

**[◆*PRODUCT*]  
AS A SERVICE  
AGREEMENT  
BELGIUM**

**OPTIONAL CLAUSES**

This document is complementary to the template [product] as a service Agreement for the supply of energy efficient services, such as cooling, heating, lighting,... by the Service Provider to professional Clients. The clauses are optional and can be added to the Agreement where parties require so and such is suitable for the specific situation.

Throughout the document, additional comments are visible as explanations to guide the reader on the use of the contract.

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## 1. [OPTION] COOPERATION FOR FINANCING

- 1.1 The Client will cooperate in good faith with the Service Provider in view of obtaining the necessary financing for the Service Provider in respect of the Service Provider Equipment, as well as cooperate with the Service Provider in view of meeting any know your customer ("KYC") requirements.

## 2. [OPTION] PURCHASE OPTION

- 2.1 At the expiration of the Term, the Client shall dispose of a purchase option on the Service Provider Equipment, located on the Client Premises.
- 2.2 The option must be called no later than [◆] months prior to the expiration of the Term, by means of a registered letter.
- 2.3 In case the option is called, a sale will be established, subject to the condition precedent of further compliance by the Client to any and all of his obligations, until the expected expiration of the Term.
- 2.4 The sales price will be equal to the market value (fair market value), at such time, of the rights *in rem* with a minimum amount to be calculated as follows: [◆]
- 2.5 In the event the Parties should not reach an agreement on the market value (fair market value) of the rights *in rem* on the Service Provider Equipment on the Client Premises, they will, in mutual deliberation, appoint an independent expert who will determine the market value, which shall be binding for the Parties. If the Parties do not reach an agreement as to the appointment of an independent expert, they will each appoint an independent expert and those experts will then jointly appoint a third independent expert. This board of experts will consequently determine the value of the rights *in rem*, which will be binding on the Parties. The fees of the expert(s) will be borne in equal parts by the Parties.
- 2.6 The deed of sale will be passed in the month following the date on which this Agreement terminates. The sales price will be payable at the execution of the deed. All costs, charges, taxes and fees resulting from calling the purchase option and the deed of sale or relating to the (notary) deed, its registration and transcription, shall be borne by the Client.

## 3. [OPTION] FAILURE TO RECOVER THE SERVICE PROVIDER EQUIPMENT

- 3.1 The Client shall be responsible for all costs and expenses of repair or replacement, insofar as the Service Provider would not be able to recover the Service Provider Equipment or any part thereof after termination of the Agreement (fair wear and tear excepted), as a result of a failure by the Client, its personnel, Sub-Contractors and/or agents to comply with its / their obligations under this Agreement.

## 4. [OPTION] CHAIN CLAUSE IN CASE OF TRANSFER

- 4.1 In the event of transfer of the property and/or other rights to the Client Premises in which the Service Provider Equipment is located, the Client, his assignees and legal successors, in whatever capacity, undertake to impose compliance with this Agreement on the transferee by means of a perpetual clause ("*kettingbeding*" / "*stipulation en chaîne*").

**Commented [A1]:** Explanation: Upon termination of the Agreement, the Service Provider Equipment is normally returned to the Service Provider. Parties however may include a purchase option on the Service Provider Equipment to the benefit of the Client upon termination of the Agreement.

**Commented [A2]:** Explanation: Upon termination of the Agreement, the Service Provider Equipment is returned to the Service Provider. According to art.3.1.2 of the Agreement, the Client is responsible for all costs and expenses of repair or replacement caused by the Client (except for wear and tear). The same may apply upon recovery of the Service Provider Equipment upon termination of the Agreement.

**Commented [A3]:** Explanation: This clause concerns the situation where there is a change in ownership or other rights to the Client Premises, irrespective of whether the Client owns these Client Premises. In case of such modification, the beneficiary of such right will also have to abide with this Agreement.

- 4.2 In the event of such a transfer, the Client undertakes, in each case by registered letter
- (i). to inform the Service Provider in advance and in due time of the intended transfer;
  - (ii). to notify the Service Provider that the transfer has taken place and this within seven (7) calendar days from the date on which the transfer took place.

