

THIRD-PARTY SERVICE AGREEMENT

This Third Party Service Agreement (“Agreement”) is entered into as of May 1, 2013 concerning services between manufacturer’s authorized service representative _____ (hereinafter “MASR”) and On-Line Power Inc. dba POWER SERVICES (“POWER SERVICES”). This Agreement will continue in full force and effect until terminated in accordance with the terms hereof.

RECITALS

- A. POWER SERVICES and its affiliates provide various start-up, troubleshooting and maintenance services to their customers nationwide. The identity, needs and relationships with these customers have been built over time, involve detailed sales and technical information and constitute some of the trade secrets of POWER SERVICES and their affiliates. As used herein, the rights and privileges of POWER SERVICES extend to its affiliates, which include Crucial Power Inc. and Perfect Power Inc., the parties recognizing that MASR will be asked to perform services for customers of any of these entities each of whom has agreed to utilize the services of POWER SERVICES to handle the servicing of their customers. As used herein, “Customers” refers to any customers of POWER SERVICES or any of its affiliates as defined herein;
- B. MASR are third party repair and service representatives who have bases nationwide, and offer the services of their technicians to entities such as POWER SERVICES;
- C. POWER SERVICES is interested in using MASR’s service personnel to perform various installation, repair and maintenance tasks for its customers, and MASR is interested in performing such tasks for POWER SERVICES.
- D. POWER SERVICES will educate and train MASR’s technicians on how to provide the services to the customers, and MASR will insure full compliance with such training and procedures.

NOW THEREFOR, in consideration of the mutual promise and covenants herein, the parties agree as follows:

1. **RECITALS.** The Recitals above are herein incorporated herein as though stated in full again.

2. **RELATIONSHIP OF PARTIES.** The relationship of MASR to POWER SERVICES is that of independent contractor. MASR shall not represent itself as having any authority; either expressed or implied, to make any commitments, promises, or contracts on behalf of POWER SERVICES. All of the costs of MASR in providing the services, which are the subject of this Agreement, except for the amounts, specifically set forth on Appendix A, shall be the sole responsibility of MASR. Nothing herein entitles MASR to have any exclusive rights to any product or services offered by POWER SERVICES, or any such product or services sought by POWER SERVICES’ Customers. MASR recognizes that POWER SERVICES may choose to work with a number of different companies for the services provided herein, in any region, including that region in which MASR is working, without in any way violating this Agreement.

3. **REPRESENTATION.** MASR shall not represent itself to be POWER SERVICES’s Manufacturer, or use the POWER SERVICES name, logos, trademarks, or other corporate identification

marks without prior, written consent from POWER SERVICES. MASR acknowledges POWER SERVICES' exclusive right to its trade name and all related names, logos, trademarks and confidential documents. Nothing herein conveys any exclusive rights or representation to MASR, and the parties acknowledge and agree that POWER SERVICES, in its sole discretion, may elect to provide part or all of the services, which are the subject of this Agreement directly to customers without using MASR or by using other service providers.

4. **TRAINING AND TECHNICAL MATERIALS.**

- a. Technical Materials & Information. POWER SERVICES will supply MASR with technical documentation, drawings, schematics, and engineering bulletins necessary for MASR to competently service, install, startup or maintain its products. Special fixtures and documentation will be made available when necessary. Such materials are the property of POWER SERVICES and shall be returned upon termination of this Agreement.
- b. Training. Technical Training will be offered to MASR on a periodic basis. POWER SERVICES will choose an appropriate site for such training. This training will be offered at no charge to MASR, but MASR will pay all travel, hotel, local transportation, and other similar expenses as necessary to receive such training. POWER SERVICES will also provide technical training materials for use in class and in the servicing of its products. POWER SERVICES will provide MASR personnel a "FACTORY TRAINED" certificate upon training completion. MASR will insure that only its certified FACTORY TRAINED personnel ever perform any work or services on any products of POWER SERVICES.

5. **MASR SERVICE OBLIGATIONS.** MASR shall insure that at all times, any and all services it provides to any customers of POWER SERVICES are not only provided by certified FACTORY TRAINED personnel, that any such services are either at the written request of, or upon written notification to and consent of POWER SERVICES, and that all such services are performed to the highest levels of diligence, professionalism and safety. MASR may receive contacts from POWER SERVICES, or directly from POWER SERVICES' customers for performing any work or services on POWER SERVICES' products, both of which sources of requests shall be governed by this Agreement. In responding to any request by POWER SERVICES or by any of its customers, MASR shall provide the following services in the following manner on behalf of POWER SERVICES:

- a. Service Authorization. POWER SERVICES will notify MASR after a request for service is placed by any Customer. Alternatively, a Customer who has MASR contact information may contact MASR or its representatives directly. In either event, MASR may perform service work only after POWER SERVICES requests or is notified of the Customer request, and provides a purchase order number to MASR. Should MASR receive a request for service directly from a customer, it must inform POWER SERVICES and sell the service at the POWER SERVICES pre-approved rates on behalf of POWER SERVICES only. MASR may not use verbal authorizations without a purchase order number in any event and MASR may not attach its name and phone number to any unit for which they perform services. MASR will be provided a certificate and a badge to prove to customer their factory trained capability.
- b. Installation and Startup. When requested by POWER SERVICES, MASR shall perform installation of POWER SERVICES' products at the customer facilities, and perform all startup tasks required in accordance with the schematics, manuals and

training provided by POWER SERVICES, and pursuant to any written directions provided by POWER SERVICES.

- c. Emergency Services. POWER SERVICES provides a toll free number monitored 24 hours a day for emergency purposes. POWER SERVICES reserves the sole right to determine which circumstances constitutes an emergency. MASR must provide POWER SERVICES with availability to respond to emergencies during regular working hours and MASR shall also provide and maintain after hour's pager/telephone numbers in order to facilitate timely emergency response, as may be necessary. Should a customer call after business hours and there is no need to contact POWER SERVICES immediately, MASR must report to POWER SERVICES on the following business day.

- d. Maintenance and Service. MASR is permitted and encouraged to sell Maintenance Agreements on behalf of POWER SERVICES. In the event MASR seeks and obtains from any Customers or potential customers, a request for maintenance services, MASR will notify POWER SERVICES in writing of such customer information and requested coverage. POWER SERVICES will then provide MASR coverage terms so that MASR can extend the offer of coverage to the Customer. MASR will not perform any Maintenance Services for any Customer until it receives written authorization from POWER SERVICES, and then only in accordance with the terms and provisions of the agreement between the parties. In the event MASR is solely responsible for selling a Maintenance Agreement to any existing Customers or new customers, MASR will receive a commission in accordance with POWER SERVICES rates for such commissions. All Maintenance Agreements shall be provided by POWER SERVICES for execution by the Customer before any work or services are performed on such maintenance needs for the Customer.

- e. Replacement Parts. Customers who maintain a warranty or service agreement may be provided with replacement parts at no additional cost. Other Customers will be responsible for payment for replacement Parts. MASR is responsible to know, identify, and if it is not clear, to ascertain whether the required parts are part of a service or maintenance agreement or not. Such parts will be sent either to MASR or directly to the customer. Parts not covered under any agreement with the manufacturer will be invoiced directly to the customer at list price. Spare part kits are made available to MASR at the factory's option. MASR will be responsible for all parts sent for repair. The Manufacturer requires the complete return of warranty parts. Failure to return a part or all parts within 15 business days after service is completed will result in a direct billing to MASR at list price plus shipping. POWER SERVICES will provide parts to MASR for Warranty or Service Contract customers. RMA numbers is issued for all parts sent to MASR of which MASR will sue to send back to the factory upon completion of the service. All parts that are not required should not be opened up and sent back. The service provider will email or fax and mail a copy of the field service report, signed by the Customer, within 48 hours of work performed.

- f. Response Time for All Services. MASR shall respond to service requests within _____ business hours. Requests received after 5:00 PM local time should be responded to by 9:00 AM on the next business day. Emergency requests must be responded to within four (4) hours. Once a purchase order is generated and MASR is notified of a request for service, it is MASR responsibility to coordinate all aspects

of the visit including the availability of equipment, electrical service, load equipment, personnel, etc. POWER SERVICES will not pay for multiple visits due to lack of communication between the customer and MASR.

- g. Radius of Services. MASR shall provide services only within the radius of services provided and described in Appendix B, attached hereto.

6. SERVICE REPORTS AND BILLING BY MASR.

- a. Service Reports. MASR will supply POWER SERVICES with a final invoice and a completed report within 2 days after the service is rendered. The service report will contain at minimum the reason for the visit, a summary of the work performed, model number, serial number, Customer name, address, phone #, contact name, purchase order number, part number used, a description of services provided and the customer's signature. POWER SERVICES will provide specific forms for MASR to use and complete, together with obtaining the customer signature.
- b. Billing and Invoicing. The invoice will have at minimum a detailed breakdown for each day of service. Invoices will be paid on a net 30 basis from the date the invoice is received. Under no circumstances, can MASR delay or decline services as a result of a billing dispute with POWER SERVICES due to a billing issue. No bills will be processed without a service report. MASR shall complete all billing/invoicing by no later than 45 days from the date of service, otherwise MASR will not be compensated.

7. PAYMENT BY POWER SERVICES. POWER SERVICES shall pay MASR in accordance with the Rate sheet, as may be amended from time to time by POWER SERVICES, attached as Appendix A hereto. POWER SERVICES shall insure that its invoices and billings are in accordance with the rate sheet, and no extra costs or expenses are included therein unless expressly authorized by POWER SERVICES in writing. Payment by POWER SERVICES shall be made in accordance with the terms and conditions of POWER SERVICES attached as Appendix C, and only upon full compliance by MASR with all terms and conditions of service, reports, billing and other applicable provisions of this Agreement.

8. NON-DISCLOSURE AND CONFIDENTIALITY. During the duration of this Agreement, POWER SERVICES may disclose to MASR certain confidential information which may consist of but shall not be limited to, trade secrets, lists, business know-how, technical information, drawings, results of operations, strategies, practices and techniques of POWER SERVICES, POWER SERVICES Customers, their preferences and identities, as well as other proprietary and confidential information (hereinafter "Confidential Information"). MASR recognizes that such Confidential Information is a valuable, special and unique asset of POWER SERVICES which may provide POWER SERVICES with a significant competitive advantage and MASR understands and acknowledges that the disclosure of any such Confidential Information to unauthorized parties will prejudice the ability of POWER SERVICES to conduct its business successfully. In consideration of the willingness of POWER SERVICES to disclose certain Confidential Information to MASR, MASR hereby agrees to receive and retain the Confidential Information in strict confidence and to use the Confidential Information only in the furtherance of the business relationship between the parties to this Agreement. Without the prior written consent of POWER SERVICES, MASR will not:

- (a) Disclose any Confidential Information to any third party or entity nor give any third party or entity access thereto;
- (b) Use any Confidential Information in any manner except of the express business purpose and relationship between Manufacturer and/or;
- (c) Disclose to any third party entity the fact that Confidential Information is being made available to MASR. MASR further agrees to make no other use of the Confidential Information, to make the Confidential Information available only to its employees and those with a need to know in order to perform their duties in connection with the limited purposes of this Agreement. The prohibition against disclosure of Confidential Information will survive the termination or expiration of any business relationship between the parties. MASR acknowledges and agrees that money damages will not be a sufficient remedy for any breach of this prohibition on disclosure of Confidential Information. MASR will insure that all of its employees, agents or representatives who come into contact with POWER SERVICES, its business or Confidential Information, will execute this Agreement, and agree to be bound by the terms herein.

The terms and provisions of this Section, shall survive the expiration or termination of this Agreement, and shall remain in full force and effect and bind the parties hereto from the date of execution hereof.

9. **NON-SOLICITATION.** MASR, its agents, employees and representatives shall not solicit or refer to others any POWER SERVICES Customers, employees, or business contacts for any purpose which is competitive with POWER SERVICES, its business, services, and products without the prior written authorization of POWER SERVICES, and further they shall not sell or agree to sell any service contracts directly or indirectly or agree to provide any services similar to those in POWER SERVICES's service contracts to any customer of POWER SERVICES or any customers who own, control or use POWER SERVICES products or equipment. MASR, its agents, employees and representatives agree that they will direct any inquiries or requests for information by any POWER SERVICES Customers only to POWER SERVICES's Field Service. This Non-Solicitation section shall remain in full force and effect throughout the duration of this Agreement, and for a period of an additional three (3) years from the termination date of this Agreement.

10. **PROFESSIONALISM.** MASR shall handle service calls and business dealings with customers in a professional, courteous and businesslike manner with appropriate dress.

11. **INDEMNIFICATION.** MASR and POWER SERVICES will save each other harmless of any and all liabilities as a result of claims, demands, costs including attorney's fees, which may result from any act of its officers, directors, agents or employees in performing its obligations under the terms of this Agreement or which may result from its breach of any of the terms and conditions of this agreement.

12. **TERMINATION.** Subject to Section 8 and 9 of this Agreement, either party may terminate this agreement by providing a written 30-day notice to the other party. However, for any work for which MASR had already been solicited, for which a Purchase Order had been issued by POWER SERVICES, or for which MASR had otherwise commenced engagement prior to receipt of such notice of termination, MASR shall insure the timely and proper completion of such work.

13. **MISCELLANEOUS.** This Agreement supersedes all previous agreements, written or oral, relating to the above subject matter, and may be modified only by a written instrument duly executed by the parties hereto. All clauses and covenants contained in this Agreement may be severed and in the event any of them is held to be invalid by any court, this Agreement shall be interpreted as if such invalid clauses and covenants were not contained herein. Captions and Headings are for convenience only and

shall not modify, abrogate or otherwise affect the terms and provisions herein. This Agreement will be construed according to the laws of the State of California, and has been entered into in Los Angeles, California for the Central Judicial District. This Agreement has been entered into as a result of a fully negotiated and bargained exchange, and neither party shall be deemed the drafting party for purposes of interpreting the Agreement, or ambiguities, if any against the drafter.

14. **COUNTERPARTS.** This Agreement may be executed in counterparts, and the combined signature pages so executed will operate as one fully executed Agreement. Signatures will be valid if exchanged by facsimile, electronic mail, or other means regularly employed for exchanging signatures on Agreements in the industry.

IN WITNESS WHEREOF, the parties hereto have borne their signatures below:

MASR	
Signature:	_____
Date:	_____
Company	_____
Address	_____

Phone	_____

Power Services	
Signature	_____
Date	_____

APPENDIX A
RATE SCHEDULE

FLAT RATE:

	Monday – Friday 8:00 AM – 5:00 PM	Monday – Friday after 5:00 PM & Saturday 8:00 AM – 5:00 PM	Saturday after 5:00 PM, Sunday & Holidays
Start-up			
Preventative Maintenance			
Repair			

NON FLAT RATE:

Service visits beyond a _____ mile radius and after regular business hours of Monday through Friday, 8:00 AM to 5:00 PM shall be invoiced on the following schedule:

	Monday – Friday 8:00 AM – 5:00 PM	Monday – Friday after 5:00 PM & Saturday 8:00 AM – 5:00 PM	Saturday after 5:00 PM, Sunday & Holidays
Start-up			
Preventative Maintenance			
Repair			

Labor: labor is defined as actual time spent servicing, testing, or repairing POWER SERVICES product.

Travel: travel time is actual time spend in transit to and from a customer’s site. _____

Mileage: _____

Travel Expenses:

- a. Actual vehicle mileage at \$0.35 (cents) per mile.
- b. Most economical airfare (coach, economy) at actual cost.
- c. Rental car at cost (economy or mid-sized class) not to exceed \$70/day.
- d. Hotel/Motel accommodations at cost not to exceed \$80/day.

Should MASR obtain a service contract for multiple units from other manufactures, which includes an POWER SERVICES product, MASR shall pass the sale of the POWER SERVICES product contract to POWER SERVICES.

RATES: Fixed price for Start-up, preventative maintenance & repairs

COMMISSIONS: Commissions are paid only as a percentage of the Service Agreement as it is billed and collected. No commissions will be paid until payment has been received. (Commission will be paid on the 20th day of each month following receipt of payment.)

APPENDIX B

TERRITORY
“Turn On, Repair, Certification”

- FLAT RATE TERRITORY

Travel Time	CITY	STATE	ZIP

- OUTSIDE OF FLAT RATE TERRITORY

Travel Time	CITY	STATE	ZIP

APPENDIX C.
TERMS AND CONDITIONS.

MASR Service Personnel Name:
Power Equipment List:
Time required to schedule service:
Business Hour (8am-5pm) Contact:
After Hour (5pm-8am) Contact: