

Schedule C (Performance Standards)

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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 the 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.

1. INTRODUCTION

1.1. General

- 1.1.1. From the Service Commencement Date, the Supplier will perform the Services to which the Service Levels apply so that the Service Level Performance will, in each month of the Service Period, meet, or exceed the Performance Standards.
- 1.1.2. In addition to the Performance Standards, the Supplier will perform the Services in accordance with each of the following (provided that for those services that have associated Performance Standards, the following will not be deemed to increase such Performance Standards and where there is a conflict between the standards described in this section 1.1.2, the higher standard will prevail):
 - 1.1.2.1. at least to the same degree of accuracy, completeness, efficiency, quality, responsiveness, and timeliness as:
 - 1.1.2.2. was provided prior to the Service Commencement Date by, or for, the Service Recipients with respect to services equivalent to the Services to be performed under this Agreement;
 - 1.1.2.3. is provided by well managed suppliers providing services similar to the Services, in accordance with Good Industry Practice;
 - 1.1.2.4. promptly, using reasonable skill and care and in a professional and diligent manner; and
 - 1.1.2.5. in accordance with any other Performance Standards specified in this Agreement.
- 1.1.3. The Supplier will, throughout the Term, use proven and current technology, processes and procedures that enable Eskom to take advantage of technological advancement in relation to the Services and which support Eskom's efforts to maintain competitiveness.
- 1.1.4. The Supplier shall perform the Services in compliance with the information security obligations contained in Schedule R (Information Security Requirements) and the data protection obligations contained in Schedule P (Operator Agreement). Any breach of such obligations shall be treated as a material breach of the Agreement.

1.2. Times

- 1.2.1. References to "days" in this Schedule C (Performance Standards) are to consecutive days during a Month.
- 1.2.2. References to "hours" in this Schedule C (Performance Standards) are to consecutive hours during a day.
- 1.2.3. References to "Months" in this Schedule C (Performance Standards) are to consecutive calendar months during a Contract Year.

1.3. Cooperation

- 1.3.1. The achievement of the Performance Standards by the Supplier may require the coordinated, collaborative effort of the Supplier with the Eskom Service Providers, in accordance with Schedule L (Cooperation Agreement).
- 1.3.2. The Supplier will provide a single point of contact for the prompt resolution of all Service Level Defaults and all failures to provide high-quality Services to Eskom,

regardless of whether the Service Level Defaults, or failures to provide high-quality Services to Eskom, arise from or in connection with the acts or omissions of the Supplier, Eskom, or Eskom Service Providers.

2. SERVICE LEVEL PERFORMANCE

2.1. Measurement

2.1.1. Service Level Performance:

- 2.1.1.1. will commence being measured on the relevant Service Commencement Date;
- 2.1.1.2. will be measured over the Measurement Period unless otherwise specified in the Agreement; and
- 2.1.1.3. will be reported on a monthly basis, unless otherwise specified in the Agreement.

2.1.2. The Supplier will use appropriate measurement and monitoring Tools and procedures to measure and report Service Level Performance, and such Tools and procedures:

- 2.1.2.1. must be automated, without the need for any manual intervention;
- 2.1.2.2. subject to section 2.1.3, will include those Tools specified in the Agreement;
- 2.1.2.3. will be measured over the Measurement Period specified in the Agreement; and
- 2.1.2.4. may be the subject of an Audit.

2.1.3. Any changes to the measurement and monitoring Tools and procedures will be made through the Change Procedures and will be subject to Eskom's prior written approval. Any such change will not change the Performance Standard itself, unless otherwise agreed by the Parties.

2.1.4. If the Supplier fails to measure or report Service Level Performance for a Service Level so that it is not possible to confirm whether the Service Level has been achieved for a particular Measurement Period, then unless the failure to measure or report was an Excused Event, the Service Level Performance for such Service Level will be deemed to be a Service Level Default and Eskom will be entitled to a Service Credit calculated in accordance with section 3.3.