**5. [OPTION] DUE DILIGENCE**

- 5.1 The Service Provider acknowledges that, prior to the Effective Date of this Agreement,
- 5.1.1 Client has delivered or made available to the Service Provider all of the information and documents that the Service Provider considers necessary or relevant for the performance of its obligations under this Agreement;
  - 5.1.2 it has made its own enquiries to satisfy itself as to the accuracy, completeness and adequacy of any information, documents and data provided by and/or on behalf of Client; and
  - 5.1.3 it has satisfied itself by having raised all relevant due diligence questions with Client of all relevant details relating to the Services.
- 5.2 The Service Provider declares that it has entered into this Agreement in reliance on its own due diligence alone and that it has not relied upon any representation, warranty, condition or term, express or implied, statutory or otherwise (including as to condition, quality, performance or fitness for purpose), save for those expressly provided in this Agreement and those which cannot be prohibited by Law.

**Commented [A4]:** Explanation: All information necessary in order for the latter to be able to undertake the Preparatory Works and subsequently supply the Services and Service Provider Equipment as agreed

**6. [OPTION] CONTINUOUS IMPROVEMENT AND INNOVATION**

- 6.1 The Service Provider shall have an ongoing obligation to develop its business, service concepts, methods and processes and shall strive to enhance and otherwise develop in a proactive manner the Services and Service Level Requirements provided to Client, especially in terms of technological development and to maintain their competitiveness in terms of both quality and price in the market.
- 6.2 The Service Provider shall inform Client on a yearly basis of all improvements, trends and innovations of which it becomes aware in relation to new technology, business rules, processes and management, operational and costs improvements related to the Services and which may support Client' strategy, competitive and/or financial position or customer service to Client' customers or their experience thereof.
- 6.3 The Service Provider shall produce an annual plan for discussion with Client relating to the improvement of the quality and efficiency of the Services and corresponding Fees (without adversely affecting the Services or Service Level Requirements or detracting from their overall performance) ("**Improvement Plan**").
- 6.4 The Improvement Plan shall cover (to the extent possible and reasonable in the circumstances) at a minimum:
- 6.4.1 proposals for refreshing the Service Provider Equipment, the Service Provider's technology and identifying the emergence of new and evolving technologies and business processes which could improve the Services; and

**Commented [A5]:** Explanation: The Agreement aims the supply of energy efficient Services. These may evolve throughout the contract term, through innovation, new processes, insights,... This clause requires the Service Provider to keep up with such evolutions and inform the Client on a yearly basis, eventually parties can agree to such improvements.

6.4.2 realisable savings opportunities (both shorter term and longer term) along with sensible plans that simply require Client' agreement to enable execution, showing how such opportunities will or can be delivered.

6.5 The Parties shall discuss the Improvement Plan, and once approved by Client, the Improvement Plan shall be implemented by the Service Provider. If such implementation constitutes a Change, the Parties will deal with such Change through the Change request procedure as provided in Schedule [◆].

**Commented [A6]: Explanation:** As provided in the optional Schedule "Relationship and Governance" below.

## 7. [OPTION] SERVICE PROVIDER PERSONNEL

**Commented [A7]: Explanation:** This clause is mostly relevant in the event Service Provider Personnel is supplying the Services at the location of the Client Premises.

### 7.1 Quality and profile

7.1.1 The Service Provider shall use suitable, appropriately qualified, experienced and competent Service Provider Personnel in the provision of the Services and shall use all reasonable endeavours to ensure continuity of Service Provider Personnel.

7.1.2 The Service Provider provides appropriate training and education for all Service Provider Personnel that is involved in the provision of the Services, to allow the proper performance of the Services by the Service Provider Personnel and such from the moment these are assigned to the Services. The costs of additional training for the Service Provider Personnel shall be entirely borne by the Service Provider.

7.1.3 The Service Provider must familiarise its staff with the functioning of Client by making use of training materials provided by Client. Such introduction training shall be completed within the first month of assignment to the Services.

