

# NATIONAL CONTRACTING COMPANY – GENERAL TERMS AND CONDITIONS FOR PLANT HIRE

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The Terms and Conditions set forth herein shall form part of and shall be incorporated into the Contract.

- A. The Proposal, these Terms and Conditions and Project Design Pack comprise the entire contract, agreement and understanding between Aggreko and the Customer (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.
- B. No variation of the Contract shall be effective unless specifically agreed in writing by an authorised signatory of Aggreko and the Customer.
- C. In the event of any inconsistency between any of the documents forming part of the Contract, these Terms and Conditions shall prevail over the Proposal and the Project Design Pack.

## **1. DEFINITION AND INTERPRETATION**

1.1 The following definitions shall apply to the Contract:

“**Aggreko**” means National Contracting Company Limited, P.O. Box 60, Safat, 13001, State of Kuwait and who is authorised to enter into contracts for the hire and maintenance of Plant within the State of Kuwait.

“**Breakdown**” means any defect, breakdown or fault with the working of the Plant or any part of it

“**Business Day**” means a day other than Friday, Saturday and officially declared public holidays;

“**Business Hours**” means between 0800 and 1700 on a Business Day;

“**Charges**” means fuel charges, hire charges, Service charges and/or transportation charges (as applicable);

“**Collection Point**” means the location of Aggreko’s depot, as named in the Proposal, at which the Plant is to be collected;

“**Commission**” means that Aggreko will interconnect the Plant up to the point of Aggreko’s own distribution panel (in the case of power generation equipment) or discharge point (in the case of temperature cooling equipment).

“**Customer**” means the party to the Contract as named in the Proposal as customer including its successors, assigns and representatives;

“**Fair Wear and Tear**” means the unavoidable deterioration resulting from compliant and ordinary use of the Plant;

“**Force Majeure Event**” means a strike, lock-out, riot, civil commotion, insurrection, 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), fire, flood, storm, earthquake, volcanic eruption, ionising radiations 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;

“**Hire Period**” means the period of Plant hire by the Customer as specified in the Proposal;

“**IOW Charge**” means an additional charge levied by Aggreko (on not less than a weekly basis) that waives certain specified liabilities for the Customer under the Contract and has the outcomes as set out within clause 2.6 (*Insurance and Risk*);

“**Incoterm**” means the International Commercial Terms published by the International Chamber of Commerce as published on 1 January 2011 of which the terms ‘Seller’ and ‘Buyer’ shall respectively mean ‘Aggreko’ and ‘Customer’, and as amended thereafter from time to time;

“**Intellectual Property Rights**” means any patents, models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“**Manuals**” means operating, commissioning and maintenance manuals or other instructions provided or advised by Aggreko to the Customer from time to time;

“**Operator(s)**” means employees of the Customer who are appropriately qualified, trained, competent and authorised to operate the Plant;

“**Plant**” means all machinery and equipment of whatever nature, including any accessories, spare parts and ancillary items, and replacements or substitutions thereof, hired from Aggreko by the Customer, as specified in the Proposal.

“**Project Design Pack**” means a document setting out technical characteristics of the Service which may contain additional obligations for the Customer in addition to those specified within a Proposal, or these Terms and Conditions;

“**Proposal**” means Aggreko’s offer for Plant hire as accepted by the Customer, of which these Terms and Conditions form an integral part;

“**Resident Engineer**” means a person employed or subcontracted by Aggreko to act as an operator of the Plant;

“**Service(s)**” means the services related to the Plant to be performed by Aggreko and set out in the Proposal and/or Project Design Pack;

“**Site**” means the location at which the Plant shall be situated for use by the Customer, as stipulated in the Proposal;

“**Terms and Conditions**” means these terms and conditions of Plant hire as amended from time to time; and

“**Terrorism**” means involvement in violent acts or acts dangerous to human life that violate federal or state law; appear to be intended i) to intimidate or coerce a civilian population, ii) influence the policy of a government by intimidation or coercion, or iii) to affect the conduct of a government by mass destruction, assassination or kidnapping.

