

Schedule A (Definitions)

1. DEFINITIONS

In this Agreement, the following terms have the following meanings:

1.1. “Acknowledgement Notice”

has the meaning set out in of Schedule E (Governance);

1.2. “Actual Usage”

means the quantity of P (Price) x Q (Quantity) (Billable Units actually used in the relevant Month, as calculated in accordance with Schedule D (Charges) and Appendix D-1(Billable Unit Descriptions and Counting Rules);

1.3. “Advanced Technology”

has the meaning set out in Schedule B (Service Description);

1.4. “AFSA”

has the meaning set out in of Schedule E (Governance);

1.5. “AFSA Rules”

has the meaning set out in of Schedule E (Governance);

1.6. “Affiliate”

means:

1.6.1. with respect to a Party, any other person or entity which directly or indirectly Controls, is Controlled by, or is under common Control with such Party; or

1.6.2. in addition, in respect of Eskom, any part of Eskom which is unbundled or otherwise separated from Eskom, including its Generation, National Transmission Company South Africa and Distribution businesses, as may be notified by Eskom to the Supplier from time to time;

1.7. “Agreement”

means the Terms and Conditions, Schedules, Appendices and Annexures and any other documents incorporated by reference into the agreement, as may be amended from time to time in accordance with this agreement;

1.8. “AI Input”

means any Eskom Data, information, material, code, document, image, plan, prompts, queries or other input which are inputted into an AI Tool;

1.9. “AI Output”

means any data, information, material, code, document, image, plan or other output generated, assisted or completed using AI Tools as a result of processing any AI Inputs;

1.10. “AI Tool”

means any artificial intelligence, machine-learning, deep learning, generative, extractive foundational or large-language-model-based system or service, whether hosted or on-premises, used in connection with the Services or any Eskom Data, and, where applicable may include the supply, procurement or provision of such system or service, whether standalone or embedded within another product or platform, and whether supplied, accessed, integrated or invoked directly or indirectly, including through any third-party AI provider or API that processes, receives, accesses or interacts with Eskom Data;

1.11. “Applicable Export Control or Economic Sanctions Programs”

means U.S. export control laws such as the Export Administration Regulations and the International Traffic in Arms Regulation, and U.S. economic sanctions programs that are maintained by the U.S. Government including sanctions currently imposed against countries designated, as well as Specially Designated Nationals and Blocked Persons programs;

1.12. “Applicable Law”

means the following, as amended from time to time, to the extent it applies to a Party (including, as applicable, the Affiliates and Subcontractors of a Party) or to the Services (including the performance, delivery, receipt or use of the Services, as applicable and wherever occurring) or to the Eskom Sites, whether in the Republic of South Africa or in any other country in which the Services are being provided and/or received:

1.12.1. any Legislation;

1.12.2. the common law;

1.12.3. any binding court order;

1.12.4. judgement or ruling;

1.12.5. any applicable industry code, policy or standard enforceable by law; and

1.12.6. any applicable direction, policy or order that is given by any Regulator, competent authority or organ of state or industry body.

1.13. “Approvals”

has the meaning set out in Schedule E (Governance);

1.14. “Arbitration Notice”

has the meaning set out in Schedule E (Governance);

1.15. “Arbitration Response Notice”

has the meaning set out in Schedule E (Governance);

1.16. “Assigned Personnel”

has the meaning set out Appendix I-1 (Transfer of Assigned Personnel);

1.17. “Associated Person”

means in relation to any entity, a person who (by reference to all the relevant circumstances) performs services for or on behalf of that entity in any capacity and including, without limitation, employees, agents, subsidiaries, representatives and subcontractors;

1.18. “At-Risk Amount”

has the meaning set out Schedule C (Performance Standards);

1.19. “Auditors”

has the meaning set out in Schedule E (Governance);

1.20. “Audits”

has the meaning set out in Schedule E (Governance) and references to “**Auditing**” shall be construed accordingly;

1.21. “Baseline Target Charge”

has the meaning set out in Schedule D (Charges);

1.22. “BBBEE”

has the meaning set out in the Terms and Conditions;

1.23. “Benchmarked Services”

has the meaning set out in Schedule N (Value and Competitiveness Rider);

1.24. “Benchmarker”

has the meaning set out in Schedule N (Value and Competitiveness Rider);

1.25. “Benchmarking Report”

has the meaning set out in Schedule N (Value and Competitiveness Rider);

1.26. “Billable Day”

has the meaning set out in Schedule D (Charges);

1.27. “Billable Unit”

means for each P(Price) x Q(Quantity) Charge, the individual charging units as described in Appendix D-1 (Billable Unit Descriptions and Counting Rules);

1.28. “Bribery Act”

means the UK Bribery Act 2010 (as amended from time to time);

1.29. “Business Day”

means any day other than a Saturday, Sunday and/or a public holiday as gazetted by the government of the Republic of South Africa from time to time;

1.30. **“Business Rescue”**

shall bear the meaning set out in section 128(1)(b) of the Companies Act of 2008;

1.31. **“Change”**

has the meaning set out in Schedule F (Change Management);

1.32. **“Change Management Procedure”**

has the meaning set out in Schedule F (Change Management);

1.33. **“Change Note” or “CN”**

means a record of the Changes agreed between the Parties;

1.34. **“Change Procedures”**

has the meaning set out in Schedule F (Change Management);

1.35. **“Change Request”**

means a formal request for the implementation of a Change;

1.36. **“Chargeable Time”**

has the meaning set out in Schedule D (Charges);

1.37. **“Charges”**

has the meaning set out in Schedule D (Charges);

1.38. **“Claims”**

means any claims, demands, proceedings, actions (including any brought by a Regulator), application and/or law suit, whether actual or alleged and whether substantiated by a court of law, a tribunal, an oversight body, an ombudsman, a Regulator, and/or an arbitrator or otherwise;

1.39. **“CMS”**

means Configuration Management System is a formally defined system that manages the relationships between configuration items (CIs), enabling a comprehensive understanding of how components within the IT environment are connected and how changes to one item may impact others;

