

(1) [◆*NAME*]

- and -

(2) [◆*NAME SERVICE PROVIDER*]

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

This template agreement has as object the supply of energy efficient services, such as cooling, heating, lighting,... by the Service Provider to professional Clients together with the necessary equipment to that purpose, without any transfer of title. It provides for a balanced set of rights and obligations for both the Service Provider and the Client, whereby the Service Provider guarantees a determined service output throughout the term of the Agreement, including installation, maintenance and repair against a fixed periodical fee. This template and at least the mentions between [brackets] are to be adapted in line with each 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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THIS AGREEMENT is made on [◆Date]

BETWEEN:

1. [◆NAME CLIENT], a company incorporated and registered in [◆] which has its registered office at [◆], registered in the Crossroad Bank of Enterprises under number [◆] ("Client"); and
2. [◆NAME SERVICE PROVIDER], a company incorporated and registered in [◆] which has its registered office at [◆], registered in the Crossroad Bank of Enterprises under number [◆] ("Service Provider");

individually referred to as "Party", and collectively referred to as "Parties".

WHEREAS:

- A. the Client seeks the use of efficient [◆] equipment based on a servitisation model;
- B. the Service Provider is able and willing to provide such services, without transferring the title of the equipment used therefore, in exchange for a service fee;
- C. the Client and the Service Provider agree on the supply and use of such services on the terms and conditions laid out in this Agreement;

IT IS AGREED:

1. DEFINITIONS

- 1.1 In this Agreement, capitalised terms shall have the meaning given to them in this clause 1 and as otherwise determined in the Agreement:

"Agreement" means this agreement, including the recitals, the attached Schedules and Appendices;

"Business Day" means a day (other than a Saturday or Sunday) on which the banks are ordinarily open for business in the city in which the Client or the Client Affiliate receiving Services is established;

"Business Hours" means the hours between 8.00 and 18.00 on a Business Day (in the local time zone of the city in which the Client or the Client Affiliate receiving Services is established);

"Capacity Charge" means the fee (if applicable) provided for in Section 2 of Schedule 3;

"Capacity Excess Charge" means the fee (if applicable) provided for in Section 3 of Schedule 3;

"Client Affiliates" means the affiliates of the Client. An affiliate means, in relation to the Client, every company related to it as set forth in article 1:20 of the Belgian Company Code and every associated company as set forth in article 1:21 of the Belgian Company Code;

"Client Data" means all data, information, text, drawings, statistics, analysis and other materials embodied in any form relating to the Client or any Client Affiliate (and/or their respective customers) and which may be supplied by the Service Provider, the Client or any

Client Affiliate and/or which the Service Provider (and/or any Sub-Contractors) generates, collects, processes, stores or transmits in connection with the Agreement;

"Client Equipment" means Equipment owned or controlled and operated by the Client.

"Client Policies" means all instructions, procedures, guidelines and policies of the Client, as included in Schedule 4 of the Agreement, and as may be further modified after the Effective Date provided such modifications have been communicated in accordance with clause 5.1.3;

"Client Premises" means the premises owned, controlled or occupied by the Client or a Client Affiliate which are made available for use by the Service Provider or its Sub-Contractors, employees or agents for provision of the Services (or any of them) on the terms set out in the Agreement;

"Contracted Supply" means the supply capacity set out in the Term Sheet (Schedule 1) that the Client has requested, and that the Service Provider has agreed to provide where the Client demands this capacity at any given time;

"Commercially Reasonable Efforts" means that the Party obliged to perform shall take all such steps and perform in such a manner as if it were acting in a determined, prudent and reasonable manner in order to achieve the desired result, and perform the obligations set out in this Agreement;

"Confidential Information" means:

- a) all information which is disclosed by one Party to the other, whether before or after the Effective Date, which is designated in writing as confidential or would appear to a reasonable person to be confidential and which relates to a Party's business including its products, operations, processes, plans or intentions, developments, trade secrets, know-how, design rights, market opportunities, personnel, suppliers and customers of the party disclosing it;
- b) all Client Data;
- c) all information derived from any of the above; and
- d) the provisions of the Agreement and the negotiations relating to it;

"Contract Year" means each twelve (12) month period beginning on the Effective Date and on each subsequent anniversary thereof during the Term of the Agreement;

"Disclosing Party" means the Party disclosing or making available Confidential Information directly or indirectly, or on whose behalf Confidential Information is disclosed;

"Dispute" means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute regarding pre-contractual negotiations, the existence, validity or termination or the consequences of non-existence or invalidity (whether contractual or non-contractual), any dispute, difference or question of interpretation relating to the Services or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

"Dispute Resolution Procedure" means the procedure set out in clause 20 relating to the resolution of Disputes between the Parties.

"Effective Date" means the date set out on the first page of this Agreement;

"Equipment" means any infrastructure, materials, software, assets, equipment or other property owned or controlled and operated by a Party;

"Extension Term" means a [◆] ([◆]) year period commencing the day after the expiry of the Initial Term or the previous Extension Term (as applicable) in case the Client decides upon such extension pursuant to clause 6 (*Term*);

"Fees" means the fees set out in and/or calculated pursuant to Schedule 3 (*Fees*);

"Fees Paid and/or Payable by Client" means for one Contract Year the sum of the following Fees: (i) Fees already paid by the Client during that Contract Year at the moment the event occurs, (ii) Fees already invoiced during that Contract Year, but unpaid by the Client at the moment the event occurs and (iii) Fees accrued during that Contract Year but not yet invoiced at the moment the event occurs;

"Force Majeure Event" means any event of force majeure, i.e. strike, pandemic, lock-out or labour dispute (excluding, in all cases, by the employees of the Service Provider or its Sub-Contractors or suppliers, unless there is a general strike at national or regional level), an act of God, war, fire, flood, civil rebellion or terrorism, in each case, that is beyond the control of the affected Party and not susceptible to being planned for or avoided by reasonably prudent persons or entities providing or operating a business similar in scale and scope to the affected Party. For the avoidance of doubt, the mere shortage of materials, equipment, labour or supplies shall not constitute a Force Majeure Event;

"Incident" means any event which is not part of the standard operation of a Service and which causes, or may cause, an interruption to, or a reduction in, the quality of that Service;

"Initial Term" means the term defined in Schedule 1, commencing on the Effective Date;

"Insolvency Situation" means (i) a Party passing a resolution for its liquidation, dissolution or winding up or suffering a winding-up order being made against it or going into administration; (ii) a receiver or administrative receiver is appointed or an encumbrance takes possession of the undertaking or assets (or any substantial part thereof) of a Party; and/or (iii) if a Party is unable to pay its debts or ceases to, threatens to cease to carry on its business, extends its requests for suspension of payment, or enters into a composition with all or part of its creditors;

"Intellectual Property Rights" or "IPR" means:

- a) any intellectual property rights including without limitation copyright, neighbouring rights, rights in software, patents, trademarks, design rights, database rights, plant variety rights, geographical indications (of origin), semiconductor topography rights and trade secrets;
- b) all registrations or applications to register and the right to apply for registration of any of these rights; and
- c) all other intellectual property rights and equivalent or similar forms of protection anywhere in the world;

"Law" means any applicable law, statute, bye law, regulation, order, regulatory policy (including any requirement or notice of any regulatory body), guidance or industry code of practice, rule of court or directives, delegated or subordinate legislation in force from time to time;

"Liquidated Damages Service Level Requirements" means the compensation, based on a realistic and mutual accepted estimation of the effective damage in relation to non-compliance, due by the Service Provider if it fails to meet certain Service Level Requirements, as provided for in Section 4 of Schedule 3;

Commented [A1]: Explanation: Given that the effective damage suffered may be difficult to establish and prove, a fixed compensation is agreed for certain non-compliance events by the Service Provider.