1.2 The following rules of interpretation apply to these Terms and Conditions:

a) Clause headings shall not affect the interpretation.

b) Except where a contrary intention appears, a reference to a clause is a reference to a clause of these Terms and Conditions or the Proposal.

- c) Unless otherwise specified, a reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- d) A reference to writing or written includes faxes and e-mail.
- e) Aggreko includes Aggreko's successors in title and any other person who is or becomes entitled to the reversion (whether immediate or not).
- f) The term "affiliate" in relation to a company shall mean and include its respective subsidiaries, holding companies and their employees, agents and representatives.
- g) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- h) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

## **2. INSURANCE AND RISK**

2.1 The risk of loss, theft, damage or destruction of the Plant shall pass to the Customer from the moment that the Plant passes into the possession, custody and/or control of the Customer. The Plant shall remain at the sole risk of the Customer throughout the Hire Period and any further term as agreed between the parties until such time that the Plant is accepted back by Aggreko or its authorised representative as confirmed by Aggreko.

2.2 Throughout the Hire Period (and any extension thereof) the Customer shall, at its own expense, obtain the following insurance cover for:

- a) loss, damage, fire, flood, terrorism or theft to a value of not less than 100% of the Plant value;
- b) third party and public liability;
- c) pursuant to clause 3.1**b**) (*Transport*), transportation of the Plant (for when the Plant is in transit); and
- d) any and all other insurance related to the hiring and utilisation of the Plant as required by local law.

2.3 The Customer shall be responsible for paying any deductible or excess due on any claims under such insurance policies.

2.4 On or before the start date of the Hire Period, the Customer shall furnish Aggreko with a copy of the relevant insurance policies outlined in clause 2.2. In the event that the Customer has not procured adequate insurance, Aggreko shall be entitled to apply IOW Charges until such time as the Customer fulfils its insurance obligations in accordance with this clause 2.

2.5 The Customer may also opt to pay the IOW Charge.

2.6 The Customer's payment of the IOW Charge means that:

- a) the Customer will be relieved of its obligation to provide insurance cover required under clause 2.2(a); and
- b) the Customer's liability for loss, accidental damage, fire, flood, terrorism or theft shall be limited to KWD820 (Eight hundred and twenty Kuwaiti Dinar) per item of machinery or equipment.

2.7 The IOW Charge does not relieve the Customer from:

- a) any other obligations set out within the Contract or under law;
- b) liability for lost or stolen ducting, hoses and cables; or
- c) deliberate, wilful, malicious acts, negligence or omissions.

## **3. TRANSPORT**

3.1 During the Hire Period the Customer may elect for one of the following modes of transportation between Aggreko's Collection Point and the Site:

- a) If the Customer instructs Aggreko to deliver the Plant to Site, Aggreko shall be bound by Incoterm DAP (Site). Customer shall pay for costs incurred by Aggreko.
- b) If the Customer elects to use its own carrier to deliver the Plant to Site, Customer shall be bound by Incoterm CPT (Aggreko's depot). Customer shall be responsible for its own costs.

3.2 In all circumstances, the Customer shall bear all risk and cost of unloading and loading Plant at the Site and any damage or loss of the Plant.

3.3 In the event that the Plant is damaged, is faulty or defective and Aggreko agrees that the Plant is faulty, defective or damaged as a result of Aggreko's actions, Aggreko shall bear the cost of transporting the Plant from the Site and shall cover the cost of one-way transport for the replacement or repair of the Plant to the Site.

#### **4. ACCESS TO SITE**

4.1 The Customer shall provide Aggreko, its employees, agents, representatives and insurers, and their vehicles, with safe and proper access to the Site twenty four (24) hours a day for the duration of the Hire Period for the purpose of;

- a) inspecting, testing, servicing, maintaining and/or repairing the Plant; and
- b) collecting and/or delivering the Plant to site.

4.2 Pursuant to clause 4.1, the Customer shall be responsible for all costs to obtain access to the Site. This includes, but is not limited to registration fees, application fees, licenses and permits.

