MASTER SERVICE AGREEMENT

BETWEEN

ESKOM HOLDINGS SOC LTD

AND

[Drafting note: Insert Supplier Details]

ESKOM CONTRACT NUMBER: [Drafting note: Insert Eskom Contract Number]

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CLAUSE NUMBER AND DESCRIPTION

1. INTRODUCTION 2
2. TERM 7
3. SERVICE RECIPIENTS 9
4. SUBCONTRACTORS 12
5. SERVICES – GENERAL TERMS AND ARTIFICIAL INTELLIGENCE 15
6. THIRD-PARTY SUPPLIER COOPERATION 17
7. INTELLECTUAL PROPERTY RIGHTS AND SOFTWARE 19
8. CONFIDENTIALITY, ESKOM DATA AND DATA PROTECTION 24
9. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS 32
10. LIABILITY 42
11. TERMINATION 53
12. MISCELLANEOUS 57

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TERMS AND CONDITIONS

This Agreement will be entered into by and between:

Eskom Holdings SOC Ltd, a company incorporated in South Africa with registered number 2002/015527/30 and having its registered office at Megawatt Park, Maxwell Drive, Sunninghill, Sandton ("**Eskom**"); and

[•] [**Drafting Note: Insert Name of Supplier**], a company incorporated in South Africa with registered number [•] [**Drafting note: Insert registration number**] and having its registered office at [•] [**Drafting Note: Insert Supplier's registered address**] ("**Supplier**").

1. INTRODUCTION

1.1. Definitions and Interpretation

1.1.1. All capitalised terms used in this Agreement will have the meanings given in Schedule A (Definitions). This Agreement will be interpreted in accordance with Schedule A (Definitions).

1.1.2. Unless otherwise defined in this Agreement, terms used in relation to IT services or other relevant business contexts will be interpreted in accordance with their generally understood meaning in that industry or business context.

1.2. Structure of Agreement

In accordance with the terms of this Agreement:

1.2.1. the Supplier shall perform the Services as described in Schedule B (Service Description) in accordance with the Performance Standards (including the Service Levels), as set out in Schedule C (Performance Standards);

1.2.2. in consideration of such performance and Supplier's performance of its other obligations pursuant to this Agreement, Eskom will pay Supplier the Charges in accordance with Schedule D (Charges);

1.2.3. the Parties will comply with the governance and associated terms relating to the management of this Agreement set out in Schedule E (Governance);

1.2.4. the Parties will comply with the procedures documented in Schedule F (Change Management) in making any changes to this Agreement or the Services, when ordering any ad hoc services and in the performance of any Projects;

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1.2.5. the Supplier will perform the Transition Services and Transformation Services set out in Schedule G (Transition) and Schedule H (Transformation) during the Transition period and the Transformation period, respectively;

1.2.6. the Supplier will perform the Exit Assistance Services set out in Schedule I (Exit Assistance) during the Exit Assistance Period;

1.2.7. the Supplier will, in accordance with the requirements of clause 6 below, cooperate with Third Party Suppliers and shall be required to conclude 1 (one) or more Third-Party Cooperation Agreements on substantially similar terms as those contained in Schedule L (Cooperation Agreement);

1.2.8. the Supplier will deliver the Critical Deliverables specified in Schedule M (Critical Deliverables) on or before the time periods specified in such Schedule;

1.2.9. Eskom shall be entitled to benchmark the Services, Service Levels, and/or Charges in accordance with the terms of Schedule N (Value Competitiveness Rider);

1.2.10. the Supplier shall comply with the HR provisions set forth in Schedule O (HR Provisions);

1.2.11. the supplier shall comply with Schedule P (Operator Agreement);

1.2.12. the Supplier shall comply with all supplementary terms set forth in Schedule Q (Supplementary Terms), which will be incorporated as part of this Agreement;

1.2.13. the Supplier shall comply with the IT information security provisions set out in Schedule R (Information Security Requirements); and

1.2.14. the Supplier shall comply with the Supplier Development Localisation and Industrialisation ("**SDL&I**") set out in Schedule S (Supplier Development Localisation and Industrialisation).

1.3. **Precedence of Terms**

If there is a conflict between the Terms and Conditions, Schedules, Appendices, Annexes and any other document incorporated by reference into this Agreement, then, save to the extent expressly stated to the contrary, such conflict will be resolved by giving precedence to such different parts of this Agreement in the following order of precedence:

1.3.1. first, the Terms and Conditions;

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1.3.2. second, Schedules, Appendices and Annexes; and

1.3.3. third, any other documents incorporated by reference.

1.4. **Conditions Precedent**

1.4.1. This Agreement, save for this clause 1.4 and clauses 1 and 6 to 12 (both inclusive) ("**Surviving Clauses**"), shall be of immediate force and effect and is conditional on the fulfilment of the condition precedent that Eskom requires the Supplier to undergo and provide:

1.4.1.1. due execution by the:

1.4.1.1.1. Supplier's guarantor [**Note to Tenderer: In the event of a consortium being successful, Eskom reserves the right to request more than one Guarantee pursuant to this clause**.] and delivery to Eskom as at the date of this Agreement of a parent company guarantee which shall be in the same form as the parent company guarantee that is set out in Schedule J (Parent Company Guarantee); or

1.4.1.1.2. Supplier's bank (as approved by Eskom) [**Note to Tenderer: In the event of a consortium being successful, Eskom reserves the right to request more than one performance bond pursuant to this clause**] and delivery to Eskom as at the date of this Agreement of a performance bond which shall be in the same form as the performance bond that is set out in Schedule K (Performance Bond);

as applicable at Eskom's option;

1.4.1.2. a first draft of a RACI within 20 (twenty) business days following the Effective Date and, thereafter, a duly signed RACI to be provided within 10 (ten) business days of receipt of the first draft, which will be incorporated into the Agreement as an annexure to Schedule L (Cooperation Agreement) (Appendix L-1 (RACI)), together with a duly signed Schedule L (Cooperation Agreement) entered into by the Supplier with all the relevant parties;

1.4.1.3. a list of duly signed Subcontractors agreements entered into by the Supplier with the Subcontractors within 21 (twenty-one) days following the date of the last signing party;

1.4.1.4. a signed asset sale agreement entered into by the Supplier with the Existing Supplier(s) for the sale of the infrastructure being the hardware which will be fully described in the agreement ("**Asset Sale of Infrastructure**'') (Drafting Note: Where applicable); and

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1.4.1.5. security vetting and screening prior to the Effective Date when the Supplier, its Service Personnel and Subcontractors:

1.4.1.5.1. accesses National Key Points as declared in the National Key Point Act 102 of 1980, or critical infrastructure defined in or declared in terms of the Critical Infrastructure Protection Act 8 of 2019;

1.4.1.5.2. is required by the National Strategic Intelligence Act 39 of 1994 (as amended);

1.4.1.5.3. may have access to intelligence or information classified as confidential or more restricted;

1.4.1.5.4. is required in terms of the Service that similar measures are required for undertaking specified responsibilities or tasks, or for accessing other premises, installations or sites, systems, or information; or

1.4.1.5.5. are subject to safety or security concerns, or where the risk rating of the responsibilities or tasks undertaken, or the premises, installations, sites, systems or information accessed, warrants such vetting or screening after the date on which the Agreement came into existence.

1.4.2. Failure by the Supplier to fulfil these conditions precedent within the periods set forth in clause 1.4.1 will have the result that:

1.4.2.1. the Agreement (save for the Surviving Clauses, all of which shall continue to be of full force and effect) shall have no force and effect;

1.4.2.2. no Party shall have any Claim against any other Party arising out of or in connection with this Agreement; and

1.4.2.3. to the extent that this Agreement may have been partially implemented, the Parties shall be restored as near as possible to the positions which they would have been in had this Agreement not been signed, it being agreed that any costs incurred by the Parties as a result of such restitution, shall be for their own account.

1.4.3. Where a parent company guarantee is required pursuant to clause 1.4.1.1, in providing the executed parent company guarantee, the Supplier shall ensure that the guarantor, prior to the Effective Date, shall deliver to Eskom a certified copy extract of the board minutes of the guarantor approving the execution of the parent company guarantee.

1.4.4. Where a parent company guarantee is required pursuant to clause 1.4.1.1, in the event that, following a change of Control, there is any change to the Supplier Group whereby the guarantor will not be the ultimate parent company of the Supplier Group or, as a result of any restructuring of the Supplier Group, the guarantor's financial standing is reduced to a level that is less than the

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guarantor's as at the Effective Date, then the Supplier hereby undertakes to obtain a replacement guarantee in the same form as the guarantee that is set out at Schedule J (Parent Company Guarantee) from a parent company in the Supplier Group of equal or greater net worth than the guarantor, such guarantee to be effective within 10 (ten) Business Days following the date on which such change becomes effective.

1.5. **Due Diligence**

1.5.1. The Supplier hereby acknowledges and will indemnify Eskom against any claim to the contrary, that Eskom has delivered or made available to the Supplier all information and documents which the Supplier deems necessary, including all information and documents requested by the Supplier (collectively, the "**Due Diligence Information**"), in order for the Supplier to enter into this Agreement and perform its obligations under this Agreement in accordance with its terms.

1.5.2. The Supplier further acknowledges that, other than the warranties provided by Eskom pursuant to clause 9 of this Agreement, Eskom offers no other warranty as to the accuracy or completeness of the Due Diligence Information.

1.5.3. The Supplier shall not be entitled to increase the Charges nor be relieved of any of its obligations under these Terms and Conditions as a result of (i) its failure to review the Due Diligence Information or any documents referred to therein, (ii) any inaccuracies, errors or omissions contained in the Due Diligence Information or in any documents referred to therein or (iii) its failure to request any additional information or documents from Eskom.

1.5.3.1. The Supplier acknowledges that it has had full opportunity to conduct due diligence prior to the Commencement Date and that it has entered into this Agreement on the basis of its own assumptions and assessments. The Supplier accepts all risks associated with its assumptions and assessments, whether verified or not, and shall not be entitled to any adjustment of the Charges or Service Levels due to any alleged failure of due diligence. It shall be a material breach of this Agreement if the Supplier requests or purports to revise the Charges or Service Levels to the detriment of Eskom based on the Supplier's incomplete or incorrect assumptions and assessments.

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2. TERM

2.1. Term and Service Period

2.1.1. This Agreement will come into effect on the Effective Date and, unless terminated earlier in accordance with clause 11, will Terminate automatically on the day after the last day of the final Exit Assistance Period (the "**Term**"). For avoidance of doubt, the Term will be inclusive of the Transition and Exit Assistance Period.

2.1.2. Subject to clauses 2.1.3 and 2.1.4 and notwithstanding the Effective Date, the "**Service Period**" will commence on the Service Commencement Date and continue until the commencement of the Exit Assistance Period. The Service Period, together with the Transition Period and the Exit Assistance Period, shall not exceed the Term of 5 (five) years commencing on the Effective Date.

2.1.3. Prior to the expiry of the Service Period, Eskom may (at its option), by giving not less than 3 (three) Months' prior written notice to the Supplier, in respect of all the Services or any component of the Services, extend the Service Period for a further period as determined by Eskom.

2.1.4. Following the service of any Termination Notice, Eskom (at its option) may, in respect of all of the Services or any component of the Services, extend:

2.1.4.1. the Service Period (in the case of Termination in whole by either Party in accordance with clause 1); or

2.1.4.2. performance of the relevant Services (in the case of any Termination in Part),

beyond the then-effective Termination Date, 1 (one) or more times, by giving not less than 30 (thirty) days' written notice prior to the then-effective Termination Date, provided that the total of all such further extensions will not exceed 6 (six) Months, unless otherwise agreed.

2.1.5. Any extensions to the Service Period pursuant to clauses 2.1.3 or 2.1.4 will be on the same terms that are then in effect, save that, in the event of a partial renewal of Services by the Parties, the terms of Schedule D (Charges) shall apply in respect of any adjustment to the Charges. Unless otherwise agreed between the Parties, the Charges payable in any extension of the Service Period pursuant to clauses 2.1.3 or 2.1.4 beyond the initial Service Period will be subject to negotiations and governance.

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2.2. **Right to Withdraw Services**

2.2.1. The Supplier is appointed to provide the Services to Eskom on a non-exclusive basis and Eskom shall not be precluded from obtaining services that may be similar or identical to the Services from any other supplier. Nothing contained herein shall in any way be construed or constitute a guarantee in favour of the Supplier that the Supplier will receive any work or contract for services in the future, whether under this Agreement or otherwise.

2.2.2. Eskom will have the right upon 30 (thirty) days' written notice to the Supplier ("**Notice of Withdrawal"**), to provide itself, or retain Third Parties to provide any telecommunications and information technology products and/or services that make up a part of the Services or to otherwise terminate or withdraw any component of the Services including any Services (or components thereof) performed at any specific location or site or any Services (or components thereof) provided to any Service Recipient.

2.2.3. The Supplier will cooperate with Eskom and any Third Parties providing services in accordance with clause 6. Such cooperation will include:

2.2.3.1. providing reasonable access to any facilities being used to provide the Services (as necessary for Eskom or a Third Party to perform) subject to reasonable facility and equipment access processes and procedures (including a requirement that Eskom and/or Third-Party personnel be escorted to such facilities, subject to any confidentiality obligations to which such Eskom and/or Third Party may be subject);

2.2.3.2. providing reasonable access to Equipment and/or Software subject to reasonable access processes and procedures;

2.2.3.3. providing such information regarding the Services as a person with reasonable skill and expertise would find reasonably necessary to perform such Services; and

2.2.3.4. providing an updated copy of the RACI within 15 (fifteen) days of receipt of the Notice of Withdrawal.

2.3. **Exit Assistance Periods**

2.3.1. There will be one or more Exit Assistance Periods that may fall within the period specified in clause 2.1.2, during which the Supplier will perform the Exit Assistance Services, as follows:

2.3.1.1. Exit Assistance Services will be performed in respect of each Termination or Termination in Part and, in any event, in respect of all of the Services 3 (three) Months prior to the expiry or earlier Termination of the Term; and

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2.3.1.2. each Exit Assistance Period will commence on receipt of the Termination Notice issued at any time prior to the relevant Termination Date and will be as specified by Eskom giving notice to Supplier, provided that each such Exit Assistance Period will not continue for more than 3 (three) Months following the Termination Date of the relevant Services or component thereof (or such longer period as may be specified in an Exit Management Plan).

2.4. **Exit Assistance Services - Critical Requirements**

2.4.1. The Supplier shall ensure that the Services are designed, implemented, and operated on the basis of open standards and interoperability principles, to enable Eskom or any Successor Supplier to migrate the Services without unreasonable difficulty, delay, or cost.

2.4.2. The Supplier shall provide Eskom with all Eskom Data and Deliverables in an open and standard format (as reasonably specified by Eskom) and shall provide all reasonable assistance, at no additional cost to Eskom, to facilitate the migration of such Eskom Data and Deliverables to Eskom or a Successor Supplier.

2.4.3. Any failure by the Supplier to comply with this clause 2.4 shall be deemed a failure to provide Exit Assistance Services in accordance with this Agreement.

