

Schedule E (Governance)

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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 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. **RELATIONSHIP MANAGEMENT**

1.1. Governance Principles

1.1.1. The Parties agree that their implementation of the governance structure and processes set out in this Schedule E (Governance) shall support each Party's performance of their respective obligations under the Agreement, to ensure that:

- 1.1.1.1. the Services are provided in accordance with the Agreement;
- 1.1.1.2. the provision of the Services is regularly monitored, and sufficient information is provided by the Supplier to ensure compliance with the Agreement, and that appropriate timely action is taken to deal with any problems or issues;
- 1.1.1.3. the Services are carried out in compliance with the Eskom Policies;
- 1.1.1.4. both Parties undertake their responsibilities in a timely and professional manner;
- 1.1.1.5. the Services are performed efficiently and are completed within the agreed timescales; and
- 1.1.1.6. the Services are governed by both Parties to be cost effective for Eskom.

1.2. Relationship Aspirations

1.2.1. It is intended that the conduct of the Parties in the implementation of the governance structures and processes contemplated in this Schedule E (Governance):

- 1.2.1.1. supports and reinforces the business objective of satisfying the needs of the Service Recipients;
- 1.2.1.2. reflects commitment at executive levels in both Parties to foster an enduring, mutually beneficial commercial relationship;

- 1.2.1.3. supports a relationship between Eskom and the Supplier that is characterised by trust and openness;
- 1.2.1.4. supports and engenders effective Performance Standards and drives continuous improvement;
- 1.2.1.5. creates a close working relationship at the relevant management levels that stimulates cooperation, collaboration, information sharing and trust; and
- 1.2.1.6. supports a joint continuous improvement culture within both Parties in relation to the Services.

1.3. Cooperation between the Parties

1.3.1. Each Party will:

- 1.3.1.1. cooperate with the other Party as set out in Schedule L (Cooperation Agreement) including but not limited to making information available and providing Approvals (or rejections rather than Approvals), as required in the Agreement within the time periods specified herein or, where no period is specified, the Parties shall provide the requisite Approvals (or rejections) within 10 (ten) Business Days of such Approvals being required; and
- 1.3.1.2. act in a cooperative manner in dealing with the other Party in connection with the Agreement.

1.4. Executives, Committees and Meetings

- 1.4.1. All communications from the other Party concerning this Agreement shall be addressed to the Supplier Executive and Eskom Executive.
- 1.4.2. The Parties will form the joint committees and hold the meetings specified in Appendix E-1 (Committees and Key Management Meetings). In addition:
 - 1.4.2.1. representatives of the Parties will also meet as reasonably requested by either Party; and

1.4.2.2. the Supplier will participate in Eskom's committees and governance forums as reasonably requested by Eskom.

1.4.3. In respect of the committee meetings and other meetings specified in section 1.4.2:

1.4.3.1. Eskom will give the Supplier reasonable prior written notice of Eskom representatives who will attend the meeting;

1.4.3.2. the Supplier's representatives at the meeting will be of equivalent seniority and connection to the Agreement as Eskom's representatives, having regard to the subject matter of the meeting and the Supplier will notify Eskom of such representatives reasonably in advance of the meeting;

1.4.3.3. either Party may, on giving reasonable written prior notice, reasonably request the attendance of a particular individual from the other Party at the meeting and the other Party will use Commercially Reasonable Efforts to ensure that such individual is available to attend;

1.4.3.4. Eskom (or the Supplier, if Eskom so elects) will prepare and circulate in advance an agenda for the meeting and the other Party may add additional items;

1.4.3.5. to the extent practicable, each Party will circulate in advance any reports or documents for consideration at any meeting;

1.4.3.6. for committee meetings, each Party will, to the extent reasonably practicable, minimise changes in its representatives from meeting to meeting;

1.4.3.7. without prejudice to section 4 (Dispute Resolution Procedure), each Party will use Commercially Reasonable Efforts to ensure that its representatives at the meeting will be empowered to discuss, provide such Party's views upon and make decisions in respect of the issues on the agenda;

- 1.4.3.8. within 2 (two) Business Days following the meeting, the Supplier (or Eskom, if Eskom so elects) will prepare a set of minutes accurately documenting the discussions and actions. Any objections to the accuracy of minutes and/or actions should be communicated to the other Party within 2 (two) Business Days following the distribution of the minutes; and
- 1.4.3.9. the other Party's reasonable comments and changes will be incorporated into the minutes, and the final minutes will be subject to the other Party's approval (not to be unreasonably withheld).
- 1.4.3.10. The acceptance of any minutes shall not amend this Agreement. Should the Parties resolve to amend the Agreement in any minutes, such amendment shall be affected through the Change Management Procedure and a duly executed amendment to the Agreement.

1.5. Approvals

- 1.5.1. Approvals, consents, agreement, decisions, directions, determinations, acceptances, requests, commitments or the like that may be given pursuant to this Agreement ("**Approvals**") will not be effective, may not be relied upon by the other Party and will be at the other Party's risk unless:
 - 1.5.1.1. in the case of Eskom, the Approval is given by a committee duly authorised by the Eskom Executive or the designees appointed in accordance with section 1.5.2 to grant such Approvals; or
 - 1.5.1.2. in the case of the Supplier, the Approval is given by a committee duly authorised by the Supplier Executive or the designees appointed in accordance with section 1.5.2 to grant such Approvals.
- 1.5.2. The Eskom Executive and the Supplier Executive will, by no later than 90 (ninety) days of the Effective Date, by giving notice to the other Party, appoint, and change, from time to time, the designees entitled to:
 - 1.5.2.1. give specified types of Approvals pursuant to this Agreement; and/or

1.5.2.2. receive specified types of notices pursuant to this Agreement (or copies of notices), including notices of Approvals.

1.5.3. Any Approvals to be given pursuant to this Agreement will, unless this Agreement provides otherwise, be in the sole discretion of the relevant Party.

