

Service Terms and Conditions

PLEASE READ THIS SERVICE AGREEMENT CAREFULLY. THIS INDICATES YOUR ACKNOWLEDGEMENT THAT YOU ("CLIENT") HAVE READ THIS AGREEMENT.

The break/fix repairs ("Services") provided under this Agreement for the AHPC products purchased by Client ("Product") will be provided by AHPC or an AHPC authorized service provider. Questions about this Agreement should be e-mailed to AHPC at sales@advancedhpc.com
To schedule Service or if you have technical questions, please call 877-870-2472 option 2.

1. Service

- 1.1. Product(s) shall only be eligible for Service provided that they are either new or in good operating condition as approved by AHPC. Any repairs and/or adjustments as deemed necessary by AHPC to bring the Product to good operating condition shall be made concurrent with execution of this Agreement. In the event there is a charge for such repair or adjustment, it will be approved by Client prior to any work being done.
- 1.2. Client Responsibilities
 - 1.2.1 Client will designate an authorized representative for the purpose of interacting with AHPC's service personnel. The Client representative and the Client must:
 - 1.2.2 provide initial problem-solving assistance to site users;
 - 1.2.3 coordinate all requests for assistance and act as liaison with AHPC service personnel;
 - 1.2.4 perform appropriate problem analysis and corrective actions by following troubleshooting instructions and remedial actions as prescribed by AHPC;
 - 1.2.5 maintain system and Product documentation and install software updates, maintenance upgrades and patches supplied by the manufacturers;
 - 1.2.6 perform preventative maintenance and error recovery procedures as defined in the individual Products' users manual;
 - 1.2.7 provide service personnel with immediate access to the Products when service is requested;
 - 1.2.8 when necessary, supply and maintain a modem and communication software approved by AHPC which satisfied the respective manufacturer's Product specifications;
 - 1.2.9 keep the site environmental ranges within the specifications set forth by the manufacturer of the relevant Product;
 - 1.2.10 provide continuous and appropriate resource availability during problem resolution. Note: Failure to meet these obligations may result, at AHPC's sole option, in the imposition of additional charges at prevailing Per-Call rates.
- 1.3 Client Software
 - 1.3.1 Prior to service commencing on computers with hard drives, Client is responsible for creating a back-up copy of the file from the hard drive(s). AHPC is only responsible for formatting (if required) and transferring those files deemed necessary for formatting as more precisely outlined in the AHPC formatting procedures for specific Products. Client is responsible for restoring data. AHPC shall not be held liable for any damages arising from or relating to the loss of data, any software or any other information contained on a computer or similar device or contained in or stored on a Product.
- 1.4 Product Condition
 - 1.4.1 Client warrants that the Product covered by this Agreement (a) is in proper operating condition, (b) is without any unauthorized modifications, (c) has all safety features in working condition, and (d) has been maintained in accordance with the manufacturer's Product performance specifications. AHPC reserves the right to inspect the Product and site installation to confirm that such Products meet AHPC's then-current minimum conditions for service. At AHPC's discretion, such inspection and any repairs necessary to bring the Product up to AHPC's minimum conditions for service shall be treated as Per-Call service. If at any time Client fails to maintain the Product in proper operating condition as described above, AHPC may cancel this Agreement immediately upon written notice to Client.
- 1.5 Levels of Service
 - 1.5.1 Service shall be provided (subject to region availability) on an on-call basis in accordance with the level of Service purchased by Client. AHPC will provide toll-free telephone support seven (7) days a week and twenty-four (24) hours a day.
Levels of Service that may be purchased (may differ by product):
 - 1.5.1.1. Standard Return-to-depot Warranty - Client will request RMA from AHPC to return failed part or chassis. Client will ship failed part to AHPC. AHPC will repair or replace part.
 - 1.5.1.2. 48-hour Advance Replacement – 48-hour advance replacement of FRUs (Monday-Friday, 8AM-5PM, local time, excluding AHPC (country holidays). For requests received before 2pm PST, parts will ship for arrival at client site by the second business day.
 - 1.5.1.3. 5x9xNBD Onsite Service -- 5x9 next business day service provides on-site response by the next business day. (Monday- Friday, 8AM-5PM, local time, excluding AHPC or National Holidays (including but not limited to New Years, Memorial, Independence, Thanksgiving and Christmas Days). Service is available on a best efforts basis at prevailing Per-Call Holiday rates. Requests received before 1PM, local time, will be handled by the next business day.
- 1.6. Technical Support
 - 1.6.1. Technical Support shall also be provided in accordance with the level of Service purchased by Client.
 - 1.6.2. Client may request on site technical support outside of the level of Service purchased on a time and material basis. AHPC shall provide such support direct to Client at AHPC's sole discretion.
- 1.7. Replacement Parts
 - 1.7.1. In the event replacement parts are required, they will be provided on a replacement of defective part basis and may be either new or reconditioned to like new condition. The replacement product will perform at the same minimum specifications of the current Product, but may not be the same make and model.

