

**Maintenance Services Terms and Conditions**

Two Rivers Power is herein referred to as "TRP". The person or entity purchasing maintenance services is herein referred to as "Customer". TRP agrees to provide and Customer agrees to accept maintenance services for those Customer products and equipment ("Equipment") set forth in the Schedule(s) (individually or collectively the "Schedule") to these Terms and Conditions, or as listed on the attached Proposal for Service ("Proposal"), as applicable. Such services will be provided in accordance with these Terms and Conditions and the particular maintenance plan and services ("Maintenance Plan") selected by Customer, in consideration for Customer payment of the appropriate Maintenance Plan fees, as set forth in the Proposal or Schedule to these Terms and Conditions, and any other applicable fees as described herein.

1. **Maintenance Plan:** Maintenance Plans may include: a) **Scheduled Preventative Maintenance:** Service includes lubrication, adjustment and replacement of unserviceable parts and such other services as may be required by the particular Equipment. Services will be provided at times mutually agreed upon by TRP and Customer so as to minimize interference with Customer's use of the Equipment; b) **Unscheduled On-Call Preventative Maintenance:** Service includes adjustment and replacement of unserviceable Equipment parts as TRP determines necessary; c) **Conforming Maintenance:** Service includes maintenance of Equipment in accordance with manufacturers' written instructions, including the installation of mandatory safety engineering changes as may be required by a manufacturer; d) **Diagnostic Assistance:** Service includes assisting Customer in determining origin of Equipment problems, reading log outs and testing and running of diagnostics to isolate a failing unit, whether or not such unit is part of the Equipment covered under Customer selected Maintenance Plan; e) **Monitoring:** Remote monitoring of TRP monitoring equipment installed at the Customer's site and initiation of agreed upon response plans when an alarm occurs; f) **Service Management:** Management of service activities not directly provided by TRP, i.e., services provided under items (a) through (e). Service management includes management of multiple vendors providing the above services, consolidation of other service agreements, and reporting of service activity, as selected in the Maintenance Plan. If Customer requests a service which is not included in the Maintenance Plan selected by Customer, Customer will be billed for such service at TRP's then prevailing labor and materials rates. Customer may elect to change Maintenance Plans if: a) Customer provides written notice of same to TRP at least thirty (30) days prior to the desired effective date of the change and b) a new Schedule or Proposal is executed by Customer and accepted by TRP within this same period of time. Upon completion of a) and b) above, the substitute Maintenance Plan selected by Customer shall become the Maintenance Plan hereunder.

2. **Service Hours:** TRP's normal service hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. All regularly scheduled maintenance services will be provided during these hours. Customer can request services at other times, on a 24 hour 7 day week basis (except legal holidays), by calling. If the Maintenance Plan selected by Customer provides coverage for services rendered at times other than TRP's normal service hours Customer will not be charged for these services. Otherwise, Customer will be charged for these services at TRP's then prevailing rates.

3. **Parts:** If provided for in the Maintenance Plan selected by Customer, Equipment parts in need of replacement will be removed by TRP and replacement parts installed free of charge. Parts removed become the property of TRP. Under other Maintenance Plans which Customer may select, parts which TRP determines require replacement will be furnished at TRP's then prevailing materials rate. Parts furnished hereunder are furnished AS IS, WHERE IS, WITH NO WARRANTY WHATSOEVER, unless such warranty is provided in other agreements.

4. **Payment:** Maintenance Plan fees will be billed by TRP to Customer annually in advance, or as may otherwise be provided for in the Schedule or Proposal, and will be assessed commencing with the later of: a) if the Equipment is new and start-up of the Equipment has not yet occurred, the start-up date of the Equipment as determined by TRP or b) the date specified in the Schedule or Proposal. All Maintenance Plan fee payments, or other payments that may be due hereunder, are due thirty (30) days from date of invoice. Payments not received within thirty (30) days from date of invoice shall be subject to a late payment charge of one and one-half percent (1 1/2%), or the maximum charge allowed by law. TRP reserves the right to increase Maintenance Plan fees upon ninety (90) days prior written notice of same to Customer, but in no case will TRP increase the Maintenance Plan fees for identical services more than once every twelve (12) months.

5. **Taxes:** Customer will be responsible for payment of any additional amounts needed to pay any taxes, however designated or levied, applicable to any parts or services provided hereunder exclusive, however, of taxes based on the net income of EPS.