1.5.4. Any Approval given pursuant to this Agreement does not by itself constitute a Change to the Agreement.

2. **SERVICE MANAGEMENT**

2.1. Compliance with Policies

2.1.1. The Supplier will comply with the following from the Effective Date (and to the extent that the same issue is addressed by two or more of these policies or procedures, the Supplier will comply with the higher standard):

2.1.1.1. Eskom's policies, procedures and standards and or otherwise provided to the Supplier during the term of the Agreement, as such policies and procedures may be changed by Eskom during the Term ("**Eskom Policies**"); and

2.1.1.2. the Supplier's policies, procedures and standards that relate to the performance of the Services or the Supplier's other obligations under this Agreement (to the extent that they do not conflict with the Eskom Policies or the other provisions of this Agreement) and the Supplier will provide copies of the same to Eskom pursuant to Schedule M (Critical Deliverables).

2.1.2. If Eskom changes the Eskom Policies listed in Appendix E-3 (Eskom Policies) or introduces new standard policies and procedures that are applicable to the Services, then the same will be deemed to be Eskom Policies upon Eskom providing the Supplier with reasonable notice, and a copy, of the same. The pricing impact (if any) of such a change will be addressed in accordance with the Change Management Procedure.

2.1.3. The Supplier Policies will only apply to Eskom or any other Service Recipient in such a way as applicable to the provisioning of the Service. Eskom's acknowledgement of the Supplier's standards shall not be construed in any way as Eskom adopting such standards within its environment.

2.1.4. Changes to the Supplier Policies will not lead to an increase in the Charges.

2.2. Operations Manual

2.2.1. The Supplier will develop an Operations Manual in accordance with and to include the contents as described in the Operations Manual which will comply with the following:

2.2.1.1. the Parties will develop and follow specific procedures during the Term, which are to be set out in an Operations Manual;

2.2.1.2. the Operations Manual will clearly and comprehensively describe the procedures to be used to perform the Services, including the Tools and Equipment used in rendering the Services;

2.2.1.3. the Operations Manual will conform to the Eskom Policies, the Supplier Policies and shall not conflict with the provisions of this Agreement. In the event of any discrepancy between the Operations Manual and this Agreement, the terms of this Agreement will prevail;

2.2.1.4. the Supplier and Eskom will jointly use the Operations Manual to enable close cooperation and communication between the Parties;

2.2.1.5. the Operations Manual will include checkpoint reviews; testing, acceptance procedures; and other mechanisms to enable Eskom to assure the quality of the Supplier's performance; and

2.2.1.6. the Operations Manual will be deemed to be Eskom Data and all Intellectual Property Rights in the Operations Manual will be owned by Eskom.

2.2.2. Following Eskom's approval of the Operations Manual, the Supplier will perform the Services in accordance with the Operations Manual. Until the Operations Manual has been completed and approved by Eskom, the Supplier will comply with the then existing Eskom Policies and procedures relating to the performance of the Services that have been notified to the Supplier.

2.3. Provision of Reports and Information

2.3.1. The Supplier will:

2.3.1.1. comply with the requirements for furnishing reports in the format and frequency stipulated in Appendix E-2 (Reports);

2.3.1.2. furnish any Report not specified in the Agreement and arising from the operational meetings at no additional cost to Eskom, provided that a Report required to be furnished due to a Change to the Services shall be submitted through the Change Management Procedure;

2.3.1.3. promptly provide any additions, changes or deletions to Reports requested by Eskom pursuant to section 2.4; and

2.3.1.4. subject to section 2.3.2, promptly provide Eskom with information about, and answer Eskom's questions in respect of, the Services and other aspects of the Agreement, and/or provide additional *ad hoc* reports, as Eskom may request from time to time.

2.3.1.5. provide its actual costs incurred in performing the Services in terms of

2.3.1.5.1. information about costs that are rechargeable to Eskom (whether as Pass-Through Expenses, a discrete component of the Charges or otherwise);

2.3.1.5.2. cost information to be provided pursuant to Appendix I-1 (Transfer of Assigned Personnel); and

2.3.1.5.3. other cost information expressly to be provided by the Supplier under this Agreement (including through the Change Procedures).

2.3.2. The Supplier will not be obliged to provide information:

2.3.2.1. which cannot be provided under Applicable Law, provided that the Supplier will:

2.3.2.1.1. subject to section 2.3.2.1.2 below, in any event, include in contracts with Subcontractors the right for the Supplier to obtain any information to be provided under the Agreement and provide the same to Eskom;

2.3.2.1.2. ensure that for each of the Service Personnel, the Supplier has the right to disclose relevant Personal Information about them to the Service Recipients, including their identity in accordance with the Agreement; and

2.3.2.1.3. otherwise use Commercially Reasonable Efforts to obtain any consents required to satisfy such Applicable Law or otherwise work with Eskom to identify and then implement a method to provide the same that is consistent with Applicable Law.

unless required by a Regulator.

2.4. Additions, Deletions and Changes to Reports

2.4.1. Eskom may, at any time during the Term and upon reasonable notice, require changes to existing Reports, the deletion of Reports, or the addition or replacement of Reports. These changes shall be made at no additional cost to Eskom.

2.4.2. The Supplier shall assist Eskom in defining the required changes or new reporting requirements and shall promptly implement the necessary reporting measurement processes upon receipt of Eskom's notice.

2.4.3. The Parties shall agree on the start date, intended recipients, and method of distribution for any new, replacement, or modified Reports as part of the definition process.

2.5. Supporting Data

2.5.1. Any supporting data, deemed to be Eskom Data and all Intellectual Property Rights will vest with Eskom, collected or stored by the Supplier which is necessary to validate the contents of any Report shall be retained by the Supplier in accordance with the timescales set out in section 2.7, to allow Eskom to verify any Report and shall be uploaded and made available to Eskom on a secured online portal ("**Service Portal**").

2.6. Documentation and Distribution of Reports

2.6.1. Unless otherwise specified in relation to any Report, all Reports shall be distributed to the relevant Report Recipients on the Service Portal unless required by Eskom in a hard copy format.

2.6.2. The Parties shall agree to the recipient distribution list for all Reports, from time to time ("**Report Recipients**").

2.7. Records Retention

2.7.1. The Supplier will retain Eskom Data and any other records solely to the extent that they relate to the Services or otherwise to this Agreement ("**Records**").

2.7.2. Eskom Data and Records specified in section 2.7.1 will be retained for the timescales required for retention in accordance with relevant Eskom Policies and any Applicable Law. Prior to destroying any Eskom Data or Records following such period, the

Supplier will give Eskom not less than sixty (60) days' written notice and if requested by Eskom, will provide copies of such Eskom Data for further storage by Eskom.