2. Service Exclusions

- 2.1. Service shall not include:
 - 2.1.1. Service, repair or replacement of parts damaged as a result of catastrophe, accident, neglect, misuse, use of parts not authorized by or purchased from AHPC or modification without the written permission of AHPC or negligence by the Client.
 - 2.1.2. Service for causes external to the Product such as, but not limited to, failure of, or faulty electric power or air conditioning or as a result of, any causes other than ordinary use of the Product.
 - 2.1.3. Re-manufacturing or refurbishing the Product.
 - 2.1.4. Damage arising from unauthorized moving, removal/reinstallation of the Product.
 - 2.1.5. Service made necessary because of alterations, modifications, repairs or maintenance of the Product made by a person other than AHPC or an AHPC authorized service provider.
 - 2.1.6. Operator training other than the specific operation of the installed products.
 - 2.1.7. Non-mandatory engineering changes.
 - 2.1.8. Installation of new or upgraded features.
 - 2.1.9. Media maintenance.
 - 2.1.10. SAN management or configuration.

3. Period of Performance

- 3.1. The period during which AHPC shall perform Service under this Agreement shall be in accordance with the period of time purchased from and accepted by AHPC ("Service Period").

4. Purchase Orders

- 4.1. Client shall order Service by faxing or emailing Purchase Orders to AHPC. Each Purchase Order shall specify items such as the type of Service being purchased, the Client and address, unit model and serial number, Service Period and total Purchase Order value.
- 4.2. All of the terms and conditions of this Agreement shall be deemed incorporated into each Purchase Order as if fully set forth therein. If any term of this Agreement conflicts with any term of an issued Purchase Order, this Agreement shall take precedence.

5. Shipment, Risk of Loss and Title

- 5.1. All FRU's (field replaceable unit) shipped to Client by AHPC shall be shipped FOB Destination for domestic shipments or DDU Destination for international shipments in accordance with INCOTERMS 2000. All FRU's returned to AHPC by Client shall be shipped FOB Clients facility for domestic shipments or DDU Clients for international shipments in accordance with INCOTERMS 2000. Risk of loss while parts are in the care, custody and control of Client shall be with Client. Damage to or loss of parts shall be valued at AHPC's replacement cost. Title of the FRU shall transfer to Client in accordance with INCOTERMS 2000. This also applies to controllers and chassis.

6. Import/Export

- 6.1. Export/Re-Export Compliance. Client warrants that it shall comply with all applicable Export/Re-Export laws, rules and regulations of the United States and any other applicable countries.
- 6.2. AHPC's Products, equipment, technologies and software are not intended to be shipped or transferred, either directly or indirectly, to the countries identified as restricted in the current Export Administration Regulations without written approval from the United States Bureau of Industry and Security. Client warrants that it shall comply in all respects with the export and re-export restrictions set forth in any export license (if applicable) or license exception used to ship AHPC Products, equipment, technology and software and will otherwise comply with the Export Administration Regulations and other United States laws in effect at the time.
- 6.3. Client agrees not to participate in economic boycotts contrary to United States anti-boycott laws.

7. Limitation of Liability

- 7.1. AHPC SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, ECONOMIC OR CONSEQUENTIAL DAMAGES OR LOSSES RESULTING FROM THE SERVICES RENDERED HEREUNDER, INCLUDING BUT NOT LIMITED TO CLAIMS FOR LOST BUSINESS, LOST PROFITS, LOSS OF GOOD WILL, LOSS OF DATA, REPLACEMENT OF ANY SOFTWARE APPLICATION PROGRAMS, OR DATA USED IN CONJUNCTION THEREWITH, OR ANY OTHER TYPE OF INDIRECT DAMAGES PURPORTEDLY SUFFERED BY Client OR THE END USER. NOTWITHSTANDING THE FOREGOING, AHPC'S TOTAL LIABILITY SHALL NOT EXCEED THE VALUE OF THE SERVICES PROVIDED UNDER THIS AGREEMENT.