"Measurement Tool" means a tool used to measure equipment, networks and systems, e.g., Availability, electricity consumption and usage;

"Minimum Capacity Use" means – if made applicable in the Term Sheet - the minimum amount of the Contracted Supply which the Client is required to use in each month of the Term (in the first month in which the Supply Date falls, calculated pro rata), which amount is then stated in the Term Sheet;

"Permitted Tolerance of Error" means – if applicable - the rate of tolerance accepted for a Measurement Tool as then set out in the Term Sheet.

"Planned Outage" means a period of time in which a Service or a component thereof is unavailable due to reasons agreed in advance;

"Recipient" means the Party that receives or obtains Confidential Information directly or indirectly;

"Resource Unit" has the meaning given to it in Schedule 1 (*Term Sheet*).

"Schedule" means an annex to the Agreement entitled as such, being an integral part of the Agreement;

"Services" means the services and outputs to be provided by the Service Provider under this Agreement;

"Service Level Requirements" means the levels of service to be met or exceeded in providing the Services, as set out in the Agreement;

"Service Provider Equipment" means any Equipment provided by the Service Provider to the Client for providing the Services;

"Shortfall Charge" means the fee (if applicable) provided for in Section 2 of Schedule 3;

"Stated Purpose" means the purpose specified in the Term Sheet (Schedule 1);

"Sub-Contract" means any contract between the Service Provider and any Third Party, whereby that Third Party agrees to provide the Services or any part of them on behalf of the Service Provider;

"Sub-Contractor" means a sub-contractor of the Service Provider engaged by the Service Provider under a Sub-Contract;

"Supply Date" means the date on which the Service Provider will start supplying the Services, as specified in the Term Sheet (Schedule 1);

"Term" means the period of planned duration and validity of the Agreement. This Term can at a given point in time either be the Initial Term or an Extension Term;

"Term Sheet" means Schedule 1 specifying the particulars of the Services to be provided and/or the commercial conditions under which the Services are to be provided under this Agreement;

"Termination Date" means the effective date of termination of the Agreement;

"Third Party" means any person or entity which is not a Party to the Agreement;

"Unplanned Outage" means a period of time in which a Service or component thereof is unavailable due to reasons not agreed in advance.

"Usage Charge" means the fee provided for in Section 2 of Schedule 3.

2. RIGHTS AND OBLIGATIONS OF THE SERVICE PROVIDER

2.1 General

2.1.1 Unless explicitly otherwise agreed, all Service Provider's obligations under this Agreement in respect of meeting the Service Level Requirements shall be considered as obligations of result ("*resultaatsverbintenis*" / "*obligation de résultat*").

2.2 Preparatory works

2.2.1 The Service Provider shall, at its own cost, be responsible for designing, procuring, constructing, installing, testing and commissioning of the Service Provider Equipment so as to be able to provide the Services by the Supply Date.

2.2.2 The Client will provide the Service Provider with all information reasonably required and requested by the Service Provider in view of providing the Services. In addition, the Client will have performed the preparatory works as listed in the Term Sheet by the Supply Date.

2.2.3 The Service Provider will provide the Client before the Supply Date with all information reasonably required and requested by the Client in relation to the provision of the Services.

2.3 Provision of the Services

2.3.1 The Service Provider shall provide the Services to the Client in accordance with (1) all terms and conditions set forth in this Agreement, including the Service Level Requirements; (2) good industry practice and industry standards; (3) all applicable Laws; (4) the Stated Purpose and (5) the Client Policies.

2.3.2 The Service Provider shall perform its obligations with due care and shall at all times minimise any disruption to the Services and the Client's operations when carrying out its obligations under this Agreement.

2.3.3 The Service Provider shall at its own cost provide for the provision, installation, maintenance and repair of the Service Provider Equipment in accordance with the Service Level Requirements.

2.3.4 The Service Provider shall be responsible for and pay all costs of and relating to the supply of electricity required for the operation of the Service Provider Equipment and the supply of the Services.

2.4 Measuring

2.4.1 The Service Provider will measure, track, retain measurement data, validate and report on the Client's usage of Resource Units, utilizing the agreed Measurement Tools, processes and procedures (including but not limited to clause 13). These

Commented [A2]: Explanation: The optional clause 12 can be added in case timing is of essence, as it provides for a compensation to the Client per day of delay in installation and commissioning of the Service Provider Equipment, to the extent such delay is not attributable to the Client. In such case, the Supply Date as provided in Schedule 1, Term Sheet will be delayed accordingly.

Commented [A3]: Explanation: Main preparatory works will presumably rely on the Service Provider as these concern the Service Provider Equipment which are to be installed at Client's premises. However, the Client may also be required to prepare its premises for such installation as well as its Client equipment, which will be connected or involved in the service supply.

Measurement Tools, processes and procedures may be updated from time to time, subject to the Client's prior written approval.

- 2.4.2 The Service Provider shall provide the Client with on-going reporting of actual Resource Unit usage for each month after the Supply Date.
- 2.4.3 The Service Provider shall be responsible for monitoring its performance against all of the Service Level Requirements and shall maintain adequate technical and organisational procedures and reasonable and auditable tools to enable it to do so.
- 2.4.4 The Service Provider shall maintain the Measurement Tools and ensure that the Measurement Tools shall at all times be accurate.
- 2.4.5 The accuracy of the Measurement Tools shall be verified independently upon their installation and the Service Provider will thereafter have the Measurement Tools independently tested from time to time in accordance with the standard established by the manufacturer (not exceeding two years) to ensure that they are working properly and will provide the Client with a copy of the relevant test report and calibration certificates at the Service Provider's cost.
- 2.4.6 The Client has the right to access these Measurement Tools and the data produced. The Client has the right to implement and utilize its own Measurement Tools as a means to verify the measurement usage data.
- 2.4.7 The Client may at any time by written notice to the Service Provider, but no more than twice in any given year, request that the accuracy of the Measurement Tools be tested. The Service Provider shall forthwith, upon receipt of the Client's request, arrange for the testing and calibration of the Measurement Tools. The costs of the testing of the Measurement Tools requested by the Client shall be borne by the Client unless such testing reveals that the Measurement Tools are inaccurate (or, where applicable, inaccurate beyond the stated Permitted Tolerance of Error), in which case the costs shall be borne by the Service Provider.

3. **RIGHTS AND OBLIGATIONS OF THE CLIENT**

3.1 The Client shall:

- 3.1.1 make all payments becoming due under this Agreement on or before the due date;
- 3.1.2 make use of the Service Provider Equipment as follows;
 - 3.1.2.1 The Client will use the Service Provider Equipment for the sole purpose of receiving and/or using the Services, and will use the Service Provider Equipment in an efficient manner and using all due care and attention .
 - 3.1.2.2 If the Client notices a defect in (a part of) the Service Provider Equipment, the Client will inform the Service Provider thereof within the term outlined in Schedule 2, while taking all reasonable measures to prevent any deterioration of the damage. Following the receipt of such notification, the Service Provider will carry out the necessary

Commented [A4]: Explanation: Client's obligation principally concerns the timely payment of the Fees. Use of the Service Provider Equipment is limited to what is necessary for the purpose of benefitting from the Services and will depend on the type of Service provided.

steps in accordance with Schedule 2, so as to ensure that the Service Level Requirements are met at all times.