4.3 In the event that the Customer fails to procure access, prevents or prohibits any of Aggreko employee's, agents, representatives and/or insurers from accessing the Site, the Customer agrees that Aggreko shall not be liable for any losses, damages or delays suffered by the Customer arising from this event and the Customer shall be liable for any damage caused to the Plant by prevention or delay of such access.

#### **5. COMMISSIONING**

5.1 Unless otherwise agreed by the parties, Aggreko will Commission the Plant at the Site. Aggreko shall use all reasonable endeavours to Commission the Plant as per the deadline specified in the Proposal, however, time shall not be of the essence. The Customer shall be responsible for interconnecting the distribution panel or discharge point with the Customer's system.

5.2 If a Plant is required to be connected through a switchgear mechanism, the Customer shall procure that only an authorized and trained engineer shall perform such procedure. In the event that the Customer is unable to provide an engineer for such purpose, Aggreko may instruct an engineer to perform this task at the Customer's expense and risk. In such circumstances the Customer will indemnify and hold harmless Aggreko for any loss, damage or breach of Customer's policy suffered as a result of performing such action.

5.3 The Customer shall procure that a duly authorised representative of the Customer shall be present during the Commissioning of the Plant at the Site and shall sign a document presented by Aggreko to acknowledge completion of the Commissioning works. Signature by the representative or use of the Plant by the Customer shall constitute acceptance by the Customer that the Plant is in an acceptable condition and fit for usage.

#### **6. OPERATION OF PLANT**

6.1 Prior to commencement of the Hire Period, the Customer will supply the Operators' credentials to Aggreko. The Customer shall not permit anyone else other than Operators approved by Aggreko to control and operate the Plant.

6.2 If the Customer is unable to instruct an Operator, the Customer must request that Aggreko provides a Resident Engineer. The Customer shall instruct and supervise the Resident Engineer. The Customer shall be responsible for any acts or omissions (including in negligence) committed by the Resident Engineer.

#### **7. CARE OF PLANT**

7.1 The Customer shall not, unless expressly permitted by Aggreko:

- a) use or permit the Plant to be used with or near salt water, salt spray, salt laden air, hazardous materials or in an environment that is open to dust ingress or fine metallic substances;
- b) use or subject the Plant to any contaminant, corrosive chemicals, bacteria, virus, parasite, debris or other materials or substances that may be harmful to the Plant and to notify Aggreko immediately of any such exposure or risk of exposure; or
- c) introduce any coolant, refrigerants, water treatment chemical or other consumables into the temperature control system comprised of or incorporating the Plant,

7.2 The Customer shall be responsible for ensuring that the Plant is kept and operated in a suitable environment, used only for the purpose for which it is designed and ensure that the Plant is operated in a proper manner by Operators in accordance with any Manuals.

7.3 The Customer is responsible for ensuring that the conditions on Site are suitable and safe for the storing and operating of the Plant. The Customer shall therefore be responsible for providing suitable timbers (or equivalent) and compacted gravel to be levelled in an appropriate position for the Plant to travel or remain stationary as necessary.

7.4 The Customer shall ensure that all necessary steps are taken (including compliance with all safety and usage instructions) so as to make certain that the Plant is at all times safe and without risk to health when it is being set, used or operated.

7.5 The Customer shall provide a suitable earth point connections on the Site.

7.6 Failure to acknowledge and abide by any of the provisions of this clause 7 (*Care of the Plant*) shall result in the Customer being held fully and solely responsible and liable for the full replacement value of the Plant, even if the Plant is damaged only in part.

## **8. FUEL, OIL, COOLANTS & LUBRICANTS**

8.1 Unless otherwise stated within the Proposal, the Customer shall be responsible for the supply of fuel for the Plant's operation. The Customer undertakes that the fuel quality shall comply with the specification provided by Aggreko in the Proposal or otherwise in writing.

8.2 The Customer shall be liable for any and all loss or damage arising from or attributed to the unauthorized or non-compliant use of products in the Plant.

## **9. SERVICING AND MAINTAINING PLANT**

9.1 The Customer is responsible for monitoring the Plant during the Hire Period and ensuring that the Plant is supplied with a suitable level of oil, coolants and fuel to ensure safe and efficient functioning of the Plant.

