



# HUBBELL POWER SYSTEMS, INC. TERMS & CONDITIONS OF LABORATORY SERVICES

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## 1. SERVICES

(a) Subject to the terms and conditions in this Agreement (as later defined in Section 7(f) below), the Services to be performed hereunder will be as specified in one or more Statements of Work (each a "SOW"). Each SOW will be attached to this Agreement and incorporated herein upon execution of same by both parties in accordance herewith.

(b) Changes in the scope of the Services (but not changes in the manner of performing the Services) being performed under this Agreement and each applicable SOW will be made only if agreed to in writing in the form of an amendment to such SOW executed by authorized representatives of both parties. In the event of any inconsistency between the provisions of any SOW and the provisions of this Agreement, the provisions of this Agreement will control.

(c) HPS will perform the Services in a manner consistent with the degree of care, skill and diligence as is ordinarily exercised by a professional laboratory testing contractor under similar conditions and circumstances. HPS will have sole control and discretion over the means, methods, techniques, equipment, sequences and procedures its uses to perform the Services. If HPS implements any material changes in the manner in which it performs the Services, whether as required by changes in applicable law, rule or regulation or otherwise, HPS will notify Customer of such changes within a commercially reasonable period of time or as required by applicable law, but will not be required to confer with, or obtain the consent or approval of, Customer in connection with implementing such changes.

(d) Upon completion of the Services, HPS will provide the results to Customer. Unless otherwise agreed, such results shall be provided to Customer without any certification by HPS. Customer may not under any circumstances hold out or represent to any third party that HPS has in any way whatsoever certified, guaranteed or otherwise passed judgment on the efficacy of any results derived from the performance of the Services hereunder. In the event that Customer desires to obtain certification of the results, it may do so using a third party certification agency, subject to HPS's prior written approval.

(e) Customer and any third party certification agency approved by HPS may observe HPS's performance of the Services, provided that (i) any third parties which are not a party to this Agreement shall agree in writing to be bound by the confidentiality provisions of this Agreement or shall execute a confidentiality agreement satisfactory to HPS, and (ii) both Customer and any such third parties shall at all times comply with HPS's rules and procedures.

## 2. FEES

(a) Fees and other charges for the Services will be as specified in each SOW and will be invoiced by HPS to Customer. HPS will submit invoices to Customer on a regular basis and will send a final invoice to Customer upon completion of the Services set forth in a SOW. Unless otherwise specified in a SOW, payment for the amount invoiced will be due upon presentation of the applicable invoice and all undisputed amounts will be paid within thirty (30) days of the date of invoice.

(b) HPS reserves the right to adjust its fees beginning upon the expiration of the Initial Term (as defined below) and agrees to notify Customer, in writing, of the adjusted fees not less than sixty (60) days prior to the date when such adjusted fees will come into effect.

## 3. TERM; TERMINATION

(a) This Agreement shall commence on the Effective Date and shall continue for an initial term of one (1) year (the "Initial Term") and be automatically renewed for successive six-month terms upon the same terms and conditions as set forth herein unless either party gives the other party at least thirty (30) days' written notice of its intent not to renew such term.

(b) This Agreement may be terminated by either party for any reason upon thirty (30) days' written notice to the other party. Further, either party may terminate this Agreement, immediately, without advance notice, (i) in the event of a material breach of this Agreement by the other party, which breach is not cured within fifteen (15) days after such breaching party's receipt of notice of such breach or (ii) if the other party becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other party (and such proceeding is not dismissed within ninety (90) days). Upon the expiration or termination of this Agreement, Customer will pay HPS all fees for Services earned as of and through the effective date of expiration or termination and will also pay and reimburse HPS for all expenses incurred prior to and through the effective date of expiration or termination and all non-cancelable commitments that shall have been pre-approved by Customer.

(c) The parties may terminate one or more SOWs without terminating this Agreement or other SOWs under this Agreement upon the same terms and pursuant to the same procedures set forth above in Section 3(a) and (b) or as otherwise specified in an SOW. Upon the expiration or termination of one or more SOWs, Customer will pay HPS all fees for Services earned as of and through the effective date of expiration or termination under the SOW(s) and will also pay and reimburse HPS for all expenses incurred prior to and through the effective date of expiration or termination under, and all non-cancelable commitments that shall have been pre-approved by Customer in connection with, the applicable SOW(s).

## 4. REPRESENTATIONS & WARRANTIES

(a) HPS hereby represents and warrants that it has the power and authority to enter into this Agreement, and is duly licensed, authorized and qualified to perform the Services. HPS hereby further represents and warrants that the execution of this Agreement and the performance of the Services

will not, directly or indirectly, contravene, conflict with or result in a violation of any agreement, authorization or other obligation of HPS.

