

SCHEDULE L (COOPERATION AGREEMENT)

This document contains confidential and proprietary information of Eskom and is “Eskom Confidential Information” for the purposes of the non-disclosure agreement entered into between Eskom and Supplier in relation to this Project. It is furnished for contract evaluation and award purposes only. Except with the express prior written permission of Eskom, this document and the information contained herein may not be published, disclosed, or used for any other purpose.

INSTRUCTIONS FOR RESPONDING TO THIS DOCUMENT:

General Guidelines

- These RFP documents contain the key legal terms and conditions that the Supplier will be required to comply with in relation to this Project.
- Eskom requires the Supplier to comply with the requirements as written, and compliance with these RFP documents will be a critical component of Supplier's response to the RFP.
- The Supplier must complete Schedule Q (Supplementary Terms), as it is a mandatory requirement. Non-compliance will result in the Supplier being disqualified from further evaluation.

ESKOM HOLDINGS SOC Ltd

and

[■] [Drafting note: Insert Supplier Name] (“Supplier”)

and

Third-Party Supplier 1 [■] [Drafting note: Insert Supplier Name]

and

Third-Party Supplier 2 [■] [Drafting note: Insert Supplier Name]

and

Third-Party Supplier 3 [■] [Drafting note: Insert Supplier Name]

and

Third-Party Supplier 4 [■], [Drafting note: Insert Supplier Name]

and

Third-Party Supplier 5 [■] [Drafting note: Insert Supplier Name]

1. INTERPRETATION

1.1. In this Schedule L (Cooperation Agreement)

1.1.1. clause headings are for convenience only and are not to be used in its interpretation;

1.1.2. an expression which denotes

1.1.2.1. any gender includes the other gender;

1.1.2.2. a natural person includes a juristic persona and vice versa; and

1.1.2.3. the singular includes the plural and vice versa.

1.2. In this Schedule, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings

1.2.1. **“AFSA”** has the meaning set out in Schedule E (Governance);

1.2.2. **“Agreement”** means this cooperation agreement, as may be amended from time to time;

1.2.3. **“Commencement Date”** means [■] **[Drafting note: Insert date]** notwithstanding the signature hereof;

1.2.4. **“Commercially Reasonable Efforts”** means taking such steps and performing in such a manner as a well-managed company would undertake where such company was acting in a determined, prudent, and reasonable manner to achieve the particular result for its own benefit;

1.2.5. **“Confidential Information”** means, in respect of a Party, information in any form (whether written, electronic, graphic, oral, or otherwise) that falls within any of the following categories:

- 1.2.5.1. confidential or proprietary information provided by the Party (whether or not marked confidential (or a similar designation) or stated to be confidential at the time of disclosure);
- 1.2.5.2. it concerns the customers, finances, sales, marketing, products, suppliers, employees, business operations, forecasts, or management of, or it would ordinarily be deemed by a reasonable person to be confidential or proprietary to:
 - 1.2.5.2.1. in the case of Eskom Confidential Information: Service Recipients and the other Eskom Affiliates; or
 - 1.2.5.2.2. in the case of Supplier Confidential Information: Supplier, the Subcontractors, and the other Supplier Affiliates;
- 1.2.5.3. information contained in, or relating to, the items licensed to the other Party pursuant to clause 5 (Intellectual Property Rights and Software) of the Terms and Conditions;
- 1.2.5.4. information identified in the Agreement as Confidential Information of a Party; or
 - 1.2.5.4.1. in the case of Eskom Confidential Information, information contained in the following:
 - 1.2.5.4.2. Eskom Data, Eskom Policies, and the Operations Manual; and
 - 1.2.5.4.3. any of the material provided by either Party to the other Party that contains information about Eskom or its customers (including Eskom know how and trade secrets);
- 1.2.6. **“Cooperate”** and **“Cooperation”** means the obligations placed on the Supplier in terms of the Terms and Conditions and the Supplier and Third-Party Suppliers in terms of this Schedule to use Commercially Reasonable Efforts to cooperate, assist and to work in coordination with each other as set out in this Schedule;
- 1.2.7. **“Eskom”** has the meaning set out in the preamble to the Terms and Conditions;

- 1.2.8. **"X1 Services"** means the services provided by the Third-Party Supplier 1 to Eskom in terms of the [■] [Drafting note: Insert details] Services Agreement;
- 1.2.9. **"X2 Services"** means the services provided by the Third-Party Supplier 2 to Eskom in terms of the [■] [Drafting note: Insert details] Services Agreement;
- 1.2.10. **"X3 Services"** means the services provided by the Third-Party Supplier 3 to Eskom in terms of the [■] [Drafting note: Insert details] Services Agreement;
- 1.2.11. **"X4 Services"** means the services provided by the Third-Party Supplier 4 to Eskom in terms of the [■] [Drafting note: Insert details] Services Agreement;
- 1.2.12. **"X5 Services"** means the services provided by the Third-Party Supplier 5 to Eskom in terms of the [■] [Drafting note: Insert details] Services Agreement;
- 1.2.13. **"X1 Services Agreement"** means the [■] [Drafting note: Insert details] Agreement entered into by the Third-Party Supplier 1 and Eskom effective [■] [Drafting note: Insert date];
- 1.2.14. **"X2 Services Agreement"** means the [■] [Drafting note: Insert details] Agreement entered into by the Third-Party Supplier 2 and Eskom effective [■] [Drafting note: Insert date];
- 1.2.15. **"X3 Services Agreement"** means the [■] [Drafting note: Insert details] Agreement entered into by the Third-Party Supplier 3 and Eskom effective [■] [Drafting note: Insert date];
- 1.2.16. **"X4 Services Agreement"** means the [■] [Drafting note: Insert details] Agreement entered into by the Third-Party Supplier 4 and Eskom effective [■] [Drafting note: Insert date];

- 1.2.17. **"X5 Services Agreement"** means the [■] [Drafting note: Insert details] Agreement entered into by the Third-Party Supplier 5 and Eskom effective [■] [Drafting note: Insert date];
- 1.2.18. **"Parties"** means the parties to this Schedule;
- 1.2.19. **"RACI"** means an acronym defining responsibilities, accountability, consultation, and informing commitments between the Parties;
- 1.2.20. **"MSA"** means the agreement, including the Terms & Conditions, Schedules, Appendices and Annexes and any other documents incorporated by reference into this Schedule, as may be amended from time to time in accordance with the Agreement entered into between Eskom and Supplier effective on [■] [Drafting Note: Parties to insert] for [■] [Drafting Note: Parties to insert];
- 1.2.21. **"Service Providers"** means the Third-Party Suppliers and the Supplier;
- 1.2.22. **"Signature Date"** means the date of signature of this Schedule by the Party last signing;
- 1.2.23. **"Supplier"** means [■] [Drafting Note: Supplier to insert], Registration number [■] [Drafting Note: Supplier to insert], a company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa and having its registered office at [■] [Drafting Note: Supplier to insert];
- 1.2.24. **"Third Party"** means a person, contractor, or entity other than a Party;
- 1.2.24.1. **"Third-Party Supplier 1"** means [■] [Drafting Note: Supplier to insert] Registration number; [■] [Drafting Note: Supplier to insert] a company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa and having its registered office at [■] [Drafting Note: Supplier to insert];
- 1.2.24.2. **"Third-Party Supplier 2"** means [■] [Drafting Note: Supplier to insert], Registration number: [■] [Drafting Note: Supplier to insert], a company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa and having its registered office at [■] [Drafting Note: Supplier to insert];

- 1.2.24.3. “Third-Party Supplier 3” means [■] [Drafting Note: Supplier to insert], Registration number: [■] [Drafting Note: Supplier to insert], a company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa and having its registered address at [■] [Drafting Note: Supplier to insert];
- 1.2.24.4. “Third-Party Supplier 4” means [■] (Drafting Note: Supplier to insert), Registration number [■] [Drafting Note: Supplier to insert], a company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa and having its registered address at [■] [Drafting Note: Supplier to insert];
- 1.2.24.5. “Third-Party Supplier 5” means [■] [Drafting Note: Supplier to insert], Registration number [■] [Drafting Note: Supplier to insert], a company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa and having its registered address at [■] [Drafting Note: Supplier to insert];

(each of 1.2.24 a “Third-Party Supplier” and together the “Third-Party Suppliers”)

- 1.3. Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 1 or elsewhere in this Schedule, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 1.4. Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Schedule.
- 1.5. Defined terms appearing in this Schedule in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.6. A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.

