

**AGGREKO COOLING TOWER SERVICES (ACTS)
COOLING TOWER RENTAL TERMS AND CONDITIONS**

1. USE OF EQUIPMENT. Aggreko shall provide to Customer the equipment set forth on the attached proposal (“Proposal”), together with the attachments, parts, and accessories, necessary for operation of the equipment (collectively called the “Equipment”) to cool water at the Site from the source provided by Customer per the Customer’s plans, specifications, and drawings (“Specifications”). Customer’s plant facility and the water source are collectively referred to herein as the “Site”). The Proposal, including the allocation of Project Responsibilities between the parties set forth therein, Specifications and the terms and conditions contained herein shall collectively be referred to herein as the “Agreement”.

2. RENTAL PERIOD. Unless otherwise provided by Aggreko in the Proposal, the rental period shall commence on the date of shipment of the Equipment covered by this Agreement (“Commencement Date”) and, unless sooner terminated as provided herein, continue in full force and effect thereafter for the minimum rental commitment period identified in the Proposal (“Initial Rental Term”) or until the Equipment is returned to Aggreko’s yard, whichever occurs later.

3. RENTAL AMOUNT, CHARGES & PAYMENT TERMS

A. The rental amount, costs of delivery, installation, removal and return delivery shall be at the rate set forth on the Proposal. Additionally, the daily, weekly and monthly rental rates after the expiration of the Initial Rental Term, if applicable, and the labor rates for any services provided by Aggreko, are identified on the Proposal.

B. All rentals, labor and service charges due are due and payable within 30 days of date of Aggreko’s invoice at the address designated on the invoice, unless otherwise agreed in writing. All overdue payments, including damages to Aggreko’s property, referenced in Section 12 below, shall bear interest at the lesser of 18% per annum or the highest amount otherwise allowed by law without prejudice to Aggreko’s rights and in particular without prejudice to Aggreko’s right contained in Section 10.A., below, to terminate the rental for non-payment.

C. Customer’s payment obligations for services actually rendered shall not be conditioned upon or affected by payment to Customer by any third party or by changes in specifications after the Commencement Date.

D. Lessor will endeavor to comply with Lessee’s written invoicing requirements that are provided to Lessor in advance of the rental, but non-compliance by Lessor therewith shall not be a deemed valid reason for delay in payment by Lessee.

4. DELIVERY, INSTALLATION & ACCEPTANCE

A. Delivery. All costs of transportation of the Equipment shall be borne by Customer, regardless of whether transportation has been arranged or prepayment has been made by Aggreko. Upon delivery of the Equipment to the site or other designated receiving point, all liability for damage thereto is transferred to and remains with Customer until the equipment is returned to Aggreko’s original shipping point or other destination as directed by Aggreko, unless caused by the negligence or fault of Aggreko. Customer shall be responsible for the proper and safe handling, operation, and maintenance of the Equipment, including all injuries incurred by its agents and employees in unloading and reloading the equipment at the Site.

B. Customer grants Aggreko, its subcontractors and/or agents, access to the Site and to occupy the Site at all times reasonably necessary for the purposes of installing the Equipment, servicing the Equipment to the extent necessary and removing the Equipment under the conditions stated herein.

C. Installation, Acceptance & Inspection. If the written services to be provided include installation of the Equipment by Aggreko, then it shall be performed pursuant to the Specifications. Aggreko shall not be liable for any damages resulting from inaccurate or incomplete Specifications provided by or on behalf of Customer. Customer may have a qualified inspector inspect the Equipment upon completion of installation. If as a result of such inspection the Equipment is not found to be in a satisfactory condition, the reasonable cost of replacing such equipment shall be paid for by Aggreko. If Customer does not inspect the Equipment within twenty-four (24) hours of Aggreko’s notification of completion of installation, or provide Aggreko written notice of any unsatisfactory conditions found within such time period, then Customer is deemed to have accepted the Equipment and the Equipment is deemed to be in proper working order, in compliance with the Specifications, and in a clean and unmarred condition.

5. PROJECT MANAGEMENT. Each party shall designate a Project Manager to have overall responsibility and authority for supervising performance of this Agreement on its respective behalf and who shall be identified to the other party prior to delivery of the Equipment.

6. HEALTH, SAFETY & ENVIRONMENTAL. Each party shall comply with all applicable Federal, State, and local health or safety laws and regulations, and all Customer’s written safety rules and procedures applicable to the rental services to be provided by Aggreko (provided Customer’s written safety rules and procedures are delivered to Aggreko with sufficient time for the applicable Aggreko representative(s) to become familiar with and assure compliance therewith).

