

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions and the Contract, the following words and expressions shall bear the following meanings:

“**Aggreko**” means Aggreko UK Limited a Company having its Registered Office at Overburn Avenue, Dumbarton G82 2RL.

“**Breakdown**” means any defect, breakdown or unsatisfactory working of any part of the Plant.

“**Cash Account Order Acknowledgment**” means Aggreko’s cash account order acknowledgment as published and applicable from time to time.

“**Charges**” means the Fuel Charges, the Hire Charges, the Services Charges and/or the Transport Charges (as applicable).

“**Delivery**” means the transfer of physical possession of the Plant to the Hirer at the Delivery Place or Aggreko’s nominated depot (as applicable), and the word **Delivered** shall be construed accordingly.

“**Delivery Place**” means the Delivery Place specified in the Quotation, which may be the Site or the Onshore Supply Base (as applicable).

“**EAWR**” means The Electricity at Work Regulations 1989.

“**Expected Hire Period**” means the expected hire period set out in the Quotation.

“**Force Majeure Event**” has the meaning given to it in Clause 18.

“**Fuel Charges**” means the charges payable by the Hirer for the supply of fuel in accordance with Clause 4 and set out in the Quotation, subject to Clause 4.7.

“**Hire Charges**” means the charges payable by the Hirer for hire of the Plant in accordance with Clause 4 and set out in the Quotation.

“**Hire Period**” means the period of hire as determined in accordance with Clause 3.3.

“**Hirer**” means the party taking the Plant on hire and named as such in the Contract and shall include its successors, assignees or personal representatives.

“**HSWA**” means The Health and Safety at Work etc Act 1974.

“**IOW**” means the Insurance Obligation Waiver described in the IOW Document.

“**IOW Document**” means the Aggreko leaflet titled “Introducing Aggreko’s Insurance Obligation Waiver” as published and applicable from time to time.

“**Normal Working Hours**” means 8 a.m. to 5 p.m. on each Working Day.

“**Offshore Contract**” means a contract where the Plant will be used at an offshore Site.

“**Onshore Supply Base**” means, in the case of an Offshore Contract, the Hirer’s onshore supply base (or relevant heliport) agreed with Aggreko, from which the Plant (and personnel) will be transported offshore and to which they will be returned when transported onshore.

“**Order Acknowledgment**” means any order acknowledgment (including a Cash Account Order Acknowledgment) issued by Aggreko from time to time.

“**Plant**” means all temporary power and temperature control plant, machinery and equipment of whatever nature, including accessories, spare parts and ancillary items (including any substitutions or replacements thereof), hired by the Hirer from Aggreko.

“**Quotation**” means Aggreko’s form of quotation, including the notes thereto, as updated from time to time and accepted by the Hirer.

“**Risk Period**” has the meaning given to it in Clause 13.3.

“**Services**” means the services relating to the Plant to be performed by Aggreko and set out in the Quotation or otherwise agreed in writing between the parties.

“**Services Charges**” means the charges payable by the Hirer for the supply of the Services in accordance with Clause 4 and set out in the Quotation.

“**Site**” means the site where the Plant will be used under the Contract.

“**Terrorism**” shall have the meaning given to that term in the Terrorism Act 2000.

“**Transport Charges**” means the charges payable by the Hirer for the transport of the Plant in accordance with Clause 4 and set out in the Quotation.

“**Week**” means a period of seven (7) consecutive calendar days.

“**Working Day**” means a day other than a Saturday, Sunday or public holiday.

1.2 Clause headings shall not affect the interpretation of the Contract. References to clauses are to the clauses of these Conditions.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s legal and personal representatives, successors and permitted assigns.

1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.7 A reference to **writing** or **written** includes fax and e-mail.

1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.9 Any words following the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. BASIS OF CONTRACT

2.1 The Quotation (including the Hirer’s acceptance thereof), any Order Acknowledgment, the IOW Document (if applicable) and these Conditions comprise the entire contract, agreement and understanding between Aggreko and the Hirer (the “**Contract**”) and no other terms and conditions, or pre-contractual statements or representations, shall form part of the Contract. The Contract supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

2.2 No variation of the Contract shall be effective unless specifically agreed in writing by an authorised signatory of Aggreko and of the Hirer.

2.3 In the event of any inconsistency between any of the documents forming part of the Contract, the Quotation shall prevail against all other such documents. These Conditions shall prevail against the IOW Document.

2.4 To the extent that the Quotation specifies (or Aggreko and the Hirer otherwise agree in writing) that any Services are to be performed by, or be the responsibility of, Aggreko, any provision of these Conditions which provides for it to be performed by, or be the responsibility of, the Hirer shall not apply to that extent.

