

This contract was prepared as part of the Cooling as a Service Initiative (www.caas-initiative.org), led by the Basel Agency for Sustainable Energy (www.energy-base.org) and the Kigali Cooling Efficiency Program (www.k-cep.org).

Dated

20[]

[INSERT NAME OF PARTY]

as **Service Provider**

[INSERT NAME OF PARTY]

as **Client**

COOLING AS A SERVICE AGREEMENT

Term Sheet

| | |
|--------------------------------------|--|
| Contract Reference Number | [contract reference number, PO, or other identifying number, if required] |
| Service Provider | [full company name, registered number (or equivalent, if available) and registered address] |
| Client | [full company name, registered number (or equivalent, if available) and registered address] |
| Premises | [address(es) at which the Cooling Service will be provided] |
| Licensed Area | |
| Agreed Supply Date | [DATE] |
| Expiration Date | [DATE] |
| Cooling Services | The provision by the Service Provider of a continuous supply of <i>chilled water from a chiller system / refrigerant liquid and/or gas from a variable refrigerant flow (VRF) system</i> [select system] owned by the Service Provider to the Delivery Point, to satisfy the Client's requirements for air-conditioning, as further set out at Schedule 1 (Cooling Services) |
| Stated Purpose | [describe the purpose for which the Cooling Services are to be provided, to assist with IFRS 16 compliance] |
| Load Head | [Note: this is the pressure drop that a chiller system or a compressor would have to pump against. Determined by factors such as: the purpose for which the building will be used; the number of persons likely to occupy the building; the type of activities they are likely to be doing; and the equipment, such as computers, to be utilised in the building] |
| Equipment | The equipment comprised in the <i>chiller system / variable refrigerant flow (VRF) system</i> [select system] owned/controlled and operated by the Service Provider to provide the Cooling Services, as further set out at Schedule 2 (Equipment) |
| Contracted Supply | [♦] tonnes of refrigeration per year, which it is agreed will be supplied by the Service Provider and utilised by the Client |
| Minimum Capacity Use (if applicable) | [♦] percent (%) of one-twelfth of the Contracted Supply |
| Supply Temperature Range | [♦] to [♦] degrees [Fahrenheit / Celsius] at the Delivery Point |
| Normal Usage Hours | [♦] a.m. to [♦] p.m. ([specify which days of the week and whether bank holidays are included or not]) |
| Permitted Tolerance of Error | ± [♦]% |

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| | |
|--|---|
| Initial Unit TR Rate | [\$[♦]] per tonnes of refrigeration |
| Default Interest Rate | [♦]% per annum |
| Methods of writing | [set out what methods would constitute as "being in writing" – this may include email, fax, SMS, etc. Consider setting out specific addresses and numbers as formal notification points.] |
| Currency of this Agreement | |
| Security Deposit | |
| Liquidated Damages payable by the Client | |
| Liquidated Damages payable by the Service Provider | |
| Governing Law | |

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COOLING AS A SERVICE AGREEMENT

This Cooling as a Service Agreement (this **Agreement**) is made on _____, 20__ (the **Effective Date**) between the Service Provider and the Client, both named in the Term Sheet and each a **Party** and together the **Parties**.

WHEREAS the Service Provider is a provider of Cooling Services utilising technologies involving energy-efficient air conditioning and/or refrigeration systems and associated services

AND WHEREAS the Client desires to have the Service Provider provide the Cooling Service at the Client's premises, more fully described in Item 1 of Schedule 2

AND WHEREAS the Service Provider and the Client agree that the Service Provider will provide and the Client will accept the Cooling Service on the terms and conditions set out in this Agreement

It is hereby agreed as follows:

1 Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

1 **Agreed Supply Date** means the date the Client requires the Contracted Supply and the Service Provider has agreed to make such Contracted Supply available to the Client, which shall be the date specified in the Term Sheet

2 **Applicable Law** means

- (a) any statute, regulation, by law, ordinance or subordinate legislation which is in force for the time being to which a Party is subject
- (b) the common law as applicable to the Parties (or any one of them)
- (c) any binding court order, judgment or decree applicable to the Parties (or any one of them) and
- (d) any applicable industry code, policy, guidance, standard or accreditation terms (i) enforceable by law which is in force for the time being, and/or (ii) stipulated by any regulatory authority to which any member of the group of either Party is subject

in each case, for the time being

3 **Average Meter Readings** means either

- (a) the average of the Meter readings from the invoices for three consecutive months immediately preceding the occurrence of the event resulting in the use of this measurement or
- (b) in the case of an inaccurate Meter, the three consecutive months immediately preceding the last known accurate reading

- 4 **C** means units of temperature measurement in degrees Celsius
- 5 **Capacity Excess Charge** for any calendar month, means the amount payable by the Client in relation to excess demand for Cooling Service pursuant to Clause 10.1 and Schedule 3 with respect to that month
- 6 **Change in Law** means any law, statute, proclamation, regulation, subsidiary legislation, order or legal interpretation which amends or modifies the Governing Law referred to in the Term Sheet
- 7 **Client's Facilities** means all installations, fittings and fixtures from the Delivery Point to the space to be cooled which facilitate the transmission of the Cooling Service, including but not limited to, pipes, gauges, supports, valves, fittings, sensors, controls, fan coils, evaporator units, heat exchangers, air handling units, monitoring and control devices and other associated apparatus owned and/or controlled by the Client which are incorporated into and form a part of the relevant building(s) on the Premises to which the Cooling Service is being supplied
- 8 **Contracted Supply** means the supply capacity set out in the Term Sheet that the Client has requested, the Service Provider has agreed to provide and the Client has agreed to take for each year of the Term
- 9 **Cooling Capacity Charge** if applicable, for any calendar month, means the amount payable by the Client in relation to the availability of the Contracted Supply pursuant to Item 1A of Schedule 3, with respect to that month
- 10 **Cooling Service** means the provision by the Service Provider of chilled water from a chiller system or refrigerant liquid and/or gas from a variable refrigerant flow (VRF) system (as set out in the Term Sheet and Schedule 1 (Cooling Services) and any ancillary supporting services
- 11 **CPI** means the Consumer Price Index compiled and published each month by the designated body in the country in which the Cooling Service is to be provided
- 12 **Default Interest Rate** means the rate as set out in the Term Sheet which is 4 percent (4%) above the highest base rate among the commercial or retail banks in the country in which the Cooling Service is to be performed or such other rate agreed by the Parties
- 13 **Delivery Point** means the point at which Cooling Service is delivered to the Client's Facilities, which shall be: (a) at the outlet of a single chiller; or (b) at the common outlet point of a multi-chiller system (in the case of a multi-chiller system); or (c) at the outlets of the outdoor units (in the case of a VRF system)
- 14 **Dispute Resolution Process** means the process and procedures set out in Clause 22 relating to the resolution of disputes between the Parties.
- 15 **Effective Supply Date** means the date on which the Supply is first provided to the Premises, which shall be confirmed in writing from the Service Provider to the Client
- 16 **Equipment** means any equipment as set out in the Term Sheet and Schedule 2 (Equipment) owned or controlled and operated by the Service Provider and incorporated in an environmentally friendly and energy efficient cooling system designed to achieve objectives consistent with the Kigali Amendment to the Montreal Protocol and used to supply the Client with Cooling Service, including but not limited to any and all network equipment, air conditioners, chillers, cooling towers, pumps, meters, sensors, controls, compressors, condensers, fan coils,

evaporator units, heat exchangers, pipes, gauges, supports, valves, fittings, monitoring and control devices and other associated apparatus

