

## **iPower Systems Ltd. SERVICE AGREEMENT**

**THIS SERVICE AGREEMENT** (this “Service Agreement”) is entered into on or as of the \_\_\_\_ day of \_\_\_\_\_, 2009 (the “Effective Date”) by and between iPower Systems Ltd, a system integrator and emergency power sales organization having offices located at 115 Wall Street, Valhalla, NY 10595 (“Seller”), and \_\_\_\_\_, located at \_\_\_\_\_ (“Customer”). The parties hereto hereby agree that the complete agreement between such parties with respect the Services contemplated by this Service Agreement shall consist of this Service Agreement, the General Terms and Conditions set forth on Schedule A attached hereto and incorporated herein by reference (the “General Terms and Conditions”) and the Service Levels set forth on Schedule B attached hereto and incorporated herein by reference (the “Service Levels”). Capitalized terms used in this Service Agreement and defined in the General Terms and Conditions shall have the meanings assigned in the General Terms and Conditions.

### **A. Scope of Work:**

Seller shall provide the following services, performed on the following devices and products as set forth below (collectively, the “Services”) in accordance with the timeline, if any, set forth in this Service Agreement

#### **Services Provided:**

**IPS Gold Package: Includes a annual general diagnostic of your back up power system to include all inverter settings are correct, adjust as needed, voltage test on batteries, perform load test on inverters and test system overall functionality. Cleaning of unit venting. Gold Package includes unlimited telephone support, email support and on site support (metro tri-state area only)**

**Silver Package-Unlimited telephone & email support**

Devices / Products Covered: **Gaia PowerTower**

The following services, products and parts are not covered by this Service Agreement: Damage from flooding, lighting, fire, theft, vandalism, and other acts of God.

#### Excluded Services:

Customer understands and agrees that services required to recover from failures and/or incidents caused by any of the following circumstances are not considered normal maintenance and are not covered under this Service Agreement:

- Service and repair made necessary due to accidents or acts of God, damage from fire, water, wind, earthquakes, lightning, terrorism, transporting equipment, vandalism, or burglary;
- Service and repair made necessary by the alteration or modification of equipment other than that authorized by Seller;
- Service and repair of damage or problems caused by neglect, malicious activity, or misuse including, without limitation, use of the system(s) for purpose other than which it was designed, by the Customer, its employees, or third-party contractors;
- Service or repair due to electrical damage caused by electrical wiring at system location or resulting from electrical surges, sags, or spikes;
- Service and repair made necessary by bugs released by software vendors, e.g. adverse effects from installing updates or service packs;
- If in the reasonable opinion of Seller, as supported by its experience, any particular user's requests exceed a normal and reasonable frequency, Seller may advise the Customer that the user's requests are excluded until such time as the user has received additional training.

#### Excluded Third Party Costs:

Customer understands and agrees that the following third party costs are not covered by the fees set forth in this Service Agreement and shall be charged by Seller to Customer:

- Labor, parts, hardware and software not covered by warranties;
- Software licenses, subscription or upgrade fees;
- Manufacturer or vendor support fees, whether by annual contract or per incident;
- Shipping costs.

#### Additional Projects:

Customer may occasionally require additional or amended services outside of the terms of this Service Agreement (collectively, “Additional Projects”). Seller will provide a detailed scope of work and labor quote for any Additional Project required by Customer. Customer will be required to execute a change order for any Additional Project before any work for such Project is performed and understands that a separate invoice(s) will be generated for such work. Examples of Additional Projects include:

- Software development, programming, debugging, or customization except as expressly specified in this Service Agreement;
- Cost to bring Customer’s environment up to minimum standards required by Seller;
- Training and coaching;
- Planning, project management, research, and advisory consulting services;

**1. Pricing:** In consideration for the Services contemplated by this Service Agreement, Customer shall pay Seller as follows:

**Fees:**

**Silver Package - \$199 annually**

**Gold Package - \$499 annually**

Package charges will be processed on anniversary date of agreement unless client cancels services within 30 days of said date.

Hourly Rates for Services Not Covered by Fixed Fee: \$175 First hour, \$75 for each additional hour

Payment Terms and Schedule: Visa, MasterCard, American Express, check

Reimbursement of Expenses:

Client will reimburse IPS for any shipping expenses related to replacement of warranted parts on their existing Gaia Power Tower systems Client will reimburse IPS at .55 cents per mile for any service related issues outside tri state area.

**B. Timeline:** Except as otherwise set forth herein, the Services contemplated by this Service Agreement shall commence as of the Effective Date.