### 3. PLANT HIRE, SERVICES AND HIRE PERIOD

- 3.1 Aggreko shall hire the Plant to the Hirer for use at the Site and provide the Services to the Hirer at the Site subject to the terms and conditions of the Contract.
- 3.2 Aggreko shall not, other than in the exercise of its rights under the Contract or applicable law, interfere with the Hirer's quiet possession of the Plant.
- 3.3 The Hire Period starts from the time from when the Plant leaves Aggreko's nominated depot (or place where otherwise despatched) and shall continue, unless the Contract is terminated earlier in accordance with its terms, until the Plant is received back at Aggreko's nominated depot. The minimum Hire Period shall in any event be one (1) Week (unless specified otherwise in the Quotation or agreed otherwise in writing between the parties).
- 3.4 Subject always to Clauses 3.5 and 17, Aggreko may (at its own cost, subject to Clauses 11.2 and 11.3), without incurring any liability to the Hirer, or giving any right of termination to the Hirer, in respect of or in connection with such recall so long as there is no material interruption in the service provided to the Hirer (other than a reasonable period to allow for disconnection of the recalled Plant and connection of the substitute Plant), recall any or all Plant and substitute equivalent Plant for such recalled Plant, upon giving thirty (30) calendar days' written notice to the Hirer.
- 3.5 Subject to Clause 17, in the case where the hiring which is the subject of the Contract is an indefinite hiring and is not for an agreed fixed period, the Contract may be terminated by either the Hirer or Aggreko on giving not less than one Working Day's written notice to the other (provided that the same shall not expire prior to the end of any agreed minimum hire period).

### 4. CHARGES

- 4.1 The Hirer shall pay the Charges to Aggreko.
- 4.2 Unless otherwise agreed in writing, Aggreko shall invoice the Hirer following completion of the Hire Period, provided that where the Hire Period for any Plant exceeds four (4) Weeks Aggreko shall invoice the Hirer every four (4) Weeks in arrears and following completion of the Hire Period; and the Hirer shall pay each invoice submitted by Aggreko in full within thirty (30) calendar days of the date of the invoice.
- 4.3 The Charges are exclusive of VAT and any other applicable taxes; and any customs, import or other duties or similar charges which shall be payable in addition by the Hirer at the rate and in the manner from time to time prescribed by law.
- 4.4 If the Hirer fails to make any payment due to Aggreko under the Contract by the due date for payment, then, without limiting Aggreko's remedies under Clause 17, the Hirer shall pay interest on the overdue amount at the rate of 5% per annum above Royal Bank of Scotland plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Hirer shall pay the interest together with the overdue amount.
- 4.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Aggreko may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Hirer against any amount payable by Aggreko to the Hirer.
- 4.6 The Hire Charges, Transport Charges and Services Charges specified in the Quotation and are fixed for the Expected Hire Period. Unless otherwise stated in the Quotation, Aggreko reserves the right, upon giving the Hirer at least four (4) Weeks' notice, to vary such the Hire Charges, Transport Charges and Services Charges so as to reflect increases in Aggreko's own cost of goods, materials and labour, and any other relevant factors, if the Contract is extended beyond the Expected Hire Period.
- 4.7 Where Aggreko is providing fuel or fuel management services, Aggreko reserves the right to vary the Fuel Charges specified in the Quotation on a weekly basis with reference to movements in the applicable fuel index (or any similar measure of market fluctuations).

