

Powerside Standard Terms and Conditions of Sale

1. General; Specific Terms.

1.1 General. These Powerside Standard Terms and Conditions of Sale (the “**Terms**”) form part of the agreement between the Powerside entity (“**Powerside**”) and “**Customer**” which enter into an ordering document (“**Order**”) or a statement of work (“**SOW**”). Orders and SOWs incorporate these Terms by reference (including by reference to Powerside’s website located at <https://powerside.com>, and by reference to these Terms made available directly from Powerside). Each Order or SOW, which incorporates these Terms and may incorporate the Specific Terms (as defined below), constitutes a separate agreement with respect to its subject matter to create the contract (the “**Agreement**”) between the Customer and Powerside, by which Powerside and its Affiliates make available power quality, monitoring and power correction solutions (the “**Powerside Solutions**”) and related services. Powerside Solutions may be provided by Powerside or Powerside affiliates.

The Powerside Solutions will comprise one or more of the following as set out in an Order or SOW:

- a) the equipment purchased by Customer (the “**Equipment**”) comprising hardware (the “**Purchased Hardware**”) and the software embedded in the Purchased Hardware or provided separately (the “**Software**”);
- b) the software and services made available by Powerside to Customer over the internet (the “**Portal Services**”, and together with the Software and Equipment, the “**System**”); and
- c) support and maintenance services (“**Support and Maintenance**”) and installation and other professional services (“**Professional Services**”, and together with the Support and Maintenance, the “**Services**”) provided by Powerside to Customer.

1.2 Specific Terms. The purchase or license of the various products and services comprising the Powerside Solutions may be subject to specific terms that are set forth below or set out in an Order or SOW (the “**Specific Terms**”).

2. Software License. Subject to the terms and conditions of the Agreement, Powerside grants Customer a perpetual, non-exclusive, non-transferable, non-sublicensable, and limited license (“**License**”) to execute one copy of the Software, in executable object code form only, solely in each unit of Purchased Hardware (as applicable) and solely for use with each such unit of Purchased Hardware, or separately, according to the individual license terms of such separately provided Software. Subject to Section 3 and Section 13 herein, these Terms apply to Customer’s use of the Software notwithstanding any electronic software license agreement that may be included and presented as part of the downloading, installation, or use of the Software.

3. Third Party Materials; Releases; Uses.

3.1 Third Party Materials. The System may include hardware, software, content, data or other materials, including related documentation, that are licensed or owned by third parties and that are provided to Powerside on terms that are in addition to or different from those contained in these Terms (“**Third-Party Terms**”). A list of all such materials, if any, included in the Equipment and provided under Third-Party Terms will be provided by Powerside upon written request from Customer. Customer is bound by and will comply with all Third-Party Terms. Any breach by Customer of any Third-Party Terms is also a breach of these Terms.

3.2 Releases. Unless expressly stated otherwise in applicable Specific Terms, all repairs, bug fixes, patches, deliverables workarounds, updates, upgrades, enhancements, modifications, and other new versions of the System that Powerside provides to Customer are considered part of the System.

3.3 Proprietary Rights; Prohibited Uses. Except as expressly provided in these Terms, Powerside and its licensors retain all right, title and interest in the System and associated technical information, and all Intellectual Property Rights therein. Customer will not use the System for any purposes beyond the scope expressly set out in the Agreement. Customer will have no right and will not, nor will it authorize or assist any third party to: (a) except as permitted by applicable law, copy, disassemble, reverse engineer, modify, translate, alter or decompile all or any portion of the System or otherwise discern the source code in the System; (b) adapt, modify, translate, or create derivative works of the System; (c) distribute, rent, lease, sublicense, assign, transmit, sell or otherwise transfer the System (other than purchased Equipment) or any of Customer’s rights therein, except as expressly permitted in the Agreement; or (d) use the System to create, collect, transmit, store, use, or process any data that violates any applicable laws, or infringes, violates or otherwise misappropriates the Intellectual Property Rights or other rights of any third party (including any moral right, privacy right or right of publicity). Customer must not remove, alter, or obscure any proprietary notice or legend in the System. Nothing in the Agreement will be construed to grant Customer any right to obtain or use source code. Under the Agreement, “**Intellectual Property Rights**” mean any and all intellectual property rights including copyrights, patent rights,

trademark rights and any other intellectual property right anywhere in the world, whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection.