7. INSURANCE.

A. Each party shall at its sole expense and for all relevant periods maintain the following insurance policies, written on an “occurrence” basis and not on a “claims made” basis, with the minimum limits specified: (i) Workmen’s Compensation and Occupational Disease insurance in compliance with the laws of all jurisdictions covering its respective employees, and (ii) Employer’s Liability insurance, with limits of not less than \$1,000,000 per occurrence; (iii) Comprehensive General Liability insurance (including, but not limited to, premises-operations, products/completed operations, contractual liability of the named insured, independent contractors, personal injury, property damage and cross liability coverage endorsement(s) covering all services to be performed by and contractual liability assumed by the named insured herein, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 combined general aggregate, and (iv) Automobile Liability insurance covering all owned, non-owned and hired motor vehicles, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 combined general aggregate.

B. Customer shall additionally obtain and maintain Broad Form Property Insurance for Aggreko’s rental property placed in the care, custody, control or possession of Customer, and Cargo insurance for all Aggreko’s rental property while being transported by Customer or Customer’s agent, with limits of not less than the replacement value of

the property, as specified in the rental agreement, bill of lading or, if not identified on either, as stated in Aggreko's most current schedule of insurance values published prior to the date of loss, which coverage shall include, but is not limited to losses caused by fire, theft, vandalism, acts or omissions of Customer, its employees and agents or third parties, or other risk of loss customarily insured against in a commercial property loss policy. The insurance certificate shall certify that the policy is endorsed to name Aggreko as a Loss Payee. Failure to provide the requisite insurance shall not be deemed as a waiver of this provision.

C. Each party shall furnish certificate(s) evidencing the foregoing required insurance is in full force and effect and identifying: (1) the other party as an additional insured, except that the property insurance and cargo insurance required of Customer shall be endorsed to name Aggreko as "Loss Payee", and as the Certificate Holder, (2) a waiver by the underwriters or insurers of any and all claims, including subrogation, against the other party (including its parent, subsidiaries, affiliates, and the officers, directors, agents, employees and invitees of each) for workers' compensation, bodily injury, death, losses or damages covered by such policies, (3) that the policy shall be primary to any and all other valid and collectible insurance of the other party, and (4) that the insurers endeavor to give thirty (30) days' advance written notice to the other party before any material change to or cancellation of the policy, provided that the requirements of (1) - (3) shall only apply with respect to and to the extent of the obtaining party's liability and indemnity obligations assumed herein.

8. WARRANTIES BY AGGREKO

A. Equipment Design and Performance; Services.

i. Aggreko warrants that the Equipment shall be in proper and safe working order, and shall promptly remedy any defects that become apparent or occur during the period of the rental. In the event a dispute arises between the parties as to whether the Equipment is in proper working order, Aggreko and Customer shall jointly conduct a thermal performance test at a mutually agreeable date to determine whether the Equipment performs in compliance with the Specifications. Such performance test shall, for cooling tower rentals, be conducted in accordance with Cooling Tower Institute (CTI) 105 testing protocol. If the performance test indicates that some or all of the Operational Requirements have not been met, then Aggreko shall be permitted thirty (30) days to repair, replace or modify the Equipment in an effort to meet the Operational Requirements.

ii. The foregoing warranty and Aggreko's obligation to repair or replace the Equipment at no charge to Customer will not, however, apply where the defect, failure or problem has arisen from: (i) any drawing, design, or specification supplied by Customer, (ii) abnormal working conditions, (iii) contaminated water or mud entering the Cooling Tower System or insufficient or obstructed flow of water to the Cooling Tower System, (iv) Customer's failure to follow Aggreko's instructions, (v) alteration or repair of the Equipment without Aggreko's prior written approval, (vi) failure to permit maintenance reasonably requested by Aggreko, or (vii) the negligence or fault of Customer or a third party. If any of (i) - (vii) occur, then Customer will be liable for the costs of repair at the rates set forth on the Proposal. AGGREKO MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND HEREBY DISCLAIMS SAME.

B. Aggreko's liability under this Section 8 is limited to repairing or replacing (at the discretion of the Aggreko)

any Equipment not performing according to the specifications and rated operation.