3. SERVICE RECIPIENTS

3.1. **Service Recipients**

3.1.1. The Supplier will perform the Services for Eskom and any of the following entities from time to time:

3.1.1.1. Eskom Affiliate;

3.1.1.2. JV Entities in accordance with clause 3.2;

3.1.1.3. any entity receiving services from, or performing services for, the Eskom Group provided that the Services form only part of, or are otherwise used to enable, the services received by, or performed by, the Eskom Group;

3.1.1.4. any entity in relation to the Services, that was receiving services equivalent to the Services prior to the Service Commencement Date;

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3.1.1.5. any divested business (excluding any divested business that has entered into a Divestment Agreement in accordance with clause 3.3.2.2);

3.1.1.6. any entity that the Parties otherwise agree will receive the Services;

together ("**Service Recipients**").

3.1.2. To the extent the Supplier performs Services for Service Recipients (other than Eskom), Eskom will, except where the relevant obligation is specified in this Agreement as an Eskom Retained Obligation, ensure that the Service Recipients comply with Eskom's obligations pursuant to this Agreement to the extent such Eskom obligations relate to the Services received by the Service Recipients or that are otherwise stated in this Agreement to apply to such Service Recipients (including pursuant to clause 3.1.3) ("**Service Recipient Obligations**").

3.1.3. In this Agreement, unless the context requires otherwise or where specified in this Agreement as an Eskom Retained Right:

3.1.3.1. references to Eskom receiving the Services will include, to the extent that they are receiving the Services, the other Service Recipients;

3.1.3.2. references to Eskom's:

3.1.3.2.1. assets, systems, business, operations, and the like; and

3.1.3.2.2. customers, contractors, advisors and other similar third parties, will include, to the extent that they are receiving the Services, those of the other Service Recipients;

3.1.3.3. references to Eskom providing or receiving an item (including data or information) pursuant to this Agreement will include items provided by or to the other Service Recipients;

3.1.3.4. other references to Eskom will include the other Service Recipients where such reference relates to a right of Eskom which the other Service Recipients also require the benefit of in order to receive equivalent benefit in relation to the Services; and

3.1.3.5. other references to Eskom will include the other Service Recipients as otherwise reasonably designated by Eskom.

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3.2. **JV Entities**

3.2.1. In accordance with clause 3.1, the Supplier will perform the Services for:

3.2.1.1. any JV Entity as at the Effective Date; and

3.2.1.2. any JV Entity which Eskom notifies the Supplier about pursuant to this clause 3.2.

3.2.2. Where Eskom notifies the Supplier that it requires the Supplier to provide Services to a JV Entity formed after the Effective Date, the Supplier will accept such JV Entity as a Service Recipient.

3.2.3. Where the Supplier is a joint venture:

3.2.3.1. If the Supplier constitutes a joint venture, consortium, or other unincorporated grouping of 2 (two) or more persons or organisations, then these persons or organisations are deemed to be jointly and severally liable to Eskom for the performance of this contract.

3.2.3.2. Unless already notified to Eskom, each of the constituent persons or organisations must notify Eskom within 2 (two) weeks of the Effective Date of the key person who has the authority to act or to bind the Supplier on their behalf, unless the key person has already been notified to Eskom by each of the constituent persons or organisations and is the same representative of the Supplier who fulfilled the role of signatory to the Agreement. Until a key person is notified by the Supplier's joint venture to Eskom, the signature of each of the constituent persons or organisations is required.

3.2.3.3. The Supplier must not alter the composition of the joint venture, consortium, or other unincorporated grouping of 2 (two) or more persons without the consent of Eskom having been given to the Supplier in writing.

3.3. **Divestment**

3.3.1. Eskom may, from time to time, restructure, sell or transfer an Eskom Affiliate or a department or division within an Eskom Affiliate (a "**Divestment**") with the sold, transferred, or restructured Eskom Affiliate, or part thereof, becoming a "**Divested Affiliate**".

3.3.2. Pursuant to a Divestment, Eskom may:

3.3.2.1. Require the Supplier to continue to provide Services to the Divested Affiliate as though the Divestment has not occurred and, accordingly, the Divested Affiliate shall continue to enjoy all rights and benefits it would be entitled to under this

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Agreement if it were still a Eskom Affiliate, provided that whilst Eskom shall continue to be able to recover losses suffered by the Divested Affiliate pursuant to clause 10.2 the Divested Affiliate shall not itself be entitled to enforce this Agreement against the Supplier under clause 10.2.3; or

3.3.2.2. subject to clause 3.3.3, require the Supplier to enter into a separate contract ("**Divestment Agreement**") with the Divested Affiliate on no lesser terms than those set out in this Agreement for Eskom in respect of the relevant portion of the Services.

3.3.3. The removal of a Divested Affiliate from the Service Recipients shall not affect the receipt of Services by Eskom or the other Service Recipients or otherwise amend the terms of this Agreement, provided that the Charges will be adjusted in accordance with the relevant mechanism in Schedule D (Charges) or, where there is no mechanism set out in Schedule D (Charges) to adjust the relevant Charges, the Parties will equitably adjust the Charges in accordance with the Change Management Procedure.

4. SUBCONTRACTORS

4.1. Approval of Subcontractors

4.1.1. The Supplier will not subcontract or otherwise delegate the performance of any of its obligations pursuant to this Agreement other than pursuant to this clause 4.

4.1.2. Without prejudice to clause 4.1.3, any subcontracting by the Supplier will be subject to Eskom's prior written approval, other than subcontracts for Third Party services or products that meet each of the following tests:

4.1.2.1. that are not dedicated to Eskom;

4.1.2.2. that do not Process Eskom Data;

4.1.2.3. that do not form a material part of the Services; and

4.1.2.4. that do not involve employees of such Third-Party having access to Eskom Confidential Information, Eskom IT Environment, Eskom Data or non-public parts of Eskom Sites or Eskom Facilities;

("**Non-Material Subcontracts**").

4.1.3. Eskom will have the right to revoke its prior approval and/or direct the Supplier to cease using and replace a Subcontractor if:

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4.1.3.1. the Subcontractor breaches any of the Subcontractor Obligations;

4.1.3.2. if the Subcontractor provides any of the Services or component of the Services from any location outside of the Republic of South Africa;

4.1.3.3. Eskom has reasonable concerns about the financial viability of the Subcontractor, which the Supplier is unable to resolve to Eskom's reasonable satisfaction;

4.1.3.4. there has been a misrepresentation by, or concerning the Subcontractor, which Eskom relied upon in consenting to the Supplier using such Subcontractor;

4.1.3.5. the actions or omissions of a Subcontractor has caused (or is likely to cause) damage to the reputation, brand or has (or is likely to) result in adverse publicity for any member of the Eskom Group; or

4.1.3.6. a Regulator directs, recommends, or gives a guideline that the Subcontractor should not continue to be used to perform the Subcontractor Obligations, and the Supplier is not able, within a reasonable period, to resolve the Regulator's concerns.

4.2. **Rights and Obligations Relating to Subcontractors**

4.2.1. If the Supplier subcontracts the performance of any of the Services pursuant to this Agreement, then:

4.2.1.1. the Supplier must ensure that the Subcontractor complies with Supplier's obligations pursuant to this Agreement to the extent such obligations relate to the Services performed by the Subcontractor or are otherwise stated in this Agreement to apply to such Subcontractor ("**Subcontractor Obligations**");

4.2.1.2. the Supplier will be liable to Eskom and the Service Recipients (as appropriate) for the acts and omissions of such Subcontractors as if they were the acts or omissions of the Supplier under this Agreement;

4.2.1.3. such subcontracting will not relieve the Supplier of its obligation to perform its obligations under this Agreement; and

4.2.1.4. the Supplier will remain the single point of contact for Eskom with respect to the Subcontractors, provided that Eskom will have the right to establish technical and operational contact directly with the relevant Subcontractors.

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4.2.2. In this Agreement, unless the context requires otherwise:

4.2.2.1. references to the Supplier providing the Services will, to the extent that they are providing the Services, include the Subcontractors;

4.2.2.1.1. references to the Supplier:

4.2.2.1.2. assets, systems, business, operations, and the like; and

4.2.2.1.3. customers, contractors, advisors and other similar third parties,

will include, to the extent they are providing the Services, those of the Subcontractors;

4.2.2.2. references to Supplier providing or receiving an item (including data or information) pursuant to this Agreement will, to the extent that they are providing or receiving any item, include the Subcontractors;

4.2.2.3. references to any prohibition or requirement on the Supplier providing or receiving an item (including data or information) pursuant to this Agreement will, to the extent that they are providing or receiving any item, include the Subcontractors; and

4.2.2.4. other references to the Supplier will be deemed to include the Subcontractors, where such reference relates to an obligation of the Supplier which has been delegated in whole or in part to a Subcontractor.

4.3. **Other Subcontractor Requirements**

4.3.1. The Supplier will give Eskom the following details when seeking approval of a subcontractor pursuant to clause 4.1.2:

4.3.1.1. the name and address of the proposed subcontractor;

4.3.1.2. the subject matter of the subcontract; and

4.3.1.3. any additional information reasonably required by Eskom (including the scope of the services proposed to be subcontracted).

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4.3.2. The Supplier will enter into a written contract with each Subcontractor and will impose and enforce the Subcontractor Obligations on the Subcontractor.

4.3.3. A Subcontractor will not be entitled to further subcontract the performance of the Services without Eskom's prior written approval. If Eskom does approve such subcontracting, then the provisions in this Agreement relating to subcontracting will also apply to the subcontracting by the Subcontractor.

5. SERVICES – GENERAL TERMS AND ARTIFICIAL INTELLIGENCE

5.1. The Supplier shall render the Services in accordance with the terms of the Agreement.

5.2. Artificial Intelligence

5.2.1. Where the Supplier utilises any AI Tools pursuant to this Agreement, the Supplier shall:

5.2.1.1. notify Eskom in writing that such AI Tools will be used in the performance of the Services and provide all relevant details relating to the AI Tools and the Supplier's use thereof;

5.2.1.2. be required to obtain written permission from Eskom, which permission may be granted subject to any conditions stipulated by Eskom or withheld in Eskom's sole discretion. The terms of Eskom's approval, if granted, shall detail any specific Eskom requirements and additional obligations in relation to such AI Tool;

5.2.1.3. maintain a register of all AI Tools proposed to be used or used, which includes details relating to the AI Tool such as provider, model, licence terms, and data-handling controls, and shall provide such register to Eskom on request;

5.2.1.4. ensure that no AI Tool is trained, fine-tuned, enhanced or otherwise improved using Eskom Data, Eskom Confidential Information, Deliverables, telemetry (including logs or metadata derived from such data) or AI Outputs, and that prompts, inputs, or content supplied by or on behalf of Eskom are not retained, stored, cached or used by the Supplier or by any AI Tool provider beyond the session necessary to generate the AI Output; and

5.2.1.5. ensure that all AI Outputs form part of the Developed Intellectual Property and are owned by Eskom.

5.2.2. Any unauthorised use of AI Tools shall constitute a material breach of this Agreement.

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5.2.3. As part of the Services, the Supplier may render specific Services related to artificial intelligence, including supply or development of an AI Tool, licensing of an AI Tool, training of an AI Tool and/or providing or procuring AI Tools.

5.3. Information Technology and Operational Technology

5.3.1. As part of the Services, the Supplier may be required to provide information technology and/or operational technology services. The terms of the relevant Schedule will set forth the detailed requirements in respect of such services.

5.3.2. Where the Supplier provides operational technology services, in rendering such services and in addition to the terms of the applicable Schedules:

5.3.2.1. the Supplier must comply with all applicable safety regulations and Good Industry Practice relevant to Eskom's operational technology environment;

5.3.2.2. the Supplier must implement and maintain safety protocols to prevent harm to Personnel, equipment, and the environment;

5.3.2.3. any changes to the operational technology systems must, in addition to following the Change Management Procedure, be subject to a formal risk assessment and Eskom's written approval;

5.3.2.4. the Supplier must ensure that Eskom retains all right, title and interest in all Eskom Data generated by operational technology systems, including process and operational data;

5.3.2.5. the Supplier must ensure secure, real-time access to operational technology data for Eskom and must not restrict or delay access;

5.3.2.6. the Supplier must assist Eskom in meeting all regulatory and compliance obligations specific to operational technology (e.g., NERC CIP, ISA/IEC 62443);

5.3.2.7. the Supplier must promptly inform Eskom of any regulatory changes that may impact operational technology services;

5.3.2.8. the Supplier must implement both physical and cybersecurity measures tailored to operational technology environments, including network segmentation, access controls, and monitoring;

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5.3.2.9. the Supplier must not introduce remote access or connectivity to operational technology systems without Eskom's written consent and robust security controls;

5.3.2.10. the Supplier must provide training to Eskom Personnel on any new operational technology systems, updates, or procedures;

5.3.2.11. the Supplier must document all changes and provide comprehensive handover materials as part of Exit Assistance; and

5.3.2.12. the Supplier must support a smooth Transition at the end of the Term or upon Termination of the Agreement, including the transfer of all relevant Documentation, Eskom Data, and system access to Eskom or Eskom's new Supplier.

6. THIRD-PARTY SUPPLIER COOPERATION

6.1. As part of the Services and at no additional cost to Eskom, the Supplier shall work in coordination with, and cooperate with, all other Third-Party Suppliers providing ICT and any other related services to Eskom so that all Eskom required ICT and other services are provided seamlessly across all suppliers (including the Supplier).

6.2. Eskom, the Supplier, and each applicable Third-Party Supplier (as identified by Eskom) shall be required to enter into a separate agreement on substantially similar terms to those contained in Schedule L (Cooperation Agreement). A failure by the Supplier to adhere to this requirement shall be a material breach of this Agreement.

6.3. This coordination and cooperation referred to in this clause 6, in addition to the obligations set forth in clause 2.2.3, shall include:

6.3.1. openly exchanging information with Eskom and such other Third-Party Suppliers in connection with the Services and/or the services being provided by such other Third-Party Supplier to Eskom in a cooperative manner and in good faith. The information exchanged by Supplier and the Third-Party Suppliers shall not include information in respect of services provided to any party other than Eskom and shall further exclude any:

6.3.1.1. confidential information, which if disclosed would result in the Supplier being in breach of any Third-Party confidentiality undertakings provided that, in such instances, if required by Eskom, the Supplier shall use reasonable efforts to obtain consent from such Third Party for the disclosure of such confidential information;

6.3.1.2. financial information;

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6.3.1.3. pricing information; and

6.3.1.4. other competitively sensitive information, which if exchanged, could be used by the Supplier and Third-Party Suppliers to fix the prices or to jointly agree to trading terms in respect of their services, or to act anti-competitively in any way;

6.3.2. providing such other Third-Party Suppliers reasonable access to information, data and documentation being used to provide the Services;

6.3.3. participating in meetings, workshops and other relevant governance forums with such other Third-Party Suppliers reasonably required to manage the interfaces between and the interaction of the Services;

6.3.4. working jointly and in good faith with such other Third Party Suppliers as reasonably required to allocate responsibilities where the Services and the services provided by other Third Party Suppliers overlap, by using commercially reasonable efforts to not avoid any responsibility in connection: (i) with any failure by the Supplier and the Third-Party Suppliers to provide Eskom with end to end services; and/or (ii) with any events, disputes or problems; and

6.3.5. attempting to resolve disputes regarding responsibility for the provision of services where the Services and services of other Third-Party Suppliers provided to Eskom overlap and working directly with such other Third-Party Suppliers before escalating the dispute to Eskom.

