

## PAR<sup>4</sup> Certification Terms of Service

THESE TERMS OF SERVICE ARE A LEGAL CONTRACT BETWEEN YOU ("CUSTOMER", "YOU", "YOUR") AND POWER ASSURE, INC. A DELAWARE CORPORATION ("POWER ASSURE", "WE", "US"), AND SETS FORTH THE TERMS AND CONDITIONS GOVERNING THE PROVISION OF PAR<sup>4</sup> MEASUREMENT AND CERTIFICATION SERVICES ("SERVICES") TO YOU. BY SUBMITTING AN ORDER FOR THE SERVICES, YOU ACKNOWLEDGE THAT YOU ACCEPT THESE TERMS OF SERVICE. IF YOU DO NOT AGREE WITH ANY OF THESE TERMS, DO NOT CLICK THE "I ACCEPT" BUTTON OR OTHERWISE USE POWER ASSURE SERVICES. IF YOU ARE USING THE SERVICES ON BEHALF OF YOUR COMPANY, YOU REPRESENT THAT YOU ARE AN AUTHORIZED REPRESENTATIVE WHO HAS THE AUTHORITY TO LEGALLY BIND YOUR COMPANY TO THESE TERMS.

- 1. Services.** The term "Services" means the PAR<sup>4</sup> measurement services to be performed by us to test and measure the operating characteristics of equipment provided, specified, or otherwise made available by you, and the analysis, production and supply of reports thereon.
- 2. Scheduling, Pricing and Payment Terms.** Any pricing and delivery schedules quoted for Services are estimates only, and may be subject to change by us upon prior notice to you, depending on the requirements of the specific project. Before we begin Services, we may require you to make a deposit (to be credited against the total charges). We will invoice you for fees and expenses due and you agree to pay all undisputed fees and expenses within 30 days of our invoice. You agree that you are responsible for all shipping costs related to the provision of Services, including but not limited to the costs of shipping your equipment to Power Assure and the costs of returning your equipment to you after testing. You will be responsible for all taxes, duties or imposts which may be levied by a governmental body, except state or federal sales taxes (if any), U.S. taxes based solely upon our net income, or taxes levied in connection with our employees, agents, contractors and other personnel. You will not deduct any wire or transfer fees or other offsets from payments to us. We may charge interest at 1% per month (12% per year), or the maximum legal rate, whichever is less, on all outstanding balances, from the due date until paid in full. You agree to pay reasonable collection costs, including attorneys' fees, if necessary, in the event of untimely payment or non-payment. If charges are not paid when due, we may deny or withdraw any Services to you.
- 3. Publication of Results.** You or we may publish or otherwise disclose the results produced by us to third parties only in the one of the forms specified in [Attachment A](#) hereto. You may not describe the results in any way, including by omission, which suggests a better outcome than was actually achieved or otherwise misleads the reader. You may not amend, append, prepend, redact or otherwise modify any results document provided by us. You may not use the results in any way which damages our reputation, or the reputation or validity of the Services.
- 4. Confidential Information.** Each Party acknowledges that in connection with the Services it may have access to or otherwise receive or observe confidential or proprietary information or materials of the other Party ("Confidential Information"). Confidential Information includes: (a) business and marketing plans and financial information; (b) plans, designs, sketches, and prototypes for products and services; (c) engineering and technical information such as software, test processes and methodologies, data, and test equipment and fixtures; (d) trade secrets; and (e) information concerning the disclosing Party's customers, business partners, or affiliates and their products or services. Each Party agrees that it will not, in whole or in part, disclose, transfer, use, reverse

engineer, or otherwise make available the disclosing Party's Confidential Information, except as explicitly authorized in this Agreement or as required by law. Each Party agrees to treat all Confidential Information of the disclosing Party with the same degree of care it employs to protect its own Confidential Information and in no event less than a reasonable standard of care. Confidential Information does not include information or materials that are: (i) already known to the receiving Party at the time of disclosure; (ii) publicly available or that become publicly available other than through the acts or omissions of the receiving Party; or (iii) subsequently acquired by the receiving Party from other sources not in violation of any confidentiality obligations. Additionally, a disclosure of Confidential Information that is (x) in response to a valid order by a court or other government body, (y) required by law, or (z) necessary to establish the rights of either party hereunder, shall not be considered to be a breach of these Terms of Service; however, the Party seeking to disclose such Confidential Information shall provide ample notice to Party who originally disclosed such information prior to any such disclosure, to provide an opportunity for opposition to such disclosure. Each Party agrees at its expense to return or destroy, as instructed by the disclosing Party, all Confidential Information upon request from the disclosing Party. Each disclosing Party retains exclusive ownership of all right, title and interest in its Confidential Information.

5. **Your Information and Equipment.** You represent and warrant that all information and/or data provided to us by you, or on your behalf ("Your Information"), will be complete and accurate, that it does not infringe on the intellectual property rights of any third party, and that you are in compliance with any relevant data protection laws in furnishing it to us. You agree that we may rely upon and process Your Information when providing you Services. If any of Your Information is inaccurate, incomplete or corrupted, we will not be liable for any performance or alleged non-performance of Services. Where you have supplied, or otherwise provided, equipment to us on which to perform the Services you represent and warrant that such equipment is materially identical to that made generally available in the market, and has not been modified in any way in order to produce better results.
6. **Intellectual Property.** "Power Assure" and "PAR4" (the "Marks") are registered trademarks of Power Assure, and you agree that you will not directly or indirectly challenge our ownership of or the validity of the Marks. You may use the Marks only in the manner detailed in Attachment A. You may not use the Marks in any way which damages our reputation, or the reputation or validity of the Services. Except for the rights explicitly granted in this Agreement, neither Party shall have any right to use the trademarks or patents of the other. You acknowledge that the PAR4 methodology is protected by US Patent 7970561 (the "Par<sup>4</sup> Patent")\_and other intellectual property laws, and you agree that nothing in this agreement grants you any right under the Par<sup>4</sup> Patent to use, make, have made, sell, have sold or import any product or service. Nothing in this Agreement shall transfer any ownership of a Party's trademark, patent or other intellectual property right. You will not seek to register any of the Marks, or any confusingly similar marks, anywhere in the world. You agree to notify us promptly if you are aware of any infringement or misuse involving any of the Marks, the Par<sup>4</sup> Patent, or any other Power Assure intellectual property. Each party agrees that any misuse of the other's trademarks, patents, or other intellectual property, will cause irreparable harm that cannot be compensated by money only.
7. **Use of Equipment.** You represent and warrant that our use of equipment supplied, or otherwise provided, by you to for us provide the Services will not violate any export, trade or other law or regulation and that you will promptly advise us if such equipment involves technology that is subject to any government controls, including, without limitation, U.S. export controls, and will

promptly supply all information needed to comply with those controls. Title to such equipment and risk of loss shall remain with Customer at all times.