2.1.5. The Supplier shall not deploy AI Tools, in the performance of the Services without Eskom's prior written consent. Where such technologies are approved, the Supplier shall ensure that any efficiency gains, savings, or improvements generated thereby are reported to Eskom on a bi-annual basis and factored into Service Level reporting.

2.2. Failure to Perform

2.2.1. In respect of any Service Level Default, the Supplier will:

- 2.2.1.1. investigate, assemble and preserve pertinent information with respect to, and report on the cause of the failure which led to the Service Level Default, including performing an appropriate root cause analysis of the underlying Problem within the timescales required by Eskom;
- 2.2.1.2. promptly, and in any event within the timescales required by Eskom, propose an appropriate, written corrective action plan with respect to such failure (unless a plan has already been implemented) and, subject to Eskom's approval, proceed diligently to execute such action plan (and any costs directly attributable to, and incurred by, Eskom in performing activities in respect of such plan will be reimbursed by the Supplier);
- 2.2.1.3. advise Eskom, as requested, of the status of remedial efforts being undertaken with respect to such Service; and
- 2.2.1.4. take appropriate preventive measures so that the Incidents and Problem do not recur.

2.2.2. Upon the occurrence of (a) 2 (two) or more consecutive Service Level Defaults on any Target Service Level at any time, or (b) any 3 (three) Service Level Defaults on any Target Service Level in any rolling 12 (twelve) month period, or (c) a single Service Level Default below either the Defective Level or the Material Default Level, in addition to the steps set out in section 2.2.1, and without prejudice to any other rights available to Eskom in the Agreement, at Eskom's request, the Supplier will:

- 2.2.2.1. make available senior representatives of the Supplier to meet Eskom's representatives to review and discuss the ongoing performance of the Services; and
- 2.2.2.2. put in place a focused recovery programme, to be agreed with Eskom (and at Eskom's discretion in accordance with Eskom's pro-forma Service Improvement Plan), setting out the remedial action to be taken by the Supplier in respect of the Service Level Default. The Supplier will ensure that its senior representatives will be responsible for leading and monitoring the progress of the steps undertaken pursuant to such recovery programme.

2.2.3. If the Supplier or Eskom identifies a trend in Service Level Performance which reasonably indicates that there will be a similar Service Level Default in the future, then the Supplier will perform a root cause analysis of the trend, report to Eskom on its findings and take any necessary steps to prevent an actual Service Level Default indicated by such root cause analysis.

2.2.4. Any Service Level Default arising from a failure of the Supplier's information security obligations, including data breach, compromise of Eskom Data, or failure to implement safeguards as required under Schedule R (Information Security Requirements), shall be deemed a **Critical Service Level Default** regardless of measurement thresholds.

2.3. Reporting

2.3.1. The Supplier will provide a monthly performance report (the “**Performance Report**”) to Eskom, which will be delivered within 4 (four) Business Days following the end of the immediately preceding Month (“**Reported Month**”). The Performance Report will, for each Month:

2.3.1.1. separately address the Supplier’s performance in the Services;

2.3.1.2. assess the degree to which the Supplier has attained or failed to attain any relevant Performance Standards; and

2.3.1.3. include the following information about the Supplier’s Service Level Performance (the “**Performance Data**”):

2.3.1.3.1. Service Level Performance against each of the Service Levels and Key Performance Indicators calculated in accordance with this Schedule C (Performance Standards);

2.3.1.3.2. details of any root cause analyses or investigations into Service Level Default(s) carried out by the Supplier in accordance with section 2.2.3;

2.3.1.3.3. identify whether Eskom is entitled to any Service Credits for the Reported Month; and

2.3.1.3.4. include detailed supporting information in machine-readable form suitable for use on a personal computer.

2.3.2. The Performance Data and detailed supporting information will be classified as Eskom Data, and the Supplier will ensure that Eskom will be able to access such information online (on the Eskom Portal) and in real-time, at any time during the Service Period.

2.3.3. The Supplier will ensure that any Eskom Data contained in a Report which is sent to Eskom outside of a secure network will be sent with appropriate level of encryption and in any case in compliance with the relevant Eskom Policies.