2.7.3. The Supplier will provide Eskom with copies of Eskom Data and Records specified in section 2.7.1 (as requested by Eskom) and will provide access to Auditors in accordance with section 2.8.1.

2.7.4. The Supplier shall not change the format or systems used to store Eskom Data without Eskom's prior written approval. If the Supplier changes the format or system it uses to store Eskom Data, the Supplier will ensure that it retains the capability to recover Eskom Data and Records stored using any previous format or system. Any approved change shall be implemented without additional cost to Eskom and without loss of accessibility, integrity, or completeness of Eskom Data and Records.

2.8. Audit Rights

2.8.1. The Supplier will provide Eskom, Eskom's auditors (including internal, external, forensic and Auditor General's auditors, counsel, compliance, personal financial, IT and security auditors) and Regulators ("**Auditors**") with such assistance as they require for the purpose of performing examinations, tests, audits, investigations or inspections of the Supplier and the Subcontractors (collectively, "**Audits**"), including providing the Auditors with access to any of the following for the purposes of performing Audits:

- 2.8.1.1. any facility or part of a facility at which, or from which, the Supplier or Subcontractors are performing the Services;
- 2.8.1.2. the Equipment, Software and other systems (including networks, firewalls and servers) and IT Infrastructure used to perform or support the Services;
- 2.8.1.3. quality/compliance regarding Service activities and/or supervision;
- 2.8.1.4. the Supplier Policies;

- 2.8.1.5. the Service Personnel, including individuals who were previously Service Personnel and have moved to another role within the Supplier or any Subcontractor; and
- 2.8.1.6. data, records, manuals and other information relating to the Services (including the Records and Eskom Data) or the arrangement of the Supplier's business (such as insurance details and trade body registration) and will provide the Auditor (if requested) with a copy of the relevant parts of any such materials.
- 2.8.2. The Supplier will allow Eskom's and any other Eskom Connected Entities' internal and external Auditors, counsel, compliance personnel, Regulators and other Personnel full rights of access to the items set out in section 2.8.1 on a planned, or unplanned, basis.
- 2.8.3. Audit access will be on reasonable notice for Audits other than the following types of Audits which may be at any time and without restriction:
 - 2.8.3.1. security Audits;
 - 2.8.3.2. if Eskom has reasonable grounds to suspect that fraudulent activity or serious malpractice has occurred, regardless of whether such conduct arises from the actions or omissions of the Supplier or its Service Personnel;
 - 2.8.3.3. if Eskom has reasonable grounds to suspect that an act or omission related to the Services has occurred which, whether or not it constitutes a breach of the Supplier's obligations under this Agreement, would constitute a breach of any Applicable Law, or accounting rule or established standard practice concerning the Service Recipients or the carrying on of a Service Recipient's business;
 - 2.8.3.4. any audit as reasonably necessary to verify compliance with Applicable Law;
 - 2.8.3.5. any audits required for purposes of conducting forensic investigations; or

- 2.8.3.6. regulatory Audits and Controls Audits.
- 2.8.4. Without limiting the data privacy provisions of the Terms and Conditions, the Supplier shall:
 - 2.8.4.1. participate each year in Eskom's annual assessment to evaluate the supplier's ongoing cybersecurity practices;
 - 2.8.4.2. immediately notify Eskom of any actual or suspected cybersecurity or data privacy incident;
 - 2.8.4.3. provide evidence that it has taken steps to remediate the identified vulnerabilities;
 - 2.8.4.4. on a continuous basis perform security testing and remediate the identified vulnerabilities; and
 - 2.8.4.5. provide evidence of compliance with Eskom's cyber resilience and POPIA requirements upon request.
- 2.8.5. Service Personnel may also be required to comply with standard Audits as appropriate to a role they are performing.
- 2.8.6. Subject to section 2.8.7, the Auditors may conduct Audits during the Term and thereafter for a period of 3 (three) years after the end of the calendar year in which the Term expired.
- 2.8.7. The Supplier acknowledges that any Audit required pursuant to section 2.8.3.4 may be conducted for the term specified in the applicable Legislation and Eskom's Policies.
- 2.8.8. Without limitation to section 2.8.1, but subject to sections 2.3.2 and 2.8.9, the Audits may be in respect of:
 - 2.8.8.1. the accuracy of Charges, Invoices and Service Credits;
 - 2.8.8.2. the security (including integrity, confidentiality and availability) of Eskom Data and other Eskom Confidential Information, including inspecting the Supplier's systems that process, store, support and transmit Eskom Data and other Eskom Confidential Information;

- 2.8.8.3. internal controls, risk management and governance of either Party relating to the Services;
 - 2.8.8.4. the performance of the Services including controls, standards, practices and procedures relating to the Services and the efficiency with which the Services are performed;
 - 2.8.8.5. the Supplier Support Systems;
 - 2.8.8.6. disaster recovery, business continuity and backup procedures and systems;
 - 2.8.8.7. the tools and procedures used to measure and report on Service Level Performance;
 - 2.8.8.8. SDL&I and B-BBEE levels of compliance;
 - 2.8.8.9. compliance by the Supplier and the Subcontractors with the provisions of this Agreement; and
 - 2.8.8.10. any other matters required by Applicable Law.
- 2.8.9. Unless otherwise required by a Regulator and subject to sections 2.8.2:
- 2.8.9.1. Audits will be conducted during normal office hours (except with respect to Services that are performed outside of normal office hours) and so as not to unreasonably interfere with the Supplier's performance of the Services or unreasonably interfere with the Supplier's business (other than such interference as ordinarily and necessarily would be expected of a reasonable audit process); and
 - 2.8.9.2. Auditors will comply with the Supplier's reasonable security and confidentiality requirements (including, in the case of external auditors, executing a reasonable nondisclosure agreement with Eskom).