9.2 The Customer acknowledges and accepts that Aggreko must carry out routine service and maintenance on the Plant during Business Hours. The Customer acknowledges that Aggreko's routine services are not a substitute for the Customer's responsibilities under clause 9.1. To this end:

- a) the Plant must be serviced after it has been operating for four hundred (400) running hours or any alternative period that Aggreko may advise to the Customer.
- b) prior to the Plant having been operating for four hundred running (400) hours, the Customer must:
  - i) notify Aggreko that the Plant requires servicing; and
  - ii) permit Aggreko access to the Site pursuant to clause 4.3 (*Access to Site*) and at such time that the Plant is not being utilized.

Such routine service and maintenance of the Plant shall be carried out at Aggreko's cost.

9.3 If the Customer fails to notify Aggreko of the four hundred (400) running hour utilization mark or does not permit Aggreko the requisite access to the Site:

- a) the Customer shall indemnify Aggreko for any loss or damage caused to the Plant as a result of it operating past the four hundred (400) hour threshold without having been serviced in accordance with clause 9.2; and
- b) Aggreko will not be liable to the Customer as a result of the non-availability of the Plant or any other detrimental consequence to the Customer.

9.4 Aggreko shall not be liable for any damage caused to either the Customer or any third party as a result of the Plant not being serviced in accordance with clause 9.2.

9.5 At the Customer's request, Aggreko may, at its discretion, agree to service the Plant outside of a Business Day or Business Hours at an extra cost to the Customer to be agreed between the parties on a case by case basis.

## **10. BREAKDOWNS**

10.1 The Customer must notify Aggreko about any Breakdown. Notice shall only be effective once confirmation of notice has been acknowledged by Aggreko. Repair shall be performed by Aggreko or its affiliate.

10.2 The Customer shall not attempt to remedy any Breakdown or initiate repair of the Plant without Aggreko's express confirmation.

10.3 If Aggreko determines that Breakdown to the Plant is through alteration, mishandling, misuse, omission, neglect unauthorised mishandling and/or negligence by the Customer, repair to the Plant shall be at the Customer's expense. Should Aggreko deem that repairs are not either viable or practicable due to such negligence or misuse, then Aggreko may charge the Customer for the entire cost of purchasing new Plant.

## **11. RETURN OF PLANT**

- 11.1 The Customer must return the Plant to Aggreko by 16:59 of the next Business Day after the last day of the Hire Period. Unless otherwise stated by Aggreko, the return location shall be Aggreko's depot as indicated in the Proposal.
- 11.2 The Customer shall return all parts and equipment, packaged in the same manner as when it was delivered on Site at the start of the Hire Period. The Plant shall be delivered to Aggreko in the same condition as it was at the start of the Hire Period, subject to Fair Wear and Tear. In the event of a dispute, Aggreko shall, in its sole discretion, decide what is to be regarded as Fair Wear and Tear.
- 11.3 Should the Customer return the Plant with damage that is not consistent with Fair Wear and Tear, the Customer shall be liable to Aggreko for:
- a) the full amount of any cost of repairs for the Plant, which Aggreko shall deem necessary; and
  - b) Aggreko's full hire charges for the Plant while the Plant is idle owing to any such repairs or cost of replacement referred to in clause 11.4.
- 11.4 Aggreko may decide, in its sole discretion, that such repairs to the Plant are not practical or cost-effective and may elect to replace the entire Plant. In such instance, the Customer shall be liable for the full cost of replacement, including any taxes and expenses incurred by Aggreko as result of the replacement.
- 11.5 If the Customer fails to return the Plant for any reason whatsoever within the timeframe agreed in the Proposal the Customer shall be liable to Aggreko for:
- a) the entire replacement value of the Plant;
  - b) Aggreko's full hire charges for the Plant until a replacement of the Plant is procured and installed at Aggreko's depot or other site as indicated by Aggreko; and
  - c) any taxes arising out of replacement of the Plant.
- 12. OWNERSHIP OF PLANT**
- 12.1 The Customer agrees and acknowledges that the Plant remains the exclusive property of Aggreko and undertakes:
- a) not to lease, lend or dispose of the Plant in any way, including by way of security for loans, without the prior written approval of Aggreko;
  - b) not to infringe against Aggreko's rights of ownership against the Plant;
  - c) not to repair, modify, attempt to improve, move, interfere with, deface, or otherwise interact or attempt to interact with the Plant other than for the intended and permitted use of the Plant, without the prior written approval of Aggreko; and
  - d) to protect the Plant against any attachment, confiscation or any other enforcement procedure applicable under law or otherwise and to inform Aggreko immediately of any threatened attachment, confiscation or any other enforcement procedure.
- 12.2 The Customer shall indemnify Aggreko for all losses, damages, costs, charges and expenses arising as a result of failure to comply with this clause 12 (*Ownership of Plant*).
- 13. TRANSFER, ASSIGNMENT AND REHIRE OF PLANT**
- 13.1 The Plant shall not be transferred or moved from the Site without Aggreko's prior written consent.
- 13.2 The Customer shall not assign, sublet, hire or lend in part or in whole the Plant or any element of it to any other party, even if free of charge, or admit any other person, other than authorised Aggreko or Customer personnel, to use the Plant in any way which would breach the Contract or any local or international laws.
- 14. TERMINATION**
- 14.1 Aggreko may terminate the Contract with immediate effect by giving written notice to the Customer if:
- a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default for more than thirty (30) days from the invoice date; or
  - b) the Customer 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 Customer commits a material breach of any term of the Contract which breach is irremediable or if such breach is remediable Customer fails to remedy that breach within a period of five (5) Business Days of receiving written notice from Aggreko; or

