

## **SCHEDULE N (Value and Competitiveness Rider)**

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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. VALUE AND COMPETITIVENESS

### 1.1. Benchmarking

- 1.1.1. Eskom will have the right, at any time after the first anniversary of the Effective Date, but not more than once in each Contract Year, to benchmark some or all of the Services (the “**Benchmarked Services**”) in accordance with this section 1.1. A benchmarking exercise includes, without limitation, evaluating the quality, performance and/or Charges of the Services provided by the Supplier against services provided by one or more persons, contractors or entities (other than the Supplier) (“**Supplier Competitor**”).
- 1.1.2. Benchmarking exercises will be conducted by an independent benchmarking service provider from an agreed pool of organisations in the business of providing benchmarking services (the “**Benchmarker**”). The Benchmarker will be jointly appointed and retained by the Parties, and the costs of the Benchmarker will be shared equally between the Parties on each occasion.
- 1.1.3. The Parties will cooperate with the Benchmarker, including, without limitation, making available knowledgeable personnel and pertinent documents and records. The Benchmarker will enter into a confidentiality agreement with each of Eskom and Supplier prior to being provided with Confidential Information of either Party.
- 1.1.4. The Benchmarker will compare the Charges of the Benchmarked Services with those of the Supplier Competitor in accordance with the following:
  - 1.1.4.1. the following factors may be used by the Benchmarker to select and normalise the transactions and organisations:
    - 1.1.4.1.1. volume of Benchmarked Services;
    - 1.1.4.1.2. scope of Benchmarked Services;
    - 1.1.4.1.3. the extent to which this Schedule calls for the Supplier to provide and comply with requirements unique to Eskom;
    - 1.1.4.1.4. the number and geographical spread of the Eskom Sites and Service delivery locations;
    - 1.1.4.1.5. the Supplier’s invoicing model;
    - 1.1.4.1.6. Eskom’s policy and compliance requirements;
    - 1.1.4.1.7. deal shaping factors such as contract duration and contract terms;

- 1.1.4.1.8. service levels, KPIs and service credits applicable to the Benchmarked Services;
  - 1.1.4.1.9. any material difference in the terms and conditions under which the Benchmarked Services and the services of the Supplier Competitor are delivered; and
  - 1.1.4.1.10. such other normalisation factors as the Parties may mutually agree on or identify.
- 1.1.4.2. the Benchmarker will select the representative sample of transactions and organisations, and either Party may propose alternative transactions and organisations, subject to the Benchmarker's written approval; and
- 1.1.4.3. the representative sample will be of a sufficient number and variation as determined by the Benchmarker.
- 1.1.5. The Benchmarker will present its findings in a preliminary report to both Parties. On receipt of the report, each Party will, in consultation with the other, have 10 (ten) Business Days to review, comment on and request changes to the report. The Benchmarker is, however, not obliged to take account of such comments in the final report.
- 1.1.6. The Benchmarker will then compile the final report (the "**Benchmarking Report**"), which will include its detailed findings on, among other things:
- 1.1.6.1. services provided by the Supplier Competitor that are similar to the Benchmarked Services, as well as the service levels, KPIs, service credits ("**SLAs**") and charges ("**Competitor Charges**") applicable to such Supplier Competitor;
  - 1.1.6.2. a comparison between:
    - 1.1.6.2.1. the Benchmarked Services, Charges and the applicable Performance Standards; and
    - 1.1.6.2.2. the services rendered by the Supplier Competitor, the Competitor Charges, and the SLAs;
    - 1.1.6.2.3. recommendations as to increased efficiency by the Supplier in the provision of the Services and decreasing the Charges in relation thereto; and

- 1.1.6.2.4. the way in which the Charges and the Supplier's price structure (and, if applicable, that of the Supplier Competitor) compare with Good Industry Practice.
- 1.1.7. The Benchmarking Report shall, in addition to the findings in section 1.1.6, include recommendations as to the required improvements and acceptable timescales for their implementation, which the Supplier shall consider and discuss with Eskom as part of the performance of the Services. The Supplier shall implement such recommendations in accordance with timescales agreed with Eskom, at no additional cost to Eskom.
- 1.1.8. If the Benchmarking Report shows the Charges of the Benchmarked Services to be greater than the lowest quartile of the comparable charges (the "Target"), the Parties will promptly meet, and in any event within 5 (five) Business Days of the release of the report, to discuss the findings. Eskom will have the right to require the Supplier to implement the Benchmarking Report's findings in the Benchmarking Report (including, without limitation, a reduction in the Charges to meet the Target) and will give the Supplier formal notice to do so. The Supplier will have 20 (twenty) Business Days from such meeting to comply with such notice by Eskom.
- 1.1.9. Any change to Charges or Service components arising from a Benchmarking Report will be implemented by following the Change Management Procedure set out in Schedule F (Change Management) within 15 (fifteen) Business Days of Eskom's notice. Disputes about the calculation or allocation of reductions do not delay implementation of the undisputed portion.
- 1.1.10. If the findings have not been implemented by the Supplier on or before the expiry of the aforementioned 20 (twenty) Business Days, Eskom will be entitled to:
- 1.1.10.1. reduce the Charges for the remainder of the Term in accordance with the findings of the Benchmarking Report, such reduction in Charges to be offset against future Invoices with immediate effect; or
- 1.1.10.2. terminate the Benchmarked Services, or any part thereof, at no cost and without payment of any Termination Charges.
- 1.1.11. For the avoidance of any doubt and notwithstanding any results or recommendations determined or made by the Benchmarking Report, there shall be no upward adjustment to any Charges or any downward adjustment of any Performance Standards as a result of any Benchmarking exercise.
- 1.1.12. Save as otherwise provided herein, the cost of any activities arising from a Benchmarking exercise which are required to be carried out by the Supplier will be for the sole account of the Supplier.