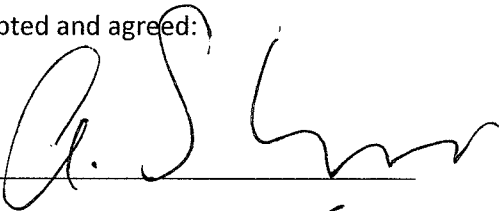
8. **Disclaimer of Warranties.** You acknowledge and agree that we are not a designer, manufacturer, marketer, seller, endorser, guarantor, or insurer of your products or systems of any kind. By providing the Services we are not assuming and we disclaim any obligation, including any duty of care toward you or any third party related to the design, manufacture, marketing, or sale of any equipment that you provide, specify, or otherwise make available to us for Services. You agree that: (a) our provision of Services is not intended to supplant your examination and testing of such product(s) or system(s); (b) by our performance of Services, we are not assuming any duty that you have to examine or test the design of such product(s) or system(s), either before or after manufacture or sale; (c) we are not endorsing, or warranting the safety or performance of such product(s) or system(s); and (d) in rendering Services, we are not supplying, information for your guidance and conduct of your business. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 8, WE MAKE NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.
9. **Limitation of Liability; Limitation of Damages.** We will provide Services in accordance with professional standards of conduct generally applicable to conformity assessment organizations and we will not have any responsibility other than to exercise reasonable skill, care and diligence in the performance of Services. In the event a tribunal described in Section 16 determines that we have failed to comply with such standards of conduct in providing Services and that such failure directly caused you harm, we will compensate you for such direct harm, PROVIDED, HOWEVER, THAT THE AMOUNT OF SUCH COMPENSATION WILL NOT EXCEED THE FEES PAID BY YOU TO US FOR THE SPECIFIC PORTION OF THE SERVICES RENDERED THAT DIRECTLY CAUSED YOU HARM, AND THAT, UNDER NO CIRCUMSTANCES WILL WE BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES. Any limitations and exclusions of liability and disclaimers of implied warranties in these Terms of Service shall apply to the fullest extent permitted by law.
10. **Third Party Claims.** YOU AGREE TO INDEMNIFY, DEFEND AND HOLD POWER ASSURE AND ITS DIRECTORS, OFFICERS, EMPLOYEES, MEMBERS, AFFILIATES, AGENTS AND SUBCONTRACTORS (EACH AN "INDEMNIFIED PARTY") HARMLESS FROM ALL LOSSES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF, OR RELATED TO, CLAIMS ASSERTED BY THIRD PARTIES THAT RELATE TO THE EQUIPMENT, DESIGN, OR DATA PROVIDED BY YOU, OR THE MANUFACTURE, MARKETING, OR SALE OF YOUR PRODUCTS OR SERVICES (INCLUDING YOUR USE OF ANY OF THE MARKS), OR THAT RELATE TO THE SERVICES, UNLESS CAUSED SOLELY BY AN INDEMNIFIED PARTY'S NEGLIGENCE. IF AN INDEMNIFIED PARTY BECOMES SUBJECT TO A THIRD PARTY CLAIM, SUCH INDEMNIFIED PARTY MAY, WITH YOUR CONSENT, WHICH SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED, DEFEND ITSELF AT YOUR EXPENSE WITH COUNSEL OF ITS OWN CHOOSING.
11. **Release and Waiver.** TO THE EXTENT PERMITTED BY LAW, YOU WAIVE AND RELEASE POWER ASSURE AND ITS DIRECTORS, OFFICERS, EMPLOYEES, MEMBERS, AFFILIATES, AGENTS AND SUBCONTRACTORS FROM ALL LIABILITY, CLAIMS, DEMANDS, ACTIONS, OR CAUSES OF ACTION FOR ANY ALLEGED LOSS, DAMAGE, OR INJURY, OTHER THAN A CLAIM FOR COMPENSATION FROM US PURSUANT TO SECTION 10. THIS RELEASE AND WAIVER COVERS ALL CLAIMS ARISING IN TORT AS WELL AS THOSE ARISING UNDER ANY STATE OR FEDERAL STATUTE, THAT IN ANY WAY ARISE OUT OF, OR RELATE TO, THE SERVICES OR PERFORMANCE OR ALLEGED NON-PERFORMANCE UNDER

ANY SERVICE AGREEMENT. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE §1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." IF YOU ARE A RESIDENT OF ANY OTHER JURISDICTION THAT REQUIRES A SIMILAR WAIVER FOR THE FOREGOING RELEASE TO BE ENFORCEABLE, YOU HEREBY WAIVE ANY APPLICABLE STATUTES OF THAT JURISDICTION.

12. **Our Documentation.** We retain all ownership, rights, title and interest, in and to any reports, procedures, data, calculations, certificates, notes, or other materials in any form conceived, prepared, or generated or originated by us. Except as explicitly stated in this agreement, you may not distribute any of the foregoing by way of any medium, paper or electronic, to third parties without our prior written consent.
13. **Assignment.** You shall not assign any of your rights or delegate any of your obligations under these Terms of Service to any person or other legal entity without our written consent. We may, upon prior notice to you, assign and/or delegate any or all of our rights and/or obligations under these Terms of Service.
14. **Waiver or Modification.** Any failure by a Party to insist upon the performance of any provision of these Terms of Service will not constitute a waiver of any rights or a waiver of any right to future performance of that provision. Any waiver or modification of any provision of these Terms of Service must be set forth in writing and signed by authorized agents of both Parties.
15. **Dispute Resolution.** Any dispute or disagreement, other than non-payment of fees, relating to these Terms of Service will be settled by confidential, binding arbitration administered by the American Arbitration Association ("AAA"), and the arbitration will be conducted before a single arbitrator. The arbitration shall be commenced as an individual arbitration, and shall in no event be commenced as a class arbitration. For Disputes of less than \$75,000, the AAA's Supplementary Procedures for Consumer-Related Disputes will apply; for Disputes involving \$75,000 or more, the AAA's Commercial Arbitration Rules will apply. The arbitrator will not have the authority to add, change, or disregard any provision of these Terms of Service, award incidental, consequential, or punitive damages (including, but not limited to, loss of use, unjust enrichment, and/or lost profits), or exceed the remedies provided by Section 9 above, or the limitation of liability and release and waiver described in Sections 9 and 11 above. The arbitrator's decision will be binding and judgment on the arbitration award may be entered by a court of competent jurisdiction. Arbitration will be the final remedy for any dispute between the Parties arising out of these Terms of Service, provided, however, that nothing herein shall prevent any Party from seeking a court order for injunctive relief (in addition to other remedies) to stop or prevent misuse or misappropriation of its trademarks, confidential or proprietary information, or infringement of its intellectual property, in a court of law. All arbitrations shall be conducted in English.
16. **Notices.** Any notices or other communications permitted or required hereunder, including those regarding modifications to these Terms of Service, will be given by us in writing and addressed to your principal place of business. Any notices or other communications permitted or required hereunder by you, shall be given in writing and addressed to us at our principal place of business. Notices will be effective upon receipt. Any notices that you provide without compliance with this section shall have no legal effect.