17 **Expiration Date** means the date stated in the Term Sheet

18 **Force Majeure Event** means in relation to the Party affected, any circumstances beyond its reasonable control which directly prevent its performance of its obligations and includes without prejudice to the generality of the foregoing any of the following

- (a) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions
- (b) terrorist attack, civil war, civil commotion or riots
- (c) epidemic or pandemic
- (d) any law or government order, rule, regulation or direction, or any action taken by a government or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary licence or consent
- (e) (to the extent beyond the reasonable control of the Party affected) any labour dispute, including but not limited to general strikes, industrial action or lockouts (**Labour Disputes**) (other than in each case any such Labour Disputes involving employees of the Affected Party, or employees of any of the Affiliates of the Affected Party) or employees of any contractor of the Affected Party)
- (f) unavailability of or disruption in the supply of electricity and water from a supplier licensed to provide such services to the public
- (g) floods or other usually severe weather conditions, earthquake, hurricane, drought, other natural disasters, explosions or fire
- (h) Change in Law

19 **Governing Law** means the laws of the jurisdiction stated in the Term Sheet

20 **Kigali Amendment to the Montreal Protocol** means an amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer designed to increase the energy efficiency of cooling and requiring the phasing down of the production and consumption of hydrofluorocarbons (HFCs) and their replacement with more environmentally friendly alternatives

21 **Licensed Area** means the part or parts of the Premises required by the Service Provider and agreed by the Client, on which to install the Equipment, as more fully described in the Term Sheet

22 **Liquidated Damages** means the sums set out in the Term Sheet, which may become payable by the Client or by the Service Provider, as the case may be, calculated in accordance with Item 4 of Schedule 3 and which the Parties agree have been calculated as, and are, a genuine pre-estimate of the loss likely to be suffered

23 **Load Head** means the pressure drop that a chiller system or a compressor would have to pump against, as set out in the Term Sheet, determined by factors such as, without limitation, the purpose for which the building will be used, the number of persons likely to occupy the building, the

type of activities they are likely to be doing and the equipment, such as computers, to be utilised in the building

24 **Meter** means any or all of the metering devices utilised to measure and record the quantity of Cooling Service supplied to the Client pursuant to this Agreement

25 **Minimum Capacity Use** means the minimum amount of the Contracted Supply which the Client is required to use in each month of the Supply Term, which amount is stated in the Term Sheet

26 **Normal Operating Conditions** at any time means that the Client's demand for Cooling Service is within the Contracted Supply and within the Normal Usage Hours and there are no conditions prevailing, which has the effect of increasing the Load Head.

27 **Normal Usage Hours** means the period for each day that the Parties have agreed that Supply is to be made available by the Service Provider, as set out in the Term Sheet

28 **Permitted Tolerance of Error** means the rate of tolerance set out in the Term Sheet of the nominal flow for providing the Cooling Service of chilled water from a chiller system or refrigerant liquid and/or gas from a variable refrigerant flow (VRF) system, as applicable

29 **Planned Outage** shall have the meaning ascribed in Schedule 1

30 **Premises** means those premises set out in the Term Sheet

31 **Rate Schedule** means the relevant schedule setting out the tier of electricity service in which the Premises fall and the rate charged for supply of electricity to the Premises as set out in Item 6 of Schedule 3

32 **Renewal Period** means the period stated in the Term Sheet

33 **Stated Purpose** means the purpose set out in the Term Sheet

34 **Security Deposit** means the figure set out in the Term Sheet

35 **Supply** means the provision of Cooling Service at the Delivery Point at the Premises at the Contracted Supply and at the Supply Temperature under Normal Operating Conditions

36 **Supply Temperature** means the temperature of the Supply at the Delivery Point, which shall be within the Supply Temperature Range

37 **Supply Temperature Range** means the range set out in the Term Sheet

38 **Supply Term** means the period commencing on the Effective Supply Date and ending on the Expiration Date, unless this Agreement is terminated sooner in accordance with its terms

39 **Term Sheet** means the table of contract data at the front of this Agreement and which is incorporated in and forms a part of this Agreement

40 **Usage Charge** for any calendar month, means the amount payable by the Client pursuant to Clause 10.1 and Schedule 3 with respect to that month

(a) Unless the context requires otherwise, words importing a singular number shall include the plural number and vice versa

- (b) Clause headings and the titles of paragraphs and sections of this Agreement are inserted for convenience of reference only and shall have no effect on the interpretation or operation hereof
- (c) The Term Sheet and the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Term Sheet and the Schedules
- (d) References to "person" shall include any natural person, corporation, judicial entity, association, statutory body, partnership, limited liability company, joint venture, trust, estate, unincorporated organisation or government, state or any political subdivision, instrumentality, agency or authority, and shall be construed as a reference to such person's successors or permitted assigns.
- (e) Unless the context requires otherwise, a reference to one gender shall include a reference to the other genders.
- (f) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- (g) A reference to writing or written includes the methods specified in the Term Sheet.
- (h) Any words following the terms: including, include, in particular, for example or any other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms.

2 **Order of Precedence**

2.1 If and to the extent of any inconsistency or conflict between any of the clauses (including the recitals), the Term Sheet, the Schedules and any document otherwise attached or incorporated into this Agreement, the order of priority for the purposes of construction, is in descending order:

- (a) Schedule 4 ([Local Law Requirements]);
- (b) the Term Sheet
- (c) the Terms and Conditions (including the recitals);
- (d) the Schedules;
- (e) any appendices to the Schedules.

3 **Term and Renewal**

- (a) The term of the Agreement will commence on the signing of this Agreement and end on the Expiration Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.
- (b) This Agreement may be renewed for a period not exceeding the Renewal Period, subject to the agreement of both parties to do so and on terms to be agreed by the parties.

4 Pre-commencement

- (a) Notwithstanding anything to the contrary in this Agreement (including Schedule 1 (Cooling Services)), the Service Provider shall, at its own cost, be responsible for auditing, planning, designing, procuring, constructing, installing, testing, commissioning, operating, servicing and maintaining the Equipment.
- (b) The Service Provider shall ensure that the Equipment is commissioned and fully operational to provide the Supply by the Agreed Supply Date.
- (c) The Parties agree that the Cooling Service is to be provided for the Stated Purpose.