7.1.4 The Service Provider agrees that it will, and procures that all members of the Service Provider Personnel will, comply with any relevant Client Policies in accordance with Schedule 4 (*Client Policies*). The Service Provider shall use Commercially Reasonable Efforts to ensure that no damage to Client' reputation occurs as a result of any failure by the Service Provider or any Service Provider Personnel to comply with such Client Policies. The Service Provider shall ensure that the Service Provider Personnel has read, understood and acts in accordance with, among others, the following Client Policies:

**Commented [A8]: Explanation:** Policies to be listed in Schedule 4 of the Agreement in accordance with those in use by the Client.

7.1.4.1 the Client Code of Conduct;

7.1.4.2 the Client Policies concerning health and safety;

7.1.4.3 the Client Policies concerning discrimination and intimidation; and

7.1.4.4 all other Client Policies which need to ensure that Client complies with all its legal obligations.

7.1.5 The Service Provider Personnel shall at all times behave in a professional and business-like manner.

7.1.6 When any member of the Service Provider Personnel who, in the reasonable opinion of the Service Provider, is not performing in accordance with (the quality requirements under) this Agreement or represents a threat to confidentiality or security or is in breach of Client Policies or otherwise is disruptive to Client'

business or reputation, the Service Provider will immediately inform Client thereof and will immediately remove that person from the provision of the Services and will not permit that person to be involved subsequently in the provision of the Services without the prior written consent of Client.

- 7.1.7 Client may require the immediate removal from the Client Premises and/or the provision of the Services, of any member of the Service Provider Personnel who, in the reasonable opinion of Client, represents a threat to confidentiality or security or is in breach of Client Policies or otherwise is disruptive to Client's business or reputation. Unless in case the Service Provider would deem the Client's request manifestly unreasonable, the Service Provider will immediately remove that person from the provision of the Services and will not permit that person to be involved subsequently in the provision of the Services without the prior written consent of Client.

## **7.2 Authority and responsibility**

- 7.2.1 In no case shall Client exercise, or be deemed to exercise, a partial or complete employer's authority on the Service Provider Personnel.
- 7.2.2 The Service Provider warrants that no member of the Service Provider Personnel shall, under any circumstance or at any time, be presented or considered as a member of the personnel of Client.
- 7.2.3 Without prejudice to clause 7.2.1 and/or Client's other rights and remedies accorded to it by this Agreement or by Law, Client has the right to demand from the Service Provider to take all measures against a member of the Service Provider Personnel in case of inappropriate behaviour, or any behaviour that violates (or threatens to violate) the provisions of this Agreement.
- 7.2.4 The Service Provider shall be fully responsible for the management of, and the acts and omissions of, all Service Provider Personnel and its Sub-Contractors in the supply of the Services and shall be liable to Client and the Client Affiliates, including their personnel, employees, directors, officers, agents, representatives, consultants, suppliers, contractors, successors and assigns for any Losses incurred by Client or a Client Affiliate, including their personnel, employees, directors, officers, agents, representatives, consultants, suppliers, contractors, successors and assigns arising out of or in connection with any such acts or omissions.

## **7.3 Replacement of Personnel**

- 7.3.1 If for any reason a member of the Service Provider Personnel is removed from the provision of Services or Deliverables by the Service Provider, or is no longer available to deliver the Services or Deliverables, the Service Provider shall replace this person as soon as reasonably possible. The costs and expenses for the replacement of this person shall be borne by the Service Provider. The Service Provider ensures that each replacement is fully competent, informed and trained at the expense of the Service Provider to perform the tasks that were assigned to the person he is replacing. The Service Provider shall in each case bear the costs of settling-in of the replacement, regardless of the reason for replacement.
- 7.3.2 The replacement or removal of Service Provider Personnel may not result in additional costs for Client and not have a negative impact on the provision of Services.

## 8. [OPTION] MERGER OF DATA

- 8.1 In derogation from article [◆ *article on client data, specifically specifying that data cannot be merged*], the Service Provider is allowed to merge and/or combine the Client Data with its own data, however only for purely internal purposes. This possibility to merge and/or combine the Client Data with its own data does not constitute a deviation from any other obligation of the Service Provider with regard to the Client Data, as outlined in article [◆ *all other articles on client data*].

