

Equipment Rental Agreement

TPE MIDSTREAM LLC

18865 FL-54, Suite 321
Lutz, FL 33558



Date

January 1, 2019

Equipment Provided By:

TPE MIDSTREAM LLC
18865 FL-54, Suite 321
Lutz, FL 33558

Equipment Rented By:

[Client Name]
[Client Address]
[City, ST ZIP Code]

Equipment to be _____ Delivered by TPE _____ Picked up from TPE Location on _____ (date).

Equipment to be _____ Picked up by TPE _____ Returned to TPE Location on _____ (date).

	Location 1		Location 2
Address	_____	Address	_____
City	_____	City	_____
State/Zip	_____	State/Zip	_____
On Site	_____	On Site	_____
Contact	_____	Contact	_____

Equipment	Rate	Period

Use of the Equipment constitutes acceptance of these terms and conditions.

Customer's Initials: _____

1. DEFINITIONS

“Rental Agreement” means this Rental Agreement, as well as any Addendum, exhibits, schedules, or documents attached hereto or expressly incorporated by reference herein. “TPE Midstream” or “TPE” means the corporate entity TPE Midstream LLC identified on the first page of this Rental Agreement from whom the Customer has rented the Equipment. “Equipment” means any one or more of the items identified as such on the first page of this Rental Agreement and any accessories, attachments, or similar items delivered to Customer, including, but not limited to air hoses, hydraulic hoses, gauges, cables, supports, flanges, pipe, fasteners, and instruments. “Customer” means the person or entity identified as such on the first page of this Rental Agreement or any representative, agent, officer, or employee of Customer. “Store Location” means the TPE Midstream address in the upper left-hand corner on the first page of this Rental Agreement. “Rental Period” means the period of time between the “Date Out” and “Date Due In,” set forth on the first page of this Rental Agreement, except that the Rental Period may terminate earlier or later as permitted by the Rental Agreement. The rental of the Equipment described herein is subject only to the terms of this Agreement and shall not be governed by, in any manner, any pre-existing agreement between the Parties.

2. AUTHORITY TO SIGN

Any individual signing this Rental Agreement represents and warrants that he or she is of legal age, and has the authority and power to sign this Rental Agreement on their own behalf for the Customer.

3. INDEMNITY / HOLD HARMLESS

To the fullest extent permitted by law, Customer agrees to indemnify, defend, and hold TPE Midstream, and any of its respective officers, directors, managers, members, agents, servants, or employees, and affiliates, parents and subsidiaries, harmless from and against any and all liability, claims, loss, damage, or costs (including, but not limited to, attorney's fees, loss of profit, business interruption or other special or consequential damages, damages relating to property damage, bodily injury, or damages relating to wrongful death) arising out of or related to the handling, operation, use, or possession or rental of the equipment. This indemnity provision also applies to any claims asserted against TPE Midstream based upon strict or product liability causes of action. Customer expressly and specifically agrees that the foregoing obligation to indemnify shall not in any way be affected or diminished by any statutory or constitutional limitation of liability or immunity customer enjoys from suits by its own employees. The duty to indemnify will continue in full force and effect notwithstanding the expiration or early termination of the Rental Agreement.

4. LIMITATION OF LIABILITY

In no event shall TPE Midstream be responsible to Customer or any other party for any loss, damage, or injury caused by, resulting from or in any way connected with the Equipment, its operation or its use, TPE's failure to deliver the Equipment as required hereunder, or TPE's failure to repair or replace non-working Equipment. Customer acknowledges and assumes all risks inherent in the operation, use, and possession of the Equipment from the time the Equipment leaves TPE until the Equipment is returned to TPE and will take all necessary precautions to protect all persons and property from injury or damage from the Equipment.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT SHALL TPE MIDSTREAM BE LIABLE TO CUSTOMER, OR ANY THIRD PARTY, FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES UNDER, ARISING OUT OF, OR PERTAINING TO, THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, TO LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOSS OF PRODUCT, PRODUCT REPLACEMENT OR LOSS OF GOODWILL, WHETHER ARISING OR BASED ON CONTRACT, STRICT LIABILITY, OR ANY OTHER THEORY OR

FORM OF ACTION, REGARDLESS OF FAULT OR NEGLIGENCE AND WHETHER CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. **FURTHER, AND NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT SHALL TPE'S LIABILITY OF ANY KIND, UNDER, ARISING OUT OF, OR PERTAINING TO, THIS AGREEMENT, EXCEED THE TOTAL RENTAL FEES PAID BY CUSTOMER HEREUNDER, REGARDLESS OF TPE'S BREACH, FAULT OR NEGLIGENCE AND TPE IS HEREBY RELEASED FROM ANY AND ALL LIABILITY IN EXCESS OF SUCH AMOUNT.**

5. DISCLAIMER OF WARRANTIES

TPE MIDSTREAM MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. THERE IS NO WARRANTY THAT THE EQUIPMENT IS SUITED FOR THE CUSTOMER'S INTENDED OR ACTUAL USE, OR THAT IT IS FREE FROM DEFECTS. EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS RENTAL AGREEMENT, TPE MIDSTREAM DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, MADE IN CONNECTION WITH THIS RENTAL TRANSACTION.

6. INSPECTION OF EQUIPMENT

Customer acknowledges that Customer has inspected the Equipment prior to taking possession thereof, will only take possession of the Equipment if it finds it in good working order and repair, and suitable for Customer's needs. Customer is familiar with the proper operation and use of each item of Equipment. Customer acknowledges TPE Midstream is not responsible for any damage to Customer's equipment due to the movement or handling of TPE equipment. Customer shall inspect the Equipment and report, in writing, within four (4) hours any defects or unacceptable condition. If no such report is received by TPE within that period, the Equipment shall be considered in good working condition and accepted by Customer. Upon conclusion of the rental and the return of the equipment, TPE will issue to Customer a written report of any damage or loss to the Equipment, normal wear and tear excepted, the Customer shall be responsible for repairing the Equipment and returning to "job ready" status.

7. USE OF EQUIPMENT

Customer will not use, nor allow anyone to use, the Equipment: (a) for an illegal purpose or in an illegal manner, (b) without a license, if required under any applicable law, or (c) who is not qualified to operate it, (d) in any way that is outside the bounds of the Equipment's rated pressure, temperature, and specifications. Customer agrees, at Customer's sole expense, to comply with all applicable municipal, state, and federal laws, ordinances and regulations (including O.S.H.A. And the Internal Revenue Code) which may apply to the use of the Equipment. Customer agrees to defend, indemnify, and hold TPE Midstream harmless from all fines, penalties, and costs incurred related to its use, or allowance of the use, of the Equipment in contravention of this Section. Customer agrees to clean and visually inspect the Equipment daily and to immediately notify TPE when Equipment needs repair or maintenance. Customer acknowledge that TPE has no responsibility to inspect the Equipment while it is not in TPE's possession. TPE Midstream shall have the right to replace the Equipment with similar Equipment at any time and for any reason.

8. MALFUNCTIONING EQUIPMENT

Should the Equipment be involved in an accident, become unsafe, malfunction, or require repair, Customer shall immediately cease using the Equipment and immediately notify TPE. If such condition is the result of normal operation, TPE will repair or replace the Equipment with similar Equipment in working order, if such replacement Equipment is available. TPE has no obligation to repair or replace Equipment rendered inoperable by misuse,

abuse, or neglect. Customer's sole remedy for any failure or defect in Equipment shall be the termination of any rental charges accruing after the time of failure. Customer must return the Equipment to the Store Location within 48 hours from the time of defect in order to terminate rental charges.

9. RETURN OF EQUIPMENT / DAMAGED & LOST EQUIPMENT

At the expiration of the Rental Period, Customer will return the Equipment to the Store Location during TPE's regular business hours, such Equipment to be in the condition and repair as when delivered to Customer, subject to reasonable wear and tear as defined below. In the event that TPE has agreed to pick up the Equipment from Customer, Customer shall notify TPE in writing that the Equipment is ready for pick up. TPE shall endeavor to pick up the Equipment within a commercially reasonable period of time. After the Equipment leaves the Store Location until the Equipment is (a) returned to the Store Location, including any damage during transit to or from Customer; or (b) picked up by TPE after issuance of an "off rent" confirmation number. In the case of the loss or destruction of any Equipment, or inability or failure to return same to TPE for any reason whatsoever, Customer will pay TPE the then full replacement list value of the Equipment together with the full rental rate as specified until such Equipment is replaced. If the Equipment is returned in a dirty, damaged, or excessively worn condition, Customer shall pay TPE the reasonable cost of cleaning and repair and pay rental on the Equipment at the regular rate until all cleaning and repairs have been completed. TPE shall be under no obligation to commence repair work until Customer has paid to TPE the estimated cost therefor.