5 Service Provider's Obligations

5.1 Provision of Cooling Service

- (a) The Service Provider will provide the Cooling Service to the Premises in accordance with this Agreement and comply with all Applicable Laws.
- (b) In supplying the Cooling Service, the Service Provider will perform the Cooling Service with reasonable care and skill and use reasonable endeavours to perform the Cooling Service in accordance with Schedule 1 (Cooling Services).

5.2 Service Provider's Other Responsibilities

- (a) The Service Provider shall at its own cost provide and install the Equipment and service, maintain and repair the Equipment in accordance with Schedule 1 (Cooling Services).
- (b) The Service Provider shall be responsible for and pay all costs of and relating to the supply of electricity and water required for the operation of the Equipment and the supply of Cooling Service.
- (c) The Service Provider shall at all times maintain ownership of the Equipment or an interest in and control of the Equipment which allows it to utilise the Equipment as contemplated herein and under no circumstances shall the Equipment become or be deemed to be a part of the Premises.
- (d) The Service Provider shall be entitled to attach to each part of the Equipment appropriate plates, labels, stamps or other means of identifying the Service Provider as the owner of or being entitled to the Equipment.
- (e) The Service Provider shall, at its sole discretion, be entitled from time to time to substitute and replace the Equipment or any part thereof or item comprised therein with more advanced and improved parts or items, which will enhance the efficiency of the Equipment and reduce operational costs incurred by the Service Provider.
- (f) The Service Provider shall install a main Meter and a "back-up" Meter at the Delivery Point, to measure the quantity of Cooling Service supplied to the Client. The main Meter shall be the primary Meter used for this purpose and the "back-up" Meter used in the event of a malfunction of or inaccurate reading from the main Meter.
- (g) The Service Provider shall maintain the Meters and ensure that the Meters shall at all times be accurate subject only to the Permitted Tolerance of Error.

- (h) The accuracy of the Meters shall be verified upon their installation and the Service Provider will thereafter have the Meters independently tested from time to time in accordance with the standard established by the manufacturer (but in no event 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.
- (i) If any Meter shall for any reason become faulty or inaccurate beyond the Permitted Tolerance of Error, the Service Provider shall as soon as reasonably possible procure the service, repair, re-calibration and/or replacement of such Meter as may be appropriate.
- (j) 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 one or both of the Meters be tested. The Service Provider shall forthwith, upon receipt of the Client's request, arrange for the testing and calibration of the Meter. The costs of the testing of the Meter requested by the Client shall be borne by the Client unless such testing reveals that the Meter is inaccurate beyond the Permitted Tolerance of Error, in which case the costs shall be borne by the Service Provider.
- (k) The Service Provider shall provide the Client with any necessary instructions and directives relating to the Client's access to and utilisation of the Cooling Services, subject to supervisory monitoring and control provided by the Service Provider, which may be done remotely.
- (l) Nothing herein shall prevent or otherwise impede the Client and the Service Provider from entering into separate agreements for:
 - (i) the Service Provider to design and upgrade and/or finance (in the case of an existing building) or to design and install and/or finance (in the case of a new building) the Client's Facilities on the Premises and/or to service, maintain and repair the Client's Facilities on terms and conditions to be agreed by the Parties; or
 - (ii) the Service Provider to lease the Client's Facilities from the Client, on terms and conditions to be agreed by them.

2 Access to the Premises

- 2.1 In consideration of the covenants on the part of the Service Provider herein contained the Client shall grant to the Service Provider an irrevocable licence, commencing as of the date of this Agreement and terminating when this Agreement ends or is terminated, to use the Licensed Area for the purposes of installing the Equipment and to perform its obligations and exercise its rights pursuant to this Agreement.
- 2.2 The Service Provider shall be entitled to unrestricted access to the Licensed Area and shall further advise the Client what additional access to the Premises is appropriate and satisfactory for the Service Provider to:
 - (a) install and connect the Equipment to the Client's Facilities on the Premises;
 - (b) install, read, test, service or replace the Meter;
 - (c) provide, restore or protect the supply of Cooling Service to the Premises;

- (d) monitor the performance of the Equipment;
- (e) protect or prevent danger or damage to the Equipment;
- (f) upgrade, repair, service, maintain, test or protect the Equipment;
- (g) repair, service and maintain the Client's Facilities if there is an agreement with the Client pursuant to Clause 5(n);
- (h) suspend and/or disconnect the supply of Cooling Service, as permitted hereunder; or
- (i) anything reasonably required to perform its obligations and exercise its rights pursuant to this Agreement.

3 **General Obligations of the Client**

3.1 The Client shall:

- (a) comply with all provisions of this Agreement at all times;
- (b) where required to allow the Cooling Service to be provided, arrange for a competent person to upgrade, or design and construct and/or install the Client's Facilities;
 - (i) at the Client's cost; and
 - (ii) in accordance with technical guidance and requirements reasonably requested by the Service Provider;
- (c) maintain, or arrange for a competent person to maintain, the Client's Facilities in good order and repair for the duration of this Agreement;
- (d) access and use the Cooling Service strictly in accordance with such instructions and directives which are provided by the Service Provider;
- (e) make all payments becoming due hereunder on or before the due date;
- (f) promptly inform the Service Provider if it has not received an invoice from the Service Provider for over a month or if the Client believes that there is an error on the invoice;
- (g) promptly inform the Service Provider of any changes to the Client's account information or contact details;
- (h) ensure at all times, if required, that the Premises either has the necessary power and water supply or can accommodate any utility infrastructure which the Service Provider has to install to facilitate supply of electricity and water to the Equipment;
- (i) comply with all Applicable Laws;
- (j) inform the Service Provider in advance if the Client vacates the Premises to allow a reasonable period for the Service Provider to remove its Equipment;
- (k) ensure that if the Premises are owned by it but occupied by another person, that such occupier complies with all applicable provisions of this Agreement, including without limitation, this Clause 7;

- (l) promptly provide the Service Provider with any information relating to the Client, the Premises, the Client's Facilities, the Equipment or the Supply which the Service Provider may reasonably request.

3.2 The Client shall not:

- (a) tamper with the Equipment save for the prevention of harm to person or property, in which event the Service Provider must be promptly notified;
- (b) use, or allow any person to use, the Cooling Service in any way other than in accordance with this Agreement;
- (c) interfere, or allow any person to interfere, with the supply of Cooling Service to the Client or to any other person, including disconnecting supply to another person or re-connecting supply which has been disconnected by the Service Provider;
- (d) use the Equipment for any purpose other than as stated herein;
- (e) take, permit or allow any action which affects the Normal Operating Conditions, without the prior written consent of the Service Provider;
- (f) assign or transfer its rights and interests in this Agreement to another person other than in accordance with Clause 19 of this Agreement;
- (g) separately charge a tenant or occupier of the Premises or any part thereof for the use of any Cooling Service if the Premises is owned by the Client, without the prior written consent of the Service Provider, which shall not be unreasonably withheld or delayed;
- (h) supply the Cooling Service received from the Service Provider to any building or premises other than the Premises;
- (i) use or install any other system to provide Cooling Services to the Premises without the Service Provider's written consent;
- (j) take any action which it knows may render any policy of insurance placed by the Service Provider on the Equipment void or voidable or whereby the rate of premium thereon may be increased; or
- (k) allow modifications of or additions to the Client's Facilities which materially increase or are likely to materially increase the Load Head or in any other way adversely affect the load on and efficiency of the Equipment.