1.40. **“Coercive Action”**

has the meaning set out in the Terms and Conditions Agreement;

1.41. **“Collusive Action”**

has the meaning as set out in the Terms and Conditions;

1.42. “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;

1.43. “Companies Act”

means the South African Companies Act No 71 of 2008, as amended;

1.44. “Competitor Charges”

has the meaning set out in Schedule N (Value and Competitiveness Rider);

1.45. “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:

1.45.1. 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);

1.45.2. 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:

1.45.2.1. in the case of Eskom Confidential Information: Service Recipients and the other Eskom Affiliates; or

1.45.2.2. in the case of Supplier Confidential Information: Supplier, the Subcontractors, and the other Supplier Affiliates;

1.45.3. information contained in, or relating to, the items licensed to the other Party pursuant to clause 8 (Intellectual Property Rights and Software) of the Terms and Conditions;

1.45.4. information identified in the Agreement as Confidential Information of a Party; or

1.45.5. in the case of Eskom Confidential Information, information contained in the following:

1.45.5.1. Eskom Data, Eskom Policies, and the Operations Manual; and any of the materials provided by either Party to the other Party that contains information about Eskom or its customers (including Eskom know how and trade secrets);

1.46. “Consecutive Failure Multiplier”

has the meaning set out in Schedule C (Performance Standards);

1.47. “Contract Year”

means each successive period of 12 (twelve) Months commencing on the Effective Date;

1.48. “Control”

means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management, board, executive body, decision-making process, or policies of the other person (whether through the ownership of voting shares, right of appointment, right to control election or appointment, voting rights, the ability to control the exercise of voting rights, management agreement, or agreement of any kind, or otherwise), and **“Controlled”** and **“Controlling”** in the context of **“Control”** will be construed accordingly;

1.49. “Controls Audit”

has the meaning set out in Schedule E (Governance);

1.50. “Controls Review”

has the meaning set out in Schedule E (Governance);

1.51. “Copyright”

means all copyright, design rights (whether registered or unregistered) and database rights and any other intellectual property having a similar nature or equivalent effect anywhere in the world; and applications for or registrations of any of these rights;

1.52. “Core Charges”

has the meaning set out in Schedule D (Charges);

1.53. “Corrupt Action”

has the meaning set out in the Terms and Conditions;

1.54. “Critical Deliverables”

means those Deliverables listed in Schedule M (Critical Deliverables) and those indicated as being critical by Eskom, from time to time, in accordance with Schedule M;

1.55. “Critical Service Level Default”

has the meaning set out in Schedule C (Performance Standards);

1.56. “Defective Level”

means, in respect of each Service Level, the level of the Performance Standard which is designated as the ‘Defective Level’ in the relevant Service Specification;

1.57. “Defects”

includes any virus, timer, clock, counter, time lock, time bomb, Trojan horse, worms, file infectors, boot sector infectors or other limiting design, instruction or routine and surveillance software or routines or data gathering or collecting software or devices that could, if triggered:

1.57.1. erase Data, data, or programming;

1.57.2. cause an unplanned interruption of the Services and/or have an adverse impact on the Services; and/or

1.57.3. alters, destroys or inhibits the use of or causes the Equipment, hardware, Software / software or other resources to become inoperable or otherwise incapable of being used in the full manner for which such Equipment, hardware, Software / software or other resources were intended to be used unless by prior agreement between the Parties or in accordance with the terms of this Agreement;

1.58. **“Deliverable Credits”**

has the meaning set out in Schedule C (Performance Standards);

1.59. **“Deliverables”**

means Materials or Software produced by the Supplier in providing the Services;

1.60. **“Developed Intellectual Property”**

means any Intellectual Property Rights developed or created by the Supplier in the course of rendering Services to Eskom including Intellectual Property Rights in all Deliverables, materials, software, systems, processes, documentation, data models, reports, designs, plans or any other items developed or created by the Supplier, including the Intellectual Property Rights listed in the Terms and Conditions;

1.61. **“Dispute”**

means any dispute, difference or question of interpretation arising out of or in connection with this Agreement (including any dispute regarding pre-contractual negotiations, the existence, validity or termination of this Agreement or the consequences thereof), whether contractual or non-contractual;

1.62. **“Dispute Notice”**

has the meaning set out in Schedule E (Governance);

1.63. **“Dispute Resolution Procedure”**

means the dispute resolution procedure set out in Schedule E (Governance);

1.64. **“Disputing Party”**

has the meaning set out in Schedule E (Governance);

1.65. **“Divested Affiliate”**

has the meaning set out in the Terms and Conditions;

1.66. **“Divestment”**

has the meaning set out in the Terms and Conditions;

1.67. **“Divestment Agreement”**

has the meaning set out in the Terms and Conditions;

1.68. **“Due Diligence Information”**

has the meaning set out in the Terms and Conditions;

1.69. “Effective Date”

means [] [Drafting note: Insert Date of is the Transition Commencement Date, notwithstanding date of signature];

1.70. “Equipment”

means any equipment or hardware, including computer and telecommunications equipment and hardware associated peripherals and all connecting equipment;

1.71. “Escalation Triggers”

has the meaning set out in the Terms and Conditions;

1.72. “Eskom”

has the meaning set out in the preamble to the Terms and Conditions;

1.73. “Eskom Authorised Personnel”

means designated representatives of a Service Recipient who are authorised by that Service Recipient under this Agreement to perform specific activities or give specific approvals, to the extent of such delegated authority;

1.74. “Eskom Connected Entities”

has the meaning set out in the Terms and Conditions;

1.75. “Eskom Data”

means all data, information, Personal Information, Confidential Information, text, drawings and other materials relating to Eskom, Eskom’s Affiliates, or any of the Service Recipients and their respect operations, facilities, customers, personnel (including Eskom Personnel) and assets, which are embodied in any medium including all electronic, optical, magnetic or tangible media, including any data produced, generated or processed in the provision of the Services by the Supplier or a Subcontractor, and includes any:

1.75.1. database in which such data or information is contained;

1.75.2. documentation or records related to such data or information;

1.75.3. products resulting from the use or manipulation of such data or information;

1.75.4. other data and other information entered into, generated by, stored by, or otherwise processed in the Eskom IT Environment; and

1.75.5. any derivatives, compilations, and copies of the foregoing in whatever form, including any redacted and/or aggregated versions of the same;

1.76. “Eskom Dependency”

means those responsibilities or functions specifically set out in Appendix B-3 (Eskom Dependencies), Appendix G-3 (Eskom Transition Dependency) and Appendix H-2 (Eskom Transformation Dependency) as acts, tasks, functions or dependencies of Eskom to be carried out by Eskom, or a Third-Party Supplier (other than the Supplier or a Subcontractor) on Eskom’s behalf;

1.77. **“Eskom Designated Item(s)”**

has the meaning set out in Schedule N (Value and Competitiveness Rider);

1.78. **“Eskom Executive”**

the Eskom Chief Technology and Information Officer or his/her duly authorised representative;

1.79. **“Eskom Facilities”**

has the meaning set out in Schedule E (Governance), and **“Eskom Facility”** will be construed accordingly;

1.80. **“Eskom Group”**

means Eskom and its Affiliates;

1.81. **“Eskom IT Environment”**

means Eskom’s IT and network environment, including any equipment and Software forming part of such systems, but excluding Supplier Support Systems, the internet, and other public networks (other than dedicated Service Recipient connections over the internet or such public networks);

1.82. **“Eskom Personnel”**

means employees, officers, consultants, contractors, and agents of the Eskom Group;

1.83. **“Eskom Policies”**

has the meaning set out in Schedule E (Governance) and includes such technical standards, guidelines, baselines, and procedures as Eskom may prescribe from time to time;

1.84. **“Eskom Portal”**

has the meaning set out in Schedule B (Services Description);

1.85. **“Eskom-Provided Equipment”**

means any Equipment provided by Eskom for the use of Supplier in accordance with the terms of the Agreement;

1.86. **“Eskom Provided Resources”**

has the meaning set out in Schedule E (Governance);

1.87. **“Eskom Provided Software”**

means any Software provided by Eskom for the use of Supplier in accordance with the terms of the Agreement;

1.88. **“Eskom Retained Obligation”**

means any obligation described in the Agreement as a **“Eskom Retained Obligation”** which will only be performed by Eskom and not the other Service Recipients;

1.89. **“Eskom Retained Right”**

means any right described in the Agreement as a **“Eskom Retained Right”** which will only be received by Eskom and not the other Service Recipients;

1.90. **“Eskom Service Provider”**

means any party other than the Supplier who renders services to Eskom, and can either be a Third-Party Supplier or an internal Eskom supplier;

1.91. **“Eskom Sites”**

means the Eskom sites listed in the Service Specification;

1.92. **“Eskom Transformation Manager”**

has the meaning set out in Schedule H (Transformation);

1.93. **“Eskom Transition Dependencies”**

means those dependencies set out in Appendix G-3 (Transition Dependencies);

1.94. **“Eskom Transition Manager”**

has the meaning set out in Schedule G (Transition);

1.95. **“Excused Event”**

has the meaning set out in the Terms and Conditions;

1.96. **“Existing Supplier”**

means any supplier providing services similar to the Services prior to the relevant Services Commencement Date;

1.97. **“Exit Assistance Charges”**

means any charges payable in respect of any chargeable Exit Assistance Services in accordance with section 4.4 of Schedule D (Charges);

1.98. **“Exit Assistance Manager”**

has the meaning set out in Schedule I (Exit Assistance);

1.99. **“Exit Assistance Period”**

means a period, the duration of which is determined in accordance with clause 2.3 of the Terms and Conditions, in which the Supplier is required to provide Exit Assistance Services;

1.100. **“Exit Assistance Services”**

has the meaning set out in Schedule I (Exit Assistance);

1.101. **“Exit Management Plan”**

has the meaning set out in Schedule I (Exit Assistance);

1.102. “External Communications”

means communications by any means and designed for any media, including oral communications, press releases, marketing brochures, CDs or other marketing media, advertisements, announcements or statements for radio, film, television, cable or satellite transmission, advertisements, announcements or statements for internet, website or like availability and any other item for distribution by general or trade magazine, journal and newspaper articles;

1.103. “Facilities”

has the meaning set out in Schedule E (Governance);

1.104. “Financially Distressed”

shall bear the meaning set out in section 128(1)(f) of the Companies Act;

1.105. “First Transformation Credit Period”

has the meaning set out in Schedule H (Transformation);

1.106. “First Transition Credit Period”

has the meaning set out in Schedule G (Transition);

1.107. “Fixed Charges”

has the meaning set out in Schedule D (Charges);

1.108. “Fixed Price”

has the meaning set out in Appendix F-2 (New Services Project Process);

1.109. “Force Majeure Event”

means an event beyond the control of the affected Party which was not reasonably foreseeable by the affected Party and which was not caused by and could not have been reasonably planned for, or avoided by the exercise of reasonable foresight and/or reasonable care and diligence on the part of the affected Party, including acts of God, fire, flood, war, acts of terrorism, riot, civil commotion, governmental actions (excluding regulatory change), labour disputes (save where such disputes involve personnel of the non-performing Party) including, in the case of the Supplier, personnel of the Subcontractors, and any similar events beyond the reasonable control of the non-performing Party (including in the case of the Supplier, the Subcontractors);

1.110. “Fraudulent Practice”

has the meaning set out in the Terms and Conditions;

1.111. “Generic Exit Plan”

has the meaning set out in Schedule I (Exit Assistance);

1.112. “Good Industry Practice”

means that the Services will be performed in an efficient, effective, reliable, professional, and safe manner and with the standard and skill, care, knowledge, and foresight which would reasonably be expected from an experienced person engaged in providing services which are the same as, or similar to, the Services;

1.113. “High Band”

has the meaning set out in Schedule D (Charges);

1.114. “High Band Ceiling”

has the meaning set out in Schedule D (Charges);

