

**PERIODIC MAINTENANCE AGREEMENT/ REPAIRS
TERMS AND CONDITIONS
Engine and Generator Systems**

This Periodic Maintenance Agreement/Repairs Terms and Conditions ("Terms and Conditions"), together with the Proposal attached hereto or provided separately to the Customer, are hereinafter collectively referred to as this "Agreement." All capitalized terms shall have the meanings ascribed to such terms in the Proposal or in these Terms and Conditions. Customer owns a generator system, together with associated equipment listed on the Proposal (herein "System" or "Equipment"). Contractor is engaged in the service and maintenance of systems like the System owned or operated by Customer and has been requested to provide maintenance and/or testing to the System pursuant to the terms and conditions of this Agreement (the "Services").

1. **Maintenance Services.** Contractor shall maintain and service the System and Equipment listed on the Proposal in accordance with schedule of Services described in the Proposal and at the intervals specified therein. Contractor shall provide scheduled preventive maintenance, with the schedule to be based on the specific needs of the Equipment as determined by Contractor. In addition, Contractor may provide other remedial maintenance and/or testing at Customer's request, as and when needed. Service maintenance and/or testing may include, without limitation, lubrication, adjustments, testing, and replacement of parts and components deemed necessary by Contractor. Other maintenance and/or testing requested by Customer and not described on the Proposal shall include those items of service requested by Customer and agreed upon by Contractor.

2. **Exclusions.** Unless otherwise agreed by Contractor in writing, the service and maintenance performed pursuant to this Agreement shall not include any of the following: (a) electrical work external to the Equipment; (b) furnishing of supplies or accessories; (c) painting or refinishing the Equipment of furnishing the material therefore; (d) making specification changes to the Equipment; (e) performing services connected with relocation of the Equipment; (f) repairing damage resulting from, or furnishing parts required as a result of causes other than ordinary wear and tear including, without limitation: neglect; misuse, including faulty repair or maintenance by persons other than the Contractor; accidents; failure of electrical power, air conditioning, humidity control or events outside the reasonable control of Contractor, such as, but not limited to, Acts of God; (g) adding, removing, servicing, or maintaining accessories, attachments, or other devices not furnished by Contractor, unless specifically scheduled on the Proposal.

3. **Parts.** Contractor shall furnish parts as necessary at Contractor's then current scheduled price or on an exchange basis, regardless of when installed and such parts shall be either new or equivalent to new in performance when used in the Equipment.

4. **Charges.** Customer shall be responsible for the payment schedule described on the Proposal. Charges for on-call, unscheduled service, or for services otherwise requested by Customer, shall be at the rates then published and agreed upon by Contractor, in writing. Notwithstanding anything contained in this Agreement, there will be a three-hour minimum charge for any work performed that requires three (3) hours or less.

5. **Payment of Charges.** Customer agrees to pay Contractor immediately upon completion for the scheduled maintenance described on the Proposal. Customer otherwise agrees to pay Contractor for all on-call, unscheduled or otherwise Customer requested maintenance charges immediately on completion unless otherwise agreed by Contractor in writing. If Contractor elects to accept payment from Customer other than on completion for the Services provided pursuant to this Agreement, Customer shall promptly comply with terms of payment granted by Contractor. Any payment due, shall entitle Contractor to seek, in addition to the principal amount owed, interest at eighteen percent (18%) per year or maximum rate allowable by Florida law.

6. **Term.** This Agreement shall be effective from the date of its execution by Contractor and Customer and shall remain in force unless terminated by Contractor giving thirty (30) days written notice to Contractor. Contractor may terminate for any reason and without cause. However, the giving of notice of termination shall not relieve or eliminate the obligations of the Customer occurring before the termination date, unless otherwise agreed by the parties hereto in writing.

7. **Warranty; Limitation.** The foregoing warranty and conditions shall apply only to any repaired or replaced product, part, or component supplied by Contractor, together with the workmanship as provided herein:

(a) Contractor warrants that under normal conditions of use and operation, the Services furnished pursuant to this Agreement shall be free from defects in workmanship and that the parts furnished pursuant to this Agreement shall be free from defects in workmanship and material.

(b) Contractor's obligation under this warranty is limited to the repair or replacement, at its option, of any part that, within ninety (90) days after installation and acceptance, is established by Contractor not to be in conformity with the Equipment manufacturer's published specifications. Contractor further warrants that its Services rendered pursuant to this Agreement shall be free of defects in workmanship for ninety (90) days after performance of Services, but Contractor's obligation shall be limited to correction of the defective workmanship.

(c) **EXCEPT AS IS EXPRESSLY STATED HEREIN, THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, EXCEPT SUCH AS IS EXPRESSLY STATED IN THIS LIMITED WARRANTY.**

(d) Customer agrees that the sole remedies for the breach of any warranties contained in no event shall the Contractor's liability to Customer for damages of any nature exceed the total charges paid or payable for either (1) the total charges paid or payable for all Services during one (1) year under this Agreement if the liability arises from the provision of such Services; or (2) the purchase price of the parts if the liability results from the provision of such parts.