### 5. DELIVERY, COLLECTION, TRANSPORT, UNLOADING AND LOADING

- 5.1 Subject to Clauses 5.2, 5.3 and 5.6, Aggreko shall in accordance with the Quotation either (a) deliver the Plant to the Delivery Place or (b) make the Plant available for collection by the Hirer at Aggreko's nominated depot. Aggreko shall use its reasonable endeavours to effect Delivery by the date or within the period set out in the Quotation. Time of Delivery and provision of the Services shall not be of the essence. Risk shall transfer in accordance with Clause 13.
- 5.2 The Hirer shall be responsible for the unobstructed access and egress at the Site and Delivery Place and, unless otherwise agreed in writing, for unloading and loading of the Plant at the Delivery Place. Personnel supplied or contracted by Aggreko for unloading and/or loading shall do so as agents of the Hirer and under the Hirer's direction and control. Any period agreed by the parties for installation of the Plant shall not commence until the Hirer has completed such unloading and located the Plant in its required position.
- 5.3 Subject to Clause 5.6, the cost of and responsibility for arranging Delivery and subsequent collections shall be as specified in the Quotation. Unless Aggreko has agreed in the Quotation to supply craneage, if a crane or other lifting equipment is required for the safe and proper delivery of any Plant, the Hirer will be responsible for the provision and cost of the same. The Hirer shall give Aggreko not less than one (1) Working Day's prior written notice of off-hire the Plant.
- 5.4 The Hirer shall carry out a reasonable visual inspection of the Plant on, or as soon as reasonably practicable after, Delivery and shall promptly (and in any event within three (3) Working Days) notify any apparent damage or defects to Aggreko.
- 5.5 Unless notification in writing to the contrary is received by Aggreko from the Hirer within three (3) Working Days of the date of Delivery, all Plant shall be deemed to have been timeously Delivered in good condition, complete and fit in every way for the purpose for which it is intended and to the Hirer's satisfaction (save as regards any inherent fault or a fault not ascertainable by reasonable examination in accordance with Clause 5.4), provided that where Aggreko is responsible for installing and/or commissioning the Plant on Site, the period stated above shall be calculated from the date of completion of installation and/or commissioning (as applicable) of the Plant.
- 5.6 Subject to Clause 11, in the event that the Plant is required to be transported from the Site for the purpose of repair owing to damage or Breakdown, the cost of which is to be met by Aggreko in terms of the Contract, then the cost of such transport shall be met by Aggreko. In the event that the cost of such repair is to be met by the Hirer in terms of the Contract, then the cost of such transport shall be met by the Hirer. The cost of transporting replacement Plant to the Site shall be borne by the relevant party on the same basis.

### 6. INSTALLATION, COMMISSIONING AND USE

- 6.1 Unless the Quotation specifies that the installation, commissioning, operation/watch keeping, de-commissioning and/or de-installation of the Plant (as applicable) are to be performed by, or be the responsibility of, Aggreko (or it is otherwise agreed in writing that any such obligations are to be performed by an Aggreko engineer) the Hirer shall:
  - (a) carry out the safe and proper installation, commissioning, de-commissioning and de-installation of the Plant in accordance with the EAWR, the HSWA and all other applicable laws and regulations;
  - (b) carry out the termination at any connection point between the Plant and the Hirer's network/system in accordance with the EAWR, the HSWA and all other applicable laws and regulations;
  - (c) ensure the use and operation of the Plant in conformity with its specification, Aggreko's operating instructions, the EAWR, the HSWA and all other applicable laws and regulations;
  - (d) ensure that the Plant is not used or operated for any purpose beyond its rated capacity or in a manner likely to result in deterioration of the Plant (except normal wear and tear);
  - (e) in the event of a leak spill or dispersal, immediately implement control measures to prevent, limit or reduce the impact;
  - (f) keep itself acquainted with the condition of the Plant and shall not use or operate it after it has become defective, damaged or in a dangerous state or in a state which results in a breach of any applicable law or regulation and if the Hirer or any employee,

contractor or agent of the Hirer does operate the Plant in such condition then the Hirer shall be solely responsible for any damage, loss or accidents resulting therefrom;

(g) carry out a visual inspection of the Plant (including all connection points) and leak identification checks on a daily basis and ensure that consumable levels (including fuel, oil and lubricant, coolant, refrigerant and chilled water treatment chemicals (as applicable)) in the Plant are checked daily and that these are kept at the level required for the proper operation of the Plant.

6.2 Unless the Plant is hired on the basis of unlimited running hours, as soon as reasonably practicable after the end of each Week during the Hire Period, the Hirer shall render to Aggreko an accurate statement of the number of hours the Plant has worked each calendar day in that Week. Where the Plant is accompanied by an Aggreko engineer, the Hirer or its representative shall sign the engineer's time record sheets daily or weekly and the signature of a representative of the Hirer shall bind the Hirer to accept the hours shown on the time record sheets.

6.3 To the extent that the Quotation specifies (or Aggreko and the Hirer otherwise agree in writing) that the installation, commissioning, operation/watch keeping, de-commissioning and/or de-installation of the Plant (as applicable) are to be performed by, or be the responsibility of, Aggreko, Aggreko shall carry out the same in accordance with Aggreko's standard practice, the EAWR, the HSWA and all other applicable laws and regulations.