**Commented [A9]: Explanation:** This article amends art.13.5. of the Agreement which does not allow the Service Provider to merge or combine the Client Data with other data. For the purpose of monitoring and improvement of its Services and Service Provider Equipment, such may however be necessary, in which case this clause can be added.

## 9. [OPTION] STEP-IN

### 9.1 Right to step-in

- 9.1.1 Without prejudice to any of Client' other rights and remedies under this Agreement or at Law, Client may, in its sole discretion, by notice in writing to the Service Provider appoint a management team or Third Party to manage or provide the Services (or part thereof) where:

9.1.1.1 a breach by the Service Provider of any of its obligations under the Agreement has occurred which has created a material interruption or disruption in the provision of the Services, or results in a material interruption or disruption of Client' services and continuity for an uninterrupted period exceeding [◆] days and where the Service Provider does not take measurable steps to cure such breach within [◆] Business Days following written notice from the Client invoking this clause;

9.1.1.2 a Force Majeure Event occurs for an uninterrupted period exceeding [◆] days which materially prevents or materially delays the performance of the Services or any part of the Services by the Service Provider; or

9.1.1.3 Client has reasonable grounds to suspect that one of the circumstances listed above in clause 9.1.1.1 or 9.1.1.2 are more likely than not to occur.

**Commented [A10]: Explanation:** This clause allows the Client to ascertain continuity of Services in the event of serious non-compliance by the Service Provider, e.g. by calling upon a third party service provider.

**Commented [A11]: Explanation:** This only applies when parties do not seek to terminate the Agreement for "Protracted Force Majeure Event" as provided in art.9.3. of the Agreement.

- 9.1.2 In exercising its rights of step-in, Client may take such steps as it considers to be appropriate (either itself or by engaging others to take any such steps) to ensure provision of the Services or any element thereof to the standards required by this Agreement (or as close as possible to those standards as the circumstances permit), including through the appointment of any person to either take on the provision of all or part of the Services (including any Services provided by any Sub-Contractor) or work with the Service Provider in providing all or any part of the Services (including any Services provided by any Sub-Contractor).

### 9.2 Service Provider co-operation

- 9.2.1 In any case in which Client appoints any person to work with the Service Provider in providing all or any part of the Services (including any Services provided by any Sub-Contractor), or in which Client decides to take the necessary

steps itself, the Service Provider shall co-operate fully and in good faith with that person and/or Client, and any rights and licences granted to Client pursuant to this Agreement shall be automatically extended to such Third Party.

- 9.2.2 Where Client considers it to be necessary or expedient to do so, the steps which Client may take pursuant to this clause 9 (*Step-in*) shall include the partial or total suspension of the obligation of the Service Provider to provide all or any part of the Services until such time as the Service Provider shall have demonstrated to the satisfaction of Client that it shall perform (and is capable of performing) its obligations in respect of the relevant Services to the required standard.

### 9.3 Financial consequences

- 9.3.1 Client shall not be obliged to pay the relevant Fees for the elements of the Services affected by the exercise of its step-in right.
- 9.3.2 The Service Provider shall reimburse all losses incurred by Client or Client Affiliates in taking the steps, or engaging others to take the steps, under this clause 9 (*Step-in*). Client will be entitled to deduct such amounts from the Fees.
- 9.3.3 All costs reasonably incurred by Client in transferring such Services from the Service Provider to any Third Party and then permitting the Service Provider to resume performance where it has appointed a Third Party in the circumstances described above will be borne by the Service Provider.

