

SCHEDULE O (HR PROVISIONS)

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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. EMPLOYMENT INDEMNITIES

1.1. Employment Indemnities

1.1.1. The Supplier will indemnify, fully reimburse, and hold Eskom and its Connected Entities, free from liability for all time in respect of any Indemnified Losses, whether arising before, on or after the relevant Services Commencement Date, arising out of:

1.1.1.1. any Claims by, or on behalf of, or any liability in connection with, any Service Personnel relating to his or her employment, or the termination of employment, with a Supplier Employer;

1.1.1.2. any Claims by, or on behalf of, any employee or employee representative arising as a result of, or any liability in connection with, any act or omission of a Supplier Employer in relation to their obligations under the provisions of Section 197 of the Act including any obligations regarding consultation and the giving of information;

1.1.1.3. any Claims by, or on behalf of, or any liability in connection with, any Resigning Employee as a result of a proposed change by a Supplier Employer to the detriment of that Resigning Employee to the terms and conditions of employment or working conditions to apply to that Resigning Employee after the relevant Services Commencement Date;

1.1.1.4. any Claims by, or on behalf of, or any liability in connection with, any Service Personnel relating to his or her employment, or the termination of employment, where that Service Personnel claims or is deemed to become employed by any Eskom Connected Entity by operation of law during the performance of the Services;

1.1.1.5. any Claims by staff of the Eskom Connected Entities or any Third Party arising as a result of, or any liability in connection with, any act or omission of a Supplier Employer or its/their officers, employees, or sub-contractors;

1.1.1.6. any losses suffered by an Eskom Connected Entity or a Successor of the Supplier as a result of a breach by the Supplier of the warranty set forth in Schedule I (Exit Assistance) or the information provided

by a Supplier Employer pursuant to Schedule I (Exit Assistance) being inaccurate or incomplete; and

- 1.1.1.7. if on termination or expiry of this Schedule, or all or any part of the Services, the employment of any Service Personnel is claimed or deemed to transfer to any Eskom Connected Entity or Successor of the Supplier, any liabilities associated with dismissing any Service Personnel (including without limitation salary and benefits until the date of dismissal and redundancy costs) that the Eskom Connected Entity or Successor of the Supplier dismisses within 12 (twelve) months of the date of the transfer or alleged transfer provided that the liabilities for which the Supplier provides the indemnity in this clause shall only be for the period up to the date of the deemed transfer.

2. HR TRANSITION

2.1. Transfer of Transferring Employees

- 2.1.1. The Parties acknowledge and agree that, unless a competent Court finds otherwise in relation to the application of section 197 of the Labour Relations Act 66 of 1995 ("**the LRA**"), the Supplier will employ the Transferring Employees in accordance with the provisions of this clause 2.

- 2.1.1.1. For the avoidance of any doubt, if a competent Court finds that the provisions of section 197 of the LRA apply, then the provisions of section 197 of the LRA will apply in respect of any obligations that the Supplier may have in respect of any employees of the Existing Supplier.

- 2.1.1.2. The Supplier acknowledges that on commencement of the Services:

- 2.1.1.2.1. The Supplier is automatically substituted in the place of the Existing Supplier in respect of all contracts of employment of the Transferring Employees in existence immediately before the date of transfer;

- 2.1.1.2.2. subject to any agreement which the Supplier may reach with any Transferring Employee, all rights and obligations between the Existing Supplier and the Transferring Employees at the time of the Services Commencement Date continue in force as if they had been rights and

obligations between the Supplier and the Transferring Employees;

- 2.1.1.2.3. the transfer does not interrupt a Transferring Employee's continuity of employment and a Transferring Employee's contract of employment continues with the Supplier.

2.1.2. The Supplier will ensure that it engages with the Existing Supplier to ensure that the Supplier and the Existing Supplier reach an agreement on the following issues to facilitate the transfer of the Transferring Employees:

- 2.1.2.1. Arranging the transfer of the Transferring Employees' pension, provident, retirement or similar fund (if necessary);

- 2.1.2.2. A valuation, as at the day immediately prior to the Services Commencement Date, of the following amounts which the Existing Supplier should remain liable for:

- 2.1.2.2.1. The leave pay accrued to the Transferring Employees;

- 2.1.2.2.2. The severance pay that would have been payable to the Transferring Employees in the event of a dismissal by reason of the Existing Supplier's operational requirements; and

- 2.1.2.2.3. Any other payments that have accrued to the Transferring Employees but have not been paid to them by the Existing Supplier.