- 1.7. Reference to "days" shall be construed as calendar days unless qualified by the word "business," in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time.
- 1.8. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.9. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.10. No provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.
- 1.11. The expiration or termination of this Schedule shall not affect such of the provisions of this Schedule as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.12. The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

2. INTRODUCTION

- 2.1. Eskom has entered into the MSA with the Supplier for the provision of certain services by the Supplier to Eskom, as such services are detailed in the MSA.
 - 2.1.1. Eskom has entered into the X1 Services Agreement with Third-Party Supplier 1 for the provision of X1 Services to Eskom. The X1 Services include, inter alia, the services described in Schedule B (Service Description) of the X1 Services Agreement.

- 2.1.2. Eskom has entered into the X2 Services Agreement with Third-Party Supplier 2 for the provision of X2 Services to Eskom. The X2 Services are described in Schedule B (Service Description) of the X2 Services Agreement.
- 2.1.3. Eskom has entered into the X3 Services Agreement with Third-Party Supplier 3 for the provision of X3 Services to Eskom. These X3 Services include, inter alia, the services described in Schedule B (Service Description) of the X3 Services Agreement.
- 2.1.4. Eskom has entered into the X4 Services Agreement with Third-Party Supplier 4 for the provision of X4 Services to Eskom. These X4 Services include, inter alia, the services described in Schedule B (Service Description) of the X4 Services Agreement.
- 2.1.5. Eskom has entered into the X5 Services Agreement with Third-Party Supplier 5 for the provision of X5 Services to Eskom. These X5 Services include, inter alia, the services described in Schedule B (Service Description) of the X5 Services Agreement.
- 2.2. The Supplier specifically acknowledge that the Third-Party Suppliers have been appointed by Eskom, with whom the Supplier is required to fully Cooperate to allow Eskom to realise the full benefit of the services provided under the MSA.
- 2.3. As part of the services and service charges under the MSA, the Supplier hereby undertakes to work in coordination with, and to cooperate with the Third-Party Suppliers to provide such Cooperation to one another in accordance with this Schedule.
- 2.4. In order to regulate this multi-party relationship, including the responsibilities of the Supplier and Eskom's rights with regard to this Schedule, the Parties wish to record in writing their agreement in respect of the above and matters ancillary thereto.

3. **TERM AND DURATION**

- 3.1. The Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Schedule, shall remain in existence for as long as the MSA and any one or more of the X1 to X5 Services Agreements remain of force and effect.
- 3.2. This Agreement will automatically terminate in the event of the termination or expiration of the MSA, provided that such date of termination shall be effective after the termination / expiration assistance period as defined in the MSA or the X Service Agreement whichever is applicable.

- 3.3. In the event that the X1, X2, X3, X4 or X5 Service Agreements are individually terminated, such termination will not have an effect on the other X Service Agreements, which will continue to be in full force and effect.

4. **ESKOM'S RIGHTS**

- 4.1. Eskom, by its signature hereto, shall have the right to at any time during the term of this Schedule to:

- 4.1.1. direct either the Supplier or a Third-Party Supplier to carry out any of their respective duties and obligations set forth in this Schedule;

- 4.1.1.1. by agreement between the Parties, to amend the terms of this Schedule following the applicable governance procedures as set out in Appendix E-1 (Committees and Key Management Meetings) to Schedule E, to cater for any agreed changes to the MSA and/or X1 to X5 Services Agreements and/or to cater for any changes as they relate to any changes which Eskom requires to the services and/or the manner or nature of the Cooperation which is required of the Supplier or the Third-Party Suppliers; and

- 4.1.2. at its option, enforce the rights of the Third-Party Suppliers against the Supplier, which the Third-Party Suppliers and the Supplier accept.

5. **SUPPLIER COOPERATION**

- 5.1. In addition to the terms of the MSA, the Supplier shall, at its cost, provide its full Cooperation in relation to their interaction with and dealings with the Third-Party Suppliers in relation to the services which the Supplier provides to Eskom, including:

- 5.1.1. openly exchanging information with Eskom and the Third-Party Suppliers, in connection with the Services and/or the services being provided by the Third-Party Suppliers or any other Third-Party Supplier to Eskom in a cooperative manner and in good faith.