## 1.2. Market Testing

### 1.2.1. Introduction

- 1.2.1.1. The procedure specified in this section 1.2 (the “**Market Testing Procedure**”) will apply to establishing prices for Services and/or Equipment that are capable of procurement on a commodity basis, as determined by Eskom in its reasonable discretion (“**Eskom Designated Item**”).
- 1.2.1.2. Eskom reserves the right, at its option, to apply the Market Testing Procedure from time to time during the Term (whether in addition to, or instead of, Benchmarking, or otherwise).

### 1.2.2. Market Testing Procedure

- 1.2.2.1. The Market Testing Procedure will comprise the following procedure, which will apply separately to each relevant Eskom Designated Item, as the case may be.
- 1.2.2.2. Eskom will issue an RFI (request for information) to a minimum of three suppliers in order to:
  - 1.2.2.2.1. obtain alternative price proposals from the Supplier in respect of the relevant Items; and/or
  - 1.2.2.2.2. gather information through RFI testing on offers or quotes made by other suppliers in the ICT environment marketplace and provide details of these offers or quotes to the Supplier without any obligation on Eskom to disclose commercially sensitive information.
- 1.2.2.3. In considering the data collected under section 1.2.2.1, Eskom will compare the price proposals made by the Supplier, and the offers or quotes made by other suppliers in the ICT environment marketplace, with the Eskom Designated Item.
- 1.2.2.4. The Supplier will have the right to match or improve upon the best price obtained by Eskom.
- 1.2.2.5. Where the Supplier (or its existing Subcontractors) is not able to match the best offer, proposal or quote obtained by Eskom, Eskom may:
  - 1.2.2.5.1. require the Supplier to adjust the Charges applicable to the relevant Eskom Designated Item in order to match or improve upon the best offer, proposal or quote obtained by Eskom;

- 1.2.2.5.2. require the Supplier to enter into a contract directly with the relevant third-party supplier on the terms of the proposal provided by Eskom, in which case such third party will then become a pre-approved Subcontractor; or
  - 1.2.2.5.3. terminate in part or cease to procure the relevant Equipment or Services from the Supplier and directly engage the relevant third-party supplier to perform those Services or provide that Equipment.
- 1.2.3. For the avoidance of any doubt and notwithstanding any results borne out by the Market Testing Procedure, there shall be no upward adjustment to any Charges as a result of the Market Testing Procedure being carried out.
- 1.2.4. Save as otherwise provided herein, the cost of any activities arising from the Market Testing Procedure which are required to be carried out by the Supplier will be for the sole account of the Supplier.

### 1.3. Independent Assessment of Proposed Charges

- 1.3.1. In the event that Eskom, in its reasonable opinion, believes that, in providing a proposal for charges for the performance of a Project or in relation to a Price-Sensitive Change, the Supplier has not taken account of the key principles for determining the Charges for the relevant Project or Price-Sensitive Change (as provided for in Schedule F (Change Management)), then Eskom may return the Supplier's proposal, with a supporting explanation, and require the Supplier to provide a revised proposal.
- 1.3.2. If, notwithstanding any revision by the Supplier pursuant to section 1.3.1, Eskom is unable to accept the proposed level of charges as reasonable and proportionate for the proposed services, then Eskom may refer the matter to an independent assessor to value the proposed Project or Change.
- 1.3.3. The assessor shall be jointly appointed by the Parties, shall have at least 10 (ten) years' experience in valuing IT development services and shall have experience within the financial services industry. The assessor must not have an existing business relationship with either Party.
- 1.3.4. If the Parties are unable to agree on the identity of the assessor within 10 (ten) Business Days after either Party serves details of a suggested assessor on the other, either Party shall then be entitled to request the Chairman of the South African Institute of Chartered Accountants to appoint an assessor who is an accountant of international repute with experience in the valuation of ICT services.
- 1.3.5. The costs and expenses of the assessor shall be borne equally between the Parties.

- 1.3.6. The assessor will present his or her findings in a joint report to the Parties, and the valuation will be binding on the Parties. Based on the binding valuation, Eskom will then elect whether to proceed with the proposed Project or Change.
- 1.3.7. For the avoidance of any doubt and notwithstanding any results determined or recommendations made by the assessor, there shall be no upward adjustment to any Charges or proposed charges as a result of an independent assessment.
- 1.3.8. Save as otherwise provided herein, the cost of any activities arising from an independent assessment which are required to be carried out by the Supplier will be for the sole account of the Supplier.