- d) the Customer or any guarantor of the Customer becoming insolvent, bankrupt, enters into administration or liquidation; or
- e) Aggreko's anticipated or actual performance of the Contract is, or would be: (i) illegal; or (ii) would breach the UK Bribery Act (2010) or the US Foreign Corrupt Practices Act (1977); or (iii) breach international sanctions imposed on either party by a competent regulatory authority responsible for regulating the either party, their parent companies, shareholders, directors or employees.

14.2 Upon termination of the Contract, however caused:

- a) Aggreko's consent to the Customer's possession and use of the Plant shall terminate and Aggreko or its authorised representative may without notice and at the Customer's expense, retake possession of the Plant and for this purpose enter the Site or any premises at which the Plant is located; and
- b) without prejudice to any other rights or remedies of the Customer, the Customer 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 15 (Cost and Expenses); and
  - ii) any costs and expenses incurred by Aggreko in recovering the Plant and/or in collecting any sums due under the Contract (including but not limited to any storage, insurance, repair, transport, legal and remarketing costs).

14.3 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.

## 15. COST AND EXPENSES

15.1 The Customer shall pay all Charges and amounts due to Aggreko free from any deduction, set-off, counterclaim or withholding (other than as required by law).

15.2 Aggreko may at any time, without limiting its other rights or remedies, set-off any amount owing to it by the Customer against any amount payable by Aggreko to the Customer.

15.3 The Customer shall be responsible for:

- a) any and all additional costs, charges and expenses incurred by the Customer for the hire of the Plant;
- b) paying a standby charge to Aggreko in the event that the Customer requests to keep Plant on Site in a non-operational mode;
- c) any and all costs, charges and expenses incurred by Aggreko in:
  - i) recovering possession of the Plant,
  - ii) collecting sums which may be due by the Customer,
  - iii) defence of any action brought against Aggreko for cost, damages or loss, or
  - iv) any other expenses caused directly or indirectly by or in connection with the operation of the Plant to any person while the Plant is in the possession or under the control of the Customer

15.4 The Charges are exclusive of VAT and any other applicable taxes, customs, import or other duties or similar charges or costs shall be payable in addition by the Customer. VAT shall be charged if and when applicable by law.

15.5 Invoices are due for payment in full within thirty (30) days of invoice date.

15.6 In the event that the Customer fails to pay an invoice after the due date, the Customer shall indemnify Aggreko for all direct costs and expenses (including all legal costs) incurred by Aggreko to recover late payments or unpaid sums from the Customer.