- 2.8.10. Following an Audit:
- 2.8.10.1. the Auditors may conduct an exit conference with the Supplier to confirm facts identified in the Audit (and the Supplier will promptly meet with the Auditors and provide appropriate attendees as requested by Eskom); and
 - 2.8.10.2. if requested by Eskom, the Supplier will comment on, and meet with Eskom to review, the Audit report after it is issued.
- 2.8.11. If any Audit, investigation, or inspection shows that the Supplier is not in compliance with the terms of this Agreement, or any IT industry best practices relating to the Services, the Supplier shall, at its own cost and within the time specified by and agreed with the Auditor, investigator, inspector, Regulator or Eskom (as applicable), take the steps necessary to bring the Services into compliance, or take all necessary steps to rectify such non-compliance immediately in relation to the processing of Personal Information. Where the measures affect Subcontractors, Third Party Suppliers and/or agents, the Supplier shall ensure that those measures are implemented by the relevant Subcontractors, Third Party Suppliers and/or agents.
- 2.8.12. If Eskom requires assistance for any Audits, such assistance will not be additionally chargeable unless the following apply, in which case any Charges will be agreed through the Change Management Procedure:
- 2.8.13. In order to perform such audit support, the Supplier is not able to use Service Personnel who are performing the Services at the relevant time (notwithstanding the Supplier having used Commercially Reasonable Efforts to make such Service Personnel available); and
- 2.8.13.1. Eskom agrees to the use of additional resources, and Eskom, at its option, may elect to waive or delay other Supplier obligations in respect of the Services so that existing Service Personnel may perform Audit support Services.
- 2.8.14. The Supplier will provide Eskom with copies of the Supplier's internal and external audit reports to the extent that such reports relate to the Agreement.

- 2.8.15. The Supplier will ensure that each agreement which it enters into with its Subcontractors permits Audits in accordance with this section 2.8.

2.9. Regulatory Requirements

- 2.9.1. The Supplier will ensure that its Personnel, and/or Subcontractors will, deal in an open and cooperative way with any Regulators carrying out Audits.
- 2.9.2. The Supplier will promptly notify Eskom of any developments which may have a material adverse impact on the Supplier's, or a Subcontractor's, ability to meet the Supplier's obligations under this Agreement, including of any material control weaknesses identified by the Supplier's or a Subcontractor's internal or external auditors.
- 2.9.3. Eskom may provide a Regulator with any information relating to this Agreement that the Regulator requires, including any developments notified to Eskom. The provision by Eskom to a Regulator of any Supplier Confidential Information will be in accordance with the Terms and Conditions.
- 2.9.4. The Supplier will cooperate with Eskom and any Regulator if the same make further enquiries in respect of any developments notified pursuant to section 2.9.2.

2.10. International Standards and Reporting Requirements

- 2.10.1. The Supplier will institute all reasonably appropriate controls in performing the Services, in the Supplier Support Systems and other processes and Tools used by the Supplier to perform the Services and support Eskom under this Agreement as necessary to satisfy the Supplier's and Eskom's obligations under, or in relation to, any Applicable Law and any applicable standards or reporting requirements.
- 2.10.2. The Supplier will, upon the written request of Eskom:

- 2.10.2.1. provide information regarding the systems used in the performance of the Services; and
- 2.10.2.2. co-operate with the independent auditors to conduct, in accordance with the audit rights and cybersecurity obligations set out in this Schedule E (Governance):
 - 2.10.2.2.1. a type I or type II Statement on Standards for Attestation Engagements No. 16, Reporting on Controls at a Service Organization (SSAE 16) report;
 - 2.10.2.2.2. an International Standard on Assurance Engagements No. 3402, Assurance Reports on Controls at a Service Organization (ISAE 3402) report;
 - 2.10.2.2.3. an International Standard on Assurance Engagements No. 3000 (Revised), Assurance Engagements Other Than Audits or Reviews of Historical Financial Information (ISAE 3000) report; or
 - 2.10.2.2.4. any other report required by any Applicable Law or any other applicable standards or reporting requirements;
 - 2.10.2.2.5. conduct a SOC 1 / SOC 2 (Type I or Type II) controls audit, each of the reports and audits referred to in this section being a “**Controls Audit**”, and any accompanying controls review being a “**Controls Review**”.
- 2.10.3. The independent auditors to be used, the scope and timing of the Controls Audit and the form of the report will be determined by Eskom and communicated to the Supplier in advance of the Controls Audit.
- 2.10.4. The Supplier will reasonably cooperate with, and support, the Controls Audit including providing access to the Supplier’s and the Subcontractors’ systems and facilities. Such cooperation will not be additionally chargeable to Eskom.

- 2.10.5. If any audit reveals a material inadequacy or material deficiency in respect of the scope of the audit exercise conducted, the cost of such audit shall be borne by the Supplier.
- 2.10.6. If any financial audit reveals that the Supplier has overcharged Service Recipient by any amount during the period to which the audit relates (as determined prior to the commencement of the audit), then the Supplier promptly shall:
- 2.10.6.1. a) be liable for the costs of the audit exercise; and
- 2.10.6.2. b) refund such overcharges to Service Recipient, together with interest, to be assessed at the Prime Rate (calculated from the date such funds were paid to the Supplier up to the date of refund by the Supplier, both dates inclusive), within 30 (thirty) days of the notification of the overcharge by Service Recipient.”
- 2.10.7. The Supplier will promptly provide Eskom with:
- 2.10.7.1. copies of the Controls Audit report; and
- 2.10.7.2. submit to Eskom a proposed remediation action plan in accordance to section 2.10.8.1, if any, in respect of deficiencies highlighted in the Controls Audit report, within 5 (five) days of the Supplier having received the Controls Audit report.
- 2.10.8. Following a Controls Review, Eskom may require that the Supplier change controls, processes or procedures relating to the Services, or introduce new controls, processes or procedures, where Eskom reasonably believes that the existing systems are deficient. If such deficiency:
- 2.10.8.1. is a result of the Supplier failing to comply with this Agreement, then the Supplier will undertake, as soon as reasonably practicable and in accordance with the Change Management Procedure, any remedial actions or measures required by Eskom. For the avoidance of doubt, the implementation of such measures will not be chargeable notwithstanding that such remedial action may be agreed pursuant to the Change Management Procedure; and

- 2.10.8.2. requires the introduction of a new control, process or procedure, the introduction of same shall be agreed by the parties in accordance with the Change Management Procedure (implementation of such measures may be chargeable as assessed in accordance with the Change Management Procedure).
- 2.10.9. Any Controls Audit report will be Confidential Information of both Parties, provided that:
 - 2.10.9.1. Eskom may provide copies to any of the other Service Recipients and their respective independent auditors, professional advisors and the Regulators; and
 - 2.10.9.2. Eskom Group's auditors may use the report as a contribution to Eskom's attestations under any Applicable Law or any applicable standards or reporting requirements.
- 2.10.10. Notwithstanding the foregoing, Eskom may require that the Supplier changes controls relating to the Services, or imposes new controls, where Eskom reasonably believes that existing controls are deficient.
- 2.10.11. The Supplier will provide copies of any Controls Audits that are performed in respect of any element of the Services (including for other Supplier customers) at no additional cost to Eskom.