4. **Shipment and Delivery.** Unless expressly agreed to by the parties in writing, Powerside will ship the Equipment *Ex Works* (Incoterms 2010) at Powerside's warehouse, provided that title to Equipment will only transfer to Customer upon full payment in accordance with the Order and commencement of the warranty period specified in the Equipment Warranty. In the event that an Order is comprised of multiple units of Equipment, Equipment may be shipped separately, and Customer will pay for the units so shipped whether such shipment is in whole or partial fulfillment of an Order. Any time quoted by Powerside for delivery is an estimate only, and Powerside is not responsible for any delivery delays caused by or requested by Customer. Powerside is not liable for, or in respect of, any loss or damage arising from any delay in filling any Order, failure to deliver or delay in delivery. Powerside will properly pack, mark and ship the Equipment to Customer and provide Customer with shipment documentation showing the Order number, Powerside's identification number for the subject Equipment, the quantity of pieces in shipment, the number of cartons or containers in shipment and Powerside's name. Notwithstanding any provision of the Agreement that may require Powerside to perform commissioning or configuration services, Powerside's delivery pursuant to this Section 4 will be deemed complete, and Customer will be deemed to have accepted the Equipment, upon delivery to the carrier.
5. **Equipment Warranty.** Powerside makes certain limited warranties regarding the Equipment (other than the Software), as set forth in Powerside's written warranty statement located at Powerside's website <https://powerside.com> (the "**Equipment Warranty**"), which is incorporated into and is subject to this Agreement. The foregoing will be Powerside's sole obligation and Customer's sole remedy for any defective Equipment (other than the Software). Customer has no right to return any Equipment for repair, replacement, credit or refund except as set out in this Section 5.

6. **Payment**

6.1 Fees. Customer agrees that the rights granted under the Agreement, including any license or access provided to the System or Services, are conditioned on Customer's payment of all required fees for such System or Services, whether upfront, one-time, recurring, or a combination of the foregoing, as specified in an applicable Order or SOW (the "**Fees**"). The prices payable by Customer for the System ordered are as indicated in the Order, SOW or as otherwise agreed to by the parties in writing.

6.2 Payment. Powerside will specify Customer payment terms, including price and accepted methods, in an applicable Order or SOW. Customer agrees to pay Powerside for the price of all Equipment ordered and Services rendered. Customer's payment is not subject to any setoff claims or rights of offset of any kind. Powerside reserves the right to take any and all appropriate action if Customer fails to pay as required under the Agreement, which may include: (a) prevention of use of the System by any party; (b) withholding of the Services until Customer has paid in full amounts owed to Powerside; (c) ceasing fulfillment of Orders; (d) charging a late fee of 1.5% per month (19.56% per annum) for all past due amounts; and (e) charging Customer for all costs and expenses incurred by Powerside relating to collection of past due amounts (including collection agency fees and attorneys' fees).

6.3 Taxes. The Fees may not include applicable sales, use, value-added, GST or HST, personal property or other taxes (collectively "**Taxes**"). Customer will be responsible for and pay all applicable Taxes, duties, tariffs, assessments, export and import fees or similar charges (including interest and penalties imposed thereon) on the transactions contemplated in connection with the Agreement, other than Taxes based on the net income or profits of Powerside. Notwithstanding anything to the contrary in the Agreement, if any amounts (including any Taxes) are required to be withheld by Customer from any amount otherwise payable by Customer to or for the benefit of Powerside under the Agreement, Customer will: (a) pay an additional amount such that the net amount actually received by Powerside will, after all such withholdings (including any withholdings to be made in respect of any additional amount payable pursuant to this sentence), equal the full amount of the payment then due; (b) pay, or cause to be paid, to the relevant taxation authority the full amount of such withholdings (including the full amount of any withholdings in respect of any additional payment required to be paid pursuant to this sentence) in accordance with applicable law; and (c) furnish Powerside as soon as practicable (and, in any event, within 30 days) with an official receipt (or a certified copy thereof) or such other documentation as is reasonably acceptable to Powerside evidencing payment of such withholdings to the relevant taxation authority. If Customer is a tax-exempt entity or claims exemption from any Taxes hereunder, Customer will provide a certificate of exemption upon execution of an Order or SOW and, after receipt of valid evidence of exemption, Powerside will not charge Customer any Taxes from which Customer is exempt.

7. Support; Maintenance; Updates.

7.1 Support. Unless otherwise agreed between the parties in a separate written agreement, Powerside will have no obligation to provide support services for the System.

