
SERVICE AGREEMENT

This Service Agreement ("Agreement") made and entered into this ____ day of _____, 2005 by and between **MGE UPS SYSTEMS, INC.** ("MGE"), a California corporation with its principal offices located at 1660 Scenic Avenue, Costa Mesa, California 92626, and _____ ("Customer"), located at _____-[if applicable, by and through their Agent/Manager _____], with an effective date in which this Agreement is fully executed by both Parties ("Effective Date").

1. **Acceptance:** For and in consideration of the contract sum as outlined in the MGE quote proposal and/or attached Equipment Schedule(s), MGE agrees that it will, by its authorized employees or representatives, inspect, service, and maintain the equipment listed on the Equipment Schedule by performing periodic maintenance and inspection services and/or emergency services as specified. **It is the Customer's responsibility to schedule any periodic service appointments and notification of emergencies by telephoning MGE's Customer Care Center at 1-800-438-7373.** No subscription for services shall be binding upon MGE until this Agreement is accepted by MGE in writing by an authorized official of MGE and fully executed by the Customer.
2. **Subscription and Renewal Process:** At the same time this Agreement is fully executed by the Parties, Customer shall issue to MGE a purchase order in the amount of the contract price specified in the quote and/or Equipment Schedule ("Work Authorization"). The Work Authorization shall specify (i) the purchase price of the service(s) subscribed by Customer, (ii) the period of time during which the service package covers ("Package Term"), and (iii) list the equipment units and location including equipment serial numbers and equipment model numbers. Failure to issue a purchase order, however, shall not relieve Customer from its obligations under this Agreement, including the obligation to pay MGE the consideration specified in the Work Authorization unless Customer elects not to renew the service package with thirty (30) days written notice from the natural expiration of time period covering the previous Package Term. In the event of a renewal, Customer shall receive an updated Equipment Schedule for Customer's signature and Customer shall execute the new Equipment Schedule or issue a new purchase order for the applicable service fee for the renewal term. In the event Customer fails to issue a new purchase order for a renewal period, Customer shall be invoiced in accordance to the terms contained herein. Each and every Work Authorization shall be subject to and shall be incorporated herein by reference to the terms and conditions set forth in this Agreement.
3. **Billing:** *Unless otherwise specified on the Work Authorization, the Customer will be billed annually in advance.* Any billings for less than the annual period will be prorated on a 365 day basis from the Effective Date of this Agreement. Payment in full of the total amount owing, without offset or deduction, is due in accordance with the payment terms specified in the quote and/or Equipment Schedule. If no payment term is specified, Customer shall be required to make payment within thirty (30) days from the Effective Date, or in the event Customer fails to issue a purchase order, within thirty (30) days from the issuance of an invoice from MGE.
4. **Term:** This Agreement shall govern the course of business between the Parties and shall remain in effect until specifically terminated by the Parties in accordance with the terms herein.
5. **Cancellation, Termination or Suspension of Service:**
 - A. **Cancellation for Convenience:** Customer may cancel this Agreement for the Customer's convenience prior to the natural expiration of the current Package Term for any or all equipment unit(s) listed on the attached Equipment Schedule, PROVIDED HOWEVER, 1) Customer provides MGE with thirty (30) days advance written notice of Customer's intent for early cancellation for Customer's convenience, and 2) Customer pays MGE an early cancellation charge equal to ten percent (10%) of the contract price for the equipment unit(s) that are being cancelled or \$500.00, whichever sum is greater. "Customer convenience" shall be defined as the cancellation of this Agreement or equipment unit(s) ("Cancelled Equipment") without cause and/or not due to an uncured breach by MGE, or in the event Customer takes the equipment unit(s) out of service or replaces the equipment unit(s) with non-MGE units.