3. SERVICE CREDITS

3.1. Status of Service Credits

3.1.1. The Parties each acknowledge and agree that the Service Credits:

3.1.1.1. are an adjustment to reflect the Supplier’s reduced Service Level Performance as measured against the Performance Standards; and

3.1.1.2. are neither an estimate of the loss or damage that may be suffered by Eskom or the other Service Recipients as a result of a Service Level Default, nor penalties or liquidated damages.

3.1.2. Payment of a Service Credit by the Supplier is without prejudice to, and will not limit, any right Eskom may have:

- 3.1.2.1. to damages or non-monetary remedies at law or under the Agreement resulting from, or otherwise arising in respect of, such Service Level Default; or
- 3.1.2.2. to terminate the Agreement for cause in respect of such Service Level Default.
- 3.1.3. During the first 3 (three) Months immediately following the Service Commencement Date, the Supplier will be required to perform at the following Service Levels:
 - 3.1.3.1. Month 1: Material Default Level;
 - 3.1.3.2. Month 2: Defective Level; and
 - 3.1.3.3. Month 3: Target Service Level.

The ramp-up period of 3 (three) months is intended to afford the Supplier an opportunity to achieve the Target Service Level in month 3 (three). Section 3.3 below will apply *mutatis mutandis* during the ramp-up period.

3.2. Weighting Factors

- 3.2.1. Subject to section 3.2.3, Eskom will apportion Weighting Factors against all or some of the Service Levels. The initial apportionment of Weighting Factors as of the Effective Date will be set out in Appendix C-1 (Service Levels Descriptions). Following the first Service Commencement Date, Eskom may change the apportionment of Weighting Factors in accordance with section 3.2.2.
- 3.2.2. Subject to section 3.2.3, Eskom may change the allocation of Weighting Factors between Service Levels provided that the Weighting Factor for a Service Level is changed no more frequently than once in any 3 (three) month period by providing 30 (thirty) days' written prior notice to the Supplier.
- 3.2.3. In no event will the aggregate Weighting Factors applied by Eskom against all of the Service Levels exceed 200% (two hundred percent) of the At-Risk Amount and no single Service Level will receive an allocation of Weighting Factors greater than 100% (one hundred percent).

3.3. Calculation of Service Credits

- 3.3.1. For each Service Level Default occurring during the Term that relates to a Service Level that has an associated Weighting Factor at the relevant time, the Charges will be reduced in accordance with section 3.3.7, by an amount calculated in accordance with section 3.3.2 (a "**Service Credit**").
- 3.3.2. In respect of each Service Level Default to which section 3.3.1 applies, the applicable Service Credit will be equal to an amount calculated by multiplying:
 - 3.3.2.1. the Weighting Factor for such Service Level; by
 - 3.3.2.2. the Performance Level Multiplier in relation to the Service Level Default in accordance with section 3.3.4; by
 - 3.3.2.3. any Consecutive Failure Multiplier in relation to the Service Level Default in accordance with section 3.3.5; by

3.3.2.4. the At-Risk Amount.

3.3.3. By way of example:

3.3.3.1. the Monthly Charges are R100;

3.3.3.2. the Weighting Factor is 25%;

3.3.3.3. the Performance Level Multiplier is 1.5;

3.3.3.4. the Consecutive Failure Multiplier is 2; and

3.3.3.5. the At-Risk Amount is R15 (15% of the Monthly Charges).

$$25\% \times 1.5 \times 2 \times 15$$

R11,25 (Service Credit)

3.3.4. The "**Performance Level Multiplier**" in relation to each Service Level Default will be determined as follows:

3.3.4.1. where Service Level Performance is below the Target Service Level but above the Defective Level, the Performance Level Multiplier will be one (1).

3.3.4.2. where Service Level Performance is below the Defective Level but above the Material Default Level, the Performance Level Multiplier will be one point five (1.5).

3.3.4.3. where Service Level Performance is below the Material Default Level, the Performance Level Multiplier will be 2 (two).