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- 7.2. The foregoing limitations shall not apply: (1) to any claims for infringement of intellectual property rights; (2) to any claims for personal injuries, including death, as a result of negligence or willful misconduct on the part of AHPC or any AHPC authorized service provider; and (3) to any claims for property loss or liability arising out of the willful misconduct or gross negligence of AHPC or any AHPC authorized service provider.
- 7.3. Except as expressly noted herein, this section and all other remedies sets forth herein are exclusive and in lieu of all other representations and warranties, oral or written, express or implied. No dealer, distributor, agent or employee of AHPC is authorized to make any modification or addition to this section.
8. Disclaimer of Warranties
- 8.1. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, AHPC MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE SERVICES PERFORMED HEREUNDER.
9. Intellectual Property
- 9.1. AHPC shall own the entire right, title and interest in and to all intellectual property rights relating to the Service of the Products that are or have been designed and developed exclusively by AHPC.
10. Confidential Information
- 10.1. AHPC and Client agree that Confidential Information is that information identified Proprietary, Confidential, Secret or similar legend and which is disclosed to the other Party subject to the terms of this Agreement. AHPC and Client each further acknowledge that they may acquire information about the business, products, and programming techniques of the other (including but not limited to the existence, terms and conditions of this Agreement, and any software provided hereunder) and that all such information acquired shall be the confidential and proprietary information of the disclosing party. Confidential Information shall not include any information which (i) is or becomes part of the public domain through no fault of the receiving party, (ii) the receiving party rightfully obtains from a third party or (iii) the receiving party develops independently. The receiving party agrees to hold all such Confidential Information in strict confidence and not to disclose it to others or use it in any way, except in accordance with this Agreement, and shall return or destroy the Confidential Information at the conclusion of this Agreement.
11. Disputes
- 11.1. The Parties shall attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between executives of the Parties.
- 11.2. If a controversy or claim should arise, one Party shall give Written Notice to the other Party of such controversy or claim (the "Invoking Party"). The Parties shall use their best efforts to arrange personal meetings or telephone conferences as needed, at mutually convenient times and places, between negotiators for the Parties to try and resolve the controversy or claim.
- 11.3. If resolution is not achieved by negotiators at the final management level within thirty (30) days from the date of Written Notice, then the Parties agree any controversy or claim shall be subject to the exclusive jurisdiction of the federal and state courts within San Diego County, California and the parties further agree and submit to the personal and exclusive jurisdiction and venue of those courts.
12. Termination
- 12.1. Either party may terminate this Agreement by written notice in the event of a material breach by the other party of this Agreement if such material breach continues uncured for a period of fifteen (15) days after an initial written notice. Any failure by either party to enforce its right against a breach or potential breach hereunder shall not be deemed to be a waiver of such rights, nor prevent such party from enforcing such rights at a later date or against other breaches or potential breaches.
- 12.2. This Agreement terminates automatically if either party is adjudicated bankrupt, files a voluntary petition of bankruptcy, and makes a general assignment for the benefit of creditors and is unable to meet its obligations in the normal course of business or if a receiver is appointed on account of its insolvency.
- 12.3.3. Either party may terminate this Agreement upon ninety (90) day advanced written notice. If Client elects such at-will termination, it shall pay AHPC for all services performed and expenses incurred from the original date of the contract.
13. Survivability
- 13.1. The provisions of this Agreement including without limitation, Limitation of Liability, Disclaimer of Warranty, Confidential Information, Intellectual Property, Rights and Remedies, Governing Law and General shall survive the expiration or termination of this Agreement.
14. Assignment
- 14.1. Neither party may assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other party, except as part of a corporate reorganization, consolidation, merger or sales of substantially all assets. Any attempted assignment or delegation without such consent shall be void. This Agreement shall bind and inure to the benefit of each party's successors and permitted assigns.
15. Notices
- 15.1. Any notices under this Agreement shall be sent by certified or registered mail, return receipt requested, to the address specified above or such other address as the party specifies in writing, and shall be effective upon its mailing.
16. Force Majeure
- 16.1. No default, delay or failure to perform on the part of either party shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due entirely to causes beyond the reasonable control of the defaulting party, including without limitation shortages of or inability to obtain labor, fuel, raw materials or supplies, war, riot, insurrection, epidemic, act of God or governmental action.
17. Rights and Remedies
- 17.1. All rights and remedies conferred by this Agreement, by any other instrument, or by law are cumulative and may be exercised singly or concurrently. If any provision of this Agreement is held invalid by any law or regulation of any government or by any court, such invalidity shall not effect the enforceability of any other provisions hereof.
18. Governing Law and Jurisdiction
- 18.1. This Agreement and the rights and obligations of the parties hereto shall be governed by and interpreted in accordance with the laws of the State of California in the United States of America, without reference to California's conflict of laws principles. The federal and state courts with the County of San Diego in the State of California shall have exclusive jurisdiction and venue to adjudicate any dispute arising out of, or in relation to, this Agreement. The Parties hereby agree to the foregoing jurisdiction.
19. General
- 19.1. Entire Agreement - This Agreement which is executed by the parties hereunder, constitutes the complete and exclusive understanding and agreement of the parties and supersedes all prior communications, proposals, understandings and agreements, whether written or oral, with respect to the subject matter hereof. Any waiver, modification or amendment shall be effective only if in writing and signed by the parties hereto.
- 19.2. Independent Contractors - Each Party, including its servants, agents, and employees, is an independent contractor and not an agent or employee of the other. Without limiting the generality of the foregoing, neither Party is authorized to represent or make any commitments on behalf of the other, and both Parties expressly disclaim any liability therefore.
- 19.3. No Implied Waiver - If either party fails to require performance of any duty hereunder by the other party, such failure shall not affect its right to require performance of that or any other duty thereafter. The waiver by either party of a breach of any provision of this Agreement shall not be waiver of the provision itself or a waiver of any breach thereafter, or a waiver of any other provision herein.
- 19.4. Section Headings - The section headings in this Agreement are for convenience only, and shall not be used in construing the Agreement.
- 19.5. Severability - If any provision of this Agreement is held invalid by any law, rule, order or regulation of any government, or by the final determination of any state or federal court, such invalidity shall not affect the enforceability of any other provisions not held to be invalid.