6.4. Where, in Eskom's reasonable discretion, it believes that the Supplier has failed to fulfil any of the obligations set forth in this clause 6 or failed to cooperate with any Third Party Supplier, such failure shall constitute a material breach of this Agreement, entitling Eskom (in addition to any other remedies which it may have in terms of this Agreement or otherwise) to provide the Supplier with a notice of breach allowing the Supplier a period of 30 (thirty) days within which to remedy such breach, failing which Eskom may terminate this Agreement on written notice to the Supplier and with immediate effect.

6.5. For the sake of clarity, it is recorded here that ‘reasonable access’, for the purposes of this clause 6 shall not preclude the Supplier from implementing and enforcing reasonable safeguards, policies and protocols governing such access and the protection of its proprietary interests, including its Confidential Information, its assets, and other property, provided that such safeguards, policies and protocols are effected after consultation with Eskom.

6.6. The Supplier shall, at its own expense (as part of the Services and within time periods agreed with Eskom) implement automated tools, processes, interfaces and methodologies agreed between the Parties to meet the Service and reporting requirements set forth in the Agreement or as otherwise required by Eskom and to enable measurement of the Supplier’s performance against the Service Levels. Such tools shall be capable of interfacing with Eskom’s (or its designated Third Party’s) tools and functions, including implementing, configuring, populating, and

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maintaining the CMS to accurately reflect the inventory and configuration of Equipment and Software that is maintained by the Supplier. If the Supplier fails to implement these tools on or before such date Eskom shall continue to direct Supplier to implement such other automated tools, processes, interfaces, and methodologies as required by Eskom.

7. INTELLECTUAL PROPERTY RIGHTS AND SOFTWARE

7.1. Ownership of Intellectual Property Rights

7.1.1. Pre-Existing Intellectual Property

Nothing in this clause 7 will operate to transfer ownership of any Intellectual Property Rights:

7.1.1.1. belonging to a Party, Service Recipient or Subcontractor prior to the Effective Date; or

7.1.1.2. which are independently developed by a Party, Service Recipient or Subcontractor otherwise than under this Agreement.

7.1.2. Developed Intellectual Property rights.

7.1.2.1. Eskom shall have all right, title and interest in all Developed Intellectual Property developed or generated for, or jointly or collaboratively with, Eskom as part of the Services by the Supplier or a Subcontractor in relation to this Agreement. This is an Eskom Retained Right.

7.1.2.2. To the fullest extent permitted by law, the Supplier hereby assigns by way of present and future assignment to Eskom all right, title and interest in and to the Developed Intellectual Property, with effect on and from creation thereof. Where any Developed Intellectual Property cannot vest in Eskom *ab initio* under the laws of the place of creation, the Supplier shall procure immediate assignment of such rights to Eskom and holds such rights on trust for Eskom until assignment is perfected.

7.1.2.3. The Supplier shall ensure, regardless of jurisdiction, that: (i) ownership in all Developed Intellectual Property vests in Eskom at the earliest point permitted by Applicable Law (or, where local law requires, first vests in the Supplier with immediate assignment to Eskom); (ii) all Service Personnel outside South Africa enter into back-to-back IP assignment

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and moral-rights waiver/consent agreements effective to transfer all rights to Eskom; and (iii) any formalities (including notarisation, recordals or filings) required to perfect Eskom's title are completed at the Supplier's cost.

7.1.2.4. The Supplier shall, and shall procure that all Service Personnel shall, execute all documents and do all acts reasonably required by Eskom to perfect, register, defend and enforce Eskom's title to the Developed Intellectual Property Rights, both during and after the Term, at the Supplier's cost.

7.1.2.5. The Developed Intellectual Property also includes the following:

7.1.2.5.1. newly developed Software (that is not, subject to paragraph 7.1.2.5.3, a Modification to Software existing at the Effective Date);

7.1.2.5.2. newly developed Material (that is not, subject to paragraph 7.1.2.5.5 a Modification to Material existing at the Effective Date);

7.1.2.5.3. Modifications to Eskom-Provided Software;

7.1.2.5.4. Eskom Data (including Modifications to Eskom Data); and

7.1.2.5.5. Modifications to any Material provided by Eskom to Supplier in relation to this Agreement.

7.1.2.6. In respect of Developed Intellectual Property, the Supplier shall waive, or shall ensure a waiver in respect of, all moral rights and similar author's rights ("**Moral Rights**") which are capable of being waived in accordance with Applicable Law. In the event that such waiver cannot legally be obtained either in part (whether in terms of scope, duration or other applicable grounds) or in whole, the obligation on the Supplier under this clause 7.1.2.6 shall only apply in respect of those Moral Rights or parts of Moral Rights which can be waived under Applicable Law.

7.1.3. Save as provided in clause 7.1.2, nothing in this Agreement will be deemed to assign or transfer any Intellectual Property Rights between the Parties.

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7.2. **Licensing of Supplier's Intellectual Property Rights**

7.2.1. The Supplier grants the following licences:

7.2.1.1. during the Term, Eskom and each Service Recipient will have the benefit of a royalty free, worldwide, non-exclusive licence to Use (and sublicense such right to Use to any Service Recipient's contractors (including Successor Suppliers) only to the extent that such contractors are performing services for Eskom or Service Recipients), each of the following items:

7.2.1.1.1. the Supplier-Provided Software that is not owned by Eskom pursuant to clause 7.1.2; and

7.2.1.1.2. any Materials or data provided by Supplier to Eskom or a Service Recipient that are not owned by Eskom pursuant to clause 7.1.2.

7.2.2. Eskom and each Service Recipient will have the benefit of a non-exclusive, royalty free, worldwide licence to Use (and sublicense such right to Use to any Service Recipient's contractors (including Successor Suppliers) only to the extent the contractors are performing services for Eskom or Service Recipients), each of the following items:

7.2.2.1. irrevocably and perpetually, the Materials provided and used by Supplier in the performance of the Services that are not owned by Eskom pursuant to clause 7.1.2;

7.2.2.2. irrevocably and perpetually, the Materials provided to Eskom in accordance with Appendix I-2 (Exit Assistance Data); and

7.2.2.3. irrevocably and perpetually, the Supplier-Provided Software to the extent deployed into or embedded within the Eskom IT Environment.

7.2.3. Eskom and each Service Recipient will comply with any restrictions on the use of any of the items licensed pursuant to this clause and any additional terms notified by the Supplier. Without prejudice to the foregoing, Eskom and each Service Recipient shall not do any of the following acts in connection with Supplier-Provided Software, save for instances where Eskom is required to make a backup copy and solely in relation to utilising such backup for the Services:

7.2.3.1. reproduce, reverse engineer, translate or adapt Supplier-Provided Software, or arrange or create derivative works based on Supplier-Provided Software;

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7.2.3.2. transfer, distribute (whether by way of rental, sale, licence or otherwise) or disclose all or any part of the Supplier-Provided Software to any Third Party; or

7.2.3.3. remove, alter, or obscure any copyright or other proprietary rights notices on Supplier-Provided Software.

7.2.4. To the extent the Supplier's Pre-Existing Intellectual Property is incorporated into any Deliverable or is otherwise necessary to receive or use the Services, the Supplier grants Eskom a perpetual, irrevocable, worldwide, transferable, sub-licensable, royalty-free licence to use, copy, modify and create derivative works from such Pre-Existing Intellectual Property Rights to the extent required for Eskom to fully use, support and maintain the Deliverables and Services (including with a Successor Supplier).

7.3. **Maintenance of Supplier-Provided Software**

The Supplier will at Eskom's election and subject to Eskom's governance processes, provide support and maintenance for Supplier-Provided Software (to the extent that it is embedded in the Eskom IT Environment and licensed to Eskom in accordance with clause 7.2.2.3) during the Term at no additional cost to Eskom.

7.4. **Licensing of Eskom Intellectual Property Rights**

7.4.1. During the Term, Eskom grants and will ensure that each Service Recipient grants to the Supplier and each Subcontractor (as required), a non-exclusive, royalty free and non-transferable licence to Use the following items, only to the extent necessary to perform, and for the purposes of performing, the relevant Services and to comply with their other obligations pursuant to this Agreement:

7.4.1.1. Eskom-Provided Software;

7.4.1.2. Eskom Data;

7.4.1.3. any Materials provided by Eskom or any Service Recipient to Supplier, or any Subcontractor in relation to this Agreement; and

7.4.1.4. the items referred to in sub-clauses 7.1.2.5.1, 7.1.2.5.2, 7.1.2.5.3 and 7.1.2.5.5.

7.4.2. The Supplier will comply with any restrictions on the use of any of the items licensed pursuant to clause 7.4 and notified by Eskom or a Service Recipient in addition to those specified in this Agreement. Without prejudice to the foregoing, the Supplier shall not do any of the following acts in connection with Eskom-Provided Software:

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7.4.2.1. reproduce, reverse engineer, translate or adapt Eskom-Provided Software, or arrange or create derivative works based on Eskom-Provided Software except to the extent required to enable the Supplier to fulfil any obligations owed to Eskom or other Service Recipients under this Agreement;

7.4.2.2. transfer, distribute (whether by way of rental, sale, licence or otherwise) or disclose all or any part of the Eskom-Provided Software to any Third Party; or

7.4.2.3. remove, alter, or obscure any copyright or other proprietary rights notices on Eskom-Provided Software.

7.5. **Third Party Intellectual Property Rights**

7.5.1. The Supplier will be responsible for Third Party licences used in relation to the provision of its Services. If Eskom requires the Supplier to procure any Third-Party licenses on behalf of Eskom, this will be specifically agreed in writing.

7.5.2. The Supplier will not introduce any Third-Party Intellectual Property Rights into the Eskom IT Environment without the prior written approval of Eskom.

7.5.3. Without prejudice to clause 7.5, the Supplier will ensure that each Third-Party contract for Supplier-Provided Software (to the extent deployed into or embedded within the Eskom IT Environment) that is entered into in relation to the Services is capable, on its terms, of being transferred to Eskom and/or its Successor Supplier without cost or penalty. If a proposed Third Party refuses to grant such rights to the Supplier, the Supplier will bring that refusal to Eskom's attention in writing prior to entering into an agreement with the Third-Party to give Eskom the opportunity to agree, in writing, to waive its rights (and/or the rights of another Service Recipient and/or the Successor Supplier, as the case may be) under this clause 7.5. If no such waiver is agreed, the Supplier shall bear the costs or penalties in relation to such transferral.

7.5.4. The Supplier shall not incorporate any open-source or third-party component that imposes copyleft, source-availability or usage restrictions on Eskom or the Deliverables without Eskom's prior written consent. The Supplier remains responsible for compliance with all licences and will indemnify Eskom for any breach thereof.

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7.6. **Escrow**

7.6.1. Within 30 (thirty) days of a written request from Eskom, the Supplier will:

place the Source Code Material as requested by Eskom (of the Supplier, its Subcontractors and any Third-Party Providers) in escrow with a reputable escrow agent designated by Eskom (and on terms substantially similar to give effect to the provisions of this clause 1.1).

7.6.2. The Supplier will update the Source Code Material for the Software held in escrow:

7.6.2.1. within 5 (five) Business Days of Supplier performing a material upgrade of the Software; and/or

7.6.2.2. every 6 (six) Months for all updates made to the Software in the previous 6 (six) Months.

7.6.3. The Supplier shall pay all escrow fees (save for any release fees which, if payable, shall be paid by Eskom).

7.6.4. Prior to using any Supplier-Licensed Software or any other Third-Party cloud environment or AI Tool in the delivery of the Services, the Supplier will confirm with the licensor that it can comply with the terms of this clause 1.1. If the Supplier is unable to secure the placement of any Source Code Material into escrow, the Supplier shall inform Eskom prior to utilising/installing same and Eskom reserves the right to either reject such use/installation or direct the Supplier to find another supplier or to impose any additional conditions on the Supplier.

8. CONFIDENTIALITY, ESKOM DATA AND DATA PROTECTION

8.1. **Confidentiality**

8.1.1. General Obligations

Except to the extent set out in this clause 8.1, the Supplier and Eskom will each treat as confidential all Confidential Information obtained from the other under this Agreement, will protect such Confidential Information and will not, without the prior written consent of the other, disclose or use such Confidential Information except for the purposes of this Agreement. Both Parties shall afford to the other Party's Confidential Information at least the same degree of care as it normally employs to avoid unauthorised disclosure of its own confidential information.

8.1.2. Authorised Disclosure

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8.1.2.1. Clause 8.1 does not prohibit disclosure of Confidential Information:

8.1.2.1.1. in the case of Eskom: to the Service Recipients and each of their respective officers, directors, employees, contractors, professional advisors, and auditors; or

8.1.2.1.2. in the case of the Supplier: to the Subcontractors, and each of their respective officers, directors, employees, professional advisors, and auditors,

but, in each case, only to the extent and provided that such persons:

8.1.2.1.3. need to know the Confidential Information disclosed to them; and

8.1.2.1.4. have been informed in writing of the confidential nature of the Confidential Information and the purpose for which it may be lawfully used.

8.1.2.2. Each Party will ensure that each person to whom Confidential Information is disclosed pursuant to clause 8.1.2.1 is made aware, prior to any disclosure of Confidential Information that it is confidential and that such person and the receiving Party owe a duty to the owner of it to keep it confidential. Each Party shall remain responsible for maintaining the confidentiality of any Confidential Information it discloses pursuant to this clause 8.1.2.

8.1.3. <u>Mandatory Disclosure</u>

Each Party may disclose the other Party's Confidential Information if, and to the extent that, it is required to do so by a Regulator, a relevant stock exchange or otherwise by Applicable Law provided that, to the extent it is permitted to do so, it will:

8.1.3.1. notify the other Party as soon as practicable upon becoming aware of the obligation to disclose; and

8.1.3.2. co-operate with the other Party in avoiding or limiting the disclosure and obtaining assurances as to confidentiality from the body to whom the Confidential Information is to be disclosed.

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8.1.4. Disclosure of this Agreement

The content of this Agreement will be deemed to be the Confidential Information of both Parties, provided that:

8.1.4.1. Eskom may disclose the contents of this Agreement to a potential acquirer of Control of Eskom or an acquirer of a relevant part of the business, assets or undertaking of the Eskom Group but only to the extent that such acquirer:

8.1.4.1.1. has been informed in writing of the confidential nature of the contents of this Agreement and the purpose for which it may be lawfully used; and

8.1.4.1.2. has entered into a confidentiality agreement with Eskom; and

8.1.4.2. the Supplier acknowledges and agrees that Eskom may at any time disclose (or re-use in the form of future agreements) any elements of this Agreement (save for details of the Charges) to a potential Successor Supplier as part of a re-tendering process.

8.1.5. Exceptions to Obligations of Confidentiality

Clause 8.1 will not apply to information which the receiving party can show by reference to documentary or other evidence:

8.1.5.1. was rightfully in its possession prior to disclosure to it by the other Party;

8.1.5.2. is already public knowledge or which becomes so at a future date, other than as a result of breach of this clause 8.1;

8.1.5.3. is received from a Third Party who is not under an obligation of confidentiality in relation to the information;

8.1.5.4. is Confidential Information but such disclosure has been authorised by the disclosing Party; or

8.1.5.5. is developed independently without access to, or use or knowledge of, the Confidential Information.

8.1.6. Survival of Confidentiality Obligations

The obligations with respect to Confidential Information disclosed in relation to this Agreement will survive Termination or expiry of this Agreement.