10. REASONABLE WEAR AND TEAR

Reasonable wear and tear of the equipment shall mean only the normal deterioration of the Equipment caused by ordinary and reasonable use. The following shall not be deemed reasonable wear and tear; (a) damage resulting from lack of lubrication; (b) except where TPE expressly assumes the obligation to service or maintain the Equipment, any damage resulting from lack of servicing or preventative maintenance suggested in the manufacturer's operation and maintenance manual; (c) damage resulting from any collision, overturning, or improper operation including over-pressurization, overloading, or exceeding the rated capacity of the Equipment (d) damage in the nature of dents, bending, tearing, straining, corrosion, or misalignment to or of the Equipment or any part thereof; (e) wear resulting from use in excess of shifts for which rented; and (f) any other damage to the Equipment which is not considered ordinary and reasonable in the equipment rental industry. Repairs to the Equipment shall be made to the reasonable satisfaction of TPE and in a manner which will not adversely affect the operation, manufacturer's design or value of the Equipment.

11. RENTAL PERIOD / CALCULATION OF CHARGES

The Rental shall commence on [\[Click to select date\]](#), and shall continue through [\[Click to select date\]](#). The rental period commences upon the date the rented Equipment leaves the Equipment storage site for delivery to the specified delivery point. Compensation shall cease upon return of the Equipment to the specified redelivery point. Rental charges shall continue for the entire rental period, as described above, regardless of any period the Equipment is not available for use due to maintenance or repair. Rental charges commence when Equipment leaves the TPE Location and end when the Equipment is returned to the TPE Location during TPE's regular business hours. Rental charges do not include the cost of fuel, any applicable taxes, cost of delivery and pick-up of the Equipment, transportation surcharges, environmental charges or other miscellaneous charges. Rental charges accrue during Saturdays, Sundays, and Holidays. Rental rates are for normal usage. Customer's right to possess the Equipment terminates on the expiration of the Rental Period and retention of possession after this time is a material breach of this Rental Agreement. TIME IS OF THE ESSENCE.

12. LATE RETURN

Customer agrees that if the Equipment is not returned by the end of the Rental Period, TPE, in its sole discretion, may require Customer to do any of the following: (a) continue to pay the rental rate(s) applicable to the Equipment as specified on the front page of this Rental Agreement, (b) for periods less than 24 hours, pay the full daily rental rate applicable to the Equipment, or (c) pay any increased rental rate(s) in effect at the time of, or after, the expiration of the Rental Period.

13. FREIGHT

Unless otherwise agreed to in writing by the parties, delivery shall be made EXW (Incoterms 2010) TPE's warehouse located in Tulsa, Oklahoma, United States of America. Freight shall be prepaid by Customer or freight collect to the destination, unless TPE otherwise agrees in writing to pay freight charges; provided, however, TPE's agreement to pay any freight charges shall not affect delivery EXW (Incoterms 2010) TPE's warehouse located in Tulsa, Oklahoma, United States of America. If shipped freight is prepaid by Customer, the charge for freight will be added to the Customer's invoice or charged to Customer via an additional, separate invoice.

Neither freight charges nor tax is subject to any discount. Regardless of whether Customer, TPE, or a third party pays the costs of freight, risk of loss or damage in transit shall be borne by Customer, and any claims shall be made directly with carrier. Customer may pick up the Equipment leased/rented at TPE's warehouse located in Tulsa, Oklahoma, United States of America, provided Customer does so promptly after TPE's notice that the Equipment is available for pickup. In the event Equipment is lost or damaged in transit, Customer shall pay to TPE amounts sufficient to repair or replace, to TPE's satisfaction, such lost or damaged Equipment, plus incidental and consequential damages suffered by TPE as a result of such loss, within thirty

(30) days of TPE's written demand to Customer, and such payment shall be due regardless of the status of any claim(s) the TPE may have pending against any third party arising from the loss or damage of Equipment in transit.

14. DEPOSIT

In addition to securing payment of the rental charges hereunder, Customer agrees that any rental deposit shall be deemed to be a guarantee by Customer of the full and complete performance of each and all of the terms, covenants, and agreements to be performed by Customer hereunder, and in the event of any breach by Customer, the deposit will be credited against any damages, cost or expense incurred by TPE as a result of the breach.

15. PAYMENT

All amounts due hereunder shall be payable in full upon receipt of invoice by Customer. Customer acknowledges that timely payment of rental charges is essential to TPE's business operations and it would be impractical and extremely difficult to fix the actual damages caused by late payment. Customer and TPE agree that there shall be added to all past due rental charges a late payment fee equal to the lesser of 2% per month (24% per annum) on any such payments outstanding after 30 days, or the maximum amount allowed by applicable law.

