

## GENERATOR MAINTENANCE AGREEMENT TERMS AND CONDITIONS

These Generator Maintenance Agreement Terms and Conditions, together with the proposal on the front side and the Scope of Work, are hereinafter referred to as this "Agreement" and shall constitute the entire agreement between the customer identified in the Quote ("Customer") and Powergen Development Group, LLC and supersedes any previous agreement or understanding (oral or written) between the parties with respect to the subject matter of this Agreement.

**1. SCOPE OF WORK; PERFORMANCE OF SERVICES.** Powergen Development Group, Inc. shall perform the maintenance ("Services") on the equipment identified in the Proposal ("Equipment") in accordance with the schedule specified in the Proposal. The Services include those services defined in the "Scope of Work" section of the Proposal. No additional services or materials are included in this Agreement unless agreed upon by the parties in supplemental documentation. Powergen Development Group, Inc. shall provide the Services in a safe and workmanlike manner. Powergen Development Group, Inc. has licenses, permits, authorizations, or registrations necessary to perform the Services. Unless otherwise indicated in the Proposal, Powergen Development Group, LLC will provide the labor and tools necessary to perform the Services and shall keep Customer's property free from accumulation of waste materials caused by Powergen Development Group, LLC's operations. Customer shall provide Powergen Development Group, LLC safe access to Customer's site and arrange for all related services and utilities necessary for Powergen Development Group, LLC to perform the Services. During the performance of the Services, Customer shall fully and completely secure all or any part of any facility where the Equipment is located for any and all safety issues that an electrical service interruption might cause, including but not limited to injury to facility occupants, customers, invitees, or any third party and/or property damage or work interruption arising out of the Services.

**2. PAYMENT TERMS.** Payment terms are net thirty (30) days from the date of invoice unless otherwise specified in the Proposal. If payment is not received when due, in addition to any rights Powergen Development Group, LLC has under the law and charges that Powergen Development Group, LLC may levy against Customer under statute (including attorney fees and costs of collection), Powergen Development Group, LLC may charge Customer eighteen percent (18%) annually, or the maximum amount allowed by law, on late payments.

**3. DELAYS.** Powergen Development Group, LLC shall not be liable for any delays in performance that result directly or indirectly from acts of Customer or causes beyond Powergen Development Group, LLC's control, including but not limited to acts of God, accidents, fire, explosions, flood, unusual weather conditions, acts of government authority, labor disputes, and/or union mandated procedures resulting in a loss of time and productivity in services being performed.

**4. WARRANTY.** Limited warranties apply for select parts and components as defined by the respective component manufacturer's limited warranties. All Services shall be free from defects in workmanship for a period of ninety (90) days after completion of Services. In the event of a warrantable defect in workmanship, Powergen Development Group, LLC's obligation shall be limited to correcting the defective workmanship. Powergen Development Group, LLC shall correct the nonconforming Services where (i) such nonconformity becomes apparent to Customer during the warranty period; (ii) Powergen Development Group, LLC receives written notice of any nonconformity within thirty (30) days following discovery by Customer; and (iii) Powergen Development Group, LLC has determined that the Services are nonconforming. Services corrected or re-performed shall be subject to the remaining warranty period of the original warranty of the Services. New parts supplied during correction or re-performance of Services are warranted for the balance of the warranty period still available from the original warranty of such parts. The remedies set forth in this Section 4 shall not be deemed to have failed of their essential purpose so long as Powergen Development Group, LLC is willing to correct defective Services or refund the purchase price therefor.

**5. LIMITATIONS ON WARRANTIES AND REMEDIES.**

Powergen Development Group, LLC expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability and warranty for fitness of a purpose, to the extent permitted by law. The warranties set forth herein are the sole warranties made by Powergen Development Group, LLC. Some states do not allow limitation on warranties, so these limitations may not apply to you.

**THE MAXIMUM LIABILITY, IF ANY, OF EITHER PARTY FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION, AGREEMENT DAMAGES AND DAMAGES FOR PROPERTY, WHETHER ARISING FROM POWERGEN DEVELOPMENT GROUP, LLC'S INDEMNITY HEREUNDER, BREACH OF AGREEMENT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PRICE OF THE SERVICES PAID BY CUSTOMER UNDER THIS AGREEMENT WHICH SHALL BE THE SOLE REMEDY UNDER THIS AGREEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, PROPERTY DAMAGE,**

**LOSS OF PROFIT OR REVENUE, LOSS OF DATA, DAMAGE TO GOODWILL) HOWSOEVER CAUSED ARISING FROM THIS AGREEMENT OR THE BREACH OF THIS AGREEMENT, WHETHER IN INDEMNITY, TORT, CONTRACT, OR OTHERWISE. NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST POWERGEN DEVELOPMENT GROUP, LLC FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN.**

**6. INDEMNITY.** Each party shall indemnify and hold harmless the other party, its affiliates, subsidiaries, officers, directors, agents and employees from and against any and all third party losses, costs, liabilities, damages and expense, including reasonable attorney and expert fees (collectively, "Losses"), subject to the limitations on claims and damages in Section 5, attributable to bodily injury or property damage to the extent it is conclusively determined that such Losses were directly caused by the gross negligence or willful misconduct of such party. The party seeking indemnification shall give written notice to the other party promptly upon learning of the events giving rise to such claim; provided, however, that failure to provide such notice promptly shall only relieve an indemnifying party of its obligations hereunder to the extent it is prejudiced by such delay. The indemnifying party shall select counsel to control and manage the defense of a claim and the settlement thereof and shall keep the indemnified party apprised of all material developments with respect to such claim. The indemnified party may, at its expense, select additional co-counsel. The indemnifying party shall have no obligation to indemnify or hold harmless the indemnified party for any Losses conclusively determined to be caused by the negligence or willful misconduct of the indemnified party.

**7. CONFIDENTIALITY.** Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees, and agents.

**8. GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State in which services are to be rendered or performed without giving effect to any choice or conflict of law provision. The parties agree that the courts of the State in which services are to be rendered or performed and shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.

**9. INSURANCE.** Upon Customer's request, Powergen Development Group, LLC will provide to Customer a Certificate of Insurance evidencing Powergen Development Group, LLC's relevant insurance coverage.

**10. ASSIGNMENT.** This Agreement shall be binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Powergen Development Group, LLC.

**11. IP.** Any intellectual property rights created by Powergen Development Group, LLC during the performance of any Agreement or otherwise shall remain Powergen Development Group, LLC's property. Nothing in these conditions shall be deemed to have given Customer a license or any other rights to use any of the intellectual property rights of Powergen Development Group, LLC.

**12. MISCELLANEOUS.** Powergen Development Group, LLC shall be an independent contractor with respect to the Services performed under this Agreement. All notices under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in the Quote. No amendment of this Agreement shall be valid unless it is in writing and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof.

**13. Termination.** Either party has the right, to terminate this Agreement within thirty (30) days prior notice, unless the work has already been performed and completed.