7.2 Maintenance Services. Customer will use, operate and maintain the System in good working order, repair and condition, and in accordance with: (a) applicable laws; (b) Powerside's specifications and recommendations; and (c) and Third-Party Terms. Powerside may, in its sole discretion, include the provision of such updates, upgrades, bug fixes, patches and other error corrections (collectively, "**Updates**") as Powerside makes generally available to other licensees of the Software. All Updates will be deemed Software under this Agreement. Unless otherwise agreed to in writing, maintenance services do not include any new version or new release of the Software that Powerside may issue as a separate or new product, and Powerside may determine whether any issuance qualifies as a new version, new release or Update in its sole discretion.

7.3 Automatic Updates. The Software may automatically communicate with Powerside's Portal Services or other servers to receive Updates. The Updates may be automatically installed without providing any additional notice or receiving any additional consent. Customer consents to these automatic Updates. If Customer does not want the Updates, it should not use the Software. Powerside may require Customer to accept and install Updates Software as a condition of continuing the License.

8. Customer Data. Customer retains all ownership and intellectual property rights in and to any data, information, content, records, and files that Customer or any of its Permitted Users (as defined in the Specific Terms applicable to Portal Services) loads, makes available for access by, transmits to or enters into Powerside Solutions ("**Customer Data**", which includes Personal Data as defined in section 9). Customer grants to Powerside a nonexclusive, worldwide, royalty-free, irrevocable, fully paid-up right to access, use, process, store, collect, disclose, and transmit Customer Data to (a) perform its obligations under the Agreement including to provide the Services; and (b) to produce data, information, or other materials that are not identified as relating to a particular individual or company including Customer (such data, information and materials, the "**Aggregated Data**"). Powerside is free to process, create, use, transmit and disclose the Aggregated Data for any purpose and without obligations of any kind.

9. Personal Data. Each party will comply with all applicable laws, when using, handling, disclosing, transferring, sharing, or processing, in any way and for any purpose, any information about an identifiable individual ("**Personal Data**"), including each party's employee and customer Personal Data. The parties will provide reasonable assistance to each other in order to allow the parties to comply with their respective obligations under privacy laws. Powerside's collection, use, storage, processing, disclosure, and deletion of Personal Data provided to Powerside by Customer under the Agreement is governed by the privacy statement located at the company's website, which may be updated by Powerside from time to time.

10. Representations and Warranties; Disclaimer.

10.1 Representations and Warranties. Each party represents, warrants, and covenants that:

- a) it has full power and all necessary rights to agree to the Agreement; and
- b) it will carry out its obligations under the Agreement in compliance with applicable laws.

10.2 Disclaimers.

a) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT (INCLUDING THE EQUIPMENT WARRANTY), POWERSIDE DOES NOT WARRANT THAT THE SYSTEM OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL ERRORS CAN OR WILL BE CORRECTED; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SYSTEM OR SERVICES. EXCEPT AS SPECIFICALLY PROVIDED IN THE AGREEMENT, THE SYSTEM AND SERVICES (AND ANY PART THEREOF) ARE PROVIDED "AS IS" AND "AS AVAILABLE".

b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT (INCLUDING THE EQUIPMENT WARRANTY) AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, POWERSIDE HEREBY DISCLAIMS ALL EXPRESS, IMPLIED, COLLATERAL, OR STATUTORY WARRANTIES, REPRESENTATIONS, AND CONDITIONS, WHETHER WRITTEN OR ORAL, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, COMPATIBILITY, TITLE, NON-INFRINGEMENT, SECURITY, RELIABILITY, COMPLETENESS, QUIET ENJOYMENT, ACCURACY, QUALITY, INTEGRATION OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ANY WARRANTIES OR

CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, POWERSIDE EXPRESSLY DISCLAIMS ANY REPRESENTATION, CONDITION, OR WARRANTY THAT ANY DATA, INFORMATION, INSTRUCTIONS OR DESIGNS PROVIDED TO CUSTOMER IN CONNECTION WITH CUSTOMER'S USE OF THE SYSTEM OR SERVICES (OR ANY PART THEREOF) IS ACCURATE, OR CAN OR SHOULD BE RELIED UPON BY CUSTOMER FOR A PARTICULAR PURPOSE. CUSTOMER IS RESPONSIBLE FOR ENSURING INSTALLATION AND USE OF THE SYSTEM IS CARRIED OUT IN A SAFE MANNER BY SUFFICIENTLY TRAINED PERSONNEL, INCLUDING WITH RESPECT TO THE INSTALLATION OF ELECTRICAL FACILITIES AND EQUIPMENT.

