

**THIS AGREEMENT** is made on date:

**BETWEEN:**

(1) a company incorporated in under company number and having its registered office at ("Customer"); and

(2) **P & I GENERATORS LIMITED** a company incorporated in England and Wales (company number 5717392) and having its registered office at Unit 8, Dakota Business Park, Downley Road, Havant, Hampshire, PO9 2NJ ("**P & I Generators**")

**IT IS AGREED:**

**1 Definitions and Interpretation**

In this Agreement:

the following words and expressions shall have the following meanings:

<b>Charges</b>	the Support and Maintenance Fee and any additional charges due under or in accordance with this Agreement;
<b>Commencement Date</b>	the date identified as such and detailed in Schedule 3;
<b>Documentation</b>	any documentation in whatever medium provided by P & I Generators in relation to the use or operation of the Equipment or otherwise supplied in accordance with this Agreement;
<b>Emergency Support Service</b>	the service identified as such and detailed in Schedule 1;
<b>Equipment</b>	the equipment in respect of which P & I Generators has agreed to provide the Maintenance Services and as set out in Schedule 3 as the same may from time to time be amended by agreement between the parties;
<b>Initial Term</b>	the term described as such in Schedule 3;
<b>Intellectual Property Rights</b>	all patents, copyrights and related rights, database rights, design rights, trade marks, service marks, trade names, rights in undisclosed or confidential information (such as know how, trade secrets and inventions (whether patentable or not) and other rights of a like nature (whether registered or unregistered) and all applications for such rights as may exist anywhere in the world);
<b>Loan Equipment</b>	any equipment loaned to Customer by P & I Generators from time to time;
<b>Maintenance Services</b>	the maintenance services provided by P & I Generators to the Customer as set out in clause 5 and Schedule 3;
<b>Optional Services</b>	the services identified as such and detailed in Schedule 1;
<b>Service Checklist</b>	the checklist set out in Schedule 4 and as amended by P & I Generators from time to time;
<b>Service Frequency</b>	the maintenance service frequency identified as such and detailed in Schedule 3;
<b>Serviced Sites</b>	the sites or locations in respect of which P & I Generators has agreed to provide the Services and as detailed in Schedule 3;
<b>Services</b>	the services to be provided under this Agreement as detailed in clause 2;
<b>Standard Support Services</b>	the standard support services as set out in clause 4.1;
<b>Support and Maintenance Fee</b>	the fee identified as such and detailed in Schedule 2;
<b>Support Service Hours</b>	the hours between 0800 and 1630 on a Working Day;
<b>Term</b>	the term of this Agreement as described in clause 3;
<b>Working Day</b>	any day (other than a Saturday or Sunday) on which the clearing banks are open for normal banking business in England.

1.2 any reference to a clause is to the relevant clause of this Agreement.

1.3 any reference to a Schedule is to a Schedule to this Agreement;

1.4 headings are included for convenience only and shall not affect the construction or interpretation of this Agreement.

1.5 words importing a particular gender or number do not exclude other genders or numbers.

1.6 references to any statute, statutory provision or statutory instrument include a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it all as from time to time amended, consolidated or re-enacted.

1.7 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and the words following any of those terms shall not limit the sense of the words preceding those terms.

1.8 if there is any conflict or inconsistency between provisions in the main body of this Agreement, the Schedules or any documents referred to herein the following order of precedence shall apply:

1.8.1 the main body first; then

1.8.2 the Schedules (together).

**2. The Services**

2.1 P & I Generators will supply and the Customer shall pay for the following Services:

2.1.1 the Standard Support Services;

2.1.2 such of the Optional Services as are included from time to time within an order for Optional Services agreed between P & I Generators and the Customer pursuant to clause 6;

2.1.3 the Emergency Support Service; and

2.1.4 the Maintenance Services.

2.2 P & I Generators shall be entitled, on prior notice to the Customer, to make changes to the Services, provided such changes do not have a material adverse affect on the Customer's business operations.

**3. Term**

The Services shall commence on the date of this Agreement and subject to termination in accordance with the provisions of this Agreement, shall continue for the Initial Term. Following expiry of the Initial Term this Agreement shall remain in force from year to year thereafter, unless and until terminated by either party in accordance with the terms of this Agreement.