## 16. WARRANTIES

16.1 Aggreko warrants to the Customer 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 law from time to time in force;
- iii) by suitably skilled and experienced personnel; 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 during the Hire Period in accordance with clause 10 (*Breakdowns*).

16.2 The warranty and obligation to remedy in clause 16.1 will not apply where any defect in the Plant or Services has arisen from any wilful damage, negligence or fault of the Customer or its employees, subcontractors or agents, abnormal working conditions, failure to follow Aggreko's instructions or non-compliance with Manuals, 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 Customer.

16.3 Aggreko makes no warranty about the ability of a Plant to provide a constant, uninterrupted supply of electricity. If a constant, uninterrupted supply is required, the Customer is responsible for ensuring that there is a contingency supply in place on Site in the event that the supply from the Plant fails.

16.4 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 Customer. 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 or otherwise, is expressly excluded to the extent permissible.

## **17. LIABILITY**

17.1 Subject to clause 17.2, Aggreko's maximum aggregate liability to the Customer 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, breach of statutory duty, misrepresentation or otherwise, shall in no circumstances exceed the total Charges received by Aggreko from the Customer.

17.2 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.

17.3 Subject to clause 17.2, neither party shall be liable under or in connection with the Contract (whether in contract, 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.

17.4 Subject to clause 17.2, Aggreko shall not be liable to the Customer to the extent that any breach of contract, 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 Customer, or the Customer otherwise being in breach of contract, or any circumstances referred to in clause 16.2 (*Warranty*).

## **18. INDEMNITIES**

18.1 Subject to clause 18.2, the Customer 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 arising under 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 Customer to Aggreko under the Contract.
- 18.2 The indemnities contained in clause 18.1 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.
- 19. FORCE MAJEURE**
- 19.1 Aggreko shall not be in breach of the Contract nor be liable to the Customer for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure is attributable to a Force Majeure Event.
- 19.2 Aggreko may terminate the Contract with immediate effect if a Force Majeure Event prevents Aggreko from performing its obligations under the Contract for a period of no less than fourteen (14) calendar days.
- 20. MISCELLANEOUS**
- 20.1 **Confidentiality.** The Customer shall not disclose the content or nature of the Contract, and/or any subsequent agreement entered into between the parties in relation to the Contract, to a third party without the written consent of Aggreko, unless required by law, a court of competent jurisdiction or any governmental or regulatory authority.  
Furthermore, the Customer shall not use Aggreko's confidential information for any purpose other than to perform its obligations under the Contract.
- 20.2 **Materials.** Any and all materials, equipment, tools, drawings, specifications and data supplied by either party to the other (including pre-existing materials and equipment) shall, at all times, be and remain the exclusive property of the party that provided such material, but shall be held by the receiving party in safe custody at its own risk and maintained and kept in good condition by that party until returned to the other party, and shall not be disposed of or used other than in accordance with the terms of the Contract or that party's written instructions or authorisation.
- 20.3 **Intellectual Property Rights.** Aggreko shall retain ownership and control of any Intellectual Property Rights accrued or developed with regard to its business and through the course of providing Services under the Contract.  
All Intellectual Property Rights and all other rights in pre-existing materials shall be owned respectively by each party.
- 20.4 **Assignment.** The Customer shall not, without the prior written consent of Aggreko, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 20.5 **Severability.** If any part of the Contract becomes invalid, illegal or unenforceable the parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible gives effect to their intentions as expressed in the Contract.
- 20.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 20.7 **Severance.** 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.
- 20.8 **No Partnership or Agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of

another party, or authorize any party to make or enter into any commitments for or on behalf of any other party.

20.9 **Counterparts and Language.** The Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

Should any of the language or interpretation of the Contract be questioned or in dispute, the English language version shall prevail over any other translation.

## **21. GOVERNING LAW & JURISDICTION**

21.1 **Law and Jurisdiction.** This Contract shall be governed by and construed in accordance with the laws of England & Wales. The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre.