



**Powerside In-Site Customer Agreement**

**Order**

This agreement (“Agreement”), made effective \_\_\_\_\_ (“Effective Date”), is between Power Survey and Equipment Inc. or its affiliate signing below (“Powerside”), having a principal place of business at 7850 Trans-Canada Route, Saint-Laurent, Quebec H4T 1A5, CANADA and the customer identified below (“Customer” or “you”) for the supply of the Powerside In-site power system monitoring solution (“**Powerside Solution**”).

**Customer**

Name: \_\_\_\_\_ Phone #: \_\_\_\_\_ Email: \_\_\_\_\_

Installation Address (“**Location**”): \_\_\_\_\_

City: \_\_\_\_\_ Province/State: \_\_\_\_\_ Postal Code: \_\_\_\_\_

**Term:** This Agreement is effective on the Effective Date and will continue until the Service Period Expiry date set out on the Order, unless sooner terminated as provided under this Agreement. Powerside’s execution of this Agreement is contingent on the successful completion of a site survey which validates the suitability of the site.

Powerside will during the Term in accordance with this Agreement provide the Powerside Solution consisting of:

- (a) the Powerside Power Quality and Energy Analyzer unit (“**Monitoring Equipment**”), including the software and intellectual property included with Monitoring Equipment, connected to a mutually agreed upon equipment location at the Location;
- (b) cellular communications between your facility and Powerside’s cloud data center;
- (c) upload of your power quality data to Powerside’s cloud data center;
- (d) reporting, to your designees, of your power quality status through Powerside’s online portal (“**Online Web Portal**”).

**Commercial Terms:** See Exhibit A.

**Agreed** to and signed by the duly authorized representatives of the Parties as of the Effective Date.

**Power Survey and Equipment dba Powerside**

**Customer Name**

**By:**

**By:**

\_\_\_\_\_

\_\_\_\_\_

**Name:**

**Name:**

\_\_\_\_\_

\_\_\_\_\_

**Title:**

**Title:**

\_\_\_\_\_

\_\_\_\_\_

**Date:**

**Date:**

\_\_\_\_\_

\_\_\_\_\_

## 1. Terms and Conditions

This Agreement is a legally-binding agreement between you and Powerside. These Terms and Conditions govern your use of Monitoring Equipment and the following services (collectively, the “**Services**”): (i) the Online Portal, (ii) installation services; and (iii) such other services as Powerside may make available from time to time. In addition to the terms defined in these Terms and Conditions, capitalized terms shall have the meanings specified in the Order.

## 2. Customer Obligations

In order to receive the Powerside Solution you will

- (a) permit Powerside, its service providers and/or resellers (“**Partners**”), under direction from Customer’s management, to perform a site survey at the Location and create a simple single line diagram of the facility electrical system, identifying major loads and operations as well as the location of Monitoring Equipment;
- (b) provide reasonable access throughout the Term to Powerside and/or its Partners to the location designated by the parties for installation of Monitoring Equipment (“**Equipment Location**”) for purposes of installation, inspection, maintenance and repair of Monitoring Equipment;
- (c) if you have elected to install Monitoring Equipment, in part or entirely, then permit Powerside and/or its Partners to be present at the Location during such installation;
- (d) permit Powerside to collect, transmit, and analyze power quality data from Monitoring Equipment and to report power quality data to your designees;
- (e) provide Powerside and/or its Partners advance notice of work which may impact or interrupt operation of Monitoring System, including disconnection, temporary removal or relocation of Monitoring Equipment;
- (f) invite and reasonably consider quotes for power quality correction equipment and services from Powerside and/or its Partners, particularly where the correction need is identified by the Powerside Monitoring System; and,
- (g) at expiry or termination of this Agreement, remove the Monitoring System and return it to Powerside at Powerside’s shipping expense.

## 3. Powerside Obligations

Powerside will:

- (a) if necessary, assist you to obtain permits and provide installation drawings in support of such permits;
- (b) provide you with online access to the Online Portal;
- (c) provide first level technical support as needed;
- (d) maintain and show insurance coverage for Powerside employees when they are working at the Location and comply with directions given by Customer’s management when onsite at the Location.

## 4. Monitoring Equipment

(a) You are provided Monitoring Equipment for use solely at the Location(s) specified in the Order. The Monitoring Equipment will at all times remain the property of Powerside or its suppliers or assignees, and Monitoring Equipment shall remain personal property whether affixed to real estate or not, and you will not and will not permit any levy, lien, security interest, hypothec, pledge or encumbrance to attach to Monitoring Equipment. Upon expiry or termination, Powerside or its agent may enter the Location(s) and retrieve Monitoring Equipment

(b) You agree that you will not alter, modify, damage or move Monitoring Equipment, and, except for reasonable wear and tear, will return or surrender it to Powerside upon

the expiry or termination of this Agreement. You assume any risk of loss or damage to Monitoring Equipment until Monitoring Equipment is returned to Powerside in accordance with the terms of this Agreement. You agree to keep Monitoring Equipment insured at your expense against all risks from any cause whatsoever, including without limitation loss by fire, theft and damage. You will immediately notify Powerside of any loss or damage to Monitoring Equipment other than reasonable wear and tear.

## 5. Licence Grants and Reservation of Rights

(a) Licence Grants by Powerside: Subject to these Terms and Conditions, Powerside grants you a revocable, limited, non-exclusive licence to use the software and intellectual property contained in Monitoring Equipment and accessed or provided as a consequence of receipt of the Services (collectively, “**Licensed Property**”).

(b) Reservation of Rights: Except for the limited licence granted to you under this Agreement, all right, title and interest in and to the Licensed Property, all other materials provided or made accessible by Powerside under this Agreement, the Powerside Solution and all intellectual property rights therein will remain with Powerside (or its third Party suppliers and licensors, if applicable). The Powerside Solution and all other materials provided or made accessible by Powerside under this Agreement are licensed and not “sold” to you. You will not attempt to reverse engineer, disassemble or otherwise attempt to ascertain or replicate the functioning of the Powerside Solution.

(c) Customer Data. All rights in any information you provide to Powerside remains with you, including any files that are transmitted to or entered into the Powerside Solution (the “**Customer Data**”). You hereby grant to Powerside an irrevocable, worldwide, non-exclusive, royalty-free, transferable and sublicensable right and license to access, collect, store and use Customer Data to: (a) develop, enhance and make available the Solutions; and (b) to produce data, information, or other materials that are not identified as relating to you or any particular individual or company (such data, information and materials, the “**Aggregated and De-identified Data**”). Powerside is free, on a perpetual and irrevocable basis, to create, use and disclose the Aggregated and De-identified Data for any purpose and without obligations of any kind.

## 6. User ID; Limitations; Your Responsibilities

(a) User ID: You are required to open an account in order to access and use the Online Portal. You must provide accurate, current and complete information as prompted through the registration process. You will also be required to choose: (a) a username for the account, and (b) a password which conforms to the password strength requirements of the account page (collectively, your “**User ID**”). You must maintain the confidentiality of your User ID. You are entirely responsible for all activities that occur on your account. You agree to notify Powerside immediately of any misuse of your account or any security breach of which you become aware.

(b) Limitations: You will not be permitted to and will not permit any other person to: (i) access or use the Online Portal, other than your employees who have a need to use it and other personnel approved by Powerside; (ii) modify, adapt, alter or translate the Online Portal or (iii) sublicense, lease, rent, loan, distribute, or otherwise transfer the Powerside Solution to any other person.

## 7. Termination

(a) If the Term of this Agreement expires, unless either Party provides written notice 30 days prior to such expiry of

the term or any extension of the Term, this Agreement will extend for successive 30-day periods.

(b) Either Party may terminate this Agreement upon 30 days prior written notice, if the other Party commits a material breach of this Agreement.

(c) Powerside may terminate this Agreement immediately upon written notice if you utilize Powerside Solution in a manner not permitted by this Agreement.

(d) Survival: Sections 5(b), 5(c), 8, 9 and 10 will survive the expiration or termination of this Agreement for any reason.

#### 8. Disclaimer and Limitation of Liability

(a) YOU ACKNOWLEDGE THAT THE DISCLAIMER AND LIMITATION OF LIABILITY IN THIS AGREEMENT REFLECT A FAIR APPORTIONMENT OF LIABILITY. THE HARDWARE AND SOFTWARE (INCLUDING ANY INTELLECTUAL PROPERTY INCLUDED THEREIN) IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. POWERSIDE DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS OF ANY KIND WITH RESPECT TO THE HARDWARE AND SERVICES WHETHER EXPRESS, IMPLIED OR COLLATERAL OR WHETHER ARISING BY STATUTE, COURSE OF DEALING, CUSTOM OR USAGE OF TRADE, INCLUDING, WITHOUT LIMITATION: (I) THAT THE HARDWARE AND SOFTWARE WILL BE OF MERCHANTABILITY AND FIT FOR A PARTICULAR PURPOSE, (II) THAT THE HARDWARE AND SERVICES WILL BE ACCURATE, COMPLETE, CURRENT, RELIABLE, OR TIMELY, (III) THAT HARDWARE AND SOFTWARE WILL BE AVAILABLE OR OPERATION OF THE HARDWARE AND SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, (IV) THAT DEFECTS OR ERRORS IN THE HARDWARE OR SOFTWARE (BE THEY HUMAN OR COMPUTER ERROR(S)) WILL BE CORRECTED, (V) THAT THE HARDWARE OR SOFTWARE WILL BE FREE FROM VIRUSES OR HARMFUL COMPONENTS, (VI) THAT COMMUNICATIONS TO OR FROM THE POWERSIDE SOLUTION WILL BE SECURE AND/OR NOT INTERCEPTED, AND (VI) ANY AND ALL WARRANTIES, OBLIGATIONS, AND CONDITIONS ARISING OTHERWISE. YOU EXPRESSLY AGREE THAT YOUR USE OF, OR INABILITY TO USE, THE LINKETT SOLUTION IS ENTIRELY AT YOUR OWN RISK.

(b) TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL POWERSIDE BE LIABLE TO YOU 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 THIS 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. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, POWERSIDE'S LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED US\$5,000. CUSTOMER ACKNOWLEDGES THAT THE FOREGOING LIMITATION OF LIABILITY ARE APPROPRIATE IN CONSERVATION OF POWERSIDE'S PROVISION OF THE POWERSIDE SOLUTION AT NOT CHARGE TO THE CUSTOMER.

#### 9. Confidential Information

(a) "Confidential Information" means information marked or otherwise identified in writing by a party as proprietary or

confidential, or information that, under the circumstances surrounding the disclosure, the recipient should recognize as being confidential; provided that discloser's Confidential Information does not include: (i) information already known or independently developed by recipient without access to discloser's Confidential Information; (ii) information that is publicly available through no wrongful act of recipient; or (iii) information received by recipient from a third party who was free to disclose it without confidentiality obligations.

(b) The recipient party to this Agreement may only use and copy the disclosing party's Confidential Information as is necessary to carry out its activities contemplated by this Agreement and for no other purpose. Each recipient will take reasonable precautions to safeguard the discloser's Confidential Information. Those precautions will be at least as great as the precautions that the recipient takes to protect its own Confidential Information of a similar type.

(c) Notwithstanding Section 9(b), a recipient party may disclose disclosing party's Confidential Information: (i) to its employees on a "need to know basis", provided that it will first instruct such employees to maintain the confidentiality thereof, and to its affiliated companies, subcontractors and service providers (including in the case of Powerside, its Partners), who have entered into non-disclosure obligations no less onerous than this Section; and (ii) to the extent that such disclosure is required by applicable law or by the order of a court or similar judicial or administrative body, provided that, except to the extent prohibited by law, the recipient promptly notifies the discloser in writing of such required disclosure and cooperates with the discloser to seek an appropriate protective order.

(d) Notwithstanding Section 9(b), Powerside and its Partners may list the project and your name in marketing materials, provided that you may opt out of this consent by initialing here: \_\_\_\_\_

#### 10. General

(a) This Agreement constitutes the entire agreement between Powerside and you pertaining to the subject matter of this Agreement and supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and Powerside with respect to the subject matter of this Agreement. This Agreement shall be construed and governed by the laws of State of Delaware, and each Portal further consents to exclusive jurisdiction of the courts of Delaware. You may not assign this Agreement to any third Portal without Powerside's prior written consent. Any assignment in violation of this section shall be void. The terms of this Agreement shall enure to the benefit of and be binding upon the Parties, their successors and permitted assignees. In the event that any provision of this Agreement is held to be invalid or unenforceable to any extent, then the remainder of the provisions will have full force and effect.

(b) It is the express wish of the Parties that this 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.*

(c) This Agreement may be executed by the Parties in separate counterparts, which may be delivered in electronic form, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

## Exhibit A. Commercial Terms

### A1. Price and Payment

1 <sup>st</sup> Year	\$4,800	Paid in advance
2 <sup>nd</sup> Year	\$0	No charge
3 <sup>rd</sup> Year	\$0	No charge
4 <sup>th</sup> Year	\$4,800	Paid in advance

Beyond Term      \$4,800      Annual renewal

Invoiced annually in advance. Payment due upon receipt of invoice.

28 days grace period to return equipment without charge at end of any annual term

### A2. Powerside Services Provided During the Term

- (a) Access to In-site Power System Monitoring Portal
- (b) Access to all associated reports and alerts for In-site Power System Monitoring
- (c) Up to 4 hours per year of power quality consulting with a Powerside Power Intelligence Expert - additional hours at a preferred rate
- (d) Unlimited Technical Support, as required

**Customer:**

Initials: \_\_\_\_\_

Date: \_\_\_\_\_

**Powerside:**

Initials: \_\_\_\_\_

Date: \_\_\_\_\_