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8.2. **Residual Knowledge**

8.2.1. Nothing in this Agreement will prevent either Party or its Affiliates from using any general concepts, ideas, know-how, trade secrets, methodologies, processes, techniques or algorithms retained in the unaided memory of such Party's or its Affiliates' personnel which were developed or disclosed pursuant to this Agreement, provided that in doing so such Party does not and will ensure that its Affiliates do not:

8.2.1.1. breach its obligations of confidentiality pursuant to clause 8.1; or

8.2.1.2. infringe the Intellectual Property Rights of the other Party, its Affiliates or of third parties.

8.2.2. For the purposes of clause 8.2, an individual's memory is only 'unaided' with respect to any information if that individual has not retained a copy of the information and has not intentionally memorised that information other than as required to perform activities relating to this Agreement.

8.3. **No Publicity**

8.3.1. Without prejudice to clause 8.1, the Supplier shall not (and shall ensure that its Affiliates and Subcontractors do not) publicise (including by way of advertising, marketing or promotion) the relationship between them under this Agreement or any other relationship, agreement or arrangement relating to that relationship or this Agreement without the prior written consent of Eskom.

8.3.2. The Supplier shall not (and shall ensure that its Affiliates and Subcontractors do not), without the prior written consent of Eskom (which may be withheld at Eskom's absolute discretion), use, or allow the use of, any trademarks, logos, devices, symbols or other similar items (whether registered or otherwise) owned or used by, or licensed to, Eskom, or any other items misleadingly, confusingly or materially similar to the foregoing, including, without prejudice to the generality of the foregoing, the names and any logo used by Eskom from time to time in respect of its correspondence or notices. Where Eskom consents to, or requests, the Supplier's use of Eskom-owned or licensed trademarks, logos, devices, symbols, or other similar items (whether registered or otherwise) in the provision of these Services, then the Supplier will carry out the same in compliance with Eskom's branding policies, rules, or guidance.

8.3.3. The Supplier (and its Affiliates and Subcontractors) shall not acquire any proprietary right, licence or interest in any of the items of Eskom referred to in clause 8.3.2.

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8.4. **Eskom Data**

8.4.1. The Supplier will not use Eskom Data other than as authorised pursuant to this Agreement or otherwise approved by Eskom in writing, including:

8.4.1.1. using Eskom Data other than in accordance with the performance of the Services;

8.4.1.2. storing, disclosing, reproducing, modifying, adapting, selling, transferring, assigning, leasing or commercially exploiting Eskom Data;

8.4.1.3. merging or combining any Eskom Data with other data, including other Eskom Data; or

8.4.1.4. otherwise providing Eskom Data to Third Parties, other than as may be expressly required by, or necessary for, performance by the Supplier of its obligations under this Agreement.

8.4.2. The Supplier shall:

8.4.2.1. process Eskom Data only on behalf of Eskom, members of Eskom Group, and Eskom customers in compliance with Eskom's or relevant members of the Eskom Group's instructions and this Agreement. If, for whatever reason, the Supplier cannot provide such compliance, Eskom is entitled to suspend the processing of and any Supplier access to Eskom Data;

8.4.2.2. ensure that it has in place appropriate operational and technological processes and procedures to safeguard against any unauthorised or unlawful processing, access, loss, destruction, theft, use, or disclosure of the Eskom Data. The Supplier warrants that these measures are appropriate to the harm which might result from any unauthorised or unlawful processing, access, loss, destruction, theft, use or disclosure of the Eskom Data and having regard to the nature of the Eskom Data which is to be protected;

8.4.2.3. process the Eskom Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Applicable Law and, in any event, in accordance with such Applicable Laws;

8.4.2.4. provide a written description of the technical and organisational methods employed by the Supplier for the processing of Eskom Data (within the timescales required by Eskom);

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8.4.2.5. ensure that those of the Service Personnel who are used to process Eskom Data under this Agreement have first been trained in international best practice in respect of data protection and in the care and handling of Eskom Data and that no other employees of the Supplier are allowed access to the Eskom Data;

8.4.2.6. promptly notify Eskom about:

8.4.2.6.1. any legally binding request for disclosure of the Eskom Data by a law enforcement authority prior to any such disclosure unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation; and

8.4.2.6.2. any accidental or unauthorised access which may affect the Eskom Data;

8.4.2.7. deal promptly and properly with all enquiries from Eskom relating to the Supplier's processing of the Eskom Data;

8.4.2.8. upon reasonable request from Eskom (unless Eskom has reasonable cause to suspect there has been a breach of Applicable Law, in which case upon request without notice), submit its data processing facilities, procedures and documentation relating to Eskom Data, and those of its Subcontractors, to scrutiny by Eskom, the relevant member of the Eskom Group or their respective auditors in order to ascertain compliance with the Applicable Law and the terms of this Master Agreement;

8.4.2.9. on request by Eskom, enter into a separate agreement with Eskom in relation to the processing of Eskom Data by the Supplier in any country outside South Africa; and

8.4.2.10. not transfer or process any Eskom Data outside South Africa without the prior written consent of Eskom.

8.4.3. The Supplier shall be responsible for preserving the integrity of Eskom Data and preventing its disclosure, misuse, interception, theft, corruption, or loss. Any such Eskom Data that is lost, degraded, or damaged due to the Supplier's default shall, where copies of such data exist (in any form), promptly be reinstated and/or reconstituted by the Supplier at its own cost. If the Supplier fails to do so within 2 (two) Business Days following the loss, degradation or damage (where the Eskom Data is in the form of the relevant backup and otherwise as soon as reasonably practicable and in any event within 5 (five) Business Days), then Eskom may by itself or by appointment of a Third Party undertake the reinstatement and/or reconstitution of such Eskom Data at the Supplier's cost. Any such Eskom Data that is lost, degraded, or damaged other than due to the Supplier's default shall, where copies of such data exist (in any form), promptly be reinstated and/or reconstituted by the Supplier.

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8.4.4. The Supplier shall ensure that the backups of Eskom Data held by the Supplier, or on its behalf, are always made available to Eskom as soon as is practicable upon request and in any event within 48 (forty-eight) hours of such request.

8.4.5. If at any time the Supplier suspects or has reasons to believe that Eskom Data has or may become corrupted in any way, the Supplier shall notify Eskom forthwith of the remedial action it proposes to take.

8.5. **Data Privacy**

8.5.1. Without prejudice to clause 12.3, each Party shall, and in the case of Eskom its Eskom Connected Entities, and in the case of Supplier its Subcontractors, performs its obligations and exercises its rights pursuant to this Agreement in accordance with the Protection of Personal Information Act, 2013 and without limiting the aforementioned, in accordance with the terms set forth in Schedule P (Operator Agreement).

8.5.2. Eskom reserves the right to conduct a gap analysis assessment of the Supplier's data privacy processes against Eskom's data privacy requirements. Such assessment may include a site visit as well as an audit of the Supplier's processes which may be conducted by Eskom or a Third Party selected by Eskom, subject always to the obligations of confidentiality under this Agreement.

8.5.3. Once the assessment has been completed, if required, the Parties shall meet and agree a remediation plan which Eskom will require the Supplier to undertake in order for Supplier to meet Eskom's data privacy requirements. In the event that the Parties are unable to agree on a remediation plan, the Parties will engage in the dispute resolution process set out under this Agreement.

8.5.4. The Supplier shall provide Eskom with Monthly reports detailing its progress and actions taken under the agreed remediation plan.

8.5.5. Each Party shall not and shall ensure that its subcontractors shall not delete or remove any copyright, database right or other intellectual property notices or security classification notices contained within or relating to data or other materials received from the other Party or any other member of Eskom Group or Supplier Group, as applicable.

8.5.6. The Supplier shall ensure that Eskom Data and any other data relating to any other member of Eskom Group is stored separately from data relating to the Supplier or other members of Supplier Group or any Third Party.

8.5.7. The Supplier shall ensure that its Affiliates and Subcontractors contractually agree in writing to comply with obligations in relation to the processing of data which are equivalent to those agreed by Supplier, as set out in this clause 8.5.

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8.6. **Use and Return of Data**

8.6.1. The Supplier acknowledges and agrees that the Supplier Policies applicable to the Service Personnel under this Agreement will contain terms which are no less onerous than the terms set out in this Agreement and will provide an equivalent level of protection for Eskom Data. In the event that a breach of a Supplier Policy by a member of Service Personnel results in loss or damage to Eskom Data under this Agreement, such breach shall be deemed to be a breach of this Agreement by Supplier, notwithstanding the terms of the Supplier Policy.

8.6.2. At the end of the Term, or upon Eskom's earlier written request, the Supplier will ensure that the Service Personnel and Subcontractors will promptly provide to Eskom:

8.6.2.1. copies of any Eskom Data that any member of the Supplier Group or a Subcontractor (including any Service Personnel) have in their possession in a format and on media reasonably requested by Eskom;

8.6.2.2. copies of any other Eskom Confidential Information that any member of the Supplier Group and the Subcontractors (including any Service Personnel) have in their possession;

8.6.2.3. the object code, source code and associated documentation for the Software specified in clauses 7.1.2 and 7.2.2; and

8.6.2.4. if so requested, destroy or delete permanently any other copies of Eskom Data and other Eskom Confidential Information in any member of the Supplier Group's or the Subcontractor's (including Service Personnel's) possession (including backup copies) and certify in writing to Eskom that it has done so.

8.6.3. At the end of the Term, Eskom may retain a copy of the Supplier's Confidential Information as is required to:

8.6.3.1. comply with its reporting and regulatory requirements;

8.6.3.2. carry out any on-going obligations including obligations under the Exit Management Plan; and/or

8.6.3.3. to enjoy and make use of licences granted under this Agreement.

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9. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

9.1. Warranties and Representations

9.1.1. Each Party warrants and represents that:

9.1.1.1. it has the capacity, power, and authority to enter into this Agreement;

9.1.1.2. the persons entering into this Agreement on its behalf have been duly authorised to do so;

9.1.1.3. this Agreement and the obligations created hereunder are binding upon it and enforceable against it in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any other agreement, or any judgment or court order, to which it is bound;

9.1.1.4. it shall comply with all Eskom policies and procedures;

9.1.1.5. it is entitled to grant (or transfer to the extent required by this Agreement) the rights and licences set out in clause 7;

9.1.1.6. there are no actions, suits or proceedings pending or threatened, or any other event, matter, occurrence, or circumstance which to the Party's knowledge, challenges or may have a material adverse impact on this Agreement or the ability of the Party to perform its obligations under this Agreement; and

9.1.1.7. once duly executed, this Agreement will constitute its legal, valid, and binding obligations.

9.1.2. The Supplier warrants and represents to Eskom that:

9.1.2.1. as at the Effective Date, the Supplier Group and its Subcontractors have not violated any:

9.1.2.1.1. Applicable Law; or

9.1.2.1.2. Eskom Policies,

regarding the offering of inducements in relation to this Agreement;

9.1.2.2. it has the required skills, facilities, tools, resources, experience, and expertise to perform the Services;

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9.1.2.3. it is authorised (in terms of the Companies Act, its MOI, its rules, and all other Applicable Laws) to enter into this Agreement and no proceedings have been commenced or threatened against it which would restrain the Supplier from entering into this Agreement;

9.1.2.4. all internal and formal procedural requirements of the Companies Act, its MOI, its rules, and shareholders agreement have been complied with in respect of the entry into of this Agreement;

9.1.2.5. it is not Financially Distressed nor is any other circumstance present to justify Business Rescue nor has any notice been sent to any "affected person" as contemplated in Chapter 6 (section 128) of the Companies Act, to the effect that the Supplier is Financially Distressed;

9.1.2.6. no application to court for an administration order against it has been made;

9.1.2.7. it is not under Business Rescue nor is Business Rescue pending or threatened against it nor have any steps been taken, at any time, to commence Business Rescue against it under Chapter 6 of the Companies Act nor have any meetings of shareholders, directors, or other officers been convened for the purposes of considering or passing a resolution for, to petition for, or file a document with a court or with any registrar, in respect of the commencement of Business Rescue proceedings;

9.1.2.8. no proceedings have been commenced, threatened, or are pending under section 77(5) of the Companies Act in respect of any decision of the board of the Supplier;

9.1.2.9. no material shareholder appraisal rights have been commenced, threatened, or are pending in respect of it under section 164 of the Companies Act;

9.1.2.10. its obligations under this Agreement will be performed:

9.1.2.10.1. in accordance with the descriptions and specifications provided by Eskom; and

9.1.2.10.2. by an appropriate number of experienced, qualified, competent, trained, and efficient Service Personnel and in accordance with Good Industry Practice;

9.1.2.11. it has the resources necessary to accommodate a reasonable level of changes to the Services that may be reasonably anticipated by the Parties to occur;

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9.1.2.12. it has, and will continue to hold, all approvals from Regulators necessary to perform its obligations under this Agreement;

9.1.2.13. it has and will continue to have all rights in and to its tools necessary to perform its obligations under this Agreement;

9.1.2.14. it has not received any payment or other benefit from any Third Party (except for any arms' length payments made for goods or services provided) in return for the Supplier introducing that Third Party to Eskom or in return for subcontracting part of the Services to that Third Party;

9.1.2.15. it will not, by any act or omission, breach any licence granted by Eskom to the Supplier;

9.1.2.16. the performance of its and its Subcontractors' obligations under this Agreement and Eskom's use of the Services, Equipment or Materials, and any licences granted by the Supplier to Eskom, will not infringe any Intellectual Property Rights of any Third Party;

9.1.2.17. the Deliverables will be free from Defects and free from any Third-Party rights and interests (including liens, charges, and options) (unless reasonable and as disclosed to Eskom);

9.1.2.18. it will maintain security procedures in accordance with this Agreement, including under the relevant Eskom Policies and Supplier Policies and the Operations Manual to prevent unauthorised access to Eskom Data;

9.1.2.19. in performing its obligations under this Agreement, all Software used by or on behalf of the Supplier will:

9.1.2.19.1. be currently supported versions of that Software; and

9.1.2.19.2. perform in accordance with its specification;

9.1.2.20. it will perform the Services diligently, in a timely manner, and in accordance with any applicable time schedules set forth in the Agreement or relating to the Services;

9.1.2.21. it will promptly notify in writing Eskom upon becoming aware of any circumstances (including Eskom's failure to perform, or to perform on a timely basis, any Eskom Dependencies) that may reasonably be expected to jeopardise the performance or timely performance of any part of the Services;

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9.1.2.22. it will, as part of the Services, implement and maintain a robust business continuity plan in accordance with Good Industry Practices and as is applicable to the Supplier environments that relate to the performance of the Services;

9.1.2.23. it will provide the appropriate number of personnel to meet its Service obligations, and that the personnel that the Supplier assigns to perform the Services will be properly educated, trained, and qualified for the services they are to perform;

9.1.2.24. it shall: (i) efficiently use the resources or services necessary to provide the Services; and (ii) use Commercially Reasonable Efforts to perform the Services in the most cost-effective manner consistent with the required level of quality and performance;

9.1.2.25. at the time it is delivered to Eskom, each Deliverable (including any Software, code or scripts) produced by (or on behalf of) the Supplier under this Agreement shall: (i) conform in all material respects to the specifications and requirements therefore; and (ii) be compatible with and will properly operate in Eskom's supply chain, operating, production, distribution, marketing, procurement and general business and operational environment without a need to modify any Software or create any interfaces that are not a part of the Deliverable;

9.1.2.26. it will reinstate all Software and data from Eskom's back-up records, at the Supplier's cost, if the loss or corruption of such Software or data arises from a default of the Supplier;

9.1.2.27. during the Term, it will inform Eskom promptly of the existence of any proceedings, pending or threatened, or of any other event, matter, occurrence or circumstance to which the Supplier or a Subcontractor is a party which may have a material adverse effect upon the supply or operation of the Services or the fulfilment of the Supplier Group's liabilities, responsibilities and obligations pursuant to this Agreement;

9.1.2.28. it will comply strictly with the terms set forth in Schedule Q (Supplementary Terms);

9.1.2.29. it shall not use any AI Tools in connection with the Services or Eskom Data without Eskom's prior written consent;

9.1.2.30. if Eskom provides consent to the use of AI Tools, the Supplier will:

9.1.2.30.1. comply with all Applicable Laws, Eskom Policies and Good Industry Practice;

9.1.2.30.2. be transparent, explainable, and auditable to Eskom's satisfaction; and

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9.1.2.30.3. not compromise the confidentiality, security, or integrity of Eskom Data.