3.1.2.3 The Client shall be responsible for all costs and expenses of repair or replacement to correct any damage to Service Provider Equipment or any part thereof (reasonable wear and tear excluded) caused by the Client, its personnel, Sub-Contractors and/or agents, as a result of its failure to comply with its obligations under this Agreement.

3.1.3 refrain from making any changes to or interfere with the Service Provider Equipment, unless with the prior written consent of the Service Provider or unless stipulated otherwise in this Agreement;

3.1.4 maintain the Client Premises in good order and condition to accommodate the provision of Services;

3.1.5 ensure at all times, if required, that the Client Premises either have the necessary power supply or can accommodate any utility infrastructure which the Service Provider has to install to facilitate supply of electricity to the Service Provider Equipment;

3.1.6 ensure that if the Client Premises are owned by it but occupied by another person, that such occupier complies with all applicable provisions of this Agreement;

3.1.7 ensure that if the Client Premises are occupied by it but owned by another person, that such owner complies with all applicable provisions of this Agreement.

Commented [A5]: Explanation: If the party making use of the Client Premises is not the Client, but e.g. a tenant of that Client, this tenant is a third party to this agreement. In such case, the Client has to make such tenant abide by the relevant provisions of this agreement.

Commented [A6]: Explanation: In the event the Client is not the owner of the Client Premises, e.g. the Client is a tenant, he will have to make the owner of the Client Premises abide with the relevant provisions of this agreement.

4. REMUNERATION

4.1 Fees

4.1.1 In consideration for the due and proper performance by the Service Provider of its obligations under the Agreement, the Client shall pay the Service Provider the Fees as set out in Schedule 3 on a monthly basis, with the first payment relating to the calendar month in which the Supply Date falls.

4.1.2 All prices and Fees will be in EUR and shall be exclusive of VAT and any other applicable taxes and duties payable by the Client under relevant Law, at the rate and in the manner from time to time prescribed by such Law and provided these are properly set out in a valid tax invoice. Unless otherwise agreed between the Parties, the Service Provider shall be responsible for all other taxes which are incurred as a result of the Agreement.

4.1.3 Unless otherwise agreed in this Agreement, rates set by the Service Provider shall be "all included". The Service Provider can be allowed to invoice travel and accommodation expenses on an open book basis, but only when pre-approved by the Client in writing, taking notably into account the Client's travel policies and charged in accordance with the principles set out in Schedule 3.

4.2 Invoicing

4.2.1 The Service Provider shall send an invoice in relation to the applicable Fees for the previous calendar month before the 15th of each month.

- 4.2.2 The Service Provider shall guarantee that each invoice or credit note specifies (1) the name of this Agreement, (2) the period to which the invoice relates, (3) the Services or other activities to which the invoice relates, (4) where applicable, the calculations used to reach the amount of the Fees that are being invoiced, separately itemises any expense or taxes said to be payable by the Client, (5) the Service Provider's VAT code, (6) the Client's VAT code, (7) the relevant purchase order number, (8) any other information reasonably required by the Client from time to time and (9) any other information required by Law.
- 4.2.3 The Service Provider shall provide the Client upon simple request promptly and in any case within seven (7) calendar days from that request with all such documentation and other information in electronic form as the Client may reasonably require with respect to each invoice or each attachment, in order to verify its accuracy and compliance with the provisions of this Agreement.

4.3 Payment

- 4.3.1 Duly submitted invoices will be due and payable by the Client within [◆] days of the date of receipt by the Client of the relevant invoice.
- 4.3.2 Payment of an invoice shall not constitute the acceptance of the Services listed in the invoice, and shall not constitute any acknowledgement by the Client as to the proper performance of the Service Provider's obligations.
- 4.3.3 The Client may withhold payment of particular Fees (or elements of the Fees) it disputes, acting reasonably, or if the Service Provider has not performed or is not providing the Services in accordance with the terms of the Agreement. If the Client withholds any payment, it shall inform the Service Provider with reasonable promptness giving reasonable details to the Service Provider as to which elements of the Fees are disputed and the reason therefore.
- 4.3.4 If any portion of an invoice is disputed by the Client, then the Service Provider shall credit the disputed amount in full to the Client and issue a new invoice in respect of the disputed amount. The invoice for the undisputed amount shall be paid by the Client in accordance with clause 4.3.1. The Parties shall use Commercially Reasonable Efforts to resolve the Dispute for the disputed amount in accordance with the Dispute Resolution Procedure set out in clause 20.
- 4.3.5 Upon resolution of the Dispute in respect of the disputed amount in accordance with the Dispute Resolution Procedure, the Client shall pay any amounts determined or agreed to be payable to the Service Provider. Pending resolution of the Dispute, the Service Provider shall continue to provide the Services in accordance with the Agreement.
- 4.3.6 The Service Provider is entitled to charge the Client interest on undisputed overdue amounts at the yearly rate of [◆] per cent ([◆]%) as from the date of the registered default letter until payment, provided that the Service Provider shall have first given the Client at least [◆] ([◆]) calendar days' prior written notice (not to be served prior to the expiry of the relevant period allowed for payment under this Agreement) of its intention to charge interest and such sum remains outstanding at the end of such [◆] ([◆]) calendar day period.
- 4.3.7 As long as any overdue amounts are outstanding, the Client will provide the Service Provider with financial and business statements on a monthly basis,

which provide insight in the Client's solvency and ability to pay the overdue amounts.

5. PREMISES AND EQUIPMENT

5.1 Access

- 5.1.1 The Client shall provide the Service Provider upon reasonable notice and during Business Hours with access to such parts of the Client Premises and Client Equipment as the Service Provider reasonably requires for the preparatory works and for providing the Services in accordance with this Agreement, including for remedying any unavailability of the Services.
- 5.1.2 The Service Provider will use the Client Premises and Client Equipment in function of the provision of the Services, in an efficient manner, using all due care and attention and in accordance with the instructions from the Client and the applicable Client Policies.
- 5.1.3 The Client will communicate any changes to the Client Policies to the Service Provider in due time. Such changes may not prejudice the supply of the Services by the Service Provider in an unreasonable manner or at an additional cost.
- 5.1.4 The Service Provider shall, at its sole discretion, be entitled from time to time to substitute and replace the Service Provider Equipment or any part thereof or item comprised therein with more advanced and improved parts or items, in order to enhance the efficiency of the Service Provider Equipment and reduce operational costs incurred by the Service Provider.

5.2 Ownership of the Service Provider Equipment

- 5.2.1 The Client acknowledges that all Service Provider Equipment made available to the Client by the Service Provider on the Client Premises for rendering the Services, is and shall remain the exclusive and sole property of the Service Provider (or the Third Party identified by the Service Provider as the owner of the Service Provider Equipment, or any other Third party to which it will assign property rights during the Term provided it informs the Client thereof in writing) during the Agreement Term. Under no circumstances shall the Service Provider Equipment become or be deemed to be a part of the Client Premises.
- 5.2.2 The Service Provider will ensure that a nameplate, label, stamp or other means of identifying the Service Provider (or the Third Party identified by the Service Provider as the owner of the Service Provider Equipment) as the owner of or being entitled to the Service Provider Equipment, is and remains affixed on the Service Provider Equipment. The fact that this Service Provider Equipment is not the property of the Client, is made 'public' by the nameplate on it, so as to ensure that the title of ownership of the Service Provider (or the Third Party identified by the Service Provider as the owner of the Service Provider Equipment) will be recognised by law and will give Service Provider (or the Third Party identified by the Service Provider as the owner of the Service Provider Equipment) full right of removal and repossession, also in a possible scenario of the Client's bankruptcy, insolvency, reorganization, moratorium and other legal regimes now or hereafter in effect which relate to or limit creditors' and secured parties' rights or remedies generally.

Commented [A7]: Explanation: This article covers Client Premises and Equipment on the one hand and Service Provider Equipment on the other hand, both being located at the Client Premises.

Commented [A8]: Explanation: Although the Service Provider Equipment is installed and located at the Client Premises, there is no transfer of title and this equipment will be returned to the Service Provider upon termination of the Agreement (unless the Client is granted a purchase option as provided in optional clause 2). In the event Service Provider Equipment is being incorporated at the Client Premises, the Service Provider may wish to reinforce its ownership rights by establishing a superficies right as provided in optional clause 14.

- 5.2.3 The Client undertakes not to remove or tamper the nameplates, labels, stamps or other means of identifying the Service Provider (or the Third Party identified by the Service Provider as the owner of the Service Provider Equipment) as the owner of or being entitled to the Service Provider Equipment.
- 5.2.4 The Service Provider Equipment may not be put into use at a location other than that stated in the Agreement, nor may the use of this Service Provider Equipment be transferred to Third Parties or let to Third Parties in any way without the prior written consent of the Service Provider.
- 5.2.5 In the event of an actual or imminent infringement of the ownership rights related to the Service Provider Equipment, following any claim of any third party on the Service Provider Equipment (or parts thereof), the Client will immediately inform such Third Party of the ownership status of the Service Provider Equipment, as well as notify the Service Provider of such actual or imminent infringement.

6. **TERM**

- 6.1 This Agreement shall enter into force on the Effective Date and continue (unless terminated in accordance with the provisions of this Agreement) for the Initial Term.
- 6.2 [◆] ([◆]) **months before** the planned expiry of the running Term, Parties will inform each other whether they wish to enter into negotiations in respect of an Extension Term or (ii) whether they are not willing to extend the Initial Term (or any running Extension Term). In case one of the Parties indicates its willingness to enter into negotiations in respect of an Extension Term, Parties will enter into good faith negotiations on the commercial terms for a subsequent Extension Term. In case the Parties fail to reach an agreement on the commercial terms for a subsequent Extension Term, or in case none of the Parties has indicated that it is willing to enter into negotiations in respect of an Extension Term, the Term will no longer be extended beyond its planned expiry date and the Agreement will terminate on its planned expiry date (except for the inherently surviving obligations, including in respect of the Service Provider's obligation to remove the Service Provider Equipment and the Client's obligation to pay the cost for such removal, including transport).

7. **SERVICE FAILURES AND REMEDIES**

- 7.1 Service failures that take the form of a full or partial unavailability of the Services or a failure to properly and timely respond to an Unplanned Outage, are the responsibility of the Service Provider, unless he can substantiate that a breach of this Agreement or negligence by the Client caused the failure or that a situation of Force Majeure existed.
- 7.2 Service failures in the sense of clause 7.1 that take the form of a (full or partial) unavailability of the Service are, except where this Agreement provides otherwise, exclusively sanctioned (to the exclusion of any other remedy) with the imposition of the corresponding Liquidated Damages Service Level Requirements to the extent the unavailability over the given availability period does not meet the minimum Service Level Requirement in relation to availability provided for under Section 2 of Schedule 2.
- 7.3 Service failures in the sense of clause 7.1 that take the form of a failure to properly and timely respond to an Unplanned Outage as provided for in Section 5 of the Schedule 2, are, except where this Agreement provides otherwise, exclusively sanctioned (to the exclusion of any other remedy) with the imposition of the corresponding Liquidated Damages Service Level Requirements.

Commented [A9]: Explanation: The agreement is concluded for an initial definite term, which can be subsequently extended for a mutually agreed Extension Term and negotiated contractual conditions. Parties can agree on a minimum period during which Client cannot terminate for convenience (to be provided in Schedule 1, term sheet). **Such minimum period can be shorter or equal to the Initial Term.** After this minimum period, Client is entitled to terminate the Agreement for convenience subject to prior written notice of a minimum amount of months (to be agreed upon by the parties), without any compensation due by the Client except for the costs of removal and transport of the Service Provider Equipment.

Commented [A10]: Explanation: Service failures consisting of Unplanned Outages or Unavailability, are solely sanctioned by liquidated damages as provided in Schedule 3, art.4 to the exclusion of any other remedies, in order to allow continuity in the supply of Services. These damages are deducted from the subsequent invoice issued by the Service Provider.

7.4 Any other type of breach of this Agreement by either Party will be governed by the principles of liability set out in clause 10.

7.5 The arrangements in respect of the Liquidated Damages Service Level Requirements imply and require that it is only the Service Provider who can take remedial action in respect of the Service Provider Equipment (repairing, replacing and/or supplementing such equipment) in order to restore the (full) availability of the Services. Neither the Client nor any representative or Third Party nominated by it is entitled to take action in respect of the Service Provider Equipment to remedy the Service failure.

This is without prejudice to the right of the Client to satisfy its business needs for the Services in an alternative manner, in the event of an Unplanned Outage where the Service Provider has not met the response times stated in Section 5 of Schedule 2, on the condition that this does not impact in any manner the Service Provider Equipment or prejudice the subsequent performance of the Services by the Service Provider and on the condition that the Client ceases to make use of this said alternative for meeting its business needs (unless expressly allowed under this Agreement) as soon as the Service Provider has restored the (full) availability of the Service.

8. SUSPENSION

The Service Provider is only entitled to suspend the performance of its obligations in the following cases:

- 1) the failure or refusal by the Client to pay any amount payable by the Client on the date such amount is due and payable under this Agreement, insofar as this amount was not disputed in due time by the Client;
- 2) any default of the Client materially affecting the efficiency and/or the safety of the Equipment;
- 3) if the Client denies or prevents Service Provider's access to the Service Provider Equipment without reasonable motive, thereby contravening the Agreement;
- 4) in the event the Client is in an Insolvency Situation.

9. TERMINATION

9.1 Termination for convenience

The Client is not entitled to terminate the Agreement fully or partly for convenience during the period indicated in the Term Sheet. However, after this period, the Client will be entitled to terminate the Agreement fully or partly for convenience by giving the Service Provider minimum [◆] ([◆]) months' prior written notice and, unless otherwise agreed in writing, without any compensation being due by the Client except for the costs of removal of the Service Provider Equipment (including transport).

Commented [A11]: Explanation: As commented in art.6, this period can be equal or shorter than the Initial Term and is to be indicated in Schedule 1, Term Sheet.

Commented [A12]: Explanation: Such prior written notice to be reasonable and proportionate to the term of the Agreement.

9.2 Termination for cause

9.2.1 Without prejudice to its other rights and remedies under this Agreement and applicable Law, the Client has the right to terminate this Agreement with

immediate effect by simple notice, without court intervention and without any compensation being due by the Client:

- 9.2.1.1 if for six (6) continuous months, or for a period of at least nine (9) months over a period of at least twelve (12) months, the Liquidated Damages Service Level Requirements amount to more than [50%] of the fees that would otherwise be due without these liquidated damages being applicable;
 - 9.2.1.2 if the Service Provider commits a material breach of the Agreement that does not take the form of a (full or partial) unavailability of the Service or of a failure to properly and timely respond to an Unplanned Outage and that is so serious that it may undermine the mutual trust and confidence of the Client in the further good execution of the Agreement; and upon written notice from the Client whereby it invokes this clause, the Service Provider does not take measurable steps to cure the breach within thirty (30) calendar days; or
 - 9.2.1.3 to the extent allowed under applicable Law, if the Service Provider is in an Insolvency Situation;
- 9.2.2 Notwithstanding any other provisions of this Agreement, the Service Provider may only terminate the Agreement without court intervention:
- 9.2.2.1 in the event of subsequent failure by the Client to pay three (3) undisputed invoices within the agreed payment term provided that the Service Provider has informed the Client through a reminder letter (not to be sent prior to the due date of the payment) of the unpaid undisputed invoices and the Parties did not reach an agreement regarding the payment of the undisputed invoices in the framework of the Dispute Resolution Procedure;
 - 9.2.2.2 in the event of a change of control over the Client - or the assignment of the Agreement, or any rights or obligations thereunder - by the Client to a third party without the Service Provider Prior consent.
 - 9.2.2.3 if the Client commits a material breach of the Agreement that is so serious that it may undermine the mutual trust and confidence of the Service Provider in the further good execution of the Agreement; and whereby, upon written notice from the Service Client whereby it invokes this clause, the Client does not take measurable steps to cure the breach within thirty (30) calendar days; or
 - 9.2.2.4 to the extent allowed under applicable Law, in the event the Client is in an Insolvency Situation.
 - 9.2.2.5 whenever the Service Provider's liability under the Agreement has exceeded the cap specified in clause 10.2 and the Service Provider refuses the Client's request to raise the cap specified in clause 10.2 with hundred percent (100%). The burden of proof with respect to reaching the aforementioned percentage, lies with the Client.

Commented [A13]: Explanation: As determined in Schedule 3, art.4.

Commented [A14]: Explanation: Art.15 provides that the Client is entitled to assign, novate or transfer its rights, obligations and liabilities under the Agreement subject to the Service Provider's prior consent, whereby the acquiring entity confirms compliance with the agreement in writing.

9.2.3 The consequence of such terminations for cause are laid down in Section 5 of Schedule 3.

Commented [A15]: Explanation: In case of termination for cause, a termination fee is to be paid by the party responsible for the termination for cause, as established in Schedule 3, art.5.

9.3 Termination for protracted Force Majeure Event

In the event of a Force Majeure Event that makes it impossible for the Service Provider to perform the Services and that exceeds an uninterrupted period of [◆] months], either Party can provide written notice of termination of the Agreement to the other Party, which will take effect within one month from the date of such notice. The only compensation due is the payment to the Service Provider of the costs for removal of the Service Provider Equipment (including its transport).

10. LIABILITY

- 10.1 Other than for those losses for which the Client cannot exclude or limit its liability in accordance with clause 10.4, and without prejudice to the Client's obligations to pay the Fees as and when they fall due for payment, the Client's total aggregate liability per Contract Year in respect of all losses incurred by the Service Provider for all occurrences and events occurred during that Contract Year and arising out of or in connection with this Agreement shall not exceed [◆] per cent ([◆]%) of the Fees Paid and/or Payable by the Client in relation to this Agreement.
- 10.2 Other than for those losses for which the Service Provider cannot exclude or limit its liability in accordance with clause 10.4, the Service Provider's total aggregate liability in respect of all other losses incurred by the Client or a Client Affiliate arising out of or in connection with the Agreement shall in one Contract Year for all occurrences and events occurred during that Contract Year not exceed [◆] per cent ([◆]%) of the Fees Paid and/or Payable by the Client in relation to this Agreement.
- 10.3 Subject to clause 10.4, neither Party shall be liable for reputation damage, loss of clients, indirect loss of revenue, indirect loss of profits and/or loss of opportunities.
- 10.4 Nothing in this Agreement shall exclude or limit:
- 10.4.1 either Party's liability for death or personal injury caused by its (or its agents' ("aangestelden") or Sub-Contractors') negligence;
 - 10.4.2 either Party's liability for fraud, wilful intent or gross negligence ("zware fout" or "grove nalatigheid");
 - 10.4.3 either Party's liability that cannot, as a matter of Law, be limited or excluded;
 - 10.4.4 the Parties' liability for all breaches under clauses 2.3.1(3) (*Compliance with Laws*), 12 (*Confidentiality*) and 13 (*Client Data*); and
 - 10.4.5 the Service Provider's liability for the indemnities set out in this Agreement.
- 10.5 Any losses suffered by any Client Affiliate in relation to this Agreement for which the Service Provider is liable pursuant to this Agreement shall be recoverable by the Client as if the loss had been suffered by the Client itself and in accordance with the provision of this Agreement. If the Client recovers losses from the Service Provider on behalf of a Client Affiliate, such Client Affiliate will no longer be entitled to recover such losses directly from the Service Provider.

11. INSURANCE

- 11.1 The Service Provider shall, at its cost and in accordance with good industry practice, during the Term and at least two (2) years (or such longer period as is required by applicable Law) thereafter, be solely responsible for and ensure a sufficient insurance cover (for a single event or series of related events in a single calendar year) taking into account the risks the Service Provider incurs or may incur under the Agreement, and on terms as favourable as those generally available to a prudent contractor in respect of usual and reasonable risks.
- 11.2 The Service Provider shall, at the Client's first request, provide the Client with a copy of the current insurance certificate for each of the insurances it has in place, together with a proof of payment of the most recent premiums relating to the insured period.
- 11.3 Service Provider's obligations under this clause 11 (*Insurance*) shall in no way limit or diminish its indemnification obligations, or liability for claims covered, under the terms of this Agreement.
- 11.4 The Client shall, at its cost and in accordance with good industry practice, during the Term and at least two (2) years (or such longer period as is required by applicable Law) thereafter, be solely responsible for and ensure a sufficient insurance cover (for a single event or series of related events in a single calendar year) for risks relating to the Client Premises, including for fire and flooding. The Client shall inform its insurer for this policy or these policies in writing of the presence of the Service Provider Equipment in the Client Premises, and update this information as necessary.

12. CONFIDENTIALITY

12.1 Duty of confidentiality

The Recipient shall keep the Confidential Information of the Disclosing Party confidential and shall in particular:

- use the Disclosing Party's Confidential Information only for the purposes of fulfilling its obligations under the Agreement;
- keep the Disclosing Party's Confidential Information secure and take no lesser security measures and degree of care to protect the Disclosing Party's Confidential Information than the Recipient applies to its own Confidential Information;
- not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the Disclosing Party's prior written consent; and
- immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying use or disclosure in any form or any of the Disclosing Party's Confidential Information.

12.2 Exceptions

The obligations of confidentiality set out in this clause 12.1 shall not apply:

- where the Disclosing Party has given its specific prior written consent to the disclosure of its Confidential Information;
- to Confidential Information which at the Effective Date is, or becomes at any time after that date, within the public domain (other than as a result of a breach of this clause 12.1);
- where the Recipient can show that the information was obtained, free from any restrictions as to its use or disclosure, from a Third Party who was free to divulge it, it being understood that the Client Affiliates or personnel, employees, directors or

officers of the Client and/or the Client Affiliates are not considered Third Parties for the purpose of this clause; or

- where the information was developed by, or for, the Recipient independently of any information received under this Agreement (or received from the Client Affiliates or their personnel, employees, directors or officers) and by persons who had no access to, or knowledge of, that Confidential Information.
- where a Party is required to disclose the other Party's Confidential Information by Law or by a court or regulatory authority of competent jurisdiction. Where a Party is so required to make such a disclosure, it shall, where practicable and/or permissible, consult with the Disclosing Party as to the terms, content or timing of the disclosure, and shall use reasonable endeavours to limit the scope of the required disclosure.

12.3 Remedies

The Parties acknowledge that damages may not be an adequate remedy for any breach of this clause 12. Each Party shall be entitled to seek any legal or equitable relief, including an injunction, upon the breach (or reasonably anticipated breach) of any part of this clause 12.

13. CLIENT DATA

- 13.1 The Service Provider acknowledges that Client Data is and remains the property of the Client and/or the Client Affiliates and that the Client and/or the Client Affiliates reserve all Intellectual Property Rights which may, at any time, subsist in Client Data.
- 13.2 At any time during and after the Term and upon the Client's request, the Service Provider shall promptly and in any event within three (3) Business Days provide the Client with a copy of all the Client Data held by the Service Provider in a readily accessible and editable format.
- 13.3 The Service Provider shall only store, copy or use the Client Data to the extent necessary to perform its obligations under this Agreement and shall keep it strictly confidential and not disclose it to any Third Party unless otherwise agreed in writing. However, in addition, the Service Provider can use Client Data obtained through the provision of the Services or necessary for the provision of the Services (including that created as a result of any derivations of the Client Data or analysis based on or learnt from the Client Data), for the purpose of monitoring its own performance and that of its equipment with a view to general improvement thereof.
- 13.4 In the event that, at any time and from time to time, through the provision of the Services, the Service Provider or any Sub-Contractor is deemed by virtue of Book XI (*Intellectual Property*) of the Code of Economic Law of 28 February 2013 or otherwise to be the first owner of any database right or other Intellectual Property Rights in or in relation to any of Client Data (including that created as a result of any derivations of the Client Data or analysis based on or learnt from the Client Data), the Service Provider shall immediately assign all Intellectual Property Rights in that Client Data to the Client, and shall do such things, and shall procure that any Sub-Contractor assigns and does all such things, as the Client may reasonably consider are necessary to give effect to this clause.
- 13.5 Unless instructed otherwise by the Client, the Service Provider shall not, unless specifically and expressly required for the purposes of complying with its obligations under this Agreement:
- disclose, use, modify, store, copy or adapt the Client Data;
 - disclose, use, modify, store, copy or adapt the Client Data outside of the European Economic Area;
 - merge or combine the Client Data with other data; or

Commented [A16]: Explanation: Client Data may include monitoring and usage data collected through the Service Provider Equipment at Client's Premises.

- remove any proprietary or copyright notices contained within or relating to the Client Data, except as may be necessary for the performance by the Service Provider of its obligations under this Agreement or as otherwise expressly authorised by the Client.

13.6 The Service Provider obligations with respect to the Processing of Client's Data are set out in Schedule 5 (*Data protection*).

14. NOTICES

14.1 Any notice given by either Party under this Agreement shall be in writing, delivered by hand, by mail, by registered letter or by email, and shall be addressed to:

Client	Service Provider
For the attention of:	For the attention of:
[name]	[name]
[company]	[company]
[address]	[address]
[e-mail]	[e-mail]

14.2 Notices delivered by hand or by email shall be given on the day of receipt (unless received after 5.00 pm in which case they shall be given on the next Business Day). Notices sent by mail or registered delivery shall be deemed to have been given two (2) Business Days after the date of posting.

14.3 Either Party may vary its address, and/or contact for notices by giving notice to the other. The notice must expressly state that the new address is the address for notices and/or the new contact is the contact to whose attention all future notices should be brought, as the case may be.

14.4 Notwithstanding clause 14.1 above, the Parties agree that any termination notice and/or formal default letter shall be sent by registered letter to the address set out in clause 14.1.

15. TRANSFER

15.1 The Service Provider shall be entitled to assign, novate or otherwise transfer to a Third Party its rights, obligations or liabilities under this Agreement provided it informs the Client thereof in writing with one month prior notice.

15.2 The Client shall be entitled to assign, novate or otherwise transfer its rights, obligations and liabilities under the Agreement to any entity which acquires the whole or a substantial part of the Client or the Client's business to which the provision of the Services relates, subject to the Service Provider's prior consent (which shall not be withheld unreasonably), yet only insofar as such entity confirms in writing that it will fully comply with this Agreement. Upon receipt of a request from the Client, the Service Provider shall promptly execute such documentation as may be reasonably required to effect such request.

15.3 A change in legal status of the Client shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Client.

16. VARIATION

No variation of this Agreement shall be valid unless it is in writing signed by or on behalf of each of the Parties to this Agreement.

17. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding between the Parties in respect of its subject matter and supersedes any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) given or made before the Effective Date by or on behalf of the Parties and relating to its subject matter notwithstanding the terms of any such previous agreement or arrangement expressed to survive termination.

18. SEVERANCE

18.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable, in any respect:

18.1.1 it shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement; and

18.1.2 the Parties will use reasonable endeavours to negotiate in good faith with a view to replacing it with a valid and enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the illegal, invalid or unenforceable provision but differing from the replaced provision as little as possible.

18.2 If any illegal, invalid or unenforceable provision would be legal, valid or enforceable if some part of it were deleted, such provision shall apply with the minimum modifications necessary to make it legal, valid or enforceable.

19. GOVERNING LAW

19.1 The Agreement, any non-contractual obligation arising out of or in connection with it, and any Dispute arising out of or in connection with it, shall be governed by, and construed in accordance with the Laws of Belgium, without application of the conflict of law provisions of private international law.

19.2 This Agreement expresses Belgian legal concepts in English terms. Even when such terms have a valid meaning in other (particularly common law) jurisdictions, it is understood that all terms shall be exclusively interpreted according to their meaning under Belgian law.

20. DISPUTE RESOLUTION

20.1 Escalation

The Parties shall first attempt to resolve a Dispute informally by either Party referring the matter in dispute to the [Client's ♦] and the [Service Provider's ♦] within five (5) Working Days of the Dispute occurring. In the event that the Parties' representatives are unable to resolve the Dispute within three (3) Working Days of reference to them, then within one (1) Working Day thereafter, the Service Provider shall refer the Dispute to [♦]. In the event that

Commented [A17]: Explanation: The purpose of this clause is to attempt an informal resolution of disputes through several escalation levels, if so required. If none of these levels proves to be successful, court proceedings can be initiated by either party.