### 9.4 Step-out

- 9.4.1 Before ceasing to exercise its step-in rights Client shall inform Service Provider of ("**Step-Out Notice**"):
- 9.4.1.1 the action it has taken in exercising the step-in right; and
- 9.4.1.2 the date on which, subject to Client being satisfied with the plan the Service Provider is required to develop under clause 9.4.2 and the Service Provider's ability to, and progress in, implementing it, it plans to conclude that action ("**Step-Out Date**").
- 9.4.2 The Service Provider shall, following receipt of a Step-Out Notice and not less than ten (10) Business Days in advance of the Step-Out Date, develop a plan to restore the affected Services to the standards required by this Agreement by the Step-Out Date, which it shall agree with Client in writing. Following agreement of that plan, the Service Provider shall implement it and shall devote sufficient resources to ensure that delivery of the affected Services is restored to the Service Level Requirements as from the Step-Out Date or as otherwise agreed by the Parties in writing.
- 9.4.3 The Client shall deliver the Step-out Notice to the Service Provider not less than [◆] ([◆]) Business Days in advance of the Step-Out Date.



10. [OPTION] GUARANTEES

- 10.1 The [Service Provider/Client] shall ensure that it possesses and shall maintain throughout the Term sufficient financial resources to comply with the requirements of this Agreement. If the [Service Provider/Client] experiences a change in its financial condition that may adversely affect its ability to perform under this Agreement, it shall immediately notify [Client/Service Provider] thereof.
- 10.2 The [Service Provider/Client] shall provide a [parent company guarantee] / [bank guarantee] that will provide for the performance by the [Service Provider's/Client's] parent company of the [Service Provider's/Client's] obligations and payment on first demand of any liabilities incurred by the [Service Provider/Client] under or in relation to the Agreement, attached to this Agreement as Schedule [◆] ([Parent company guarantee] / [Bank guarantee]).
- 10.3 For every event of delay in performance or non-performance of all or part of the Agreement which is not remedied within two (2) weeks or incapable of remedy or in the circumstances listed in clause [◆] [Client/Service Provider] may invoke the [parent company guarantee] / [bank guarantee] and the [parent company guarantee] / [bank guarantee] shall be automatically renewed. [Client's/Service Provider's] right to invoke the [parent company guarantee] / [bank guarantee] is without prejudice to any other remedies [Client/Service Provider] has under this Agreement and/or at Law.

**Commented [A12]:** Explanation: This clause concerns financial guarantees for either party, such as a bank guarantee or a parent company guarantee to cover any contractual liabilities which that party would not be able to respond to.

11. [OPTION] NO EXCLUSIVITY

The Service Provider acknowledges that it is not being appointed as an exclusive provider of any of the Services that are the subject of this Agreement and the Client may at any time perform any part of these Services itself or procure them from a Third Party. In such case however, the Client may not make use of any Service Provider Equipment or otherwise impact the performance of the Service Provider Equipment or prejudice the concurrent performance of the Services by the Service Provider, unless as expressly agreed otherwise in writing.

**Commented [A13]:** Explanation: This clause can be added in the event the Client also provides the Services itself, or calls upon other third party service providers, next to the Service Provider for the same services, in which case such services may not interfere with the Service Provider Services nor may its Service Provider Equipment be used to that purpose.

12. [OPTION, IN ADDITION TO CLAUSE 2.2.1] EXTENSIVE AND CRUCIAL COMMISSIONING WORKS FOR SERVICE PROVIDER EQUIPMENT

Where the Service Provider has not been able to install and commission the Service Provider Equipment by the Supply Date, the payment obligation for the Client as stated in clause 4.1 of the Agreement will only be applied as from the calendar month in which the date on which the Service Provider Equipment is effectively installed and commissioned ("the Effective Supply Date") falls.

In addition, for each day of delay in the installation and commissioning of the Service Provider Equipment, to the extent not attributable to the Client, the Service Provider will pay a compensation to the Client of [...] EUR, in order to off-set the reasonably estimated damage for the Client from the late commissioning of such equipment.

13. [OPTION, TO BE INTEGRATED IN CLAUSE 5.2] SUPERFICIES RIGHT

In order to further create publicity concerning the ownership right of the Service Provider [or the nominated Third Party to which ownership is assigned] over the Service Provider Equipment, the Client agrees that it will conclude, within a period of [◆] weeks as from the Effective Date, a superficies agreement with the Service Provider [or the nominated third party] that will establish the property rights of the Service Provider Equipment to be installed

**Commented [A14]:** Explanation: The Service Provider Equipment remains property of the Service Provider. In the event such equipment is incorporated at the Client Premises, the Service Provider may wish to reinforce its ownership rights by requiring the establishment of a superficies right by the Client by means of a notarial. This can be provided either as a requirement following the conclusion of the Agreement, or as a suspensive condition for the conclusion of Agreement. Both options are provided here.

at the Client Premises. Such superficies right will be granted for the Term of the Agreement and will be granted at no cost.