9.1.2.31. AI Outputs shall be free from any third-party intellectual property claims, encumbrances, or usage restrictions;

9.1.2.32. the licence terms of any AI Tool used do not (i) preclude or restrict Eskom's ownership and use of the AI Output, (ii) grant the AI Tool provider any ownership or usage rights in AI Outputs, and (iii) impose attribution, share-alike or re-licensing obligations on Eskom;

9.1.2.33. the use of any AI Tool will not introduce third party rights that impair Eskom's title or ability to exploit the Deliverables or AI Outputs, and that the Supplier has secured all necessary rights to assign/vest such AI Outputs in Eskom under clause 7.1. The Supplier shall indemnify Eskom against any Claim alleging infringement or misappropriation of AI Outputs or AI Tools;

9.1.2.34. it shall not use Eskom Data to train, test, or develop any AI Tool except as expressly authorised in writing by Eskom;

9.1.2.35. it shall implement and maintain appropriate technical and organisational measures to protect Eskom Data, the Services, and Eskom's systems against unauthorised access, use, disclosure, alteration, or destruction, including compliance with all information security requirements set out in this Agreement and in Eskom Policies;

9.1.2.36. it shall ensure that all Subcontractors and third parties engaged in the provision of the Services comply with equivalent cybersecurity obligations in addition to those set out in Schedule R (Information Security Requirements);

9.1.2.37. it shall notify Eskom of any actual or suspected cybersecurity incident or data privacy incident affecting Eskom Data or the Services within 24 (twenty-four) hours of becoming aware of such incident;

9.1.2.38. it shall promptly investigate and remediate any cybersecurity incident at its own cost, and shall provide Eskom with full cooperation and access to information relating to such incident;

9.1.2.39. it shall ensure that its personnel, systems, and processes are subject to regular penetration testing, vulnerability assessments, and security patching in accordance with industry best practice; and

9.1.2.40. Eskom Data shall be provided in a manner that ensures full data portability, migration of such data to any Third Party, Successor Supplier or Eskom's system without dependency on the Supplier's proprietary tools, software, licences, Application Programming Interface ("API"), or services.

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9.2. **Supplier Indemnities**

9.2.1. The Supplier will on demand defend, indemnify and keep indemnified Eskom, Eskom Affiliates, the other Service Recipients and all of their respective officers, employees, and contractors (including Successor Suppliers) (together referred to as "**Eskom Connected Entities**") against any Indemnified Losses that may be assessed against or incurred by such Eskom Connected Entities arising out of, or in connection with:

9.2.1.1. any Claims that any of the following (including use of the following) infringe or misappropriate any Intellectual Property Right of Eskom or any Third Party:

9.2.1.1.1. the performance, receipt or use of the Services and/or any Deliverable;

9.2.1.1.2. any Software, Equipment or Materials Used by the Supplier or a Subcontractor in the performance of the Services, other than Software, Equipment or Materials provided by Eskom or any Service Recipient to the Supplier or a Subcontractor;

9.2.1.1.3. any Software, Equipment or Materials provided by the Supplier to Eskom or any Service Recipient in accordance with the terms of this Agreement (other than to the extent that these are not Used in accordance with any written instructions provided by the Supplier);

9.2.1.1.4. any systems (or combination of systems), processes or procedures Used by Eskom or any Service Recipient at the direction of the Supplier, including a combination of the Supplier's and Eskom's systems made at the direction of Supplier; and/or

9.2.1.1.5. any breach by the Supplier of the permitted terms of use of Eskom Intellectual Property Rights, Eskom Materials, Eskom Data or Eskom-Provided Software, of which the Supplier has been made aware in writing;

9.2.1.2. any Claims brought as a result of the Supplier's or a Subcontractor's breach of clause 12.3, being a failure to perform its obligations pursuant to this Agreement as applicable in accordance with all Applicable Laws that apply to the Supplier, including if the Supplier is prevented from providing the Services due to a failure by the Supplier to comply with Applicable Law;

9.2.1.3. any Claims brought as a result of the Supplier's or a Subcontractor's failure to comply with clause 4;

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9.2.1.4. any Claims arising from service failures that cause production losses, safety incidents, or environmental harm;

9.2.1.5. Third Party Claims arising from operational Technology service failures;

9.2.1.6. any fines or other penalties imposed by a court of competent jurisdiction or by a Regulator arising as a result of a breach by the Supplier or a Subcontractor of their obligations under this Agreement;

9.2.1.7. any damage caused to, or loss of, Eskom property (to the extent of either the deductible was covered by Eskom and Service Recipient's insurance or the replacement value where no insurance cover is provided) or any Third-Party property (to the extent of the replacement costs of the property);

9.2.1.8. any Claims brought in respect of death or bodily injury of any Service Personnel or Third Party; and

9.2.1.9. any acts of fraud, dishonesty, or wilful default by the Supplier (including any Subcontractor or Service Personnel) in the course of providing the Services or otherwise arising in connection with this Agreement.

9.2.2. The Supplier shall indemnify, defend, and hold harmless the Eskom Connected Entities from and against any and all Indemnified Losses arising out of or in connection with:

9.2.2.1. any breach by the Supplier or its Subcontractors of Applicable Laws, including but not limited to anti-corruption, anti-bribery, data protection, cybercrime, and competition laws;

9.2.2.2. fraud, wilful misconduct, dishonesty, or gross negligence by the Supplier or its Subcontractors;

9.2.2.3. any unauthorised disclosure, access to, or loss of Eskom Data;

9.2.2.4. infringement or alleged infringement of Intellectual Property Rights by the Supplier, its Subcontractors, or the Deliverables.

9.2.3. The indemnities under this clause 9.2 and 9.3 shall be unlimited and uncapped and shall survive termination or expiry of this Agreement.

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9.3. **Artificial intelligence**:

9.3.1. The Supplier will on demand defend, indemnify and keep indemnified Eskom, Eskom Affiliates, the other Service Recipients and all of their respective officers, employees, and contractors (including Successor Suppliers) (together referred to as "**Eskom Connected Entities**") against any Indemnified Losses that may be assessed against or incurred by such Eskom Connected Entities arising out of, or in connection with:

9.3.1.1. Eskom's use of the Services including the Supplier's use of the AI Tools in connection with the Services or Eskom's use of such AI Tools, or the use by the Supplier of any Eskom Data and/or Eskom Intellectual Property in such AI Tool, and the Supplier's breach of this Agreement or violation of Applicable Laws;

9.3.1.2. the negligent or wrongful acts and omissions of the Supplier in respect of the AI Tools and the Services; and

9.3.1.3. any damages occasioned by the unauthorised use, misappropriation, or commercialisation of the Eskom's Intellectual Property, Eskom Data or Eskom Confidential Information by the Suppliers use, supply or deployment or any AI Tools.

9.4. **Employment Indemnities**

The Supplier shall comply with the provisions set forth in Schedule O (HR Provisions).

9.5. **Eskom Indemnity**

This is an Eskom Retained Obligation. Eskom will defend the Supplier in accordance with clause 9.7 against, and indemnify the Supplier in respect of any Indemnified Losses to the extent the same are assessed against, or incurred by, the Supplier in respect of, any Claims brought against the Supplier that Use of any Eskom-Provided Software, Equipment or Materials provided by Eskom or any other Service Recipient to the Supplier for the Supplier's use in providing the Services infringes or misappropriates any Intellectual Property Right of any third party (other than to the extent that such Software, Equipment or Materials is not Used in accordance with any written instructions provided by Eskom).

9.6. **Intellectual Property Indemnity Provisions**

9.6.1. The following will apply to the indemnity set out in clauses 9.2.1.1 and 9.5.

9.6.2. Indemnified Losses will not be recoverable pursuant to such indemnities to the extent that a Claim is based upon:

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9.6.2.1. any Modifications made by the Indemnitee of an Indemnified Item (other than by, or pursuant to the specific direction of, the Indemnitor);

9.6.2.2. any combination of an Indemnified Item with Equipment or Software that the Indemnitor has notified the Indemnitee in writing cannot be combined with the Indemnified Item at the time the Indemnified Item was provided to the Indemnitee; or

9.6.2.3. failure to use any corrections or enhancements of the Indemnified Item provided that any relevant corrections or enhancements are provided free of charge and provide the same functionality or in any event, no less functionality than the original Indemnified Item,

provided in each case that the Indemnitor notifies the Indemnitee of any potential infringement of such Third-Party rights of which the Indemnitor is reasonably aware.

9.6.3. If a Claim is brought that is the subject of an indemnity, or the Indemnitor reasonably believes that any Indemnified Items may be the subject of a Claim, then in addition to such indemnity obligations and notwithstanding clause 9.7:

9.6.3.1. if the Supplier is the Indemnitor, the Supplier will:

9.6.3.1.1. use Commercially Reasonable Efforts to ensure the necessary rights to provide and use such Indemnified Items from such Third Party as required by this Agreement; and

9.6.3.1.2. if the Supplier cannot ensure such rights, use Commercially Reasonable Efforts to replace or Modify such Indemnified Items so that they no longer infringe such Third-Party rights, provided that such replacement or Modification does not degrade the functionality and performance of such Indemnified Items; and

9.6.3.1.3. if the Supplier, having used Commercially Reasonable Efforts, is unable to carry out the steps set forth in clauses 9.6.3.1.1 and 9.6.3.1.2, then the Supplier may remove such Services or require that Eskom and/or any relevant Service Recipients cease using such Indemnified Items by giving Eskom reasonable written notice sufficient to allow Eskom and/or those Service Recipients to migrate from, or cease using, the same and without limitation to any other rights that Eskom or any Service Recipient may have pursuant to this Agreement:

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9.6.3.1.3.1. the Charges will be equitably reduced to reflect the impact of such removal on the Services; and

9.6.3.1.3.2. the Supplier will reimburse Eskom and any Service Recipients (as applicable) for their costs incurred in migrating from or ceasing to use the same; or

9.6.3.2. if Eskom is the Indemnitor, Eskom may elect to ensure the necessary rights, to replace or Modify the Indemnified Items (and the Supplier will provide reasonable assistance to Eskom in identifying replacements or Modifications and implementing the same) or to require that the Supplier cease using such Indemnified Items by giving reasonable notice sufficient to allow the Supplier to cease using the same. Any impact of the replacement, Modification or removal of such Indemnified Items on the Supplier's performance or ability to perform will be addressed in accordance with clause 10.4.

9.7. **Defence of Claims**

9.7.1. Upon a Third Party threatening or bringing a Claim in respect of which a Party has given an indemnity pursuant to this Agreement:

9.7.1.1. the Indemnitee will notify the Indemnitor as soon as reasonably practicable upon becoming aware of the Claim; and

9.7.1.2. the Indemnitor will elect whether or not to defend the Claim in accordance with clause 9.7.2 or 9.7.3.

9.7.2. The Indemnitor may elect, by giving notice within 14 (fourteen) days following receipt of the notice to be given in clause 9.7.1 or, if earlier, 7 (seven) days prior to the first date when a response to the Claim is due, to assume control of the defence and settlement of the Claim, in which case:

9.7.2.1. the Indemnitor will, at its own expense, defend the Claim and have control of the conduct of the defence and settlement of the Claim, provided however that the Indemnitee will have the right to:

9.7.2.1.1. participate in any defence and settlement, such participation to be at its own cost where it is not pursuant to a request for participation from the Indemnitor;

9.7.2.1.2. approve the terms of any settlement (such approval not to be unreasonably withheld) and reasonably veto any proposed admission of liability by the Indemnitor and any such settlement or admission (including its terms) will be Confidential Information of both Parties; and

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9.7.2.1.3. join the Indemnitor as a defendant in legal proceedings arising out of the Claim;

9.7.2.2. the Indemnitee will:

9.7.2.2.1. not make admissions (except under compulsion of law), agree to any settlement or otherwise compromise the defence or settlement of the Claim without the prior written approval of the Indemnitor, which will not be unreasonably withheld; and

9.7.2.2.2. give, at the Indemnitor's request and cost, all reasonable assistance in connection with the defence and settlement of the Claim; and

9.7.2.3. the Indemnitor will be subrogated to the rights and defences of the Indemnitee in respect of the Claim**.**

9.7.3. If the Indemnitor does not elect to defend the Claim or does not, following such election, actively defend the Claim, then:

9.7.3.1. the Indemnitee will have the right to defend or settle the Claim in the manner it considers appropriate, at the cost of the Indemnitor (including in respect of any Indemnified Losses for which the Indemnitor is liable pursuant to the indemnity and legal costs on an attorney-client basis); and

9.7.3.2. the Indemnitor will give, at the Indemnitee's request, all reasonable assistance in connection with the conduct of the defence and settlement of the Claim at the cost of the Indemnitor.

9.7.4. If the Indemnitor does not elect to defend the Claim within the time periods set out in clause 9.7.2 such election may be made subsequently with the agreement of the Indemnitee (not to be unreasonably withheld).

10. LIABILITY

10.1. Limits on Liability

10.1.1. Except as set forth in clause 10.1.4 , the Supplier Group's total aggregate liability to the Eskom Group (and the other Service Recipients) will be limited to 100% (hundred percent) of the total of the Charges paid or payable.

10.1.2. Except as set forth in clause 10.1.4, the Eskom Group's total aggregate liability to the Supplier Group (and the Subcontractors), whether based on an action or claim in contract, delict (including negligence), breach of statutory duty or otherwise arising out of,

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or in relation to, this Agreement, will be limited to the total of 25% (twenty fifty percent) of the 12 (twelve) Months Charges paid, save for payment of any undisputed invoices lawfully due, owing and payable.

10.1.3. Subject to clause 10.1.4 10.1.4 of this Agreement, no member of the Supplier Group will be liable to any member of the Eskom Group, and neither will any member of the Eskom Group be liable to any member of the Supplier Group, whether based on a claim in contract, delict (including negligence), breach of statutory duty or otherwise arising out of, or in relation to, this Agreement, for any indirect, special or consequential losses, or loss of profits or loss of revenue, even if foreseeable, or if such entity has been advised of the possibility of such losses (provided that direct losses of Service Recipients will not be deemed to be indirect or consequential losses).