**4. Standard Support Service**

4.1 The Standard Support Service shall be provided during the Support Services Hours and shall comprise:

4.1.1 a telephone help desk to provide first-line technical support to users of the Equipment including where possible remote diagnosis and instructions for correcting faults; and

4.1.2 up to eight (8) hours in any month of second-line on-site technical support and repairs of the Equipment by an engineer attending at a Serviced Site within 4 hours from receipt of the fault being reported.

**5. Maintenance**

P & I Generators shall during the Term carry out Maintenance Services of the Equipment in accordance with the Service Frequency and as more particularly set out in Schedule 3. Each such service will record the condition of the Equipment as measured against the Service Checklist.

**6. Orders for Optional Services**

6.1 The Customer may from time to time require P & I Generators to supply Optional Services at P & I Generators standard scale of charges from time to time in force. P & I Generators shall use its reasonable endeavours to comply with the Customer's request, but the Customer acknowledges that P & I Generators' ability to supply the Optional Services shall depend on the availability of appropriate resources at the time in question.

6.2 Where P & I Generators agrees to provide Optional Services, such agreement shall be embodied in an order for Optional Services. Each order for Optional Services shall be made under, and shall incorporate, the terms of this Agreement.

**7. Emergency Maintenance Services**

P & I Generators shall provide the Emergency Support Service outside the Support Service Hours. P & I Generators shall use its reasonable endeavours to comply with the Customer's request within 4 hours after the receipt of such request from the Customer. P & I Generators shall make an additional charge for any Emergency Support Services supplied in accordance with its standard scale of charges from time to time in force.

**8. Excluded Support and Maintenance**

8.1 P & I Generators shall have no obligation to provide the Services where faults arise from, or relate to:

8.1.1 misuse, incorrect use of or damage to the Equipment; or

8.1.2 failure to maintain the necessary environmental conditions for use of the Equipment; or

8.1.3 use of the Equipment in combination with any equipment or software not provided by P & I Generators, or any fault in any such equipment or software; or

8.1.4 relocation or installation of the Equipment by any person other than P & I Generators or a person acting under P & I Generators' instructions; or

8.1.5 any breach of the Customer's obligations under this Agreement; or

8.1.6 problems resulting from any modifications or customisation of the Equipment; or

8.1.7 incorrect or unauthorised use of the Equipment or operator error where these are defined as use or operation not in accordance with the Documentation.

8.2 P & I Generators shall not be required to provide the Services in relation to any equipment or goods other than the Equipment.

8.3 P & I Generators shall not be required to carry out the Services at any location other than the Serviced Sites.

8.4 P & I Generators shall upon request by the Customer at its discretion provide Services notwithstanding clause 8.1, clause 8.2 or clause 8.3 and any such Services shall be subject to payment of additional charges in accordance with clause 10.1.

**9 Serviced Sites**

The Customer shall be entitled to request a change to the Serviced Sites by written notice to P & I Generators. No change to the Serviced Sites shall be effective until agreed in writing by P & I Generators and P & I Generators shall be entitled to increase the Charges in recognition of any anticipated increase to its costs as a result of such change.

**10 Additional Charges**

10.1 P & I Generators shall make an additional charge in accordance with its standard scale of charges time to time in force for any Services provided by P & I Generators at the request of the Customer in respect of:

10.1.1 any equipment or fault which does not qualify Services by virtue of any of the exclusions referred to in clause 8.1 and clause 8.2;

10.1.2 Optional Services;

10.1.3 Emergency Services;

10.1.4 additional on-site support over and above that set out in clause 4.1.2;

10.1.5 provided to the Customer at any site other than the Serviced Sites; or

10.1.6 at the request of the Customer but which P & I Generators finds are not necessary.

For the avoidance of doubt nothing in this clause shall impose any obligation on P & I Generators to provide services in respect of any of the exclusions referred to in clause 8.

- 10.2 P & I Generators shall invoice such additional charges at its discretion and which the Customer will pay within thirty (30) days of the date of said invoice (time of payment being of the essence).