1.115. “Impacted Services”

has the meaning set out in the Terms and Conditions;

1.116. “Incident”

means any event which is not part of the standard operation of a Service (including in respect of any equipment or Eskom Site) and which causes or may cause, an unplanned interruption to, or reduction in the quality, or a failure of a configuration item that has not yet impacted a Service;

1.117. “Indemnified Item”

means the Services, Deliverables, Software and Materials and Services that are subject to a relevant indemnity under the Agreement;

1.118. “Indemnified Losses”

means:

1.118.1. any amounts awarded by a court or tribunal of competent jurisdiction or arbitrator to a Third Party;

1.118.2. any amounts paid in settlement to a Third Party;

1.118.3. any interest awarded by a court of competent jurisdiction, or arbitrator in respect of the above;

1.118.4. any costs of investigation, litigation, settlement, and external legal fees (on a party and party basis) and disbursements and administrative costs directly incurred by the Indemnatee in respect of a Claim; and

1.118.5. any other losses or damages suffered by the Indemnatee;

1.119. “Indemnatee”

means the Party that is receiving the benefit of the relevant indemnity;

1.120. “Indemnitor”

means the Party that is giving the relevant indemnity;

1.121. “In-Flight Projects”

has the meaning set out in Schedule G (Transition);

1.122. “Information Release Table”

has the meaning set out in Schedule I (Exit Assistance);

1.123. “Initial Notice”

has the meaning set out in the Terms and Conditions;

1.124. “Insolvency Event”

means the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than Republic of South Africa) in relation to the relevant entity:

1.124.1. the entity passing a resolution for its winding up or placing it under Business Rescue or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved or had a Business Rescue order granted against it;

1.124.2. the appointment of an administrator of or, the making of an administration order in relation to the entity or the appointment of a receiver or administrative receiver of or Business Rescue practitioner, or an encumbrancer taking possession of or selling, the whole or part of the entity's undertaking, assets, rights, or revenue;

1.124.3. the entity entering into an arrangement, compromise, or composition in satisfaction of its debts with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors;

1.124.4. the entity being unable to pay its debts or being capable of being deemed unable to pay its debts; or

1.124.5. the entity entering into any arrangement, compromise or compromise or composition in satisfaction of its debts with its creditors,

however, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide reconstruction or amalgamation will not amount to an Insolvency Event;

1.125. “Intellectual Property Rights”

means all and any intellectual property including of any kind that are recognised and/or capable of being protected by law from use by any other person, and all rights resulting from or attributable to such intellectual activity, whether acquired or protected by statute or common law and whether in terms of Applicable Laws and/or any other jurisdiction, and including whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all rights or forms of protection having similar or equivalent or similar effect to any of the aforementioned, which may subsist in any country in the world, including:

1.125.1. Copyrights;

1.125.2. patents, utility models, trademarks, trade names, trade secrets, know how, domain names and topography rights and any other intellectual property having a similar nature or equivalent effect anywhere in the world;

1.125.3. Confidential Information;

1.125.4. applications for or registrations of any of the rights described above;

1.126. **“Interest Rate”**

means the then-current prime lending rate published by the Standard Bank of South Africa Limited;

1.127. **“Invoice”**

means an invoice issued by the Supplier pursuant to, and in accordance with, Schedule D (Charges);

1.128. **“ITIL”**

means an IT Infrastructure Library version 3.0, or later version as agreed with Eskom;

1.129. **“JV Entity”**

means an entity formed by Eskom entering into a joint venture with a Third Party;

1.130. **“Key Performance Indicators/ KPIs”**

means the required timescales, levels, and standards of service, as set out in the relevant Service Specification or Service Level Description, Appendix C-1, which the Supplier is required to comply with in providing the Services;

1.131. **“Key Service Personnel”**

means those Service Personnel filling Key Services Positions, and **“Key Service Person”** will be construed accordingly;

1.132. **“Key Services Position”**

has the meaning set out in Schedule O (HR Provisions)

1.133. **“Key Transformation Credits”**

has the meaning set out in Schedule H (Transformation);

1.134. **“Key Transformation Milestone”**

means any Transformation Milestones identified as key in the Transformation Plan;

1.135. **“Key Transformation Milestone Default”**

has the meaning set out in Schedule H (Transformation);

1.136. **“Key Transition Credits”**

has the meaning set out in Schedule G (Transition);

1.137. **“Key Transition Milestone”**

means any Transition Milestones identified as key in the Transition Plan;

1.138. **“Key Transition Milestone Default”**

has the meaning set out in Schedule G (Transition);

1.139. “Legislation”

means all local and international statutes, regulations, rulings, directives, judgements, by-laws, and the like (including authorisations, permits, licences, and certificates) having the force of law as well industry codes of practice / standards, pertaining to, but not limited to:

1.139.1. the performance of the Services;

1.139.2. the protection of health, safety, and the environment;

1.139.3. any substance capable of causing harm to the public or contamination of or pollution or degradation of the environment;

1.139.4. incident management;

1.139.5. the combating of corruption and the payment / acceptance of bribes;

1.139.6. including but not limited to the following Acts and Regulations promulgated thereunder (as amended or substituted from time to time), as well as all relevant codes of practice, compulsory specifications and standards issued by the South African Bureau of Standards, that Supplier shall comply with in performing the Services for Eskom in terms of the Agreement:

1.139.6.1. Occupational Health and Safety Act, No. 85 of 1993;

1.139.6.2. Occupational Diseases in Mines and Works Act, No. 78 of 1973;

1.139.6.3. The UK Bribery Act (2010);

1.139.6.4. The USA Foreign Corrupt Practices Act of 1977; and

1.139.6.5. Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.