## 7. MAINTENANCE AND SERVICING

7.1 Subject to Clause 7.4, Aggreko shall, either itself or via a subcontractor, provide routine maintenance and servicing of the Plant during the Hire Period in accordance with Aggreko's standard practice. The Hirer shall make the Plant available to Aggreko for the purpose of carrying out maintenance and servicing (whether routine or otherwise) within one (1) Week of Aggreko advising the Hirer of such maintenance and servicing being due. During Normal Working Hours Aggreko will make no charge to the Hirer for any routine maintenance and servicing but if the Hirer can only make the Plant available for this purpose outside Normal Working Hours then Aggreko reserves the right to charge the Hirer for overtime costs in accordance with the rates set out in the Quotation.

7.2 If scheduled maintenance and servicing is not carried out within one (1) Week of Aggreko advising the Hirer of such maintenance and servicing being due, Aggreko shall not be responsible for any Breakdown which is attributable to such denial of or delay in access and the Hirer shall compensate Aggreko for additional wear, tear and damage to the Plant by paying the full cost of both the next service and any consequent repairs which are attributable to such failure to service the Plant.

7.3 The maintenance and servicing schedule for the Plant is determined by the running hours of the Plant. Where the Plant is hired on the basis of limited running hours in a Week, if the actual running hours of the Plant in a Week exceed the agreed limit for that Week and the Hirer fails to provide notification in accordance with Clause 6.2, Aggreko shall not be responsible for any Breakdown which is attributable to a missed or extended service interval and the Hirer shall compensate Aggreko for additional wear, tear and damage to the Plant by paying the full cost of both the next service and any consequent repairs which are attributable to a missed or extended service interval.

7.4 If Aggreko and the Hirer have agreed in writing that the Hirer will be responsible for routine maintenance and servicing, then Clauses 7.1 and 7.3 shall not apply and the Hirer shall at its own cost maintain and service the Plant in accordance with Aggreko's maintenance instructions and service schedule. Aggreko will in such circumstances provide the Hirer with a copy of such maintenance instructions and service schedule and any relevant consumables specifications at the same time as the Plant is Delivered to the Hirer.

## 8. BREAKDOWNS

8.1 Any Breakdown must be notified immediately to Aggreko and for this purpose no notification shall be effective unless and until it is actually received by Aggreko. The Hirer shall not attempt to remedy any Breakdown or effect any repairs himself or engage any third party to carry out any repairs except with the express written authority of Aggreko.

8.2 Subject to Clauses 7, 11 and 12, Breakdowns resulting from a breach of the warranties in Clause 14.1; proper ordinary usage; fair wear and tear; the development of an inherent fault; or a fault not ascertainable by reasonable examination by the Hirer in accordance with Clause 5.4 shall, at Aggreko's option, either (a) be repaired by Aggreko at Aggreko's expense and with the least reasonably practicable delay; or alternatively (b) if Aggreko considers (acting reasonably) that repair would not be practicable or cost effective, Aggreko shall replace the relevant Plant (or part thereof) at its own expense and with the least reasonably practicable delay, and the Hirer shall not be charged for the hire of the item of Plant that has suffered a Breakdown from the date of its notification of the Breakdown to Aggreko until such item of Plant has been repaired or replaced (as applicable).

8.3 Without prejudice to Clause 7, any Breakdown not falling within Clause 8.2 may, at Aggreko's option, either (a) be repaired by Aggreko at the Hirer's expense; or alternatively (b) if Aggreko considers (acting reasonably) that repair would not be practicable or cost effective, Aggreko may replace the relevant Plant (or part thereof) at the Hirer's expense, in each case without prejudice to the obligation of the Hirer to pay any Charges due to Aggreko under the Contract while the Plant is idle owing to any such Breakdown and until repair or replacement (as applicable) is completed.

8.4 Notwithstanding the foregoing provisions of this Clause 8, if repair is impracticable and if replacement Plant is not available Aggreko may terminate the hiring of the affected Plant forthwith and will not have any liability whatever to the Hirer for such termination or any consequences of such Breakdown or termination.

8.5 If there are stoppages outside Aggreko's control, Aggreko will not accept any relief from the Charges (except to the extent that such stoppages arise as a direct result of a Force Majeure Event) or any other claims however they arise.

## 9. SITE CONDITIONS AND ACCESS

9.1 The Hirer is solely responsible for ground conditions at the Delivery Place and the Site. The Hirer shall at its own cost provide a suitable area for the lay down, installation and operation of the Plant and shall ensure that the Delivery Place and the Site is levelled, graded, compacted and free from debris, structures and obstructions. If the ground at the Delivery Place and the Site is soft or unsuitable for the Plant to work on or travel over, the Hirer shall at its own cost supply and lay an aggregate / hardcore base with gravel finish, or a concrete pad, in accordance with Aggreko's specifications in a suitable position.

