on Equipment and Services Covered by this Agreement:** In the case of any Full Service Agreement, Seller's obligations hereunder, cover only the Equipment listed on the Schedule of Equipment (which may be amended from time to time upon written agreement of Seller and Purchaser). This Agreement only covers labor and materials for repairs due to ordinary wear and tear, other than battery and capacitor replacements, which will be priced separately. This Agreement does not cover damages caused by misuse, negligence, accident, theft or unexplained loss, abuse, fire, flood, wind, lightning or other electrical surge, tornado, sandstorm, hail, explosion, earthquake, smoke, vandalism, terrorism, acts of God or public enemy, or improper wiring, installation, repair or alteration by anyone other than Seller. Operation of any Equipment in a manner that is not in compliance with the Equipment manufacturers' recommended operating conditions or specifications, or exceeding the Equipment's original design limits shall constitute misuse. Examples include, but are not limited to, UPS overloads, phase-imbalanced conditions (more than 20%), and overloads caused by leading power factor loads. In the case of any such event, Seller will notify Purchaser and may at its sole option either a) terminate the Equipment subject of the FS Agreement effective upon notice thereof or, with Purchaser's authorization to proceed, will bring the Equipment back up to properly maintained standards in accordance with Seller's then current time and material rates.

**14. Limitation of Liability:** IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, LOSS, OR EXPENSE (INCLUDING, BUT NOT LIMITED TO LOSS OF USE, REVENUE, DATA, OR PROFIT). UNDER NO CIRCUMSTANCES SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE PRICE PAID HEREUNDER FOR THE GOODS AND SERVICES PROVIDED.

**15. Insurance:** Seller agrees to maintain at its expense during the term of this Agreement policies of commercial or comprehensive general liability insurance (to include contractual liability and products/completed operations liability) and automobile liability insurance, each with policy limits of - \$2,000,000 per occurrence and \$5,000,000 in the annual aggregate, and policies of workers compensation insurance with such limits of coverage as are required by law.

**16. Relationship of the Parties:** Seller is performing Services under this Agreement only as an independent contractor. Nothing contained herein or otherwise implied by the relationship between the parties shall be deemed to constitute any joint venture, partnership, agency, co-employer or relationship between the parties other than that of an independent contractor.

**17. Assignment:** Purchaser may transfer or assign its rights or obligations under this Agreement only upon providing written notice thereof to Seller.

**18. Failure of Purchaser to Make Timely Payment:** If Purchaser fails to pay Seller any amounts due pursuant to the terms of this Agreement within the time period required herein, in addition to all other rights and remedies available in this Agreement and under applicable law, Seller may, in its sole discretion, withhold Services until such time as Purchaser's account is paid in full or immediately terminate this Agreement without further liability to Purchaser.

**19. Governing Law:** This Agreement and the relationship of the parties hereunder shall be governed by, and construed in accordance, with the laws of the State of Wisconsin.

**20. Legal Costs:** In the event that litigation should be instituted to enforce the terms of this Agreement, the party prevailing in such litigation shall be entitled to recover from the other party, in addition to all other damages to which it may be entitled, its reasonable attorney's fees and cost incurred in connection with such litigation.

**21. Partial Invalidity:** The terms of this Agreement shall be deemed separable. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to person(s) or circumstance(s) other than those as to which it is invalid or unenforceable, shall not be affected thereby.

**22. Purchase Orders and Other Documents/Entire Agreement:** This Agreement and the Terms and Conditions stated herein constitute the final and complete agreement between Seller and Purchaser regarding the subject matter hereof and shall exclusively control the relationship of the parties in connection with the performance of the Services. Any additional or different terms contained in any purchase order, acknowledgment, notice to proceed, statement of work or any other document shall be of no effect between the parties. This Agreement may only be modified by a separate written agreement signed by both parties hereto and specifically referencing the parties' intent to modify this Agreement

**23. Waiver:** The failure of either party to enforce, at any time or for any period of time, any provisions of this Agreement shall not be construed as a waiver of such provision or of the right of such party thereafter to enforce such provision.

**24. If Purchaser purchases a battery replacement project under the Additional Work provision contained herein, the following additional terms and conditions shall apply:**

1. **Cancellation of BRR Project:** If Purchaser cancels a BRR related Project prior to Seller's shipment of the batteries, refuses to permit Seller to install the batteries, or notifies Seller after Purchaser's authorization to proceed, of its refusal to accept such installation, Purchaser hereby agrees to pay Seller, a "Cancellation Fee" equal to all of the actual costs related to BRR Project incurred by Seller through the date of cancellation (including, but not limited to, restocking fees in the amount of twenty percent (20%) of the Project price, freight charges, employee labor charges and any materials or Equipment special ordered for Purchaser which cannot be returned).
2. **Additional Installation and Construction Charges:** Seller has estimated the cost of the batteries and the cost of installation of the batteries based upon a reasonable review and inspection of the Ship To location. If installation of the batteries will require additional material, labor or construction: (i) not originally estimated because of hidden or unknown conditions; (ii) necessary to accommodate the batteries or move or change any existing Equipment or cable; or (iii) at Purchaser's request, Purchaser agrees to pay all the additional charges associated with the required material and work. Seller will make reasonable efforts to notify Purchaser if additional installation or related charges will be incurred, however, because the information may not be known by Seller until the actual installation is underway, lack of notification of Purchaser by Seller shall not alter Purchaser's obligation to pay all such additional charges.
3. **Warranty – Battery Removal and Replacements (BRR) Agreements:** Warranty will vary as the manufacturer dictates; therefore warranties and Warranty Period, dependent on the battery type, will be outlined as per each Seller proposal in a project-specific manner. The Warranty Period shall commence upon the date of installation or sixty (60) days past the date of shipment, whichever occurs first. During the Warranty Period, Seller will repair or replace any battery that has malfunctioned, other than as a result of casualty or product misuse. Installation service shall be warranted against defects in labor for a period of thirty (30) days from the date of installation. Freight charges associated with replacing a warranted battery are not covered under this Agreement and will be charged accordingly. Any labor associated with repair or replacement of a warranted battery beyond the thirty (30) day period stated herein, is not covered under this Agreement and shall be charged accordingly.
4. **Installation-Purchaser Responsibilities**  
To assure a smooth installation the Purchaser shall:
  - a. Permit or arrange for access to the Ship To location for Seller's installation and maintenance personnel.
  - b. Provide suitable environmental conditions for the batteries; Temperature: 65-75F, Relative Humidity: 40%-60% (Non-Condensing). Conditions which exceed these parameters will void the warranty.
  - c. Obtain all required permits.

Seller is an Equal Employment Opportunity / Affirmative Action Employer M/F/H/V.