OR

« In order to further create publicity concerning the ownership right of the Service Provider [or the nominated Third Party to which ownership is assigned] over the Service Provider Equipment, the Parties agree that the Agreement is concluded under the suspensive condition of conclusion by the Client, within a period of [◆] weeks as from the Effective Date, into a superficies agreement with the Service Provider [or the nominated third party] that will establish the property rights of the Service Provider Equipment to be installed at the Client Premises. Such superficies right will be granted for the Term of the Agreement and will be granted at no cost. »

#### 14. [OPTION] POST-TERMINATION ASSISTANCE

- 14.1 In case of termination (for whatever reason) of this Agreement, the Service Provider shall co-operate with the Client and the Client' other suppliers and provide reasonable information (including any documentation), advice and assistance in connection with the Services to any other suppliers to enable them to create and maintain technical or organisational interfaces with the Services and to enable the timely transition of the Services (or any of them) to the Client and/or to any replacement supplier.

**Commented [A15]: Explanation:** This clause requires the Service Provider to provide assistance upon termination in order to allow smooth migration of the Services.

#### 15. [OPTION] HARDSHIP CLAUSE

- 15.1 Without prejudice to other provisions of this Agreement, in the event, after the execution of this Agreement, of any political, technical or economic event or in the event of any measure taken by the competent authorities or any change in the laws or regulations pertaining to the subject-matter of this Agreement, including but not limited to [◆], which event is not attributable to any Party nor could have been reasonably foreseen by either Party at the time of signature of this Agreement, which event has a substantial impact on the balance of the respective interests of the Parties under the Agreement, such impact being of such a nature that a Party cannot reasonably expect the other Party to bear all consequences of such event, the Parties shall, at the initiative of either Party, negotiate in good faith any possible amendment of this Agreement in order to restore such balance, thereby referring to the balance of their respective interests obtained through the initial terms and conditions of this Agreement.
- 15.2 Without prejudice to clause 15.3, any situation for which clause 15.1 can be invoked, does not exempt any Party of its obligations under this Agreement.
- 15.3 If no agreement can be reached within a period of three (3) months as of the date on which one of the Parties requested a renegotiation, [◆*clause(s) on dispute resolution*] will apply.

**Commented [A16]: Explanation:** This clause allows a renegotiation of the contract terms in case of substantial, external changes negatively affecting the economic balance between the parties. Instead of a "force majeure event", which makes it impossible for the Service Provider to perform the Services, "hardship" does not necessarily make performance impossible, but rather unreasonably burdensome for one of the parties.

#### 16. [OPTION] ADDITIONAL DISPUTE SETTLEMENT PROCEDURES

- 16.1 Mediation

If a Dispute has not been resolved between the parties through the procedure provided for under clause [◆], said Dispute may, at either party's request, be referred to mediation. Any reference to mediation shall be made in accordance with the procedures of the [◆*mediation centre*]. The mediation shall be conducted by a single mediator appointed by the parties or, if

**Commented [A17]: Explanation:** Parties may wish to extend the dispute resolution mechanism provided in art.20 of the Agreement with mediation and/or recourse to an independent expert in case of disputes relating to technological aspects.

the parties are unable to agree on the identity of the mediator within fourteen (14) days after the date of the request that the Dispute be resolved by mediation, or if the person appointed is unable or unwilling to act, the mediator shall be appointed by [◆mediation centre] on the application of either party. The mediation shall be conducted in English at [the offices of CEDR in Brussels or [◆]]. Mediation is without prejudice to the rights of the parties in any future proceedings.