4 **Supply Requirements**

The Service Provider undertakes to regulate the temperature of the Supply so that the Client will receive the Cooling Service from the chiller or VRF system at the Delivery Point at the Supply Temperature under Normal Operating Conditions.

5 **Supply Capacity**

- 5.1 The Contracted Supply shall be fixed for the duration of the Supply Term. In the event that the Client's requirements for Cooling Service at the Premises exceed the Contracted Supply, the Client may by notice in writing to the Service Provider request that the Contracted Supply be increased to the amount stated in such notice and the Service Provider shall use its best efforts to

accommodate the Client's request provided that the increase in the Contracted Supply is subject to there being available capacity in the Equipment.

- 5.2 If an increase in Contracted Supply necessitates upgrading of or additions to the Equipment, the Service Provider may decline to increase the Contracted Supply. Alternatively, the Service Provider may charge the Client for the cost of any upgrade or addition, or adjust the Cooling Capacity Charge to take these costs into account.

6 Charges, Invoicing and Payment

- 6.1 In consideration of the supply and performance of the Cooling Services, the Client shall pay the Service Provider the charges as set out in and/or as calculated in accordance with Schedule 3 (Charges Schedule), which shall be invoiced at the times and in the manner specified in Schedule 3 (Charges Schedule).
- 6.2 Unless otherwise expressly agreed between the Parties, the charges and such other amounts expressed to be payable by the Client under this Agreement shall constitute the Client's entire payment liability for the Cooling Services under this Agreement.
- 6.3 The charges shall be invoiced and paid in the currency stated in the Term Sheet. The Service Provider shall submit an invoice on the first working day of each month in respect of the Cooling Services performed during the immediately preceding month, which invoice shall be payable by the Client within 14 days of the date of receipt of the relevant invoice by the Client.
- 6.4 If the Client receives an invoice from the Service Provider which it disputes in good faith, the Client shall notify the Service Provider in writing of such dispute as soon as reasonably practicable and the Client may withhold payment of such sums as are in dispute pending resolution of such dispute through the Dispute Resolution Process.
- 6.5 Each party shall be entitled to receive interest on any payment not made when properly due pursuant to the terms of this Agreement, calculated from day to day at a rate per annum equal to the Default Interest Rate, and payable from the day after the date on which payment was due up to and including the date of payment.
- 6.6 All charges and payments to be made under this Agreement are stated exclusive of any applicable VAT or its equivalent in the relevant jurisdiction applicable to an invoice, which shall be paid by the paying party at the rate and in the manner prescribed by law from time to time.
- 6.7 Payment for the Cooling Services shall not be deemed to be acceptance by the Client that all or any of the Cooling Services have been performed in accordance with this Agreement.

7 Security Deposit

- 7.1 The Client shall pay the Security Deposit, in the sum set out in the Term Sheet, prior to the Effective Supply Date.
- 7.2 The amount of the Security Deposit may be increased by the Service Provider in accordance with Clause 14.2.
- 7.3 The Service Provider may use the Security Deposit to recover any amount owing or outstanding from the Client at any time.
- 7.4 The Service Provider shall repay the Security Deposit, or the balance remaining, to the Client either;

- (a) at the end of the Term; or
- (b) upon transfer or assignment in accordance with Clause 19.

7.5 The Service Provider may elect to repay the remaining balance of the Security Deposit either by crediting it to the Client's final invoice, or by way of refund, within thirty (30) days of the payment of the Client's final invoice.

7.6 For the avoidance of doubt, no interest shall accrue on the Security Deposit and no interest shall be payable to the Client in relation to the Security Deposit.

8 Taxes and Tax Concessions

8.1 In the event that any payment to be made in respect of any invoice is subject by law to any withholding tax, the payer will make payment to the payee of the amount owing, less a deduction for such withholding tax and will account to the relevant tax authority for the withholding tax. Provided always that the payer has possession, as furnished by the payee, of declaration(s) of tax residence on the prescribed forms and certification (or equivalent) of the relevant taxation authorities which are current and accurate in order to confirm the applicability and availability of any reduced rate of withholding tax under the provisions of the relevant double taxation convention and/or treaty, the amount of withholding tax deducted will be calculated by the payer in accordance with any appropriate double taxation convention and/or treaty between the states in which the payer and the payee respectively reside. The payee will furnish declaration(s) of tax residence on the prescribed forms and obtain certification (or equivalent) of the taxation authorities in order that the payer may confirm the applicability and availability of any reduced rate of withholding tax under the provisions of the relevant double taxation convention and/or treaty as envisaged above. Payment of such net sum to the payee and to the relevant tax authority of the said withholding tax will, for the purposes of this Agreement, constitute full settlement of the sums owing under the relevant invoice.

8.2 Without prejudice to payment in accordance with clause 12.1 constituting full settlement of the sums owing under the relevant invoice, the payer will use reasonable endeavours to obtain and provide to the payee evidence from the relevant local tax authority of the payment of the said withholding tax (including, where available, tax deduction certificates or the equivalent thereof). Where the payer is not able to obtain such evidence (having used reasonable endeavours), the payer will provide written confirmation itself to the payee of the payment of said withholding tax.

8.3 Prior to planning, designing and acquiring the Equipment, the Service Provider shall ascertain from the Client what concessions, waivers and exemptions it may be entitled to and the Service Provider shall make reasonable endeavours to plan and design the Equipment in a manner that will allow the application of any such concessions, waivers and exemptions as well as include in the Equipment, items that will attract similar concessions, waivers and exemptions, but without adversely affecting the efficiency and affordability of the Equipment.

9 Insurance

9.1 The Service Provider shall be responsible for placing adequate insurance coverage on the Equipment based on its replacement value.

9.2 In the event that the Equipment or any part thereof is damaged or destroyed and the insurance money under the insurance placed by the Service Provider becomes wholly or partly irrecoverable by reason of any act or default by the Client, its agents and/or servants, then the Client shall be

liable to pay to the Service Provider the whole or (as the case may require) a fair proportion of the cost of replacing the damaged part of the Equipment.

- 9.3 The Service Provider shall obtain and maintain comprehensive general liability insurance for operations and contractual liability adequate to cover the liability assumed by the Service Provider hereunder, including without limitation the liability for liquidated damages, and with adequate limits in respect of each occurrence of property damage and personal injury.