9. INDEMNIFICATION. Each party shall release, defend, indemnify and hold harmless the other party, its affiliated entities, agents and representatives of that party, and any and all respective employees, agents, shareholders, directors, officers and/or assigns of each of the foregoing (collectively, "Indemnified Parties") from and against liabilities, claims, demands, debts, damages, fines, penalties, losses, causes of action, suits, expenses and costs of any nature whatsoever, including but not limited to attorney's fees and expenses, court costs, and arbitration costs (collectively, "Claims"), suffered by any of the Indemnified Parties as a result of injury to, illness or death of any person, or loss or damage to any property. Provided, however, the indemnity obligations herein shall be apportioned based on the relative fault or negligence of each party such that the liability and obligation of the indemnitor under this Section 9, whether through breach of any provision of this Agreement, or any negligent or willful act or omission, shall be limited to its relative degree of fault or negligence.

10. TERMINATION

A. Termination for Cause. Except as otherwise set forth herein, either party has the right to terminate this Agreement if the other party is in default of any obligation or representation hereunder, which default is incapable of cure or which, being capable of cure, has not been cured within fifteen (15) days after receipt of written notice of such default (or such additional cure period as the non-defaulting party may authorize).

i. Default by a Customer. The following constitute events of default by Customer: (i) failure to comply with payment terms herein and such failure continues for a period of five (5) days after written notice; (ii) Customer becomes bankrupt, insolvent or makes an assignment for the benefit of its creditors, (iii) failure to maintain and/or operate and/or return the Equipment as provided by herein, (iv) failure to maintain the insurance required by Section 7 above, (v) Aggreko reasonably believes that Customer is unable to comply with the payment terms hereof or is likely to become bankrupt, insolvent or make an assignment for the benefit of its creditors, (vi) the Equipment is lost, damaged, stolen or destroyed (collectively, "loss") after it has been delivered to the Site (vii) Aggreko has a reasonable belief that there is an unusual risk of damage to the Equipment or that Customer cannot adequately protect the Equipment, or (viii) a Force Majeure event that lasts longer than two (2) weeks, then Aggreko may at its option, after three (3) days' notice in writing of such event exercise, without further notice, any one or more of the following options: (a) turn off or suspend Customer's use of the Equipment and related services, (b) terminate this agreement, (c) retrieve the Equipment wherever it may be found without becoming liable for damages or for trespass, and/or, (d) in addition to any other remedies Aggreko may have, recover all amounts due together with any damages for injury to the Equipment and all expenses incurred in turning off, recovering, retrieving or repossessing the Equipment. Customer waives any right to claim damages resulting from any of the above remedies exercised by Aggreko. Customer further waives any right to additional notice and opportunity to cure pursuant to this Section 10 for any default following Customer's cure of a prior default.

ii. Default by Aggreko. The following constitute events of default by Aggreko: (i) Aggreko becomes bankrupt, insolvent or makes an assignment for the benefit of its creditors, (ii) Aggreko fails to service or repair the equipment as required by its warranty obligation herein; (iii) Aggreko

fails to maintain the insurance required by Section 7 above; (iv) Customer reasonably believes that Aggreko is likely to become bankrupt, insolvent or make an assignment for the benefit of its creditors; or (v) Aggreko violates any material provision hereof. Upon default by Aggreko, Customer may at its option and except as otherwise set forth in this Agreement, after complying with the notice requirement set forth above, terminate this agreement, cause Aggreko to remove the Equipment from the Site, complete the work with Equipment from an alternative source, and shall be entitled to the costs reasonably incurred for the use of the replacement equipment.

B. Termination At Will. Upon expiration of the initial term, either party may terminate this Agreement by providing ninety (90) days advance written notice to the other party.

C. Customer is responsible for costs incurred by Aggreko relating to termination, including but not limited to demobilization, cancellation charges and freight and labor if not already paid pursuant to the payment terms herein.

11. SURRENDER OF EQUIPMENT. Upon termination of this Agreement, including any extension thereto, Customer shall provide access to Aggreko to remove the Equipment from the Site. Aggreko shall leave the area where the Equipment was located in the same condition as when the Equipment was installed, normal wear and tear excepted.

12. DAMAGE TO EQUIPMENT

A. Notwithstanding anything herein to the contrary, Customer shall be liable for loss, damage, theft, fire, or destruction to the Equipment during the Initial Rental Term or extended term of this Agreement and/or while it is under the care, custody or control of Customer (including its parent, subsidiary, affiliates, customer or end user to the extent applicable), normal wear and tear excepted, provided such loss or damage is not the result of the negligence or fault of Aggreko. Customer shall be responsible for all losses or damage to the Equipment caused by contaminated water, mud or insufficient flow of water to the Cooling Tower System.

