

SCHEDULE J (PARENT COMPANY GUARANTEE)

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 Except with the express prior written permission of Eskom, this document and the information contained herein may not be published, disclosed, or used for any other purpose.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.

(to be reproduced on the letterhead of the Guarantor)

**Eskom Holdings SOC Ltd
Megawatt Park
2 Maxwell Drive
Sandton
Johannesburg**

Date:

Dear Sirs,

Parent Company Guarantee

With reference to the agreement concluded or to be concluded, including the Terms and Conditions, Schedules, Appendices and Annexes and any other documents incorporated by reference into the agreement, as may be amended from time to time (**Agreement**) between Eskom Holdings SOC Ltd (**Eskom**) and **[Drafting Note: Insert registered name and address of the Supplier]**, (**the Supplier**) for the supply of the Services set out in Schedule B (Service Description) (**the Services**).

I/We the undersigned

on behalf of the *Supplier's* parent company (name)

of physical address

and duly authorised thereto, from the date of the last signature below ("*Effective Date*"), do hereby irrevocably and unconditionally guarantee to *Eskom* as a separate, primary obligation, the due and punctual performance of all the *Supplier's* obligation to provide the *Services*. If the *Agreement* is amended or varied in any manner whatsoever, this Guarantee shall apply in respect of the *Agreement* as amended or varied.

1. If for any reason the *Supplier* fails to provide or becomes unable to perform punctually, either partially or at all, any or all of the *Services*, we hereby agree to, at Eskom's election (i) perform or procure the full and timely performance of the *Services* in accordance with the terms of the *Agreement* at no additional cost to Eskom or (ii) pay to Eskom the total sum of **[Drafting Note: Amount equal to the value of the Services]** in cash and without deduction or setoff or (iii) partially perform or procure the performance of the *Services* and pay an equitable amount in cash for any *Services* which are not to be provided. We accept full liability for any damages that may be incurred by *Eskom* as a result of the *Supplier* failing to fulfil, either partially or at all, the *Services*. We further undertake to pay *Eskom* on first written demand all sums which are now, or at any time or times in the future shall become due, owing or incurred by the *Supplier* to *Eskom* pursuant to the *Services*.
2. We warrant that we know and understand the full terms and conditions of the *Agreement* and this Guarantee. We warrant that we have a material interest in securing the *Services*. We confirm and warrant the financial and technical strength of the *Supplier*. We warrant that our obligations under this Guarantee will rank at least simultaneously and in equal measure with all of our other unsecured and unsubordinated indebtedness. We warrant that we shall not, without the prior written consent of *Eskom* give or issue any guarantees similar in nature to this Guarantee and/or any suretyships until the expiry of this Guarantee or allow a material reduction in our net asset value to take place which will have an effect on the security of *Eskom* provided by us.
3. Each warranty, representation and undertaking set out in this Guarantee shall be a separate warranty, representation and undertaking and shall in no way be limited or restricted by reference to or inference from the terms of any other warranty, representation and undertaking. We acknowledge that we make the representations and give the warranties and undertakings in this Guarantee with the intention of inducing *Eskom* to accept the benefits under this Guarantee and enter into the *Agreement* and that *Eskom* enters into this Guarantee and the *Agreement* on the basis of, and in full reliance on, each of such warranty, representation and undertaking.

4. We hereby agree that all admissions and acknowledgements by the *Supplier*, whether express, tacit or implied, shall be binding on us.
5. If we fail to comply with the terms of this Deed of Guarantee, *Eskom* may itself procure such performance (whether or not the Agreement be formally determined). *Eskom* is to notify us, and we shall indemnify *Eskom* for any additional cost or expense it incurs.
6. Our liability shall be as primary obligor and not merely as surety and shall not be impaired or discharged by reason of any arrangement or change in relationship made between the *Supplier* and *Eskom* and/or between us and *Supplier*; nor any alteration in the obligations undertaken by the *Supplier* or in the terms of the Agreement; nor any indulgence, failure, delay by you as to any matter; nor any dissolution or liquidation or such other analogous event of the *Supplier*.
7. We hereby waive any and all rights to rely on the prescription of any of the *Services* or any obligation created by this Guarantee.
8. We hereby renounce any benefits to which we may be entitled in law as a result of this Guarantee including, without limitation, the benefits of the legal exceptions of no cause of debt (*non-causa debiti*), no value received (*non numeratae pecuniae*), simultaneous citation and division of debt (*de duobus vel pluribus reis debendi*), error in calculation (*errore calculi*) and revision of accounts, insofar as they or any of them may be applicable. We acknowledge that we are fully aware of the meaning and effect of those benefits and the renunciation thereof.
9. As security for the due and punctual performance by the *Supplier* of its obligations in terms of the *Services* and by us of our obligations in terms of this Guarantee, we shall if required by *Eskom* provide security, the form and substance of which are to be to the satisfaction of *Eskom*.
10. This Guarantee shall be in addition to and not in substitution for any other undertakings, guarantees, suretyships, or other security held or hereafter to be held by *Eskom* from us or any Third Party in connection with the *Services* or otherwise and the rights of *Eskom* under this Guarantee will not be affected or diminished thereby. *Eskom* shall, without prejudice to its rights hereunder, be entitled to release any such additional security held by it.