2.2. Terms of employment after the Services Commencement Date

- 2.2.1. For a period of at least 12 (twelve) months after the relevant Services Commencement Date, each Transferring Employee will be employed by the Supplier on terms and conditions of employment that are on the whole not less favourable than those the Transferring Employee enjoyed, with the Existing Supplier, immediately before the Services Commencement Date.

- 2.2.2. The Supplier shall not terminate the employment of any Transferring Employee for operational requirements during the first 12 (twelve) months following the relevant Services Commencement Date.

- 2.2.3. Nothing in this clause 2 precludes the Supplier from concluding new contracts of employment with the Transferring Employees, provided that such contracts are consistent with the provisions of this Clause 2.

3. SERVICES PERSONNEL

3.1. Use and Compliance of Service Personnel

3.1.1. The Supplier will ensure that:

3.1.1.1. at all times there are an adequate number of Service Personnel to perform the Services; and

3.1.1.2. all Service Personnel:

3.1.1.2.1. are appropriately experienced, qualified, and trained to perform the Services;

3.1.1.2.2. are familiar with the requirements set out in this Schedule;

3.1.1.2.3. will perform the Services with all reasonable skill, care, and diligence;

3.1.1.2.4. have entered into any confidentiality undertakings that are reasonably required by Eskom;

3.1.1.2.5. will cooperate with Eskom Personnel and employees of third parties to the extent reasonably necessary to provide the Services;

3.1.1.2.6. will comply with any policies and procedures reasonably required by Eskom and communicated in advance to the Supplier;

3.1.1.2.7. will comply with the Supplier's obligations under this Schedule; and

3.1.1.2.8. are authorised to perform the Services.

3.1.2. Eskom will incur no additional Charges for any induction training or familiarisation of new or replacement Service Personnel with the then current processes and procedures utilised by the Supplier in performing the Services.

3.1.3. The Supplier undertakes to ensure that the Service Personnel (including the employees or agents of its Subcontractors) do not use Eskom Provided Resources:

3.1.3.1. for the transmission, publication or distribution of any material which is defamatory, offensive, or abusive or of an obscene or menacing character;

3.1.3.2. in a manner which constitutes a violation or infringement of the rights of any person, firm, or company (including but not limited to rights of copyright or confidentiality); or

3.1.3.3. for personal use, except as permitted in accordance with Eskom Policies, and indemnifies Eskom, on its own behalf and on behalf of the members of the Eskom Group, against any and all loss, damage, costs (including its or their reasonable legal costs and expenses), claims and liability resulting from a breach of the undertaking set out in this section 3.1.3.

3.2. Authorisation of Personnel

3.2.1. The Supplier shall comply at all times with the Service Personnel screening requirements used by the relevant member of the Eskom Group, as set out in the vetting requirements in Schedule R (Information Security Requirements).

3.3. Turnover of Personnel

3.3.1. The Supplier will use Commercially Reasonable Efforts to keep the turnover rate of Service Personnel (the “**Turnover Rate**”) to a level that is acceptable to Eskom. If Eskom notifies the Supplier that the Turnover Rate is not acceptable, the Supplier will:

3.3.1.1. report to Eskom on the Turnover Rate;

3.3.1.2. meet with Eskom to discuss the impact of the Turnover Rate; and

3.3.1.3. submit to Eskom a proposal within 5 (five) Business Days for reducing the Turnover Rate, which, once agreed in writing between Eskom and the Supplier, will be complied with by the Supplier.

3.4. Service Personnel Report

3.4.1. The Supplier will send a written report on a quarterly basis to Eskom which is to include the following information:

- 3.4.1.1. a list of Service Personnel;
- 3.4.1.2. the full name and age of each Service Personnel;
- 3.4.1.3. an indication of the job function performed by each Service Personnel;
- 3.4.1.4. the name of each Service Personnel absent due to maternity or adoption leave or due to long-term sickness;
- 3.4.1.5. the period of continuous employment and notice entitlement and any severance payments exceeding statutory requirements that each Service Personnel may be eligible to receive;
- 3.4.1.6. details of all emoluments and remuneration to which each Service Personnel is, or may, be entitled to receive, including base salary, overtime payments and bonus payments and benefits and the Supplier shall provide copies of any such benefit schemes or plans);
- 3.4.1.7. details and copies of all collective agreements applicable to any Service Personnel, including which Service Personnel each such agreement applies to;
- 3.4.1.8. details of the material terms and conditions of employment of each Service Personnel;
- 3.4.1.9. details of all agreements, whether written or oral, which involve recognition of any trade union, staff association, or other employee representative body in respect of any Service Personnel;
- 3.4.1.10. details of the pension benefits and entitlements of each Service Personnel, including the rate of employer and employee contributions if applicable;
- 3.4.1.11. the approximate number of hours that each such Service Personnel works per week; and

3.4.1.12. an explanation of why any individuals who were Service Personnel in the last quarter are no longer providing the Services.