#### **11 Spare Parts & Replacement of Equipment**

- 11.1 All materials, parts, components and replacements will be sourced by P & I Generators and chargeable to the Customer.
- 11.2 Any Loan Equipment supplied to the Customer shall remain the property of P & I Generators at all times and P & I Generators reserves the right to request the return of any Loan Equipment at any time.
- 11.3 The Customer agrees on request by P & I Generators to provide a list of any Loan Equipment in its possession.
- 11.4 The Customer shall take all reasonable steps to ensure that any Loan Equipment is not damaged, stolen, or used other than by or as directed by P & I Generators' employees, servants, agents or sub-contractors and further the Customer shall indemnify P & I Generators for any loss that P & I Generators may incur arising from the Customer's failure to comply with its obligations under this sub-clause.

#### **12 P & I Generators' Warranties and Obligations**

- 12.1. P & I Generators warrants to the Customer that:
- 12.1.1 it has the authority to enter into this Agreement;
- 12.1.2 the Services will be performed:
- a. in accordance with all applicable laws and regulations; and
- b. with all reasonable skill and care by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated;
- 12.1.3 to the best of its knowledge and belief, the Documentation will not infringe the United Kingdom Intellectual Property Rights of any third party; and
- 12.1.4 at the date of this Agreement, P & I Generators has obtained and will maintain for the duration of this Agreement all permissions, licences and consents necessary for P & I Generators to perform the Services.
- 12.1.5 it will at all times work in a co-operative manner with the employees, agents, sub-contractors, contractors and third party suppliers of the Customer to the extent necessary for the effective performance of the Services.
- 12.2 No representation or warranty is given by P & I Generators that all faults will be fixed or will be fixed within a specified period of time.
- 12.3 P & I Generators itself does not warrant third party products. Where P & I Generators supplies third party hardware, P & I Generators will pass on to the Customer the benefit of any third party warranty which will usually be supplied by a third party manufacturer as specified in the documentation provided with the third party products.

#### **13. Remedy for Breach of Warranty**

- 13.1 If, during the term of this Agreement, P & I Generators receives written notice from the Customer of any breach by P & I Generators of the warranties contained in clause 12.1, P & I Generators shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate this Agreement immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to P & I Generators under this Agreement during the twelve (12) months immediately preceding the termination, less a charge for the Services performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable P & I Generators to comply with its obligations under clause 12.2. This clause sets out the Customer's exclusive remedy and P & I Generators' entire liability for breach of clause 12.1.
- 13.2 The Customer must promptly notify P & I Generators of any non-conformance to the warranties contained in this Agreement in order to benefit from the remedy stated above, and in any event within three (3) months of the discovery of such non-conformance.

#### **14 Customer's Warranty and Obligations**

- 14.1 The Customer warrants that:
- 14.1.1 it has authority to enter this Agreement; and
- 14.1.2 it shall comply in all material respects with all applicable laws, regulations and codes of conduct (whether statutory or otherwise) of the United Kingdom, and that all licences, permissions and consents required for carrying on its business have been obtained and are in full force and effect.
- 14.2 The Customer covenants and undertakes:
- 14.2.1 to operate the Equipment in accordance with the user manual and operator manual;
- 14.2.2 on P & I Generators' request, to supply in writing a detailed description of any fault requiring the Services and the circumstances in which it arose, and to submit sufficient material and information to enable P & I Generators' support staff to diagnose or duplicate the problem;
- 14.2.3 without prejudice to clause 14.2.2, to provide P & I Generators and all other persons duly authorised by P & I Generators with full, safe and uninterrupted access including remote access to the Customer's premises including the Serviced Sites as may reasonably be required for the purpose of performing the Services; such access, except in the case of Emergency Maintenance Services, shall be within the Standard Support Hours. Where the Services are to be performed at any of the Customer's premises or the Serviced Sites, the Customer shall provide adequate working space and where available office (including telephone) facilities for use by P & I Generators personnel and all other persons duly authorised by P and I Generators and take reasonable care to ensure their safety;

- 14.2.4 to ensure that appropriate environmental conditions are maintained for the Equipment and to take all reasonable steps to ensure that the Equipment is operated in a proper manner by the Customer's employees, agents, and sub-contractors;
- 14.2.5 when reporting a fault, to nominate a manager or point of contact who will be available to meet any P & I Generators' engineers or agents called out to a Serviced Site and generally to be available to liaise with, and respond to queries from P and I Generators.
- 14.2.6 to co-operate with P & I Generators in performing the Services and provide any assistance or information as may reasonably be required by P & I Generators.
- 14.3 The Customer shall indemnify P & I Generators against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against P & I Generators as a result of the Customer's breach of this Agreement or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.