**C. Term:** The term of this Service Agreement is as follows:

Initial Term:  
1 year annually renewable

Renewal Term:  
Annually renewable on anniversary date

**D. Service Levels.** Telephone support will be available 8AM-6PM 7 days a week. Messages left after hours will be returned within 24 hours. On Site customer support is available 9AM-5PM Monday through Friday. After hours service/weekend available upon request subject to availability.

**E. Customer Obligations:** Customer shall be responsible for the following:

- Customer may be required to conduct preliminary diagnostic steps or provide additional information related to a support request, prior to a technician being dispatched to Customer's facility; and
- Provide adequate access to facility

**Contact Information:**

**Telephone: 1-800-618-9774  
914-449-2003**

**Email: service@ipowerltd.com**

ACCEPTED AND AGREED:

CUSTOMER:

Select:

**Silver Package \$199**

**OR**

**Gold Package \$499**

Name: \_\_\_\_\_

Billing Address: \_\_\_\_\_

Contact: \_\_\_\_\_

**Credit Card #** \_\_\_\_\_

**Exp. Date** \_\_\_\_\_

**CCV 3 or 4 digit code** \_\_\_\_\_

**(Located on back of credit card)**

**SCHEDULE A**

**GENERAL TERMS AND CONDITIONS**

**1. Service Agreements.** This Schedule A, General Terms and Conditions (“General Terms and Conditions”), contains the general terms and conditions governing the relationship between the parties as part of any related Service Agreement.

**2. Term.** The term of each Service Agreement shall begin as of the Effective Date of such Service Agreement and continue for the term specified on such Service Agreement. The term of each Service Agreement shall automatically extend for the Renewal Term specified on such Service Agreement, unless such Service Agreement is terminated by either party by written notice of termination at least thirty (30) days prior to the expiration of such term then in effect, or until otherwise terminated pursuant to the provisions of such Service Agreement or these General Terms and Conditions.

**3. Services.** During the term of each Service Agreement, Seller shall provide Customer the Services described on such Service Agreement. The Services shall be provided by Seller in accordance with the timeline, if any, set forth on such Service Agreement. Customer shall satisfy all of Customer’s obligations, if any, set forth on such Service Agreement.

Except as otherwise provided on a Service Agreement, Customer shall be responsible for providing the hardware, software and materials and for providing Seller with the information and access to Customer’s facility as are necessary for Seller to render the Services. Except as otherwise provided on a Service Agreement, Customer shall be responsible for the application, operation, maintenance and support of its systems, hardware and software and all components thereof including, but not limited to, the implementation of appropriate procedures, training and safeguards and routine backups.

Except as otherwise provided on a Service Agreement, to the extent that Seller or any third party manufacturer specifies any preventative maintenance with respect to the Services, Customer shall be responsible for such maintenance.

From time to time, Customer may request that Seller provide additional or amended Services not covered by an existing Service Agreement, and the parties hereto may, but are not required to, agree to a change order for Services either by amending an existing Service Agreement or by entering into a new Service Agreement. Such change order, if executed, will specify the Services to be provided by Seller and terms for such Services, including, but not limited to, price terms.

**4. Compensation.** Customer shall compensate Seller for the Services in accordance with the terms and payment schedule set forth on each Service Agreement. Customer shall make payments to Seller in accordance with such payment schedule and within thirty (30) days after receipt of an accurate invoice from Seller showing the value of the Services completed. Such invoice shall also itemize any reimbursable expenses. Customer shall also pay any sales, use, value-added, or other tax or charge imposed by any governmental entity upon the sale, use or receipt of the Services. Late payments shall accrue interest at the rate of one and one-half percent (1.5%) per month, or the maximum rate allowed by applicable law, whichever is lower.

Except as expressly set forth on a Service Agreement, Seller shall be responsible for all expenses incurred by Seller under such Service Agreement. To the extent that the reimbursement of any travel-related expenses is authorized on a Service Agreement, Customer shall reimburse Seller for all reasonable expenses incurred by Seller for travel, lodging and sustenance when Seller is required to perform Services at locations other than Seller’s offices.

**5. Installation.** To the extent that any products or materials, are to be installed by Seller, Seller shall install such products or materials as specified on a Service Agreement. Installation dates are estimates only. Customer shall be responsible for preparation and maintenance of the site for such installation, including, but not limited to, providing necessary electrical power and communication lines and proper air conditioning and humidity control.