3.4.2. Eskom may within a reasonable time after being provided with a list of Service Personnel which it disputes request proof of, *inter alia*, the information contained under section 3.4.1 above, or any other information that is reasonably required by Eskom to prove the correctness of the Service Personnel list. Such information will be furnished to Eskom within a reasonable time but no longer than 15 (fifteen) days after the request. The Parties will take reasonable endeavours to resolve dispute/s which may arise. However, should the dispute/s not be resolved by the endeavours taken by the Parties, the dispute/s will be dealt with in terms of the Dispute Resolution Procedures set out in Schedule E (Governance).

3.5. Replacement of Service Personnel at Eskom's Request

3.5.1. All Service Personnel performing Services will remain at all times employees or contractors of the Supplier or a Subcontractor, and the Supplier, or Subcontractor (as appropriate) will at all times remain responsible for the payment, and/or withholding, of all salary, benefits, income tax, national insurance contributions and all other costs not included in the Charges, and statutory deductions relating to, or associated, directly or indirectly, with the employment or engagement of such Service Personnel. The Parties agree that nothing in this Schedule will be interpreted to mean that such individuals are employed by, or seconded or personally contracted to, Eskom.

3.5.2. If Eskom notifies the Supplier in writing that Eskom believes that a Service Person is:

3.5.2.1. a threat to the health, safety, or security of any of Eskom Group's personnel, data, or property; or

3.5.2.2. failing materially to fulfil the requirements of section 3.1.1.2 or other requirements of this Schedule, then the Supplier will immediately remove that individual from performance of the Services and will replace that individual in accordance with section 3.5.3.

3.5.3. If Eskom has concerns about the performance of any Service Person, other than for a reason specified in section 3.5.1, Eskom may notify the Supplier in writing specifying its concerns and request that the individual ceases to provide the Services, or some other adjustment is made. After receipt of such notice, the

Supplier will have 2 (two) Business Days in which to investigate the concerns and discuss its findings with Eskom. If, following that period, Eskom still reasonably requires that the individual ceases to provide the Services, then the Supplier will immediately remove that individual from the Services and replace that individual in accordance with section 3.5.3.

3.5.4. Following the removal of a Service Person pursuant to sections 3.5.1 or 3.5.3, the Supplier will promptly replace that individual with another individual and ensure that the replacement complies with the requirements set out in section 3.1.1.2.

3.5.5. Nothing in this Schedule will grant Eskom the right to require the Supplier to terminate any individual's contract of employment or contract with the Supplier.

3.6. Maintaining Personnel Records

3.6.1. The Supplier shall ensure that it keeps proper and updated personnel records of all Service Personnel (including recording length of service, pension details, performance appraisal documentation, trade union membership, disciplinary records and all other personnel records) required to be maintained by Applicable Law.

3.7. Training of Personnel

3.7.1. The Supplier will ensure that all Service Personnel are appropriately and adequately trained to perform the tasks assigned to them, including trained on:

3.7.1.1. Eskom methodologies (where appropriate);

3.7.1.2. Eskom Policies relating to human resources, conduct of personnel and security policies where a Service Person may come into contact with Eskom Personnel or visit Eskom Sites;

3.7.1.3. information security;

3.7.1.4. cyber security threats;

3.7.1.5. data protection obligations under POPIA;

3.7.1.6. any professional accreditation typically required for the Services performed including ITIL and manufacturer's accreditations;

3.7.1.7. the requirements of this Schedule including the Services and the Performance Standards; and

3.7.1.8. the obligations of the Supplier under this Schedule.

4. **KEY SERVICES POSITIONS**

4.1. For purposes of this Schedule, “**Key Services Positions**” means those Service Personnel roles identified by Eskom as critical to the performance, governance, continuity, management, or delivery of the Services, as finalised during Transition and incorporated into this Schedule, as may be amended or supplemented by Eskom from time to time.

4.2. Filling of Key Services Positions

4.2.1. The Supplier will ensure that it fills Key Services Positions as at the Services Commencement Date and for the duration of this Schedule. The list of Key Services Positions will be finalised during Transition which will be incorporated and attached to this Schedule.

4.2.2. Eskom may, from time to time, designate new or alternative Key Services Positions.

4.2.3. The Supplier’s obligations in respect of Service Personnel and Key Services Positions shall continue to apply during Schedule G (Transition) and Schedule I (Exit Assistance) and Supplier shall ensure continuity of Key Services Positions through such phases unless otherwise agreed in writing by Eskom.