10 **Events of Default**

10.1 The occurrence of any of the following events shall be a Client event of default:

- (a) 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;
- (b) any default of the Client materially affecting the efficiency and/or the safety of the Equipment;
- (c) if the Service Provider is prevented from delivering the Supply by the Agreed Supply Date or any agreed extension thereof or the Supply is interrupted, solely by an act or omission of the Client;
- (d) if the Client denies or prevents Service Provider's access to the Premises, including the Licensed Area, or to the Meter;
- (e) if the Client tampers with the Equipment, or allows any other person to do so;
- (f) if the Client materially fails to access and use the Cooling Service in accordance with the instructions and directives provided by the Service Provider thereby causing or allowing damage to the Equipment;
- (g) if the Client becomes insolvent or goes into liquidation (other than for the purpose of amalgamation or reconstruction) or enters into any arrangement with its creditors or shall have a receiver or administrator appointed over any of its assets;
- (h) if the Client commits any other breach of this Agreement.

10.2 Subject to clause 14.5, if a Client event of default occurs, the Service Provider may, without limitation to any other rights it may have, do any or all of the following things:

- (a) discontinue the supply of Cooling Service;
- (b) terminate this Agreement;
- (c) reasonably increase the amount of the Security Deposit referred to in Clause 11;
- (d) in the case of a default under Clause 14.1(c), claim Liquidated Damages, as set out in the Term Sheet and in Item 4 of Schedule 3 for the period of delay or interruption, as the case may be;
- (e) take any other action which the Service Provider may consider necessary to obtain any other available legal remedy, including an injunction to prevent a further breach of this Agreement.

- 10.3 The occurrence of any of the following events shall be a Service Provider event of default:
- (a) the failure or refusal by the Service Provider to pay any amount payable to the Client on the date such amount is due and payable under this Agreement;
 - (b) if the Service Provider fails to provide the Supply by the Agreed Supply Date or any agreed extension thereof and such failure is not due to a Force Majeure Event or of an act or omission of the Client; or
 - (c) there is an interruption in the Supply for a period exceeding eight (8) consecutive hours or the availability tolerance is exceeded for three (3) consecutive months, which is not caused by a Force Majeure Event, an event mentioned in Clause 14.1 or an act or omission of the Client; and/or
 - (d) if the Service Provider commits any other breach of this Agreement.
- 10.4 Subject to clause 14.5, if a Service Provider event of default occurs, the Client may, without limitation to any other rights it may have, do any or all of the following things:
- (a) in the case of Clause 14.3(a), deduct the amount due from any invoice received from the Service Provider and if the Service Provider has discontinued the supply of Cooling Service (other than for a disconnection under Clause 15) and the debt remains outstanding for more than fourteen (14) days, file a court action to recover the amount due and/or terminate this Agreement without liability; and/or
 - (b) in the case of Clauses 14.3(b) and 14.3(c), claim Liquidated Damages and if the failure (Clause 14.3(b)) or the interruption (Clause 14.3(c)), as the case may be, continues for a consecutive thirty (30) day period, terminate this Agreement without liability;
 - (c) take any other action which the Client may consider necessary to obtain any other available legal remedy, including an injunction to prevent a further breach of this Agreement.
- 10.5 Where an act of default occurs, the non-defaulting party shall first give the defaulting party notice of the default and provide a reasonable period to rectify the event of default. Where the default is not rectified or cannot be rectified, the rights set out in clause 14.2 and 14.4 (as applicable) may be exercised.

11 Supply Disconnection and Reconnection

- 11.1 The Service Provider shall be entitled to discontinue the Supply and for this purpose to disconnect the Equipment from the Client's Facilities on the occurrence of an event of default, as set out in Clause 14.1, or of any of the following events:
- (a) a need to protect the health and safety of any person lawfully on the Premises or the general public or to prevent damage to any property; or
 - (b) an order or direction given by a competent authority or by law requires the Service Provider to do so.
- 11.2 In the event of any disconnection pursuant to Clause 15.1, the Service Provider shall reconnect the Equipment and resume the Supply to the Client as soon as the event leading to the disconnection is remedied by the Client to its reasonable satisfaction or is otherwise satisfactorily addressed.

11.3 In the event of disconnection for any of the reasons set out in paragraphs (a) to (g) of Clause 14.1, the Client shall pay as a reconnection fee, the Service Provider's reasonable costs relating to or in connection with such disconnection and reconnection.

11.4 The Client shall during any period of such disconnection or interruption, continue to be liable to pay any applicable Cooling Capacity Charge, save and except that if the interruption is due to either of the reasons stated at Clauses 15.1(a) and (b), the Client will be liable to pay the applicable Cooling Capacity Charge for no more than three (3) months while the interruption subsists.

12 Termination and the Effects of Termination

12.1 The Service Provider shall be entitled to terminate this Agreement pursuant to Clause 14.2(b) by delivering a notice to the Client indicating that such termination will be effective upon the expiry of seven (7) days from the date the notice is delivered.

12.2 In the event that the Client intends to terminate this Agreement pursuant to any of the matters set out in Clause 14.4, the Client shall do so by delivering a notice in writing to the Service Provider indicating that such termination will be effective upon the expiry of seven (7) days from the date the notice is delivered.

12.3 Either Party may terminate this Agreement for convenience at any time, in whole or in part, on giving not less than six (6) months' prior written notice to the other Party PROVIDED THAT the Party giving notice shall not have committed or is reasonably likely to commit an event of default, at the time of giving notice.

12.4 Upon termination or expiration of this Agreement:

(a) the Service Provider shall be entitled to remove the Equipment from the Premises with the cost of removal being borne by the Client in the event of a Client event of default and being borne by the Service Provider in the event of a Service Provider event of default; and

(b) each Party shall pay to the other any amount due, which shall include without limitation:

(i) in the case of a Client event of default, a breakage fee determined in accordance with the provisions of Schedule 3 (Charges Schedule), and

(ii) in the case of a Service Provider event of default, a termination fee as set out in Schedule 3 (Charges Schedule).

(c) for convenience pursuant to Clause 16.3, the terminating Party shall pay to the other Party the compensation fee set out in paragraph 3 of Item 5 of Schedule 3 and the other matters set out in the said paragraph 3 shall become applicable.

13 Limitation and Exclusion of Liability

13.1 Except as otherwise expressly set out in this Agreement, the Parties disclaim and waive all representations and warranties, express or implied. In particular, the Service Provider does not warrant the uninterrupted supply of Cooling Service to the Client.

13.2 Notwithstanding any other provision in this Agreement, neither Party shall be liable to the other for any consequential, incidental or indirect loss including without limitation loss of revenue, loss of profit, loss of customers, loss of goodwill or loss of business opportunity or any punitive or exemplary damages, whether based in contract, negligence, tort or otherwise.