3.3.5. The Agreement will include further thresholds as provided for in section 6.1.7 below, which Eskom will be entitled to claim as a single liquidated damage, exercise its right to step in in accordance with the Terms and Conditions, and/or terminate the Agreement for cause.

3.3.6. The "**Consecutive Failure Multiplier**" in relation to each Service Level Default will be determined as follows:

3.3.6.1. where there are 2 (two) consecutive Service Level Defaults in relation to a Service Level, the Consecutive Failure Multiplier applicable to the second Service Level Default will be 2 (two).

3.3.6.2. where there are 3 (three) or more consecutive Service Level Defaults in relation to a Service Level, the Consecutive Failure Multiplier applicable to the third and each subsequent Service Level Default will be 4 (four).

3.3.7. Any Service Credits during a Measurement Period will be applied against the first Invoice submitted following the month when the Performance Report showing the Service Level Default is issued by the Supplier (or in the circumstances described in section 3.3.8, applied against the first Invoice submitted by the Supplier following the failure to provide a Performance Report).

- 3.3.8. Where the Supplier has failed to provide a Performance Report in respect of one or more of the Service Levels in any Month, such failure will be deemed a Service Level Default in accordance with section 2.1.4. Eskom will under such circumstances be entitled to a Service Credit in respect of each Service Level that the Supplier failed to report on, equal to the Service Credit which would otherwise be payable by the Supplier in the event of a Service Level Default in respect of the relevant Service Level(s) where the Supplier did provide a Performance Report.
- 3.3.9. In no event will the total amount of Service Credits, in respect of Service Level Defaults occurring during any Month, exceed an amount equal to 15% (fifteen percent) of the Monthly Charges payable for the Services (but excluding the Transition Services) ("**At-Risk Amount**").
- 3.4. Termination Rights for Service Level Defaults
- 3.4.1. Where Service Level Performance drops below the Target Service Level for the relevant Service Level for any 4 (four) consecutive Measurement Periods or drops below the Defective Level for the relevant Service Level for any 2 (two) consecutive Measurement Periods, this will be deemed to be a "**Critical Service Level Default**" and as a result Eskom may at its discretion either exercise its Step-In Right in accordance with the Terms and Conditions, or terminate the Agreement for cause in accordance with the Terms and Conditions.
- 3.5. Exceptions
- 3.5.1. If any Service Level is not achieved in accordance with the relevant Performance Standard and the Supplier demonstrates that such failure is or was directly caused by any of the following events, then such events and the consequential failures will be disregarded for the purpose of calculating the relevant Service Credit (and will be excluded from both the numerator and the denominator for the purposes of calculating whether the Service Level has been achieved).
- 3.5.1.1. a Force Majeure Event to the extent that the Supplier is excused from performing in accordance with the Terms and Conditions; or
- 3.5.1.2. the Supplier's failure to perform is excused in accordance with the Terms and Conditions.
- 3.5.2. In addition to section 3.5.1, where the Supplier can demonstrate to Eskom's reasonable satisfaction that a Service Level Default in relation to the serviceability and/or availability of the Service Levels for WAN access networks are directly attributable to the failure of a Third Party telecommunications provider, such Service Level Defaults will be disregarded for the purposes of sections 3.3.5 and 3.4.

4. CHANGES TO SERVICE LEVELS

- 4.1. Addition, Deletion and Modification of Designations of Performance Standards
- 4.1.1. The methodology provided in sections 4.2 and 4.3, shall be used to add new Service Levels and/or Key Performance Indicators, delete existing Service Levels and/or Key Performance Indicators, or change the designations of the Service Levels and Key Performance Indicators, as requested by Eskom at any time during the Term,

provided that this may only be done following the first Service Commencement Date. All such changes will be documented through the Change Management Procedure and will constitute a Mandatory Change and with the exception of section 4.2, shall not constitute a Price Sensitive Change.

4.2. Adding New Performance Standards

4.2.1. Eskom may add new Service Levels and/or new Key Performance Indicators by sending a written request to the Supplier at least 60 (sixty) days prior to the date that Eskom requires such additional Service Levels or Key Performance Indicators (as applicable) to be effective, provided that Eskom may send such written request (which may contain multiple additions) not more than once in a calendar quarter. The cost of implementing such new Performance Standard, such as new or additional Tools required to measure and report the new Performance Standard, will be agreed in accordance with the Change Management Procedure.