(b) Customer hereby represents and warrants that it has the power and authority to enter into this Agreement and procure the Services and that Customer's procurement and use of the Services will not violate any federal, state or local laws or regulations. Customer hereby further represents and warrants that the execution of this Agreement and the performance of the Services will not, directly or indirectly, contravene, conflict with or result in a violation of any agreement, authorization or other obligation of Customer.

(c) EXCEPT TO THE EXTENT OF THE LIMITED WARRANTIES SET FORTH IN THIS SECTION 4, AND NOTWITHSTANDING ANY PROVISION TO THE CONTRARY CONTAINED HEREIN OR IN ANY SOW, REPORT OR OTHER STATEMENT OR INSTRUMENT, HPS MAKES NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. HPS ASSUMES NO RESPONSIBILITY FOR THE PURPOSES FOR WHICH CUSTOMER OR ANY THIRD PARTY USES THE RESULTS OF SERVICES.

## 5. CONFIDENTIALITY

(a) For purposes of this Agreement, "Confidential Information" means all information or items (including information, data and materials relating to current or prospective products and processes) made available (whether intentionally or otherwise) to a party or its affiliates or subcontractors, or its or its affiliates' or its subcontractors' employees, agents and other representatives, by or on behalf of the other party and relating to the business, operations, affairs, technologies, plans and strategies of such other party, whether observed or provided orally, in written, graphic or electronic form, or in the form of samples, and whether or not marked, labeled or otherwise identified as "confidential," "secret" or "proprietary" (it being acknowledged and agreed that the existence and terms of this Agreement will be considered to be Confidential Information as to both parties). "Confidential Information" does not include any information or items that: (i) were generally available to the public, or otherwise part of the public domain, when received by the receiving party; (ii) become generally available to the public, or otherwise part of the public domain, other than through breach of this Agreement; (iii) can be demonstrated by the receiving party to have already been in its possession, or otherwise known by it, prior to the time of receipt from the disclosing party; (iv) are received by the receiving party from a third party that is (1) in lawful possession thereof and (2) under no confidentiality obligation to the disclosing party; or (v) are independently developed by the receiving party without use of the Confidential Information of the disclosing party.

(b) Each party hereby agrees that, with respect to Confidential Information of the disclosing party, the receiving party will: (i) maintain such Confidential Information in confidence using the same degree of care the receiving party uses to prevent disclosure, dissemination or publication of its own confidential, proprietary or secret information, data, materials and items (but in no event less than reasonable care); (ii) not disclose such Confidential Information publicly or to any third party in an unauthorized manner; (iii) use such Confidential Information only for purposes of its obligations under

this Agreement, and for no other purpose; and (iv) disclose such Confidential Information only to its affiliates, its subcontractors and its, its affiliates' and its subcontractors' respective employees, agents and other representatives, who have a "need-to-know" in connection with, and agree to comply with, the obligations imposed upon the receiving party by this Agreement (with the receiving party bearing ultimate responsibility for any breach by such persons or entities of those obligations by a party to the other party).

(c) If a party receives a request from a regulatory authority or by judicial process to disclose Confidential Information of the disclosing party, then the receiving party (i) will use reasonable efforts to promptly give the disclosing party notice of such required disclosure in order to afford the disclosing party adequate opportunity to seek a protective order or other legal remedy to prevent the disclosure, (ii) will reasonably cooperate with the disclosing party's efforts to secure such a protective order or legal remedy, and (iii) if efforts seeking such an order or remedy are unsuccessful, will take reasonable steps to seek confidential treatment of such information or items to be disclosed.

(d) Subject to the provisions of Section 5(a) above and Section 5(e) below, and Customer having paid HPS in full for all Services under the relevant SOW, Customer will own and have all right and title in all work product related to such Services and specifically produced or generated for, and delivered to, Customer by HPS under this Agreement during the term of this Agreement (collectively, "Work Product"); provided that such Work Product is (i) based solely on Confidential Information of Customer and/or (ii) developed directly and solely as a result of HPS's performance of the Services. To the extent possible, all Work Product shall be considered a work made for hire for Customer within the meaning of Title 17 of the United States Code (the Copyright Act); provided, however, that, notwithstanding anything to the contrary in this Agreement, HPS reserves the right to utilize the Confidential Information of Customer and Work Product for the Services and otherwise internally for the limited purposes of the conduct of its business, including training, research and education, and to use Confidential Information of Customer and Work Product, in the aggregate, to determine trends in the industry for the express and limited purpose of establishing the best practices for audits, inspections and testing in the industry, so long as no use of the Confidential Information of Customer or Work Product, in the aggregate, for this purpose will allow the identification of Customer or a third party subject to the Services or disclosure of particular Customer-identifiable Confidential Information.