#### 16.2 Expert determination

If a Dispute relates to any aspect of the technology underlying the Services and the Dispute has not been resolved between the parties through the procedure provided for under clause [◆], then either party may request by notice in writing to the other that the Dispute be referred to an expert for determination. Where both parties so agree, the Dispute shall then be referred to an expert for determination. Where the parties fail to agree on the referral of a Dispute to an expert, such Dispute shall not be referred to an expert and may be resolved in accordance with clause [◆].

Where the Parties refer a Dispute to an expert, such expert shall be appointed by agreement in writing between the parties. If the parties fail to agree which person should be appointed as expert within five (5) Business Days of such notice or if the person appointed is unable or unwilling to act, the expert shall be appointed by the [◆].

#### 16.3 The expert appointed under clause 16.2 above shall act on the following basis:

- the expert shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- the expert's determination shall (in the absence of a material failure by the expert) be final and binding on the parties;
- the expert shall decide the procedure to be followed in the determination and shall be requested to make its determination in writing within thirty (30) days after his appointment or as soon as reasonably practicable thereafter and the parties shall assist and provide such determination as the expert shall require for the purposes of the determination;
- any amount payable by one party to another as a result of the expert's determinations shall be due and payable within thirty (30) days of the expert's determination being notified by the parties;
- the process shall be conducted in private and shall be confidential; and
- the expert shall determine how and by whom the costs of the determination, including the fees and expenses of the expert, are to be paid.

[OPTION] SCHEDULE [◆]: **RELATIONSHIP AND GOVERNANCE**

**Commented [A18]:** Explanation: Given that the term of the Agreement may be quite long, parties may wish to foresee a procedure for change requests and the implementation thereof in the course of the Agreement. This can for example be the result of an Improvement Plan as provided in art.6.

**1. Change requests**

1.1 In the event that either Party determines that a Change is required, the following procedure will be executed:

1.1.1 The Party determining that a Change is required shall initiate a request for change to the other Party

1.1.2 Each Party shall evaluate the Change request as detailed below:

Within a period of twenty (20) Business Days or at an alternatively mutually agreed time, the Parties shall convene to determine the action to be taken on the Change request.

In the event that only Client believes the Change request needs implementing, the Parties will nonetheless enter a discussion or negotiation in good faith within such twenty (20) Business Days period, so that an eventual agreed position can be established, including any financial adjustments that may be required.

**2. Evaluation of Change requests**

2.1 Change requests shall undergo an evaluation by both Parties, and the results of both evaluations shall be documented in a manner that includes the below elements. The content of the evaluation should contain as a minimum:

- 1) Date of evaluation;
- 2) Impact/risk analysis;
- 3) Financial impact;
- 4) Legal review;
- 5) Recommendation including Change activities and implementation plan including the time frame in which the Change can be implemented;
- 6) Documentation requirements;
- 7) Suggested review team and approval level.

2.2 Both Parties shall contribute to the evaluation as appropriate, and the conclusion of the evaluation shall be recorded with the original Change request.

**3. Process**

3.1 After a Change request has been initiated and an initial evaluation undertaken, the Change request will go through a series of reviews, escalating the Change request up the chain of authority, as required.

3.2 Service Provider's activities in evaluating and responding to both Client submitted Change requests and Service Provider submitted Change requests shall be undertaken at Service Provider's own cost and expense.

3.3 Service Provider shall only be entitled to refuse to implement a Change where it would:

- 1) be technically infeasible for Service Provider to implement; or

- 2) require the Services to be performed (or Service Provider to otherwise act) in a way that infringed any applicable Laws.
- 3.4 Client shall not be liable to pay any Fees for Services performed pursuant to a Change request which has not been approved by Client in writing. If Service Provider proceeds with performing the Services or procuring and/or providing material prior to Client acceptance of the Change request (which then may need to be translated into an Amendment to the Agreement), then such performance shall be at the Service Provider's risk and expense. For the avoidance of doubt, the Service Provider shall not be expected to start with the implementation of a Change prior to acceptance of the Change request by Client.
- 3.5 At each review, either Party may request that the Change request be re-submitted for additional evaluation, if more information is needed before a decision can be made. The review team may ask that the Change request be re-submitted to them with additional evaluation, or back down to a lower level review team, as deemed appropriate.