10.1.4. Nothing in this clause 10 shall limit any member of the Supplier Group's liability for:

10.1.4.1. additional costs to maintain the Services or to implement a temporary workaround, including the transfer of the Services to a replacement supplier, arising from a default by the Supplier;

10.1.4.2. costs of Eskom or Service Recipients providing themselves or procuring any or all of the Services from an alternate source to the extent such costs exceed the Charges that would have been payable by Eskom pursuant to this Agreement in respect of such period, following a breach or failure to perform by the Supplier;

10.1.4.3. costs incurred by Eskom in procuring or performing services substantially similar to the Services and/or Exit Assistance Services following a Termination (or a Termination in Part) of this Agreement for cause, for the remainder of the Service Period (but for such Termination) that are in excess of the Charges that would have been payable by Eskom pursuant to this Agreement in respect of such period;

10.1.4.4. additional operational and/or administrative costs and expenses incurred by Eskom arising from a default by Supplier;

10.1.4.5. any regulatory losses, fines, expenses, or other losses arising from a breach of, or failure to comply with, any Applicable Law by Supplier;

10.1.4.6. costs to reload or rectify Eskom Data and/or to replace Equipment, Software and Material which are lost, corrupted or damaged due to a breach by Supplier of this Agreement or otherwise caused by an act or omission of Supplier;

10.1.4.7. costs incurred by Eskom as a result of any ex-gratia payments made by Eskom to its customers or Eskom Personnel, arising from a default by Supplier.

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10.1.4.8. costs incurred as a result of cyberattack, damage to, and/or downtime in respect of, any IT platforms (including any cloud computing infrastructure, tools, software, or platform whether owned by Supplier or Customer or a Third Party) arising from a default by the Supplier or any Third Party;

10.1.4.9. death or personal injury caused by a Party's negligence and other losses which cannot be excluded by Applicable Law;

10.1.4.10. any gross negligence, wilful default, or criminal, fraudulent or deliberate act or omission of the Supplier, Subcontractors, or any Service Personnel;

10.1.4.11. refusal and/or failure by the Supplier to cooperate with any Third-Party Suppliers;

10.1.4.12. the Supplier Indemnities;

10.1.4.13. the Supplier's obligation to pay Service Credits or payments for missed Transition Milestones or Transformation Milestones;

10.1.4.14. the wrongful termination or abandonment of this Agreement or any of the Services by the Supplier;

10.1.4.15. infringement of Intellectual Property Rights or Confidential Information of the Service Recipient or any Third Party;

10.1.4.16. any losses arising from a breach of the Supplier's obligations under Clause 8.5 (Data Privacy), Schedule P (Operator Agreement), or any other data protection obligations under this Agreement;

10.1.4.17. any losses from breach of the Supplier's obligations under Clause 5.2(Artificial Intelligence) or any other obligations under this Agreement;

10.1.4.18. any damage to, or loss or destruction of, any real or tangible property where the Supplier is legally liable or responsible for that damage, loss or destruction, or the same results from a breach of this Agreement (including any Claims in respect of same);

10.1.4.19. breaches of Applicable Law in relation to unauthorised access or modifications to computer systems or networks (including programs or data held therein) or any form of cybercrime.

10.1.5. Each Party acknowledges its general duty at law to mitigate its losses incurred in relation to this Agreement.

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10.1.6. None of the provisions of this Agreement (nor the existence of the Agreement itself) shall: (i) preclude Eskom from bringing a Claim against the other arising in delict in circumstances where such Claim would lie in any event had this Agreement not been concluded; or (ii) limit the extent of the liability of Supplier pursuant to a Claim which falls within the ambit of (i) foregoing or for which Supplier is indemnified under any insurance claim.

10.2. **Recovery of Third-Party Losses and Consolidation of Claims**

10.2.1. The Parties agree that the following losses suffered by the following entities are recoverable (subject to clause 10.1) directly by Eskom against the Supplier pursuant to this Agreement on behalf of such entities:

10.2.1.1. any Indemnified Losses suffered by an Eskom Connected Entity (other than Eskom) that are the subject of an indemnity given by Supplier pursuant to this Agreement; and

10.2.1.2. any other losses that are suffered by an Eskom Connected Entity (other than Eskom) to the extent the same would be the type of loss recoverable by Eskom from Supplier pursuant to this Agreement (and would not have been otherwise excluded by the terms of this Agreement) if Eskom had suffered the same damages.

10.2.2. No Third-Party entity other than the Third-Party Beneficiaries will have the right to enforce any provision of this Agreement as a Third-Party Beneficiary.

10.2.3. The following will apply in respect of a recovery of a Third-Party Beneficiary's losses by a Party in accordance with clauses 10.2.1:

10.2.3.1. the relevant Party will ensure that its Third Party Beneficiary will refer any Claim for loss in relation to this Agreement to that Party and that Party will handle the Claim and liaise with the Third-Party Beneficiary in respect of the Claim but the Third-Party Beneficiary will not settle or agree to settle or compromise the Claim or make any admission in respect of the Claim without the prior written consent of the relevant Party;

10.2.3.2. the other Party will not seek to avoid or restrict liability to the relevant Party on the grounds that the Third-Party Beneficiary is not a party to this Agreement;

10.2.3.3. any amounts recovered by a Party on behalf of its Third-Party Beneficiary in accordance with clauses 10.2.1 will not be taken into account in relation to the respective Party's total aggregate liability under this Agreement pursuant to clause 10.1; and

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10.2.3.4. if, notwithstanding clauses 10.2.1, a court of first instance holds that a Party is not able to recover a loss (including an Indemnified Loss) that would otherwise be recoverable, then the Third-Party Beneficiary, with the consent of the relevant Party, may recover such loss directly from the other Party.

10.2.4. In respect of any Claims brought pursuant to this clause 10.2, each Party will:

10.2.4.1. promptly notify the other Party if it becomes aware of a potential Claim from a Third-Party Beneficiary pursuant to this Agreement; and

10.2.4.2. use Commercially Reasonable Efforts to ensure that contemporaneous Claims brought in relation to this Agreement by their respective Third-Party Beneficiaries, pursuant this clause 10.2, are consolidated.

10.2.5. Notwithstanding this clause 10.2, Eskom and the Supplier will be entitled to vary, Terminate or rescind this Agreement without reference to, or the consent of, the Third-Party Beneficiaries.

10.2.6. Save to the extent provided in this clause 10.2, the Parties confirm that it is not their intention to confer any rights on any person who is not a party to this Agreement by virtue of its terms.

10.3. **Force Majeure**

10.3.1. Neither Party will be liable for any delay or failure in the performance of any of its obligations pursuant to this Agreement to the extent that the same results from a Force Majeure Event and the Party affected by the Force Majeure Event:

10.3.1.1. could not have prevented the delay or failure by using reasonable precautions;

10.3.1.2. as soon as reasonably practicable following becoming aware gives notice of the occurrence of the Force Majeure Event to the other party by telephone (and confirms the same in writing within 24 (twenty-four) hours); and

10.3.1.3. uses Commercially Reasonable Efforts to commence performing such obligations as soon as possible or otherwise mitigate the effects of the Force Majeure Event by finding a work around to perform the obligation despite the Force Majeure Event.

10.3.2. This clause 10.3 will not limit the Supplier's obligations to the extend it is able to perform the Services.

10.3.3. Upon the occurrence of a Force Majeure Event affecting the Supplier, Eskom will have the right to:

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10.3.3.1. step-in in accordance with clause 10.5 ; and/or

10.3.3.2. Terminate the affected Services in accordance with clause 11.2.6.

10.3.4. If a Force Majeure Event causes the Supplier to allocate limited resources between or among the Supplier's customers, Eskom will not be placed in a lower priority to any other similarly affected customers of the Supplier.

10.3.5. Where the provision of the Services or part thereof is prevented or affected by a Force Majeure Event, Eskom's obligation to pay the Charges will be reduced until the Supplier resumes full performance of that part of the Service in accordance with the terms of this Agreement.

10.4. Escalation and Excused Performance

10.4.1. Escalation

10.4.1.1. The Parties shall escalate any ambiguity or discrepancy in the Agreement annexures and/or documents or drawings as well as any problems, issues, risks and/or actual, potential, envisaged and/or impending delays (including if same are caused by Eskom and or Third-Party Suppliers) (collectively referred to here as "**Escalation Triggers**") in accordance with the escalation hierarchy agreed upon in Schedule E (Governance).

10.4.1.2. The Supplier shall escalate any Escalation Triggers within 48 (forty-eight) hours of the Supplier becoming aware of such Escalation Triggers which it is not able to resolve and shall provide Eskom with a summary of the current Escalation Triggers on a Monthly basis.

10.4.1.3. Within two (2) Business Days after escalating the Escalation Trigger, the Supplier shall produce a proposed plan for approval by Eskom listing all the necessary and foreseeable tasks and activities required, or a work around or a circumvention to address and mitigate such Escalation Triggers.

10.4.1.4. In the event that the Supplier does comply with the requirements of clauses 10.4.1.1, 10.4.1.2 and 10.4.1.3 above, the Supplier shall nevertheless not be excused from performing its obligations under this Agreement (including performing according to the agreed standards and/or deadlines for delivery) unless the requirements of clause 10.4.2.1 - 1.1.1.1 below have been met.

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10.4.1.5. In the event that the Supplier does not comply with the requirements of clauses, 10.4.1.1, 10.4.1.2 and 10.4.1.3 above, this shall be a material breach entitling Eskom to, in addition to any other remedies which it may have under the Agreement or in law:

10.4.1.5.1. submit the breach to the dispute resolution procedure in accordance with Schedule E (Governance) for determination of an appropriate resolution or remedy;

10.4.1.5.2. impose a penalty on Supplier in the amount of 1% (one percent) of the Monthly Charges**;** or

10.4.1.5.3. withhold payment of any amounts due which would have been due payable at the time of the breach, until such breach has been remedied.

10.4.2. Excused Performance Process

10.4.2.1. The Supplier will be relieved from performing its directly affected obligations pursuant to this Agreement (as applicable) if, and to the extent:

10.4.2.1.1. the relevant non-performance directly results from Eskom's failure to perform an Eskom Dependency (an "**Excused Event**"); and

10.4.2.1.2. the Supplier:

10.4.2.1.2.1. promptly (and in any event within the timeframe for escalation contemplated in clause 10.4.1.2) provide Eskom with notice of such failure, act or omission and its intention to rely on this clause (the "**Relief Notice**"). The giving of such notice shall not prejudice Eskom's rights under this Agreement;

10.4.2.1.2.2. uses Commercially Reasonable Efforts to perform (and to minimise the impact of such non-performance) notwithstanding any matters referred to in a Relief Notice; and

10.4.2.1.2.3. recommences performance immediately following resolution of the failure to perform an Eskom Dependency.

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10.4.2.2. The Relief Notice shall:

10.4.2.2.1. identify the cause or causes of the delay or interruption;

10.4.2.2.2. provide details of the delay or interruption and expected duration;

10.4.2.2.3. identify clearly which Services and/or Service Level requirements or other obligations pursuant to this Agreement are to be affected and, in the reasonable opinion of the Supplier, the extent to which they are to be affected;

10.4.2.2.4. identify as far as possible the extent to which the Supplier's fulfilment of the relevant obligations under this Agreement will be delayed, interrupted, or otherwise affected; and

10.4.2.2.5. give indications of the proposed rectification steps to be taken by the Supplier to solve the problem and progress made so far.

10.4.2.3. If the delay or interruption continues for more than 3 (three) Business Days, the Supplier shall provide Eskom periodically (and at least on a weekly basis) with updated information in relation to the matters referred to in clause 1.1.1.1 above.

10.5. **Step-In Right**

10.5.1. Without limiting Eskom's or any Service Recipient's other rights pursuant to this Agreement, if:

10.5.1.1. a Step-In Event occurs;

10.5.1.2. the Supplier notifies Eskom that a Step-In Event is likely to occur; or

10.5.1.3. in the reasonable opinion of Eskom, a Step-In Event is likely to occur,

then Eskom may give notice, in accordance with clause 10.5.2 below, requiring the Supplier to take such steps, as Eskom reasonably considers necessary or expedient in the circumstances, to mitigate or prevent the Step-In Event (including the provision of additional or alternative services by the Supplier at the Supplier's cost and expense).

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10.5.2. Notwithstanding any other provision of this Agreement, and without prejudice to any other right or remedy of Eskom, if the Supplier fails to take steps within such reasonable time specified by Eskom or otherwise fails to remedy the Step-In Event, or if Eskom reasonably considers that the Supplier is unable to, or will not do so to Eskom's reasonable satisfaction then Eskom may, at its option do any of the following as Eskom considers necessary, and for as long as Eskom considers necessary, in respect of the affected Services (the "**Impacted Services**"):

10.5.2.1. take control of or perform any of the Impacted Services itself;

10.5.2.2. appoint a Third-Party management team or engage a Third Party to perform the Impacted Services; or

10.5.2.3. second employees ("**Secondees**") to the Supplier and such Secondees shall be given full access to all information that is available to Service Personnel in relation to the Impacted Services. The Supplier will act in accordance with the Secondees' reasonable suggestions as to how to minimise disruption to the Services,

("**Step-In**").

10.5.3. If Eskom initiates a Step-In then from the point in time of the Step-In until the Supplier recommences performance of the Services pursuant to clause 10.5.4:

10.5.3.1. neither Eskom nor the relevant Service Recipient will be required to pay any charges for the Impacted Services for that period;

10.5.3.2. Eskom will, except where the Step-In is in accordance with clause 10.5.1.3, be responsible for the performance of the Impacted Services and the Service Levels will not apply to such services; and

10.5.3.3. where such Step-In has been taken following a breach by the Supplier, the Supplier will reimburse Eskom for any excess costs (above those that would have been paid as Charges to the Supplier) incurred by Eskom or Service Recipient in conducting such Step-In.

10.5.4. Following the Supplier demonstrating to Eskom's satisfaction that the Supplier is ready to recommence performance of the Services, the Supplier will recommence performance in accordance with a timetable reasonably proposed by the Supplier, subject to Eskom's written approval.

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10.6. **Insurance**

10.6.1. The Supplier shall, at its own cost and expense, for the continued duration of this Agreement have and maintain in force, sufficient insurance cover, to cover both its obligations and liabilities under this Agreement, consistent with acceptable and prudent business practices, including at a minimum, the insurance specified hereunder:

Insurance against	**Minimum amount of cover**	**Period following Completion of the whole of the *services* or earlier termination**
Liability of the Supplier for claims made against it arising out of its failure to use the skill and care normally used by professionals providing services similar to the Services.	The total of the contract value.	Until the end of the Term.
Liability for death of or bodily injury to a person (not an employee of the Supplier) or loss of or damage to property resulting from an action or failure to take action by the Supplier.	**Loss of/or damage to property** The replacement cost. **Bodily injury to or death of a person** The amount required by Applicable Law.	Until the end of the Term.
Liability for death of or bodily injury to employees of the Supplier arising out of and in the course of their employment in connection with this Agreement	The amount required by Applicable Law.	Until the end of the Term.
Cyber Liability	Liability for data breach due to cyber perils resulting in the loss of Eskom and third-party information caused by the Supplier.	Until the end of the Term.

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10.6.2. The Supplier will ensure that the following apply to such insurance:

10.6.2.1. the Supplier will pay all deductible amounts associated with Eskom's insurance in the event that Eskom's insurance is claimed upon and provided that such loss is caused by negligence or wilful misconduct of the Supplier or any Service Personnel; and

10.6.2.2. upon request, the Supplier will provide updated certificates of insurance evidencing that the coverage required under this clause 1.1. The Supplier will ensure that the Supplier's insurers provide not less than 30 (thirty) days written notice to Service Recipient prior to any modification, cancellation, or non-renewal of the policies.