16. TAXES

Customer shall pay all taxes and other governmental charges assessed in connection with the rental, use or possession of the Equipment including, without limitation, any and all sales and/or use taxes and personal property taxes (other than taxes on TMS's net income). Because delivery of the Equipment is made EXW (Incoterms 2010) TPE's warehouse located in Tulsa, Oklahoma, United States of America, Customer shall pay to TPE local sales/use tax due as separately itemized on TPE's invoice to the Customer and TPE shall remit such taxes to the appropriate taxing authority in accordance with applicable law. Unless otherwise provided herein or in a separate writing

executed by TPE and Customer, in addition to the charges due under this Rental Agreement, Customer shall be responsible for, and shall protect, indemnify, defend and save harmless TPE from and against the reporting, filing and payment of any taxes, duties, charges, licenses, or fees (and any related fines, penalties or interest and the like) imposed directly or indirectly on Customer as a result of this Rental Agreement and all liabilities, costs, and associated expenses (including lawyers' and experts' fees) which may be incurred in connection therewith. Such taxes, duties, charges, licenses, or fees include but are not limited to any local, state, federal, foreign, or international sales, use, value added tax ("VAT"), goods and services tax ("GST"), rental, import, export, personal property, stamp, excise and like taxes and duties. If TPE pays any such tax, Customer shall, within thirty (30) days of TPE's written demand, reimburse TPE for the tax including interest fines, and penalties, paid by TPE. It shall be Customer's sole obligation after payment to TPE to challenge the applicability of any tax.

17. TITLE / NO PURCHASE OPTION / NO LIENS

This Rental Agreement is not a contract of sale, and title to the Equipment shall at all times remain with TPE. Unless covered by a specific supplemental agreement signed by TPE, Customer has no option or right to purchase the Equipment. Customer shall keep the Equipment free and clear of all mechanics and other liens and encumbrances.

18. DEFAULT

Customer shall be deemed to be in default should Customer in any way fail to pay any amount when due hereunder, or to perform, observe or keep any provision of this Rental Agreement, or should Customer become "Insolvent" (as defined herein), or should TPE anticipate that Customer may become Insolvent or that Customer may otherwise become in default. If Customer is in default, TPE may do any one or more of the following: (a) terminate the Rental Period, (b) declare the entire amount due hereunder immediately due and payable and commence legal action therefor; (c) cause TPE's employees or agents, with notice but without legal process, to enter upon Customer's property and take all action necessary to retake and repossess the Equipment, and Customer hereby consents to such entry, re-taking and re-possession and hereby waives all claims for damages and losses, physical and pecuniary, caused thereby and shall pay all costs and expenses incurred by TPE in retaking and repossessing; or (d) pursue any other remedies available by law. Customer shall be considered "Insolvent" if Customer (i) shall generally not pay, or shall be unable to pay, or shall admit its inability or anticipated inability to pay its debts as such debts become due, or (ii) shall make an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for it or a substantial part of its assets, or (iii) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (iv) shall have had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made; or (v) shall take any action indicating its consent to, approval or, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or any substantial part of its properties.

19. CUSTOMER'S INSURANCE COVERAGE

Customer agrees to maintain and carry, at Customer's sole cost, the following insurance: (a) property insurance for the full replacement cost of the Equipment, including coverage for all risks of loss or damage to the Equipment. Such coverage will include, but not be limited to, risk of loss arising out of the maintenance, operation, possession or use of the Equipment; (b) commercial auto liability insurance with at least a per occurrence limit of \$2 million; and (c) commercial general liability insurance ("CGL") (providing coverage equal to or greater than the standard ISO CG 00 01 12 04 form) for any property damage, bodily injury or personal injury arising out of the maintenance, operation, possession or use of the Equipment with combined single limits of insurance not less than \$2 million per occurrence and \$4 million in the aggregate. Customer shall obtain insurance policies that provide, or are endorsed to provide, that all insurance required hereunder is primary and non-contributory to any additional loss payee for

property insurance. Any deductibles or self-insured retentions shall be the sole recovery against TPE or its insurers by the Customer and its insurers, as well as a waiver of subrogation against TPE or its insurers. The policies required hereunder shall provide that TPE must receive not less than 90 days' notice prior to any cancellation. For rental of equipment, Customer must name TPE as loss payee evidencing property insurance coverage. In addition to the Insurance Coverages listed above, Customer shall provide and maintain sufficient insurance (or self-insurance) to cover any and all risks, liabilities and indemnities assumed under the Agreement and at law and shall provide on demand valid certificate(s) of insurance to TPE in respect thereof.