9.2 Unless otherwise agreed in writing, the Hirer at its own cost shall carry out any other civil engineering and related works required at the Site for the Delivery, installation and operation of the Plant in accordance with Aggreko's specifications, including (where applicable) the installation of cable trenching and drainage.

9.3 Notwithstanding any other provision of the Contract, the Hirer shall be solely responsible for the cost of recovering any Plant from soft ground and shall, where required to do so by Aggreko, make arrangements for such recovery.

9.4 The Hirer is responsible for the security of the Plant during the Risk Period, and shall take all appropriate measures to secure the Plant at the Delivery Place and the Site.

9.5 The Hirer shall allow Aggreko's employees, contractors, agents and insurers access (including vehicle access) to the Plant at all reasonable times to inspect, test, adjust, maintain, service, repair or replace the same. The Hirer shall be responsible for providing safe and proper access both for such purposes and for delivery and collection of the Plant. If access is denied or delayed, any obligation of Aggreko to deliver the Plant on a specified date or within a specified period; or provide an Aggreko engineer on Site and/or remedy any Breakdown, in each case within a specified period, shall be modified by extending the relevant period by such time as Aggreko considers is reasonably necessary to take account of such denial of or delay in access.

## 10. CONSUMABLES AND WASTE

10.1 Unless otherwise specified in the Quotation, all consumables (including fuel, oil and lubricants, coolant, refrigerants, chilled water treatment chemicals and filters) shall be supplied by Aggreko.

10.2 All consumables (including fuel, oil and lubricants, coolant, refrigerants, water treatment chemicals and filters) shall, when supplied by the Hirer, be of a grade and type specified by Aggreko.

10.3 The Hirer shall be responsible for disposal of all waste including used consumables, drums and hazardous waste, in a manner that meets all applicable laws.

## 11. OFFSHORE CONTRACTS

11.1 In the case of an Offshore Contract, the provisions of this Clause 11 shall amend or replace the other provisions of these Conditions as follows.

11.2 The Hirer shall be responsible at its own cost for transporting the Plant between the Onshore Supply Base and the offshore Site, regardless of the reason why such transport is required, and unloading and loading of the Plant at the offshore Site.

11.3 The Hirer shall be responsible at its own cost for transporting Aggreko's and its subcontractors' employees (including medi-vac transportation) between the Onshore Supply Base and the offshore Site, regardless of the reason why such transport is required.

11.4 All offshore transport of the Plant and Aggreko's and its subcontractors' employees shall be provided in accordance with the agreed project timetable (including enabling Aggreko (or its subcontractor) to carry out maintenance and servicing of the Plant during the Hire Period in accordance with Aggreko's standard practice and service schedule).

11.5 Aggreko shall not be in breach of contract by reference to any required period for the transport of personnel or equipment between the Onshore Supply Base and the offshore Site, or by reason of such transport not being immediately available at or from the Onshore Supply Base.

11.6 Unless otherwise agreed in writing, where the Contract requires Aggreko's or its subcontractors' employees to work at an offshore Site, the Hirer shall arrange at its own cost any required qualifications and training which would not be required were the Site to be located onshore.

11.7 In the event of a Breakdown which requires the attendance of an Aggreko engineer, Aggreko shall arrange for such engineer to attend the Onshore Supply Base, and the Hirer shall arrange for such engineer to be transported to the offshore Site, with the least possible delay. In the event that Aggreko determines that the Plant requires to be returned to the Onshore Supply Base or to Aggreko's depot to repair such Breakdown, or that the Plant requires to be replaced, the Hirer shall arrange for the relevant Plant to be transported between the offshore Site and the Onshore Supply Base at its own cost and with the least possible delay.

## 12. LOSS OR DAMAGE / DUTY TO RETURN

12.1 The Hirer shall:

- (a) not permit the Plant to be used near salt water, salt spray, salt laden air or hazardous materials; or situated in an environment liable to be open to dust ingress or fine metallic substances without giving prior written notification to Aggreko;
- (b) notify Aggreko prior to commencement of the Hire Period of any bacteria, viruses, parasites, contaminants, corrosion, debris or other hazardous substances or materials present in the Hirer's temperature control system or plant;
- (c) notify Aggreko of any bacteria, viruses, parasites, contaminants, corrosion, debris or other hazardous substances or materials that are discovered in the Hirer's temperature control system or plant during the Hire Period;
- (d) not introduce any coolant, refrigerants, water treatment chemicals or other consumables to the temperature control system comprised of or incorporating the Plant without giving reasonable prior written notification to Aggreko.

12.2 The Hirer shall deliver up the Plant at the end of the Expected Hire Period (unless extended in writing), on recall of the Plant under Clause 3.4 or on earlier termination of the Contract (the "Return Date") at such address as Aggreko requires, or if necessary allow Aggreko or its representatives access to the Site or any premises where the Plant is located for the purpose of removing the Plant. The Plant shall be returned to Aggreko in good working and cosmetic

condition, fair wear and tear excepted, and when Plant includes cable, the Hirer shall be responsible for recoiling cable on drums supplied.

12.3 If the Hirer returns any of the Plant on the Return Date other than in such condition for any reason whatsoever (whether or not involving any negligence or other fault on the part of the Hirer or its employees, contractors or agents but save in so far as caused by Aggreko or its employees, contractors or agents) or should damage occur to any of the Plant owing to (a) failure by the Hirer to observe any terms of the Contract, (b) negligence or misuse by the Hirer or its employees, contractors or agents or (c) wilful or accidental damage however occurring, then the Hirer shall be liable to Aggreko for:

- (i) the full cost of any repairs which Aggreko shall deem necessary or desirable; or
- (ii) if Aggreko considers (acting reasonably) that such repairs would not be practicable or cost effective, the whole cost of replacement of such Plant with equivalent new Plant.

12.4 If the Hirer fails to return any of the Plant on the Return Date for any reason whatsoever (whether or not involving any negligence or other fault on the part of the Hirer, its employees, contractors or agents), then the Hirer shall be liable to Aggreko for the whole cost of replacement of such Plant with equivalent new Plant.

## 13. TITLE, RISK AND INSURANCE

13.1 The Plant shall at all times remain the property of Aggreko, and the Hirer shall have no right, title or interest in or to the Plant (save the right to possession and use of the Plant subject to the terms and conditions of the Contract). The Plant shall not be moved from or within the Site without the prior written consent of Aggreko.

13.2 The Hirer shall:

- (a) not remove or deface any plate or marking on the Plant identifying Aggreko as the owner of the Plant, make any alteration to the Plant or remove any existing component(s) from the Plant;
- (b) not part with control of (including for the purposes of repair or maintenance), sell or offer for sale, rehire, underlet or lend the Plant or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (c) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of Aggreko in the Plant; or
- (d) not suffer or permit the Plant to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Plant is so confiscated, seized or taken, the Hirer shall notify Aggreko and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Plant.

Without prejudice to Clause 16, the Hirer shall indemnify Aggreko upon Aggreko's written demand against all losses, damage, costs, charges and expenses arising as a result of failure to comply with this Clause.

13.3 The risk of loss, theft, damage or destruction of the Plant shall pass to the Hirer on Delivery. The Plant shall remain at the sole risk of the Hirer during the Hire Period and any further term during which the Plant is in the possession, custody or control of the Hirer (including transport to and from the Site and within the Site; and unloading/loading at the Site where this is the responsibility of the Hirer) (the "Risk Period") until such time as the Plant is redelivered to Aggreko. During the Hire Period and the Risk Period, the Hirer shall, at its own expense, obtain and maintain the following insurances:

- (a) insurance of the Plant to a value not less than its full replacement value against all usual risks of loss, damage or destruction by fire, flood, theft, vandalism or accident, and such other risks as Aggreko may from time to time nominate in writing;
- (b) insurance for such amounts as a prudent owner or operator of the Plant would insure for, or such amount as Aggreko may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Plant.

13.4 The Hirer shall be responsible for paying any deductibles due on any claims under such insurance policies; and any insurance monies recovered by the Hirer under such insurance policies shall, to the

extent deemed necessary by Aggreko, be applied as directed by Aggreko.

- 13.5 Unless the Hirer has purchased the IOW, evidence of the Hirer's insurance shall be supplied by the Hirer to Aggreko forthwith on request by Aggreko and in any event prior to the start of the Hire Period.
- 13.6 Notwithstanding Clause 13.5, if evidence of insurance for loss, damage or destruction of the Plant under Clause 13.3(a) is not provided by the Hirer prior to the start of the Hire Period, Aggreko shall be entitled to charge for the IOW in addition to any other Charges.
- 13.7 The IOW, if purchased, means that the Hirer is not obliged to provide its own insurance against loss of or damage to the Plant under Clause 13.3(a), and will be liable for loss of or damage to the Plant as set out in Clauses 13.8, 13.9 and 13.10. The IOW applies only to loss of or damage to the Plant (excluding ducting, hoses, cable and cable storage) and does not relieve the Hirer from its other insurance obligations referred to in Clause 13.3. Further details are contained in the IOW Document.
- 13.8 The Hirer's attention is specifically drawn to its obligations pursuant to Clauses 7, 8, 12 and 16, which shall apply notwithstanding the provision of insurance by the Hirer or the purchase of the IOW, provided that if the Hirer has purchased the IOW then (subject to Clauses 13.9 and 13.10) the Hirer's liability in respect of parts and labour for loss of or damage to an item of Plant under Clauses 8, 12 and 16 (including for fire and theft) shall be limited to £1000 per incident per item of Plant.
- 13.9 Ducting, hoses, cable and cable storage provided as part of the Plant are excluded from cover under the IOW. Accordingly, the Hirer's liability under Clauses 7, 8, 12 and 16 for loss of or damage to any ducting, hoses, cable or cable storage forming part of the Plant shall not be limited by the IOW.
- 13.10 There is no limitation or exclusion of liability under the IOW for (a) damage to any of the Plant caused by the Hirer's deliberate, wilful or malicious acts or omissions; (b) damage to any of the Plant caused by any delay or failure by the Hirer to make the Plant available to Aggreko for the purpose of carrying out maintenance or servicing (routine or otherwise); or (c) transport costs associated with the repair or replacement of any Plant. Accordingly, the Hirer's liability under Clauses 7, 8, 12 and 16 for damage to any of the Plant caused by its deliberate, wilful or malicious acts or omissions or any delay or failure by the Hirer to make the Plant available to Aggreko for the purpose of carrying out maintenance or servicing (routine or otherwise); and for transport costs under Clause 5.6, shall not be limited by the IOW.
- 13.11 If the Plant suffers any loss, theft, damage or destruction or is involved in any incident resulting in injury to persons or damage to property, immediate notice must be given to Aggreko by telephone and confirmed in writing and no admission, offer, promise of payment or indemnity shall be made by the Hirer without Aggreko's consent in writing.

## 14. WARRANTY

- 14.1 Aggreko warrants to the Hirer that:
- (a) the Plant shall:
- (i) be free from any defects in design, workmanship and material which would affect the proper and safe operation of the Plant;
  - (ii) conform in all material respects to its specification (as made available by Aggreko) be of satisfactory quality and fit for any purpose held out by Aggreko; and
  - (iii) comply with all applicable legislation from time to time in force; and
- (b) the Services shall be provided:
- (i) using reasonable care, skill and diligence;
  - (ii) in accordance with all applicable legislation from time to time in force;
  - (iii) by personnel who are suitably skilled and experienced to perform tasks assigned to them; and
  - (iv) in accordance with all health and safety rules and regulations and any other reasonable security requirements that apply at the Site.

Aggreko shall remedy any defect in the Plant or re-perform any defective Services which manifests itself during the Hire Period in accordance with Clause 8. Except as provided in this Clause 14, Aggreko shall have no liability to the Hirer in respect of the Plant's and/or the Services' failure to comply with the warranties in this Clause.

- 14.2 The warranty and obligation to remedy in Clause 14.1 will not apply where any defect in the Plant or Services has arisen from any drawing, design or specification supplied by the Hirer, wilful damage, negligence of the Hirer or its employees, subcontractors or agents, abnormal working conditions, failure to follow Aggreko's instructions, misuse or alteration or repair of the Plant without Aggreko's prior written approval or breach of any of the terms of the Contract by the Hirer.
- 14.3 The Contract sets forth the full extent of Aggreko's obligations and liabilities in respect of the Services and the Plant and its hiring to the Hirer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on Aggreko except as specifically stated in the Contract. Any condition, warranty or other term concerning the Plant which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.

## 15. LIABILITY

- 15.1 Subject to Clause 15.2, Aggreko's maximum aggregate liability to the Hirer under or in connection with the Contract (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, shall in no circumstances exceed the total Hire Charges and Services Charges received from the Hirer by Aggreko.
- 15.2 Nothing in the Contract shall exclude or in any way limit or exclude either party's liability for:
- (a) death or personal injury caused by its (or its employees, agents and subcontractors) own negligence;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) breach of any statutory implied term or warranty, or any other liability, to the extent that the same cannot be lawfully limited or excluded.
- 15.3 Subject to Clause 15.2, neither party shall be liable under or in connection with the Contract (whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise) for any:
- (a) loss (direct or indirect) of business, production, profits, contracts, opportunity, goodwill, revenues, anticipated savings or similar; or
  - (b) special, indirect or consequential loss or damage, in each case, however caused, even if foreseeable.
- 15.4 Subject to Clause 15.2, Aggreko shall not be liable to the Hirer to the extent that any breach of contract, tort (including negligence), breach of statutory duty, misrepresentation or other ground for liability is due to any incorrect, incomplete or misleading advice, statement, information, representation or warranty by the Hirer, or the Hirer otherwise being in breach of contract, or any circumstances referred to in Clause 14.2.