14 Indemnity

Subject to clause 17, each Party shall indemnify and keep the other Party harmless against any and all claims made by any third party for damages, loss, injury or expense arising from negligence or wilful misconduct on the part of a Party in the performance of its obligations under this Agreement.

15 Assignment and Transfer; Sub-Contracting

15.1 At any time and provided that all Charges due and payable are paid, the Client may, by notice in writing of no less than ninety (90) days, delivered to the Service Provider, assign or transfer its rights and obligations under this Agreement only if:

- (a) the Client is giving up possession and/or occupation of the Premises; and
- (b) the person assuming possession and/or occupation of the Premises delivers to the Service Provider a written acknowledgement, acceptance and assumption by that person of the Client's rights and obligations under this Agreement; and
- (c) the Service Provider does not choose to exercise its termination right under Clause 19.2.

15.2 Notwithstanding the above, the Service Provider shall be entitled to elect to terminate this Agreement on receiving a notice of assignment. If the Service Provider chooses to do so, it shall notify the Client in writing. Unless agreed otherwise by the Parties, such termination shall be effective upon the date the Client surrenders possession and/or occupation, up to which point, the Client shall be liable to pay the applicable Charges pursuant to Clause 16.4.

15.3 For the avoidance of doubt, except as stated in Clause 19.1, the Client shall not be entitled to assign or transfer its rights and obligations under this Agreement, without the Service Provider's prior written consent.

15.4 The Service Provider shall be entitled to assign, charge, novate or otherwise transfer any right or obligation under this Agreement and to engage a suitably qualified and experienced sub-contractor to discharge any of its functions, without the consent of the Client.

16 Change in Law

16.1 In the event of a Change in Law, which does not prevent performance of a Party of any of its obligations but compliance with which would either:

- (a) require the Service Provider to incur any combination of capital improvements and or operational cost increases in order to continue to meet its obligations hereunder, or
- (b) otherwise materially and adversely affect the performance by the Service Provider of its obligations or the enjoyment by the Service Provider of its rights under or pursuant to this Agreement, or
- (c) result in cost savings to the Service Provider,

the Unit TR Rate in Schedule 3 (Charges Schedule) shall be adjusted to offset the actual, demonstrable effect of such Change in Law on the Service Provider.

16.2 Promptly on becoming aware of such Change in Law, the Service Provider shall advise the Client of the change and the estimated consequent savings or increased expenditure. The Service

Provider shall use reasonable efforts to mitigate the financial impact on the Service Provider and on the Client of any such Change in Law; and any costs incurred or savings accrued by the Service Provider in connection with mitigating the impact of the Change in Law shall be included in the Service Provider's cost of compliance hereunder. The Service Provider shall also submit to the Client calculation of the savings resulting from, or evidence of the expenses actually incurred in complying with, and mitigating the impact of, such Change in Law.

17 General Provisions

17.1 Notices

Any notice to be given under this Agreement shall be either delivered personally or sent by registered post or any other available and acceptable means. The address for service of each party is its address stated in Schedule 1 or any other address for service previously notified to the other party. A notice is deemed to have been served, if personally delivered, at the time of delivery; and if mailed by certified or registered mail, at the expiration of five (5) days after the envelope containing it is delivered into the custody of the postal authorities.

17.2 No Waiver, Remedies Cumulative

No failure or delay by either Party in exercising any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

17.3 Successors and Assigns

This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and permitted assigns.

17.4 Entire Agreement; Amendments

This Agreement contains all of the representations and warranties, undertakings, covenants and agreements between the Parties. All prior accepted terms from negotiations, understandings, undertakings, covenants, representations and agreements, whether oral or written, in connection with this Agreement are merged herein. This Agreement may not be amended or modified except by a written instrument describing such amendment or modification executed by both Parties.

17.5 Severability

Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction, shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

17.6 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

17.7 Governing Law

This Agreement shall be governed by and construed in accordance with the Governing Law and any disputes arising in connection with this Agreement shall be settled by the courts of that jurisdiction.

22 Dispute Resolution Process

22.1 Mediation

- (a) The Parties shall endeavour in good faith to resolve by negotiation any dispute between them arising out of or relating to this Agreement (the "Dispute"), including any dispute relating to the validity, interpretation or termination of this Agreement.
- (b) Either party may serve notice on the other party giving particulars of the Dispute and requesting that negotiations commence to settle the Dispute and the Parties shall attempt amicably to resolve the Dispute.
- (c) If after thirty (30) days from the date of service of the notice in Clause 22.1(b), or such other period as the Parties may in writing agree, the Dispute has not been resolved by negotiation, the Parties will attempt in good faith to resolve the Dispute by referring the same to a mutually agreed mediator for mediation. The Parties will bear the costs of any mediation equally.
- (d) Unless otherwise agreed by the Parties no party shall be entitled in any proceeding, whether before arbitrators or in any court of law or otherwise, and whether or not in relation to the Dispute, to invoke or rely on any of the views expressed or statements made or written by either party during the negotiations or mediation referred to in Clauses 22.1(a) and 22.1(b) respectively.

22.2 Arbitration

- (a) If the Dispute is not resolved by mediation, either Party may serve notice on the other Party that the Dispute shall be settled by an Arbitrator appointed by the Institute of Engineers and the decision of the Arbitrator shall be final and binding on the Parties.
- (b) The arbitration award shall be given in writing within two (2) months after the arbitration proceedings are concluded and shall give the grounds for the award.
- (c) Unless the Arbitrator determines otherwise as part of the award, each of the Parties shall bear their respective legal fees and other costs and expenses in connection with any arbitration proceedings, and shall bear equally the fees of the Arbitrator and the costs and expenses of concluding the arbitration.

In witness whereof, the parties have duly executed this Agreement the day and year first hereinbefore written.

Signed by _____)
in the presence of: _____) _____

This contract was prepared as part of the Cooling as a Service Initiative (www.caas-initiative.org), led by the Basel Agency for Sustainable Energy (www.energy-base.org) and the Kigali Cooling Efficiency Program (www.k-cep.org).

Witness

Signed by _____)
in the presence of: _____)

Witness

Cooling Services

The provision by the Service Provider, utilising clean cooling technology, of a continuous supply of *chilled water from a chiller system/ refrigerant liquid and/or gas from a variable refrigerant flow (VRF) system [select system]* owned by the Service Provider to the Delivery Point, within the Supply Temperature Range, the Normal Usage Hours and the Permitted Tolerance of Error, to satisfy the Client's requirements for air-conditioning to cool the interior space of the building(s) at the Premises and to be utilised by the Client solely for that purpose, together with other related services.