[the Contract Management Committee] is unable to resolve the Dispute within three (3) Working Days of reference to it, then, within one (1) Working Day thereafter, the Service Provider shall refer the Dispute to [the Client's ♦ and the Service Provider's ♦].

If [the Client's ♦ and the Service Provider's ♦] are unable to resolve the Dispute within three (3) Working Days of reference to them, then either Party may refer the matter to a court as specified in clause 20.2 of the Agreement.

Both parties shall be entitled to make oral and/or written representations prior to any of the meetings taking place at each escalation level referred to above.

20.2 Any Dispute between the Parties arising out of or in connection with this Agreement, which cannot be settled by escalation, shall be submitted to the courts of [**].

SIGNED for and on behalf of the Client	SIGNED for and on behalf of the Service Provider
Signature:	Signature:
Full Name:	Full Name:
Position:	Position:
Date:	Date:

SCHEDULE 1: TERM SHEET

Where certain items are not applicable, state “N/A”.

Services [◆, as further set out in Schedule 2]

Location [◆]

Initial Term [◆]

Term during which termination for convenience by the Client is not possible [◆]

Commented [A18]: Explanation: This is the minimum period, which can be equal or shorter than the Initial Term.

Supply Date [◆]

Stated Purpose [◆]

Permitted Tolerance of Error [◆]

Contracted Supply [◆]

Contracted Supply Rate [◆]

Resource Unit [◆]

Resource Unit Price The Resource Unit Price shall comprise a component representing the electricity factor (E) and a component representing a factor for other charges (P). The Resource Unit Price at the supply date shall be [insert]: $R_o = E_o + P_o$
Where:
Eo is the electricity factor at the supply date
Po is the other charges at the supply date.

Commented [A19]: Explanation: The separation of the Resource Unit Price (RUP) into these components is meant to allow for a revision of the RUP according to changes in the electricity price. For equipment powered by other utility (e.g. Natural Gas), the same formula will apply

Minimum Capacity Use [◆]

Preparatory works to be carried out by the Client [◆]

SCHEDULE 2: SERVICE LEVEL REQUIREMENTS

1. Description of the Services to be provided by the Service Provider

[◆]

2. Availability

[◆]

3. Maintenance

[◆]

4. Planned Outages

[◆]

5. Unplanned Outages

[◆]

SCHEDULE 3: FEES

1. Introduction

This Schedule 3 (*Fees*) provides the basis for determining the Fees applicable to the Services under the Agreement. This Schedule 3 (*Fees*) describes the processes and methodologies to calculate the applicable Fees.

2. Fees to be paid by the Client

2.1. Components

For each billing period of one calendar month, the charges for the Services provided shall be calculated based on:

- 1) if applicable, a charge for making the Contracted Supply available (the “**Capacity Charge**”), commencing from the Supply Date (in the first calendar month that is invoiced, the Capacity Charge shall be calculated pro rata from the Supply Date);
- 2) a charge for the supply of Services used (the “**Usage Charge**”); and
- 3) if applicable, a charge for failing to take the Minimum Capacity Use (the “**Shortfall Charge**”).

2.2. Capacity Charge

The Capacity Charge payable by the Client, if applicable, is based on the Contracted Supply agreed to by the Client and is to be calculated as follows:

$$[\text{Contracted Supply}] \times [\text{Contracted Supply Rate}]$$

(The “Contracted Supply” and the “Contracted Supply Rate” are set out in the Term Sheet in Schedule 1)

2.3. Usage Charge

The Usage Charge payable by the Client is based on the metered consumption quantity derived from readings of the Measurement Tools, stated in Resource Units. The Usage Charge is to be calculated as follows:

$$[\text{measured Resource Units}] \times [\text{Resource Unit price}]$$

Where:

- the measured Resource Units correspond to the metered consumption quantity (expressed in Resource Units) derived from readings of the Measurement Tools during the applicable billing period; and
- the Resource Unit price is the price per Resource Unit, as stated in the Term Sheet (Schedule 1).

2.4. Shortfall Charge

In the event that the Client uses less than the Minimum Capacity Use in any billing period, if applicable, the Service Provider shall be entitled to claim and the Client shall pay to the Service

Commented [A20]: Explanation: The Capacity Charge is an optional charge. It provides a fixed component in the charges to represent consideration for the SP making the system available for the use by the client. The capacity Charge therefore provides a source of income that continues even if there is an interruption of supply not due to the SP fault. The capacity Charge provides a source of income that SP can utilise to service debt.
Note, under IFRS, the existence of a fixed charge could lead to a lease designation. This is why it is made optional.
If fixed charge used: must be a minor part of the total charge

Provider the Shortfall Charge, being an amount equal to the Usage Charge that would have been collected for the shortfall in Services below the Minimum Capacity Use.

2.5. Capacity Excess Charge

If at the end of each year of the Agreement Term, the Client's actual demand for and use of the Services has exceeded the Contracted Supply, a charge relating to the excess demand, (the "Capacity Excess Charge"), shall be payable by the Client in the next billing period. The Capacity Excess Charge is to be calculated as follows:

$$[actual\ demand\ and\ usage\ for\ the\ year\ minus\ Contracted\ Supply\ for\ the\ year] \times [Contracted\ Supply\ Rate] \times [2]$$

3. Electricity costs to be paid by the Service Provider

If the Service Provider receives electricity supply for the Service Provider Equipment and the supply of Services directly from the utility supplier, the Service Provider shall pay for such supply directly to the utility supplier.

OR

If the Service Provider receives electricity supply from the Client, then the Service Provider shall, on a monthly basis, be liable to pay to the Client an amount to cover the electricity consumed by the Service Provider Equipment based on a prorated amount of the bill received by the Client for the supply of electricity to the Client Premises, determined by the consumption shown from the reading of the relevant Measurement Tool and the electricity unit price [◆] applicable to the Client by the utility supplier for the electricity at the Supply Date. The Service Provider will deduct the relevant amounts from the immediately next invoice to be issued by the Service Provider.

Any subsequent change in the electricity unit price, resulting in higher tariffs for electricity supply shall be solely borne by the Client.

4. Liquidated damages to be paid by the Service Provider

In the event the Service Level Requirement in relation to availability is not met over the given calendar month (for the month in which the Supply Date falls, calculated on a pro rata basis) (Schedule 2, point 2), the Service Provider will be due compensation equal to (([◆] EUR) OR ([◆] % of the monthly/annual fee for the Service) per [◆] % below the agreed availability percentage.

For each event in which the Service Level Requirement in relation to response times in relation to Unplanned Outages is not met (Schedule 2, point 5), the Service Provider will be due compensation equal to (([◆] EUR) OR ([◆] % of the monthly/annual fee for the Service) for each new period of [3 hours] in which it fails to properly respond to the Unplanned Outage (i.e. a response meeting the requirements as provided for in Section 5 of Schedule 2). Where the actual response time exceeds the maximum response time stated in the Service Level Requirements by a period of [24 hours], each newly started period of [3 hours] after that threshold in which the Service Provider fails to properly respond to the Unplanned Outage will give rise to a compensation for the Client to (([◆] EUR) OR ([◆] % of the monthly/annual fee for the Service)

Both types of compensation are referred to as "Liquidated Damages Service Level Requirements".

