



ELECTRO-MOTION

GENERATOR SERVICE RENTALS AND SALES

PERIODIC MAINTENANCE AGREEMENT/ REPAIRS TERMS AND CONDITIONS Engine and Generator Systems

This Periodic Maintenance Agreement/ Repairs Terms and Conditions ("Terms and Conditions"), together with the Proposal attached hereto or provided separately to the Customer, are hereinafter collectively referred to as this "Agreement." All capitalized terms shall have the meanings ascribed to such terms in the Proposal or in these Terms and Conditions. Customer owns a generator system, together with associated equipment listed on the Proposal (herein "System" or "Equipment"). Electro-Motion, (EMI) is engaged in the service and maintenance of systems like the System owned or operated by Customer and has been requested to provide maintenance and/or testing to the System pursuant to the terms and conditions of this Agreement (the "Services").

1. Maintenance Services. EMI shall maintain and service the System and Equipment listed on the Proposal in accordance with the schedule of Services described in the Proposal and at the intervals specified therein. EMI shall provide scheduled preventive maintenance, with the schedule to be based on the specific needs of the Equipment as determined by EMI. In addition, EMI may provide other remedial maintenance and/or testing at Customer's request, as and when needed. Service maintenance and/or testing may include, without limitation, lubrication, adjustments, testing, and replacement of parts and components deemed necessary by EMI. Other maintenance and/or testing requested by the Customer and not described in the Proposal shall include those items of service requested by Customer and agreed upon by EMI.

2. Exclusions. Unless otherwise agreed by EMI in writing, the service and maintenance performed pursuant to this Agreement shall not include any of the following: (a) electrical work external to the Equipment; (b) furnishing of supplies or accessories; (c) painting or refinishing the Equipment or furnishing the material therefore; (d) making specification changes to the Equipment; (e) performing services connected with relocation of the Equipment; (f) repairing damage resulting from, or furnishing parts required as a result of causes other than ordinary wear and tear including, without limitation: neglect; misuse, including faulty repair or maintenance by persons other than the EMI; accidents; failure of electrical power, air conditioning, humidity control or events outside the reasonable control of EMI, such as, but not limited to, Acts of God; (g) adding, removing, servicing, or maintaining accessories, attachments, or other devices not furnished by EMI, unless specifically scheduled on the Proposal.

3. Parts. EMI shall furnish parts as necessary at EMI's current scheduled price or on an exchange basis, regardless of when installed and such parts shall be either new or equivalent to new in performance when used in the Equipment.

4. EMI warrants that all parts provided during the services are covered solely under the manufacturer's warranties. Any warranties provided by the manufacturers of the parts shall be applicable to the extent specified by the respective manufacturers. EMI shall facilitate the process of warranty claims on behalf of the Customer in accordance with the terms and conditions set forth by the manufacturers. EMI does not assume any additional warranty obligations beyond those provided by the manufacturers of the parts. Any claims or disputes regarding the warranty of parts shall be resolved directly between the client and the manufacturers. EMI shall not be held liable for any issues arising from the warranty coverage of parts.

5. Rates & Charges. Customer shall be responsible for the payment schedule described on the Proposal. Charges for on-call, unscheduled service, or for services otherwise requested by the Customer, shall be at the rates then published and agreed upon by EMI, in writing. Notwithstanding anything contained in this Agreement, there will be a four-hour minimum charge for any non-standard service calls performed that require four (4) hours or less. Additional Repairs, Estimates. Unless otherwise specified in writing, all EMI Estimates are firm for ninety (90) days from the date of the Estimate.

All prices stated are exclusively as outlined in an EMI Estimate and are subject to the schedule provided therein. Prices are subject to change without prior notice and may be corrected for clerical errors. The Customer is responsible for all applicable taxes and/or duties related to the products (Parts). Should EMI cover such taxes on the customer's behalf, full reimbursement is required from the Customer. EMI's labor charges are determined by multiplying EMI's labor rate by industry time allowances or EMI's discretion regarding the time required. Estimates for price, time, materials, and labor are approximate and subject to variance unless agreed upon in writing beforehand. The Customer is liable for all time, parts, materials, and supplies at EMI's prevailing rates or prices. In the event of different or additional repairs, customer authorization is necessary. Authorization may be given orally or in writing, including email. If repair commencement is authorized but completion is not, charges will apply for disassembly, reassembly, or partially completed work, reflecting the actual technician's time and/or parts involved. No order, whether in full or in part, may be canceled without prior written consent from EMI.

6. Sublet Repairs: Customer acknowledges that portions of the repairs may be provided by a subcontractor hired by EMI and customer hereby authorizes all sublet repairs that EMI, in its sole discretion, may deem necessary.

7. Payment of Charges. Customer agrees to pay EMI for services immediately upon completion for the scheduled maintenance described on the Proposal unless explicitly agreed upon otherwise in writing between Customer and EMI. Customer otherwise agrees to pay EMI for all on-call, unscheduled or otherwise Customer requested maintenance charges immediately on completion unless otherwise agreed by EMI in writing. If EMI elects to accept payment from the Customer other than on completion for the Services provided pursuant to this Agreement, Customer shall promptly comply with terms of payment granted by EMI. Any payment due shall entitle EMI to seek, in addition to the principal amount owed, interest at eighteen percent (18%) per year or maximum rate allowable by California law.

8. Insurance: EMI reserves the right to request that the customer and/or their agents, representatives, or employees provide a Certificate of Insurance, confirming sufficient liability coverage for any potential losses while their equipment and personal property are on EMI's premises. This requirement must be fulfilled before any work is undertaken by them or by EMI.

9. Monthly Maintenance: The maintenance term and any renewal terms are detailed in the Proposal. The Agreement becomes effective upon acceptance of the Proposal at our headquarters in Fremont, CA ("Effective Date Unless otherwise specified in the Proposal, the Agreement will automatically renew on a month-to-month basis with new prices calculated at the then-current list pricing ("Rack Rate") or until either party terminates the Agreement per Section 10 Either party may terminate a contract by providing written notice at least 30 days prior to the intended termination date or upon expiration of the Contract term, whichever is later. EMI reserves the right to suspend our services or terminate the Contract in cases of material breach of your obligations or violation of law. If suspension is remediable, we will provide notice of the actions required to reinstate the services or Contract. Failure to comply within 10 days may lead to permanent termination.

Customer may terminate the Contract immediately upon written notice if we commit a material breach and fail to remedy it within 30 days. We may amend these Terms of Service with at least 30 days prior written notice. If a material amendment occurs, Customer may request good faith negotiations regarding the changes. Failure to reach mutual agreement within 30 days allows Customer to terminate the Contract immediately upon written notice. Termination does not absolve Customer of any outstanding payment obligations to EMI up to the termination date.

Term. This Agreement shall be effective from the date of its execution by EMI and Customer and shall remain in force unless terminated by EMI giving thirty (30) days written notice to EMI. EMI may terminate for any reason and without cause. However, the giving of notice of termination shall not relieve or eliminate the obligations of the Customer occurring before the termination date, unless otherwise agreed by the parties hereto in writing.

10. Warranty; Limitation. The foregoing warranty and conditions shall apply only to any repaired or replaced product, part, or component supplied by EMI, together with the workmanship as provided herein:

(a) EMI warrants that under normal conditions of use and operation, the Services furnished pursuant to this Agreement shall be free from defects in workmanship and that the parts furnished pursuant to this Agreement shall be free from defects in workmanship and material.

(b) EMI's obligation under this warranty is limited to the repair or replacement, at its option, of any part that, within ninety (90) days after installation and acceptance, is established by EMI not to be in conformity with the Equipment manufacturer's published specifications. EMI further warrants that its Services rendered pursuant to this Agreement shall be free of defects in workmanship for ninety (90) days after performance of Services, but EMI's obligation shall be limited to correction of the defective workmanship.

(c) Repairing power distribution equipment, relays, controllers, control systems, and transfer switches entails inherent risks that could potentially damage adjacent electrical distribution systems and connected equipment. If a recommendation has been proposed to replace the Customer's equipment, in the event that EMI has been requested by the Customer to proceed with a repair instead of a replacement, EMI assumes no risk or liability and provides no guarantee regarding the success of the repair or any additional damage that may occur during or after the repair process. Acceptance of the repair service Estimate/estimate is solely at the discretion and liability of the Customer. EMI will make every effort to repair the Customer's equipment as outlined in the scope of work included in the estimate, utilizing our team of technicians and support personnel. Should additional repairs or scope of work be necessary, resulting in additional costs, they will be detailed in a separate estimate and service visit. The Customer's approval will be required before any additional work is undertaken. EMI will advise Customer to proceed with caution, understanding that acceptance of this type of repair service estimate places the responsibility solely on Customer.

(d) **EXCEPT AS IS EXPRESSLY STATED HEREIN, THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, EXCEPT SUCH AS IS EXPRESSLY STATED IN THIS LIMITED WARRANTY.**

(e) Customer agrees that the sole remedies for the breach of any warranties contained in this Agreement are those expressly stated in this provision. Customer further agrees that in no event shall the EMI's liability to Customer for damages of any nature exceed the total charges paid or payable for either (1) the total charges paid or payable for all Services during one (1) year under this Agreement if the liability arises from the provision of such Services; or (2) the purchase price of the parts if the liability results from the provision of such parts.

11. Access to Equipment; Performance of Services; Customer Obligations. EMI's maintenance personnel shall have free access to the System and the Equipment for the purpose of providing maintenance service. During the Services provided pursuant to this Agreement as to the System, whether an interruption in electrical services is contemplated by Customer or EMI or not, as a matter of allocating between Customer and EMI the risks associated with an interruption in electrical services and/or taking the System off line, Customer agrees to use its best efforts to fully and completely secure all or any part of any facility in which the System is located, as the case may be, for any and all safety issues that an electrical service interruption might give rise to, including but not limited to, injury to building occupants, customers, invitees, or any third party and/or property damage, or work interruption, arising out of any event of maintenance or testing performed by EMI as to the System. Customer agrees with EMI that securing of the premises in order for EMI to perform its Services is a material and critical element of this Agreement and, prior to the performance of any maintenance and/or testing Services under this Agreement, Customer will receive and execute with EMI a written Notification and Acknowledgement of Inspection and Warning ("Notification") related to the Services provided herein. The Notification shall include EMI's estimate as to when interruption of electrical services may occur during the performance of its obligations under this Agreement. Customer further agrees that EMI shall have no liability to Customer or any third party for any estimate given in connection with potential interruptions in electrical services during the performance of EMI's obligations herein, it being acknowledged by Customer that EMI's Services are often affected by acts of third parties and/or components or elements of the System that do not allow for more specific and accurate estimates as to when an electrical service interruption may occur.

12. Delays. EMI shall not be liable for any delays in performance directly or indirectly resulting from the acts of the Customer, its agents, employees, subcontractors or causes beyond the reasonable control of EMI. "Causes beyond the reasonable control of EMI" include, but are not limited to: (a) Acts of God; (b) Acts of a public enemy; (c) Acts of the United States or the State of California, or any State or Territory of the United States, or any of their political subdivision; (d) Fire, flood, epidemics, or quarantine restrictions; (e) Strikes, civil commotions, or revolutions; (f) Freight embargos; (g) Unusually severe weather conditions, including, without limitation, tropical storms and hurricanes; (h) Default of EMI's subcontractors or suppliers; (i) Normal wear and tear; (j) Overloads; (k) Improper operation and/or abuse of the System by Customer or other third parties; or (l) Accidents beyond the reasonable control of EMI.

13. LIMITATION OF LIABILITY. CUSTOMER AGREES THAT EMI SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFITS, REVENUES, OR ANY OTHER LOSSES ARISING OUT OF ANY DEFAULT UNDER THIS AGREEMENT, EVEN IF EMI SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. EXCEPT FOR PERSONAL

INJURY CAUSED BY EMI'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EMI'S CUMULATIVE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AGGREGATE AMOUNT PAID TO EMI UNDER THIS AGREEMENT, EVEN IF A TERM OF THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

14. **Indemnification of EMI.** Customer agrees to defend, hold harmless, and indemnify EMI, its officers, directors, employees and agents for any and all losses, damages, and liabilities, legal or non-legal, arising out of any interruption in electrical services or as to any other incident or event as to the System or Equipment which is not caused by the willful misconduct or gross negligence of EMI. Customer further agrees with EMI that this Agreement of indemnification shall include, without limitation, any attorney's fees, costs or other legal or non-legal expenses of any description incurred by EMI.

15. **Assignment.** This Agreement shall benefit and bind the parties, their respective successors and assigns. Notwithstanding the foregoing, Customer may not assign any interest in, nor delegate any obligation under this Agreement or any other agreement with the EMI. For purposes of this Agreement, assign shall include a change in control or a change in more than fifty percent (50%) of the ownership of Customer.

16. **Construction and Severability.** In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

17. **Amendments and Waivers.** No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the parties hereto. No waiver by any party of any default, misrepresentation, or breach hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

18. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

19. **Entire Agreement.** This Agreement, together with the Proposal and any other schedules, releases, and/or warranties (as applicable) attached hereto or delivered in connection herewith, embodies the entire agreement and understanding of the parties hereto and supersedes any prior agreement or understanding between the parties with respect to the subject matter of this Agreement. This Section does not apply to prior written agreements which both parties have signed.

20. **Governing Law; Venue; Attorneys' Fees.** This Agreement shall be governed by and construed in accordance with the domestic laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of California. Each of the parties submits to the exclusive jurisdiction of the U.S. District Court for California, California, as the exclusive forum to adjudicate any dispute arising hereunder. The prevailing party in any dispute shall be entitled to recover all costs and reasonable attorneys' fees incurred.