[This Schedule should set out the full services specification. For information on what the services specification should include and tips on preparing it, see Drafting note, the service description at Clause 6.2(b)]

The service description is a key component of this contract, and it is vital that the Client's requirements are accurately, clearly and fully documented in this schedule. This schedule in particular is likely to be referred to by both the Client and the Service Provider frequently throughout the lifetime of the contract, in order to check whether certain services are within the scope of the contract, as well enabling the effective management of the Service Provider. It is in the interests of the parties to include a sufficiently detailed and well drafted service description here. This will reduce the risk of disputes over what is and is not included in the services.

The following is a suggested approach to drafting the service description. This is not intended to be comprehensive or exhaustive, but rather to be a prompt for consideration of issues.

- *Step 1: Identify the relevant members of the Client and Service Provider teams required to develop/provide input into the drafting of the service description.*
- *Step 2: Identify each element of the services at a high level. This might include the installation of equipment, maintenance and planned outages, emergency repair, alternative provision in the event of equipment failure and provision of cooling, ancillary supporting services (such as remote monitoring).*
- *Step 3: in relation to each element of the services, identify specific requirements. Consider the division of responsibilities between the parties and be very clear on who is doing what. Identify any areas where the Service Provider's performance is dependent on something the Client must do, such as changes or upgrades to the Client Facilities. For any task make it clear who is doing it, when they must do it and how they must do it.]*

Availability and Planned Outages:

Availability:

- (a) Subject to the other provisions of this paragraph (a), the Supply shall be provided and be available at the Premises for the Normal Usage Hours at all times during the Supply Term subject to a tolerance of five percent (5%) in the availability of the Supply for the Normal Usage Hours in each month provided that notwithstanding the permitted tolerance, in the event that the Supply is unavailable for more than eight consecutive hours, the provisions of Clause 15.3 may become applicable.
- (b) The Service Provider shall use its best efforts to prevent any interruption in the provision of the Supply and to minimise the duration of any such interruption.

- (c) The Service Provider shall notify the Client as soon as is reasonably practicable if any unexpected significant event occurs which is expected to cause or causes an interruption of the Supply.

Planned Outages

- (a) Without prejudice to the generality of paragraph (b), the Service Provider shall, in scheduling any servicing, maintenance, repair, upgrade, connection, disconnection for maintenance purposes, extension and/or other work in the Equipment ("Planned Outage"), endeavour so far as is reasonably practicable to:
- (i) consult with the Client as to the scheduling of the execution of a Planned Outage;
 - (ii) undertake the execution of the Planned Outage outside the Normal Usage Hours;
 - (iii) undertake the execution of the Planned Outage in phases; and
 - (iv) ensure that:
 - (A) a single Planned Outage does not, and
 - (B) all Planned Outages for any one year of the Term do not, exceed, in each case, the number of hours stated above,such that there shall not be any interruption in the provision of the Supply at the Premises or if an interruption cannot reasonably be avoided, the duration and extent of the interruption is minimized.
- (b) The Service Provider shall in any event give the Client at least seven (7) days' prior written notice of the execution of any Planned Outage, and such notice shall state the dates on, and times at which the Planned Outage will be executed, and the extent to which the provision of the Supply at the Premises will be interrupted.

Urgent Outages

Nothing in this Agreement shall restrict the Service Provider from taking immediate action to avoid injury to persons or significant damage to property on the occurrence of any emergency, provided that the Service Provider shall give the Client as much prior notice as possible.

Electricity and Water Requirements:

- 1 The Client shall either ensure that the Premises has or facilitate the Service Provider to install the necessary electricity power supply and water supply and utility infrastructure in accordance with the specifications set out in this Schedule to enable the efficient operation and functioning of the Equipment.
- 2 **[If the Service Provider will be using electricity supply and water supply from the Client rather than directly from the utility supplier, the Service Provider shall, in consultation with the Client, install a sub-meter at an appropriate point on the electricity circuit and/or the water pipeline for the Premises for the purpose of recording and reading the electricity and water consumed by the Equipment and otherwise determine how associated costs will be tracked and apportioned and the effect such arrangements may have on the provision of the Services. The Client shall also provide the Service Provider with a copy of the then most recent electricity bill or other acceptable proof to establish**

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the Rate Schedule under which electricity is supplied to the Premises and which sets the tariffs the supplier charges for the electricity supplied.]

3 Specifications for Electricity Connections to be provided

4 Specifications for water connections to be provided

Schedule 1

Equipment

Criteria and Specifications: [insert as applicable]

Equipment: All of the equipment comprised in the *chiller system / variable refrigerant flow (VRF) system* [select system] owned/controlled and operated by the Service Provider to provide the Cooling Services, including without limitation, compressors, condensers, evaporators, expansion valves, power panels, controls units, water boxes, pumps, heat exchangers, heat recovery units and motors, as the case may be.

Schedule 2

Charges Schedule

Item 1

Contracted Supply Rate: [insert]

Item 1A

Charges and invoicing:

Charges:

- (a) For each billing period of one calendar month, the charges for the Cooling Service shall be calculated based on:
 - (i) if applicable, a charge for making the Contracted Supply available, referred to in Clause 9.2 (the “**Cooling Capacity Charge**”), commencing from the Effective Supply Date;
 - (ii) a charge for the Supply used (the “**Usage Charge**”); and
 - (iii) if applicable, a charge for failing to take the Minimum Capacity Use (the “**Shortfall Charge**”).

- (b) The Cooling Capacity Charge payable by the Client, if applicable, is based on the Contracted Supply agreed to by the Client measured in units of tons of refrigeration/cooling and is to be calculated as follows:

Cooling Capacity Charge = Contracted Supply subscribed by Client x Contracted Supply Rate

(The initial “**Contracted Supply Rate**” is set out at Item 1 of this Schedule.)

- (i) The Cooling Capacity Charge shall be prorated for any billing period that is less than a complete month based on the actual number of days in the billing period.
- (ii) The Usage Charge payable by the Client is based on the metered consumption quantity derived from readings of the Meter or based on Average Meter Readings if the Service Provider is unable to conduct a Meter reading, stated in units of tons of refrigeration/cooling (TR). The Usage Charge is to be calculated as follows:

Usage Charge = Measured TR x Unit TR Rate

where:

- Measured TR is the metered consumption quantity of Cooling Service for the billing period or the Average Meter Readings; and
- Unit TR Rate is the dollar rate per ton of refrigeration/cooling determined in accordance with the provisions set out at Item 2 of this Schedule, subject to adjustments permitted under this Agreement.
- (iii) 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 Provider the Shortfall Charge, being an amount equal to the Usage Charge that would have been collected for the shortfall in Cooling Service below the Minimum Capacity Use.