3. **RESOURCE MANAGEMENT**

3.1. Systems and Resources

3.1.1. Provision of Systems and Other Resources

- 3.1.1.1. Save for any Eskom Provided Software and any other Materials, facilities, systems and other resources that Eskom is expressly required to provide under this Agreement ("**Eskom Provided Resources**"), the Supplier will provide, as part of the performance of the Services, the Software, Materials, facilities, systems and other resources needed to perform the Services in accordance with the Performance Standards.

- 3.1.1.2. Unless stated as an Eskom Retained Obligation in this Agreement and/or stipulated in the Charges, the Supplier will be financially responsible (and the same will not be additionally chargeable to Eskom) for providing the resources specified in this section 3 or otherwise to be provided pursuant to this Agreement.
- 3.1.1.3. Neither Party will, nor will it purport to, pledge or charge by way of security any Software, Materials, facilities or other resources owned or leased by the other Party that are made available pursuant to this Agreement.
- 3.1.1.4. The Supplier will not use, nor permit any third party (including any Subcontractor) to use, any Eskom Provided Resources for any purpose other than the performance of the Services.
- 3.1.1.5. The Supplier will keep any Equipment owned or leased by Eskom or a Service Recipient that is under the Supplier's or a Subcontractor's control, secure and, for any such Equipment not located at Eskom Sites:
 - 3.1.1.5.1. separate from the Supplier's and third parties' property; and
 - 3.1.1.5.2. clearly identified as belonging to Eskom or the Service Recipient.
- 3.1.2. The Supplier will bear the risk in the following Equipment:
 - 3.1.2.1. any Equipment owned or leased by Eskom or a Service Recipient that is located at the Supplier Site or is otherwise under the Supplier's control; and
 - 3.1.2.2. any Equipment owned or leased by the Supplier or a Subcontractor, whether located at Eskom Sites or elsewhere,
 - 3.1.2.3. and the Supplier will, replace or repair such Equipment if it is lost, damaged or destroyed (for whatever reason) without charge to Eskom or Service Recipient unless such loss, damage or destruction is directly caused by a delictual act of Eskom or such Service Recipient.

3.2. Ownership of Assets

- 3.2.1. Nothing in this Agreement will be deemed to transfer to the Supplier or any Subcontractor any rights, title or interest in any assets (including Software or Materials) owned or leased by Eskom or a Service Recipient.

3.3. Changes to Eskom Provided Resources

- 3.3.1. Eskom may at any time, change Eskom Provided Resources by giving the Supplier 30 (thirty) day's prior notice.

3.4. Cooperation with Eskom and Third Parties

- 3.4.1. The Supplier will cooperate with the Service Recipients and any Third-Party Suppliers, including in accordance with the terms of the Third-Party Co-Operation Agreement. Without limiting the Supplier's obligations in this regard, the Supplier shall ensure the following are complied with:

- 3.4.1.1. permitting access to Eskom and its Third-Party Suppliers to any facilities which are being used by the Supplier to store Equipment used for the Services ("**Facilities**"), where such access is reasonably necessary for Eskom and/or Third-Party Suppliers to perform their work;
- 3.4.1.2. allowing Eskom and its representatives to carry out site visits to Facilities during standard hours of operation; and
- 3.4.1.3. making available to Service Recipients or the relevant Third-Party Supplier (as reasonably necessary for them to perform their work) the following functionality or data taken from the Supplier Support Systems (as applicable):
 - 3.4.1.3.1. logical access to the Supplier Support Systems (including providing accounts on the Supplier Support Systems), in accordance with the Supplier Policies;
 - 3.4.1.3.2. Client-side Software necessary to access the Supplier Support Systems;

- 3.4.1.3.3. integration by Service Recipients and Third-Party Suppliers with the Supplier Support Systems, in accordance with the Supplier Policies; and
 - 3.4.1.3.4. such information regarding the Supplier Support Systems and the Services, including any operating environment, system constraints and other operating parameters, as a person with reasonable commercial skills and expertise would find reasonably necessary for such Service Recipient or Third-Party Supplier to perform its work.
- 3.5. The Supplier will:
 - 3.5.1. develop processes and procedures that integrate with the processes and procedures used by Eskom and its Third-Party Suppliers;
 - 3.5.2. coordinate testing, scheduling and other necessary functions with Eskom;
 - 3.5.3. implement and maintain interfaces between the Equipment and Software used by the Supplier to deliver the Services and the Equipment and Software used by Eskom and its Third-Party Suppliers through the Operational Change Management Procedure; and
 - 3.5.4. attend all meetings where the attendance of the Supplier and a Third-Party Supplier is required, at no additional cost to Eskom.
- 3.6. The Supplier will immediately notify Eskom if an act or omission by Eskom may cause a Problem or delay in providing the Services and work with Eskom to prevent, resolve or circumvent such Problem or delay.
- 3.7. Eskom Facilities
 - 3.7.1. As at the Effective Date, the space allocated for use by the Supplier at specified Eskom Sites together with other resources made available for use by the Service Personnel in performing the Services at those Eskom Sites are listed in Appendix E-4 (Eskom Facilities) (the “**Eskom Facilities**”). Any changes to those Eskom Facilities will be notified to the Supplier by Eskom and where

such change causes an adverse impact on the Supplier's ability to perform the Services at the affected Eskom Site, the Supplier will notify Eskom of the likely impact and the Parties will use Commercially Reasonable Efforts to agree a workaround that minimises the impact of the change, and both Parties agree not to unreasonably withhold or delay any consents or approvals required in agreeing such workaround.