10.6.3. The Supplier will ensure that any Subcontractors maintain insurance cover with such limits as applicable.

10.6.4. If there is a loss, damage or other event that requires notice or other action under the terms of any insurance coverage specified in clause 1.1, the Supplier will be solely responsible for taking such action.

10.6.5. The Supplier's obligations specified in this clause 1.1 will not limit or expand in any way the other liabilities and obligations assumed by the Supplier under this Agreement.

10.6.6. Eskom provides the insurance stated below.

10.6.7. The Supplier will be liable for the applicable deductible, if any, from the Effective Date. Eskom will provide the schedule of deductibles as at the Effective Date.

Insurance against	**Minimum amount of cover or minimum limit of indemnity**
Assets All Risk	As per the insurance policy document.
General and Public Liability	As per the insurance policy document.
Cyber Liability	As per the insurance policy document.

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11. TERMINATION

11.1. General

11.1.1. Unless otherwise expressly provided in this Agreement, clause 11.2 sets out the only grounds on which this Agreement may be Terminated prior to the end of the period contemplated in clause 2.1. Save as provided in clause 11.2, notwithstanding any dispute between the Parties, each Party shall continue to perform its respective obligations under this Agreement pending the resolution of the dispute.

11.1.2. References in clause 11.2 to Termination of this Agreement will be interpreted in accordance with the following:

11.1.2.1. the Termination that is referred to, relates to the Termination of the Services and will not include the Exit Assistance Services (which will be performed notwithstanding any Termination in accordance with Schedule I (Exit Assistance)); and

11.1.2.2. references to Termination of all of the Services will mean that the Services will end as of the Termination Date specified in the relevant Termination Notice, (unless extended by Eskom pursuant to clause 2.1.4).

11.1.3. A Termination Notice given by a Party will specify the Termination Date, which will comply with any notice periods specified in clause 11.2, and which may be changed pursuant to clause 2.1.4. Unless expressly stated otherwise in the Termination Notice, if there is no notice period required pursuant to clause 11.2, any Termination Notice provided by Eskom will be effective immediately upon such notice being served.

11.1.4. If there is a Termination in Part of this Agreement, the Charges for the remainder of the Services will be adjusted in accordance with the relevant mechanism in Schedule D (Charges) and, where there is no mechanism, set out in Schedule D (Charges) to adjust the Charges, the Parties will equitably adjust the Charges in accordance with the Change Management Procedure.

11.2. Rights of Termination

11.2.1. Termination for Cause by Eskom may Terminate this Agreement, in whole or in part, by giving in each case, except in respect of clause 11.2.1.2, 30 (thirty) days of written notice of termination, if:

11.2.1.1. the Supplier commits a material breach of this Agreement, and such breach is not cured within such period as may be specified by Eskom;

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11.2.1.2. the Supplier commits a material breach of this Agreement that is not capable of being cured;

11.2.1.3. the Supplier commits a series of breaches of this Agreement that may not themselves be material, but which collectively can be construed as constituting a material breach;

11.2.1.4. the failure by the Supplier and/or its Subcontractors to perform the Services results in the interruption of the activities of Eskom such that Eskom or it is unable to continue to carry out any portion of its business operations;

11.2.1.5. the Supplier infects Eskom Data and systems with Defects or any other type of virus or malicious software or code;

11.2.1.6. the Supplier is subject either to an enforcement action by any Regulator or ceases to be authorised under any Applicable Law which in either case prevents the Supplier from lawfully performing its obligations under the relevant Agreement;

11.2.1.7. any act or omission of the Supplier or Subcontractor results in:

11.2.1.7.1. any Regulator notifying Eskom that it intends to withdraw any Eskom licence or impose a fine on Eskom;

11.2.1.7.2. any Regulator notifying Eskom in writing in the form of a warning letter that it is considering withdrawing any Eskom licence or imposing a fine on Eskom; or

11.2.1.7.3. damage to Eskom's reputation, brand, or results in adverse publicity for the Eskom Group;

11.2.1.8. the Supplier fails to adhere to any individual Services Level for 3 (three) consecutive Months or 4 (four) Months in any Contract Year;

11.2.1.9. a Critical Service Level Default occurs;

11.2.1.10. the Supplier fails to meet a Key Transition Milestone or Key Transformation Milestone;

11.2.1.11. the Supplier refusal and/or failure to cooperate with Third Party Suppliers;

11.2.1.12. the Supplier breaches clauses 7 (Intellectual Property Rights), 8 (Confidentiality, Eskom Data and Data Protection), 12.10 (Broad Base Black Economic Empowerment) or 12.11 (SDL&I) or 12.13 (Ethics); or

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11.2.1.13. the Supplier suffers an Insolvency Event.

Eskom's rights to terminate this Agreement at law will not be limited in any way by the terms of this Agreement. Where Eskom issues a notice to terminate an Agreement, Eskom may withdraw its notice of termination at any time up to the termination date on giving not less than 30 (thirty) days' notice.

11.2.2. Termination for Convenience by Eskom

11.2.2.1. Eskom shall have the right to Terminate (i) this Agreement, (ii) a Service Request, (iii) the Services, or (iv) any part of the Services ("**Termination in Part**"), for convenience by giving the Supplier not less than 2 (two) Months' prior written notice.

11.2.2.2. The Supplier acknowledges and agrees that the Charges shall not be adjusted, increased, or otherwise restructured on the grounds of any cross-subsidisation between the Terminated Services and the remaining Services.

11.2.2.3. Termination in Part shall not prejudice Eskom's rights to terminate any further Services under this Agreement at a later date.

11.2.2.4. Eskom's sole liability in respect of a termination under this clause 11.2.2 will be payment of:

11.2.2.4.1. the Charges due and owing up to the Termination Date; and

11.2.2.4.2. termination charges in accordance with the Agreement as specified in Schedule D (Charges), which will be payable on the Termination Date.

11.2.3. Withdrawal of Services

11.2.3.1. In addition to the right to terminate, Eskom shall have the right to withdraw Services pursuant to clause 1.1. Such withdrawal of Services shall not be regarded as a termination for convenience under clause 11.2.2 unless more than 80% (eighty percent) of Services (calculated on the basis of fees paid to Supplier by Eskom) have been withdrawn as compared to the immediately preceding Contract Year.

11.2.3.2. In the case of a withdrawal of Services generating less than an 80% (eighty percent) reduction in the revenue of Supplier generated directly from the Services in the applicable Contract Year, no early termination fee will be payable.

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11.2.4. Termination for Change of Control

Eskom may Terminate this Agreement, by giving notice to Supplier, where there is a change in the Control of the Supplier.

11.2.5. Business Impacting Event suffered by Eskom.

Eskom may Terminate this Agreement or Terminate in Part, if, for whatever reason, Eskom loses a regulatory licence, consent, or approval or, by order of a Regulator, is no longer authorised to provide electricity products and/or services.

11.2.6. Termination for Force Majeure

11.2.6.1. Eskom shall have the right to Terminate this Agreement or Terminate in Part if:

11.2.6.2. there is a Force Majeure Event affecting the Services that lasts for more than 10 (ten) days; or

11.2.6.3. the Supplier fails to resume the affected Services within 10 (ten) days of the Force Majeure Event commencing.

11.2.7. Termination for Cause by the Supplier

11.2.7.1. The Supplier may Terminate this Agreement, by written notice to Eskom, if the number of unpaid Charges is more than 3 (three) Months' aggregate Charges, provided that the Supplier has given Eskom a notice of default relating to such non-payment, and Eskom has failed to cure such default within 90 (ninety) days of the date that such Charges were due.

11.2.7.2. Save as provided for in clause 11.2.7.1 or in the event of a deliberate and wilful misappropriation of Supplier Intellectual Property which causes the Supplier a material financial loss, in no other circumstances will the Supplier be entitled to Terminate this Agreement for cause.

11.2.8. Termination by the Supplier for Insolvency

The Supplier may Terminate this Agreement by giving notice to Eskom if Eskom suffers an Insolvency Event.

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11.3. **Consequences of Termination**

11.3.1. The expiration or Termination of this Agreement will not affect any accrued rights of either Party or any Service Recipient, including any right to receive any payments due but unpaid before expiration or Termination.

11.3.2. In relation to any expiration or Termination of this Agreement or any of the Services (including a withdrawal of Services), the Supplier will perform Exit Assistance Services in accordance with Schedule I (Exit Assistance).

11.3.3. Any clauses which are expressed to survive expiration or Termination, or which are required to give effect to such expiration or Termination shall survive expiration or Termination of this Agreement howsoever caused (including, for the avoidance of doubt, each Party's obligations pursuant to clause 8).

12. MISCELLANEOUS

12.1. **Most Favoured Customer**

12.1.1. The Supplier hereby represents and warrants that Eskom shall, for the Term, be given "most favoured customer" status with respect to the Charges and accordingly shall ensure that this Agreement provides Eskom with no less favourable commercial terms than those offered by the Supplier to any customer of comparable size under any of its contracts for comparable products and/or services, provided that promptly following Supplier becoming aware of more favourable charges offered to another customer of comparable size under a contract for comparable products and/or services, the Parties will meet to discuss the same and having taken into consideration the Supplier's contribution to such discussion, Eskom shall have the right to require the Supplier, and the Supplier undertakes, to prospectively reduce the Charges or improve the Services by the difference between the then current Charges and the charges offered to such other customer or the then current Services and the services offered to such customer, with effect from the date on which the Supplier becomes aware of such difference.

12.1.2. For purposes of this section 12.1, in determining whether products and/or services are "comparable products and/or services", the Parties acknowledge that the products and/or services are unlikely to be identical and as such it is necessary to consider all the commercial elements of the products and/or services in determining whether they are comparable. Therefore, the Supplier shall take into consideration all the elements of each of the different commercial packages offered to the relevant customer and assess these on an overall value basis, including by assessing the following:

12.1.2.1. the duration of the contract with the customer;

12.1.2.2. the Supplier's standard rates in the market for the products and/or services;

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12.1.2.3. unitisation of charging;

12.1.2.4. any other incentives or discounts offered to the customer; and

12.1.2.5. service charges.

12.1.3. The Supplier will use this overall comparison, having taken into account such elements as are listed above and acknowledging that these elements are unlikely to be identical across the Supplier's customers, to determine whether the relevant products and/or services offered to its other customers are comparable to those offered to Eskom and in turn whether this section 12.1 will apply.

12.2. **Export Restrictions**

Notwithstanding any applicable export control or trade restriction laws (including those of the United States of America, the People's Republic of China, or any other jurisdiction) or in this Agreement, the Parties agree that:

12.2.1. nothing in this Agreement shall restrict or limit Eskom's right to use, combine, integrate, interoperate, or otherwise deploy the Services or Deliverables with any technology, software, hardware, or services originating from any other jurisdiction, whether or not such jurisdictions are subject to restrictions under United States of America export control laws;

12.2.2. the Supplier shall be responsible for complying with any export control or trade restrictions that apply to its own business operations. However, the Supplier shall not impose, pass through, or enforce against Eskom any such restrictions in a manner that limits Eskom's rights under this Agreement;

12.2.3. Eskom shall not be liable for, and shall not be in breach of this Agreement due to, any combination, integration, or deployment of the Services or Deliverables with other technology, provided such use is lawful under South African Applicable Laws; and

12.2.4. in the event any export control or trade restriction prevents the Supplier from providing any part of the Services or Deliverables, the Supplier shall (at its cost and without delay) provide a functionally equivalent alternative that permits Eskom to continue to combine and use the Services or Deliverables with other technologies without material loss of functionality.

12.3. **Compliance with Applicable Laws**

12.3.1. Each Party shall ensure, and in the case of Supplier, ensure its Subcontractors, performs its obligations and exercises its rights pursuant to this Agreement in accordance with all Applicable Laws.

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12.3.2. The Supplier's use of each Eskom Site will, and the Supplier shall ensure that its Subcontractors' use of each Eskom Site will, comply with all Applicable Laws and Eskom Policies.

12.3.3. If the Supplier receives any communication from a Regulator which relates to this Agreement, then, to the extent permitted by the Regulator, the Supplier will notify Eskom of the same as soon as reasonably practicable.

12.3.4. In respect of any complaint received by the Supplier or Eskom from a Regulator of Eskom, the Supplier will, to the extent permitted by law and the Regulator:

12.3.4.1. not make any admissions or take any action which may be prejudicial to the defence or settlement of any complaint;

12.3.4.2. promptly provide to Eskom any information requested by Eskom which is in the Supplier's possession or control for the purpose of complying with Applicable Law or any reasonable requests made by a Regulator; and

12.3.4.3. provide to Eskom such other reasonable assistance as Eskom may require in connection with such complaint.

12.3.5. If a Regulator makes a direct enquiry of the Supplier in relation to Eskom or in relation to this Agreement, or the Supplier wishes to approach the Regulator to address any matters that impact the Supplier's reputation or business then the Supplier will notify Eskom promptly in writing and provide Eskom with full details of all correspondence with and from the Regulator.

12.3.6. The Supplier will not, and will ensure that its Subcontractors will not, make any disclosures of Eskom's Confidential Information to the Regulator, unless:

12.3.6.1. Eskom agrees to it in writing; or

12.3.6.2. the Subcontractor is required to do so by any Applicable Law, provided that any such disclosure is notified to Eskom in advance (unless such notification is prohibited by Applicable Law).

12.3.7. The Supplier shall comply at all times with the *Critical Infrastructure Protection Act, 2019*, and all other Applicable Laws, directives, or national security obligations relevant to the Services.

12.3.8. Eskom may require the Supplier, at the Supplier's cost, to implement additional measures to ensure compliance with Eskom's obligations relating to critical infrastructure or national interest. Failure to comply shall constitute a material breach of this Agreement.

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12.3.9. Notwithstanding clause 12.7, the Supplier will be responsible for obtaining, maintaining and complying with any filings, registrations, licences, approvals, permissions or the equivalents required for the Supplier to perform, or Eskom and Service Recipients to receive, the benefit of the Services.

12.3.10. Without limiting the generality of clause 12.3.1, the Supplier shall ensure ongoing compliance with the following statutes and regulations, as amended from time to time:

12.3.10.1. the *Protection of Personal Information Act, 2013*;

12.3.10.2. the Promotion of Access to Information Act, 2000;

12.3.10.3. the *Cybercrimes Act, 2020*;

12.3.10.4. the *Critical Infrastructure Protection Act, 2019*;

12.3.10.5. any directives, guidelines or codes of conduct issued by a Regulator relevant to Eskom or the Services.

12.3.11. The Supplier shall annually provide Eskom with a written certification of compliance with the laws set out in clause 12.3.10.

12.4. **Further Assurance**

Each Party will do and execute, or arrange for the doing and executing of, each necessary act, document and thing reasonably within its power to implement and give effect to this Agreement (including executing any licences or assignments in a form reasonably required to give full effect to the licences and ownership rights set out in this Agreement).

12.5. **Assignment and Transferral**

12.5.1. The Supplier may not assign, cede, transfer, or create any trust, or purport to assign, cede, transfer or create any trust in respect of a right or obligation (as applicable), pursuant to this Agreement without the prior written approval of Eskom, which Eskom will not unreasonably withhold approval.