- (iv) If at the end of each year of the Supply Term, the Client's actual demand for and use of Cooling Service 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:

Capacity Excess Charge = (actual demand and usage for the year minus Contracted Supply for the year) x Contracted Supply Rate x 2

Electricity and Water Charges

- (a) [Where the Service Provider is receiving electricity supply and water supply for the Equipment directly from the utility supplier, the Service Provider shall pay for such supply directly to the utility supplier.]
- (b) If the Service Provider receives such electricity supply and/or water 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 and/or water consumed by the Equipment based on a prorated amount of the bill received by the Client for the supply of electricity and/or water to the Premises determined by the consumption shown from the reading of the relevant sub-meter. The Service Provider will be entitled to satisfy the liability to the Client under this Clause by deducting the relevant amounts from the immediately next invoice to be issued by the Service Provider.]
- (c) If the Service Provider receives electricity supply from the Client and there is a subsequent change in the Rate Schedule in which the Premises fall, resulting in higher tariffs for electricity supply, the Service Provider shall be only obliged to continue paying for the electricity consumed on the basis of the tariffs under the originally established Rate Schedule, subject only to any increases in the tariffs in that originally established Rate Schedule which are approved by the electricity regulator.]

Invoicing

- (a) Each invoice rendered by the Service Provider shall include a record of the Meter reading or an indication that Average Meter Readings were used.
- (b) The Service Provider may make adjustments to the Unit TR Rate only in accordance with the provisions of this Schedule and shall give the Client notice of any adjustment to the prevailing Unit TR Rate on the invoice immediately preceding such adjustment.
- (c) In the event that the Meter that is being used, upon being tested as provided in Clause 5, is found to be inaccurate beyond the permitted tolerance of error, the Service Provider shall, if appropriate, make retrospective adjustment, utilizing the Average Meter Readings, to the invoices previously rendered by the Service Provider with respect to the Cooling Service based on the readings of the inaccurate Meter for the period since the Meter was last inspected and tested and found to be accurate within the permitted tolerance of error.

Item 2

Unit TR Rate:

- (a) The Unit TR Rate shall comprise a component representing the electricity factor and a component representing a factor for other charges. The initial Unit TR Rate shall be [insert].
- (b) The Unit TR Rate will be subject to periodic adjustment based on changes in the values of the two components, as follows:
- (c) The Electricity Factor Adjustment is based on:

- (i) the increase or decrease in the tariffs under the Rate Schedule established pursuant to this Schedule 3 and will be applicable at the commencement of the year of the Term immediately following any such change in the tariffs approved by the electricity regulator. It is calculated as follows:

Unit TR Rate multiplied by **0.60** multiplied by **RSi**

where, RSi is the percentage by which the tariffs under the said Rate Schedule has increased or decreased.; and

- (ii) if applicable, the amount attributed to foreign exchange adjustment as reflected on the relevant invoice for the electricity supply in each month.

- (d) The Other Charges Adjustment is based on annual changes in the CPI and will be applicable at the commencement of each year of the Term. It is calculated as follows:

Unit TR Rate multiplied by **0.40** multiplied by **the percentage change in CPI**

The adjustment to be made to the Unit TR Rate will be the aggregate of the Electricity Factor Adjustment and the Other Charges Adjustment.

Item 3

NOT USED

Item 4

Liquidated Damages payable by the Client:

If the Service Provider is prevented from delivering the Supply by the Agreed Supply Date or any agreed extension thereof and such delay was directly caused by the Client, the Client shall pay to the Service Provider the Cooling Capacity Charge, if applicable, or otherwise the amount the Service Provider would have received for Usage Charge based on a prorated consumption of the Contracted Supply for the period of delay commencing from:

- (a) the Agreed Supply Date or any agreed extension thereof; or
- (b) the date on which the Effective Supply Date would have occurred but for the delay caused by the Client,

whichever is the later.

Liquidated Damages payable by the Service Provider:

- 1 If the Service Provider fails to provide the Supply by the Agreed Supply Date or any agreed extension thereof, the Service Provider shall, unless the delay was caused by the Client or a Force Majeure Event, pay the Client as liquidated damages a sum calculated on a daily basis as follows:

$$\text{Contracted Supply} \times \text{Contracted Supply Rate} \div 30$$

for each day from (and including) the Agreed Supply Date until the Effective Supply Date.

- 2 In the event of a total interruption or failure in the Supply to the Premises at any time during the Supply Term, the Service Provider shall pay the Client as liquidated damages a sum calculated on an hourly basis as follows:

$$\text{Contracted Supply} \times \text{Contracted Supply Rate} \div (30 \times 24)$$

for each hour that the interruption or failure continues provided always that:

- (a) the Service Provider shall not be obliged to pay such liquidated damages with respect to any interruption or failure in the Supply to the extent that such interruption or failure in the Supply:
 - (i) is caused by disruption of electricity and/or water supplies to the Equipment and such disruption was not caused or contributed to by any act or omission on the part of the Service Provider;
 - (ii) is caused by any other Force Majeure Event; or
 - (iii) is caused by any act or omission of the Client or any matter related to the Client's Facilities; or
 - (iv) has been caused by the Service Provider due to any of the circumstances set out at Clause 14.1; or
 - (v) is caused by a Planned Outage; or
 - (vi) falls within the permitted tolerance outlined in Schedule 1
- (b) the Service Provider's liability for such liquidated damages shall not exceed the amount referred to in Item 5 below.

Item 5

- 1 Breakage fee payable pursuant to Clause 16.4(b)(i)

The breakage fee payable by the Client shall be an amount equal to fifty percent (50%) of the sum of the average of the Usage Charges charged for the six months immediately preceding the termination multiplied by the number of months remaining in the Supply Term.

- 2 Termination fee payable pursuant to Clause 16.4(b)(ii)

The termination fee payable by the Service Provider shall be an amount equal to two times the average of the Usage Charge charged for the six months immediately preceding the termination.

- 3 Termination pursuant to Clause 16.4(c)

Where the terminating Party is the Client:

- (a) a compensation fee payable by the Client to the Service Provider shall be an amount equal to fifty percent (50%) of the sum of the average of the Usage Charges charged for the six months immediately preceding the termination multiplied by six or the number of months remaining in the Term, if less than six months; and
- (b) the Service Provider shall be entitled to remove the Equipment from the Premises with the cost of removal being borne by the Client.

Where the terminating Party is the Service Provider:

- (a) a compensation fee payable by the Service Provider to the Client shall be an amount equal to the sum of the average of the Usage Charges charged for the six months immediately preceding the termination multiplied by three; and
- (b) the Service Provider shall be entitled to remove the Equipment from the Premises with the cost of removal being borne by the Service Provider.

Item 6

Rate Schedule: [insert]

This contract was prepared as part of the Cooling as a Service Initiative (www.caas-initiative.org), led by the Basel Agency for Sustainable Energy (www.energy-base.org) and the Kigali Cooling Efficiency Program (www.k-cep.org).

Schedule 3

[Local Law Requirements]

Subject to the provisions of Clause 21.4, the Parties have chosen to amend the terms of the Agreement set out above. As such, the Parties agree to amend the Agreement as follows:

[Insert details of changes]

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Signed for and on behalf of:

Signed by)
in the presence of:) _____

Witness

Signed by)
in the presence of:) _____

Witness