- 3.7.2. Eskom and/or another Service Recipient will permit the Supplier to use, to the extent necessary to perform the Services and subject to the restrictions and obligations set out in this section 3.7.2, the Eskom Facilities, subject always to the orderly and timely vacation of such Eskom Facilities upon completion or Termination of the Services.
- 3.7.3. The right to use space on Eskom Sites in accordance with section 3.7.1 shall not be deemed to create a lease or any relationship of landlord and tenant between the Supplier and Eskom or another Service Recipient, and Eskom or another Service Recipient shall have the right to revoke its permission at any time.
- 3.7.4. The Supplier will use the Eskom Facilities in accordance with all Applicable Laws, Eskom Policies and, if applicable, subject to Eskom or another Service Recipient's leases affecting or relating to the Eskom Facilities and all ground or underlying leases and mortgages, as communicated to the Supplier which may now or in the future affect such leases or the real property of which the Eskom Facilities are a part.
- 3.7.5. Except in relation to Applicable Law and the Eskom Policies, the Supplier's obligations set out in section 3.7.4 above shall only apply to the extent that the Supplier is provided copies of and/or given access to the rules, policies and procedures, requirements and information in advance.
- 3.7.6. When all or part of the Eskom Facilities are no longer required for performance of the Services, the Supplier will vacate the Eskom Facilities or part thereof and make the Eskom Facilities available to Eskom and/or another Service Recipient in substantially the same condition as when the Supplier began using the Eskom Facilities subject to any improvements or changes made by Eskom or another Service Recipient and to reasonable wear and tear given the time elapsed.

3.8. Access to Eskom Facilities

- 3.8.1. Eskom may request that Service Personnel using Eskom Facilities be required to undergo a background check prior to being admitted to any Eskom Facility, in accordance with the Vetting Requirements. the Supplier will comply with any such request.
- 3.8.2. Eskom reserves the right to refuse to admit to its premises any Service Personnel or any other agent of the Supplier whose admission would, at the sole discretion of Eskom (acting reasonably), cause (or be likely to cause):
 - 3.8.2.1. a security and/or health and safety risk;
 - 3.8.2.2. Eskom to be in breach of Applicable Law and/or any Eskom Policies including in respect any site-specific policies; or
 - 3.8.2.3. damage to the reputation of, or result in adverse publicity for, the Eskom Group.
- 3.8.3. If an internal investigation is conducted by Eskom or a Service Recipient, any Service Personnel working or located at an Eskom Facility will be required to cooperate with the investigators and, if necessary, make themselves available for interview. Failure to cooperate may result in Eskom or a Service Recipient directing the individual to leave the Eskom Facility and to be barred from future access to Eskom Facilities.

3.9. Use of Eskom Sites

- 3.9.1. Eskom may relocate or alter any of the Eskom Facilities, or carry-out emergency or pre-planned maintenance, repairs or shutdowns in respect of the Eskom Facilities. Where any of the same affects the Supplier's performance of the Services, Eskom will, or will ensure that Service Recipient will, provide the Supplier with reasonable advance notice (other than in the case of emergencies) and if the Supplier's performance of the Services is prevented then the Supplier's performance of such Services may be excused in accordance with the Terms and Conditions.

3.9.2. the Supplier will:

- 3.9.2.1. use the Eskom Facilities in an efficient and coordinated manner that, unless otherwise approved by Eskom, does not interfere with or disrupt Eskom's normal business operations;
- 3.9.2.2. keep the Eskom Facilities in good order and not commit or permit waste or damage to the same;
- 3.9.2.3. not make improvements or other structural, mechanical or electrical alterations to the Eskom Facilities without Eskom's prior approval (and any such improvements or changes to the same will become the property of Eskom);
- 3.9.2.4. coordinate with Eskom the installation of Equipment at Eskom Sites and not install any Equipment that increases the power, cooling or weight requirements for an Eskom Site without Eskom's prior approval;
- 3.9.2.5. remove and collect any Equipment located at Eskom Sites that is no longer utilised for the delivery of the Services within fifteen (15) days at its cost. Removal shall be coordinated in accordance with Eskom's site-access and safety requirements, and the Supplier shall ensure secure sanitisation of all Eskom data (if any) prior to removal.
- 3.9.2.6. permit Eskom and its employees, agents and representatives to enter into the Eskom Facilities at any time and for any purpose.

4. **DISPUTE RESOLUTION PROCEDURE**

- 4.1. In the event that the Parties, notwithstanding the use of reasonable endeavours to do so, are unable to resolve any dispute between them arising out of or in connection with this Agreement (including, without limitation, any question regarding its existence, validity, interpretation, rectification or termination) (the "**Dispute**"), such Dispute shall be settled in accordance with the procedures set out in this section 4.

- 4.2. Where such a Dispute arises as contemplated in this section 4, either Party (the “**Disputing Party**”) shall within 2 (two) Business Days of the date on which the Dispute arose, give written notice of the Dispute (the “**Dispute Notice**”) to the Eskom Executive where the Supplier is the Disputing Party or the Supplier Executive, where Eskom is the Disputing Party, in accordance with the provisions of this section 4.
- 4.3. The Dispute Notice, which shall be sent to the address of the Eskom Executive or the Supplier Executive (as the case may be) as specified in section 5 (the “**Service Address**”), shall:
- 4.3.1. inform the Eskom Executive / the Supplier Executive of the Dispute;
 - 4.3.2. refer to the reasons for declaring the Dispute; and
 - 4.3.3. describe the nature of the Dispute with sufficient clarity for the Receiving Party to be able to identify it.
- 4.4. Within 2 (two) Business Days of receipt of the Dispute Notice, the Eskom Executive / the Supplier Executive shall be obliged to send a written notice (the “**Acknowledgement Notice**”) to the Disputing Party acknowledging receipt of the Dispute Notice.
- 4.5. Within 3 (three) Business Days of receipt of the Acknowledgement Notice, the Eskom Executive and the Supplier Executive, shall meet or communicate in such a manner expedient to resolving the dispute if it is impractical to meet in person (by way of example via email, video/telephone conferencing etc.) to attempt to settle the Dispute in an amicable manner, within a period of 7 (seven) days after the commencement of the negotiations (the “**Negotiation Period**”). In the event that the Dispute is resolved between the Eskom Executive and the Supplier Executive, the outcome of such negotiations shall be reduced to writing and signed by the Parties.
- 4.6. The Parties agree that while a Dispute is continuing, they shall both continue to perform their respective obligations under this Agreement until the Dispute has been fully and finally resolved in accordance with this Dispute Resolution Procedure and Schedule D (Charges). It is specifically agreed that where the nature of the Dispute precludes compliance, whether in full or in part, with this section, the Party so precluded from performing shall forthwith notify the remaining Party or Parties that it is unable to perform and the reasons therefor. Any Party receiving notice

of an inability to perform in terms of this section may dispute the content thereof, which dispute shall in itself be dealt with contemporaneously with the Dispute.