1.140. “Low Band”

has the meaning set out in Schedule D (Charges);

1.141. “Low Band Floor”

has the meaning set out in Schedule D (Charges);

1.142. “Mandatory Change”

means a change to which Supplier will not withhold its consent in accordance with section 2.2 of Schedule F (Change Management);

1.143. “Market Testing Procedure”

has the meaning set out in Schedule N (Value and Competitiveness Rider);

1.144. “Material”

means any documentation or other written materials in whatever form (including written or electronic documentation), including any reports, specifications, business rules or requirements, designs, manuals, user guides, training materials, or instructions, but excludes Software;

1.145. **“Material Default Level”**

means, in respect of each Service Level, the level of Performance Standard designated as the ‘Material Default Level’ in the relevant Service Specification;

1.146. **“Measurement Period”**

means a Month or any other period stated as a “Measurement Period” in relation to a Service Level in the relevant Service Specification;

1.147. **“Mediation Notice”**

has the meaning set out in Schedule E (Governance);

1.148. **“Mediation Period”**

has the meaning set out in Schedule E (Governance);

1.149. **“Mediation Response Notice”**

has the meaning set out in Schedule E (Governance);

1.150. **“Milestone Default”**

has the meaning set out in Schedule C (Performance Standards);

1.151. **“Modify”**

means to add to, enhance, reduce, change, vary, derive, or improve and **“Modification”** and **“Modified”** will be construed accordingly;

1.152. **“Month”**

means a calendar month;

1.153. **“Monthly Charges”**

means the total charges payable in the relevant Month pursuant to this Agreement;

1.154. **“Moral Rights”**

has the meaning set out in the Terms and Conditions;

1.155. **“Negotiation Period”**

has the meaning set out in Schedule E (Governance);

1.156. **“Negotiation Representatives”**

means a representative(s) from each Party as stated in Schedule E Governance;

1.157. **“NCC”**

has the meaning set out in the Terms and Conditions;

1.158. **“Non-conformity”**

has the meaning set out in Schedule B (Service Description);

1.159. **“New Services Project Order”**

means an order for a Project prepared in accordance with Appendix F-2 (New Services Project Process) and in the form set out in Annex F-2-1 (Pro-Forma New Services Project Order);

1.160. **“New Services Project Positions”**

has the meaning set out in Appendix F-2 (New Services Project Process);

1.161. **“New Services Project Process”**

has the meaning set out in Schedule F (Change Management);

1.162. **“Non-Material Subcontracts”**

has the meaning set out in the Terms and Conditions;

1.163. **“Notice of Withdrawal”**

has the meaning set out in the Terms and Conditions;

1.164. **“Obstructive Practice”**

1.164.1. means deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation by Eskom into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any Party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

1.164.2. acts intended to materially impede the exercise of Eskom's inspection and audit rights provided herein.

1.165. **“Operational Change Management Procedure”**

has the meaning set out in Schedule F (Change Management);

1.166. **“Operations Manual”**

means the manual which will include details of procedures, contact details and other necessary information relevant to the Services, as same is developed and maintained by Supplier in accordance with Schedule E (Governance) and Schedule B: Appendix B-2 (Operations Manual);

1.167. **“Party”**

means Eskom or Supplier, as appropriate, and **“Parties”** shall be construed accordingly;

1.168. **“Pass-Through Expense”**

means third party charges passed directly through to Eskom by the Supplier without mark-up or other charge;

1.169. **“Performance Data”**

has the meaning set out in Schedule C (Performance Standards);

1.170. **“Performance Level Multiplier”**

has the meaning set out in Schedule C (Performance Standards);

1.171. **“Performance Report”**

has the meaning set out in Schedule C (Performance Standards);

1.172. **“Performance Standards”**

means the quantitative and qualitative performance standards and commitments for the Services set out in the Agreement, including the Service Levels and Key Performance Indicators;

1.173. **“Personal Information”**

has the meaning set out in Schedule P (Operator Agreement);

1.174. **“Planned Transformation Handover Date”**

has the meaning set out in Schedule H (Transformation);

1.175. **“Post-Termination Services”**

has the meaning set out in Schedule I (Exit Assistance);

1.176. **“Pre-Existing Intellectual Property”**

means Intellectual Property owned or controlled by a Party (or a third party) prior to the Effective Date or developed independently of this Agreement without use of Eskom Confidential Information.

1.177. **“Price Sensitive Change”**

has the meaning set out in Schedule F (Change Management);

1.178. **“Problem”**

means a problem that is the underlying cause of one or more actual or potential Incidents, including a problem where the underlying cause is unknown or where it is known and a temporary workaround or permanent alternative has been identified;

1.179. **“Project”**

Refers to a unit of work, constituting a Change to the Services that will be managed through the Change Management Procedure, which is incremental in nature and falls within the scope of the Services to be provided under this Agreement;

1.180. **“Project At Risk Amount”**

has the meaning set out in Schedule C (Performance Standards);

1.181. **“Project Deliverable”**

means a Deliverable to provided pursuant to a particular Project, as set out in the relevant New Services Project Order;

1.182. **“Project Deliverable Weighting Factor”**

has the meaning set out in Schedule C (Performance Standards);

1.183. **“Project Milestone”**

means the date by which a particular Project Deliverable must be delivered as such dates are set out in the relevant New Services Project Order;

1.184. **“Project Rates”**

means the rates to be specified in Appendix D-3 (Project Rates);

1.185. **“Project Sponsor”**

means the Eskom representative named in the New Services Project Order and Change Note for each Project;

1.186. **“Purchased Equipment”**

has the meaning set out in Schedule I (Exit Assistance);

1.187. **“Purchase Order”**

A purchase order (PO) is a system-generated commercial document issued by Eskom to the Supplier to formally request the delivery of specified goods or services. It outlines the nature of the items or services to be procured, including type, quantity, unit price, and total value. Once accepted by the supplier, the PO becomes a legally binding agreement and is required for invoicing and payment processing.