17. **Severability.** If any provision of these Terms of Service is held invalid, void, or unenforceable, the remainder of the terms will not be affected, and each remaining provision will be valid and enforced to the full extent permitted by law.
18. **Governing Law/Jurisdiction.** These Terms of Service will be governed by the laws of the State of California, United States of America, without reference to its choice of law principles.
19. **Complete Agreement.** These Terms of Service constitute the complete and fully integrated understanding between the Parties with respect to our performance of Services. Under no circumstances will any pre-printed, additional, or different terms or conditions on your requests for quotation, purchase orders, invoices, sales or marketing materials, or other business documents apply to any Services, modify these Terms of Service, or otherwise bind us.
20. **Force Majeure.** Neither Party shall be liable for any failure or delay in the performance of its obligations due to fire, flood, earthquake, elements of nature, acts of God, acts of war, terrorism, riots, civil disorder, rebellions, or other similar cause beyond the reasonable control of the Party affected, provided that such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented, and, provided further, that the Party hindered or delayed immediately notifies the other Party describing the circumstances causing the delay. This provision shall not act to delay or defer the payment of any sums which may be due and owing.

Accepted and agreed:



By

ANDREW SHARP

Name

LOW POWER COMPANY, INC.

Company

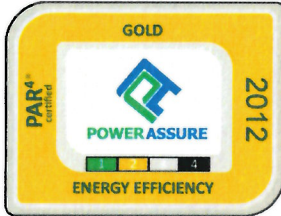
9/5/13

Date

## Attachment A

Results may be published only in the following forms:

1. The complete PAR<sup>4</sup> certificate (including all pages) generated by us and supplied to you. The certificate may be distributed in printed or electronic form.
2. The unmodified PAR<sup>4</sup> rating logo (including the correct rating color and year) that appears in the PAR4 certificate generated by us and supplied to you, for example:



The logo may be placed on the product specified in the certificate, on its packaging, and on marketing materials in electronic (including Web sites) or printed form, provided that the materials directly relate to the equipment specified in the certificate. Where the materials describe other equipment, the materials must make it clear to which item of equipment the logo relates.

3. Any of the results in the “Power Consumption Details” table, provided they are clearly related to the equipment specified in the certificate:

Power Consumption Details				
OFF	IDLE	LOADED	PEAK	BOOT TIME
-1W	129.2W	303.6W	309.4W	288s
117V	116.3V	117.8V	116.1V	
0.917A	1.121A	2.603A	2.69A	
-1PF	1PF	1PF	1PF	

4. Any of the following values specified in the results section of the certificate:

Vintage PAR<sup>4</sup>, Vintage Year, PAR<sup>4</sup> Rating, Absolute PAR<sup>4</sup>, 3 Year Cost (Est).

Provided the disclosure of the value is clearly related to the equipment specified in the certificate.

The Absolute PAR<sup>4</sup> value may only be disclosed if explicitly described as the “Absolute PAR<sup>4</sup>” value. The Vintage PAR<sup>4</sup> value may only be disclosed if described as either the “Vintage PAR<sup>4</sup>” value or the “PAR<sup>4</sup>” value.

Where the Absolute PAR<sup>4</sup> or Vintage PAR<sup>4</sup> value is disclosed in printed or electronic materials the disclosure must include the words “PAR<sup>4</sup> is a registered trademark of Power Assure, Inc.” in readable form on the same page or document.