- 4.7. If the Dispute is not resolved by the Eskom Executive and the Supplier Executive within the Negotiation Period, either Party shall, within a period of 5 (five) Business Days after the last day of the Negotiation Period, and by written notice to the other Party (the “**Mediation Notice**”) refer the Dispute to mediation by 1 (one) mediator appointed in accordance with the remaining provisions of this section.
- 4.8. The Mediation Notice, which shall be sent to the Service Address of the other Party, shall:
- 4.8.1. record the failure of the Negotiation Representatives to resolve the Dispute within the Negotiation Period;
 - 4.8.2. notify the other Party of the identities and details of 5 (five) mediators nominated by the Party sending the Mediation Notice, and request the other Party to, within 3 (three) Business Days of receipt of the Mediation Notice, and by written notice (the “**Mediation Response Notice**”), agree to the appointment of 1 (one) of such nominated mediators; and
 - 4.8.3. advise the other Party of its right to, by way of the Mediation Response Notice, nominate 5 (five) mediators of its own should it object to the nominated mediators.
- 4.9. Should the other Party fail to respond to such Mediation Notice, within 5 (five) Business days of the giving of the Mediation Notice, the other Party will be deemed to have agreed to the use of the first listed mediator as nominated on the Mediation Notice.
- 4.10. If the Parties are not able to agree on the appointment of such mediator, within 3 (three) Business days of the giving of the Mediation Response Notice, either Party shall within 3 (three) Business Days thereafter, by written notice to the other Party, refer the appointment of the mediator to the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead) (“**AFSA**”).
- 4.11. The mediation shall be conducted under the AFSA Rules in force at the time of referral unless the Parties agree otherwise in writing.

- 4.12. Only Persons with the adequate level of skill and expertise in relation to the nature of the Dispute and the scope of the contract shall be appointed as mediators. No person shall be eligible to be nominated or appointed as a mediator pursuant to this Agreement, if such person:
- 4.12.1. is presently or has been in the previous 24 (twenty-four) months an employee or agent of, or consultant or counsel to, either Party or any Affiliate of either Party, or
 - 4.12.2. acted against either Party or any Affiliate of either Party in the previous 24 (twenty-four) months in a litigious proceeding, or
 - 4.12.3. is not in good standing with any professional body that such person is affiliated with, or
 - 4.12.4. is a national of a state with which the domicile of any Party does not maintain diplomatic relations.
- 4.13. The mediation shall be conducted according to the directions of the mediator, and the Parties shall participate in the mediation in good faith and shall respond to all reasonable directions and requests of the mediator in attempting to resolve the Dispute. The costs of the mediation shall be borne equally by the Parties, save where otherwise agreed to in writing by the Parties.
- 4.14. No prior direction, decision, conclusion or recommendation (or similar act) by any Party or the mediator shall be referred to, or used in any subsequent arbitration proceedings, whether in respect of the Dispute or any subsequent dispute which may arise, irrespective of whether or not such subsequent dispute is the same subject matter as the Dispute.
- 4.15. Should the mediation not resolve the Dispute within 7 (seven) Business Days of its commencement ("**Mediation Period**"), either Party shall by written notice to the other Party (the "**Arbitration Notice**") refer the Dispute for resolution by arbitration in terms of the Rules of the Arbitration Foundation of Southern Africa ("**AFSA**") from time to time in force ("**AFSA Rules**"), the then-current rules for expedited arbitration of AFSA (which shall not act as the administrator of the arbitration) shall govern such arbitration;
- 4.16. Any arbitration conducted in accordance with the arbitration provisions of this Dispute Resolution Procedure:
- 4.16.1. the seat shall be in the Republic of South Africa;

- 4.16.2. the arbitration shall be held and conducted in the city of Johannesburg in South Africa;
 - 4.16.3. the arbitration shall be conducted in the English language and all documents submitted in connection with such proceeding shall be in the English language or, if in another language, accompanied by a certified English translation;
 - 4.16.4. the arbitration shall be conducted before 1 (one) arbitrator appointed in accordance with the provisions of this Agreement;
 - 4.16.5. final and binding on the Parties; and
 - 4.16.6. the arbitrators must allocate the cost of arbitration between the Parties to the arbitration in any arbitral award by the arbitrators.
- 4.17. The Arbitration Notice, which shall be sent to the Service Address of the other Party, shall:
- 4.17.1. record the failure of the Parties to resolve the Dispute within the Mediation Period;
 - 4.17.2. notify the other Party of the identities and details of 5 (five) arbitrators nominated by the Party sending the Arbitration Notice, and request the other Party to, within 3 (three) Business Days of receipt of the Arbitration Notice, and by written notice (“**Arbitration Response Notice**”), agree to the appointment of 1 (one) of such nominated arbitrators; and
 - 4.17.3. advise the other Party of its right to, by way of the Arbitration Response Notice, nominate 5 (five) arbitrators of its own should it object to the nominated arbitrators.
- 4.18. If the Parties cannot agree on the arbitrator within a period of 2 (two) Business Days after the giving of the Arbitration Response Notice referral, either Party shall within 3 (three) Business Days thereafter, by written notice to the other Party, refer the appointment of the arbitrator to the Secretariat of AFSA, which shall, as it deems fit, appoint any 1 (one) of the arbitrators nominated by both parties.
- 4.19. Only Persons with the adequate level of skill and expertise in relation to the nature of the Dispute and the scope of the contract shall be appointed as arbitrators. No person shall be eligible to be nominated or appointed as an arbitrator pursuant to this Agreement, if such person:

- 4.19.1. is presently or has been in the previous 24 (twenty-four) months an employee or agent of, or consultant or counsel to, either Party or any Affiliate of either Party, or
 - 4.19.2. acted against either Party or any Affiliate of either Party in the previous 24 (twenty-four) months in a litigious proceeding, or
 - 4.19.3. is not in good standing with any professional body that such person is affiliated with, or
 - 4.19.4. is a national of a state with which the domicile of any Party does not maintain diplomatic relations.
- 4.20. Notwithstanding the AFSA Rules for expedited arbitrations, the arbitrators shall be obliged to provide written reasons for the award or other decision, together with reasons for such decision to the Parties within 14 (fourteen) Business Days after the conclusion of the arbitration hearing.
- 4.21. The Parties irrevocably agree that the decision of the arbitrators in any such arbitration proceedings shall be final and binding upon them, will forthwith be put into effect and may be made an order of any court of competent jurisdiction.
- 4.22. Notwithstanding, Dispute Resolution Procedure, neither Party will be precluded from approaching or accessing an appropriate court of law for interim relief in respect of urgent matters by way of an interdict or mandamus pending finalisation of the dispute resolution process, for which purpose the Parties irrevocably submit to the jurisdiction of the South Gauteng High Court, a division of the High Court of the Republic of South Africa.
- 4.23. The periods for negotiation, mediation or arbitration may be shortened or lengthened by written agreement between the Parties.
- 4.24. This section 4 is a separate, divisible agreement from the rest of this Agreement and shall remain in effect even if the Agreement terminates, is nullified, held to be void or cancelled for any reason or cause.

5. NOTICES

5.1. Unless otherwise provided in the Agreement and this schedule, all notices, requests, statements and other communications required or permitted between the Parties by the Agreement shall be in writing and either hand delivered or sent by pre-paid registered post or facsimile to the address or number within South Africa of the Party concerned set out in section 5.2 or such other address or number as contemplated in section 5.5. No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

5.1.1. if delivered by hand during ordinary business hours, to its physical address in section 5.2, when so delivered

5.1.2. if delivered by pre-paid registered post, to its postal address in section 5.2, 7 (seven) Business Days after posting, subject to proof of posting; and

5.1.3. if delivered by facsimile, upon sending, subject to confirmation of uninterrupted transmission on a transmission report and provided that a hard copy is promptly dispatched to the recipient in the manner provided in section 5.1.1 or 5.1.2.

5.2. The Parties choose the postal and physical addresses and contact details set out below:

5.3. For Eskom

5.3.1. Attention:

5.3.2. Address:

5.3.3. Email

5.4. For the Supplier

5.4.1. Attention:

5.4.2. Address:

5.4.3. Email address:

- 5.5. The Parties choose the physical address set out opposite their names in section 5.2 as their *domicilium citandi et executandi* for all purposes of and in connection with this Agreement. Notwithstanding anything to the contrary herein, a written legal notice or process actually received by a Party shall be an adequate written notice or process, notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.
- 5.6. The Parties record that whilst they may correspond via email during the currency of this Agreement for routine operational reasons, no formal notice or demand which is or may reasonably be expected to be a prelude to a dispute between the Parties may be given by email or by post.
- 5.7. Either Party may change its nominated physical or postal address to another physical or postal address, as the case may be, in South Africa (and not in any other country) or its contact details by giving at least 15 (fifteen) days prior written notice to the other Party.

Appendix E-1 Committees and Key Management Meetings

Each committee and key management meeting will have a chairperson appointed by Eskom.

	Governance Forum	Objective	Key Topics	Meeting Frequency
STRATEGIC	Strategic Supplier Committee	Ensure a healthy relationship and ongoing strategic alignment between parties.	- Resolve escalated issues. - Align business strategies. - Address relationship issues. - Review future roadmaps.	Six-monthly
	Service Integration Management Committee (SIMC)	Oversee effective execution of contracted IT services and integration.	- Review SLA compliance and approve related matters where required. - Handle escalations. - Review service catalogue changes. - Review innovation and improvement opportunities. - Ratify new, amended or retired services and associated KPIs and SLAs. - Address relationship issues. - Escalate unresolved tactical issues to the Strategic Supplier Committee, where required. - Review customer satisfaction.	Monthly
	Contract Management Committee (CMC)	Review, coordinate, and recommend changes to the Master Services Agreement (MSA) and related documents; ensure changes are technically, legally, and financially evaluated before SIMC ratification, if required.	- Coordinate/control all contract changes (additions, changes, deletions). - Ensure changes follow agreed process and governance. - Evaluate technical, legal, and financial impacts. - Allocate expert resources for impact analysis. - Maintain audit trails.	Ad hoc

	Governance Forum	Objective	Key Topics	Meeting Frequency
OPERATIONAL	Change and Release Management Committee	Manage and control changes and safeguard Eskom's IT environment during business changes.	- Oversee IT change requests. - Assess risks. - Review, recommend and/or approve changes and releases in accordance with the applicable change authority.	Weekly
	SLA Performance Review Meeting	Ensure delivery against contracted SLAs.	- Review SLA performance. - Confirm SLA validity. - Recommend corrective actions. - Review SLAs, KPIs and corrective actions.	Monthly
	Weekly Operations Management Forum (WOMF)	Ensure ongoing stability and improvements across services and related infrastructure.	- Review the operational health of services and related infrastructure. - Identify and drive improvement opportunities. - Identify and drive resolution of potential problems and/or issues.	Weekly

Appendix E-2 Reports

As per each service, Eskom shall indicate to the Supplier from time to time the list of reports, formatting and frequency of each report to be provided by the Supplier as per the Terms and Conditions for such service category.

The Supplier shall include in its regular governance reports (i) benchmarking data comparing the Services and Charges against comparable services in the market, and (ii) details of proposed innovations, efficiency initiatives and technology enhancements, including cost-savings opportunities.

Appendix E-3 Eskom Policies

The Supplier shall comply with all Eskom policies applicable, and any amendments effected from time to time.

[Drafting Note: Eskom to supply Eskom Policies relevant to the provision of the Service]

Appendix E-4 Eskom Facilities

[Drafting Note: the Supplier: To be determined during transition and to be incorporated as an annexure.]