4.2.2. For any new Service Levels and/or Key Performance Indicators requested by Eskom following the Service Commencement Date, in accordance with this section 4.2, the Supplier shall agree on a Service Level or Key Performance Indicator (as applicable) commitment using industry standard measures (e.g., measures provided by third party experts such as Gartner, Forrester, and Hackett) or data from a comparable Service Level or Key Performance Indicator.

4.3. Deleting Service Levels

Eskom may delete Service Levels and/or Key Performance Indicators by sending written notice to the Supplier at least 30 (thirty) days prior to the date that Eskom requires such deletion to be effective.

5. KEY PERFORMANCE INDICATORS

5.1. Introduction

5.1.1. The Key Performance Indicators are, in addition to the Service Levels, included for the purpose of measuring the Supplier's performance of the Services.

5.1.2. The Supplier shall report on the Service Level Performance with respect to the Key Performance Indicators in accordance with section 2.3.

5.2. Improvement Plan for Performance Measurements

5.2.1. Irrespective of whether or not the Supplier commits any Service Level Default with respect to a Key Performance Indicator, the Supplier shall:

5.2.1.1. make available senior representatives of the Supplier to meet Eskom representatives to review and discuss such Service Level Default;

5.2.1.2. provide Eskom with a written plan for improving the Supplier's performance to satisfy the applicable Key Performance Indicator as soon as possible and in any event within 30 (thirty) days of either the Supplier's notification to Eskom of the Service Level Default with respect to a Key Performance Indicator, or the event causing such Service Level Default (which event should have been notified to Eskom);

5.2.1.3. ensure that its senior representatives will be responsible for leading and monitoring the progress of the steps undertaken pursuant to such plan; and

5.2.1.4. the Supplier shall participate bi-annual governance sessions with Eskom and other Eskom Service Providers to review Key Performance Indicators on a coordinated basis, to ensure alignment across multi-vendor environments in accordance with Schedule L (Cooperation Agreement).

5.2.2. The plan prepared by the Supplier in accordance with section 5.2.1 shall be agreed with Eskom (and at Eskom's discretion in accordance with Eskom's pro-forma Service Improvement Plan). The Supplier shall commence implementing such plan immediately following Eskom's approval.

6. TRANSITION, PROJECT AND TRANSFORMATION PERFORMANCE STANDARDS

6.1. Deliverable Credits

6.1.1. The Supplier recognises that its failure to meet a Transition Milestone, a Project Milestone or a Transformation Milestone (each a "**Milestone Default**") may have a material adverse impact on the business and operations of Eskom and that the resulting damage may not be capable of precise determination. Accordingly, in the event of a Milestone Default, then, in addition to any other remedies as may be available to Eskom under this Agreement or at law, Eskom may elect to recover monetary compensation for such failure as calculated in accordance with section 6.1.2, 6.1.3 or 6.1.3.4 (as applicable) ("**Deliverable Credits**").

6.1.2. In respect of Transition Milestones, the Deliverable Credits that Eskom may elect to recover shall be calculated as follows:

6.1.2.1. Each Transition Milestone shall be assigned a weighting between 0% (zero percent) and 100% (one hundred percent) ("**Transition Deliverable Weighting Factor**"), having regard to the relative importance of the Transition Milestone and/or the relative severity of the occurrence of a corresponding Milestone Default, provided that the cumulative total of the Transition Deliverable Weighting Factors for all Transition Deliverables shall be precisely 100% (one hundred percent).

6.1.2.2. The monetary value which the Supplier places at risk with respect to Milestone Defaults in relation to Transition Milestones occurring in any given Month (or part thereof) shall be equal to 15% (fifteen percent) of the Monthly Charges payable in respect of the Transition Services (the "**Transition At-Risk Amount**").

6.1.2.3. The Deliverable Credits for Transition Deliverables for each Month shall be the sum of the Transition Deliverable Weighting Factors of all Milestone Defaults in relation to Transition Milestones occurring in that Month, multiplied by the Transition At-Risk Amount for that Month.

6.1.3. In respect of Project Milestones, the Deliverable Credits that Eskom may elect to recover shall be calculated as follows:

- 6.1.3.1. In each Project plan, the Parties shall list the applicable Project Milestones and define the corresponding acceptance criteria, performance indicators or measurement criteria in order to determine the likelihood of the occurrence of a Milestone Default in respect of each such Project Milestone.
- 6.1.3.2. Each Project Milestone in relation to a particular Project shall be assigned a weighting between 0% (zero percent) and 100% (one hundred percent) ("**Project Deliverable Weighting Factor**"), having regard to the relative importance of the Project Milestone and/or the relative severity of the occurrence of a corresponding Milestone Default, provided that the cumulative total of the Project Deliverable Weighting Factors for all Project Deliverables for each Project shall be precisely 100% (one hundred percent).
- 6.1.3.3. For each Project, the monetary value which the Supplier places at risk with respect to Milestone Defaults in relation to Project Milestones occurring in any given Month (or part thereof) shall be equal to 15% (fifteen percent) of the Monthly Charges payable in respect of the relevant Project (the "**Project At-Risk Amount**").
- 6.1.3.4. The Deliverable Credits for Project Deliverables for each Project during each Month shall be the sum of the Project Deliverable Weighting Factors of all Milestone Defaults in relation to Project Milestones occurring in that Month, multiplied by the Project At-Risk Amount for that Month.
- 6.1.4. In respect of Transformation Milestones, the Deliverable Credits that Eskom may elect to recover shall be calculated as follows:
 - 6.1.4.1. Each Transformation Milestone shall be assigned a weighting between 0% (zero percent) and 100% (one hundred percent) ("**Transformation Deliverable Weighting Factor**"), having regard to the relative importance of the Transformation Milestone and/or the relative severity of the occurrence of a corresponding Milestone Default, provided that the cumulative total of the Transformation Deliverable Weighting Factors for all Transformation Deliverables shall be precisely 100% (one hundred percent).
 - 6.1.4.2. The monetary value which the Supplier places at risk with respect to Milestone Defaults in relation to Transformation Milestones occurring in any given Month, shall be equal to 15% (fifteen percent) of the Monthly Charges payable in respect of the Transformation Services (the "**Transformation At-Risk Amount**").
 - 6.1.4.3. The Deliverable Credits for Transformation Deliverables for each Month shall be the sum of the Transformation Deliverable Weighting Factors of all Milestone Defaults in relation to Transformation Milestones occurring in that Month, multiplied by the Transformation At-Risk Amount for that Month.
- 6.1.5. In the event that Eskom is entitled to recover Deliverable Credits in relation to Transition, any Project and/or Transformation, the amount of such Deliverable Credits shall be deducted from the Supplier's Invoice for the Month following the end

of the Month in which the Milestone Defaults giving rise to the Deliverable Credits occurred.

6.1.6. The Parties each acknowledge and agree that the Deliverable Credits:

- 6.1.6.1. are a price adjustment to reflect the Supplier's failure to meet the relevant Transition Milestone, Project Milestone and/or Transformation Milestone; and
- 6.1.6.2. are neither an estimate of the loss or damage that may be suffered by Eskom or the other Service Recipients as a result of a Milestone Default, nor penalties or liquidated damages.

6.1.7. Payment of a Deliverable Credit by the Supplier is without prejudice to, and will not limit, any right Eskom may have:

- 6.1.7.1. to damages or non-monetary remedies at law or under this Agreement resulting from, or otherwise arising in respect of, such Milestone Default; or
- 6.1.7.2. to terminate the Agreement for cause in respect of such Milestone Default.

Appendix C-1 Service Level Descriptions

[Drafting Note to the Supplier: Service Levels will be inserted here.]

Appendix C-2 Key Performance Indicators

[Drafting Note to the Supplier: KPIs will be inserted here.]