10.3 Customer's Responsibilities. Unless expressly set out in applicable Specific Terms, Customer is solely responsible for: (a) purchasing and obtaining from third parties all applicable licenses and consents for third party technology needed to install, execute, and otherwise use the System (unless provided by Powerside pursuant to these Terms and paid for by Customer to Powerside); (b) obtaining all permits and certifications related to installation of the Systems; (c) configuring all equipment, software, and systems used with the System; and (d) ensuring that users use the System in compliance with these Terms.

11. Limitation of Liability. The following provisions reflect a fair allocation of risk and form an essential basis of the bargain and will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy:

11.1 AMOUNT. IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF POWERSIDE IN CONNECTION WITH OR UNDER THE AGREEMENT (INCLUDING THE EQUIPMENT WARRANTY), WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND GROSS NEGLIGENCE), OR OTHERWISE, EXCEED, (I) UNDER ORDERS OR SOWS FOR SOFTWARE, THE AMOUNT OF FEES PAID BY CUSTOMER IN THE PRIOR 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM; OR (II) UNDER ORDERS OR SOWS FOR EQUIPMENT, THE FEES PAID FOR THE EQUIPMENT GIVING RISE TO THE CLAIM. FOR GREATER CERTAINTY, THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THE AGREEMENT WILL NOT INCREASE THIS MAXIMUM LIABILITY AMOUNT. IN NO EVENT WILL POWERSIDE'S LICENSORS OR THIRD-PARTY SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THE AGREEMENT.

11.2 TYPE. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL POWERSIDE BE LIABLE TO CUSTOMER OR ANY PERMITTED USER FOR ANY: (A) SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; (B) LOST SAVINGS, PROFIT, DATA, USE, OR GOODWILL; (C) BUSINESS INTERRUPTION; (D) COSTS FOR THE PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES; (E) PERSONAL INJURY OR DEATH; OR (F) PERSONAL OR PROPERTY DAMAGE; ARISING OUT OF OR IN ANY WAY CONNECTED TO THE AGREEMENT, REGARDLESS OF CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), OR OTHERWISE, AND EVEN IF NOTIFIED IN ADVANCE OF THE POSSIBILITIES OF SUCH DAMAGES.

12. Term. Each Agreement is effective as of the effective date specified in the applicable Order or SOW and will remain in effect until the completion, expiration or permitted termination of such Order or SOW (the "Term").

13. Termination.

13.1 Certain Termination Rights. Either party may terminate the Agreement by giving to the other party written notice of termination upon the occurrence of any of the following events: (a) the other party breaches or defaults on any of the material terms or conditions of the Agreement (including Customer's payment obligations under Section 4) and fails to cure such breach or default within thirty (30) days of receipt of written notice thereof; except that, in the event of any breach that is incapable of being cured, such termination will be effective immediately; (b) the other party makes any assignment for the benefit of creditors or is unable to pay its debts as they mature in the ordinary course of business; or (c) any proceedings are instituted by or against the other party under any insolvency laws or for reorganization, receivership or dissolution.

13.2 Effect of Termination. Unless otherwise specified in the Agreement, upon expiration or termination of the Agreement: (a) Customer must immediately cease any and all use of the Portal Services; (b) Powerside will have no further obligation to provide the System or perform Services of any kind to Customer; and (c) unless Powerside terminated the Agreement pursuant to Section **Error! Reference source not found.**, all amounts payable under the Agreement, including amounts not otherwise due or billed as of the effective date of termination, will become immediately due and payable. Expiration or termination of the Agreement will not limit Powerside from pursuing any other remedies available to it, including injunctive relief, nor will any such expiration or termination relieve Customer's obligation to pay all amounts and Fees that have accrued or are otherwise owed by Customer under any Agreement.

13.3 Software License Term. In the event that Powerside terminates the Agreement pursuant to Section 13.1 herein, Customer's Software License granted pursuant to Section 2 herein terminates upon termination of the Agreement. Upon such termination, Customer must immediately cease use of, and return or destroy any copies of, the Software.

13.4 Survival of the Terms. Upon any termination or expiration of the Agreement, provisions contained in these Terms that by their nature and context are intended to survive completion of performance, expiration, termination, or cancellation of the Agreement, including the terms in Sections 4 (Fees and Audit); 10 (Representations and Warranties; Disclaimer); 17 (Dispute Resolution); and 19 (General), will survive.