1.188. **“PxQ Charges”**

has the meaning set out in Schedule D (Charges);

1.189. **“Quarter”**

means each period of 3 (three) Months ending on 31 March, 30 June, 30 September, and 31 December;

1.190. **“RACI”**

has the meaning set out in Schedule L (Cooperation Agreement);

1.191. **“Receiving Party”**

means the Party who receives the Dispute Notice from the Disputing Party as stated in Schedule E (Governance);

1.192. **“Records”**

has the meaning set out in Schedule E (Governance);

1.193. **“Regulator”**

means any regulator or regulatory body, which Eskom, or any member of the Eskom Group, is subject to the regulatory remit of under Applicable Law from time to time or whose consent, approval or authority is required so that Eskom or the relevant member of the Eskom Group can lawfully carry on its business;

1.194. **“Regulatory Audit”**

means any Audit carried out by a Regulator;

1.195. **“Relevant Transfer”**

means a relevant transfer in terms of the Transfer Regulations;

1.196. **“Relief Notice”**

has the meaning set out in the Terms and Conditions;

1.197. **“Reported Month”**

has the meaning set out in Schedule C (Performance Standards);

1.198. **“Report Recipients”**

has the meaning set out in Schedule E (Governance);

1.199. **“Reports”**

means the reports to be provided by the Supplier as further described in Schedule E; (Governance);

1.200. **“Required Level”**

means, in respect of each Service Level, the level of the Performance Standard which is designated as the ‘Required Level’ in the relevant Service Specification;

1.201. **“Resigning Employee”**

means any employee of an Eskom Connected Entities or an Existing Supplier who would have transferred to the Supplier or a Subcontractor pursuant to the Transfer Regulations but for that employee resigning;

1.202. **“RFP”**

means a request for proposal;

1.203. **“Roadmap”**

has the meaning set out in the Terms and Conditions;

1.204. **“Roadmap Accelerator”**

has the meaning set out in the Terms and Conditions;

1.205. **“Run Down Period”**

has the meaning set out in Appendix I-1 (Transfer of Assigned Personnel);

1.206. **“SDL&I Credit”**

has the meaning set out in Schedule S (Supplier Development, Localisation, and Industrialisation);

1.207. **“SDL&I”**

has the meaning set out in the Terms and Conditions;

1.208. **“Second Transformation Credit Period”**

has the meaning set out in Schedule H (Transformation);

1.209. **“Second Transition Credit Period”**

has the meaning set out in Schedule G (Transition);

1.210. **“Secondees”**

has the meaning set out in the Terms and Conditions;

1.211. **“Service Address”**

has the meaning set out in Schedule E (Governance);

1.212. **“Service Commencement Date”**

means in respect of each of the Services, the effective date on which Supplier commences the provision of the relevant services in accordance with the Agreement;

1.213. **“Service Coverage Window”**

means the agreed period of time during which a Service is available and supported, and Service Levels apply;

1.214. **“Service Credit”**

has the meaning set out in Schedule C (Performance Standards);

1.215. **“Service Desk”**

means the service desk function described in the Service Desk Specification and to be provided by Supplier;

1.216. **“Service Hours”**

means those hours the Supplier will provide the Services, as set out in the Services Specification;

1.217. “Service Level Default”

means where, in respect of a Performance Standard, the Service Level Performance fails to meet or exceed the relevant Performance Standard in the relevant Measurement Period;

1.218. “Service Level Performance”

means, in respect of each Service Level or Key Performance Indicator, Supplier’s actual performance of the Services against such Service Level or Key Performance Indicator;

1.219. “Service Levels”

means the quantitative and qualitative performance metrics for the Services contained in the Agreement as specified in the Service Specification; as the same may be changed in accordance with Schedule C (Performance Standards);

1.220. “Service Period”

has the meaning set out in the Terms and Conditions;

1.221. “Service Personnel”

means employees, officers, consultants, contractors and agents of the Supplier and Subcontractors assigned to perform the Services (whether on a part time or full-time basis), or any part of the Services, pursuant to the Agreement, and “Service Person” will be construed accordingly;

1.222. “Service Recipient Obligation”

has the meaning set out in the Terms and Conditions, clause 3.1.2;

1.223. “Service Recipients”

has the meaning set out in the Terms and Conditions;

1.224. “Service Request”

means a request made by Eskom for a service, Equipment or Deliverable;

1.225. “Service Request Process”

has the meaning set out in Schedule F (Change Management)

1.226. “Services”

has the meaning set out in Schedule B (Service Description) and includes any other duties, responsibilities, tasks, or services to be undertaken by the Supplier as described or otherwise referred to in the Agreement;

1.227. “Service Specification”

has the meaning set out in Schedule B (Services Description);

1.228. “Software”

means any elements of coding or computer programs (including related documentation and media), including as applicable the object code and/or source code and without limit to whether the software is an operating system software, application software, tools, firmware or otherwise;

1.229. “Source Code Material”

means:

1.229.1. Programming Components:

All source code, object code, executable files, scripts, libraries, APIs, configuration files, and all other programming materials, in both human-readable and machine-readable form, whether stored electronically, on magnetic media, or in printed versions;

1.229.2. Documentation:

All related technical and functional documentation, design specifications, architectural diagrams, development notes, user manuals, run-books, and operating instructions, in each case sufficient to enable the Customer (or its nominated third parties) to install, maintain, enhance, customise, modify, support, and perpetuate the Developed Software, any Deliverables, and any other software used to provide the Services;

1.229.3. Tools & Supporting Materials:

Any build tools, test data, scripts, environments, workflows, and other ancillary materials reasonably necessary to compile, train, test, deploy, and operate the Developed Software or Deliverables in substantially the same manner as performed by the Provider;

1.229.4. Cloud-Related Artefacts:

Any configuration templates, infrastructure-as-code files, orchestration scripts, cloud service dependencies, container images, and environment definitions required for deployment and operation of the Deliverables in cloud or hybrid environments; and

1.229.5. Artificial Intelligence Artefacts:

Any algorithms, models, model weights, training data (where contractually permitted), fine-tuning data, pre-processing and post-processing scripts, prompt libraries, embeddings, documentation of model behaviour, and related artefacts reasonably necessary for the Customer (or its nominated third parties) to maintain, enhance, retrain, interpret, audit, and perpetuate AI or machine learning systems forming part of the Deliverables or Services.