11. *Eskom* shall not be obliged before taking steps to enforce the terms of this Deed of Guarantee to obtain judgement against the *Supplier* in any court or other tribunal, to make or file any claim in liquidation (or analogous proceedings) or to seek any remedy or proceed first against the *Supplier*.
12. We acknowledge and agree that our obligations under this Guarantee are absolute and, without in any way limiting or derogating from any other provisions of this Guarantee, we shall, as from the *Effective Date*, be and remain bound to the full extent of this Guarantee, which shall at all times be fully and immediately enforceable in accordance with its terms, notwithstanding
 - 12.1. any dispute or defence which may be raised by us in regard to any amounts or other performance claimed from us by *Eskom* in terms of and pursuant to the provisions of this Guarantee;
 - 12.2. any insolvency, business rescue, administration, judicial management, reorganisation, arrangement, readjustment of debt, dissolution, liquidation or similar proceedings by or against *Eskom* or the *Supplier* or us;
 - 12.3. any invalidity or unenforceability or lack of due authorisation of, or other defect in, this Guarantee, the *Agreement* or any other agreement to which *Eskom* or we are a party to relating to the subject matter hereof;
 - 12.4. any failure or delay on the part of us to duly perform or comply with any of our obligations under this Guarantee;
 - 12.5. any compromise, settlement, release, change, modification, amendment (whether material or otherwise) or termination of any of the undertakings, terms or conditions imposed on *Supplier* in accordance with the *Agreement*;
 - 12.6. any variation or novation of the *Services*, whether by agreement, operation of law or otherwise;
 - 12.7. any time or other indulgences being granted or agreed to be granted to the *Supplier* and/or us by *Eskom* or *Eskom* not exercising any one or more of its rights hereunder or under the *Services*, either timeously or at all;

- 12.8. any failure to take, or to realise or fully realise the value of, or any release, discharge, exchange or substitution of, any security taken pursuant to the *Agreement*; and
- 12.9. any other cause which, but for this section, would or might have the effect of terminating, discharging or in any other manner whatsoever affecting any of our obligations under this Guarantee or any of the rights, powers or remedies conferred upon *Eskom* by law.
13. We agree that the nature and amount of our indebtedness in terms of this Guarantee will at any time be deemed to be adequately proved by a written certificate purporting to have been signed by or on behalf of *Eskom*, which certificate will in the absence of manifest error be binding on us and constitute *prima facie* proof in any legal proceedings against us of the contents thereof and of the amount of our indebtedness and the fact that such amount is due and payable.
14. All payments made by us under this Guarantee will be made free of any deductions of whatsoever nature and without set off or other withholding whatsoever by way of a deposit into a bank account so designated by *Eskom*. Any amount due by us hereunder will bear interest at the prime rate (being the publicly quoted rate (per cent, per annum) from time to time charged by *Eskom*'s bankers for similar amounts on an unsecured overdraft, as certified by any manager of that bank whose appointment it shall not be necessary to prove) and which shall be calculated from, and including, the date on which the amount became due for payment to, but excluding, the date of actual payment.
15. We hereby warrant to and in favour of *Eskom* that we are a limited liability company, duly incorporated in accordance with the laws of **(Drafting Note: Insert the country of incorporation)**; we have the power to enter into and perform in terms of this Guarantee and the transactions contemplated hereby and have taken all necessary action to authorise the entry into and performance of this Guarantee and the transactions contemplated hereby in accordance with its terms; and this Guarantee constitutes legal, valid and binding obligations on us in accordance with its terms.

16. No representations, promises or warranties have been made or given to us by *Eskom* or any other Person in connection with this Guarantee.
17. This Guarantee will expire upon the *Supplier* fulfilling the *Services* and paying *Eskom* all sums which may be owing or incurred by the *Supplier* to *Eskom* pursuant to the *Services*. Until such time, we will not be entitled to revoke or cancel this Guarantee.
18. We will not cede, delegate or assign this Guarantee, without the prior written consent of *Eskom*. This Guarantee will also be for the benefit of and be binding upon the successors in title and permitted assigns of the parties or either of them.
19. All provisions and the various sections of this Guarantee are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or section of this Guarantee, 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 sections of this Guarantee shall remain of full force and effect. The parties declare that it is their intention that this Guarantee would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
20. No addition to or variation, deletion, or agreed cancellation of all or any sections or provisions of this Guarantee will be of any force or effect unless in writing and signed by the parties.
21. No waiver of any of the terms and conditions of this Guarantee 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 either party in exercising any right, power or privilege under this Guarantee 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.

22. The parties select their respective physical addresses set forth on page one as their respective *domicilia citandi et executandi*, and for the purposes of giving or sending any notice provided for or required under this Guarantee.
23. This Deed of Guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa, and we hereby consent and submit to the non-exclusive jurisdiction of the South Gauteng High Court of the Republic of South Africa in any dispute arising from or in connection with this Guarantee.

Signed on this _____ day of _____ 20__ at _____

Signature(s)

Name(s) (printed)

Position in parent company

Signature of Witness(s)

Name(s) (printed)