14. Compliance with Laws. The parties will comply with all applicable laws, rules and regulations, including export laws, in its performance under the Agreement. Customer must ensure that its use of the System or Services complies in all respects and at all times with all applicable laws, statutes, regulations, ordinances or other rules promulgated by governing authorities that the parties or the System are subject to, including by means of obtaining any permits, licenses, approvals required with respect to applicable export regulations, and any certifications or licences relating to safe use to maintenance and installation of power systems.

15. Export. Customer agrees not to directly or indirectly export, re-export or import the System or any component thereof without first obtaining all required licenses, permits and permissions. Powerside makes no representation or warranty that the System may be exported without Customer first obtaining appropriate licenses or permits under applicable law, or that any such license or permit has been, will be, or can be obtained.

16. Force Majeure. Powerside will be excused from any delays in performance of its obligations under the Agreement if such a delay results from compliance with any requirement of applicable law, acts of God, fire, strike, embargo, terrorist attack, war, insurrection or riot, Internet service failures or delays, acts or omissions of Customer or any third parties, the unavailability or modification by third parties of telecommunications or hosting infrastructure or third party websites, or other causes beyond the reasonable control of Powerside (“**Force Majeure**”). Any delay resulting from any of such causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

17. Governing Law. The Agreement is governed by and construed in accordance with the laws of the State of Delaware and federal laws of the United States applicable therein, not including its conflict of law principles. The parties disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods to the Agreement.

18. Dispute Resolution.

18.1 Arbitration. For all disputes based upon, arising out of, or in any manner connected with the Agreement, it will be settled in English by binding arbitration in Delaware in accordance with the AAA Rules. Each party will bear its own expenses and will share equally in fees of the arbitrator(s). A single arbitrator will be selected by the parties from the candidate pool. The parties will provide each other with all requested documents and records related to the dispute in a manner that will minimize the expense and inconvenience of both parties. Discovery will not include depositions or interrogatories except as the arbitrator expressly allows upon a showing of need. The parties and arbitrator will be guided in resolving discovery disputes by the Federal Rules of Civil Procedure. If disputes arise concerning discovery requests, the arbitrators will have sole and complete discretion to resolve the disputes. The parties agree that time of the essence principles will guide the hearing and that the arbitrator will have the right and authority to issue monetary sanctions in the event of unreasonable delay. The arbitrator will deliver a written opinion setting forth findings of fact and the rationale for the award within thirty (30) days following conclusion of the hearing. The award of the arbitrator(s), which may include legal and equitable relief, but which may not include punitive damages (except with respect to a claim for indemnification for a third-party claim that may have included such types of damages) to the extent awarded, will be final and binding upon the parties, and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction. The Agreement will control if there is a conflict between the terms of this Agreement and the AAA Rules.

19. General.

19.1 Assignment. The Agreement is binding upon and is for the benefit of the parties, their permitted successors and permitted assigns. Customer may not transfer, sublicense or otherwise assign the Agreement or any of its rights or obligations under the Agreement, by operation of law or otherwise, without Powerside’s prior written consent, which consent will not be unreasonably withheld.

19.2 Notices. All notices required by or relating to the Agreement must be in writing and sent by registered mail, return receipt requested, or via an internationally recognized express mail carrier (postage prepaid, return receipt requested), to the applicable party to the Agreement and addressed as set forth on the first page, or to such other address as that party may have given by written notice in accordance with this provision. All notices required by or relating to the Agreement may also be communicated by electronic mail, if the sender also mails a hard copy of such notice to the aforementioned address.

19.3 Severability. Any provision of the Agreement found by a tribunal or court of competent jurisdiction to be illegal or unenforceable will be severed from such Agreement and all other provisions of the Agreement will remain in full force and effect.

19.4 Waiver. A waiver of any provision of the Agreement must be in writing and a waiver in one instance will not preclude enforcement of such provision on other occasions.

19.5 Construction. Except as otherwise provided in the Agreement, the parties' rights and remedies under the Agreement are cumulative. The terms "include" and "including" mean, respectively, "include without limitation" and "including without limitation." The headings of sections of the Agreement are for reference purposes only and have no substantive effect.

19.6 Independent Contractors. Powerside's relationship to Customer is that of an independent contractor, and neither party is an agent or partner of the other. Neither party will have, nor will represent to any third party that it has, any authority to act on behalf of the other party.

19.7 Entire Agreement. The Agreement, including these Terms, the Specific Terms and all applicable Orders or SOWs constitute the entire agreement between the parties with respect to the subject matter of the Agreement and supersedes all prior or contemporaneous agreements, representations or other communications, whether oral or written. If there is a conflict or inconsistency between these Terms, Specific Terms and an applicable Order or SOW, the following descending order of priority applies:

- a) the applicable Specific Terms; then
- b) these Powerside Terms and Conditions; then
- c) an applicable Order or SOW.

19.8 Amendments. No amendment, supplement, modification, waiver, or termination of the Agreement and, unless otherwise expressly specified in the Agreement, no consent or approval by any party, will be binding unless executed in writing by the parties.

19.9 English Language. It is the express wish of the parties that any Agreement and all related documents be drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

SPECIFIC TERMS APPLICABLE TO ORDERS AND SOWS ORDERING PORTAL SERVICES (“PORTAL TERMS”)

1. **Effect of these Portal Terms.** These Portal Terms apply to Orders and SOWs in which Portal Services are ordered.
2. **Definitions.** Capitalized terms used but not defined in these Portal Terms have the meaning set forth in the Terms.
3. **Portal Services.**
 - 3.1 **Access.** If included in an Order or SOW, Powerside will make the Portal Services available to Customer on the terms and conditions set out these Portal Terms and the Terms.
 - 3.2 **Portal Services Description.** The features and functionality of the Portal Services (the “**Portal Services Description**”) will be described in the applicable Order or SOW.
 - 3.3 **Suspension of Access; Scheduled Downtime; Modifications.** Powerside may from time to time and in its discretion, without limiting any of its other rights or remedies at law or in equity, under the Agreement: (a) suspend Customer’s access to or use of the Portal Services or any component thereof: (i) for scheduled maintenance; (ii) due to a Force Majeure; (iii) if Powerside believes in good faith that Customer or any Permitted User has violated any provision of the Agreement; or (iv) to address any emergency security concerns; and (b) make any modifications, improvements, customizations, updates and enhancements to the Portal Services.
 - 3.4 **Permitted Users; Accounts.** Customer is responsible for identifying and authenticating those employees and independent contractors authorized by Customer to access and use the Portal Services on Customer’s behalf (“**Permitted Users**”), for ensuring only Permitted Users access and use the Portal Services, and for Permitted Users’ use of the Portal Services in compliance with the Agreement. Upon Customer’s request, Powerside will issue one or more accounts (each, a “**Customer User Account**”) to Customer for use by one or more Permitted Users. Customer will ensure that Permitted Users only use the Portal Services through the Customer User Account. Customer will not allow any Permitted User to share the Customer User Account with any other person. Customer will promptly notify Powerside of any actual or suspected unauthorized use of the Portal Services. Powerside reserves the right to suspend, deactivate, or replace the Customer User Account if it determines that the Customer User Account may have been used for an unauthorized purpose. Permitted Users access to Portal Services will be subject to additional terms found in Powerside’s terms of use, which will be provided through the Portal Services or that will be otherwise available from Powerside upon request.
4. **Support and Maintenance.** Powerside’s Support and Maintenance Services include providing Customer with access to Powerside’s technical support services via telephone and via. Powerside’s Support and Maintenance Services also include Powerside’s provision of certain on-site services as set forth in an applicable Order or SOW to maintain the Equipment and provide training on the System. In the event that Customer requires additional Support and Maintenance Services from Powerside, such services need to be ordered separately under a Services Addendum referencing the Agreement.
5. **Fees and Payments.** In consideration for the access granted to Customer and the performance of Powerside’s obligations under these Portal Terms, Customer will pay to Powerside the amounts set forth in any applicable Order or SOW. Any suspension of the Portal Services by Powerside pursuant to the terms of the Agreement will not excuse Customer from its obligation to make payments under the Agreement.
6. **Effect of Termination.** Upon termination of the Agreement, Customer will immediately cease accessing or using the Portal Services.

SPECIFIC TERMS APPLICABLE TO POWERSIDE SERVICES (“SERVICE TERMS”)

1. **Effect of this Service Terms.** These Service Terms apply to SOWs in which Services for Projects are ordered.
2. **Definitions.** Capitalized terms used but not defined in these Service Terms have the meaning set forth in the Terms.
3. **Statements of Work.** Powerside and Customer may, from time to time, agree to perform services and provide deliverables that are not included in the then-current scope of Services provided under the Agreement (“**Projects**”). The parties will identify each Project and the terms and conditions relating to such Project in a SOW. Each SOW, when duly executed, will be incorporated into and subject to these Service Terms.
4. **Services and Deliverables.** Powerside will use commercially reasonable efforts to deliver all items expressly identified as a deliverable in a SOW (“**Deliverables**”) and to perform all Services expressly set out in a SOW. All Services will be performed remotely unless otherwise indicated in the SOW as being an on-site provided service. Unless otherwise agreed to by the parties in the SOW, Powerside will have no obligation to provide support and maintenance services for Deliverables. Powerside will, in its sole discretion, determine the number of personnel and the appropriate skill sets of such personnel necessary to perform the Services. Powerside’s resources may include employees of Powerside or subcontractors. The delegating or subcontracting of Powerside’s obligations set out in these Service Terms will not relieve Powerside from any obligation or liability under these Service Terms.
5. **Term and Termination; Suspension.**
 - 5.1 **SOW Term and Termination; Suspension.** Each SOW will become effective on the effective date set out therein (the “**SOW Effective Date**”) and, unless otherwise provided in the SOW, will continue for the term indicated in the SOW, unless earlier terminated in accordance with the Terms (the “**SOW Term**”). Without limiting any other termination right set out in the Terms, either party may terminate any SOW if the other party breaches on any of the material terms or conditions of such SOW and fails to cure such breach or default within thirty (30) days of receipt of written notice thereof. In addition to Powerside’s termination rights set out in the Terms, upon any material breach by Customer of a SOW, Powerside will be entitled, in its discretion, to suspend the Services under the applicable SOW until such time as such breach or default is remedied by Customer.
 - 5.2 **Effect of Termination.** Without limiting Section 13.2 of the Terms, within ten (10) days of the expiration or termination of the Agreement or any SOW, as applicable, Customer will pay all Fees and related expenses for the portion of Services performed or Deliverables completed as of the effective date of termination.
6. **Milestones; Deliverables and Acceptance.**
 - 6.1 **Milestones.** For any Deliverable, Service, or other performance obligation of Powerside described as a milestone in an applicable SOW (each, a “**Milestone**”), Powerside will use commercially reasonable efforts to complete such Milestone on or before the deadline specified for such Milestone in the applicable SOW. Any delay in receiving Customer Resources (as defined below) will cause Powerside a delay in performing the Services and will result in a delay in Powerside’s ability to meet the Milestones.
 - 6.2 **Deliverables and Acceptance.** Unless otherwise stated in an SOW, within ten (10) business days of Powerside’s completion of any Milestone or Deliverable, Customer will provide Powerside with written notice of its acceptance or rejection of such Milestone or Deliverable. Customer may not reject any Milestone or Deliverable that substantially complies with the requirements set out in the applicable SOW. Customer’s failure to respond within such ten (10) day period will constitute Customer’s acceptance of the applicable Milestone or Deliverable. If Customer rejects a Milestone or Deliverable, Powerside will use commercially reasonable efforts to correct the deficiencies set out in Customer’s notice of rejection for such Milestone or Deliverable. Once Powerside has notified Customer that it has completed such corrections, Customer will have seven (7) days from the date of such notice to re-test the Milestone or Deliverable. Customer’s failure to respond within such seven (7) day period will constitute Customer’s acceptance of the applicable Milestone or Deliverable. The process set out in this Section 6.2 will continue until Customer notifies Powerside of its acceptance of a Milestone or Deliverable, or until a Milestone or Deliverable is deemed accepted as set forth herein, but will in no event repeat more than three (3) times. If Customer has provided three rejection notices for the same Milestone or Deliverable, then the parties will treat the matter as a Dispute and the parties will resolve such Dispute in accordance with Section 18 of the Terms. Notwithstanding anything to the contrary in the Agreement, if Customer uses any Deliverable in a production or commercial environment (e.g., “go live” with the Deliverable), Customer will be deemed to have accepted such Deliverable as of the date such Deliverable was first used in such production or commercial environment.

7. Customer Dependencies.

7.1 Customer will cooperate with Powerside in the performance of the Services and in the development of Deliverables, including by providing access (whether onsite or remotely, as specified in the applicable SOW) to Customer's personnel, systems, equipment, or communications facilities, as reasonably requested by Powerside from time to time. If Customer has not provided all necessary cooperation or information to Powerside, or Powerside is otherwise denied or delayed access or information by Customer, then Powerside will be excused, without liability, from performing any further Services. Such failure to perform Services resulting from Customer's failures will not relieve Customer from its payment obligations to Powerside.

7.2 Unless otherwise set out in the applicable SOW, for each SOW, Customer will: (a) provide timely access to all information requested by Powerside for matters related to the Services and make available key Customer personnel required by Powerside in connection with the Services (collectively, "Customer Resources"); (b) accept each completed Milestone or Deliverable prior to Powerside commencing work on the next Milestone or Deliverable; (c) ensure that support of applicable third-party manufacturers and licensors reasonably required by Powerside is provided in the event of an issue which is not related to systems managed by Powerside; and (d) provide and manage the underlying infrastructure components used by the System (where such components are not maintained by Powerside).

8. Change Requests.

8.1 Changes. Any service or deliverable not specifically set out in a Statement of Work will be considered out-of-scope and not included in the Services or Deliverables. The parties may request any change to the nature or scope of any Services or Deliverables then-currently provided (each, a "Change") pursuant to this Section 8.

8.2 Change Order Process. If, after Powerside's commencement of Services set out in a SOW, either party requires a Change, such party will set out the new requirements in writing and deliver such request to the other party. Following a request made by Customer (or, in the case of a request made by Powerside, concurrently with such request), Powerside will use commercially reasonable efforts to describe in writing the estimated impact of such Change to the costs, Milestones, timeline, Customer responsibilities, and other relevant aspects of the Services or Deliverables. If Customer agrees with such written description of the estimated impact, then the parties will negotiate in good faith a Change order setting out the detailed terms and conditions pursuant to which the Change will be implemented ("Change Order"). If Customer disagrees with such written description of the estimated impact and the parties are unable to reach agreement on the impact of such proposed Change, then no such Changes to the SoW will be effective, and Powerside will perform the Services in accordance with the original SOW.

9. No Assignment or Transfer of Intellectual Property. Without limiting Section 3.3 of the Terms, Powerside retains all ownership and intellectual property rights in and to: (a) the Services; (b) the Deliverables; (c) anything developed or delivered by or on behalf of Powerside under these Service Terms or any SOW; and (d) any modifications or enhancements to (a), (b) or (c). All rights not expressly granted by Powerside to Customer under the Terms or any SOW are reserved.

10. No Exclusivity. Unless otherwise specified in the applicable SOW, all Deliverables are non-exclusive and may be provided to any or all Powerside customers in Powerside's sole discretion.

11. Fees and Payment. In consideration for the Services and Deliverables performed or provided to Customer under these Service Terms, Customer will pay to Powerside the amounts set forth in each applicable SOW. Unless otherwise agreed to by the parties in writing, Powerside must receive all prepayment amounts listed in a SOW before the commencement of any services thereunder. Any suspension of the Services by Powerside pursuant to the terms of the Agreement will not excuse Customer from its obligation to make payments under the Agreement. Customer agrees to pay all reasonable, pre-approved in writing, out-of-pocket expenses incurred by Powerside in connection with performing Services or delivering any Deliverables, including all reasonable travel expenses.

12. Survival. Upon any termination or expiration of these Service Terms, provisions contained in these Service Terms that by their nature and context are intended to survive completion of performance, expiration, termination, or cancellation of these Service Terms, including Sections 11, will survive.

SPECIFIC TERMS APPLICABLE TO POWERSIDE LV & MV CORRECTION EQUIPMENT CUSTOMIZATIONS (“CUSTOMIZATION TERMS”)

1. **Effect of these Customization Terms.** These Customization Terms apply to Orders and SOWs in which customizations to Systems are ordered.
2. **Definitions.** Capitalized terms used but not defined in these Customization Terms have the meaning set forth in the Terms.
3. **Approvals; Lead Time.**
 - 3.1 **Approvals.** Approval drawings are typically supplied two to three weeks after receipt of order for low voltage Equipment and three to four weeks for medium voltage Equipment and this will be noted in a quotation supplied by Powerside. Once drawings are provided to a Customer, Customer must approve such drawings within two weeks of receipt of the drawings. Upon such approval, (in the form of drawings marked approved or an email stating “Approved as Submitted”), Powerside will release the customization project to production. Powerside may charge the Customer three percent (3%) per week based on the quoted price of the Equipment if the approval by the Customer extends beyond the two-week allocated time as noted above.
 - 3.2 **Drawings Return; Change Orders.** Should Customer return drawings for information or typographical errors, Powerside will correct and resubmit the drawings in a timing mutually agreed upon. Should Customer return drawings for revisions concerning additional material outside the scope of supply, Powerside will provide Customer with an Engineering Change Order for approval which will detail the changes in design, price and delivery time.
 - 3.3 **Lead Time.** Production lead time depends on the type of Equipment, its complexity and the level of customization. The typical lead time is specified on the quotation and confirmed at the reception of an Order.