## 15 Payment

- 15.1 The Customer shall pay the Support and Maintenance Fee in advance on the Commencement Date and periodically in advance in the manner specified in Schedule 3. P & I Generators shall be under no obligation to provide any Services, until payment has been received by P & I Generators in cleared funds.
- 15.2 P & I Generators shall be entitled to increase the Support and Maintenance Fee as from each anniversary of the date of this Agreement. P & I Generators shall notify any such increase to the Customer at least ninety (90) days prior to such anniversary.
- 15.3 Any additional charges payable by the Customer under this Agreement shall be paid within thirty (30) days after receipt by the Customer of P & I Generators' invoice.
- 15.4 The Customer shall reimburse any travel or subsistence expenses incurred by P & I Generators where such expenses are incurred wholly and exclusively for the purpose of providing the Services.
- 15.5 For the avoidance of doubt, time is of the essence for the purposes of payment of Charges.
- 15.6 If the Customer fails to pay any amount payable by it under this Agreement, P & I Generators shall be entitled, but not obliged, to charge the Customer interest on the overdue amount, payable by the Customer forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of three per cent (3%) per annum above the base rate for the time being of HSBC Bank plc. Such interest shall accrue on a daily basis and be compounded quarterly. P & I Generators reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 15.7 All amounts payable under this Agreement shall be exclusive of value added tax (if any) which shall be paid by the Customer at the rate and in the manner time to time prescribed by law.
- 15.8 P & I Generators Ltd reserve the right to charge interest and to claim compensation on invoices not paid within the agreed credit period, in accordance with the Late Payment of Commercial Debts Regulations 2002 (as amended or replaced from time to time). In addition, all costs incurred on the collection of overdue sums (including, but not limited to, collection agents' fees, will be charged to and payable by the Customer."

## 16 Termination

- 16.1 Either party may terminate this Agreement at any time after the Initial Period on at least sixty (60) days' prior written notice to the other party such notice to expire on the anniversary of the date of commencement of the agreement.
- 16.2 This Agreement may be terminated immediately by notice in writing:
- 16.2.1 by either party if the other party is in material or continuing breach of any of its obligations under this Agreement and fails to remedy the same (if capable of remedy) for a period of thirty (30) days after written notice of the breach by the other party in which event this Agreement shall automatically terminate;
- 16.2.2 by either party if any of the following events (or any event analogous to any of the following occurs in a jurisdiction other than England & Wales) occurs in respect of the other party:
- a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
  - a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
  - a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or for the making of an administration order, or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to s.98 of Insolvency Act 1986;
  - a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - it is or becomes insolvent within the meaning of s.123 Insolvency Act 1986,
- 16.2.3 by P & I Generators in the event of non-payment by the Customer of Charges or other amounts in accordance with clause 4.3 of this Agreement; and
- 16.2.4 by P & I Generators if there is a change in the control ("control" being defined in accordance with Section 416 of the Income and Corporation Taxes Act 1988) in the Customer.

## 17 Consequences of Termination

- 17.1 If this Agreement is terminated for any reason:
- 17.1.1 any sums due to P & I Generators will become immediately payable by the Customer without set-off or deduction;
- 17.1.2 the Customer shall return to P & I Generators all tangible property belonging to P & I Generators in its possession, custody or control;

- 17.1.3 each party shall immediately cease use of (and at the direction of the other party return or destroy) the other's Confidential Information and Intellectual Property Rights; and
- 17.1.4 the Customer shall be reimbursed any sums which, as at the date of termination, have been prepaid in respect of any goods or services to be provided by P & I Generators.
- 17.2 Termination of this Agreement howsoever caused shall:
  - 17.2.1 be without prejudice to any obligations or rights of either of the parties accrued prior to such termination; and
  - 17.2.2 not affect any provision of this Agreement which is expressly or by its nature intended to come into effect on or continue in effect after such termination.