B. In the event of total loss to the Equipment for which Customer is responsible as set forth in the preceding paragraph, and which loss shall be determined by Aggreko in its sole reasonable discretion, Customer shall pay, within thirty (30) days from such total loss, the "Replacement Cost" of the Equipment as identified on Aggreko's most current schedule of replacement costs published prior to the date of loss, which is available at <http://www.aggreko.com/en-us/terms-of-business> and is incorporated herein by reference.

13. LIMITATIONS ON LIABILITY

A. **Neither party nor their respective officers, directors or employees shall be liable to the other in any action for consequential, special, incidental or indirect damages of any kind including but not limited to loss of profits, loss of revenues, loss of production, punitive damages, cost of labor, delays, contract extensions or delays, whether arising in contract, tort, strict liability, equity, statute, or otherwise.**

B. Each party's liability and indemnity obligations shall be limited to the amount of insurance required in Section 7 above.

14. TAXES. All sales and use taxes shall be charged to Customer as a separate line item unless Customer provides Aggreko with a valid and current tax exemption certificate applicable to the Agreement in advance of the Commencement Date, with updated provided as needed.

15. GENERAL

A. The Equipment is personal property of Aggreko notwithstanding that it may now be, or hereafter become, in some manner affixed or attached to real property or any

building. Customer shall prevent any liens, levies or attachments from being filed against the Equipment and shall reimburse Aggreko for any costs incurred in defending, removing and or protecting the Equipment from same.

B. Any alterations, additions, improvements, maintenance or repair to the Equipment made by Customer without Aggreko's prior written consent shall constitute a material breach of this Agreement and shall invalidate any performance guarantees or equipment warranties granted hereunder and shall become Aggreko's property.

16. FORCE MAJEURE. In the event either party is rendered unable, wholly or in part, to carry out its respective obligations under this Agreement, except for any obligations to make payment, due to circumstances beyond its reasonable control, including, without limitation, strikes, lockouts or other disturbances, flood, natural disaster, acts of God, war, or civil insurrection, or other circumstances beyond its reasonable control, then written notice setting out the reason for non-performance shall be given to the other party within a reasonable time of discovering the force majeure event. Upon receipt of such notice, the obligations of the parties shall be suspended during the period of the force majeure event. Every reasonable effort shall be made by the parties to avoid delay and limit any suspension period.

17. CONFIDENTIALITY. Each party shall hold in confidence the terms of this Agreement and all confidential information of the other party acquired as a result of this Agreement. Information, subject to this restriction, shall not include any information in the public domain, or any information known to the prior to disclosure hereunder by the other party. All pricing shall be deemed confidential.

18. SEVERABILITY & NON-WAIVER. The provisions of this Agreement shall be severable so that the invalidity, unenforceability or waiver of any of provision shall not affect the remaining provisions but rather this Agreement shall be reformed and construed as not to contain such invalid or unenforceable provision or provisions, but only to the extent that they are contravening or are invalid under the laws of that state or jurisdiction. All other provisions of the Agreement shall remain in full force and effect.

19. NOTICES. Any notice or other communication hereunder shall be in writing and sent postage prepaid, certified mail, as follows:

Contractor:	Aggreko, LLC
P.O. Box 627	4607 W. Admiral Doyle Dr.
Chickasha, OK 73023	New Iberia, LA 70560
Attn: Billy Childers	Attn: Legal Department

Customer: At the address identified on the proposal or as otherwise provided in writing by Customer.

20. ATTORNEYS FEES. The prevailing party in any judicial or ADR proceeding shall be entitled to recover its reasonable attorney's fees, costs, and expenses. The presiding official shall determine the prevailing party and the reasonableness of all fees, costs, and expenses.

21. AMENDMENTS. Changes, modifications, waivers, additions or amendments to this Agreement shall be binding on the parties only if such are in writing and signed by a duly authorized representative of Customer and Aggreko. The failure of a party to enforce any of the provisions of this Agreement, at any time or for any period of time, shall not constitute a waiver of such provisions or of the right of that party to enforce each and every provision.

22. ENTIRE AGREEMENT; GOVERNING LAW; VENUE. This Agreement constitutes the entire agreement between the parties and supersedes any representations, warranties or agreements made or entered into between the

parties relating to the Equipment and Services. This Agreement may be modified only in a written document signed by both parties. The Agreement shall be governed by and construed on accordance with the laws of Texas and no conflict of laws of any state shall apply to cause the laws of another state to apply. The parties submit to the jurisdiction and venue of Harris County, Texas.

23. APPLICABILITY. The terms and conditions hereof shall be deemed accepted and binding upon Customer upon receipt of the Equipment by Customer or Customer's agent at the designated receiving point, regardless of whether the Rental Agreement is signed by Customer.