## 16. INDEMNITIES

- 16.1 Subject to Clause 16.2, the Hirer shall be solely responsible for and shall hold Aggreko fully indemnified against all losses, costs, charges, damages and expenses (including legal fees) incurred by Aggreko arising out of or in connection with:
- (a) any claim by any person whatsoever arising from or in connection with the use or situation of the Plant whether arising under statute or common law;
  - (b) any violation of any applicable environmental laws, rules or regulations in connection with the discharge, release and/or disposal of any hazardous materials or hazardous substances in the course of the operation, use, handling or transportation of the Plant;
  - (c) recovering possession of the Plant or collecting any sums which may be due and payable by the Hirer to Aggreko under the Contract.

16.2 The indemnities contained in Clause 16.1 shall not apply to the extent that the loss, damage or injury arises from any fraud or negligence on the part of Aggreko or its employees, contractors or agents, or is the responsibility of Aggreko under the Contract.

## 17. TERMINATION

17.1 Without affecting any other right or remedy available to it, Aggreko may terminate the Contract with immediate effect by giving written notice to the Hirer if:

- (a) the Hirer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven (7) calendar days after being notified in writing to make such payment;
- (b) the Hirer shall do or cause to be done or permit or suffer any act or thing whereby the Plant or Aggreko's rights in the Plant may be prejudiced or put into jeopardy; or
- (c) the Hirer commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of seven (7) calendar days after being notified in writing to do so;
- (d) the Hirer shall cease to carry on business or shall be unable to pay its debts as they fall due for payment or if the Hirer shall suffer any diligence, distress or execution to be used or levied against it or make or propose to make any arrangement (including but not limited to an individual voluntary arrangement or company voluntary arrangement) with its creditors or, being a company shall go into liquidation (other than for the purposes of reconstruction or amalgamation) or have a receiver, administrator or administrative receiver appointed to the whole or any part of its assets and undertaking or shall do or suffer the equivalent of any of the foregoing in any other jurisdiction; or
- (e) a Force Majeure Event shall have affected the Plant and/or the performance of all or any part of Aggreko's services under the Contract for a continuous period of not less than 14 calendar days.

17.2 Upon termination of the Contract, however caused:

- (a) Aggreko's consent to the Hirer's possession of the Plant shall terminate and Aggreko may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Plant and for this purpose may enter the Site or any premises at which the Plant is located; and
- (b) without prejudice to any other rights or remedies of the Hirer, the Hirer shall pay to Aggreko on demand:
  - (i) all Charges and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to Clause 4.4;
  - (ii) any costs and expenses incurred by Aggreko in recovering the Plant and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).

17.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

## 18. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure is attributable to strike, lock-out, riot, civil commotion, insurrections, Terrorism or suspected Terrorism, threat of Terrorism, act of war (whether or not officially declared) or civil war, war-like action, act of any Parliament, government, agency or department (whether local or national), natural calamity, fire, flood, storm, tempest, earthquake, volcanic eruption, explosion, ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, maritime or aviation disasters, or any other events, circumstances or causes beyond its reasonable control (each a "Force Majeure Event"). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

## 19. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

19.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Clause 19.2.

19.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 19; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

19.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.

19.4 As between the Hirer and Aggreko, all Intellectual Property Rights and all other rights in the Plant and the Services shall be owned by Aggreko. Aggreko licenses all such rights to the Hirer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Hirer to make reasonable use of the Plant and the Services. This licence will automatically terminate on termination or expiry of the Contract.

## 20. ASSIGNMENT AND OTHER DEALINGS

20.1 The Hirer shall not assign the Contract or any part of it or any benefit or interest in or under it without the previous written agreement of Aggreko which will only be given in exceptional circumstances and shall notwithstanding the foregoing be in the absolute discretion of Aggreko.

20.2 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

20.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

20.4 At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to the Contract.

20.5 No one other than a party to the Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

20.6 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20.7 Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

20.8 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of the Contract.

## 21. GOVERNING LAW AND JURISDICTION

21.1 The governing law of the Contract and of the relationship of the parties thereto arising out of it shall be English Law.

21.2 Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).