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- A. ***Cancellation for Convenience:*** (continued)
If Customer cancels for its convenience, any service fees paid in advance will be pro-rated and credited back to Customer in the form of a credit for future services less the applicable early cancellation fee. If MGE's service obligations under the attached Equipment Schedule for the Cancelled Equipment include the proactive replacement of capacitors (i.e.; other than due to the capacitor's failure) and/or the replacement of batteries, and if the cancellation occurs after the replacement of either component, then in addition to the cancellation fee contained in this section, Customer shall pay MGE the difference between the list price then in effect for the applicable replacement service and the discounted amount previously paid as part of the service agreement.
- B. ***Termination for Cause:*** This Agreement may be terminated immediately on written notice by either party in the event the other party (i) breaches any term of this Agreement and fails to cure such breach within thirty (30) days following receipt of written notice thereof from the non-breaching party; (ii) if the other party becomes insolvent or upon the institution by the other party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of its debts; (iii) following the institution of such proceedings against the other party, which proceedings are not dismissed or otherwise resolved in that party's favor within sixty (60) days thereafter or upon the other party's making a general assignment for the benefit of creditors or the other party's dissolution or ceasing to conduct business in the normal course, (iv) or in the event Customer engages a third party to perform emergency or corrective maintenance on the equipment which is under contract by this Agreement. In the event of a Customer breach of subsection (iv) above, MGE's indemnification and warranty obligations hereunder shall be void and MGE shall have no indemnification obligation or liability for damages caused as a result of the third party's actions or inaction. The parties further agree that, from the nature of the services to be provided, it would be impracticable or extremely difficult to fix the actual damages, if any, which may result to Customer from a breach by MGE of this Agreement or from any failure by MGE to perform any of its obligations hereunder. Therefore, in the event this Agreement is terminated due to a breach by MGE, which breach remains uncured for the period described herein, the Parties agree that Customer's sole remedy shall be exclusively limited and fixed (as liquidated damages and not as a penalty) at the sum equal to the portion of the annual service fee paid hereunder by Customer for the period of time that would have remained under the Term but for said early termination for breach.
- C. ***Suspension of Service:*** In the event Customer fails to remit payment for the amount listed on the Work Authorization, MGE shall have the right without liability and without limiting any other right or remedy available, place Customer on service hold and suspend any and all preventive, corrective, and emergency services to Customer. Suspension of service by MGE does not relieve Customer of its obligation to pay the contracted service fees. In the event of a dispute in payment, the Parties agree to use its reasonable commercial best efforts to resolve the dispute in a timely manner.
6. **Warranty Period and Disclaimer:** MGE represents and warrants that all services performed hereunder shall be performed in accordance with Customer's specifications and requirements and with all necessary care, skill and diligence. Performed services done during the Package Term are warranted against defects in design and workmanship for a period of ninety (90) days from the date of service or until the expiration, cancellation, or termination of the Work Authorization, whichever time period is sooner. Any "Buy-out" parts and/or materials (defined herein as any Non-MGE manufactured parts and/or material(s)), shall be warranted under the manufacturer's warranty terms and conditions, and MGE disclaims any additional warranties, as referenced herein and made part hereof. MGE EXCLUDES AND DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND CUSTOMER AGREES TO HOLD MGE HARMLESS FROM ANY DAMAGES THAT ARISE FROM SERVICES PERFORMED IN STRICT ACCORDANCE WITH THE CUSTOMER'S SPECIFICATIONS.
7. **Indemnification and Limitation of Liability:** Except to the extent caused by the negligent acts or omissions or willful misconduct of Customer or outside third parties, and subject to the limitations stated herein, MGE agrees to indemnify, defend and hold harmless the Customer from and against direct losses, costs, damages, liability, and expense arising from injury to any person or damage to real or tangible personal property to the extent such is caused by the negligent acts or omissions or willful misconduct of MGE, its employees, or

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agents in the performance of this Agreement. IN NO EVENT SHALL MGE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, SPECULATIVE, REMOTE, OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST SAVINGS OR LOST REVENUES OF ANY KIND WHETHER OR NOT MGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING FROM OR CONNECTED WITH THE SERVICES, EQUIPMENT, MATERIALS, OR ANY GOODS OR SERVICES PROVIDED HEREUNDER. IN THE EVENT A CLAIM ARISES FROM THE NEGLIGENCE OR MISCONDUCT OF MGE'S EMPLOYEES OR AGENTS, MGE'S ENTIRE LIABILITY FOR SUCH CLAIM SHALL BE LIMITED TO PROVEN DIRECT DAMAGES AND IN NO EVENT SHALL THE LIABILITY OF MGE FOR THE TOTAL OF ANY DAMAGES EXCEED THE TOTAL AMOUNT DEFINED IN THE EQUIPMENT SCHEDULE REFERENCED HEREIN AND MADE PART HEREOF. This section shall survive any termination, cancellation or expiration of this Agreement; however, the indemnification obligations of this section shall only survive as to claims made hereunder on or before that date which is one year from any termination, cancellation or expiration of this Agreement. Customer agrees to notify MGE promptly of any claim against which MGE has agreed to indemnify, and cooperate in every reasonable way to facilitate the defense. Any failure to so notify or cooperate in a timely manner shall relieve MGE of its indemnification obligations to the extent it is prejudiced by such failure to communicate. MGE shall afford Customer, at Customer's own expense, an opportunity to participate on an equal basis with MGE in the defense or settlement of any such claim.

8. **Order of Precedence:** The terms and conditions set forth in this Agreement and Schedule(s) shall supersede and replace in their entirety any and all terms and conditions set forth on the face or reverse side of any Purchase Order or other document presented by Customer, except for the specific terms of the Purchase Order setting forth the price and scope of work described herein.
9. **Additional Terms:** The additional terms attached in Schedule A are incorporated herein by reference and are made part of this Agreement. The additional terms can be downloaded at <http://www.mgeups.com/us/tnc/service>.
10. **Schedules:** The attached Schedules are identified as Schedule A- Additional Terms, and Schedule B- Equipment Schedule(s).
11. **Preventative Maintenance:** With respect to the Preventative Maintenance (PM) purchased under this Agreement, it shall be the Customer's responsibility to schedule the PM visits as stated in Section 1 ("Acceptance") of this Agreement. MGE shall attempt to complete the PM (for UPS modules, related equipment and for batteries) within ninety (90) days of the scheduled service date. The scheduled service date will be noted on the Equipment Schedule and vary from annual to semi-annual to quarterly visits depending on the service selected by the Customer. Should the Customer not permit any PM to be completed within ninety (90) days of the scheduled service date, MGE shall deem its obligation for that PM to have been met.

MGE UPS SYSTEMS, INC.

Signature: _____

Signature: _____

Name: _____

Name: Michael Dennis

Title: _____

Title: Director of Risk Management

Date: _____

Date: _____