**6. Warranties.** SELLER MAKES NO WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED REGARDING THE FUNCTIONALITY OF HARDWARE OR SOFTWARE, BUT INSTEAD RELIES ON THE WARRANTIES PROVIDED BY THE MANUFACTURER OF EACH PRODUCT. EXCEPT AS EXPRESSLY STATED IN ANY SERVICE AGREEMENT OR THESE GENERAL TERMS AND CONDITIONS, SELLER DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

Seller hereby warrants that any products or materials to be installed by Seller under any Service Agreement shall be performed or installed by Seller in a workmanlike manner, consistent with generally prevailing industry standards for comparable services, and in compliance with the requirements of such Service Agreement.

**7. Limitation of Liability.** IN NO EVENT SHALL SELLER BE LIABLE TO CUSTOMER, ANY EMPLOYEE, AGENT OR CONTRACTOR OF CUSTOMER, OR ANY THIRD PARTY, FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, OR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO ANY SERVICE AGREEMENT OR THESE GENERAL TERMS AND CONDITIONS EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. SELLER’S LIABILITY TO CUSTOMER UNDER ANY SERVICE AGREEMENT AND THESE GENERAL TERMS AND CONDITIONS SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO SELLER PURSUANT TO SUCH SERVICE AGREEMENT FOR THE SERVICES DURING THE PRECEDING TWELVE (12) MONTHS.

**Termination.** The parties hereto may terminate any Service Agreement, and their respective obligations under such Service Agreement, as follows: (1) by mutual, written consent of the parties hereto; (2) by Seller, if Customer fails to pay to Seller any payments under any Service Agreement when due, as contemplated by such Service Agreement; (3) by any party hereto upon (30) days written notice if the other party hereto materially breaches any term of any Service Agreement or these General Terms and Conditions or otherwise fails to satisfy any promise or covenant made herein or in any Service Agreement, and further provided that such party shall fail to cure said breach or failure within such period; (4) by Seller, with or without cause, upon (30) days’ written notice of intent to terminate to Customer.

**8. Notices.** All notices, demands and communications required or permitted in connection with each Service Agreement shall be in writing and shall be deemed effectively given in all respects upon personal delivery or, if mailed, by registered or certified mail, postage prepaid, return receipt requested, or by overnight courier, the receipt of which is confirmed, addressed to the party hereto at the address set forth in the first paragraph of such Service Agreement (or such other address for a party as shall hereafter be specified by like notice). Either party hereto may from time to time change its notification address by giving the other party hereto prior written notice of the new address and the effective date thereof.

**9. Relationship of the Parties.** Neither any Service Agreement nor these General Terms and Conditions shall create, nor shall be represented by either party hereto to create, a partnership, joint venture, employer-employee, master-servant, principal-agent, or other relationship whatsoever between the parties hereto.

**10. Successors and Assigns.** Each Service Agreement shall benefit and be binding upon the parties hereto and their respective successors and assigns.

**11. Force Majeure.** Neither party hereto shall be deemed in default of any Service Agreement or these General Terms and Conditions to the extent that performance of its obligations (other than an obligation of payment) or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, civil disturbance, terrorism, acts or omissions of suppliers and other third parties, act of government, strikes, unavailability of material, facilities, telecommunications services or supplies or any other cause beyond the reasonable control of such party (each, a “Force Majeure Event”).

**12. Modification or Waiver.** The parties hereto may, by mutual agreement, amend any provision of any Service Agreement or these General Terms and Conditions, and any party hereto may grant consent or waive any right to which it is entitled under any Service Agreement or these General Terms and Conditions or any condition to its obligations under any Service Agreement or these General Terms and Conditions, provided that each such amendment, consent or waiver shall be in writing.

**13. Governing Law.** Each Service Agreement and these General Terms and Conditions shall be governed by and construed in accordance with the laws of the State of New York and the federal laws of the United States of America. The parties hereto consent to submit to the jurisdiction of the Courts of the State of New York for any actions, suits or proceedings arising out of or relating to each any Service Agreement or these General Terms and Conditions.

**14. Severability.** In the event that any provision of any Service Agreement or these General Terms and Conditions, or any word, phrase, clause, sentence or other provision thereof, should be held to be unenforceable or invalid for any reason, such provision or portion thereof shall be modified or deleted in such a manner so as to make such Service Agreement or these General Terms and Conditions as modified legal and enforceable to the fullest extent permitted under applicable laws.

**15. Entire Agreement.** These General Terms and Conditions and each Service Agreement and other attachments thereto constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, purchase orders, understandings and negotiations, whether oral or written, between the parties hereto with respect to such subject matter.