8. **Access to Equipment; Performance of Services; Customer Obligations.** Contractor's maintenance personnel shall have free access to the System and the Equipment for the purpose of providing maintenance service. During the Services provided pursuant to this Agreement as to the System, whether an interruption in electrical services is contemplated by Customer or Contractor or not, as a matter of allocating between Customer and Contractor the risks associated with an interruption in electrical services and/or taking the System off line, Customer agrees to use its best efforts to fully and completely secure all or any part of any facility in which the System is located, as the case may be, for any and all safety issues that an electrical service interruption might give rise to, including but not limited to, injury to building occupants, customers, invitees, or any third party and/or property damage, or work interruption, arising out of any event of maintenance or testing performed by Contractor as to the System. Customer agrees with Contractor that securing of the premises in order for Contractor to

perform its Services is a material and critical element of this Agreement and, prior to the performance of any maintenance and/or testing Services under this Agreement, Customer will receive and execute with Contractor a written Notification and Acknowledgement of Inspection and Warning ("Notification") related to the Services provided herein. The Notification shall include Contractor's estimate as to when interruption of electrical services may occur during the performance of its obligations under this Agreement. Customer further agrees that Contractor shall have no liability to Customer or any third party for any estimate given in connection with potential interruptions in electrical services during the performance of Contractor's obligations herein, it being acknowledged by Customer that Contractor's Services are often affected by acts of third parties and/or components or elements of the System that do not allow for more specific and accurate estimates as to when an electrical service interruption may occur.

9. **Delays.** Contractor shall not be liable for any delays in performance directly or indirectly resulting from acts of Customer, its agents, employees, or subcontractors, or causes beyond the reasonable control of Contractor. "Causes beyond the reasonable control of Contractor" include, but are not limited to: (a) Acts of God; (b) Acts of a public enemy; (c) Acts of the United States or the District of Columbia, or any State or Territory of the United States, or any of their political subdivision; (d) Fire, flood, epidemics, or quarantine restrictions; (e) Strikes, civil commotions, or revolutions; (f) Freight embargos; (g) Unusually severe weather conditions, including, without limitation, tropical storms and hurricanes; (h) Default of Contractor's subcontractors or suppliers; (i) Normal wear and tear; (j) Overloads; (k) Improper operation and/or abuse of the System by Customer or other third parties; or (l) Accidents beyond the reasonable control of Contractor.

10. **LIMITATION OF LIABILITY. CUSTOMER AGREES THAT CONTRACTOR SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFITS, REVENUES, OR ANY OTHER LOSSES ARISING OUT OF ANY DEFAULT UNDER THIS AGREEMENT, EVEN IF CONTRACTOR SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. EXCEPT FOR PERSONAL INJURY CAUSED BY CONTRACTOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, CONTRACTOR'S CUMULATIVE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AGGREGATE AMOUNT PAID TO CONTRACTOR UNDER THIS AGREEMENT, EVEN IF A TERM OF THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.**

11. **Indemnification of Contractor.** Customer agrees to defend, hold harmless, and indemnify Contractor, its officers, directors, employees and agents for any and all losses, damages, and liabilities, legal or non-legal, arising out of any interruption in electrical services or as to any other incident or event as to the System or Equipment which is not caused by the willful misconduct or gross negligence of Contractor. Customer further agrees with Contractor that this Agreement of indemnification shall include, without limitation, any attorney's fees, costs or other legal or non-legal expenses of any description incurred by Contractor.

12. **Assignment.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Notwithstanding the foregoing, Customer may not assign any interest in, nor delegate any obligation under this Agreement or any other agreement with the Contractor. For purposes of this Agreement, assign shall include a change in control or a change in more than fifty percent (50%) of the ownership of Customer.

13. **Construction and Severability.** The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

14. **Amendments and Waivers.** No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the parties hereto. No waiver by any party of any default, misrepresentation, or breach hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

15. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

16. **Entire Agreement.** This Agreement, together with the Proposal and any other schedules, releases, and/or warranties (as applicable) attached hereto or delivered in connection herewith, embodies the entire agreement and understanding of the parties hereto and supersedes any prior agreement or understanding between the parties with respect to the subject matter of this Agreement. This Section does not apply to prior written agreements which both parties have signed.

17. **Governing Law; Venue; Attorneys' Fees.** This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Florida without giving effect to any choice or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Florida. Each of the parties submits to the exclusive jurisdiction of the U.S. District Court for the Middle District of Florida, Tampa Division, and the Circuit Court in and for Hillsborough County, Florida, as the exclusive proper forum and venue in which to adjudicate any case or controversy arising hereunder. In the event of any dispute, action or proceeding arising out of or relating to this Agreement, including the breach, termination, validity, interpretation, or enforcement of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all costs and reasonable attorneys' fees incurred in connection therewith.

18. **Survival.** The sections of this Agreement pertaining to indemnification and limitations of liability shall apply notwithstanding any other section of this Agreement or any other Agreement and shall survive termination, cancellation or expiration of this Agreement.