1.230. “Statement of Requirements”

has the meaning set out in Appendix F-2 (New Services Project Process);

1.231. “Step-In Event”

means any of the following:

1.231.1. the Supplier is in breach of this Agreement; or

1.231.2. a Force Majeure Event occurs;

1.232. **“Step-In”**

has the meaning set out in the Terms and Conditions;

1.233. **“Step-In-Right”**

has the meaning set out in the Terms and Conditions;

1.234. **“Subcontractor”**

means any subcontractor to the Supplier assigned to perform the Services, or any part of the Services, pursuant to the Agreement;

1.235. **“Subcontractor Obligations”**

has the meaning set out in the Terms and Conditions;

1.236. **“Successor Supplier”**

means Eskom or any other entity or entities, as designated by Eskom, which will provide for the Service Recipients, any replacement services, or services similar to the Services that have been Terminated or Terminated in Part;

1.237. **“Supplier”**

has the meaning set out in the preamble to the Terms and Conditions;

1.238. **“Supplier Competitor”**

has the meaning set out in Schedule N (Value and Competitiveness Rider);

1.239. **“Supplier Employer”**

means, as applicable in relation to the employer of a Service Person, either the Supplier, one of its Affiliates or a Subcontractor;

1.240. **“Supplier Executive”**

means the Supplier Chief Information Officer or his/her duly authorised representative;

1.241. **“Supplier Group”**

means the Supplier and its Affiliates;

1.242. **“Supplier Indemnity”**

means any indemnity granted by Supplier to Eskom under this Agreement;

1.243. **“Supplier-Licensed Software”**

means any Supplier-Provided Software that is not Supplier-Owned Software;

1.244. **“Supplier-Owned Software”**

means any Supplier-Provided Software that is owned by Supplier or Supplier Affiliate;

1.245. **“Supplier Policies”**

has the meaning set out in Schedule E (Governance);

1.246. **“Supplier Portal”**

has the meaning set out in section 3.2.1 of Schedule B (Services Description);

1.247. **“Supplier-Provided Software”**

means any Software that is provided to a Service Recipient by the Supplier or a Subcontractor in connection with the Agreement or used by the Supplier, or Subcontractors in performing the Services but excluding any Eskom-Provided Software, Deliverables, or any other Software which is Developed Intellectual Property;

1.248. **“Supplier Support Systems”**

means the Supplier and Subcontractor IT and network systems (including any Software forming part of such systems) that are used to perform and manage the Services, including any Supplier and Subcontractor Equipment (and Software installed on such Equipment) that is connected to Eskom IT Environment;

1.249. **“Supplier Transformation Manager”**

has the meaning set out in Schedule H (Transformation);

1.250. **“Supplier Transformation Team”**

has the meaning set out in Schedule H (Transformation);

1.251. **“Supplier Transition Manager”**

has the meaning set out in Schedule G (Transition);

1.252. **“Supplier Transition Project Office”**

has the meaning set out in Schedule G (Transition);

1.253. **“Supplier Transition Team”**

has the meaning set out in of Schedule G (Transition);

1.254. **“Surviving Clauses”**

has the meaning set out in the Terms and Conditions;

1.255. **“T&M Estimate”**

has the meaning set out in Appendix F-2 (New Services Project Process);

1.256. **“Target”**

has the meaning set out in Schedule N (Value and Competitiveness Rider);

1.257. **“Target Charge Adjustment”**

has the meaning set out in Schedule D (Charges);

1.258. **“Target Charge Basis”**

has the meaning set out in Schedule D (Charges);

1.259. **“Target Service Level”**

means, in respect of each Service Level, the level of Performance Standard designated as the ‘Target Service Level’ in the relevant Service Specification;

1.260. **“Technology Innovation Plan”**

has the meaning set out in Schedule B (Service Description);

1.261. **“Term”**

has the meaning set out in the Terms and Conditions;

1.262. **“Terminate”**

means to end the performance of all of the Services (and end the Service Period) or end, or remove from the scope of this Agreement, any Services, including a Termination in Part, as the case may be, (other than, in each case, the Exit Assistance Services);

1.263. **“Terminated Services”**

means any part of the Services that are no longer to be performed by the Supplier and instead are to be performed by a Successor Supplier either (i) at the end of the Term, or (ii) on termination of those Services prior to the end of the Term;

1.264. **“Termination Charges Caps”**

has the meaning set out in Schedule D (Charges);

1.265. **“Termination Date”**

means the effective date of termination of the relevant Terminated Services;

1.266. **“Termination in Part”**

means a termination of part of the Services in accordance with clause 13 of the Terms and Conditions;

1.267. **“Termination Notice”**

means a notice given by a Party to terminate all of the Services or part of the Services in accordance with the Terms and Conditions;

1.268. **“Termination Period”**

means the period during which the Supplier provides the Exit Assistance Services to Eskom;

1.269. **“Terms and Conditions”**

means the opening paragraphs, the recitals, and clauses 1 to 124 of the Agreement;

1.270. “Third Party”

means any party who is not a party to the Agreement;

1.271. “Third-Party Beneficiary”

means, in respect of Eskom, its third-party beneficiaries referred to in the Terms and Conditions (including Eskom Affiliates and where relevant Eskom customers), and in respect of Supplier, its third-party beneficiaries referred to in Terms and Conditions;

1.272. “Third-Party Fees”

has the meaning set out in Appendix F-2 (New Services Project Process);

1.273. “Third-Party Suppliers”

means a Third Party that is a supplier of goods or services to Eskom, which goods or services relate to or are connected with the Services, including that Third Party’s employees, agents, subcontractors, and suppliers (excluding the Supplier and the Subcontractors);

1.274. “Ticket”

means a ticket used to collect information and to document Customer requirements, which will be logged and processed using the Ticket Management System;

1.275. “Ticket Management System”

means the ticket management system used by Supplier;

1.276. “Tool(s)”

means any Software tool or process that is used to provide or receive the benefit of the Services including those used for: data management, monitoring, testing, data search or analysis or other similar functions and includes related methodologies and processes;

1.277. “Transfer Regulations”

section 197 of the Labour Relations Act, No. 66 of 1995 as amended, or, as the context requires, equivalent legislation in any jurisdiction outside the Republic of South Africa;