## 18 Limitation of Liability

- 18.1 The following provisions set out the entire financial liability of P & I Generators (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
  - 18.1.1 any breach of this Agreement; and
  - 18.1.2 any representation, statement or tortious act or omission (including negligence) arising out of or in connection with this Agreement.
- 18.2 Save as expressly provided in this Agreement all warranties, conditions and other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.
- 18.3 Nothing in this Agreement excludes or limits the liability of P & I Generators for:
  - 18.3.1 death or personal injury caused by the negligence of P & I Generators, its officers, employees, contractors or agents; or
  - 18.3.2 fraud or fraudulent misrepresentation; or
  - 18.3.3 breach of the obligations implied by Section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982; or
  - 18.3.4 any other liability which cannot be excluded by law
- 18.4 Subject to clause 18.2 and clause 18.3:
  - 18.4.1 P & I Generators shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
    - a. loss of profits; or
    - b. loss of business; or
    - c. depletion of goodwill or similar losses; or
    - d. loss of anticipated savings; or
    - e. loss of goods; or
    - f. loss of contract; or
    - g. loss of use; or
    - h. loss or corruption of data or information; or
    - i. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 18.5 P & I Generators' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to:
  - 18.5.1 a sum equal to one hundred and fifty percent (150%) of the aggregate amount paid or payable by the Customer under the Agreement in the twelve (12) months immediately preceding the circumstances giving rise to the claim in respect of direct damage to tangible property; and
  - 18.5.2 a sum equal to one hundred and fifty percent (150%) of the aggregate amount paid or payable by the Customer under the Agreement in the twelve (12) months immediately preceding the circumstances giving rise to the claim in respect of all other losses or damage.

## 19 Intellectual Property Rights

- 19.1 All Intellectual Property Rights in the Documentation shall belong to P & I Generators or (as the case may be) the third party rights owner and the Customer shall have no rights in respect of any of the Documentation except as expressly granted under this Agreement. The Customer shall do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as P & I Generators may from time to time require for the purpose of giving P & I Generators the full benefit of the provisions of this clause 19.1.
- 19.2 P & I Generators undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the use or possession of any of the Documentation in which P & I Generators asserts Intellectual Property Rights (or any part of them) infringes the UK Intellectual Property Rights of a third party (**Infringement Claim**) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Infringement Claim.
- 19.3 Clause 19.2 is conditional upon:
  - 19.3.1 the Customer notifying P & I Generators in writing, as soon as reasonably practicable, of any Infringement Claim of which it has notice;
  - 19.3.2 the Customer not making any admission as to liability or compromise or agreeing to any settlement of any Infringement Claim without the prior written consent of P & I Generators, which consent shall not be unreasonably withheld or delayed; and
  - 19.3.3 P & I Generators having, at its own expense, the conduct of or the right to settle all negotiations and litigation arising from any Infringement Claim and the Customer giving P & I Generators all reasonable assistance in connection with those negotiations and such litigation at P & I Generators' request and expense.
- 19.4 If any Infringement Claim is made, or in P & I Generators' reasonable opinion is likely to be made, against the Customer, P & I Generators may at its sole option and expense:

- 19.4.1 procure for the Customer the right to continue using, developing, modifying or maintaining the Documentation (or any part of them) in accordance with the terms of this Agreement; or
  - 19.4.2 modify the Documentation so that they cease to be infringing; or
  - 19.4.3 replace the Documentation with non-infringing works; or
  - 19.4.4 terminate this Agreement immediately on notice to the Customer and repay to the Customer all sums which the Customer has paid to P & I Generators under this Agreement during the year in which the termination occurs, less a charge for the Services performed up to the date of termination.
- 19.5 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Equipment are and shall remain the sole property of P & I Generators or (as the case may be) the third party rights owner.
- 19.6 P & I Generators shall retain the property and copyright in all documents supplied to the Customer in connection with this Agreement and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of P & I Generators.
- 19.7 P & I Generators' Intellectual Property Rights in and relating to the Equipment shall remain the exclusive property of P & I Generators, and the Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its agents or contractors or any other person to do so.

## **20 Dispute resolution**

- 20.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of performance, procedure and management arising out of this Agreement. Accordingly, it is agreed that the procedure set out in this clause 20 shall be followed prior to the serving of written notice terminating this Agreement, or in relation to any matter of dispute between the parties concerning performance, procedure or management.
- 20.2 In the event that any disagreement or difference of opinion arises out of this Agreement, the matter shall be disposed of as follows:
- 20.2.1 each party shall appoint a manager who shall meet to attempt resolution. Should they not meet within fourteen (14) days of the date on which either party convenes a meeting to resolve the matter, or should they not be able to resolve the matter with fourteen (14) days of first meeting; then
  - 20.2.2 the matter shall promptly be referred by each party to a director for immediate resolution.
- 20.3 If, within fourteen (14) days of the matter first having been referred to the directors in accordance with clause 20.2.2 no agreement has been reached as to the matter in dispute, the dispute resolution process shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it by this Agreement in respect of such matter without further reference to the dispute resolution process.
- 20.4 For the avoidance of doubt, clause 20 shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's Intellectual Property Rights.

## **21 Confidentiality and P & I Generators' property**

- 21.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by P & I Generators or its agents, and any other confidential information concerning P & I Generators' business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to P & I Generators and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 21.2 This clause 21 shall survive termination of this Agreement, howsoever arising.

## **22 Force majeure**

- 22.1 In this Agreement "Force Majeure" shall mean any supervening events beyond a party's reasonable control including acts of God, acts of terrorism, fire, tempest, acts of war, riot, civil commotion, flood or other natural disaster, strike or lock-out (other than a strike or lock-out induced by the party so incapacitated).
- 22.2 Neither party to this Agreement shall be deemed to be in breach of this Agreement or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations, other than the Customer's obligations to pay the Charges, under this Agreement because of Force Majeure.
- 22.3 The party unable to fulfil its obligations because of Force Majeure shall:
- 22.3.1 immediately on becoming aware of the Force Majeure give written notice of this to the other party specifying the nature and extent of Force Majeure and shall use reasonable endeavours to mitigate the severity of the Force Majeure;
  - 22.3.2 subject to the provisions of Clause 22.3.1 performance of such obligation shall be deemed suspended only for a period equal to the delay caused by such event
- 22.4 If the Force Majeure in question continues for more than three (3) months then either party may give written notice to the other to terminate this Agreement. The notice to terminate must specify the termination date which must not be less than fifteen (15) days after the date on which the notice is given and once such notice is validly given, this Agreement will terminate on that date.

## **23 Waiver**

- 23.1 A waiver of any right under this Agreement is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 23.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

**24 Severance**

If any provision of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced

**25 Entire Agreement**

- 25.1 This Agreement, together with the documents referred to in it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the parties relating to such matters.
- 25.2 The Customer acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement save as expressly set out in this Agreement.

**26 Assignment**

- 26.1 The Customer shall not, without the prior written consent of P & I Generators, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 26.2 P & I Generators may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

**27 Third party rights**

- 27.1 This Agreement does not create any right enforceable by any person who is not a party, save that a person who is the permitted successor to or assignee of the rights of a party is deemed to be a party to this Agreement and the rights of such successor or assignee shall, subject to and on any succession or assignment permitted by this Agreement, be regulated by the terms of this Agreement.
- 27.2 Notwithstanding that any term of this Agreement may be or become enforceable by a person who is not a party to it, the terms of this Agreement or any of them may be varied, amended or modified or this Agreement may be suspended, cancelled or terminated by agreement in writing between the parties, or this Agreement may be rescinded (in each case), without the consent of any such third party.

**28 Notices**

- 28.1 Notices will be delivered or sent to the addresses of the parties as first set out herein or to any replacement address notified by either party to the other in accordance with this clause 28.1. Any notice must be in writing and may be delivered personally or by recorded delivery post or first class mail or fax provided faxes are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail will be deemed to be delivered two (2) Working Days after posting. Correctly directed faxes will be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above. Each party may specify by notice to the other a particular individual or office holder to whom any notices served on it are to be addressed in which event a notice will not be validly given unless so addressed.

**29 Relationship**

- 29.1 Nothing in this Agreement is intended to create a partnership between the parties, or to authorise either party to act as agent for the other. Save where expressly so stated in this Agreement neither party will have authority to act in the name or on behalf of or otherwise to bind the other.

**30 Governing law and jurisdiction**

- 30.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.
- 30.2 The parties irrevocably agree that the courts of England have non-exclusive jurisdiction to settle any dispute or claim that arises.