20. NO ASSIGNMENT, LENDING OF SUBLETTING

Customer shall not sublease, sub rent, or assign or loan the Equipment without first obtaining the written consent of TPE, and any such action by Customer, without TPE's written consent, shall be void. Customer agrees to use and keep the Equipment at the job site set forth on the first page of this Rental Agreement unless TPE approves otherwise in writing. TPE may at any time, without notice to Customer, transfer or assign this Rental Agreement or any Equipment or any moneys or other benefits due or become due hereunder.

21. ENTIRE AGREEMENT / ONLY AGREEMENT

The Rental Agreement, including any Addendum exhibits, schedules, or documents attached hereto or expressly incorporated by reference herein, represent the entire agreement between Customer and TPE with respect to the Equipment and the rental of the Equipment. There are no oral or other representations or agreements not included herein. None of TPE's rights or Customer's rights may be changed and no extension of the terms of this Rental Agreement may be made except in writing, signed by both TPE and Customer. Any use of Customer's purchase order number on this Rental Agreement is for Customer's convenience only and terms and conditions, whether oral or written, that are different or inconsistent with the terms contained herein are hereby rejected by TPE Midstream.

22. ORDER OF PRECEDENCE

The terms and conditions of this Rental Agreement shall control over any conflicting preprinted terms and conditions contained in the Customer's purchase order or similar documents.

23. OTHER PROVISIONS

A. Any failure of TPE to insist upon strict performance by Customer of any terms and conditions of this Rental Agreement shall not be construed as a waiver of TPE's right to demand strict compliance. Customer has carefully reviewed this Rental Agreement and waives any principle of law which would construe any provision hereof against TPE as the draftsperson of this Rental Agreement. Any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Rental Agreement.

B. Customer agrees to pay all reasonable costs of collection, court, attorney's fees and other expenses incurred by TPE in the collection of any charges due under this Rental Agreement or in connection with the enforcement of its terms.

C. Customer shall pay the rental charges without any offsets, deductions, or claims.

D. The federal and state courts in the county in which the TPE Location is located shall have exclusive jurisdiction over all matters relating to this Rental Agreement. TRIAL BY JURY IS WAIVED. In order to effect service of process on TPE, please contact the Secretary of State Corporations Division or the equivalent office in your state to obtain the name of the registered agent and the registered office address that is on file with the Secretary of State for

TPE Midstream. TPE shall be entitled to decrees of specific performance (without posting bond or other security) in addition to such other remedies as may be available.

E. Class Action Waiver. Customer agrees that any claims or proceedings brought by Customer relating to this Rental Agreement shall be conducted on an individual basis, and not on a class-wide, collective, or representative bases, and that any one person's claims or proceedings may not be consolidated, with any other claims or proceedings. Customer will not sue TPE as a class plaintiff or class representative, join as a class member, or participate as an adverse party in any way in a class-action lawsuit against TPE. Nothing in this paragraph however, limits Customer's right to bring a lawsuit as an individual plaintiff.

24. REPOSSESSION

TPE shall have the right to immediately repossess the Equipment, without any liability to Customer, in the event of (i) permanent closure of the TPE Locations or (ii) declaration of any emergency, disaster, or similar situation by any federal, state, or local government or (iii) as otherwise set forth in this Rental Agreement.

25. CONFIDENTIALITY

The Parties shall oblige their officers, employees, and agents to, maintain full secrecy and confidentiality on all matters not in the public domain concerning or arising out of the performance of the Rental Agreement.

26. INTELLECTUAL PROPERTY

Any of TPE's or third-party trade names, trademarks, logos, service marks, product designations of TPE or third-party's that are otherwise used in connection with the Equipment, (collectively, the "Company Marks") remain the property of TPE or such third-party and no right, title or interest in or to such Company Marks are granted or created in favor of Customer. Customer agrees that in addition to Company's Marks, TPE or third-parties own all right, title, and interest in the Equipment and in all patents, trademarks, trade names, inventions, copyrights, know-how, trade secrets and other intellectual property relating to the design, manufacture, operation or service of the Equipment, and TPE or such third-parties retain exclusive ownership thereof. Except where and to the extent such restriction is expressly prohibited by law, Customer will not, and will not allow any other party to, reverse engineer or otherwise attempt to derive or obtain information about the functioning, manufacture or operation of the Equipment, including any software therein.

I HEREBY AGREE TO THE TERMS AND CONDITIONS SET FORTH ABOVE.

	[Client Name]		TPE MIDSTREAM LLC
By	_____	By	_____
Signed	_____	Signed	_____
Title	_____	Title	_____
Date	_____	Date	_____