6. **Billable Services:** Additional charges will be billed to Customer, at TRP's then prevailing labor and material rates, for any of the following: a) Any services not provided for in the Maintenance Plan selected by Customer; b) Any Maintenance Plan services performed at times other than TRP's normal service hours if extended service hour coverage is not provided for in the Maintenance Plan selected by Customer; c) Service necessary to return Equipment to proper operating condition as a result of Customer or Customer's representatives attempts to maintain/repair the Equipment; d) Service to repair damage to Equipment as a result of: i) misuse, neglect, accident; ii) use of other non-covered equipment with Equipment covered by these Terms and Conditions; iii) catastrophe or other causes external to Equipment; iv) failure to maintain facilities and Equipment in a reasonable manner v) failure to operate Equipment in accordance with applicable specifications; e) If reasonable site and Equipment access is denied the TRP service representative; f) If it is necessary, due to local circumstances, to use union labor or hire an outside contractor; TRP service personnel will provide supervision only and the cost of such union or contract labor will be charged to Customer; g) If Equipment is modified by Customer, including, but not limited to changes in specifications and incorporation of attachments or other features.

7. **Movement of Equipment:** Customer agrees to provide TRP with ninety (90) days prior written notice of any change in location or material rearrangement of the Equipment. If TRP restarts the Equipment or provides relocation assistance to Customer, Customer will be charged for such services at TRP's then prevailing labor and materials rates.

8. **Geographical Service Area:** Maintenance Plan fees and any other fees due hereunder shall be increased by the zone charge specified in the Schedule or Proposal if the Equipment is located or relocated outside a one hundred (100) mile radius of a designated TRP Service Center (such designations may change from time to time). Zone charges are assessed to cover travel expenses of those TRP personnel providing Maintenance Plan services.

9. **Exclusions:** Maintenance Plan services to be provided hereunder do not include: a) Maintenance or repair of accessories, attachments, features or other devices not covered by the Maintenance Plan; b) Electrical work external to the Equipment; c) Equipment painting and exterior finish; d) Daily Equipment operations; e) Installation of new equipment or modifications, updates, or revisions to existing Equipment; f) Removing, replacing, or refinishing any part of the building structure or other objects restricting access to the Equipment; g) Service which is impractical for TRP to render because of alterations to the Equipment; h) Services and materials required to bring equipment up to a state of good working order due to pre-existing problems with the equipment that pre-exist the start date of the agreement, for example batteries or other components that are beyond their usable life span or are defective at day one of the agreement or found during the first equipment inspection after the start date of the agreement. I) Service which is precluded by federal, state, local government or trade association regulations or contractual standards.

10. **Access to Equipment:** Customer shall provide TRP service personnel ready access to the Equipment site, subject to Customer's reasonable internal security and safety rules, and adequate work space and facilities to perform Maintenance Plan services. Actions and expenses necessary to provide TRP access to Equipment to include building structure alteration, repair, or movement/replacement of other equipment are the responsibility of Customer. TRP shall have no responsibility or liability for any costs, expenses, or damages arising from Customer failure to provide access.

11. **TRP Materials:** TRP reserves the right to place materials on Customer premises that are to be used in the provision of Maintenance Plan services or installed in the Equipment. Customer hereby acknowledges that such materials remain the property of TRP until installed in the Equipment and agrees to take no action that will jeopardize TRP's rights of ownership in such materials. If TRP materials placed on Customer property are damaged, destroyed or stolen due to the intentional acts, negligence or failure to act of Customer, its employees, agents, or invitees, Customer shall reimburse TRP for such loss in an amount equal to the full replacement value of such materials. TRP shall remove any TRP materials placed on Customer premises within a reasonable time, not to exceed sixty (60) days, after the cancellation of these Terms and Conditions.

12. **Subcontractors:** TRP, in its sole discretion, reserves the right to subcontract to others Maintenance Plan services or other repairs or services to be performed under these Terms and Conditions.

13. **Safety Personnel:** IF OSHA or any other federal, state or local government, trade association, or contractual regulations or standards require a "safety person" to be on site during Maintenance Plan services or other services, Customer shall be responsible for advising TRP of same and providing for such a person at the Equipment site at Customer cost. If TRP agrees, in writing, to provide for a safety person, Customer will be billed for such person's time at TRP's then current labor and materials rates.

14. **Cancellation:** These Terms and Conditions, or any part of them, are subject to cancellation by TRP if the conditions specified herein are not met by Customer, or if Customer becomes insolvent or bankrupt. In such event, TRP is under no obligation to pay Customer for any expenses, costs, claims, or liabilities incurred and TRP may retain any portion of the Maintenance Plan fees prepaid by Customer as liquidated damages. TRP retains all rights to any other legal remedies it may have against Customer. Customer may cancel Maintenance Plans billed on an annual basis at the end of the annual coverage period upon thirty (30) days prior written notice to TRP. Maintenance Plans billed at any other time may be terminated by Customer upon ninety (90) days prior written notice to TRP.

15. **Nuclear:** MAINTENANCE PLANS AND SERVICES SOLD HEREUNDER ARE NOT FOR USE IN ANY NUCLEAR AND RELATED APPLICATIONS. Customer is hereby deemed to have purchased Maintenance Plans and services with the foregoing understanding and will indemnify, defend and hold TRP harmless from any claims, losses, suits, judgments and damages, including, but not limited to, incidental and consequential damages, arising from the provision of services in any nuclear and related application, whether the cause of action be based in tort, contract or otherwise, including allegations that TRP's liability is based on negligence or strict liability.

16. **Limitation of Liability:** TRP'S LIABILITY FOR FAILURE OF PERFORMANCE HEREUNDER SHALL BE CORRECT PERFORMANCE OF SERVICES INCORRECTLY PERFORMED. IN NO EVENT SHALL TRP'S LIABILITY EXCEED THE TOTAL CHARGES PAID BY CUSTOMER FOR MAINTENANCE PLAN SERVICES OR OTHER SERVICES PROVIDED HEREUNDER. TRP ASSUMES NO OTHER LIABILITY NOR PROVIDES ANY INDEMNIFICATION EXCEPT AS MAY BE SPECIFICALLY PROVIDED FOR IN THESE TERMS AND CONDITIONS.

17. **Consequential Damages:** IN NO EVENT SHALL TRP ASSUME ANY LIABILITY FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION OR LOSS OF DATA, WHETHER ANY CLAIM IS BASED UPON THEORIES OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHERWISE.

18. **Warranties:** TRP'S OBLIGATIONS HEREUNDER ARE IN LIEU OF AND EXCLUDE ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

19. **Force Majeure:** TRP shall not be liable or responsible for cost, expense or damage due to a delay in the performance of services hereunder, where such delay is due to causes beyond its reasonable control, including, but not limited to natural disasters, acts of government after the date of these Terms and Conditions, power failure, acts of God, labor disputes, riots, acts of war, epidemics, or material and transportation shortages.

20. **Non-Solicitation:** Customer shall not solicit, directly or indirectly, or employ any employee of TRP for the term of the Maintenance Plan, during the period any other such services are being provided to Customer and for a period of one (1) year after the expiration or termination of the Maintenance Plan or services.

21. **Governing Law:** These Terms and Conditions shall be governed by and performance construed in accordance with State Law.

22. **Severability:** If any section or part of these Terms and Conditions is or becomes illegal, unenforceable or invalid, then the such part or section shall be struck from these Terms and Conditions and shall not affect the remaining parts or sections.

23. **Successors and Assigns:** All covenants and provisions contained in these Terms and Conditions shall bind and inure to the benefit of the parties and their respective successors and assigns.

24. **Authority:** Customer represents to TRP that it is the owner of the Equipment or, if not the owner, that it has full authority to enter into these Terms and Conditions.

25. **Assignment/Delegation:** Customer shall not assign any rights or delegate any duties hereunder without the prior written permission of TRP.

26. **Modifications:** Except as may be specifically provided for herein, any agreement which modifies, changes or supplements these Terms and Conditions, or any documents referenced herein, shall only be valid if in writing and signed by a duly authorized representative of TRP.

27. **Statute of Limitations:** No action arising out of these Terms and Conditions shall be brought by either party more than one (1) year after the cause of action has accrued, except that any action for nonpayment may be brought within two (2) years of the date payment was due.

28. **Complete Agreements:** These Terms and Conditions, which include any Schedules and/or Proposals attached hereto, represent the entire final and complete agreement between the parties with respect to the subject matter herein and supersede all prior or contemporaneous oral or written communications, representations, understandings or agreements relating to this subject.