(e) Further, the Confidential Information and Work Product that will belong to Customer, to the extent provided in this Section 5, will not include any Background Technology or Preliminary Data and Materials of HPS, which at all times will remain the sole and exclusive property of HPS. For purposes of this Agreement: (i) "Background Technology" means all intellectual property and other proprietary rights in and to: (1) all specifications, checklists, audit tools, scoring criteria, risk profiling tools, protocols, methods (analytical, testing and otherwise), ideas, know-how, concepts, plans, creations, work product, reports, writings, compilations, trade secrets, data, databases, software, files, programs, writings, models and devices, patents, processes (including, but not limited to, polymerase chain reaction and real-time polymerase chain reaction processes and technologies), policy developments, documents, equipment and other materials owned, possessed, developed or acquired by, or licensed or sublicensed to, HPS prior to the later of the date of this Agreement or disclosure to Customer; and

(2) all general additions, accretions, improvements and enhancements to the same which are owned, possessed, developed or acquired by, or licensed or sublicensed to, HPS during the term of this Agreement that are not developed or acquired expressly and exclusively for Customer; and (ii) "Preliminary Data and Materials" means all laboratory test data, calculations, estimates, reports and other electronic or written communications describing the results of any Services (or element thereof) and any memoranda and status summaries prepared by or on behalf of HPS in connection with the Services performed hereunder (excluding any Work Product).

(f) Each party hereby acknowledges and agrees that: (i) any unauthorized disclosure or use of Confidential Information would cause irreparable harm to the disclosing party; (ii) money damages would be inadequate to compensate the disclosing party for such harm; and (iii) the breach or threatened breach of this Agreement may entitle the disclosing party to obtain specific performance and injunctive relief (and each party agrees that it will not oppose the disclosing party's efforts to obtain such relief), in addition to any other legal remedies that may be available. Each party hereby expressly waives any requirement for the disclosing party to post a bond in order to obtain an injunction or other equitable relief.

## 6. INDEMNIFICATION

(a) Each party agrees to indemnify and hold the other party and its affiliates and each of their respective directors, officers, agents, independent contractors and employees harmless from and against any and all claims, liabilities, losses, damages, expenses and actions, including reasonable attorneys' fees, which result from, are caused by or are related to (a) the violation of state, federal, or local law, rules or regulations which results in bodily injury or physical or actual damages or the imposition of a fine, penalty or other charge, (b) a party's breach of the Agreement or (c) the gross negligence or willful misconduct of a party, its directors, officers, agents, independent contractors and employees.

(b) IN NO EVENT SHALL HPS'S LIABILITY TO CUSTOMER EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER TO HPS DURING THE PREVIOUS TWELVE MONTHS. HPS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES RELATING TO THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUE, EVEN IF HPS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 7. MISCELLANEOUS

(a) HPS is an independent contractor of Customer. Neither party is a partner, principal, director, agent, master, servant, employer nor employee of the other party and nothing contained in this Agreement shall be construed so as to place the parties in the relationship of joint venture, partners, principal, director, agent, master, servant, employer or employee.

(b) Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of fees owed) shall not be considered a breach of this Agreement and the time required for performance hereunder shall be extended for a period equal to the period of such delay, provided

that such delay has been caused or is the result of any labor disputes, including strikes, lockouts, job actions or boycotts; inability to procure materials; riots; embargoes; war; acts of God; inclement weather; fires; floods or other natural disasters; or other reasons or causes beyond the reasonable control of the party seeking to perform. The party so affected shall give prompt notice to the other party of such cause and shall take whatever reasonable steps are necessary to relieve the effect of such cause as quickly as is practicable.

(c) This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. Any action brought by either party to enforce a provision of this Agreement shall be brought in the State in which the laboratory where the Services are performed is located.

(d) Neither party may assign, transfer or delegate, in whole or in part, any of its rights, interests or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, and any such assignment without such prior written consent shall be null and void.

(e) This Agreement shall not be amended without the written consent of both HPS and Customer.

(f) This Laboratory Services Agreement and the Laboratory Services Terms and Conditions and SOW(s) (all attached hereto and incorporated by reference as if set forth herein) (collectively, this "Agreement"), set forth the entire understanding of the parties hereto with respect to the subject matter hereof, and any previous agreements or understandings between the parties with respect to such subject matter are merged into and superseded by this Agreement.

(g) In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect its other provisions, and this Agreement shall be construed in all respects as if such unenforceable provision had been omitted.

(h) All notices and other communications given hereunder will be in writing addressed to each party at the address set forth next to its name on the signature page to this Agreement. Notices will be effective when delivered, if delivered personally. Otherwise, they will be effective when sent to a party at the addresses or number listed below, as follows: (i) on the business day delivered (or the next business day following delivery if not delivered on a business day) if personally delivered or sent by overnight delivery courier, (ii) the next business day after transmission by telefax or other facsimile or electronic means or (iii) three business days after mailing if mailed by registered or certified U.S. mail, postage prepaid and return receipt requested. If to

(i) The provisions of Sections 4, 5, 6 and 7 shall survive the expiration or termination of this Agreement.

(j) This Agreement may be executed in any number of counterparts, each of which shall be considered an original.