12.5.2. Any actual, attempted, or purported cession or assignment by the Supplier of any of its rights or obligations under this Agreement to any person that does not comply with this clause shall be null and void and have no legal force or effect.

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12.5.3. Eskom may assign, cede, or transfer all or any part of Eskom's or a Service Recipient's rights and/or obligations (as applicable), pursuant to this Agreement by giving written notice of same to the Supplier.

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

12.5.5. Notwithstanding the above, Eskom may on written notice to the Supplier cede and delegate its rights and obligations under this Agreement to any of its Affiliates or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the electrical supply industry and/or the electricity distribution industry.

12.6. **Change in Control**

12.6.1. Where there is a change in the Supplier's legal status, ownership or any other change to its business composition or business, the Supplier notifies Eskom in writing 30 (thirty) days prior to the change.

12.6.2. Any changes to the legal status of the Supplier, will be subject to Eskom's due diligence and governance process.

12.6.3. Eskom will not be held liable for any of its obligations under this Agreement to the Supplier in the event of a failure by the Supplier to notify Eskom in writing and in accordance with clause 12.6.1.

12.7. **Required Consents**

12.7.1. Subject to clause 12.7.2 and any express provision in this Agreement stating that Eskom or a Service Recipient will obtain any Third Party or regulatory approval, licence, consent or right, the Supplier will obtain all Third Party and regulatory approvals, licences, consents, filings, registrations, permissions and rights necessary to perform the Services or for Eskom to receive the benefit of the Services (including obtaining membership of any trade body or organisation necessary to be able to perform the Services) and comply with the Supplier's other obligations pursuant to this Agreement and for Eskom to receive the benefit of the Services.

12.7.2. Eskom shall and will ensure that each Service Recipient obtains all regulatory approvals, licences or consents necessary to perform Eskom's or Service Recipient's obligations pursuant to this Agreement (as the case may be).

12.7.3. Without limitation to clauses 12.7.1 and 12.7.2, each Party will obtain any Third Party approval, licence consent or right necessary so that none of the things that are the subject of the indemnities given by that Party pursuant to clauses 9.2 and 9.5 infringe or misappropriate any Intellectual Property Rights, confidentiality rights, Moral Rights or other proprietary rights of any Third Party.

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12.8. **Health and Safety**

12.8.1. The Supplier, and its employees, agents, and Subcontractors, who are involved in the provision of the Services or Deliverables, will comply with Eskom's Policies on health and safety, and all health and safety-related Applicable Law.

12.8.2. The Supplier undertakes all reasonable precautions to ensure the health and safety of persons and to protect the environment in providing the Services.

12.8.3. The Supplier may not commence with providing the Services until the Supplier's related occupational health and safety and environmental documentation has been accepted by Eskom.

12.8.4. The Supplier will notify Eskom in writing (and immediately by telephone, Eskom's Executive or his or her designee) if the Supplier becomes aware that any of the following may exist or arise in the performance of these Services:

12.8.4.1. health and safety hazards (including anything which might cause death or any form of injury to any person); or

12.8.4.2. any non-compliance with Eskom Policies or Applicable Law (whether by Eskom, Supplier, or any Third Party).

12.9. **Equality and Diversity**

12.9.1. During the performance of this Agreement, the Supplier will not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status, subject to any applicable legislation and any amendments and re-enactments thereof, including but not limited to:

12.9.1.1. the *Labour Relations Act, 1995*;

12.9.1.2. the *Basic Conditions of Employment Act, 1997*;

12.9.1.3. the *Skills Development Act, 1998*;

12.9.1.4. the *Employment Equity Act, 1998*;

12.9.1.5. the *Occupational Health and Safety Act, 1993*;

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12.9.1.6. the *Compensation for Occupational Injuries and Diseases Act, 1993*;

12.9.1.7. the *Unemployment Insurance Act, 2001*; and

12.9.1.8. the *Workmen's Compensation Act, 1993*.

12.9.2. The provisions mentioned in this clause 12.9 apply, but are not limited to employment, upgrading, work environment, demotion, transfer, recruitment, advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

12.9.3. The Supplier undertakes that it will not, and will procure that its employees, agents and Subcontractors will not breach or cause Eskom or any member of the Eskom Group to breach any applicable legislation and any amendments and re-enactments thereof mentioned under this clause 12.9.

12.9.4. The Supplier further undertakes that it will endeavour to ensure that no damage to Eskom or any member of the Eskom Group's reputation will occur as a result of any failure by the Supplier to comply with its obligations under this clause 12.9. If any such failure by the Supplier results, or is likely to result, in material adverse reputational damage to Eskom or any member of the Eskom Group, Eskom may Terminate this Agreement with immediate effect for material breach in accordance with clause 11.2.1.

12.9.5. The Supplier shall deliver to Eskom such management information relating to its compliance with this clause 12.9 in relation to the Services as Eskom may reasonably request in writing.

12.10. **Broad Base Black Economic Empowerment**

12.10.1. In complying with the Codes of Good Practice, Eskom is required to meet particular Broad Base Black Economic Empowerment ("**BBBEE**") procurement spend targets and to report on all such expenditure incurred and spent with the Supplier.

12.10.2. In instances where doubt may exist as to the interpretation of the Codes of Good Practice, the Parties will resolve any dispute in accordance with the Dispute Resolution Procedure.

12.10.3. Any updates to the Codes of Good Practice shall be binding upon Eskom and Supplier.

12.10.4. Subject to clause 12.10.5, the Supplier and approved Subcontractors will maintain a level [**Drafting Note: insert rating at the time of contract award**] B-BBEE rating.

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12.10.5. The Supplier will be a level **[Drafting Note: insert rating at the time of contract award]** B-BBEE rating and approved Subcontractor being an either an EME or QSE prior to the start of Contract Year (1) one and to maintain a **[Drafting Note: insert rating at the time of contract award]** B-BBEE rating for the remainder of the Term.

12.10.5.1. Where a change in the Supplier's legal status, ownership or any other change to its business composition or business dealings results in a change to the Supplier's B-BBEE status, the Supplier notifies Eskom in writing within 7 (seven) days of the change.

12.10.5.2. The Supplier is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to Eskom within 30 (thirty) days of the notification or as otherwise instructed by Eskom.

12.10.5.3. Where, as a result, the Supplier's B-BBEE status has decreased since the Effective Date, Eskom may either re-negotiate this contract or alternatively, terminate the Supplier's obligation to provide the Services.

12.10.5.4. The Supplier shall on an annual basis present its B-BBEE certificate, issued by an accredited verification agency, to Eskom, in the format as reasonably prescribed by Eskom at review meetings and in accordance with the Codes of Good Practise between the Parties. In addition, hereto, the Supplier shall provide any other information as may reasonably be required by Eskom from time to time.

12.10.5.5. Eskom may at its cost and at its sole discretion audit, whether by internal or external auditors, all information provided by the Supplier in terms of this clause 12.10.

12.10.5.6. Failure by the Supplier to notify Eskom of a change in its B-BBEE status may constitute a reason for termination.

12.10.5.7. The Supplier agrees that it shall immediately disclose all and any facts that may have substantial detrimental effect on the Supplier in the achievement of its obligations in terms of this clause 12.10.

12.11. **Skills Development, Localisation, and Industrialisation ("SDL&I")**

12.11.1. The Supplier will be required to meet Eskom's SDL&I requirements as set out in the SDL&I Matrix in Schedule S (Supplier Development, Localisation, and Industrialisation) and the Agreement in general.

12.11.2. A failure to comply with SDL&I requirements during the Term shall be a material breach of this Agreement entitling Eskom to Terminate this Agreement.

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12.12. **Export Controls**

Notwithstanding any other provision of this Agreement:

12.12.1. each Party shall (and will procure the same in relation to: in the case of Eskom the Service Recipients and, in the case of the Supplier and its Subcontractors) retain responsibility for its compliance with all Applicable Export Control laws and Economic Sanctions Programs relating to its respective business, facilities, and the provision of services to third parties; and

12.12.2. the Supplier shall refrain from being directly or indirectly involved in the provision of goods, software, services, and/or technical data that may be prohibited by Applicable Export Control or Economic Sanctions Programs.

12.13. **Ethics**

12.13.1. For the purposes of this clause, the following definitions apply:

12.13.1.1. "**Affected Party**" means, as the context requires, any natural or juristic person, irrespective of whether it is one of the Parties to this Agreement, or a third party, or any member in the case of a joint venture, consortium, or other unincorporated grouping of two or more persons, or their employees, agents, representatives, directors, owners, members of a close corporation, Subcontractors, or any one or more of all of these persons' relatives or friends;

12.13.1.2. "**Coercive Action**" means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally;

12.13.1.3. "**Collusive Action**" means where 2 (two) or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally;

12.13.1.4. "Committing Party" means, as the context requires, the Parties to this contract, or any member of the Parties in the case of a joint venture, consortium, or other unincorporated grouping of two or more persons, or their employees, agents, representatives, directors, owners, members of a close corporation, or Subcontractors;

12.13.1.5. "**Corrupt Action**" means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party;

12.13.1.6. "**Fraudulent Action**" means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation;

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12.13.1.7. "**Obstructive Action**" means a Committing Party unlawfully or illegally destroying, falsifying, altering, or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action; and

12.13.1.8. "**Prohibited Action**" means any one or more of a Coercive Action, Collusive Action, Corrupt Action, Fraudulent Action, or Obstructive Action.

12.13.2. A Committing Party may not take or have taken any Prohibited Action.

12.13.3. Eskom may terminate the Supplier's obligation to provide the Services or any part of the Services with the Supplier if the Committing Party has taken any Prohibited Actions and the Supplier has not taken timely and appropriate action to prevent or remedy the situation or one of its directors, owners or members is the Committing Party without limiting any other rights or remedies Eskom has.

12.13.4. Though to be evidenced by written records in existence at that time, it is not required that the Committing Party had to have been given notice of default under this agreement, or found guilty, in court or in any other similar process, of such Prohibited Action before the Service Recipient may terminate the Supplier's obligation to provide the Service for this reason.

12.13.5. If the Service Recipient Terminates the Supplier's obligation to provide the Services for this reason, the amounts due on termination are those intended as if the Service Recipient has terminated for a reason due to the Suppliers default determined as per the termination for cause events as set out in clause 11.2.1.

12.13.6. Eskom may Terminate the Services or Terminate in Part, if the Supplier has committed any Prohibited Actions and the Supplier did not take timely and appropriate measures to prevent or remedy the situation, without limiting any other rights or remedies Eskom has. Though to be evidenced by written records in existence at that time, it is not required that the Supplier had to have been given notice of default under this contract, or found guilty, in court or in any other similar process, of such Prohibited Action before Eskom may terminate its obligation to Provide the Services for this reason.

12.13.7. The Supplier must cooperate fully with any investigation pursuant to alleged Prohibited Action.

12.13.8. Any Prohibited Action taken by the Supplier may lead to their denial or restriction of access to premises, persons, information, systems and/or procurement opportunities, and further action being taken by Eskom, including civil or criminal action.

12.13.9. The Supplier is bound by and subject to Eskom's review processes which shall be within Eskom's sole discretion and communicated to the Supplier from time to time.

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12.14. **Protection of Reputation**

12.14.1. The Supplier shall not and shall procure that its Affiliates and Service Personnel do not, engage in any conduct, act or omission that could reasonably be expected to adversely affect or damage the reputation, goodwill, or standing of Eskom, the Eskom Group, or any other Service Recipient.

12.14.2. Eskom shall be entitled to treat any breach of this clause 12.14 as a material breach of this Agreement.

12.15. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which is an original and all of which evidence the same agreement between the Parties.

12.16. **No Exclusivity**

This Agreement will not constitute an exclusive arrangement and Eskom, and any other Service Recipient may perform itself, or retain third parties to perform, any of the Services or any other services.

12.17. **Independent Contractors**

12.17.1. Nothing in this Agreement creates a joint venture or partnership between the Parties.

12.17.2. Except as expressly authorised in this Agreement, this Agreement will not create an agency relationship between the Parties and neither Party has any authority to, and will not, act, make representations or contract on behalf of the other Party.

12.18. **Waiver**

12.18.1. A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by Applicable Law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by Applicable Law prevents further exercise of the right or remedy or the exercise of another right or remedy.

12.18.2. A waiver (whether express or implied) of a breach of any of the terms of this Agreement does not constitute a waiver of any other breach and will not affect the other terms of this Agreement.

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12.18.3. A waiver of a breach of any of the terms of this Agreement will not be effective unless given in accordance with section 4 of Schedule E (Governance).

12.19. **Remedies**

The rights and remedies provided by this Agreement are cumulative and are not exclusive of any other rights or remedies provided by the law of the Republic of South Africa.

12.20. **Severability**

12.20.1. If any term of this Agreement is held by a court of competent jurisdiction to be contrary to Applicable Law, then the remaining terms of this Agreement or the application of such provision to persons or circumstances other than those as to which it is illegal, invalid or unenforceable will not be affected thereby, and each such term of this Agreement will be valid and enforceable to the extent granted by Applicable Law.

12.20.2. If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part(s) of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid.

12.20.3. If an illegality, invalidity, or unenforceability is so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Parties will promptly commence negotiations in good faith to remedy such illegality, invalidity, or unenforceability.

12.21. **Entire Agreement**

12.21.1. This Agreement constitutes the entire agreement, supersedes, and extinguishes any previous oral or written understandings, warranties, undertakings, commitments, contracts, or representations between the Parties relating to the subject matter of this Agreement.

12.21.2. Each Party acknowledges that in entering into this Agreement that it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement) and waives all rights and remedies which, but for this clause 12.21.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance. Each Party acknowledges that its legal advisers have explained to it the effect of this clause 12.21.2.

12.21.3. All Services ordered by Eskom pursuant to this Agreement will be subject only to the terms of this Agreement and no other terms shall apply, including the following:

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12.21.3.1. any order forms or other correspondence that the Parties may use for the ordering of Services or otherwise administering this Agreement will be for administrative convenience only and terms and conditions included on such forms will have no effect and will not modify this Agreement (even if such forms state otherwise); and

12.21.3.2. any standard Supplier service guides will be effective only for the purpose of providing a technical description of Supplier's standard service offerings and will not amend the terms of this Agreement unless specifically incorporated into this Agreement.

12.22. **Governing Law and Jurisdiction**

This Agreement, and any non-contractual obligation arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the laws of the Republic of South Africa. The Parties irrevocably agree that the High Court of South Africa, Gauteng Local Division, Johannesburg shall have exclusive jurisdiction to settle any disputes or claims arising under this Agreement in accordance with section 4 of Schedule E (Governance).

12.23. **Costs**

Each Party shall be responsible for its own cost and expense in relation to the drafting, preparation, and negotiation of this Agreement.

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Signed at _____ on behalf of Eskom Holdings SOC Ltd on this _____day of _____20____ in the presence of the undersigned witnesses, by:

Name:_____Signature: _____

who is duly authorised to sign in his/her capacity as: _____

Witnesses:

1 Name _____ Signature: _____ Date: _____

2 Name _____ Signature: _____ Date: _____

Signed at _____ on behalf of Supplier **[Drafting note: Details of Supplier to be inserted]** on this _____ in the presence of the undersigned witnesses, by:

Name:_____Signature: _____

who is duly authorised to sign in his/her capacity as: _____

Witnesses:

1 Name _____ Signature: _____ Date: _____

2 Name _____ Signature: _____ Date: _____

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