The information exchanged by the 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:

- 5.1.1.1. financial information;
- 5.1.1.2. pricing information;
- 5.1.1.3. information in respect of trading terms applicable between Eskom and the Supplier, Eskom, and the Third-Party Suppliers; and
- 5.1.1.4. other competitively sensitive information, which if exchanged, could be used by the 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;
- 5.1.2. providing one another with reasonable access to information, data and documentation being used to provide the Services;
- 5.1.3. participating in meetings, workshops etc. with one another reasonably required to manage the interfaces between and the interaction of the Services; and
- 5.1.4. attempting to resolve disputes regarding responsibility for the provision of services and collaborating directly with one another before escalating the dispute to Eskom.
- 5.2. The Supplier and the Third-Party Suppliers shall, as part of their Cooperation obligations under this Schedule, comply with the information security and data protection obligations set out in Schedule R (Information Security Requirement) and Schedule P (Operator Agreement), including coordinating their respective security measures during joint activities, to ensure consistent protection of Eskom Data.
- 5.3. The Supplier and each Third-Party Supplier will coordinate all changes to the Services through the change procedures in Schedule F (Change Management), including providing timely impact assessments (scope, SLAs, Charges) where changes drive cross-party dependencies.

- 5.3.1. Without limiting Schedule P (Operator Agreement) and Schedule Q (Supplementary Terms), the Supplier and each Third-Party Supplier will (a) promptly notify each other of any actual or suspected Security Incident or Personal Information Breach affecting the Services; (b) cooperate in incident triage, containment and root-cause analysis; and (c) provide Eskom with coordinated, consolidated incident reports and remediation plans in accordance with Appendix E-2 (Reports) to Schedule E (Governance).

6. PROVISION OF SERVICES AND SUPPLIERS' RESPONSIBILITIES

- 6.1. The Supplier and the Third-Party Suppliers shall be responsible for ensuring that their services are provided timeously and effectively at all times and, in particular, the Supplier and the Third-Party Suppliers shall ensure that they shall at all times manage the provision of their services in accordance with the provisions of the MSA and the X1 to X5 Services Agreements.
- 6.2. The Supplier is accountable to Eskom for ensuring that the Third-Party Suppliers shall at all relevant times provide their full Cooperation to the Supplier and that any delays, faults or non-compliance by the Third-Party Suppliers with its obligations set forth in this Schedule shall be escalated to Eskom as soon as the Supplier is aware of such non-compliance or delays.
- 6.3. The Third-Party Suppliers are accountable to Eskom for ensuring that the Supplier shall at all relevant times provide their full Cooperation to the Third-Party Suppliers and that any delays, faults or non-compliance by the Supplier with its obligations set forth in this Schedule shall be escalated to Eskom as soon as the Third-Party Suppliers are aware of such non-compliance or delays.
- 6.4. The Supplier, and the Third-Party Suppliers shall provide all data, reports, and information within the time frames set forth in the aforementioned clauses.
- 6.5. The Parties agree that the RACI matrices of the Supplier, and the Third-Party Suppliers will be aligned and concluded within 20 (twenty) Business Days following the Effective Date of the Agreement and will be incorporated hereto as Appendix L-1 (RACI).

7. GOVERNANCE AND REPORTS

- 7.1. All Parties hereto shall comply with the governance and respective reporting requirements as set forth in Appendix E-1 (Committees and Key Management Meetings) to Schedule E (Governance).
- 7.2. The Parties acknowledge that effective Cooperation is critical to Transition and Exit. The Supplier and Third-Party Suppliers shall ensure that all Cooperation obligations under this Schedule are performed in a manner consistent with Schedule G (Transition) and Schedule I (Exit Assistance), including sharing of necessary documentation, access credentials, and knowledge transfer to support reversibility and continuity of services.

8. WARRANTIES

- 8.1. Each of the Parties hereby warrants to each other Party to this Schedule that:
- 8.1.1. it shall act in utmost good faith in its dealings with the other Party;
 - 8.1.2. it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;
 - 8.1.3. this Schedule constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;
 - 8.1.4. the execution of this Schedule and the performance of its obligations hereunder do not and shall not
 - 8.1.4.1. contravene any law or regulation to which the Party is subject;
 - 8.1.4.2. contravene any provision of that Party's constitutional documents; and

- 8.1.4.3. conflict with or constitute a breach of any of the provisions of any other agreement, obligations, restriction or undertaking which is binding on it.

8.2. Each of the representations and warranties given by the Parties in terms of this clause 8, shall

- 8.2.1. be a separate warranty and will in no way be limited or restricted by inference from the terms of any warranty or by any other words in this Schedule;
- 8.2.2. continue and remain in force notwithstanding the completion of any or all the transactions and services contemplated in this Schedule; and
- 8.2.3. prima facie be deemed to be material and to be a material representation inducing the other Parties to enter into this Schedule.

9. **INDEMNITY**

- 9.1. The Supplier hereby indemnifies and holds Eskom harmless in accordance with the MSA;
- 9.2. The Third-Party Suppliers hereby indemnifies and holds Eskom harmless in accordance with the indemnities recorded in their respective X1 to X5 Services Agreements; and
- 9.3. The Supplier and the Third-Party Suppliers hereby indemnify and hold Eskom harmless against any loss or damage howsoever arising which Eskom may suffer as a result of the Supplier and the Third-Party Suppliers not complying with their duties and responsibilities as set forth in this Schedule.

10. **CONFIDENTIALITY**

10.1. The Receiving Party acknowledges the significant importance of the Confidential Information which it receives from the Disclosing Party and that the Disclosing Party may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in accordance with this Schedule.

10.2. The Receiving Party agrees and undertakes:

10.2.1. subject to clause 10.7 as well as the provisions of the MSA and the respective X1 to X5 Services Agreements, not to disclose or publish any Confidential Information and not to disclose to any third party, save as may be required in law (including by the rules of any recognised securities exchange, where applicable) or permitted in terms of this Schedule, the nature, content or existence of this Schedule and any and all Confidential Information given by a Disclosing Party to the Receiving Party pursuant to this Schedule;

10.2.2. except as permitted by this Schedule, MSA or the respective X1 to X5 Services Agreements, not to use, employ, exploit or in any other manner whatsoever use the Confidential Information for any purpose whatsoever without the prior written consent of the Disclosing Party;

10.2.2.1. to restrict the dissemination of the Confidential Information to only those of its staff, or Eskom staff and the staff of any Third-Party Supplier who are actively involved in activities for which use of Confidential Information is authorised and then only on a "need to know" basis and the Receiving Party shall initiate, maintain and monitor internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure by its staff; and

10.2.3. to take all practical steps, both before and after disclosure, to impress upon its staff who are given access to Confidential Information the secret and confidential nature thereof.

- 10.3. The Receiving Party shall not disclose the other Parties' Confidential Information to a Third-Party Supplier unless the Disclosing Party has confirmed in writing that it has an appropriate confidentiality undertaking from such Third-Party supplier.
- 10.4. Save as provided for in the MSA and/or the respective X1 to X5 Services Agreements, all Confidential Information disclosed by the Disclosing Party to the Receiving Party or which otherwise comes to the knowledge of the Receiving Party, is acknowledged by the Receiving Party as follows:
 - 10.4.1. to be proprietary to the Disclosing Party; and
 - 10.4.2. not to confer any rights of whatsoever nature in such Confidential Information on the Receiving Party.
- 10.5. The Receiving Party shall protect the Confidential Information in the manner, and with the endeavour, of a reasonable person protecting their own Confidential Information. In no event shall the Receiving Party use less than reasonable efforts to protect the confidentiality of the Confidential Information.
- 10.6. Upon termination or expiry of this Schedule, the Parties will deliver to each other or, at each Party's option, destroy all originals and copies of confidential information, (other than the terms and conditions of this Schedule) in their possession.
- 10.7. This clause 10 shall not apply to any disclosure made by a Party to its professional advisors or consultants, provided that they have agreed to the same confidentiality undertakings, or to any judicial or arbitral tribunal or officer, in connection with any matter relating to this Schedule or arising out of it.
- 10.8. Nothing contained in the Agreement will restrict either Party from the use of any generic ideas, concepts, know-how, or techniques developed or learned by such Party in the course of performing any Services under the Agreement, provided that in doing so such Party does not disclose Confidential Information to third parties or infringe the intellectual property rights of the other Party or third parties who have licensed or provided materials to the other Party.

11. PUBLICITY

11.1. Subject to clause 11.2, each Party undertakes to keep confidential and not to disclose to any Third Party, save as may be required in law (including by the rules of any recognised securities exchange, where applicable) or permitted in terms of this Schedule, the nature, content or existence of this Schedule and any and all information given by a Party to the other Parties pursuant to this Schedule.

11.2. No announcements of any nature whatsoever will be made on behalf of a Party relating to this Schedule without the prior written consent of Eskom.

12. SUPPORT

12.1. Subject to the Supplier and the Third-Party Suppliers' responsibilities in their respective agreements with Eskom, the Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Schedule.

13. DISPUTE RESOLUTION

13.1. In the event of there being any dispute or difference between the Parties arising out of this Schedule the Parties shall first attempt to resolve such dispute informally, which may include utilisation of the appropriate governance structures more fully defined in Appendix E-1 (Committees and Key Management Meetings) to Schedule E (Governance).

13.2. In the event of there being any dispute or difference between the Parties arising out of this Schedule not capable of being informally resolved between the Parties, the said dispute or difference shall on written demand by any Party be submitted to arbitration in Johannesburg in accordance with the AFSA Rules, which arbitration shall be administered by AFSA.

- 13.3. Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA Rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the Parties to the dispute or failing agreement within 10 (ten) business days of the demand for arbitration, then any Party to the dispute shall be entitled to forthwith call upon the chairperson of the Johannesburg Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 (ten) years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the Parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the Parties to the dispute.
- 13.4. Any Party to the arbitration may appeal the decision of the arbitrator or arbitrators in terms of the AFSA Rules for commercial arbitration.
- 13.5. Nothing herein contained shall be deemed to prevent or prohibit a Party to the arbitration from applying to the appropriate court for urgent relief or for judgement in relation to a liquidated claim.
- 13.6. Any arbitration in terms of this clause¹³ (including any appeal proceedings) shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 13.7. This clause¹³ will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.
- 13.8. The Parties agree that the written demand by a Party to the dispute in terms of clause 13.2 that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act of 1969.
- 13.9. Notwithstanding the existence of any dispute between the Parties, the Supplier and the Third-Party Suppliers shall continue to perform their Cooperation obligations under this Schedule in good faith and without interruption, pending final resolution of the dispute, subject always to Applicable Law and the Agreement.

14. **NOTICES AND DOMICILIA**

14.1. The Parties select as their respective *domicilia citandi et executandi*:

14.1.1. Eskom:

14.1.1.1. Name: Eskom Holdings SOC Ltd

14.1.1.2. Physical Address: Eskom Megawatt Park, 2 Maxwell Drive, Sunninghill, Sandton, 2157

14.1.1.3. Marked for the attention of:

14.1.1.4. Telefax:

14.1.2. The Supplier:

14.1.2.1. Name:

14.1.2.2. Physical Address:

14.1.2.3. Marked for the attention of:

14.1.2.4. Telefax:

14.1.2.4.1. Third-Party Supplier 1:

14.1.2.5. Name:

14.1.2.6. Physical Address:

14.1.2.7. Marked for the attention of:

14.1.2.8. Telefax:

14.1.2.8.1. Third-Party Supplier 2:

14.1.2.9. Name:

14.1.2.10. Physical Address:

14.1.2.11. Marked for the attention of:

14.1.2.12. Telefax:

14.1.2.12.1. Third-Party Supplier 3:

14.1.2.13. Name:

14.1.2.14. Physical Address:

14.1.2.15. Marked for the attention of:

14.1.2.16. Telefax:

14.1.2.16.1. Third-Party Supplier 4:

14.1.2.17. Name:

14.1.2.18. Physical Address:

14.1.2.19. Marked for the attention of:

14.1.2.20. Telefax:

14.1.2.20.1. Third-Party Supplier 5

14.1.2.21. Name:

14.1.2.22. Physical Address:

14.1.2.23. Marked for the attention of:

14.1.2.24. Telefax:

provided that a Party may change its *domicillium* or its address for the purposes of notices to any other physical street address or telefax number by written notice to the other Parties to that effect. Such change of address will be effective 5 (five) business days after receipt of the notice of the change by the other Parties.

14.2. All notices to be given in terms of this Schedule will be given in writing, in English, and will:

14.2.1. be delivered by hand or sent by telefax;

14.2.2. if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or a day which is not a business day will be presumed to have been received on the following business day; and

14.2.3. if sent by telefax during business hours, be presumed to have been received on the date of successful transmission of the telefax. Any telefax sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.

14.3. Notwithstanding the above, any notice given in writing in English, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given accordance with this clause 14.

14.4. The Parties record that whilst they may correspond via e-mail during the currency of this Schedule for operational reasons, no formal notice required in terms of this Schedule, nor any amendment of or variation to this Schedule may be given or concluded via e-mail.

15. **BENEFIT OF THE AGREEMENT**

15.1. This Agreement will also be for the benefit of and be binding upon the successors in title and permitted assigns of the Parties or any of them.

16. **APPLICABLE LAW AND JURISDICTION**

16.1. This Agreement will in all respect be governed by and construed under the laws of the Republic of South Africa.

16.2. Subject to clause 12.1, the Parties hereby consent and submit to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg of the Republic of South Africa in any dispute arising from or in connection with this Schedule.

17. **GENERAL**

17.1. This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, proposal, quotation, term or condition relating to the subject matter of this Schedule not incorporated in this Schedule shall be binding on any of the Parties.

17.2. No addition to or variation, deletion, or agreed cancellation or all or any clauses or provisions of this Schedule will be of any force or effect unless put in writing and signed by the Parties.

17.3. No waiver of any of the terms and conditions of this Schedule will be binding or effectual for any purpose unless in writing and signed by the Party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. Failure or delay on the part of

any Party in exercising any right, power or privilege hereunder will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

- 17.4. All provisions and the various clauses of this Schedule are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Schedule, which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Schedule shall remain of full force and effect. The Parties declare that it is their intention that this Schedule would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 17.5. Neither this Schedule nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated, or assigned by any Party without the prior written consent of Eskom.
- 17.6. Any consent or approval required to be given by any Party in terms of this Schedule will, unless specifically otherwise stated, not be unreasonably withheld.
- 17.7. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute the same Agreement as at the Signature Date.
- 17.8. The parties will not exchange competitively sensitive information (including future pricing, margins, or costs unrelated to the Services) except to the minimum extent strictly necessary to perform this Schedule and will implement appropriate information-barriers where required.

18. **COSTS**

- 18.1. Each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation, and implementation of this Schedule.

19. SIGNATURE

19.1. Signed on behalf of the Parties, each signatory hereto warranting that he / she has due authority to do so.

20. LIMITATION OF LIABILITY

20.1. Each Party's liability toward the other shall be determined as follows:

20.1.1. for claims made by Eskom and/or the Supplier against each other, the liability shall be determined in accordance with the provisions of the MSA;

20.1.2. for claims made by Eskom and Third-Party Suppliers against each other, the liability shall be determined in accordance with the provisions of the respective X1 to X5 Services Agreements.

20.1.3. Subject to the limits set out in the Terms and Conditions, the Supplier, the Third-Party Suppliers and Eskom agree that any claim arising from this Schedule by one of them against the other will be inextricably linked to the MSA and the Agreement respectively, and that any such claim shall, therefore, be deemed, for the purposes of determining the limitations of liability applicable thereto, to have arisen out of the MSA and Agreement as the case may be. The limitations of liability contained in the MSA and the Agreement respectively shall, therefore, apply in respect of claims arising out of such MSA and the Agreement and this Schedule and the fact that there are two agreements between the Supplier and Eskom and the Third-Party Suppliers and Eskom respectively shall not give rise to a doubling of the amounts of the limitations of liability as specified in the MSA and the Agreement.

20.2. Nothing in this clause 20 limits or excludes any liability that is not permitted to be limited or excluded under the Agreement (including liability for fraud, wilful misconduct, gross negligence, breach of confidentiality or data protection obligations, or IP infringement indemnities).

20.3. This clause 20 shall survive this Schedule.

Eskom Holdings SOC Ltd:

Name: _____

Signature: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

Supplier: (Third-Party Supplier 1)

Name: _____

Signature: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

Supplier:

Name: _____

Signature: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

Supplier: (Third-Party Supplier 2)

Name: _____

Signature: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

Supplier:(Third-Party Supplier 3)

Name: _____

Signature: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

Supplier: (Third-Party Supplier 5)

Name: _____

Signature: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

Supplier:(Third-Party Supplier 4)

Name: _____

Signature: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

Appendix L1 (RACI)

[Drafting note: Parties to agree on RACI table]