1.278. “Transferred Contracts”

means any contracts that are transferred from any Service Recipient (or an existing supplier of a Service Recipient) to Supplier pursuant to this Agreement;

1.279. “Transferring Employees”

means those employees of the Existing Supplier as more fully set out in Schedule O (HR Provisions);

1.280. “Transformation Acceptance Criteria”

has the meaning set out in Schedule H (Transformation);

1.281. “Transformation Acceptance Tests”

has the meaning set out in Schedule H (Transformation);

1.282. **“Transformation At Risk Amount”**

has the meaning set out in Schedule C (Performance Standards);

1.283. **“Transformation Charges”**

means Charges payable in respect of Transformation Services and/or Transformation Deliverables in accordance with Schedule D (Charges);

1.284. **“Transformation Deliverable”**

has the meaning set out in Schedule H (Transformation);

1.285. **“Transformation Deliverable Weighting Factor”**

has the meaning set out in Schedule C (Performance Standards);

1.286. **“Transformation Handover Date”**

has the meaning set out in Schedule H (Transformation);

1.287. **“Transformation Meetings”**

has the meaning set out in Schedule H (Transformation);

1.288. **“Transformation Milestone”**

means the date by which a particular Transformation Deliverable must be delivered as such dates are set out in Appendix H-1 (Transformation Documentation);

1.289. **“Transformation Plan”**

means the plan for Transformation, as such plan is developed in accordance with Schedule H (Transformation);

1.290. **“Transformation Services”**

has the meaning set out in Schedule H (Transformation);

1.291. **“Transformed Methods”**

has the meaning set out in Schedule H (Transformation);

1.292. **“Transformed Services”**

has the meaning set out in Schedule H (Transformation);

1.293. **“Transition”**

means the individual services, activities, tasks, functions, and responsibilities which, collectively, transfer responsibility for the provision of the Services to the Supplier or its Subcontractors. **“Transitioned”** in the context of **“Transition”** will be construed accordingly;

1.294. **“Transition At Risk Amount”**

has the meaning set out in Schedule C (Performance Standards);

1.295. “Transition Charges”

means Charges payable in respect of Transition Services and/or Transition Deliverables in accordance with Schedule D (Charges);

1.296. “Transition Commencement Date”

means the Effective Date;

1.297. “Transition Deliverables”

means one of the separately identified key components (or series of related key components) of Transition identified in Appendix G-1 (Transition Plan);

1.298. “Transition Deliverable Criteria”

means the acceptance criteria which each Transition Deliverable must meet as specified in the Transition Plan and includes the Transition Deliverable Criteria set out in Appendix G-1 (Transition Plan);

1.299. “Transition Deliverable Weighting Factor”

has the meaning set out in Schedule C (Performance Standards);

1.300. “Transition Event”

has the meaning set out in Schedule G (Transition);

1.301. “Transition Meetings”

has the meaning set out in Schedule G (Transition);

1.302. “Transition Milestone”

means the date by which a particular Transition Deliverable must be delivered as such dates are set out in Appendix G-2 (Transition Deliverables);

1.303. “Transition Period”

has the meaning set out in Schedule G (Transition);

1.304. “Transition Plan”

means the plan for Transition, as such plan is developed in accordance with Schedule G (Transition);

1.305. “Transition Services”

has the meaning set out in Schedule G (Transition);

1.306. “Turnover Rate”

has the meaning set out in Schedule O (HR Provisions);

1.307. “Unit Rate”

means the actual charge associated with each Billable Unit;

1.308. **“Use”**

means, with respect to any Software or Materials, to use, execute, reproduce, display, perform, distribute, maintain, or modify;

1.309. **“Verification Tests”**

has the meaning set out in Schedule G (Transition);

1.310. **“Weighting Factor”**

means the weighting allocated to a Service Level in accordance with Schedule C (Performance Standards); and

1.311. **“Year”**

means a calendar year.

2. INTERPRETATION

2.1. In this Agreement, a reference to:

2.1.1. a statutory provision, includes a reference to:

2.1.1.1. the statutory provision as modified or re-enacted from time to time (whether before or after the Effective Date); and

2.1.1.2. any subordinate legislation made pursuant to the statutory provision (whether before or after the Effective Date);

2.1.2. persons or entities, includes a reference to natural persons, juristic person, unincorporated association, trust, partnership or other entity or organisation;

2.1.3. a person or entity, includes a reference to that person's or entity's successors or assigns;

2.1.4. an agreement, includes a reference to the agreement as amended from time to time;

2.1.5. **“Schedule”** or **“Appendix”** or **“Annex”** unless the context otherwise requires, is a reference to the relevant schedule, appendix, or annex to this Agreement;

2.1.6. a **“clause”** or **“section”**, unless the context otherwise requires, is a reference to a clause in the Terms and Conditions or a section in the relevant Schedule, Appendix or Annex, respectively; and

2.1.7. the singular includes the plural and vice versa unless the context otherwise requires.

2.2. The headings in this Agreement will not affect the interpretation of this Agreement (and unless the context requires otherwise, a reference to the Schedule includes the associated Appendices and Annexes).

2.3. If any provision in this Schedule is a substantive provision conferring rights or imposing obligations on any Party, then notwithstanding that such provision is contained in such clauses, effect will be given thereto as if such provision were a substantive provision in the body of this Agreement.

- 2.4. Whenever the words “**include**”, “**includes**”, “**including**” or “**in particular**” (or similar derivatives) are used, they will be deemed to be followed by the words “without limitation”.
- 2.5. When any number of days or Business Days is prescribed in this Agreement, same will be reckoned inclusively of the first and exclusively of the last day or Business Day, as the case may be.
- 2.6. A time of day is a reference to Johannesburg time.
- 2.7. Warranties provided by the Supplier are material and go to the root of the Agreement.
- 2.8. This Agreement is the result of arm's length negotiations between the Parties and will be construed to have been drafted by both Parties such that any ambiguities in this Agreement will not be construed against either Party as a result of that Party having drafted or proposed the relevant clause.