Commented [A21]: Explanation: The electricity costs for supplying the Services and the Service Provider Equipment is borne by the Service Provider as stated in art. 2.3.4. of the Agreement. This clause provides 2 options, parties have to retain one option in accordance with their specific situation: (1) Service Provider can either pay these electricity costs directly to the utility supplier, in which case a periodic price revision of this electricity price is recommended OR (2) The electricity cost is paid by the Client to the utility supplier, in which case the prorated amount of such cost for the supply of the Services and Service Provider Equipment will be charged to the Service Provider by deducting such amount from the monthly invoices of the Fees by Service Provider to Client. In such case, electricity price fluctuations are borne by the Client.

For equipment powered by other utility (e.g. Natural Gas), the same requirement will apply.

Commented [A22]: Explanation: These Liquidated damages apply in case of unplanned Outages or Unavailability, as provided in art.7 of the Agreement, to the exclusion of any other remedies.

The compensation will be deducted from the next invoice. If there will not be a next invoice (e.g. due to termination of the Agreement), the Service Provider will issue a credit note and will reimburse the compensation.

5. Termination fees to be paid by the Client or the Service Provider

5.1. Termination fee in case of termination for cause by the Service Provider

The termination fee payable by the Client shall be an amount equal to [◆] percent of the sum of the average of the Usage Charges charged for the six months immediately preceding the termination, multiplied by the number of years remaining in the Agreement Term, to be supplemented with the cost for removal of the Service Provider Equipment (including its transport) by the Service Provider and with a minimum of [◆] EUR.

5.2. Termination fee in case of termination for cause by the Client

The termination fee payable by the Service Provider shall be an amount equal to [◆] percent of the sum of the average of the Usage Charges charged for the six months immediately preceding the termination, multiplied by the number of years remaining in the Agreement Term, to be decreased by the cost for removal of the Service Provider Equipment (including its transport) by the Service Provider.

6. Adjustment to the Resource Unit Price and Contracted Supply Rate

The Service Provider may make adjustments to the Resource Unit Price and Contracted Supply Rate only in accordance with the provisions of this Schedule and shall give the Client notice of any adjustment to the prevailing Resource Unit Price on the invoice immediately preceding such adjustment.

6.1. Resource Unit Price

The Resource unit price will be subject to periodic adjustment based on changes in the values of the two components, as follows:

- (a) The electricity factor adjustment

If the Service Provider pays for the supply of electricity for the Service Provider Equipment and the supply of Services directly to the utility supplier, for Services delivered in Belgium, a quarterly indexation of the electricity factor will be applied, based on the forward price of the electricity as published by the ICE Index Belgian Power Base Load Futures based on the formula below.

$$E = E_o (0,2 + 0,8 * (I/I_o))$$

The first indexation can only take place in [◆Month] [◆Year]

E = new electricity factor

E_o = electricity factor at the Supply Date

I = ICE Index Belgian Power Base Load Futures of the last month of preceding quarter

I_o = ICE Index Belgian Power Base Load Futures at the Supply Date

Commented [A23]: Explanation: These Fees only apply in the event of termination for cause by either party, as provided in art.9.2 of the Agreement.

Commented [A24]: Explanation: For Equipment powered by other utility, Indexation can be found here [Prix de l'énergie \(agoria.be\)](http://Prix.de.lenergie.agoria.be)

(b) The other charges adjustment

For Services delivered in Belgium, at the start of every calendar year an indexation of the other charges will be applied, based on the national reference salary costs published by Agoria Belgium, based on the formula below.

$$P = P_o (0,2 + 0,8 * (X/X_0))$$

The first indexation can only take place in [◆Month] [◆Year]

$$P = P_o (0,2 + 0,8 * (X/X_0))$$

P = new other charges rate

P_o = other charges rate at the supply date

X₁ = Agoria reference index of the month December before the revision

X₀ = Agoria reference index December [◆Year]

The same principles and formula apply to the indexation of the other charges for Services delivered outside of Belgium subject to the following adjustments: the indexation will take place on the basis of the local Consumer Price Index in the jurisdiction to which the Services are delivered.

6.2. Adjustment to Contracted Supply Rate

For Services delivered in Belgium, at the start of every calendar year an indexation of the Contracted Supply Rate will be applied, based on the national reference salary costs published by Agoria Belgium, based on the formula below.

$$C = C_o (0,2 + 0,8 * (X/X_0))$$

The first indexation can only take place in [◆Month] [◆Year]

$$C = C_o (0,2 + 0,8 * (X/X_0))$$

C = New Contracted Supply Rate

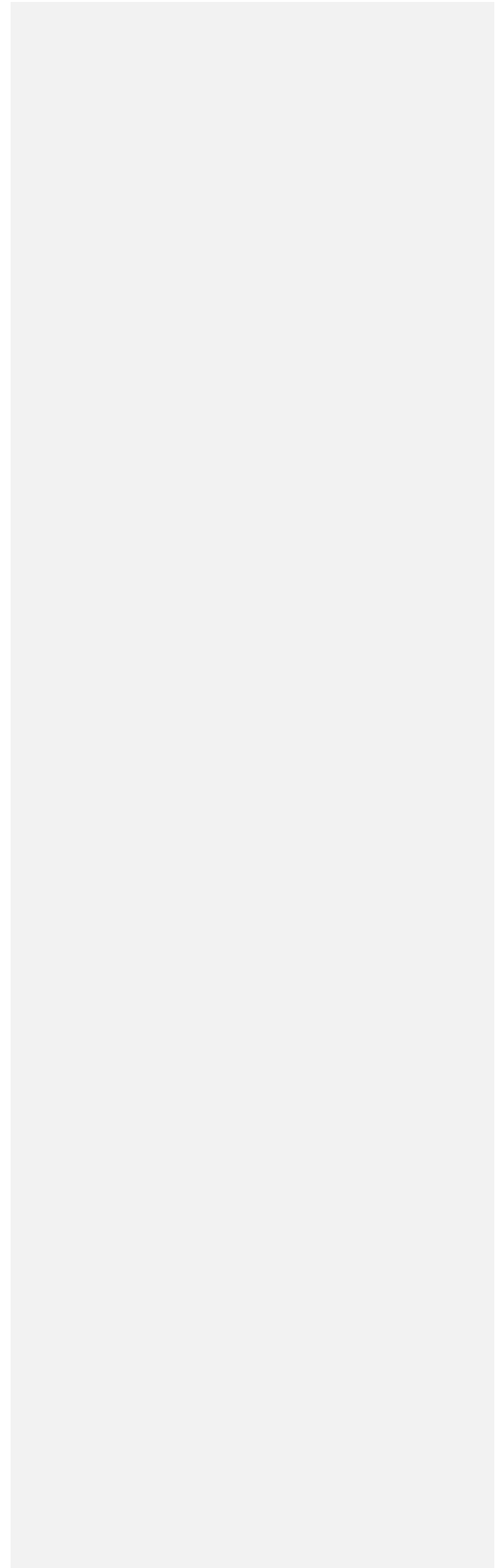
C_o = Contracted Supply Rate at the supply date

X₁ = Agoria reference index of the month December before the revision

X₀ = Agoria reference index December [◆Year]

The same principles and formula apply to the indexation of Contracted Supply Rate for Services delivered outside of Belgium subject to the following adjustments: the indexation will take place on the basis of the local Consumer Price Index in the jurisdiction to which the Services are delivered.

SCHEDULE 4: CLIENT POLICIES



SCHEDULE 5: DATA PROTECTION

